LAWYERS AND AGILE MANAGEMENT. ARE YOU READY TO SCRUM?[1](PART. II)

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IMPLEMENTING THEORY: SCRUM[2]

Scrum is a methodology which implements the agile principles. It is not a cool acronym or anything else, it's just Scrum, a way of doing things. It was invented, among others, by Jeff Sutherland[3].

In this article, we only aim to provide a very high level view of Scrum, to start the thinking process. The methodology is, of course, a bit more complicated, but still fairly easy.

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1. A short but interesting blog entry on the subject can be found at: https://www.ilf-ua.com/en/blog/scrum-for-lawyers-or-how-legal-business-uses-agile/.
   For a more "French" analysis, see: G. Deharo, « Le droit, un outil du management agile », *Revue Française de gestion*, 2018/3 n° 272, pp. 33-49 (Lavoisier, disponible sur cairn.info).

2. See, J. Sutherland, *Scrum: the art of doing twice the work in half the time*, New York, Crown Business, 2014.

3. *Ibidem*.

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– CHRONIQUE –

In Scrum, which is very much team centred and builds on the collective intelligence of teams, each team has the following members:

- The product owner, who is responsible for maximizing the product's value;
- A scrum master, who makes sure that the team follows the methodology;
- And the team members, who are cross-functional.

The team has a lot of organizational autonomy, and trust in people to organize their work, as well as a strong acceptance of making mistakes (as long as the team learns from them) are very important values of Scrum.

The method that is applied, is that the project is divided into short phases, usually called sprints (which can be from a week up to a month).

Each sprint is planned in advance by the team, which identifies a small scope for the sprint and a deliverable to be given to the client at the end. Lawyers hate to do this type of planning, but it helps. Usually this planning is done in a weekly planning meeting, where the team decides together which tasks of the general backlog (the list of client stories, i.e. of tasks to be completed), are to be comple-

ted during that sprint, and decides collectively the expected effort.

A good way for creating these small building blocks, is dividing the steps of the project into time blocks of 1 hour, 2 hours, 4 hours, 1 day or 2 days. No block should be bigger than 2 days.

For each of these, the following steps should be followed:

1_Plan the task
2_Test on a sample
3_Review the process, / get feedback from the client
4_Adapt for requested changes
5_Run the improved version

Another important feature of Scrum is what is called daily standups. These are short meetings taking place every day (they should not last more than 15 minutes), where each team member has to speak up and give a short answer to the following three questions:

- What did you do yesterday?
- What will you do today?

- What (if anything) is blocking your progress?

These daily standup meetings have the advantage of spotting a potential mistake rather early in the process, thanks to the common intelligence of the team, and to spread the knowledge of the current status of the project across the entire team.

Retrospectives (mentioned above) are also an important part of Scrum.

Let's try this approach (for the software development world) for lawyers, both for litigation work as for corporate work:

For litigation work, we use as an example a trial prepared by a litigator. A trial contains a number of phases, the first of which being the summons. We will use a sprint to prepare the summons (in this case a complex one, containing many different topics, this method is not necessarily very useful for a simple summons to request the judicial payment of an uncontested invoice).

"The method that is applied, is that the project is divided into short phases, usually called sprints"

Software developers	Litigation lawyers
1. Plan the task	Map out the draft summons in a detailed "road map" (a "plan détaillé").
2. Test on a sample	Provide the client with said road map and ask him to challenge it.
3. Review the process, / get feedback from the client	Discuss the road map with the client.
4. Adapt for requested changes	Adapt the road map, if necessary, move to step 1.
5. Run the improved version	Start filling out a part of the road map, and move back to point 2, sharing it with the client and discussing it. From here: we go back to 1 for the next phase, i.e. the next parts of the summons.

For corporate work: corporate lawyers often prepare a step plan, detailing every step of the transaction and then drafting all the documents, applying the waterfall methodology, and sending them in one batch to the client. Changes in one document then have to be reflected upon other documents prepared. Increasing the dangers of mistakes. In the agile way of working, the client and the lawyers would use scrum to set up the plan together.

For example, we'll assume that a general plan has been worked out together with the client, and that it now needs to be implemented through tasks. For this specific example, we'll use the drafting and negotiating of a shareholders agreement with one counterparty:

Software developers	corporate lawyers
1. Plan the task	Create a term sheet of the important clauses, avoiding the use of terms such as "standard wording to be inserted", and replacing them with the keywords that should be in the final agreement. The term sheet should contain as a heading every article that will also be in the final agreement. We will assume that the client agrees with the term sheet for this example.
2. Test on a sample	Provide the counterparty with the term sheet, ask for a challenge thereof and comments.
3. Review the process, / get feedback from the client	Discuss the changes required by the counterparty with the client.
4. Adapt for requested changes	Adapt the term sheet.
5. Run the improved version	Transfer the term sheet to the counterpart.

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"An important part of working efficiently, is to work in deep focus, i.e. without being constantly interrupted"

These iterations will then be done until agreement is found on the term sheet. This should not be signed, but simply be used to finalize the writing of the final agreement, in the same logic.

Especially by avoiding the use of terms such as "standard clauses", the risk of misunderstandings and negotiation hiccups (which may potentially jeopardize the deal) is largely reduced.

An important part of working efficiently, is to work in deep focus, i.e. without being constantly interrupted:

DEEP FOCUS AND EMAIL TICKETING

Can you remember reading the book *The Circle*, by Dave Eggers, where the main character, Mae Holland, ended up with having 6 screens in front of her, all sending notifications at her one after the other?

That is exactly the way of working that does not allow to work in deep focus mode, and tires people.

I remember that when reading the book (and its sequel, *The Every*, in which things get even worse), I was suffering a lot internally, together with the main characters, as they were exposed to a never-ending stream of notifications and interactions, that it felt painful to read. Books like these made me move away from social media and move back to physical interactions[4].

It is a little disputed fact that our brains are not made for multitasking, even if we generally expect them to be. If we force our brain to multitask, we make it less effective and thus more prone to errors[5].

We should thus prefer deep focus work over multitasking.

Unfortunately, in our daily lives, there are lots of impediments to this way of working: as lawyers (but not only), we get constantly interrupted by phone calls (by coworkers or clients), by emails coming in, or notifications of our internal com-

munication systems, such as slack, and, of course, social media.

We are compelled to be ever-present, while, at the same time being effectively less present and less concentrated on the task at hand.

There are a number of ways to deal with the impediments to deep focus:

Phone calls: Mark H. McCormack wrote in his very useful book *"What they don't teach you at Harvard Business School"*, that he rarely takes phone calls, but always returns them, as you are *"less likely to snap at someone on the phone if you are initiating the phone call than if you are being interrupted by it"*. This will make the conversation more productive.

Notifications: I have turned off most notifications, except Whatsapp on my phone, and I only use Whatsapp for personal matters. If I am deep working, I put my phone into do not disturb mode, to have

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4. The same goes for *Zero* by Marc Elsberg, which is a real warning sign to social media over-users.

5. For a good blog entry on the topic, see: https://karbonhq.com/resources/what-is-deep-work-and-why-is-it-so-important/.