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**A FIVE YEAR REVIEW OF UNINCORPORATED
ASSOCIATIONS AND TRUSTS IN FLEXIBLE DELIVERY**

MODE:

A HIGH SPEED JOURNEY TO SOMEWHERE...

PHILLIPA ENGLAND*

In 2000 I offered a compulsory, second year, undergraduate law subject, Unincorporated Associations and Trusts (UAT) in flexible delivery mode to approximately 200 students for the first time. The program included a comprehensive web based study guide, electronic and face-to-face communication opportunities (in place of tutorials) and continuous assessment. My aim was to incorporate technology within a package of reforms aimed at enhancing student centred learning. In its first year of operation, feedback from the majority of students exposed to this approach was quite negative. After minor modifications, the program ran very successfully in 2002 – 2005. This paper describes the innovations that were introduced, student feedback across five years of the program's operation and adjustments made to address students' concerns. It also raises for discussion some on-going issues related to sustaining innovation and marking courses set in a flexible delivery mode.

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**I UNINCORPORATED ASSOCIATIONS AND TRUSTS (UAT) PRIOR TO 2000: A DESIRE
FOR CHANGE**

UAT is a compulsory, one semester course for all second year law students at Griffith University.¹ It is taught by different staff at two campuses but following a common curriculum developed by the course convenor at Nathan (the writer). I commenced teaching the course in 1993. By 2000, after seven years of involvement in the teaching of UAT at Griffith University, I harboured a number of concerns about the delivery of this course:

- The balance of large groups versus small groups (four to one hours per week) seemed less than desirable in the light of evidence that ‘lectures’ are a relatively ineffectual learning tool.²
- Pressure to reduce the amount of material included in the reading materials created an inequity between past, present and future generations of students.
- Despite the range of assessment items there was still an emphasis on the end of semester written exam (worth 60 per cent of the total marks for this subject). This meant, with the exception of the mid semester hypothetical, some students could (or at least thought they could) postpone any really hard work on the subject until the end of the semester. Despite my best endeavours, I was not encouraging a ‘deep’ approach to learning.³
- Every year, the end of semester would reap a small number of complaints about individuals’ class participation marks (worth up to 10 per cent of the total marks for this subject). Despite all our attempts to synchronise marking methods in a clearly structured way, awarding class participation marks

¹ For an earlier appraisal of this subject, see, Philippa England, 'Like it or Loathe it: Flexible Delivery of Unincorporated Associations and Trusts at Griffith University' (2002) 3 *The Journal of Information, Law and Technology*

<http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2002_3/england/> at 11 April 2007.

² See Diana Laurillard, *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology* (1993) 107; Richard Jones and John Scully, 'Hypertext Within Legal Education' (1996) 2 *The Journal of Information Law and Technology*

<http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1996_2/jones/> at 11 April 2007.

³ See Paul Ramsden, *Improving Learning: New Perspectives* (1988) 19; Jones and Scully, above n 2, 4.

remained something of an art not a science to the chagrin of at least some students.

In 2000, in order to address at least some of these problems, I opted to deliver UAT in a flexible mode. 'Flexible delivery' was a concept then being promoted at Griffith University. Although no precise definition was adopted, the general intention was to promote a student centred approach to learning, including state of the art web based teaching tools where appropriate.⁴ Adopting this philosophy, my overall aim was to incorporate technology within a package of reforms aimed at enhanced, student centred learning. Put simply, I hoped flexible delivery could produce a *better* learning environment - not necessarily a cheaper, quicker, more convenient or more streamlined one.

II MAIN COMPONENTS OF FLEXIBLE DELIVERY IN UAT

The main elements of the flexible delivery of UAT, as currently delivered, are:

A A comprehensive study guide designed for self-study

At the start of the semester every student is given a comprehensive, printed study guide, comprising 12 modules. Each module is designed to encourage self-paced, inter active learning. The study guide is also available on-line and on CD. The electronic versions of the study guide include links to case law and other materials set as required reading.

