Re-Thinking Assessment in Law

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The legal curriculum is staggering under the weight of increasing and arguably impossible expectations. There is a sense it must teach more detail and more skills in less time and with an increasing burden of assessment. Changes to how teaching is timetabled and moves to more formative assessment have increased levels of assessment at the same time that the impact of technology on the student cohort has made them less prepared for traditional assessment forms. The impact of COVID-19 in 2020 and beyond sees the curriculum and the assessment of student learning at a tipping point. Old shibboleths have been challenged and at least partly overcome. As law schools seek to return to a 'normal' approach to teaching, could there be changes in the way law students are assessed that might provide more space and flexibility in the curriculum?

This chapter outlines those challenges and then critically analyses the contours of assessment in law. It identifies the various dimensions, environments, formats, and approaches to grading typically used. For each aspect the chapter considers alternative approaches that might better aid student learning and reduce academic workloads. The chapter concludes with a suggestion for a radically different approach to assessment in legal education.

1 THE CURRENT LANDSCAPE

1.1 MORE AND MORE TO LEARN

There is more law than in previous generations, and understanding it is more complex.[i] Common law jurisdictions lean heavily on the concept of precedent and so much authority for current interpretations depends on a nuanced understanding of previous caselaw both of common law and statute. Courts developing that precedent craft their judgments with a focus on the needs of the parties and the issues put before them. They do not see themselves as providing content for new editions of textbooks on the law. Consequently, any new case that resolves or develops a point of law is unlikely to fully describe the whole area of law in which it sits. This requires lawyers, and law students, to study previous decisions in order to see the new decision in context.

In the last century, law schools developed the case-method approach to teaching.[ii] Students are asked to read full or extracted appeal cases – to see the law as primary sources – and to construct a complete understanding of the area of law by a compilation of the various legal decisions. Often this involves a critical parsing of the judgments to sift obiter dicta from ratio decidenda. This approach to learning builds reading and analytical skills as well as legal knowledge. But it takes up significant time in a curriculum. A single lecture can cover the main points of an area of law in under an hour; reading and discussing the key cases – and then extracting the principles – takes much longer.

As courts continue to develop law, and more areas of law become significant for legal practice, there is increasing pressure to reduce the length of extracts that can be read by students, the amount of time in class that can be spent analysing them, and indeed the number of areas of law that can be covered.[iii] The facts of the cases are also often more complex than in previous generations. Corporate structures and the digital economy can militate against a simple, concise explanation of the facts underlying the issue.

Additionally, legislation is constantly being created by Parliaments. Again, the legislation is not getting simpler, and is increasingly interconnected. This means that if students are to appreciate the web of legislative provisions, significant time must be spent reading and analysing Acts as a whole rather than as isolated provisions.[iv]

The increase tends more towards the exponential than the linear. This is largely due to technology. In previous generations, written law was relatively scarce. Acts were printed in volumes, caselaw was selected and edited for printed law reports. Law from other jurisdictions could take months to arrive on boats. Today, judgments at all levels of the court hierarchy and across the world are potentially available instantly; hearings and judgments may be streamed live. Similar instantaneity applies to Parliaments and legislation.

Beyond law itself, there are increasing commissions of enquiry, law reform bodies, activist and academic interventions and a whole world of peer-reviewed theoretical, doctrinal and empirical legal and socio-legal publication. All of these are now instantly available on computer screens worldwide, rather than being locked up in libraries or only available on application. Large scale digitisation projects have brought to the internet primary materials stretching back decades and sometimes centuries.

A law school curriculum thus battles increasing volume and complexity in law and a digital stream of information that is not easily edited and prioritised – not only by academics in constructing classes, but also by students in researching assessments.

This deluge of information is replicated in practice. Lawyers no longer need to be able to learn the arcane skills of a legislation citator reference book, the catalogue system of their firm and the Law Society's library in order to find the hidden precedent for their case. Instead, they need critical analysis and logic skills to construct boolean text-string searches in databases. They need to read quickly across digital texts to find key passages but with an ability to keep in their minds the logical structure of the publication they are reading. They need to be able to know when a source distributed through social media – and often professional social media – is reliable. Increasingly they will rely on AI to manage their workloads. [v] These skills are on top of the traditional legal research skills. Despite claims that younger generations are 'digital natives', many of these digital skills need to be learned in law school.[vi]

Traditional legal communication skills must still be learned. The ability to craft extended legal advice, the ability to verbally articulate a logical argument, the ability to respectfully listen and respond in non-emotional ways remain key skills for a lawyer. In some ways, particularly in relation to written outputs, the requirements of legal practice are divorced from the way business is conducted and secondary school is taught. There is thus an increased need to emphasise and to practice skills in which previous generations may have already been partly proficient. Those skills also need to be translated to other digital formats such as formal writing in emails. In short, the scope of technical skills required in the curriculum has increased.

Finally, law schools and the profession are also now recognising the need to provide soft skills and life skills alongside the analytical aspects of university study. Many students undertake university straight out of school and are in a vulnerable transition phase from childhood to adulthood, from dependent to independent study and life. There is an increasingly realisation that law schools have a responsibility to equip students with skills to enable them to be resilient and to thrive in a quickly changing world.[vii] Skills of digital communication, time management, reflection and maintaining wellbeing are increasingly being taught explicitly.

Together, these factors have created a highly crowded curriculum. It seems to inevitably lead to compromises on content and skills, and on breadth and context in the curriculum.[viii]

In terms of assessment, these crowded curricula can have a range of effects. If content is dealt with at speed or in a summary fashion it becomes difficult to set complex or analytical questions, and the tendency can be instead to focus on proof of knowledge retention. It can be difficult to ensure academic integrity in such assessment without invigilation – and this then leads to a tendency to set stressful, time-limited and supervised examinations.

For students, covering a wide range of material at speed can also make it stressful to study, and increase the pressure to rely on others' notes – whether borrowed or purchased. This in turn then undervalues the role of the class readings and discussion and tends to produce increasingly uniform assessment answers and issues of academic integrity. Finding space to properly assess research skills and other soft skills is also made more difficult by the felt need to assess the mass of content covered.

1.2 LESS TIME TO DO IT IN

The last few decades have seen fundamental changes to the way legal education is set up. Most universities taught year-long courses in the 1970s, broken into terms.[ix] By the 1990s, universities had moved to semesters.[x] A growing number are now teaching in discrete terms or trimesters.[xi] Some are experimenting with 'intensive'[xii] or 'block model'[xiii] approaches, whether face to face or online. At postgraduate level, intensive teaching has become commonplace, operated within semester frameworks.

