# MOOTING IN AN UNDERGRADUATE TAX PROGRAM

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## I. Introduction

Teaching law is often a difficult task. Particularly in a modern university environment, with students faced with a myriad of distractions as well as compounding obligations, maintaining student interest in subject material even for a 12- or 13-week semester can be a daunting task.

Teaching tax law as part of a LLB program presents a special set of challenges. For whatever reason, students often approach their first lectures in this discipline with a special trepidation. Whether it is due to the strong emphasis on technical legal content, the interdisciplinary nature of the subject or the perception that one needs a business background to understand the material (where roughly three-quarters of students do not have a background in business studies), the initial concern is there. This raises the very real prospect that students will be lost early on in the semester, leading potentially to high withdrawal rates and/or poor performance in the assessment — both scenarios which undermine the appeal of the subject to future cohorts and the instructor's enthusiasm for teaching in the discipline.

The challenge confronting all law lecturers, but one that is particularly acute for those teaching tax law, is to maintain student interest in the discipline. One means by which this is achieved in the tax courses conducted in the School of Law at La Trobe University is through the use of a variety of assessment modes. An emphasis is placed on assessments that require students either to develop or extend skills that are rarely exercised in other subjects within the LLB program.

This paper describes and places within the pedagogical literature one form of assessment used in these courses, specifically a moot exercise. This was first used in 2004 and has been used in the subsequent seven iterations of that particular subject (eight in all). As such, this paper serves two purposes. The first is to provide information that other legal academics may use in designing assessment for their own courses. The outcomes identified and techniques used are not necessarily peculiar to teaching tax law — this really is only the specific application. The second is to provide the author with the opportunity to reflect on eight years' worth of experience, collating the experiences in a logical format and considering opportunities to improve the student learning experience for future cohorts through developing this assessment. This exercise is in line with the recommendations recognised as required for the continuous improvement of teaching.[1]

The remainder of this article is set out as follows. Part II provides a brief overview of the relevant pedagogical literature. Part III provides a description of the moot assessment used in the tax law course at La Trobe University. Part IV discusses some of the experiences and outcomes arising from the use of the moot assessment in light of the literature reviewed in part II.

## II. Objectives for Teaching in a Higher Education Setting

Teaching in a higher learning environment may pursue various combinations of particular goals. The following four objectives are those aimed for in the tax course conducted at La Trobe University. The theory underpinning these objectives as legitimate aims for teaching in a higher learning setting is drawn primarily from Biggs and Tang's research, which represents

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[1]   John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (Open University Press, 3rd ed, 2007) 41–6.

the most comprehensive presentation of pedagogical theory for the modern higher learning environment.[2]

As is noted at appropriate points in the discussion in this section, these objectives are interrelated. Promoting one will often assist in promoting at least one other. Such interactions may be seen more clearly when applied to the specific form of assessment that is the focus of this paper in the discussion in part IV.

## A. *Problem-Based Learning and Experiential Learning*

Problem-based learning and experiential learning are related approaches to learning in a higher education setting in that they both rely on the student's personal experience for learning to be effective. Biggs and Tang describe problem-based learning as 'the way people learn in real life'.[3] Essentially, students are faced with a problem and, armed with no or little specific knowledge of the material necessary for resolving the problem, attempt to construct a solution. Winsor explains problem-based learning in the following terms:

> this form of LEARNING (as distinct from TEACHING) is based on your tackling a problem, or series of problems, *without prior instruction*. The idea is to get you to indulge in what is described as 'discovery learning' by using your own initiative, but guided and assisted (rather than lectured or taught) by your instructor.[4]

This is very similar to Wolski's definition of experiential learning, adopted from Grimes, which is summarised as 'doing, reflecting, applying and evaluating'.[5] Wolski then goes on to expand on this brief definition using Kolb's four-stage loop of experiential learning, in which the student engages in a concrete experience; reflects on that experience; positions the newly acquired knowledge within their abstract understanding of the discipline; and then actively experiments with this understanding in novel situations, leading back to concrete experience.[6]

The experience that the student derives from being confronted with unfamiliar problems and being required to form solutions with minimal guidance allows students to develop both skills and understanding of the subject matter.[7] This understanding is the hallmark of deep learning described in the next subsection that is the primary goal of teaching in a higher education environment. Further, the responsibility placed on the student for their own learning and making connections (leading to the deep learning just mentioned) is consistent with Biggs and Tang's 'Theory Y' approach to student learning, described below.

