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# Chapter 1: Being a Lawyer

## ■ Lawyers and Their Skills

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Law practice is so diverse that it is not possible to describe the so-called typical lawyer. Each lawyer works with different clients and different legal problems. Ordinarily, certain basic legal skills are required of all lawyers. They must know:

- how to analyze legal issues in light of the existing state of the law, the direction in which the law is headed, and relevant policy considerations;
- how to synthesize material in light of the fact that many issues are multifaceted and require the combination of diverse elements into a coherent whole;
- how to advocate the views of groups and individuals within the context of the legal system;
- how to give intelligent counsel on the law's requirements;
- how to write and speak clearly; and
- how to negotiate effectively.

### Reading and Listening

Lawyers must be able to take in a great deal of information, often on topics about which they are unfamiliar. The ability to digest information from lengthy, dense texts is essential. Equally important is the ability to listen to clients and understand their unique issues and concerns.

### Analyzing

Lawyers must be able to determine the fundamental elements of problems. They spend much time discerning the nature and significance of the many issues in a particular problem. In every issue, the lawyer must study the relationship between each element in order to arrive at an answer, result, or solution.

### Synthesizing

Lawyers must have the ability to organize large amounts of material in a meaningful, focused, cogent manner. The complexities of many issues and the number of laws either directly or tangentially relevant make this kind of organization crucial.

### Advocating

As an advocate, the lawyer's role is to represent his or her client's particular point of view and interests as vigorously as possible. The American judicial system assumes that equitable solutions will emerge from the clash of opposing interests. The success of this adversarial system of American law depends upon the talents and training of the lawyers who work as advocates within it, as speakers and as writers. Lawyers

must be able to use their advocacy skills—both written and oral—to marshal evidence and present arguments as to why a particular outcome is desirable.

### Counseling

Lawyers also spend a good deal of their time giving clients legal advice. Few ventures in the modern world can be undertaken without some understanding of the law. Through their knowledge of what the law involves, lawyers advise clients about partnerships, decisions, actions, and many other subjects. In many cases, the lawyer's role as a counselor serves as much to prevent litigation as to support it.

### Writing and Speaking

Whether in the courtroom or the law office, lawyers must be effective communicators. If lawyers could not translate thoughts and opinions into clear and precise English, it would be difficult for the law to serve society. After all, the law is embodied in words, and many of the disputes that give birth to laws begin with language—its meaning, use, and interpretation. Litigation leads to written judicial opinions; congressional enactments are recorded as printed statutes; and even economic transactions must be expressed as formal, written contracts.

### Negotiating

One of the lawyer's primary roles is reconciling divergent interests and opinions. When the parties to a proposed transaction disagree, the lawyer, acting as a facilitator, may be able to help them negotiate to a common ground. Although the client's interests are a lawyer's first priority, often those interests are served best after compromise and conciliation have paved the way to an equitable settlement. Because lawyers are trained to see the implications of alternative courses of action, they are often able to break an impasse.

A legal education is also excellent preparation for many other careers, because the course of study provides a framework for organizing knowledge and teaches an analytical approach to problems. Any or all of the skills described here are useful for those law school graduates who choose not to practice law, but to go into another field. Professions such as banking, insurance, real estate, public relations, human resources, government, education, and international trade are significant areas of employment for law school graduates. The fields of health care, media, and publishing have also attracted law school graduates to their ranks. Law school does not train you for any particular kind of law, but rather acts as a springboard into various professional opportunities. Among the skills learned in law school that are basic to a variety of nonlegal positions are ease in dealing with legal terminology and concepts, ability to analyze facts, and facility in persuading others.

## ■ Fields of Law

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Lawyers are central figures in the life of a democratic country. They may deal with major courtroom cases or minor traffic disputes, complex corporate mergers or straightforward real estate transactions. Lawyers may work for giant industries, small businesses, government agencies, international organizations,

public interest groups, legal aid offices, and universities—or they may work for themselves. They represent both the impoverished and the wealthy, the helpless and the powerful. Lawyers may work solo, in a small group, or in a large law firm.

