

Doing Deals at a Time of Changing Technologies

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DOING DEALS IN A TIME OF CHANGING TECHNOLOGIES:

Contracting Principles for BPO, ITO, RDA, RPA, IA
or Whatever

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What we hope to accomplish today

Move beyond clauses.

Draw on principles that apply across technologies.

Look at a few examples.

A Threshold Issue: Complexity

Relates to the complexity of the relationship, not the product

Complete, Simple, or Commodity

- For our purposes, defined only by how the product can be contracted
- Completely describable in a contract
- Supplier agnostic
- Inverse relationship between price and value

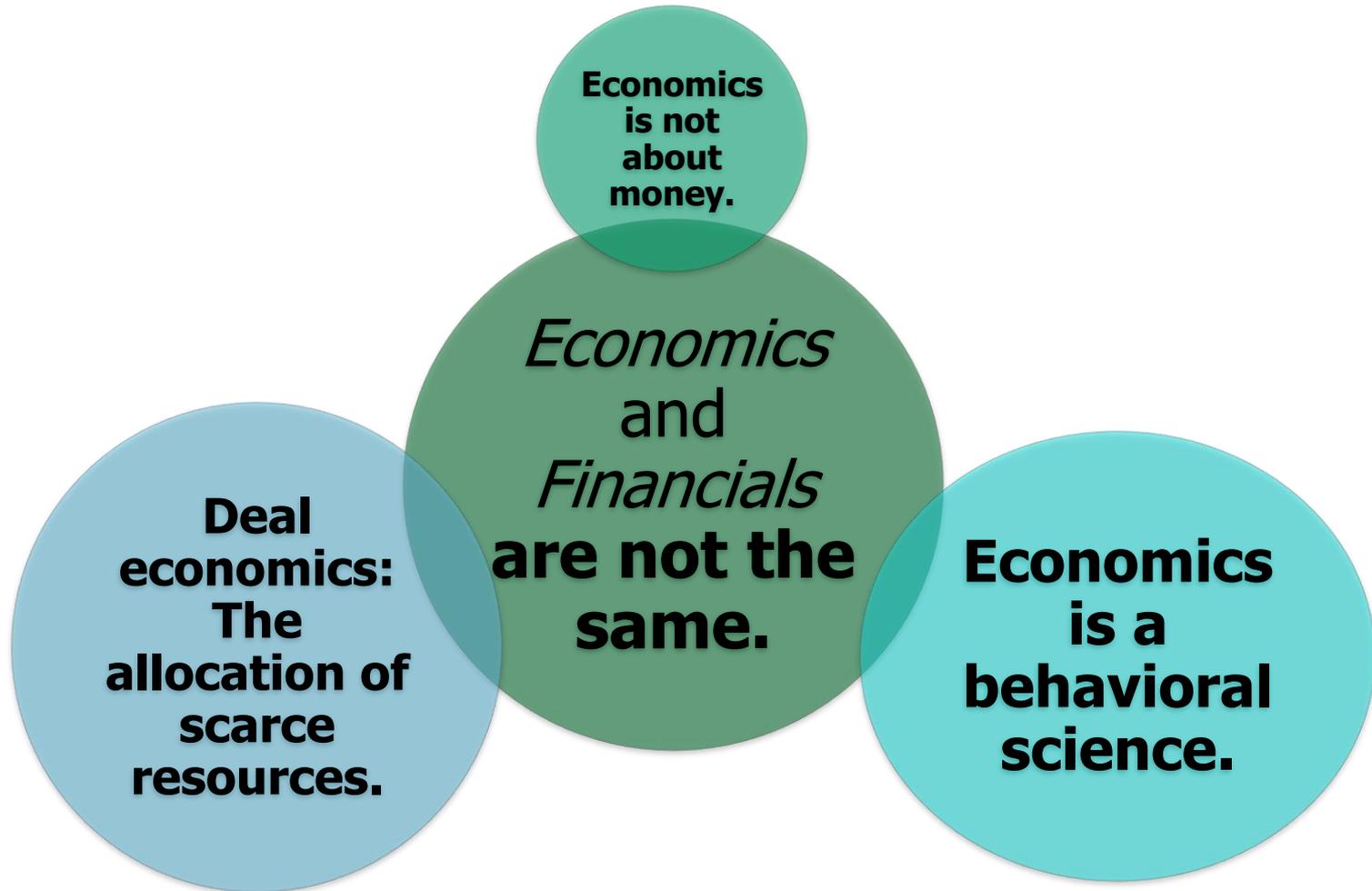
Complex

- Parties are very interdependent
- Neither can be truly successful without the input, support and cooperation of the other
- Economic rents may be involved
- The relationship between price and value may not be inverse

