

Getting to a Handshake:

HOW TO BECOME A MORE EFFECTIVE DEAL LAWYER AND GET DEALS DONE

By Fred Tannenbaum

A specter is haunting efficient deal making—the specter of excessive legal wrangling, adding delays, cost and unnecessary stress and tension between the contracting parties. Certainly the lawyers on both sides are well intentioned and just trying to do their jobs. However, what is their “job”? Extracting every minute point, regardless of how conjectural, ephemeral and of speculative importance? And at what cost are these benefits derived? Higher fees. More time. Greater risk of severing the delicate fabric of trust between the principals which is necessary to forge decent relations.

Here are a few practical ways to redefine a deal lawyer’s “job” from that of expediting every last issue for reflection to that of assessing appropriate risks, prioritizing and focusing on the important ones, and prudently dispensing with the less important ones for cocktail party banter. Bottom line—consider a paradigm shift in the definition of “smart.” A truly “smart” lawyer should balance risk with reality, moderate displaying intellectual brilliance with practical common sense, and become part of his or her client’s business team instead of relegated to the dreaded “no business department.” Temper your intellect with your practical sense of

what’s value and what’s fool’s gold.

After twenty-five years of deal making across the U.S. in many complex and nuanced transactions, and confronting some of the best and brightest adversaries, I have finally realized that being a “smart” lawyer requires much more than just having a good mind and grasp of the law. The most successful deal lawyers understand that being “smart” actually requires mastery of two components. First, know the law, but everyone in our milieu does. More fundamentally, however, know how to apply it. The lawyer who combines both substantive and practical intelligence is the truly “smart” lawyer.

Below are humbly offered ten ideas to enable a deal lawyer to be a zealous advocate for his client while at the same time get a deal done quicker, less contentiously and more efficiently.

1. Perspective. Too often a discussion over an important, but nonetheless secondary, issue can overwhelm the entire transaction and divert attention, focus, and emotions from what is truly important. Ask yourself how important an issue is in the big picture and

what the reaction to the issue would be if you explained it to uninvolved third persons. If they would just roll their eyes, then compromise or just move on.

2. Proper Focus. Remember that the deal is about the clients and the business and not about you or the lawyer on the other side. What Professors Fischer and Ury said many years ago is still true today: separate your and the other lawyer’s personality from the issues. Transactions are not about the lawyers, as charming and engaging as we may be. Our role is to make our clients look good, protect them as best as we can, sometimes run interference when necessary, but, in the final analysis, be a tool to facilitate as smooth a result for the person that pays our bill.

3. Timing on Concessions. Both Kenny Rogers and Ecclesiastes expressed keen sensitivity to timing, whether in song “you gotta know when to hold ‘em and know when to fold ‘em” or verse, “there is a time...” Implementing this immutable principle, however, is easier said (or sung) than done, but deals must come to closure.



4. Practical Realities. Perhaps an analogue of the prior point is to remember Mick Jagger's guiding principle: "You can't always get what you want, you get what you need." Prioritize which points are truly significant business or legal issues and which are just nice to have but not essential. Just make a judgment regarding which of your points you really need and then move on.

5. Proper Role. This is not a contest to see who can show how smart they are by spotting the most issues. In most deals, the 80-20 rule applies. 80% of the value you bring to the client is in 20% or so of the items. Therefore, be tenacious on the important and conciliatory on the unimportant. Get the deal done.

6. You are a Business Advisor who Happens to have a Law Degree. Homogenization of the legal issues with the financial, tax, accounting, sales, marketing, human resources, specific industry and many other disciplines involved in any deal or business is critical to put the issue at hand in context and allow a deal lawyer to analyze the relative risks in and significance of the matter. Be a business advisor first to contextualize the risk inher-

ent in every issue to appreciate whether it is worth fighting over or compromising.

7. Speak Concisely and in English. Rarely are people swayed by orations of Cicerian proportion. If you cannot communicate clearly and effectively, just shut up.

The only words people really wait for or actually hear are "yes," "no" or "here's how we can resolve this".

8. Accommodation. Many lawyers' first impulse, especially when they have superior bargaining power, is to just say no. Instead, find out why the other side needs something and if it can be accommodated without disrupting your client's needs. That gesture will build trust, necessitate reciprocity and help build long term relationships.

9. Separate Important from Meaningless Requests. If you answer affirmatively to Shakespeare's question whether a lawyer's proposed wordsmithing is merely "the sound and the fury of a tale told by an idiot, signifying nothing," then just make the changes, move on and get the deal done.

10. Be Relevant and Take a Stand. Too often lawyers just spot the issues and let the clients make the call. This deflects any responsibility for tough decisions and similarly abrogates responsibility. Many clients look to their lawyers for reasoned recommendations on both legal and business points. Don't fob all responsibility and burden on those who pay your bill. Be part of the team.

Just as our clients expect their lawyers to know the law, however, they also expect us to apply it in a "smart" way to help accomplish their goals. No matter how assiduously we apply these principles, not every deal is simply worth doing. Try as we might, sometimes the best deals are the ones you do not do. Always try to have a Plan B, C and D. ■

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