

‘SCARY BUT FUN!’: A REFLECTION ON THREE YEARS OF MOOTING IN TORTS AT THE JD LEVEL

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ABSTRACT

In a very full curriculum, finding time and space to develop important skills such as communication and collaboration can be difficult. These issues are exacerbated in a postgraduate Juris Doctor (‘JD’) degree. In this article, the authors describe and evaluate the moot exercise that has been introduced into their first-year JD core unit ‘Torts’ at the University of Western Australia and particularly how it has provided students with the opportunity to develop crucial skills that align with the national Threshold Learning Outcomes (‘TLOs’), notably TLO 5: Communication and Collaboration.

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I INTRODUCTION

There is a ‘long standing, if not timeless tension’ between the roles theory and practice should play in the study of law,¹ but the *practice* of law is ultimately vocational.² From an educational perspective then, a successful law graduate should have acquired, in addition to substantive content, a significant and diverse range of relevant practical skills. Of those skills, students should, at the very least, have had the opportunity to acquire a good level of advocacy and communication competencies, which are critical to practice in the legal profession.³ This is obviously the case for those students who intend to be involved in court work. However, the ability to formulate complex oral arguments and be responsive to counterarguments, objections or unexpected turns of events constitutes a valuable competency for those who will undertake different career paths, such as solicitors, in-house counsel and working in the public service.

Incorporating the assessment of skills in a meaningful way throughout any law course can be challenging,⁴ but doing so in the course of a three-year postgraduate Juris Doctor (‘JD’) degree, while maintaining high levels of substantive rigour, can be a particularly complex task. This is exacerbated by current trends in higher education that push towards the shortening of teaching periods and the need to ‘do more with less’, among other things.⁵ Additionally, a significant difficulty that we as legal educators face is how to guarantee that every law student has the opportunity to develop and be assessed on advocacy skills when we are dealing with increasingly large cohorts.⁶

This article examines our experience in utilising mooting as a mid-semester assessment in ‘Torts’, a core JD unit at the University of Western Australia Law School (‘UWA’).⁷ By using this well-established type of exercise, which is grounded in a constructivist pedagogical theory, we aim to integrate advocacy and other valuable skills into the core curriculum of the degree, thereby enhancing the overall calibre and versatility of our graduates. Constructivist theory supports a participative learner-centred approach, placing an emphasis on the construction of meaning by the learner through appropriate activities and assessments that leads to enhanced

¹ Michael Coper, ‘Introduction and Overview’ in K Lindgren, F Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters, 2018) 1, 3.

² Frederick Allen, ‘The Law as a Vocation’ in *Twentieth-Century Legal Treatises: UK* (Harvard University, 2019).

³ Natalie Skead and Kate Offer, ‘Learning Law through a Lens: Using Visual Media to Support Student Learning and Skills Development in Law’ (2016) 41(3) *Alternative Law Journal* 186, 186.

⁴ Kate Galloway, Kate Offer and Natalie Skead, ‘Disrupting Legal Education’ (2017) 44(10) *Brief* 10, 10.

⁵ Martin Tsamenyi and Eugene Clark, ‘An Overview of the Present Status and Future Prospects of Australian Legal Education’ (1995) 29(1) *The Law Teacher* 1, 20; Madeline Breeze, Yvette Taylor and Cristina Costa, ‘Introduction: Time and Space in the Neoliberal University’ in Madeline Breeze, Yvette Taylor and Cristina Costa (eds), *Time and Space in the Neoliberal University: Futures and Fractures in Higher Education* (Springer, 2019) 1, 2. At UWA, where the authors are based, the teaching semester was reduced from 13 weeks to 12 weeks in 2019.

⁶ Tsamenyi and Clark (n 5) 9.

