1. The many layers and dimensions of contract design

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1.1 INTRODUCTION

Contracts are a core framework that organize and structure every aspect of social and economic life. Business success depends on contracts and almost all individual activities – whether they are related to work or leisure – involve contracts at some level. We may not always be cognizant of their central role, but contracts are a crucial infrastructure that define what we do and how we do it, across every aspect of our lives.

For a long time, bringing predictability to transactions and relationships and managing the various risks associated with them were among contract drafters’ primary goals. Precise text and correct legal interpretation were key, as if contracts were made for legal enforcement and winning legal battles only. This view no longer holds. Legal considerations are not the only stakeholder in the contracting process. Contracts have many purposes and functions, and to be fit for purpose and functional, today’s contracts must be designed, not just drafted. They must work in fostering and sustaining business and human relationships, and not just between legal professionals and in legal contexts only.

In a world where contracts were drafted, their drafters – typically lawyers – focused on content and precision. Their attention was primarily directed towards legal compliance and mitigating legal risk, rather than the needs of the people who used or relied on the resulting documents. However, there is a lot of evidence – both anecdotal and from research – suggesting that the users of contracts have not been well served by this practice. Due to this, implementation can fail, and various problems (legal and economic) can follow. Instead of minimizing legal risk, overly complex contracts can lead to new risks, such as unintentional non-compliance, delays and misunderstandings – let alone the missed opportunities and unhappy relationships between business partners or consumers and business. A creeping realization of the inadequacies in our traditional approach to contracting provides the basis and impetus for the emergence of contemporary discussion around contract design.

1 Legal Design Alliance (LeDA) [www.legaldesignalliance.org] accessed 3 August 2021. See also Wendy Wagner and Will Walker, Incomprehensible! A Study of How Our Legal System Encourages Incomprehensibility, Why It Matters, and What We Can Do About It (Cambridge University Press 2019); Wagner, Chapter 7 in this volume; Christopher Williams, ‘Functional or Dysfunctional: The Language of Business Contracts in English’ (2010) XLII(3) Rassegna Italiana di Linguistica Applicata 217; Williams, Chapter 5 in this volume.
1.2 THE POWER OF DESIGN

Everyone is aware that contracts can be ‘impenetrable, incomprehensible, confusing and downright boring’. Their current language, look and feel do not improve the situation for readers – quite the opposite. Most people do not even try to understand the opaque terms and conditions that typically characterize such agreements. However, applying design principles and methods in the context of contracting is not just about translating legalese into ordinary language or improving the look and feel of contracts. Contract design as understood in this book means going deeper than changing the surface. It means using design processes and methods to support collaboration, drive desirable outcomes, create opportunities, and prevent difficulties before they arise. Contract designers care about legal functionality and compliance, but they also pursue a balance between such functionality and legal precision, and between precision and ease of use. This requires contracts and processes that make sense for the people who work with the contracts.

Designers stress the importance of affordances, signifiers and visual communication in helping people to use things and delivering a smoother, friction-free user experience. Affordances are about what actions are possible and what a thing can do, and signifiers are about providing cues to help users figure it out, by communicating the function and operation of the thing to the users. Visuals, in turn, help people to think, communicate, make assumptions visible, and secure understanding across different fields of activity. A good, logical contract structure can represent an affordance and help find information smoothly, while visual design elements can be signifiers, indicating where to search for a specific type of information and how to navigate the document.

In the words of Ben Shneiderman, Professor of Computer Science at the University of Maryland, ‘the goal of visualization is not just pictures, but insight’. Similarly, the goal of contract visualization is not just incorporating images into contracts – rather, the goal is to generate and sustain understanding. Contract visualization – done right – can deliver functional, useful and usable processes, documents, systems and outcomes. It can help contract and legal professionals, technologists and entrepreneurs see the bigger picture and communicate and share solutions. When well-thought-out and functional content (what is said) is merged with good drafting and good design (how it is said), contracts will provide the affordances and signifiers that conventional contracts currently lack.

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2 According to Tim Cummins, ‘[t]hese are a few of the words commonly associated with contracts. Whether it is the way they are designed, or the way they are worded, the overwhelming majority of contracts merit those descriptions.’ Tim Cummins, ‘Can Contracts Really Change?’ (Commitment Matters Blog, 2 March 2016) [https://commitmentmatters.com/2016/03/02/can-contracts-really-change/] accessed 3 August 2021.

