



Yikraz/Shutterstock.com

# Practice Area Overview: Finding the Right Fit

Choosing a practice area in the legal profession can be a daunting decision. Many junior attorneys find themselves directed into a specialty without taking the opportunity to explore their options. This article provides insights on what aspiring attorneys can expect in various law firm practice areas and highlights best practices for success.

## *Practical Law*

The legal profession offers more practice areas and specialities than most aspiring attorneys would expect. Economic forces and other market factors often dictate the busiest or most lucrative practices for a law firm, and many junior attorneys “go with the flow” to service those teams. Before they know it, a practice area has chosen them.

As new attorneys embark on their legal careers, they should consider their natural strengths, skills, and interests, as well as supply and demand in different practice areas, before pursuing a particular area of expertise.

This article provides an introduction to the following major practice areas:

- Antitrust.
- Bankruptcy.
- Capital markets (often known as securities) and corporate governance.
- Commercial transactions.
- General corporate, including mergers and acquisitions (M&A).
- Employee benefits and executive compensation.

- Finance.
- Intellectual property and technology.
- International arbitration.
- Labor and employment.
- Litigation.
- Privacy and data security.
- Real estate.
- Tax.
- Trusts and estates.

## ANTITRUST

For an attorney with a head for economic policy, an antitrust practice offers an opportunity to work at the intersection of law and economics. “At the heart of antitrust practice is learning how your client competes in the marketplace,” explains Christian Lorenz, Senior Legal Editor for Practical Law’s Antitrust service.

The US antitrust laws are designed to protect the competitive process and promote consumer welfare. These laws have evolved to prohibit companies from engaging in a wide range of anticompetitive conduct including, for example, price fixing and other unlawful agreements among competitors, monopolistic activity, and anticompetitive mergers, acquisitions, and joint ventures.

There are four primary areas of antitrust practice:

- **Transactional.** This involves shepherding mergers, acquisitions, and joint ventures through regulatory review, typically to satisfy rigorous reporting requirements under the Clayton Act and the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Attorneys in a transactional antitrust practice often partner with colleagues in the firm’s M&A, tax, employment, and employee benefits practice groups.
- **Litigation.** Antitrust litigators represent companies in private litigation involving anticompetitive conduct, or in civil enforcement actions brought by the Federal Trade Commission (FTC), the Antitrust Division of the Department of Justice (DOJ), or state attorneys general. Because antitrust claims can lead to treble damages, these are high-stakes cases. Depending on the size of the antitrust practice group and the litigation experience of its members, these attorneys may work closely with colleagues in the firm’s litigation department and other subject-matter experts.
- **Criminal.** The DOJ prosecutes some antitrust violations criminally. Companies and individuals face significant fines, and individuals may face prison time. Criminal antitrust attorneys may conduct internal investigations, appear before the DOJ during investigations, and represent defendants in criminal trials.
- **General counseling.** Most antitrust attorneys provide day-to-day advice to clients on how to properly comply with the antitrust laws to minimize scrutiny and exposure down the road. Attorneys also help their clients develop antitrust compliance programs and train employees on antitrust compliance.

Antitrust attorneys may specialize in one or more of these areas or have a practice that encompasses all four.

Junior attorneys can be expected to assist in tasks including:

- Client calls and industry research to understand the competitive landscape.
- Legal research into judicial and agency precedent.
- Managing and participating in document reviews for agency filings or litigation.

Lorenz recommends that aspiring antitrust attorneys make it a habit to review the news every morning, whether through daily alerts or subscribing to press releases from the FTC and DOJ, to follow developments in antitrust law and practice. “Staying up to date and having a big picture understanding of the antitrust landscape better prepares you for conversations with clients and colleagues, and gives you a leg up on future projects,” he says.



Search [Practice Area Essentials: Antitrust](#) for a collection of resources that new attorneys can use to get up to speed on antitrust topics.



### CHRISTIAN LORENZ

SENIOR LEGAL EDITOR,  
PRACTICAL LAW ANTITRUST

Christian was an associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP, focusing on a full range of antitrust matters.

## BANKRUPTCY

Attorneys interested in both transactional and litigation aspects of practice should consider specializing in bankruptcy, which offers an interesting blend of both.

At its core, a bankruptcy proceeding provides a distressed individual or company (the debtor) with a process aimed at alleviating debts and compensating creditors that have varying financial interests and legal protections. Given the conflicting positions of creditors and the limited funds available to a debtor, “the most important attribute for a successful bankruptcy attorney is the ability to think fairly, logically, and creatively,” says Ira Levee, Senior Legal Editor for Practical Law’s Bankruptcy service.

In large law firms, bankruptcy matters typically involve complex corporate reorganizations and orderly liquidations under Chapter 11 of the Bankruptcy Code. By contrast, smaller firms generally handle liquidations for individuals under Chapter 7, reorganizations for individuals under Chapter 13, and smaller corporate reorganizations under Chapter 11. Depending on the issues involved and the size of the team, bankruptcy attorneys may need to develop expertise in a particular substantive area, such as tax or securities, or partner closely with colleagues in other practice groups or special counsel from another firm to address these issues.

Key clients in a bankruptcy matter are:

- **The debtor.** When representing a debtor, junior attorneys typically learn about the debtor's finances and operations by reviewing corporate documents and consulting with the debtor's accountant or financial advisor.
- **Creditors' committees.** When representing a creditors' committee, a key task for junior attorneys is reviewing the bankruptcy docket and relevant pleadings to identify and track applicable filing deadlines.

Junior attorneys might also be involved in reviewing, researching, or drafting motions and responses, preparing client witnesses for testimony, and communicating with experts. Notably, given the quick pace of a bankruptcy proceeding and the frequency of emergency motions, attorneys often must complete these tasks within a short time frame (commonly within 24 hours). "The generally rapid pace of a bankruptcy proceeding offers junior attorneys the opportunity to quickly build up their courtroom experience," notes Levee.

Levee encourages aspiring bankruptcy attorneys to:

- **Build a network.** The bankruptcy bar is a collegial one, and junior attorneys should consider seeking out senior bankruptcy attorneys for guidance and support. In addition to firm colleagues, joining a bankruptcy bar association can connect junior attorneys with potential mentors.
- **Apply for clerkships.** While interning or clerking for a bankruptcy judge can help make the transition to bankruptcy practice fairly seamless, any clerkship will be beneficial for a rising bankruptcy attorney, given the focus on research and drafting (see *Box, Judicial Clerkships*).
- **Seek out pro bono representations.** Levee notes that non-profits are always looking for assistance with Chapter 7 and Chapter 13 matters, which can give junior attorneys significant hands-on experience.



Search [Practice Area Essentials: Bankruptcy](#) for a collection of resources that new attorneys can use to get up to speed on bankruptcy topics.



#### IRA LEVEE

SENIOR LEGAL EDITOR,  
PRACTICAL LAW BANKRUPTCY

Ira was of counsel at Lowenstein Sandler LLP, focusing on bankruptcy, financial reorganization, and creditors' rights (including representing securities class action plaintiffs in a bankruptcy), and a partner at Ravin, Sarasohn, Cook, Baumgarten, Fisch & Rosen, P.C., a boutique bankruptcy firm.

