

Legal Forms

From Clay to Computers

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From the beginnings of recorded law, model legal forms have existed as aids to lawyers, scribes, officers, or any individual who might be involved in a law-regulated transaction without professional counsel. Such model forms can be found in the literature of cultures throughout the world. Examples of the most common forms

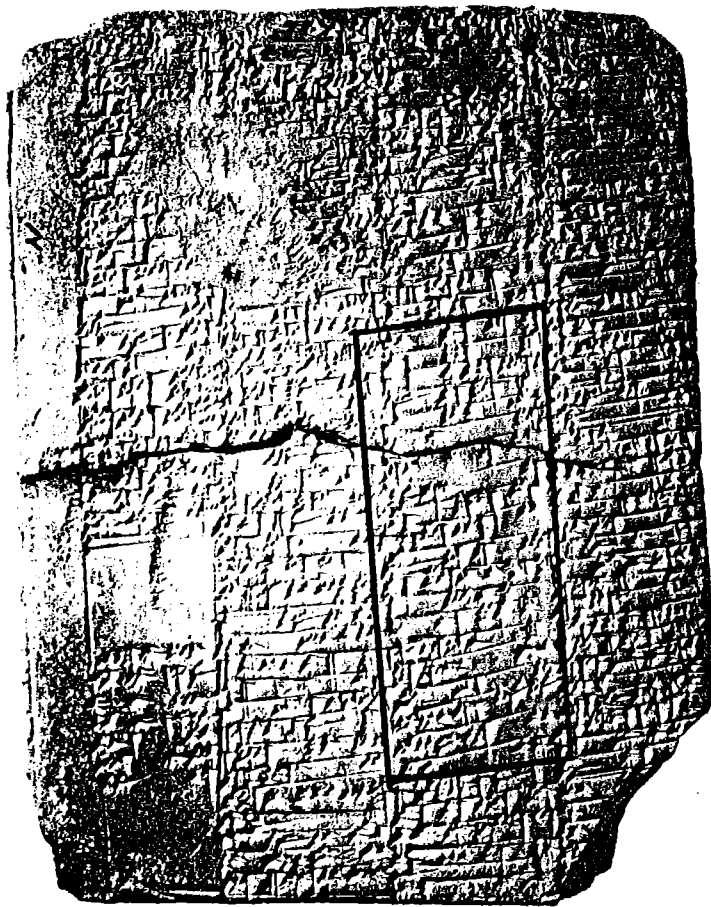
—bills of sale, contracts, deeds, leases, oaths and wills—can be seen in the documents of many ancient civilizations, including the Babylonian, Chinese, Egyptian, Greek, Hebrew, Hindu and Roman. Whether scratched on clay, written on parchment, or printed on paper, the established forms for pleadings, private instruments or official documents offered a sense of security to the drafter and some assurance of regularity to the recipient.

The repeated use of legal forms has tended to give legal prose both uniformity and rigidity. As these forms were enlarged to meet new contingencies and to avoid possibilities of evasion and misunderstanding, their language acquired a prolixity typified by the "boiler-plate" of many contemporary instruments. David Mellinkoff's *The Language of the Law* (Little, Brown, 1963) is one of the best studies of these developments. The resulting redundancy and opacity has attracted both criticism and parody, and has led to the movement for "plain English" forms. Familiar formulations and phrasing, however, gave both the drafter and the reader a feeling of confidence in the authority of the document, whether in ancient Mesopotamia or modern Manhattan.

Karl Llewellyn's rationale for the doctrine of precedent explains as well some of the reasons for the use of model forms:

"... laziness as to the reworking of a problem once solved; the time and energy saved by routine, especially under the pressure of business; the values of routine as a curb on arbitrariness and as a prop of weakness, inexperience and instability; the social values of predictability; the power of whatever exists to produce expectations and the power of expectations to become normative." *Encyclopedia of the Social Sciences* 249 (New York, 1930).

Legal forms are sometimes studied as an aspect of the particular culture or legal system from which they come. The Babylonian Collection at the Yale University Library, for example, contains many such forms on clay tablets (one of which is shown here) and these are the object of important research and scholarly activity. When the Yale Law School Library recently purchased a unique collection of early 19th century model forms printed in New York City, my interest in legal forms was aroused and I was surprised to find no general historical treatment of their development. Despite their long and almost universal use, these documents have attracted little scholarly attention as a publishing genre. Without attempting such a study here, I thought our unusual acquisition justified at least some attention to its historical context.



A collection of model contracts on a cuneiform tablet (NBC 7800) dating from approximately the reign of Hammurabi of Babylon (ca. 1792-1750 B.C.) The tablet contains 16 separate documents in eight columns. The section set off by dark lines (reverse, col. vi) may be translated approximately as follows: "12 'acres' of fallow land of a (date-palm) orchard Mr. A the owner of the orchard to Mr. B. the orchard-keeper for planting trees has been given. In the date-palms they will share equally. The opened (part of the) orchard Mr. B. the orchard-keeper as (his) share has received. That neither party would contest against the other they have sworn in the name of the king." [Caption and reproduction provided by the Babylonian Collection, Sterling Memorial Library, Yale University. The help of Professor William W. Hallo, Curator of the Collection, is gratefully acknowledged.]

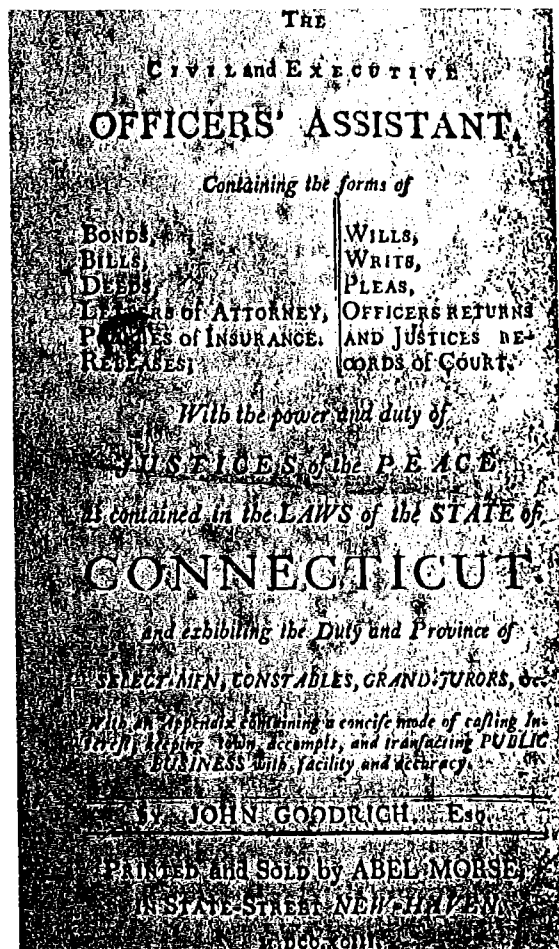
Early Formbooks

Collections of writs, forms for conveyancing and sample pleadings constituted some of the earliest English lawbooks. Manuscripts of the *Registrum Brevium*, dated as early as 1227, contained model writs for use in pleading. The *Brevia Placitata*, consisting of forms of pleadings in law French, circulated about 1260. It was followed, a century later, by a similar collection, the *Natura Brevium*. These manuscripts and variants of them were copied and recopied throughout England, and provided guidance to scribes and officials.

Right: Goodrich's *Civil and Executive Officer's Assistant* (New Haven, 1793), an early Connecticut formbook and legal manual for lay officials.

With the invention of printing, the publication and dissemination of formbooks, and of legal manuals containing a multitude of forms, made them more easily available. Although the first English printer, William Caxton, issued only one lawbook and that one a volume of the statutes of Henry VII, his successors printed many lawbooks, including formbooks. Caxton's apprentice, Wynken de Worde, who was the next great English printer, issued several justice manuals in 1510 and 1515, a *Court Baron* in 1510, and the *Returna Brevium* in 1519. He was followed by William de Machlinia, the first printer to specialize in law books, and by Richard Pynson who published almost one hundred and forty lawbooks before 1529. Then came a series of legal printers, including Thomas Berthelet, Richard Grafton, John and William Rastell, Robert Redman, and, most productive of all, Grafton's son-in-law, Richard Tottell, who printed several hundred lawbooks of all kinds from 1552 to 1593. Many of these men wrote or compiled some of the texts they printed. Each produced books of writs, justice manuals and other books of practice and forms, in addition to the *Yearbooks* (i.e. court reports) and statutes which comprised the bulk of their law printing.

These guidebooks were intended not only for lawyers, clerks and conveyancers, justices of the peace, sheriffs, constables, coroners, and other local officials, but also for that limited public that was sufficiently literate and propertied to need such assistance. With the settlement of the American Colonies, the most popular of the then current manuals and formbooks were exported for use here. Although the standard English texts continued in local use until well after independence, American printers gradually produced a series of such guides designed for American needs and attitudes. The first of these was probably Nicholas Boone's *The Constables Pocketbook* . . . (Boston, 1710). Interestingly, the first product of the first American press was a blank form of oath to be taken by the freemen of the Massachusetts Bay Colony.

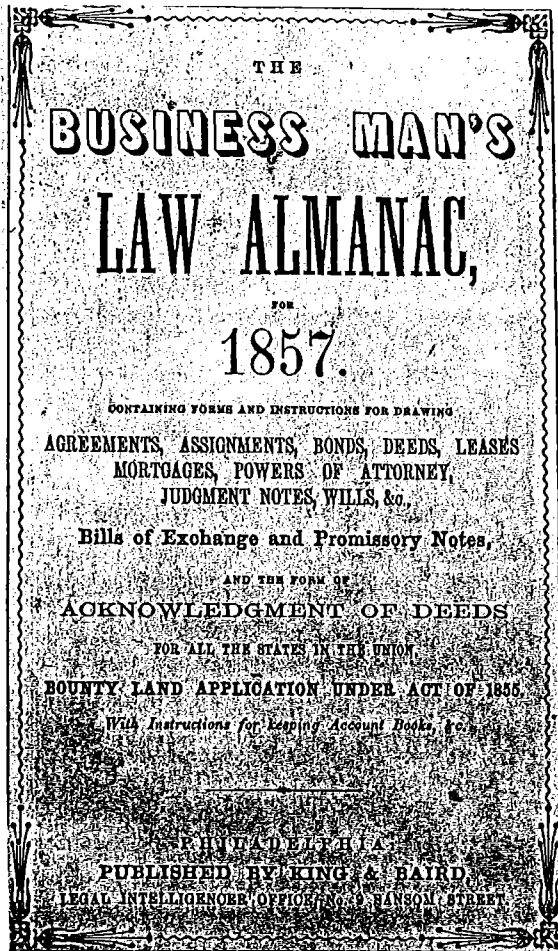


different countries with that name. An English Printed in Cambridge in 1698, no printed copy of that form seems to have survived but its text has been clearly established from other records.

Among the most successful of the American versions of popular English legal manuals and formbooks was *Conductor Generalis; or a Guide for Justices of the Peace, and Coroners, Constables, Jury-Men, Over-seers of the Poor . . . To Which is Added Copies of Warrant, Mittimus, Recognizances, and Other Necessary Instruments. Conductor Generalis*, based in part on Richard Burn's *Justice of the Peace*, was first published in this country by Andrew Bradford in New York in 1711. It was reissued, with frequent variation in at least twelve editions between 1711 and 1819, and was widely circulated throughout the country.

Other formbooks and legal manuals for the non-lawyer continued to be published through the 19th and 20th centuries, and they remain today one of the most popular of the how-to-do-it books. Many have been published under the title, *Every Man His Own Lawyer*—the Yale Law Library holds fifteen works from several

A short-lived almanac containing legal forms for business people.



version, which was first published in London by Giles Jacob in 1736, was frequently reissued, and a later variation, *Every Man's Own Lawyer*, was published in 1981 in its 71st edition. In 1858, *Every Woman Her Own Lawyer* was printed in New York, and similar works specifically designed for the assistance of women have become increasingly popular. Virtually all of these manuals contain model forms for the transaction of legal business.

When such works are offered aggressively to the general public as a means of avoiding the expense and snares of professional counsel, the legal profession rises to guard its interests and protect the unwary from the unauthorized practice of law. See, for example, the bar's attacks on Norman F. Dacey's still popular *How to Avoid Probate!*, in *Dacey v. N.Y. County Lawyers Association*, 290 F. Supp. 835 (S.D. N.Y. 1968), *aff'd*, 423 F. 2d 188 (2d Cir. 1969), *cert. denied* 398 U.S. 929 (1970) and *Dacey v. Florida Bar, Inc.*, 414 F. 2d 195 (5th Cir. 1969), *cert. denied* 397 U.S. 909 (1970). Formbooks and legal manuals for the non-lawyer, however, are still profitable staples of the publishing industry.