What to Make of Complexity

- The contract is an extremely important element of any technology deal
- A great contract is important, but it not save a sub-optimal business deal
- Make sure the deal is right, and then make sure that deal is reflected in the contract
- Because in a complex contract incomplete contract economics apply, pricing models need to be flexible
- The contract *process* should be an integral part of getting the deal right

Economics vs. Financials



Risk



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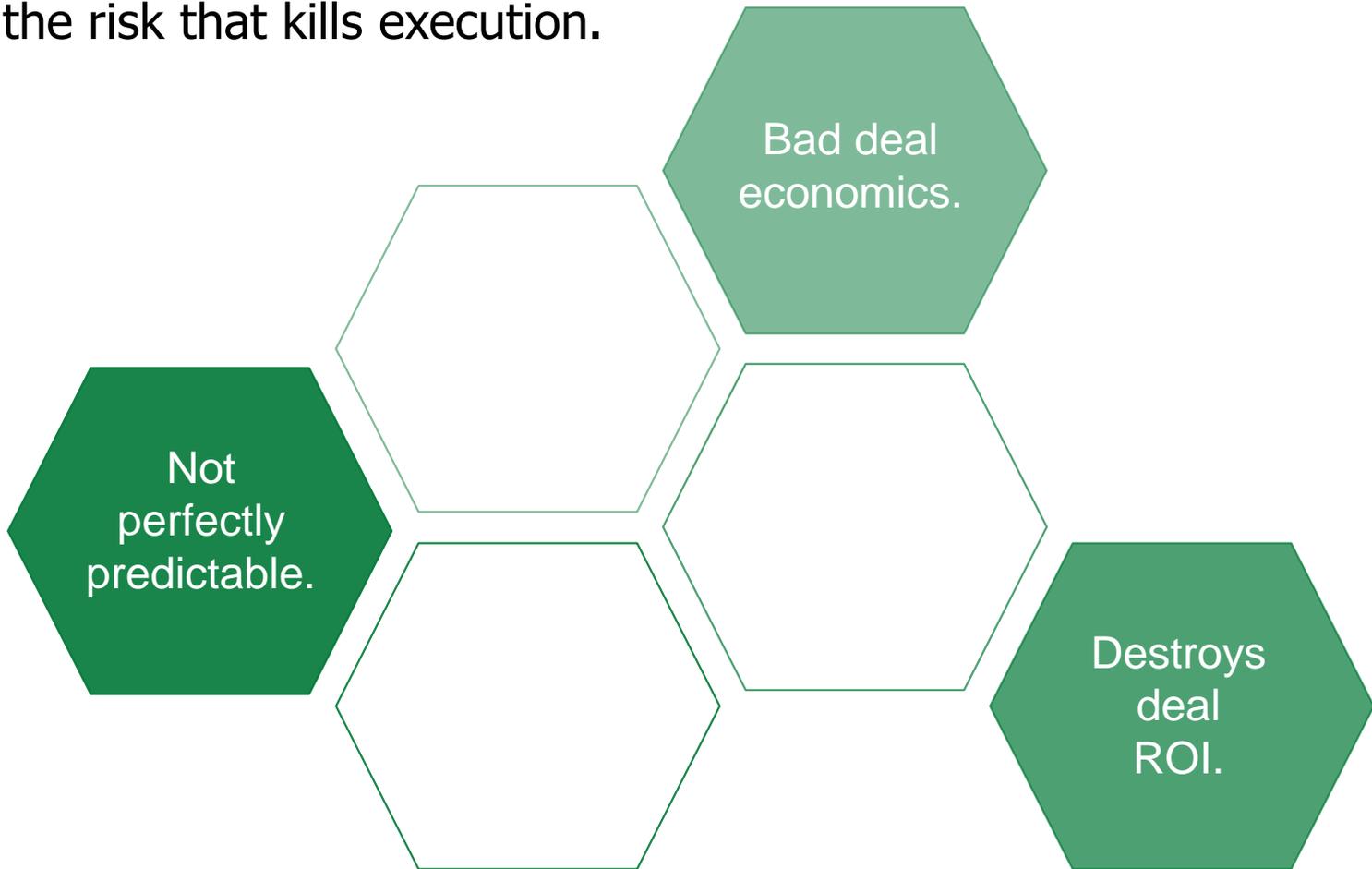
Structural Risk

Static Risk is within our comfort zone.



