

Visualisation in Commercial Contracts

Part I



Clearer Legal Information

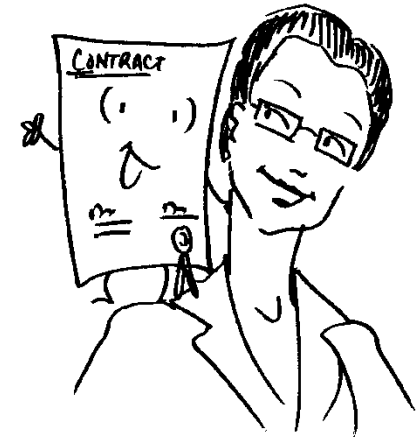
9 April 2014, London

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Introduction

Helena Haapio, LL.M., MQ, DSc (Master of Laws, Master of Quality, Doctor of Science (Econ.)) works as Postdoctoral Researcher at the University of Vaasa and as Legal Management Consultant at Lexpert Ltd based in Helsinki, Finland (www.lexpert.com). She helps her clients use contracts and the law proactively to achieve better business results, balance risk with reward, and prevent problems. She also acts as arbitrator in cross-border contract disputes.



After completing legal studies at the University of Turku, Finland, and Cambridge University, England, Helena served for several years as in-house Legal Counsel in Europe and the United States. Since her doctoral dissertation on *Next Generation Contracts* her multi-disciplinary research focuses on ways to enhance the quality – especially functionality and usability – of contracts. Through a proactive approach, information design and visualisation, she seeks to fundamentally change the way contracts are designed, communicated, perceived, and taught.

Visualisation in Commercial Contracts

Part I

1. What is the problem?
2. What are the causes?
3. What does our work seek to do?
4. How do we propose to do it?
5. Examples – more in Part II & in the Webliography

1. What Is the Problem?

My work as an in-house counsel and recent research reveal that contracts

- **dysfunction** (or **malfunction**) in business
- are not always read or understood by users: critical information is lost or misunderstood
- are not always implemented or interpreted as expected -> non-compliance, negative surprises
- become more complex, as do business and the legal environment

2. What Are the Causes?

Dysfunctional contracts have many roots. My research has focused on three causes

- Mindset
- Approach
- Design (or lack of design)

... all reflections of the *classical legal paradigm*, the dominant paradigm in both *contract theory and contract practice*. Both tend to see contract writing as legal writing...

What's Wrong with Legal Writing?

- Fred Rodell (1936): two things
- David Mellinkoff (1963): four things
- Helena Haapio (2013): all of the above
– and more!

“There are two things wrong with almost all legal writing. One is its *style*. The other is its *content*.”

Fred Rodell

Professor of Law, Yale University

Goodbye to Law Reviews,

Virginia Law Review, Vol. 23, 1936, p. 38 &

Goodbye to Law Reviews-Revisited,

Virginia Law Review, Vol. 48, 1962, p. 279

**“The language of the law has
a strong tendency to be:**

(1) Wordy

(2) Unclear

(3) Pompous

(4) Dull”

David Mellinkoff

Professor of Law, University of California at
Los Angeles and member of the California Bar

The Language of the Law. Little, Brown and
Company, Boston 1963, p. 24

**“The language of the law is
‘full of long sentences, awkward
constructions, and fuzzy-wuzzy
words.’ The result is often nothing
less than a failure of communication.”**

David Mellinkoff: *The Language of the Law*.
Little, Brown and Company, Boston 1963, p. 27,
citing Fred Rodell: Goodbye to Law Reviews, 23
Virginia Law Review 38, 39 (1936)

The Lawyer Mindset

“Some day someone will read what you have written, trying to find something wrong with it. This is the special burden of legal writing, and the special incentive to be as precise as you can.”

