

Time & Delay Across Cultures

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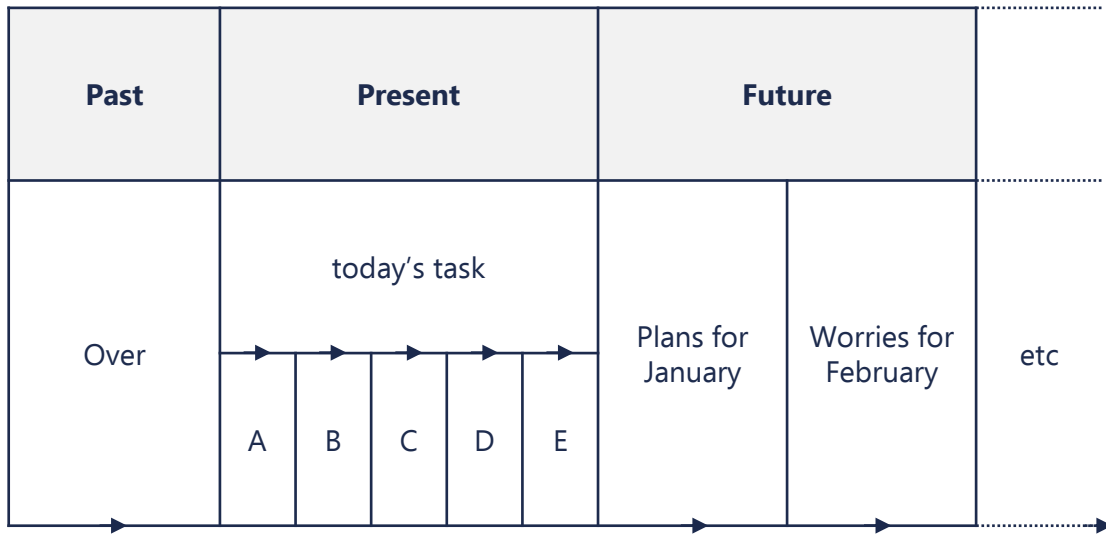
Time and culture



You have the watches,
we have time



Linear Time



Anglo Saxon world

Netherlands

Switzerland

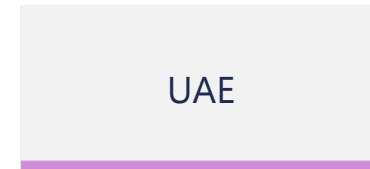
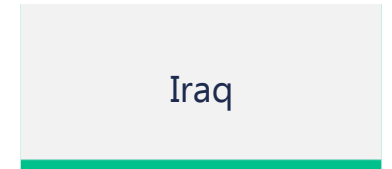
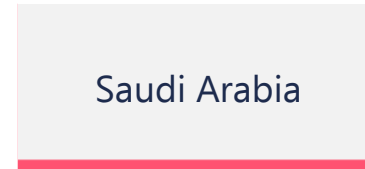
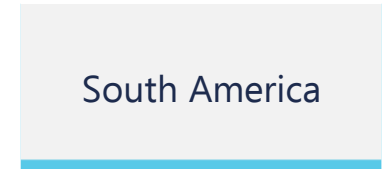
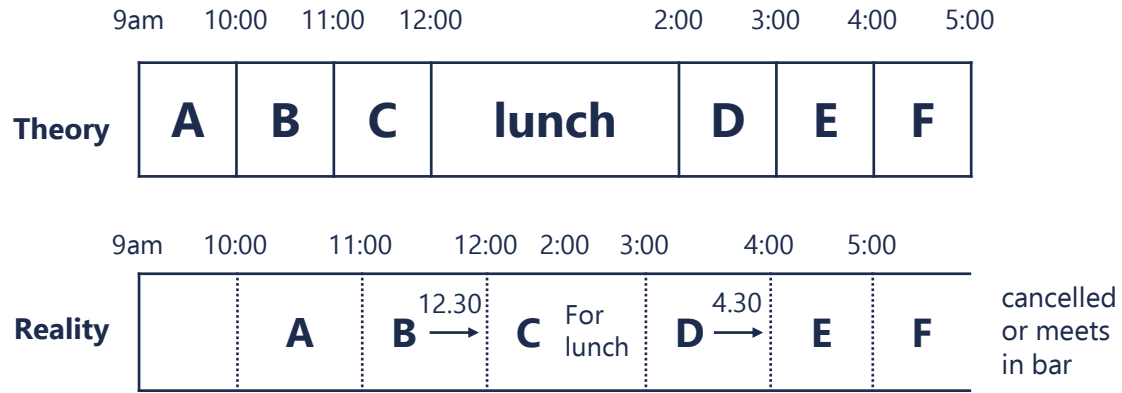
Austria

