

'The Real Deal: Using formative assessment techniques in authentic assessment delivery, to improve law degree academic performance'

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Introduction:

Developing critical reasoning skills is vital to maximise academic law degree performance, yet the traditional 'paper-based' assessment methods are not best equipped to teach the skill, or monitor progress. However, authentic assessment techniques – which are closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of university courses – when delivered in extra and co-curricular activities (ECCAs), have been proven to improve law degree academic performance.

The authors assert that as long as the ECCAs are delivered with academic law degree learning outcomes taken under consideration, and are rigorously delivered by staff who are trained and experienced to elicit optimum student performance, students will benefit from authentic assessment in other indirectly connected areas of their academic lives.

By delivering authentic assessment methods in ECCAs, a combination of formative and summative techniques used throughout the assessment processes improves student performance, which thereby has positive cross-impact onto law degree academic performance.

This two-way communicative assessment strategy allows students to benefit from continuous mid-assessment feedback, which serves to best demonstrate the adversarial nature of the legal system and the demands placed on lawyers to provide clear, simple, usable legal advice – a skill best learned in the ECCA authentic assessment environment, rather than in the artificial 'one-shot' approach to traditional coursework and paper-based exam assessments, which provides primarily a summative assessment and/or a weak/unusable formative element in future assessments. In this regard, the authentic nature of ECCAs not only *'requires students to make judgements [and] choices'* [1] but also fits with Boud & Falchikov's observation [2] that assessment should be seen as an act of informing a student's judgement. This is reflected in further benefits, such as increased confidence in critical reasoning skills, also improve the students' academic performance.

This paper examines best-practice authentic assessment techniques, and uses datasets relating to improved performance on the law academic degree to demonstrate that, when utilised, authentic assessment, together with its continuous formative assessment strategy, is the optimum method of teaching critical reasoning skills, monitoring current ECCA student performance and improving future academic performance.

Authentic assessment:

Authentic assessment is a method that presents a task for students to perform and a way to measure their performance on the task. It tests a student's ability to solve hypothetical problems, which then assesses how effectively a student solves a real world problem, and

requires students to apply a broad range of knowledge and skills. Authentic assessment *'can raise aspirations and increase intrinsic student motivation through explicit demonstration of career alignment and relevance of curriculum activities'* [3], and is *'closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of University courses'* [2].

Authentic assessment is supported by the Quality Assurance Agency for Higher Education (QAA)'s aim to ensure that law students graduate with practical skills, as well as the traditional knowledge and understanding of the law. In this regard, the Draft QAA Subject Benchmark Statement for Law (2015) [4] provides that *'a law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-knowledge, skills and attributes... We encourage Law Schools to help students to articulate to employers what they can do and what their qualities of mind are by using this statement:*

- *Ability to produce a synthesis of relevant doctrinal and policy issues, presentations of a reasoned choice between alternative solutions and critical judgment of the merits of particular arguments*
- *Ability to apply knowledge and understanding to offer evidenced conclusions, addressing complex actual or hypothetical problems*
- *Ability to communicate both orally and in writing, in relation to legal matters, including an ability to listen and respond to oral stimuli including questions and instructions.'*

Authentic assessment can be incorporated into almost any type of course delivery, including the academic law degree, but its methods have been largely centred on extra and co-curricular courses (ECCAs), as they have largely oral components, and were originally designed to increase student engagement, rather than directly augmenting the academic learning process. However, indirect benefits of student engagement to improve academic performance has been recognised by Hart et al [5] who state *'through the process of engagement, students are more likely to experience a positive and fulfilling approach to the accumulation of the 'legal content' in their law degree'*.

Conversely, it is our assertion that ECCAs do more than simply increase student engagement, which then has an indirect correlation towards improved academic performance. We argue that authentic assessment in ECCAs has a DIRECT impact on law degree performance, and have found that students, who actively participate in University run and accredited ECCAs, excel on the law degree [6].

In this paper, we assert that the reason why ECCAs are so effective in raising academic standards, is that the formative assessment techniques utilised within, are vital to increase critical reasoning skills – the key transferable component to law degree success.

