

Case Studies
A Letter-Writing Activity in Commercial Practice

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Introduction

The University of Hong Kong is in the process of designing a new PCLL (post-graduate certificate of laws), a one-year post-graduate professional legal education programme, which is a prerequisite for commencing on-the-job legal training in Hong Kong. The existing PCLL is a subject-based programme that has been criticised for over-emphasising substantive law and under-emphasising legal skills. The new programme is a response to this and other criticisms.¹ Instead of being organised around traditional subjects, the new programme will be organised around skills such as writing, drafting, advising, negotiation and advocacy. Each skill will be embedded in a realistic context or common area of practice in Hong Kong. Each unit of instruction is set out in a learning activity plan or activity plan. The activity plan set out in Appendix A is one of many activity plans written as part of the redesign exercise. The purpose of this article is to introduce this activity plan to readers and, in the commentary that precedes it, to explain some of the principles and techniques used in designing it.

We suggest that readers read the activity plan in Appendix A and then move on to the commentary in the next section.

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¹ These are set out in a 445-page review of legal education in Hong Kong prepared by Paul Redmond and Christopher Roper for The Steering Committee on the Review of Legal Education and Training in Hong Kong, Legal Education and Training in Hong Kong: Preliminary Review, August, 2001.

The New PCLL

To redesign its PCLL programme, the Department of Professional Legal Education established a design team, including the authors. We have undergone training in design and teaching skills to enable us to refashion the curriculum so that it is organised around skills rather than substantive or procedural law. The one-year curriculum is divided into two modules referred to as the non-contentious and contentious modules. In the non-contentious module, students focus mainly on writing, drafting and advising skills carried out in property, commercial, wills and probate transactions. In the contentious module, students focus mainly on advocacy, negotiation, research, opinion writing and pleadings drafting in the context of civil and criminal litigation.

The most important mode of instruction for the new PCLL will be small-group learning activities. In the activities, students will work through problems and simulations in training groups of sixteen. The learning activities are set out in the activity plans, a format for programmed instruction first developed for professional legal education (PLE) by Neil Gold in 1983.² The Professional Legal Training Course of British Columbia revised the format and it was soon adopted in several other PLE courses around the world.³ The activity plan format presented here is a variation on the original theme.⁴

The design of learning activities has evolved into a sophisticated practice. Gold and colleagues foresaw how important learning activities would become in professional legal education. In 1989 they published a book that included activity plans contributed by designers in several countries.⁵ Since the publication of that book, however, very little in the way of activity plans has been published. We believe that the design of good activity plans and the problems that go with them are vital to the success of the new PCLL programme and may well be the most important element of effective legal education.⁶ If this is so, there needs to be wider dissemination of activity plans as well as elaboration of the operational principles they embody.

² For background, see Neil Gold, "The Professional Legal Training Program: Toward Training for Competence" (1983) 41 *Advocate* 247 and (1983) 1 *The Journal of Professional Legal Education* 1.

³ E.g. The Institute of Professional Legal Studies of New Zealand; the Professional Legal Education and Training programme at the University of Queensland; the Bar Vocational Course, College of Law, London; the Legal Practice Course at Nottingham Law School; the Bar Admission Course, Ontario; the PCLL at the University of Hong Kong and the City University of Hong Kong.

⁴ A British law teacher studied PLTC's approach to design and wrote an article that influenced the development of professional legal education in England. See Phil Jones, "A Skills-based Approach to Professional Legal Education – an Exemplary Case", (1989) 2 *The Law Teacher* 173.

⁵ Neil Gold, Karl Mackie, and William Twining, *Learning Lawyers' Skills*, London, 1989.

⁶ Stephen Nathanson, "Designing Problems to Teach Legal Problem Solving", 2 *California Western Law Review* 325, 326-8.

