

## Using A Reflective Court Report To Integrate And Assess Reflective Practice In Law

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### **Abstract**

*In an Australian legal education context, there is minimal research on designing and implementing a court report as a summative assessment task. This journal article attempts to fill this gap by reflecting on the journey of a legal educator who pioneered a court report for a core final year course in a Bachelor of Laws program with large cohorts and improved it over 13 semesters in six years. Integrating reflective practice into the court report enhanced its level of authenticity. Notably, this journal article disseminates an example of a court report template and a criterion-referenced assessment rubric for a reflective court report that was grounded in the literature that conceptualises 'reflective practice' and has been refined over time with the benefit of a longstanding and rich experience.*

### **Key Words**

*reflective practice, authentic assessment, criterion-referenced assessment, legal education, court report*

### **Introduction**

Over the last thirty years, changes to assessment practices in the discipline of Law have been dynamic and unforeseeable (Keyes & Johnstone, 2004; Le Brun, 2001). A proliferation of innovative assessment tasks in many Australian Bachelor of Laws programs has superseded the single 100% end of semester examination that has been criticised for being unfair, invalid and unreliable (Race, 200; Stuckey et al., 2007).

Recent literature has identified a diverse range of assessment tasks that may be implemented in a Bachelor of Laws program. These tasks include a drafting exercise, case note, take-home examination, research essay, problem-based assignment, group assignment, moot, viva, tutorial participation, oral presentation, group presentation, multiple-choice questions, short answer quiz, book review, issues paper, press file (students monitor the media for specific legal issues), reflective journal, reflective court report, advocacy exercise, letter from a solicitor to a client, barrister's advice, cultural competency critique, legal citation exercise, library exercise, community-based assessment, community brochure, poster presentation, contributions to an online discussion forum, e-portfolio, wikis and blogs (Burton, 2014; Johnstone & Vignaendra, 2003; McNamara, Cockburn & Campbell, 2013; Stuckey et al., 2007).

This article focusses on how to integrate reflective practice into a court report as a summative assessment task in a Bachelor of Laws program. In doing so, it takes reflective approach and draws

on a rich experience of assessing a reflective court report over 13 semesters in a core undergraduate final year law course with a large cohort of internal and external students (500+).

### **Integrating Reflective Practice in a Bachelor of Laws**

Reflective practice is critical in a Bachelor of Laws program. It sits squarely within one of the six threshold learning outcomes (TLOs) that were developed as part of a Learning and Teaching Academic Standards Project (Kift, Israel & Field, 2010). The TLOs are: TLO 1: Knowledge; TLO 2: Ethics and professional responsibility; TLO 3: Thinking Skills; TLO 4: Research Skills; TLO 5: Communication and Collaboration; and TLO 6: Self-management (Kift, Israel & Field, 2010). Together, the TLOs represent what a graduate is expected to know, understand and be able to do as a result of learning or, in the words of the Australian Qualifications Framework (AQF), the “set of knowledge, skills and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning (Kift, Israel & Field, 2010, p. 9). Reflective practice is incorporated in TLO 6: Self-management (McNamara, Cockburn & Campbell). This threshold learning outcome requires law students to “learn and work independently ... reflect on and assess their own capabilities and performance... [and] make use of feedback as appropriate (Kift, Israel & Field, 2010, pp. 22-23).

In the context of assessing reflective writing, Moon (2004) highlighted the predominance of analysis over description and the consideration of an experience from a diverse range of viewpoints rather than from one personal viewpoint. Bourner (2003) emphasised the importance of the student identifying their strengths and weaknesses; as well as opportunities for developing the weaknesses into strengths. In addition, Bourner (2003) noted that reflective practice requires comparisons between what happened in the experience in question and whether that contradicted or confirmed prior beliefs. Mezirow maintained that “learning to think for oneself involves becoming critically reflective of assumptions and participating in discourse to validate beliefs, intentions, values and feelings” (2004, 185). Further, Mezirow construed “critical reflection” as “an analytical discussion but also a ‘contextual awareness’; that is, an appreciation of historical, social and political perspectives and underpinning assumptions” (2004, 185). Stein (2000) merged contextual reflection with “cultural forces” such as “race, gender, ethnicity, institutional policies, and personal expertise” (p. 3).

