



CAREERS IN TRANSACTIONAL LAW

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I. INTRODUCTION

This document will provide an introduction to transactional law, answer some recurring questions about the field and discuss some of the common practice opportunities available to transactional lawyers. We hope that this resource will serve as a roadmap for you when considering the various transactional paths available. We encourage you to use this resource as a part of your online research and networking efforts in private practice. We also encourage you to make an appointment with your OCS advisor to discuss your individual questions and career goals.

II. WHAT IS TRANSACTIONAL LAW?

Transactional law is a broad designation that covers a variety of legal practice areas. In general, transactional lawyers help clients - often privately held, publicly traded or even multinational companies - to conduct their business transactions, or deals. These undertakings might include, but are not limited to, capital formation and securities issuances, mergers, acquisitions and divestitures, leveraged buy-outs, bank financings, project financings, joint ventures, business restructurings, negotiation of commercial contracts and advising on regulatory matters related to those transactions. Transactional attorneys most commonly work at large and mid-sized law firms, where most transactional attorneys receive their initial training, but they might also work for in-house corporate departments, governments or nonprofits.

The first year of law school traditionally focuses on the case method, which centers court cases and other dispute resolution forums in the curriculum. This can make learning about transactional practice difficult. The introduction of practical courses like contract drafting and negotiations in the second and third years of law school - in addition to clinical and externship opportunities - has helped to engage students in transactional practice earlier in their law school careers. But students still find it difficult to gain insight into what life as a transactional attorney is like.

Please note that recessions and other economic downturns negatively impact certain areas of transactional law, while those same practice areas experience significant booms during economic expansions. Some practice areas that do significant bankruptcy and restructuring work, bank finance for example, might still remain robust during economic downturns.

III. FAQ AND ISSUES TO CONSIDER

What does a transactional attorney do, day to day?

Transactional attorneys spend a great deal of their time drafting agreements, negotiating with counterparties over the phone (sometimes in person), advising on corporate governance matters, creating legal entities, filing legally required forms and conducting due diligence. More senior attorneys might spend their time managing a transaction from a high level, talking with clients and counterparties and drafting primary transactional documents. Newer associates might spend more of their time conducting due diligence, drafting ancillary documents - such as board resolutions, bring down certificates or escrow agreements - and managing the more administrative aspects of the transaction, such as updating closing checklists or collecting work product from third parties and subject matter specialists. As you gain more experience, you are given larger responsibilities in the transaction, including drafting more complicated documents and supervising junior attorneys. For more information, see this Vault article on a [day in the life of a mid-level corporate associate at Mayer Brown](#). See also Vault's article called "[So, You're Thinking of Becoming a Transactional Lawyer.](#)"

What skills do transactional attorneys need?

- ◇ Analytical skills
- ◇ Project management skills
- ◇ Attention to detail
- ◇ Drafting skills
- ◇ Negotiation skills
- ◇ Oral and written communications skills
- ◇ Business administration, accounting and client relations skills

Transactional v. Litigation

When thinking about litigation and transactional law, here are some key differences to consider. A transactional law practice will likely entail:

More mutually beneficial outcomes

As opposed to a lawsuit or arbitration, where one party normally wins and another party loses, transactional law might involve two or more parties entering into a transaction that all sides support. In this sense, clients want their attorneys to work together to consummate a transaction. Do not take this to mean that transactional law is free from contention or intensity - with sophisticated lawyers zealously advocating for their clients, it can be just as contentious as the arguments made in and out of a courtroom.

Relatively less legal research

Transactional lawyers often do not conduct large amounts of legal research on WestLaw or LexisNexis. Regulatory regimes might govern many transactions - especially state corporate law and federal securities regulations - but they usually require little to no complex arguments from case law.

An overlap between business and legal issues

Transactional lawyers find themselves advising clients in many issues that have an overlap between legal and business arenas that are not always clearly separable.

Faster and client-driven timelines

Litigation attorneys normally operate according to timelines provided by a court or adjudicative body. They also might work on certain matters for months or even years prior to resolution. Conversely, transactional attorneys might only work on a given client matter for a few weeks or months. Transactional clients might also accelerate or decelerate timelines based on their individual business goals or competitive pressures. In practice, a client might call to tell you that the transaction originally planned to close at the end of the month must now close by the end of the week. As a transactional attorney, you will be expected to respond to client demands promptly. While all law firm attorneys are busy, transactional attorneys are more likely to have unpredictable schedules that include night and weekend work. Of course, all practices are different and there are many exceptions - including when a litigator is at trial.

