VIRTUAL WORLD - PRACTICAL LEGAL SKILLS

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ABSTRACT

Legal educators have the opportunity to embrace major online developments to complement existing teaching and learning initiatives. One of those developments is Second Life, an interactive, virtual world or 'metaverse' in which users interact as avatars in a similar way to real, or first, life. Avatars can buy things, build houses, run businesses, meet people and develop personal and professional relationships. In an educational setting, Second Life presents significant opportunities for real-time interaction and engagement between students and teaching staff.

This paper explores the potential for using Second Life to teach practical legal skills. It draws upon the authors various experiences in teaching practical legal training and mooting. The author explain how Second Life works, covering both live interactions between avatars and recorded 'machinima', and examine the practical and pedagogical rationales for using a virtual world such as Second Life for teaching and learning. It is well established that law students benefit from the opportunity to practise legal skills before using them in real life. Practice involving avatars in Second Life allows students to 'fake it' in the virtual world until they 'make it' in real life.

While there is real pedagogical potential for using Second Life in legal education, there are also some important issues and constraints. This paper examines a range of practical, technological and access issues that need to be addressed to ensure that using Second Life advantages all students in the cohort, not just those with ready access to high-speed computer resources. The paper also sets out plans for a pilot of Second Life in the School of Law at the University of Western Sydney. These plans include construction of a virtual moot court, development of simulations for practical legal skills, such as negotiation and client interviewing, and the use of Second Life as part of training law students for volunteer clinical practice in the Parramatta Community Justice Clinic.

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INTRODUCTION

There is a great deal of literature on the use of online tools and resources for teaching and learning in law – both as a substitute for, and a supplement to, face-to-face teaching.[1] Law academics often view their students, particularly the current school leavers who are part of Generation Y, as being technologically savvy.[2] There is also great demand for online education, as a consequence not only of geography but of competing demands for the time of the modern student – most typically work and family commitments.[3] The College of Law, Australia's largest provider of practical legal training, has developed a nationwide, fully online option, which is increasingly popular with time-poor law graduates.[4] However, some academics disagree with online teaching of practical legal skills, believing that skills such as client interviewing, negotiating and advocacy skills can only be taught effectively in face-to-face mode.[5] This paper considers the pros and cons of expanding the repertoire of law teaching tools to include virtual learning environments such as Second Life.

In Part I, the practical and pedagogical value of interactive, virtual learning environments are examined. Part II explains how Second Life works, both in relation to pre-captured content (known as machinima) and real-time interaction. Part III draws upon the authors' experience in blended learning and in teaching practical legal training and mooting, to explore the adaptation of Second Life to teaching practical legal skills. This part also sets out plans for a pilot of Second Life in the School of Law at the University of Western Sydney (UWS). Part IV identifies a range of potential practical, pedagogical and legal constraints around the educational use of

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[1] See, eg, Alan Davidson and Myles McGregor-Lowndes, 'Practical Strategies for Using Computers in Legal Education' (1995) 2(2) *Murdoch University Electronic Journal of Law* <http://www.murdoch.edu.au/elaw/issues/v2n2/mcgregor22.html> at 14 June 2009; Michael Geist, 'Where Can You Go Today? The Computerisation of Legal Education from Workbooks to the Web' (1997) 11 *Harvard Journal of Law and Technology* 141; Peter Martin, 'Information Technology and US Legal Education: Opportunities, Challenges and Threats' (2002) 54(2) *Journal of Legal Education* 509; Rebecca Enyon, 'The Use of ICTs for Teaching and Learning in Law Education: Some Innovators' Perspectives' (2006) 3 *Web Journal of Current Legal Issues* 1.

[2] See Laura Collins, 'Generation Y in Cyberspace: How Do Digital Natives Manage Social Stigma on MySpace' (Paper presented at The Australian Sociological Association Conference, Melbourne, December 2008) <http://www.tasa.org.au/conferences/conferencepapers08/Social%20Networks/Collins,%20Laura,%20Session%2054%20PDF.pdf > at 14 June 2009.