The wealth of literature on conceptualising “reflective practice” reinforces the numerous benefits of integrating it into a Bachelor of Laws program. *The Good Practice Guide for Reflective Practice* (McNamara, Cockburn & Campbell, 2013) lists the numerous benefits of teaching and learning reflective practice for law students. Some of the more pertinent benefits for the reflective court report in a final year core law course include:

- The development of the ability to identify gaps in students’ knowledge to enable them to assess their own capabilities and performance.
- The promotion of deeper learning by encouraging students to reflect on, identify, and critique their own learning.
- The provision of evidence of skills development and increases in competencies.
- Maximising the benefits of experiential learning practices.
- Assisting students with a smooth transition from student to professional as they look back and reflect on their learning and look forward to the prospects of their professional roles.

(McNamara, Cockburn & Campbell, 2013)

In addition to these benefits, integrating reflective practice into law curriculum develops a student’s “emotional intelligence” which has been defined as the “ability to perceive, use, understand, and manage emotions” (Kift, Israel & Field, 2010, p. 23). This is critical to handling the stresses confronting law students and legal practitioners evident in reported high rates of unhappiness, depression and substance abuse amongst these populations (Field, Duffy & Huggins, 2014; McNamara, Field & Brown, 2009).

First year as well as final year law students have much to gain from the integration of reflective practice (McNamara, Field & Cuffe, 2008). Final year law students should be encouraged to

reflect on professional identity and what has been learned throughout the law degree (Armstrong & McNamara, 2011).

Integrating reflective practice in a Bachelor of Laws program is an innovation pioneered in the 21st century (Burton & McNamara, 2009; McNamara & Burton, 2009; McNamara & Field, 2007; McNamara, Field & Cuffe, 2008). Traditionally, Australian legal education has focussed on transmitting discipline knowledge which dominated in law schools until the mid-1980s (Keyes & Johnstone, 2004). Challenges to transcending this traditional approach include the demands of students; pressure from the legal profession; the unwillingness of the legal academy to engage with legal education literature; the self-absorbed approach of legal educators to focus on their own courses to the detriment of an integrated curriculum; and inadequate resources (Keyes & Johnstone, 2004). Efforts to integrate reflective practice in contemporary legal education have to tackle these obstacles.

There is limited use of reflective practice in law courses that are heavily content based. The reason offered for this is that legal educators do not have the time to teach the content of their course in addition to teaching reflective skills to students (McNamara & Field, 2007).

The *Good Practice Guide for Reflective Practice* identifies journals as the most prevalent tool to assess reflective practice but recognises other tools such as e-portfolios, wikis and blogs (McNamara, Cockburn & Campbell, 2013). It is suggested that reflective practice could be integrated into any assessment task in a Bachelor of Laws program but this article explores the use of another tool that can be designed and implemented to assess reflective practice, that is, a reflective court report.

Integrating and assessing reflective practice will gain more momentum in legal education and may even supersede the traditional doctrinal ways of thinking as we travel further into the 21st century. Galloway and Jones (2014); and Watson (2012) foreshadowed the need for changes to the legal academy, the nature of the legal professional identity, and what it means to think like a lawyer. Designing and implementing a reflective court report is one way in which a legal educator can embrace such significant changes.

### ***Using a Court Report as Reflective Tool***

For the purposes of this article, a court report template is defined as a structured framework containing headings pertaining to judicial proceedings and rules of law. An example of a court report template is shown in Figure 1 and serves as a useful starting point for other legal educators who plan to design a reflective court report.

