University of Cincinnati College of Law
Client Counseling – Dispute Context
a/k/a
Client Science: Client Interviewing, Counseling and Decision-Making

January 13 -17, 2020
[Plus individually coached Final Counseling Skills Sessions
And a final wrap up class in September]

Faculty:
Professor Marjorie Corman Aaron

Workshop Schedule
Monday, January 13, 2020   9:00 a.m. – 4:00 p.m.
Tuesday, January 14, 2020   9:00 a.m. – 4:00 p.m.
Wednesday, January 15, 2020 9:00 a.m. – 4:00 p.m.
Thursday, January 16, 2020   9:00 a.m. – 4:00 p.m.
Friday, January 17, 2020   9:00 a.m. – 2:00 p.m.
Followed by Final Counseling Skills Exercises and a
FINAL 90-minute WRAP UP session at a lunchtime, TBA

Workshop Syllabus

Please GO TO Clientsciencecourse.com, to the participants' section for ALL SIMULATION ROLES, EXERCISES AND READINGS in addition to the course text. Do note that each student has been assigned to a group for simulations and exercises. Thus, all of your simulation roles and exercises should be obtained from within your group assignment within the participants' section of the website. Your group assignment will be attached to this syllabus as of January 7, 2020, if not sooner. If you (commendably) downloaded this document before then, please check back for the page with your group assignment. You should access and download ONLY those for your assigned group.

I will also email and/or post the group assignments in the syllabus section of the registrar's website. (I cannot make final group assignments until after the drop-add deadline set for this course.) Until these are finalized, you should not go to the Group Assignment section of Clientsciencecourse.com. You are, however, welcome to go to the readings section of the website before then.

Learning Outcomes

It is fair for you to ask what the course is designed to achieve – what you can expect to learn. The chances of achieving these "learning outcomes" can only be enhanced by articulating them at the outset. As the course "designer" as well as its professor, I can state that it is designed to enable all students to become effective in the strategies and skills of client interviewing and counseling, including the challenges of communicating complex legal realities and unwelcome

news or difficult choices to the client. More specifically, you will learn:

- Techniques for building trust and rapport in an initial client interaction.
- Practical structure and strategy for the initial client interview.
- How to communicate regarding attorney-client privilege and commercial relationship
- How to elicit information necessary to understand legal claims and client's interests
- How to recognize and work effectively with five client counseling challenges: clarity of communication (translating legalese); deeper, sometimes hidden client interests, goals, priorities and attributed meaning; impact of psychology, force of emotion, and decision-making under conditions of uncertainty.
- Awareness of and practice with the use of voice and gesture to enhance client's sense that the lawyer fully appreciates their perspective, and that the lawyer has sufficient competence, confidence, and gravitas to be their advocate.
- Specific strategies for conveying legal complexity and reality, including "bad news" to a client in ways that achieve client understanding and retain client trust and loyalty.
- Awareness of your own strengths and areas for improvement in client communication.
- Ability to critically assess others' client communication skills and strategies, enabling you to become a continuing auto-didact for future practice.

Interim Assessments

The American Bar Associate also now requires law school courses include an "interim assessment," enabling feedback and guidance regarding how student course work will be graded. It is fair to say that an interim assessment presents a real challenge in a week-long intensive workshop. On the positive side, particularly in a pass-fail course, this requirement takes on a Montessori-like spirit that I support - encouraging students to work, learn, try, learn, and finally demonstrate mastery of knowledge and skill!

I am pleased to have designed the course's "Final Counseling Skills Exercise" to include an "interim assessment"; ABA aside, I believe it is also good teaching.   The exercise takes place in two stages: the "FCSE Final Dress Rehearsal and the "FSCE Final Take." The FSCE Dress Rehearsal is a recorded client counseling session with an actor-client, with coaching from me and the actor. (The recording will be done on an SD card, supplied by the law school, to be returned with final submissions.) Students then produce a video recorded "FCSE Final Take," this time with a classmate or other client of your choosing, and submit it to me with a short memo outlining the skills and strategies it demonstrates. This FSCE Final Take will count heavily toward your final pass-fail grade (high pass, pass, low pass, or fail).

