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**WRITING AND DRAFTING  
STUDY UNIT 1:  
INTRODUCTION TO WRITING  
AND DRAFTING  
STUDENT INSTRUCTIONS**

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# STUDENT INSTRUCTIONS

## 1 Introduction

This Study Unit:

- is the first of three Study Units concerned with the core skills of Writing and Drafting. This first Study Unit is a combined Study Unit on Writing and Drafting and will be followed by separate Units in each of Drafting and Writing later in the course
- is intended to be an introduction to both of these skills
- consists of preparatory work, a face to face workshop and some post workshop tasks (including an online test)

## 2 Teaching Aims

In this Study Unit we will:

- Consider some of the Assessment Criteria and wider Learning Outcomes for Writing and Drafting
- Consider the principal skills associated with Writing and Drafting in professional practice

## 3 Learning Outcomes

When you have completed this Study Unit you will be able to:

- Identify the characteristics of good writing
- Consider and apply the techniques of effective letter writing in the context of communications with clients and other professionals
- Explain a number of common drafting terms
- Critique a precedent and also consider the appropriateness of a precedent for a client
- Draft clauses/ paragraphs of text using the first principles of drafting (free drafting)
- Explain some of the Assessment Criteria for each of the core skills of Writing and Drafting

## **4 Preparation for the workshop**

By way of preparation:

### **4.1 Read Documents 1 & 2 in the Document Bundle**

**4.2 Consider the Preparatory Activity set out in Document 3 in the Document Bundle. Be prepared to present your work to the class in the workshop.**

**4.3 Bring these Instructions, the Document Bundle and your Lawyers' Skills manual to the workshop.**

## **5 Introductory task**

In the first 30 minutes of the workshop we will consider the Preparatory Activity referred to at paragraph 4.2 above.

## **6 Workshop activity 1**

### **Time for completion of this task**

45 minutes

### **Method of Working**

In teams

**6.1 Read the scenario in Document 4 of the Document Bundle.**

**6.2 Working with other members of your team, analyse the solicitor's letter at Document 5 of the Document Bundle and make brief notes on any specific problems with it.**

**6.3 One team will be chosen to present their answer to paragraph 6.2 above to the rest of the class and there will be a plenary discussion.**

**6.4 Working with other members of your team, re-draft the solicitor's letter onto your whiteboards/ the flipchart paper provided so that it addresses the concerns raised by the group.**

**6.5 Nominate a representative from your team to read out your re-drafted letter to the rest of the class in the plenary discussion which will follow.**

## **7 Workshop activity 2**

### **Time for completion of this task**

1 hour

## **Method of Working**

Discuss with the other members of your team and then individually draft the clauses.

**7.1 Please read Documents 6 and Document 7 in the Document Bundle.**

**7.2 Working with other members of your team, consider what changes need to be made to the precedents to reflect your client's instructions.**

**7.3 Please prepare drafts of each of the following clauses for your Supervising Principal to review:**

- the price clause;
- the confidentiality clause;
- the limitation of liability clause.

Is there anything else that you need to think about?

## **8 Tutor recap**

Your tutor will recap on the activities you have performed and the learning you should have acquired.

## **9 Review and Consolidation**

After the workshop, complete the following tasks:

**9.1 Re-read any notes you have made in connection with the workshop and organise your file ready for the next study units for Writing and Drafting.**

**9.2 Complete the Review and Consolidation Exercise referred to at Document 1 of the Supplementary Document Bundle.**



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**WRITING AND DRAFTING**  
**STUDY UNIT 1:**  
**INTRODUCTION TO WRITING**  
**AND DRAFTING**  
**DOCUMENT BUNDLE**

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This bundle contains:

DOCUMENT 1 .....	9
DRAFTING PREPARATORY READING.....	9
DOCUMENT 2.....	17
WRITING PREPARATORY READING .....	17
DOCUMENT 3.....	23
PREPARATORY ACTIVITY.....	23
DOCUMENT 4.....	25
ACTIVITY 1 SCENARIO .....	25
DOCUMENT 5.....	27
SOLICITOR'S LETTER.....	27
DOCUMENT 6.....	29
ACTIVITY 2 SCENARIO .....	29
DOCUMENT 7 .....	31
PRECEDENTS .....	31





## **DOCUMENT 1**

### **DRAFTING PREPARATORY READING**

#### **9.3 Introduction**

The ability to draft clear and unambiguous legal documents that reflect your client's goals and instructions is a skill that is absolutely critical to develop as a lawyer in practice. You can learn how to approach the drafting of a legal document and the theory but then it is down to practice and you will have lots of practice on the LPC.

