

ADDING RISK ASSESSMENT AND NEGOTIATION TO A DRAFTING COURSE

Richard K. Neumann Jr.*

Risk assessment and negotiation are two of the most important skills that surround drafting. This presentation shows how to integrate them into a drafting course. I teach a course called Transactional Lawyering, which covers drafting in combination with other skills.

The course begins with the risk assessment assignment, which startles students out of the way casebook courses have taught them to think. At that point in law school, they have been taught how to judge the past, such as liability from past events. But in this course, students learn how to plan the future, which starts with identifying and analyzing risks and strategizing ways of reducing them.

The course ends with an assignment in which students negotiate a deal's legal issues and the contract's drafting after observing their clients negotiate the business terms.

Risk Assessment Assignment

Students are given details of a contemplated deal and then research and write a memo identifying the risks and how they can be reduced or eliminated.

In the assignment illustrated here (reproduced below as Appendix A), students represent a non-profit, which wants to obtain from the Navy a decommissioned aircraft carrier — USS *Enterprise* — for use as a museum ship. The Navy has a standard-form contract with strict requirements, some of which the students should flag for risks the non-profit would not otherwise recognize. Additional issues involve the condition of the ship, regulatory issues, potential liability under environmental statutes, and potential tort liabilities.

You might or might not want to use the assignment in Appendix A. But looking at its details will show you how to create a very detailed risk assessment assignment.

* Alexander Bickel Professor of Law, Maurice A. Deane School of Law, Hofstra University.

Realism is essential to making an assignment like this work. The details should be so realistic that students can *feel* it as reality. Here all the assignment's details about *Enterprise*¹ as a ship are 100% true. An online search for the ship's name and hull number will produce half a million hits, and all the assignment's facts are consistent with everything students would find online, including the ship's decommissioning, which occurred in real life a week before students received the assignment.

But the donation story is entirely fictitious, and the client — the Puget Sound Alliance To Save CVN-65 — does not exist.

Because of a risk that teachers worry about (academic dishonesty), you wouldn't be able to use the same assignment every semester. You would need a stable of assignments, rotating them so that students who work on each one will have graduated before you reuse it.

I've used an assignment based on Tina Stark's Icarus I-800 aircraft purchase. This is a shorter and less detailed assignment than the *Enterprise* one in Appendix A. Students represent the buyer and must address industry practices, such as number of flying hours between overhauls, together with issues about the accuracy of statements made by two entities — the manufacturer's claimed performance specifications and the current owner's claims about the aircraft's condition. Because this is a regulated transaction, it also involves navigating through Federal Aviation Administration regulations. A deal lawyer must be able to figure out a regulatory agency's requirements and how to shepherd a deal through them. The FAA regulations can be hard reading without some prior aircraft knowledge. But government agencies have websites that explain procedures and requirements for routine events, and students should be able to figure out what the buyer (their client) would need the seller to do at the closing so the buyer can satisfy FAA requirements.

And I've used an assignment in which a law school (the client) wants to offer a special J.D. degree that would enable a graduate to qualify for admission to the bar in both the U.S. and Canada (specifically, Ontario). The client would set up a branch campus on the Canadian side of the border, requiring applicants who want the special J.D. to take courses at both campuses. The assignment involves the type of preliminary risk assessment that would be a wise step before hiring Canadian counsel. In addition to researching U.S. law, students need to do at least some preliminary research into Canadian law, which is not as difficult as it might seem. It's similar to U.S. law; analyzing it is a little

¹ Write *Enterprise*—not “the” *Enterprise*. Each ship has its own unique personality. Professional writers treat ships that way, and nearly all book authors omit the “the.”

harder than analyzing the law of another U.S. state; and nearly all of it is accessible online through Canadian websites, although that tests students' resourcefulness. Among the risk issues students should identify are what the client would need to tell prospective applicants in order to avoid truth-in-advertising liability in both countries (it turns out that admission to the bar in Ontario involves the extra cost and time of post-J.D. skills training, which U.S. law school applicants would not anticipate); what Canadian approvals would be needed for the branch campus (Ontario has an education ministry with strict quality-control requirements); whether the client's faculty would be able to teach at the proposed branch campus (they would need Canadian work permits); whether they would be double-taxed, owing income tax in both countries for the same work (probably not, although students should recommend that tax specialists in both countries be consulted); and what business entity the client would need in Canada to operate the branch campus. On the last issue, students should discover that the client would need to set up a Canadian corporation that is independent from the client in leadership and finances and would have the power to disobey the client's dean and university administration. Otherwise the client could be directly liable for anything that happens on the branch campus in violation of Canadian law.

Another possible assignment, which I might develop in the future, would involve museum-quality art — perhaps a sale or a museum donation or loan — in which students would deal with risks associated with authenticity; possible unanticipated claims to ownership (which might lurk hidden in any artwork's history); theft or damage in the case of a loan (subtle damage can occur in many ways); and the possibility that the art might have been damaged and repaired in the past (which might not be immediately apparent but does affect value).

Grading Rubric for the USS Enterprise Risk Assessment Assignment.

During post-assignment teacher/student conferences, students were given, in writing, the explanations below. “You” means the student. The teacher/student conferences focused on the extent to which a student identified, analyzed, and strategized each risk. No student identified all of them. Most students saw no more than half. That makes this a productive assignment. Its purpose was to create in students an *instinct* for risk — an instinct for which life up to this point has not prepared them. The assignment would have been a waste of time if most students had seen almost all the risks. (The following will make more sense if you read Appendix A first.)

1. *premises liability* —

Only a tiny number of cases have interpreted the ship donation statute. But one of them, *Meagher v. United States*, illustrates how people can get injured on a museum ship.² Before opening *Enterprise* to the public, the Alliance should have someone experienced with aircraft carrier museum ships inspect this ship for hazards like bulkhead door coamings (*Meagher*), ladders, decks from which a person could fall, gangways, etc.

— If you didn’t find Meager, why not? One of the first things you should have done was to see what the cases say about the statute that governs this transaction.

2. *maintaining the ship “in a condition satisfactory to the Secretary” (contract section 2(c))* —

The Alliance will be obligated to do that. But what does it mean? This is a standards issue, and the contract doesn’t pin down how much will be enough. The other ship donation contracts you’ve seen demonstrate³ that the Navy won’t take this provision out. The only way to learn the standard would be to contact the other museum ship organizations to find out what the Navy has required of them.

— If you didn’t notice this, why not? Think of all the vagueness and ambiguity we’ve addressed in class.

3. *condition of the ship* —

The Alliance will promise to take the ship “as is,” but what is “as is”? In any asset transfer, the party acquiring the asset should be able to walk away if the asset isn’t acceptable. Ordinary due diligence would include a thorough inspection by experts immediately before signing the contract. And the Alliance should negotiate for a provision allowing it to terminate the contract if the ship is in unacceptable condition on the day the Alliance is supposed to take title.