More project management

Transactional attorneys might be responsible for certain non-legal aspects of a transaction, including process management and supervising the work product of third parties. For example, a real estate attorney might be responsible for coordinating with a surveyor, or for retaining local counsel to opine on land use issues in connection with a real estate sale. An M&A attorney might be responsible for coordinating the work of subject matter specialists (more on subject matter specialists later in this document) with respect to conducting due diligence on a target company and then filtering those findings into the primary transactional document. These responsibilities are not quite legal work, but an important component to a transaction. While the extent to which a certain transactional practice must execute project management duties varies, it is nonetheless an important question to keep in mind while researching and networking.

More frequent negotiations

While negotiations certainly occur in litigation and regulatory work, negotiations are far more frequent and central to the work of a transactional attorney. Since transactional attorneys draft contracts and ancillary documents that will be signed by their own client and a

counterparty, the counterparty normally has the opportunity to comment and suggest edits to such documents. Transactional attorneys must assess each party's negotiating leverage and must engage counterparties in a way that advances their client's interests while not scuttling the transaction.

More drafting

Transactional attorneys receive early and frequent opportunities to draft full agreements in connection with a deal. An important question to ask in your networking is what types of documents a new attorney will be responsible for, and what types of documents will more experienced attorneys handle.

Potentially less document review

Some transactional practices will not require junior attorneys to review large amounts of legal documents. This does not apply to mergers and acquisitions attorneys, and subject matter specialists, as large amounts of due diligence are often a component of acquisitions or divestitures. An important question to ask in your research is the extent to which certain deal attorneys conduct due diligence as a part of their practice. While you are not required to understand the nuances of due diligence and document review right now, you should certainly understand how it factors into your practice area interests and have an answer for how you will respond to more or less document review.

Do I need relevant work experience to be a transactional lawyer?

You do not need to have had financial industry or transactional experience prior to entering law school to be a transactional attorney. Many large law firms do not expect recent graduates to have significant substantive knowledge or training in a given transactional practice area. Much of your training will happen on the job. Of course, prior work experience, dedicated course selection and transactional internships can help in your interviewing and recruitment efforts. But you should not think that coming into law school with a teaching or science background, for example, will prevent you from having success in transactional recruiting.

What are helpful classes you should consider taking to gain transactional skills?

Consider the following courses if you are interested in building additional transactional skills and knowledge. This is certainly not an exhaustive list of all Georgetown transactional law offerings.

- Accounting for Lawyers
- Advanced Legal Writing: Transactional Practice; Writing for Practice: Corporations; Writing for Practice: Deals
- Antitrust law
- Bankruptcy and restructuring
- Business and Financial Basics for Lawyers; Business Basics for Lawyers
- Business Essentials: A Mini-MBA for Lawyers
- Contract drafting seminars
 - Drafting and Negotiating Commercial Real Estate Documents
 - Drafting Partnership and LLC Agreements
- Corporate Finance; Corporate Finance: Quantitative Analysis and Valuation
- Corporate Governance Seminar

- Corporate Legal Department Practicum
- Corporations and Advanced Topics in Corporate Law
- Deals: The Economics of Structuring Transactions
- Employee Benefits Practicum; Employee Benefits: Executive Compensation
- Hedge, Private Equity and Other Private Funds
- Information Technology Transactions: Strategy, Negotiations and Drafting
- In-House Counsel: Law and Practice
- International Business Negotiations; International Business Transactions
- Mergers and Acquisitions; Takeovers, Mergers and Acquisitions; Mergers and Acquisitions in Practice: Advising the Board of Directors; Negotiating a Mergers and Acquisitions Transaction
- Negotiations Seminar
- Project Development and Finance; Developing and Financing Infrastructure Projects
- Regulated Money Management: Mutual Funds and Investment Advisers
- Secured Transactions
- Securities Regulation; Beyond the IPO: Exempt Securities Offerings; Initial Public Offerings
- Structuring Private Equity Funds and Transactions
- Taxation: Corporate, Partnership and Federal Income

Where do transactional lawyers practice?

