

IMPROVING THE QUALITY OF LEARNING IN LAW SCHOOLS BY IMPROVING STUDENT ASSESSMENT

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Internationally and nationally there is an exciting wave of renewed interest in improving the quality of higher education. In the context of legal education, law schools across Australia are engaged (or soon will be given the new push towards academic “accountability”), in the sometimes painful process of examining and evaluating the effectiveness of their teaching.

Whilst it is essential when considering how to encourage students to adopt qualitative learning approaches to consider the effect of all elements in the learning “eco-system”¹ on the student, it is my thesis that student assessment plays not only an important, but a critical role in influencing their approaches to learning tasks.

I am encouraged by the similar sentiments expressed by such pre-eminent writers as Paul Ramsden,² William Twining³ and Professor Kahn-Freund.⁴ Indeed, it is a tragic indictment on the legal education system generally that it is now a quarter of a century since Professor Kahn-Freund pleaded that “... difficulties or none, a start must be made and the first thing to be reformed is the examination system. This reform is the most urgent job confronting the present generation of law teachers”.⁵

In 1987, in Australia, the Pearce Committee⁶ reported the prevailing method of assessment used by Australian law schools as the problem-type examination at the end of the semester:

In all law schools except Macquarie and UNSW, a substantial majority of the subjects taught are assessed as to 50% or more of the possible marks by means of formal end of year or semester examinations.⁷

In my own law school in 1992, 80 per cent of the subjects offered will have examinations worth 80 per cent or more of the total possible marks available.

If the examination system was in need of “urgent reform” twenty-five years ago, this generation of legal educators risks losing complete credibility if it does not engage in a wholesale review of its assessment procedures.⁸

QUALITATIVE LEARNING APPROACHES

An “approach to learning has two aspects: motive and a related strategy for satisfying the motive.”⁹

Most of us are already familiar with the different approaches students may take to learning. They have been neatly summarised as deep, surface and achieving learning approaches.

Deep Learning Approach

Students adopting a deep approach to learning are internally motivated to learn to satisfy their own interest or curiosity. Typically, such an approach involves the student maximising her or his understanding of the relevant issues by reading widely and in discussion or reflection.

Deep approaches result in high qualitative learning outcomes. The student achieves a personal meaning of the issues taught. There is a sense of ownership of the subject matter which makes it easier for the student to impose meaning and structure and so perceive personal relevance of the subject.¹⁰

Surface Learning Approach

Students adopting a surface or superficial approach to learning are externally motivated to learn. They may be motivated for example, by fear of failing the subject; the fact they have to prepare for some form of assessment; or by family or peer group pressure.

If learning is about changing one’s understanding or experience of the world,¹¹ then adopting a surface approach involves students using learning strategies which do not necessarily change their understanding at all. These strategies give only an imitation of learning. The learning which does occur has no relevance to the student’s personal understanding or experience of the subject-

matter and the world that the subject-matter tries to explain.¹²

Surface approaches are associated with qualitatively inferior learning outcomes (sometimes referred to as “quantitative learning outcomes”¹³). Most knowledge acquired through surface strategies is forgotten within a relatively short period of time whilst the balance often becomes “inert” knowledge which is never adequately used by the student again.¹⁴

Achieving Learning Approach

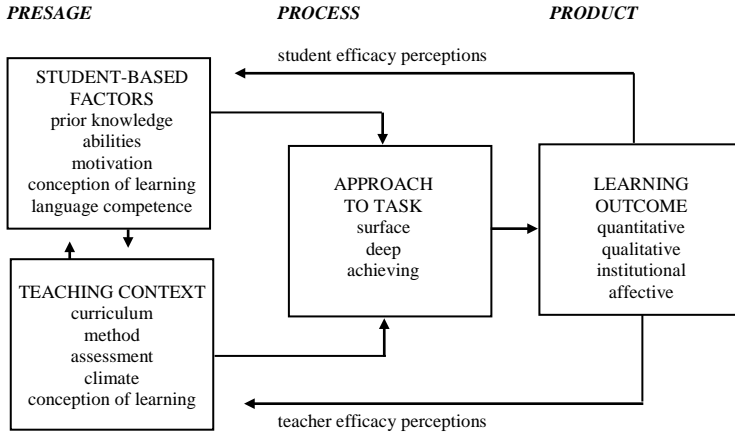
A third category, the “achieving” learning approach has also been identified. Students adopting an achieving approach are externally motivated (usually by the prospect of obtaining high marks or some other institutional reward) and may adopt either deep or surface strategies to the task depending on which strategy optimises their time and effort in achieving the desired learning outcome.¹⁵

Clearly, good teaching requires that deep learning approaches be encouraged and surface learning approaches be minimalised as much as possible.

THE TEACHING CONTEXT

Implementing procedures which encourage deeper learning and discourage surface learning involves understanding the whole context in which the learning process takes place: what and how are students influenced to learn? In an excellent article entitled *Teaching for Better Learning*,¹⁶ Biggs diagrammatically illustrates the relationships between each of the factors influencing student learning as follows:

FIGURE 1



(Source: Biggs, *supra* note 1, at 137.)

