

© National Centre for Legal Education and Author(s) 1999

Published by  
THE NATIONAL CENTRE FOR LEGAL EDUCATION  
University of Warwick  
Coventry  
CV4 7AL  
Tel: 01203 523117  
Fax: 01203 524105  
Email: [ncle@warwick.ac.uk](mailto:ncle@warwick.ac.uk)  
URL: <http://www.law.warwick.ac.uk/ncle/>

Law teachers are welcome, and indeed encouraged, to photocopy or otherwise reproduce any part of this document for their own use, but the NCLE and its authors would ask you please to acknowledge the source.

Guidance Notes: Ensuring Successful Assessment  
ISBN 1 902730 03 8

Designed and printed in Great Britain by  
Warwick Printing Company Limited  
Theatre Street  
Warwick  
CV34 4DR  
Tel: 01926 491666

This publication was produced as part of the National Centre for Legal Education project funded by the Higher Education Funding Council for England (HEFCE) under their Fund for the Development of Teaching and Learning (FDTL).

# Ensuring Successful Assessment

Alison Bone

Series Editors: Roger Burridge and Tracey Varnava

# CONTENTS

Foreword

Preface

<b>Section 1</b>	<b>1</b>
Purposes of Assessment	
<b>Section 2</b>	<b>13</b>
The Importance of Feedback	
<b>Section 3</b>	<b>17</b>
Varieties of Assessment	
<b>Section 4</b>	<b>37</b>
Assessment and Self-Confidence	
<b>Section 5</b>	<b>43</b>
Quality in Assessment	
<b>Section 6</b>	<b>55</b>
Examinations	
<b>Section 7</b>	<b>63</b>
References and Further Reading	

# FOREWORD

The National Centre for Legal Education was established to disseminate information about teaching and learning in law and to support the development of innovative teaching and learning practices. As part of its work, the NCLE has commissioned a series of Guidance Notes for Educators of which *Ensuring Successful Assessment* by Alison Bone is a valuable contribution. This book will be a useful resource for teachers wishing to develop and review their assessment practices and we hope that it will be widely used. In keeping with the objectives of the *Guidance Notes* the book is full of practical advice and commentary while being sensitive to the differing teaching environments and styles with which the reader is familiar.

The author and the NCLE are grateful to Professor John Bell, University of Leeds, for reading and commenting on an earlier draft of this manuscript.

## **About the Author**

Alison Bone is (in her words) a continuous learner. She believes that the best way to grow as a teacher is to keep on being a student, and, as often as resources allow, in a formal structure. She therefore has an odd collection of qualifications: in law, teaching, personnel and French. Most of her time is spent in Brighton Business School at the University of Brighton where she helps people learn about law on both undergraduate and postgraduate programmes although her entry for the forthcoming RAE is based on work done on the development of senior managers in higher education. She is the Examiner in Employment Law for the Institute of Personnel and Development.

If you have any comments on this publication or would like further information about the work of the National Centre for Legal Education please contact us at the address below.

National Centre for Legal Education  
University of Warwick  
COVENTRY  
CV4 7AL

Telephone: 01203 523117  
Fax: 01203 524105  
Email: [ncle@warwick.ac.uk](mailto:ncle@warwick.ac.uk)  
Web site: <http://www.law.warwick.ac.uk/ncle>

*The NCLE is funded by the Higher Education Funding Council through the Fund for the Development of Teaching and Learning.*

# PREFACE

This handbook provides practical advice and guidance about ensuring successful assessment. The Dearing Report, the Quality Assurance Agency and of course the National Centre for Legal Education have all expressed clearly the importance of assessment and this handbook is designed to enable you to:

- take a pragmatic view of assessment
- consider the suitability of different forms of assessment
- design an assessment matrix
- evaluate the effectiveness of different forms of assessment

There is a great deal of literature about assessment in general and also about higher education issues related to assessment and sometimes examples are given within them in relation to specialist subjects. Science, engineering, geography and medicine are very popular subjects for individual treatment, but there has been very little written in the UK about assessment of legal studies even in specialist journals such as ‘The Law Teacher’, the journal of the Association of Law Teachers, which apart from a few special issues, has published articles mainly concerning the content of law teaching rather than the processes including assessment. Many who enter education see themselves primarily as academics and not necessarily as teachers, and there are important differences. An academic is defined by the Shorter Oxford English Dictionary as “a member of a college or university” - so the Vice Chancellor, the Financial Director and a research fellow with no teaching responsibilities could all be described as academics. A teacher is of course someone who teaches i.e. “imparts or conveys knowledge...” (SOED again).

Lewis Elton has said that excellent academics are not only highly skilled as teachers, but they treat teaching in the same way as they treat research...as a problematic activity where one can learn from one’s own research and that of others and where one learns from one’s own reflective experience. (Elton 1990).

This handbook is written from the perspective of you, the lecturer, involved with teaching a law course. Some assessment techniques that are discussed here are so tried and tested it seems cheeky to assume they need to be described, others you may never have come across. Students are prepared to be pioneers but are strangely reluctant to be guinea pigs so you need your wits about you when introducing a new technique. If students think on balance there’s something in it for them they’ll support you and if they respect your aims that’s a bonus. Teachers have much to learn from their students when it comes to assessment and it helps to get feedback from them regularly. The environment in which law teaching occurs is also constantly changing and there is evidence that with the advent of semesterisation and modularisation students are assessed much more frequently, with the result that they appear to learn less effectively. A well-structured assessment strategy will encourage deep learning and increase student motivation (Harris and Tribe 1995).

## Some reflections

I have learnt a great deal about teaching method and assessment since I qualified as a teacher, some of it through formal training but most of it through experience, both as a teacher and as a continuous learner. Over the years I have studied for two additional ‘A’ levels, a language qualification, a masters degree in industrial relations and a diploma in human resource management at roughly equal intervals. All have contributed significantly to my expertise as a law academic. The best way to recognise a bad teacher is to be taught by one!

If this seems a little drastic you may use the increasing opportunities to observe and be observed by colleagues in the learning environment. Peer observation is not optional in some institutions – it is used by several as part of their ongoing quality assessment – but it may, and arguably should, be a valuable learning opportunity for both parties (Osmond

1997). Once you are familiar with each other's learning and teaching styles you may value the opportunity to discuss assessment styles too. It is intended that this handbook may assist you in this task and encourage you to become reflective practitioners. As Boud (1986) states

There is often a gap between what we do in teaching as academics and what we do in other aspects of our professional practice. This is particularly marked in our approach to assessment. We place a high value on critical analysis in our own work but we are in general uncritically accepting of our assessment practices.

Because of my very general experience in law teaching there are some aspects on which I do not feel qualified to speak in any depth. For those wishing a discussion on the role of assessment in relation to professional qualifications I recommend Patricia Hassett's article (1992) and also those by Hugh Brayne (1994) and Peter Clinch (1994). Lundy (1995) has written an interesting account of assessment of clinical legal education.

Above all – have fun!

## The structure of the handbook

### Fig. 1

The handbook is in seven sections

**Section 1** provides a general overview of assessment and looks at the fundamental question of why we assess and introduces some key terms. The role of assessment in our development as teachers is touched on too and the importance of marking criteria is highlighted.

**Section 2** examines formative assessment and concentrates on feedback. Key features of good feedback are examined including timing and content.

**Section 3** is the longest and looks at the different ways we may choose to assess our students. Several different methods are described and evaluated.

**Section 4** concentrates on the use of assessment to build student confidence. Peer and self assessment are discussed as is the role of group assessment in the assessment portfolio.

**Section 5** deals with quality issues in relation to assessment and looks at the role of both the internal and the external examiner. Marking issues are aired including the use of grading and the importance of evaluation is highlighted.

**Section 6** addresses revision and the build-up to summative assessment with some suggested tactics for helping students to know what is required of them. Problems associated with assessment are also discussed.

**Section 7** contains further reading and references.

## Using the handbook

The handbook reflects modern approaches to learning i.e. it is assumed that very few people change practices merely as a result of reading something: it is necessary to reflect on the advantages and disadvantages of the proposal and the practical implications of implementation. This text is described as a handbook but 'workbook' would also be an appropriate term since at many stages in the text you are requested to perform an activity – often merely to cause you to reflect on why you do things the way you do. There are spaces left in the text for you to write, but you may prefer to keep a separate note. Either way, it is important that you do the activities, most of which are quite brief, and keep a written note as some will be revisited at a later stage. Ideally you won't be the only one in your institution who is using the handbook since assessment is a team activity: your students will normally be studying your subject alongside others which may or may not be law-based. What you do in terms of assessment impacts not just on the student's perception of you and your subject, but also on the student's perception of the assessment mechanisms of the course in general.

It is assumed that most readers are examiners – both internal and external – and the handbook considers a range of issues that are normally considered relevant to designing and marking and evaluating assessment in further and higher education.

# Purposes of Assessment

## Beginning at the beginning

“A hard begynning maketh a good endyng” Old English proverb

There are several thousand light-bulb jokes and one of the best-known is “How many therapists does it take to change a light bulb?” Answer: Only one – but the light-bulb must really want to change.

Few of us like change for the sake of it and as one of the intended outcomes of this handbook is to get you to change your approach to assessment you need a reason.

So – first a reflection. Kolb (1976) suggests this is a good place to start. Think about the last assessment exercise you did with your students which did not involve a time-constrained examination. What did they think of it? Write your response below.

If you have written “well – most of them passed” that is not a qualitative answer, nor does it answer the question set! Many will respond “I don’t know – I didn’t ask”. Asking students about their feelings about the way you assess them can be a great motivator: it may give you confidence to carry on a practice which is not common or, more often, lead you to query a method of assessment which you and others have been using for years.

Here’s another reflective exercise taken from an excellent recent publication by Brown *et al* (1997):

### Fig.1.1

A compulsory examination for all examiners

Answer all questions. This examination is un-timed. Consultation with others (including students) and references to books and other sources *is recommended*.

1. What objectives do you assess?
2. Justify and criticise your choice of assessment methods. Refer to research in your answer.
3. Describe, justify and criticise your methods of grading
4. With reference to research findings, describe, justify and criticise your marking techniques to overcome the following:
  - a) variations in standards on a single occasion
  - b) variation in standards on different occasions
  - c) variations between examiners
  - d) differences in students’ handwriting
5. How do you ensure that your students are similar to standards adopted in comparable assessments and examinations?
6. What values underlie your approach to assessment in higher education? How are they manifest in your practice?
7. Assess your answers to questions 1 – 6.

As with most examinations model answers are not provided either in Brown or here! If you have never really thought much about why you do what you do in relation to assessment, you are not alone. Many academics, if not all, are appointed on the basis of their subject expertise and in the past several were expected to 'pick up' the basics of assessment methodology by talking to peers. This has changed in recent years with the acknowledgement that teaching and assessment skills are better acquired as early as possible and many universities now make it a condition of appointment for new lecturers that they undertake a programme of study accredited e.g. by the Staff and Educational Development Association (SEDA – see their information on assessment at <http://www.seda.demon.co.uk/assess.html>). The establishment of the new Institute for Learning and Teaching has also led to further discussion on the accreditation of all teachers, although it is not proposed that such accreditation should be compulsory. Existing and proposed programmes are not generally, however, subject-oriented and this handbook, while drawing heavily on the general principles associated with assessment and learning, aims to give examples in a legal context. A useful introduction to some of the myths associated with law assessment are included in the article by Tribe and Tribe (1986). It is more frightening to realise that very little progress has been made in some law schools in the years that have passed since it was written.

## Why is assessment important?

According to David Boud:

Assessment 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. (Boud 1995).

Most new lecturers (and many older ones) will admit that they spend most of their time ensuring their material is up to date or in a presentable fashion. Given the choice of attending a session on e.g. using the web to gain materials or choosing assessment mechanisms, the former sounds more attractive and useful to most of us. We tend to underestimate the importance of assessment and are often reluctant to discuss it with our colleagues.

One way of viewing assessment is as a maze with the learning outcomes as the exit. There are however a number of paths through the maze, some more testing and difficult than others. The hedges that make up the maze are the subject-matter and we would like students to follow the recognised paths, but have to accept the fact that some come armed with machetes and will hack their way through. This may or may not be important...it depends on where your learning outcomes are in relation to the maze entrance!

## Why do we assess?

Assessment has many purposes. Jot down below a few of the reasons why you assess your students.

The main purpose of assessment is to discover if students have achieved the learning outcomes of the course studied. The term assessment is derived from the Latin phrase *ad sedere*: to sit down beside. Primarily then assessment should provide guidance and feedback to the learner. Having carried out the assessment we can use the results for several purposes as indicated in Fig.1.2.

**Fig 1.2 Uses of assessment**

- To grade or rank a student
- To pass or fail a student
- To provide feedback to students
- To provide feedback to lecturers
- To provide feedback to professional bodies such as The Law Society
- To contribute to a student profile
- To motivate students
- To motivate lecturers
- To predict success in research and/or professional courses
- To predict success in future law-based and other employment
- To provide a SWOT analysis for students
- To provide a SWOT analysis for lecturers
- To assist an institution in establishing quality in their provision of courses

Many of these purposes are related to each other but they should as far as possible be treated as separate purposes. The requirements of the very first assessment we set our students on their law course in terms of learning outcomes should be very different from those set in the final year electives. We can set examinations and assess in a variety of ways but assessment will not be effective unless it can tell us as teachers whether our students at the completion of their studies are capable lawyers in the broadest sense. Probably because of the educational system most academic lawyers received themselves, examinations are the most popular form of assessment in modern university law schools (Association of Law Teachers 1997)

**Examinations will only be improved if they provide structures which will enable the more precise assessment of objectives** (Heywood 1977).

The benchmarks currently being developed at the time of writing by the QAA law benchmarking committee will help inform the debate about the minimum requirements of all law graduates and assessment mechanisms have a key role here.

## Uses of Assessment

Assessment and learning are closely interlinked. Research has clearly indicated that assessment mechanisms help to determine learning styles – or even if learning will occur at all (Watkins and Hattie 1985). Put another way, changing the assessment procedure is one of the most effective ways of changing how and what students learn. Surface approaches are induced by excessive workloads, a narrow band of assessment techniques and undue emphasis upon knowledge reproduction. Deep approaches are influenced by choice, a variety of assessment methods, project work and an emphasis upon tasks that demand demonstration of understanding (Brown 1994). At a more anecdotal level, many of us have been confronted, having asked students to read or learn something towards the end of a course when time is pressured, by the question “will there be an exam question on this?” The implication hangs in the air that if there is not, it will not be taken seriously.

## Some key terms

Assessment is frequently categorised as being **formative** or **summative**. Formative assessment is that which is intended primarily to develop students so that they become aware of their strengths and weaknesses having received individual feedback and is looked at in [Section 2](#). Summative assessment occurs at the end of a course of study and is primarily used for the purposes of making a final judgement of the student alongside his or her peers – final in the sense that (unless there are mitigating circumstances) it is how a student performs in this assessment that will be used to decide whether a student can proceed e.g. to the next level of the course or be admitted to a vocational course. With more and more students entering higher education and the move especially in new universities towards semesterisation and modularisation, there is much more emphasis on summative assessment. Sometimes assessment is intended to have both formative and summative purposes, but normally both the lecturer and the student will be more focused on the summative element. Handling of mid-term ‘diagnostic’ assessments are dealt with in [Section 2](#). The increase in summative assessment has resulted in students being less likely to take risks or to be innovative in their approach to assessment unless directly encouraged by their teacher.

Another way to categorise assessment is to distinguish between **criterion-referenced** assessment and **norm-referenced** assessment. The former is used to judge whether certain criteria have been satisfied and normally operates on a pass/fail basis: an example would be the driving test. It is not important to establish whether more or less drivers pass this test in any one year (or at any one centre) but only to ensure that the national pass standard is maintained. Norm-referenced assessment is intended to produce a rank order however and would be used if it was decided to run a Driver of the Year competition with marks allocated for different skills.

## Quality in assessment

Quality in assessment is fundamental and underpins most of what is to be found in this handbook. The role of the external examiner in ensuring standards are maintained is addressed in [Section 5](#). It would be ludicrous to suggest that we all maintain the same quality in all our assessment mechanisms at all times, but some of us play safer than others. Here are some questions for you to consider – it would be of benefit if you could discuss your response with those of colleagues.

1. Have you ever set an assessment which produced a response (either from an individual or more than one student) that was totally unexpected i.e. the work/answer produced was not at all what you had envisaged when the assignment was set?

If your answer to this is 'No' then just answer the next question – otherwise move straight to Question 3.

2. As all assessments you have set have always produced a predictable response, to what do you attribute your success?

3. In what ways was the response different from that which you expected?

- the task/question was interpreted differently
- the balance of the assignment/answer was other than I expected
- the presentation/structure was different from what I expected
- the response contained material/insights which were unexpected
- other

4. As a result of these responses would you say that on balance the student/s involved

- were not prejudiced/favoured in any way
- earned higher marks as a result
- lost marks as a result

## Changing Nature of Assessment

The answer to question one is not so important as your reaction to it! Some of you will look at it as a question relating to your abilities as an assessor – others as directed at your students' abilities to discern your intentions. It is quite interesting to examine how your personality influences what you do with your students. Are you a risk-taker? Do you tend to repeat similar assessment methods on the basis that if it ain't broke don't fix it? If a student takes a risk and launches into something that you were not expecting is that an issue for you – or the student? Most colleagues answered question 4 in a way that indicated that students generally tended to lose marks if they responded in an unexpected way: it was the student's "fault" that they had misinterpreted the question. Although the colleagues involved were not lawyers, I suspect that the answers would be the same for you: generally academic lawyers are not renowned for rewarding creativity!

