ASSESSMENT IN THE LAW SCHOOL: CONTEMPORARY APPROACHES OF AUSTRALIAN PROPERTY LAW TEACHERS

Kate Galloway,[*] *Penny Carruthers*[**] *And Natalie Skead*[#]

Abstract

Assessment in higher education has received increasing attention in the last decade. This attention is partly a result of the recognition that traditional assessments do not reflect the application of learning in a real life, or real work context. Calls for changes to traditional modes of assessment in legal education have gained currency with the latest iteration of what it means to be a law graduate, in terms of knowledge, skills and attitudes. The nature of what is taught in the law curriculum in terms of legal knowledge and skills – both professional and generic – inevitably has an impact on the learning outcomes for a degree course or course unit and this in turn will affect the intent and the mode of assessment. This paper reports on the assessment practices of Australian property law teachers ascertained from results of a national survey, and situates these practices within the context of the diversity of learning outcomes and types of assessment, as well as contemporary thinking on assessment per se.

I Introduction

Much has been written about law curricula particularly in terms of what should be taught. This focus has recently been expressed in terms of what law graduates should 'know, understand and be able to do'.[1] This raises the question of how we know that students know, understand and are able to do these things. As law teachers, we may teach doctrine, context and skills to our students, but do they learn it? How can we support their learning? And if they do learn, how do we know this? Assessment is of course one means by which we can determine what students know, although this is not as straight forward as it may seem.[2] For example, some analyses of modes of assessment indicate its capacity to promote 'surface learning' which is learning that is not retained. In this regard, assessment and its design also affect how students learn.[3]

In 2002, James, McInnis and Devlin pointed out that there was 'considerable scope to make assessment in higher education more sophisticated and more educationally effective.'[4] The role of assessment and its effective implementation takes on a new resonance in the context of contemporary statutory regulation of universities in Australia via the Tertiary Education Quality and Standards Agency (TEQSA) which began its tenure in January 2012,[5] and creates a new

* Senior Lecturer, School of Law, James Cook University.
** Assistant Professor, School of Law, University of Western Australia.
# Associate Professor, School of Law, University of Western Australia.

1 Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010).

2 Sue Bloxham and Pete Boyd, *Developing Assessment in Higher Education: A Practical Guide* (Open University Press, 2007) 24.

3 John Biggs, *Teaching for Quality Learning at University* (Open University Press, 2nd ed, 2005); Richard Johnstone and Sumitra Vignaendra, 'Learning Outcomes and Curriculum Development in Law' (Australian Universities Teaching Committee, 2003); Gary Davis and Susanne Owen, Some Innovations in Assessment in Legal Education (Australian Learning and Teaching Council, 2008).

4 Richard James, Craig McInnis and Marcia Devlin, *Assessing Learning in Australian Universities* (Centre for the Study of Higher Education, 2002).

5 *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

reason for serious dialogue about assessment in higher education generally, and in light of the Discipline Standards for Law,[6] in legal education in particular.

In terms of the Discipline Standards for Law,[7] a focus on skills such as communication and self-management suggest a need for different forms of assessment that would embrace more than simply discipline knowledge which is the traditional domain of legal education.[8]

In a survey of property law teachers around Australia, the authors have sought to understand the landscape of property law curricula in terms of content and skills. What is taught and what might be taught have been reported on elsewhere.[9] What also emerged out of the survey responses is the way in which property law teachers assess content and skills and what they would like to do – and this is the focus of this paper. While not a comprehensive review of the law degree generally, what this study reveals may well be of interest to legal educators more broadly as a sample of approaches to assessment of and for student learning across Australian law schools.

After introducing the survey and discussing how respondents assess in their property law units and how they would like to assess,[10] this paper will contextualise these data in light of contemporary literature on assessment in legal education and in higher education more broadly.

II The Survey

The results reported here are part of a larger project surveying property law teachers in Australian law schools. The survey complies with the National Health and Research Council of Australia's National Statement on Ethical Conduct in Human Research. Both the University of Western Australia and James Cook University have provided ethics approval for the project.

The authors administered an anonymous online survey as the method of data collection in this project. Property law teachers in all Australian law schools were identified via law school websites and authorship in the field of property law, and were invited to participate.

The survey dealt first with general information about the structure of the respondent's degree program and followed with questions on: teaching methods; unit content; skills acquisition; and assessment and outcomes. Finally, there were open-ended questions about what respondents wished to change in their teaching of property law, and the challenges they faced. A total of 18 responses were received from 14 different universities. The survey questions dealing with assessment in the property law unit are included as an appendix at the end of this paper.