Another significant part of your overall assessment is the decision tree analysis submission. During the workshop, students will have completed a decision tree "problem set" and will receive feedback in the form of "correct" trees during class. Students who turn in the decision tree component of the final submission by an interim deadline (January 31) will receive interim feedback on their submissions. I will conduct a review session for anyone who seeks clarification or further explanation regarding this method.

Required Reading:

Text:

Aaron, M., *Client Science: Advice for Lawyers on Counseling Clients Through Bad News and Other Legal Realities* (Oxford University Press, 2012) ("*Client Science*").

This book should be available at the campus bookstore or Dubois. If you have some lead-time, do check prices. While Oxford University Press lists it at approximately $4o, the price on Amazon and B&N is generally $29 - $33ish. (I once found it at $26.95). It is even less expensive as an e-book.

Given that the book's DNA was generated by this course and what I learned from working with your predecessor UC Law students, it just does not feel right for me to realize profits from assigning it. Thus, I will abide by the results of a class vote on whether to donate 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 snack for all on one of the workshop days.

Additional Readings (available in pdf format on Clientsciencecourse.com: http://clientsciencecourse.com/course-readings/)

- Aaron, M., "Client Science: Advice for Lawyers on Initial Client Interviews" (Clientsciencecourse.com, 2013).

- Cunningham, C. "What Do Clients Want From Their Lawyers?" Social Science Research Network (SSRN) (2009), http://ssrn.com/abstract=1505616.

- Golann, D., "Death of a Claim: The Impact of Loss Reactions on Bargaining," *Negotiation Journal*, Vol. 20, No.4 (October 2004).

- Aaron, M., Risk and Rigor: A Lawyer's Guide to Assessing Cases and Advising Clients (DRI Press 2019), Chapters 1-3 and 13. These chapters (in fact, the entire book) are available for free downloading from DRI Press, or at riskandrigor.com.

- Aaron, M., "Finding Settlement with Numbers, Maps and Trees," Chapter 13 in Moffitt, M. and Bordone, R. eds, *The Handbook of Dispute Resolution* (Jossey Bass, 2005).

- ABA Model Rule 1.4 and Comments 1-7.

Case Assessment Exercises

Each student has been assigned ONE case assessment exercise, available within your assigned group on Clientsciencecourse.com. You should download and print out your assigned case

assessment exercise from the website. Please read it carefully, answer the questions posed at the end of the case exercise, and e-mail your completed form OR hand in your hard copy answers to our fourth floor Faculty Assistant BEFORE class on **Monday, January 13, 2020**.

Please do not discuss the facts of your case assessment exercise or your answers with any of your classmates prior to the commencement of the course.

Simulation Exercises

Please remember to print out and download your assigned role information through the correct group assignment page on Clientsciencecourse.com: **http://clientsciencecourse.com/course-materials-designation/ I will ask you NOT to consult your laptops to review the role information in class.**

Preparation for the in-class simulation works means that, if you are in the client role, you should have absorbed all of the facts about the client circumstances, and really have rehearsed how you will play the part. When you are in 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 printed version of your role information to class, you should not be relying on it in class, except if needed to check a detail.)

- On the first day of class (January 13), we will be working with two cases: *Hapless Harvest* and *Family Business Matters*. You have been assigned to the role of client in one case and attorney in another case. As noted above, if you have been assigned the client role, it is IMPERATIVE that you come fully prepared to play the part. For the lawyer's role, consider carefully what your approach will be. Prepare to open, greet the client, explain important concepts, etc.

- For the second day of class (January 14), you have been assigned either to an attorney or a client role in a third exercise: *To Ditch or Not to Ditch Design Display*. It is imperative that you read and completely absorb your assigned information. As you will see, the facts are somewhat complicated, especially for those playing the lawyer's role. The lawyer's analysis and consideration of various options are quite comprehensive. The lawyers should be prepared to explain all of the analysis to their clients. Again, it is important that you spend the necessary preparation time to fully play your role. (Note that a video of a lawyer interviewing and counseling Dale Doran will be posted for you to watch AFTER the end of class that day and will be discussed the next day.)

