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Legal Design: New Thinking and New Challenges

This article is dedicated to the notion of “Legal Design” which generally applies to creative approaches to legal tasks. The method has spread widely with the development of legal technologies (legal tech) which improve the efficiency of everyday legal jobs (through aggregators, machine learning algorithms, distributed instruments. etc.). As developers of the new products must use design thinking (UX/UI design, prototyping, a/b testing, scaling) this approach is also being gradually adopted by the legal community.

When I started to write this article, I faced a dilemma: either to put it together using legal design methods (e.g. client-oriented approach, visualizations, simplifications) or mask the content under layers of pseudo-scientific jargon and sophisticated citations. I’ve chosen the first option in full accordance with Legal Design philosophy and I hope that readers find it useful.

Keywords: Legal design, legal writing, legal tech, legal drafting

1. What is Legal Design?

The phrase “Legal Design”1 is becoming more and more popular: we can hear it at conferences, in the news or even in conversation. Usually, the notion is used in conjunction with the phrase “Legal Tech” (legal technologies). Certainly, most people would associate legal design with colorful presentations or well-made business cards; some with more advanced knowledge will think of “information style” or correct layouts. The truth is that legal design is much more global yet at the same time an issue close to everyone: it encompasses all creative approaches to resolving legal tasks.

Legal design is not just about the appearance of legal documents. For the documents to make sense, “Legal Design Thinking”2, “design-thinking for lawyers”, the art of thinking “as a designer”, e.g. thinking outside the box all become necessary. Furthermore, “design-thinking” does not presume thinking chaotically as an eccentric painter might. A designer’s creative process doesn’t rely on pure inspiration; on the contrary, they must apply their creative skills to

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1 The «legal design” is used in two meanings: first, as a structure of this or that institution (the translation “Legal mechanism” is the most accurate); second is the meaning to which the article is dedicated.

2 This observation was made by Holger Zschegey in Legal Geek / Legal Design Geek // Legal Insight. 2018. № 9.
resolving practical tasks. A designer seeks unconventional solutions in order to make a product more useful, to give it an additional value or to re-purpose it for resolving other tasks.

“Design-thinking” refers to a long-established business method meant to bring creative thinking into resolving trivial tasks. The first business literature describing such methods in entrepreneurship emerged in 1960s\(^3\). The best-seller “Design-thinking” was published in 1987\(^4\). Since then, dozens of thematic publications encouraging nonlinear thinking and forgetting patterns and templates have appeared. In a rapidly changing world, it is now essential for businesses to communicate with their audience in a creative and dynamic way. This is why big brands took design-thinking methodology on board so quickly.

However, strange as it may seem, design-thinking only entered jurisprudence in the 2010s\(^5\). This lag can only be explained by conservatism which characterizing us lawyers as a group. There is no incompatibility between the methodology and our field. In fact, we face the same problems as designers do. We’re constantly trying to enhance our products, our structures and processes, make them more useful and efficient. Still, for the most part, we tend to see things through the prism of stereotypes, to resolve tasks using the most obvious method, and in the end the result of our work does not serve as a solution at all; moreover, this solution often satisfies only its lawyer-creator.

2. Empathy

Design-thinking is based on three methods: empathy, visualization and simplification.

Since its focus is on the client and making their lives easier, design-thinking relies on empathy: it is necessary to understand your client, to relate to him or her not only in a rational but also in an emotional way. Without understanding a client’s needs and emotions it is impossible to create a comfortable car, handy equipment or a friendly interface.

Usually, jurisprudence has no place for empathy and lawyers rarely think about their client’s deeper needs, beyond the legal task they have been set. Nobody wants to play psychiatrist with a stranger so a lawyer asks a client about his or her actions (past, present, future) and analyzes them from a legal regulation perspective. This is enough for a lawyer to accomplish their main task – to reduce a client’s risks. At the same time, it prevents them from seeing a situation from a client’s point of view and, thus, from resolving real problems rather than covering more blank pages with writing. What motivated a client’s actions? What were his or her motives? What did he or she hope to achieve? More broadly, lawyers need to ask themselves what can be done to make their solutions more useful to the client, so that they are able to reach balanced, good decisions.

