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Article:

Assessing the (Legal) Essentials: A Reflection through the Prism of Self-Determination Theory

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Abstract

This is a reflection on the teaching and assessment of the Legal Essentials module, in terms of its role in preparing Level 4 students for the rest of their Law degree. Legal Essentials is designed to provide a grounding in legal skills and the legal system, and to support students' transition to higher education. Legal Essentials provides a foundation for the whole degree, and module assessment therefore has a Janus-like, dual-faced quality: looking back over students' learning since joining Keele; and looking forward to what they need to engage successfully with their future studies. This paper illustrates how module and assessment design is constructively aligned and informed by pedagogic research. Design draws on self-determination theory, supporting students' autonomy, competence, and relatedness to improve engagement and motivation. It also consciously aims to capture assessment *of* learning, *for* learning, and *as* learning. The paper considers the challenges inherent in scaffolding the learning in Legal Essentials throughout the degree and looks forward to how skills development and meaningful assessment can be understood as belonging to the whole School community.

Objectives and Context

This paper reflects on teaching and assessment in the Legal Essentials module, and their role in preparing students for the ongoing journey of legal study. Legal Essentials is the first module encountered by Keele's Law students. It takes a holistic approach to studying Law, through four inter-related and complementary streams: *Making Law* (understanding the English legal system); *Thinking Law* (learning to critically analyse the legal system and the law); *Doing Law* (developing research, reading, note-making, analytical and writing skills); and *Being Law* (exploring and developing the personal qualities that are important for successful study and practice). Legal Essentials thereby aims to give students a grounding in legal skills and the legal system, and to support their transition – personally, as well as academically – to university and to the study of Law at degree level. As such, module assessment is not only concerned with discrete module content; it also serves as a formative exercise to prepare Level 4 students for the rest of their Law degree and beyond.

Legal Essentials will soon begin its fourth year and, as module leader, I see its design as a work-in-progress on which I continually reflect. Indeed, the challenge of designing assessments that both support student learning and meet the requirements of the law degree – and the wider School community – can only be met through reflective practice, and from engaging in reflective dialogue with students and colleagues. As will become clear during this discussion, module assessment has gone through several iterations and is currently being revised again for the coming year. As part of this revision process, and in my reflections on module teaching and assessment, I have found it instructive to refer back to the principles of self-determination theory to remind myself what I am doing and why. Reflexive practice should be integral to HE teaching, along with informed use of pedagogical principles and educational theory. This paper offers a blend of these vital ingredients and will hopefully be helpful to fellow HE teachers as we approach the new academic year.

The essentials of Legal Essentials: the Janus module

Janus, the dual-faced god of doors and transitions (Davenport, 2017), is a perfect patron saint for an introductory module such as Legal Essentials. Module assessment also has a Janus-like, dual-faced quality: it looks back over students' learning since joining Keele; and it looks forward to what they need to engage successfully with their future studies. The module's focus on induction to higher education and to legal skills development provides the foundation for the whole degree. However, as well as looking back and forward, Legal Essentials must also look sideways, and recognise and respond to students' assumptions and colleagues' expectations. Bloom's taxonomy of learning (Bloom et al, 1956) conceptualises a pyramid of learning development: from simply remembering information; progressing through understanding, applying, analysing, and evaluating that information; before arriving at the pinnacle where new or original work can be created. Sometimes it feels as if both students and Law colleagues expect to have scaled the pyramid by the end of Legal Essentials, which is of course not possible. Indeed, developing and refining legal skills is a long-term process.

The challenge of design and assessment for a module like this, therefore, gives rise to several related questions:

1. How do we encourage students to see themselves as 'works in progress'?
2. How do we scaffold and embed the skills introduced in Legal Essentials more effectively throughout the degree?
3. How do we make skills development and meaningful assessment a whole-School responsibility?