- In class, on January 15, we will address working with clients' (and sometimes lawyers') emotion and psychology. After presentation and discussion, we will work through a set of vignettes on each topic. These vignettes are NOT available on the Clientsciencecourse website but will be handed out in class or emailed to you on or before January 9. Please spend time reviewing the vignettes and consider how you would approach each of them. We will use these vignettes to practice incorporating knowledge of emotion and psychology into lawyer-client dialog.

- For class on January 16, you must complete the decision trees for the *Simple Hypo* problem set as well as a decision tree analysis from the American Steele counsel's perspective in the Lancer case, in preparation for advising the client regarding settlement. The case is summarized in *Balanced Trees on Balance Beams!* These are all available on the Clientsciencecourse website, with the posted materials for all students.

- In class, on January 17, we will work on client interviewing and counseling for *Upscale Accusations*. Everyone will eventually play lawyer and client roles, so everyone should prepare both parts. As discussed above, please be thoroughly familiar with the client facts and ready to give counseling advice before class. (See the assignments for that day as not all students will be required to read the interview portions.)

- Students who will seek "interim assessments" of the decision tree analysis for their Final Counseling Skills Exercise (the *Hapless Harvest* case) should turn them in by the end of the day on Friday, January 26.

Optional Software (download trial copy or purchase student version):

You are NOT required to purchase decision tree analysis software for this course, and it's really not necessarily to produce a perfectly competent tree for the decision tree-related assignments in the course. However, the Appendix at the back of this syllabus and the course memo) describes some free and/or very reasonably priced software options.

The decision tree software I have long used is called TreeAge, but I'm not suggesting that any one purchase for this short unit on the topic. On the other hand, if you are very interested in playing with the software, please let me know. I have the full version loaded both on my laptop and on my desktop in the office and would be happy to let you try it. (I just have to remember to bring the laptop in.)

A Note regarding the ABA on Reading and Class Preparation:

You may be thinking that there seems to be a great deal of outside preparation required for this workshop, given that you will be in class from 9:00 – 3:30 or 4:00 every day. I hereby acknowledge this will be an intense week. In fact, I am asking you to really absorb all of the assigned simulation facts (not just read them over) and prepare your approach for in-class simulation work as well as smaller exercises. There's a pretty long video for you to watch after the workshop day is over on the second day in addition to other preparation. There are problem sets to be completed between the third and fourth day. These will take real time. And, as mentioned earlier, within the Final Counseling Skills Exercise – "FCSE Final Dress Rehearsal" requires each student to prepare carefully for an individual counseling session with an actor-client, with coaching by the professor and the actor. (More detail about this exercise is included in the description of "Post Workshop" requirements toward the end of this syllabus document. I hereby admit that some of it is repetitive, intentionally so).

After the FCSE Final Dress Rehearsal sessions, students will work on, record, and submit their "FCSE Final Take" of this exercise, along with a short memo outlining strategies and skills observable in the FCSE Final Take. Along with the FCSE Final Take submission, students will also submit a final decision tree for the case (*Hapless Harvest*) with a short written report in the form you would provide to a client. After all is done, we will meet again for a final but substantive wrap-up session in late September or early October (before fall break).

Yes, it's a lot of work! The simple reason for the quantity of reading and preparation is that we are squeezing two credits into the workshop week, the final skills exercise and one final session. **The ABA accreditation standards now require that a law school course involve TWO outside preparation hours for every in-class hour**. Just in case you didn't realize it, a one-credit law school course must consist of at least 15 (50 minute) in-class hours and 30 (presumably 50 minute) out-of-class preparation hours. Thus, according to the ABA accreditors, a two-credit course must involve **30** (50 minute) in-class hours and **60** out-of-class hours – a total of 90 hours. Even if we assume a considerable time to prepare the Final Counseling Skills Exercise, write up the decision tree and report, and review post-class videos, that leaves considerable time for completing reading assignments and really preparing for role simulation and in-class decision analysis problems. So, I suggest we collectively embrace the immersion in client counseling. Of course, it's my hope that your future clients will be glad you did.

