

Offering up a toast to higher-minded dealmaking

I love lawyers. I really do. I don't always laugh at those "75 lawyers in a bus at the bottom of the ocean" jokes. At least I try not to. Some of my best friends are lawyers. No kidding. But I'm very concerned that the deal world has become controlled by ... lawyers.



Equity Line

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What's been happening?

Well, the fact is that the word processor has completely ruined the lives of all business people. Colleagues in the deal world who have more gray hair than I have described a day only 20 years ago where deal terms really were written on the back of an envelope and where a handshake meant something and got things done.

Legal documents, in the period B.C. (before computers) had to be typed and re-typed if they were changed. This had a wonderful, now-forgotten impact: documents were short, to the point and few. Deal principles meant a lot then and you rarely ever went back to the documents. The spirit of the deal was what counted. Then life changed, mostly for the worse.

In the period A.D. (after disk-space), the word processor showed up. Now, tragically, legal documents can be stored, lengthened, extended, strengthened and expanded upon with little more than a few keystrokes. It's like rabbits multiplying, squared.

Documents are created by documents. Deals that once took a small conference room table to close now take two floors and 47 legal eagles. Documents that were invented for past deals are now reused even though they probably weren't relevant to begin with.

You say you're worried about developments in the environmental code of Newfoundland and how it affects your deal? We have a document for that!

Let me create an obtuse problem, heretofore only thought of by legal theorists in a basement at Oxford. Then I'll spend a lot of your money so I can solve it.

Worst of all, this creates an overall environment of mistrust and worry. How can I get screwed on this deal? What really is the meaning of "reasonable best efforts?" *Force majeure* could be when the car wash breaks down with my BMW inside. Let's retrade the deal!!

The retrade has become an art in itself. People don't just do deals anymore, they set them up to retrade them.

"This loophole in the ERISA document referencing a change in the 1937 statute 1743A2-dash-semicolon-ampersand-dot 3 will protect us. We can retrade on that!"

The fact is that legal documents, retrading, covering your derriere from litigation, preparing for litigation and analyzing documents have come to rule the deal world. CYA has become the rule of the day and the value of the handshake has dissipated.

At least it had. Until Sept. 11. The horror of that day has no bounds. However, some positive developments have come from it.

Patriotism in this extraordinary country has soared. We have an unfettered global mandate to eliminate terrorism and our poor airport security system will be fixed. We look at each other differently. Life concerns have changed dramatically. Before Sept. 11, we were upset by bad traffic and the quality of cell phone coverage.

Suddenly, this truly has become a life to live — and higher-minded principles have come back to us as central. This, in fact, is a gift. And as a deal-maker, I hope this

extends to higher-minded business interactions for everyone.

Let's do away with the "gotcha" world, where you know you have an out in the documents and the whole point of the deal seems to be to assess where and when your opponent can screw you.

Let's go back to old-world dealmaking, where two dealmakers sat at a red-checkered tablecloth somewhere and sketched out a vision and the terms of a deal on the proverbial napkin they saved to show to their kids. When they stood up at the end of the meal, they looked each other straight in the eye, shook hands and said "done."

Back then, that meant something powerful! Today, it's often just the start of a great haggle.

Perhaps Sept. 11 has reminded us to focus on the higher-minded days when legal documents were a short tool to symbolize a handshake, not an end on themselves.

That's my toast for 2002 and beyond: "To lawyers, to the value of a handshake, and to higher-minded days."

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