

Asking the Right Questions: The Pedagogical Advantages of Using Media Reports as Assessment Problems in the Law Curriculum

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Abstract

This paper describes an assessment practice employed in a law course (tort law) whereby locally sourced newspaper articles serve as assessment problems in both examinations and task-based assessment activities. The principal pedagogical reason for doing so is to provide an assessment derived from authentic material that is more likely to be taken seriously by students, more likely to encourage students to make connections between the substance of the law as studied and the community and the world around them, and more likely to foster skills of the sort legal practitioners and professionals actually need and use. Such an assessment strategy will lead students away from short-term reproductive learning towards more reflective learning in which they themselves make the relevant connections. It has potential for application in disciplines other than law, in particular, social science and humanities .

Introduction

This paper seeks to persuade law teachers to consider a new approach to their assessment practices, one that can have a profound impact on how law students learn. Although the principal audience of the paper is law teachers, teachers in other disciplines may also consider employing the pedagogical approach presented here. This approach, in which media-sourced news items are utilised as assessment and learning tools, will help students to move away from the habit of short-term reproductive learning and develop more effective skills that go beyond the accumulation of legal knowledge. Moreover, it will promote the development of independent and life-long learning skills in a way that gives substance to what are often meaningless academic clichés. This approach – which is new to the law curriculum and law pedagogy – reconceptualises assessment as a learning opportunity rather than merely a measurement exercise. It accepts as true the axiom that assessment drives student learning behaviour, and is premised on the beliefs that assessment is an integral part of student learning and that more effective student learning requires a rethink of how we assess students.

Before proceeding to discuss its role in teaching and learning, a word of clarification on how assessment is conceptualised in this paper. Assessment is regarded as summative assessment – student work that contributes to the grade awarded in the course. Summative assessment is to be distinguished from formative assessment, which provides an opportunity for constructive feedback without carrying weight in the grading process. This is not to say that summative

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assessment does not have a formative dimension, indeed, it is argued in this paper that it can and should have a formative dimension, but this depends on other factors.

The Role of Assessment in Teaching and Learning

Assessment as generally practised in university programmes has emphasised its summative or grading function. This is particularly true in the law school, with its gatekeeper obsession with procedures, accreditation, maintaining ‘standards’, satisfying professional bodies, and the like. For many university teachers, assessment is seen as a ‘final’ event both chronologically, given that it often only takes place at the end of the course, and in the teacher’s mind when planning the course and preparing course documents – “something to think about once the curriculum has been devised and plans for delivery finalized”.¹ Conceived in this way, assessment produces judgments and classifications that serve the accreditation and recruitment purposes of the institution and the legal profession, but not much more. Its role in supporting learning is limited. Its purpose is to ascertain what students know according to the measures used and to rank students against a standard or norm, rather than to advance student learning. We know this, if only because law schools worldwide continue to use the time-limited unseen end-of-course examination as the main – and sometimes the sole – instrument of assessment. The results of a 2010 Internet survey of tort law teachers from different common law countries (22 replies in all) indicated that, on average, the unseen final examination made up 80% of the course assessment.² In this model, once the examination is written, the course is at an end, learning is concluded, the books are closed, if not sold on the second-hand student book market, and there is no opportunity for follow-up. This is a description of what might be called the assessment *of* learning, or “assessment as measurement”, typically “characterized by a limited number of assessment strategies and techniques”.³

Yet it has long been recognized how feebly our examinations perform the assessment function (Hartog and Rhodes 1935).⁴ Moreover, student perceptions of marking inconsistencies are a common source of student discontent.⁵ Marking is often done hastily, to meet examination board deadlines.⁶ Marking, especially in large courses, is conducted by multiple markers. In law, as in other disciplines in which examinations require that complex problems be solved, there is a highly subjective dimension to the exercise that commonly produces inconsistent results. Falchikov examined a number of studies on marker reliability and identified a range of factors

¹ Brown S. & Glasner A. (eds), *Assessment Matters in Higher Education*. (Milton Keynes: Open University Press, 1999).

² Author survey of tort law teachers conducted between November 5 and 12, 2010 on the Obligations Discussion Group (ODG) convened by Jason Neyers of the Faculty of Law, University of Western Ontario. See http://www0.hku.hk/law/faculty/staff/glofcheski_rick.html.

³ Falchikov N, *Improving Assessment through Student Involvement* (London: Routledge, 2005) 32.

⁴ Hartog P.J. and Rhodes E.C., *An Examination of Examinations* (London: MacMillan, 1935).

⁵ Ashcroft A. and Foreman-Peck L., *Managing Teaching and Learning in Further and Higher Education* (London: Routledge, 1994).