#### **9.4 What are the Learning Outcomes for the core skill of Drafting on the LPC?**

We hope that by the time you have finished your studies on the LPC you will

- understand the content and requirements of formal legal documents in each of the Core Practice Areas
- understand the principles of good drafting and editing in order to review your own and others' drafting to identify and correct omissions, errors and unnecessary provisions
- be able to explain your own and others' drafting including explaining in clear and simple terms the meaning and effect of basic documents and possible implications for the client
- improve your written word skills
- have had much practice in drafting and amending documents or provisions using appropriate and accurate, language with correct spelling, grammar, syntax and punctuation to produce documents that are easy to follow, internally consistent and free of ambiguity
- be able to draft documents with a clear, logical, consistent and appropriate structure and layout and be able to correctly use numbering, schedules, recitals, definitions and boilerplate provisions as appropriate
- demonstrate an understanding of the relevant legal, factual and procedural issues and meet all formal legal/ commercial / other requirements
- have had practice in making effective use of precedent documentation, demonstrating a considered choice in the use of precedents/ templates and producing documents in a prescribed or generally accepted form
- have had practice in negotiating draft documents as appropriate
- be aware of the conventions relating to the marking-up of documents by hand/ electronically

#### **9.5 How will the skill of Drafting be taught?**

You will have two Study Units dedicated to the skill of Drafting. The first will be a combined introduction to Writing and Drafting and this will take place very early on in the course. The second Unit will be dedicated to the skill of Drafting and will take place a few weeks later. In addition, further Drafting tasks will be undertaken in Business Law and Practice (BLP) and the other Core Practice Areas. You will also have one Additional Exercise on drafting in BLP (which is self assessed) and a further practice assessment which is tutor- marked towards the end of Autumn Term.

## 9.6 Feedback/ Review

As with the other core skills, Drafting is a skill to be practised and in order to improve it is very important to reflect and evaluate your performance (this may be through self assessment, peer review or tutor feedback). We will be helping you to do this regularly and we have designed a feedback sheet which we will ask you to complete at various stages for this purpose. You will see that in each piece of work we shall be focussing on particular learning outcomes - a sample feedback sheet is set out at the end of this Document so that you can see how this might work in practice.

## 9.7 How will the skill of Drafting be assessed on the LPC?

The skill of Drafting will be assessed in the context of BLP and will consist of one 1.5 hour paper that you will take in addition to your BLP Assessment in late February/ early March (this is the first assessment opportunity, you will have further assessment opportunities in June and in late August/ early September). Although you will gain further experience throughout the LPC in drafting formal legal documents in other contexts (in the other Core Practice Areas and in your Elective subjects), the assessment will be based upon drafting formal legal documents that you have encountered within the context of BLP and you will be ready to take the assessment at that point. We will teach you from first principles how you should approach the drafting all of these documents. The legal documents that we could ask you to draft could include for example partnership agreements, shareholder agreements, company forms and/or minutes of company meetings and shareholder resolutions (the list is not intended to be exhaustive).

Finally, as with the other core skills assessments, your assessment in Drafting will be assessed on a competent/ non-competent basis and individual grades will not be given.

## 9.8 What are the Assessment Criteria?

The Assessment Criteria for the core skill of Drafting are set out below (some of these criteria are self-explanatory but see the comments in the second column for further clarification as appropriate):