[3] Margaret Thornton, 'The Impact of Changes in Higher Education Policy' (Paper presented at the Australian Lawyers & Social Change Conference, Canberra, September 2004) <http://law.anu.edu.au/alsc/ThorntonPlenary.pdf> at 14 June 2009; John Tarrant, 'Teaching Time-Savvy Law Students' (2006) 13 *James Cook University Law Review* 64.

[4] See College of Law website <http://www.collaw.edu.au/Future-Students/Attendance-Modes/> at 14 June 2009.

[5] Roslin Brennan, *One Size Doesn't Fit All: Pedagogy in the Online Environment – Vol 1* (2003) National Centre for Vocational Education Research <http://www.ncver.edu.au/research/proj/nr0F05_1.pdf> at 14 June 2009; John Eklund, Margaret Kay and Helen M Lynch, *E-learning: Emerging Issues and Key Trends* (2003) Australian Flexible Learning Framework <http://pre2005.flexiblelearning.net.au/research/2003/elearning250903final.pdf> at 14 June 2009.

Second Life. It describes the author's initial responses to these issues and how they will be tested during the pilot.

I   PRACTICAL AND PEDAGOGICAL VALUE OF VIRTUAL LEARNING ENVIRONMENTS

There are significant practical reasons why law academics and faculties have been drawn to the online environment. Many of these practical drivers also apply to virtual learning environments or immersive learning technologies as they are sometimes known.

First, the modern law student expects materials to be available online. Wherever face-to-face teaching is provided, students often expect the classes to be recorded and made available online. Where classes are recorded and made available online, there are requests from students that they be available in video, not just audio. The students want to access materials in their time, in their own way.[6]

Second, students are trying to juggle more commitments than ever before.[7] It is not unheard of for a parent of young children who works full-time to enrol in a part-time or even a full-time law degree. The frequent description of law students as being 'time poor', however, is not limited to mature age students who are seeking to qualify in law in order to effect a career change. Even school leavers are increasingly time-poor; they often have consumption 'needs' which far exceed Austudy or scholarship payments, or receive no study support and need to support themselves financially with paid work while studying. The flexibility[8] provided by online learning is often vital to students who find themselves in this position.

Third, some law schools are looking for ways to attract more students, particularly those who fall outside the geographical catchment for their universities. If they can develop wholly online courses, their student target market has no geographical limitation. Online courses can provide a profitable niche market, for, although they are resource intensive to set up,[9] they can be less intensive to run, provided they are

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[6] See, eg, Oliver McGarr, 'A Review of Podcasting in Higher Education: Its Influence on the Traditional Lecture' (2009) 25(3) *Australasian Journal of Educational Technology* 309; Belinda Tynan and Stephen Colbran, 'Podcasting, Student Learning and Expectations' in *Proceedings of the 23rd Annual Ascilite Conference: Who's Learning? Whose Technology?* (2006) 830, 831 <http://www.ascilite.org.au/conferences/sydney06/proceeding/pdf_papers/p132.pdf> at 1 August 2009.

[7] Chris Evans, 'The Effectiveness of M-learning in the Form of Podcast Revision of Lectures in Higher Education' (2008) 50(2) *Computers & Education* 491; Marie-Pierre Moreau and Carole Leathwood, 'Balancing Paid Work and Studies: Working (-class) Students in Higher Education' (2006) 31(1) *Studies in Higher Education* 23.

[8] As to the flexibility of online learning, see, eg, Charles R Graham, 'Blended Learning Systems: Definition, Current Trends, and Future Directions' in Curtis J Bonk and Charles R Graham (eds), *The Handbook of Blended Learning: Global Perspectives, Local Designs* (2006) 3, 9; Janet MacDonald, *Blended Learning and Online Tutoring* (2006) 2–3; Tynan and Colbran, above n 6.

