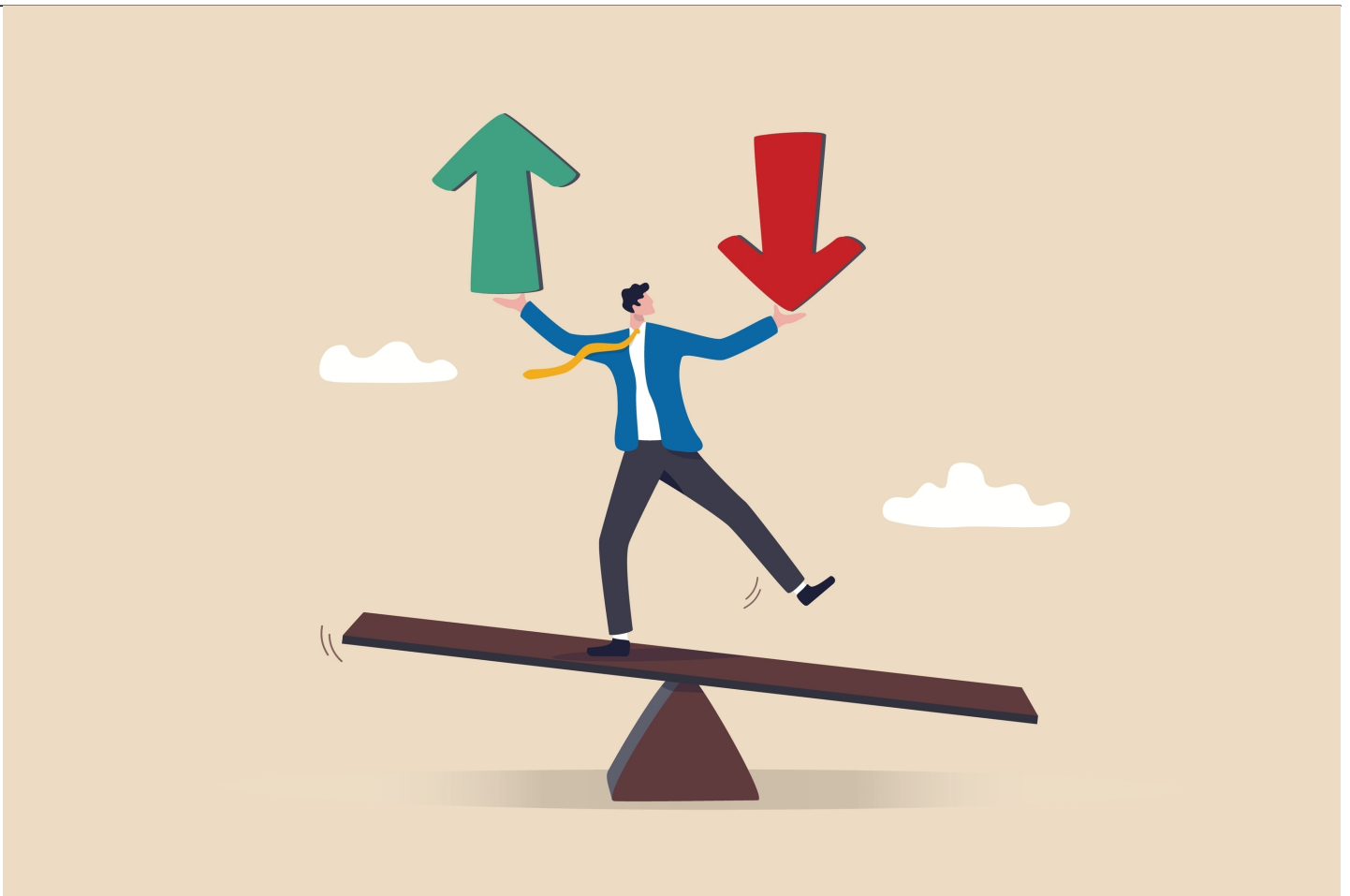




Legal Ops Corner: Get Comfortable with Risk

Law Department Management



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Legal ops aims to maximize the business value a law department adds. And, unless a law department is already adding the most value possible, change is necessary.

When legal ops leaders propose changes, questions inevitably ensue — especially about the impact on legal risks. Change is never risk-free, and a proposal's risks often generate discomfort among stakeholders that leads to pushback against even the best ideas for improvement. Achieving change requires that legal ops professionals understand how to think about risk in ways that alleviate the concerns of their key constituencies.

Risk is always there

Risk is unavoidable. Death and taxes may be certainties, but in the legal field, no one is perfect, and every process has an error rate. Furthermore, trying to reduce risk always comes at a price — and nearly every risk curve (i.e., the level of risk that exists based on the amount of effort taken to reduce the risk) has a point of diminishing marginal returns. Moreover, risk never exists in a vacuum because every risk is relative to the risks of alternative courses of action. The question isn't, "How risky is this?" but rather, "What are the risks of this compared to the alternative(s)?"



