

NOTES

6 LEGAL WRITING

In Legal Writing you must cover all of the steps in the Problem Solving Model. You have to identify the client's objective(s) from your instructions, gather the **relevant facts** from the instructions, identify the **relevant law**, **apply it to your facts correctly and comprehensively** and be able to **advise the client** on the correct solution. There may be different solutions, in which case you will have to consider the advantages and disadvantages to advise on the most appropriate solution and your answer must be presented appropriately.

6.1 ASSESSMENT OBJECTIVE

You can demonstrate that you are able to produce a letter or an email as the solicitor acting in a matter.

6.2 ASSESSMENT OVERVIEW

You will be provided with instructions relating to a client matter and be given 30 minutes to write a letter or email setting out your legal advice as a solicitor acting or assisting in a matter.

You will be required to produce your work in Microsoft Word.

Almost all topics could feature in writing. The limitation is that the short duration of the assessment makes it unlikely you will be asked to advise on anything complex, or where it is necessary for you to assimilate significant factual information by reading documents, such as witness statements.

You will be assessed in the context of:

- Business Organisations, Rules and Procedures, **and**
- Dispute Resolution **or** Criminal Litigation, and
- Property Practice **or** Wills and Intestacy, Probate Administration

The writing assessment is the shortest of all the SQE2 assessments, and managing your time is key.

Exam Tip

Managing Your Time

BARBRI's experience is that most students will write 1-2 pages of A4 within the time permitted.

As soon as you have read the question, you should make a bullet point list of the four or five issues you need to address. If you identify more than five, select the five most important.

Then aim to draft a short paragraph with an appropriate subheading to address each issue, together with an appropriate opening—which should set out clearly the question you have been asked to advise on—and closing.

You will not have time to do more than this.

Aim to have at least three minutes at the end of the assessment to check your work for sense and typos.

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6.3 ASSESSMENT CRITERIA

In relation to skills, you will be graded on four areas:

- clear, precise, concise and acceptable language which is appropriate to the recipient
- include relevant facts
- advice/content is client and recipient focused
- a logical structure

You will also be graded on the legal content of your drafting, that is, whether you have applied the law correctly and comprehensively to the client's situation, identifying any ethical and professional conduct issues and resolving them honestly and with integrity. The skills criteria and the law criteria are equally weighted, meaning that 50% of your result will come from skills and 50% will come from law.

6.3.1 Clear, Precise, Concise and Acceptable Language

You could be asked to write to:

- a client with little or no understanding of legal matters;
- a sophisticated non-lawyer client; or
- a client with legal training.

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Exam Tip

Planning Your Legal Writing

You should think carefully about the recipient of your email/letter. You should not normally quote section numbers or case names to a client who has little or no understanding of the law. If you are writing to a client, your purpose is to explain your advice in language that is easy for them to understand, not to show them how much law you know.

The more sophisticated the recipient, the more legal content you may be able to include. However, even a client with legal training is unlikely to be interested in the detail of your reasoning unless there is a specific reason why you need to explain it to them.

If you are writing to another firm of solicitors, then it may be both appropriate and necessary to include legal detail—perhaps in order to persuade them of your client's position. However, you should still ensure that your email/letter is more than just a technical statement of the law (such as you might write in a file note). It needs to be courteous, structured appropriately and, where necessary, persuasive.

Clear

Clarity in legal writing is about identifying your reader (or readers) and adjusting how you write accordingly.

It is likely that your instructions will specify that you are writing to a lay client, in which case:

- avoid technical language and “legalese”;
- use the active and not the passive voice;
- avoid redundant and archaic words such as “hereto” or “ergo”;
- keep your sentences and paragraphs short; and
- use subheadings.

Precise

For your writing to be precise, you should:

- choose the right words to avoid ambiguity; and
- express yourself in as simple a way as possible.

Acceptable

Your writing will be acceptable if you observe the following simple principles:

- reference any relevant facts correctly;
- check your work very carefully for typos;
- use the correct layout for a letter or email. If it is a letter and you are not provided with the client's address, simply use "address to be provided" in the correct space on the page; and
- have an appropriate opening and closing. In a letter, this would typically be "Dr/Mr/Ms Hill ... Yours sincerely, A Solicitor." If the letter is addressed to an unnamed party, such as "Dear Managing Partner", it should end "Yours faithfully". In an email, it can be less formal.

6.3.2 Recommended alternatives to 'Dear Sirs'

"Dear Sirs" is often paired with "Yours faithfully" where you may not know the recipient's name or are corresponding with a collective. There are a range of gender-neutral greetings you could use to replace "Dear Sirs" while still maintaining the respectful closing of "Yours faithfully." When you do not know the recipient's name, or are addressing a group, consider using:

- Dear team
- Dear [organisation]
- Dear colleagues
- Dear [role]. For example, "Dear managing partner" or "Dear Head of HR"
- Dear counsel
- Dear [organisation name] [department name] team
- Dear legal team

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- Dear [department name]. For example, “Dear HR team”
- Greetings
- Good morning or Good afternoon
- Dear all

These alternatives maintain professionalism while ensuring your communication is respectful of all gender identities. If you know the person’s name, always use it. If not, keep it simple and neutral rather than overly formal.

