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Document Appreciation: Some Characteristics of Legal Documents (and Talking with Students About Them)

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Working paper

Document appreciation:
some characteristics of legal documents
(and talking with students about them)

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What's here

This working paper is about legal documents. It describes (from a practitioner's point of view) some characteristics of documents, makes observations about useful habits of mind for lawyers working with them, and offers a few thoughts for law school teachers who introduce students, in the clinic or the classroom, to these products of the trade. The idea is that we might be inspired by others who make refined objects and help novices learn to make them. Engineers, for example, study bridges. Mechanics examine engines. Artists contemplate sculptures. All step back and consider the objects' variety, features, properties, and fabrication, and the qualities demanded of the maker. For us lawyers, talking generally about the characteristics of the products we make, whether the mention be a simple riff in a classroom discussion, a comment in the margin of a draft, or a more systematic curricular move, may help students build facility with these materials, convey a sense of the imagination and discipline needed to produce them, and reinforce important messages about practice and craft. At least that's the suggestion here; stepping back may provide a step up, and spark deeper understanding and appreciation of the product. This paper secondarily is intended for designers interested in law and legal documents. For designers, who begin a development process with deep study of user and context, the paper provides information about legal materials and some ways lawyers understand them.

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Legal documents

Documents here means corporate documents, not the briefs and interrogatories of litigation. Corporate documents include contracts, company bylaws, prospectuses for selling stock, wills, leases, and, as developed below, lots and lots and lots of other things. These kinds of materials are considerably different than lawsuit documents. Litigation is about conflict and advocacy and one side prevailing. Litigators write about the law, how it applies in the case at hand, and how it should be changed. Much of litigation writing is directed to judges and other lawyers. There are extensive procedural, evidentiary and ethical rules about how the work is done, including the format and style of the work-product. Most of the documents seems to have a short (if important) life, narrow purpose and a small, targeted readership.

Corporate work, on the other hand, is largely collaborative and business-oriented in nature; contracting parties literally write documents together, and a considerable portion of corporate work involves no opposing party at all but instead close interaction between client and lawyer. The work typically involves building and maintenance: an entity form, a corporate structure, a commercial relationship, a board decision, a disclosure. Corporate documents tend to reflect, not describe, law, and the writing is generally directed to audiences other than lawyers. The readers can include not only client executives and employees but also constituents: contract parties, consumers, customers, suppliers, investors, lenders, auditors, regulators, community members.

Documents as products of the trade

Preparation of these documents is at the core of corporate work. David Howarth in a recent book made this assertion:

Clients come to lawyers, as they come to engineers, with problems that they cannot solve themselves. The service both engineers and lawyers provide is the solving of those problems. But more than that, although both lawyers and engineers might solve clients' problems merely by offering advice and guidance, the central instrument for solving problems that both use is a device of some kind – using a physical device in the case of engineers and a document in the case of lawyers....The job lawyers do, from corporate finance to legal drafting, of making things for clients is arguably the most important, and it is the most frequent, job they do.

Documents are the products of the trade. We make them with our hands and we provide them to clients who rely on them. We often charge a lot of money for them. So what can we say about these devices?

Documents are diverse

Lawyers make all kinds of things. They fall into two categories. One category consists of materials created in the name of the client. These come in an enormous variety: entity formation documents, contracts, reports under the securities laws, estate planning instruments, compensation plans, regulatory filings, and so on. Some concern only the client; others bind, are directed to, or otherwise involve multiple parties. The second category are those produced and circulated in the lawyer's name. These may be purely internal: a research memorandum, or a table summarizing findings of a due diligence review. Others are external: a note to a client responding to a question, a cover memo transmitting a document, or a set of slides for a training session. Both types of documents vary widely in terms of format and nature. Some reflect long-standing market and legal conventions or regulatory requirements. Some can be positively brutal; financing and other documents can run for hundreds of dense and technical pages, and be accompanied by multiple schedules, exhibits and appendices. Others are short and informal; a great piece for a client may consist of a handful of bullet points. Surprise! Lawyers write lots of things in lots of styles.

