

# CLIENT COMMUNICATION: DRAFTING A CLIENT ISSUES MEMO

**Larry Platt**

I have been practicing law at private firms for more than I care to say: 36 years. I practice in an industry sector, which is consumer credit. Within that sector, we do transactional, regulatory compliance and government enforcement. It's a classic Washington D.C. practice. I also am an Adjunct Professor at Georgetown University Law Center and teach Advanced Legal Writing: Transactional Practice. We use this book: Stephen L. Sepinuck and John F. Hilson's *Transactional Skills: How to Structure and Document a Deal*. And this particular class was the brain child of one of the long-time writing teachers at Georgetown Law, who wanted to come up with a transactional course, and she found me to help with it. She co-taught it last year, and then I did it myself this winter semester. It's a small class of only 12 students. We had a long wait list, so I could have easily doubled it in size but that would have been just too many students for what we were trying to do.

The class is a seminar and requires interaction between and among the students. We tell people upfront that, if you think you're going to be missing classes, take another class because we need you in here; not everybody listened to that advice this past semester. We have five writing assignments: four of which came from the textbook and one of which I developed, which is what we're going to talk about. The first writing assignment requires students to classify provisions in an agreement—representations, warranties, conditions, declarations, and the like—just to make sure they understand the building blocks of an agreement. We then ask the students to rewrite the provisions in different ways and explain their preferred approach. The second writing assignment is what we're going to talk about, which is the client memo, and then the last three projects each involve reviewing and revising agreements that are in the book, and the very last one involves a negotiation. But, because this is a writing course, we don't really focus on negotiations other than its part of the very last assignment. The class really is about getting inside of an agreement and understanding how to review and discuss it.

So what's the purpose of this client communication memo? I sequenced this assignment, so it was before the students were asked to actually review and revise an agreement. What I wanted to do is give a real-life situation of the type that I address all the time. And what I said is, in a

typical scenario, a client will send a draft agreement and say, “review it and don’t spend a lot of time on it because I don’t know whether we’re going to sign it.” Sometimes it’s accompanied by an executed term sheet; sometimes it’s not. Sometimes there’s a draft term sheet. And the typical client directive would be to compare the agreement to the term sheet and otherwise try to identify what you think are important issues, arrange for a call—first with a client and then with the counterparty—to talk through issues before really putting pen to paper. Again, if there’s no real meeting of the minds, the last thing the client wants to do is pay lawyers for a non-deal.

I keep emphasizing again and again, in a somewhat friendly way, that our clients really don’t like us because we cost them money. And we’re an unproductive expense, so you have to be really precise in what you’re doing. I also tell the class—and this may or may not be true but, for our purpose, I think it works—to assume that the client hasn’t read the agreement. Now, in my experience, that’s always true where the client is the business person and not the in-house counsel. It might be different if it’s the in-house counsel. But as I just said, I tell them that they should assume that the client hasn’t read the agreement, doesn’t want to spend a lot of money upfront on lawyers on a deal that may not happen, and really just wants a quick overview of the material issues to discuss before going any further.

While in reality a client communication might just be an e-mail with bullet points, which is the way I often do it, I use this as an opportunity for them to think about writing a short memo to the client to highlight the issues. And of course, in order to do that, they have to read the agreement. So here’s the assignment, in no more than two pages—which is really hard for a lawyer to do—to identify three to five provisions that you believe are the most important focus for the negotiation of the agreement and explain why you believe that the provision is important to the client’s interests and what concerns you. Then I tell them, “don’t draft language at this point. You might want to propose an approach or approaches, but we’ll get to revising the agreement later because the next assignment is actually getting into the agreement and revising it.” So it’s a two-page memo with three to five issues. It’s pretty hard for students that are used to writing legal memoranda with cases and writing legal briefs; it’s a completely different form of writing for them.

