Larissa Wyss (Managing Editor) | Kathrin Weston Walsh (Contributing Editor)

Amy Jost | Richard Norman | Larry Teply | Stephanie Motz Sandra Kuhn-Schulthess | Clemens von Zedtwitz

The Legal English Course Book

Volume Two

Professional Legal English and Practical Skills (PLEPS Examination)

Lawbility C.H.BECK Helbing Lichtenhahn Werner Institute for Negotiation & Dispute Resolution Wyss Weston Walsh Jost Norman Teply Motz Kuhn-Schulthess von Zedtwitz

The Legal English Course Book Volume Two



www.lawbility.com

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Professional Legal English and Practical Skills (PLEPS Examination)

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Train your legal English. Demonstrate your lawbility!

Preface

As English has become the *lingua franca* for many important industries, including commerce, science, computing, and law, even non-Anglo-American companies often choose English for international negotiations and agreements. Consequently, the ability to use legal English competently and confidently has become a requirement for lawyers working in an international environment or with international clients.

We have specifically tailored the Lawbility Legal English Course Book Volume One and Volume Two (the 'Course Book') to focus on applying precisely these legal language skills in practice. The courses are designed to improve your legal writing and speaking skills, and to expand your legal vocabulary.

The Course Book will also help prepare you for the Professional Legal English and Practical Skills (PLEPS) Examination, which assesses your level of professional language and ability to use this language in different legal practice scenarios. The exam certification demonstrates that you can successfully and confidently provide legal services in English (for more information regarding the PLEPS Examination, see: www.legalenglishexperts.com).

The Course Book features a compilation of handouts and other teaching materials developed by Lawbility's team of coaches for the legal English courses. Lawbility's team consists of practising lawyers trained and licensed in the US, the UK, Australia, and civil law jurisdictions, as well as linguists with extensive experience teaching and coaching legal English. As a result, the Course Book's materials cover a broad spectrum of legal areas, different approaches to teaching legal English, and formal as well as informal communication styles. The different approaches to legal English in the Course Book reflect the differences in style, tone, and legal terminology you may encounter in dealing with colleagues, clients, and opposing counsel in international legal practice.

Specifically designed for legal practitioners, the Course Book, together with The Legal English Manual and classroom activities, will enable you to practise your oral and written legal skills to master various situations so that you can demonstrate your lawbility!

Please send any comments or queries you may have to legalenglish@lawbility.ch

August 2018

Larissa Wyss Managing Editor Jean-Luc Delli Managing Director Lawbility Ltd.

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Volume One

Module I: Oral Negotiation and Pleading

- 1. Language Check
- 2. Advocacy and Pleading in Practice

Module II: Meeting Language and Minutes

- 1. Reported Speech
- 2. Expressions for Negotiation and Legal Meetings
- 3. Legal Meetings
- 4. Minutes

Module III: Contract Clauses and Emails

- 1. Introduction to Contract Formation
- 2. Key Terms: Contract Formation
- 3. Writing Practice

Module IV: Legal Writing Skills

- 1. Capital Letters
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Module V: Exam Strategies and Revision

- 1. Informal vs. Formal
- 2. Practice Exam

Module VI: Effective Negotiation Techniques

- 1. Introduction to Negotiation
- 2. Negotiation Techniques
- 3. Negotiations Collocations and Expressions

Module VII: Practice-Orientated Negotiation Scenario

1. Negotiation Exercise

Module VIII: Reviewing Common Contract Clauses

- 1. Contract Comprehension
- 2. Key Terms and Collocations

Module IX: Practical Email Training

1. Practical Email Training

Module X: Drafting Professional Correspondence and Memoranda

- 1. Professional Client Correspondence
- 2. Professional Drafting Avoiding Common Stylistic and Usage Errors

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How to Use the Course Book

Introduction

Unlike The Legal English Manual (2nd ed.) (the 'LEM'), the Course Book is not intended as a substantive reference work. Instead, the Course Book offers examples and exercises for the sole purpose of helping you practise your oral communication and legal writing skills across a variety of contexts. Accordingly, while the Course Book contains several exercises featuring contract clauses or correspondence, these examples are not in any way intended as templates or models to be used in practice, nor should they be interpreted as statements on substantive legal matters.

