

**Why, what, and how? case study on law, risk, and decision making as necessary themes in built environment teaching**

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***Why, what and how? - a case study on law, risk and decision making as necessary themes in built environment teaching***

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**ABSTRACT**

**This paper considers (and defends) the necessity of including legal studies as a core part of built environment undergraduate and post graduate curricula. The author reflects upon his own experience as a lawyer working alongside and advising built environment professionals in complex land remediation and site safety management situations in the United Kingdom and explains how themes of liability, risk and decision making can be integrated into a practical simulation in order to underpin more traditional lecture based law teaching. Through reflection upon the author's experiments with simulation based teaching, the paper suggests some innovations that may better orientate law teaching to engage these themes and thereby enhance the relevance of law studies to the future needs of built environment professionals in practice.**

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## **SUBJECT HEADINGS**

**EDUCATION-PRACTICE INTERCHANGE - DECISION MAKING - LEGAL FACTORS - TEACHING METHODS - RISK MANAGEMENT - SAFETY - ENVIRONMENTAL ISSUES - LAND MANAGEMENT**

### **1. INTRODUCTION**

#### **1.1 The problem**

"Why do we have to learn all this boring law stuff?" - this is a fairly commonly encountered student question in built environment faculties. Many students eventually come to see "why" as their insight into the shaping force of law increases - but for some students it appears to remain something of a mystery right through to the end of their University studies.

In this paper I consider this question from the perspective of an experienced environmental and safety law lawyer who has recently transferred from legal practice to a teaching and research role in a large United Kingdom vocationally oriented University. The paper addresses two themes that arise from this analysis:

*i) **why** include law in the curriculum?* I contend that from a vocational perspective teaching some law to built environment students is a (very) necessary endeavour -

but only if care has been taken to think through **what** that legal content should be; and

*ii) how should the law element be taught?* I tackle this by setting out a case study based upon my own experience of experimenting with simple simulations to embed and reinforce appropriate law skills in a practical manner.

## **1.2 "Built environment" ?**

I use the term "built environment" extensively in this paper. It has become popular in the United Kingdom to use this expression as a short hand to group together all of the professions and disciplines that combine to construct, maintain and manage the urban environment. The expression therefore spans architecture, construction, environmental and civil engineering, surveying and property management, town planning and housing (to name but a few).

I am a new arrival to academic teaching, but have over 15 years of experience in legal practice in the United Kingdom as a lawyer advising built environment professionals on a daily basis in relation to environmental and property management issues - in particular those issues that present risks of cost, loss or liability for those given professional responsibility for constructing, maintaining and managing the built environment.

Primarily I teach surveyors (realtors and land managers) and environmental management students. Both of these subject areas are inherently multi-disciplinary

(as is the case with any project aimed at delivering (or preventing) any physical change in the built environment). Surveying undergraduate programmes necessarily draw across science (civil engineering and construction technology) social science (economics, management) and policy orientated fields (urban planning and housing). Accordingly inclusion of another discrete professional discipline, law, is merely addition to this diversity - the addition of law to the curriculum does not create something new, the curriculum is diverse (and potentially dissonant) even if there is no law content. For example, construction technology and economics require quite distinct aptitudes - which may not be present in equal amounts within each student.

### **1.3 The need for multi-disciplinary forms of training and thinking**

Griffiths (2004), in seeking to explore the novelties of the research-teaching nexus in the built environment domain, characterises built environment as a family of "applied" fields of enquiry and notes that:

"In applied fields, the production and validation of knowledge appears to operate according to somewhat different principles than in "pure" disciplines, such as the natural sciences and humanities." (p712)

(and this comment can equally be applied also to curriculum decisions and modes of teaching and learning in built environment) Griffiths continues, noting the built environment domain's:

"weaker attachment to academic "discipline" identities, a greater emphasis on multi- or interdisciplinary ways of thinking, and a greater emphasis on embedding knowledge in the context of problem solving, policy and professional practice." (p712)

I find this multi-disciplinary "cross section" a stimulating environment to work in, but it should be appreciated that the "mind set" required for each discipline is distinct - and mental drain of the constant "switching" required of built environment students is at times palpable.