Transactional attorneys most commonly work at large and mid-sized law firms, where most transactional attorneys receive their initial training, but they might also work for in-house corporate departments, governments or nonprofits. If organizations hire in-house transactional attorneys, those entities likely have recurring operational needs that require some form of contract review and negotiation, that cost at least as much as the yearly salary of one transactional attorney in law firm fees.

Can I become an in-house attorney directly after graduation?

Often, corporations and in-house departments do not hire recent law school graduates. The typical path to working in house involves working at a large or mid-sized transactional law firm for a few years, or more, and then transitioning to a corporation or other organization's legal department. There can be a steep learning curve to becoming an effective transactional attorney and law firms are generally better suited at absorbing the high costs of training, in part due to the high billable rates law firms charge their clients. Of course, there are always exceptions to this general trend. Students interested in going in-house should conduct extensive outreach as each employer might be different. For more information, visit OCS' [Practice Area Pages](#), the [Association of Corporate Counsel](#) or the [Minority Corporate Counsel Association](#).

What is contract drafting and how does it work?

You might hear attorneys talk about contract drafting as a part of their practice, but what is it and how does it factor into your life as a transactional attorney? Contract drafting involves creating a new legal document suitable to a client's current transactional needs. It involves utilizing precedent - typically a document used on a previous matter and stored at a law firm - and updating the major terms to match the current transaction and to account for any unique risks. Precedent

documents will likely already contain certain structural and formatting elements so that an attorney does not have to start from scratch. It will also likely contain certain “boilerplate” terms that are unlikely to materially change between transactions, e.g. notice provisions, assignment provisions, governing law, etc. But even these boilerplate provisions are subject to negotiation and comment in a complex transaction.

Agreements are often heavily negotiated, i.e. a document might start off including terms only favorable to one side and, through the process of negotiations, evolve to become more balanced to both parties’ needs and risk tolerance. It is incredibly important to understand the material risks associated with a transaction and to address them in the final agreement, no matter how remote the risks might seem. [As a recent example](#), an attorney at Davis Polk cleverly included updated “force majeure” and “material adverse change” terms in a private equity firm’s agreement to purchase Victoria’s Secret, making it much harder to back out of the purchase for reasons related to disruptions in the national economy as a result of the coronavirus pandemic. The more an attorney understands their clients risks and the more carefully they draft agreements, the more protected a client might be from adverse business results.

IV. OVERVIEW OF TRANSACTIONAL PRACTICE AREAS

This section of the document will discuss some of the major practice areas available to transactional attorneys, and some of the major issues to consider alongside those practice areas. For more information and resources on specific practice areas, please consult the OCS [Practice Area Pages](#).

A. Mergers and Acquisitions

Mergers and acquisitions, or M&A, is the business practice of buying and selling of a business and/or the assets used in businesses around the world. **M&A attorneys** advise their clients on how to structure, negotiate and document the purchase and sale of operating businesses

Helpful Resources

- Georgetown Practice Area Page - [Mergers and Acquisitions](#)
- Chambers Associate - Practice Area Profile - [Corporate / M&A](#)
- Vault - [What is it like to be an M&A Attorney?](#)
- Chambers and Partners - USA Rankings - [Elite M&A](#) / [Highly Regarded](#)
- Vault - [Best Law Firms to Work for General Corporate Practice](#)
- Vault - [Career Guide to Private Equity](#)

What is due diligence?

Mergers and acquisitions work, at least for junior attorneys, includes a significant amount of due diligence. So it is important to understand what it is and how it factors into the practice area. Legal due diligence is the process of collecting, understanding and assessing all of the legal risks associated with the purchase or sale of a target business during the M&A process. It normally

involves a target company uploading its formational documents, contracts, loans and other operational documents into a virtual document sharing platform, usually called a “data room,” where attorneys may review the legal risks associated with a transaction. It is an M&A attorney’s responsibility to identify and analyze issues that might arise as a result of the purchase or sale of a business, and then communicate those issues to the client along with recommendations on how to address such risks. For example, a transaction might obligate a target company to make additional payments to its creditors, allow a target’s clients to cancel contracts, or increase the risk of a lawsuit related to the target’s pension or healthcare plans. An end product of due diligence is typically a summary or report of due diligence findings called a due diligence memorandum, which is then sent to the client or third parties for review.

