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Teaching Note

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THE CARROT AND STICK APPROACH

PROMOTING STUDENT LEARNING ENGAGEMENT THROUGH ASSESSMENT

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This piece is published as a ‘teaching note’ rather than a scholarly article.

WALTR publishes teaching notes to provide space for reflective, practice-based contributions that sit outside the scope of traditional peer-reviewed articles but are nonetheless of value to the community of legal educators. They may include reflections on teaching and assessment, contextualised lesson plans (including for secondary legal studies), or opinion and commentary on broader issues in legal education.

I INTRODUCTION

The following scene is probably all too familiar for law teachers: You are sitting at your desk surrounded by numerous exam scripts. To your right, a small pile of marked scripts; to your left, a daunting pile of unmarked ones (scattered in between are several empty coffee cups and various chocolate bar wrappers). With a sigh of exasperation, you throw your pen down, frustrated by how often you have written the same advice on your students’ scripts. And it’s too late to tell them that if they had actively engaged in the unit and its learning activities, they could have gained a better understanding of the law, and the skills needed to study and practice it (thereby minimising exam answer ‘mistakes’, which would have been immensely beneficial when it came time to produce sound exam answers)!

The frustration described above is common, and there is always going to be some level of disengagement among students in each cohort, for a variety of reasons beyond our control. However, for me this recurring frustration was significantly exacerbated during the pandemic, where I observed greater and more troubling levels of student disengagement in two first-year law units I usually teach. I decided to see what I could do to address the issue. This teaching note reflects on the approaches implemented to deepen student engagement in my two first-year law units: one, a ‘blackletter’ law unit and the other a skills-based unit. In Part II, I outline the types and levels of the disengagement observed in what I will refer to as the ‘troubling cohort’ and my belief as to what was the likely cause of this. In Part III, I outline the modifications made to subsequent iterations of these units to try and address these trends. In Part IV, I reflect on the success of these modifications.

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II THE TROUBLING ITERATION

It was while teaching during the pandemic, but after Western Australia's strict lockdown period, that I observed both a troubling level and troubling types of disengagement in one particular cohort. The top five most concerning signs of disengagement within the 'troubling cohort' included:

1. *Assignment submission*: Over one-third of the cohort sought an extension for their main assignment – an 800-word legal problem-solving task – or simply submitted it late.
2. *Teacher-student meetings*: Half of the students who scheduled meetings to discuss their marked assignment did not attend without explanation.
3. *Workshop non-attendance*: One tutor reported zero attendance for a particular workshop timeslot on two consecutive weeks.
4. *Late exam preparation*: In this unit the exam factual scenario is released to the cohort around four weeks prior to the exam,¹ and nearly half of the cohort had not viewed the exam's factual scenario one week before the exam.
5. *Virtually no exam preparation*: more than a tenth of the cohort had not accessed the exam scenario one day before the exam.

These were not the only signs of disengagement, but from my experience of teaching this unit, they were the most dispiriting.

Another concern was that the 'troubling cohort' had been run similarly to the previous iteration, which I'll refer to as the 'lockdown cohort', delivered during Western Australia's lockdown period. The lockdown cohort's feedback – both formal and informal – was generally positive, with many reporting good learning experiences and no significant barriers to engagement. However, the troubling cohort showed minimal engagement with feedback opportunities, leaving me to ponder the reasons for the significant decline in engagement and whether this trend would continue.

I posited the troubling cohort's experiences immediately prior to their first-year law studies, during the height of the pandemic, were likely significant factors in their low engagement levels. The troubling cohort included many school leavers who completed their final years of secondary schooling in an unfamiliar and isolated online environment. Additionally, many non-school leavers began their law studies after experiencing significant upheaval in employment, other studies and life in general. Against this background, it is perhaps unsurprising that the bulk of the cohort did not know how to engage in their university studies in a way which would maximise their learning experiences. Furthermore, I posited

¹ This is a closed book restricted exam where students can only bring one A4 page with notes back and front into the exam. The factual scenario is complex with around two dozen possible questions the cohort could be asked, with only four of these ultimately being asked in the exam paper itself.