3 Affordances and signifiers were introduced into design by Don Norman in The Design of Everyday Things (Basic Books 1988), based on James J Gibson’s work; see, eg, James J Gibson, The Ecological Approach to Visual Perception (Erlbaum 1986, first published in 1979). See also Donald A Norman, ‘Signifiers, Not Affordances’ (2008) 15(6) Interactions 18.


One of Shneiderman’s basic design principles is particularly well suited for contract design: ‘overview first, zoom and filter, then details-on-demand’. Before the pioneers started to apply design principles in the world of contracting, the structure and logic of contracts were quite far from what the design principles promoted. Overviews or summaries were seldom provided, and apart from occasional engineering or construction drawings in attachments, images were rarely seen embedded in contracts. Old habits and templates prevailed, and companies and their contract crafters followed self-reinforcing historically generated paths.

The new breed of contract design researchers and practitioners started to ‘think and do’ differently. They chose to depart from the traditional path, using perspectives, principles and tools of design as signposts. Aside from the traditional mindsets, they found nothing prohibiting a major change in the content, language, structure and presentation of contracts. These changes are enabled by the parties’ freedom of contract: the parties are not only free to choose and agree upon the contents of their contract, but they are also free to choose its form (except when the law requires a specific form, such as in the case of the sale of real property). If the arrangement and the parties’ intent to commit (or not to commit, at the preliminary stages) are clear, then the parties enjoy the freedom to tailor their affairs and to design their contracts the way they want, according to their needs and interests. If they want to, they can choose to deviate from the traditional paradigm in which the contents of contracts are expressed as text only. They can choose to use computer code, a visual user-friendly interface, or both for their contracts – something that is also happening with Creative Commons licences, for example.

The first experiments with human-centred design in the context of contracts started with their visual communication: presenting complex content so that it is easy to translate into action. This is deeply rooted in the discipline of information design: organizing and displaying information in a way that maximizes its clarity and understandability. Even before

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6 This statement is known as Ben Shneiderman’s Information Visualization Mantra. He introduced it in Ben Shneiderman, ‘The Eyes Have It: A Task by Data Type Taxonomy for Information Visualizations’ in *Proceedings 1996 IEEE Symposium on Visual Languages* (Institute of Electrical and Electronics Engineers (IEEE) 1996).

7 For existing templates and path dependence as the root causes of contracts’ dysfunction, see, eg, Helena Haapio, *Next Generation Contracts: A Paradigm Shift* (Lexpert 2013) 49–52, with references.

8 ibid 79.

9 See ‘Three “Layers” of Licenses’ at Creative Commons, ‘About the Licenses’ [http://creativecommons.org/licenses] accessed 3 August 2021. For computable contracts, see Corrales, Fenwick and Haapio, Chapter 23 in this volume, with references.


11 See, eg, Stefania Passera, *Beyond the Wall of Contract Text – Visualizing Contracts to Foster Understanding and Collaboration within and across Organizations* (Doctoral Dissertation, Aalto
contract design and legal design became a movement or ‘thing’, early pioneers promoted better and simpler presentation of contracts and legal information with simplification and visualization.

Visualization can mean different things to different people. In the context of contract documents, it can mean graphic editing, seeking to ensure that the content and the way it is structured and presented work together to support meaning. Alternatively, it can mean adding graphs, icons, tables, charts and images to supplement text to help readers in navigating complex information, opening its meaning, and reinforcing its message. At the planning stage, visualization can help identify the stakeholders’ goals and expectations, align these, and capture them in a record.

For information designers, the primary questions are: what is the context in which the information will be used, and how do we expect people to use it in that context? These are useful questions for those in charge of contract preparation as well. One approach or visual does not fit all contexts, and contract visualization is not appropriate for every context. The purpose of the contract and the goals of the parties need to be considered. To help contract planners and users, it usually makes sense to supplement text with explanatory diagrams and navigation tools.

As evidenced by several chapters in this book, contract design, too, means different things to different people. Here, we take an expansive view. We do not see contract design as simply an issue of document design or a ‘post-drafting’ exercise. Instead, we regard it as a broad and open project for improving contract content (how an agreement is presented in language, but also structure, visuals and graphic editing); contract process (whether this is achieved with automation or not); and contract outcomes (aiming at successful contract implementation, whether by people or machines, and the parties achieving their objectives).

