

## From Conventional to Useful, Usable Contracts

Helena Haapio, [helena.haapio@lexpert.com](mailto:helena.haapio@lexpert.com)

IACCM Finland & PMAF Contract Management SIG & MORFEUS  
**Contract Simplification**, 15 June 2016, Espoo, Finland



## From Conventional to Useful, Usable Contracts

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1

## From Conventional to Useful, Usable Contracts

1. What is the problem?
2. What are the causes?
3. How can we solve the problem?
4. Examples: highlights from ICCS 2016

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2

IACCM Finland & PMAF Contract Management SIG & MORFEUS  
**Contract Simplification**  
15 June 2016, Espoo, Finland

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## Who's Talking?



**Helena Haapio**, LL.M. (Master of Laws),  
MQ (Master of Quality), DSc (Doctor of Science (Econ.))

- International Contract Counsel, **Lexpert Ltd**, Helsinki
  - formerly corporate counsel in Europe and the US
  - since the 1990s, arbitrator in commercial contract disputes
- Co-founder and co-leader of the **ProActive ThinkTank** and of the **Nordic School of Proactive Law**
- Assistant Professor, **University of Vaasa**, Finland
  - cross-professional research on ways to enhance the functionality, usability and UX of contracts in business
- Founder and coordinator of IACCM Finland/PMAF CM SIG

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3

International Association for  
Contract and Commercial Management (IACCM)  
**IACCM Finland**

Project Management Association Finland (PMAF)  
**PMAF Contract Management  
Special Interest Group, SIG (SIG-9)**

Projektiyhdistyksen Sopimusten hallinnan ryhmä  
<http://www.pry.fi/toiminta/sig-ryhmat/sig-9>

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4

## IACCM Finland / PMAF SIG-9 Examples of Topics / Meetings

- Launch Meeting, **Marsh Oy**, Jan 27, 2004
- Contracting, Governance and Trust - Nordnet Pre-Conf. Meeting, **Rastor Oy**, Sept 29, 2004
- Reducing Project Risks through Contract Management, **Kone Corporation**, March 31, 2005
- Sopimusosaamisella tulosta! **Nextrom Oy**, May 30, 2005
- Manage Your Business and Projects by Managing Your Contracts **Marsh Oy**, June 13, 2006
- Successful Projects through Effective Contracting **Aon Finland Oy**, Nov 29, 2006
- Ketterä, hallittu sopiminen, **Zurich Insurance Finland**, Apr 27, 2010
- Sopimusten hallinta tänään, **Oy Juridia Ab**, Jan 20, 2011
- Elinkaaripalvelut ja niistä sopiminen, **FCG Oy**, June 8, 2011
- The Future of Contracting, **Sopima Corporation**, June 7, 2012
- Generating Value From Trading Relationships, **PMAF**, June 27, 2013
- Do projects fail because of poor contracting? **PMAF**, Sept 8, 2014
- Towards Agile, Simpler Contracts and Successful Relationships, **Fennia Mutual Insurance Company**, Sept 14, 2015
- Contract Simplification, **Aalto University SimLab**, June 15, 2016
- Sessions & Seminars at **Project Management Days**, next November 2, 2016

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5



### Invitation

The series of joint meetings of the Contract Management Special Interest Group (CM SIG-9) of Project Management Association Finland (PMAF) and the International Association for Contract and Commercial Management (IACCM) Finland will continue with an event arranged in collaboration with MORFEUS, a research project of Aalto University SimLab and Laurea University of Applied Sciences, on

### Contract Simplification

Winning and awarding contracts is important for the health and performance of most organizations. For many people, contracts contain important information that is directly relevant to how they do their jobs. Do they have to struggle with complex information in requests for proposals, bids, or contracts? Does it really have to be as bad as it so often is? We do not think so. This event brings together people who have explored new ways to communicate complex information, both in theory and in practice. The meeting will take place on **Wednesday 15 June 2016 at 2:30 pm** (registration at 2:15 pm) – approx. 5:30 pm at Open Innovation House, Olanenintie 19b, Espoo.