We know that 'assessment exerts a major influence on students' approaches to study in Higher Education' (Sambell, 2016); it 'defines what students regard as important, how they spend their time, and how they come to see themselves' (Brown et al, 1997). Indeed, 'assessment makes more difference to the way that students spend their time, focus their effort and perform, than any other aspect of the courses they study, including their teaching' (Gibbs, 2010). This paper illustrates how the module's formative and summative assessment design aims to support students' holistic development and to harness the respective benefits of assessment *of*, *for*, and *as* learning (William, 2009; O'Neill, 2017).

Literature

Research suggests that Law students are more likely to be studying Law for external reasons, such as parental pressure, and so are less likely to find their course intrinsically interesting. They tend to see grades as the crucial indicator of their success, rather than helping them to learn (Tani and Vines, 2009). These characteristics may, in turn, have an impact on Law students' motivation. Here, it appears that the key factor is the level of intrinsic – rather than extrinsic – motivation that students may possess. Intrinsic motivation exists when people engage in activities because they find them interesting or enjoyable. Extrinsic motivation is found where activities are undertaken as a means to an end, rather than for the enjoyment of them. Law is one of those degrees that is neither purely academic nor purely vocational, but rather a blend of the two. This can mean that Law students have a variety of expectations and motivations for studying the subject at university. In the introductory Legal Essentials welcome session, I use Mentimeter to capture the reasons why the new students have chosen to study Law. In 2021/22, the resulting word cloud revealed an interesting mix of intrinsic ("interesting"; "passion"; "to help people") and extrinsic ("money"; "respectable"; "looked cool on tv") motivations, but also several indications of students feeling lost or uncertain ("seemed like a good idea"; "that's a good question"; "I don't know"). How best to respond to this variety is a question on which I continually reflect, and this paper is itself an illustration of my reflexive practice.

Self-determination theory

The Legal Essentials' module and assessment design is informed by Self-Determination Theory (SDT) (Deci and Ryan, 2002; Duncan, Strevens & Field, 2020), as a means of ameliorating some of the characteristics typical of Law students. SDT draws on the insights of 'Basic Psychological Needs' Theory (BPNT), which highlights three qualities required for human thriving: competence, relatedness, and autonomy (Field, Duffy, and Huggins, 2014). SDT recognises that our engagement with learning depends on meeting these basic human needs, and also on having 'predominantly intrinsically motivated goals' (*ibid*: 6). So if our students feel 'useless' or gripped by 'imposter syndrome' (Clance and Imes, 1978), this is a threat to their competence. If they feel socially isolated, this is an attack on relatedness. If they feel subject to the demands that are placed on them by the university, this can be experienced as a compromise to their autonomy. These can combine to render the student at risk of becoming alienated from their course and failing to thrive (Ferris and Huxley-Binns, 2011).

SDT is grounded in the concept of intrinsic motivation. Intrinsic motivation can be undermined when our inherent need to be autonomous is compromised, through for example being in a controlling, prescriptive environment (such as a traditional Law school). Extrinsic motivation is not necessarily problematic, if the individual identifies with and internalises the 'rationale and value' underpinning the activity (Sheldon and Krieger, 2004; 2007). However, research suggests that, during their first year, Law students move away from intrinsic values, such as community service, towards extrinsic values, such as appearance and image. Furthermore, these students felt less self-determined in their goals – and their learning – as their degree studies progressed. They grew to be concerned more with impressing others and less with their own interest and enjoyment. The research findings 'support the

supposition that law school may bring about some negative changes in student motivations and values' (Sheldon and Krieger, 2004: 281). So Law students may begin their studies with intrinsic (and internalised extrinsic) motivation but may become subject to 'controlled' motivations whereby they are subject to external pressure, fear, or guilt, leading to a loss of satisfaction and engagement.

On the other hand, student engagement and achievement can be promoted if students are supported to develop skills that allow them to be self-regulated, autonomous, and motivated to take an active part in their own learning. Legal Essentials' assessment design draws on the insights of SDT to help shape how students engage with the course materials, and with the learning we want them to achieve in Thinking, Making, Doing, and Being Law. Our formative and summative assessments aim to develop our students' sense of autonomy, competence, and relatedness – ultimately aiming to sustain or increase their intrinsic motivation to study Law so that they might better thrive on the programme.

