

SANTA CLARA LAW



ENTREPRENEURS'  
LAW CLINIC



*Entrepreneurs' Law Clinic Coursebook:  
Law for Startups Through an Empathetic Lens*

***DRAFT Version 1.0 - January 2023***

*Laura Norris, Mary Fuller, and Linsey Krolik  
Santa Clara University School of Law  
© 2022-2023*

**CHAPTER 2: THE ENTREPRENEURIAL CLIENT, CREATING A CASE PLAN & LEGAL PROJECT MANAGEMENT, DESIGN THINKING & ENGAGING WITH CLIENTS, ETHICS**

*“When you show deep empathy toward others, their defensive energy goes down, and positive energy replaces it. That’s when you can get more creative in solving problems.” - Stephen Covey*

**LEARNING OBJECTIVES**

- Recognize challenges facing startup companies
- Explain role of the business lawyer in working with startup companies
- Develop interviewing techniques to obtain complete information from clients
- Identify potential conflicts of interest
- Generate engagement letter properly tailored to client project
- Conduct a conflicts of interest search and analysis

Mini-Module - Design Thinking

- Understand the methodology of design thinking for solving problems
- Apply design thinking in interviewing and counseling clinic clients

**ADDITIONAL READINGS AND PRE-WORK**

In addition to this chapter, please:

|                    |   |
|--------------------|---|
| Read               | <ul style="list-style-type: none"> <li>• <a href="#">California Rules of Professional Conduct, Rule 1.7</a></li> <li>• <a href="#">The 4 Stages of Startups</a>, KPMG Spark, 2020</li> <li>• <a href="#">10 Ways to Strengthen Your Team Relationships</a>, Teamwork.com 2015</li> <li>• <a href="#">How to Conduct Empathy Interviews</a>, Zion and Zion, May 2018</li> <li>• <a href="#">Spotlight on Ethics: The Benefits of an Engagement Letter</a>, California Lawyers Association, Scott Garner, Sept 2020</li> <li>• <a href="#">Design Thinking and Visual Advocacy for Lawyers</a>, Faegre Drinker, 2021 (pages 20-53, and 71-77, and 85-89)</li> <li>• Initial Client Interview, California Practice Guide--Corporations, Feb 2020 (Camino)</li> </ul> |
| Watch              | <ul style="list-style-type: none"> <li>• <a href="#">Five Whys Jefferson Memorial Example</a>, Danielle Young, March, 2016</li> </ul>   |
| Hot off the press! | <ul style="list-style-type: none"> <li>• <a href="#">Four Items Every Startup Should Consider When Engaging a Startup Lawyer</a>, StartUpBlog, Nov 2021</li> <li>• <a href="#">The Biggest Challenges Faced By Startups</a>, Forbes, Nov 2021</li> </ul>  |

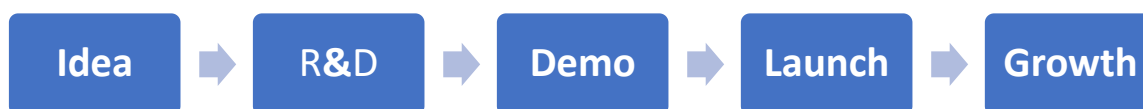
## THE ENTREPRENEURIAL CLIENT

### CHALLENGES FACING STARTUP COMPANIES

*Innovation and risk-taking go hand in hand.*

Startup companies are trying to do many things – disrupt a traditional industry, introduce an entirely new product or service, or simply expand on an existing business in new ways – and they are taking risk to do so. Innovation and risk-taking go hand in hand.

In its simplest form, the lifecycle of a startup includes:



The idea stage is all about evaluating an idea and finding the problem/solution fit. At this stage, a company may change its direction and focus many times!

R&D means research and development. Some companies may do more R&D than others. This stage includes researching to decide what the company’s product or service looks like and may involve developing prototypes, mockups, or models before doing a full build out of a product or service.

The demo stage may happen when a company is ready to go get some funding. Here, a company may take its prototype or preliminary build of its product or service and show it to potential investors as a way of proving that they’ve done enough work to show that this idea is going to be a success.

Launch happens when a company turns its idea into reality and launches it to the market. Launch is often in the form of “beta” or “MVP” (which stands for minimally viable product). These types of initial launches happen when a company is testing out the market to see what works with potential customers and perhaps to get the kinks or bugs out. Feedback and testing are important part of a beta or MVP launch. As the product or service is refined, the launch may move into “GA” (which stands for generally available). This signifies that the company believes that its product or service has developed to a greater degree and can be reliably delivered.