Germany

Scandinavia

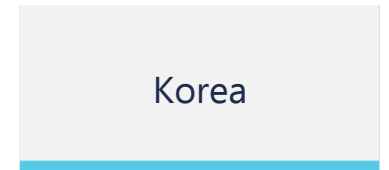
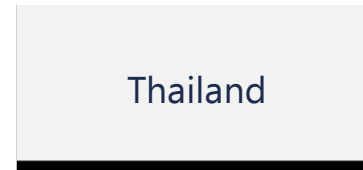
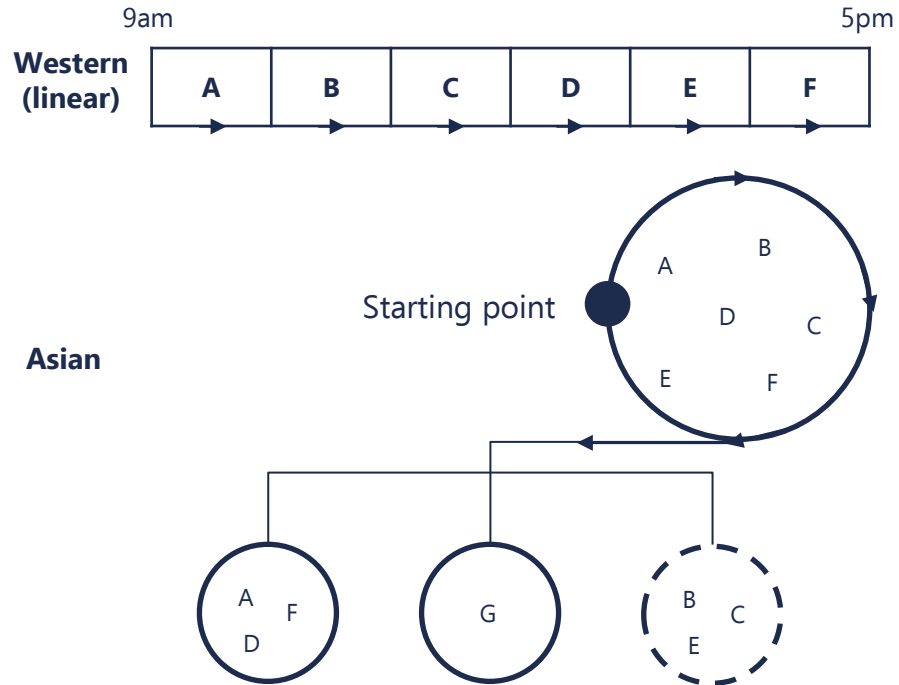
Source: Richard Lewis
From "How Different Cultures Understand Time"

Multi-Active Time



Source: Richard Lewis
From "How Different Cultures Understand Time"