Clearly, improving the quality of students’ approaches to the learning task requires improving the quality of the teaching context so that the right message is being sent to students: surface approaches are not sufficient; deep approaches are desirable and necessary.

The teaching context comprises many elements: curriculum, pedagogical methods, assessment, climate and the teacher’s conception of teaching (for instance, does the teacher believe his or her role is merely to “transmit” knowledge from the teacher’s brain to that of the student?).

I began this paper with the thesis that student assessment was very important, indeed critical in influencing the qualitative learning approach adopted by the student. My thesis is in part the result of my own learning experience at law school and the results of a recent student survey I administered to a large number of law students.

STUDENT SURVEY

In April 1992, I surveyed 145 third year full-time students and 47 final year part-time students enrolled in the LLB degree at the Queensland University of Technology.

Principally, the object of the survey was to gather the students’ perceptions regarding:

1. what motivates the students to learn;
2. what quality of learning takes place; and
3. what improvements could be made to the curriculum and assessment to encourage “deep learning”.

The students’ responses to the questionnaire have been submitted to a Curriculum Review Committee which has been formed for the purpose of thoroughly reviewing the law faculty’s curriculum and assessment procedures. Apart from the students’ responses, the Committee is also considering input from other interested parties including legal and non-legal employer groups, barristers and judges.

The students completed the questionnaire (26 double sided pages in all comprising 36 questions some of which required written comments), in approximately 40 to 45 minutes during class time. The questionnaire was received with general enthusiasm by the students. All 192 students who participated in the survey, completed every question except for a very small number of students who were unable to complete the questionnaire due to lack of time.

Prior to administering the questionnaire, the students were assured that their responses to the survey were completely confidential and would assist the faculty in preparing future teaching objectives and in reviewing the current curriculum.

The concepts of “deep” and “surface” learning were verbally explained to the students and reinforced in writing at the commencement of the section of questions on the questionnaire dealing with “deep” and “surface” learning issues. The same explanation of these concepts was given to each class of students participating in the survey.

HOW IMPORTANT IS STUDENT ASSESSMENT?

How important is student assessment in contrast to the other elements of the teaching context in influencing qualitative learning approaches? In determining this question, the students were asked to rank from 1 to 3 their most critical responses to the following question.

“What motivates you to learn about this subject?”

- O The subject appears to be relevant to practice or desired career path.

- O Desire to be the best in the subject.
- O The fact that I have to sit an exam in this subject at the end of semester.
- O The fact that I have to prepare an assignment in this subject or moot during the year.
- O Family pressure to complete the law degree.
- O Fear of failing the subject.
- O Peer group pressure to complete the law degree.
- O The prestige associated with having a law degree.
- O Fear of having to repeat the subject and incur further tertiary education fees.
- O The monetary rewards associated with becoming a lawyer.
- O Not motivated to study at all.
- O Other? Please specify

The results of the students' number 1 ranked responses to this question are summarised in table 1 below.

Interestingly, 45 per cent of the students ranked number one, "the fact that I have to sit an exam at the end of semester". Twenty-three per cent ranked their number one response as "fear of failing the subject". Only seven per cent ranked that they were most motivated by "interest or curiosity".

Assessment was ranked the primary motivation for learning by a total 70 per cent of the students surveyed. This figure includes two per cent of the students who ranked their prime motive for learning as their "desire to be the best in the subject". These students would probably adopt an achieving approach to learning tasks.

Obviously, there may be more than one hypothesis for these results. The fact that more of the students are not being motivated by "interest or curiosity" or that "the subject appears to be relevant to practice or desired career path", may suggest weaknesses in the areas of the teaching context we have previously noted (namely, curriculum, pedagogical methods, climate or the teacher's or faculty's conception of teaching).

TABLE 1: What Motivates You to Learn About this Subject?

Percentage of students ranking responses number one.

	Possible Response	Full-time students	Part-time students	Total
1	The fact that I have to sit an exam at the end of semester	51%	27%	45%
2	Fear of failing the subject	23%	25%	23%
3	The subject appears to be relevant to practice or desired career path	11%	30%	15%
4	Interest/Curiosity	8%	5%	7%
5	Desire to be the best in the subject	3%	—	2%
6	Fear of having to repeat the subject and incur further tertiary fees	—	7%	2%
7	The fact that I have to prepare an assignment or moot	1%	2%	1%
8	Prestige associated with having a law degree	1%	—	1%
9	Monetary rewards	1%	—	1%
10	Other	4%	5%	4%

It is interesting to speculate why only 27 per cent of part-time students (as opposed to 51 per cent of full-time students), responded “the fact that I have to sit an exam at the end of semester” as their primary motivation for learning. Instead, 30 per cent of the part-time students ranked as their primary motivation for learning “the subject appears to be relevant to practice or desired career path”. Only 11 per cent of the full-time students ranked this as their number one response.