## CAPITAL MARKETS AND CORPORATE GOVERNANCE

A career in capital markets and corporate governance may appeal to attorneys who are excited by the idea of applying both legal and business judgment to their client matters. This

practice area has transactional and advisory components. Attorneys typically focus on issues relating to conducting initial public offerings (IPOs) or other securities offerings, filing periodic reports with the Securities and Exchange Commission (SEC) and disclosing information to investors, and complying with various corporate governance standards established by the SEC and the major securities exchanges.

Attorneys focusing on the most common aspects of capital markets and corporate governance law must have an understanding of:

- The Securities Act of 1933, which primarily regulates the offer and sale of securities.
- The Securities Exchange Act of 1934, which, among other things:
  - imposes reporting obligations and corporate governance requirements on public companies; and
  - regulates tenders offers, proxies, beneficial ownership reporting, and insider trading.

The capital markets practice area also encompasses other specialized areas, including laws and regulations relating to investment advisers and broker-dealers.

Other federal laws and state securities and corporate laws also may apply to a matter, including Delaware corporate law and case law (given that many companies are incorporated in Delaware).


Financing needs, M&A deals, and tax considerations drive many securities offerings, making collaboration with colleagues in these practice areas common. Additionally, a capital markets and corporate governance attorney often cooperates closely with specialist attorneys to draft disclosures on executive compensation, intellectual property, tax, or real estate matters. If a transaction involves a company in a regulated industry, the attorney may need to consult a specialist in the relevant regulatory area as well.

The day-to-day workflow in this practice area can be unpredictable, says Christopher Roehrig, Senior Legal Editor for Practical Law's Capital Markets & Corporate Governance service. Typical assignments for a junior attorney include:

- Conducting due diligence to identify issues with a transaction or company, including "material" facts that may need to be disclosed to potential investors.
- Assisting in compiling disclosure for offerings and periodic reports.
- Verifying that disclosure forms include all information required by the SEC.
- Researching and drafting legal opinions.

A capital markets and corporate governance practice is "demanding, intense, and fast-paced," notes Roehrig. He explains that junior attorneys must put in the time necessary to learn the numerous laws and produce high-quality work product in an efficient manner. "While these efforts often involve long hours, the upfront investment can pay off later and ultimately

help you achieve some work-life balance,” Roehrig adds, “and equip you to deal with the bigger challenges that arise when, as a senior attorney, you are responsible for clients’ most complicated issues.”

 Search [Practice Area Essentials: Capital Markets & Corporate Governance](#) for a collection of resources that new attorneys can use to get up to speed on capital markets and corporate governance topics.



**CHRISTOPHER ROEHRIG**  
SENIOR LEGAL EDITOR, PRACTICAL LAW  
CAPITAL MARKETS & CORPORATE GOVERNANCE

Christopher was a senior associate in the corporate and capital markets practice groups at Torys LLP, and an associate in the capital markets and M&A practice groups at Shearman & Sterling LLP.

## COMMERCIAL TRANSACTIONS

Solutions-oriented attorneys who particularly enjoyed contracts coursework during law school may enjoy commercial transactions work. Commercial transactions attorneys play a key role in supporting their clients by drafting and negotiating agreements for various business activities, including the sale of goods and services, supply, distribution, and resale arrangements, and advising on marketing and advertising. Law firms do not typically have a separate commercial transactions practice, but clients of various practice areas often seek counsel on these matters. Also, in-house attorneys frequently handle commercial transactions as one of their primary duties.

Commercial transactions attorneys must ensure that a client’s various agreements properly describe key issues (for example, the conditions to a company’s performance under the contract and agreed allocation of risk) and satisfy applicable regulatory requirements. “A company’s deals are often very important to business operations and strategy, and clients tend to view the attorney as a trusted advisor who has seen many transactions and knows the pitfalls,” notes Tom Smolders, Director of Practical Law’s Commercial Transactions service.


In a typical day, a junior attorney who handles commercial transactions should expect to work on several different matters. Common tasks include contacting the client for details on important deal terms and diligence, developing term sheets and schedules for key deal points, and drafting and reviewing final agreements. As attorneys become more senior and gain experience and an understanding of market practice, they are increasingly involved in client counseling and negotiating agreements.

An attorney seeking to specialize in commercial transactions will benefit from honing the following skill sets:

- **Drafting skills.** Junior attorneys should develop an eye for precision. “Drafting errors can result in significant costs and unanticipated consequences for a client, including assuming

risks that were never considered or accelerating a potential breach,” warns Smolders.

- **Organizational skills.** Clients often seek to complete transactions quickly, which requires attorneys to handle many complex projects in a short time period. Junior attorneys must be able to prioritize their responsibilities, while also being thorough enough to spot potential problems, avoid drafting mistakes, monitor open issues, and ensure that the transaction requirements are satisfied.
- **Creative thinking.** Commercial transactions attorneys must craft solutions to achieve a client’s goals and not be wedded to a single idea or approach. “Commercial work requires attorneys to understand various business models,” explains Smolders. “By mastering the terminology and common solutions for each type of agreement, attorneys can think creatively to develop solutions that match the client’s business priorities and risk tolerance.”

 Search [Practice Area Essentials: Commercial Transactions](#) for a collection of resources that new attorneys can use to get up to speed on commercial transactions topics.



**TOM SMOLDERS**  
DIRECTOR, PRACTICAL LAW  
COMMERCIAL TRANSACTIONS

Tom was corporate counsel at Stratasys, Ltd., senior counsel in the neuromodulation division of Boston Scientific Corporation, assistant general counsel at Quallion LLC, and an associate at Liebler, Gonzalez & Portuondo, P.A. and at Jones Day.

## CORPORATE AND M&A

A corporate and M&A practice may appeal to attorneys who are interested in business issues and economic trends. Attorneys joining this practice area assist companies in achieving their business goals and, later in their career, are well positioned to specialize in a particular industry or stage of business, or to join a company’s in-house legal department.

Though corporate law is defined broadly, two main practice areas typically fall within a law firm’s corporate department:

- **M&A.** This involves assisting companies in buying or selling businesses, including by:
  - conducting due diligence on possible acquisition targets or assets that the client wants to acquire, which is a key responsibility for junior attorneys (for more information, search [Due Diligence for Private Mergers and Acquisitions](#) and [Due Diligence for Public Mergers and Acquisitions](#) on Practical Law or see page 42 in this issue);
  - negotiating and drafting agreements, such as a merger agreement, an asset purchase agreement, or a stock purchase agreement, and preparing related documentation; and

- assisting in corporate governance matters, such as seeking approval of the transaction by the client's board of directors and shareholders.
- **Securities.** This involves assisting companies in raising capital through securities offerings and satisfying public reporting requirements (see above *Capital Markets and Corporate Governance*).

In some firms, corporate attorneys may also specialize in, among other things, commercial bank finance (see below *Finance*), private equity and investment management, startups and emerging companies, and international transactions.

