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An Ounce of Prevention… – Proactive Legal Care for Corporate Contracting Success

Contractual disputes are time consuming, expensive and unpleasant. They can destroy client / supplier relationships painstakingly built up over a period of time and can impact the supply chain. They can add substantially to the cost of the contract, as well as nullifying some or all of its benefits or advantages. They can also impact on the achievement of value for money. It is in everyone’s interest to work at avoiding disputes in the first place...


Contracts have a tremendous impact on the outcomes of transactions and relationships. If they fail, a lot is at stake, including good-will and reputation. Expensive contractual disputes endanger relationships and consume time and resources which could be used for productive work. Businesses do not succeed by winning disputes or court cases, or by looking for parties to blame and claim damages from. Their reputation, their workplaces, and their ability to continue and prosper may have been destroyed long before they collect on any judgment.

In the private and the public sector alike, emphasis has been put lately on the importance of forward planning and dispute avoidance. The old truth, an ounce of prevention is better than a pound of cure, is true even when it comes to corporate contracting – or to practicing law. Unnecessary problems should be prevented at source, and many can be. As a possible solution, this article introduces Proactive legal care, together with clients’ self-care and cross-professional collaboration.

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1 This article is based on a paper presented at the Conference on Private Law and the Many Cultures of Europe hosted by the PriME Research Project and the Institute of International Economic Law at the University of Helsinki in August 2006. It represents work in progress by the Author as a member of the Nordic School of Proactive Law (NSPL), a network consisting of lawyers and other professionals from both business and the academia, devoted to the research and practice of Proactive Law. For further outcomes of the work of the NSPL, see Scandinavian Studies in Law, Volume 49, A Proactive Approach, Wahlgren & Magnusson Sjöberg 2006 and <http://www.proactivelaw.org>. For Proactive Law and Proactive Contracting in Finnish, see Pohjonen 2005 and Pohjonen 2002; an introduction of the latter in Swedish is provided by Kavaleff 2003. – The Author wishes to express her thanks to Thomas Barton, Nancy Kim, Cecilia Magnusson Sjöberg, and Anette Kavaleff for their valuable comments in respect of an earlier version of this article, and to Leila Hamhoum for her effective editing assistance.
In traditional *litigation law* (or *curative law*), a dispute has arisen out of past facts and the lawyer represents one of the parties to that dispute. In the practice of *proactive law*, the lawyer helps the client to identify legal opportunities in time to take advantage of them, and provides tools and techniques for the early detection and prevention of potential problems. If problems do arise, the proactive lawyer seeks to help the client to resolve them quickly, before they develop into disputes.

Proactive legal care is based on a strong belief that legal knowledge is at its best when applied before things go wrong. Still the focus is not just on preventing problems or »legal ill-health«. The goal is to promote »legal well-being«: embed legal knowledge and skills in clients’ culture, strategy and everyday actions to actively promote business success, ensure desired outcomes, and balance risk with reward.

1. **Introduction: An Ounce of Proactive Preventive Law**

When an organization decides to have a third party provide goods or services which it has been producing itself, it will be faced with many logistics and management issues with a host of legal implications. The same is true when a company involved in domestic dealings enters cross-border trade, whether on the buy-side or on the sell-side. When problems arise, hours are lost putting out fires. Personal and business relationships suffer, friends become enemies, and the damage caused to reputation can be permanent. But that does not have to happen.

Traditionally, the steps in providing legal care have resembled those of medical care: diagnosis, treatment, and referral – all steps that happen after a client or a patient has a problem. Care has been *reactive*. You get sick, you seek treatment. You encounter a dispute, you turn to a lawyer. We need to move away from that model. Both the legal profession and its clients benefit from a proactive approach focusing on how to secure success and help clients stay out of legal trouble.

The idea of proactivity in the practice of law – or legal foresight – is not new in itself. It has been known for years that the earlier a dispute or a potential dispute is addressed, the better the chances of a fair and prompt solution. Most contract lawyers and in-house counsel actually practice future-oriented law: they help clients to plan and structure transactions and manage risk. Even lawyers who have never heard the phrase *proactive law* may actually employ many of its principles on a daily basis.²

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² *Similarly* Edward A. Dauer, Professor and Dean Emeritus at the University of Denver, CO, USA, co-founder and former President of the National Center for Preventive Law, in Dauer 2006, p. 93, adding: »There are nonetheless advantages to identifying this part of law practice as a distinct field with its own name. It causes us to appreciate unifying principles in the prac-
In the context of practicing law, the idea of prevention was first introduced by Louis M. Brown, a Law Professor and legal practitioner recognized as the Father of Preventive Law. In an effort to help people minimize the risk of legal trouble and maximize legal benefits, he published *Preventive Law* in 1950, followed by numerous other books and articles on the topic. In *Preventive Law*, he states a simple but profound truth that has not lost any of its value in more than fifty years:

»It usually costs less to avoid getting into trouble than to pay for getting out of trouble«.4

Proactive legal care has its origins in preventive law. Both approaches have similarities with preventive medicine: a branch of medical science dealing with methods (such as vaccination) of preventing the occurrence of disease. Along the same line, it can be stated that proactive law aims at »vaccinating« organizations against the »disease« of legal trouble, disputes, and litigation. The goal is to build a protective system or a defence mechanism that makes the client, its management and personnel, strong and resistant; keeps them in good legal health and »immune« to the legal risks inherent in business. The focus is on promoting the client’s »well-being«: on helping clients reach their goals and succeed.

In traditional litigation law, it is essential for the lawyer to predict what a *court* will do. In the practice of Proactive Law, it is essential to predict what *people* will do.6 Here, the core is not about applying legal rules to facts that happened in the past, but about applying sound legal practices to create future facts and to plan a future course of conduct:

»Litigation law is mostly law. Preventive law is mostly facts. And the critical time for preventive lawyering is when those facts are first being born. As a lawyer speaking to business people, I would have one request of them: Please let us be involved in the making of those facts.« 7

