Chapter 6

‘Here be dragons’: A Critical Reflection on the Experience of Using Formative Assessments to Teach Professional Drafting Skills

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Abstract

Formative assessment remains unexplored territory for many academics, and although its importance has long been recognised, its features are not well understood. The rapid transition to flexible continuous assessment in response to the Covid-19 pandemic required that both formative and summative assessments should be used. Formative assessments provide students with opportunities to reflect upon their learning, identify, and close learning gaps. However, there remain challenges, particularly related to the time constraints burdening lecturers of large classes. There are also concerns about the validity of formative assessments. This chapter presents the documented experience of two lecturers and a class of full-time students in the use of formative assessments for three professional drafting assignments in a final-year undergraduate course in law during the second semester of 2020. This chapter describes the formative assessment tasks and the supporting resources and modalities of self-review and lecturer feedback used, prior to the final submission for summative assessment at the end of the semester. The students’ engagement with the formative assessments was tracked by analysis of Moodle course participation statistics. Student reflections in e-mails to the lecturers and course evaluations were analysed to

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provide insights into the students' perceived benefits and difficulties associated with completing the formative assessment tasks. The lecturers' critical reflections on the documented experience are included to highlight challenges and concerns. From the analysis, a framework is proposed for including formative assessments as a tool to scaffold the development of professional writing skills in undergraduate students at higher education institutions.

Keywords: formative assessment, self-assessment, scaffolding, professional legal drafting

1 Introduction

'If it's not in writing it didn't happen' is a phrase used so often by lawyers and in legal circles that it has been absorbed into popular parlance. It finds expression in a number of different circumstances, the most famous of which must be Samuel Goldwyn's statement that 'A verbal contract isn't worth the paper it's written on' (Johnston 1927)[1].

For legal professionals, an essential skill that is ubiquitously referred to as 'drafting' requires the committal to the written word, usually on paper, of a legal memorial of an agreement, a record of a witness statement, or the preparation of pleadings and notices for civil court proceedings. The drafting exercises referred to in this paper fell into the latter category. Competence in these professional drafting tasks is a critical attribute required in aspirant lawyers.

Thus, if the profession places such store on the written word or written representations in various forms, how exactly should one go about teaching this skill? The answer is not straightforward and the process is not easy. However, this should not dissuade us from trying. This chapter describes, analyses and comments on one such attempt that took place in a final-year undergraduate law course at the University of KwaZulu-Natal (UKZN) in 2020.

The background to the chapter is the adoption of continuous assessment as part of the emergency remote teaching plan devised by UKZN and most other institutions of higher learning, in response to the Covid-19 pandemic in 2020. Continuous assessment differs significantly from the traditional end-of-semester examination session in that its purpose is to 'identify potential problems, monitor

[1] Although its origins are disputed, the quip is popularly attributed to movie producer Samuel Goldwyn.

progress and provide feedback' (Songca 2020:5). Continuous assessment should therefore include both formative and summative assessments, and it should be aligned with teaching and learning activities in the course to encourage *active* learning (Songca 2020:5). However, while all academics at institutions of higher learning were familiar with summative assessments, for most formative assessments are *terra incognita*. Like the earliest explorers who marked dragons on the unexplored corners of the map of the world as they knew it, we incorporated four new pedagogies into our course assessment: use of complex, real-world scenarios requiring higher-order thinking than would have been asked in a closed-book test; self-assessment as an essential component of the assessment process; peer collaboration, which in a closed-book environment might have been called 'copying' or 'cheating'; and provision for multiple attempts before marking the final submission. As such, the paper is of wider relevance to any course seeking to introduce these elements as a combination of formative and summative assessment in relation to teaching practical skills.

2 Nature and Importance of Drafting in a Professional Legal Context

Legal writing comprises a range of different applications and legal students are trained in a specific module focused on interpretation of written agreements, judgments, and legislation. Yet at no point in the 100-year history of the Law degree at the UKZN[2] has there been a Legal Document Drafting course. So how has drafting been taught? The starting point has been that drafting is a practical skill and is thus not part of the university curriculum. It has traditionally been left to the profession to teach as part of its in-service training (known as Articles of Clerkship for candidate attorneys, or Pupillage for pupil advocates). This has been done by on-the-job training, and/or in recent years a practical training course run by the Law Society, which is compulsory for all candidate attorneys.

It has, however, become apparent that drafting skills need to be inculcated at a much earlier stage, for a number of reasons. First, it is a developed skill, one which improves with practice and over time; thus, the year, sometimes two, spent doing articles is inadequate to develop the skill optimally. Secondly, with the advent of several alternative entry routes to the profession, not all potential attorneys are subjected to the same opportunities to develop this skill.

