CLARIFYING ASSESSMENT: DEVELOPING OFFICIAL TYPOLOGIES AND INSTRUCTIONS FOR FORMS OF ASSESSMENT IN LAW

ALEX STEEL*

ABSTRACT

Law students are expected to complete a range of assessment throughout their degree, and do so with varying levels of success. Increasingly, research has examined the ways in which student performance can be enhanced. While much focus has been on how to best to provide students with feedback that can be acted on, this paper examines the extent to which standardisation of the way in which assessment tasks are described could assist students.

The use of the same name to describe different variations of an assessment task can create confusion for students and for new members of staff. Research demonstrates that students find it difficult to understand tacit knowledge embedded in assessment descriptions and feedback, and could benefit from clearer explanations of cognitive activities and product forms. Additionally, it is clear that student dialogue over the meaning of assessment requirements is valued by students. In order to assist with this process this paper suggests the development of official typologies of assessment and authoritative explanations of assessment requirements across a course of study.

I. INTRODUCTION

The form and nature of types of assessment in a law degree vary from subject to subject. There are good pedagogic reasons for this. Key graduate skills of research, extended writing for different audiences, communication skills, etc. require repetition in order for students to gain expertise. As students begin as novices in the use of legal academic discourse they require assistance and feedback on their assessment activities. Varying the format of assessment types avoids staleness and permits development of different perspectives on a task, but can still allow for formative repetition of the underlying skill assessed. However, the use of the same name to describe different variations of an assessment task can create confusion for students and new members of staff. By contrast, a method of highlighting those underlying skills and providing a consistent nomenclature for task descriptions can be of assistance in the process of increasing student understanding of assessment requirements.

II. THE LIMITATIONS OF FEEDBACK FOR IMPROVING STUDENT LEARNING

In recent years there has been an increasing focus in educational literature on the ways in which students understand feedback on assessment in higher education.[1] Initially, significant improvements in student learning were found to be possible via increased levels of feedback

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1 For a comprehensive review see Carol Evans, 'Making Sense of Assessment Feedback in Higher Education' (2013) 83 *Review of Educational Research* 70.

post assessment completion.[2] However, further research has found that feedback alone may not as beneficial as imagined. Issues that have arisen include the existence of differences between students' understanding of the aims of assessment tasks or the feedback they receive and that of the setting and marking academics;[3] that strong adherence to overly detailed rubrics can lead to perverse results;[4] and that students need explanation of standards if they are to understand them.[5]

Part of the difficulty with reliance on feedback mechanisms alone − particularly those based around written formulas or rubrics − is that higher education requires students to enter a 'community of practice' in academic writing which requires them to demonstrate their learning using the particular forms of discourse in that discipline.[6] However, understandings of what amounts to academic literacy can vary across disciplines and at times between assessment markers.[7] It has been argued that students need a space to discuss what the feedback might mean in order to be able to absorb it.[8]

In a recent paper,[9] Royce Sadler has argued that much of the effort in giving students feedback is misplaced and of limited utility for ongoing learning. He argues that:

> regardless of levels of motivation to learn, students cannot convert feedback statements into actions for improvement without sufficient working knowledge of some fundamental concepts. Teachers who compose feedback obviously possess and draw on a working knowledge which embraces these concepts. They also tend to assume that students are at least adequately equipped as well. However, unless this prerequisite knowledge is identified and addressed, the prospects for even the most thorough feedback are inherently limited.

Sadler continues:

> Students face at least three interpretive challenges in trying to capitalise on feedback. The first relates to the work as a whole: students may focus partly on a work exactly as it was submitted or performed and partly on what they had intended it to be. The learner's personal investment in the production then blurs the boundary between the two. The second challenge arises when the feedback's implications for action are dependent on student understandings of certain concepts or criteria used in the communication. Teachers become accustomed to using certain terms and can easily presume that students know what they mean. A third type of challenge is experienced by the student who lacks the tacit knowledge necessary to identify the feature of their work to which some part of the feedback refers … In all three situations, the student cannot make critical connections between the feedback and the work.[10]

These problems can be overcome if students come to understand the key underlying concepts that are used in assessing quality in complex assessment. Simply being told what

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2 See the comprehensive review of research by P Black and D William, 'Assessment and classroom learning' (1998) 5 *Assessment in Education* 7.

3 David Carless, 'Differing Perceptions in the Feedback Process' (2006) 21 *Studies in Higher Education* 219.

4 D Royce Sadler, 'Indeterminacy in the use of preset criteria for assessment and grading' (2009) 34 *Assessment & Evaluation in Higher Education* 159.

5 Berry O'Donovan, Margaret Price and Chris Rust, 'The student experience of criterion-referenced assessment (through the introduction of a common criteria assessment grid)' (2001) 38(1) *Innovations in Education and Teaching International* 74; Berry O'Donovan, Margaret Price and Chris Rust, 'Know what I mean? Enhancing student understanding of assessment standards and criteria' (2004) 9(3) *Teaching in Higher Education* 325.