Assessment Criteria	Comments
Be consistent with the client's goals and instructions	In its simplest form this means doing what the client has asked you to do. You will need to remember that the client will be relying on you for your legal expertise and the client's instructions will need to

	be filtered in the light of the law relating to the matter
Where appropriate, demonstrate a critical use of precedents	A precedent is a form of document that is in standard form – it may be your firm's precedent, it may come from a Company Law Stationers (such as Jordans and you will come across these forms in BLP) or it may come from the Encyclopaedia of Forms and Precedents. You must use precedents carefully and adapt them to suit your needs – there is no such thing as a standard form document that covers all eventualities and you need to make sure that the document you produce meets your client's needs
Clearly and accurately address all relevant legal and factual issues and achieve the intended purpose	The document that you produce must achieve its intended purpose. Attention to detail is critical
Meet any relevant formal requirements, customs and/or conventions	Some documents are required by law or by custom to be in a particular form – for example certain Companies House forms or litigation documents. Note the importance of presentation here
Protect the client's interests and comply with the rules of professional conduct	
Be succinct and precise, covering all relevant matters without irrelevance, repetition or ambiguity	

Use an appropriate structure and, if hand-written, be legible	Use a formal structure for formal documents
Be logically organised, self contained, internally consistent and form a coherent whole.	Plan and use headings and numberings as appropriate
Be written in a style appropriate to the circumstances, following the rules of grammar and using appropriate language, proper punctuation and correct spelling.	

## DEVELOPING YOUR DRAFTING SKILLS

### 9.1 Introduction

The core skill of Drafting on the LPC essentially involves you acquiring the skills to enable you to draft various formal legal documents. Such documents need to be drafted with great care as they generally create rights and impose obligations (and so there will be obvious liability if you get it wrong)!

Although the formal structure and the content of the types of legal document that you may be required to draft on the LPC will vary according to the type of document, the aim of this Note is to give you some basic guidelines applicable to all forms of drafting. In addition and throughout the LPC you will be given further detailed guidance in terms of how to draft particular types of documents.

### 9.2 Before you begin drafting

You will need to consider both the purpose of the legal document and the context. As we have already noted, you will need to be particularly careful when drafting legal documents as they often create or impose legal rights and obligations. The primary purpose in drafting a legal agreement is of course to carry out your client's instructions. The rights and obligations set out in the agreement should be expressed as clearly and unambiguously as possible. Your client will be relying on you to include in the agreement the appropriate legal and practical safeguards to protect their position.

The starting point is to obtain clear instructions so that you know what the client is trying to achieve. Then consider the context of the transaction and the effect of relevant

law. Finally consider the context of the document that you are drafting – whether it forms part of a series of documents, whether it must be in ‘house style’ or in a prescribed form (many company documents must be in a prescribed form). Is there a precedent document that you can use (a precedent is an accepted or standard form of document that you can use as a template and adapt as necessary).

Lawyers use different techniques when approaching the drafting of a formal legal agreement. You may plan out your draft in skeleton format perhaps using headings before you start your drafting. Here are some ideas for you to think about:

- Content – does the document contain all the necessary information and is it consistent with your client’s instructions? Choose your words carefully and be accurate.
- Organisation – is the document well structured and logically organised? Use headings and numbering. Are the paragraphs and sentences constructed in the best way to convey the points?
- Layout and design – is it appropriate /does the document need to be in a particular prescribed form. Does it look professional?
- Use of Definitions - careful use of definitions will avoid unnecessary repetition and make the document clearer.
- Draft in the present tense
- Grammar, punctuation and spelling.
- Read, check and revise the document.

Principles of good legal writing that you will come across in the context of the core skill of Writing – for example, avoid surplus words, avoid using more words than is absolutely necessary, avoid redundant ‘legalese’, use plain English, use short sentences, use the active voice rather than the passive voice, avoid double negatives and so on.

### **9.3 Typical structure of a Legal agreement**

The structure of a legal agreement will vary according to the type of legal document that you are drafting. As a general guide, many legal agreements contain the following provisions:

#### **9.3.1 Commencement**

This states what the agreement is – for example “This Partnership Agreement...”

#### **9.3.2 Date**

This gives the date the agreement is entered into. Be careful to state the date the document is to take effect from if it is different from the date of signature.