A. *Assessment Types And Weighting*

In terms of assessment, the authors sought information regarding assessment practices adopted by the respondents in their property units. The alternatives provided in the survey were: final

6 Kift, Israel and Field, above n 1.

7 Ibid.

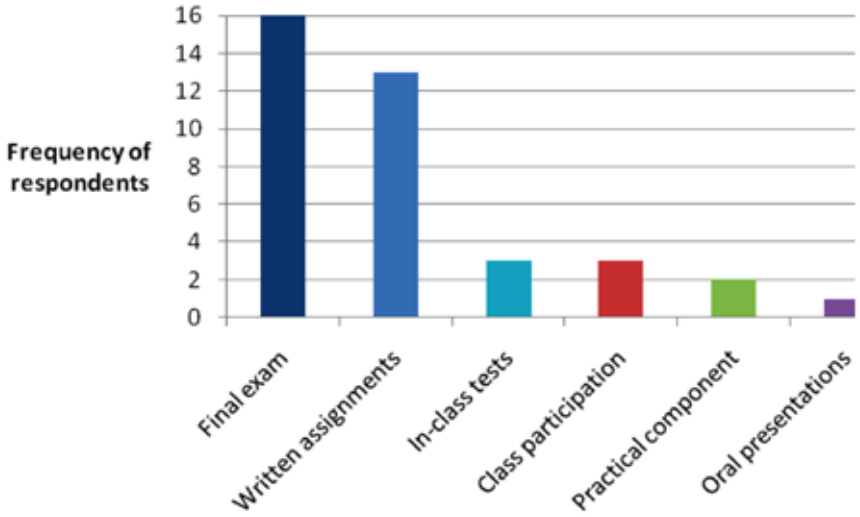
8 Susanne Owen and Gary Davis, 'Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment' (Australian Learning & Teaching Council; Council of Australian Law Deans, 2009)

9 Penny Carruthers, Natalie Skead and Kate Galloway 'Teaching Property Law in Australia in the Twenty-first Century: What We Do Now, What Should We Do in the Future? (2012) 21 *Australian Property Law Journal* 57. The analysis of the survey responses dealing with the acquisition of skills in the property unit is discussed in, Penny Carruthers, Natalie Skead and Kate Galloway , 'Teaching skills and outcomes in Australian Property Law units: A survey of current approaches', (2012) *QUT Law and Justice Journal,* forthcoming.

10 In this paper 'property law unit' is used as a generic term covering all those aspects of property law that are prescribed by the 'Priestley 11' including property concepts, land law and personal property. The 'Priestley 11' is the list of prescribed areas of legal knowledge identified by the Law Council of Australia that a student must cover within his or her law degree in order to be admitted to legal practice. See <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=3043E5A9-1C23-CACD-2244-5630B0BFA046&siteName=lca>, 11 December 2011.

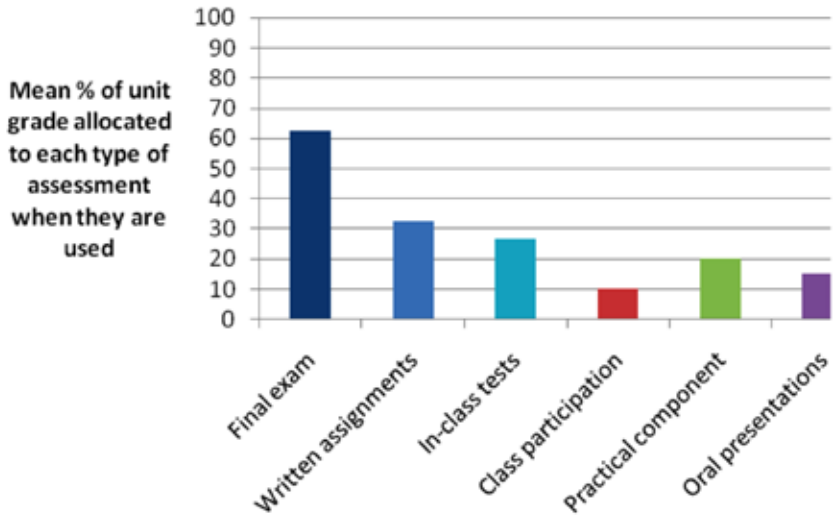
exam; written assignments; in-class tests; class participation; practical component; and oral presentations. Overwhelmingly, the assessment of property law at the respondent universities is by way of a final exam and a written assignment (see Figure 1 below.) All respondents include a final exam as part of the assessment and most respondents (81%) also include a written assignment. About 20% of respondents include an in-class test or class participation component and there is minimal assessment by way of a practical component or oral presentations.