6 Sue Bloxham and Amanda West, 'Learning to Write in Higher Education: Students' Perceptions of an Intervention in Developing Understanding of Assessment Criteria' (2007) 12 (1) *Teaching in Higher Education* 77; Andrew Northedge, 'Enabling participation in academic discourse' (2003) 8 *Teaching in Higher Education* 17.

7 Ibid.

8 David J Nicol and Debra Macfarlane-Dick, 'Formative assessment and self-regulated learning: a model and seven principles of good feedback practice' (2006) 31 (2) *Studies in Higher Education* 199; Richard Higgins, Peter Hartley and Alan Skelton, 'Getting the Message Across: The problem of communicating assessment feedback' (2001) 6 *Teaching in Higher Education* 269. In addition, students can benefit from a gradual entry into such discourse requirements, through progressively removed learning scaffolds. Such scaffolds could model aspects of the form of the discourse. One simple example could be the dictation of the format of each paragraph in a first year answer.

9 D Royce Sadler, 'Beyond Feedback: developing student capability in complex appraisal' (2010) 35 *Assessment & Evaluation in Higher Education* 535.

10 Sadler, above n 9, 540.

those concepts are is likely to be insufficient. This insight underlies critique of over-reliance on detailed rubrics as feedback mechanisms.[11] Instead, what is likely to be needed is a space for what David Carless calls 'assessment dialogues'.[12] By this he means a process through which students and staff can discuss the assumptions and tacit knowledge that staff bring to assessment marking, and that are often absent from formal assessment instruction or feedback.

Sadler argues that the fundamental concepts or tacit knowledge that are needed by students are in three categories: task compliance, quality[13] and criteria.[14] Issues of dialogue about quality and criteria often form part of discussion of feedback. But from a student's point of view the initial concern involves task compliance, with which this paper is concerned. Task compliance refers to the need for students to submit a work that corresponds to the type of work required by the set assessment. Thus a student would fail to comply with an assigned task to critique an article if they were to submit a descriptive summary. As Sadler points out, different types of tasks require different cognitive processes (or combinations of cognitive processes) and they result in distinctive forms of final product – a case note looks very different from a research essay. If a student fails to produce a work that complies with the task, it is not possible to fairly assess the quality of their work. Giving such work a grade requires unwanted compromises between fairness to other students, recognition of misguided effort, and penalties necessary to maintain the integrity of the assessment process. Students who submit such work often display ignorance of their failure to comply with the task requirements.[15]

However, increasing the degree of detail of task explanation is likely to encounter the same limitations as over-reliance on written feedback. That is, student understanding is unlikely to be advanced without the creation of some form of dialogue about the meaning of the task requirements.[16]

III. STUDENT PREFERENCES

This has been demonstrated through research in the United Kingdom by Sue Bloxham and Amanda West. A series of assessment assistance activities were undertaken with students in the hope of increasing their performance.[17] Follow-up research the next year sought to determine the ongoing effectiveness of these interventions. Among other things, they found that while written instructions did have some impact, the activity students found most beneficial was informal conversation with their teachers. This, they found, was because the teacher could act as a translator between the specialist discourse of the assessment requirements and the language students found more familiar.[18] In light of this finding they concluded that the most effective approach to improving student performance would be a combination of: putting all relevant assessment information into subject outlines; undertaking an activity that made students attend to that information; and providing an opportunity for dialogue about assignments, both before completion and after marking.[19]

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11 Nichol and Macfarlane-Dick, above n 8; D Royce Sadler, 'Indeterminacy in the use of preset criteria for assessment and grading in higher education' (2009) 34 *Assessment & Evaluation in Higher Education* 159.

12 Carless, above n 3, 230.

13 Sadler, above n 9, 544. By quality Sadler means 'the degree to which a work comes together as a whole to achieve its intended purpose' – something that is difficult for students to understand in complex assessment such as essays, where quality is assessed 'configuratively' rather than as a sum of particular criteria. He sees the use of criteria to assess quality in such assessment as particularly problematic.

14 Sadler, above n 9, 544–5. Sadler sees criteria as properties or characteristics that are useful in determining quality. While some criteria (such as correct referencing) are simple to understand, many are quite abstract (such as originality, argument or clarity) and it takes time for students to develop competency in understanding their role and interaction with other criteria.

15 Sadler, above n 9, 544. There appears to have been no research on why this occurs.

16 O'Donovan, Price and Rust, above n 5.

17 The activities included an evaluation of the impact, on student work, of opportunities to practise using assessment criteria and grade descriptors, together with peer marking including the compilation of written feedback. Sue Bloxham and Amanda West, 'Understanding the rules of the game: marking peer assessment as a medium for developing students' conceptions of assessment' (2004) 29 *Assessment & Evaluation in Higher Education* 721.

