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Research Guides

TRANSACTIONAL RESOURCES: RESEARCH TOOLS FOR DOING A DEAL

I. INTRODUCTION	1
II. REFERENCE MATERIALS	2
III. TREATISES & DRAFTING GUIDANCE	2
IV. FORMS & CHECKLISTS	5
V. NEWSLETTERS & BLOGS	7

I. INTRODUCTION

While many legal research resources have traditionally been geared toward litigation-based areas of practice, helpful print and online research tools are now increasingly available for transactional lawyers as well. Several types of research tools can assist the transactional lawyer forming a business or doing a deal. Business and finance dictionaries and glossaries clarify unfamiliar terms. Practitioner-oriented treatises examine the legal and business context of transactions. Drafting guides describe various types of agreements and clauses and explain their usage. Sample documents (“forms” and “precedents”) facilitate the drafting process, and checklists ensure that all steps in a transaction have been completed. Finally, newsletters and blogs keep transactional lawyers up-to-date on legal and business news and recent deals.

Bloomberg Law, Lexis Advance, and Westlaw all offer transactional pages or interfaces that are convenient starting places for the transactional lawyer. These pages collect relevant primary and secondary sources, along with forms and checklists.

- On Bloomberg Law, the *Corporate Transactions* and *Practical Guidance* pages (found under “Corporate & Transactional” in the Browse All Content menu) include forms, checklists, newsletters, and securities laws and regulations, as well as treatises and drafting guidance.
- On Lexis Advance, *Lexis Practice Advisor* (a separate interface accessible through the tiles to the left of the Lexis Advance Research button) offers a transaction-based view of materials in a variety of practice areas such as Business & Commercial, Corporate and M&A, and Capital Markets & Corporate Governance. Each practice area is broken down into detailed topics, and associated forms, practice notes, cases, statutes, regulations, and secondary sources are presented when the user selects a topic.
- On Westlaw, the *Business Law Center* (formerly known as Westlaw Business) provides quick access to administrative materials from the Securities and Exchange Commission

and the Financial Industry Regulatory Authority, securities filings, forms and precedents, abstracts of recent transactions, and business news. In addition, *Practical Law* (discussed further under Forms & Checklists below) makes sample documents easily accessible by practice area, resource type, and jurisdiction. Practical Law also includes a helpful glossary and tools for comparing the laws of different states and countries on a variety of topics, such as corporations, executive compensation, and private equity.

More information about selected specific materials by type is provided below.

II. REFERENCE MATERIALS

The following dictionaries and glossaries can help the transactional lawyer better understand legal, accounting, business, finance, and investment terms.

Erik Banks, *The Palgrave Macmillan Dictionary of Finance, Investment, and Banking* (Reference HG151 .B2698 2010). This dictionary explains the formal terminology of finance, as well as colloquialisms and acronyms, including both U.S. and many foreign terms. Includes charts, graphs, and formulas where relevant.

John Downes, *Dictionary of Finance and Investment Terms*, 9th ed. (Reference HG151 .D69 2014). The extensively revised ninth edition of this dictionary covers stocks and bonds, banking, economics, real estate, corporate finance, tax, and mutual funds, including many terms resulting from the recent financial crisis. Abbreviations and acronyms are spelled out in an appendix.

Jack P. Friedman, *Dictionary of Business and Economics Terms*, 5th ed. (Reference HF1001 .F78 2012). Defines thousands of terms used in accounting, taxation, business, marketing, real estate, and statistics, among other topics. Abbreviations and acronyms are spelled out in an appendix.

Michael Singer, *The Pocket MBA: Everything an Attorney Needs to Know about Finance* (vols. 1-3 in one volume at KF1428 .A68 S55 2005). A collection of finance and accounting terms for attorneys compiled from a weekly newsletter of the same name. Each term is briefly defined, and its real-world usage is then explained in plain English (and often in a lighthearted tone).

Practical Law Glossary (on Westlaw; found under “Additional Resources” in the right-hand column on any Practical Law screen). This glossary provides straightforward, plain-English explanations of legal, business, and banking/finance terms and jargon. Many entries explain the business context of the defined words and include links to more detailed practice notes where available.

