



<b>Title</b>	<b>Can lawyers ever add value?</b>
<b>Author(s)</b>	<b>McInnis, A</b>
<b>Citation</b>	<b>Asian Architect &amp; Contractor, 2002, v. 31 n. 8, p. 51</b>
<b>Issued Date</b>	<b>2002</b>
<b>URL</b>	<b><a href="http://hdl.handle.net/10722/57087">http://hdl.handle.net/10722/57087</a></b>
<b>Rights</b>	<b>Creative Commons: Attribution 3.0 Hong Kong License</b>



# law

## Can Lawyers Ever Add Value?

**G**ood question. Some might say the answer is obvious but not flattering – for the lawyers at least. To them I would say hold your horses. I will match them to your courses later. Recently I gave a talk on this very topic. It was not meant to be light-hearted. You see the talk was given to the Hong Kong Institute of Value Management and after all their members take the issue of value seriously so I decided to see if I could as well.

I began by doing some research to see whether lawyers might be adding value in the context of value management or VM. I looked at the US, Europe, the UK and Japan. What I found was a tremendous amount of information on the characteristics of value management teams; and in particular the value manager or facilitator but almost nothing on the composition of the team. In other words, nothing which said that lawyers were either on the team or on the bench. As it turns out, the debate in the literature, it seems, is more about who has a superior claim to running the VM process than who else is in the room. I can assure you that there is a lot of competition at the top of this food chain and many professional bodies are seeking that lead role but it does not include the lawyers. Most lawyers just still don't know that VM exists.

While I could stop there I would now like to take my question a little further. Let's assume that the coach has picked a lawyer for his team. Where might she be able to add value? Well, you have to start somewhere so I took a comparator. I looked at project processes. I asked what they entail and how a lawyer might view them. Four project processes were picked up on: product development, project implementation, partnering the supply chain, and production of components. In my view, lawyers can add value in particular to two of them: project implementation and partnering.

First up implementation. How might that value be added you ask? By documenting the rights and responsibilities, duties and obligations of those involved. You see one end product of the VM process is a report. If lawyers are contributing to the informed debate upon and eventually the report produced from the process then value, in my view and if the lawyer is up to speed, will be added.

Let's take it a little further still and draw upon one of the key reports that is reshaping views and attitudes in the industry, the report by Sir John Egan. In Egan's report, *Rethinking*

*Construction*, he sets out a number "targets for Improvement" as he calls them. I like five of them for lawyers and their similarities to the VM process.

**Capital cost.** Unless you have money under your mattress a client might have to deal with financiers. These financiers will be represented. They will have lawyers. In Project Financing, for example, lawyers can spend two weeks or two years negotiating the term sheet from which the representations and covenants will flow and which will bind the parties in the delivery of the deal. The financiers will ask for things in return. Now we know no project goes ahead without financing, so how well placed is someone who brings in the lawyers after the financiers have locked up all the value for themselves?

**Construction time.** Who knows something about that? This is where costs are incurred or savings realised. But you have to get it right. The construction times have to match with all the parties' objectives to be realistic.

**Defects.** You will be familiar with claims in this regard. Lawyers are of course in the frame here.

**Accidents.** Now accidents are governed by a dual regime both statutory and common law, namely tort. The lawyers are in the driving seat on this one.

**Productivity.** Contracts can incentivise productivity. Lawyers can draft the contracts that contain those incentives. It can be among parties, joint venturers or otherwise with suppliers etc. On construction projects you can go target cost and then negotiate over the appropriate share percentages.

So much for Egan. Hopefully I have shown just how close lawyers can be to processes which may bear upon ones' value opportunities.

Next up – partnering. Are clients and their value managers achieving best value in partnering? Definitely not. Why not? It's because few people are using appropriate procurement modes. Let me put it this way. You can have the best will in the world. You can do value management workshops until you're blue in the face but all of the research that is being done still says that with 20-30- 40% of projects finishing late and/or over budget any savings that value management might have been able to bring to the table will be lost during the meal. Room I would say for a lawyer to add value here.

It comes in matching horses to courses. Clients are simply not looking closely at what works in their procurement arrangements or in how partnering, when that forms a part, relates to them. Little attention is being paid to the project's characteristics, its risk profile, financial parameters, management controls, change processes and the like in deciding what type of contract to use. Instead the contract used is the contract used last time. Yet, these types of issues can be dealt with in the value management process and workshop(s). It seems a shame to then not make some use of them in making an informed choice of contract.

Therefore, if the clients' objectives match the chosen procurement mode you are far more likely to lock in the savings which are being pencilled in. What is more, if you partner your choice, you further enhance the likelihood of those savings being realized. Lawyers can and should play roles here. They can add value. If they are not involved, and usually they are not, then let us say you and your clients are just going through the motions.

*Dr Arthur McInnis is a consultant with Clifford Chance in Hong Kong and the author of The New Engineering Contract: A Legal Commentary, (2001) published by Thomas Telford Ltd.*