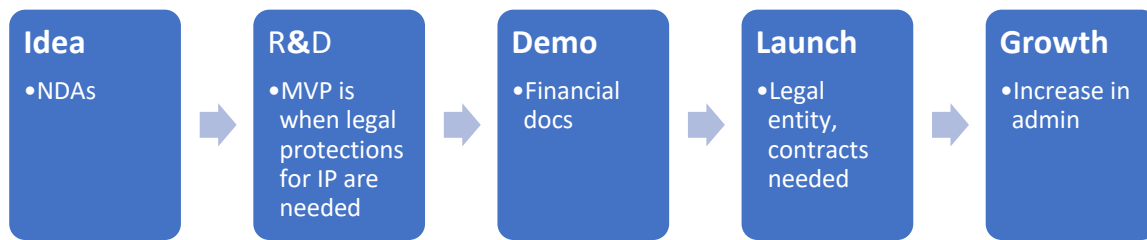
Growth stage follows a successful launch and is all about scaling or growing a company’s user base. This stage starts looking more like a traditional business, which has competing priorities, such as identifying and pursuing new customers, managing increasing revenue, helping customers, evolving the product or service, administration of the business, outsmarting the competition, and more.

### THE ROLE OF THE BUSINESS LAWYER IN WORKING WITH STARTUP COMPANIES

*The business lawyer is a valuable advisor for startup companies to get basic legal protections in place and often more, depending on the industry, location, and product.*

So where does the business lawyer come in?

In general, every company needs some basic legal protections, shown below.



Additional problems and opportunities may need tackling from a legal perspective, depending on the industry, location, and product.

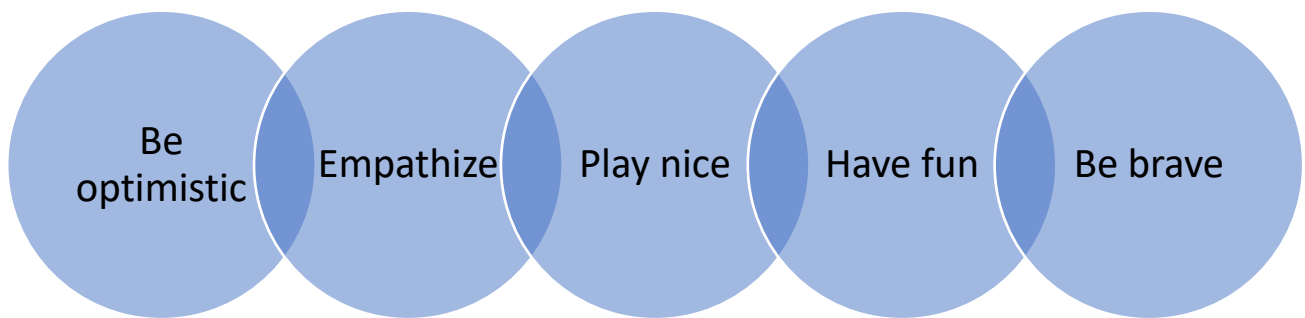
DESIGN THINKING

*The idea of design thinking is to tap into your brain so you can empathize with your client.*

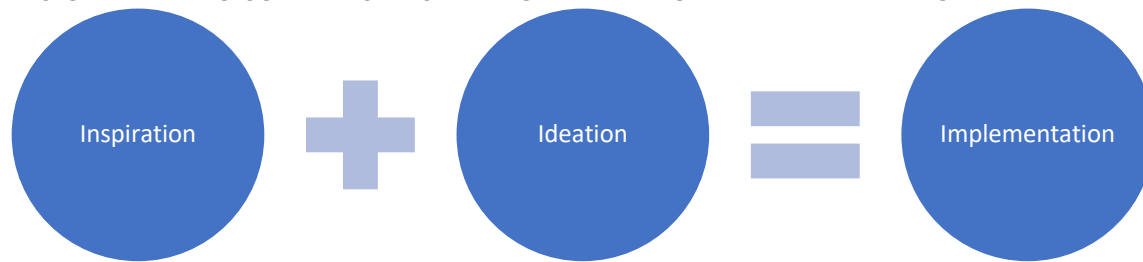
Before we talk about conducting client interviews, we will introduce a concept called design thinking.

IDEO (<https://www.ideo.com/>) is the organization that invented design thinking. The whole idea of this is to tap into a different part of your brain to empathize with your client.

DESIGN THINKING MINDSET:

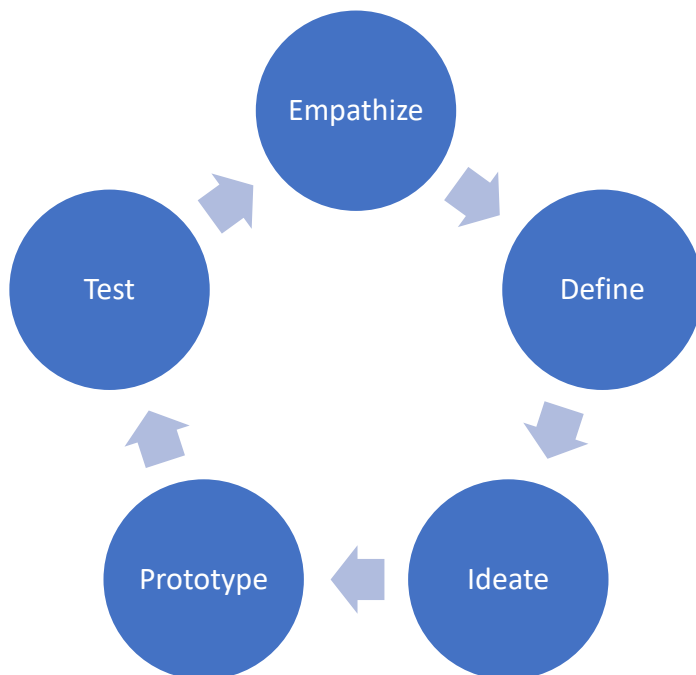


DESIGN THINKING COMBINES: INSPIRATION + IDEATION + IMPLEMENTATION



|                              |  |
|------------------------------|--|
| <b><u>Inspiration</u></b>    | <ul style="list-style-type: none"> <li>• You get inspiration from what you learn about your clients, what they want and what they're thinking.</li> <li>• This is gained through empathy and by understanding your clients.</li> </ul> |
| <b><u>Ideation</u></b>       | <ul style="list-style-type: none"> <li>• Then you identify some ways that we can solve this problem.</li> <li>• These options may or may not seem like the “lawyerly” solution.</li> </ul>   |
| <b><u>Implementation</u></b> | <ul style="list-style-type: none"> <li>• Finally, you go and implement those solutions and implement them quickly.</li> <li>• Lawyers can help clients to implement solutions and see if they're working.</li> </ul>                   |

DESIGN THINKING STEPS



|                  |   |
|------------------|---|
| <b>Empathize</b> | Learn about the audience for whom you are designing                   |
| <b>Define</b>    | Construct a point of view that is based on user needs and insights    |
| <b>Ideate</b>    | Brainstorm and come up with creative solutions                        |
| <b>Prototype</b> | Build a representation of one or more of your ideas to show to others |
| <b>Test</b>      | Return to your original user group and test your ideas for feedback   |

## CONDUCTING CLIENT INTERVIEWS - ENGAGING WITH YOUR CLIENT

### PURPOSE OF THE INITIAL CLIENT INTERVIEW

*The purpose of the initial client interview is to gather info and to understand their business/problems. No legal advice!*

#### **Refer back to Chapter 1 for more information on Initial Client Interviews.**

The purpose of the initial client interview is to gather information and to understand their business and their problems. Remember - you cannot give any advice! You are going to assess what projects you could potentially do for them.

### CONFIDENTIALITY

*Don't accept any confidential information (or documents) from your clients at the initial client interview, or until after the engagement letter is signed.*

You have all signed confidentiality oaths, but we do not have an attorney-client relationship in place with your clients until the engagement letters are signed. Hold off on getting client confidential information such as copies of agreements, etc. you need enough information to do a conflicts check and to determine potential projects.

### EMPATHY IN INTERVIEWING

*Asking open ended questions encourages your clients to tell you more.*

You can encourage storytelling by asking open ended questions. For instance, framing the problem as a question, "How might we...?" is solutions-oriented. (Note that "might" encourages optimism and "we" is collaborative). You can also try asking multiple "whys."

### GATHERING INSPIRATION AND DEFINING WHAT YOUR CLIENT REALLY NEEDS

*Do more than just gather answers in your initial intake. Look for the unexpected.*

Look for telltale signs of what is important to your client. For instance, you can observe body language. You can reflect on what priorities or issues came up over and over. You can think about whether there are constraints.

Look for the unexpected - you are trying to unlock new ways of thinking, observe, and find out what matters.

---

## IDEATING AND LOOKING FOR AS MANY SOLUTIONS AS POSSIBLE FOR YOUR CLIENT

*Challenge yourself to come up with as many possible solutions as you can think of.*

You are looking for solutions - as many as possible. Pick up your pen (or keyboard) and jot down as many ideas as you can. Challenge yourself not to judge, and when you think you are out of ideas, to come up with two more.

For each idea, describe its value as it relates to the problem.

---

## PROTOTYPING

*Diagramming or drawing out what you think your client is doing with their business and what their issues might be can get you into a new way of thinking.*

It helps to build a rough sketch of your ideas.

Make it tangible, quick, and dirty! Diagramming can help too. Use simple shapes to draw people and objects. Flowcharts can work too. Include people in your sketches. When possible, make it physical.

---

## TESTING

*Get feedback from your supervisor and teammate before jumping to what you think is the answer.*

Iterate with your supervisor and also with your client.

Get user feedback and iterate if necessary. Ask: Does it solve the problem? Does it create new problems? Does it generate new ideas for further improvement?



