

## ASSESSMENT METHODS

### New modes of assessment

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The traditional and dominant mode of formal assessment in law schools is an essay examination administered at the end of the semester. Although essay examinations are the standard method of formal assessment in law school, they have their own strengths and limitations. These include the ability to assess writing skills and provide limited clues about the desired answers, thereby requiring students to recall material and generate an answer on their own. An additional advantage of essay exams is that the opportunity to explain an answer may identify an ambiguity in the question that would remain concealed with forced-choice exams.

The limitations of essay examinations result in some way from their strengths. Because students must write out their answers, essay exams are time-consuming to take. Their open-ended nature also makes them difficult to grade reliably.

When considering whether and to what extent to adopt alternative methods of assessment, law teachers need to compare the alternative methods to how essay examinations actually work, rather than comparing them to an inaccurate and idealised version of how they work. Essay exams, by requiring knowledge to be organised and written down, are a comparatively time-consuming way of testing knowledge. Because the time for taking exams is limited, an essay examination can test only a relatively small sampling of the course. This means that essay examinations are especially prone to sampling error in the items tested, thereby misrepresenting students' knowledge. This reduces the reliability of the exam.

A traditional essay exam calls for the application of recalled law to a factual situation. This tests the ability to read, to identify facts as triggering the application of legal rules, and to write analysis. Thus, the traditional law school exam does not test the ability to interpret and apply

unfamiliar legal materials. As a result of this discrepancy, there is a substantial lack of congruence between the subjects taught and the subjects tested. This removes a motivation for students to learn critical skills and makes tests unrepresentative of students' abilities.

Using performance exams solves this problem by testing for a full range of relevant skills, including reading cases, statutes and rules. However, the time necessary to apply such legal skills means that performance exams achieve narrower coverage of the substantive law than conventional essay exams.

The traditional essay examination is extremely time-consuming to grade. To mitigate the burden of grading, professors tend to assign a single examination at the end of the semester. One examination is less work than several, and grading examinations at the end of the semester, miserable though it is, avoids conflicts with teaching, committee work, and other duties.

This format, the end-of-semester essay examination, has several difficulties. Using a single occasion for graded assessment decreases reliability by making it possible for random factors, such as the students' or professors' personal crises, to have a substantial effect on grading. Using a single occasion for graded assessment also reduces feedback during the semester.

The grading of essay examinations is likely to be highly inconsistent. Lack of reliability by reason of scoring inconsistency may be a grave problem in law schools, which have no internal coordination among faculty members in scoring exams even when teachers are teaching sections of the same course.

Although law schools lack a pool of graduate students to provide formal, non-instructor assessment, other alternatives exist. These alternatives allow for more frequent assessment. In addition, they broaden students' perspective from believing that the professor's answer is the only right answer to believing that there are many ways to approach a problem.

One possibility is outside assessment by judges, practising lawyers and members of the community. Outside assessment provides a variety of perspectives, helping to counteract the belief that there is a single right way - the instructor's way - to practise a skill. Although outside assessment is an important resource, it is not fundamentally different from instructor assessment. In both cases, the assessor is presumably experienced and impartial. However, some characteristics associated with outside assessment may require more care in assessment practices. Second, outside assessment may more often require multiple assessors.

Student-based assessment offers important advantages to the learning process that do not occur with instructor-based assessment. Lawyering involves complex strategies, and law school cannot possibly anticipate the legal issues or even the skills that students will need in their decades-long careers. The ability to self-assess one's work is, therefore, critical to lifelong learning in practice. Thus, some of the most valuable knowledge we can give students is how to monitor and learn from their responses to novel situations.

The obstacles to good peer or self-assessment are formidable. The chief difficulty of assessment in the learning process is that the same deficiencies that make people poor performers often make them poor judges. Assessment of one's own work is difficult because most of us have a bias in favour of our own work, even when no grade turns on the assessment. Peer-assessment reduces several disadvantages of self-assessment. The most obvious benefit of peer-assessment is that it diminishes bias. A second advantage of peer-assessment is that the peer assessor does not know what the person being assessed was trying to say or do. This contributes to a more impartial review. Also, a student reviewer who identified deficiencies in another student's work may be better able to see them in her own subsequent work.

