



**DESIGN THINKING, A BETTER METHOD FOR LEGAL SERVICES**

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## **Abstract**

In this project we will address the discipline of legal design and how it can improve legal services, through a synthesis of various design thinkers. The paper will first introduce the concept of design and the birth of design thinking. We will explore the fluid nature of the discipline, trying to explain its essence according to its most important thinkers; furthermore, we will navigate through its use in different disciplines. Then, to copulate design thinking with legal services, we will set a basic understanding of its nature and operation. Finally, we will ground our work in legal design services as a consequence of design thinking as applied in the juridical industry, and, through casework, we will demonstrate its usefulness in improving them

### **Key words.**

Design thinking, design method, legal design, services, legal services.

Lawyers, regardless of where or how they put into practice the profession, struggle with the way we provide our service. This deficiency may be attributed to the fact that most of the time, we aren't even aware that it is providing a service on what our activity consists of. This results in us doing a bunch of important things that are just incomprehensible, meaning a waste of time, and translates into a great deal of frustration for users.

Legal design, first and foremost, implies understanding legal activity as a service. Only then it will be able to provide us with the tools, knowledges, and benefits it has to offer. Legal design combines both legal knowledge and design principles and methods, while keeping the end user as the backbone, to create and re-create human centred legal services and products. Legal design permits lawyers to relation better, in more clear and direct ways, with others, being customers, judicial system's users or even other departments inside a company, among all the other possibilities.

With this paper I pretend to introduce to others Legal design, showing briefly how it works and why it works, while contribute to the ongoing expansion of the topic, spreading knowledge and awareness on the topic. This I will do by first Introducing the concept of design and take it all the way to the design thinking method, where I will go through the most relevant people to the topic, it's use amongst other disciplines, and its nature and operation, which will allow me to showcase legal design as a result of the application of design thinking to the juridical industry. Finally, in order to demonstrate its value and utility, I will undergo some real-life implementation examples.

## **Methodology**

For the present study, a systemic review of relevant literature was effected gathering books, research papers, design projects and further academic and experiential material on the subject. For the systemic review of reference-works the data process was implemented in three phases: collection, analysis, and synthesis. More-over, a deductive abduction was used for the concepts on which we articulate the work: “design”, “design thinking”, “service design”, “legal services” and “legal design”. Using the definitions approached or provided by the sources or synthetized by our analysis of them, we derive the specific element of how these initial concepts are and ought to be applied to the legal discipline as the provision of a service.

The initial phase was carried out by consulting databases enabled by the Bolivarian Pontifical University and Google Scholar, where a keyword-based search brought up a great deal of potentially relevant literature. The operative keywords were stated above; in some cases, other elements were added to specify even more the search. Titles and abstracts worked as a preliminary filter, allowing us to exclude those that, for example, focused on very technical aspects of design, or that deviated into more technology-related discussions; and many others that bared significantly different understandings of the subject.

Once done, we moved onto a second phase, when the remaining sources were reviewed and analysed closely so that we could extract both the most important ideas of the source and the key-points related with the subject of research; the excerpts were included in the present by paraphrasing or citation. On a third and final phase we synthetized through the recognition of

points of contrasts, similar lines of thoughts, complementary ideas, among other elements of comparison; these set the grounds on which we developed further discussion. Among the selected material, some were highly cited, as it was the case of Herbert Simon's *The sciences of the artificial* (1969); Astrid Kohlmeier's *Legal Design and Mastering Challenges in the Legal Market* (2018); Tom Brown's article for Harvard Business Review (2008), and his subsequent book, *Change by Design* (2009), where he articulates the process of inspiration, ideation and implementation. Likewise, the following authors were repeatedly cited across several different sources: Margaret Hagan, Tim Brown, Astrid Kohlmeier, and Jeanne Liedtka.



## **Introduction to Design Thinking**

Design may be understood as either an aspect of things, a process through which they are produced, or a discipline. As an aspect, design is the interaction between the elements of a thing through which it may easily achieve its ends. Further, design is also the process through which this interaction is provided in the production of stuff; ideation of their ends, deduction of their elements, forethought of their interactions, pondering of their implementation. Finally, and most properly for the purposes of this paper, the discipline of design studies such interactions; according to Walls et al. it is “a prescriptive theory based on theoretical underpinnings which say how a design process can be carried out in a way which is both effective and feasible” (1992, p. 37).