PUTTING IT TOGETHER – DESIGN THINKING + CLIENT INTERVIEWS

| Design Thinking and Client Interviews  |  |
|--|--|
| <p><u>Empathizing</u></p> <ul style="list-style-type: none"> <li>• How do participants feel?</li> <li>• How might they feel differently?</li> <li>• Why? Why? Why?</li> </ul> <p><u>Clarifying/ Defining</u></p> <ul style="list-style-type: none"> <li>• What is the meeting about?</li> <li>• What issues did you identify?</li> <li>• What constraints did you find?</li> <li>• What do you want everyone to remember from the meeting?</li> </ul> <p><u>Ideating/ Brainstorming</u></p> <ul style="list-style-type: none"> <li>• Can brainstorming be more fun?</li> <li>• How can you generate more ideas?</li> <li>• How have others solved it?</li> </ul> | <p><u>Prototyping</u></p> <ul style="list-style-type: none"> <li>• Create rough solution, rather than just “follow up”</li> <li>• If possible (or appropriate), create alternative solutions</li> </ul> <p><u>Testing</u></p> <ul style="list-style-type: none"> <li>• Is this what your client expected?</li> <li>• Did it solve their problem?</li> <li>• Did anything unexpected happen?</li> <li>• Were new issues identified?</li> <li>• Can you improve it?</li> </ul> |

INITIAL CLIENT INTAKE OUTLINE AND SUGGESTIONS

Here are some things to think about doing before the meeting and at the meeting:

|                           |   |
|---------------------------|---|
| <b>Before the meeting</b> | <ul style="list-style-type: none"> <li>• Read through client application</li> <li>• Check Clio to see if client has been a previous client (search on name of company as well as name of founder). Read through documents in case files.</li> <li>• Do some research about the client and founder(s) via the internet, LinkedIn, etc.</li> <li>• Create your own outline of what topics you want to cover (see below the table for some suggested topics).</li> <li>• Send an email to client setting expectations for the purpose of the meeting.</li> </ul>   |
| <b>At the meeting</b>     | <ul style="list-style-type: none"> <li>• <u>Start of meeting</u>: Remind the client applicant that they should share no particularly proprietary information with you during this interview. Though we will not disclose any information they share in the meeting, there is no attorney-client relationship formed until after an engagement letter is prepared and signed by both parties. This is an initial informational meeting only, and if you need more information to actually complete the project you can get it after the engagement letter is signed.</li> <li>• <u>End of meeting</u>: Explain timeline – we deliver drafts at end of semester, so short timeline projects are not usually feasible. Summarize what you heard from the client as to their priorities and constraints. Explain next steps (e.g. I will talk with my supervisor, and then you can expect I’ll be emailing you in the next week regarding whether we can represent you this semester, and the project(s) we can complete.)</li> </ul> |

**Some suggested topics:**

**CLIENT INFORMATION**

1. Business Name (if applicable)
2. Best way to contact with questions
3. How hear about ELC
4. Business location/address
5. Description of business
6. When business started
7. Client business structure / entity
8. Owners / officers
9. Customers
10. Funding / Investors
11. Workers / Employees / Contractors
12. Where was product / service / business created – were founders students, employed at the time, etc.
13. Company sales / revenue
14. Other legal counsel for company

**PROJECT INFORMATION**

1. Type of legal services indicated in application – is it still priority
2. Are there other issues that keep them up at night
3. If more than one project, what is their prioritization and why
4. What are top business goals in next year, and how does legal project(s) support those
5. May want to talk through types of legal services ELC can provide
  - \_\_\_\_\_ Entity Choice and Formation
  - \_\_\_\_\_ Friends & Family Financing
  - \_\_\_\_\_ Founder/Shareholder Agreement
  - \_\_\_\_\_ Contract or License Drafting or Review
  - \_\_\_\_\_ Terms of Service and/or Privacy Policy (Web or Mobile Application)
  - \_\_\_\_\_ Company Policy and Procedure Document
  - \_\_\_\_\_ Research on Legal or Compliance Issue
  - \_\_\_\_\_ Assistance with Trademark or Copyright protection
  - \_\_\_\_\_ Respond to a Trademark Office Action from USPTO (rejection)
  - \_\_\_\_\_ Other
6. What client hopes to accomplish in using the ELC
7. Any time constraints
8. Any other constraints relating to project

**CONFLICTS INFORMATION**

1. Competitors of client
2. Parent/Subsidiary companies
3. (If an agreement project) – who is other party intended to sign the agreement
4. General other party information – are there other parties involved in the potential project(s), or who might be affected by the project(s)
5. Is Santa Clara University a potentially interested party in the project(s)

## CREATIVE PROBLEM SOLVING

*Creative problem solving is where you can really add value, because as business lawyers, you are there to provide solutions and to meet your client's objectives. Try to identify options for your client, and then flush out the pros and cons of each option, before making a recommendation.*

We want you to start thinking about: how do you come up with creative different ways to get accomplished what your client wants? Creative problem solving is where you can really add value, because as business lawyers, you are there to provide solutions and to meet your client's objectives.

