



Universität St.Gallen

Legal Framework for E-Assessments

Why Security Issues, Personal
Data Protection and Fundamental
Rights matter

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Agenda

- 01 Why should we care?
- 02 How can we be on the safe side
- 03 Checklist – Good practice



Are students going to sue universities?

Refund if university fails to deliver



In 2002, a mature law student, Mike Austin, was awarded **£30,000** by the University of Wolverhampton in an out of court settlement. His catalogue of grievances include crowded lecture halls, **poorly drafted exams papers** and inflated promises.

For endangered future careers?

X received a 5.0 for her master thesis at the University of Bern resulting in a grade point average of 5.43, which lead to a masters degree with predicate «magna cum laude».

With a 5.5 in for her thesis she would have reached a «summa cum laude».

Although the grading for an individual exam can not be judged by the appellate authority this particular grad had a significant impact on her final degree predicate and therefore on her future career (specification of judicial practice; BGE I 36 I 229).



For a «distraction-free environment»?

Student Sues University After Failing Required

13.05.2015 - Eric Scheiner



A nursing student in Pennsylvania who twice failed to pass a required course has filed a federal lawsuit against the university....

According to the complaint, student had an “existing predisposition” that caused anxiety and depression.

An Anglo-American phenomenon?



11.02.2016

HSG wiederholt Prüfung, weil Lösungen im Internet waren

 [Sharing Is Caring University of St. Gallen \(HSG\)](#) · 16 hrs · 

!!An alle Juristen und möchtegem Harvey Specters!!

Privatrecht ZGB Prüfung soll am 3. März wiederholt werden, weil Teile einer alten Prüfung 1:1 übernommen wurden. Kann man da irgendetwas einwenden oder muss man sich den Professoren Don Vito und Geiser geschlagen geben?

Danke für jede Hilfe.

 Like  Comment

   and 171 others like this.

 [Better Call Saul](#)

Like · Reply ·  93 · 16 hrs

And not just a University of St.Gallen problem...

Server Breakdown at University of Zurich

Slip-up with online exams

14.1.2014 - Corsin Zander

Neue Zürcher Zeitung

On Monday afternoon University of Zurich Law students have completed an online exam for the first time. For some students the exam came to an early end due to an error message on their screen.

Reputational risks

Where technology fails
there is potential risk for

- Reputational damage
- Loss in confidence
- Liability in negligence



How can we provide safe (online) exams?



