

**CHARLES WILD WILD**

University of Hertfordshire, United Kingdom

**DANIEL BERGER**

University of Hertfordshire, United Kingdom

## **'GET REAL: USING AUTHENTIC ASSESSMENT TECHNIQUES TO IMPROVE LAW DEGREE ACADEMIC PERFORMANCE'**

### **Abstract:**

Authentic assessments are closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of university courses. The undergraduate law degree differs from many other degrees, in that it requires arguments to be constructed, at even the most academic level.

While the traditional 'paper-based' assessment strategy provides a pragmatic solution to the problem of a general lack of time and resources to grade students en masse, the authors believe that the use of authentic assessment techniques, in accredited and university-run extra and co-curricular activities (ECCAs), are perfectly placed to augment legal education.

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

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

This two-way communicative assessment strategy allows students to benefit from continuous mid-assessment feedback, which serves to best demonstrate the adversarial nature of the legal system and the demands placed on lawyers to provide clear, simple, usable legal advice - a skill best learned in the ECCA authentic assessment environment, rather than in the artificial 'one-shot' approach to traditional coursework and paper-based exam assessments, which provides primarily a summative assessment and/or a weak/unusable formative element in future assessments. Further benefits, such as increased confidence in critical reasoning skills, also improves the students' academic performance.

The authors examine data which shows the entry tariff of the entire student cohort, and then the entry tariff of the student control group who participated in ECCAs in the 2014-15 academic year. These datasets demonstrate that the control group were a true reflection of the capabilities of the general student population. By then comparing academic performance of the control group before and after exposure to ECCAs, the authors assert that there is a correlation between exposure to authentic assessment techniques, and improved general academic performance.

### **Keywords:**

Authentic assessment, co-curricular activities, enhanced student performance, summative assessment, formative assessment

**JEL Classification:** I21, I23

## Introduction

Authentic assessments are closely aligned with activities that take place in real work settings, as distinct from the often artificial constructs of most University courses. The undergraduate law degree differs from many other degrees, in that it requires arguments to be constructed, at even the most academic level. As such, the development of 'wicked' competences such as critical reasoning is vital in order to maximise student performance, yet traditional 'paper-based' assessment methods are not best equipped to teach the skill, or indeed to monitor progress.

Whilst there are indications that current educational goals have shifted focus to the development of "*competent students and future employees*" as opposed to solely on the acquisition of knowledge (Gulikes et al), commentators such as Segal (2011) observe that Law Schools still pursue a traditional approach that "*emphasizes the theoretical over the useful*". However, to compete and ultimately succeed in the current global environment, law graduates need to develop, and continuously hone, a variety of soft skills or 'wicked' competences, including creativity, entrepreneurial skills, management ability and critical thinking. Employers are increasingly placing an emphasis on the recruitment of graduates who have such 'wicked' competences (Tomlinson 2008), meaning that in a world of Day 1 outcomes, law graduates need to "*know less about Contracts and more about contracts*" (Segal 2011).

Significantly though, such competences are essential for a student's successful study whilst at University (Berger & Wild 2015b). As Barnett & Coate (2005) note, a central purpose of higher education is the development of an individual's identity, of which the formation of 'wicked' competences is an important part. Consequently, it follows that a Law School should not only seek to strengthen them as part of the curriculum (Knight 2007) but also adopt a mode of assessment that is sympathetic to this goal.

However, the reality within most Higher Education institutions is that the traditional 'paper-based' assessment strategy not only provides a pragmatic solution to the problem of a general lack of time and resources to grade students *en masse*, but, when focused in a summative way, provides a useful tool "*to differentiate between students and rank them according to their achievement*" (Gulikes et al). In effect, it serves the testing culture that remains deeply rooted within Higher Education and which, in turn, provides a defensible record of educational output in the form of ranked student achievement.