The Course Book consists of two volumes:

- 1. Volume One: a 10 module 'crash course'
- 2. **Volume Two:** an 11 module detailed course, with an in-depth study of practical skills, professional legal language, and terminology

The LEM complements the Course Book with its rich variety of legal language, notes on substantive legal matters, and templates for legal writing and oral communication. As volumes one and two of the Course Book refer to material in the LEM, students will benefit from having the LEM available for reference.

In contrast to the LEM, the Course Book is written in UK style. These differences occur not only with regard to spelling, for example: defense counsel (US) and defence counsel (UK), but also in date formats: 3/4/2017 (US) and 4.3.2017 (UK), or December 30, 2000 (US) and 24 June 2003 (UK), and in the use of punctuation: Mr. Jones (US) and Mr Jones (UK). You may also encounter these differences in dealing with colleagues, clients, and opposing counsel in international legal practice. You are, of course, free to adopt either American English or British English, but we recommend that correspondence and other documents be internally consistent.

Volume One

Legal practitioners may wish to take an intensive course, which touches on and reviews negotiation, contract law, and corporate law. The aim of the intensive course is to give practitioners the basics of terminology and some key concepts in these areas. You will practise your oral skills, written skills, and grammar, and, at the same time, focus largely on applying these skills and developing confidence in practice.

Course participants will be given the opportunity to complete a practice Lawbility Legal English Exam and receive feedback from their teachers. While volume one offers a wealth of information, new vocabulary, techniques, and tips, this volume does not delve into all the details necessary to attain a higher standard of legal English. After completing this course, you will have the basic necessary knowledge to undertake a second course in line with volume two.

Volume one is the minimum preparation required for the Lawbility Legal English Exam. In order to attain a higher professional standard of legal English, Lawbility strongly recommends that you work through volume two before taking the exam.

Volume Two

Volume two will better prepare course participants both for legal English in the workplace and the Lawbility Legal English Exam. You will learn key terminology and collocations (a pair or group of words that are habitually juxtaposed or 'word partners') for a wide range of legal practice areas, giving you greater confidence to write and speak about various topics in a professional context.

Legal English is rich in collocations, and using them correctly helps to ensure that your communication is sophisticated and appropriately formal. The focus will also be on legal writing and correspondence, in line with the correspondence and documents that you may draft or receive in the exam and in the course of your professional duties.

These exercises provide you with an opportunity to practise and develop your writing ability, whilst receiving feedback and reviewing sample legal documents from teachers. You will also become familiar with some of the main differences between British and American English and these jurisdictions' respective legal systems.

Furthermore, class participants will be given the opportunity to participate in role-plays and oral communication exercises, where you will learn, memorise, and practise important expressions to use on appropriate occasions. These oral communication exercises will cover a range of legal areas, including negotiation, employment law, and corporate law. As such, they will also help you recognise and appreciate the language that your colleagues, opposing counsel, and clients use.

As volume two makes reference to exercises in volume one, students will benefit from having both volumes available for reference.

Answers

The answers to the exercises can be found at the back of each volume. Practitioners can therefore self-correct their answers, which aids in learning and enables independent study, homework, and revision.

As is true for the exercises in the Course Book, the answers to some of the exercises will also require referring to the LEM.

The Training and Coaching Legal English Teacher's Handbook

The Course Book offers a range of exercises and materials developed following extensive research and consultation with international multidisciplinary lawyers and language coaches. The materials have been designed to save you time when preparing for your legal English classes, and to provide you with additional ideas to assist you in your own legal English studies or coaching.

The Teacher's Handbook (the 'Handbook') provides you with teaching concepts that complement the exercises found within the Course Book. It is intended as an essential guide for prospective coaches of legal English under Lawbility's Coach Accreditation Programme. We recommend you read the Handbook in conjunction with the Course Book as a resource to guide and assist you from your very first assignment onward.

Lawbility's coaching system is multi-faceted and group-orientated. Groups can be smaller or larger (smaller groups of up to 12 candidates are preferred). The main components of Lawbility's coaching system comprise:

- a) continuous interaction between the coach and candidates through a highly interactive lecturing style;
- b) team work and problem solving; and
- c) coach-led exercises that add value to the legal topics discussed and engage candidates, thereby enabling an interactive and engaging curriculum.