[9] Jennifer Ireland, 'Blended Learning in Intellectual Property: The Best of Both Worlds' (2008) 18 *Legal Education Review* 139, 155–6.

set up in a sustainable manner,[10] and they do not monopolise the often scarce physical resources of classrooms and other infrastructure. Virtual learning environments share these benefits of online learning.

In addition to the practical motivators for developing online, and by extension virtual, approaches to legal education, there are sound pedagogical factors underpinning these developments. It is widely understood that students have different learning styles – visual, auditory, kinaesthetic and read/write.[11] Lectures are predominantly auditory, although they can also be visual where slides are used, while seminars can provide options for kinaesthetic interaction, but in practice are often limited to class discussion. Some forms of online education provide only limited kinaesthetic interaction, particularly where all communications between students via discussion boards are in the form of typed, asynchronous interactions. By comparison, virtual learning environments such as Second Life offer a means for engaging in kinaesthetic learning online, in real time. Virtual learning environments also provide an inherently active, as opposed to passive, platform for learning.[12] They also meet many modern constructivist objectives as they foster student-centred learning in an environment that is collaborative, interesting and motivational.[13] Immersive learning technologies are also inherently suited to the provision of authentic learning tasks,[14] which are of particular importance in teaching practical legal skills.[15]

Virtual learning environments can also address some of the constraints and criticisms directed at online learning in general. A common criticism is that the lack of interaction between students makes for an isolating experience for online or distance students.[16] By comparison, virtual learning environments are highly interactive, with simulated characters controlled by the students that are able to interact in real time. Online learning provides new ways for teachers to provide formative feedback, such

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[10] Sustainability is a particularly important consideration for development of online resources in law subjects, given that '[t]he law is a constantly changing beast': see Des Butler, 'ICT in Legal Education: A Challenge But an Opportunity' (Paper presented at the 30th HERDSA Annual Conference, Adelaide, 8–11 July 2007) 9 <http://www.herdsa.org.au/wp-content/uploads/conference/2007/papers/p139.pdf> at 2 August 2009.

[11] See Neil D Fleming, *Teaching and Learning Styles: VARK Strategies* (2001).

[12] Butler, above n 10.

[13] Nicola Whitton and Paul Hollins, 'Collaborative Virtual Gaming Worlds in Higher Education' (2008) 16(3) *Association for Learning Technology Journal* 221, 222–4.

[14] Jan Herrington, Thomas Reeves and Ron Oliver, 'Immersive Learning Technologies: Realism and Online Authentic Learning' (2007) 19(1) *Journal of Computing in Higher Education* 80.

[15] See, eg, Roy Stuckey, *Best Practices for Legal Education: A Vision and a Road Map* (2007) 121–38.

[16] See Julie Pastellas and Kay Maxwell, 'The Role of On-line Learning in the Assessment of Legal Skills' (Paper presented at the Evaluations and Assessment Conference, Adelaide, November 2003) <www.unisa.edu.au/evaluations/Full-papers/MaxwellFull.doc> at 14 June 2009; Julie Pastellas and Kay Maxwell, 'Blending Educational Tools and Strategies: Integrating Online Learning in Practical Legal Training Programs' (Paper presented at Online Learning and Teaching Conference, Brisbane, September 2005) <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1026&context=lawpapers> at 14 June 2009; David Spencer and Samantha Hardy, 'Deal or No Deal: Teaching Online Negotiation to Law Students' (2008) 8(1) *Queensland University Technology Law and Justice Journal* 93; and Thomas Keefe, 'Using Technology to Enhance a Course: The Importance of Interaction' (2003) 1 *EDUCAUSE Quarterly* 24.

as self-directed tutorials or quizzes that encourage students to self-assess during semester[17] or blogs.[18] However, this type of feedback is often asynchronous and may even be automated,[19] which can reduce the effectiveness of feedback, particularly formative feedback. Virtual learning environments offer an advantage in this respect: they allow the teacher to interact with students and to provide formative feedback in real time as they progressively develop practical legal skills.