True to its reputation as demanding and fast-paced, the corporate and M&A practice area offers little predictability from day to day, according to Barbara Oikle, Senior Legal Editor for Practical Law's Corporate and M&A service. "After a client's businesspeople decide to do a deal, the pace is likely to be frantic, with attorneys working nonstop to draft and finalize the deal documents," she explains. "Going two or three days without sleep is not unheard of, especially in a public company deal, because time is of the essence and premature publicity leaks can kill deals." Given that there are ebbs and flows in M&A practice, Oikle advises junior attorneys to take advantage of the downtimes to recover from the hectic periods and get up to speed on the latest corporate law developments.

To excel in this practice area, junior attorneys should have strong project management, negotiating, and writing skills. Additionally, Oikle encourages rising corporate attorneys to:

- **Research the relevant laws and market practice.** Junior attorneys should deepen their understanding of state corporate law and case law, federal and state securities laws, and trends in market practice. They should also become familiar with corporate finance and accounting principles. Oikle emphasizes that being fluent in these areas helps corporate attorneys articulate positions more effectively to their clients and during negotiations.
- **Be inquisitive and propose solutions.** Corporate attorneys should be skilled at communicating with non-attorney businesspeople to identify, understand, and address a client's concerns. "Businesspeople do not always know what they need from a legal terminology perspective," notes Oikle. "Attorneys must be able to distinguish nuances to bridge the gap and find a remedy to help get the deal done."



Search [Practice Area Essentials: Corporate and M&A](#) for a collection of resources that new attorneys can use to get up to speed on corporate and M&A topics.



#### BARBARA OIKLE

SENIOR LEGAL EDITOR,  
PRACTICAL LAW CORPORATE AND M&A

Barbara was a shareholder at Greenberg Traurig, P.A. and an associate at Cravath, Swaine & Moore LLP, focusing on M&A and securities transactions for public companies, and a law clerk for Chief Justice Deborah T. Poritz in the New Jersey Supreme Court.

## EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

An employee benefits and executive compensation practice may be a good fit for attorneys who enjoy variety throughout the day, both in the people with whom they interact and the topics and issues that arise. This practice area can be divided into the following two main areas:

- **Employee benefits.** An employee benefits practice involves counseling companies on different types of retirement plans and health and welfare plans, many of which are regulated by the Employee Retirement Income Security Act of 1974 (ERISA). An employee benefits attorney's practice may involve designing, drafting, and updating defined contribution 401(k) plans, pension plans, employee stock ownership plans (ESOPs), group health plans, and severance plans. Employee benefit plans are heavily regulated by agencies such as the Internal Revenue Service (IRS) and the Department of Labor, and attorneys must be comfortable interpreting and applying a host of complex rules and regulations.
- **Executive compensation.** An executive compensation practice involves designing and drafting arrangements that are intended to attract and retain executives, such as executive employment agreements, cash incentive plans, equity compensation plans, and deferred compensation arrangements. These arrangements must be drafted to comply with complicated tax rules, such as Internal Revenue Code Section 409A. Executive compensation attorneys typically assist capital markets and corporate attorneys with drafting disclosures required by the securities laws and advising on issues that arise in corporate transactions, such as determining the effect of a transaction on executives' outstanding equity awards or designing arrangements that help the company retain key personnel until the transaction is complete or for a longer period.

"Attorneys interested in this practice area can shorten their learning curve by taking employee benefits, executive compensation, or ERISA courses, along with courses on tax, corporations, and securities law," says Jessica Cherry, Senior Legal Editor for Practical Law's Employee Benefits & Executive Compensation service. In addition to learning the substantive legal issues, Cherry highlights the following competencies and attributes as critical to success in this practice area:

- **Drafting skills.** Given the highly technical nature of employee benefits and executive compensation agreements, plans, and disclosures, attorneys should have strong drafting skills and a meticulous approach.
- **Analytical skills.** This practice area requires attorneys to analyze complex rules and regulations, and apply them to novel and complicated situations.
- **Organizational skills.** Attorneys in this practice area must regularly juggle multiple projects, exercise good judgment in prioritizing projects, and keep track of various project requirements and deadlines.
- **Collegiality.** An employee benefits and executive compensation practice group is typically a "service" group in the law firm, meaning that these attorneys frequently support colleagues

in other practice groups, such as corporate, labor and employment, and tax. Developing these internal relationships requires effective communication skills, an ability to explain complex matters in plain English, and a team-oriented attitude.

- **Comfort with financial calculations.** A facility with numbers is useful, for example, in performing executive compensation calculations.



Search [Practice Area Essentials: Employee Benefits & Executive Compensation](#) for a collection of resources that new attorneys can use to get up to speed on employee benefits and executive compensation topics.



#### JESSICA CHERRY

SENIOR LEGAL EDITOR,  
PRACTICAL LAW EMPLOYEE BENEFITS  
& EXECUTIVE COMPENSATION

Jessica was a partner at Akin Gump Strauss Hauer & Feld LLP, focusing on employee benefits and executive compensation, and an associate at Baker McKenzie.

## FINANCE

Finance attorneys provide a wide range of legal assistance to the financial services industry. Their clients are typically either a borrower (a company or an individual) or a lender or group of lenders (usually banks or other financial institutions).

A finance practice encompasses elements of law, business, and the financial markets. The work is often very technical, and generally involves sophisticated clients and high-stakes deals. "Individuals who most enjoy this practice area tend to be detail oriented and well organized, with a curiosity or understanding about financial products, accounting principles, and economic trends," notes Melissa Malpass, Senior Legal Editor for Practical Law's Finance service.

Most finance attorneys work at large and mid-size firms in major markets such as New York. At a firm, some litigators may specialize in representing financial institutions in private lawsuits or enforcement actions (see below *Litigation*). However, traditional finance attorneys specialize in either:

- **Corporate transactions.** A corporate (or commercial) finance attorney assists clients with negotiating and completing lending transactions, including cash flow lending, acquisition finance, and asset-based loan transactions. Some corporate finance attorneys choose to further specialize in a subtopic of finance law, such as project, trade, or structured finance. Lending transactions are generally document intensive and include, for example, credit agreements, security agreements, guarantees, subordination agreements, intercreditor agreements, legal opinions, and Uniform Commercial Code (UCC) financing statements.
- **Regulatory counseling.** A regulatory finance attorney assists bank and financial institution clients in complying with numerous regulations, such as those governing safety and

soundness, anti-money laundering, fraud prevention, and consumer protection. These attorneys must learn the client's business, identify applicable regulations, and advise the client on how best to structure and carry out its business activities to comply with those regulations.

A finance attorney's daily routine varies significantly depending on the practice. While a corporate finance attorney usually works long hours for several months when completing a deal for a client, a regulatory attorney's day may consist of fielding questions from several clients about different regulatory issues.