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3 See, e.g. Brown 1950, Brown 1955, and Brown 1986. – Louis M. Brown’s legacy is carried on through the Louis M. Brown Program in Preventive Law and the National Center for Preventive Law (NCPL) at the California Western School of Law in San Diego, CA, USA. The NCPL is dedicated to preventing legal risks from becoming legal problems and acts as a clearinghouse for information and as a network for those interested in the theory of preventive law, or how it applies to particular areas of practice or the courts. See <http://www.preventivelawyer.com>.
4 Brown 1950, p. 3, under »Cost of Prevention vs. Cost of Cure«.
6 – Even in other professions, such as facility maintenance and quality management, prevention has long been known to be more effective than control and reactive corrective action.
7 For Preventive Law, see Dauer 2006, p. 94, quoting »Brownian lessons«, the fundamental premises of preventive law.
8 Dauer 1988. – For a discussion of the importance of *facts* and *culture* (rather than *rules* alone) in proactive legal care and in legal risk management, see Dauer 2006.
Clients do not necessarily turn to their lawyers early. They do not necessarily ask for proactive legal services. They may not even know that such services exist. Proactive legal guidance may in fact be needed far more extensively than it is offered and taken today. There may be a huge untapped market, a latent legal market here.\(^8\) A myriad of opportunities for both businesses and lawyers may exist, waiting to be discovered.\(^9\)

Proactive legal care offers significant value to organizations of all sizes. The larger the organization, the more it can benefit from proactive legal care.\(^10\) In the following, the focus is on large companies which deal internationally, the Author’s primary field of practice.\(^11\) Needless to say, this is a field where companies inevitably face legal issues of financial significance and where it is particularly easy, even for experienced people, to get into business and legal trouble. On the other hand, when proactive legal care is practiced effectively, the benefits will be great – not only for those involved, but also for the society as a whole.

2. Using Contracts for Business Success and Problem Prevention

»When you ‘sign on the dotted line’, you obligate yourself; before you sign, you have a freedom of choice not available later.»

*(Louis M. Brown, Preface to How to Negotiate a Successful Contract. 1955)*

In business dealings, everything – schedules, deliveries, payments, termination rights, responsibilities, and remedies – revolves around the underlying agreements. The terms of those agreements affect profitability, increase or decrease costs and liabilities, and play a major role in customer and supplier satisfaction. If agree-

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\(^9\) Proactive legal care has various applications and is not limited to the areas discussed in this article. In recent years, the number of contracts has exploded even in public organizations, and an increasing number of managers find new challenges in forming contract-based relationships and setting the rules by which those relationships will operate. See, e.g., Cooper 2003.

\(^10\) While the individuals in large organizations may be more experienced in contracting than their colleagues in small ones, the tracking and managing of contractual risks and opportunities is never an easy task. In fact, the larger the organization, the more difficult and complex are the challenges. See, e.g., Krappé & Kallayil 2003.

\(^11\) The Author works as International Contracts Counsel with Lexpert Ltd, <http://www.lexpert.com>, based in Helsinki, Finland, supporting clients in cross-border contractual (ad)ventures, helping them use contracts to get better business results and stay out of legal trouble. Before founding Lexpert Ltd the Author served for several years as in-house Legal Counsel for Wärtsilä Group companies in Finland, Norway, Sweden and the United States. Her responsibilities included drafting and negotiating contracts for complex international projects, acquisitions, joint ventures, distributorships, sales and licensing transactions. As part of her work, she regularly conducts corporate in-house training workshops on topics related to cross-border contracting and contractual risk management in Europe and overseas. She also acts as arbitrator.
ments fail, business performance will suffer. A lot is at stake, including goodwill and reputation. It is not in businesses’ interest to develop case law around disputes which should have been avoided.

Many organizations have invested in resources, tools and technologies that enable them to make and manage their contracts effectively. Many still need help in these areas. In a number of organizations, contracts could be used more effectively than they are used today, and contract failures could be prevented more often than is done today.

2.1 The Three Levels of Proactive Legal Care in Corporate Contracting

Like medical care, proactive legal care can be divided into three levels: primary, secondary, and tertiary care. In the context of corporate contracting, the primary goals of proactive legal care are: 1) to promote successful performance and relationships, and to eliminate causes of potential problems; 2) to minimize the risk, problems and harmful effects when problems do arise; and 3) to manage conflict, avoid litigation, and minimize costs and losses where they are unavoidable.

Proactive legal care in the context of corporate contracting is illustrated in Figure 1, which is adapted from preventive medicine. The pyramid has three levels: primary (causes), secondary (effects), and tertiary (losses and other harmful consequences). Proactive legal care stresses the importance of working at all levels. To benefit fully from the opportunities offered by contracts, clients’ self-care is crucial. It is so fundamental that, without it, proactive legal care cannot succeed.

12 In Krappé & Kallayil 2003, the authors describe the results of a survey which highlights how companies are often unaware of their contractual risks, unable to mitigate risk, and may therefore also be unable to make accurate disclosures to investors and regulators. Despite the fact that the recent focus on corporate governance has heightened awareness of contractual risk, the survey found that, while 75% of companies list this as a ‘major area of concern’, companies were unable to track their contractual risk adequately; 61% of the companies had no idea of the interdependencies among their contracts, 66% either did not or rarely tracked side letters, and 60% did not track any contingent liabilities. – The survey, which covered more than 100 companies headquartered in the United States and Europe, revealed that a surprisingly high number of the companies surveyed, 81%, reported that simply finding all their contracts when they needed them was an area of concern.

13 The corresponding levels in preventive medicine are: primary (e.g., prevention of coronary heart disease in a healthy person), secondary (e.g., prevention of heart attack in a person with heart disease), and tertiary (e.g., prevention of disability and death after a heart attack). Self-care is not always part of the preventive medicine map.
As shown in Figure 1, contracts and contracting processes can be used to prepare for, guide and manage: first, performance (translating goals and shared expectations into contracts which secure business success, ensure desired outcomes, and balance risk with reward); second, risk and contingencies (contract terms dealing with failure, risk allocation, Force Majeure, liabilities, indemnities and remedies, etc.); and third, dispute resolution (alternative dispute resolution mechanisms, appropriate choice of law and forum selection clauses in contracts, etc.).

At the point when contracts are made, one needs to be sure that those contracts can be followed. If they cannot, either the contracts or the ways the organization operates need to be changed. Usually it is easier to change the contracts. Still contracts (or other rules) do not make things happen – people do. In order for contracts to be implemented, people must take action. They must understand what needs to be done, be motivated and committed. Proactive legal care focuses on people and the conscious use of contracts to support clients’ success. It seeks to bring clients both the certainty and the flexibility they require to prosper.

