

# How to Buy Legal Tech That Works



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## Chapter 2:

# A truth-finding process

Buying software is hard work, and folks who underestimate the effort involved or take a superficial, lackadaisical approach are likely to get screwed by vendors. When they do get screwed, they tend to blame the vendors. And to be sure, the vendors often deserve a lot of the blame. But there's usually plenty of blame to go around, and what the screwees typically refuse to acknowledge is how their own foolhardy behavior probably contributed to what happened.

Often this foolhardy behavior comes in the form of taking a passive approach to software buying. Since this is a legal book, I'll use an analogy. Purchasers of software often handle the process in much the same way that American judges handle court litigation. American judges work under what is called an adversarial system, and do not drive litigation. They act like referees, allowing the litigants to present various evidence and arguments, while they merely listen and consider the merits. Normally they do not go beyond the evidence and arguments put in front of them by considering valid arguments that might not have been made. In fact, if a judge makes a decision that is obviously wrong, by law that decision cannot be overturned by an appellate court unless one of the parties to the lawsuit had previously put forth an argument to the contrary. And under no circumstances do judges do their own detective work by gathering or demanding evidence that was not obtained and put in front of them by the litigants.

Not so in nations like France and Italy. European judges work under what is called an inquisitorial system. In these cases, the judges take an active role in the litigation. While the litigants are entitled to present various evidence and arguments, judges – at least in criminal matters – are expected to go beyond those arguments and perform their own investigation and analysis. If they make an incorrect decision, they cannot blame the litigants for failing to provide all the evidence and arguments that were needed to arrive at that decision; it is their job to go out and find that evidence and those arguments, regardless of whether they were presented by the parties.

While the American approach might work for legal decisions, for various

reasons, it doesn't work for software decisions. Particularly, consider the fact that, if an American judge makes a bad decision, the unfortunate consequences fall on the litigants, not the judge. However, a corporate law department that gets lazy and takes a passive approach to software selection may suffer years of frustration, late nights, and impaired ability to help other parts of the organization due to bad technology.

Compared with other business units, law departments may be particularly vulnerable to such consequences, in part because they are not necessarily comfortable with or familiar with technology. They continue to be seen – and to see themselves – as subject matter experts in the law, not as business-people. That can lead to dire consequence like those suffered by the British Post Office, which was similarly unfamiliar with technology.

In the late 1990s, the Post Office purchased a new payments system, called Horizon, from Fujitsu, a Japanese company. Among other things, the system was supposed to be able to detect when postal workers were stealing from the organization in various ways. Data from the system were eventually used to convict over 900 postal workers of theft and related crimes, ruining their careers and causing bankruptcies, divorces and, allegedly, four suicides. The postal workers in question insisted that the data out of the system was faulty and that there had been no theft, but the government proceeded with its prosecutions, partly because of a strange law on the books that basically prohibited courts from questioning the accuracy and reliability of computer records.

However, as of this writing, over 100 of those convictions have been overturned and it appears the majority of the outstanding ones may have been invalid as well. By all accounts – even if some of the convictions end up being valid – it is clear that the Horizon system that led to those convictions was garbage and that the reason why the Post Office ended up with that system was because they didn't know what they were doing.

Consider the following analysis by *The Economist*:

*“The most obvious problem was that the Post Office... was a credulous customer. Senior executives had no idea how branches worked in practice or what a ‘computerised’ payments system would involve...”<sup>1</sup>*

The result of this credulity was, the Post Office got catfished. The executives in charge of the buy decision went with the system whose salespeople told them the project was going to be cheap and easy, rather than with the more

honest salespeople who focused on “difficulties and complexities” and admitted the solution wasn’t going to be cheap. Twenty years later, as the story continued to unfold and a lot of the convictions started to look invalid, the Post Office “responded to concerns about [the system] by referring to assurances from Fujitsu that the software was ‘like Fort Knox.’”

“What that really meant,” concluded *The Economist*, “was that the Post Office did not know what was going wrong. Jeremy Folkes, the employee tasked with ensuring the system worked, called it a ‘black box’....”

