Qualitative Data

Hands-on Experience: Can you apply the technique?

Question #1

A plaintiff has sued a defendant, alleging that she was run over by a speeding car driven by the defendant. The plaintiff was unconscious after her injury and, accompanied by her husband, was brought to the hospital in an ambulance. At trial, the plaintiff calls an emergency room physician to testify that when the physician asked the plaintiff's husband if he knew what had happened, the husband, who was upset, replied, "I saw my wife get run over two hours ago by a driver who went right through the intersection without looking."

Is the physician's testimony about the husband's statement admissible?

(A) No, because it relates an opinion.
(B) No, because it is hearsay not within any exception.
(C) Yes, as a statement made for purposes of diagnosis or treatment.
(D) Yes, as an excited utterance.

LAW: Hearsay is not admissible. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay statements related to a startling event or condition that are made while the declarant was under the stress or excited caused by the event or condition are admissible.

Question #2

For ten years, a vacationer and a neighbor have owned summer vacation homes on adjoining lots. A stream flows through both lots. As a result of a childhood swimming accident, the vacationer is afraid of water and has never gone close to the stream. The neighbor built a dam on her property that has completely stopped the flow of the stream to the vacationer's property. In a suit by the vacationer against the neighbor, will the vacationer prevail?

(A) Yes, if the damming unreasonably interferes with the use and enjoyment of the vacationer's property.
(B) Yes, if the neighbor intended to affect the vacationer's property.
(C) No, because the vacationer made no use of the stream.
(D) No, if the dam was built in conformity with all applicable laws.

LAW: A landowner who causes a substantial, unreasonable interference with a neighbor's use or enjoyment of his property without a valid defense is liable for private nuisance.

Student Testimonials: How did the students feel about *the technique*?

Student comments were not anonymous and from Spring 2018

"I realize bias does affect how I read the facts. I need to keep tract of the small terms and ideas the bar thinks is reasonable."

"I don't believe biases affect my choices even though I come from a lower class Hispanic family. I am able to see the facts for what they are. My whole life I have understood that people have different ways of thinking."

"Bias can affect how I select answers. Sometimes, I would be able to pick up biases when they start to talk about 'high crime neighborhood,' 'dangerous activity,' or 'reasonable steps.' Once I noticed the bias, I would try to remember similar facts from previous questions. And my last resort is to view the problem from a 'typical white male in America.' This usually works."

"Biases do affect my answer choices, especially in torts for reasonable person standards or criminal negligence. Questions regarding whether a child should be liable and to what standard are particularly difficult for me—this is something I've recently noticed through reviewing/studying."

"To improve on getting the best answer choice, I will continue to journal and review my journals, along with reviewing sample essays for facts that were deemed reasonable/unreasonable and substantial/unsubstantial. I want to read a prompt and determine if I think a subjective test is met, and then see if my choice matches the sample answer's determination of that subjective test. With enough practice, I should be able to alter my bias to align with bar graders."

"I have noticed that biases have affected the way I answer questions sometimes, I need to remember it is not what I would do, but what the neutral outcome would be given the law."

"I don't believe biases will hinder me to the point of missing a substantial amount of questions, but maybe a few."

Student Testimonials: How did students feel about *the class*?

Student comments were anonymous and from Fall 2016 to Spring 2018

"I really enjoyed this class. I was very pleased with my improvement. There was a ton of homework, but it wasn't overwhelming. I liked the structure of the course and different approaches about how to improve our score."

"This class was very helpful – evaluating my test taking skills and style really helped me to begin my bar prep and helped me feel more confident about the MBE – the area I struggle the most with. 3 diagnostic exams was very helpful."

"My favorite part of the class were the diagnostics and the skills improvement strategies."

"The diagnostic tests were great to see how much this class helped."

"Loved: Figuring out skills to tackle each question...learning about biases and grit...tacking hard issues...attack plans and writing our own."

"I also liked that you held us to high standard and forced us to understand what works and what does not work – this is an extremely valuable skill. Overall, this class could be the reason I pass the bar."

"The skills-based classes were very helpful. The diagnostics were helpful."

"This class was incredibly helpful and everything about it was helpful and useful including: initial tests and final assessment with score comparisons, weaning off feedback in essays to allow for self-eval, journals, list of commonly-tested subjects, literally everything was helpful!"

"The best part of this class is learning about myself as a student. I finally realized how to be more efficient and why some things were not working well for me. Learning the techniques about MBE was extremely helpful."

Programmatic Decisions and the School's Administration: How can *quantitative* and *qualitative data* influence your curriculum?

The law school's bar passage rate has been below the state average for the past two years. Your Academic Dean asks you to teach a skills class that will help students pass the bar examination. The objectives of the class include: improving the student's (1) multiple-choice taking skills, (2) essay-exam taking skills, and (3) general study habits. In order to achieve this goal, your class requires extensive, weekly formative assessment. The class can be 2 or 3 units and for a letter grade or credit/no credit. You are not co-teaching this class with anyone.

