# Client Science:
## Client Interviewing, Counseling & Decision-Making - Disputes Context
## The Ten Week Course

## Spring Semester 2020

University of Cincinnati College of Law

Professor Marjorie Corman Aaron

**Course Meeting Dates**
January 22 & 29, February 5, 12, 19, & 26, March 5, 12, and 26, and April 1 (or 15th)

## Syllabus

Please GO TO Clientsciencecourse.com FOR ALL SIMULATION ROLES, EXERCISES AND READINGS other than the course text.

All of your simulation roles and exercises should be obtained ONLY from within your group assignment within the participants' section of the website. Your group assignment will be attached to this syllabus as of January 13, 2020. 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 them and/or post the group assignments the law school's TWEN syllabus website. 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 become a continuing auto-didact for future practice.

## Interim Assessments

The American Bar Associate now requires law school courses include an "interim assessment," enabling feedback and guidance regarding how student course work will be graded. I happen to think this requirement is a good idea. In this pass-fail course, this requirement takes on a rather nice Montessori-like spirit - encouraging students to work, learn, try, learn, and finally demonstrate mastery of knowledge and skill!

Thus, our "Final Counseling Skills Exercise" will take place two stages: the first stage is what we'll call the "FCSE Final Dress Rehearsal; the second stage is the "FSCE Final Take." The FSCE Dress Rehearsal will be 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 you returned to you after the session.) Everyone will then produce a video-recorded "FCSE Final Take," this time with a classmate 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, or low pass, or fail).

A smaller but still significant part of your overall assessment is the decision tree analysis submission. During the course, 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 the interim deadline (March 27) 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 usual law school bookstore. If you have some lead-time, do check prices. While Oxford University Press lists it at a bit over $40 (too much!), the price on Amazon and B&N is generally $33ish. (I once found it at $26.95). It is less expensive as an e-book or a rental, or second hand from last year's 2Ls.

I do not intend to profit (financially) from my students! Thus, I will either donate the very approximate royalties attributable to your book purchases to a charity chosen by the class or spend it on for pizza one day – your choice.

**Additional Readings (available in pdf format on Clientsciencecourse.com):**

- Aaron, M., "Client Science: Advice for Lawyers on Initial Client Interviews" (published for use in this course at 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).

- ABA Model Rule 1.4 and Comments 1-7.

  *Please note that the following two reading selections may change, as I have a book coming out on the topic of decision tree analysis for lawyers and students may be able to read the first few chapters instead. The good news is that this new book will be available for download as pdf, completely free. But for now, as I write this syllabus, I'm keeping the old readings in as placeholders.*

- Aaron, M., Risk and Rigor: *A Lawyer's Guide to Decision Tree Analysis for Assessing Cases and Advising Clients* (DRI Press, 2019), Chapters 1-3 and 13 (also available as free chapter by chapter downloads through the publisher or on 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).

**Case Assessment Exercises**

Each student has been assigned ONE case assessment exercise (available within your group at Clientsciencecourse.com). You should download and print out your assigned case assessment exercise from your group's materials within Clientsciencecourse.com. Please read it carefully, answer the questions posed at the end of the case exercise and hand it in at the beginning of our first class. Of course, we would appreciate your handing it in earlier, to the fourth floor Faculty Assistant.

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.  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.)

- During the first class session (and again in the second session), 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.  It is IMPERATIVE that you read these exercises thoroughly and carefully before class, and come prepared to play the role. We will work again with these cases in our second meeting in a more fact-intensive way. Please do allocate time to re-review the simulation facts before then.

- For the third class session, 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 your assigned role and know the information well. (Lawyers be warned: your role is lengthier but you must come to class ready to counsel your client.)

- We *may* begin work on the decision analysis "problem set" entitled *Simple Hypos* at the end of the fourth class session.  Just in case we get that far, you should print it out and bring it to class in blank form.  (Of course, you are welcome to try to do it earlier.) You **must** complete a first effort at this problem set and bring it to the fifth class. Focused work on the problem set will take place during the fifth class session.   It will be based upon the decision analysis readings and the lecture presentation in the previous class.