Design Principles

While many of these principles are under-researched, they are still well-known among experienced designers. The most important, overarching principle is that learning activities designed for small groups should be focused primarily on skills and only secondarily on the knowledge needed to perform them. Thus, while it makes sense in the design of most learning activities to achieve a balance of skills and knowledge, the primary focus should remain on skills. To achieve this, the problems designed for students to work on must follow certain principles. Realism is one of them. Consistency with current legal practice is another. To achieve the appropriate balance of skills and knowledge, realism and consistency with current practice must not be overdone, otherwise the problem may become too complex or issue-laden. If this occurs, students and teachers will get sidetracked by finer points of law and legal practice. The result will be that the focus of learning will shift from skills to knowledge.

The need to ensure the primacy of skills over knowledge is related to the significance of transfer of learning in professional education. Since the knowledge required for professional practice is constantly changing and since, in any event, students can learn only a tiny fraction of that knowledge, it stands to reason that for students entering the world of professional practice, it is of primary importance to learn skills that can be transferred to the workplace. This in turn suggests that designers should not only emphasise skills but help students develop the habit of transfer.

Designers have observed that, with careful design, legal skills can be transferred among a variety of different contexts.⁷ Moreover, it is not just legal skills, such as writing or negotiation, that can be transferred. Also important are more illusive skills, such as being able to identify transfer opportunities. By using a variety of techniques, designers can enhance this particular skill by constantly highlighting the importance of transfer and by using systematic approaches to instruction. For example, designers can construct theories of skills, summarised in skills guides,⁸ that can be applied in a variety of different contexts. Designers can remind students when transfer is occurring or is likely to occur or they can require students to identify transfer opportunities. The content of activity plans can be arranged so that students learn to see similarities in different types of legal work. In the design of learning activities, we need to do everything possible to encourage not just the development of legal skills, but also the ability to see and understand these similarities. It can be argued that all these techniques help to develop the habit of transfer, which is so critical in learning to deal with new types of problems. For a young lawyer

⁷ Stephen Nathanson, "Putting Skills and Transactions Together in Professional Legal Education", (1987) 5 *The Journal of Professional Legal Education* 187, 195.

⁸ See Appendix C for the "Letter-writing Guide" used in the Activity Plan in Appendix A.

to confront a new problem with a sense, however vague, of having seen something like it before is to be given not only a head start in solving the problem, but a reminder that professional practice is not just a chaotic heap of different problems, but a comprehensible whole with a coherent, though not yet visible, shape.

In the new PCLL, we are applying a variety of design principles in an effort to encourage transfer of learning. The activity plan in Appendix A provides illustrations of two of these principles: *integration* and *ease of use*.

Integration

In order to promote transfer of learning among a variety of legal contexts, the designer needs to integrate skill and knowledge objectives, while keeping the skill objective dominant. In Appendix A, the designer⁹ needed to integrate writing skill with knowledge of banking law and practice. She had to achieve balance by including enough relevant legal details to make the activity meaningful, but not so much as to overwhelm the skill.

To do this, she used three techniques: graduated performance, focused practice and building-block sequencing.

Graduated performance

With graduated performance, she moved the students systematically from simple to more complex skills. This can be seen in her three learning objectives at page 76 which, for convenience, are repeated here:

“After completion of this exercise, students should be able to:

1. explain the meaning and legal effect of a guarantee;
2. prepare a plan for writing a letter of advice to lay client; and
3. write a letter of advice to lay client to explain clearly the meaning and legal effect of the provisions in a standard guarantee.”

These objectives are outlined in the order in which students learn them in the activity, but also in order of their complexity, so that writing the letter, which is the last part of the activity, is the most challenging. Using graduated performance, students are able first to acquire some legal knowledge through reading; secondly, they apply it in a realistic context to the interpretation of a guarantee; and, finally, they structure their advice and write the letter.

⁹ Jessica Young wrote the activity plan and Stephen Nathanson wrote the commentary. They collaborated on rewriting both.

Focused practice

The designer also used focused practice in designing the activity plan. To avoid crowding out other learning objectives, overwhelming students with details or simply boring them, students are asked to advise not on every provision of the guarantee, but rather on selected provisions only. In addition, the designer kept the facts as simple as she could, while keeping the scenario real. Last, but not least, the reading that students are asked to do in preparation for the small-group activity is kept to a minimum. It is important that students do not become sidetracked from the skill that the activity aims to develop.

