

LANCASTER UNIVERSITY

Department of Linguistics and English language

What features of legal writing matter to domain and language specialists?

*(an exploratory study investigating indigenous assessment criteria in
a second language legal context)*

By Indrit Bulku

Dissertation submitted in partial fulfilment of the requirements for the M.A. in
Language Testing (by distance)

September 2019

(17,873 words)

Table of Contents

Abstract.....	V
Acknowledgments	VI
List of figures.....	VII
List of abbreviations.....	VIII
1. INTRODUCTION	1
1.1. Issues in LSP Assessment	1
1.2. The Context of the Study.....	5
2. LITERATURE REVIEW	9
2.1. Indigenous Assessment Criteria Defined.....	9
2.2. Studies on Indigenous Assessment Criteria	10
2.2.1. The Issue of Deriving Generalizable Assessment Criteria.....	10
2.2.2. Authenticity of the Research Methodology	11
2.2.3. Indigenous Assessment Criteria in Standard Setting	12
2.2.4 Incorporating Indigenous Assessment Criteria into LSP Assessment Criteria	12
2.3. Research on Legal English and Legal Writing	15
2.4. Issues in Identifying Indigenous Assessment Criteria in Legal Writing	17
2.4.1. The LSAC Report	18
2.4.2. A comparative study on the assessment criteria used to evaluate legal texts	18
2.4.3. Eliciting judges' views on good features of appellate brief	20
2.5 Research questions	21
3. METHODOLOGY	23
3.1 Participants.....	23
3.2. Instrument.....	25
3.3. Method of data collection	27
3.3.1. Procedure	27

3.3.2. Preparing and organizing the data	29
3.4. Method of data analysis	30
4. RESULTS.....	33
4.1. Research Question 1	33
4.1.1 The structure of the brief	33
4.1.2 Legal analysis-argumentation	35
4.1.3 Language	38
4.1.4 Ranking- Standard setting	39
4.2. Research Question 2	42
4.2.1 Clarity	42
4.2.2 Argumentation	44
4.2.3 Structure	45
4.2.4 Ranking- Standard setting	46
4.3. Research Question 3.....	47
4.3.1 LSP instructors	47
4.3.2 Legal specialists	49
5. DISCUSSION	51
6. CONCLUSION AND IMPLICATIONS FOR FUTURE RESEARCH....	56
APPENDICES.....	60
A. THE ASSESSMENT PROMPT.....	60
B. THE ASSESSMENT CRITERIA	69
C. TRANSCRIPT: LSP INSTRUCTORS	71
D. TRANSCRIPT: LAWYERS.....	93
E. TEST SAMPLE	104
REFERENCES	105

Abstract

This quasi-exploratory study offers a qualitative comparison of expert feedback on a legal writing assessment gathered from two focus group settings in which six samples of an appellate brief written by second language law students were shown to a group of lawyers and Language for Specific Purposes instructors to comment on the strengths and weakness of each performance. The purpose of the study was to elicit authentic assessment criteria which could inform the review of the scope of the assessment scheme used to evaluate students' performances.

Thematic analysis was applied to codify the data and identify those aspects of performance that are not only valued by legal specialists but could also be assessed in a language performance test.

The qualitative analysis of the data revealed a striking similarity in terms of the assessment criteria which both groups of participants applied when evaluating students' performances; nevertheless, the nature of expert feedback differed significantly: legal specialists focused more on the quality of legal analysis and legal reasoning while language assessors provided more detailed feedback on the language and the clarity of the legal texts. The findings, therefore, suggest the need for the collaboration of legal and language experts to extend beyond the curriculum design to the assessment of second language legal writing performances. The findings from the analysis also provided an empirical basis for the revision of two criteria used to evaluate the second language legal writing test in the context of this study: Argumentation and Organization. Overall, the study's findings support the value of the qualitative evidence in providing insights into how legal experts read and evaluate written legal texts and how this could enable English for Legal Purposes instructors to represent domain specialist when evaluating second language written legal tests.

Acknowledgments

First of all, I would like to thank Dr. John Pill for introducing me to the fascinating subject of Language for Specific Purposes and for all his invaluable feedback and support throughout the process of writing my MA dissertation. However, I would have never been able to reach the end of the long journey of the MA in Language Testing without the support and feedback I have received since I first decided to join the Language Testing summer school at Lancaster University back in 2016. I am, therefore, grateful to Dr Rita Green, Tineke Brunfaut, Luke Harding as well as to all the colleagues I have been studying with. It has indeed been a wonderful journey.

Finally, special thanks go to all the participants, who despite being very busy with their own projects, spared time for and contributed to this study with their valuable insights and feedback.

List of Tables

Table 1.	Lawyer Participants' Biographical Information	24
Table 2.	LSP Teacher Participants' Biographical Information	25
Table 3.	Focus groups details	30
Table 4.	Lawyer Participants' commentary: thematic analysis.....	35
Table 5.	Lawyer participants' commentary: thematic analysis.....	36
Table 6.	Lawyer Participants' Ranking of Students' Appellate Briefs	41
Table 7.	LSP Instructors' Ranking of Students' Appellate Briefs.....	46

List of Abbreviations

CAE	Cambridge Advanced English
CEFR	The Common European Framework of Reference for Languages
CREAC	Conclusion, Rule, Explanation, Application, & Conclusion
EAP	English for Academic Purposes
ELP	English for Legal Purposes
ESOL	English for speakers of other languages
ESP	English for Specific Purposes
FCE	First Certificate in English
ICAO	the International Civil Aviation Organisation
ILEC	The International Legal English Certificate
IREC	Issue, Rule, Explanation Conclusion
LSAC	Law School Admission Council
LSP	Language for Specific Purposes
L1.....	a speaker's first language
L2	a speaker's second language
OET.....	The Occupational English Test
TLU	Target language use
TOLES	Test of Legal English Skills

1. Introduction

The aim of this chapter is to introduce the topic as well as the context of the study by first discussing the issues in Language for Specific Purposes Assessment and then stating the research problem.

1.1 Issues in Language for Specific Purposes Assessment

English for Legal Purposes (ELP) is perhaps one of the most complex and specialist branches of the Language for Specific Purposes (LSP) domain (Marin, 2009). Although it sounds or appears like standard English, it has been referred to as a sublanguage (Legalese) because it contains a number of unusual features relating to terminology, linguistic structure, linguistic conventions, and punctuation (Tiersma, 1999; Williams, 2005). Particularly, a great deal of technical terminology is unfamiliar and challenging to even educated native speakers of English (di Carlo, 2005; Lokjo, 2011). In other words, legal English is a very specific target language use (TLU) domain that might be safely considered a language variety in which being a native speaker does not make a significant difference when effective communication is considered (Lokjo, 2011). While there are many challenges associated with the way ELP courses are conceptualized, designed, and delivered (Bruce, 2002; Candlin, Bhatia, & Jensen, 2002; Curcio, 2009; Lokjo, 2011; Northcott, 2012; Vinson, 2005), this study limits its discussion to the assessment of written ELP tests in a second language (L2) legal context. Such tests are by default language performance tests which involve tasks that tap not only the L2 learning ability (in this case, legal English) but also the ability to fulfill the non-linguistic requirements of a given task (e.g. the ability to make an argument, persuade a judge, critically evaluate and analyze facts, and so on). Such ELP tests are, in fact, what McNamara (1996) labels as “strong performance tests” (p.43). One distinctive characteristic of such tests is the application of real-world criteria because the focus is not exclusively on the linguistic performance but on the successful completion of a given task (McNamara, 1996).

However, the application of real-world, or authentic assessment criteria in assessing LSP tests still remains one of the thorniest issues that applied linguists are dealing with (Basturkmen & Elder, 2004; Elder, McNamara, Kim, Pill, & Sato, 2017; Douglas & Myers, 2000). This is mainly due to two reasons. First, assessment criteria “should be grounded in a theory that describes the language used in the target language use domain” (Knoch, 2014, p.78), which according to Jacoby & McNamara (1999), is not an easy task. This is due to the fact that LSP performances are “by definition task-related, context-related, specific and local” (Jacoby & McNamara, 1999, p.234). Douglas suggests the need for a “theory”, or generalizable assessment criteria derived from a needs analysis of LSP contexts (Douglas, 2000; Douglas, 2001; Douglas & Myers, 2000). However, practical studies in which such a process is attempted have just recently started to emerge. There is no wonder, then, that the authenticity of LSP tests has been mainly confined to task authenticity, or *situational authenticity* (Bachman, 1990), and the interaction between the test taker and the test task, or the *interactional authenticity* (Bachman & Palmer 1996; Douglas 2000; O’Sullivan, 2012).

The second challenge lies in the nature of the more authentic or specialized LSP tests such as legal English. Since, the interaction between language knowledge and domain-related knowledge is required for the successful completion of a given task (Douglas, 2000), language assessors might lack access to expert knowledge which could inform their evaluation of such LSP tests. Likewise, subjects’ specialists might find it hard to articulate what they value in real-life communication in their TLU domains in linguistic terms or in a LSP test situation (Erdosy, 2009).

An example of a LSP test which illustrates the points raised above, and which is also relevant to the context of this study, is that of the International Legal English Certificate (ILEC). The test was developed and administered by Cambridge ESOL and intended for prospective law students and legal professionals as evidence of their language ability to work in an international legal context or to

study at university level (ILEC Handbook, 2007 cited in Vidakovic & Galaczi, 2009). The initial stage of needs analysis involved collaboration between Cambridge ESOL specialists and domain experts from the global legal community to ensure that the tasks simulated in a testing situation were authentic and appropriate in terms of topic, content and level of proficiency. It is worth noting that the focus of the collaboration was exclusively on the task authenticity; no attempts at deriving authentic assessment criteria from the analysis of the TLU have been reported. This is further confirmed by the fact that the level of proficiency during the trial period of the test was measured against the CEFR levels/descriptors (Corkill & Robinson, 2006); there was no reference to any criteria indicative of the ability of candidates to perform or communicate satisfactorily in a legal context. In fact, the ILEC assessment criteria were revised to bring them in line with the updated rating scales used in the First Certificate in English (FCE) and Cambridge Advanced English (CAE) - two general-purpose English international exams developed and administered by Cambridge ESOL (Vidakovic & Galaczi, 2009).

The use of linguistically-oriented assessment criteria to assess LSP tests, particularly the more specific or stronger LSP performance tests (McNamara, 1996), poses a challenge to test validity, though, and this is more concerning in cases when candidates passing a LSP test have failed to function in the workplace due to their inadequate ability to communicate effectively (Kosse & ButleRitchie, 2003; McNamara, 1996). Therefore, the assessment criteria should also reflect what is valued by professionals in a TLU setting (Kim, Banerjee, & Iwashita, 2018; Knoch & Macqueen, 2016). For example, in her attempt to investigate the effect of raters' linguistic and occupational background on evaluating tour guides' performance on a language test, Brown (1995) found that some non-linguistic qualities such as "enthusiasm, empathy, ... persuasiveness, ... and so on" (p.5) were considered essential in tour guides' communication with tourists. The question, thus, is how to select or identify "... criteria that reflect those employed in a target language use situation [TLU] which could also be

interpretable as evidence of communicative language ability (Douglas & Myers, 2000).

Furthermore, there are cases in which being a native speaker of English does not contribute to effective communication in a TLU domain. Two examples are aviation English (Knoch & Macqueen, 2016) and legal English (Curcio, 2009; di Carlo, 2015; Kosse & ButleRitchie, 2003; Tiersma, 1999) which make particular demands on the language use- two domains in which a native speaker may not have sufficient language resources in his/her first language or knowledge of the register of technical communication to be considered as a competent communicator.

So naturally, some questions arise. Which real-world criteria should be included in the assessment of ELP tests? How to incorporate real-world assessment criteria into ELP assessment schemes? What should be done when non-linguistic features have a determining role in the effective communication in a legal context? Should domain experts- judges, lawyers or legal educators- be involved in the assessment of ELP tests?

The challenge lies in the fact that the models of communicative language ability have been put forward by applied linguists (Douglas, 2001). Particularly, their perception of non-linguistic aspects of performance as too complex to deal with and unscientific has had a significant role in the way LSP test assessment criteria have been developed (Elder at al., 2017). In other words, LSP assessment schemes have usually been derived from an understanding of what it means to know and use a language in a specific context rather than from an analysis of the TLU situation (Douglas, 2001). Therefore, the mismatch between the views of domain experts and language specialists (Brown, 1995; Galloway, 1980; Douglas & Meyers, 2000; Elder at al., 2017) in terms of LSP assessment criteria comes as no surprise, i.e. the former value the communicative success in the TLU

domain, while the latter focus on the language proficiency and/or grammatical accuracy (Douglas, 2001; Elder, 2011; Elder et al., 2017).

This by no means should undermine the role of applied linguistics in the design and evaluation of LSP tests. As Alderson (2000) argues, a number of aviation English tests developed without sufficient input from language testing specialists were found to be lacking in quality. The goal then is to find a way of better aligning the applied linguists' understanding of the scope of language with "the perspective of the disciplinary insiders (Pill, 2016, p. 178). This is especially paramount in high-stakes professional contexts (Basturkmen & Elder, 2008; Kim & Elder, 2015) such as legal domain, in which the way an argument is presented or a case is made might save or ruin the life of a defendant (di Carlo, 2005; Tiersma, 1999).

1.2 The Context of the Study

Clearly, the issues of LSP assessment raised above are relevant to the context of this study. Falling under the category of LSP testing domain, this study will attempt to address the validity of the assessment criteria of a legal writing task by involving legal experts and LSP instructors in revising and reviewing the assessment scheme used to evaluate the argumentation component of an appellate brief. As the Middle Eastern countries continue to open up to the world and expand their commercial activity abroad, the demand for qualified lawyers who are not only familiar with the international law but also proficient in legal English- the language of the international law (Bruce, 2012)- is on the rise. This was one of the reasons that for the first time at an university in the Middle East, a L2 legal writing course was introduced. The L2 legal writing course is the last in a series of five English language courses required for students who study in Arabic in the College of Law. All courses are credit bearing courses which take students from CEFR A2 to B2/C1 levels of proficiency. The first three courses integrate the four skills of speaking, listening, reading and writing. Level 1 and 2 courses provide practice in developing all four skills while level 3 course builds upon

these previous courses with a greater emphasis on reading and writing. Level 4 course is the first ELP course in the series; it introduces students to Legal English and the language they need to communicate effectively in a legal context. It aims to improve both the students' language and legal skills by combining a linguistic (i.e. English for Law) and a content focus (i.e. Law in English). After completing this ELP course, students are expected to have a comfortable level of competency in English to move to the last ELP course, which is a L2 legal writing course with a focus on legal reading and writing skills. In this course students practice a common law jurisdiction in analytical and persuasive legal writing and advocacy. The teaching material include authentic professional documents (e.g. contracts, balance sheets, memos; see the legal case in Appendix A), mostly adapted to make them more accessible to L2 learners. The staff is made up of ELP instructors with various degrees of legal background. By the end of the course, students are expected to structure and communicate an effective legal argument by writing an appellate brief.

While the design of the assessment (the case study for the appellate brief) posed few challenges to the curriculum developers, an issue that clearly transcends the context of the study was designing valid/authentic assessment criteria. The assessment criteria for the appellate brief was adopted from the assessment criteria used in a parallel course of English for Academic Purposes (EAP) at the same university. The reasons for adopting the assessment criteria were the similarities in the respective genres and the assumption that persuasive legal writing is a variation of persuasive prose: in the EAP course, students learn how to write an argumentative essay, and argumentation is also the essence of an appellate brief. However, based on the ELP language instructors' feedback, some descriptors in the assessment criteria were rather vague, and the instructors often felt they were basing their scores on impressionistic judgments. There was also a feeling that the reasoning paradigm (CREAC) used in the prompt to scaffold students' argumentation was not quite fully captured by the task fulfillment component of the assessment scheme, raising the concern that

the assessment criteria may fail to accurately measure those features of appellate brief that matter to legal professionals.

Since the current assessment scheme used to evaluate the students' appellate briefs was thought to lack elements of authenticity, there was a need to consult domain specialists when revising and reviewing the assessment criteria at the end of the course. However, as it was argued early in this section, there is a need to balance out the views of subject specialists so that the test still assesses the communicative language ability while reflecting the communicative demands of the legal context. Therefore, the views of language specialists were also sought.

It should be noted that this study represents only the initial stage of the revision and the review of the assessment scheme of the test under investigation. In other words, the aim of this study is to consider how the scope of the current assessment scheme could be refocused to include more of what is valued by legal and LSP specialists. The applicability and then the validation of the revised assessment scheme will be subject of another, follow-up study.

While this study does not claim to bring any novelty, its merit lies in the fact that it is the first study to investigate the indigenous assessment criteria of legal and LSP professionals in a L2 legal setting, thus extending the research on the assessment criteria to another LSP domain, that of English for Legal Purposes. The study is thus hoped to contribute to the authenticity in the assessment of L2 legal writing in addition to the validity of the test in question.

The following chapter introduces the reader to the concept of indigenous assessment criteria and the related studies in the domains of health and aviation. This is followed by a review of the research in the domain of legal English and legal writing with a special focus on the studies eliciting the views of domain specialists. The chapter ends with the rationale for this study as well as the

research questions. Chapter 3 delineates the methodology of the study, including the information about participants, instrument, and the methods of data collection and analysis. In chapter 4 results are presented which are then discussed in chapter 5. Conclusions are drawn in Chapter 6, whereby the limitations of the study and implications for future research are explained.

2. Literature Review

In order to address the issues in L2 legal writing assessment, it is important to first review the research previously done on the authenticity of LSP assessment in other TLU domains, especially because this study has drawn upon/ been informed by the methodology/research design of those studies. Therefore, after introducing the reader to the concept of authentic LSP assessment, this chapter reviews some relevant studies in the domain of health, aviation, and finally law. The chapter ends in identifying the research gap and stating the research questions for this study.

2.1 Indigenous Assessment Criteria Defined

The literature on LSP assessment criteria is scant. In most cases, developers of LSP tests, which by definition are mostly performance tests (McNamara, 1996), have focused almost exclusively on the situational and interactional authenticity of the test (Douglas, 2000, 2001). Little information has been provided on how LSP rating scales/assessment schemes have been developed (Knoch, 2014). That is why Douglas (2001) argues that the need analysis of a given TLU situation should be conducted to derive authentic, or indigenous assessment criteria, whose focus is not only on language but also on other factors which might contribute to the successful/effective communication in the TLU domain (McNamara, 1996). These criteria are defined as “those used by subject specialists in assessing communicative performances of both novices and colleagues in academic, professional and vocational fields” (Douglas, 2001, p.171). The investigation of such indigenous, or real-world assessment criteria would shed light on what counts as communicative competence in a particular TLU context or setting, and therefore facilitate the extrapolation from test performance to real-life performance in the TLU domain (Erdosy, 2009). Therefore, the identification of indigenous assessment criteria in various TLU

contexts remains one of the most pressing issues for research and practice in the field of LSP testing (Jacoby & McNamara, 1999).

2.2 Studies on Indigenous Assessment Criteria

The first attempt to derive indigenous assessment criteria was reported by Jacoby (cited in Elder et al., 2017). In her study, she involved subject specialists on the belief that an analysis of the way they assess real world performances might assist language test developers in identifying important criteria of effective communication not evident to them (Jacoby & McNamara, 1999). Using methodologies of conversation/discourse analysis and ethnography, she explored the criteria used by a group of physicists in providing feedback on oral presentations by analyzing the physicists' discussions of the presenters' rehearsals. The *implicit* criteria *indigenous* to that communicative context differed sharply from the criteria applied by language specialists since the group of physicists valued non-linguistic features of the presentation, paying little attention to the linguistic errors made by the presenters who were non-native speakers of English.

2.2.1 The issue of deriving generalizable assessment criteria

Following a similar methodology as that employed by Jacoby, Erdosy (cited in Elder & McNamara, 2016) investigated the indigenous assessment criteria employed by a professor at a Canadian university when assessing students' written assignments. Again, this study revealed that language proficiency was not the determining factor as long as it did not hinder comprehension/meaning. Although the conclusions drawn from this study echo the concern shared by McNamara (1996) that it is difficult to derive more generalizable assessment criteria in highly contextualized settings (Erdosy, 2009), the fact that only one professor was involved in the study should be taken into consideration.

One attempt at identifying indigenous assessment criteria that could be generalized and applied in similar TLU settings could perhaps be seen in a series of studies on the validity of the OET oral subtest - a specific purpose English language test that assesses the language and communication skills of health professionals seeking to practice their profession in Australia, New Zealand and Singapore (Elder 2016). Workshops with doctors, nurses and physiotherapist were conducted to elicit the views of the three groups of health professionals on the effective spoken clinical communication in their respective workplaces (Elder, Pill, Woodward-Kron, McNamara, Webb, & McColl, 2012). What is worth noting is that despite certain differences in terms of the indigenous assessment criteria for assessing professional communication skills across the three healthcare disciplines under investigation, a common set of criteria articulated by the health practitioners in all the three healthcare settings gives hope that it could be possible to identify generalizable criteria which could be applied across various LSP settings, thus being able to develop a LSP assessment theoretical framework or model.

2.2.2 Authenticity of the research methodology

It should be noted that although the most naturalistic/authentic way of identifying the indigenous assessment criteria is for the researcher/applied linguist to immerse in the TLU situation, and therefore, observe professionals articulating their judgment of trainees' or their peers' performances in their professional settings (ethnographic approach), the less direct, or authentic methods such as those employed in the aforementioned OET validation studies but also other similar methods such as verbal protocols and semi-structured interviews have been found to generate richer/thicker data (Elder & McNamara, 2016)

2.2.3 Indigenous assessment criteria in standard setting

In a standard-setting study (Manias & McNamara, 2016; Pill & McNamara, 2016), a group comprised of doctors, nurses and physiotherapists were invited to watch and then grade a selection of audio-recorded samples of health practitioners aspiring to exercise their profession in an English-speaking country. In each workshop, the experts revealed the grades awarded to each sample and discussed the reasons for their decisions. The ensuing discussion allowed each expert to revise their initial grades if they wished to do so. The qualitative (experts' commentary) and quantitative data (scores awarded by them) helped the researchers identify the minimum level of acceptable performance. Involving domain specialists in determining the minimum level of acceptable performance could address the issue discussed in the introduction that in many cases, those who pass a LSP test fail to perform effectively/successfully in the workplace.

2.2.4 Incorporating the indigenous assessment criteria into the LSP assessment schemes

A number of other studies have investigated the indigenous assessment criteria in various TLU settings in order to “either feed these back into the assessment cycle or compare them to already existing criteria” (Knock, 2014, p.78). In her study, Brown (1993), for example, elicited the views of representatives of tourism industry when developing the tasks and the assessment criteria of a test of Japanese for tour guides in Australia. As mentioned in the introduction, the indigenous assessment criteria elicited from the domain experts included non-linguistic factors, such as enthusiasm, and this represents a challenge when it comes to transferring or imposing these highly-specific indigenous criteria into linguistically oriented rating scales/ LSP assessment criteria (Jacoby & McNamara, 1999). Therefore, Douglas (2001) appears to favor a “weaker” version of indigenous assessment criteria, which he describes as using the indigenous criteria “to supplement linguistically-oriented criteria ... and to help

guide our interpretations of language performances in specific purpose tests...[rather than] employing the criteria derived from an analysis of assessment practices directly in the TLU situation” (p.183).