This navel-gazing does have an objective reason. Assessment should be designed to reflect the learning outcomes of the course. If it does do this the assessment meets the essential requirement of **validity** which measures the extent to which assessments and their results demonstrate the students' achievement of outcomes.

Another key term is **reliability**. It is one which academics are reluctant to discuss but concerns the impact of subjective influences on the assessment processes. If you were off sick for a prolonged period and a colleague marked your examination would the outcome be similar? With huge piles of scripts how can you ensure that the scripts you mark at the beginning are dealt with in exactly the same way as those you mark last? How does this year's cohort compare with last year's given that the subject-matter and/or your approach to it may have changed radically in the interim? These issues are revisited in **Section 5**.

### Them and us: then and now

Modern law graduates who become academics are far less likely to assess only by means of traditional three hour closed book examinations. There are two main reasons for this: first, they are likely to have undertaken a teaching skills course and to have discussed the advantages and disadvantages of different modes of assessment; but the other, and more significant factor is they are likely to have been exposed to a wider range of assessment themselves both as undergraduates and later, either on postgraduate research or vocational courses. It is not that long ago that many law courses were assessed solely by end-of-year examination, with criteria which were implicit, but the recognition of the importance of personal transferable skills for all graduates has led to the spread of different assessment methods, many of which are discussed in later chapters.

It was not possible to undertake a teaching qualification until comparatively recently without examining the work of Bloom (1965). Bloom developed a hierarchy of learning which is summarised in Fig. 1.3. It was assumed that one moved up through the levels from knowledge to evaluation. As teachers it was important to ensure that the assessment was pitched at an appropriate level so that it would not normally be appropriate to ask students just starting out on a law course to 'critically evaluate' the system of judicial precedent, although it may be justifiable to ask them (after some appropriate reading) to explain it in its historical context.

## Bloom's Taxonomy

**Fig 1.3**

1. <b>Knowledge</b>	That which can be recalled Assessment words: List, Describe, Outline
2. <b>Manipulation</b>	Ability to rephrase knowledge Assessment words: Compare, Contrast
3. <b>Application</b>	Ability to apply rephrased knowledge in novel situations Assessment words : Advise
4. <b>Analysis</b>	Ability to break a problem into its constituent parts and establish the relationships between each one Assessment words: Explain
5. <b>Synthesis</b>	Ability to combine separate elements of the whole Assessment words: Explain, Analyse, Advise, Discuss
6. <b>Evaluation</b>	Ability to make a judgement of the worth of something Assessment words: Criticise, Evaluate

Much has been written about typologies of understanding. Meux and Smith (1970) related the kinds of questions we ask students to the kind of operations and skills they need to answer them and came up with the following:

- |                 |                               |
|-----------------|-------------------------------|
| 1. Defining     | 7. Evaluating                 |
| 2. Describing   | 8. Opining                    |
| 3. Designating  | 9. Classifying                |
| 4. Stating      | 10. Comparing and contrasting |
| 5. Reporting    | 11. Conditional inferring     |
| 6. Substituting | 12. Explaining –              |
|                 | mechanical                    |
|                 | causal                        |
|                 | sequent                       |
|                 | procedural                    |
|                 | teleological                  |
|                 | normative                     |

More recently Kemmis, Atkin and Wright (1977) devised the following typology of learning tasks:

1. Recognition
2. Recall
3. Reconstructive understanding
4. Global reconstructive
5. Constructive understanding

It helps to explain these if we look at Brown *et al* (1997) who have produced a table based on the work at the University of Sydney of Candy *et al* (1994) which is summarised in Fig.1.4.

What skills if any, in addition to these, do you think it is necessary for law graduates to acquire, bearing in mind that several of them may never wish to practice?

**Fig 1.4**

**1. Knowledge**

Graduates should

- have a body of knowledge in the field(s) studied
- be able to apply theory to practice in familiar and unfamiliar situations
- be able to identify, access, organise and communicate knowledge in both written and oral English and
- have an appreciation of the requirements and characteristics of scholarship and research

**2. Thinking skills**

Graduates should

- be able to exercise critical judgement
- be capable of rigorous and independent thinking
- be able to account for their decisions
- be realistic self-evaluators
- adopt a problem-solving approach and
- be creative and imaginative thinkers

**3. Personal skills**

Graduates should have

- the capacity and desire to continue to learn
- the ability to plan and achieve goals in both the personal and the professional sphere
- the ability to work with others

**4. Personal Attributes**

Graduates should

- strive for tolerance
- acknowledge their personal responsibility for
  - their own value and
  - ethical behaviour towards others

Ironically, the fact that many law graduates will be going on to do a vocational course which has assessment geared towards skills acquisition, could be used as a reason for retaining traditional closed-book examinations in undergraduate law courses.

It is also useful to note that with recent emphasis on the development of lifelong learners, it is unrealistic to expect new graduates to have acquired all these skills in any depth. Many can only be exercised after lengthy exposure to the world of work. To illustrate here's how one group of management authors break it down. Quinn *et al* (1996) argue that the professional intellect of an organisation operates on four levels listed below in increasing order of importance:

**Cognitive knowledge** (know-what). This is the basic mastery of a discipline. In universities it would be represented by law undergraduate and postgraduate degrees plus professional vocational qualifications.

**Advanced skill** (know-how). This is what is required to translate cognitive knowledge into effective execution. Relatively few undergraduate programmes include problem-solving skills (or indeed any personal transferable skills) as a course objective, although most academics would agree that they form part of the 'graduateness' profile. Both in and out of education 'know-how' is a recognised term for a skill which has benefits at all levels.

**Systems understanding** (know-why) is a deep knowledge of the cause-and-effect relationship which underlies a discipline. Such an understanding enables professionals to solve more complex problems

and indeed to anticipate them and is sometimes mistakenly thought to be purely innate instinct or intuition.

**Self-motivated creativity** (care-why) combines will, motivation and adaptability for success. Lacking this, professionals may become complacent and lose the advantages of the other levels of intellect. Care-why is a pre-requisite for managing change effectively.

It would be unrealistic to expect the learning outcomes of any undergraduate course to do more than touch on many of these, but we can be more precise about the basic skills and knowledge that law students are expected to acquire. A generic statement is proposed at Fig.1.5.

## Aims and Outcomes of a Law Degree

**Fig 1.5**

### Aims and outcomes of a law degree

#### Aims

The purpose of the course is to provide students with an adequate knowledge and understanding of the tools and analysis of law and of the problems to which this analysis is applied. As well as subject specific aims, which are indicated within the separate module specifications, the general aims of each of the modules are to encourage the development in the student of:

- a basis of factual knowledge within a social science framework, an appreciation of the theoretical structures used and methods of reasoning
- a facility for self-expression, not only in writing but also in interpersonal communication and in oral presentation of ideas and arguments
- the habit of using primary legal sources including statutes and law reports both in hard copy and electronically as sources of information
- the ability to read critically to gain information about the changing economic, political and social climate in which the English legal system operates
- an appreciation of the different methods of study used by lawyers
- an understanding of the most effective ways in which legal information may be analysed, discussed and presented, together with an appreciation of the strengths and weaknesses of the different sources of the information.

#### Outcomes

The outcomes of the course are:

- A Knowledge with understanding
- B Analysis and application
- C Evaluation and judgement
- D Investigation and presentation

- A Knowledge with understanding

Students should be able to:

- a) demonstrate a knowledge of the terminology of law
- b) demonstrate an understanding of specific core legal subjects and the main concepts and theories which underpin them
- c) demonstrate a familiarity with the methods of legal research and the main sources of legal information.

## B Application and Analysis

Student should be able to:

- a) select, organise and interpret facts and apply the law to novel problems and situations
- b) use legal and other information to recognise patterns and deduce possible future legal developments
- c) organise ideas into a new unity and to present them in an appropriate manner
- d) demonstrate the ability to interpret legal decisions making use of other legal contexts as well as other social science disciplines

## C Evaluation and Judgement

Students should be able to

- a) demonstrate the ability to recognise unstated assumptions
- b) make valid inferences and examine the implication of a hypothesis
- c) demonstrate the ability to make valid generalisations and evaluate the reliability of material
- d) distinguish between evidence and opinion, make reasoned judgements in an accurate and logical manner

## D Investigation and Presentation

Students should be able to

- a) observe, record and collect legal and other data accurately and systematically
- b) reorganise information to enable the formulation of new problems, new questions and new hypotheses
- c) draw conclusions from given or collected facts and evaluate critically observations made and communicate them in a concise and precise manner
- d) demonstrate the ability to deliver oral presentations in public; to produce writing in varying format styles for different audiences
- e) demonstrate an ability to develop and construct an argument and defend it.

## Marking criteria

Arguably the most important link between learning outcomes and successful assessment methods is the use of explicit marking criteria. Explicit criteria have been used for several years by national examining bodies and are normally to be found in the examination reports published after each examination diet e.g. the various GCSE and Advanced level national examining boards and several professional bodies such as the Institute of Personnel and Development. These reports are intended mainly to explain how students performed but also include very clear explanations of what the examiners were looking for, both in terms of content and presentation. It is unusual for details of actual marks awarded to be given, but the use of key words gives clear indicators as to what is essential, additional or superfluous material in any answer. Those lecturers who have acted as national examiners will be used to writing such reports but they are not commonly used within educational institutions. Some of us are required – or choose – to provide external examiners or moderators a marking scheme so that they have a clear indication of what is expected and how marks are allocated, but these are still comparatively rare within law schools, especially in the old university sector.

A clear set of criteria in reports is normally included for the benefit of other lecturers or teachers who use them as guidance for the future as occasionally do students sitting examinations in following years – only if students fail are they encouraged to read examiners' reports to gain

feedback after the event. Those preparing students for national examinations recognise the difficulties of external marking and perhaps are more likely to appreciate the importance of clear criteria. Ideally all assessments which are internally set should have explicit criteria.

Course handbooks often have a set of generic criteria which give a sense of the differences between degree classifications. An example is found in Fig.1.6.

**Fig 1.6**

### **General assessment criteria**

#### **70% plus**

The student demonstrates a comprehensive understanding of all or most of the relevant issues raised. Those issues identified are explained fully. Arguments put forward are made in a structured and logical way. There is clear progression and development of arguments which have been put succinctly and intelligently. Arguments are supported with all or most of the relevant authorities. The student has undertaken extensive research and the overall quality of the presentation is of excellent standard. In addition, responds confidently and well to interjections/questions.

#### **60% plus**

The student demonstrates a broad understanding of most of the relevant issues. Shows sound ability to recognise and analyse those relevant issues, attempt to explain and develop arguments reasonably well. Most of the relevant authorities are used to support the arguments; evidence of wider research. The overall quality of the presentation is above average standard, demonstrating a degree of fluency. Responds well to interjections/questions.

#### **50% plus**

The student achieves a satisfactory understanding of some of the issues. There has been an attempt at presenting the arguments logically, but without the fluency of the top two bands. Shows ability to develop and analyse arguments but only to an average standard. Generally too descriptive in nature. Some support with authorities and evidence of research. The overall presentation is average and responds to interjections/questions only adequately.

#### **40% plus**

The student achieves only an adequate understanding of the issues; those issues identified are presented logically, but there has been an attempt at some analysis, although generally poor. There is evidence of some research and some authorities are cited. The overall quality of the presentation is acceptable. Poor response to interjections/questions.

#### **39% or less**

The student achieves an inadequate understanding of the issues. There has been little or no attempt at analysis. There is little evidence of research and few cases are cited. The overall quality of the standard of the presentation is not acceptable. Unable to respond to interjections/questions.

## **General Assessment Criteria**

Such criteria are useful as a general guide, but ideally should be subject-based and geared specifically to the assessment to which it relates. An example of a set of criteria that could be modified as required for use with a law case study is to be found at Fig.1.7.

Criteria are essential for developing students critical abilities and can be used for peer marking as discussed in [Section 4](#). There is more on marking criteria in relation to marking techniques in [Section 5](#), but it is always useful to discuss with colleagues your marking criteria. Are you looking for similar points? What bare minima would you expect before awarding a pass mark on a particular question? Do you agree on where you would draw the line between a 2.i and a 2.ii essay? Do all colleagues, whatever their subject specialism, agree on these same basic principles?

Fig 1.7					
Grade		Class III 40 - 49	Class II ii 50 - 59	Class II i 60 - 69	Class I 70+
<b>Factual Analysis</b>	15%	Basic coverage of obvious issues More subtle issues missed entirely	Good coverage of obvious issues More subtle issues recognised but not adequately dealt with	Good coverage of obvious issues More subtle issues recognised and dealt with reasonably	Good coverage of all issues
<b>Statement of legal principles</b>	25%	Statement of basic statutory provisions Few (if any) relevant cases	Clear statement of relevant statutory provisions Adequate coverage of basic cases	Clear statement of all relevant statutory provisions Good coverage of basic cases Other cases also referred to	Clear statement of all relevant statutory provisions Good coverage of all relevant cases
<b>Application of legal principles</b>	50%	Adequate but basic Further attention needed to details	Vague but covers most points Understanding shown of major issues with others highlighted	Good coverage of all major issues Appreciation indicated of finer points indicating which are not covered by precedent	Clear coverage of all issues Recognises points not covered by precedent and argues by analogy to suggest possible outcome
<b>Presentation</b>	10%	Barely adequate Spelling and grammatical errors Referencing poor	Good presentation Few spelling or grammatical errors Adequate referencing	Good presentation No spelling or grammatical errors Clear referencing	Excellent in all respects

## Examinations v Coursework

A very brief endword on this thorny question of examinations. Why do lawyers and their professional bodies favour them so highly? A brief telephone survey indicated that (albeit from a modest sample which may not have been representative) most old and many new universities set examinations as a means of assessing the majority of the core subjects, although the reasons were far from clear with answers ranging from “The Law Society expects it” to “We always have – it’s the quickest means from the point of view of lecturers involved in marking”. Innovative methods of assessment do exist but they tend not to be jumped upon with glee by law academics. A useful topic for discussion by the law team?

# The Importance of Feedback

## Linking assessment with learning

Feedback is a crucial part of the learning loop. My paternal grandmother was very strict about table manners and always laid a table even for the most casual meals with a side plate and a napkin. When we were quite young before we went to stay or visit we were coached by my father (who was much more informal about such matters and thus so were we) about always placing the napkin on our lap as soon as we were seated, only eating bread with the left hand etc. etc.. If we didn't remember when at our grandmother's she got very cross and shouted at us – very effective feedback which ensured our compliance, at least for the rest of that visit. We were lucky as we were given a reminder before we went. Because of our tender age it would have been a little cruel to leave us at the mercy of our grandmother.

Some students probably have an image of us lecturers as caring, friendly and helpful, but we can apparently turn into wicked grandparents overnight when we become assessors: cruel, malevolent and unsympathetic. Jeremy Bentham used the phrase “dog's law” to explain how sanctions are imposed to teach rules – you beat the dog after it has broken a rule and that is how it learns that the behaviour is wrong. Sometimes we may appear to use such methods on our students – they only discover how not to answer a question after being given a very low mark in their assessment.

This is where formative assessment comes in. We can give helpful feedback which is not associated with grades.

## The nature and role of feedback

The purpose of feedback is to give the learner the information she needs to do better next time – or if there is to be no next time, at least to understand the strengths and weaknesses of the assessed work.

Administer the little test in Fig.2.1. Read through a recent feedback sheet you have given one of your students and then answer the questions. How do you rate?

### Fig. 2.1 Feedback checklist

Award yourself one point for each positive answer:

Did you:

- start off with a positive comment or a compliment?
- write a BRIEF summary of your views?
- balance negative with positive constructive comments?
- turn all criticism into positive suggestions?
- make general suggestions that could improve a later assessment?
- ask questions which encourage reflections about the work?
- use informal, conversational language?
- explain ALL your comments?
- suggest follow-up work or references?
- explain the mark or grade and why it is not better (or worse)?
- offer help with specific problems?
- offer the opportunity to discuss the assessment and your comments?

Score less than TEN? Definite improvement required!

## Feedback Checklist

If work is marked on a pass/fail basis with no grade, comments should be particularly detailed, especially if the work represents a borderline pass. It has been said that students value the grade more than the comments – but that probably says more about the nature of the feedback given by the average lecturer.

## To be effective feedback must be ...

### Prompt

A student should know when work is set when it is to be given back, which ideally should be no more than two weeks after the hand-in date, or three weeks if it is to be second-marked. Students are normally penalised for handing in work late but some lecturers get away with blue murder when it comes to returning work. Some colleagues (not lawyers, but then that is no defence) have marked work so late that students have left the institution without it ever having been returned...

Prompt feedback requires you to keep rigid control of your time. You must schedule it into your work diary and keep a realistic amount of quality time for it. Marking odd essays between meetings or lectures will not make for consistency: you need to block out hours – or sometimes days – at a time.

Prompt feedback is necessary as the longer the delay, the less likely it is that the feedback will be perceived as meaningful or relevant; students will have moved on in the interim.