Most importantly, contract design means focusing on the interests and needs of the people and organizations making the contracts and the users of those contracts – typically business
users and ordinary people – and not overly focusing on the interests of contract and legal professionals. A general theme throughout this book is that contracts must be both legally and operationally functional.

Contract design is about bringing design and user-centricity into the world of contracting. It is not just about verbal content, it is also about communicating contracts so that they work better for their intended purpose and functions and for all audiences, whether consumers or organizations, commercial or technical. It is about functionality, usability, and understandability – viewing contracts through their users’ eyes: organizing and communicating contracts so that the users can find what they need, understand it, and use it in as smooth a way as possible. Contract design can help balance risk and reward, enhance value creation, and help implement business strategies. Moreover, contract design can help move beyond merely allocating risk to genuinely managing risk and using contracting processes and documents to realize business benefits and manage opportunities for value creation.15

From a legal perspective, Proactive Law is the starting point: the goal is the success of the parties’ relationship and collaboration from their joint perspective (win-win), not just protecting the interests of one party in case of a dispute.16 The Proactive Law approach emphasizes forward-looking action and distinguishes between two dimensions of proactivity: (1) a proactive dimension, seeking to promote what is desirable and to secure the respective actors’ success in reaching their goals; and a preventive dimension, seeking to prevent what is not desirable (such as problems and disputes) and to keep legal risks from materializing.17

It has been said that ‘the best test of a good contract is its ability to withstand challenge in litigation’.18 Proactive contract designers do not agree with this view. Around the world, they have started to ask new questions and see contract drafters’ traditional tools, templates and work product in a new light. This new impetus results in a different set of questions and concerns: Do our contracts work for their users? Are they fit for purpose and both operationally and legally functional? Are they framed the way they should be to promote trust and successful business? Do they focus on the right subjects, generate value and prevent unnecessary problems?19 Are they machine-readable or genuinely human-readable?

15 Helena Haapio and George J Siedel, *A Short Guide to Contract Risk* (Gower 2013). The book views contracts as visible scripts – blueprints, roadmaps, or sets of instructions for collaboration, similar to user instructions – and introduces contract visualization as a way to simplify and demystify contracts.


19 WorldCC (formerly IACCM) surveys of Most Negotiated Terms show that year after year, limitation of liability, indemnification, and other risk mitigation clauses top the list of most negotiated terms, even though these are not considered to be the most important terms. See, eg, WorldCC,
1.3 IMAGINING A BETTER FUTURE

Aligning expectations, clarifying desired outcomes, communicating the parties’ intended roles and responsibilities and providing incentives for the parties to fulfil these are key characteristics of good contracts.20 Another aspect is their user-friendliness. From the client’s point of view, courts, arbitrators, regulatory bodies and lawyers are not the primary readership of contracts – the people in charge of implementing, managing and monitoring contracts are. To work for their business users, contracts should be easy to translate into desired action; they should contain just enough, and not too much, detail. Research about the psychological effects of contracts on relationship quality hints that effective contract design is not only a matter of selecting the right clauses, but also of communicating and framing them in the right way to promote trust, creativity, flexibility and collaboration.21

Another central concern of this volume is to think of future trends in the contract space, specifically the impact of the digital transformation. Document assembly and digitally delivered contracts offer great potential. The automation of contracts seems inevitable, and this opens up new challenges and opportunities for contract design. Lawyer-designer teams and a new breed of contract designers and professionals are already joining forces with clients and technologists to improve contract framing, functionality and usability to deliver a better user experience. This requires a new mindset, shifting these professionals from being unconscious designers – creating contracts, templates, playbooks and manuals in conventional ways – to conscious designers, with a focus on the users and their needs for more useful and usable contracts and guidance.22

This new approach entails a series of shifts. First, a shift away from legally perfect contracts that prepare for all eventualities and seek to allocate risk to the other party towards usable contracts that guide the desired action and facilitate what has been agreed. Second, a shift away from a vision of contracts as primarily legal tools that are meant to be legally binding, legally enforceable and made to win in court, towards a view that emphasizes how contracts are ultimately business tools that create a win-win. Third, a shift away from the idea that contracts only allocate risk and are only needed when things go wrong towards the idea that contracts add value and enable businesses to succeed: moving from a problem-driven approach to a possibility-driven approach. Finally, the model of a contract as text only towards a more open-textured model of contracts that can be visual, text-based, code-based or hybrid.