18 Bloxham and West, above n 6.

19 87.

In 2012, UNSW law students (LLB and JD) were invited to take part in a wide-ranging survey on attitudes to the five most common forms of assessment in the law school: class participation, problem scenario assignments, group work, research essays and examinations.[20] For the purposes of this paper, responses to the three individual, written forms of assessment – problems, essays and exams − are reported. These assessment types are the ones most likely to have written instructions as to style, format and argument which could be replicated across a degree program. Students were asked what forms of advice or feedback they found *most* beneficial and were forced to choose between these options: 'Explicit instruction in class'; 'Written instructions and tips for assignments produced by teachers'; 'Feedback from teachers on your work'; 'Peer mentoring/peer tutoring'; 'Study guides produced externally to UNSW law'; 'Discussions with friends'; or 'Trial and error'. Whereas the Bloxham and West study was a follow-up on specific innovations, the UNSW study sought to survey the existing landscape in which no program-wide policies on assessment guidance existed beyond assistance as part of the introductory law subject in first year.
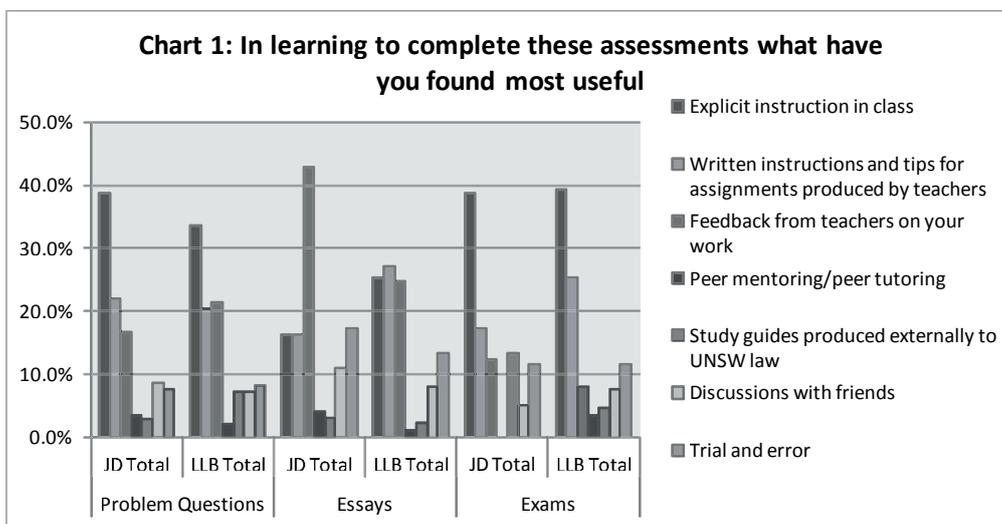

Chart 1 demonstrates that overwhelmingly, students nominated the first two options as the most beneficial – that is, handouts and explanations in class. In other words students found task definition (and hence their compliance) far more beneficial than post-assessment feedback. The one exception was for essays in the JD, where feedback was the most favoured.

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20 In June 2012 all UNSW LLB and JD students were invited to participate in the UNSW Law School Student Assessment Survey. The survey contained 81 items spanning six areas of law school assessment. They were: (1) class participation; (2) group work; (3) legal problem questions; (4) essays; (5) examinations; and (6) general assessment and feedback questions. The items were a mixture of forced-choice Likert scale responses to statements, open-ended text based answers to questions, and multiple choice single answer questions, and were developed based on a literature review and the investigators' hypotheses of likely student issues. The survey formed part of UNSW Law's contribution to a university-wide Assessment Project. The aims of the survey were: to provide an empirical basis for understanding the student experience of assessment, as well as an opportunity for students to provide feedback to inform the future development of curriculum and assessment at UNSW Law; to create a benchmark against which innovations and refinements of assessment practices could be tested by follow-up surveys; and to inform further academic research into best practice approaches to assessment in the teaching of law. The survey was administered online via Survey Monkey and students were invited to participate via email. Student participation was entirely voluntary and anonymous, and the survey had ethics approval (UNSW Human Research Ethics Committee, application and approval no 12 058). A total of 332 LLB and JD students started the survey and, of these, 267 students answered all 81 questions. Those figures represent approximately 12% of then enrolled LLB students and 18% of JD students.

These findings reinforce the suggestions of Bloxham and West. As one UNSW student put it in free text comment:

> I spent hours trying to figure out the relevant materials that are useful in answering the questions and I've followed those assessment instructions but got a extremely low mark for that assignment. And the feedback from my lecturer was not quite clear. I don't understand why would I get such a low mark. I think I'd prefer an individual consultation about the assignment.

