

## **Mooting within the curriculum as a vehicle for learning: student perceptions**

Lucy Jones\*  
*Brighton Business School*  
*University of Brighton*  
[l.jones@brighton.ac.uk](mailto:l.jones@brighton.ac.uk)

Sarah Field  
*Brighton Business School*  
*University of Brighton*  
[s.field@brighton.ac.uk](mailto:s.field@brighton.ac.uk)

### **Abstract**

Extensive scholarship has investigated the role of oral assessment in education, not only as a means to test and develop the specific rhetorical skills required of lawyers, but also more generally, as a means to assess and develop generic and transferable skills. Because it is important to understand student reaction (McDowell 2001) we wanted to obtain an understanding of student perceptions of one specific form of oral assessment, namely mooting, located within the curriculum. This paper therefore considers the responses of second year LLB undergraduate students to an online survey as well as the data collected from semi-structured interviews – both conducted after completion of the module and both of which were designed to elicit students' views of their experiences of mooting within the curriculum as a vehicle for learning and developing key skills. The findings indicate that students perceive summatively assessed mooting as an effective tool for developing the skills they need to move into employment on graduation, whatever their choice of career.

### **Keywords:**

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\* Corresponding Author

## Introduction: Context and Literature

It has long been argued (Haug & Tauch 2001) that graduates should be attuned to the needs of the workplace, and that the skills that are beyond the subject-specific (often termed 'transferable', 'core' or 'generic' skills) can assist students to demonstrate their value to the workplace (Mason, Williams & Cramer 2009). The Dearing report (1997 NCIHE) recommended that HE institutions should focus on such skills, on the grounds that a more rounded education, underpinned by qualities and skills relevant to employment, would improve the graduate profile, and thereby increase employment prospects. In addition, according to the policy document, Higher Ambitions - The Future of Universities in a Knowledge Economy (BIS 2009), universities are expected to demonstrate how they prepare their students for employment by developing key skills such as team working and communication (BIS 2009). It is these two essential skills that Archer and Davidson (2008) found ranked highest overall of those required by employers – both large and small - when recruiting new graduates. In the current economic climate, where the need to enhance student employability has become more acute, the teaching of such skills is arguably more than ever a vital component of higher education curricula.

To this end, teaching, learning and assessment strategies need to evolve but without compromising traditional academic values – in a manner that fits with what Biggs (2003) has termed 'constructive alignment'. According to his theory, constructive alignment has two key elements:

- Students construct meaning from what they do to learn.
- The teacher aligns the planned learning activities with the learning outcomes.

Biggs argues that constructive alignment provides many benefits, including the facilitation of deep learning where approaches - such as a moot - are selected that require more active participation and encourage more high-level learning. Indeed there is considerable support for the view that generic/standard teaching strategies generally do not teach critical thinking skills: Bowers, (2006) and Paul, Elder and Bartell (1997) for example concluded that undergraduate law students do not develop their analytical problem solving skills naturally through ordinary law teaching but may require an alternative approach. Also, Carlson and Skaggs (2000) found that active learning

techniques in the classroom, such as the use of moot courts, offer a way to make economics more interesting to a broader range of students and requiring students to 'do' economics means that students are more likely to learn and understand the concept in question.

Although Kozinski (1997) opines that moots are unrealistic and do not focus on specific lawyer-skills - and he has a valid point in that the majority of lawyers will be unlikely to find themselves in front of the Court of Appeal or Supreme Court (particularly early in their career) - it is well established that mooting has been a feature of legal education for many years (Broadbent 2001) - albeit usually on the side-lines in the form of an optional or non-assessed activity. It is generally embraced by those who believe it can assist in the development of 'professional skills' (the specific practical skills required by those seeking to become solicitors or barristers) (Gillespie & Watt 2007). Broadbent (2001), however, suggests that in addition, mooting serves to develop other, key, skills, such as research, analysis, argument and presentational skills. Furthermore, students have to exercise a degree of autonomy and independence beyond that which is expected of them in standard taught modules. As Akister, Isabel and Maynard note: *Developing autonomous adult learning requires a move from passive absorption to an active reflective process* (2009: 78).

