

## Even Next-Gen Tech Needs a Lawyer

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Speaker 1: Tech Reimagined, redefining the relationship between people and technology. Brought to you by Endava, this is Tech Reimagined.

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Bradley Howard: Hello, I'm Bradley Howard, and I'm happy to welcome you back to the latest episode of Tech Reimagined. Joining us today is John Buyers. He's a partner and commercial solicitor at Osborne Clark. And the topic of today's episode is the combination of IT services and next generation technology. Hello, John, it's lovely to have you here. Can you tell us a bit more about yourself and your background?

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John Buyers: Yes. I'm technology partner at Osborne Clark. I lead the commercial services team there. And we deal with all things transactional and all things technology. And I also lead the international AI team, and typically advise businesses that are looking to implement or deploy AI solutions. What led me into the IT services industry? Well, I started in a city law firm. It was called then Denton Hall, it's now, I think, called Dentons. And that was my first introduction to the world of technology and transactions. And I was simply fascinated by it. And it led me into a career path where I moved from Dentons to an IT company by the name of Elonex which, back in the day, was a PC manufacturer. And I got involved in my first substantial IT services transactions at that particular point. It was simply my milieu and the transactions got bigger and bigger. The values got higher and higher. And the issues got more and more complex. And it was just a natural path for me to tread.

And then I moved into a business called Cap Gemini, which is a very famous IT services provider, and ended up running some very, very large international transactions. What I loved about IT services was that you are pulling together a wide variety of different disciplines. And not only do you have to write the agreement, but you also have to act a bit like a cowboy. You have to corral everyone into a particular pen. And it's difficult with IT services people because they're a bit like cats. You can't really herd them and they've all got their own opinion. They've famously over opinionated. But anyway, you've got to project manage them. And then you've got to be a diplomat as well. So not only have you got to get your own side aligned, you've got to get the other side on the same page as well. And I'm very much a people person. So it's the people aspect of the job that I really love.

And over the course of the 25 years or so that I've been working in IT services, I've really seen the industry transition from a model where the businesses were using big, on-premise IT systems, and taking big transfers of people when IT departments were moved across, to a situation where services are being transitioned into the cloud. And where the people element is significantly, more and more, being replaced by technologies such as artificial intelligence. Which was, indirectly, how I got into advising on artificial intelligence in the first place.

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Bradley Howard: Well, thank you, and welcome to the show. So in those 20 years, presumably you've seen projects migrate from a massive requirements document at the start of a project, which is quite easy from a legal perspective to say, "You have done this, you haven't done that." Into much more of a fluid and agile approach now, which is, "We want some teams. This is generally where we want to be going." So how's that changed from a legal perspective?

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John Buyers: Yeah. Again, and it's a bit of a bit of a trope, isn't it. But the law always seems to catch up, it always seems to be late to the party. And I think that's one of the areas, in particular in IT services, where we've really had to evolve the way in which IT services contracts have been drafted. Because, traditionally, they've always been drafted... Certainly in an integration or a development situation, they've always been drafted on a waterfall methodology with a very detailed specification. And a big checkbox or a cross at the end where the customer accepts the solution to a more agile situation.

And what I found really interesting is that there's a remarkable lack of understanding. Given that agile development has been around now for a pretty long time, there's a remarkable lack of understanding. And you must come across this, Bradley, as well. A remarkable lack of understanding in the professional services legal industry about how agile developments actually work. And a couple of years ago, actually, we deconstructed it all with a major IT services client. And we created an agile template, and we went into the intricacies of MoSCoW requirements and scrums and sprints, codified that into a cogent document, which I think is still class-leading to this day. But I would say that.

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Bradley Howard: And when you said opinionated before, I'm hoping that present company is excluded from that.

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John Buyers: Of course.

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Bradley Howard: So governments and industry are really promoting STEM, that's science, technology, engineering, and mathematics, subjects in education. Are there still enough people studying law?

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John Buyers: Yeah, it's still very much oversubscribed. But certainly, my two teenage kids, I would've cautioned against them entering the legal profession at the moment. Because I think it's very competitive and it's, frankly, very, very hard to get a decent role. And I think, potentially, from my own perspective of my own professional practice, this is an area which could be operationalized by the introduction of technology. And again, that's a bit of a meme that seems to run through the conversation circles that I'm in. That, "When are the machines going to take over your job?" But there's a kernel of truth to it, and I think professional services are, such as legal services and accountancy services, potentially, some of the most vulnerable industries to the wave of automation.