How a student's learning year is divided up has significant implications for assessment. The usual approach to tertiary education for many years has been to teach discrete subjects or units that are the same length as the teaching term. Assessment is also commonly weighted towards the end of the term, with 'finals' occurring after teaching concludes and constituting a majority of the percentage of the final grade. A few decades ago, that might have been a 100% final examination.[xiv] Today, more in-term summative assessment occurs, but there remains an inevitable emphasis on a final assessment.[1] The movement towards more in-term, low-stakes and formative assessment is intended to provide better scaffolding for student learning – sometimes described as 'assessment for learning' rather than 'assessment of learning'.[xv] This is an important and laudable aim. But when it is combined with shorter teaching terms it often leads to over-assessment. There is a tendency to set the same number of assessments per subject irrespective of its length. A final exam for a one-year length subject or a 6-week length subject is still likely to be 2-3 hours, yet the coverage is unlikely to be the same. No matter what the length of the subject there will be one or two in-term

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[1] That is because assurance of the learning in the final weeks of the term is considered necessary, because the later the assessment the more the learning over the term can be assessed in a synthesised way, and logistically because if teachers are marking, there is more time to do this when teaching has ceased.

assessments. There is not likely to be significant differences in the amount of preparation or research required.

On paper, a year-long subject taught two hours per week and a half-year subject taught four hours per week, or four subjects taught over a semester and four subjects taught in intensive blocks and sequentially over the same period, all seem to have the same content and teaching time. But research shows that the cognitive load is different, and students' ability to absorb, synthesise and reflect on their learning is more limited in intensive teaching modes.[xvi] As a learning experience it can be immersive and transformative. But as experienced teachers know, students just don't have the time to do all the pre-reading required, and the more compressed the subject the less content can be covered. This then impacts on the scope of what can be assessed.

1.3 CHANGING STUDENTS

Today's students are very different to those of previous generations. The internet and smart devices have brought entertainment and distraction into almost all facets of learning and studying. Constant streams of information and info-tainment through social media have produced an 'always on' society.[xvii] The constant flicking from one screen to another, from one platform to another, has also built a facility and preference for multitasking, though the evidence suggests that this is at the loss of deeper learning.[xviii] This militates against extended periods of quiet reflection or content revision, against what Csikzentmihaly called 'flow'.[xix] Our work worlds are now largely reliant on instant search and retrieval of information rather than memorisation. There is some evidence that this has changed the way we remember things.[xx]

These developments mean that students can find it more difficult to absorb large sections of complex text.[xxi] Yet often assessment remains centred around large-scale, memory-based tasks in time limited formats[xxii] that neither reflect the way students learn nor how they will work in the profession. These skills arguably remain important foundational abilities, but as already mentioned, students are less prepared than in previous generations.

Students often come to university with a concretised approach to test-taking. For many, regular testing and sorting by apparent ability from those tests is an experience they have had since kindergarten.[xxiii] Matriculating to university is likely to have involved repetitive learning of notes prepared by others, and inculcation into a culture of looking to coaches or tutors for the 'correct' answer.[xxiv] Many of the 'innovative' approaches to assessment in universities will have already been experienced in secondary school and not all experiences will have been positive.

Particularly in law, students are likely to have been high achievers in secondary school and at least partly define themselves around their test results.[xxv] This may be combined with a fear that labour markets are tight and they will need to sustain high grades to be employed in the profession. This ingrained approach to test-taking and fear of failure is likely to mean students are risk-averse and anxious about any approach to assessment that is not clear-cut or based on rigid rubrics.

1.4 COMPETING DEMANDS ON STAFF

Academic staff also face significant changes in recent years to how they are involved in assessment. Teaching loads and class sizes have increased as law schools grow in size. Increasing numbers of law staff are now employed as 'teaching focussed' or as casuals with higher teaching loads than full-time staff with research commitments.[xxvi] Those attempting to undertake research face a battle to prioritise their teaching over the need to comply with research output performance metrics. Shorter

teaching terms leave less time to mark and to develop new assessment. High workloads lead to exhaustion and a lack of enthusiasm for innovative practices.[xxvii]

In order to try to deal with these workload issues staff are driven towards assessment that is quick to mark. Questions with predetermined answers and based on assessment of knowledge rather than reasoning – such as multiple choice or short answer questions – have increased attraction. There is a tendency to retain and re-use questions leading to both issues for assessment integrity and also limiting students' ability to learn from their performance because of the need to prevent students from retaining the question.

1.5   THE ENDURING IMPACTS OF THE PANDEMIC

COVID-19 has fundamentally disrupted education in 2020-21 and it remains unclear what environments we will settle back into. However, some things appear to have changed irrevocably. Online learning and assessment has moved from a fringe aspect of higher education to the core.[xxviii] While face to face learning will remain a treasured aspect of legal study, it is likely there will from now be a significant online component. The pedagogies of online learning and teaching are different to face to face. They require technical skills significantly beyond the ability to use a pen and a whiteboard marker, and they require approaches to interaction and engagement that can be quite different to face to face techniques. Online and remote assessment also upends many assumptions about high stakes assessment. Where face to face assessment is by its nature amenable to time limits, invigilation and closed book, remote assessment works best over longer time periods (to guard against internet connection failures), open book and without invigilation. Assessment questions are easily retained by students either with approval via downloads or surreptitiously via screenshots and photos by phones. This undermines attempts to develop reusable banks of multiple-choice questions. The ability to undertake internet searches on the exam taking device, or another device, severely limits the utility of short answer questions for which defined knowledge-based answers exist.

2   DIMENSIONS OF ASSESSMENT

Together, these are seismic changes to the way we teach and the way students learn. This chapter suggests similar seismic changes should occur to the way we assess.

2.1   ATOMISTIC – PROGRAMME LEVEL, PROGRAMMATIC

Law schools have traditionally built degree programs against a list of 19th century doctrinal categories.[xxix] Once a student understood the basics of the legal system and had a modicum of research and writing skills, they passed from doctrinal course to doctrinal course with a final exam to assure knowledge prior to each transition. Some of the courses built on assumed knowledge, but largely no knowledge of earlier courses was expected. There has been no final assessment in Australia at the end of the degree for many decades.[xxx] As a result, overall competence was, and is, demonstrated by overall grade averages, and for informed employers how well a student went in 'tough' subjects. For students this means no need to retain any detailed knowledge of a subject from one year to the next, and also the ability to increasingly take the subjects in whatever order is most convenient. This is currently reinforced for law schools in Australia by the fact that schools are accredited against eleven Prescribed Areas of Knowledge (known as the Priestley 11).[xxxi] Nothing is expected of the law schools beyond ensuring graduates are competent in these discrete doctrinal areas, though in recent years some accrediting bodies have begun to require a grounding in

statutory interpretation.[xxxii] It is important to note however, that government regulators require a more holistic approach to assessment, [xxxiii] and that legal scholars have argued for capstone assessments for some time.[xxxiv] Yet, the atomistic sentiment prevails.

