

2008

## Using Assessment Practice to Evaluate the Legal Skills Curriculum

M. T. O'Brien

*Australian National University, Australia*

J. Littrich

*University of Wollongong, [littrich@uow.edu.au](mailto:littrich@uow.edu.au)*

Follow this and additional works at: <https://ro.uow.edu.au/jutlp>

---

### Recommended Citation

O'Brien, M. T., & Littrich, J. (2008). Using Assessment Practice to Evaluate the Legal Skills Curriculum. *Journal of University Teaching & Learning Practice*, 5(1), 68-84. <https://doi.org/10.53761/1.5.1.6>

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: [research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)

---

## Using Assessment Practice to Evaluate the Legal Skills Curriculum

### Abstract

A comprehensive audit of the skills curriculum offered to students in a Bachelor of Laws program yielded important insights about the collective impact of assessment tasks on the hidden and operational skills curriculum. This qualitative case study supports the views (1) that assessment tasks provide significant skills practice and performance opportunities for students; (2) that assessment provides students with important cues about what type of learning is valued; and (3) that review of assessment practices across the curriculum can provide important information for curricular reform.

2008

## Using Assessment Practice to Evaluate the Legal Skills Curriculum

M. T. O'Brien

*Australian National University*

J. Littrich

*University of Wollongong, [littrich@uow.edu.au](mailto:littrich@uow.edu.au)*

Follow this and additional works at: <https://ro.uow.edu.au/jutlp>

---

### Recommended Citation

O'Brien, M. T., & Littrich, J. (2008). Using Assessment Practice to Evaluate the Legal Skills Curriculum. *Journal of University Teaching & Learning Practice*, 5(1). <https://ro.uow.edu.au/jutlp/vol5/iss1/6>

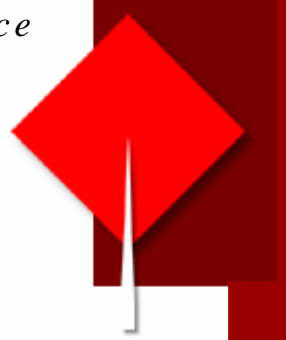
Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: [research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)

---

## Using Assessment Practice to Evaluate the Legal Skills Curriculum

### Abstract

A comprehensive audit of the skills curriculum offered to students in a Bachelor of Laws program yielded important insights about the collective impact of assessment tasks on the hidden and operational skills curriculum. This qualitative case study supports the views (1) that assessment tasks provide significant skills practice and performance opportunities for students; (2) that assessment provides students with important cues about what type of learning is valued; and (3) that review of assessment practices across the curriculum can provide important information for curricular reform.



## **Using Assessment Practice to Evaluate the Legal Skills Curriculum**

**Molly Townes O'Brien**

Australian National University

obrienm@law.anu.edu.au

**John Littrich**

University of Wollongong

Littrich@uow.edu.au

### **Abstract**

*A comprehensive audit of the skills curriculum offered to students in a Bachelor of Laws program yielded important insights about the collective impact of assessment tasks on the hidden and operational skills curriculum. This qualitative case study supports the views (1) that assessment tasks provide significant skills practice and performance opportunities for students; (2) that assessment provides students with important cues about what type of learning is valued; and (3) that review of assessment practices across the curriculum can provide important information for curricular reform.*

---

## Introduction

Teaching legal skills is an important business. Very soon after receiving an undergraduate degree in law, many young lawyers enter the practice of law and are entrusted with their clients' most important legal, financial and family matters. Others enter business or pursue a career in politics, government or academia. Law school graduates must emerge from school adequately prepared to become society's leaders, counsellors and problem solvers. They must be capable of working in a complex, internationalised legal community in which law is constantly changing and the demands of practice are ever-increasing. It is not enough to know a body of doctrine. Practice will demand a variety of intellectual, technical and interpersonal skills. Today's legal curriculum must be attentive to legal skills and outcomes. It must be oriented 'around *what lawyers need to be able to do*, [rather than remaining] anchored around outmoded notions of *what lawyers need to know*' (Weisbrot, 2002, p. 37).

Throughout Australia and around the world, law faculties have struggled with the task of designing a curriculum that teaches students the practical skills and values they will need when they enter a complex legal field (Engler, 2003; Weisbrot, 2001). It is a task that cannot be done in a one-off manner. Best practice requires law schools to re-evaluate their programs regularly to determine their effectiveness in preparing students for the changing world of work (Stuckey, 2007).

This project began as an audit or review of the skills curriculum offered to students in the Bachelor of Laws program at the University of Wollongong (UOW). The faculty of law encouraged the study as part of its culture of continuous self-improvement, in which the law school examines its aims and performance in order to improve not only itself, but, ultimately, the quality of justice in the community. The goal of the curricular audit was to provide information about both the strengths and weaknesses of the skills curriculum to guide future curricular improvement, revision and reform.

