

# DESIGN OF GOOD COMMERCIAL CONTRACTS – PRACTICAL TOOLS FOR CONTRACT DRAFTERS

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**Abstract:** *The proactive law approach has brought attention to the fact that legal function is not the only function of the contract, and lawyers are not the only users of commercial contracts. However, a majority of managers are reluctant to read lengthy, difficult to read and understand documents; therefore, contracts underperform their functions. Research shows that in order to enhance the usability of commercial contracts, it is necessary to change the way they are designed. The following paper aims to gather useful tools for commercial contract drafters, which help to design user-centered and usable contracts. The three main groups of methods are analyzed: page features, typography, and highlighting.*

## 1. Introduction

Commercial contracts play an important role in today's interconnected world. They are supposed to express, define and fulfill complex business relations between parties. [POHJONEN 2006, 155] However, in spite of the fact that commercial contract transfers information, valuable above all for business audience, a contract is usually perceived as a purely legal document, necessary only for lawyers and carrying out only legal functions. [MAMULA & HAGEL 2015, 471] Such an interpretation goes along with the classical legal theory, where contracts are often equated to contract litigation and most of the attention is drawn to applying contract in court. [HAAPIO 2013, 2]

According to the proactive law approach, along with traditional legal functions of preventing problems and resolving disputes, contract can serve as an instrument for managing business and projects, realizing benefits, communication and risk minimization. [HAAPIO 2013, 29] In order to make sure that these functions are performed, it is necessary to make the contracts readable and usable for all the parties involved in the life cycle of a contract, including managers. One of the ways to achieve this is to change the existing approach in contract design. [HAAPIO 2013, 80]

The design of commercial contracts relates to the visual impact of the document. The current look and feel of most commercial contracts is not user-friendly. It doesn't invite readers to use the document. This has a great impact on the usability of the commercial contracts and significantly limits their functionality. Traditionally, commercial contracts resemble laws: endless dull pieces of dense text in small font. They can be described as «design-free»: [BERNSTEIN 2011, 3] it seems like no effort at all was put to make the documents readable. Good design of a commercial contract aims to present information in such a way that the document becomes visually appealing, the needed information is quickly found and easier to comprehend. [BERMAN 2000, 5]

Design thinking is already present in many areas of life, including various scientific disciplines. However, unfortunately, in the field of contract drafting, it is still on a very primitive stage. The research on contract

design is very modest and is mostly limited to individual case studies.<sup>1</sup> At the same time, areas of information and knowledge design that can offer a number of useful methods and tools, which can be used in the contract drafting procedure, are already quite developed.

In the area of contract design, it is hardly possible to find any resources that would offer a set of tips or a checklist for contract drafters. Various aspects of contract design are covered with different sources from different fields. The following paper aims to compile useful methods and tools for commercial contract designers.

## 2. Design of good contracts

The question of contract design is to some extent researched and discussed by organizations that strive for clear language and communication. In particular, most of the organizations highlight the necessity of clear and user-friendly layout for documents. Some of the features of good design that are mentioned include white space, typography, colour, line length and capitalization. [Center for Plain Language n.a.; Plain English Foundation 2014; Plain Language Association International (PLAIN) 2014; Wordsmith Associates Communication Consultants Inc. 2014] However, these aspects are not discussed in detail and specific methods to help the contract drafter to cover all these aspects in the document in a proper way are not offered. These organizations rather provide a direction for further research in the field, than particular practical recommendations.<sup>2</sup>

There is a number of manuals for contract drafters that also covers some of the aspects of good design for contracts. For instance, «*Guidelines for Document Designers*» by DANIEL FELKER highlight such principles as appropriate line length, sufficient white space between margins and sections, highlighting and type size. [FELKER & AL. 1981, 71-105] In his book «*A Manual of Style for Contract Drafting*» and blog «*Adams on Contract Drafting*», KENNETH A. ADAMS pays particular attention to the typography of contracts, including font type and size, number of characters per line, line spacing, justification and emphasizing names and headings. [ADAMS 2013, 377–392; ADAMS 2014]

Taking into account all the aspects mentioned above, it is possible to distinguish three main groups of methods, according to the focus of the application: page features, typography and highlighting. Each of them will be discussed below with an emphasis on tools that help to make the best design of the commercial contract.