A rising finance attorney should:

- **Focus on the details.** "Finance attorneys need to understand and consider even the most minute aspects of a transaction," says Malpass. "These details can seem small but have a significant impact on a client's needs."
- **Leave room for creativity.** Despite the complex web of legal requirements applicable to financial institutions, finance attorneys have some leeway to consider creative strategies to help a client negotiate the best deal, structure or alter its business activities, or achieve another desired outcome.
- **Monitor regulatory changes and trends.** Finance attorneys must keep track of changes in financial laws, regulations, and interpretive guidance, as well as trends in supervision and enforcement. As Malpass observes, "the practical requirements seem to change with increasing frequency, sometimes due to shifts in the political climate, unofficial comments or bulletins from regulatory agencies, or takeaways from new enforcement actions or settlements."
- **Monitor developments in market practice.** Lending transactions are driven mostly by market practice, rather than by regulation, especially in large corporate transactions. To effectively represent their clients, finance attorneys need to be aware of current market trends in loan structures and documentation.

"The financial services industry is changing due to rapidly advancing financial technology (fintech) and an industry desire to reinvent itself to avoid increasing regulation," notes Malpass. "This evolution makes it a particularly exciting time to be a finance attorney."



Search [Practice Area Essentials: Finance](#) for a collection of resources that new attorneys can use to get up to speed on finance topics.



#### MELISSA MALPASS

SENIOR LEGAL EDITOR,  
PRACTICAL LAW FINANCE

Melissa was counsel at WilmerHale and an associate at K&L Gates LLP, focusing on consumer regulatory issues.

## INTELLECTUAL PROPERTY AND TECHNOLOGY

Intellectual property (IP) attorneys are a large and varied group of practitioners who typically focus on either “soft IP” matters (that is, copyright, trademark, and trade secrets) or patent matters. Further, IP attorneys may work in a litigation or transactional capacity.



Search [Practice Area Essentials: Intellectual Property & Technology](#) for a collection of resources that new attorneys can use to get up to speed on IP topics.

### IP LITIGATION

A curious mind and a focus on precision are vital attributes for an IP litigator. Because the legal terminology in IP litigation can be obscure, rising attorneys in this practice area must be comfortable asking questions to ensure they understand the complex facts and the team’s case strategy, advises Mark Baker, Managing Editor for Practical Law’s Intellectual Property & Technology service. “If you are unwilling to expose your ignorance on a legal or factual issue, then an IP litigation practice will be challenging,” he warns.

Most IP disputes are premised on a copyright-, trademark-, or patent-owner’s belief that another party has infringed on the owner’s property right by using it improperly, either without permission or in a manner that exceeds the permissible use set out in a licensing agreement. In some cases, the allegedly infringing party might contest the validity of the copyright, trademark, or patent itself. Whatever the nature of the dispute, if the parties are unable to resolve it, litigation results.

As with many practice areas involving litigation (see below *Litigation*), IP litigators will have periods of intensity in their work schedule (such as around hearings or trials) followed by periods of relative calm as cases move through the litigation life cycle.

A common misconception about IP litigators is that a background in computer science, engineering, chemistry, or some other technical field is a prerequisite. As Baker explains, “a scientific background is not mandatory, but an attorney who has a curiosity about science and technology and enjoys learning about these areas will make for a better fit, particularly for patent litigation.” One exception to this general rule is the patent prosecution bar, which requires a technical background. Admission to the patent bar is required for attorneys who want to handle patent prosecution work (the process of obtaining a patent).



#### MARK BAKER

MANAGING EDITOR, PRACTICAL LAW  
INTELLECTUAL PROPERTY & TECHNOLOGY

Mark was counsel at Quinn Emanuel Urquhart & Sullivan, LLP and an associate at Skadden, Arps, Slate, Meagher & Flom LLP, focusing on patent litigation.

### IP TRANSACTIONS

Well-organized attorneys with an interest in cutting-edge technologies may enjoy an IP transactional practice. This type of practice is varied and nuanced, and is best suited to attorneys who can track small details without losing sight of the high-level view of a client’s interests, according to Rakiya Diggs, Senior Legal Editor for Practical Law’s Intellectual Property & Technology service.

Particularly at large law firms, IP transactional attorneys often counsel clients on how to monetize technology owned through various IP rights or how a certain corporate transaction might impact a client’s IP rights. For example, in a joint venture transaction, IP attorneys might be asked to identify potential cross-border IP issues. By contrast, in a traditional M&A deal, IP attorneys might be called on to assess the strength of IP ownership rights or analyze how the newly formed company might leverage the client’s technology.

Diggs encourages junior attorneys considering an IP transactional practice to:

- **Gain experience through traditional corporate work.** The drafting and project management experience that associates obtain by working on corporate and M&A matters is valuable when drafting IP agreements, such as e-commerce contracts, cloud service agreements, or outsourcing and procurement agreements. “Gaining the generalist corporate experience and skills across a variety of clients in different sectors is a helpful way to start and provides the tools to see the big picture,” says Diggs. (See above *Corporate and M&A*.)
- **Learn how the relevant IP rights and technology operate.** Junior attorneys should become familiar with the general legal landscape for copyrights, trademarks, patents, and trade secrets, as well as the terminology and operation of different technologies. Similarly, attorneys should develop market and industry awareness so they can provide commercially appropriate responses to clients.
- **Stay organized.** Because an IP transactional practice is constantly changing, often to keep pace with relevant technology, attorneys may be juggling 15 to 20 matters at any given time. IP attorneys must be sufficiently organized to provide concise, accurate, and substantive status updates on any matter on short notice.
- **Listen carefully.** Given the many legal issues that can arise in an IP transaction, scoping a project is sometimes confusing for junior attorneys. To help prioritize projects appropriately, Diggs advises attorneys to focus on the client’s objectives and the specific language of the client’s request, along with the precise assignment instructions given by the supervising attorney.

In Diggs’s view, the demand for IP transactional attorneys, and particularly those with a technology focus, is unlikely to wane anytime soon. “As technology advances and businesses continue to integrate globally, companies will need even more IP attorneys to achieve their business goals, making this a promising career path for a junior attorney,” she says.



### RAKIYA DIGGS

SENIOR LEGAL EDITOR, PRACTICAL LAW  
INTELLECTUAL PROPERTY & TECHNOLOGY

Rakiya was an associate at DLA Piper LLP, focusing on technology-related IP and commercial transactions, and an in-house attorney and associate at King & Spalding LLP.

## INTERNATIONAL ARBITRATION

For an attorney interested in complex commercial disputes with an international flavor, a career in international arbitration offers an opportunity to advocate in a procedural setting designed to reach the merits of a case quickly and efficiently, according to Steven Skulnik, Senior Legal Editor for Practical Law's International Arbitration and Litigation services.

Arbitration is an alternative to litigation as a means of resolving disputes. It is based on the parties' agreement to submit the dispute in question to arbitration. Like a judgment issued by a court, the decision of an arbitral tribunal (called an award) is final and binding. However, arbitration differs fundamentally from litigation in various ways including, for example, the emphasis on confidentiality in arbitration (for more information, search [Arbitration Versus Litigation in the US](#) on Practical Law or see page 84 in this issue).

