

Chapter 15

TRANSACTIONAL LAW RESEARCH

Table of Sections

Sec.

- 15.1 Practitioners' Materials and News
 - (a) Practitioners' Materials
 - (b) Transactional News
- 15.2 Transactional Drafting
 - (a) Precedents and Sample Agreements
 - (b) Drafting Guides and Tools
- 15.3 Transactional Law Across Jurisdictions
- 15.4 Specific Areas of Transactional Practice
 - (a) Securities Law
 - (b) Corporate Governance and M&A
 - (c) Banking and Finance Law
 - (d) Intellectual Property Law
 - (e) Tax Law

To this point, we have covered legal research materials without much reference to specific types of legal practice. But as the legal profession has moved toward greater specialization in recent decades, so too has legal information. A wealth of useful tools and resources are now available in many specialized practice areas. One area with a broad array of customized resources is transactional practice.

Transactional practice, as differentiated from litigation practice, primarily involves the handling of legal matters outside of court. A transactional lawyer, sometimes called a business lawyer, may negotiate and draft contracts, prepare wills and create trusts, or structure complex commercial real-estate deals. Transactional lawyers may represent businesses or individuals. And any practicing attorney may also need to research and analyze unfamiliar transactional problems from time to time.

Transactional lawyers represent clients seeking to control risk and avoid litigation. Skills such as researching and reading statutes, regulations, and cases are still of the utmost importance as business

398

lawyers seek to determine the legal issues that will influence their clients' strategies. But business lawyers must also be adept at using specialized research tools in addition to being familiar with the workings of commercial and financial institutions.¹

First, it is necessary for transactional lawyers to be familiar with business jargon. Newer attorneys without a background in business can be overwhelmed by the unfamiliar vocabulary, and even the most seasoned deal lawyer can find it difficult to keep up. *Dictionary of Finance and Investment Terms* (John Downes & Jordan Elliot Goodman eds., 10th ed. 2018) is an inexpensive single-volume paperback dictionary that covers a variety of stock, bond, and corporate finance terms. There are also several free sources for definitions that can be found online: Investopedia's financial dictionary (www.investopedia.com/dictionary/) in particular will work well in a pinch.

Glossaries of transactional law terms are included in specialized transactional research products like Practical Law (Thomson Reuters) and Lexis Practice Advisor, which we will cover in greater depth as the chapter continues. Another sizeable online glossary is available at Investor.gov, a website maintained by the Securities and Exchange Commission to further that agency's mission of keeping the investing public informed.

Legal resources used in transactional practice can also be confusing to use at first. Traditionally, business lawyers have relied less on standard primary and secondary sources than on specialized looseleaf services and practitioners' manuals. Looseleaf services provide access to primary law, its interpretation, and new developments in its applications. Practitioners' manuals include checklists, forms, and how-to materials. Most of these products are still available in print, but the industry is clearly moving toward online-only publication of these frequently updated resources. These online services combine primary law and practice tools. While the services have improved through the years, they can still be difficult for the uninitiated law student or lawyer to use because of the diversity of material they contain and the idiosyncrasies of different publishers' interfaces.

This chapter covers several different aspects of the specialized online transactional research tools now

these platforms, the efficiencies in research and document drafting you can achieve with them, and how to use them to find digital versions of essential print sources in a variety of transactional law practice areas.

§ 15.1 PRACTITIONERS' MATERIALS AND NEWS

Researching topics in transactional law often involves using a specialized online product or interface offered by one of the major legal information vendors. These platforms include primary law, treatises, research guides, practitioners' tools, and news, and are organized by area or topic of transactional practice.²

Thomson Reuters, which owns Westlaw, and LexisNexis have increased the volume and quality of the materials they provide for business lawyers, mostly through acquisitions of existing products. Wolters Kluwer's Cheetah platform incorporates materials from CCH (Commerce Clearing House), a longtime publisher of business information. Likewise, Bloomberg Law features current awareness materials in corporate and other highly regulated areas, including practice centers for a diverse set of fields, such as antitrust, environmental law, health, and privacy and data security.

(a) Practitioners' Materials

Specialized online research products marketed to transactional lawyers tend to be organized by topics that track with the tasks or problems these lawyers face. These products, expensive but efficient, are intended to be one-stop-shops for detailed analysis of common, often-repeated issues in transactional law. While further research is still often necessary, these specialized tools offer analytical material alongside sample business documents and checklists. We focus here on practice notes, checklists, flowcharts, timelines, and other materials that explain specific elements of transactional law practice, and we cover sample transactional documents in the next section of this chapter.

Three major online platforms designed specifically for researching transactional practitioners' materials are Practical Law from Thomson Reuters (us.practicallaw.com), Lexis Practice Advisor (www.lexispracticeadvisor.com), and Bloomberg Law's Transactional Intelligence Center (www.bloomberglaw.com/product/btic/). Each of these is available both as a stand-alone product for law firm subscribers and through their publishers' more general websites under law school subscriptions. While each platform has unique content, they are organized by subject area or have options for easily browsing or filtering by the type of document sought. Illustration 15-1 shows the range of topics covered in one Practical Law area.