This article does not report the full results of the audit or reflect the current status of the skills curriculum at UOW. Indeed, the skills curriculum has undergone significant reform since the date of this study. Instead, this paper focuses on one aspect of the audit – the programmatic review of assessment practice – and discusses its importance for curricular reform generally. A careful look at assessment was undertaken for two reasons. First, as the faculty recognised in designing the skills curriculum, legal skills are best learned by doing. Students learn most effectively (or deeply) when they are called on to participate in activities that engage them in role-sensitive, experiential or contextualised instructional activities that require them to mobilise learning into action. In the process of engaging in active learning experiences students translate theory into action, weigh competing values, review doctrine, and make strategic, analytic and moral judgments relating to that doctrine. Learning-by-doing is an extraordinarily effective way to develop skills and integrate knowledge of doctrine. All stages of learning-by-doing – preparation, action, feedback, reflection, and repetition – work to enhance the student's knowledge and understanding of substantive law and professional ethics (Peters, 1996). Learning-by-doing helps students develop conceptual constructs (schemata) that facilitate knowledge storage and retrieval and reinforce learning of both skills and doctrine (Baker,

1996; Mitchell et al, 1995). Each assessment task involves a performance, application or demonstration. Each assessment task is, at some level, a learning-by-doing activity. Assessments may provide an opportunity to mobilise, reinforce, and practice the skills identified by the faculty as required for a law degree. It was therefore appropriate to survey and consider whether, how, and to what extent assessment tasks were providing opportunities to practice and demonstrate the variety of legal skills that the stated curriculum seeks to develop.

Second, according to the Australian Universities Teaching Committee, 'it is now widely accepted that student expectations of assessment have a strong influence on the content, depth and nature of their learning' (AUTC 2001). In the US, the 2007 *Best Practices in Legal Education* report released by the Clinical Legal Education Association (CLEA) echoes this finding stating that '[t]he goals and methods we select for assessment directly affect student learning' (Stuckey, 2007, p. 235). Writing for the UK's National Centre for Legal Education, Bone commented that '[a]ssessment methods and requirements probably have a greater influence on how and what students learn than any other single factor. This influence may well be of greater importance than the impact of teaching materials' (Bone, 1999, as cited in Stuckey, 2007, p. 235). Assessment provides students with the motivation to prepare, study and perform to their highest potential. With multiple demands on their time, students learn early in their university careers – if, indeed, they have not already learned in high school – to devote their time and effort to assessed tasks (Albon, 2003). If one assignment will be assessed and another one will not, the assessed assignment will net more student time and effort.

If assessment drives learning (Albon, 2003; Ramsden, 1992; O'Leary & Hargreaves, 2004), then a review of what is actually being assessed and what students expect to be assessed provides important information about the curriculum-in-action or what is actually being taught and learned. The term 'curriculum' may be thought of as having several aspects: the official curriculum, the operational curriculum (the curriculum as it is implemented), the hidden curriculum (the unstated norms and values communicated to students), the null curriculum (what is not taught) and the extra-curriculum (including activities like team competitions) (Bennet & LeCompte, 1990; Posner, 1992). The goal of reviewing assessment practices was to look past the official skills curriculum to understand the curriculum in action – or all aspects of the curriculum. While many of the findings were specific to the program offered at UOW, the review also yielded significant insights about the impact and value of assessment in curricular reform. By reviewing assessment practice on a programmatic level, it was possible to see the cumulative impact of assessment practice on both the hidden and operational curricula. This article discusses those impacts and considers how assessment may be used as a tool of curricular reform.

## Method

This review of assessment practices adopted a qualitative case study method. It began by considering a substantial body of historical data, including subject and course evaluations, student surveys and interviews. To follow up on issues raised by the existing data, additional fact-gathering interviews were conducted with students and members of the faculty. Skills subject classes were observed. Subject outlines and teaching materials from compulsory subjects were also reviewed. Finally, separate focus group interviews were conducted with current and former students and with legal practitioners who had hired recent graduates.

## The Official Legal Skills Curriculum

Before 1950, legal education in Australia was primarily gained in an apprentice system, in which new members of the profession learned their craft in articles of clerkship (Johnstone & Vignaendra, 2003). The apprentice model depended heavily on the quality of the mentor's instruction, however, and produced decidedly uneven educational results. The early university-based approach to legal education, which gradually replaced the apprentice system, typically endeavoured to impart a core of legal or knowledge or academic training, with the expectation that practical skills would continue to be learned in postgraduate, in-service training. Within the university, law was generally taught in a large lecture format that approached law as a 'closed system of rules' (p. 2).

As university-based law schools became the norm, the approach to legal education gradually shifted away from a purely pre-professional model toward a more liberal model of education (p. 2). The demands of pre-professional and academic education were frequently viewed as being in conflict. University-based programs sought to distance themselves from the 'trade school' label in order to establish law as a serious academic discipline.

Meanwhile, however, the legal profession raised its expectations of university graduates. In 1992, the Consultative Committee of State and Territory Law Admitting Authorities, chaired by Justice Priestly, prescribed 11 areas of knowledge (the 'Priestly 11') that have been adopted as required curricula for law graduates who wish to enter legal practice. Required areas of knowledge include the traditional core of legal doctrine, such as contract, tort, property law, criminal law, constitutional law and company law. Although the report focused on doctrinal knowledge rather than on legal skills, the Priestly Committee also described 12 areas of skills (the 'Priestly 12') required for practice of law, which are traditionally taught in post-graduate legal training programs (Johnstone & Vignaendra).

At about the same time, the international legal community began to criticise law school curricula that were organised primarily around teaching legal doctrine and began to emphasise the importance of teaching professional skills and values. In 1992, American Bar Association's MacCrate Report on legal education (American Bar Association, 1992) declared that teaching lawyering skills and professional values should be the central mission of law schools. The MacCrate report made



recommendations for the implementation of a 'coherent agenda of skills instruction' (p. 331) and set forth a sort of canon of competency, a list of 'Fundamental Lawyering Skills and Professional Values' (p. 135-141). Similarly, in 1996, the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) criticised English and Welsh legal education for 'unnecessary compartmentalisation' of the vocational and academic aspects of legal education (p. 24). Further, the Scottish Legal Education committee proposed a 'series of objectives' for undergraduate legal education and specified nine areas of performance including subject specific abilities, generally transferable intellectual skills and personal skills (Johnstone & Vignaendra). In 2000, the Australian Law Reform Commission examined Australian legal education and criticised Priestly's approach that assumed a rigid divide between law school education and professional legal education (ALRC, 2000).