As the time spent on courses gets shorter, and as assessment tasks increase, there is a danger that learning is being atomised into a series of incremental achievements that are never synthesised into a larger whole. The alternative is to see the student journey through the degree as an arc rather than a series of disconnected achievement points. Achievements and skills should build on each other – and should be expected and used in later subjects. This means decoupling assessment from individual subjects. Rather than defining the degree by the subjects studied, the subjects could be background building blocks of an overall programme level approach to assessment and achievement. For example, low stakes assessment of knowledge attainment can be a part of those subjects, but higher stakes assessments that combine multiple subjects into one assessment can be set annually. Problem questions combining contracts and torts, ethics and criminal law are possible examples. If low stakes testing of knowledge has already occurred, that knowledge can be assumed in the larger assessments which can focus on critical reasoning or communication skills.

The first stage in this development is to see assessment from a program perspective. Thus students must at some point in the program be assessed against the key areas (such as the Priestleys) but the timing of that assessment is not tied to the attending of classes for that subject area. Breaking that link allows for assessments combining topics, and for moving high stakes assessments to a time of the year that better suits student and staff workflows.

A second stage is to introduce programmatic approaches to assessment.[xxxv] This involves identifying skills and attributes that are formed by students throughout a degree, but not fully developed until the end. Assessment is based around formative and low stakes tasks that demonstrate the development of the skill or attribute. In law the most obvious are legal analysis and research skills, and communication and self-management skills. Programmatic assessment of these skills can complement program level assessment of doctrinal knowledge. Whereas program level assessment would emphasise high stakes assessment at different points in the degree to assure learning, programmatic assessment would only assure the learning at the end of the degree. Programmatic assessment is also often associated with assessment portfolios.[xxxvi] Portfolios curate a series of student outputs and allow a holistic assessment of achievement at the end of a degree even when the task was completed earlier in the degree.

In fact, Australian law schools already have the basis for programmatic assessment in place. Australian universities are required by legislation to have learning outcomes for all degree programs. Most law schools have adopted the Law Threshold Learning Outcomes (TLOs),[xxxvii] or a variant thereof. The TLOs set out levels of competence, skill and achievement that all graduates should have on graduation. Law schools will have mapped these outcomes to some extent to their existing curriculum. The awkwardness of fit in these exercises is due to the need to shoehorn them into a subject dominated assessment strategy.

But if the assessment can be wrested free from the subjects a very different set of assessment expectations could be crafted. Currently the Priestley 11 list legal content only – there is no reference at all to any underlying reasoning skills, research ability or critical thinking. By contrast the TLOs only refer to legal content in one of six outcomes. Those others speak of the skills and attributes of a lawyer. Yet legal doctrinal knowledge remains implicit in all. One cannot advise a client without knowing the legal issues, one cannot undertake legal research without understanding

what is being read. Assessment could be arranged around the TLOs and inserted into stages of the degree, leaving the doctrinal aspects to be building blocks to these larger, integrated assessments.

2.2 SUMMATIVE - FORMATIVE

Over the last decades there has been a growing emphasis on formative forms of assessment. That is an assessment task is seen not just as badge of achievement – where the ultimate score obtained is all that matters – but instead as a structured way to provide feedback for students on how their learning is progressing, explaining the nature of the errors they have made and how to resolve them, and also providing encouragement and praise for tasks done well. It is sometimes described as the difference between 'assessment of learning' and 'assessment for learning'.[xxxviii] In law, most summative assessment tasks now include formative aspects.[xxxix] A research essay will involve both a final mark and also formative feedback – at times in the style of a rubric. There is sometimes complaint from academics that students only care about the mark and fail to read or learn from the feedback.

In large part the failure of students to learn from the feedback on assessment is because the atomistic nature of assessment means that students do not think the feedback will ever be of direct assistance in the rest of their degree – instead seeing it as a justification for the mark given. The feedback is interpreted in light of the mark – a good mark means any negative feedback can be discounted and vice versa.

One way to subvert this is to set far fewer summative assessments – that is far fewer assessments where a mark counts towards the final grade. Instead, assessments can be entirely formative – where students only receive feedback on their performance with an indication of the grade they might have got, or no grade indication at all. This would make the feedback the only way students could assess their progress. Students could hand in substandard efforts without formal penalty, but then the stress levels going into summative assessments with higher weighting would increase as students would be less certain of their capacity to pass. Staff in formative assessments would not need to worry about constructing overall grades or class rankings – instead just providing advice for improvement.

Formative assessment also lends itself to peer-assessment.[xl] This is an often-underappreciated form of assessment and feedback. For it to be effective though, students need to be trained in how to give feedback. This training then can develop into a graduate ability to give respectful feedback and critically assess others' work. Peer-review of assessment provides multiple benefits. A primary benefit is that students see more papers than their own or their friends. This helps students to understand how their work sits in the broader cohort – to see excellent and poor work – and to encourage more engagement through the responsibility of critiquing their peers.[xli]

So why do we set so many summative assessments? It appears to be a mismatched combination of student welfare and staff convenience. Some decades ago, 100% final examinations were common. There was justifiable concern that this meant students were being unfairly assessed – assessed at only one point in time, and often only in one assessment format. As a reaction, summative assessment has been spread across the term with limits on the weighting that can be given to any one assessment. This is a significant improvement for students, though it increased the workload on academics.

On the other hand, the myopic focus on assessment inside individual subjects has been largely for the convenience of academics. If the Law School wishes to assess student learning in a subject, the

simplest way to do so is to create a test during or at the end of that subject, and only assess students on materials taught in that subject. This means the academic setting the test only needs to have detailed knowledge of the material in that subject, and has no responsibility for assessing the students overall learning to that point in the degree. Students can be directed to quite specific materials needed to prepare for the assessment (e.g., set readings), and this alignment also assists in producing largely standardised answers that make marking quicker.

However, if program level assessment is developed as discussed above, the summative assessment of the subject need not be during the subject, and students could take it when they had completed all the subjects that made up the exam coverage. These assessments that combine subject areas need not only be final exams. They could be cross-subject research papers, or authentic experiential assessments. Student welfare would not be diminished by removal of the number of summative assessments if an equivalent number of formative assessments remained and students could use these to build confidence and competence towards the major summative assessments.

