

# GETTING THE JOB DONE: USING AUTHENTIC ASSESSMENT TECHNIQUES IN EXTRA AND CO-CURRICULAR ACTIVITIES (ECCAs) TO IMPROVE LAW STUDENTS' EMPLOYABILITY PROSPECTS

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**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. 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 improve law students' employability prospects. 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 into improving critical reasoning, team-working, self-confidence and public speaking skills – all highly prized by employers in many different disciplines and working environments. By examining recent employability data, and cross-referencing them with trends in student participation with ECCAs, the authors demonstrate that authentic assessment improves law students' employability prospects in a variety of sectors – not just in law.

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**Keywords-** Authentic assessment, student employability, legal education, formative assessment

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## I. INTRODUCTION

Developing critical reasoning skills is vital in order to maximise student performance both academically as well as in terms of enhanced employability, yet traditional 'paper-based' assessment methods are not best equipped to teach the skill, or to monitor progress. 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'. Equally, this mode of assessment is primarily used in a summative way "to differentiate between students and rank them according to their achievement" (Gulikes et al) – the testing culture.

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". He goes on to suggest that lectures are frequently focused on out-of-date concepts such as "the variety of property law in post-feudal England" and that "Professors are rewarded for chin-stroking scholarship, like law review articles with titles like 'A Future Foretold: Neo-Aristotelian Praise of Postmodern Legal Theory'" (Segal 2011).

However, to succeed in the current global environment, graduates need to develop, and hone, a variety of soft skills including entrepreneurial skills,

management ability and critical thinking. In other words, in a world of Day 1 outcomes, a graduate needs to "know less about Contracts and more about contracts" (Segal 2011). Employers are increasingly placing an emphasis on the recruitment of graduates who have such 'soft' skills, and complex achievements which may best be described as 'wicked' competences (Knight and Yorke 2003). A 'wicked' competence, such as creativity or critical thinking, cannot be precisely defined and, inevitably, not only takes on different forms in different contexts / environments but is something which is likely to keep on evolving within a graduate if nurtured at a sufficiently early stage of their University studies. Significantly though, such competences are not only of value to future employers, but are also necessary for a student's successful study whilst at University (Berger & Wild 2015a). As Barnett & Coate (2005) note, there is also a view that a central purpose of higher education is the development of identity, of which the formation of 'wicked' competences is an important part. Consequently, it follows that a Law School should seek to strengthen them as part of the curriculum (Knight 2007).

Nevertheless, traditional University assessment practices are not compatible with this objective, as 'measurement' approaches tend to dominate, which are in turn "clearly unsuited to 'fuzzy' or complex competences" (Knight and Yorke, 2003). Instead, it is suggested that approaches such as authentic assessment or work-integrated learning are more appropriately used here (Knight 2007). However, this presents a number of challenges.

To be successful, any interventions to enhance the assessment of such soft skills or '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. In this regard, Professor Rubin (former Dean at the Vanderbilt Law School) reflected on his failure to convince colleagues to update and refresh the School's first year Contracts class, commenting: "Some members of the faculty got a little overstressed by all the change...Planning a new course, you have to move out of your comfort zone a little in terms of teaching. And there is always the fear that your school will wind up being seen as an oddball place" (Segal 2011). Yet it is precisely this approach that the Solicitors Regulation Authority (SRA) has sought to encourage via its Day 1 outcomes, and one that lies at the heart of the QAA Subject Benchmark Statement for Law (2015) which provides that: '...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.'

When exploring the contribution that Business Schools have had to the development of 'wicked' competencies, Shepherd and Douglas (1996) noted that many lecturers teach logical thinking as opposed to that of flexible, entrepreneurial thinking. Logical

thinking, they argue, can lead to incorrect and unworkable answers, even though a student's underlying theoretical knowledge may be perfectly sound. In this regard, Shepherd and Douglas (1996) suggest that 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. In other words, the goal is to provide authentic assessment opportunities; innovative learning methods that coincide with the requirements of potential entrepreneurs (Cumming & Maxwell, 1999).

