

CLM Simplified⁺

Four-part excerpt of *CLM
Simplified* by Lucy Endel Bassli.



Editor's Note

Bill Henderson

This is a four-part series that excerpts Lucy Bassli's new book, *CLM Simplified*. Part I is Bassli's full Introduction. Part II excerpts What is CLM?, Legal Policy Review, and Templates (Ch 2-4). Part III excerpts Playbooks, People, and Process (Ch 5-7). Part IV excerpts Technology, Metrics & Data, and Outsourcing (Ch 8-10).

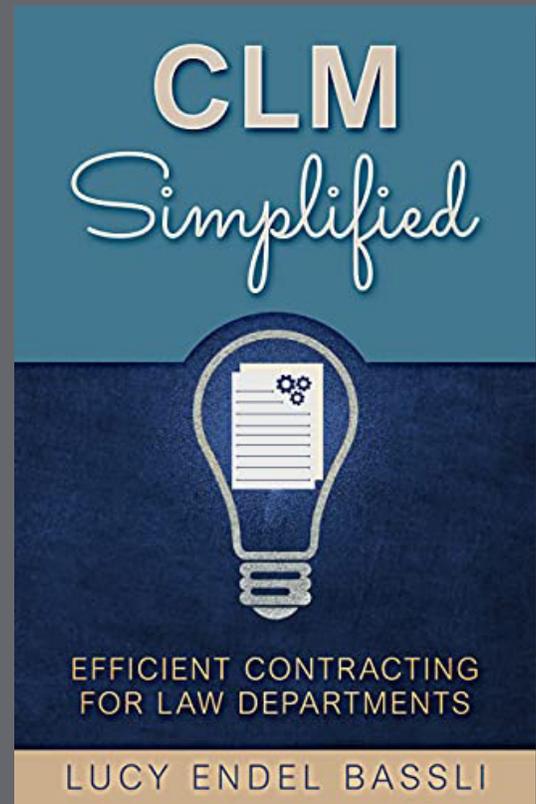
Bassli's excerpts reveal three things about the future of law: (1) substantial gains in legal productivity require legal professionals to build a skill set that goes beyond legal knowledge and know-how, (2) in the case of CLM, these skills are fully within the grasp of any practicing lawyer or group of lawyers who is willing to take up the challenge, (3) law is becoming multidisciplinary, which requires all legal professionals to listen, learn, and collaborate as part of a team.

It is rare that a highly specialized expert is willing to put so much of their knowledge into the public domain. Yet, when it comes to change, examples are 10x more valuable than abstractions. Without readily available examples, we risk underinvestment in what actually works. Hopefully, Bassli's generous excerpts will enable legal leaders and managers to accurately grasp both the complexity and potential of CLM and similar productivity-enhancing initiatives. As Bassli notes, technology is important, but it comes last. Many thanks to Lucy Bassli for her generosity.

CLM SIMPLIFIED PART I:

Introduction

Lucy Bassli • Post 269 • October 26, 2021



Having spent most of my career as a commercial transactions lawyer, both at a big law firm and, mostly, inside a global legal department, I've seen it all when it comes to contracts.

Over the years, I have learned through trial and error the ways to make contracting simpler, smoother, and, hopefully, more predictable for the business. After all, contracts are, at their core, a *business* document. They are the lifeline of business.

To ground us before diving in, I'll start by saying that contracting is a problem for every corporate law department. At every company I've spoken with on this subject, we usually start with a very broad list of operational challenges. Comments like, "too many contracts," "not enough time," and "the business is frustrated with us."

Too often I hear, "They think we're too slow," "They call us the black hole," and lots of other less flattering comments, as well. Even when relationships are good, many businesses struggle with the perception of their law department as slowing down progress.

But without contracts, business can't be done, money can't be made, and money can't be spent. (Well, it can, but it shouldn't.) Without contracts, business doesn't move forward. Because they take time, contracts are often perceived as some sort of necessary evil; they are a step that must be taken and not one that most business owners look forward to. But we all know the legal department ends up taking the brunt of the work associated with the contracting process. Legal teams over-function; we step in to overcorrect

"This book is designed specifically for legal teams to become the lean, mean contracting machines that the business needs."

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and fix parts of the contract that we shouldn't even review, parts the business should be handling.

All of these challenges and realities are taken into account as I walk you through how to approach the contracting problem your legal department is facing. I do this in a way that helps you move forward more efficiently, while focusing on the highest-value work you should do, rather than drown in a stack of contracts that go on and on and on.

So, how to start? First, prepare before jumping in to solve the problem. You have to take stock of what's happening right now. Really study and understand where these contracts are flowing, who is doing them, who is touching them, and what kind of contract the company deals with on a regular basis. Set the right tone within your own department and with your business counterparts, so they understand it's time to look at contracts holistically and that they are all in it together. This isn't just a problem for the legal department to solve. I also want you to remember that there's often an urgency to jump to technology to solve this problem. There is a feeling that, with the right contract management system, things will automatically improve.

There is a role for technology to play, and I certainly will get to that for sure. It is a key topic, in fact, but one I want to save until the end, on purpose. There's a lot to do before jumping to technology.

For example, it's important to understand the stakeholders. The various roles and people involved in the contracting process will help inform the extent of change possible, or whether it is preferable. There is a reason that lawyers over-function. Usually, it is a lack of trust in the business owners to handle contracts. That lack of trust has various sources, including: skillset gaps, disclaiming responsibilities, laziness, lack of accountability, and myriad other reasons. So, the legal team steps in and "just handles it."

It is hard to turn over a bad contract into the hands of the business to complete. But you can look away from a bad contract. It's quite simple. A contract lands on your desk, and you feel like you have to clean it up; you have to take a look. You can't just let it go in the state you saw it. That's normal, but it is not optimal. So, we want to move toward changing that feeling of obligation to clean up anything that lands on your desk.

But who besides Legal should be a part of this conversation? Who other than Legal should be in these discussions about improving the contracting process? Who will be impacted? Who will feel downstream effects of changes that you might want to make, after reviewing this course? Who will step up to more responsibility?

