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### From Clause A to Clause Z: The Transactional Reader and Narrative Transportation

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**FROM CLAUSE A TO CLAUSE Z:  
NARRATIVE TRANSPORTATION AND THE TRANSACTIONAL READER\***

Susan M. Chesler\*\* and Karen J. Sneddon\*\*\*

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## I. INTRODUCTION

You know the phrase “lost in a good book.” The book’s story is so compelling that you are absorbed by the characters, setting, actions, and plot. The book pulls you into the narrative such that you must continue to read—even if that means staying up all night to finish the book. Because many associate that immersive experience with reading a novel, the phrase “lost in a good book” is most often connected to reading for pleasure. But the experience of being transported by the words of a narrative can occur when reading a variety of texts, including legal texts. That is because legal texts—both litigation-based documents and transactional documents—are, like novels, narratives.

Transactional documents may initially appear to be simply compilations of standard provisions, but they are in fact narratives. Consider, for instance, a contract between an architect and a newly formed LLC for blueprints to convert a historic home into a bed and breakfast. Or contemplate the gift agreement between a local businessperson and her alma mater that will establish an endowment to support scholarships for gifted students to attend the university. A local family farm and a newly created farm-to-table restaurant may enter into an agreement for the provision of organically grown fruits and vegetables throughout the year. These legal documents not only comprise part of an individual’s story but also become complete stories themselves. These texts present a series of related events in which characters perform actions anticipating particular resolutions of these events. In other words, these documents are narratives.

Transactional documents contain provisions related to the wishes, hopes, fears, and choices of the transacting parties. These documents are not merely memorializations of past events. They are documents that authors construct to guide and inform future behavior. They create the legal obligations and rights of the transacting parties. As such, it follows that the transacting parties are both performing roles within the narratives and are the readers of those narratives. The provisions in the transactional document must be accurately

processed, recalled, and acted upon by these parties. The inclusion of narrative within transactional documents can help the readers become more immersed in the document and thus lead to more effective outcomes throughout the life of the transaction.

This Article will begin by highlighting the power of narrative and defining narrative transportation. The Article will then address the power of narrative transportation and its impact on readers. It will then explore how narrative transportation applies to transactional documents. To better understand how narrative transportation may apply to transactional documents, including both its potential benefits and limits, the Article will first define the transactional reader. Then, the Article will showcase the benefits that narrative transportation offers by presenting two excerpted transactional documents. One document does not use narrative techniques while the other incorporates select narrative techniques. This illustration will enable readers to see first-hand the impact of narrative transportation on the transactional reader.

## II. NARRATIVE AND NARRATIVE TRANSPORTATION DEFINED

The term “narrative” is much broader than it may initially seem. A narrative is a text in which a narrative agent or storyteller shares a series of events.<sup>1</sup> Narratives may be used to inform, educate, persuade, entertain, or a combination thereof.<sup>2</sup> Narratives are powerful, at least in part, because of their ability to “transport” the audience to the world of the narrative. This section highlights the power of narratives, describes the act of reading, and defines narrative transportation.

### A. *The Power of Narratives*

All texts are created for specific purposes. A text, whether written or oral, may also be presented in a number of mediums or forms. A text could be, for example, expository. An expository text, like an instruction manual, is a text that exclusively delivers information.<sup>3</sup> Statistics is another medium for

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1. E.g., ROBERT SCHOLES ET AL., *THE NATURE OF NARRATIVE* 4 (40th anniversary ed. 2006) (articulating the core characteristics of narrative as “the presence of a story and a storyteller”).

2. See Michael D. Slater, *Entertainment Education and the Persuasive Impact of Narrative*, in *NARRATIVE IMPACT* 157, 158 (Melanie C. Green et al. eds., 2002) (“The use of story-telling to influence behavior is at least as old as Aesop and is deeply ingrained in Western as well as non-Western cultures. . .”).

3. Susan M. Chelser & Karen J. Sneddon, *Happily Ever After: Fostering the Role of the*

delivering information.<sup>4</sup> These examples illustrate that a text need not be presented as a narrative. So the question arises as to why a narrative would be used as a medium of expression.

The extensive use of narrative in various methods of communication evidences the adaptability and power of narratives. A narrative may be chosen as the means of communicating for various reasons. For instance, it can be because the narrative is considered by the author or speaker as the best form to (1) advance a personal goal, (2) cause a particular effect on the audience, or (3) meet the goals of an existing conversation.<sup>5</sup> In other words, authors may use narratives to persuade the reader, to inform the reader, or to do a combination of both.

The use of narrative may cause the audience to process the presented information in a more meaningful manner or retain that information for a longer period of time.<sup>6</sup> Some have even suggested that the brain innately processes information as narratives.<sup>7</sup> The power of narratives has been the subject of study from fields including literary theory, composition, rhetoric, history, educational theory, neuroscience, and cognitive science.<sup>8</sup> Although

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*Transactional Lawyer as Storyteller*, 20 TRANSACTIONS 491, 493 (2019) [hereinafter Chesler & Sneddon, *Fostering the Role of the Transactional Lawyer as Storyteller*].

4. For an analysis of the power of presenting health information in a narrative form compared to a series of statistics, see Sheila T. Murphy et al., *Narrative Versus Non-Narrative: The Role of Identification, Transportation and Emotion in Reducing Health Disparities*, 63 J. COMM. 116 (2014).

5. See Roger C. Shank & Tamara R. Berman, *The Pervasive Role of Stories in Knowledge and Action*, in NARRATIVE IMPACT, *supra* note 2, at 287, 289.

6. See, e.g., *id.* at 287 (proposing that even basic information “is stored in our memory structured as stories”).

7. See JEROME BRUNER, ACTS OF MEANING 115 (1990) (“Indeed, the ‘new’ recognition that people narrativize their experience of the world and of their own role . . . .”); MARSHALL GROSSMAN, THE STORY OF ALL THINGS 34 (1998) (“The construction of narrative is an essential activity of the human mind.”). For further discussion on the relationship between storytelling and the mind, see also Louis J. Goldberg, *Expanding the Narrative: The Grand Compulsion of a Storytelling Species*, 6 J. CONTEMP. LEGAL ISSUES 281, 281 (1995); Lorie M. Graham & Stephen M. McJohn, *Cognition, Law, Stories*, 10 MINN. J.L. SCI. & TECH. 255, 258 (2009); Lea B. Vaughn, *Feeling at Home: Law, Cognitive Science, and Narrative*, 43 MCGEORGE L. REV. 999, 1004 (2012).

8. See SCHOLES ET AL., *supra* note 1, at xiv, 8–9 (arguing that narrative plays an important role in literature beyond the traditional concept of a novel); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2415–16 (1989) (explaining the utilization of narrative in the context of racial reform); Goldberg, *supra* note 7, at 282; Vaughn, *supra* note 7, at 1004; Paul J. Zak, *Why Inspiring Stories Make Us React: The Neuroscience of Narrative*, CEREBRUM, Feb. 2015, at 1.

each of these fields has suggested different reasons to explain the power of stories, from a study of brain scans to the compelling recollections of childhood remembered reads, all the fields agree that narratives are powerful because of how they affect the audience.<sup>9</sup> Narratives are eagerly consumed and remembered.<sup>10</sup> Narratives “shap[e] our memories, knowledge, and beliefs,”<sup>11</sup> and they can change attitudes and influence behaviors.<sup>12</sup> The extensive use of narratives in various methods of communications evidences both the power and adaptability of narratives to a range of different topics.<sup>13</sup>

It is important to recognize that the term “narrative” is not limited to a fictional story.<sup>14</sup> Legal documents, including transactional documents, may be narratives.<sup>15</sup> Legal documents, whether affidavits, complaints, contracts, or trust agreements, are a series of events relayed by an individual. For more than twenty years, the applicability of narrative to the law has been explored by adapting narrative techniques to the development, composition, and production of a variety of legal documents.<sup>16</sup>

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9. For a summary of the persuasive features of narrative in the legal context, see generally, J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING 53, 57–78 (2008).

10. See, e.g., Melanie C. Green & John K. Donahue, *Simulated Worlds: Transportation into Narratives*, in HANDBOOK OF IMAGINATION AND MENTAL STIMULATION 241, 241–51 (Keith D. Markman et al. eds., 2009) (describing the aspects of narrative that make consumption enjoyable and distinct from other writing styles).

11. Marcia K. Johnson, *Foreword to NARRATIVE IMPACT*, *supra* note 2, at ix.

12. E.g., Leslie J. Hinyard & Matthew W. Kreuter, *Using Narrative Communication as a Tool for Health Behavior Change: A Conceptual, Theoretical, and Empirical Overview*, 34 HEALTH EDUC. & BEHAV. 777, 777 (2007) (asserting that narratives are greater motivators for behavioral change than statistical evidence, probability analysis, and appeals to logic).

13. See, e.g., ARTHUR ASA BERGER, *NARRATIVES IN POPULAR CULTURE, MEDIA, AND EVERYDAY LIFE* 1–2, 14–16 (1997); see also Anne E. Ralph, *Narrative-Erasing Procedure*, 18 NEV. L.J. 573, 581 (2018) (“Narrative is powerful because it is natural, inviting, and shared.”).

14. BRUNER, *supra* note 7, at 44 (stating that a narrative “can be ‘real’ or ‘imaginary’ without loss of its power as a story”).

15. Susan M. Chesler & Karen J. Sneddon, *Telling Tales: Transactional Lawyer as Storyteller*, 15 LEGAL COMM. & RHETORIC 119, 119 (2018); see also David Collins, *Narrative and Lyrical Elements in International Investment Agreements: Towards an Imagination-Inspired Understanding of International Legal Obligations*, 24 U.C. DAVIS J. INT’L L. & POL’Y 179, 180 (2018).

16. See generally *NARRATIVE AND METAPHOR IN THE LAW* (Michael Hanne & Robert Weisberg eds., 2018) (providing a collection of scholarly works that explain how narrative and metaphor are both vital to the legal process); J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEGAL COMM. & RHETORIC 247 (2015) [hereinafter Rideout, *Bibliography*] (compiling the recent scholarly works on the topic of applied legal storytelling).

To date, most legal scholarship has focused on litigation-based documents, such as pleadings, briefs, closing arguments, and victim impact statements.<sup>17</sup> More recently, legal scholarship has expanded its focus to analyze the creation and interpretation of transactional documents as narratives.<sup>18</sup> All of this scholarship draws the power of narrative into the legal context to show how narrative can be used to construct legal documents that more effectively advance the purposes or goals of the text.<sup>19</sup> The applicability of narrative to documents has most often focused on how to create those narratives. But how the audience perceives and interacts with the narrative is also a relevant scholarly inquiry. This Article aims to explore the impact of narrative techniques used in the drafting of transactional documents on the primary readers of those documents.

### B. *The Reading Experience*

To fully understand the power of narrative, attention must be paid to how the audience engages with the narrative.<sup>20</sup> Text, after all, is created to be read or viewed by someone. In the context of a written narrative, this means that

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17. See Anthony G. Amsterdam & Randy Hertz, *An Analysis of Closing Argument to a Jury*, 37 N.Y.L. SCH. L. REV. 55, 55 (1992); Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 362 (1992); Todd A. Berger, *A Trial Attorney's Dilemma: How Storytelling as a Trial Strategy Can Impact a Criminal Defendant's Successful Appellate Review*, 4 DREXEL L. REV. 297, 297 (2013); Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING 127, 130 (2008); Elizabeth Fajans & Mary R. Falk, *Untold Stories: Restoring Narrative to Pleading Practice*, 15 LEGAL WRITING 3, 4 (2009); Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459, 459–60 (2001); Lia Kern Griffin, *Narrative, Truth, and Trial*, 101 GEO. L.J. 281, 281 (2013).

18. See, e.g., Susan M. Chesler & Karen J. Sneddon, *Once upon a Transaction: Narrative Techniques in Drafting*, 68 OKLA. L. REV. 263, 265–68 (2016) [hereinafter Chesler & Sneddon, *Narrative Techniques in Drafting*]; Susan M. Chesler & Karen J. Sneddon, *Tales from a Form Book: Stock Stories and Transactional Documents* 78 MONT. L. REV. 237, 237 (2017) [hereinafter Chesler & Sneddon, *Stock Stories*]; Lori Johnson, *Redefining Roles and Duties of the Transactional Lawyer: A Narrative Approach*, 91 ST. JOHN'S L. REV. 845, 849–50 (2017).