Our host and chair:  
**Soile Pohjonen**, Senior Researcher, Aalto University SimLab

**Our speakers:**



**Tim Cummins**, CEO of IACCM  
**Commercial agility and creativity through contract simplification**

- why contract simplification matters
- the costs of failing to simplify
- the forms that simplification is taking now and the benefits being achieved
- where next?




**Rob Waller & Jenny Waller**, Simplification Centre  
**Simplifying contracts through language and design: Experiences and challenges**

- A case study of contract simplification, moving from traditional legal language to a user guide format
- Bridging the gap, and balancing the power relationship, between large corporations and small contractors



**Helena Haapio**, Lexpert Ltd / University of Vaasa, SIG-9/IACCM Finland Coordinator  
**From conventional to useful, usable contracts**

- Highlights from the International Conference on Contract Simplification (CCS 2016 [http://igd.swinsie.com/events/contract\\_simplification.html](http://igd.swinsie.com/events/contract_simplification.html): Contracts as Comics and FIT contracts: Functional, Inclusive, Transparent, Contract Design Jam
- Transforming contracts from legal tools to enablers and empowers



**Stefania Passera**, Doctoral researcher, Aalto University  
**Contract framing and its impact on relationships**

- Choice of clauses and how they are presented have an effect on the type of relationship between parties
- Case study: How can contract visualization help shape good business relationships?
- Contract & Legal Design Jams as a way to reframe contracts

In addition to IACCM and SIG-9 members, the meeting is open to invitees of the MORFEUS research project. There is no charge to attend. Please register at <http://www.pry.fi/ominitar/apuhtumakalenteri>. Space is limited, so be sure to register early!

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6

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## 1. What Is the Problem?

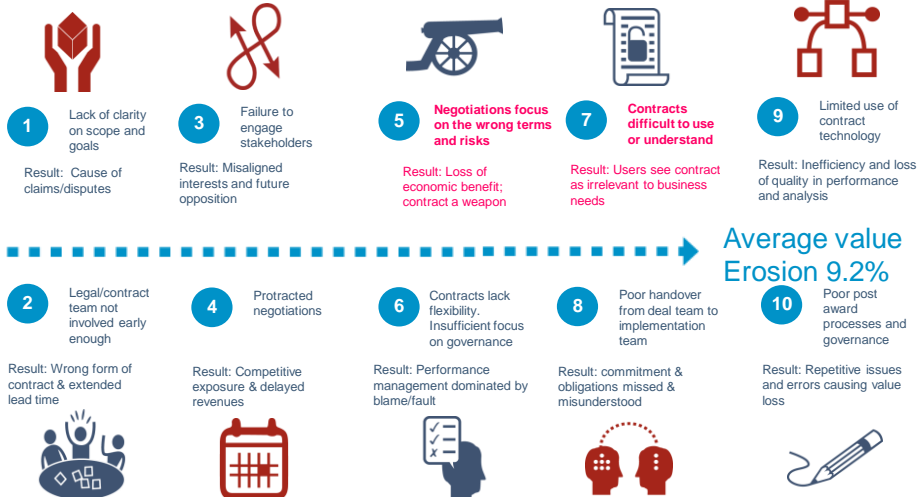
# Contract UX is the problem.

(UX = user experience)

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9

## 10 Pitfalls



Copyright IACCM 2015

Tim Cummins: Commercial Excellence. Presentation at IACCM Finland event, Helsinki 14 September 2015

0

MOOC: Commercial Excelli... x +

info.iaccm.com/commercial-excellence-ten-pitfalls-to-avoid-in-contracting

IACCM

## Commercial Excellence: Ten Pitfalls to Avoid in Contracting

### Commercial Excellence: Ten Pitfalls to Avoid in Contracting


Of course you care about the bottom line. But do you have any sense of how much money you are losing each day through under-performing contracts?

Your contracts are core business assets, but unless you tackle the common sources of erosion, they are leaking value. On average, companies could be generating over 9% improvement to their bottom line if they tackled the commercial issues that commonly undermine contract performance.

This brochure highlights ten pitfalls in your contracting process that are most likely to be costing you money - and damaging the quality of your customer and supplier relationships.

The first step towards fixing them is awareness: by reading this, you have already started on the journey.