Virtual learning environments also provide a semi-anonymous environment that allows the most introverted student to participate in a simulated face-to-face discussion in a safer environment than face-to-face discussion in class.[20] In the same way as a trainee pilot uses a flight simulator,[21] law students can use the virtual spaces to practise legal skills in a non-threatening, interesting environment. As Mark Childs explains:

> the technology gives the ability to create a simulated environment to allow students to practise in situations which would not be possible or even desirable in the 'real' world. Students can undertake tasks and activities in a safe and controlled space where they can assume a certain independence and responsibility for their actions – and where they can be monitored, mentored and assessed.[22]

Students may also experiment with being an avatar of a different gender, culture, race, physical appearance or level of ability/disability, which may impact on how they are perceived and treated in Second Life. This can provide students with a unique insight into how particular minority groups experience life, building an understanding of cultural diversity and an awareness of the different backgrounds of real-life clients.

The practical and pedagogical factors described above suggest that there is, prima facie, significant potential for use of virtual learning environments in legal education. The next part considers the most popular virtual environment to date, Second Life.

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[17] Butler, above n 10.

[18] Peter Black, 'Uses of Blogs in Legal Education' (2006) 13 *James Cook University Law Review* 8; Kate Galloway, 'The Internet as God: Analysing Assessment in Web 2.0' (Paper presented at the 64th Annual ALTA Conference, Sydney, 5–8 July 2009).

[19] See, eg, Mariana Lilley and Trevor Barker, 'Students' Perceived Usefulness of Formative Feedback for a Computer-adaptive Test' (2007) 5(1) *The Electronic Journal of e-Learning* 31.

[20] Mark Childs, *Teaching in Virtual Worlds* (2008) UK Centre for Legal Education <http://www.ukcle.ac.uk/resources/ict/secondlife.html> at 1 August 2009.

[21] Herrington, Reeves and Oliver, above n 14, 94.

[22] Childs, above n 20.

II   SECOND LIFE

Second Life is an adaptation of a metaverse construct.[23] For many of us who are unfamiliar with online virtual environments, it can be difficult to conceive of Second Life. We instantly revile from something that appears so artificial, escapist and strange. One way to conceptualise Second Life is as a kind of video game in which the players are developed by the user and there is no set agenda in terms of levels to accomplish or opponents to beat. Instead, the users may explore and create as they wish.

On the following pages are a series of screen shots from Second Life to help explain what it looks like and how it works. Figure 1 is the login screen, which is not dissimilar to most email programs – users enter their user name and password. The difference is that the username is two words – a first name and surname for the avatar, as shown in the bottom left corner of Figure 1.

Figure 1: Second Life login

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[23] 'Metaverse' is a phrase coined in Neal Stephenson's *Snow Crash* (1992), a novel depicting a virtual reality-based Internet ('meta' = beyond and 'verse' = universe).

When users register, they are able to choose their first name, and Second Life generates a list of forty surnames for them to choose from. The authors avatar is Lexi Zuta (now PaulRogers Actor), and Figure 2 shows Lex Farshore and Felix Afterthought communicating in Second Life.
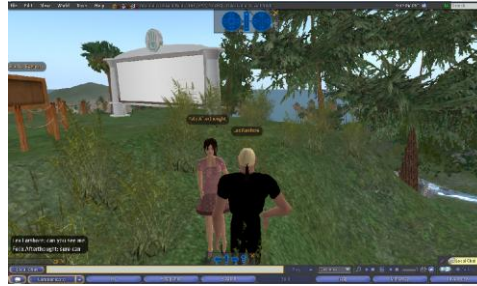

Figure 2: Avatars communicating

Avatars may communicate by typing, in a similar way to using a 'chat' function in a program such as Gmail or Yahoo (as shown in the bottom left corner of Figure 2). Alternatively, they may communicate with their actual voices, by using a computer with speakers and a microphone, or using a headset with these capabilities. Voice communication is preferable for teaching practical legal skills in Second Life.

