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A Critique of the Assessment of Professional Skills

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PRACTICE ARTICLE

A CRITIQUE OF THE ASSESSMENT OF PROFESSIONAL SKILLS

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I INTRODUCTION

As someone who has spent his entire career doing research, writing and thinking about educational testing and assessment issues, I would like to conclude by summarising a compelling case showing that the major uses of tests for student and school accountability over the past 50 years have improved education and student learning in dramatic ways. Unfortunately, that is not my conclusion.[1]

Well designed assessment can be an important part of the learning process.[2] However, as suggested above, not all forms of assessment will fulfil this function. In order to improve education and student learning in 'dramatic ways', assessment must be appropriately designed and implemented. This is often a complicated task, especially in non-traditional academic disciplines, such as the teaching of professional skills, which demand experiential testing.[3] This is further complicated by the inevitable tension between logistical convenience and sound educational practice.[4]

This article will outline five key criteria in the design of credible assessment tasks for skills subjects in an academic environment. Two models for assessment of professional skills in an academic environment (at the University of Adelaide and Bond University) will then be evaluated in relation to these criteria.

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[1] Robert Linn, 'Assessments and Accountability' (2000) 29(2) *Educational Researcher* 4, 14.

[2] Discussion of the importance of assessment in skills teaching can be found in Bobette Wolski, 'Why, How and What to Practice: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum' (2002) 52 *Journal of Legal Education* 287, 293.

[3] Sally Brown, 'Assessing Practice' in Sally Brown and Angela Glasner (eds) *Assessment in Higher Education: Choosing and Using Diverse Approaches* (1999) 95.

[4] John Biggs, 'A Qualitative Approach to Grading Students' (1992) 14(3) *HERSDA News* 3.

II What are Professional Skills, and Why Teach Them?

Many professional skills are of general cross-disciplinary relevance. For instance, in almost every area the skills of effective communication, complex decision-making, problem solving, and ethical behaviour are important. However, a discussion of the pedagogy of skills education can stretch beyond these 'fundamental' or 'generic' skills, by virtue of the fact that there are inherent similarities in the teaching and assessment process for many skills, including many of the more 'profession-specific' skills. Therefore, while this paper will focus on skills teaching and assessment of both general and profession specific skills in the context of law, it is hoped that the principles discussed will be applicable in many other disciplines.

In the context of law, professional skills can range from narrow technical skills like drafting a list of discoverable documents or a notice to admit, to broader skills associated with dealing with clients, the skills needed for the application of substantive knowledge to a particular factual context, and the knowledge and understanding of the ethical principles that form the framework for the practice of the professional skills. There is ongoing pedagogical and professional debate about how these skills may best be learned in the context of an academic program: whether as a discrete formal subject or in a pervasive method, embedded within the substantive material in each course. This is particularly an issue for the teaching of law, as law is now taught almost exclusively in a non clinical (that is, academic) environment, so students rarely have an opportunity to learn about professionalism and ethical issues in a real professional context.

Skills teaching takes place in almost all law schools in Australia, America and the United Kingdom.[5] Some of this teaching of skills could be considered a by-product of the teaching of substantive law. However, there has been a repeated emphasis on the role of law schools in developing in students the skills they need to be ethical and competent practitioners. For example, the Australian Law Reform Commission commented in 2000 that the law school plays a key role in the development of a professional culture among lawyers. It recommended that:

> [i]n addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.[6]

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[5] Wolski above n 2, 289.

[6] Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, AGPS (1999), 22 (recommendation 2) <http://www.alrc.gov.au/> at 2 November 2007.

