LAW BLANKS & FORM BOOKS

A CHAPTER IN THE EARLY HISTORY OF DOCUMENT PRODUCTION

M.H. Hoeflich

LAWYERS ARE INHERENTLY CONSERVATIVE. Our culture is one built upon authority and precedent. In document drafting and pleadings innovation is not necessarily a good thing. Instead, we value the tried and true argument or formula. Young lawyers are advised to seek out models of documents drafted by more experienced lawyers. For centuries we have taught would-be lawyers by having them read pleadings and opinions, listen to arguments in court, and study time-proven form documents. In the legal world that which has already been tested is preferred to that which is new.[1]

This legal culture of reproduction as opposed to innovation has led over the centuries to great value being placed upon older, tested documents. But in the world of the law prior to the invention of modern copying technology, document production and reproduc-

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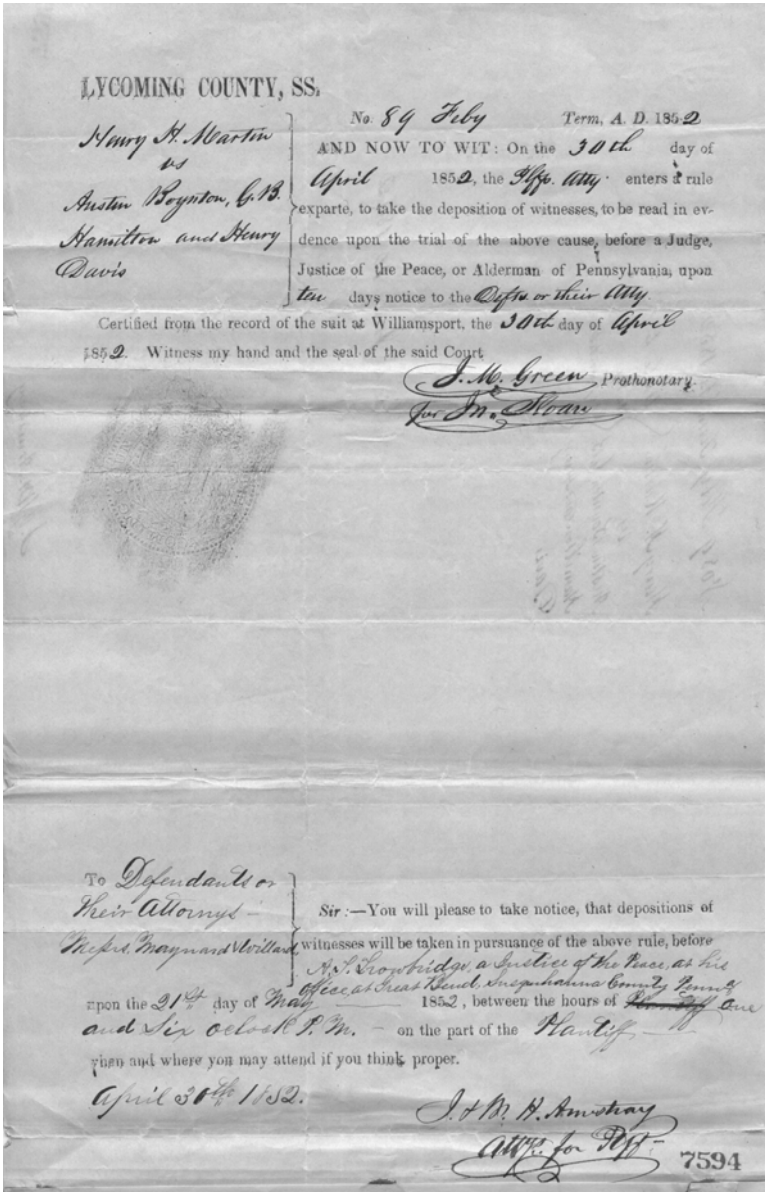
[1] Judge Richard Posner has observed, in fact, that this veneration of tested documents has led to the widespread acceptance in the legal profession of what would otherwise be considered plagiarism. Richard Posner, *The Little Book of Plagiarism* (2007).

tion was neither simple nor inexpensive. Thus, a number of techniques were developed to aid the practicing lawyer in the production and reproduction of documents.



LYCOMING COUNTY, SS.