[2] Including the period as the University of Natal.

Thirdly, it is unreasonable to expect proficiency in what is essentially a word-smith's skill from English second-language speakers who have not had the advantage of immersion in the foibles of English over a protracted period. Fourthly, when interpreting case law statutes and the many other sources upon which the LLB degree is based, students are able to understand the documents they are reading better if they have some knowledge of the documents they put together. Finally, in the modern age where there is a simple and easy (and completely uncritical) resort to databases of 'made-to-fit' electronic precedents, the emphasis has shifted from creation to collation, and thus critical interpretative skills are becoming more prevalent.

This chapter does not intend to offer a solution across the board with regard to all forms of drafting in all areas of law, but instead focuses on a specific (and vitally important) area: the drafting of legal documents in civil court proceedings. This is a perfect area upon which to focus, as this adjectival area of law is heavily, if not entirely, dependent on drafted documents. Even minor errors can be extremely costly (so the stakes of getting it right are very high), and there are several standard-form documents that require a focused drafting input, not drafting *ab initio*.

3 Formative Assessment

While formative assessment originally focused on the gathering of information to enable curriculum development (Black & Wiliam 2009), it has evolved considerably. Scriven (1967), who coined the term, and Bloom (1967; 1968), believe that assessment is formative if it enables changes in curriculum design. This approach developed over time and Black and Wiliam (2009:9) felt able to redefine formative assessment more broadly, thus:

> Practice in a classroom is formative to the extent that evidence about student achievement is elicited, interpreted, and used by teachers, learners, or their peers, to make decisions about the next steps in instruction that are likely to be better, or better founded, than the decisions they would have taken in the absence of the evidence that was elicited.

Adopting formative assessment techniques thus allows for the achievement of a number of different objectives. As already mentioned, it provides feedback so that teachers can modify and improve their techniques (Huhta 2010);

it enables teachers to identify deficiencies and thus enables them to address them (Huhta 2010); it shifts the focus away from marks and onto the learning process (Shepard 2005a); students gain some insight into how they learn and are thus empowered to improve their learning process (Shepard 2005a; 2005b); and 'frequent, ongoing assessment allows both for fine-tuning of instruction and student focus on progress' (Cauley & McMillan 2010:2). While assessment was traditionally regarded as useful for teachers to gauge their students' attainment of knowledge (Crooks 2001, as cited in Zondi 2015), formative assessment allows for improvements in teaching *and in learning*: 'The goal of formative assessment is to monitor student learning to provide ongoing feedback that can be used by instructors to improve their teaching and by students to improve their learning' (Eberly Centre 2014). While curriculum development is definitely part of our formative assessment, our focus is on enabling student learning.

Self-assessment is a key component of formative assessment (Trumbull & Lash 2013:5):

> In addition to using assessment evidence to plan future instruction, teachers are expected to use it to help students; (1) judge the state of their own knowledge and understanding; (2) identify the demands of a learning task; (3) judge their own work against a standard; (4) grasp and set learning goals; and (5) select and engage in appropriate strategies to keep their learning moving forward.

This means that strengthening students' self-assessment skills is equally important to the provision of teacher feedback in the learning process (Nicol & Macfarlane-Dick 2006:205).

4 Professional Formative Training

The move to learning on an online platform occasioned by the Covid-19 pandemic brought with it several challenges when assessing students' performance, especially with regard to drafting exercises. The assessed drafting component of the course has traditionally taken the form of providing students with a comprehensive set of precedents, a shortlist of potential documents from which an assessment would be drawn, and then setting the student a sit-down, closed-book examination with a life-like set of facts from which they are to extrapolate the nature of the proceedings, the stage which it is at, and thus the document that

is needed. They then need to draft the document. It is then assessed in minute detail and a mark is awarded. The deficiencies are obvious. Only the document chosen is actually tested and students have a limited opportunity to implement any lessons learnt from the exercise.

Continuous assessment presented us with an opportunity to redesign the drafting assessment, particularly because of the online nature of the assessment exercise itself. With a dozen perfect precedents (templates) available at the touch of a button, assessing students on the accuracy of their uploaded answers seemed fruitless. Everyone would get everything correct. We thus accepted an almost 100% accuracy rate on assessments instead of working on the summative aspect – the final mark. We decided to tackle the formative aspect – the learning process that went into the attainment of the final mark, designing a series of exercises that encouraged students to apply their knowledge to the exercises, we provided them comprehensive feedback, and then allowed them to apply the lessons learnt to correct their errors and resubmit a self-drafted but accurate document.