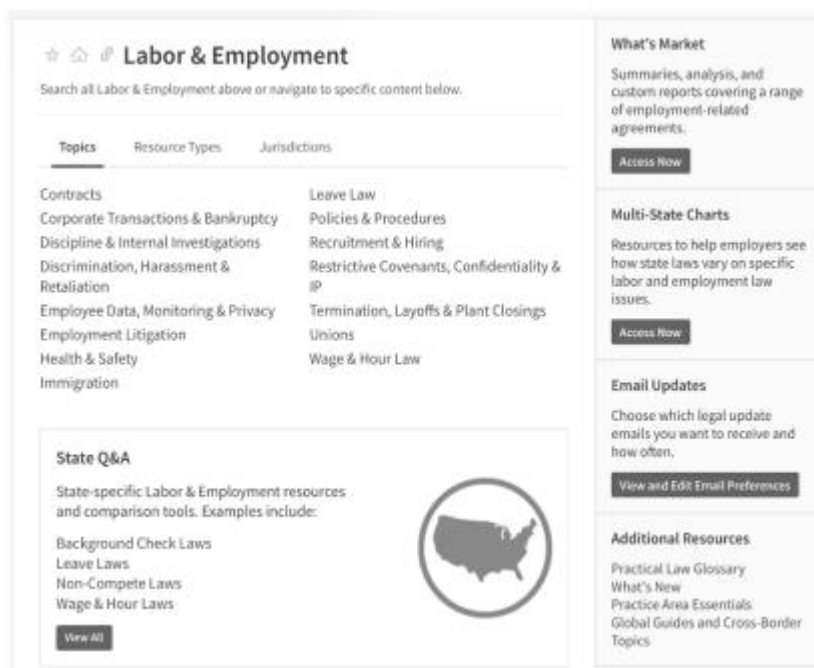


Illustration 15-1. Practical Law's main Labor & Employment screen.

There are other similarities between the platforms. The first is that each publisher relies on experienced editors to produce and curate much of their material. Marketing materials from Practical Law boast more than 230

“attorney-editors” working on the product, while Lexis Practice Advisor claims to have items from over 850 “attorney-authors” and over 320 contributing law firms. Likewise, Bloomberg Law emphasizes the importance of the experts who contribute to the platform.

401

Each platform also provides access to relevant primary law materials, generally statutes, regulations, and regulatory documents. Bloomberg Law’s Transactional Intelligence Center does this directly from an entry on the main page, while Lexis Practice Advisor and Practical Law make use of connections with databases on Lexis and Westlaw, respectively. Thomson Reuters offers a separate product, Practical Law Connect (formerly Practice Point), that allows users to search across both Westlaw and Practical Law at the same time.³

Another similarity between platforms is the ability to conduct research on a large number of narrow, pre-defined transactional law tasks. Within a topical area on each platform, you can select specific events that businesses or individuals are likely to seek representation for. These tasks include, for example, how to register certain types of securities or how to form different business entities.

Each platform allows users to search across all content included. While the browsing functionality works quite well on each platform (dividing materials by subject area, resource type, and jurisdiction), most researchers are expected to search for relevant terms and then filter the results. The search features on each platform are predictive, meaning they suggest resources after the researchers types a word or two. Advanced search, with the ability to select the types of documents being searched, is available on Bloomberg Law’s Transactional Intelligence Center, while the other two platforms allow filtering prior to as well as subsequent to searching.

Finally, there are standard types of documents available on each platform. Knowing the general kinds of documents that you will encounter on these platforms will help make your research more efficient.

Practice Notes. Often, attorneys need quick explanations of complicated topics containing leads to other useful sources. Practice notes are a type of secondary source document featuring plain language explanations of topics in transactional law, written by practicing attorneys or other attorney editors. Practice notes can be shorter overviews or longer, in-depth entries on a narrow aspect of business representation. In the practitioners’ platforms, practice notes contain hyperlinks to primary law, glossary terms, and to other secondary sources on the platform.

402

On Practical Law, practice notes are available for each topic covered, including capital markets, corporate governance, corporate mergers and acquisitions, finance, real estate, and trusts and estates. Notes may be classified in more than one subject area. Practice notes on Lexis Practice Advisor are likewise available on a similar range of topics, and both platforms also provide jurisdiction-specific notes. They also include information about a practice note’s currency and its authorship.

Bloomberg Law’s Transactional Intelligence Center does not contain a type of document explicitly called a practice note, but Overviews are the equivalent product and are can be found with the practical guidance documents.

Checklists, Flowcharts, and Timelines. Business lawyers have long relied on practitioners’ materials that include checklists, flowcharts, timelines, and other similarly detailed, step-by-step materials to assist them in completing transactions successfully.⁴ The specialized transactional law platforms have retained these types of materials, which is a testament to their usefulness, and online publication has improved upon some of their features.

Finding these resources is easiest by selecting a topic or task or by searching for appropriate keywords. On Lexis Practice Advisor, checklists are a distinct document type, while flowcharts and timelines can be found with practice notes or sample forms. On Bloomberg Law, checklists, flowcharts, and timelines are separate document types within the Practical Guidance Library. And on Practical Law, all three types of documents are available under a more generic Checklists category.

Transaction Analysis. Business lawyers can be more than mere advisors on the legal aspects of transactions. Indeed, they must also structure deals that will meet a client’s needs by steering clear of regulatory or tax problems, thereby maximizing value.⁵ It is no surprise, then, that transactional law research platforms contain tools for comparing and analyzing large, complex transactions.

Bloomberg Law’s Transactional Intelligence Center includes Deal Analytics, which comprises two digital dashboards—one for mergers and acquisitions (M&A) and one for equity offerings. These products aggregate data from actual past transactions, and researchers can select the elements of the deal they are interested in,

403

such as the parties to the deal, its size, and when it was approved by regulators. Results are displayed in a table, and each deal has a details page listing relevant information.

Bloomberg Law also offers written analysis of trends in different types of transactions beyond M&A and equity offerings in its In Focus: Deal Points collection. Practical Law maintains a similar database of trends and updates across a wider area of transactions in its What's Market tool. What's Market includes written summaries of individual publicly filed deals and prepared comparisons of deals.

Combinations of Sources. Researchers looking for comprehensive coverage of a practice task can find collections or combinations of sources on all three transactional platforms. Generally, these types of resources contain some analytical material but are most useful because they link to a large number of relevant documents on the same platform. They can therefore serve as a good starting or ending point for research, depending on the researcher's level of familiarity with a topic.

On Practical Law, these combinations of sources are known as Toolkits. The Toolkits database can be searched independently from the rest of the content on Practical Law, allowing for more precise results. On Lexis Practice Advisor, these sources are called Resource Kits. The easiest way to locate them is to browse to the Tools & Resources tab on the Practice Advisor platform.

Bloomberg Law's Transactional Intelligence Center contains what it calls Step-by-Step Guidance serving a similar function to the resources on the other platforms. There is less analytical material but more in the way of links to other sources.