To order your copy of the Handbook, please contact legalenglish@lawbility.ch

Legal Comprehension and Fact Analysis

- 1. Introduction
- 2. Contract Comprehension, Fact Analysis, and Issue Spotting
- 3. Company Law: Fact Analysis and Issue Spotting

Contract Comprehension, Fact Analysis, and Issue Spotting

2.1. Read the contract provision below and answer questions one to three

Liquidated Damages Provision in Condominium Construction Project

The condominium's master builder (the 'Builder') and the subcontractor responsible for all electrical wiring (the 'Subcontractor') with regard to condominium units 1-14 (the 'Units') hereby agree as follows:

The Builder and the Subcontractor (collectively, the 'Parties') hereby agree that the Subcontractor's installation of all electric wiring (the 'Electrical Work') in the Units within ten working days is a necessary condition to completion and preparation for sale of the Units, and that, therefore, time is of the utmost essence with regard to the Subcontractor's completion of the Electrical Work.

In light of the foregoing, the Parties agree that the Builder will be deemed to have suffered damages should the Contractor fail to complete the Electrical Work as specified in this agreement within ten working days, as agreed herein. Given the difficulty of ascertaining, quantifying, and proving the amount of such damages to the Builder, the Parties agree that the amount of such damages will be deemed to be the liquidated sum of \$1,000 per additional calendar day beyond the agreed-upon timeframe in which the Subcontractor fails to complete the Electrical Work. This liquidated damages sum includes all expenses such as inspection and assessment, any travel deemed necessary in the Builder's opinion, and the rental of any necessary additional equipment.

Should this liquidated damages provision enter into effect, as a result of the Subcontractor's failure to perform the Electric Work within the agreed-upon timeframe, the Subcontractor agrees that the Builder will deduct the damages calculated as specified herein from any amounts due or owing to the Subcontractor pursuant to this agreement. Should there be no such amounts due or owing to the Subcontractor, the Subcontractor agrees to pay the Builder as

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liquidated damages, exclusive of any penalties, the total sum attributable to the delay in completing the Electrical Work, that sum to be calculated as set forth in this provision.

- 1. What does the legal expression 'time is of the essence' mean?
- 2. How much would the Builder be entitled to receive as damages if the Electrical Work were not completed in ten days, as agreed, but rather in 15 days?
- 3. If this clause is breached, how will the Builder receive compensation?



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Contract Language and Contract Drafting

- 1. Contract Language and Contract Drafting
- Do's and Don'ts of Contract Writing – General Rules
- 3. Key Terms
- 4. Practising Key Terminology

- 5. Collocations
- 6. Important Verbs in Contract Drafting
- 7. Legalese to Plain English
- 8. Navigating Contracts
- 9. Drafting Contract Clauses

5. Collocations

Collocations are words that naturally match. These are natural word 'partners' that native speakers put together automatically. In legal documents, they most often appear as a noun + noun combination, or as a verb + noun combination.

Example A: **parties** to a **contract** (noun + noun combination) Example B: **to file a document** (verb + noun combination)

5.1. Read the sample contract on pages 234-236 of the LEM and write down below as many collocations, key terms, and terminology as you can find in the sample contract

5.2. Substitute the correct professional term for the words in bold

- 1. A lawyer's work frequently involves writing contracts.
- 2. The lawyer will first **make** a list of the substantive terms he or she wants to include, and will then **bargain** with his adversary regarding those terms.
- 3. In writing the contract, the lawyer will use defined terms to make it very clear what a particular contract clause **talks about**.
- 4. The two sides may **interpret** the language of the contract differently, and one lawyer may ask the other to **change** or **edit** particular clauses.

- 5. **Editing** certain clauses may **change** the substance of the contract so that the parties may decide to **take out** particular portions of the contract.
- 6. Once the lawyers have finalised the contract, the parties will **sign** it. The terms of the contract will now be treated as **mandatory** upon the parties.
- 7. After **signing** the contract, the parties are **obligated** by it, must **respect** the contract's terms, and must **act** under the contract.

5.3. Insert the term or terms missing from the collocations

Offer

- 1. Starluck Ltd. ______ an offer to purchase the secret recipe for a new coconut latte macchiato.
- However, the recipe's owner wanted to start his own coffee franchise business, so he ______ to accept the terms Starluck Ltd. offered, and instead ______ the offer.
- 3. The position was his dream job, so John decided to _____ ABM's offer of employment.
- 4. However, when ABM found out that John had lied on his CV, the CEO decided ABM could not hire him after all, and decided to ______ the offer.