A critical weakness of this traditional approach though lies in the fact that it isn't compatible with the objective of developing creative, flexible, problem-solving students, as 'measurement' approaches tend to dominate, which are in turn "*clearly unsuited to 'fuzzy' or complex competences*" (Knight and Yorke, 2003). Instead, the authors contend that approaches such as authentic assessment or work-integrated learning are more appropriately used for such purposes. Furthermore, the authors

believe that the use of authentic assessment techniques in accredited and University-run extra and co-curricular activities (ECCAs) is perfectly placed to augment legal education. As long as the ECCAs are delivered with academic law degree learning outcomes taken under consideration, and are rigorously delivered by staff who are trained and experienced to elicit optimum student performance, students will benefit from authentic assessment in other indirectly connected areas of their academic lives.

A traditional paper-based assessment has only one formative aspect – the feedback at the end – which, as Montgomery (2002) notes, is *‘done after rather than before the writing, so [comments] cannot serve as guidelines, compromising the value of writing comments at all’*. However, the delivery of authentic assessment methods by way of ECCAs, provides a combination of formative and summative techniques throughout the assessment processes which, in turn, impacts positively on student performance and has a positive cross-impact on their academic performance across the degree programme. This two-way communicative assessment strategy allows students to benefit from continuous mid-assessment feedback, which serves to best demonstrate the adversarial nature of the legal system and the demands placed on lawyers to provide clear, simple, usable legal advice – a skill best learned in the ECCA authentic assessment environment, rather than in the artificial ‘one-shot’ approach to traditional coursework and paper-based exam assessments, which provides primarily a summative assessment and/or a weak/unusable formative element in future assessments.

Equally, the authentic nature of ECCAs not only *‘requires students to make judgements [and] choices’* Burton (2011) but also fits with Boud & Falchikov’s (2007) observation that assessment should be seen as an act of informing a student’s judgement. A student can only learn effectively when he/she undertakes a particular skill or competence in an environment as close to real life as possible (Shepherd & Douglas, 1996). In this respect, ECCAs achieve the goal of providing authentic assessment opportunities wherein innovative learning methods coincide with the requirements of the current global environment (Cumming & Maxwell, 1999). However, such a change in emphasis is not without its challenges.

To be successful, any interventions to enhance the assessment of ‘wicked’ competences should start with the training of staff, not solely in relation to the utilisation of authentic assessment regimes but, perhaps more importantly, in terms of *“helping colleagues to appreciate the inadequacies of current practices that are typically – and wrongly – assumed to be ‘good enough’”* (Knight 2007). As such, Law Schools face the uphill task of not only updating and enhancing assessment practice but, at the same time, convincing colleagues of the need to move away from traditional ‘one-shot’ paper-based assessments.

Alongside this change in approach to assessment, there is also the need to update the content of Law School courses. This too requires buy-in from colleagues who may

be reluctant to move away from a long-standing defensible curriculum to one more closely attuned to the needs to the legal sector (Berger & Wild 2015b). Yet it is precisely this approach within England & Wales that the Solicitors Regulation Authority (SRA) has sought to encourage via its Day 1 outcomes, and one that also lies at the heart of the QAA Subject Benchmark Statement for Law (2015): '*...a law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-knowledge, skills and attributes... We encourage Law Schools to help students to articulate to employers what they can do and what their qualities of mind are by using this statement:*

*Ability to produce a synthesis of relevant doctrinal and policy issues, presentations of a reasoned choice between alternative solutions and critical judgment of the merits of particular arguments*

*Ability to apply knowledge and understanding to offer evidenced conclusions, addressing complex actual or hypothetical problems*

*Ability to communicate both orally and in writing, in relation to legal matters, including an ability to listen and respond to oral stimuli including questions and instructions.'*