Using an ethnomethodological technique, Douglas and Myers (2000) investigated the indigenous assessment criteria used by veterinary professionals in assessing the communication skills of their students in interviewing clients about sick animals and compared those with the criteria articulated by a group of applied linguistics. The results showed that each group of participants focused on different aspects of performance despite many overlapping criteria identified by them. It was thus concluded that the official criteria used to evaluate the interviewing skills of the veterinary students failed to capture all aspects of the performance, and therefore, there was a need to revise the rating scale by incorporating the new criteria. However, no suggestions were made as to how to incorporate the differing comments from the various stakeholders involved into the rating scale.

Perhaps the only study on indigenous assessment that goes a step further in attempting to incorporate the views of domain specialists into the assessment criteria of a LSP test is that of Pill (2016). The purpose of his study was to review the scope of assessment in the speaking subtest of OET through a series of profession-specific workshops aimed at eliciting the views of educators and clinical supervisors on the strengths and weakness of the performance of trainees interacting with their patients. Thematic analysis was applied to codify the data and identify those aspects of performance that are not only valued by health educators but could also be assessed in a language performance test; that is, those aspects that are directly observable. Consideration was also given to the capability of language assessors to assess the criteria deriving from the identified valued aspects of performance. In other words, a further selection process followed, which resulted in the identification of those aspects of performance that could be related to language ability and assessed by language

assessors. The commentary of the health specialists on the trainees' performance resulted in rich data that informed the researcher's decision to propose two extra components for the evaluation criteria of the speaking component of the OET.

It could be argued that the significance of this study lies in the proposed model of incorporating indigenous assessment criteria into the rating scales by translating them into linguistic terms, making them accessible to language assessors. This, in fact, seems to be confirmed by a follow up study (O'Hagan, Pill, & Zhang, 2016) which suggests that the challenge of language assessors judging the performance of test takers by using the criteria that reflect the perspective of domain experts in a language assessment scale could be addressed through training, provided that the professionally-related criteria are also related to language ability, or translated into linguistic terms. A similar methodology as that introduced by Pill has been adopted in a very recent study reviewing the scope of the assessment criteria and the passing standards of the OET writing sub-test based (Knoch, McNamara, Woodward, Elder, Manias, Flynn, & Zhang, 2015). Pill's study also demonstrates how more general criteria could be derived from specific data, which is of great interest to applied linguists and test developers.

Nevertheless, while the OET lies more towards the extreme end of the specificity continuum (Douglas, 2001), it is still a language test which aims to separate the language ability from the domain knowledge (Pill, 2016). Such methodology needs to be tried in more specific contexts such as legal English, in which communication is so specialized that separating communicative language ability from the overall ability to communicate effectively in the legal domain might prove difficult.

In an aviation-related LSP rating scale validation study using focus group interviews as a method of eliciting indigenous criteria (Knoch, 2014), trained pilots were asked to listen to eight speech samples and decide whether the

candidates' performance met the English proficiency requirements they felt are necessary for pilots to exercise their profession. The trained pilots put more emphasis on the technical knowledge. However, there were also language-related points that they highlighted. The findings suggest that the indigenous criteria were more comprehensive than the International Civil Aviation Organisation (ICAO) rating scale. Given the high stakes of aviation English tests, it was suggested that aviation industry informants be involved not only in the development and validation of test rating criteria; they should also be involved in assessing the borderline performances to set industry-appropriate cut scores.

Although the study is claimed to serve as a model of how experienced professionals can be involved in the validation of an LSP rating scale, no follow up study has demonstrated the successful co-operation between language testing specialists and domain experts in developing more authentic assessment criteria. It seems that the involvement of domain specialists has not been fully utilized, given that no revision or modification of ICAO assessment scales has been reported. In other words, domain specialists still assess test performances using ICAO rating scales.

2.3 Research on Legal English and Legal Writing: the Need for More Focus on the Indigenous Assessment Criteria

With regard to legal English, research has mainly been pedagogical in nature (Margolis, 2018), with a special focus on enabling L2 law students or professionals to operate in their respective TLU contexts which require the use of English (Northcott, 2013; Scott-Monkhouse, 2017; Xhaferi & Xhaferi, 2011). This trend is confirmed by an extensive survey of the L2 Legal English books (Dwyer, Feldman, & McBridge, 2007; Frost, 2009; Garner, 2001; Haigh, 2018; Kroise-Linder, Firth, & TransLegal, 2008; McKay & Charlton, 2005), and also reflected in the two most well-known international Legal English tests, namely ILEC, administered by Cambridge Assessment, and TOLES issued by Global Legal

English (Lokjo, 2011). The aim of both tests is to assess knowledge of legal English within the context of English and international law. In fact, the only research study reported involves reviewing the ILEC speaking subtest rating scales in order to align them with the other general English Cambridge examinations' rating scales (Vidakovic & Galaczi, 2009).

Likewise, much of existing literature about legal writing offers perspectives on organization and style with little insights into how legal documents are actually read, i.e., what a judge responds to in a brief, or what a client looks for in a legal document (Becker, 2018). This trend has resulted mainly in an emphasis on language (Tiersma, 1988b) or on the teaching of certain persuasive rhetorical techniques thought to be preferred by judges (Becker, 2018; Burton, 2017; Dwyer, Feldman, & McBride, 2007; Garner, 2004; Kraft, 2014; Petroski, 2018; Turner, 2015).

Spenser and Feldman (2018), for example, studied a collection of briefs archived in state and federal courts and found that the readability of the briefs (i.e. vocabulary, organizational pattern, cohesiveness, and sentence structure) had an impact on the outcome of the summary judgment motions. Another survey of briefs from three appellate courts (Campbell, 2017) suggested that the writing style, particularly, voiceless, passive and complex writing, had an impact on the court decisions. In an empirical analysis of writing style, persuasion and the use of plain English, Flammer (2010) found out that judges seemed to favor, and to be influenced by, the use of plain English. The more reader-friendly and the more easily the message came across, the more likely it was that judges would agree with the case made by the lawyer.

Nevertheless, in addition to the contradictory findings, none of these studies has provided clear insights into how judges read briefs or legal documents. Furthermore, these studies are rather limited in their focus, given that the certain

elements of persuasive legal writing being investigated were predetermined by the researchers rather than identified by legal specialists.

2.4 Issues in Identifying Indigenous Assessment Criteria in Legal Writing

Evaluating lawyers' performance is a practice followed in many firms and organizations. Such evaluation involves judgments of overall competency and professional conduct of novice or less experienced lawyers made by other lawyers "who have competence to make such evaluations" (Baird, Carlson, Reilly, Powell, 1979, p.4). Baird, et al. (1979) embarked on a study using a variety of methods to find out why such evaluations are made, how they are made, whether they are made effectively, which elements are included and whether there is a consensus about these elements. Despite the useful data concerning the evaluation criteria used to assess lawyers' performance, no evaluation guidelines were reported or shared, which means, it is not known which assessment criteria were used to evaluate lawyers. Moreover, most of the evaluation was related to lawyers' overall expertise, professional conduct, and interpersonal skills, all of which are not relevant to the evaluation of appellate brief- the subject of this study. Additionally, although general writing skills and legal writing skills were both found to be among the criteria used to evaluate lawyers' performance, there is no detailed information about what aspects of the writing skills were particularly valued by competent lawyers.

Some more recent studies have attempted to elicit the views of legal professionals on effective written communication in a legal context although the term of indigenous assessment criteria has not been mentioned. What follows is a discussion and a critical evaluation of these three studies.

2.4.1 The LSAC report

A three-year-long project (Hart & Breland, 1994) involving legal writing teachers, humanities specialists, testing specialists, and two legal consultants was launched in order to analyze 237 legal memoranda written by first-year law students from 12 American schools with the aim of identifying the features of good legal writing. Based on a very thorough analysis of the participants' commentaries and annotations on the legal memoranda, a taxonomy of the elements of the legal memorandum was developed. The report published by the Law School Admission Council (LSAC) ranked the application of law to facts, structural organization, flow and clarity as the most prominent features of a good legal memorandum. However, it should be noted that the prompts for the legal memoranda varied from one school to another, and therefore, the lack of standardization might have had an impact on the rating. Second, the taxonomy could be of limited use if no elaboration on each feature of good legal writing has been provided, especially when it comes to designing the descriptors of an assessment scheme or establishing the cut-off scores. Finally, while different types of legal writing are thought to share some elements, it has been argued that various genre such as appellate briefs, letters to clients, contracts, or wills, require different skills (Hart & Breland, 1994). Therefore, while the results of this comprehensive study deserve attention, similar studies involving domain specialists in assessing other types of legal writing, such as appellate briefs, need to be conducted to arrive at more generalizable indigenous assessment criteria that could be applied across various/similar types of legal writing.

2.4.2 A comparative study on the assessment criteria used to evaluate legal texts

Another study (Kosse & ButtleRitchie, 2003) compared the views of legal writing teachers, judges and practicing lawyers in the USA to find out whether they differed in the assessment criteria which they used to evaluate legal texts.

Surveys sent to the participants had both open-ended and rating scale questions. The open ended questions aimed at identifying what each group considered to be the essential elements of good legal writing while rating scale questions would enable the researchers to quantify and rank the responses. The open-ended responses were then compared to the rating scale responses. The goal was to develop a taxonomy of essential elements of good legal writing based on the responses to the survey.

The results revealed a striking similarity between the groups. Legal writing teachers, practicing lawyers and judges all ranked concision (or brevity), clarity and organization of a brief or legal memorandum as the most important elements of good writing.

However, despite the promising results in terms of deriving generalizable assessment criteria, it should be noted that none of the participants in the study was asked to elaborate on their responses. A taxonomy without a rationale for the selection and ranking of the essential elements of good legal writing would be of limited use when it comes to creating, reviewing or revising assessment schemes for L2 legal writing tests. Additionally, the taxonomy was developed on the basis of responses elicited from a survey; no insights were gained into how the legal specialists read a legal writing and what kind of feedback they would provide on problematic legal memoranda. Another issue that was not addressed in the discussion of the findings of this study is the mismatch between some of the open-ended and the rating scale responses. To illustrate this point, the researchers did not explain or hypothesize why participants failed to identify composition rules as an important element of legal writing in their open-ended responses, yet 66.4% of them ranked it as one of the most important features in their rating scale responses. Clearly, more research is needed, using more authentic means of eliciting the views of legal specialists.

2.4.3 Eliciting judges' views on the good features of appellate brief

Perhaps the only research study involving judges in articulating their evaluation of appellate briefs is that of Robbins (2002). 355 judges responded to a questionnaire designed to elicit their views on what constitutes good legal writing. While judges valued the organizational skills, clarity and cohesion, what they mostly wanted to see in a brief or a piece of legal writing was rigorous legal analysis and a strong argument. This undoubtedly requires critical thinking, a thorough evaluation of sources/facts/precedent cases as well as induction and rule/case synthesis (Tiscione, 2011), all of which Burton (2017) labels as “legal reasoning” or “think [ing] like a lawyer” (p.57).

However, it should be noted that this study does not seem to have been replicated in other legal contexts by involving judges with different backgrounds in order to derive generalizable indigenous assessment criteria. Additionally, this study used as stimuli briefs written by certified lawyers. Certainly, it would be of interest to know how judges or lawyers would read a brief written by a L2 lawyer student, or a novice lawyer, and how such experienced professionals would articulate their feedback. This is especially important, given the debate on what constitutes legal writing (Hart & Breland, 1994). On one hand, there is the view that legal reasoning and writing skills are so inseparable (Berger, 2010; Burton, 2017; Tiersma, 1988b; Tiscione, 2011) that one cannot be fully taught without the other (Conley & O'Barr, 1998; Lojko, 2011). Those holding such a view perceive themselves as experts on both law and language (Baird, Carlson, Reilly, & Powell, 1979; Northcott, 2013). It is argued that by relying on their instincts and expertise as legal analytical readers, they are also able to judge whether language has been used creatively and effectively to put forward an argument (Becker, 2018). That is why the use of standardized rating scales is even not desirable by many experienced legal educators. Regardless of their quality, such rating scales are perceived as restrictive, and often misleading. “[A]n excellent and creatively persuasive brief or legal analytical argument may fail the rubric ...,

while a legal analysis that fulfills the exacting criteria of the rubric may earn a top grade despite lacking the intangible aspects of excellent persuasive writing (Borman, 2018, p. 714). Even in cases when analytical frameworks such as IREC (Issue, Rule, Explanation Conclusion) or CREAC (Conclusion, Rule, Explanation, Application, Conclusion) are used as assessment schemes, the evaluation is subjective, varying from one law professor to another, especially regarding the cut-off scores (Burton, 2017). Therefore, there is no standardized set of assessment criteria which could be modeled or adopted (Turner, 2015).

On the other hand, there is the view that the ability to write an organized, persuasive legal argument is just a variation of persuasive prose (Hart & Breland, 1994; Turner, 2015), and therefore, language instructors could assess legal writing tests without recourse to legal background. In other words, the ability to build a strong argument depends on the language or writing skills of a lawyer (Flammer, 2010; Osbeck, 2012). Thus, a question that needs to be addressed in this case is who should evaluate the performance of a lawyer, or a L1/L2 law student- a legal educator or a LSP instructor.

2.5 Research Questions

Regardless of the view, it could be argued that ELP instructors need access to the expertise and the experience of legal educators since both analytical argument and creativity/skillful use of language need to be captured by any rating scale that purports to be providing a valid estimation of a L2 lawyer's, or law student's ability to communicate effectively in a L2 legal context. How could this be achieved in an ELP context? Most importantly, who should be involved in assessing legal tests? In the absence of any study of indigenous assessment criteria in a L2 legal context but also given the fact that the previous studies on indigenous assessment criteria are still unable to provide answers beyond their specific TLU domain/settings, this study is hoped to contribute to the authenticity

of the assessment of L2 legal writing in general and the validity of the test in particular by answering the following research questions:

Q1. What aspects of an appellate brief are valued by subject specialists?

Q.2 What aspects of an appellate brief are valued by language instructors?

Q.3 Should legal writings in a university course be assessed by a subject specialist or a language instructor.

3. Methodology

The design of this study draws from and is informed by the methodology of some studies carried out previously on indigenous assessment criteria in other TLU domains, particularly those conducted by Douglas and Myers (2000), Pill (2016), and Manias and McNamara (2016). This study is exploratory and interpretive in nature; it compares the views of domain specialists (i.e., legal experts) and language professionals (i.e., LSP instructors) in order to elicit their (indigenous) assessment criteria which they apply to the evaluation of an appellate brief. These criteria are believed to be useful in reviewing and revising the current official assessment scheme. The views of both teams of specialists were explored through two separate focus groups while their commentaries were analyzed via thematic analysis in order to identify criteria that could supplement the current assessment scheme, or expand its scope. What follows is a description of the participants, the instrument as well as the methods of data collection and data analysis.

3.1 Participants

Six participants- three lawyers and three ESP language instructors were selected for this study. The decision to keep the number of participants small was based on the argument put forward by Morgan (1995) that if a focus group is comprised of more than four experts, they may become frustrated for not having enough time to express their views properly.

Both the domain and language specialists were selected not only on the basis of availability but most importantly on their professional qualifications and relevant teaching experience on the belief that a combination of the expertise in their respective fields and their involvement in education would enable them to better articulate their views and feedback on the tests.

The domain specialists participating in this study (Table 1) had extensive experience in teaching legal writing and legal English in various countries in Europe, in the Middle East as well as in North America. The participants were thus familiar with legal education and with providing feedback to novice lawyers and law students in both L1 and L2 contexts. While one of the lawyer participants (lawyer 1) was mostly involved in teaching (i.e., as a Professor of Law), the other two had had rich experience as lawyers on an international level, being involved in various projects, mainly administered by the European Union. What is important about their rich background is that they were familiar with a variety of legal contexts, and therefore, their feedback was expected to be more detailed and more generalizable compared to the feedback obtained in Robbins (2002)'s study, which elicited the views of judges exercising their activity in the USA only.

Table 1
Lawyer Participants' Biographical Information

Participant	Educational Background	Country	Teaching Experience	Country	Work Experience	Country
Lawyer 1	PhD In Law Postdoc in Law	Greece Switzerland	Professor of Law	Greece Albania	Lawyer	Greece Albania
Lawyer 2	PhD In Law Postdoc in Law	UK USA	Professor of Law	Kuwait USA UK	Judge/ Legal expert	Albania
Lawyer 3	PhD in Law Postdoc in Law	Canada Canada	Professor of Law	Canada/ Albania	Judge/ Legal Expert	UK/ Canada

The LSP instructors (Table 2) had all a rich background in teaching LSP courses. Two of the participants had taught ELP courses in the USA and in the Middle East previously, while the remaining LSP instructor participating in the study was a business English instructor and a business English course coordinator. Two of the LSP instructors were also IELTS examiners. Their LSP teaching background as well as their background as language assessors were also thought to contribute to the richness of the data for the study.

Table 2
LSP Teacher Participants' Biographical Information

Participant	Educational Background	Country	Teaching Experience	Country	Examining Experience	Country
Teacher 1	MA in TESOL	USA	ESP/EAP/ ESL instructor	USA Qatar	IELTS	Middle East
			Course coordinator	Qatar		
Teacher 2	MA in TESOL	USA	ELP/EAP/ ESL instructor	USA Qatar	IELTS	Middle East
Teacher 3	MA in TESOL	USA	ELP/EAP/ ESL Instructor	Middle East		

3.2 Instrument

The stimuli consisted of six appellate briefs written by L2 law students based on a given legal case (Appendix A). It is a quasi-authentic task- one of the most common types of persuasive writing that lawyer deal with in their professional careers. The appellate brief assessment used as the instrument for this study assesses students' ability to:

- a. appreciate which facts of a case are legally material (i.e., which facts-determinative or/and explanatory- could be used to raise a legal issue or build a legal argument);
- b. demonstrate how a legal rule or principle can be applied to a specific case;
- c. structure an argument in favour of or against a defendant;
- d. argue why an appellate court should affirm or reverse;
- e. comprehend and use legal terminology correctly
- f. linguistically produce a nearly error-free piece of writing

Appellate briefs are, by nature, integrated skills tasks, which involve global, expeditious, careful reading as well as the critical evaluation of facts/cases and the synthesis of evidence from various sources or within the same text, in order to build a legal argument.

Although the length of a real-world appellate brief ranges from a few to 50 or more pages, the appellate brief task serving as stimuli for this study was short-up to two pages. The brevity of the task stems from the limited sources (e.g. only one precedent case to examine) as well as the narrow scope of content required to complete the task, which was conditioned by the high cognitive demand of input processing on L2 law students (both in terms of language and legal skills) as well as the inability of the ELP instructors to go beyond their expertise and deal with substantive legal questions.

The legal case file and the students' briefs were sent to all six participants by email a few days prior to the conduct of focus groups in order to give them sufficient time to analyse the legal case and the accompanying documents and familiarize themselves with the task requirements. The six selected sample briefs represented a range of scores- from the highest to the lowest recorded performances, which was hoped to generate a variety of and more detailed feedback. The decision to include only six samples was based on two factors:

1. The small number of students taking the English legal writing course (a sample of over 5% selected from the registered students)
2. The range of the ability: according to the scores awarded based on the existing criteria the test population was rather homogenous, with little variability in the data. Thus, the six selected samples represent a range of scores- from the highest to the lowest. However, two important points are worthy of consideration:
 - a. The lack of variability in the data may be related to the existing criteria not satisfactorily distinguishing between performances in a way that matters to insiders.
 - b. Although the six selected samples represent rather distinctive levels of performance according to the existing criteria, it might be the case that these performances are found to be more similar (rather than more different) based on the new criteria- the ones that matter in the legal context.

3.3 Method of Data Collection

The data for this study was collected from May 2019 to June 2019 and consisted of the participants' oral commentary on the students' appellate briefs. Two focus groups were held: one with the lawyers and the other one with the LSP instructors. Each focus group lasted approximately one hour. The focus group with the lawyers was conducted in an office while the setting of the other focus group was a university classroom.

The decision to take part in the focus groups/ this research study was based on the informed individual consent of each participant. Regarding the permission to use the sample performances, the instructor of the legal writing course agreed to grant the researcher access to the sample texts after he/she had anonymized them. The researcher has no access to the personal information of the students who wrote the sample legal texts. The name of the course instructor and the organization will not be mentioned in this study. It should be noted that it is a practice at the university that at the beginning of each course, students sign a consent form if they are willing to allow the instructor, the course coordinator or the university at large to use their work for the purpose of assessment standardization, curriculum revision, or research.

3.3.1 Procedure

Each focus group consisted of three stages. At the beginning of stage one, the participants were asked by the researcher, who was acting as a focus group facilitator, to imagine themselves in a feedback session with students, and in that context, to consider which aspects of each appellate brief they might comment on. Lawyers were also asked to formulate their feedback in terms of a feedback session with a novice lawyer. In addition to a file consisting of hard copies of the legal case, *Reste* (precedent) case and students' briefs, each participant was given a simple handout with two columns headed Strong/Weak aspects of the

appellate brief on which to take notes. Asking the participants to broadly comment on the strengths and weaknesses of each appellate brief was deliberate by the researcher, who did not want to skew the participants' feedback towards issues that might not indeed be in the focus of their assessment/evaluation. Another reason for keeping the headings deliberately general was that the researcher wanted to elicit as thick data (Geertz, 1973) as possible in order to find out whether the task, and therefore, the assessment criteria in the official rating scale (Appendix B) were capturing, in essence, what lawyers and LSP instructors value in legal/persuasive writing.

Each student brief was analysed one at a time. Participants were given the time they needed to assess each brief and the discussion started only once every participant was ready. The preparation time varied from brief to brief. Once every participant was ready for the discussion, each of them took turns to share their evaluation, commenting on the strengths and weaknesses of the brief. The participants were allowed to exchange views, comment on each other's evaluation of briefs, and co-construct their evaluation if they wished. In order to elicit as thick data as possible, the participants were also allowed to compare the students' briefs if they deemed it necessary to better articulate their evaluation. The participants were reminded that they did not need to reach an agreement but discussion/comments on each other's views would help the researcher get a comprehensive insight into what the particular group of experts indeed valued in a persuasive piece of legal writing.

In stage 2, the participants of each focus group were asked to rank the briefs on the assumption that ranking the briefs and explaining the rationale for the particular rank assigned to each of them would make it more evident to the researcher which criteria were most important to both groups of specialists. This could also help the researcher identify the borderline performances and the criteria for determining the cut off scores. It should be mentioned that the participants were allowed to negotiate their ranking should they wish to do so.

The re-evaluation of the sample performances did not affect in any way the grading/status of the students who wrote them.

In order to address the third research question, the participants were asked in stage 3 to share and discuss their views on who should assess legal writing tests- lawyers/judges/legal educators or ESP/ELP instructors- and based on which criteria- indigenous or more linguistically-oriented criteria. The participants were encouraged to base their views on the experience of evaluating the briefs for this study as well as on their educational experience of teaching Law/L2/ELP/ESP students.