Assessment of, for, and as learning

Assessment design is also informed by the research on assessment of, for, and as learning (see for example O'Neill, 2017; Ni Drisceoil, 2022). Assessment *of* learning is the traditional form of assessment; is designed to demonstrate achievement, through for example a graded test or an essay at the end of a course. Assessment *for* learning focuses on feed-forward as well as feed-back, through exercises such as a formative multiple-choice quiz (MCQ), or ongoing in-class discussion and dialogue. It is interesting to note, from anecdotal evidence, how often students do not seem to recognise this latter exercise as assessment and feedback. Finally, assessment *as* learning empowers students to autonomously self-regulate and critically evaluate, for example through using self and peer review, or comparison with exemplars. While assessment *of* learning involves the highest level of teacher responsibility, assessment *as* learning involves the highest level of student responsibility. Legal Essentials incorporates all three types into its assessment design. The module may be seen to contain quite a lot of assessment for a relatively short course (the module has hitherto lasted eight weeks with an intensive induction period; it will be extended to ten weeks from 2023-24). The following section explains the rationale for the formative and summative assessments, illustrating how they implement the insights of SDT and combine to capture assessment *of, for, and as* learning.

Case Study: Methods of assessing the (legal) essentials

Legal Essentials has always included a formative peer-assessed group presentation exercise during the module, to capture students' learning from the *Thinking, Doing, and Being* Law streams. We have a summative online MCQ during the module, based on Making Law, which is preceded by a formative mock MCQ in a class tutorial. A summative analytical piece and reflection on skills development is undertaken at the end of the module, together capturing all four streams: *Making, Thinking, Doing and Being* Law. As part of the reflective piece, students are asked to identify areas for further development and indicate how they will work on these areas – including how to obtain additional support. This aims to reinforce their sense of autonomy and ownership of their own learning. Feedback is provided in week 12, before the Christmas vacation. The final summative assessment thus also functions as a formative for the core module assessments that take place in January.

Group Presentation

The group presentation uses supported group work to foster students' sense of belonging to the Law School community and thereby support their sense of relatedness. Students work in small groups to develop and present arguments for introducing, repealing, or amending a law of their choice. This element of choice serves to support their sense of autonomy. Emphasis is placed on students working together to create interesting arguments for their own propositions. Teams are not required to argue against each other; the ethos is cooperative rather than adversarial. During the formative presentation, the tutor guides fellow members of the tutorial group to provide simple, constructive peer feedback on each presentation: What did you like about the arguments? What could be improved? Were you persuaded to reform the law? This aspect of the work enhances students' sense of their own competence, by demonstrating their capacity for critical thinking through assessing their peers' arguments.

O'Brien, Tang, and Hall (2011) found that traditional Law school made students more competitive and adversarial, and made them feel isolated, disconnected, and intolerant. This project, and this assessment, is purposely intended to counter this and to offer an antidote to traditional legal education, which tends to emphasise doctrinal content and linear thinking, while de-emphasising 'creativity, personal values, reflexivity and interdisciplinary factors such as justice and social policy' (Duffy, Field, and Shirley, 2011: 250). The antidote emphasises the importance of community connection and autonomy, echoing the emphasis placed by SDT on autonomy and relatedness. The group presentation element also reflects the insights of Hendrick (2019), who advocates facilitating students' involvement in tasks and activities that challenge them and thus result in a genuine experience of achievement – and thus their sense of competence:

A lot of what drives students is their innate beliefs and how they perceive themselves. There is a strong correlation between self-perception and achievement, but there is some evidence to suggest that the actual effect of achievement on self-perception is stronger than the other way round. To stand up in a classroom and successfully deliver a good speech is a genuine achievement, and that is likely to be more powerfully motivating than woolly notions of 'motivation' itself.