Henry N. Martin
vs
Austin Boynton, C.B. Hamilton and Henry Davis

No. 89 Feby Term, A. D. 1852

AND NOW TO WIT: On the 30th day of April 1852, the Plffs. Atty. enters a rule exparte, to take the deposition of witnesses, to be read in evidence upon the trial of the above cause, before a Judge, Justice of the Peace, or Alderman of Pennsylvania, upon ten days notice to the Defts or their Atty

Certified from the record of the suit at Williamsport, the 30th day of April 1852. Witness my hand and the seal of the said Court

J. M. Green Prothonotary.
Jas. M. Scarr

To Defendants or their Attorneys — Messrs. Maynard & Willard

Sir:—You will please to take notice, that depositions of witnesses will be taken in pursuance of the above rule, before N. S. Strowbridge a Justice of the Peace, at his Office at Texas Bend, Susquehanna County, Penna upon the 21st day of May 1852, between the hours of Nine o'clock A.M. and Six o'clock P.M. — on the part of the Plaintiff — when and where you may attend if you think proper.

April 30th 1852.

J. & M. H. Armstrong
Attys. for Plff.

7594

THE LOGIC OF LEGAL FORMS

The repetitive nature of much of legal drafting makes the use of forms economically efficient. In addition to being part of a culture which valued the tried and true, lawyers also saved time and money by utilizing existing document templates rather than creating documents each time they had a transaction. It was far easier to modify an existing document than to create a new document. Further, if a lawyer could obtain an existing document which had been drafted by a reputable and knowledgeable author, then he could produce documents for transactions for which he himself might not have been otherwise competent. Indeed, by using documents drafted by other more experienced lawyers, even an inexperienced practitioner could have high quality documents available for use, and with only a minimum amount of knowledge and effort he could modify those documents to suit a particular case, or, if possible, use the documents without modification, simply by filling in the blanks with the particular facts of his case.

From the financial perspective of a lawyer, the availability of form documents meant not only that the lawyer could handle relatively unfamiliar transactions with sufficient confidence, he could also do so without spending an inordinate amount of time doing research and drafting. The time-saving aspect of the use of forms was particularly important to American lawyers for much of the nineteenth century because they tended to bill by the transaction, rather than by the hour or increment thereof. If one studies the various fee schedules common in the United States during the nineteenth century, one sees quickly that transactional rather than hourly billing was the norm. For instance, in 1869 the Douglas County, Kansas Bar adopted a fee schedule.[2] This schedule set forth the minimum charges for legal work by transaction. To draw a contract a lawyer under this schedule would have been paid "not less than two dollars." Thus, the more quickly that contract could be

[2] See M.H. Hoeflich, "Legal Fees in Nineteenth-Century Kansas," 48 *Kansas Law Review* 991 (2000).

drafted, the more time the lawyer would have to do other income-producing work for other clients. Any time-saving device, like prepared form documents, would be financially beneficial.

The attractions of the use of form documents therefore were many for the nineteenth century American lawyer. A well-drafted form would permit a lawyer to expand his practice, conduct it more efficiently, and create documents with fewer errors than might otherwise be possible. On the other hand, a lawyer who used such form documents wanted to be assured that they were up-to-date, well-drafted by a lawyer knowledgeable about the laws and local rules and practices of his jurisdiction and, thus, free of errors. All of these concerns helped to shape the production of blank legal forms in this period.

FORM BOOKS

For the nineteenth century American lawyer, the easiest and most familiar sources for prepared forms were the multitudes of legal form books for sale in virtually every jurisdiction. The tradition of preparing such collections of forms was venerable. "Books of Precedents" had been published by English legal publishers and used by English lawyers since the beginnings of the legal profession in England. In the early national period in the United States, the publication of such collections, aimed at both lawyers and laymen, became a mainstay both of major publishing houses as well as provincial printers. Many of these collections were targeted at a specific group: judges, magistrates, sheriffs, lawyers, merchants, farmers, and just ordinary folks. All adhered to a relatively standardized formula. The volumes were issued by a printer or publisher. The documents themselves were attributed to a reputable lawyer as author, often by name. The documents were grouped by subject and consisted of boilerplate language with blanks for specific facts.