that the significant and likely long-lasting changes in teaching, learning and living, brought about by the pandemic would have a major impact. These changes included the shift to online learning, reduced face-to-face interactions between teachers and learners as well as between learners and learners, and the increased reliance on digital resources. As a result, students would likely arrive at university with less experience and fewer effective study skills, since these changes disrupted their ability to develop essential skills like time management, critical thinking, and collaborative learning. As such, I felt it imperative to implement strategies in my first-year law units to deepen and embed practices of student learning through engagement in the unit and its learning activities.

III THE CARROT AND STICK APPROACH

To engage my students in the unit's learning activities, I implemented a 'carrot and stick' approach. I used the aspect of the unit that always has the highest levels of engagement – assessments – as the carrot to dangle from my stick. I developed a low-stakes 'Student Learning Engagement Assessment Item' (SLEAI), worth 10–15% of the unit's total marks, requiring engagement in key learning activities to complete the assessment.² I considered key learning activities to be those designed to help students learn unit content, develop skills needed for practicing law and establish good study habits.

A General 'Carrot and Stick' Design Considerations

Before outlining the specifics of the SLEAIs I implemented in my first-year units, I'll highlight a few considerations I had to keep in mind during their development.

First, any modifications in, or development of, assessment had to align with my institution's assessment policies and procedures. For example, commonly assessment policies do not allow student attendance to be the sole criterion, or part of the criteria, of an assessment item. As such I could not simply award marks for attendance.³ Also, any changes to the unit need to take into account the role of the unit and its assessment within the structure of the school's law degree. For example, if a law degree is structured so that the particular skill of client letter writing is taught and assessed in unit X, this must be accounted for when modifying assessments within unit X.

Second, any modification to my units – whether to assessment items or other aspects, like the unit's learning activities – had to be achievable within my allocated teaching workload.

² Of course, the alternative analogy is the carrot or stick approach. The carrot is the reward of attaining marks through simply engaging in the unit, while the stick is the threat of losing marks for failing to engage in the unit's learning activities. This is a double punishment because, as discussed in Part Three, undertaking the engagement assessment generally gave students a better opportunity to do well in other unit assessments.

³ While I'm not suggesting that mandatory attendance would result in students undertaking a unit's key learning activities, being aware of the prohibitions and requirements prescribed in institutional assessment policies and procedures is a must at the outset of any assessment redesign.

Therefore, the redesigned aspects of the unit, including the time and complexity of marking this SLEAI, could not be the straw to break the camel's back.

Third, the workload for students undertaking the redesigned aspects of the unit must be appropriate. For example, the time students are expected to study outside of the classroom must align with the relevant institutional policies. Requiring extensive reading, such as hundreds of High Court cases, for a unit with a low course weighting would likely not be appropriate. In my units, since I chose assessment as my approach for deepening and improving engagement, the number, weighting and complexity of the assessments required careful consideration in light of the relevant assessment policies and procedures.

B Specific 'Carrot and Stick' SLEAI Designs

In this section, I'll outline the design of the carrot and stick SLEAIs implemented in my first-year law units. The first, *Workshop SLEAI*, aims to encourage student engagement in the unit's existing workshop activities.⁴ The second, *Introductory Recording SLEAI*, focuses on student engagement with unit content helping students keep up and practice applying it.

1 Workshop SLEAIs

Used in both my blackletter law and skills-based unit, this SLEAI required students to submit a brief written response to specific questions arising from each of the unit's scheduled workshops. These are administered via the online Learning Management System ('LMS') as quizzes with short answer questions. Take, for example, a workshop activity requiring discussion of cause of action 'Y' that has four elements, and discussion of any relevant defences. The SLEAI quiz question might be: 'Discuss whether the plaintiff will be able to make out the first element of X in a cause of action of Y against the defendant.'

