

The Business Shield:

Proactive Legal Engineering to
Prevent Costly Disputes

A **comprehensive guide** on minimizing
ambiguity in contracts



The Business Shield:

Proactive Legal Engineering

The most cost-effective legal strategy in business relationships is to avoid disputes, as they are a predictable risk. Minimising ambiguity and conflict in legal documents such as contracts and agreements, mortgages and leases, among others, reduces these predictable risks, if not eliminating them. However, most businesses opt for a reactive approach, rather than being proactive to reduce such risk. Such thinking is expensive. Although legal defense is good, a legal shield is much better.

Proactive legal engineering entails implementing mechanisms to anticipate risks and de-escalate costly disputes. The use of clear, conflict-minimising clauses, tiered dispute-resolution mechanisms, and early dispute identification serves as a preventive shield against costly disputes.



Why Proactive?

“Reactive approaches are expensive. Proactive engineering transforms legal documents from mere formalities into strategic business tools that actively prevent conflict.”

Contract Design as Prevention

Key Clauses that Minimise Ambiguity and Conflict

Very often, the costliest contractual disputes do not arise from deliberate breaches, but from contracts that fail to anticipate practical difficulties in performance.¹ Preventive contract design addresses this gap by creating agreements with clear, structured clauses to manage friction before it escalates into formal conflict.²

🔗 Scope & Performance³

When parties are aware of their exact obligations, what has to be delivered, the milestones, and the measurable standards, it leaves no room for speculation and reduces interpretive disputes.⁴ Vague wording, such as "reasonable efforts" or "as required", can lead to disagreements between expectations and performance.

⏪ Notice & Escalation

Mechanisms for early warning and escalation are intended to have one party give formal notice of the problem, and then the parties engage in a structured discussion before any enforcement action is taken. This way, the situation becomes more transparent, and there is more room for a solution.

↔ Change Control

Addresses ownership changes or scope variations. A clear step-by-step process (instructions, impact assessments, approval) allows changes to scope, time, or cost to be managed without disputes.

🏠 Termination

These clauses define when, how, and with what consequences a party can bring the relationship to an end. At the end of the relationship, if the parties have to escalate and start litigation, those situations can be prevented if the termination is based on what is very clearly stated, i.e., the reasons for termination, the notice period, and the outcomes of the exit.

🛡️ Risk Allocation

Liability should be placed on the party best able to control risk, and the limit of the risk should be clear and appropriate insurance.⁵ This way, the parties are less likely to make opportunistic claims and more willing to cooperate, especially in energy, project finance, and infrastructure contracts.

➡️ Dispute Resolution

Tiered dispute resolution clauses specify a step-by-step procedure for resolving disputes if and when they arise. It usually starts with parties negotiating in good faith. If necessary, they can then pursue mediation or expert determination before proceeding to arbitration, the primary binding mechanism.

Case Highlight **Obrascon Huarte Lain SA v HM Attorney General for Gibraltar⁶**

The importance of these clauses was underscored in the UK High Court decision in *Obrascon Huarte Lain SA v HM Attorney General for Gibraltar*, a major infrastructure dispute. The conflict emanated from Sub-Clause 20.1 of the contract between the parties, which obligated the contractor to issue a timely notice for extension of time and additional costs if there are overriding circumstances which prevented them from concluding the project within the stipulated timeline. The contractor neglected to give such notice as clearly as required under Sub-Clause 20.1.

Ruling: The Court held that the contractor was not entitled to an extension of time, having failed to comply with the clause.

The Tiered Dispute Resolution Clause:

A Step-by-Step Escalation Ladder

The tiered dispute resolution clause in any contract serves as a step-by-step escalation ladder, giving the parties an opportunity to resolve disputes at the earliest stage while saving time and costs.⁷ It involves the following progressive stages: negotiation, mediation, and arbitration, before resorting to litigation.

Negotiation is a business-level problem-solving mechanism focusing on preserving the business relationship between the parties. Where negotiation fails, parties proceed to mediation, which we call a facilitated negotiation with the assistance of a third party. In the same vein, when mediation fails, parties proceed to arbitration, which is more formal and closely related to litigation. When mediation fails, parties proceed to arbitration, which is more formal, and it is conducted in a private setting.