20 For the characteristic of good contracts, see Haapio, Next Generation Contracts (n 7); Haapio, ‘Good Contracts’ (n 10)


depending on the needs of the audience. New elements can be deployed to explain, synthesize and clarify issues in a way that enhances the user experience.

In recent years, new contract genres and designs have been introduced, and redesigned, visual and comic contracts have become a reality. Emerging new technologies such as blockchain-driven smart contracts, document assembly systems and AI-powered tools such as GPT-3, Open AI’s Generative Pre-trained Transformer 3,25 have enabled solutions that will transform how contracts are made, managed, read, reviewed and executed. Contract design and contract tech are opening access to new tools, templates and patterns that challenge old beliefs, even industries.

1.4 MAPPING THE STATE OF THE ART

This volume brings together the leading scholars and practitioners working on these issues. Our aim is to introduce contract design by presenting examples of global best practice. And, in doing so, we hope to show how integrating business, design and legal thinking with technology can make complex contracts more accessible and actionable, for the benefit of contract and legal professionals and clients alike.

The chapters draw upon multiple disciplinary perspectives and methods to examine different aspects and moments of the contract lifecycle. The book focuses not only on contract formation but also their application and integration with business infrastructure before and after deployment. As such, the collection opens new avenues for research and practice and provides research-based practical solutions, building a bridge between business, marketing, linguistics, design, technology and law.

The book comprises, in addition to this introductory chapter, 22 thematic chapters divided into five main parts (Part I – ‘Rethinking contracts: from drafting to design’; Part II – ‘Why contract design matters: rethinking the business and legal purpose and functions of contracts’; Part III – ‘Designing better contracts for business and legal purposes’; Part IV – ‘When text


26 See Marcelo Corrales, Mark Fenwick and Helena Haapio (eds), Legal Tech, Smart Contracts and Blockchain (Springer 2019); Marcelo Corrales Compagnucci, Mark Fenwick and Stefan Wrbka (eds), Smart Contracts: Technological, Business and Legal Perspectives (Hart-Bloomsbury 2021). See also Corrales, Fenwick and Haapio, Chapter 23 in this volume.
alone is not enough: visual contracts’; and Part V – ‘What does the future hold? Designing for humans and machines’).

Each part focuses on different aspects of the contracting process and its outcomes, providing stimulation for beginners and experts, academia and business. It is our hope that this collection illustrates the art of the possible and inspires new innovative approaches across the many levels and dimensions of contract design.

### 1.4.1 Part I – Rethinking Contracts: From Drafting to Design

Contract design has many nuances depending on the context. The views presented in the chapters forming Part I of this volume are all tied together with a common concern, namely that contracts need to be **designed**, not just **drafted**.

In Chapter 2, ‘Contracts are just words’, Tim Cummins describes how the last 60 years have seen many advances in academic research and thinking about both the role and the form of contracts. There has been massive growth in the frequency with which contracts are used in business dealings, as well as the size and length of contracts themselves. Today, the cost, inefficiency and complexity of modern contracts is increasingly called into question and new technologies offer the potential for a transformation in their design, structure and purpose.

Chapter 3, ‘Reframing contract design: integrating business, legal, design, and technology perspectives’ by Thomas D Barton, Helena Haapio, Stefania Passera and James G Hazard introduces contract design in a new light, building a bridge between content and its presentation on the one hand, and among business, legal, design and technology perspectives, on the other. Drawing on the authors’ previous research and the work of WorldCC (World Commerce & Contracting, formerly the International Association for Contract and Commercial Management, IACCM) and CommonAccord.org, the chapter explores, with examples, the drivers and objects of contract design, along with design and coding tools that can be deployed in a variety of contexts, to serve a variety of contracting needs and audiences. The reframed meaning of contract design advances a functional practice of content and document design, aimed at identifying and serving the goals and needs of both the contracting organizations and of the people who work with contracts. The goal is not merely a contract, but its successful implementation so that the parties reach their objectives.