Documents are functional

Documents get work done. They can be highly versatile and functional. Contracts, for example, describe an exchange of value, convey information, allocate risk, enable achievement of desired legal results, document due diligence, help avoid conflicts with other contracts, and serve as practical litigation tools. Public company disclosure filing respond to regulatory requirements and convey signals to markets, the trade, and the public. Company policies and training materials shape behavior and evidence exercise of reasonable care and good faith. Deal diagrams, timelines and meeting discussion documents inform decision-making, facilitate transaction analysis and structuring, and provide tools for project management. E-mails to clients transmit data, convey advice, identify needed decisions, cabin lawyer scope, and assure clients that their attorney is thinking about them.

The next page is suggestive of the range of legal documents and functionalities.

Document diversity, and the fact that lawyers routinely write for others as well as themselves, suggests the importance of facility with language, awareness of how documents create impressions, and a good ear. Document writing is intensely functional; there is a premium on efficiency and leverage. Lawyers ask themselves: how much work can we accomplish for the client in this product?

Things lawyers write in their clients' names

function	examples
Entity create entity	articles of incorporation; LLC and partnership agreements
Governance govern entity	bylaws; committee charters; board advance materials, minutes and resolutions; stockholder agreements
Contract transfer value and create rights	purchase, lease, loan, license, product commercialization, security, merger, settlement, grant, employment, etc.
Conveyance transfer asset or create lien	deed, bill of sale, assignment, mortgage, pledge, gift instrument
Direction provide direction about action	trust, will, health care directive
Disclosure describe entity or program	prospectus; Form 10-K; proxy statement; Hart-Scott-Rodino filing; covenant compliance certificate
Consent provide consent to an action	contractual consent; risk assumption/liability waiver
Operations regulate conduct by employees, suppliers et al	employee handbook; compliance program; code of conduct; website terms; savings, pension, severance, healthcare plans
Question seek information in request of legal result or in anticipation of decision	SEC no-action request; director and officer questionnaires
Communication communicate information to varied constituencies	press release; annual report; website copy; summary plan description for employee benefit plan
Advocacy communicate position to government or public	response to SEC comments; submission in rulemaking process/investigation
Assurance provide assurance to third party	officers' certificate at closing; compliance certificate to lender; memo to auditor re accounting position or response to management letter

Things lawyers write in their own names

function	examples
Analytical analyze a problem	memo; diagram; process map; timeline
Planning set out a transaction, implementation or other plan	timeline; diagram; time and responsibility schedule; sources and uses statement; pro forma
Project management manage a transaction or initiative	meeting agenda; timeline; closing memorandum; e-mail
Advisory provide legal or business advice	memo; letter; meeting handout; e-mail
Teaching educate and train	presentation document; training materials; client alert
Assurance provide assurance to third party	formal legal opinion; memo; e-mail
Transmittal transmit, explain and provide instructions about another document	e-mail; cover memo

Variety and functionality mean that lawyers often have to make up what they create for clients (no civil procedure or court rules!), work at varying levels of formality, and write in a range of voices.

Documents reflect common sense

Clients want to get things done. They worry about what you'd expect them to worry about. Lenders, for example, want to be paid back, and want recourse if they're not. They naturally are concerned about the borrower's assets, other claims on those assets, cash inflows, and cash outflows. Credit agreements accordingly include promises (covenants) about location and deployment of assets, permitted debt and liens, investments of borrower cash, payments to other lenders and to stockholders, financial performance, and fundamental changes in the enterprise. Trademark licensors worry about the risk to their brands created by allowing a third party to market and sell products using their name. They respond by including in their licenses rules about design and sample approval, manufacturing practices, quality control, and marketing. Regulators and transacting parties want to be sure organizations take reporting and contractual obligations seriously. They require representations and disclosures about compliance practices and status, and demand that senior executives sign personal certifications about document accuracy, legal and contractual compliance, and internal processes. Documents may be technical in nature but the underlying logic often makes everyday common sense.

Documents share approaches

Documents reflect shared approaches to similar problems. Loans, licenses and leases, which involve a temporary transfer of one person's asset to another, all include rules about use and return of the asset, and often reporting and inspection rights relating to that asset. Purchase agreements for both prosaic products and public companies include representations by the seller about the object of the sale and rules about what happens if the asset turns out not to be as represented. Joint venture, research and development, and alliance arrangements, as well as nonprofit coalitions, all involve collaboration and joint decision-making. Lawyers documenting these arrangements sensibly adapt board, committee, approval, minute-taking, and other governance mechanics resembling those used by corporations.