⁷ ‘Torts [LAWS4106]’, *The University of Western Australia Handbook 2023* (Web Page) <<https://handbooks.uwa.edu.au/unitdetails?code=LAWS4106>>.

learning.⁸ Lynch in particular has analysed how mooting fits into established theories of learning, including constructivism, noting that students who moot must engage in legal research in order to develop their argument. They ‘construct [their argument] from the materials they will discover through their research’, which ‘exposes students to areas with which they are unfamiliar, or at least require a much deeper understanding than was necessary when the students were first introduced to the material’.⁹ Kinchin, who conducted a study at the University of Wollongong Law School in relation to a mooting assessment in their undergraduate ‘Administrative Law’ unit, also notes the importance of collaboration to constructivism, as it allows students ‘to test their own understanding and to examine the understandings, or alternative views, of others’.¹⁰

In this article we provide some background to contextualise our initiative, describe ‘the how and the why’ of mooting in the JD, and reflect upon the successes and challenges of the experience. It is also worth noting that, while in-semester mooting is overwhelmingly a positive experience that attracts good-to-enthusiastic feedback from students, some aspects require constant fine tuning (particularly in the wake of the Covid-19 pandemic).

This article should be read as an extended reflective piece on the back of three consecutive years of running this assessment. As such, it is not methodologically grounded on quantitative or qualitative data, but rather on that particular type of scholarship of teaching and learning that is based on self-reflective practices.¹¹ Reflective practice can encourage improvement through reflecting on one’s own teaching methodologies and practices, to move towards, as Biggs and Tang put it, ‘transformation from the unsatisfactory what-is to the more effective what-might-be’.¹² The observations that follow are based on our experiences as unit coordinators, as well as the formal and informal feedback that we have received over the past three years, of an assessment practice in which we have endeavoured to create an effective ‘what-is’.

II MOOTING IN POSTGRADUATE LEGAL EDUCATION AND THE ‘SHORT DEGREE WITH SHORT SEMESTERS’ DILEMMA

Traditionally, the journey through law school involves an undergraduate degree (LLB) over a four-year timeframe, with core subjects either taught as year-long units or split into semester-

⁸ John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (McGraw Hill, 3rd ed, 2007) 28; John Biggs, ‘Enhancing Teaching through Constructive Alignment’ (1996) 32(1) *Higher Education* 347; Bärbel Inhelder, Harold H Chipman and Charles Zwingmann, *Piaget and His School: A Reader in Developmental Psychology* (Springer-Verlag, 1976); John Dewey, *Experience and Education* (Free Press, 1998).

⁹ Andrew Lynch, ‘Why Do We Moot? Exploring the Role of Mooting in Legal Education’ (1996) 7(1) *Legal Education Review* 67, 78.

¹⁰ Niamh Kinchin, ‘Assessable Moots in Administrative Law: The Role of Student Feedback in Creating Cohesion’ (2020) 29(1) *Legal Education Review* 1, 3.

¹¹ See, eg, Roberta M Berry, ‘Teaching Health Law: Problem-Based Learning Regarding “Fractious Problems” in Health Law: Reflections on an Educational Experiment’ (2011) 39(4) *The Journal of Law, Medicine & Ethics* 694; Ming-Sung Kuo, ‘Reconciling Teaching and Research in Law: An Expatriate Law Teacher’s Interdisciplinary Reflection’ (2015) 32(2) *The Journal of Legal Studies Education* 229; Eleanor Stein, ‘Ignorance/ Denial-Fear/ Paralysis/ Engagement/ Commitment: Reflections on a Decade Teaching Climate Change Law’ (2015) 102 *Radical Teacher* 17.

