To: All Students in the January 2020 Client Counseling Workshop – Dispute Context
A/k/a *Client Science: Client Interviewing, Counseling and Decision-Making*

Fr: Marjorie Corman Aaron, Professor of Practice

Date: January 4, 2020

Re: IMPORTANT COURSE INFORMATION AND INSTRUCTIONS - and Welcome

Welcome to the January 2020 Client Counseling Workshop – Dispute Context. I very much look forward to working and learning with you.

I ask that you PLEASE read this memorandum carefully, as it contains important instructions for participation in the workshop, including how to access:

- a short assignment to be completed and handed in BEFORE the workshop – DON'T WORRY, the assignment is just to read a fact pattern and fill out a short questionnaire;
- case role play information to be read and prepared before the workshop;
- articles on the syllabus to be read before the workshop.
- Please Register for the class on TWEN to receive up to date information.

Please read below for detailed information about the course format and requirements, absence and class participation policies, the pass-fail grading policy, and the final individual client counseling skills exercise.

**Different (and Early) Drop-Add**

<u>Because this workshop takes place well before the normal drop/add dates, the registrar and I have established a drop-add date and time of Tuesday, January 7, 2020. If you have not dropped by then, consider yourself committed for the full workshop. (The on-line system will require department consent after 5:00 p.m. on January 7).</u>

<u>If you suffer a severe illness, injury, or death in the family after the drop/add date and will be unable to participate in the workshop, please let Registrar, me, and Faculty Assistant Jennie Edelstein know as soon as possible.</u> (if you are a 2L, and you haven't fulfilled the client counseling requirement via OIP or another approved clinical placement, you will have to enroll in the semester version of this course, which meets on Wednesdays from 12:20 – 3:00.)

Note that students (any of your classmates) who wish to ADD the workshop will be permitted to do so, without permission (up to the course cap), until 5:00 p.m., January 7. After that, permission will be required, but will be given through that Thursday, January 9.

<u>Students admitted to the workshop after January 7 should disregard information in the syllabus or in the separate role assignment document regarding their assigned groups for role-play instructions. Instead, please check with Jennie Edelstein, and she will assign you to a group. Your group designation may NOT correspond to your last name, as we juggle to insure even</u>

<u>distribution of students among the groups.</u>

***Reading, Preparation and Materials***

I am pleased to direct students to the course website: Clientsciencecourse.com. As you'll see, all course readings and all simulation materials and exercises are available and downloadable at the site. (The two exceptions are referenced in the syllabus and will either be handed out or emailed to you in a timely fashion.)

You should go to the website http://clientsciencecourse.com/ and click on the section of the site for participants. Any time prior to the workshop, you are welcome to access the course readings (other than the text, which must be purchased separately) at http://clientsciencecourse.com/course-readings/.

By the end of the day on January 7, I will email and/or post your Group Assignments. At that point, you can click onto the group assignments page. [http://clientsciencecourse.com/course-materials-designation/] I You should view and download materials ONLY from within your assigned group. I will also email them to you that day, based upon the class emails from the registration site.

As noted on the syllabus, I've assigned my book, *Client Science: Advice for Lawyers on Counseling Clients Through Bad News and Other Legal Realities* (Oxford University Press, 2012) as the course text. It should be available through the campus bookstore or Dubois. It is also available through Amazon.com or Barnesandnoble.com. Check prices. The list price is approximately $40 at Oxford University Press, but it's been on Amazon or B&N lately for $29 - $33; I've seen it at least once for just under $27. It's fine with me if you want to get the e-book version, which is even less expensive.

This book's DNA was generated by this course and what I learned from working with your predecessor UC Law students. For that reason, it just does not feel right for me to realize profits from UC Law students. Thus, I will donate my approximate royalties from your book purchases (roughly $2 per book, by my calculations) to the UC Law fund of your choice, or to purchase lunch or snacks for the class on one of the workshop days.