However policy makers see a multi-disciplinary character for built environment education as a necessary goal. For example, in 1999 the UK Government's "Urban Task Force" (Rogers 1999) declared a multi-disciplinary approach to built environment education to be essential to delivering urban regeneration:

"Skills and innovation are key to urban management and regeneration. Every urban development project needs well motivated individuals working as part of dedicated multi-professional teams, with clear objectives and easy access to external assistance. This requires a transformation in professional education and training to bring it out of its traditional specialist boxes, to construct a modern urban expert capable of working for the urban renaissance". (p168)

By this view a built environment curriculum needs to provide experience of the array of professional disciplines which the "modern urban expert" must have a

working understanding of (and so that he knows what and when to call upon the "external assistance" that the Task Force urges that he or she be provided easy access to).

But a further challenge remains, even after the curriculum has been designed to provide an economics module, a construction technology module, a law module and so on. If each discipline is represented separately, in self contained modules, then students' experience will still be one based around "traditional specialist boxes".

#### **1.4 The need to integrate law into a multi-disciplinary perspective**

The challenge therefore becomes a question of how teaching and learning within the built environment can move more towards an integrated multi-disciplinary package - one in which issues present themselves "holistically", i.e. without a contextual effect that implies that because (say) an unstable wall is being considered in a law module, only a legalistic appraisal of the topic is called for on that occasion. In professional practice these students will have to balance a number of perspectives that give insight and suggest rival strategies for defining whether that wall is a problem or an opportunity and what to do about it. "Fixing" the wall requires drawing upon and balancing the following perspectives:

- **law:** is there a risk of liability? is it a risk that is sufficiently low to leave to insurance? what contract arrangement would govern the repair works?

- **planning / development strategy:** is the wall protected? Is planning permission needed? How can dealing with the wall synchronise with the development aspirations for the site?
- **construction technology:** how to fix the wall?: what are the feasible options and at what cost?
- **financial planning:** what is the optimum way to structure the spend for dealing with the wall?
- **sustainability:** what could I do with the bricks when I take the wall down?
- **security:** will my site be vulnerable if I take the wall away, and how should I manage that?
- **valuation:** will my site be worth less or more with the wall gone?

But moving to such a holistic form of teaching is a challenge that is easier to state than to implement - necessarily learning and understanding disciplines such as economics or law require the learner to develop a schema, a framework of conceptual understanding of each discipline. Trying to simultaneously (i.e within the same teaching encounter) learn economics and law may make matters considerably more complex - even though that complexity may be a hall mark of "the real world". A degree of sub-division of disciplines into silos for teaching purposes may be unavoidable.

However even allowing for this, designing integrative "moments" into the curriculum in which cross discipline links and perspectives can be drawn together to break away from "silo" thinking is a feasible and desirable objective.



## **2. THE NECESSITY OF LAW IN BUILT ENVIRONMENT CURRICULA**

### **2.1 Law is a necessary subject of study**

Progression within built environment careers tends to see the professional progressing from trainee / internship through specialisation into a particular sub-field followed by onward movement into a managerial (project management or specialist team management) direction.

Whilst noting some exceptions to this linear career path Tremblay, Willis and Prouix (2002) agree that :

"In industrialized nations, an overwhelming proportion of employees, including engineers, work in a bureaucratic context where career advancement is linked to managerial responsibility." (p1)

Within that trajectory the career path of the professional will see them increasingly acting as a manager, drawing upon (i.e. managing) the experience and resources of others rather than their job being centrally based upon their own specialist knowledge. This had been the path taken by surveyors and senior consultants who I met and worked alongside in private practice.

All of these managers needed a working knowledge of:

- **how the law provides a framework within which projects are assembled, financed and performed** - i.e. the fundamentals of contract law, property law and corporate personality; and
- **how the law imposes blame, cost and penalty for error or prohibited activities** - i.e. the fundamentals of the court system, criminal law and regulation, insurance, nuisance and tort.

Some of those managers had a conspicuously greater appreciation of these factors than others. A few could out-pace their legal advisers in relevant fields, but most of the competent ones were content to know the pitfalls, the questions and risk areas which were their trigger to call upon a lawyer (or other adviser). On most occasions those with the greater depth of understanding outwitted those with the more shallow knowledge (although there were some occasions where the manager's deep engagement with the legal side of the project could bog the project down, incurring greater time and monetary costs than those projects managed by an aware, but not "micro-managing" manager).

Ignorance of the law is costly - and can prove fatal to the success of a project or a career. To skill built environment professionals to succeed in their own chosen fields the legal content of built environment education needs to be focussed on instilling a practical understanding of the core frameworks by which projects can be successfully planned and implemented - and that understanding needs to include a healthy dose of legal (and non-legal) risk assessment and management techniques.