19. See generally Ruth Anne Robbins, *Three 3Ls, Kairos, and the Civil Right to Counsel in Domestic Violence Cases*, 2015 MICH. ST. L. REV. 1359, 1359 (2015) (exploring the concept of *kairos*, or “opportune moment,” in the context of constructing compelling legal narratives and legal arguments).

20. See Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 155 (1999) (asserting that students learn to communicate through legal writing by considering how the reader will process the information).

the author must consider the reader and the reading experience.<sup>21</sup> Reading is not a passive act. Reading demands much more than recognizing and understanding the letters and words on a page. It is a complex task that involves both physiological processes and cognitive processes.<sup>22</sup> In terms of physiological processes, readers may experience physical changes. Those changes include increases in muscle tension, respiration, and heartbeat.<sup>23</sup> Other physical changes include sensations in the skin (e.g., goosebumps) and tears welling in the eyes.<sup>24</sup>

In terms of cognitive processes, readers are performing a number of processes to receive and interpret the text.<sup>25</sup> One example is phonological processing, which refers to hearing the sounds of language and the basic decoding and recognizing of words.<sup>26</sup> Other metalinguistic processes include syntactic awareness, which is how the reader understands the word order in light of understandings of grammar; morphological awareness, which is how the reader understands the relationship between and among the words;<sup>27</sup> and semantic processing, which is how the reader understands the definition of the words.<sup>28</sup> Reading also activates the working memory, which is how information is retained for the time period needed to process the word, phrase, or sentence.<sup>29</sup>

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21. Narrative transportation can and does occur when the audience engages with a visual narrative or an audio narrative. Since this Article is focused on written documents, the term “reader,” rather than the term “audience,” will be used throughout.

22. MARYANNE WOLF, *PROUST AND THE SQUID: THE STORY AND SCIENCE OF THE READING BRAIN* 160–61 (First Harper Perennial ed. 2008) (2007). *See generally* STANISLAS DEHAENE, *READING IN THE BRAIN: THE NEW SCIENCE OF HOW WE READ* (2009) (explaining the complicated neural circuitry devoted to the reading process).

23. VICTOR NELL, *LOST IN A BOOK: THE PSYCHOLOGY OF READING FOR PLEASURE* 9 (1988).

24. *Id.*

25. *See* Louise Spear-Swerling, *A Road Map for Understanding Reading Disabilities and Other Reading Problems, Redux*, in *THEORETICAL MODELS AND PROCESSES OF READING* 412, 416–17 (Donna E. Alvermann et al. eds., 6th ed. 2013) [hereinafter *THEORETICAL MODELS*] (exploring the reading and learning process through cognitive, sociocultural, and transactional theories).

26. *Id.* at 416.

27. William E. Nagy & Judith A. Scott, *Vocabulary Processes*, in *THEORETICAL MODELS*, *supra* note 25, at 458, 464–67.

28. David E. Rumelhart, *Toward an Interactive Model of Reading*, in *THEORETICAL MODELS*, *supra* note 25, at 719, 727–30.

29. *See* Andrew M. Carter, *The Reader’s Limited Capacity: A Working-Memory Theory for Legal Writers*, 11 *LEGAL COMM. & RHETORIC* 31, 39–41 (2014) (applying the working-memory theory to the reading process).

Reading is an individualized experience, where the readers bring their own abilities and perspectives to the task.<sup>30</sup> These abilities and perspectives refer not only to the level of language fluidity a reader may have but also to the personal experiences upon which the reader will draw to interpret and “react” to the text.<sup>31</sup> Focusing on the reader’s experiences references the power of narrative to inform and to persuade the reader. A narrative will have limited power if the narrative does not engage the reader.

C. *The Power of Narrative Transportation*

THERE is no frigate like a book  
To take us lands away . . . .  
- *Emily Dickinson*<sup>32</sup>

Individuals read a variety of texts every day. The act of reading any text can trigger the physiological processes and cognitive processes.<sup>33</sup> These are both learned responses and automatic responses. But the act of reading also has the power to activate other responses. The responses to a narrative will influence the present and future behavior of readers.

Reading, whether the act of reading an advertisement or a novel, can cast a spell over the reader.<sup>34</sup> The reader can experience an altered “state of consciousness through entrancement.”<sup>35</sup> As one scholar described, “Like dreaming, reading performs the prodigious task of carrying us off to other worlds.”<sup>36</sup> The ability of a narrative to move readers, who may or may not be familiar with the narrative text, to other times and locations is generally described as narrative transportation.<sup>37</sup>

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30. For studies on reading in the legal profession, see generally Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 *LEGAL WRITING: J. LEGAL WRITING INST.* 63 (2016); Catherine J. Cameron, *In the Eyes of the Law Student: Determining Reading Patterns with Eye-Tracking Technology*, 45 *RUTGERS L. REC.* 39 (2017–2018); Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 *BYU EDUC. & L.J.* 53 (2008).

31. See MORTIMER J. ADLER & CHARLES VAN DOREN, *HOW TO READ A BOOK: THE CLASSIC GUIDE TO INTELLIGENT READING* 346 (rev. and updated ed. 1972).

32. EMILY DICKINSON, *There Is No Frigate like a Book*, in *THE SELECTED POEMS OF EMILY DICKINSON* 148 (Milton Creek Dig. Servs. ed., 2016).

33. NELL, *supra* note 23.

34. *Id.* at 48 (describing storytelling as “a power relationship that strongly parallels the induction of a hypnotic trance.”).

35. *Id.* at 73.

36. *Id.* at 2.

37. RICHARD J. GERRIG, *EXPERIENCING NARRATIVE WORLDS: ON THE PSYCHOLOGICAL*

Narrative transportation is the “phenomenological experience of being transported to a narrative world.”<sup>38</sup> The reader experiences “immersion into a text.”<sup>39</sup> Essentially, narrative transportation refers to the ability of the narrative to engage the reader, to hold the reader’s attention, to potentially influence the reader’s attitudes and beliefs, and to prompt subsequent actions by the reader.

Narrative transportation has the potential to exert power over the reader in at least three ways. First, narrative transportation may affect how the reader processes the narrative.<sup>40</sup> This effect may be seen as increased time devoted to reading the narrative, increased proficiency, or increased comprehension. Second, narrative transportation can enhance the reader’s recall of information presented in the narrative.<sup>41</sup> The reader may remember both broad concepts and details for longer periods of time. Third, narrative transportation can influence what actions the reader takes after completion of the narrative or even at a later date.<sup>42</sup> This influence may be a change in belief or encouragement to read another related narrative.

Narrative transportation can be cultivated in narratives of any length that have been constructed for varied purposes. Much study in narrative transportation has thus far focused on the persuasive power of narrative transportation.<sup>43</sup>

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ACTIVITIES OF READING 2 (1993) [hereinafter GERRIG, NARRATIVE WORLDS] (“[R]eaders are often described as *being transported* by a narrative by virtue of *performing* that narrative.”).

38. Melanie C. Green & Timothy C. Brock, *In the Mind’s Eye: Transportation-Imagery Model of Narrative Persuasion*, in NARRATIVE IMPACT, *supra* note 2, at 315, 315.

39. Melanie C. Green & Timothy C. Brock, *The Role of Transportation in the Persuasiveness of Public Narratives*, 79 J. PERSONALITY & SOC. PSYCHOL. 701, 702 (2000); *see also* NELL, *supra* note 23, at 1 (“[P]leasure reading breeds a concentration so effortless that the absorbed reader . . . [is] transported by the book to some other place, and shielded by it from distractions . . .”).

40. *See* GERRIG, NARRATIVE WORLDS, *supra* note 37, at 157–95 (analyzing the physical and cognitive effects of narrative transportation and how they affect readers’ intake of information).

41. Melanie C. Green & Jenna L. Clark, *Transportation into Narrative Worlds: Implications for Entertainment Media Influencers on Tobacco Uses*, 108 ADDICTION 477, 480 (2013).

42. Various studies have been conducted about the power of narrative transportation. As one work summarized, “past research has demonstrated that individuals who are more transported exhibit greater attitude and belief change in response to stories.” Philip Mazzocco et al., *This Story is Not for Everyone: Transportability and Narrative Persuasion*, 1 SOC. PSYCHOL. & PERSONALITY SCI. 361, 361 (2010).

43. *See* Green & Brock, *supra* note 39, at 701; Slater, *supra* note 2, at 157; Tom Van Laer et al., *The Extended Transportation-Imagery Model: A Meta-Analysis of the Antecedents and*

For instance, studies related to narrative transportation and advertising examine how readers' attitudes or buying patterns can be changed by the experience of narrative transportation.<sup>44</sup> These studies suggest that narrative transportation distracts the audience from critically evaluating arguments about the product.<sup>45</sup> The audience is then more likely to believe the claims presented in the narrative, which may result in the subsequent purchase of the product.<sup>46</sup> Narrative transportation also evokes emotional responses that enhance favorable impressions of the brand, even if the audience does not immediately purchase a new product.<sup>47</sup> This emotional response may help increase recall of the brand so that audience will remember the brand and produce lasting impressions about the brand.<sup>48</sup> At some points in the future, the audience may purchase a variety of products associated with the brand, even though the ultimately purchased product was not specifically referenced in the narrative.

The power of narrative transportation to engage the reader and influence behaviors is not limited to changes in consumers' purchasing patterns.<sup>49</sup> Studies have shown how narrative transportation can affect the audience's attitudes and beliefs about a variety of social issues.<sup>50</sup> Studies have also shown how presentation of certain behaviors, such as smoking, in the narrative influences the adoption of those behaviors in the audience.<sup>51</sup> Scholars and researchers believe that more work can be done to better understand how to create and leverage narrative transportation—especially outside of the context

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*Consequences of Consumers' Narrative Transportation*, 40 J. CONSUMER RES. 797, 798 (2014).

44. Jennifer Edson Escalas, *Imagine Yourself in the Product: Mental Stimulation, Narrative Transportation, and Persuasion*, 33 J. ADVERT. 37 (2004); Van Laer et al., *supra* note 43.

45. Escalas, *Imagine Yourself*, *supra* note 44, at 40 (“Specifically, when consumers are transported. . . they will not notice differences in whether the ad presents strong or weak rationale for buying the product.”).

46. Van Laer et al., *supra* note 43, at 804.

47. Escalas, *Imagine Yourself*, *supra* note 44, at 45.

48. See Green & Clark, *supra* note 41 (applying this concept to use of tobacco products).

49. See Mary Fan, *The Case for Crimmigration Reform*, 92 N.C. L. REV. 75, 112 (2013) (observing that “affective reactions can help precipitate action”); Bruce Ching, *Narrative Implications of Evidentiary Rules*, 29 QUINNIPIAC L. REV. 971, 973–76 (noting the power of narrative transportation to influence the reader's experience of the narrative).

50. See Mazzocco et al., *supra* note 42 (conducting surveys using narratives related to sexual orientation and affirmation action).

51. See, e.g., Green & Clark, *supra* note 41, at 478 (examining how the presentation of smoking in movies and television may increase the adoption of smoking by individuals, including teenagers).

of persuasion.<sup>52</sup> These scholars and researchers focus on how narrative transportation supports comprehension and recall.<sup>53</sup>

The experience of narrative transportation pulls the reader into the narrative, keeps the reader engaged with the narrative, and leaves the reader changed because of the experience of reading the narrative.<sup>54</sup> The change may be the acquisition of new information or a new perception on a previously understood situation. Accordingly, narrative transportation relies upon (1) the reader's participation in the narrative; (2) the evocation of emotional responses, particularly the emotion of empathy; and (3) the attributes of the text to create a well-crafted, coherent narrative. Each is discussed below.

### 1. *Participatory Responses*

Narrative transportation requires the creation and cultivation of a variety of reader responses.<sup>55</sup> Those responses include the production of mental images, the inspiration of emotional responses, the nurturing of character identification, and the promotion of text comprehension.<sup>56</sup>

The act of reading casts the reader in the role of a performer.<sup>57</sup> While readers perform cognitive functions, they also perform roles within the narratives themselves.<sup>58</sup> As the readers are participating in the narrative by

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52. For a summary of various studies and suggestions for future studies, see generally Van Laer et al., *supra* note 43.

53. *See id.* at 801.

54. *See generally* Melanie C. Green et al., *The Power of Fiction: Determinant and Boundaries*, in *THE PSYCHOLOGY OF ENTERTAINMENT MEDIA: BLURRING THE LINES BETWEEN ENTERTAINMENT AND PERSUASION* 167, 172–76 (L. J. Shrum ed., 2004) (describing fiction as “a powerful tool for shaping attitudes and opinions.”); Barbara J. Phillips & Edward F. McQuarrie, *Narrative and Persuasion in Fashion Advertising*, 37 *J. CONSUMER RES.* 368, 369 (2010) (explaining narrative transportation as a route to persuasion).