Another critical question: what contracts really should you tackle? What is the scope of the work Legal should handle? I suggest starting with a finite approach. Pick a particular type of contract, one you know is a pain point. Pick one that you have good clarity around: how it flows, who is touching it, and who should be touching it, plus the impact it has, of course, on the company.

It is important not to approach contracting as a general problem to be solved. That is often overwhelming. It is critical to focus on what is the one type, or few types, of contracts you want to tackle, when you are considering a holistic revision to how to approach this particular contracting problem.

Contracting is a process that touches almost every part of a company, and there could be many departments that consider it a workflow they should manage and control. Who has responsibility for contracting is an open question, answered differently at every company, but one thing is consistent: legal departments are always part of that decision and often become the default owners of this process.

This book is intended for the legal departments. While legal teams don't own the business goals that contracts are enabling, the attorneys are usually the owners of the language that facilitates those business goals. They are tasked with ensuring that all of the regulatory, compliance, and core legal principles are covered. Since those are written by lawyers for lawyers, the entire contract becomes a document that legal teams end up handling, often from start to signature.

Here lies some of the problem I want to resolve. Since legal teams are often perceived as blockers or hurdles to efficient business (aka efficient contracting), this book is designed specifically for legal teams to become the lean, mean contracting machines that the business needs.

This book is designed to cover all aspects of the contracting process, as experienced from the perspective of the corporate legal department. While contracts flow across the company, the legal team is usually the main orchestrator of getting contracts negotiated and signed. But the process starts much before the negotiation phase and requires that the legal team create templates and also educate the business owners on how to use those templates. There needs to be a place where templates are retrieved and a place to store executed contracts within the policies defined by the legal department (usually). The book is structured so an attorney can read almost any chapter without context and capture some practical ideas for how to improve the contracting experience in their company.

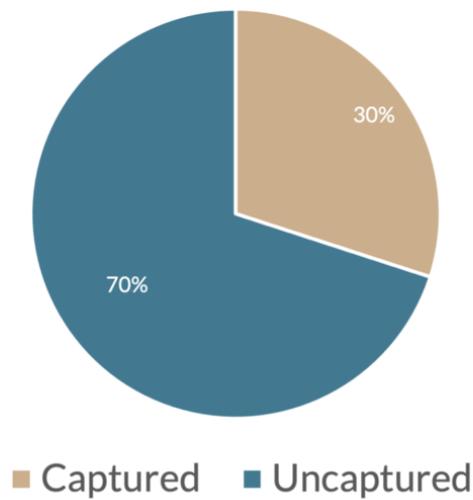
Culturally, companies are different in the ways they perceive self-help and empowerment, or how they define timeliness. Similarly, companies range along a wide spectrum of digital transformation and automation, which will influence how contracting may or may not be enabled with technology. One thing is certain: every company can make improvements in how contracts are handled, and this book sheds light on how to tackle those improvements in a manageable and methodical way.

To approach this complex problem methodically, this book is divided into chapters covering the core places where improvements can be made: legal review policy, templates, playbooks, and process, among others. When tackled together, it is the combination of improvements to these various aspects that brings the greatest impact. Then considering the technologies that can enable improvements becomes almost like an engine booster to

optimized contracting, while delivering critical data points to help drive decisions. The book also sheds light on alternative resourcing models and outsourcing best practices to most effectively align the right people to different parts of the contracting lifecycle.

There is a lot of work to get done to create value for law departments who are not extracting much today from their contracting lifecycle, per a recent Gartner study (Figure 1.1).

Potential Benefit of CLM Captured by Corporate Legal Departments by 2025



CLM SIMPLIFIED PART II:

What is CLM?, Legal Policy Review, Templates

Lucy Bassli • Post 270 • October 26, 2021



Chapter 2, What is CLM?

The term contract lifecycle management (CLM) is a hotly discussed topic in legal operations and legal technology circles. It is important to dissect the concept and understand what precisely I am referring to, especially in trying to tackle and improve the contracting lifecycle.

"Contracts are the lifeline of the company, so it's no wonder it is an ongoing cycle."

Most often, when I hear CLM, people are referring to the technology or the system that is implemented in order to make contracting go smoother. The lifecycle, however, is actually a series of processes and steps. [Cf. [Post 256](#) (Zach Abramowitz & Bryon Bratcher noting confusion around CLM and defining it similar to Bassli as a complex process that requires design and discipline)]. When people consider CLM, they should talk about the entire lifecycle of a contract, from the very first stages before it is initiated by the business owner, to once it is designed and continuously managed all the way through when it is stored.

In this chapter, I will review the lifecycle and the various phases that make up the lifecycle.

Figure 2.1 [lead graphic above] shows the contracting lifecycle as an ongoing cycle. There is a reason for that.

On the one hand, the legal team feels like there is a continuing barrage of contracts coming into their department. The volume seems to grow endlessly, and the complexity evolves as the corporation develops and grows. Contracting never seems to stop; it is, of course, the lifeline of the company, so it's no wonder it is an ongoing cycle.

The good news about having a cycle is, every time you do something repeatedly, improvements should occur, and there are opportunities to identify changes to make the entire cycle go faster. The business is interested in speed. They expect the legal team to handle the complexity and the legal issues, but, at the end of the day, they require speed. Anything that can be done to increase the velocity of the agreement cycle will be much appreciated by the business and will certainly shed light on the law department functioning as a true business partner to the company.

Pre-Contracting

In the very first stage of the lifecycle, we have to consider all of the activity that is actually happening pre-contracting. The reason it is important to focus on this stage of the contracting lifecycle is because the legal team, typically, has a highly significant role at this stage, before the contract is generated and before the contract is requested by the business.

For example, the request-for-proposal process is one that requires Legal to chime in on the template that is attached to the RFP or somehow attaching the standard or preferred terms for the company. So, the legal team does not have the opportunity to influence the path of the contracting process before the process actually begins. At this phase, it is important to consider if the RFP terms provided in the proposal template are the correct terms that will help speed up negotiation, or if the terms are potentially too onerous and will thus slow things down.

