

ADVANCED LEGAL SERVICES

WHAT IS LEGAL DESIGN AND WHY DO WE NEED IT?

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This article discusses why and how legal design can help improving legal documents. Legal design is an innovative approach to the way businesses and law firms draft and use legal documents to ensure they are accessible and truly effective by applying product design principles to legal drafting.

Legal design aims to address the often hermetic or closed nature of traditional legal documents by taking the viewpoint of end-users, whether they are clients, suppliers, government authorities or other legal professionals, and communicating in a manner that is effective and comprehensible without compromising its intended purpose.

THE PROBLEM

Use of Antiquated and Hermetic Terminology

Many legal terms, such as *habeas corpus*, estoppel, chattel or tort, are relics of the eras in which they originated.¹

At the time most terms began to be used in a legal context, they were often common words used in day-to-day language of that time; in some cases, they adopted a symbolic nature that conferred them power and warned people that were to be taken seriously. We must also remember that when civilization appeared, Law, religion and political power were closely interconnected.

¹ "Habeas Corpus" (Latin term meaning "you shall have the body") refers to a legal action or writ requiring a person under arrest to be brought before a judge to determine the legality of the arrest. "Chattel" (Old French "chatel") refers to personal property or movable possessions in legal contexts (e.g., goods or livestock). "Tort" (Old French "tort") means a wrongful action that leads to legal liability.

This feature is seen in every country, language and legal system, showing the intrinsic cultural nature of the Law.

It is possible to reduce the use of complex and difficult legal terms, but it is impossible to avoid their use altogether. To do so, we would need to rewrite the laws of every country and replace such old terms for newer common words. This task would not only be enormous but also give rise to new legal terms that would eventually age and get disengaged with society as time lapses.

Legal terms, as an integral part of the Law, aim to provide security and predictable outcomes. For this reason, once a legal term is coined it will remain unchanged for as long as it is needed, its meaning changing slowly as it is used by courts, legislators and other legal practitioners. Like other words it may fade away or be replaced, but not at the normal rate of evolution of language, which is everchanging. Legal terms remain as cornerstones of the Law; their rate of change is slow because people must trust they remain almost static in a world of continuous flux.

The use of established legal terms that may be either antique or not easily understood by consumers or lawyers' clients is many times unavoidable, but lawyers should endeavour to use simpler terms and providing clear explanations of more difficult and not commonly used terms.

Complexity of Legal Texts

The meaning of most legal terms can normally be condensed in one sentence. You can look up many legal terms in a dictionary and get a reasonably straight explanation.

However, legal terms will eventually acquire various interpretations as they are applied to specific situations as controversies between individuals and businesses surface. Legal books discuss such interpretations. Court decisions reflect on their meaning and on the applicability of specific legal terms in real life situations, giving rise to more views and interpretations. This makes the Law a complex business mastered only by specialists, but that does not mean that ordinary people should be excluded from the legal world.

Despite their inherent complexity, legal texts can be simpler than they currently are. Legislators, judges and lawyers should reduce the length of sentences and use a simpler language in their documents.

USER-CENTRIC APPROACH OF DESIGN

Legal design implies a shift in the approach to legal writing, moving from old school formal structures where legal concepts are the central object of the document, to a user-centric approach that

prioritises conveying a clear message to the intended recipient. This change in focus – from the object (legal concepts) to the subject (the reader) – is essential for lawmakers, judges and lawyers to write legal documents that are purposeful, meaningful and understandable.

Using the analogy of product design, Apple's iPhone (including both its software and hardware) is a good example of a user-centric product, which has in mind the user's ability to learn and use new features or adapt to changes, such as the shape, size, position and functions of buttons. Features that are not understood by the user are either eliminated or redesigned. Steve Jobs' and Jony Ive's stellar products like the iMac, iPod, iPhone and iPad - arguably inspired by the famous industrial designer Dieter Rams ² - show what product design should be. This approach contrasts with the clumsy and often unintuitive competing products like the physical keyboards of Nokia and Blackberry "smart" phones.

Good legal design aims to make legal documents accessible and understandable to the persons they are addressed to. The first consideration in drafting a legal document is identifying its addressee. It is different to write the terms and conditions for a B2C like Amazon's online shop or Google's search engine, which are addressed to persons with different backgrounds, cultures and languages, from drafting a B2B loan agreement to finance the acquisition of a multinational business.