#### **9.3.3 Parties**

The full names and addresses of the parties are included. If you are going to refer to them in the operative part of the agreement it is worth including a short definition instead of having to repeat unnecessary text. For example:

*This Partnership Agreement is made the       day of    2012 between Jonathan Patrick Robinson of 22 Hans Square, Bristol BS1 4TY ("JR") and Ophelia Josephine Smith of 45 Herington Avenue, Bristol BS13 7JK ("OS").*

#### **9.3.4 Recitals**

These are not always necessary. They set out the background facts to the agreement and often include a statement as to the purposes for which the agreement is to be entered into. If a short history is helpful; include recitals, if not, they are unnecessary (and be aware that by including them you may run the risk of introducing ambiguities). Recitals should not be part of the operative part of the document.

#### **9.3.5 Definitions**

If there are a number of definitions in a document it is worth including them all together in a definitions clause. Definitions are useful as a form of shorthand to save you repeating unnecessary text throughout the document. They could also be used to give a detailed explanation of a complicated term used in an agreement. They may also be used to extend or narrow a meaning of a word. It is convention to define a term by capitalising the first letter of the word each time it is used in the defined sense (for example Business Law and Practice (BLP) is defined as BLP in this Document). You must be consistent in your use of definitions within the document as a whole.

#### **9.3.6 Operative Part of the Document**

This is the most important part of the legal agreement in that it sets out the various rights and obligations of the parties. The clauses should be logically sequenced. Use headings and numbering as appropriate. Every word counts!

#### **9.3.7 Schedules**

Complex or technical parts of the agreement are often set out in a schedule to the agreement at the back of the agreement rather than actually included in the body of the agreement. Consider whether this is appropriate.

#### **9.3.8 Execution Clause**

Legal agreements end with an execution clause. This sets out the method by which the agreement is signed and whether any formalities are required – for example that the document is signed as a deed and witnessed. Companies may but do not have to execute by affixing a company seal.

### **9.4 Drafting pitfalls**

The use of "and" or "or". When listing a series of options or rights or obligations be careful – in particular consider whether you want the list to be conjunctive or disjunctive.

Before, after prior to, subsequently – take special care with measurements of time.

Words which look or sound similar but which have different meanings and therefore could be confusing e.g. mortgagor/mortgagee - try lender and borrower instead.

You will come across others in your studies!

## **9.5 Use of Precedents**

Using precedents can be very useful but do not follow them slavishly when drafting an agreement- most precedents attempt to cover every eventuality and some clauses will not be appropriate to your client's needs. Conversely the precedent might not have contemplated an eventuality that it should or that is necessary to protect your client's position.

In practice the agreements that you produce are likely to be scrutinised by the lawyers acting for the other side and you may have to defend/ negotiate each clause. You need to understand why each provision is in your agreement and be able to defend it if necessary. When negotiating legal documents you need to be able to 'free draft' (i.e draft without using precedents).

## **9.6 Amending Draft agreements**

As a rule of thumb it is better to prepare the first draft of an agreement yourself rather than let the other side to do it. That way you will draft in your own style and use a structure that is most helpful to you and your client. It will also set the basis for negotiations. Sometimes it is not possible to do this and there are conventions as to which party produces the first draft. For example in share purchase transactions, the purchaser's solicitor prepares the draft agreement.

If you receive a draft from the other side in a transaction, you will have to read it carefully. You will need to take your client's instructions as to the contents and explain to your client what various provisions in the agreement mean. Having done this you may wish to make amendments to the draft legal agreement. Amendments may be required because:

- Substantive matters have been included or omitted that are contrary to your client's expectations
- Matters to which you cannot allow your client to agree as they would disadvantage your client in the transaction
- Matters of flexibility, where a compromise can be achieved but are useful as negotiation points.

Amendments may be made by hand in manuscript form on the document. It is conventional for amendments to be shown first in red ink, followed by green, violet and then yellow. If you want to reinstate deleted text then you would write "stet" (Latin for "let it stand") in the margin next to the deleted text. These days documents are often sent electronically and it is common for amendments to then be made electronically using the "track changes" option in Word – and we will teach you how to mark up documents in manuscript and electronically on the LPC. It is good practice to keep all drafts of a document showing each stage of amendment – as a record. It may help you later to remedy any mistakes and may prove useful in the unfortunate event that the agreement was ever the subject of litigation.

## **9.7 Engrossment and Signature**

Once a draft agreement has been agreed it is ready for engrossment – that is producing a fresh pristine copy for signature (firms often use different heavier paper for engrossments of legal agreements and these are often specially bound and or ‘cornered’).