Single Forms

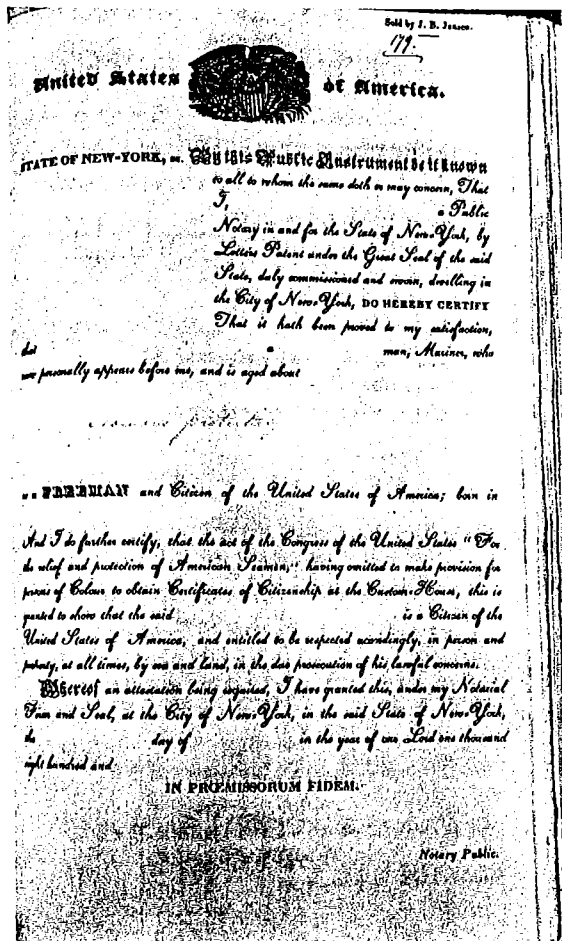
In addition to books of forms and legal manuals, single legal forms, for use in particular transactions, have also been produced in great number and variety since the beginning of printing. Single blank forms are still printed and sold to the general public and to the bar by printers and legal stationers. The current catalog of one of the most successful publishers of such forms, Julius Blumberg, Inc., offers over twelve hundred different forms for use in Connecticut, New Jersey and New York.

The recent Yale Law Library acquisition which led to this survey of forms and formbooks is in a way the predecessor of Blumberg's catalog of forms. It is the sample book of forms of a New York City printer, J. B. Jansen, who practised his trade on Chatham Street, and then on Nassau Street in the 1820's. The volume, measuring eight by thirteen inches, is labelled on the spine, *Precedents*. In addition to its use for precedential judicial decisions, that term was and still is used for model forms in England, and was so used in this country up to the middle of the 19th century.

Jansen's sample book contains two hundred eighty-eight different blank forms which he offered for sale to lawyers and the public at large. The samples include a variety of the usual legal instruments, as well as forms for practice in many of the New York courts. Some of the forms have woodcut or engraved reproductions of state or federal emblems at the top, thereby giving them an aura of official authority. The text of many are printed in a cursive style simulating a scrivener's handwriting, much as early printing sought acceptance by basing its typefaces on the style of contemporary manuscripts.

Jansen, who also printed and sold books from at least 1819 to 1827, offered a full stock of stationery, writing and art supplies, and paper products. Like other printers and stationers, he probably carried his sample book among the law offices of the City, taking orders for such forms as his customers might need. Although published formbooks of that time reveal the same types of forms, Jansen's samples illustrate a much larger selection, appearing as they were actually used. One of his legal forms is shown here. The volume is an interesting addition to the Library's collection of formbooks and illustrates a curious aspect of early American legal practice.

Form of certificate of protection for free black seaman, from J. B. Jansen's sample book.



Modern Formbooks

In contemporary legal literature, formbooks for lawyers have increased in number, size and variety, and have grown increasingly specialized. The Yale Law Library has over two thousand formbooks, many of which are large multi-volume sets like *American Jurisprudence Legal Forms 2d* in 24 volumes and its companion, *Pleading and Practice Forms, Revised*, in 28 volumes. Many modern formbooks include checklists of steps to be followed for each transaction, annotations to relevant judicial decisions and statutes, and even tax analysis. The frequent boast of formbook publishers that their forms have been adjudicated and upheld in court may be less than reassuring. One may wonder about the safety of using a form that required costly litigation to establish its reliability. This concern has led one commentator to offer the following warning:

"An adjudicated form is a form that has attached to it a certificate that there is something terribly wrong with it. If there were not something terribly wrong with it, it would not

have been adjudicated." Beardsley, "Beware of, Eschew and Avoid Pompous Prolixity and Plitudinous Epistles," 16 *Cal. S. B. J.* 65, 66 (1941).

Electronic Drafting

Even the most sophisticated of current formbooks are now being superseded in many large firms by computerized data banks of previously used forms and drafting clauses. Commercial firms offer extensive computer-based drafting services, and advertisements for such systems in the pages of legal newspapers already outnumber the ads for traditional formbooks. Most of these systems store clauses and whole documents in word processors, enabling the drafter to select relevant segments and construct instruments with the speed and flexibility of text-editing afforded by this equipment.

Research under the auspices of the American Bar Foundation is carrying the process of electronic drafting even further. By integrating computer programs for document drafting with computer-based legal research systems, researchers are incorporating the language of the applicable law directly into the drafting process. The specific statutory provisions and regulations governing the content of the document being prepared can be retrieved and used to construct and then verify the legal accuracy of the draft. These developments have been reported by C. S. Saxon in "Computer-aided Drafting of Legal Documents," 1982 *Am. B. Found. J.* 685-754.

It's a long history from Babylonian clay tablets to Jansen's printed forms and now to computer-based drafting, but, as with all legal institutions, further changes are inevitable. A proper study of this aspect of legal practice seems long overdue.