Because it’s a legal writing class, we talk about things that apply to all types of writing, which include the following: “there’s nothing here unique, be precise with word choice, organize logically, use sentence structure to reflect logical structure, and use correct punctuation.” Use words easily understood by lay readers. Forget the “heretofore.” Don’t get

elegant in your word choice; you're not writing the great American novel. Use logical, simple, straightforward organizational structure; omit unnecessary words; and use an active voice rather than passive voice. So as you can see, this could be just an English composition class. But I go over this to remind students some of the basics on writing. And then we talk about what a typical professional letter looks like? And while this is in the context of an agreement, in the transactional practice, you might often be writing short memos to clients and so it's like any story. There's a beginning, a middle, and an end.

In the beginning, get to the point—why are you writing, what is the purpose—and then give the substance—what are the three to five issues—and then have a summary. Just understand the purpose of the memo and the actions we are asking them to take. I tell them what I don't want them to do is tell a client what it has to do or what it must do or what it should do because that's not the purpose of the lawyering role. The purpose is to identify issues. Let them make a business judgment. But it's really interesting how often the students come back with, "you must remove this section" or "you must revise this" or "I wouldn't sign the agreement if it included this provision," and I'm constantly telling them, "look, you just want to raise the issue, you want to be respectful, you can have your phone call that addresses that. You particularly don't want it in discovery if you told them not to sign it."

I always tell them you have to be really careful what you put it in writing because it could come back and hurt the client. And when I talk about formal versus informal, it's actually a really interesting "touch and feel" for law students that are trying to learn how to write like lawyers because they are generally more formal in their presentation. So I say, "conversational yet concise, respectful yet confident." These are just phrases, I say, "avoid legalese and inaccessible words."

I don't tell the students in advance what to look for in the agreement, which is maybe unfair on my part because they don't have a clue, and that is the most difficult part of the assignment. Even for just traditional reviewing agreements, how do you learn what to highlight? I always talk to them about visualizing performance. In our last class, we had four Division I athletes, and that resonated with them. But in the book, it's really interesting. They start with the problem of four roommates that are going to live together: four law students. And they give a whole fact pattern about the students, and then they say, "what would you want in an agreement?"

And when you put it in that context, all of the students have gone through that scenario, and they can identify issues like access to bathroom, noise, and cleaning. And so without even knowing the contents, they can bring their judgment, their knowledge to what are the issues, and then I tell them that's what I want them to do. I want them to dive into an agreement and work their way out because I think, for all transactional lawyers, you know if you're really in an agreement—it's totally in your head—and then I tell them that you can research online. In fact, they should research online because while they'll have this one form of agreement, they don't have any context. So they may want to look around at Bloomberg or West or whatever and come up with alternative forms of agreements. But I always caution them that they have to avoid the rabbit hole that you can get so caught up researching different forms of agreements that you can't get your own work product out there.

I say to use other forms as a start. Try to do some compare and contrast to see what provisions may have been missing or what may have been said in a different way, and I also tell them that you always have to focus on—if you can from what's on the internet—what side, what counterparty is the drafter representing. I always tell them a story about when I was a first-year associate—we received a contract from the other side, it was my peer, another first-year associate, and they gave us the wrong form—that was the form they would have used for my side, and it was even more than we would have thought to put in, and we signed it right away. Now, putting aside the ethical issue of whether there was some duty to inform, I tell them, “when you're looking for forms of contracts, just be careful you know what the context is.”

Remember I said that it's an interactive class. For each class, they have to come in and do a posting of their reflections on the assignment. So they do the draft memo, and they have to first just say what they struggled with and found easy. It's pretty interesting. At first, I was against this kind of touchy-feely approach, but my co-teacher in the first class said, “you'd be surprised how much you can learn from the students when you ask them to articulate in writing what they struggled with.” So we do that, and then we ask the students to divide themselves into groups of two and I hand out—a peer review form. This is what my co-teacher drafted last time. And so each of the peer reviewers has to read the other person's draft memo and then fill out this form. Now, they don't have to give me the form: I don't grade the form; it's really just a guide for them. So it's pretty interesting. Do you agree that the provisions identified in the draft client communication are important enough to draw to the client's attention? And you'd be surprised how different the issues are that students address in this situation.