To do this, you have to really, really insanely understand what's important to your client - and not just hear what you want to hear as a lawyer.

Lawyers can do a much better job of listening to what their clients have to say and then coming up with creative solutions that might be very practical things (for example, advising a new company who wants to launch a beta test of their product about how they might think about getting insurance to protect themselves vs. writing a lengthy contract or thinking about how a future court case might play out).

One of the best ways to engage in creative problem solving is identify ideas and options for your client. Once you have identified options, you can evaluate the pros and cons of each option and make a reasoned recommendation for your client – one that is practical and takes into account where your client is at in the lifecycle of their business and how much risk they might be willing to take on.

### EXERCISES / HYPOTHETICALS:

## DESIGN THINKING MASHUP EXERCISE

List 5 things you enjoy doing

|   |  |
|---|--|
| 1 |  |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |

List 5 things a lawyer does

|   |  |
|---|--|
| 1 |  |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |

Mashup these things (1 thing you enjoy + 1 thing a lawyer does) to come up with a new legal career:

**\*\*SELECTED EXCERPTS\*\*\*** *ELC Coursebook: Law for Startups Through an Empathetic Lens*  
(contact Laura Norris, [LNorris@scu.edu](mailto:LNorris@scu.edu), for a full copy of the book)



---

#### BRAINSTORMING FOR INITIAL CLIENT INTERVIEWS

We will do some brainstorming in class for how to approach initial client interviews. Be thinking about how you might approach this.

---

#### MOCK INTERVIEWS

We may pair up for some mock interviews. Get ready to practice!

## TAKEAWAYS

### **The Entrepreneurial Client, Creating a Case Plan, Ethics, Engaging with Client, Design Thinking**

- Analyzing conflicts is fact-specific. Your client is the company – not the individual founders!
- We are here to provide solutions as business lawyers
- Huge emphasis on really, really listening
- Another thing that lawyers need to learn: how to work nimbly and being able to help clients that are working quickly themselves
- Think outside the box! Start practicing coming up with ideas on weren't in your initial thoughts
- Purpose of the initial client interview: 1) find out what the client wants, 2) figure out if you can help the client, and 3) are there any reasons you can't help the client? (conflicts, competency)
- Review the tips for the initial client interview as you prepare

## WHAT WOULD THE ENTREPRENEUR THINK?

- When they come to the ELC, entrepreneurs are trying to solve problems, not just trying to get a template agreement or to have you complete a specific task. They want their lawyer to try to help them achieve their business goals while minimizing legal risk. You should focus your inquiry on truly understanding their business goals and product/service offering, even if you don't readily see the relevance in doing so.
- The entrepreneur will feel the most at ease during and after the initial interview if they feel like you are organized and confident. One way to signal confidence is to carefully explain the procedure – what will happen during the interview, what happens after the interview, when can they expect to hear back?
- Entrepreneurs have many things going on at once, the most important being getting their product/service offering completed, finding funding, and building a team. Therefore, you should keep your client informed of what is happening with your project on a regular basis and if you believe you need information from your client, shorten the list of questions and give them plenty of time to respond.

## CHAPTER 4: COMMUNICATING CLEARLY, PROBLEM SOLVING, PLAIN LANGUAGE WRITING

*"One day I will find the right words, and they will be simple."*

*~Jack Kerouac, The Dharma Bums*

### LEARNING OBJECTIVES

- Craft organized, brief and complete client emails and memos
- Predict risk areas and revise poorly crafted clauses or a document to simplify and clarify language

### ADDITIONAL READINGS AND PRE-WORK

In addition to this chapter, please:

|                    |   |
|--------------------|---|
| Read               | <ul style="list-style-type: none"><li>• <a href="#">Expert Advice on Effective Emails for Lawyers: An Interview With Nancy Harhut</a>, Attorney at Work, Feb 2022</li><li>• <a href="#">The Guide To Writing Great Emails That Win You Clients</a>, Double Your Freelancing (especially the section "The email line that repels clients")</li><li>• <a href="#">10 Business Email Phrases to Stop (&amp; Start) Using With Clients</a>, Hubspot Blog, November 2021</li><li>• <a href="#">We Read 150 Privacy Policies. They Were an Incomprehensible Disaster</a>, New York Times, June 2019</li><li>• <a href="#">The Case for Plain Language Contracts</a>, Harvard Business Review, January-February 2018</li><li>• <a href="#">Design Thinking and Visual Advocacy for Lawyers</a>, Faegre Drinker, 2021 (pages 90-94)</li></ul> |
| Watch              | <ul style="list-style-type: none"><li>• <a href="#">If It Is To Be Said, So It Be, So It Is.   Succession</a></li></ul>   |
| Hot off the Press! | <ul style="list-style-type: none"><li>• Onion Amicus Brief in <i>Novak v. City of Parma</i>, Oct 2022 (pp 15) (Camino)</li></ul>  |

## COMMUNICATING CLEARLY AND BEING A PROBLEM SOLVER

*Because we do so much writing as lawyers, in this clinic we will focus on writing clearly rather than in legalese, and solving problems rather than merely identifying legal issues.*

Lawyers can take anything and complicate it – why? Often, we are trying to cover all of the risks, but also we sometimes think that we need to sound “smart,” like a lawyer. After all, lawyers are professionals who need to present themselves in a certain way.