2.3 RANDOM – ALIGNED

Moving the balance of assessment away from summative to formative is predicated on the need to align assessment not only to subject learning outcomes but across the degree. Assessment in individual subjects is often set without any reference to other subjects. This leads to a lack of obvious relevance of feedback for later tasks discussed above. It means that it is not clear to students how feedback on performance in an assessment in one subject could assure them that they will succeed in a subsequent assessment in a different subject.

Instead, assessment across the degree should be set with intentional alignment towards major summative moments. The assessments should build on each other – each subsequent task assuming the use of knowledge and skills assessed in earlier assessments. This then makes feedback critical for students to understand what their learning gaps are. Assessment can also move towards program perspectives on skills. For example, expertise at statutory interpretation is unlikely to be achieved in one term, but can be seen as group of distinct sub-skills that build on each other throughout a degree. The ability to apply advanced jurisprudential models of interpretation builds on basic analytical skills.[xlii] Students need not be required to complete summative tests on each of these skill levels, but instead could be offered formative tasks to self-test their ability, and be clearly told the level of skill required for each larger stakes summative assessment. A later capstone assessment could form a summative assessment of all of those skills.

2.4 SECRET – OPEN

One significant issue post 2020 is the question of integrity in assessment – particularly if taken remotely.[xliii] Students are motivated to cheat if the outcome of an assessment is a mark contributing to their final degree, or a hurdle they need to overcome to proceed. The greater the marks or the hurdle, the greater the incentive to cheat. Because of the significance of these high stakes summative assessments for attesting student competence and attainment, it is paramount that there is integrity in the assessment. This involves both attestation of the identity of the person undertaking the assessment, and that they have only used permissible means to complete the assessment. Partly, this is achieved by assessment design, but a significant basis for integrity is often secrecy. This requires that the questions are not known to students before the time of the assessment, and once used cannot easily be reused because of the advantage that would accrue to those who may have practised using those questions.

Conversely, there is very little incentive to cheat if the test is entirely formative. Indeed, looking at someone else's answer to the test may have positive educational benefits – particularly if the student attempts the answer themselves first. In a formative assessment that does not result in any summative grade the saying "you are only cheating yourself if you cheat" rings true. Further, in a formative assessment there is no need for secrecy. As grades are not involved there is no unfair advantage to be gained from knowing the questions ahead of time.

This means that assessments can be easily re-used year after year while still relevant. This longer half-life of assessments means academics can justify investing more time into developing them – and in a digital environment, can also develop automated or pre-prepared feedback. Longitudinal analysis of the assessment items becomes possible, allowing the opportunity to identify students who are finding aspects of learning more difficult than a usual cohort.

Having open assessments with automated feedback also means that students can re-do assessments until they have reached a level of proficiency that gives them confidence to tackle the summative tasks. Academic staff are also relieved from marking burdens for these multiple attempts. However, it is critical to remember that the student's overall assessment burden should not increase. So, introduction of formative assessment means less summative tasks.

3 ASSESSMENT ENVIRONMENTS

The ability to reimagine the assessment structure in law school is also strongly influenced by the types of assessments that are set for students. Many of the standard assessment types in law have both advantages and disadvantages for students' learning and for staff workloads. Identifying the underlying reasons to use each assessment type can help to streamline assessment but still enhance learning outcomes. It is helpful to see assessment tasks as differentiated by both the environment in which they are undertaken as well as the nature of the task that is required.

3.1 FORMAL LIMITED TIME EXAMINATIONS

Exams taken by students in exam halls in a final exam period is a time-honoured assessment practice. Yet it is possibly the assessment setting most removed from any real-world situation. Students are restricted in the material they can use in the exam – even in an open book exam the students cannot access any material they have failed to take in with them, they are unable to collaborate or seek assistance, and they have a time limit placed on their answer. While in some workplace emergency situations a time limit might apply, the usual work environment is to craft the best advice possible for a client using all means available and as much time as is needed.

Limiting exams to 2 or 3 hours is a modern practice largely due to logistical timetabling issues, and staff concerns about marking workloads.[xliv] There seems to be marginal educational benefit in ranking students in higher education on how quickly they can write. Limited time exams encourage quick surface responses over deeper critical thinking, and they encourage the production of standard notes and third party 'tutoring' services.

Given the limited time becomes the most pressing aspect of these exams, it seems that the main contributions of formal time-limited examinations to the learning outcomes for students beyond the university are building competence in note and time management, writing better first drafts, building resilience in the fact of stressful situations, and in assessing the value of notes prepared by others.

3.2 OPEN BOOK/OPEN WEB OR CLOSED BOOK

The range of materials a student can access when completing an assessment can fundamentally change the learning outcomes of the task. The range of options is wide. They include no-materials exams; limited materials, sometimes involving materials provided by the examiner such as a list of cases or legislative extracts; open book, where students can use any printed material they bring to the exam; and open web where the students have access to any printed or online materials they can find.

While there is nothing to constrain the form of questions asked in closed book exams, the fact that a student is unable to access supporting material means there is a strong temptation to ask questions that test short term knowledge. These questions can be an important way of encouraging the learning of basic concepts that are practically needed to be rote learned in order to efficiently solve higher order problems. But beyond first year it is questionable whether such knowledge should be tested, or just assumed. In law in particular there are few concepts that benefit from rote learning. By contrast law is characterised by skills of analysis that assume no two situations are exactly alike.

Limiting materials also involves the costs and security issues of invigilation, discussed below. It is obviously easier to write a question based on readily available material if that material is denied to the students taking the test, but it is artificially divorced from what a graduate lawyer would be asked to do in practice. The challenge is to construct questions that require students to synthesise in novel ways the information that is readily available.

3.3 INVIGILATION

Invigilation is a form of assessment security generally believed to ensure the authenticity of the candidate and integrity of the assessment response. Authenticity can be assured if the invigilator is the class teacher and has verified the identity of the student on multiple occasions. However, invigilation is easily compromised by the use of forged identity documents in large formal examinations. This can be overcome by scanning programs that compare the proffered identity card to a central copy, assuming the original is not compromised, and a second system or person is able to correctly match the cardholder to the photo or biometric match. Such systems are likely to be expensive and involve difficult privacy considerations.

If the assessment is closed book, the integrity of assessment is also compromised if the invigilator does not see the additional material snuck into the venue. Classic low-tech options include hiding notes on the person and accessing them in a toilet, but these methods are now supplemented by a wide range of technological devices that students can easily purchase online. If the assessment is being conducted remotely there are services that offer remote proctoring through webcams and keystroke analysis. But there are even more ways to subvert those systems including use of notes out of the view of the camera, mirrors, virtual desktops, etc.. The low-tech option of going to the toilet remains – enhanced by the ability to store notes in the toilet. There are even greater privacy issues with room 'inspection' by the invigilator. While invigilation in face to face assessments is largely effective in preventing group collusion, that becomes more problematic in remote assessments where students have more ability to engage in surreptitious forms of communication.