To download this report, fill out the form on the right to receive your free copy from IACCM



Commercial Excellence: Ten Pitfalls To Avoid In Contracting

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11


## Seeing Contracts through the User's Eyes

What does the user see?

What does the user hope to achieve?

What does the user need to do?

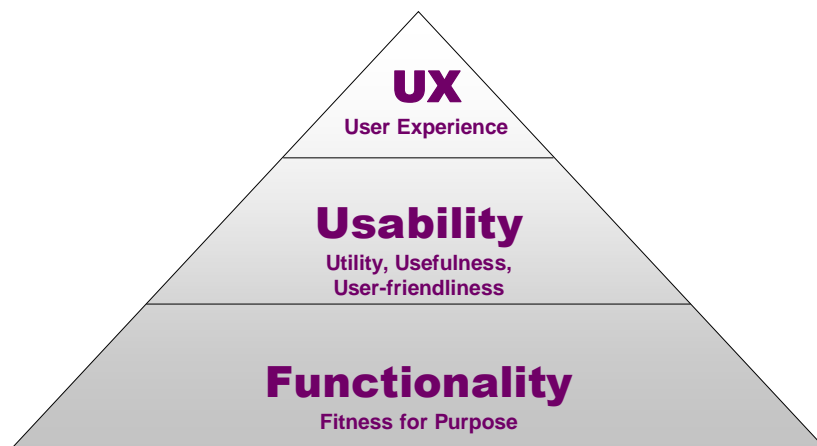
What does the user think and feel?



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12

## A Hierarchy of Users' Needs



Adapted from Helena Haapio: Next Generation Contracts: A Paradigm Shift (2013), based on Patrick W. Jordan; Designing Pleasurable Products. An Introduction to the New Human Factors (2002).

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13

## Contracts through the User's Eyes

Too complex,  
boring, irrelevant

Hard to  
work with,  
**horrible UX**



Risky, scary,  
full of  
legalese

Expensive to code  
and decode

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14

## Horrible UX

- contracts are **disliked by most people**
- many are **ignored - not read or understood** by those who are impacted => **not implemented or interpreted** as expected => unintentional non-compliance, negative surprises
- contracts **do not work**, some **lead to disputes**
- similar challenges in most B2C, B2B, B2G, G2C/B contracts, online and offline

## 2. What Are the Causes?

Three main causes of poor contract UX:

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

... all reflections of the *classical legal paradigm* dominant in both *contract theory* and *practice*.

Many people still think that contracts are only about **contract law** or **winning in court** and see contract writing as **legal writing**...



## 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 so much more to help the parties articulate, align and achieve their objectives.

## The Contracting Puzzle



Helena Haapio & George Siedel: A Short Guide to Contract Risk (Gower 2013) and Proactive Law for Managers (Gower 2011)

## Conventional Management Scholarship

- almost exclusive focus on contracts as a **safeguarding mechanism**: fixing rights and obligations **for eventual litigation** and seeking to **deter opportunistic behavior**
- even in the **relational contract theory**, the importance of non-contractual governance mechanisms come to fore
- only very few scholars have viewed contracts as management tools crucial to business success

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19

## Dominant View in Management Scholarship

**“Contracting is treated like plumbing:  
it is visible and relevant  
only when it fails.”**

Liinamaa, J, et al.,  
Performance-based and functional contracting  
in value-based solution selling  
Industrial Marketing Management (2016)  
<http://dx.doi.org/10.1016/j.indmarman.2016.05.032>

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20

## Conventional Contract Law Scholarship

- core interest in **contract law, not contracts** themselves, for example the attributes of good contracts (except how their provisions affect litigation options and outcomes)
- focus on disputes and litigation, **negatives**
- little attention to the strengths and successes of contracts and to the roles they might play in a best-case scenario (or even business as usual)

## Conventional Approach: Reactive, Corrective

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.

## Contracts: Top Negotiated Terms

### Question:

Where do negotiators spend most of their time?  
What terms are most frequently negotiated?

### Answer:

1. Limitation of Liability
2. Indemnification
3. Price / Charge / Price Changes

**Top Negotiated Terms 2015:** No News Is Bad News  
International Association for Contract and Commercial Management (IACCM)  
<https://www2.iaccm.com/resources/?id=8930>

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23

## Most Important Terms

### Question:

Where should negotiating time be focused?