When we overly complicate things, our message can get lost. Our clients may leave a meeting or read an email or memo from us and think: what in the world was that??? Or, that was so long - it put me to sleep or I stopped reading it or I took one look and closed the email or file. And they may be embarrassed to ask for clarification or for something more digestible, leaving our advice not able to be acted upon.

It is important to communicate clearly and to continue honing our skills in this area, since its often not as simple as it sounds. Because we do so much writing as lawyers, we will focus on writing clearly, which can help in your regular communications with businesspeople. Many of the skills we are talking about in this module will also apply to oral communication, like interviews, meetings, and presentations.

Also, in this clinic, we want you to start practice solving problems, rather than merely identifying legal issues. This is where your true value as a legal advisor to clients comes to life.

A problem solver:

- helps the client to accomplish their goals
- should not merely raise or identify issues
- should not shift the problem back onto the client

## TOP NON-LEGAL SKILLS

*Communicating clearly and leadership capabilities are top non-legal skills that legal hiring managers are looking for.*

Leadership capabilities and communication skills come in as number 1 and number 4, respectively, in top non-legal skills that hiring managers are looking for.

*In a 2020 Survey of Chief Legal Officers done by the Association of Corporate Counsel, the top non-legal skills Chief Legal Officers seek to develop in their law department are:*

- 1. Leadership capabilities**
- 2. Business management**
- 3. Executive presence**
- 4. Communication skills**
- 5. Emotional intelligence**

Also, people are busy. Entrepreneurs, the businesspeople we work with in-house, leaders, and other lawyers are inundated with emails and items on our to do list. It is helpful to remember that others are juggling many things,

**\*\*SELECTED EXCERPTS\*\*\*** ELC Coursebook: *Law for Startups Through an Empathetic Lens*  
(contact Laura Norris, [LNorris@scu.edu](mailto:LNorris@scu.edu), for a full copy of the book)

just like you are juggling many intense classes, job searches, and priorities in your life like family and friends. While we may wish we were less busy, we can bring value to our clients by recognizing this fact and trying to make things a bit easier for our clients. After all, being a lawyer is a service-oriented business and we want to bring our clients value that is efficient and that solves their problems, rather than creating more headaches for them to deal with.

---

#### HOW CAN WE COMMUNICATE CLEARLY?

*Communicating clearly improves understanding.*

Some of the main ways we can communicate more clearly include:

- Be concise
- Know your audience
- Organize your points
- Use informative headings, bullets, numbers and/or tables
- Use Plain English (sometimes called “plain language”)
- Listen to the question that is asked

These methods improve understanding.

---

#### HOW CAN WE BE PROBLEM SOLVERS?

*Being a problem solver demonstrates leadership capabilities.*

Some of the main ways we can be problems solvers include:

- Understand the business problem, opportunity or goal
- Avoid saying no to a client’s proposal (unless illegal)
- Identify options (use Design Thinking)
- Develop pro’s and con’s of each option
- Make a clear recommendation

These methods demonstrate leadership capabilities.



## USING THE “BACE” METHOD TO WRITE BUSINESS EMAILS

*Use the BACE method to write business emails, which is different than IRAC and is a practical way to put communicating clearly into everyday use. Make sure to use plain language!*

One of the things you will be doing in this clinic is writing emails to your client. Usually, emails will not be used to deliver advice (that is what you will do in your memo), but sometimes they will. And lawyers who advise businesses often don't write legal memos, but instead use emails to deliver advice. Instead of writing out a long memo style document into an email, we have developed a method called “BACE” to help you communicate legal advice clearly and concisely.

This method is quite different from IRAC, which leads with the legal issue and winds through long explanations before getting to the conclusion. Instead, BACE flips this into something actionable and leads with the conclusions and recommendations.

The BACE method follows this format:

### B = Bottom Line

- summarizes your recommendation

### A = Ask

- tells the reader what they need to do upon reading your email

### C = Conclusions / Recommendations

- the conclusions and recommendations you reached after doing your analysis

### E = Explanation

- how you arrived at your conclusions or recommendations

Your writing using the BACE method should always use plain language to make it easier to read. See more about using plain language below.

## PLAIN LANGUAGE

Almost everyone thinks that writing in plain language is easy. But it's not. It takes work. And when you are working in the ELC on your client projects, which is something real that is being delivered to a real client, we want you to really practice these skills. After all, you aren't simply turning this paper in for a grade, you are helping real people with their real challenges.

