

***Project Business Management*¹**

Conflict Resolution in Project Business

Oliver F. Lehmann

"Come not between the dragon and his wrath."
William Shakespeare – King Lear



Summary

Healing conflicts between contract parties in a project and turning them into project partners may be no more possible in certain instances. For such cases, individuals and organizations involved should understand the various methods of conflict resolution.

Project Business Conflicts

The growing number of projects that are not just done inside the protective walls of an organization but in a cross-corporate manner with customers, contractors, possibly

¹Editor's note: This series of articles is by Oliver Lehmann, author of the book "[Project Business Management](#)" (ISBN 9781138197503), published by Auerbach / Taylor & Francis in 2018. See full author profile at the end of this article.

subcontractors and many other parties involved, brings a high potential for conflicts. These conflicts can be damaging to the organizations involved. They may prove disastrous for the projects affected.

In my May 2019 article “Healing Conflicts in Project Business”², I discussed approaches to “heal” project conflicts. This healing is based on the fundamental assumption that all parties are interested in a resolution and that the project, its results, but also the business that it incorporates, have enough value for the parties involved that they put aside their differences and find a jointly acceptable solution. The article also talks about the causes of such conflicts, with diverse business interests, cultures, and clashing strong egos at the top.

Here, I want to talk about those situations, when healing seems not possible. The project may be over, the parties have departed, and the conflicts are caused by the need to finally settle claims and obligations. There may no be the mutual interests to achieve joint goals that help overcome differences.

During the project, relationships may also become too poisoned to allow for a healing process. There may still be a joint interest to finish the project and gain the benefits expected from it, however, the causes of conflict are exceeding these positive forces, and emotions of anger, frustration, disappointment, and fear of losing out in the conflict make it impossible to find common ground again³.

How will such conflicts be resolved?

Do Project Managers Need Legal Knowledge?

Details are depending on the legislation under which the conflict needs to be resolved. The following paragraphs are therefore not to be understood as legal advice, which can only be given by a lawyer. This is basic knowledge that a project manager should have to do the job.

One may compare this to driving lessons that convey basic knowledge of traffic laws, however, when legal advice is needed, this will not come from the driving instructor but from a lawyer educated in traffic laws and regulations. A car driver, however, has to make many decisions in traffic that may in a worst case lead to charges and fines, and the person cannot ask a lawyer in each of these moments. Instead, the person has to rely on education received in traffic rules and common sense.

Project managers in project business are in a similar situation: They make a large number of messages, actions, but also inactions during a project day. Each can cause legal troubles. And just like a car driver, a project manager cannot ask a lawyer at every crossing and every turn what to do. They need education and experience, and a lot of common sense, to make the right decisions.

² (Lehmann, 2019)

³ I described the underlying forces of such conflicts in my books “Situational Project Management – the Dynamics of Success and Failure” (Lehmann, 2016) and “Project Business Management” (Lehmann, 2018)

Things get even more difficult, when the contract parties are in different countries. At least one of the parties must act in a foreign and partially unknown legal environment. This is similar to a car driver in a foreign country with specific rules that are unknown at home, traffic signs, and sometimes all traffic taking place on the other side of the road.

In project business, cross-country contracts are not an exception, they are normal, and in many project supply networks, a project does not only span over several companies but also over a number of countries. Figure 1 shows a simple example of such a network with four companies in four countries. The network includes three contracts; two of them under US law and one under German law.

