

'Simple' Matters Are Often Far From It

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Nothing strikes fear into the heart of a lawyer (my lawyer's heart, anyway) like when someone announces at the start of a matter something like "this is a really simple deal".

I remember one client I once had who was negotiating a transaction with another party and actually brought the other party to our first meeting. The other party was at pains to explain how simple it was all going to be.

After this I spoke to my client alone.

It became apparent that the simple version of the deal left all the risk with my client.

Needless to say, the "simple version" did not proceed.

I have had other experiences where a "simple deal" is explained to me and at the end of the session I have pages of notes and it feels like I have been tasked with rewriting the algorithms used in the operation of the Hadron Collider.

Lawyers often get accused of needlessly complicating things. Sometimes that can be true, but the law is often complex, sometimes ambiguous and even illogical at times.

Business and property transactions take place within a web of overlapping laws and regulations, and against a background of case law much of which has evolved over hundreds of years.

I often use a line that I picked up from one of my mentors 30 years ago - that contract law was invented for lawyers to argue about.

And, of course, the consequences of having a transaction that is non-compliant in some respect, or where the contract documents leave room for argument based on case law, can be financially devastating.

In my previous example, my client would have sold a valuable business that he and his family had built up from nothing over 20 years on vendor finance terms – leaving most of the purchase price to be paid off by the buyer over 10 years without security.

The deal had danger signs written all over it.

Sometimes things can be simple, but, unfortunately when it comes to legal dealings, often they are not. In fact, simplicity can equal risk. So be wary when someone uses the word simple as an adjective in a legal context.

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