

Cherish the Routine Legal Services

Commodity work can actually open the door to new and progressive techniques.

BY REES W. MORRISON

Law department managers love to use the term “commodity legal work.” But they don’t always spell out what it means.

By most definitions, commodity legal work covers humdrum, everyday work—the routine contracts, security interest continuation statements, nondisclosure agreements, promotional copy reviews, and many other kinds of ordinary legal services.

In-house counsel need to develop a shared understanding of the term and the kind of legal services it describes. Once general

counsel and other management lawyers in-house more consistently recognize commodity work, they can improve how they manage it. In fact, commodity legal services allow

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in-house counsel to use progressive techniques for work-flow management, technology use, staffing, client relations, and outside counsel arrangements.

WHAT’S IN A NAME?

One problem is that the term “commodity legal work” means different things to different people, mostly because its application depends heavily on context. Work that is a toss-off to a lawyer who does it all the time perplexes another lawyer who encounters it for the first time. A transaction that is plain to one law department, such as sub-leases to a real estate company, may be complex and unfamiliar to another that rarely changes office locations.

Everyone has a different conception of the term commodity. For example, several years ago, when the general counsel of Coachmen Industries put out to bid “a package of commodity type matters,” the work included “common compliance and transactional matters and routine litigation and warranty work.” That’s a broad definition of commodity legal services.

Although commodity legal work depends on context, it still has four hallmarks. It’s important to know these distinguishing traits of commodity work so that you can spot such work and improve how it is delivered.

Frequency: Commodity work implies a steady stream of volume, an in-box that stacks up regularly. Just because legal services of a certain kind show up regularly, however, does not make them routine; some law departments have many class actions under way and some handle many matters, such as regulatory approvals, that are deemed highly specialized for others. But for most law departments, class actions and interstate commerce rate approvals are once-a-year matters, or once-a-quarter matters—hardly commodity work.

Simplicity: The work is not complicated legally. It’s on a well-trod and well-marked path, requiring more industry than invention. Commoditized legal work often means a lawyer can find a checklist or guideline for how to proceed through the matter, such as how to file a security interest or assemble the documents in a board book or obtain export permission from the International Trade Commission. As Mary Beth Gustafsson, the general counsel of American Standard, describes it: “Junior attorneys can handle the work, or paralegals, and often with a form template.”

In fact, one way of getting a clear sense of whether something is a commodity service is to ask whether it involves standard documents. For instance, in the usually routine case of obtaining a security interest, there are often standard documents, such as forms of loan agreements, International Swaps and Derivatives Association documentation, a purchase or sale of goods or services, a termination agreement, and many other documents.

Low economic risk: Commodity work often involves penny ante matters that don’t individually involve much money. As Gustafsson puts it, “There is a low materiality risk.” Commodity legal work has little or no likelihood of a legal blowup. If tens of millions of dollars ride on the legal outcome, it’s “bet-the-company;” if pennies are at stake from a bankruptcy proof of claim, many disparage it as “commodity.”

Amenability to processes: Those in a law department who handle routine legal services usually figure out the best steps, a process, to follow. David Krasnostein, the general counsel of Australia’s National Australia Bank, was quoted in a *Lawyers Weekly* article that he wants his staff to focus more on “legal risk

management, and outsource work that is more product or process oriented.” Commodity work lends itself to a step-by-step process that can be written down, taught, and followed. For example, reviewing most contracts or vetting advertisements is largely a straightforward process.

BIGGER STEP

Recognizing commodity work, with its four characteristics, is a step forward. Knowing how a law department can manage it better is a bigger step.

- Recognize that commodity legal work is crucial for a company’s success. Take commodity work seriously. Ironically, what lawyers in companies view as routine commodity work—here we go with another cease-and-desist letter or the fifth agreement of this kind this week—is very much what makes a company tick. Every day the company buys what it needs, produces what it can, and sells as much as possible. Many routine transactions need to take place as smoothly as possible and with as little legal perturbation as possible. Hence the importance of smooth-flowing commodity work. The closer to the business the legal work is, therefore, the more urgent the need to create standard processes and to streamline commodity legal work.

In fact, this is another way to differentiate commodity work, according to Gustafsson of American Standard: the level of business knowledge the work requires. For example, doing supply agreements well requires intimate knowledge of the business. Lawyers inside can go over contracts much more quickly and spot the key issues than can outside lawyers. By contrast, an immigration lawyer may not need to know much about a particular company and how it operates.

A useful step is to inventory the kinds of commodity legal services your law department handles or oversees and what level of person does it. From the standpoint of law department management, those who distribute work need to appreciate that some amount of commodity work is inevitable and crucial, departments need the right talent inside and out for its distribution of work, and managers ought to take into account differences among lawyers with regard to the kinds of work coming into the department that each lawyer handles.

- Build on the fact that all legal services move toward commodity. What was once a fascinating and novel legal area inevitably becomes mastered and commodified. For example, ISDA agreements moved from the subject of conferences to work that is done by offshore lawyers. To the extent possible, standardize how you handle legal services, recognize similarities in processes, and sort out the relatively few activities with higher legal risks. All these steps move more legal work toward commodity services.

- Apply technology and knowledge management to commodity work. Invest in systems and procedures to facilitate your commodity work. Some legal managers distinguish between

fungible and nonfungible legal work, including in the fungible categories such tasks as review of electronic documents, contract review, patent application drafting, and even legal research and writing. Software of all kinds and knowledge management practices can help a law department with its fungible work. Additionally, the Internet will keep providing low-cost resources and vendors of commodity legal services. An example is Tax Almanac, which uses a wiki structure to create sophisticated, easily searchable online discussions, and ultimately counseling, by tax professionals.

- Reconsider where the work is done. Think through who should do your commodity work. One theory on allocating legal work of a company is to keep “strategic” work inside and send “commodity” work outside. The opposite view, however, is more common. Another option for some types of matters is to train your inside clients and give them tools so they can handle much of the commodity legal issues that arise and seek counsel from the lawyers only for exceptional situations. Yet another alternative is to bundle and assign such work to a law firm, perhaps after a competitive bid process. Only when you recognize and act on commodity legal work can you decide where and how it is best done.

- Avoid the tendency to overlook the improvements available for commodity legal work. Don’t give commodity work short shrift. According to MIT’s *Sloan Management Review*, if you perceive your service as a commodity, you will stunt your creativity about it. If you say to yourself, “That’s boring work that simply has to be gotten through,” you won’t bother to consider how to get through it more effectively. Settling for the status quo as “good enough” wastes opportunities to do better as the potential for improvement is undervalued.

Slip-and-fall lawsuits may be high volume and low challenge; workers comp issues seem to most people to be administrative and barely legal; nothing much new arises in a sea of bankruptcy claim filings—all of these services are perceived as legal child’s play, commodity work, except by practitioners. Simply because a certain legal service is frequently done and many lawyers are competent to perform it does not at all mean that someone can’t provide that service much more effectively nor devise a breakthrough service proposition.

Commodity legal work is usually given this label in a pejorative sense, yet much legal work for any company falls within its ambit. Those who manage law departments and the partners who serve them ought to think about what they mean by the term and to take advantage of what managerial opportunities commodity legal work presents.

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