(b) Transactional News

Staying up to date with the latest trends in the market and in industry, changes in the law, and in the businesses relevant to clients is essential in transactional practice. There is no shortage of sources for this kind of news, though the cost, quality, and focus can vary widely.

First, each of the three specialized transactional law platforms discussed in the last section contains news sources. Bloomberg Law News provides in-depth coverage of legal, regulatory, and business developments. Many practitioners have relied for years on its predecessors for current awareness.

Lexis Practice Advisor and Practical Law both have databases in which documents are updated or created when significant events occur. Additionally, *Lexis Practice Advisor Journal* is a standalone periodical that can be found on that platform; *Practical Law The*

404

Journal is the equivalent product on Practical Law. On Bloomberg, there are a limited number of In Focus topic pages that are updated following new developments in regulation or litigation.

Detailed news is also available from other subscription platforms. Wolters Kluwer's Cheetah platform has white papers, news, blogs, and numerous other in-depth current awareness materials, grouped by topical area. The ABI/INFORM Collection (ProQuest) includes articles from business journals and from the trade press, along with reports on market trends. The Deal Pipeline (pipeline.thedeal.com) is a subscription news and data source aimed at lawyers working on complex business transactions.

News articles aimed at transactional lawyers can also be found in online legal newsletter services, like the ones discussed in Chapter 14. A number of sections on the Law360 (LexisNexis) service are particularly relevant to transactional practice, such as commercial contracts, compliance, mergers & acquisitions, and project finance. Corporate Counsel (ALM www.law.com) (www.law.com/corpcounsel/, also available on Lexis) is a more targeted source, with a special section for in-house counsel. Practitioners' magazines such as *The Business Lawyer*, published quarterly by the Business Law Section of the American Bar Association, can also be helpful sources on trends in the law important to transactional attorneys.

Any lawyer working closely or regularly with clients in a particular industry should be aware of the trade magazines or newspapers which those clients read and the associations to which they belong. A lawyer representing banks, for example, will learn of new developments affecting the industry by reading the daily *American Banker*, and will learn from the American Bankers Association website (www.aba.com) about the industry's perspective on policy issues and current events. Being knowledgeable about clients' concerns will help you anticipate their legal needs. Finally, business news reporting, often referencing legal issues, can be found in the *Wall Street Journal* and in the *New York Times* sections on business. The *Financial Times* is also an excellent source with a more global perspective. Those newspapers offer daily newsletters to subscribers, such as DealBook (from the *New York Times*), which includes summaries of business and policy stories. Money Stuff, a Bloomberg newsletter available on Bloomberg Law and compiled by Matt Levine, an attorney and former investment banker, discusses finance trends in an often-amusing manner.

§ 15.2 TRANSACTIONAL DRAFTING

Drafting contracts, wills, or other documents is a core transactional lawyering skill. Efficiently locating sample or form

405

documents and clauses is only one component of that skill, but it is an important one. Adapting tried-and-true contract precedents to new and unique situations is especially common in the profession, as is drafting standard corporate documents such as articles of incorporation, bylaws, or board meeting minutes.⁶ Some transactional attorneys are also called upon to write third-party legal opinion letters or even specialize in the practice, which involves providing assurances to non-clients who are parties to a business deal.

(a) Precedents and Sample Agreements

Form and sample transactional documents have been a mainstay of the business lawyer’s trade for as long as legal publishing has existed.⁷ More recently, databases of documents used in actual transactions, known as precedents, have also become available to researchers. Firms have internal collections of precedents, sometimes called “go-bys,” for the transactions they have handled for clients, and some have even begun selling their precedents (and the tools for compiling them) on the web.⁸ Some forms and sample documents include instructions on how they can be filled out and adopted most advantageously.

While the first stop for locating a sample document or precedent in the firm environment is the firm’s internal document management system, it will often be necessary to explore other sources. As mentioned above, there are two main types of databases available for this kind of research: those for precedents and those for forms and sample documents.

Precedents. The largest source for precedents in a major legal research service is Bloomberg Law’s DealMaker document collection. DealMaker contains over 800,000 documents (and more than 600 document types) used in actual transactions. These documents are culled from SEC filings on EDGAR, including Exhibit 10 filings containing material contracts.⁹ Bloomberg Law offers the ability to search by document type, transaction type, party name, law firm, or

by governing national or state law. For M&A deals or equity offerings, it is possible to specify the size of the deal in the search criteria as well. Illustration 15-2 shows a sample results screen when searching for precedents on Bloomberg Law.

LawInsider (www.lawinsider.com), a standalone subscription database, also queries the EDGAR system for precedent documents. Information about companies, individuals, and transactions is available, and the company provides contract datasets for education and research purposes.

PRACTICAL GUIDANCE

Results for Transactional Precedents

Result type | Documents

Filters Clear All Filters

Narrow by Date

Any

Topic

- Mergers & Acquisitions (4)
- Securities Law (4)
- Employment Law (23)
- Executive Compensation (18)
- Employee Benefits (3)

Show More

Industries

- Pharmaceutical Manufacturing (2)
- Computers (1)
- Real Estate Investment Trusts (1)
- Drug Stores (1)
- Semiconductors & Microchips (1)

SIC Industry

- Pharmaceutical Preparations [2834] (2)
- Unknown Sic [0000] (1)
- Semiconductors & Related Devices [3674] (1)

< 1 - 7 of 7 > Sort by Date Details

Select All Edit Search Create Alert Add to

1. Agreement and Plan of Merger (10/29/2015)

PARTY	Rite Aid Corp, Walgreens Boots Alliance Inc
LAW FIRM	Simpson Thacher & Bartlett LLP, Skadden Arps Slate Meagher & Flom LLP
GOVERNING LAW	Delaware
DOCUMENT TYPES	Merger & Amalgamation Agreements
DOCUMENT SUBTYPES	Merger Agreements
TRANSACTION TYPES	Merger & Acquisition Transactions, Mergers

Notwithstanding anything to the contrary herein, the Parties agree that, for purposes of this Agreement, Parent shall be deemed to have announced plans to enter into any specific Parent Permitted Transaction as a result of having made publicly available a **bear hug** letter, or a tender or exchange, take-over bid or other public offer to acquire all or a controlling interest with respect to a Parent Permitted Transaction.