While this comment was an outlier, it does provide a sense of a student who has failed to grasp the fundamental requirements of the assessment task. Individual consultations for all students are of course not likely to be economical. Instead, what might be possible is to bridge the gap between the assessment instructions and what students receive from explanation by teachers in class. That is, helping students perform better in assessment might well be tied to increasing the utility of assessment handouts. The survey indicates that the benefits of assistance in class *prior* to assessments are significantly higher in most cases than *post*-assessment feedback. Increasing the utility of handouts, the other prior method of assisting, is likely to have significant benefits.

Official assessment task instructions can often be written in an academic shorthand and concentrate on describing the form rather than the substance of the assessment task. There have long been excellent guides to how to write problem assignments, essays, etc produced by individual law schools or learning centres.[21] But these guides are commonly generic in nature – and remain advisory, not definitive of an individual assessment task's requirements. Individual assessments may dispense with some characteristics or requirements of that form of assessment or require additional ones. These changes are unlikely to be clearly related to the generic writing guide. Examples of such slippages include differing requirements on referencing and bibliography, the desirability of headings, the degree of conciseness or depth required in analysis and the extent to which the student's own voice is suppressed in the written product.

In the UNSW survey, this variation was one theme of student comment. Two comments are illustrative of this:
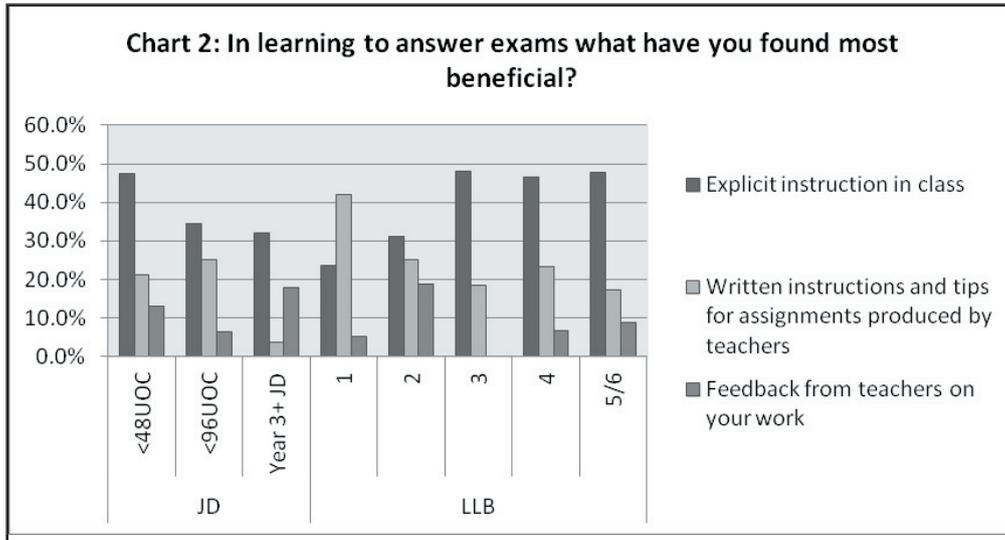
> In [subject A] I received feedback that I needed to do more research for my essay. In [subject B] this year I consciously did a lot more research. However, my [subject B] lecturer thought this was a bit of a waste of time as he didn't like the commentary on the area of law. It is hard to know what each lecturer wants and it feels that just as you do you have to start all over again with a different set of lecturers.

> I generally only use it on a teacher-by-teacher basis, as many teachers want different things. Or I'll say something like 'a teacher suggested we do x, do you like that or would you prefer y' and teachers usually let us know what they want.

When the options of explicit instruction in class, written instructions and feedback from teachers were analysed by year, there was also a discernible trend of increasing usefulness of feedback throughout the degree and a concomitant decline in the usefulness of handouts. Explicit instruction, though declining, remained the most beneficial form of assistance for most cohorts and assessment types. These findings merit further enquiry of students, but in light of the arguments about communities of learning discussed above, some preliminary explanations suggest themselves.

Final examinations are notorious for not containing much by way of teacher feedback, and little incentive for students to seek such out. It is therefore not surprising to see little usefulness in such feedback reported in Chart 2. Given the novice status of students early in their degree, there is a strong preference for written advice, but this declines over the degree – possibly as students realise that important tacit knowledge and expert tips are more likely to be found in dialogue with the teacher.

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21 For example see Brownyn Olliffe, *UTS:Law Guide to Written Communication* <http://www.law.uts.edu.au/assessment/WrittenComm.pdf>; Monash University, *Writing in Law* available at <http://www.monash.edu.au/lls/llonline/writing/law/index.xml>.

**Chart 2: In learning to answer exams what have you found most beneficial?**

Similar trends appear in Chart 3 concerning legal problem questions. These scenarios typically demand highly structured answer formats, and teacher expectations can vary from subject to subject. Thus it is likely that as students' expertise grows, they are less likely to trust generic assessment guides and instead quiz teachers on particular requirements.