6.3.3 Include Relevant Facts

It is important to clarify the factual basis for your legal advice to avoid it being taken out of context. You will not have time to repeat all the facts from the question but should summarise those which are relevant to your advice. However, you must show how these facts are relevant to the advice you are giving, rather than just cut and paste your instructions. If it is unclear what the facts are and/or you are assuming for the purpose of your advice that particular facts are correct, you should say so.

EXAMPLE

You are asked to write a letter to a client who has been unable to complete the sale of their property due to the default of the buyer. You are told in the question that this is because the buyer has not been able to obtain their mortgage advance from their lender.

You are asked to advise on what remedies are available to the client. You could summarise by stating:

I am writing to advise you on the remedies available as a result of the fact that the buyer has been unable to complete the purchase of your property on the date specified in the contract for completion.

If you want to advise on the basis that the buyer is able to complete in the near future, you could express this as:

One possibility is that the buyer is able to obtain their mortgage advance and complete the purchase within the next few days, in which case I would advise...

6.3.4 Content Is Recipient Focused

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The advice you give in your letter will need to be tailored to the specific issues raised by the facts of your client's matter. The key to the legal writing assessment is to think carefully about the recipient and their needs.

When writing a letter or email of advice to a client, you will ensure that your writing is client focused if you are clear from the outset about your client's concerns, needs and objectives:

- What problem or problems do they want you to solve?
- What transaction do they want to conduct with your help?
- What are their fears and aspirations in relation to this problem or transaction?

Remember that the client has not asked you to display your extensive knowledge of a particular area of law in your letter. Essentially, clients want to know things such as:

- What are my chances of success?
- Is this course of action possible?
- What are the risks?
- How can I guard against them?
- How long will it take?
- What will it cost me?
- Are there any alternative ways to achieve my objectives?
- What steps should I take and when?
- What steps are you going to take to help me?

EXAMPLE

In a dispute resolution context if, as is likely, the recipient is the client, they will generally need to understand the following:

- *What has happened to trigger the need for advice, for example, the other side has made a Part 36 offer, the Court has ordered disclosure of documents;*
- *What must be done, in simple terms: you have 21 days to reject or accept the offer...; we must search for relevant documents to disclose and list them...;*

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- *Explain the consequences and/or pros and cons of the different options available: if you accept the offer, you will be entitled to...; if you reject the offer and the other side achieves a better outcome at trial, the consequence will be...;*
- *Explain any action required by the client: would you please provide me with instructions within 14 days as to whether you would like to accept the offer; please contact me if there is anything you would like me to clarify further; and*
- *If the recipient is the other party to proceedings, you will need to convey your client's instructions to them and any counter-offer: we are instructed to reject your client's offer for the following reasons....*

The requirement for your advice to be client focused means that legal points which are not relevant to the facts of your client's case should not be covered.

EXAMPLE

In a letter to a retail business client to advise them of the consequences of a supplier having gone into liquidation, you would need to focus on the legal position in relation to the goods already delivered to the client from the insolvent supplier, as well as orders which have been placed but not paid for.

It would not be relevant to explain the more general principles of insolvency law and/or its consequences for the supplier.

Exam Tip**Ensuring Your Advice Is Client Focused**

To ensure your advice is client focused, use expressions such as:

This has the following consequences for you ... Applying the law to your situation ...

I would advise you to take the following steps ...

6.3.5 Logical Structure

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It should be possible for the reader to read your answer from top to bottom without having to jump back and forth. A typical structure would be:

- a letter or email heading;
- a greeting;
- a heading;
- an introductory paragraph;
- a brief section summarising the facts;
- the legal section;
- conclusion and next steps. Here, you might want to summarise your advice if it has been spread throughout the letter, so that the client has one easy-to-access summary of the advice if they come back to the letter later; and
- closing sentence and sign off.

A template might look something like this:

Solicitor's Details

Recipient's Details: Dear X

Re: Subject Matter of the Letter/Email

Further to [insert the trigger for the letter], I write to [insert the reason for writing].

Background

[It will often be useful to include a couple of sentences on what has led to the current need for advice.]

Issue 1

[Set out the issue, relevant law, application and conclusion on the first issue. Continue this process for each point of advice.]

Issue 2 etc.

[Set out the issue, relevant law, application and conclusion on the second issue. Continue this process for each point of advice.]

Next Steps

[Include what steps the firm and the client will/should take to progress the matter further.]

Yours sincerely/faithfully

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Exam Tip**What Does Not Need to Be Included in the Letter**

There are certain client care issues, such as the firm's fees and complaints handling process, that should be communicated to a client when writing to them for the first time. Your instructions will generally state that the client has already had this information and it is therefore not necessary to include it in this letter, so check your instructions carefully to avoid wasting time including unnecessary information.

Exam Tip**Signing Your Name**

Unless Kaplan advises you to the contrary, you should sign your letter "A Solicitor" or "An Associate" and avoid using your own name.

6.3.6 Legally Correct and Comprehensive Including Professional Conduct Where Relevant

The requirement for your advice in your letter or email to be legally correct means that you must correctly identify the legal rules applicable to your client's matter and apply them correctly to the issues that arise, to enable you to provide the client with an accurate conclusion.

EXAMPLE

If you are asked to advise the seller of a property as to their remedies in the event that the buyer is not able to complete on the date specified in the contract, you must ensure you address all legal and equitable remedies under the contract and what steps the client would need to take to obtain a particular remedy.

6.3.7 Professional Conduct

As with the other assessments, you will be expected to address any relevant principles of professional conduct in your writing assessment.