Figure 3: Flying

There is flexibility in creating online spaces – it is entirely possible to create an office in the sky or under the water – but to date most educators involved in Second Life appear to have simply replicated their real-life, or first-life, environments. For example, the Harvard Law School building in Second Life, partly shown in Figure 3, is a reproduction of the real law school building. Figure 3 also shows an avatar flying.

Some educators have experimented with minor innovations such as outdoor classrooms, as shown in Figure 4, where students sit on the black cushions shown.

Figure 4: Classroom layout

Figure 5: Powerpoint in Second Life

Figure 5 shows the use of Powerpoint slides in Second Life. These can be uploaded ahead of time for students to access in their own time, or they can be used in real time while avatars are present – this is the Second Life equivalent to a face-to-face lecture.

In addition to teaching spaces, a virtual law office can be created, including a reception area, waiting lounge, office spaces and meeting rooms. The building units are known as 'prims', many of which are available as 'freebies' on Second Life. These prims can be used to create external facades of buildings, interior design, furniture and equipment. To demonstrate, Figure 6 shows an office, Figure 7 a meeting room, Figure 8 shows a lounge which is being used by an educator to provide a pre-recorded video briefing, and Figure 9 shows a reception area.

Figure 6: Office

Figure 7: Meeting Room

Figure 8: Lounge used for Briefing

Figure 9: Reception Area

Educators have the option to use real-time, live interactions between students, and between students and teaching staff, or pre-recorded interactions as a learning tool, known as 'machinima'.[24] Professor Des Butler from Queensland University of Technology (QUT) has successfully used Second Life to teach negotiation skills in contract law, using machinima to record interaction between characters in a scenario.[25] The students watch the scenario and are then asked to advise the clients on aspects of their contractual negotiation. Feedback Professor Butler received clearly indicated that the students found this mode of delivery more interesting and engaging overall and that the realistic and practical nature of the exercise helped them to gain a better understanding of the negotiation process than a more traditional delivery (lecture and role plays) would have done.[26]

III   USING SECOND LIFE TO TEACH PRACTICAL LEGAL SKILLS

Virtual learning environments make possible a range of 'educational exercises such as simulations, immersive displays, recreations, treasure hunts, interactive tutorials, guest lectures, and virtual field trips', many of which would not be feasible in the real world.[27] Second Life has been used for teaching negotiation[28] and legal research skills,[29] and for conducting moots,[30] as well as for problem-based learning in other

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[24] On educational uses of machinima, see Andrew John Middleton and Richard Mather, 'Machinima Interventions: Innovative Approaches to Immersive Virtual World Curriculum Integration' (2008) 16(3) *Association for Learning Technology Journal* 207.

[25] Des Butler, '*Air Gondwana*: Teaching Basic Negotiation Skills Using Multimedia' (2008) 1 *JALTA* 213.

[26] Ibid 223–6.

[27] Rob Hudson, *A Little Grafting of Second Life into a Legal Research Class* (2008) LLRX.com <http://www.llrx.com/features/secondlife.htm> at 29 July 2009.

[28] Butler, above n 25.

[29] Hudson, above n 27, describes use of Second Life to supplement the teaching of an International Legal Research Skills class at Nova Southeastern University Law School.

disciplines.[31] At UWS, the author has planned pilots of Second Life in several areas of practical legal education: specifically mooting, practical legal training and also in conjunction with the Parramatta Community Justice Clinic (PCJC).

Our interest in using Second Life to develop mooting skills is twofold. First, we want to provide students who have a compulsory mooting assessment as part of a substantive law subject (such as Property Law), or where mooting forms the basis of the entire subject (such as Australian Moot Court, and International Moot Court) with an opportunity to practise in a virtual moot court in Second Life before their assessment. The importance of practising submissions as part of preparation for any moot, whether for assessment or a competition, is universally acknowledged.[32] Our initial pilot will involve developing a virtual moot court that will give a volunteer group of students a realistic environment in which to practise their submissions and their timing, to develop familiarity with courtroom etiquette and, for some, simply to build their confidence speaking in such a forum. David Pope and Dan Hill explain the importance of authentic practice in mooting as follows:

> If you can run through your speech at least once in the actual moot courtroom *or a room just like it,* the experience will be considerably more authentic and consequently more helpful, particularly for the novice mooter.'[33]

Such benefits would clearly translate into the virtual moot court setting. Additionally, students can take turns on the bench and experience advocacy from the judge's perspective. This also removes the need to schedule practice time with a member of staff acting as judge.