In doing this, we borrowed from standard legal practice – both the vocational training aspect and the stressful world of superior court litigation. With regard to the former, no candidate attorney in training at a legal practice is allowed, by law, to sign any pleadings or other court documents. These have to be signed by an admitted attorney[3]. However, it is the candidate attorneys that are tasked with preparing these documents, sometimes dozens a day, and then with presenting them to the relevant attorney for signature. These documents are thus perused, amended and then returned to the candidate attorneys to be redrafted to incorporate the corrections before their principal (the supervising attorney) is prepared to sign them. While, obviously, an informal and sometimes an extremely 'hit-and-miss' process, the drafting of multiple versions until a perfect final version is achieved is a valuable formative learning process.

With regard to the stressful world of superior court litigation, the legal profession has a built-in formative drafting process. The rules of court require that all superior court pleadings are signed by both an attorney and an advocate.[4] Papers drafted by an attorney (including some that have already been through the attorney/candidate attorney formative process) are sent to an advocate to be 'settled'. This process involves the advocate providing corrective input and returning the papers, duly signed – if he or she is satisfied with them. Seldom,

[3] Rule 18(1) of the Uniform Rules of Court, South Africa.
[4] Rule 18(1) of the Uniform Rules of Court, South Africa.

therefore, are court documents served, filed and presented to court without going through a formative process.

The process in the professional legal sphere is neither organised, comprehensive or designed, nor primarily aimed at teaching and learning – the primary focus is on the production of professionally competent documents and so we were able to not only borrow, but to formalise and improve on this raw formative training.

Adopting this essentially open-book approach to online assessment is one means of ensuring the integrity of assessments without resorting to online proctoring solutions. Open-book assessments are designed on the basis that students will be able to consult their notes, and resources on the internet, textbooks or otherwise (Edwards *et al.* 2020:1). Coupling the assignment with a self-assessment mirrored the real-world experience in which students must become professionals capable of critically evaluating their own performance.

5 Case Study

5.1 Methodology and Description

This paper adopts the methodology of a case study, describing analysis by the lecturers who set three professional drafting assessments in a final-year law module. Student feedback on the exercise has been positive since its introduction, but while student feedback is important, it should not be used as the sole marker for evaluating teaching and assessment practices (Theall & Franklin 2010). This chapter presents an empirical analysis of activity participation, performance and student engagement. The case-study method is classically defined as 'an empirical inquiry that investigates a contemporary phenomenon (the 'case') in depth and within its real-world context' (Yin 2014:16), and is appropriate and useful for analysing experimental introductions of formative assessment practices for teaching law (Merritt *et al.* 2017:387).

The learning outcomes associated with this assessment were for students to develop a practical understanding of the concepts inherent in civil legal practice and the rules of court, and to develop the ability to apply this theoretical knowledge to practical situations as one would do for one's clients in a civil litigation practice. They were presented with three detailed real-world factual problems, and were instructed to decide what litigation step was appropriate and to draft the relevant court document to take that step. The modality used for the assessment was submission of an MS Word document through the 'assignment'

activity on the Moodle learning management system.

5.2 Scaffolding

Careful consideration was given to the timing of the assessment tasks. The assessment questions were made available at the beginning of the semester, but the opening of submissions on Moodle was timetabled to coincide with the week in which students would be covering the relevant substantive content in the module.

In addition, a number of supports were put in place to provide the scaffolding necessary for successful completion of the assessment tasks. The required skills to complete the assessment task successfully were categorised. Students must:

- be able to locate the relevant court rule and understand its content;
- understand the conventions applied to the structure of a court document;
- have the necessary computer skills to correctly format and spell check the document; and
- be able to apply their theoretical knowledge to the facts of the problem question in order to draft the content of the document.

The structured supports provided to address these needs comprised:

- Learning materials in the form of written course notes, short audio notes explaining and unpacking key concepts in the written notes, weekly Zoom consultations, and a prescribed course textbook. The modality for delivery of learning materials was Moodle file uploads, with the use of Moodle's reporting feature made to track student engagement and trace students requiring intervention (e.g. non-participation in course due to lack of access to computing facilities). The use of data-light files meant that students were largely able to engage in the core materials. The textbook was available online through Ebscohost.
- Additional learning support for the assessment task was provided in the form of four video lectures taped at the UTEL studio, in which students were taken through a practical demonstration of how to approach the drafting task. Using PowerPoint, and the pointer and annotation tool, the document's content was explained in a step-by-step fashion. Video lectures

were uploaded as Kaltura resources on Moodle, and made downloadable to ensure students could watch the video again if needed without using additional data. Moodle reports were used to track student engagement.