Contractual Rights

- 5. The licencing agreement ______ Michelle the right to use Sanro's Hello Kitty trademark on her clothing line for children.
- Michelle paid so much for the licence that she planned to ______ this right to the fullest extent by putting Hello Kitty on every T-shirt in her boutique.
- In return for the licence, Michelle had to ______ any rights to use Disney characters on the clothing she designed.
- 8. The contract provided that if Michelle did use any Disney characters in her clothing designs, Sanrio would immediately seek to ______ the liquidated damages clause against her.

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Legal Memorandum

- 1. Structure of a Memorandum
- 2. Style of a Memorandum
- 3. Drafting a Memorandum

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2. Style of a Memorandum

2.1. Changing passive to active voice

Edit the following sentences to eliminate the passive voice.

- 1. The parties agreed that the venture should be undertaken by them jointly.
- 2. The documents were provided to us by her paralegal.
- 3. This is a substantive issue to be decided by the arbitral tribunal.
- 4. The plaintiff's argument in favour of awarding costs should not be believed by the court.

2.2. Transforming double negatives to positive form

Eliminate double negatives by rephrasing the sentences in a positive form.

- 1. We should not assume that the supplier has not breached the contract.
- 2. Notice will not be effective unless the non-breaching party receives it within 30 days of sending the notice.
- 3. We will only select him for the position if he does not fail the bar exam.

2

2.3. Eliminating weak to-be verbs

Rewrite the following sentences to eliminate the be-verbs.

- 1. We are all in agreement that this is a decision we have to make soon.
- 2. Whether he is successful is dependent on whether his business plan is in compliance with the local zoning ordinances.
- 3. The painting is evocative of a beachfront sunset.
- 4. Everyone who was in attendance at the meeting was in favour of finding that the CFO's actions were violative of the corporation's bylaws.
- 5. Whether he is a resident of Sweden for tax purposes will be determinative of whether Swedish law is applicable to this case.

2.4. Changing weak nouns to strong verbs

Improve the following passages by changing all but one or two of the -ion words.

- 1. The plaintiff had made allegations that his employer had engaged in an improper termination of his employment.
- 2. The employer issued a denial of the plaintiff's allegations.
- 3. She asked her lawyers to make some modifications to the proposed agreement.

Answers

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Answers

Module IV Legal Memorandum

1.1. Solution example

D, A, C, E, B

1.2.

The individual components are:

- A. Short answer / Executive summary
- B. Issue / Question presented
- C. Facts
- D. Conclusion
- E. Analysis / Discussion

In application of the IRAC rule, the correct order is **B**, **A**, **C**, **E**, **D**

2.1.

- 1. The parties agreed to undertake the venture jointly / that they would undertake the venture jointly.
- 2. Her paralegal provided us with the documents / provided the documents to us.
- 3. This is a substantive issue for the arbitral tribunal to decide.
- 4. The court should not believe the plaintiff's argument in favour of awarding costs.

2.2.

- 1. We should not assume that the supplier has fulfilled / honoured / satisfied the contract.
- 2. Notice will be effective only if the non-breaching party receives it within 30 days of sending the notice.
- 3. We will only select him for the position if he passes the bar exam.

2.3.

- 1. We all agree to decide soon / make this decision soon / that we should make this decision soon.
- 2. Whether he succeeds depends on whether his business plan complies with the local zoning ordinances.
- 3. The painting evokes a beachfront sunset.
- 4. Everyone attending the meeting favoured finding that the CFO's actions violated the corporation's bylaws.
- 5. Whether he is a Swedish resident for tax purposes will determine whether Swedish law applies to this case.

