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A Pedagogical Newsletter for Faculty to Exchange Ideas About Teaching

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Teaching & Assessing Course Competencies: Writing Better Exam and Assessment Exercises, Measuring Test Difficulty, and Tracking Student Progress

Editorial Note: *Law School Teaching Innovations/Tips No. 10* reports on a March 2006 workshop about teaching and assessing course competencies that was conducted for the faculty at the Thurgood Marshall School of Law. *Law School Teaching Innovations/Tips No. 10* is divided into two parts: Part One presents a handout for a faculty teaching forum about how to write better assessment items, measure test difficulty, and track student progress. Part Two presents a handout with two exam questions for a faculty teaching forum about how to write better assessment items along with a commentary by a faculty member who is one of the uniform exam coordinators and a commentary by center faculty.

Part 1 – A Handout about Writing Better Assessment Items: Exam or Essay – Essay or Objective

The following handout was distributed at a faculty teaching forum about how to write better assessment items. It is divided into three sections. Section 1 states two pedagogical premises. Next, Section 2 makes four assessment suggestions. Finally, Section 3 presents two examples.

Handout Section 1 — A Statement of Pedagogical Premises

The assessment suggestions below are based on the accuracy of the following two pedagogical premises:

Pedagogical Premise No. 1

> Mastery learning requires incremental assessments and repeat opportunities to master the basic skills and knowledge of the course. The size of our classes dictates that it is difficult to try to achieve mastery learning.

The mastery learning method divides subject matter into units that have predetermined instructional objectives or unit expectations. Students, alone or in groups, work through each unit in an organized fashion. Students must demonstrate mastery on unit exams, typically 80%, before moving on to new material. Students who do not achieve mastery receive remediation through tutoring, peer monitoring, small group discussions, or additional homework. Additional time for learning is prescribed for those requiring remediation. Students continue the cycle of studying and testing until mastery is met. (See discussion in *Teaching Innovations/Tips No. 3* and *Teaching Innovations/Tips No. 8.)*

Pedagogical Premise No. 2

Improvement in the drafting of exam and other assessment exercises must focus on the quality of the discrimination among the students enrolled in our courses. (See discussion in *Teaching Innovations/Tips No. 3* and *Teaching Innovations/Tips No. 9*, and the commentary to the property questions distributed in conjunction with this tip's discussion.)

Handout Section 2 — Four Assessment Suggestions

Assessment Suggestion No. 1 - "Early Performance Evidence" RE: Students

To get a sense of how the students are likely to sort themselves, administer a pre-course exam/ exercise, and obtain an item analysis of the students' performance. Or, alternatively, an early semester read can be obtained by administering a written exercise or exam after completion of the first chapter or coverage of the first topic in the course.

It is important to obtain relatively early in the semester, roughly what percentage of the students are correctly answering your assessment items. It is usually easier to get the type of separation among your students that is desirable when you have some evidence of the degree of difficulty which will produce a correct answer rate of between 35-75%.

Assessment Suggestion No. 2 - Test What You Teach

Students should be shown that instructors intend to test what they teach by being shown how the instructors intend to test what they teach.

Tell all of the students what you intend to test as well as what student competencies you are focusing upon. Tell them how they will be tested. On occasion, when focusing on assessment exercises and evaluation of your students' incremental acquisition of your target skill set, send the students an assessment exercise prior to class. This can foster a class discussion of the translation of competencies-rules and policies to facts.

Assessment Suggestion No. 3 — Show Students Samples of the Course Restatement

Word process your target competency/rule-policy sequence, and choose facts/factual sequence that match those sequences exactly. Show students samples a rule-policy sequence for a topic or sub-topic of the course. Show students sample fact patterns illustrative of that sequence. When you begin your test construction, take care that the facts you choose as your test item match exactly the rule-policy-skill set that you believe most accurately restates that topic or sub-topic in the course.

To this most crucial point in crafting exercises and exams that have the best chance of appropriately discriminating among students, the teacher-item writer need have no concern as to whether the test format will or should be essay/short essay or some form of objective exam, or some mix thereof.

Teachers who believe one format is "better" than the other, as apparently is the sentiment of Kenney Hegland (see "On Essay Exams" in the March 2006 issue of the *Journal of Legal Education*), should empirically test that belief by administering conceptually identical items with regard to professor perception of degree of difficulty to their students on the same exercise/exam, or on sequential exercises or exams. Unlike Professor Hegland, such testing would develop an evidential basis that goes beyond hunch, heuristics, and history.

Assessment Suggestion No. 4 — Make Sure that the Test Does Test

Identify the competency/rule-policy sequence you believe will be the primary basis for sorting the students with regard to this item, essay question, or exercise. Translate that prime discriminator into facts in your test or exercise item narrative.