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Bradley Howard: I'm quite surprised at that answer because one of my closest, dearest friends, he's a patent attorney. And I think that is the best job in the world. Because, by definition, you only get to work with people who are inventing stuff, coming up with brand new concepts, trying to work out what makes that different, and work with the inventors. It just sounds absolutely fantastic. And you're also helping to protect them from being copied. It just sounds absolutely brilliant. So he gets to work with technology, and the inventors, and law. Sounded brilliant.

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John Buyers: Yeah. And I think, look, there's a qualification to what I'm saying, Bradley, which is that, so far as the law is concerned and other professional services, there is always going to be... It's like a pyramid, there's always going to be... At the apex of the pyramid, there's always going to be a demand for premium, strategic, legal, or other professional services that customers are going to be willing to pay for. Where the operationalization actually occurs is in the base of the pyramid, where there's all this commoditized work that just can be handed off to machines. And I think we're seeing that happen at the moment with automated due diligence solutions. And document review solutions that are being implemented at the moment. So if you're going to be a lawyer, and it's a roundabout answer to your question, if you're going to be a lawyer, become AI lawyer like me, or a patent lawyer like your mate. So that you're actually in a position to control the new technologies as they're being developed.

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Bradley Howard: And how early on do you recommend companies or teams engage you during that ideation process, to actually writing code, to start thinking about the legal perspective? You mentioned before about agile and sprints. So do you really think that lawyers should be involved every two weeks? And I'm not talking from a billing perspective, John.

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John Buyers: Well, talking about something close to my heart. No, I think you'd expect me to say involve us as soon as possible. But I really do appreciate the pragmatic practical constraints to hiring external counsel because we can be quite expensive. I don't think we need to be involved in every single sprint. I think that's overkill. But what we do need to be involved in is the creation of a document, a suitable framework, which protects the interests of both parties. And the only way that we can do that adequately and efficiently is to understand precisely what it is that's going to be done right at the very beginning. So yeah, the optimal model will be to have a consultation with an external counsel before you start. Then you go through ideation and, while you're doing that, we create the framework within which the agile development takes place. And then, ultimately, we'll negotiate it. But don't leave us right until the last moment, because you'll end up with a half-baked solution.

So my predictions, on a regulatory front, we're inevitably going... And this is less of a prediction than an inevitability. We're going to see more regulation in the IT services space through regulations, such as The AI Act. And that is really going to influence the way in which IT services are delivered in the UK and in Europe. And the point I would

make here is that there's a real concern that that particular act is going to create a bunch of compliance hurdles, which may actually act to disincentivize the provision of IT services within Europe. It's certainly going to create a high number of regulatory hurdles. So that's, potentially, going to change the shape of the way in which IT services are being delivered. And my prediction there is that Europe is going to move more towards traditional IT services and away from AI. I need to think about the other two, Bradley.

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Bradley Howard: That's okay, that's okay. In your experience, what are the industries that are adopting AI the quickest from, let's say, your clients? You don't need to mention them by name, but which industries?

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John Buyers: Again, another very good question. I think the industries that are adopting AI are the ones that are computationally intensive and need to make volume decisions. So I'm not categorizing them by sector at the moment. And equally speaking, they can be operationalized relatively straightforwardly. So to put typical businesses within that bucket, clearly, the financial services industry, in the context of having to make high volume decisions about eligibility for products and services, has massively embraced artificial intelligence and machine learning as a solution. Likewise, insurance, which is, again, highly operationalized in terms of the volume of decisions that it's making, in terms of underwriting policies of insurance and risk. We've already talked about professional services such as accountancy and the legal profession. I think they're following close behind. But in that situation, it will be services that are more at the commoditized end, rather than the strategic end. So those are the class leaders when it comes to industry. I think the rest of the industries are following behind. I'm seeing it permeate every sector in quite an insidious way.

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Bradley Howard: Back to IT services, can you share with us what are the most common causes for which IT services providers are in a bit of legal hot bother for?

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John Buyers: I think they boil down to basic human dynamics. And it's just like any other interaction you would have with any other person. So where you've misrepresented what your service can do, then you will get into a lot of trouble. And I've seen that time and time again, where sales people on the IT services side have mis-sold a particular service, it's failed to deliver the results, and litigation has resulted. And of course, the big one on that front was the B Sky B and EDS case, which happened a few years back, when EDS, which no longer exists, misrepresented its platform to Sky.

Poor commercials are another one, in my experience. And I will not name names to spare the guilty. But I've seen, for example, service levels that are being crafted in a way which are, frankly, impossible to achieve. And you combine that with a service credit remedy schedule which is quite expensive, has core suppliers to, frankly, hemorrhage

money. And there was one particular deal, in the public sector inevitably, where the supplier really lost money for the term of the agreement. Didn't make any money at all. And that was through poor hygiene in the creation of the backend schedules. It's rarely anything to do with the front end. The front end, what you tend to find in IT services, is the front end or the front end terms and conditions are usually over crafted. And are usually polished and are fantastic. It's the interaction between the schedules and the back end with the front end, is where the vulnerability is created.