A good example of the genre was published by Joseph Steen, a printer in Brattleboro, Vermont in 1845.[3] The volume was entitled *A Book of Forms, with Occasional Notes.* The author, identified on the

[3] Royall Tyler, *A Book of Forms, with Occasional Notes* (1845).

title-page, was the Brattleboro lawyer and judge Royall Tyler.[4] The author's preface to this small volume touched upon all the points that would have been of interest to the lawyer-reader:

> An extensive demand for a work like the present, exists in the community. The Practical Forms of Judge Aikens is a work of far more pretension … but its very elaborateness makes it expensive. … The revision of the Laws in 1840, since the publication of Judge Aikens' work has also operated to render many of his Forms obsolete.[5]

Of particular interest in this preface are Tyler's comments about Judge Aikens' competing volume.[6] This larger volume was "pretentious" and burdened by esoteric information of interest only to lawyers. This is a clear indication that Tyler's far shorter book was intended not only for the use of lawyers but also others such as farmers and merchants precisely so that they could dispense with the expensive services of a lawyer who would simply mark up a form himself. Further, Tyler was quick to point out that Aikens' work was out of date because it had not been revised to take account of the revision of Vermont laws which took place in 1840. Thus, Tyler attempted to sell his work to potential readers based on its brevity, simplicity, and currency.

The volume itself is a small octavo of ninety-six pages divided into five chapters with a total of ninety-eight forms. The first chapter contains forms for the use of court officers, the second for sheriffs, the third forms used in probate proceedings, the fourth miscellaneous forms including contracts, indentures, leases, and real estate covenants, and the fifth chapter contains forms from the 1840 Revised Statutes. Each included form contains all necessary language, including alternatives where appropriate, and blanks for the facts of each specific situation. All that a reader needed to do to use

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[4] Royall Tyler (b.1812) was one of eleven children of his father, who was also Royall Tyler, and a well-known Vermont lawyer, judge, playwright, and poet.

[5] Op. cit., n.4, above, "Advertisement."

[6] Asa Aikens, *Practical Forms, with Notes* … (1823). A second edition was issued in 1836.

one of these was to copy it onto a separate piece of paper. The book was small enough that it could easily have been slipped into a coat pocket to accompany a lawyer to court, on circuit, or to a client's place of business, if necessary.

Although these form books would have provided useful model documents for lawyers, they had drawbacks. Perhaps the most important of these was that each time a document was needed someone had to copy the appropriate form from the book and produce a fair copy or copies for use. In most law offices this would have to be done either by a paid scrivener or an apprentice.[7] The copying process took time and could be costly. The copyist could also introduce errors into the document for which the lawyer would need to be on guard. Thus, even a simple document could require a substantial amount of labor. The use of the form book eliminated one difficult step, composition, but did not otherwise reduce the time or cost involved in document production. Further, for young lawyers starting out or those without substantial practices which justified the hiring of a scrivener, the lawyer would be required to undertake the role of copyist.

Printed form books had two other major drawbacks. One, of course, was pointed out by Royall Tyler in regard to his competition. Form books grew obsolete as the law changed. During the antebellum period in particular, as American society expanded and found its own equilibrium and industrialization gained a foothold in the country, laws changed rapidly. This meant that the useful life of form books could be very short indeed. It also meant that lawyers were constantly replacing expensive volumes, a boon for authors and publishers but a very difficult economic burden on lawyers.

The second major drawback of printed form books was the fact that a lawyer would often want only a few documents but was forced to buy the entire volume in order to obtain them. Thus, the lawyer was paying substantial sums for documents he didn't want and wouldn't use. The vast majority of American lawyers in the

[7] The classic account of the nineteenth century scrivener's work is, of course, to be found in Herman Melville, *Bartleby the Scrivener* (1881).

nineteenth century – as today – were loathe to waste their hard-earned money on useless things. Because of these various drawbacks to book-length compilations of model forms, printers and publishers began to issue single documents for sale to lawyers, what soon came to be called "law blanks."

LAW BLANKS

While law books were, by definition, the primary merchandise for sale by antebellum law booksellers, most also carried stationery, forms, and even non-legal books. Stephen Gould in New York and Little & Brown in Boston both listed stationery as for sale on their stores' trade signs. Gould, in his 1821 catalogue, also devoted six pages to law blanks and stationery items.[8] There were several reasons why law booksellers sold these items. First, of course, most shops wanted to be able to supply the members of the legal profession with all of their professional needs. Second, many of the booksellers also acted as printers, and printing only law texts did not fully utilize their presses. They needed to keep the presses going and stationery and forms provided a ready use for otherwise idle machinery. Third, the actual cost of printing these forms was low and so profit potential in such business was high.