Invigilation is expensive, and with the introduction of technology is fast becoming an 'arms-race' between invigilating and cheating vendors. It is clear this will become increasingly expensive for law schools, even as the efficacy of invigilation remains unclear.

In law, examinations have traditionally been invigilated, but not research essays. This is interesting because it demonstrates that law has long accepted that not all high stakes assessment need invigilation to assure the integrity of an overall degree program. Invigilation is also mostly used for time limited assessments – it is difficult to imagine how a student could be invigilated across a week-long research task.

There are alternatives to the traditional approach to invigilation. For longer forms of assessment students can submit drafts of their work, they can be asked to discuss their progress with teachers, they can be required to peer assess drafts (building a sense of trust and community). As discussed above, there may no longer be a real justification for time limited assessment in law. But where it is justified, randomisation of questions, higher level complex questions for which answers do not pre-exist, similarity checking software, submission of files showing drafts across the time period are all options to assure integrity. All these options are also available for longer form assessment.

3.4 INDIVIDUAL, ASSISTED OR GROUP WORK

A common environmental stipulation is that the task is to be undertaken individually and without assistance. These two stipulations, often implicit, are central drivers for invigilation and other integrity measures. It is however possible to construct tasks without the need for invigilation. Strongly formative assessment that focusses on student learning rather than grades, assessment that relies on student presentation or dialogue-based discussion of student work,[xlv] can be agnostic as to the method by which the student chooses to learn.

Assessing students in groups is a common alternative. Exactly how the contributions of individual students and group outcomes are assessed remains contentious, but there is general agreement that collaborative learning outcomes are really only achieved or measurable through group tasks.[xlvi]

Indeed, in the real world of legal practice it might even amount to professional malpractice for a lawyer to fail to seek assistance or work in a group to solve complex problems. Individually focussed assessments may be important for the integrity of claims of student competence, but they are not necessarily effective introductions to workplace activities.

3.5 POINT IN TIME OR ONGOING ASSESSMENT

The placement of assessment tasks in a degree is also a significant environmental consideration. Traditionally, exams were at the end of a year or term to assess, at one point in time, the student's accumulated learning. Assessment at the end of a stage of learning allows for responses that more fully synthesise the learning across that stage. Weekly assessments can create a positive learning environment via the 'testing effect' but often struggle to assess synthesis, and focus on lower order knowledge-based areas.[xlvii] Both approaches are assessment tasks that are conducted at a single point in time. This can have a number of negative impacts. It can mean that a student who is 'off their game' on that day is penalised though they performed well at other times. It can mean that students focus on 'cramming' for these tasks rather than focussing on other subjects or areas of their learning. Students can find the assessment regime stressful if either the focus is only a small number of high stakes assessments, or alternatively on a large number of summative tests through a subject.

Alternatively, assessment can be seen as an ongoing form of appraisal throughout a course, where student work builds towards a final mark, and where there is flexibility in both the scoring and the timing of work submitted or activities undertaken. Class participation is one example often found in

law;[xlviii] others are research projects or experiential subjects. Finding the appropriate balance between formative and summative aspects of continuous assessment is important and complex. Continuing assessment if not well designed can have all of the negative impacts of weekly testing,[xlix] and conversely, weekly testing can at times ameliorate uncertainty caused by vaguer continuing assessment scoring. What is ideal will vary by subject, but often a blend of continuous and point in time is optimal. Avoiding an excessive assessment burden for staff and students is also critical.

3.6 AUTHENTIC CLASSROOM OR WORKPLACE ASSESSMENT

There has been increased interest in moving where possible to forms of authentic assessment – that is assessment that approximates real world conditions.[l] Student engagement has been linked to a sense that the assessment tasks are similar to what they will be asked to do as graduates. Law is intrinsically linked to real world issues so assessment in law has always been strongly problem based and so authentic. A truly authentic assessment would involve large amounts of documentation, interviews and legal bureaucracy which cannot be directly replicated in a university assessment environment. As a result, law has long simplified fact scenarios, and often created unrealistically disastrous scenarios to cover as much material as possible in one task. Its arguable that the unrealistically disastrous nature of these problems in fact make them more engaging for students. But there is probably a limit to the extent to which such assessments should be used. Mixing in more complex case studies with primary documentation, setting open-ended, messy tasks with no clear answer, having students answer in the form of briefs, letters advice or judgments are all innovations law schools have used to increase authenticity.[li]

The increased availability of experiential learning either as discrete subjects or as excursions inside courses also creates significant opportunities to bring real workplace experiences into assessment tasks. Reflective work based on actual legal work in clinics is a gold standard but there are many imaginative ways to bring something from outside the classroom into the way a student's learning is assessed. Court reports are a simple method to do this, but almost any community activity can be analysed in legal terms and add an authentic element.

4   FORMATS

There are a range of formats of assessment traditionally used in law and a wide variety of innovative formats. It is beyond the scope of this chapter to attempt to consider the strengths and weaknesses of each format. Instead, a few approaches to critiquing assessment types are suggested. The main focus of such a critique is to understand exactly what aspects of learning are actually being assessed. Most assessment types involve a number of learning outcomes. Designing an assessment strategy for a program involves looking for the most efficient and effective way to assess those learning outcomes. Some complex learning outcomes may require repeated assessment, but others may be inadvertently over-assessed. Some tasks may be focussed on outcomes that are not central to the program and are therefore not properly aligned.

Fundamentally, the format of the way in which the assessment response is produced emphasises, or de-emphasises, particular skills or learning outcomes. Every assessment task will assume that by the end of the task the student will have accessed a set of information, often been required to manipulate it in some way, and to have produced some form of response. The task may also mandate a particular method for each of these components.

The way in which a student accesses information can vary from a quick test of memory recall, through an assessment of how well a student's notes have been arranged, to a discovery-based research question. The degree to which the information accessed is the same for all students has implications for how easy it will be for students to gain the information from others, and so has implications for the need for invigilation or randomisation. If it is a rich source of information from which students can individually choose to use aspects, these needs are lessened. The difficulty of the means of accessing the information also has research skills learning outcome implications. For example, some quick quizzes on assigned reading will require that the assigned material be read, but other quizzes on broadly known principles or facts might be able to be more easily accessed via Wikipedia. Assessment should assume students will use the most convenient way to access the information.