- Also for the sixth class you should attempt a decision tree analysis from American Steele's counsel's perspective in the Lancer case, to prepare to advise the client regarding settlement. The case is summarized in *Balanced Trees on Balance Beams!* available on ClientScienceCourse.com.

- In the ninth class session, we will work on putting it all together in *Upscale Accusations*, first interviewing and then counseling.  For the eighth class, some students will be invited to play lawyer and client roles for the interview phase (but these students may decline).  These students will read and prepare for their "on stage" interview work.  Other students

are welcome but not required to read roles for the interview phase. However, all students will play both lawyer and client roles for the counseling phase of Upscale Accusations, so all must read both parts. Please be thoroughly familiar with the facts and counseling advice before class.

- As you'll see, there's quite a gap between the 9<sup>th</sup> and the 10<sup>th</sup> class, to allow time before that session for you to complete the "Dress Rehearsal" and then the Final Final Client Counseling Skills exercise as well as written submissions. More detailed information on these assignments are available in the course memorandum.

**Optional Software**

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 each meeting of this course. You might wonder whether it wouldn't be enough to read over the simulations, as opposed to carefully absorbing the facts and spending time to prepare your approach for in-class simulation work. There are problem sets to be completed between the fourth and fifth class sessions. And, as you will see in the syllabus, the "Final Counseling Skills Exercise" requires each student to prepare carefully for an individual counseling session with a "real fake" actor client, with coaching by the professor (and to hand in a decision tree on that case).

We are squeezing a lot into ten nearly three-hour sessions. (I think the course works well in a compressed format. Indeed, I can't imagine teaching it in very short segments.) **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** (50 minute?) out-of-class hours. Even if we assume a considerable amount of time to prepare the Final Counseling Skills Exercise, that leaves considerable time for completing the reading assignments, reading and really preparing for role simulation work and decision analysis problems. So, I suggest that 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 the first class session, January 22, 2020**
      **Read:**
In *Client Science:* Introduction, pp. 1-3" (through paragraph ending with: "That is hard enough")*,* Chapter 7, "Choreography of Counsel" (only pages 221-224 and 230-232), Chapter 8, "A Gesture to Clarity", and Chapter 9, "Channel Navigation Notes" (only pages 249-252).

M. Aaron, "Client Science: Advice for Lawyers on Initial Client Interviews" (Clientsciencecoure.com, 2013), pages 1-13, and 22-38 (ending with "5. Client Narrative").

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

      **Read and prepare:**
Read your assigned lawyer and client roles in *Hapless Harvest* and *Family Matters* and prepare to play the part.  In this first class session, we will work through only the introductory portions of the interview, not all of the factual details.

      **Complete the case assessment exercise:**
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*

Please access ONLY the materials for your assigned group on Clientsciencecourse.com.

**Read, consider, and fill out** your answers to your case assessment exercise, and TURN THESE IN TO ME AT THE BEGINNING OF the course. (It would be great if you could e-mail or drop them off to our faculty assistant before that day.)

***Consider this client circumstance and prepare to discuss your responses to the questions that follow.  (These will be discussed in class.)***

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 before law school?  Has that changed?
- How might a client's beliefs about the legal system impact the lawyer as counselor?

**Class Session One: Wednesday, January 20, 2020, 12:20 – 3:00 p.m.**
- 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

**Reading and Preparation Assignments for Class Session Two**
   **Read:**

   In *Client Science:* Chapter 3, "Meaning Truths", Chapter 4, "Emotional Effects and Affecting Emotion" (only pp. 96-99, relating to active listening and reflective dialogue).