Chart 3: In learning to solve legal problem questions what have you found most beneficial
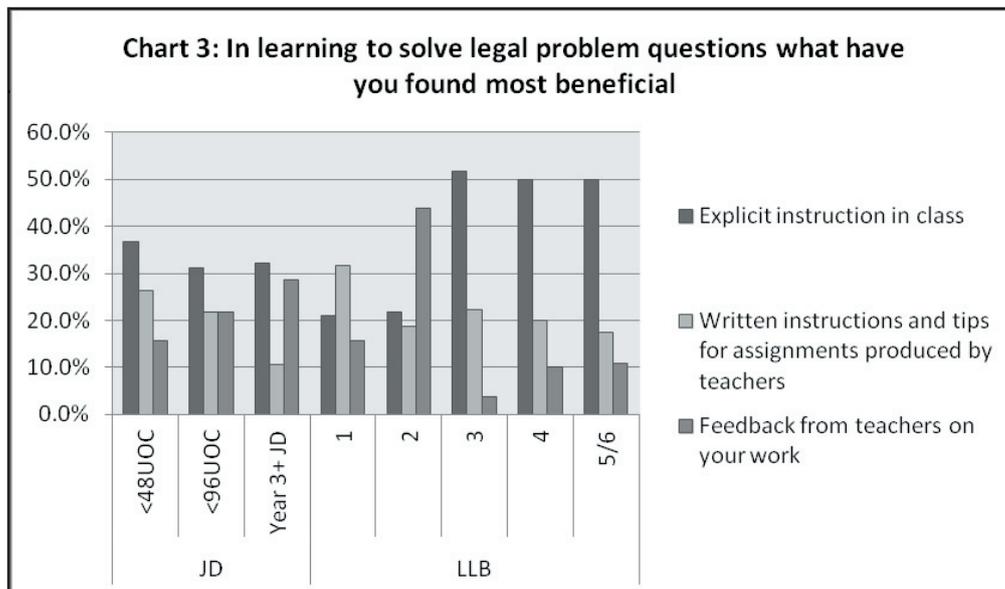
However, Chart 4 concerning essays suggests a slightly different situation. JD students have already completed an undergraduate degree and may well be more comfortable with the demands of academic writing, thus finding instructions less important and marker feedback more easily applicable. LLB students, however, display a widely spread set of preferences. Of the three assessment types, essays are the least common, so understanding of the disciplinary discourse might be slower to achieve. Essays are also some of the most complex assessment tasks, and can give rise to a wide range of misunderstandings between staff and students.[22] These results may be evidence of the need for more clarity about markers' expectations.

22 Dai Hounsell, 'Contrasting Conceptions of Essay-Writing' in *The Experience of Learning: Implications for Teaching and Studying in Higher Education*, in R Marton, D Hounsell and N Entwistle (eds), Scottish Academic Press, 1997) 106−25.

Chart 4: In learning to write essays what have you found most beneficial
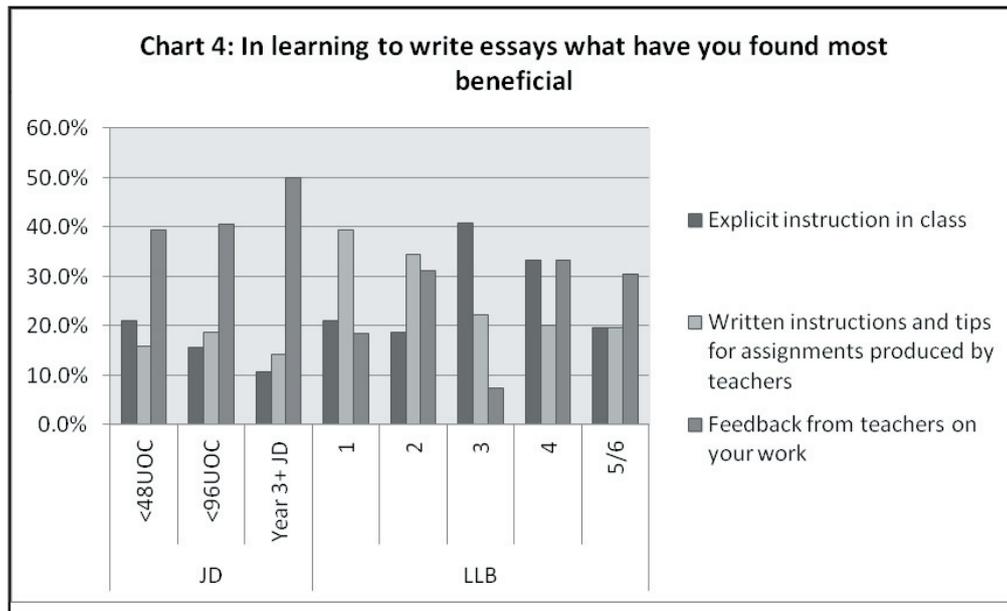
These are preliminary findings, and more work is necessary before they can be seen as demonstrating any firm positions. But they do suggest that students have strong preferences for advice prior to completing assessment and that they find it necessary to seek guidance from teaching staff beyond written handouts.