### Encouraging

Be careful not to damn with faint praise! Your opening sentence will have the greatest impact and you should probably write it last since it should be an accurate representation of your overall grade and opinion. Some comments may appear encouraging but they are so bland as to be virtually meaningless e.g. “a good effort”. No good marking criteria will ever give credit for effort – we assess outcomes, not input. Some lecturers appear reluctant to write on an assignment itself, but students prefer it if you do because it reassures them that you have actually read all of it and specific comments are much more meaningful when placed at the appropriate point. With weak work it is also easier to write something positive against the minor points in the body of the assignment such as “a good case summary” or “shows a good understanding of the impact of this statute” or whatever.

Good students need encouragement too! It may be that the work you have just marked is the best they have achieved so they need to know what it was about it that you found good. One lecturer’s comment “Well done – keep it up!” was shown to me by one student for whom I acted as personal tutor and she was very pleased, but could see no discernible difference between what she had done and the work of her friend who was awarded a grade lower. Both were confused.

### Constructive

When marking examination scripts that the student may never see and to give the external examiner or second marker a faint indication of your line of thought it may be acceptable to slash sentences through with red pen or to write “No!” or “WRONG!” or other exclamations in the margin. This probably helps reduce your stress levels a little. Doing the same on work that is going back to a student will only tell them

that you are displeased, but not why, or maybe that they are the twentieth person to make the same error (whatever it is) and not the second. Or that you are tired, if not emotional.

### Rational

If you have clear marking criteria which you have given to your students at the time the work was set, it makes giving feedback an easier process. You could even write on the criteria itself if you design it carefully, or tick boxes against which you have typed various general common comments if you are dealing with very large groups of students. Students need to see the clear relationship between what you were expecting and are giving marks for and what they have done. The student marking exercise outlined in [Section 6](#) is a very powerful one which supports this.

## Feedback on examinations

It is not usual to give feedback on summative assessment and frequently examinations are seen as an end-point. If a student has successfully completed an examination there is an argument that they do not need to be told why and how, but it is difficult to use the same argument if a student has failed. There has been little written about how to deal with students who fail examinations: the implication being that success in examinations is something a student either achieves – or leaves the educational system which requires assessment in this form. Leaving aside a student’s intellectual incompetence (arguably the fault of the admissions or progression system) the main reason for examination failure is the student’s inability to understand what is required to provide evidence of competence by a particular examination i.e. a detailed understanding of the assessment criteria. Ideally this understanding should be tested and if necessary coached in the weeks leading up to the examination – see some of the techniques suggested in [Section 6](#). An alternative approach is to set peer tests at an early stage in the course whereby students can assess their own levels of competence: see Bee Chen Goh (1994). Finally there is the possibility of returning students their scripts with the internal examiner’s comments. This may seem a step too far and highly modern but the idea has been around for several years:

How did the student answer the question? Did he grasp the problem? Did he analyse the facts properly? Did he argue effectively? What are his weaknesses? The student never knows. I have in my files 143 [scripts]; not one of my students knows anything other than the final mark. The [scripts] were not to be returned. I defy anyone to tell me this is proper educational process... To the extent that the examination continues to be a measure of a student’s ability it must serve as an educational process...marginal comments on the returned [script] would certainly serve as a teaching device. Individual or group discussion of the examination should be part of the teaching process. (Orschel ‘Is Legal Education Doing its Job?’ 40 ABAJ 121,124 quoted in Horgan (1974)).

## Dealing with difficult questions

Sometimes students ask difficult questions about assessment. It is said that doctors bury their mistakes, but uncertain lecturers do not have to be so active – time passes and students leave...to be replaced by a new group with perhaps slightly different expectations. The sorts of questions you may get asked are usefully summarised by Brown and Smith (1997) and include:

- When will I get a mark for this assignment?
- What will happen to my examination papers?
- What happens if I wish to appeal against my mark?
- Why do lecturers always ask for assignments for different modules at the same time?
- What happens if I can't sit the exam or get my work in on time?
- As a dyslexic student what help can I expect?
- Am I given the chance to learn from my mistakes?
- Will allowances be made if English isn't my first language?
- Do I have to be assessed as a member of a group?
- What do I do if I think someone has copied my work?
- Will the tutors know whose work they are marking?

Some of these questions you may be able to answer easily and others not so easily. Most are referred to in some way in the following sections. As a professional lecturer you should be able to attempt to answer all of them.

# Varieties of Assessment

## Developing an Assessment Strategy

Starting at course or module level it is relatively easy to develop a learning strategy as long as there are clear learning outcomes. It is not often that we are able to devise a course from scratch, but if we do have that privilege it is important to make sure that the assessment strategy fits the learning outcomes. Put the following in order of importance:

assessment tasks

subject content

learning outcomes

At one time a new lecturer would be presented with a syllabus (or even worse, it would simply be assumed that the lecturer would know what the essential topics were) and told to get on with it – but the most sensible ordering for the above is learning outcomes, followed by assessment. The subject content should then be established. For a discussion of this approach in relation to the teaching of EC Law see Carolan (1997).

Unfortunately it is not enough to look just at individual subjects. At one time we might have thought that our approach to teaching and assessing say Contract at level one on an undergraduate programme should be similar whatever the nature of the degree, but recent work on graduate standards illustrates the importance of typology. Those who are taking a specialist law degree will require a different focus from those taking law as part of a combined degree, or as a subsidiary, or from those studying law for the purposes of the Common Professional Examination. Obviously all will require a knowledge of legal rules and principles but at what sort of level will they need to be able to apply and synthesise these rules? What about teamworking and communication? Is research ability equally important for all? The key to these different approaches is the nature of the assessment which can develop and evaluate all these different perspectives as appropriate.

## Team approach

Assessment strategies are best dealt with at award team level i.e. the course team responsible for the individual subjects devise a strategy which will be common, as far as possible, for all students achieving that award. Some issues that need to be addressed are examined in a course example in Fig.3.1.

Once such strategic aspects have been examined, then it may be appropriate to ensure the team has a common approach to the operational issues. Some of these are raised in Fig.3.2.

The student doing your course or module is likely to be studying other law courses as well, but even if you are the sole lawyer (perhaps teaching a group of engineers or marketing students) it is important that you gain an insight into the assessment mechanisms being used by other lecturers. Ideally the course team, or year team should spend some time planning the year's assessment in advance to see at what stage the students will be required to do which assessments. This is sometimes done by circulating a calendar where lecturers put in their hand-in dates but this is merely brushing the surface. It ensures the students are not

## Law Assignment Overview

## Some Ingredients of a Good Assignment Strategy

being grossly overworked at one time of the year, with comparatively little to do at another but it does not address the student experience. The best way to do this is by way of the assessment matrix within the context of an assessment strategy.

### Fig 3.1 Law assignment overview

#### What are the purposes of assignments?

- To develop student learning in the core areas contained in the LLB programme
- To stimulate the student's analytical, critical and evaluative faculties
- To encourage students reflective abilities and to see the LLB programme in terms of "added value" in reciprocal terms i.e. what they can contribute to the LLB course and fellow students on it and what the LLB course adds to their personal and potential professional development
- To promote practical skills in written communications, particularly in the systematic presentation of written materials using clearly referenced legal sources
- To promote interpersonal skills in key areas such as informing, persuading and negotiating
- To assist students in preparing thoroughly and systematically for the kinds of issues and questions encountered in other assessment mechanisms e.g. examinations
- To help prepare students for a career which is likely to involve teamworking

### Fig. 3.2 Some ingredients of a good assignment strategy

- It should be made clear which assignments are testing breadth of knowledge and which, depth
- Contextual aspects should be used occasionally to encourage corporate/organisational as well as individual/personal perspectives
- Data collection and simple original research should be nurtured from an early stage
- Description alone should never be the main focus of any assessed work at undergraduate level
- Criteria should encourage the use of a wide range of sources including the internet
- Assignment topics should as far as possible be distributed at the beginning of the course, together with the hand-in date and the date they will be returned to students

## Assessment matrix

The idea of an assessment matrix is that you match the learning outcomes of a course of study e.g. an LLB or linked set of courses if several modules are common (law major or minor pathways in a combined degree) to the assessments to ensure that all learning outcomes are being assessed and that students are exposed to a variety of assessment methods which enable them to demonstrate their learning in different ways.

As can be seen in Fig.3.3 it is possible to be very general or quite specific in how learning outcomes are to be assessed.

**Fig 3.3****LLB BORCHESTER UNIVERSITY YEAR 1 Semester 1**

Subjects studied with learning outcomes (LO)

**A Legal Skills LOs**

- 1 Undertake basic legal research involving the identification and location of legal source material
- 2 State the relationship between different sources of law
- 3 Identify basic legal phraseology and understand its meaning
- 4 Communicate effectively in a variety of contexts
- 5 Analyse the legal issues arising in a given factual situation and be able to explain in a logical manner the likely legal outcome

**Assessment**

- a) Legal source workbook (a workbook completed by the student involving a wide range of sources including statutes, statutory instruments, government papers, cases, leading textbooks, legal databases, webpages) INDIVIDUAL (10%) LO1,2,3,4.
- b) Written assignment (2000 words on how judge interpret law – final wording to be agreed) INDIVIDUAL (40%) LO2,3,4.
- c) Moot GROUP (50%) LO1,3,4,5.

**B Public law 1 LOs**

- 1 Identify the functions of government and discuss the role of a constitution in different politico-legal contexts
- 2 Explain how political institutions and processes work and evaluate them in the light of liberal democratic and other theoretical perspectives
- 3 Communicate understanding of relevant legal rules and theory
- 4 Analyse the content of specific legal rules which apply to public law situations and interpret given factual situations to determine whether they fall within the scope of such rules
- 5 Participate effectively in the discussion of contemporary constitutional issues and, in doing so, demonstrate an appreciation of the importance of structured, coherent arguments based on the use of logic and credible concepts.

**Assessment**

- a) a two-hour closed book examination (100%)

Legal skills outcomes at Borchester University are in many ways underpinning the rest of the degree programme and it would be expected that they would be picked up and developed in a subject specific way in many of the other courses undertaken. Note how the assessment mechanism spells out not just the type of the assignment (workbook) but how it relates to the learning outcomes and the written assignment relates to a specific learning outcome.

By way of contrast it is very difficult to discover how the students are going to be assessed on their learning outcomes in Public Law. Presumably LOs 1 – 4 inclusive could be covered in the examination, but what about LO5? It may well be that students have regular seminars where there will be the opportunity for discussion, but as there is apparently no assessment of these how will the lecturer know if the outcome has been achieved? One possible way would be through the moot which is being assessed for legal skills if all students are studying both courses simultaneously: there is no reason why assessments should not cross course boundaries in terms of learning outcomes.

How to assess is dealt with below, but the first issue may well be when assessment is to occur. Will it all be at the very end of the course (rare outside Oxbridge)? At the end of the academic year? At the end of the semester? At the end of the module? Many courses may have more than one assessment incident – one or more during the course for formative purposes – which may or may not be graded and be counted towards a final mark – and another summative assessment at the end.

## Timing of assessment

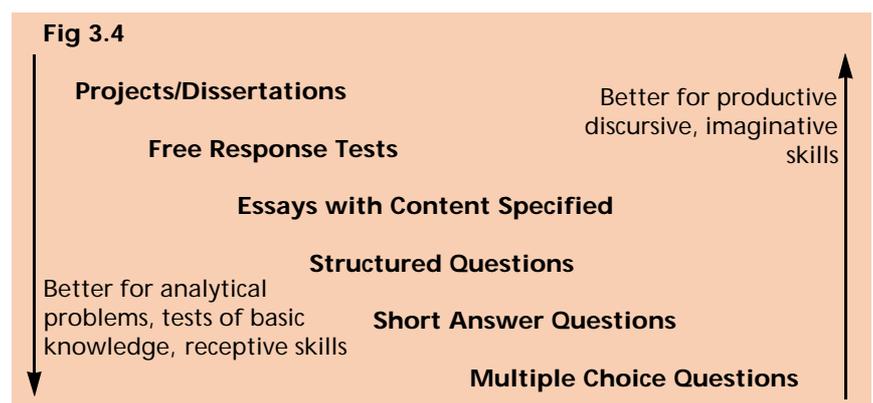
Do not undervalue the use of early assessment. The importance of feedback has already been addressed in [Section 2](#). A piece of work set, assessed and returned early in a course (within the first six weeks) gives students the chance to discover where they are in relation to the subject-matter – are they engaging with it in the right way? Are their study techniques paying dividends? Does your subject (and your approach to assessment) require the student to change a strategy that has worked with other lecturers and subjects in the past?

Early assessment does not require grades – written qualitative comments are more valuable – but do try and set something that will stretch the students a little; if it is too simple they will relax for the entire course, if it is too difficult they will become dispirited and perhaps even leave if they have the choice.

Try and rationalise every assessment incident. Why are you setting this particular form of assessment? Which learning outcome(s) are you assessing? How does this assessment fit in with other assessments on your course? How does it fit with other assessments the students are doing? Here’s a practical test. What assessments are your students currently working on? Do you know what form the most recent piece of assessed work they completed took? (This was probably for some other lecturer!)

## Different forms of assessment

There follows a discussion of a variety of different assessment methods with some of their advantages and disadvantages. It is important to remember that assessment methods are typically categorised by their format: “I’m setting the final year course a three-hour examination” but that content within a given format is full of potential. An examination could contain essay questions, or multiple choice questions and the abilities tested would differ as indicated by Fig.3.4.



There has been no recent systematic research on differing assessment methods but for an account of practices in the late 80's see Tribe and Tribe (1988).

## Examinations

There are several different forms an examination may take and variations within forms too. Below are the main players.

Often referred to as the 'traditional' or 'standard' examination because it is so common: schools use it as of course do GCSE and A level examination boards. One of the reasons for their popularity amongst academics is that students are familiar with them (although mature students need to be reminded and often dread them because of past experiences). Lecturers too like them because they are traditional: we are happy with what we know – we had to do them, why shouldn't they? Three hours is a common time period for reasons that are steeped in history, but probably partly related to human biology. With modular courses taken at the end of a semester the examination may be reduced to two hours. It is very important that you don't cram a three hour examination into a two hour time period as sometimes can happen...how many questions are you asking? Is there reading time? Are all questions of roughly similar length? Is there a wide choice? Have students seen a similar paper before? Are the questions mainly essays? Or problems/case studies?

There are many advantages in using this form of assessment – it has proved its worth over time. Spend a few minutes now listing what you consider them to be.

Your list will probably include some of the following:

- they are relatively efficient in terms of student and lecturer time
- reliable
- assess individual student's abilities
- plagiarism is rare
- cheating is rare
- moderation by external examiner easy to organise

But there must be some disadvantages too. List any that come to mind:

## Closed Book Examinations

## Open Book Examinations

Here are some frequently cited:

- students are judged by their performance on a particular day
- marking can be tedious and take a disproportionate amount of time
- students' handwriting is often indecipherable
- students can question spot
- misinterpretation can lead to disastrous results
- what goes around comes around: it's difficult to think up really new questions

Even if your lists are very different from those given it is likely that what you have written is not unique to this form of assessment. All forms of examination have slightly different advantages and disadvantages but there is much overlap too.

For these examinations students are able to bring in learning material but the questions are unseen. This may be restricted to say one book (commonly the leading text) or may be very wide with students being encouraged to bring their notes and revision materials in addition to copies of statutes. What do you think are the main advantages of this?

And disadvantages?

It is more stretching for students to sit open book examinations as the questions will be geared towards manipulation and application of knowledge and concepts i.e. those at the higher end of the taxonomy. Surface-level learning i.e. mere recall of facts will earn few marks although if the material is really complex it would be right to give some reward for this skill. In practice students often say that they have to rely on their memories since they do not have time in the examination to look everything up. Devising suitable questions can be stretching for the lecturer too and experience indicates that marking criteria have to be quite flexible.

## Seen Examinations

If students have a choice on the paper it is quite possible that they will question spot and choose not to study certain topics. One way round this is to make all the questions compulsory but to give plenty of notice of what the questions will be i.e. to give out a list of say, ten examination questions at the beginning of the course and tell the students that four of them will be the examination questions. This has the advantage that you can guarantee that all the topics will be studied by the students, but the

questions would have to be fairly broad and students are very likely to limit their study to the ambit of the questions set. Problem-based questions would not lend themselves easily to this approach. You may be able to think of other pros and cons.

Some would argue that if an examination paper can be taken away it ceases to be an examination, so a limited-time-constrained assessment might be a more accurate, if unwieldy, description. Students are given a week to do the 'examination' which is of course open-book. You can set really challenging questions that could involve original research, web hunts, and use of databases. Another advantage that is that the answers would normally be word processed. The major disadvantage of such examinations is that students often spend so much time doing them that all other work gets sidelined, even though the examination counts for only a small percentage of the overall course assessment. (Nield 1994). It is also possible that weak students may not do most of the work themselves.