In the words of Edward A. Dauer,

»...an effective legal risk management requires a trio of strategies – the creation of rules, the application of facts that limit violations of the rules, and the inculcation of a culture that makes compliance with the rules both easy and likely.«

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15 For the tension between certainty (brought in the minds of many lawyers by clear rules) and flexibility (allowed in the minds of many business people by minimal regulation), see, e.g. Collins 2003, p. 174–201. See also Cummins 2006.
16 See Dauer 2006, p. 106, where the author further asks the question how much of this trio ought to be the work of lawyers. His answer is straightforward: All of it. He urges lawyer in-
Proper planning and documentation are required, not only when contracts are crafted, but also when they are put to practice, or changed. Everyday actions, such as making payments, keeping records, giving notices, and handling problems become crucial. Proactive legal care needs to be fused with the client’s strategy, business processes, and culture. It needs to become embedded in the client’s corporate governance, customer and supplier relationship management as well as in its project, quality, risk and other management practices. Then and only then, proactive legal care and contracts work at their best: helping clients manage their transactions and relationships more efficiently, with improved outcomes, balanced risk exposure, and fewer problems.

In the private and the public sector alike, a number of institutions have developed conflict management procedures and taken advantage of alternative dispute resolution mechanisms. While these efforts are important, it is not enough to deal with such typically »legal» issues alone. Clients do not profit from dispute resolution, or from damages and other remedies. That is not what they want. What they want and what they profit from are successful relationships, trouble-free transactions, and the performance they expected. Each day, hundreds of lawyers still spend hours on drafting and negotiating clauses dealing with the settlement of disputes, (limitations of) liabilities and (limitations of) remedies – many more hours than they spend on drafting and negotiating clauses that enhance communication, clarify tasks, and help secure successful performance.

When things proceed as planned, when success is secured on the primary level, fewer efforts are needed on the secondary and tertiary levels. The latter – dispute resolution mechanisms, contractual risk management, remedies, exit

volvement in all three facets of the risk management enterprise. – See also Dauer 1998 and Chapter 3, with references.

17 In Australia, a standard concerning the prevention, handling and resolution of legal problems was approved in 1999. See Guide to the prevention, handling and resolution of disputes 1999, AS 4608-1999. This Standard was revised in 2004 through the approval of AS 4608-2004, Dispute management systems (2004). In the UK, the Office of Government Commerce (OGC), which supports the public sector in improving procurement and commercial activities, published its Dispute Resolution Guidance in 2002.

18 The International Association for Contract and Commercial Management (IACCM) conducts a yearly survey where participants representing hundreds of major corporations in various parts of the world are asked to highlight the terms they negotiate with the greatest frequency. Limitation of liability has retained its Number 1 status each year. In the words of IACCM President Tim Cummins, »The survey shows relatively little evidence of time being spent on creative ‘expanding the pie’ negotiation – that is, growing the deal or solution, or defining parameters that increase the likelihood of success. The list is dominated by risk containment clauses. … Avoiding foolhardy exposure to claims or litigation, ensuring corporate assets are protected and providing a framework for contract and relationship management are key requirements. But where on the list are those terms that might add to our reputation; where is the evidence that we are viewing governance not just in terms of pre-award risk allocation, but also in terms of post-award management? … These questions apply equally to both sides; it is in the interests of both buyers and sellers to ask questions about where time is being spent.« – See Cummins 2004.
or termination provisions, etc. – can only minimize harmful effects and losses. They by themselves can never secure success, if the efforts at the primary level and the client’s self-care efforts fail. This is not to say that dispute resolution and contractual risk management efforts do not matter, they do. The intent here is to say that the primary level, along with clients’ self-care, deserve much more of our attention than they have received before.

2.2 The Many Elements and Functions of Contracts: the Contract Puzzle

»The salesman finds contract the work of the devil; it is just one more thing to get in the way of closing a sale.»

(Stewart Macaulay: The Use and Non-Use of Contracts in the Manufacturing Industry. 1963)

Clients do not enter into a contract just to have a contract, nor do they enter into a contract just to manage against legal risks. They want to achieve their objectives and create revenue, profit, and good-will. They care about relationships, various stakeholders’ expectations, and business opportunities. From a busy business person’s point of view, crafting a contract may seem to be a necessary evil, just a step without which internal procedures do not allow a business deal or a project to proceed.

The functions of corporate contracts can be summarized as illustrated in Figure 2. Here, contracts are seen as tools to coordinate and manage business and commitments; to create, allocate and protect value, whether tangible or intangible (such as intellectual property rights); and to communicate crucial information inside and between organizations, to motivate, and to allocate decision and control rights.¹⁹ In addition, contracts help share, minimize and manage

¹⁹ For the business functions of contracts, see, e.g. Argyres & Mayer 2005 discussing contract design capabilities from a managerial perspective in terms of roles and responsibilities, communication procedures, decision and control rights, dispute resolution, and contingency planning. See also Eckhard & Mellewigt 2006, Bogetoft & Olesen 2004, and Roxenhall & Ghauri 2004. Roxenhall (1999) explores three Swedish case studies to determine how written contracts are used as a means of communication to control the company’s own staff as well as the staff of the opposite party, and to co-ordinate the supply and production activities of both parties. Pruth (2002) investigates logistics alliances. His empirical study shows that logistics contracts work as management tools supporting operative efficiency, development, and change; they formalize the common objective and motivate behaviour by incentive structures. Contracts can further be used for various other purposes not reflected here, including the protection of confidential information, allocation of decision and control rights, and exclusion or minimization of tort liability. For the contractual allocation of intellectual property rights and control rights to customized products based on an empirical analysis of Finnish small and medium-sized firms, see Paija 2003 and Paija 2004.
risk, define and formalize relationships, prevent problems, and resolve disputes.²⁰

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<tr>
<td>1. Coordinating and managing business and commitments</td>
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<td>2. Creating, allocating and protecting value</td>
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<td>3. Communication, motivation, and control</td>
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<td>4. Sharing, minimizing and managing risk</td>
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<td>5. Formalization, problem prevention and dispute resolution</td>
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Figure 2. Functions of Corporate Contracts ²¹

We lawyers are used to determining which obligations and liabilities are included and which are excluded in the contractual arrangement. We pay attention to regulatory requirements and mandatory laws, we consider pre-contractual promises: whether some were made and whether they are enforceable. We take into account both express (»visible«) and implied (»invisible«) terms.²² We look for provisions dealing with forum selection and choice of law, as well as those excluding or limiting particular types of liabilities and remedies, etc. – A lawyer’s view of the various elements that go into (or out of) a contract can be illustrated as follows (Figure 3):

²⁰ While the latter functions matter, they are not the primary goals of contracts. According to the International Association for Contract and Commercial Management (IACCM), on average nearly 80 % of the terms in business-to-business contracts are not areas of significant legal concern, but rather business and financial terms, such as Statements of Work, Specifications, and Service Level Agreements. See Cummins 2003.