The Faculty of Law at UOW was established in 1991 during the so-called 'third wave' of Australian law schools, which introduced substantial curricular innovation in legal education. (Johnstone & Vignaendra, p. 3). Undergraduate teaching of legal skills was introduced as an integral part of the Bachelor of Laws (LLB) Degree when the Faculty of Law was established and remained an important part of the LLB degree. The Faculty considers the skills curriculum to be both a 'distinguishing feature of the course' and a vehicle for better understanding of the theory of law (*University of Wollongong Undergraduate Handbook 2006: Faculty of Law*, p. 13).

The development of the skills curriculum required a great deal of faculty discussion, and involved mapping the required skills on a conceptual map. The faculty envisioned the substance of the skills curriculum as organised around four 'overriding skills' required for all law graduates: legal research, oral communication, written communication and dispute management (Lamb, 2001, p. 6). Other skills, such as interviewing, advocacy, negotiation, problem analysis, advising, fact investigation, were mapped as subsets of these four skills. Critical thinking, a questioning attitude, and the ability to apply learned material to new situations are considered to be over-arching skills, necessary for all of the others (Faculty of Law, 2006, p. 7).

Learning theory suggests that skill building for professional fields is best done in contextualised settings that merge skill-building practice with doctrinal learning in a way that reinforces both (Baker, 1994; Mitchell, et al, 1995). In recent decades, law faculties around the world have tried out a variety of curricular models to achieve this goal. While some law faculties have adopted a wholly integrated approach to skill instruction that merges the doctrinal and practical curricula, others have elected to teach skills in separate subjects (Myers, 1997). At UOW, the faculty reached a consensus that skills are learned most 'effectively by doing' (Faculty of Law, 2006, p. 7) and that the skills taught should 'be linked to several subjects for reinforcement, so that skills are developed *concurrently, consecutively and continuously* throughout the degree' (Lamb, p. 6). The UOW Law Faculty adopted a hybrid skills instruction model, with a compulsory core of skills subjects to be introduced early in the degree and subsequently reinforced in later subjects. In other words, legal skills are taught first in stand alone subjects, then by integration into substantive or doctrinal law subjects. For example, the official curriculum calls for legal research skill to be taught first in a stand-alone subject called Legal Writing and Research. Legal research skill is then to be reinforced in later doctrinal subjects, such as

Constitutional Law or Property Law. The doctrinal law subjects generally do not provide explicit instruction in legal skills, but should provide students with opportunities to learn or reinforce legal skills by engaging them in activities that give them an opportunity to apply their learning and practice their skills (Faculty of Law, 2006, p.7).

## **The Stand-Alone Skills Subjects – An Overview**

The stand-alone skills subjects forming part of the UOW LLB skills curriculum are Legal Research and Writing, Communication Skills, Drafting Skills, Advocacy Skills, Dispute Management Skills, and Lawyers and Australian Society. The last of these deals with the role of lawyers and the ethical framework. Legal Research and Writing, Communication Skills, Advocacy Skills and Lawyers and Australian Society are all taught in the first year of the LLB program. Drafting Skills and Dispute Management Skills are taught in second or third year, depending on whether the student is undertaking the LLB program as a single degree or undertaking the double degree program. This is consistent with the Law Faculty's resolve (as outlined above) to introduce the compulsory core of skills subjects early in the degree. The upper level legal skills curriculum is amplified by a Professional Experience Placement that requires each student to work in a professional placement for 20 days and submit a reflective report relating to the placement.

The format for skills teaching is varied. Lawyers and Australian Society is taught in a lecture and tutorial format during a regular semester. The Legal Research and Writing subject also meets throughout the semester and involves the students in a number of tutorials, library workshops, on-line tutorials and on-line quizzes. The other skills subjects involve attendance at seminars over a number of weeks but not a full semester. Seminar activities include presentation of material by the lecturer as well as class discussion and workshop activities.

Legal Research and Writing and Lawyers and Australian Society have a credit point value of 4 and 8 respectively and are given a mark out of 100 and corresponding grade. The remainder of the skills subjects have a 2-credit point value and are graded on a "satisfactory/unsatisfactory" basis with no final mark given. The decision to grade on a "satisfactory/unsatisfactory" basis was undertaken for a variety of reasons, including concern over the objectivity of marking skill performance exercises and a philosophical preference among the skills faculty to educate all students to a level of competency – rather than rank them serially. The focus was to be on the student's acquisition of skills and *formative* rather than *summative* assessment.<sup>1</sup> For example, in Drafting Skills, students are required to undertake in-class drafting exercises where their work is not graded, but is subject to peer review via a detailed feedback sheet prepared by the teacher and completed by a fellow student. In Dispute

---

<sup>1</sup> Summative assessments typically evaluate what a student has learned relative to external criteria and rank student performance. Formative assessments, on the other hand, assume that learning is on-going and provide students with feedback about a performance with the goal of improving that performance (Harlen, W & James, M. 1997, Sergienko, G. 2001).

Management, in-class activities include taking part in a mediation and negotiation with time allocated for feedback and de-briefing.

