

The background of the entire page is a dark, abstract composition. It features a faint, high-contrast image of a person's face, possibly a woman, looking forward. Overlaid on this are various digital and geometric patterns, including glowing blue and white lines, dots, and circular orbits, suggesting a theme of technology and data. The overall color palette is dark, with shades of blue, black, and white.

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The Future of Contracts

PERSPECTIVES FROM
LEADERS IN LAW AND
TECHNOLOGY ON THE NEXT
DECADE OF CONTRACTING

WHITE
PAPER



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IN PURSUIT OF PERSPECTIVE ON THE FUTURE OF CONTRACTS

Ari Kaplan

Principal, Ari Kaplan Advisors
Editor, The Future of Contracts



As an industry analyst, my mission is to learn and to share. My work is designed to help the legal and business community make decisions, craft strategies, and adapt to a dynamically shifting marketplace. For that reason, I was grateful for the opportunity to interview a cross section of leaders to understand how the legal profession is changing, the influence of technology on business transactions, and the cultural shift necessary to promote progress.

The resulting themes focused on aligning the roles of technology and talent, enabling professionals to optimize their effort, and harnessing data to more effectively manage risk. From artificial intelligence to smart contracting, there has been widespread attention on streamlining transactions, both complex and straightforward. Although the future of contracts is uncertain, the expert perspectives reflected in this report highlight a roadmap that enhances clarity, offers direction, and emphasizes a multidisciplinary approach.

Those who proactively plan for a disruption to their agreement protocols will more effectively position themselves for greater commercial success. This effort could both provide a competitive advantage and streamline the change management process.

Regardless of its trajectory, the consensus of the participants in this discussion was that future of contracts will yield material improvements in communication, a broad expansion of interdisciplinary collaboration, and a holistic optimization of technological resources. These developments will positively impact the legal and procurement professions and empower businesses around the world.

CONTRACTING IN THE FUTURE WILL BE DRIVEN FROM A STANDARDIZED PROGRAM

“Companies will look to the creation, deployment, adoption and measurement of a CLM program to reach the next level of success.

In the past fifteen years, we've seen the popularity of process-driven improvement increase to support the expansion and contraction of companies and the thought that a better process can cure all ills. While that may be true, better processes aren't better if they stand alone. As companies focus more on process improvement, it becomes necessary to collect and harmonize those processes into cohesive programs.

Program management, defined as a group of related projects managed in a coordinated manner to obtain benefits not available from managing them individually, is the future for companies that want to take better contract processes and group them to achieve truly best practices.

For a Contract Lifecycle Management (“CLM”) program to work, it must honestly and wholly envelop all the processes that companies have for their contracts. It doesn't mean that they must all have the

same processes, but the program must organize them into manageable pieces.

CLM Programs will allow companies to organize:

- Request processes and employee request engagement
- Contract drafting and clause selection protocol
- Negotiation positions and risk management
- Approval policies and compliance
- Signature policies and compliance
- Obligation management
- Information governance and records retention.

To truly be a high performing company, it will not be sufficient to maintain a CLM system and a singular CLM process. Rather, companies will look to the creation, deployment, adoption and measurement of a CLM program to reach the next level of success.



Lauryn K. Haake,
Managing Director, HBR Consulting

CONTRACT ANALYTICS CAN ENABLE COMPANIES TO TAKE SMART RISKS

“Data is often an untapped resource in many legal organizations.

The contracting process is about taking smart risks and inspiring trust. Those factors will only grow more important as legal organizations embrace digital transformation. Artificial intelligence (AI) solutions that get smarter over time, powered by massive amounts of data, can help lawyers earn that credibility and use information more thoughtfully and quickly.

Lawyers using AI tools for contract analytics can embrace the “growth mindset” and better leverage their past experiences from prior deals and transactions to help their clients take smart risks in subsequent matters. Doing so will also help break down silos as legal and business teams can internally share data and lessons learned.

A contract analytics tool that uses AI could review a finalized set of contracts to identify trends, such as how often a company agreed to a non-standard provision, the total negotiating time of particular deals and the types of contract issues that arose, among other elements.

The learnings from such tools can help drive future enhancements to standard contract terms, support smarter decision-making and increase the velocity of closing key contracts.

It has been said that “data is the new oil” and data is often an untapped resource in many legal organizations. Key industries like healthcare, retail, and financial services are increasingly using data and AI tools to enhance their businesses and better serve their customers.

Law firms and legal departments should leverage data and AI solutions to learn more, to provide high impact client service and to stop doing repetitive tasks so they can practice law at a higher level and use their judgment to offer more value-added trusted legal advisor services. Legal organizations that are open to this kind of digital transformation will be better positioned to differentiate their legal services and provide higher valued support to their business clients.