3.3.2 Preparing and organizing the data

Both focus groups were audio recorded and then transcribed verbatim by the researcher. However, since the transcripts were analyzed thematically, the content- not the features of the talk such as emphasis, speed, tone of voice, etc.- was the focus of the analysis (Bailey, 2008). That is why the mode of transcribing has been kept straightforward, omitting all non-verbal dimensions of interaction except for hesitations or short/long pauses, which are represented by three dots (...) in the text. Names and all other references in the transcripts that might identify the participants were removed for the analysis process. Each participant was anonymized by assigning them a pseudonym. Lawyers have been labeled as L1, L2, L3 while LSP instructors will be identified as T1, T2, and T3. The researcher has been labeled as R. All the sentences or phrases which the participants read out verbatim from the students' briefs have been put in quotation marks to distinguish them from the participants' commentary. The words in brackets have been added by the researcher for clarification when the references were not clear from the participants' commentary. The information about each transcript is provided in table 3 below:

Table 3
Focus groups details

Focus Group	Venue	Length (Time)	Length (Words)
LSP Instructors	Classroom	1:22:38	10911
Lawyers	Office	1:01:11	6187

The researcher checked the accuracy of the transcripts against the audio recording four times. A few words that seemed to have been heard incorrectly were fixed. Independent, blind parallel coding and the check for the clarity of the themes identified by the researcher were not implemented due to practical considerations and the limited time the researcher had to collect and analyze the data. However, the ranking of the legal texts by both groups of experts at the end of the focus group discussion served as a substitute for intercoder reliability, since each participant had to state the criteria/criterion which they based their ranking decisions on. This helped the researcher check for the accuracy and consistency of the themes initially identified through thematic analysis.

3.4 Method of data analysis

As mentioned in the previous section, thematic analysis was applied to the data in order to elicit the indigenous assessment criteria. The method focused on the content of the data, with the themes initially being derived inductively from the participants' commentary and then further refined and consolidated through an iterative process following the six-phase framework proposed by Braun and Clarke (2006): (1) becoming familiar with the data, (2) generating initial codes through inductive thematic analysis and open coding, (3) searching for themes, (4) reviewing the themes, (5) defining the themes, and (6) writing up.

Initially, each transcript was read several time to create a general picture of the entire body of data. Then every participant's comment or suggestion in the transcript was coded using open coding (i.e., codes were developed and modified through the coding process; the researcher did not have pre-set codes). The codes were then examined whether they fitted together into a theme. Initially

the themes were broad but later they were reviewed, modified by gathering together all the data relevant to each theme and verifying that the data supported the theme which they were grouped under. The final step involved an examination of each theme to confirm that they were distinct from each other. The themes and their inter-relationships established through the analysis of the data allowed a model to be developed exploring what is valued by legal experts as well as LSP instructors in a persuasive/appellate brief.

There were a few challenges faced by the researcher during the process of data analysis. First, the participants' commentary consisted of questions, criticism, suggestions, statements that something is missing, or a combination of all these. Therefore, a very close examination of the data was needed during the initial coding. This was compounded by the fact that in several cases, the comments and the evaluation of the briefs were interactionally co-constructed, clarified, interpreted and even negotiated by the participants, especially by the LSP instructor participants. This meant that a view expressed earlier was worked out by the participants and even changed later as participants reflected, refined or justified the issues raised during the group discussion, as the following excerpt from the focus group discussion with the LSP instructors shows:

T3: *(Brief) 4 will definitely not pass.*

T1: *So if they don't apply Reste, they can't pass.*

T2: *Yeah, they shouldn't.*

T1: *Four has Reste but doesn't explain it at all.*

T2: *yeah.. but the actual article is fine, the decision is fine, the conclusion is fine. The introductory phrase is not.*

T1: *That one is tricky; I don't know if four passes or not.*

T2: *Four is probably barely passing.*

A final challenge was related to the fact that some comments were associated with more than one theme, suggesting that some assessment criteria might be inextricably linked rather than discrete features of performance evaluation. An example was the analytical framework CREAC, which was a criterion used by the

LSP instructors to assess both the strength of the argument and the organization/structure of the brief (section 4.2.3 in this paper)

4. Findings

The findings have been organized, analysed and presented by research question. This approach is thought to facilitate the discussion of the findings because it draws together all the relevant data for the exact issue of concern to the researcher and preserves the coherence of the material, thus enabling the themes, relationships, comparisons across the two sets of data to be explored more conveniently and clearly (Cohen, Manion & Morrison, 2018).

4.1 Research Question 1

Q1. What aspects of an appellate brief are valued by subject specialists?

The lawyer participants' comments on the students' appellate briefs fell into three main thematic groups: structure/organization, legal analysis, and language. Brief examples from the data from the focus group with the lawyers are used to illustrate each theme. The entire transcript can be found in Appendix D.

4.1.1 The structure of the brief

All the three participants emphasized in their commentaries that the structure of the brief is essential for two reasons: first, it shows professionalism, which means it makes a first positive impression even before a judge considers the case; second, a well-structured brief adds to the strength of the argument. The following comments are illustrative of the importance that the lawyer participants attached to the structure of the brief.

L3: ...unprofessional, I would say. Well, I can understand, but I would like to see this brief better built in terms of the blocks of the argument, I see here and there, it is difficult if you would see this piece of the argument. You need to see the argument in block. It makes the work of the judge more difficult because the judge needs to scan through the entire argument to get the point. I am not impressed certainly.

L1: You cannot throw your arguments in this way. The arguments should be tight together... to build the case in favour of the client.

L2: Student 6 has better analysis compared to student 5 but she has not followed a format to structure the argument... the main problem is that he or she has a patchy structure; you don't know where the conclusionary statement begins, and where the conclusion of the case is. There is some good analysis, but here you see that structure is very important because a judge or a lawyer is trained and they have their own methodology of analysis... and if you have this patchy analysis, it will be difficult for a judge to be persuaded.

Although all the lawyer participants referred to the reasoning paradigm given in the test question, i.e. CREAC (see Appendix A), what they really wanted to see was an introduction with a thesis/conclusionary statement, a main body with the analysis, and a conclusion, as the illustrative comment below show:

L1: the two students should have an introduction, development of the case with all the facts, including the articles in the contract, and a conclusion.

While the participants did not elaborate on the introduction (except for the fact that conclusionary statement should be in the introduction) the features that they valued in the conclusion of a legal brief were extracted from their commentary as illustrated below:

L2: ... it has a very well organized conclusion. So in four or five lines it has exposed the problem, the key arguments and why the court should change the opinion.

The conclusion, therefore, is no different from the conclusion of a traditional five-paragraph essay, in which the thesis is restated (the problem/legal issue of the current case), the key points are summarized (i.e. the key arguments in favour of the client) and a recommendation is provided (i.e. why the court should affirm or reverse). It is a component of organization (introduction, body, conclusion) but it is also linked to the content of the brief as a complementary to its

analysis/argumentation. The comments below illustrate the significance of conclusion in strengthening the argument.

L3: Normally, a legal brief like this should have a conclusion; it gives you the taste, that seeing it, me as a judge, I would say that this is a problematic brief because this lacks an important component

L2: An appeal without a conclusion is a very bad start

Regarding the body of the brief, i.e., the analysis or argumentation, the participants would like to see the arguments organized in blocks, each paragraph dealing with one type of argument as the illustrative commentary below suggest:

L2: It has some explanation of the rule but the explanation is patchy, so it is here and there; it starts in paragraph 1,2,3, and then we have another good explanation of rule in the almost last paragraph before the conclusion, so this makes it a bit difficult to understand, to capture the explanation.

Table 4: *Lawyer Participants' commentary: thematic analysis*

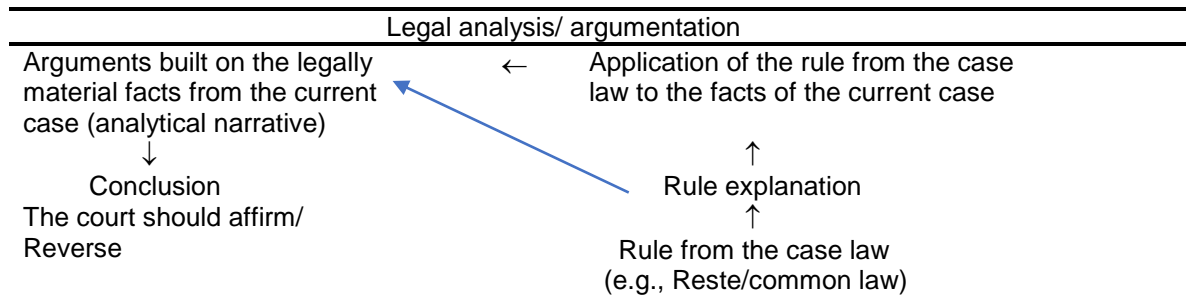
The structure/organization of the brief		
Introduction	Body	Conclusion
↑	↑	↑
Conclusionary statement Stating the legal issue, i.e. whether the court has erred or not	Arguments discussed in blocks Violation or not, based on the facts from the case Rule Rule Explanation Rule Application	Statement of the problem Key Arguments Why the court should affirm or reverse

4.1.2 Legal analysis/argumentation

This theme was perhaps the most challenging one to extract since it includes a few other sub-criteria which cannot be easily considered in isolation (Table 5). All the lawyer participants agreed that a good analysis/argumentation is the core of a brief.

L2: *But if I would be a lawyer hiring someone out of these three students, I would hire student 3 because we know that analysis in law is very important... The format can be easily taught but what is difficult to be taught to someone is the analytical explanation.*

Table 5: *Lawyer participants' commentary: thematic analysis*



According to the lawyer participants, a good analysis is a process whose initial and the most important step involves the analytical narrative, i.e., the ability to build a solid argument based on the rule/common law analysis and the selection and synthesis of the determinative (legally material/relevant) facts from the current case. In other words, analytical narrative focuses on the case at hand: the ability to pick up legally material facts which will most likely determine the court decision and build the argument based on them (i.e. explain why the law is in favor or against a defendant based on the selected facts from the case at hand). Picking up the key or determinative facts from the case at hand and skilfully use them to raise a legal issue/build an argument is very much what is defined as legal reasoning or thinking like a lawyer. The following excerpt illustrates this concept (the words in square brackets are the explanation of the researcher).

L1: *Now... the student has mentioned that, according to article 9 in the contract, the house was rented for the purpose that the client wanted a quiet house [the rule from the contract] because she was a student and wanted to study. The landlord failed to provide this requirement [the rule/law is against the landlord and in favor of the tenant].... "the noise prevented her from sleeping and studying" [legally material/determinative fact which proves the violation of the rule of the contract] so the purpose of renting the house was to sleep and study... so in the case of repeated noise, the house was not meeting the prescribed conditions of the house, so in the case of repeated noise, the house was not meeting the prescribed conditions of the house [the*

argument: the rule has been violated and this has been evidenced with relevant facts from the case]. This is a point that judge would immediately notice and also find in the contract.. the articles in the contract that have been violated. This is the first argument... So as a judge, I look at the violated law, and all the facts of the case and I immediately agree with the case made in the brief.

It is this element of the analysis that was valued the most by the lawyer participants since working with facts is challenging. It involves separating facts from other material (conclusion, inferences, etc) separating key or determinative facts (legally material facts) from other (e.g. explanatory and/or coincidental) facts, and establishing their relevance to the rule or common law to build the legal case or argument. The importance that the lawyer participants attached to the facts skills is illustrated through the excerpts from the focus group discussion show:

L2: Here you have the fact; failure to prevent noise, noise was serious and repetitive, reasonable time; so I see very strong arguments to convince the judge; this is the student we are looking for; I am happy that we read this.

L1: The student has given the noise in the apartment, which was repetitive and lasted for two to three weeks from 9 or 10 pm for two to three hours. She has stated events in such a detailed way, adding even hours, not only weeks, so as a judge I get a better picture of the situation... (the noise) not only repetitive but also late at night; so facts should be used cleverly in order to build the case in favour of the client.

L3: She uses another argument that no one else uses. She says that finding an apartment in New York in a short time is impossible. So time and place (the city) are very important arguments that she uses in favour of the tenant.

The comments above illustrate the emphasis that the lawyer participants placed on analytical narrative, particularly in selecting the determinative facts. It is the most challenging step of the process because it involves looking at the facts at the beginning of the case, before they are even put to a court, thus predicting the impact of such selection on the court's decision.

However, the participants also emphasized the need to include in the analytical process the rule coming from the case law (previous cases similar to the case at hand), the rule explanation (explaining how the rule was derived from the facts in the case law) and application (how the rule from the case law applies to the facts of the case at hand). Rule explanation and application, according to the lawyer participants, strengthens and supports the analysis/the argument. That is, lawyers need to tell judges explicitly how the law supports their opinion rather than letting judges figure that on their own. Whenever the rule explanation/application was missing in a brief, all the participants pointed it out.

L2: *The only missing point is that after the rule, is the explanation of the rule. The student cites the rule and the (precedent) case but it doesn't go and explain the rule in detail; lack of this explanation backfires you.*

L1: *This is very close to a perfect brief, if it had a bit more explanation of the rule.*

L2: *One of the weaknesses is that the brief has the rule but does not explain the rule; instead of explaining the rule of the Reste (the precedent case), it gives the facts of the Reste. So in a legal case what you need to know is how the court explained the rule using some of the facts of the case; you should look more at the judgment of the rule or the explanation of the court and then apply that to your case.*

4.1.3 Language of the brief

Language seems to be the least important feature of a brief based on the lawyer participants' commentaries. It was mentioned only five times: three times with a reference to syntax and grammar and twice with a reference to the legal terminology.

L2: *The positive aspect of this brief is the fact that language and writing are flowing smoothly, so it is generally positive.*

L3: *I see unfinished sentences; this is a problematic brief; and language is another issue.*

L1: *And in my opinion, this student's strengths are the use of the relevant arguments and the correct use of terminology.*

However, none of the participants was able to articulate or elaborate on their comments on language. This could be because they lack the metalanguage to comment on the language aspects of the brief. It could also be that language is not an important assessment criterion for them as the following excerpts from the data suggest:

R: *So do you think that language... based on your discussion, you didn't focus so much on language, so I assume that even with some language-related problems, you can still get what you need from these. So do you think language should be included in the evaluation criteria?*

L1: *So, you are going to fail a student because of some language mistakes? We are not going to judge them in terms of language but in terms of ideas and how the student has understood the case study and made effective use of the facts to make his/her case.*

R: *But these are law students in a legal writing course, and their briefs have language errors. So in this case, would you disregard these mistakes?*

L1: *To me the arguments are important, so I would appreciate the arguments, not language.*

L2: *To me language is also important; we wouldn't expect a good lawyer without good language, but we as lawyers would accept minor mistakes, not substantial ones. Because a good argument without a structure wouldn't make any sense. But if language is understandable, if language is above average, because every law student has to have a high or average score in IELTS, in English, but still if we compare a good language user with some problems in analysis and a very good analytical user but not so skillful in language, I would prefer the latter, with strong argument because they can improve language. Language is something that can be improved but analysis is something which is not only related to training, but sometimes it is gifted in a sense, so that's why we look more for analytical skills.*

4.1.4 Ranking/ Standard Setting

All the three participants came up with the same ranking (Table 6). Their ranking did not only serve as a check against the themes that were identified through thematic analysis. It also confirmed the importance that the lawyers attached to the legal analysis/argumentation component of the brief, using it as the primary criterion when ranking the students' briefs.

It should be noted that ranking students' performance served as standard setting, too. This is because the borderline performances as well as the minimum criteria of an acceptable brief were identified. Referring to the rationale that each participant provided for their rankings as well as the overall score assigned to each brief, it could be argued that the minimum acceptable level of a brief is the inclusion of the analytical narrative, as the following excerpts from the commentary on the borderline performances indicate:

L2: Student 3 has the best analysis, or analytical narrative. The main problem student 3 has is it doesn't apply the conclusionary statement, I mean it has it but it doesn't mention anything about the rule, it doesn't explain the rule and what we have here out of the four elements, we have only analysis, somehow, and the conclusion is also lacking. So when it comes to the depth of analysis, this is very good, so arguments are backed up by the facts of the case, and the way they are structured makes the case persuasive.

L3: For example, it is required to include facts, the whole analysis rationale, the other case to strengthen argumentation, like Reste case here, so I think the previous case could have been used to make a better argument, not just referring to.

The rationale for the ranking as well as the commentaries on the strengths and weaknesses of each brief reveal another sub-criterion used by the lawyers to assess the quality of the analytical narrative (please see the explanation in the ranking table on page 41). That is, the more key facts used by the students to build their arguments, the higher the score for the analysis should be. The commentary below illustrates this sub-criterion:

L1: Two answers we have seen.. first and second student... it is stated that the landlord is guilty, and why he is guilty... because he should provide proper conditions, but where are the facts in the brief, where in the contract it is, and at the end, the student 2... there is the same answer as student 1, that the landlord failed to stop the noise in his apartment, although the student spoke to the landlord but the noise returned even worse... In samples 1 and 2, we didn't see which article in the contract has been violated and which are the rights of the landlord and the tenant, so in my opinion, these two briefs are good, but not good enough.

L3: *She uses another argument that no one else uses. She says that finding an apartment in New York in a short time is impossible. So time and place (the city) are very important arguments that she uses in favour of the tenant.*

Table 6: *Lawyer Participants' Ranking of Students' Appellate Briefs*

Rank	Brief		Rationale for ranking		
			Analysis		Organization
1	Brief 4	Very Good	Excellent Analytical Narrative*; Explanation missing/undeveloped	Well organized conclusion	Well Structured
2	Brief 5	Good	Good analytical narrative *** Application missing	Short conclusion	Arguments not structured in blocks
3	Brief 6	Average	Good analytical narrative/ correct use of legal terms All parts of the analysis present	Missing conclusion	Poorly structured
4	Brief 3	Borderline	Very good analytical narrative **; Rule, Explanation, Application missing	No conclusion	No conclusionary statement (intro)
5	Brief 2	Borderline	Satisfactory analytical narrative****; Explanation, Application missing;	Clear Conclusion	Poorly structured
6	Brief 1	Borderline	Satisfactory analytical narrative****; Rule, Explanation, Application missing;	Missing Conclusion	No conclusionary statement (intro)

* all determinative facts of the case have been used to build the argument; ** most of the determinative facts have been used; *** few of the determinative facts have been used **** all the explanatory facts have been used

The structure of the brief was the second most important criterion which the lawyer participants applied when ranking students' briefs :

L2: *I would say 6 is average. Number 6, the main problem he or she has is the patchy structure. You don't know where the conclusionary statement begins and where is the conclusion of the case, which makes it, I mean, the arguments are there; there is some good analysis, but here you see that structure is very important because a judge or lawyer is trained and they have their own methodology of analysis and because we are talking about two pages – a court decision can vary*

from ten to 20 pages, and if you have this patchy analysis, it will be difficult for a judge to be persuaded. And it is a pity because this student has a good analysis. So this is a main problem he or she has.

4.2 Research Question 2

Q2. What aspects of an appellate brief are valued by LSP instructors?

A thorough and iterative analysis of the data from the focus group with the LSP instructors led to the identification of three main themes: clarity, the strength of argumentation, and structure. Each of these themes has been illustrated through excerpts from LSP instructors' commentaries. The entire transcript of the focus group can be found in Appendix C.

4.2.1 Clarity

This criterion seems to be valued by all the LSP instructor participants. Clarity, according to them, is associated with language accuracy and the correct use of legal terminology.

T2: The main problem that makes this piece of writing sort of problematic, difficult to understand, is language issues. You know, the person probably knows what she wants to say but the language errors have made it impossible, difficult, so you know, that should be noted. So language renders it sometimes confusing and incomprehensible in parts.

T1: They understand correctly, but they cannot write correctly the language of this, so whether a lawyer would look at this and say no this is all wrong or whether we can understand this is a language issue; some language errors, but I can understand at least.

T2: There are several language issues like fragments, run-ons, misspelled words, wrong word, subject -verb agreement...issues like article use... unclear statements, verb tense, right? ... there are so many unclear sentences, you don't know what she is trying to say...

T3: The clarity is the main point; the student is using the wrong word or wrong forms which are conveying the opposite meaning of what she is supposed to present... there are several cases where the capitalization- there are capitalization errors, there are grammar errors like word forms in the main idea, as T1 mentioned, such as constructive eviction instead of constructively evicted.

T1: I just crossed out one word...ok... and adding one word- how much of a difference does this make? ... so we are saying changing 6 words, and this goes from not acceptable at all to well done... it's the clarity... but it is based on language. Because it is those words that are missing or misplaced. So it is not that the message is wrong. It is that they didn't have quite the language to clarify it.

However, a shared concern among the LSP instructor participants was the measurability of this element of the brief, or the inferences that could be drawn based on a score awarded to the clarity of a brief: is clarity a manifestation of successful “translation” from the mind to the written word, or is it indicative of a strong, well-formed argument? Or, put it differently, are linguistic errors or the incorrectly used legal terminology symptomatic of poor reading comprehension of legal cases, undeveloped legal reasoning, or inadequate linguistic resources needed to translate complex thinking and legal analysis into written word? How could clarity be incorporated into the assessment scheme? This was a question that, unfortunately, remained unanswered after one hour and twenty minutes of discussion among the LSP instructor participants.

T2: ... but look at the first sentence of the second paragraph, “The court should hold that Deema was not constructively evicted.

T1: Should hold that was not

T2: But she was constructively evicted, so again, I don't know if it is a language problem; do you see what I mean?

T1. Hmm... yes.

T2: but I think they maybe misunderstood...

T1: I think students find it, as I found this, challenging... and this (the Reste case) is in my opinion the most complex reading...and the longest.

T3: Sometimes we could say this is a language issue but the judge will not listen to that because he will look at what you presented in writing instead of what was in your mind, so if I were a judge, and I had to decide based on this, and the lawyer made a mistake of typing incorrect

language, I would make a judgment based on what is in front of me, so in terms of clarity, I think she does not present a good argument because she has lost her position in a couple of places where she has kind of failed to explain

T1: They may or may not understand what evicted means because they are using the wrong form here... they use constructive with it, you know, as a form of adjective so they have been able to change an adverb to an adjective instead of some cases, but they don't understand how to make it to eviction and they may not understand what it means at all .

T3: I doubt that

T1: Why do you doubt that

T3: Because they are common terms...

T1: You are just assuming that they know things; they are not showing you they know that.

T2: Clearly they understand it, they understand the basic premise but they can't write arguments using it because of their weak English.

T1: Right... and I still question whether they know what effective truly means and whether they understand what constructively evicted truly means.

4.2.2 Argumentation

All the three LSP instructors associated the strength of the argument with the students' ability to include all steps of CREAC in their briefs.

T3: However, I don't see the application of the rule. For example, the prompt says that she has to refer to the case brief of Reste Realty... that would make the language more argumentative. ... in terms of the strength of the text, it is not argumentative enough.

T1: They do use persuasion but they don't use the CREAC format, so their persuasion is lacking but it does use persuasion to some extent.

T1: So she has some persuasion but it is incomplete... she doesn't have much of a conclusion.

T3: She is explaining what happened and how this is not good but what should the court do is not mentioned.

T1: She is lacking all parts of the CREAC.

The participants also agreed that the argumentation is the core of the brief.

T3: *Five should also pass*

T1: *... they apply CREAC*

T1: *So If they don't have Reste, they can't pass.... One of these doesn't have Reste (RE from CREAC) at all, that's three. Three doesn't have Reste at all... doesn't pass... major issue... yeah.*

4.2.3 Structure

CREAC has been also referred to when the organization or the structure of the brief was discussed. Participants expected the students to follow the order suggested by the analytical framework required to frame the argument. So, paragraph 1, the introduction, should have the conclusionary statement, which serves as the thesis statement or the main idea of the brief (e.g., The court erred). The body paragraphs deal with REA components of the framework, which means the rule coming from the precedent case, its explanation and its application to the current case. C component is the conclusion, in which students should suggest that the court reverse the decision.