2. Prospectus (424B3) (10/30/2013)

PARTY	PHARMATHENE, INC
DOCUMENT TYPES	Prospectuses
DOCUMENT SUBTYPES	Prospectuses (Form 424B3)
TRANSACTION TYPES	SEC Filings & Disclosures

20% or more of the aggregate fair market value of the consolidated assets of PharmAthene and its subsidiaries taken as a whole, (iv) any spin-off, spin-out, split-up, carve-out or similar event pursuant to which assets representing 20% or more of either the aggregate fair market value of the assets of PharmAthene as of the Closing Date or the business of the PharmAthene as of the Closing Date will be transferred in one or more transactions or (v) the public announcement of a third party regarding a **bear hug** letter sent to PharmAthene or the public announcement of a third party regarding a tender offer for shares of PharmAthene Common Stock;

Form or Sample Documents. Model forms and sample transactional documents can be found in many print and online sources. Online sample documents tend to be easier for the contemporary researcher to work with than print, as they can often be edited in a web interface or downloaded as a Microsoft Word document. But collections of print forms are useful not only for those without access to online databases, but also for those who wish to quickly browse forms to choose the most suitable one for the task at hand.

Practical Law, Lexis Practice Advisor, and Bloomberg Law's Transactional Intelligence Center all have collections of sample documents and clauses in the subject areas covered in those platforms. These sample documents contain different value-added features that take advantage of the digital medium. On Practical Law, the Standard Documents and Standard Clauses documents include notes for each of the document's major portions.¹⁰ On Lexis Practice Advisor, the Forms and Clauses databases function similarly, and some documents come with alternative clauses that can be swapped in at appropriate points. The Transactional Intelligence Center on Bloomberg Law has, in addition to the DealMaker documents discussed above, model forms that can be found in relevant portfolios or practice treatises. Illustration 15-3 shows a sample letter from Lexis Practice Advisor.

Broader collections of forms, including transactional law forms, can be found on Westlaw and Lexis. The Westlaw Form Finder database and the associated Form Builder tool offer coverage across jurisdictions and practice areas. On Lexis, the Forms database is also organized by jurisdiction and practice area and can be searched and filtered. The sources of model forms on these collections are different, but in both databases the forms cover litigation and transactional law documents, so you must narrow your searches in advance to avoid irrelevant results or filter your results post-search.

Document: Strategic Investor Bear Hug Letter | Actions

Home / Corporate and M&A / Hostile Takeovers & Shareholder Activism / Hostile Takeovers / Document

Go to Proposal repres... 1 of 1 Search Document

Strategic Investor Bear Hug Letter

► Summary

+ Expand all Drafting Notes

Board of Directors
[Target Company]
[Target Company Address]
Attention: [Chairman of Board]
Attention: [Chief Executive Office (if different from Chairman)]

Dear Members of the Board:

[I/We] [am/are] writing on behalf of [the Board of Directors] of [Acquiror] to make a proposal for a business combination of [Acquiror] and [Target]. Under our proposal, [Acquiror] would acquire [all/ []% of the outstanding shares of [Target] common stock for per share consideration of \$[] based on [Acquiror]'s closing share price on [date of letter], payable in the form of [\$[] in cash [and/or] [0.[] of a/ [] share[s] of [Acquiror] common stock. [Acquiror] would provide each [Target] shareholder with the ability to choose whether to receive the consideration in cash or [Acquiror] common stock, subject to pro-rata so that in the aggregate []% of the [Target] common shares will be exchanged for shares of [Acquiror] common stock and []% of the [Target] common shares will be converted into the right to receive cash.] Our proposal [is/is not] subject to any financing condition.

+ Drafting Note

Our proposal represents a []% premium above the [unaffected] closing price of [Target] common stock of \$[] [on date of letter][before market speculation of a possible offer [by us] to acquire Target]. By [many] financial measures, our proposal represents a compelling value realization event for your shareholders.

+ Drafting Note

Illustration 15-3. A form letter available from Lexis Practice Advisor.

Print sources with model forms relevant to transactional law include the large, multi-volume *American Jurisprudence Legal Forms 2d* (1971–date, available on Westlaw). Another comprehensive set is Jacob Rabkin & Mark H. Johnson, *Current Legal Forms with Tax Analysis* (1948–date, available on Lexis), containing checklists, forms, and analytical materials. *Nichols Cyclopedic of Legal Forms Annotated* (1936–date, available on Westlaw)

is a collection of transactional forms with analysis. For sample corporate documents, see *Fletcher Corporation Forms* (4th ed. 1972–date, available on Westlaw). For legal opinion letter forms, see A. Sidney Holderness, Jr. & Brooke Wunnicke, *Legal Opinion Letters Formbook* (3d ed. 2010–date, available on Cheetah). Specialized treatises, such as

409

Lindey on Entertainment, Publishing and the Arts (3d ed. 2004–date, available on Westlaw) are also helpful sources for forms and sample agreements.

(b) Drafting Guides and Tools

Transactional attorneys have many tools at their disposal to help improve their documents. On one end of the spectrum are more traditional print or electronic resources that offer instruction and analysis in the drafting of contracts, corporate documents, and legal opinion letters. On the other end are algorithmic tools for comparing transactional drafts to precedents or model forms or for creating new drafts wholesale using expert systems. Legal research databases have expanded to meet the growing demand for tools of this kind.

Drafting Guides. For students, new associates, or attorneys lacking familiarity with writing in the business law context, popular introductory sources include Charles M. Fox, *Working with Contracts: What Law School Doesn't Teach You* (2d ed. 2008, available on PLI PLUS); Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (2d ed. 2013); and Lenné Eidson Espenschied, *Contract Drafting: Powerful Prose in Transactional Practice* (2d ed. 2015). These books, sometimes used in law school drafting classes or to train new transactional associates, present frameworks for analyzing transactional law issues and offer helpful examples.