Cyclic Time

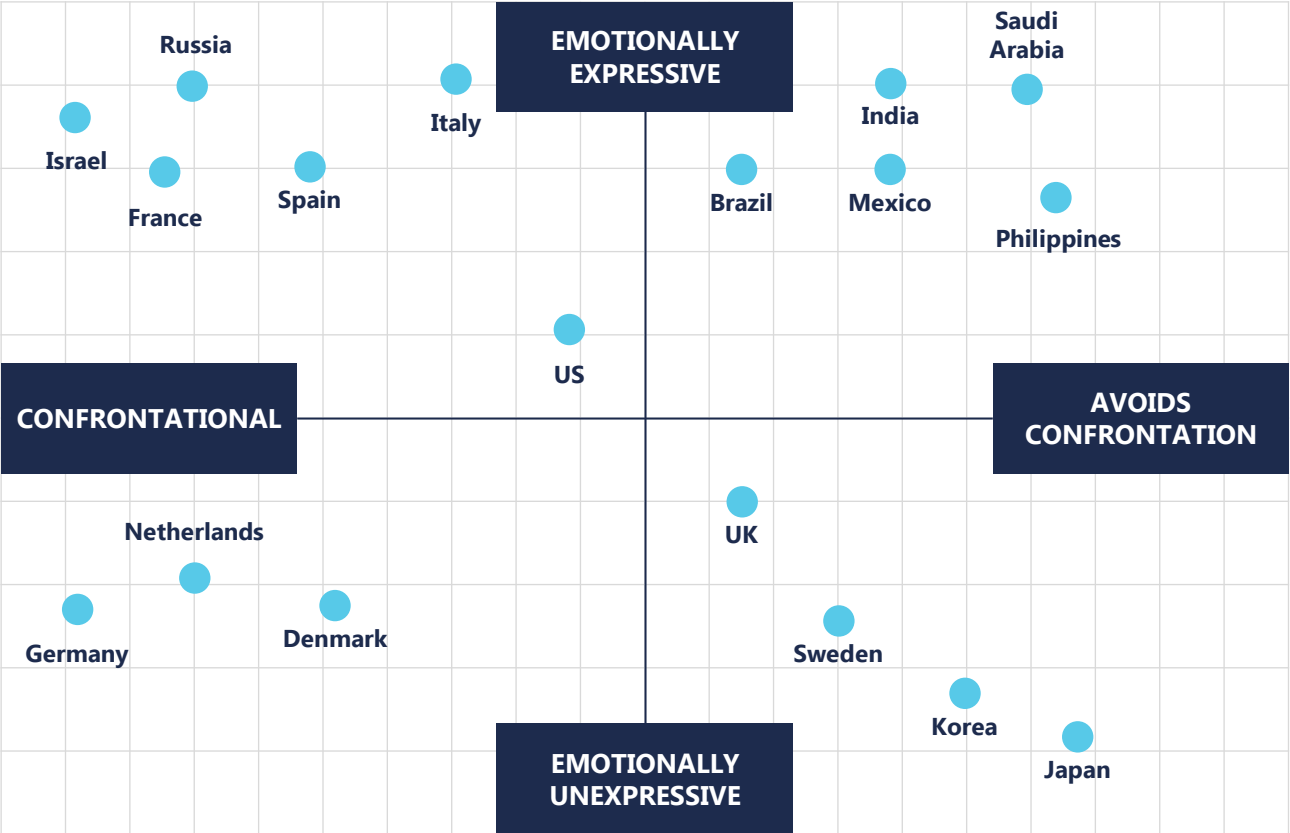


Source: Richard Lewis
From "How Different Cultures Understand Time"

Communication Styles

Preparing to Face Your Counterpart

The chart sorts nationalities according to how confrontational and emotionally expressive they are. Although negotiators often believe that the two characteristics go hand in hand, that's not always the case.



Source: Erin Meyer
 From "Getting to SI, JA, OUI, HAI, and DA," December 2015

How is culture examined?

Three main dichotomies are used to compare cultures:

1

Individualism
VS
Collectivism

2

Hierarchical
VS
Egalitarian

3

High-context
VS
Low-context

However, these traits can overlap

Notice Requirements

What are they and why do they matter?

Notice Requirements:

Failure to comply across cultures

English law

Time bars will be enforceable
provided there is clear condition
precedent wording

(Obrascon v Gibraltar [2014])



Notice Requirements: Failure to comply across cultures

Civil law jurisdictions: more nuanced?