Discuss the questions below.

(1) What data should you collect to prove your teaching methods are working? Consider both qualitative and quantitative data.

(2) How can you successfully provide quality, weekly feedback without burning out?

(3) Should you teach substantive law during this class or partner with a doctrinal professor? If you selected the former, what law would you use and how would you teach it? If you selected the latter, how would you manage the relationship with your co-professor?

(4) What type of statistical analysis should you conduct to determine if your data results are statistically significant?

(5) How should you present your data, if at all, to your Academic Dean and faculty? Should you share this information with anyone else?

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Article available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3205413

Measuring Skills on Essay Exams

<u>Collecting Qualitative Data</u>: How do you measure whether students improved their essay, exam-taking skills?

- **Class Details**

    o University of California, Irvine -- Legal Analysis of Evidence
    o 3 Units, Graded, 2 hours, Twice a week
    o Fall 2018, 2Ls on Academic Probation

- **The Study**

    o Format
        ▪ Reading on the law
        ▪ Lecture on the law
        ▪ Attack plan on the law provided (open-book exam)
        ▪ 30 minutes to write in class

    o Timing
        ▪ Week 2 - Class #3 – Entrance Exam
        ▪ Week 14 – Class #23 – Exit Exam

- **The Results**

    o Two sample student entrance and exit exams – **see handout**

    o **Student testimonials**

        "I am satisfied with the progress I've made. The format and structure of my response in week 14 is far more developed than my response in week 2. My answer in week 14 contains chains of facts and inferences, whereas the answer I wrote in week 2 was entirely conclusory. These differences are due to your guidance and instruction (thank you!), my meaningful engagement with the course materials, and lots of practice and reflection. But more importantly, I'm more confident in my ability to grow and improve my exam taking skills."

        "I feel that I have made so much progress. I remember taking the practice exam during class #3 and being so lost with how to even begin. Now, I have a concrete plan and I know exactly what to do after reading an exam prompt. This class provided me with the set of tools I needed to succeed on law school exams. I wish this class was required for 1L's to take during their first semester."

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"Initially, I did not think that I progressed that much throughout the semester. Yet after comparing my first essay with my final graded assessment, I realized that the latter was easier to read and not as convoluted."

"I did not realize how much progress I've made. It doesn't seem like it's been twelve weeks. Comparing the differences between the first exam answer ("week 2") and the last exam answer ("week 14"), my written response is very different. They look like they've been written by two entirely different people— one that kind of knew what was going on and one that definitely knew what was happening."

"I think I've made a lot of progress and I am happy about this. I realized this throughout the semester, but I realized even more after reviewing my write out from class #3 versus #24 (under the same conditions of recently exposed to the material and then asked to write about it). Taking this course seriously and spending time identifying my areas of growth and making changes helped with those differences. Going through the learning process over and over again allowed me to build and internalize the skills until they were second nature."

"It's funny looking at my class #3 exam because it is literally a huge block/ chunk of disorganized text. The rules are not clearly stated, and my analysis is a scrambled jumble. It also doesn't contain many counterarguments or inferences. My class #24 answer is well organized with clear headers and white space. It contains counterarguments, clear conclusions, clear rule statements, and substantive analysis with well thought out inferences. I think these differences were caused as a result of being provided with many examples and strategies throughout the course. I am glad that I had the opportunity to take this class."

"I immediately noticed the difference in my structure and organization. Looking at the papers side by side, visually, one looked a lot stronger than the other. In the first exam, I didn't break the rules down into sub-components/elements. As a result, my analysis wasn't as thorough or concise. I ended up missing nuanced arguments that I could have made if I read the rule more critically. Breaking it down helps me to analyze it. I also wasted time rewriting the call of the question. Secondly, I didn't leave enough white space or have headers so It read like an essay. The problem with that approach is that it's easier to skip arguments, or the reader may not see them because they're too subtle."

"The exam answer I wrote during Class #24 is significantly more organized and easier to follow. It incorporates headers and lays out my arguments more directly. As a grader, I would find it much clearer as to where I was going with my analysis. My answer from Class #3 is what I did all of last year. It is paragraph style and jumps around a lot. It does not necessarily follow IRAC, well, does not follow it as well as it should have. There is no white space and just looking at the page is overwhelming. Looking at the answer from Class #24, it is calmer, it has white space and headers and nicely follows IRAC."

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Battling Biases: *How Can Diverse Students Overcome Bias on Multistate Bar Exam*

Share Your Ideas

- What have you done to measure your success? What worked? What didn't?

    First, discuss essay exam-taking skills.
    Second, discuss multiple-choice skills.
    Finally, discuss general study skills.

- Do psychological factors, such as grit and anxiety, impact our students' success? How do you measure these factors in your classes or programming?

- What else is the industry missing?