More in-depth resources on drafting include Robert A. Feldman & Raymond T. Nimmer, *Drafting Effective Contracts: A Practitioner's Guide* (2d ed. 2007, available on Cheetah), and Scott J. Burnham, *Drafting and Analyzing Contracts: A Guide to the Practical Applications of the Principles of Contract Law* (4th ed. 2016). Another helpful resource is Kenneth A. Adams, *A Manual of Style for Contract Drafting* (4th ed. 2017), which includes commentary, tables of contract language, and samples of properly formatted contract sections.

Resources on drafting documents other than contracts can be found in *Legal Opinion Letters: A Comprehensive Guide to Opinion Letter Practice* (M. John Sterba, Jr. ed., 3d ed. 2003–date, available on Cheetah), and Carolyn E.C. Paris, *Drafting for Corporate Finance: Concepts, Deals, and Documents* (2d ed. 2014, available on PLI PLUS).

Drafting Tools. A variety of new, software-driven tools to aid business lawyers have appeared on the market recently. Some tools allow researchers to compare a document they are drafting against a database of precedents or forms. Others, known as document assembly tools, offer question-and-answer prompts to suggest

410

appropriate language to the drafter. Each of the three transactional law research platforms we have discussed throughout this chapter contains drafting tools.

Bloomberg Law's Draft Analyzer tool, available in the Transactional Intelligence Center, works with documents that are uploaded or typed into its interface. These documents are compared to agreements or corporate documents in DealMaker. Researchers can see legal blackline markup showing how similar their phrasing is to what Bloomberg's software has deemed to be consensus language in similar instances. Consensus language is just that—consensus—and does not represent what is best or most correct, but it may still be useful at many stages of the drafting process.¹¹

Thomson Reuters's Drafting Assistant, which works with Practical Law data, can be used online or with Microsoft Word. For transactional drafting, the Deal Proof tool is its most salient feature. Deal Proof scans a document entered in its system for problems like inconsistent numbering and missing definitions. Drafting Assistant also allows users to work directly with templates or forms from Practical Law.

Lexis Smart Forms, available in Lexis Practice Advisor, is a document assembly tool. This type of software guides a researcher through a series of questions to determine appropriate language to be used in a document. When the user completes the questions, the tool creates a customized draft. Lexis Smart Forms includes explanatory drafting notes as you work through the question-and-answer interview. There are currently only a handful of Smart Forms available, and they are limited to only a few subject areas, including commercial transactions, corporate M&A, and labor and employment.

§ 15.3 TRANSACTIONAL LAW ACROSS JURISDICTIONS

As discussed in Chapter 5, tools like multistate surveys and chart builders can make locating and comparing laws from several states more efficient. In transactional practice, this tends to be a more common task than in some other areas of legal work due to the nature of business and its reach across jurisdictions. Specialized transactional law platforms, therefore, make this kind of research somewhat easier.

Wolters Kluwer's Cheetah platform offers Smart Charts, which allow you to select relevant topics and jurisdictions for comparison. The topics available are more specific given Wolters Kluwer's experience with transactional practice resources. Recent developments in areas of law that change rapidly, like federal tax, can also be tracked through Smart Charts. Results include brief explanations and links to applicable law and to treatises within Cheetah. This information can easily be exported to Microsoft Excel for further analysis.

The Practical Law State Q&A Comparison Tool is more limited in scope than the Cheetah Smart Charts. However, the interface creates comparisons based on a question-and-answer interview, like the expert systems described above. This can be especially helpful in narrowing the range of inquiry, leading to greater precision in the results returned. Information is displayed question-by-question for each jurisdiction selected.

Transactional law practice is notable for the extent to which uniform laws and model acts control policy. The Uniform Commercial Code, enacted in every state, is an obvious example, covering sales of goods, negotiable instruments, bank deposits, and secured transactions, among other things. Other important uniform laws govern trade secrets, agency, and the many varieties of partnerships.

Continuing legal education, or CLE, publications, such as those produced by the Practising Law Institute, are a good way to stay current on multistate transactional law developments. PLI publications are available on its online platform PLI PLUS. Another publisher with significant CLE content related to businesses is the American Law Institute's ALI CLE, formerly ALI-ABA.

§ 15.4 SPECIFIC AREAS OF TRANSACTIONAL PRACTICE

As we have seen, research in transactional law practice areas can be quite different from research in litigation or regulatory practice. However, within transactional practice, legal research sources and methods are quite alike across the different areas of practice. In general, the governing U.S. primary law tends to be statutory and regulatory and exists at both the federal and state levels. There is usually some form of agency oversight. And there are likely specialized online services or platforms as well as print looseleaves from a distinct set of publishers.¹² Finally, if you are lucky,

there is a specialized research guide to help you make use of these resources.

This section presents miniature guides, intended to be illustrative starting points for your research in five areas of transactional law practice: securities law, the law governing corporate governance and M&A (mergers and acquisitions), banking and finance law, intellectual property law, and tax law. Each subsection briefly sketches the outline of primary law on the subject. Key treatises, practitioners' materials, and looseleaf services, as well as online tools for research, are also listed and described. Finally, there are references to guides on conducting legal research on each topic. None of these subsections, however, are meant to be comprehensive treatments of research on the topics.

Transactional lawyers may also practice in areas like trusts and estates or real estate, but these topics do not lend themselves to succinct summaries of available research tools. While there are many uniform laws in these areas, such as the widely adopted Uniform Probate Code, relevant resources vary widely from state to state. That said, state formbooks and practice treatises like those described in Chapter 14 tend to be quite useful in these areas, and practitioners must also be aware of the vast federal regulatory landscape.

Several of the subsections below reference chapters in *Specialized Legal Research* (Penny Hazelton ed., new ed. 2014–date), an excellent, in-depth guide to more than a dozen areas of legal practice. Individual chapters are revised on a rotating basis, so some are more current than others. There are also many topical research guides and bibliographies available on law library websites. The appendix to this book lists treatises and services in many transactional law practice areas, as well.

