

“Math Tutor”
Basic Services Agreement

**Instructor Notes
& Background**

Title

Math Tutor – Basic Transaction

Skills Addressed

Negotiating, drafting covenants and representations and warranties, and managing clients

Target Audience

2Ls and 3Ls who have completed Contracts and have had some basic drafting and negotiating coursework

Overview

This is a basic negotiating and drafting simulation intended for law students. The underlying scenario involves a forensic entomologist who is hiring a math professor for tutoring services. In this simulation, students play both clients and attorneys. The students negotiate and draft

covenants and representations and warranties for an agreement between the forensic entomologist and the math professor. The simulation is designed for use in one class session plus a drafting assignment (the drafting assignment is typically reviewed in the next class session). The in-class time for the exercise is less than two hours (not including debrief):

1. Instructions and introduction (1 minute)
2. Student preparation / reading the materials (9 minutes)
3. Meeting between clients and attorneys (30 minutes)
4. Meeting with the other side(with clients present¹) (60 minutes)
5. Every student (including those playing clients) drafts major covenants and representations and warranties (if there is no deal, the students draft provisions that would be reasonable proposal options given the discussions) (between class periods – approximately one hour of work, although the time needed for the drafting will vary greatly depending on the student)
6. If desirable, review common mistakes and best examples² from the students’ drafting work during the next class period (1 hour)

Scenario Background

A forensic entomologist needs to pass a basic level calculus examination in order to accept an appointment to the National Academy of Sciences. The entomologist, unfortunately, has never taken calculus and has a life-long fear of all things mathematical.

The entomologist has a connection to a math professor, who has agreed to meet to discuss a possible tutoring arrangement. Both the entomologist and the math professor have hired counsel to negotiate the matter on their behalf.

Students play both the roles of attorneys and clients.³ Each student receives a one-page description with their role.⁴ The students then draft the major commitments for the tutoring

¹ This may not be conventional practice but it ensures that the student-clients can participate and observe. This way, the student-clients can also be assigned the drafting assignment and can share their observations of the negotiations during the debrief.

² This can work well where students are placed in small groups to identify mistakes collaboratively.

³ Another approach on student roles is to assign one-third of the students as observer / coaches for each student-attorney. The observers will report good and bad examples and also provide answers to any questions from the student-attorney partner (as a “coach”).

arrangement (the covenants – such as payment terms, tutoring obligations, etc.) and also representations and warranties of the parties (such as the credentials of the math professor, the upcoming examination of the forensic entomologist and its importance, etc.).

Learning Outcomes

- ✓ Introduce basic negotiation and client management skills
- ✓ Explore the perspective of the client and what it is like to have legal representation
- ✓ Introduce basic drafting skills (covenants and representations and warranties)
- ✓ Work with a client on understanding client interests, developing strategies for making deals or no deal, and managing client expectations

Teaching Notes:

1. Set-up and assignments for the students.
 - a. Introduction. Because the scenario is pretty straightforward, students will not require a lot of introduction, other than the logistics of the simulation (timeframe, assignment, e.g.). It is useful in advance to explain the drafting assignment (covenants and representations and warranties) to help students focus the discussion.
 - b. Schedule. It is useful to break up the exercise into small segments so that the students perform the necessary preparation (individual reading of the scenario, meeting between clients and attorneys to prepare, and the negotiation).
 - c. Attorney-client relationship. Student-attorneys receive very little background information and will need to interview their student-clients. Student-clients should be encouraged to play the role of clients as they would expect real clients to behave (e.g., not necessarily explaining every detail without prompting through good questions, withholding their true bottom line to see if they can get more in the deal, focusing on their interests only). This is not a simulation on how to manage difficult clients, but some realism may help make the point that interacting with clients is more complicated than reading a summary of client information.
2. Assignment. Each student (including those playing clients) drafts major covenants and representations and warranties (if there is no deal, the students draft provisions that would be reasonable proposal options given the discussions).

⁴ The attorneys receive very little information about the scenario so they must rely on their clients to explain the situation and share client objectives.

3. Debriefing points for discussion.

- a. Basic Negotiation Framework Points. The simulation is designed as an early introductory exercise in a drafting and negotiating course. Students may not yet understand the basic framework for thinking about negotiations - i.) understanding who is involved and what do they need (the interests of the two parties); ii) what sort of possible proposal ideas are available to satisfy those needs (possible options); and iii) what happens if there is no deal (potential consequences). Simple questions about understanding these basic points can help spark the discussion on how lawyers plan for a negotiation, such as “what are the critical interests of each party and how did you figure that out?” (for student attorneys).
- b. Timing of Proposals and Deal Specifics. Typically students get anxious in this process and start sharing proposal specifics quite early in the discussions, particularly where they feel that the scenario is pretty simple and the time frame pretty short. They should understand the value of information gathering and exploring what the underlying issues are for both parties before jumping into presenting proposals, even if they must do so efficiently to work within the time limits of the exercise. Student-clients (and observers, if used) can be helpful in discussing the good and bad in what they saw during the discussions (either the value of exploring issues before proposals or the problems that arose when proposals were exchanged prematurely).
- c. Presenting Proposals / Dealing with Counters and Objections. Once students move to sharing proposals, they will invariably get stuck debating certain provisions (usually the payment amount). Students should understand the value of starting with “easier” topics first, those topics where the other party can easily see value in how their interests would be satisfied (in this simulation, that could be the forensic entomologist suggesting that the tutoring services take place at the offices of the math professor, because location matters much more to the math professor). Proposals should also clarify how the other party’s interests are satisfied (being explicit even if it feels obvious just to make sure to clarify the point). Lastly, students should be encouraged to respond to counter proposals or objections (or flat out “no” from the other side) by asking questions about underlying concerns rather than just debating the merits of the previous proposal.
- d. Differences between Covenants and Representations and Warranties (either before or after the drafting assignment). Representations and warranties are often confusing for students because of the temptation to include party commitments in these types of phrases. Students should understand that covenants are promises by the parties to do (or not do) certain things. Representations and warranties are merely statements of fact, true at the time of the agreement (e.g., math professor has a Ph.D. in theoretical mathematics).

Handouts:

1. Role information for the forensic entomologist (Lon Maxwell)
2. Role information for the forensic entomologist's attorney
3. Role information for the math professor (Roma Neejan)
4. Role information for the math professor's attorney
5. Role information for the observers / coaches (if appropriate)