Dennis Garcia,
Assistant General Counsel, Microsoft

ELIMINATING EVERYTHING BUT THE LAWYERS

“The use of Artificial Intelligence to help lawyers find missing clauses or outlier provisions in contracts will transform the way they work.”

Software now facilitates negotiation and collaboration. Future contracts will advance that movement further and could represent the demise of email to streamline all aspects of the contracting process. In addition, secure electronic communication will produce more thoughtful conversations.

These communication portals are already built into many practice management tools for users to share, edit, sign and comment on documents because using unencrypted email alone is like sending postcards through the mail. There will likely be more tools to produce audit trails in anticipation of future litigation.

The use of Artificial Intelligence to help lawyers find missing clauses or outlier provisions in contracts will transform the way they work, though we will always need lawyers to confirm the implementation of this data. Changing culture is the biggest roadblock in a typically slow conversion process.

That said, while solo practitioners and small firm lawyers generally adapt to new technology more quickly than their peers in bigger practices, large and mid-sized firms are leveraging contract analytics more aggressively given their client base. Market forces will fuel more rapid change in the coming years. As breaches and privacy concerns increase, there could even be regulatory shifts that drive mass adoption.



Nicole Black,
Legal Technology Evangelist, MyCase

AI WILL REDUCE RISK

“*Contracts will undergo a completely AI-driven transformation.*”

Many companies are seeing broad success with Artificial Intelligence, automation and advanced analytics, so CEOs are looking to replicate that progress across all business units, including legal. In turn, law departments are asking their outside firms to demonstrate similar advancements. There is, however, a misconception that the goal of this next-generation technology is to mimic human processes. Rather, it is to look across an outside legal team's work product over the course of its representation and compare it to the current facts to draw meaningful conclusions.

Contract work is often idiosyncratic and related to high-value initiatives. In the future, contracts will undergo a completely AI-driven transformation to minimize any exposure to risk and

eliminate the prospect of litigation. The components of each agreement will be drawn from an increasingly broad pool of data to create recommendations that evolve with the growing universe of information. Recommendations will also leverage human expertise to dictate strategies, particularly in multi-party complex transactions.

Blockchain will serve as a trigger to highlight whether the parties have met certain contractual conditions to automatically facilitate a subsequent stage in the process. It will eliminate the need for a clearinghouse or a financial intermediary. Smart contracts will be much easier to draft with AI technology evaluating the unstructured substance of a pact to produce a confidence score with terms published to a blockchain that validates the conditions.



Brian Kuhn,
Co-founder, IBM Watson Legal

THE FUTURE OF CONTRACTING IS DESIGNING CONTRACTS FOR USERS

“*There is no point in creating a contract that the users of that contract cannot understand.*”

There is no doubt that the world today is all about “user experience”, and yet the field of contracting remains woefully behind the curve.

Together with a group of leading in-house lawyers, the IACCM has developed a set of “Contracting Principles” to support and streamline the drafting and negotiation of contracts. Rather than spending time locked in adversarial negotiations, the Contracting Principles offer negotiating parties the ability to take a balanced position from the outset on those terms that frequently absorb disproportionate time and resources, which ultimately shortens the time to signature.

Relational Contracting is rapidly gaining adoption across the globe, particularly in the context of long-term and complex projects. This approach emphasizes the importance of communication, problem solving, and collaboration. Adopting relational techniques pre- and post-award increases the likelihood that a project is completed under budget and on schedule. It also recognizes that contracts are the critical tools for managing performance across supply networks or ecosystems.

New initiatives in design thinking and visualization, including comic contracts, law

tunes, and the use of graphics more generally, have made contracting more accessible.

These approaches get to the heart of designing contracts for the user community and are based on recognition that contracts contain important information which parties to them must effectively communicate.

Far from being immune to automation, contracts and the contracting process are also rapidly being digitized. Technology is an undeniable freight train hurtling through the contracting landscape. As a result, simplified and standardized language, along with more structure must follow. Artificial intelligence and natural language processing are having the most immediate impact, with blockchain and smart contracting beginning to produce dramatic results. Organizations are increasingly focused on “no-touch contracting”, which eliminates humans from the activity completely to drive efficiencies and enhance the user experience.

Contracts remain the cornerstone of business. By continuing to design and write for lawyers and judges, we contribute to their obsolescence and create risk where it has no place. There is no point in creating a contract that the users of that contract cannot understand. To remain competitive, organizations must focus on the user experience in their contracting practices.