Proof of performance in E-Environments



Offline

- Written exams
- Oral exams
- Portfolios
- Peer assessment
- Study diary

- *Participation in class*
- *Group examination*
- *Poster presentation*

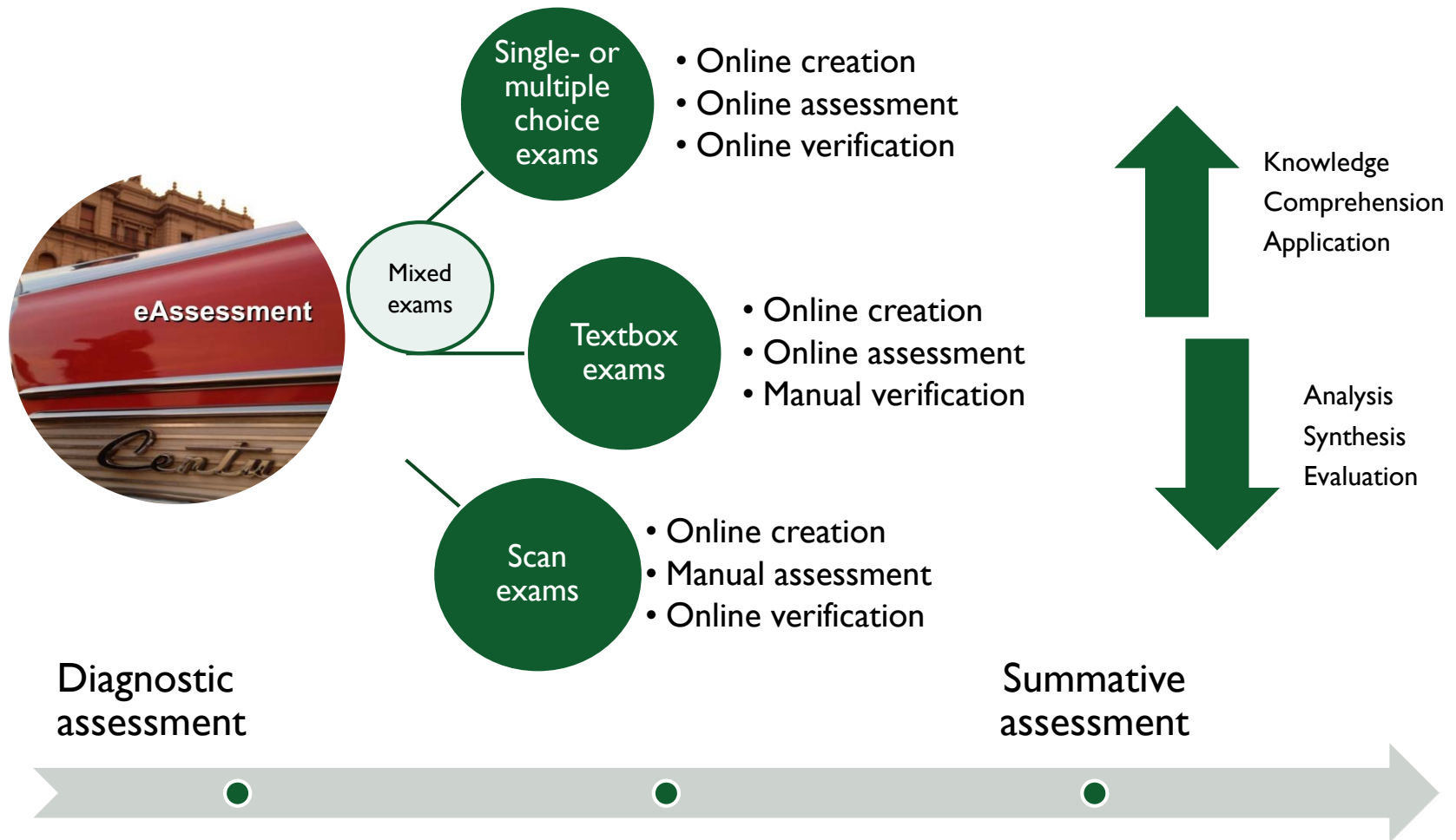


Online

- **Online exams**
- Adaptive testing
- E-Portfolios
- Peer assessment
- Blog

- *Online voting/ Forums*
- *Wikis*
- *Digital Storytelling*

Proof of performance with E-exams



Features of a fair and legally save exam

Just like any written exam, E-exams must maintain the features of traditional assessment such as

- Objectivity
- Validity
- Reliability
- Fairness
- Authenticity
- Accessibility
- Transparency



Legally protected rights (fundamental rights)

Concerning exams the following (fundamental) rights are protected by the Federal Constitution of the Swiss Confederation

- Freedom of career choice (Art. 27 Abs. 2 BV)
- Equal opportunities of examinees (Art. 8 BV)
- Protection against arbitrary conduct and principle of good faith (Art. 9 BV)



Legally protected rights (Personal Data)

Art. 3 Definitions

a. **personal data** (data): all information relating to an identified or identifiable person;

...

c. sensitive personal data:

1. religious, ideological, political or trade union-related views or activities,
2. health, the intimate sphere or the racial origin,
3. social security measures,
4. administrative or criminal proceedings and sanctions



Art. 4 Principles

¹ Personal data may only be **processed lawfully**.

² Its processing must be carried out in **good faith** and must be **proportionate**.

^{3,4}, ...

⁵ If the **consent** of the data subject is required for the processing of personal data, such consent is valid only if given voluntarily on the provision of adequate information. Additionally, **consent must be given expressly** in the case of processing of **sensitive personal data** or personality profiles.

My educational data belongs to me!

7.7.2015 - Ernst Hafen

Neue Zürcher Zeitung

E-Learning is democratizing education.

But at the same time we are getting more and more dependent on, large platform providers (such as Coursera or EdX).

Within our educational data there is an enormous potential...

Der gläserne Student

2. 12. 2015 - Johannes Boie; Hannes Grassegger

**Süddeutsche
Zeitung**

Data Protection

University of Lucerne released grades of all students in the Internet

06.09.2013

Reaction on allegations by University of Lucerne:

Only students can access grades – by a dedicated link. But since this link got publically accessible one could access exam results without login.

The link has been disabled in the meantime as an immediate measure.

Within a few days, students will receive a secured online access to the test results.



What about student data in the cloud?

If a university is buying or leasing storage capacity from a cloud provider, data is given «away». Therefore a third party (provider) is responsible for keeping the data available and accessible.