If Law Schools are to remain relevant and at the heart of legal education over the course of the next decade, there needs to be a movement away from the traditional to that of the current, not only in terms of programme focus and curriculum content but also in terms of assessment. The acquisition of knowledge tested via traditional modes of assessment is not enough (Gulikes et al). A degree programme that focuses upon a student's ability to undertake logical thinking is also insufficient. Indeed, as Shepherd and Douglas (1996) note, logical thinking can lead to incorrect and unworkable answers, even though a student's underlying theoretical knowledge may be perfectly sound. The goal of every modern Law School must be to embed the use of authentic assessment (Cumming & Maxwell, 1999) as it not only enhances a student's 'wicked' competences by taking knowledge out of the abstract and into reality, but also enhances academic performance by requiring students to make '*judgements [and] choices*' in real time (Burton, 2011).

In this regard, the authors examined four sets of School specific data which demonstrates (i) the entry tariff of the entire student cohort, (ii) the entry tariff of the student control group who participated in ECCAs, both relating to those students graduating in the 2014-15 academic year. As will be noted later, these datasets show that the control group was a true reflection of the capabilities of the general student population. Following this, the authors compared (iii) the academic performance of the control group who undertook ECCAs during their studies, as well as (iv) the performance of the entire student cohort over the same period. Based on this data, the authors assert that there is a direct and positive correlation between exposure to authentic assessment techniques, and improved general academic performance.

## **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 the 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 has a direct, and significant, impact on student academic performance; students, who actively participate in University run and accredited ECCAs, excel on the law degree (Berger & Wild, 2015a).

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

## **Conclusion and recommendations**

After having considered the four datasets within the School of Law relating to the cohort of students graduating in the 2014/15 academic year - (i) Average entry tariff for the entire cohort of students; (ii) Average tariff for the cohort of students who actively engaged with ECCAs during their studies; (iii) The overall achievement of the entire cohort of students graduating in 2014/15; and (iv) The overall achievement of the cohort of students who engaged with ECCAs graduating in 2014/15 - we reached the following conclusion.

Turning to the two datasets involving the average entry tariff for the entire student cohort and for the subset which actively engaged in ECCAs, the information was gathered independently by the University as part of its admissions process and based on the UCAS tariff system which governs entry to Universities and Law Schools across the United Kingdom. By way of background, the UCAS tariff system was developed so as to enable broad comparisons to be undertaken between a wide range of qualifications by universities and colleges. However, it should be noted that not all qualifications are provided with UCAS tariff points. In addition, tariff points are usually only counted for the highest level of achievement within a subject. As such, a student's AS levels will not be counted if he/she has gone on to achieve a full A level in the same subject. As such, it is acknowledged that there may be instances where student achievement has not been factored into the entry point data gathered by the University as part of the UCAS tariff system. Nevertheless, this applies across both cohorts and produced the following two averages:

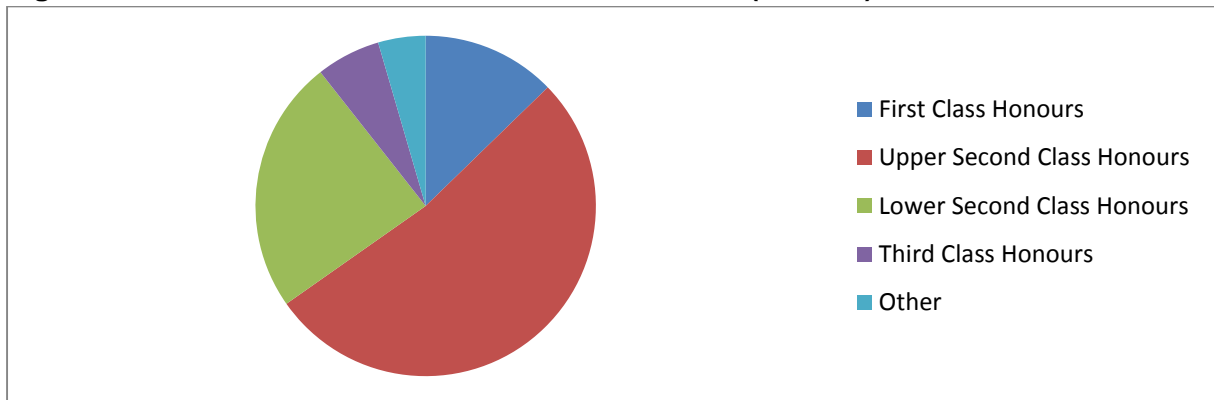
- The average entry tariff for the entire cohort graduating in 2014/15 was 329 points

- The average entry tariff for the subset of students who engaged in ECCAs and who graduate in 2014/15 was 307 points.