The common sense of documents is easy to grasp: what would you worry about if you were lending money to somebody? Or letting somebody make and sell a product under your name? Or buying a business? Or making decisions as a group? Experienced lawyers (like experts generally) recognize patterns when they engage in factual assessment. They scratch their heads and then adapt from situation A a solution for similar situation B.

Documents are grounded in operations and markets

Documents are full of business. For example, they can reflect a process by which a product is brought to market.

Pharmaceutical commercialization agreements describe a complex scientific, regulatory, manufacturing, and marketing path from idea to consumer, molecule to market. Documents can relate to a specific business function. Business process outsourcing arrangements contain detailed operational requirements for functionality, reliability, error response, reporting, and internal controls. Documents can relate to a specific asset. Commercial leases address, often at a granular level, use and maintenance of a building. The degree of detail in a contract often correlates with the degree of interaction and integration between the parties; compare a one-shot sale of commodity goods with one of these commercialization or outsourcing relationships. Documents can relate to a specific business initiative. Board materials set out strategic objectives, actions, metrics, and projections for new products or alliances. Documents can also describe a business generally. Public company annual reports and securities offering materials include page after page of data about a company's strategy, products, marketing, supply chain, customer, competitors, facilities, intellectual property, employees, governance arrangements, business risks, leadership team, executive compensation, share ownership, litigation, accounting principles, auditing relationship and financial performance. Business business business.

Documents describe how things work

Documents often focus on process. They describe how things work, how money flows or decisions are made, or how transactions are executed. Formal contracting is a tool parties use to plan and manage their relationships; scholars describe how that function may be more important than the threat or reality of formal enforcement. Process is everywhere. Development and commercialization agreements include procedures for information exchange and joint decision-making. Trademark licenses contain product and marketing approval regimes. Acquisition and financing documents set out the mechanics of asset transfers and funds flows. Bylaws provide a framework for how boards make decisions. Contracts among stockholders detail voting agreements and information access rights. Nonprofit conflict of interest policies set out procedures for disclosure, discussion, resolution, and documentation of situations where the interest of an executive or director may be in conflict with those of the charity. Employee benefit plans include eligibility, participation, and grievance rules. Equity compensation plans specify procedures for exercise of stock options. Company procurement policies set out vendor selection criteria, decision approval rights, and signature authority. Transaction planning materials such as time-and-responsibility schedules and closing memorandums provide the script for a transaction; in many respects these are documents that identify and help track other documents. Process process process.

Document grounding in operations illustrates the centrality of business knowledge and of sensitivity to commercial and management considerations. Process design requires a capacity for step-by-step analysis and practical communication. (And this characteristic certainly suggests the potential value of bringing a design sensibility to the task, huh?)

Documents follow conventions

Documents are often convention-driven exercises in information presentation. They have distinctive designs and internal mechanics. They use technical language, common devices, and characteristic text structures. For example, there are standard contract tools (representations, covenants), standard forms, and standard contract provisions used across a variety of commercial relationships. Such standardization, as scholars describe, reduces costs and enables a party to obtain the benefit of network and learning externalities, and of greater certainty of enforcement. Documents that diverge in content or form from market standards may affect market reception. On the ground in practice, use of precedents and models can save time, prompt ideas, and acquaint lawyers with market practice, which is good for efficiency, document receptivity, and, in view of the standards relating to professional liability, lawyer risk management. Shared solutions and forms are not unique to contracts; standardization characterizes corporate governance documents and transaction management and closing materials as well. That said, as scholars have noted, while standardization has many benefits, it may retard innovation in both substance and form.

Documents are interrelated

Documents relate to one another. There may be a substantive relationship. A credit agreement may be accompanied by documents relating to collateral, credit support, and relationships with other creditors, and by a range of reporting forms, certificates and notices; those documents necessarily must be integrated and internally consistent. Acquisition agreements have an entourage of ancillary agreements. A document may be unrelated but nonetheless create big trouble under another document. The terms of one agreement may violate the terms of, or a default under one agreement may result in a default under, one or more other contracts. (It's a bad day when that happens.) Documents may relate to provisions in other documents. Conditions in contracts are the subjects of planning documents, governance actions, regulatory submissions, and officers' certificates and legal opinions delivered at transaction closings, and may be noted in SEC filings and press releases. SEC filing and board materials describe governance and contractual documents; lawyers regularly write documents describing other documents. SEC filings and contracts may "incorporate by reference" other documents, with meaningful implications from comprehension, diligence, and exposure perspectives.