In short, the aim of law teaching should not be to train built environment students to be lawyers - but rather to train them to be able to analyse the shaping force of law (shaping in both positive (i.e. chosen) and negative (imposed) forms) and to know when to call in (in the Urban Taskforce's words (Rogers 1999)) the "external assistance".

Built environmental professionals and lawyers are not the same breed. Lawyers are trained to be deeply analytical and pessimistic. Lawyering involves anticipating the worst project outcomes, making provision for them or counselling a client to avoid a course of action that might bring those feared outcomes to fruition. Lawyering is necessarily cautious and conservative. Yet built environment professions must have vision for change, and must weigh the pros and cons in the balance.

In practice, the built environment professional (if acting as client or project manager) must take into account the lawyer's advice - but will not necessarily regard that advice as determinative in all situations. In some situations he may decide to give more weight to another professional adviser's counsel or he may (again rationally) consider that it is appropriate for him to run a risk in pursuit of an overall project gain, one that the individual advisers either cannot see or which they are not trained to acknowledge as valuable. Such "off piste" decisions may be explained by the client to his advisers as "seeing the bigger picture", "taking a view" or "being commercial". The important thing is that the trainee built environment professional knows how to differentiate between legal advice that is a non-negotiable clear signal of a step that must not be taken and legal advice that

is a form of risk management advice which may legitimately be open to "balancing" by the perspectives offered by other professionals or calculated commercial risk taking. The built environment professional needs to know something of the law in order to have a fair chance of spotting legal advice that is off target or lacking in credibility.

### **2.3 How law is taught**

Law is invariably taught by lawyers. Lawyers are the product of legal education (which is shaped by Law Society and Bar requirements about what and how law curricula must be constituted). Legal training in Common Law jurisdictions is also steeped in the reverence of case law and court based law making processes. The net result in legal education is an obsessive focus on the workings and ruminations of the higher (appellate) courts, and the judicial fate of novel and law-forming cases. Legislation gets layered in almost as an afterthought. Matters of policy (and policy forming processes) get little profile at all. Consideration of risk management and options appraisal is alien to traditional forms of law teaching - yet core features of giving and receiving legal advice in the commercial world.

Whilst this schema is the way it has to be in Law Schools for those headed towards legal practice, it is, I believe, a core source of the alienation that afflicts many of the non-law students who are required to study law as part of multi-disciplinary degrees like those in the built environment arena.

It is alienating because the world that it presents is alien both to the current experience of the student and - if they have a view on this yet - to how they expect their role and experiences in built environment professional practice will be. As Atiyah (1995) notes:

"Courts may be central to the way in which lawyers think about the law. But most people have very little actual contact with the courts...the courts are not institutions of central and daily relevance for the ordinary person. On the other hand, there are numerous other institutions which may be much more important to ordinary people" (p76)

Leaving aside Atiyah's proposition that there is such a thing as "an ordinary person" (and who that might be) a very important point is being made here. It is a point that can be echoed by considering the number of contracts that are formed in any jurisdiction each year. Millions probably, if one takes into account every item bought and sold, every fare paid and journey taken, every service purchased and performed. Then add in every obligation owed in Tort - every duty of care arising, every slur uttered, every trespass, every slip, trip and every other collision (social and/or physical) suffered. But how many of those ever result in a dispute?, and of those which do, only a very small fraction will ever reach the courts (and only a tiny sub-fraction of those reach the appellate courts and find their way into law reports).

This view can be evidenced by Beale and Dugdale's (1975) study of the reality of contract forming behaviours of a sample of engineering manufacturers in Bristol,

England. This study found clear evidence of a disjuncture between how contract law assumes business relationships are formed and regulated - and the reality. As Beale and Dugdale observe, there are other rival influences that shape the extent to which formal legal processes are engaged:

"...factors as low risk, mutually accepted norms and duties and various extra-contractual devices may operate to reduce the use of contract law... there is not much scope for using contractual remedies. Lawyers and legal remedies also tend to be avoided as being inflexible; lawyers are thought not to understand the needs of commerce and those firms who had consulted solicitors were not all satisfied. A similar reluctance to use the law was also evident on the planning side." (p46)

