

Hapless Harvest
Initial Client Interview
Instructions for Jan Hapless

You are Jan Hapless, a thirty-five year old restaurant manager, seeking representation in a possible law suit against the health food grocery store, Harvest Plenty. Ever since slipping and falling on some liquid in your local Harvest Plenty store two months ago, your life has felt like a nightmare. Your knee and your back were seriously injured in the fall. The knee was excruciating at the time but healed relatively. Your back – twisted and strained in the fall – has become increasingly excruciating. You are scheduled for surgery on your back in a few weeks. Frankly, you might have waited a bit longer for the surgery, but the surgeon said he was ready and you wanted to do it while you still had health insurance from your job.

The accident couldn't have come at a worse time – just when you were starting to get things together after your divorce. Four or five years ago, your marriage to your high school sweetheart began to sour. Maybe it was your spouse turning 30. Maybe it was because s/he was ready to have children and you were not.

Maybe the marriage suffered because you started slowing down physically. You had periodic episodes of back pain, which typically eased after several days. Your doctor attributed the back problem to high school football injuries and excess weight. He said it wasn't serious: just muscle spasms, no significant disc involvement. He said that your beer/couch potato belly was straining your back and recommended diet and exercise.

Whatever the cause, marital squabbles escalated to several really ugly scenes and your spouse left. That was more than three years ago; the divorce was finalized the next year. While you hated being alone, it was a relief not to be in constant conflict.

After the divorce, you lost a great deal of weight, joined a gym, and started working out with a physical therapist and personal trainer. At the time of the accident, you were in top physical shape. Six weeks earlier, you had begun a more ambitious weight training regimen, proving that any earlier back troubles were long gone. (You hadn't had ANY back problems for more than two years.) The weekend before the accident, your trainer at the gym commented on your great progress in building strength. Your newer healthy eating habits and regular running schedule were keeping your weight down. You had just started dating again – no one special yet – but you were “out there” and confident about finding someone.

You had been a loyal customer at Harvest Plenty, even though it was a bit expensive. Ironically, your appreciation for its healthy foods has ruined your health and well-being. You had come to know the produce manager and the fellow behind the fresh fish counter.

On the day of the accident, you went to Harvest Plenty for your weekly grocery expedition. You had been in Aisle Five at the small inset refrigerated tofu section, spent some time reading

a casserole card there, went back to Aisle Four to find an Asian sauce, and then returned to Aisle Five. You picked up a tofu package, checked the expiration date, and the next thing you knew you had slipped on a wet puddle on the floor.

You vaguely remember hearing some commotion - a mother yelling at her kid – a little bit before the fall. Frankly, you try to tune out the parenting dramas that seem to happen so often in grocery stores. You know from friends with kids that it isn't easy: even great kids act out and great parents yell. To avoid embarrassing anyone you make it a practice not to look up and stare when that happens. You think the mother and kid had already turned the corner to the next aisle when you fell because you don't remember seeing them.

This time, you were the one embarrassed as you landed in the middle of the aisle, flat on your back, writhing in pain. All of a sudden, lots of people were all around you. You were soaked, probably in shock. It's hard to remember exactly what happened when. At some point, you remember that a store employee – a young guy wearing a white apron and store hat – knelt down and said: "I'm sorry I didn't get this right away."

You don't know exactly what had spilled – undoubtedly some type of juice because Aisle Five is the juice aisle – beyond the tofu refrigerator inset. You had seen spills there before, probably because they jam an amazing variety of exotic juices on those shelves (one of the reasons you used to like the store).

The spill was wet and sticky, yellowish or light orange, but you didn't see that when you went down. The floor was generally dirty with food bits and sticky spots. The lighting wasn't great. You were just walking and shopping. Whatever it was, you slid through the liquid puddle, and your body covered most of it when you fell. (You don't remember them taking your clothes off in the hospital. When you washed them much later, they came out with yellow-orange stains.)

Eventually, they took you out on a stretcher. The ambulance took you to the emergency room. There were so many forms to fill out and you were all alone. The excruciating level of pain in your knee took you by surprise. Your back was wrenched and twisted in the fall and also hurt terribly, but you had experienced back pain before. At the time, you were hoping that the bed rest required for the knee would also work for your back, as it had years ago.

The doctor said your knee was just badly sprained. While terribly painful at first, it was mostly healed after two weeks, as predicted. However, your back steadily worsened. By the time the knee was healed, you couldn't get up without pain. You spent two more weeks lying down. Physical therapy proved ineffective. That is why you agreed to have back surgery, scheduled for two weeks from now. The doctor estimates a four month recovery period from the surgery. You work as a senior restaurant manager in an upscale restaurant. While you don't regularly wait tables or tend bar, you are often required to fill in as waiter or bar tender to expedite

service. Your salary is \$60,000 per year, or \$5,000 per month. Your boss will hold your job and pay your health insurance benefit for four months after the surgery, but will not pay you for the time off. (Healing the knee and two weeks on your back used all up your sick leave.) You have no disability insurance. Right now, you have about \$10,000 in savings and a little bit more in a CD, but you hate the idea of spending that. Still, you have to pay rent, buy food, and probably pay someone to help with housework during your recovery.

The worst of this is feeling fragile at the age of thirty five. It was bad enough facing your empty apartment while your knee recovered. The aftermath of the back surgery will be worse, and far longer. You are worried about chronic back pain after the technical recovery period. How will you start dating? Who will want someone with an old person's body? How will you stay fit, play ball with your buddies or, someday, with your kids – if you ever have kids?

It is ironic that the people at a health food store don't seem to care about your health. No one from Harvest Plenty ever called to see how you were doing. They could have brought you groceries, for heaven's sake. You wouldn't set foot in the store now. They care more about profits than their customers' safety. You want to sue Harvest Plenty because of the pain and loss they have caused you, and so that this won't happen to anybody else. You want to teach Harvest Plenty that they have to make the store safe for simple grocery shopping and that they should treat their customers better.

You are lonely, scared and angry.

You are about to meet with an attorney who was a law school classmate of your boss's wife. She said the attorney was one of the smartest in the class, and has built an excellent reputation for plaintiff's personal injury work. Your initial interview with the attorney is about to begin.

Role Play “Acting” instructions:

In adopting a persona/personality for this exercise, imagine yourself to be either:

- Someone reticent with information – reserved, perhaps shy (yet feeling stress). You might even be embarrassed at current circumstances. In other words, you will not volunteer information or telegraph your state of mind. Yours would be the clenched jaw, little slips about what you might be feeling, but nothing obvious unless the lawyer explores it. Your lawyer will have to work to get you to communicate what you are thinking and what is bothering you.

OR

- A “real talker” providing a great deal of information very quickly, perhaps even more details than in the fact pattern, but not in perfect sequence or logical order. Do not be calm. Be agitated. Talk about the fact that you are stressed. Be loud in asserting that

you have done nothing wrong. Be emphatic. Play this one a bit “over the top.” Your lawyer’s job will be to calm you down, get the sequence and the facts straight, elicit careful details, and make you feel that he/she understands your dilemma.