The loose cannon syndrome: University as business & students as consumers

Damien Considine

University of Wollongong

Abstract

This paper will draw distinctions between legal obligations imposed on universities with the task of being supervised and policed by each university, and those which are requirements of individual students, who are required to achieve the required academic results. The relationship between a loose cannon and the requirements of nature just and procedural fairness, both of which impose obligations and potential liability on both universities as institutions and staff as individuals. Until each and every employee understands their role, their functions and their powers (including the correct exercise of discretion in exercising their powers), then universities will have failed to take all possible steps to not only secure their legal position, but to also avoid employing a loose cannon.

If universities are increasingly seen as businesses, and if students are increasingly seen as the consumers of services provided by universities, then the legal consequences of the business/consumer relationships need to be addressed.

University and regulation

Universities have had no difficulty in adapting to a regulatory environment and have become a prominent part of the corporate culture. Examples may be drawn from occupational health and safety legislation, from anti-discrimination law and from various other laws (such as the Co-operatives Act) which will enable the establishment of necessary systems for that law, in the absence of any requirement to do so.

What is required is an appreciation of the extent to which a university's ethos, its policies and processes have failed to adapt to a new culture of regulation. If each piece of regulatory legislation is looked at and implemented in isolation, then an over-regulated environment will be the result. Universities must remain vigilant to ensure that the legal requirements are met, and that no individual employee is left without being required to take all possible steps to not only secure their legal position, but to also allow the employee to secure their legal position.

The student as a consumer

There are two areas of particular concern in the context of university regulation: the regulation of a relationship: the relationship between the student and the university. The practical consequence to such a definition may vary from one university to another.

Several universities have "Mission Statements" or a statement of goals and ideals of the university. However, the practical consequence to such a definition may vary from one university to another.

Many universities have "Mission Statements" or a statement of goals and ideals of the university. However, the practical consequence to such a definition may vary from one university to another.

The university as business & students as consumers

What is required is an appreciation of the extent to which a university's ethos, its policies and processes have failed to adapt to a new culture of regulation. If each piece of regulatory legislation is looked at and implemented in isolation, then an over-regulated environment will be the result. Universities must remain vigilant to ensure that the legal requirements are met, and that no individual employee is left without being required to take all possible steps to not only secure their legal position, but to also allow the employee to secure their legal position.

The student as a consumer

There are two areas of particular concern in the context of university regulation: the regulation of a relationship: the relationship between the student and the university. The practical consequence to such a definition may vary from one university to another.

Many universities have "Mission Statements" or a statement of goals and ideals of the university. However, the practical consequence to such a definition may vary from one university to another.

The university as business & students as consumers

What is required is an appreciation of the extent to which a university's ethos, its policies and processes have failed to adapt to a new culture of regulation. If each piece of regulatory legislation is looked at and implemented in isolation, then an over-regulated environment will be the result. Universities must remain vigilant to ensure that the legal requirements are met, and that no individual employee is left without being required to take all possible steps to not only secure their legal position, but to also allow the employee to secure their legal position.

The student as a consumer

There are two areas of particular concern in the context of university regulation: the regulation of a relationship: the relationship between the student and the university. The practical consequence to such a definition may vary from one university to another.

Many universities have "Mission Statements" or a statement of goals and ideals of the university. However, the practical consequence to such a definition may vary from one university to another.

The university as business & students as consumers

What is required is an appreciation of the extent to which a university's ethos, its policies and processes have failed to adapt to a new culture of regulation. If each piece of regulatory legislation is looked at and implemented in isolation, then an over-regulated environment will be the result. Universities must remain vigilant to ensure that the legal requirements are met, and that no individual employee is left without being required to take all possible steps to not only secure their legal position, but to also allow the employee to secure their legal position.

The student as a consumer

There are two areas of particular concern in the context of university regulation: the regulation of a relationship: the relationship between the student and the university. The practical consequence to such a definition may vary from one university to another.

Many universities have "Mission Statements" or a statement of goals and ideals of the university. However, the practical consequence to such a definition may vary from one university to another.
Advertisements intended not to be carefully noticed, but rather to produce or induce purchases of goods or services.

The following general points should be noted:

(a) engaging in conduct includes the doing or failing to do anything

(b) is in relation to s. 52, intend to mislead or deceive, or whether the information, advice or conduct was honestly given

(c) is in relation to s. 53A, being a criminal provision, it is necessary to prove that the offence is beyond reasonable doubt — there is no need to prove mens rea or intention, so that even if the person making the statements believed it to be true, it is not a defense

(d) silence may, in itself, constitute misleading or deceptive conduct — this creates a de facto obligation, when providing advice or information which would reasonably be required given the circumstances of the case

(e) all that need be proved is that conduct was likely to mislead or deceive, not that conduct actually misled or deceived; and

(f) disclaimer clauses, exclusion clauses and qualifying clauses will have no effect, per se, on the question of whether the conduct complained of was misleading or deceptive.

Given these statements of the law, and some of the principles on which those rules are interpreted, it is clear that universities need to act to ensure compliance. Regardless of whether the institution is located in a liberal or restrictive legal environment, the credibility and reputation of the institution itself will suffer.

Universities provide an enormous range of conduct where the possibility of misleading or deceptive conduct exists. One of the most significant areas of concern must be the area of the universities' personnel policies and practices. A number of anecdotal and compelling evidence, some qualitative, indicates the degree of emphasis in which it may be styled hard work recruiting. As one participant has indicated:

"In my experience, second-hand car salesmen are models of good practice when compared with the representatives of some UK universities and politicians."  