² 170 F. Supp. 2d 960 (N.D. CA 2001).

³ With the assignment, students were given contracts the Navy signed donating the aircraft carrier *Midway*, which is now a museum ship in San Diego, and the battleship *Wisconsin*, which is now in Norfolk.

— That would be discretionary authority to terminate subject to a condition. Choose a draftable contract tool.

4. *towing to Seattle* —

Google Maps shows the Bremerton–Seattle ferry route with what looks like a 90° bend in a narrow channel. The Alliance could be liable if *Enterprise* collides with another vessel or the shoreline trying to squeeze through that bend. And if *Enterprise* gets stuck in the bend and blocks the channel to marine traffic — including the ferry — the Alliance could be liable for even more damages. Do the private tug operators have experience moving a 1,000-ft-plus ship through that channel? Will the Navy use a different route bringing the ship *into* Bremerton? Could the Alliance pay the Navy to move *Enterprise* to Seattle? Surely during 55 years the Navy has learned more than anyone else about how best to move its own ship from one place to another. The statute requires that the transfer be zero cost to the Navy, but the cost is zero if the Navy is paid for doing the work. Also: can this trip be insured?

— This is the kind of thing lawyers are paid to notice. Someone else might see only a tight bend in a channel. A good lawyer will see a dozen lawsuits that need to be prevented. If you didn't see that, why not? Go to Google Maps, plot the route, and burn that channel's shape into your memory as a reminder of what your clients need you to see.

5. *compliance with general environmental statutes* —

The Environmental Plan does *not* involve Navy evaluation for compliance with general environmental statutes. The Toxic Substances Control Act and CERCLA — both of which are specifically mentioned in the ship donation statute (section 6(b)) — impose strict liability on a property owner even where the owner acquired the property after it became contaminated. Because the Navy is not warranting anything about the ship, the Alliance would be 100% liable. If the Alliance signs the Navy's contract, the Alliance would, through the contract's section 6(b), actually represent to the Navy that the Alliance knows the ship is contaminated with PCBs. The

Alliance should do its own assessment, using consultants who are experts in the following: the Toxic Substances Control Act, CERCLA, the National Environmental Policy Act, and any Washington state statutes to which the Alliance will be subject.

— Two things should have set off alarm bells. First, some important statutes aren't listed in the Navy's required Environmental Plan, and the assignment points that out. Second, the Navy's contract mentions (in section 6(b)) one of the missing statutes. Lawyers notice things like that.

6. *rebuilding the decks* —

The Navy has promised to rebuild parts of the ship after the reactors are removed. Put that in the contract.

— Do you remember the ice house case from first-year Contracts? What if the Navy doesn't fix the ship and then tries to force the Alliance to take title? If your client wants something to happen (removing the ice house), put it in the contract.

7. *compliance with other state regulation and local ordinances* —

What city, county, and state regulations will the Alliance need to satisfy? Virtually every aspect of a business is subject to regulation.

— You should recommend that a lawyer in your firm go through everything the Alliance will do, and make certain that every legal requirement is satisfied.

8. *the Alliance's method of removing the reactors* —

The Navy will use a method devised by the Alliance.

— You should recommend that it be investigated, both factually and legally, to predict the Alliance's liability if this turns out badly.

It was somewhat distressing that most students did not see what I thought were the obvious risks associated with the Bremerton–Seattle route, which required no legal research at all and only the curiosity needed to look at a map (number 4 in the grading rubric). The assignment told students the following:

- The client will take title and possession at the Naval Shipyard at Bremerton. Then tugboats hired by the client will move the ship out of Bremerton to Seattle, which is on the opposite side of Puget Sound.
- This is the same route taken by Washington State ferries.
- *Enterprise* “is more than twice as long as the ferry, and it will be difficult to maneuver through the turns in the route. The ferry travels under its own power. But *Enterprise* will have to be towed, pushed, and shoved by tug boats — all at the Alliance’s expense.”
- Students can plot the route exactly on Google Maps using instructions the assignment provided.

Failure to spot so obvious a risk created excellent teaching opportunities because of the risks’ vividness and the fact that the route could be on my computer screen during student/teacher conferences. The Bremerton–Seattle tow might turn out to be like the attempt by an Ontario truck driver to maneuver an 18-wheeler into a McDonald’s drive-through,⁴ Or the ship might pass easily and precisely through the channel while everyone smiles and says “piece of cake.” Given the enormous potential for tort liability, a risk-assessing lawyer would insist, before signing off on the deal, that the route be evaluated by an expert who puts an assessment into a written report for the Alliance.

Contract Negotiation Assignment

The course ends with negotiation. After the parties negotiate the business issues, students, in two-person law firms, negotiate legal issues and draft the contract.

Students receive the written assignment, which includes all the business terms to which the parties agreed. (The assignment is reproduced in this article’s Appendix B). Then students watch the business deal being negotiated by the parties in an hour-long video called *The Stanford Video Guide to Negotiating: The Sluggers Come Home*. After watching the business negotiation, students negotiate the legal issues and produce a contract the parties can sign. Then I mark up the contract with comments and meet

⁴ See Pam Douglas, ‘What’s This Guy Thinking?’ – Transport Trucker Tries to Use Mississauga McDonald’s Drive-Thru, THE STAR (Dec. 15, 2017), <https://www.thestar.com/news/gta/2017/12/15/whats-this-guy-thinking-transport-trucker-tries-to-use-mississauga-mcdonalds-drive-thru.html>.

with both firms together to discuss those comments and the negotiation.

The Currys are two brothers who have inherited a small ballpark from their father. They have no tenant (no resident team), and they need one desperately. The other party, On-Field, has a minor league baseball franchise and wants to move into a better ballpark than the one it's playing in now. On-Field is owned by Barbara Meyers. The video plays out the negotiation as a story. One of the Curry brothers (Ted) negotiates with Barbara. The other brother (Billy) has a photographic memory, is likeably eccentric, but would wilt in a negotiation. Al Griggs, who manages Barbara's team, has a realistic view of the situation. And Carla, who handles the business details of the Currys' operation, is usually the smartest person in any room. The students have clients who are people, not just abstract business entities.

Notice the counter-intuitive anomaly: when students watch the business negotiation, they already know how it will end. The assignment includes the equivalent of a term sheet, which students read *before* they see the parties negotiate. This is like picking up a novel and reading the last chapter before starting on page 1.