Although the skills subjects are not marked on a 100 point scale, they require summative assessment tasks that engage the students in performing the particular skills being taught. In Advocacy, for example, the students present a plea in mitigation and a bail application at the Wollongong court complex in front of a magistrate or senior lawyer. In Communication Skills, the students participate in interviews and make oral presentations to the class.

## **The Skills Curriculum in Action: Doctrinal Subjects**

As outlined above, the official UOW LLB skills curriculum was developed with a view that students would begin learning professional skills in the stand-alone skills subjects and would have further opportunity to learn and reinforce those skills in the doctrinal subjects. To uncover how the official curriculum works in practice, this audit engaged in class observations, interviews, focus groups and a number of informal discussions. One audit task that yielded significant results – and is the focus of this article – was the review of assessment practices on a programmatic level.

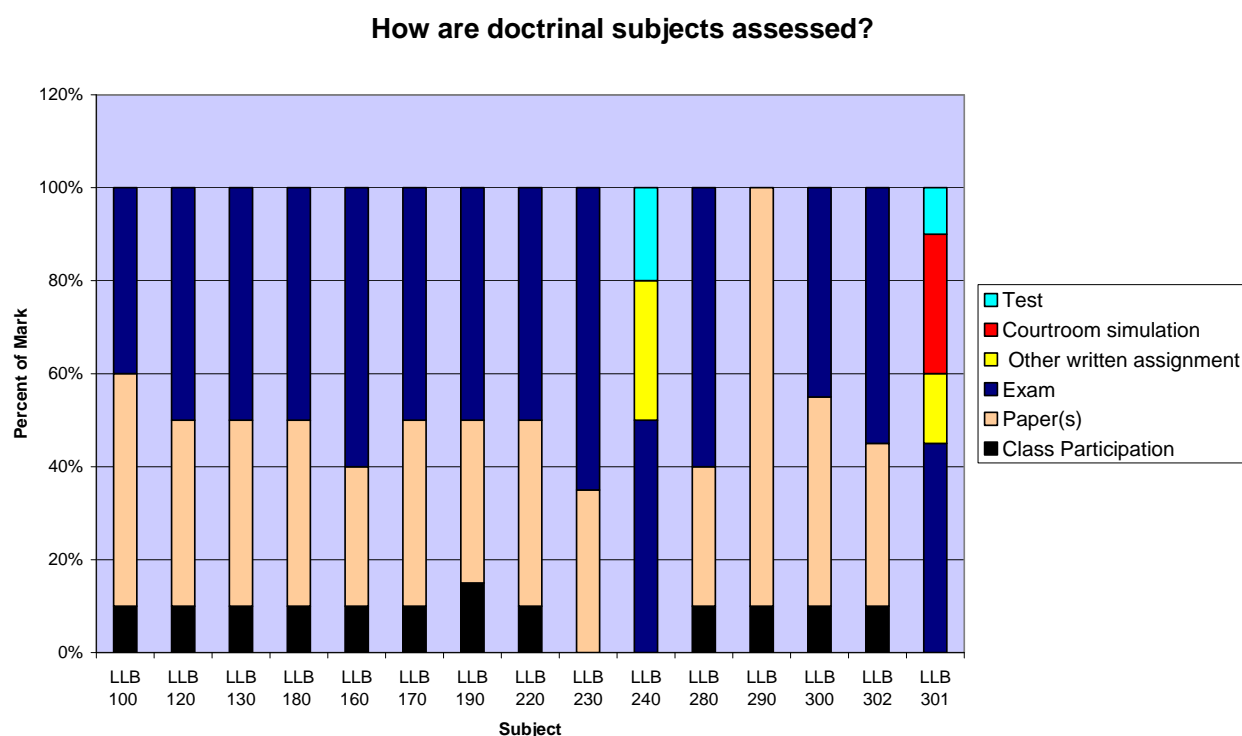
Analysis of assessment practices began with a survey of the subject outlines of all compulsory LLB subjects, looking particularly at which tasks were assessed. At UOW, subject outlines are viewed much like a contract with the students. All of the required and optional assessment tasks, including their weighting, are described in the subject outlines. Most subject outlines also state the specific evaluation criteria that are applied to assessment tasks. Thus, by surveying the subject outlines it was possible to produce a snapshot or overview of the type of assessment tasks utilised over the core LLB course. The goal was not to evaluate the validity or reliability of assessment tasks, but to evaluate the alignment of the curriculum (Biggs, 1996) – or the extent to which are legal skills developed *concurrently, consecutively and continuously* throughout the degree. The objective was to discover whether the assessments are likely to require the students to use, reinforce and develop the skills identified in the official curricular objectives.

The survey revealed a high degree of similarity in assessment practices across the required doctrinal law subjects.<sup>2</sup> All but one of the required subjects provided three mandatory assessments, which generally included a written examination, a research essay, and class participation (Figure 1). In 2006 only two subjects required a test or a paper that was not a research essay. One subject had an optional courtroom simulation (mooting) component.

---

<sup>2</sup> Figure 1 reflects only the assessments in required doctrinal subjects. All students in the LLB program would be required to complete all of the charted assessments. Elective subjects are not included in this discussion.

The next step was to ask: Which skills are used and assessed in each of the most common assessment tools? This evaluation required consideration of the written assessment criteria stated in the subject outlines, review of the content and marking criteria of actual examinations, and evaluation of information gathered from faculty interviews and student focus groups.



**Figure 1.** Bar graph illustrating how each required doctrinal subject allocated marks among various types of assessment tasks.

