

OCCASIONAL ADDRESS

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Congratulations to you all.

There must have been times when you thought the stress, exams, assessments and assignments just were not worth it ...

But you stuck it out and I admire you for it.

Whichever degree you have completed – there will be times when it is actually useful!

You might be working in a bar - as you do when you've got a top degree and don't know exactly what you want to do – or doing work experience in an effort to get that graduate traineeship – or whatever...and there'll be a little flashes of ...

“ Oh yeah I GET it” or “Oh NOW, that makes sense ...”

For me - because I did Arts – English and politics (In those day there were no communications or journalism degrees) it's that flash of recognition that takes me back to a book I would never have read properly if I had not been forced to, or a system of government I realise I understand better than my mates who studied, say architecture – in China or in Japan.

When my degree has not been of direct vocational assistance, it has been a tremendous assistance in my DAILY life. It has helped me understand, and take joy in, experiencing the world around me.

So when you are out on the job market despairing about getting paid less than you did as a bar tender, or seeing your mates flying high in a merchant bank. Know this. All that study, all the angst - will have been worth it.

I have been lucky enough to do a number of things in my professional and community life, and so will you. A journalist in Australia and in Latin America, in print, in radio and in television; an editor; a farmer.

I have sat on lots of Boards of very diverse organisations. I have been a union president, Chair of an International aid organisation, director of the National Art Gallery and one of the most contentious of them all, a director of the NRMA.

The NRMA was one of the earliest fights for ETHICAL governance in business in Australia. It was before the HIH scandal and before the Coles battle and before the National Australia Bank.

The NRMA played out all the big ETHICAL issues and they were tough to wrestle with. And it's the ethical issues in our professional and community lives I would like to talk about a bit today.

I had to deal with my - and others' ethics - or lack of them, as well; in my own business (which is now pejoratively described as spin doctoring). Would I do this for that organisation? Would it be ethical for me to do? Would it be ethical to ask my staff to do it? Did my prospective client behave ethically? For fifteen years my company worked in public affairs or public relations – trying to do it ethically and in the public interest. I stress TRYING because it isn't always easy and you don't always succeed.

In the business lives you may well pursue, you too will have to face questions of ethics.

May I tell you a little of what I am working at present, for it deals in a very direct way with business and ethics.

At the moment I am working on behalf of asbestos victims, to force James Hardie Industries to pay the compensation thousands of people dying from exposure to their products, are due.

James Hardie was Australia's biggest manufacturer of products containing asbestos.

What used to be called fibro contained asbestos and was made by the James Hardie company. It was an economic, effective but deadly building material that before 1983 was in two thirds of all Australia's housing.

And asbestos was used in brake linings, it lagged pipes, it insulated. It was a very useful fibre – but it can kill people.

Asbestos was not completely prohibited in Australia until the very last day of 2003.

James Hardie has not been using it in its products for decades, but the deadly cancer that exposure to even the tiniest amount of the fibre can create, can take twenty to forty years to develop. So people who worked with it or were exposed years ago are getting sick now.

It had been known to cause illness and death since the 1930s, yet the company went on manufacturing it, put no warnings on its products and made millions and millions of dollars from it.

In 2001 it decided to restructure its companies for - quote "tax" reasons and moved its headquarters to the Netherlands. It set up a Foundation in Australia, to provide for the compensation victims were being awarded in the Courts. It said around \$300 million was enough to pay all current and future claims. And then in addition it had more than a billion dollars backing it in shares that could be accessed by the Foundation.

Victims' groups, unions and lawyers said the \$300 million wasn't enough. But the company said it was.

The Supreme Court let the arrangement go ahead.

Later the shares that the Court was told the Foundation could call on, were cancelled by the company.

The Court was not told, neither was the stock exchange nor the community. There was no legal requirement, said the company for it to notify the changes.

So the Foundation on which the victims were relying, had nothing but what was left of the \$300 million, and it was likely to have run out of funds by 2007. And it has no access to the billions of dollars James Hardie holds in its, now, overseas companies. Even though much of its wealth was built on its Australian activities.

There will be increasing numbers of victims until at least 2020. By then numbers are estimated to be around 53,000 with asbestos related disease in Australia alone. More than 600 people died last year. In the developing world, 100,000 die each year.

(Interestingly directors of the Foundation had previously been directors of James Hardie, so should have understood what was going on. And it is worth noting that the new Chair of James Hardie in Australia, has been on the Board of James Hardie for more than twelve years. So she should have known what the ramifications might have been, too.)

You may have seen the media coverage of this over recent months.