My point is that non-law students need to be introduced to law as a framework that subtly (and fundamentally) shapes commercial and professional behaviour - and that disputes (comparatively) rarely (compared to the focus on senior court cases by traditional legal education) ever reach the courts. It is because commercial and professional behaviour is "silently" steered by a general (and vague) awareness of legal pitfalls and structures that most "collusions" (of whatever type) do not lead to wigs, courtrooms and law reports. Everyone (i.e. all the "ordinary people" - the non-lawyers) get on with their businesses, manage risk and deploy legal redress as only one of a number of dispute resolution or profit maximisation strategies. Legal education (to be relevant and therefore non-alienating) for non-law students needs to show how law sits alongside other disciplines and strategies, rather than

maintaining an aloof detachment that suggests that all other disciplines or strategies for dealing with such "collisions" are inferior or ineffective.

If law teaching could focus more on drawing connections with the other disciplines that the students are studying and provide opportunity for the students to experiment making decisions framed around likely professional dilemmas that they will face in practice then the role and relevance of law within built environment curricula will become more authentic, and thereby more naturally engaged with by non-law students. This was my aim in modest innovation that I describe and analyse as a case study below.

I believe there is a further alienating factor. Traditional approaches to law teaching, with their focus upon case law from higher courts, also give students a distorted view of the relative importance of law (as opposed to fact) in the majority of litigation (whether it reaches court or settles at an earlier stage). In many disputes the decision upon whether or not to proceed "to law" is influenced more by concerns that the factual evidence (or expert opinion) necessary to support the litigant's position is simply not present or "fit for purpose" - even if in terms of legal analysis of his rights and obligations he has a very "clear cut case".

To fail to showcase the importance of fact and expert opinion within litigation success or failure is further alienating - and fundamentally at odds with reality. Few cases can proceed without factual and expert input from non-lawyers. An engineering dispute is likely to be as much about defective design and implementation of works (and proving or disproving allegations about who told who

to do what) than about the finer points of negligence, contract or property law. Indeed, in built environment projects it is hard to think of a project dispute which could arise solely because of a "pure" law issue and without the need for factual and expert advice to be engaged at some point in the process of resolving that dispute. Viewed from this perspective law itself becomes intrinsically multi-disciplinary - the law machine cannot operate without the factual and subject specialist inputs of other professions.

In short, revealing to students that they could, in practice, have a core role to play in legal proceedings as witnesses of fact or expert witnesses may paint both a more attention grabbing, and in fact a truer picture of the law than is provided by the traditional case law fare that they are provided with. Such an approach could draw out the inherent uncertainties of litigation by revealing them as being as much about "battles of fact" (i.e. evidence) as about "battles of law".

### **3. THE CASE STUDY**

#### **3.1 The way the game worked**

I constructed a one hour "game" to be played during a formal lecture session in an attempt to innovate part of my teaching to address some of the themes outlined above.

The game consisted of a PowerPoint sequence of text slides (with photographic and map enhancements locating the exercise around a real premises) setting out



a scenario involving the risk management of a derelict factory building at a fictional site awaiting demolition and redevelopment. The game required the learners (approximately 70 students) to collaboratively make decisions upon the scenario, and issues put to them, as the sequence evolved. I pre-selected an able member of the class to act as score keeper and discussion leader.

The choices made by the class determined the "path" taken through the scenario (and therefore which PowerPoint slide they would next travel to - each choice had a number, typing this in "flew" the participants to the selected slide, and the next dilemma to work through). The class had finite resources (10 points for each of the following: money, time and community goodwill). As decisions were taken points would be spent (or otherwise lost: e.g. as "fines"). Accordingly each decision had a cost attached. The unpredictability of third party factors (and life in general) was simulated by use of a dice at various junctures during the exercise. If any of the resources reduced to nil the game was lost. If the total of each resource remained above zero by the end (after play of all nine of the decision requiring events comprising the game) then the game had been "won".

The game required decisions to be taken on issues including:

- whether to remove asbestos
- how to dispose of excavated contaminated soils
- whether to respond to oil pollution caused by vandalism
- responsibility for children playing on the site
- alleged presence of bats as a constraint to demolition

- lead paint exposure by sub-contractors
- occupational health issues arising from rats urine
- safeguarding empty premises against drug dealers and illegal raves
- heritage protection and development consents

25 members of the class were individually (and randomly) given a unique piece of information which was relevant to the decisions that they would face. Some of this was *misinformation* (to simulate the effect of "Chinese whispers", hearsay and partisan positions within the class, as a diverse community of stakeholders). Many of the "titbits" were meaningless on their own - and only became helpful to the group if combined. For example, joining three of the independently meaningless facts together would have revealed that a person claiming to be the leader of a local bat protection group was in fact a fantasist and could be ignored. This character was alleging that bats were present in the building that provided the subject matter of the game. Failure to carefully and collectively evaluate the available information could have resulted in the lady's claim being accepted at face value - with major disruption to the development project whilst a search for the alleged bats was conducted (bats are a protected species in the UK)..