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Bradley Howard: What do you mean by front end and back end?

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John Buyers: This is lawyer speak so sorry, Bradley. But the front end would be the set of formal terms and conditions that define the transactions. So you'd have a set of Ts and Cs for an outsourcing, or for an integration, or for a development. And that would be typically crafted by a law firm or internal counsel. And that refers to a set of schedules. So things like the SLAs, the service description if there's one, the timelines for the project, change control, things like that that are ancillary to the main project. It's in those schedules where most of the mistakes happen. And in not ensuring that the schedules communicate properly with the front end. Typically, in the service delivery elements of the schedules, I can't draft a service specification because I'm a lawyer. I'm not a service delivery person. So we rely on the service delivery people to draft that. If they make a mistake, then it's on them. They've created an issue for themselves.

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Bradley Howard: And are the litigation circumstances becoming more complex? Are you seeing the same issues happen now as in almost 20 years ago? How's it changing?

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John Buyers: I think what we're seeing, again, so far as market indicators are concerned, I think we're seeing an increased appetite on the part of customers to take on suppliers when they're unhappy with an outcome. So certainly, the appetite for litigation is higher, which is a potentially worrying outcome for IT services providers. We've been involved in a number of technology disputes. I work with, not through any contracts that we've created, but we've been instructed separately. And I work with my litigation colleagues on the dispute side, in relation to number of disputes with suppliers and with customers, which we've had to sort out. And my role in that situation is to try and talk people off a precipice. And get them to a workable solution or a workaround, which will fit both parties. But if that doesn't happen, then we retreat back to the trenches and open fire, metaphorically.

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Bradley Howard: Good old fashion communication principles. And finally, when you and I both started in this industry, there were much more IT services companies providing hosting solutions, literally, the servers and managing those. But with the event of cloud computing, where most of the IT services companies are now recommending clients start using Amazon, Google, Microsoft, and any of the other cloud vendors, surely that removed some of the litigation circumstances? I remember, when I was starting out in the industry, and when we were responsible for our client servers. If there was a problem there with downtime, it was us who were liable. But now, it's all passed on to the cloud providers, isn't it?

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John Buyers: It could be in some situations, but I think in some situations it could actually increase your propensity to be sued for a situation you're not able to control. And this is something I'm seeing very much in the industry at the moment. And you're absolutely right, Bradley. We are now moving to AWS and Azure and using those platforms. But the lawyers, and the delivery people, that are setting up these SaaS delivered solutions are forgetting that when they're putting their solution into the cloud, they're relying on the terms and conditions of Microsoft Azure or Amazon and AWS. And they're not allowing the enterprise license from those SaaS providers to influence their own terms and conditions. And I have to say this time and time again. I'm running about six SaaS or cloud platform transactions at the moment. You would be amazed at how often, and in some incredibly large organizations are involved, they have mis-licensed their core enterprise license with AWS or with Azure. To the point where they are forbidden, under that license, from providing a hosting service to their customers. I see it time and time again. They ignore the terms of their core SaaS license. And that is going to create more and more issues because, frankly, the core SaaS providers can simply turn the solution off.

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Bradley Howard: I don't quite understand. What do you mean by mis-licensed from the cloud provider?

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John Buyers: So you'll get a situation where you have a tier of license that the customer has taken from the SaaS provider, which only allows for personal, internal use. And does not allow them to use the hosted platform for onward use to their customers. So, basically, they're out of license the moment they offer their solution to a third party. It's as simple as that.

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Bradley Howard: Right. Wow. And are these on large projects?

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John Buyers: Yeah. Yeah, you would be surprised. We're talking about organizations that measure their turnover in the billions of dollars and not the millions. Household names.

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Bradley Howard: Wow. Well, okay. Well, thank you very much for that. We won't delve any deeper on that one. John, it's been really insightful having you on the show today. Thank you so much for sharing some of your expertise and these anecdotes. To all of our listeners, I hope you've enjoyed today's episode of Tech Reimagined, and thank you for joining. Please show us some love and hit that subscribe button if you liked the episode. And don't forget to tell your friends and colleagues about the show. If you have any questions, or want to reach out, or you've got any feedback, please drop us a line at [endava.com](https://endava.com). Or use the @endava handle on most of the social media platforms. We look forward to hearing from you. Until next time, it's been a pleasure.