55. Some scholars term these responses “mimetic imagination,” which refers to the narrative's ability to pull the reading into the narrative and participate. *See* MARIA TATAR, *ENCHANTED HUNTERS: THE POWER OF STORIES IN CHILDHOOD* 13 (2009) (“Mimetic imagination . . . allows children to cross thresholds and to breathe the air of the story worlds.”).

56. *See, e.g.*, Mazzocco et al., *supra* note 42, at 361.

57. One of the initial works to examine narrative transportation suggested two metaphors to describe the experience of readers. Those metaphors were (1) transportation and (2) performance. GERRIG, *NARRATIVE WORLDS*, *supra* note 37. Today, the term narrative transportation refers to the reader's experience. *See* Van Laer et al., *supra* note 43, at 799–800.

58. Participatory responses, in the terms of narrative transportation, is a metaphor related to the reader's performance of the narrative. Modern media allows the reader to actually participate in the narrative by making choices that influence the story's development in “choose your own adventure” format. For a modern application of this narrative style, see generally

performing these roles, the readers are transported to the world defined by the narrative. These experiences affect how readers comprehend and recall the narratives. These responses will affect the reader's evaluation of the narrative and the long-term impact of the narrative on the reader. With performance, the reader responds to the narrative by performing one of several roles. These responses are described as participatory responses.

Participatory responses "are a reader's attempts to strategically gather evidence from a narrative that will allow [the reader] to more confidently predict outcomes, particularly those [the reader] favor[s]." <sup>59</sup> Professor Richard Gerrig, who first sparked scholarly examination of narrative transportation, proposed the following three participatory responses: (1) side participation, (2) problem-solving, and (3) replotting. <sup>60</sup> "Side participation" casts the reader in the role of an eavesdropper or commentator. <sup>61</sup> Although not assuming a character role within the narrative, side participation allows the reader to follow the journey of the characters. <sup>62</sup> The reader serves as a witness to the events of the narrative, cheering the victories and bemoaning the defeats. <sup>63</sup>

"Problem-solving" responses refer to situations when the reader is given the role of fact gatherer. The reader gathers information and evidence to anticipate the characters' next actions or even predict the probable resolution of the narrative's conflicts. <sup>64</sup> The reader then eagerly continues reading the narrative to determine the accuracy of his or her predictions. <sup>65</sup>

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READING IN A PARTICIPATORY CULTURE: REMIXING *MOBY-DICK* IN THE ENGLISH CLASSROOM (Henry Jenkins et al. eds., 2013) (presenting a multi-media update to a classic tale where the reader becomes a narrative agent who, at certain stages, can influence the next event of the narrative).

59. James W. Polichak & Richard J. Gerrig, "Get Up and Win!": *Participatory Responses to Narrative*, in *NARRATIVE IMPACT*, *supra* note 2, at 71, 78.

60. *Id.* at 73, 78.

61. *Id.* at 74–75.

62. *See id.* at 75.

63. For an examination of the character archetype of the hero and its applicability to the creation of legal documents, see Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767 (2006).

64. David S. Miall, *Affect and Narrative*, 17 POETICS 259, 264 (1988) (referring to the problem-solving participatory response as an "anticipatory reader response," where the reader is anticipating what will happen next based upon provided reference points of information.).

65. The problem-solving participatory response is often associated with reading mysteries. *See* Polichak & Gerrig, *supra* note 59, at 82–84 (discussing the effect of suspense on readers' problem-solving participatory responses).

“Replotting,” as contrasted with the previous two participatory responses that occur as the reader is reading the narrative, is a participatory response that occurs after the reader has concluded the narrative.<sup>66</sup> Replotting is a retrospective reflection on what could have or should have happened.<sup>67</sup> Replotting may occur as soon as the reader concludes reading of the narrative or may occur days, months, or even years after reading the narrative.<sup>68</sup> Replotting allows the reader to revisit the world of the narrative after the reading process has ended.

In addition to those suggested by Professor Gerrig, “self-referencing” is another participatory responses.<sup>69</sup> In this context, self-referencing<sup>70</sup> refers to an experience whereby the reader processes the text by comparing the text to “self-relevant information stored in memory.”<sup>71</sup> This means that readers “relate[s] what they see to their own and personal experiences.”<sup>72</sup> The reader sees himself or herself in the narrative.

When participatory responses are provoked by narrative transportation, the reader takes a performative role in the narrative, essentially “playing a part” in the narrative. The narrative becomes a “page turner” where the reader feels compelled to continue reading to see what the reader, in the performative

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66. *Id.* at 78 (describing replotting as “retrospective”).

67. *See id.* at 78–79.

68. The creation of “fan fiction” is an example of reader replotting that results in the production of a new work. *See generally* HENRY JENKINS, FANS, BLOGGERS, AND GAMERS 41–49 (2006) (analyzing how fans “rewrote” *Star Trek* inspired stories to correct inconsistencies or remove stereotypes from the original narratives); *see also* Angela Thomas, *Fan Fiction Online: Engagement, Cultural Response and Affective Play Through Writing*, 29 AUSTL. J. LANGUAGE & LITERATURE 226, 226–27 (2006) (noting that although *Star Trek* promoted the development of fan fiction in the 1960s, today’s fan sites use multiple source materials, including *Harry Potter* and *Lord of the Rings*).

69. *See, e.g.*, Jennifer Edson Escalas, *Self-Referencing and Persuasion: Narrative Transportation Versus Analytical Elaboration*, 33 J. CONSUMER RES. 421, 421 (2006) [hereinafter Escalas, *Self-Referencing*].

70. The words, “me,” “mine,” “my,” and “I” are used to relate the events of the narrative to the reader. *See* Suzanne Keen, *A Theory of Narrative Empathy*, 14 NARRATIVE 207, 215–16 (2006) (“[F]irst person fiction more readily evokes feeling responsiveness than the whole variety of third person narrative situations.”); *see also* Jennifer Trahan, *Enemy of the State: The Trial and Execution of Saddam Hussein by Michael A. Newton & Michael P. Scharf*, 18 CORNELL J.L. & PUB. POL’Y 831, 832 (2009) (book review) (“The use of first-person narrative [in the reviewed book] lends a sense of immediacy that contributes to the gripping nature of the book.”).

71. Escalas, *Self-References*, *supra* note 69; *see also* Robert E. Burnkrant & H. Rao Unnava, *Effects of Self-Referencing on Persuasion*, 22 J. CONSUMER RES. 17, 17 (1995).

72. HANDBOOK OF RESEARCH ON NARRATIVE ADVERTISING 195 (Recep Yilmaz ed., 2019).

role, must do next. In addition to influencing the reader's engagement and evaluation of the narrative, the number and nature of participatory responses will influence the "long-term impact of [the] narrative" on the reader.<sup>73</sup>

*a. Emotional Responses*

Emotional responses will facilitate "immersion in the text" and can reduce critical analysis of the narrative.<sup>74</sup> During the course of reading the narrative, the reader may experience a range of emotional responses. The emotional responses are, at least in part, activated by the reader's identification with characters in the narrative.<sup>75</sup> This identification primarily promotes the creation of sympathy and empathy.<sup>76</sup> The reader may experience other emotional responses, such as fear, anger, and joy. The reader's emotional responses triggered by the narrative also contribute to a positive reader experience.

The reader may sympathize with the narrative such that the reader "feels sorry" for the experiences the characters must endure.<sup>77</sup> The word "sympathy" may be considered synonymous with the word "compassion."<sup>78</sup> Sympathy can

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73. Polichak & Gerrig, *supra* note 59, at 91.

74. See Escalas, *Imagine Yourself*, *supra* note 44, at 37; see also LINDA L. BERGER & KATHRYN M. STANCHI, LEGAL PERSUASION: A RHETORICAL APPROACH TO THE SCIENCE 51–52 (2008) (contrasting narrative persuasion and analytical persuasion by referencing the ability of narrative transportation to "effect changes in emotions, cognitive processing, and beliefs").

75. RUTH ANNE ROBBINS ET AL., YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING 168 (2d ed. 2019) ("You want your reader to be drawn into the story, *i.e.*, be narratively transported, because it is there that persuasion with narrative can occur. The readers connect with characters, appreciate their motivations, and possibly adopt their positions.").

76. For an examination of the roles of sympathy and empathy in the law, see generally Archie Zariski, *Sympathy and Empathy in Therapeutic Jurisprudence from a Psychoanalytic Perspective: From Freud to Posner and Beyond*, 1 INT'L J. THERAPEUTIC JURIS. 291 (2016); Cary Bricker, *Teaching the Power of Empathy in Domestic and Transnational Experiential Public Defender Courses*, 32 BUFF. PUB. INT. L.J. 1 (2014); Ian Gallacher, *Thinking Like Nonlawyers: Why Empathy is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance*, 8 LEGAL COMM. & RHETORIC: JALWD 109 (2011); Rebecca K. Lee, *Judging Judges: Empathy as the Litmus Test for Impartiality*, 82 U. CINN. L. REV. 145 (2013).

77. See, e.g., Alessandro Giovannelli, *In Sympathy with Narrative Characters*, J. AESTHETICS & ART CRITICISM 83, 83 (2009) ("Sympathetic responses to characters are a pervasive form of narrative engagement, and they contribute importantly to what makes perceiving a narrative a rewarding experience.").

78. Neal R. Feigenson, *Sympathy and Legal Judgment: A Psychological Analysis*, 65 TENN. L. REV. 1, 4, 10 (1997) (defining sympathy as "a heightened awareness of the suffering of another and the urge to alleviate that suffering").

be a powerful emotional response, but narrative transportation is more likely to occur if the reader empathizes with the narrative's characters. Indeed, the stronger narrative transportation is, the stronger the emotional responses are—especially the emotional response of empathy.<sup>79</sup>

As articulated by one scholar, “Empathy is founded on our capacity to recognize that others are similar to us, but to do so without confusing ourselves with the other.”<sup>80</sup> Some have asserted that empathy is more than a mere emotional response by noting that empathy requires evaluation.<sup>81</sup> That is, empathy is not an immediate exclusively emotional reaction but rather is a reasoned response based upon evaluation of a situation or a series of events.<sup>82</sup> While perhaps a mix of emotion and evaluation, empathy essentially allows the reader to place himself or herself in the shoes of the narrative's characters. The reader then sees and experiences the events of the narrative from the perspective of the characters. The reader should feel the greatest empathy with the narrative's protagonist, but in a well-crafted narrative, the reader may empathize with multiple characters.

The range of emotional response experienced by the reader will affect the reader's impression of the narrative both during and after reading the narrative. While experiencing the emotional responses, the reader will enjoy meeting the characters, appreciate the setting of the narrative, and value the events of the narrative. The reader will have a favorable experience that leads to a favorable recollection of the narrative. The favorable recollection lingers after the reading process has concluded to become a favorable memory.<sup>83</sup> When later asked to recall the narrative, whether characters or events, the reader will recall not only the information but also the positive experience from having read the narrative.

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79. P. Matthijs Bal & Marijin Veltkamp, *How Does Fiction Reading Influence Empathy? An Experimental Investigation on the Role of Emotional Transportation*, 8 PLOS ONE 1, 10 (2013).

80. Shaun Gallagher, *Empathy, Simulation, and Narrative*, 25 SCI. CONTEXT 355, 356 (2012); see also Mark H. Davis, *A Multidimensional Approach to Individual Differences in Empathy*, 10 JSAS CATALOG SELECTED DOCUMENTS PSYCHOL. 85 (1980) (analyzing individualized empathy through a multidimensional approach).

81. Jody Lyneé Madeira, *Lashing Reason to the Mast: Understanding Judicial Constraints on Emotion in Personal Injury Litigation*, 40 U.C. DAVIS L. REV. 137, 141 (2006); see also Andrea McArdle, *Using a Narrative Lens to Understand Empathy and How It Matters in Judging*, 9 LEGAL COMM. & RHETORIC 173, 176 (2012) (noting that empathy requires both an emotional response and a cognitive response).