### **3.2 The teaching context**

I contribute a sub-module block of four two-hour lectures to a Final Year module on the Real Estate undergraduate degree course. The aims of the module are to prepare students for the world of practice by introducing them to professional issues and situations which they are likely to encounter in the workplace (primarily

as surveyors, developers and land managers). The module aims to draw the links between their academic studies to date and what (and how) this learning can be applied by them in the workplace after graduation. Accordingly the module is fundamentally concerned with issues of employability (specifically the development of vocational skills).

Approximately half of the class members have in the preceding year been on 12 months vocational placement, and will already have some experience of property management in practice. In addition approximately 10% of the class are part-time students, currently in practice in the surveying profession.

My sub-module explores how risk, liability and regulation impact upon the management and exploitation of the built environment. The game session took place in the final session of my sequence.

My preceding sessions had all been traditional lectures: the structure of the Module - which I had no influence over - did not provide for tutorials or other non-lecture based forms of encounter with this class. The lectures had covered the following themes:

- **introduction to environmental liability risk factors** and tools for identifying and evaluating such factors;
- **liability for land contamination** and legal frameworks for remediation and/or liability transfer;

- **safety and health liabilities within indoor environments** (e.g. asbestos exposure, toxic mould and legionnaires disease liabilities)
- **climate change** - emerging legislation and impacts upon the property industry;
- **the impact of human factors and crime** in causing loss, damage or liability to the built environment (with particular focus upon recreational trespass and metal theft).

Issues representative of each these sessions were built into the "game" session with the aim of reinforcing (through application) the learning of the topics previously covered in the lectures.

### **3.3 The rationale**

The preceding lectures in my sequence had been focussed upon "real world" issues and had been well received, but as lectures, the students were largely passive, with a significant amount of information being transferred to them (in the old style "fill with knowledge" mode). I wanted the final session to:

**i) apply their knowledge:** by giving the students an opportunity to make practical use of what they had (hopefully) learnt through the lectures;

**ii) test their understanding:** by finding out how much the students had actually taken on board from the lectures - and how well they could apply what they have been taught to "real world" decision making;

**iii) learn by experience:** by creating a learning environment in which they could learn by decision taking - the way that they will have to learn (and thereby build "experience") when working;

**iv) acquire new skills:** create a learning scenario that will give them direct experience of the challenge of incomplete information, "Chinese whispers" and (trying) to reach consensus in a large group (the class being an analogue for the multitude of stakeholders and viewpoints that in practice add complexity to even straight forward decision making in development and property management projects); and

**v) illustrate and practically embed a core theme:** by finding a different way to illustrate two core messages that I had been seeking to instil in the class throughout the lectures (but which may be counter-intuitive given the way in which these students have studied law and liability to date on their degree course) - namely that:

- just because a text book, court judgment and/or legislation says that something is wrong or must not be done doesn't mean that it won't happen; and

- just because something "wrong" happens doesn't mean automatically that the perpetrator will be prosecuted (or otherwise incur a cost for it).

In short - I wanted to emphasise that *risk* (i.e. matters of probability rather than certainty) are relevant to the "legal" aspect of property management. Within the exercise this factor was simulated by use of a dice to affect some outcomes, and by flagging within the narrative instances of misinformation and story lines that simply fade out (rather than building to a court case or other event).

In addition to forcing my students to meet and cope with key risk and liability issues likely to be encountered when managing derelict buildings my learning outcomes for the game comprised:

- to show how cumulative decision making can lead to an unintended drift away from the target (i.e. goal) of the project;
- to illustrate the difficulties of decision making via committee (i.e. the entire class);
- to illustrate the difficulty of satisfying all stakeholders all of the time;
- to illustrate the tension between project resources (time, money and community goodwill) and compliance / liability management;

- to show how good / bad "luck" (i.e. probability factors) influence the outcome; and
- to highlight suitable risk management strategies.