The Open University has clearly demonstrated the way computer-marked multiple choice questions (MCQs) can play a major cost-effective assessment role and with the addition of law to its portfolio it may be possible to dispel some of the myths surrounding this valuable form of assessment. It is well-known that multiple choice questions can be used for checking on the assimilation of factual knowledge but it is not widely appreciated that MCQs can be used to test deeper understanding – they can be intellectually stretching and exceedingly demanding. The advantages of using such questions were summarised as long ago as 1974 by Horgan. They are:

- They provide a more adequate sampling of the subject-matter of the examination – they ask more questions about more things in the same amount of time.
- They increase the consistency of scoring from one paper to the next. A given paper will receive the same score whether graded first in a batch or last, or even if some other person does the scoring.
- The amount of time necessary after the examination to do the work of scoring is reduced.
- They limit the possible range of responses to the question, thus indicating more clearly to the student the issue with which the [lecturer] wants him to deal.
- The disadvantages under which a slow writer now labours are removed, though the dilemma of the slow thinker is unlikely to improve.
- They facilitate the return of answer books to students who can be shown exactly how they lost marks.
- They facilitate post-examination analysis since the variety of answer to any one question is limited in advance by the [lecturer]. The post-examination analysis would allow the [lecturer] to explain why one solution was preferred to another.

For an excellent article on the use of such tests (with examples) see Alldridge (1997). Peter Alldridge has restated the advantages and talked about implementation using the legal education newsgroup, which is recommended for anyone wishing to air their doubts, experiments, successes or failures or just to discuss legal education issues. Join in the usual way: [legaled@mailbase.ac.uk](mailto:legaled@mailbase.ac.uk).

## Take-Away Examinations

## Multiple Choice Questions and Tests

## Vivas

Conducting a viva examination is an excellent way of adding an individual examination component to a course that is additionally assessed by coursework. Students may feel apprehensive until it is explained that the viva will give them the chance to talk about aspects of the course that they feel they have not been able to demonstrate their understanding of and interest in otherwise.

## Coursework

Coursework can be set for both formative and summative assessment and the former is discussed in more detail in [Section 2](#). Before looking at the different types of coursework, some general pointers about meeting student expectations. We have moved a long way since the Council for National Academic Awards wrote in 1989

**There is advantage in giving out the topics in written form, so there can be little ambiguity over what is being asked of the students.**

Back in [Section 1](#) you were asked to think about students producing unexpected responses to assessment. Obviously the clearer you are in specifying what you require, the less likely it is that students will produce something surprising. A colleague came up with the following:

“I tried to analyse why I have been uncertain of what response was needed when I was a student and preempt such a situation with relevant information. I felt it would help if I included the following:

- purpose of the assignment (in addition to the title) and its relevance to the course
- very clear terms of reference
- definite information about expected length
- extent to which they were free to choose the method of presentation of information. If completely free to choose, make this absolutely clear
- what sorts of assignment are typically expected by colleagues teaching on this course? Will my expectations be different? If so make this clear
- give assignment instructions in writing, plus discuss it in class beforehand, inviting questions
- if, during the discussion, it is evident that there is some misunderstanding or confusion, find out why this occurred so it can be avoided in future
- for complex assignments, ask for an assignment plan beforehand and assess it and/or discuss the plans in class or individually as appropriate
- give an appropriate reading list.”

These would appear to be very comprehensive. Can you see anything missing?

Clearly stated assessment criteria are not expressly mentioned although arguably are implicit in some of the other information given. Marking criteria will obviously vary according to the nature of the coursework and interpretation can still be problematic. Lecturers sometimes show colleagues potential assessment questions to check for ambiguities but it is rare to discuss the accompanying criteria – if they exist! If the course team use the assessment matrix approach outlined at the beginning of this section, such discussions are essential.

Essays are a popular form of assessment and are often to be found in examinations, so it is right that students continue to exercise their skills in presenting information in a logical persuasive manner outside the stressful examination room. Essays are good for assessing a wide range of skills including planning, selecting, organising and presenting.

Why use essays? What do students think we are asking them to do when we set them an essay? What are we looking for? Jot down your thoughts.

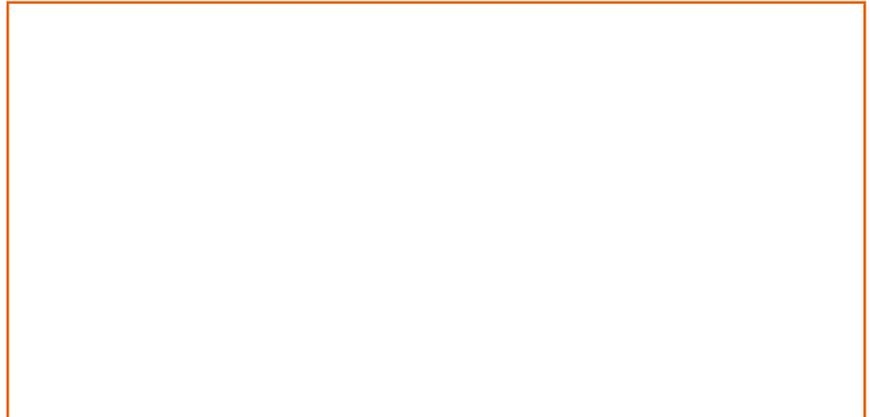
Research carried out by Hounsell (1984) showed that students had three different views:

- argument supported by evidence
- distinctive viewpoint on topic
- structured arrangement of facts and opinions

These reflect different levels of learning from the deepest to the most superficial and some essays go off this scale into writing everything down that students have read or been told. How students perform in essays depends on a large number of factors including previous experience over which you the lecturer will have no control. Others will be affected by how you act and some of these are discussed below. Should students be summatively assessed i.e. should the marks count on essays too? If students are going to be graded and these grades

## Essays

contribute towards their final year mark then there are further issues that need to be considered. Those who have come into further and higher education direct from school will have had some coaching in the skills required to write a good essay, but others may not. Is yours the first essay they will write on the course? Do you think there are skills that pertain specifically to writing essays about legal topics? If so, what help and advice are you going to give them before they start? Write down a few tactics that you could use below:



There are several guides on essay writing and it may well be that your college provides a study skills course for all new students. This however is likely to be very general and arguably there are extra considerations to be borne in mind when writing a law essay. Some books offer such guidance to students of law e.g. Bradney *et al* (1986), Kenny (1994). Whatever specific guidance is provided a student may benefit from feedback at an early stage. A 250 word plan could be submitted for outline comment on structure and content or if you have a very small group you may be generous enough to offer the opportunity of comment on a full draft. How strict are you about word limits? What will happen if the limit is exceeded? What are the penalties for late submission? Are the students aware of them? Do you penalise for bad spelling or grammar? Do you correct bad spelling or grammar? Finally there is the thorny issue of plagiarism. How is it dealt with?

There are no right answers to these questions, although some of the more controversial issues are picked up again in [Section 5](#). By the final year of the course students will have learnt that although all lecturers purport to be carrying out assessment in a very similar way to each other (if only that they are equally fair and consistent), each of us have our own individual quirks – what may raise merely a rye smile if written down in one essay may result in an explosion of red ink and loss of marks if written in another. (My quirk is student misuse of the apostrophe in “its”: I feel it is my duty to explain it at the beginning of every course and then I penalise them if they get it wrong.)

The essay can be used to assess differing degrees of learning and different outcomes depending on the words used within the title and also the context in which it is set. Brown *et al* (1996) suggest a classification based on common characteristics which is adapted below with some legal examples:

#### *Speculative*

‘What would be the impact on the English legal system if all judges over the age of sixty were to retire tomorrow?’

## Different Types of Essay

'If Lord Denning had been a road sweeper rather than a judge, how would the English law of contract be affected?'

These questions are virtually impossible to spot and they require students to engage with knowledge in a different way – via an alternative reality.

#### *Quote to discuss*

Very popular in law papers – extracts from judgements, statutes, leading textbook writers, newspaper articles or law journals can be used, or you could make one up yourself. Don't make them too long or esoteric: "Equity can be used as a shield not a sword". Explain.'

#### *Assertion*

These are similar to the above in that they use statements in quotes but the assertions in them are controversial and intended to provoke discussion. Weaker students may assume they are supposed to support the assertion.

"Judges do not make law". Discuss.'

"Judges do not make law" Discuss in relation to discrimination of transsexuals and on the basis of sexual orientation.'

#### *Write on*

Not a format commonly used in higher education in relation to law (although used by some professional bodies in years gone by in general principles examination papers as a 'mopping-up' question).

'Write notes on two of the following:

- a) the defence of qualified privilege
- b) specific performance
- c) res ipsa loquitur
- d) stipendiary magistrates'

Such a format is difficult to defend since it tests memory recall and gives no guidance – it really is a request to write as much as can be remembered on a number of unrelated topics which are in the syllabus and not dealt with elsewhere. It is unlikely to be used for assessment outside an examination except as preparation for it.

Problem-based essays need to be distinguished from the more typical problem questions which are dealt with below. These are really just a guise to give a general disquisition a real world context. Thus:

'Your friend Tom has had an innovative idea for developing computer games and has been approached by a leading computer company who wish to help him develop their potential. He wants to know whether he should accept their offer of a two year employment contract or remain independent and offer consultancy services. Advise him.'

Students enjoy the novelty of writing dialogues and scripts, which are rarely found on law courses. They can also be very challenging.

'Script a discussion between Bentham and Hart on the role of law in society'.

'You have been asked to give a talk to the local sixth form on basic consumer rights in relation to defective goods bought in the high street. Prepare a draft of your talk and the answers to four questions that might be raised by the audience.'

Assignments like the latter may be made in response to real approaches or can lead to the offer of a presentation. Students really excel when they feel what they do in an academic environment is having an impact outside in the community.

## Problem-based Essays

## Dialogues and Scripts

## Answering Problem Questions

### Projects

Projects may be carried out by individuals or groups and normally involve some original research and are excellent vehicles for ensuring students have a feel for the place of law in the commercial world. It is a good idea to set projects at level 2 since students are developing their research skills and it gives them an opportunity to receive some constructive feedback before embarking on a dissertation which is normally set at level 3. Part-time students who are working can usually gain access to information from their own organisation and it has been known for employers to commission work to be done and for student groups to be awarded a prize for what is essentially consultancy. Such work can also be used by students to demonstrate their communication and team-working skills if a written report is introduced with a presentation.

### Problems and case studies

In common law subjects in particular the best way to test understanding of the rules and their application is by the use of problems or mini-case studies. These are frequently used in examinations and students will have the opportunity to develop their skills in seminars and perhaps by coursework which include these. Students first exposure to problems can be intimidating and there needs to be clear guidance about how to tackle them. A sample handout is included at Fig.3.5. If students are taking many law subjects at once they will obviously acquire the skills more quickly but those studying law as a minor subject will need extra attention.

**Fig.3.5**

#### **ANSWERING PROBLEM QUESTIONS**

1. Read every word of the problem. Almost every word has been put in for a purpose and needs to be commented upon. Even if you are of the opinion that a fact stated in the problem is immaterial, you should not in general pass it by in silence but should express your opinion that it is immaterial, and, if possible, give reasons.
2. The student should not assume facts **contrary** to those stated in the problem for the purpose of giving the examiner a piece of information for which he did not ask. Also, there is generally no need to assume facts that go beyond those given in the problem.
3. Although supplementary facts should not, in general, be added to a problem, the case is different with what may be called omitted facts. One of the marks of a competent lawyer is his ability to know what gaps there are in the facts of his case; thus a student may be tested with a problem which deliberately omits something that is important. Always look for such omissions and state how your answer will be affected by the presence or absence of the fact in question.
4. If you decide a fact can be inferred from what is given, though not explicitly stated, it is wise to guard yourself by stating expressly that you assume the fact to exist. The examiner may not agree with you but he will not mind your assumption if he can see it is based on your considered interpretation rather than carelessness. If you are in doubt whether a fact is implied you should "play safe" and take the problem each way i.e. first on the assumption that the fact exists and then on the assumption that it does not.

5. Even if all the relevant facts are stated, what is legally called “a question of fact” may still arise on the problem e.g. a question whether a lapse of time is “reasonable”. On such a problem, although you may venture an opinion as to the proper verdict, and argue it to the best of your ability, you should not, in the last resort, usurp what would be the function of the judge. The most you should say is that on these facts there is evidence e.g. of unreasonableness. If the point is at all doubtful, take the facts each way and state the legal result following on each possible finding.

6. Some examiners conclude the statement of facts in a problem with the direction to discuss it; others adopt the mannerism of requesting you to advise one of the parties. This second form does not mean that you are expected to bias your answer in favour of the particular party; the legal advice you give in your answer will generally be the same whichever party you are supposed to be advising. However there may be some practical advice to be given to the party you are supposed to be advising and you should certainly comply with the examiner’s direction as far as you are able. Do not use the second person in your answer – make it impersonal, thus you should say “X is liable”, not “you are liable”. If names are used in the problem you can abbreviate them to the initial letter – unless of course, the parties have the same initials!

7. Remember that a bald answer to a problem, even though correct, will not earn many (perhaps not any) marks, because the examiner cannot tell whether the student has knowledge or is just guessing. Reasons and authorities should therefore always be given. Pretend to yourself that the examiner will disagree with your point of view and set yourself to win him over by argument. *Always* argue in terms of legal rules and concepts – it is a common fault to give the impression that the answer is wholly based on common sense or the chance viewing of a relevant TV programme.

8. It is bad style to begin an answer by citing a string of cases. Begin by addressing yourself to the problem. If the law is clear, first state the law and then give the authorities for your statement. If the law is not clear, first pose the legal question and then set out the authorities bearing on it.

9. When citing cases, the mere giving of the name is of little use. What is wanted is not only the name but also a statement of the legal points involved in the decision and probably also a consideration of its standing i.e. whether it has been approved or criticised. This is so even when the case directly covers the problem. It is still more so when the case is not on all fours with the problem. A problem is often set upon some point of law that is not exactly covered by authority. No candidate who fails to see this point can get a good mark on such a question. See for example this contract problem:

*A writes to B offering to sell him his horse for £100. B posts a letter accepting but misdirects it and in consequence it is a week late in being delivered to A. In the meantime A has sold his horse to C. Discuss.*

The ordinary beginner answers this problem simply by quoting **HOUSEHOLD FIRE INSURANCE CO v GRANT** or some authority to the same effect, and saying that the contract is complete on the posting of the letter of acceptance. But the whole point of the question is whether **GRANT’S** case applies to a misdirected letter of acceptance. Often the student sees the difficulty but thinks it is too hard for discussion and conveniently pretends that he has not seen it. He will get more marks *by posing the legal difficulty* even though no solution is suggested, than by ignoring it completely. If in addition to posing the difficulty, he says there is no authority on the point and that **GRANT’S** case is distinguishable and could also suggest some reasons why on these facts it ought to be distinguished, he would get a really good mark instead of a doubtful pass. In all legal problems *have the courage to argue*.

10. If a case falls midway between two authorities, this may indicate that there is a fundamental conflict of principle between the two authorities and that it is necessary to hold that one of them is wrongly decided. Alternatively you may come to the conclusion that there is no real distinction between the authorities and in this event the problem must be looked at from the point of view of general legal principle or public policy to decide whether it should be brought under one head or another.

11. To summarise the above, when the problem is possibly distinguishable from the authority or authorities nearest the point, a careful analysis of the possible distinction(s) should always be given. Also, distinctions should be pointed out even though in the opinion of the student they are not material: of course the student should express it is his own opinion that they are not material. If you know that there is no case bearing directly on the problem, say so. The fact that the problem is not covered by authority is in itself a valuable piece of information.

12. Where the law is doubtful, a categorical statement that the rule is one way or the other will earn few, if any, marks. This is particularly important in answering problems. If the answer to the problem is doubtful, say so and then suggest what the answer ought to be. It is a mistake to simulate confidence where you have no certain knowledge. Try to avoid weak conclusions e.g. "A is perhaps liable". Your conclusion may be that if the facts are so-and-so, he is liable; if they are such-and-such he is not. Or, if the court follows **BOGGS v COGGS** then A will be liable, but if it follows **HOBBS v DOBBS**, which is to be preferred for reasons already given, then A will not be liable.

13. When answering a problem, never preface your answer with a general statement of the law. Start straight away to answer the problem. Where the problem contains several persons, say A and B as possible defendants and C and D as possible plaintiffs, the best course is to begin your answer by writing down the heading **C v A**. When you have dealt with this, write (say) **D v A**, referring back to your previous answer for any points that do not need to be repeated. Then you will deal with **C v B** and **D v B**. Although a problem is not an invitation to launch out into a general disquisition on the department of law on which the problem is set, it is important in working out the problem to state all the rules that are really relevant to it. A frequent blemish on an otherwise good answer is that the relevant rule of law is not expressly stated but is left to be implied from the candidate's conclusion. For example do not write "D is liable on the contract because he did not communicate his revocation of his offer". It is better style to write: "An uncommunicated revocation of an offer is ineffective. Here D's revocation did not come to the notice of the offeree, so the offeree's acceptance is valid and D is liable on the contract."

Extracted – and adapted – from Glanville Williams, (1982). This seminal work also includes valuable information on such topics as "Answering book-work questions", "In the examination room", "Methods of study" etc.

## Presentations

Some students find speaking in public particularly daunting and it is not suggested that all individual students should be assessed by this method in front of large groups. If presentation skills are one of the learning outcomes of the course then non-threatening small group seminars are an ideal starting place. It is best that they be given the opportunity to practice their skills by giving mini-presentations with constructive feedback before summative assessment occurs. One way of doing this is by the use of student-led seminars, more on which below.

Again, some basic questions need to be explored. Have the students ever been assessed on their presentation skills before? Have they been given guidance on resources that can help their communication skills (including videos on best practice or loans of camcorders so that rehearsals can be captured)? What if a student has a severe speech impediment?