### ***Law in Practice: Moot***

A number of innovative assessment strategies have been introduced within the LLB programme at the University of Brighton with the aim of developing critical thinking, oral proficiency and other transferable skills. One such strategy is located in the module Law in Practice: Moot. A compulsory 20 credit level 5 core module, the Moot is summatively assessed and takes the form of a moot trial. Students divide into groups of four and each group then subdivide into two teams comprising leading and junior counsel for the appellant and leading and junior counsel for the respondent. While the module is essentially an independent study module, support is provided via (a total of five) meetings/workshops with the teaching team. Students are provided with module materials, (which are subsequently posted on the university's intranet), containing, *inter alia*, information on the moot topic, the assessment criteria and the rules and general guidelines to mooting and court etiquette. Additional resources are also made available – such as links to mooting sites, where students can access short video recordings of

mock trials, as well as detailed information about moots and guidance on mooting etiquette.

The module requires students to engage in academic debate in a professional manner and use the format of a moot to present specialist material according to strict rules and court etiquette. Some (such as Joughin, 2010) have highlighted potential problem areas with oral assessment such as anonymity (as examiners clearly know who they are examining). In order to address such concerns and to ensure best practice, and for quality assurance, the moots are video-recorded and internally and externally moderated.

### ***The Study: student reaction to the module***

In 2013/14, a piece of small-scale research was carried out to explore student perceptions of this module in order to assess the benefits of mooting within the curriculum from a student perspective.

### **Methodology**

A variety of methods were employed to collect the data. On completion of the module but before publication of the results (in May 2014) all (58) students who were undertaking the Moot module were invited to participate in brief (15 minute) semi-structured interviews (in groups of three/four) with the two module tutors (Sarah Field and Lucy Jones). The interview questions were open-ended in order to elicit broad ranging qualitative data: students were asked about their perceptions of the module from a personal, academic and skills development perspective.

In order to ensure that the research was carried out to high academic and ethical standards and that it conformed to good practice in this area, students were fully informed regarding the aims, purpose and methods of the research, and the potential use and dissemination of its results. In particular they were given information on exactly what their participation would involve, including any possible risks and benefits. A participant information sheet outlining the above was provided in advance of the

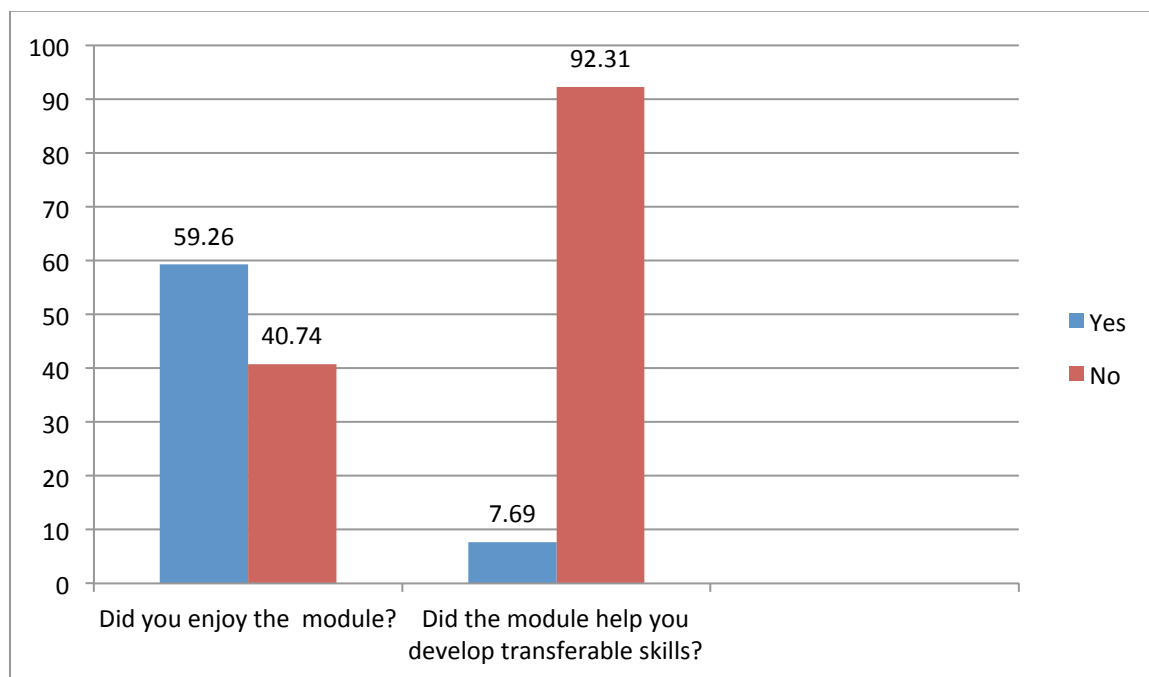
interviews, as well as a verbal explanation of what was involved at the interviews themselves.