Figure 1: The number of respondents adopting different forms of assessment.



On average, the final exam is worth around 60% of the final mark in the unit and, where there is a written assignment it is worth about 30% of the final mark. The remainder of the mark is made up of some form of combination of the other assessment types (see Figure 2 below.)

Figure 2: The mean percentage of the unit mark allocated to each assessment type.



There were no additional questions in relation to the written assignment such as word or page limit for the assignment and whether the assignment was a research assignment or rather one that focused on assessing the fundamental property principles covered in class. It is recognised therefore that there is no means of benchmarking such assessment.

In regard to the final exam, the authors sought further information as to the different question types that may be included in the exam and their respective weighting. Figure 3 shows the

number of respondents who adopt problem solving, essay or short answer questions in the exam and Figure 4 shows the mean percentage of the final exam that is allocated to that particular question type.

Figure 3: The number of respondents who adopt particular types of exam question

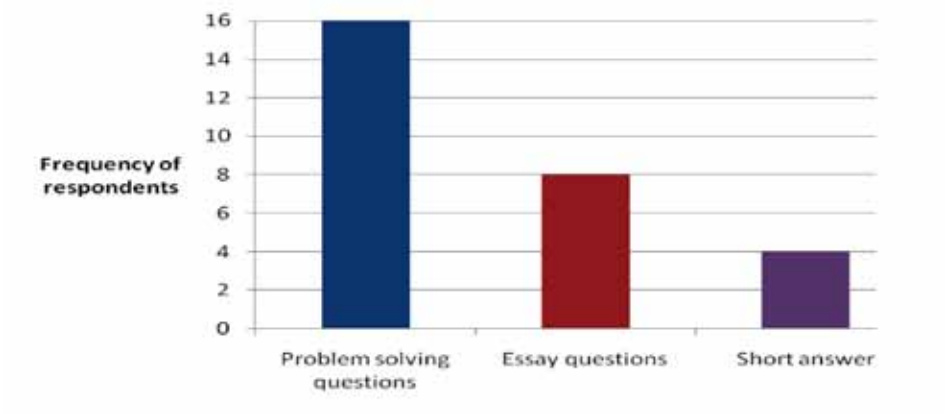
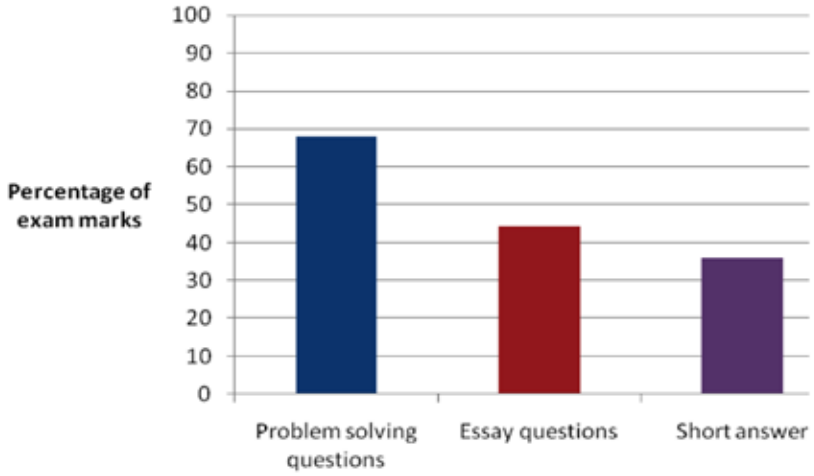


Figure 4: The mean percentage of marks for particular types of exam question.



Figures 3 and 4 reveal that the property law exam at all the respondent universities includes problem solving questions and that the mean weighting for the problem solving component is in the region of 70%. Half of the respondent universities include essay style questions and the mean percentage of marks allocated for essay questions in the exam is 45%. In those universities that adopt short answer questions in the exam (25% of respondents) the mean allocation of marks for this type of question is 35%.

The overall picture that is painted by these results is that the typical assessment methods adopted at the respondent universities consist of a final exam worth the majority of the marks in the unit accompanied by a single written assignment worth the remainder of the marks. Some universities may also include an in-class test, class participation, a practical component or oral presentations; however only a small minority of the respondent universities adopts these forms of assessment.

B. *Preferred Alternative Assessments*

In light of traditional practice in the law degree,[11] the authors contemplated that the standard assessment in the property unit would be by way of a final exam and a written assignment.