David Mellinkoff: *Legal Writing: Sense & Nonsense*.
West Publishing Co. St. Paul, MN, 1982, p.15

“I teach contract law at Harvard Law School and I can’t understand my credit card contract. I just can’t. It’s **not designed to be read.”**

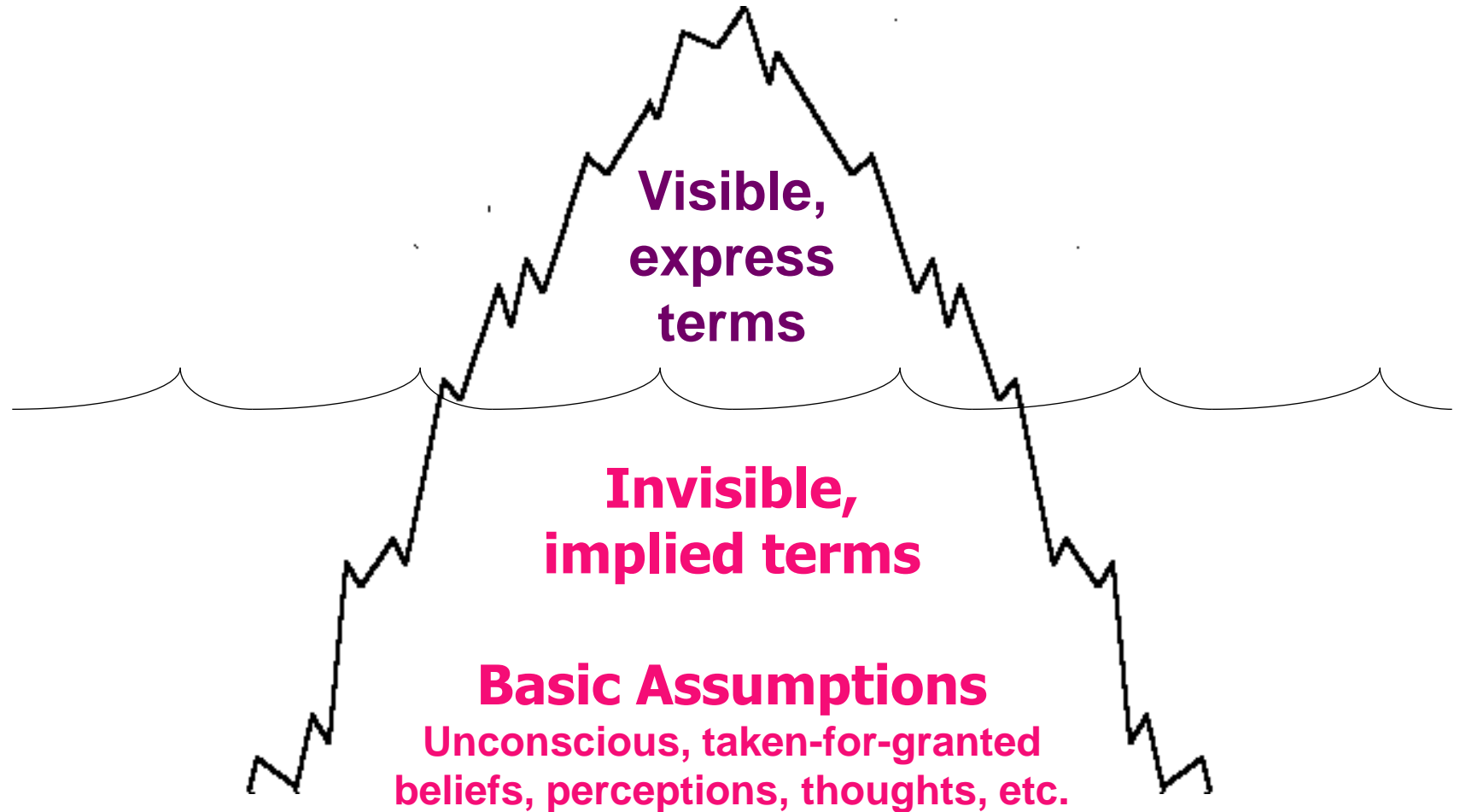
Elizabeth Warren

Professor of Law, Harvard Law School

NOW on PBS interview Week of 1.2.2009

<http://www.pbs.org/now/shows/501/credit-traps.html>

There's More than Meets the Eye...