For a discussion on how presentations can be used for demonstrating skills see Cruickshank (1994) and for an example of a self-assessment exercise in a legal context see Rawson and Tyree (1991).

## Student-led seminars

These are often used as the basis of assessment as – to be blunt – if no marks or grade are allocated, the standard may decline quite sharply, quite quickly. Students are allocated a topic and told which week it will run (or you can let them throw the dice or otherwise negotiate and give them the choice of topic). The rest of the group are given general reading to do and specific questions to be discussed in the seminar. At the seminar the student(s) leading it give a brief presentation highlighting the main points of the topic, areas of particular difficulty, resources they have discovered e.g. newspaper articles, websites etc. and then lead the discussion on the questions, encouraging all present to participate and to do all the things that you would normally do. You, meanwhile, act mainly as observer, contributing only when called upon to do so unless some major error needs correcting to avoid misunderstanding. With highly motivated students such a practice can mean that lectures are dispensed with entirely and it introduces a competitive edge which many groups find invigorating.

On the downside, students tend to put in great effort for their seminar, and less effort for others, although they do learn to appreciate the difficulties of running a seminar where little preparation appears to have been done. Marking criteria have to be very clear and it works well if these are negotiated with the students. Typically they agree that marks should be allocated for

- quality of presentation
- understanding of the topic
- additional information/resources
- quality of handout (if one supplied)
- ability to deal with questions
- ability to draw out knowledge from the group

but others may be suggested e.g. entertainment value. What you agree to include must again reflect the learning outcomes of the course. Such seminars are also a relatively stress-free way of introducing peer and self assessment, which are discussed in [Section 4](#).

## Seminar assessment

Some lecturers feel uncomfortable with the idea of handing over seminars to students but wish to assess seminars. There are several reasons for this. They may feel that attendance will improve if seminars are assessed or that contributions by students will be of a better quality since there will be better preparation. Skills development is encouraged:

discussion, persuasion, analytical argument through to tactical withdrawal. There does need to be meticulous preparation by the lecturer however. Here follow a number of key issues.

Are all seminars are to be assessed or only a proportion? Either way all students must be given a chance to display their talents. This may mean ensuring that every student is asked a question every time, or shutting up one vociferous contributor who is stealing the show. Students may well be reluctant to buy into the aims of such assessment and may see it as a means of boosting attendance rates. What are the penalties for failure to attend? What evidence will you require for valid reasons for non-attendance? When are the marks to be allocated? It is very important that you either have photographs of the students or know them extremely well if marks are to be awarded during the session. It is also difficult to focus on student B if you are still computing a mark for student A. What criteria are to be used? Are they sufficiently valid? Are other lecturers involved in the process? If so how can you ensure consistency?

Feedback and marks should be given to students at the end of the session and, if other lecturers are involved as may be the case with several parallel sessions, regular comparisons made of performances and marks across and within groups.

It may appear that seminar assessment is a minefield but it has proved a popular means of raising student participation and the preparation students make for seminars pays dividends when it comes to examination performance.

## Assessment at different levels

With most undergraduate law programmes the lecturer is frequently concerned that students have covered the subject-matter. During the first year this will normally be a question of breadth rather than depth, since many first year courses will underpin later ones. For this reason first year assessment may tend to encourage surface learning and test knowledge recall. But what is happening by the final year? Students may be tackling more 'difficult' subjects such as intellectual property law or international law, but are they being assessed in the same way as first year students? What distinguishes a level three student from a level one student? The answer must lie in the assessment methodology. Higher level abilities need to be demonstrated by final year students and they should be assessed at the higher levels of Bloom's taxonomy (see [Section 1](#)). Examinations when used should be structured in such a way that mere recall of factual knowledge should be limited.

Coursework also needs to address similar issues and the issue of choice (see below) is more relevant at the higher levels.

Students arguably should be aware that higher levels of performance are required of them as they progress through their course, but they may get mixed messages unless the course team has discussed its assessment strategy. This is of particular importance when students may be taking the same subject but are at different levels e.g. Commercial law may be an option that is available to both second and final year students and they may share not only the same lecture but be in mixed seminar groups. Is it possible to set them all the same assessment? The same examination? How will the criteria differentiate?

## Assessing work placements

It is very rare for undergraduate law courses to have a work placement as part of the course. Combined studies e.g. law and business or law and accountancy may cater for an optional sandwich placement, but there is great competition for such places since law firms are often saving such vacancies for law graduates.

Assessment of work placements can be problematic, given that all students will be subjected to differing environments with different tasks and responsibilities. Reflective documents whereby students log up their experiences and what they have learnt, is one approach, which does not impose too great a burden on the assessor. It could be marked on a simple pass/fail basis. Sometimes the work experience is used as a vehicle for doing practical research and a dissertation may be the outcome, but the two outcomes should be kept distinct and assessed accordingly.

Where placements are more common e.g. undergraduate business sandwich courses or paramedical courses the placement may well be chosen to ensure the student is exposed to a wide range of situations and may have to demonstrate competence. National Vocational Qualifications (NVQs) provide a means of structuring such placements and the language of NVQs is worth examining: it provides an insight into the nature of skills acquisition.

## The issue of choice

How far, if at all, should students be given a choice in what they do by way of assessment? This itself could be the subject of a final year question! Jot down your immediate feelings below.

There are many different aspects to this. You may say that students always have a choice in that they may choose their university course partly on whether it is modular, assessed by coursework as well as examination and so on. Once they are enrolled on a course though, what then? Could/should students following a particular course or module be given a choice say as to doing coursework or an examination? Your immediate reaction may be that you – and the course-team – have devised an assessment strategy and that it should be the same for all. But if the learning outcomes can successfully be demonstrated in another way, why should your way be the only way?

To go a little further what about choice within examinations? It is very rare to have a closed book examination where all the questions are compulsory, but assessors may wish to ensure certain key elements are

covered and so may set a compulsory question or structure an examination so that students must answer questions from two sections, with a minimum number being chosen from each.

Choice in coursework is varied too. Some lecturers may get students to select topics subject to approval on which they wish to work, others may give a range of topics or prescribed essay titles and yet others may allow no choice at all. The reasons for choice or lack of it may not always be obvious even to the lecturer. Lack of choice tends to make assessments more reliable but unless the topic is very broad and the criteria make it clear that different interpretations are possible, the lecturer is faced with wading through several pieces of work which are very similar and thus difficult to differentiate. Postgraduate students are more likely to be given a choice on masters level courses, but the same is not necessarily true of courses leading to professional qualifications.

### How much is too much?

The issue of choice does not usually address the quantity of assessment. In Scotland, students may choose to study for an additional year and gain honours and there are still some English ordinary degrees which can be 'topped up' to honours with the submission of a dissertation. In many honours law degree programmes there is no requirement to complete a dissertation, although many courses include a comparatively long project as one of a number of assessment methods. The requirements to satisfy professional bodies for qualifying law degree status are such that there is usually relatively little choice in how much law can be studied and most undergraduate courses will have every course assessed separately. In addition there is a tendency for some courses to be overassessed, with both coursework and an end of course examination being used (Bennett 1998).

As stated above there is a need to devise a strategy to ensure both academics and students use their time effectively in relation to assessment. Although relatively little has been written on law assessment specifically (and most of it is to be found in "The Law Teacher", the journal of the Association of Law Teachers) there has been work on developing assessment strategies in general (Andresen *et al* 1993). It is recognised that the growth of student numbers linked with reductions in part-time and support staff have put heavier assessment loads on those who remain. An outline guide on how to manage this is produced in Fig.3.6.

## Economy and Efficiency in Assessment

### Fig. 3.6 Economy and efficiency in assessment

The following strategies help establish economy and efficiency:

- decide whose interests assessment is serving
- avoid over-sampling the course
- avoid over-questioning
- avoid over-reading student work
- avoid over-commenting on student work
- avoid over-grading student work
- refine current policies and find ways of using present methods better
- consider alternative approaches to assessment policy and practice
- consult original sources for how-to-do-it details

Adapted from Andresen *et al* 1993

## The use of computers

There has been very little written about the use of computers in law assessment. They can be used for informal formative assessment, for example the Law Courseware Consortium IOLIS package. This contains self-test questions which give instant feedback and the programme enables the monitoring of users. It is thus possible to see how many students have accessed a particular exercise and also to monitor the number of attempts made and the results. It is only by reading accounts of what is being done elsewhere that we realise how much potential there is in computer assisted learning and assessment. In Holland for example, computers are used to simulate assessment centre activities to engage students in sophisticated skills assessment (Valcke *et al* 1995). There is also a relatively new mailbase discussion list dealing with web assisted assessment and learning. The address is <http://www.mailbase.ac.uk/lists/web-assisted-assessment/>

# Assessment and Self-Confidence

This section looks at how assessment can be used not only to build students' self-confidence but also that of the lecturer using it. One of the outcomes most of us would wish for our students, even if it is not specifically mentioned in their course handbook, is that they emerge as independent lifelong learners. For this to occur they need to have acquired the joy of study – not an automatic occurrence after a three year course – and also to be confident in their own ability to make judgements about themselves and others. The use of peer and self-assessment during the course will encourage this development.

## Peer assessment

There is anecdotal evidence to suggest that peer assessment is growing in law schools, but in isolated pockets rather than across assessment in a particular course or school. For an account of how peer assessment was introduced and used on a purely formative basis on an LLB programme see Owens (1992). Students had to prepare summaries of topics which were marked by fellow students and also undertake projects which took a variety of forms including role-playing and making of training videos. For the assessment they were given guidance on basic assessment principles and some criteria to use. After initial reluctance to engage in the exercise at all, the students recognised the value of it and the marks awarded were extremely close to those a tutor would have awarded. Students marked both the written summaries and the various projects and the tutor monitored and also assigned marks to the assessing team. There were a few hiccups and the system demanded a great deal of lecturer input in terms of administration but there was evidence of deep learning strategies evolving.

For a general discussion of the advantages of peer assessment see Ewers and Searby (1997). The seminal work on this aspect of assessment is acknowledged by many to be that of Boud (1986). A useful evaluation of peer marking is to be found in an article by Fry (1990).

## Self assessment

Back in 1989 the CNAAs stated

[Self -assessment] is little used in higher education. [It] has the drawback of being demanding in time and effort if validity and reliability are to be maintained. However where it is used, students often tend to be over-severe in their own self-assessment...It perhaps...deserves more experimentation as an element within a diet of assessments (p24).

There has been little general research to date on the value of self-assessment – but the Self Assessment in Professional Higher Education (SAPHE) project has done some pioneering work. The project has illustrated how self assessment develops reflective practitioners and develops the key skills that are essential for employability. For those who wish to learn more contact the Project Director Judith Thomas, at the Graduate School of Education at the University of Bristol. Further information on interesting projects relating to the development of teaching and learning can be found at <http://www.hefce.ac.uk/initiat/current/fdtl/>

For a report on research into how specimen answers may assist students in forming judgments of what is required by lecturers see Cobley and White (1994). A reflective article containing clear guidance on how to

assist students in assessing their own work has been written by Hahlo (1997).

Validity of self-assessment could be an issue if the student has little guidance in how it is done, but allowing students to be involved in drawing up marking criteria should assist them. There is a debate over how much freedom students should be given in the drawing up of criteria: should they be given guidelines and left to get on with it – or are you intending to keep overall control? At level 1 students are often reluctant to get involved at all: they see the lecturer as having the expertise and lack confidence. By the final year students have overcome these difficulties (especially if you have been encouraging the use of peer and self-assessment) but may at this stage be so concerned with grades that they find it almost impossible to be objective. Other aspects of this are discussed below. A sample of essay self-assessment criteria is shown in Fig. 4.1.

## Essay Self-Assessment Criteria

**Fig. 4.1 Essay Self-Assessment Criteria**

1. Is the essay a reasoned argument in which the writer endeavours to *persuade* a sceptical reader of the justifiability of the line of argument adopted?
2. Is the argument *clear*? Is each part of it *clear*? Is it easy to understand and does it make sense? Is it presented *logically*?
3. Arising out of this, is there a *development* in the reasoning in which the clarity and significance of one point stems from the existence of a previous point? To help such development and make clear to the reader what course the argument will take:
  - (i) considerable *planning* is necessary. When you plan an essay, do not stop the process when you have arrived at a first plan. Go on to try and think of a second and subsequent ways of achieving your objective: the first way is not always the best – it frequently is not even the most obvious way.
  - (ii) sub-heads are necessary. These should not necessarily be one-word telegraphic sub-heads: they should express concisely what is to be found in the section following them. Do not get the wrong idea about sub-heads: they do **not** “break up” an essay – on the contrary, they make it flow and integrate the elements of the argument in the reader’s mind. They make for a vastly greater clarity. Most published academic work uses them, so do most newspapers: in both, communication is important. *Use sub-heads*.
4. Is there an initial statement of the stance that is to be adopted? This statement may involve a comment on how a question is to be interpreted, what kind of information is pertinent and why it is pertinent. *Beware* – an initial statement does not involve *waffle* – waffle is needless and often meaningless material. Do not waste time and valuable space writing it.
5. Arising from this, is all the material *relevant*? Is the relevance *explained*? You must keep reminding the reader *why* the point you are making is significant and how it relates (a) to the sub-head, (b) possibly the wider theme. You should also ask yourself *how relevant* your material is. Only if it has ‘first-order’ relevance will you wish to put it in the main body of the text. If its relevance is of second order, put it into a footnote. If it is third-order leave it out altogether.

6. Are opinions and assertions (which are welcome) *evidenced* or *backed-up* in some way e.g. by reference to published work in the field, by data or by detailed argument? Such back-up material may often be put into footnotes and appendices but it should be there.
7. Are examples of what you are referring to given at all possible times?
8. Does the essay stick to discussion and argument, rather than description? In essays in this course the reader generally wants to know more about *why* e.g. this case differs from another or this legal system has adopted a different approach to another.
9. Is the essay repetitive? Does it say the same thing twice?!
10. Is it generally clear, readable, correctly referenced and presented? Will it make the reader want to read it?

Adapted from the *Teaching More Students Project*, Polytechnics and Colleges Funding Council 1992.

Students can self-assess not just their own written assessment but also oral presentations or indeed any form of assessment. The main impact is to improve students' performance and to reduce the need for – and occasional dependency on – detailed tutor feedback. This in turn encourages independent learning which impacts on the whole nature of the teacher-student relationship. For a clear illustration of this and more examples of marking criteria see the highly informative article by Rule (1995).

'Over-severity' by students as noted by CNAAB has been redressed in recent times as students compete for high grades by generosity: marks may well be awarded for effort rather than quality of work. The criticism that self-assessment may prove not to be reliable needs to be carefully thought through. Is this alleging that the student assessing themselves may not make the same judgement in say six months time if asked to do it again on the basis of the same piece of work? Or (and this may really be the issue) is it making the point that the lecturer's perception may differ perhaps considerably from that of the student?

If you fundamentally disagree with the marks a student has awarded him or herself (or another in a peer assessment situation) are you going to alter the marks? If so you would obviously need to reserve the right in advance, or make it clear that student assessment would only play a part in the final mark arrived at. This can be dangerous: if a lecturer can effectively veto the peer or self assessment either by overturning the mark entirely or watering it down by contributing more than 50% of the mark, the students are unlikely to become at all confident in their own abilities. Ironically some students may want the lecturer to have this power – they may feel so insecure that they wish the lecturer to be a backstop – or they may just rebel and say that it is the lecturer's 'job' to do the marking – not theirs. This can lead to a useful discussion of the dual role of assessment with the student – most of them will not have heard of the terms summative and formative assessment – and can lead into an interesting session on the reasons for assessment.

## Principles for Assessing Groups

### Group work

Group work may be new to many students and it is therefore necessary to build student confidence and to help create a group assessment culture. Fig.4.2 outlines some principles.

**Fig. 4.2 Principles for assessing groups**

#### DO

- Inform students well in advance of the assessment schedule
- Encourage students to plan
- State the intended learning outcomes
- Negotiate the process/weighting/criteria/format
- Ensure students accept the above and buy into the outcomes
- Be explicit about how groups are formed and give the rationale (more on this below)
- Be clear about whether you are assessing just the achievement of the assignment task or the process of learning itself
- Make clear whether and what type of communications between groups is legitimate
- Are students intended to co-operate with other groups – or are they in competition with them?
- Be innovative! Develop the pioneer spirit in your students!
- Carry out some interim formative assessment – with feedback
- Keep in touch with group progress
- Try and assess in timetabled time (especially with part-time students)
- Delegate responsibility for primary marking to students
- Encourage students to monitor the group process e.g. by a short reflective statement
- Make sure you have a fall-back position (“I reserve the right...”)

#### DON'T

- Keep group membership the same over a number of assignments
- Let students confuse friendship groups with good learning groups
- Expect all students to have covered the same content
- Give just one common grade/mark
- Over-assess
- Be inconsistent without negotiation
- Change the rules as you go along without negotiation
- Overspecify – give room for creativity and original thought

Group formation is something that deserves a little attention. If students have studied how teams work they may be reluctant to accept your rationale! There are various methods to choose from:

- a) Use specific criteria such as Belbin categories or according to ability (similar or mixed)
- b) Arbitrary e.g. alphabet
- c) Friendship
- d) Convenience e.g. geographic location
- e) Students choose groups after identifying key criteria
- f) You choose groups after identifying key criteria
- g) As above but students indicate one person they do want in their group and one they would rather not have in the group

The last method is the most time-consuming but tends to work well as students identify with the process but you keep overall control. Groups should not be too large: for short tasks three is probably enough, for longer more complex projects the maximum number is six.