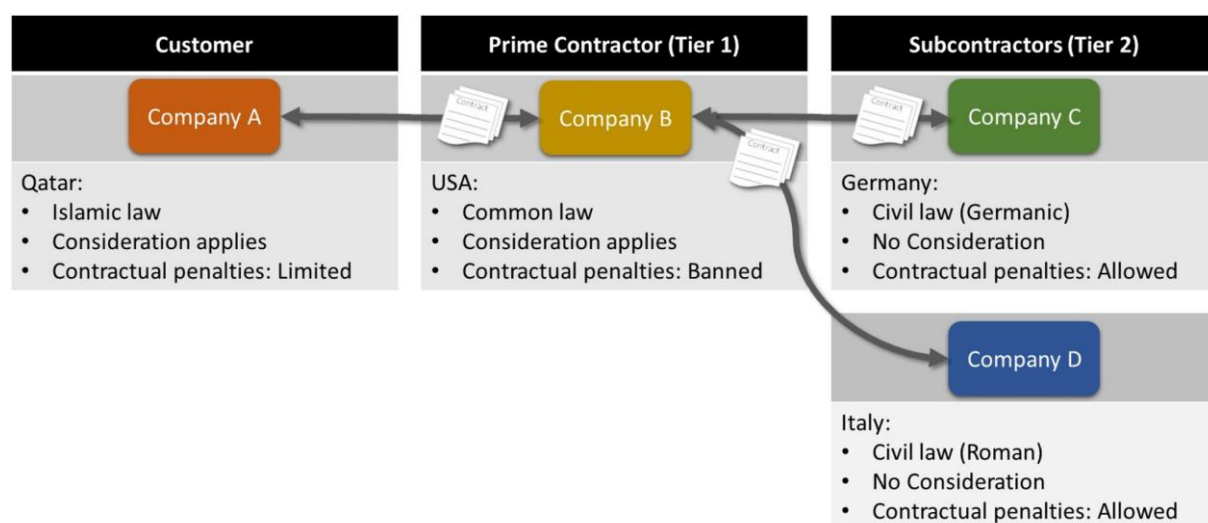


Figure 1: An example of a Project Supply Network spanning over several legal systems

Consideration in the example refers to a rule in Islamic⁴ and Common law⁵ as a prerequisite for a valid contract: Each party pays some kind of price in form of one or more disadvantages from the agreement, such as costs, obligations, risks, or limitations of their freedoms in return for the benefits that are expected to be yielded by the contract. Civil law countries do generally not have such a rule.

Many people are also surprised that in Common law, contractual penalties are banned⁶. They are generally replaced with liquidated damages, that are functionally similar, or with incentives. In civil law countries, such penalties are legally accepted and commonly used.

In Figure 1, the prime contractor has two contracts under US law and one under German law. In the example, three companies have contracts under foreign legal systems, and expectations derived from their home law systems may not be applicable in this project. What seems legal and just at home may be wrongful in another jurisdiction. If all parties act in good faith, they should help each other overcome the risks, however, who would want to guarantee for that?

⁴ (Jalil & Rahman, 2010, p. 180)

⁵ (Markovits, 2015)

⁶ (George, 2007, p. 649ff)

As stated above, project managers need as much legal knowledge as a car driver needs it in traffic, and driving in a foreign country needs additional preparation and information to avoid the situations that would indeed make a lawyer necessary.⁷

When Friendliness Ends

In a cross-corporate project, completing should be placed before competing, and the more contract parties behave as project partners, the more success the project will have. Nothing drives a project more than the “Speed of Trust”⁸, however, trust builds on the perception of trustworthiness, and when this is no more existent, formal ways to resolve the conflict will become necessary. Figure 2 shows the steps that can be taken from this moment on.

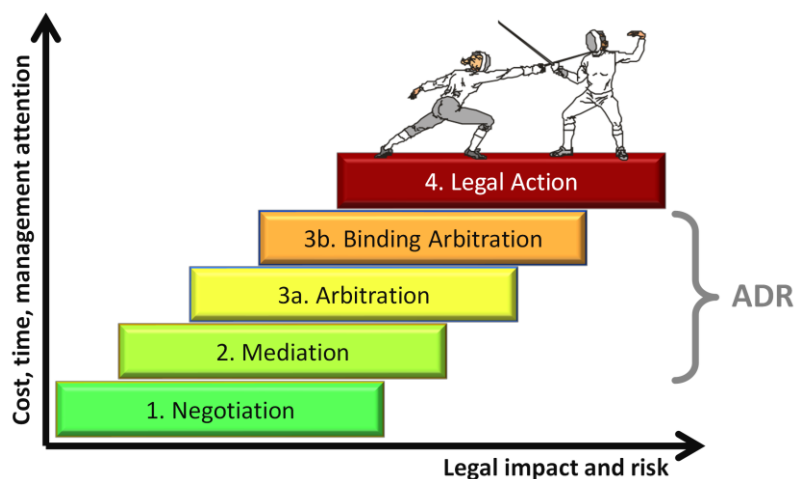


Figure 2: Stages of conflict resolution

Negotiation

The parties try to find a joint solution together in a more or less formal setting. Costs are low, and so is the time investment. The process is well manageable, however, the risk is high that conflicts get amplified, not removed. This may lead to one of the next stages, which are sometimes referred to as ADR – alternative dispute resolution.