Multiple-choice questions can be used as a vehicle for either formal or in-

formal assessment. For informal assessment, multiple-choice questions can be used in class without requiring students to turn in answers. Students' answers provide vehicles for discussing the rules. The focus provided by the possible answers can restrain more wide-ranging discussions and supply objective feedback for students so that they can better assess their work. In-class discussions also allow the instructor to detect problems with questions and fix them before using them on an examination with another class.

The advantages of using multiple-choice questions for formal assessment include broader coverage than essay or performance examinations and a reduction in grading burdens. The reduced grading burdens make possible quick, frequent, and low-stake examinations during the semester. These encourage students to keep up with work and provide them with frequent feedback on their progress.

Multiple-choice questions have limitations. They require students only to evaluate arguments, not to construct arguments on their own. Thus, although multiple-choice questions can evaluate knowledge of grammatical rules and the ability to organise an argument, they are poor at testing the ability to express oneself in writing. In addition, multiple-choice questions allow a student to guess an answer.

Even the limits of multiple-choice questions can sometimes be turned into advantages. Essay examinations require students simultaneously to demonstrate several skills. While more realistic than multiple-choice questions, essay examinations make it difficult to assess where an error is occurring. Multiple-choice questions can break that complex task down into the many elements of effective legal performance and isolate them.

Most people who draft multiple-choice questions agree that drafting them is very difficult. Ambiguity on essay questions can be removed by including an answer that identifies the student's perspective on an ambiguity that the questions create. Ambiguity on multiple-choice questions cannot be addressed through the

forced choices available. Class discussion of multiple-choice questions can provide a basis for identifying ambiguities and improving questions for a subsequent administration to a different class.

Skills evaluation and multiple-choice questions are often thought to be inconsistent. Certainly, multiple-choice questions cannot easily test writing skills. Moreover, instructors consistently overestimate the extent to which their multiple-choice questions test skills. On the other hand, law professors do use multiple-choice questions to assess skills, and in some respect they offer more sophisticated tools for analysing skills than essay questions. Multiple-choice questions can ask only about the facts, pinpointing students' difficulties in reading facts, or include a rule of law, pinpointing students' difficulties in applying rules. Moreover, multiple-choice questions provide fast feedback and statistical verification of the reliability of questions.

Essay questions can test a student's ability to identify relevant facts, apply the law to them, and organise and write an answer. Unfortunately, the very complexity of essay questions limits their usefulness in identifying where students make mistakes. The thought process in writing an exam answer is a chain with many links and when the chain breaks, it is often impossible to tell which link failed.

The traditional multiple-choice exam tests knowledge of the law by asking questions about the legal rule and forcing the student to select among alternative statements of the law or by providing a fact pattern and alternative answers applying the law to fact. Multiple-choice questions requiring reading, recall, and application are quite similar to essay questions in their complexity, but also share the defects of essay questions. Because the student can go wrong in reading, recalling, and applying a rule, a wrong answer to such a question does not reveal where the student went wrong.

The limitations of essay exams and traditional multiple-choice questions have led to the development of skills-oriented multiple-choice questions. These ques-

tions examine separately the ability to read facts and cases and the ability to apply an unfamiliar rule of law. Questions testing for the ability to read facts provide reading material and ask factual questions about it. Questions testing for law application provide a rule of law and ask the student to apply it. Breaking down legal analysis into pieces also makes the test more effective as a teaching tool. The information about where students are going wrong is often a surprise to them.

## ENROLMENT POLICIES

### **Does the LSAT mirror or magnify racial and ethnic differences in educational attainment?: a study of equally achieving 'elite' college students**

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A growing number of American law schools, and flagship public law schools in particular, have recently terminated race-conscious affirmative action plans in order to comply with various court decisions, popular referenda, and actions by public officials. Moreover, it is quite possible that the United States Supreme Court will soon grant review to one of the several pending challenges to affirmative action at public universities. As affirmative action continues to come under fire, high-stakes standardised tests like the Law School Admission Test ('LSAT') have also become the focus of intensified criticism. Much of the debate centres on whether standardised tests like the LSAT are neutral barometers of racial and ethnic differences in educational achievement.

In this study, African American, Chicano/Latino, Native American, and Asian Pacific American applicants were matched with White applicants who possessed equivalent undergraduate grade-point averages ('UGPA') from the same colleges during the same time period. The database of 1996, 1997, and 1998 applicants from 15 highly selective colleges and universities to Boalt Hall, the law school at the University of California, Berkeley was relied on. This is the first attempt to repli-