Extra and co-curricular activities (ECCAs):

The School of Law delivers various ECCAs, each designed to echo a different area of legal practice, including among others:

- Mooting – legal research and application on technical points of law

- War of Words (WoW) – high pressure emergency applications
- Mock trials – testing of evidence
- Debating – logical reasoning
- Mediation – alternative dispute resolution

Each course incorporates formative and summative assessment methods and is delivered in at least three separate assessment stages and involves an element of public speaking. Each course (apart from mediation) also incorporates an element of competition, to align with the adversarial nature of the UK legal system. In this paper we examine the format of the Mooting and WoW ECCAs to illustrate the different, but equally important, modes of delivery.

To ensure the ‘authenticity of the assessments, there are two settings for the ECCAs: The authentic Crown courtroom; and the bespoke mediation centre. Most law schools deliver practical courses in featureless classrooms, inauthentic to the environments encountered in practice. However, at the School of Law, the Courtroom is an open forum with spectator areas, an authentic distance between Bar and raised bench, authentic and imposing décor. The Mediation Centre has a glass-fronted central meeting room with separate caucus meeting rooms for client instructions/negotiations in private. Students become comfortable with challenging environments and quickly become accustomed to the formality of the settings.

The mooted ECCA format is as follows: At the start of the academic year there are two hour combined lecture/workshops for three consecutive weeks, which explains the basic content of the course, and teaches basic skills. Students then pair-off into teams of two as specified by the ECCA requirements – this is recommended to be outside of their own year/programme groups to encourage peer-led tuition and support. Students prepare written presentations first, with intensive legal research, as it would be in practice. Oral submissions are made in the courtroom with a tutor judging, again as would be found in practice. Post-assessment formative feedback, from the tutor, is provided on: (i) Content; (ii) Presentation. Summative appraisal provided for written and oral elements. Students are encouraged to watch other students mooted/receiving tutor feedback.

The War of Words (WoW) ECCA format is as follows: WoW allows a single student to make a one minute argument on a controversial (not specifically legal) topic, who then faces high pressure rebuttals from the audience. This tests: research skills, critical analysis, resolve under pressure, and public speaking skills. The format is a ‘flipped’ version of an emergency legal application, with one applicant and many judges, instead of the traditional opposite position of one judge in open court with many applicants. WoW is confrontational, and places the student under immense pressure to react to questions from multiple directions.

Formative v summative assessment:

Formative assessment is vital where there is an ongoing assessment, such as in advocacy competition formats – this can be: (i) peer-led and/or tutor-led; and (ii) active and/or passive (receiving feedback yourself or observing others receiving feedback); whereas summative assessment is vital to determine the winner of a stage of the competition.

'Assessment is formative where it occurs as part of a progressive learning exercise, and where the main purpose is to facilitate student learning...Summative assessment reports on and certifies the "achievement status of a student" [7]. Authentic assessment naturally incorporates both methods, as two-way interaction between participants/assessor is encouraged and inevitable - formative and summative assessment methods are not mutually exclusive.

Legal practice incorporates both methods, so it is natural that authentic assessment should too: Formative: The legal community relies largely upon self-regulation, education and improvement, to ensure that practitioners provide clients with exemplary service – without which it cannot be said that the system upholds the Rule of Law. Inns of Court, the Bar Society, the Solicitors' Regulation Authority et al, require practitioners to develop themselves and others throughout their professional careers. The nature of the hierarchical court system and authorship of legal journal articles are a form of peer-led formative assessment of court judgments. Summative: The UK legal system is adversarial in nature and demands a 'winner' and a 'loser' in each case.

Formative assessment techniques in ECCAs:

Authentic assessment is normally a two-way communication scenario, which means that students are able to you respond to their assessor mid-assessment and make tweaks and minor adjustments to their performance as familiarise themselves their assessor's demands, personality and character traits. This means that the assessment is within a constant formative framework with a summative assessment at the end, followed by a formative assessment when feedback is provided. A traditional paper-based assessment has only one formative aspect – the feedback at the end – which as Montgomery [8] notes *'are done after rather than before the writing, so they cannot serve as guidelines, compromising the value of writing comments at all'*. Equally, this mode of assessment is primarily used in a summative way 'to differentiate between students and rank them according to their achievement' [9] – the testing culture - and, as such, does not sit easily with current educational goals which focus to a greater extent on the development of 'competent students and future employees' as opposed to solely on the acquisition of knowledge [9].