¹² Biggs and Tang (n 8) 43.

long components.¹³ This setting provided educators with significantly more time to explore complex subject matter as well as develop crucial legal skills. However, the move to the postgraduate model (a three-year-long JD), combined with the shortened teaching periods, has drastically reduced the time available. Arguably, there are sound pedagogical reasons to teach law at postgraduate level;¹⁴ students come to their legal studies already with a tertiary education background and having learned much of the foundational work that is required at undergraduate level. At UWA, where many students have undertaken undergraduate majors in Law and Society or Business Law, substantive and vocational content that is specific to the study of law has been studied and can reliably be built upon. Nevertheless, from a practical perspective the move to postgraduate legal education entails changing and adapting teaching styles as well as assessment structures in core subjects that have a long and established teaching tradition.¹⁵

Aside from the obvious challenges that a shortened timeline presents for the transmission of substantive content, the condensed format can be particularly detrimental to an educator's capacity to facilitate students' acquisition of appropriate levels of the so-called 'soft' skills. The importance of these skills was recognised by the government-funded Learning and Teaching Academic Standards Project in 2009, which was established to identify and define learning standards across all disciplines.¹⁶ The six Threshold Learning Outcomes ('TLOs') prescribed for the JD are: Knowledge (TLO 1); Ethics and Professional Responsibility (TLO 2); Thinking Skills (TLO 3); Research Skills (TLO 4); Communication and Collaboration (TLO 5); and Self-management (TLO 6).¹⁷

In choosing to assess 'Torts' with a moot, we were particularly focused on TLO 5: Communication and Collaboration. TLO 5(a) provides that JD graduates will be able to communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences. TLO 5(b) provides that JD graduates will be able to collaborate effectively; collaboration and the ability to work as a part of a team are particularly crucial skills in the modern workplace. Of course, a moot goes beyond the development of broader communication and collaboration skills and can give students the opportunity to hone advocacy skills. Advocacy skills include the ability not only to deliver a persuasive argument but the ability to respond effectively to the arguments of one's counterparty, which is the crux of the adversarial system.

¹³ Sally Kift and Mark Israel, *Learning and Teaching Academic Standards Project: Bachelor of Laws, Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, December 2010) <<https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf>>.

¹⁴ See Natalie Skead and Penelope Carruthers, 'The Juris Doctor: A New Era of Legal Education at the University of Western Australia' (2018) 45(3) *Brief* 12; Natalie Skead, Sarah Murray and Penelope Carruthers, 'Taking Up the Challenge: Embedding, Mapping and Maintaining Threshold Learning Outcomes in the Transition to the JD — The UWA Experience' (2013) 47(2) *The Law Teacher* 130.

¹⁵ Skead and Carruthers (n 14) 13.

¹⁶ Australian Learning and Teaching Council and Council of Australian Law Deans, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Final Report, 2009) <https://ltr.edu.au/resources/altc_LawReport.pdf>.

¹⁷ Skead, Murray and Carruthers (n 14) 134.

It would be unrealistic to suggest that the complex process of acquisition of oral advocacy skills can be fully integrated within the scope of one content-heavy core substantive unit — of course, it cannot. Rather, the contention here is that adding a structured advocacy component to a content-focused assessment provides an important opportunity for students to develop their oral and rhetorical skills beyond traditional communication, and in a more effective way than simply assessing students' participation in tutorials.

The issue of over-assessment is particularly severe in law schools,¹⁸ and our experience is no exception. For context, full-time JD students take four units per semester.¹⁹ In Semester 2 of their first year, students take 'Foundations of Public Law', 'Legal Interpretation', 'Land Law' and 'Torts' — four core units. University policies prevent final exams being worth more than 60% of the total mark; as a result of this, every unit needs to run a weighty mid-semester assignment (worth typically between 30% and 40% of the mark). This is in contrast with the unit structures that used to take place in the LLB, where big core units were either split across two semesters, thus allowing greater in-depth coverage of content, or run for an entire year, with a final, end-of-year examination carrying the bulk of the total mark. This observation illustrates how studying law in a three-year degree entails a significant compression of the time available to students to digest complex content. Moreover, it is important to consider that postgraduate students are a more mature cohort that tends to have overall more external constraints than undergraduates (such as work commitments, caring duties, and so on).²⁰ In this context, it becomes apparent that, for students to focus on particular skillsets such as advocacy and communication skills, it is essential to carve out a dedicated space.