Google's terms and conditions adopt the principles of legal design. They start by a giving a good visualisation of their content, with the use of only minimal visuals to make the presentation more aesthetic without compromising the importance of the message. The text fonts are clean and easy to read. Defined terms are used sparingly and their respective definitions are shown by hover-over side notes. Hyperlinks take users to the relevant sections of the legal terms. Most of the text is written in plain English.

However, there are some redundant sentences in Google's legal documents; for instance, its Privacy Policy starts with the following paragraph:

² Dieter Rams, born in Wiesbaden, Germany in 1932, is one of the most influential German industrial designers of the twentieth century. He led Braun's design department in the early 1960s, creating minimalist household appliances like the SK 4 radio-record player, and the renowned 606 Universal Shelving System for Vitsoe furniture. For more information about Dieter Rams go to the [German Patent Office's website](#).

"When you use our services, you're trusting us with your information. We understand this is a big responsibility and work hard to protect your information and put you in control." (our emphasis)

The phrase "we understand this is a big responsibility and work hard to..." seems to lack substantive value. It is self-evident that Google can face potential sanctions and lawsuits if it does not protect the privacy of its users. Statements regarding Google's efforts, like working "hard" to protect the user's rights, are unnecessary and can reinforce Google's obligations towards users. Google must not only do what is legally or contractually required, it must work "hard" in doing so.

Legal terms are meant to establish the rights and obligations of users and service providers. The use of promotional language that only aims to enhance the service provider's image can be potentially misleading and should be avoided.

LEGAL DESIGN PRINCIPLES

Dieter Rams "Ten Principles of Good Design" can be used as a starting point for legal professionals tasked with legal drafting.³

Inspired by Dieter Ram's principles, we propose the following "Nine Principles of Good Legal Design":

- (1) **Good legal design is purposeful.** A good legal text is not an end in itself; any legal text must have a defined purpose.
- (2) **Good legal design makes the text meaningful.** A good legal text must convey a message.
- (3) **Good legal design is aesthetic.** The aesthetics of a good legal text lies in the clarity of its message.
- (4) **Good legal design makes a text understandable.** A good legal text must be easy to read and understand.

³ Dieter Ram's Ten Good Design Principles: 1. Good design is innovative; 2. Good design makes a product useful; 3. Good design is aesthetic; 4. Good design makes a product understandable; 5. Good design is unobtrusive; 6. Good design is honest; 7. Good design is long-lasting; 8. Good design is thorough, down to the last detail; 9. Good design is environmentally friendly; 10. Good design is as little design as possible. See <https://www.vitsoe.com/us/about/good-design#good-design-is-innovative>.

- (5) **Good legal design is unobtrusive.** A good legal text is not verbose; words are used intelligently and intentionally.
- (6) **Good legal design is honest.** A good legal text must be plain, not concealing unexpected conditions or exceptions in complex provisions.
- (7) **Good legal design is long-lasting.** Good legal texts survive time changes. The French 1804 Civil Code, that served as an inspiration for civil law countries codification in the nineteenth century, and the United States Constitution of 1787 are good examples of how legal texts can live for centuries. Both texts are aesthetic and clear despite using what is now an antiquated style.
- (8) **Good legal design is thorough, down to the last detail.** Good legal texts must be well thought; the implications of each sentence must be considered; each word counts; the phrasing of conditions and consequences will have an impact that must be intended.
- (9) **Good legal design is as little design as possible.** Legal texts must be as short as possible and redundancy kept to the minimum. Double conditions should be avoided. Sentences that are not serving an intended purpose should be eliminated.

PRACTICAL STEPS

Legislators, judges, lawyers and other legal professionals must communicate with every other person in clear, unambiguous and accessible language.

Generally, legal documents do not need to be overly complex and difficult to understand. Following basic grammar and style rules is sufficient to greatly improve the accessibility of any legal text, whether it is a statute, a court decision, a contract or a client memo.

To ensure the accessibility and clarity of legal texts to their addressees, legislators, judges, lawyers and other legal professionals should:

- (1) **Use short and clear sentences.** Reduce the use of conditions and other embedded sentences as much as possible. Double conditions should be avoided in all instances. Break long sentences in smaller ones. Put conditions to the application of provisions in lists that are easy to read. When there are exceptions to the application of particular provisions, place them in separate paragraphs.

- (2) **Ensure that every sentence has a clear and defined purpose.** In contracts and other legal terms and conditions include only the provisions that are mandatory under the Law or required to properly describe the parties' obligations and the contract conditions. For B2C this will mean reducing document to essential clauses only. For B2B contracts complexity will surely arise but should be mastered and well thought. Question the need and meaning of every sentence.