IV. STANDARDISING ASSESSMENT ADVICE THROUGH TYPOLOGIES AND DIALOGUE

It thus seems futile to imagine that any form of feedback or task description will replace the desire of students to discuss assessment tasks with teachers. However, one significant impetus for this desire is likely to be the fear that there is something novel about the way the task will be assessed, even if it appears to conform to a standard assessment type. Concomitantly, as Sadler points out, if there are novelties in the assessment task students may fail to understand these requirements and submit assessment conforming to incorrect assumptions.

Researchers such as Berry O'Donovan et al have argued that no one form of assistance sufficiently overcomes student concern and misunderstanding. However, they argue that a range of approaches, when taken together, can constitute a process of defining and refining student understanding of expectations.[23] They argue:

> developing a shared understanding of assessment criteria and standards requires a multifaceted approach. Accordingly, an assessment criteria and standards framework encompassing both tacit and explicit knowledge transfer processes involving verbal descriptors, exemplars, imitation and practice appears to be worth pursuing. Such an approach seems to be sought and suggested by students as they struggle to find firmer footing within the changing tides of assessment criteria and standards.[24]

To date, most of the emphasis in the research has been on assessment feedback and use of examplars. It should be possible to make this iterative process more efficient by more standardisation of the initial handouts. That is, one way of limiting students' failure to comply with task parameters and reduce the query requirements in each subject is to standardise the way in which assessment tasks are described across a degree, and possibly across the discipline.

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23 O'Donovan, Price and Rust, above n 5, 83.

24 Ibid. They go on to argue: The grid in its present quasi-scientific form has incorporated too great an assumption about the nature of the knowledge to be transferred and our ability to transfer it. Plausibly, this may involve looking at the grid as a process tool, facilitating shared understanding between staff and students, thus playing a key part, but only a part, in a multifaceted framework of assessment processes rather than as a stand-alone tool for explicit verbal description of standards and criteria (ibid).

This standardisation would mean that particular types of assessment were identified and given an official name, together with an official guide to the writing requirements. By so doing, what have previously merely been guides to generic assessments become the official definitions of that assessment type. If there is any deviation from that approach, individual subjects must clearly explain the variation.

This would mean that once a student had completed a task that was identified by an official nomenclature they could bring that understanding – tacit knowledge – of what was required, with them to the next task. By clearly delineating the differences between task types, students could also more easily see how their approach to the task would need to differ from their previous assessments. The ability for re-use of the descriptors to explain subsequent tasks is key. In this way the problems of merely being told the criteria with no clear prospects of 'feed-forward' can be overcome. Students can begin to see the nuances in the tacit knowledge of assessment types – particularly if they can compare their own efforts with that of exemplars. It also provides a common language for staff, allowing for more efficient explanation in class of what is required in each assessment task. If students can be comfortable that there is a shared understanding of basic expectations, dialogue on assessment can move on to more complex quality issues. The process also makes transparent to individual staff members the extent to which their marking practice deviates from the norm. This occurs both through a need to accept or reject the terms of the descriptor, and also through the increased ability of students in dialogue to explore differences through the use of a common language. There is often a general assumption that staff have expertise in marking, but often the markers are themselves novices uncertain of marking standards and emphases – a problem particularly acute for sessional staff more removed from the communal academic work environment.[25] For such markers, the creation of a common language may be just as useful as it is for students. Curriculum mapping is also enhanced by the use of generic descriptors.

Because the typologies are an attempt to generically describe the tacit knowledge of the academy, the attempt moves this knowledge from tacit to explicit. In so doing, staff are required to agree on a common understanding of the elements. It is likely that the process will be iterative, with the exposure of different understandings of the elements of assessment. While it may not be possible to precisely define the elements, approximation is a significant step forward for students.

In essence, what is suggested is to expand on the best practices identified for use of feedback criteria in a broader context of dialogue and move that to the earliest point in time possible. For a subject, that is the point at which the assessment task is defined, but across a degree that can be from the very beginning, as part of an elaboration of assessment types to be encountered in the degree course. As such, the approach suggested maps onto a number of David Nicol and Debra Macfarlane-Dick's seven principles of good feedback practice[26]. In particular the typologies: help clarify what good performance is (Principle 1) by defining more clearly what is expected of students, and by providing both advice and exemplars on how to achieve quality; and encourage teacher and peer dialogue about learning (Principle 4) by providing resources about which class discussion can occur, *prior to* the attempting of the assessment, thus increasing both the likelihood of success and also a focus on feedback against those markers. Repeated use of the same criteria across assessments can significantly assist in providing opportunities to close the gap between current and desired performances (Principle 6) through what has been described as 'feed-forward'.