T1: *Perhaps we have CREAC formatting here... we assume they must be in order; it makes sense in order... so when using CREAC format, they should probably go in order, right?*

T2: *Right*

T2: *This is probably the messiest in terms of structure.*

T3: *And then if you look at the paragraph number 1,2,3,4,5, reference to Reste again?*

T1: *OK, this is organization, sure it is all over the place.*

T1: Start with what the problem is (C). You say the rule after that (R), and you explain it (E), ok? Now I believe in A (analysis), this is where we compare the two, jumping back and forth- you have Atheya's case first and then go to Reste, then you explain Reste, and when you analyse, you have both Atheya and Reste, and then you can conclude with Atheya's case

4.2.4 Ranking/Standard Setting

The themes identified and discussed above and the importance the participants attach to each of them have also been confirmed by the ranking of the appellate briefs at the end of the discussion. Differently from the lawyer participants, the ranking of the appellate briefs by the LSP instructors was co-constructed. After some discussion, there was eventually total agreement on the ranking and the criteria used to rank the appellate briefs (Table 7). The most important criterion to LSP instructors is the argumentation, but their criteria for assessing the quality of argumentation is strictly based on the analytical framework provided in the prompt. Failure to miss any of the components of the framework would put students in danger of failing the test.

Table 7: *LSP Instructor Participants' Ranking of Students' Appellate Briefs*

Rank	Brief	Overall Grade	Rationale for ranking		
1	Brief 6	Very Good	Applies CREAC	Clarity	Well structured
2	Brief 5	Good	Applies CREAC	Issues with clarity	Well structured
3	Brief 4	Borderline	E from CREAC missing	Clarity	Errors in structure
4	Brief 2	Borderline	E from CREAC missing	Unclear	Poorly structured
5	Brief 1	Fail	REA from CREAC missing	Unclear	Poorly structured
6	Brief 3	Fail	CREAC format not followed		

T3: *I think in terms of assessment, this would be easy to assess because we see that the CREAC format is kind of followed.*

T1: *Yeah missing just one part.*

T1: *Six would rank number one. Fulfilling all the criteria despite some organization problems.*

It can be seen from table 5 that the borderline performances miss rule explanation although they have the conclusionary statement (the court has erred) the reference to the rule (the rule from the case law, i.e. Reste), rule application (application of the rule to facts of the current case) as well as a conclusion (a statement of why the appellate court should reverse).

4.3 Research Question 3

Q.3 Should legal writings in a university course be assessed by a subject specialist or a language instructor.

4.3.1 LSP instructors' views

Regarding this question, the LSP instructor participants first wanted to clarify that who assesses a L2 legal writing test and based on which criteria will very much depend on the purpose of the course and the level of language proficiency of the L2 students taking the course.

T1: If it is an English course with some legal content and you have a lower level of language which necessitates lower domain knowledge, a language teacher is a better assessor and more qualified because language is one of the goals. So it depends on the goal of the course. On the other hand, if the level of language proficiency is higher, you have more domain knowledge and language is part of the TLU domain, then a domain specialist should be the assessor... this is quite clearly the type of work that a law student would do whether he or she is a law student in their first language or in their second language.

T2: Regarding who should assess L2 legal writing tests, as we have agreed at our meeting, if the course is a basic legal writing course, a language teacher trained in basic legal terms and concepts should be the assessor. However, if the writing delves deeper into hardcore legal issues, then a domain specialist with some training in teaching writing would be the right person to assess it.

However, regardless of the case, all the three participants reiterated that if the assessor is a domain specialist, he or she should have some linguistic background and receive prior training in language teaching; likewise, if the assessor is a language instructor, he or she should have some basic legal background to be able to understand the methodology of writing a legal document.

T2: But whoever does the assessment- whether a domain specialist or language specialist- that should have some training in the other field.

T3: It goes back to the theory of using literature to teach language, so one of the objections is that if you choose literature to teach language, you have to teach learners how to read literature before you teach language. I think, if we use language specialists to assess this type of writing, we have to train them how to read law before they start assessing legal writing tests..

In cases of strong performance tests such as the appellate brief under investigation, the LSP unanimously contended that a domain specialist would be a better fit as an assessor:

T3: I think the main concern in this writing is the meaning... it is argumentative writing... can you convince the judge that your client is right and the defendant is wrong, so a domain specialist can make that judgment than a general language teacher, because they know how judges look at the appeal and they know how this should be structured, so they are aware of the format and the analysis., this is not a general summary... this is a very technical piece of work that students have to produce, so a domain specialist would know how these thing works, how to analyse in a legal context versus how to analyse in a general context, so he would spend more time assessing the strength of the writing in terms of the content than language like we do in terms of grammar, word choice, vocabulary. He would look at these things, are these things convincing. Does this lawyer convince the judge in terms of producing persuasive writing in all these five areas.

T2: So we are making the assumptions based on the materials required for this task, so that's why I agree with T3 that definitely.... a domain specialist with language background should assess it.

T1: A domain specialist is more qualified as an assessor if you have more domain knowledge and language is part of the domain.

While two of the participants believed that a strong performance test should be assessed against the real-world assessment criteria, the other participant argued that the assessment criteria should also include language descriptors.

T3: I believe that the lawyers' assessment criteria should be used to assess legal writing tests since they are aware of the purpose, format and practices in the field.

T1: I would say the criteria should match the assessor and the general purpose and context of the course/assessment.

T2: It would be best if the assessment criteria combined both the lawyers' and the language teachers' criteria. The reason is that even if a student has made an attempt to adequately cover the required content, if the language and structure are defective, the writing could be incomprehensible or confusing.

4.3.2 Legal specialists' views

Legal professionals participating in the focus group were in agreement that an appellate brief or any type of legal writing should be assessed by a domain specialist unless the focus is more on language.

L1: For sure, in my opinion, a lawyer. This is because these students are going to operate within a court, and just as in other institutions, when operating in a court, you need to know the rules but you also need to know the steps... so always there should be a person to assess, who has very good idea about law and the practice of law.

L3: if the aim of the course is to actually train lawyers, for sure you should have law professors, judges or lawyers assess their writing. If the purpose of this course is to teach English in a legal context, then I would prefer language trainers because probably the legal argument is less important than legal English. So it depends on the aim of the course. If this is a clear legal course, there is no doubt that you need to have a judge; otherwise can you imagine a language instructor to assess this? You can have as much legal background as you want; you cannot have engineers

train lawyers even if you have legal background; so the purpose of the course/assessment is the key and from there you decide who will assess students.

5. Discussion

In response to the first question about what matters to legal experts, the thematic analysis of the commentary established a range of interconnected themes that mattered to the lawyer participants as they gave feedback on the appellate briefs written by L2 law students. Legal analysis or argumentation was identified as the most important criterion to judge the quality of a brief. Although legal analysis comprises five elements, including a conclusionary/thesis statement, analytical narrative, the explanation of the rule from the case law, its application to the facts of the case at hand and a conclusion, analytical narrative, or the ability to build a legal argument based on the legally material facts from a case at hand, was deemed as the core ability that legal specialists expected a law student to display. Such an ability represents what is usually known as legal reasoning, or thinking like a lawyer. This might explain the fact that the lawyers participating in this study were more lenient in their evaluation than the LSP instructors, establishing a satisfactory analytical narrative as the minimum standard of the acceptability of an appellate brief.

This finding is important not only in relation to the main goal of this study, i.e. the review and revision of the assessment scheme used to evaluate the legal written test in question. It also enables breaking down a very complex process into components which are weighted according to their importance as decided by the domain specialists- those who evaluate lawyers' legal written communication in real life. Knowing the value of each step in the process of developing a legal written argument makes it easier for non-domain specialists, i.e., language assessors, to evaluate L2 students' briefs and represent domain specialists in a legal test setting.

In terms of organization, which was the second most important criterion elicited from the lawyers' feedback, an appellate brief appears to share similar organizational features to a persuasive essay, beginning with an introduction

which includes a thesis statement or the statement of the legal issue, a body containing blocks of argument (analytical narrative, rule, explanation, application), and a conclusion ending with a recommendation for the appellate court to consider. A structured brief is more likely to be considered by a judge because it is easier for him or her to follow the argument. The way the conclusion is structured is thought to strengthen the argument, since the function of this part of the brief is to summarize the key arguments and state whether a court should affirm or reverse. It is, in a sense, a brief within the brief.

Finally, it is also interesting that although language was referred to when the lawyers provided feedback on the quality of the briefs, it was considered the least important assessment criterion. The lawyers reiterated that the main purpose of an appellate brief is to persuade. Language, important as it might be, is not the primary focus as long as it does not prevent a judge from following the argument. It should also be noted that the reason for disregarding the linguistic component of performance might be that the lawyers expect law students or novice lawyers to possess a certain level of language proficiency (usually above average, or at a minimum of B2 CEFR level of proficiency), given the complexity of the legal material they consult or process during brief writing. Therefore, the lawyer participants seemed to hold the view that at this particular level of language proficiency, linguistic performance is likely to improve through practice in a much shorter time than legal reasoning, which usually requires years of rigorous studying and practice to develop. The lawyers, nevertheless, valued language fluency and the correct use of legal terminology, praising those students who displayed such language-related features in their writings.

In response to the second research question regarding what matters to LSP specialists, the data analysis revealed the same broad three themes or assessment criteria as those employed by the legal experts: argumentation, organization (structure), and clarity (or language). Nevertheless, the nature of the feedback was significantly different. This is because LSP instructors focused

more on the linguistic errors and the use of legal terminology than on the quality of argumentation, although argumentation was the primary criterion they referred to when ranking the briefs. This was expected, given the LSP instructors' linguistic background/expertise and their tendency to evaluate a piece of writing in linguistic terms, regardless of its genre or its specificity.

The issue that the LSP instructors raised about the difficulty of interpreting the score assigned to clarity is worth considering, though. An appellate brief by its very nature is a very complex task, involving the integration of two language skills (reading and writing) as well as the analytical and critical thinking abilities. Focusing on the observable (the linguistic errors) but also being cognizant of the underlying abilities that are manifested through writing, none of the LSP instructors was sure whether the lack of clarity or the incorrect use of legal terminology in some briefs could be attributed to inadequate reading comprehension skills, undeveloped legal reasoning, or limited linguistic resources needed to translate complex thinking and legal analysis into written word.

Another interesting finding was the approach which the LSP instructors adopted in assessing the quality of argumentation in the briefs. Differently from the lawyers, who ranked analytical narrative as the most important sub-criterion, the LSP instructors stuck to the analytical paradigm provided in the prompt of the test when assessing students' briefs. This is understandable, given their limited legal background. In real life, legal reasoning is not as rule-based as it might appear in theory: it often depends on how the evidence is used to build an argument or raise a legal issue- working with facts, including the selection of the key evidence and the way the facts from a case are synthesized to fit together in order to present a coherent and cohesive legal analysis, and so on. One might be able to develop an argument based on evidence and yet fail to persuade a judge, while another lawyer may miss a few facts, yet develop a compelling argument that achieves the intended effect on a judge's decision. As argued in the literature

review section, this might be the reason why many professors of law rely on their instincts and expertise as legal analytical readers rather than to an assessment scheme when grading students' briefs. Since the LSP instructors in this study lacked such an expertise, sticking to a formula when assessing the quality of argumentation and ranking students' briefs accordingly seemed to have been a safer and easier approach for them to adopt.

The LSP instructors, too, stressed the need for an appellate brief to be well structured, with an introduction, a body and a conclusion. However, for them this was the least important criterion, following the strength of argumentation and clarity.

The ranking disparities, too, highlighted the value of involving domain specialists in the development of assessment criteria and in establishing the minimum standards of legal writing tests (cut-off scores). Not only did their ranking differ from that of the LSP instructors. Their expectations regarding the minimum level of the acceptability of an appellate brief suggests that the involvement of legal domain specialists in the development and the validation of the assessment criteria of a legal writing test is a valuable contribution to test validity.

On the other hand, the differences in terms of the quality of the expert feedback, point to the importance of the collaboration between legal experts and language specialists in developing assessment criteria which would enable the measurement of both legal writing and general writing abilities- two abilities that are intertwined and part of a lawyer's overall competence and valued by the legal community.

The indigenous assessment criteria derived from this study could inform the revision of two components of the official rating scale, namely the task fulfillment/ argumentation and the brief's organization. Regarding the argumentation, the vaguely perceived descriptors in the official rating scale could be replaced with

the three main blocks of argumentation elicited from the participants' commentaries and their assessment criteria: analytical narrative, the rule and explanation of the case law and its application to the facts/evidence of the case at hand (for more details, please see the revised version of the rating scale in Appendix B). As for the brief's structure, a valuable addition could be the inclusion of an effective introduction and conclusion as two important blocks of organization in addition to effective paragraphing.

In response to the third research question about who should assess a legal writing test (i.e., domain or language specialists), all the participants, regardless of their domain of expertise, were in unanimous agreement that the focus and the nature of the course or assessment will very much determine who the assessor should be. If the purpose is to teach content and legal reasoning skills through the medium of writing, then all the participants agreed that a legal educator should be both a teacher and assessor/evaluator. This is because in their view, reading a legal brief is not the same as reading a general persuasive piece of writing; it takes years of study, practice, as well as experience in a court setting to develop not only legal reasoning, but most importantly, the ability to evaluate the effectiveness of such reasoning. A language instructor, never operating within a court of law, would thus be unable to fully represent a domain specialist in a legal test setting. However, if the purpose of a test is to measure the knowledge and the abilities underlying legal communicative performance rather than communicative success (Douglas, 2000), a language specialist receiving some training in legal analysis, especially in working with facts, would be a better fit. The latter case is more relevant to the context of this study, where basic written legal communication in English is targeted and assessed through a mixture of linguistic and professionally relevant indigenous criteria.

6. Conclusion and Implications for Future Research

This study has sought to address a number of research questions related to the assessment of L2 legal writing, in particular, what features of an appellate brief matter to legal experts and language assessors and who should assess L2 legal writing tests. The main aim in this study was to address the almost total lack of research evidence on designing and validating L2 legal writing assessment criteria. This was done by eliciting and analyzing qualitative data from two focus group discussions with three experienced lawyers and legal educators as well as three LSP instructors.

The methodology of this study drew from the previous studies on the indigenous assessment criteria in two other LSP domains, namely health and aviation. That is, the decision to involve both subject and language specialist and compare the ensuing qualitative data was informed by Douglas and Myers' (2000) study. The structure of the focus group as well as the approach to eliciting expert feedback/indigenous assessment criteria were adopted from Pill's (2000) study, while the qualitative approach to standard setting was informed by Manias and McNamara's (2016) study.

Overall, the outcome of this research attests to the value of the qualitative evidence in providing insights into what matters to domain specialists and how this could contribute to the development of LSP assessment schemes that better reflect the real-world assessment criteria used to evaluate performance in a TLU domain. At a more practical level, a major contribution of the present research is that it provides much needed empirical basis for the validation of L2 ELP tests. To illustrate this point, breaking down complex processes, such as analytical reasoning, and establishing the minimum level of an acceptable performance is thought to facilitate the role of LSP/ELP instructors in representing domain experts in a L2 legal writing test setting. Further, viewing performance from the perspective of both domain and language specialists ensures that both general

and legal writing abilities are measured or captured by a L2 legal writing assessment scheme.

This study's findings also seem to support the view that it might prove impossible in a LSP testing situation to fully implement indigenous assessment criteria. Even in cases of very specialized LSP tests such as ELP tests, an adoption of the weak version of indigenous assessment criteria (Douglas, 2000) seems to be a safer approach. That is, measuring the knowledge and the abilities underlying legal communicative performance rather than *communicative success* should be the goal. This is because both ELP instructors and assessors lack the expertise and content knowledge to be involved in teaching and assessing complex processes such as legal reasoning, which take years of study and practice to be developed (Turner, 2015; Vinson, 2005). This is also compounded by the fact that such knowledge and expertise can be evaluated only if one has extensive experience in reviewing trial court decisions. It is, therefore clear, that only (appellate) judges or legal educators could teach and assess legal content and analytical or reasoning skills. In other words, only domain experts can measure communicative success in a legal context.

Another merit of this study lies in the attempt to translate the indigenous assessment criteria applied by the lawyers into linguistic terms (Pill, 2016). From the very beginning, the presence of an applied linguist as a focus group facilitator served as a reminder to the lawyer participants that their feedback was to be used by experts of another domain. Therefore, in many cases the lawyer participants offered their feedback both in legal and standard English. This made it easier for the researcher during the data analysis to look for themes that could be more accessible and interpretable by a language assessor.

However, the most significant implications of this study stem from the corroboration of the conclusions drawn from some previous studies on the features of good legal writing (Hart & Breeland, 1994; Kosse & ButtleRitchie,

2003; Robbins, 2003). Particularly, by confirming the value of organization, language fluency, and clarity as three important features of an effective appellate brief, this study suggests that it is possible to derive generalizable indigenous assessment criteria that could be applied in assessing various types of legal writing, such as legal memoranda and legal briefs in various legal contexts. Furthermore, this study's findings resonate the conclusions drawn from Robbins' (2002) US federal judges survey on best features of an appellate brief that a solid argument and legal reasoning are the core of an appellate brief, thus making those findings more generalizable.

Being of an exploratory and interpretive nature, this study has a number of limitations, which at the same time raise a number of opportunities for future research, both in terms of theory development and concept validation. Indeed, more research will in fact be necessary to refine and further elaborate the findings of this study.

First, disentangling the relationship between language and domain knowledge (Davies, 2001) is one of the issues that has remained unresolved and, as a matter of fact, was not addressed in the current study either. For example, what is the role of critical reading, reasoning skills or language resources in one's written performance? Perhaps, involving L2 law students in retrospective think-aloud protocols could provide more insights into the cognitive processes and the interaction of various task components when an appellate brief is constructed by students.

Second, although training was recommended for ELP instructors in order for them to better represent domain specialists in an ELP test context, none of the participants elaborated on this issue. Therefore, designing a checklist which delineates the process of analytical narrative, especially in working with facts, and using such a list for training purposes in a similar way to that recommended by Pill (2016) could be the subject of another study.

Furthermore, the proposed modifications to the current assessment scheme should undergo a painstaking validation process, involving all the stakeholders, students and course instructors, too. This could then confirm or challenge some of the findings and, therefore, enable test developers to revise or not the test construct and the assessment criteria.

The standard setting practice in this study was rather simplistic. Therefore, more detailed research, including the collection of concurrent think-aloud protocols could be carried out. This is especially important in the context of legal writing, which involves a lot of inferencing and subjectivity in the evaluation of arguments and evidence presented in a brief.

Finally, the sample for this study was rather limited- only six samples of students' briefs were analyzed. A larger sample might be needed to arrive at more generalizable criteria.

APPENDIX A

The Appellate Brief Case Study

Bonnie & Clyde, L.P.A.

TO: Law Clerk

FR: Attorney

RE: Wyatt v. Altheya

You are a first year associate in the law firm of Bonnie & Clyde, L.P.A. in Doha, Qatar. Bonnie & Clyde, LPA is an international law firm with offices in New Jersey and New York, among others. One of the partners, Frank Clyde, has called you to his office in Doha and handed you the attached file. He stated that the client, Deema Altheya, is the daughter of a big client from Doha. The Altheya family requested that someone from the Doha office be assigned as a contact person for the case.

The file contains information regarding a suit for collection of unpaid rent against the client, Deema Altheya, by her former landlord. The case has gone through a trial without a jury, where the landlord, Michael Wyatt, has just won a judgment last week for \$10,000 plus attorney's fees. The notice of appeal has been filed and we plan to file for an extension to file the appellate brief until March 1, 2019.

Included in the file are the following documents: (1) a memo which the lead lawyer in New York, Mr. Simmons, prepared summarizing the facts found at trial based on the testimonies, (2) the letter which Mr. Wyatt sent Deema to collect rent, (3) the complaint, and (4) the rental agreement.

Mr. Clyde has asked you to look at the file and any relevant cases, and to draft an appellate brief claiming that the trial court erred in finding that Deema was not constructively evicted, the defense we raised but that the trial court rejected.

After looking over the file, you find the case of Reste Realty Corp. v. Cooper, 251 A.2d 268 (N.J. 1969). Using this case, **please write a draft of the appellate brief**. You may find it helpful to brief the case before you write your analysis. Your analysis is due on the date stated in the Syllabus.

Memorandum

TO: The file of Deema Altheya

FR: Greg Simmons

Date: September 15, 2018

RE: Wyatt v. Altheya - Summary of Facts at Trial

These are the facts that emerged from trial as found by the trial court. This is a lawsuit for failure to pay rent filed by Plaintiff-Landlord Michael Wyatt against our client Defendant-Tenant Deema Altheya. The trial consisted mainly of testimony by our client Deema Altheya, who testified to the following facts:

Ms. Altheya is a law student at New York University Law School and was just beginning her first year of the SJD program when she entered into a three-year rental agreement with Michael Wyatt on August 1, 2017. She rented the apartment located on Charlotte Street in the New York SoHo District because it is near her law school. The Rental Agreement was properly admitted into evidence. The Rental Agreement was to run from August 1, 2017 until July 31, 2020. Mr. Wyatt, who owns several apartment buildings in New Jersey and New York, had Ms. Altheya sign that excessive noise on the part of a tenant constitutes grounds for termination of that tenant's rental agreement. (See Rental Agreement.)

Ms. Altheya had problems with her next door neighbor, Chris Rood, an aspiring bass trombone musician who studies at the Julliard School of Music in New York City. In about the beginning of November 2017, Mr. Rood began practicing at home for a musical play involving his bass trombone. He held rehearsals at his apartment three to four times a week beginning at about 9:00 or 10:00 p.m. and lasting two or three hours. The rehearsals always involved loud sounds, shouting and banging. During these rehearsals, Ms. Altheya was subjected not only to noise, but to various obscenities as well.

Ms. Altheya's life was greatly disrupted while these rehearsals were being held. She could not study in her apartment because of the distracting noise. Getting to sleep at night became a problem whenever there was a rehearsal. She had to resort to the bathtub just to be able to fall asleep, as her bathroom was the furthest point in her apartment from Mr. Rood's apartment.

On December 1, 2017, Ms. Altheya ran into her landlord, Mr. Wyatt, in the basement of her apartment building while she was doing her laundry. Ms. Altheya's testimony was confirmed by Mr. Wyatt's testimony. She took the opportunity to explain to Mr. Wyatt the problems she was having with Mr. Rood's rehearsals and trombone sounds. She told him that she was having trouble living in her apartment because of the noise coming from Mr. Rood's apartment. She emphasized that her studies and sleep were being significantly affected. Mr. Wyatt explained to Ms. Altheya that Mr. Rood was a musician but that, to date, he had seldom worked at home. He also told her that he would speak to Mr. Rood about Ms. Altheya's concerns. Ms. Altheya thanked him. The noise ended four days later.