Gould offered an impressive variety of blanks. He offered deeds, mortgages, bonds, bills of exchange, bail bonds, trial notice forms, summons, various documents for process, as well as notarial certificates. He also offered a range of documents for Chancery practice, as well as for practice in Magistrate's Courts and before Justices of the Peace. He even offered military blanks for discharges and warrants. Gould made sure that his customers understood that these blank forms were good under New York law.[9] They had been drafted by two attorneys, Winter and Bolton, and had "been examined" by one of three prominent New York lawyers, Thomas Addis Emmet, Samuel Jones, and David Jones. Indeed, Gould points out that "the more important blanks" had been examined by all three.

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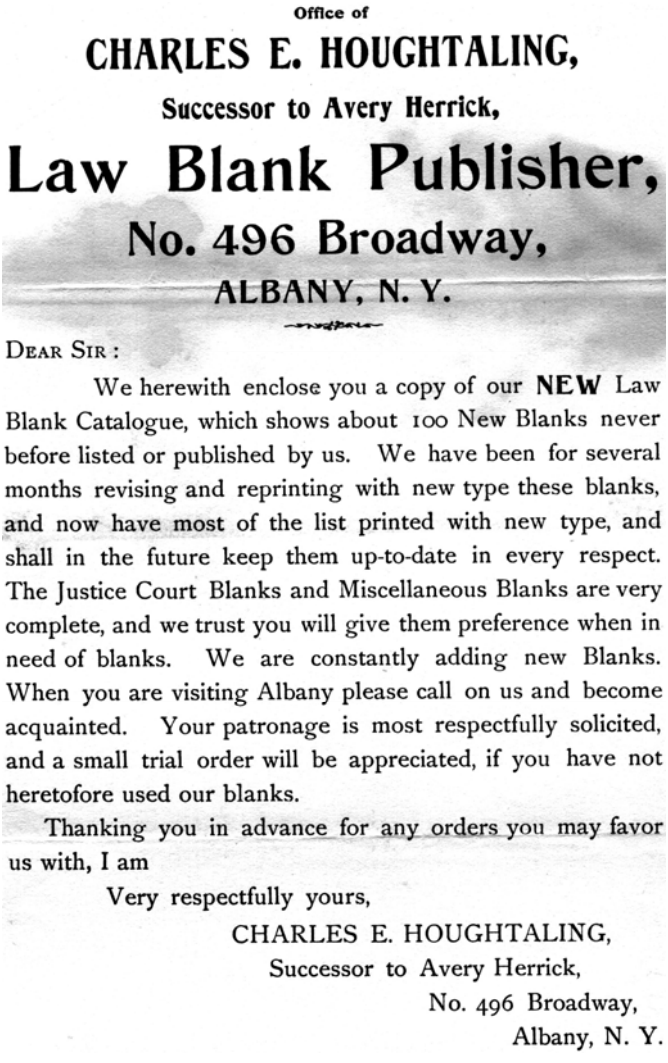
[8] Stephen Gould, *A New Bibliotheca Legum Americana* 49-54 (1821).

[9] Ibid.



Office of

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Successor to Avery Herrick,

Law Blank Publisher,

No. 496 Broadway,

ALBANY, N. Y.

DEAR SIR:

We herewith enclose you a copy of our **NEW** Law Blank Catalogue, which shows about 100 New Blanks never before listed or published by us. We have been for several months revising and reprinting with new type these blanks, and now have most of the list printed with new type, and shall in the future keep them up-to-date in every respect. The Justice Court Blanks and Miscellaneous Blanks are very complete, and we trust you will give them preference when in need of blanks. We are constantly adding new Blanks. When you are visiting Albany please call on us and become acquainted. Your patronage is most respectfully solicited, and a small trial order will be appreciated, if you have not heretofore used our blanks.

Thanking you in advance for any orders you may favor us with, I am

Very respectfully yours,

CHARLES E. HOUGHTALING,
Successor to Avery Herrick,
No. 496 Broadway,
Albany, N. Y.