## B. *Deep versus Surface Learning*

One of the problems that has been identified with many tax law courses, particularly in the United States (although there is no reason to expect that the situation is any different in other common law jurisdictions) is that students are merely trained how to spot issues requiring resolution on a client scenario.[8] Such an approach does little to excite students about the intricacies of tax law,

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2    Ibid.

3    Ibid 151.

4    Keith Winsor, 'Introduction to Materials for Students — Problem Based Learning Segment' (unpublished manuscript, College of Law, 1989), quoted in Keith Winsor, 'Toe in the Bathwater: Testing the Temperature with Problem-Based Learning' (1989) 7 *Journal of Professional Legal Education* 1, 2 (emphasis added).

5    Richard Grimes, 'The Theory and Practice of Clinical Legal Education' in Julian Webb and Caroline Maughan (eds), *Teaching Lawyers' Skills* (Butterworths, 1995) 142, cited in Bobette Wolski, 'Beyond Mooting: Designing an Advocacy, Ethics and Values Matrix for the Law School Curriculum' (2009) 19 *Legal Education Review* 41, 51.

6    Wolski, above n 5, 51, citing David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice-Hall, 1984) 20–1.

7    Wolski, above n 5, 51.

8    See, eg, Michael Oberst, 'Teaching Tax Law: Developing Analytical Skills' (1996) 46 *Journal of Legal Education* 79, 80.

which lead to the significant real-world implications that may engender the sort of enthusiasm that legal academics seek to instil in their classes.

The ultimate prize in designing a higher education program is positioning students to engage in deep learning, rather than the more superficial surface learning approach.[9] The latter is the situation in which the student merely memorises information sufficient to regurgitate in an assessment environment and achieve a desired grade (usually a pass or middling grade for students consciously adopting this approach). Rote learning is a typical technique adopted by students pursuing a surface learning approach.

Deep learning, by contrast, describes the situation where the student engages wholeheartedly with the material, identifying connections and recognising implications that may not have been made explicit in class or in the assigned reading materials. Students are genuinely able to understand complex concepts and this understanding is demonstrable through the application of the knowledge obtained.

## C. *Formative versus Summative Assessment*

One of the areas that tends to get a significant amount of attention in the pedagogical literature is the distinction between formative and summative assessment. The basic distinction is the purpose for which the assessment is undertaken. Summative assessment is final in nature and is used to determine the student's performance in the subject: '[i]ts purpose is to see how well students have learned what they were supposed to have learned'.[10]

Formative assessment, on the other hand, has feedback as its primary purpose.[11] Biggs and Tang identify this feedback element as one of the most powerful aspects of effective teaching.[12] A critical element for assessment to qualify as formative is the opportunity for students to be able to act upon the feedback to improve their final grade. As such, an assessment task does not qualify as formative merely because feedback is provided with the grade. The student needs to have the opportunity to act on that feedback to improve their overall grade.

An important element of formative assessment is that students feel comfortable in exploring novel ideas.[13] This is achieved best where students are not faced with a penalty for failing or making mistakes and, especially so, where students can admit to mistakes.[14] It is through this exploration and learning from mistakes that the abstract understanding associated with deep learning may be achieved. Consequently, typical means of formative assessment are tasks which either are not directly assessed, but are undertaken for feedback purposes only, or carry only a nominal weight towards the final grade (for example, 5 per cent). Of course, providing effective feedback is necessary for this approach to learning to work, but can be difficult to implement in practice, not only due to resource constraints, but also because of the significant chance of misinterpretation.[15]

## D. *Theory Y Learning*

Drawing on organisational management theory, Biggs and Tang draw a contrast between what they term 'Theory X' and 'Theory Y' approaches to teaching.[16] Theory X teaching is perhaps the more traditional style of university instruction, in which the lecturer provides learning

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9    Biggs and Tang, above n 1, 22–5 provide a comprehensive description of the distinction between deep learning and surface learning.