However, it is well known that the very fact that people are under study or observation can have an effect on them and, by definition, impact upon the results (Earl-Slater, 2002). One method of counteracting this so-called Hawthorne effect is to observe the participants unobtrusively, but this was clearly not feasible in these face to face interviews. Instead, we determined to deal with the Hawthorne effect and eliminate some of the effects of this source bias by also asking the students to complete an online survey anonymously.

The online anonymous questionnaire also enabled us to elicit student views in a more structured and quantitative manner. The sample size of the questionnaire was 58 (all second year LLB students). It was answered by 28 students - a response rate of 48%. Before the questionnaire was finalised it was tested on five level 6 LLB students for clarification and commentary. The questions were of two types: Type one comprising a choice between an affirmative and negative response and type two requiring respondents to choose from five possible responses on a Likert scale, i.e. totally disagree/disagree/neither disagree nor agree/ agree/totally agree. The data collected was then analysed thematically in terms of student perceptions of skills development and learning.

## **Our Findings**

Scholarship has indicated that when practised voluntarily, students appear to enjoy mooted (Gillespie, 2007). When asked in the questionnaires whether they enjoyed the module, nearly 60% of the respondents stated they positively enjoyed the module and a very substantial majority - 92% - believed that the module developed important personal and academic skills. The questions seeking this information were closed questions which gave the respondents the choice of a 'yes' or 'no' answer.

**Figure 1.** Student Questionnaire - questions 1 and 2.

Interestingly, in the interviews all the students were positive about the module. Many students commented that they found the module “interesting”, a “fun way” of developing quite complicated skills. It would seem that whether or not mooting is assessed, students find it ‘fun’. In part, the ‘fun’ aspect seemed to derive from the ‘real law’ element:

*The experience gave us a good insight into preparing a case and then presenting this in a real court setting.*

*It was a particularly valuable experience from an academic point of view as this was for many of us the first time we were able to apply our legal knowledge in a very practical and realistic context. ....It offers the chance to test yourself in real-time, apply our knowledge of law and procedure.*

*I really enjoyed the module, it felt like ‘real law’.*

*The Moot was great for practical mooting skills and to experience court experience.*

Other responses indicated that students perceived that their general transferable skills had improved. Many for example felt that the module provided useful experience of public speaking:

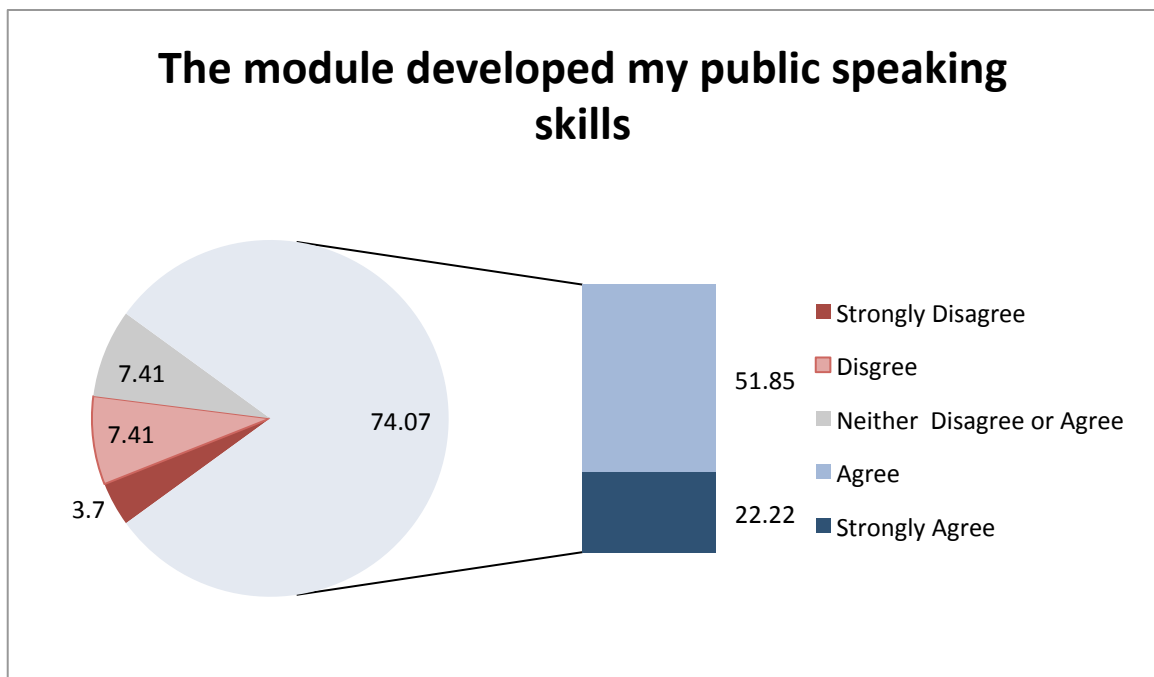
*I would recommend the exercise to any student who wants to improve their public speaking, confidence under pressure and above all advocacy skills. .It was a great opportunity to prepare for practice and gain an insight into litigation.*

*The Moot is a good opportunity other universities or courses don't have, gives confidence in presenting information orally.*

*Mooting is not something I would have participated in if it was not part of the curriculum as I intend to seek a career outside the legal profession but the experience was valuable and gave me confidence in presentations.*

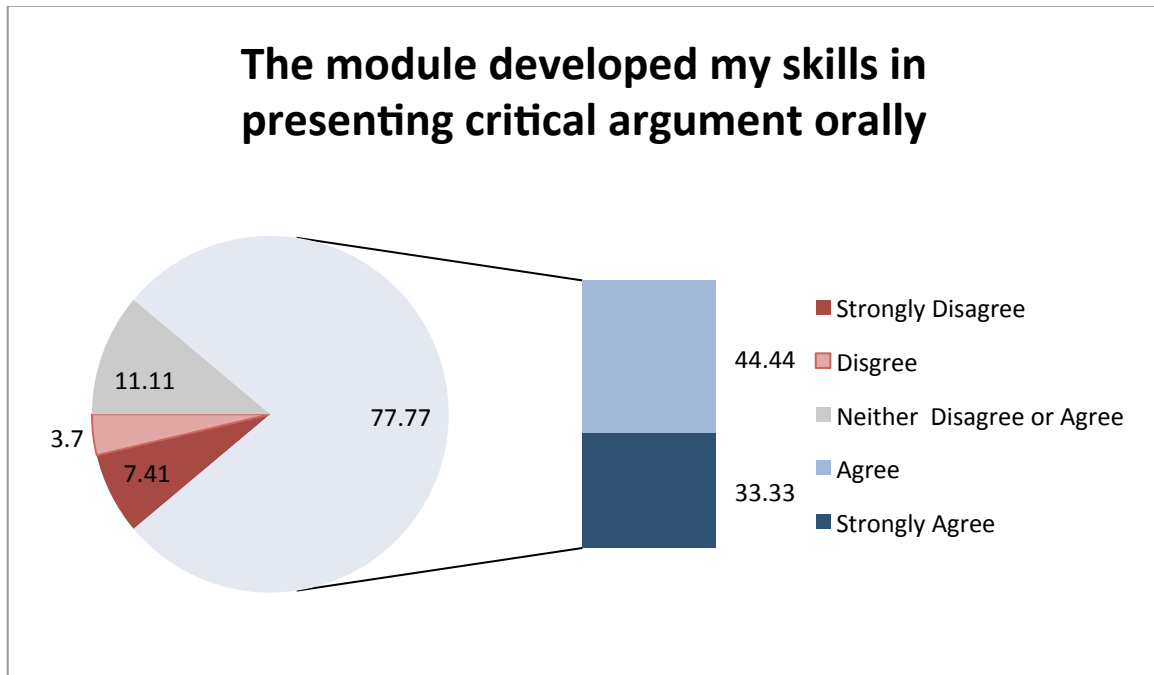
The data from the questionnaires supported the qualitative data obtained from the interviews: 74% of students agreed/strongly agreed that the module developed their public speaking skills.