Is the reason for the author's concern about the identified provisions clearly stated and adequately explained? Sometimes it's gobbledygook; other times it's pretty clear. Is a document organized in a way that flows logically and is easy to follow? I think you all have realized that writers don't write the way they talk. This sounds like an old person statement, but there's a lot of bad writing out there still. And is the tone appropriate for client communication? And then we talk about it in thirty minutes where I ask the students, "Okay, what did you find from the peer review that you hadn't thought about on your own?" And we get into this really good exchange of things that the student didn't see that the other person saw.

**Speaker 1:** How long is your class because you talk for thirty minutes?

**Larry Platt:** So I should have begun with that. It's once a week for three hours with a 10-minute break in between.

**Speaker 2:** Okay, thank you.

**Larry Platt:** I have found that the students love the peer review. They really find it collaborative in a way that helps them understand concepts better. Sometimes it's hard to get them to talk, and so I have to go around the room and ask people. It just depends whether there's one talker. If there's one talker, we'll get others talk, but if there isn't, then we have to pull it out until they get comfortable with each other. And then I review the draft memos. I provide individual written feedback to each of the students. So I've handed out one draft—you'll see my comments are a little cryptic on the side, and I don't put everything I could in there. And then what they have to do is take the feedback they receive from their peers and my comments and then come up with a final version.

Now, each of our projects has a different point scale. The five written projects total eighty, and then we have twenty points for class participation. But when I'm actually grading it, what I do is identify important provisions and focus on accuracy, clarity, and organization—all the things that are here. So what I wanted to do was give you two examples of a draft memo by a student who got better as the semester went on and

then a final memo. When you look at the final memo in particular, you'll see that that student just got it. She was really good at just honing in on the issue. One of the common problems is that, rather than starting with the issue, they'd start with a section reference. Section 7 provides X. Okay, you only got two pages, so if you're going to start with that, you're not going to get where you need to be.

After I graded their memos and gave them back to them, I tried to give them observations of what I saw, and I had the same issues each time. The first one, and I thought one of the more important ones, was to try to identify higher level themes. In this particular agreement about which they were writing, it was a publication agreement. It was two university professors who were writing their first book, and the publisher had no experience in academic publishing, so perhaps was going to get a co-publisher with more experience in academic press. There were issues related to the relationship between the two authors—the relationship between the authors and the publisher—but it really broke down into such simple things as certainty of publication, like “Is the book going to happen?” or “What could prevent the book from happening?” Another is calculation of royalties, and that's an economic issue.

So here's a good example where, on royalties, you could have things like this: “From what types of publications are royalties derived?”; “Is there third-party licensing, and, if so, are the royalties the same amount for that?”; “Are they the same amount in other countries versus in the United States? English versus foreign languages?” And what a lot of the students would do is they wouldn't think through economics or royalties as a theme. Instead, they'd pick out sub issues like calculation of the dollar amount or what did “out of print” mean. They were all sub issues that were good, but if they took it up a level to economics, or with termination, there's termination with cause, there's termination without cause, consequences of termination, effective termination. They would come up with issues that were sub issues, so I kept hitting home this concept of taking it up a level. Take it up another level—what's the larger theme?

And then I told them in a two-page memo that it's critically important that you develop a consistent framework and stick to it. Topic sentence—what's the issue? Not section X says Y. And I said, “particularly if you're writing to the client, they don't even care about the section number. They just want to know, for example, whether this agreement differs from the term sheet in the calculation of purchase price.”

I tell them to use a parallel structure. I wanted the topic sentence for each of the different examples to be somewhat structured in the same way. And then use examples—illustrative examples. So if it's calculation

of royalties, for example, what are the sub issues related to calculation of royalties?