If you have devised an assessment matrix (see [Section 3](#)) you should have identified at which stage the first group assessment occurs. The students will need some guidance: many will have had no experience of working in groups although ideally this issue should be addressed at induction. It is important to ensure the criteria for marking and mark allocation are discussed at an early stage.

The main advantage in group assessment is that it reduces the number of pieces of work that have to be assessed. Although marking a group assignment will take longer as it is likely to be more comprehensive, it still takes significantly less time than individual marking. It is also a good means of promoting self and peer assessment. Some of the objections raised about group assessments are:

- individuals do the work, not groups, so an individual mark needs to be calculated on an equitable basis
- truly mixed groups revert to the mean and thus a group assessment will tend to produce a narrow spread of marks
- groups tend to work more efficiently and effectively than individuals and so the quality of the work may well be higher. This may have the result that the average marks for the whole group assessed seem rather high
- if marks are not individually calculated, 'free riders' get the benefit of the group mark
- hard-working individuals outstanding contributions may not be properly recognised

## How are marks awarded?

If it is decided to set a group assessment how are you going to allocate the marks? The easiest way is just to give a group mark and to give this mark to all members of the group. This may work if all members are equally dedicated and hard-working and have allocated tasks fairly. You are likely to find however that many groups do not operate so effectively – that one group member leads and is extremely dynamic while another reluctantly contributes a few pages of basic information gleaned from a leading text. If a member of the group goes sick or has severe problems preventing a meaningful contribution, the rest of the group may just cover and say nothing. How can such issues be resolved?

The classic way is to allow peer assessment of the individual contribution. All members of the group have to submit an assessment sheet listing all group members by name and give a grade or mark plus a brief comment on their contribution. This is done anonymously. A sample is given in Fig 4.3.

## Assessment of Group Members

### Fig. 4.3 Assessment of group members

List all members of the group, including yourself and give each member a mark out of 5 where 5 = excellent, 4 = good, 3 = satisfactory, 2 = weak, 1 = unacceptable. If no contribution is made you should give a mark of zero. Use the marking criteria agreed in class and give a brief comment.

**ALEX 4** Alex was asked to collect data on the definition of disability and comment on its effectiveness. He was two days late in submitting it to the group, but otherwise would have earned a mark of 5 as he worked very hard and the material was excellent..

**BRIONY 0** Briony said that she would contribute towards the end of the project as she had work outstanding for other courses that she needed to concentrate on. In the event she was supposed to be processing the final version and binding it but she did not turn up so somebody else did it.

**CHRIS 3** Chris collected the case law as requested on the operation of the Act and said there was very little available as it was so new. Unfortunately someone else discovered another valuable source too late to include it! Chris helped with the processing.

**DAN 4** Dan collated the work of others and gave very useful comments on the final draft and also did much of the input on the computer. He also did the binding and checked all references.

Agreeing the marking criteria with the students is a helpful exercise for them. What are they going to assess? Is it effort (input) or quality (output)? Or both? Should all members be expected to collect information and help process it or would it be fair to make one person responsible for the final word-processing and merely comment on the work of others? Should people be allocated tasks on the basis of what they want to do or what the group thinks they are best at? Are the criteria fair? Are they reliable?

You'll note that students are asked to assess themselves in the sample given. The reason for this is that it makes the assessment anonymous and it also helps develop their objective judgement. It is quite interesting to see if you can spot which of the comments relate to the student who wrote it of themselves! Reflection by students of their own performance in a brief comment such as this can be the first steps in writing a statement of relevance.

### Statement of Relevance

This can form part of the marking criteria for any assessment or not be graded in any way. The purpose of such a statement is to enable the student to reflect on their own learning and is intended to be completely subjective. The student may talk not just about the content of the assessment but also about the process e.g. how some data was difficult to find, how interesting Bloggs' views on the legality of sperm donation while unconscious were, how he finally learnt to use the Excel package to draw pie charts...

# Quality in Assessment

## Internal examiners

To ensure quality it is important that there is some check on assessment procedures and the first stage in the process is usually using your own colleagues. It has been established for some time that a common weakness in course design is the links between outcomes, learning opportunities and methods of assessment (Brown 1994). Brown suggested then that:

- Lecturers should be provided with opportunities to refresh and update their expertise in assessment.
- Course teams, departments and schools should audit and review their assessment procedures.
- Subject specialists should use their networks to pool expertise in assessment, to develop banks of questions and multiple choice items that test understanding as well as knowledge and to consider ways in which technology might be used for assessing and recording achievement.
- A relatively autonomous national centre for the study and practice of assessment should be established. Assistance not prescription should be its mission.

There has not been a great deal of progress since, although some institutions may have attempted an audit of assessment procedures in the light of imminent quality visits from the former HEQC (Higher Education Quality Council) and the expansion of the use of computer technology has led to considerable advances in the use of computers for both teaching and assessment. There once was a bank of legal materials including sample assessments organised by the Association of Law Teachers but this fell by the wayside. Most recently, the National Centre for Legal Education's website (<http://www.law.warwick.ac.uk/ncl>) has begun to gather together some information on assessment practices.

The nature and effectiveness of the support of fellow law teachers at institutional level will depend on several factors including the size of the law group, how they are spread within and across the institution, whether you are full-time or part-time and have reasonable access to other group members and most importantly the prevailing culture. Culture is addressed more specifically below but as an example a new lecturer who requests that a senior colleague 'glance over' an examination paper may well be met with a benign smile of agreement, but a request that the same senior colleague look over two dozen potential examination papers from a large number of staff may not be received in the same manner. Cross-checking of each others papers can be done at a formal or informal level and is a useful practice; apart from picking up howlers and ambiguities it does give the law group a sense of what students are being assessed on. Professional bodies setting national examinations often cross-check papers in this way, again not just as a quality control mechanism but because it allows them to check that the range of learning outcomes across an entire course is being assessed by the melange of papers.

The role of culture was highlighted in 1993 by Atkins, Beattie and Dockrell who indicated that it was one of the difficulties in the path of improving assessment practice. Assessment is not seen as an urgent and important problem:

Individual staff may feel that they have little responsibility for assessment practices: departments often have an examinations secretary, and the round of examiners' meetings cycles quietly on. Indeed, the system works well enough from the point of view of those who run it: the academics. And given other pressures on the time and energy which people can spare for innovation, assessment is unlikely to be a high priority except for a few. (Otter 1992).

Otter concluded back in 1992 prior to the HEQC quality visits that extensive documentation and periodic 'inspections' do not necessarily change day to day assessment practice. No doubt many of us would still say the same as the Quality Assurance Agency (QAA) takes the helm.

The problem is compounded by the absence in most departments, of expertise in assessment methodology, or in the design of tests and assignments. The customary is repeated without knowledge of alternatives (Atkins *et al* 1993). The establishment of the Institute for Learning and Teaching and the accreditation of teachers is likely in the long term to lead to improvement at individual level as teachers become accredited, but as in all effective changes there needs to be commitment within institutions at the highest levels if such changes are to be embedded in organisational structure and procedures.

## Marking issues

There are several aspects to assigning marks or grades to assessed work that deserve to be aired and these need quality time for discussion with colleagues. Do we grade all the work our students do? Or just some of it? With the growth of modularised courses there has been a move to cut assessment, but it is formative rather than summative assessment that tends to go which sends a particular message to students and must affect their motivation. Much work however is still the subject of assessment in modern times and not always for the right reasons. Some lecturers argue that if the work does not carry a grade the students tend not to do it (hence the assessment of seminar contribution looked at in [Section 3](#)). Other lecturers complain that students do not prepare for seminars because they are concentrating their efforts on the assessed coursework they are doing.

Marking scales may also be problematic. With the growth of modular courses it may not be feasible for all lecturers on a 'course' to agree on a schema for marking or perhaps such matters are never discussed. Students need to be assured that standards are the same across subjects and whoever is marking their work and it cannot be very reassuring if some mark out of 20, a few out of 25, others in percentages while a few prefer letter grades, perhaps some even in Greek...

Time for another brief exercise. Write your answers in the space below.  
How do you mark?

Why do you use this method?

Which methods do other law teachers on your course use?

Which of these methods do students prefer?

Is it possible (or necessary) for you all – teachers and students – to reach a consensus?

Another important issue is whether students' work is marked anonymously. Many institutions do have anonymous examination marking but not for coursework or even dissertations which arguably are more important since their grades usually have more of an impact on the final classification.

Marking criteria need to be checked for consistency too. Do all lecturers penalise poor presentation which includes bad spelling and grammar and illegible handwriting, or just a few? If such matters are included in the criteria how many marks can be lost or gained as a result? 10%? 15%?

If there is consistency then double-marking becomes much easier to do and if such double-marking is blind it is more likely to be reliable. Does the work you mark get double-marked? If so, why? If not, why not?

Double-marking may improve reliability but it is very time-consuming.

Double blind marking has had a bad press as there is evidence that there is little to be gained from doing it: second markers tend to come up with similar marks regardless of whether they have seen the first marker's marks or not.

Many of the issues outlined above are aimed at reducing variability which is necessary to improve reliability and validity. Obviously there may be a wide variety in the performance of individual students in a given examination but it is also possible that there will be a wide disparity in the marks awarded by different examiners for the same piece of work. As Pieron says in relation to reliability "the part played by the examiner can be greater than that of the performance of the examinee" (Pieron 1963). Law lecturers have indicated that they are very confident about their ability to mark accurately, but research has also indicated that the majority tend to use a mark range of only 25 marks (Tribe and Tribe 1988).

Brown *et al* (1997) make the suggestions contained in Fig.5.1 for reducing the variability in marking.

**Fig. 5.1 Suggestions to reduce variability when marking**

- Know your values and prejudices about style, punctuation, grammar, handwriting and particular ideologies or perspectives.
- Know when you are likely to feel tired and irritable (unfortunately you can't answer this by saying it is whenever you have piles of marking to do!)
- Plan and pace your marking but mark the first few intensively to get a feel for how the criteria operate in practice
- Mark by question not script
- Re-mark the first few to check for consistency when you have finished and at the beginning of each day if it's a long job
- Don't be afraid to shift categories after marking
- If in doubt, give the furthest mark from the mid-point, but
- Ask yourself 'Is this really a fail?'
- Have a set of criteria. Keep them simple.
- Consult them regularly.
- Give students the criteria
- Get a colleague to second mark at least a sample
- If there is serious disagreement of more than one grade, get an independent marker to mark using the same criteria

Modified from Brown *et al* (1997)

Most of the suggestions will not be controversial and many of you will have been doing these very things for many years without question. What about marking individual questions instead of scripts? With really small numbers (under 10) it probably makes little difference but it is much more reliable to mark larger numbers question by question. Validity may be better if the performance across an entire script is viewed since a weak candidate may reproduce the same material without justification and a strong one may cross-reference between questions to save time. It is recommended that all scripts with total marks that are close to a borderline be looked at again. Marking is not merely a numerical calculation and it is better that a student's final classification be made on an overall judgement. If it's a pass/fail decision imagine that the student will have to walk around with a label on them stating "I was certified as competent in Company Law by Mr Green of

## Suggestions to Reduce Variability when Marking

Nonesuch University” changing the names as appropriate. Would you be happy with your decision?

## Back to the issue of standards

So, we’re back to talking about standards. It is important to remember the distinction between **norm-referencing** and **criterion-referencing** (see [Section 1](#)). It is the latter that is normally marked on a pass/fail basis like the driving test and the student must demonstrate that they have achieved all of the learning outcomes. This sounds very straightforward but there can be arguments here about how such achievement is demonstrated. On the driving test you normally only have one opportunity at each test to demonstrate your skill at e.g. doing a three-point turn whereas a colleague involved in nurse education informed me that student nurses have to practice giving injections into grapefruit for as long as it takes for them to get it right. I, as a possible patient, was greatly relieved to discover this. In both cases there is close fit between the achievement and the criterion in question.

With norm-referencing on the other hand the standard ascribed to a student’s performance is a function of that performance in relation to other comparable students. Although we may well mark with the classification of first, upper second etc. in our head, as we mark we tend to note comparisons especially at the top and bottom of these scales. If Jennings has written the worst essay you have read and you think it is worth a mere 25 marks, you may change your opinion when you read Derbyshire’s, whose is even worse. You will either give Derbyshire 25 – perhaps because this represents your definition of truly abysmal – and credit Jennings with a few more or (and this is less likely) go below your own glass floor and give Derbyshire 20. Lawyers tend not to use the full range of the marking scale: an excellent language or maths student can be awarded a mark in the 90s – if you ask law teachers how many times they have awarded a mark in excess of 80, most will give you a puzzled glance.

Generally speaking, when we make comparisons for marking purposes in norm-referencing, we are comparing the students completing an assessment at any one time and it is difficult to cross-reference. External examiners have the task of comparing standards across institutions and are normally asked if they think such standards are comparable, but it is rare for either internal or external examiners to compare across years, unless there is a notable rise or fall. Because it is not quite known how to deal with such disparities may be the reason for failing to note them: common statements at examination boards are “well, this is a particularly strong (or weak) cohort”. It is only when a quality assessment visit is looming that comparative figures may be examined.

Standards are very topical with the Quality Assurance Agency (QAA) attempting to identify thresholds in degree performance, with law being one of the first to be looked at. The questions being posed by the QAA are not new. In 1989 the CNAAs asked:

The general issue here is what is meant by standards? How are boards of examiners to improve their knowledge of national patterns of student achievements? Against what context is the ‘standard’ to be set? – Is it that of the subject across [the old and the new universities]? Of cognate subjects? Or of all subjects in British higher education? (CNAAs 1989).

## A shift away from norms

There has been much written in the past about 'easing the burden' of assessment, with the growth of student numbers and competing demands on lecturers' time. A way of cutting marking times considerably is to move from norm to criterion referencing i.e. to let some assessments be made on a pass/fail basis. Since it is rare for first year assessments to count towards final degree classification it would be possible for all such assessments to be done on a pass/fail basis: the professional bodies only require that a satisfactory standard has been reached in the foundation subjects so that would not be an issue. Coursework comments would indicate where strengths and weaknesses lay and it would be possible to use the time saved on assigning marks to examination scripts to give a few lines of qualitative comment which could be given back to students. Many students wish for examination feedback: see also [Section 2](#). Do you give feedback on examinations? If not, why not?

## Profiles

Universities are reluctant to get rid of the classification of degrees, although the University of Aston abolished them in 1970 and introduced profiling. Student profiles list student's achievements under a range of headings with qualitative comments and have been discussed over the years. Employers feel that degree classifications are useful as a sifting mechanism but that profiles provide more useful information (Klug 1975).

## Self-evaluation

This has already been discussed in [Section 4](#) under the heading of statements of relevance. The power of such statements to increase student learning should not be underestimated but they also have a valuable role for the lecturer as they will often contain qualitative feedback on the material used by the lecturer in structured learning sessions as well as on the method of assessment.

## Effective use of the external examiner

The role of the external examiner was discussed in the Dearing Report and led to the QAA making some quite radical suggestions as to a revised role in the form of the registered external examiner. This met with strong resistance from several institutions who felt that the proposed dual role of independent moderator and quality agent acting for the QAA would at the very least compromise the examiner and would make finding external examiners a more difficult task. The proposal has since been withdrawn.

How much of the students' work should external examiners see? This is a length of string-type question. The examiner needs to see a sufficiently large sample to make an informed opinion as to the standard of student work. Practices vary widely from institution to institution and ideally both parties should negotiate if there is appears to be a disparity between expectations.

Do external examiners see all summative assessment regardless of the form it takes? Some externals are sent samples of coursework, examinations, videos of presentations, interviewing skills, advocacy skills etc. Others are sent a much more limited diet, perhaps only of written examinations taken at the end of the year. Some externals are sent referred scripts, others are not.

The role of the external examiner as far as an individual institution is concerned is normally set out in some centrally published document and should be given to the external examiner before he or she agrees to adopt the role (in what other jobs do you get a job description after you have started?) but practices vary widely and it would be a useful research topic...

Such job descriptions do not normally give any detail as to how an external examiner is to moderate the assessment process – this will normally be devolved to school/department level and may well be dealt with by an administrator. Such issues as sampling for example may be decided by the subject lecturer or occasionally by the course leader. Does the external get to see a range of work from the whole cohort? Are all borderline cases shown to the examiner? Does the examiner get sent all failed scripts? Or perhaps all first class scripts? Many of these answers will depend on the number of students involved and the number of scripts that fall into the various categories as well as how the parties define the role of the examiner.

Before the advent of modular courses and the more recent rapid growth of 'two-tier' examination boards, it was possible for external examiners to comment about the assessment regime of a course, since they were in a position to give an overview having moderated a wide cross-section of assessments. Some courses have managed to keep the number of external examiners down (thus giving the unfortunate examiner the responsibility of moderating a large number of subjects), while others have fragmented the task, allocating different subjects to different examiners, who may well meet only once at the final examination board or perhaps not at all if for example law is a minor subject in a combined award. Opportunities for comparisons by external examiners of assessment practices which affect students on the same course can thus be minimal and with rising student numbers it may be realistic to say that the examiners' priorities are to ensure that rules are being adhered to and standards being upheld, rather than whether the methods of assessment *per se* are effective.