For example, a table’s design is how the materials of its construction, the way the legs attach to board, and their figures make it stable, straight, and strong enough such that food may be eaten off it; further, design is how that interaction makes the table beautiful and comfortable for this activity. However, table design is also the process of combination and articulation of those elements to achieve these ends. Finally, table design is the discipline through which these elements and their interactions are considered regarding its ends; the study of how wood or metal is strong, how boards ought to be straight, how legs ought to be perpendicular to the ground, and most properly, how all of these integrate to make a good table.

From the previous given notions, we can conclude that design may be understood as the operations through which problems, whereas actual or notional, are to be given an effective, efficient, and feasible solution. Thus, the discipline of design not only describes the way objects easily achieve their ends and prescribes how to improve them in this regard. Van Aken affirms one ought to profit from the discipline “in an instrumental way to design solutions for management problems” (2004, pág. 221) . Richard Buchanan had offered a similar outlook in his article “Wicked Problems in Design Thinking”, where he stated that design is most proper to solve persistent and difficult problems (1992). In the same order of ideas Charles Eames, while interviewed, pointed out design's aim: to create or recreate things in such a way as to best accomplish a particular purpose (Eames, 1969).

## **Design thinking**

In our explanation we have used products to exemplify our notions, for in them is most intuitive. However, its elements —process, problem solving, effectiveness, efficiency, and feasibility— are not exclusive to material things. Hence, design has transcended the realm of products into the realm of services; healthcare and medicine, entertainment, even education, have taken the principles of design as a tool to better their operations, and it may even extend more broadly. Design implies an important cognitive dimension; a way of thinking that pursues “the transformation of existing conditions into preferred ones” says Nobel laureate Herbert Simon (The Sciences of the

Artificial, 1969). The tool of the previous design of products have been adapted and transformed into a broader concept: design thinking (Brown & Martin, How to use design thinking to make great things actually happen, 2015).

A ‘design thinking approach’ means more than just paying attention to aesthetics or developing physical products. Design thinking is a methodology. Using it, we can address a wide variety of personal, social, and business challenges in creative new ways. — David Kelley, IDEO founder, and Tom Kelley, Partner. (IDEO, s.f.)

The concept of design thinking was first employed by Peter Rowe in 1987, where he addressed how non designers could solve design problems; his explanation, however, restricted it to product design (Design Thinking). Ever since, the concept has developed considerably, moving beyond the product industry. IDEO, a globally distinguished design and consulting firm, is to be attributed with its current general understanding (Liedtka, Perspective, 2015). Today, design thinking has been unbound and is still continuously unfolding. Although IDEO has said there is no single definition for the concept addressed, former CEO and current Executive Chair, Tom Brown, has explained it as “a human-centred approach to innovation that draws from the designer’s toolkit to integrate the needs of people, the possibilities of technology, and the requirements for business success” (Design Thinking Defined, s.f.); the disciple becomes human-centred by placing them at the heart of the process and “building a deep empathy” in the start line and in the finish line. (What is Human-Centered Design?, s.f.),

## ***Definition of design thinking***

As may be obvious from the previous ideas, “[t]here’s no single definition for design thinking. It’s an idea, a strategy, a method, and a way of seeing the world. It’s grown beyond the confines of any individual person, organization, or website.” (IDEO, s.f.) This may be attributed to a general momentum in academia to reject strict definitions and let concepts be freely employed. It may also be because it still novel, a green shoot rapidly outgrowing the pots that have been used to contain it: “[d]esign thinking is maturing. It’s moving from a nascent practice to an established one, and with that comes interest and critique. People are debating its definition, pedigree, and value.” (IDEO, s.f.)

Its broad application would also make its definition to be as broad, not being really useful to the point of only having recourse to examples and partial descriptions to effectively communicate what it is. May be that the lack of boundaries in the conception of design thinking is beneficial; as we have affirmed before, its usefulness in various industries and professions is one of the vectors of its fluidity. If design thinking were to be petrified through concrete or specific definition it would make it harder to grasp, and thus less effective in bringing forth better solutions. It might be that the lack of rigid limits on the concept is itself a phenomenon of design thinking; a way to easily achieve the ends of design by making it approachable.