What's the issue? Why should the client care, and what do you recommend? I wanted each issue to be written in that way, and again, I'm used to communicating with executive officers that tune me out very quickly. And so I'm always thinking in executive summary terms. That's just the way I think; that's the way my clients want information delivered. And so that's what I'm really trying to get them to do. "How do you talk to senior executives?" Get to the point. Why do you care? What do you do about it? The second point I tell them is to try to differentiate business issues from legal issues. So that's hard for students that are still trying to figure out what a legal issue is or what a business issue is. But what I tell them is that, from a practical perspective, the business people want to quickly identify "gating" items that may make a deal less likely. Because again, remember, the clients don't want to pay you for a deal that doesn't happen. Is there anything they need to know where they should go back to the counterparty right away before they even get to negotiation of the agreement? So for example, if you have a term sheet and it just doesn't jive with what the contract says, which is not uncommon, go back to the client right away with those business issues. And so, for that, you have to have an understanding of what the client wants, and it's hard if the client just sends you the agreement and says, "Look at it," But doesn't give you any context; then it's really hard to figure out what the business issues are upfront.

So what's drafting a business issue versus a legal issue? And you'll see that they really blend together. But let's just take an economic issue: amount of royalties versus calculation versus what's in and what's out of the calculation of royalties. So what you'll find is that the business people will think, "Okay, seven percent on printed products, okay. But how do you really calculate that?" And when you look at the definition and if you look at the agreement, you'll see that, in the book, there's all these little ins and outs that may be innocuous and maybe not. So I say the number is a business issue—what's in, what's out could be a business issue. But it's truly a legal issue in terms of how you draft it. "Out of print" was another one that the authors could terminate if the book was deemed to be out of print. There was a business agreement on that, but when you got into the definition of what constituted "out of print," there was a lot of legal subtleties in there.

I also try to help them understand what they were looking at because they kept coming back and saying, “I just don’t see it, I don’t know what I’m supposed to be finding here, I had some sense, but I have no relationship to publication agreements,” for example. I told them, “Focus on the type of risk,” and this is the way my client’s think. The first risk is **transaction risk**. And what is a transaction risk? Well, to me, a transaction risk has two components to it. And I’ll go into this in a little more detail later, but a transaction risk first is what I’ll call deal certainty. What does it take to get the deal done? Because if there’s too many barriers or conditions, then if your client really needs to get this deal done—they need to make the sale by the end of the quarter or by the end of the year, for example, or they have to hire this person—deal certainty is critically important. Also, is the deal what it purports to be?

This goes back to whether the client’s objectives are fulfilled in this Agreement. I can go through an agreement and say, “You’ve got recitals, and you’ve got definitions, and then you’ve got the meat of it, which is scope of services or things to be sold,” but at the end of the day, is it what it purports to be? That’s the transaction risk as well.

And then I talk about economics, and I take a really sixth grade analysis of economics. If I’m a seller, how much are you paying me, right? Or if I’m a buyer, how much do I have to pay? And I call that the **front-end economic risk**.

And the **back-end economic risk** is this: “Do I have to give the money back?” If I’m selling an asset, and I want to get a certain price, and a buyer has bid more than other bidders in an auction but then has these take backs, such as an overly broad indemnification clause, is the buyer merely reallocating risk in a way that, I think, causes the seller to lose the money it received up front. In other words, a back end, economic risk can be characterized as an illusory front-end economic provision, because the buyer has the right to demand a return of some of the up front money. So again, think in terms of risk. Economic risk is a big risk.

Then I have **performance risk**. Now, performance risk applies generally on agreements that aren’t one-time agreements. So it could be a services agreement. It could be a master sales agreement. It could be an agreement where there’s an effective date and a closing date, and there’s things that have to happen in between that aren’t necessarily conditions per se. But in terms of performance, do you think you can do what you’re supposed to do? Do you think the other side can do what it needs to do?