<b>EVIDENCE COURT REPORT</b>
<b>PARTIES:</b>
<b>DATE YOU WERE PRESENT AT COURT:</b>
<b>TIME YOU WERE PRESENT AT COURT:</b>
<b>COURT:</b>
<b>JUDGE/S:</b>
<i>Use your critical thinking skills, reflection skills, written communication skills and discipline knowledge to explore the following evidentiary issues.</i>
<ol style="list-style-type: none"> <li>1. <b>Relevant source of evidence law.</b></li> <li>2. <b>Onus of proof.</b></li> <li>3. <b>Role of the Judge/s, Crown, Defence Counsel in calling and questioning the witness/es.</b></li> <li>4. <b>Competence and compellability of the witness/es.</b></li> <li>5. <b>Special witness/es and special measures.</b></li> <li>6. <b>Objectionable questions and reformulations.</b></li> <li>7. <b>Main facts in issue.</b></li> <li>8. <b>Collateral facts.</b></li> <li>9. <b>Types of evidence.</b></li> <li>10. <b>Hearsay.</b></li> <li>11. <b>Exception/s to hearsay.</b></li> <li>12. <b>Implied admission/s and confession/s.</b></li> <li>13. <b>Voir dire.</b></li> <li>14. <b>Judicial discretion.</b></li> <li>15. <b>Any other worthy evidentiary issues.</b></li> </ol>

*Figure 1.* Example of a court report template

This particular court report template has been designed to contain headings relevant to *Evidence*, one of the eleven “prescribed areas of knowledge” for legal practice (Law Admissions Consultative Committee, 2009, p. 1). Evidence is commonly known amongst Australian law academics as one of the “Priestley 11” (Kift, Israel & Field, 2010, 13). This essentially means that law students are required to study Evidence if they choose to practice in the Australian legal profession.

The organising headings in the Evidence court report template in Figure 1 have been refined over time to make a greater connection with the content of Evidence. The initial headings on the court report were: citation, party names, file numbers, type of proceeding, originating court, where and when the case was delivered, judge, order, catchwords, counsel and solicitors for the applicant, and

counsel and solicitors for the respondent (Burton & McNamara, 2009). The initial headings can be readily transferred to court cases involving other “prescribed areas of knowledge” in the discipline of law (Law Admissions Consultative Committee, 2009, 1).

An alternative approach to developing headings for a court report template is to allow law students to choose headings from a list or to devise their own set of headings. Allowing law students to choose from options is supported by TLO 3: Thinking Skills (Kift, Israel & Field, 2010). Further, students’ choice over the headings on the court report template would give them more ownership over the assessment task and allow them to better cope with a court case that does not address the headings on a court report template. This flexibility would overcome the need for students to visit a court more than once or to mash together the evidentiary proceedings from more than one court case. Designing headings for a court report template is much more efficient on the workload of a legal educator as compared to, for example, setting a problem-based law question. Further, a court report template can be readily recycled from year-to-year, whereas recycling, for example, a problem-based law question or a law brief raises issues of academic integrity (Hopkins, 2013). In one offering of Evidence, students were able to choose the headings on their reflective court report from a list of headings. This was deemed to be valuable although it posed a challenge to sustainable and streamlined marking.

Designing a reflective court report template is merely the first step along the way of integrating reflective assessment. The reflective court report template needs to be scaffolded, and the amount of scaffolding can be tapered off in the later years of a law degree (Hughes, 2009). Even though Evidence is a core final year law course, the scaffolding for the Evidence reflective court report was extensive because the law students had not been given the opportunity to do a reflective court report as a summative assessment task earlier in their law degree. In Evidence, the scaffolding included a discussion in a lecture about where the courts were located; how to read the daily law list to find out what trials were on; court etiquette; examples of court reports completed by past students with feedback; a detailed explanation of the criterion-referenced assessment rubric with examples of how to meet the performance standards, including how to demonstrate reflection; and a weekly tutorial program that developed an understanding of the rules of Evidence and a traditional approach to legal reasoning, which is discussed below. The weekly tutorial program also served as formative assessment, whereby the law students routinely received feedback on their work and could identify gaps in their understanding (Kift, 2000; Nichol & MacFarlane-Dick, 2010; Shircore, Galloway, Corbett-Jarvis & Ryan, 2013; Stuckey et al., 2007; Sullivan, et al., 2007). In the future, law students could be given the opportunity critique past students’ examples of the reflective court report against the criterion-referenced assessment rubric. This strategy has been successfully exercised in a first year law course (Burton & Cuffe, 2005).