10    Ibid 164.

11    Ibid 163.

12    Ibid 97.

13    Ibid.

14    Ibid.

15    Mary-Jane Taylor and Coralie McCormack, 'Effective Verbal Feedback for Project-Based Assessment: A Case Study of the Graphic Design Technique' in Steve Frankland (ed), *Enhancing Teaching and Learning through Assessment* (Springer, 2007) 52, 53–4.

16    Biggs and Tang, above n 1, 37–9.

opportunities in a strictly controlled environment, where the student's learning experience is directed by the instructor. This is typical of the usual problem and answer style of assessment in most university law subjects.

Theory Y teaching, by contrast, places much more control over the learning experience in the students' hands. Removing the strict parameters characteristic of Theory X approaches places the responsibility for learning on the student. This may take the form of choosing the particular question to be addressed in assessment. A full Theory Y approach would allow the student to choose the area without restriction, in contrast with the approach sometimes adopted where students choose from a range of preset questions. Placing such responsibility on students for their own learning fosters the deep learning objective, as students are more likely to engage with the material where they have selected their own direction. Student engagement strengthens the prospect of achieving the understanding that is the desired outcome of higher learning instruction.

The use of formative assessment, particularly in a group environment, can be linked to a Theory Y approach where students provide each other with feedback. Where students are given responsibility for providing feedback to their peers, the students engage in higher cognitive processes, engendering the level of understanding sought to achieve the deeper learning outcomes.[17]

## 1. *Design of the Moot Exercise*

The moot represents one option available for students undertaking a first income tax law course in the LLB program.[18] The alternative that students may choose is a more traditional client advice problem scenario. This aspect of the course's assessment is worth 40 per cent of the student's final mark (the remaining 60 per cent coming from the final exam). Most students undertaking this course do not have a business background (generally defined as undertaking business studies either before or concurrently with their LLB program), with the implication that they are unfamiliar with basic business concepts generally, and have had no exposure to substantive knowledge of taxation specifically, before commencing this subject. The vast majority are domestic students whose first language is English and are in their third to fifth year of law studies.[19] Most students would not have had much, if any, prior mooting experience, with only one other subject in the LLB curriculum incorporating an assessed moot (this subject may be undertaken before, concurrently with or subsequent to Income Tax Law).[20]

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17  See James Oldham et al, 'Formative Assessment for Progress Tests of Applied Medical Knowledge' in Steve Frankland (ed), *Enhancing Teaching and Learning through Assessment* (Springer, 2007) 32, 34.

18  The subject for which this is available is 'LAW3ITL Income Tax Law'.

19  La Trobe Law has a proportionately large cohort of graduate-entry LLB students, that is, students who have already obtained a bachelor-level qualification in another discipline. The graduate-entry LLB program is three years full-time and, as such, some of this cohort may attempt this subject in their second year. However, these students would have completed a similar number of law subjects in their first year compared with a third-year undergraduate LLB student (who would normally have spent the majority of their previous years completing non-law subjects as part of a double-degree program). Consequently, the considerations raised here in respect of student experience apply equally to these second-year LLB students.

20  Some students have had significant mooting experience through participation in the extension mooting competitions coordinated by the La Trobe Law Students Association. However, such students are in a distinct minority, since there is no compulsion to participate in these competitions.

These demographics are important influences on the moot's design as implemented in Income Tax Law. Lynch identifies three salient features common to moots derived from their original function as the means of training for admission to the Inns of Court in medieval England:[21]

- students assume the role of advocates before a simulated bench … ;
- students argue points of law before the bench, which arise from a hypothetical scenario they have been supplied with;
- students are expected to be able to answer questions from the bench relating to the arguments presented or any other relevant law that the students may not have considered.