## **9.8 The Rules on Construction**

The primary consideration is establishing what the intention of the parties was. The courts have developed a number of rules over the years to help interpret the meaning of words in statutes and other documents. They are:

### **9.8.1 The Literal Rule**

The literal rule is that words should be given their ordinary grammatical meaning as found in standard dictionaries. Technical words are given their technical meanings.

### **9.8.2 The Golden Rule**

The golden rule is that statutes should be interpreted so as to avoid absurdity or contradiction. For example in *Re Sigsworth (1935)* the golden rule was applied so that a murderer did not inherit on the death of his victim, although as her son, he was her only heir on a literal interpretation of the Administration of Estates Act 1925.

### **9.8.3 The Contextual Rule**

The contextual rule is that a word should be interpreted in its context. The courts will look at the document as a whole to discover the meaning of a word within it.

### **9.8.4 The Eiusdem Generis Rule**

The eiusdem generis rule is that where a number of specific items are listed and the lists ends with general words, then the general words are interpreted to mean other things of the same kind.

### **9.8.5 Contra Proferentum Rule**

The contra proferentem means that where there is an ambiguous term in an agreement, it is construed against the party for whose benefit it is intended.



## DOCUMENT 2

### WRITING PREPARATORY READING

#### 1. Introduction

You are probably familiar with writing lengthy legal essays from your legal studies to date. However, on the LPC we encourage you to develop other styles of writing in a more practical legal context. For example:

- A memo to another solicitor reporting on a piece of legal research you have undertaken;
- A letter of advice to a client who has no legal background;
- An attendance note of a meeting; or
- An email to a client or another solicitor.

The aim of the Writing course on the LPC is not to teach you spelling, grammar and punctuation. However, these skills are important and feature in both the Learning Outcomes and Assessment Criteria for the core skill of Writing.

The following extract from *LPC Skills Online* (First Edition, Oxford University Press) by Liz Polding & Jill Cripps contains a good explanation of why these skills are important:

*“Grammar, spelling and punctuation are important. If they are correct, they are not noticed. However, if they are incorrect, they convey an impression of sloppiness and inattention to detail. You may be an excellent lawyer with a keen eye for detail on legal matters, but if your writing contains errors, the client may feel that this tells them a great deal about your overall approach. This may cause them to lose confidence in you and focus on your punctuation error, rather than on what you are actually saying in your letter.”*

The ability to communicate effectively with clients and other professionals through various forms of writing is an essential skill to develop as a lawyer. Failure to do so may mean you are unable to convey your message to the recipient and could lead to confusion or delay in carrying out your client’s instructions correctly. The more you practise conveying your views or advice in writing to clients and other professionals, the easier it will become. There will be plenty of opportunities for you to practise this skill on the LPC.

#### 2. What are the Learning Outcomes for the core skill of Writing on the LPC?

On completion of this area, you should be able to communicate effectively in writing and should:

- Understand and be able to choose the appropriate method of communication;
- Understand and be able to apply the principles of good writing.

This breaks down into 3 elements as follows:

***Element 1: Appropriate use of media***

You should:

- Understand the appropriate use of e-mails, letters, memoranda and other forms of written communication;
- Be able to choose the appropriate medium, form and style;
- Be able to tailor the written communication to suit the purpose of the communication and the needs of different clients or recipients

***Element 2: Writing style***

You should be able to produce written work which is appropriate for the chosen medium and the recipient and which:

- Uses accurate, straight-forward and modern language;
- Uses correct spelling, grammar, syntax and punctuation;
- Has a clear, logical, consistent and appropriate structure and format;
- Has been checked and edited.

***Element 3: Content***

You should be able to produce written work which:

- Forms a coherent whole and, where appropriate, advances the matter;
- Addresses accurately and correctly all the relevant legal and factual issues and, where appropriate, identifies practical options including the costs, benefits and risks of those options;
- Identifies clearly clients' objectives and priorities, addresses their concerns and carries out their instructions;
- Accurately and systematically records a meeting or presentation and its outcomes.