In other words, the whole disaster happened because the Post Office failed to take responsibility and do the hard work of an inquisitorial, truth-finding approach, instead substituting dubious vendor assertions for its own analysis. It did this because it was incompetent and either didn’t know it was incompetent or knowingly accepted the risk of proceeding with a major software purchase despite knowledge of its own incompetence to do so.

The consequences of bad legal tech decisions (as far as we know) don’t typically include bankruptcy, divorce, and suicide, but they are still serious. Having been a user of ill-considered law department software in the past, I can assure you that the pain and frustration bad tech can cause law department workers is significant. Furthermore, the pain spreads, because virtually every other business unit in the corporation needs help from the law department to do its job. If law department tech isn’t up to snuff, it makes everything slower and more expensive. Business deals get slowed down and, because “time kills deals”, revenue takes a hit. Litigation outcomes are impaired, as is the ability to manage outside counsel, the costs around which are already outrageous, and becoming more so every day. Internally, law department workers get frustrated with incompetent tech deployments that make their jobs take longer than they need to. After one too many late nights living in a Dilbert cartoon, they eventually find employment elsewhere.

Perhaps the most damaging consequence of bad tech decisions is the reputational damage to the law department itself. In many corporations – including ones I have worked in – the law department is viewed as antiquated, technologically incompetent, sluggish, and so out of touch it doesn’t even know it. I have watched a highly-paid paralegal send ten or 20 emails arguing with a counter-party over some minor language in a \$500 contract to the point where the deadline for doing a deal came and went and the whole issue became irrelevant. Perhaps experiences like those are why 73 percent of enterprise employee respondents to a recent survey<sup>2</sup> indicated they do not consider the legal department to be a good business partner, and

79 percent indicated they do not view legal as “a modern operation”. Most alarmingly, in the same study, 65 percent of employees admitted to “intentionally bypassing their legal departments and processes, even though they know they are breaking company policy”. Not good.

When you sit back and let software vendors tell you what to think and how, you risk impairing both the quality and perception of your legal operations even more. If those risks become realities, folks in the business units start to view your law department not as a business partner, but as a hindrance to be ignored or circumvented altogether. And if you think, as I do, that the purpose of the law department is to de-risk the organization as quickly, cheaply, and with as little organizational friction as possible, then effectively training the people you are supposed to be helping to avoid you is diametrically opposed to that purpose.

Therefore, this book advocates for an active, even aggressive approach to software buying – an approach that penetrates through layers of sales and marketing platitudes to get as close as possible to the actual truth.

### **Why most legal tech sucks**

I was joking with two colleagues about the tentative title of this book, and said it should be, “How to Buy Legal Tech that Isn’t Cr\*\*.” Longtime veterans of the space, they both laughed and agreed – it mostly is.

It’s certainly not all rubbish – there is some very thoughtful software on the marketplace – and even when the software is bad, it is generally at least functional.

But about six months ago, I was talking with a former Big Law partner who had split off and formed his own firm. The firm recently switched from one timekeeping system to another, and he was scratching his head about why the new one didn’t seem any better.

*“If Apple and Google can do it, then why can’t company X?”* he said.

If I had been drinking milk when he said this, I would have blown it out my nose.

*“Well, Company X is hardly Google,”* I said. *“Google revenue last year was \$306 bn. Company X probably had less than \$500,000. Google has the smartest engineers and product managers in the world working for them, and Company X has six guys in Muncie, Indiana. Also, Google has been extremely lucky, and Company X hasn’t.”*

*“Well,”* he said, *“I still don’t see what makes it so hard.”*

He didn’t get it, and never will.

Making software is an extremely hard and speculative venture. The promise of the great returns the industry is reputed for is largely survivorship bias, where all the attention goes to wild successes like Steve Jobs and Bill Gates. Those unrealistic images attract a lot of smart people to the space, creating a lot of competition and making it hard to succeed. Not all areas of legal tech, but many of them, are what business theorists call “red oceans” – areas where a surplus of competitors cannibalize one another’s business, and hardly anyone makes any money. Indeed, the median outcome for a software start-up is going out of business or getting sold for scrap.

