



On Building a Precedent Library

Technology, Privacy, and eCommerce



Whether you're a corporation business lawyer, employment lawyer, or litigation professional, you are likely called upon to draft or review contracts. As a result, most corporate counsel have developed a drafting process that takes advantage of a personal stockpile of preferred documents they can use as a starting point.

However, many law departments don't have a systematic process in place to ensure that all of the drafting done by lawyers in their department is done efficiently, consistently, and accurately. This is where having a departmental precedent library can make a huge difference.

A precedent library is a collection of standard, recommended (or required) forms and clauses that can be used as a starting point in contract drafting. Good precedent libraries help drafters understand the context in which the materials in the library are to be used, and provide guidance on how to choose between alternate provisions. They take advantage of user input to actively assist the drafter with clause selection.

The benefits of an effective precedent library are enormous. When I was a novice contract writer, I had the great fortune to work in a firm that had a well-developed precedent library. It enabled experienced lawyers in the firm to create sophisticated contracts with more consistency. Good precedent libraries make all drafters better by enforcing best practices across the department.

At one time, precedent libraries largely consisted of three ring binder collections of the various forms used by the firm. Lawyers would have to laboriously copy the clauses they wanted into their drafts and, as a result, many law departments never bothered.

Thankfully, technology has made this process much easier. Here are some tips on how to get started

building a precedent library for your department.

In-house counsel should begin by identifying internal experts to participate on the editorial board. These experts should not only have subject-matter expertise, but should be influential within the department so they can assist with user implementation.

Next, enlist all the lawyers in the department in the effort. Get them to contribute their private stashes of forms and ask them to make annotations. If possible, have outside counsel demo their own precedent libraries and donate as many documents as they are willing to share.

Try to develop a logical taxonomy for organizing documents in the library. I do this by creating a mindmap that starts at the highest or most basic level (e.g., commercial contracts, employment contracts, settlement agreements, etc.) and drills down progressively farther until you have gone down at least four or five levels (e.g., commercial contracts ? real estate contracts ? lease agreements ? retail stores). Your document collection efforts should inform this part of the work.

Now, pick your department's five or 10 most important types of contracts and work with the editorial board to develop a good precedent for each form. Use search and document comparison tools (e.g., MS Word) to find and highlight small differences in similar forms and evaluate which are best. Make sure to include alternate provisions where appropriate.

You will also need to implement a platform to contain the Precedent Library documents and a portal to assist users in easily navigating to the ones they need. SharePoint or similar platforms can be used to house the PL documents but as the number of precedents grows, you will need to provide a way for users to easily locate the ones they want. This is where the taxonomy comes into play. You can begin by setting up folder and/or tag hierarchies that follow the taxonomy, but you can make it even easier to navigate by setting up a hyperlinked smartguide to help your users quickly and easily get to the precedents they need.

Make sure the editorial board (1) appoints an SME to curate the precedents in the library on an ongoing basis, and (2) regularly reviews the structure and functionality over time.

And that's it. If you follow this approach, you should be able to develop a precedent library of your own that will bring contract drafting in your department to a much higher level.

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