### 2.1. Page features

When talking about the page features of traditional contracts, the first problem that comes to mind is the overwhelming underestimation of the role of white space for the readability of documents. White space is a blank area on the page with no type on it. [FELKER ET AL. 1981, 81] It is essential to leave enough white space within the page, as it brings attention to the important pieces of information and gives opportunities for the readers' eyes to rest. [BERMAN 2000, 25] Graphic designers recommend that the proportion of text and white space in legal documents should be 50:50. [ROBBINS 2004, 113] In order to achieve this, the contract drafter should apply larger margins, larger spaces between paragraphs and after headings, as well as larger line

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<sup>1</sup> Cf. e.g. GLPI/SCHMOLKA, Results of Usability Testing Research on Plain Language Draft Sections of the Employment Insurance Act, <https://www.davidberman.com/wp-content/uploads/glpi-english.pdf> (accessed on 29 November 2015), 2000; MAMULA/HAGEL, The Design of Commercial Conditions – Layout, Visualization, Language. In: Schweighofer/Kummer/Hötendorfer (eds.), Cooperation. Proceedings of the 18th Legal Informatics Symposium IRIS 2015, books@ocg.at, Wien 2015, p. 471–478; PASSERA, Enhancing contract usability and user experience through visualization. An experimental evaluation, 16<sup>th</sup> International Conference on Information Visualization, IEEE, Montpellier 2012, p. 376–382.

<sup>2</sup> In the light of this discussion, the British organization called Simplification Centre definitely stands aside. As its primary goal is to simplify complicated communication, it offers a more significant research in the field of contract simplification. The web page of the Simplification Centre is regularly updated, including its blog, list of technical papers and reports from events. For more information see: [www.simplificationcentre.org.uk](http://www.simplificationcentre.org.uk)

spacing. [FELKER ET AL. 1981, 81–83] Using bullet point lists and visualizations also helps to create more white space on the page. There is no perfect use of white space: it all depends on the particular document. However, it is always necessary to keep in mind that if there is too little white space on the page, it is less likely that the reader will want to read the document.

«Giving the text room to breathe also allows the reader to breathe mentally.»

M. H. SAM JACOBSON

[JACOBSON 2008, 111]

## 2.2. Typography

AS DAVID BERMAN puts it: «*Typography is the tone of voice in the printed world*». [BERMAN 2000, 17] The same way that the voice tone helps to add additional meanings to what we say, the particular typography style brings additional meanings to the written text. [BERMAN 2000] In the pursuit of typography, there are several critical aspects that should be considered. They are typeface, type size and line length.

### 2.2.1. Typeface

The majority of traditional contracts uses the most conservative typefaces *Times New Roman* and *Arial*. However, these two fonts are being seriously criticized by typography professionals. [e.g., FELICI 2003, 70; BUTTERICK 2010, 84, 110] They are considered to be crowded and difficult to read. At the same time, there is no single opinion about the perfect typeface that should be used in contracts. MATTHEW BUTTERICK, the author of «*Typography for Lawyers*», recommends the use of the typeface *Equity* of his own production. [BUTTERICK 2014c] Nevertheless, such an approach is widely criticized, [e.g., GLOVER 2012] as this typeface is not initially installed on computers – it needs to be bought online additionally. Therefore, most of the contract's users don't work with it. Generally, it is recommended to use system fonts that work across all computers and are widely available in order to avoid problems with sharing documents inside and outside the company. [e.g., ADAMS 2013, 380; BERMAN 2000, 17] Wordsmith Associates Communication Consulting advises using *Palatino*, *Book Antiqua*, *Garamond* or *Times*. [WORDSMITH ASSOCIATES COMMUNICATION CONSULTANTS INC. 2014] KENNETH A. ADAMS prefers *Calibri*. [ADAMS 2013, 379] DAVID BERMAN chose *Century Oldstyle* and *Frutiger* for the modified version of the Canadian Employment Insurance Act. His choice was explained by a set of criteria: the typeface should be not ubiquitous, have a neutral emotional tone, should be reproduced easily on different systems, have efficient width and lower x-height. [BERMAN 2000, 17–19]

Taking into account all mentioned above, it is important to keep in mind the recommendation on choosing the font by MATTHEW BUTTERICK:

«*Fonts are only one ingredient of typography. And good fonts are neither necessary nor sufficient for good typography.*»

[BUTTERICK 2014d]

So, in spite of the seeming importance of typefaces, their role in the overall look and feel of the contract is not crucial. In the case of limited time and resources that can be spent on the contract design, it is more important to pay attention to other aspects of typography, such as type size and line length.