Execution or Dynamic Risk

This is the risk that kills execution.



Risk: Allocation or Mitigation?

Risk Allocation...

- Shifts risk to the other party.
- Not a great strategy for complex deals.
- Is largely market driven.

Risk Mitigation...

- Lowers the amount of overall risk.
- Offers better results for both parties.

Some Relevant Terms (Examples)

Risk Allocation	Risk Mitigation
Limitation of Liabilities	Objectives
Indemnities	Service Levels
Compliance with Laws	Pricing Model
Privacy/Data Protection	Certain Personnel Provisions
Certain IP Provisions	Staffing Plan
Certain Warranties	Certain Warranties
Others?	Others?

RPA/BPO Examples

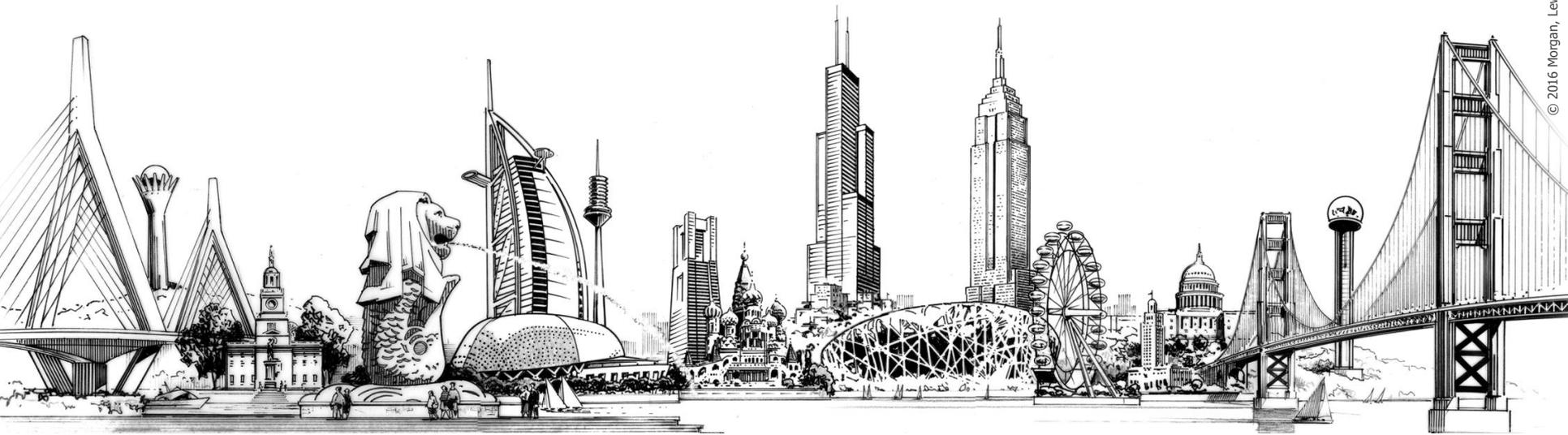
Driver	Select Terms or Schedules Impacted
Reduced Cost of Performance	Efficiency Multiplier in the Fee Schedule (More work / FTE or Lower Cost per Transaction)
Decreased Reliance on Labor Arbitrage	
Desire to Find Savings Alternatives	
Reduced Error Rate	Predictive SLA Improvement
Decreased cycle times and improved throughput: Software robots are designed to perform tasks faster than a person can and do not require sleep — making 24x7 operations possible	

RPA Drivers vs. BPO Term Impact

Driver	Select Terms or Schedules Impacted
Scalability at a fixed and known level of price and service quality	<ul style="list-style-type: none"> • Pricing model based on transaction-level resource units with no or very high upper limit for SLA relief • Where solution is mixed FTE/RPA, consider technology mix in whether pricing remains constant
No loss of institutional knowledge when workers leave	IP; Transition/Transformation/Production Run best practices
Reduced training and other costs associated with employee turnover capability	Fee Schedule; SLA Schedule
Reduced risk of theft or misuse of information by Service Provider Personnel	Data protection; Security
Potential increase in employee morale (less repetitive tasks, etc)	Employee engagement SLA; customer satisfaction
Detailed Data Capture and improved analytics	SOW
Better compliance (decreased human factor)	MSA/SOW
Ability to move more work on-shore?	MSA/SOW/Fee Schedule