This assessment is both *as learning* and *for learning*, and it supports the SDT objectives of beginning to foster autonomy, competence, and relatedness at an early stage of their studies. It can also be regarded as assessment for social justice (McArthur, 2016). Student feedback is consistently very positive, with most participants rating both the presentation and work-in-progress session as 'helpful' or 'very helpful'. As part of the module revisions for 2023-24, I have proposed replacing the written critical analysis assessment with a summative version of the group presentation exercise (see below).

Multiple Choice Quiz

The MCQ is based on prescribed reading from the required textbook and on material from lectures and recordings given during the first half of the module. It is open-book and contains 30 questions to be answered within one hour, accounting for 25% of the overall module grade. Instant results and feedback are provided through the Grade Centre. There is a formative in-class assessment consisting of a mock MCQ that students prepare in advance and bring to their tutorials. We go over the answers as a group and check for common misunderstandings. The summative MCQ can certainly be characterised as simple assessment *of learning*, and it is true that there is an instrumental aim behind it: to make students read a book and engage with lecture content. I had to laugh when I saw one comment in the student evaluations, complaining that they had to read a textbook!

However, a key aspect of transition to higher education is that important move away from being 'taught', towards being more responsible for their own independent learning – an example of increasing autonomy. So yes, it is instrumental, but it is designed that way for a good reason. It also provides a confidence-boosting quick win, which can support students' sense of competence. The formative MCQ also involves assessment *for learning*, as well as offering students the experience of relatedness. Common misunderstandings are revealed in the class, enabling students to realise that they are not the only ones making mistakes. Indeed, the Legal Essentials motto, borrowed from the author Neil Gaiman (2011), is 'make glorious mistakes!', because this is how we learn and grow (Coyle and Gibbons-Jones, 2022).

Critical analysis

This assessment currently (at time of writing) counts for 50% of the overall module grade, with a reflective piece comprising the remaining 25% (see below). Last year (2022-23), the assessment took the form of a critical case analysis. The written assessment was originally a critical analysis of an academic article on a current legal topic. However, feedback from Law colleagues in 2020-21 revealed that, while students were quite good at participating in critical discussion, they did not always base their arguments firmly in the law. We therefore changed the assessment source in 2021-22, from an academic article to a legal case, but ensured that we retained the critical analysis element – not least to avoid students copy pasting answers from case summaries available on the internet. Now, of course, the integrity of all traditional essay-style assessment is vulnerable to being compromised by students' use of artificial intelligence, particularly Large Language Models such as ChatGPT (see for example Ajevski, Barker, Gilbert, Hardie, and Ryan, 2023).

The case analysis also necessitated changes to our teaching, to include in-depth work on one case (*Ghaidan v Godin-Mendoza*) over several sessions during the first few weeks of the module. In class, we looked at the opening arguments made in the case and students drafted a short 'judgment' based on their initial view of these arguments. Over the next few classes, we explored the leading majority judgment and the dissenting judgment in depth. Students then revisited their initial judgments and considered what they had learned about the law that supported or challenged their initial ideas. Finally, we asked them to write a short critical analysis of the case based on their learning. They were then given an annotated exemplar analysis to compare with their own draft.

The formative and summative elements of this assessment together constituted assessment *of, as, and for* learning. They were also designed to help develop students' autonomy, competence, and relatedness. Students learn to use legal principles to support their own arguments and analysis, which enhances their sense of autonomy and competence. The formative class discussions also help foster a sense of relatedness, as we work together to understand the arguments and the competing principles at stake. As with the group presentation, the in-class case analysis exercise reminds us all that learning is not just an individual phenomenon; it is also socially constructed.

