

Out of the Box Themes

Analysing and managing risk using decision trees

Bill Marsh and John Clark

All businesses face conflicts, and all conflicts involve risk. So analysing risk well is at the heart of good decision-making in conflicts. Everyone has their own way of doing it - detailed financial assessment, litigation risks, "big picture" thinking, or just personal hunch. Few of us ever stop to ask why we do it the way we do, or whether we could do it better, or just differently. And even fewer of us actively try to learn from our previous encounters with risk.

In their workshop, Bill and John will explore tools to help us to analyse risk, helping people to make choices and decisions in uncertain situations, and to explain them clearly. For example, an offer has been made settle. One side thinks their chances in court are good, but the outcome is uncertain. How do they choose whether or not to accept the offer? How do they explain their approach? We shall look specifically at decision trees as a simple quantitative tool to assist making decisions under conditions of uncertainty.

Managing business relationships intelligently

David Fraser

'Communication skills' are necessary for success in business and organisations. However, both traditional and contemporary developments in communication skills tend to place the focus on the individual - and his or her ability to get their point across. David will suggest a shift of focus from individuals to relationships and will contrast the transient nature of communication with the enduring character of relationships and thereby set out the case for managing relationships intelligently.

The workings of interpersonal relationships don't have to be mysterious - they can be learned and they can be taught. In his workshop, David will offer practical learning in some of the some key ideas that might sometimes be seen as the preserve of psychologists, linguists and coaching specialists. Proficiency in these skills for initiating, building and maintaining business relationships is entirely open to most people and can provide tremendous leverage to mainstream professional, business and boardroom expertise.

Drafting concise commercial contracts

Graeme Colquhoun

After several years of involvement in commercial contracts, Steve Weatherley and his legal team at Scottish & Newcastle plc, concluded that in many cases detailed contract terms are unnecessary. In addition, they realised that contracts can actually be an obstacle to doing business and a waste of time and resources for the businesses involved, often contributing to protracted and bitter disputes. Sometimes, contracts were still being finalised after a project was completed.

In this seminar and workshop, Steve's successor, Graeme Buchanan, will lead a discussion on the rationale, benefits and practicalities of the innovative Pathclearer approach. This is based on the concept of "commercial affinity", speed and simplicity, and management of risk. It is already being used in a number of contracts by lawyers who are recognising that clients' expectations of their role and contributions are changing. This is an opportunity to gain an insight into how Pathclearer works and to gain practical experience of aspects of its use.

Negotiating in difficult situations

John Sturrock

The best negotiators use a variety of techniques and strategies to deal with difficult situations in dispute management and deal making. Avoiding ongoing time-consuming and costly antagonism may be vital. Whether the differences arise in a commercial contract, an employment situation, a policy decision or in door-of-the-court bargaining, there are some tools that can enhance the prospect of a successful and speedy outcome, and enable you to do the best deal possible for yourself or your client, while maintaining respectful relationships with the other parties who may be involved.

In this workshop, we will reflect on how to break deadlock, how to deal with difficult people (whether on your side or another), how to improvise and change the dynamics and how to keep focusing on the bigger picture even when the going gets tough. Participants will be invited to bring their own personal or business examples to discuss and experiment with.

Reducing organisational conflict

Miryana Nesic

In the US, research shows that "dispute-wise" organisations are producing better business results. What makes a "dispute wise" organisation? Miryana will provide an overview of the demands on organisations to prevent disputes, manage risk and protect brand, reputation and relationships. How can ADR be used in a systematic way by organisations to achieve these goals?

This introduction will be developed further in the dispute systems design workshop. The regulatory environment, employee claims and commercial relationships are causing organisations to reconsider their approach to conflict. Old approaches - negative attitudes towards conflict; lack of ownership of problems; and treating disputes differently to other management

functions - have little place in a business environment which demands responsibility and accountability and which values relationships. This workshop will consider the tools that organisations can use to reduce the cost and uncertainty of conflict; to build a more positive culture internally and to nurture profitable external relationships.

Making best use of a mediator

Pamela Lyall

In recent years, the use of mediation has increased significantly in commercial, business, boardroom, workplace, professional, contractual and other situations where difficulties arise in managing difficult situations or avoiding lengthy and costly disputes. There is a growing sophistication among the users of mediation which, in Scotland as elsewhere, includes all of the major law firms, many large corporate bodies and other organisations in the public and private sectors.

The relationship between lawyers and other advisers and their clients is changing, opening up new opportunities for those who want to differentiate themselves and provide modern services. Pamela will address what the experienced legal and other advisers are doing to make the best use of mediation and how their clients are playing increasingly important roles.

Drafting dispute resolution clauses

Miryana Nestic

Modern contract drafting demands bespoke dispute resolution provisions. "Escalating" dispute resolution clauses in contracts are now becoming common across a wide range of industries. This workshop will appeal to deal makers, transactional lawyers and litigators alike. It will provide tips on drafting a range of clauses, including negotiation, mediation, expert determination and arbitration. It will also consider the advantages and limitations of different dispute resolution methods, and help participants to assess which option is the most appropriate for different circumstances and outcomes.

Engaging the whole brain for creative thinking

Elizabeth Rivers

Where do you get your best ideas? In the bath? Out walking the dog? Chances are it's not whilst poring over papers at your desk. Most people experience their creativity as something over which they have little conscious control, which may or may not materialise when needed. However, creativity is no longer a "nice to have" – it is essential in the modern business environment. The world around us is changing in rapid and unprecedented ways. Challenges such as global warming will force all of us to make radical changes in our lifestyles and attitudes. The task of meeting these challenges cannot be simply left to governments. Business has a crucial part to play, and all parts of business (and advisers) share this responsibility, not just PR or corporate affairs. Now, more than ever, we need innovative solutions to the sustainability challenges we face. The traditional training of lawyers does not equip them particularly well for these challenges.

The good news is that, with focus and attention, it is possible consciously to cultivate creativity and thereby dramatically improve both the quality and quantity of your ideas. By adopting certain attitudes and learning key techniques, you can be far more creative and innovative. Working with examples from participants, Elizabeth's workshop will look at key skills to enhance creativity.