After completing the semester without any more problems, Ms. Althea went home to Doha, Qatar for the holidays on December 20th. On returning to New York on January 20, 2018, Ms. Althea telephoned Mr. Wyatt to reiterate the problems she had had. She told him that, although there had been no noise since December 5th, she was afraid that the musical rehearsals would begin again. Mr. Wyatt assured Ms. Althea that he had spoken to Mr. Rood and that Mr. Rood's musical play was now in production and the rehearsals were over.

On February 28, 2018, Mr. Rood began holding rehearsals at his apartment once again. The noise and offensive language were as bad as before, and Ms. Althea again had trouble studying or sleeping. On March 12, 2018, the day before a particularly noisy rehearsal had prevented Ms. Althea from finishing a law school paper on time, she again telephoned Mr. Wyatt with her complaints. He told her that he would call Mr. Rood.

Ms. Althea at that time wanted to move out of her apartment, but her intense law school schedule did not leave her time to look for a new place to live. Mr. Wyatt telephoned Ms. Althea three days later to inform her that he had again spoken to Mr. Rood, who had promised to keep the noise down or hold his rehearsals elsewhere. The noise continued for several more days and then ended. On April 15, 2018, Ms. Althea overheard Mr. Rood in the hall telling someone that his new musical play was due to run for two months but that he had auditioned for a new part for which musical rehearsals were set to begin again in August. The noise had adversely affected her studies and she felt that she could not live with the noise or the constant fear that the noise might begin again.

As soon as she completed her exams at the end of April 2018, Ms. Althea began to look for a new apartment. She notified Mr. Wyatt by telephone on May 1, 2018 that she could not continue to live in her apartment because of Mr. Rood's intolerable noise. She explained that, although presently there was no noise, she was afraid the rehearsals would begin again.

She moved out on June 1, 2018.

The trial court admitted into evidence the letter from Mr. Wyatt collecting rent dated September 30, 2018.

WYATT HOUSING ASSOCIATES, INC.
3414 Park Ave, Union City, NJ 07087
Quality Apartment Since 1977

September 30, 2018

Ms. Deema Altheya
Doha, Qatar

Also sent via email to: deema-Altheya@nyu.edu

Dear Ms. Altheya:

Please be advised that you are in arrears in your rental payments in the amount of \$10,000. Although you vacated your apartment in June of this year, you were still under a contractual obligation to pay rent. You are liable for the rent due from the time you vacated until a new tenant leased the apartment.

The last rent check received from you was for the month of May. A new tenant has rented the apartment effective September 30, 2018. Accordingly, you are obligated to pay the back rent of \$2500 a month for the months of June, July, August, and September, for a total of \$10,000. If payment is not received by October 30, 2018, all appropriate legal action will be taken against you.

Your prompt attention to this matter is appreciated.

Respectfully,

Michael Wyatt, President
Wyatt Housing Associates, Inc.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

MICHAEL WYATT,

Plaintiff,

COMPLAINT

- vs -
2014-0123

Index No.:

DEEMA ALTHEYA,

Defendant.

X

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The Complaint of the Plaintiff, Michael Wyatt, through undersigned counsel respectfully shows and alleges as follows:

1. The Plaintiff herein, Michael Wyatt, is a resident of the State of New Jersey. Mr. Wyatt resides at 3414 Park Ave, Union City, NJ 07087.
2. The Defendant herein, Deema Altheya, is a resident of the State of New York. Ms. Altheya resides at 66 Houston Street, New York City, New York. Defendant is a student at the New York University Law School.
3. Defendant was tenant of the premises owned by Plaintiff under a written rental agreement made between Defendant and Plaintiff on or about August 1, 2017.
4. Article 12 of the rental agreement designates New Jersey law as the law that governs the construction, validity, enforcement and performance of obligations arising under the rental agreement. Article 12 further designates New York state court as the forum for actions or proceedings under the Lease.
5. The premises are described in the rental agreement as follows: All rooms contained in that space designated as Apartment #4 in that building known as and located at 99 Charlotte Street, New York City, New York, 10014, which is situated within the territorial jurisdiction of the Supreme Court of New York, County of New York.

6. Under the rental agreement, Defendant was to lease the premises from Plaintiff for a lease period of three years commencing August 1, 2017 until July 31, 2020.
7. Under the rental agreement, Defendant promised to pay to the Plaintiff as rent an amount of \$2,500 each month on the first day of each month.
8. Defendant moved out of the premises on June 1, 2018 in violation of the rental agreement.
9. Defendant did not pay Plaintiff rent for four months from June 1, 2018 until September 30, 2018, after which the premises were rented to another tenant.
10. Rent has been demanded by the Plaintiff from the Defendant personally and by letter since the rent became due.
11. Defendant owes Plaintiff unpaid rent of \$10,000.
12. By reason of the facts and circumstances stated above, Plaintiff has been damaged by Defendant in the sum of \$10,000.00 and the expenses of finding a new tenant.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of \$10,000.00, plus interest, costs and disbursements, together with any other relief the Court finds to be just and proper.

Dated: October 30, 2018

Atty. Gregory Simmons
(1234567)
Counsel for Plaintiff
32 Adams Street
New York City, New York 10014
Phone # 123-4567

Rental Agreement

THIS RENTAL AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 1st day of August, 2017, by and between - Michael Wyatt, 3414 Park Ave, Union City, NJ 07087 (hereinafter referred to as "Landlord") and Deema Altheya, Doha, Qatar (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the fee owner of certain real property being, lying and situated in New York County, New York, such real property having a street address of 99 Charlotte Street, New York City, 10014 (hereinafter referred to as the "Premises").

WHEREAS, Landlord is desirous of leasing the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant is desirous of leasing the Premises from Landlord on the terms and conditions as contained herein;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the above described Premises for a lease period of 3 (three) years, such term beginning on August 1, 2017, and ending on July 31, 2020.
2. **RENT.** The rent is Two Thousand Five Hundred DOLLARS (\$2,500) payable on the 1st day of each month upon the due execution of this Agreement. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.
3. **DEPOSIT.** Upon the due execution of this Agreement, Tenant shall deposit with Landlord the sum of Two Thousand Five Hundred DOLLARS (\$2,500) receipt of which is hereby acknowledged by Landlord, as security deposit.
4. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant, as a private single family dwelling. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.
5. **MAINTENANCE AND REPAIR; RULES.** Tenant agrees to keep the leased premises in a safe, clean, sightly, and sanitary condition at all times. Tenant further agrees to refrain from excessive noise or other conduct which may disturb any neighbors' peaceful enjoyment of the

leased premises. Tenant will require other persons in the premises with the Tenant's consent to comply with this requirement.

6. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord.
7. **UTILITIES.** Tenant shall be responsible for arranging for and paying for all utility services required on the Premises.
8. **INSPECTION OF PREMISES.** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon.
9. **QUIET ENJOYMENT.** Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant's performance of all Tenant's agreements contained herein and Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof.
10. **DEFAULT.** Tenant(s) agrees that upon any breach of this Agreement the Landlord may terminate this Agreement and/or require the Tenant(s) to surrender possession of the leased premises to the Landlord upon the giving of thirty days' notice.
11. **ABANDONMENT.** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind whatever. Landlord may, at Landlord's discretion, as agent for Tenant, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Landlord by means of such reletting.
12. **GOVERNING LAW AND FORUM.** New Jersey law shall be the law that governs the construction, validity, enforcement and performance of obligations arising under the rental agreement. New York state court shall be the forum for actions or proceedings under the Lease.

13. **MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

14. **NOTICE.** Any notice required or permitted under this Lease or under state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested.

As to Landlord this 1st day of August, 2017.

LANDLORD:

Sign: _____

Print: Michael Wyatt Date: August 1, 2017.

As to Tenant, this 1st day of August, 2017.

TENANT

("Tenant"):

Sign: _____

Print: Deema Altheya Date: August 1, 2017.

THE PREVIOUS CASE

<https://law.justia.com/cases/new-jersey/supreme-court/1969/53-n-j-444-0.html>

Reste Realty Corporation v. Cooper

53 N.J. 444 (1969)

251 A.2d 268

Test Prompt

Directions: Please write a persuasive argument in favor of Deema Altheya using the CREAC format of the first issue in the Wyatt vs Altheya case.

You might want to include the Conclusory Statement, the Rule, the Explanation, the Analysis, and the Conclusion. You may refer to your Case Brief of Reste Realty Corp. v. Cooper to write the Rule and Explanation. Please remember that the Rule and Explanation for this task will come from the Reste case. The Explanation will require you to include the facts, holding and analysis, or rationale in Reste.

Appendix B

Appellate Brief Assessment Criteria (official)

	Poor (1)	Satisfactory (2)	Good (3)	Excellent (4)
Task Achievement	The writing presents only a vague or confusing argument. No evidence is presented	The writing presents a clear and relatively precise argument but provides little evidence to support it	The writing presents a clear argument and provides sufficient evidence to support it, but perhaps no clear articulation of the reasoning related to the evidence to the claim	The writing presents a clear argument, provides sufficient and compelling evidence to support it, and makes clear the reasoning relating the evidence to the claim
Organization	No logical sequence of arguments*; no evidence of effective paragraphing	There is some logical sequence of the arguments*; effective paragraphing attempted	The facts and arguments are presented coherently with minor errors; effective paragraphing is evident	The facts and arguments are presented coherently with no mistakes; effective paragraphing is clearly evident
Register and Style	Legal terms are used incorrectly, or not at all	Legal terms are attempted, but they are sporadic and mostly not correct	Legal terms are used frequently and mostly correctly, but not consistently	Legal terms are used accurately and effectively
Grammar and Punctuation	Uses simple grammatical forms with a good degree of control; most of the sentences contain grammar, capitalization and punctuation errors which impede meaning and comprehension	Uses simple grammatical forms with a good degree of control; a few sentences contain grammar, capitalization and punctuation errors which may impede meaning and comprehension	Uses a range of simple and a few complex sentences with a good degree of control. A few errors which may impede meaning and comprehension at times	Uses a range of simple and complex grammatical forms with a high degree of control; minimal grammar errors occur only in complex grammatical forms, yet these errors do not impede meaning and comprehension; no errors in simple grammatical forms

***CREAC format**

The proposed modifications to the Appellate Brief Official Assessment Criteria (in bold)

	Poor (1)	Satisfactory (2)	Good (3)	Very good (4)
Task Achievement (legal analysis)	The argument is based on little/coincidental evidence from the case. The rule, the explanation and/or application might be missing.	The argument is based on sufficient/ mostly explanatory evidence from the case. The rule, the explanation and/or application might be erroneous or missing.	The argument is based on substantial and compelling/determinative evidence from the case. The rule , the explanation and/ or application might be erroneous.	The argument is based on thorough and compelling /determinative evidence from the case. The rule, the explanation and application are all well presented.
Organization	The brief is missing the introduction and conclusion; No logical sequence of arguments; no evidence of effective paragraphing	Either the introduction or conclusion is missing. There is some logical sequence of the arguments; effective paragraphing attempted	Either the introduction or conclusion is effective; The facts and arguments are presented coherently with minor errors; effective paragraphing is evident	The introduction and conclusion are effective; The facts and arguments are presented coherently with no mistakes; effective paragraphing is clearly evident

Appendix C

The transcript of the focus group with LSP language teachers

R: Should we start with the first sample?

T1: OK

T3: Looking at the text, I think the message is clear in terms of conveying the message. The student has clearly delivered the message. She is trying to make the argument that the tenant was not comfortable in that apartment because of the noise and because the landlord, I mean, could not solve it and because of that, she had to leave the apartment, so it was not her fault; it was the landlord's. So, I think the facts are repeated in multiple places with some kind of argument. However, I don't see the application of the rule. For example, the prompt says that she has to refer to the case brief of Reste Realty ... that would make the language more argumentative. For example in law, when we present an argument we normally refer to the precedents of the previous courts because that makes your argument relevant. In terms of language clarity, it is clear but in terms of the strength of text, it is not argumentative enough.

T2: Well, that's what I thought too. First of all, look at the very first sentence. It is erroneous. ... the trial court erred in finding there was constructive eviction... right? But there was no constructive eviction. The court did not. Constructive eviction means when there is a problem where the tenant lives and the landlord does not do anything as a result the tenant is forced to leave the premises, to leave the apartment. So there was no constructive eviction...the court did not find there was constructive eviction but there was constructive eviction, so that was the problem. There was no reference to the precedent, she has to refer to the precedent because the two cases are similar, right? And there is no discussion of the precedent, no application, so most parts of the prompt are missing. There should be rule, explanation, analysis, but there is none... these three parts are missing. Maybe there is a conclusion, right? So the nomination of the rule, which according to instructions should come from the Reste case, no explanation and application, no statement of what action the court should take; that's also an important part. In the conclusion, she or he should mention what the court should do but he doesn't discuss that at all. So the major elements of the rubric, I am sorry, the instructions are missing. The requirements are missing. ... How about the language? There are several language issues like fragments run-ons, misspelled words, wrong word, subject verb agreement.

T1: Sorry to jump in... I would even argue that potentially we don't know that in the first sentence, which you are arguing about, that there is a problem with the conclusory statement- that she says the opposite, in fact, of what she means. It could be a language issue. It could be. What was clearly written here in the ... how do we call this... how do we call this document... the case study. In the case study it says that the court erred in finding that Deema was not constructively evicted; of course she (the student) wrote the opposite.

T2: yeah

T1: Maybe the error was writing "I" instead of "in finding" She did not write "no".

T2: She should have written "not".

T1: On the other hand, if you consider that "I", I am reviewing this, I find that there was...

T2: Oh I see, possibly.

T1: So, we don't know because of the language issue. If she says I found, it would be correct.

T2: So she is writing the opposite, right?

T1: It does... we are not sure... so there are language issues here; besides, missing elements of persuasion, that are required in this format, the abstract, you know, clearly understanding of the student's intention.

T2: One thing I think, it probably captured case of al Athiya, sort of, you know.

T3: The case of Athiya's case is fine.

T1: The facts are relatively understandable even with errors.

T2: Yeah yeah

T3: I think it is more a description of the incident rather than an argument.

T2: Yeah

T3: For example, when you pointed out, if we, if I believe that she was trying to say that I found, that doesn't make it a relevant legal document because in law, we don't involve ourselves directly. So there is no personal pronouns. Because...

T2: But very likely, I think it's a .. she wanted to say there was no constructive... there was no constructive eviction but she ended up saying the opposite, probably because of language problem.

T2: But the major problem is lack of discussion of the precedent. No discussion of it at all, number one. Number two, no statement about what action the court should have taken, that's also a major issue.

T1: I think as I mentioned before, it is more a description, than an argumentative piece of writing. So that doesn't make it a legal... a document that I can call a legal document.

T2: But I think something that I think it should be noted is because this might also inform our discussion about whether a language teacher or domain specialist should deal with this, the main problem that makes this piece of writing sort of problematic, difficult to understand, is language issues. You know, the person probably knows what she wants to say but language problem has made it impossible, difficult, so you know, that should be noted. So language renders it sometimes confusing and incomprehensible in parts.

T1: I would add something else, that from my perspective, it seems that the student has read the case study, and the accompanying documents but has possibly not read Reste case, because there is no mention of it at all.

T2: At all.

T1: And this is in my opinion the most complex reading.. and the longest.

T2: hmm.. but is this what they are supposed to do or do they get a summarized version?

R: No, they read it.

T2: I see.

T1: And the highlight, if I can ask, these are the pertinent aspects of the case, right. Ok, so it is not summarized for them in different words, but it is highlighted to make it easy for them to find the most important information.

T2: But if you look at some other samples, there is at least one case in which Reste has been summarized effectively, the most relevant portions. ... the most important points.

T3: I think we are not comparing them.

R: We can compare them later.

T3: Ok ok

T2: So, is that enough for sample 1?

T1: Yeah, let's go on.

T2: So, let's look at sample 2?

T3: Yeah

T1: So when using CREAC format, they should probably go in order, right?

T2: Right

T1: We didn't talk about it in sample 1. We decided they were missing REA because they didn't have the rule, they didn't explain the rule, they couldn't analyze it, therefore...

T2: And there was no conclusion

T1: So, we couldn't effectively find CREAC. Here perhaps we can.

T2: Let's see. Possibly.

T1: C is in the first sentence, correct?

T2: Yes... yeah

T1: "R" then is using the rule of rest, and which is in fact coded.

T2: But the code starts but there is no end.

T1: Well, I think it is a format issue, potentially. I think it is at the end of the paragraph.

T1: "In Reste" ... E.. could start explaining.. and now it could well be the next paragraph... In Athaya's.... and we have a conclusion and perhaps we have CREAC formatting here, and I don't know whether you think it is effective but to my mind, I can potentially see where the student is trying to use it, even though it is from paragraph to paragraph, which by the way doesn't say how it has to look... it must have these parts. We assume they must be in order; it makes sense in order... we need certain parts of each fact.

T2: But look at the first sentence of the second paragraph, " The court should hold that Deema was not constructively evicted.

T1: Should hold that was not ...

T2: But she was constructively evicted, so again, I don't know if it is language, do you see what I mean?

T1: hmm.. yes

T2: That's a problem.

T1: It's a problem; I also find it one of the most complex statements and important statements in this entire case.. is the trial court errored so did they make a mistake in finding, which means that, of course, their decision was that Deema... was not actually constructively evicted.

T2: Yeah, so what they are saying is that she was actually constructively evicted, meaning that the landlord refused to fix a problem that made the apartment unlivable.

T1: Right

T2: As a result, she had to leave; she had no option. Right? But the court said... that's called constructive eviction... the landlord does not do anything, so she has to leave.

T1: Right

T2: But the court said, no, ... you are not constructively evicted, right? So the trial court made a mistake by saying that she was not constructively evicted.

T1: That's what they want students to write.

T2: Yeah, but I think maybe they misunderstood.

T1: I think students find this, as I found this, challenging.

T2: It's a bit convoluted.

T1: Yeah, I had to read it more to fully understand this.

T2: Yeah

T1: This... and this statement ... although we've decided. Even in example 1, they understand what the problem is but they are not able to create this statement. Even they just have to copy it.

T2: Yeah, the same thing happens here, that's what it says... the court should hold she was not constructively evicted.

T1: But the rest of the statement probably does not follow that line... they understand correctly but they cannot write correctly the language of this... so whether a lawyer would look at this and say no this is all wrong or whether we can understand this is a language issue...

T2: Yeah... I mean looking at their writing samples, you see that they have some major language issues, right? I mean to understand this complicated statement would be really challenging, but sample 2 is better than the other (1) in the fact that it follows the structure, the CREAC Structure, right?

T3: It attempts to do that

T1: Yeah

T3: I think what you point out that the student could have misunderstood the statement in the draft or the document which they were supposed to read.. I think coming with some legal background, I wouldn't be reading this statement wrong, because that's what I used to ... that's what I do everyday, so if I cannot understand this basic statement or this style of writing, then I shouldn't be in this field, so I think it's not a matter of not understanding the statement ... it's a matter of how you interpret that and how you use it to present an argument.

T2: So ... ok let me ... so do you think the student misunderstood the text in the brief and then reflects that misunderstanding in his writing or...

T3: I think it's a matter of describing her point of view.

T1: Which is language issue by the way.

T2: Yeah, language

T3: Which brings me to the second point I wanted to raise. Sometimes we could say this is a language issue but the judge will not listen to that because he will look at what you presented in writing instead of what was in your mind, so if I were a judge, and I had to decide based on this, and the lawyer made a mistake of typing incorrect language, I would made a judgment based on what was in front of me, so in terms of clarity, I think she does not present a good argument

because she has lost her position in a couple of places, where she has kind of failed to explain...

T2: Yeah, one of the proofs that it is a language issue... look at the first statement; it says :The Trial court erred in applying the rule that Deema Altheya was not constructively evicted"... this is correct

T1: Yes

T2: But the second statement "This court should hold that Deema was not constructively evicted:... these two statements are contradictory, so definitely the student understood the concept but was not able to express it in the second statement. So it's a language issue definitely.

T3: I took the last sentence : "The court should hold that there was constructive evicted".

T1: But it is the same issue. Show me another one that is not dealing with the same exact language issue of erring and finding constructively evicting because this is effectively the same example.

T3: First sentence?

T1: Yeah, so I am asking for a different example because they are equally showing that they have a language issue, so show me another example that they do not understand the concept; I don't think there is; they understand it. They don't understand this vocabulary – constructively evicted- they don't understand that. They don't understand how a court can error and a judgment based on that.

T2: This statement should have been correct if simply this word was written as eviction. The court should hold that there was constructive eviction.

T1: Yeah... they may or may not understand what evicted means because they are using the wrong form here.

T2: Yeah, the wrong form.

T1: They use constructive with it, you know, as a form of adjective so they have been able to change an adverb to an adjective instead of some cases, but they don't understand how to make it to eviction and they may not understand what it means at all.

T2: I am sure

T3: I doubt that

T1: Why do you doubt that.

T3: Because they are common terms that ..

T1: You're just assuming that they know things.. they're not showing you they know that.

T3: But the student use this term multiple times

T1: Ok show me where they use it.

T3: Evicted?

T1: Yeah

T2: The very first sentence

T1: They're copying.. show me where they're using it.

T2: I have seen other samples where they have used that... oh look at this one: "The court held the view that the trial court was correct in deciding that the defendant had been constructively evicted from the premises in question."

T1: Ok, yeah

T2: There is also another one .. there are also some other instances. Clearly, they understand it, they understand the basic premise but they can't write arguments using it because of their weakness in English.

T1: Right... and I still question whether they know what effective truly means and whether they understand what constructively evicted truly means.

T2: They probably look it up at a dictionary because such a major concept...

T1: Yeah

T2: For the whole essay... they will definitely understand it.

T1: Perhaps they will probably copy it in chunks according to what they're copying here but they are not able to write freely based on this concept and using this concept of eviction and constructive eviction; they are not able to explain it in any similar words. So I see a lot of language issue here and I don't know how much experience of dealing with this and whether they are written by students of x university who have not done much study of law yet, and I wouldn't expect them to have a worth of knowledge of law concepts.

R: This, by the way, is one of the final assessments; so basically they work on it, for example the other stages of the appellate brief; they (the stages) are kind of prep, so this is the argument- the core/the heart of the brief, so that's why they are being assessed.

T1: Sure

R: But they (students) have been working on this.

T1: Sure

T2: But I have seen as I was reading samples several instances where they actually understand the basics of what's happening what constructive eviction means but paraphrasing it, expressing it in their own words, is difficult.

T1: Right but that's how we can best see in this type of persuasive writing that they do understand it; otherwise, how else do we know that, especially how else do we know that when they're using it not only incorrectly but they are using it correctly, so they have both cases. How else would you know whether they understand the concept. They have to be able to paraphrase it and be able to show it to you.

T2: OK?

T1: So I would end with that. I would say that there are language gaps here especially regarding this term; they understand the basic premise of the case and they are able to show it to organize it and CREAC Message here, but language, like T3 said, I mean those are not small errors they are big errors for the main idea. So they should affect them more seriously than other errors. I agree.

T2: So, the strength of the second sample is ... it discusses the application of the common law, right? Statement of what the ruling of the appellate court should be, that's discussed, and also the precedent is discussed, right, and applied and everything.

T3: One thing I want to mention is that if this is one of the final drafts and this has gone through different processes of feedback that also raises the question of the type of feedback that is provided to students because there are several cases where the capitalization – there capitalization errors, there are grammar errors like word forms of the main idea as T1 mentioned: constructive eviction

constructively evicted- that also raises the question on the type of how feedback was provided by the instructor

T1: Not to mention the main idea in the first sentence, which has been incorrect.