But watching the business negotiation helps students understand their clients' goals and their clients as human beings. Because students have already received the assignment, they know how the parties' negotiation will end and can pay attention to how their clients feel about it and expect it to work. The brothers, for example, feel very strongly that Barbara's team must rename itself "The Sluggers." Their lawyers (students) can't do a good job without understanding the depth of that feeling.

In the video, the characters come off as real. The actors do a good job and themselves are having a good time playing their roles. The video was filmed in a California League ballpark in San Bernardino, although the script gives the community and the ballpark fictional names. The video doesn't contain all the agreement's details. I created many and put all the terms into the assignment.

The video was made for business schools in the 1990s. It's a little dated. At one point, Barbara asks to use a land line where today she would use her own cell phone. But students don't care. Every once in a while Margaret Neale, a Stanford business professor, interrupts the action and gives a brief commentary (90 seconds or so) on business negotiation skills. The video is available online for about \$170. A vendor might try to sell supplemental study guides, but they are for business students. Don't buy them.

Although this happens in a sports industry, the sport is irrelevant. It's really an entertainment industry. Once students understand that, they enjoy the assignment even if they hate sports.

After students have done all their work, I meet with both firms together — four students — to go over everything they did during the course of the assignment. This conference usually takes 60 to 90 minutes.

Students actually submit two contracts — a preliminary draft (one per firm) and a final negotiated contract (drafted by two firms together during the negotiation).

Each firm turns in a preliminary draft before negotiation begins. There are two advantages to this. First, it gives me evidence of what the firm is capable of producing. Second, each firm is forced to work out its own side of the deal before meeting to negotiate. I don't grade or give feedback on the preliminary contracts until the post-negotiation conference — after the students have finished negotiating and have submitted their final negotiated contracts. Providing earlier feedback would accomplish neither of the preliminary draft's two goals.

After the negotiation, the two firms together submit a final contract ready for the parties to sign. Then all four students meet with me for the student/teacher conference.

Comparing the final contract with the two preliminary drafts (one per firm) often reveals a lot about the negotiation. Sometimes the final closely resembles one firm's preliminary draft, which suggests that that firm dominated the negotiation and the other party had put itself in the weak position of bargaining for changes in the stronger party's draft. At the other extreme, the final might look like the best-drafted parts of the two preliminaries had been stitched together, which suggests a problem-solving negotiation in which the two firms collaborated to produce a good contract — often, and perhaps not coincidentally, a contract that is fair to both parties.

Sometimes a final contract will contain a provision that would cause a party to refuse to sign. In the student/teacher conference, that provision usually leads to a discussion of both negotiation skills (how one firm snookered the other) and lawyer-client relations (how the snookered firm failed to understand client needs and why the firm didn't consult the client).

Each of the four students submits two other documents. One is a time sheet, which reveals a lot about the student's work methods. The other is a confidential memo to me describing the firm's work, the negotiation, and what the student learned. Confidentiality allows a student

to be blunt about relations with the three other students.

Before students do this assignment, you'd want them to do some readings on negotiation. I use the negotiation chapters from my book, *Transactional Lawyering Skills*. But many other good readings are available. It doesn't matter which you use as long as they cover what you want.

Because four students are involved, two on each side, there is no academic dishonesty risk. I have used the Curry Field assignment every year for more than a decade.

Appendix A: USS *Enterprise* Risk Assessment Assignment

The following is the assignment in exactly the form that students receive it.

Your client is the Puget Sound Alliance To Save CVN-65. The Alliance is a nonprofit organization. It wants to acquire a ship, which will be the Alliance's main asset. You'll do an assessment of legal risks connected with this asset acquisition.

After the acquisition, the ship will be moored at a dock in Seattle. It will not move from that spot. In fact, the ship will be incapable of moving under its own power. Its propulsion source — eight nuclear reactors — will be removed by the ship's current owner before the Alliance takes title.

The Alliance will use the ship to operate a nonprofit business. The business's revenue stream must at least equal the Alliance's expenses but is not expected to generate profit. Revenue will come from two sources. One is admission tickets sold to people who will tour the ship individually. The other is rental fees paid by organizations to use the ship as a venue for receptions, parties, and large-audience business meetings. The ship has two huge spaces that can be used for this. One is fully enclosed and is called the hangar deck (*hangar* spelled with two *a*'s in this instance). The other is fully open and is called the flight deck. (On a ship, a large level surface on which a person can walk is usually called a deck.)

The Ship. USS *Enterprise* is an aircraft carrier. USS means United States Ship, which indicates that the ship is part of the U.S. Navy, which is *Enterprise's* current owner.

Enterprise was commissioned on November 25, 1961, and decommissioned on February 3, 2017. Commissioning puts a ship into active Navy service after the ship has been built. Decommissioning retires the ship. This ship's active life span — over 55 years — is extraordinarily long for any ship.

Every Navy ship has a hull number. CVN-65 is *Enterprise's* hull number and part of the Alliance's name. CV means aircraft carrier; N means nuclear-powered; and 65 means the ship is the 65th fleet-sized aircraft carrier ordered by the Navy.

The Alliance wants to receive *Enterprise* from the Navy as a donation. The Navy wouldn't sell the ship to the Alliance. The ship would be a gift. The Alliance would maintain *Enterprise* as a museum ship. The Navy has done this with several other ships, including *Intrepid*, which is

moored at a pier where West 46th Street ends at the Hudson River in Manhattan.

A museum ship is a ship that has been converted to a museum. You can walk through the ship just as you would any other museum. It is no longer owned by the Navy. It is instead owned and operated by a private, nonprofit organization, usually one that was created for the sole purpose of operating one museum ship. *Intrepid* no longer goes to sea. It is part of the Intrepid Sea, Air & Space Museum. The Alliance wants to do something similar with *Enterprise*.

When a ship is retired, it is usually scrapped. The Navy removes all the equipment it wants from the ship and then sells what's left to a company that will break it up, piece by piece, and to the extent possible recycle the parts, especially the steel. But prices for scrap steel have fallen so much that selling a ship for scrap can produce only a little revenue or none for the Navy. This is one of the reasons why the Navy is willing to donate a ship to an organization that will maintain it as a museum.

In an asset transfer, you should learn as much as possible about the asset itself. But for this assignment, it will enough to read parts of the Wikipedia article in the footnote,⁵ which you can assume to be accurate as of the time it was written. Read the introductory paragraphs and the parts headed “2.9 2010s” and “2.9.1. Decommissioning.” You can scan the rest of the article.