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\(^5\) There are few articles on the matter in the array of legal literature. Though, the Legal Design Lab was launched by Standford Law School as well as several European higher educational institutions (for example, Aalto University in Helsinki)
Legislation offers an obvious example of the lack of empathy in the legal world. Let’s imagine for a moment what a legislator’s “client” – a party to civil proceedings – feels when he or she reads the article 144.1 of the Civil Procedural Code of the Russian Federation:

When applying for preliminary protection of copyright and (or) related rights, except for rights to photographic works and works obtained by methods similar to photography, in information and telecommunication networks, including the "Internet" network, in accordance with this article through filling out the form hosted on the official website of the Moscow City Court in the information and telecommunication "Internet" network, documents confirming the fact of use of objects of exclusive rights and the rights of the applicant for these objects in the information and telecommunication networks, including the "Internet" network, can be submitted in a digital form.

The essence of the problem with article 144.1 is not that of a language. The real problem is in the absence of a systematical feedback from the audience of our legislation, from them who will apply these norms, i.e. ultimately from the Russians. The usability of these norms seems to be the last concern of the deputies. As a result, the Internet is filled with amateur translations and adaptations of our laws for regular people, starting with Tinkoff-journal⁶, and ending with articles of your humble servant.

Unfortunately, adopting laws which will be understandable to an average Russian is not the Russian Parliament’s priority. At some point, the Regulatory Impact Analysis (RIA) tried to to foresee the impact of adopted laws on the Russian economy with the help of quality and quantity method system. To my mind, they did not succeed⁷. Perhaps, making the right shift will demand more decisive political backing, a special law to this effect and the election of special executive authorities following the USA’s model⁸.

3. Interacting with a client

Understanding and helping a client (and not just nominally completing the task) fall within the practicing lawyer’s duties as well. For instance, should the lawyer make the agreement drafted for a client understandable? The answer seems clear: if the client and his or her contracting parties can understand the terms of an agreement better, then, firstly, they will become able to evaluate and transfer risks in advance; secondly, the risk of accidental violation of the agreement will be reduced, and, thirdly, specific contractors will use the agreement as an operation manual of some sort, which, in turn, reduces risks of violation as well. Nonetheless, I often see people who strongly disagree with these arguments. From their perspective, the agreement should only protect a client, even if its content is unclear either for a client or his or her contracting parties.

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⁶ [https://journal.tinkoff.ru/](https://journal.tinkoff.ru/)
⁸ Plain Writing Act 2010 (5 USC 301 note).
The “protect a client from himself” principle reaches its absolute peak when a lawyer interacts with a client only two times during a working process: first at the beginning (before getting the advanced payment), and second at the end (after submitting the end product). Moreover, when a client expresses his or her dissatisfaction with the result (not because of legal mistakes, but more often because a client cannot understand the document or finds it inapplicable to current business-processes), a lawyer without empathy will blame it on a client. The “client first” approach is hardly ever recognized, and, if so, is accompanied by resentment as the lawyer is forced to redraft the execution copy and adjust all the cross-references “just because this unpleasant willful person wants it that way”.

As a result, we can see a structure of interaction with a client, developed by lawyers themselves, who ignore what additional information a client may want or need and basically hide all the inner process from them. The client is recognized as a child to whom his parents do not want to explain a saucy joke from a grown-up comedy film. Obviously, this approach is nonproductive and is often explained by a lawyer’s limited appetite of desire to be fully involved into a process themselves. Indeed, while it will always be difficult to explain the inner-workings of a legal document to a client, it is much harder still if you apply a template and don’t yourself really know why different elements are arranged the way they are.

When observing a client, his or her actions, and listening to his or her words, a lawyer should analyze not only the rational but also the emotional reasons behind their actions and those of contracting parties. It may be difficult to understand why a client is unwilling to pay the right price for outstanding web-site confidentiality policy development. But can you remember when you last reviewed any such policy yourself before clicking on the “I agree” button. Presumably never. So it would seem that some lawyers adopt the laws, others execute them for quite a sum of money; but at the same time the real target audience is not involved in the process whatsoever and, what’s more, does not understand its meaning.

It’s certain that a good lawyer does not need to know design-thinking methods in order to show some empathy. For example, almost every lecturer in law can show empathy. You can probably remember that your favorite lecturer law instructor could always find the right moment to ask a suitable question, how they focused your attention on the matters significant for your future work, or how they kept the lecture going smoothly by telling a joke or making a lyrical digression. While it is true that empathic ability varies from person to person, nothing prevents you from developing your own by putting yourself into a client’s shoes, seeing things from their perspective, communicating and listening to try to understand them.

