

CRITICAL REVIEW EXAMINATION SYSTEM (CRES)
COMPUTER ASSISTED STUDENT SELF-CRITIQUE OF ESSAY QUESTION ANSWERS

David S Bogen, Professor Emeritus of Law
University of Maryland Francis King Carey School of Law

Some time ago, Alan Tyree of Sydney University developed a mechanism to analyze multiple issues with complex answers that the instructor need not grade, but that gave the student feedback on their progress and tools to improve their analysis in the future. He called it the Critical Review Examination System [CRES]. Tyree wrote about the theory and the analysis, and he implemented the test at the University of Sydney across a variety of law school courses for several years.

[A]fter the student answer has been "submitted," the computer asks the student a number of simple yes/no questions about the submitted answer. The practical effect of these "critical review" questions is that the student marks their own answer. The "critical review" questions may be arranged in a tree structure so that a variety of possible student answers will result in a pass, thus facilitating the use of questions which have no "right" answer. (Alan Tyree, *The CRES Tutorial Method* at <http://austlii.edu.au/~alan/teaching.htm>)

Using Professor Tyree's idea and the spine of his operating system, my research assistants constructed a set of essay questions covering the major areas of contract. The University of Maryland School of Law technical staff put them on the web. My research assistants are currently working on CRES exercises in other areas. All are available at <http://www.law.umaryland.edu/faculty/dbogen/menu.html>.

Go to the site and play with the contracts program. Despite its flaws, the current model provides the basics and should enable the reader to understand what it is and how it can be helpful. The more faculty that are aware of its potential, the more likely it is that it could become a part of the law school experience generally.

The construction of a question for the program is simple. The instructor needs to construct an essay question with a model answer, although the answer may simply involve discussing a variety of opposing arguments. For example, a damages question may be posed with an essay question that has arguments for both sides (Damages 6):

Our client, a semi-professional clown who appears at birthday parties, has entered into a two year agreement with the National Tobacco Company to play the role of "H.R. Snuff-n-Puff" in a series of print ads and personal appearances. Three months into the agreement, National scraps the campaign, and offers your client a settlement that she considers to be too small. National says "O.K., you can sue, but don't expect us to pay for you to sit around for 21 months when there are plenty of birthday parties to do." She's tired of birthday parties, and is actively seeking another

hard-to-find position as a corporate mascot. Once you have made it clear that you will not accept “play money” for your fee, how would you advise your client?

The student then writes an essay answer in the box that should discuss whether damages will be reduced by the amount she could have earned as a birthday clown. At the conclusion of the answer, the student will hit a button labeled “submit.” This produces a prompt that asks “Have you advised that being a clown at birthday parties is not substantially similar work with which your client can mitigate damages?” There are “yes” and “no” buttons to click. If the student clicks on “no”, she will be taken to a box that asks whether she advised that being a clown at birthday parties is substantially similar work. If she still clicks on “no”, the program tells her “you were asked to advise!” Then it says to click “yes” to proceed so that the program will have an answer to deal with.

If the student had clicked on “yes” to the original question, she would be taken to a box that discusses reasons for making that argument, e.g.:

You will argue that your client has no duty to mitigate, and that recovery may be reduced by the amount that a party could have reasonably avoided. Birthday parties are not similar to being a corporate spokesperson, and your client was reasonable in not seeking such work. Have you explained this in your answer?

Whether the student says “yes” or “no” to this question, she will still be taken to a box that discusses the counter-arguments to the proposition that being a clown is not substantially similar work, e.g.:

National will argue that your client is a first and foremost a clown, in the business of dressing funny and cavorting around. It is reasonable for her to accept birthday parties rather than attempt a low probability job search. Have you explained why this does not apply to the present fact situation?

If the student had said “no” to the original question, and “yes” to whether she advised that working at a birthday party is substantially similar work, she would be taken to a box that raised the argument that should be made in favor of similarity and asked whether the student addressed why she thought the argument did not work. Whether the student said “yes” or “no” to this question, she would still be taken to a box that discussed the argument that being a clown is not similar work.

At this point, the student has been able to determine whether she addressed the crucial issue in her essay answer and made arguments on both sides to support her conclusion. However she responds to the last question, she will be taken to a box that discusses the question, e.g.:

This is an issue of mitigation of damages. While your client has no duty to find other work to replace her National engagement, she cannot recover for a loss that she could have avoided without undue risk, burden, or

humiliation. Restatement of Contracts § 350. The argument will involve defining your client's profession. National will attempt to portray your client as a clown who, by turning down birthdays, does not make reasonable attempts to avoid the loss. You will portray her as a performance artist seeking work similar to what she had with National, and thus birthday parties were not “substantially similar” work. For § 350 purposes, reasonableness is a measure of the injured party’s attempts to avoid the loss — not a measure of her decisions regarding the available alternatives. *Parker v. Twentieth Century-Fox Film Corp.*, 474 P.2d 689 (Ca. 1970).

Of course, you could have produced a much better question and answer, but this gives the idea — showing how the essay question format can produce an answer that requires analysis of opposing arguments, and illustrating to the student what kinds of arguments she should have made.

Some questions offer hypotheticals that change the facts in the middle of the answer to illustrate the significance of facts to the answer without having to write another essay (e.g. Formation 4). Longer questions may have multiple issues (e.g. Formation 6, Damages 5). At the conclusion of analysis of one issue, the response takes the student to questions about the second issue rather than to a single final response. The instructor chooses whether answers should involve straightforward information, application of principles, or even complex and controversial arguments.

Basically, if you were to tell someone else how they should mark your exam, you can build in those instructions to the Critical Review system. The student then sees what is important to put in an examination by responding to questions about whether they have included it or how they distinguished or applied it. Students may think of points that the instructor failed to consider, and they should be encouraged to ask the instructor directly (by email or other discussion mode) about those points. The instructor can then use this feedback to revise the answer, make the question clearer or more complicated, or simply add steps to the critical review process that encompass the additional responses.

With CRES, students are actively engaged in the learning process. The timing of the response is up to the student. A well-constructed CRES question can show the student how to think about the legal problem. Students can in turn get back to the instructor with out-of-the-box thoughts that can be reincorporated into the discussion section of CRES.

In my last semester of teaching contracts, over half of my two classes chose to do some of the exercises. They enjoyed the exercises, and on average had a higher test result than those who chose not to do so. For obvious reasons the better results are not evidence that the CRES system itself improves student performance. Nevertheless, I think that it is worth further use and experiment by others and hope others will agree.