11 Davis and Owen, above n 3, 4; Johnstone and Vignaendra, above n 3.

However, given the contemporary focus on graduate attributes and the skills aspects of the Discipline Standards for Law, the authors sought to identify whether property teachers would prefer to adopt other assessment practices in the unit that embraced a wider approach than the traditional focus on doctrine. If so, respondents were asked: why they would like to adopt other practices; whether it was likely the preferred form of assessment would be adopted in the future (viability); and what would be the reasons preventing the adoption of the preferred assessment type.

A variety of responses were provided and these are included in Table 1 below. There was no common theme regarding the preferred assessment type, though three respondents indicated they would like to introduce oral presentations or oral exams (or both) and two respondents were interested in online quizzes or multiple choice or short answer questions. Another respondent indicated a preference for an extended research essay. This is of interest. As noted below in the discussion of outcomes, property teachers rarely include, as one of the outcomes for the property unit, the development of research skills. The respondent who would like to introduce a research essay indicated that it was unlikely this would be adopted due to lack of time.

There were however, common threads running through the reasons why respondents would like to introduce the preferred assessment. These include improved assessment of skills, increased variety of assessment, and improving the amount or quality of feedback provided to students. Unfortunately, most respondents reported it was unlikely that the preferred form of assessment would be adopted. A variety of reasons were provided with a lack of resources, time and funding being the most commonly cited.

Table 1: Preferred assessment methods: reasons for preference and viabil

Preferred assessment type	***Reasons for preference***	***Viability?***	***Reasons re viability***
Written assignment	Variety; assessment of skills; feedback	NO	Lack of human resources; too many students
Extended research essay	Assessment of skills	NO	Lack of time
Multiple choice questions and answers that could be read by an optical scanner	Variety; feedback; efficiency; saves money	NO	Politics
Oral presentations	Assessment of skills	NO	80% of students are external. Intensive School, no compulsory [attendance].
Oral exams; Oral student presentations	Legitimate, accurate truthful assessment; variety; assessment of skills; feedback; alignment with outcomes	NO	Lack of time; Lack of funding
Would like to continue the reflective journal (if can find marking assistance); would like to do a negotiation exercise, of a lease as means to introduce different skill and real world context for learning about leases	Variety; assessment of skills; feedback	NO	Lack of time; Lack of funding; Lack of human resources

Preferred assessment type	***Reasons for preference***	***Viability?***	***Reasons re viability***
Group work, practical problems, short answers, secure online quizzes	Variety; assessment of skills; feedback; alignment with outcomes	YES	Staff opposition will have to be overcome if we are to meet the regulatory requirements imposed by the AQF and ALTC Standards
I am quite interested in vivas	Legitimate, accurate assessment	YES	Because I am senior enough to be able to do so

C. *Assessing Skills*

While many of the assessment types may seem to involve assessing content knowledge, of particular interest are those responses that related specifically to the acquisition of skills. Assessment of statutory interpretation, negotiation and oral communication stood out from the responses.

In two cases, respondents reported the incorporation of a statutory interpretation assignment requiring students independently to learn an entirely new area of law by reading the relevant legislation and applying the law to a hypothetical legal problem scenario. The exercise was described in terms of facilitating a range of skills, including self-learning, problem solving and clear, concise writing skills, as well as statutory interpretation. The task implicitly also requires immersion in a discrete area of property law content.

At another law school, negotiation skills are assessed both summatively and formatively through 'an early lecture, small group on theory/ethics of negotiation, formative exercise in small group and summative exercise in small group'.

Additionally, oral communication skills through oral presentations on property law topics; or the rigorous and robust incorporation of class participation, are reported by a further two respondents. Robust class participation was undertaken as a form of assessment in these terms: 'I make it clear that I am not assessing whether what they say is correct, just whether they have done the reading and thought about the law. "I didn't understand p458", counts as CP [compulsory participation]'.[12]

In addition, a range of other thoughtful practices have been adopted to enhance the development of skills including the drafting of court submissions as part of an assignment, the writing of an assessable weekly reflective journal and undertaking an in-class exercise where students read a trust deed and relate its provisions to the background substantive law regarding the creation of trusts and trustee's powers and duties. Although this latter exercise relates to the trusts component of this particular property unit, it may easily be transferred to a property context. For example, reading a mortgage or lease document, or an appropriately drafted will, and requiring students to comment on the particular provisions of the document in the light of a hypothetical fact scenario and the relevant substantive property law.

While not a large sample, these examples offer an alternative to the traditional forms of assessment. These examples embrace a focus on skills relevant to the context (and content) of property law units. In this respect, it is suggested they provide a model for development of practice in this area.