How often do universities offer free or reduced-price services to overseas students and their families? Did they find it easy to provide both information? How many colloquial adjectives, some of which may be ambiguous, are in the university's syllabus? What is the role of the individual university in the context of education? For example, the dedication of various universities to publishing their graduates is not available in the university's syllabus. Why? What are the implications of this?

Many universities have established policies and procedures for handling complaints from students. A number of these issues have been raised in the context of the role of universities in the education of students who have had complaints. It is important to note that the nature of the complaint may be a significant factor in determining whether the university has acted inappropriately. An understanding of the nature of the complaint is necessary in order to determine whether the university has acted inappropriately.

In determining whether a university has acted inappropriately, the nature of the complaint is important. Determining the nature of the complaint is important in order to determine whether the university has acted inappropriately. The nature of the complaint is important in order to determine whether the university has acted inappropriately. Determining the nature of the complaint is important in order to determine whether the university has acted inappropriately.

The nature of the complaint is important in order to determine whether the university has acted inappropriately. Determining the nature of the complaint is important in order to determine whether the university has acted inappropriately. Determining the nature of the complaint is important in order to determine whether the university has acted inappropriately.

Conclusion

Universities, through their internal staff training departments, typically use a variety of techniques to increase the awareness of legal issues and to reduce the risk of reputational damage. One of the most basic units of knowledge with which to carry out a designated function is the current procedure for dealing with the subject of national and international law. This is a summary of the main issues. The law has now developed to a point where it may be accepted that there is a common law duty to act fairly in the course of performing duties or exercising powers, but the nature of this duty may be determined by administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention."
Apart from the moral or ethical obligations to assure that law is adhered to, there are significant practical considerations for doing so. In an era of increasing competition to provide undergraduate and postgraduate education to domestic and international students, productivity and success play an important role. Academic performance is used as a measure of the quality of the educational system and its impact, the first step in a continuous process of self-assessment.

References
4. The following references may be useful in the area of consumer protection in general, and satisfying and dispute-resolution in particular.
10. Although see generally Golding, Sofrasin & Coady, ibid.
11. Student Protection Act 1990 (Cth) ss 35 & 44.
15. eg. Fair Trading Act (NSW) 1987, s 41.
17. In NSW, for example, TPA s 5.22 corresponds with TPA s 45.
18. TPA s 87.
19. TPA s 86.
22. For example, "The Bread and Buttermilk case" in Administrative Law, Street & Maxwell, London, 1983.

In a recent article in the Australian Universities Review, Coady and Miller (1993) argue that the functions of Australian universities are ill-defined, and that debate concerning the role of tertiary education suffers from a lack of theoretical precision. They propose a modern conception of the university based on a re-examination of John Henry Newman's seminal work. Specifically, Coady and Miller argue that the university is required to have the primary role of providing and disseminating new knowledge and the cultivation of students' intellects, and a utilitarian purpose for the fostering of personal skills and competencies contributing to economic growth, are not incompatible (as Newman himself acknowledged).

Coady and Miller's position is well-taken; Newman's consideration that "the true and adequate end of a university...is thought or research exercised upon knowledge" (cited in Tolkey, 1979, p 25) does not disclaim the ability of such an end, especially with regard to economic productivity. It is suggested that the "exercise of reason", or commonly, critical thinking is more important than ever in today's world, where the emergence of new knowledge and the cultivation of students' intellects, and a utilitarian purpose for the fostering of personal skills and competencies contributing to economic growth, are not incompatible (as Newman himself acknowledged).

Coady and Miller's position is well-taken; Newman's consideration that "the true and adequate end of a university...is thought or research exercised upon knowledge" (cited in Tolkey, 1979, p 25) does not disclaim the ability of such an end, especially with regard to economic productivity. It is suggested that the "exercise of reason", or commonly, critical thinking is more important than ever in today's world, where the emergence of new knowledge and the cultivation of students' intellects, and a utilitarian purpose for the fostering of personal skills and competencies contributing to economic growth, are not incompatible (as Newman himself acknowledged).

Coady and Miller's argument is that the function of the university is to provide a higher level of thinking as measured by standard and non-standard tests both (Kock, 1992; Cobb et al, 1991). Students enjoy learning in a constructivist classroom (Hand, 1988; Haed, Logiey & Bakum, 1991), and perceptions and attitudes toward the subject concern (Cobb et al, 1992; Heid, 1992). Coady and Miller argue that constructivist teaching methods are Fundamentally on the basis of providing opportunities to students to explain and evaluate their ideas (in discussion eg. Cobb et al, 1991; Yakkel, Cobb & Wood, 1992; Driver & Oleson, 1980). Recent advances in constructivist teaching methods (K Dick & Stahberg, 1990), whereby, for example, students participate in small group discussion to achieve a consensus with respect to specific issue (Johnson & Johnson, 1998), are consistent with constructivist and constructivist teaching methods. Significantly, Newman's view is that a university must be a "place where, by familiar intercourse and for the sake of intellectual pace... (people can) adjust together the claims and relations of their respective subjects of investigation. They learn to respect, to understand, to entertain each other" (cited in De Lacy & Morris, 1990, p 1(R) emphasis added). Newman's original vision agrees with an emphasis by modern constructivist students' "learning" understanding and collaboration during discussion and problem-solving (eg. Cobb et al, 1991; Yakkel, Cobb & Wood, 1992), and receives support indirectly from recent research.

Specifically, Kock (1992) evaluated the effectiveness of constructivist teaching strategies in teaching a remedial tertiary mathematics. In a study of remedial tertiary mathematics, students who received constructivist experience demonstrated significant improvement in test scores 15-20% greater than students in the experimental group. Students in the experimental group performed on post-test means between control group classes and the experimental group, their performance was significantly different at the 0.001 level.