Note: When you obtain the item analysis report, you will see the breakdown of the percentage of students choosing each answer option; it is entitled "distractor analysis."

If you are using the above guideline to draft an objective test item or assessment exercise, use your work-product to draft the answer option that reflects your selection of the prime discriminator competencies-rules-policies, and resulting facts. Draft less attractive distractors. Check call of the question to determine if it accurately reflects the above sequence.

If you are using the above guideline to draft an essay test item or exercise, use your work-product to draft/review your call of the question, or the sequence of calls of the questions to ensure that they reflect your selection of the prime discriminator competencies-rules-policies, and resulting facts.

Avoid “tells” in your answer options or calls of the question.

Note: One of the most frequent tells in law school exams is inclusion of the correct rule of law in a single answer option.

Handout Section 3 — An Example of Sequential Questions
Illustrating the above Suggestions

Questions 4-5 are based on the following facts:

> Mike was on parole for theft when he was arrested on suspicion of bank robbery. Mike was living in his old neighborhood with his elderly aunt at the time of his arrest. Re was working at a neighborhood coffee shop. At trial, the prosecutor called Jack, Mike’s parole officer, to testily. She wants to ask Jack, if the was familiar with Mike’s hair color and length at the time of the bank robbery. The purpose of the question is to provide the jury with the information that Mike has shortened and colored his hair since the time of the robbery. The defense attorney objected to allowing Jack to testify for this purpose.

Question No. 4.

Which of the following rules, is the rule that provides the best basis for exclusion?

A. 402-irrelevant
B. 403-evidence policy balancing evaluation
C. 701-inadmissible lay person's opinion.
D. 802-Inadmissible hearsay

Question No. 5.

The prosecution also called Mary to testify. Mary would testify that she was Mike's high school classmate, and that the prosecutor had shown her photos of the bank robber, taken at the time of the robbery with bank cameras, and that she had identified the person in the photos as Mike. All of the following rules, except one, would be a valid basis for excluding this testimony.

A. 602
B. 701
C. 901
D. 1002

Question No. 4-5 Combo

4. B - 403 Old Chief no need for this purpose to call parole officer ---- significant unfair prejudice when prosecutor had multiple witness options.

Note: Approximately 80 takers, 42.66% of all students got question 4 correct. 71.43% of top 27% of test takers got question 4 correct. 14.29% of lower 27% of test takers got question 4 correct.

PBS: .49

Question No. 5.

A - At issue is content of bank photos – an exhibit which must be authenticated and original introduced in court. If introduced, jury could compare the photo to Mike even with change of hair, and therefore Mary's ID not helpful.

Note: 19.48% of all students got question 5 correct. 33.330/o of top 27% of test takers got question *5* correct. 4.76% of lower 2704 of test takers got question 5 correct

PBS: .38

Essay Question 4 above

Mike was on parole for theft when he was arrested on suspicion of bank robbery. Mike was living in his old neighborhood with his elderly aunt at the time of his arrest. He was working at a neighborhood coffee shop. At trial, the prosecutor called Jack, Mike's parole officer, to testify. She wants to ask Jack, if he was familiar with Mike's hair color and length at the time of the bank robbery. The purpose of the question is to provide the jury with the information that Mike has shortened and colored his hair since the time of the robbery. The defense attorney objected to allowing Jack to testify for this purpose. Please identify from among the following evidence rules the one that provides the best basis for exclusion: The basic relevance rule-40l, the evidence policy balancing evaluation rule-403, the lay person's opinion rule-701, or the hearsay rule-801. Discuss fully.

Part 2 – A Handout with Two Exam Questions and a Faculty Member's Commentary

In order to prepare for the faculty teaching forum discussion about assessing competencies, please review the two exam questions below and the commentary by one of our uniform exam coordinators, and consider the following question:

> What do you think made one question a good test item over the course of several years while the other question did not effectively test the target competencies?

Question No. 1

Tony and Robert, as lessees, signed and executed a valid lease agreement for a house in New Town. Lovely, the lessor, executed the lease and delivered possession of the premises to Tony and Robert. Three months after they entered into the lease Robert invited Anita to share the house with them. Anita agreed to pay her share of the rent to Lovely. Lovely did not object to this arrangement. There was a provision in the lease agreement that provided "any assignments, subletting, or transfer of any rights in the lease without the express written consent of the lessor is strictly prohibited."