The Federal Arbitration Act (FAA) provides the basic legal principles applicable to arbitration in the US. Its core principle is that arbitration agreements involving interstate or foreign commerce should be presumed valid and enforceable, and are revocable in only narrow and limited circumstances. This principle is supported by provisions requiring the courts to stay proceedings before them that involve matters referable to arbitration and to issue orders directing the arbitration of those matters. The FAA also requires courts to confirm arbitral awards rendered in the US and abroad, except in the limited circumstances when the party resisting enforcement can show a permitted defense to enforcement. Arbitration practitioners must understand these laws to ensure their client has an enforceable arbitration agreement and arbitral award.

Parties can agree to arbitrate any dispute that otherwise would be litigated in court. The kinds of disputes that are often arbitrated include those over:

- Long-term supply contracts.
- Energy and mining concessions.
- Construction projects.
- Technology sharing arrangements.
- Insurance coverage.
- Admiralty and maritime matters.

Attorneys may specialize in one of these areas or have a practice that is more general. Commercial litigation often requires attorneys to become experts in their clients' business or industry. "In US litigation, the learning curve can be less steep because the merits of the dispute will often not be heard

for years," Skulnik notes. "In arbitration, by contrast, attorneys plead the merits of the case in exacting detail from day one. There is no time for a learning curve."

To succeed in this practice area, Skulnik encourages attorneys to:

- Follow trends in industry practices and customs that concern current and potential clients.
- Learn how to present evidence, particularly cross-examinations of witnesses.
- Attend the many free or low-cost arbitration events that educate attorneys on a variety of topics.



Search [Practice Area Essentials: International Arbitration](#) for a collection of resources that new attorneys can use to get up to speed on arbitration topics.



### STEVEN SKULNIK

SENIOR LEGAL EDITOR,  
PRACTICAL LAW ARBITRATION

Steve was counsel at Squire Patton Boggs (US) LLP, in addition to practicing at other law firms in his 30-plus years in private practice. He is a Fellow of the Chartered Institute of Arbitrators (FCIArb), and he chairs the New York City Bar Association's Arbitration Committee.

## LABOR AND EMPLOYMENT

Attorneys may be drawn to the labor and employment (L&E) practice area because it is people oriented and involves relatable topics.

L&E attorneys handle issues that arise in employment relationships, including hiring and termination practices, wage payment, employment discrimination, workplace harassment, retaliation against employees for exercising their rights, leave due to illness or military service, and accommodation of a religious practice or disability. Most L&E attorneys do not focus on employee benefits and executive compensation matters as part of their practice (see above [Employee Benefits and Executive Compensation](#)).

L&E attorneys may assist an employer in complying with, or responding to claims under, various federal, state, and local laws (for more information, search [Federal Employment Laws by Employer Size Chart](#) on Practical Law or see page 74 in this issue). They do so either working in-house at a company or providing services through a law firm. Alternatively, L&E attorneys may represent an individual who seeks to assert claims against an employer.

The L&E practice area often involves counseling (assisting clients in preventing litigation), drafting (creating employment agreements or handbooks), and litigating (defending clients against claims). L&E attorneys have substantial client contact even at the junior level. For example, an L&E attorney often interacts with a client's human resources director, in-house counsel, or other specialists, as well as insurance companies



(because employment practices liability insurance may provide coverage against an employment-related claim).

An L&E attorney's typical day is likely to include "a lot of firefighting" to handle the varied and unexpected issues raised by clients, according to Kate Bally, Director of Practical Law's Labor & Employment service. A junior attorney may conduct research on various L&E topics, write briefs and client memoranda, take depositions and conduct discovery, train employees on legal compliance on behalf of their employers, create employee handbooks, and draft agreements (such as settlement, separation, non-compete, or independent contractor agreements).

Successful L&E attorneys have a variety of well-honed skills and competencies. Bally emphasizes that the most critical skills include an attorney's:

- **Attention to detail.** Employment law is highly nuanced (particularly state law), with frequent and significant developments, so it is important for attorneys to understand and stay up to date on the specific requirements.
- **Ability to communicate effectively.** An L&E practice deals with human interactions between employers and individuals. "The specific issues and needs of employers and employees do not always match up," Bally notes. Attorneys must be able to work through conflict, and be both respectful when discussing sensitive topics and comfortable with those delicate conversations.



Search [Practice Area Essentials: Labor & Employment](#) for a collection of resources that new attorneys can use to get up to speed on L&E topics.



**KATE BALLY**  
DIRECTOR,  
PRACTICAL LAW LABOR & EMPLOYMENT

Kate was an associate at Littler Mendelson P.C. and at Day Pitney LLP, focusing on employment law, and a law clerk for the Honorable Stefan R. Underhill in the District of Connecticut.

## LITIGATION

Individuals who can stay cool under pressure, enjoy public speaking and persuasive writing, and are both nimble and organized tend to make the happiest litigators, according to Jessica Brand, Senior Legal Editor for Practical Law's Litigation service. "After clerking and seeing litigators in action, I realized how much I liked the fast pace of litigation and the opportunity to get out from behind my desk," Brand recalls. "It seemed like an exciting way to represent a client." (See *Box, Judicial Clerkships*.)

A litigation practice offers attorneys the opportunity to focus on a particular substantive area of law (for example, securities litigation), procedural phase (for example, appellate litigation), or industry sector (for example, automotive or retail litigation), or to develop a generalist commercial litigation practice that involves a mix of everything (for example, business torts, contractual breaches, and other business disputes).

Litigation attorneys are typically responsible for an entire case, from the filing of a claim through settlement or trial, along with any appeals. However, most of an attorney's time is spent on the discovery phase, during which the parties make and respond to discovery requests, conduct and defend depositions, and argue discovery disputes with opposing counsel and, at times, before the court. Discovery conflicts are often acrimonious, even when the stakes are relatively low, and frequently require litigators to adopt an adversarial posture in both written and verbal communications with opposing counsel.

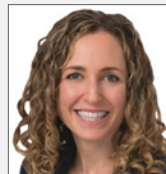
In many ways, an attorney's litigation skills begin to develop in law school classrooms, where careful review and analysis and the ability to articulate a position are essential. For example, most litigators will perform some combination of the following tasks daily:

- **Review and analyze documents.** This might involve reviewing documents or correspondence from a client, an opposing party, or a third party. Regardless of the type of document, litigators are expected to conduct a precise and discriminating review to catch overlooked details.
- **Draft documents.** Whether drafting a scheduling email to opposing counsel, an in-depth research memorandum, discovery documents, pleadings, or motion papers, litigators are expected to write clearly, concisely, persuasively, and frequently. Producing superior written work product is one way junior attorneys can make themselves stand out.
- **Confer with the client, the case team, or opposing counsel.** Litigators regularly have formal and informal conversations about some aspect of a case with clients, colleagues, opposing counsel, litigation support professionals or vendors, and the court. Some of these conferences will be logistical and neutral in tone, while others will require oral advocacy and, at times, argument. Individuals who are particularly sensitive to contentiousness might find this aspect of a litigation practice challenging.

Litigation can be difficult from a work-life balance perspective, at least at the junior level. "As a litigator, your time is not really your own. You learn to structure your week to accommodate your job and the needs of your client and the partners with whom you work," notes Brand. "Work-life balance improves as you become more senior and have more control over scheduling matters."