4. Visualization

The second milestone of design-thinking is visualization, e.g. visible presentation of work results/information. Design-thinking principles demand that we do not limit ourselves to one layer of information, but instead convey it to everybody by any possible means.

It may appear that the specificity of jurisprudence eliminates any possibility of using design-thinking methods since the majority of legal texts cannot be visualized. The abstractness and
neutrality of written language allows norms to be formed in the most universal way possible. It’s true that the visualization of a phrase “premediated murder of another person” or “to exercise due diligence” are difficult to illustrate.

Yet visualization does not always mean replacing text with images. In the legal sphere, visualization is firstly about leaving behind patterns and stereotypes. Under these conditions even drawing up a client’s business-process scheme before preparing a draft is already considered a step beyond a one-dimensional structure (a sequential text) to a two-dimensional structure (a map). It is an opportunity to discover links and connections between subjects and processes that were not obvious before. A classical method of working on a new problem is to create a two-dimensional system (Mind map), which is a simple form of visualization itself.

Visualization can be used not only during preparation to the legal work but as a result of this work as well. A great example of a visualization that transformed a legal document is an illustrated brochure created by New-York lawyer Sean Basinski for street vendors and based on the New York Administrative Code, which includes existing requirements and common violations.

Authors of the guide noticed the needs of their audience and created a suitable product. As a result, street vendors have learned the rules and stopped violating them.

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The New York guide is a successful example of visualization, but we can find relatable examples here, in Russia, too. For comparison, Moscow metro system is also very good at presenting its regulations in a visual form:

Images illustrating Moscow metro regulations used in metro maps (Artemy Lebedev, Egor Zhgun, Ludwig Bystronovsky and others)

Visualization is also used for many of federal statutory acts such as federal constitutional law “Concerning the state flag of the Russian Federation”10, technical regulations, military service manuals of Armed Forces11, etc.:

Sentry’ arms carrying positions. Picture from Garrison standard operating procedures SOP of the Armed Forces of the Russian Federation (Unknown author)

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11 The edict of the President of the Russian Federation dd. 10.11.2007 № 1495 “Concerning approval of military service manuals of Armed Forces of the Russian Federation”
Surprisingly there is no limitation on using illustrations in legislation, but at the moment they are generally used in technical regulations. One of the successful examples of visualization is block-schemes which illustrate procedures in executive authorities’ administrative provisions.

Many privately practicing lawyers use visualization quite often. Almost every time they follow complex projects with block-schemes and presentations for a client’s benefit. Block-schemes can also be seen quite often in memoranda of law. Drawing up client’s instructions on complex agreements with process visualization can be a marvelous practice as well.

However, jurisprudential visualization more often finds its place in educational institutions. Modern students (as well as a few generations before them, I suppose) are much better at learning and acknowledging diversified patterns: not just texts, but also illustrations, photos, and videos. “Legal support for startups”, a course launched by me and A.E. Molotnikov in 2014 had great success with tens of thousands of participants. One of the reasons behind this, to my mind, was the visualization of legal matters that we covered during the course, as well as a video format more suitable for an online-audience than a traditional lecture.

"Directed share issue. Slide from a course presentation dedicated to attracting investments"

Unfortunately, according to what I have seen, professors rarely use visualization means as needed. Presentations for lecture materials usually contain a lot of text; the authors of books and manuals also limit themselves to text, moreover, this text is presented in a very primitive and simple manner. Editions like “Corporate law in tables and schemes” of I.S. Shitkina or “Fiscal law” edited by S.G. Pepelyaev are truly rare diamonds in this sphere.

Curiously enough, during preparation for exams, students always use the ability to visualize cause-effect relations or to compare characteristic features in a form of a scheme.
Visualization does not always mean using and applying images and pictures. For example, a well-known form of visualization is information layering, or the so-called layered approach. It is often used in different types of user agreements on the Internet: the “Wikipedia User Terms” are made up in this exact way. The information is layered onto two levels: a general, simplified edition for users, and a full text (the complete license agreement) for lawyers. Thus, it allows information to be acquired on several levels: a look-see level for the enthusiast, and a profound level for the professional lawyer.

