

DESIGN PATTERNS FOR CONTRACTS

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Abstract: *Law as a profession has much in common with architecture and engineering. In contexts as diverse as business transactions, legislative work, and mediation, lawyers have been called legal architects or engineers. We propose seeing contracts as things or artefacts - something to be designed - and borrowing from architects and engineers the idea of design patterns: solutions to recurring problems. Our examples illustrate how design patterns may relate to contract forms, templates, or clauses, but also go way beyond. The paper concludes with an agenda for an open design pattern library for contracts, seeking to help share examples and best practices that enable better contract design and communication.*

1. Introduction

Contract preparation and review take time. Many people are reluctant to read contracts;¹ these “seem to be written *by lawyers for lawyers*”.² The felt need to produce traditional legal language easily diverts drafters’ attention away from the needs of the users: those who are impacted by or need to work with the text – in contracting, mostly non-lawyers.³

In our previous work, we have looked into what lawyers can learn from designers, especially information and interaction designers,⁴ to develop tools that help people use and navigate complex legal domains. Prior research has revealed many ways to make legal information more accessible and understandable.⁵ Experienced contracts and legal professionals can draw upon a number of solutions to problems they meet in their work. However, they do not necessarily have names for those solutions, so they are hard to discuss or teach.⁶ As a solution, we propose adopting from practitioners in fields outside the law the use of *design patterns*: reusable models of a solution to a commonly occurring problem. This paper first introduces the concept of design patterns and then explores its application

¹ See, generally, Burnham 2003, Haapio 2012 and 2013. For click-through agreements and online terms and conditions, see, e.g. Plant & Barden 2012 and Lønne 2013.

² Berger-Walliser, Bird & Haapio 2011 (emphasis added).

³ See, generally, Berger-Walliser, Bird & Haapio 2011, Haapio 2013, Haapio & Barton (forthcoming), and Berger-Walliser, Barton & Haapio (forthcoming).

⁴ Haapio & Passera 2013, Hagan, Garvis & Ozene 2014, and Hagan & Ozene (forthcoming).

⁵ See, generally, Brunschwig 2013 and 2014 and Margaret Hagan, <http://www.margarethagan.com> (all websites last accessed 5 January 2016).

⁶ Similarly Waller & Della 2011, p. 1, in terms of experienced designers.

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