Making the invisible visible makes contracts more complex...

The Dilemma

According to their writers, contracts are intended to **support, guide** and **protect** the parties.

However, contracts' current language and look and feel often do the opposite: they alienate people at every stage

- planning and negotiation/eliciting information
- document drafting and design
- implementation

Contracts could do more to help the parties articulate, align and achieve their business objectives.

The Traditional Approach

Traditionally, the focus in the legal field has been on

- **the past**
- past **failures**
 - problems, shortcomings, failures to comply
 - delays, infringements, breaches
- **reaction** to past failures
 - legal proceedings, remedies to force compliance
 - sanctions, punishment, fines

Even contracts are often directed toward failures.

Preventive Law

“It usually costs less to avoid getting into trouble than to pay for getting out of trouble.”

Louis M. Brown

known as the Father of Preventive Law
in *Preventive Law*. New York: Prentice-Hall, Inc., 1950

3. What Does Our Work Seek to Do?

It calls for a **paradigm shift**, a new approach, one where the focus is on

- the **future**
- **success** rather than failure
- the **users**, the business community, rather than the legal community alone

Through visualisation, we seek to bring business, legal and design communities closer to one another so that we can co-create tools and methods that will ultimately **make a paradigm shift happen.**

A Proactive Approach

“A proactive contract is **crafted for the parties**, especially for the **people in charge of its implementation** in the field, **not for a judge** who is supposed to decide about the parties’ failures. Instead of providing the most advantageous solution for one of the parties, in case of the failure of the other party to comply with its contractual obligations, the proactive contracting process and documents **seek to align and express the interests of both sides** of the contract in order to **create value for both.**”

Gerlinde Berger-Walliser, Robert C. Bird & Helena Haapio:

Promoting Business Success through Contract Visualization.

Journal of Law, Business & Ethics, Vol. 17, Winter 2011, 55–75, at 61.

Our Focus

We recognise that “a contract” may look different for a judge asked to interpret it in a dispute from what it appears to be for a non-lawyer user seeking to turn it into action.

Our focus is on how we can help

- 1) people in charge of *contract implementation* read and understand contracts so that unnecessary misunderstanding and disputes are prevented; and
- 2) people in charge of *contract crafting* produce contracts that provide transparency and understandability and prevent inadvertent non-compliance.

Users of Commercial Contracts

Two major groups:

1) the legal community

legal practitioners and scholars, law teachers, judges, and arbitrators

2) the business community

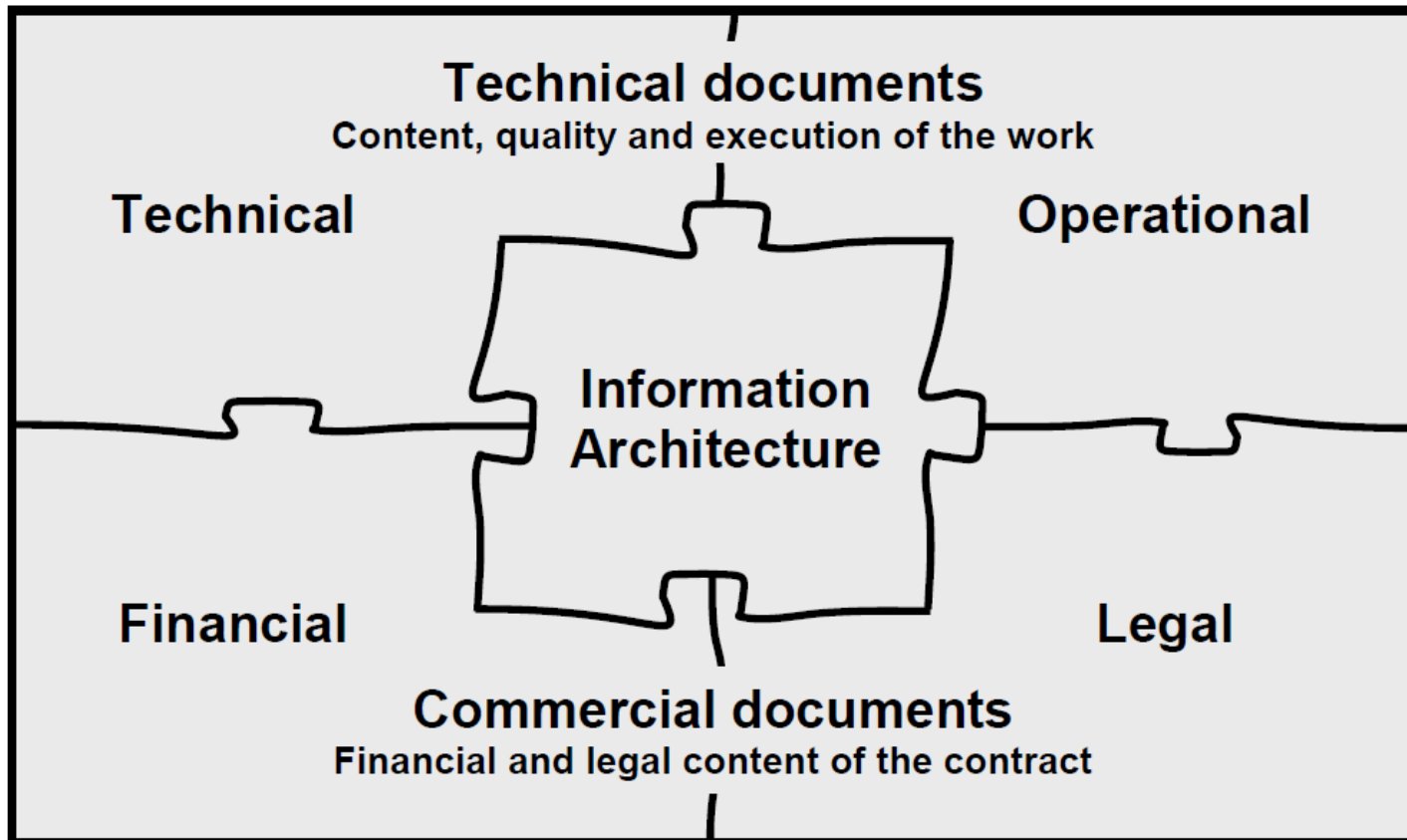
parties involved in business dealings: sellers, buyers, traders, entrepreneurs, represented by engineers, business and project managers: mostly non-lawyers

4. How Do We Propose to Do It?

To reach our goal, we propose to

- make the current paradigm visible & challenge it
- introduce *user-centered design* and *usability* into the field of contracts
- merge a *proactive approach* with *design thinking*, especially information design and visualisation
- see contracts as information products

Contracts as Information Products



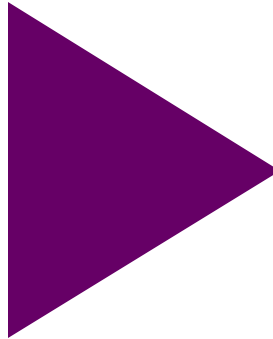
The Contract Puzzle: Contract Documents and their Contents. Adapted from Helena Haapio: Next Generation Contracts (2013) and YSE 1998 (RT 16-10660)

A New Perspective

From...

legally perfect contracts that prepare for failure and seek to allocate all risk to the other party.

«Contracts are **legal** tools: legally binding, enforceable, must cover all thinkable contingencies.»



To...

usable contracts that promote, facilitate and guide desired action and help manage change.

«Contracts are tools for **business** action and communication: must be clear, understandable, easy-to-use to achieve business goals.»

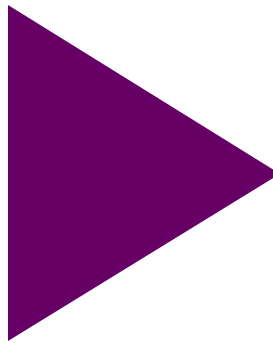
**We need to bridge the gap
– and we can!**

Bridging the Gap

From...