Sally Hughes,
CEO, IACCM

CONTRACT MANAGEMENT TECHNOLOGY WILL STREAMLINE THE PRACTICE OF LAW

“AI will not replace lawyers; but lawyers who leverage AI will replace the lawyers who don’t.”

Artificial Intelligence is turning everything on its head. While it gained prominence in electronic discovery, many companies are now using it to analyze their contract portfolios and automate rote administrative tasks. But lawyers need not be worried about being replaced... yet. The Second Circuit found that “If an activity can be completely automated... it cannot be considered the practice of law,” which is a distinction that is drawing a line in the sand between lawyers and legal services delivery professionals.

In the next few years, AI will not replace lawyers; but lawyers who leverage AI will replace the lawyers who don’t. With the emergence of an entire community of alternative legal services providers, the very meaning of legal practice will need to be redefined.

As such, the future will feature a bifurcation of the law into a small group of legal specialists and a larger constituency of hybrid legal and business entities, which have traditionally been responsible for contracts since they are both a commercial document that manages all of the terms of a deal and a legal record that outlines the rights, responsibilities, and contingencies of a commercial transaction.

Although the business unit leaders always view a deal through rose-colored glasses, while their lawyers see it through the lens of hindsight, contracts will help align their views to simultaneously promote the promise of a transaction while planning for its potential pitfalls. And, AI will ensure that equilibrium.



Jason Smith,
AVP, Service Delivery, Risk and Financial Advisory, Deloitte

LEGAL WILL BE OUT OF THE CONTRACTS BUSINESS

“Take what lawyers want to happen, computerize it, and make it self-service.

The legal department should be out of the contracts business since 80% of the time – given the right parameters, expert systems and analytics – individual business units can write their own agreements according to predetermined rules and authorizations.

Take what lawyers want to happen, computerize it, and make it self-service. For new documents, engage Artificial Intelligence to conduct an initial evaluation and highlight any areas of concern.

The future of contracts should ultimately take most of this work away from the legal department, though lawyers will need to establish a comprehensive structure within which business leaders must live when drafting any agreement. It will eventually also feature the simultaneous execution of simple contracts, but that is years away from becoming commonplace in most instances.

In lieu of drafting and negotiating the same provisions over and over again, fewer lawyers will spend more time evaluating risk and leveraging data to better predict where a company will be sued or face a controversy.



Brad Blickstein,
Founder, Blickstein Group

EMPOWERMENT OF PROCUREMENT AND SOURCING PROFESSIONALS IS ON THE HORIZON

“Standardization will permit sourcing professionals to negotiate directly based on a series of approved terms.

The future of contracts will empower procurement and sourcing professionals to create an array of agreements using a law department-driven playbook featuring a library of key terms and clauses. They will leverage natural language technology to generate contract analytics that gauge the quality of those contracts and use dashboards to track renewals and expirations.

Most organizations currently track aging accounts payable or accounts receivable because they serve as the foundation of their respective businesses, but few treat aging contract terms in the same manner. Better information will drive richer conversations with corporate business owners and management to develop proactive strategies as sourcing professionals take on more of a leading role in managing the end-to-end contract process.

Contract analytics will become as important as spend analytics with software applying pre-approved legal terms and conditions into master agreements and subsequent statements of work. Supplier relationships

will eventually be determined at the contract level, rather than at the spend level. For the sake of efficiency, attorneys will focus on supporting sales more frequently than purchasing.

Standardization will permit sourcing professionals to negotiate directly based on a series of approved terms, with limited authority to adjust them, resulting in the use of fewer legal resources. Companies will also use more natural language and machine learning solutions to manage the Big Data captured by future contracts to accommodate a fourth industrial revolution where they extract business insights from their agreements.

As companies continue to grow revenue, they will allocate more valuable legal resources to the commercial side and fewer resources to non-revenue generating functions, such as procurement. Consequently, many tasks will need to scale through technology to drive more automation and productivity.



Linda Chuan,
VP and Head of Global Technology Sourcing, Thomson Reuters

OBJECTIVES WILL DICTATE THE FUTURE OF CONTRACTING

“We need to move from document-centric to data-centric contracts.”

I come from the premise that contracting is broken. Generally, business-to-business contracts take too long to finalize, the discussions focus on the wrong issues, and the output is sub-optimal in supporting commercial relationships.

There are numerous reasons for this, but the outcome is that business users are too often left sitting on the sidelines watching a rote dance that has become mechanical and leaks value. Unreasonable positions are proposed in standard terms and negotiations follow a predictable back-and-forth influenced more by the size of the respective parties than what is best to create value for them. As the annual IACCM survey shows every year, the negotiations are on liability provisions rather than what actually goes wrong: not being clear about who is doing what.