Building-block sequencing

Mindful that students learn best by building on what they have already learned, the designer employed a "building blocks" approach to design. The activity plan set out in Appendix A in fact forms part of a trilogy of activity plans all of which are set in a loan and security context. It is the second of three activities (Activity 2). It is preceded by Activity 1 in which students analyse a simple loan agreement. The designer appreciated that, for students to be able to write a letter of advice to explain the effect of a guarantee in Activity 2, students must first learn legal concepts governing a loan transaction and the skills necessary for them to analyse related documents. Activity 1 is the building block that serves this purpose. Similarly, Activity 3 builds on Activity 2 in that students write a letter that is more challenging than in Activity 2. In Activity 2 they are asked to interpret and explain, but in Activity 3, they have to advise on various options to enforce security for a problem loan. As this leads to client decision-making, it is a more complex task.

Note, in particular, that in Activity 2 the designer intends students to make conceptual connections between the two activities in order to promote transfer. The increased complexity of the task in Activity 3 is foreshadowed in Activity 2. For example, in Activity 2, students are asked to advise clients on the possibility of deleting clause 16 of the guarantee. This goes a little bit beyond interpretation and explanation into the realm of options analysis and client decision-making. For students with little exposure to problems of this kind – problems that involve an analysis of both the client's goals and the bank's, as well as an understanding of bargaining positions, advising the client in this situation is no simple matter.

But this particular sub-task was included in Activity 2 precisely because it does foreshadow the complexity of Activity 3 and more complex exercises that occur later in the programme in different contexts. In other words, it highlights an opportunity for transfer of learning. Inserted in the guidance notes to the teacher at page 79 is a reference to transfer of

learning. It is repeated here:

“Remind students that their advice in relation to clause 16 goes beyond mere legal interpretation and explanation. It foreshadows the kind of advice they will be giving later on in PCLL – helping the client to make a decision. In such a case, lawyers need to analyze options and consequences. To do this, students need to think about both the client’s and the bank’s goals as well as their respective bargaining positions.”

To encourage transfer, teachers are prompted to alert students in this way, and will alert them again when similar, more complex, tasks arise in later activities.

Ease of Use

Activity plans are full of information and instructions. The design principles that they incorporate need to be user-friendly and easy to discern. When instructions are easy to read and follow, as they are in this activity plan, it makes the learning activity efficient and the objectives easier to achieve. The activity plan format itself enhances ease of use. Using precisely the same format with each activity does the same. In Appendix A the designer’s faithful adherence to the format and the clarity of the instructions to both students and teachers enable both to focus easily on achieving the objectives.

Experienced teachers know how much time can be wasted when instructions are unclear and how inefficient learning can be when instructions must be explained and repeated. One technique that this activity illustrates that is helpful in achieving efficiency is the use of subgroup patterns. Readers will note, for example, that when the group is divided into subgroups in this activity, the subgroup pattern is described as “E”.¹⁰ “E” is a subgroup pattern that students will immediately recognise by reference to their course handbook. Each student in a 16-member group is assigned a number for the duration of the programme and subgroups “E” denotes how those numbers are configured into subgroups.

For the teacher, the use of subgroup patterns obviates the necessity to spend time and energy dividing students into subgroups and moving them around the classroom. When the students see subgroup “E” in the activity plan, they automatically break into subgroups and move around the room themselves.¹¹ In addition, because subgroup patterns are changed with each activity, it ensures that students work in a different subgroup each time. With user-friendly activity plans, student responsibility for learning is not just a slogan; they actually facilitate the assumption of

¹⁰ In Appendix A, see under “Activity,” 2. Students divide into subgroups (E)

¹¹ For this subgroup pattern, see Appendix B.

that responsibility. The instructions are so clear that students can carry them out with minimal guidance from teachers.

Like all effective activity plans, this one is also user-friendly for teachers. The teacher is given comprehensive, step-by-step guidance notes as well as answer guides or sample answers. This does not mean that the notes restrict the teacher to a narrow agenda or to rigid methods, but it does mean that all teachers leading this particular activity are provided with the tools necessary to achieve the same objectives. The existence of common objectives in all training groups gives students the sense that they are all moving towards a common purpose. This is a strong motivating influence and reinforces the value of teamwork inside each training group.