Tony objected to Anita's moving in with them even if she was going to pay part of the rent. After Anita moved in Tony brought an action against Lovely, Robert and Anita for a declaratory judgment that Robert had no right to assign the lease. Robert's defense is that he and Tony were tenants in common for a term of years and that he had a right to assign a fraction of his undivided one-half interest. In this action Tony will:

A. prevail, because a cotenant has no right to assign all or part of a leasehold interest without obtaining the consent of all interested parties

B. prevail, because the lease provision prohibits assignments

C. not prevail, because he is not the beneficiary of the non-assignment clause in the lease

D. not prevail, because his claims amount to a restraint on alienation

Question No. 2

Landlord, by written lease, leases a house to Tenant for three years at an annual rent of $6,000, payable $500 per month. The lease has no provisions in it against subletting or assignments. After one year, Tenant has an offer to go to Paris to work. His friend, Clark, is willing to take over the house, however, he tells Tenant he can only afford to pay $400 rent. This is fine with Tenant as his company is providing housing for him in Paris and he does not mind paying the additional $100 per month on the lease. Tenant draws up a simple agreement which states: "In consideration of Clark's agreement to pay $400 a month for the remainder of the lease, I, Tenant, hereby transfer all my interest in the lease I have with Landlord to Clark." They date the agreement and both sign it. A year later the house is destroyed by fire. There is no provision for releasing the Tenant in case of destruction of the premises. This jurisdiction follows a conveyance theory of leases.

In an action by Landlord to collect the $6,000 owed for year three from Tenant and/or Clark what are the rights of the parties?

A. The lease ended with the destruction of the house.

B. Tenant received a term of years and is responsible for year three.

C. Tenant is only responsible for the $100 difference between his rent and that which Clark was paying.

D. Clark, as an assignee, is responsible for the rent.

Commentary by a Uniform Exam Coordinator

Question 1 has been used six times between 1992-2004 and has performed above the .20 Point Biserial we use as the cut off for a valid question every time except 2004 when the figure was .15. Question 2 was in 2004 and scored .05.

For Question No. 1, 41% of all students, 51% of the top third, and 29% of the bottom third answered it correctly, and students chose all the other three answers in roughly equal numbers. For Question No. 2, 42% of all students, 46% of the top third, and 34% of the bottom third answered it correctly, and students again chose all the other three answers in roughly equal numbers. To receive a PB score above .20 ordinarily requires the gap in answering correctly between the top and bottom thirds to be more than 30 percentage points. So Question No. 1 performed better because the gap was 22 percentage points as against 12 percentage points for Question No. 2. Since Question No. 1 performed substantially better in earlier years, the gap was substantially larger, although I don't have the exact figures.

In examining the questions, I personally have a hard time speculating as to why Question No. 1 performed better. I do think Question No. 1 is a relatively hard question, that the correct answer isn't immediately obvious, and that finding the correct answer demands eliminating the other answers. I also think Question No. 2 is relatively hard because it demands quite a thorough understanding of what constitutes the difference between an assignment and a sublease (not exactly a monumental legal issue) and because the facts are drafted so as to make the transfer look very much like an assignment rather than the sublease it really is, which should have led a lot of students without a thorough understanding to pick answer d, which in fact was the least popular answer overall and among the top and bottom thirds. Go figure.

Commentary by Center Faculty on the Comparative Evaluation of Two Property Uniform Exam Questions as Quality Student Discriminators.

Question 2 rule-policy sequence seems more complex based solely on fact sequences of the two problems, and their respective call of the questions based on the two sets of facts. Question 1, for example, appears to contain the specific most legally significant facts given the call of the question in a way likely to invoke reference to the correct rule-policy-skill sequence by the students. There is a non-assignment clause, but we are told that the lessor knows, and apparently does not object to what Robert did. Question two, for example, unlike question one does not pose typical litigation call of question, pitting one side against the other, but rather asks for a comparative evaluation of the respective rights of three persons. In addition, problem two also requires additional rule-policy-sequence abilities with regard to property assignment/sub-lease law because the item evaluator needs to know which of the three parties, given their respective legal status, is allocated this risk of an "Act of God".

Arguably, if the entire assignment/sublease rule-policy-skill sequence was presented accurately with the same degree of emphasis, the students would sort themselves similarly on both items. But the complexity of the rule-policy-skill sequence does impact our most crucial issue as professors - the likelihood that the complete message we believe we sent was accurately received. This is why mini-exercises designed to determine if incremental complex messages are being received accurately by most/fifty percent/a significant minority of our students are so vital.

This discussion highlights the potential great value of our periodic use in class of the "responders" that Professor Colon demonstrated at an October teaching session entitled Teaching in the 21st Century – Synchronous Teaching and Learning with Clickers, Podcasts, and Interactive Teaching by Satellite.