According to Joseph Grynbaum, and in his words, "an ounce of mediation is worth a pound of arbitration and a ton of litigation!" This underscores the fact that the earlier a dispute is resolved, the less costly and damaging it is.

An illustration of a tiered dispute resolution clause is seen below:

Where there are disputes arising out of or in relation to any issue regarding the interpretation, performance, breach, termination or validity of this contract, the parties shall make efforts to negotiate and find a solution to the issues therein, within 20 days from the request of either party to the other party. Where, after the expiry of the 20 days, the parties have not reached a settlement to the issues therein, either party, within 10 days from the expiry of such term, may refer the dispute to Mediation in accordance with the Arbitration and Mediation Act 2023. If the dispute remains unresolved, it shall be finally settled by arbitration under the rules of a designated arbitral institution, with the seat in Lagos, Nigeria, a sole arbitrator, proceedings in English, and an award that is final and binding. Nothing in this clause prevents either Party from seeking interim or conservatory relief from a court of competent jurisdiction, enforcing an arbitral award, or addressing matters not capable of settlement by arbitration.⁸

“An ounce of mediation is worth a pound of arbitration and a ton of litigation!”

— Joseph Grynbaum —

Operational Tools

Joint Governance Committees & Real-Time Relationship Dashboards

Businesses are advised to implement practical systems to detect potential problems or breaches before they escalate into costly legal disputes. Practical systems, such as the establishment of a Joint Governance Committee and the creation of a real-time relationship dashboard, are operational tools businesses must have.



Joint Governance Committees

representatives of the parties to a contract serve as a relationship-management board that monitors contracts, discusses risks before they escalate, resolves operational tensions, and aligns expectations when business reality changes.⁹ It is expected that both parties meet regularly to oversee these relationships.

Oversee Relationships Regularly



Real-Time Relationship Dashboards

use data and tracking tools to monitor the functioning of the business relationship. It is expected to track payment timelines, compliance deadlines, risk flags, and delivery milestones, amongst others.

✓ Data-Driven Monitoring

💡 Strategic Benefit

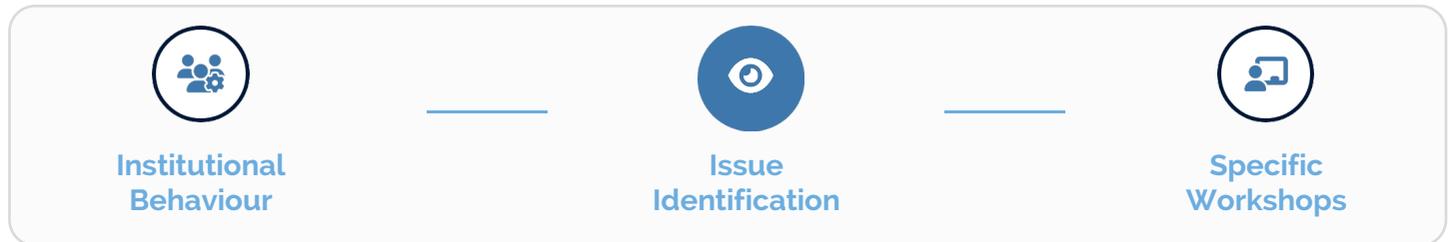
Businesses that adopt such operational tools are more inclined to prevent disputes through design rather than fight them after damage is done.



Training Commercial Teams

In Early Issue Identification

Preventive contract drafting is quite ineffective if it is not backed by appropriate institutional behaviour that enables its implementation. It is a common misconception that most disputes arise from the absence of preventive clauses. However, it is often the case that the commercial teams responsible for contract performance are unaware that contract thresholds have been breached.



Hence, a cultural change is necessary to treat the identification of potential problems as a primary commercial responsibility, rather than a legal afterthought. Commercial teams should be instructed to interpret contracts as performance guidance frameworks rather than merely as legally binding documents.

In reality, this implies the ability to identify legally significant events, such as variations, delays, force majeure triggers, and notice deadlines, in real time. Industries such as construction and energy, and long-term infrastructure projects, are examples where failing to promptly recognise these events can lead to the loss of contractual rights. Therefore, specific workshops should focus on key contractual provisions, including notice requirements, change processes, escalation clauses, and conditions precedent.