“Contracts are **legal** tools, made to win in court.”

«Contracts allocate risk. They are needed only when things go wrong.»



To...

“Contracts are **managerial** tools, made for win-win in business.”

«Contracts add value. They enable business success and prevent problems and disputes.»

- **A proactive approach**
- **User-centered contract design**
- **Information design; visualisation**

Contract Visualisation

- adding tables, charts, and images to supplement text
- contract visualisation
 - 1) images *in* contracts: inserted in the contract, for instance to highlight, clarify and explain the content of some of the clauses
 - 2) images *about* contracts: used to provide guidance on how to read and use the contract

Helena Haapio: *Next Generation Contracts: A Paradigm Shift*. Lexpert Ltd 2013.

What Can Visualisation Do?

Visualisation helps us see contracts in a new light: as information products and communication tools, not just legal tools

- a **new design** can accelerate a **new mindset** and vice versa: together, they can make a paradigm shift happen
- our goal is better contract design, considering not only **content** but also **the way in which it is presented**

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- 5. Examples**

“Before...”

New York City Administrative Code - Typical page from New York City Administrative Code
Title 20
Consumer Affairs
http://72.0.151.116/nyc/AdCode/Title20_20-465.asp (October 2013)

§ 20-465 **Restrictions on the placement of vehicles, pushcarts and stands; vending in certain areas prohibited.** a. No general vendor shall engage in any vending business on any sidewalk unless such sidewalk has at least a twelve-foot wide clear pedestrian path to be measured from the boundary of any private property to any obstructions in or on the sidewalk, or if there are no obstructions, to the curb. In no event shall any pushcart or stand be placed on any part of a sidewalk other than that which abuts the curb.

b. No general vendor shall occupy more than eight linear feet of public space parallel to the curb in the operation of a vending business and, in addition, no general vendor operating any vending business on any sidewalk shall occupy more than three linear feet to be measured from the curb toward the property line.

c. No vending vehicle, pushcart, stand, goods or any other item related to the operation of a vending business shall touch, lean against or be affixed permanently or temporarily to any building or structure including, but not limited to lamp posts, parking meters, mail boxes, traffic signal stanchions, fire hydrants, tree boxes, benches, bus shelters, refuse baskets or traffic barriers.

d. No vending pushcart, stand or goods shall be located against display windows of fixed location businesses, nor shall they be within twenty feet from an entranceway to any building, store, theatre, movie house, sports arena or other place of public assembly.

e. No general vendor shall vend within any bus stop or taxi stand, or within ten feet of any driveway, any subway entrance or exit, or any corner. For purposes of this subdivision, ten feet from any corner shall be measured from a point where the property line on the nearest intersecting block face, when extended, meets the curb.

f. Each general vendor who vends from a pushcart or stand in the roadway shall obey all traffic and parking laws, rules and regulations as now exist or as may be promulgated, but in no case shall a general vendor vend so as to restrict the continued maintenance of a clear passageway for vehicles.

g. (1) No general vendor shall vend on any street which is in a C4, C5, or C6 zoning district, or in the area bounded on the east by Second Avenue, on the south by Thirtieth Street, on the west by Ninth Avenue and Columbus Avenue and on the north by Sixty-fifth Street, except that as chairperson of the street vendor review panel established pursuant to section 20-465.1 of this subchapter, the commissioner of the department of small business services or his or her designee may receive applications from any person, group, organization or other entity to permit general vendors on any street within said area or said zones, or to prohibit general vendors on any other street. Such applications shall be considered by the street vendor review panel in accordance with the procedures enumerated in section 20-465.1 of this subchapter.

(2) No general vendor shall vend on any street which is in the area including and bounded on the east by the easterly side of Broadway, on the south by the southerly side of Liberty Street, on the west by the westerly side of West Street and on the north by the northerly side of Vesey Street.

