'*Practice Makes Perfect: Using authentic assessment techniques in Extra and Co-curricular course (ECCAs) delivery to reflect the Solicitor's Regulation Authority's (SRA) change towards legal vocational stage delivery'*

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Introduction

Authentic assessments are closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of university courses. As the Solicitors' Regulation Authority (SRA) has recognised that delivery of the vocational stage of training should utilise authentic assessment techniques to improve students' 'Day One' outcomes, the authors assert that authentic assessments, in accredited and university-run extra and co-curricular activities (ECCAs), should be used to improve student performance.

As the authors have found, delivering authentic assessment methods in ECCAs, using a combination of formative and summative techniques used throughout the assessment processes, improves student performance.

The traditional law degree method of delivery, which provides for disseminated information followed by the traditional 'one-shot' paper-based assessment – normally in the format of coursework and exams – is not the optimum way to train the legal practitioners of tomorrow. The authors assert that the authentic assessment model, which 'flips' the method of delivery from content-then-assessment to assessment-then-content is a more accurate reflection of legal practical life.

The improvement in performance is seen over two separate stages: (a) the pre-assessment stage; and (b) the mid-assessment stage.

At stage (a), the student receives the assessment paper at the beginning of the delivery process and is then encouraged to research the law to find support for their answer, rather than encouraging the use of law to construct an answer. This is the most effective method of assessing research skills, since it allows students to reach 'outwards' to all of the available legal material, and then rewards innovation when an answer is constructed. Conversely, under the traditional dissemination-then-assessment method, students take a more 'inward' approach to research, and rely on filtration and regurgitation of provided legal material to construct an answer.

At stage (b), the student receives continuous formative assessment, rather than the largely summative process in the traditional 'one-shot' approach to paper based assessments. This allows students the opportunity to improve performance mid assessment, and allows assessors an opportunity to test more than just legal knowledge skills – the ability to innovate under pressure, for one example.

When used conjunctively, stages (a) and (b) of the authentic assessment method in ECCA delivery, optimises student performance levels and provides a more accurate representation of the standards and methods of legal practice, as recognised and required by the SRA.

The key difference between legal education and legal practice

Legal education at undergraduate level generally consists of the learning-by-rote of a voluminous number of rules and principles, to be later applied in one-shot paper-based assessments. Law programmes which adopt this method are designed to disseminate information to be ingested, which is then selectively regurgitated to best fit hypothetical 'problem' scenarios or essay-style 'discussion' questions – both of which require an argument to be formed, using law to support, but not construct, the student's answer.

Legal practice is somewhat different. The client seeks advice on a legal problem – say, a purported breach of contract – and then requires the lawyer to seek the best argument to help the client win. The lawyer, unbound by any strict set of parameters that prescribes which law is 'available' to be argued, will construct an answer which seeks to balance the guiding master principles of the common law: justice, fairness and the common good, and will turn to legal principle to support their advice, but only insofar as it provides moral legitimacy to their argument.

The difference in approaches between legal education and legal practice is subtle but crucial. In traditional law degree delivery, for ease of ingestion, the law degree is broken down into years of study, modules and topics. In any three year undergraduate programme, it is likely that a student will see the legal system as up to 100 discrete examinable topics, each with its own separate rules and sub-rules. It is therefore easy to see how the construction of pure argument, supported by legal principles, is sublimated in favour of the pragmatic learning of principle, to fit correlated assessments.

The problem with this method, is that the law student is ill-equipped to solve problems in practical legal life. Since the requirement for lateral thinking is largely ignored in favour of a regimented regime of rote-learning, the law student is led to believe that the legal system is based on legal principle rather than the true converse position. This defect in the learning process leads to poor legal practice, and following the SRA's recent recognition that the legal practice landscape has undergone a radical transformation since the advent of the Legal Services Act 2007, a more innovative approach to legal education must be implemented to respond to these changes.

It is the authors' argument that they have presciently readied themselves for this evolution in the legal practice sector by implementing authentic assessment practices in ECCAs, to augment law degree delivery, and in doing so, changing the approach to solving legal problems, by 'flipping' the educational model from content dissemination→assessment to assessment→content dissemination. It is asserted that this paradigm shift makes better law students, and therefore better legal practitioners.