Making software for big businesses is also more complex, in some ways, than making software for individual users. Software for individuals only has to work with one person to be valuable, whereas software for big business has to get many types of people from different parts of the organization – and often people outside the organization – to all work together. Trouble is, those different groups of people all have different needs and, sometimes, somewhat conflicting interests. Their needs aren’t everyday ones that anyone with a heartbeat can understand, but very specific needs that occur in a very specific context that is hard to explain to outsiders. It is hard for software developers to get interview time with those very specific people about those very specific things, so they just do the best they can, and it can take years and years for them to work out all the kinks.

The lack of resources available to the average legal tech start-up, the surfeit of competition in some spaces, and the complexity and obscurity of the client’s business needs are just a few of the reasons why most legal tech sucks.

Another one is asymmetrical knowledge, where the sellers have a much more sophisticated understanding of the market than buyers do. Buyers do not necessarily know what they want, do not necessarily know what the options are, and, at least at an organizational level, often have a very superficial understanding of how the claimed features and functionality of a product will work in practice. As such, they are in a poor position to determine the extent to which a given product fits with their particular needs.

Even when they do have the sophistication and understanding to choose the best product for them, many corporate law departments do not take the time to apply that understanding, instead rushing through software selection, failing to define the problems they are trying to solve, and doing insufficient due diligence to identify the best solution to target those problems.

Insufficient sophistication and insufficient time together create a situa-

tion in which law departments have a hard time discerning quality, and instead start to settle for proxies of quality. They start to buy on brand name, slick demos that hide the limitations of the product, and from the salesperson who has bought them baseball tickets. This superficiality distorts the market and causes some vendors to focus on hype and external appearance to win new business, rather than focusing on creating a great experience for existing clients.

High switching costs are yet another reason a lot of legal tech is less than satisfactory, and can lead to some truly gruesome results. Corporate law departments can spend years of hard work and millions of dollars only to end up with an unstable, clunky system that becomes the bane of their existence. Admitting it was all a mistake and spending even more time and money to move over to another system that might also disappoint is a hard sell, and vendors know this. They know their clients are trapped and will put up with a lot of abuse, and therefore, for many of them, the temptation is to shortchange existing clients and instead focus on optimizing the proxies for quality that prospective clients continue to foolishly rely on as the basis for their buy decisions.

But even when a legal tech provider sincerely wants to hustle and give its clients the absolute best experience, sometimes they are prevented from doing so because their clients don't want to go along for the ride. Legal organizations are inherently conservative, and are not as interested in new ways of working as other parts of the business organization. But in order for your legal tech company to take you on a journey, not only you but other clients like you need to be willing to go on that journey. There is no point in legal tech providers spending a lot of time and effort developing innovative features that their clients would use if they were enlightened, because the clients aren't enlightened, and a lot of those brilliant features will never be used.

Actually starting to use those features would require each client to take a huge change management burden on itself and, potentially, on its outside counsel and other providers. For instance, it is (mostly) not the fault of e-billing providers that the vast majority of legal projects are still done via the billable hour when most people agree that flat fees and other alternative fee arrangements are better. It is because corporate law departments and outside law firms are buried in urgent day-to-day work and frankly don't care half as much as they say they do about improving fee arrangements. They have enough problems without having to worry about fee arrangements, too.

Therefore, you have corporate law departments that don't necessarily want to change and, even if they do, the lawyers who work there don't necessarily want to change. There is no incentive for them, personally, to want to dump the billable hour and move to AFAs, because it isn't their money being wasted. But even if the in-house attorneys wanted to change, the lawyers at the law firms would also need to change, and they are being paid very well not to. The software providers themselves also have a vested interest in the status quo, as many of them charge a percentage of all invoices that go through their e-billing portals and make further revenue off hourly invoice review and other services.

Both of those revenue sources are potentially threatened if the world moved away from the billable hour, so why would they work extra hard to make it easy for the industry to do that? To be honest, very few of the organizations mentioned above have any real incentive to change and, even if they did, the individuals working in these organizations might not cooperate because there's nothing in it for them. The status quo is both easier and more profitable.