Information about the Professional Legal English and Practical Skills (PLEPS) Examination



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INFORMATION REGARDING CERTIFICATION

Candidates taking the Professional Legal English Language Examination demonstrate the level at which they master professional written language as well as comprehension and use of legal terminology in practical legal writing. The Professional Legal English Language Certificate reflects the level each successful candidate has achieved with regard to professional written legal English language and with regard to practical legal writing. Successful candidates should use the following format when referring to the Certificate on a CV or web bio:

Amani Gross Trainee

Expertise:

Intellectual Property Law, Tax Law

Languages:

German	(Native Speaker)
English	(Lawbility Professional Legal English Language Certificate 2018)
French	(strong verbal communication skills)
Spanish	(intermediate general language skills)

Career:

2017:	Trainee at Whitefields AG
2016:	University of Bern, Master of Law
2015:	University of Bern, Bachelor of Law

Admission:

Not admitted to the Bar

AUTHENTICATION OF CERTIFICATE

Lawbility keeps records of those candidates who take the examination, as well as records of their results. Upon request, Lawbility will provide candidates or third parties with a copy of the applicable Certificate (an administrative fee applies).

For additional information, please contact legalenglish@lawbility.ch.



SKILLS ASSESMENT

Exam candidates demonstrate their level of professional language and use of legal terminology in practical legal writing. Each exam candidate will receive a Professional Legal Language Certificate stating their level of Professional Legal Language.

PROFESSIONAL LEGAL LANGUAGE SKILLS

Professional Level (equivalent to CEFR's C2*)

- Content and Communication: The candidate completes the task with no omissions, and the communication is equal to what a law firm would expect – politeness, assertiveness, ease of communication, etc. Almost no errors.
- Text Organisation and Structure: Well-organised piece with a clear flow using a variety of simple and complex linking devices. Hardly any errors.
- Grammar and Vocabulary: The candidate demonstrates proficiency in using both common and less common vocabulary. Uses a wide range of grammatical structures, such as simple and complex verb tenses, conditionals, inversions, passive structures, more than one modality (future, present, past), relative clauses, etc. Hardly any repetition of vocabulary. Errors are minimal.

Advanced Level (equivalent to CEFR's C1*)

- Content and Communication: The candidate completes the task using a straightforward, but not necessarily sophisticated approach. Incorporated some complex ideas. Addressed the issue and the receiver in an appropriate way. Some errors occur when the communicator stretches his/her grammar or vocabulary use.
- Text Organisation and Structure: Well-organised piece using a variety of simple and some complex linking devices. Some minor errors apparent.
- · Grammar and Vocabulary: The candidate uses both common and less common vocabulary appropriately. Uses a wide range of grammar with occasional errors, which do not impede communication.

Upper Intermediate Level (equivalent to CEFR's B2*)

- Content and Communication: The candidate completes the task using a straightforward approach. Some errors occur, but do not impede communication.
- Text Organisation and Structure: Well-organised piece using a variety of simple and some complex linking devices. Some minor errors apparent.
- Grammar and Vocabulary: The candidate uses both common and less common vocabulary appropriately. The candidate also uses a wide range of grammar with occasional errors, which do not impede communication.
- * CEFR: Common European Framework of Reference for Languages

PRACTICAL LEGAL WRITING SKILLS

Professional Level

The candidate has a superior grasp of professional language terminology and can accurately and elegantly use a wide range of professional phrases and formulations; effectively uses professional terminology, collocations, and expressions to present and develop arguments, evaluate ideas, and offer convincing possibilities for alternative courses of action for clients; is attuned to and can respond appropriately to differences in tone and displays cultural sensitivity in communications with English speakers from different backgrounds.

Advanced Level

The candidate has a strong grasp of professional language terminology and can accurately use a number of professional phrases and formulations; can clearly and concisely present and develop arguments, evaluate ideas, and present different options in client correspondence.

Upper Intermediate Level

The candidate competently understands and uses key professional language terminology across different areas of law; can draft clear and accurate correspondence using basic professional terminology and formulations.

INFORMATION OF THE ISSUER OF THE CERTIFICATION

The examination is developed by a team of expert linguists and lawyers with extensive experience in teaching, coaching, and assessing the professional legal English language skills of lawyers and law students. All examiners were selected by Lawbility Ltd. and meet the applicable requirements in terms of language and legal knowledge, as well as training in professional education.

GENERAL INSTRUCTIONS GIVEN TO EXAM CANDIDATES

- The exam consists entirely of written questions and answers. There is no oral testing component.
- Candidates will have two hours (120 minutes) to complete the exam (exception: granted prolongation requests) and can achieve a maximum of 120 points.
- Each question on the exam will indicate the number of points one can achieve on that question. Although candidates are free to choose how much time to spend on each question, we recommend scanning the exam and the point allo-
- 22 cation per question briefly before starting the exam.