An earlier aircraft carrier named *Enterprise* (CV-6) was commissioned in 1938 and was the most decorated ship in the Navy during World War II. If you're curious, its Wikipedia article is in this footnote.⁶ The name *Enterprise* is so important in the Navy that a third aircraft carrier will be built with it. Construction will begin in 2018, and the ship will be commissioned in 2027. Its hull number will be CVN-80, and its Wikipedia article is in this footnote.⁷

The name means something to the public as well. The largest car rental company in the United States — Enterprise Holdings, Inc. — is named after the first *Enterprise* (CV-6). The company's founder served on it during World War II and felt a profound loyalty to the ship.⁸ And it's

⁵ [https://en.wikipedia.org/wiki/USS_Enterprise_\(CVN-65\)](https://en.wikipedia.org/wiki/USS_Enterprise_(CVN-65)).

⁶ [https://en.wikipedia.org/wiki/USS_Enterprise_\(CV-6\)](https://en.wikipedia.org/wiki/USS_Enterprise_(CV-6)).

⁷ [https://en.wikipedia.org/wiki/USS_Enterprise_\(CVN-80\)](https://en.wikipedia.org/wiki/USS_Enterprise_(CVN-80)).

⁸ See https://en.wikipedia.org/wiki/Enterprise_Holdings.

no coincidence that the Star Trek spaceship is named USS *Enterprise*.⁹

People who served on the two aircraft carriers named *Enterprise* — both CV-6 and CVN-65 — have felt extraordinarily strong loyalties to the ship and the name. Over 100,000 people served on CVN-65 over its 55-year life span.

Ship Donations. The Navy Ship Donation Program is governed by 10 U.S.C. § 7306. The Program is administered by the Naval Sea Systems Command. For an overview, follow the links in this footnote.¹⁰

A decision by the Navy on whether to donate a ship is made in three phases. In Phase I, an organization that wants to own the ship and use it as a museum submits a Letter of Intent with an Executive Summary.

In Phase II, the organization submits a Business/Financial Plan and an Environmental Plan.

If the Navy is satisfied with the organization's Business/Financial Plan and Environmental Plan, the process enters Phase III, and the organization has six months to submit a Mooring Plan, a Towing Plan, a Maintenance Plan, and a Curatorial/Museum Plan.

If the Navy is satisfied with the organization's Phase III submissions, the Navy and the Organization sign a Donation Contract in which the Navy promises to transfer the ship to the organization, and the organization promises to use and maintain the ship in ways satisfactory to the Navy.

The Situation Now. *Enterprise* was defueled — the nuclear fuel removed — in Newport News, Virginia, during 2016. The ship was decommissioned on February 3, 2017, and it will now be towed to the Puget Sound Naval Shipyard at Bremerton in Washington State. The nuclear reactors will be removed in either Newport News or Bremerton. The ship will be taken apart for scrapping in Bremerton.

[Note: Students received the assignment a week after the ship's decommissioning ceremony. That helped give the assignment realism and immediacy.]

⁹ See [https://en.wikipedia.org/wiki/USS_Enterprise_\(NCC-1701\)](https://en.wikipedia.org/wiki/USS_Enterprise_(NCC-1701)).

¹⁰ <http://www.navsea.navy.mil/Home/Team-Ships/NAVSEA-21/Inactive-Ships/Ship-Donation/>. See also <http://www.navsea.navy.mil/Home/Team-Ships/NAVSEA-21/Inactive-Ships/Ship-Donation/FAQ-Donation/>; <http://www.navsea.navy.mil/Home/Team-Ships/NAVSEA-21/Inactive-Ships/Ship-Donation/FAQ-Application-Process/>.

The Navy had decided that because *Enterprise* was nuclear-powered, it could not become a museum ship. The reactors must be removed, and this requires dismantling large parts of the ship. Once a ship is partially dismantled, it cannot be used for anything.

In the last few months, the Alliance raised an enormous amount of money from people who have served on the ship; families of people who served on the World War II *Enterprise* (CV-6), large Washington State corporations such as Amazon and Microsoft; and Trekkies (Star Trek fans). The Alliance got physicists and engineers to develop a way of removing the reactors with much less damage to the ship. And the Alliance created the Phase I Letter of Intent and Executive Summary and the Phase II Business/Financial Plan and Environmental Plan.

The Alliance submitted all four documents to the Navy and asked the Navy to decide that Phases I and II have been satisfied simultaneously. The Navy was astounded. It had assumed that converting *Enterprise* into a museum ship was impossible, but the Alliance's work proved that it could be done. The Navy analyzed all four documents and decided that they are, as one admiral said, "100% perfect, the best I've ever seen." The Navy has now told the Alliance that it could create the plans required in Phase III, and if those plans are satisfactory, the Navy will sign a Donation Contract with the Alliance.

Two days ago, the Alliance's board of directors met to start work on Phase III. One of the members said, "We did all this at warp speed trying to solve the business problems and the scientific/engineering problems. But has anybody bothered to run it past a lawyer?" The answer was no, and everyone in the room got a little nervous.

Your Role. The Alliance's president sat in your office yesterday afternoon and explained everything you have just read. He then said, "Could you tell us what we should be concerned about legally?" When lawyers hear this kind of question, they realize that their job is to identify ways in which the client is vulnerable and to come up with ways of protecting the client. That is what you will do.

Don't limit yourself to the contract the Alliance will sign with the Navy. Look at the big picture and think of everything you've studied in law school so far. Your client is a nonprofit business and will acquire a big ship and operate it as a museum. As that business's lawyer,

- what problems do you anticipate?
- what will you do to reduce the client's risks?
- what should the client do to reduce risks?

Write a memo to your firm's file on this client. The memo's audience will be lawyers in your firm who work on this transaction. The audience is *not* the client.

Identify problems and explain how to solve them.

Research anything you think necessary, factual or legal. This assignment doesn't require a lot of research. There's very little case law interpreting 10 U.S.C. § 7306. But whenever you realize that there's something you need to know — whether factual or legal — research it.

Use headings to reflect your organization. Use a memo-type heading at the top of the first page (To, From, Date, Re). Put your name in a header on each page, and number your pages. (*Imagine a pile of memos falling to the floor before they have been stapled. You don't want your pages to end up in another student's memo.*)

Don't double-space your memo. Instead, in Word click on the Home menu. In the header, slightly to the left of the middle, you'll see a little box with an arrow pointing up and another arrow pointing down. Click on the box. Then click on 1.15. (*Don't* click on 1.5 or 2.0.) If instead you use WordPerfect, you know what to click on to get to line spacing; then choose 1.2.

It's hard to imagine covering this material well in fewer than four pages. You probably won't need more than six.

If you want to negotiate with the Navy for a change in the contract, draft the language you want and include it in your memo.

The Statute.¹¹ Section 7306(b) limits government responsibility for a donated ship as of the moment it is transferred to the donee (in this case, the Alliance). As of that moment, the Alliance will own the ship; the Navy will no longer own it; and the federal government will no longer be liable or responsible for anything listed in § 7306(b).