**A. Written examinations.** Written examinations are the most heavily weighted student performance in law school assessments, with a required exam weighted between 40% and 60% in all but one required subject. These exams are typically cumulative exams given at the end of the semester for summative assessment. Each exam typically required students to answer 2-3 problem or case study - type questions. These questions generally described a hypothetical set of facts and called on students to identify legal issues and evaluate possible legal outcomes. A typical examination might also include a new or hypothetical statute to be interpreted in light of hypothetical facts given. Other exam questions called on students to critique existing doctrine or discuss policy options. Some exams required students to adopt the role of a representative of one party in a legal dispute and advocate a position on behalf of that party. Short answer questions or multiple choice questions constituted only a very small percentage of exam marks.

Although each of these essay exams required a certain level of memorisation of legal doctrine, each required demonstration of higher order learning, such as synthesis, analysis and evaluation (Bloom,

1956). To succeed on these assessments, students must demonstrate the ability to apply doctrine to new set of facts, to solve problems, to think critically and to engage in factual and legal analysis.<sup>3</sup>

Notably, student expectations of assessment practice were closely aligned with the reality of the examination marking criteria because the criteria are clearly stated in advance and because students typically have access to several practice exam problems and examinations. Thus, examinations given in 2006 reinforced, assessed and provided an opportunity student performance of important skills that are central to the faculty's stated legal skills curriculum: the ability to apply legal doctrine to new set of facts, to solve problems, to think critically and to engage in factual and legal analysis. To a lesser extent, the examinations given also provided some opportunity for the demonstration of strategic thinking and advocacy skills. Other skills in the stated skills curriculum were not assessed or minimally assessed in written examinations. These included oral communication skills, dispute management skills, mediating, advising, negotiating, teamwork, organisation and interpersonal skills.

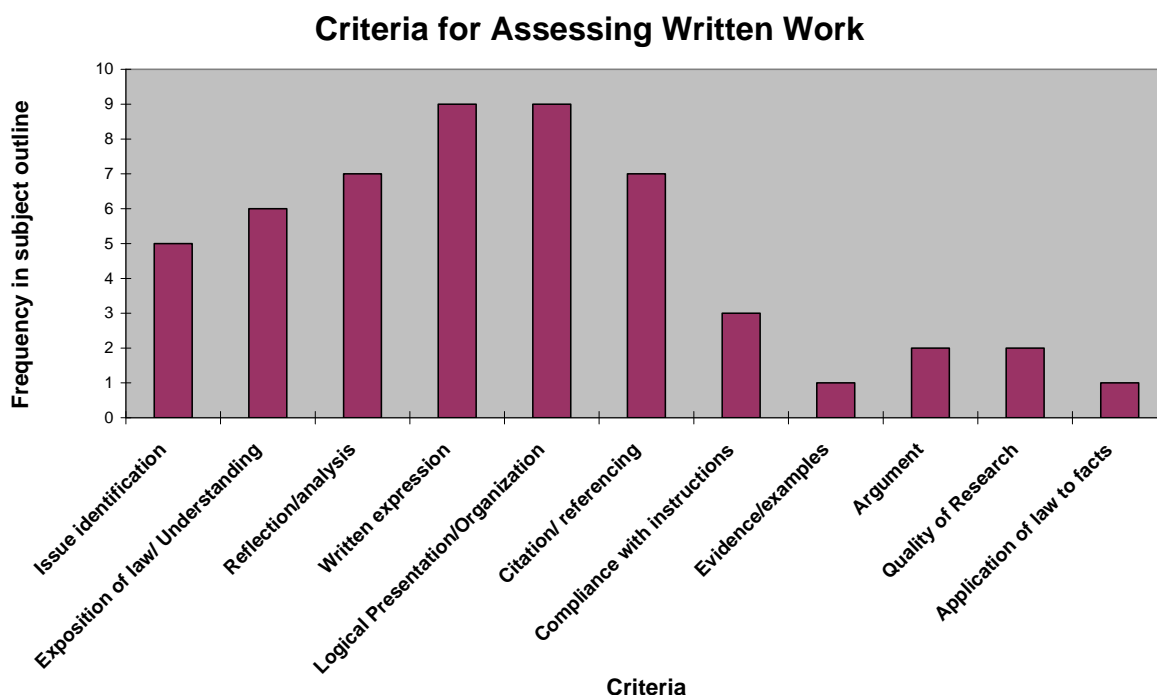
All but one of the examinations in required subjects involved a timed, in-class, written performance. Timed examinations assess and develop skills that are not enumerated in the stated skills curriculum, particularly, the ability to think and write *quickly*, and the ability to perform under stress. Some faculty members implicitly acknowledge that the ability to deal with time pressure is a desired skill (or, perhaps, a necessary exam-taking skill) and encourage students to take practice examinations in a timed setting. In interviews, several faculty members expressed the view that time pressure reduces the effectiveness of the exam in developing skills in deep critical thinking, reasoned reflection, and careful written expression. To attempt to counteract this effect (and in the hope that students would engage in deep critical thinking and reflection about the class material *before* the exam), faculty members would generally, prior to an exam, make it clear to students what areas would be covered in the exam and provide some guidance as to the sort issues that might appear in the exam. Other faculty members expressed the view that the ability to perform under pressure is, indeed, an important skill for a lawyer and that timed examinations provided an appropriate opportunity to develop and practice that skill.

**B. Research Essays and Traditional Academic Papers.** Although it was not typically weighted as heavily as examinations, the most common assessment task in law school was the traditional academic paper. In the first year curriculum in 2006, students were required to complete 11 traditional papers (essays or research papers) and three other written assignments, including a report of an interview in Communication Skills, a 'No Bill' in Advocacy Skills, and a report of court observations in Criminal Law and Process..