Nichol and MacFarlane-Dick (2010) have suggested that formative assessment empowers students to have control over their learning. Stuckey et al. (2007) stressed the importance of formative assessment, particularly for first year students. Sullivan et al. (2007) noted that law schools currently make limited use of formative feedback. Kift (2002) recommended that formative feedback should be given greater attention and that law students should receive it routinely. Shircore et al. (2013) shared an approach that was consistent with the Kift’s (2002) recommendation to embed formative assessment into a first year law experience, and as a result, their students received feedback on a weekly basis.

The key to successfully integrating reflective practice into a court report template depends on how the assessment task is implemented. For the purposes of the Evidence reflective court report, the law students were instructed to demonstrate their discipline knowledge by identifying the legal issues in the court case, state the evidentiary rules of law, apply the evidentiary rules to the facts of a court case and reach a conclusion. This is colloquially known amongst the law academy as IRAC (issue, rule, application, and conclusion) (Field, Duffy & Huggins, 2013). This is a traditional, logical and linear approach to legal reasoning and thinking like a lawyer (Field, Duffy & Huggins, 2014). There are a myriad of approaches to legal reasoning “which try to supplement the simplicity of IRAC, and aim to offer a method that is more congruent with authentic legal problem

solving” (Field, Duffy & Huggins, 2014). A discussion of these other approaches to legal reasoning is outside the scope of this journal article. Where legal educators only assess a court report on the basis of the IRAC approach without a reflective component, they perpetuate doctrinal legal reasoning and arguably limit the scope of what it means to think like a lawyer.

In addition to IRAC legal reasoning, the Evidence students are advised to use critical thinking and reflection skills, which are couched in terms of the performance descriptors on the reflective court report’s criterion-referenced assessment rubric, which is shown in Figure 2. This, in turn, strengthens the constructive alignment between the learning outcomes and assessment (Heath, 2011). One area where law students struggle to engage in reflective practice is in identifying their strengths and weaknesses in their understanding of the trial process. This type of thinking goes against the grain of doctrinal and traditional approaches to legal education. Efforts to overcome this issue have been to show the law students examples of past student reflective court reports and to unpack the performance standards on the criterion-referenced assessment rubric.

Assessing reflective practice motivates law students as they channel their energies towards summative assessment (Johnstone, Patterson & Rubenstein, 1998). The Evidence reflective court report was due in Week 11 of a 13-week semester. This deadline was deliberately late in the semester so the law students had plenty of opportunity to make comparisons between what they had learned in the course of Evidence and what they observed in the courtroom; and to circumvent the courts being inundated with large cohorts of law students. Anecdotally, many of the Evidence law students attended the courts in the week before the reflective court report was due. In the future, law students will be encouraged to attend the court earlier in the semester so that they can engage with deeper approaches to learning, rather than surface learning (Heath, 2011).

In the future, one strategy that could be used to encourage a deeper approach to learning is permitting law students to draw on secondary sources, for example, newspaper articles about the court case to, for example, help them tease out the “contextual forces” listed above (Stein, 2000, p. 3). While this might lead to the unintended and unethical consequence that a law student decides not to attend a court and simply relies on secondary sources or a transcript of a court case to complete the reflective court report, it is hoped that the law students would be motivated to attend a court case earlier in the semester, allowing the ability to capitalise on secondary resources to supplement their observations in the courtroom.