**Figure 2.** Student Questionnaire - question 3.



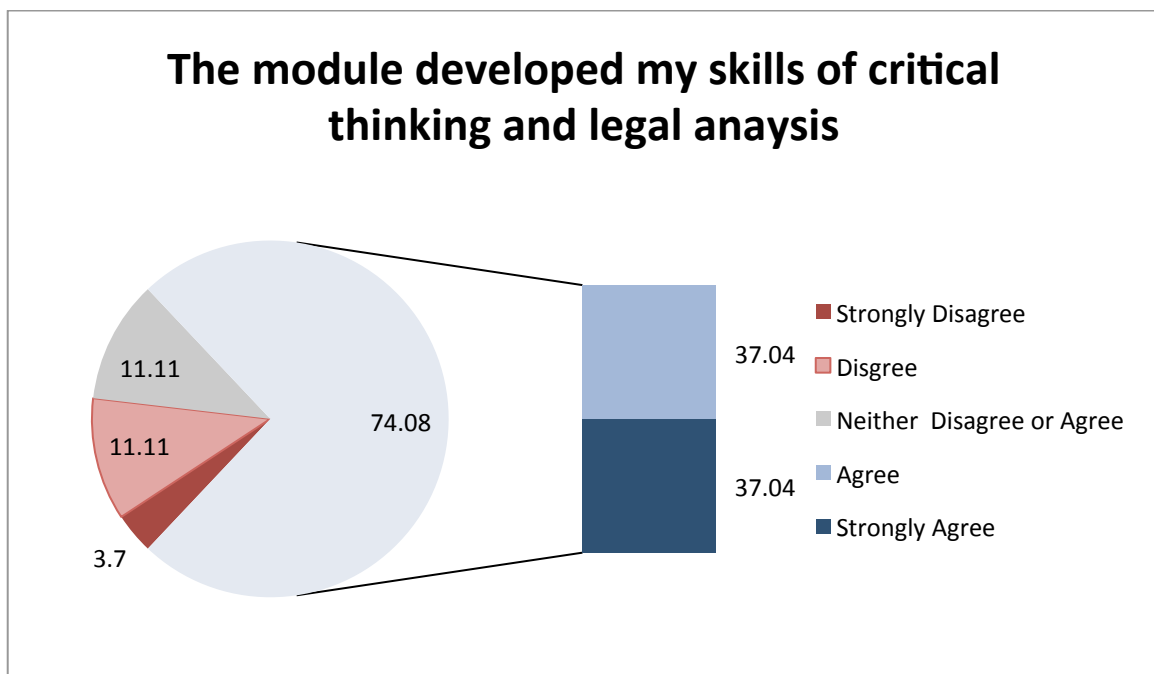
Notably, a slightly higher percentage of students, 78%, agreed/strongly agreed that it developed their skills in presenting critical argument orally.

**Figure 3.** Student Questionnaire - question 4.



This module is about learning rather than teaching and it appears that students perceived that participation in the moot enhanced their critical thinking.

**Figure 4.** Student Questionnaire - question 5.



Their responses to both the survey and comments made during the interviews indicated that they felt the module had assisted them to develop a more profound understanding of the law and legal principles; their knowledge had become embedded through 'doing'.