⁴ Flexible learning has been described as 'a vision that encompasses the appropriate use of technology for student-centred learning rather than the substitution of face-to-face teaching by on-line delivery', *Griffith Project 2002* (2002) 16 [University Policy adopted by the Griffith Council, May 2002 16] <http://www.griffith.edu.au/cgi-bin/frameit?http://www.griffith.edu.au/vc/content_griffithproject.html> at 11 April 2007. Student centred learning focuses on how students learn and what teachers can do to foster deep learning styles. For an explanation of student centred learning approaches in law, see Marlene Le Brun and Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (1994) 89-97. For a summary of deep approaches to learning generally, see Paul Ramsden, *Improving Learning: New Perspectives* (1988) 17-21.

B Changes to contact hours

The conventional four hours per week of large groups has been reduced to two hours per week. The intention is that, instead of attending large groups, students will work through the modules at their own pace and in their own time, whether individually or with their friends. Small groups (conventional tutorials) have also been abandoned. They have been replaced by a system of continuous assessment.

C Group based, continuous assessment

This is the most fundamental change made in the delivery of UAT. The continuous assessment regime consists of:

- Study groups consisting of three or four students who work together to complete the weekly assessment item throughout the semester. Students are encouraged to form their own study groups with friends they know they can rely on. Although stability is encouraged, if a study group becomes unworkable the members are free to disband and find other groups to work with. Coercion is not the intention – the fostering of effective working relationships is.
- For eight weeks of the semester, every study group has to submit a weekly piece of work, no more than 600 words in length. Typically the work set is an old tutorial or exam question relevant to that week's module. Every member of the study group receives the group's mark provided they sign to confirm they participated in the week's work.
- Assessment work is due in by Thursday 10.30 am each week. There is absolutely no 'flexibility' about this. The strict deadline means all assessment work is marked and returned to the students by 9.00 am *the following day*, the time of their next class. This procedure means feedback is prompt and meaningful to the students because the question is still fresh in their minds.
- In place of tutorials, each study group (or a delegate there from) is required to attend a 10 minute consultation period with the staff teaching and

marking that week's module. In that period their draft answer to the week's work is reviewed and any areas of weakness are discussed.

This continuous assessment regime – including consultation time – replaces small groups (tutorials) and the second, two hour, weekly lecture. We find the workload involved, at least for us, is fairly equivalent. The rationale for insisting on group based assessment work is not simply to make the workload manageable for staff but, more importantly, to prevent feelings of isolation and helplessness that often accompany web-based learning.⁵ Group discussion has been identified as an important element of student centred learning.⁶

E Electronic materials and communication

Flexible delivery is often equated with forms of electronic delivery but in UAT the real innovation is towards group based, continuous assessment work. Nevertheless, on-line communication facilities also make a valuable contribution to the flexible delivery of UAT. The course web site includes a set of frequently asked questions (FAQs) to complement each module; a glossary of frequently used terms; a forum for students to provide feedback and discuss their learning; copies of lecture notes, overheads etc. With the significantly reduced contact hours now running in UAT the ability to communicate with students through the web site is invaluable.

III STUDENT FEEDBACK AND OUR RESPONSE

In 2000, I quickly discovered many students were less than enthusiastic about the reforms I had made to UAT. Two of the most worrying fears voiced (in class and on the electronic forum) were:

⁵ Linda McNamara, 'Lecturing (and not Lecturing) Using the Web: Developing a Teaching Strategy for Web Based Lectures' (2000) 11 *Legal Education Review* 172.

⁶ Ramsden, above n 3, 22.

A Flexible delivery is a cost cutting measure

For some students flexible delivery was perceived as an opportunity for staff to withdraw from the classroom and simply post notes on the web instead of appearing in person. Just as students were being asked to pay more for their education it seemed they were getting less in return. In my naivety this thought had not even occurred to me before students voiced their concerns!