The good news is that the workshop will be mostly finished during the January short course week (not including the two-part Final Counseling Skills Exercise (FCSE) - individual half-hour recorded "Final Dress Rehearsal" client counseling sessions and FCSE Final Take submissions, and a final wrap up session to be scheduled later). The workshop compresses but does not reduce the number of two credit-class hours. The bad news is that each day's reading and preparation assignments may seem long, because each day covers a lot of ground. Thus, you are strongly advised to do all of the first day's reading before the first class, and to get a jump on the remaining reading as well. I hope you will find the readings to be straightforward, accessible, and practical. No appellate case decisions are involved!

***PRE-Workshop Readings and Assignments, including case assessment exercises and lawyer and client role information***

For the workshop to work, all MUST be ready to "hit the ground running." To help make that possible, the case assessment exercise and all role information are accessible and downloadable from the course website, at http://clientsciencecourse.com/course-materials-designation. To find your assignments, go to the student Group on the website corresponding to your last name's place in the alphabet. Readings other than the course text are at: http://clientsciencecourse.com/course-readings/

**If you somehow managed to register for the workshop after the deadline, you must see or email Jennie Edelstein (556-0090), our fourth-floor faculty assistant, for your group and role assignments. DO NOT USE THE ALPHABETICAL SYSTEM.**

IT IS EXTREMELY IMPORTANT that you go to the CORRECT student group on the Clientsciencecourse.com website, open, download, and print all of the documents there. Please do not open or download the materials for any other group. (YOU SHOULD PRINT YOUR ROLE INFORMATION OUT, AS LAPTOP SCREENS WILL NOT BE UP DURING CLASS EXERCISES.)

For each student, one of these documents is a pre-workshop case assessment exercise. Don't worry. No outside research is required! But you should read it carefully and think about your answers to the questions on the form. THESE MUST BE COMPLETED AND HANDED IN TO the FOURTH FLOOR FACULTY ASSISTANT, JENNIE EDELSTEIN, BEFORE THE START OF THE WORKSHOP. We will compile class statistics from these and will need the time for number crunching.

Each group has also been given client or attorney role-play information in three classroom role-play exercises. You should have read and *fully prepared* these before the workshop date on which they will be used. Note that the role-plays entitled *Hapless Harvest Interview* and *Family Matters Interview* will begin on the first workshop day!

**Course format**

The workshop will at times be in plenary presentation/discussion format and at times will involve work in small groups. This course is designed for participation, interaction, role-playing, in-class problem sets and small group work. Please be ready to do some serious acting when in client roles, and some serious lawyering when in the attorney roles. While I will offer a few demonstrations and video clips, the workshop's value depends upon your willingness to undertake the tasks of interviewing, counseling and decision-making as real and important.

As noted in the syllabus, I may arrange for some of your client interviewing and counseling work – during class – to be video-recorded. Rest assured, they will not be posted on YouTube or any public website.

## Absence Policy

Please don't get sick! I know that this is easier said than done. No one should come to class delirious, nauseated...etc. Unfortunately, to miss one day is to miss 1/5 of the workshop. Thus, after some deliberation, I have decided that if you are absent for 4 hours or more, you cannot receive credit for the workshop. You would be required to transfer to another client counseling course. Absence shorter than 4 hours, but significant, may require make up work, at the prof's discretion.

Of course, the paragraph above should not be read as permission to be late, leave, or miss less than 4 hours. Your absence adversely affects your classmates in paired role-playing exercises. Our agenda is TIGHTLY packed; missing even an hour or so may make it more difficult for you to perform effectively. Coming in late or returning late from breaks (unless excused) will affect that "high pass," "low pass" determination and, just as important, will make your professor unhappy.

Bottom line: I look forward to everyone being bright eyed, bushy tailed, on time, and healthy.

## The Pass-fail Grading

This course is graded on the modified pass-fail basis. Students may receive the grade of "high pass", "pass", "low pass", or "fail". While these words will appear on your transcript, they will not affect your GPA or class rank. "High pass" signals exemplary performance on your transcript, and "low pass" the opposite. Failing the course would also appear on your transcript and you would be required to repeat it for credit and for graduation.