The way in which a student is asked to manipulate that information has strong links to assessing skills of synthesis, analysis and critical thinking. Identifying with some precision exactly what analytical processes a student is required to undertake can give insights into the learning outcomes of the assessment. Tasks that merely ask for identification of key facts may not be testing understanding of how those facts fit in a broader context, but may be appropriate as first tasks. Tasks that ask for the application of law to hypothetical scenarios may require students to critically imagine outcomes that cannot be found already analysed elsewhere. More complex assessment tasks may even ask for iterative or cumulative forms of analysis – such as when a research essay asks for law in an area to be summarised, its flaws highlighted, and reform suggested. Each of these are separate skills and illuminate the complexity of the task assigned.

The way in which the student is asked to respond is also critical, and possibly the most important aspect of assessment tasks. By way of example, the American Bar Association admission tests are a holistic test of a student's entire law degree. They are based around real world fact scenarios. Yet they are closed book exams, and the questions are multiple choice. The closed book environment means the knowledge accessed is merely memory recall. The manipulation ranges across a number of professional skills, but is limited to manipulating the candidate's remembered facts. Significantly, because the response is multiple choice there is no evidence of how the candidate reasoned to a conclusion. Nothing in the paper can distinguish whether the student correctly reasoned to the answer, incorrectly reasoned to the answer, or randomly guessed. Instead, examiners rely on probability to indicate that it is very unlikely that guessed or wrongly reasoned answers form a small part of a candidate's overall correct answers. [lii]

At the other end of the assessment scale is the academic essay. While it is a format of response that is rarely required in business, it is arguably the assessment response format that contains the greatest number of skills and learning outcomes of any common assessment type. It is this complexity that makes its marking so time consuming. Longer research essays can be seen to contain the need for a student to demonstrate in their answer: evidence of wide reading and research with an implicit or explicit research methodology; the ability to summarise, synthesise and critique a range of long, complex sources written for different audiences; analysis of raw data; the ability to accept and reflect on other voices on an issue and to appropriately give them primacy; the need to balance opposing views before setting on one's own; the development of an authentic, yet respectful and professional voice of one's own; the ability to construct logical arguments and maintain them across complex terrains; and the ability to write persuasively and with a particular audience in mind.[liii]

Separating out all the learning outcomes required in such responses can assist with more explicitly explaining marking to students, often via rubrics.[liv] It can also help to better allocate marking

workloads across programs by demonstrating the complexity of the marking task in comparison to other tasks.

5 GRADING

Summative assessment ranks and sorts students. It raises and lowers students both in relation to others in their cohort and across other students across geography and time. At the degree level it can have significant impacts on students' life choices and job prospects, and on their own sense of achievement and self-worth. Failing to achieve minimum grades during the degree can lead to the cancellation of scholarships or visas for international students. The need to repeat failed subjects leads to tuition and living costs.

Consequently, it is important to ask what and why we are grading. It is useful to separate what we are grading into two distinct areas: competence and excellence. Sporting competitions focus on excellence: both comparative and objective. In each competition there is a forced ranking from first to last, and records and statistics are then used to measure that achievement in light of previous cohorts. A gold medal in the Olympics and a world record are separate measures of excellence. There is only one opportunity to achieve a ranking in each competition. However, in each competition there is opportunity to increase a career best score and perhaps attain a record.

Motor vehicle driving licence tests focus on competence. A score of 100% or close to it is required. No one is licenced for achieving a pass of 50% competence. There are no limits to the number of times a test can be taken. Equally there are no special considerations that can lower the bar to pass.

In higher education these two distinct approaches are conflated. Students are routinely graded out of 100 but allowed to continue through the degree and to graduate with grades of 50%. Students who fail to pass, however, are considered so incompetent that they are required to retake the subject from the beginning. Usually there is no opportunity for multiple attempts at tests. Those who complain of 'soft marking' regularly allege that incompetent students receive degrees, but rarely consider what percentage of an assessment a student can get wrong before they are deemed incompetent. This is further confused by the practice of seeing a grade of over 90% as very exceptional. If a course has made it possible for a student to achieve all the learning outcomes set, it might in fact be that there is systemic failure in the teaching if students do not regularly get close to 100%.

For law schools, at least in Australia, the professional accrediting authorities have a set of competencies all students must attain. But like driving tests, the authorities do not look for a grade. Instead, they expect a level of competence. Competence is not assessed on a range of grades. It is assessed as Pass/Fail. This means that if we are assessing students for the admitting authorities we should only be assessing on a pass/fail basis, and importantly, lifting the pass point to one that requires broad competence. We should also allow students who fail to achieve that level to retake the test. Re-doing the whole subject might be optional.

Employers, at least those in the legal profession, expect all graduates to be competent against the accrediting body standards. Beyond that they look for differentiating factors to identify appropriate employees. All that a university provides for this purpose is a set of subjects with a grade out of 100 against it. Employers cannot determine from this the learning outcomes assessed, how the student did on the various tasks, or if the tasks set were a fair reflection of the student's abilities. Often the tasks set will be testing skills only indirectly related to the tasks the employee will perform. If we are

assessing students for employers, we should be instead offering a range of skills against which our students have been assessed. It would be only a specialist employer who was specifically interested in achievement in a distinct subject area. Instead, employers would be looking for program level attainment in the areas highlighted by the Threshold Learning Outcomes – research, analysis, collaboration, self-management, professional responsibility, and ethics. The legal content of the individual courses is assumed by the accreditation. These considerations are even more compelling if the majority of law graduates do not enter the legal profession or do not stay there for long. The legal aspects of the degree become less important than the approach to reasoning and research that the degree provides.

Then there is the academic argument for ranking. Our best students need an academic ranking in order to go on to further studies, to get prestigious scholarships and to win prizes. For this, excellence in rigorous academic assessments is needed, and consistent excellence across courses – particularly those areas in which they intend to study further. These rankings are close to the hearts of academics, rankings that were self-defining for many of us. They are the rankings we are most comfortable with, the ones we have used for many years and have tradition behind them. They are also the rankings that closely align to the conveyor belt of grading through secondary school, and which the students have come to expect. Nostalgia, affinity and acculturation aside though, the academic reasons seem the least compelling.

Australia has nearly 40 law schools, all grading on the same basis. But if the accrediting authorities only require a pass/fail competence basis there is enormous scope for law schools to create distinctly different approaches to assessment. Some schools may choose to focus on developing local practitioners with a strong emphasis on practical skills assessment. Others may seek to become an academically elite school with an emphasis on research papers and law reform. Assessment can be a driver for distinct offerings.

6   POSSIBLE FUTURES

With all of these factors in mind, law schools have much to consider about their approach to assessment. Here is one possible approach.

Assessment in the law degree is separated from subjects. Students undertake formative assessments in the subjects and can retake them till they achieve competence. These tasks are not time limited, are remote and not invigilated. They must however be completed. The formative assessments build skill towards larger summative assessments. The tasks are automatically marked, with significant investment in developing adaptive testing with feedback to guide and appropriately challenge students. Multimedia stimuli and design concepts from online gaming are used to increase the authenticity of the tasks.