III. TREATISES & DRAFTING GUIDANCE

Geared toward practitioners, these treatises and drafting guides put transactions in context, explain the usage of particular provisions in practice, and help drafters avoid potential pitfalls.

ABA Committee on Negotiated Acquisitions, *The M&A Process: A Practical Guide for the Business Lawyer* (KF1477 .M47 2005 and on Bloomberg Law). Published by the American Bar Association’s Section of Business Law, this book is intended to help the beginning lawyer understand how experienced practitioners actually “do the deal.” It covers ethical issues and the potential roles of the lawyer and offers practical advice on every stage of a deal, from planning and negotiating deals through

post-closing matters. A glossary defines technical, accounting, and legal terms involved in mergers and acquisitions, focusing on terms used in acquisitions of privately held companies.

Kenneth A. Adams, *A Manual of Style for Contract Drafting*, 4th ed. (KF807 .A33 2017). This guide for contract drafters offers advice on effective usage of common contract terms and ways to avoid uncertainty in contract language. Later chapters discuss special issues in drafting amendments and letter agreements. Additional helpful works by Adams, a frequent speaker and writer on contract drafting, include *Legal Usage in Drafting Corporate Agreements* (KF250 .A32 2001) and his blog on usage in contract drafting, *Adams on Contract Drafting* (<http://www.adamsdrafting.com/blog/>).

BNA Corporate Practice Series Portfolios (especially the *Forms of Business Portfolios*) (on Bloomberg Law). This series of frequently updated treatises, written by and for practitioners, covers many aspects of transactional work. Examples include *Negotiated Acquisitions* (Portfolio 61-3rd), *Choice of Entity: Legal Considerations of Selection* (Portfolio 50-4th), *Franchising* (Portfolio 102), and *Initial Public Offerings* (Portfolio 60-3rd). This series also includes guides to organizing and operating under the corporate laws of various states, such as *The Delaware Corporation: Legal Aspects of Organization* (Portfolio 1-5th), as well as *Doing Business in States Other than the State of Incorporation* (Portfolios 84-1st and 85-1st). Portfolios provide detailed analysis, practice tools like checklists and sample documents, and extensive bibliographies.

Robert B. Dickie, *Financial Statement Analysis and Business Valuation for the Practical Lawyer*, 2d ed. (HF5686 .L35 D53 2006 and on Bloomberg Law). Part I of this book offers newer business lawyers and company directors “a practical orientation to the fundamentals of financial statements,” while Part II covers valuation of businesses and value creation. Frequently-used abbreviations, acronyms, and other terms are defined at the beginning of the book. Published by the ABA Section of Business Law.

Lenné E. Espenschied, *Contract Drafting: Powerful Prose in Transactional Practice*, 2d ed. (KF807 .E84 2015). This manual is “intended to serve as a ‘how to’ guide for lawyers new to transactional practice.” It explains the drafting process and offers practical advice on effective contract drafting. This work also includes case studies, exercises (with suggested answers), and a glossary of contract terms.

Charles M. Fox, *Working with Contracts: What Law School Doesn’t Teach You*, 2d ed. (Reserves KF801 .F69 2008). This guide is meant to “provide the beginning transactional lawyer with an operative understanding of the vocabulary and building blocks of contracts.” It explains lawyers’ functions in contract negotiation and drafting, principles of effective drafting, review and interpretation of contracts, and the forms and formalities of contracts, among other topics. The narrative is illustrated with sample provisions and drafting checklists. Also includes a glossary of contracts terms.

Carla Garrett and Hayden Trubitt, *Lawyers Guide to Formulas in Deal Documents and SEC Filings* (on Lexis Advance). This treatise provides a detailed discussion of and drafting guidance on “the use of numbers, formulas and ratios in securities offerings, mergers and acquisitions, debt financing, venture capital, private equity, and intellectual property.”

Getting the Deal Through (on Bloomberg Law and Lexis Advance). An international comparative guide to business deals and disputes under the laws of over a hundred jurisdictions, arranged by topic, from “acquisition finance” to “vertical agreements.” This guide also includes entries on U.S. law.

Summaries of each country's laws are written by practitioners in those countries. Updates and information about trends appear at the end of each entry.