Within this model, there is significant scope for variation. For example, Lynch surveyed the use of moots in three Queensland law schools,[22] which all differed on several key aspects.[23] Bentley discusses, in detail, the moot used as part of the assessment in a tax law subject (undertaken by both LLB and non-LLB students as part of a common cohort) at Bond University in the mid-1990s,[24] which differs from the constitutional law moots that Lynch describes at the University of Western Sydney.[25] Elements of moot design which may vary include: the requirement and subsequent emphasis of any written submissions required before oral arguments; the forum in which the moot is set; the degree of formality during oral arguments; whether the moot is compulsory or optional as a form of assessment; and the allocation of marks among participants. As explained in the remainder of this part, deliberate decisions have been made in respect of these and other design features for the moot as used in Income Tax Law.[26]

As previously noted, the moot is an optional form of assessment, with students being able to choose to prepare a more traditional client advice form of problem instead. Students generally self-select[27] into groups of four, dividing themselves into pairs, with one pair representing the Commissioner of Taxation and the other the taxpayer.[28] Students are encouraged to work in their groups of four, developing and testing arguments against each other during the preparation stage.[29]

Problems deal with only income issues (including capital gains tax) and have been drawn from one of three sources to date:

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21  Andrew Lynch, 'Why Do We Moot? Exploring the Role of Mooting in Legal Education' (1996) 7 *Legal Education Review* 67, 70. This may be contrasted with Wolski's more expansive list of 'usual' features that modern moots exhibit: Wolski, above n 5, 43–4.

22  Griffith University, Queensland University of Technology and the University of Queensland.

23  Lynch, 'Why Do We Moot?', above n 21.

24  Duncan Bentley, 'Mooting in an Undergraduate Tax Program' (1996) 7 *Legal Education Review* 97.

25  Andrew Lynch, 'Packing Them in the Aisles: Making Use of Moots as Part of Course Delivery' (1999) 10 *Legal Education Review* 83.

26  Feedback received over the moot's design during the eight years that it has been used has been overwhelmingly positive. The design described here has been left unchanged over this period of time, with the one exception that the moot was compulsory in the first year (2004). This was made optional in 2005 to allow for the situation where an odd number of students have enrolled in the subject (24 enrolled in 2004).

27  Students are paired with assistance from the lecturer only where they have been unable to find a partner themselves. The self-selection is an important element in the justification for the approach to marking discussed below.

28  In rare circumstances, students have been permitted to undertake the moot in groups of two rather than four and then moot against each other as individuals. This is permitted only where the lecturer is confident that the students in question have demonstrated the ability to perform to a high level and, therefore, will not be disadvantaged by the absence of a partner. The time limits discussed below apply in the same fashion and the right of reply feature is facilitated by each mooter speaking twice.

29  Notwithstanding the comments in above n 27, where students are unable to form a group of four (such as an odd number of students enrolled in the subject or insufficient students being willing to do the moot), those students are required to do the written assignment.

- client problems,[30] on which the lecturer had to advise during his years in professional practice, or which a former colleague has provided details;
- a case that is not mentioned in the subject's assigned reading materials (which may or may not be on appeal at the time of the moot);
- a practical issue that is the subject of controversy at the time of the moot (such as a contentious draft Tax Ruling).

Most moot problems are drawn from the first two sources to facilitate the emphasis on the practical aspects of this subject. Specifically, students are informed that the basic fact pattern that they are researching have been the subject of actual advice at some point, rather than a hypothetical situation. While problems drawn from the third source are strictly hypothetical, the practical element is still able to be emphasised as the nature of the issues at hand are in dispute within the profession at the time of the moot. Of course, students in a particular year are not told from which category the problem with which they are confronted is drawn.

A potential problem that may be predicted with respect to the second source is that students identify the source case and then rely on this as 'the' authority on which the moot problem is to be decided. To date, this has not occurred. Despite some students using the source case in their arguments, no student to date has ever relied upon this case as the decisive point. Rather, the case is presented as only part of an overall argument (note that while all students in this group clearly recognise the relevance of the particular case, not all recognise it as the source case for the moot problem).

