
HAPLESS HARVEST

INITIAL CLIENT INTERVIEWING EXERCISE

Teaching Note

This exercise provides relatively rich and nuanced client information (as to his or her circumstances, feelings and perceptions of an event giving rise to a legal claim) and attorney's information (as to relationship with the client reference, law firm background, practice preference and fee rates and arrangements).

"Client Science: Advice for Lawyers on Initial Client Interviews" (referred to as a supplement chapter for the Client Science book, and published and freely accessible on clientsciencecourse.com), which synthesizes a raft of other writing and research regarding establishing a client relationship, understanding the client's perspective, as well as techniques for fact gathering.

The Hapless Harvest Initial Client Interview should demonstrate the importance of eliciting and understanding a client's whole story – both the context and impact of the event(s) giving rise to a legal claim, as well as the factual sequence and details. The client's narrative gives rise to significant and entirely natural ambiguities as to the causes of an injury (arguably pre-existing or exacerbated by the client), the causes of the client's current distress, as well as limited client recollection as to how the accident occurred.

To establish rapport and a full understanding of the client's circumstances, the lawyer is well-advised to listen to his client's telling of personal circumstances. These impact his current feeling, even if not directly related to the injury. course relevant to his current feelings.

To obtain a clear picture of what occurred, and to recognize where the client's perspective may be incomplete or unreliable, the lawyer must proceed through the interview, first listening to the narrative and then asking questions with care. The exercise is also designed to elicit discussion of different client styles (the emotional talker vs. reserved and reticent).

Précis of the facts at this stage [and explanation of its role in my "Client Science" course]

It happens that Jan Hapless' slip and fall at the Harvest Plenty grocery store "book ends" the Client Counseling Workshop and Course. We begin with the attorney's initial interview of his potential client, Jan Hapless, and end with the attorney counseling Jan Hapless regarding some unfortunate case developments and an opportunity to settle the case in the Final Client Counseling Skills exercise, also included and described on the course website. It could also be used in any law school course or lawyer training program focused on the challenges of client interviewing.

In a nutshell, Jan Hapless slipped and fell in some spilled juice while grocery shopping at the Harvest Plenty grocery store. Jan's boss, the owner of the restaurant where Jan is a manager, referred them to the attorney, who is a trial lawyer in a small firm and specializes in employment and personal



injury litigation. The attorney typically handles personal injury cases on a 1/3 contingency fee plus direct expenses but is willing to represent clients at an hourly rate of \$200 per hour.

This could give rise to an interesting discussion regarding the desirability of early settlement from the attorney's perspective. Is an attorney obligated to let the client know that such cases are often settled, and that it might be possible to conduct the litigation in a way to encourage an early settlement offer? Even if it's not a clear professional obligation, would it be a good idea? Why? For whom? [These are interesting questions relating to professional responsibility and lawyering, though I admit we have not used the exercise for that purpose in the Client Counseling course thus far.]

Jan's personal circumstances and feelings are highlighted in the client information document. Some of these are arguably relevant to the legal liability and damages claims, and they certainly affect Jan's state of mind. A few years before the accident, Jan was overweight and out of shape when he injured his back, and his marriage became rocky. Since then, Jan lost weight and achieved top physical form, but also went through a divorce. Jan's fall resulted in a knee injury and a back injury.

While the knee injury is not in dispute, it seems clear that defense counsel or an insurer would dispute that the slip and fall caused the back injury. It is Jan's back pain that has led to the greater medical expenses and lost wages. The defense might raise the prior injury, or Jan's recent ramp up in his fitness routine just before the accident. There's also a slight question regarding whether Jan really needed surgery when he had it. Legal theories aside, the slip and fall came at a terrible time for Jan, given that he had just begun dating again after the divorce. It's easy to imagine that Jan is lonely, and perhaps fearful that his back condition will render him less desirable in a future romantic partnership.

The document goes into some detail about both his economic losses and his feelings after the accident and post-surgery. Jan's memory is not perfect as to how the accident occurred, and there is some dispute as to the following: how and where he happened to be in the aisle, a loud commotion before he fell, the conditions of the aisle, and the substance in which he fell. Jan maintains that the juice aisle was always cluttered, and the floor was sticky and dirty, with bad lighting.

Jan's narrative gives rise to some legal concerns: was he paying attention to where he was walking – is there a contributory negligence issue or perhaps a complete defense? How big was the spill and how visible? Should the substance he slipped in (probably juice) have been cleaned up by the store? Jan remembers that a store employee knelt down and apologized, saying: "I'm sorry I didn't get this right away." That sounds good, but we don't know how long the spill had been on the ground, whether the store was or should have been on notice. (As discussed later, if the "open and obvious doctrine" in Ohio law is applied, the notice and the length of time the spill had been there are irrelevant.)

While Jan felt his back injury immediately, the focus seemed to be on his knee. Does that matter? Will his physician's or an independent medical report be required? As to damages: Jan's salary is \$60,000 per year or \$5,000 per month. Their job was kept open and health insurance maintained during the



four-month recovery period, but he missed out on \$20,000 in gross salary. Jan has little savings and will incur expenses for physical therapy and someone to help with housework.

Note that Jan Hapless role information ends with a request that role-players play the client as one of two personality types: (1) The first type is someone reticent with information – reserved, perhaps shy (yet feeling stress), maybe a bit embarrassed. This client does not volunteer information or telegraph his state of mind. The role player is asked to permit little slips about what he might be feeling, but nothing obvious unless the lawyer explores it. (2) The second type is a “real talker” who runs on with his story, not necessarily in logical or sequential order. The role player is asked to play it “over the top,” as highly emotional, stressed, and emphatic that he has done nothing wrong. The lawyer’s job will be to calm the client down, get the order of events and the facts, and elicit other details. Whatever client personality is presented, the lawyer’s challenge is to communicate understanding of and empathy for the client dilemma.

I am more than pleased to report that there are videos of a “By the Book” and “Not by the Book” Initial Client Interview session, showing contrasting approaches. Support for this video was provided by the University of Cincinnati’s College of Law and Suffolk University Law School’s Dispute Resolution Program (thanks to Professor Dwight Golann). This is available for legal educators on clientsciencecourse.com (password is “educator”).

At some point, it should also be available on the ABA/Suffolk ADR Teaching Video site: <https://www.adrvideo.org/> Password is “adrteacher123”.