82. Madeira, *supra* note 81.

83. See Escalas, *Self-Referencing*, *supra* note 69, at 424–25.

b. *Attributes of the Text*

The storyteller, or in this context the author, can enhance reader engagement, and thus narrative transportation, using a number of techniques related to the construction of the narrative.<sup>84</sup> As one study stated, “a well-crafted story would be expected to elicit more transportation than a poorly written story.”<sup>85</sup> All text features, from word choice to narrative structure, will enhance or limit transportation. Point of view, for instance, influences how the reader will respond to the text.<sup>86</sup> Point of view refers to the perspective from which the reader will experience the narrative’s events, characters, and emotions.<sup>87</sup> Many may think that first person point of view will be the most effective to create narrative transportation. But a third person point of view can be used effectively to give the reader a broader perspective of the narrative.<sup>88</sup> The construction of the story is an attribute of the text that will affect transportation.<sup>89</sup>

Narrative coherence, for example, will enhance the likelihood of narrative transportation. Coherence refers to the degree to which the narrative “makes sense” to the reader.<sup>90</sup> The actions of the character, the settings described, and

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84. See Melissa H. Weresh, *Wait, What?*, 15 LEGAL COMM. & RHETORIC: JALWD 81, 92 (2018) (listing transportation as one aspect of narrative engagement) (quoting Rick Busselle & Helena Biladzic, *Measuring Narrative Engagement*, 12 MEDIA PSYCHOL. 321, 321–22 (2009)).

85. Mazzocco et al., *supra* note 42.

86. Miall, *supra* note 64, at 269–70.

87. Mary Ann Becker, *What Is Your Favorite Book?: Using Narrative to Teach Theme Development in Persuasive Writing*, 46 GONZ. L. REV. 575, 588–89 (2010); Cathren Koehlert-Page, *Come a Little Closer so I Can See You My Pretty: The Use and Limits of Fiction Techniques for Establishing an Empathetic Point of View in Appellate Briefs*, 80 UMKC L. REV. 399, 404 (2011).

88. See generally John B. Black et al., *Point of View in Narrative Comprehension, Memory, & Production*, 18 J. VERBAL LEARNING & VERBAL BEHAV. 187, 187–88 (1979) (stating that a consistent point of view within a narrative promotes coherence); Fenja V. Ziegler & Daniel K. Acquah, *Stepping into Someone Else’s Shoes: Children Create Spatial Mental Models from the Protagonist’s Point of View*, 10 EUR. J. DEV. PSYCHOL. 546, 546–47 (2013) (“One of the reasons why narrative is so engrossing is because it allows us to step outside our own perspective and take that of another person in a different spatial and temporal reference frame . . .”).

89. See Mazzocco et al., *supra* note 42.

90. See J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 LEGAL COMM. & RHETORIC 67, 71–78 (2013) (defining the two components of narrative coherence: external consistency and internal consistency); see also Jan M. Van Dunn, *Narrative Coherence and Its Function in Judicial Decision Making and Legislation*, 44 AM. J. COMP. L. 463, 465 (1996).

the sequence of the events contribute to narrative coherence.<sup>91</sup> When the characters make irrational choices, the settings are too lightly sketched, or the events are presented in a convoluted manner, the reader loses interest in the narrative. The reader is presented with an incomplete or inconsistent narrative.<sup>92</sup> When the reader is lost or confused, the text's ability to transport the reader will diminish. In the legal context, one legal scholar drew upon the concept of narrative coherence to suggest that circumstantial evidence has limited ability to influence narrative transportation in jurors compared to direct evidence.<sup>93</sup> The scholar asserted that direct evidence "normally provides jurors with a vivid and structurally coherent narrative."<sup>94</sup> The jurors thus constructed a counter-narrative that made more sense to them. The jurors then disengage from the presented narrative.

Related to the concept of narrative coherence is the concept of narrative fidelity.<sup>95</sup> Narrative fidelity refers to the reader's perception as to the plausibility of the narrative.<sup>96</sup> Even in a fictional narrative, the characters, settings, and events must be presented to the reader in a manner that is believable—given the nature of the narrative world. Fidelity helps the reader stay in the narrative world without asking himself or herself distracting questions about the character's actions, setting, or events. When the reader

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91. "A text is perceived to be coherent to the reader when the ideas hang together in a meaningful and organized manner." Arthur C. Graesser et al., *What Do Readers Need to Learn in Order to Process Coherence Relations in Narrative and Expository Text*, in *RETHINKING READING COMPREHENSION* 82, 83 (Anne PolSELLI Sweet & Catherine E. Snow eds., 2003).

92. See Melissa H. Weresh, *Morality, Trust, and Illusion: Ethos as Relationship*, 9 *LEGAL COMM. & RHETORIC* 229, 251–52 (exploring the concepts of narrative coherence, narrative correspondence, and narrative fidelity).

93. Kevin Jon Heller, *The Cognitive Psychology of Circumstantial Evidence*, 105 *MICH. L. REV.* 241, 287–88 (2006); see also Carl N. Hammarskjöld, *Smokes, Candy, and the Blood Sword: How Classifying Jailhouse Snitch Testimony as Direct, Rather than Circumstantial, Evidence Contributes to Wrongful Convictions*, 45 *U.S.F. L. REV.* 1103, 1124 (2011) (stating narrative transportation occurs in the jury context "when a juror becomes engrossed in a witness's testimony," which then affects the ability to think critically and believe the testimony); Philip J. Mazzocco & Melanie C. Green, *Narrative Persuasion in Legal Settings: What's the Story*, 23 *JURY EXPERT* 27, 32–33 (2011) (applying narrative transportation to the juror experience).

94. Heller, *supra* note 93, at 288.

95. See Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 *YALE J.L. & HUMAN.* 1, 30–31 (exploring the terms narrative coherence and narrative fidelity).

96. Jennifer Sheppard, *What if the Big Bad Wolf in All Those Fairy Tales Was Just Misunderstood?: Techniques for Maintaining Narrative Rationality While Altering Stock Stories that Are Harmful to Your Client's Case*, 34 *HASTINGS COMM. & ENT. L.J.* 187, 200 (2012).

becomes distracted, the reader disengages from the text and may no longer be immersed in the text, thus limiting the impact of narrative transportation.

Another attribute of the text that may support or interfere with the reader's engagement is the visual presentation of the text itself. As two scholars described, "A primary incentive for reading a literary narrative is to become immersed in the story world that is conveyed by black marks on a white page."<sup>97</sup> Where those "black marks" are placed on a page, as well as the medium used to display those "black marks," will affect reader engagement.<sup>98</sup> To immerse the reader into the narrative text, the interface features (i.e., book binding, text navigation) "should recede into the background during reading."<sup>99</sup> Thus, the visual presentation may be manipulated to increase reader engagement by altering the formatting of the document.<sup>100</sup> Formatting, such as line spacing, typeface, font size, and margin size, can all make the text more accessible to the reader, and this will increase the likelihood of the reader's engagement with that text.<sup>101</sup> One author arguing how to construct "better" contracts suggests that attorneys draw from designers to construct a more visually accessible document.<sup>102</sup> As one scholar summarized, "A well designed page is more likely to be impactful and cause the reader to act on the message."<sup>103</sup> The visual presentation, in addition to other attributes of the text,

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97. Anne Mangen & Don Kuiken, *Lost in an iPad: Narrative Engagement on Paper and Tablet*, 4:2 SCI. STUDY LITERATURE 150, 151 (2014).

98. *See id.* at 152.

99. *Id.* at 151 (citing NELL, *supra* note 23, at 9).

100. Headings, for instance, affect how the reader processes and recalls information presented in the text. *See, e.g.*, Robert F. Lorch, Jr., *Text-Signaling Devices and Their Effects on Reading and Memory Processes*, 1 EDUC. PSYCHOL. REV. 209, 212 (1989) (examining the effect impact of text signals on reading processes and recall); Kristin Ritchey et al., *How the Relationship Between Text and Headings Influences Readers' Memory*, 33 CONTEMP. EDUC. PSYCHOL. 859, 860 (2008) (examining how the use of typographical signals, such as bolding and underling, and organizational signals, such as headings, overviews, and summaries, supports reader comprehension and recall).

101. *See generally* MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS* (2d ed. 2015) (explaining how document formatting can enhance reader comprehension).

102. Jay A. Mitchell, *Putting Some Product into Work-Product: Corporate Lawyers Learning from Designers*, 12 BERKELEY BUS. J. 1, 5 (2015) ("Our job as information designers is to clarify, to simplify, and to make information accessible to the people who will need it and use it to make important decisions."); *see also* HOWARD DARMSTADTER, *HEREOF, THEREOF, AND EVERYWHEREOF: A CONTRARIAN GUIDE TO LEGAL DRAFTING* 67–78 (2d ed. 2008) (providing suggestions on document design for contracts); Mark Sabelman, *Typographic Legibility: Delivering Your Message Effectively*, 17 SCRIBES J. LEGAL WRITING 9, 29–32 (2017) (presenting seven tips for drafting transactional documents that leverage typography).

103. Kevin Larson, *The Art, Technology, and Science of Reading*, CHANNEL9 (Dec. 8,

supports the cognitive processes in reading, which then promotes narrative transportation.

*c. Limitations on Narrative Transportation*

Narrative transportation may spontaneously occur in some readers in certain situations.<sup>104</sup> Particular readers may be particularly susceptible to narrative transportation because the narrative appeals to the readers' pre-existing interests. The topic of the narrative, for instance, may have particular appeal to the reader so that the reader is already motivated to read and engage with the text. One or more of the characters may have attributes which cause the reader to identify more strongly with the character, which in turn increases the likelihood of identification with the narrative and narrative transportation.<sup>105</sup>

The act of reading a narrative alone will thus not necessarily trigger narrative transportation. Narrative transportation is an experience that should not be left to chance but should be cultivated by the narrative's author. Even when the author is attempting to create the narrative transportation experience, not all readers will experience narrative transportation or experience narrative transportation to the same degree. A reader may only briefly skim the text seeking particular information. Without the deep reading of the text, narrative transportation may not occur. Another reader may be distracted by external stimuli, such as noise or other interruptions, that interfere with the reader's ability to fully engage with the narrative.<sup>106</sup>

In addition, some readers may actively resist narrative transportation.<sup>107</sup> The likelihood of narrative transportation decreases when the reader is a

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2009), <https://channel9.msdn.com/Events/MIX/MIX10/DS07>, [<https://perma.cc/T999-C7KN>].

104. Mazzocco et al., *supra* note 42, at 366.

105. See Sonya Dal Cin et al., *Narrative Persuasion and Overcoming Resistance*, in *RESISTANCE AND PERSUASION* 175, 178–180 (Eric S. Knowles & Jay A. Linn eds., 2013); see also Marc Sestir & Melanie C. Green, *You Are Who You Watch: Identification and Transportation Effects on Temporary Self-Concept*, 5 *SOC. INFLUENCE* 272, 273–74 (2010).

106. Reader distraction is often considered a recent phenomenon. See, e.g., DAVID L. ULIN, *THE LOST ART OF READING: WHY BOOKS MATTER IN A DISTRACTED TIME* 33–36 (2010). But the concerns associated with reader distraction pre-dates the focus on multiple tasking. See, e.g., Paul Fendrick, *The Influence of Music Distraction upon Reading Efficiency*, 31 *J. EDUC. RES.* 264, 270 (1937). But cf. Cecil M. Freeburne & Murray S. Fleischer, *The Effect of Music Distraction upon Reading Rate and Comprehension*, 43 *J. EDUC. PSYCHOL.* 101, 106–07 (1952) (finding no significant difference in reading rates with distracted readers).

107. See, e.g., GERRIG, *NARRATIVE WORLDS*, *supra* note 37, at 5 (“[W]e must acknowledge that the experiences of narrative worlds will be optional: a text cannot force a reader to experience a narrative world.”).

weaker reader, is generally uninterested in the narrative, or is reading unfamiliar text. For instance, pure expository text may not give rise to narrative transportation. Expository text tends to include “a high density of unfamiliar terms.”<sup>108</sup> When the reader is confronted with dense, unfamiliar information, the text may fail to hold the reader’s attention or may even repulse the reader. When the reader does not or cannot engage with the text, no transportation will occur.<sup>109</sup>

There may also be instances where a reader actively resists the narrative because the reader is aware that he or she is being manipulated because the narrative is attempting to persuade the reader. The use of narratives in political campaigns, for instance, may have limited power to persuade or change attitudes in those who already hold opposing strong beliefs or viewpoints.<sup>110</sup> Rather than be transported by the narrative in those situations, the reader may actively resist transportation by creating counterarguments or even constructing counter-narratives that are consistent with his or her existing attitudes and beliefs.<sup>111</sup> The reader may disagree with the narrative theme or engage in participatory responses that run counter to the goals of the narrative, such as empathizing with the narrative’s antagonist.

