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between those obstacles to agreement that are mountains and those that are molehills. A legal education does manage to train students to rigorously parse out the crucial and the trivial and defend that analysis when challenged. This habit of mind is formed in law school and matured in practice.

The good business lawyer thus does not sit by the clients’ side, scowling balefully and throwing “legal” obstacles in the path of the deal. Instead, the lawyer will demand only those representations and warranties that are actually needed to compensate for a lack of complete information. Similarly, the lawyer will not negotiate and draft endlessly over the consequences of dissolution when there will be little post-dissolution value to divide among the parties.

The good business lawyer, exercising judgment developed through both law school training and real world experience, makes deals work by helping parties sort through the confusion, targeting those impediments that need attention and leaving other issues to the obscurity they deserve. The skill of discrimination may not be unique to lawyers, but in a good business lawyer it is highly cultivated because it is the starting point for reducing transaction costs.

When to Use the Kandy-Kolored Tangerine-Flake Streamline Baby.

The Kandy-Kolored Tangerine-Flake Streamline Baby was the fabulous car described by Tom Wolfe in his essay on those obsessed with customizing cars to almost impossible perfection. Business lawyers can be as obsessive as Wolfe’s car cultists. They know how to customize. They can transform any agreement into a gleaming masterpiece of thoroughness and subtlety.

What is more important, however, is their ability to know when to produce the Streamline Baby and when to be content with a stock car tweaked in just the right places. This is more than a question of how much money is available for the job, or how complicated the deal is. Transaction costs need to be reduced even in complex deals in which the parties have deep pockets.

The lawyer’s lust to produce the legal equivalent of the Streamline Baby is tempered, furthermore, by recognition of our bounded rationality—the impossibility of identifying all possible conflicts and writing contracts to resolve them. At some point—and that point varies from deal to deal—the lawyer has to stop and lay down the tools. In structuring the relationship among owners in a closely held enterprise, for example, it makes no sense to try to anticipate every possible form of oppression of the minority by the majority and to design appropriate remedies. The lawyer falls back, instead, on the rule that the parties are bound together by fiduciary duty, which functions as an implied contractual obligation to treat each other fairly.

Knowing when to rely on that standard-implied term and when to create explicit, nonstandard “customized” terms, such as an equal opportunity rule for shareholder redemptions, is a skill that allows business lawyers to produce the most cost-effective means of mitigating conflicts.

The Universal Translation Machine.

I am always astonished that whenever the Enterprise encounters an unknown alien from some distant quadrant of the Star Trek universe, the stranger inevitably speaks perfect, colloquial English. Of course, these strangers are not really speaking English; their language is translated instantaneously by the starship’s universal translation machine.
Business lawyers also could use that machine, because they must be skilled translators. In a regulatory context, for example, they must translate the impenetrable language of the regulatory scheme into advice the client can understand and follow.

Perhaps more important, they help transacting parties understand what each other wants. A lawyer counseling an entrepreneur seeking venture capital, for instance, must help translate the client’s business plan into something that a venture capitalist will read and consider seriously. Without the lawyer’s skill in translation, a promising business may never be recognized by the potential capital provider. The inability to speak a common language is obviously one of the major obstacles to the information exchange needed to complete a transaction; the business lawyer’s skill in translation helps remove that obstacle.

**The Power of Detachment.**

Experienced business lawyers do not presume rationality on the part of their clients. Even the most gimpet-eyed, bottom-line driven client can be overpowered by ego needs, suspicion or fear. How often are deals threatened or killed by resentment over whether a person had to sit in the back of the plane? Equally insidious is the effect within business organizations of unvoiced preferences. The fear of contradicting an apparent consensus often results in everyone agreeing to take a miserable trip to an undesired destination.

One should not presume greater rationality on the part of lawyers than anyone else, but their ability to detach themselves from their clients’ passions and fears allows business lawyers to step onto a battlefield laid waste by their clients and to ask each other quietly: “How can we work this out?” That same detachment allows them, when helping an organization achieve its goals, to probe carefully into an apparent consensus, allowing decision makers to recognize and give voice to their real preferences. Such detachment is not the exclusive product of legal education or training, but it is a skill business lawyers must develop.

**A Sense of an Ending.**

I once sat down with two experienced business lawyers from different cities and different practices to ask them how they believed they brought value to their clients’ transactions. Their answers were immediate and identical: “We get the deal done.” By this they meant many of the important functions just described, as well as tasks as humble as making sure the documents got produced in time for the overnight mail. But they also were referring to that sense of responsibility for bringing the transaction to an end, for making sure that the closing would indeed be a “closing.” This sense of responsibility serves as a counterweight to the tendency of things to fall apart, drift away or just sit there.

The term “professionalism” has many meanings, but this instinct for taking the responsibility for holding things together and moving them along is an aspect of professionalism that makes business lawyers unusually valuable to their clients.

**The Capacity to be Trusted.**

The conventional wisdom about business lawyers presumes a system pervaded by mistrust. According to this wisdom, lawyers throw legal obstacles into the path of transactions largely to exaggerate their own importance and make themselves crucial to continued on next page
The capacity to earn a client's trust is more than a matter of zealous advocacy.

There are many specific ways in which the capacity to be trusted is crucial to reducing transaction costs. Informational imbalances and uncertainty can be reduced without costly information production by using lawyers as reputational intermediaries. A respected lawyer's (or law firm's) presence can be read as vouching for representations made by a client, thereby reducing the need for supporting information. In such a case, the lawyer's capacity to be trusted by both sides is crucial.

Similarly, lawyers help reduce uncertainty costs by agreeing to share uncertainty risks through opinion letters. This is another, more formalized type of vouching that reduces the need for verification of representations and provides a greater sense of certainty than would otherwise exist. A lawyer's (and firm's) reputation for probity and for willingness to stand behind a formal opinion makes the lawyer an effective and valuable facilitator of transactions.

Equally dependent on trust is the business lawyer's ability to help parties understand each others' language and to serve as a vital intermediary between capital providers and seekers of capital. The business lawyer holds the passkey to heavily regulated markets, such as the public securities markets, as well as to private markets, such as the venture capital market, in which personal relationships and knowing the informal rules are vital. The stock-in-trade of such a lawyer is a reputation for using that passkey carefully, in a way that potential clients will recognize as serving their interests.

There are surely many other ways in which the capacity to be trusted is crucial to what business lawyers do. The point to remember about all such examples, however, is that trust-keeping is not only part of the business lawyer's moral imperative, it is central to the business lawyer's very function, an ethical stock-in-trade without which a business lawyer's other skills would be superfluous.