Article 246(1) of the UAE Civil Code

the contract must be performed in accordance with its contents, and in a manner consistent with the requirements of good faith

Article 473 of the UAE Civil Code

A right shall not expire by the passage of time



Surat Al Maida Verse 1

"O believers! Honour your obligations"

Hanbali School of Thought

"The Contract is the law of the parties"

Shari'ah Law Principle

Rights are not lost due to passage of time



Duty to give notice is considered an obligation rather than a condition precedent

Delay Liquidated Damages

What are they and why do they matter?

Delay Liquidated Damages: can they be a penalty?

England & Wales

Cavendish Square Holding BV v. Talal El Makdessi and ParkingEye Ltd v Beavis [2015] UKSC 67 at [32].

A penalty is a "secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation."



Delay Liquidated Damages: can they be a penalty?

France

Pénaltiés de retard



Brazil

Cláusula Penal



Delay Liquidated Damages: can they be a penalty?

MENA



Liquidated damage clauses are enforceable, but the judge (tribunal) retains broad discretion to reduce or increase the amount of damages stipulated to reflect actual loss suffered.



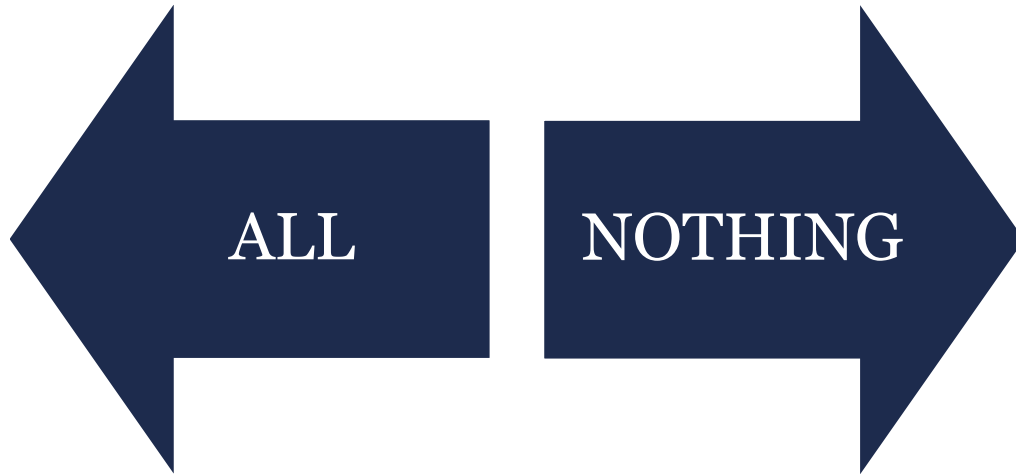
Liquidated damage clauses are enforceable. The judge may reduce them where the amount stipulated is “grossly exaggerated”.



Liquidated damage clauses are unenforceable on the basis that it is not possible to foresee potential damages from a Shari’ah perspective.

Delay Liquidated Damages: can they be adjusted?

Common Law jurisdictions



England

Australia

Singapore

USA

Delay Liquidated Damages: can they be adjusted?