The experience of narrative transportation may be moderated by some readers in some situations. Scholars, commentators, and researchers posit that the narrative will still influence the reader—perhaps just to a lesser degree.<sup>112</sup> As one study concluded, “well-written, emotionally charged, suspense-inducing narratives are likely to produce a state of transportation even in those who tend not to be spontaneously transportable.”<sup>113</sup> For that reason, how to leverage the power of narrative transportation is a relevant inquiry.

### III. TRANSACTIONAL DOCUMENTS AS NARRATIVES

Narratives can be used to inform, persuade, educate, entertain, or a combination thereof. The use of narratives is not restricted to text that is read for pleasure.<sup>114</sup> Instead, narratives can be and are used for a variety of texts in

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108. Graesser et al., *supra* note 91, at 86.

109. The word “attention” derives from the Latin word *tender*, which means “to hold.” NELL, *supra* note 23, at 75.

110. Mazzocco et al., *supra* note 42, at 367.

111. *Id.*

112. *See id.* at 366.

113. *Id.*

114. *See* Catherine Sheldrick Ross, *Finding Without Seeking: What Readers Say About the Role of Pleasure Reading as a Source of Information*, 13 INFO. PROCESSING & MGMT. 783, 793 (2000).

which the goal is to engage the reader to further the purpose of the text. This then includes legal documents. Many authors have explored how legal documents may be conceptualized as narratives and how narrative techniques can be used to construct those legal documents.<sup>115</sup> For instance, one author posited that using a narrative structure would enhance the purpose of environmental impact statements.<sup>116</sup>

Transactional documents can be conceptualized as narratives.<sup>117</sup> Transactional documents, such as contracts, are created to educate, inform, and guide the behavior of the transacting parties.<sup>118</sup> The primary goal of any transactional document thus shares certain similarities with expository texts in that they are both intended to share information with the readers.<sup>119</sup> Yet transactional documents, like many texts, are a blend of expository text and narrative text.<sup>120</sup> Transactional documents seek to relay a series of events in a manner that engages the reader. Conceptualizing the transactional document as a narrative benefits both the drafter of the transactional document and the transactional reader. The drafter of the document can use narrative techniques to craft a more compelling document.<sup>121</sup> For instance, the drafter may focus on character development, narrative setting, narrative movement, or motifs.<sup>122</sup> The reader's ability to meaningfully engage with and retain the information will be increased. So whether litigation-based document, transactional document, or legislative document, narrative can be used to further the purpose of the document.

Every transaction is unique. As such, no drafting technique will be applicable to the creation of all transactional documents for all transactions. When altering form documents, the issue arises as to whether the potential

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115. See generally Rideout, *Bibliography*, *supra* note 16, at 247.

116. David S. Mattern, *Reader-Friendly Environmental Documents: Opportunity or Oxymoron?*, 39 ENVTL. L. REP. NEWS & ANALYSIS 10624, 10626–27 (2009).

117. See DARMSTADTER, *supra* note 102, at 99 (“Legal documents, especially agreements, have a story to tell.”). See generally Chesler & Sneddon, *Narrative Techniques in Drafting*, *supra* note 18, at 266–68 (explaining how narrative techniques can be utilized in transactional writing).

118. See Mark C. Suchman, *The Contract as Social Artifact*, 37 L. & SOC'Y REV. 91, 92 (2003) (examining the different legal, psychological, and social functions of contracts).

119. See Ruth A. Berman & Bracha Nir-sagiv, *Comparing Narrative and Expository Text Construction Across Adolescence: A Developmental Paradox*, 43 DISCOURSE PROCESS 79, 79–80 (2007) (examining expository texts and narrative texts).

120. Chesler & Sneddon, *Fostering the Role of the Transactional Lawyer as Storyteller*, *supra* note 3, at 493.

121. Chesler & Sneddon, *Narrative Techniques in Drafting*, *supra* note 18, at 265–68.

122. *Id.* at 269–95.

increase in transaction costs and the risk of altering “conventional” language will be justified.<sup>123</sup>

Not all transactional documents will benefit from the use of narrative techniques to the same degree. Some transactional documents, such as a financial power of attorney, are statutory forms that should be modified with caution.<sup>124</sup> Some transactional documents are form disclosures or filings required by statutes or regulations. Market forces, such as the secondary mortgage market, may press for use of standards forms.<sup>125</sup> Modifying or altering these form or standard documents may result in creating legally inoperative documents.

However, a great many transactional documents, whether commercial contracts, personal trust and estate documents, or contracts dealing with familial and domestic matters, would benefit from the inclusion of narrative techniques by the drafters. As demonstrated in the previous section, a powerful aspect of a narrative is the ability for the narrative to transport the reader into the narrative world to keep the reader in the narrative world.<sup>126</sup> Narrative transportation can be used to influence reader engagement with the narrative, reader recall, and reader behaviors in a variety of contexts.

Transactional documents do not memorialize a static, completed narrative. Instead, transactional documents are intended to inform, to guide,

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123. See Kenneth A. Adams, *Dysfunction in Contract Drafting: The Causes and A Cure*, 15 TRANSACTIONS 317, 327 (2014) (cautioning that reliance on forms or previously used documents may produce over-confidence by the drafters and the transacting parties); Larry E. Ribstein, *Sticky Forms, Property Rights, and Law*, 40 HOFSTRA L. REV. 65, 68 (2011) (“One reason for not changing a contract clause that has stopped making sense is that the costs of change outweigh the benefits.”).

124. Many statutory forms will be prefaced with the following language: “A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.” *E.g.*, GA. CODE ANN. § 10-6B-70. Despite the preface, some financial institutions may query the use of a modified form. Even if the financial institution ultimately determines the modified form is legally operative, such determination may impede the effective use of the document by resulting in a delay in the exercise of the document’s powers.

125. See Peter W. Carozzo, *Marketing the American Mortgage: The Emerging Home Finance Act of 1970, Standardization and the Secondary Market Revolution*, 39 REAL PROP. PROB. & TR. J. 765, 778 (2005). See generally Robin Paul Malloy, *The Secondary Mortgage Market: A Catalyst for Change in Real Estate Transactions*, 39 SW. L.J. 991, 999 (1986) (positing that “pressure for national standardization and uniformity of real property law, designed to expand and facilitate, rather than hinder, the activity of the market has increased” since the early 1980s).

126. See, *e.g.*, Mangen & Kuiken, *supra* note 87, at 154 (“The sense of being transported into a narrative, whether written or audiovisual, is not limited to fictional accounts.”).

and influence the future behavior of the transacting parties.<sup>127</sup> Because the reader of a transactional document must engage with and use the document, a better understanding of the transactional reader is needed.

#### IV. IDENTIFYING THE TRANSACTIONAL READER

To understand how narrative transportation can be nurtured and supported in transactional documents,<sup>128</sup> an understanding of the transactional reader is necessary. The term transactional reader is not a monolithic term; there is no single “transactional reader” and that term is not comprised of a uniform set of individuals. Instead, the term could be used to refer to many possible readers of many types of transactional documents with varying characteristics and purposes for reading the transactional document. First, each transactional document is created for a particular purpose and for particular transacting parties. Second, during the life cycle of a transaction, the transactional document is read by a wide variety of readers who are not the transacting parties. Thus, the term “transactional reader” is intentionally a broad term that refers to more readers than the transacting parties themselves.<sup>129</sup> These readers may have differing purposes for reading or interacting with the transactional document: to negotiate the terms, to draft the terms, to perform some or all of the terms, or to interpret their meaning, among others.

For purposes of this Article, the wide range of transactional readers have been grouped into two categories: primary readers and secondary readers.<sup>130</sup> Narrative transportation will likely have the greatest impact on the primary readers. Accordingly, after describing the general characteristics and roles of primary and secondary readers, the following sections will focus on the

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127. See Chesler & Sneddon, *Stock Stories*, *supra* note 18, at 268.

128. The term “transactional document” refers to a number of different documents. In contrast to litigation based documents, transactional documents focus on the planning of a transaction. The documents become the private law that will govern the transaction. *E.g.*, Andrew S. Gold, *A Moral Rights Theory of Private Law*, 52 WM. & MARY L. REV. 1873, 1873–74 (2011); Adam J. Hirsch, *Freedom of Testation/Freedom of Contract*, 95 MINN. L. REV. 2180, 2181–82 (2011); Nathan B. Oman, *Promise and Private Law*, 45 SUFFOLK U. L. REV. 935 (2012); Reid Kress Weisbord, *The Advisory Function of Law*, 90 TUL. L. REV. 129, 133 (2015).

129. See, *e.g.*, Carol Goforth, *Transactional Skills Training Across the Curriculum*, 66 J. LEGAL EDUC. 904, 913 (2017) (“Once the lawyer actually begins to draft, the writing must not only be clear to the client and other current parties, but also readily understandable by third parties who may enter the picture later . . .”).

130. All documents, including legal documents, have multiple potential readers. See generally Henry E. Smith, *The Language of Property: Form, Context, and Audience*, 55 STAN. L. REV. 1105, 1134 (2003) (describing Allan Bell’s terminology regarding audience design).

application of narrative transportation to the primary readers of transactional documents.

*A. Primary Readers: Transacting and Performing Parties*

The primary readers of transactional documents include the transacting parties and the performing parties, which are sometimes one and the same. The term “transacting parties” refers to the individuals who are legally bound by the terms of the transaction.<sup>131</sup> These individuals, or individuals properly acting on behalf of entities,<sup>132</sup> are likely the persons who were involved in the negotiation and creation of the transactional document on behalf of the parties to the transaction. In some instances, these individuals conducted the negotiations and drafted terms themselves, but oftentimes they have authorized attorneys to act on their behalf. While a transactional document is typically considered a bilateral agreement between two parties, such as a lease agreement or an employment contract, it may be a unilateral declaration.<sup>133</sup> Examples of such unilateral declarations are wills and deeds of trust. In the instance of a unilateral declaration, only one party is the transacting party.

These transacting parties will have a range of experiences and perspectives. They typically are non-lawyers or “lay readers,”<sup>134</sup> but often have significant business or personal experience relevant to the transaction.<sup>135</sup> Regardless of whether the transacting parties had legal representation or not during the negotiation and drafting phases of the transaction, they are the primary readers of the resulting document. During the negotiation and drafting process, they likely read both drafts of the document as well as the final executed document. Upon execution, the transacting parties became legally

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131. See Suchman, *supra* note 118, at 91–92.

132. A president of a corporation, for instance, may be empowered to act as the negotiator and ultimately signatory for the transaction. The performing parties may be employees of the corporation, such as the director of marketing.

133. See, e.g., WILLISTON ON CONTRACTS, *Bilateral and Unilateral Contracts* § 1:17 (4th ed.) (“Differences between unilateral contracts and bilateral contracts lie both in the operative acts of the parties and in the legal relations created.”).

134. “Even sophisticated commercial readers are (unless formally schooled in the law) lay readers.” Matt Keating, *On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting*, 18 SCRIBES J. LEGAL WRITING 92, 118 (2019).

135. The term “legal reader” is not synonymous with transactional reader because the transactional reader is not necessarily a legally-trained reader. For an examination of the legal reader, see generally Michael J. Higdon, *The Legal Reader: An Exposé*, 43 N.M. L. REV. 77 (2013); Leah M. Christensen, *The Paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, 2008 BYU EDUC. & L.J. 53; Jessica E. Price, *Teaching Students About the Legal Reader: The Reader Who Won’t Be Taken for a Ride*, 12 PERSP 168 (2004).

bound by the document's terms and conditions.<sup>136</sup> This is a key characteristic of transacting parties.

Sometimes, depending on the transaction, the transacting parties are also the performing parties. The performing parties are those individuals who need to perform in accordance with the terms of the transactional document.<sup>137</sup> They may have had limited or no ability to influence the creation of the transactional document, but they are still considered primary readers. For instance, the president of the corporation may have acted as the negotiator and signatory of the transaction, but the party who needs to perform may be a member of the corporation's marketing or human resources department. Likewise, an individual grantor may have created a declaration of trust, but the trustee is the party who must perform in accordance with the terms of the trust document. The trustee likely had no input in the creation of the declaration of trust. In the case of a will, the testator creates the document that will ultimately be implemented by other individuals: the executor, the testamentary trustee, the conservator, and the guardian.