   Aaron, M. "Client Science: Advice for Lawyers on Initial Client Interviews", pages 14 – 22 and 38 through the end.   Note: you are welcome to skip the "Interlude on Narrative and Principles of Conversation," from pages 45-48. The content covered will be introduced during the second class, and some element of surprise may be preferred. These pages might serve as post-class review. (This article appears as a pdf on Clientsciencecourse.com under readings.)

   **Prepare:** Assigned client & lawyer roles in *Hapless Harvest & Family Matters.*
   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.)

**Class Session Two: Wednesday, January 29, 2020, 12:20 – 3:00 p.m.**
**Topical Agenda**
- 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
- In the Thick of It: Interviews continued in *Hapless Harvest* and *Family Business Matters*
- Interviewing - Last Words
- Introducing the Challenges of Counseling REAL Clients - *can we talk*????

**Reading and Preparation Assignments for Class Session Three**
   **Read:**
    In *Client Science*, Chapter 2, "Translating the Terrain."

   ABA Model Rule 1.4 and Comments 1-7.

Read and prepare the General Information and your assigned lawyer or client role in the Design Display case, accessible through your group on clientsciencecourse.com

***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

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.)


**Class Session Three: Wednesday, February 5, 2020, 12:20 – 3:00 p.m.**
- Taking on The Five Counseling Challenges
- Translating Legalese - class exercise
- Directing Process; Collaborating For Wise Client Decisions
- Practice Counseling for Deciding

**Reading and Preparation Assignments for Class Session Four**

In *Client Science*: Chapter 4, "Emotional Effects and Affecting Emotions" and Chapter 5, "Predictable and Potent Psychology," pp. 173-179 (on risk, loss, gain, & framing).

*Note that, by the time we reach this portion of the syllabus, my new book on decision tree analysis for lawyers should be available for all! If so, students would be welcome to read selected (TBA) chapters in that book, instead of the articles listed next. The good news is that this book will be published electronically as FREE downloadable pdfs. (It will also be available eventually on Amazon for people who really want to buy it.)*

Aaron, M., Risk and Rigor: *A Lawyer's Guide to Decision Tree Analysis for Assessing Cases and Advising Clients* (DRI Press, 2019), Chapters 1-3 (also available as free chapter by chapter downloads through the publisher or on Riskandrigor.com).

If the concepts in Chapters 1-3 seem easy to you, I encourage you to read either Chapter 13 in *Risk and Rigor* (cited above)

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). [Note, however, these might be considered optional for this evening if you are having trouble with concepts in Chapters 1-3 in Risk and Rigor, or if you're short on time or energy. Please do read it for the next class.]

**Based on the reading, prepare** the vignettes titled "considering how you would approach each of them as the lawyer. These are not accessible in the student portion of the website but will be emailed or handed out in the prior class. There may be video-recording in class, so be ready!.

### Class Session Four: Wednesday, February 12, 2020, 12:20 – 3:00 p.m.
- Emotions and the Core Concerns Model - presentation and class exercises
- Introducing the VERY BASICS of Decision Analysis

### Reading and Preparation Assignments for Class Session Five
**Do:** Draw decision trees and do calculations needed for the *Simple Hypotheticals* and a decision tree for American Steel in the Lancer case (*Balanced Trees for Balance Beams* problem), in preparation and bring them to class. See the *dec-anal-hypos* and *Balanced Trees for Balance Beams* problem sets on Clientsciencecourse.com.

### Class Session Five:  Wednesday, Feb. 19, 2020, 12:20 – 3:00 p.m.
**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 – demonstration
- Time permitting: Counseling with Trees for Lancer Defense

### Reading and Preparation Assignment for Class Session Six
**Read:**
In *Client Science*: Chapter 5, "Predictable and Potent Psychology." (Pages 173-179 as review.)

**Based on the reading, prepare:** the vignettes titled "Working with Client Psychology," by considering how you would approach each of them as the lawyer. (These are not on the portion of the course website that is accessible to students. They will either be emailed or handed out to you in the previous class.)

Once again, there may be video-recording in class, so be ready!