The documents used as part of the RFP process are often one and done, so

to speak, and forgotten. What this means is, while the legal team may opine initially on what the template looks like, it is often a stale document that is used repeatedly by the sales organizations or the procurement professionals without the necessary review from the legal team on an ongoing basis. So, this becomes an area to keep an eye on as a way to influence the contracting workflows from before a contract is initiated.

Request

When most of us think about contracts, the legal team appreciates that it actually starts to feel real once the business requests a contract. The request stage is critical, because many legal teams are used to getting requests that are simply incomplete. This creates a significant amount of churn and wasted time as attorneys seek to get additional (and often unnecessary) information from the requesters in order to understand what kind of contract is needed. Often, an email is received that is forwarded to the legal team with very little context, and with nothing attached, potentially just a couple of sentences.

In fact, the request phase is a great area of opportunity when seeking to increase a company's deal-making velocity. If a request were to come in with all the detail necessary for the legal professionals to begin drafting or piecing together the contract based only on the information available in that first email, there is a very good chance that hours or days would be eliminated from the entire process. In reality, it is often very difficult to begin to prepare a contract or locate the necessary template (if templates exist) just from that initial request.

Good contracting lifecycle improvements always start with the request stage being clearly defined in a way that guides the business through a useful request process. This request phase can be improved on in many ways, one of which is automation, but I'll get to that later. For now, let's review some of the tips for making that request more useful to enable the legal team to immediately to begin work. Assuming there is no automated intake process for these requests to come from the business to the legal department, many steps can be taken to improve it even if on a manual basis. ...

The intake form should contain the key and basic pieces of information that will enable the legal team to start drafting the contract without seeking more information. If it is developed in a way that still requires the attorneys or legal professionals to seek inputs before they can get started, then something critical is missing from the form, so let's make this a test:

- Create the form.
- Start using it.
- And track the number of times you still have to seek more inputs.

That's the key lesson. Your aim is that proper mix of information to seek that will not upset the business users because it's too tedious, while at the same time be enough information that will actually enable the legal professional to begin work immediately. ...

Pop Quiz

Q: In which phase should your legal department be involved?

A: Likely, Legal influences almost every phase of the CLM in some way, but active recurring involvement should only happen in the negotiation phase. With the right planning and having an operational mindset to empower the business and create guardrails, Legal can stay out of most phases of the lifecycle.

[More on Create, Negotiate, Approve, Sign, Store, Manage]

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Good post-execution obligation management of contracts requires that a central repository be effective and efficient in how people retrieve the information they seek. Modern repositories also do an excellent job reminding business owners of obligations and are almost an intelligent assistant to the business to ensure that key obligations are not missed.

This phase of the contracting lifecycle is actually ongoing until the contract has expired, and often certain obligations even continue beyond expiration, making this a critical phase of the CLM for business continuity and compliance.

Chapter 3, Legal Review Policy

More often than not, law department lawyers find themselves in a reactive role when they review the contracts sent to them by the business. Somehow, the business owners determine what Legal should and shouldn't review. Yet the attorneys are in the best place to make that determination. So, why don't more legal teams take a proactive role in defining what should land on their plates?

Eventually, the sheer volume of commercial contracting work leads legal teams to be more restrictive and prescriptive about how they spend their time. But often, they arrive at this step only because they reach a breaking point and cannot keep up with demand. Or they are sick of being called a bottleneck and reach a "the business should be handling some of this themselves!" conclusion, after handling insignificant contracting matters or reviewing contract terms that are clearly within the wheelhouse of the person who sent the request to Legal.

Enough is enough. Reacting to every request for contracting help is not an effective strategy—in fact, it is not a strategy at all. It is time for Legal to take back control over their inbox and start creating a policy for the business to follow. But how do you tackle a policy like that?

It all starts with writing down what Legal must review. It is basically a rule that business owners must get Legal involved in certain transactions. Of course, this begs an obvious question: what happens to the other contracts that Legal does not review?

Well, the first step toward recovery is accepting smart risks, which is something lawyers have to do regularly, but for some reason putting it down in writing is challenging. It feels like lawyers are giving away control and opening up some sort of free-for-all. Actually, it is not a free-for-all, but it certainly allows for the business to handle some contracts without Legal's input. *That is precisely the goal: getting Legal out of the way when there isn't significant risk to consider or mitigate. ...*

The Takeaway

The CLM is a complex web of activities performed across many departments at a company. It often has no clear owner and becomes an organically growing combination of processes. It must be tackled by breaking it into phases and making incremental improvements.

Defining the Policy

Determine if the policy comprises a list of what the business *may* handle without legal involvement versus what the business *may not* handle without legal support. Meaning, are you trying to give as much freedom as possible? Or empower the business with only specific scenarios where they can contract without Legal’s involvement? While at first glance it may seem highly tolerant of risk and very empowering to have a short and finite list of contracts that require legal support, it can have the opposite effect. (Presuming that Legal doesn’t need to be contacted for contracts outside that list.) So, it really comes down to the content and how tolerant the legal team is, regardless of initial perceptions. Figures 3.1 provide[s a] sample perspective[] on how to tier and delegate risk mitigation.

Figure 3.1: Approaching a Policy Methodically



[Outlining the eight steps necessary to create a legal policy; Create, Negotiate, Approve, Sign, Store, Manage; discussing the creation and deployment of a plan to communicate the policy]

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Change management and communications are not natural skills for many lawyers. If the attorneys are unsure how to handle that aspect, asking for help on this part of the policy launch is a great way to bring others into the loop and expand engagement with others across the legal team.

The Takeaway

Legal review policy can be based on a number of different criteria that should make sense in the context of the industry and culture of the company. No matter what the details of the policy, as long as there is a clear mechanism to empower business independence in certain contracting processes, then it is a great start.

Note to the Policy Drafter:
Keep it simple! Do not write it like a contract.