Familiarity with standard document components, organizational schemes, conventions, and relations speeds a lawyer's uptake and production. Vigilance is required to make sure the precedent is fitted to the facts. Vigilance (and imagination) is required to make that all relevant documents fit together and co-exist peacefully.

Documents are relied upon

People expect documents to generate desired, predictable, and important outcomes. That is why clients pay lawyers to write them. Lenders rely on security agreements to create enforceable claims against assets. Investment banks underwriting securities offerings rely on legal opinions and diligence memorandums to help establish a due diligence defense to securities fraud liability. Individuals expect that wills and trust instruments will carry out their wishes. Patients expect that family members and medical care providers will follow their instructions about end-of-life care. Asset managers base investment decisions on SEC reports and corporate announcements. Recreation providers expect that releases will protect against liability claims. Litigants rely on settlement agreements to resolve disputes. Businesses, nonprofits and individuals rely on advice memos in making decisions about (and avoiding breach, penalty, and willful infringement claims regarding) structural, transactional, intellectual property, tax and other matters. People make important decisions based on things made by lawyers.

Documents have consequences

Documents have consequences. Contracts require organizations to understand and internalize complex rules. A contract may require a party to monitor, compute, and report on a variety of quantitative measures, and to not exceed (or fall short) of specified levels. It may set out multiple events that require a party to respond or provide notice within a specified period. Or it may provide for multiple trigger events that demand quick and consequential decision-making. Parties can face meaningful strategic and operating challenges when subject to contractual rules, and practical challenges in recognizing and acting on contract-relevant situations. Contracts can also affect accounting results, require external disclosure, and be the subject of antitrust review by regulators. Financial disclosures affect market perception and expectations, set precedents that bound future external reporting, and be the subject of securities fraud claims and breach of representation claims. Compliance program policies, training materials and reports may reduce the risk of prosecution or mitigate sentencing in corporate criminal matters. The broad footprint of documents means one needs to be on one's toes.

Document reliance and consequentiality suggest the importance of competence, imagination, diligence, methodical analysis, precision, and seriousness.

Documents can be visible

Documents aren't just hidden in filing cabinets or three-ring binders or password-protected boxes in the cloud. SEC filings by definition are public, and instantly available upon filing. Public company governance materials are posted on the company website. Articles of incorporation and UCC financing statements are available through the state. Real property ownership, easement, and security documents are retrievable at the county registrar of deeds; recall from Property the importance of "notice." Bankruptcy reorganization plans and antitrust settlement agreements (corporate documents operating in a litigation setting) are filed in open court. Website terms and conditions are on the site. Performance warranties are on the package and safety warnings are on the product. Even internal documents are visible. Board materials and minutes are read by auditors, examined in due diligence reviews by potential acquirers and lenders, and discoverable in fiduciary duty and other litigation. Lawyer work is often on display, which is both sobering for the author and convenient for one looking for examples or precedents as corporate lawyers regularly do. And it's really, really important to bear in mind that documents are read in different contexts at different times by different persons with different agendas; that recognition and spur to thought is a central aspect of reading as a lawyer.

Documents can have a long life

Documents can have a long life. A good portion of the written work is ephemeral in nature (for example, routine documents delivered at a transaction closing) but many documents can have a long and consequential life. Easements on land last forever. Entity creation documents result in legal persons with perpetual life. Bond indentures provide for multi-year maturities and residential mortgages are effective for decades. The same is true of wills, and trusts can remain in place for a century. A commercial lease may have options extending far out in time, and financial disclosure materials provide the foundation for quarter after quarter of subsequent statements and disclosures. The lawyer may be done with the document, but the client will be living with it for a long time.

Document visibility and longevity suggest the importance of competence, imagination, diligence, methodical analysis, precision, and seriousness.