Carolyn E.C. Paris, *Drafting for Corporate Finance: Concepts, Deals, and Documents*, 2d ed. (Reserves KF1428 .P27 2014). This practical guide offers an overview of drafting and interpreting corporate financial agreements. It introduces the parties and commonly used instruments, addresses both accounting and legal principles, and discusses the roles of lawyers in the life of a deal. Appendices include sample documents and a drafting checklist.

Russell M. Robinson II, *Robinson on North Carolina Corporation Law*, 7th ed. (NC Area KFN7613 .R622 and on Lexis Advance). A comprehensive treatise on corporations under the North Carolina Business Corporation Act, from formation through dissolution. Part IX of the treatise includes forms with citations to the relevant sections of the N.C. General Statutes and references to additional official forms to be filed with the Secretary of State's Corporations Division.

Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do*, 2d ed. (Reserves KF807 .S73 2014). This combined textbook and workbook covers the fundamentals of contract drafting through explanation and practical exercises. It begins by translating a business deal into seven contract concepts, and then breaks down a contract into its component parts. Chapters on drafting cover techniques for enhancing clarity and avoiding ambiguity. Later chapters explain the drafting process, how to look a deal from a client's business perspective, and ethical issues in contract drafting. Examples of good and poor drafting appear throughout, and sample agreements are reproduced in the appendices.

M. John Sterba, Jr., *Legal Opinion Letters: A Comprehensive Guide to Opinion Letter Practice*, 3d ed. (Alumni KF250 .D732 and on Westlaw). This one-volume treatise covers all aspects of opinion letter practice, including requesting, receiving, drafting, interpreting, and evaluating legal opinions. The work discusses opinion letters in a variety of legal contexts, such as corporate, commercial finance and banking, securities, and tax, among others. Illustrative sample opinion letters are set forth for each area of law. Additional chapters address elements of opinion letters generally and attorney liability associated with opinion letters. Appendices reproduce guidance and reports from ABA committees, the TriBar Opinion Committee, and the California State Bar. An extensive bibliography of additional works on opinion letters is provided at the end.

Transactional Practical Guidance (on Bloomberg Law). Drafting guides written by attorneys at Bloomberg Law provide detailed overviews of drafting concepts, agreements, and clauses in the areas of capital markets, M&A, banking and finance, and corporate governance. Charts describe the purpose and structure of various provisions and include example clauses, cautionary notes, citations to relevant cases, and information about the popularity of those provisions in practice. This guidance supplements the *Precedent Documents* and *Precedent Clauses* available on Bloomberg Law (see Forms & Checklists below).

IV. FORMS & CHECKLISTS

Sample documents, also known as “forms” or “precedents,” offer a convenient starting place for drafters, and checklists help drafters confirm that all necessary provisions are included and all steps in a transaction are completed. When using forms and checklists, drafters must, of course, tailor the documents to the needs of the client and the specifics of the client’s transaction.

American Law Institute-American Bar Association (ALI-ABA) Forms Library (on Bloomberg Law) includes hundreds of forms drafted by practitioners. The collection can be searched comprehensively or browsed by topic, such as antitrust, banking and finance, executive compensation, mergers and acquisitions, partnerships and non-corporate entities, and securities law. Forms are accompanied by detailed practice commentary.

Bloomberg BNA Sample Forms (on Bloomberg Law) is a collection of forms compiled from Bloomberg BNA publications, such as the *Corporate Practice Series Portfolios*, on a variety of topics, including executive employment and compensation, health care ownership, initial public offerings, intellectual property, negotiated acquisitions, and third-party legal opinions.

Business Law Center Research Library (on Westlaw) provides pre-formatted searches to facilitate searching sample agreements, mergers and acquisitions, private placements, and EDGAR filings. Users can filter results by governing law, SIC codes, law firm, and filer market capitalization, among other factors.

Alan S. Gutterman, **Business Transactions Solutions** (on Westlaw) is a tool for drafting documents throughout “the life cycle of a business,” from planning and launching to business transactions, finance, human resources, compliance, going public, acquisitions, and divestitures. In addition, Part I covers law practice management and development. Each chapter includes an executive summary, commentary and practice notes, master forms and clauses, specialty forms, and checklists.