## Examiner reports

What external examiners write in their reports is arguably less important than what is done with them. Much will depend on the institution's quality system. Until comparatively recently such reports were often sent to the department and it was up to the relevant head what happened to them and what actions, if any, were taken. Perhaps because of the friendly, occasionally cosy, relationship that sometimes existed between the parties, it was possible for an examiner to write very little:

Dear Rowena. How good to see you last week. Smashing lunch. The students did well this year I thought and such wonderful spreadsheets. Remember me to Arthur. All the best. Colin.

## Sample of External Examiners Guidelines

This parody was not too far from some real examples that may be familiar to some of you. The impact of quality assessment on universities has led to a rethink of many systems and one of the results was the centralisation of many functions including that of appointment and communications with external examiners. Most are now requested to send their reports to a senior manager, sometimes even to the Vice-Chancellor or equivalent and many chief executives will personally look at several of such reports to enable them to gain a better feel of the 'objective' views held.

It is also common for external examiners to be given clear guidelines about what their report should contain. An example is to be found at Fig.5.2.

**Fig. 5.2**

### **Sample of external examiner guidelines**

The areas to be covered by the report include:

- The general standard of the work assessed and comparability with similar levels of work nationally
- The overall performance of the students in relation to their peers in other institutions
- The strengths and weaknesses of the students
- The quality of knowledge and skills (both general and subject specific) demonstrated by the students
- The structure, organisation, design, and marking of all assessments
- The quality of teaching as indicated by student performance
- The lessons of the assessments for the curriculum, syllabus, teaching methods and resources
- Any other recommendations arising from the assessments

The report must not mention individual students by name

Extracted from cover letter sent to external examiners by the University of Brighton as at September 1998

It is also becoming more common for external examiners not to be paid until their reports are received and sometimes to be told if their reports do not address many of the issues. That said, most external examiners perform an unenvied task for comparatively low reward and are normally highly regarded and their comments appreciated. External examiners are able to share good practice and warn against bad practice across the different institutions of which they have experience. The extent to which their views are adopted and acted upon will depend partly on the nature of their comment and partly on the culture of the institution. It is also clear that the role of the external examiner is subtly shifting, but this has been written about extensively elsewhere.

For an amusing account of the experience of one law professor acting as an external examiner see Colin Reid's article in Times Higher Education Supplement of 17 July 1998.

## Ensuring quality is maintained in assessment

As with all quality issues, the only way to ensure quality maintenance is by periodic review. The big question is how long should the gap be between reviews? This handbook has stressed the importance of individual reflection in relation to learning and this process should be carried out as part of the end of course evaluation.

### Student evaluation

Students are typically asked their views when they have completed a course of study for evaluation purposes. Does such a survey include questions on the assessment? In one university the question was asked “How far do you agree that the assessment of this module has contributed to your learning”. The answer, using the 5 point Lickert scale, was scaled from “strongly agree” down to “strongly disagree” but the most frequent response was a blank or occasionally the honest comment. “Don’t know – haven’t been assessed yet” or “Don’t know – haven’t had the work back yet”. These responses indicate that timing is vital. If the evaluation is set mid-way during the course – leaving time to address issues raised – it is unlikely that students will have been assessed. The latter comment indicates how much students are dependent on feedback, or even just a mark, before they are prepared to give an opinion on their own learning: “Tell me how I’m doing, then I’ll tell you how I’m doing”. The use of self-evaluation (see above) can reduce this dependence rapidly.

What questions, if any, do you ask your students about how assessment has contributed to their learning?



### Staff evaluation

It is less common for staff to be asked to evaluate their own course after having completed the teaching and assessment of it. They may be asked to comment at course boards which may meet during the year on features that deserve mentioning, especially if students have made representations, but general reflection and review is rare. It is important to remember that lack of complaint or comment is not a sign of quality: well-fed customers at a restaurant do not complain and may not comment about the food but neither do comatose patients on a drip fed intravenously!

## Sample Lecturer Course Report

One way of addressing these issues is for lecturers to write an end of course report addressing the following issues:

- teaching method, including innovations
- assessment method, including innovations
- lecturer's evaluation of these
- student evaluation
- lecturer's reaction

These can provide valuable feedback for colleagues and tend to be much more reflective and to contain far more insights than the typical third party formal report required by the institution's quality system. For a sample see Fig.5.3.

**Fig. 5.3 Sample lecturer course report**

### **Teaching method**

Basically the same approach as last year. No lectures as such but students are given reading to do before the two-hour session and I open it with a series of overheads with key points. Copies of these are now available on the school intranet, which is a welcome development, as are copies of other handouts, the assessment and criteria and former assessments. The students agreed that basic points are as easily picked up by the reading which leaves more quality time with me for questions and exploring the difficult aspects of the subject. The half-time ten minute break was suggested by students: they said their concentration was flagging and they needed to stretch and grab a drink (I think for many this meant a cigarette!). It has paid dividends though. After that they go into small groups for thirty minutes to discuss their progress with the logbooks and we finish with two problems dealt with by the student panel of the week (the student panel is now five instead of four, but they get two weeks notice of their required presence). One of the questions they have notice of – the other they don't.

### **Assessment method**

The logbook kept by the groups was new. The subject was divided into five major topics and each group was assigned a topic. They were told to keep a note of all developments in the subject area from whatever source over the coming year and to write a summary and short critical review of each. The web pages kept them very busy with most groups reporting an average of three new contributions a week. At the end of the year they had to be selective and cut the whole logbook down to 4000 words and write an introduction and a conclusion. The best one has now been put into the library for next year's group.

### **Overall**

I am really pleased by the way the course has gone. The student suggestion of a break was supported by the majority and the minority sometimes stay and work through. They appreciated the change of pace when they split into groups to discuss their logbooks – they said it was easier to meet like this in class time and much more productive as they knew they only had a limited time to exchange ideas and discuss progress. The finished logbooks were really excellent – three were awarded first class grades. The students said it was hard work but they enjoyed doing it: they said they were fed up with pouring over books in the library which is what they claim they need to do for most other subjects.

## Getting it wrong

Lack of quality in the systems that underpin assessment may have serious consequences. Students are becoming more legalistic and the publicity surrounding such events causes damage that is more difficult to quantify. In September 1998 the Times Higher Education Supplement ran a story about an American postgraduate student at Cambridge who was considering legal action after losing her claim that she was removed unfairly from a linguistics course. She argued that although having failed three out of four 2000 word examination essays this decision was unfair since her tutors failed to communicate with her properly and she misunderstood the nature of the questions. She also claims she was denied an extension offered to fellow students. The university's complaints review committee recommended that her fees be refunded and found that exam regulations had been "unclear and inconsistent" and that "the requirements for candidates to pass the essay component before being allowed to proceed was not communicated."

We as individuals cannot be held responsible for our institution's examination regulations but imagine if the instructions you gave to your students when giving them a written assignment were subjected to scrutiny – or even judicial review! Were the criteria explicit and transparent? Were the instructions in writing? Were the word limits strictly adhered to in every case? What was the penalty (if any) if such limits were exceeded? How do you deal with late course work? Here's a situation based on a real case that you may wish to reflect on.

### Fig. 5.4 Missing the deadline

Amy is a part-time student on the LLB course at Cobbledown College. This course is very popular with over 70 students enrolled on the first year. She was due to submit a written assignment on Monday 9 November. Assignments are posted in a special box in the department with a front sheet completed by the student. The assignment box is emptied every evening at 5.00 pm and the contents date stamped by the departmental administrator. The college's Examination Regulations are very clear – any assignment received late is given a mark of zero. Students who wish an extension should contact their tutor in advance and must give supporting evidence. These rules are spelled out clearly in the course handbook and emphasised at induction.

Amy's assignment was received date-stamped Wednesday 11th November. Amy's tutor had not been asked for an extension and gave her zero. Amy comes to you as course leader and asks if the decisions can be reconsidered. She explains that all other assignments have been due in on a Wednesday (the day she attends the college for her course) and she had not realised that the 9th November was a Monday. What do you do?

Discuss as many implications as you can think of – then have a glance at Fig. 5.5

## Missing the Deadline

**Fig. 5.5**

Issues for discussion:

- You need time to investigate – make no decisions but say you’ll look into the matter – give her a day by which you’ll get back to her at the latest and try to beat your own deadline.
- If her version is true and you decide to waive the zero penalty you need to face the consequences. What if other students had queried the Monday deadline and been told it was correct? What if she (and perhaps a few others) were absent on that occasion? What if other students on the course complain that she has effectively been given extra time for no good reason?
- What are the implications if she carries the zero mark? Can she resubmit? If so is there a maximum mark she can obtain because it is a resubmission? How are similar cases dealt with on this courses i.e. are the rules applied consistently and fairly? How are such decisions logged? When, if ever, are such decisions evaluated?

There is much evidence to suggest that external quality audits of institutions by both state-funded and professional organisations will continue to check systems that underpin assessment and how examination and assessment regulations and their breach are communicated and enforced both at institutional and school or departmental level.

# Examinations

## Revision sessions

Running revision sessions can be invigorating! You can play games, get the students to take over the sessions entirely – pull the course apart and put it together again. Coming at the subject-matter from different angles is good for everybody and here are few techniques you can try.

This exercise is best done towards the end of a course when the students are reasonably confident in the nature of the subject-matter. You need to have copies of a couple of examination script answers – one a solid pass, the other a weak script or even one which is a failure. A week or so before the exercise distribute the question to be marked. A juicy problem with three or four different elements is ideal. Ask the students to note the essential aspects for which they would expect to gain marks if they were writing the answer in examination conditions. The following week start by brainstorming the essentials with the group (or break them down into small groups and feed back) and come up with agreed marking criteria. This is likely to be highly content specific so you may need to draw their attention to such factors as critical analysis, importance of accuracy and build these in. The assessment criteria for problems in Fig.1.7 may help.

It is very important that the group own these criteria, so as far as possible do not impose additional criteria, but encourage them to discuss further until all main aspects are covered. Now distribute copies of the sample examination scripts and let marking commence! This can be done by all students individually, but you should get them to discuss in small groups what was good, what was not so good, what key elements were missing, if any. and finally get them to assign a class: first, upper-second, lower-second, third or fail. Now get the groups to discuss. Is there agreement between groups? If not, why not?

The perfect outcome is that students agree a class between them that matches yours! If this is not the case then further discussion is necessary – you may even wish to revisit the criteria you originally drew up when marking the scripts in question! Having carried out this exercise myself many times, the biggest problem is with borderline fails – some students will decide on balance it is worth a pass, some may even think it is a clear pass – so try not to use as an example a script where you have deliberated yourself long and hard. This exercise takes some time but the first part is the most valuable – listing a question's key aspects forms the basis of solid revision. This forms the basis of the next exercise.

For those of you who have not come across it, this is a TV panel game where competing families guess the responses of 100 members of the public to simple questions e.g. "Name a pet that would be suitable for a child". The aim of the game is to come up with highest score by correctly naming the most popular responses. This can be adapted for revision sessions by revealing examination questions and getting groups of students to compete in listing key aspects that should appear in the answers (for those of you familiar with the TV game, you will recall that there are bonus points for getting the last few answers that the minority list).

## Student Marking Exercise

## Family Fortunes

## Best and Worst Questions

Another good exercise for making sure students answer the question set – and not the question they would have liked to have been asked. Get them to revise a reasonably narrow topic that could be the subject of a question such as consideration in the law of contract. Then compose a list of as many examination questions as you can on this topic, raiding examples in student textbooks, past papers of your own and other institutions. Use both essay style and problem-based questions. Get students to vote on the questions that they consider to be “best” and “worst” and then to explain why they made the choices they did. This is a very good way of getting students to articulate what they think the examiner is looking for in a question. It gives you the opportunity to address some popular myths e.g. essay questions are easy to get good marks on; you can’t get a good mark for a problem unless you know and quote several cases by name. Again you can explore key aspects of answers: first year students may not appreciate that a short essay question requires a depth of analysis that an apparently complicated problem may not.

## Guess the Question

Another variant on the above. Give each student the same sample of the opening paragraph or so of an examination script answer and get them to match it to the question. This helps to bring home to them the importance of addressing the question set as early as possible! Then ask them how many marks they award this opening paragraph if it was all there was because e.g. the student became ill and had to leave. Is there anything to indicate the student knew enough to gain a pass?

## Coping with the examination

You may or may not give guidance to your external examiner about the subject matter you expect to find in the answers on your examination. This was discussed in [Section 5](#) where it was suggested that such practices are often decided at departmental or school level. If you do give such guidance, dig out last year’s examination paper and look up the guidance given. If there is none, write a few lines outlining the main points you would expect to see, indicating which are the most crucial and which are less so. You are of course effectively writing marking criteria for each question. Make sure the students all have a copy of last year’s paper and get them to prepare marking criteria for a set number of questions, but keep the number low – three as a maximum should generate a wealth of material for an hour’s session.

A week later you can get the students to present and discuss their findings: what is essential? what is peripheral? what is the magical extra something that might earn them a first? You can also encourage them to discuss style and presentation. Keep a low profile and let them run the session. Towards the end give them the guidance you gave (or would have given) the examiner, or wrote yourself and encourage discussion about the shortfalls – if any. Ideally you need a couple of sessions like this as they really build self-confidence. Students need to be sure that you all share the same concept of a good answer.

## Coping with the examination board

For students their ordeal is normally over as they exit the examination room but for academics this can mark the beginning of a large amount of work and accompanying headaches. Huge marking loads in a limited time span are part of it and the examination board may be another.

What goes on at examination boards warrants a “Lucky Jim” treatment all by itself, but it would be difficult to get a group of academics from within the same institution, let alone different ones, to agree about the nature and function of the role of internal examiners.

Here are a few basic rules:

- Turn up

Even this is easier said than done as many examination board meetings are not scheduled as far in advance as they could be. Meticulous planning and strict time management by the person chairing the meeting ideally mean that not everybody has to be there for every part of the meeting.

- Put up

One of the most important roles of the academic is to pass judgement, using assessment tools properly applied, on a student’s suitability to be awarded a pass or grade in a subject studied. There are probably still a few boards sitting where the individual students are well-known to their assessors, who can give accurate qualitative information that may influence academic decisions. In others, the rise in student numbers means that lecturers do not have such detailed subjective knowledge unless students have discussed issues out of class with a member of staff. Equity and equality of treatment is thus in the hands of the individual student to a great extent, but information and to a lesser extent, opinion, needs to be aired at examination boards. If it is not it may lead to student appeals for failure to follow due process.

- Shut up

Examination boards have collective responsibility for their decisions and all proceedings should be confidential. Sometimes decisions are made with which you will disagree. It is important to make your views known (see above) but after the decision has been made you must support it. Serious issues of principle rarely arise at such meetings, but if such a decision is made that has far-reaching implications it should be raised at another later meeting. Proceedings of an examination board should not be discussed outside of the meeting and certainly not with students.

All examination boards have regulations which govern their operation: some may be course-specific but the majority will have been centrally determined. It helps if all the internal members know the rules relating to a particular board or course e.g. how many and which subjects are ‘core’ and have to be passed, how many (if any) courses a student may fail and still proceed to the next year or to graduate, the rules relating to referrals and deferrals. A good chair may well refresh the memories of the board members before a meeting begins – if only for the benefit of external members – but it is still the collective memory of a process that operates only a few times at most in a year that will ensure smooth running.

## Knowing the Rules

## Referral, Deferral and Repeats

## Plagiarism

Different institutions use these terms in their rules in slightly different ways and it is of course the individual definitions that are crucial, but simply put a deferral is used to describe a situation where there is insufficient information or material on which to base a decision, so the result must be postponed. Mitigating circumstances such as illness of the student on the date of the assessment commonly lead to a deferral. The student will often be given the opportunity to undertake the assessment as if for the first time – it may well in fact be the first time – and the grade/result awarded recorded for the student as it stands.

A student who has not satisfied the examination board requirements in relation to a given subject *may* (and even using italics cannot really convey the crucial importance of this tiny word) be given the opportunity to present themselves again for a second assessment. They are thus given a second chance. This second assessment may take a variety of forms, usually decided by the board itself. It is common to allow the student to take a similar form of assessment to ensure reliability so that a student who fails an examination will be set another similar paper; one who fails a skills assessment involving an oral presentation must give another oral presentation and so on. A referral commonly carries a penalty e.g. no more than the bare pass mark will be awarded regardless of the mark achieved.

The power to grant a referral usually lies at the board's discretion and this is exercised in different ways: for some it is virtually automatic, for others a referral has to be 'earned' so that a student must gain a certain minimum mark to be entitled to a referral. The exercise of this discretion varies not just across but within institutions and sometimes across different boards within the same school within the same institution...as with many other systems of rules, it is not the strength of the edifice of the rules that dictates the outcome but the shifting sands of culture on which the rules are built.

For students who are not awarded a referral, or who subsequently fail such a referral, there is sometimes a possibility of repeating a course either with or without attendance. Repeating with attendance can cause problems of motivation for the student, unless their attendance the first time was spasmodic for reasons beyond their control. Lack of motivation affects not just the individual student but his or her peers and even, in small groups, the lecturer too. Repeating a course without attendance also has its associated problems, but a student may be motivated to put in the required work if kept with their existing cohort and allowed to proceed with other work at the next level.