The method of layering information has become widespread across the Internet. It requires technically-competent implementation to program drop-down list boxes. Alongside Wikipedia many open licenses (Creative Commons in particular) use this criterion for text design. What’s more: authors of Creative Commons use four layers instead of the two Wikipedia uses, completing a license with machine-readable versions, adapted for recognition by programs and search systems, as well as with a graphic view available to be placed on a product itself (like a watermark on a photograph).
On a basic level, we naturally use the same mechanism of information layering when we want to emphasize a part of a large claim. This is done in the hope that a plaintiff’s concern about the time spent on reading of a claim will be highly estimated by a judge while he will be screening though the text. However, underlining a massive part of a text is not the best way of visualizing layers of information. Since a claim text has a known legal meaning in the proceeding, we cannot divide it into parts or make several variants of the same text as Wikipedia does. It could work for agreements or even some statutory acts, however, in case of contradictions a full text shall certainly prevail. I would remind sceptics that a good lawyer analyses a text on several levels: with regard to the legislation, judicial practice, etc.

The layered approach is even more useful for analytical works or memoranda: many times I’ve noticed this method was applied to the text by the Analytical Organization under the Government of the Russian Federation. Thanks to text highlighting, presenting it in various colours or sizes, a reader obtains the opportunity to work with it in three different ways. He or she could either screen through the text (thanks to large text blocks), or read it as a whole (usual text size), or study the data on which the report is based (small sized text).

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On the previous page: Example of text layering in “Changes and tendencies in regulation of non-resource exports in Russia and the world” review (Analytical Organization under the Government of the Russian Federation, 2018)

Besides the layered approach a lawyer can use other methods to create a parallel structure inside a document, methods which have been used for a long time by publishers of non-fiction and business literature, such as denoting key notions on a document’s margins, using quotations inside the text, colorizing parts of a document for easier navigation.

Visualizing a legal work not only helps create a more efficient, useful, interesting product, it also allows a lawyer to think non-linearly, forget about patterns, and focus attention both on a current process position (statics) and a dynamic of a client’s business and legislation as a whole.

5. Simplification

The last of the design-thinking milestones (but definitely not the least) is simplification of an end product in order to get a clear result. Please, notice, that I understand “clear product” as a product with a maximum volume/efficiency performance coefficient. Mathematically speaking, if we have two memoranda elaborating the same issue and based on the same argumentation, but one of them is 5000 symbols shorter, we should choose the shorter one, simply because this memorandum will be clearer for a client.

Thus, making a legal product clear is not just about simplification, but, speaking in designer’s terminology, also about enhancing its usability, increasing its functionality and improving the “user experience” of working with the product. The quality of a good legal product – e.g. a clear, useful, harmonious text – cannot be presented by a series of patterns or limited to following Russian or English grammar rules. In the end, the purpose of legal design is to define the client’s tasks and to suggest adequate ways of solving them. A productive interaction between a lawyer and a client, a so-called crystallization of a client’s tasks and highlighting the essence resolving are the ultimate goal of legal design.

Practically any efficient legal text can be made up based on design-thinking principles that are: to identify a client’s needs, to draw up a first draft, to simplify it. I could have a claim (which convinces a court of the plaintiff’s position) or a memorandum (which allows a client to take legal risks into account) as an example; instead of the aforementioned. I’ve chosen a simple text – a business card. This is a very small and very formal legal document yet the lawyers attach a high value to it. Indeed, it is effectively a text which should motivate a client to buy your services. A correctly-made business card containing the right text and some amount of emotional subtext helps to sell legal services better. However, even one wrong word (for example, an e-mail address on a free mail service) can spoil everything.

Legal design works in the same way. Before sending a letter to a client, a lawyer always thinks about how the addressee looks, what he or she is doing at the moment, what can help in influencing his or her thoughts or actions. As you may notice, this example is a good representation of long-distance empathy. This will subsequently impact the rest of the legal writing technique: its structure, its highlights, its style (language specifics), even layout (appearance).
It is hard to learn how to feel a client, but it’s even harder to teach. A man cannot feel the other man sufferings without walking in his or her shoes; thus a graduated lawyer who read hundreds of books written in a mixture of bureaucratese and special terminology will never understand a student who has just opened “Concerning Military Duty and Military Service” for the first time. This ability develops differently among people: some can see their text from a client’s perspective, some cannot. This leads to the conclusion that empathy itself is not enough. Working on a text should be conducted in accordance with simple rules, the first of which is to simplify your texts by throwing out unnecessary words.