### **3. How will the skill of Writing be taught?**

#### Full time students

You will have two Study Units dedicated to the skill of Writing. The first will be a combined introduction to Writing and Drafting and this will take place at the start of the course. The second Unit will be dedicated to the skill of Writing only and will take place a few weeks later.

In addition, further Writing tasks will be undertaken in Property Law and Practice ("PLP") and the rest of the Core Practice Areas. In particular, you will have:

- the opportunity to hand in a legal letter in PLP Study Unit 4 for tutor comment;
- two Additional Exercises on Writing in PLP. The first of these will be at the time of PLP Study Unit 6 and the second Additional Exercise is at the time of PLP Study Unit 11; and
- a Writing practice assessment (which is tutor marked) towards the end of the Autumn term.

#### Part time students

You will have two Study Units dedicated to the skill of Writing. The first will be a combined introduction to Writing and Drafting and this will take place in year 1. The second Unit will be dedicated to the skill of Writing only and will take place in year 2 of the course.

In addition, further Writing tasks will be undertaken in PLP and the rest of the Core Practice Areas. In year 2 of the course you will have:

- the opportunity to hand in a legal letter in PLP Study Unit 4 for tutor comment;
- two Additional Exercises on Writing in PLP. The first of these will be at the time of PLP Study Unit 6 and the second Additional Exercise is at the time of PLP Study Unit 11; and
- a Writing practice assessment (which can be tutor marked).

### **4. Feedback/Review**

As Writing is a skill to be practised, it is very important to reflect and evaluate on performance. This may be through self assessment, peer review or tutor feedback. We will be helping you to do this regularly and have designed a feedback sheet which we will ask you to complete at various stages for this purpose. For each piece of work reviewed we shall be focusing on particular learning outcomes.

## 5. How will the skill of Writing be assessed on the LPC?

Writing will be assessed in the context of PLP and will consist of one 1.5 hour paper. The first opportunity you have to take the assessment is in March (at the same time as your PLP Assessment). There are also assessment opportunities to take the Writing Assessment in June and August/September. (For part time students this will be in the second year of the course.)

As with the other core skills assessments, your assessment in Writing will be assessed on a competent/ non-competent basis. Individual grades will not be given.

## 6. What are the Assessment Criteria?

The Assessment Criteria are not the same as the Learning Outcomes as detailed above; the Assessment Criteria are similar but narrower than the Learning Outcomes.

The Assessment Criteria for the core skill of Writing are set out below (some of these criteria are self-explanatory but see the comments in the second column for further clarification as appropriate):

Assessment Criteria	Comments
Be consistent with the client's goals and instructions. A commercially effective document is what is required.	In its simplest form this means doing what the client has asked you to do. You will need to remember that the client will be relying on you for your legal expertise and the client's instructions will need to be filtered in the light of the law relating to the matter.
Clearly and accurately address all relevant legal and factual issues.	Attention to detail is critical.
Where appropriate: (a) identify any further information required; (b) address the relevant options, including the costs, benefits and risks of those options; (c) protect the client's interests; address the client's concerns; and (d) deal with client care and professional conduct issues	<p>Do not be vague when corresponding with or taking instructions from the client.</p> <p>In protecting the client's interests, you should advise clients on the advantages and disadvantages of each/any options. For example, letters of advice should present all the options to the client with the advantages and disadvantages of each to enable the client to make an informed decision.</p> <p>You should be careful not to disclose anything to a third party which may</p>

	<p>prejudice your client. For example, if you are trying to negotiate a claim for your client, it is not helpful to let slip to the other side's solicitor that your client is being pursued by HMRC for unpaid taxes and is therefore desperate to settle quickly!</p> <p>Be careful to ensure you address all the client's concerns. Sometimes those concerns may not be expressed explicitly.</p>
Be succinct and precise, covering all relevant matters without irrelevance or repetition	Long letters serve no useful purpose if the recipient does not read and understand them.
Use an appropriate structure and, if hand-written, be legible	
Be logically organised and form a consistent and coherent whole.	Plan and use headings and numbering as appropriate
Be written in a style appropriate to the circumstances, following the rules of grammar and using appropriate language, proper punctuation and correct spelling.	<p>Avoid unnecessary technical jargon when writing to clients. If it is necessary then the terms should be clearly explained.</p> <p>Think about the target audience for the relevant piece of written communication. For example, case references may be appropriate in a memo to a colleague but would not be appropriate in a letter to a client.</p> <p>Grammar and spelling are important. If you get the grammar wrong you could be conveying a meaning you did not intend. It also makes you look unprofessional to the client/ the other side's solicitor.</p>