Search [Practice Area Essentials: Litigation](#) for a collection of resources that new attorneys can use to get up to speed on litigation topics.



**JESSICA BRAND**  
SENIOR LEGAL EDITOR,  
PRACTICAL LAW LITIGATION

Jessie was an associate at Sills Cummis & Gross PC, focusing on complex commercial and real estate litigation, and a law clerk for the Honorable Joseph E. Irenas in the District of New Jersey.

## Judicial Clerkships

A judicial clerkship offers a rare frontline view of the inner workings of a judge's chambers and the opportunity to learn from the legal community's most esteemed attorneys and scholars. Although some judges work with career clerks, most law clerk positions are for one- or two-year terms.

Every day in a judge's chambers brings something new, and law clerks are exposed to a broad range of cases raising a variety of substantive and procedural issues, notes Nicholas Haddad, Senior Legal Editor for Practical Law's Litigation service. "The most successful law clerks are intellectually curious, eager to learn, and a quick study when confronting cases raising unfamiliar fact patterns or areas of law," says Haddad.

Federal and state judges, at both the trial and appellate levels, hire law clerks to assist them with their workloads, as do judges in specialty courts (such as the federal bankruptcy courts or the US Court of International Trade). A law clerk's responsibilities vary based on the court and the individual judge's preferences, but typically involve:

- Drafting opinions and orders on motions and other applications, including conducting the necessary research to support the court's decision.
- Preparing for oral argument, sometimes by creating a bench memo setting out the parties' arguments and a neutral summary of applicable legal principles.
- Observing trials, hearings, and oral arguments, typically taking notes on the proceedings to discuss with the judge after they have concluded.
- Attending status and settlement conferences.
- Coordinating with the court clerk's office, court reporters, and courtroom deputies on a range of logistical issues, including scheduling and filings.
- Advising the judge on upcoming deadlines and court appearances.

"In many ways, a law clerk serves as the judge's eyes and ears," explains Haddad. "A clerk's job is to spot issues, cut through the thicket, and ensure the judge has all necessary information to make an informed decision based on the law and facts. A good law clerk takes the privilege of that responsibility seriously."



### NICHOLAS HADDAD

SENIOR LEGAL EDITOR,  
PRACTICAL LAW LITIGATION

Nicholas was an associate at Jones Day and at Davis Polk & Wardwell LLP, focusing on appellate litigation and motion practice, and a law clerk for the Honorable Robert A. Katzmann in the Second Circuit and the Honorable Jed S. Rakoff in the Southern District of New York.

## PRIVACY AND DATA SECURITY

With data breaches and cyber attacks in the news daily, it is unsurprising that attorneys are flocking to privacy and data security practice. An evolving legal landscape means that these attorneys should be comfortable with uncertainty and relish new learning opportunities. "The constant change in applicable laws is both the best and worst thing about privacy and data security practice," says Lindsey Gillespie, Senior Legal Editor for Practical Law's Privacy & Data Security team.

A privacy and data security practice may focus on:

- **Compliance with regulatory and statutory regimes.** A compliance practice involves assisting clients in meeting obligations set by state, federal, and international privacy laws. Projects might include significant undertakings such as auditing and overhauling a privacy compliance program or more discrete tasks such as developing a website privacy policy or an employee privacy notice. Most attorneys working on privacy compliance simultaneously juggle several matters for different clients. While some of these projects may be time sensitive, many larger projects contemplate a longer time frame.
- **Privacy and data security litigation.** Privacy and data security litigation typically involves advising clients on appropriate responses to a data breach and defending clients against data breach or other privacy-related claims. Privacy litigation attorneys also often advise on privacy issues that arise in cross-border discovery. In the case of data breach response, attorneys typically must provide recommendations under intense time pressure.
- **Transaction counseling.** A privacy attorney providing transaction counseling advises on privacy issues associated with information technology transactions, for example, providing personal information to outsourcing vendors. Privacy attorneys also advise on aspects such as required contract terms, data breach notification requirements, cross-border transfer issues, and liability.

Successful privacy attorneys typically possess superior skills in the following areas:

- **Research and issue spotting.** The sheer volume of privacy requirements that might apply to a client makes it difficult for a junior attorney to master. Instead, an attorney's ability to spot issues and determine when and where to look for

answers for a particular request are more important to the attorney's success than knowing all applicable laws and regulations, advises Gillespie.

- **Problem solving and analytical thinking.** Given the uncertainty inherent in a rapidly changing area of law, privacy attorneys must be able to think analytically. "Often, 100% compliance is not realistic, so privacy attorneys are tasked with developing creative solutions to meet a client's business needs at an appropriate risk tolerance," says Gillespie. A flexible mind and desire to be challenged are also crucial to keep pace with frequent changes in legal regimes.

Additionally, as in many practice areas, clear written and verbal communication skills are key to successful client relationships. "In-house attorneys do not have time to review a three-page memo detailing legal analysis on an issue," notes Gillespie. Junior attorneys should hone their ability to distill information into key points. "It is best to provide clients with a concise response on how to comply, including the risks and benefits of the recommendation, and, where applicable, the document or policy itself that is needed to comply," says Gillespie.



Search [Privacy and Data Security Toolkit](#) for a collection of resources that new attorneys can use to get up to speed on privacy and data security topics.



#### LINDSEY GILLESPIE

SENIOR LEGAL EDITOR,  
PRACTICAL LAW PRIVACY & DATA SECURITY

Lindsey was of counsel at Potomac Law Group, PLLC and a senior privacy associate at Baker McKenzie, focusing on US and global privacy and data security matters, as well as assistant general counsel at the University of Michigan.

## REAL ESTATE

A real estate practice may be a good fit for attorneys who are interested in real estate market developments, enjoy variety in their work, and gain satisfaction from seeing the tangible results of their efforts by, for example, visiting a property that they assisted in purchasing, selling, or refinancing.

Real estate attorneys handle a broad range of matters, including the financing, leasing, and ownership of commercial and residential real estate, construction and development projects, and real estate-related aspects of corporate transactions. "Every real estate transaction presents unique and challenging issues," says Julie Schwartzberg, Senior Legal Editor for Practical Law's Real Estate service. Depending on the stage of a transaction, a real estate attorney's day may involve:

- Conducting due diligence on a property by, for example, reviewing a title, surveys, or third-party reports.
- Drafting, reviewing, and negotiating transaction documents, such as loan documents, purchase and sale agreements, and leases.

- Liaising with a client or counsel for the other party to a transaction to resolve issues, or interacting with third parties, for example, retail tenants in a shopping center that is the subject of an acquisition.
- Seeking specialized advice from colleagues in other practice areas, such as tax, environmental, or land use, on issues that arise in a transaction.

A junior attorney usually assists more senior attorneys on real estate transactions, with the goal of learning how to independently manage and close a transaction. These transactions commonly conclude within a period of months and offer clear start and end points, so a junior attorney quickly gains experience with a variety of matters.