### 2.2.2. Type size

The size of the text plays an important role in the readability of the contract. If it is too small, readers tend to avoid reading the text; in case, if it is too big, the document becomes too long and again readers feel reluctant

to read it. The majority of researchers agree that the optimal type size is between 10 and 12 points. [e.g., BUTTERICK 2010, 90; ADAMS 2013, 385] However, it appears to be not as easy as it sounds. The point system is not absolute. It means that the same point size in different typefaces can look differently. For instance, in the same point size the font *Century* looks bigger than the font *Calibri*:

This sentence is written in Calibri, 12 pt.  
This sentence is written in Century, 12 pt.

Therefore, it is recommended to choose the point size according to the visual size rather than point size. [BUTTERICK 2014f; FELKER ET AL. 1981, 77] There is a type of font measurement, which is more specific than a point size and shows the visual size of letters. It is called x-height (see figure 1).



**Figure 1: Point size and x-height** [WALLER 2011a, 5]

The optimal x-height is considered to be 2 mm. [WALLER 2011a, 5] But the difficulty is that when choosing a typeface and font size in the Microsoft Word application you can't see the x-height. The author of this article would recommend for contract drafters to compare the typeface and size they choose with *Century*, 12pt., which actually has x-height 2 mm:

This sentence is written in Century, 12pt.

This approach helps to get a feeling for the advised type size and provides room for benchmarking.

### 2.2.3. Line length

Overlong lines are one of the most common problems of contract layout. [WALLER 2011a, 15] Too many characters per line make reading tiring, and the reader gets lost in the middle of the line. At the same time, it is important to avoid too short lines, as a text divided into columns, in which the readers eye has to move to the next line too often affects comprehension. The optimal line length is considered to be 50–70 characters per line, which corresponds 10–12 words per line. [e.g., BERMAN 2000, 20; BUTTERICK 2010, 142; FELKER ET AL. 1981, 74] Another way to measure the appropriate line length is the «alphabet test», offered by MATTHEW BUTTERICK in his blog: a good line length should fit between two and three English alphabets, [BUTTERICK 2014e] like here:<sup>3</sup>

absdefghigklmnopqrstuvwxyzabsdefghigklmnopqrstuvwxyzabsdefghigklmnoprstuv

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<sup>3</sup> This line is written using *Palatino* typeface, font size 12,5

## 2.3. Highlighting

Traditional contracts are criticised for being a uniform text. Highlighting techniques offer a number of ways that can help to make certain parts of text distinct and, therefore, break it into parts. [FELKER ET AL. 1981, 73] Some of the most common ways to highlight information are bold face, italics and underlining, capitalization and colour. It is important not to overuse the highlighting techniques and to avoid using too many different ones, as it makes a contract look cluttered and confuse a contract user. [FELKER ET AL. 1981, 73–74] The golden rule is: if too much is emphasized, nothing is emphasized. [BUTTERICK 2014b; FELKER ET AL. 1981, 73–76]

### 2.3.1. Bold face, italic and underlining

These highlighting techniques are very useful when it is necessary to emphasize some small amounts of text. For instance, bold usually works very well for headings and italic serves great for highlighting names or examples. However, it is important to remember that bold and italic are mutually exclusive. It is a sign of a bad tone to use bold and italic simultaneously. The same rule applies to the combination of bold and underlining. [BUTTERICK 2014b] Overall, underlining as a highlighting technique should be used very carefully. Typography professionals are united in the opinion that it makes text harder to read as the underlining is too close to the text line. [BUTTERICK 2010, 78; FELICI 2003, 85]

### 2.3.2. Capitalization

This highlighting technique includes the usage of capital letters. There are two options: ALL-CAPS text (all letters are capital) or Capitalize Each Word (every first letter of the word is capital). As any other highlighting technique, capitalization works well when limited. It suits perfectly for headings, headers, footers and captions. [BUTTERICK 2014a] However, it is necessary to avoid using capitalization for paragraphs or any other parts of the contract longer than one line. According to the research in the field, capitalized text is harder and longer to read, so it should be used wisely. [FELKER ET AL. 1981, 87]