### ***Integrating Reflective Practice into a Court Report to Improve its Authenticity***

The salient features of ‘authenticity’ include mimicking a real world professional; producing a valuable, polished product; integrating higher order thinking skills, reflection and self-assessment; completing the task using resources available in the workplace and under realistic conditions; allowing students to collaborate, exercise judgment, choose sub-tasks, and provide diverse responses (Ashford-Rowe, Herrington & Brown, 2014; Herrington & Herrington, 1998, 2006; Herrington, Oliver & Reeves, 2002). These features underpin the Authentic Assessment Framework, which offers legal educators a means of measuring the authenticity of an assessment task and identifies areas for improving the authenticity of an assessment task (Burton, 2011). Applying the Authentic Assessment Framework to a Reflective Court Report is a novel idea. For ease of application, the Authentic Assessment Framework provides 10 closed (yes/no) questions, which are outlined and applied to a Reflective Court Report. A score of 1 is given to each affirmative answer (Yes). A reflective court report achieves 8/10 on this framework (see Table 1). It is more authentic than a court report that is simply based on doctrinal or traditional modes of thought, which would not seamlessly integrate reflection or self-assessment, and therefore, would only achieve 6/10.

Table 1. *Authentic Assessment Framework Applied to a Reflective Court Report*

Item	Question/criterion	
1	Is the student required to mimic a professional in the real world?	No
2	Is the student required to complete the assessment task using resources similar to that in the workplace?	Yes
3	Is the student required to complete the assessment task under realistic conditions?	Yes
4	Does the assessment task produce a valuable, polished product?	Yes
5	Is higher order thinking or meta-cognition seamlessly integrated with the assessment task?	Yes
6	Is reflection seamlessly integrated with the assessment task?	Yes
7	Is self-assessment seamlessly integrated with the assessment task?	Yes
8	Does the student collaborate with other stakeholders (for example, professionals/students) when completing the assessment task?	No
9	Does the student need to exercise judgment or choice in determining sub-tasks of the assessment task?	Yes
10	Does the assessment task produce a novel or diverse responses?	Yes

In the context of a reflective court report, the following comments justify the yes/no answers to the 10 questions in the Authentic Assessment Framework.

- A reflective court report merely requires a law student to observe the roles of a judge and counsel in a real court room, rather than mimic them. In doing so, law students use resources similar to that in the workplace, for example, legislation, case law, text books, daily law list on the Queensland Courts website, map of the court, stationery and printer. They have access to additional resources such as lecture notes and examples of past student reflective court reports.
- Students complete the reflective court report under realistic conditions because they write notes whilst they are in the courtroom and then type up the notes at their own leisure rather than under the stresses of exam conditions.
- The court report is a valuable, polished product because it provides a snapshot of the relevant legal authorities pertaining to important topics in Evidence, and supports students to identify and address gaps in their knowledge of the rules of evidence.
- Students are required to use higher order thinking skills (analysis, synthesis, evaluation) when they apply the rules of evidence to the court case that they have observed.
- In addition, the assessment task involves reflection and self-assessment. For example, students are required to analyse what they observed in the courtroom from a personal perspective, and identify strengths and weaknesses in their understanding of the trial process. They need to suggest a way forward for dealing with their weaknesses, or preferably how they have dealt with them. Students need to analyse what they observed in the courtroom from a historical, social, cultural or political perspective. Further, students are required to question assumptions and values, consider alternative options, and resolve inconsistencies between the expectations from their studies and what they observed in the courtroom.

- Students make several judgments and choices in completing this assessment, for example, the type of case - a civil or criminal case; the Court - Supreme Court, District Court, Magistrates Court or Commonwealth Court; and when they attend the court - based on their own preference plus the information detailed on the daily law list. There is also a degree of judgment involved in which strengths and weaknesses of their understanding of the rules of evidence they reveal in their reflections, and how they apply the rules of evidence to the case they observed.
- The student attempts at the Evidence reflective court report usually contain the same legislative provisions and case law, but produce novel and diverse responses, depending on what case the student has observed in the courtroom as well as the quality of the student's reflection and self-assessment.

Figure 2 shows how a reflective court report and court report based on doctrinal or traditional modes of thought compare to other assessment tasks that have previously been measured on the Authentic Assessment Framework (Burton, 2011, 2014).