Do not use boilerplate provisions unless needed. Consider the implications of each provision in the transaction at hand; consider if a shorter version of the provision would not protect the parties adequately considering the nature, size and importance of the transaction.

Do not curtail provisions by creating exceptions to conform with legal requirements. For instance, if a limitation of liability is not allowed in a particular jurisdiction do not include such limitation, instead of carving an exception for that jurisdiction. In terms and conditions applicable to multiple jurisdictions, identify the provisions that must be changed to conform with certain jurisdictions and organise a workflow showing similarities and differences to reduce the need to customise language for the fewer number of countries as possible.

- (3) **Avoid complex legal expressions without compromising meaning and precision.** Replace old words for their equivalent everyday language whenever this does not make the text ambiguous or less clear.
- (4) **Use defined terms and definitions sparingly.** In B2C contracts include a glossary explaining the meaning of complex terms, but avoid using definitions for cross-referencing across the document unless they facilitate its readability. For B2B documents use definitions purposefully. If a term is used only one time, do not define it. Put definitions in a separate clause when the document contains many defined terms. Avoid putting definitions in the middle of sentences.
- (5) **Ensure that the visual presentation of the text is clear and accessible.** Use legible fonts, consistent numbering and font hierarchy and size and by highlighting the more important sections and words to focus the addressee's attention to the key aspects of the document.
- (6) **Set measurable goals to incentivise improving the clarity of documents.** For instance, when reviewing existing terms and conditions in a B2C agreement, aim to reduce the number of provisions by 30%. For B2B contracts and other legal documents, aim to cut the length of sentences by at least 20%. These metrics may be more or less adequate to a particular text, but by setting measurable goals you take a first step in the right direction: simplifying legal texts.

FINAL REMARKS

We advocate that lawyers and other legal professionals should strive to make their documents simpler and more readable to their audiences, whether they are other legal professionals or ordinary people.

The suggested legal design principles and practical steps aim to help change the current mindset in the legal profession and introduce lawyers into the habit of working with their readers in mind rather than crafting laborious but hard to understand texts.

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ABOUT MACEDO VITORINO

MACEDO VITORINO is a leading Portuguese law firm. We advise domestic and foreign clients in a wide range of business sectors, including banking, distribution, industry and projects. We are known for our professional and client-oriented approach to complex and difficult matters.

Since the incorporation of the firm in 1996, we have been involved in several high-profile transactions in all of the firm's fields of practice, including banking and finance, capital markets, corporate and M&A, energy, real estate, project finance, complex disputes and restructurings.

OUR ADVANCED LEGAL SERVICES

We assist domestic and international clients in drafting global templates and adapting them to local laws and languages. We collaborate with several leading local and international law firms to ensure seamless integration of international standards across different jurisdictions in a cohesive manner. We use tailor made artificial intelligence software powered by the leading LLMs, always with a human lawyer on the loop, to improve document drafting, reduce time spent and increase efficiency in producing results.

Our dedicated advanced services team provides clients the following specialised legal design services:

- **Improvement of Legal Document Accessibility.** Drafting user-centric legal documents, ensuring they are understandable to their addressees, such as clients, suppliers, government authorities, and other legal professionals, without compromising their intended purpose.

- ***Simplification of Complex Legal Documents.*** Applying design principles to legal drafting to make complex and dense legal documents simple and clear. Setting measurable goals for enhancing the clarity of legal texts. Implementing strategies to improve readability, including the use of short, clear sentences, minimizing complex legal jargon.
- ***Designing Documents for Specific Audiences.*** Drafting documents with specific addressees in mind, such as creating accessible B2C legal terms (such as terms and conditions for online shops or websites, privacy policies, employment agreements) and reducing the complexity of B2B agreements while maintaining their precision and integrity (such as international, distribution agreements, supply agreements, finance agreements or M&A agreements).
- ***Optimisation and Localisation of Global Templates.*** Reviewing, adapting and deploying general terms and conditions and organisations' template agreements across multiple jurisdictions taking into account the local legal and linguistic characteristics.
- ***Visual Design and Presentation.*** Working with professional designers and the client design teams to improve the visual accessibility of legal texts through legible fonts, consistent numbering, font hierarchy and size aligned with the client's brand identity.

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IMPORTANT NOTICE

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