²¹ Adapted from Haapio & Haavisto 2005, with elements added from Vlaar 2006.

²² The Author has coined the distinction between »visible« and »invisible« terms of contracts to make the topic more easily accessible to business people. According to feedback received, this distinction has indeed been a successful step toward making the world of law more interesting for them. For a more detailed discussion of »invisible« terms in international contracts and what to do about them, see Haapio 2004. – For a research-based interdisciplinary and comparative approach to the implicit dimensions of contracts, see Collins 2003 and others in Campbell et al. 2003.
For a business person wanting to secure a successful business deal and relationship, most of what we lawyers worry about may not matter much – particularly if it is discussed in typical lawyers’ language. For clients, business, technical and financial concerns are crucial, and relationships and reputation matter more than the detailed terms or what is or is not part of the formal contract.

In routine transactions, clients get and give what they expected in more than 99.9 per cent of the course of events. However, as we lawyers know (almost too) well, business people’s expectations are sometimes not fulfilled. They may not get what they wanted. The delivery may be late, the goods may be damaged or defective, or customers may be asked to pay more than they expected to pay. Disappointed and angry, people start to think of methods to receive the performance they expected at the price they were willing to pay. They look for their contract and ask their lawyer for help. – For proactive legal care, that is obviously too late.

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23 Adopted from Mulcahy & Tillotson 2004, p. 178. The notion of »visible« and »invisible« terms and other elements are added by the Author.

24 The basics have not changed in more than 50 years; see Brown 1955, p. 3, and Brown 1950. The Chapter »Understanding and Preventing Risks in Offers to Form a Contract« is excerpted in Gruner 1998 and available on the Internet.
The Contract Puzzle

To address the choices that organizations must make and the challenges that they face when making and using contracts, it is useful to view contracts and contracting through the analogy of a jigsaw puzzle. With a complex project in mind, Figure 4 shows the contract as a puzzle of technical, implementation, business and legal parts, all of which must be consistent and coordinated.

If correctly assembled, the pieces of the puzzle form a complete, synchronized picture. The ideal contract matches the parties’ business needs and reflects their true goals. It is capable of being implemented within the allotted time, with the resources that have been allocated, and within budget. The designed solution matches the priced solution, which in turn matches the solution that is described – and will be implemented. The supplied solution will meet the customer’s requirements, while the project will satisfy the supplier’s needs in respect of profitability and risk management. The parts of the puzzle fit together and create a successful business deal and relationship. The contract helps eliminate causes of problems and misunderstandings and provides safeguards, procedures and resolution mechanisms if changes, delays or disturbances occur or if a conflict situation arises.

![The Contract Puzzle](image)

Figure 4. The Contract Puzzle

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25 See also Garrett & Kipke 2003, p. 106–108.
A lawyer new to corporate contracting must keep in mind that in business reality, contracts are not just legal documents or enforcement mechanisms, something used as evidence in court. For clients, a contract is a vehicle to achieve revenues, profit, goods, services, etc. The legal part is only one piece of the puzzle, and not the puzzle itself. A balance needs to be struck between many different (and often conflicting) requirements, such as the need for clear rules and certainty on one hand, and flexibility on the other. Contracts must be commercially acceptable – even attractive, so that they generate new business and revenue and help maintain good relationships. At the same time, they must be legally permissible, and secure compliance with pre-existing commitments, applicable laws, and governance regulations. Contracts must be financially sound, improve supply-chain performance, provide adequate protection, and balance risks against benefits.

2.3 Contract Planning: the Practical and Theoretical Foundation for Success

The foundations for good-quality contracts are laid in the planning phase, long before negotiation and signing – the earlier, the better. For buyers and suppliers alike, the planning phase is vital in creating the basis for successful projects, contracts and relationships. Most contract information is (or should be) captured in that phase, in the pre-contract process.

Supplier selection is one of the most important decisions a buyer will make. Contract and project success depends on the competence and reliability of the key suppliers and their subcontractors. The procurement documents can take different forms and may or may not include the buyer’s contract form and terms and conditions. The documents communicate (or should communicate) the buyer’s needs and requirements clearly to the potential suppliers. Better solicitations from the buyer generally result in better bids, while poorly communicated solicitations often result in delays, confusion, fewer bids and lower-quality responses.

For the supplier, making the bid/no bid decision includes evaluating the buyer’s solicitation, the proposed specifications, scope of work, requirements, and contract (including terms and conditions, where provided), and assessing the risks against the opportunities. This step is crucial for the supplier’s contracting process. Bid preparation can range from one person writing an email or one page proposal to a team of people developing a proposal of hundreds of pages that take weeks or months to prepare.26

In the actual drafting of the bid (or quote, tender, proposal, or offer), the supplier has to satisfy two conflicting objectives. On the one hand, the primary

function of the bid is to act as an aid to selling: the supplier is seeking to persuade the buyer that he, rather than any other, should be selected for the award of the contract. Its preparation should therefore be attractive and positive. At the same time, the bid is the supplier’s opportunity, often his only opportunity, of seeking to protect himself against provisions in the request for proposals which he considers unreasonable. At the least, if there are any such provisions, he must make certain his bid is so worded that it cannot be accepted without his having the right of discussing these with the buyer.27

Not many lawyers have been involved in the processes or documents used at the planning, solicitation and bidding stage. Traditionally, legal researchers have not been interested in them either – unless they have been litigated as, for example, battle of forms, contract formation, or enforceability issues. If planning is addressed at all in legal literature, it is mainly for dispute resolution purposes, preparing for litigation.28

In their broad-base introduction to contracts, Ian Macneil and Paul Gudel excel at a non-traditional law book approach.29 When they look at contract planning (and non-planning), they state that all contractual relations involve 1) performance planning and 2) risk planning, whether lawyers are involved or not. After the profound truth, «countless contracts are entered and carried to conclusion without ever having passed before the eyes of any lawyer», they go on exploring the actual functions of anyone, lawyer or otherwise, in contract planning, in administering the agreement process, and in administering contract performance.

