Unpacking Organizational Roles in the Contract Design Process – The Roles of “Legal Professionals”

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“Some” Nomenclature

⇒ Lawyer, (aka) Attorney
⇒ Counsel
  ✓ House counsel
  ✓ Retained counsel
⇒ Barrister
⇒ Solicitor
⇒ Paralegal
⇒ Avocat
Some Factoids

- A 2012 “survey” found that 46 of 498 CEOs of Fortune 500 firms (two CEOs served on 2 firms) had law degrees.
- My five roommates in the class of 1966
Contracting Processes

- Psychological
- Arms-length
- Recurrent
- Relational
Key Contracting Elements

Nature of Assets Being Exchanged
- Physical features-based
- Exchange party-based
- Site-based
- Person-based

Frequency of Exchanges
- Occasional
- Frequent
Key Contracting Elements

- **Uncertainty Surrounding Exchanges**
  - State contingent
  - Behavioral

- **Relational Bonds Governing Exchanges**
  - Distrust
  - Forbearance
  - Trust
Key Contracting Elements

- Legal Requirements (common law)
  - Competent parties
  - Consideration
  - Mutual assent
  - Legality

- Functional Considerations
  - Nature of goods/services being produced
  - Design of goods/service being produce
  - Efficacy of “competitive” markets

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Key Contracting Elements

Nature of the “social” contexts within which business relationships are established and maintained

- Traditions
- Values
- Habits
- Mores
Key Contracting Elements

⇒ Institutional guarantors exist at supra-national, national and sub-national levels:
  ⇒ “Courts”
  ⇒ Arbitrators
  ⇒ Mediators
  ⇒ Legislative bodies
  ⇒ Regulatory bodies
Assumptions

- **Rationality**
  - Maximizing
  - Organic
  - Bounded

- **Interest orientation**
  - Opportunism
  - Simple
  - Obedience
### Psychological and Economic Assumptions

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<th>Rationality</th>
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<th>Frequency</th>
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<th>Risk Propensity</th>
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<th>Implied Type of Contract</th>
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**Key**
- Rationality: Maximizing (+); Bounded rationality (=); Organic Rationality (-); Absent (τ)
- Interest Orientation: Opportunism (+); Simple (=); Obedience (-); Trust (Ω)
- Asset Specificity: physical (p); site (s); human (h); dedicated (d); nonspecific (k=0), idiosyncratic (k>0)
- Frequency: recurrent (+); occasional (=); rare (-)
- Uncertainty: behavioral (β); state contingent (Θ)
- Risk Propensity: neutral (N); adverse (Α)
- Ordering: public or private (_); exclusively private (π), unnecessary (ü)
- Safeguards: absent (φ=0); present (φ>0); incentives (i); specialized governance (Φ)[1]; trading regularities (ü)

[1] Specialized governance includes non-standard modes of economic organization such as customer/ territorial restrictions, tie-ins, franchising, vertical integration.
Managerial Implications

- In the domains of contracts and contracting, clearly articulating assumptions is essential to successful business relationships.
- It is functional to operate on the basis of distrust, just as it is functional to trust.
- A clearly articulated vision and mission as well as clearly defined goals makes it easier to engage in psychological contracting.
Managerial Implications

➡️ Contracting is not the exclusive domains of "lawyers"; in many instances it is a strategic managerial activity

➡️ Contracts governing strategic relationships must be legal; they do not always have to be written

➡️ Social contexts matter enormously
  - Social contexts will define approaches to contracts, contracting processes and public and private ordering
  - Social contexts will define initial approaches to relational bonds.

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