Documents show up in litigation

Speaking of reliance, consequences, visibility, and longevity, we shouldn't forget about trouble that arises after the document is finished. Documents "get litigated" in open court. Contracts are breached, prospectuses are misleading, terms are anti-competitive, remedies are enforced; the meaning or effect of the document is at the center of the suit. Documents can influence as well as be the subject of a litigation; consider the liability limitation, indemnification, choice of law, jurisdiction, venue, dispute resolution, and interpretation rules in contracts of all sorts, or the undertakings contained in a Securities Act registration statement. Documents are discoverable and have evidentiary value. They can have independent significance (a contract) or be offered to prove a factual assertion (the board exercised due care) or be used to impeach a witness (the e-mail is inconsistent with the testimony). They are the subject of evidence rules relating to authentication, best evidence, presumptions, and hearsay exceptions. It's wise for corporate lawyers to learn evidence for reasons in addition to the bar exam.

Documents can be hard

Documents can demand considerable intellectual effort. They may call for great breadth in content knowledge. Comprehension of a pharmaceutical commercialization agreement requires knowledge of scientific terminology and concepts, regulatory processes in multiple jurisdictions, marketing laws and practices in the industry, accounting principles, and patent, trade secret, trademark, copyright, and commercial law. Preparation of financial disclosure documents and employee handbooks requires facility with a massive set of rules. Documents may require pretty serious analytical aptitude. A transaction plan requires identification, analysis and sequencing of multiple organizational, operating, approval, disclosure, notice, and other factors. A piece of advice about the feasibility of a transaction under a set of complex financing instruments requires facility with abstract concepts and forward thinking. Documents may require heavy-duty technical writing. Financing, development and other agreements may have 30 or 40 pages of defined terms involving accounting, scientific, statutory, market, and other matters. Individual defined terms are then incorporated in other defined terms which are used in covenants that cross-reference other covenants which include exceptions and provisos and require computations for specified time periods, a reality that tests abstract reasoning abilities. It's no surprise that contract drafting is the subject of multiple books, articles, and law school classes. And that coffee shops near law firms do a nice business.

Documents make up the record; lawyers have a central role in shaping the record through the documents they create. Document work requires both business knowledge obtained outside law school and the abstract reasoning ability developed in law school. It also requires the ability to consider both the big picture and the (very) little picture.

Documents require stamina

Documents can be long and boring as well as really hard. A critical part of a document may be a business-focused exhibit in the back, or there may be a boilerplate provision that in context has a substantive effect on the deal or otherwise prejudice the client. The lawyer needs to read all the way through. Even one-page documents can require substantial diligence and judgment; the “302” certification required of public company CEOs and CFOs involve broad statements about disclosure accuracy, internal processes, and legal compliance. Formal legal opinions demand intensive behind-the-scenes work; there is a substantial literature regarding the meaning of, and homework required to deliver, one-sentence legal opinions. Documents nicely illustrate why the term “diligence” appears in both case law and professional responsibility rules regarding lawyer duties of care and competence.

Documents are crisply executed

Corporate documents are polished (and often terribly expensive) pieces of writing. Expectations for written work are exceedingly high. Documents ideally are well-designed, logical in organization, crisply written, and aesthetically appealing. There is a premium on accuracy, relevance, and efficiency. Lawyers, clients and counterparties make judgments about a lawyer’s competence based on quality of execution. In all cases, organization, internal consistency, precision in language, and technical execution are paramount.

The emphasis on and expectation of crisp execution demands attention to detail, deep concentration, and commitment to craft. Self-discipline is good.

Documents are written by groups

Documents routinely are the products of collaborative work. Contracts are prepared by at least two and often more parties. Equity and debt offerings involve group drafting by roomfuls of businesspersons, accountants, investment bankers, and lawyers. Corporate policies and employee communications are the product of multiple functional units within an organization. Documents are subject to critical reading, testing, and comment by multiple readers from diverse disciplines at different times. The resolutions adopted at a board meeting, for example, will be an object examined in due diligence, a subject of representations in a contract, and a topic of assertions in officers' certificates and legal opinions; sloppy work gets exposed. The abilities to anticipate reactions, to incorporate comments received in varied forms, to persuade others about language choices, and to communicate in an efficient and practical way, are basic competencies of the trade. Document preparation is often an iterative, multi-participant, multi-layered, multi-draft processes requiring attention to detail, collaboration, patience, and good cheer.