### Class Session Six: Wednesday, February 26, 2020, 12:20 – 3:00 p.m.
- As needed: Wrap up Counseling with Trees for Lancer Defense

- "Red Flags and Strategic Interceptions in Psychology for Savvy Lawyers:
- Intentional Impact on Minds and Hearts" - lecture and class exercises

## Reading and Preparation Assignment for Class Session Seven
**Read:**
In *Client Science*: Chapter 6, "Choices in Voice"; Chapter 7, "Choreography of Counsel" (this should be review); and Chapter 9, "Channel Navigation Notes".  (Pages 249-252 are review).

## Class Session Seven: Wednesday, March 5, 2020, 12:20 – 3:00 p.m.
Drama Does It! Actors' Advice for Lawyers' Choice in Gesture and Voice
- Time permitting, foreshadowing Bad News

## Reading and Preparation Assignments for Class Session Eight
**Read:**
In *Client Science*: Chapter 1, "Bad News and The Fully Informed Client", and Chapter 2, "Meaning Truths". (Chapter 2 should be review.)

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

**Prepare:** Read Client *and* Attorney roles for the Interview phase in *Upscale Accusations*

Please note that I may arrange to video-record your work in the *Upscale Accusations* Exercise. As promised, these will not be posted to Youtube or any public website without your permission. It does create added incentive to prepare for a polished job.

## Class Session Eight: Wednesday, March 12, 2020, 12:20 – 3:00 p.m.
- Interviewing perfection in *Upscale Accusations*
- Debriefing the interview and "real life" initial client conversations
- Bad news for clients

## Reading and Preparation Assignments for Class Session Nine
*Read the Client and Attorney Roles in Upscale Accusations Counseling Exercise.*  Be ready to "act" the client.  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, and give some though to the way damages should be presented.

There may be further video-recording, this time of the counseling session in *Upscale Accusations*!

## Class Session Nine: Wednesday, March 19, 2020, 12:20 – 3:00 p.m.
- Client counseling in *Upscale Accusations* - play it both ways]
- Upscale Accusations – the movie
- Discussion & practice for putting it all together & the Final Counseling Skills Exercise

**Final Counseling Skills Exercise: individually scheduled 30 minute "Dress Rehearsal" Counseling Skills sessions will take place before March 24 – preferably earlier. Final recorded student-generated Counseling Skills Exercises, Decision Analysis, and related memoranda are due before the final Wrap Up classs session.**
**Note that any students having trouble completing the decision tree portion of the final assignment should contact me prior to March 12 and I will be happy to arrange group or individual review sessions on decision trees over that next week or so.**

**Final Class Session –Wednesday, April 1 or April 15, 12:20 – 3:00 p.m. [to be determined].**
Deconstructing and Playing Through the Perfect Hapless Harvest
- Variations on the Model; Skills for Improvisation in Real Cases