Looking across the compulsory or core curriculum, it appears that students finishing their degrees in 2006 had been required to complete at least 20 research papers or essays in the LLB course. Figure 2 illustrates the assessment criteria (as stated in subject outlines) for the required papers or essays.

---

<sup>3</sup> No attempt was made to verify that higher marks were, in fact, given to students who engaged in effective analysis or evaluation. Professor Biggs has noted that in large classes with multiple markers, 'higher level understanding performances tend not to be in focus' (Biggs, J. 1996, 356).



**Figure 2.** *Criteria for assessing written work as expressed in subject outlines.*

Research essays, unlike timed examinations, provide an opportunity for students to engage in deep critical thinking, and careful drafting. Essays also provide numerous opportunities for students to engage in legal research and demonstrate their written communication skills. These skills are thus practiced and reinforced throughout the law program at all levels.

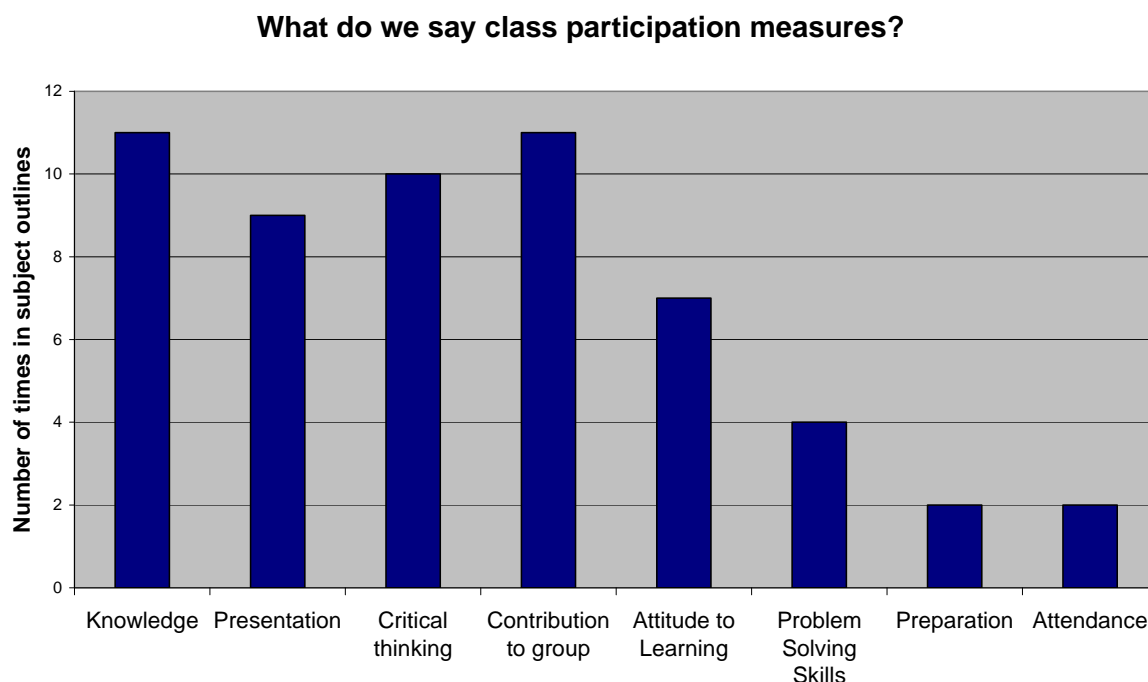
Although research papers provided many opportunities for practice and assessment of research, writing, and critical thinking skills, the full potential of research essay as a learning tool was diminished by the fact no second drafts were required. Each essay was assessed as a finished product and ranked by reference to the quality of essays done by other students. In other words, essays were treated as summative assessment tools. Essays, because they can be evaluated both as a work-in-progress and again as a finished product present an excellent opportunity for linked formative and summative evaluation. Providing an opportunity for students to receive feedback on a first draft, followed by a required second draft would push students to improve the quality of their research, organisation and written communication skills while their motivation to improve was still strong – that is, while the *mark* for the work might still be improved. In the absence of a second draft requirement, students received feedback on their work only after the final product had been marked. At that point the motivation to improve the paper's organisation or expression was generally gone. Indeed, some students did not even bother to pick up their papers to read the feedback.

**C. Class Participation.** The third assessment tool that is typically used in UOW required doctrinal classes is a class participation assessment mark. Does the class participation assessment encourage, develop, or measure skills that are not assessed in examinations? Does it allow us to

infer anything about how students organise their time to achieve a high assessment? These are difficult questions to answer and require us first to look carefully at what kind of class the students are participating in.

The vast majority of all of the required subjects – both skills subjects and doctrinal subjects – were taught in a lecture/seminar format. Lectures typically required students to listen and take notes. Although some faculty members included occasional active learning techniques in their lectures, students were generally quiet and passive during lectures. The mode of delivery of seminar classes varied more. Most used a question and answer discussion format and engaged students in problem-solving, group discussion, and occasional role-playing. Many seminar classes also spent a large fraction of class time in a quasi-lecture format, in which the faculty member explained or reviewed the material discussed in the lecture.

Subject outlines typically express a set of criteria that are to be considered in awarding class participations scores. The following graph summarises the stated marking criteria for class participation.