Financial M&A, Strategic M&A and Public M&A

There are multiple types of mergers and acquisitions, and attorneys might specialize in one, or multiple, of the various sub-specialties. An important question to ask when thinking about the different types of M&A is “what type of entity is making the acquisition and to what end?” You can think of strategic M&A as operating businesses acquiring other businesses, oftentimes competitors or businesses with complementary operations, to realize certain business or “strategic” goals, like expanding revenue or market share, or to realize synergies or cost savings. Strategic purchasers normally fund their acquisitions with cash or stock. Examples of strategic M&A include Amazon purchasing Whole Foods or Facebook acquiring Instagram. Financial M&A typically involves an investment company, oftentimes a private equity or venture capital firm, purchasing an operating company and packaging it into a portfolio of other businesses in an industry, with the intent of reselling the portfolio for a profit in the future. Financial buyers typically fund their acquisitions through small amounts of cash combined with large bank loans or bond sales - otherwise known as leveraged buyouts. There are also different legal regimes and responsibilities associated with the purchase of a business when it is a publicly traded company - this is normally called “public M&A.”

While there will always be some overlap, law firms might have clients that focus primarily on financial M&A, while others might have clients focused on strategic M&A. Law firms like Kirkland & Ellis LLP, Latham and Watkins, LLP, and Simpson Thacher Bartlett LLP possess very strong financial or private equity M&A practice groups, while firms like Cravath, Swaine and Moore LLP and Sullivan and Cromwell LLP tend to practice in strategic M&A. Consider reviewing Vault’s [Best Law Firms by Practice Area](#) list, including [Private Equity](#).

B. Subject Matter Specialists

In connection with many law firms’ mergers and acquisitions or general corporate practices, there exist a number of transactional attorneys possessing an expertise in one or more specialized areas of the law. These **subject matter specialists** help to analyze transactions from a more focused perspective, and comment not only on the legal risks of engaging in certain transactions, but also how to document and execute client deals.

At some law firms, transactional specialists might exist alongside a firm's regulatory or litigation attorneys, and some might practice in multiple of those categories. The way a firm structures its practice groups is an important issue to examine when researching law firms and networking with attorneys, especially when it comes to transactional specialists.

As an illustrative example of how transactional specialists are utilized, if an M&A client seeks to purchase a manufacturing company, M&A attorneys might enlist the help of the law firm's environmental group to examine the potential pollution liability in connection with the company's manufacturing facilities. Antitrust attorneys would analyze the market implications, the price of the potential merger, and the size of the parties in order to make the necessary Hart-Scott-Rodino Act disclosures to the Federal Trade Commission and the Department of Justice. Employee benefits attorneys might also analyze the target company's healthcare and pension plans to identify issues or additional liabilities. These specialists conduct their own due diligence reviews of a company's documents, draft sections of the due diligence memo, make any required filings with regulatory bodies and add their own comments and negotiation assistance in the primary transactional agreements governing the deal.

Corporate Support v. Self-Generated Transactions

One should determine whether a specialist practice group engages in "corporate support" only or also generates its own transactions, as there are practical differences between the two. The balance between corporate support and self-generated transactions will likely impact an associate's hours, their number of matters and potentially the responsibilities they take on as they develop. Corporate support means assisting on a larger transaction where the subject matter issue is not the primary driver of the deal. For example, a real estate attorney might analyze the leases and surveys of a company's office facilities, but the purpose of the transaction is to purchase an operating business not primarily in the real estate business. Other practice groups might generate their own transactions in addition to serving as corporate support. Real estate practice groups might assist development companies in the purchase and sale of large portfolios of commercial buildings, which is an example of a self-generated real estate transaction. Examples of the practice areas that generate their own transactions, in addition to providing corporate support, include real estate, technology/intellectual property transactions, capital markets and finance.

Types of Subject Matter Specialties

The following is a non-exhaustive list of practice areas that might assist in a firm's transactional matters as subject matter specialists:

- Antitrust
- Capital Markets and Securities
- Employee Benefits
- Executive Compensation
- Environmental
- Healthcare
- International Trade and National Security
- Labor and Employment
- Real Estate
- Tax

- Technology/Intellectual Property Transactions

Helpful Resources

- Georgetown Practice Area Pages - [Antitrust](#)
- Georgetown Practice Area Pages - [Tax Law](#)
- Chambers & Partners - USA Rankings - [Antitrust](#)
- Chambers & Partners - USA Rankings - [Employee Benefits & Executive Compensation](#)
- Chambers Associate - Practice Area Profile - [Healthcare](#)
- Chambers Associate - Practice Area Profile - [International Trade](#)
- Chambers Associate - Practice Area Profile - [Labor and Employment](#)
- Vault - [Best Law Firms for Real Estate Law](#)