The Strategic Aim

The aim is to ensure that parties understand the importance of addressing issues through contractual mechanisms and formal resolution, while maintaining the continuity of commercial solutions.

The Business Shield:

Summary & Key Takeaways

Disputes are expensive and disruptive, but many can be avoided. Proactive legal engineering helps businesses prevent conflicts by using clear, unambiguous contracts, step-by-step dispute-resolution clauses, and practical execution structures. When issues are identified early and handled properly, they are less likely to escalate into formal disputes.

Benefits of Prevention

 <p>Save Time & Money</p> <p>Minimizing costly litigation and operational delays.</p>	 <p>Strong Relationships</p> <p>Maintaining commercial continuity through collaboration.</p>	 <p>Reliable Results</p> <p>Achieving efficient project outcomes with less friction.</p>
---	--	--

Moreover, training commercial teams to detect and resolve issues at the earliest stage also reduces risk. Preventing problems rather than reacting to them helps the business save time and money, maintain strong relationships, and achieve more reliable, efficient results.

“Final Verdict

“The most successful businesses don't just win disputes; they engineer their relationships to avoid them entirely.”

Endnotes

1. Johnson JS and Sohi RS, 'Understanding and Resolving Major Contractual Breaches in Buyer-Seller Relationships: A Grounded Theory Approach' (2016) 44(2) *Journal of the Academy of Marketing Science* 185 <<https://link.springer.com/article/10.1007/s11747-015-0427-8>> accessed 27 January 2026.
2. P Hietanen-Kunwald and H Haapio, 'Effective Dispute Prevention and Resolution Through Proactive Contract Design' (2021) 5(1-2) *Journal of Strategic Contracting and Negotiation* 3 <<https://journals.sagepub.com/doi/abs/10.1177/20555636211016878>> accessed 27 January 2026.
3. See *Ogwu v Leventis Motors Ltd (1963) NRNLR 115* where the contract had a material provision that purported to exclude the defendant from any liability for any warranty, implied or otherwise, as to description, state, quality, fitness or roadworthiness. The decision was that the term did not shield the defendants who supplied a five-year-old lorry instead of the one-year-old lorry that was agreed upon.
4. EO Osifo, ES Omumu and M Alozie, *Contract Management in Construction Law: Mitigating Risks, Dispute Resolution, and Performance Enforcement* <<https://shorturl.at/nGjhy>> accessed 27 January 2026.
5. WZ Zahari, 'On the Contractual Risk Allocation in Oil and Gas Projects' (2017) *The Law Review (LR)* 168 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3052064> accessed 27 January 2026.
6. [2014] EWHC 1028 (TCC).
7. Bernardo M, Cremades, 'Multi-tiered Dispute Resolution Clauses' CPR Institute for Dispute Resolution <https://fidic.org/sites/default/files/36%20cremades_2004.pdf> accessed February 11, 2026.
8. IBA Litigation Committee, 'Multi-tiered Dispute Resolution Clauses' October 1, 2025 <<https://globaldisputes.com/wp-content/uploads/2015/11/handbook-multi-tiered-dispute-resolution-clauses-1-october-2015.pdf>> accessed February 11, 2025.
9. Doctors Nova Scotia, 'Committee Terms of Reference - Joint Governance Committee' <<https://doctorsns.com/sites/default/files/2021-08/next-steps/WCB-JGC-TOR.pdf>> accessed February 11, 2026.

Contributors



Ituah Imhanze

Partner, Dispute Resolution
& ADR



Amanda Abor

Associate, Dispute Resolution
& ADR



Chinonso Ekuma

Associate, Dispute Resolution
& ADR



CONTACT US

LAGOS

KENNA Place
8, Ogunyemi Road, Palace Way, Oniru
PO Box 73002, Victoria Island, Lagos

ABUJA

1st Floor, Novare Central
Plot 502 Dalaba Street,
Wuse Zone 5, FCT 900285, Abuja

ENUGU

3 Emmanuel Ngwu Street,
Old Emene Road, by AC Drug,
Thinkers Corner, Enugu.

+234 811 395 1052, +234 811 395 1053
counsel@kennalp.com