Chapter 4, Templates

Creating **templates** is probably the easiest place to start for legal teams looking to streamline their contracting work. It is easiest because it fits squarely inside the skillset of the attorneys. We know the words that need to go into contracts; we know *lots* of words. Therein lies much of the problem. Contracts are complicated and generally not user friendly. It is no wonder a bad template is often the source of contracting woes. Of course, it matters whose hands the template falls into for negotiations, but the reality is that a simple, easy-to-read and *reasonable* template (meaning the terms are within market normal ranges of what is commonly acceptable by both parties) will go a long way to making the contracting process more efficient.

But like so many other aspects of contracting optimization, just how much can be accomplished with templates depends on several factors. Most notably, not all contracts should be templated.

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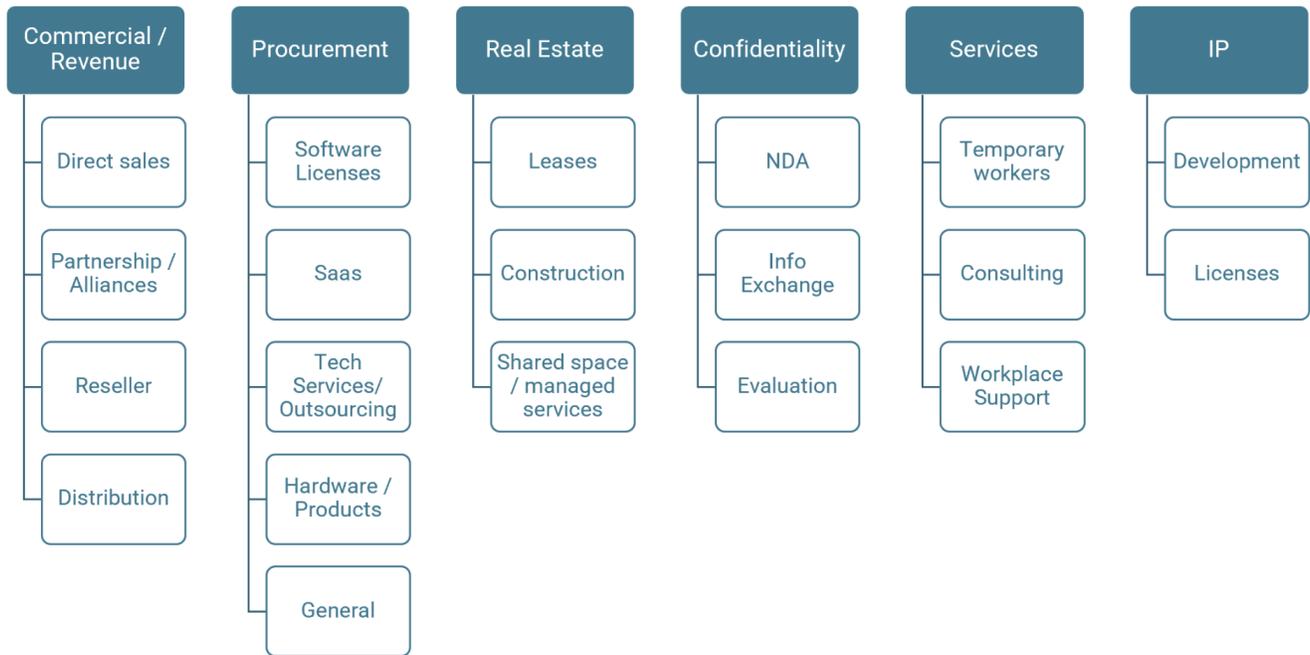
There is no better forcing function to finally decide on the appropriate limit of liability than when everyone has an opportunity to voice their perspectives, but with the understood goal that a decision *must* be made. So, even a rarely used template is a useful document as a reference guide that defines the preferred terms for the company.

Templates serve two main purposes in expediting the contracting process:

- They speed up the initial production of the starting contract.
- They enable the business to handle certain contracts independent of the legal team.

Depending on how they are used, template formation, where they are stored, and how they are retrieved will vary, and there is no one right way. Every legal team will have the approach to templates that fits their culture, resources, and processes. Before beginning the actual work of drafting template terms, take an inventory of the types of contracts that the department regularly deals with. Create a simple view with categories of contract types. Figure 4.1 demonstrates a sample of a high-level breakdown of common agreement types for a high-tech company.

Figure 4.1: Common Commercial Transaction Types for Tech Companies



[Discussion of templates for legal teams, clause Libraries, use of AI with sample contracts, and business-facing templates]

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When the C-suite understands that Legal is not a gatekeeper for all contracts, it is very helpful to set that tone from the top down.

Often, Legal feels it must protect the business from itself and thus over-functions on every aspect of contracting. But with the right leadership, the business can be empowered *and* accountable for when some contracts either slip through the cracks or simply aren't negotiated in an ideal way. This has to be acceptable to all the leaders of the company, or else Legal will be involved in every contract—something no one wants!

The Takeaway

Template Tips:

- Don't create too many
- Consider the difference between a sample and a template
- Pick higher-volume contracts to template first
- Make templates for those engagements where your company has negotiation leverage to start with your paper
- Start with templates you can use to empower the business to handle independently (low complexity)

CLM SIMPLIFIED PART III:

Playbooks, People, and Process

Lucy Bassli • Post 271 • October 27, 2021

ATTORNEYS: TAKE THE PLEDGE

Somewhere along the path of evolution in legal services, we lawyers, who indeed passed that specific test call the bar, have devolved many *other* professions with which we work and professionals on whom we rely, into one non-descript group: “non-lawyers.”

Promise to stop calling these amazing professionals, without whom we could not be successful, “non-lawyers.” To all the program managers, operations managers, business and data analysts, and all other professionals who work with lawyers on a daily basis: Thank you for your support and expertise.

More and more, we are delegating parts of our jobs to them and enhancing the legal service we deliver due to their skills, so let’s change our lingo to match our intentions.

-- Lucy Bassli, from Chapter 6, People.

Chapter 5, Playbooks

The need for creating **playbooks** for templated contracts is a subject of much discussion. This is because playbooks are one of the ways in which contracting is simplified. But they can take many forms. Luckily, distinguishing and differentiating between the necessary types of playbooks is possible without creating too much complexity. Not only are they used to create standardization across a law department, but they also empower the business.