### **Most legal technology is very slight**

Another reason why legal tech isn't that great is, most of these companies are really tiny. Building, maintaining, and growing software is extremely difficult, and requires a lot of resources. Most legal tech companies run on a shoestring budget, and their products reflect that.

I don't think big companies understand how slight even some of the more recognized brands in legal tech are. To give you an idea, let me tell you a story. Circa 2016, I was working for a legal tech procurement consultancy, helping a client find a contract lifecycle management system that worked for them. I identified the top ten or so solutions and went through them one by one.

One of the solutions I identified was an early leader in applying AI to CLM, or claimed to be. I spoke with the company's sales team extensively to learn all I could about the product, and demoed it as well. The company was small but had been around for quite some time and had a good reputation in the industry. However, a colleague who knew more about CLM than I did discouraged advising our client to go with this company, for reasons that aren't relevant here.

Approximately six years later, I was working a different job at a different company, and that company ended up hiring the head of sales from the CLM

company I had investigated so long ago. From him, I learned that the CLM company, despite being in business for over a decade, had less than \$1m in lifetime revenue.

To me, this was shocking. I had been so impressed by the story spun by the salespeople at the CLM company, the information I learned from their website, from talking to actual users, and by the product demo I had seen. Although it wasn't the best solution for the client I was serving at that time, I had kept it in mind as a good solution that I might recommend to other clients. The idea that this company had less than \$1m in lifetime revenue definitely pulled it down from the pedestal I had put it on. I had previously owned a simple law practice that, in the beginning, employed only me, and we never grew beyond four people before I got my MBA and changed careers. Our clients were mostly lower middle-class people who couldn't pay much, and we were only in business for eight years, yet we cracked \$1m in revenue during that time. Furthermore, I hadn't borrowed any money or taken on any investment to start my law practice – I started it using a \$40,000 lump sum I had been paid to write a book about election law. The idea that this apparently impressive CLM company had raised millions of dollars but, a decade later, had basically nothing to show for it made me realize just how insubstantial a lot of these companies must be.

As I continued in my career and got to know other players in the start-up world, I realized a lot of them are desperate. They seemed very impressive on the outside, and the ideas behind their products – if not the actual execution on those products – really were thoughtful and creative. But the “red flag” moments kept coming. I talked to the founder of a really cool start-up that had done some really creative projects (they may have just been pilots) for some of the biggest and most innovative corporate law departments in the world. It had attracted substantial investment and, from the outside, seemed like one to beat. But then, in an unguarded moment at Legal Week, the founder confessed to me that he and his partner had dumped millions of their own personal wealth into the venture and, six or seven years in, still hadn't turned a dollar of profit.

Again, it shocked me that such a thoughtful company with a relatively high profile could be such a money-loser. But it can.

At my last job, I was one of the main people responsible for “horizon scanning” – basically, I was out and about a lot, networking, absorbing gossip and intel, scouting. I worked for one of the biggest legal tech companies in the world, and legal tech founders would randomly come up to me at confer-

ences, contact me on LinkedIn, or hit me up in different ways. Although they wouldn't say so explicitly, they wanted to get bought. I always try to be friendly and open, and I am also always interested in learning – especially learning information that isn't available publicly – so I always scheduled calls with these people. In fact, I did what I could to connect them with various industry leaders, hoping it would help them succeed and eventually get bought, but they almost never did. At first, I thought it was because legal industry leaders were just close-minded.

But as my view and experience of the industry changed and grew, I decided maybe they weren't. Maybe they were experienced. Most of them had been around for a couple decades and seen everything. Maybe they thought 95 percent of these companies were a complete dead-end, and didn't want to waste time talking about a speculative venture when they had important work to do for a proven, successful company – their own.

I am not trying to disrespect start-ups – I have always been a person who roots for David, not Goliath – and a lot of these start-ups will be a key part of changing the way the industry practices law. And the Goliath companies are irritating in their own way – arrogant, sluggish, and sometimes content to rest on their laurels in an industry that isn't known for taking risks on lesser-known companies. But, being a person dedicated to actual truth – not sugarcoating – a lot of these companies are insubstantial.