Your "high pass", "pass", "low pass", or "fail" grade will be based upon your written decision analysis exercise (a decision tree with short memo), your FCSE Final Takes (the recording to be submitted with a short memo), and class participation (which includes all preparation for course exercises). Students who do not perform the FCSE or decision analysis exercises competently will be required to redo them to receive course credit.

### *Proposal for student cooperation toward continuing the pass-fail grading!*

Pass-fail grading for this course continues based upon my representation that it is successful. I propose that all join in a collective effort to prove that UC Law students are self-motivated to work diligently, complete reading, prepare and participate seriously, and perform skills exercises at the highest level, even in a pass-fail course.

The reasons for pass-fail grading in this course are many:

- My initial experience in this course indicated that many students were resentful and anxious about being graded based upon performance in skills exercises in a required course. When given critical feedback or asked to "retake" an exercise, students understandably became defensive or flustered. Eliminating grade anxiety makes everyone more comfortable with honest feedback and more receptive to incorporating it.

- This course does include a significant segment on decision-analysis and that does involve math. While it's easy math - arithmetic only - I know that many lawyers (and law students) are "math phobic." They would most likely choose to avoid an elective course with any math at all. Students seem to learn better and find the requirement to be fair under pass-fail grading. I WANT YOU TO LEARN THE BASICS OF DECISION ANALYSIS because a future client might well benefit from your familiarity with its application in client counseling and decision-making.1

- Paradoxically, pass-fail grading may enable your professor to be more critical and seek demonstration of skills at very high levels. With traditional grades, there's no power to ask students to do better, try it again. In this workshop, particularly in the Final Dress Rehearsal and the Final Take of the Final Counseling Skills Exercise, I am committed to asking students to demonstrate preparation and skills at a high level.

**Class preparation and participation**

Full participation in the workshop means joining into class discussion (including discussion of the readings), being fully ready to "act" a role simulation part in your seat or occasionally in front of the class, providing feedback on classmates' performance, engaging in small group tasks, and completing problem sets and case assessment exercises.

I do want to emphasize that preparation impacts participation. Obviously, doing the reading affects your ability to contribute to class discussion. But a good deal of the prep work for this course should be directed toward the in-class simulation exercises. If you have been assigned the client role, preparation means absorbing *all of the facts* about the client circumstances and rehearsing in advance how you will play the part. If you will take on the lawyer's role, I ask that you prepare for the way you will conduct the interview or counseling session based upon the readings. Of course, you may want to revise your approach based upon class presentation and discussion before the in-class exercise begins. (While you may bring a print version of your role information to class, you should not be relying on it in class, except if needed to check a detail.)

Class preparation, participation and quality of performance will count in the assignment of "high pass", "low pass", or plain "pass" designations.

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1 You are not required to buy decision tree software for this course and it's really not necessary to produce a perfectly fine decision tree or do the calculations for any of the problems in this course. However, the Appendix at the back of this memo (also found at the back of the syllabus) describes some free and some reasonably priced software options. Also, since the TreeAge software I use lives on my computer and my laptop, anyone interested in trying is welcome to set up a time to play with it.

**Final Counseling Skills Exercise: Two Stages - Final Dress Rehearsal and Final Take**

Students obtain tremendous value from the experience of counseling a "real" client, consciously applying the collaborative counseling approach, skills, and strategic lessons taught in the course. Practicing with classmates is useful and efficient, but it cannot fully replicate a client counseling experience. The College of Law and I are committed to each student's receiving individual attention and "coaching" feedback, in a way that is not possible in class. This is the motivation for both stages of the “capstone” Final Counseling Skills Exercise (“FCSE”).

A full memorandum of instructions, with the case and client information will be provided to all students either in hard copy or via email before the fourth workshop day. In the first stage –the FCSE Dress Rehearsal - each student will participate in an abbreviated counseling session with an actor playing the client’s role. Your actor-client will be prepared to play the part and respond to your counseling choices in a consistent manner. While they may be emotional or “unreasonable” at points, they will shift when you use the skills and strategies taught in the course.