12 Survey response.

D. *Outcomes*

An integral part of assessment is of course alignment with the unit outcomes.[13] The survey therefore asked participants to indicate unit outcomes and the level of expected outcome: advanced, intermediate or introductory.[14] The question asked was: 'What are the key outcomes for the unit and at what achievement level (advanced, intermediate, introductory)? Please indicate how the assessment aligns with the key outcomes'.

Responses were wide ranging. This could be attributable to a number of reasons. This question came towards the end of a very long survey; it is possible that the question was not phrased very clearly: 'Question is somewhat advanced for the co-ordinator!' and 'Don't follow the question – sorry.' An alternative interpretation for this response may be that at some institutions, there may be no practice of categorising levels of understanding in this way.

For the most part, however, respondents provided detailed information regarding the outcomes, skills, achievement level and assessment alignment. The responses fell into two groups: those who interpreted outcomes to mean skills and provided an achievement level in relation to the acquisition of particular skills; and those who reported on broader outcomes, including skills. In the latter case, outcomes were linked with either the achievement level or assessment type or both.

A number of respondents provided information linking outcomes or skills with assessment. In some cases the responses were quite brief, for example:

> The assignments test students' abilities to research, reason and [tests] communication skills in the area of property. The exam tests students' comprehension of the unit. The exam is not perfect, but to date no one has come up with a more efficient and cost effective way of assessment.

In other cases the responses were more detailed, as illustrated by the response in Table 2 below, covering three discrete areas: integrating knowledge; theoretical and comparative perspectives in understanding the social and economic effects of property law principles; and effective and persuasive communication.

Table 2: Survey Response – Alignment of Outcomes and Skills with Assessment

Outcomes, including skills	Assessment type
Integrate knowledge of property law principles and exercise analytic skill and professional judgment to generate appropriate responses to moderately complex problems	Problem solving exercises in exams
Critically evaluate the social and economic purposes and effects of property law principles, using theories, broader contexts and comparative perspectives	Assignments
Research independently, synthesise and analyse property law information in standard formats to create new understandings or new applications	Assignments
Interpret, communicate and present property law ideas effectively and persuasively to specialist and non-specialist audiences and peers	Class discussion and assignments

Another respondent also emphasised the integration of property law knowledge with other areas such as equity, contract, torts and succession and requires students to 'understand the international aspects of land law in particular in relation to native title'.

A further conceptualisation of the question appears in Table 3 below. The structure of this response indicates the mode of curriculum design in terms of knowledge, skills and attitudes

13 Bloxham and Boyd, above n 2, 27.

14 Ibid, 24.

implicit in the Discipline Standards for Law.[15] This unit is 'introductory [and] assignment and exam aligns with attitude and skills'.[16]

Table 3: Survey Response – Outcomes for a Property Law Unit

Knowledge	***Skills***	***Attitudes***
to understand the fundamental principles relating to property law, and the policy factors which underlie these principles	to use the skills of statutory interpretation and case construction in addressing law problems	to never rely on memorised statutes or cases
to develop an understanding of the relevant statute and case law relating to property law	to develop the ability to recognise and discuss property law issues; 8. to develop internet based communication skills	to always check the currency of any source of information
to gain an appreciation of the context in which property law operates	to demonstrate high level written communication skills	to never be satisfied with an indirect report of what the law states
to critically evaluate the implications of land law principles in Australia and explore potential areas for reform	to develop oral communication and presentation skills	to consider the ethical and practical dimensions of property law
to develop a working knowledge of fundamental land law, including land title systems, sufficient to satisfy professional requirements for legal practice		

This response confirms the emphasis in property law units more generally, of: statutory interpretation; problem solving and written communications skills. Interestingly, this response identifies additional skills not noted elsewhere in this survey including the development of internet-based communication skills and oral communication and presentation skills. In addition, the respondent, under the heading 'Attitude', articulates and flags some basic, though wise, warnings for students.

In the results overall, an outcome which is perhaps noticeable by its absence is an emphasis on research skill development. Although some respondents mention research it does not appear to be a skill which is generally developed in the property units of the respondent universities. This is possibly a reflection of how the survey questions were posed. In the skills acquisition section, research skills were not included as an alternative and this may have affected the way in which respondents answered the outcomes section.

III. DISCUSSION

The importance of assessment in higher education cannot be overstated, and this is reflected in its place 'at the forefront of efforts to improve teaching and learning in Australian higher education.'[17] On this view, assessment may be seen not just as assessment *of* learning, but assessment *for* learning and even assessment *as* learning.[18] Regardless of the purpose of assessment, as Bloxham and Boyd point out, it 'shapes the experience of students and influences their behaviour more than the teaching they receive.'[19]

15 Kift, Israel and Field, above n 1.
16 Survey response.
17 James, McInnis and Devlin, above n 4, 3.
18 Bloxham and Boyd, above n 2, 15, citing Lorna Earl *Assessment as Learning: Using Classroom Assessment to Maximize Student Learning* (Routledge, 2003).
19 Ibid, 1.