To ensure manageable student workload, to cater for equity, diversity, and inclusion considerations, to provide maximum flexibility in order to promote engagement and also to mitigate the risk of academic integrity violations, several steps were taken. These included:

- Opening all Workshop SLEAI quizzes at the start of the teaching period (with unlimited attempts allowed) and having each close around three weeks after its associated workshop concluded.⁵
- Informing students of the relative ease of undertaking the Workshop SLEAIs and of the expectations for doing well in the assessment. For example, instructions suggested a small maximum word count for responses and the assessment criteria emphasised only engagement with the workshop material was being evaluated, not the accuracy of responses or quality of the writing.

⁴ I was confident, from experience and continuous improvement, the existing workshop activities were effective ways for students to learn the required skills and content.

⁵ This very large open period meant there were few valid grounds for extensions.

- Making students aware that the quiz questions arose from issues directly discussed in workshops, incentivising preparation, attendance and active engagement in workshop classes.
- Advising students of the usefulness of properly completing the SLEAI assessment to their understanding of the unit content, and legal skills in general.
- Clearly communicating academic integrity expectations specific to this assessment and discussing these expectations with them. For example, acceptable and non-acceptable use of AI was made clear to student.⁶

These measures collectively created an assessment regime which was manageable for students and facilitated integrity-focused practices as much as possible.

To ensure manageable marking, only a subset of responses to Workshop SLEAI quizzes were assessable. Rather than marking every response for every Workshop SLEAI quiz, the assessment scheme specified only a quarter of the Workshop SLEAI quizzes were assessable. To incentivise completion of all Workshop SLEAI quizzes, and not just the assessable quizzes, the identity of the assessable quizzes was not disclosed to students until the completion date for the quiz had closed. Several examples of assessment schemes are given in Appendix 1 below. Using Scheme A as an example, which was essentially the scheme used in my blackletter law unit, the unit might contain a total for 12 Workshop SLEAI quizzes to be completed throughout the unit, with the SLEAI instructions specifying that:

- The Unit Coordinator will randomly choose the same three Workshop SLEAI quizzes for all students to be assessed on, and the selected quizzes will not be disclosed until marks have been finalised.⁷
- Each of the three selected assessment quizzes will be worth 3% of the unit marks, making the Workshop SLEAI quiz worth a total of 9% for the unit.

This approach ensures fairness and encourages consistent engagement with all Workshop SLEAI quizzes throughout the unit.

Additionally, since the focus was on evaluating engagement rather than the accuracy or quality of the responses, the marking process was much more straightforward than, say, marking responses to a legal problem-solving assignment. That is, the marker would not need to critically assess the quality of the arguments made, the adequacy of the authorities cited, or the quality of the written expression. The marker needed only to be satisfied that the student had attempted to address the quiz question in some way, to award full marks. For example, consider a Workshop SLEAI quiz asking students to ‘discuss whether the element of “so as to cause” in the statutory offence contained in s 5 of the *Fictitious Act* is likely to be established by X against Y in the factual scenario from workshop Z’. A response might be:

⁶ In fact, in this unit we spent an hour of lecture time experimenting with AI and expressly discussing its advantages and disadvantages and ethical uses.

⁷ Again, thereby incentivising ongoing engagement in all workshops.

Y will establish the element of 'so as to cause' from the statutory offence of whacking from s 5 of the *Fictitious Act* by proving there is a direct link (*Made Up v Case*) between the X's action of throwing a bottle, and the harm suffered to Y of a head wound. In *Made Up v Case* the court held that a direct link will establish a statutory 'so as to cause' element through an unbroken chain of factual events. That is, the 'facts of the occurrence are so closely connected that they can only sensibly be considered all part of the same event'. On the facts of our case, X was standing approximately one metre away from Y and Y was visible to X. X was in control of the glass bottle as X meant to pick the bottle up and meant to intimidate Y through the threats made. In particular, X spoke the words 'cop this' and deliberately swung the bottle in the direction of Y. The bottle was out of X's hand for approximately one second before hitting Y's head. This chain of events were closely connected temporally, by physical proximity and via the apparent intent behind X's actions. As such is it likely a court will find there is a direct link between X's act of letting go of the bottle and Y's head injury, to make out 'so as to cause' in s 5.