Many law schools have responded to comments such as this by incorporating more specific teaching of skills in their law degrees. Since the late 1990s the University of Adelaide Law School has followed this trend. This has been done by incorporating a number of skills-based courses into the academic program. These skills courses (both compulsory and elective) are structured around problems representative of professional practice and require active student participation to learn from the problems. By allowing students to develop their knowledge in a context which is similar to those they may encounter in their future professional lives it is hoped that students will remember and recall more effectively the knowledge they acquire.[7] It is also hoped that these courses will help overcome the academic-vocational divide that can appear in traditional professional courses, and make the study of law meaningful by taking it beyond abstract rules.[8] The development of skills will also assist graduates to move effectively into professional employment.[9]

III ASSESSMENT OF SKILLS

It has been recognised that assessment has an important impact on learning, and that a proper alignment of the learning environments' objectives with assessment can have a significant impact on improving learning.[10] In the context of skills education Wolski states that students are more likely to take various stages of skills learning seriously if they know that they will be judged on their efforts.[11] However, the teaching of skills subjects has raised a number of assessment problems. One significant problem is that the nature of the skills which students are expected to develop, such as complex skills of professional and ethical judgement, are often difficult to assess by traditional methods. Compounding this problem is that some of the forms of assessment which are arguably best designed

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[7] Robert Canon and David Newble, *Handbook for Teachers in Universities and Colleges* (4th ed, 2003) 19.

[8] Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (1994); John Goldring, Charles Stamford and Ralph Simmonds (eds), *New Foundations in Legal Education* (1998); Christine Parker and Andrew Goldsmith, '"Failed Sociologists" in the Market Place: Law Schools in Australia' (1998) 25 *Journal of Law and Society* 33, 48.

[9] Barbara De la Harpe and Alex Radloff, 'Learning to be Strategic About Helping Staff to Increase Graduate Employability' in Chris Rust (ed), *Improving Learning Strategically* (2001) 220, 223. See also Anna Reid, Vijaya Nagarajan and Emma Dortins, 'The Experience of Becoming a Legal Professional' (2006) 25 *Higher Education Research and Development Journal* 85.

[10] Graham Gibbs, 'Using Assessment Strategically to Change the Way Students Learn' in Sally Brown and Angela Glasner (eds) *Assessment in Higher Education: Choosing and Using Diverse Approaches* (1999) 41; S. Alan Cohen, 'Instructional Alignment: Searching for a Magic Bullet' (1987) 16(8) *Educational Researcher* 16.

[11] Wolski, above n 2.

to assess such skills (role plays, oral exercises, and portfolios) are often subjective in nature, or suffer from problems of reliability or practicality. These problems are mirrored in legal skills subjects elsewhere in Australia.[12]

While this paper will look at the issue of skills assessment in law, the problem of assessment of skills arises in many other disciplines which may teach both generic professional skills (such as problem solving, skills of excellent written and oral communication, presentation skills, research skills, etc) and specific professional skills (these are obvious in professions such as nursing and medicine, but also exist in many other disciplines). It is hoped that the assessment criteria, and discussion of combining those criteria, will be of broad relevance. However, it is noted that those involved in the teaching of law could, perhaps, learn much from the developments in other disciplines in this regard. While reference is made to research conducted outside of law on occasion, a comprehensive comparative study across disciplines is beyond the scope of this paper.

IV Issues in Assessment Design

The literature suggests a number of issues that should be considered in the design of assessment.[13] Five key criteria are summarised below.[14]

A *Validity*

The validity of any assessment is vitally important.[15] In this context, validity can be interpreted (at its most basic) to mean that the assessment measures what it purports to measure. This is an important consideration in relation to the design of skills assessments, as any useful measurement of proficiency in skills is likely to be complex and difficult. Such measurement often involves subjective assessment of performance in a context where there may

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[12]   Interview with Bobette Wolski, Bond University (telephone interview, 15 January 2007).

[13]   See eg, the United Kingdom Quality Assurance Agency for Higher Education (UKQAA) recommended that assessment practices should be valid, reliable, transparent, fair, timely, incremental, demanding and efficient: United Kingdom Quality Assurance Agency for Higher Education, *Code of practice for the assurance of academic quality and standards in higher education, Section 6: Assessment of students — September 2006* (2nd ed) available from www.qaa.ac.uk at 9 October 2007.