The discrepancy may be explained by:

- (a) the different subject areas in which the full-time and part-time students were surveyed.
- (b) the practical experience part-time students acquire places them in a better position to appreciate the relevance and

possible applications of the course content than full-time students who do not have the advantage of this perspective.

- (c) the maturity of the part-time students (compared to the full-time students), in terms of both age and legal experience, provides them with a more meaningful and long-term approach to their studies than full-time students.

The above represent suggested hypotheses only and would require further investigation. However, the disparity between the full-time and part-time students' responses should be of interest to curriculum planners. The results may suggest that clinical education programs have an important role in the full-time curriculum.

These results serve as a warning to all law schools. Unless a perfect teaching environment exists, which can never be assumed by any good teacher (and even then, the students' own characteristics including attitudes to learning, previous learning experiences, abilities, conception of learning and so on as noted by Biggs in the learning eco-system above, may unfavourably influence how the student approaches the learning task), assessment will be for the large majority of students, the real impetus for learning.

Teachers can not afford to neglect paying serious and careful attention to the quality of learning that assessment tasks will require of their students.

Assessment plays a key role in determining the quality of student learning. If students perceive that their learning will be measured in terms of reproducing facts or implementing memorised procedures and formulae, they will adopt approaches that prevent understanding from being reached. The widespread use of surface approaches to learning, and the related fact that students may successfully complete their courses while never gaining an understanding of fundamental ideas which the teachers of those courses themselves desire their students to gain, together indicate beyond reasonable doubt that much assessment in higher education is flawed.¹⁷

If assessment plays such a "key" role, how effective are our current assessment procedures in eliciting high qualitative learning approaches?

EXAMINATIONS

As mentioned at this paper's commencement, the dominant

mode of assessment in most law schools in Australia continues to be the problem-based exam. Traditionally, there have been few variations to this assessment mode except that the exam may be open-book or closed-book; it may contain an essay question or short note questions; it may contain compulsory questions including compulsory case note questions or it may comprise a choice of questions.

At the Queensland University of Technology, most exams are now open-book. *All* of the varieties of exams mentioned above are used. The law school uses exams principally in tandem with assignments as the mode of assessment in most subjects (although assignments are usually worth only 15 to 20 per cent of the total available marks for the subject).

How Effective are Examinations in Encouraging Deeper Learning Strategies?

In the student survey mentioned above, students were requested to rank 1 to 3 their most critical responses to the following question:

‘Which of the following factors do you believe hamper students engaging in a deeper approach to learning?’

- Subject workload is too heavy — ie., too many subjects and not enough time to devote to interesting topics in individual subjects.
- Assessment demands of subjects too heavy to spend time exploring particular topics of interest or difficulty.
- Lack of stimulating or inspirational teaching from lecturers and tutors.
- Subject material is boring.
- Subject material seems irrelevant to life in the ‘real world’.
- Exams encourage rote learning or a superficial grasp of the subject at the expense of deeper learning objectives.
- Unsure.
- Other? Please specify

The results of students’ number 1 ranked responses to this question are summarised in Table 2 below.

TABLE 2: Which of the Following Factors Do You Believe Hamper Students Engaging in a Deeper Approach to

Learning?

Percentage of students ranked number one responses.

	Possible Response	Full-time Students	Part-time Students	Total
1	Subject workload is too heavy ie., too many subjects and not enough time to devote to interesting topics in individual subjects	46%	53%	48%
2	Exams encourage rote learning or a superficial grasp of the subject at the expense of deeper learning objectives	20%	38%	24%
3	Assessment Demands of subjects too heavy to spend time exploring particular topics of interest or difficulty	11%	11%	11%
4	Lack of stimulating or inspirational teaching	2%	4%	3%
5	Subject material is boring	2%	4%	3%
6	Subject material seems irrelevant to life in the 'real world'	1%	—	1%
7	Other	2%	11%	4%

Fifty-one per cent of the total students surveyed ranked as their number one response to this question “subject workload is too heavy”. Thirty-two per cent ranked their no 1 response as “exams encourage rote learning or a superficial grasp of the subject at the expense of deeper learning objectives”. Twelve per cent ranked as their no 1 response: “assessment demands of subjects too heavy to spend time exploring particular topics of interest or difficulty”.

The results confirm the conclusions of previous studies. Surface approaches are encouraged (amongst other things), by an excessive amount of material in the curriculum; excessive assessment; assessment methods that emphasise recall or the application of trivial procedural knowledge; and assessment methods that create anxiety.¹⁸

The results also demonstrate Paul Ramsden’s assertion that there are two aspects of assessment which directly influence students’ learning: the amount of assessed work and the quality of the task being assessed.¹⁹

Again, assessment is clearly perceived by the students as an important factor influencing their qualitative approaches to the learning task (as a total of 44 per cent of the students identified weaknesses in this area as being the most responsible factor hampering their adoption of deeper approaches to learning).

In another question, the students were asked to rank 1 to 3 their most critical responses to the following question:

“What approach would you recommend to encourage deeper learning amongst students?”

- Reduce the number of compulsory subjects in the Bachelor of Laws degree and introduce more law elective subjects.
- Reduce the content of the curriculum in each law subject and concentrate on brief overview of the subject with detailed study of only a few major or interesting topics.
- Reduce the amount of assessment currently required in each subject.
- Reduce the assessment weight of end of semester exams and place greater emphasis on other forms of assessment (eg., assignments, moots, seminar performance, etc).
- Introduce greater variety in forms of assessment (eg., role-play; written reports on observations of court proceedings or legal practice in law office; debates; oral presentations of papers; etc).
- Introduce greater student choice in formulating subject assessment schemes.
- Teach more relevant and practical skills (eg., interviewing clients, negotiation, letter-writing, telephone skills, computer assisted legal education and research, etc).
- Unsure.
- Uninterested.
- Other. Please specify

The results of the students’ number 1 ranked responses to this question are summarised in table 3 below.

TABLE 3: What Approach Would You Recommend to Encourage Deeper Learning Amongst Students?

Percentage of students ranked number one responses.

	Possible Response	Full-time Students	Part-time Students	Total
1	Reduce the assessment weight of end of semester exams and place greater emphasis on other forms of assessment	33%	33%	33%
2	Reduce the number of compulsory subjects in the LLB degree and introduce more law elective subjects	20%	38%	24%
3	Reduce the content of the curriculum in each law subject and concentrate on a brief overview of the subject with detailed study of only a few major or interesting topics	16%	10%	15%
4	Introduce greater variety in forms of assessment	13%	—	10%
5	Reduce the amount of assessment currently required in each subject	7%	5%	7%
6	Teach more relevant and practical skills	2%	5%	3%
7	Introduce greater student choice in formulating subject assessment schemes	2%	—	2%
8	Other	6%	5%	6%
9	Unsure	1%	3%	1%
10	Uninterested	—	3%	1%

Interestingly, the highest percentage of students (33 per cent) ranked as their number one response “reduce the assessment weight of end of semester exams and place greater emphasis on other forms of assessment”.

Finally, the students were requested to indicate their response to

the following statement:

“It is possible to pass an exam without really understanding the subject examined.

1. Yes.
2. No.
3. unsure.
4. Sometimes. It depends on

The results of the students’ responses to this question are summarised in table 4 below.

TABLE 4: It is Possible to Pass an Exam Without Really Understanding the Subject Examined.

	Possible Response	Full-time Students	Part-time Students	Total
1	Yes	47%	46%	47%
2	No	25%	26%	25%
3	Unsure	7%	11%	8%
4	Sometimes. It depends on ...	21%	17%	20%

Only 25 per cent of the total students surveyed responded “no” to this statement.

Forty-seven per cent of students agreed with the statement. Twenty per cent responded “Sometimes. It depends on ...”. Those indicating this response mentioned that the following factors were relevant as to whether they could pass the exam without really understanding it: luck; the type of exam (for example, whether problem or essay type or whether the exam was closed or open book); the subject; how everyone else performed; how well you have memorised the material; your exam technique; whether you can “bluff” your way through it. Open book exams were overwhelmingly favoured by the students in promoting a deeper learning approach to the subject than closed book exams.

In the context of these results, the suggested rationale for using formal exams as the predominant form of assessment seems to pale in comparison.

There is a number of advantages in formal examinations. It is possible to be virtually certain that the marks obtained by a student in a formal examination are the result of his own unaided efforts. Examinations provide a relatively standardised method of scaling students in order of merit with far greater precision than is possible in the case of written assignments. There is a need for law students to learn and retain some knowledge of the basic principles and leading authorities in a subject. Examinations require students to undertake a rapid comprehension of novel, factual material, analyse that material, select the relevant case law and statutory authorities and apply them to the issues, all of which are skills required of lawyers in some situations in practice.²⁰

Of course the other benefits of using the examination method of assessment include:

1. administrative convenience;
2. the fact that relatively few resources are needed to administer and mark exams; and
3. the fact that use of the examination as the principal method of assessment leaves faculty members free to pursue research.

The primary motive for the examination as disclosed above, however, appears to be the function of assessment as a means of certification — a means of grading and categorising students for the benefit of employer groups. How valid are exams a measure of “lawyer competency” however, when almost 70 per cent of all students feel that it is possible to pass an exam without really understanding the subject examined?

The secondary rationale for exams advanced above is that it leads students to learn and retain some knowledge of the basic principles in a subject.

I requested students in the survey previously mentioned to answer the following question:

“In your previous years at law school you have studied various subjects. Do you remember the basic legal framework and principles of those subjects?”

1. Yes.
2. Yes, a good memory of them.
3. Yes, a reasonable memory of them.
4. Hardly any memory at all.
5. No memory at all.”

The results of the students’ responses to this question are summarised in table 5 below.

TABLE 5: Do You Remember the Basic Legal Framework and Principles of Previously Studied Subjects?