Appendix A

Week	: 11
Day	: 1
Time	: Group A -- 12:00 to 1:30 p.m.
	: Group B -- 2:00 p.m. to 3:30 p.m.
Module	: Non-contentious
Group Format	: Small Group
Skill	: Document analysis and letter writing
Context	: Loan and Security

Objectives:

After completion of this exercise, students should be able to:

1. explain the meaning and legal effect of a guarantee;
2. prepare a plan for writing a letter of advice to lay client; and
3. write a letter of advice to lay client to explain clearly the meaning and legal effect of the provisions in a standard guarantee.

Preparation:

1. Read and prepare Exercise A below; review the LG AP on “Guarantees” and study carefully the precedent guarantee attached to it.
2. Read: Betty Ho, *Security for Credit, Law and Practice in Hong Kong* pp. 13-16, and 31-70. *Civil Liability (Contribution) Ordinance*, section 3.

Activity:

1. Teacher hands out Guarantee Questionnaire and gives instructions for Exercise A.
2. Students divide into subgroups (E).
3. In each subgroup students complete Guarantee Questionnaire. Subgroup representatives present answers to Guarantee Questionnaire.
4. Each subgroup draws up a plan for a letter of advice [Exercise B]
5. Subgroup representatives present subgroup’s plan using the OHP.
6. Class discussion of plans.

Exercises:

Your supervising partner acts for Mr Peter Luk, a personal friend of his who is a director and 35% shareholder of Cornerstone.com Company

Limited (“the Company”). The Company has applied to SAR Bank Limited (“the Bank”) for an overdraft facility of up to HK\$15 million. The Bank is agreeable in principle to the grant of the overdraft facility but would require Mr Peter Luk, Mr Kevin Chan and Mr Jacky Chan, the three directors and shareholders of the Company, to guarantee the Company’s indebtedness to the Bank. At this morning’s meeting, Mr Luk showed your partner a draft of the guarantee which the Bank sent him. (The draft guarantee is in the form of the precedent attached to LG AP[].) He was unsure as to the meaning and effect of Clause 16 and wonders whether he should ask the Bank to delete it. He is also concerned as to the legal implications of him acting as the Company’s guarantor under this guarantee. In particular, he would like to know:

1. What exactly is he guaranteeing?
2. Is there a cap on his liability?
3. What is meant by him being “jointly and severally liable” with Kevin Chan and Jacky Chan under this guarantee?
4. Whether he still remains liable under the guarantee if the Company borrows from the Bank without his knowledge or consent?

He would appreciate your partner’s advice in writing before he commits himself. Your partner has passed on to you the draft guarantee and a note setting out Mr Luk’s queries, and asked you to draft a letter for him to respond to Mr Luk. According to your partner, Mr Luk’s English standard is reasonable but would appreciate the use of plain, simple English rather than lots of “legalese”.

Exercise A

Familiarize yourself with the relevant law and study carefully the terms of the guarantee, with a view to answering Peter Luk’s queries. In class, the teacher will hand out a series of questions set out in a “Guarantee Questionnaire.”

Exercise B

In class, with the aid of the Letter Writing Skills Guide, prepare a plan for writing the advice letter to Peter Luk.

Exercise C:

After class, write a letter of advice to Mr Peter Luk and hand in your letter on Week 10 Day 3. In your letter, you should address client’s queries (1)

to (4), explain the meaning and legal effect of Clause 16 of the guarantee and advise whether he should ask the Bank to delete this clause. In your letter, you should also touch on the Bank's likely response to the client's request. Your letter should not exceed 1,000 words.

[From here to the end of plan for teachers only]

Preparation:

[As for students]

Resources:

1. OHP with stack of blank transparencies.
2. 5 transparency pens
3. Copies of questionnaire to be handed out to students.