(a) Securities Law

Stocks, bonds, and options are the most well-known and common types of securities. Transactions involving securities are regulated by both federal and state law. At the federal level, there are six essential securities acts as well as numerous regulations and proposed regulations promulgated under their authority by the SEC. At the state level, statutes known as "blue sky laws" regulate conduct in this area. Businesses must follow the applicable law on registration of securities, financial reporting, and disclosure of the purchase or sale of securities by company insiders.

The SEC generates several unique types of primary law documents. Regulatory actions taken by the agency include Interpretive Releases, Concept Releases, Policy Statements, and Exemptive Orders. In response to an enforcement action, the

commission's administrative law judges hold hearings and issue decisions on alleged securities law violations. The commission hears appeals to those decisions and issues Commission Opinions which are then appealable to the U.S. Court of Appeals. SEC staff members can also issue No-Action Letters at the request of individuals or entities in response to questions about potential securities law violations. No-Action Letters are issued if staff will not recommend enforcement actions against the requesting party and are binding only in that situation, but they provide guidance as to how the agency will address similar issues.

Several treatises cover securities law. Thomas Lee Hazen, *Treatise on the Law of Securities Regulation* (7th ed. 2016) is available in seven print volumes and on Westlaw. Other treatises are available online in practice centers on Westlaw, Lexis, Bloomberg Law, and Cheetah.

Federal Securities Law Reporter (Wolters Kluwer) is the most respected looseleaf service and is available on the Cheetah platform as well as in print. *Securities Law News* (Bloomberg) is a newsletter good for tracking recent developments and regulatory trends, available on Bloomberg Law. The *Blue Sky Law Reporter* (Wolters Kluwer) covers state securities laws and is available on Cheetah.

Practitioners' materials include Gary M. Brown, *Securities Law and Practice Deskbook* (6th ed. 2012) from the Practising Law Institute and available on PLI PLUS. The Securities Law Handbook Series (annual, available on Westlaw) consists of 27 publications on a variety of narrow topics and includes the more general *Securities Law Handbook*. *Securities Law Techniques* (1985–date, available on Lexis) was edited for nearly twenty years by A.A. Sommer, Jr., a former SEC commissioner, and contains information on securities litigation.

A relatively new online tool is Lexis Securities Mosaic (www.lexissecuritiesmosaic.com), formerly Knowledge Mosaic, which LexisNexis acquired in 2013. The platform is separate from Lexis Practice Advisor and is not part of law school subscriptions. It offers additional materials such as updates from regulatory agencies and a database of law firm commentary and news reports.

For more comprehensive coverage of legal research resources and methods in securities law, see Kay Moller Todd, "Securities Regulation," chapter 1 in *Specialized Legal Research*. The chapter has two helpful appendices: Appendix 1-1 is a concordance of SEC rules, the acts under which they are authorized, the relevant regulations if any, and their location in Title 17 of the *CFR*, and Appendix 1-2 is a concordance of SEC forms and schedules. Both

414

concordances are detailed indexes listing the rules, forms, and schedules alphabetically and pointing to where in the securities law they can be found.

(b) Corporate Governance and M&A

Corporate formation, record-keeping, accounting, decision-making, and combination often involve legal counsel, especially in large corporations. The primary authorities governing these areas of corporate conduct are varied, and can overlap with securities laws, banking and finance law, employment law, intellectual property law, and tax law.

Corporate formation and delegation of responsibility in the U.S. are based in state law. Since so many corporations are organized under Delaware law, Title 8 of the *Delaware Code*, the Delaware General Corporation Law (DGCL), is an essential source. So too is the Model Business Corporation Act, or MBCA, managed by a committee of the ABA's Business Law Section and adopted in whole or in part by over half of the states. Judicial interpretations of statutes in the relevant jurisdiction is also a significant area of the law. Finally, knowing how to access corporate documents like articles of incorporation and bylaws is part of the transactional lawyer's trade.

Several federal statutes are designed to prevent fraud and abuse in accounting and in corporate mergers and acquisitions. A host of statutes and regulations seek to curb the anticompetitive effects of business combination and are enforced by the Federal Trade Commission and the Department of Justice. Corporate accounting oversight has seen a marked increase in complexity due to the Sarbanes-Oxley Act of 2002, which was passed in the wake of several corporate scandals in the early 2000s.¹³

Two preeminent national treatises on corporate governance and combinations are the comprehensive *Fletcher Cyclopedia of the Law of Corporations* (1931–date, available on Westlaw), and James D. Cox & Thomas Lee Hazen, *Treatise on the Law of Corporations* (3d ed. 2010–date, also on Westlaw), which focuses more on jurisdictions following the MBCA. There are also many state-specific treatises. The leading treatises on Delaware corporate law are R. Franklin Balotti & Jesse A. Finkelstein, *The Delaware Law of Corporations and Business Organizations* (3d ed. 1998–date, available on both

415

Cheetah and Westlaw), and Edward P. Welch et al., *Folk on the Delaware General Corporation Law* (6th ed. 2014–date, available on Cheetah).

The ABA's online M&A Deal Points Studies

(www.americanbar.org/groups/business_law/committees/ma/deal_points/) provide in-depth, periodic coverage of mergers and acquisitions, but they are only available to Business Law Section members. Looseleaves in the area are *Corporation Service* (CCH), available on Cheetah, and *Merger & Antitrust News* (Bloomberg), available on Bloomberg Law.

Practitioners' materials tend to deal with one or more specific aspects of corporate law, but there are some more general handbooks on governance. One example is Wolters Kluwer's *Corporate Governance Guide*, available on Cheetah, which provides explanations and updates on relevant topics. In a slightly different vein, the American Law Institute's *Principles of Corporate Governance: Analysis & Recommendations* can be helpful for comparing the law in different states.

(c) Banking and Finance Law

The law governing banking and finance in the U.S. is both state and federal, with states handling bank charters and supervision while federal authorities oversee deposits, currency, and consumer protection. Recent federal legislation passed in the wake of the 2008 financial crisis has added complexity to the area. The main new statute is the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010) (mostly codified at [12 U.S.C. §§ 5301–5641](#)).