Robert Waller in Chapter 4, ‘Designing contracts for human readers’ proceeds from the idea that contracts with a high proportion of boilerplate or small print are not designed with readers in mind, and so few people read them. According to Waller, we need to go beyond surface-level optimization (plain language and legible type) to develop a transformational approach rooted in an understanding of user needs and behaviours. The roles of strategic reading, literacy, context and inference are reviewed to explain why users trip over unexpected contract terms. Viewing contract-related problems as ‘cognitive accidents’ changes the perspective from legal accuracy to duty of care. Processes are key, with multi-specialist teams, user-centred methods and risk assessment combining to arrive at new design patterns, leading in time to a new genre of human-readable contract.

In Chapter 5, ‘Functional or dysfunctional? The language of business contracts in English: an update’, Christopher Williams analyses the language of contracts in English and tries to explain why such texts are still full of archaic and redundant expressions. After highlighting some of the characteristics of the language of contracts, the chapter looks at some of the differences between the way a legislative text is drafted and the way a contract is drafted.
Then, it analyses some of the reasons why contract drafters tend to be so reluctant to abandon consolidated habits.Lastly, it asks whether contract drafting in the English-speaking world is likely to change in the future.

Chapter 6, ‘Contract transformation: merging drafting and design to meet the needs of human readers’, by Stefania Passera, Emily Allbon and Helena Haapio is about the urgency and value of a transformation in contracting. With significant benefits for lawyers, designers and clients alike, the chapter is a call to action for contract professionals, lawyers and designers to merge drafting and design for better business, fewer disputes and happier users. The authors introduce two personas of professionals who design and draft contracts, the conventional lawyer-drafter and the designer, and explore the differences in their mindsets regarding how they see the purpose and functions of contracts, what they focus on, who they write for, and how they expect people to use the contracts they produce. The proactive/preventive lawyer is then introduced as a hybrid: a business-oriented legal professional who is eager to learn from information designers. Working together, they can become contract transformers: applying design patterns and other ‘designerly’ approaches to improve contract clarity and functionality and enhance collaboration among the contracting parties, their lawyers and those implementing the contract.

1.4.2 Part II – Why Contract Design Matters: Rethinking the Business and Legal Purpose and Functions of Contracts

Part II focuses on the different and diverse roles and functions that contracts play in a business context and the many benefits of re-visiting these roles and functions from a design perspective.

In Chapter 7, ‘Rethinking legal requirements: a case study of incomprehensible consumer contracts in the United States’, Wendy E Wagner suggests that consumer contract law in the US is notoriously imbalanced with respect to the superior ability of sellers to draft and understand contractual terms as compared to their lay customers. Yet despite the resulting asymmetries in processing abilities, consumer contract law in the US generally fails to encourage sellers to communicate meaningfully with their target audiences. Indeed, to the extent the law plays a role in contract design, it tends to reward more detailed, lengthy, and inaccessibly drafted consumer contracts. This chapter explores how contract law tacitly encourages incomprehensible contracts and proposes legal reforms that would provide increased incentives for meaningful communication between buyers and sellers in the area of consumer contracts.

Chapter 8, ‘Contract processualization: designing proactive contractual processes to support legal, technical and commercial purposes’ by René Franz Henschel looks at how contracts are designed to match post-award management processes, eg, Contract Management (CM), Quality Management (QM), Customer Satisfaction Management (CSM), Dispute Resolution Management (DRM), Project Management (PM), IT Service Management (ITSM), and similar process-oriented disciplines serving a variety of legal, technical and commercial purposes. Firstly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduced. Secondly, contractual processualization and the basic research questions are introduc
In Chapter 9, ‘The functional contracting framework: assessing the impacts of contract functions, framing and regulatory focus’, Anna Hurmerinta-Haanpää suggests that companies currently seek competitive advantage from collaborative interorganizational relationships, yet, in contrast, their contracts support more arm’s-length transactions. The chapter shows how functional contracting can be applied as a contract design framework to assess the current status of an organization’s contract practices. It analyses ten purchase contract documents and argues that organizations must pay attention to the distribution of contractual functions, inconsistencies among different functions and between the functions and their framings, and critically assesses the necessity of using one-sided framing in contracts. The analysis reveals that the most common contractual function is the safeguarding function and that the regulatory focus of the analysed contracts is mostly preventive. The chapter encourages organizations to employ the functional contracting framework to assess their contract practices and to make more use of both preventive and promotive regulatory focuses.