R: You guys have mentioned the language, for example, I have noted down here, the strength of the argument, there is a language gap problem, that they are not able to express themselves, so let' say for example, you were tasked to create a rubric based on what you were seeing here, for example how do you articulate this language problem if you would come up with one criterion in the rubric. For example, what kind of language problem is this. I mean just naming it as the strength of the argument, or how would you, for example, we are mentioning here that there is a language problem

T3: To me it's more the meaning of the text more than the word form or the correct form of the word

T2: Clarity

T3= the clarity is the main point, the student is using the wrong word or word wrong forms which are conveying the opposite meaning fo what she is supposed to present

T2: Clarity and organization- how ideas flow logically.

R: Also you mentioned like descriptive versus persuasive tone in language. You mentioned that they are describing but there is no persuasion.

T2: Not all of them, some of them.

T1: I guess we have captured it. I think again the biggest problem in this text is very very small, it could be as simple as... I just crossed out one word.. ok and adding... one word- how much of a difference does this make.

T2: And also here constructive eviction changes the meaning

T1: So we're saying changing 6 words, and this goes from not acceptable at all to well done.

T2: Yeah

T1: Good job. So, where do you put that on the rubric. This problem... it's the main idea, the main understanding, it's the main concept. It's the clarity of... But it is based on language. Because it is those words that are missing or misplaced. So it is not that the message is wrong, it is that they didn't have quite have the language to clarify it.

T2: Yes, I kept thinking as I was reviewing these... it seems they knew they understood the basic concept, and they also seemed to know what they want to say, but they are not able to say it correctly, you see?

T1: Yeah.. it is difficult to put that on a rubric in my opinion, though.

T3: That's where the language teachers come in. `I think a general language teacher would help correct some of these basic mistakes better than a domain specialist because we see that this is a last draft and probably a domain specialist provided feedback on it, and we see... it could also be the student that he or she neglected or ignored the feedback provided... like our students do, but I think our students write final drafts way better than this one because of the coding, course conferences we have, so I think a general language teacher would make this draft better...

T2: Or the feedback provided was not effective... ok should we move to sample 3?

T1 & T3: Ok.

T1: Aha, they have that concept correct in the first two sentences. So obviously this is one of the first things you look for .. I mean obviously, but we determined this is also the main idea. So we have that...

T2: But there is no reference to the case.

T3: So there is

T1: In fact I don't see a good conclusion either. ... "Court must be sympathetic towards the tenant plight" is that starting the conclusion? In the second paragraph?

T2: There is no C.. there is no conclusion

T1: Noo... noo.

T2: So,

T1: And even the rules...

T2: No, there is no REA ... and the case.. the other case...

T1: No, so they ...

T3: I think it is similar to sample 1 where the student describes more than presents an argument.

T1: The language is quite good

T2: The first paragraph, if you look at the second paragraph, everything starts falling apart.

T1: Yeah ...

T3: So I think again, it's more descriptive than argumentative, because I mean as a law student, when you present ... when you prepare an appeal, you have to describe what happened, like the case and then... I mean, discuss the precedence and come to conclusion and request the court to... I mean for whatever you expect ... the results... I mean you expect them in your appeal. But the student here has kind of... starts with a good format; she described the case, so this case brief is really good. It summarizes what happened, and.. but then when it comes to the second part which is fact repetition and rule application, that's where it's very weak.

T2: And no conclusion and no reference to the other case.. so the first paragraph is where, the case brief is fine.. ok, it's effective, but everything else is missing. So we have the C part but not REAC.

T3: Yeah

T1: Ironically in terms of language, if I am allowed to compare, I find this the best example of language so far. They do use persuasion but they don't use the CREAC form, so their persuasion of course is lacking but it does use persuasion to some extent, should and would and could... but we have it.

T2: In terms of fulfilling the requirement of prompt- the major part is missing- almost all of it is missing.

T3: But I think there is some repetition as well.

T2: There is some repetition.

T1: There is supposed to be a little bit, right?

T3: When you make an argument, yes. So that's fact repetition rather than the repetition of what happened, like not the incident, so if I look at the second part of the second paragraph, she starts explaining what happened and how reasonable the argument bla bla bla without reaching the conclusion.

T2: So, like the content ...

T1: So she has some persuasion but it is incomplete. Even without the CREAC format, which is completely absent... even with the general persuasion, she doesn't actually have much of a conclusion.

T3: She is explaining what happened and how this is not good but what should the court do is not mentioned.

T1: She is lacking all part of the CREAC.

T2: I found that interesting that the first paragraph seems to be well written in terms of grammar but the second paragraph is much different- it has several errors, it sort of falls apart.

T1: It read a little bit differently too.

T2: Yeah

T1: This type of writing is difficult sometimes -it is difficult to assess sometimes because they use a lot of input, and some of it even correctly, so in a real sense, it is copied. In order to do it correctly you should quote but I mean paraphrasing slightly these things is necessary. You have to use the same words and even the same structures some time, so it is difficult for a language teacher to ascertain what is her language and what is not.

T3: Where what's the language specialist vs domain specialist comes up.

T2: So, in terms of language, this also shares the same language issues as the previous sample but it still has issues, like articles use, fragments, SV agreement, unclear statements, verb tense, right?

T3: From the assessment point of view, it will be difficult to assess this piece of writing because paragraph 1 is perfect, second paragraph has multiple mistakes. Until here I feel like OK, she is gonna get ten out of ten, but in the second paragraph I don't think she deserves a 10. That would also raise question in terms of rubric. How good can a rubric be to deal with one paragraph of a piece of writing which is perfect and one which is not perfect.

R: Which might be explained as T1 pointed out: they copy sentences, phrases or chunks, which is not really indicative of their language proficiency, but when they need to use their language more freely, they show their real level of language ability.

T3: Still, if you look at the first paragraph, even if they have copied chunks, the sentence structure is perfect. In the second paragraph they also copy chunks; for example, some of description is repetitive, but the student is making mistakes in simple sentence structures in the second paragraph. For example, in the sentence "Al Thaya moved out within a reasonable time" ... this is the same thing she described in paragraph 1 but then there are mistakes in grammar.

T2: But because they are using their language

T1: I think again a language specialist is more qualified to probably see and understand this, knowing what is being copied and how and .. most importantly understanding the perspective of the student as a language learner having

certain faults, using what she can but most probably by making mistakes. It is sometimes difficult what is copied and what is not. We need to think holistically and do our best and like what I said in the very beginning, I think the language specialist might be best to assess these.

T2: Should we go to the next sample?

T1: Is it problematic putting it at the end of the sentence? Until studying fine... that shouldn't be there, yeah. It should be at the end of the sentence. I think this is a language issue again; some language errors but I can understand it at least.

T2: So, this sample starts with a good conclusion except the last part right? And it also quotes the common law decision which is relevant to this case, but it doesn't apply it, it doesn't relate it to this case. It is just inserted there but no discussion of its application to this case.

T2: There is no mention

T1: You are right, she just throws it in there

T2: The last two paragraphs ... they are basically the same, you know. It's the same issue we discussed.

T1: We don't have the explanation of the rule, then right? Because we have the rule...

T2: No analysis

T1: No analysis that connects them, so we are missing E and A.. we have a persuasive argument, regarding the case, which is paragraph 3.

T2: Does she say what the court should do? Simply repeats what she says in the beginning. What she wants the court to do now, it is not there.

T1: So we have some language that is good but we have some ... a lot missing with the CREAC format, which I find it is not unusual. Perhaps students are not applying or understanding the CREAC format, because more than half of the examples, they are not applying CREAC correctly.

T2: This is a skill they need to learn

T1: They understand the persuasion but they do not apply the CREAC

T3: This raises questions in the instructor because this is consistent. This is supposed to be a process writing, so there is no fair assessment.

T2: What part of the case they should quote and they quoted but making connections, applying to and connecting it to the current case, that is missing.

T3: I think my main concern about this sample is format. I like the language, she was clear but the way you guys pointed out- the CREAC format, it should first be a conclusionary statement, mentioning the rule, the explanation of the rule, how she expects the court to divert the ruling and give advantage to the tenant, and that is missing, and in the end I wrote, so what.

T2: Exactly, so what they want.

T1: It is stated in the prompt, which the students are missing. So they are having problems.

T3: Did she start with an explanation with what happened?

T2: Yeah

T1: Ok, she has the rule, she understand the rule, but they get stuck in A and E, especially E. Now look at what the prompt says... the ruling comes primarily from the Reste case, so she has quoted it, but explanation is required too, and

she is explaining, she is doing a lot of explanation, but as most of the students they are not explaining the Reste case. They are explaining the judgment.

T2: And this is also an important part of the instructions; it says for the analysis portion of CREAC please keeps in mind the first two levels of analysis: fact repetition and rule application with effective dovetailing. Meaning this is what happened in the Reste case and similarly in this case, the landlord didn't do this, you know they have to make a relationship.

R: They have to draw an analogy so that it adds to the persuasion.

T1: I had to put a question that I have about the students and which is the application of this case. The problem is the lack of applying the CREAC format, specifically the explanation of the rule. That comes from the Reste case here. In many cases, they are scarcely mentioning it, let alone explaining it. As I mentioned before, that comes mainly from the linguistically complex and long document and it doesn't help in my opinion that part of it is highlighted here. When I reviewed it, I found that there was part of it necessary but was not highlighted. So I need to know what it is all about in order to explain it; I don't think they are understanding it. I see no evidence that they understand the Reste. From my perspective, looking at their writing, they are supposed to write about it but they don't. So they don't understand it at all.

R: So what you say is how can we check the evidence of comprehension? The way they are missing or the way they are using the input in their writing. They are not making reference to the input or explain it; it means they are not understanding it at all.

T2: Yeah, just for this. Just to answer his question. There are some students who have understood the case, who have related it to this present case, there are some students who have done it. I don't know how they did it.

T1: So they read it and understood it while other students did not understand it or maybe they even didn't read it at all.

R: So then you know the input is important; we need to make sure; did they understand it?

T1: We have a similar case in our course; we provide them with a lot of input and we expect them and want them to use it, and in some cases it is necessary to use it and if they don't, they didn't read it correctly. The instructions clearly say that they need to read it and use it and so by them not including it, I assume, they don't understand it because they cannot use it and apply it.

T2: Possibly

T3: For example, the last paragraph, where you are supposed to tell the court what to do.. that is missing and that's the reason why you are putting the appeal and if that is missing then how this can be complete final draft.

T1: Yeah, you look for the main ideas first, you don't have ERA.

T3: The second thing I have observed... do you guys think that the student understood the prompt?

T1: No, I wonder that too. I don't know if they understood the prompt or Reste.

T2: One thing is for sure.. if the instructions say use the CREAC format, so definitely they have discussed this. So students know what `CREAC means for

sure. They can't give such an assignment with such instructions if students don't know what it means.

T3: I mean I will give you an example to answer that. In 251 (course) when we give the prompt for the problem solution or opinion essay, we give them two solution and the third one says your own opinion. What I see, I have explained it multiple times to my students that your opinion means the third point supporting your position. But what they do is they start writing in my personal opinion this issue should be solved as soon as possible... instead of giving the third solution, they start giving their opinion.

T2: But you have discussed that several times you said, right?

T3: That's why even though they know what it means they still misunderstand which also raises a question the way this was taught. Were students taught how to read a prompt? And ...

T2: And whether they practiced writing

T1: So, if I were to guess, I would guess that they understood the prompt more than they understood the RESTE case, the prompt being much simpler linguistically, and it is much simpler descriptive writing. And while the case is descriptive writing it is still heavily endowed with heavy vocabulary terminology, and we have clearly seen here that they don't understand.

T2: But one thing we need to make sure is also I don't know... do we know was this what they were given: a summarized version of the case?

R: So, T1 thinks that students misunderstand the input but it could also be misunderstanding the prompt.

T1: Or a combination of two

T3: The reason why I say they misunderstood the prompt is because it's very clear very simple that you have to have 5 things which is conclusory statement, the rule, explanation, analysis and conclusion and the person explains what it means by analysis which is the main component, and that is missing in all the writings, we have seen so far. They should understand this but since it is missing I observe that these parts are missing so this brings me to the conclusion even though the prompt is simple the students still don't understand the prompt.

T1: Which I think even more that, they don't understand the case as opposed to the prompt.

T2: Based on the language level, the level of the language that I have seen in the samples, if the students have had enough practice with the prompt with organizing their thoughts, I think they would probably have no problem. Maybe I am just assuming they didn't get enough practice. I mean they can understand the prompt but they don't know how to put paragraphs together because if you look at the level of the language, I don't think they would never have any problem understanding this if they were taught properly.

T3: I think in terms of creating the rubric, if I followed the prompt to create the rubric then I assess this writing, most of them would be towards the lower end in terms of score ...

T2: In terms of task completion.

T3: Task completion, delivery, content, language format. For example lets say if I create a rubric, and I have these five things in terms of content- the CREAC format, so I think in terms of task fulfillment, students will get a very low score.

T2: The language as bad as it is, it's not very bad. I think the lowest score would be in task fulfillment because many parts ... the main components of the instructions are missing.

T1: In my opinion, based on the reasons... I agree with you both, I still think it is based on the input, that they are not able to make REA because they are not understanding the input. In my opinion, I think we have evidence to prove as much... I think we find that CREAC is followed correctly when we have paraphrasing of Reste that they clearly understand it. So, I would call into question how they are learning cases like this. Are they learning how to read and how to apply it. This is linguistically the most complex of all. It is so long... it doesn't really say why this is highlighted; you understand that this is kind of most important...

T3: They need to know how to read the document, so even if this document is long, they should be looking at specific parts of the document rather than reading it all.

T1: But if you are doing it in a real way, you are not reading tiny parts of the document, are you? You are reading the entire document. It's perhaps skimming it but you are reading more than one small part.

T2: Yeah

T1: I read a bit more... didn't read it very carefully but I read the Reste, of course the verdict that they are after, with Althaya because they base their case on other cases as well, so if you read Reste and understood it well, you would know how they were successful and how you can use that to be successful yourself, but they don't do it; they don't understand that concept ,and because they haven't read the RESTE, in my opinion, or understood how it works, so they are not successful.

T2: So as you guys said, possibly either they misunderstood the input...,right?... because it is too complicated, too long, or they misunderstood the process, they haven't got enough practice writing in this format, both the prompt as well as following the instructions.

R. So, you agree that maybe assessing the comprehension of the input could be some additional, I mean useful addition to rubric, so that it is clear when you assess them, because I think I assume when you write an appellate brief and when you argue in favour of a case, you also need to demonstrate that you have understood the input.

T2: You can see that in the writing, you can see whether they have understood the precedent case or not.

T1: I think it needs to be there too, because that is what CREAC is. CREAC is required in real life, in this format. Perhaps it is an important piece in the rubric

T2: So you can say mostly understood, poorly understood, and mistakenly understood.

T1: You can put it in a very general way. Must be included at least at a higher level, assimilated or demonstrated understanding.

T2: So, sample 5. It's a mess!

T1: Oh no! it looked good in the very first reading... and... OK...so they do a very very short explanation of the rule... the court errored in applying the rule of constructive eviction... is it a rule or rules?

T2: This sounds like the court actually found that she was constructively evicted

T1: Or it doesn't say, you are right, it is not specific enough, I agree. I think it's not wrong actually. So it's not complete and based on that, it's not correct.

T2: Ambiguous

T1: Is that a language issue?

T2: You see?

T1: We don't know because the language they use is correct. There is a lack of format; again, because it is not a conclusory statement and that's general... explanation is...

T3: There is also the format, the way this is ... the writing is structured. Meaning becomes a bit unclear; for example, there is wrong citation. I think this was repeated in the previous writing too; the second paragraph starts, under the common law. And then there are quotes, and at the end, the citation is RESTE Realty Cooper; that's not common law; You see, common law is different than the judgment that she is citing. So these are two different piece of information that are kind of put together.

T1: So from a practical point, we are talking about a language issue.

T2: Hmm right

T3: And then if you look at the third paragraph and the fourth paragraph, the third paragraph is a reference to the RESTE judgement and the fourth paragraph is the explanation of the case. So I think it should be the opposite. The presentation of the case first and then some kind of support... it goes the opposite

T2: This is probably the messiest in term of structure,

T3: And then, if you look at the paragraph, number 1, 2, 3, 4,5, reference to Reste again?

T1: OK, this is organization, sure- it's all over the place.

T2: Also, if you look at the sentence, also, the purpose of which it was leased was affected because the noise prevented..., so lots of unclear statements, structure has serious effects, and again, do you see any area where the precedent is applied to the current case?

T3: This is what I was saying that she has tried to do it in a wrong way. For example, the citation is done wrongfully, for example, second paragraph, under the common law and the citation is RESTE realty cooper case, these are two different things.

T1: No, but they tried to do it in the second to last paragraph, I believe. In paragraph 5.. here. ... there are some errors, but she can summarize, here.

T2: I see, OK, there is an attempt.

T1: Right

T2: Ok

T1: But really I will have to really think about it how I would do it because you say going back and forth between the two is confusing; it is a difficult thing that they have been asked to do to connect them both, so first see, you have to say... that

the trial court errored, and... as conclusory statement you must say what they should do, my understanding..

T3: This is what you say.. what the court...

T1: OK there

T3: And at the end of the conclusion you say what you expect the court should do.

T1: Start with what the problem is, you say the rule after that, and you explain it, ok, now I believe in A, analysis, this is where you compare the two...with Reste at these two points, in fact, jumping back and forth you have Ahtaya's case first and then you go to RESTE then you explain RESTE and when you analyze you have both Athyaya and RESTE and then you can conclude then with Athaya . So we are looking for this. It is difficult, and I think like you said before correctly. It is not just the prompt. It is CREAC. We need experience with this. We need practice with this.

T2: Yeah.. they have to go through the process repeatedly for them to do it well.

T1: This person might not know how to do this because there are back and forth all the time.

T3: And look at the last paragraph, in conclusion. What she expects the court to do. Look at that...

T2: It is completely incomprehensible

T3: She tries to conclude but ...

R: So, it is incomprehensive because the language or because of the application of the concepts or presentations

T2: There are so many unclear sentences; you don't know what she is trying to say

T3: When I am looking at this, I expect the student to follow the same format because the prompt says you should do that, and that's how the legal writings work, so because, I mean... after reading the first paragraph, I think,... well... the student is going to mention the rule, but when the student doesn't, I am lost, so it is the format.

T2: I don't think this is a difficult concept for students to follow. Difficulties is understanding these things, but this is not a difficult thing to teach for teachers and for students to learn. Pretty clear to follow.

T1: I agree, if I look carefully, how CREAC can be applied, I see it here and it spells CREAC when I look at it, paragraph 1 is C, paragraph 2 is R, starting to do E, paragraph 3 is E, It's all about RESTE, she doesn't talk about the other case, now she starts to mix the two, which we agree it was acceptable, comparing RESTE and Althaya, in paragraph 4, and into paragraph 5, which is C. But abstracting all of that, and our first reaction was ohh organization problem, in fact it's spells CREAC... the organization issues, I think, here stems from language, in fact. It's how she shows understanding of that and how she shows comparison,... becomes kind of muddled.

T2: The first sentence is horrible, and it doesn't help. We need transitions. Maybe only three samples out of six seem to follow the format.

T1: This one attempts it. ... perhaps it is language issue... We have the same error here..

T2: You see... exactly

T1: I don't know if this will be a problem. From my perspective, it is a persuasive strategy that you might tell the main ideas in the beginning. But when I asked T3, he said that the problem should be mentioned in the beginning but the solution at the end. She says this in the beginning. From my perspective this strategy is effective.

T2: Yeah, the conclusory statement should say what happened in Al Athaya case, was she constructively evicted or not. Right? So if that there is a statement to that effect, she has satisfied the C requirement.

T1: Sure, but my comment was that it also goes on to say what the court should do.

T2: Oh. I see... she put the last C here.

T1: And she probably repeats it, I would guess... No she doesn't.

T3: So, I think the remedy normally is mentioned in the end, when you expect what the court to do

T1: And she put it in the beginning.

T2: In terms of application, I think this has done a good job.

T1: Expect for that, two Cs together and R is the second paragraph.

T2: If you look at this paragraph.

T1: And that's A, and that's R, and E here... this is still A, really; we don't have C included in the beginning. And that for a student at this level you think.. you wish she hadn't made that error. How can you forget your conclusion, putting it in the beginning.

T3: I like her explanation and the analysis.

T1: Also from this student you would find hard to believe the first error, that trial court errored in finding... that's a possible I in stead of in...

T3: I think in terms of assessment, this would be easy to assess because we see that the CREAC format is kind of followed.

T1: Yeah missing just one part

T3: For example, the rule is mentioned and then conclusion is done and analysis is strong between the precedent and the case. For example, the third paragraph... the analysis is good. And the forth one is kind of again...

T2: That's the application.

T3: That's correct.

R: For example, if you were to rank these samples, which one would you think could pass.

T1: Six

T2: Six

T1: ones ... six would rank number one. Fulfilling all the criteria despite some organization problems.

T3: Five should also pass, even though there are some wrong citations

T1: And some language issues, but they apply CREAC .

T3: Yeah

T1: So, perhaps five passes not with...

T2: Distinction

T1: Not with distinction, certainly

T3: Four will definitely not pass.
T1: So if they don't apply Reste they can't pass.
T2: Yeah they shouldn't.
T2: Sample one doesn't pass, right? Shouldn't pass.
T1: Four has Reste but it doesn't explain it at all;
T2: Yeah
T1: She just copies it... and language issues.
T3: And it also has wrong citations. It says under the common law..
T2: But the actual article is fine, the decision is fine, the conclusion is fine. The introductory phrase is not
T1: That one is tricky; I don't know if four passes or not
T2: Four is probably barely passing.
T2: One is a fail.
T1: One of these doesn't have Reste at all; that's three. Three doesn't have Reste at all; doesn't pass.. major issue..., yeah
T2: 2 passes
T1: Two was interesting.... two was a difficult one.
T2: Because this is a language issue .. that's the court should hold that there was constructive eviction. She doesn't know the word form here... she wrote "evicted".
T1: But she makes some mistakes that shouldn't be taken lightly, as T3 mentioned. Saying "not" when she shouldn't say "not"; it changes the entire message.
T3: If I were a client of this lawyer, I would have died because .. because she is actually defending the landlord.
T1: Yeah
T2: But if you look at the explanation, it shows that she understood.. it is clear. So, it is a structure ...
T1: So, if this student passes or not entirely depends on the rubric.
T3: And it will also goes with four- like the borderline.
T1: How important is language how important is that issue. How much should that influence the overall language score. There are good things here besides some of those errors. Obviously they are important..
T2: But the argument follows, makes it clear that she understands the basic premise.
T1: Agreed.. and the language specialist might be best to judge that
T2: So that she can convince that... there is a typo here
T1: So if you don't have that language perspective and you see this you might not really read much farther.
T2: Yeah
T1: I mean failing, you might get to this point... incorrect. You are supposed to read it all. Read it all please
R: Thank you so much. I think it was a great discussion. Even though T1 was kind of worried initially that he didn't have much to say, he contributed a lot. Actually I would like to have your notes because, yeah..
T2: Can I say what I wrote about the suggestions about the language specialist?