Section 7306(c) requires that the transfer cost the government nothing. The Navy will do whatever it would do anyway if the ship weren't

¹¹ 10 U.S.C. § 7306.

being donated. But it will spend no money donating the ship. For example, the Navy will need to remove the nuclear reactors regardless of whether the ship is donated or scrapped or has some other fate. But the Navy cannot legally spend government money moving the ship from Bremerton to Seattle unless the Alliance reimburses all the Navy's towing expenses. The only reason the ship would make that journey would be to become a donated museum ship. (The Navy is part of the Department of Defense.)

The Alliance is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. It is therefore a nonprofit entity under § 7306(e)(1).

Nothing in this situation involves a munitions list (§ 7306(e)(2)).

The Navy's Standard-Form Donation Contract.¹² It's not wonderful drafting. In fact, there are drafting mistakes all over it. But the Navy will not agree to change any of the wording unless you identify an ambiguity that might hurt your client and can explain to the Navy exactly how it is ambiguous and why the Navy should be willing to fix it.

The Navy might be willing to add a provision here or there if you can make a good argument that your client needs something that's not already in the contract. The Navy will refuse to represent or warrant anything, and you will not be able persuade them otherwise.

With this assignment, you have received, as separate PDFs, the contracts the Navy signed concerning USS *Midway*, another aircraft carrier converted to a museum ship, now in San Diego, and USS *Wisconsin*, a battleship that is now a museum ship in Norfolk, Virginia. (You might have seen *Wisconsin* in GEICO commercials, where the gecko complains about how long the main deck is.)

Comparing those contracts with the standard-form version will give you some idea of the extent to which the Navy will agree to changes in the standard form. Variations in the *Midway* and *Wisconsin* contracts probably reflect the particular circumstances on those donations.

The *Midway* and *Wisconsin* contracts refer to those ships as *ex-Midway* and *ex-Wisconsin* because the Navy adds the prefix *ex-* to the formal name of any retired ship. The Navy does this so the name can be reserved

¹² Contract N00024-00-c-xxxx Contract for the Donation of [Name of Vessel and Hull Number]. See <http://www.navsea.navy.mil/Portals/103/Documents/TeamShips/SEA21/InactiveShips/Donation/Inactive%20Ship%20Museum%20Sample%20Donation%20Contract.pdf>.

for some other ship in the future. The *ex-* appears only in formal records and documents. Nobody ever says it. And your memo shouldn't. It's awkward and wastes space.

Some words or phrases in the contract are industry terms. The industry is ships and ship handling. An example is "menace to navigation" in section 2(c). Something is a menace to navigation if it might cause a collision. If you see a word or phrase you don't understand, it might be an industry term, in this case a ship term, with a clear meaning rather than an ambiguity. If you're unsure, try Googling the word or phrase for its definition.

If you want to represent business clients, you must be willing to learn their business, their industry, and their market. If you don't do that, your clients can't rely on you, and they won't trust you.

Other words and phrases are from law. An example is "appurtenances" in section 9. You know how to find out what legal terminology means.

Don't worry about notifying Congress (the contract's first recital). That's the Navy's job. This donation won't need Congressional approval. Congress just wants to know what's going on.

Contract section 1: The phrase "as is, where is" means that the Alliance agrees to accept the ship in whatever condition it is and wherever it happens to be. If something needs to be fixed, the Alliance will have to fix it. The Alliance will have to move the ship from the place where it is to the place where the Alliance wants it to be. Here that will mean towing the ship from Bremerton to Seattle.

"Deliver" doesn't mean the Navy will move the ship. In a house sale, the seller "delivers" the house by handing the keys over to the buyer.

The Navy will deliver the ship to the Alliance in Bremerton. The Alliance will need to pay tug boats to tow the ship out of Bremerton and to Seattle, which is on the opposite side of Puget Sound from Bremerton. To get a sense of the route, go to Google Maps. A side panel dialog box should be on the left side of your screen. If it isn't, click on the little arrow you'll see in the upper left. In the search window at the top of the dialog box, type "Seattle WA." You'll see an arrow inside a rectangle, which is inside a circle. Click on that. Now you'll see a blank line above the word "Seattle." On that line, type "Puget Sound Naval." Google will auto-suggest "Puget Sound Naval Shipyard & Intermediate Maintenance Facility." Click on that. Google will suggest several routes to be driven in a car. Ignore them. Instead, look at the top of the box and click on the person walking. Now you'll see only one route. It's the one taken by the

Seattle–Bremerton ferry. The ferry does the trip in less than two hours.

Towing *Enterprise* will take a lot longer. The ship is more than twice as long as the ferry, and it will be difficult to maneuver through the turns in the route. The ferry travels under its own power. But *Enterprise* will have to be towed, pushed, and shoved by tug boats — all at the Alliance’s expense. (None of this needs to be specified in the Donation Contract. The contract wording on transporting the ship is fine.)

Contract section 2(b): “Static display” means that the ship won’t move around under its own power after it opens as a museum. It will stay in one place.

Contract section 4: The blanks with asterisks are places where the parties will insert numbers that they negotiate. Don’t worry about this. It’s part of the business negotiation conducted by the parties themselves. The Alliance and the Navy will decide what those numbers should be.

NAVSEAINST 4520.1B.¹³ You don’t need to worry about anything listed in NAVSEAINST 4520.1B. All of what the Alliance said in those Plans has been vetted by the Navy already. You have been provided with these excerpts so you know *not* to worry about these things.

But if something *isn’t* listed in NAVSEAINST 4520.1B, it might be an issue for you to be concerned about.

Among the statutes and regulations listed for the Environmental Plan, none protect the environment from toxic substances generally.

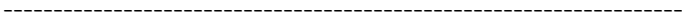
Among the statutes and regulations listed, the following protect wildlife: the Endangered Species Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, and the Essential Fish Habitat regulations of National Marine Fisheries Service. The following protect ecological systems such as beaches, harbors, and waterways: the Coastal Zone Management Act, Section 404 of the Clean Water Act (Dredge Material Disposal Permit), Section 10 of the Rivers and Harbor Act (Army Corps

¹³ U.S. Navy, Naval Sea Systems Command, NAVSEAINST 4520.1B: Navy Ship Donation Program Manual. See https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwi2pubNkvnbAhXKuVkKHXMMBewQFggxMAE&url=http%3A%2F%2Fwww.navsea.navy.mil%2FPortals%2F103%2FDocuments%2FTeamShips%2FSEA21%2FInactiveShips%2FDonation%2F0452001B_Final.pdf&usg=AOvVaw3FhiwmOcGpLEGuOfmIS9U7.

of Engineers Permit); and the Marine Protection, Research and Sanctuaries Act. The National Historic Preservation Act protects places and things (like ships) that have historical value.