### **3.4 Evaluation - learning processes**

The session worked very well. I make this comment based upon both my own impression and feedback received from the class. As this was my final session with them I provided them with a feedback questionnaire to complete (about my entire sub-module, not just the game session). There was a >70% response rate to this questionnaire. The feedback shows that whilst the class all scored my formal lecture sessions highly, they (unanimously) identified the game session as their favourite session overall.

It was clear from the feedback that the group had found the game session both instructional (i.e. they felt that they had gained significant insights through the exercise) and enjoyable.

This positive association between evident learning and a strong emotional experience (in this case enjoyment) maximises the chance of the learning being absorbed to a deep / permanent level. As many learning theories observe - learning is most successful where the learner identifies the relevance, has an emotional response to the task and "learns through doing" - a classic statement of Experiential learning theorists such as Kolb (1984), who sees:

"Learning is the process whereby knowledge is created through the transformation of experience." (p38)

The way in which the game was structured (with the class seeing the consequences of their choices immediately after they made them) also had a link with the Behaviouralist model of "operant conditioning" (Skinner 1954) in which a direct and immediate stimulus / response relationship will instil association and learning by the participant. For example, I noticed that the group's initial "gung-ho" approach to the decisions soon became tempered when they started to realise the consequences (e.g. losing money) of those steps. This led to feedback (i.e. learning) that in turn influenced how decisions were taken subsequently.

As the game session was themed around utilisation of previous learning, and was thus aimed at reinforcement of learning, the event's success may in part have been due to its ability to take existing understanding to a "new level" and/or "helping the penny to drop", thereby moving the learning along Bloom's Taxonomy (Bloom 1956) - from Knowledge and Comprehension into the higher order zones of Synthesis (i.e. an ability to apply the learning to new facts / situations) and Evaluation (i.e. a high level insight into the essence of the issues and their relevance to the learner).

The "peppering" of the class with "titbits" worked well to force random members of the group to contribute. It was clear that some recipients did not reveal their information - but I observed that it did force some "quiet types" to speak out during



the session. As some of those were rather understated in the way that they announced their information I was able in summing up to emphasise that in situations such as a 70 people meeting comments may have to be said loudly, confidently and more than once before they will actually be embedded into the group's collective consciousness.

### **3.5 Evaluation - gameplay, decision making and risk**

In devising the game session I was influenced by my own experience of recreational role playing and computer games - the simple (and fun) end of the "simulation" hierarchy, particularly computer simulations such as Sim City (an urban management simulation). The use of a dice to simulate uncertainty owes its origin to simple board games, the arraying of options (and pathways leading from them) is a hall mark of labyrinth exploration games such as Dungeons & Dragons or the Fighting Fantasy (Jackson 1984) series of "choose your way" game-novels.

Such simulations are very reductive - rendering down the complexity of the real world into simplified variables and choices. Accordingly the simplification felt like a move away from authenticity and validity. However, during preparation of the game I came to realise that it needed to be kept simple in order to be workable (and running the game proved that just nine decision stages will fill an hour). Indeed simplicity and structure may be the key to the participants feeling ready, able and willing to engage with the exercise. As Herz (1997) notes (commenting upon the benefits of Sim City's simplicity and its reductivism):

"Simulations chop up reality into bite-size pieces...all the headaches of an Urban Mayor are simplified and structured so that your mind can parse them...Things fall into nice neat categories...you don't feel helpless because you know the range of possibilities. There are no random forces of destruction...there's a kind of security ...a sense of control and containment that's hard to find in a nonvirtual environment" (p219)

The choice of a "game" format was in part a desire to find a less formal learning situation - and one that would resonate with my students recreational and technological world view. As Prensky (2002) notes, there is likely to be increasing pressure for Higher Education to be delivered in rich multi-media forms which are engaging, entertaining and immersive:

"Students who spend so much of their time playing rich, fun and engaging interactive games will no longer accept or do learning that is painful and boring. And as the military and many businesses have already found, to get students involved in learning we have to inject fun into the process...Great games are about gameplay. Gameplay is all the doing, thinking and decision making that makes a game fun, or not" (pp 7 & 9)

When reflecting on the origins of the game exercise I also realised that my choice was influenced by another formative strand in my own learning: existentialism. I was haunted by a remembered quote from my youth: "you are only truly alive when making decisions". Looking back into this I have found the sentiment very

much originated within John Paul-Sartre's writings but I have not found authorship of that remembered quote. However it is a fundamental tenet of existentialism that:

"We discover our freedom in the act of making choices. Any life situation that forces an individual to become acutely aware that he is making free choices expands his consciousness and enhances his capacity for freedom" (Christian (2005), p262)

and as Albert Camus writes: *"life is the sum of all of your choices"* (Buchanan & O'Connell 2006, p33). Whilst existentialism is concerned with the nature of human existence, its focus upon the centrality of "choice" can be applied to more mundane areas of existence - namely, the success or failure of a project (e.g. looking after a derelict building) will in large part be determined by the choices (i.e. decisions) taken along the way, and the need for taking those decisions cannot be removed. A property manager therefore has to accept this reality and learn the skills needed to deal with this existential dilemma. Ogilvy (2003) in similar vein notes the relevance of existential forms of interpretation to business strategy processes, whilst Buchanan & O'Connell (2006) cite Camus within their review of the history of the study of business decision making.

The game is fundamentally a series of choices (with instantaneous feedback). The class is forced to choose between imperfect options and to suffer the consequences of their choices. Through that process they gain insight and (at least in relation to the management of derelict buildings!) become more alive /

fulfilled / capable human beings. I'm happy with that as an outcome from the session.

The "forcing people to choose" nature of the game also resonates with Kolb's declaration that learning is:

"best facilitated in an environment where there is a dialectical tension and conflict between immediate, concrete experience and analytic detachment"  
(Kolb 1984, p9)

In short - creating a situation where people have little chance to think and have to make decisions in sequence and continuously adjust to receipt of further information and choices, followed by structured reflection (and sense making) at the end of that pressured experience.

### **3.6 Evaluation - authenticity or simplicity?**

The game was conceived as a simplified version of a full blown role play that I have formulated on the same theme for use in Seminars with postgraduate (MSc) students on Environmental Management and Urban Regeneration courses.

The game session took place between two outings of the full role play version. Having reflected on the success of the game and the second outing of the full role play I realise that the game may actually be more effective at "making its point" than the full role play. The full role play runs for 2.5 hours and assigns roles and

personalised briefing on "private" information, goals and attitudes to each participant. It also requires the participants to conduct unique research into different topic areas - so that they each become "expert" (and partisan) on one theme. The role play runs with around 12 participants. A core project team (3 students) has to meet successively with various advisers, regulators, activists and other stakeholders and make sense of the information and viewpoints that they encounter. The exercise ends with the project group having to rank in priority order the actions that they are going to (or not going to) take to address safety concerns about the derelict site.

Reflecting on the two versions of the resource (much of the core information about the site, and risk issues facing it, is the same) I realise that the focussed (i.e. simplified) and decision-forced nature of the game version makes it more hard hitting. Whilst, unlike the game, the full blown role play gives participants insight into the planning and psychology of meetings and the un-structured nature of "real" meetings / decision making and negotiation - its messages are less sharp. In particular the full blown role play does not feature a fixed budget. The resource limits were added to the game at design stage to "make up for" the fact that the lecture theatre environment would not enable the truly "free form" (and more realistic) process to play-out. However I am now going to add a "resource limit" element to the full blown role play to give it more shape.

### **3.7 Evaluation - recommendations**

The game worked better than I had expected - until deployed it had felt like the "poor cousin" of its more grown up older sibling (the "full" role play version). I would now recommend the benefits of a short-sharp and decision-forced game as more suitable than "free form" role play in situations where time is limited and there are core messages that need to be communicated.

As a technique for reinforcing more traditional teaching / subject information the game is a good addition. However teaching subjects like law solely through such games would be very time consuming (both in terms of preparation and delivery). In particular the "density" of information that can be communicated is low (the game features only around 12 discrete points of law).

As a tool, the game offers a way to get learners thinking about the questions they will need to ask in such situations in practice rather than actually teaching them the answers. However this directly matches the reality of their roles in practice - they are not being trained as lawyers, rather they are being trained as professionals who will need to be able to spot situations in which they should prudently seek advice from other professionals. Accordingly the game sits squarely within the student centred learning / learner autonomy model.