**Figure 3.** *Criteria for class participation scores as reflected in subject outlines.*

According to the formal assessment criteria, class participation marks assess many of the same skills (critical thinking and problem-solving skills) as examinations. In addition, they claim to assess oral communication skills (presentation), teamwork and interpersonal skills (contribution to group learning) and student attitudes. Note that dispute management skills, advocacy, mediating, advising,



negotiating, and organisation skills (skills not assessed in written examinations or research essays) are not specifically listed among the assessment criteria. Thus, although in-class activities may provide an opportunity for students to practice negotiating, advising, drafting etc, these skills are not formally assessed in class participation marks. If there is some assessment of these skills implicit in the class participation mark, that fact is not made apparent to the students.

Nevertheless, given this information about the mode of delivery of seminar class time and the sheer number of hours spent in tutorials, one might be tempted to conclude that class participation assessment should provide students with a strong incentive to engage actively in skill-building activities that demonstrate the skills stated in the marking criteria. This optimistic view, unfortunately, was undermined by information gathered in interviews about class participation scores. Some students admitted that they often participate in discussions without reading or preparing in advance. Some faculty members indicated that they find it difficult to measure the quality of student participation in discussion and therefore use the assessment chiefly as a reflection of attendance and willingness to participate.

## **Skills Assessment and the Hidden Curriculum**

Review of the assessment practices of skills subjects revealed that, in keeping with the official curriculum, the skills subject assessments generally placed students in role-sensitive situations and required them to perform complex tasks including making arguments before a court, negotiating an agreement, interviewing a client. These 'learning-by-doing' exercises are exemplary of the type of tasks that have been repeatedly found to lead to deep learning. Rather than focus on the positive aspects of the skills-assessment regime, this article highlights an unexpected revelation about perceptions of the hidden curriculum.

The hidden curriculum consists of 'implicit messages given to students' about the norms and values of the educational institution, including what kind of knowledge is valued (Bennett & Lecompte, 1990, p. 188). As noted earlier, the stand-alone skills subjects (except for the professional ethics subject and Legal Research and Writing) were structured as 2-credit point subjects and were marked on a satisfactory/unsatisfactory basis. Doctrinal subjects, in contrast, were generally structured as 8-credit point subjects in which students received a score out of 100% and a grade. For some students, these credit and marking factors communicated a negative message about the value of these assessments and the skills required. The hidden curriculum, as interpreted by these students, was that the skills subjects did not merit their best work. Focus group discussions confirmed that, while some students found the skills assessment tasks intrinsically motivating and devoted substantial time and effort to them, others placed the skills tasks low on their work agendas. One graduate remarked:

*Because the subjects are pass/fail, it means that no effort goes into them. The students find their line of what they need to get through; these [the skills subjects] are the throw-away subjects. If you have a 40% paper due in an 8-credit point subject, you're not going to pay much attention to*



*the 2- credit subject that you have to sit through. . . Everyone knows what you have to do to get the pass.*

For these students, the skills marking and credit regime undermined learning. Students have busy schedules and generally try to find shortcuts. Because of the low credits and absence of a percentage mark, some students found it safe to give short shrift to the skills subjects and their assessments. This meant that these students gave less attention, preparation and less study time to their skills classes than to their other classes. Many did only the minimum required to complete the assigned skills tasks. As a result, some students interviewed suggested that they did not learn the material well and did not retain the information presented. All students interviewed – even those who reported that skills subjects were among the most valuable of their educational experiences – reported that they probably would have put in a greater effort and learned more if the skills subjects had been graded on a traditional scale.<sup>4</sup>

On the other hand, the focus group discussions also revealed that, whilst no grade or mark was attached to the compulsory professional placement<sup>5</sup> which must be completed as part of the ethics subject (called Lawyers and Australian Society), students generally viewed the placement as valuable and worthwhile both in terms of a learning experience and in terms of possible future employment opportunities. In focus group discussions, students, graduates and employers all gave high praise to the Student Professional Experience Placement for its educational value. One graduate claimed that he learned more in four weeks of a placement than he had learned in five years of university. One student remarked, 'Learning really happens in the placement. That's where it all comes together. You don't really know what these things you've been reading about mean until you actually see it.' Even in the absence of a traditional ranked assessment, students reported that the placement helped them put learning into context and broaden and deepen their understanding of what they had learned in class.

Most students undertake their placement in their final years of study, some time after they have completed the stand alone skills subjects. In the reflective reports submitted after the placement experience, students often draw on what they learned in both skills and doctrinal subjects when reflecting on what they observed in practice. When this is considered along with the comments made by students in the audit focus groups such as those outlined above, it suggests that the value of the learning in the skills subjects might not be recognised by some students until they experience the law in action. This evidence supports the view that ranked assessments are motivating, in part, because they serve as a proxy for employability. In professional placement, where a student is face-to-face with a potential employer (and real clients), students are motivated to perform at a high level – even in the absence of a ranked assessment.

---

<sup>4</sup> It has been suggested by some writers in the legal skills field summative assessment and its evaluative measuring system – formal marks – may be necessary if skills subjects are to be taken seriously students (Shrag, 1996, Laflin, 1997, p. 17).

<sup>5</sup> Students are, however, required to submit a reflective placement report which is a graded assessment task.