Jacob Rabkin and Mark H. Johnson, **Current Legal Forms with Tax Analysis** (on Lexis Advance; no longer updated in print at KF170 .R33). This well-regarded treatise and collection of forms includes full documents and clauses, checklists, drafting guidance, and commentary on a variety of transactional (and other) topics, such as joint ventures, corporations, and partnerships. As the title suggests, chapters also provide detailed discussion of the tax background of transactions.

Robert Dick Douglas, **Douglas’ Forms** (NC Area KFN7468 .D682 and on Lexis Advance). Volume 1 of this collection of North Carolina civil practice forms covers business transactions. The forms in this volume address the formation of various types of business organizations, as well as debt-financing, employment agreements, and powers of attorney, among other topics. Notes provide practice guidance and references to sections of the N.C. General Statutes. (Volume 2 covers other areas of civil practice such as wills, real estate, and domestic relations.) A supplement, *Douglas’ Forms: Transactions in Turbulent Times*, includes forms relating to financing (e.g., loans, letters of credit, and financing statements), enforcing and settling claims (e.g., defaults, remedies, and subordination), reorganization and dissolution, and real estate.

Draft Analyzer (on Bloomberg Law). This function, found under “Corporate & Transactional” in the main menu, allows users to compare language from their own contracts or from EDGAR exhibits with similar agreements in EDGAR filings to determine whether the language is “market-standard” and to

find additional precedents.

EDGAR & SEDAR Precedent Agreements (in the Business Law Center on Westlaw) include agreements, contracts, and other documents filed with the U.S. Securities and Exchange Commission and Canadian Securities Administrators. In addition to full-text searching, the precedents can be searched by agreement or clause title, defined term, party name, governing law, industry, and law firm.

William Meade Fletcher, **Fletcher Corporation Forms Annotated**, 5th ed. (Reference KF1411 .F55 2011 and on Westlaw). This comprehensive set includes federal and state forms covering corporations from pre-incorporation through dissolution. It also addresses other forms of business organizations such as nonprofit corporations, professional corporations, and limited liability companies. Chapters begin with “Practice Considerations,” and forms include references to corresponding explanatory material in the *Fletcher Cyclopaedia of the Law of Corporations* (KF1411 .F544 and on Westlaw).

Lexis Practice Advisor (found under the tiles to the left of the Lexis Advance Research button). This transaction-based interface provides model documents from letters of intent through post-closing obligations in a variety of practice areas, including business and commercial, mergers and acquisitions, and securities and capital markets. State-specific business and commercial resources presently include California, Florida, New York, and Texas, with more states to be added in the future. Documents include drafting notes, optional and alternative clauses, exhibits, and checklists. Relevant cases and statutes are also presented. Forms can be downloaded to Microsoft Word for easy customization. Materials are written by attorneys in law firms and in-house counsel.

Model Asset Purchase Agreement with Commentary (KF1355 .M63 2001 and on Bloomberg Law). This work is a comprehensive resource for negotiating and documenting an asset purchase. The model agreement represents a buyer’s first draft of an asset acquisition agreement and provides detailed commentary on each provision from both the buyer’s and the seller’s perspectives. It begins with a fact pattern for the hypothetical deal, and three volumes comprise the sample asset purchase agreement itself (volume 1), along with exhibits, ancillary documents, and appendices (volume 2), and summaries of other countries’ laws for international asset acquisitions (volume 3, print only).

Cyrus M. Johnson, Jr. **North Carolina Limited Liability Company Forms and Practice Manual**, 3d ed. (NC Area KFN7607.5 A65 J643). This manual is intended to “aid the practitioner with the practical aspects of drafting LLC documents” under the North Carolina Limited Liability Company Act (Chapter 57D of the N.C. General Statutes). Volume 1 provides a detailed discussion of the organization and operation of LLCs, along with miscellaneous related issues including reorganization, foreign LLCs, professional LLCs, compensation strategies, and opinion letters. Volume 2 includes three sample operating agreements, reproductions of relevant statutes and regulations, a 50-state survey identifying each state’s code sections governing LLCs, and summaries of key state and federal cases on LLPs and LLCs.