Johnstone and Vignaendra[20] confirm this in the context of legal education. Their 2002 national survey revealed that legal education at that time was incorporating what they described as 'diversification of assessment tasks'[21] - that is, assessment beyond a traditional exam. They found that this was a result of growing semesterisation of the law degree, a changing student body and a different institutional policy framework. While there was evidence of diversification of assessment however, the examination still remained the dominant mode of assessment, particularly in the core subjects.[22] This comprehensive 2002 survey provides a useful benchmark against which to measure contemporary assessment approaches in property law units and, more generally, to assessment in all units in the law degree. Two areas of interest are the diversity of assessment in the property law units surveyed, and the purpose of assessment.

A. *Diversity of Assessment*

The first point of note in the property survey results is the ongoing heavy reliance on the examination as assessment, some 10 years after Johnstone and Vignaendra's report. While the data collected seems to indicate that a variety of learning outcomes are sought in property law units, there remains a steadfast reliance upon traditional modes of assessment, predominantly the examination heavily weighted towards problem solving. This reliance suggests an ongoing doctrinal approach to the teaching of property law, and a low emphasis on the development of skills through alternative or more diverse assessments. There are a number of possible reasons for this.

The first observation is that the perception of property law as a challenging subject conceptually[23] may result in a focus on teaching doctrine, possibly at the expense of skills.[24] This is reflected in the bias in the reported learning outcomes, towards knowledge. The fact that the principal skill taught is statutory interpretation does not contradict such a conclusion, given the centrality of statute to property law content (particularly in terms of the Torrens system). Statutory interpretation is one skill that intersects with content per se.

Such a focus on knowledge may predispose a teacher towards an exam as assessment especially in light of academics' own undergraduate experience. This is particularly the case in law, where most academics would have graduated within a system with its own focus on examinations as assessment. As James, McInnis and Devlin point out:

> The values underlying approaches to assessment are so deeply embedded in academic practices developed over many years that it is often extremely difficult to change them without challenging fundamental and often competing assumptions about the nature of teaching and learning across the institution.[25]

Likewise, attitudes in the profession have in the past influenced assessment choices in the academy. The examination is seen as the 'gold standard' of genuine assessment of learning.[26]

The second possible reason for the limited diversity of assessment may be the ongoing (and incomplete) transformation of legal education from its traditional doctrinal foundation to a much wider education: a mixed model of legal education[27] that incorporates practical skills which, one might expect, are best assessed using a more diverse array of assessment types. While professional and generic skills have been on the agenda for legal education for many

20 Johnstone and Vignaendra, above n 3.
21 Ibid, 369.
22 Ibid, 391.
23 R Chambers *An Introduction to Property Law in Australia* (LBC Information Services, 2001) Preface, v.
24 See eg Johnstone and Vignaendra, above n 3, 371.
25 James, McInnis and Devlin, above n 4, 11.
26 See eg Johnstone and Vignaendra, above n 3, 371.
27 Lyndal Taylor, 'Skills Skills – Kind Inclusion and Learning in Law School' [2001] *UTS Law Review* 8.

years now,[28] in terms of property law units at least, there seems to remain a greater emphasis on discipline content (knowledge) than on teaching skills. This is evidenced by the survey results in both the learning outcomes and the types of assessment in property law units.

Thirdly, those respondents who would prefer to diversify their unit's assessment have themselves identified why they do not. It is crucial to understand these reasons, which go to the heart not just of law teaching, but teaching and assessment in higher education generally. These reasons centre on time, funding, resources and what could be described as collegiality.[29]

James, McInnis and Devlin point out that the context of the university, faculty and department are critical for development and renewal of approaches to assessment.[30] They acknowledge that change takes some years to implement successfully. Kift also identifies that the law curriculum has struggled to keep pace with the change in higher education and the profession.[31] Yet if it is accurate to extrapolate from this sample of property law assessment, to say that there has been little shift in types of assessment in legal education since Johnstone and Vignaendra reported in 2002, then perhaps a fresh look needs to be taken at the resources available and the attitudes of academics towards such renewal.

While some respondents indicated a desire to diversify the assessment in their units, it is also notable that many respondents were happy to retain the status quo. This could be either because there was already a diversity of assessment in their units, or because of a preference for more traditional modes of assessment. This highlights the role of values and attitudes in curriculum design, particularly in choice of assessment.