And then there’s **legal risk**. I deal in a regulated industry; legal risk is a more important risk that might be true in other cases. But the legal risk here, quite often, is “does the transaction violate law?” And you’ll find,

at least in the consumer credit industry, there are a lot of transactions that aren't intended to violate the law, but the law comes into play. So what are the legal risks?

And then **reputation risks**. I represent banks, so you know about reputation risk, right? They've got bad reputations. So a lot of times we'll tell people, "the agreement is exactly what it says but when you get into it, you've got some real reputation risk." That's more of a business issue than a legal issue, but I like the students to start to think about it.

And then what I call **opportunity cost risk**, which is maybe the agreement works but, for example, if it's an exclusive arrangement, you're locked in and you're forgoing other opportunities that you may have. So these are just primary risks that I tell them to think about in identifying issues.

And then the third thing I talk about is, and again, this is after they've given me their final version, is to think about alternative ways to achieve objectives. So here we're getting into what you can do to make it better without replacing the counterparty's form with your own. So adding or deleting a term or provision, if it says exclusive, take out exclusive. Clarifying the language to make it more precise. Okay, there's a lot of really badly worded contracts.

Qualify the language to balance interest, materiality, reasonableness, and things like that. Condition the term on the occurrence or nonoccurrence of some facts or circumstances. It's self-evident. And what I tell them is that the approach is inextricably tied to the relative bargaining power and the objectives of the party. So for example, on this publication agreement, one of the issues that the students identified was who owns the copyright. And I said, "Okay, you got two first time authors, and they're going to this big publishing house. Who do you think is going to own the contract?" But you're going to get one-sided contracts, and you may not like it. But if you don't have the money or if you don't have the goods, that just may be the way it is.

And then I tell them, "evaluate the appropriateness of a remedy." So in this contract, it was really the termination. But one of the issues that came up in this was whether the publisher could terminate for what seemed to be immaterial events. And what was the effect of the termination? Could they lose their right to royalties for ongoing sales when it was their book? O are they going to get the copyright back if they terminate because the publisher defaulted? So think of it as how am I

going to get my money. Are they going to take it back? Is there anything that could get in the way of me getting the deal done? And what happens when bad things happen? It's like really, really, simple stuff. And then I tell them to know the audience, so a memo to the in-house legal counsel will be different than the memo to the business people. And will the client likely read the agreement at all, or prior to or after your memo? Are they looking at you? I find this so often. I get kind of nervous where I write this short list of bullet points and that becomes the basis for the negotiation, and they've never even looked at the agreement, and I'm just praying I got it right. So I always talk about translating the complex into the understandable. Particularly true in a two-page memo.

And then I say the reverse Jerry Maguire rule. I have a lot of cultural references in my class. Most of the students didn't get them.

So how many of you saw Jerry Maguire? Okay, not one person raised their hand in my class.

**Speaker 2:**                    They're too young.

**Larry Platt:**                They're too young, well but it's not that old. What's the flip side of, "You had me at hello?" You've lost me at hello. So what I tell students is that if you start out with obtuse, inaccessible language, you're going to lose them. And I can tell when I'm talking to clients if I've lost them because I'm not providing information in an accessible way. And then I tell them that this memo, I mean it's a writing project but what it really is is the foundation for what's going to happen next—that you're going to have to talk with the client, you're going to have to defend your findings, and then you're going to have to negotiate with the counterparties.

I always found that, when I'm interviewing law students, they say they want to do litigation because they're interested in advocacy. And I say, "you should do transactional work," right? But what you're doing is coming up with the foundation for those future negotiations and quite often, those issues just get turned around and become an issues list that gets sent to the other side for the next call.