Instruction:

1. Analyse the precedent guarantee with the students.
[Allow 55 minutes. Group A: 12:00 – 12:55pm; Group B: 2:00 – 2:55pm.]
 - 1.1 Hand out Questionnaires. Split students into sub-groups (E) to complete the Questionnaire. Each sub-group should appoint a secretary to record completed answers as well a representative to speak on behalf of the sub-group. The secretary and representative should be different people. The Questionnaire is designed to help students explore the answers to Mr Luk's questions. Students should appreciate that they must (a) know the law well and (b) be familiar with the terms of a standard guarantee. [20 minutes]
 - 1.2 The teacher selects representatives from the sub-groups to present to the rest of the class his or her sub-group's answers to the questions. Teacher and class give feedback. [35 minutes]
 - 1.3 Teachers, see sample Questionnaire attached.
2. Formulate the lay-out and organization of the letter of advice with students.
[Allow 35 minutes. Group A: 12:55 – 1:30pm; Group B: 2:55 – 3:30pm.]
 - 2.1 Students continue to work in sub-groups (E). Ask each sub-group to prepare a plan for the letter. Each sub-group should appoint a different representative for this exercise who will set out the draft

- plan on a transparency. [15 minutes]
- 2.2 Ask the representatives of selected sub-groups to present their respective sub-group's plan to the rest of the class. Teacher and class give feedback. [20 minutes]
 - 2.2.1.1.1 Teachers, see sample Plan attached, but do not hand it out.
 3. Remind students to draft their letters of advice according to the plan they have prepared. Students are to hand in their letters on Week 12 Day 1.
 4. Remind students that their advice in relation to clause 16 goes beyond mere legal interpretation and explanation. It foreshadows the kind of advice they will be giving later on in PCLL – helping the client to make a decision. In such a case lawyers need to analyze options and consequences. To do this, students need to think about both the client's and the bank's goals as well as their respective bargaining positions.

Guarantee Questionnaire

[All answers should be accompanied by a concise and clear explanation]

1. Who are the guarantors?

Peter Luk, Kevin Chan and Jacky Chan.

2. Are their liabilities several or joint and several? What is the legal implication for Peter Luk?

Joint and several – Clause 2.

It means that the guarantors jointly and each of them severally undertake to assume in full the obligations created by the guarantee. The result is that, as against the Bank, each and every one of the guarantors is liable for the full amount guaranteed and the Bank may elect to sue any one of the joint and several guarantors for the full amount of the debt owing to it by the Company, and leave the guarantor who has paid to seek contribution from his co-guarantors. It is not necessary for the Bank to commence action against all three guarantors (as in the case of a joint guarantee), nor is the amount recoverable from any one guarantor limited to a pro rata portion of the Company's debt (as in the case of a several guarantee).

3. Whose debts are being guaranteed? Is there any limitation as to the amount or the type of facility being guaranteed?

The debts of Cornerstone.com Company Limited to SAR Bank Limited are being guaranteed.

The guarantee covers all amounts outstanding or incurred by the Company to the Bank, now or in the future, under all and any general banking facilities *from time to time* granted by the Bank to the Company or under other arrangements which may from time to time exist between the Bank and the Company, without any limit as to amount. The guarantee is *not* limited to the Company's liabilities to the Bank under the proposed HK\$15M overdraft facility. The guarantee also covers all interest, fees and charges owing or payable by the Company to the Bank in relation to such general banking facilities or other arrangements.

4. What is the difference between a guarantee and an indemnity? Is Peter Luk being asked to execute a pure guarantee or an indemnity?

A surety's obligation under a guarantee is secondary. Therefore he is only liable to the extent the principal debtor is liable. If the principal debtor's obligation should become avoided for whatever reasons, a surety under a pure guarantee owes no obligation to the creditor – a surety is only liable to the creditor for the sum owing but unpaid by the principal debtor to the creditor.

In contrast, the obligation created under an indemnity is primary and independent of the principal debtor's obligation. The obligor under an indemnity will remain liable to indemnify the creditor for the full amount notwithstanding that the creditor may be unable to bring any claim against the principal debtor.

Peter Luk is being asked to execute a document which comprises both a guarantee and an indemnity – see Clauses 4 and 8.