This would be congruent with Woodier-Harris' assertion that learning occurs through doing and 'critical experience' (Woodier-Harris 2010):

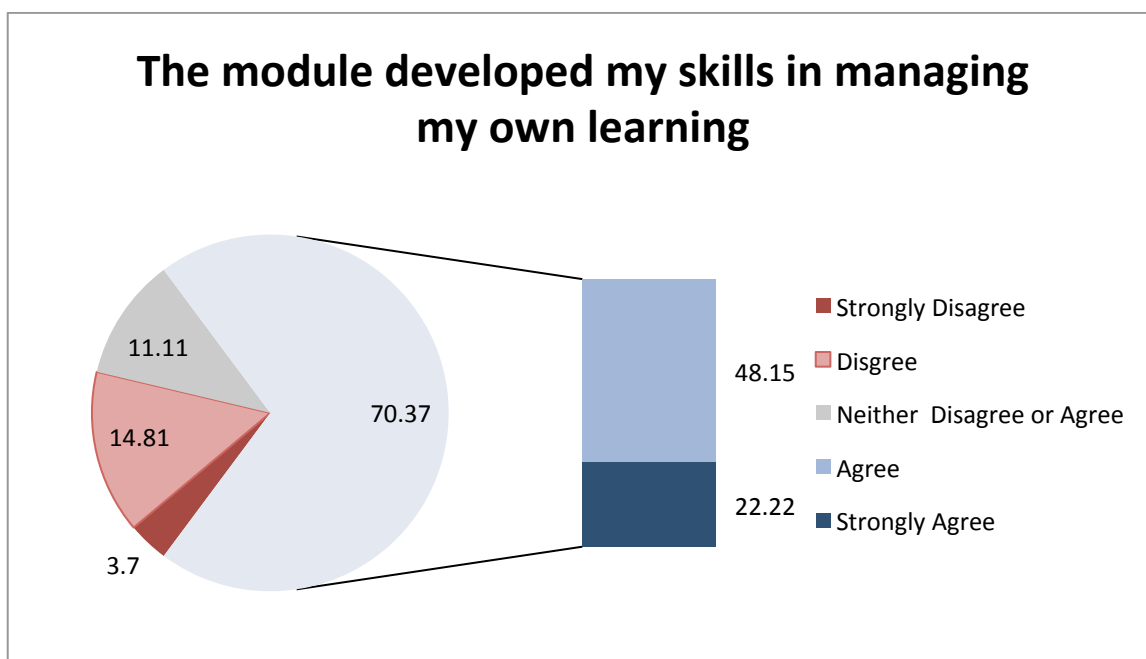
*Having to learn the material in order to be able to present it orally made me really think about the law and legal principles. It was only then that I started to understand it.*

*When I was preparing for the moot I realised I'd made mistakes in the written submissions and I worked out what I had written was wrong. It was great to have the chance to correct it for the moot itself.*

These responses demonstrate how such teaching and learning strategies are viewed by the students as effective tools for self-directed learning and how they facilitate the development of self-assessment - ie reflection in learning - in line with what Nicol and Macfarlane-Dick have espoused (2006), as well as indicating a shift away from passive learning to more active, reflective learning that Akister et al note in the context of autonomous study (2009: 78).

The data from the questionnaires also suggest that the majority of students recognised that the module developed their skills in managing their own learning.

**Figure 5.** Student Questionnaire - question 6.



Indeed, and somewhat surprisingly, many respondents appreciated the opportunity provided by the module to work independently:

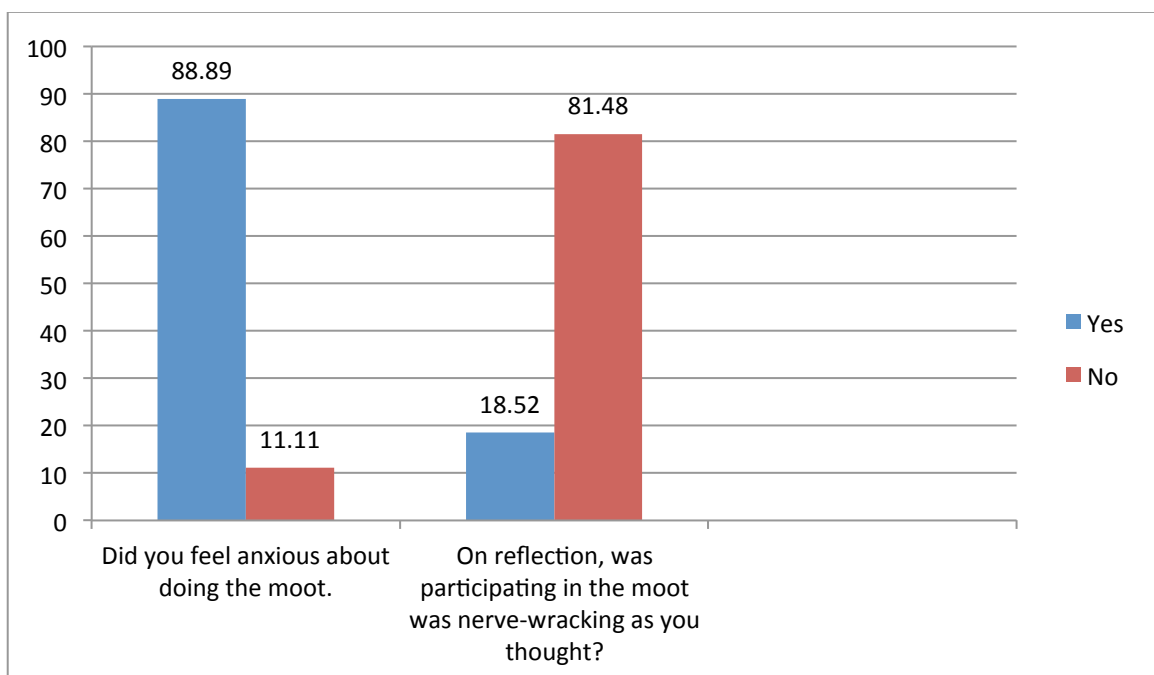
*The module encourages private research and makes us think.*

*It allows self-study practice.*

A discrete issue that we wished to investigate - one raised by Joughlin (2010) - was that of student anxiety, particularly since oral assessment was new and unfamiliar to the students.

Hence, in the questionnaire, we asked students about their concerns in participating in the moot, and asked if on reflection, having completed the module it was as nerve-wracking as they had anticipated. The questions seeking this information were closed questions which gave the respondents the choice of a 'yes' or 'no' answer. What is particularly germane from the responses to this particular pair of questions is the symmetry that emerged between the two: 'yes' to the first question had a 89% response rate while 'no' to the second was 81%. These responses indicate a somewhat misplaced apprehension, which, it is submitted, might translate into a reluctance to participate in mooting were the Moot module an optional element of the degree programme.

**Figure 6.** Student Questionnaire - question 7.



The responses from the interviews elicited comments such as:

*It was rather daunting at first but after a while I began to feel more confident and the whole process flowed well.*

*I was worried about the whole module to begin with – I did not have any experience in mooting.*

*It seemed scary but gave me confidence in my ability to present orally.*

## **Conclusion**

'Mooting is best conceived...not as a skill in its own right but rather as a complex amalgam of intellectual, interpersonal and presentational skills' (Broadbent, 2001: 2) For Broadbent, although not a skill *per se*, mooting is skills-based, enhancing research skills, analysis, legal argument, teamwork and presentational skills. This view appears to be borne out by our study: student perceptions of the Law in Practice: Moot module are that it encourages active engagement in the learning process and aids the development of essential transferable skills.

It has been well documented that Higher Education institutions are now required to enhance graduate employability (Knight & Yorke 2003) by developing key skills alongside academic skills (Mason, Williams & Cramer 2009). To this end, the Moot Module provides sophisticated and complex simulations which assess and develop generic and transferable skills. Without compromising traditional academic values (and in line with Biggs' 'constructive alignment' (2003)), this teaching and learning strategy goes some way to addressing the requirements set out by BIS (2009) for a more 'rounded' education, in order to better prepare students for employment.

Our findings also concur with Biggs' (2003) and Joughin's research on oral assessment (2007), namely that mooting facilitates deep learning in that it is 'more demanding... requiring deeper understanding, and leading to more or better learning' - a much richer source of learning than written assignments. It would appear then, that in line with the scholarship in the field, students themselves also perceive that a discrete mooting module within the later stages of an undergraduate curriculum can be an effective vehicle for learning – one which, for many students, would remain unexplored were

mooting to remain on the side-lines rather than a core element of the degree programme.

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