A second aspect of our pilot will explore the use of Second Life in relation to competition mooting. We will be investigating potential uses for our virtual moot court in the selection and preparation of representatives of the UWS Law School in competitive 'real life' moots. Further, as several other universities both in Australia and overseas[34] already either have, or are developing, moot courts in Second Life, we are keen to position ourselves to take part in any Second Life virtual mooting competitions that may develop in the future.[35]

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[30] Childs, above n 20, describes the use of a mock trial conducted in Second Life as part of a Harvard Law School subject.

[31] Judith Good, Katherine Howland and Liz Thackray, 'Problem-based Learning Spanning Real and Virtual Worlds: A Case Study in Second Life' (2008) 16(3) *Association for Learning Technology Journal* 163, 163–5.

[32] David Pope and Dan Hill, *Mooting & Advocacy Skills* (2007) 75; John Snape and Gary Watt, *How to Moot* (2004) 90, 96.

[33] Pope and Hill, above n 33, 77 (emphasis added).

[34] See Childs, above n 20.

[35] The International Virtual Moot Competition is presently conducted via videoconferencing: see, eg, *International Virtual Moot 2008,* Murdoch University <http://www.law.murdoch.edu.au/news/virtual_moot_2008_result.html> at 4 August 2009.

In addition to mooting, our pilot will also explore the use of Second Life to help students develop other practical legal skills as a component of their practical legal training, which can be undertaken as part of the degree at UWS. This aspect of the trials may also be expanded to include preparation in practical skills for student volunteers at the PCJC, where the UWS School of Law is setting up a legal clinic to serve real clients who are otherwise unable to afford legal representation or acquire legal aid. It is our view that Second Life is particularly well suited for client interviewing and negotiation exercises, and that there is also potential to develop a virtual law firm[36] for student training or a 'shopfront' presence in Second Life for the PCJC in the future.

The authors have planned a pilot in the 2011-12 financial year, using private land that will be purchased in Second Life, upon which facilities for client interviewing, meeting rooms and virtual court rooms will be constructed. A number of avatars will be created and given access to the UWS facilities in Second Life for the purpose of the pilot. Individual students will be given the password to individual avatars and have the option to change their password and alter their avatar's appearance and clothing. This can be useful in the lead-up to a simulated activity – for example, a student may adopt a gown and wig if taking the role of the judge, a suit if acting as a lawyer, or other clothing if he or she will be a lay client. The students will be required to restore the original password of their avatar at the end of the pilot so that the avatars may be used again in future iterations.

During the pilot, students will use real-time interactions in Second Life, with each student being allocated to a particular role in a scenario. For example, one student can play the client and another the lawyer in a simulated client interview; or students can negotiate in teams of two for simulated law firms in a simulated dispute. Similarly, students can prepare a moot scenario and speak on behalf of their party in a court where the judges may be other students or their lecturers. In addition to having students interact in-world, we intend to use machinima[37] to prerecord demonstration interviews, settlement negotiation meetings and mock court cases for students to critique.

IV ISSUES AND CONSTRAINTS

Despite the potential that Second Life has for teaching practical legal skills, there are some practical issues and technological constraints which must be addressed.

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[36] There are many virtual law firms already operating in Second Life: see Benjamin Duranske, *Virtual Law: Navigating the Legal Landscape of Virtual Worlds* (2008) 268–78 for a listing. Real-life law firms are also increasingly interested in having a presence in Second Life: see, eg, Michael Herman and Alex Spence, 'First UK Law Firm Opens 'Virtual' Office in Second Life' *Times Online*, 24 April 2007 <http://business.timesonline.co.uk/tol/business/law/article1699474.ece?token=null&offset=0&page=1> at 4 August 2009.