Related to this concern is the choice of forum in which the oral arguments are set. The intention is to allow students maximum freedom in preparing and presenting their arguments. To this end, students are not given any prior history in terms of arguments that have been made, but told to assume that they may raise any and all arguments they think may be relevant. In some situations, this is achieved easily by situating the moot hearing within the Administrative Appeals Tribunal. This, though, gives rise to the prospect that students may present an authority as binding and inappropriately base their entire argument around that single case (which, while possibly correct in practice, would not demonstrate a sufficient breadth of understanding necessary to achieve a high grade in the task). An alternative that has been adopted to avoid this possibility is to situate the hearing in the High Court. Even if students discover a High Court authority on point, they are still required to argue the merits of the authority due to the High Court not being bound by any authority (the distinction between a single judge and the Full Court is glossed over, but it is made clear to students that this is the reason for positioning the hearing in that forum).

The moot itself is divided into two parts: a written submission and oral arguments. Written submissions are due approximately two weeks prior to oral arguments at the same time for all mooters. The written submission takes no particular form, is limited to 1500 words and is designed merely to have a written record of the mooters' intended arguments at the time of preparation. Little weight is placed on the written submission in terms of the contribution made to the final grade and, as such, substantively represents a hurdle requirement for the exercise. Given the little weight placed on this element and the relatively long lead time of two weeks between turning in the written submission and presentation of oral arguments,[31] students are permitted to revise and add or remove arguments, conditional on keeping their opponents fully informed of such changes.

Oral arguments are all scheduled for the same week (the same week in which the alternative written assignments are due). Groups are assigned one hour time slots, with each pair allocated 20 minutes in which to make their oral arguments and respond to questions from the bench.

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30  All actual problems have had identifying features removed and are usually simplified to some extent.

31  For example, Bentley states that students must provide their written submissions the day before the oral arguments in the moots conducted at Bond University: Bentley, above n 24, 115.

Pairs are free to allocate their 20 minutes between them as they see fit, subject to the constraint that each individual must speak for at least five minutes. The additional 20 minutes in the hour allows for some flexibility in speakers going (slightly) overtime and to provide feedback at the end of the moot.

Oral arguments are conducted with a minimum of formality in a deliberate attempt to ensure that students are as comfortable as possible. The intention behind this design decision is to allow students to concentrate on mastering their understanding of the relevant substantive law, not spending time familiarising themselves with procedural matters. This also recognises that the majority of students have not mooted before and, as well as encouraging students to focus on substantive legal matters, is meant to allow students to approach the moot as a less intimidating exercise.

To this end, formalities are dispensed with as far as is possible. For example, rather than the School's moot court, oral arguments take place in an empty tutorial room. All participants remain seated while making their addresses. Formal business attire and court address ('your Honour', 'my learned friend', etc) are not required, although students are permitted to be formal in these respects if they prefer (this is sometimes the case for experienced mooters who have been trained in these moot formalities). This approach recognises that not all students have the same preferences and is consistent with the philosophy of following procedure with which students are most comfortable and, therefore, most relaxed and can concentrate on their substantive legal arguments.

Unlike some moots, pairs in the Income Tax Law moot alternate in their presentations rather than the first pair completing their submission followed by their opponents. For example, if groups A and B (comprising students AA and BB) were mooting against each other, the order of proceedings would be A-B-A-B (rather than A-A-B-B as in many other moots). No final right of reply is afforded to the first individual presenter.

This design feature affords an additional opportunity to assess the students' substantive tax knowledge. As well as demonstrating their understanding of the relevant law through responding to questions from the bench, students are given additional opportunities to show their knowledge by presenting counterarguments to their opponent's points. This is done especially well when the opponent's point has been raised in response to a question from the bench[32] (that is, both the argument and the counterargument were unprepared), demonstrating a more thorough understanding of the material since the response is provided under pressure and without the ability to prepare comprehensively. This opportunity is created by the order in which mooters speak.