And yet we manage to do \$20 trillion of business between companies each year.

I remain a great optimist about the future of contracting. But I am skeptical of many of the “silver bullet” fixes that are suggested with the latest fashionable technology (such as smart contracts). The difficulties with contracting are numerous and a “wicked problem.” Progress will require improvements on many fronts, including a “silver shotgun shell” rather than a silver bullet if you will.

The future of contracting needs to be objective-led rather than driven by a standard position. Terms need to be built for users, rather than lawyers. They also must be shorter, clearer, and more reasonable.

We need to inform negotiations with better data about what is market and better tools to price and weigh risks. And, we need to move from document-centric to data-centric contracts, with the ability to extract key details without human intervention before we can even start to really make progress with smart contracts.

All of this is possible, but the industry has a few bad habits to unlearn along the way.



Alex Hamilton,
Co-Founder & CEO, Radiant Law

KNOWLEDGE MANAGEMENT WILL REDUCE CONTRACTING

“*Collaboration technology will facilitate communication, knowledge-sharing and negotiation.*”

There is a huge opportunity to refine the contracting process and make it more collaborative. Centralized repositories, unified databases, and a culture of knowledge sharing, facilitated by modern, easy-to-use cloud and app technology, will define the future of multi-party agreements.

Since many organizations cannot even find all of their existing contracts, much less capture exchanges along the negotiation path, there is runway for developing systems that support searchable, machine-readable records and fluid information exchange. This will permit contributors throughout a law department to evaluate, negotiate, modify, and execute contracts, particularly as electronic signatures become more common.

Artificial Intelligence will enhance the ability to search and access contract clauses, as well as automate more of the contracting process. It will reduce or eliminate the time spent on substantive updates and terminology selection. Secure and sophisticated, yet easy-to-use, collaboration technology will facilitate communication, knowledge-sharing, and negotiation of a wide variety of matters to avoid unnecessary churn, waste, and inefficiency in and across organizations.

That reduction will refocus the time professionals dedicate to higher value tasks and place a greater emphasis on knowledge management. It will help with bargaining and lower intellectual property, commercial, and contractual risk by developing a more thorough process. Blockchain technology will aid in the contracting process but may only be a sufficient supplement for a few decades before advances in AI and quantum computing offer reliability and security that exceeds what is possible today.



Monica Zent,
Founder, Foxwordy

ALGORITHMS AND HUMANS WILL BOTH PLAY IMPORTANT ROLES IN CONTRACTS

“*I predict a hollowing out of the middle, where the legal industry looks similar to a lopsided hourglass.*”

The future of legal work will be bifurcated into matters that are extremely high-end and bespoke, and others that are routine, commoditized, and repeatable. Some lawyers will be called upon to handle the most volatile, uncertain, complex, and ambiguous (VUCA) matters, while machines will automate much of the remaining legal work. As a result, I predict a hollowing out of the middle, where the legal industry looks similar to a lopsided hourglass.

Fewer firms will capture or maintain a position at either end of the market, with some focusing on the sophisticated and highly specialized viewpoint and others primarily supporting technological initiatives. The future of contracting will be determined by the trajectory of the legal industry. Artificial Intelligence and machine learning are already infusing efficiency, quality, reliability and responsiveness into contracts.

Future contracts powered by technology will create a better data trail about what went wrong, when, and why. In fact, the more mistakes an algorithm makes, identifies and corrects, the less likely it will be to repeat them. Human beings can repeatedly make the same

mistakes, while algorithms reduce the likelihood of mistakes. Smart, talented, and ambitious associates who are asked to perform mind-numbing repetitive work are almost always more likely to make errors, which will contribute to the disintermediation of law firms in the contracting process.

The more uniform an agreement, the more likely a machine will outperform a human being. Humans are, however, still better at tasks that require judgment, negotiation, or true interpretation. As contracting becomes more automated, lawyers will be free to engage in more creative, thoughtful, and collaborative work. Machines will free the mindshare taken up by the mundane issues and refocus them on the VUCA issues.

One significant challenge, however, is that junior lawyers have historically cut their teeth on contracting work and the profession has not determined how the next generation of will develop judgment and an appreciation for drafting if computers take responsibility for the early stages of the process. The art of tailoring contracts is an important learning experience that will be lost to future professionals.



Dr. Heidi K. Gardner,

Distinguished Fellow, Center of the Legal Profession, Harvard Law School

FUTURE CONTRACTS WILL REFLECT A MOVEMENT UP THE VALUE CHAIN

When we frame the question as the “future of contracting,” we are apt to fall into a trap. We focus on the just-over-the-horizon, the whizbang, the magic gizmo, and we ignore the low-hanging fruit in the form of technology we already have. In fact, there are way too many people who rationalize the dysfunction of their existing contracting process by their perpetual search for technology breakthroughs that will make contracting easy.