Basically, a lot of these companies are mom and pops. They will struggle along for ten or 15 years, fail to generate substantial revenue, and investors will stop believing in them. They will go out of business or be sold for scrap.

I know that isn't the image they project on their website, or in sales demos, or at conferences, but it is true. Once you realize this, you start to realize how unrealistic a lot of the expectations of legal tech buyers are. They don't realize how hard it is to build a legal technology company of real substance, and they don't realize that very few of the companies that present themselves as having real substance actually do.

They are surprised when technology doesn't work the way it is supposed to, but they shouldn't be. They should be surprised when the stuff actually works.

### **Legal tech is getting better, and will continue to**

Despite the historically lackluster offerings marketed by many legal tech companies, they have evolved when there is an incentive to, and there is reason to think those incentives will increase. The broader legal market is

changing, and there is increasingly a sense that the status quo will have to give. Both firms and the corporate clients they serve keep getting bigger and more international, creating complexity and the need to handle not only legal administrative tasks, but the development of actual attorney work-product, at scale. We've also seen a new breed of start-up enter into the legal tech space, receiving record inflows of capital during and after the pandemic – the largest legal tech investments in history, mostly invested in a handful of companies that have achieved (perhaps temporary) rock star status. That fresh perspective, combined with the potential of generative AI, may well change the very structure of legal organizations.

Specifically, legal organizations may transform from organizations that provide services in a way that do not scale or scale very poorly, to providing services in a way that scales value by using technology as an “attorney extender” that allows each individual attorney to do more and accomplish more per hour. For instance, the rise of true low code/no code platforms that can handle document assembly workflow and various forms of approval workflows will enable scaling legal services in ways that were impractical, if not impossible, before. Combining artificial intelligence with these tools could make it possible to at least partially McDonalds-ize large tranches of routine legal work. Legal research and writing, too, can be McDonalds-ized using generative AI, either handled through a center of excellence within a corporate law department or as a managed service performed by a law firm or ALSP.

This ability to McDonalds-ize important parts of the legal process is a game-changer in a world where, previously, the only way to accomplish more was to add warm bodies. It will force firms to question whether leverage is still the best way to make money, or whether it is better to focus on technology-enabled services. It will also cause corporate law departments to have to re-examine their current mix of insourced versus outsourced services, as well as, in their outsourced work, the portion performed by firms versus the portion performed by ALSPs.

The ability to McDonalds-ize services may also spur the ongoing consolidation in the law firm market, which is both the largest professional services market in the world as well as the most fragmented. The degree of fragmentation is unnatural and exists for various reasons having to do with the disciplinary rules governing attorneys, but those reasons are slowly being chipped away and law firms are getting bigger and bigger. The biggest law firm in the US in the late 1960s had fewer than 200 attorneys, and now we

have behemoths with over 10,000, and we are just getting started. Big Law is heading closer and closer to a market like auditing, in which four companies dominate. The conflict of interest rules governing attorneys will never allow the legal market to be dominated by such a small number of firms, but there is still an abundance of consolidation possible before that becomes a blocker.

The future I envision is one in which both corporations and law firms get bigger and bigger, centralizing more and more functions, and perform more and more services in a scaled way using AI or other means. This puts legal technology, not warm bodies, at the core of the business model, and creates demand for more and better legal tech products.

The business models of many legacy providers will be fundamentally undermined by the advents I envision. Are e-billing tools – which are used to carefully scan individual timekeeper line-items and look for charges to dispute – as important in a world where AI, not timekeepers, are performing a lot of the work? Are traditional CLM systems, built to facilitate processes that were not AI-enabled, still relevant?

Nobody knows the answers to such questions, but industry changes combined with the record levels of investment dollars entering the space means it is easier to start a legal tech company than ever before, and there is greater upside potential for the companies that succeed. The result may be a new breed of legal technology that is more powerful, easier to use, and built with AI as the core, not as a marketing gimmick sprinkled on ex post facto to enable sales.

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