## DOCUMENT 3

### PREPARATORY ACTIVITY

#### Writing Activity

Consider the two paragraphs of text below. Make a list of the problems with the original drafts and prepare re-drafts of the paragraphs of text. Be prepared to present your work to the rest of the class in the workshop:

1. Being ignorant of the law, the solicitor argued that his client should receive a light sentence.
2. My client is willing to grant a lease of the property for an annual rent of £15,000, to be paid each quarter in advance and your client must immediately carry out repairs shown on the attached list, and repaint the property by Christmas. Further my client insists upon your client replacing the entire section of fence at the southern boundary of the property, the replacement to be at your client's expense.

*[Notes to students on exercise 2:*

- *No list of repair work is included for the purposes of this exercise*
- *Under the terms of commercial leases rent is usually paid in advance on fixed quarter days (at intervals of three months) during a year.]*

#### Drafting Activity

Re-read the section of Document 1 entitled "Developing your Drafting Skills" and then answer the following questions. Be prepared to present your work to the rest of the class in the workshop:

1. What must a lawyer take into account before drafting any legal document and why?
2. Why must legal documents or agreements be drafted with great care?
3. Why might it be helpful to use a precedent?
4. Identify three characteristics of a well drafted legal document.





## **DOCUMENT 4**

### **ACTIVITY 1 SCENARIO**

You are a trainee solicitor in the Property department of the law firm Harringtons LLP, a large commercial law firm based in Bristol. The firm is acting for Jupiter Promotions in respect of Unit 129 Bloomdale Wharf, Gloucester. Your client contact is Tim Cheung. The company's address for correspondence is 21 Queens Square, Gloucester GL2 1RR.

Jupiter has agreed heads of terms with Phoenix Recycled Paper Limited for Phoenix to take a lease of Unit 129. An agreement for lease is to be exchanged shortly. The lease itself will be completed at a later date.

Your colleague, Barbara Smith (one of the Associate Solicitors at the firm), has been dealing with this matter. She is on holiday for a few days and asked her trainee to draft a letter to Phoenix's solicitor sending out the draft agreement for lease. Her trainee's draft letter is the next document in this bundle.



## DOCUMENT 5

### SOLICITOR'S LETTER

Harringtons

Charter House. New Street, Bristol BS1 2RW  
Telephone: +44 (0)117 976 2000  
Fax: +44 (0) 117 976 2100  
DX: 6200 Bristol

E-mail: law@harrington.co.uk  
Web: www.harrington.co.uk

Buxton Staple  
13 Barton Street  
Gloucester  
GL1 3QB

Your ref: PRPL12  
Our ref: JPL1  
[date of workshop]

Dear Sirs,

#### **Re: Agreement for Lease**

We acknowledge receipt of your undated letter to us which was received on \*  
September 20\*\*.

In accordance with the heads of terms we have now prepared a draft agreement for lease between our respective clients and we enclose the same herewith for your perusal and consideration.

We would refer you inter alia to clause 7 of the said agreement and ask you to note that we have provided that any alterations made to the premises by the tenant are to be re-instated at their expense. We ask you to confirm that such clause is in accordance with your instructions.

If you have any queries in relation to this matter then please do not hesitate to contact this office.

After perusal and consideration of the draft agreement we would ask you to return the same to us with your comments thereon and we will then attend to any amendments necessary and to the engrossing of the formal agreement for submission to Jupiter Promotions Limited for their execution.

Yours faithfully

Harringtons LLP

We use the word 'partner' to refer to a member of the LLP, or an employee or consultant with equivalent standing and qualifications. Harringtons LLP is a limited liability partnership registered in England and Wales (registration number OC345873) which is regulated by the Solicitors Regulation Authority. A list of the names of our members is available for inspection at the above address.