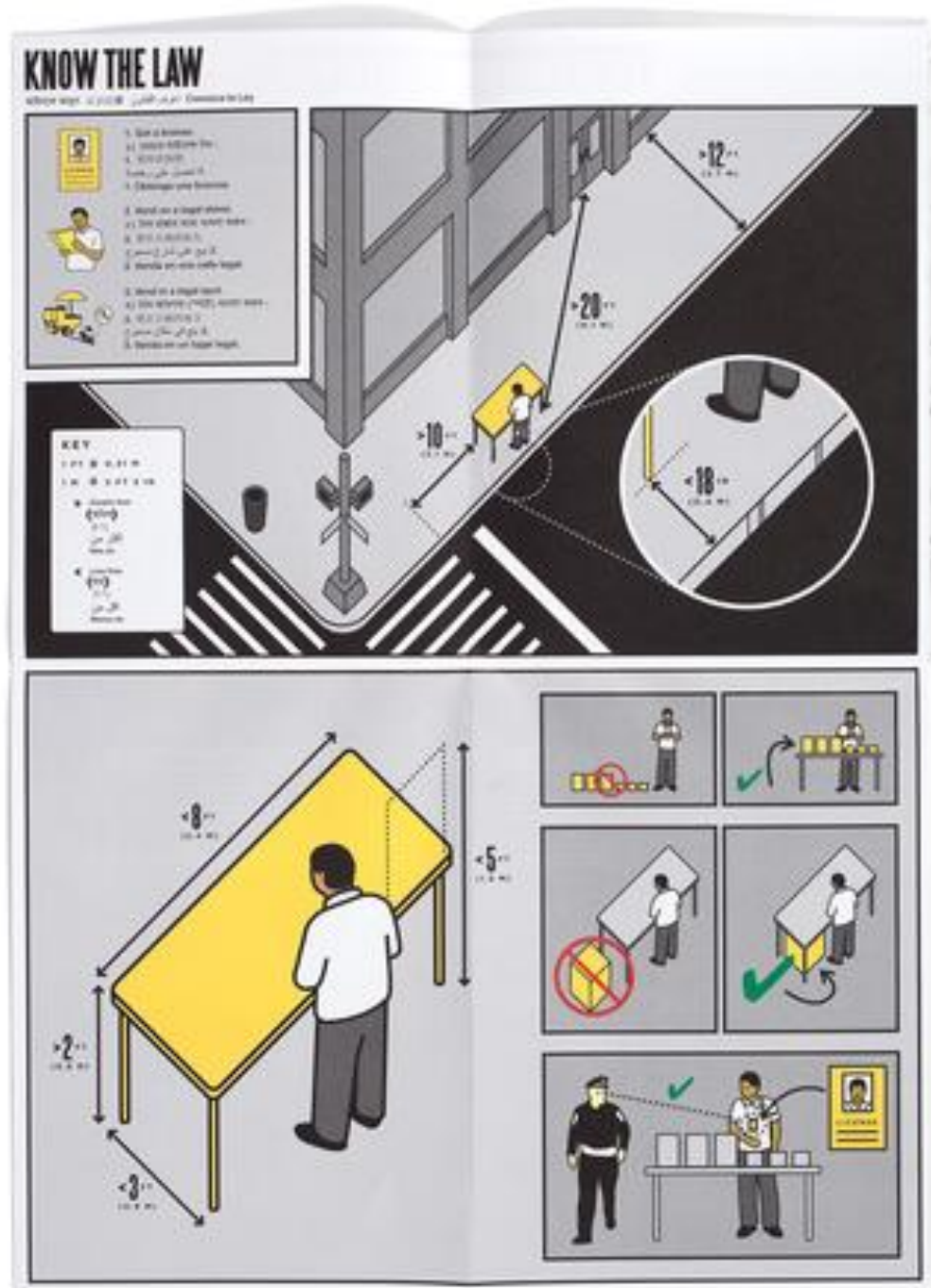
(3) Upon issuance of a new general vendor license or a renewal of an existing license, the commissioner shall provide a copy of subchapter twenty-seven of chapter two of this title and of the rules of the city of New York implementing such subchapter to such new or renewal licensee

“After...”