B Small groups were irreplaceable

When flexible delivery was initially introduced study group consultation was an optional feature of the course. To my disappointment, many students did not avail themselves of this new opportunity for supervised learning. Instead, they chose to complain vigorously about the absence of small groups (tutorials) in this subject. In 2000, this was by far the deepest and most sustained of students' concerns. Many students felt they had been abandoned and left to figure out the assessment work on their own. Study groups could not replace tutorials because that was simply 'the blind leading the blind'. Without more direction, specifically in the form of tutorials, this was all simply too hard.

In 2002, I decided to make study group consultation time in effect compulsory. I awarded up to one per cent per week (over eight weeks) to each study group that attended and participated in a 10- minute consultation period with the staff member teaching and marking that week's work. Cutting down on the number of assessment items – from an initial twelve items to eight – also freed up three weeks at the start of the semester when we ran 'optional' tutorials. These proved a good training ground for preparing students for the continuous assessment regime. It also gave some students time to meet other students who they could then form a study group with.

Allocating one mark to study group consultation altogether changed the nature of consultation. It was no longer a free ranging discussion with a few motivated students. Instead it became a routine checking point for every study group. It gave each study group the opportunity to check they were on the right track with their draft answers. Inevitably, by consulting with each group separately we ended up repeating a lot of

the same information. Arguably, typing answers to FAQs on the web site would have dealt with these issues much more efficiently. In reality, however, the advantages gained from face-to-face consultation with every study group were enormous. Students could no longer complain about being left in the dark with the blind leading the blind; staff developed a personal rapport with the students that was maintained across the whole semester, and problems in group dynamics were identified and dealt with as soon as possible instead of being left to run indefinitely. Of all the changes made to the course for 2002, awarding a small mark for weekly consultation had the greatest impact. Instead of merely hoping students would become self-motivated and student centred in their learning it was forced upon them – but in a way that was supportive of their fragile learning abilities. By manipulating eight per cent of the total marks, flexible delivery suddenly started to hang together.

Throughout 2002 & 2003, I heard virtually no complaints about the lack of tutorials. On the contrary, students were now telling me they found the continuous assessment regime and weekly consultations more effective than the conventional mix of lectures and tutorials. By the end of the semester I felt I had arrived at the destination I had targeted for myself – and my students – at the end of 1999. Student evaluations at the end of semester one, 2002, confirmed my impressions. Student evaluations in 2003 & 2004 suggest these improvements may now be enduring (table 1). Flexible delivery, comprising a mix of face-to-face and electronic communication tools, coupled with a rigorous continuous assessment regime, seems finally to have delivered an effective, student-centred approach to learning.

Table 1: Student Evaluations of Unincorporated Associations and Trusts 2002-5

Question	2002	2003	2004
The assessment items tested the most significant aspects of the course.	4.2	4.19	4.13
Assessment in this course focussed on understanding rather than rote learning.	4.1	4.0	3.93
The continuous assessment was a valuable learning experience for me.	4.26	4.19	4.11

NB. All marks represent an average out of 5.

IV FLEXIBLE DELIVERY COMING OF AGE: OUTSTANDING ISSUES

The essential components of a flexible delivery course are now in place. There are, however, some outstanding issues of current debate. These include:

A Sustainability

This is the political issue! To date I have been supported by other staff willing to make changes in their teaching practices and expectations. It is no small matter to expect staff to spend up to seven plus hours consulting with groups of students and repeating the same or similar advice up to 34 times across two days. If that isn't enough, I then expect them to sit down and mark up to 35 pieces of assessment work in less than 24 hours of receiving that work! Staff I have forced this work upon have actually found it less draining than it sounds. Of course, it was essential to abolish some other types of staff workload – the extra lecture slot and tutorials - in order to make this feasible. Nevertheless, other colleagues who hear about our workload (as opposed to actually operating it) tend to think we are utterly crazy to take it on. Students' are starting to ask for more of this type of teaching – but my colleagues are not yet persuaded. In a cross campus teaching school, where increasing uniformity

across each campus is the now the order of the day, my failure to persuade some colleagues of the value of this approach may actually cause the demise of this teaching regime.