Not unconnected to this, at UWA, recent trends show a disproportionate number of deadline extension requests in relation to written assessments (with research essays the most common form of mid-semester assessment in law schools),²¹ with anecdotal consensus among colleagues that the Covid-19 years have put unprecedented pressure on both students and the system. Additionally, there is well-established research demonstrating how law students suffer from above-average assessment-related stress with measurable impact on their mental health.²² In this sense, offering an alternative approach to assessment can provide some relief from the

¹⁸ Melissa Henke, 'When Your Plate Is Already Full: Efficient and Meaningful Outcomes Assessment for Busy Law Schools' (2020) 71(2) *Mercer Law Review* 529.

¹⁹ The structure of the course is available at: 'Juris Doctor [20820]: Course Overview', *The University of Western Australia Handbook 2023* (Web Page) <<https://handbooks.uwa.edu.au/coursedetails?code=20820>>.

²⁰ Arlie Loughnan and Rita Shackel, 'The Travails of Postgraduate Research in Law' (2009) 19(1) *Legal Education Review* 99, 121; Tricia Marie van Rhijn et al, 'Unmet Needs: Challenges to Success from the Perspectives of Mature University Students' (2016) 28(1) *Canadian Journal for the Study of Adult Education* 29, 31; Cathy Stone and Sarah O'Shea, 'Time, Money, Leisure and Guilt: The Gendered Challenges of Higher Education for Mature-Age Students' (2013) 53(1) *Australian Journal of Adult Learning* 95, 97.

²¹ Whilst the data is not publicly available, we are privy to this information given the service roles we cover in the Law School.

²² Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress among Law Students' (2013) 36(2) *UNSW Law Journal* 390; Wendy Larcombe, Sue Finch and Rachel Sore, 'Who's Distressed? Not Only Law Students: Psychological Distress Levels in University Students across Diverse Fields of Study' (2015) 37(2) *Sydney Law Review* 243; Natalie Skead and Shane L Rogers, 'Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing' (2014) 40(2) *Monash Law Review* 564.

constant grind of written assessments, which represent the vast majority (if not entirety) of assessments in other core units of the degree.

The use of alternative assessments to research papers has the advantage of accommodating students' differing learning styles. Learning styles are defined as 'stable ways of approaching [academic] tasks that are characteristic of individuals'.²³ Since learning styles vary between individual students, particularly so in a postgraduate law degree where there is likely to be a more diverse cohort, providing a wider range of assessment styles would be a more equitable approach to assessment.²⁴

A related issue, which is not specific to law schools but rather applies to universities across the board, is that of increasing contract cheating in the context of take-home assignments (such as research essays) and online cheating, such as during online exams.²⁵ Adopting a moot as a form of assessment can help mitigate these issues, as the in-person and interactive nature of the mooting assessment substantially reduces opportunities for plagiarism and collusion.

III THE *WHY* AND THE *HOW* OF MOOTING IN THE JD

A *Why?*

The fact that mooting is an overall valuable learning and skills development exercise for law students and one that is particularly beneficial to the development of communication skills is amply demonstrated in the legal education literature.²⁶ What sets the moot we currently conduct at UWA apart from other experiences is that it is the first of its kind to be conducted at postgraduate level in Australia, and within the scope of the condensed three-year JD timeframe. Moots that already exist as a part of the Law School curriculum will usually be located in standalone units. These moots can be internal, state, national or even international competitive programmes, or extracurricular activities.²⁷ While immensely rewarding and beneficial for the students who participate (typically after a process of selection), they do not achieve the intended goal of providing access to advocacy development to all students in the cohort.

The fundamental question we faced as unit coordinators was whether the demonstrated benefits of mooting can be maintained in the context of the JD, or whether the degree's constraints made mooting as an assessment impractical in a core unit. To answer the question, we sought

²³ John Biggs, 'Approaches to Learning and to Essay Writing' in RR Schmeck, *Learning Strategies and Learning Styles* (Plenum Press, 1988) 185.