As primary readers, transacting parties and performing parties have some key commonalities. As mentioned above, these parties are most often not lawyers, but have significant practical experience and expertise in the relevant subject matter of the transaction. Primary readers are generally most interested in how the terms of the transactional document affect their legal obligations and legal rights.<sup>138</sup> They often read the document with the purpose of determining how they or their respective entities must comply with its terms, and whether the other transacting party is complying with its duties. In other words, they are reading the document with a forward-looking perspective, focusing on how the terms will be understood and used in the present and in the future. Primary readers often consult and re-read the document throughout the life cycle of the transaction.<sup>139</sup> Their proper understanding and recall of the terms of the transaction are vital to ensuring the parties properly perform.

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136. See David Charny, *Hypothetical Bargains: The Normative Structure of Contract Interpretation*, 89 MICH. L. REV. 1815, 1823 (1991) ("Enforcement of promises fosters the autonomy of transacting parties by enabling them to bind themselves to cooperate with others.").

137. See *id.*

138. See M.H. Sam Jacobson, *A Checklist for Drafting Good Contracts*, 5 J. ASS'N LEGAL WRITING DIRECTORS 79, 86 (2008).

139. See, e.g., LENNÉ EIDSON ESPENSCHIED, *CONTRACT DRAFTING: POWERFUL PROSE IN TRANSACTIONAL PRACTICE* 148 (3d ed. 2019) ("The written contract is like a time capsule, ready to be unearthed and examined to reveal what the parties intended at the time promises were exchanged.").

*B. Secondary Readers: Supporting and Ancillary Readers*

The term “transactional reader” may also refer to an individual or entity who is supporting the transaction. This party is not a transacting party in the sense that the party was involved in the creation of the document or is legally bound by its terms, and the party may also not be accurately described as a performing party. Instead, the party has a supportive or ancillary role that may be relevant to the drafting, performance, or interpretation of the transactional document. Secondary readers encompass a wide array of individuals, often with varied interests in the transaction.<sup>140</sup> For example, the lawyers representing the transacting parties in negotiating and drafting the document are secondary readers. The lawyers do not themselves become legally bound and are not required to perform under the agreement, but they read the document with a similar focus on the parties’ legal obligations and legal rights.<sup>141</sup>

Another example of a supportive transactional reader is a financial institution who has the ability to approve a loan, which will form part of the purchase price specified in the transactional document. A governmental agency may also be a secondary reader if the governmental agency has the ability to approve—or disapprove—a proposed action that is part of the sequence of events outlined in the transactional document. These secondary readers may impact the performance of the transaction, but they are not legally bound by its terms.

Additionally, some transactional documents may be read by individuals only after a dispute has arisen between the transacting parties.<sup>142</sup> This type of reader may be a mediator tasked with resolving a dispute. Alternatively, it may be a judge or other court personnel. These readers also consist of jury members reading the terms of the document to determine questions of liability. All of these secondary readers are generally tasked with deciding whether a transacting party has breached the terms of the document. They have the purpose of interpreting the words of the transactional document in

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140. See, e.g., Bret Rappaport, *A Lawyer’s Hidden Persuader: Genre Bias and How It Shapes Legal Texts by Constraining Writers’ Choices and Influencing Readers’ Perceptions*, 22 J.L. & POL’Y 197, 250 (2013) (“The drafters of transactional documents, wills, leases, and the like are creating texts for unknown readers of an unknown time, in an unknown place, and for use in a to-be-determined situation.”).

141. See, e.g., ESPENSCHIED, *supra* note 139, at 3.

142. For both a primer on contract interpretation and the perspective of a judge interpreting contracts, see Randall H. Warner, *All Mixed Up About Contracts: When Is Contract Interpretation a Legal Question and When Is It a Fact Question?*, 5 VA. L. & BUS. REV. 101, 102–03 (2010).

hindsight.<sup>143</sup> In other words, their understanding of the terms will not likely affect the future performance of the document. Instead, their purpose is to determine whether the transacting or performing parties properly understood and performed the terms of the document in the past. Hence, these readers are classified as secondary, not primary, readers.

Moreover, there may even be more remote readers of a transactional document, such as legislators, lobbyists, law professors, and law students, who likely have little to no impact on the creation, performance, or interpretation of that particular transactional document. These readers will be reading the document with very different purposes, such as whether to create laws that regulate similar transactions that may take place in the future. Or in the case of law professors and law students, the document is read with the purpose of teaching students how to negotiate and draft similar transactional documents for future transacting parties.

While narrative may facilitate the reading of transactional documents by all of these supporting or ancillary readers, these secondary readers are not directly impacted in the same way as the transacting parties or performing parties. Secondary readers may be reviewing the document to identify a specific provision and read that provision in isolation. For instance, a representative of a financial institution may only read the provision relating to securing the funds for the purchase price specified in the purchase and sale agreement. The personal connection that the primary readers have to the transactional documents means the primary readers are more likely to review the entire transactional document and to do so repeatedly throughout the life of the transaction. This will likely enhance the reader's immersion in the text, which is the hallmark of narrative transportation. Thus, narrative transportation will likely have the greatest impact on the primary readers.

#### V. NARRATIVE TRANSPORTATION AND ITS IMPLICATIONS FOR THE TRANSACTION AND THE TRANSACTIONAL READER

Studies have demonstrated that narrative transportation affects how readers process the text, recall the text, and act upon the information provided by the text.<sup>144</sup> Transactional readers, like readers of other types of texts, would benefit by enhancing these reader responses, which would in turn enhance the goals and purposes of transactional documents. This section explores three benefits of narrative transportation to the transactional reader. Examples will

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143. For a summary of various conceptual frameworks for the interpretation of contracts, see Shahar Lifshitz & Elad Finkelstein, *A Hermeneutic Perspective on the Interpretation of Contracts*, 54 AM. BUS. L.J. 519, 525–26 (2017).

144. See, e.g., Mazzocco et al., *supra* note 42.

be primarily drawn from the excerpted agreements in Appendix A and Appendix B.<sup>145</sup> This section also acknowledges the potential pitfalls and limitations of narrative transportation as applied to transactional documents.

*A. Benefits to the Transaction and the Transactional Reader*

One does not expect the reader of a transactional document, such as a sales contract or trust agreement, to be unable to put it down or to be transported to a magical place. However, many transactional documents are narratives, and narratives present opportunities to cultivate narrative transportation effects. Narrative transportation will benefit the transaction by furthering the goals of the transactional document. Specifically, narrative transportation (1) affects how the reader engages with the document; (2) facilitates reader recall of the provisions; and (3) influences the subsequent behavior of the reader. Each benefit, with relevant examples, is presented below.

*I. Affects How the Transactional Reader Processes the Transactional Document*

Narrative transportation enhances reading proficiency and leads to increased reading comprehension. Because narrative transportation engages the reader with the narrative, the reader is less likely to be distracted while reading the document. The distraction may be caused by external stimuli, like music. The distraction may also be caused by internal responses, such as internal dialogue or thoughts. By facilitating engagement, the risk of distraction is minimized. If the “inner voice” is not distracting the reader, the reader will be less likely to be actively constructing counterarguments against the obligations outlined in the transactional document when reading. Additionally, the engagement with the text will decrease the likelihood that the transactional reader will begin to scan or skim the text rather than critically reading the text.

Narrative transportation is more likely to occur if the reader identifies with the characters of the narrative.<sup>146</sup> This identification can be promoted in

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145. Although it was not an empirical study, a brief survey of law professors in attendance at the 2019 Legal Applied Storytelling Conference presentation who participated in a narrative transportation exercise suggested that the readers of the version of the contract in Appendix B that incorporates select narrative techniques exhibited better recall of certain contract terms and a more positive attitude towards the transaction itself.

146. When analyzing the U.S. Supreme Court’s use of rhetorical devices in *United States v. Windsor*, Professor Min Kyung Lee analyzes the use of narrative and specifically the cultivation

transactional documents by using the names of the parties rather than using the parties' roles in the narrative. Consider the difference in the excerpts in the appendices. The excerpt in Appendix A uses the generic terms "Purchaser" and "Provider" while the excerpt in Appendix B uses "IMG" and "Weberous." The parties in Appendix B do not need to consciously attribute "Purchaser" to IMG and "Provider" to "Weberous." Instead, the transacting and performing parties can readily identify themselves in the characters of the transaction. By increasing the likelihood of transactional readers identifying with the parties, or characters of the text, there is also an increase in the level of empathy for the parties.

Empathy is a powerful emotional response that will affect how the reader engages with the narrative and supports a positive impression of the narrative.<sup>147</sup> In the context of transactional documents, recitals provide an opportunity to cultivate empathy. In addition, the more detailed description of the parties in the recitals or Background section in Appendix B also promotes a greater identification with those parties by the readers.<sup>148</sup> In Appendix B, IMG is described as "a marketing company headquartered in Las Vegas, Nevada that primarily focuses on providing internet marketing services for home businesses located in Nevada."<sup>149</sup> The recitals also include a brief history of the founding and growth of the company with the following statement: "IMG was founded in 2015 by its current President, Mary Walsh, and has recently doubled the size of its workforce."<sup>150</sup> These two sentences allow the readers of the document to see themselves in the shoes of IMG. Similarly, the recitals in Appendix B (unlike those in Appendix A) describe Weberous in a manner that goes beyond identifying the party.<sup>151</sup> Weberous is described as "a Nevada-based web design and development company providing services since 2009."<sup>152</sup> By also adding, "[i]t includes a group of top rated website designers, digital marketers, and mobile app developers,"

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of narrative transportation by the character identification and emotional responses triggered by the narrative. See Min Kyung Lee, *A Story of Birth and a Funeral: A Rhetorical Analysis of Windsor and Shelby County*, 23 J.L. & POL'Y 507, 522–23 (2015).

147. See *supra* notes 74–83 and accompanying text.

148. The recitals will help both primary and secondary readers. See, e.g., Royce de R. Barondes, *Side Letters, Incorporation by Reference and Construction of Contractual Relationships Memorialized in Multiple Writings*, 64 BAYLOR L. REV. 651, 686 n.173 (2012) (asserting that the recitals "inform future readers of the context" of the transaction).

149. See *infra* p. 38.

150. See *infra* p. 38.

151. See *infra* p. 38.

152. See *infra* p. 38.

Weberous becomes more than a mere business enterprise.<sup>153</sup> The employees at Weberous put a face to the company. This cultivation of empathy may help the readers experience feelings of respect and understanding. In the event that a misunderstanding arises during the course of the transaction, the readers may even pause before jumping to the conclusion that the party is acting in bad faith. Instead, the parties may seek to resolve issues informally before resorting to legal resolutions of the issue, which generally leads to a more positive conclusion for both transacting parties.<sup>154</sup>

When processing the narrative, the reader will not only identify and empathize with the characters of the narrative but also the events specified in the narrative based on the description of the events, the presentation order of the events, and the grouping of the events. For example, the use of clear headings, enumeration, and grouping of like terms in Appendix B allows for easier processing. This will increase the accessibility of the information. In addition, more complicated legal terms like a confidentiality provision could be more easily understood by the lay transactional readers if, like the clause in Appendix B, the drafter included background information explaining the events giving rise to the need for such a provision. Accordingly, the reader will be more likely to see the completion of the events by taking a participatory role in the narrative. The positive reading experience will have both immediate and lasting consequences. The reader will “buy into” the transaction and performance that is outlined in the document by having a more positive impression of the document and its obligations because the reader has effectively processed the information in the narrative.

## 2. *Facilitates the Recall of the Transactional Reader*

Transactional documents are often multi-page, dense documents. The length, the number of provisions, and the details of the provisions make it difficult for transactional parties to not only read the document, but also to later recall the relevant information. To act in accordance with the provisions, the performing parties may re-read the relevant provisions. Notwithstanding the availability of the document for re-reading, on many occasions the performing parties will act upon their recollections of the scope and meaning of the provisions.

When recalling information, the reader may misremember provisions or forget provisions entirely. For example, in Appendix A, there are multiple clauses dealing with IMG’s obligations to make payment. These clauses are not only contained in separate distinct sections of the contract, but they also

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153. *See infra* p. 38.

154. *See* Catherine R. Albiston et al., *The Dispute Tree and the Legal Forest*, 105 ANN. REV. L. & SOC. SCI., 110–11 (2014).

contain confusing and somewhat contradictory headings. For instance, fees are addressed in one clause; Total Price is addressed in another. In addition, despite the title “Total Price” in one provision, the contract does not contain a set total price to be paid by IMG, but only an estimate. Alternatively, in Appendix B, there is a single section of the contract titled “Price and Payment Terms” containing all of the information relevant to IMG’s payment obligations, and a sub-heading that clearly indicates the price included is only an estimated, not set, final price. Re-ordering and grouping related provisions in Appendix B minimizes reader confusion on the initial read and on subsequent reads. This may promote reader engagement and hence narrative transportation by keeping the reader immersed in the text rather than questioning the completeness of the information or searching for information.