Almost fifty years later, Pease & Prentice, law booksellers and stationers in Albany, New York, issued a separate catalogue of their law blanks.[10] Again, they offered an impressive array of law blanks

[10] Pease & Prentice, *Catalogue of Law and Pension Blanks* (1868).

taking up seven octavo catalogue pages and covering as wide a spectrum of activities as those offered by Gould earlier. Interestingly, there is no mention of who drafted the documents or whether they had been examined for errors, but we may surmise that by the Civil War period, the use of law blanks had become more common than in 1821. What is significant about the Pease & Prentice offering is that there is a catalogue specifically devoted to law blanks and that "special rates" were available for quantities.[11] Also of interest from an historical perspective is that Pease & Prentice's law blanks were numbered and purchasers were asked to order by name and number, a system still in use today.

By the beginning of the twentieth century, the production and use of law blanks had become a staple of both law publishing and law practice. Although the invention of the typewriter and the dictation machine had revolutionized document production and ended the centuries-old reign of legal scriveners, law blanks continued to be a highly efficient business tool for lawyers. Blanks also continued to be a profitable product line for both law publishers and general printers. The sophistication of the law blank industry is illustrated by the 1920 catalogue of law blanks published by H.S. Crocker Company, a California printer and wholesaler.[12] The catalogue itself is hardbound and the list of forms available extends to forty-seven pages and over 1,000 different numbered forms. The preface to the catalogue shows great similarities to statements made a century earlier:

> This line of blanks will be found to be the very best in the market. They are revised and up to the minute, and are in harmony with all the statutes. … The phrase "*Crocker's Blank*" printed on every form is a guarantee of accuracy and quality. Don't accept any substitute.

[11] Ibid.

[12] *Catalogue of Legal, Official & Miscellaneous Blanks* (1920).

Catalogue of LAW BLANKS

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GET THE BEST AND MOST RELIABLE BLANKS.

☞These Blanks have been published for over 40 years and are the best and and most reliable published. We shall be pleased to fill all mail orders, no matter how small, and will send samples to intending purchasers. Our Blanks are revised to conform to all new laws, and we are constantly adding new blanks.

Price 25 cents per dozen full sheets, delivered free of postage charges, when cash comes with order.

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ORDER BY CATALOGUE NUMBER.

CONVEYANCING REAL ESTATE.

333 Affidavit—Of Title.
294 Mortgage—Interest, Insurance, Tax and Assessment, 1896—Schedule C.
304 Mortgage—Real Estate. (Short Form.)
86 Mortgage—Real Estate.
E Mortgage—Real Estate. (*Special form.*)
87 Mortgage—Insurance Clause.
298 Mortgage—Insurance Clause. (Short Form.)
89 Mortgage—Interest Clause.
299 Mortgage—Interest Clause. (Short Form.)
88 Mortgage—Interest and Insurance Clause.
347 Mortgage—Interest and Insurance Clauses. (Short Form.)
330 Mortgage—Interest, Insurance, Tax, Water Rates and Assessment Clauses.
307 Mortgage—Extension of.
92 Mortgage—Assignment of.
A Mortgage—Assignment of. (*Special form.*)
93 Mortgage—Satisfaction of.
288 Mortgage—Discharge of.
124 Mortgage—Release—Part Mortgaged Premises.
295 Mortgage—Certificate Amount Due.
295 Certificate—Amount Due on Mortgages.
30 Bond—Blank Conditions.
26 Bond—Common Money.
29 Bond—Insurance Clause.
301 Bond—Insurance Clause. (Short form.)
181 Bond—Interest Clause.
300 Bond—Interest and Tax Clauses. (Short Form.)
355 Bond—Interest and Insurance Clauses. (Short Form.)
302 Bond—Interest, Insurance, Tax and Assessment. (Short Form.)
28 Bond—Interest and Insurance Clause.
329 Bond—Interest, Insurance, Tax, Water Rates and Assessment Clauses.
H Bond—Irrevocable for an Individual.
54 Contract to Convey Real Estate.
249 Contract—Land—Tenant Clause.
296 Deed—Warranty. (Short Form.)
63 Deed—Warranty.
D Deed—Warranty. (*Special form.*)
64 Deed—Full Covenant.
292 Deed—With Full Covenants—Law 1896—Schedule A.
55 Deed—Covenant against Grantor.
303 Deed—Covenant against Grantor. (Short Form.
297 Deed—Quit Claim. (Short Form.)
56 Deed—Quit Claim.
57 Deed—On Sale, in Partition.
58 Deed—Executor's.
293 Deed—Executor's, Law 1896, Schedule B.
59 Deed—Administrator's.
60 Deed—Referee's in Foreclosure.
61 Deed—Sheriff's in Foreclosure.
62 Deed—Sheriff's on Execution.
211 Deed—Guardian's—Sale Infant's Real Estate.