At the departmental level, change and innovation are not equally well understood or appreciated by, for example, heads of school that did not originally endorse these innovations and may not fully understand or appreciate the differences involved. When matters arise which seem to justify a different or special status for this course my pleas for different treatment are not always appreciated. For several years, heads of school have threatened to reduce my teaching allocation because I am not actually in the lecture theatre teaching for four hours per week. It is ironic the least valuable learning experience (lectures) is that most heavily weighted in teaching allocations! On the flip side, I have occasionally been able to turn this to my advantage when considering the employment of sessionals.

B Grades / assessment

Setting grades for assessment items and for specific individuals in this course has been problematic. Some of the issues are:

1 Can /should hangers on be penalised?

Since 2000, UAT has allocated between 40-50 per cent of the marks for this subject to group work.⁷ From 2000-2004, the exam was in fact the only piece of individual assessment work. In these years, to give sufficient weight to individual effort, I made passing the exam a compulsory pre-requisite for passing the course overall. This was a rather rudimentary method of ensuring ‘hangers-on’ don’t get by without doing at least the minimum amount of work. For most students, it was a wholly unappreciated aspect of the course! A more sophisticated measure would be a rule that specifies students can only move one grade up or down on the grade they achieve through continuous assessment. The issue is open to debate.

⁷ This includes 10 per cent allocated to the separate Offices program that runs concurrently with the course.

How serious is the problem of bludgers anyway? In 2000, I started off by allocating only three per cent of the marks to each piece of group assessment work partly because I was so fearful of the bludger issue. I was quickly informed by my students that three per cent was an absolute joke – on balance they would rather get their own decent set of marks for all the work involved rather than worry about bludgers. In addition, the 2002 results showed a very close correlation between students' continuous assessment work and their exam mark – a very satisfying result. However, poor exam results in 2003 meant approximately 30 students had to re-sit the exam – and could then only obtain a Pass or Fail regardless of their performance in the continuous assessment regime. This made the pre-requisite of passing the exam seem a particularly harsh one. This result was also disappointing because the continuous assessment regime had not really managed to distinguish these weaker students – although clearly the course overall had.

Another instance troubled me even more. In 2004, all but one of the members of a particular study group slipped from a HD to credit status in the final exam. Normally, students, with surprising regularity, slip one grade in the exam as compared with their continuous assessment grade. The individual who did not slip (in fact she retained her HD status) later confessed she had done most of the work for them – and in retrospect she sort of resented it. Once again, the exam had sorted them out, but I was quite fuming that the group work had been undermined in this way! No doubt this was not the only case.

In 2004, I replaced two group assessment pieces with individual assessment work amounting to 10 per cent of the overall marks. In so doing, I felt justified in dropping the exam as a pre-requisite for passing the course. I also altered the weight given to the exam (from 50 per cent to 40 per cent). One consequence was a very high proportion of Ds and HDs. Another problematic issue was a degree of, probably unwitting, plagiarism in the individual work. As students were, by that point in the semester, so used to working out the assessment as a team, they continued to do so for the individual work, to a degree that probably breaches the School's policy on

plagiarism. Up until this year, plagiarism had been noticeably lacking in evidence in this course.