⁶ Brown, & Glasner, n 1 above.

that typically contribute to the unreliability of traditional assessment. Among the many factors cited, inconsistencies arise due to ‘differences in the standard of marking employed by different markers, differences in the dispersion of marks awarded by them and “random error”’.⁷ Marks may also vary depending on the characteristics and idiosyncrasies of the individual markers.⁸ In a typical first-year law course at the author’s university, with up to 275 students and five or six tutors sharing the marking load, it is not uncommon that examination scripts are given a substantially different grade than other papers with the same content and persuasive quality, despite careful preparation and the sharing of marking guidance notes that sometimes run to a dozen or more pages. Cox found that even where teachers have agreed on the criteria to be used for assessment, they often interpret and apply them differently and reach different results.⁹ Indeed, the allegation made by students over the years that there are hard markers and easy markers is largely correct, and even the second marker can pick up inconsistencies only by reading huge swaths of examination scripts, which, due to limited resources is unlikely to happen. Inconsistent results often stand, because they are never identified. At any rate, as Gibbs and Simpson have pointed out, where assessment is most reliable and cheat-proof, it is “often accompanied by dull and lifeless learning that has short lasting outcomes”.¹⁰

Given that the summative function of assessment is performed so feebly, and given the inevitability of assessment, the question comes to mind: can assessment be made to serve some other purpose? If so, then the case for assessment can be made more convincingly. This leads to the need for re-conceptualisation of the assessment function.

It is also worthwhile at this point to consider what is assessed under our current assessment practices. This is important, because it is widely accepted and has been amply demonstrated that assessment drives student learning behaviour.¹¹ Assessment shapes student behaviour but also sends signals about what activities and skills are valued. It is vital to assess for the right things in the right way. If we assess the wrong things or in the wrong way, then students will naturally spend their time studying and learning the wrong things and in the wrong way. Assessment should encourage deep, independent life-long learning. However, there is a danger that poorly designed assessments, including in many cases the end-of-semester unseen final examination, will encourage surface or short-term reproductive learning. As argued by Brown,

If we reward, through our marking, information recall and repetition of what has been taught (as much traditional assessment does), then this is what students will think we

⁷ Falchikov, n 3 above at 35, citing Cox R., n 9 below. Marks “may also depend on the idiosyncrasies of the individual marker”: Falchikov (*ibid*) citing Laming D, n 8 below.

⁸ Laming D., ‘The Reliability of a Certain University Examination Compared with the Precision of Absolute Judgments’ (1990) 42A *The Quarterly Journal of Experimental Psychology* 2: 239-54.

⁹ Cox R., ‘Examinations and Higher Education: a Survey of the Literature’ (1967) 21(3) *University Quarterly* 292-340.

¹⁰ Gibbs G and Simpson C., ‘Conditions Under Which Assessment Supports Students’ Learning’ (2004-05) 1 *Learning and Teaching in Higher Education* 3-31.

¹¹ Snyder B.R., *The Hidden Curriculum* (Cambridge, MA: MIT Press, 1971); Miller C.M.I. and Parlett M., *Up to the Mark: a Study of the Examination Game* (Guildford: Society for Research into Higher Education, 1974).

want and perform accordingly. If we wish to encourage the higher level skills such as the application of theoretical knowledge to a given context, analysis and synthesis of new components of their learning...then we need to look at new ways of assessment.¹²

If assessment is carefully and strategically designed, then students will begin to do and to take seriously the very things necessary to achieve the desired learning outcomes. This is what is sometimes referred to as assessment *for* learning.

What Students Do

A few years ago, the author and a few other teachers at the Faculty of Law of the University of Hong Kong conducted a study of the learning practices and preferences of LLB students.¹³ Some of the many findings confirmed longstanding suspicions held by university teachers the world over. We learned in our study that students generally eschewed hands-on learning activities geared towards deeper learning in preference for activities that were perceived as preparatory for the final examination. Much to the continuing disappointment of their teachers, students preferred an examination-oriented approach to their studies. However, criticizing students for taking such an approach is to some degree unfair and disingenuous - teachers can hardly complain when it is they (and the universities) who attach such importance to examinations, using examination results to rank students and determine their future career prospects. In the author's view, the evil does not lie in the examination-oriented approach *per se*, but in an approach that results in short-term reproductive learning. Although the two are often connected, they need not be.

We also found in our study that students were very diligent in following their teachers' instructions regarding their class preparation and study. Their most common learning activities in terms of time spent were 'reading distributed materials', 'reading law textbooks' and 'preparing notes of lectures and readings'. These three methods accounted for 31% (119.2 hours), 23% (88.7 hours) and 13% (48.4 hours), respectively, of learning and study time. This distribution matches the findings of a later survey of law teacher practices and expectations showing that the most common instructions given by law teachers to their students were to 'read distributed materials', 'read textbooks' and 'read journal articles', in that order.¹⁴

This latter finding may provide teachers with some reassurance that students are prepared to trust and follow their teachers' advice and judgment on how to learn and study. However, the sorts of instructions described in the previous paragraph are not terribly imaginative and may explain in part why students take an examination-oriented approach that produces short-term reproductive

¹² Brown & Glasner, n 1 above.

¹³ Glofcheski et al. *How Law Students Learn*, (2007) University of Hong Kong, Faculty of Law website <http://www.hku.hk/law/Files/How%20law%20students%20learn%20report.PDF>.