- There is no penalty for guessing or for incorrect answers.
- Candidates may not use any additional materials during the exam period and are requested to write legibly. Answers that cannot be read will not receive any credit.

EXAM PART ONE: PROFESSIONAL LEGAL LANGUAGE (60 TOTAL POINTS) KEY LEGAL TERMINOLOGY (40 POINTS)

Exam Content

Key legal terminology in important legal and practice areas, including inter alia: • contract formation

- contract remedies
- assignment of contracts and third-party rights
- corporate/company law (company formation, capitalisation, and fundamental changes in a corporation)
- employment law

Testing Methods

- Rewriting and fill-in-the-blank exercises in documents commonly used in practice, e.g. memoranda
- Contracts, correspondence and file notes
- Defining, describing, and translating legal terms and concepts

Skills Tested

Comprehension of Key Terminology and Legal Concepts:

- Reading and understanding legal terms in context
- Actively using accurate legal terminology, including terms of art, in context
- Accurately using legal terminology with the appropriate collocations, phrases, and expressions

Document Sources

- LEM
- Course Documentation
- International Legal Practice Documents

How to Prepare

Review LEM Part I and your Course Documentation

 LEGEND
LEM: The Legal English Manual
Course Documentation: The Legal English Course Book - Volume One / Volume Two
International Legal Practice Documents: Documents used in international legal practice

PROFESSIONAL WRITTEN COMMUNICATION (20 POINTS)

Exam Content

Terms and expressions used in professional written communication, including inter alia:

- formal vs. informal formulations
- forms of address and titles
- asking for information
- arranging next steps
- closing phrases

Testing Methods

Review and revise a poorly written email communication or similar correspondence using professional legal language.

Skills Tested

Text Comprehension and Written Communication Skills:

- Reading and understanding a written legal communication
- Identifying obviously unprofessional expressions and poor word choices
- Using professional formulations in writing to revise the same

Document Sources

- LEM Manual Part II (especially LEM Manual on Substantive Correspondence to a Client)
- Course Documentation

How to Prepare

Review LEM Part II and your Course Documentation

EXAM PART TWO: INTERNATIONAL LEGAL PRACTICE (60 TOTAL POINTS)

DOCUMENT COMPREHENSION (30 POINTS)

Content (law, language, practice)

Key Contract Terminology and Clauses, e.g.

- contract commencement
- term and termination

- parties' positions
- rights and obligations
- governing law
- dispute resolution procedures
- IP ownership, insurance, and indemnification
- severability
- jurisdiction and venue
- merger clauses

Testing Methods

Review a straightforward contract drafted pursuant to common or civil law principles and prepare written answers to questions on the contract.

Skills Tested

Text Comprehension and Analysis Skills:

- Demonstrating an understanding of important contractual terms in context
- Interpreting common contractual clauses in context
- Drafting a brief assessment of how particular clauses affect a client or other contractual party

Document Sources

- LEM
- Course Documentation
- International Legal Practice Documents

How to Prepare

Review LEM Part II and your Course Documentation

LEGAL DRAFTING (30 POINTS)

Content (law, language, practice)

Professional Formulations in Written Client Communications:

- correctly addressing clients, drafting a strong introductory paragraph
- identifying legal issues
- \bullet providing a short analysis evaluating and recommending $\mbox{course}(s)$ of action
- choosing appropriate closing formulations

Testing Methods

Prepare a short written communication to a client advising them on a point of domestic law. The exam will provide a short set of facts, as well as set of legal assumptions under domestic law.

PLEPS Examination

Skills Tested

Professional Written Communication Skills:

- Reading and understanding the client's problem and needs
- Identifying legal issues
- Providing the client with a piece of legal advice
- Drafting a professional written communication to a client

Document Sources

- LEM
- Course Documentation
- International Legal Practice Documents

How to Prepare

Review LEM Part II and your Course Documentation

personal notes:

	PLEPS Examinat	tior
ersonal notes:		



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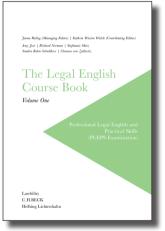
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