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About Morgan Lewis

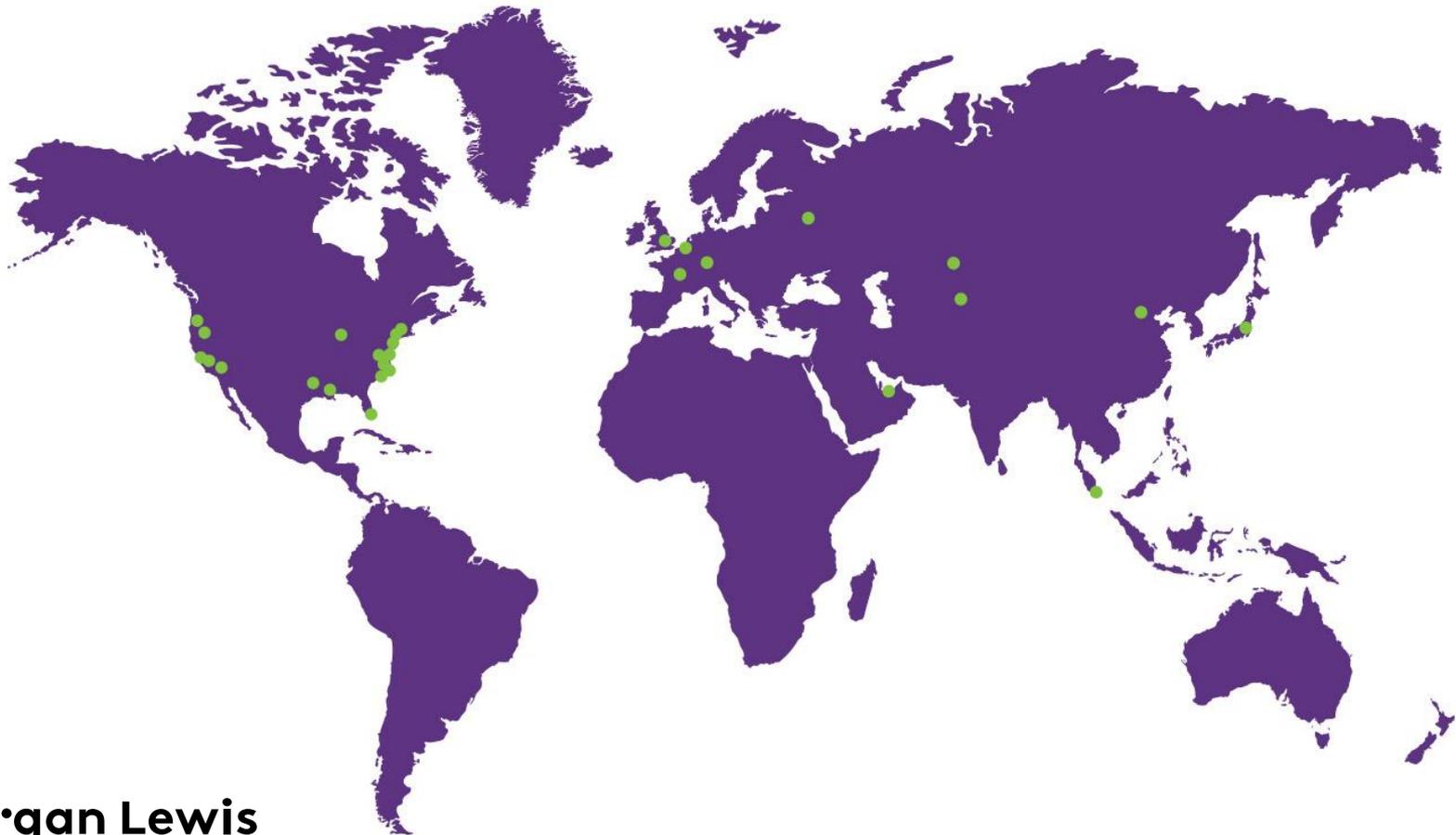
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Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

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Edward J. Hansen brings more than 20 years of experience representing clients in technology transactions that involve significant business change. From the early stages of deals, Ed works closely with clients and their advisers on whole deal advice, often before a request for proposal is sent, and continues his support throughout the engagement's life cycle.

Ed employs a highly collaborative approach in counseling clients that are executing technology-enabled programs that require substantial supplier/customer interdependence, such as information technology outsourcing, business process outsourcing, and complex system integration not only for newly sourced deals, but also for troubleshooting and realigning problematic deals and sourcing distressed processes.

THANK YOU

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Workshop # 1

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All **Tweeters** will be
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Thursday, March 29, 2018*

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Thank you!