In Chapter 10, ‘Genre blending and contract design’, Tarja Salmi-Tolonen argues that although contracts are often said to involve a meeting of minds, there are, in fact, few possibilities to share what is in the minds of the contracting parties to make such a meeting of minds tangible to the parties themselves and other audiences. The chapter is about the blending of conventional expressions of the minds, specifically genres. The chapter first explains how these concepts are used in the chapter and then discusses present-day contractual genres in view of a model of five parameters and their dimensions. It is no news that the world and commerce are changing and, consequently, contracting and contracts are also changing. The realization of these changes becomes obvious slowly and incrementally because traditions and conventions represented by genres change slowly. Genres are not static or solid, but dynamic and continuously evolving with every instance of contracting. The main concern of the chapter is in international commercial interfirm contracting, contract chains and their expression, although a large part of the discussion and suggestions are universally relevant.

Chapter 11, ‘Contract design beyond the hype: measuring the value’, by Marie Potel-Saville and Mathilde François Da Rocha focuses on studying the value created by contract design: how to measure it to constantly improve it, leveraging scientifically grounded methodologies to enable the sharing of results between practitioners. Beyond the tip of the iceberg (the hype factor) and a range of benefits which have already been evidenced, the authors argue, we need a clear methodology, with precise criteria to validate what works, to compare precisely two prototypes and identify what works best and how to quantify the gain, to involve users directly and measure what is the most usable and easily accepted by them. This means that user-centred evaluation, ie evaluation based on the users’ perspective, is a required activity in contract design: When to evaluate? What to evaluate? How to evaluate? This chapter proposes both a methodology and some examples in the field.

1.4.3 Part III – Designing Better Contracts for Business and Legal Purposes

Part III offers a series of studies from different disciplinary perspectives examining a variety of approaches to contracting processes and documents, all focused on delivering better contracts with better outcomes.

In Chapter 12, ‘Contracts and the human factor – hidden fears and tears or mutual success?’ Tuula Pere outlines how giving birth to a contract and ensuring it has a good life with fruitful results is packed with human factors and considerations. Creating a good contractual basis for
any business transaction is a joint effort and by no means an accomplishment of the contract lawyers only. Even the most strict and professional agreements between large corporations are a result of the work and wishes of the people engaged in it. Those people can be found on various organizational levels inside and outside the companies involved. Besides their abilities and skills as professionals, also their current motivation and commitment to influence the result are essential. How is the magic of a well-functioning contract achieved? It requires many open discussions and a lot of listening amongst various experts – including the legal advisors. Contractual negotiations are also a place where both personal morals and companies’ ethical standards are put to the test.

In Chapter 13, ‘Prevention and promotion approaches to contracting: implications for negotiator focus and contract frames on exchange performance and relationships in the digital age’, Beverly Rich, Libby Weber and Christopher W Bauman explore how contracting can be approached in very different ways, depending on whether negotiators and the contracts themselves focus on preventing negative events or promoting positive outcomes. These two different approaches influence the exchange and exchange relationship in predictable ways. This chapter reviews prior work on how regulatory focus affects the traditional contracting process; that is, how individuals negotiate, draft, review, and then manage the contract, highlighting the need to expand the promotion role for contracts in practice. However, the advent of AI contracting tools and smart contracts is significantly changing this process. Thus, this chapter also provides an examination of these new digital contracting tools and how they further bias people and contracts toward prevention. Understanding these effects can allow managers to strategically use negotiator focus and contract frames to increase performance and enhance exchange relationships in the digital age, as use of AI tools and smart contracts becomes widespread.

In Chapter 14, ‘Contract simplification – a user-centred approach to contract structure design’, Milva Finnegan describes how simplification aims at taking complex information and making it clear and understandable. The overall goal of such simplification is to enhance readability and usability for all contract users. Structural simplification focuses on identifying and organizing content in a systematic logical flow. Access and ease of finding information are critical for successful contract execution. The traditionally designed document consists of black and white text in long paragraphs and often without clear headings, creating a design that makes it challenging for the reader to find information. Contracts tend to be considered one continuous writing. The underlying idea in structure simplification is that contracts consist of several individual core concepts, contract ‘building blocks’, and when combined, they create a document. This chapter identifies various building blocks and their relationship to specific user groups. User-centred design is proposed as the optimal framework for this kind of simplification. Practical approaches are modelled to show how to re-design contract documents.