Most importantly of all though, whilst academic achievement is still seen as a significant dimension of employability, students – and their families - increasingly see the need to add value to them in order to gain an advantage in the job market (Tomlinson 2008). 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, as will be discussed for the remainder of this paper, in terms of assessment.

## II. 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), and though explicit preparation for employment due to the relevance of the tasks undertaken (Herrington & Herrington, 1998).

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 are reluctant to veer too far from the long established

model or legal education for fear of being regarded as the 'oddball'. Consequently, 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 and the improvement of academic performance have 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 impact on both student performance and student employability; 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 and student employability 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).

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. In this regard, 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. This is reflected in further benefits, such as increased confidence in critical reasoning skills and, ultimately, in enhanced student employability.

### **III. 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.

In line with the recommendations of Bhaerman & Spill (1988), each ECCA has a competency statement which specifies the way in which each skill is employment related and how attainment is quantified, measured, and verified. In other words, the School provides a definitive module documents for each ECCA which "define the skill, describe how it enhances employability, specify the level of proficiency to be reached, itemize the indicators of success that will be measured, identify the means of measurement, and explain the basis on which the need for the skill was determined" (Bhaerman & Spill 1988). Proof has also offered to demonstrate that gain occurred as a result of program participation (Beger & Wild 2015a).

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.

#### **IV. 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.

In Budge & Gopal's study (2009), 93% of their participants indicated that they would like to receive feedback progressively, with one respondent commenting specifically on the importance of timing: "I think every subject should be graded throughout the semester, allowing plenty of feedback and therefore the opportunity to achieve a HD. No student should be shocked or surprised at the end of a semester when the grade is significantly lower (or 'Failed') than what they expected." Furthermore, 75% of respondents indicated that feedback motivated them to study. In particular, students have an interest in "receiving feedback about their strengths and weaknesses [so as] to enable them to apply this to their learning and incorporate it into future assessment" (Budge & Gopal 2009).

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.”

## V. ECCAS

Taking mooting – which has a long standing presence within legal education (Keys & Whincop, 1997) - as an example of continuous mid-assessment formative feedback: There is one thing constructing an argument and giving advice in a paper-based exam scenario, which does not matter which ‘side’ the student takes as long as they make the soundest argument possible. But when the student is forced to represent a hypothetical client, who will not likely readily accept advice that their case lacks merit, the student starts thinking creatively, and will develop an argument mid- assessment, if the original prepared position does not seem to be effective.

During a moot, the student commences the oral assessment with a prepared skeleton argument, which has been submitted before the moot, to allow the assessor to prepare questions. The timed (usually 10-20 minutes) oral assessment is a ‘conversation’ between the student and the tutor, designed to test the student’s knowledge of not only the relevant law relating to the topic, but also the student’s intelligence in understanding why the legal principles exist and how they correlate with other topic areas. Depending on the standard of the student, the tutor is able to tailor the questioning to allow the student to develop the argument well beyond that of the original written skeleton. However, this requires tutors ‘to become ever more skilful in their ability to evaluate teaching situations and develop teaching responses that can be effective under different circumstances’ (Darling-Hammond & Snyder 2000).

Indeed, since there are no ‘right’ answers in law, the assessment is perfectly attuned to discovering more than simply a student’s legal knowledge – it is also an effective means of testing emotional intelligence and wider knowledge of social and political issues. As Ku (2009) notes, assessments which support open-ended responses “make it possible to assess [an] individuals’ spontaneous application of thinking skills on top of their ability to recognize a correct response”, thus enabling the tutor to evaluate a student’s ‘wicked’ competencies such as their critical thinking performance. Furthermore, by developing a student’s arguing skills, the tutor is able to demonstrate that the construction of a legal argument is closely aligned with critical reasoning skills – a skill which is not usually expressly taught as a part of the academic degree curriculum, but which is a vital component for optimum law degree performance.

Of course, as noted earlier, it is important that the assessor is trained in asking appropriate questions, to elicit optimum responses from the student, so ECCAs must be run and accredited by the University, with trained and experienced staff - rather than as a student-led society which cannot guarantee rigour. To ensure assessment standards are maintained, Berger & Wild (2015b) explain how authentic assessment can be used as a teacher-training and monitoring aid.