B. *Attitudes to Assessment*

As mentioned above, Earl's classification of approaches to assessment identifies assessment *of* learning, assessment *for* learning and assessment *as* learning.[32] It is suggested that the traditional mode of heavily weighted exam is most likely to focus on assessment *of* learning. It is of course possible that an exam offers a strong motivation to learn thus crossing the boundaries of these different types of learning. The latter categorisation of exams as assessment *of* learning however, may represent the more traditional doctrinal focus of the law degree whereby being versed in doctrine, or subject content, is the primary purpose of legal education.[33]

The survey results may also be interpreted to show that each of these three attitudes to assessment is represented in the survey responses. Some responses, for example, seem to presuppose the learning of skills through assessment or assessment *as* learning. Oral communication skills are seen to be developed through tutorial participation and robust class discussion. It is not clear whether such skills are explicitly taught, however this assessment is seen of itself to foster such a skill. Likewise, while responses did not include research as an explicit outcome, assessments such as written assignment presuppose student engagement in research thus representing assessment *as* learning.

Assessment *for* learning may be represented by on-course assessment. It promotes learning through feedback to students on their understanding of discipline knowledge, or their acquisition of skills. It has been reported for example, that the frequency of assessments may improve student learning and experience particularly in relation to mastery of basic concepts, though at

28 Ibid; Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43; Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 8; Davis and Owen, above n 3.

29 See Table 1 above.

30 Above, n 4, 11.

31 Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 (1&2) *Legal Education Review* 1, 2.

32 Bloxham and Boyd, above n 2.

33 DE Pearce, E Campbell, and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission. A Summary and Volumes I-IV* (AGPS, 1987). See also discussion in Kift, 'Lawyering Skills', above n 28.

the expense of 'redundant' subject content.[34] Recent research suggests this is also the case in a (US) legal education context, though these results are somewhat qualified.[35] Additionally, any loss of subject content is potentially of concern for property law teachers.[36]

This view of progressive assessment supporting student learning is not uncontested. Torrance for example, is of the view that continuous on-course assessment represents assessment *as* learning, in a way that promotes an instrumentalist approach to student learning,[37] or 'surface learning'.[38] In contrast, James, McInnis and Devlin frame this in a positive way, in terms of a 'reasonable workload (one that does not push students into rote reproductive approaches to study), [that] provides opportunities for students to self-monitor, rehearse, practise and receive feedback'.[39]

Further complicating the benefits apparent in assessment *for* learning via on-course or continuous assessments, Johnstone and Vignaendra[40] as well as James, McInnis and Devlin,[41] recognise the increasing pressure on students and academic staff in terms of the sustainability of continuous workloads. The issue of sustainability is important also in terms of capacity to assure that work is the student's own. The invigilated examination is an efficient way of achieving this.

If the end of semester exam remains the most heavily weighted assessment (assessment *of* learning), then feedback throughout semester (assessment *for* learning) is useful for students' revision and self-monitoring of their progress, translating into improved exam performance.

Is there capacity for a shift in attitudes to assessment within university property law units both to make student learning paramount and to support education in skills as well as content?

The open-ended responses regarding the desire to implement new or different assessment indicate that property law teachers do hold a range of views about assessment and its relationship to learning but that implementing assessment along these lines is not presently viable.[42] Recognition that a change in practice might improve assessment of skills, increase the variety of assessment, and improve the amount and quality of feedback provided to students, all represent a desire to assess for student learning. These kinds of reasons are consistent with literature discussed above. While such attitudes are heartening in terms of the potential of the law curriculum to encompass contemporary best practice in assessment, it seems that there are still significant barriers to implementation.

IV. Conclusion

To the extent that the compulsory property law unit can be seen as a microcosm of the law degree in general, the results of this survey are somewhat concerning. While it is noted that there is some diversity in assessment, covering some skills and therefore not limited solely to discipline content, the overall picture is a heavy reliance on content-focussed assessment *of* learning via end of semester exam.

It may be that property law teachers feel able to justify this focus. After all, property law is often taught in the early years of a law degree and emphasis on the fundamental legal skill of problem solving, assessed by way of an exam, may be seen as entirely appropriate. In addition,

34 Frank Leeming, 'The Exam-A-Day Procedure improves performance in psychology' (2002) 29(3) *Teaching of Psychology*, 212.

35 Carol Sargent and Andrea Curcio, 'Empirical Evidence that Formative Assessments Improve Final Exams' (2012) 61 *Journal of Legal Education* 379.