Alternatively, a response might be:

- s 5 FA element = 'so as to cause'.
- Relevant case law = *Made Up v Case* where 'so as to cause' described as 'direct link' .
- Evidence of a direct link here through X's close physical proximity to Y, knowledge of presence of Y, words spoken to Y, one second temporal immediacy between X letting go of bottle and contact with Y's head.
- Element likely to be established.

Both of these responses contain evidence of a student's engagement with the unit content. They both identify the relevant issue, some relevant law and some relevant facts. Even a response which incorrectly states the law pertaining to 'so as to cause' or suggests that the day of the week is a fact relevant to the chain of events will still show evidence of student engagement in unit content. All such responses would receive full marks. A response which merely says 'element likely established', or sets out the elements of a contract law in a criminal law unit question on assault will not evidence engagement in the unit content.⁸

2 Introductory Recording SLEAIs

Used only in my blackletter law unit, this SLEAI leveraged existing recorded lecture content. During lockdown teaching in the pandemic, I created 20–30 minute videos for each of the unit's lecture topics, which introduced the topic and discussed basic content. To lighten student cognitive load during synchronous online lectures, the lockdown cohort was encouraged to view these 'Introductory Recording' videos before the synchronous lectures.⁹ Given the lockdown cohort's positive feedback on the utility of these Introductory Recordings to their learning, I decided to make them into a SLEAI.

Using the multimedia polling functionality within EchoVideo, I inserted 3–6 multiple-choice questions throughout each of the 9 or 10 (depending on the iteration) Introductory Recordings. These questions were simple and based on video content covered immediately

⁸ Therefore, essentially quizzes were marked on a pass/fail basis. Further, as the 'correct answer' had already been discussed in the workshops, and was not being assessed, individualised feedback was not required.

⁹ Or reviewing the synchronous lecture's recording.

prior to the question being asked. For example, let's consider an Introductory Recording on the topic of defences. Such a recording might typically start with a discussion covering the following points:

- The specific defences to be discussed in the unit/topic;
- That defences, like the causes of action, have elements that need to be proven and that this will be the focus of our discussions in-class;
- The effect of proving a defence is that a defendant will escape all or some legal liability; and
- That a defendant who wishes to rely on a defence will need to raise and prove it.

Importantly, these points will be *discussed* in the Introductory Recording rather than simply listed. For example, I like to highlight the shift in perspective that occurs when discussing defences. I specifically warn students that, unlike our previous discussions which focused on what a plaintiff must prove, our discussions of defences will focus on what a defendant must prove. I advise students to be cognisant of this shift in language in our discussions and their reading. Additionally, I counsel students of usefulness of identifying whether the appellant and respondent, in an appeal case, had the role of plaintiff/prosecution and defendant/accused in the first instance decision as a way of avoiding conflation that comes with this perspective shift. I might also couch discussion of these points by reference to a case or factual example students are already familiar with.

After some discussion, the Introductory Recording will pause, and a multiple-choice question will appear for students to answer. Students must answer the question before the video will continue playing and immediate feedback is provided as to the correct answer. For example, a question relating to defences, appearing after the initial discussion noted above, could be:

Question: At common law, who bears the onus of proving a defence in this area of law and to what standard?

- A. The plaintiff, beyond reasonable doubt
- B. The plaintiff, on the balance of probabilities
- C. The defendant, beyond reasonable doubt
- D. The defendant, on the balance of probabilities.

As can be seen, the Introductory Recording's initial discussion covers the answer to this question, but not in a format where a statement like 'the defendant bears the onus of proving the elements of the defence to X standard' is expressly made. Instead, students need to reflect on, or relisten to, the Introductory Recording's discussion to determine the correct answer.