Moreover, group work is a valuable means of co-creating knowledge and encouraging students to see themselves as active citizens within their learning experience (Zepke, 2018). This is why it is intended that the mode of assessment for critical analysis will change in 2023-24, to a summative version of the group presentation exercise. The group presentation will retain the requirement for critical analysis of legal materials: case law, legislation, and academic commentary. Nevertheless, it will reinforce Zepke's idea of students as active citizens in their learning, which is so important to embed at an early stage. Summative group work will also emphasise the importance of relatedness. In recognition that group work is not always a smooth ride for all students, they will be prompted to consider their participation in, and experience of, the group work as part of their written reflection (see below).

Reflective piece

Last year (2022-23), I was granted funding from the HUMSS Scholarship Fund to implement a reflection project with a Law School colleague. Part of my work on this project involved introducing reflection as an element of assessment in Legal Essentials. Students are supported from the outset to reflect on their learning and development journey – both academic and personal – over the course of the module, and to submit a written piece at the end (Driscoll, 2000). Reflection can encourage students to see themselves as 'works in progress' who can remain open to being shaped and refined by diverse connections and experiences – this supports the development of relatedness. It encourages students to see themselves as bringing assets to be developed, rather than liabilities and deficiencies to be ameliorated – this supports the sense of competence. It also encourages them to recognise their own agency in shaping their environment and experience at university – this supports a greater sense of autonomy.

Reflection emphasises an authentic recognition of the 'whole student', instead of the doctrinal, rational emphasis of traditional legal education, which has hitherto decentred reflexivity and emotion (Jones, 2023). Reflection encourages students to go beyond their immediate response to experience (which may be defensive or shame-bound), towards recognition of the multi-dimensionality of experience and thus to greater openness and self-understanding (Moon, 2004). Initial feedback and focus group data has proved promising (see below) and will provide the basis for further research in this area.

Next Steps

Over the past four years, I have continued to develop Legal Essentials through informed application of legal education research and pedagogic theory, and through consultation with Law School colleagues and students. Future development of the module, and the whole Law degree, will involve ongoing discussion of the three key questions raised at the beginning:

1. How do we scaffold and embed the skills introduced in Legal Essentials within the core modules in Year 1 and beyond?
2. How do we encourage students to see themselves as 'works in progress'?

3. How do we make skills development and meaningful assessment a whole-School responsibility?

As a School, we are keen to explore how the personal and academic skills introduced in Legal Essentials can be better scaffolded throughout the Law degree. This will be an important focus of our work over the next academic year, beginning with the School's Level 4 working group. Through our work with KIITE on the TESTA assessment project, we are also working towards a more joined-up, holistic approach to assessment and learning across the Law School. We aim to embed more intra- and inter-year communication and discussion of assessment - *of, for, and as learning*.

As a result of the Reflection project, the School has introduced reflection into other modules where it can also play a useful role. It is hoped that students will be better equipped to reflect on themselves as learners in a more holistic, authentic sense; recognise what characteristics and experience they bring with them at transition; and decide what qualities they want to develop during their degree – academically, personally, and professionally. Embedding more reflective work may thus contribute to students' autonomy, competence, and relatedness, and may help sustain and improve the intrinsic motivation necessary for thriving on the degree. Doing this is not without its challenges; it is probably fair to say that colleagues' attitudes towards reflection is variable. This is where evaluation data, from the modules and from recent focus groups of students across all levels, will be helpful (this will be the subject of a separate paper, once the data has been interpreted).

If students are encouraged to continually reflect on their own development, they will recognise that they are indeed works-in-progress – not just during their studies, but also after they graduate. Legal Essentials cannot do it all – and there is recognition that it should not be expected to do it all. Skills development – including intra- and interpersonal skills – is an ongoing process. To paraphrase the philosopher Jean-Paul Sartre (2007), human life can be compared to a work of art, with everyone as their own artist. Through our choices and actions, we make and remake this artwork throughout our lives, with the finished product only revealed at the very end. And, as a reflexive practitioner, I will continue to reflect on module development for as long as Legal Essentials exists. It will no doubt remain – as all modules should – a work-in-progress.

(3800 words)

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