

Problematising Assessment in Clinical Legal Education

Richard Grimes,

University of York

Abstract

We have been asked to contribute to this seminar by looking at the assessment of experiential learning in the context of a Van der Vleuten and Schuwirth's 'utility model'.

Whilst agreeing with much of the reasoning put forward for this model my contribution will be to pose what I suggest are fundamental questions about the why, what and how of assessment in a clinical setting. I will then invite delegates to look at responses to these issues by considering of two clinical programmes – one delivered at undergraduate level and the other for masters' students – but both of which use a particular diet of assessment methods as a strategic tool for supporting learning.

My intention is to challenge, to an extent, the value and certainly the transferability of a model taken from the medical world and applied to the legal one. My starting point will be to say that that education is a process and not merely a product and any attempt to assess is necessarily problematic – at what point can and indeed should the acquisition of 'education' be measured? Are we interested as teachers and learners in competence or are there other goals or outcomes that are relevant? How do these considerations affect what we do on individual courses and modules and in overall programmes?

Finally I intend to explore the ways in which the utility model's foundation stones (validity, reliability and impact) can themselves be tested and scrutinised to enhance learning through effective assessment

In my contribution to the workshop I want to stress that assessment of experiential learning and clinic is, in essence, no different from assessment elsewhere on the curriculum. To address the validity/reliability/learning impact concerns one needs to be clear, in terms of both design and delivery, what the anticipated learning outcomes are, how the assessment regime will be conducted, how we will know if the assessment accurately and consistently measures performance and what the students may be expected to gain from undertaking the assessments - particularly the role of feedback. For me this is no different from any other module. Where the difference lies is, I think, is that the way 'clinic' (and I use that term in its most generic sense to cover all aspects of experiential learning where learning is by doing and reflecting on the doing) is set up and run lends itself to a range of assessments tools and techniques that are perhaps not commonly used in more traditional forms of curriculum delivery. Reflective portfolios, assessed role-play, vivas, case-study vignettes and various forms of personal development records are now increasing found where clinic is part of the credit-bearing programme. So in my view the issues are the same as for all teaching/learning/assessment but the vehicle is so often very different and this is what opens up the assessment possibilities.

Now of course none of this precludes other modules from having more innovative means of assessment but clinic, by virtue of its relative novelty, is perhaps more an open setting for a different approach to assessment.

To relate this to the questions you ask:

1. I think that experiential learning in general and CLE in particular was (and in about 2/3rds of law schools remains) in the main an extra-curricula activity. The increasing number of those that do assess use reflective portfolios and written up case-studies (see the last LawWorks clinic report, 2014). The fact that most clinics were non-assessed perhaps reflects the fact that as a relatively novel concept law schools were slow to embrace clinic as part of the mainstream programme. This has clearly changed - the reasons why are interesting and centre on student preference, greater confidence in what we are doing, employability issues and making the most of of all learning opportunities.

2. the implications of making clinic assessed are surely no different from any other aspect of the assessed curriculum. Of course from the law school's point of view once a module is credit-bearing it falls on the law school to resource it. This is a real issue for many law schools particularly for those that have been running clinics with staff who are not on academic contracts.

3. the nature and purpose of assessment in clinic is, I suggest, entirely dependent on what the programme and module outcomes are - again no different to other parts of the curriculum. For me at York we are not interested in establishing competency in say drafting or interviewing (although we hope they do develop e.g. their skills). We do assess the students' substantive and procedural legal knowledge, their understanding (rather than actual practice of) legal and related skills and their appreciation of the professional and wider ethical issues arising in a live-client clinic. If you run a vocational programme (e.g. LPC or integrated course such as at Northumbria) then the expected outcomes may be somewhat different. A very interesting point then comes into play - what might this all look like in the post SRA/BSB consultation world?

4. on assessment and design similar arguments can be made. How can either be progressed unless generic and specific outcomes are clear? Presumably we should be looking at how student progress towards achieving outcomes can be best facilitated and ensuring that the devices we use to measure that progress and support student learning can be made reliable, valid and effective?

I think the above covers the other two matters that you mention at the end of the email Elaine.

In a nutshell the point I want to make is that there is (in my view at least) little science in assessment. The entire process is inevitably subjective. With experience we all probably know what a First looks like and what a fail is. Somewhere in between we are probably close to getting the other grades right. What the difference is between for example a 62 and a 65 (or any other numbers you like that sit quite close together) is however much more problematic unless you use a rigid marking scheme where marks are awarded or deducted for mentioning or not mentioning specific issues.

What we can do to mitigate against inconsistency is to put in place a set of devices and procedures that should focus the assessment on the outcomes (validity) and iron out inconsistencies (thus addressing reliability). This might cover team and possibly peer marking, a set of criteria and descriptors for each outcome, a moderation process where a representative sample of assessed tasks is reviewed, the use of external examiners to look at overall standards and a feedback system that points out to the student what the mark/grade is based on. In other words we should accept the limitations and inherent problems with assessment, be able to justify the marks/grades arrived at and use a system that supports future student learning.

So yes, we should link assessment to wider programme design and we should endeavour to make the whole assessment process and product valid, reliable and impactful but we have an imperfect scenario here that (unless you use a right/wrong approach to assessment e.g. some sort of multiple-choice, computer marked scheme) can only aspire to being as good as possible in the circumstances.

I fear when I read papers like Cees' that we are kidding ourselves that we can address e.g. reliability in some analytical way that then resolves the problem. Sorry if that sounds anti-intellectual. That is not my intent. I am just a realist and if we put less emphasis on measuring performance and more on enhancing learning we might make better progress! If I could change things at the sweep of some godly pen I would abolish marks and grades. I would have a pass/fail system with the pass mark set high. Differentiating between students could then be done through references - telling, for example, a prospective employer the detail of what a student had to offer in terms of his or her ability and qualities.

It is perhaps a good job I am nearer the end of my 'academic' working life than the beginning.