[14]   Those criteria are validity, reliability, alignment with learning objectives, integration, and practicality. These criteria have been chosen because of their importance to both substantive and skills assessment, and because they are broadly recognised in the literature as extremely important.

[15]   Terry Crooks, Michael Kane and S. Alan Cohen, 'Threats to the Valid Use of Assessment' (1996) 3 *Assessment in Education* 265; Canon and Newble, above n 7, 168.

legitimately be a multitude of more-or-less appropriate outcomes rather than one 'correct' answer. While this problem is not, of course, restricted to skills assessment, it is a significant issue in this context. Skills assessment is also complicated as a result of the need to extract performance of a particular skill from the substantive context in which it is being performed.

B *Reliability*

An important criterion by which assessment should be judged is reliability.[16] Reliable assessment is one that is seen to be objective, fairly administered, and consistently marked. Ideally, this means that an assessment task should be reproducible.[17] This can be problematic in skills assessment, where a degree of subjectivity is often involved in the assessment process. Of course, subjectivity is also an issue in 'traditional' assessment forms, where different markers may award different grades for the same work. However, in assessing the appropriate demonstration of skills marker subjectivity is, perhaps, an even greater problem. For example, if students are asked to demonstrate their communication skills by developing and presenting a 'convincing' argument, individual markers may be more or less convinced according to their own assumptions about oral presentation style, structure, and the nature of professional conduct. The fact that an oral presentation of this type is only made once and cannot be reconsidered in the same way as written work also emphasises the problem of subjectivity, which could be limited by recording of performances to allow multiple marking and review of the exercise. Explicit marking criteria can assist in improving the reliability of assessments. However, assessment techniques that avoid professional judgement in the search for reliability may lead to a trivialisation of the content of the assessment. For example, Vleuten commented that 'to break down communication skills into its smallest possible behavioural components in order to be able to check them better on a performance list may enhance objectivity but will not reflect the intended complexity of the skill'.[18] Some reliable and rigorous assessment can also be dull, lifeless and have short-lasting outcomes.[19]

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[16] Canon and Newble, above n 7, 169; Wolski, above n 2, 293.
[17] Wendy Harris and Melinda Shirley, 'Assuring Quality in the Assessment of Negotiation Skills – A Case Study in the Teaching of Trusts' (2002) 9(3) *Murdoch University Electronic Journal of Law* 1, 12.
[18] Cees P.M. Van Der Vleuten, 'The Assessment of Professional Competence: Developments, Research and Practical Implications' (1996) 1 *Advances in Health Sciences Education* 41, 51.
[19] Peter Knight and Mantz Yorke, *Assessment, Learning and Employability* (2003) 18–20.

C *Alignment with Learning Objectives*

An important pedagogical aim of assessment of skills is to assess student competency levels within those skills. In order to fulfil this objective, assessment must be aligned with the learning objective of mastering practical skills. However, Boursicot noted that some forms of performance assessment test only practical technical skills and do not scrutinise deeper layers of understanding.[20] This marginalises the more complex and not as easily measured features of competence (such as professional and ethical judgement, and organisation skills) in favour of the more technical skills which can be easily identified and assessed (for example, correctly drafting an interrogatory or notice to admit). It is much easier to design assessments which require students to demonstrate that they can draft an interrogatory, than assessments in which the strategic reasons for requiring the information, the rationale for the drafting style and the timing of the interrogatory are apparent. Assessment must be carefully structured to avoid excessive emphasis on the technical.

D *Integration*

In the context of a problem-based curriculum, integrated assessment can operate as an effective tool for learning.[21] A properly integrated assessment structure can also help create (or maintain) an authentic environment in which to practice relevant professional skills, thereby increasing the perceived relevance of the skills,[22] and assisting student retention of knowledge. As Sacks stated in his discussion of student fieldwork:

> If an experience seems real, the beneficial effects on students are likely to be several. Students have more interest in the subject matter, and are better motivated to learn. They work harder, and pay closer attention to what is happening. They tend to learn things at a deeper level, and thus to remember them longer. Prejudices and stereotypes are subject to more intensive attack; and feeling of concern about perceived injustice and misery are more easily aroused.[23]

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[20] Katherine Boursicot, 'Setting the Standards in a Higher Education course: Defining the Concept of the Minimally Competent Student in Performance-based Assessment at the Level of Graduation from Medical School' (2006) 60 *Higher Education Quarterly* 74, 79.

[21] David Gijbels, Gerard van de Watering and Filip Dochy, 'Integrating Assessment Tasks in a Problem-based Learning Environment' (2005) 30 Ass*essment and Evaluation in Higher Education* 73.

[22] Karen Hinnet and Alison Bone, 'Diversifying Assessment, Developing Judgement' in Roger Burridge, Karen Hinett, Abdul Paliwala and Tracey Varnava (eds) *Effective Learning and Teaching in Law (*2002) 52, 55

[23] Howard R. Sacks, 'Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility' (1968) 20 *Journal of Legal Education* 291, 294.

Authentic assessment entails utilising tasks as closely related as possible to those that would be involved in the profession to which the degree is orientated.[24]

E *Practicality*

It is an obvious statement that teaching resources are limited. Therefore, any assessment method must be practical: the costs, time and resource demands of the assessment must be such that they can be accommodated by the relevant institution and academic staff. Questions relevant to the issue of practicality are;

- Do the available academics have skills suitable to administer, mark and grade the assessment?
- Can the assessment results be accurately interpreted?
- Does the assessment scheme demand too much time?[25]

V COMBINING THE CRITERIA

The five key criteria discussed above are often in conflict, if not mutually inconsistent. For example, assessment tasks aligned closely with course objectives and designed to test professional skills are much more likely to be open ended than right/wrong, and are correspondingly less reliable.[26] To illustrate, a portfolio may be a valid method to assess professional skills such as reasoned analysis, critical thinking and decision-making. A portfolio may also be well integrated with a problem based learning environment. However, since the portfolio usually gives students the choice of which evidence to present in support of their claims, the final product becomes increasingly variable and claims of reliability harder to support. A portfolio assessment also has a tendency to become unwieldy and difficult to mark and therefore potentially impractical.[27]

The complete reconciliation of these and other important criteria in the context of formulation of assessment of professional skills taught in a problem-based format may be impossible. However, in order to ensure the best possible learning environment, teaching outcomes and quality control, it is an exercise which must, at least, be attempted. How can we undertake this task?

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[24] Mark A. Baron and Floyd Boschee, *Authentic Assessment: The Key to Unlocking Student Success* (1st ed., 1995); Grant Wiggins, *Educative Assessment: Designing Assessments to Inform and Improve Student Performance* (1st ed, 1998).

[25] Canon and Newble, above n 7, 171.

[26] Knight and Yorke, above n 19, 108.

[27] Ranald Macdonald and Maggie Savin-Baden, *A Briefing on Assessment in Problem-based Learning* (LTSN Generic Centre Assessment Series No 13, 2004) 13 <http://corporate.coventry.ac.uk/content/1/c6/01/90/26/ASS092[1].pdf> at 2 November 2007.

VI ASSESSMENT MODELS

Various models could be employed for teaching and assessing skills subjects which will reflect the criteria above to a greater or lesser extent. The choice of possible types of assessment is extensive: multiple choice exams, essay exams, case based assessment, self- and peer-assessment and performance based or portfolio assessment, or any combination of these are only a few of the possible options. In order to shed light on some different ways in which the key criteria can be accommodated through course structure and assessment type, and some of the consequences of those arrangements, I will discuss the professional skills models used at the University of Adelaide (Adelaide) and Bond University Law Schools (Bond). These two Universities have been chosen because they offer very differently structured skills programmes, which facilitate a useful comparison.

A *Bond*

Wolski has described a skills programme integrated into the undergraduate curriculum at Bond in which students are required to enrol in a subject called *Legal Skills* in their first semester of study.[28] However, this subject does not stand alone; instead it consists of a number of skills components which are taught and assessed in designated compulsory substantive law subjects. Students receive a mark for each skills component completed which is recorded in the substantive law subject containing that skill component (where it may be worth between 10 and 25 per cent of the final grade), and also recorded in the *Legal Skills* subject (where it is worth five per cent). For each skills component students undertaking this programme receive individualised feedback on their performance (via written comments or oral debriefing). This permits students to process the experience and progress their skills development.

The model described by Wolski is innovative in that the skills programme is fundamentally incorporated into the undergraduate programme. This linking of professional skills assessment to substantive legal content is also done at Adelaide, through the process of 'twinning' skills subjects with a substantive law subject. However, the process of amending a curriculum to incorporate professional skills as taught at Bond would undoubtedly be a difficult undertaking for many established law schools, especially as course coordinators in many institutions often maintain almost total control over the format and assessment structure for their courses. The complex and comprehensive assessment scheme described by Wolski also necessitates significant ongoing efforts to maintain reliability and integrity of assessment across all 20 assessment

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[28] Wolski, above n 2.

components in multiple substantive law courses (discussed below). This is an enormous undertaking, however, it should also be noted that the staff-student ratio in the Bond law school is 1:10. This ratio may alleviate issues of practicality which result from the number of assessments (18 in 2002, now increased to 20),[29] their type (such as individualised assessment based on performance in simulations, which are marker intensive), and the moderation required. Wolski has described a comprehensive, multi-tiered moderation process that involves the creation of detailed assessment criteria, marker training (and co-marking where required), double marking of selected assessments, as well as post-marking moderation.[30] The student-staff ratio also assists the assessment of skills by permitting more intensive methods of assessment (such as role plays) to be used where they are appropriate, and allowing for more intensive feedback to students for each assessment item, promoting a useful reflection and the opportunity for further development of skills. However, despite the advantages of the number of assessments at Bond, and their (relatively marker intensive) type, another important point to note about the unique structure of this programme is that some of the benefits of a well integrated assessment programme (which may help create an authentic environment in which to practice relevant professional skills, thereby increasing the perceived relevance of the skills and student retention of knowledge) are necessarily lost by the location of skills components in a variety of substantive law subjects and the fact that the skills components do not relate to a single factual scenario. This structure prevents the creation of an ongoing authentic environment, and must create limited opportunity for the development of more strategic practical skills, as well as potentially limiting student awareness of the inter-relation between skills.

B *Adelaide*

Adelaide has developed a structured programme of compulsory skills-based units. Although these units stand alone, they have been designed to run parallel to substantive law subjects. For example, the skills subject *Introduction to Advocacy* (advocacy) is taught parallel to the *Law of Evidence*. The substantive law of evidence is used as a framework for developing applied research, strategic planning and advocacy skills in the advocacy course. However, the assessment in advocacy relates exclusively to the development of skills within that legal framework. While the assessment in other skills subjects varies slightly in detail from the advocacy course, the assessment structure in advocacy will be discussed in this paper as generally reflective of the skills assessment model at Adelaide.

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[29] Wolski, above n 12.
[30] Ibid.

The assessment in advocacy (until 2006: the assessment was slightly modified in 2007) consisted of two 'case files' (portfolio assessment consisting of student progression of one civil and one criminal matter across the semester – worth 60 per cent and 20 per cent of the final grade). The remainder of the assessable grade was derived from assessment of advocacy skills in a 'mock trial' context (worth 20 per cent of the final grade). Each student is required to complete a minimum of two oral exercises, but can complete up to six. Each exercise is graded (by a full or part time academic, or a volunteer from the legal profession such as a judge, magistrate, solicitor or barrister) and an average of the two best marks received is credited to the student's final grade for the course. After each exercise immediate substantial oral feedback is given to each student participant, which facilitates reflective learning and progressive skills development.

The format of other compulsory skills based subjects within the Adelaide law school is substantially similar to that in this unit, with assessment consisting of a selection of practically oriented exercises (written or oral) which relate to the progress of a fictional case.

VII Bond and Adelaide Compared

Bond and Adelaide have addressed the assessment of skills differently. Bond has introduced 20 separate pieces of assessment which are designed to assess specific professional skills. Within this scheme some types of assessment are used several times, and some pieces of assessment demand that students demonstrate several skills. In contrast, Adelaide has restricted both the number and type of assessments, and relies heavily on portfolio assessment which is used to evaluate student performance across a broad range of skills. In order to critically evaluate these different assessment schemes, I have attempted to compare the skills programmes of Adelaide and Bond using the five criteria of assessment outlined above.

A *Validity*

In each University the assessment tasks used have been designed to test various professional skills. The degree to which these tools are valid is arguable. The portfolio/case file assessment used at Adelaide is intended to be an approximation of reality which is designed to demonstrate skills such as written advocacy, research and writing and strategic thinking. However, like portfolio assessment generally, the case files tend to be unwieldy,[31] and some skills may not be as clearly demonstrated as others. In contrast, inclusion of other more specific forms of assessment for specific skills, such as oral assessment

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[31]   Macdonald and Savin-Baden, above n 27.

of advocacy, appears more valid, as those particular skills are not easily assessed in written form and therefore will not necessarily be demonstrated in a portfolio.

At Bond, assessment tasks are more specifically targeted to testing specific skills. However, the very specificity of this assessment scheme suggests that it may be more difficult to assess underlying skills (such as strategic thinking), which may be better demonstrated in an ongoing 'professional' environment.

B *Reliability*

Maintaining reliability and consistency in marking is an ongoing concern in any assessment. Rowntree recommends a number of strategies to improve reliability, including; marking schemes, repeat marking to make sure an individual marker maintains the same standard over time, and cross marking to ensure consistency.[32] Adelaide employs several of these strategies: a generalised marking scheme is distributed, and, in order to guarantee consistency between markers, a system of cross marking is undertaken. However, it is acknowledged that there remains subjectivity in the grading process (for instance, the assessment of oral applications involves subjective elements).[33] The subjectivity of marking is particularly problematic in relation to the demonstration of the deeper level professional skills which may not be demonstrated by student performance in isolated exercises, such as demonstration of ability to plan strategically in order to advance a client's interest.

The Legal Skills programme at Bond involves multiple pieces of assessment, over many substantive law courses. It can be assumed that the variety of academics involved in the assessment of practical skills in the Bond programme creates some problems of reliability, especially when some markers may have no specific experience in the relevant skills area. However, any unreliability in marking which arises from these factors is partially offset by the number of assessments (currently 20), and the comprehensive marker training and moderation schemes utilised. The programme also includes multiple simulations, a type of assessment which must involve issues of subjectivity and possible reliability problems. Wolski describes a number of initiatives that are relevant to maintaining reliability in assessment, and addressing these potential problems.[34] These include videotaping of simulations and the use of detailed criteria checklists by assessors. In order to ensure equivalency in marking, Bond University also provides training for those involved

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[32] Derek Rowntree, *Assessing Students* (1977).
[33] Terry Carlson et al., 'Implementing Criterion-referenced Assessment within a Multi-disciplinary University Department' (2000) 19 *Higher Education Research and Development* 103, 110.
[34] Wolski, above n 2, 298.

in skills assessment (by exposing them to the same instructions and theoretical information which directs students, and by a process of joint marking with a person experienced in the relevant field).[35] Moderation is also undertaken, both through multiple markings of some performances and sample work to ensure consistency.[36]

Harris and Shirley suggested another tool to improve reliability between markers that could be implemented at both Adelaide and Bond; that is the distribution of a selection of student work which has been marked by an experienced member of the teaching team. That marked work can then be used as a reference point or benchmark by other markers.[37]

C   *Alignment with Learning Objectives*

While Adelaide has chosen to use several larger case file/portfolio assessments, Bond has implemented numerous specific assessments relating to the development of skills. Each of these assessment schemes has individual merit. The portfolio assessment used by Adelaide is intended to assess deeper levels of understanding rather than superficial application of process by students. This is done by allowing students substantial freedom with regard to the supporting material included in the portfolio, and allowing students to justify their decisions (both legal and relating to the exercise of practical skills) in the context of the assessment.