I will be your coach for this exercise (as will your actor client at times). When you are having trouble at various points, I will intervene and suggest using a specific skill or strategy more likely to be successful. Your client may also provide direct feedback. THIS IS NOT INTENDED TO MAKE YOU NERVOUS; it is intended to be CONSTRUCTIVE! My goal is for all students to successfully employ counseling skills and strategies covered in the course. When working with a real (even almost real) client, this is more difficult than you might think.

These “FCSE Dress Rehearsal” sessions will be recorded. **The law school will provide the SD card for recording your 30-minute session.** (You may also use it to record your Final Take to be submitted later.) This will insure that each student has access to his or her recording when preparing for the FCSE Final Take, as discussed below. These SD cards are to be returned with your final submissions.

**FCSE Final Take – stage two of the Final Counseling Skills Exercise:** After the dress rehearsal comes the real show! Each student will then be required to produce their own NEW, DIRECTED AND EDITED video of the Final Counseling Skills Exercise – no longer then 15 – 17 minutes in length – demonstrating GREAT client counseling. Students should pair up to complete this exercise, playing clients for each other. A clear grasp of the client’s concerns should be demonstrated by students playing the client roles.

**Along with the video, each student should submit a brief memorandum highlighting and describing the client counseling strategies and skills it demonstrates.** These can be in outline or bullet point form and, if possible, should include reference to approximate time codes at which identified behaviors can be found on the video. While these memos need not be long (2-3 pages should be plenty), it’s a good idea to highlight aspects of the exercise you found challenging in the “dress rehearsal” and to discuss how your final version reflects improvement.

**Note the reward for flawless performance:** I anticipate that a very small number of students will demonstrate FLAWLESS client counseling in their recorded "FCSE Dress Rehearsal" session. IF that happens, you will be permitted to opt-out of a second video, but will be required to submit a short memorandum identifying and the [successful] skills and strategies in their "dress rehearsal', now final video.

**Case Switching Option:** students who are absolutely sick of the *Hapless Harvest* case used in the "Final Dress Rehearsal" are free to elect to record an FCSE Final Take session using another case. Please check with me to discuss candidate cases.

**Don't Forget Final Decision Trees:** Each student must prepare a decision tree for *Hapless Harvest* case and a short memo explaining the method and the results to the client, and hand it in with their FCSE Final Take recording. Please note that you are NOT to use the written decision tree in the counseling session. You should be prepared to counsel your client *without* using the tree. (There will not be time to explain it to your client so you should not attempt it).

No library or on-line research is required for the FCSE. However, some students may find it helpful to review basic torts concepts as they prepare to explain them to a client within the counseling session. Students should also review the lessons of the workshop and be prepared to demonstrate their application in the counseling session. Most importantly, students should demonstrate:

- Collaborative counseling approach to process
- Clear communication of legal issues and concepts
- Strong listening skills
- Strategies for psychological barriers (including framing around risk and loss)
- An understanding of how best to deliver bad news
- Strategies/skills for the emotional or difficult client

I ask that you participate in the exercise in good faith - be prepared and able - *with coaching* - by the end of the time period - to demonstrate some mastery of the skills and concepts. Note the emphasis on *with coaching.* If you are struggling with the task, I (and sometimes your actor client) will intervene and make suggestions. You will be able to incorporate these suggestions for a more successful counseling session. Often, I will intervene and make a suggestion just to add some polish when a student is doing extremely well. (I am ever aiming for the perfect video.) However, if you are unprepared, appear not to have read the materials, or demonstrate little familiarity with the core prescriptions in the course, you will not pass.

I am happy to answer any questions regarding this exercise or any other aspect of this course.

It should be fun, and a great learning experience!