[37] Middleton and Mather, above n 24.

First, universities must provide computers equipped with Second Life available to students. It cannot be assumed that all law students have access to the internet on a private computer with sufficient capacity to handle running Second Life.[38] Universities must have sufficiently high-speed connections to ensure that there is no frustrating time lag between a communication being made and it being received by other participants. This raises bandwidth issues, because Second Life can use a great deal of bandwidth and may risk overloading a networked system. Students may also use Second Life for non-academic purposes, which could waste bandwidth and monopolise university computers. To address this issue, the authors are in negotiations with the university, and will make the pilot optional for those who can allocate time to use dedicated computers on campus or who have external access to suitable facilities.

Second, there is a lead time involved in students becoming familiar with Second Life. Although it is estimated that in the future students will be as familiar with using Second Life[39] as they are with using email, Facebook and YouTube, at present there still needs to be a degree of practical instruction.[40] This can be addressed through a face-to-face demonstration in class, followed by students exploring Orientation Island, which provides step-by-step instructions for new avatars on how to move, pick up objects, sit down and communicate. The Help resources in Second Life itself are very highly developed and most issues of a technical nature can readily be resolved using these. However, we also intend to generate tailored written materials and 'frequently asked questions' (FAQs) addressing commonly encountered problems that are specific to our own use of Second Life for our students to refer to if they experience difficulties.

Third, students need to be made aware that, apart from educational, creative and commercial users, there are also some deviant and unusual personalities on Second Life, whose behaviour may cause offence.[41] For example, in our initial period after registering avatars, we received invitations from other avatars. On acceptance, the author was teleported to a sex party, with naked avatars engaging in highly explicit activities. The author has also been bitten by a vampire avatar, and had to locate and wear a string of garlic to prevent further bites as these can disable the avatar for a period of time in Second Life. Where students stay within the university-developed private land, to which access is controlled, these types of encounters should not occur. However, we recognise that students may naturally also wish to explore other parts of Second Life for a range of other valid reasons. It is therefore our position that

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[38] Access to technology and the related equity issues have been of concern to many since the advent of e-learning: see, eg, Kennedy et al, 'First Year Students' Experiences with Technology: Are They Really Digital Natives?' (2008) 24(1) *Australasian Journal of Educational Technology* 108, 118.
[39] Christy Pettey, 'Gartner Says 80 Percent of Active Internet Users Will Have a 'Second Life' in the Virtual World by the End of 2011' (Press Release, 24 April 2007) <http://www.gartner.com/it/page.jsp?id=503861> at 15 June 2009.
[40] See, eg, Hudson, above n 27; Whitton and Hollins, above n 13, 225.
[41] For similar warnings, see Childs, above n 20.

disclaimers should be used to make students aware that the university does not take any responsibility for encounters they may have if they choose to go to any other parts of Second Life outside the university's own land.

Fourth, there is a significant cost involved. The currency in Second Life is Linden dollars, and there are approximately 3 Linden dollars to a US dollar. It is estimated that establishing private land with appropriate facilities, using freebie prims wherever possible, will cost approximately AUD$3,500. Yet the contractual relationship with the creator of Second Life, Linden Labs, includes a clause whereby Linden does not warrant the ongoing availability of Second Life and may confiscate property or otherwise shut down avatars at its discretion.[42] Benjamin Duranske describes a suit filed by a virtual property developer seeking compensation for the real-life value of virtual land he owned in Second Life when his account was cancelled. Although that action, *Bragg v Linden Labs*, was settled out of court on undisclosed terms, an early motion to dismiss was denied,[43] indicating that the court was prepared to entertain Mr Bragg's claim of unconscionability and that it would not simply 'enforce the click-through Terms of Service without subjecting them to significant scrutiny'.[44] It remains to be seen how the courts would treat a cancellation involving an educational institution. While this question remains open, the potential for cancellations to disrupt access is a risk that universities who invest in Second Life should be mindful of. It is a more significant risk where Second Life is part of compulsory summative assessment. The authors therefore do not intend to invest heavily at the present time,[45] or to use Second Life for assessment, or as an integral part of an online course. Whether this affects the take-up rate by students, as reported by Corbin, remains to be seen.[46]