In terms of assessment, similar to the Workshop SLEAI, the Unit Coordinator would select one question from each of the Introductory Recordings for assessment. If the selected question had been attempted, 0.5 marks were awarded and if the answer was correct, another 0.5 marks were awarded.¹⁰ Therefore, by simply answering all questions, students could earn half the available marks, even if their answers were not correct. To earn the remainder,

¹⁰ See Annexure 1, Schemes C and D, for examples of how marks could be broken down.

students needed to demonstrate engagement with the video content through active listening, analysis and application.¹¹

C Added Bonuses

Both the Workshop and Introductory Recording SLEAIs provided bonus learning benefits that were not present when these learning activities were not assessed.

First, by progressively marking and releasing SLEAI results throughout the teaching period, both students and teachers received feedback on student progress. Students could gauge their understanding of unit content in addition to practicing typical unit assessment tasks. As a teacher and marker, I had access to writing samples and multiple-choice response statistics, providing insight into an individual's and the cohort's overall understanding. This allowed me to quickly address any problematic trend or offer support to individual students who showed signs of struggling with the content or university life in general. For example, if I noted a student had not completed any SLEAIs at all, or seemed not to have basic typing skills, I could reach out to the student or ask university support services to reach out to the student. If noticed a high percentage of the cohort answered an Introductory Recording SLEAI question incorrectly, I could expressly address this issue in the lecture on that topic.

Second, the SLEAIs required students to keep up with unit content, promoting the benefits of continuous engagement in learning activities. Similarly, the SLEAI schedule modelled effective study habits – that is, it encouraged students to do small bits regularly – but at the same time, still allowed students to undertake larger chunks less frequently if required or desired. This staggered scheduling of SLEAIs enabled students to steadily build their understanding of the unit content as the unit progressed.¹² Additionally, the Workshop SLEAIs demonstrated the value of timely reflection and review of workshop content.

Finally, in my experience, a student's first attempt at legal writing is typically when drafting their assignment and their second attempt is when writing their exam. Instead, the Workshop SLEAIs facilitated writing small parts of a legal problem-solving answer (even though writing in note form was permissible) continuously throughout the unit. This exposed students to the challenges involved in legal writing early, via low-stakes continuous assessment, and facilitated a first attempt at legal writing before the unit's high-stakes assessments.

¹¹ Like Workshop SLEAIs, and for the same reasons, the Introductory Recording SLEAI: (1) Were open and available for completion from the start of the teaching period (although only one attempt was allowed) until about three weeks after corresponding lecture topic was scheduled for conclusion; (2) Question chosen for assessment was selected and disclosed after the close of each Introductory Recording; and (3) Results were compiled and released progressively throughout the teaching period.

¹² See Part IV for discussion of the observed benefit of this.

IV HAS THERE BEEN MUCH MOVEMENT?

I have implemented my carrot and stick SLEAI approach over several iterations of my first-year units and feel it has achieved my teaching goals. That is, my stubborn mules have moved forward towards more effective engagement in their learning. I now outline my observations from these SLEAI iterations that have led me to conclude that this approach is effective.

Returning to item 3 on my ‘top five most concerning signs of disengagement’ from Part II, concerning workshop attendance: Had attendance rates for workshops or lectures changed during SLEAI iterations? Maintaining comprehensive and accurate records of in-person attendance has its challenges. It’s impractical in a lecture setting, and for workshops while tutors are asked to take attendance, and more recently students have been asked to electronically record their attendance, there is naturally room for inaccuracies. However, during SLEAI iterations, tutors did not report any instances of zero attendance, as was reported twice during the troubling cohort. Nor did I note from the attendance records any unexplained or concerningly low attendance rates. Furthermore, as the lecturer, I did not observe any troublingly low attendance at face-to-face lectures for SLEAI iterations, unlike the troubling iteration where by the end of the teaching period lecture attendance dropped to around 10%. In terms of the completion rates for the skills-based unit’s Workshop SLEAI, both SLEAI iterations had weekly completion rates ranging from about 85% to 60%, with the lower completion rates occurring towards the end of the teaching period.