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About 72.9 percent of American lawyers are in private practice, most in small, one-person offices and some in large firms. Roughly 8.2 percent of the profession work for government agencies, 9.5 percent work for private industries and associations as salaried lawyers or as managers, 1.1 percent work for legal aid or as public defenders, and 1 percent are in legal education. (About 4.6 percent are retired or inactive.) Many lawyers develop expertise in a particular field of law. Large law firms that provide a full range of legal services tend to employ more specialists. The solo practitioner, who must handle a variety of problems alone, may have greater opportunity to work in several areas. Of course, there are lawyers in large firms who maintain general practices, and lawyers in one-person offices who concentrate on a particular legal issue. Both specialized and general practice can be rewarding. One offers the satisfaction of mastering a particular legal discipline, and the other the challenge of exploring new fields. Following are brief descriptions of selected areas of specialization, though there are many areas of the law that can rightly fall into more than one category.

### **Civil Rights**

Many lawyers entered law school wishing ultimately to work in the field of civil rights—the area of law that is concerned with the balance of governmental power and individual liberties. Although the number of full-time jobs in this field is relatively small, many lawyers whose principal practices are in other fields are able to work in this area by taking cases on a pro bono basis. Full-time civil rights attorneys often work for nonprofit, public interest law firms, or as part of a larger firm with a diverse practice.

### **Corporate and Securities Law**

The corporate lawyer helps clients conduct their business affairs in a manner that is efficient and consistent with the law. The responsibilities of a corporate lawyer can range from preparing the initial articles of incorporation and bylaws for a new enterprise to handling a corporate reorganization under the provisions of federal bankruptcy law. Examples of other areas of corporate law practice include (but are not limited to) contract, intellectual property, legislative compliance, and liability matters.

Securities law is an extremely complex area that almost always requires the services of a specialist. Lawyers who acquire this specialty are involved with the formation, organization, and financing of corporations through securities such as stock, as well as mergers, acquisitions, and corporate takeovers.

### **Criminal Law**

Criminal defense lawyers represent clients accused of crimes. Their public counterparts are the prosecutors and district attorneys who represent the interests of the state in the prosecution of those accused of crimes. Both types of criminal lawyers deal with fundamental issues of the law and personal liberty. They defend many of the basic rights considered crucial to the preservation of a free and just society.

### **Education Law**

An education law attorney may provide advice, counsel, and representation of a school district or other educational agency in matters pertinent to education law, such as: student

residency, governance issues, the principal and teacher selection and retention process, student discipline, special education law, tuition fraud, and in the development of educational policies. Other education law attorneys may represent parents with special education or student expulsion matters against a school district.

### **Employment and Labor Law**

Employment and labor law addresses the legal rights of workers and their employers. Issues might include disputes regarding wages; hours; unlawful termination; child labor; workplace safety; workplace injury and disease; family and related leave; pension and benefit plans; the right to unionize; regulations of and negotiations with union employees; sexual harassment; government civil service systems; and discrimination based upon race, gender, age, and disabilities. Attorneys practicing employment and labor law might represent an individual employee, a group of employees, job applicants, a union, union employees, government workers, a large or small business or organization, a government agency, or interest groups.

### **Environmental and Natural Resources Law**

Environmental law was born out of widespread public and professional concern about the fate of our natural resources. Lawyers in this field may tackle legal and regulatory issues relating to air and water quality, hazardous waste practice, natural gas transportation, oil and gas exploration and development, electric power licensing, water rights, toxic torts, public land use, marine resources, and energy trade regulation. They may work directly for governmental agencies that address environmental problems or represent corporations, public interest groups, and entities concerned about protecting the environment.

### **Family and Juvenile Law**

Family, or domestic relations, law is concerned with relationships between individuals in the context of the family. Many lawyers who practice this kind of law are members of small law firms or are solo practitioners. They specialize in solving problems that arise among family members and in creating or dissolving personal relationships through such means as adoption or divorce.

### **Health Law**

The practice of health law encompasses many different disciplines. Lawyers in this field can be in the private bar or at government agencies. Health lawyers can represent hospitals, physician groups, health maintenance organizations (HMOs), or individual doctors, among many others. Government health lawyers can investigate fraud, deal with Medicare policy and compliance, or oversee public health policy. Many health lawyers are engaged in the business of health care, spending significant time in mergers and acquisitions, tax law, employee benefits, and risk management issues. The impact of technology on health care has been great with health lawyers helping to guide their clients through intellectual property, biomedicine, and telemedicine issues. Other health lawyers specialize in bioethics and clinical ethics, representing universities and other research academic centers.