The less likely the reader is to be confused or distracted by the attributes or language of the text, the greater likelihood he or she will be immersed in the text. The increased immersion in the text allows the reader to focus on the language of the text and the story contained therein. This in turn enhances the impact of narrative transportation. Drafting techniques such as these that support and enhance reader recall will also benefit the goals of the transaction by promoting timely, accurate, and complete performance of the terms.

### 3. *Influences the Behavior of the Transactional Reader*

The transactional document creates a relationship.<sup>155</sup> That relationship often begins when the document is signed and continues for a defined period of time.<sup>156</sup> The transactional document should thus be created so that the parties can perform in accordance with the terms of the document without resorting to court involvement. Having the parties, both the transacting parties and the performing parties, look more favorably upon the document and hence the transaction itself can increase the likelihood of timely, accurate, and complete performance. A more favorable impression of the document may also support the reader’s belief about the fairness of the document’s provisions.

Moreover, narrative transportation may help the readers to problem solve and complete gaps in the document in a manner that furthers the goals of the transaction.<sup>157</sup> In terms of problem solving, the parties may seek to resolve

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155. See Chesler & Sneddon, *supra* note 15, at 122.

156. For example, a purchase and sale agreement in a real estate transaction will govern behavior during the executory contract period. See Kevin L. Shepherd & Frederick L. Klein, *Uh Oh!: Does My Purchase and Sale Agreement Cover These Points?*, 28 PROB. & PROP., Mar.–Apr. 2014, at 24, 25.

157. As seemingly comprehensive as a document may be, unanticipated situations and gaps

issues that arise during the course of the transaction. Documents will have gaps—whether those gaps are intentional omissions, forgotten provisions, or unforeseen circumstances. The narrative transportation experience may mean that the parties are more willing to fill the gaps in a manner that is consistent with the spirit of the provisions, the parties’ intentions, and the goals of the transaction. For example, the inclusion of background information tailored to the specific parties and their particular transaction in Appendix B helps readers better understand the intentions of the two transacting parties and the purpose of the transaction. The recital relating to IMG described IMG as a young company, founded just in 2015, with its founder serving as the current President. Additionally, the recital notes that IMG is in a period of growth, having “recently doubled the size of its workforce.”<sup>158</sup> Likewise, Weberous is described as including “a group of top-rated” employees.<sup>159</sup> Both companies are thus invested in being innovative and expanding their market share. These insights about the age of the companies and references to their growing reputations may lead to more positive impressions towards the document and ultimately better performance and problem-solving by the transacting and performing parties. For instance, if an issue arises relating to the timeline for performance, the performing parties may call each other to informally address the issue rather than immediately assert a breach of contract. This then leads to completion of the transaction, albeit on a modified timeline. Performance is the goal of every transaction.<sup>160</sup> Narrative transportation has the power to influence the behavior of the transactional reader. That power lasts long after the reading process has concluded.

*B. Pitfalls and Limitations of the Applicability of Narrative Transportation to Transactional Documents*

As discussed in Part III above, not all possible transactional documents are best conceptualized as narratives. The limitations on using narrative

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in the terms arise. A tension between over-drafting and under-drafting thus exists. As one commentator described, “[w]hen transactional attorneys write legal documents, their fundamental job is to communicate intentions and meanings accurately through words. At the same time, however, a document should not be too much longer or more complex than necessary.” Joshua Stein, *How to Use Defined Terms to Make Transactional Documents Work Better*, 43 PRAC. LAW., Oct. 1997, at 15, 15.

158. *Infra*, p. 38.

159. *Infra*, p. 38.

160. See Greg M. Zipes, *Ties that Bind: Codes of Conduct that Require Automatic Reductions to the Pay of Directors, Officers, and Their Advisors for Failures of Corporate Governance*, 15 J. BUS. & SEC. L. 105, 145 (2014).

transportation are connected to the form required by law and the client instructions. In some instances, the transacting parties are sophisticated parties who are using the same base document for multiple transactions.<sup>161</sup> The parties do not need the benefits of narrative transportation to increase ease of reading or facilitate recall.

Narrative and narrative transportation may seem restricted to a limited number of transactional documents, such as those documents described as intimate or familial. One may think of wills, surrogacy contracts, or marital agreements as benefiting from narrative transportations because of the personal nature of these documents. For example, one may clearly understand why two forty-something individuals with established careers and extensive retirement savings would wish to tell their story through the use of narrative in their premarital agreements.

While intimate or familial transactional documents do benefit from narrative and narrative transportation, a wider range of transactional documents would also benefit by being conceptualized, drafted, and read as a narrative. For instance, partnership agreements, settlement agreements, trust agreements, and personal services contracts would all potentially benefit from narrative and narrative transportation. Consider a contract between a construction company and a homeowner to restore a beloved mid-century modern single-family house. The parties to that transaction also have a story to tell. The same is true for a contract entered into to form a partnership between a web designer and a social media influencer to launch a company that offers services to increase the digital presence of individuals and companies.

The purpose of the transactional document should inform the construction of the documents. For many transactions, a document that embodies narrative could help support the purpose of the transaction. Alternatively, some transacting parties may wish for a standardized form document because they are repeatedly engaging in a series of similar transactions with the same parties. Unlike the contracts referenced above, drafters and readers of corporate merger or commercial real estate financing documents may be reluctant to alter the established form documents because of the repeat nature of these transactions and the financial complexity.

Even where the transactional documents would benefit from narrative transportation, issues can arise when using narrative techniques. Narratives have inherent problems. The structure of a narrative relies upon a narrative

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161. For an exploration of the consequences of categorizing parties as sophisticated or unsophisticated, see Meredith R. Miller, *Party Sophistication and Value Pluralism in Contract*, 29 *TOURO L. REV.* 659, 663–69 (2013).

agent to select and present the relevant events.<sup>162</sup> As complete as any narrative may be, the events are necessarily selective. The descriptions, no matter how detailed, will omit some information. This means that gaps will necessarily be part of any narrative.<sup>163</sup> The narrative agent must rely upon the reader to appropriately fill in any gaps.<sup>164</sup> Depending upon the nature of the gaps, the reader's engagement, the reader's experiences, and the reader's perspective, the reader may fill in the gaps in a manner that undermines or even directly contradicts the terms of the transactional document.<sup>165</sup> Indeed, the reader may, intentionally or unintentionally, alter the meaning of the words of the document if the document is inconsistent with the reader's own experiences, perspectives, and understanding of the transaction. The reader then "re-writes" the document to be coherent with the reader's recollection of the narrative. In that instance, rather than act in compliance with the terms of the transactional document, the reader may undermine the transaction. The drafter must be cognizant of these potential pitfalls of the use of narrative and try to limit any negative consequences. In addition, some transactional readers may resist narrative transportation, but primary transactional readers have an interest in the terms of the transactional document and the transaction as a whole.

Narrative transportation may present potential pitfalls and be limited in some circumstances. Nonetheless, for a wide variety of transactions and many transactional readers, the benefits will outweigh the potential pitfalls and risks.

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162. See Chesler & Sneddon, *Fostering the Role of the Transactional Lawyer as Storyteller*, *supra* note 3, at 493.

163. Indeed, gaps will arise in any text. In describing what the narrative agent requires of the reader, two scholars describe the following: "No matter how detailed a description is, it cannot represent every single detail of the place where the action unfolds. Rather, narrators refer to a small selection of details and let the readers complete their work by imagining the rest." Richard J. Gerrig & Giovanna Egidi, *Cognitive Psychological Foundations of Narrative Experiences* in *NARRATIVE THEORY AND THE COGNITIVE SCIENCES* 36 (David Herman ed., 2003).

164. Even if the text is not a narrative, the reader may rely upon narrative to fill the gaps in the text's analysis, arguments, or information. See, e.g., Jennifer Sheppard, *Once upon a Time, a Happily Ever After, and in a Galaxy Far, Far away: Using Narrative to Fill the Cognitive Gap Left by Over-Reliance on Pure Logic in Appellate Briefs*, 46 *WILLAMETTE L. REV.* 255, 260–61 (2009).

165. The danger of incorrectly filling gaps in information is presented when the narrator uses a variation of a stock story. See Chesler & Sneddon, *Stock Stories*, *supra* note 18, at 242; see also Rappaport, *supra* note 140, at 198 (exploring how "genre bias" acts as a "cognitive short cut" that might produce incorrect or incomplete understandings).

## VI. CONCLUSION

A transactional document may initially seem to have little in common with a bestselling novel. Yet, a transactional document can be a narrative that develops characters, describes plot points, and moves along a narrative arc. As a result, what makes the bestselling novel so compelling can be used to increase the effectiveness of transactional documents. The text can be constructed using narrative techniques that transport the reader into the world of the narrative text by assigning participatory roles to the reader, triggering emotional responses, and crafting a well-developed narrative.

This Article articulated the benefits of crafting the transactional document as a narrative from the perspective of the transactional reader. Narrative transportation has the power to draw the reader into the text in a manner that promotes reading proficiency and comprehension; facilitates reader recall; and encourages subsequent actions by the reader. Narrative transportation can effectively take the transactional reader from Clause A to Clause Z.

While transactional documents may never be considered “page turners” that are read purely for entertainment and enjoyment, the use of narrative by transactional drafters can cultivate narrative transportation. Narrative transportation may increase reader engagement with the transactional document resulting in increased comprehension as well as greater and more accurate recall, and also produce a lasting effect on the transactional reader. These benefits may extend beyond the act of reading and may lead to a more effective transaction overall.

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**APPENDIX A**

*Appendix A includes excerpts of a personal services contract that uses the principles of Plain English<sup>166</sup> but does not use narrative techniques.*

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**AGREEMENT FOR WEB DESIGN & DEVELOPMENT**

This Agreement for Web Design & Development has been entered into by and between Idea Marketing Group (hereinafter referred to as “Purchaser”) and Weberous Web Design (hereinafter referred to as “Provider”) (hereinafter collectively referred to as “Parties”) as of July 1, 2019.

**Recitals**

WHEREAS, Purchaser desires to enter into this Agreement for Provider to develop a website for the domain [www.marketingforhomebusinesses.com](http://www.marketingforhomebusinesses.com).

WHEREAS, under this Agreement, Purchaser authorizes Provider to access Purchaser’s web host server to upload and download files as needed from the Purchaser directory for the purposes of creating a website. The Purchaser authorizes use of Purchaser’s logo and all brand identification in the creation of the website.

WHEREAS, Provider desires to design and develop a website for Purchaser under the term contained herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree as follows:

- 1. Fees.** Fees for website servicing are \$75 per hour. Before Provider will begin work on the website, Purchaser must sign and return this contract with the initial payment of half of the total estimate quoted below. A final bill will be mailed to the Purchaser upon completion of the project.

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166. The following ten elements are typically components of Plain English: “(1) a clear, organized, easy-to-follow outline or table of contents; (2) appropriate caption or headings, (3) reasonably short sentences, (4) active voice, (5) positive form, (6) subject-verb-object sequences, (7) parallel construction, (8) concise words, (9) simple words, and (10) precise words.” George H. Hathaway, *An Overview of the Plain English Movement for Lawyers*, 62 MICH. B.J. 945, 945 (1983). For an examination of plain English, see generally JOSEPH KIMBLE, *LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE* 9 (2006).

- 2. Total Price.** The Provider will create an informative website for approximately \$5,000. This estimate is based on a rate of seventy-five dollars (\$75) per hour. Final fees and expenses shall be shown when invoice is rendered. The Purchaser's approval shall be obtained in writing for any increases in fees or expenses that exceed the original estimate by 10% or more. The Provider will not proceed with any work that would exceed the original estimated total until receiving written approval from Purchaser for the new estimated total.
- 3. Completion.** The Provider will submit the final website to Purchaser for approval in writing. If necessary, the Provider will submit final website to search engines when both Purchaser and Provider agree that the website is ready for submission to search engines and directories.
- 4. Payment Terms.** Until payment is received in full, Provider owns the website design and any files created for the website. Once Provider has received payment in full, the website ownership is transferred to the Purchaser. Provider will bill Purchaser monthly for work performed on an hourly basis at the rate of \$75 per hour. Any deposits paid by Purchaser will be credited against Provider's fee for each monthly billing cycle. After all credits have been applied for Purchaser's deposit, payment for work done through the time of invoicing is due upon receipt of invoice.
- 5. Expenses.** Purchaser shall reimburse Provider for all expenses arising from this assignment, including the payment of any sales taxes due on this assignment.
- 6. Deadlines.** The Provider agrees to have Purchaser's website completed no later than 30 days from the date the deposit is paid to begin the assignment. This deadline can be reached only if the Purchaser has provided all necessary graphics, text content, and logins to Provider. Provider shall not be held responsible for delays to site development arising out of Purchaser's delays in providing graphics, text, and logins to Provider.