In contrast, the numerous and repeated assessment of skills components in the Bond programme allows for progressive development of skills, incorporating formative assessment in order to develop student understanding and ability. The structure of multiple assessments also allows each assessment task to be more specifically tailored to the relevant skill that is being assessed.

These different structures act in such a way as to facilitate alignment of assessment with certain learning objectives. As stated above, portfolio assessment may be used to test learning objectives such as complex decision making, strategic thinking, and case management, which are harder to identify in smaller pieces of assessment. However, it is a *generalised* assessment method, which may not be well suited to the assessment of some *particular* skills. This problem can be avoided by the use of more discrete assessment tasks which are designed to test *particular* skills, but which may not identify deeper levels of student undertaking.

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[35]   Wolski, above n 12.
[36]   Ibid.
[37]   Harris and Shirley, above n 17, 12.

D *Integration*

The Bond legal skills course involves teaching and assessment of skills that are integrated within the substantive law subjects, rather than part of a stand alone subject. Wolski explains that (in substantive courses) where more than one skills component is taught:

> the teaching and assessment of these components are linked, to show students that lawyers exercise a range of skills in solving problems for their clients and to demonstrate the interrelationship among those skills.[38]

Wolski has also pointed out that within each skills component the links *between* skills are emphasised to students.[39] For example, within the advocacy tasks it is emphasised to students that the component consists of a bundle of skills including research, analysis, problem-solving, strategic choice, and ethical decision making. Despite this intentional emphasis on the inter-related nature of skills, the fact that skills components are spread over a large number of substantive courses and often relate to different facts restricts opportunities for an ongoing 'professional' scenario (that is, a developing and complex factual scenario which requires demonstration and development of multiple skills) to be developed. This contrasts with the position at Adelaide, where the assessment in skills subjects is fundamentally integrated with the 'mock trial' scenario which is the basis of the subjects.

E *Practicality*

The assessment of the skills courses taught at Adelaide, particularly of oral presentations, is time intensive and a significant drain on faculty resources. Some assistance is offered by members of the local legal community who volunteer their time to assess oral applications, however (as discussed above) this has implications in terms of reliability.

By incorporating skills *into* the substantive law programme, Bond may have avoided some of the practical problems facilitating marking of skills related material (as the same people who teach and mark the substantive law will also mark the skills assessment). However, the prevalence of simulations in the Bond assessment scheme (in negotiation and dispute resolution, advocacy and oral presentation, and client interviewing and communication modules) must create a practical problem if every student is to receive individualised attention. As stated by Harris and Shirley, the economics of legal education in Australia make individual role-play exercises a problematic and unaffordable method of summative assessment.[40]

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[38] Wolski, above n 2, 296.
[39] Email from Bobette Wolski to Anne Hewitt, 19 January 2007.
[40] Harris and Shirley, above n 17, 6.

There is a further practical issue with the Bond skills programme for other law schools: implementation of this model requires the complete reworking of an undergraduate curriculum. However, this is not impossible: Queensland University of Technology successfully integrated professional and generic capabilities within the content of all its substantive undergraduate law units in 2000.[41]

VIII   CONCLUSION

Both Bond and Adelaide have developed skills programmes which allow the learning of substantive law to be placed in a practical context. At Bond this is done by embedding particular skills exercises in individual substantive courses. At Adelaide the skills courses are taught in conjunction with the substantive courses of Civil and Criminal Procedure and Introduction to Evidence and require demonstration of the substantive knowledge developed in those courses, as well as a general understanding of other areas of law relevant to the mock-trial scenario.