The individual members of each pair receive the same mark. While this does raise the prospect of complaints of free-riding (which has not happened to date), this danger is mitigated by students self-selecting their partners. Having chosen to work with a particular individual, it is difficult for a student to complain about the efforts of their partner as this will reflect on their own judgment.[33] The purpose of this design feature, though, is to avoid other dangers associated with attempting to assess work where much relative effort is unobservable. For example, a substantial amount of the effort that goes into a solid oral argument is the research performed in crafting the arguments presented. However, the relative contributions of the partners to the joint effort in this regard cannot be entirely determined by the observable quality of the oral

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32    The bench for the moot comprises solely of the lecturer.

33    Even for the rare situations in which pairings have been arranged, no complaints have occurred. Consistent with the design theme of making students responsible for their own learning experience, trust is placed in the students to allocate tasks within their group effectively. No specific data has been collected regarding any free-riding or similar behaviour, although students are given open-ended questions in the standard teaching surveys conducted at the end of semester, providing the opportunity to give feedback on any negative experiences. To date, there have been no negative comments relating to the group structures and the responsibility placed on the students as described.

presentations. Additionally, if one partner speaks for longer than is planned, thereby reducing their partner's time allocation of the 20 minute presentation time, the fact that both members of the pair receive the same mark removes the prospect that the partner denied expected presentation time will be penalised. Further, any incentives for partners not to co-operate with each other (for example, by withholding a strong argument for their own presentation to boost their own relative performance) is removed, since benefiting one individual benefits the pair.

## III. ANALYSIS AND CRITIQUE

Mooting in general is capable of satisfying the requirements of effective teaching identified in part II above. Lynch provides a comprehensive case for mooting as a means of implementing problem-based learning and providing experiential learning.[34] In the case of the Income Tax Law moot described in the previous part, while not a pure form of problem-based learning — as students have been given a grounding in the broad issues raised by the moot problem in lectures — to score well, students realise that they must go beyond the material covered in class. This is prompted by the need, first, to construct novel arguments to demonstrate a prima facie superior understanding of the concepts and relevant authorities and, second, to anticipate questions from the bench. In this way, students are confronted with a situation in which they must acquire new knowledge on their own terms in order to solve that problem.

Lynch notes that, as there is not a correct answer to a moot problem per se, mooting represents a form of assessment in which the process by which a solution is constructed takes on an increased importance relative to the solution that is actually produced:[35]

> moots are a good example of a piece of assessment in legal education where the importance of the process applied in responding to the problem is at least equal to, if not more than, the emphasis on the actual solution reached. Mooters are not marked solely upon the accuracy of the law they argue in the moot court. Many of the arguments heard in moots are rather desperate, and the assessing academic knows this … The true test is to see how students use the authorities that do exist in support of their argument, how they organise this material both individually and as a team, how they research the problem, and how they present it and respond to questions from the Bench. Certainly, students are marked on their understanding of the law, but by the nature of the exercise, they cannot all reach *the* correct solution. The final answer to the problem posed by the case really plays a very minor role in both their learning experience and also the assessment of their work.

This passage accurately captures the approach taken in assessing the Income Tax Law moot and, as such, establishes this moot as a solid example of problem-based and experiential learning.

Lynch also describes moots as 'a perfect example of assessment in law which involves high degrees of cognition and metacognition',[36] being the hallmarks of a deep learning experience. The nature of mooting requires students to achieve this level of understanding. While some surface learning techniques may allow students to form an argument on first principles, this will get them only as far as producing a viable written submission, which, as noted, does not contribute significantly to their final mark for the task. Surface learning is insufficient preparation, in particular, for responding to questions from the bench. The prospect of being questioned requires students to obtain their own understanding from the available authorities. Lynch states that:

> it is impossible to moot successfully without interpreting and abstracting meaning from the vast amounts of case and statute law … relevant to the moot problem. Moots involve memorisation and the retention of knowledge, but first mooters must construct that knowledge from the materials they will discover through their research.[37]

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34  Lynch, 'Why Do We Moot?', above n 21, 78–81.
35  Ibid 79–80 (emphasis in original).
36  Ibid 76.
37  Ibid 77.