I return to items 1, 4 and 5 of my ‘top five’ from Part II, which concerned aspects of study related to assessment preparation. I have tracked data relating to assignment and exam preparation in my blackletter law unit, and observed pleasing results. The proportion of the cohort who submitted their main assignment late, or sought an extension, has roughly halved. Meanwhile, the proportion of students viewing the exam scenario at least a week in advance of the exam has roughly doubled, with almost none waiting until the day before to view the scenario for the first time – down from more than a tenth of the cohort in the troubling iteration. Overall, it is clear to me that the SLEAI iterations had better success when it came to helping students keep up with unit content and enabling them to prepare in advance for assessments more effectively. It seems reasonable to conclude that the SLEAIs, which required students to engage in learning activities directly related to the unit content and assessment skills, encouraged earlier preparation for assignments and exams.

Finally, I also observed encouraging trends in the assignment and exam results in SLEAI cohorts. In my blackletter law unit, unsurprisingly, students who engaged with the Introductory Recording SLEAI were much more likely to ‘do well’ in their other assessments for that unit (namely the main assignment and exam). Students who achieved a perfect score in the Introductory Reading SLEAI achieved a combined assignment and exam mark in the ‘pass’ range or better, with around a third in the ‘distinction’ or above range. Further, very few students who made a diligent attempt at the Introductory Recording SLEAIs¹³ had a

¹³ I regarded a ‘diligent attempt’ to be when a student achieved 80% or more for the Introductory Recording SLEAI. This indicated the student likely completed all questions in all Introductory Recordings and got half of the questions chosen for assessment correct.

combined exam and assignment mark in the ‘fail’ range. Conversely, in each iteration, about half the students who made a non-attempt at the Introductory Recording SLEAI¹⁴ obtained a combined exam and assignment mark falling within the ‘fail’ range. Therefore, it seems reasonable to conclude that the SLEAIs, which required students to engage in learning activities directly related to unit content and required legal skills, equipped or assisted students to achieve success in the unit’s assessments.

V CONCLUSION

The implementation of the carrot and stick SLEAI approach in my first-year units has proven effective in promoting student engagement and improving learning outcomes. By integrating low-stakes assessments that require active participation in key learning activities, students are encouraged to stay engaged with the unit content and progressively develop essential skills. The observed improvements in attendance, assignment submission and exam preparation, along with positive anecdotal and formal feedback from students, support the effectiveness of this approach. Moving forward, this model can be adapted and applied to other law units for other key learning activities to further enhance student engagement and success.

Annexure A: Possible Assessment Schemes

| Scheme A | | |
|--|----------------------|---|
| Assessment Name | Weighting | Assessment Description |
| Student Learning Engagement, comprised of: • Workshop Quizzes (12 total for the unit). | 9% | The following will be randomly selected for assessment: • 3 quizzes worth 3% each |
| Scheme B | | |
| Assessment Name | Weighting | Assessment Description |
| Student Learning Engagement, comprised of: • Workshop Quizzes (10 total for the unit). | 10% | The following will be randomly selected for assessment: • 2 quizzes worth 5% each |
| Scheme C | | |
| Assessment Name | Weighting | Assessment Description |
| Student Learning Engagement, comprised of: • Workshop Quizzes (12 total for the unit); and • Introductory Recording (9 total for the unit). | 15% (6%) (9%) | The following will be randomly selected for assessment: • 3 quizzes worth 2% each • 1 question per recording worth 1% each (0.5% for attempting and 0.5% for a correct answer). |
| Scheme D | | |
| Assessment Name | Weighting | Assessment Description |
| Student Learning Engagement, comprised of: • Workshop Quizzes (10 total for the unit); and • Introductory Recording (10 total for the unit). | 15% (5%) (10%) | The following will be randomly selected for assessment: • 2 quizzes worth 2.5% each • 1 question per recording worth 1% each (0.5% for attempting and 0.5% for a correct answer). |

¹⁴ I regarded a score of below 60% for the Introductory Recording SLEAI a ‘non-attempt’, as this mark indicated that, at best only half the assessment had been attempted.