Practical Law (on Westlaw) provides detailed practice notes (including drafting and negotiating tips), annotated standard documents and clauses, and checklists that reflect the positions of various parties. Materials can be searched or browsed by practice area (such as corporate, public and private mergers and acquisitions, private equity), resource type, or jurisdiction. Practical Law includes multiple forms on the same subject, which facilitates finding an appropriate form for a specific business context, *e.g.*, a pro-discloser non-disclosure agreement for an early-stage business preparing to disclose information to a prospective investor.

Precedent Documents & Clauses (also known as *DealMaker Documents & Clauses*) (on Bloomberg Law) consist of example agreements and other legal documents that were filed with the Securities and Exchange Commission. These materials can be filtered by document type, governing law, deal size, law firm, and industry, among other factors. For help searching these precedents, see the ***DealMaker Document Tips*** that accompany the database.

TechAgreements (at <http://www.techagreements.com/default.aspx>) is a database of actual agreements used in transactions in many industries. Agreements can be searched by keyword, company name, agreement type, or industry and are available in rich text format for ease of editing. Note: Searching and previewing documents are free, but full agreements cost \$35 each.

Transaction Checklists & Timelines (on Bloomberg Law) include sample transaction timelines and detailed sample closing and due diligence checklists, along with drafting checklists for specific types of transactions. Transaction timelines include example fact patterns and practice pointers.

Samuel Williston, ***A Treatise on the Law of Contracts: Forms***, 4th ed. (Reserves KF801 .W53 and on Westlaw). The forms in this set illustrate concepts discussed in the classic treatise *Williston on Contracts* and include both transactional and litigation forms. For ease of use, the numbering of the forms corresponds to chapters and sections in the treatise. The forms include practice notes, cross-references to the treatise and other secondary sources, West's Topics and Key Numbers, and tax notes where appropriate. On Westlaw, enter ***Williston on Contracts 4th: Forms*** to find this work.

For information about additional forms sets available through the Goodson Law Library, including general forms sets which include transactional forms, such as *West's Legal Forms* and Nichols' *Cyclopedia of Legal Forms Annotated*, see the research guide to Legal Forms available at <https://law.duke.edu/lib/researchguides/legalforms/>. For additional resources on entrepreneurship, including sample business plans, as well as industry reports and competitive analysis, see Ford Library's LibGuide to Entrepreneurship at <http://guides.library.duke.edu/content.php?pid=151572>.

V. NEWSLETTERS & BLOGS

The following newsletters and blogs can help transactional lawyers stay current on recent deals and other relevant legal and business news.

The Deal Pipeline (on Lexis Advance with a 7-day embargo and at <http://pipeline.thedeal.com/tdd/today/TodaysDeal.dl> to the Duke community) reports on recent deals in the areas of venture capital, M&A, initial public offerings, private equity, and bankruptcy and covers the “movers and shakers” behind the deals. It also provides databases of deals and company information, including both public and private companies. The “Deals” database is searchable by company name, deal type, industry, deal size, and geographic region.

Law 360 (on Lexis Advance and at <http://www.law360.com/> within the Law School network) provides legal news and analysis in many transactional practice areas, including corporate, mergers and acquisitions, private equity, and securities. A weekly “Don't Miss It” feature covers recently announced M&A deals and the law firms acting as counsel on those deals.

Mergers & Acquisitions Law Report (available through Bloomberg BNA's Corporate Law Resource Center) is a weekly e-newsletter that provides news coverage and analysis of legal and regulatory

developments in M&A. Articles can be filtered by law firm, company name, court, agency, country, and industry.

New York Times DealBook (<http://dealbook.nytimes.com/>) provides news and analysis in the areas of mergers and acquisitions, investment banking, private equity, hedge funds, I.P.O./offerings, venture capital, and legal/regulatory.

Practical Law “What’s Market” (on Westlaw) includes searchable summaries of recent deals and filings, arranged by practice area, as well as weekly lists of “featured agreements.” The accompanying practice notes analyze current trends and practices in specific industries.

Wall Street Journal MoneyBeat (<http://blogs.wsj.com/moneybeat/>) covers markets (stocks, commodities, credit, and currencies), deals, banks, private equity, hedge funds, and bankruptcy.

Laura M. Scott 10/2018