### WHAT IS "PLAIN LANGUAGE"?

*Plain language is a communication that is clear, concise, and precise.*

According to Ginny Redish's book *Letting Go of the Words*, the goal of plain-language is a communication where users/customers can:

- Find what they need (**intuitive**)
- Understand what they find (**understandable**)
- Act appropriately on that understanding (**actionable**)
- Do all that in the time and effort they are willing to spend (**time-efficient**)

### A QUICK GUIDE TO USING PLAIN LANGUAGE

*The number one rule to using plain language is to consider your audience. Two other key how to items: use simple words and make it skimmable.*

Here is a quick guide to using plain language:

|  |   |
|--|---|
| <b>Consider your audience</b>                | Unless your audience is a lawyer (e.g. in-house counsel) no footnotes, do not cite to cases or codes, don't refer to "courts," "splits in jurisdiction," etc. → Just say "the law is" |
| <b>Simple words</b>                          | No legalese/other jargon (unless you define/explain it or unless everyone in your audience understands the jargon).   |
| <b>Lead from the top → make it skimmable</b> | <ul style="list-style-type: none"><li>• Get to your bottom line as quickly as possible</li><li>• Use informative headings</li><li>• Use bullets, numbers, tables</li></ul>            |

HOW TO KNOW YOUR AUDIENCE

*Your audience is interested in different things depending on who they are, and their point of view.*

For example (in light blue shading are audiences you will encounter in the ELC):

| Audience  | Interested in   |
|---|---|
| <b>Startup Founder / CEO</b><br>(AKA your client in the ELC)                | Getting financing<br><br>Building and launching their product and business without spending too much money<br><br>Understanding the balance between the benefit to the company is realizing from the deal vs. the potential downside risk |
| <b>Your boss</b><br>(AKA your supervisor in this clinic)                    | Knowing where you are in your projects and when you need help   |
| <b>Your coworkers</b><br>(AKA your teammates in this clinic)                | Knowing how best you communicate and work with others<br><br>Knowing when and where you need help with items you are responsible for  |
| <b>Your department</b><br>(AKA the class in this clinic)                    | Knowing about your clients and projects and whether their client and project has similar challenges to yours<br><br>Learning from your experiences and knowledge  |
| <b>Professional contacts</b><br>(AKA networking connections in this clinic) | Knowing what you are looking for in terms of career and learning opportunities  |
| <b>Experts</b>  | What specific questions you have for them and what work you have done already   |
| <b>General Counsel</b>  | Understanding the most recent developments in the law relating to the proposed contract terms   |
| <b>CFO</b>  | Understanding the financial exposure if various scenarios play out under the contract, so they can appropriately reserve funds to cover the exposure  |
| <b>VP of Sales</b>  | Identifying only the most onerous contract terms to get the deal done before the end of the quarter   |

---

## WHEN YOUR AUDIENCE IS VARIED

*When your audience is varied or if you are in doubt about what your audience is interested in, putting yourself in the shoes of an average reader/listener can be a good tactic.*

Ways to do put yourself in the shoes of an average reader/listener include:

Ask questions of  
your audience

Try non-linear  
thinking (e.g.  
mind-mapping)

Ask yourself:  
what's my point?

Build a  
terminology list to  
identify jargon

When editing /  
writing use a plain  
language checklist

PLAIN LANGUAGE CHECKLIST

*When writing and editing, use a plain language checklist to move from legalese to plain English.*

In this clinic, we expect you to peer edit your teammate’s work to ensure you are using plain language. Start with readability and move onto more structure and nuance.

|                             |  |   |
|-----------------------------|--|---|
| <b>Words</b>                | <b>1.</b> Plain words and lean phrases                                 | <ul style="list-style-type: none"> <li>• Change –ion words into verbs</li> <li>• Use the active voice</li> <li>• Rephrase wordy construction</li> </ul>                             |
|                             | <b>2.</b> Jargon / legal terms of art explained, replaced or defined   | <ul style="list-style-type: none"> <li>• Cut or reword jargon (see sample words below)</li> <li>• Develop / consult terminology list</li> </ul>                                     |
|                             | <b>3.</b> Definitions minimized and clear / concise / easy to refer to | <ul style="list-style-type: none"> <li>• Use none, if you can</li> <li>• If there is a <u>need</u> to define a term, do not capitalize / use quotes</li> </ul>                      |
|                             | <b>4.</b> Abbreviations or acronyms spelled out                        | <ul style="list-style-type: none"> <li>• Spell these out, unless the reader would already know them</li> </ul>  |
| <b>Sentences / Phrasing</b> | <b>5.</b> Short and varied sentences                                   | <ul style="list-style-type: none"> <li>• Try to cut each sentence by &gt; 25% (15-25 words per sentence)</li> <li>• Remove all embedded clauses / grammatical complexity</li> </ul> |
|                             | <b>6.</b> Effective bulleted and numbered lists where meaningful       | <ul style="list-style-type: none"> <li>• Check for parallel construction</li> <li>• List should be neat and bulleted</li> </ul>   |
| <b>Structure</b>            | <b>7.</b> Short paragraphs   | <ul style="list-style-type: none"> <li>• Focus on one point per paragraph</li> <li>• Change long blocks of text</li> </ul>  |
|                             | <b>8.</b> Informative headings   | <ul style="list-style-type: none"> <li>• Use an informative heading for each idea</li> <li>• Try to make headings “skimmable”</li> </ul>  |
| <b>Presentation</b>         | <b>9.</b> Effective emphasis   | <ul style="list-style-type: none"> <li>• Remove any use ALL CAPS or too much bold</li> </ul>  |
|                             | <b>10.</b> Numbering minimized / should aid in navigation              | <ul style="list-style-type: none"> <li>• Remove any numbering, unless overall section numbers are being used for a very long printable document</li> </ul>                          |
| <b>Context and Fairness</b> | <b>11.</b> Framing the context   | <ul style="list-style-type: none"> <li>• Orientate the reader</li> <li>• Consider balancing rights / responsibilities</li> <li>• Consistent tone / terminology</li> </ul>           |
| <b>Overall</b>              | <b>12.</b> Overall length  | <ul style="list-style-type: none"> <li>• Try to cut down the overall length by at least 50%</li> </ul>  |