Attempting to minimize risks more than likely always comes with a price. Instead, embrace them and try to discover alternative solutions. *mentalmind / Shutterstock.com*

Getting things right requires accounting for all the benefits of a proposed change, not just the obvious and immediate ones, and identifying the sacrifices and detriments of the status quo.

Opportunity benefits and opportunity costs

Often, assessing the risks of competing options centers on comparing each one's expected value — the difference between the odds a course of action will succeed multiplied by the size of the potential gain from its success versus the odds of a negative outcome multiplied by the loss a negative result imposes.

The calculation is easier to describe than perform. One frequent error is miscalculating *opportunity benefits* and *opportunity costs*. Getting things right requires accounting for all the benefits of a proposed change, not just the obvious and immediate ones, and identifying the sacrifices and detriments of the status quo.

What stands to be gained...

Consider the decision of whether to routinize the negotiation and legal review of standard, run-the-business contracts. Routinization's expected value isn't simply its obvious benefits (e.g., cost savings from outsourcing the work) minus its out-of-pocket costs (e.g., the added expense of hiring an outside managed contracts service provider). It also produces opportunity benefits. These include,

for example, faster cycle times for drafting, reviewing, and finalizing contracts, more time for staff to perform higher value work, increased “customer satisfaction” of the law department’s internal clients in the rest of the business, and more.

If the new process includes a mechanism for continuous improvement, then even small, seemingly trivial gains become exponentially larger over time.

The opportunity benefits don’t end there. Aggregated gains may exist, too, whereby the sum of many small gains adds up to a large number — larger still if synergistic gains occur. If the new process includes a mechanism for continuous improvement, then even small, seemingly trivial initial gains become exponentially larger over time. Plus, the project may enable “bootstrapping” other initiatives that bring their own set of benefits.

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...and what is currently being lost

Correctly calculating the status quo’s expected value requires fully accounting for its opportunity costs. The more time a manual contracts review process takes, the less time there is for other work — including activity that adds more value than scrutinizing run-of-the-mill contracts.



Consider all potential benefits of routinizing the negotiation and legal review of contracts that can help improve your status quo while not miscalculating the opportunity costs at hand. Dilen / Shutterstock.com

There is also the “overhead” inflicted by the status quo. Often, these opportunity costs escape notice because they are so long-standing that people view them as normal and unremarkable — “just the way things are.” With a manual contracts review process, they likely include burnout and turnover of overworked staff, inability to further the professional development of department lawyers with no time for non-contracts-review work, lost business opportunities due to long turn-around times for reviewing contracts, the impact of frustrated internal clients, and more.

The effect of legal culture

Some resistance is due to the culture of the legal field. Legal culture has a strong bias against taking risks. From the first day of law school, students learn that certain outcomes — being found liable, losing a motion, getting an adverse ruling — are categorically bad; winning (no matter the context) and “minimizing exposure” are good. Diligence and thoroughness are unqualified virtues, and an “eyes on everything” mentality trumps the notion that, sometimes, “good enough is good enough” or that there are times when it is best to cut one’s losses and move on.

Lawyers are also susceptible to loss avoidance — the inherent bias of people to sacrifice the possibility of a gain when doing so lowers their risk of a loss.

Human psychology reinforces legal culture's risk aversion. The availability heuristic — how people, when evaluating risk, instinctively rely on examples that are rare but easy to recall — may lead a lawyer to wildly overestimate risk based on the notoriety of the rarest of outcomes (e.g., the \$1.5 billion drafting error, “million-dollar-commas,” etc.). Lawyers are also susceptible to loss avoidance — the inherent bias of people to sacrifice the possibility of a gain when doing so lowers their risk of a loss. Notable, loss avoidance occurs even in situations where the expected value of doing X is positive (i.e., the size of the gain multiplied by the odds of winning are greater than the size of the loss, times the odds of losing).

Don't polish cannonballs

Maximizing law department value-add is fundamentally a process and a mindset, including — especially — about risk. It requires internalizing a commitment to constantly assess how much risk the enterprise can safely assume for a given type of work: how far can the department increase risk and still have the expected gain exceed the expected loss.



When assessing risks, legal ops professionals must address fears ahead of time to ensure success within the business. Diki Prayogo / *Shutterstock.com*

When it comes to a proposal to routinize the contracts process, reflexively concentrating on minimizing the legal risk generated by a new approach misses the point. The correct course begins with figuring out the “must-haves” for a business and its counterparties in run-the-business contracts. “Up-armoring” those contracts beyond those essential needs is a dubious proposition — like polishing a cannonball to a shine when all you need it to do is fly out of a cannon and sail through the air.

Even when the benefits of a legal ops initiative are glaringly obvious, that will not necessarily carry

the day. Change requires persuasion, and law department leaders and legal ops professionals must anticipate fears driven by attitudes toward and misunderstandings about risk and address those fears head-on. Doing so enables sound decisions about how best to deploy resources to deliver maximum value, which is what legal ops — and business — is all about.

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