Reading and Preparation Assignments for Day One – January 13, 2020

Read:
Aaron, M., "Client Science: Advice for Lawyers on Initial Client Interviews" (Clientsciencecourse.com, 2013): pp. 1-13; and 22-38 ending at "5. Client Narrative."

Cunningham, C. "What Do Clients Want From Their Lawyers?" Social Science Research Network (SSRN) (2009), http://ssrn.com/abstract'1505616**.**

**In *Client Science:*
 Introduction, pp. 1-3 (through paragraph ending with: "That is hard enough").
Chapter 7, "Choreography of Counsel," pp. 221-225 and 230-232.
Chapter 9, "Channel Navigation Notes," pp. 249-252 (through the paragraph ending with "legal problem within that channel").
Chapter 4, "Emotional Effects and Affecting Emotion," pp. 97-100 (relating to active listening and reflective dialogue).

Complete the case assessment exercise: [see next page]

You have been assigned as counsel in ONLY ONE of these case assessment exercises:
Betting on This One
Finally, A Great Case
Calculations in Confidence
Predicting What's Probable

Your assignment is based upon groupings by last name and is posted on the website. Read, consider, and fill out your answers to your case assessment exercise, and TURN THESE IN TO OUR FACULTY ASSISTANT ON OR BEFORE January 8 (It would be great if you could e-mail or drop them off before that day, but I understand that the 8th may be the first day you are on campus for the semester).

Day One: January 13, 2020 - 9:00 a.m. - 4:00 p.m.
(Day includes a 1-hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda
- Introductions: Why and how this course
- Challenges of client interaction - interviewing, counseling, decision making
- A Course Stance: Collaborative Lawyering
- Goals, Tasks, Techniques, Initial Stages of a Client Interview
- Oh yes, Confidentiality and Fees
- Initial Interviews - Practice in Case 1 - *Hapless Harvest* and Case 2 - *Family Business Matters*; Debriefing and Demonstration
- Moving into Substance:
  - ▸ About Natural and Not-So-Natural Discourse: Counseling as Conversation
  - ▸ Listening, Listening, Like You've never Listened Before
  - ▸ Questioning Strategies: Open Inquiry; Getting Information; Steering with a Light Touch; Funneling to a Close
  - ▸ Finally, the Hapless Harvest movie!

Reading and Preparation Assignments for Day Two – January 14, 2020

Read: *In Client Science***:**
Chapter 3, "Translating the Terrain."
Chapter 5, "Predictable and Potent Psychology," pp. 173-179 (on risk, loss, gain, etc.)

Aaron, M., "Client Science: Advice for Lawyers on Initial Client Interviews" (Clientsciencecourse.com, 2013): pp. 14-22; 38-end, but you may elect to skip the "Interlude" at 45-48 and review it sometime after this class session.

ABA Model Rule 1.4 and Comments 1-7.

Consider and prepare to discuss your responses to the following questions.

- A client has consulted with you because he or she was terminated, physically injured, or sued. The client has never been involved in litigation before.
- What underlying beliefs in the U.S. legal system is the client likely to have?
- What did you believe about the U.S. legal system pre-law school? Has that changed?
- How might a client's beliefs about our legal system impact a lawyer's role as counselor?

Prepare to explain to a client the meaning of at least two of the following legal concepts:

- Motion for summary judgment,
- The standards for grant of preliminary injunction
- Judgment notwithstanding verdict (j.n.o.v.)

Imagine (make up!) client circumstances such that these would pose a risk in your client's case. In other words, your client's business activities might be the target of a preliminary injunction motion; your client's successful verdict might be overturned with a j.n.o.v (perhaps his case is likely to arouse jury sympathy but your ability to establish the essential legal elements is in question); or your client may face a motion for summary judgment or seek to file one to end the case against him.