36 Paul Ramsden, *Learning to Teach in Higher Education* (Routledge, 2003).

37 Harry Torrance, 'Assessment as Learning? How the Use of Explicit Learning Objectives, Assessment Criteria and Feedback in Post-secondary Education and Training Can Come to Dominate Learning' (2007) 14(3) *Assessment in Education* 281.

38 Paul Ramsden, *Learning to Teach in Higher Education* (Routledge, 2003).

39 James, McInnis and Devlin, above n 4, 7.

40 Above n 3, 321-422.

41 Above, n 4, 4.

42 See Table 1 above.

the property law unit is just one of many law units. It may be thought that other law units are better suited to adopt alternative assessment practices.

However, there are a number of property law teachers who see the potential of a diverse range of assessments to facilitate student learning and to promote the development of skills as well as subject content, but feel constrained in their ability to implement such change. On balance, this survey seems to show that property law – and, possibly also, the degree as a whole – has not necessarily advanced in terms of assessment practice since 2002. As an essential component of curriculum, assessment is not necessarily keeping pace with the imperatives of the contemporary law degree. The reasons for this seem to be no different from concerns expressed in 2002: concerns regarding resources, time and attitudes of law academics towards legal education.[43] Perhaps, finally, the time has come for these ongoing barriers to effective and appropriate assessment design to be confronted and addressed.

43 Johnstone and Vignaendra, above n 3. See also in general terms, in James, McInnis and Devlin, above n 4

APPENDIX

PROPERTY LAW SURVEY QUESTIONS - ASSESSMENT

Section 5 and Section 6 of the survey dealt with the assessment in the property law unit.

Section 5: Assessment and outcomes

1 The assessment in property law units may include a variety of assessment types. How much of the final grade is allocated to the following: Please choose the appropriate response for each item:

	N/A	zero	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Final exam	○	○	○	○	○	○	○	○	○	○	○	○
Written assignments	○	○	○	○	○	○	○	○	○	○	○	○
Class participation	○	○	○	○	○	○	○	○	○	○	○	○
Practical component	○	○	○	○	○	○	○	○	○	○	○	○
Oral presentations	○	○	○	○	○	○	○	○	○	○	○	○
In-class tests	○	○	○	○	○	○	○	○	○	○	○	○
Online quizzes	○	○	○	○	○	○	○	○	○	○	○	○

2. Approximately what percentage of the final grade is allocated to other types of assessment not listed here? Please write your answer here:

3. How many written assignments are students required to submit? Please choose **only one** of the following: [Choices included: N/A, 0. 1, 2, 3, 4, 5 or more]

4. How many in-class tests are required of students? Please choose **only one** of the following: [Choices included: N/A, 0. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 or more]

5. How many online quizzes are required of students? Please choose **only one** of the following: [Choices included: N/A, 0. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 or more]

Section 6: A few more general assessment and outcomes questions

1. Where there is a final exam, what is the approximate proportion of marks allocated to the different question types listed below: Please choose the appropriate response for each item:

	N/A	zero	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Problem solving questions	○	○	○	○	○	○	○	○	○	○	○	○
Essay questions	○	○	○	○	○	○	○	○	○	○	○	○
Short answer questions	○	○	○	○	○	○	○	○	○	○	○	○
Multiple choice questions	○	○	○	○	○	○	○	○	○	○	○	○
Other	○	○	○	○	○	○	○	○	○	○	○	○

2. What are the key outcomes for the unit and at what achievement level (advanced, intermediate, introductory)? Please indicate how the assessment aligns with the key outcomes. Please write your answer here:

3. Are there other ways you would like to assess but don't? If YES, please give details in the box provided.

4. Why would you like to adopt these preferred assessment practices? Please choose **all** that apply:

- ☐ Provides a more legitimate, accurate and truthful assessment
- ☐ Provides a greater variety in assessment
- ☐ Provides for the assessment of skills
- ☐ Provides more effective feedback
- ☐ Provides for a more closely aligned method of assessing the desired outcomes
- ☐ Improved efficiency
- ☐ Saves money
- ☐ Other:

5. Do you anticipate being able to adopt these preferred assessment practices in the future? Please choose **only one** of the following: [Choice of yes or no]

6. Why you would be able to adopt the preferred assessment practices? Please choose **all** that apply:

- ☐ Time available
- ☐ Funding available
- ☐ Human resources available
- ☐ Requisite expertise available
- ☐ Other:

7. Why would you NOT be able to adopt the preferred assessment practices? Please choose all that apply:

- ☐ Lack of time available
- ☐ Lack of funding available
- ☐ Lack of human resources available
- ☐ Lack of requisite expertise available
- ☐ Other:

8. Do you have any other comments regarding the teaching of property law in the 21st century? Please write your answer here: