

DIAGRAMMING TRANSACTIONS: SOME MODEST PROPOSALS AND A FEW SUGGESTED RULES

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INTRODUCTION

Mark Twain frequently is given credit for saying “Everybody complains about the weather, but nobody *does* anything about it.” (In fact, he did say it, frequently, but Charles Dudley Warner, with whom Twain coauthored The Gilded Age: A Tale of Today, said it first).¹ Transaction diagramming, and other diagrams and pictograms prepared by lawyers, are the reverse: everybody *does* diagramming, but nobody *talks (or writes)* about it. Legal diagrams are found in law textbooks, hornbooks and other study aids, prospectuses, offering materials, term sheets and deal documents, continuing legal education materials and bar preparation materials, blogs, law firm training materials, briefs and legal memoranda, judicial decisions, and in many other places. Most American lawyers likely saw their first diagram during their first day of classes in law school. Using diagrams is the most common way for an experienced lawyer to train a new lawyer, or to introduce a new lawyer to a deal, a concept, a structure, or a case. But are there rules that lawyers generally follow for the use of symbols, lines, colors, and shapes in diagramming business transactions (and other legal matters)? The answer, to date, is no. This article is a modest start at changing that answer.

For purposes of this article, the author will use “diagram” for lawyers to mean a two-dimensional representation of a matter that has legal consequences, such as a transaction, tax consequences, familial inheritance information, or corporate structure, designed to enhance the reader’s understanding. It is intended to illustrate or visually explain a thing quickly that would typically take paragraphs or pages of text to explain. A diagram can be stand-alone (showing a

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¹ RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS REQUESTED FROM THE CONGRESSIONAL RESEARCH SERVICE 370-71 (1989).

transaction on a single page, computer screen, or frame), or show a before-and-after view of a deal, or each step in a series of steps comprising a transaction. Diagrams can depict static situations, and typically through the use of arrows, actions. Diagrams can also indicate relationships among persons and legal entities. Entities are typically shown through the use of different geometric shapes. Frequently, but not always, diagrams are simplified drawings omitting substantial detail. Diagrams in this sense are different from charts, which typically illustrate in visual fashion statistical or financial information in summary form. However, legal diagrams may also include in summary form key financial information, such as the dollar amount of an investment or loan.

The author knows of no area of legal practice in which diagrams are *not* used.

Lawyers and law professors who use diagrams will frequently prepare keys, legends, or explanations, for his or her diagramming. Good diagrammers will be consistent in their diagramming, so that the reader or viewer of the diagram quickly perceives the message intended to be delivered by the diagram. Fifteen years ago, in a note by a prominent practitioner, UCC expert, and advocate of legal education to produce “practice-ready” lawyers, readers of *Business Law Today* (a publication of the ABA Section of Business Law) were urged to “Get Your Crayons Out: Sure, You Like Words. But an Image Can Make Your Case.”² Lawyers continue to use images to make their cases. But there is surprisingly little standardization in law practice, and among business, tax, and financial professionals who work together on transactions with attorneys. In the few instances in which practitioners have articulated suggested rules, the suggestions have not caught on, and have remained in use only by that practitioner or a few others. This article attempts to move this ball forward, with respect principally to the diagramming of business transactions. The KISS³ principle is kept firmly in mind; distilled to their essentials, most business transactions have a certain basic commonality, with one party parting with money, and the other party giving the first party something in return, such as assets, ownership interests, collateral, or other binding contractual arrangements.

First, this article reviews the sparse literature on the use of diagrams in practicing law.⁴ Second, this article analyzes the uses to which diagrams are most

² Steve Weise, *Get Your Crayons Out*, 8 BUS. L. TODAY 26 (1999).

³ “Keep it simple, stupid.” A design principle noted by the U.S. Navy in 1960. TOM DALZELL, *THE RUTLEDGE DICTIONARY OF MODERN AMERICAN SLANG AND UNCONVENTIONAL ENGLISH*, 595 (2009).

⁴ Note that any scholarly literature or attempt at standardization of transactional diagramming is lacking in business education literature as well.

commonly put by lawyers, both in the Academy and in the practice of law. Possible uses are discussed in terms of both feasible goals for diagramming, and sensible categories of information for which the structures of diagramming can reasonably be expected to be helpful, such as depicting transactions or legal structures, or summarizing legal information. In considering these uses, the author keeps in mind both the limited usefulness of a diagram that must be examined using a magnifying glass (no font size smaller than 10, please!), and the useful truism attributed to Einstein, particularly with respect to education or instruction, that “[e]very thing should be made as simple as possible, but no simpler.”⁵ Reflecting the author’s business law practice experience, the discussion focuses on corporate transactions, with some attention paid to tax treatment, which frequently *drives*, or at a minimum *shapes*, transactional decisions.

Third, the author makes suggestions for diagramming rules that, it is hoped, will be a step toward standardization in the legal profession. Standardization would make it *easier* to use diagrams, and would make the use of diagrams *clearer* and *more consistent*. The author makes suggestions for the meaning of shapes, with respect to legal entities; suggests a convention for indicating an entity’s taxable status as either a corporation, a partnership, a “pass-through” entity, or something else; explains what lines and arrows should mean; addresses the significance of movement from top to bottom of page, and from left to right; discusses the use of step-by-step diagrams versus all-in-one diagrams; addresses how to signify ownership, and acquisitions; addresses lending and borrowing, and the giving and taking of collateral; and explains how to depict individual human beings. In suggesting the consistent use of a “Key” or “Legend” for additional explanatory and necessary information, the author suggests that relationships, among human beings and among legal persons, that are not otherwise obvious from the diagram but important to the transaction or other matter displayed, be disclosed and explained as necessary in the “Key.” Similarly, the Key should contain information, if important to the transaction, regarding whether one or more of the parties to a transaction is a public company.

These suggestions will no doubt be at odds with the conventions of some practicing lawyers and perhaps the conventions of significant practice areas, but comments and criticisms from other legal practitioners and law professors are likely to lead to better diagramming rules and conventions in the future. The author has consulted and will continue to consult with legal practitioners, members of the Academy, government attorneys, officials in specialty areas, and

⁵ ALICE CALAPRICE, THE ULTIMATE QUOTABLE EINSTEIN 385 (2010).

businesspersons involved with securities, mergers and acquisitions, tax, real estate, trusts and estate, and finance. The author's hope is that review of this article and its suggested rules by other academics and practitioners will result in refinement and more detail in the rules to be discussed in a subsequent article.

I. DIAGRAMS GENERALLY; DISTINGUISHED FROM CHARTS

Webster's Dictionary defines diagram as "a figure, usually consisting of a line drawing, made to accompany and illustrate a geometrical theorem, mathematical demonstration, etc. . . . a drawing or plan that outlines and explains the parts, operation, etc. of something."⁶ We see diagrams everywhere: assembling furniture, looking at maps of airports (maps being a form of diagram), reviewing one's family tree; studying science (periodic table of the elements, diagram of the structure of various atoms, and of molecules)⁷, studying history (timelines, family charts for ruling families, maps of the rise and fall of empires), studying sports (in baseball, for example, the strike zone, pitching mechanics, and distribution of hits on the field), and in medicine, engineering and architecture (blueprints), surveying, philosophy, mathematics (Venn Diagrams, and geometry itself). We all use diagrams for explanations, and for visual depiction of more complicated concepts. Diagrams are used by attorney diagrammers to set forth something that is complicated or complex in a way that is designed to *enhance understanding*. Why is this teaching and learning tool so commonly employed, by lawyers and other human beings?

Researchers in the field of education have determined in the past fifty years that there are three different 'styles' of absorbing and learning information and skills: visual, auditory, and kinesthetic. Most people (almost 65%) are categorized as *visual* learners.⁸ Visual learners employ, and benefit from, visual depictions of knowledge and information, such as diagrams.⁹ Lawyers are over-represented in the dominant visual learner category.¹⁰ Hence the affection in the legal community for good diagrams.

⁶ WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 546 (2d ed. 1996).

⁷ I still remember my joy in high school biology when, stumped by the challenge of memorizing the (then) 17 steps of the Krebs Cycle, I was introduced to a diagram of the Cycle in a way that made it clear and memorizable. See J. Kay & P.D. J. Weitzman, KREBS' CITRIC ACID CYCLE – HALF A CENTURY AND STILL TURNING (1987).

⁸ William C. Bradford; *Reaching the Visual Learner: Teaching Property Through Art*, 11 THE LAW TEACHER, Sept. 1, 2011, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=587201 (last visited Nov. 3, 2014).

⁹ LYNNE CELLI SARASIN, LEARNING STYLE PERSPECTIVES: IMPACT IN THE CLASSROOM 69 (2d ed. 2006).

¹⁰ *Res ipsa loquitur*.

Diagrams are to be distinguished from charts, which may be viewed as a subset of diagram but which perform a function for which there is generally less utility among attorneys. Charts typically summarize and display financial and statistical information. For example, the pie chart demonstrates the distribution in a universe of data of the respective categories that make up the whole. Bar charts frequently demonstrate statistical growth or contraction, or compare data among peers. Charts are used by lawyers, particularly those whose focus is largely or exclusively on financial matters, but that is not the principal focus of this article.¹¹ This article instead focuses on the use of diagrams for transactions and proposes rules of standardization for transactional diagramming. To the extent money or statistical information is required to be displayed, there are suggestions below for ways to show dollars invested, loaned, distributed or otherwise employed in a transaction. To the extent that accounting or tax issues predominate and implicate the display of more complicated financial information, another approach will be suggested.

II. HOW ATTORNEYS USE DIAGRAMS; AND A REVIEW OF THE SPARSE LITERATURE ON ATTORNEY DIAGRAMMING CONVENTIONS

Almost nothing has been written on diagramming transactions other than the article previously cited by Professor Weise.¹² This brief article was written for a legal trade publication of the American Bar Association fifteen years ago. In it, Professor Weise identifies why we should “get our crayons out” and make our case with images.¹³ As children, he states, we learn to “express ourselves by drawing with our crayons.”¹⁴ But as we grow and learn we spend much less time drawing and far more time using words: “Law schools train lawyers to work in words. Lawyers learn to prize the well-chosen word.”¹⁵ But “[w]ords, sentences and paragraphs are linear . . . The reader constructs his mental picture one word at a time rather than having the opportunity to grasp the ‘big picture’ all at once. . . .”¹⁶ Professor Weiss implores, “Why not skip the words and go straight to the

¹¹ Weise, *supra* note 3, at 28. The Weise article actually calls two of the four illustrations in the brief, three-page article, “charts”: a cursory organization chart (for the officers and managers of a corporation), and a flow chart (demonstrating in rudimentary form a securitization transaction). The other two illustrations are a depiction of a corporate family and its ownership by related individuals, and a timeline for an upcoming deal. The author says that the timeline “gives a chilling indication of the compression of time as the deal moves forward.”

¹² Weise, *supra* note 3.

¹³ *Id.* at 26.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

picture?”¹⁷ Diagrams “can communicate information in ways that words cannot achieve.”¹⁸ Among other things, they “can display movement and relationships.”¹⁹ As important as diagrams or drawings are in facilitating reader understanding, the positive effect on the author in thinking through the matter to be presented is usually powerful. Preparing diagrams will “help you, as the author, think through what you are doing. As with drafting in ‘plain English,’ you are forced to display your thoughts in an understandable fashion. The very process of creating the [diagram] pushes you to organize your analysis in a logical manner.”²⁰

But the advisability of using good diagrams is supported not just by the words of this practitioner and law professor, but also by the overwhelming use of diagrams in legal academia and practice. It is difficult to locate a legal textbook, hornbook or other study aid that does *not* contain diagrams, and some contain many diagrams. They are frequently found in prospectuses and offering memoranda. Blackboards and whiteboards throughout the legal Academy are covered with them.

The ways in which practicing attorneys use diagrams are almost limitless. What follows is just a collected variety for the reader’s edification.

A simple but effective corporate transaction example comes from Weise’s article, in which he excerpts from a prospectus five lines of descriptive text about the ownership of related corporations by family members.²¹ The meaning of the language on first reading is not clear to most readers, but the simple corporate ownership chart makes the ownership structure clear at a glance.²² For an example of a corporate structure chart see Exhibit 1 at the end of this article.

Likewise, the timeline Weise shows is an effective use of a diagram in a corporate setting, visually showing how the pace of a deal picks up as the closing date approaches.²³ The timeline also focuses one’s attention on the fact that in preparing such a timeline, one begins with the intended closing date and works backwards in time to the present.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 28.

²² *Id.*

²³ *Id.*

In the wills, trusts and estates arena, practitioners frequently use diagrams to show what happens to the property of the decedent after death (to whom property passes and from what source), and to show the family of the decedent and to what each family member is entitled.

Litigation specialists often use diagrams to demonstrate who has what claims against whom, timelines for cases once filed, how the dispute arose or the accident occurred, what the “scene of the crime” looked like, etc.

Not only do corporate lawyers use diagrams to display transactions on which they are laboring; they also frequently use diagrams to show how particular *types* of transactions are conducted. For example, the author uses diagrams to show how a letter of credit transaction (both commercial and standby) occurs (see Exhibit 5), and how a public finance (municipal bond) transaction is conducted. Similarly, in his course on commercial lending, the author introduces the topic of loan transactions by using a PowerPoint presentation, which demonstrates how a loan can be a relatively simple, two-party loan transaction evidenced by a promissory note. At the other end of the commercial finance spectrum, a loan can be an extremely complicated transaction with multiple borrowers and guarantors, a lending ‘syndicate’ with an agent bank and many lenders, a variety of collateral items including real estate, other creditors of the borrower or borrowers (resulting in intercreditor and subordination agreements), such latter transaction being closed in coordination with the closing of an acquisition, and perhaps even the issuance by the (primary) borrower (or its parent) of high-yield bonds. (See Exhibit 4 for a diagram of a rather simple commercial finance transaction).

In the business law world, practitioners who frequently use diagrams include securities and mergers and acquisitions lawyers, bankruptcy and workout specialists, lawyers who frequently do cross-border transactions, real estate attorneys, ERISA and other employee benefit and pension lawyers, wills, trusts and estate and family lawyers, and tax lawyers.

An international tax practitioner, Andrew Mitchel, who practices in Centerbrook, Connecticut, is the creator of the International Tax Blog, as well as the related website Tax-Charts.com.²⁴ Mr. Mitchel has created hundreds of charts pertinent to international tax. On July 31, 2009, he posted a two-page note on the International Tax Blog called, “Tax Chart Shape & Color Conventions.”²⁵ This

²⁴ ANDREW MITCHEL LLC, http://www.andrewmitchel.com/html/topic_page_1.html#sec304 (last visited Nov. 3, 2014); *See also* TAX-CHARTS.COM, <http://www.tax-charts.com> (last visited Nov. 3, 2014).

²⁵ Andrew Mitchel, *Tax Chart Shape & Color Conventions*, INT’L TAX BLOG (July 31, 2009), http://intltx.typepad.com/intltx_blog/2009/07/tax-chart-shape-color-conventions.html.

thoughtful note outlined his use of shapes to designate types of entity, the significance of lines and outlines, the meaning of background colors, how he displays loan transactions, and new conventions on diagrams that he is using, particularly regarding trusts.²⁶ These suggestions and conventions will be discussed in more detail in Section III of this article.²⁷

Finally, two members of the Academy and a third writer from Finland have written an article titled “Visualization: Seeing Contracts for What They Are, and What They Could Become.”²⁸ While these authors may someday engage in the process and improvement of diagramming transactions, they are at an early stage in their scholarship, as they acknowledge, and are focused on visualization rather than clarity or consistency.²⁹

That concludes the review of the existing scholarly literature on diagramming transactions.³⁰

²⁶ *Id.*

²⁷ The author would like to thank Mr. Mitchel for his extensive and thoughtful work in this area of international tax and his International Tax Blog work, much (but not all) of which is consistent with the author’s transactional diagramming experience.

²⁸ Thomas D. Barton, Gerlinde Berger-Walliser & Helen Haapio, *Visualization: Seeing Contracts for What They Are, and What They Could Become*, 19 J.L. BUS. & ETH. 47 (2013).

²⁹ *Id.* at 48.

³⁰ To provide perspective on how little has been written in this area, the Google search the author conducted on diagramming transactions (sans quotation marks) produced this item as its first result:

[From the LucidChart Help Center]

Corporate Transaction Diagrams

I have been comparing a variety of diagramming programs recently, and I have yet to find one that includes a diagramming template for corporate transactions. I am a corporate lawyer, and I frequently find myself hand-drawing diagrams to show the various parties involved in a deal, the flow of stock and cash, and results for shareholders and the target entity.

I imagine a basic diagramming template would be easy to create. The ‘palate’ of pre-made shapes could include (1) partnership, (2) corporation, (3) LLC, and (4) shareholder. A ‘palate’ of basic transaction structures could include (1) merger, (2) asset sale, (3) triangular merger, and a (4) stock purchase. Other shapes and features would follow to help diagram the specifics or particular business combinations.

I also think a diagramming tool could be powerful for two reasons if linked to the actual deal documents that corporate lawyers use. . . . ‘I’d be glad to hear if anyone knows of any other diagramming software that includes a ‘Corporate Transaction Diagramming’ tool. Cheers!

See LUCID CHART HELP CENTER, <http://support.lucidchart.com/entries/23407271-Corporate-Transaction-Diagrams> (last visited Nov. 3, 2014).

III. SOME SUGGESTED RULES

The author's purpose in suggesting rules is not completeness or absolute precision with respect to all legal specialties, but rather to set forth some more basic rules and principles agreeable to all and on which specialists, such as tax lawyers, can then build within their own practices. These suggested rules are designed for transactions, but ought to be useful in depicting extant legal structures not undergoing change. A uniform, comprehensive and robust set of rules will make it unnecessary for anyone else ever to need to reinvent this wheel.

Legal diagrams have used a variety of symbols and other indicators to convey representations and meaning. Diagrams use *lines* for a variety of purposes, but frequently lines are used to show an ownership interest. *Shapes* typically represent legal entities, with particular shapes being associated with particular types of legal entities. *Arrows* frequently signify an action, such as an investment or a loan. *Colors* may have significance; and the *thickness or thinness of lines* may also have meaning, depending on the diagrammer.³¹

Diagrams appear on paper pages or computer screens. In the United States, an 8-1/2 inch by 11 inch page vertically arranged is standard for the printed word, but such a page can also be used and viewed horizontally.³² Computer screens are ordinarily arranged horizontally, with the author's Dell computer screen being arranged horizontally with dimensions of about 11-1/2 inches by 19 inches. Keep in mind that as Americans using the English language, the page or screen itself has significance. One starts with the upper left hand corner when reading, and diagrams also tend to flow from left to right and from top to bottom. Therefore, in signifying actions, lines will generally flow from left to right and from top to bottom, although consideration for the action may flow in the opposite direction.

A. INITIAL CONSIDERATIONS FOR CREATING A TRANSACTION DIAGRAM

³¹ This being the 21st century, note should be made of smiley faces and other "emoticons" (described, wondrously, in Wikipedia as "a metacommunicative pictorial representation of a facial expression which in the absence of body language and prosody serves to draw a receiver's attention to the tenor or temper of a sender's nominal verbal communication, changing and improving its interpretation."), and this author would urge persons working with diagrams on important legal matters to eschew the use of such items, no matter how tempting. © See what I mean? See WIKIPEDIA, <http://en.wikipedia.org/wiki/Emoticon> (last visited Nov. 3, 2014). See also George W. Kuney, *Legal Form, Style, and Etiquette for Email*, 15 TENN. J. BUS. L. 59 (2013).

³² The diagrams at the end of this article are so arranged, but two to a page.

1. Horizontal or Vertical? Think about your transaction, pick horizontal or vertical format, and be consistent with the flow pattern.

2. Give it a Title. Good things frequently happen when we think hard about a task before we start. Stopping at the beginning of diagramming a transaction to come up with a brief but accurate description is likely to have a positive effect on the entire task. Deciding upon the type of transaction in just a few words is recommended. Place the title at the top of your (horizontal or vertical) page in all capital letters, bold face, or both.

3. Key or Legend. As you proceed, keep in mind, and keep a list of, items that may require explanation or clarification, even within the confines of a diagram or chart. Accumulate these for use and explanation in a legend or key, which will be placed at the bottom of the diagram page.

4. One Diagram or More. Decide whether your diagram is to be a single diagram, a before-and-after set of two diagrams, or a series of diagrams depicting a transaction step by step, or something else.

5. Color. Will you use color in your diagram, and if so, how? Keep in mind that not all of your readers may have color capacity, and consider using shading, stripes, or other distinguishing conventions.

B. IDENTIFYING PARTIES

The custom has arisen with most legal diagrammers of showing a corporation as a square or rectangle, a partnership as a triangle, and an individual or non-partnership pass-through entity (for federal income tax purposes) as a circle or oval. After reviewing Mr. Mitchel's International Tax Blog and consulting tax practitioners, comprehending the importance of tax analysis and results, and the complexities of tax planning, my suggestions for entities follow. Corporations of any sort (including Subchapter S corporations) should be represented by squares or rectangles. In the center of the shape should appear the corporation's legal name. In the lower left hand corner should appear the nature of the corporate entity (i.e., "S Corporation," "C Corporation,"); depending on the nature of the deal, this information could include "for profit" or "not for profit"), along with the jurisdiction (state) and year of formation. In the event the tax treatment of the entity is consequential to the transaction being diagrammed, tax position would be denominated in the lower right hand corner of the square or rectangle (i.e., "C Corporation," or "S Corporation").³³ If space

³³ This treatment gives short shift to the tax elements of transactions, frequently a critical consideration. However, federal income tax is sufficiently complex that no shorthand formalization, appropriate for diagramming generally, occurs to the author.

or font size is a concern, this information could be run together along the bottom of the box underneath the name of the corporation.

Similarly, partnerships should be designated by triangles with the legal name to appear in the center. In the lower left hand corner should appear the nature of the partnership entity (i.e., “Limited Partnership,” “Limited Liability Partnership,” “General Partnership,” “Joint Venture”), along with the jurisdiction (state) and year of formation. Again, tax position would be denominated in the lower right hand corner of the triangle.

Individuals would be denoted with a circle or oval, with the individual’s legal name in the center, and the state or country of residence underneath. In the event of issues regarding a party’s legal name, or aliases, that information can be relegated to the key.

Trusts would be denoted by pentagons, and treated in a manner analogous to partnerships.

Limited liability companies (LLCs) can be subject to a variety of tax treatments, and have characteristics of corporations and partnerships. LLCs would be denoted by ovals within rectangles, with the jurisdiction (state) and year of formation of the LLC in the lower left hand region of the oval within the rectangle, and tax denomination in the lower right hand portion of the oval within the rectangle.

One factor that may be important, particularly in tax matters, securities transactions, family law, or transactions in which control is a consideration, is the relationship among the parties. Some relationships will be obvious from the corporate structure shown in a diagram. For example, two companies each 100% owned by the same individual or corporate parent will be “sister” (or sibling) companies. Two human children of the same two parents will be siblings. No further explanation is necessary. But what of non-obvious relationships? The author’s view is that if there is a relationship that is not obvious, but is important, appropriate information should be included in the key or legend.

It may also be appropriate to identify the *role* of a party in a transaction. For example, it may be appropriate to designate a certain corporation or partnership party as “seller” or “issuer” or “borrower” or some other similar designation. The author suggests placing this designation **below** the name of the party and in **bold face**. (Note that if the Title (see III(A)2, above) for the diagram is, for example, “\$10,000,000 Loan by Bank of America, N.A. to The

Burns Club of Atlanta, Inc.”, and there are just two parties identified in the diagram, it will not be necessary to identify the Bank of America as the “*Lender*”).

Once all of the parties to a transaction have been identified, it is appropriate to think about who is doing what to whom in the deal before positioning the parties on the page. Keeping in mind our left to right and up to down conventions, and knowing the deal, you will find sensible places on the page for each of the parties to the transaction. Therefore:

6. Parties. Place on the diagram page and identify, with all salient and required information, each of the parties to the deal. Place the “money party” to the left or the top of the page. (See discussion, below.)

7. Rules Governing Shapes for Entities:

Entity	Appropriate Shape
Corporation (any type)	Square or other rectangle
Partnership (any type)	Triangle
Limited Liability Company	Oval within rectangle
Trust (any type)	Pentagon
Human being	Circle or oval

8. Entity Information within Shape:

- Legal Name of Person or Entity in Center
- Role in Transaction- bold face below name
- Lower left-hand corner: specific type of entity (if not clear from the entity’s name), state and year of formation
- Lower right-hand corner: federal income tax treatment of entity.

C. LINES VERSUS ARROWS: SIGNIFYING ACTIONS

There is inconsistency among legal practitioners in the use of lines and arrows in diagramming transactions. By lines here, of course, we mean line *segments*, rather than true lines extending indefinitely in opposite directions. Rather than identify and discuss the issue or practice inconsistency, here is a

suggested solution. Arrows, which are line segments with a triangle at one end and are commonly used to point or indicate direction, should be used to signify an *action* of some sort. This is the more common use of the arrow in diagramming, and is consistent with its commonly used meaning. A line, or line segment, should be used only to signify ownership, with the owner being above or to the left of the owned thing, and the owned entity or asset being below or to the right of the owner person or entity. The ownership percentage (if less than 100%) may be reflected numerically above the line (or to the left or right of the line if the line is vertical) in Arabic numerals together with the percent sign (“%”), for brevity. Should there be more than a single class of common stock, the class of stock should be indicated.

One variable for lines or line segments, other than color, is thickness. One might use a thick line to reflect 100% ownership, and a thinner line to show 10% or other minority ownership percentage. Such use of variable line thickness ought to be accompanied by a numerical explanation; while human beings can appreciate that the width of a line may have significant meaning concerning the size or volume of a particular piece of a transaction, we are not yet bar code scanners.

If these suggestions are followed, then arrows will clearly signify action. Arrows are to be used to signify the making of a loan or investment, the purchase or sale of stock (or other equity ownership interests) or assets, a merger, the issuance of debt or equity, the payment of a dividend or other distribution of cash, stock, or assets, etc., or any other kind of corporate action.

In section III(B)6 above, it is suggested that the party that is the *money* party be above or to the left of the party *receiving* money, whether due to loan, investment, or asset or securities sale.³⁴ In very few transactions is there no “money party”; the only such transactions that come to mind are barter transactions (which are rare and when done, for example, in the real estate world, are usually swaps accompanied by ‘boot’, some cash, from one party to the other), and true mergers of equals.³⁵

³⁴ The author is aware that from the perspective of the issuer of debt or securities, the perspective may be that such party is the “prime mover” and thus entitled to the left or top spot (an investment banking “place of honor”) on the diagram. Traditionally, however, the primacy of money controls and as this would be more conventional the author suggests this placement as a rule, an offshoot of the so-called “Golden Rule,” that is, the party with the gold makes the rules.

³⁵ And again, there is frequently some cash component even with true mergers of equals.

When there is a direct ‘quid pro quo’ for the money that is moving, it is appropriate for the arrow denoting the consideration for the money to be placed directly below the money arrow, along with the explanation of the consideration.

As with the percentage indicator shown above lines reflecting ownership, action arrows should be accompanied by a brief written description of the action either above the arrow or to the left or right of it. For example, in a stock purchase transaction for \$10,000,000, the arrow indicating the movement of the purchase price from the buyer to the seller might appear with the arrow triangle to the right, pointing to the stock seller and away from the stock purchaser, with the words “\$10MM stock purchase price” above the line that is part of the arrow.³⁶ Consistent with the preceding paragraph, below the money arrow should appear another arrow, pointed in the opposite direction, signifying the movement of the stock being sold or issued by the seller.

Some transaction diagrammers use “dashed lines” or “dotted lines” for different purposes. Tax practitioners frequently use shapes indicated with dotted lines to signify entities that are “pass-through” or “disregarded” entities. In some cases, shapes are shown with dotted lines to signify that the thing is *not* a separate legal person or entity (e.g., a corporate division, or some assets or property).³⁷ Some practitioners use dotted lines to “represent action, an agreement, or a special type of relationship.”³⁸ The author finds this use of dotted lines for a variety of purposes confusing, and would prefer to use the key, or legend, to specifically signify any use to which a dotted line, or a shape enclosed by dotted lines, is put in a diagram.

Colors are another way to communicate meaning in a diagramming transaction, but there is less use of color, and less consistency in use, than there is with respect to other symbols. There is less use, because we still have black and white printers, and a certain portion of the human population, a little less than five percent, is colorblind.³⁹ To the extent there are conventions, though limited, they are clear: green typically indicates the flow of money (thanks to our “greenbacks”); red is consistent with debt, or borrowing money; and black is the

³⁶ In common diagramming parlance, as well as legal, financial and accounting shorthand, either “M” or “K” is an abbreviation for one thousand, and “MM” is a universal abbreviation for one million. “B” is a common abbreviation for one billion.

³⁷ Mitchel, *supra* note 25.

³⁸ *Id.*

³⁹ *Colour Blindness*, COLOUR BLIND AWARENESS, <http://www.colourblindawareness.org/colour-blindness/> (last visited Nov. 5, 2014).

credit side of the debit/credit equation. This use of color is typically not necessary to the diagram.

In tax practice, there is a single, common, color convention: a white entity background signifies a US entity while a blue background signifies a non-US entity.⁴⁰ Foreign entities, and generally speaking, cross-border tax matters and transactions, are outside the scope of this article. In sum then, regarding actions:

9. Lines v. Arrow. Lines (line segments) are used to signify ownership, with the owner being above or to the left of the owned entity or thing, and the percentage (if less than 100%) being indicated (for example - “50%”).