	Possible Response	Full-time Students	Part-time Students	Total
1	Yes, an excellent memory of them.	—	—	—
2	Yes, a good memory of them	13%	9%	12%
3	Yes, a reasonable memory of them	60%	63%	61%
4	Hardly any memory at all	26%	28%	26%
5	No memory at all.	—	—	—

To gain further information, I asked the students to rank from 1 to 3 their most critical responses to the following question.

“Do you attribute your memory of any previous subject studied to:

- good teaching which made the subject’s content more interesting or comprehensible and thus memorable.
- interesting subject content.
- exam preparation.
- assignment preparation.
- moot preparation.
- subject’s relevance to your future career.
- your own intelligence or good memory.
- unsure.
- other? Please specify

The results of the students’ number 1 ranked responses to this question are summarised in table 6 below.

TABLE 6: What Do You Attribute Your Memory of Previously Studied Subjects?

Percentage of students ranked number one responses

	Possible Responses	Full-time Students	Part-time Students	Total
1	Interesting subject content.	21%	41%	26%

2	Exam preparation	25%	20%	24%
3	Good teaching	19%	9%	16%
4	Assignment preparation	11%	7%	10%
5	Your own intelligence/good memory	10%	7%	9%
6	Subject's relevance to your future career	5	11	7
7	Moot preparation	4	—	3
8	Unsure	2	—	2
9	Other	2	7	3

Most students ranked as their number one response to this question “interesting subject content” (26 per cent). Note again however, the discrepancy between the full-time and part-time students’ responses. Forty-one per cent of part-time students attributed their memory of previously studied subjects to “interesting subject content”, while only 21 per cent of full-time students attributed their memory to this factor. Instead, a greater proportion of full-time students (25 per cent), attributed their memory to “exam preparation”.

This discrepancy between the full-time and part-time students’ responses support the earlier hypotheses for the discrepancies noted between these two groups’ responses in table 1 above.

Despite these discrepancies, it is noted that there was no material differences between the responses of the full-time and part-time students when asked “Do you remember the basic legal framework and principles” of previously studied subjects in table 5 above. Both groups, in the large majority, reported having only a “reasonable” memory with over one-quarter of the students in each group responding that they had “hardly any memory at all”.

In the results summarised in table 6 above, “exam preparation” was ranked number one by 24 per cent of the students. Sixteen per cent of the students ranked “good teaching” as their number one response.

Examinations are usually the only form of assessment which requires the students to review the whole course content. In this

sense then, arguably, examinations perform an important function in bringing together in overall context, all the conceptual principles taught during the year.

Indeed the results of other questions on the survey confirm this student perception.

The students were asked:

“Does preparing for exams expand and deepen your understanding of a subject?”

1. Always.
2. Often.
3. Occasionally.
4. Hardly ever.
5. Never.
6. Unsure.”

The results of this survey question appear in table 7 below.

TABLE 7: Does Preparing for Exams Expand and Deepen Your Understanding of a Subject?

	Possible Responses	Full-time Students	Part-time Students	Total
1	Always	28%	39%	31%
2	Often	31%	20%	28%
3	Occasionally	24%	23%	24%
4	Hardly Ever	16%	11%	15%
5	Never	1%	4%	2%
6	Unsure	—	2%	1%

Clearly, most students regard preparing for exams as helping them to varying degrees, understand the subject. I then asked the students to explain their responses to this question.

Many students reported that exam preparation enabled them to get a complete overview of the subject. Other students who had responded “never” or “hardly ever” to this question stressed the very limited level of understanding that is required to pass the exam; the fact that rote learning and issue spotting seems to be

sufficient to pass without really understanding “why things *are* the way they *are*”. Many others reported that the knowledge learnt for exams is quickly forgotten.

Those students who responded “occasionally” to this question commented that it was helpful to prepare for exams because they were able to appreciate the overall structure of the subject. Others commented that it depended on how much time was left (after studying for other subjects) and the quality of lecture and seminar notes or the text book which determined the level of learning that took place. There were also comments regarding how quickly the knowledge they learnt for exams was forgotten after the exam.

In these responses we see a heavy reliance placed on external factors to teach rather than on internal inquiry processes being initiated by the students themselves. Self-learning is low. The students rely on the teacher, the tutor or the textbook to provide them with all they need to know. Exams are not seen as involving much initiative, innovation or creativity.

I requested the students to rank 1–3 their most critical responses to the following question:

“Do you attribute any lack of memory of any subject previously studied to:

- bad teaching which made the subject’s content seem boring or difficult to understand and thus forgettable.
- your own lack of understanding of the subject.
- boring subject content.
- irrelevancy of the subject to the “real world”.
- the fact that exams simply require you to rote learn rules and cases which are then easily forgotten within a relatively short time after the exam.
- the large volume of content covered in the subject makes it impossible to remember.
- your own laziness which meant you did not do enough work in the subject.
- unsure.
- other? Please specify

The results of the students’ number one ranked responses to this question are summarised in table 8 below.

TABLE 8: What Do You Attribute Any Lack of Memory of

Subjects Previously Studied?

Percentage of students ranked number one responses.