The professional skills programme at Bond, where professional skills are taught as components within substantive law subjects, creates an assessment environment in which professional skills are intimately linked to substantive law. However, the model of assessing different professional skills in isolation (or perhaps, one or two skills together, but others individually) restricts opportunities for the development of an ongoing 'realistic' professional environment. While each component assessment in legal skills may be representative of one part of professional practise, the maintenance of an ongoing realistic environment allows for the development of additional professional skills, such as strategic thinking and decision making. Without an ongoing role play or other exercise, it is difficult to see how such long term skills can be developed.

The teaching and assessment methods employed by both Adelaide and Bond arguably suffer in terms of reliability and practicality. Multiple assessments, marked by multiple academics (and, in the case of Adelaide, volunteers from various arms of the legal profession) necessarily means assessment is less reliable. In both Adelaide and Bond various initiatives aimed at achieving consistent marking have been implemented to address this problem. The number of assessments, and forms of assessment, also mean the skills courses are administratively burdensome and require large amounts of marking time. At Adelaide the portfolio assessment is particularly problematic in this regard. Each portfolio is often extremely bulky, as it provides students opportunity to present evidence in order to justify their decisions in the management of a 'mock trial'. While

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[41]   Ibid 2.

this assessment has been chosen for reasons of validity (as one of the only assessment methods which will allow students to demonstrate deeper levels of understanding), it is arguably deficient in terms of reliability and practicality.

While the teaching and assessment methods employed at Adelaide and Bond are different, each seems to have its own strengths and weaknesses. Adelaide is arguably stronger in terms of the integration of professional skills teaching and assessment in a 'realistic' professional environment, in assessing deeper levels of understanding through portfolio assessment. However, Bond's multiple assessments may improve reliability, and assist in developing cyclical learning patterns where students can use feedback from previous assessment to further develop their skills.

Both teaching and assessment regimes appear to be a compromise between various ideals which cannot entirely be reconciled, tempered by the practical realities of funding and teaching resources. It appears probable that the assessment criteria discussed in this paper cannot be reconciled to everyone's satisfaction. If we assess any model of professional skills assessment based on its validity, reliability, alignment, integration and practicality, something will always be lacking. As stated by Chambers and Glassman '[a]lthough all…characteristics are desirable they cannot be simultaneously maximised – trade-offs are unavoidable'.[42] This may also be true of substantive law subjects, but additional problems arise in the context of skills teaching because of the enormous range of professional skills, the difficulty of designing effective assessment methods for each of them, and the problems of creating assessments which will also give students the opportunity to demonstrate deeper skills. A consequence of these problems is that the teaching of professional skills is often expensive. Additional resources may permit some of the practical problems limiting the assessment of professional skills to be overcome, and also permit improvements in reliability (by funding academic assessment, or permitting a greater number of progressive assessments) and validity (by funding the marking of more time consuming and subjective assessments such as portfolios which may demonstrate deeper student understanding).

While I am unable to propose an 'ideal' assessment model for skills, the most significant issue appears to be that of practicality. I suggest that the preferred skills assessment regime is one in which students are able to receive regular feedback on their performance relevant to strict criteria from academics with specific training and experience in skills assessment. The assessments which students undertake should be explicitly related to the skills they are required to demonstrate. Where the appropriate assessment for a particular

[42] David W. Chambers and Paul Glassman, 'A Primer on Competency-based Education' (1997) 5 *Dental Education* 651, 659.

skill is one with an identifiable weakness (whether in terms of validity, reliability, alignment or integration), resources should focus on addressing that weakness. For example, if subjectivity and reliability are an issue in the assessment of oral presentations, resources should be provided to record the presentation. This would facilitate collaboration between markers and objective comparative assessment, and address some of the concerns.

Because skills learning must be about 'doing' the particular skill, the challenges of designing appropriate assessments which are affordable and practical are significant. Despite these problems, it is important that those involved in the teaching and assessment of skills remember that even if we cannot design a perfect assessment scheme, we need to ensure that there are adequate resources available to make the best compromise scheme work.