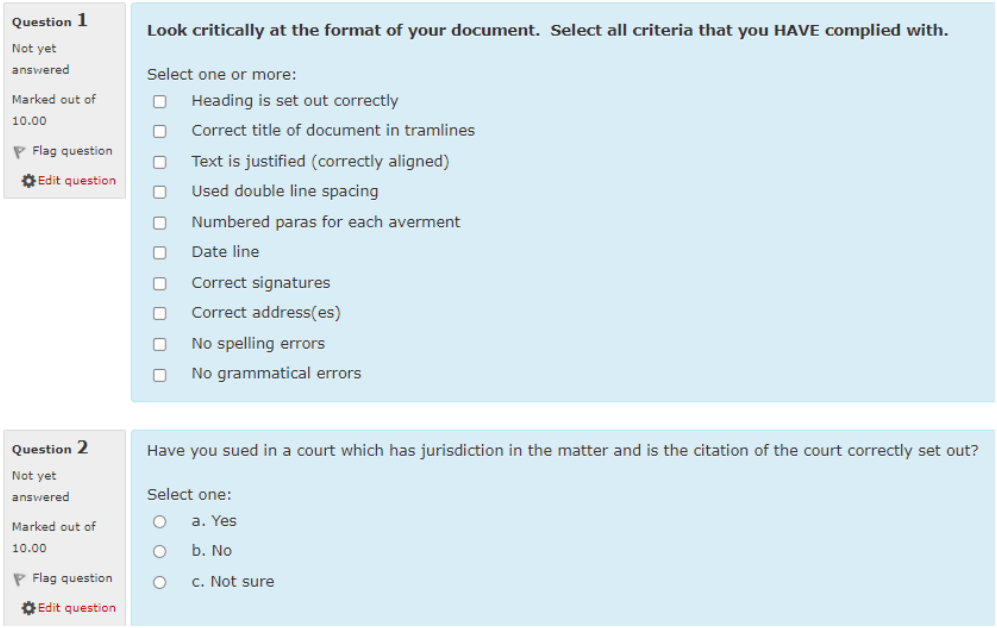
- Students were supplied via Moodle with a file folder upload with 'precedents', which are examples of actual court documents in other matters, and were given access to the court rules in the library's online resources. This provided a sound, real-world context to the exercise by mirroring the process an attorney would follow checking court rules and comparing other examples of similar documents. This process was explained to the students in the video lectures, and they were also warned of the pitfalls associated with using precedents – namely that they might be outdated, wrong or inappropriate. We did not supply students with outdated or incorrect precedents, but we did warn them that we had deliberately included precedents that would be inappropriate in important respects and that this would require the students to make the changes required by the facts of the problem set.
- The third support that students required was motivation. This was identified by the lecturers as a key need under the stressful circumstances that prevailed in the second semester of 2020 with the Covid-19 pandemic and a rapid transition to emergency remote online teaching. It was addressed by regularly downloading Moodle activity reports and sending weekly e-mail messages to students falling behind. A catch-up group was created for students joining late and out of sync with the class to enable them to move sequentially through the material with lecturer guidance. A WhatsApp help number was set up and was used to liaise with students who were unable to regularly check email and Moodle due to connectivity issues.
- The final support provided was mentoring. We took the approach of encouraging class discussion about the drafting assessment. In addition, formal peer mentoring support was in place through support from a dedicated Graduate Teaching Assistant to provide technical support on the blended learning tasks, and Academic Development Officers to provide guidance on academic content and writing skills. Mentoring was facilitated by the lecturers using group consultations in Zoom and individual consultations upon request. This approach was taken as it again mirrors the real world in which lawyers frequently consult a colleague to discuss a difficult problem. We sought to shift the students' mind-set from

cheating and copying to one of engagement with the material and collaboration. Ultimately, the students each had to submit their own draft and would thus take responsibility for decisions about how to respond to the assessment. The self-assessment activity discussed next was central to encouraging this meta-cognitive reflective approach to the task.

5.3 The Self-assessment Activity

A marking rubric was set up for the marking of the assessment. This rubric was used to create a self-assessment that guided students to all key components without providing a model answer. After completing the self-assessment, students were permitted to upload a second attempt of the assessment. The modality for delivering the self-assessment was a short Moodle questionnaire in which the five measures of attainment were scored by the students according to their level of certainty on a simple scale of 1–3. Figure 1 illustrates the first two questions of the questionnaire.

Figure 1: An extract from the self-evaluation questionnaire



Question 1 directed students to the formal requirements for the court document, and the repetition of this question in all three self-assessment questionnaires assisted students to internalise the formal aspects of the document structure.

Question 2 was directed at a key content component, being selection of the correct court having jurisdiction based on the facts of the problem question. Students indicated 'Yes' to indicate that they were certain that they had sued in the correct court, in which case they were scoring themselves 100 per cent. Students indicated 'No' if they realised that they had mistakenly sued in the wrong court. Students who picked 'Not sure' were reminded via a Moodle quiz feedback option of resources available on the topic and the opportunity to consult the lecturer. In the case of 'No' and 'Not sure' students scored 0 per cent.