	Possible Response	Full-time Students	Part-time Students	Total
1	Exams simply require you to rote learn rules and cases which are then easily forgotten within a relatively short time after the exam	47%	47%	47%
2	Large volume of content covered in subjects makes it impossible to remember	24%	24%	24%
3	Bad teaching	10%	18%	13%
4	Boring subject content	9%	4%	8%
5	Your own lack of understanding of the subject	7%	2%	6%
6	Your own laziness	2%	2%	2%
7	Other	—	2%	1%
8	Unsure	—	—	—

An overwhelming 47 per cent of students attributed their inability to remember previous subjects to exams which “simply require you to rote learn rules and cases which are then easily forgotten within a relatively short time after the exam”.

The next most popular response was the “large volume of content covered in subjects which makes it impossible to remember” (24 per cent).

A possible hypothesis of these results is that examinations being the principal (in some subjects, the only) mode of assessment, it is obvious that some learning must occur in order to prepare for them. The quality of the learning for most students is low (70 per cent feel it is possible to pass the exam without necessarily understanding the subject examined). However, it appears that exams are perceived as performing a beneficial service in forcing students to review the whole semester’s work which gives them some sense of structure and meaning to what they have learnt.

FUNCTIONS OF ASSESSMENT

Whilst student grading and certification is a valid function of assessment, it should not be regarded as the predominant function. To the extent that examinations are regarded advantageously as providing “a relatively standardised method of scaling students in order of merit,²¹ we risk, as Derek Rowntree warns, “committing McNamara’s Fallacy ... by making the measurable important when we would be better employed attempting to make the important measurable”.²²

Also, as Paul Ramsden notes:

Uniformity of methods makes comparisons superficially easy but forces students into a situation where they may not be able to display what they have learned and where there are often hidden rewards for conformity rather than originality ... Generally, the more predictable, more narrow, and the more conventional the learning outcome which is measured is, the more likely it is that assessment will produce consistent results.²³

As we have seen, assessment plays a “key” role in influencing students’ learning approaches. More important than any other of its possible functions, assessment is a precious teaching and learning tool. “Good teaching” requires that assessment be regarded and used principally for teaching the skills and competencies we desire our students to learn; for encouraging interest, commitment and intellectual challenge; and for enhancing independence and responsibility.²⁴

DESIGNING ASSESSMENT PROCEDURES TO ENHANCE STUDENT LEARNING

There are four essential aspects of assessment which require consideration:

1. aligning assessment procedures with the teaching objectives of the course;
2. making assessment criteria clear to the students before they embark on the assessment task;
3. providing helpful and timely feedback to students regarding their performance of the assessment task; and
4. measuring the effectiveness of our assessment methods.

Linking Assessment with Teaching Objectives

This necessitates that the teacher already have identified what are her or his teaching objectives. Preferably, the teaching objectives were set by the teacher and the curriculum planners acting together in designing the conceptual and skills education program for the entire undergraduate course.

The curriculum planners may have allocated responsibility for the teaching of various skills to the teacher. It will then be up to the teacher to decide how he or she will teach and test for those skills. It may be however, that the teacher will have to justify that the assessment procedures selected do teach and test the teaching objectives previously agreed upon between the curriculum planners and the teacher.

The Pearce Committee suggested that:

There is advantage in a school committee providing some oversight of assessment packages. We think that there should be limits on the freedom of lecturers to assess subjects in any way they please — at least the more unusual form of assessment should have to be justified.²⁵

There are obviously some assessment guidelines which must be adhered to, including:

- (a) that too much assessment work leads to superficial approaches. This has already been demonstrated by the results summarised in tables 2, 3 and 8 above.
- (b) that a variety of assessment methods must be used to accommodate the different learning styles of different students.²⁶

A great criticism of the overuse of the examination method of assessment is that it prejudices those students who are “concrete” learners or who learn by “active experimentation”.²⁷

It is well documented that “success breeds motivation”. Accordingly, if these types of students are constantly failing to achieve their own usually high expectations of success, they will be less motivated to learn and adopt deep approaches to the next learning task.

In addition, Ramsden notes that “although a greater variety of methods may be administratively inconvenient, it offers more latitude for students to display their knowledge and it has the potential to provide a more accurate — though more complex depiction of each student’s achievement”.²⁸

Making Assessment Criteria Clear to the Students

If assessment criteria are published beforehand, students perceive the relevance of the set task to their overall learning. It is the stated policy of the Queensland University of Technology that:

The principles underpinning assessment strategies imply that clear and unambiguous information should be available to students ...

To test whether this policy was being successfully maintained in the law faculty, I asked the students:

“Do teachers generally make clear to you what criteria they are using when assessing your performance in a subject?”

1. Yes, always.
2. Most of the time.
3. Occasionally.
4. Hardly ever.
5. Never.”

The students’ responses are summarised in table 9 below.

TABLE 9: Do Teachers Generally Make Clear to You What Criteria They are Using When Assessing Your Performance in a Subject?