Appendix B: The Curry Field Ballpark Lease Negotiation

The following is the assignment in exactly the form that students receive it.



type of contract: space usage agreement
(not a true lease, although everybody will call it a lease)

parties: Curry Brothers, Inc. (landlord; owns the stadium)
On-Field Enterprises, Inc. (tenant; owns the team)

location of the real estate: California (whose law will govern this deal)

where incorporated: California (both parties)

*Before you see the parties' business negotiation,
You'll be told by email which party you represent.*

The Industry: This transaction takes place in an entertainment industry. The entertainment is sports, but revenue is generated in the same way as with other forms of entertainment outside the home, including movies and concerts.

The basic sale is the admissions ticket. At some venues, the customer might also have to purchase parking. Once inside the venue, the customer might be persuaded to buy food and souvenirs (collectively called concessions). Three possible revenue streams are possible: admissions, parking, and concessions.

Ultimately all the revenue will be divided between the entertainment provider (in this case a sports team) and the venue owner (in this case, the Curry brothers, who own a type of stadium called a ballpark). The same thing happens with a concert (the band and the concert hall) and with a movie (the movie producers and the theater). The venue owner might subcontract out the parking or let a food franchise like

a pizza chain operate on the premises, but those are just ways of generating revenue for the venue.

The venue owner and the entertainment provider can negotiate any deal they like on how to divide up these revenue streams. Typical deals vary widely from one entertainment industry to another as well as within an industry. At one extreme, the venue owner can take all the revenue and pay the entertainment provider to perform. At another extreme, the entertainment provider can take all the revenue and pay the venue owner for use of the space.

This is a negotiation between an entertainment provider and a venue owner over how to divide up revenue. The initial question is whether they'll do business with each other at all. That depends on whether they can work out mutually satisfactory revenue divisions.

Watching the Clients Negotiate: In class you'll have the unique experience of knowing in advance what the parties will agree to — and then watching them negotiate it. You'll know the ending before they do.

In lieu of a term sheet, this memo includes an explanation of the parties' agreement. Read it carefully before watching the negotiation video in class.

While watching the video, try to figure out the dynamics of the deal — what kinds of people the parties are; their attitudes and preconceptions; what they hope to accomplish through the deal; their problem-solving styles; and the relationship they create during the business negotiation. Everything you do in the legal negotiation will be in the context of the business negotiation you watch.

Firms, Drafts, and Clients: A firm will include two students. You may form a firm on your own. Or I will assign you to one. As soon as your firm is formed, exchange phone numbers and email addresses with your firm partners.

Your firm represents one of the parties. Another firm in the class represents the other party, but you won't learn right away which firm it is.

In a real firm, the partner who adds the most to the firm would be the first one in the firm name. But in your firm name, the partners will be listed in alphabetical order. That's an objective way to list partners, and let's keep it that way.

During times when you may communicate with your client, you can do so by sending an email to me referring in the subject line to your firm and your client ("Smith & Jones to Curry Bros."). I'll respond as your client. Don't do this lightly. If you pester business clients, they'll think

you're more trouble than you're worth. Their time is valuable. Send only necessary communications to your client. In real life, instead of calling your client eight times in two days, you would try to cover everything in one or two phone calls — same number of issues covered, but in fewer phone calls.

On the preliminary draft due date, you'll submit to me a first draft of your contract. This won't be graded until *after* you submit your final contract. The reason for submitting a preliminary draft then is to establish what you drafted before you have begun discussions with the lawyers representing the other party.

Designate one member of your firm to submit the preliminary draft. That person should send the contract as an email attachment in Word or WordPerfect and also as a PDF. The email should be cc'd to other members of your firm so they know the contract has been submitted.

As soon as you know the identity of the firm that represents the other party in your contract, exchange email addresses with all that firm's members.

When you start communicating with the other firm, you may use any means of communication you prefer (phone, face-to-face, email, telepathy). But if you communicate by email, please include me as a cc and use a subject line that makes clear who's talking to whom ("Smith & Jones to Dewey Chetum & Howe"). Don't cc me with other methods of communication (especially telepathy).

If you want, you may show your preliminary draft — or selected parts of your preliminary draft — to the other firm. You don't have to. That's a decision for your firm to make.

You and the other firm will submit one negotiated contract — the one on which both sides agree.

Designate a member of either firm to submit the final contract. That person should send the contract as an attachment in an email to me, cc'd to all the members of both firms so they know the contract has been submitted.

Post-negotiation self-assessment: Within 24 hours after the deadline for submitting the final negotiated contract, send me a memo describing the negotiation from your personal and individual point of view.

1. What happened?
2. How much of your firm's goals did the firm accomplish?
3. What in the contract will please the client most?
4. What in the contract would disappoint the client?
5. Does the negotiated contract include anything that would upset the client?
6. What did you do well individually?
7. What did you do individually less well than you had hoped?
8. What are your personal goals for improvement?
9. What did you learn about negotiation?
10. What did you learn about yourself?

Send this to me as an email attachment. Don't cc the other students. It's a confidential communication from you to me.

Post-Negotiation Conference: After you submit your negotiated contract, both firms will meet with me to discuss the whole process: the two preliminary drafts, the final contract, and the negotiations in between. First, you'll review your graded contract. Each member of your group will get a separate copy. This will take about half an hour. Then we'll discuss anything you want to talk about (as we did at your car contract critique). If you're free earlier in the day of your critique and want to get a head start on reviewing the contract, that might be possible (no guarantees).

The Business Deal: Don't renegotiate the money unless your client specifically authorizes it. Changing the money changes the deal's value. A client who finds that the deal has less value after the lawyers played with it won't hire those lawyers again.

A deal's value can change when the lawyers agree to costs the clients wouldn't have agreed to. Profit = receipts (money obtained) minus costs. Profit decreases when receipts fall. But it also decreases when costs rise. In a goods transaction, for example, the lawyers might think it better to transport the goods by air rather than by sea ("Let's get them there faster!"), but air is also a lot more expensive. If the parties agreed to sea transport, they had a good reason.

That shouldn't stop you from raising a money issue with your

client. If the business deal seems not quite right to you, it's possible you've misunderstood it. It's also possible that you spotted something the client overlooked. The only way to find out is to ask.

Industry Knowledge: Don't assume that most tickets are sold over a counter, an employee handing a paper ticket to a customer in exchange for money. Are most tickets sold this way? Don't assume that forty security guards are necessary in a minor league ballpark. Are they?

Don't make assumptions about your client's industry. Recognize what you don't really know, and ask about it. Even if you've been in a ballpark many times, you probably don't know the industry in depth unless you've worked in it.