Lynch confirms that students perceive moots as tasks in which they must acquire a proper understanding of the material to be graded well; information memorisation would be insufficient.[38] Bentley comments in a similar vein, stating that the opportunity to question students' arguments represents the primary pedagogical advantage over written assignments and ensuring that they obtain a 'real understanding of the tax law'.[39]

The major challenge, as with most assessment tasks, is in providing students with formative feedback without placing an undue demand on the limited teaching resources available.[40] While Wolski appears to suggest that the only manner in which formative feedback can be provided is through iterations of the task,[41] this is an unnecessarily limited view of formative feedback. Any type of feedback that the student receives at a time when they have an opportunity to act on that information to improve their grade can qualify as formative. This is provided for in the dialogue between mooters and the bench during oral argument, which is made up primarily of questions from the bench, but does involve some commentary (for example, the appropriateness of some cases to the dispute at hand). Student responses to such feedback — in other words, how effectively they can immediately incorporate this feedback into their presentations — influences their grade for the task.

It is also a design intent that students will receive peer formative feedback during the preparation phase. As mooters are encouraged to prepare in their groups of four (and not separately as pairs), the intention is that they will each test out arguments against each other beforehand without time constraints to identify the most appropriate material to present during their limited opportunity in oral arguments.[42]

This last element represents one of the primary means by which the Income Tax Law moot fits within Biggs and Tang's Theory Y model of learning. It is through this preparation stage that students are forced to take responsibility for their own learning. In this case, not only are they taking the initiative regarding their own position, but they contribute to their peers' learning as well.

Finally, many of the design features identified in Part III above address some of the concerns that Wolski raises in respect of the manner in which mooting is traditionally undertaken in law schools.[43] The lack of formality is adopted in the Income Tax Law moot to avoid students from finding the moot overwhelming, which Wolski identifies as one such problem.[44] Wolski's criticism of an overemphasis on appellate mooting[45] is met by the justification presented earlier that this resolves any potential problems around students believing that they have identified

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38   Ibid 96.

39   Bentley, above n 24, 114. Bentley also states that '[d]ialogue between the judge and counsel provides the opportunity for instructors to assess higher level skills of analysis and evaluation rather than lower level skills such as recall of knowledge': at 117.

40   Wolski identifies the already perceived high demands on instructor time as a prime reason for reluctance to use moots as a form of assessment: Wolski, above n 5, 65. One concern that other academics have raised in private discussions is that the time taken to assess moots generally — that is, not just in respect of providing formative feedback — will be greater than that required for written assignments. Given the design of the moot in this subject — specifically, one hour allocated for an assessment task involving four students — individual written assignments need to be assessed in less than 15 minutes each before the moot, which represents a significant demand on instructor time. The time taken to mark assessments will depend, to an extent, on the design of the relevant assessment task, particularly the complexity of marking. In any event, the experience with this subject has been fortunate in that enrolments have been relatively low (cohorts have been roughly 50 in most years, with no more than 70 in any one year), meaning that any additional demands have been minimised.

41   Ibid 65–6.

42   See also Lynch, 'Why Do We Moot?', above n 21, 81.

43   Wolski, above n 5, 53–60.

44   Ibid 54.

45   Ibid 54–60.

a conclusive binding precedent. The concern that this leads to a focus on legal issues to the exclusion of facts is dealt with by not providing the case's procedural history and instructing students that any and all lines of argument are open. Any students who attempt to argue law in isolation from the facts provided are brought back on track through appropriate questions from the bench (which acts as a form of formative feedback that the student is taking an inappropriate approach in their presentation). Focusing on facts in this fashion avoids any over-reliance on policy arguments.[46]

In summary, the moot as a form of assessment in the Income Tax Law course at La Trobe University has proved to be quite successful, with students typically reporting that they enjoyed the experience and that they generally learnt more than they believe they would have with a more standard written assignment. These reported experiences are consistent with the intended learning outcomes of the exercise explained in part II above and provide the basis for describing this assessment as successful. The literature demonstrates that mooting is not subject specific (only one paper reviewed dealt with mooting in a tax context)[47] and, as such, elements of the model described here may be adopted and adapted to suit other subjects in LLB programs.

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46   See ibid 57–8 for an explanation of this concern with traditional mooting.
47   Bentley, above n 24.