Civil Law jurisdictions



UAE

Jordan

Oman

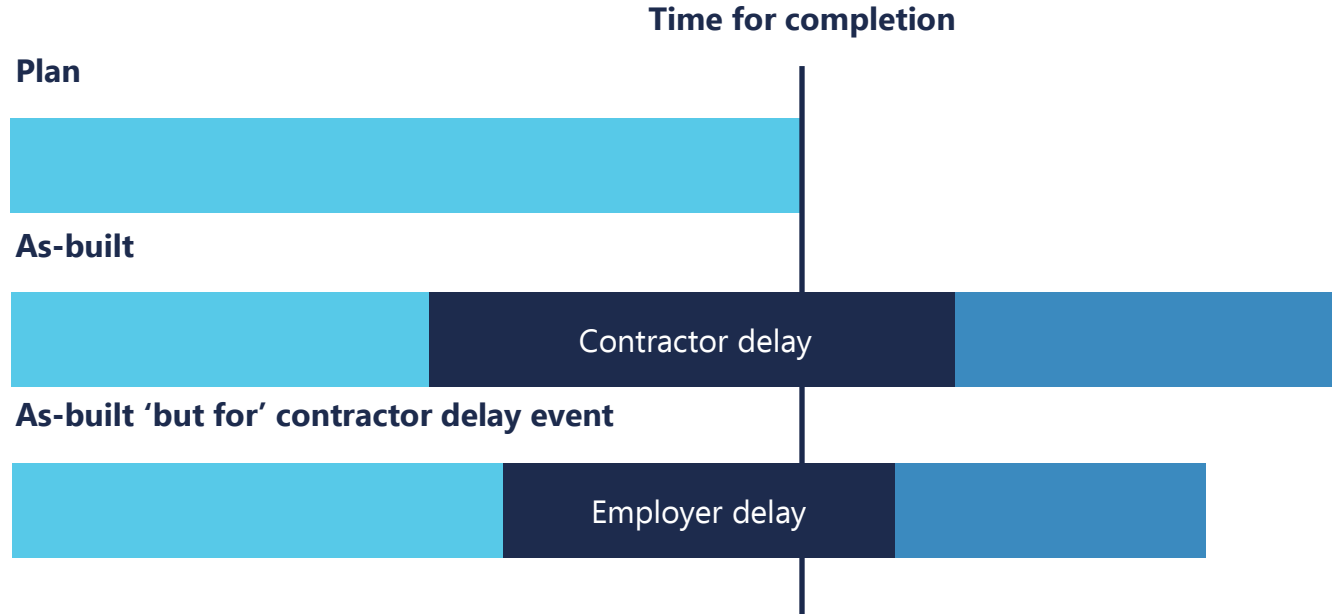
Egypt

France

Concurrent Delay

What is it and why does it matter?