The New South Wales Government, to its credit, established a Commission of Inquiry which revealed both the cynicism and effectiveness of the manoeuvre.

However, Commissioner Jackson QC has said what has happened was appalling, but probably **not illegal**, and that in any case legal action to get at the money would be so long and expensive ...

His report alleged the CEO's conduct was misleading and deceptive.

He said "the notion that the holding company would make the cheapest provision thought marketable in respect of those liabilities so that it could go off to pursue its other more lucrative interests insulated from those liabilities is singularly unattractive. Why should the victims and the public bear the cost not provided for?"

The company, it seems, has behaved legally.

Has it behaved morally? Has it behaved ethically? I say NO, but the company sees things differently. And so it seems does the market. Deutsche Bank said "James Hardie... no legal obligation – up grade to buy" when the report came out last Tuesday.

When you are diagnosed with mesothelioma - one of the cancers caused by exposure to asbestos dust - you generally have about 150 days left to live. Your death is agonising, every breath you take creates searing pain, but of course the life force within you makes you take that dreadful breath.

Asbestos has been known to cause this disease for nearly 70 years.

Yet the products were being manufactured and sold in a relatively affluent Westernised democracy.

Shame on us. And shame on them. But it is, most probably, LEGAL.

A lot of the governance discussion around corporate behaviour concentrates on legality. How to make sure you abide by the law.

Is that enough? No! I say. But how does an organisation determine what is right and wrong?

The easy thing to do is argue that the primary responsibility is to our shareholders, and that is best measured by the financial value we can deliver. Stay within the law and we have done our duty.

The bottom line is about money, not about life or death, not about decency, not about ethics.

Would you work for a company like that?

There is no doubt it is profitable enough to fund the compensation. Despite no longer using asbestos it is very successful in the US. It is worth billions.

Would you own its shares?

What would you do if you were a director?

And that brings us to another rub. Directors' duties. Much is made of them at the moment. But what do you do if you disagree with a decision of the Board?

The convention is like that of the Cabinet in the Westminster system. Solidarity. You fight it out behind closed doors and if you fail to persuade your colleagues, you put and shut up.

If you don't like that you resign, but you still shut up.

In some, certainly not all cases, I don't think that is ethical. I don't think that is moral.

But what should those Hardies directors have done? Should they have demanded better advice from management? How would they know they were not getting the best advice?

And even if they were able to get differing advice, if they were in the minority, what should they have done about it?

In my view, in an issue of such great public importance and of such great moral weight, they should have stood up, spoken up and taken the consequences.

Whether they face opprobrium from their colleagues, derision from the rest of corporate Australia or hefty legal actions.

It's all very well, you might say. You are not in their shoes. No, not quite, but I did make both a behind the scenes stand in the Boardroom at the NRMA; and failing in that, went public. And I did face hefty legal actions. So I feel I have a right to speak - not just an outsider preaching from the wings, but as one who has been there.

Have you seen the documentary, The Corporation? Yes, it's a bit sixties! Yes, it's a bit wet! I mean why should the CEO or chair of Nike know that unpaid child labour made his company's shoes? He told the film makers he never knew ...

The film brings us back to what is right and wrong and it is not nearly so Gung Ho and self indulgent as Mike Moore's work. (With \$8 million dollars to spend on a documentary surely he could have used a tripod. All that shaky camera stuff, too contrived for my liking.)

But what of the costs of standing up to be counted?

Death to your career or part of a growing public conscience in both Australia and US, which is making us rethink business, rethink the corporation and rethink our own ethics?

So what if it's legal! Well sometimes the law is an ass, and business does not have a right to put bottom line before the welfare, lives and health of a community.

Globalisation is here. There needs to be law to ensure that a company cannot flee from one jurisdiction to another to avoid its liabilities. This is where the relationship between national law and global business is failing us.

We have seen Bond, Skase, HIH, Enron and now James Hardie.

It is not ethical, in my view, for directors of a board to put up and shut up regardless.

It is not OK to shuffle your company cards around so that you retain private wealth, while the company for which you were responsible leaves its creditors broke and powerless.

It is not ethical for a company to hide behind the law to leave its liabilities behind it. To pack up its tent and leave its victims dying.

You are moving into a world where currently these issues are top of mind, and you can make a difference. You can make money without gross exploitation. You can do business ethically.

It will take guts. It will take energy, and it will cause some heartache.

But business will be the better for it. And you will be able to sleep at night.

So speak up! Act up! And – go for it.

Congratulations on your graduation. And Good Luck! May your professional and community lives be at least as much fun as mine have been.