Excerpt from Vendor Power! – a visual guide to the rights and duties for street vendors in New York City. © 2009 The Center for Urban Pedagogy. http://welcometocup.org/Store?product_id=17

“Vendor Power! decodes the rules and regulations for New York’s 10,000 street vendors so they can understand their rights, avoid fines, and earn an honest living.”

Design: Candy Chang





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MAKING POLICY PUBLIC

Vendor Power!

Vendor Power! decodes the rules and regulations for New York's 10,000 street vendors so they can understand their rights, avoid fines, and earn an honest living. Did you know you can get a \$1,000 ticket for parking more than 18 inches from the curb? It doubles as a poster on the rich landscape and history of vending in the City.

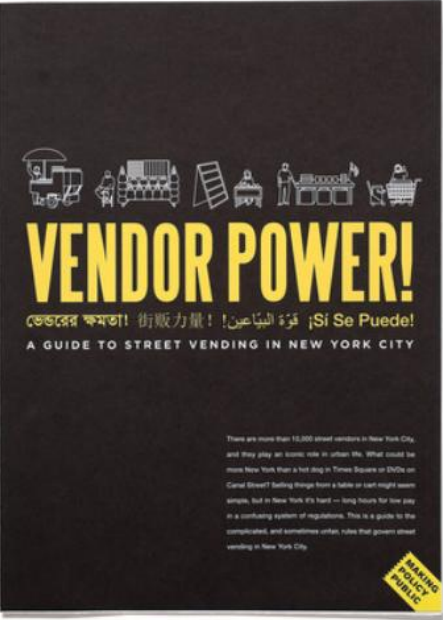
This pamphlet was produced through a collaboration of CUP, [the Street Vendor Project](#), and [Candy Chang](#).

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8" x 11" color pamphlet; unfolds to 32" x 22" poster

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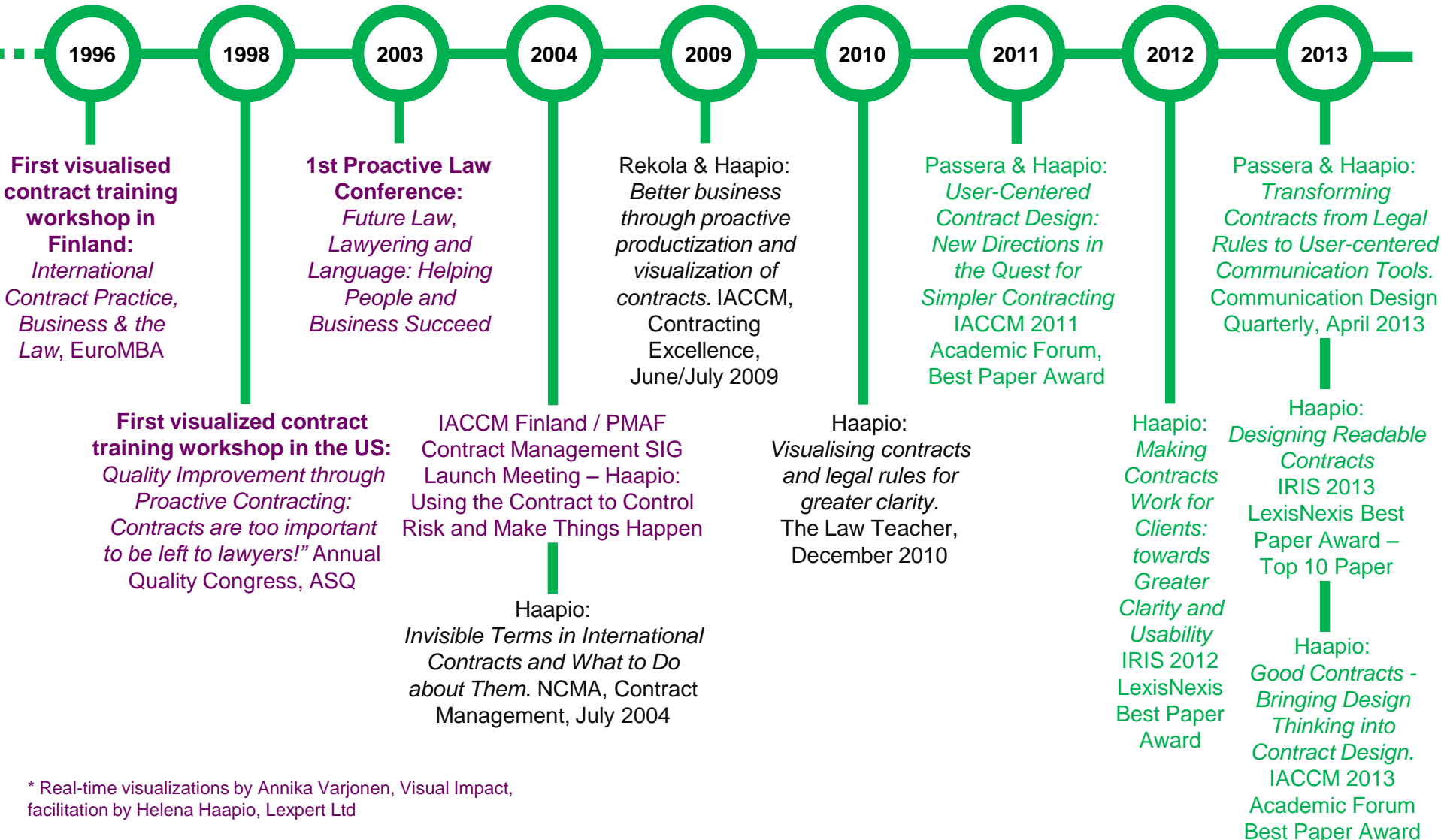
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Contract Visualisation: the Trajectory