Playbooks educate, create consistency, and are an absolute requirement for any type of outsourcing contract review. I submit for your consideration that there are two basic types of playbooks: **The Law Department Playbook** and the **Empowerment Guide**.

*The hard work
that comes before
any discussion of
technology*

The Law Department Playbook is a great way to share knowledge. It is perfect for educating and training new attorneys joining the in-house team. It is not uncommon for a lawyer to learn simply by diving in and just doing it. They don't necessarily want to be thrown into the fire, but often there is no formal training in place that teaches how to handle contracts. Playbooks are also useful to those attorneys who are covering for others on leave or helping out when volumes increase.

Playbooks created for educational purposes are used to explain the rationale behind the positions for specific provisions, provide historical context, and perhaps even offer examples of fallback positions. They are a fluid and holistic explanation of what the department has decided for certain legal concepts in contracts. This is extremely helpful in speeding up how attorneys think about negotiating contracts.

Anytime legal departments talk about contracts, they talk about speed; it is a common theme. This is because the business places great value on speed. Playbooks are excellent at increasing speed. ...

[discussing "stoplight approach," where "fallback provisions are classified as red, yellow, and green," and how playbooks avoid "forum shopping" by business units.]

* * *

Empowerment Guides

When discussing various types of playbooks, it is easier and clearer to begin calling these documents by specific names. It doesn't matter what they are called as long as you are clear and aligned on the purpose of the taxonomy you've chosen. At its core, a Law Department Playbook is a method of knowledge sharing and knowledge management. However, if the purpose of the playbook is for empowerment, then it's an **Empowerment Guide**.

An Empowerment Guide doesn't spend much time explaining the history, the why, or the purpose of the different contract provisions; it's more about actionable items. The goal is to make contracting faster with less involvement from the legal department. The only way to get Legal less involved is to empower the business. ...

I'm going to go out on a limb and assert most lawyers don't want to spend their time chasing signatures. In fact, I have a strong opinion that no attorney should ever spend time chasing down signatures. These types of administrative steps are handy to hand off to the business.

[discussing Playbooks for Outsourcing Contract Review and Playbooks for Negotiating Third-Party Paper]

* * *

Playbooks, like templates, take time to create. They also need to be written in plain language and thus be easy to read. They should be living documents

you can modify to ensure they are up to date. The more you modify them, as you learn more throughout your negotiations, the more your playbooks will evolve.

Most importantly, *actively use the playbooks*, because the best way to learn what should be in your playbook is through data gathering.

Chapter 6, People

For ages, Legal has been accused of being the blocker; the group that slows down contracting and business; the ones to avoid, or else the contract may fall into a black hole, and other unpleasant categorizations. By the way, some of these descriptions come from companies with a healthy relationship between business and Legal. In fact, in many companies, the organization has great respect and appreciation for one another, but the frustration is there nevertheless.

The reason for the frustration is simple: *Speed*. The business wants to move at lightning speed, but legal review takes time. It simply does. Advancements in artificial intelligence are helping and adding significant efficiencies, especially for simple contract review, but to do a thorough job on complex agreements, it just takes time. In many cases, *a lot* of time. Compound that effort with high volume, and the problem becomes obvious.

In prior chapters, I reviewed the concept of simplifying contract templates and empowering the business to handle certain negotiations independently. I also laid the foundation for having a clear and strictly enforced policy about what Legal needs to review. So, this brings us back to the reviews that rightfully fall on the plate of the legal department. These contracts *need* legal review, and they need the trained eye of someone who knows contracts.

But who in Legal does the review is a question many departments still do not answer (or even ask). Those who have the luxury of being larger than a solo GC (aka a team of one) can choose if the attorney(s) should review contracts or if a paraprofessional can take a stab at the review. Perhaps it is an initial review. Perhaps it is some subset of contracts that can be reviewed by someone other than an attorney.

Skillsets: who should touch the contracts?

The healthiest approach to determining who should provide the legal review is to consider the skillsets needed, rather than titles or company roles. To comply with "practice of law" regulations, let's assume all options we review here are to be performed under the direction and control of the General Counsel or other designated attorney in the legal department. Since we are trying to figure out who in Legal performs the review, we are not going to include the consideration of whether someone in the business should handle the contract negotiations independently, since that was covered in

The Takeaway

- Regardless of what you call it, be clear on the purpose and audience. That will guide the content of the "playbook."
 - Legal professionals will appreciate the background and rationale.
 - Business professionals will want clear options and precise language.
 - Operations professionals will want detailed directions and specific actionable steps.
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Chapter 5 on Playbooks.

With the premise that someone in Legal must review the contract, the options are:

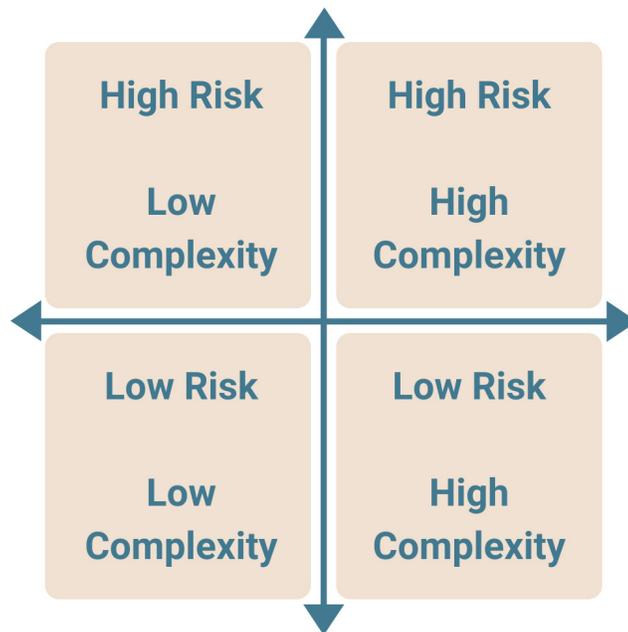
1. Lawyer or other professional
2. Internal resource or external (contingent staff or law firm)
3. Outsourced managed legal service provider

* * *

Back to skillsets. It is important not to think about contracts as one homogenous lump of legal work. We all know that contracts vary in complexity, volume, and risk.