Right now, the book market is filled with titles targeted at writers, journalists and even natural scientists, so I won’t dwell much on the technique of making a text better. I will only draw your attention to the differences in approach between lawyers and designers. A lawyer often deals with single-use texts; claims, judicial opinions, agreements and contracts are rarely rewritten and improved. Few of our colleagues keep count of their templates, or collect well-made documents, or, for example, their most favorite wordings for contracts of different types. As a result, lawyers rarely think about how to improve their products’ standards even when good feedback from clients could allow them to collate effective phrases and formats.

Unlike lawyers, designers (especially interface designers) are constantly working on enhancing their product. It’s fair to notice, that you can improve the design only if you know how clients work with it and what disappoints them. That is why a good product – now, in the era of technological race, – equals a constantly improving and changing product. This is what I suggest lawyers should accept and understand. We need to make our templates, drafts and processes better day by day, both on the inside and on the outside (the last is done with the help of the client).

The old and the new version of Consultant Plus legal research service is a great example of simplification.

The two main enemies of simplification are our own habits and, of course, laziness. Try and ask a lawyer why he or she uses Times New Roman, or why width alignment is the only right way, or why (this concerns conservative foreign companies in particular) they should put double space at the end of a sentence, – I assure you, they won’t be able to explain all of these. Nonetheless,
nobody tries to understand the roots of the problem, or to find potential solutions. In the end, all we have is that lawyers continue to underline or to bold whole paragraphs in the claims, because of the power of habit (both for a claim’s author and a judge, apparently). Incomprehensible wordings are included in legal texts because of legislators’ habits, their absence of desire to change the established practice. Agreements are made based on a formal structure (“Customer Rights – Contractor Rights – Liabilities of the Customer – Liabilities of the Contractor”, etc.) because the authors used to apply it that way.

Unfortunately, lawyers’ bad habits are feeding on our disintegration with other groups. Contracts and agreements, as well as monographs are written by the lawyers and for the lawyers, and we rarely leave our comfort zone of professional communication. However, only working with new people – clients, colleagues, students, – a lawyer gets the opportunity to see things differently, from other people’s perspective. Thus, all of the aforementioned (simplification, visualization, and some other methods of legal design-thinking) can only work well if fueled by new social interactions. In order to think as a designer we sometimes need to change our usual social circle and meet with new people.

6. Conclusion

We’ve been taught “to think as a lawyer” from the very first days of university. It is believed that using templates and following the established order are the source of lawyer’s power. This opinion is so rooted that at some point it became a fundamental principle of our profession. I believe that today “thinking as a lawyer” is not always an absolute good. There are times when a lawyer should think proactively – and in business categories, – as a client does. Sometimes creative, designer thinking is the right way. A key to success in a fast changing world is the ability to see things from different angles, to quickly absorb everything new and to stay out of frames.

Though I must tell you: do not rely on technology! Without any doubt we work quicker and more efficiently thanks to technology. At some point, for some parts of the work (especially repetitive work) technology will perhaps take the place of living lawyers. In any case we simply cannot to shift our problems onto robots and neuron networks. Misunderstandings a client, ignoring his or her needs and emotions, a lack of desire to simplify the result of your work making it comprehensive for the audience – all of these are not problems arising from technology, nor can they be resolved by technology. Let’s take oral university lectures as an example. Russian students find lectures useless, and what does the university administration do? They record the material as a videos and upload it on the Internet so students can watch it at home. This is a maximum of what a university can propose as a solution, even in progressive universities. No one concerns that oral lectures may be obsolete as a training format.

Another example is legal reference systems. Yes, they may have a better-looking interfaces (especially in recent); yes, they make the process of searching for information quicker and more efficient. Nonetheless, after the system has done its search for thematic statutory acts, you still have to spend your time wading through controversial terminology and unnatural structures in order to find the main thing. Can a legal reference system, even the best one, substitute for the law? The answer is no.
That is why design-thinking principles are becoming more and more relevant. The design-thinking is more about the human, his or her motives, and less about norms and regulations. Moreover, design-thinking suggests is constantly improving itself and its product to make work results more useful and friendly for a client. “Design-thinking” demands simplification, e.g., to make the same meaningful result clearer and easier to understand. I am sure that many of our readers use these principles unconsciously, without any additional methodology, just because they are not revolutionary. The question remains: why is our legal system is still so unfriendly

7. **References**