Note that I may arrange to video-record some of your efforts at explaining these concepts. So DO take some time to prepare well! (Don't worry, they will not appear on YouTube or in any public website without your permission.)

Day Two: January 14, 2020 - 9:00 a.m. - 4:00 p.m.
(Day includes a 1-hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda
- In the Thick of It: Full Interviews in *Hapless Harvest* and *Family Business Matters*
- Interviewing - Last Words
- Introducing the Challenges of Counseling REAL Clients - *can we talk*????
- Taking on The Five Counseling Challenges
- Translating Legalese - class exercise
- Directing Process; Collaborating For Wise Client Decisions
- Practice Counseling for Deciding

Note that I may arrange to video-record some of your interviews. So DO take some time to prepare well! (Don't worry, they will not appear on YouTube or in any public website without your permission.)

Reading and Preparation Assignments for Day Three – January 15, 2020

Read:

In Client Science:
Chapter 4, "Emotional Effects and Affecting Emotions."
Chapter 5, "Predictable and Potent Psychology."

Aaron, M., *Risk and Rigor: A Lawyer's Guide to Assessing Cases and Advising Client*s (DRI Press 2019), Chapter 1-3 and 13. (These should be on the Client Science website as well as RiskandRigor.com. In fact, the entire book is available for free download, chapter by chapter, at DRI Press.)

Or, instead of chapter 13 in Risk and Rigor, you may opt to read:

Aaron, M., "Finding Settlement with Numbers, Maps and Trees," Chapter 13 in Moffitt, M. and Bordone, R. eds., *The Handbook of Dispute Resolution* (Jossey Bass, 2005). *[Note: If you're having trouble with the concepts in the first three Risk and Rigor book chapters, or you're low on time or energy you can pass on this one until tomorrow.]*

Watch: **If we did not get to it in class:** The Dale Doran Video of a combined interview and counseling session. I will provide a link to the Dale Doran Video before the end of class on Day Two. I ask that you watch and take notes on what you observe and be prepared to discuss them at the beginning of tomorrow's class.

Prepare: Read the two sets of vignettes titled "Ever-Present Ever-Real Emotion" and "Working with Client Psychology" and consider how you would approach each of them as the lawyer. These are not accessible in the student portion of the website but will be handed out in class or emailed to you on or before January 14.

Day Three: January 15, 2020 - 9:00 a.m. - 4:00 p.m.
(Day includes a 1-hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda

- *Dale Doran* – Let the movie reviews be heard!
- Emotions and the Core Concerns Model - presentation and class exercises
- Red Flags and Strategic Interceptions in Psychology for Savvy Lawyers
- Introducing the VERY BASICS of Decision Analysis

Reading and Preparation Assignments for Day Four

Read: Aaron, M. *Risk and Rigor: A Lawyer's Guide to Assessing Cases and Advising Clients* (DRI Press 2019), Chapter 13
OR
Aaron, M., "Finding Settlement with Numbers, Maps and Trees," Chapter 13 in Moffitt, M. and Bordone, R. eds, *The Handbook of Dispute Resolution* (Jossey Bass, 2005).

In *Client Science:*
Chapter 6, "Choices in Voice."
Chapter 7, "Choreography of Counsel."
Chapter 8, "A Gesture to Clarity."
Chapter 9, "Channel Navigation Notes" (pages 249-252 should be review).

Do: Complete the decision trees for the *Simple Hypo* problem set as well as a decision tree analysis from the American Steele counsel's perspective in the Lancer case, in preparation for advising the client regarding settlement. The case is summarized in *Balanced Trees on Balance Beams!*

Day Four: January 16, 2020 – 9:00 – 4:00 p.m.
(Day includes a 1-hour lunch break and short mid-morning and mid-afternoon breaks.)