Marjorie Aaron

**January 2020 Client Counseling Workshop**
**Group and Role Assignments**

| **Group I**<br>Last names between<br>____and ____ | **Group II**<br>Last names between<br>____and _____<br>**(Except in *Deciding* exercise below)** | **Group III**<br>Last names between<br>____and ____ | **Group IV**<br>**Last names between**<br>_____& _____<br>**(Except in *Deciding* exercise below)** |
|---|---|---|---|
| **Due at or before first class**<br>Eval/Estimation Ex: *Calculations in Confidence* | **Due at or before first class**<br>Eval/Estimation Ex: *Predicting What's Probable* | **Due at or before first class**<br>Eval/Estimation Ex: *Finally, A Great Case* | **Due at or before first class**<br>Eval/Estimation Ex: *Betting on This One* |
| **Prepare for first day**<br>Case 1<br>*Hapless Harvest Interview-Client*<br>Case 2<br>*Family Matters – Atty* | **Prepare for first day**<br>Case 1<br>*Hapless Harvest Interview-Atty*<br>Case 2<br>Family Matters – Client | **Prepare for first day**<br>Case 1<br>*Hapless Harvest Interview-Client*<br>Case 2<br>*Family Matters – Atty* | **Prepare for first day**<br>Case 1<br>*Hapless Harvest Interview-Atty*<br>Case 2<br>*Family Matters – Client* |
| **Prepare for second day**<br>See syllabus for questions to consider & instructions to prepare explanations of legal concepts for communicating to a client<br>Case 3<br>*Deciding: To Ditch or Not to Ditch Design Display General Information; Instructions for Attorney* | **Prepare for second day**<br>See syllabus for questions to consider & instructions to prepare explanations of legal concepts for communicating to a client<br>Case 3<br>*Deciding: To Ditch or Not to Ditch Design Display General Information;*<br>Names: -<br>*Instrs. for Dale Doran (1)*<br>Names: -<br>*Instrs. for Dale Doran (2)* | **Prepare for second day**<br>See syllabus for questions to consider & instructions to prepare explanations of legal concepts for communicating to a client<br>Case 3<br>*Deciding: To Ditch or Not to Ditch Design Display General Information; Instructions for Attorney* | **Prepare for second day**<br>See syllabus for questions to consider & instructions to prepare explanations of legal concepts for communicating to a client<br>Case 3<br>*Deciding: To Ditch or Not to Ditch Design Display General Information;*<br>Names: -<br>*Instrs. for Dale Doran (2)*<br>Names: -<br>*Instrs. for Dale Doran (3)* |
| **Prepare for third day**<br>Prepare the vignettes: "Ever-Present Ever-Real Emotion" and "Working with Client Psychology", to be handed out in class or emailed. | **Prepare for third day**<br>Prepare the vignettes: "Ever-Present Ever-Real Emotion" and "Working with Client Psychology", to be handed out in class or emailed. | **Prepare for third day**<br>Prepare the vignettes: "Ever-Present Ever-Real Emotion" and "Working with Client Psychology", to be handed out in class or emailed. | **Prepare for third day**<br>Prepare the vignettes: "Ever-Present Ever-Real Emotion" and "Working with Client Psychology", to be handed out in class or emailed. |
| **Prepare for fourth day**<br>Decision Analysis Problems<br>*Simple Hypotheticals: plaintiff's side, defense side Balanced Trees on Balance Beams* | **Prepare for fourth day**<br>Decision Analysis Problems<br>*Simple Hypotheticals: plaintiff's side, defense side, Balanced Trees on Balance Beams* | **Prepare for fourth day**<br>Decision Analysis Problems<br>*Simple Hypotheticals: plaintiff's side, defense side, Balanced Trees on Balance Beams* | **Prepare for fourth day**<br>Decision Analysis Problems<br>*Simple Hypotheticals: plaintiff's side, defense side, Balanced Trees on Balance Beams* |
| **Prepare for the fifth day**<br>*Upscale Accusations Interview*<br>Lawyer and Client Roles<br>*Upscale Accusations Client Counseling Ex.*<br>Lawyer and Client Roles | **Prepare for the fifth day**<br>*Upscale Accusations Interview*<br>Lawyer and Client Roles<br>*Upscale Accusations Client Counseling Ex.*<br>Lawyer and Client Roles | **Prepare for the fifth day**<br>*Upscale Accusations Interview*<br>Lawyer and Client Roles<br>*Upscale Accusations Client Counseling Ex.*<br>Lawyer and Client Roles | **Prepare for the fifth day**<br>*Upscale Accusations Interview*<br>Lawyer and Client Roles<br>*Upscale Accusations Client Counseling Ex.*<br>Lawyer and Client Roles |