A range of mid-level assessments are set on a Pass/Fail basis. These may be group work based and focussed on skills development. These may focus on application of knowledge learnt in subjects. There is an opportunity to retake these assessments if the student fails. Primarily, these Pass/Fail assessments demonstrate competence against the accrediting standards. These assessments are manually marked by academic staff, and feedback is given against learning outcome rubrics. But as the overall grade is Pass/Fail, staff can concentrate on assessing the constituent elements rather than a ranking. One such assessment is in each subject, but its timing can vary as can the format. Some subjects may have a final problem question, others a mid-term essay or report. Failure in the assessment would not prevent progression to a subsequent subject, but students would receive

Electronic copy available at: https://ssrn.com/abstract=4011423

advice as to whether this was wise, and a discretion to prevent progression could be applied to students who appeared to be struggling.

Larger stage or capstone assessments are set in teaching breaks. Students can take them when they feel competent, but some are hurdle requirements to progress to later stages of the degree. These larger summative assessments combine more than one subject area and require extended answers. Staff are separately assigned to set and mark these assessments. The combination of subject areas in the larger assessments mean that students do fewer such assessments. Each assessment would typically be different. There may be an opportunity to take these assessments a second time if students wish to improve their mark. These assessments are marked out of a full range of 0-100 marks. Results in these assessments provide an academic ranking of students. There is a required pass mark for these assessments and failure to achieve that grade would prevent progression to later stages or graduation.

Integrity is assured through extending the range of assessment types to include dialogic forms of assessment – such as through vivas, class discussions and presentations. The larger assessments would have the greatest emphasis on integrity measures. Some might be traditionally invigilated.

Student achievement is reported not only through subject grades but also against competencies and skills which are assessed programmatically throughout the degree. Students are aware that feedback on one task will assist with performance in the next task linked to that competency, and that this will be in a later subject. Where possible, assessment responses are collected in e-portfolios and advertised to employers as a more textured way to appreciate student achievement and differentiation. Students see their major assessments as public artefacts that they strive to be proud of and that demonstrate their achievement.

This is one way of combining the suggestions explored in this chapter, but there would be others. Law schools could adopt one or more of the ideas in an incremental approach to change. A number can indeed be adopted by convenors in individual courses. Most of these suggestions lead to a reduction in academic staff workload, though not all do. But all are intended to increase the value of assessment to a student's learning. At the end of the day, we are here to help students learn, not to rank them for others. Holding fast to that idea may be the most subversive idea of all.

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[i] See generally the discussion in Alex Steel and others, 'Critical Legal Reading: The Elements, Strategies and Dispositions Needed to Master This Essential Skill' (2016) 26 Legal Educ. Rev. 187; Alex Steel, 'Reflections on Approaches to Drafting Regulatory Standards: Finding Ways to Quicken, Not Deaden, the Spirit of Legal Education', *The Future of Australian Legal Education* (Thomson Reuters 2018).

[ii] A leading review of legal pedagogy can be found in WM Sullivan and others, *Educating Lawyers: Preparation for the Profession of Law ["the Carnegie Report"]* (2007).

[iii] For an analysis of criminal law coverage see Helen Gibbon and Alex Steel, 'Are We Reading Enough Crime? Examining the Content and Depth of Criminal Law Courses' (2019) 44 Alternative Law Journal 151.

[iv] Issues for the curriculum are discussed in Jeffery Barnes and others, 'CALD Good Practice Guide for Teaching Statutory Interpretation' (Council of Australian Law Deans 2015) <http://www.cald.asn.au/assets/lists/Resources/GPGSI-June15.pdf>.

[v] Zhiqiong June Wang, 'Between Constancy and Change: Legal Practice and Legal Education in the Age of Technology' (2019) 36 Law in Context. A Socio-legal Journal 64.

[vi] Kate Galloway, 'A Rationale and Framework for Digital Literacies in Legal Education Special Topic - Legal Education Active Research Network' (2017) 27 Legal Education Review 117.

[vii] Randall Kiser, *Soft Skills for the Effective Lawyer* (Cambridge University Press 2017); 'UBC Press | The New Lawyer, Second Edition - How Clients Are Transforming the Practice of Law, By Julie MacFarlane' (*UBC Press*) <https://www.ubcpress.ca/the-new-lawyer-second-edition> accessed 13 January 2021.

[viii] Steel (n 1).

[ix] Committee of Inquiry into Legal Education in New South Wales, 'Legal Education in N.S.W.: Report of Committee of Inquiry, December 1979.' 271–278.

[x] In the mid 1980's 5 law schools had moved to semesters DC Pearce, 'Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission' 88.

[xi] Universities Australia, 'Teaching Calendar' (*Universities Australia*) <https://www.universitiesaustralia.edu.au/our-universities/teaching-calendars/> accessed 14 January 2021.

[xii] See the summary in Sarah Moulds, 'Visible Learning at Law School: An Australian Approach to Improving Teacher Impact in Intensive and Online Courses' (2020) 0 The Law Teacher 1.

[xiii] 'Block Teaching Comes of Age at Victoria University' (*Victoria University | Melbourne Australia*) <https://www.vu.edu.au/about-vu/news-events/news/block-teaching-comes-of-age-at-victoria-university> accessed 14 January 2021.

[xiv] Pearce (n 10) 173.

[xv] Dylan Wiliam, 'What Is Assessment for Learning?' (2011) 37 Studies in Educational Evaluation 3.

[xvi] Suzan Burton and Paul Nesbit, 'An Analysis of Student and Faculty Attitudes to Intensive Teaching' (2002) <https://research-management.mq.edu.au/ws/portalfiles/portal/17151315/mq-1583-Publisher+version+%28open+access%29.pdf>; W Martin Davies, 'Intensive Teaching Formats: A Review' (2006) 16 Issues in Educational Research 1; Marilyn Mitchell and Sven Brodmerkel, 'Highly Intensive Teaching in Tertiary Education: A Review of Recent Scholarship', *Stagnancy Issues and Change Initiatives for Global Education in the Digital Age* (IGI Global 2021) <www.igi-global.com/chapter/highly-intensive-teaching-in-tertiary-education/264077> accessed 26 October 2020.

[xvii] Derek E Baird and Mercedes Fisher, 'Neomillennial User Experience Design Strategies: Utilizing Social Networking Media to Support "Always on" Learning Styles' (2005) 34 Journal of Educational Technology Systems 5.

[xviii] See eg Eileen Wood and Lucia Zivcakova. "Multitasking in educational settings." *The Wiley handbook of psychology, technology and society* (Wiley 2015) 404.