²⁴ Mihail Danov, 'Teaching International Commercial Arbitration at Postgraduate Level: Techniques for Enhancing Students' Learning' (2011) 45(1) *The Law Teacher* 101, 103.

²⁵ Kamrul Ahsan, Suraiyah Akbar and Booi Kam, 'Contract Cheating in Higher Education: A Systematic Literature Review and Future Research Agenda' (2022) 47(4) *Assessment & Evaluation in Higher Education* 523.

²⁶ See, among others, Ruth Jones, 'Assessment and Legal Education: What Is Assessment and What the *# Does It Have to Do with the Challenges Facing Legal Education' (2013) 45(1) *McGeorge Law Review* 85; Lang Tang, 'The Effective Application of "Moot Court" in Law Teaching' (Conference Paper, International Conference on Computers, Information Processing and Advanced Education, May 2021).

²⁷ For example, participation in the Philip C Jessup International Law Moot Court Competition, which is undertaken as an elective unit, is limited to only five students.

to develop a model that would accommodate yearly cohorts of about 250 students, with a maximum of three teaching staff involved in the assessment. What follows is a description of the structure of the assessment, which we hope may provide some useful inspiration for colleagues attempting to integrate this type of assessment in their curriculum.

B *How?*

‘Torts’ runs in Semester 2 of the first year of the JD. During the winter break, we design a complex factual scenario, supplemented by extra materials such as made-up statutory provisions, contractual obligations, industry standards, witness statements and the like. This scenario typically involves two separate claims; with two plaintiffs and two defendants we can accommodate four different submissions. The problem is released to students via our Learning Management System in week 2. The moot then takes place in the mid-semester break and is focused on the content of the first four weeks of semester, ie, Duty of Care and Breach of Duty in Negligence.

Each moot takes place in a 60-minute block, during which four students are assessed. Students work in teams of two. Students are free to decide who they want to work with and are responsible for signing themselves up to an assessment time slot on an online calendar system.²⁸ If a student does not have a preferred teammate they simply register individually, and we pair them up with another student who registers for the same time slot.

Prior to their moot, teams must provide 800-word written submissions for both the plaintiff and the defendant. This is a very basic skeleton argument highlighting the key issues of fact and law (and relevant authorities) that will be raised in the oral arguments. Crucially, each team of two students must be prepared to argue either side of the problem (plaintiff or defendant), and whether a team appears for the plaintiff or the defendant is decided on the day, on the basis of a coin toss. This ensures that students cover every angle of the problem in their preparation.

During the moot, each student is required to speak for up to eight minutes, and each team is given an extra eight minutes at the end for rebuttal and rejoinder, in the following format:

- Plaintiff 1** — 8-minute argument
- Plaintiff 2** — 8-minute argument
- Defendant 1** — 8-minute argument
- Defendant 2** — 8-minute argument
- Plaintiff team** — 8-minute rebuttal
- Defendant team** — 8-minute rejoinder

The moot assessment is worth 35% of the unit’s total mark. The written submission is marked jointly and is worth 10 marks. The oral component is marked individually and is worth 25

²⁸ There are a number of free services available for this purpose, although we currently use a live Excel signup sheet embedded into our institutional MS Teams platform.

marks. The oral argument is marked out of 18 and the advocacy component is marked out of 7.

It is important to note that the emphasis of the assessment is on the substance of the argument rather than compliance with court procedures and formalities. So, for example, it is sufficient for students to commence their oral submissions as follows: *‘Your Honour, my name is XX, and I appear with my learned colleague, YY, on behalf of the Plaintiff/Defendant.’* This is an important distinction from other mooting competitions where emphasis is placed on strict adherence to protocol. Thus, the key assessment criteria are as follows:

- Clearly identify relevant factual and legal issues and apply legal principles to resolve each issue.
- Demonstrate a deep knowledge and understanding of legal principles, relevant case authority and commentary.
- Develop a clear and cogent oral argument.
- Where necessary, respond clearly and relevantly to key points raised by counterparties.