Students keep coming back and asking for help to evaluate what to highlight. And I've already talked about this, but I came back at it in different ways. So this is what I call the first part of the transaction risk. Is there an apparent meeting of the minds on the essence or the purpose of the agreement? What's being purchased, what services are being

performed, and as I said before, what does it purport to be? What is the reason for doing the contract, and does the contract address that? And then my other example of transaction risk—what does it take to get to closing? So the requirements are within my reasonable control, right? There might be conditions that I just can't control, and that really works against me. Is it clear what I have to do? If it's so, again, obtuse, and it can prevent me from getting to yes, that's a problem. Does the timing work? Sometimes, if you have conditions and there's no realistic way you can accomplish those by closing, then that's a problem. And are the conditions to closing reasonable, and does the counterparty have an easy out?

So what I tell the students, for example, when you're reading it, if the buyer has the due diligence out, it's just an option to buy, right? So that's something again; it's transaction risk. Why is that a transaction risk? Because the counterparty can easily get out of the contract, so I would highlight termination as one of my reasons, but then there might be three or four examples in the contract that go to that. Again, economic risk. Are the economics clearly consistent with expectations? How do I get my money? Did the pricing methodologies work? Now as a lawyer, I always tell people that I was a political science major and not a finance major, and my oldest son, who's thirty-two, still doesn't know what eight times seven is, and I'm not far past where he is. So I always tell people, when it comes to pricing, obviously in the memo, it doesn't work, but you might say something like, "so much of this agreement is based on the pricing methodology, you need to look at it," right?

You may not want to read this agreement, but if there's one thing you read, you should read the calculation of money. Are there continuing performance obligations? Are they feasible and reasonable? That's the performance risk, and then I, again, talk about the legal risk. So I'm hitting it home again and again. Then what happens when something goes wrong? So there's the backend economic risk. It's a downside risk. Do I have to give the money back? Do I lose rights I shouldn't lose? Can I be pushed aside unfairly? In my publication agreement or in the one that was used, if the authors didn't agree to do a new edition when the publisher, in its unilateral discretion, decided one had to be done, they could terminate the agreement, keep the copyright, find another author to do the update, and terminate the right to pay any royalties to the prior author. So although I lose rights I shouldn't lose, is that fair?

And as you'll see, these are really simple questions in terms of visualizing performance. Can I get out of what turns out to be a bad deal?

Okay, I've done a lot of small owner-operator M&A's where the owner calls me up two years later and says, "How can I get out of this noncompete? I hate this place." But that noncompete should have been one of the issues that was highlighted upfront. Am I unfairly bearing certain types of risk of loss, and did the risk allocations make sense? Particularly in one-sided contracts, you'll often find that the counterparty who controls will try to allocate the risk of loss to the other side in a really unfair way. So that's, again, a basic reason why should I bear that risk? Keep it simple. What's the scope of tail liability? Are the remedies reasonable, unreasonable, or overly generous? And then could my reputation be tarnished? So, again, this is helping the students figure out what they should be highlighting. As I said, it's after I've already done the memo, and they've already done the memo.

But because they've already done the memo and they've already read the agreement, they have a much better sense, obviously, of the contents of the agreement, but what I'm trying to do on the backend is help them conceptualize how to look at it. Can I get out of the agreement simply to pursue better opportunities—a 10-year exclusive contract for example? And could there be unintended spillover consequences? That's really hard for the students to know but, for example, if you're declared in default in one agreement, it could be a cross default on their other agreement, so it matters how default is defined and things like that.

So that's the slides. It didn't take me forty-five minutes, but I will take questions. Yes?

**Speaker 4:**

First of all, I think this is great. I really like it. What we do is a similar exercise, but we don't necessarily provide all of this great feedback and conceptual feedback like you've done on what to think about and how to approach it, and it's more in the throw-you-in-the-deep-end type of approach, so I really appreciate this. My question is on the peer assessment. I like the idea, and I was just curious. I've tried in some context, and sometimes I find that it's hard to get students to buy into the process and actually be constructive. Sometimes they just want to pat the other peers on the back. Because I was trying to figure out how you have an opportunity to see the peer feedback before you review the paper.