It is clear to see that whilst the average score for the ECCA subset is slightly lower than that for the entire cohort, it is nevertheless in line with the entry achievement of other students. As such, the expectation would be for the two cohorts to perform, and ultimately to graduate, within similar parameters of one another.

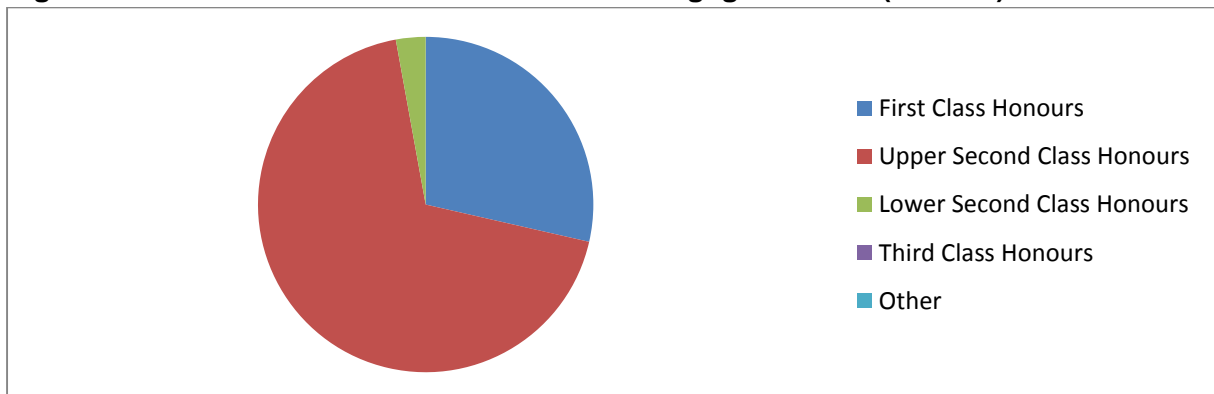
Focusing on the exit data for these two groups of students, information has once again been derived from the University's academic registry and student performance following examination boards and associated resit opportunities. The following figures illustrate the performance of each group:

**Figure 1: Academic Performance of the entire cohort (2014/15)**



Source: Own University's academic registry

**Figure 2: Academic Performance of the ECCA engaged cohort (2014/15)**



Source: Own University's academic registry

As may be noted from Figure 1, 65.2% of the entire cohort graduated with a good honours degree (defined as being either a first class honours or upper second class honours degree). A further 24.2% achieved a lower second class honours degree, with a further 10.6% either achieving another exit award or choosing to resist the following year. By comparison Figure 2 illustrates that 97.2% of the student cohort which

engaged with ECCAs during their academic studies achieved a good honours degree. A further 2.8% achieved lower second class honours, with no-one receiving either a third class honours degree.

Based on this data, the authors assert that there is a direct and positive correlation between exposure to authentic assessment techniques, and the improved academic performance of students engaged in ECCAs. Whilst there is considerable mileage in extending this analysis across a three to five year period so as to better understand the impact of authentic assessment on student achievement within the School, there is a clear link to be made between the introduction of the School's co-curricular programme and the significant increase in the student achievement rates.

It is our conclusion, that ECCAs are a vital component in augmenting academic law degree delivery to improve student academic performance though ultimately, as Henry et al (2015) observe, the individual will always be responsible for their own success.