Finally, there are a range of broader legal pitfalls that educators need to be aware of. Many of these apply equally to offline learning and teaching, or to general e-learning, but their application to virtual learning environments has yet to be tested. These include, inter alia, the potential for defamation,[47] intellectual property infringement,[48]

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[42] Duranske, above n 37, 28, 88–9, 113.

[43] The Memorandum and Order Denying Motion to Dismiss (*Bragg v Linden Research Inc)* of the United State District Court, E.D. Pennsylvania is reproduced in Duranske, above n 37, 365–93.

[44] Ibid 123.

[45] However, as Butler has demonstrated with the *Air Gondwana* (above n 25) and *Contracts Vignettes* projects, some excellent results can be achieved using free or low-cost resources or otherwise for relatively small capital outlays: see Butler, above n 10 and Des Butler, 'The *Contracts Vignettes*: Cost Effective Podcasting Producing Quality Learning Outcomes in First Year Contract Law' (Paper presented at the 62nd ALTA Conference – Law and Public Policy: Taming the Unruly Horse?, Perth, 23–26 September 2007) <http://www.alta.edu.au/pdf/conference/published_papers/2007_BUTLER%20D_The%20Contracts%20Vignettes_Final.pdf> at 4 August 2009.

[46] Lillian Corbin, 'Learning in Cyberspace: Succession Law Online' (2004) 11(1) *Murdoch University Electronic Law Journal* <http://www.murdoch.edu.au/elaw/issues/v11n1/corbin111nf.html> at 14 June 2009.

[47] Bettina Chin, 'Regulating your Second Life: Defamation in Virtual Worlds' (2007) 72(4) *Brooklyn Law Review* 1303.

[48] In Second Life, users retain copyright in their own in-world creations (unlike many other virtual online worlds) but they may infringe by making unauthorised use of the intellectual property of others:

culturally insensitive depiction of artefacts and a range of privacy-related infractions[49] to take place in-world. Although research into how these issues impact virtual learning environments and how the virtual and real worlds interact with each other in a legal sense is still in its infancy, our investigations thus far do not suggest that they pose serious impediments to conduct of the pilot described above. However, they are nevertheless real considerations that do need to be managed, as with the introduction of any new technology into the broader learning and teaching landscape. The development of appropriate policies and other documentation that sets down parameters for the activities of staff and students while in-world is an important response to these issues. Drivers for our Second Life pilot include the need to begin assessing the impact of the shortcomings described above, identifying any significant risks and devising appropriate means of managing them, and generally contributing to policy development at the institutional level.

V Conclusion

Overall, it is our view that Second Life has real potential to supplement face-to-face instruction in law, allowing students to practise using legal skills in real-time simulated environments without needing additional scheduled class time and without always needing the lecturer to be present. Although we have also identified a range of potential shortcomings of virtual learning environments, one of the central drivers of our trials will be to assess the seriousness of these constraints and to devise appropriate ways to manage these in the event of more expansive uses of Second Life in future.

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see discussion in Duranske, above n 37, 146–9. As to protection for trade marks in Second Life, see Duranske, above n 37, 149–53; Lucy Davis, 'Creation and Protection of Trade Mark Rights in Second Life: Inadequacies in Australia's Current Law' (2007) 18(4) *Australian Intellectual Property Journal* 183. On intellectual property protection in virtual worlds generally, see Woodrow Barfield, 'Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars' (2005) 39 *Akron Law Review* 649.

[49] Office of the Privacy Commissioner of Canada, *Second Life: Privacy in Virtual Worlds* (2008) <http://www.priv.gc.ca/information/pub/sl_080411_e.cfm#sec32> at 2 August 2009.