27 See Marsh 2000, p. 60.
28 There are some remarkable exceptions: in addition to the pioneers of preventive law (e.g. Brown 1955 and Brown & Dauer 1978), Stewart Macaulay and Ian Macneil in the United States and Hugh Beale and Tony Dugdale in Europe were among the first to break the lawyers’ tradition of looking at the past and ignoring the planning stage. Their work on the use (and non-use) of contracts as well as on planning (and non-planning) even though partly several decades old now, is still valid. See, e.g. Macaulay 1963 and Beale & Dugdale 1975. The first two Editions of Ian Macneil’s Contracts: Exchange Transactions and Relations (now Macneil & Gudel 2001) were published in 1971 and 1978.
29 Macneil & Gudel 2001. The fact that the book is entitled »Contracts», not »Contract Law», is no accident: »contract law, and particularly contract litigation, is but a small part of contracts. You cannot begin to understand the law of contracts unless you also come to an understanding of contracts – what they are, how they work, why people enter into them and what people use them for.» See Macneil & Gudel 2001, p. 2. – It is worth noting that for this book, a Teachers’ Manual is available; see Macneil & Gudel 2003. – For a Nordic attempt to merge the worlds of contract law and contracting and to make designing good contracts and their effective management part of legal thinking, see Nystén-Haarala 1998.
In the words of Macneil and Gudel, a lawyer (or anyone) engaged in performance and risk planning will engage in the four planning processes set out in Figure 5: ascertaining the facts, negotiating, drafting, and applying legal knowledge. Each of these processes is intertwined with each other, and it is virtually impossible to carry out one without carrying out aspects of the others.

The crafting of a contract can be seen as an important initial step in articulating the business plan, in thinking through potential contingencies that may affect it, and in achieving business objectives while meeting legal and regulatory demands. Still many deals that look good on paper never materialize into value-creating endeavors. Often, the problem begins at the negotiating table. Many negotiators see the signed contract as the final destination rather than the start.

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of a cooperative venture.\textsuperscript{31} For proactive legal care, it is important to have a mindset toward successful implementation and ongoing rewarding relationships. After all, the contract is not the goal; successful implementation and completion are.

3. Making It Work: Lawyers’ and Clients’ Shared Responsibility

Matters of corporate contracting are not the exclusive domain of lawyers or legal scholars. Lawyers do not attend to the preparation of all deals and contracts – business managers and front-line personnel do. Lawyers do not manage or implement projects or changes based on those contracts – people involved in sales, purchasing, and projects do. Non-lawyers make commitments, request bids and submit quotations and purchase orders, send and receive related confirmation and other messages, handle project change and failure situations, and so on. Many of them make, change and handle contracts on a daily basis. They are experienced and business-savvy people, but their concerns are not primarily legal.

People don’t know what they don’t know. Experience shows that business people do not spend time reading contracts. People who make offers, quotations, purchase orders and contracts often assume what the deal is and what the contract says, particularly when they work closely or interact frequently with the same counterparts. They often trust they can »work things out without bringing lawyers into it«. When problems arise, there is a hesitancy to use legal sanctions or even to refer to the contract.\textsuperscript{32}

Much has been written recently about tacit knowledge. Less attention has been devoted to its counterpart, tacit ignorance: prevailing myths, beliefs, and assumptions that are considered to be true but which are not.\textsuperscript{33} Still in day-to-day business dealings, what is believed to be self-evident and appears as tacit knowledge may in fact turn out to be guesswork or tacit ignorance. Based on their

\textsuperscript{31} According to Ertel (2004), most negotiators have a deal maker mindset: They see the signed contract as the final destination rather than the start of a cooperative venture. What’s worse, most companies reward negotiators on the basis of the number and size of the deals they’re signing. Ertel asserts that organizations and negotiators must transition from a deal maker mentality, which involves squeezing your counterpart for everything you can get, to an implementation mindset, which sets the stage for a healthy working relationship long after the ink has dried. »The best deals don’t end at the negotiating table -- they begin there.»

\textsuperscript{32} See Macneil & Gudel 2001, p. 37–38, listing reasons why business can and does ignore contracts. For business people’s indifferent, sometimes even hostile attitude toward contracts, see e.g. Macaulay 1963. – For corresponding findings in Europe, see, e.g. Beale & Dugdale 1975.

\textsuperscript{33} See Haapio 2003a and Haapio 2003b, where the Author has coined the term tacit ignorance to describe »knowledge« that is based on tacit assumptions or preconceptions, unreliable or inadequate information, an unconscious lack of attention or interest, or misjudgment. Tacit knowledge and tacit ignorance are part of clients’ corporate culture.
assumptions, people making or implementing contracts may believe they know how things are – even without finding out about what the contract actually says (or does not say). Sometimes their assumptions prove to be wrong or not applicable in the situation at hand. If for example, people in sales believe, incorrectly, that when agreeing to liquidated damages of any kind, they are following company policy and agreeing to exclusive remedies and limited liabilities, when they are actually creating additional remedies and unlimited liabilities, they are unknowingly exposing their company to unidentified risks and liability exposure. This can be hazardous to the company’s legal health.34

It is not always easy to tell whether people are making informed choices as to the contracts they suggest and accept, or whether they are tacitly ignorant. For a proactive lawyer, it is important to find out, so that appropriate help and support can be provided. In the words of Albert H. Kritzer, there are two categories of contract clauses that reduce profits or increase risks of loss: 1) those that are accepted, with eyes wide open, as legitimate trade-offs to obtaining an order, and 2) other unfavourable clauses. The latter are signs of tacit ignorance (or »skulls», as Kritzer calls them), to the extent that they could have been avoided or mitigated through preparation and skillful negotiation.35

Most people do not intentionally make poor-quality contracts or breach contracts, or do other things that add to their company’s liability exposure. They just »do their job» and what they think is expected of them. The problem lies in the culture. In the words of Edward A. Dauer,

»…legal risks are most often created by people behaving in perfectly ordinary and predictable ways. … We can often reduce legal risk by predicting and then shaping or accounting for the ordinary, well-meaning, everyday behaviors of the people who touch or are touched by the events.»36

34 Other examples of tacit ignorance that the Author has come across include the following: »Small transactions only expose a company to small risks.»; »If the contract is silent on remedies, the supplier is not liable for delays or non-conformities»; »If the contract is silent, the supplier’s liability for damages is limited to the fee (or purchase price).»; »The supplier’s liability for defects and non-conformities ends at the end of the warranty period.»; and »In cross-border contracts, the law of the buyer’s country is always applied.» This list of examples is by no means exhaustive. – As regards warranties, a client may believe that a supplier’s liability for design faults of a piece of equipment ends at the end of the contractual warranty period. Experienced lawyers know that despite the expiration of a contractual warranty, there may be other grounds for liability; the goods may not be reasonably fit for their purpose, and the question of implied warranties or statutory liability for non-conformity remains (unless that liability is effectively excluded). One single sentence in the contract can make the difference. For a proactive lawyer, however, the matter is not just a question of adding or deleting that sentence in the warranty or remedies clause; it is making sure that the client and its contracting partner(s) truly understand and agree what the performance and other requirements for the equipment are, what obligations and liabilities each party has in respect of reaching those requirements, and what happens if they are not reached.