## DOCUMENT 6

### ACTIVITY 2 SCENARIO

You are a trainee solicitor in the company/commercial department of the law firm Harringtons LLP. The firm is acting for Somerset Organic Foods Ltd. Somerset Organic Foods is a new business supplying high quality organic foods throughout the South West of England. They have recently been approached by a small delicatessen business based in Bristol: Frescos Food Limited ("Frescos"). Somerset Organic Foods has engaged your firm to draft an agreement for it to supply goods to Frescos.

Earlier today you attended a meeting with your Supervising Principal, Janice Williams, and David Jones, who is the Operations Director of our client, Somerset Organic Foods. Janice talked David through the draft agreement she has prepared for Somerset Organic Foods and Frescos.

It became clear at that meeting that David would like a couple of additional clauses adding to the draft agreement and a couple of the existing clauses amended before it is sent to Frescos for their comments. David's additional requirements are:

- Somerset Organic Foods' recipes and ingredients must be kept secret by Frescos and Frescos must agree to this for the entire period of the agreement and for a period of five years from the end of the agreement. A new clause dealing with these requirements is needed (see precedent provided at Document 7).
- Any confidential information (such as the recipes and ingredients used in its products) given to Frescos by Somerset Organic Foods must only be used in order to allow Frescos to carry out its obligations under the agreement. This should be made clear in the agreement.
- Somerset Organic Foods must have the power to adjust its prices twice each year as the price of its ingredients is heavily affected by the seasons – ingredients which are cheap in the summer months are often at least twice the price during winter, as most products are locally sourced and importing from abroad is avoided where possible. There is not currently a price adjustment clause in the agreement, so this will need to be inserted as a new clause (see precedent provided at Document 7).
- Somerset Organic Foods will give Frescos one week's notice of any price adjustments it makes.
- The maximum liability that Somerset Organic Foods should be exposed to under the agreement is £100,000 – the value of the agreement to them over a three year period. Somerset Organic Foods needs to have a clear cap on its liability so that it can insure against any risk to its business. There is currently a liability clause in the agreement (clause 14) – Janice has attached the clause for you to amend (see Document 7).

- In addition to the cap on its liability mentioned above, the liability clause should clearly state that Somerset Organic Foods will not be liable for any use of the products by Frescos, nor should it be liable for any product created by Frescos which incorporates one of Somerset Organic Foods' products. This provision is needed as Frescos is considering creating a new food line to sell in its stores using some of Somerset Organic Foods' locally grown leeks and red onions.

Janice has handed you some precedent clauses (see Document 7) and has asked you to **draft new clauses on Product Prices and Confidentiality and to amend the clause on Limitation of Liability using the precedents**. These clauses will then be inserted into the agreement she has drafted, which will then be sent to Frescos for their comments and approval.

## **DOCUMENT 7**

### **PRECEDENTS**

#### **3. PRODUCT PRICES**

3.1 The Product Prices shall be the prices set out in Schedule 1. Except as expressly provided in this agreement, no variations shall be made to the Product Prices during the Term.

3.2 The Supplier may adjust the Product Prices with effect from 1 January of each year to reflect increases or decreases in the cost of raw materials and increases in the Consumer Price Index during the previous year. The Supplier shall give the Customer not less than one month's prior notice in writing of proposed changes. If the Customer objects to a proposed adjustment, it may refer the matter to an Independent Expert, who shall determine the appropriate adjustment.

3.3 Pending determination of a proposed adjustment to the Product Prices, the Product Prices then in force shall continue to apply. Once the Independent Expert determines the appropriate adjustment, the adjusted Product Prices shall be deemed to apply with effect from 1 January. Within one month of the appropriate adjustment being determined, the Customer shall pay the Supplier any outstanding sums due in respect of its purchases of Products since 1 January of the relevant year, together with any applicable VAT, or the Supplier shall refund the Customer for any excess amounts paid on Products purchased since the relevant date, and shall repay any VAT due to be repaid, as appropriate.

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#### **6. CONFIDENTIALITY**

6.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by clause 6.2 below.

6.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 6; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

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## **14. LIMITATION OF LIABILITY**

14.1 This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

- (a) any breach of this agreement; and
- (b) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

14.2 Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987.

14.3 Without prejudice to clause 14.2 above the Supplier's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to [£[AMOUNT]].