### Answer:

1. Scope and Goals
2. Responsibilities of the Parties
3. Service Levels

**Top Negotiated Terms 2015:** No News Is Bad News  
International Association for Contract and Commercial Management (IACCM)  
<https://www2.iaccm.com/resources/?id=8930>

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24

## 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

## Conventional Approach

Traditionally, the focus of contract drafters has been on text that is

- precise, accurate, unambiguous
- enforceable, legally binding
- interpreted so it favours the party drafting it

**Content** matters – not **how it is presented**.

Core question: “What does **a judge** say?”

### 3. How Can We Solve the Problem?

**We can be proactive and  
design better contract  
UX.**

(UX design = user experience design)

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27

### **An Ounce of Prevention...**

**“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 *Manual of Preventive Law*. Prentice-Hall, Inc. New York 1950.  
[www.preventivelawyer.org](http://www.preventivelawyer.org)

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28

## Proactive Contracting

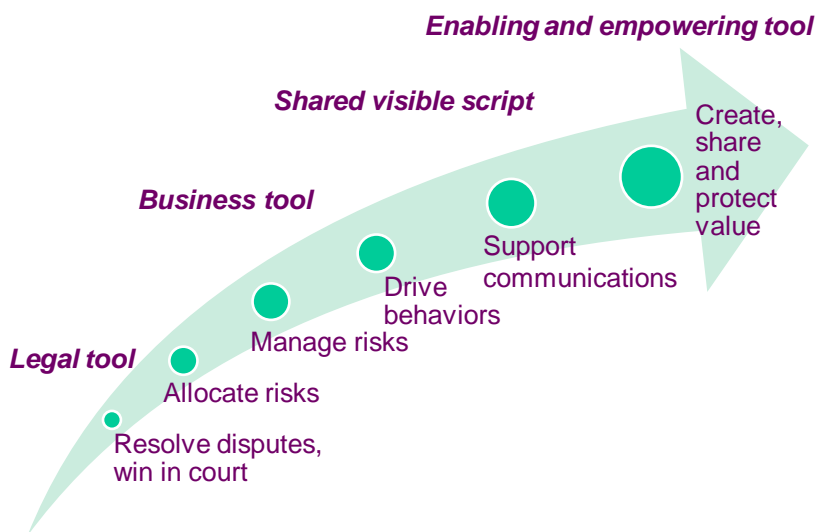
- *promotive, positive*: reaching business objectives, legal in a supportive role
- *preventive*: avoiding problems caused by misunderstandings or poor communication
- contracts as business tools, *enablers* and *empowerers* rather than *legal weapons*
  - benefits: operational efficiency, fewer problems and breaches: saves time & money => ease of doing business

## Proactive Contracting

“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.

## The Emerging Functions of Contracts



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31

## Next-Gen Approach

Contracts need to be **designed**, not just drafted.

Next-gen design requires thinking about the users

- the judge is not a frequent user, people in charge of negotiation and implementation are

Attention needs to be paid to how

- contract content is presented: look and feel, structure, layout, text navigation tools
- contracts can become more engaging, useful, and usable for “**normal people**”

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32



## Lawyers as Engineers

“Like engineers,  
transactional and legislative lawyers  
want to **make something useful that works  
for their clients.**”

David Howarth: *Law as Engineering, Thinking About What Lawyers Do*.  
Edward Elgar 2013, p. 67.

## Lawyers as Engineers and Designers

Even in the legal field, the vision and the building blocks have been around for quite a while:

- Louis M. Brown, Father of Preventive Law 1950s
- Proactive Law, Proactive Contracting 1990s
- Nordic School of Proactive Law 2004
- ProActive ThinkTank 2007
- Using the Law for Competitive Advantage
- Law and Strategy, Law and Management
- Visual Law, Legal Design

### 3. How Can We Solve the Problem?

**How can we make  
working with contracts  
less horrible of an  
experience?**

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35

### Towards Better Contract UX

- our current approach is not dictated by the law; it is “dictated” by tradition, current practices and sticky templates and forms
- we can **transform current practices**
- researchers can ask **new research questions**
- **templates and forms** can be challenged and changed; **mindsets** and **research agendas** can be changed, too