Legal must take the time to plot contracts on a matrix such as the one in Figure 6.1, so they can understand which contracts they want to tackle. I'm assuming they have already done such an exercise in conjunction with their policy creation, as described in Chapter 3. Once they have identified the quadrant, then they can ask the most important question: "Does a *lawyer* need to review this contract?"

Figure 6.1: Risk and Complexity Matrix



[Discussing challenges of lawyer review in a small legal department with very limited bandwidth and evaluating pros and cons of internal versus external review; discussing potential of automated review of some contracts, with "more on that later in the technology chapter"; discussing system Bassli designed and implemented at Microsoft]

* * *

Chapter 7, Process

Process is vital to improving contract lifecycle management. Of course, there is a lifecycle to contracting, because this is the one thing that grounds us: all contacts go through some form of a lifecycle. Something I tell lawyers, which they don't like to hear, is that a lot of what we do is a process. In fact, almost everything we do in our day jobs is a process.

And lawyers don't like to think of that, because it makes it sound like we're somehow diminishing the art of lawyering, the complexity, the great brainy work we pride ourselves on. It is true: our work is complex, and we love analyzing really complicated topics and issues and providing guidance to the business. But there are recurring steps we take every day, and those recurring steps come together to form a process or the series of steps. Maybe they're not even recurring as much as it's simply a series of steps taken. ...

In the legal field, there is a phenomenon I call the *process stigma*. Some attorneys see the practice of law as a unique and special craft; one that cannot be reduced to a process. Meanwhile, process is something associated with other disciplines—perhaps engineering or business operations.

By calling something a process, some attorneys think it makes their work less meaningful or perhaps less impactful. It also makes it seem like work that perhaps does not require intellectual aptitude. Obviously, that's not true. While there is the craft of the practice of law that requires deep analysis and judgment, there are many aspects of it that are amenable to process review and optimization. It is important that attorneys are trained to identify those parts of their practice that can be improved and made more efficient.

The way to overcome process stigma is to demonstrate, with basic data and logical analysis, how certain functions of the attorneys' day job can be broken down into various process steps and how some of the steps can be completed faster. While the practice of law is focused on the work that requires the unique expertise and training attorneys receive, it may not be immediately obvious how process fits in. ...

[Discussing how processes are heavily embedded in the litigation and transactional contexts; discussing CLM technology]

Technology is important, but process is more important. (See the next chapter [on Technology], where we address the big questions about implementing a CLMS.)

[Reviewing the nuts and bolts of process mapping and the use of design thinking to improve and simplify a process.]

* * *

Special Focus on Details of Legal's Process

While the contract flows through different business departments, this handbook is written for the legal department. When designing process, consider the policy of the department with every decision. The policy was written in order to lighten the workload in Legal and reallocate responsibilities. Don't fall back into over-functioning!

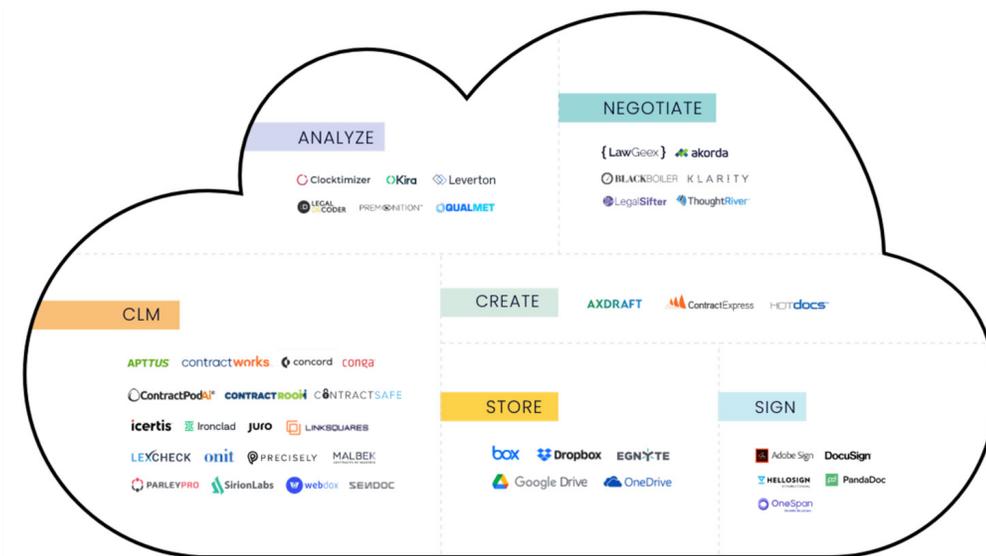
Once the mapping exercise has envisioned the process for which contracts should land in Legal, drill down into exactly what happens once it is clear that the contract must be sent to Legal.

Getting into specific details is worth the time spent. This is a part of the process that Legal controls 100% and can dictate. It is also the part of the process that requires attorneys to really test their risk tolerance.

CLM SIMPLIFIED PART IV:

Technology, Metrics & Data, and Outsourcing

Lucy Bassli • Post 272 • October 28, 2021



Chapter 8, Technology

No discussion on contracting process improvements is complete without focusing on technology. Scarcely a day goes by without an article, blog, or webinar on legal technology and, more specifically, about artificial intelligence (AI). There are many conferences and webinars about contract management systems—on selecting them, on what to use them for, how to derive greatest benefit, etc. Usually, those educational programs are provided or delivered by the contract management systems providers.

Technology is always at the core of any discussion about innovation, for example, but I maintain it should not be. Before any conversation about technology takes place, there should be an assessment of the current state of the people and processes involved in contracting, which is why this chapter follows my previous chapters on People and Process. Only after a thorough

Putting complex and often intimidating topics into context.

review takes place, and there is agreement within the organization that the right people are doing the right steps in the best order, should a discussion about technology begin.