"In addition to a keen attention to detail, an attorney's ability to anticipate issues and provide guidance to clients to help navigate and close a transaction is the real key to success in real estate practice," says Schwartzberg. "Being able to do this while juggling competing demands is also important, given that many attorneys find themselves working on multiple projects at the same time."

After developing a strong knowledge base at a law firm, a real estate attorney generally pursues partnership in a law firm, joins a smaller law firm, or seeks an in-house position handling real estate matters for a bank, an insurance company, a retailer, or an institutional real estate company.



Search [Practice Area Essentials: Real Estate](#) for a collection of resources that new attorneys can use to get up to speed on real estate topics.



#### JULIE SCHWARTZBERG

SENIOR LEGAL EDITOR,  
PRACTICAL LAW REAL ESTATE

Julie was a shareholder at Greenberg Traurig, LLP, focusing on commercial real estate transactions, and an associate at Bilzin Sumberg Baena Price & Axelrod LLP and at Weil, Gotshal & Manges LLP.

## TAX

Attorneys who are analytical and academic typically find a tax law practice rewarding. There is a steep learning curve, and US tax laws are extremely complex and constantly changing. Besides handling the day-to-day client work, a tax attorney must commit time to keep up with changes in tax law and learn new areas.

Transactional tax attorneys provide expert advice that can help clients structure transactions or investments in a tax-efficient way and avoid costly mistakes. By contrast, tax attorneys who focus on controversy work represent clients in disputes with the IRS and other tax authorities. General advice to clients on how tax rules apply to a client's particular set of facts is also a part of tax practice.

Junior transactional tax attorneys often spend a fair amount of time researching discrete issues. They may also review tax disclosures in securities offerings or review and negotiate the tax provisions in M&A agreements or loan agreements. As tax attorneys gain more experience, they usually become more involved in the tax structuring for joint ventures, acquisitions, dispositions, investment funds, or financial products.

Although keeping up with tax developments can be demanding, it also offers an opportunity for junior attorneys. Tax reform legislation enacted at the end of 2017 was passed quickly and included major changes, particularly in the international area. "Understanding the implications of tax reform is a challenge for all tax attorneys, from the most junior to the most senior," notes Sara McLeod, Senior Legal Editor for Practical Law's Corporate and M&A service. "The legislation presents a real opportunity for junior tax attorneys to become as expert on the new tax rules as practitioners who have worked in the field for 30 years."

 Search [Tax Considerations in M&A Toolkit](#) for a collection of resources that new attorneys can use to get up to speed on transactional tax topics.



**SARA McLEOD**  
SENIOR LEGAL EDITOR,  
PRACTICAL LAW CORPORATE AND M&A

Sara was a director and senior counsel in the tax group at UBS AG, and special counsel in the tax department at Sullivan & Cromwell LLP.

## TRUSTS AND ESTATES

A trusts and estates practice may appeal to attorneys who are interested in the prospect of dealing with the intricacies of family dynamics. Trusts and estates attorneys assist clients in managing their assets efficiently and passing those assets to the individuals and organizations that are important to them. Attorneys joining this people-focused practice area should expect to handle a variety of unique and interesting projects and interact with a mix of client personalities.

Along with building expertise in state, local, and federal laws governing trusts and estates, the breadth of topics implicated in client requests exposes trusts and estates attorneys to other practice areas as well, most commonly real estate and corporate. Although a trusts and estates practice involves tax concerns to a large degree, particularly for high net worth clients, tax law is not always the central focus (contrary to popular belief). There are many other reasons clients seek estate planning guidance, explains Samantha Brinn Merel, Senior Legal Editor for Practical Law's Trusts & Estates service.

Trusts and estates attorneys typically assist clients in three primary areas:

- **Creating estate plans and property transfer vehicles.** This involves preparing wills and trusts of various types, including assisting clients with their philanthropic goals by establishing

charitable giving vehicles. Clients, especially those with a high net worth, often seek advice on approaches to tax-advantaged gifting of their property during their lifetimes.


- **Planning for incapacity.** This involves drafting documents to specify, or to identify an individual who will decide, how to handle a client's assets or health care if the client becomes incapable of managing these matters. Examples include drafting powers of attorney or advance health care directives, such as health care proxies and living wills.
- **Navigating family dynamics.** This involves helping a client focus on estate planning and select the individuals or organizations that will receive the client's assets. Attorneys explain the ramifications of the client's choices and recommend how to address any discord that may result from these choices during the client's life or after the client's death.

Attorneys most comfortable in a trusts and estates practice typically possess:

- **Superior interpersonal skills.** It is helpful to be patient and have a general interest in people (including their quirks), families, and the human condition in general.
- **A facility with financial calculations and tax matters.** "If you are considering the trusts and estates practice area, take tax classes early, take them often, and take as many as you can, because the information you learn will be really helpful in practice," advises Merel.

Junior attorney positions in trusts and estates practice are somewhat scarce, perhaps due to the smaller size of these practice groups relative to other practice groups, or to a preference for hiring individuals with previous experience in trusts and estates work. Merel encourages attorneys interested in this practice area to improve their candidacy by:

- Cultivating a mentor relationship.
- Seeking internship opportunities.
- Joining bar associations to benefit from their continuing education courses and publications.
- Participating in professional discussion groups.

 Search [Practice Area Essentials: Trusts & Estates](#) for a collection of resources that new attorneys can use to get up to speed on trusts and estates topics.



**SAMANTHA BRINN MEREL**  
SENIOR LEGAL EDITOR,  
PRACTICAL LAW TRUSTS & ESTATES

Samantha was an associate at Sidley Austin LLP, focusing on international and domestic trust and estate planning for high net worth clients, and an associate at Lazard Asset Management.

# Do You Speak Lawyer?

Attorneys regularly confront unfamiliar terms in the course of their practice. The **Practical Law Glossary** offers clear and simple explanations for basic foundational language, complex legal vocabulary, and everything in between.

## Faragher-Ellerth Defense

An affirmative defense employers may use to defend against claims of hostile work environment harassment by supervisors or their superiors. Employers may attempt to use the defense if:

- No tangible adverse employment action was taken against the plaintiff (for example, no discharge, demotion, or undesirable reassignment).
- The employer exercised reasonable care to prevent and promptly correct the harassing behavior. For example, a harassment policy demonstrates reasonable care to prevent harassing behavior.
- The plaintiff employee unreasonably failed to take advantage of any preventative or corrective opportunities

## Syndicated Loan

A credit facility made available to a borrower by multiple lenders under a single loan agreement.

Syndication is the process by which one bank “sells” a portion of its lending commitment to a syndicate of lenders and reduces its own credit exposure to the borrower. An agent bank is appointed by the syndicate members to interact with the borrower on behalf of the syndicate to facilitate borrowings, receive repayments and distribute them in the correct amounts to the lenders, and administer the loans.



## Chapter 11

The chapter of the Bankruptcy Code under which a debtor seeks to reorganize its affairs by confirming a plan of reorganization. A debtor

## Employee Stock Purchase Plan (ESPP)

A type of compensatory plan that allows employees to purchase company stock, generally at a discount from the market price.