5. What is the meaning of Clause 16 (suspense account)? What purpose does it serve?

It entitles the Bank to keep separate any payment by the guarantors (by crediting such payment into a "suspense account") instead of applying it in partial discharge of the Company's debt to the Bank.

The purpose is to enable the Bank to prove for the full amount of the Company's debt if the Company should go into liquidation, without having to give credit for amounts received under the guarantee. Also, since the guarantors have technically not made any payment in discharge of the Company's debt to the Bank (and the Bank is under no obligation to use the amounts received from the guarantors for such a purpose), the guarantors cannot prove for any indemnity in the Company's liquidation in competition with the Bank's claim.

6. Will Mr Luk be released after he has sold all his shares in the Company?

No. Liabilities under the guarantee attach personally to Peter Luk irrespective of whether he holds shares in the Company. If Peter Luk wishes to be released from liabilities under the guarantee upon his ceasing to hold shares in the Company, he will have to negotiate a release with the Bank.

7. If Mr Luk is sued by the Bank under the guarantee, is he obliged also to pay for those amounts for which Kevin Chan and Jacky Chan are responsible?

Yes, initially, since he is jointly and severally liable under the guarantee with Kevin Chan and Jacky Chan. However, after he has paid off the Bank, he is entitled to claim contribution from Kevin Chan and Jacky Chan under the Civil Liability (Contribution) Ordinance. However, failure or refusal by Kevin and/or Jacky to make any contribution is no defence to a claim by the Bank against Peter Luk for the full amount guaranteed.

8. Is Mr Luk liable for debts incurred by the Company to the Bank without his consent and knowledge?

Yes, see Clause 2.

In law, a material variation of the terms of the principal contract will discharge in full the guarantor's obligations under the guarantee, except where (a) the variation is obviously beneficial to or otherwise incapable of being prejudicial to the guarantor, or (b) the variation is within the scope of or otherwise expressly authorized by the guarantee.

Clause 2 purports to bring the guarantee within exception (b) by (i) ensuring the guaranteed obligations cover debts from time to time incurred by the Company to the Bank without the guarantors' knowledge and consent, and (ii) requiring the guarantors to expressly waive notice of giving of new credit by the Bank and authorizing the Bank to grant new credit to the Company on such terms as the Bank may from time to time think fit, without reference to or consent of the guarantors.

Sample Plan of Advice Letter

Characteristics of Reader:

1. Lay client.
2. Judging from the queries he has raised, client seems to have little idea of the relevant law.
3. A personal friend of the partner.
4. Reasonable standard of English but prefers use of plain, simple English.

Purpose:

1. To answer the queries raised by client at the meeting.
2. To explain the meaning and legal effect of Clause 16 of the guarantee.
3. To advise client whether he should, and if so, whether he can successfully, persuade the Bank to delete Clause 16.

Structure:

1. Introduction by reference to meeting with client.
2. Carefully set out the matters on which you have been asked to advise.
3. Split advisory section by using headings and sub-headings, as appropriate.
4. Suggested paragraphing:
 - 4.1 What is client guaranteeing?
 - 4.2 Guarantee covers debts incurred without client's consent.
 - 4.3 No cap on liability.
 - 4.4 Effect of joint and several liability with Kevin and Jacky Chan.
 - 4.5 Meaning of suspense account provision and its implications for both client and the Bank.
 - 4.6 Whether advisable for client to request the deletion of the suspense account provision and likelihood of the Bank agreeing to such deletion.
5. Concluding remarks.
6. Close.

Sample Advice Letter

Mr Peter Luk
[address of client]

Our ref:

[date of letter]

Private & Confidential

Dear Peter,

Guarantee in favour of SAR Bank Limited in respect of the liabilities of Cornerstone.com Company Limited

I refer to our meeting on [date] at which you showed me a draft (draft dated [date]) of the guarantee ("Guarantee") which SAR Bank Limited ("the Bank") requires you to give as a condition to granting an overdraft facility to Cornerstone.com Company Limited ("the Company").