Topical Agenda
- Building and Checking Defense and Plaintiff's Trees - in class work
- Value and Limits of Trees - lecture and class exercise
- Settlement Counseling - With and Without Trees - demo and class exercise
- Drama Does It! Actors' Advice for Lawyers' Choice in Gesture and Voice

Reading and Preparation Assignments for Day Five – January 17, 2020

Read: In *Client Science*: Chapter 2, Meaning Truths" and Chapter 1, "Bad News and The Fully Informed Client."

Golann, D., "Death of a Claim: The Impact of Loss Reactions on Bargaining," *Negotiation Journal*, Vol. 20, No.4 (October 2004).

Client *and* Attorney roles in *Upscale Accusations Counseling Exercise*. [Students who have been invited and agreed to participate in the in-class, fishbowl demonstration format *Upscale Accusations* interview will prepare the interview roles. Other students are welcome but not required to read the interview roles.]

Prepare: Get ready to "act" the client for the *Upscale Accusations* counseling simulation. Come up with a client personality, style etc. Also prepare to counsel a DIFFERENT client personality (not all clients will be the same) to make a wise settlement decision in this case. You should practice articulating important legal concepts in a way the client will understand them. You should pay attention to how you will frame the decision, and how you will use voice and gesture to give the client confidence in his or her lawyer and in the lawyer-client relationship.

Please note that I may video-record some of your work in *Upscale Accusations*. As promised earlier, these will not be posted to YouTube or any public website without your permission. But it does create added incentive to prepare for a polished job.

Day Five: January 17, 2020 – 9:00 – 2:00 p.m.
(Day includes a 1-hour lunch break and a short mid-morning break.)

Topical Agenda
- Interviewing Perfection - Play it Both Ways.
- Debriefing the Interview and "Real life" Initial Client Conversations.
- Bad News for Clients
- Client Counseling in *Upscale Accusations.*
- Finally, *Upscale Accusations*: the movie.
- Grand Summary! (plus discussion of the Final Counseling Skills Exercise and other required submissions)

Post Workshop: In preparation for the FCSE Final Dress Rehearsal stage of the Final Counseling Skills Exercise (and to cement the lessons of the course), please watch the full videos of *Upscale Accusations* (*By the Book* and *Not by the Book*) as well as the "*Not by the Book*" video for the *Hapless Harvest* Case. You are also welcome to review the *Dale Doran* Video.

Post Workshop: If you wish to receive an "interim assessment" on the decision tree analysis report required for your final submission, please hand it in by the end of Friday, January 20. I will review them and schedule individual feedback sessions or a collective session.

Post Workshop – Final Client Counseling Skills Exercise – Dress Rehearsal with Coaching! [Each student will receive the SD card containing their recorded session, to be returned with their final submissions.] The post workshop two-stage Final Counseling Skills Exercise ("FCSE") is an IMPORTANT part of this course. The first stage is the FCSE Dress Rehearsals, to take place between January 27 and February 14, 2020. In the Dress Rehearsals, each student will participate in a counseling session with an actor playing the client's role. Your actor-clients will be prepared to 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.

Your "FCSE Dress Rehearsal" session will be recorded on an SD card. **You will receive this SD card, to be returned with your final submissions.** This will insure that you have access to your recording when preparing for the FCSE Final Take, discussed below.

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. You may use the SD card to record the Final Take, but you are not required to do so. You can create and submit your FCSE recording in any format that will enable me to view it.

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 Final 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 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 "FCSE Final Dress Rehearsal" are free to elect to record a FCSE Final Take Client Counseling 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).

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I hope the two-part FCSE does not sound onerous.   I know the overwhelming majority of course alumni would agree that it was a terrific learning experience. Through the workshop, you will have had some practice with all of the FCSE elements, as well as practice putting them together on the fourth workshop day with the *Upscale Accusations* simulation.

Sign-up sheets for the FCSE Dress Rehearsal stage will be available at the Fourth Floor Faculty Assistant's desk or on TWEN.