The questionnaire was therefore not intended to mirror the final marking process, but rather to indicate to the student the number of serious errors requiring correction before final submission, and to allow them to reflect on their own level of confidence and re-evaluation opportunities to seek additional information and support.

5.4 A Second Attempt

Each assessment was set up in Moodle for the manual re-opening of the assessment for a second attempt. Completion of the self-review was necessary to 'unlock' the second attempt, and a decision was made not to automate this function, but to rather require students to send an e-mail to the lecturer explaining what changes they wished to make in their document. This process required students to make decisions based on their self-review and to articulate those reasons.

The first attempt was not marked, but the lecturers used the content of the students' e-mails to assess whether there were any serious misunderstandings that might indicate a need for the students to consult with the lecturers. In these e-mails, students were not given the correct answer, but were guided to ask relevant questions in order to reach a greater level of understanding.

This was time-consuming in a class of over 300 students, and made it difficult to monitor how many students overall submitted a second attempt, as Moodle does not keep a record of earlier submissions. However, using e-mail communication provided an opportunity for rich individual feedback.

6 Parallel Experiments

The Civil Procedure drafting component is no longer the first time that students are expected to engage with the drafting legal documents. The Law of Evidence module which students complete in the academic year immediately prior to the one in which they enrol for Civil Procedure also includes a drafting component. It is structured differently, as a tutorial programme, and it emphasises different aspects of drafting. It assumes no previous drafting knowledge and thus the first exercise (there are four in total) simply requires students to identify relevant material and categorise and compile lists, in preparation for drafting their first legal document, which takes the form of an affidavit. This has been chosen deliberately, as the use of affidavits is widespread in practice and many students are already familiar with an affidavit having either read or deposed to one themselves. It is also a simpler document to draft than the complex legal documents used in Civil Procedure and thus serves as a good introduction. The tutorials comprise four separate but related tasks, which increase in difficulty until they culminate in the drafting of a document commonly used during civil trials, thus providing a direct link to and preparation, for the Civil Procedure module the following year (see further discussion in Swales & Bellengère 2021).

7 Analysis

After completing the course and marking the final assessments, student participation and performance were analysed to gain insights into students' engagement with the activity and its impact upon their performance in the summative assessment.

7.1 Higher Participation Rates

As the practical drafting exercises were introduced into the course in 2016 as part of a blended-learning pilot project funded by a UKZN Teaching and Learning Office grant, comparison with participation rates in the 2016 class was possible. Figure 1 graphically represents a comparison of the participation rates in the three drafting assessments and in the associated self-assessment questionnaires in 2016 and 2021. Each assessment is marked (a) and the associated self-assessment is marked (b).

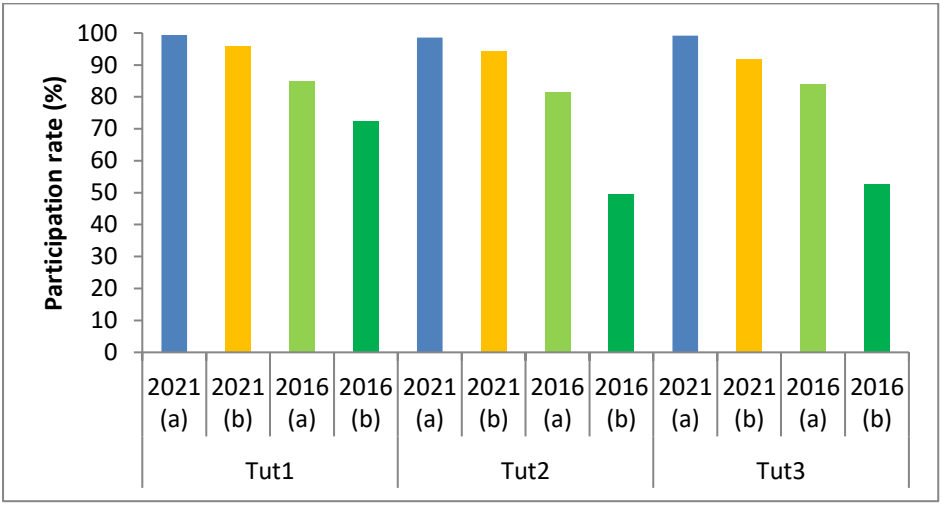


Figure 1: Participation rates of 2021 compared to 2016

Participation in the three assessments in 2021 was uniformly high, ranging between 98.55% and 99.42%. This was higher than in 2016, where the participation ranged from 81.42% to 84.83%. However, participation in the self-assessment was much higher in 2021, ranging from 91.86–95.93%. By comparison, in 2016, participation in the first self-assessment was only 72.45%, and fell dramatically to 49.54% and 52.63% in the second and third self-assessments. Using a one-sample t-test, we conclude that there was a statistically significant increase in participation in all assessments and self-evaluations in 2021, compared to 2016. The results are set out below in Table 1 (participation rates) and Table 2 (t-test results).