Title 12 of the *CFR* covers federal banking regulations, which are administered by the Federal Reserve Board, the Office of the Comptroller of Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Consumer Financial Protection Bureau (CFPB), and now the Federal Stability Oversight Council (FSOC). Regulation at the state level tends to be the purview of banking commissions or departments.

Banking and finance are given treatment in numerous treatises. Burton V. McCullough et al., *Banking Law* (1981–date, available on Lexis) is considered comprehensive, as is Michael P. Malloy, *Banking Law and Regulation* (2d ed. 2011–date, available on Cheetah). Several treatises cover more detailed aspects of financial regulation.

Looseleaf services are also plentiful in this area. *Federal Banking Law Reporter* and *State Banking Law Reporter* (both available on Cheetah) are well-established sources. News and other current awareness tools can be found in *Banking News* (available on

416

Bloomberg Law) and *The Banker's Letter of the Law* (available on Lexis), which focuses on litigation and case law in the field. *Banking Law Journal* (also on Lexis) is a classic periodical that includes digests of cases from all relevant U.S. jurisdictions.

Print and online practitioners' tools on federal banking law include *Bank Compliance Guide* (available on Cheetah) and Keith R. Fisher, *Banking Law Manual* (2d ed. 2000–date, available on Lexis). Lexis Practice Advisor's Financial Services Regulation section, which covers developing areas in the law, includes analysis and comparison of state law.

For more comprehensive coverage of legal research resources and methods in banking and finance law, see Penny Hazelton, "Banking Law," chapter 10 in *Specialized Legal Research*. Appendices include a glossary of abbreviations and acronyms and lists of banking regulations by subject and by *CFR* section.

(d) Intellectual Property Law

Intellectual property law includes copyright law, patent law, trademark law, and the law protecting trade secrets. It is quite a broad topic, and some even doubt the utility of categorizing these areas as "intellectual property."¹⁴ Each area has its own regulatory structure and specialized resources.

U.S. copyright law protects creative expressions and is almost entirely federal.¹⁵ [Article I, section 8, clause 8, of the U.S. Constitution](#) is generally referred to as the patent and copyright clause. Statutes are codified in Title 17 of the *U.S. Code* and regulations, which are made by the U.S. Copyright Office, can be found in Title 37 of the *CFR*.

Patent law protects inventions and is federal, with statutes codified at Title 35 of the *U.S. Code*. The U.S. Patent and Trademark Office (USPTO) reviews patent applications and issues regulations, which can be also be found in Title 37 of the *CFR*.

Trademark law protects businesses and their products, with the federal Lanham Act, codified at [15 U.S.C. §§ 1051–1127](#). Trademark regulations are also in Title 37 of the *CFR*. There is a significant amount of trademark protection in state statutes and common law, as well.

Law protecting trade secrets was traditionally made entirely at the state level, with many state statutes based on versions of the

417

Uniform Trade Secrets Act. However, the Defend Trade Secrets Act of 2016, [18 U.S.C. § 1836](#), now allows, among other things, for private actions in federal court for trade secret misappropriation.

Two copyright law treatises are preeminent: *Nimmer on Copyright* (1963–date, available on Lexis) and *Patry on Copyright* (2006–date, available on Westlaw). *Chisum on Patents* (1978–date, available on Lexis) is an authoritative and widely cited patent law treatise. *McCarthy on Trademarks and Unfair Competition* (5th ed. 2017–date, available on Westlaw) and *Gilson on Trademarks* (1974–date, available on Lexis) are leading treatises in that area. *Milgrim on Trade Secrets* (1967–date, available on Lexis) provides comprehensive coverage including a helpful index.

Topical services cover each of the areas of intellectual property law. *United States Patents Quarterly* (available on Bloomberg Law) reports and digests cases on copyright, patent, and trademark. *Intellectual Property Law News* (also on Bloomberg Law) is a newsletter source. *Copyright Law Reporter* (available on Cheetah) focuses on copyright cases.

There are far too many practitioners' materials in this area to make even a representative selection in this subsection. Deskbooks and manuals from Practising Law Institute such as Ronald B. Hildreth & David Aker, *Patent Law: A Practitioner's Guide* (4th ed. 2012–date, available on PLI PLUS) are popular sources, as are similar works on the Cheetah and Bloomberg Law platforms and those in print from the ABA. Of interest for corporate counsel is John W. Hazard, Jr., *Copyright Law in Business and Practice* (rev. ed. 1998–date, available on Westlaw). Lex Machina (www.lexmachina.com), an online subscription analytics service now owned by LexisNexis, is another excellent source with detailed information about intellectual property litigation.

For more comprehensive coverage of legal research resources and methods in copyright law, see William H. Manz, "Copyright Law," chapter 4, and for patent and trademark, see Harold F. See, "Federal Patent and Trademark Law," chapter 11, in *Specialized Legal Research*.

(e) Tax Law

Taxation in the United States is governed by a complex set of federal and state laws touching every aspect of business and personal affairs. Lawyers specializing in tax law tend to make heavy use of specialized legal resources. Thus, separate research platforms, looseleaf services, and in-depth newsletters are the norm.

418

The federal tax code, known as the Internal Revenue Code or IRC, makes up Title 26 of the *U.S. Code*, and Internal Revenue Service (IRS) procedures and Department of Treasury regulations are found in Title 26 of the *CFR*. The IRS also generates guidance documents in various forms, each serving a different purpose, including Revenue Rulings, Private Letter Rulings, and other memoranda.

Prominent federal tax treatises include Boris I. Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates, & Gifts* (2d/3d eds. 1989–date, available on Westlaw), and Jacob Rabkin & Mark Johnson, *Federal Income, Gift and Estate Taxation* (1942–date, available on Lexis). *Federal Tax Coordinator 2d* (available on Westlaw) goes into greater depth of analysis on excise and payroll tax in addition to other topics.

