

Commentary

Let's Make a Deal Lawyer

By Ira B. Marcus

Most people think of lawyers as warriors or gladiators. I once intervened on behalf of my daughter Heather's friend, who was brought to tears by a cruel coat-check clerk at an affair. That night I overheard Heather on the phone with a friend. "You should have seen my dad," Heather said. "He was yelling at the woman and stomping his foot. He was acting like a real lawyer!"

As a lawyer, I actually yell very little (and sometimes a whole day goes by when I do not stomp my foot!). I find litigators are much more likely than transactional lawyers like me to raise their voices or engage in histrionics. Why? I suspect it is because my relationship with my adversaries is essentially collaborative.

If I am representing someone trying to buy a business, I will fight hard to get the best price and allocate certain risks to the other side. However, in the end my client wants to buy the business and my adversary's client wants to sell it. If we close, each client will have gotten what he or she wanted, and there may be a celebratory dinner at which the clients and their advisors fete one another. When was the last time you heard of a plaintiff and a defendant celebrating the conclusion of a litigation?

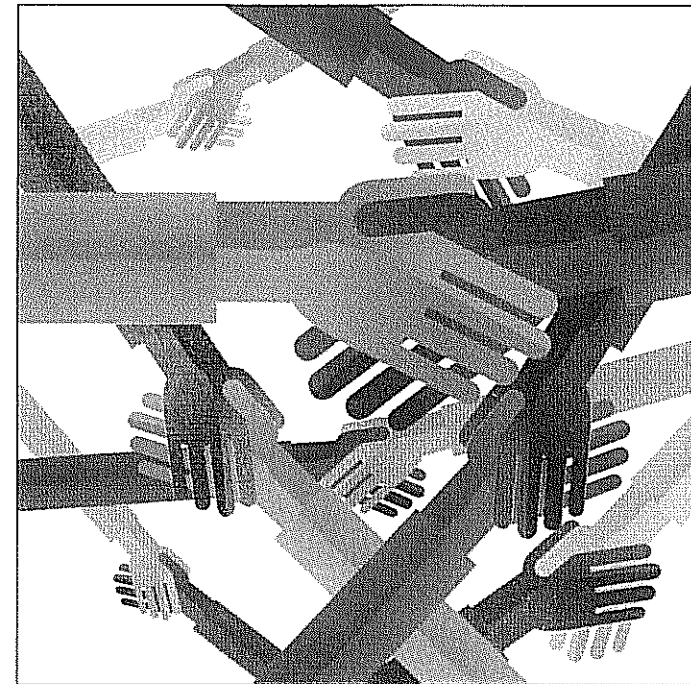
I do not think that my law school education prepared me particularly well

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to be a deal lawyer. Law schools have always been appropriately wary of providing "nuts and bolts" courses. They have rightly reasoned that law school cannot teach students everything they will need to be a lawyer, and newly admitted attorneys can more easily be taught such things as where to file pleadings than the intricacies of the rule against perpetuities (whose repeal in New Jersey made the sleep I lost in law school on its account moot). As a law school teacher myself, however, I have tried to imbue in my students both an appreciation of the roles a transactional lawyer plays and some of the finer points of transactional law that are not so easily taught in the workplace environment. I do this several ways.

First, I review sample agreements with my classes. For example, when we are studying sales of businesses, I distribute the American Bar Association's Model Stock Purchase Agreement. We review the operation and interaction of the seller's representations, the seller's pre-closing covenants, the conditions to closing and the indemnification provisions. Some of the discussions we have about the ethical aspects of "sandbagging" and lying about a client's motivations or options are the liveliest we have.

Second, I arrange for several guest speakers each semester. When we study the present value of a stream of future benefits, my students' eyes may glaze over. However, when a valuation expert later visits the class and discusses a sample valuation report, my students see that the concepts in the course book have pragmatic application. How would the valuation change if a different discount



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rate were used? How might the valuator's assumptions been different if the other side had hired him?

Third, I tell stories about deals I have worked on, people I have known and things I have learned. Some of my stories illustrate deal dynamics and how to help move a transaction toward the finish line. Others show the importance of discerning a client's comparative leverage. Lawyers tend to have big heads, and I admit to puffing my chest out a bit when a student addresses me as "professor." However, I try to tell tales illustrating my failures as well as my successes. It helps keep me humble and it is important for students to understand that, unlike Perry Mason, all real life lawyers sometimes lose.

By my stories, I try to impart what it is like to be a transactional lawyer and a sense of the satisfaction that can be obtained in helping a client accomplish

a desired goal. I also try to impart the sense of camaraderie among us deal lawyers, and the gratification that can come from participating in bar associations. I have read that professional golfers, the fiercest of competitors during matches, will coach one another and share tips between tournaments. From my experience, the circle of sophisticated transactional lawyers I regularly deal with are similar — strong advocates for their clients but, when not adverse on a matter, more than willing to share forms, provide a "sanity check" and role play. It is one of the key reasons I enjoy what I do.

Law school curricula today are diverse, commonly including courses as varied as the legal aspects of global warming and animal rights. To the extent I can, I will continue to advocate that transactional law and practice get its fair share of attention. ■