An additional benefit of such an emphasis is to highlight in an applied way the centrality of definition to the practice of law – whether in statute or contract. Often legal documents begin with a definitional section. There is an increasing emphasis on the importance of statutory definition in legal curricula.[27] But not all concepts can be fully defined, and living with uncertainty is also an important aspect of legal practice. Providing appropriate general

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25   Karen Handley, Brigit De Outer and Margaret Price 'Learning to Mark: exemplars, dialogue and participation in assessment communities' (2013) Higher Education Research and Development 10.1080/07294360.2013.806438

26   Nicol and Macfarlane-Dick, above n8.

27   See, for example, Law Admissions Consultative Committee, *Approaches to Interpretation* (2009) available at <http://www1.lawcouncil.asn.au/LACC/images/pdfs/ApproachestoInterpretationLawSchools.pdf>.

definitions of forms of assessment is one way law schools can demonstrate the importance of precision in communication outside of legal documents. The fact that there remains a need for discussion as to their fully nuanced meaning is an important understanding for students. Typologies of assessment thus act as a way of modelling good professional practice for law students.

Thus the more detailed and explicit task requirements act as a springboard for more uniform and detailed discussion of the requirements in class. As the survey results demonstrate, this is the most valued form of guidance for students. Such discussions remain important in further closing the gap between the teacher and student's understanding of what the task requires. More detailed explanations alone are not a panacea that will close this gap, but in combination with exemplars and discussion should be of significant assistance.[28]

In this respect it is important to bear in mind the findings of Chris Rust et al, who analysed an attempt to fully define assessment criteria in feedback rubrics. They noted:

> However, our research experience has been that, without active involvement through discussion and debate, the development of a common view on standards and level is problematic, if not impossible – even within a close-knit community of a single academic department. Obstacles to the transfer of knowledge about standards and assessment requirements are accentuated when such transference takes place with more 'novice' students undertaking modular courses in which they have very limited time to construct cohesive, 'objective', interpretations of assessment standards. Obstacles which are further heightened in a broad-ranging, multidisciplinary and discursive subject …[29]

Rust et al's research demonstrated that student marks were likely to be improved if students could better understand the underlying tacit meaning of the assessment criteria. Their experiment involved the distribution of exemplar assessments, marking criteria and an opportunity to discuss student attempts to mark against those criteria. The use of typologies with associated examplars, and in-class discussion of them, could have similar effects.

V. IMPLEMENTATION AND LIMITS

Implementing such an approach to task definition could not be achieved overnight if it were to be authentic and effectively expose the tacit knowledge of markers. It would require a staged approach. A first stage could be to agree on an initial glossary of typology descriptions and accompanying definitions in terms understood by experienced staff. A second stage would be to include further description of what the terms used in those definitions meant from the perspective a novice student. A third stage would be to provide exemplars of the type of product required by the assessment type. Finally, incorporation of official advice on how best to achieve the formats and qualities required in the product could be added. With the introduction of each stage significant discussion between staff to achieve common understandings would be required. This could then be tested through dialogue with students and definitions and exemplars altered where necessary.

One important aim would be to make the typologies publicly available to students from the beginning of their degree, allowing them to compare and contrast their set assessments against the range of cognitive tasks that they would be set through their degree. This could then help to limit the degree to which students remained novices in legal academic discourse by providing links between current assessment tasks and their use as components of later more complex tasks – for example by demonstrating the similarities and distinctions between formats required for case notes and legal problem questions.

A sketch of what such a typology might look like is in Appendix A. It describes the separation of the generic essay format into three distinct types based on the degree of independent research required.[30] It is important to note that typologies are not all intended to be total descriptions of an

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28 Cf Nicol and MacFarlane-Dick above n 8; O'Donovan, Price and Rust, above n 5.
29 Chris Rust, Margaret Price, Berry O'Donovan, 'Improving Students' Learning by Developing their Understanding of Assessment Criteria and Processes', (2003) 28 *Assessment & Evaluation in Higher Education* 147, 151.

assessment task. Instead they are seen as constituent building blocks of complex assessments. Each could describe a different form or context of cognitive activity. Thus there could be a typologies of 'case-law research', 'legal citation', 'essay style', etc.

These cognitive typologies would be constituent parts of a range of larger assessment types such as 'research essay', 'problem scenario' and the like. There are also likely to be forms of assessment that contain a combination of the assessment types. For example a cooperative group work task could require the writing of a research essay. Or an oral assessment might be a component part of a class participation mark. In these situations the assessment would be described both by listing relevant typologies and by explaining how they should be linked. Where staff set an assessment task that varied from the typology, that could also be clearly explained – again so students would understand the change in their practice necessary to comply with the task. Clearly, boundaries would need to be drawn as to what forms of cognitive activity and assessment needed separate explanation and what could safely be combined. Students would be just as likely to be confused by too much detail as by too little.