36 See Dauer 2006, p. 95. At p. 98, Dauer goes on to state: »It is culture that makes some things seem OK even when they really aren’t. So far as I know this has never been precisely
Proactive legal care requires attention to people and to the operative culture. While some lawyers are experts in shaping people’s behavior and changing cultures, most of us are not experienced in these areas. Fortunately, corporate clients often have access to experts in human resources, communication, project management, and other professional areas. To make proactive legal care work, their role – and successful lawyer-client collaboration – become crucial.

In complex business arrangements such as alliance, outsourcing, engineering and licensing contracts, the input of managers and engineers is needed in key areas, in order to lay the foundation for the deal and construct operationally efficient contract terms. Working together, lawyers and business managers can determine a sound way to create and manage the contract puzzle, starting from its key trade-offs, such as including more or less detail in contracts and whether and when to use standard terms and conditions and contract templates vs. customized contracts.

To ensure successful, profitable business, the contracting team must also have a good grasp of the requirements of their inbound and outbound supply chains, along with the contracts that govern them. Many companies are still struggling with weak interfaces between sales contracting and procurement: examples include companies that acquire third party software under license terms that fail to reflect the onward sale or licensing offerings they make to their customers; or product procurement that lacks the appropriate warranty or service agreements.
ice terms. In both these examples, the company is left with a range of exposures through its failure to establish back-to-back agreement terms.\(^{40}\)

As discussed earlier, lawyers tend to see contracts primarily as a source of trouble and dispute, and with few exceptions, legal writers and educators have presented contracts mostly in that context.\(^{41}\) This has led to lawyers, when discussing contracts, using the language of law, risks and failure, rather than the language of business, opportunities and success, without even noticing it. A language and culture barrier has developed, keeping lawyers out of many teams where they could have made a valuable contribution.

Yet knowing what lawyers know is of value, when used before something goes wrong, and communicated in a language that is meaningful to business people. Experienced proactive lawyers know how to use contracts to clarify obligations and requirements and to avoid negative surprises. Using the good old rules of legal risk management and dispute avoidance, they can begin the risk management process by identifying the risks: what, why, and how problems may arise. They know that implied (»invisible«) obligations and requirements are not easy to fulfill: to be able to perform, people need to know what is expected. People cannot perform obligations they do not know of or understand. By asking the right questions, proactive lawyers can help clients clarify goals, strategy, and task allocation, and be better prepared – not only for contingencies or legal problems, but also for successful performance.\(^ {42}\)

3.1 As We Move to Proactive Legal Care, Lawyers’ and Clients’ Roles Change

Traditionally, among the general public, lawyers are best known as »Fighters«, by what movies and television series show: court battles, fighting and winning, interrogating witnesses, etc.. The perception of a lawyer as a »Fighter« is so strong that many business people – whether top executives in large corporations, employees, or small business owners – are unaware of the other roles of lawyers. If a business manager has not worked with lawyers or has only worked with »Fighters«, he or she may still see lawyers as a last resort, needed only when a


\(^{41}\) This comes as no surprise: a lawyer’s view of contracts (as illustrated in Figure 3) has developed through generations of contracts that have failed; through disputes, litigation and case law. See Macneil & Gudel 2001, p. vii–viii: »Only lawyers and other trouble-oriented folk look on contracts primarily as a source of trouble and disputation, rather than as a way of getting things done.« – For a departure from the traditional litigation-centered approach to contract law, see also Nystén-Haarala 1998.

\(^{42}\) For empirical research supporting this view, see Argyres et al. 2005. According to the authors’ findings, as parties make more efforts at contingency planning, they learn more about how to carefully describe the task so as to avoid disturbances to the relationship. Conversely, as the parties increase their efforts to describe the task in more detail, they improve their understanding of important contingencies that could threaten the relationship.
»fire» breaks out. Many people, even though their organization may employ tens of lawyers, may have never worked with a lawyer and may never intend to do so, based on their assumption of how lawyers and legal departments are and what they do.43

The role of a proactive lawyer is different from that of a litigator or a »Fighter». Most proactive lawyers work as »Problem Solvers» or as »Designers», which role also includes that of a problem preventer. A proactive lawyer can aid in various ways as a business partner, legal architect, trusted counsellor, mentor, and coach. – Figure 6 illustrates the roles of lawyers, with a focus on the role of a business lawyer as a »Designer» in the context of corporate contracting.

![Figure 6. The Roles of Lawyers in Corporate Contracting](http://preventivelawyer.com/main/default.asp?pid=multi-dimensional.html)

**Designer**
A business partner, legal architect, trusted counsellor, mentor, and coach, who, as a member of a team:

- helps clients achieve objectives and succeed, with the minimum of cost and risk
- introduces solutions and options through brief and clear advice
- acts as a sounding board and confidant
- helps put in place systems, tools, and training that maximize opportunities, minimize risk, and help avoid potential problems
- encourages learning and stimulates and supports clients’ legal self-care
- helps create user-friendly manageable contracts
- helps clients use the law and contracts to create value and balance risk with reward

**Fighter**

**Problem Solver**

43 Stereotypes of lawyers include »necessary evil», »overhead», »Dr. No», and »internal cop». – See Bagley 2003, p. 1. The author quotes a study where focus groups of business leaders queried in a survey by the Case Western Reserve University Law School associated the word »lawyer» with »authoritative», »conservative», »arrogant», »intimidating», and »know-it-all». Yet, the author continues, managers who view counsel as a necessary evil miss opportunities to work with attorneys as partners to increase and capture value and to manage risk. – See also Bagley 2005a and Bagley 2005b. For the need of a paradigm shift, see Hasl-Kelchner 2006, p. 3–17.