Consider who should be part of the initial conversation. The worst thing to do is see a shiny demonstration and decide to start right then. That is not the first step. Reviewing solutions and scheduling demos should occur down the road. Start internally with key stakeholders, to understand what they need from a technology solution. Understanding these needs is the most important part of any technology implementation. If you are not certain about what your people need, you will deliver something that is not used and, therefore, is a waste of money and credibility.

So, let's start with taxonomy. Contract lifecycle management (CLM) is a *function*. It is not a system, although some people, including much of the legal press, refer to CLM as a system. This only confuses people. People even think that you can buy CLM. Actually, they're really trying to buy a CMS, which is a contract management system or CLM system. Taxonomy becomes important when you're shopping for these things.

[Discussing complex Contract Tech landscape. See also [Post 253](#) (Zach Abramowitz discussing contract tech sector)]

Technology is important, and it's particularly important in one area: data. The best way to gather data insights is through automation. And that is one thing I recommend considering, if an organization is in a place where data insights are expected. If being a data-driven organization is a direction the C-suite wants the law department to go, then it's probably time to invest in some type of CLM technologies.

Before any discussion of technology is fruitful, legal departments must first optimize their people and processes. In prior chapters we reviewed how every law department has to consider who are the right resources and which skills are needed for contracting work. Similarly, the workflows must be simplified before any tech is contemplated.

[Discussing how technological needs vary at each stage of the contract lifecycle, from intake to storage.]

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Options

If I were to break down the different types of contract-related systems out there that I'm familiar with, and I'm familiar with a lot of them, there are those that offer a start-to-end solution: everything from the request and the intake all the way through to post-signature obligation tracking. My only caveat with those is they can't be good at every phase of this lifecycle. They do not invest in the technology equally on every phase. Usually, they are better at some aspects than others, and the primary job is to make sure that what they're best at includes the features most needed, because those are the

top problems to solve. Always ask this: what problem am I trying to solve by looking at contract management systems?

[Discussing variants of large enterprise solutions to “lighter systems” more suitable for smaller, more agile departments; referencing figure 8.1, Contract Tech Landscape]

Other Solutions to Note

Let’s look at two other areas where contract management or contract-related systems are getting attention and certainly a lot of investment from venture capital funds lately.

One of them is contract review automation, and, full disclosure, I’m also an advisor to [LawGeex](#). They were one of the first contract-review automation providers, and they use AI, as do the others that have now popped up in the area.

These use AI to bring the playbook to life, the negotiation guide to life. It’s interesting in that it does enable the speed of negotiation to increase, because think of it as a good first pass done by a robot, which means there is accuracy and efficiency better than humans doing the work alone. That’s a growing area. The tech is only going to improve and become more effective with time and learning. There is some interesting opportunity in that space.

The other solution that is now almost commonplace is contract term extraction or contract analytics. That is, using AI to identify particular provisions in a contact, regardless of what they’re called. It’s a smart system. It’s not simply a search, but it’s really fantastic for large merger-and-acquisition-type projects and for litigation matters where companies have to look through high volumes of contracts and extract certain provisions.

[Discussing role of technology in compliance, clause library management, template creation, and having the ability to “lookback” at work done; reviewing the massive inflow in VC funding into the contract tech area; outlining the tech selection process, including RFPs]

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The Takeaway

- Technology is not a magic bullet.
 - Contracting problems must be dissected to get very crisp on the top pain points and to prioritize the order in which they will be tackled.
 - Follow methodical project management tactics to record the selection process with transparency.
 - Do the homework to prepare and don’t forget change management is the secret sauce for successful implementation in the long term.
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Chapter 9, Metrics and Data

In 2019, I identified the seven best contract metrics to track and why legal departments need to focus clearly on contract data. [See Bassli, “The 7 best contract metrics to track—and why you need to start,” in *The Modern Contract Handbook: Future-proof Your Contract Management*.] Virtually every legal department has the ambition to be data-driven, but how to begin? And what data should be tracked?

Obviously, technology, even very basic technology, is needed. Contract data can raise a chicken-egg situation: do you need technology in place to

get the data, or do you need a critical mass of data to justify acquiring the technology?

Actually, you don't necessarily need advanced technology to start tracking; in reality, we still live in a world of mostly manual processes. That's good news: it means that when it comes to contract data, you can get started any way that fits.

Key CLM Data Points

1. The basics: how many contracts and what kind? ...
2. Turnaround time (response time & time to first and final draft) ...
3. Cost per transaction ...
4. Simplicity and readability ... [many plug-ins provide these metrics]
5. Dollar value ...
6. Obligations ...
7. Inside the contracts: deviations

Flagging deviations from standard contract terms is always valuable. Getting insight and metrics from inside the document is labor-intensive, but that's where technology can play a key role, and there are many systems making progress with their document review capabilities. ...

Data Collection is Still Not the Norm

Tracking and acting on these metrics can make a massive difference, not only to a legal team's performance but to the business itself. However, the inconvenient truth is most legal teams are a long way from building a sophisticated understanding of their data.

[Classifying legal departments by their approach to data; discussing how to use data to set priorities for contract lifecycle management tasks such as template localization; noting that some legal departments falsely conclude that collection of data and reporting is only necessary if there is a problem, which is an attitude that will eventually create friction with the business.]

Tracking certain basic data points is simply good operational hygiene.

Chapter 10, Outsourcing

"Do what you do best and outsource the rest!" [See Peter Drucker, "**Sell the Mailroom**," Wall St J., July 25, 1989.] Lawyers are great at handling contracts, but does that mean that they should? No. Some contracts should not be handled by in-house lawyers. So, let's rephrase this popular adage to "Do what is worth your time, and outsource the rest!"

Outsourcing of legal functions is a concept that's in transition; many recognize that there is a definite value proposition to using alternative legal services to scale and gain efficiencies. But old ways die hard.