The difference between a space use agreement and a true lease: Everyone in this industry calls these contracts ballpark leases. You can, too. But when you negotiate and draft your contract, be careful. It's a space use agreement, not a true lease. Here's the difference:

A true lease is both a contract and an instrument under property law. As an instrument, it transfers to the tenant, during the term of the lease, a portion of the landlord's ownership rights. Many apartment leases, for example, begin with wording like this: "The Landlord leases the Premises to the Tenant, and the Tenant leases them from the Landlord." These words create a leasehold, which is the tenant's right to exclusive possession. (*If you don't know what a leasehold is, what research tools would you use to find out?*)

Because in a true lease the tenant occupies the property (has exclusive possession of it), the landlord may enter the premises only with the tenant's consent or with exceptions specified by the lease (performing repairs, etc.) or by local law. The tenant's possessory rights outrank those of the landlord. In many states, a landlord is considered a trespasser if the landlord enters the property without consent or an exception — even though the landlord owns the property.

Other kinds of contracts might allow one party to use the other party's real estate without occupying it (having exclusive possession of it). Think of them as space use agreements. That's not a term of art, and you won't find it in the case law. The law has no term for the category of contracts that allow use but don't include a leasehold.

To appreciate the difference between a true lease and a space use agreement, imagine that you rent an apartment and that you also rent a parking space in a parking garage adjacent to the apartment building and owned by your landlord. Imagine that you've been assigned a specific parking space, identified by a number painted onto the pavement. You

have two agreements, one for the apartment and the other for the parking space.

Your agreement to rent the apartment is a lease. You occupy it (have exclusive possession). The landlord can enter only with your consent or with an exception specified in the lease or local law. If while you're away your landlord enters to drink coffee on your balcony because he likes the view there, the landlord is trespassing.

But your agreement to rent the parking space is a space use agreement. You don't occupy the space (have exclusive possession of it). If someone walks across the space, that person is not a trespasser. Suppose the landlord parks his own car in your space. If his car prevents you from parking there, he might have breached a covenant to let you park in the space, but he hasn't invaded your leasehold. You don't have a leasehold over the space because you don't have exclusive possession (occupy it). If he parks in your space while you're at school, he hasn't breached the agreement at all because you haven't been prevented from using the space.

Some landlords would have you sign separate contracts for the apartment and for the parking space. But even if, for convenience, the parking space is in the landlord's standard-form apartment lease, the law will treat that part of the lease not as a leasehold and instead a separate space use agreement. The law will see the difference and enforce different parts of that contract differently — a leasehold over the apartment and a space use agreement for parking.

Everybody in the baseball industry calls team/stadium contracts leases regardless of whether they're true leases. Sometimes they're true leases, and sometimes they aren't.

In a true lease, the team occupies the ballpark (has exclusive possession of it) because the ballpark owner granted the team a leasehold. The lease will list circumstances in which the owner can enter. Otherwise, the owner has no right to be on the premises without the team's consent. The Currys and On-Field did *not* agree to that kind of contract.

During this contract's term, the Curry brothers will *always* have exclusive possession of (occupy) the entire ballpark. Using and possessing aren't the same thing.

On-Field will *never* be in possession of the ballpark in the property law sense. On-Field will only have the right to enter the ballpark and use certain parts of it for purposes spelled out in the contract. And On-Field will use only part of the ballpark, not all of it.

In conversation, you can call this contract a lease. Everybody in the industry does. But don't draft leasehold language into your contract. The parties didn't agree to one.

Working with Clients: Since your first day of law school, you've been living in a world in which everyone understands lawyer-talk. But people outside that world — including clients — don't understand it.

Translate for your client. Assume that your client is smart and can grasp the concepts if you explain them clearly. For example:

bad — We're negotiating now about the force majeure clause. The other side wants to include labor slow-downs. How do you feel about that?

still bad — Contracts like this usually include a clause that excuses either party from liability for nonperformance. We'll list supervening events like war, strikes, and natural disasters. The other side wants to include labor slow-downs. How do you feel about that?

The client will feel annoyed. What's a *force majeure clause* or a *supervening event*? Even business clients might have to guess about *excuses from liability for nonperformance*. Translate like this:

good — Some events can prevent a party from doing what it promised to do — for example, a natural disaster like an earthquake that damages the ballpark. Normally, we make a list of these excuses and put them in the contract so that a party isn't responsible for not doing what it can't do. Labor strikes are usually on these lists. The other side wants to include labor slow-downs where organized employees put pressure on management by not doing their jobs efficiently. Do you want this to be an excuse? If it's on the list, it would have to be an excuse for them as well as for you.

Look at this from your audience's point of view. Choose your words carefully. Break the problem down into parts and explain it step by step. Then ask a concrete and precise question.

But don't insult the client's intelligence. The third example above translates without condescension. Even the definition of labor slow-downs is done respectfully. The client has undoubtedly heard of them. The lawyer throws in a casual definition just in case the client's concept of a slow-down isn't exactly the law's concept. It's so casually done that it sounds like an aside rather than a definition.

Work Schedule: Don't wait until the last minute to draft your preliminary contract. *Start immediately after you receive the assignment.*

Don't wait until the last minute to negotiate. *Start negotiating immediately after submitting your preliminary contract.*

Outside Sources of Information: You may research California law.

And you may research the *minor* league baseball industry. Minor league baseball is very different from major league baseball — so different that they might as well be separate industries. Don't assume that anything true in the majors is also be true in the minors.

You may not use any other resources in the library or online.

And you may not discuss this assignment with anyone outside your firm or the other party's firm.

The Business Terms — *What the Parties Have Agreed To*

Term —

Two years, beginning January 1 of next year.

Games —

The team may play 70 games in the ballpark during the six months from April to September, inclusive. If the team gets into the post-season (see below), it may play one to eight post-season games in the ballpark.

The League —

The team plays in the California League, which decides in December of each year the game schedule for the following year's season. The California League's season is 140 games, and a team plays half of its games in its home ballpark. The California League has ten teams divided into two divisions — North and South — of five teams each. The team owned by On-Field is in the South Division.

Other Uses —

From April through September each year, the team can also use the ballpark so players can work out and train on 20 days selected by the

team. In April each year, the team can also use the ballpark on 10 days for a baseball clinic in which its players teach baseball skills to middle school and high school students.

On those 30 days, spectators won't have to pay to park and enter the ballpark, and the Curry brothers may operate concession stands if they want to. If the Currys do sell from concession stands, the profit from concessions will be allocated between the parties as on game days (see below).

Schedule for Other Uses —

By January 15 of each year the team will inform the Currys of the 30 dates on which the team will use the ballpark for training and for its baseball clinic during that year. After the team informs the Currys of those dates, the team can change the dates only if the Currys consent. The Currys are free to use the ballpark at other times for any purpose.