44 The Designer-lawyer can also be called »Engineer»; see Collins 2002, p. 149, with references.

45 The three roles and the idea of them in a triangle have been adapted from the Introduction to Barton & Cooper 2000 at the web page »The Multi-Dimensional Lawyer and the Legal System», <http://preventivelawyer.com/main/default.asp?pid=multi-dimensional.html> of the National Center for Preventive Law. The highlight on and the examples of the Designer’s work have been added by the Author.
To be successful, proactive lawyers need to understand what the client wants to achieve and the risk it is willing to take, and then help structure transactions and prepare contracts so that they reflect the client’s goals and minimize risk: contracts that work effectively both as business tools and as proactive law tools. When involved in a buy/sell or licensing transaction, a proactive lawyer needs to understand both parties’ perspectives and, based on that understanding, know what to ask for and what is realistic. He or she can then facilitate the closing of the deal and add real value.46

In the context of traditional law practice, lawyers play a central role. The client may be a rather passive source for information. In the practice of proactive law, the client has an active role in the process. The client may be represented by a team of knowledgeable decision-makers, well informed about the business issues involved. Consequently, proactive legal care stresses the importance of client-lawyer collaboration. On top of legal abilities, success in proactive legal care requires the lawyer to be a team player, willing to look beyond the areas typically taught in law school.

Proactive legal care encourages – even mandates – lawyers to join forces with other professions: people in sales, purchasing, projects, contracts, technology, human resources, finance, quality, and risk management. They have the possibility of recognizing opportunities and preventing problems on a daily basis. Harnessing them to this task with support from proactive legal professionals is worthwhile. Existing technology allows a redistribution of work between clients and lawyers, and a number of tasks can be entrusted to business personnel, without sacrificing contract quality or increasing risk.

The best way to successful corporate contracting is for proactive lawyers and business managers to work together and establish processes, practices, checklists, templates and training that help the entire business team take care of the key issues in a systematic way. With tools and techniques that are now available, proactive lawyers can help corporate clients to design and manage their contracts so that they promote business success, produce predictable results, manage costs and risks, avoid misunderstandings, and prevent problems. Broad based training and easy to use tools help embed proactive legal care into a company’s everyday activities. In this way, well thought-out contracts are reproducible on a regular basis, even when people change and no lawyers are around.47

In the past, corporations perceived their legal departments as cost centers, a necessary evil, the services of which most other departments would rather do without. Proactive legal departments can change this picture. While proactive

47 Examples of applications from both the private and the public sector are presented in Haapio 2006, Section 4. The examples show that the approach works in private and public organizations alike, both on the sell-side and on the buy-side.
legal care is not costless, there is an important difference between the cost of prevention and the cost of cure: within reasonably accurate limits, the cost of prevention can be predetermined, whereas the cost of cure cannot.48

3.2 Cross-professional Learning and Empirical Studies Are Called for

Some lawyers judge their quality on their legal abilities alone. Business people take lawyers’ legal abilities for granted. What they want is a commercial approach. They do not just want legal problems to be identified; they want solutions and options. They want brief and clear advice, not opinions which are so qualified that they confuse more than they clarify. They want people who take a team attitude rather than lawyers who cloak themselves in professional mystique.49

Where, then, do we learn and teach proactive legal skills? When it comes to law schools, not in many places. Rather than skills, law students learn »the law», and rather than contracts or contracting, they learn »contract law», typically in a rule- and court-centered fashion, along with other areas of law, isolated from one another.50 It is not unusual for law students to complete their studies without ever drafting or even seeing an actual contract. Even today, proactive lawyers learn their skills by watching experienced colleagues work and by working with them. This way of learning may take years. Despite the fact that many graduating law students these days pursue careers in transactional law and are not likely to litigate, law schools tend to devote much of their curricula and resources to a litigation-oriented approach. Not many expose law students to situations where they can learn how to prevent problems or how to plan, negotiate and document business transactions.51

The typical law school education reinforces the notion that litigation is the very core of lawyering. Many law schools, while priding themselves on teaching

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48 See Brown 1950, p. 6.
49 See Allott 1995.
50 It may be different now, but when the Author went to law school, there were courses in contract law, commercial law, intellectual property law, private international law, and other areas. There was no course putting the courses together or using legal knowledge in real-life situations. No one taught us about business reality, contract planning, or how to use the freedom of contract to the advantage of our clients. There was no course in international (or even in domestic) trade, nor in contract design. Nothing was said about how to find legally sound solutions for the future. See also Hasl-Kelchner 2006, p. 213–214 and Chapter 2.3, with references. – For reasons why so little attention has been given to describing and training preventive and proactive skills, see Barton 2006.
51 Louis M. Brown was an early adapter and developer of new law teaching methods; see Brown 1986, p. 97–116 and 145–174. To promote greater knowledge and interest in the preventive law and counseling functions of law practice he developed the Client Counseling Competition, which has been administered by the American Bar Association since 1973. The 2006 Finals of the International Client Counseling Competition, which started in 1986, were hosted by Cardiff Law School in Wales, see <http://www.law.cf.ac.uk/cic2006>.
students to think like lawyers, still teach students to think like litigators. Most contract law books are full of examples of failures and problem situations; contracts that have become involved in a dispute or litigation. Very few success stories are published in legal literature. As traditional law is mostly reactive, not many lawyers have questioned the habit of looking at precedents and the past, or of focusing on failures rather than successes.

Planning and doing successful business deals and eliminating causes of legal problems are fundamentally different from litigating, and they require different knowledge and skills. Students who want to become proactive lawyers must learn to think proactively. Sometimes, when beginning to work, they need to unlearn and relearn: learn how not to think like lawyers. Mere thinking is not enough: they must also learn how to do things and how to make proactive law work in real life. Businesses need practical legal skills that actively support their success. Individuals need to learn new skills, and organizations must learn how to merge and optimize their respective knowledge and skill sets.

It is certainly necessary for law students to study cases and doctrine in order to create sensitivity as to how legal problems might arise and how they can be solved. However, not all lawyers are going to be litigators, judges or arbitrators. The roles of the transactional lawyer and the corporate lawyer should no longer be neglected in legal education. To train lawyers that can help people and businesses succeed, an understanding of »what goes on every day» is required. Based on that understanding, some learning-by-doing and skills training should be included in the law school curriculum, and the focus of legal education should be changed from a reactive to a more proactive approach.