# Group and Role Assignments
## Spring Semester 2020

| **Group I**<br>Last names between<br>_____**and** _____ | **Group II**<br>Last names between<br>_____**and** _____ (Except in Deciding exercise below) | **Group III**<br>Last names between<br>_____**and** _____ | **Group IV**<br>Last names between _____ **and** _____<br>(Except in Deciding exercise below) |
|---|---|---|---|
| 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* **Due at or before first class** |
| Case 1 *Hapless Harvest Interview - Client* | Case 1 *Hapless Harvest Interview - Atty* | Case 1 *Hapless Harvest Interview - Client* | Case 1 *Hapless Harvest Interview - Atty* |
| Case 2 *Family Matters – Atty* **Prepare for first class** | Case 2 Family Matters – Client **Prepare for first class** | Case 2 *Family Matters – Atty* **Prepare for first class** | Case 2 *Family Matters – Client* **Prepare for first class** |
| Case 3 *Deciding: To Ditch or Not to Ditch Design Display General Information; Instructions for Attorney* **Prepare for third class** | 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 third class** | Case 3 *Deciding: To Ditch or Not to Ditch Design Display General Information; Instructions for Attorney* **Prepare for third class** | 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 class** |
| Decision Analysis Problems *Simple Hypotheticals: plaintiff's side, defense side, optional Balanced Trees on Balance Beams* **Prepare for fifth class** | Decision Analysis Problems *Simple Hypotheticals: plaintiff's side, defense side, optional Balanced Trees on Balance Beams* **Prepare for fifth class** | Decision Analysis Problems *Simple Hypotheticals: plaintiff's side, defense side, optional Balanced Trees on Balance Beams* **Prepare for fifth class** | Decision Analysis Problems *Simple Hypotheticals: plaintiff's side, defense side, optional Balanced Trees on Balance Beams* **Prepare for fifth class** |
| *Upscale Accusations Interview* Lawyer and Client Roles **Prepare for eighth class** | Upscale Accusations Interview Lawyer and Client Roles **Prepare for eighth class** | Upscale Accusations Interview Lawyer and Client Roles **Prepare for eighth class** | Upscale Accusations Interview Lawyer and Client Roles **Prepare for eighth class** |
| *Upscale Accusations Client Counseling Ex.* Lawyer and Client Roles **Prepare for ninth class** | *Upscale Accusations Client Counseling Ex.* Lawyer and Client Roles **Prepare for ninth class** | *Upscale Accusations Client Counseling Ex.* Lawyer and Client Roles **Prepare for ninth class** | *Upscale Accusations Client Counseling Ex.* Lawyer and Client Roles **Prepare for ninth class** |

The Faculty Senate passed a resolution requesting that all faculty include the following information on our syllabi:

**University Information for All Students**

**HONOR CODE AND PLAGIARISM:** *All applicable honor codes and student codes of conduct will be fully enforced*, including proscriptions against plagiarism (*see* http://guides.libraries.uc.edu/prevent-plagiarism/integrity and https://law.uc.edu/education/studentlife/student-handbook/honor-code.html ). Violating this provision can result in a failing grade and other available sanctions allowed by College of Law and University policy. The UC Student Code of Conduct defines plagiarism as follows:

- Submitting another's published or unpublished work in whole, in part or in paraphrase, as one's own without fully and properly crediting the author with footnotes, quotation marks, citations, or bibliographic references.
- Submitting as one's own original work, material obtained from an individual, agency, or the internet without reference to the person, agency or webpage as the source of the material.
- Submitting as one's own original work material that has been produced through unacknowledged collaboration with others without release in writing from collaborators
- Submitting one's own previously written or oral work without modification and instructor permission.

**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 three 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.

**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 www.uc.edu/titleix or contact the office at 556-3349.

**STUDENTS WITH DISABILITIES:** The College of Law works in partnership with the UC Accessibility Resources Office to provide appropriate accommodations for students with an identified physical, psychological or cognitive disability (learning, ADD/ADHD, psychological, visual, hearing, physical, cognitive, medical condition, etc.).  If you wish to request an accommodation, you must first register the Accessibility Resources Office located in Room 210 of the University Pavilion. You may contact the staff of the Accessibility Resources Offices as follows: TEL: 513.556.6823 TTY: 513.556.3277 FAX: 513.556.1383 RELAY: 711 EMAIL: AccessResources@ucmail.uc.edu        WEB:        https://www.uc.edu/campus-life/accessibility-resources.html.  HOURS: Monday – Friday 8:00 am to 5:00 pm. On site, you may contact Assistant Dean Staci Rucker, who serves as liaison between the College of Law and the Accessibility Resources Office.  Her office is Room 200C, and she may be reached at 513.556.0065 or staci.rucker@uc.edu.  For library services, you may call Ron Jones, who serves as the liaison between the College of Law Library and the Accessibility Resources Office.  His office is Law Library Room 311A, and he may be reached at 513.556.0158 or ronald.jones@uc.edu.

## 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

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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).*

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.