2 Should the traditional bell curve still apply to the end of semester results?

Up until 2005, the continuous assessment work was weighted at four per cent per item (involving eight items). Marking the 600-word group assessment work is not like marking conventional undergraduate legal work. As markers we tend to develop a points system – if you get the points you get the marks without much leeway for the exercise of discretionary judgments about style, persuasiveness etc. Because there are so few marks to award, we have tended to use all the marks available. This means students who have basically got the answer correct are likely to be awarded four out of four rather than three and a half out of four (equivalent to a HD grade). This allows us to differentiate quite well in most cases without awarding quarter marks – it is simply not worth the time to be deliberating on quarter per cents each week (bearing in mind this is all group work). And after all, in 600 words there is only so much any group can be expected to cover. However, for a lot of students this means they are sitting on very comfortable Ds and HDs before entering the exam.

In 2005, partly to deal with this issue and partly in response to concerns about student workload, I dropped the number of assessment items to five and awarded up to five per cent for each piece of assessment work. I found this worked just as smoothly for markers whilst, overall, a more familiar assessment pattern emerged. For example, groups were seldom awarded five per cent. However, as the proportion of marks awarded for continuous assessment activities overall (individual and group) increased from 50 per cent to 60 per cent my end of semester bell curve continued to be heavily skewed towards high grades.

Compulsory consultation probably accentuates the trend towards high grades. Study groups that prepare well and attend consultation time will usually present a pretty good piece of assessment work. I do not believe compulsory consultation amounts to ‘spoon-feeding’ marks to students. The majority of students are so nervous about their meeting with staff they tend to prepare pretty well before attending their consultation

time. In these circumstances I have no hesitation in guiding them further towards the right answer. Following the logic of a good tutorial, students are supposed to arrive at the end of the week with a feeling they know and understand the work – not simply a feeling they are being judged again and again as per an exam situation. The goal is enriched student learning not ever more stringent assessment techniques. Nevertheless, the situation must be watched carefully to see how continuous assessment combined with compulsory consultation impacts on grades overall.

The continuous assessment regime seems to bolster and flatten students' marks. The traditional bell curve does not necessarily emerge in a subject so heavily weighted towards continuous assessment. Is this justified? Can we /should we expect and /or accept that students will do better in a subject so heavily weighted on continuous assessment? Are better results to be expected from deeper student learning?

3 Role of the exam

The exam for this subject takes a very traditional form – three answers to be written in two and one quarter hours. It is an open book exam but, in the time available, there is really no time to rely on notes and materials brought into the exam room. This is, of course, the antithesis of the continuous assessment regime based on study, discussion and reflection. This could be a very good thing – varying the method and style of assessment. On the other hand, I believe many students in 2003/4 were caught out by the 'short, sharp, shock' of the exam. Although they had worked hard throughout the semester their lack of exam skills caused them to fail a subject they felt they had worked hard for. Perhaps the exam is the bluntest assessment tool after all.

C Supplying materials

As predicted, the University is slowly cutting back on the amount of subsidised material that is provided to students. In the Law School this has meant limiting the material included in students' reading dossiers (prepared in house). Since 2000, School policy has been to exclude extracts of case reports and legislation from reading dossiers. The argument is that on-line availability of these items eliminates supply problems. However, for a subject like Unincorporated Associations and Trusts, with

its unconventional syllabus and no one required text, the policy effectively means a transfer of the costs of reproduction to students' own pockets.

My initial approach to this problem was to make on-line access to required reading materials as easy as possible for students – by hot linking the study guide to cases in Austlii etc. Students complained, however, about the time and cost of printing out, and now accessing, these materials.⁸ To further enhance access, in 2003, we compiled a CD Rom of the study guide, offices materials (also distributed in hard copy without charge) and extracts of all required reading materials. As the cost of printing off the CD Rom was equivalent or cheaper than the cost of preparing a reading dossier (of extracts from books etc) we decided to dispense with a reading dossier altogether in 2003.

Students' reactions to the CD Rom in 2003 were very mixed. For those students who had access to free or very cheap printing facilities there were clear benefits. Only a small number of students successfully exploited opportunities to cut and paste from the CD before printing out or to work from the computer screen instead of printing out. The majority of students rated the CD Rom poorly because of the time and cost involved in printing out copious materials each week. The general lesson is that, for the time being, electronic materials offer an inferior resource to printed materials in the eyes of undergraduate, non-research students.