If website is not completed by the 30-day deadline due to lack of Purchaser assistance, Provider may:

- (a) Extend the project deadline or
- (b) Close the project and bill Purchaser for work completed at \$75 per hour, or

- (c) Provider will create a website using all content that has been provided and send a final bill for work completed to meet the project deadline.

7. **Copyright.** Purchaser represents that all website content including logos, trademarks, photos, illustrations, audio, video, and written content provided to Provider are owned by the Purchaser, or the Purchaser has received explicit permission for use, and do not violate United States copyright law.

Purchaser has also received permission from all individuals photographed to be shown on the web. Each person in photos going online understands that their face will be seen on the Internet. Any names and contact information placed on the website also have been provided with consent from each individual.

8. **Cancellation of Work.** In the event of cancellation of this assignment, ownership of all copyrights and any original artwork shall be retained by the designer.

By Purchaser: Purchaser may cancel work on the website at any time by submitting sufficient notice to Provider via e-mail. The Provider will halt work upon receipt of letter from Purchaser requesting cancellation. At that time, Purchaser will be responsible for paying for all work completed prior to Provider's receipt of cancellation request. Work completed shall be billed at an hourly rate of \$75 per hour. Purchaser shall also pay any expenses incurred by Provider to the date of cancellation.

By Provider: Provider reserves the right to refuse service and cancel a website project if necessary, in which case, the balance of the initial payment will be returned to Purchaser after all applicable fees and expenses have been deducted for work completed. Provider may cancel project for any reason deemed necessary, including but not limited to Purchaser not providing necessary information, text and graphics in a timely fashion to The Provider.

9. **Progress Reports.** Provider shall contact or meet with the Purchaser on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to the development and testing of the web site. The Provider shall inform the Purchaser promptly

by telephone or e-mail upon discovery of any event or problem that may significantly delay the development of the work.

- 10. Testing and Acceptance Procedures.** Provider will make every good-faith effort to test all elements of the website thoroughly and make all necessary corrections as a result of such testing prior to handing over the deliverables to the Purchaser. Upon receipt of the website, the Purchaser shall either accept the website and make the final payment set forth herein, or provide Provider with written notice of any corrections to be made and a suggested date for completion, which should be mutually acceptable to both Provider and Purchaser.
- 11. Confidentiality.** Provider understands that they will be working with confidential Purchaser information and will only release this information to parties directly involved in website creation. Purchaser authorizes designer to release information to third parties requiring access for site creation. This includes, but is not limited to: website and e-mail address user IDs and passwords, trade information, and banking information should the Purchaser request online shopping. Upon website completion, Purchaser will change any banking passwords Provider has had access to. If Purchaser chooses not to retain Provider for website maintenance, Purchaser will change FTP-mail, e-mail, and any other passwords Provider has had access to. Purchaser will hold Provider harmless should breach of security occur if Purchaser has not changed business passwords.
- 12. Updates.** Provider will make updates and changes to the site, and provide information regarding the website to the Purchaser and up two of Purchaser's designees, for 90 days after completion of the website.
- 13. Continuing Website Maintenance and Promotion.** No agreement for continuing website maintenance and promotion is contained in this contract. Provider could continue website maintenance and promotion at the rate of \$75 per hour, unless an agreement is signed by both parties, with different fees and options.
- 14. General Matters.** This Agreement shall be governed by the laws of the state of Nevada and shall be construed in accordance therewith.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration

Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

This Agreement may be amended, altered, or revoked at any time, in whole or in part, by the written agreement of the parties hereto.

The undersigned agrees to these terms on behalf of his or her organization or business. The undersigned represents that he/she is fully authorized to sign this agreement on behalf of the organization or business represented, and that the business entity represented is bound by this agreement.

IDEA MARKETING GROUP

/s/ Mary Walsh

President

November 28, 2019

WEBEROUS WEB DESIGN

/s/ Rodrigo Cortez

Owner

November 28, 2019

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## APPENDIX B

*Appendix B includes the excerpts of the personal service contract from Appendix A. The excerpts use the principles of Plain English, but in contrast to the excerpts in Appendix A, the excerpts in Appendix B also use select narrative techniques to promote narrative transportation.*

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### AGREEMENT FOR WEB DESIGN & DEVELOPMENT

This Agreement for Web Design & Development has been entered into by Idea Marketing Group (IMG) and Weberous Web Design (Weberous) (collectively the Parties) as of July 1, 2019.

#### **Background**

- A. IMG is a marketing company headquartered in Las Vegas, Nevada that primarily focuses on providing internet marketing services for home businesses located in Nevada. IMG was

founded in 2015 by its current President, Mary Walsh, and has recently doubled the size of its workforce.

- B. Weberous is a Nevada-based web design and development company providing services since 2009. It includes a group of top rated website designers, digital marketers, and mobile app developers.
- C. Both parties intend to enter into this Agreement for Weberous to design and develop a website for the domain [www.marketingforhomebusinesses.com](http://www.marketingforhomebusinesses.com) for use by IMG and its clients.
- D. In order to create this website pursuant to this Agreement, IMG authorizes Weberous to access IMG's web host server to upload and download files as needed from the IMG directory, and authorizes Weberous to use IMG's logo and all brand identification in the creation of the website.
- E. IMG understands that the amount of time necessary for Weberous to create the website cannot be determined with absolute certainty and therefore the parties agree that IMG will pay Weberous on an hourly basis. Weberous in good faith has estimated the cost to be approximately \$5,000, but the parties understand that the final cost may be greater or lower than this estimate.
- F. In order to save both time and money, the parties agree that in the event of a dispute between them relating to this Agreement, that dispute will be resolved through arbitration and not in a court of law.

The Parties agree as follows:

### **Terms and Conditions**

- 1. Website Creation.** Weberous shall design and develop a website for the domain [www.marketingforhomebusinesses.com](http://www.marketingforhomebusinesses.com) for use by IMG and its clients. Before Weberous will begin work on the website, IMG must sign and return this contract with the initial payment of half of the total estimate quoted below. A final bill will be mailed to the IMG upon completion of the project.

## 2. Price and Payment Terms.

**2.1 Fees.** IMG shall pay Weberous \$75 per hour for design and development of the website.

**2.2 Expenses.** IMG shall reimburse Weberous for all expenses arising from this assignment, including the payment of any sales taxes due on this assignment.

**2.3 Total price estimate.** It is estimated that the total cost for Weberous to create the website will be approximately \$5,000. This estimate is based on a rate of \$75 per hour plus expenses. The final total price will be contained on the invoice submitted after completion of the website. If Weberous believes that the final total price will exceed the original estimate by 10% or more, Weberous must obtain written approval from IMG before proceeding with any additional work.

**2.4 Deposit.** IMG shall pay an initial deposit to Weberous of 50% of the total price estimate, or \$2,500 on or before July 8, 2019.

**2.5 Payment terms.** Weberous will bill IMG monthly for work performed on an hourly basis at the rate of \$75 per hour. Any deposits paid by IMG will be credited against Weberous's fee for each monthly billing cycle. After all credits have been applied for IMG's deposit, payment for work done through the time of invoicing is due upon receipt of invoice.

**3. Completion of the Website.** Weberous shall submit the final website to IMG for approval in writing. If necessary, Weberous will submit the final website to search engines when both IMG and Weberous agree that the website is ready for submission to search engines and directories.

**4. Ownership of the Website.** Until payment is received in full, Weberous owns the website design and any files created for the website. Once Weberous has received payment in full, Weberous shall transfer ownership of the website to IMG.

## 5. Deadlines.

**5.1 Date of completion.** Weberous shall complete IMG's website no later than 30 days from the date IMG pays the initial deposit set forth in section 2.4. This deadline can be reached only if the IMG has provided all necessary graphics, text content, and logins to Weberous.

**5.2 Delays.** Weberous shall not be held responsible for delays to site development arising out of IMG's delays in providing graphics, text, and logins to Weberous.

**5.3 Response to delays.** If the website is not completed by the 30-day deadline due to lack of IMG assistance, Weberous may either:

- (a) Extend the project deadline, or
- (b) Terminate this Agreement and bill IMG for work completed at \$75 per hour, or
- (c) Create a website using all content that has been provided and send a final bill for work completed to meet the project deadline.

## 6. Copyright.

**6.1** IMG represents that all website content including logos, trademarks, photos, illustrations, audio, video, and written content provided to Weberous are owned by the IMG, or the IMG has received explicit permission for use, and do not violate United States copyright law.

**6.2** IMG represents that it has received permission from all individuals photographed to be shown on the web. Each person in photos going online understands that their face will be seen on the Internet. Any names and contact information placed on the website also have been provided with consent from each individual.

## **7. Progress Reports.**

**7.1** Weberous shall contact or meet with IMG on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to the development and testing of the web site. Weberous shall inform IMG promptly by telephone or e-mail upon discovery of any event or problem that may significantly delay the development of the website.

## **8. Testing and Acceptance Procedures.**

**8.1 Weberous's Obligation.** Weberous will make every good-faith effort to test all elements of the website thoroughly and make all necessary corrections as a result of such testing prior to handing over the deliverables to the IMG.

**8.2 IMG's Obligation.** Upon receipt of the website, IMG shall either (a) accept the website and make the final payment to Weberous, or (b) provide Weberous with written notice of any corrections to be made and a suggested date for completion, which should be mutually acceptable to both Weberous and IMG.

## **9. Confidentiality.**

**9.1** Weberous understands that they will be working with confidential IMG information and IMG authorizes Weberous to release information to third parties requiring access for site creation. Weberous shall only release this information to parties directly involved in website creation.

**9.2** Confidential information includes but is not limited to: website and e-mail addresses, user ids and passwords, trade information, and banking information should the IMG request online shopping.

**9.3** Upon website completion, IMG shall change any banking passwords Weberous has had access to. If IMG chooses not to retain Weberous for website maintenance, IMG shall also change FTP-mail, e-mail, and any other passwords Weberous has had

access to. If IMG has not changed business passwords, IMG shall hold Weberous harmless if a breach of security occurs.

#### **10. Updates.**

**10.1** Weberous will make updates and changes to the site and provide information regarding the website to the IMG and up to two of IMG's designees, for 90 days after completion of the website.

#### **11. Continuing Website Maintenance and Promotion.**

**11.1** No agreement for continuing website maintenance and promotion is contained in this contract. Weberous could continue website maintenance and promotion at the rate of \$75 per hour, unless an agreement is signed by both parties, with different fees and options.

#### **12. Termination of this Agreement.**

**12.1 Upon completion.** Unless terminated earlier pursuant to section 12.2 or 12.3, this Agreement will terminate upon completion of the website by Weberous and full and final payment by IMG.

**12.2 By IMG.** IMG may terminate this Agreement at any time by submitting sufficient notice to Weberous via e-mail. Weberous must halt work upon receipt of letter from IMG requesting termination. At that time, IMG must pay Weberous for all work completed prior to Weberous's receipt of termination request. Work completed will be billed at an hourly rate of \$75 per hour. IMG must also pay any expenses incurred by Weberous to the date of termination.

**12.3 By Weberous.** Weberous may terminate this Agreement at any time by submitting sufficient notice to IMG via e-mail. If Weberous terminates this Agreement, Weberous must return to IMG the balance of the initial payment paid by IMG after all applicable fees and expenses have been deducted for work completed. Weberous may terminate this Agreement for any reason deemed necessary, including but not limited to IMG not providing necessary information, text and graphics in a timely fashion to Weberous.

**12.4 Ownership.** In the event of termination of this Agreement by either party, ownership of all copyrights and any original artwork will be retained by Weberous.

#### **General Matters**

- 13. Choice of Law.** This Agreement will be governed by the laws of the state of Nevada.
- 14. Arbitration.** Any controversy or claim arising out of or relating to this contract will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 15. Modification.** This Agreement may be amended, altered, or revoked at any time, in whole or in part, by the written agreement of both Parties.
- 16. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement on behalf of the organization or business represented, and that the business entity represented is bound by this Agreement.

IDEA MARKETING GROUP

/s/ Mary Walsh

President

November 28, 2019

WEBEROUS WEB DESIGN

/s/ Rodrigo Cortez

Owner

November 28, 2019