In Chapter 15, ‘Simple contracting for every step of collaboration/innovation’, Deepika Jeyakodi and Mirjam E Ros advocate a structured approach to use intellectual property, simplification and design thinking techniques as tools in managing innovation and building a strategy. As a solution for simple contracting in every step of a collaboration or innovation, they interface this approach with a contracting process developed by Werner Fröhling to distribute intellectual property in collaborations. To determine the key features of the relationship and crafting user-friendly contracts the chapter proposes using three moves: Think, Strategize and Act in the three phases of collaboration and/or innovation, being Preparation/Start, Collaborate/Innovate and Commercialize/Exploit.
In Chapter 16, ‘Business contract design via Contract Management operationalized methodology’, Suvi Hirvonen-Ere describes how organizations can utilize Contract Management in designing their business contracts, and the reasons for doing this. The chapter examines Contract Management and how to utilize it as a contract design instrument. It explains how companies can better achieve their business goals through business contract design, combined with a more thorough adaption of the Contract Management approach throughout the contract lifecycle. In addition to business goals measured by direct monetary value, Contract Management can also drive other business targets. In this capability, Contract Management can nudge corporate leadership and drive the business contract process to transform contracting practices, including contract design, in the corporate world. Putting theory into action, the chapter introduces ten solid solution proposals for businesses to realize internally and externally in their business contract design by applying Contract Management operationalized methodology, as this chapter terms it, to three contract design principles: user-centricity, simplification and visualization. The chapter demonstrates what benefits companies can gain by combining the Contract Management and contract design approaches.

1.4.4 Part IV – When Text Alone Is Not Enough: Visual Contracts

In recent years, visual and comic contracts have become a reality. Part IV explores the opportunities and challenges related to these new contract genres, which can not only radically transform contracts and empower their users, but also raise new questions for research and practice about the interplay of words and images and their interpretation by contracts’ different audiences.

Chapter 17, ‘Facilitative contracts with visuals and comics: access to justice and steps for the future’, by Su-Hsien Lee and Camilla Baasch Andersen, analyses the recently developed WAiS Comic Employment Contract template, which supports domestic workers hired by disabled people as part of the effort to enable them to remain in their own homes. The contract is developed in collaboration between WAiS and the Comic Contracting team at the University of Western Australia and is the result of a sponsored research project spanning several years. The chapter analyses the main issues facing the development of the contract, in particular the difficulties with the development of the visual representations of the parties to the contract (the so-called ‘avatars’). The contract represents a unique attempt in developing a more inclusive arena for contractual understanding, which can apply to a number of different people with disabilities, whose needs for contractual comprehension have not been addressed well in the past. The chapter explores the background for the project, and the lessons learned so far. In particular, it develops the notions of reading, absorbing and remembering contracts, developing the idea that it is part of a larger movement to facilitate access to justice for disabled people through a more transparent contract format.

Chapter 18, ‘Employment agreements in comic book form – what a difference cartoons make ...’, by Camilla Baasch Andersen and Robert de Rooy, presents comic contracts as a distinct genre of contracts and discusses their purpose, applications and impact. The chapter looks at the earliest initiatives in comic contracting and present, by way of illustration, two very different contracts of employment, namely the Aurecon digital employment cartoon contract, and the Clemengold comic contract for fruit pickers. The authors explore the initial data from the psychometric testing of the former and the pragmatic implications of both, exploring the effect on disputes, the reduction of on-boarding time, and the employment relations introduced by
the format. The chapter concludes with a short discussion on the challenges and opportunities for the further development of this new genre of contracts.

Chapter 19, ‘Image analysis as a visualization tool – translating contracts into comics’, by Eliisa Pitkäsalo, Anne Ketola, Vaula Haavisto and Laura Kalliomaa-Puha, discusses the production process of a comic contract and presents one possible image analysis method that can be used to examine the illustrations of a comic contract. As empirical data, the chapter employs a comic contract produced in the Finnish social welfare context. The contract in question deals with arrangements made in cases of problematic divorces if children need to be moved from one parent to another in supervised settings. Building on theoretical foundations adopted from translation research as well as multimodal and image analysis, the authors describe the production process of the comic contract – conceptualized as a so-called intersemiotic translation process – and analyse its illustrations in accordance with the principles of the metafunction analysis framework. The chapter aims to shed light on how such analysis could help ensure that the illustrations used in the comic contract – and, subsequently, the contract itself – would be as clear and unambiguous as possible.