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36

## How Can We Bridge the Theory to Application Gap?

- We can borrow tools from the designers' toolbox and become designers - or work with designers
- Equipped with new skills and tools, we can transform conventional contracts to simple, usable contracts
  - not just simple for readers with a law degree
  - not just simple for one party, but for both

## Next Generation Contracts



## From Conventional to Useful, Usable Contracts

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available at <http://www.iaccm.com/contract-design-assessment>

**IACCM**  
International Association for  
Contract & Commercial Management

### IACCM Contract Design Assessment

*Demonstrate your commitment to ease of doing business*

**The IACCM Contract Design Assessment promotes the creation of clear and easy to use contracts**

Through market tests, IACCM has found that user-based contracts simplify negotiation and reduce errors in implementation and management. These contracts contain plain and clear language, a concise approach, an easy to follow structure and helpful reading aids.

Forward thinking organizations are focusing their attention on user-based contract models and tools, ensuring fast, accurate dissemination to those responsible for implementation and reducing performance risks.

For these organizations, contracts are a business enabler, a positive tool supporting collaborative relationships and a source of competitive difference. They reflect businesses that are adept at change and therefore more reliable trading partners.

#### THE ASSESSMENT PROCESS

**IACCM offers a confidential analysis of your contracts carried out by knowledgeable and innovative thinkers in the world of contracts and design.**

The assessment process is carried out by a team of academic and subject matter experts. It includes a swift and secure assessment of your contract templates.

The assessment does not involve a

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## IACCM Contract Design Assessment Program

promotes the creation of clear and easy to use contracts

1. **Language** Criteria: How understandable are the words in your contract?
2. **Design** Criteria: Does the design make the contract structure clear and easy to read?
3. **Relationship** Criteria: How far does your document go to help cultivate a positive relationship among the parties?
4. **Content** Criteria: What is your content and is it organized to deliver your document's purpose?
5. **Balance**: Do the terms of your contract generate a sense of collaboration and trust?

<http://www.iaccm.com/contract-design-assessment>

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40

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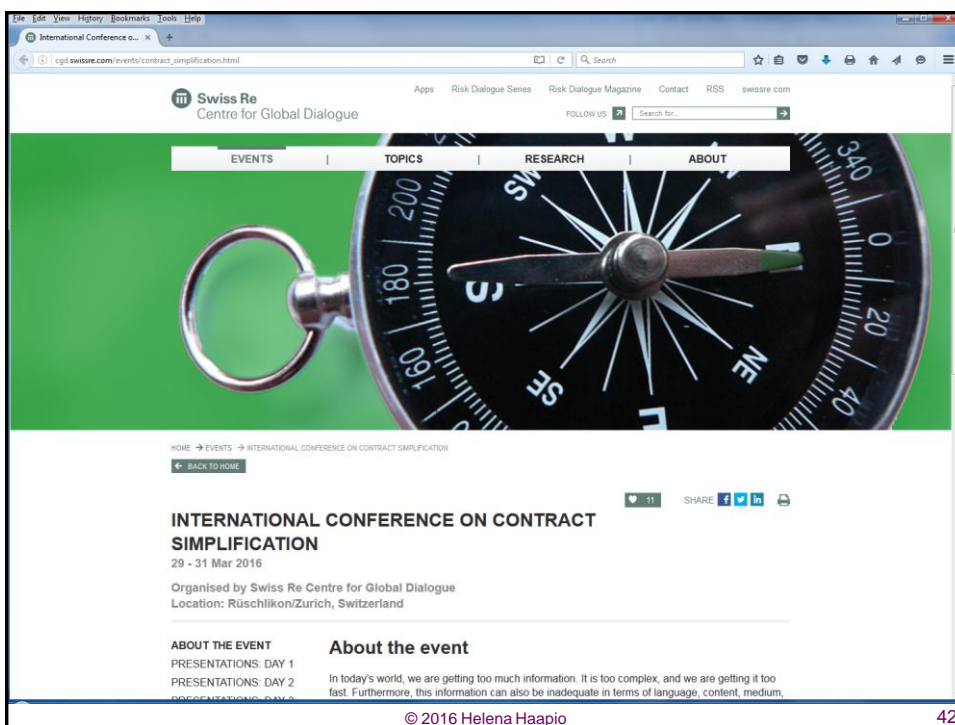
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15 June 2016, Espoo, Finland