R= Now... I will ask the question and maybe best on that you just can rephrase what you.. I mean your answer... You looked at these now, you have the experience, based on this experience, who do you think is most appropriate judge for this kind of writings, a language specialist or domain specialist and why.

T1: A language specialist with a domain knowledge .. oh I will just say why... because as a domain specialist only, you... ok or the opposite could be true also... a domain specialist with knowledge of language, and when I say knowledge of language I mean knowledge of language learning and language learners because if they fail to consider some of these factors that we deemed important. For example some of these factors could pass these student two, and a domain specialist might not pass student two maybe misinterpreting that he doesn't understand anything. But we understand that he understands the main points. That he is missing a few details here which might misconstrue his intention. On the other hand, if you look at the opposite, where was that, there was an example... can we find an example of the opposite... so I am losing...

R: Some knowledge about language learning

T1: So, is there any example of student who would be failed by the language specialist but passed by the domain specialist

T2: But I think ...

T1: But number 2 is the opposite, the language specialists would pass it but a domain specialists would not. Is there any example when a language specialist would fail it but a domain specialist would pass it?

T2: There is one sample.

T1: So maybe it is not possible, is it?

T2: Maybe it was number 5, so 5.. yeah

T1: Ok, five/

T2: Because I don't understand most of the statements and that comes from language problems. So, it has the language issue.

T2: In my view, a language specialist who has the basic knowledge of law, for example, can be a better suited, maybe because the legal concepts are not very difficult to understand for someone who is proficient in English, right? So a language specialist with a basic knowledge of legal terms and concepts would be able to teach this course. And the reason is that language problems are dominant in these samples. For even the main conclusion statements, which is the foundation of the whole writing, is written wrongly because students understood the concept but they were not able to say it correctly. Ok? Structural organization problems are also apparent in the samples and that can be addressed by a language teacher, I think. A domain specialist would be able to identify these problems but not be able to help students,

R: We are talking about assessors.

T1: That's different than teaching.

R: So assessing. Let say, for example, T1 pointed out that a domain specialist might fail it but a language specialist might pass it because they look at different things.

T2: But the question is how can anyone assess something he hasn't taught.

R: They are related together right but ... for example starting with the rubric, because creating the rubric is part of the assessment. For example who should be involved. Both specialists, should be just language specialists with some domain knowledge

T2: Yeah what I thought. A language specialist with some domain knowledge would be better.

T3: I think the opposite. A domain specialist with knowledge of English language or language which is used to do this work would be a better suit because as a domain specialist you understand how the field works and how judgments work because one of the components of the CREAC format is the explanation and the analysis and the analysis involves fact repetition, rule application

T2: But in terms of feasibility, would it be easy, for example, to train a language specialist with some domain material? Or vice versa.. Do you see what I mean?

T3: I think it would be easier to train a domain specialist in terms of language than a language specialist in terms of domain knowledge..

T2: But domain is not the whole thing, it's just the basic things, right?

T3: But like T1 was pointing out.. there is technical language and vocabulary used in this judgment, and as a language specialist, for example, constructive eviction, even though we understood it, we were asking you to explain dovetailing. You see, even though we understand those terms.. it goes back to the theory of using literature to teach language so one of the objections is that if you choose literature to teach language you have to teach people how to read literature, before you teach language. I think if we use language specialists to teach these type of writing we have to train them how to read law before they start teaching because this type of writing reading and understanding this judgment and then creating an analysis. So a domain specialist with basic ...

T2: I am convinced

T3: With basic knowledge of language would do a better job assessing these

T2: but you see, I was not sure we were talking about teachers or assessors, so anyway.

T3: I think the main concern here is the meaning... it is argumentative writing.. can you convince the judge that your client is right and the defendant is wrong, so a domain specialist can make that judgment than a general language teacher, because they know how judges look at the appeal they know how this should be structured, so they are aware of the format and the analysis

T2: T1 do you agree

T1: I am not convinced either way. I see arguments both ways. I think it depends on your purpose for the writing, the purpose of the assessment. It's training obviously, so are we dealing with students who need more training in language or more details... training in case studies and actual .. I mean what type of writing is this, is this a persuasive argument. How is this meant to be used in real life.

R: So this is part of an appellate brief

T1: So this is an appellate brief, so this is real life

T3: Very specific, it is not used by general public

T1: Well.. this is not the entire appellate brief

R: This is the course, the argument, summary.. other components are just preparations but this is where.. I mean... as T3 mentioned, when you look at this case, you look for the summary and this is the same with ...argumentative part, component here... that is basically summarizing everything.

T1: So this is quite clearly the type of work that a law student would do whether he is a law student in their first language or in their second language. The question is who is best to assess.. it goes along with the teaching a student... whose English is the second language, and how much content to include and that makes a big difference in who teaches it because how much complex is your task, how much input is required, what level of input.. how much domain.. that's gonna affect... perhaps if there more domain than it should be a domain specialist but if there is less domain and more language what your focus is... in that it depends on the level of your students in English..

R: For example, let's say a native speaker of English as law students having to write this, do you think that person would face the same problems or similar problems as second language learners?

T2: I'm pretty sure, yeah

T3: Pretty much

T1= well.. some, not all of them

T2: I used to teach English in New York and I used to work at ~Georgia College, where students had to use Legal English, and to the extent, you know... that I became convinced that the language used for writing as specialized as law and the language used like for day to day communication are completely different because students were fluent ...and the main difference between non native speakers and native speakers, especially those who go to university, they learn the language through reading, so their writing is more formal compared to native speakers, and law by its very nature, is very formal, so non native speakers were better because they learned writing through reading. They read a lot before starting speaking,.

T1: But they need to read a lot before doing this

T2= so one problem with native speakers was using informal language.. like spoken language to discuss legal issues.

T1: It's interesting thought that this type of assessment is applicable for both native and non native speakers, which is not always the case, but for this content it is.

R: So because of that, so what do you think then- do you agree that even if there is a language specialist he or she must have some domain training and T3 makes the opposite case, no, it should be a domain specialist with language background

T3: Well the reason I mentioned it before was that he would understand how to read this, and second this is not a general summary of a kind of lets say a piece of writing. This is a very technical piece of work that they have to produce, so a domain specialist would know how these thing work, how to analyze in a legal context versus how to analyze in a general context, so he would spend more time assessing the strength of the writing in terms of the content than language like we do in terms of grammar, word choice, vocabulary. He would look at these

things, are these things convincing. Does this lawyer convince the judge in terms of producing persuasive writing in all these five areas?

T2: Yeah, are the statements paraphrased correctly?

T3: It is like an engineering faculty instead of a language teacher.

T2: But whoever do the assessment whether a domain specialist or language specialist, that should have some training in the other field.

T3: Yeah

T1: I think so, too. I am not convinced one way or another... it entirely depends on the level of the students and the purpose of the course. If it is an English course with some content and you have a lower level of language which necessitate lower domain knowledge, the language teacher is better, more qualified because language is one of your goals. So it depends on the goal of the course. On the other hand, if the level is a higher level and you have more domain and language is part of the general domain, too. I mean you study this my sister study law my father is a lawyer. My father studied Latin; they still study Latin. They study language when you study this in general, so in a general domain there is a lot of language and that is challenging even for a native speaker, as T2 said. But a really high level is required to access this materials, and as far as ... university is concerned ENGL 252 students have not quite attained that.

T2: So we are making the assumptions based on the materials required for this task, so that's why I agree with T3 that definitely someone who understand this should teach this. But we should make a distinction between who teaches and who assesses this.. when it comes to teachers, a language teacher with legal background should teach this but a domain specialist with language background should assess it.

T3: Answer to the question: I believe the lawyers' assessment criteria should be used to assess legal writing tests since they are aware of the purpose, format and practices in the field. However, I would like to emphasize that the lawyers that intend to assess legal tests should receive prior training to perform well.

T1: Regarding your question, I would have to ask you what the 'lawyers' assessment criteria' and what the 'language teachers' assessment criteria' were. How are they similar? How are they different?

To answer your question, regardless of your answer to my previous question, I would say (again) that it depends on the purpose of the assessment. Similar to my previous answers (which said that content specialists should assess students if the purpose of the course/assessment is more content oriented, and language specialists should assess students if the purpose of the course/assessment is more language oriented), I would say the criteria should match the assessor and the general purpose and context of the course/assessment. I suppose that what I am saying is that a very careful analysis should be done prior to the creation of a course and its learning objectives. Perhaps this is when these decisions need to be made (content specialist versus language specialist). These decisions must also take into consideration the context in which the course and its students are in (ex. ESL, EFL, relation to the second or foreign language, age, gender, academic background, etc.).

T2: Regarding who should assess legal writing tests, as we have agreed at our meeting, if the course is a basic legal writing course, a language teacher trained in (or knowledgeable about) basic legal terms and concepts should assess it. However, if the writing delves deeper into hardcore legal issues, then a domain specialist with some training in teaching writing would be the right person to assess it. It would be best if the assessment criteria combined both the lawyer's and the language teacher's assessment criteria. The reason is: even if a student has made an attempt to adequately cover the required content, if the language and structure are defective, the writing could be incomprehensible or confusing.

Appendix D

The transcript of the focus group with lawyers

L1: With regards to student 1, I have some points, some remarks to make. Now, first of all, I think that in this case study the student has answered it right because it was the duty of the owner of the house to prevent the noise and provide any suitable conditions within the house so that she can study and she can also be able to prepare for her exams. At the end of the answer, this student has noted that, and this might be a weakness of sample 1, she has stated that Altheya had a hectic agenda and she could not have time to find a place. In my opinion, this is weak, because Al Atheya knew that she was experiencing some problems and preventing her from studying. In sample 1, the student argues that Al Al Atheya couldn't find another place. In my opinion, she could.

R: So, in your opinion as a lawyer, what do you think about... for example, did this student make the case in favour of the tenant or not.

L1: In my opinion, she has made the case because she has defended the tenant. In the sentences here, she thinks that the tenant has the right because ... wait a second... because the land lord failed to stop the noise made by the neighbor, although Altheya informed the landlord. So, in my opinion, the student has given the right answer.

R: So, as a lawyer, for example, do you accept this as an effective brief?

L1: Yes, because the student has understood that the tenant is right.

R: I would prefer you not to look at this as a student's brief but as a lawyer's brief. not from the perspective of a professor of law but from the perspective of a judge/lawyer.

L1: As a professor, and I have a case study in front of me, I would value the student for this positive brief.

L2: So, my comment on the first student's brief. The positive aspect of this answer is the fact that language and writing are flowing smoothly, so it is generally positive. I see that the student didn't answer the criteria put in the question. So, starting with the format. She didn't apply CREAC method well. And this is a problem because it has a very good analysis, which is the explanation but we don't see here the rule. The student mentions the decision of the court, the rule, but she doesn't explain that that is the rule and why in his or her opinion the analysis that he or she is doing is in the favor of the tenant. And second, we don't see a good conclusion of the answer, which, I mean, you need to go up to the end and you are still unclear what is the real key points in her conclusion that will support her argument. Generally, another problem is also a clear introduction, so there should be at least a few facts of the case starting and putting the facts that will build her or prepare the reader for her kind of analysis. This is what I see here but generally language speaking, the flow of the argument is OK.

R: So let's say for example, don't look at the question, as a lawyer you get this appellate brief so how would you judge it, now forgetting the required format, as

a lawyer, just reading this and keeping in mind the case, contract ...whatever you read.. and reading the brief

L2: This is a good brief, if I don't see the question, I can understand what is the issue, which is important. It has some good arguments, so ...and she uses an effective argument, and she uses in a sense she applies which we call devotting which is fitting in the whole argument and making it consistent, and this is good in her answer. So i think I would consider it among the good answers.

L3: Well... I would have the same argument, starting with the format. I don't see the student following the format. I don't see it very clearly even the conclusionary statement. I cannot very clearly see the pattern of organization. Generally, I can find the argument persuasive but I think the steps required in order to present the argument step by step could have been much better in terms of legal writing. Language is another issue which I see here and it is not very clear. I see even, for example, she says as she vacated within a reasonable time...,I see unfinished or out of place sentences.

R: So, as a lawyer, would you be persuaded or convinced that this new lawyer made the case in favor of the tenant?

L3: I am certainly not impressed. So, I would say this is an average or a little below an average brief.

R: So, what would have this person done better?

L3= I think if the student would have included all the steps to have a clear organizational pattern, this would have been much better. For example, it is required to include facts, the whole analysis rationale, the other case to strengthen argumentation but they are included nowhere here, like rest case here, so I think the previous case could have been used to make a better argument, not just referring to it.

R: So, this is related to the strength of the argument.

L3: Well, I can understand, but I would like to see this brief better built in terms of the blocks of the argument, I see here and there, it is difficult if you would see this piece of the argument. You need to see the argument in block. It makes the work of the judge more difficult because he or she needs to scan through the entire argument to get the point. I am not impressed certainly.

R: Should we go to number 2?

L1: Now, as a professor of law, the student has correctly answered the question. In my opinion, here there is a construction problem. Why, where is this problem. The student should start the answer in the structure stating that these are the facts, 1,2,3,4,5, and after based on the contract article number x, in my opinion, the landlord has this problem. Two answers we have seen first and second students... it is stated that the landlord is guilty, and why he is guilty... because he should provide proper conditions, but where are the facts in the brief, where in the contract it is, and at the end, the student 2... there is the same answer as student 1, that the landlord failed to stop the noise in his apartment although the student spoke to the landlord but the noise returned even worse... in my opinion, the two students should have an introduction, development of the case with all the facts, including the article in the contract and a conclusion, but this

conclusion should be based always on the contract. In samples 1 and 2, we didn't see which article in the contract has been violated and which are the rights of the landlord and the tenant, so in my opinion, these two briefs are good, but not good enough.

R: So, let's say you get this appellate brief. Would you change your decision if you were a judge and read this?

L1: Yes, the answer is given and it is correct, but it is given in a way that a law student should give more persuasive arguments but in a structured way. You cannot through your arguments in these ways. The arguments should be tight altogether.

R: So, I want you now to forget that you are a professor of law and you are a judge. Now you read the brief, would you change your decision based on this brief? Would you think that this is good enough to make you reconsider your decision?

L1: I mean...

R: Because the aim of this brief is to influence the judge.. would you think ..

L1: If I am a judge ...

R: Yes, this is what I want you to think like

L1: As a judge, yes.. this will influence my decision because the argument has been made, not structured but the answer has been given.

L3: Can I compare the samples... because just reading this, I think I can find here more components of the format. I can find from the beginning the conclusionary statement, I can find the rule somewhere, I think it is a good argument, explanation. The conclusion comes clearly in the end. So as a judge, I am more satisfied with this one. It is more structured. It refers to the other case and the student has chosen to apply the *reste* case, and I see exactly that this student uses several arguments from the rest cases, well used, and what the common law and contract say, and towards the end I see very well the structured argument, quite persuasive regarding what the court should decide in this case, so I am much more satisfied than the previous one. Because I see the structure, I see the rule, I see the *reste* case, I see the article from the contract, and I see a clear conclusion.

R: Any weaknesses, anything that might...

L3: As a judge, I am convinced from this brief, so I would be persuaded by this type of brief/argument. It could have been better or stronger.

R: For example, what could have been stronger

L3: For example, the article from the contract could have been used better- one which says ... article 9, which says..it is here but that fact could have been used better...in terms of... you see the landlord has not done enough to actually guarantee the conditions stated in the contract, so not only referring to the article in the contract but also building on it. ... but I think the argument could have been stronger but still I can find in this brief all the argument is persuasive.

L2: So, I think that in terms of the format, student 2 has followed all the steps, generally, but it has a problem. One of the weaknesses is that it gives the rule but it does not explain the rule; instead of explaining the rule of the *Reste*, it gives the facts of the *RESTE*. So in a legal case what you need to know is how

the court explained the rules using some of the facts of the case; facts of the case should be as an illustration, not taking the core part of the analysis. Of course, it has a smooth analysis and in a sense, it takes you to the conclusion, but I think if you compare the amount of the text that the student has provided on the RESTE case, it is as much as the analysis for Althaya (current) case, you need to spend more on your core case than on the previous one, and when it comes to illustration through a precedent case, you should look more at the judgment of the rule or the explanation of the court and then apply that in your case, and you see that in their conclusion, instead of applying the rule to the Althaya case, she just makes a description of the problem and this is one... I would say this a weakness of student 2... and....

R: Just to clarify.. it is more descriptive than persuasive in nature

L2: More descriptive and less analytical... yes less persuasive.. it has a description, so the moment you start engaging in the argument, it stops, so it doesn't follow the explanation, so this is I think my problem with student 2

R: So student 3 now?

L1: Now... in my opinion student 3 has given better answer in comparison to student 1 and 2. Why, student 3 has found the point of the reasonable time. She has argued the landlord has not fulfilled the conditions of contract and addressed the complaint of the tenant within a reasonable time. But all three students have not mentioned the articles of the contract and here it is a problem. As a judge I can immediately... I can side with the tenant because I get the argument. As a professor of law, I would not accept this brief as written by a student of law. This looks more like a brief written by an educated person but not a lawyer.

R: for example, if you are an employer, would you be happy with this lawyer? And why?

L1: I think as a young lawyer, yes.

R: What would you teach them?

L1: Every sentence that you are going to write should be based on articles, civil code, criminal code, etc... or agreement. We cannot argue as an ordinary citizen. You should base on your argument on facts, so tomorrow a judge or court cannot reverse. These are the weak points that I have seen in the three students

R: For example, you said that this is better than the other two. What makes this brief better. What are the good features of this brief

L1: The good features- the student has mentioned the reasonable time (the fact) that makes the point in favour of the tenant right away, but other students didn't. The second feature is that the student has given the noise in the apartment was repetitive and lasted for two three weeks from 9 to 10 pm for two to three hours. So she has stated events in such a detailed way, adding even hours, not only weeks, so as a judge I get a better picture of the situation.. not only repetitive but also late at night... so facts should be used cleverly in order to build the case in favour of the client. So all the evidence is present.

L2: Student 3 has the best analysis, or analytical narrative. The main problem 3 has is that it doesn't follow the format. It doesn't follow the format, I mean it doesn't apply the conclusionary statement, I mean it has it but it doesn't mention anything about the rule, it doesn't explain the rule and what we have here out of

the four elements, we have only analysis, somehow, and the conclusion is also lacking. So when it comes to the depth of analysis, this is very good, the language used, legally speaking, so arguments are backed up by the facts of the case, and the way they are structured makes the case persuasive. The other drawback of this brief, it is a bit short. I mean, and it is without saying that it has covered well only the first element and the analysis, so out of 5 components, she has used only the two elements of the format. But if I would be a lawyer hiring someone out of these three students, I would hire student 3 because we know that analysis in law is very important. The format can be easily taught but what is difficult to be taught to someone is the analytical explanation. Correct?

L3: I agree with the previous comments, but I would say that compared to other students, first of all in terms of components, I see the conclusionary statement, I don't see the rule anywhere, I see a very good explanation or analysis but no conclusion. In terms of the explanation analysis, this is the best compared to the other two and I agree that you can teach format but difficult to teach analytical thinking, you have it or you don't. And here student 3 would be I would hire, too. This would be much easier to add the rule and the conclusion and this brief is ready and much persuasive. And here I have the main components. Here you have the arguments..... failure to prevent noise, noise was serious and repetitive, reasonable time... so I see very strong arguments to convince the judge but as a professor this is problematic because the student has not followed the directions leaving out two important components. But this in my view are less important in terms of legal writing, I would have liked to see a little bit more... at least mentioning the Reste case, to further strengthen the argument, but this is a much stronger brief

R: So this is what actually interests me because, you know, here we are talking about a course, but we also need to see what is valued when students leave the class because they might satisfy the test criteria but when it comes to real life they might face problems, you as judges or lawyers can inform us about these real- life requirements, seeing these from the perspective of a lawyer or a judge.. you can help us come up with the right assessment criteria.

L3: This brief could have been perfect with two extra paragraphs- one with the rule and explaining it and one with conclusion. Then this would have been perfect. Just two other paragraphs

L2: This is the student we are looking for... I am happy that we have read this.

L1: Student 4, I think student 4 is much better than the previous three students. Here I have three points she has given the right answer to. First of all, she has stated that under the common law... she mentions the law... she is the first student that has mentioned in her answer the law that has been violated in this case study. So this I very strong point. If I am a judge and I have no clue about this case, I would immediately look at what the lawyer has mentioned.. so I would hire this lawyer immediately... second, the student has mentioned the reasonable time (a fact) but this has been connected with the final exams.... The noise makes it hard for the student to study for the final exams, so this makes me as a judge to sympathize with the tenant. And the third argument in favour of the client.... The client /Al Atheya moved from the house after she finished the

exams, and that was a reasonable time, so the client has given to the landlord enough time to resolve the problem, the landlord didn't resolve it so the client had to leave. So as a judge, I look at the violated law, and all the facts of the case and I immediately agree with the case made in the brief.

R: So, again, you are referring to the fact

L1: Because the facts give us the answers, without the facts without the articles/law you cannot give answers or court decisions

L2: So, student 4 is also a very good student. First and foremost it has followed the structure provided in the question. The only missing point is that after the rule, is the explanation of the rule. It cites the rule and the case but it doesn't go and explain the rule in details because lack of this explanation it backfires you or harms you when you do the analysis based on the facts of your case; however she has a very good analysis and especially when it comes to the conclusion, it has a very well organized conclusion. So in four or five lines it has exposed the problem, the key arguments and why the court should change the opinion. So I think this is.. because I don't want to be repetitive.. because I completely agree with my colleague.. I think this is a good answer with the caveat that the explanation of the rule is missing.

L3: Yeah I agree with both previous comments, so I see here much clear order of the components which we should see in a brief like this. We the conclusionary statement even though regarding the rule I would like to see the act from the contract here not just the case.. the explanation is probably something that is missing. The analysis is very good and conclusion is clear, so I think from all four briefs we have seen so far, this is the better constructed and in terms of content. I see all the components that I would like to see to make this persuasive as a judge or professor, so constructive eviction, fail to stop..., intolerable noise... unsuitable to sleep or study purpose of lease.... No one of the previous students picked this very important argument... what I the purpose of the contract,... this is the key ... if the purpose of lease was to sleep and study and she was not able to sleep or study, then the contract is rendered meaningless, so this is a very strong argument. I'm happy to see this argument.

L2: Another good argument she uses is the reasonable time. This is another important fact. She left after she exhausted some good part of her time because this is a rule within reasonable time.

L1: She uses another argument that no one uses. New York, she says that finding an apartment in New York in a short time is impossible she says. So time and place are very important arguments that she uses in favor. That's why I would favor this over the other ones. And this is a very close way to a perfect answer if it had a bit more explanation of the rule.

L3: Another paragraph would be here... so you would give the rule and explain it a bit more... this would have indeed be the perfect brief in my view.

R: Moving to 5?

L1: Student 5? In comparison to the others for me, the best student is student 4 still. Student 4 was better. Now student 5 has given some, I would say, indications that help the judge to understand who is right and who is wrong. Now which are the arguments that the student has given in favour of the client. Now...

the student has mentioned that, according to article 9 in the contract, the house was rented for the purpose that the client wanted a quiet house because she was a student and wanted to study. The landlord failed to provide this requirement.... "the noise prevented her from sleeping and studying" so the purpose of renting the house was to sleep and study... so in the case of repeated noise, the house was not meeting the prescribed conditions of the house. This is a point that judge would immediately notice and also find in the contract.. the articles in the contract that have been violated. This is the first argument. The second argument is that the decision of the court is wrong and the student has mentioned the judicial/legal terms too .. she states that the landlord has the authority and means to stop the noise.. did he do it? No.. he failed, so the landlord is responsible..., the student has given the facts.. so that as a judge I would consider this brief but the arguments are not given in a structured way.. we give structured arguments. Maybe you have all the arguments.