You have asked me to review the draft Guarantee and advise you on the following issues:

1. What is the subject matter being guaranteed?
2. Does the Guarantee cover debts incurred without your consent?
3. Whether there is a limit on your liability under the Guarantee?
4. What are the implications of your being jointly and severally liable with Kevin Chan and Jacky Chan under the Guarantee?
5. (a) What is the meaning and legal effect of Clause 16 of the Guarantee?
(b) Whether you should request deletion of Clause 16?

Having reviewed the Guarantee, I now advise as follows:

1. Subject matter being guaranteed

The subject matter being guaranteed under the Guarantee is all moneys from time to time owing or payable by the Company to the Bank. These moneys may arise out of present liabilities of the Company to the Bank or future liabilities which may be incurred by the Company to the Bank. The Guarantee is not limited to amounts owing under the proposed overdraft facility. Rather, it covers all liabilities and obligations which the Company may now or in the future owe to the Bank for whatever reason, including borrowings under banking facilities which the Bank may from time to time grant to the Company, as well as all interest, commissions, fees, costs and expenses payable by the Company to the Bank.

2. Debts incurred without your consent

In law, if the debtor incurs new debts without the guarantor's consent, it will discharge in full the guarantee if it amounts to a material variation of the obligation being guaranteed. The Guarantee seeks to avoid this problem by requiring the guarantors to expressly authorize the incurring of new debts by the Company to the Bank. Clause 2 refers to facilities and arrangements which *may be* granted or entered into by the Bank to or with the Company *in the future*. The proviso to Clause 2(m) also authorizes the Bank to impose such terms as the Bank may consider appropriate for such facilities and arrangements. Therefore, new debts incurred by the Company to the Bank without your consent will still be covered by the Guarantee.

3. Limit on liability

No limit has been set for the amount guaranteed. Therefore, your liability under the Guarantee will be unlimited. If a limit has been agreed between you and the Bank, it is important that the agreed maximum amount is clearly stated in the Guarantee.

4. Joint and several liability

Under the Guarantee, you will be jointly and severally liable with Kevin Chan and Jacky Chan for the amounts being guaranteed. This means that, as against the Bank, each and every one of you are liable for the full amount guaranteed. The Bank can therefore sue any one of you, Kevin Chan or Jacky Chan for the full amount which the Company owes it, and leave the guarantor who has paid to seek contribution from his co-guarantors. The guarantor being sued by the Bank cannot defend by saying he is only liable for part of the Company's debts and that the Bank should claim the balance from his co-guarantors.

However, having paid off the debt, a guarantor is entitled in law to claim contribution from his co-guarantors, subject to the usual risks of them absconding or going bankrupt.

5. Clause 16 of the Guarantee

(a) Meaning and legal effect of Clause 16:

Clause 16 entitles the Bank to keep separate any payment by the guarantors (by crediting such payment into a "suspense account") instead of applying it in partial discharge of the Company's debt to the Bank.

The purpose of this clause is to enable the Bank to prove for the full amount of the debt if the Company should go into liquidation, without having to give credit for amounts received under the Guarantee, and thus to maximize the Bank's chances of recovery.

Besides, since the guarantors have technically not made any payment in discharge of the Company's debt to the Bank, their right in law to seek indemnification from the Company for having discharged the Company's debts will not have arisen. Thus, the guarantors cannot compete with the Bank's claim by submitting a proof of debt in the Company's liquidation for indemnification.

(b) Possibility of deleting Clause 16:

In light of its implications for you as a guarantor, it would be preferable if Clause 16 is deleted from the Guarantee, and I would advise you to approach the Bank with such a request. However, suspense account provisions similar to Clause 16 are commonplace amongst bank guarantees, and in my experience, banks would not normally agree to delete this type of protective clause from their standard-form guarantees.

In summary, the Guarantee is a standard guarantee normally required by banks. As such, the Guarantee contains provisions intended to protect and benefit the Bank, sometimes at the expense of the guarantors. If the above does not accord with your understanding of your agreement with the Bank or you require the Bank to delete some of the provisions in the Guarantee, you are advised to raise the matter with the Bank before agreeing to the Guarantee.

I trust the above has sufficiently answered your queries. Should you require my further assistance, please do not hesitate to let me know.