We made the conscious choice of allocating a relatively low number of marks to the advocacy component. Specifically, we want the moot to be a positive formative experience, and not yet another daunting task. JD students come from diverse backgrounds and not all of them have necessarily developed strong public speaking skills at this stage of their law degree. We are also cognisant of the potential added stress for students dealing with mental health issues. Allocating 7 marks to advocacy and putting the emphasis on the substance of the arguments presented is designed to achieve a double objective. On one hand we seek to create a *sui generis* ‘sandbox’ where students can experiment and trial out their advocacy with relatively low stakes. In that spirit, we mark advocacy generously, rewarding effort over objective success. On the other hand, there are sufficient marks attached to ensure that students take the exercise seriously.

IV REFLECTING ON THE ASSESSMENT THREE YEARS ON

We have now run three iterations of this assessment, and so are able to reflect on its impact and outcomes thus far. Overall, we believe that the question of whether it is possible to successfully integrate mooting as an assessment within the scope of a JD core unit can be answered in the positive.

Indications of the experiment’s success can be found, for the first iteration (2020) in the Students’ Unit Reflective Feedback Reporting. Specifically, the statement ‘The assessment tasks were closely linked to the unit objectives’ received a score of 3.77/4 — well above the school (3.43) and university (3.47) average for the year. In the same year, the Student Perceptions of Teaching survey included the statement ‘The teacher organized and conducted the assessment (moot) effectively and fairly’, which received an excellent 4.71/5.

For the second iteration of the moot, in 2021, the unit was scored according to a different system, the Student Experience of Learning and Teaching (‘SELT’), which is now the current student evaluation used at UWA. The SELT report for the unit recorded an excellent 4.60/5 for the statement ‘The assessment tasks in this unit helped me learn’. Naturally, this is not limited to the moot and includes the final exam. However, it is possible to augment this score with observations from the open-ended comments section of the SELT report, which provides qualitative validation to these quantitative stats:

The moot assessment was very useful, it was good to prepare and research both sides of the argument and have an introduction to advocacy.

I really enjoyed the assessment structure in the unit with the moot making for a refreshing and stimulating challenge.

Although daunting, the moot was really enjoyable; it was nice to get a feel for what trial advocacy looks like.

From our perspective, so far the assessment has achieved a number of positive outcomes, which prompt a series of observations we now discuss in turn.

A Mooting in the JD: TLO 5 Communication and Collaboration

First, mooting integrates advocacy into a condensed degree that otherwise tends to sacrifice oral and rhetorical skills in favour of more manageable written assessments.

As already suggested, the moot assessment aligns with TLO 5’s requirement that students develop appropriate communication skills. On a broader level, these skills are already assessed in more traditional settings, such as tutorial participation. However, mooting allows students to delve deeper into the specific type of communication that is involved in advocacy work, ie, the art of crafting a persuasive argument on behalf of another, anchored to evidence and principles.²⁹ Students are also provided with an opportunity to work another aspect of advocacy: their responsiveness and ability to ‘think on their feet’. Advocacy and responsiveness are critical skills for law graduates, regardless of whether they end up working as litigators, solicitors or elsewhere.³⁰ Yet, such skills do not receive many other opportunities for development over the course of the JD, and certainly not in core subjects. In this sense, there are also significant benefits to exposing students to advocacy early in the degree, as further discussed below.

In addition to individual advocacy, the structure of the mooting assessment described above allows students to work on their collaborative and team-building skills. This is critical, as the legal profession, although often still regarded as solitary and individualistic, is a collaborative

²⁹ David Bennett, ‘The Art of Persuasion through Oral Advocacy’ (2007) 28(1–2) *Adelaide Law Review* 145.