R: So it is not the duty of the judge to scan for the arguments.

L1: Yes you need to structure your argument so that the judge or professor will find your argument easy to read.

R: Thank you

L2: So,... I think in terms of the format, student 5 has followed the format strictly... it has some explanation of the rule but the explanation of the rule is patchy, so it is here and there, so it starts in paragraph 1, 2, 3 and then we have another good explanation of the rule in the almost last paragraph before the conclusion, so this makes it a bit difficult to understand, to capture the explanation. It has brought two key arguments, the reasonable time or the noise that is distracting the quietness or the reason why you are renting an house. In comparison with other briefs, this has a comparative analysis, that we don't see in other students, which is a bonus, but it has been placed in the wrong place. And conclusion is very short. It should be more elaborated. So you need to bring all the key arguments and legal points supported by key arguments to conclude why the appeal court should change the opinion. The analysis is not that strong, like student 3, for instance, but overall, this student would be classified among good students.

R: So student 3 is better than 5 in terms of analysis

L2: In terms of analysis student 3 is the best. Student 4 and student 5 have good format, student 4 has better analysis compared to student 5 but she has not followed a format to structure the argument. 5 is very good, let's say in bureaucratic in a sense or in the rule book, but not very good in analysis.

L3: Yeah I completely agree with the previous comments. 5 has set the argument, absolutely. I see very clearly all the components that are set in the instructions here, so I absolutely can see all the components. I would like to see here more analysis and explanations for sure, better use of the rule in order to then analyze why you make the argument...

R: When you say explanation, what do you mean

L3: Because I see here the rule, and it could have been better if the rule which comes from the previous case, from the common law, could have been used better in terms of this case because I see referring many times to RESTE case

and it seems for a moment that this student is writing about RESTE, not about this case. So I would like to see a better use of the argument from RESTE to this case, but I ... this... you know...

R: So the student explains RESTE more but does not connect it to the current case.

L3: I would like to see a bit more connection, I would say, and I would like to see a better explanation and analysis of the rule that comes again from the contract. I think that article 9 of the contract is very important and should be included in the brief for the judge to consider because it is that article that proves the violation and makes the case in favor of the tenant.

R: Do you think that referring to the RESTE case is essential or not?

L3: I think it is an important argument and the RESTE Case compared to other briefs here it is better used. But what is lacking here is a bit more explanation of this case and the rule which comes from the contract or from the law. Another thing is that I would like to see a longer conclusion paragraph to be more persuasive at the end but this is a good brief I would say. It is not as good as 4, it does not have the strong argument as 3. It has an argument but formally speaking, it is a good brief, I would say.

L2: So student number 6

L1= Ok. Now student number 6... student number 6 is seemingly similar in some parts to student 4. There is a good paragraph written by him or her that, which he/she has mentioned the common law and also mention that the landlord has the obligation to comply with the law. I appreciate it because he or she has understood that you should base your answer on what has been violated, be it the common law, or an article in the contract. So this is a very very strong point made by the student. Or if 'I were a judge, I would immediately side with the lawyer and understand immediately that the previous decision was wrong. Not another good point in this brief is that he or she has given some words that to a judge or professor give the impression that the student has understood who is right and why he or she is right.. the correct terminology... so these words give to the judge or the professor the correct meaning, and in my opinion this student's strength are the use of the relevant arguments and the correct use of terminology. Also at the end the student has written that the noise is interfering with the beneficial enjoyment of the premises, so the student has given to the judge or a professor the correct answer. Now, we are looking at the last brief, and as a judge or a head of a law company I would say that the student 4 is the best compared to all others. There is in my opinion we always we start the brief with the facts within the case; then we identify the violation based on which articles and then the conclusion. This means the structure of let's say a good brief. But in general the student 4 is the best student in comparison with the rest.

R: So if you could rank them from the top to the bottom or vice versa, how would you rank them.

L1: Number 1 and 2 are at the bottom.

R: So would you fail these two?

L1: If we are going to

R: Because all this discussion has a person to create a valid assessment scale

L1: No I am not going to fail them because they have made the argument but I am barely passing them

R: So number 1 and number 2 are borderline, and number 4 is the best

L1= Number 5 and 6 follow, and number 3 is the second best

L2: I would say 6 is average. Number 6, the main problem he or she has is the patchy structure. You don't know where is the conclusionary statement begins and where is the conclusion of the case, which makes it, I mean, the arguments are there; there is some good analysis, but here you see that structure is very important because a judge or lawyer is trained and they have their own methodology of analysis and because we are talking about two pages – a court decision can vary from ten to 20 pages, and if you have this patchy analysis it will be difficult for a judge to be persuaded. And it is a pity because this student has a good analysis. So this is a main problem he or she has. Conclusion is completely missing from the picture and it is disrupted, so you see the last paragraph that continues to build a good conclusion but I don't know what is the reason she has stopped it and left you wonder. When it comes to the explanation – the style it starts in a original style, which confirms to the common law but when it comes to the explanation of the rule, it is very short again. So it sounds that the student has neglected the format but in the meantime it looks like he has not spent, me as a judge or professor I feel disrespected because he, he is clever, he has the analytical ability but he didn't pay attention to the case, the way he presents the case and for a judge this is very important.

R: So how you rank them?

L2: So 4 is on the top, 5 follows, than 6 average, and then 1 2 and 3 are almost on the same level.

R (to L3): So let start with 6 and then you do the ranking

L3= I can see the components in 6, so in the beginning; it starts with the conclusionary statement; I can see the rule coming from the common law. The explanation and analysis is there, but it is lacking the conclusion in the end. Language is an important point here, so I evidently I find cases when the language is problematic. In terms of argument I can see it is well structured. But could have been better in terms of adding more to the rule and the conclusion is completely missing.

R: So I am not a lawyer, I am not a judge, so ...I mean... I have the language background, so to me I would like to ask this question, if, for example, an appellate brief what impression would this make to the judge.

L3: Unprofessional, I would say,

R: So unprofessional but it wouldn't affect your decision.

L3: Well, in the beginning you are actually get the conclusion and I would like to see this paragraph at the end which would put together all the arguments that are given, so it has the components that it should have. Normally a legal brief like this should have a conclusion; it gives you the taste, that seeing it , me as a judge, I would say that this is a problematic brief because this lacks an important component. So language is another issue.

L2: Coming to your question (addressing the researcher), would a judge be persuaded by such an appeal without a conclusion. Yes and no, depending on

the argument. As a principle it will affect more... it will weaken your argument but of course you will take on board your argument. But building an approach to any one that makes a judgment is very important and lacking.... And an appeal without a conclusion is a very bad start.

L3: So 4, 5 6, 3 2 1 ..1 and 2 are very borderline, and probably 1, which was very difficult to follow its argument, might even risk failing. But 1 and 2 are borderline.

R: So one more last question now. There is problem now in this kind of courses, ELP courses because there is a clash between domain specialists like judges in your case and language instructors for example language teachers, so who should for example let's say.. so students need to pass an examination to get a certificate or pass this course... who should assess the students, a lawyer a judge with language background, or a language trainer or assessor with legal background and why

L1: For sure, in my opinion, a lawyer. Because these students are going to operate within a court, and just as in other institution, when operating in a court, you need to know the rules but you also need to know the steps. If you are going to leave the students with a person that has not a clue about the court, this means for them that they will not know much in terms of practice to help students. So always there should be a person to assess that has very good idea about law and the practice of law.

R: So do you think that language... based on your discussion, you didn't focus so much on language so I assume that even with some language-related problems you can still get what you need from these. So do you think language should be included in the evaluation criteria?

L1: So, you are going to fail a student because of some language mistakes? We are not going to judge them in terms of language but in terms of ideas and how the student has understood the case study and made effective use of the facts to make his/her case.

R: But these are law students in a legal writing course, and their briefs have language errors. So in this case would you disregard these mistakes?

L1: To me the arguments are important, so I would appreciate the arguments not language.

L2: To me language is also important; we wouldn't expect a good lawyer without good language but we as lawyers would accept minor mistakes, not substantial ones. Because a good argument without a structure wouldn't make any sense. But if language is understandable, if language is above average, because every law student has to have a high average score in IELTS, in English, but still if we compare a good language user with some problems in analysis and a very good analytical user but not so skillful in language, I would prefer the latter , with strong argument because they can improve language. Language is something that can be improved but analysis is something is not only related to training but sometime it is gifted in a sense, so that's why we look more for analytical skills.

L3: Well, to me it depends on the purpose of the course, if the aim of the course is to actually train lawyers for sure you should have law professors, judges or lawyers assess these writings. If the purpose of this course is to teach language in a legal context, then I would prefer language trainers because probably the

legal arguments is less important but it is the legal English that is important, so it depends on the aim of the course. If this is a clear legal course, there is no doubt that you need to have a judge; otherwise can you imagine a language instructor to assess this; you can have as much legal background as you want; you cannot have engineers train lawyers even if you have legal background, so the purpose of the course is the key and from there you decide who will assess students.

R: Thank you.

Appendix E

A sample of an appellate brief written by a L2 law student

The trial court erred in finding there was no constructive eviction when repeated loud noise was so serious that it prevented Altheya from sleeping and studying, and she vacated within a reasonable time.

Under the Common Law, "Act of omission of the landlord or anyone who acts under authority or legal right from the landlord which renders the premises substantially unsuitable for the purpose for which they are leased, which seriously interferes with beneficial enjoyment of the premises (Reste Realty Corop. V Cooper [53 N.J. 444, 251 A.2d 268, 1969 N.J. 33 A.L.R.3d 1341](#))

This court should find that there was constructive eviction because the landlord failed to stop the repeated loud noise from the neighbor. The intolerable noise made the premises unsuitable for sleep and study, so she had to sleep in the bathtub and she could not finish her paper on time. It is also worth mentioning that the purpose of lease was mainly to sleep and study. Moreover, there was a serious damage since it happened 2-3 weeks at a time and last for 2-3 hours. Also the sounds were so loud and different such as shouting, banging, obscenities and bass trombone and it is very hard for a student in particular to handle it or even for any ordinary person. Ms Altheya left in a reasonable time because, she is a law student and she was having final exams, which makes it so hard for her to leave the apartment to search for another one. Also she live in New York, which finding another apartment in a short time impossible.

The court could have not reasonably found that the noise did not constitute constructive eviction. The court must be sympathetic towards the tenant's plight. Altheya waited for the landlord to stop the noise, when she decided to move out she had exams, so she could not vacate at that time. Altheya moved after she finished all her exams and that was a reasonable time. The trial court erred in finding that Altheya did not move within a reasonable time because the court did not examine the facts from the perspective of the tenant, who happens to be a student.

References

- Alderson, J. Ch. (2010). A survey of aviation English tests. *Language Testing* 27(1), 51-72.
- Bachman, L. F. (1990). *Fundamental considerations in language testing*. Oxford: Oxford University Press.
- Bachman, L. F., & Palmer, A. S. (1996). *Language testing in practice: Designing and developing useful language tests*. Oxford: Oxford University Press.
- Bailey, J. (2008). First steps in qualitative data analysis: transcribing. *Family Practice* 25. 127-131. Doi:10.1093/fampra/cmn003
- Baird, L.L., Carlson, A.B., Reilly, R.R., & Powell, R.J., (1979). Defining legal competence in legal practice: the evaluation of lawyers in large firms and organizations. *Educational Testing Service*. doi.org/10.1002/j.2333-8504.1979.tb01186.x
- Basturkmen, H., & Elder, C. (2004). The Practice of LSP. In *The Handbook of Applied Linguistics* (pp. 672-694). John Wiley and Sons.
- Becker, T. (2018). What we still don't know about persuades judges- and some ways we might find out. *Legal Writing Journal* (22). 41-49.
- Berger, L.L. (2010). Studying and teaching Law as rhetoric: A place to stand. *Legal Writing Journal* (16) 6-63.
- Borman, D.L. (2018). *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 Seattle U. L. Rev. 1(2), 713- 803.
- Braun, V. & Clarke, V. (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2). 77-101. DOI: 10.1191/1478088706qp063oa
- Brown, A. (1995). The effect of rater variables in the development of an occupation- specific language performance test. *Language Testing*, 12(1), 1-15.
- Bruce, N. (2002). Dovetailing language and content: Teaching balanced argument in legal problem answer writing. *English for Specific Purposes*, 21(4), 321-345.
- Brunfaut, T. (2014). Language for Specific Purposes: Current and future issues. *Language Assessment Quarterly*, 11(2), 216-225.
- Burton, K. (2017). "Think like a lawyer" using a legal reasoning grid and criterion-referenced assessment rubric on IRAC (issue, rule, application,

- conclusion). *Journal of Learning Design*, 10(2), 57–68.
- Campbell, J. (2017). Writing that Wins: An Empirical Study of Appellate Briefs. *The Colorado Lawyer* (46)3. 85-88.
- Candlin, C.N., Bhatia, V.K., & Jensen, C.H. (2002). Developing legal writing materials for English second language learners: problems and perspectives. *English for Specific Purposes* 21. 299-320.
- Cohen, L., Manion, L., & Morrison, K (2018). *Research Methods in Education*. Routledge.
- Conley, J.M. & O'Barr, W.M. (1998). *Just Words. Law, language, and power*. Chicago and London: University of Chicago Press.
- Corkill, D. & Robinson, M. (2006). Using the global legal community in the development of ILEC. *Research Notes* 35. Cambridge.
- Curcio, A. A. (2009). Assessing differently and using empirical studies to see if it makes a difference: can law schools do it better? *Georgia State University College of Law, Legal Studies Research Paper No. 2009-22*. Retrieved from: <https://ssrn.com/abstract=1487778>
- di Carlo, G. S. (2015). *Diachronic and Synchronic Aspects of Legal English: Past, Present, and Possible Future of Legal English*. Cambridge Scholars Publishing.
- Davis, A. (2001). The logic of testing languages for specific purposes. *Language Testing*. 18(2), 133-147.
- Douglas, D. (2000). *Assessing languages for specific purposes*. (Cambridge language assessment). Cambridge U.P.
- Douglas, D. (2001). Language for Specific Purposes assessment criteria: where do they come from? *Language Testing*, 18(2), 171 - 185.
- Douglas, D. and Myers, R. K. (2000). Assessing the communication skills of veterinary students: whose criteria? In Kunnan, A., (Ed.), *Fairness in validation in language assessment. Selected papers from the 19th Language Testing Research Colloquium. Studies in Language Testing* 9. Cambridge: Cambridge University Press, 60-81.
- Douglas, D. (2014). Nobody Seems to Speak English Here Today: Enhancing Assessment and Training in Aviation English. *Iranian Journal of Language Teaching Research*, 2(2), 1-12.

- Dwyer, S. J., Feldman, L. J., & McBride, R. P. (2007). How to Write, Edit, and Review Persuasive Briefs: Seven Guidelines from One Judge and Two Lawyers. *Seattle UL Rev.*, 31, 417.
- Galloway, V.B. (1980). Perceptions of the communicative efforts of American students of Spanish. *The Modern Languages Journal*; 64(4), 428-433.
- Elder, C. (2001). Assessing the language proficiency of teachers: Are there any border controls? *Language Testing*, 18(2), 149-170.
- Elder, C. (2016). Exploring the limits of authenticity in LSP testing: The case of a specific-purpose language test for health professionals. *Language Testing*, 33(2), 147-152.
- Elder, C. (1993). How do subject specialists construe classroom language proficiency? *Language Testing*, 10(3), 235–254. <https://doi.org/10.1177/026553229301000303>
- Elder, C. & McNamara, T. (2016). The hunt for “indigenous criteria” in assessing Communication in the physiotherapy workplace. *Language Testing*, 33(2), 153-174.
- Elder, C., Pill, J., Woodward-Kron, R., McNamara, T., Manias, E., Webb, G., & McColl, G. (2012). Health Professionals' Views of Communication: Implications for Assessing Performance on a Health-Specific English Language Test. *TESOL Quarterly: A Journal for Teachers of English to Speakers of Other Languages and of Standard English as a Second Dialect*, 46(2), 409-419.
- Elder, C., McNamara, T., Kim, H., Pill, J., & Sato, T. (2017). Interrogating the construct of communicative competence in language assessment contexts: What the non- language specialist can tell us. *Language and Communication*, 57(C), 14-21.
- Erdosy, M.U. (2009). Chasing Proteus: Identifying indigenous assessment criteria in academic settings. In A. Brown and K. Hill (Eds.), *Tasks and criteria in performance assessment* (pp. 111-133). Frankfurt am Main, Germany; Peter Lang.
- Flammer, S. (2010). Persuading Judges: An empirical analysis of writing style, persuasion, and the use of plain English. *Legal Writing Journal*, 16, 191-231.
- Frost, A. (2009). *English for Legal Professionals*. (Express Series). Oxford University Press.

- Garner, B.A. (2001). *Legal Writing in Plain English: A Text with Exercises*. The University of Chicago Press. Chicago and London.
- Garner, B. A. (2004). *The winning brief: 100 tips for persuasive briefing in trial and appellate courts*. Oxford University Press.
- Geertz, C. (1973). *The interpretation of cultures*. New York: Basic Books.
- Gibson, B. D. (2015). Grading Rubrics: Their Creation and Their Many Benefits to Professors and Students. *North Carolina Central Law Review* 38 (1). 41-49. Retrieved from: <https://archives.law.nccu.edu/ncclr/vol38/iss1/4>
- Haigh, R. (2018). *Legal English*. Routledge.
- Hart, F.M., & Breland, H.M. (1994) Defining Legal Writing: An Empirical Analysis of the Legal Memorandum. *LSAC Research Report Series*. Retrieved from https://digitalrepository.unm.edu/law_facultyscholarship/142
- Kim, H., & Elder, C. (2015). Interrogating the Construct of Aviation English: Feedback from Test Takers in Korea. *Language Testing*, 32(2), 129-149.
- Kim, H., Plough, I., Banerjee, J., & Iwashita, N. (2018). What constitutes professional communication in aviation: Is language proficiency enough for testing purposes? *Language Testing*, 35(3), 403-426.
- Kosse, S. H., & ButleRitchie, D. T. (2003). How judges, practitioners, and legal writing teachers assess the writing skills of new law graduates: a comparative study. *Journal of Legal Education*, 53(1), 80–102. Retrieved from <http://www.jstor.org/stable/42893788>. Google Scholar
- Knoch, U. (2014). Using subject specialists to validate an ESP rating scale: The case of the International Civil Aviation Organization (ICAO) rating scale. *English for Specific Purposes*, 33(1), 77-86.
- Knoch, U., & Macqueen, S. (2016). Language assessment for the workplace. In D. Tsagari & J. Banerjee (Eds.), *Handbook of second language assessment* (pp.291-307). Berlin, Germany: De Gruyter.
- Knoch, U., McNamara, T., Woodward Kron, R., Elder, C., Manias, E., Flynn, E. & Zhang, B. (2015). Towards improved language assessment of written Health professional communication: The case of the Occupational English Test. *Papers in Language Testing and Assessment* 4(2), 60–66.
- Kraft, D. (2014). CREAC in the real world. *Cleveland State Law Review*.

Retrieved from <https://ssrn.com/abstract=2534359>

- Kroise-Linder, A., Firth, M., & TransLegal (2008). *An Introduction to Legal English*. Cambridge University Press.
- Lojko, M. O. (2011). Teaching Legal English to English Second Language Students in the US Law Schools. *Respectus Philologicus*, 24(19), 200-211.
- Jacoby, Sally, & McNamara, Tim. (1999). Locating Competence. *English for Specific Purposes*, 18(3), 213-241.
- Manias, E. & McNamara, T. (2016). Standard setting in a specific-purpose Language testing: What can a qualitative study add? *Language Testing* 33 (2). 235-249.
- Margolis, E. (2018). How is Legal Writing Read and Written? *Legal Writing Journal* (22), 37-40.
- Marin, A.M. (2009). English for Legal Purposes- “An Uncultivated Corner of the ESP Field? Language and Literature- European Landmarks of Identity, 5(1), 431- 434.
- McNamara, T. (1996). *Measuring second language performance* (Applied linguistics and language study). London; New York: Longman.
- McKay, W. R., & Charlton, H.E. (2005). *Legal English: How to understand and master the language of Law*. Pearson/Longman.
- Morgan, D. L. (1997). *Qualitative Research Methods: Focus groups as qualitative research*. Thousand Oaks, CA: SAGE Publications, Inc.
<https://doi.org/10.4135/9781412984287>
- Northcott, J. (2013). Legal English. In B. Paltridge & S. Starfield (Eds.), *The handbook of English for specific purposes* (pp. 213–226). West Sussex: Wiley– Blackwell.
- O'Hagan, S., Pill, J., & Zhang, Y. (2016). Extending the Scope of Speaking Assessment Criteria in a Specific-Purpose Language Test: Operationalizing a Health Professional Perspective. *Language Testing*, 33(2), 195-216.
- Osbeck, M. K. (2012). What is “good legal writing” and why does it matter? *Drexel Law Review*, 4(2), 417–466. Retrieved from <http://bits.rulebase.com/wp-content/uploads/2014/07/Good-Legal-Writing.pdf>.
Google Scholar

- O'Sullivan, B. (2012). Assessment issues in languages for specific purposes. *The Modern Language Journal*, 96(S1), 71-88.
- Petroski, K. (2018). *Fiction and the Languages of Law: Understanding Contemporary Legal Discourse*. Routledge.
- Pill, J. (2016). Drawing on Indigenous Criteria for More Authentic Assessment in a Specific-Purpose Language Test: Health Professionals Interacting with Patients. *Language Testing*, 33(2), 175-193.
- Spenser, Sh.B., & Feldman, A. (2018). Words Count: The Empirical Relationship Between Brief Writing and Summary Judgment Success.
- Robbins, K.K. (2002). The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write. *Legal Writing* (8) 257-284.
- Tiersma, P. (2008b) What is language and law? And does anyone care? In F. Olsen, A.Lorz, and D. Stein (eds.), *Law and Language: Theory and Society*. Düsseldorf University Press.
- Tiersma, Peter M. (1999): *Legal Language*. University of Chicago Press. Chicago, IL.
- Tiscione, K. K. (2011). A call to combine rhetorical theory and practice in the legal writing classroom. *Washburn Law Journal*, 50, 11-39.
- Turner, T. L. (2015). Flexible IRAC: A Best Practices Guide. *Southwestern Law School Research Paper* (2015)16. 1-41. DOI: 10.2139/ssrn.2633667
- Vidakovic, I., & Galaczi, E. (2009). ILEC Speaking: revising assessment criteria and scales. *Research Notes* 35. Cambridge.
- Vinson, K. E. (2005). Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge. *Touro Law Review* 21, 1-45.
Available at SSRN: <https://ssrn.com/abstract=847644>
- Williams C. 2004. Legal English and Plain Language: an introduction. *ESP Across Cultures*, 1, 111-124.
- Xhaferi, B., & Xhaferi, G. (2011). The English language skills in ESP for law course. *LFE: Revista de lenguas para fines específicos*, 17, 431-448.