Authentic assessment

The concept of authentic assessment is well established (Wiggins, 1993) and is typically defined as the selection of particular modes of assessment which "*authentically allow a student to demonstrate (the) ability to perform tasks, solve problems or express knowledge in ways which simulate situations which are found in real life*" (Hymes, Chafin, & Gondor,

1991). It tests a student's ability to solve hypothetical problems, which then assesses how effectively a student solves a real world problem, and requires students to apply a broad range of knowledge and skills which are *'closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of University courses*' (Boud & Falchikov, 2007). As noted earlier, in order to learn effectively students have to construct meaning from what they are doing (Biggs & Tang, 2007); authentic tasks serve as vehicles for such learning. In this regard, authentic assessment *'can raise aspirations and increase intrinsic student motivation through explicit demonstration of career alignment and relevance of curriculum activities*' (QUT Office of Teaching Quality, 2009).

Authentic assessment can be incorporated into almost any type of course delivery, including the traditional academic law degree. However, despite the signposts erected by the SRA, QAA or indeed the wider legal sector at a national and international level, many academics are still reluctant to veer too far from the long established model of legal education for fear of being regarded as different. As a result of this conservative environment its methods have been largely centred on extra and co-curricular courses (ECCAs), as they have largely oral components, and have evolved over time from the original aim to increase student engagement, as opposed to directly augmenting the academic learning process. Whilst the indirect benefits of student engagement has been recognised by Hart et al (2011) who state *'through the process of engagement, students are more likely to experience a positive and fulfilling approach to the accumulation of the 'legal content' in their law degree*', it is our assertion that ECCAs have done more than simply increase student engagement.

We argue that authentic assessment in ECCAs encourage the development of crucial critical reasoning skills, rather than promoting the vastly inferior 'rule-based' learning – the method which is emphasised through traditional academic degree delivery. Further, as an additional benefit, students who actively participate in University-run and accredited ECCAs, experience a far higher level of academic achievement on traditional law degree programmes than non-participants (Berger & Wild, 2015a).

In this paper, we assert that the formative assessment techniques utilised within ECCA delivery, are vital to increase 'wicked' skills such as critical reasoning – the key transferable component to law degree and workplace success. A combination of formative and summative techniques used throughout the assessment processes improves student performance and provides an effective learning environment in which students undertakes a particular skill or competence in an environment as close to real life as possible (Shepherd and Douglas 1996).

Extra and co-curricular activities (ECCAs)

The School of Law delivers various ECCAs, each designed to echo a different area of legal practice, including among others Mooting; War of Words (WoW); Mock trials; Debating; and Mediation. Each course incorporates formative and summative assessment methods and is delivered in at least three separate assessment stages and involves an element of public speaking. Each course (apart from mediation) also incorporates an element of competition, to align with the adversarial nature of the UK legal system.

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

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

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

Finally, probably the most important factor in the successful delivery of ECCAs is the quality of supervision provided by lecturers. This needs to be direct, close, attentive and responsive. As Bhaerman & Spill (1988) observe, "*good supervisors hold students and clients to fair standards that are clearly expressed, understandable, and firmly--yet sensitively--applied. They also provide constant feedback*." To accomplish this, lecturers require good social and communication skills, as well as to work with students as a coach and mentor so as to provide support when necessary and challenge when appropriate.

Formative v summative assessment

As Garfield (1994) observes "*the primary purpose of any student assessment should be to improve student learning*" by "*enhancing the problem-solving and critical thinking abilities of students*" (Montgomery 2002). In this regard formative assessment "*occurs as part of a progressive learning exercise, and where the main purpose is to facilitate student learning…[Whereas] summative assessment reports on and certifies the "achievement status of a student*" (Sadler 1989). Authentic assessment naturally incorporates both methods, as two-way interaction between participants/assessor is encouraged and inevitable - formative and summative assessment methods are not mutually exclusive. Students are able to you respond to their assessor mid-assessment and make tweaks and minor

adjustments to their performance as they familiarise themselves their assessor's demands, personality and character traits. This means that the assessment is within a constant formative framework with a summative assessment at the end, followed by a formative assessment when feedback is provided.

It is this formative-rich, authentically assessed environment which improves student performance in not just ECCAs, but on the law degree and beyond in terms of their employability. The student is made to, in effect, constantly review their performance and enter a mind-set which tests 'wicked' competencies such as flexibility, confidence, critical reasoning, psychological evaluation skills, and response skills. Interestingly, these are also all skills which help the student who is studying for a paper-based assessment (Knight 2007).