Documents are read by busy people

Documents are read by busy people who have hard jobs and a lot on their minds, and who come at the documents with widely varied backgrounds and needs. Accordingly, core information in documents often appears at the top of the document. Contracts may begin with recitals that describe briefly the background of the transaction and almost always present the fundamental business terms in the first few pages. Prospectuses and offering memorandums for securities offerings include a summary at the beginning of the document. The SEC requires public companies to use plain English. Materials sent to boards of directors before meetings may include a brief overview memo from the board chair or CEO, a one-page "key performance indicators" document that highlights the most salient financial and operating performance data, and an agenda for the meeting that identifies which items are for information, which are for action, and the time allotted for each. Benefit plans are accompanied by "summary plan descriptions" and FAQs. That all said, legal documents regrettably often aren't designed for user comprehension and implementation; clients regularly ask for cheat sheets, checklists, or similar tools. Lawyers who understand and respond to client time, comprehension, and implementation concerns are viewed fondly by their clients.

The pervasive nature of group writing illustrates the importance of listening, influencing, and other collaborative skills, and of comfort with criticism. Writing for busy readers requires empathy and effort. So does creating products that are actually useful for people.

Documents are grounded in law

Since we're lawyers, one supposes we shouldn't forget about law. Law surfaces in various ways in documents. Contracts may break the law; commercial parties cannot enter into agreements that unreasonably restrain trade. Law may concern the existence, content, and form of documents. Statutes, such as the securities laws, compel companies to create specified documents and dictate the subject-matters and form of those documents. Consumer protection laws both require and forbid the inclusion of certain terms in contracts, and impose standards for the organization, style and appearance of the document. Holdings in judicial opinions influence document content and language; liability waivers, for example, reflect cases in which courts define requirements for enforceability, and bylaws for public companies may require amendment following court decisions in Delaware. Law may require use of specific documents to achieve desired results; a seller may need a deed to transfer ownership of real property, and a lender may need a security agreement and financing statement to create and perfect a security interest in personal property. Law may shape entity structure and governance; documents such as articles of incorporation, bylaws, and LLC agreements reflect underlying corporate law requirements. Contracts create legal obligations, but law is seen in contracts in ways going beyond contract law; an acquisition agreement may touch upon multiple doctrinal areas. Compliance with law can be the subject of documents. Acquisition, lending and underwriting agreements include representations and covenants about compliance with a variety of statutory and regulatory requirements, and transacting parties may demand formal opinions from their counterparties' counsel about enforceability of the contract and compliance with relevant legal regimes. Law (the law regulating legal practice) even regulates what counts as legal products, who can produce them, and under what terms they're provided to the client.

Documents are but one part of the story

Contracts and other documents, and the legal rules and processes (such as litigation) attendant to them, are not the only factors affecting how parties structure and manage their relationships. Scholars have shown the centrality of industry norms, reputation, prospects of future business, and other non-legal influences in securing performance and resolving disputes. Handshakes, the way things are done, and future sales are really important, and word spreads quickly about bad behavior. Uncertainty about outcomes, as is characteristic in innovation-oriented external relationships, shapes the use and terms of contracts. Parties blend formal and informal mechanisms in defining, carrying out, and ending their work together. The fact that scholars use words like "braiding" and "scaffolding" in examining contracting behavior is instructive; documents say what they say, and folks may have invested a lot of time in them, and they may look fancy and formal, and people may consult them, but documents aren't necessarily always the only word, or the last one. (And, it should be no surprise that operating pressures and individual personalities, as well as bylaws and charters, shape corporate governance practices.) Understanding that there are multiple mechanisms at work in a given situation is really important to know for those who make and interpret documents for a living.

The multi-headed presence of law in documents demands not only technical subject matter knowledge but also imagination, diligence, and collaborative ability. The interaction of business context and documents reinforces the importance of industry understanding and situational awareness. Humility and empathy are really good there, too.

Document characteristics

To summarize, legal documents:

- are diverse and functional
- reflect common sense
- share approaches
- are grounded in operations and markets
- describe how things work
- follow conventions
- are interrelated
- are relied upon
- have consequences
- are visible
- have a long life
- surface in litigation
- are hard
- require stamina
- are crisply executed
- are written by groups
- are read by busy people.
- are grounded in law; and
- are only part of the story

Documents present meaningful communications challenges. They are complex information products with multiple relevant dimensions.