Table 1: Participation rates

PARTICIPATION RATES	2016			2020		
Assignment 1	274	323	84.83%	342	344	99.42%
Self-evaluation 1	234	323	72.45%	330	344	95.93%
Tutorial 2	263	323	81.42%	339	344	98.55%
Self-evaluation 2	160	323	49.54%	325	344	94.48%
Tutorial 3	271	323	83.90%	341	344	99.13%
Self-evaluation 3	170	323	52.63%	316	344	91.86%

Table 2: t-test on participation rates

PARTICIPATION RATES	2016	2020	Mean difference	t statistic	df	p-value
Assignment 1	84.83%	99.42%	.146	35.538	343	<.001
Self-evaluation 1	72.45%	95.93%	.235	22.008	343	<.001
Tutorial 2	81.42%	98.55%	.171	26.503	343	<.001
Self-evaluation 2	49.54%	94.48%	.449	36.432	343	<.001
Tutorial 3	83.90%	99.13%	.152	30.332	343	<.001
Self-evaluation 3	52.63%	91.86%	.392	26.571	343	<.001

7.2 Inverse Correlation between Actual Marks and Self-evaluation

Marks for each assessment were averaged across all students who did the assessments and are set out in table 3 below, together with the standard deviation.

Table 3: Average marks across all assessments

	Tut1	Tut2	Tut3	Self-Eval 1	Self-Eval 2	Self-Eval 3
N	342	339	341	330	325	316
Mean	72.77	56.48	39.84	79.15	76.64	87.12
Std. Deviation	13.78285	18.25381	17.81639	19.72402	18.01787	22.02669
Minimum	27.00	.00	.00	9.5	22.00	10
Maximum	99	97	94	100	100	100

Repeated-measure ANOVA was applied to determine if there was a significant difference in average marks across the three assessments. While the maximum mark attained remained high across the three assessments (99%; 97% and 94%, respectively), the average mark decreased significantly from one assessment to the next (72.77%, 56.48% and 39.84%, respectively), $F(2, 676) = 407.594$, $p<.001$. Post-hoc analysis shows that marks dropped significantly from assessment 1 to assessment 2 and again from assessment 2 to assessment 3. An important factor explaining the decline in marks is that the assessments were marked on a progressively stricter basis so that in the final assessment a student who made an error that would be fatal to the success of litigation, such as suing

in the wrong court or in the name of a party without legal standing, could not pass, regardless of whether other elements of the document were correct. Students had an opportunity to adjust to this marking structure, as this was discussed in the Zoom consultations that were held after each submission, where key errors made in a selected sample of first submissions were flagged and discussed by the lecturer. Nevertheless, the marks revealed that the students found the adjustment challenging.

This led to further inquiry into whether self-assessment had proven effective in assisting students to identify the kinds of serious errors that should be corrected in a re-submission. Self-assessment involved the students evaluating whether they had each criterion in the marking grid correct as explained in section 5.3, and assigning themselves an estimated self-assessment score out of 100. The same repeated measures ANOVA was applied to the average marks on the three self-assessments. There is a significant change in self-assessment score across the three assessments, $F(2; 620) = 39.931$, $p<.001$. Post-hoc analysis shows that the self-evaluation score for assessment 3 is significantly higher than for assessments 1 and 2 ($p<.001$, in each case).

Figure 2 illustrates the widening gap between actual marks awarded on the assignment and the student's estimated score on the self-assessment.