## Conclusion

Reviewing assessment practices across the curriculum proved to be a fruitful way to evaluate the success of the faculty's plan to develop professional legal skills *concurrently, consecutively and continuously* throughout the degree. It became apparent that several of the essential legal skills enumerated in the faculty's official skills curriculum are, indeed, reinforced and assessed continuously across the doctrinal curriculum. Assessments in doctrinal subjects provided substantial opportunities for practice, reinforcement and improvement in legal research and writing, critical thinking, factual and legal analysis, problem solving, and citation. To a lesser extent, students' skills in teamwork and oral communication were practiced and assessed in doctrinal subjects. Other officially essential skills, however, were practiced or reinforced in very few doctrinal subjects. For these skills – oral communication, advising, negotiating, teamwork, organisation, professional ethics and values, interpersonal skills and dispute management skills – the instruction, feedback and assessment took place almost entirely in the stand-alone skills subjects.

Tracking assessment practice at a programmatic level thus provided the faculty with important information about how its stated curriculum is operationalised. Armed with this information, the faculty may see opportunities for improved curricular alignment. It may be possible to eliminate or change some assessment tasks so that certain skills are not over-assessed. At the same time, it may be possible to introduce alternative assessment tasks that reinforce or build specifically on the under-assessed skills subjects. Moreover, building from the back-end and linking activities to existing summative assessments, the curriculum may be revised to provide improved opportunities for formative assessments.

Further, tracking assessment practice also revealed important information about the previously unstated or hidden curriculum. This review of assessment practice revealed that the pass/fail marking system for skills subjects contributed to student perception that the stand alone skills subjects were not as important as the doctrinal subjects. This was not the faculty's intended message. Once the hidden curriculum is made explicit, however, the faculty can either adopt or change it. Thus the audit has been a useful tool - identifying student perceptions and alerting staff to areas where work needs to be done to address perceptions that may undermine learning.

Assessment tasks are not only important in motivating students, they are also important performances and opportunities for building skills for professional practice. Because they are such an essential part of learning, they are also a critical part of understanding the operational and hidden curricula. Knowledge about a program's assessment practice is, in sum, an essential curriculum planning tool.

## Citations

- Albon, R. (2003). Assessment drives the learning: Raising the bar, paper presented at Evaluations and Assessment Conference, Adelaide, Australia, <http://www.unisa.edu.au/evaluations/program.htm> at 21 January 2008
- American Bar Association, Section on Legal Education and Admissions to the Bar (1992). *Legal Education and Professional Development – An Educational Continuum*
- Australian Law Reform Commission (2000). *Report No. 89: Managing Justice*, <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/> at 12 January 2008
- Australian Universities Teaching Committee (AUTC) (2001). Teaching Large Classes, AUTC Project, Teaching and Assessment in Large Classes: Assessment and Learning. [http://www.tedi.uq.edu.au/largeclasses/pdfs/LitReview\\_3\\_Teach&Assess.pdf](http://www.tedi.uq.edu.au/largeclasses/pdfs/LitReview_3_Teach&Assess.pdf) at 12 January 2008
- Baker, B.K. (1994). *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, *Arizona Law Review* 36:287-332
- Bennett, K.P. & LeCompte, M.D. (1990). *The Way Schools Work: A Sociological Analysis of Education*, New York: Longman
- Biggs, J. (1996). Enhancing Teaching Through Constructive Alignment: *Higher Education* 32: 347
- Bloom, B. S. (1956). Taxonomy of educational objectives. Handbook I: The cognitive domain. New York: David McKay Co. Inc.
- Engler, R. (2003). From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade: *Pace Law Review*, vol. 23
- Harlen, W. & James, M. (1997). Assessment and Learning: Differences and relationships between formative and summative assessment. *Assessment in Education*, 4(3): 365-379
- Johnstone, R & Vignaendra, S. (2003). Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)
- Lafin, M. (1997-98). Toward the Making of Good Lawyers: How an Appellate Clinic Satisfies the Professional Objectives of the MacCrate Report, *Gonzaga Law Review* 1997-98:1
- Lamb, A. (2001). Unpublished Report of the Skills Subcommittee of the Faculty of Law, University of Wollongong, November 2001. Copy on file with the author.
- Lord Chancellor's Advisory Committee on Legal Education and Conduct (1996). *First Report on Legal Education and Training*, <http://www.ukcle.ac.uk/resources/aclec/aclec.pdf> at 28 January 2008
- Mitchell, J.B.; Hollingsworth, B.R.; Clark, P.H. & Lidman, R. (1995). *And Then Suddenly Seattle University Was On Its Way to a Parallel Integrative Curriculum*, *CLINICAL LAW REVIEW*, 2:1-24
- Myers, E.W. (1997). Teaching Good and Teaching Well: Integrating Values with Theory and Practice, *Journal of Legal Education* 47:401
- O'Leary, J. & Hargreaves, M.H. (2002). Role of Assessment in Learning. Copy on file with author
- Peters, D. (1996). Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling, *Florida Law Review* 48:875

Posner, G.J. (1992). *Analysing the Curriculum*, New York: McGraw Hill

Ramsden, P. (1992). *Learning to teach in higher education*. London: Routledge

Schrag, P.G. (1996). Constructing a Clinic, *Clinical Law Review* 3:175-204

Stuckey, R. and others (2007). *Best Practices for Legal Education*.

[http://www.cleaweb.org/documents/Best\\_Practices\\_For\\_Legal\\_Education\\_7\\_x\\_10\\_pg\\_10\\_pt.pdf](http://www.cleaweb.org/documents/Best_Practices_For_Legal_Education_7_x_10_pg_10_pt.pdf) at 14 January 2008

Weisbrot, D. (2002). What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience: *Journal of the Association of Legal Writing Directors*, 2002(1)  
[alrc.gov.au/events/speeches/DW/20010727.htm](http://alrc.gov.au/events/speeches/DW/20010727.htm) at 10 November 2007