Basic contract law for project managers, Part 2: Building a contract webinar
Question and Answers
Tuesday 14 September 2021

Questions	Answers
How long have you seen disputes go on for, and how much were the associated legal costs/expenses?	WIthout nit-picking as to how you define 'dispute' and the trigger for it starting, I have seen everything from swift bespoke contract processes of 10 days, to lengthy court cases and arbitrations of years, and mediations and ADR of 0-6 months. The construction industry uses a specialist 'adjudication' tribunal which is 28 days, and there is also a '100-day arbitration' although it has not caught on as much as it might have. Most Court cases in UK last c .9-12 months, depending on the complexity, and extent of disclosure and witness statements. Costs-wise you can appreciate one could spend nothing or very little on informal processes, to a few low £000 £ for an adjudication, and all the way towards 6 or 7 figures for the biggest and most complex dsputes involving multiple parties. The UK Courts are quite hard on parties to cases these days, managing their costs and limiting them too!
I assume you can extend all such principles outlined for Project Manager to Contract Managers (i.e. those officers responsible for the contracts with our key business suppliers)	In large part, yes, the principles and skill sets required for both PM and CM (abbreviated to mean the terms used in the Q) overlap in many areas. Both should have a good handle on the contract, and be able to indicate where progress is at, how much is being spent, and what kind of issues are on the table to be resolved/ closed down. The PM should be closer to the day to day, genearlly, as he/ she is directing (remeber the 3 key pressures from the webinar) whereas the CM will have more to do with the minutiae of issues such as the cost of variations, or assessment of claims.Both roles are valuable in projects. WIth some training and experience, a person could swap or be able to do both.
How far can existing contracts cope with agile projects ? Do agile projects need a fundamentally different contractual approach to traditional/waterfall approaches?	A contract can cope with any methodology which the parties want to adopt. The terms (words) of the obligations should reflect what has been agreed. Typically you see the methodology set out in the Specification or Scope where the detail of the delivery is contained. Including other things such as a 'project behaviour charter' or 'documentation protocol' or 'sprint cycle' can support the methodology chosen, so that the people involved know how to interact. Remember the Parties are free to do what they like subject to legality!

In terms of Drafting errors going against the proposer, I assume the proposer would be the Client and the lawyer giving advice in drafting the contract would never be liable?	Drafting errors are different from drafting that one Party subsequently decides it doesn't like. It's an important difference for the reason that you've highlighted - making legal errors is potentially professional negligence by the drafter (here, lawyer) as it may cause loss to the client. Lawyers are very careful to advise that clients read contracts before signing them, and to ask for help where they are unclear. It's encumbent on every business leader to do this every time. The device of 'Contra proferentum' relates to an attempt by a party to undo a clause which it post-signing has decided it doesn't like. The reasonfor this is shown not to be 'poor or erroneous drafting' but rather 'bad bargain' i.e. there has been poor due diligence, or taking on too much risk; perhaps even because it did not ask its friendly lawyer for a contract review before signing it!
Would you recommend at contract mobilisation an open discussion with your contract supplier to ensure any key terms in contract are clear and fully understood at the outset (especially around breach, indemnity etc) - Bid Teams often accept contract obligations to win contract but these get lost or unclear when handed to service delivery teams?	Yes, absolutely! I have run dozens of training workshops where pre-contract teams have had eyes opened by delivery teams to risk that they never thought would arise from terms they had agreed - sometimes terms they had 'traded off' or 'fudged'. Therefore, I always recommend, and have run, combined teams workshops to exchange this experience, expertise and knowledge so that both teams appreciate what's important to each other, and what drives their department's success as opposed to organisational success e.g. nailing a sale (bid team) vs. executing the deal (delivery team). When I look at it with them in terms of profit 'expected' vs. 'banked' then people really sit up and think!
Could "Boiler Plate Clauses" also be referred to as Key Contract/Commercial Principles?	Boiler Plate clauses are active contract terms. Typically key contract or commercial principles is more of a 'wish list' from one party e.g. it might be a list of things you want to find in your contract which your corporate governance demands that as a mater of policy you include. The test is therefore one of matching up - SCL Boilerplate Bingo! - and it's a useful barometer to keep your proposed contract in check and make sure you're agreeing to terms which are negoitated poorly, traded off or fudged.