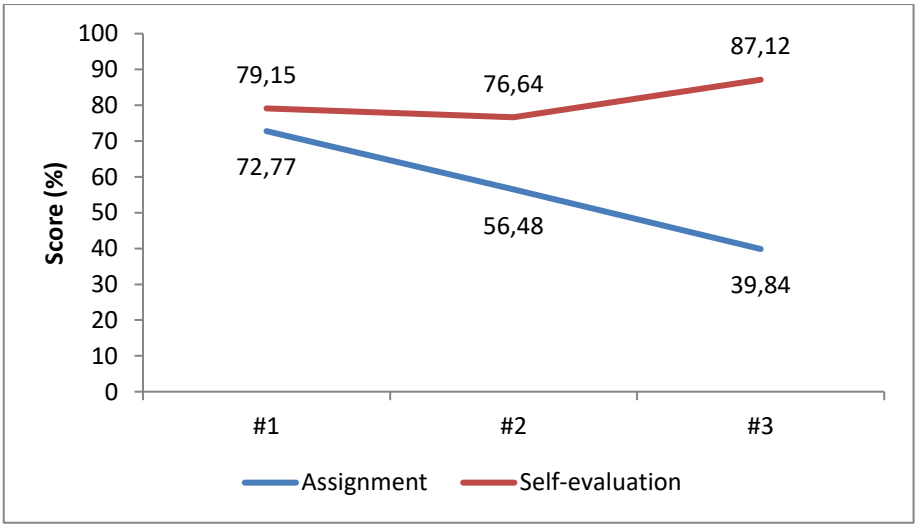


Figure 2: Inverse relationship between actual and estimated scores

Results from a repeated measures ANOVA reveal that there is a significant difference in the gaps between actual and estimated scores across the three assessments, $F(2, 620) = 282.499$, $p<.001$. Post-hoc analysis shows that the gap for assessment 2 is significantly bigger than for assessment 1; and the gap for assessment 3 is significantly larger for assessment 3 than for assessments 1 and 2.

It is possible to conclude from this that there is an inverse relationship between actual and estimated scores as the assessment progressed. As the assessment progressed, the actual mark declined while the average estimated mark increased. There was also a significant increase in the number of students, estimating that they had achieved a score of 100, from 55 students for the first self-assessment (16% of the total sample), to 157 students for the third self-assessment (44.2% of the total sample). Higher estimated scores may be attributable to growing student confidence that they had drafted the document correctly, but may also indicate a lack of engagement with the self-assessment task. The reasons for this widening gap thus required further exploration, as discussed in the next section.

7.3 Time Spent as a Measure of Student Engagement in the Self-assessment Activity

As the results indicated a counter-intuitive relationship between higher estimated scores, suggesting increasing confidence in self-assessment and declining actual performance, the self-assessment questionnaire reports were analysed to determine the average time taken by students on the self-assessment. Any completion times over 75 minutes were excluded as outliers, being most likely because of a failure to close the questionnaire rather than a reflection of actual time spent. These results are illustrated in Table 4 below.

Table 4: Mean self-evaluation time in mm:ss

Self-evaluation time	
Ass1	06:01
Ass2	03:32
Ass3	02:51

Analysis using a repeated measures ANOVA shows that the average time taken to do the evaluation differed across assessments, $F(2, 552) = 21.517$, $p<.001$. In particular, post-hoc analysis shows that the average time taken for the first self-assessment was significantly greater than for the second and third ($p<.001$ in each case). The average time taken for assessment 2 was marginally longer than for assessment 3 ($p=.097$).

Next, the number of students who took less than two minutes to complete the questionnaire was analysed. This revealed a large difference. Only 38 students took less than two minutes to complete the self-assessment for assessment one. This increased to 186 and 226 students in the self-assessments for assessments two and three respectively.

This tends to indicate that over half the class did not engage with the self-assessment activity in the second and third assessments and that the high self-evaluation scores (reflected in Table 3) were not an actual measure of their real levels of confidence. Thus, while participation in the self-assessment activities was uniformly high, meaningful engagement by the students was not high. In fact, quite the reverse. Figure 3 below illustrates the trend revealed in the data that self-evaluation time decreased and the estimated score increased across the three self-assessments. This must be seen against the background of declining actual scores, as discussed above.