What people see

One way to grasp the richness of legal documents is to think about what different readers see when they read a document. A new lawyer fresh off the bar exam, for example, may look at a contract and see consideration, conditions, and complete integration. An economist may see responses to problems such as asymmetrical information and moral hazard. A contract theorist may see embedded options. A regulator may see a restraint of trade or a model of compliance. An accountant may see a basis for an assertion on the income statement. An insurer might see a good risk management practice. A litigator may see a smoking gun. A graphic designer may minimal adherence to principles of good typography. An executive may see but one of several factors that influences behavior toward the other party. There's a lot going on here.

What lawyers see

Another way is to think about what experienced corporate lawyers do when they read a legal document. They can move efficiently through the document, explain “how it works” in simple terms, and quickly recognize the implications of a change in concept or language. They see the work the document is doing, understand why it is doing that work, assess the quality of the execution, consider all the potential readers, and look for opportunities to exploit the potential of the vehicle to accomplish good things for their client, whether now or down the road. They think about the impact of the document on their client, and then work to reduce the burden. Similarly, expert practitioners can quickly assess a situation, identify relevant issues and stakeholders, and outline next steps and deliverables. They know where an event will “hit” and can quickly identify documents needed for analysis, planning, and performance. A way of thinking about these abilities is that experts have the stance and habits of mind described above. They have internalized the characteristics of documents; that is, their understanding of the functionality, consequences, and nature of documents may enable them quickly to identify what needs to get done in order to complete the project, how to do it, what documents are needed to get it done, and what those documents should say.

And another way to think about it

The graphic below is a tool we use in a classroom discussion about things lawyers look for when they read a legal document. In many respects it represents another way of describing some document characteristics.

substance	impact	legal craft	technical execution
transaction structure	operational impact	achievement of intended legal results	consistent and accurate use of defined terms
flow of value	accounting implications		
asset ownership	disclosure consequences	reflective of underlying law (consistency/contracting out)	accuracy of cross-references
risk allocations	perception by potential readers (parties, employees, auditors, investors, competitors, regulators, media, litigants, judges, juries)	logical/natural design and organization	consistency between section captions and content
behavioral rules		document efficiency/leverage	
project plan and management		consistency with client and market expectations	correct citation and TOC format and accuracy
events requiring action or permitting exit	divergence from convention or past practice	compliance with requirements relating to form and content	typographical error
conflicts with other agreements	precedent-setting implications	internal consistency (within itself and with related documents)	aesthetic quality
decision-making process	evidentiary implications	anticipation of audit, investigation, or litigation	
		accessibility/operability for the client and other party	
		writing quality	
		consistent voice	

So what do we do with all this?

This paper identifies 20 characteristics of legal documents. A weakness of the articulation here is that it is awfully general; it lumps together e-mails, bond indentures, and closing certificates in a series of broad statements. This would seem to be a rather loosely-bounded genre. The paper also doesn't reflect contract theory, economic, sociological, or literary studies of legal documents; instead, it operates at the practitioner and client levels. The thought here, though, is that consideration of "characteristics" in this manner can have value for law students (and maybe designers) on several levels:

First and foremost, documents are at the core of corporate practice. We read and write them for a living; they are the product that we make and sell to our clients. Identifying attributes is a way to learn about what they do, what they're made of, what experts see in them, how they're made, and why they demand such intellectual effort and careful execution.

Second, naming document characteristics provides a concrete platform for reinforcing messages about legal practice and craft. This is not surprising; one would expect product characteristics to reflect the values and qualities admired (and needed) by their producers.

Third, finding common sense, common concerns, and common solutions in documents may help demystify otherwise intimidating materials and build confidence in the ability to comprehend and work with them; it may also provide an opportunity to explore the nature of professional expertise, of recognizing the familiar when confronting new situations.

Fourth, document awareness (including an understanding of relatedness and consequences) may help students understand what is going around them when they find themselves assigned to a transaction, to understand how their task fits into the larger whole, and to perceive the impact on the client.

Part of the fun – the intellectual challenge and the professional gratification – of legal work comes from being an experienced reader, from deeply seeing a document and all that's going on there. Stepping back and attending to characteristics, whether it be a simple riff in a classroom discussion, a comment in the margin of a draft, or a more systematic curricular move, may help students begin to their own structure on the strange materials they will face in practice and sharpen their sight. A dictionary definition of "appreciate" includes the phrases "to grasp the nature, worth, quality or significance of" and "to judge with heightened perception or understanding." Perhaps this sort of doc talk, along with hands-on engagement with the raw materials, will help deepen student appreciation for the products of their trade.

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