The effectiveness of the game method also echoes two contemporary perspectives on teaching and learning, namely:

***i) that learning should be themed around problems rather than subjects*** - for example, for Knowles (1984) adults have a problem-centred orientation to learning

(rather than a subject-centred perspective, something that its characteristic of children). In order to have best chance to facilitate effective learning by adults, adults need to know why something is worth knowing. The argument for this has been made above - but it is worth noting also that, in Knowles view, adult learning may be better able to cope with a non-silo based approach to disciplines than may be the case for pedagogy; and

***ii) that the aim of Higher Education should be to teach students the skills (rather than subject content) necessary for survival in an uncertain and risk laden 21st century*** - Barnett's "supercomplex world" (Barnett 2000) and/or Beck's "risk society" (Beck 2002). Law teaching's contribution to this in the built environment domain should therefore be about providing students with safe and stimulating (and simplified) simulations of the impact of risk, liability and law's ever shifting framework upon situations that they are likely to encounter in practice. There is a limited amount to be gained by seeking to train such students in detail on "what the law is now". I acknowledge that this is only a question of emphasis - not one of paradigm change. Flux has always been a feature of the law, and it has never been the case that Universities could teach law as though it would never change. However a further shift of emphasis from content to skills would be beneficial (a view shared by the UK Government's review of the role of skills training in maintaining the UK economy's competitiveness in the face of globalisation (Leitch 2006)). From this prioritisation, it is hoped, built environment professionals will be borne who can and will then, in the Urban Task Force's words, seek "access to external assistance" because they know how to spot the relevant

risks and to define the appropriate questions - rather than necessarily themselves having the answers.

This returns us to the view, expressed above, that teaching law to built environment students needs to be more focussed upon analytical skills than legal content. However, it is worth noting that many legal educators already consider that their aim is to teach skills rather than subject content. Garrett (1999) has reviewed the subject specific teaching styles and needs within social sciences and law. She notes that law lecturers characterise their teaching approach as focussing upon explaining the concepts and analytical techniques by which the law operates (what Garrett calls "abstraction of meaning") - rather than deploying a vast array of legal "facts" (and therefore ready made answers) to be learnt rote fashion by the students. But, Garrett found that students have quite different expectations of their law teachers - and tend to incline towards a more traditional (and passive) perspective - namely that the law lecturer should be giving "the facts" and/or "the answers". Accordingly moving towards a more holistic and problem centred form of law (and risk and decision taking) teaching requires a leap of faith not just by teachers - but also by their students.

#### **4. Conclusions**

No grand claims can be made for the novelty of the game described in this paper. The use of simulation techniques per se is not an innovation (see for example Tansey 1971) however the use of "in-lecture" simulations is perhaps less common. Seeking to run an hour long game with a full lecture theatre of 70 students who



were very used to traditional lecture based delivery, was something of a leap into the dark. My hope is that the above account would encourage those thinking of trying out a similar exercise.

The other aim of this paper has been to set out a case for building two core features into law teaching on built environment courses:

1. finding ways to showcase the practical and inherently multi-disciplinary nature of law's contribution towards built environment professional endeavour; and
2. to integrate an awareness of risk and uncertainty into legal analysis as taught to trainee built environmental professionals.

As the respected British urban design commentator Charles Landry has observed:

*"The evaluation of everything from a perspective of risk is a defining characteristic of contemporary society. Risk is the managerial paradigm and default mechanism that has embedded itself into how companies, community organisations and the public sector operate. Risk is a prism through which any activity is judged"* (Landry 2005 p3)

Yet whilst liability risk is a core operational issue it is not, in the main, addressed in law teaching in a way that actually skills built environment professionals to make positive judgements about which are beneficial risks to run and which are unwise

or forbidden risks. As Sir Digby Jones, a former head of the UK's business lobby group the Confederation of British Industry (and now a UK Government minister) noted in 2007:

*"Giving young people opportunities to experience, judge and manage risk should be an essential component of their education - not so that they can avoid it, but so that they can seize opportunities and benefit from them as they mature into the next generation of citizens and wealth creators" (Jones 2007).*

Law teaching often presents the law as a settled body of "thou shalt not" commandments, with scary "there but for the grace of god go I" case law examples of fellow professional pathfinders who have fallen into a liability trap. By this route law = fear. The reality in the world of practice is that law is less certain, but also that law is more multi-disciplinary and facilitative. Yes, law teaching needs to be about encouraging an awareness of pitfalls and techniques for transferring risk to others, but it is also a core, embedded part of a wider collaborative managerial and project design processes that builds and delivers things, often without dispute. If more of that part of the picture can be communicated in law teaching fewer students may find it difficult to grasp the point of law, and as law educators we will contribute more towards the delivery of urban renaissance.

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