- Personal Data (Art. 3 FADP lit. a) may only be stored encrypted.
- Personal Data shall only be processed within the EU or states «accepted by the EU».
(Save Harbor - Swiss-US Save Harbor Shield)
- Sensible Personal Data (Art. 3 FADP lit. c) should not be hosted in the cloud.



From Safe Harbor to Privacy Shield

Swiss-US Privacy Shield: new framework for the transfer of data to the USA

11.01.17 - At its meeting today, the Federal Council took note that a new framework, Privacy Shield, has been established for the transfer of personal data from Switzerland to the USA. Privacy Shield replaces the Safe Harbor Agreement between Switzerland and the USA, which the FDPIC had declared inadequate and which the Federal Council has now formally terminated. The FDPIC welcomes the introduction of the new framework.



What about access to files?

Y was studying biology at the University of Berne since 1984. In summer of 2014 he requested access to all «processed or archived files» concerning his studies.

The University disclosed all records on file. Y was not satisfied with the disclosure of just «official records»:

«The appellant considers it arbitrary, if not only the personal equipment, but also «Notes computer files and correspondence are exepcted form access (Art. 21 Abs. 3 and 4 KDSG; Art. 18 Abs. 1 KV/BE)...»

Appeal denied

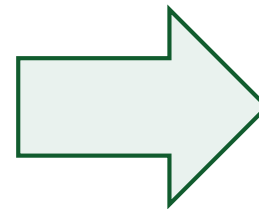


What about BYOD exams?

Great opportunity for both students working on their own device and university rather investing tight IT budgets in other areas of digitalization.

However

High maintenance in terms of communication with students regarding ICT skills (equal opportunity) and tech safety



CHECKLIST I

Solid Examination Regulation

- Explicit regulation of E-Assessments and MC exams (possibly mixed exams) in study rules and regulations.
- Explicitly allow BYOD exams including framework for technical requirements (equal opportunity)
- Consider mandatory mock-up exam

Equal Opportunity

- Avoid information advantage (simultaneous system access)
- Exam duration time: allow extra time in case of tech problem
- Adjust your compensation for disadvantages regulation (special needs arrangements)
- For MC-exams work with standardized questions (item-analysis)

CHECKLIST II

Security

- For safe and fair e-exam environment restrict access to approved URLs (e.g. via safe-exam browser)
- Randomize questions if applicable
- Avoid cheating and manipulation by proctor supervision (video surveillance only with students consent)
- Continuous recording of exam progress (logging)
- Automated security updates

Archiving

- File or/and print-out all exam relevant data (incl. exam protocol)
- Archiving period follows study and examination rules
- Avoid loss of data by keeping our operating IT systems up to date
- Avoid saving sensible personal data (grades?) in the cloud

CHECKLIST III

Authenticity

- Verify identity of examinee (student ID) before exam starts
- Secure log-in via pin or matriculation number
- Signed statement that saved file final and complete or explicit confirmation within exam bevor saving
- Final submission in non-modifiable data format

Avoid tech slip-ups

- Offer mock-up exams to better accommodate students to the new testing environment
- Reliable tech infrastructure (Power, WIFI, VPN if SEB is in use)
- Minimize risks with university managed exam devices (testing center), otherwise have extra devices available

Additional Resources I

E-Assessment

Rechtsfragen bei E-Klausuren

Uni Bremen

<http://www.eassessment.uni-bremen.de/recht.php>

E-Assessment Wiki

Rechtsfragen

<http://ep.elan-ev.de/wiki/Rechtsfragen>

Gutachten über rechtliche Aspekte von E-Assessments an Hochschulen

Universität Duisburg-Essen

<http://duepublico.uni-duisburg-essen.de/servlets/DocumentServlet?id=42871>

Additional Resources II

Data Protection

Datenschutz

Technische Universität München

<https://www.datenschutz.tum.de/leitlinien/hinweise-fuer-pruefungsverwaltende-stellen/>

Cloud Dienste in der Lehre

ZHAW

<https://blog.zhaw.ch/lehren-und-lernen/cloud-dienste-in-der-lehre-part-ii/>

Teaching and Learning

ccdigi²allaw.ch; Kompetenz-Zentrum Digitales Recht für Schweizer Hochschulen

<http://platform.ccdigi²allaw.ch/index.php/german> (copyright)

iRights law/lab/info

<https://irights.info/artikel/wissenschaftsparagraf-der-horsaal-als-grauzone/14996>

Thank you



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