10. Arrows = Action. Arrows are to be used to signify action, with money to come from above or to the left. The action should be designated or briefly described along the line constituting part of the arrow. Ordinarily, an arrow will be matched by an arrow below it or to the right in the opposite direction, reflecting the consideration for the movement of money.

CONCLUSION

This is a modest proposal for standardizing transaction diagramming conventions among lawyers. It is premature to advance to more detailed rules for the benefit of a variety of specialist practices. The author concludes by drawing the reader’s attention to the sample diagrams (Exhibits 1 through 5) that follow this article. These do not look dramatically different from other diagrams you may have seen, because the rules the author has distilled, for the most part, codify existing diagramming practice.⁴¹

⁴⁰ Mitchel, *supra* note 25.

⁴¹ The author looks forward to, and solicits, your comments and criticisms, and the author hopes these reflect both substance and consensus for changes and additions sufficient for a subsequent article and more robust set of diagramming rules.

Exhibit 1

EMS Technologies, Inc. and Subsidiaries Corporate Structure Chart

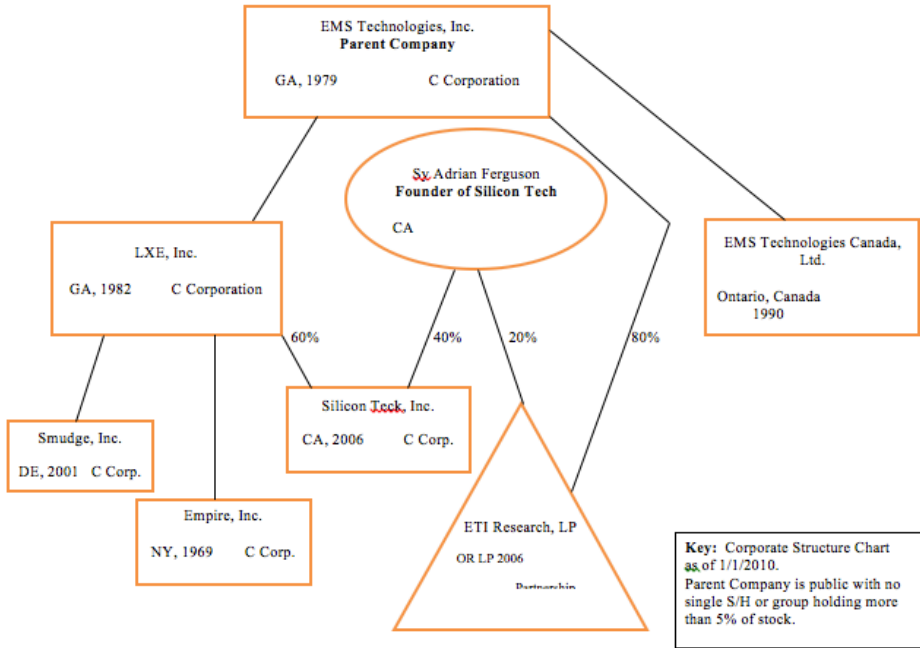


Exhibit 2

EMS \$9 M Asset Purchase Transaction for Headquarters Building

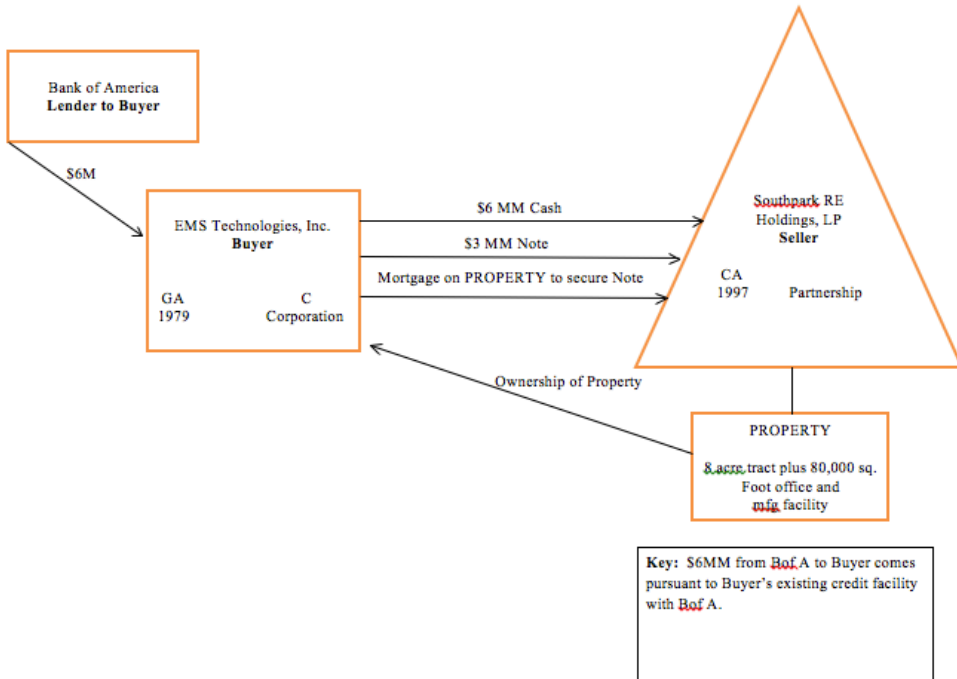


Exhibit 3

EMS \$2MM Stock Purchase-Acquisition of Tennessee Technologies from Pilot Gas

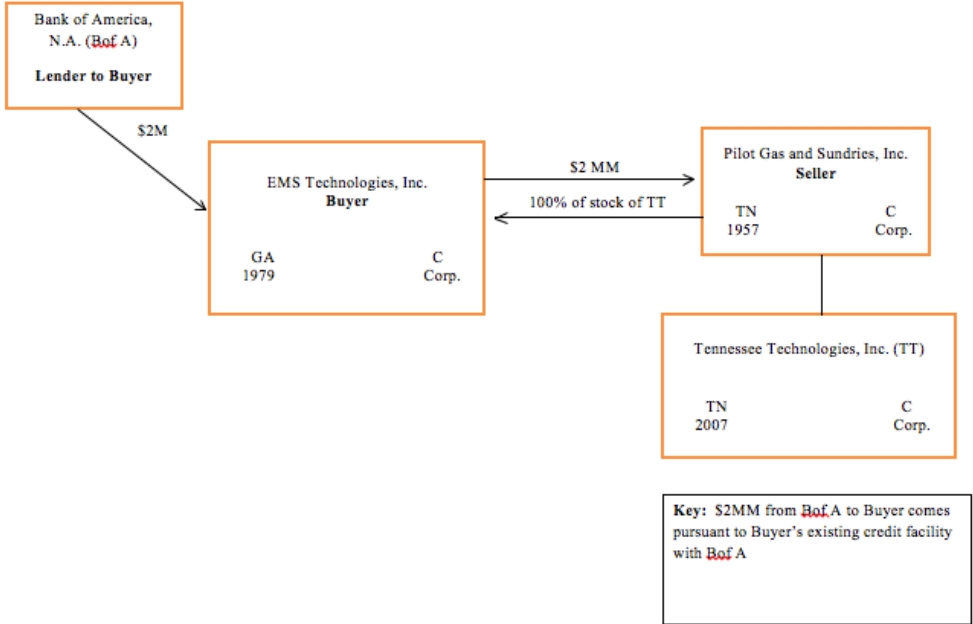


Exhibit 4

\$75 MM Loan Transaction Between a Group of Lenders (led by Bank of America), and EMS Technologies and [Domestic] Subsidiaries

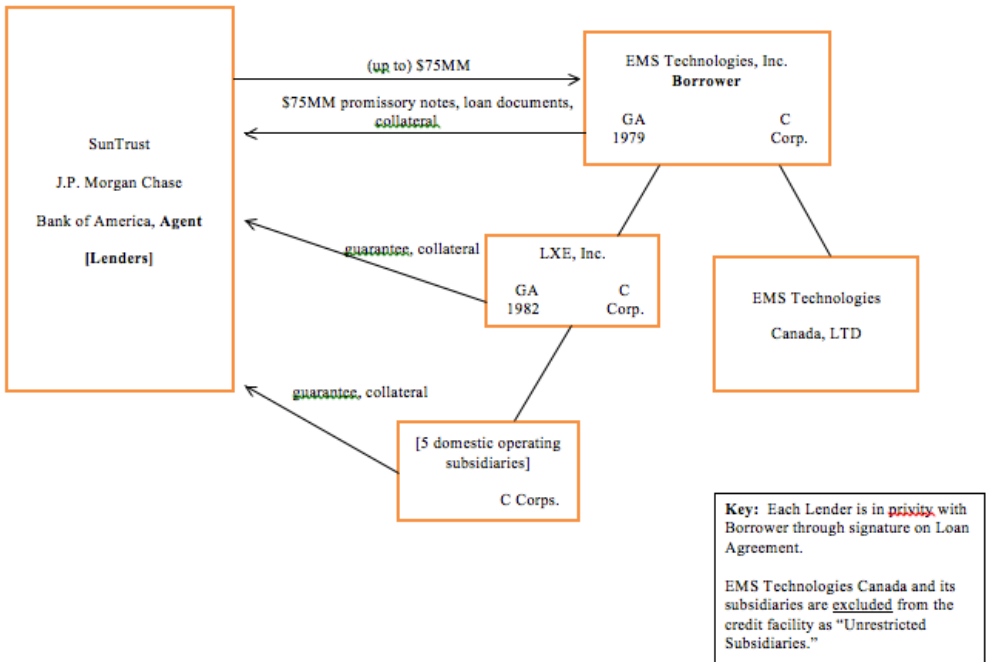


Exhibit 5

**THE LETTER OF CREDIT LC TRIPOD
(3 parties, 3 contractual relationships)**