Playoffs —

The season usually ends in early September, followed by three rounds of playoffs (which the baseball industry calls a post-season). If a team gets into the playoffs, it will play at least one post-season game in its home ballpark, and it might play as many as eight games there. The playoffs usually end during the last week of September.

Rent —

Annual rent = \$175,000 plus \$1.00 for each ticket sold after the first 210,000 tickets for regular season games plus \$3.84 for each ticket sold for post-season games. During the six months per year covered by the contract, the team to pay the Currys \$29,166.67 on the first business day of each month (the first business day in April through the first business day in September) by electronic transfer into the Currys' bank account.

That doesn't include the two portions of the rent based on attendance. By the first business day after September 15, the team to pay the Currys, in one lump-sum payment, the portion of rent that equals \$1.00 for each ticket sold after the first 210,000 tickets for regular season games.

If the team gets into the playoffs, it'll pay the Currys, in a single payment by the first business day of October, the portion of rent that equals \$3.84 for each ticket sold for post-season games.

Paid attendance doesn't include tickets given away for free. It includes all tickets sold, even if ticket holders don't actually attend the

game.

When the lawyers ask their clients where those numbers came from, here's what each client tells its lawyer —

We agreed on a base rent of \$175,000 plus additional rent if the paid attendance exceeds an average of 3,000 per game. The team is to pay a month's rent in advance at the beginning of the month. \$175,000 divided by six (six months, April through September) = \$29,166.67.

The regular-season-attendance-based portion of the rent can't be paid until mid-September because only then will the parties know how many tickets were sold after the first 210,000.

70 regular season games x 3,000 = 210,000 paid regular season attendance. The ballpark can be configured to seat 8,000 spectators, which means that potentially an average of up to 5,000 tickets per regular season game could enter into the calculation of additional rent. During the regular season, that could potentially add up to a total additional attendance of 350,000 (70 x 5,000). We agreed that the team wouldn't have to pay more than \$525,000 total rent for the regular season, which means that the maximum attendance-based rent would be \$350,000 (\$525,000 minus \$175,000). Hence, a dollar for every ticket sold after the first 210,000.

We negotiated the post-season separately from the regular season because there won't be post-season revenue unless the team gets into the playoffs. If the team does get into the playoffs, at least one game and possibly eight games will be played in the ballpark. The \$175,000 base rent assumes only 70 games of landlord per-game costs (ushers, security guards, after-game cleanup, electricity usage, general maintenance). To cover those types of costs in the post-season, we agreed on \$3.84 per ticket sold.

Ticket Prices —

The parties agreed on the prices to be charged for admissions tickets. The prices differ depending on where a seat is located. The ones with a better view cost more. The price list is too detailed to put into the text of the contract. You'll put it into a schedule. For this assignment, you don't have to write the schedule. But refer to it where necessary in the contract.

Office Suites —

Inside the ballpark are two four-room office suites. The Currys use one of them. The team can use the other one throughout the year (12 months) but must pay a landline phone company directly for service into

that suite. The office suites are on the main concourse about a hundred feet apart.

On-Field's Luxury Suite —

When On-Field is using the ballpark, it will also be able to use something the Currys call the owner's luxury suite. That refers to the team owner and not to the Currys. (This is *not* the office suite.)

In the baseball industry, a luxury suite is a partially enclosed area with air-conditioning, seating for eight to twelve people, and a buffet or other customized food and drink service. A business might rent a luxury box to entertain clients at a ball game. The Currys' ballpark has twelve luxury suits, which are numbered. The numbers are in the 300's because the suites are on the third level, above the outdoor seats. The owner's luxury suite is number 307.

The Currys' Box —

The Currys don't want a luxury suite. Instead, they'll use a six-seat box next to the home team's dugout. A box is a group of seats separated from other seats by a steel bar that looks like the kind of water pipe you might see in your family's basement. A dugout is where players sit when they're not on the field. The Currys will have box 107-A. These are front-row seats right next to the playing field. The Currys are baseball people and enjoy the company of players and coaches.

Discounted Tickets —

Each employee of a party can buy up to four tickets per game for 70% of the tickets' face value.

Clubhouses —

The team can use the ballpark's home team clubhouse on days when the team is scheduled to use the ballpark. The ballpark includes a clubhouse for the home team and another clubhouse for the visiting team. Despite the name, these aren't separate buildings. They're located inside the stadium structure, under the seats where spectators sit. A clubhouse consists of a locker room, showers, space to store equipment, etc. A team uses its clubhouse before and after a game.

Ticket Sales —

Tickets to be sold by the team's employees through its website, over its phone lines, and through the box office located in the ballpark. The team can use the box office only on game days.

Concessions —

In accounting, receipts are the money a business takes in, and expenses are the money a business pays out.

Concessions profit = receipts (what customers pay when buying food and souvenirs) minus expenses (wages, taxes, and the cost of buying food and merchandise). The Currys will buy the food and merchandise, pay their employees to sell it to customers, and collect the receipts. The parties agreed that the Currys will get 60% of the profit, and the team will get the other 40%.

Parking profit = receipts minus expenses (only wages for the Currys' employees to operate the parking lot). Here, too, the Currys will get 60%, and the team will get the other 40%.

The Currys will decide how much to charge customers for parking and concessions. The team trusts their judgment to choose prices that maximize revenue for both parties.

Curry Payments to On-Field —

For both concessions and parking, the Currys will collect money from customers and pay the expenses. By the third business day after the 15th day of each month, the Currys will pay the team its share of the concessions and parking profit from the first half of the month. By the third business day after the last day of a month, the Currys will make the same kind of payment for profit from the second half of the month. These payments to be made by electronic transfer into the team's bank account.

When the lawyers point out to their clients that in the first few days of a month, the parties will be making payments to each other, here is what the clients say —

We could have agreed to set off the team's payment against the Currys' payment (subtract the smaller payment from the larger so that only one payment is made). But that would have delayed payment while we confer and do the math. For speed and convenience, we decided just to pay each other without setting off.

Concessions and Parking Statements —

Shortly after each payment to the team from concessions and parking profit, the Currys to provide the team with a written statement of the receipts and expenses covered by that payment. The team can inspect the Currys' books to verify the numbers in those statements.

Ballpark and Field Maintenance —

The Curryys to maintain the playing field according to California League standards and pay the utilities for the ballpark, provide security on game days, and keep the ballpark clean and well maintained.

Addresses —

The ballpark address and the Curryys' address are the same: 1000 Curry Field Way, Morgan Hills CA 92401. On-Field will use the ballpark office suite beginning the first day of the contract term, so On-Field's address during the contract term will be the same as the Curryys'.

Team Name —

Morgan Hills Sluggers.