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

In the traditional 'one-shot', paper-based assessments, a student is able to ask for feedback after the exam has been sat, but how effective will it be? In such instances, a student is unlikely to recall the precise assessment questions and/or the frame of mind in which he/she was in on that day. As such, the feedback will have limited resonance with the student. Equally, the next paper-based assessment may very well be either an entire Semester or, in some instances, an entire academic year away, meaning that implementation of feedback will be limited in its effectiveness. This is supported by Sadler (1989) who states that the timing of feedback is critical; suggesting that feedback on formative assessment rather than summative assessment assists students in identifying the gap between their goals and their current knowledge and skill level. Indeed, Budge & Gopal's study (2009), highlighted the fact that 93% of their participants would like to receive feedback progressively, with 75% of respondents indicating that feedback motivated them to study.

Consequently, the function of assessment needs to move away from being predominantly summative in nature to performing the formative goal of enhancing student learning. Increasing the authenticity of assessments within the Law School has had a positive influence of student learning, motivation and engagement. This mirrors the work of Pascarella and Terenzini (2005) who show that student engagement is central to student success, going on to suggest that "when there is engagement with programmes designed to evoke complex achievements, as well as more straightforward ones, then rich achievements are more likely to be visible."

Students should be using law to support, rather than construct an argument

In legal assessments, the argument must come from the student's experiences of the world and the society he/she lives in, and it must be supported by authority. The student must pick one side of the argument and use law to support it, not the other way around. It would be poor assessment practice to simply research the available law and decide which principle is the best 'fit'. In fact, if there is no legal authority to support a student's answer, but the student is able to demonstrate that they have left no stone unturned looking for it, then the assessment piece should be good enough to publish in a highly regarded legal journal.

Each legal problem will have two sides, even if the assessment simply asks you to 'discuss' or 'explain' what it is. In law 'explain' things does not mean what it says in other subject areas. It means 'construct an argument'. So once the student has looked at the argument from both sides and has done the required research, they must now decide which side is more compelling and then explain why this is the case.

Of course, this will naturally entail giving an opinion, but this is not some sort of rhetorical opinion based on a vague gut feeling; this will be an expert opinion based on research, knowledge of legal principles and policy considerations. At the very heart of this opinion is the student's own constructed argument based on knowledge of the guiding master principles of the common law – justice, fairness and the common good - because there is not a legal authority in the world that can give the perfectly correct answer. However, because of the student's careful consideration of all of the available source material, their answer should have resonance and legitimacy.

Constructing an answer in the common law means balancing the rights of individuals against the welfare of wider society, which will naturally entail ensuring that principles of justice, fairness and the common good are adhered to. For the law academic assessor, authentic assessment is the most effective means of eliciting an answer which examines this key balancing act. In a traditional paper-based assessment, the content of the piece is dictated by the student, and there is no opportunity, mid-assessment, to enquire whether the student has considered the wider picture.

In authentic assessment, the student is available for further testing – at whichever standard they have entered the assessment on. Since there are no absolutely correct answers in law, there will always be scope for further testing – and authentic assessment is the only effective forum for this to take place. Of course, this means that the assessor must be experienced and trained to elicit the optimum responses to allow students to properly fulfil their potential, and so authentic assessment methods offer the most effective environment to improve and monitor teaching practices.

The SRA's response to the UK's changing legal world

The SRA regulates entry into the solicitors' profession, through regulating education and ongoing training. The SRA has traditionally prescribed what is now described as the qualifying law degree (QLD) for undergraduate law students wishing to embark on the academic stage of their legal education. The QLD consists of the seven compulsory 'core' modules of the law degree, together with enough optional modules to make up the required credits to comply with the university's degree-awarding requirements.

Historically, the SRA readily acceded to law schools' readiness to assess students through the standard 'one-shot' paper-based assessment – exams and courseworks etc – since those types of assessment are easily to regulate and comply with, and solve the problem of marking huge numbers of assessments *en masse*, and then return them to students in line with the university's usually stringently short turnaround timeframes.

The SRA have generally accepted that since the academic stage of legal education was to be compulsorily followed by the professional stage of education on the Legal Practice Course (LPC) - which tested largely practical skills, such as drafting, advocacy and procedure - it was content to allow the academic stage of training to be mainly theory-based, without concern for authentic assessment practices which provide a more rigorous workplace-aligned assessment framework.

The legal services sector faced a dramatic evolutionary challenge in 2007. The Legal Services Act 2007 ('the Act') was introduced to make the legal services industry more accessible and affordable by introducing more competition into the market, through the introduction of 'alternative business structures' – legal service providers with non-lawyers in professional, management and/or ownership roles. Before the Act, only solicitors, barristers or employees providing legal services specifically to their employer, were entitled to practice law.