As another saying goes, "It's complicated." Attorneys who provide differing legal services have (slowly) come to realize that they belong to a broader ecosystem encompassing legal service providers, regulatory influencers, customers with greater buying power, and other players who are forcing changes in the legal industry. Also, the legal profession is recognizing that it is actually an industry and not just a profession. This evolution into an industry implies there are varieties of commercial constituents who provide various services.

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The ALSP, the LPO, the LSP—however it is called—are critical to the future of legal practice. Some take issue with the use of the word "alternative." As the legal industry continues to evolve, these service providers are no longer alternatives; they are key players. LSPs are core service providers, just as law firms are, for many corporate legal departments. So, let's drop the term "alternative."

In-house lawyers love their jobs because they are close to the business and involved in how it works. They know how businesses operate and how they outsource non-critical work. So, why don't they learn from their business colleagues about how to operate the legal practice? It is, after all, a business. In-house lawyers are learning, and that is forcing a change in how legal services are delivered in-house. And over time, that change will flow to the law firms, too.

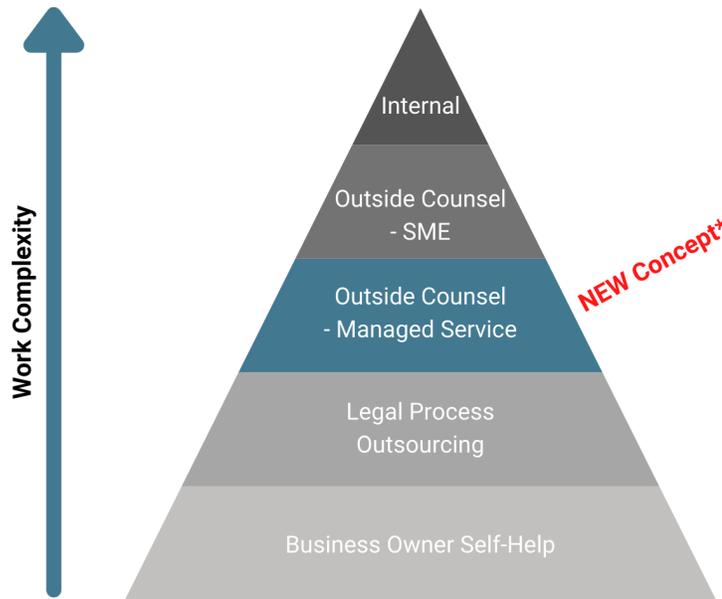
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Stratifying the Work

Before considering what work to outsource and to whom, legal departments should regularly assess if any legal involvement is necessary at all. Sometimes, Legal becomes a sort of a crutch for the business and finds itself overloaded.

Figure 10.1, [below] is my view on how work might be allocated and resourced between in-house employees and external resources, based on the complexity of the transaction. I created this graphic almost a decade ago, when I first began to consider outsourcing legal work in a different way.

Figure 10.1: Stratification of Work



[See Chapter 6, People, for a thorough discussion on the topic of Law Firm Managed Services.]

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Why Outsource?

Scalability [to deal with up and down in demands, which is difficult to staff internally] ...

Efficiencies [LSPs are built to optimize efficiency, including expert use of technology] ...

Potential Saving [particularly when switching from law firms to LSPs].

[Providing detailed guidance on what to outsource, outcome you are trying to achieve, selecting the right partner, and the planning and execution of the engagement, including governance frameworks]

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In a good relationship, the outsource team becomes an extension of the client team; they start to see more about the business and can inform the in-house team things about the business that maybe the in-house team wasn't capturing by themselves.

There is now a real opportunity to expand the relationship, which is a great carrot for the outsource provider, and a huge value for the in-house team that is constantly going to handle more and more work. This is the way to approach outsourcing to an LSP.

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Conclusion

I hope this book provided some methodical and pragmatic approaches to the problem that almost every company has. Even if taken in bite sizes, the topics and recommendations in the book provide guidance that is sure to be impactful, even if done sporadically.

Any opportunity to ask the difficult questions about contracting philosophy must be seized and acted upon. Don't wait for the C-suite to get so fed up that drastic measures are taken. Control the contracting destiny and define which transactional work the law department does. The business should not dictate attorney workloads. I implore every law department leader struggling with contracts to either make the time to perform some of these mental exercises or get help from someone to facilitate these critical internal decisions.

Happy contracting...



Kindle and paperback copies of CLM Simplified: Efficient Contracting for Law Departments are available on [Amazon](https://www.amazon.com).

About Lucy Bassli



Lucy Endel Bassli is the author of *The Simple Guide to Legal Innovation: Basics Every Lawyer Should Know* and is a sought-after legal industry expert, engaging in thought-leadership projects to drive change and evolution in the delivery of legal services. She is the founder of *InnoLaw Group, PLLC*, a modern legal solutions provider that offers legal advice and consults on operationalizing the practice of law. Her team works with law departments on modernizing their legal service delivery and resourcing models; and they train lawyers in innovative practices. Lucy specializes in all things contracting: resource allocation, automation, process optimization and smart risk-taking. Through licensed US lawyers on the team, clients receive substantive advice on templates, playbooks and empowerment guides.

Lucy is a strategy advisor for *LawGeex*, a cutting-edge AI legal tech start-up automating contract review services and regularly advises other contract management technology companies.

In her thirteen years at Microsoft, where she ran an enterprise contracting operation, Lucy focused on complex and global outsourcing contracts and gained firsthand experience in legal outsourcing to assist her with high-volume contract transactions. She launched an innovative “managed services” engagement with law firms and actively worked on continuously improving the value received. In her time at Snowflake Inc., Lucy developed the legal operations function, launched eBilling and standardized the department rhythm of the business.

Prior to joining Microsoft, Lucy practiced law at Davis Wright Tremaine, LLP in Seattle, Washington, focusing on commercial transactions and commercial bankruptcy. Lucy received her JD and BA from the University of Houston in Houston, Texas, where she grew up, but she has been living in the Seattle area since completing law school.

Lucy is a licensed member of the Washington state bar association, and was named to the National Law Journal list of Outstanding Women Lawyers, 2015. She is a frequent speaker on topics of legal services innovation, legal technology and legal process outsourcing.

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