### 2.3.3. Colour

Traditionally, all legal documents, including commercial contracts, are crafted in black-and-white, without any parts in colour. This fact has some obvious historical background: earlier the use of colour ink was a lot more complicated and expensive. [BERMAN 2000, 21] However, nowadays it doesn't seem to be that much of a difference. Colour could be very helpful in highlighting information, adding additional meaning to the text and just making the document more attractive. [BERMAN 2000, 21] Of course, colour should be used very carefully. It is important not to cross the line and make a contract become a comic. Moreover, it is important to keep in mind that colour can be lost in reproduction when the contract is copied or faxed. Therefore, it should be used only as a secondary tool of emphasizing information, and the absence of colour shouldn't impact the meaning of the contract. It is important to check that the contract with colour ink looks clear and attractive when printed black-and-white. Another important rule about colour: consistency. It is necessary to use one colour for the same type of information, e.g. headings, numbers, definitions, etc. Inconsistency can confuse the reader. [FELKER ET AL. 1981, 76]

There is a number of other highlighting techniques that also can be used. One of them is the use of borders. This technique serves especially well for highlighting definitions: a contract drafter can put a border around a provision, so it appears to be in a box. [ADAMS 2013, 385] Even white space can be used as a highlighting technique (see 2.1. Page Features).

### 3. Conclusions

The aim of this paper is to provide an overview of particular methods and techniques that can be used to design or redesign the layout of commercial contracts in such a way that they become more attractive and clear for various contract users, including managers. It could serve as a checklist for academia, lawyers, and businessmen, and bring us closer to developing a new mindset of contract users, where contract performs not only legal but also not less important managerial functions.

Different aspects of the contract design discussed above seem to be minor details that don't bring a significant change to the look and feel of the document. However, it is the combination of different methods and tools that makes a difference. If a contract drafter takes a traditional contract and enlarges type size, adds additional spacing between paragraphs and makes headers all caps and bold, the document will right away look more attractive and readable. Whatever aspect of the contract design is being changed, it is important to apply two simple rules: consistency and moderation.

### 4. Limitations

While this study focuses on the contract design, it is important to remember that this is only one of the aspects that influence contract readability and usability. Among other characteristics that make a document more simple and, therefore, more attractive for non-legal users are language, content, and structure.<sup>4</sup>

The following paper names the main characteristics of the contract design that influence the look and feel of the document. However, the list of such characteristics is not limited to the ones mentioned above. There are many more details that can be discussed when talking about contract design (like line spacing, justification, space between paragraphs, etc.), but in the scope of this research, it was decided to focus only on the main ones.

Moreover, the following research concentrates mainly on contract layout, leaving aside another important design tool – adding visualizations. Contract visualizations relate to illustration of clauses of a contract with the help of graphical tools, such as diagrams, flowcharts, icons, images, etc. [BARTON ET AL. 2013, 48] While contract layout affects the readability and attractiveness of the documents, visualizations can serve as a perfect tool for communicating complex information presented in the contract. Being a more complex method than contract layout, visualizations have to be discussed in a separate research.<sup>5</sup>

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<sup>4</sup> For more information about characteristics of user-friendly contracts see e.g.: CENTER FOR PLAIN LANGUAGE, *Write better*, from [centerforplainlanguage.org](http://centerforplainlanguage.org/): <http://centerforplainlanguage.org/5-steps-to-plain-language/>; FELKER ET AL., *Guidelines for Document Designers*, American Institutes for Research, Washington DC 1981; JACOBSON, *A Checklist for Drafting Good Documents*, *Journal of the Association of Legal Writing Directors*, Vol. 5., 2008, p. 79–117; IACCM, *Contract Design Award Program*, from [iaccm.com](https://www.iaccm.com/services/contractdesign/): <https://www.iaccm.com/services/contractdesign/>, 2014 etc.

<sup>5</sup> For more information about contract visualizations see e.g.: BARTON ET AL., *Visualization: Seeing Contracts for What They Are, and What They Could Become*, 19 *Journal of Law, Business & Ethics*, 47, 2013, p. 47–63; HAAPIO ET AL., *Time for Visual Turn in Contracting?*, *Journal of Contract Management*, Summer 2012, Vol. 10, NCMA, 2012, p. 49–57; PASSERA, *Enhancing contract usability and user experience through visualization. An experimental evaluation*, 16th International Conference on Information Visualization, IEEE, Montpellier 2012, p. 376–382.

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