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Book Review: Drafting and Negotiating IT Contracts, 3rd ed.

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This book is basic. Basic in the good sense: it is the first go-to work for IT professionals, especially procurement or contract managers and possibly also for lawyers that are starting their careers in the field of negotiating and drafting IT contracts. It provides a very good bird's-eye view of the legal issues, as well as the more recent developments in IT itself. It serves as a good point of reference and can be consulted without necessarily following the chapter sequence. The book is up-to-date on such novel topics on cloud computing and Software-as-a-service (SaaS), which are discussed in sufficient detail. The authors' explanations of the core legal issues arising in the context of new technologies are very satisfactory. The checklists and contractual templates are very useful, regardless of whether you are staring out in the field or whether you are a veteran who simply wants to conduct last-minute verification whether everything has been addressed. Particularly useful for non-lawyers are the first 6 chapters, which provide a good outline of not only the law of contract but also the foundations of confidentiality agreements and an explanation most frequently encountered contractual clauses. Lawyers and non-lawyers alike will enjoy the clear descriptions of the business context in which particular agreements function. Chapter 9, for example, discusses various distribution models of computer products or IT services. Mentions of the application services provider (ASP) model are particularly interesting although the topic is strewn over 2 chapters. The writing is accessible and unpretentious. Not something to be taken for granted nowadays.

There are some aspects of the book, however, that require further refinement. On one hand, the authors emphasize that the reader should consult a lawyer – which precludes any claims as to the book's completeness or exhaustiveness. At the same time, the authors emphasize the importance of contractual risk allocation. This is probably the main weakness of this book: there is relatively limited information on this issue and only the most basic examples of the relevant clauses, e.g. liquidated damages. There is also relatively little on exclusion clauses and indemnities. The latter are, after all, the main tools of contractual risk allocation. Needless to say, these topics are so rich and complex that a book of this kind cannot be expected to provide an exhaustive overview of the issues. Speaking from experience, apart from specifications and price, these three areas (i.e. exclusion clauses, indemnities and liquidated damages) are often the most contentious and heavily negotiated provisions in a contract for IT services. They can also directly affect the price of the contractual deliverables. It would have been helpful to provide some more guidance on these issues, especially given the recent legal developments affecting all three areas. Similarly there is only very little on service level agreements and services credits, which can often be regarded as “camouflaged” liquidated damages and *might* be a way of sidestepping the rule against penalties. It is intricacies like these that are really important when structuring risk allocation and pricing – especially in larger IT projects.

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Similarly, more detail could have been provided with regards to payment terms and how they intersect with delivery, the passing of property and risk transfer. While we cannot expect a discussion of every possible configuration, it would have been useful to point out that these factors can be linked or separated to meet the needs of a specific project. In sum, the book constitutes a fantastic reference for general issues but it does not teach “new tricks” or point out the critical intricacies that may arise.

Assuming that the book is predominantly written for non-lawyers, one of its main strengths (apart from being highly informative) is that the reader will be able to ask his or her lawyer the right questions and possibly point out the main risks and uncertainties. Ultimately, everybody on an IT project has to cooperate to identify, analyze and address the areas that are most likely to create legal risks. The task is usually too daunting for lawyers or IT professionals acting alone

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