Yours sincerely,

[name of partner]

Appendix B

PCLL

SUBGROUP PATTERNS*

(for Students numbered 1 to 16)

Note: Each PCLL student will be assigned a number from 1 to 16. When an activity plan (AP) calls for students to be divided into a sub-group pattern, students (in groups of 16) should re-group as defined by the subgroups set out below. So, for example, if the AP says, “divide into subgroups (D),” students numbered 1, 4, and 7 should form into one subgroup and those under column D below should follow suit.

A	B	C	D
1,2	1,3	1,2,3	1,4,7
3,4	2,4	4,5,6	10,13,16
5,6	5,7	7,8,9	2,5,8
7,8	6,8	10,11,12	11,14,3
9,10	9,11	13,14,15	6,9,12
11,12	10,12	16,X,Y	15,X,Y
13,14	13,15		
15,16	14,16		

E	F	G
1,2,3,4	1,6,11,16	1,2,3,4,5,6
5,6,7,8	2,7,12,4	7,8,9,10,15,16
9,10,11,12	3,8,13,5	11,12,13,14,X,Y
13,14,15,16	9,14,10,15	

* These subgroup patterns were designed by the Professional Legal Training Course of British Columbia.

Appendix C

Letter Writing Guide

This Letter Writing Guide consists of two parts: the Preparation Guide is designed to guide students in preparing to write a letter, whereas the Writing Guide is designed to assist students in providing feedback on the strengths and weaknesses of their writing.

The Preparation Guide – Preparing to Write the Letter

Know your reader

Is the reader a lawyer or a lay person?

Is the addressee the only reader, or is he/she expected to present the letter as it is to others (eg. Senior management)?

What is the addressee's relationship with you/the person signing off?

What is the addressee's status?

What are the English language capabilities of your reader(s)?

How familiar is/are your reader(s) with legal terms and basic legal principles?

How familiar is/are your reader(s) with the background and details of the transaction/dispute/problem concerned?

Any particular matter or need to note in relation to the reader(s)?

What is the purpose of this letter?

What type of letter is this?

What do you want to achieve with this letter?

Is there any reason why you may not be able to achieve this/these purpose(s) with this letter? (eg. Any reason why your advice may not be well received?) If so, how can you write your letter in such a way so as to avoid or minimize this happening?

Draw up a plan for this letter

Structure:-

Salutation.

Opening – briefly introduce purpose of this letter.

For an advice letter to client:-

Summarise your understanding of the relevant facts.

Summarise your advice.

Explain your advice.

For other letters, state clearly and logically what you want your reader(s) to know from this letter.

Conclusion – state clearly what is expected of your reader(s) (eg. Further instructions, clarification of certain issues, etc.)

Presentation:-

Is there a “house style” that you should follow?

Be consistent in your tone and style.

Where appropriate, use headings, sub-headings and numbering.

There should be a logical flow from one paragraph to the next. Use link-backs where appropriate.

Contents:-

Jot down all the points to be covered in this letter.

Organise them logically. Each paragraph should deal with one main point.

Always present the main points first.

Check that you have not missed any point or material information.

If your advice is based on any assumption, clearly say so.

Writing Guide – Writing the Letter

The letter should meet the following criteria:

- 1. (a) Meets the client's goals and carries out the client's instructions, or
(b) Meets the lawyer's goals.
- 2. Addresses all relevant facts.
- 3. Addresses all relevant legal issues.
- 4. Analyses options with a view to recommending the most effective option(s) (if possible).
- 5. Where necessary, outlines a plan or solution.
- 6. Is organized logically.
 - a) Introduction clearly states purpose.
 - b) Text is consistent with stated purpose.
 - c) Conclusion flows logically from text.
- 7. Each paragraph is organized logically.
 - a) Topic sentence introduces text.
 - b) Text is consistent with topic sentence.
 - c) Conclusion flows logically from text.
- 8. Transition between paragraphs is smooth.
- 9. Uses correct grammar and spelling.
- 10. Is succinct.
- 11. Is precise.
- 12. Is clear and leaves no doubt as to what is expressed.
- 13. Uses tone and language appropriate to the reader.