Mediation

The conflict parties ask a third party for support. This is commonly a person that is respected by both sides and comes with neutrality and equidistance. The mediator helps the parties find their solution, often a settlement or an agreement that replaces the conflict with new joint initiatives.

⁷ See also (PMI, 2017, p. 460)

⁸ (Covey & Merrill, 2006)

(Non-binding) Arbitration

An arbitrator is in a more formal role. The person may be assigned by a court, in which case the person is most likely a legal expert. Often, arbitrators are provided by chambers of commerce. In such cases, they may either be legal experts or technical experts, or both.⁹ The arbitrator also has equidistance in mostly having been unknown to the parties before the process has started.

Arbitration typically leads to an arbitral award, a suggestion by the arbitrator what a resolution could look like. If the conflict parties accept the suggestion, the arbitration is considered successful and the award becomes a new contract.

Binding Arbitration

Binding arbitration comes near to a court case. The parties have agreed or are forced by law or other rules to accept the arbitration award as binding. Cases are mostly faster and less formal than court cases and can be easily remedied behind closed doors.

Binding arbitration may be performed by courts, chambers of commerce or specialized legal offices.

Legal Action

Lawsuits are something that reasonable project business people try to avoid when possible. They are often lengthy, expensive, and the outcome is very uncertain. The public realm, in which they commonly take place, may also jeopardize the reputation of the parties.

One of the worst aspects of lawsuits is that they bind the most important resource of a project and its performing organization: Management attention.

The Key to Success in Conflict Resolution

It is good to keep aware how contracts and differ from other project documents. The project schedule, the WBS, the scope statement and many other documents and with them decisions made, bind the project. A contract binds the entire organization. This principle is true for both sides, clients and vendors.

The key to success in project business management is to deal with contract partners in an atmosphere of trust and good faith. However, in a possible situation that a conflict needs to be resolved, documentation will be the decisive factor. Most resolutions end with a settlement, and the settlement will be more favorable for the side with the better

⁹ The new association “Project Business Foundation” has a program to provide mediators and arbitrators for project business to help resolve conflicts before they are taken to court (Project BusinessFoundation, 2020).

documentation. Sometimes, it may be enough to show the other party how well documentation supports the own position and undermines that of the other party to allow resolution in the preferred way – negotiation.

Conclusion

What is then a common reason for failure in conflict resolution? Lack of documentation. Documenting project business with its good and poor performance is not a sign of distrust, it is just common sense for the rare cases that relations get sour over diverse business interests, incompatibility of cultures and when egos clash.

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About the Author



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Oliver F. Lehmann, MSc., PMP, is a project management author, consultant, speaker and teacher. He studied Linguistics, Literature and History at the University of Stuttgart and Project Management at the University of Liverpool, UK, where he holds a Master of Science Degree. Oliver has trained thousands of project managers in Europe, USA and Asia in methodological project management with a focus on certification preparation. In addition, he is a visiting lecturer at the Technical University of Munich.

He has been a member and volunteer at PMI, the Project Management Institute, since 1998, and serves currently as the President of the PMI Southern Germany Chapter. Between 2004 and 2006, he contributed to PMI's *PM Network* magazine, for which he provided a monthly editorial on page 1 called "Launch", analyzing troubled projects around the world.

Oliver believes in three driving forces for personal improvement in project management: formal learning, experience and observations. He resides in Munich, Bavaria, Germany and can be contacted at oliver@oliverlehmann.com.

Oliver Lehmann is the author of the books:

- "[Situational Project Management: The Dynamics of Success and Failure](#)" (ISBN 9781498722612), published by Auerbach / Taylor & Francis in 2016
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