[xix] Mihaly Csikszentmihalyi, Sami Abuhamdeh and Jeanne Nakamura, 'Flow', *Flow and the foundations of positive psychology* (Springer 2014).

[xx] Joseph Firth and others, 'The "Online Brain": How the Internet May Be Changing Our Cognition' (2019) 18 World Psychiatry 119.

[xxi] Cf Spichtig, A. N., Hiebert, E. H., Vorstius, C., Pascoe, J. P., David Pearson, P., & Radach, R. (2016). The decline of comprehension-based silent reading efficiency in the United States: A comparison of current data with performance in 1960. Reading Research Quarterly, 51(2), 239-259.

[xxii] While some law schools have used open book exams for years, this is not uniform and many continued to run closed book exams prior to 2020.

[xxiii] Cf Val Klenowski and Claire Wyatt-Smith, 'The Impact of High Stakes Testing: The Australian Story' (2012) 19 Assessment in Education: Principles, Policy & Practice 65.

[xxiv] Arathi Sriprakash, Helen Proctor and Betty Hu, 'Visible Pedagogic Work: Parenting, Private Tutoring and Educational Advantage in Australia' (2016) 37 Discourse: Studies in the Cultural Politics of Education 426.

[xxv] Cf Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession' (2009) 19 Legal Education Review 3; Rachael Field, James Duffy and Anna Huggins, 'Supporting Transition to Law School and Student Well-Being: The Role of Professional Legal Identity' (2013) 4 The International Journal of the First Year in Higher Education 15.

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[xxvii] Susan R Hemer, 'Finding Time for Quality Teaching: An Ethnographic Study of Academic Workloads in the Social Sciences and Their Impact on Teaching Practices' (2014) 33 Higher Education Research & Development 483.

[xxviii] Olasile Babatunde Adedoyin and Emrah Soykan, 'Covid-19 Pandemic and Online Learning: The Challenges and Opportunities' (2020) 0 Interactive Learning Environments 1; ibid.

[xxix] AWB Simpson, 'The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature' (1981) 48 The University of Chicago Law Review 632.

[xxx] For topics in admissions examinations up to the 1950's see Committee of Inquiry into Legal Education in New South Wales (n 9) 269.

[xxxi] Law Admissions Consultative Committee, 'Prescribed Areas of Knowledge' <https://www.legalservicescouncil.org.au:443/Pages/about-us/law-admissions-consultative-committee.aspx> accessed 18 January 2021.

[xxxii] Barnes and others (n 4).

[xxxiii] Tertiary Education Quality and Standards Agency, 'Guidance Note: Course Design (Including Learning Outcomes and Assessment)' (25 September 2017) <https://www.teqsa.gov.au/latest-news/publications/guidance-note-course-design-including-learning-outcomes-and-assessment> accessed 19 January 2021.

[xxxiv] Sally Kift and others, 'Conceptualising a Capstone Experience for Law Students'. In: Australasian Law Teachers Association 65th Annual Conference 2010, 4-7 July 2010, University of Auckland, Auckland.

[xxxv] Tim J Wilkinson and Michael J Tweed, 'Deconstructing Programmatic Assessment' (2018) 9 Advances in Medical Education and Practice 191.

[xxxvi] Val Klenowski, Sue Askew and Eileen Carnell, 'Portfolios for Learning, Assessment and Professional Development in Higher Education' (2006) 31 Assessment & Evaluation in Higher Education 267.

[xxxvii] Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning & Teaching Academic Standards Statement* (2013) <http://www.olt.gov.au/resources/good-practice?text=threshold%20learning%20outcomes%20law> accessed 21 October 2015.

[xxxviii] Wiliam (n 15).

[xxxix] D Royce Sadler, 'Formative Assessment and the Design of Instructional Systems' (1989) 18 Instructional Science 119.

[xl] Brent Carnell, 'Aiming for Autonomy: Formative Peer Assessment in a Final-Year Undergraduate Course' (2016) 41 Assessment & Evaluation in Higher Education 1269.

[xli] D Royce Sadler, 'Beyond Feedback: Developing Student Capability in Complex Appraisal' (2010) 35 Assessment & Evaluation in Higher Education 535.

[xlii] See eg the approach set out in Jeffery Barnes and others, 'CALD Good Practice Guide for Teaching Statutory Interpretation' (Council of Australian Law Deans 2015) <http://www.cald.asn.au/assets/lists/Resources/GPGSI-June15.pdf>.

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[xliv] Cf the approach to exams at Harvard in the 1970s in Scott Turow, *One L : The Turbulent True Story of a First Year at Harvard Law School* (Pan Macmillian 2014) <https://trove.nla.gov.au/work/33959586/version/209255704?keyword=one%20l> accessed 19 January 2021.

[xlv] See eg Carless, David R. "The 'mini-viva' as a tool to enhance assessment for learning." Assessment & Evaluation in Higher Education 27.4 (2002): 353-363.

[xlvi] Sandra Clarke and Michael Blissenden, 'Assessing Student Group Work: Is There a Right Way to Do It?' (2013) 47 The Law Teacher 368; Alex Steel, Anna Huggins and Julian Laurens, 'Valuable Learning, Unwelcome Assessment: What LLB and JD Students Really Think About Group Work' (2014) 36(2) Sydney Law Review 291

[xlvii] Cf Jeffrey D Karpicke and William R Aue, 'The Testing Effect Is Alive and Well with Complex Materials' (2015) 27 Educational Psychology Review 317.

[xlviii] Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2013) 36 University of New South Wales Law Journal 30.

[xlix] Anna Huggins and Alex Steel, 'The Relationship Between Class Participation and Law Students' Learning, Engagement and Stress: Do Demographics Matter?' in James Duffy, Rachael Field and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Ashgate 2016).

[l] Verónica Villarroel and others, 'Authentic Assessment: Creating a Blueprint for Course Design' (2018) 43 Assessment & Evaluation in Higher Education 840.

[li] See eg Noeleen McNamara (2017) 'Authentic assessment in contract law: legal drafting', The Law Teacher, 51:4, 486-498; Cormac McGrath, Annelie Gunnerstad, Christine Storr & Åsa Örnberg (2021) 'Making the case for virtual law cases: introducing an innovative way to teach law', The Law Teacher, 55:2, 198-212

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[liii] Daphne Barak-Erez, 'Writing Law: Reflections on Judicial Decisions and Academic Scholarship Essay' (2015) 41 Queen's Law Journal [i].

[liv] Phillip Dawson, 'Assessment Rubrics: Towards Clearer and More Replicable Design, Research and Practice' (2015) 42 Assessment & Evaluation in Higher Education 347.