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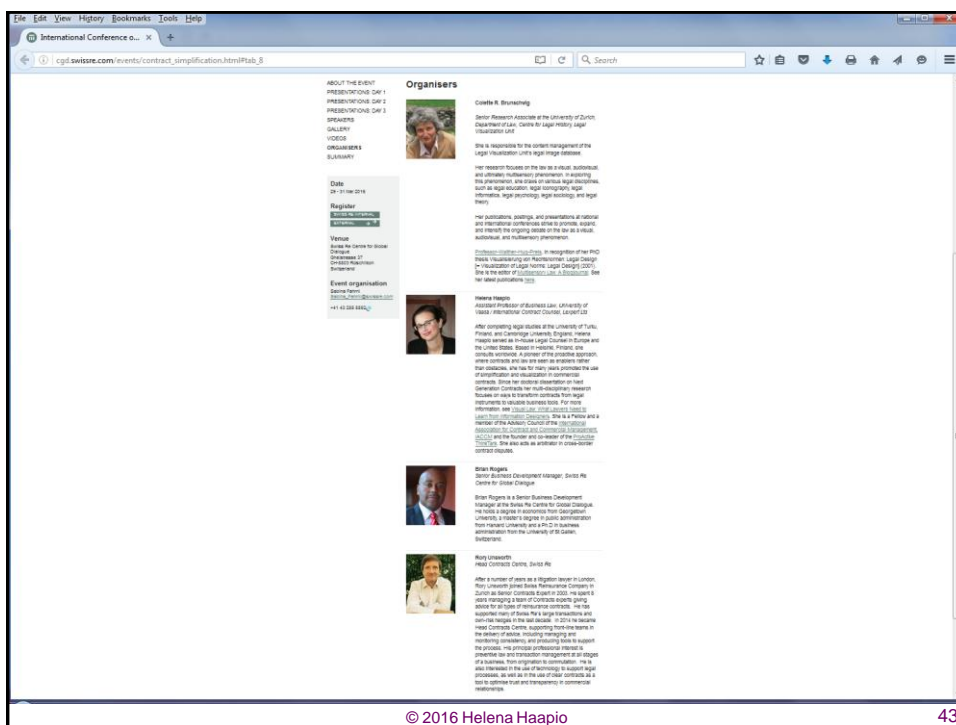
## From Conventional to Useful, Usable Contracts

1. What is the problem?
2. What are the causes?
3. How can we solve the problem?
4. Examples: highlights from ICCS 2016



# From Conventional to Useful, Usable Contracts

Helena Haapio, [helena.haapio@lexpert.com](mailto:helena.haapio@lexpert.com)



## ICCS 2016 – Contract Design Jam & FIT contracts

- On the 3<sup>rd</sup> day of the ICCS 2016 event, at the **Contract Design Jam**, the participants “hacked” the London Market Reform Contract.
- A breakout group decided to host a 4th day.  
The outcome: A decision to create the **F.I.T. Contracts Initiative**, to develop and promote the use of **functional, inclusive and transparent** contracts and contracting processes.
- The work continues, we hope to put together a new ICCS event with Swiss Re in 2017 or 2018 – stay tuned for more information...

## Comics as Contracts



Illustrated by Chip Shaddon © Robert de Rooy

Robert de Rooy's example

- Parties represented as characters
- Parties sign the comic as their contract

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45

Indigo Letsitele Comic Contract\_Booklet\_06 April\_DRAFT.pdf - Adobe Acrobat

File Edit View Window Help

Open Create 70.7%

Tools Fill & Sign Comment

Draft © Robert de Rooy

# CONTRACT

A ComContract by Jicom EHS (www.jicom.com)

Clemen Gold

## PARTIES TO THE AGREEMENT

GUIDE: Hello! This is your contract.