## CONCLUSION AND RECOMMENDATIONS

After having considered the five academic year ‘milestones’ and correlated datasets within the School of Law for the past five years - (i) Number of students enrolled on co-curricular courses, compared to other Schools; (ii) Student Barometer returns, measures student engagement levels, mid-year; (iii) Number of students awarded diplomas/certificates, compared to other Schools; (iv) NSS returns, measures student engagement levels, end of year; (v) DHLE results, measures student engagement levels and authentic assessment method effectiveness - we reach the following conclusion.

Mooting was taken as the baseline for student engagement with ECCAs, due to its long standing presence both within the School and legal education (Keys & Whincop, 1997). This activity has run on an annual basis for almost twenty years, as well as in a variety of forms. In its earliest format, this was a non-credit bearing extracurricular activity that attracted an annual enrolment of 60 students (The following numbers were recorded: 2010 – 58 students, 2011 – 67 students, 2012 – 51 students). However, by mid-November, this number had usually dwindled to less than 20 students, (Precise numbers for 2010 through to 2012 are not available for these time periods). In an attempt to increase interest in this activity, the School converted this course into being a zero-credit ECCA, which would appear on a student’s transcript. This had little or no impact on initial student engagement with the activity, or indeed retention of numbers throughout the year.

In 2013, the decision was made to amend the format again. This involved establishing mooting as a credit-bearing ECCA, though students would only achieve the credits if they engaged in a series of activities, including a round-robin mooting competition during Semester A, followed by a knock-out competition throughout Semester B culminating in an Easter final, (The credits available for mooting included 5, 10 and 15 credits, depending upon the level of student engagement during the year). In 2013, this change in the mode of delivery resulted in 346 students enrolling on the mooting course. Furthermore, of these, 128 students progressed on to the knock-out phase of the internal competition. Significantly though, many of those who had participated during

the Semester A round-robin competition continued to attend so as to support friends and/or observe which teams progressed through to the final. In 2014, this increase in both the engagement and retention of students with the course was repeated, with 285 students formally enrolling on the course in Semester A and, of these, 127 progressed on to the knock-out phase.

With regards to the first cohort of students graduating under the new credit-bearing ECCA programme, Berger & Wild (2015a) note that the School of Law awarded 35 students with a Certificate (requiring at least 30 credits) or Diploma (requiring at least 60 credits) in Professional Development, in the academic year 2014-15. These students all participated in ECCAs with an authentic assessment delivery method. It is worth noting two points. First of all, when it is noted that the maximum number of credits that a student may study, over and above their normal diet of study on the undergraduate degree, is 30 credits per year, the level of engagement in other ECCAs (i.e. beyond that of mooting), and across the past two academic years, becomes clear. This is something which the authors intend to map and track across a five year period so as to better understand student engagement and its impact on student employability. Secondly, out of these students, 34 received a 1<sup>st</sup> Class or Upper Second Class (2:1) grade on their law degree. This figure of 98% who received the highest awards, compares with 58% across the entire cohort - doubling the academic law degree performance of the ECCA students.

Turning to the School's DHLE results, a similar upward trend is readily identifiable. In 2014, the School's DHLE result was 93.5% (compared with a University average of 93.5%), an increase of 4.3% from the 2013 figure of 89.2% (compared with a University average of 88.8%). For 2012, the School's DHLE result was 86.2%, compared with a University average of 86.6%. At the time of writing, available information suggests a similar increase in the DHLE result for the School, reinforcing the positive benefits to be gained from widespread student engagement with the co-curricular programme and the impact of social media on the establishment, and maintenance, of a student oriented community.

Whilst there is considerable mileage in extending this analysis across a five year period so as to better understand the impact of authentic assessment on student employability 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 School's student employability rates. One aspect, which the authors intend to explore further alongside these data sets, is the performance of students who engage in a range of ECCAs across the entirety of their studies.

It is our conclusion, that ECCAs are a vital component in augmenting academic law degree

delivery to improve student employability as well as their academic performance though ultimately, as Henry et al (2015) observe, the individual will always be responsible for their own success.

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