³⁰ Neil J Dilloff, ‘Law School Training: Bridging the Gap between Legal Education and the Practice of Law Symposium — The Future of the Legal Profession’ (2013) 24(2) *Stanford Law & Policy Review* 425, 450; Galloway, Offer and Skead (n 4) 11.

endeavour and successful lawyers are generally able to work well with others.³¹ We note that students do have the opportunity to develop these skills in other units and through other activities and assessments. While this is therefore not unique to our assessment, the collaborative context created by mooting certainly is. Students develop their arguments by working in pairs and can confer with each other during their assessment — particularly in preparation for the rebuttal/rejoinder part of the moot. While some pairs of students simply divide up the work neatly and develop their arguments separately, we strongly encourage teamwork. Consistent anecdotal evidence over the course of the past three years points to the conclusion that teams that do collaborate perform better both in their team mark for the written submission and in their individual marks for oral submissions.

B *Mooting in Torts: Delving into the Culture of Argument*

Mooting befits the subject matter. Indeed, as we note elsewhere, ‘[t]ort law is embedded in a culture of argument that uses principles and policy considerations to justify the construction and application of rules of conduct that will guide us in the pursuit of justice and resolution of disputes.’³²

Students are exposed to this aspect of the discipline throughout the course of the unit, which is rife with references to the inductive, fact-dependant and argumentative nature of decision-making in leading cases. Examples of this are varied. One is the very different treatment of secondary victims of mental harm in the UK and Australia, partially a product of the factual scenarios underpinning the two countries’ respective leading cases. Students are particularly fascinated by the arguments brought forward in the context of the UK’s *Alcock* case,³³ which was essentially a mass tort scenario, and contrast them with the very different arguments of the Australian *Annetts* decision,³⁴ involving the tragedy of one single family. Similarly, the different presentation and discussion of scientific evidence in the UK’s *Fairchild* decision³⁵ and the Australian *Amaca v Booth*³⁶ led to the adoption of two significantly diverging alternative tests for establishing factual causation, respectively the ‘material increase in risk’ and the ‘material contribution to harm’ tests.

Providing students with a sufficiently complex and open-ended scenario and allowing them to craft arguments in teams and litigate them in the safe and controlled environment of the mooting assessment achieves a dual purpose. First, it provides students with a lived experience and practice of this culture of argument, which they would otherwise largely only understand in the abstract. Second, it provides students with the opportunity to achieve a higher

³¹ Janet Weinstein et al, ‘Teaching Teamwork to Law Students’ (2013) 63(1) *Journal of Legal Education* 36, 38.

³² Julia Davis, Marco Rizzi and Kate Offer, *Connecting with Tort Law* (Oxford University Press, 2nd ed, 2020) 53.

³³ *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310.

³⁴ *Tame v New South Wales; Annetts v Australian Stations Pty Ltd* (2002) 191 ALR 449.

³⁵ *Fairchild v Glenhaven Funeral Services Ltd* [2003] 1 AC 32.

³⁶ *Amaca Pty Ltd v Booth* (2011) 246 CLR 148.

understanding, not only of the substance of the law of torts, but of the distinctive internal dynamics that are so fundamental to its shaping.

C Mooting in Year 1: Early but Not Too Early

Integrating mooting as an assessment in a first-year law unit is, on its face, a significant risk. Other recorded experiences typically reserve mooting for more senior students, who have had the opportunity to gain greater exposure to law subjects and reasoning. However, these testimonies discuss mooting in the LLB, that is at undergraduate level. Unlike their LLB counterparts, first-year JD students are not school leavers. They have already completed a degree and have already developed important academic skills. Their law degree is also significantly shorter. Given the greater maturity of the JD cohort, exposing first-year students to this type of assessment can have several beneficial impacts, as corroborated by our experience.

First, it gives students an early opportunity to be exposed to advocacy. This is beneficial for pedagogical reasons, as not only torts but most common law subjects are embedded, at least to a degree, in a culture of argument. Thus, early experiential exposure to this feature of the common law can be the source of important tools for a deeper understanding of a broader range of legal fields than only torts. Moreover, getting a sense of advocacy and mooting opens opportunities that many JD students would not necessarily reach for. Indeed, students who are independently motivated will generally seek to participate in available extracurricular mooting competitions, but not every student is naturally inclined to do so, even though they might be perfectly good at it and would enjoy the experience.³⁷ Integrating mooting in torts ensures that, by the end of the first year, every student is given the chance to have that experience at a basic level, which puts everyone on more level ground when opportunities for advanced mooting units or extracurricular competitions arise. It is also important to remember that we only allocate 7 marks in total for the advocacy component. As discussed, we are keen to provide students with a ‘sandbox’ to experiment with their skills rather than a gauntlet they have to get through, particularly in their first year.