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## Immigration Law

US immigration law deals with legal issues and US policies relating to foreign nationals who come to the United States on a temporary or permanent basis, including the associated legal rights, duties, and obligations of aliens in the United States; the application processes and procedures involved with naturalization of foreign nationals who wish to become US citizens; as well as dealing with legal issues relating to people who are refugees, people who cross US borders by means of fraud or other illegal means, and those who traffic or otherwise illegally transport aliens into the United States. An immigration lawyer may assist clients with all aspects of immigration law, but many choose to specialize in subcategories of immigration law, due to the complexity of the law and the frequency of updates and changes. Specialization areas will include asylum/refugee law, business immigration law, and criminal and deportation defense. An attorney practicing in one of the above areas of immigration law may work for the government, a law firm, a community-based organization, or in-house for a company employing foreign nationals.

## Intellectual Property Law

Intellectual property law is concerned with the protection of inventors' rights in their discoveries, authors' rights in their creations, and businesses' rights in their identifying marks. Often, an intellectual property lawyer will specialize in a particular area of the law. For example, for those attorneys with a technical background, patent law is a way to combine one's scientific and legal background into one practice. A copyright attorney counsels authors, composers, and artists on the scope of their rights in their creations and personal identities; negotiates contracts; and litigates to enforce these rights. In recent years, copyright law has also focused on technological advances, particularly developments in electronic publishing. Additionally, in today's global economy, intellectual property issues are at the forefront of international trade negotiations.

## International Law

International law has grown significantly as a field of practice, reflecting the increasing interdependence of nations and economies. Public international law provides a limited range of job opportunities, particularly with national governments or international institutions or with public interest bodies. Immigration and refugee law also assumes increasing importance as more people move more frequently across national boundaries for business, tourism, or permanent resettlement. Private international law may offer more extensive employment opportunities, either through law firms or for corporations, banks, or telecommunications firms. Fluency in another language or familiarity with another culture can be a decided advantage for law school graduates who seek to practice in the international arena.

## Real Estate Law

Real estate law generally involves anything dealing with real property (land). These laws are designed to determine who owns land and the buildings on it, who has a right to possess and use land or buildings, the sale and purchase of real property, landlord and tenant issues, the development of real property, and compliance with local, state, or national regulations affecting the use of real property. An attorney practicing real estate law may focus on contractual issues by drafting and reviewing contracts; some real estate attorneys may be more focused on litigation issues, such as determining the ownership of land in court, challenging or enforcing easements, seeking to allow the specific development of property, or trying to prevent or alter a planned development of real property. In addition, an attorney practicing real estate law may focus on a specific type of real estate law or a related area of law, such as oil and gas or natural resources law.

## Sports and Entertainment Law

Sports law is divided between amateur and professional sports. At the amateur or university level, sports lawyers ensure that athletes and donors are in compliance with National Collegiate Athletic Association (NCAA) rules. They also work with colleges and universities that receive federal aid and are thus subject to Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of gender in athletic programs. At the professional level, sports lawyers address contract and antitrust issues. They may serve as agents to individual players or represent team owners. Entertainment law generally consists of legal issues affecting television, films, recordings, live performances, and other aspects of the entertainment industry. Entertainment law may involve employment law issues, such as contracts between actors and studios, labor law issues affecting trade unions, and intellectual property law, including the protection of creative works such as new songs and the collection of royalties. Entertainment lawyers may assist their clients in negotiating contracts for a record deal or for appearing in a movie, may ensure that their songwriting client obtains the correct amount of royalties for the songs he or she has written, or may go to court to litigate many issues involving the entertainment industry, including disputes over ideas for movies or songs.

## Tax Law

In the past 50 years, the importance and complexity of federal, state, and local taxes have necessitated a specialty in this field of law. It is one area of the law where change is constant. The federal Internal Revenue Code and its associated regulations are now several thousand pages in length. New statutes, court decisions, and administrative rulings are issued frequently, and the tax lawyer must be alert to these changes. Economic planning usually includes attention to taxes, and the tax lawyer often assists clients in understanding and minimizing their tax liabilities.