¹⁴ Glofcheski et al. *How Law Teachers Teach*. (2009) University of Hong Kong, Faculty of Law website [http://www.hku.hk/law/Files/A%20Survey%20on%20How%20Law%20Teachers%20Teach%20\(DDsummaryDec%2017\).pdf](http://www.hku.hk/law/Files/A%20Survey%20on%20How%20Law%20Teachers%20Teach%20(DDsummaryDec%2017).pdf).

learning. Such instructions are in fact conducive to a reproductive learning approach, given that the most predominant form of assessment continues to be the heavily weighted end-of-session unseen final examination consisting of mostly predictable teacher-designed problem questions intended to achieve coverage of the material in the assigned readings.

What Teachers Do

Our 2009 survey shows that the unseen in-hall examination remains the predominant form of assessment in law courses at the author's university. The 2009 survey also shows that teachers continue to prefer in-hall examinations consisting mainly of teacher-designed hypothetical problem-style questions intended to achieve coverage objectives. A 2010 survey of tort law teachers from different common law countries confirmed that this practice is widespread.¹⁵ All of the respondents used unseen problem-style questions. On average, such questions comprised 80% of the weight of their course assessment. Essay questions were used, but on a smaller scale. Moreover, more than half of the respondents answered 'yes' to the question: 'Would you describe your typical problem-style question as consisting of a fact pattern of events which, while individually possible, occur in a sequence which is exaggerated and thus unlikely actually to happen?' Taken together, these results suggest an approach to assessment that is not terribly conducive to deep learning, whatever else one might say about it. Such teacher-designed hypothetical problem questions invariably have little to do with how life is conducted and how events actually occur in the community, and therefore run the risk of creating a cognitive gap between learning and real world applications. They have more to do with the individual teacher's conception of clever assessment questions that achieve coverage objectives, and often have the effect of driving students to counter-productive behaviour such as scouring for clues based on the teacher's past examination practices, or sleuthing for examination hints dropped in class, trying to anticipate "how the teacher thinks" or "what's on the teacher's mind". This is hardly conducive to deep learning. However cleverly drafted, and however much they may serve the coverage objective, teacher-designed unseen examination problem questions are not terribly conducive to the sorts of learning outcomes we want students to achieve - the ability to identify legal issues in unflagged fact situations and analyse them deeply, the sorts of skills lawyers are regularly called on to deploy. These learning outcomes are more likely to be achieved with learning and assessment tasks that are authentic or near-authentic, resembling life as it is and professional life as it is likely to be, what is explained by Newman and Archbald as the linking of assessment tasks with normal professional tasks to achieve greater correspondence between student work and that undertaken in workplaces.¹⁶

The Use of Media Reports as Assessment and Learning Materials

¹⁵ Author survey, n 2 above.

¹⁶ Newman F.M., and Archbald D.A., "The Nature of Authentic Academic Achievement" (1992), in H Berlak et al (eds), *Toward a New Science of Educational Testing & Assessment* (Albany: State University of New York Press, 1992).

Given that students are assessment-oriented and are prepared to follow the teacher's instructions, although the instructions are currently designed in a way more likely to encourage short-term reproductive learning, it is necessary for teachers to adjust what they do in terms of both learning activities and assessment. At any rate, the inevitability of examination-driven student motivation presents something of an opportunity.

The approach to assessment proposed here requires that the subject matter of assessment in the law curriculum be changed from the conventional problem-style, fictional, teacher-designed and compact narrative covering a range of issues in a few short lines – the sort of legal 'brain-teaser' question law teachers have long preferred – to legally relevant real-life events that have happened in the community. This will have the effect of driving students to new and more productive, more sustainable kinds of learning habits, more closely related to the skills-sets needed after graduation. These real-life events on which assessment is based are also those of social significance and community interest, having warranted media coverage, the media thus providing a ready and abundant source of assessment material for the law teacher. Accounts of such real-life events are available on an almost daily basis in the daily newspaper. Moreover, such events may actually be familiar to students in view of the media coverage they generate.

Examinations

In the author's conception, in-hall examinations should continue to have a role in assessment, but the nature of the assessment questions asked should be dramatically transformed. Appendix A provides an example of a typical problem-style hypothetical question found in conventional tort law examinations. It is taken from a US examination database. The narrative covers a wide range of issues in the tort syllabus, but consists of fictionalised and improbably sequenced events. Two examples of media-sourced assessment questions that are more appropriate to effective student learning can be found in Appendix B. Both of the examples are verbatim newspaper reports of recent occurrences in Hong Kong with tort implications not explicitly flagged in the report. The first of the Appendix B questions – a newspaper summary of a coroner's inquest into the death of a man outside a hospital who was refused treatment because he was not yet an admitted patient – was used as the end-of-semester in-hall tort law assessment on 30 November 2010 at the author's university. The second – also a newspaper summary of a coroner's report – concerns a death caused by a falling object, a common problem in congested and vertical Hong Kong, and was used as a final examination problem in May 2011.