An ESPP allows employees to purchase company stock through automatic paychecks. Contributions are accrued over a specified period (offering period), the funds to purchase shares on that date are determined by the purchase price is a discount to 15%. Some plans include a “look-back” provision that allows the purchase price to be based on the lowest price of the stock during the offering period.

ESPPs can be qualified or nonqualified. Qualified ESPPs are exempt from nondiscrimination requirements. Nonqualified ESPPs are subject to nondiscrimination requirements. A qualified ESPP must meet certain requirements under Section 423 of the Internal Revenue Code.

## Comfort Letter

A letter written by a company’s auditors and delivered to the underwriters in a registered offering or to the initial purchasers or placement agents in a private placement. The comfort letter provides certain assurances about the financial information included in a registration statement or offering memorandum, as applicable, and compares certain financial information included in an offering document to the company’s audited and unaudited financial statements. A comfort letter may also discuss the results of certain additional agreed upon procedures undertaken by the auditors.

## New York Convention

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, concluded in 1958. The Convention provides a regime for the enforcement and recognition of arbitral awards within contracting states.

## Software as a Service (SaaS)

Software delivery model through which providers remotely host, manage, and support software applications for customers over the internet or a private network. Derived from the application service provider (ASP) model, SaaS consists of a one-to-many access method which allows a vendor to host the same version of a standard software product for use by multiple customers.

## Work Made For Hire

Under Section 101 of the Copyright Act, work made for hire is either:

- Created by an employee in the scope of his or her employment.
- Specially commissioned, if the work and the commissioning party have a written agreement that the work is a work made for hire and the work is commissioned for:
  - a contribution to a collective work, motion picture or audiovisual work;
  - part of a motion picture or audiovisual work;
  - a translation;

## Functus Officio

The doctrine of *functus officio* (that is, having performed his office) holds that once an arbitrator renders a decision regarding the issues submitted, he lacks any power to reexamine that decision. This principle is well established in international arbitration, and is accepted in many national laws.

## Abbreviated New Drug Application (ANDA)

A federal application for a generic drug in the US (21 CFR 314.101) that is submitted to the FDA. It is used to obtain marketing approval for a generic drug that is equivalent to a brand name drug. The ANDA must show that the generic drug is the same as the brand name drug in terms of active ingredients, strength, dosage form, and route of administration.

## Private

Also known as a private placement, it is a method of raising capital from a company's existing investors. It is typically used to fund a company's operations or to acquire other companies. The proceeds from a private placement are not subject to the same regulatory requirements as public offerings.

## Work Product Doctrine

The work product doctrine protects, from disclosure to third parties, documents and tangible things that are prepared in anticipation of litigation by or for a party or its representative. The protection is not absolute and can be overcome by a party's attorney or other representative.

## Subordination

The act of lowering the payment priority of a right or a claim with respect to another right or claim. Also known as subordinated.

In financing transactions, subordination is an arrangement where a creditor (the junior creditor) agrees not to be paid by a borrower until another creditor (the senior creditor) is paid. Subordination means increased risk for the subordinated lender since it will have less access to the borrower's assets than senior lenders. Lenders may accept this risk if they are compensated for doing so. Consequently, interest rates on subordinated debt are higher than on senior debt.

As an example, a company's debt may consist of subordinated notes (or high-yield bonds) issued by the company which are subordinated to senior syndicated loans made to the company by lenders in a bank loan facility.

## Rule of Reason

A type of antitrust analysis used to determine the legality of agreements (written or verbal) between competitors. Under the rule of reason, courts examine both the positive and negative effects of an agreement before determining whether it violates antitrust laws. Courts consider several factors in making their determinations, such as the business purpose of the agreement, the market power of the parties involved, the competition within the relevant market, and other market circumstances.

## Food Safety Modernization Act (FSMA)

The federal statute amending the Food, Drug, and Cosmetic Act (FDCA) to give the Food and Drug Administration (FDA) the authority to:

- Prevent, detect, and respond to food safety

## Clear Error

The standard of review appellate courts typically use when reviewing a trial court's findings of fact. Review under the clear error standard is significantly deferential. If the trial court's factual determinations are plausible in light of the record as a whole, generally the appellate court may not disturb them.

## Food Safety Modernization Act (FSMA)

The federal statute amending the Food, Drug, and Cosmetic Act (FDCA) to give the Food and Drug Administration (FDA) the authority to:

- Prevent, detect, and respond to food safety

## Personal Information

Also known as personally identifiable information (PII), it is information that can be used to identify, locate, or contact an individual, alone or when combined with other information. Examples of personal information include:

- Name.
- Home or other phone number.
- Email address.
- Telephone number.
- Social Security number.
- Passport number.

## Term Sheet

A term sheet is a document which sets out certain terms of a transaction agreed in principle between parties, and is typically negotiated and signed at the beginning of a transaction. Also known as a letter of intent or memorandum of understanding, term sheets evidence serious intent, but generally are not legally binding. However, some term sheets contain certain legally binding provisions (for example, confidentiality or exclusivity).

Term sheets are used in a variety of transactions, including commercial negotiations, mergers and acquisitions, lending arrangements, joint ventures, and real estate. In a finance transaction, the term sheet is usually attached to a commitment letter from the lender.

## Enterprise Value

Enterprise value is a measure of a company's value as a going concern. It is calculated as the market value of a company's equity plus the value of its debt and preferred stock, minus the value of its cash and cash equivalents.

## Charitable Trust

A trust formed pursuant to a trust instrument or will, whose unexpired interests are solely devoted to charitable purposes and for which a charitable contribution deduction was allowed. A charitable trust may apply for federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

## Separability

In the context of dispute resolution, the principle that an arbitration or jurisdiction agreement which forms part of a larger agreement is not itself invalidated merely by reason of the invalidity of the larger agreement. Separability is a principle of international arbitration law adopted in most New York Convention countries. For example, in English arbitration law, the principle is given statutory force by section 7 of the Arbitration Act 1996, and in the US, case law at both the state and federal level confirms that arbitration agreements are separable from the main contract as a matter of state and federal law (see, for example, *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)).

Separability is also expressly addressed in several institutional rules (such as the ICC Rules, LCIA Rules, AAA Rules, and the UNCITRAL Arbitration Rules).

## Uniform Commercial Code (UCC)

A model code of proposed statutes dealing with commercial transactions which has been adopted as legislation by all states. Each state can individually decide whether to adopt a uniform law as proposed by the UCC and also has the ability to make nonuniform amendments to the proposed statute.

## Apex Deposition

The deposition of a high-level executive of a business entity or organization that is a party to a lawsuit.

## Protected Health Information (PHI)

Individually identifiable Health Information that is transmitted or maintained in electronic, written, or verbal form. PHI does not include employment records held by an employer.

## Unsecured Creditor

A creditor holding an unsecured claim, or having no liens against a debtor's property. Also known as a general creditor and general unsecured creditor, unsecured creditors have no rights against specific property of the debtor. Also, they generally have no right to receive postpetition interest in a bankruptcy case. However, they do have several other rights, including the right to object to a DIP financing or sale of assets as an interested party in the case and the right to file an involuntary bankruptcy proceeding.