INFANTS' ESTATE, SALE OF.

204 Petition for Sale.
205 Order Appointing Special Guardian.
182 Guardian's Bond.
207 Referee's Report.
208 Order for Guardian to Contract.
209 Report of Special Guardian.
210 Order of Confirmation.
211 Guardian's Deed.
212 Final Report of Guardian.
265 Final Order of Confirmation.

One new aspect of this preface is the attempt to create a brand, "Crocker's Forms," that would, in and of itself and without mention of the forms' authors, stand for quality. Of course, by 1920, the size of the Bar was immensely greater than it had been in the antebellum period and the leaders of the Bar were hardly likely to spend time drafting forms as their predecessors had done a century before.

FORMS FOR JUST PLAIN FOLKS

Although form books and blank forms have been an important tool for lawyers for centuries, publishers recognized early on that certain of these would also find a ready market among laymen who could use them in everyday transactions and, thereby, avoid the necessity of hiring a lawyer. Throughout the nineteenth and twentieth centuries, volumes of forms targeted at the general public were a commonplace sight on booksellers' shelves. There even developed a whole genre of "everyman his own lawyer" volumes. Among the most popular of these were in the series produced by John G. Wells and printed across the United States during the nineteenth century.[13] The format of these volumes was very similar to that of the more professionally oriented form books. But rather than simply including the bare forms on the assumption that the reader would know the laws necessary to use them appropriately, Wells, like others publishing in this genre, accompanied the forms with brief summaries of the relevant legal issues, definitions of significant legal terms, and summaries of specific statutes in various American jurisdictions. But the idea behind the form books produced by Wells and others was very similar to that underlying the professionally oriented volumes. The reader of these books would have available tried and true documents which could be copied-out and used whenever needed.

[13] This volume went through several dozen printings and numerous revisions from the 1850s to the 1880s. Individual printers from New York to San Francisco produced examples of the book, often targeted to a specific state or region. In writing this essay, I have used John G. Wells, *Wells' Everyman His Own Lawyer and Business Form Book* (1867).

One of the more interesting aspects of this genre of "everyman his own lawyer" books is that many of the same issues which arose in regard to the professional tomes arose as well for these. First, of course, was currency. In order to be useful, the forms had to be current and in compliance with the newest legislation. This meant that these books had to be reissued regularly. In order to maintain a buying public for books with short useful lives, the publishers had to make these volumes cheap enough that the owner would not object to the need to replace them every few years. Second, the quality of the forms had to be good. Whereas many of the early forms and form books available to lawyers relied upon the reputation of the individual lawyers who drafted the forms, books aimed at the general public depended more upon the reputation of the compiler, like Wells, or even the publisher. One advantage the book form had over blanks in this market was that potential buyers were ignorant of the law and found the legal commentary included in the books (and absent in the bare forms) of great value.

The End of an Era

Form books and law blanks remained an important part of every lawyer's professional library well into the middle of the twentieth century. As word-processing technology moved into the digital era, however, the traditional form book and preprinted legal blank at last became obsolete. The ideas underlying these genres, however, remain with us, albeit in the new formats. Today, a lawyer will rarely purchase a form book, but both compilations of forms and individual forms available on CD, DVD, and downloadable from the Web remain much in use.[14]

The long life of the genre of law forms and form books should not be surprising. Although laws change frequently and business transactions are constantly evolving new complexities, the everyday aspects of legal practice such as the need to produce documentation

[14] See, for instance, the advertisement in the April 2007 issue of the *Kansas Bar Journal*, p.42: "Law office for sale … includes … complete law library, copy machine, extensive legal forms on computer … ."

efficiently and accurately do not change. Thus, the practical needs of lawyers do not change in substance. So long as lawyers practice, they will need modes of document production, and while the technologies may change, the underlying purposes remain the same.