**Larry Platt:** I never see the peer feedback.

We have that 30-minute period where students can talk about what they learned from peer feedback, and once somebody starts the conversation, they'll generally talk. If not, I'll call on people, and they generally have things to say. One thing I should add is that because this is a second- or third-year course, it's self-selective. Everybody who's taking this course wants to go into Business Law. And so they're really trying to learn. In fact, I think everybody but one person by the second year, by the time they got into the class, already had their summer associate positions lined up. And they were all going to firms where they were going to do transactional work. So they saw this class as an opportunity to get an offer, and the third years already had offers, most of them. And they wanted to have a leg up once they got there. So I didn't have trouble with it. I had some trouble with people articulating their findings but not taking the peer review seriously. It was really interesting how collaborative they were.

And again, it wasn't graded. It wasn't submitted to me. It was just between them. And the only thing I saw was the final product, but I didn't necessarily know what fed into the final product other than my comments.

**Speaker 5:** We do a similar course, and I'd like to talk to you about it. How much class time does this take as opposed to out of class writing?

**Larry Platt:** Well, so they do the draft. They come in and post on it. Sometimes it's already posted by the time they get into class. Talk maybe 10 minutes, quick overview. Then we go to peer review. I usually give them half an hour, but I watch if they're starting to talk about other things. Then I cut it off. And then I may or may not have observations, so if I have observations, I'll do that. It's whatever it takes, and then we go onto the next thing. Because then they have to go home and redo the assignment. When they came in with the final, we did the same thing. They do 10 minutes of posting of their observations that I ask them for. They don't do peer reviews at that point, so that's cut out, and I say, "What did you learn as a result of the peer review and redrafting." And again, it's really

interesting, people do participate, and then I may or may not give my observations.

Here, I spent a lot of time going through it because it did interest me how, just like I said, they should come up with themes. I saw themes as I was going through the material. And then I go onto whatever the next subject is.

**Speaker 5:**                      Thank you.

**Speaker 6:**                      This was great. This is really great. I use Tina's book, so I'm not an advanced class. She's got really good stuff on the client memo, but this was amplified and with so much more detail. I feel like my students are sometimes out there on a limb saying, "Well, I don't exactly understand it still." This filled in all those gaps.

**Larry Platt:**                      Well, you know what's funny is that one of my associates said to me, "How come you're training students and not me?" So, I'm trying to figure out how to convert this into like a one-day thing for my students, but thirteen classes of three hours is a lot different than sitting down with an associate. So I'm still trying to figure out how to do it in other contexts. But what I loved watching, and you all probably have had the same experience, you start out with students that are seeing the deer in the headlights, and in the end, they're arguing over a representation versus a covenant versus a warranty. Now one thing I didn't tell you is that I did another thing on this because they didn't get my culture references. I told them for one class that they had to look up Mr. Potato Head. I wanted them to come into class and know what Mr. Potato Head is. Now, actually, most of the students knew about Mr. Potato Head. And then I asked, how does Mr. Potato Head inform the drafting of contracts?

And they just all looked dumbfounded until one person raised his hand and got it. He goes, "Well, with Mr. Potato Head, you have the eyes, the nose, the mouth, you can change the eyes, but keep the nose and mouth, you can change the nose but keep the eyes and the mouth, and so you have options." So I put up some examples on indemnification. And I said, "Okay, "losses" as a defined term are the eyes, the "arise out of or in

connection with or results from” clause is the nose, and then the indemnifiable items are the mouth.” So do I care as much about the mouth if I have narrowly defined losses? So I care about the eyes if I’ve defined nose in such a way that there has to be a real causal connection. And you could do it any one of these ways. Now, if you can, you want to do all three, but just always keep Mr. Potato Head in your mind—that there’s alternative ways to get at the same place. They all fit together, but if you change the eyes, do you keep the nose and mouth constant?

So they actually got that one. It was really funny, and then we just got into a debate about whether there was a Ms. Potato Head, and it turned out that two of the students had Ms. Potato Head. Okay, well thank you very much.

**Speaker 6:** Thank you.