SAMPLE OF WORDS TO USE INSTEAD OF LEGALESE

| Legalese                 | Plain language                            |
|--------------------------|---|
| accordingly              | so  |
| aforementioned           | [omit], that, these, previously mentioned |
| at the present time      | now                                       |
| concerning the matter of | about                                     |
| due to the fact that     | as, because                               |
| during the time that     | while                                     |
| establish                | set up, create, form                      |
| for the purpose of doing | to do                                     |
| the law provides that    | the law says                              |
| whereas                  | [omit]                                    |

## EXERCISES / HYPOTHETICALS:

### WRITE A STATEMENT OF FACTS

Try writing your statement of facts on for three audiences:

1. Another law student / lawyer
2. A high schooler
3. A 5 year-old

### DON'T KILL THE DEAL

Your client, Cellsell Inc., has come to you to assist in putting together an agreement with Semiman Ltd., one of the biggest Chinese manufacturers of silicon-based solar cells. Cellsell is a privately-owned new solar startup, who has so far been manufacturing its solar cells at CSU's research facility where the technology was first developed. However, now Cellsell needs to move to a larger manufacturer to begin ramping to production volumes. The CEO of Cellsell, Raj Rupa, has come to you, asking you to be the lead negotiator to engage with Semiman to get the manufacturing deal done. You contact the general counsel of Semiman, and start investigating the company on your own. You find out the following in your investigations, and you are starting to wonder why Raj is contracting with Semiman in the first place.

1. Semiman recently made headlines in the legal world because a German solar firm (a customer of Semiman) filed suit against Semiman alleging that Semiman employees stole its trade secrets and disclosed them to other solar companies in China. The case was settled confidentially weeks after the lawsuit was commenced. This is a big red flag; what if Semiman does not properly handle the trade secrets of all of its customers?
2. The Semiman CFO has said that for Semiman to do business with Cellsell, Cellsell must perform a credit check, whereby Semiman will review Cellsell's confidential financials. Semiman refuses to sign an NDA before the financial review. Cellsell would need to disclose confidential financials to Semiman before any confidentiality provisions are signed.
3. Semiman is interested in potentially investing in Cellsell. Before any deal is put to paper, Semiman requires that Cellsell engineers come to China for a face-to-face investor pitch. Again, Semiman is not willing to sign any NDA.
4. Semiman sent you its standard form of manufacturing services agreement. They have stated that although the "business terms" are negotiable, the "legal terms" cannot be modified. There is a clause limiting Semiman's liability to one million US dollars (Cellsell's liability is uncapped), and the agreement has a choice of law and venue of the People's Republic of China.
5. The prices Semiman charges for its manufacturing services are thirty percent lower than any of the other manufacturers that could be an alternative for Cellsell.

Before Cellsell gets too far down the road with Semiman, you feel like you must send an email to Raj!

Please draft the email.

## TAKEAWAYS

### **Communicating Clearly and Plain Language**

- Use the BACE method to write business emails
- Use plain language basics: consider your audience, use simple words and make it skimmable
- Be a problem solver by identifying options, pros and cons and clear recommendations
- Don't kill the deal!

## WHAT WOULD THE ENTREPRENEUR THINK?

- Entrepreneurs want their lawyer to be proactive in suggesting solutions to deal with legal risk, so thinking of ways to alleviate risk shows your value.
- Entrepreneurs are busy people, with many different decisions on their plate at any given time. Stopping to read and understand a lengthy written piece is not something they have time to do.
- Entrepreneurs are risk-takers by nature; legal risks may not be unacceptable risks when weighed against all of the other risks they are incurring.