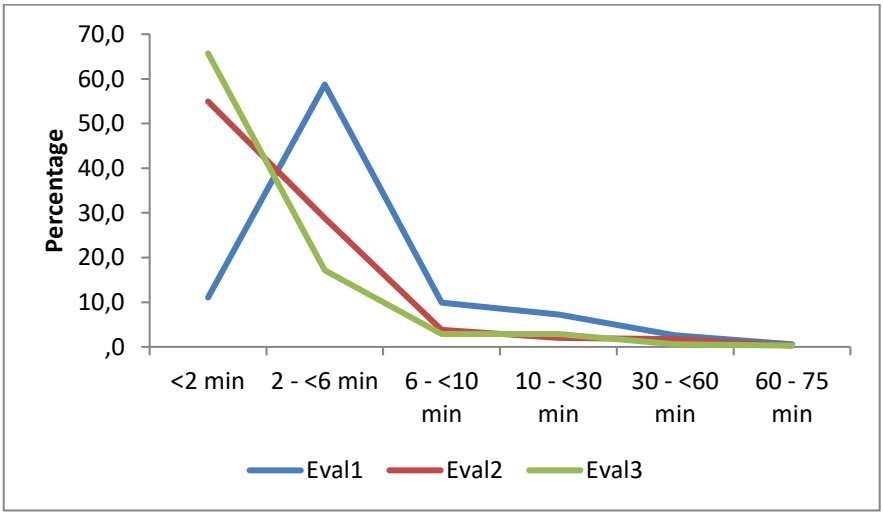


Figure 3: Relationship between evaluation time and evaluation mark

8 Discussion

This study offers insights into the use of formative assessment, including self-evaluation, when teaching legal drafting in large law-school classes. The study did not attempt to measure student engagement in the drafting task itself. Numerous studies have demonstrated that authentic formative assessment activities, which require students to apply theoretical knowledge and skills in a complex real-world context, encourage meaningful engagement and self-reflection (see literature review by Gikandi, Morrow & Davis 2011:2388). This study's focus was on assessing participation, performance and engagement in the related self-assessment tasks. Earlier studies have shown that student engagement in self-assessment predicts better performance and greater accuracy in self-assessment scores (León *et al.* 2021). The findings of this study are consistent, and show that lower engagement led to weaker performance and a wider gap between actual and estimated scores.

However, the finding in our study that self-assessment time and accuracy declined across the three assessments suggests an increasing lack of engagement with the task that merits further exploration. Student engagement has long been recognised as a critical indicator of success in higher education (Strydom, Kuh & Mentz 2010). There is a growing body of literature discussing lack of motivation and student engagement as problems in formative assessments (Baleni 2015), making it important to consider ways of enhancing engagement. These include the delivery of timely feedback (Spector *et al.* 2016), assigning 'low-stakes' grades to the task (Dermo 2011), or introducing 'gamification' through competition and play to enhance student engagement (Adukaite *et al.* 2017; Zainuddin *et al.* 2020). Another aspect requiring further investigation in a future study is whether self-assessment had differing effects on low, medium and above-average performing students, as self-assessment may be less effective for low-performing students (Panadero, Brown & Strijbos 2016).

Extrapolating from our findings in this module, preferably in conjunction with similar studies in other modules, will also enable a discussion on the broader topic of the impact of Covid-19 on learner engagement with formative assessment. Any attempt to draw a direct line between the impact of Covid-19 on formative assessment without situating this within an analysis of the impact of Covid-19 on learning and assessment generally will necessarily provide an incomplete picture. A full discussion of the multivariate issues involved is beyond the scope of this paper.

Our findings do provide insight into a vital component of such a discussion, i.e. learner engagement with the same online formative assessment tasks in a blended learning environment prior to the advent of Covid-19, compared to learner engagement with the same online formative assessment tasks in a fully online emergency remote-teaching environment in 2020. In blended learning there is a combination of online and face-to-face instruction and learning (see Graham 2006). The trend of increased participation in all online assessment tasks in 2020 seems to indicate an increasing familiarity with both formative assessment and with an online mode of formative assessment delivery. Considerably more analysis needs to be done across a wider array of modules, however, before any definitive answers can be isolated. Such studies are important, because much of the research on formative assessment has focused on its effectiveness in a blended learning environment, and further research is required to establish student engagement when formative assessment is used in a fully online environment (Chen & Kexin 2021:51).

9 Recommendations and Conclusion

The introduction of practical drafting assessments based on complex real-world scenarios was more closely aligned to learning outcomes and required more graduate attributes than a closed-book test which had been used previously. The student marks on the assessment in 2021 were better than previous years, even though marking was progressively stricter and by assessment 3 represented a realistic approximation of the real-world consequences attached to the various errors identified.

Participation in self-evaluation was much higher in 2021 than in 2016, but the effectiveness of self-evaluation was less clear. The finding that over half the students failed to engage in the second and third self-assessment exercises could indicate that students did not appreciate the benefit of the self-assessment exercise. It could also indicate that changes to the self-assessment criteria or formative feedback are required to provide students with a clearer picture of the implications of their errors (or possible errors) in respect of their final mark. However, it is difficult to determine an exact cause and effect relationship, as failure to engage in the activities could be explained by other factors, such as mounting time pressure and other assessment deadlines. Ideally, if the semester timetable permitted sufficient time to stagger the assessments, summative feedback on the first assessment would be given before the second assessment

was attempted. As explained in section 5.3 above, detailed formative feedback was provided in consultations and email correspondence with students, but the students did not receive a mark from the lecturer on their first submission. They 'marked' themselves with a self-evaluation score and used this in conjunction with the class feedback sessions (and individual consultations or email exchanges with the lecturer) to determine whether they should re-submit an amended assessment task.

A key intervention that will be introduced in 2022 is the inclusion of a second self-evaluation, in which students reflect on the effectiveness of their self-assessment after receiving their mark and feedback on the final assessment.

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