Assessment Task	Level of Authenticity
Oral presentation	3/10
Tutorial participation	3/10
Problem-based examination	3/10
Cultural competency critique	5/10
Advocacy exercise	6/10
Court report based on doctrinal or traditional modes of thought	6/10
Barrister's advice	7/10
Reflective court report	8/10

*Figure 2:* A comparison of the authenticity of assessment tasks based on the Authentic Assessment Framework

To date, a reflective court report is the most authentic assessment task captured under the Authentic Assessment Framework. Two key areas where the reflective court report used in Evidence can enhance its level of authenticity include mimicking a professional and collaboration. Arguably, this could be achieved in the future by requiring the students to complete the reflective court report in pairs or small groups; and by requiring the students to plan some of the questions that they would ask if they were counsel in the trial process.

**Assessing Reflective Practice on a Criterion-referenced Assessment Rubric**

The preference for using criterion-referenced assessment over norm-referenced assessment in legal education has been well-documented (Burton, 2006; Burton & Cuffe, 2005; Heath, 2011; Hughes & Cappa, 2007). Some of the key benefits of using criterion-referenced assessment are to advise the students upfront what is expected of them; to ensure marking is streamlined and sustainable; and to guide the provision of worthwhile feedback to students. The full criterion-referenced assessment rubric for the Evidence reflective court report is shared in Figure 3. The key criteria are discipline knowledge; and critical thinking, reflection and communication skills. The original version of the reflective component of this rubric was grounded in the literature that conceptualises “reflective practice” (Burton & McNamara, 2009). Since then it has since been refined to provide greater clarity and transparency for the markers and students, and this in turn reduced the workload for the markers.



**Reflective Court Report Criterion-Referenced Assessment Rubric**
**Student Name:**

<b>Criteria</b>	<b>Grades of 1-3</b>	<b>Grade of 4</b>	<b>Grades of 5-6</b>	<b>Grade of 7</b>
<b>Discipline Knowledge (10 marks)</b>  (Learning outcomes: 1, 3, 4, 5, 6, 7)	You demonstrated a superficial knowledge of the trial process and rules of evidence.	You demonstrated a solid knowledge of the trial process and rules of evidence.	You demonstrated a persuasive knowledge of the trial process and rules of evidence.	You demonstrated a comprehensive knowledge of the trial process and rules of evidence.
<b>Critical Thinking, Reflection and Written Communication (10 marks)</b>  (Learning outcomes: 1, 3, 4, 5, 6, 7)	You described what you observed in the courtroom from an impersonal perspective, and/or you did not identify strengths in your understanding of the trial process.	You described what you observed in the courtroom from a personal perspective, and you identified strengths in your understanding of the trial process.	You analysed what you observed in the courtroom from a personal perspective, and you identified strengths and weaknesses in your understanding of the trial process.  You considered alternative options, and resolved inconsistencies between your expectations from your studies and what you observed in the courtroom.	You analysed what you observed in the courtroom from a personal perspective, and identified strengths and weaknesses in your understanding of the trial process. You suggested a way forward for dealing with weaknesses, or preferably how you dealt with them.  You analysed what you observed in the courtroom from a historical, social, cultural or political perspective.  You questioned assumptions and values, considered alternative options, and resolved inconsistencies between your expectations from your studies and what you observed in the courtroom.
<b>TOTAL /20</b>				
<b>See Generic Feedback for the Court Report on Blackboard under the Feedback Link</b> <b>Additional feedback (if any):</b>				

Figure 3: Example of a criterion-referenced assessment rubric for a reflective court report

## Conclusion

This article has contributed to the field of legal education by exploring a court report as a tool for integrating and assessing reflective practice. As we travel further into the 21<sup>st</sup> century, it is hoped that more legal educators will embrace a reflective court report in Australian Bachelor of Laws programs. Integrating reflective practice into an assessment task enhances its level of authenticity. A reflective court report has a higher level of authenticity under the Authentic Assessment Framework, compared to an oral presentation, tutorial participation, problem-based examination, cultural competency critique, advocacy exercise, court report based on doctrinal or traditional modes of thought and barrister's advice. This article shares a court report template and a criterion-referenced assessment rubric for a reflective court report.

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