Several tax services collect relevant cases and administrative documents and provide annotated versions of the IRC. The *Standard Federal Tax Reporter* (available on Cheetah) and *United States Tax Reporter* (available on Westlaw) are both well-respected and much-used sources in tax practice. *Federal Estate and Gift Tax Reporter* is also available on the Cheetah platform. For state tax practice, see *State Tax Guide* (available on Cheetah) and *All States Tax Guide* (available on Westlaw).

Online platforms are now the main source of everyday tax practice guidance. Thomson Reuters Checkpoint (checkpoint.riaq.com) contains vital resources, including news and practice tools; much of its coverage is also available on Westlaw. Lexis Advance Tax collects news and primary law on tax along with secondary sources into one convenient interface. Bloomberg Law: Tax contains the excellent *Tax Management Portfolios*, which contain treatise-like analysis on hundreds of discrete tax topics together with practice tools like checklists and forms.

Staying up to date with changes in the tax code is especially important given the large degree to which the rules change each year. Tax Notes (www.taxnotes.com), from Tax Analysts, is a much sought-after source of daily news and analysis. Articles from tax-related periodicals are also indexed separately from other law journals and publications. CCH's *Federal Tax Articles* contains abstracts of journal articles arranged by Internal Revenue Code section and *Index to Federal Tax Articles* is a subject/author index with retrospective coverage back to 1913.

Finally, tax law research is the focus of several published works, including Joni Larson & Dan Sheaffer, *Federal Tax Research* (2d ed. 2011) and Gail Levin Richmond & Kevin M. Yamamoto, *Federal Tax*

419

Research: Guide to Materials and Techniques (10th ed. 2018). Mary A. Hotchkiss, "Federal Income Taxation," chapter 3 in *Specialized Legal Research*, is also a helpful source, containing a glossary of tax terms

and acronyms as well as lists of tax periodicals, newsletters, and websites.

¹ For a thorough (and readable) introduction to business, including the basics of accounting, see ROBERT J. RHEE, *ESSENTIAL CONCEPTS OF BUSINESS FOR LAWYERS* (2d ed. 2016). For those more in need of a refresher, the annual *POCKET MBA*, a continuing legal education publication from the Practising Law Institute, provides depth and current awareness for specific business concepts.

² There are also specialized research sources available in print or in e-book format outside of the major legal research services. The Practising Law Institute (PLI) publishes practitioner materials in specific areas of transactional practice, some of which are discussed in § 15.4. Other publishers include ALI CLE, formerly ABA-ALI and primarily a publisher of continuing legal education materials, and the American Bar Association's Section on Business Law.

For more on smaller, newer online services offering alternatives to Lexis and Westlaw, see [Taryn Marks, *John West and the Future of Legal Subscription Databases*, 107 LAW LIBR. J. 377, 392–95 \(2015\)](#). Today's startup online service is often tomorrow's acquisition by one of the major platforms.

³ An insider account about this product can be found in *Vendor Voice: Practice Point*, AALL SPECTRUM, Jan./Feb. 2017, at 47. For more on the acquisition of Practical Law and its integration into the Thomson Reuters legal product family, see [Practical Law to Join Thomson Reuters Portfolio](#), 30 No. 8 LAWYER'S PC 8 (2013).

⁴ To locate print sources for these kinds of practitioners' materials, try searching a law library catalog's title field for keywords like "deskbook," "forms," "practice guide," or "law and practice" combined with the area of law you are interested in. This can be especially helpful when trying to find jurisdiction-specific sources.

⁵ A classic article on this topic is [Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 \(1984\)](#).

⁶ A recent ABA task force on business law education put it this way: "Good business lawyers know how to find forms, when to use them (or not), and how to use them. This includes the ability to (i) mark up the form to match the deal . . . , (ii) read provisions critically to determine whether they apply to the lawyer's transaction, and (iii) incorporate provisions from other agreements as needed." [Barbara Wagner et al., *Defining Key Competencies for Business Lawyers*, 72 BUS. LAW. 101, 124 \(2016\)](#).

⁷ For more on the history of books of pre-printed forms in the U.S., see ERWIN C. SURRENCY, *A HISTORY OF AMERICAN LAW PUBLISHING* 138–41 (1990).

⁸ Cooley LLP has created a platform, CooleyGo, specifically targeting emerging businesses, with sample documents and guides (www.cooleygo.com/documents/).

⁹ See (Item 601) Exhibits, 17 C.F.R. § 229.601 (2019), for the documents that must be attached as exhibits with certain SEC filings.

¹⁰ Transactional documents, especially contracts, tend to have standard "building blocks" which go by different names, but typically include: representations and warranties, covenants, rights, conditions precedent, remedial provisions, discretionary authority, definitions, and declarations. See [Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ALWD 118, 125 \(2008\)](#), [Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223, 225 \(2004\)](#), and CHARLES M. FOX, *WORKING WITH CONTRACTS: WHAT LAW SCHOOL DOESN'T TEACH YOU* 7 (2d ed. 2008).

¹¹ Bloomberg Law has a resource describing the potential uses for Draft Analyzer (and other tools) in more depth (help.bloomberglaw.com/docs/blh-050-corporate-and-transactional.html).

¹² [Mary Whisner, *On Specialized Legal Research*, 108 LAW LIBR. J. 483, 486 \(2016\)](#).

¹³ For an interesting look at how Congress's codified instructions for statutory interpretation relating to text in section or chapter headings of the Sarbanes-Oxley criminal penalties at 18 U.S.C. § 1519 (2006) were ignored by the U.S. Supreme Court, see [Tobias A. Dorsey, *Some Reflections on Yates and the Statutes We Threw Away*, 18 GREEN BAG 2d 377 \(2015\)](#).

¹⁴ See, e.g., [Mark A. Lemley, *Property, Intellectual Property, and Free Riding*, 83 TEX. L. REV. 1031, 1033–37 \(2005\)](#).

¹⁵ For a thorough explanation of the history of state and common law copyright, see [Zvi S. Rosen, *Common-Law Copyright*, 85 U. CIN. L. REV. 1055 \(2018\)](#).