## Bibliography:

- Barnett.R & Coate. K (2005) 'Engaging the Curriculum in Higher Education' Maidenhead: Society for Research into Higher Education and the Open University Press.
- Bhaerman.R & Spill.R, (1988) "A Dialogue on Employability Skills: How Can They Be Taught?", Journal of Career Development 15(1)
- Berger & Wild (2015a), '*Giving students the third degree: Using authentic assessment techniques in extra and co-curricular activities (ECCAs) to improve teaching standards on academic law programmes*', presented at the 20<sup>th</sup> International Academic Conference, IISES, Madrid
- Berger & Wild, (2015b), '*Getting the job done: Using authentic assessment techniques in extra and co-curricular activities (ECCAs) to improve law students' employability prospects*', presented at the International Academic Conference on Teaching, Learning & E-learning, CIAE, Vienna
- Biggs, J., & Tang, C. (2007). Teaching for quality learning at university (3rd ed.). Oxford, England: Oxford University Press (Society for Research into Higher Education)
- Boud, D. & Falchikov, N. (2007) 'Rethinking assessment in higher education: Learning for the longer term', New York: Routledge
- Budge.K & Gopal.S (2009), "Feedback: Working from the students' perspective", ATN Assessment Conference, RMIT University
- Burton, K. (2011) 'A framework for determining the authenticity of assessment tasks: applied to an example in law', Journal of Learning Design, 4(2)
- Cumming J.J., & Maxwell G. S. (1999). Contextualising authentic assessment. Assessment in Education: Principles, Policy and Practice, 6, 177-194.
- Garfield.J (1994), Beyond Testing and Grading: Using Assessment to Improve Student Learning, Journal of Statistics Education 2(1)
- Gulikes.J, Bastiaens.T & Kirschner.P (2004), 'A five dimensional framework for authentic assessment', Educational Technology Research & Development 52(3), 67
- Hart, C. et al (2011) 'The real deal: using authentic assessment to promote student engagement in the first and second years of a regional law program', Legal Education Review, 21 (1)
- Henry.C, Hill.F & Leitch.C, (2015), "Can entrepreneurship be taught? Part II", Education & Training 47(3)
- Herrington.J & Herrington.A (1998) 'Authentic assessment and multimedia: How University students respond to a model of authentic assessment, Higher Education Research & Development 17(3), 305
- Hymes, D., Chafin, A., & Gondor, R. (1991). The changing face of testing and assessment: Problems and solutions. Arlington VA: American Association of School Administrators
- Knight.P & Yorke.M, (2003) Assessment, Learning and Employability. Maidenhead; Society for Research in Higher Education and the Open University Press.

- Knight.P (2007) Fostering and assessing wicked competencies, The Open University's Centres for Excellence in Teaching and Learning
- Montgomery. K (2002), 'Authentic Tasks and Rubrics: Going Beyond Traditional Assessment in College Teaching', *College Teaching* 50(1), 34
- Pascarella.E. & Terenzini.P. (2005). *How college affects students (Vol 2): A third decade of research.* San Francisco: Jossey-Bass.
- QAA Subject Benchmark Statement for Law, July 2015
- QUT Office of Teaching Quality, 2009
- Sadler, D.R. (1989). Formative assessment and the design of instructional systems. *Instructional Science*, 18 (2), 119
- Segal.D (2011) 'What They Don't Teach Law Students: Lawyering', *New York Times*
- Shepherd,D.A. & Douglas,E.J.(1996), "Is management education developing or killing the entrepreneurial spirit?", *Proceedings of the Internationalising Entrepreneurship Education and Training Conference, Arnhem*
- Tomlinson.M (2008), "The degree is not enough': students' perceptions of the role of higher education credentials for graduate work and employability", *British Journal of Sociology of Education* 29(1) 49
- Wiggins, G. P. (1993). *Assessing student performance.* San Francisco: Jossey-Bass Publishers.