V CHANGES TO TRUSTS IN 2006

Change and continual modification have been features of this course since 2000. It really has been an interesting course to teach every year since 2000! In 2006 a new crop of changes are about to take place. These changes reflect a whole sale restructuring of the undergraduate Law degree at Griffith in which Unincorporated Associations and Trusts, formerly a 15 credit point subject, will now become a 10

⁸ In Australia, web access can be obtained for the cost of a local phone call (40 cents per phone call). However, in 2002 the University introduced a separate charge for students accessing external resources via the Griffith server.

credit point course, Trusts. They also reflect further fine tuning of my understanding of group work and assessment issues. The main changes are:

A Curriculum

The curriculum will be reduced, primarily by cutting out material on unincorporated associations. As Trusts will now immediately follow a compulsory Equity course, it will be a lot simpler to supply materials. An Equity and Trusts text book has been set as required reading to cover students for the whole year. The CD Rom will not be produced this year.

B Group work

Group work will continue but in a modified form. There will be only four pieces of group assessment work. They will each be marked out of five but, for the first time this year, I will vary the actual weight given to each piece of work. The first piece of work will be weighted as four per cent of the total marks for the course. Thereafter, the per cent mark for each piece of group work will increase in weight by two per cent. In total, the continuous assessment will amount to 28 per cent of the total marks for Trusts. Continuing with the past practice of group consultations in place of tutes, another four per cent of the marks will be allocated for group consultations. I am planning to introduce a very simple, group self-assessment exercise to account for a further three per cent of the marks, bringing the total for this part of the course to 35 per cent.

Another significant change to group work is that I will now allocate all students to groups and insist they remain in them (except perhaps in really drastic cases). In the past I have let students self select their own group members if they want to but my experience of bludgers is that they all rely on 'friendships'. This change may also reduce some administration load as I will no longer have to wait and see who selects a group and who needs to be allocated to a group. Other strategies for building up group work skills and dealing with discrepancies in work effort, as they arise, will continue to be used.

The last change to group work is that it will now move to a fortnightly teaching and learning regime, for weeks five to twelve. That means one two hour lecture, one consultation and piece of assessment work to be submitted each fortnight (instead of weekly). This change is primarily to take account of work load issues for students and staff in what will now be a 10 credit point course. In other weeks the conventional weekly lecture and tutorial mode will apply.

C Assessment

Apart from the group work, weighted in total at 35 per cent of the course, there will continue to be an end of semester exam, weighted at 50 per cent of the overall marks and one individual piece of assessment work worth up to 15 per cent of the total marks. To discourage plagiarism, the individual assessment work will be set early in the semester before the group assessment regime begins. By returning the exam weighting to 50 per cent (as opposed to 40 per cent last year) I am hopeful (rightly or wrongly) that a more ordinary bell curve will result.

VI CONCLUSION

My experience with flexible delivery to date confirms the importance of combining technological change with sound pedagogy.⁹ Three findings stand out. First, personal communication remains important despite the increasing use of electronic tools. Secondly, assessment is the driving force behind much of students' learning.¹⁰ If early university students are reluctant self-directed learners then assessment is an excellent tool for pushing them on to the ladder of student centred learning. These are not new findings but I am hopeful the lessons we are learning in their application to UAT will be of interest to academics from many disciplines. Lastly, in my experience, small changes to an assessment regime, can have quite significant impacts on students end of semester grades overall and this, I must admit, is a matter of some concern and yet to be resolved.

⁹ Abdul Paliwala, 'Learning in Cyberspace' (2001) 1 *The Journal of Information Law and Technology* <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_1/paliwala/> at 11 April 2007.

¹⁰ Ramsden, above n 3, 24