Some of the criticisms of the Appendix A type of question have already been recited in earlier sections of this article. To these can be added the worry that the use of hypothetical, usually improbable, sequences of events as assessment questions is likely to encourage in law students the impression that legal problems are nothing more than a puzzle to be solved or a code to be cracked. Moreover, the fictional, improbable scenarios commonly used in conventional examinations may tend to distance the student from the very real, often desperate, human situations in which legal problems actually present themselves. The use of such unlikely

scenarios may even result in a disconnection between students' legal reasoning and their consideration of more important social policy factors underlying legal analysis and resolution. Among other potential concerns and objections too numerous to list here is that such examination questions are by their nature likely to encourage short-term reproductive learning. Certainly, there is little in the way of independent or life-long learning skills likely to emerge from student learning and study programmes aimed at success in this kind of assessment. Indeed, in a focus group session in our 2007 study, students reported that the typical hypothetical unseen examination question might not serve the purpose of encouraging deep learning because it did not normally require an understanding or analysis of the rationale of the law. However much it tested students' skill in applying law to hypothetical facts, this skill as tested in final examinations could be acquired without deep understanding.¹⁷

The merits of the Appendix B style of question are manifold. Narratives reported in the media are real; they are not clever brain-teasers, and students are less likely to treat them as such. They concern real human tragedies and involve real people in need of legal advice. They require law students to consider tort law issues in their true-to-life social contexts. Moreover, the analytical approach required to tackle such questions more closely resembles the sorts of problems encountered by legal practitioners and professionals in the work setting. Indeed, the often sketchy reports found in the popular press are bound to omit certain key facts of interest to the practitioner and necessary for complete and competent legal advice. Yet this often simply reflects the way in which clients provide factual information – incomplete and sometimes irrelevant – leaving the practitioner to ask questions or conduct his or her own independent inquiry. This kind of assessment provides a more realistic and effective training ground for the kinds of skills and attributes needed by legal professionals, including the exercise of judgment and a sensitivity for issues that go beyond the purely legal. Moreover, it encourages the habit of reading newspapers and staying abreast of relevant events in preparation for examinations.

Students respond well to this kind of assessment. The results of an exit survey of students conducted on the same day as the assessment using the first of the two test questions in Appendix B overwhelmingly bear this out. In response to the question 'Do you find that the use of test and tutorial problems based on real-life events helps develop your skill of identifying and understanding tort issues independently, in unflagged situations, such as when reading newspaper articles and news websites, or in your daily experiences?', 117 of 122 respondents (96%) answered 'yes'. Moreover, in response to the question 'Do you find that test and tutorial problems based on real-life events as reported in the media provide a better learning experience than problems that are invented by the teacher?', 108 of 122 (88.5%) respondents answered 'yes'.¹⁸ In the written response portion of the survey, students explained their preference for authentic, media-sourced questions in different ways. Some expressed an understanding of how

¹⁷ Author et al., n 13 above.

¹⁸ Author exit survey conducted November 30, 2010, the day of the end-of-semester in-class test. See http://www0.hku.hk/law/faculty/staff/glofcheski_rick.html.

teacher-designed fictional problem questions may not serve their long-term purposes. Others indicated how their outside-of-the-classroom learning habits had begun to change as they became more alert to tort law issues in unflagged situations. Examples of their responses include the following: ‘Using real-life events as tutorial problems makes me feel that the subject can really relate to our daily lives. Since those problems invented by teachers often give me the feeling that they are too “tailor-made” in accordance with the chapters taught’; ‘Now when I read the newspapers I would think more about what tort issues can be brought about from it’; ‘A very useful session to reinforce understanding of and gain insights into the law, it helps me better understand how to apply the law to unflagged situations’.¹⁹

The use of media reports in assessment need not – indeed should not – be confined to examinations. Its adaptation for other forms of continuous and task-based assessment is a practice that should be encouraged in view of how diverse forms of assessment are needed to enable students to acquire the diversity of skills and learning outcomes law students need. Diversity in assessment premised on diversity in learning activities helps ensure the achievement of diverse outcomes. As Elton and Johnston noted,

... traditional assessment practices, consisting pre-eminently of the assessment of essay and problem type final examinations and similarly constructed coursework, cannot possibly test for imponderables like independent critical thinking, creativity, etc and this is particularly so for time-limited examinations.²⁰

However, for present purposes, the discussion will remain focused on examination questions.

A drawback of using media reports as assessment problems may already have occurred to the reader. Because the examiner has no control over the narrative within the question, issue coverage will be compromised. Indeed, as noted in an email exchange with the author by Margaret Fordham of the Faculty of Law, National University of Singapore, external examiner (2009-12) for the LLB Tort Law course taught by the author at the Faculty of Law at the author’s university, an examination paper may require many more questions to ensure full or near full coverage of course material. Moreover, the question is likely to be less compact – it is after all a verbatim media report. Although all of this is true, the author considers that what is lost in terms of coverage control and convenience is gained in terms of the learning experience itself, and indeed in terms of the achievement of some of the most vital learning outcomes. Margaret Fordham went on to say:

The use of real-life situations is an excellent way to convey the relevance of tort law to everyday life, and I like the ‘stories’ you’ve chosen.... My overall conclusion is therefore that your innovative approach is to be applauded ... you should ... read my comments as

¹⁹ *Ibid.*

²⁰ Elton L. and Johnston B., *Assessment in Universities: A Critical Review of Research* LTSN Generic Centre (2002). Accessed July 31, 2011 at <<http://eprints.soton.ac.uk/59244/1/59244.pdf>>.

supporting both your methodology and the content of the paper. I think that what you are doing is extremely innovative and interesting.