THIS IS YOU, THE PICKER

NAME: \_\_\_\_\_

ID: \_\_\_\_\_

ADDRESS (PHYSICAL): \_\_\_\_\_

CO NO: \_\_\_\_\_

EMPLOYER/MANAGEMENT

COMPANY: Indigo Fruit Farming.  
2002/0043989/07

Portion 21,  
Farm "Junction"  
Letsitele,  
South Africa 0885

REPRESENTED BY: Faan Kruger

CELL NO: \_\_\_\_\_

Sectional Determination 13, Farm worker Sector, is the law which applies to this contract and your employment.

LAW

SEC 13

Put your initials here

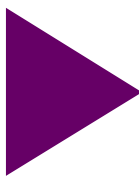


### A New Perspective

#### 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.»*

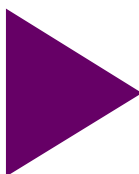
**We need to bridge the gap  
– and we can!**

### 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.»*

- **New mindset, proactive approach**
- **Better UX through simplification & visualization**



## Towards Contracts that Work

### Before...

“Contracts are **legal** tools.”

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



*New  
mindset,  
simplification,  
design*

### After...

“Contracts are **managerial** tools.”

“Contracts can be used *proactively* for better business and fewer problems.”



Clarity



Under-  
standing



Better  
decisions  
faster



Better  
results



Ease of  
doing  
business

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49

**“In just a few years, we will look back and wonder why it took so long to make our contracts intelligible to the mass of people they affect.”**

Tim Cummins  
CEO, IACCM

Contract & Commercial Management 2016: the year in prospect. Procurement and Supply Australasia (PASA)

News & Articles / Comment, 7 January 2016

<http://procurementandsupply.com/2016/01/contract-commercial-management-2016-the-year-in-prospect/>

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50

## Final Take-Aways

See your contracts through the users' eyes.

Simplify content and how it is presented.

Explore visualization.

Read JSCAN Special Issue on Contract Innovation (forthcoming in 2016).

Meet and share solutions with likeminded people at IACCM & ProActive ThinkTank events.



Forthcoming in 2016

Special Issue on  
**Contracting for Innovation  
and Innovating Contracts**

Guest Editors:

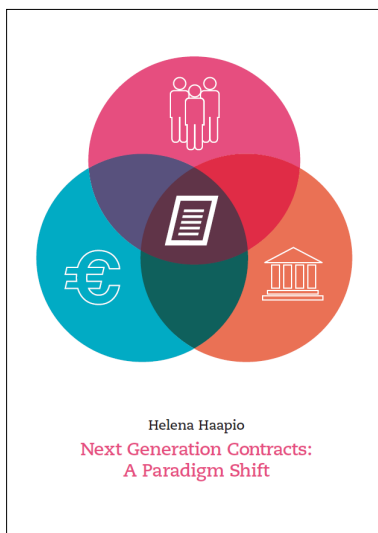
*Thomas Barton*  
(California Western School of Law)

*Gerlinde Berger-Walliser*  
(University of Connecticut)

*Helena Haapio*  
(University of Vaasa)

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### Helena Haapio **Next Generation Contracts**

Doctoral dissertation,  
University of Vaasa  
Lexpert Ltd 2013  
[contact@lexpert.com](mailto:contact@lexpert.com)

Cover: Stefania Passera

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53

## Additional Information



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For more information, see

- **International Conference on Contract Simplification (ICCS 2016)**, [cgd.swissre.com/events/contract\\_simplification.html](http://cgd.swissre.com/events/contract_simplification.html)
- **ProActive ThinkTank**, [www.proactivethinktank.com](http://www.proactivethinktank.com)
- **Nordic School of Proactive Law**, [www.proactivelaw.org](http://www.proactivelaw.org)
- **The Simplification Centre**, [www.simplificationcentre.org.uk](http://www.simplificationcentre.org.uk)
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- **MIND Contract Visualization**, [www.mindspace.fi/en/contract-visu](http://www.mindspace.fi/en/contract-visu)
- **Helena Haapio's Scholarly Papers at SSRN**, [ssrn.com/author=104371](http://ssrn.com/author=104371)
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54

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