52 See Stark 2004, p. 223. The author describes what it means to think like a deal lawyer. She discusses the analytic skill of translating the business deal into contract concepts, proposes a framework that students can use to learn how to add value to a deal, and argues that knowing about business is an imperative for deal lawyers, just as knowing civil procedure and evidence is an imperative for litigators. She also describes a course that Fordham University School of Law offers that is designed to teach students essential business concepts. See also Fox 2002, Stark 2005 and Stark 2006. For strategic lawyers, see Chanen 2005, for contract lawyers, see Collins 2002, and for business lawyers as Transaction Cost Engineers, see Fleischer 2002.

53 For experience-based examples and case studies, see Jones 1985 and Jones 2000. For examples of client (self-)care applications, see also Haapio 2006, p. 181–188.

54 In Argyres & Mayer 2005, the authors note that firms must make conscious efforts to synthesize or aggregate team-level contract design capabilities to the firm level, i.e., to transform individual- or group-level knowledge into a true organization-level competence. Here, the authors argue, contract templates and the firm’s internal legal department have an important role in codifying knowledge about contracting for general use within the firm. See also Weber & Mayer 2005, Bogetoft & Olesen 2004, p. 17–44 and Vlaar 2006, p. 55–71.

55 Some exceptional law schools, including California Western School of Law in San Diego, CA, have developed these ideas and inaugurated revisions to their curricula to incorporate a more proactive approach. In October 2006, Harvard Law School made news headlines by announcing changes to their first-year curriculum, seeking to ensure, i.a. »opportunities for students to address alone and in teams complex, fact-intensive problems as they arise in the world (rather than digested into legal doctrines in appellate opinions) and to generate and evaluate
Up until recently, there has been little empirical analysis of contracting: how contracts are actually planned, designed, made, and used.\textsuperscript{56} Not many researchers have been interested in the causes of contract problems or failures and how to prevent such problems (rather than resolve them).\textsuperscript{57} This may be due to lack of interest in empirical work by legal scholars – or the fact that empiricism has not been fully appreciated or respected.\textsuperscript{58} Another reason may be the fact that contract problems do not end at the boundaries between academic disciplines and industrial professions.\textsuperscript{59}

To fully understand how the world of contracting works, an interdisciplinary approach is necessary. What is required is the development of frameworks and theories around the needs and concerns of the business community: contract-related success factors, incentives for good performance, as well as sources of value, opportunity, and competitive advantage. Educational programs and multidisciplinary professional research – both theoretical and empirical – are called for. The time has come for multi-professional collaboration and for bridging education, research, and business reality.\textsuperscript{60} Contract planning and crafting skills, solutions through private ordering, regulation, litigation and other strategies.\textsuperscript{56}

The Collaboratory for Research on Global Projects at Stanford University, GRGP, \textsuperscript{58} offers one exception. The GRGP has assembled a General Counsels’ Roundtable to unite academics and practitioners – from industry, law, political science, economics, sociology, finance and engineering – to reflect upon, identify, and inspect the shortcomings and failures of the legal paradigm supporting capital-intensive, high-stakes projects. For the proceedings of the 1st General Counsels’ Roundtable, see Orr & Metzger 2005.\textsuperscript{58}

See also Poppo & Zenger 2002 and Haavisto 2006, with references. See also Popio & Zenger 2002 and Haavisto 2006, with references.

One of the main goals of the first Nordic School of Proactive Law Conference, »Future Law, Lawyering and Language. Helping People and Business Succeed« held in Helsinki in 2003 was to begin to design and build that bridge. The second Nordic School of Proactive Law Conference held in Stockholm in 2005 »Fusing Best Business Practices with Legal Information Management and Technology« added new elements, including new technologies, and took it one big step further. For more information on these Conferences as well as for upcoming events, see <http://www.proactivelaw.org> and <http://www.ccc-turku2007.org>.

where materials for students and teachers are already available, can lead the way to learning and teaching proactive legal care in context. Today’s students and their future employers will benefit greatly from a curriculum containing elements of proactive legal care: the theory, the way of thinking, and the skills related to their applications.

4. Concluding Remarks

In today’s business environment of increased inter-corporate dependency, complexity and uncertainty, organizations must take good care of their relationships. They must detect and strengthen weak links in their supply chains and manage their projects and transactions well. Proactive legal care seeks to help organizations in this enterprise. This article presents contracts in this context, as tools that can be used proactively for business success and problem prevention.

Proactive legal care – or lawyers working alone – cannot make or keep organizations legally healthy. A company’s transactional legal health is a matter of the work that people in the company do. It comes through the actions company managers and employees take and the choices and decision they make on a daily basis. Aligning expectations, defining desired outcomes and allocating tasks clearly are key initial steps they can take toward greater contracting success.

When potential problems are recognized and, where possible, prevented before they become legal ones – and when legal problems do occur, they are solved in good time, before they result in a dispute – everyone’s resources are saved. Lawyers’ knowledge about how problems may arise helps going to the root causes of problems. Many misunderstandings can be prevented, and many violations and breaches are avoidable. Proactive legal care aims at joining the forces of lawyers and clients in an effort to not only stay out of legal trouble but also to take full advantage of the opportunities that the law and contracts provide. Mere attention to contractual or legal rules is not enough. To be effective, proactive legal care also requires attention to people, to facts, and to culture, including people’s expectations about what should and what should not be done.

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61 For materials relating to the teaching of transactional skills and educating deal/business lawyers, see Fleischer 2002, Stark 2004, Stark 2005 and Stark 2006, with references. Tina Stark has compiled a Transactional Training Resource Guide which includes training materials that are commercially available, treatises, textbooks, and articles on the pedagogy of teaching transactional skills. See <http://www.starklegal.com/resources/> For books, teaching materials, and articles by Louis M. Brown, see Bibliography in Brown 1986, p. 265–294. – See also Chapter 2.3, with references.
Many lawyers, even those who have never heard the phrase *proactive legal care*, already apply its principles. They do so instinctively, as a part of good lawyering. The time has come for practitioners, scholars and educators to recognize this part of legal practice, identify the skills that are required, and assess ways to model, teach, and strengthen them. It then becomes easier to put in place tools, systems and training that systematically secure a strong legal foundation for corporate contracting success. The benefits will be great for both lawyers and clients.

References


Haapio, Helena: Business Success and Problem Prevention through Proactive Contracting. In Wahlgren, Peter & Magnusson Sjöberg, Cecilia (Eds.): A Proactive Approach. Scandinavian