Learning Activities

In what is perhaps an obvious point, but one that is worth repeating, assessment should be linked with learning activities to achieve learning outcomes. Our understanding of learning outcomes owes much to John Biggs, who stated that to achieve learning outcomes it is essential that

... teaching should be done in such a way as to increase the likelihood of most students achieving those outcomes. Talking about the topic, as in traditional teaching, is probably not the best way of doing that. We need to engage the students in learning activities that directly link to achieving the intended outcomes.²¹

If we consider for a moment how assessment drives student learning behaviour, then it is easy to see how students preparing to be assessed will naturally want to engage in learning activities relevant to their success in this kind of assessment. It therefore follows that tutorial exercises and other learning activities should also centre on realistic events reported in the media. Students who are aware of how they will be assessed will take to their tutorial assignments more enthusiastically and be eager to develop the skills necessary for examination success. Moreover, students will actually develop a more serious and mature approach to their learning activities and studies given that the subject matter of these activities is taken from the life and events of their own community. This focus on local events is amply demonstrated in the sample tutorial questions in Appendix C. The first is a newspaper report of a coroner's inquest into deaths caused by late-arriving ambulances, another concern in compact but congested Hong Kong. The second is a newspaper report concerning financial losses suffered by investors in allegedly mislabelled financial products ('mini-bonds') issued under the name of the well-known but now defunct investment banking house Lehman Brothers. These products lost almost all of their value during the 2008 international financial crisis, and up to 70,000 Hong Kong people were thought to have been affected, many of them unsophisticated investors who are now complaining of misrepresentation by issuing banks and mismanagement by the regulators and government. Both incidents received wide media coverage in Hong Kong over a period of many months. Such wide media coverage enables students to recognise that these kinds of events give rise to social policy concerns and controversies that go beyond their immediate liability implications, an additional feature likely to encourage a more reflective approach to the learning of law, which is something less likely to emerge from the use of more conventional assessment questions.

Moreover, students who become proficient in this kind of problem-solving acquire independent learning and life-long learning skills. Students taught and assessed in this way are more likely to have the skill, and indeed the habit, of seeing legal issues in ordinary, unflagged events in the

²¹ Biggs J., *Teaching for Quality Learning at University: What the Student Does*. (Buckingham: Open University Press, 3rd ed, 2007).

daily life of the community. This skill will stand them in good stead throughout their working lives.

Application Beyond the Tort Law Curriculum

Teachers in disciplines other than tort law may already have recognised the relevance and possible application of the assessment approach put forward in this paper to their teaching and learning programmes. The author has adapted the same strategy to his course in labour law. Moreover, it is not difficult to see its relevance to courses like criminal law, constitutional law, human rights law, and the like. It could reach further, into consumer law, environmental law etc. Newspapers are typically riddled with events relevant to these subjects. A perusal of the business pages of a leading daily newspaper could even provide evidence supporting its application to commercial law. Outside the law curriculum, political science, public administration, sociology and other disciplines in the social sciences could be areas in which this approach may be applied.

Conclusion

The author has attempted to demonstrate that the most prominent of the many flaws in the conventional method of law course assessment is that it fails to capitalise on the learning opportunity presented. It does little to facilitate the achievement of meaningful learning outcomes and does little or nothing to encourage the development of independent and life-long learning skills. Indeed, it may be encouraging the wrong skills, or it may distract students from the developing the kinds of skills they will actually need. The conventional method of assessment is more likely to encourage short-term reproductive learning. Moreover, the subject matter of the assessment is pitched in such a way as to distance the learning of law from its social context.

If we want students to be independent and life-long learners, then we must both teach and assess in ways that allow students to develop independent and life-long learning skills. Learning and assessment activities requiring the analysis of socially relevant events that are known to have occurred and that are presented in their unmanipulated published form are far more likely to achieve this objective. Students are more likely to develop the habit and the skill of identifying the legal relevance of otherwise legally unflagged events as reported in the media, and are more likely to develop the skill of engaging in independent legal analysis of such events. These are skills that will remain and will continue to develop over the life-time of the now-graduated student.

Appendix A

Susan works as a software developer for Mucent Technology. Her boss Bob invites her to dinner to discuss what Susan believes to be a promotion, so Susan agrees and is very excited about her prospects with the company. At dinner, Bob is friendly and starts off the dinner by making small talk. He then begins to ask Susan about her personal life. He asks her whether she has a boyfriend, and places his hand on her hand. Susan pulls her hand away politely, not wanting to offend Bob. Slowly it becomes clear to her that this isn't a business dinner, and she tries to keep the conversation professional, yet Bob keeps turning it to personal, intimate topics. She does not encourage him, and at one point says to Bob when he places his hand on her shoulder: 'Please Bob, you're my boss.' At the end of the meal, when he picks up the check she says: 'Thank you for a nice meal.' She now knows that this dinner was not about a promotion, but is afraid she might get fired if she tells him to cut it out.