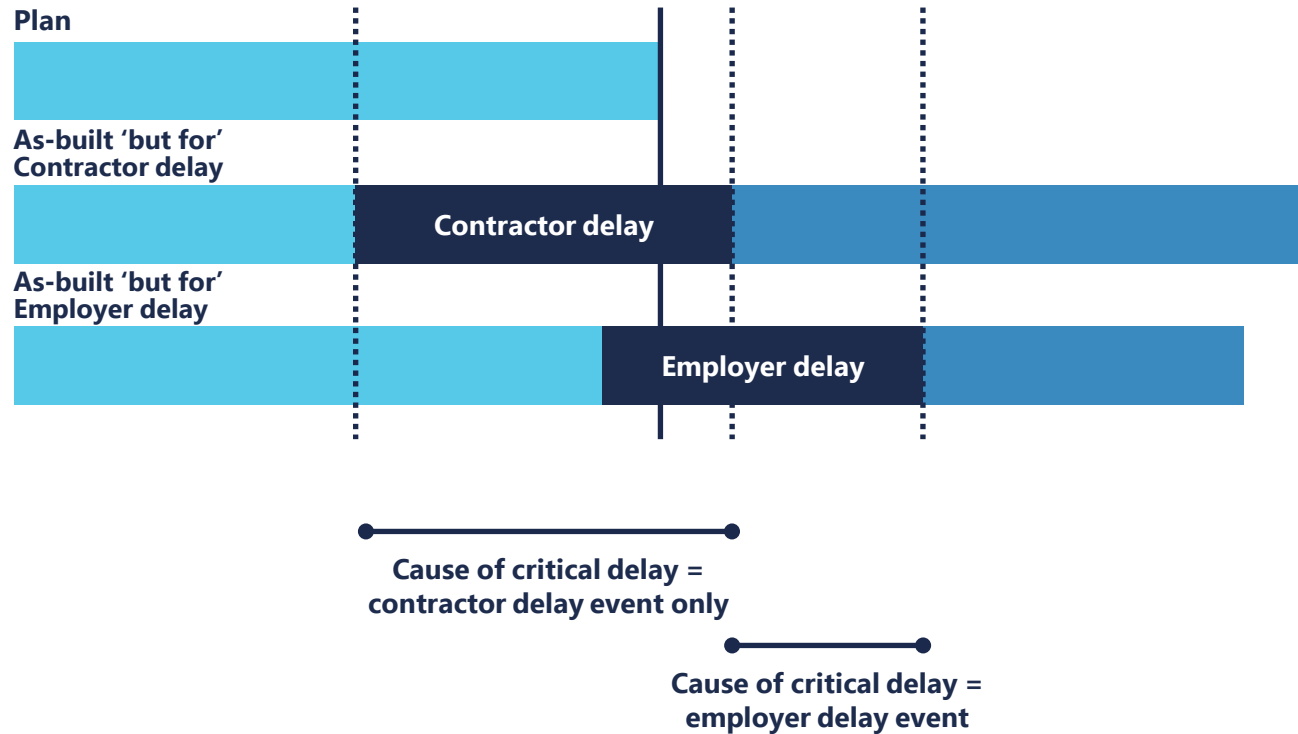
Scenario 1



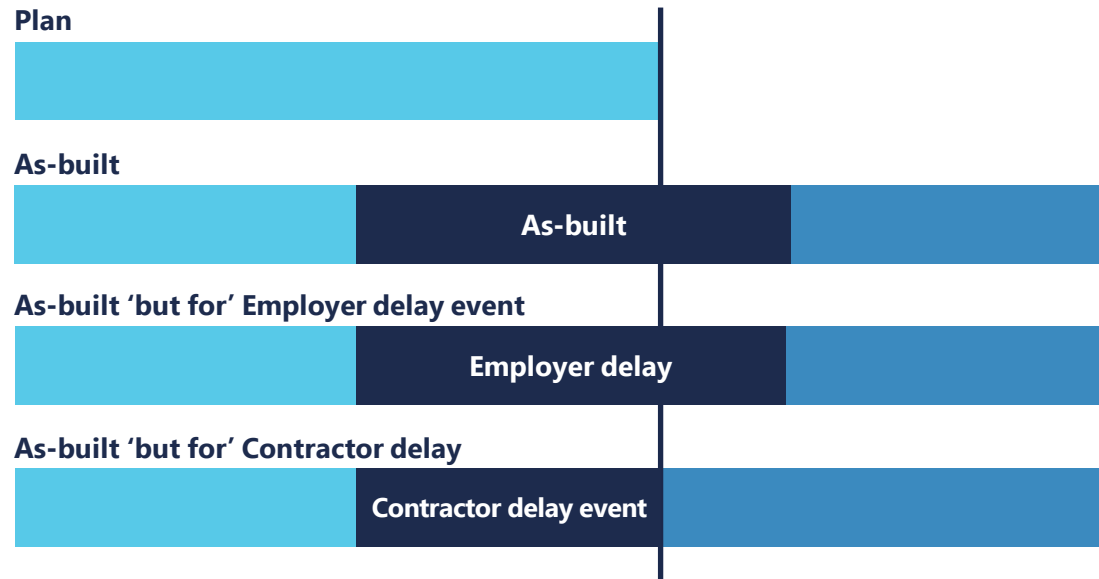
●—————●

Cause of critical delay = contractor delay event only.
Therefore, no concurrent delay

Scenario 2



Scenario 3



●—————●
Cause of critical delay = contractor delay event & Employer delay event

Concurrent Delay

Three Key principles

Two or more
delay events

The effects of
both delay
events either
start or end at
the same time

Completion
is or will be
delayed

Concurrent Delay: how is it treated?

Time but no money

Apportionment



To wrap up...

Notice Requirements

Liquidated Damages

Concurrent Delay

Common Law Jurisdictions

Time bars generally enforceable

Cannot be a penalty and cannot be adjusted

Time but no money

Civil Law Jurisdictions

Enforceable but (in MENA) subject to good faith and *Shari'ah* principles

Often don't distinguish between an LD clause and a penalty and can be adjusted

Apportionment

Questions?

Thank you

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