As Garfield [10] observes though, 'the primary purpose of any student assessment should be to improve student learning' by 'enhancing the problem-solving and critical thinking abilities of students' [8]. It is this formative-rich, authentically assessed environment which improves student performance in not just ECCAs, but on the law degree and beyond. The student is made to, in effect, constantly review their performance and enter a mind-set which tests flexibility, confidence, critical reasoning, psychological evaluation skills, and response skills. Interestingly, these are all skills which help the student who is studying for a paper-based assessment.

In the traditional 'one-shot', paper-based assessments, a student is able to ask for feedback after the exam has been sat, but how effective will it be? The student will barely remember the assessment questions or what frame of mind they were in on that exam day, and so the feedback will almost feel as if it belongs to someone else. In any case, the next paper-based exams are a whole year away, so the student's implementation of the feedback will not be particularly effective. Consequently, the function of assessment needs to change from being

summative to also performing a formative goal of enhancing student learning. Increasing the authenticity of assessment is expected to have a positive influence of student learning and motivation [11].

Taking mooting – which has a long standing presence within legal education [12] - as an example of continuous mid-assessment formative feedback: There is one thing constructing an argument and giving advice in a paper-based exam scenario, which does not matter which ‘side’ the student takes as long as they make the soundest argument possible. But when the student is forced to represent a hypothetical client, who will not likely readily accept advice that their case lacks merit, the student starts thinking creatively, and will develop an argument mid- assessment, if the original prepared position does not seem to be effective.

During a moot, the student commences the oral assessment with a prepared skeleton argument, which has been submitted before the moot, to allow the assessor to prepare questions. The timed (usually 10-20 minutes) oral assessment is a ‘conversation’ between the student and the tutor, designed to test the student’s knowledge of not only the relevant law relating to the topic, but also the student’s intelligence in understanding why the legal principles exist and how they correlate with other topic areas. Depending on the standard of the student, the tutor is able to tailor the questioning to allow the student to develop the argument well beyond that of the original written skeleton. However, this requires tutors ‘to become ever more skilful in their ability to evaluate teaching situations and develop teaching responses that can be effective under different circumstances’ [13].

In fact, it could be argued that since there are no ‘right’ answers in law, the assessment is geared towards discovering more than simply a student’s legal knowledge – it is also an effective means of testing emotional intelligence and wider knowledge of social and political issues. As Ku [14] notes assessments which support open-ended responses ‘makes it possible to assess [an] individuals’ spontaneous application of thinking skills on top of their ability to recognize a correct response’, enabling the tutor to evaluate the critical thinking performance of students.

Further, by developing a student’s arguing skills, the tutor is able to demonstrate that the construction of a legal argument is closely aligned with critical reasoning skills – a skill which is not usually expressly taught as a part of the academic degree curriculum, but which is a vital component for optimum law degree performance.

Of course, as noted earlier, it is important that the assessor is trained in asking the right questions, to elicit optimum responses from the student, so ECCAs must be run and accredited by the university, with trained and experienced staff - rather than as a student-led society which cannot guarantee rigour. To ensure assessment standards are maintained, Berger & Wild [15] explain how authentic assessment can be used as a teacher-training and monitoring aid.

While the traditional ‘paper-based’ assessment strategy provides a pragmatic solution to the problem of a general lack of time and resources to grade students en masse, the argument that authentic assessment is too ‘resource-hungry’ to be used across the assessment framework in academic law degree delivery, is rebutted by the authors [16].

Conclusion and recommendations:

As Berger & Wild [6] note, the School of Law awarded 35 students with a Certificate or Diploma in Professional Development, in the academic year 2014-15. These students all participated in ECCAs with an authentic assessment delivery method. Out of these students, 34 received a 1st Class or Upper Second Class (2:1) grade on their law degree. This figure of 98% receiving the highest awards, compares with 48% across the entire cohort – doubling the academic law degree performance of the ECCA students.

The starting cohort on the law degree entered university on an average UCAS (or equivalent) tariff of 340 points, while the ECCA cohort entered on an average 307 points, which places them at their entry point at a lower-than-average starting band. This large swing from below-average, to top achieving cohort, is attributed to the 35 students accruing crucial transferable critical reasoning skills, developed through continuous mid-assessment formative feedback on ECCAs, which then improved their law degree academic performances.

It is our conclusion, that ECCAs are a vital component in augmenting academic law degree delivery to improve academic performance. In addition, Berger & Wild [16] note that a perceived lack of resources can be overcome, so as to allow authentic assessment techniques to be used in a law degree, and not solely in ECCA delivery.

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