As the UNSW survey and other research discussed indicates, written advice is unlikely to completely replace in-class discussion of assessment. However, more elaborated written advice could well provide a consistent understanding of the elements of assessment for teachers and students alike, and help to build confidence that feedback from one activity can be applied to a similarly described later activity.

Finally, a note of caution. As Sadler points out, some criteria or descriptors may be already well known by experts in the field of discourse, or be easily measured – such as grammar and citation standards. Others may need to be derived and defined by taking words that are a good fit, then developing further nuances. Some may only be capable of expression in metaphor or by example. And some may be so tacit and ineffable that they cannot be adequately captured in words.[31] Attempts to create standardised explanations and exemplars of descriptions should not attempt the impossible. Students can be expected to cope with some uncertainty, and staff should be permitted, to some extent, to rely on overall holistic senses of quality.[32]

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30 To some extent this separation is arbitrary, but it is based on teaching experience. It would not matter how the forms were defined or separated – only that there was consistency across the degree program.

31 Royce Sadler, 'Indeterminacy in the use of preset criteria for assessment and grading' (209) 34 *Assessment & Evaluation in Higher Education* 159, 170.

32 Ibid.

Appendix A

The following description of a typology is in a form that is explicable for staff. It assumes understanding of the tacit knowledge of the elements of the assessment types. More expansive definitions and exemplars would be needed for students to begin to unpack the tacit knowledge.

Academic Essays

There are three types of law essay: essays, research essays and thesis essays.

General style and format requirements applicable to <u>all</u> essays: All forms are written in a similar style. The key elements of that style are:

- Full academic referencing following the format of the Australian Guide to Legal Citation;
- The use of a narrative style of writing with full sentences, paragraphs;
- The structure of an introduction, body and conclusion;
- A clear logical progression of argument throughout;
- Recognition of relevant alternative points of view;
- A full bibliography of all secondary sources;
- The encouragement of headings to clearly identify the logical progression of the argument;
- Etc.

> A further explanation and exemplar should be linked to each point.

Relationship between the essay types: The three types of essay progressively reduce the amount of scaffolding, and thus adapt well to students' increased knowledge and skills. The essay types provide opportunity to assess and build on a student's growing capability over the degree program. The most basic form provides considerable structure for the student, while the later forms require more advanced skills.

Essay

In this foundational type of essay, the questions are provided to the student along with most if not all the research material required by the student to complete the task. This material would include a specific or extended reading list including books, journals, cases and legislation. The emphasis in this form is to introduce students to the basics of legal research and help them develop their writing and comprehension skills. Additional research beyond the provided list would not be required, nor result in additional marks.

The main skills that an answer should demonstrate in this form of essay are:

- An academic writing style;
- Appropriate referencing;
- A sustained logical argument throughout;
- Appropriate use of all provided references to support the argument;
- An awareness of the relative importance of the issues by an appropriate depth of analysis of each point.

> A further explanation and exemplar should be linked to each point.
> **N.B.** The use of 'appropriate' in this list indicates the complexity of the tacit knowledge that needs to be conveyed through further explanation.

Research Essay

In this type of essay the topic is provided, but all research is conducted by the student. Any direction as to source material would be secondary or minimal if at all. Generally no set 'reading list' will be provided. As an anti-plagiarism or moderating device a small number

of sources may be mandated. The focus here is on a student developing independent research skills, while still fine tuning general writing and comprehension ability. Marks are awarded not only for persuasive argument and writing skills but also for evidence of underlying independent research.

In addition to the skills required for an Essay, the main skills that an answer should demonstrate in this form of essay are:

- Evidence of sufficiently broad research across appropriate sources;
- Evidence of a systematic approach to research demonstrated by the lack of gaps in the sources used to sustain the argument;
- Usually, the ability to sustain a logical argument over a longer paper with a more complex research question;
- Etc.

A further explanation and exemplar should be linked to each point.

N.B. The use of 'sufficient' and 'appropriate' in this list indicates the complexity of the tacit knowledge that needs to be conveyed through further explanation and exemplars.

Thesis Essay

In this final essay type students define their own topic and conduct wholly independent research. All formal scaffolding is removed completely. The emphasis is on higher level abstract thinking, research skills and conceptual understanding. Generally students would need to gain approval of the essay topic or submit a synopsis (itself an assessment type).

In addition to the skills required for an Essay and Research, the main skills that an answer should demonstrate in this form of essay are:

- The ability to construct an individual research question that can demonstrate independent research and a sufficiently sophisticated analysis in the set word limit;
- Usually, the ability to sustain a logical argument over a longer paper than either Essay or Research Essay with a more complex research question;
- Etc.

A further explanation and exemplar should be linked to each point.

N.B. The use of 'sufficient' and 'appropriate' in this list indicates the complexity of the tacit knowledge that needs to be conveyed through further explanation and exemplars.