needs to be carried out is to determine the passmark, and whatever other borderlines are significant. The marks achieved by a large group on an MCE test are sufficiently unpredictable that the raw marks need to be converted.

The investments of time which are necessary to introduce MCE are significant but by no means prohibitive. Time has eto be spent on learning to use a spreadsheet or database program, setting appropriate questions and supplying students with a specimen exam paper. These outlays are not recurrent. The examiner has to be prepared to spend much longer than usual setting the exam but the papers can be collected and the questions recycled.

The use of MCE as an assessment mechanism has been used elsewhere for a long time. It is well worth considering its introduction more fully into the undergraduate law curriculum.

Law school examinations and factual analysis
H Gensler
31 *Law Teacher* 2, 1997, pp 198–207

One of the greatest difficulties students face in law school is not memorisation of countless legal rules with innumerable exceptions, defences and alternatives but the expeditious and judicious analysis of complex fact patterns. Analysis of fact patterns is a central exercise in the legal curriculum, yet it arises *ad hoc* in the classroom and there is no course on the analysis of facts *per se*. There are recurring paradigms and techniques which can be learned. An understanding of these techniques by students should greatly facilitate their test taking ability, as well as enhance their ability to diagnose and analyse legal problems professionally.

It is important to delineate the rule of law in elemental form because the crux of a legal analysis is the identification of each fact which satisfies each element of the legal rule. In order to analyse the facts, it is necessary to specify the standards which satisfy each element. Only after the facts have been exhaustively analysed in the context of the elements of the legal rules can a conclusion be properly drawn.

The most basic type of fact pattern is the express fact pattern. All the relevant facts required for arriving at a single legal conclusion are expressly stated. The legal issue is resolved in the positive or the negative with virtually no room for reasonable dissent. This is the simplest form of factual presentation. It is rarely if ever employed.

A slight modification on the express fact pattern is the use of an implied fact. One or more of the facts required to reach a sound legal conclusion are absent. Rather, they are implied, either by law or by logic, by other facts which are stated. The student is required to determine whether an element of the legal test is satisfied where there is no direct statement on that point. The student must draw logical conclusions or know legal implications in order to complete the legal chain.

At times, a necessary area of the statement of facts will be missing. It is imperative that new facts are not invented to fill the hole. The correct method of handling such a problem is to indicate that there are no relevant facts stated which apply to a specific legal element. Then the student must explain that, if the unstated facts were of one type, then the element would be satisfied. Otherwise, the legal element would not be satisfied and recovery would be barred. Such a question provides an excellent test of a student's knowledge of all the elements of a legal rule, as well as the student's ability to identify which type of information is required to complete the problem. The student should explain that a fact is missing and indicate which types of facts provide which types of conclusions.

Another common technique employed in constructing law school examinations is the use of an ambiguous fact. In an ambiguous factual situation, the fact either satisfies a legal element — or it does not. The student only has to point out that the fact is ambiguous and what the alternative outcomes would be depending upon its ultimate characterisation by the finder of fact. Of course, the student may draw a conclusion but the student would be well-advised to caution that reasonable minds could differ on the point.

Another favourite technique relied upon by law professors is the weak fact. The weak fact situation exists where there is a continuum or scale of possible degrees of facts. The given fact lies somewhere on this scale. It neither clearly satisfies the burden nor does it clearly fail to satisfy the burden. It is a weak fact that lies somewhere in the grey area between obvious rejection and acceptance of the legal rule.

An additional complication that can be added to the above situations is to place the facts in an impractical setting. The facts satisfy the classic legal definition but the case is so trivial or the damages are so minimal that no attorney would advise pursuing the case. In an examination situation, a student would be well-advised to complete the legal exercise and analyse the facts methodically. After drawing the appropriate conclusion, it would be wise to note that this par-

ticular case is trivial and would not be undertaken by a responsible attorney. The incorrect approach is to dismiss the point on its face as being impractical.

A red herring is an irrelevant fact. The purpose of such facts is to distract the student either by providing superfluous facts which should be ignored or by misleading the student by appealing to the student's emotions.

The law is a sufficient challenge in and of itself. The process of becoming an attorney need not be unnecessarily complicated by legal sleight of hand by drafters of examination questions. An understanding by exam drafters of the technique of presenting fact patterns in an orderly and logical method should enable students to be better equipped to demonstrate their legal skills.

CLINICAL LEGAL EDUCATION

On your feet in the industrial tribunal: a live clinical course for a referral profession
N Duncan
14 *J Prof L Educ* 2, 1996, pp 169–187

For four years now students studying the Bar Vocational Course (BVC) in the UK have been able to choose an option which involves working with the Free Representation Unit (FRU). This enables students who have experienced a variety of simulated clinical activities to translate what they have learnt to representing the interests of real clients.

The BVC addresses seven skills: Legal Research, Fact Management, Conference Skills, Negotiation, Advocacy, Opinion Writing and Drafting. In spite of its differences from the more conventional options, the FRU option is designed to achieve the same learning objectives, although in a very different way. It has the scope to do so more effectively. In addition it can address other objectives as a result of students' exposure to real cases. This enables them to put what they have learnt in both their undergraduate and vocational courses into context, to develop a more critical view of the system within which they will operate and to reflect more effectively on their experience.

To become a FRU representative it is necessary to undertake two weekend training courses in social security and employment law and to undertake seconding. This requires the writing of two opinions in each area on cases being undertaken by an experienced representative. On completing seconding, they may start to take out cases. When they undertake the case on which they will be assessed, assessors do not sit in on their activities. Instead students are asked to produce a file containing the documents in the case and notes relating to their preparation of activities.

Students are expected to carry out legal research themselves and to answer any questions which are readily answerable from the main sources and practitioner texts. However, in areas such as tactics and dealing with awkward procedural matters, seeking permissible advice from tutors is seen as appropriate. Assessment is based on the same criteria as the assessment of skills on other parts of the BVC. This involves a criterion-referenced, rather than a norm-referenced system of assessment, with established assessment criteria.

There is no doubt that being responsible for real client work is a most powerful motivating factor. Undertaking a real case produces a further boost in motivation and often surprising levels of work and commitment from students. The FRU also allows integration of skills and the opportunity to take a particular case from start to finish, to the extent appropriate for a referral profession. The task then requires not only factual analysis and legal research but also one or more conferences with the client, and some or all of the following: drafting of requests for discovery or further particulars, dealing with other interlocutory matters, negotiation with the opponent and advocacy in the industrial tribunal. This has a profound effect on students' understanding of how the various components of their course fit together in practice. Thus the inherent characteristics of the FRU option enhance the effectiveness of the remainder of the course.

A characteristic of UK legal education has been the growth of live client courses in undergraduate LLB degrees. More than half of the law graduates produced each year do not go on to enter the legal profession. For this reason, clinics are directed towards educational rather than vocational objectives. Most undergraduate clinics operate with a high degree of supervision which is also tutor-led. On the FRU option, however, supervision has a much lower profile, being available if the student seeks it but not imposed.

A common criticism of live clinical courses is their cost. They do tend to be resource intensive, particularly in terms of staff time and staff flexibility. However, the existence of FRU, geographically very close, and providing all the expertise that could be wished for, made the step of setting up an internal clinic unnecessary. The advice of a caseworker and other FRU representatives, who are experienced in the day-by-day work of preparing cases, dealing with interlocutory matters, and representing clients in the