	Possible Response	Full-time Students	Part-time Students	Total
1	Yes, always	5%	4%	5%
2	Most of the time	37%	21%	33%
3	Occasionally	30%	38%	32%
4	Hardly ever	23%	32%	25%
5	Never	6%	4%	5%

Considering that there are no resource difficulties in pre-publishing assessment criteria for students (for example, via subject outlines or orally in class), it seems difficult to justify that 30 per cent of students responded negatively (that is, “hardly ever” or “never”) to this question.

Alternatively, the message students are sending us may be entirely different: assessment criteria are stated but are not clear or

relevant.

Timely and Helpful Feedback

The importance of feedback on student assessment cannot be over-emphasised.

In his article, *A Closet Within the House: Learning Objectives and the Law School Curriculum*,²⁹ Andrew Petter pointed out that cognitive skills can not be “taught” in the narrow sense of the word. He said:

How does one teach a student to organise and process ideas? Telling a student to comprehend, apply, analyse, synthesise and evaluate material — or even demonstrating these skills — does not teach the student ... The only way to teach a student to organise and process ideas is through interaction with and feedback to the student in an ongoing process of supervised trial and error.³⁰

In other words, feedback on student performance of learning tasks must be continuously provided throughout the year and not solely in the form of a number or percentage figure on a final examination at the end of semester.

Feedback in the form of constructive comments following assessment tasks may have an important role in law schools with large classes of students. As Petter has noted:

If the number of students in the class is small, then it may well be possible to devote sufficient attention to each one so as to fully explore and develop his or her intellectual abilities for organising and processing knowledge at each level within the cognitive domain. If the number of students in the class is large, however, these skills probably cannot be taught within the classroom. In the case of large classes, the best solution may be to integrate ongoing evaluation into the teaching process, even at the expense of cutting back of classroom hours. Rather than setting one final exam, law professors might, throughout a course, set a variety of mini-exams focusing on specific learning objectives ... Other means for teaching intellectual skills occur within the context of clinical programs, individual tutorials and directed research.³¹

In this way, the function of assessment can be seen as being predominantly one of teaching and learning rather than grading or for certification of the student.

Many legal educators agree that this is a desired ideal, but complain that in most cases student numbers are so large that it is not practical to provide adequate feedback to every student.

There are various aids which have been suggested to assist in

overcoming this problem. In particular, a pre-printed feedback form specifying areas which may be ticked where they require attention by the student may be useful. More fundamentally however, we are simply not fulfilling our role as legal educators if we do not provide adequate and timely feedback.

In its stated assessment policy for 1995 the Queensland University of Technology Law Faculty states the functions of assessment as including:

- providing regular feedback to students on their performances relative to pre-specified criteria so that specific weaknesses, errors and misunderstandings may be noted and overcome through remediation; and
- giving information on assessed work to encourage students to identify strengths and to acknowledge effort and originality of thought.³² In the same document, the “principles guiding assessment practice” are stated as including:
- assessment strategies should be designed so that maximum information about performance is communicated to students.³³

These are outstanding objectives but are they being met?

In the student survey previously described, I asked students:

“Have you ever received helpful feedback on your performance after assessment?”

1. Yes, always.
2. Most of the time.
3. Occasionally.
4. Hardly ever.
5. Never.
6. Unsure.” The results of the students’ responses to this question are summarised in table 10 below.

TABLE 10: Have You Ever Received Helpful Feedback on Your Performance After Assessment?

	Possible Response	Full-time Students	Part-time Students	Total
1	Yes, always	5%	4%	5%
2	Most of the time	37%	21%	33%

3	Occasionally	30%	38%	32%
4	Hardly ever	23%	32%	25%
5	Never	6%	4%	5%
6	Unsure	1%	—	1%

Unfortunately, 63 per cent of the total students surveyed responded “hardly ever” or “never” to this question.

It is suggested that the heavy reliance on examinations as the principal (in some subjects the exclusive), form of assessment must bear some of the responsibility for this disappointing response.

Often, exams are used at the end of the course and therefore students see little point in obtaining feedback and staff, little point in giving it.

A well-drafted exam may have an important role in the law school as a form of student assessment. It simply can not be relied upon as the only form of assessment. More continuous assessment is required. This demand is normally met with the concomitant complaints of academic staff that it eats into their research time and can not be justified.

It is the stated policy of the Queensland University of Technology (like that adopted by many other universities), that research and teaching are complementary functions. A lecturer is required to demonstrate both teaching and research skills to a satisfactory level (as well as showing satisfactory service to the University and the wider community).

Is it the case that to satisfactorily teach (including preparing assessment and giving adequate and timely feedback to students whose numbers may swell to more than 300 enrolled students in any one subject at the Queensland University of Technology Law School), it is unreasonable to also expect “satisfactory” or better performances in the areas of research and service to the University and wider community?

Is research engaged in for the purpose of proposed publication in legal journals different to research engaged in for the purpose of preparing undergraduate classes? Is it feasible for a faculty of law to have some academics involved exclusively in research for publication or applied use and some involved purely in teaching with the opportunity — indeed perhaps the expectation, that

academics would swap between the two divides after a period of time and following completion of specific projects?