A full memorandum of instructions for the full FCSE Exercise, with the case and client information will be provided to all students either in hard copy or via email before the final workshop day. **The due date for these submissions will be announced during the workshop (but my guess is February 24).**

Recommended preparation for the Final Counseling Skills Exercise – the FCSE Dress Rehearsal and the FCSE Final Take:
- Carefully review the simulation facts and instructions provided.
- Review the readings from *Client Science*.
- Review your readings and your notes from lectures and in-class exercises.
- Practice demonstrating mastery of the important tasks, skills and strategies for client counseling that you think might arise in this fact pattern. As you'll see, it will require you to counsel a client through "bad news and other legal realities", while explaining legal concepts and building trust and rapport along the way.
- The time is short, but practice permits brevity.   It is humbling to see a TV attorney in L.A. Law deliver a powerful 3-minute closing argument that would have lasted 30 minutes "in real life."
- REMEMBER that your decision tree and a brief memorandum to the client explaining this method and the decision tree in his/her case should be handed in with your recorded FCSE Final Take Counseling Skills Exercise (and memo).

LAST Post Workshop - to be scheduled: One short additional "Wrap Up" Class.

One 90-minute additional class session will take place after all students have completed the Individual Counseling Skills Exercise.

January 2020 Client Counseling Workshop
Group and Role Assignments

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

University Information for All Students

The Faculty Senate passed a resolution requesting that all faculty include the following information about mental health services and Title IX anti-discrimination policies on our syllabi:

Counseling Services, Clifton Campus

Students have access to counseling and mental health care through the University Health Services (UHS), which can provide both psychotherapy and psychiatric services. In addition, Counseling and Psychological Services (CAPS) can provide professional counseling upon request; students may receive five free counseling sessions through CAPS without insurance. Students are encouraged to seek assistance for anxiety, depression, trauma/assault, adjustment to college life, interpersonal/relational difficulty, sexuality, family conflict, grief and loss, disordered eating and body image, alcohol and substance abuse, anger management, identity development and issues related to diversity, concerns associated with sexual orientation and spirituality concerns, as well as any other issue of concerns. After hours, students may call UHS at 513-556-2564 or CAPS Cares at 513-556-0648. For urgent physician consultation after-hours students may call 513-584-7777.

Counseling Services, Blue Ash Campus

UC Blue Ash Counseling Services provides high quality integrated health, counseling, and wellness services. **Mental Health and personal counseling services are free of charge to students who are matriculated as UC Blue Ash College students.** Services address student needs such as self esteem, family conflict, loss and grief issues, adjusting to life's challenges, relationship problems, eating disorders, physical and/or emotional abuse, and domestic violence. Students who want an initial meeting with a counselor can call (513) 745-5670 or stop by Room 140 Muntz Hall to schedule an appointment. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

Counseling Services, Clermont Campus

The Compass Counseling Center provides students assistance in helping to deal with life's stressors and adjustment to college life**. All services provided to UC Clermont students are free and confidential.** Some of the most common issues addressed at the center include transition to college life, stress from home, classroom performance, depression, anxiety, relationship problems, grief and loss, and substance abuse. Students are welcome and encouraged to walk into the Compass Counseling Center located in the Student
Services Building, Room 201. Students may contact the office by calling (513) 732-5263. If after hours, please call CAPS Cares (main campus) using the 24 Hour Phone Consultation Line at 513-556-0648.

Title IX
Title IX is a federal civil rights law that prohibits discrimination on the basis of your actual or perceived sex, gender, gender identity, gender expression, or sexual orientation. Title IX also covers sexual violence, dating or domestic violence, and stalking. If you disclose a Title IX issue to me, I am required forward that information to the Title IX Office. They will follow up with you about how the University can take steps to address the impact on you and the community and make you aware of your rights and resources. Their priority is to make sure you are safe and successful here. You are not required to talk with the Title IX Office. If you would like to make a report of sex or gender-based discrimination, harassment or violence, or if you would like to know more about your rights and resources on campus, you can consult the website ww

Syllabus Appendix Regarding Decision Tree Software[1]

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

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[1] This discussion of other software is taken from Aaron, M., *Risk and Rigor: A Lawyer's Guide to Assessing Cases and Advising Clients* (DRI Press 2019).

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.