Visualisation in Education*

Visualisation about Contracts

Visualisation *in and about* Contracts



* Real-time visualizations by Annika Varjonen, Visual Impact, facilitation by Helena Haapio, Lexpert Ltd

Towards Contracts that Work

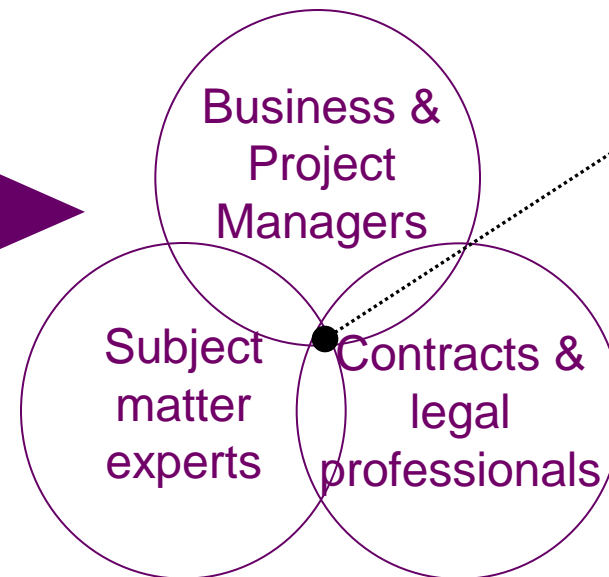
Before...

“Contracts are **legal documents** needed only in case of a dispute.”



After...

“Contracts are **management tools** needed for better business and fewer problems.”



- Clarity
- ▼
- Understanding
- ▼
- Better decisions faster
- ▼
- Better results
- ▼
- Ease of doing business

Additional Information



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For more information, see

- **Next Generation Contracts: A Paradigm Shift.** Lexpert Ltd 2013
- **Visual Law: What Lawyers Need to Learn from Information Designers,** Vox PopuLII blog at <http://blog.law.cornell.edu/voxpath>
- **Webliography**



Helena Haapio

**Next Generation Contracts:
A Paradigm Shift**

Helena Haapio
***Next Generation
Contracts***

Doctoral dissertation,
University of Vaasa
Lexpert Ltd 2013
contact@lexpert.com

Cover: Stefania Passera

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