As they get up from the table Bob offers to give her a lift, and Susan figures that the best way to end the evening is to just play along. In the car he says: 'Have I got a surprise for you!' Rather cautiously, Susan asks what he means. 'Well, we've got ringside seats at the Arena to watch the Fearsome Fletcher/Monstrous Manning wrestling match! These guys are awesome, you'll love it!' Susan responds, 'Thank you very much, but I'm rather tired and have an early meeting in the morning. I think I'd better just go home'. 'I won't take no for an answer Susan', Bob responds enthusiastically. 'I'm your boss, so you won't be in trouble for missing your meeting. And besides, wait till you see the computer graphics they use to animate the fight on the big screen over the ring. Maybe you'll get some ideas for that project you're working on.'

Once at the Arena, they are indeed seated in the front row, much to Susan's horror. She has never been to a professional wrestling match, and finds the whole thing rather barbarian.

The match begins with Fearsome Fletcher being brought into the ring on an ornate platform carried by six muscle-men dressed as Roman warriors. Fearsome is wearing a costume that appears to be a cross between Ben Hur and Liberace. Manning bungees into the ring from the rafters above – his skin is dyed green and his teeth coloured black. The bell rings and the wrestling begins. All of the fans are very excited – all except Susan who is hating this experience.

Roughly 10 minutes into the fight Fletcher grabs Manning, holds him over his head and lets out a wild yell. Bob leans over and says to Susan, 'Isn't this great? We're right on top of the action!' He then reaches over and kisses her and holds her as she tries to pull away. Fletcher then throws Manning into the ropes right in front of where Bob and Susan are seated. The ropes stretch to their limit and, to Susan's great horror, come loose from the corner post they are attached to. Manning comes flying out of the ring and lands on Bob and Susan, seriously injuring them both.

Appendix B

1. The following report of a coroner's inquest appeared in the *South China Morning Post* newspaper in May 2010.

Natural causes ruling on death outside Caritas

A coroner's inquest jury ruled yesterday in the case of a 57 year-old man who two years ago collapsed and died outside Caritas Medical Hospital while no one in the hospital tried to help. The inquest jury ruled that Yeung Tak-cheung, whose death on December 20, 2008, shocked the city, died of natural causes.

The dead man's son, Yeung Fei-lung, told the court that his father had first been diagnosed with a heart problem in 2005. He testified that the day his father died, he, his father and his father's business partner Leung Sai-ming had lifted 400 10 kg boxes onto a truck in Fat Cheung Street, Cheung Sha Wan. As they were driving to their office, his father collapsed. The son told Leung to drive to Caritas, the closest hospital. Instead of going directly to the accident and emergency department of Caritas, Leung drove to the inquiry office. He said he did so because his truck was so big, and the road up to the emergency department was too narrow to accommodate the truck. After they arrived, Yeung Fei-lung tried to carry his father inside but could not. He then tried to resuscitate him on the street.

Leung Sai-ming testified that when they arrived at the hospital, he rushed to the inquiry office and said to the receptionist Wan Hoi-see: 'Someone fainted outside. Please help.' Leung said Wan's reply was: 'That someone fainted outside is none of the hospital's business. Call 999.' However, Wan disagreed with Leung's evidence and told the court what she said was: 'I am administrative staff, not healthcare staff. Please call 999. It is quicker.' Wan, a Form Five graduate who worked at the hospital since 2005, told the court calmly that when Leung arrived she was working on paperwork that was not urgent. She admitted that she did not ask Leung more about the fainted man, thinking that it was not serious. When an ambulance from the Fire Services Department finally arrived 26 minutes after Yeung's arrival, Yeung was taken to the Caritas accident and emergency department, where he was pronounced dead.

Dr Rockson Wei, who was passing in front of the hospital shortly after Yeung's arrival, testified that he saw someone had collapsed, and called Caritas' accident and emergency department for help. He tried to resuscitate the man, whose lips had turned blue. Wei estimated that eight minutes had passed after his first telephone call to the accident and emergency department, and no one arrived to help. He called a second time, while a passing police officer continued resuscitation of Yeung.

Coroner Lam said that the circumstances required a verdict of natural causes, the usual coroner's verdict where the evidence suggests that the deceased probably died as a result of some naturally occurring illness or disease process. Noting that when driver Leung Sai-ming rushed into the hospital's inquiry office for help, receptionist Wan Hoi-see did not call 999 for him, Coroner Lam said this did not have an impact on overall efforts to save Yeung, as a passer-by had already called 999. Lam noted that Dr Rockson Wei arrived early on the scene and tried to resuscitate Yeung, which Coroner Lam said was the best possible treatment at the time. That Wei was not actually sent by the hospital and was there purely by chance did not matter. Lam also noted that a senior medical and health officer from the Department of Health, Dr Ng Chung-ki, who conducted the post-mortem examination on Yeung, testified that a person whose heart had stopped could not be saved after eight to 10 minutes.