It is beyond the scope of this paper to enter into discussion of these issues. Clearly the area is fraught with tension and ongoing debate, some of which has not been entirely free of passion, in the past. As government, community and university expectations regarding the quality of legal education services which should be provided continue to rise however, this may well be one of the most crucial and divisive issues requiring informed and non-emotive debate confronting us today and in the future.

Measuring the Effectiveness of Assessment Methods

Obviously, the success of various assessment methods over time may be measured by student performance and perhaps, as Ramsden has commented, if we discover that students do well in some pieces of assessment but poorly in others.³⁴ It is somewhat paradoxical that good assessment technique may result in the thwarting of the consistency objectives so often sought by law faculties in implementing assessment methods.

However:

Our understanding of the way students learn leads us to see that these are not educational problems at all. They are actually desirable outcomes: any one-dimensional measure of a person's achievement in many different tasks is almost certainly inadequate, and may be entirely misleading. Uniformity of methods makes comparisons superficially easy but forces students into a situation where they may not be able to display what they have learned, and where there are often hidden rewards for conformity rather than originality.³⁵

The employment of a variety of assessment methods is important. In designing assessment strategies, some scope for student choice is also desirable. This gives the student a greater sense of ownership and responsibility for her or his work. It also increases the student's awareness of the relevance of the assessment method chosen to the course goals.

CONCLUSION

Perhaps more important than any other contributor to the learning process is our assessment strategies. We have seen how assessment plays a key motivational role and more importantly

quite often, determines the qualitative approaches students take to learning tasks.

This paper will have achieved its purpose if it has succeeded in demonstrating the need for Australian universities to seriously consider and carefully plan their assessment procedures in encouraging qualitative approaches by students to their studies. In particular, we need to see the primary function of assessment as an important teaching and learning tool rather than as a mechanism for grading the “rank and file”. Admittedly, time spent in increasing the quality of our teaching services will have costs, particularly in depleting the time available for research and university and community service.

However if we continue to ignore the importance of well-planned and co-ordinated assessment policies in our law schools, we risk legal education being placed “in the unenviable position of the legal profession — much criticised, much distrusted, much questioned, not much respected.”³⁶

* Queensland University of Technology Law Faculty. I am grateful to Carol Nicoll for assistance in formatting a student questionnaire, the results of which are discussed in this paper. The results of the student survey do not necessarily reflect the views and perceptions of all students in all subjects at the QUT Law Faculty.

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¹ J Biggs, Teaching for Better Learning (1991) 2 *Legal Educ Rev* 133, at 137.

² P Ramsden, *Learning to Teach in Higher Education* (Melbourne: Routledge, 1992) 67, at 182.

³ W Twining, *Pericles and the Plumber* (1967) 83 *LQR* 396, at 424.

⁴ O Kahn-Freund, Reflections on Legal Education (1966) 29 *Mod L Rev* 121, at 134.

⁵ *Id.*

⁶ D Pearce, E Campbell & D Harding, 1 *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Pearce Report) (Canberra: AGPS, 1987) at ss 3.49ff.

⁷ *Id.* at s 3.51.

⁸ A J Pirie, Objectives in Legal Education: The Case for Systematic Instructional Design (1987) 37 *J Legal Educ* 576, at 577.

⁹ Biggs, *supra* note 1, at 138.

¹⁰ Ramsden, *supra* note 2, at 65.

¹¹ *Id.* at 4.

¹² *Id.* at 39.

¹³ Biggs, *supra* note 1, at 139.

¹⁴ Ramsden, *supra* note 2, at 31.

¹⁵ Biggs, *supra* note 1, at 140.

¹⁶ *Id.*

¹⁷ Ramsden, *supra* note 2, at 182.

- 18 *Id* at 81.
- 19 *Id* at 67.
- 20 Pearce Report, *supra* note 6, at s 3.50 (submission by QIT, as it was then known).
- 21 *Id.*
- 22 D Rowntree, *Assessing Students: How Shall We Know Them?* (London: Kogan Page, 1987).
- 23 Ramsden, *supra* note 2, at 191.
- 24 *Id* at 67.
- 25 Pearce Report, *supra* note 6, at sec. 3.5.9.
- 26 R Johnstone, Rethinking the Teaching of the Law (1992) 3 *Legal Educ Rev* 17, at 30–32; 56–57.
- 27 *Id* at 30.
- 28 Ramsden, *supra* note 2, at 191.
- 29 A Petter, “A Closet Within the House: Learning Objectives and the Law School Curriculum”, in N Gold ed, *Essays on Legal Education* (Toronto: Butterworths, 1982).
- 30 *Id* at 85–86.
- 31 *Id* at 87.
- 32 QUT Faculty of Law, *Internal Information Booklet 1992*, at 1–2.
- 33 *Id.*
- 34 Ramsden, *supra* note 2, at 191.
- 35 *Id.*
- 36 A J Pirie, *supra* note 8 at 577.