C. Capital Markets and Securities

Capital markets and securities attorneys advise their clients on how to properly access the financing options available in the public capital markets, including equity offerings, debt offerings, securitization and derivatives. These transactions are often highly regulated by state and federal law, including the Securities Act of 1933 and the Securities Exchange Act of 1934. Capital markets attorneys also work regularly with the Securities and Exchange Commission, filing reports and making disclosures to investors. In some transactions, the goal is to avoid the heightened disclosure requirements of the federal securities laws, like in a 144A bond offering.

Issuer v. Underwriter

An important issue to consider when researching law firms is the extent to which a law firm represents underwriters - investment banks and other financial firms responsible for marketing and selling securities - or issuers - the companies engaging in the origination of securities offerings. Some firms primarily represent issuers, while others represent underwriters. Practice differences do arise between the two sides.

Special-Purpose Acquisition Companies

A special-purpose acquisition company, or “SPAC” for short, is a new business and financial model that has become increasingly popular on Wall Street in the last few years. Therefore, facilitating SPAC transactions has become an increasingly important component of certain transactional attorneys’ practices, including capital markets and public M&A attorneys. A SPAC, also known as a “blank check company,” is a shell corporation listed on a stock exchange with the purpose of acquiring a private company, thus making it public without going through the traditional initial public offering process. SPACs are usually established by institutional investors and financial industry executives, including private equity and hedge fund managers, which some see as a faster way of receiving capital infusions into operating businesses.

While SPAC transactions are unlikely to predominate any firm’s transactional business, or the work of a junior transactional attorney, they are nonetheless an important transactions to consider in your research and networking.

Helpful Resources

- Georgetown Practice Area Page - [Capital Markets / Securities](#)
- Chambers Associate - Practice Area Profile - [Capital Markets](#)
- Vault - Practice Area Profile - [Securities](#)
- Vault - [Best Law Firms for Securities / Capital Markets](#)

D. Bank Finance and Project Finance

Transactional finance attorneys represent borrowers, lenders and debt investors in the structuring, negotiation and execution of debt transactions. Clients might include banks, hedge funds, private equity funds, and their portfolio companies, or corporate borrowers. Finance attorneys might assist with financing in connection with leveraged buyouts, normal corporate operations or restructurings and workouts. There are a number of creative financing structures, including syndicated, club, and bilateral facilities; leveraged and investment-grade financings; cash flow and asset-based transactions; first- and second-lien deals; senior secured and unsecured mezzanine financings; and front-end transactions.

Project finance is the financing of long-term infrastructure, industrial projects, and public services using a non-recourse or limited recourse financial structure. **Project finance attorneys** represent the multiple parties involved in these transactions: (1) sponsors that generate the project, (2) financiers that fund the project, including banks and international development agencies, (3) contractors that supply the materials and labor to construct the project and (4) offtakers that purchase the products, often energy, produced by the project. Parties take on significant amounts of risk prior to the completion of the project, so lawyers develop complex risk-sharing agreements amongst the various parties in order to advance the construction of a given project. Project finance is also notable for its international focus - some law firms have practices focused on Latin American project finance of African project finance, for example.

Helpful Resources

- Chambers Partners - USA Rankings - [Banking and Finance](#)
- Chambers Associate - Practice Area Profile - [Banking and Finance](#)
- Chambers Associate - Practice Area Profile - [Energy and Projects](#)
- Vault - [Best Law Firms for Project Finance](#)

E. Fund Formation and Private Funds

Fund formation attorneys advise their financial firm clients on how to establish complex investment vehicles. These investments funds might include private equity funds, hedge funds, venture capital funds or others. Investors often pay significant fees to fund managers for their expertise and ability to generate large investment returns. As a result, there are a number of sophisticated issues between these two sides, including: tax implications, regulatory compliance - most notably with the Investment Company Act of 1940 - determining how funds are managed and how investors receive their money at the end of an investment period.

Helpful Resources

- Chambers Partners - USA Rankings - [Fund Formation in USA](#)
- U.S. News - [Best Firms for Private Funds / Hedge Fund Law](#)