Lam said it would not have made a difference had the accident and emergency department been contacted directly by receptionist Wan. The hospital did not have any ambulances, and the only trolley available was too big to fit into a lift. Lam noted that the hospital had since brought in smaller trolleys and portable defibrillators.

The inquest jury said Caritas Medical Centre should have more display signs to direct drivers and pedestrians to the accident and emergency department. It also recommended that all public hospitals under the Hospital Authority issue guidelines to staff on dealing with similar incidents that happen near the hospitals.

Outside the court, Yeung Fei-lung said: 'I feel [the verdict] is unfair.' He said he felt that more medical help could have been provided by the hospital and did not agree that prompt medical help could not have changed his father's fate.

Yeung Tak-cheung's family is considering a negligence action against Caritas. Advise the Yeung family on what must be proved for a successful negligence action against Caritas and the difficulties that might be encountered. Provide a full analysis with reference to all of the relevant facts, and with reference to relevant case authority. Be sure to consider any policy issues that might be relevant to the court.

2. The following is the unedited news report of a Coroner's Inquest published in the *South China Morning Post* newspaper on 24 August 2010. **What do you see as the major tort liability issues? In considering the tort liability issues, identify and discuss the tort actions that might be available to the victim's family, and the remedies available. Be sure to take account of any relevant policy issues.**

Department criticised at inquest

A coroner criticised the Buildings Department during an inquest into the death of a woman crushed by a falling sign, because of its attitude to unauthorised building work and inadequate inspections. On June 28, 2008, assistant beautician Lam Wai-ha, 47, was crushed by a 280kg

wooden overhead sign above the entrance of the Happy Thai restaurant in Wan Chai. The sign, measuring 547cm by 82cm by 53cm, was attached to the wall only with glue.

Coroner William Ng Sing-wai said Lam died from head injuries and her death was accidental. Lam's only son, Cheung Ho-ming, did not comment on the verdict. The sign had been in place since 2000, Ng said. It had no top cover and it had clearly deteriorated over the years from the effects of sun and rain. He criticised the Buildings Department for inadequate inspections of what it considered tolerable unauthorised building work.

In April 2006, as part of the transfer of the restaurant's licence, surveyor Cheung Kwok-ho confirmed in writing to the department that the overhead sign was an unauthorised building work. But he was satisfied that it would pose no danger to the public and the department did not further assess it.

Former Buildings Department surveyor Lo Kwok-wai told the coroner the department received several hundred notices every month about the existence of this type of unauthorised building work. Eleven or twelve officers from the department conducted three assessments a month at random, and the sign in question had not been picked for assessment.

Ng questioned whether the overhead sign could be considered a 'lightweight shopfront overhead projection'. The definition in the department's guidelines was not specific enough, he said. "Although the Buildings Department strongly advises applicants to remove unauthorised building works themselves, I question the effectiveness of strong advice," Ng said. The licensee transferring the licence knew the department had tolerated the unauthorised building work all along and would be unlikely to spend money to remove it, he said. He urged the department to ensure that existing unauthorised building work did not become dangerous to the public because of a lack of maintenance.

A spokeswoman for the department said it had stepped up inspections and would study the coroner's recommendations.

Appendix C

1. The following was published in the *South China Morning Post* in December 2009.

Coroner Surprised by Ambulance Breakdowns

The coroner at a coroner's inquest into the deaths of three elderly people who died amid ambulance failures said yesterday it was surprising that the vehicles broke down. Coroner Michael Chan Pik-kiu said the ambulances, owned and operated by the Fire Services Department (FSD), the body entrusted with emergency ambulance service provision in Hong Kong, were maintained by highly skilled workmen at the Electrical and Mechanical Services Department (EMSD) – unlike normal cars, which are taken to run-of-the-mill shops. The court heard that the maintenance agreement with EMSD has been in place for many years.

“Surprisingly, one stalls, one runs out of gas, one is unable to drive uphill” he said. Regarding a finding by the department that one ambulance failed to start because it did not have enough petrol, he said: “It is very hard to believe such a thing could happen.”

Coroner Chan was speaking at the inquest at the Coroner's Court into the deaths of Chung Tak-shing, 60, Hui Ching, 86, and Loh Tchen-tong, 79, who all died after the ambulances that were to transport them failed. Failures caused delays of about 10 minutes for each of the deceased, the court heard.

Chung, a diabetic with heart problems, fainted after taking a shower after 11pm on July 20 last year. His wife called an ambulance to their home in Shun On Estate in Sau Mau Ping.

Driver Nam Hing-pang said his ambulance received a call at 11.39pm, arrived eight minutes later and received Chung at 11.57pm. Because the ambulance would not start for the return journey, they called another vehicle, transferred Chung to it and it left at 12.07am.