# Syllabus Appendix Regarding Decision Tree Software2

I have located a few free and open source decision tree software packages:

The first, called Simple Decision Tree was created by Thomas Seyller was originally open sourced for the Design Professionals Network (http://www.decisionprofessionals.net). It operates as an add-on to Microsoft Excel and is available at http://decisiontree.sourceforge.net. This software works easily and well for reasonably simple trees. However, it does not permit cutting and pasting of subtrees and it will only give you an EMV; it does not generate cumulative probabilities of each outcome at the right-hand margin.

A second free and open source software is called SilverDecisions, "developed at the Decision Support and Analysis Division, of the Warsaw School of Economics", as part of a project that "has received funding from the European Union's Horizon 2020 research and innovation programme" under a grant agreement. It's fairly simple, but somewhat cumbersome to use and doesn't offer easy sensitivity analysis or many other "bells and whistles." It can be found at http://silverdecisions.pl.

There appear to be a number of programs that permit visual decision tree presentations but without the ability to calculate. Without claims to an exhaustive list, these include: Solutions, offered by SmartDraw at www.smartdraw.com and Lucid Chart at lucidchart.com. Lucid Chart is a free program that enables you to draw trees and even provides a decision tree template.

Dan Klein of Klein Dispute Resolution offers an introductory decision tree analysis tool, limited to one probability on the liability question and a three-point damages range. Thus, it generates only a very basic tree. The good news is that it is also free at his website:
www.decisiontree.kleinmediation.com/tree/generator.

**Pricier and not at all necessary for this class, maybe for your future career:**

The software I have long used, is TreeAge, produced by TreeAge, Inc., and available at www.treeage.com. Unfortunately, this program is quite expensive, even for an annual license or firm-wide subscriptions.

Other software designed to enable one to create decision or risk analysis trees include: Tree Plan, available at Treeplan.com, Precision Tree by Palisades Corporation, and DPL by Syncopation Software. Tree plan operates as an add-on to Microsoft Excel and is more reasonably priced than TreeAge (particularly for the basic package). Precision Tree by Palisades Corporation and DPL by Syncopation Software are stand-alones and also quite pricey. I make no claims to extensive experience with any of these. However, Palisades often offers programs (at least on-line) for using their software. Information is available at www.palisade.com. Syncopation Software's DPL Decision Analysis product appears to be well suited for assessing litigation risk. Other software that is related but not "pure" or classic decision analysis include "CaseValue Analyzer" developed by Michael Palmer, and "Picture it Settled," developed by Donald Philbin.
I am indebted to Professors Heather Heavin and Michaela Keet at the University of Saskatchewan College of Law for sharing a pre-publication version of their excellent article: "A Spectrum of Tools to Support Litigation Risk Assessment," (submitted for publication, October 2016). Their article includes terrific discussion of many of these software sources, particularly of Michael Palmer's Case Value Analyzer Methodology, and other non-traditional approaches.
Readers are encouraged to contact the author if they know of additional software for decision tree analysis.
As suggested earlier, the software I have long used, is TreeAge, produced by TreeAge, Inc., and available at www.treeage.com. Unfortunately, this program is quite expensive, even for an annual license or firm-wide subscriptions.

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2 This discussion of other software is taken from my book: *Risk and Rigor: A Lawyer's Guide to Assessing Cases and Advising Clients* (DRI Press 2019). I am always interested in updates, and learning of new resources that facilitate the creation of decision trees.