The SRA recognised that the Act potentially widened the types and standards of legal services which would be offered, and so sought to keep pace, by investigating whether there might be advantages to creating more flexible qualification routes. In the findings of its 2011 report '*Training for Tomorrow*', one of the SRA's observations was that since the Act is concerned more with principles and standards-based, than merely rules-based, outcomes, this potentially allowed the SRA to move away from the traditional QLD/LPC route, to a more innovative approach.

Already-qualified lawyers, compulsorily adhering to the SRA's continuing professional development (CPD) guidelines, must satisfy the new Competency Statement, which came into effect on 1st April 2015. The standards of competency, which are expected of solicitors, fall under four main headings:

(i) Ethics, professionalism and judgment
(ii) Technical legal practice
(iii) Working with other people
(iv) Managing themselves, and their own work

The SRA are now exploring whether the standards of competency for already-qualified lawyers should be aligned with those entering the profession, by reviewing the theory and practical knowledge requirements for the academic and practical legal education stages, and perhaps, more importantly, how they will be assessed.

The SRA's new approach to legal education

The traditional qualification route of QLD→LPC is due to come to an end, with a new assessment model planned for implementation in the academic year 2018-19. The SRA

have made no concrete decisions as to how the new model will work, but the ideas currently being tabled seem to focus on a two-stage approach:

(i) Multiple Choice Questions (MCQs) on legal knowledge; and
(ii) Practical legal examination on specified skills areas

The key thing to note is that the QLD will no longer exist. The SRA has published no opinion as to the requirements for passing Stage (i) of the assessment. A vital issue being discussed is that **the education provider will not set the assessment**, preferring instead a centralised assessment strategy - which means that the current model of content dissemination→assessment will be defunct.

It is the authors' argument that the emphasis on learning rules, which will unlikely be used in many types of later legal practice, will lose ascendancy, in favour of the enhanced development of critical reasoning skills.

The electronic calculator analogy

Technology and the rise of the internet has advanced rapidly in recent years, yet the legal education sector has seemingly resolutely refused to respond to these changes. We now have sophisticated legal source search engines, yet we still seek to have our students learn complex legal source material to be retained for single assessments.

In the mathematical community, it has long been accepted that electronic calculators now do much of the heavy numerical lifting, meaning that modern maths students are not forced into humdrum conundrums concerning, say, long division or multiplication of negative integers, in favour of seeking answers to the more pressing and relevant key mathematical issues. Conversely, law students with good memories are still better rewarded than those whose vastly superior critical reasoning skills skills far outweighs that of their instant recall skills.

In legal practice, it may have been arguable at one time to laud instant recall skills in a world without internet capabilities. In the courtroom, where time is of the essence in the interests of justice, having reams of legal information at your intellectual fingertips was preferable to trawling through legal texts and spending time researching, during long and complex trials. However, in this new era, legal search engines are available in every courtroom, authority leads to further legal authority through a network of 'hyperlinks', and legal principle does not need to be consigned to memory. In any case, bundles of court documents have always contained some relevant legal authority, and so plain memory recall was rarely, if ever, necessary anyway.

The SRA's move away from the QLD, in response to the Act's widening of the legal services sector, demonstrates that modern legal education needs to correlate with the modern legal practice world, by removing the requirement to learn rules by rote, and promoting critical reasoning with a view to only using legal authority to support answers rather than construct them.

Conclusion and recommendations

At the time of writing, the SRA has not concluded its findings as to what the new qualification model for 2018-19 will be. The authors recommend that in this interim period, ECCAs are utilised with their incorporated formative assessment methods, to augment law degree academic programmes.

Even if the SRA's stage (i) assessment requires legal knowledge to be retained by students before embarking on practical assessment stage (ii), the authors recommend that ECCAs are utilised to augment traditional legal education, as they have previously found a direct and positive correlation between participation in ECCAs and improved academic performance (Berger & Wild, 2015).

That being said, it is the main thrust of the authors' argument that the legal landscape is changing, not only in the practice sector, but in the way that legal education is delivered and assessed. As the Legal Services Act 2007 moves us away from rules-based regulation to principles/outcomes based regulation, it is vital for the lawyers of tomorrow to see the education stage as an early necessary stage in their future professional development.

Future research will see the authors investigate the best approach to delivering the new assessment model under the SRA's proposals for modernising the qualification route. These recommendations should be made available towards the end of this calendar year.