Nam said the ambulance that failed was a replacement for another vehicle whose air conditioner had not worked that day, and which his team used to transport a patient anyway. The court has not heard why the vehicle would not start. Nam said the air conditioning failed about once per month. The Court heard that seventy new vehicles were put into service this year to replace part of the ageing fleet that has been plagued by breakdowns.

The delay in Chung's case did not matter, one expert said. Diabetic patients who, like Chung, regularly undergo dialysis and have heart disease are high-risk, said Chinese University professor Dr Szeto Cheuk-chun. “I really believe that even if the ambulance had been able to start right away and take him to hospital, it would have been impossible to save him.”

Szeto said that based on Chung's medical records and descriptions of his collapse, he believed Chung died of coronary heart disease. But a forensic pathologist said Chung died of end-stage renal failure.

Hui, who had high blood pressure and Alzheimer's disease, felt unwell on July 28 last year, so her daughter called an ambulance to their home in Tsui Chuk Garden in Wong Tai Sin.

According to an incident log read out in court, that vehicle arrived at 5.46pm. Ambulance workers discovered the vehicle would not start two minutes later and called another vehicle, which arrived at 6.06pm and left with Hui two minutes later.

Driver Chan Chi-man said his vehicle had made six trips and Hui was his seventh. He was on his way to fill up because his tank was only one-quarter full, but decided – after receiving the order to pick up Hui – that the vehicle could complete the trip. A department report said the ambulance was out of petrol.

Loh was taking a walk in Por Lo Shan in Tuen Mun at about 6am when other pedestrians found he had collapsed. An ambulance was called. Ambulance crew found him lying face down, and when they turned him over, found his face blue and bleeding. They performed cardiopulmonary resuscitation on him, the court heard.

Driver Lam Pok-man said that after starting the ambulance, he drove uphill along the steep, single-lane road to find a place to turn around and leave. However, when he reached a right turn, the vehicle would not budge, even when he stepped hard on the accelerator and shifted gears.

The ambulance supervisor called for another ambulance. In the meantime, Lam managed to retreat downhill by reversing for 450 metres until he could drive forward again, so the supervisor radioed that they no longer needed another ambulance. The reversing took seven to eight minutes, Lam estimated. An incident log showed a lapse of 10 minutes between the request for reinforcement at 6.30am and the release of the second ambulance.

The ambulance reached Tuen Mun Hospital at 6.52am and Loh was declared dead on arrival. A pathologist's report read in court said he died of coronary occlusion by atheroma, in which blood flow in a coronary artery is blocked.

The most important thing to do when the condition caused a patient's heart to slow or stop, leading him to lose consciousness, was to perform CPR or to use an automated external defibrillator, Dr Lam Yat-yin told the court.

These steps, rather than whether the ambulance was able to leave, were the important factors determining Loh's death, the doctor said. The ambulance crew performed CPR and determined the defibrillator to be unsuitable for him, Lam noted.

The families of the deceased are considering legal action. What do you see as the major negligence liability issues? What do you see as the major policy issues? Advise one of the families on the likelihood of success of their negligence action and difficulties that might be encountered. [For present purposes you can assume that a deceased victim's family has the same right to sue as the deceased would have had if he had not died but merely suffered injury. You can also assume that employers are responsible for the negligence of their employees such as drivers and mechanics. That is, you can treat employee and employer as one entity. Finally, confine your analysis to the above narrative from the *SCMP*. That is, do not rely on other media reports of this incident, which may differ in some respects from this one. For the purposes of the assessment of this exercise we need to have a common set of facts.]

2. The following item appeared in the Hong Kong news media in December 2008.

A group of elderly investors in Lehman Brothers' mini-bonds intends to sue the Hong Kong-based banks that sold the mini-bonds to them. The mini-bonds are now almost worthless, due to the collapse of the Lehman Brothers company during the international financial crisis of 2008. A spokesman for the investors said that many of the investors had invested and lost their life savings, and had nothing to support them in retirement. The spokesman said that when purchasing the mini-bonds the investors were not advised by bank staff that the mini-bonds were risky investment products. In fact mini-bonds are not corporate bonds but high-risk, credit-linked derivatives. The investors say they were cheated because the word 'bonds' suggests a no-risk investment. A spokesperson for a leading bank said that customers were not misled, they should have read the description of the product in contract document. The spokesperson said that the banks are not insurers of clients' investments, and that banks risked collapse if massive payouts are required. The investors say that if their action fails against the banks, they will sue the Government authorities responsible for regulating banks.

a. With reference to relevant case law, identify and explain in simple terms the major negligence liability issues arising from the events described in this story.

b. With reference to relevant case law provide an analysis regarding duty of care. If there are facts not provided that you see as relevant to your analysis, then feel free to identify these. In writing your analysis be sure to also identify and briefly explain any policy issues you see as possibly relevant to the legal determination. [On the subject of policy, you might think about the issues from the perspective of the various stakeholders: investors, the financial industry, the regulatory (governmental and quasi-governmental) bodies, Hong Kong's economy and its attractiveness as a place to publicly list companies. You might find some assistance by conducting electronic research of the news media sites to find relevant news articles and see what concerns were raised by the various parties as the matter developed.]