Second, mooting in a team and facing a team of colleagues appears to increase our students’ sense of responsibility towards each other and contributes to measurably reducing the amount of extension requests for the unit’s mid-semester assessment compared with previous years in which we ran a more traditional research essay. Seeking an extension with the moot impacts on three colleagues, not just the student themselves, and it appears that only the truly exceptional cases resort to it, with students in this situation generally proactively reaching out to their colleagues to find a workable alternative time. While this is largely dictated by the nature and structure of this assessment, creating early opportunities for students to develop

³⁷ Mary E Keyes and Michael J Whincop, ‘The Moot Reconceived: Some Theory and Evidence on Legal Skills’ (1997) 8(1) *Legal Education Review* 25.

restraint with regards to seeking extensions is of great pedagogical significance, particularly in the current environment.

Finally, as we noted above, this type of assessment, where only 10 marks are allocated to the 800-word written submissions and the bulk of the marks are from the presentation of the argument and students' advocacy skills, seems to mitigate against issues of cheating and recourse to ethically dubious websites.³⁸ Indeed, over the past three years we have had only one case of misconduct in a total of almost 750 students assessed; a marked reduction from plagiarism instances in written papers. Admittedly, it is unclear whether this has any positive effect on subsequent assessments and this positive impact may be limited to our moot — which would still be in and of itself worth noting.

D Mooting from the Other Side: A Better Marking Experience

Finally, but significantly, from a marking perspective this is a much more enjoyable assessment than facing hundreds of written papers to mark. While the moot problem is the same for everyone taking part, no two students will ever present their arguments in the exact same way. Presenting orally also allows for diverse personalities and approaches to emerge much more vividly than in writing. The moot is also arguably a more efficient use of a marker's time because the marking takes place over a defined period (after which it is over!!). In this sense we may even go as far as to suggest that this assessment, while seemingly daunting at first, makes for a significantly less resource-intensive assessment to mark within individually allocated workloads (and in compliance with current university policy timeframes for marking and feedback) than the more traditional written assessment items. The only downside we have encountered is that, compared to marking written assessments at one's own pace, the assessor must keep their focus up for the duration of the day's allocated moot exercises, with less flexibility for taking breaks or having moments of distraction. But, overall, we find this to be a very manageable and worthwhile trade-off.

V CONCLUSION

One aspect that we have reflected upon since starting this assessment is that it would be appropriate to provide additional resources to further assist students in developing advocacy skills. The moot has been an effective assessment, but we realise that more is required in terms of provision of some preliminary training to students. This year we have collaborated with the Blackstone Society, the UWA Law Students' Society who delivered a well-attended workshop providing guidance to the students with respect to presenting their arguments and their written submissions. Relying on peer mentoring, in an environment where resources are increasingly scarce, is certainly an avenue worth exploring further, particularly given the positive feedback from this year.

³⁸ Ahsan, Akbar and Kam (n 25) 523.

In this article we have described and evaluated the moot exercise that has been introduced into the first-year JD core unit ‘Torts’. We believe this has been a success, allowing as it has for opportunities for students to develop crucial skills that align with the national TLOs, particularly TLO 5: Communication and Collaboration. Using moots as a mid-semester assessment tool has allowed students to engage with a constructivist model of learning, for not only the broad communication and collaboration skills that students need to acquire, but also for the practice of the more specific arts of advocacy and teamwork in a time-pressured environment. This is an assessment that we would certainly encourage others to implement, even within the constraints of a postgraduate law degree.