## Assessment problems

Institutions must establish clear and consistent practices in relation to suspected cases of cheating and plagiarism or other forms of unfair advantage (CNA 1988).

Again this may seem a little dated to some of you – surely every organisation has done this eleven years on? In another publication a year later the CNA went on to say

So far as plagiarism is concerned, plagiarism in invigilated examinations should be distinguished from plagiarism in coursework; in the latter, the plagiarising of another student's work should be distinguished from the non-attribution of material drawn from a published work. (CNA 1989)

This is very interesting. How should they be distinguished? Was the CNAA claiming that some were more serious than others? Perhaps that the penalties should be different? If so, which were considered more serious and what range of penalties did they envisage?

Many of the matters are rightly dealt with by a university's central regulations, but students still need to have them drawn to their attention and discussion is of benefit. Do not assume that this has been done by somebody else, although it is common to deal with such matters at induction. With increases in litigious students, it is common for students to sign on enrolment a form that states that they agree to abide by the university rules and regulations as set out in some easily accessible document (often a personal copy of a student handbook).

For academics the problem of plagiarism is often if, rather than when, to grasp the nettle. If students are deemed to be intelligent beings who have been reliably informed of the nature of plagiarism, then if plagiarism is alleged – or discovered – or suspected, a lengthy complicated process is likely to follow involving investigation, suspicion and bad feelings all round. One of the shortest books in the world must be “A record of incidents of unsubstantiated plagiarism.” Like petty theft, plagiarism flourishes in those institutions where it is allowed to go unchecked because security is lax.

An interesting on-line discussion was started over the summer of 1998 by Tracey Varnava at the National Centre for Legal Education on how plagiarism was dealt with at various law schools. Some of the threads may still be readable at [legaled@mailbase.ac.uk](mailto:legaled@mailbase.ac.uk). Bruce Grant at Newcastle recommends the following website to combat sloppy referencing: <http://www.ncl.ac.uk/nuls/lectures/legwrit>

The different situations that give rise to potential claims of mitigating circumstances seem to be growing. This is partly the result of some institutions' fear of student appeals against the decisions of examination boards: to avoid possible appeals students have been given the message that virtually anything that could have affected their performance in an assessment should be logged. This in turn has resulted in systems overload as students have filed doctor's notes claiming unspecified viral infections, coughs, colds, gastric incidents at dates sometimes several days before or after an examination. One institution debated whether to demand sight of death certificates when one hapless student claimed to have lost three grandparents over a period of eighteen months.

This growth area has meant that universities have had to devise more formal ways of dealing with such circumstances. Leaving decisions to the discretion of an individual such as a course leader worked well when numbers involved were small, but to ensure consistency it is now common for a panel to meet to discuss all such circumstances and to make recommendations as to how they should be treated. Again, because discretion is exercised, it is difficult to ensure consistency across such panels within institutions, let alone across institutions and external examiners are not usually party to such decisions. One possible way forward is to have a university representative who sits on all such panels so there is at least a common party to all decisions, but others see this as bureaucracy gone mad. To many in the education system, the whole notion of mitigating circumstances is still an anathema, but it has to be recognised that more students are using the fact that these circumstances were not properly taken into account as a ground for appeal.

## Mitigating Circumstances

## Appeals

University Regulations will provide a process for students with a grievance in relation to their assessment to register this. The role of the internal examiner in this process will be minimal since the nature of the complaint will normally mean that the usual face-to-face interaction between lecturer and student concerning the grievance has not, or could not, result in a satisfactory outcome as far as the student is concerned. Lawyers, but not necessarily law academics, tend to keep file notes of all meetings, and the best advice for lecturers is to keep a brief written note as far as possible of interactions with students who are unhappy. Many institutions have pro formas for logging mitigating circumstances or requests for extensions which are processed in a systematic way. A formal system of personal tutors is also increasingly common, whereby individual students are given an opportunity to discuss progress with an academic who can in turn recommend courses of action which can be noted in writing.

Students who appeal are dissatisfied either with the process by which their grievance has been handled, or, more normally, the decision reached as a result of due process. University regulations usually make it clear that there is no ground for appeal on the basis of academic decisions being exercised so the fact that a student is dissatisfied that she has failed an examination for the second time, despite having worked very hard, will give no basis for an appeal. Some students however are beginning to see themselves as customers paying for a service and taking to heart total quality management principles that do not – and many would argue should not – fit easily into the context of education. Most appeals that progress to the next stage are based on the ground that due process was not followed e.g. mitigating circumstances were not taken into account and a successful appeal usually concludes with the examination board reconsidering the matter.

Despite equal opportunities statements it is clear that students arrive at college or university with different talents and different needs. As an example, a student diagnosed as dyslexic when in primary school may have spent several years developing coping strategies so that apart from requiring extra time in examinations, they are in many ways better equipped to deal with assessment tasks than an 'ordinary' student. A mature student given access to a course because of several years of work experience will not be considered a student with special needs by most institutions but will have to make several fundamental adjustments to cope satisfactorily with e.g. writing an essay or sitting an examination for the first time in several years.

It is a student's right to refuse to accept that they have special needs: a student who would be classed, if claiming state benefits, as disabled, is thus free to choose to say nothing. They then must be treated on the same basis as everybody else, despite personal knowledge to the contrary gained by academic staff. If a student wishes to have special assessment arrangements made because of special needs, the responsibility lies with the student in most institutions to make these known. These range from the use of a provided word processor or an amanuensis for those with a broken arm to the opportunity to sit alone for those suffering from panic attacks. It may be that as the subject lecturer these requests are made to you – they need to be properly processed according to whatever system your organisation has in place.

## Students with Special Needs

The percentage of overseas students range from 3% at the University of Derby to nearly 70% at the London School of Economics (Times Higher Education Supplement 2 October 1998).

Such statistics do not take into account the spread across individual subjects – there may be wide variations across institutions with some law schools attracting far more overseas students than other schools. Regardless of their national or ethnic origins many law students see law as a foreign language and their difficulties are similar in that regard, but for some they are being taught a foreign language in another foreign language so their problems are compounded! A good study skills base will be of enormous benefit and sometimes this will be provided by the institution, in others it will be assumed that students arriving for study at undergraduate level will have all the tools they need. If you are teaching and assessing first year students or are involved with induction, it is good policy that the first year team agree on a common approach, if only that you agree that you each make known your different expectations to the students!

## Overseas Students

# References and Further Reading

In this section are the references used for this handbook but do not think that the only sources of information on good assessment practices are to be found in learned texts. There are a growing range of internet sites with useful links that tap into the whole area of legal education and to reach most of them you can use the National Centre for Legal Education's website at <http://www.law.warwick.ac.uk/nclc>.

Do not forget your own colleagues and students! All over the country academics are busily inventing examination questions, devising multiple choice questions and developing their creative writing skills in producing complicated case studies. Networks such as the Association of Law Teachers encourage lecturers to swap ideas and best practice and to share their experiences on assessment by running regional workshops and also at their annual conference. Students have hidden talents in devising assessment topics simply waiting to be tapped! If you are setting a multiple choice test warn students in advance that they can gain extra marks by appending their own invented multiple choice question on any aspect of the syllabus – these can provide useful additional questions for later examinations.

With so many sources there is really no excuse for the tired old one sentence traditional questions commonly found on some examination papers. Be topical without being defamatory – even examination papers can be fun as shown by the sample in Fig.7.1.

## Fig. 7.1 Stay topical...

### Extract from an examination paper on the Law of Delict.

1. One day, in Tellytubbyland, Po was riding her scooter around a big tree when she saw Laa-Laa chasing her ball.

P: "Eh-oh, Laa-Laa!"

L-L: "Eh-oh, Po!"

#### **CRASH!**

Po crashed her scooter into Dipsy. Dipsy's hat had fallen over his head and he'd walked right in front of Po!

#### **Tinkle, tinkle, tinkle.**

L-L: "Eh-oh, Dipsy!"

P: "Uh-oh Dipsy!"

D: "Oh-oh, Laa-Laa. Ow-ow, Po! Dipsy sore arm! Dipsy blood on face! Dipsy go to hospital!"

Just then Tinky-Winky appeared.

T-W: "Eh-oh, Laa-Laa. Eh-oh, Po! Uh-oh, Dipsy?"

D: "Po run over Dipsy! Dipsy sore arm! Dipsy blood on face! Dipsy go to hospital!"

T-W: "Tinky-Winky bandage in bag!" Tinky-Winky first-aider! Tinky-Winky trained!"

So Tinky-Winky took a bandage out of his bag and tied it around Dipsy's arm.

T-W: "Dipsy all better? Dipsy like some Tubby-medicine? Dipsy like some Tubby-custard?"

D: "Dipsy not all better! Dipsy's arm more sore? More blood on Dipsy's face! Tinky-Winky call ambulance...Dipsy's arm no feeling now!"

So Tinky-Winky took his mobile phone out of the bag and called "999"

#### **Nee-naw...nee-naw...nee-naw.**

The ambulance arrived.

T-W, L-L and P (together): "Dipsy hurt. Dipsy sore arm. Dipsy blood on face." So the ambulance took Dipsy to hospital. But the bandage was too tight and Dipsy's arm, turned from green to black.

D (in hospital): "Bandage too tight! Doctor cut off Dipsy's arm! Dipsy say good-bye arm. Good-bye! Dipsy sue! Dipsy sue!"

Advise Dipsy.

With grateful thanks to Brian Pillans at Glasgow Caledonian University

## References

- Alldridge, P. (1997) 'Multiple Choice Examining in Law', *The Law Teacher* Vol.31. No.2. London, Sweet & Maxwell.
- Andresen, L., Nightingale, P., Boud, D. and Magin, D. (eds) (1993) *Strategies for Assessing Students – A guide to setting, marking, grading and giving feedback on assignments, tests and examinations* Standing Conference on Educational Development, paper 78. Birmingham: SEDA.
- Atkins, M.J., Beattie, J. and Dockrell, B. (1993) *Assessment Issues in Higher Education*. Sheffield: Employment Department.
- Bennett, M. *The Phenomenon of Over-Assessment* Paper given at the Association of Law Teacher's Annual Conference, Glasgow, March 1998.
- Bloom, B.S. (1965) *A Taxonomy of Educational Objectives Handbook 1: Cognitive Domain* 2nd edn. New York: McKay.
- Bradney, A., Fisher, V., Masson, J., Neal, A. and Newell, D. (1986) *How to study law* London: Sweet and Maxwell.
- Brayne, H. (1994) 'LPC Skills Assessments – A Year's Experience', *The Law Teacher* Vol. 28. No.3. London, Sweet & Maxwell.
- Boud, D. (1986) *Studies in Higher Education* Vol 15(1) 101 -111 p. 101.
- Boud, D. (1986) *Implementing Student Self-Assessment* HERDSA Green Guide No. 5 University of New South Wales.
- Boud, D. (1995) *Enhancing Learning through Self-assessment* London: Kogan Page.
- Brown, G. (1994) *Assessment of Learning: its implications for quality* Paper delivered at Open University Conference on Changing Patterns of Student Assessment and Examination, London, January 1994 (unpublished).
- Brown, G. with Bull, J. and Pendlebury, M. (1997) *Assessing student learning in higher education*. London: Routledge.
- Brown, S. and Smith, B. (1997) *Getting to Grips with Assessment* SEDA Special No. 3, Birmingham.
- Candy, P., Crebert, G. and O'Leary, J. (1994) *Developing Lifelong Learners through Undergraduate Education* Canberra: Australian Government Publishing Service.
- Carolan, B. 'Curriculum Design for the Teaching of European Community Law: An Outcome-Based Approach', *Association of Law Teachers Law Bulletin* 95, Spring 1997.
- Clinch, P. (1994) 'Practical Legal Research the Cardiff Way', *The Law Teacher* Vol. 28. No. 3. London, Sweet & Maxwell.
- Cobley, C. and White, S. (1994) 'Specimen and Model Answers in Law Teaching', *The Law Teacher* Vol. 28. No.1. London, Sweet & Maxwell.
- Council for National Academic Awards (1988 ) *Handbook*. London sec 2.20.
- Council for National Academic Awards (1989) *How shall we assess them?* London p22.
- Cruickshank, D. (1994) 'Skill Demonstrations: Where "Show" Works better than "Tell"', *The Law Teacher* Vol. 28. No.1. London, Sweet & Maxwell.

- Elton, L. (1990) 'Criteria of excellence in Teaching and Learning and their Appraisal' in *Bulletin of Teaching and Learning* No.3 Newcastle Polytechnic Educational Development Service.
- Ewers, T. and Searby, M. (1997) 'Peer Assessment in Music', *The New Academic* Vol. 6. No. 2. Birmingham: SEDA.
- Fry, S. (1990) 'Implementation and Evaluation of Peer Marking in Higher Education', *Assessment and Evaluation in Higher Education* Vol. 15. No. 3 pp 177-189.
- Gibbs, G., Habeshaw, S. and Habeshaw, T. (1988) *53 Interesting ways to Assess Your Students* London: TES.
- Goh, B. C. (1994) 'Some Approaches to Student-Centred Learning in Legal Education', *The Law Teacher* Vol. 28 No. 2. London, Sweet & Maxwell.
- Hahlo, K. (1997) 'An Exercise in Student Self-Assessment', *The New Academic* Vol. 6. No. 2. Birmingham: SEDA.
- Harris, P. and Tribe, D. (1995) 'The Impact of Semesterisation and Modularisation on the Assessment of Law Students', *The Law Teacher* Vol. 29. No. 3. London, Sweet & Maxwell.
- Hassett, P. (1992) 'The Role of Assessment in the Continuing Professional Development of Lawyers in England and Wales', *The Law Teacher* Vol. 26. No.2. London, Sweet & Maxwell.
- Heywood, J. (1977; 2nd edition 1989) *Assessment in Higher Education*. Chichester: John Wiley.
- Horgan, P. (1974) 'Law School Examinations: The Cinderella of Legal Education', *The Law Teacher* Vol. 8. No. 2. London, Sweet & Maxwell.
- Hounsell, D. (1984) 'Learning and essay-writing' in F. Marton, N.J. Entwistle and D. Hounsell (eds) (1984) *The Experience of Learning*. Edinburgh: Scottish University Press.
- Kemmis, S., Atkin, R. and Wright, E. (1977) *How Do Students Learn?* (CARE Occasional paper No. 5). Centre for Applied Research in Education, University of East Anglia.
- Kenny, P. (1994) *Studying Law* London: Butterworths.
- Klug, B. (1975) *A Question of Degree* London: the Nuffield Foundation, Group for Research and Information in Higher Education.
- Kolb, D. (1976) *Learning Style Inventory: Technical Manual* Boston: McBer.
- Lundy, L. (1995) 'The Assessment of Clinical Legal Education' *The Law Teacher* Vol. 29. No. 3. London, Sweet & Maxwell.
- Meux, H. and Smith, B.O. (1970) *A Study of the Logic of Teaching*. University of Illinois Press.
- Nield, S. (1994) 'Assessment: Some Lessons from Hong Kong', *The Law Teacher* Vol. 28. No. 2. London, Sweet & Maxwell.
- Osmond, P. (1997) 'Peer Observation of Teaching', *The New Academic* Vol. 6. No. 2. Birmingham: SEDA.
- Otter, S. (1992) *Learning Outcomes in Higher Education: a development project report* London: UDACE.
- Owens, K. (1992) *The Teaching Learning Strategy adopted on the LLB Course* Educational Development Unit Occasional Paper, Nene College.
- Pieron, H. (1963) 'Examens et docimologie: Paris' cited in R.J. Cox

(1967) 'Examinations and higher education', *University Quarterly* June 292-317.

Quinn, J. B., Anderson, A. and Finkelstein, S. (1996) 'Managing Professional Intellect: Making the Most of the Best', *Harvard Business Review* March-April 1996.

Rawson, P. and Tyree, D. (1991) 'Self and peer assessment', *Legal Education Review*. London.

Reid, C. (1998) 'Thirteen ways to treat an external examiner', *Times Higher Education Supplement* July 17 1998 p10.

Rule, E. (1995) 'An Experiment in Peer Assessment in LL.B Year 1', *The Law Teacher* Vol. 29. No. 3. London, Sweet & Maxwell.

Shorter Oxford English Dictionary (1985) edited by C.T. Onions, London, Guild publishing.

*Times Higher Education Supplement* September 11 1998 p5

*Times Higher Education Supplement* October 2 1998 p5

Tribe, D.M.R. and Tribe, A.J. (1986) 'Assessing Law Students', *The Law Teacher* Vol. 20. No. 3. London, Sweet & Maxwell.

Tribe, A.J. and Tribe, D.M.R. (1988) 'The Assessment of Students on Law Degrees in the Public Sector – Law Lecturers Views on Student Assessment', *The Law Teacher* Vol. 22. No. 2/3. London, Sweet & Maxwell.

Valcke, M., Dochy, F., Maassen, E. and de Craene, B. (1995) 'Alternative Assessment Procedures: Recent Trends and Experience from Practice', *The Law Teacher* Vol. 29. No. 3. London, Sweet & Maxwell.

Watkins, D. and Hattie, J. (1985) 'A longitudinal study of the approaches to learning of Australian tertiary students', *Human Learning* 4: pp127-41.

Williams, G. (1982) *Learning the Law* London: Stevens.