In Chapter 20, 'Interpreting images in contracts', Vesa Annola, Helena Haapio and Merja Koskela discuss how contracts and the law seek to remove uncertainty and provide predictability. Contracting parties need clarity as to their performance, roles, rights and duties. For proactive/preventive lawyers, predictability requires such clarity, but goes beyond – it also involves predicting how a contract, intertwined with the applicable law, will be interpreted and applied if a legal dispute arises. The increasing use of images in contracts can enhance the parties’ shared understanding and remove the need for legal interpretation. But when the need arises, images raise new questions: now there is a need to interpret images embedded in contracts, either alone or in combination with text. This chapter explores the needs and expectations of contracts’ different audiences and how they could be better aligned at the contract design stage. The goal is to guide and shape business and legal users’ image interpretation, provide predictability and prevent unnecessary disputes.

1.4.5 Part V – What Does the Future Hold? Designing for Humans and Machines

Part V locates the ideas and practices of contract design in the digital revolution and examines how design and technology interact to deliver a better user experience.

In Chapter 21, ‘Simplification and automation: the chicken and egg of contract design?’ Verity White examines how simplification has many positive effects for contract users and businesses. Automating contracts drives efficiencies and can also create positive client and business outcomes. The relationship between contract simplification (CS) and contract automation (CA) is often strained. By exploring some current methods in-house lawyers use to automate contracts, the chapter seeks to gain direct insights from those actively participating in CA projects to uncover potentially common problems and success factors. The chapter aims to advance research on contract design specifically for automation and to identify key areas for further investigation. Some novel methods of categorizing CA projects are suggested to assist practitioners in explaining and classifying projects. The chapter identifies some recurring problems with the current approach to CA projects, including lack of clear process, project management challenges, and unclear measures of success.

Aiming to clarify the relationship between providing and consenting to information and to place the discussion on a more solid doctrinal footing, Chapter 22, ‘Engineering consent: using
technology to create informed consumers’, by Eliza Mik, explores the principles of contract law that affect the design of contracting interfaces and establishes that the same technologies that are used to engineer consent, by obfuscating legally relevant information and making consent easy and implicit, can also be used to facilitate actual, informed consent. On the one hand, we have permissive legal principles, which assume but do not require informed consent and tolerate a speedy as well as frictionless contracting process. The lax consent and disclosure requirements in contract law render it possible to ‘engineer consent’ by presenting terms and obtaining consent in the most ‘user-friendly’ and unobtrusive manner. On the other hand, we have inattentive consumers who suffer from cognitive overload and act within an environment that has been purposefully designed to provide information in the least conspicuous manner possible and to mask the significance of certain actions. The first step in designing an effective contracting interface is to signal the occurrence of a commercial exchange, to convey the potential gravity of the legal consequences or implications of online acts such as clicks or continued browsing, and to encourage the user to view the terms of the contract. The creation of informed consent necessitates the creation of an unambiguous transactional context.

In the final chapter, ‘Digital technology, future lawyers and the computable contract designer of tomorrow’, Marcelo Corrales Compagnucci, Mark Fenwick and Helena Haapio explore the shifting character of contract design in the digital revolution, focusing on how emerging technologies are providing the contracting community with innovative new digital tools and resources that facilitate the creation of more user-friendly contracts. They identify emerging technologies that strive to deliver a smoother experience for both the creators and users of contracts. As a result of these technologies, we can imagine a future where contracts will not only be legally and operationally functional, but also code-based, interoperable across platforms, and built from library-stored modular components that utilize no- or low-code functionality. To remain relevant in this new environment, contract lawyers must operate as ‘relationship engineers’ who facilitate collaboration between different stakeholders with diverse expertise in multi-disciplinary teams comprising technology, business and legal perspectives. The chapter envisages a future where ‘computable contract designers’ will be key players leveraging the opportunities of digital technology to deliver the user-friendly contracts of tomorrow.

As evidenced by the chapters in this volume, contracts are no longer the monopoly of any single profession alone and they cannot remain disconnected from digital processes and technological developments. This book advocates a more user-centric approach to make contracts better by design for all stakeholders in the contracting community: better at serving the goals and needs of both contracting organizations and the people who work with contracts.

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