The future of contracting will involve deliberate movement up the value chain, much of which can already be achieved with existing technology. While every contract seems bespoke to a start-up, as companies mature, their agreements become more routine and should be treated accordingly, especially as contract volumes increase. Yet organizations initially respond to higher volume by throwing bodies at their problems. They hire more lawyers – externally, then internally.

Too many lawyers currently spend too much time copying and pasting clauses they do not understand into agreements that do not need them. They then feel compelled to engage in mindless tinkering

to leave their mark. The result is random mutation of contractual language that is referred to in the academic literature as our “black hole problem.”

But as expense escalation becomes unsustainable, organizations move towards templates, playbooks, and automation to begin building a self-service culture that embeds institutional knowledge into systems. Eventually, only a small percentage of outliers get escalated to the lawyers, who are now put to their highest and best use.

The future of contracts will not expunge legal expertise from the negotiating or drafting process; expertise will become more embedded. After all, much of what we think of as ‘Artificial Intelligence’ is the ability to apply at scale what legal professionals already do (and, in many instances, we don’t need actual AI to leverage that expertise).

Our whizbang future will be about process: combining intellectual rigor with tools that have been around for years. Adding AI, blockchain, etc., may enhance or accelerate this evolution. But invention is not a prerequisite to innovation, especially when there is so much opportunity for catch-up growth.



Casey Flaherty,
Founder, Procertas

PREPARE FOR A FUTURE OF SELF-EXECUTING CONTRACTS

“Companies will eventually adopt common standards and protocols to enable the Internet of Contracts.”

The future of contracts will feature computable agreements that can self-execute. Blockchain data will automatically trigger performance based on certain predetermined conditions. Big Data analytics will help identify and eliminate risks in contracts, and natural language processing techniques will help determine whether contracts comply with the GDPR or other consumer protection regulations.

The challenge that companies will need to overcome is harmonizing the array of proprietary approaches and the lack of interoperability. As a result, many companies will eventually adopt common standards and protocols to enable the

Internet of Contracts. The CodeX Computable Contracts Initiative and the Legal Specification Protocol project reflect an attempt to draft agreements in a format that machines can understand.

This effort to create a simple method for developing computable contracts is essential for accelerating progress. When true collaboration comes to fruition, the business community will select clauses that can operationalize their obligations, simply permitting those contracts to independently monitor activity and commence performance.



Dr. Roland Vogl,

Executive Director, Stanford Program in Law, Science & Technology
Co-Founder and Executive Director, CodeX

CONTRACTS WILL EVOLVE FROM DETAILS TO DATA

“Contract work will ultimately generate revenue because of its inherent ability to track and gauge performance.”

As I began my career with a start-up focused on digital signatures during the dot-com boom, I acutely recognize the value of verifiable information. For that reason, I expect contracts to evolve from sacred legal documents to pools of data from which technology will extract key details and relate them to an array of databases. In a future where a contract is a series of data points, lawyers will be able to balance innovation and risk more effectively. Contract work will ultimately generate revenue because of its inherent ability to track and gauge performance.

While blockchain may eventually replace the need for a signature, it will not address the composition of the data in an agreement. Smart contracts represent

the next generation of commerce because they will combine all of the data and verification elements that are currently disconnected to extract meaning from the mass of words that currently exist.

Lawyers will evolve from service providers who craft and re-craft language or unnecessarily review documents multiple times to a higher-value professional who evaluates meaning, leverages analytics to recognize uncaptured revenue, and highlights unidentified risk. This effort at reducing friction in the development, execution, and management of contracts will increase the significance of a lawyer's contribution and should ultimately lower the cost for the end-client.



Toby Brown,
Chief Practice Management Officer, Perkins Coie LLP



ABOUT APTTUS

Apttus is a Silicon Valley-based global provider of Apttus Omni, the Middle Office platform that allows enterprises to automate and optimize their most critical revenue and commercial relationship management processes. Apttus is powered by the most advanced technologies from Salesforce, Microsoft and IBM.

Analysts rank Apttus as the global gold standard for Quote-to-Cash (QTC) and Contract Lifecycle Management (CLM) solutions. Apttus' innovations include Max, the company's Applied Artificial Intelligence that enables enterprises to achieve superior business outcomes. Apttus partners with a world-class ecosystem. Apttus customers include hundreds of the world's mid-sized organizations and the who's who of the Global 2000.

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