Evidence of the fluidity of the concept of design thinking is the diverging definitions given by various authors in different fields. Some of the most influential or renowned design-thinkers to this day are David, IDEO founder, and Tom Kelley, they have described it as a method to tackle challenges innovatively and creatively in a wide range of fields, from business, to the social, to the individual (Creative Confidence: Unleashing the Creative Potential Within Us All, 2013); Christian Mueller-Roterberg, has explained it as a comprehensive customer-oriented innovation approach, aiming the generation and creation of ideas (Handbook of Design Thinking, 2018); Elizabeth Smart et al. describe it as a “framework and set of principles that emphasizes empathy-inspired solutions refined through iteration and testing” (Inspiration, Ideation, and Implementation, 2019, pág. 356). Brown further explained the concept in the Harvard Business Review as a discipline based on design sensibilities and methods to meet people’s needs with feasible solutions (2008, pág. 2). Nevertheless, for the purposes of paper at this point it seems safe to establish design thinking as a discipline nurtured by design for addressing problems and challenges in a human-centred way.

## **Designing process**

The process of design is the way through which things are perfected; made better, more efficient, more effective, more beautiful, more approachable. Design thinking has made the process open to everyone, such that non-designers may acquire abilities though habituation in thinking and

making, not merely in following algorithms mechanically; “building innovators who can use the design thinking paradigm to transform ideas into reality, to transform organization, and to transform all aspects of life.” (Wolniak, 2017) Summing various authors’ definitions for this process, Liedtka (2015) identifies its essentials: the focus on wicked problems, problem exploration, learning focus and a hypothesis-driven approach, and a focus on what might be. However, the best way to define the design process is not as series of stages, one following another and being completely consumed before the next, but as modes or aspects.

The first reference of the multiphase nature of creative thinking goes back to Henri Poincaré, who reflected on how he solved mathematical problems. Then, Graham Wallace described it as beginning with preparation, followed by incubation, illumination, and verification. (Tschimmel, 2012, pág. 12) Multiple authors have identified multiple discrete “stages” to the design thinking process. The Design Council of the United Kingdom describes it as four: discovery, definition, development, and delivery; they use a double diamond to express how the first and third diverge into wide groups of ideas and possibilities, and the second and fourth converge into a concrete product. Frog Design defines it in three: exploration, convergence, and support to bring into focus the relationship of the designer and the user even after delivery of the product. Jeanne Liedtka and Tim Ogilvie formulate it as four questions: What is? –exploring the challenge– What if? –exploring the possibilities– What wows? –exploring the user– What works? –exploring the solution–. The LUMA Institute expresses the modes of design thinking as looking, understanding,

and making each encompassing different stages within their manual and method cards. (Designing for Growth, 2011)

Never-the-less, the definition in five discrete elements to the process, presented as commands for the would-be designer, is the most widely accepted (Shanks, 2010): empathise with people's needs, define the problem or opportunity, ideate the solution, prototype, and test. Though the definition of the design process seems to describe strict stages –after all, to test, one ought to have a prototype first; to model it, ideate it; to come up with it, to define the problem; and to define it, understand it–, they are modes of operation of the designer. For example, ideation may come about by building prototypes, their refinement after testing, and its feedback is apprehended through empathy.

**Empathize.** To empathise is the first stage of design and the core of a human-centred design process. Before bringing forth a solution, the designer ought to understand the problem from the users' standpoint. Empathy depends first on information that instantiates an in-depth understanding of the current situation and the opportunities of betterment through not only observation, but from engagement also. The designer ought to understand the user's needs, how they do things and why they do it, their world view; further, they ought to understand the nature of the thing they want to improve. (Shanks, 2010, pág. 2) Regarding this information Katja Tshimmel affirms:

(...) To understand better the essence of a project task or problem, designers try to get the widest possible range of information about the users of their future products. (...) Observation techniques, in-depth interviews with those observed, photographs and other visual registers and interpretations of the context of the users, are most important for

getting empathy and for clarifying the project task. They are also vital for later use as an impulse for idea generation. (Design Thinking as an effective Toolkit for Innovation, 2012, pág. 12)

**Define.** After a thorough understanding of the user and of the problem in big-picture, the designer ought to focus the specifics. Definition brings clarity to what the challenge is and through this, what the solution may be. First, identify the patterns and the recurring themes that sprung-up in the previous mode, always have the user in mind, what are their unfulfilled needs, and weave this into the insight empathy provided.

The result of this stage is a point-of-view that will determine how to confront the challenge. A good point-of-view provides a clear picture of the situation, inspires an approach, and informs the criteria for moving forward. It will craft meaningful bounds to the situation, distinguishing what lacks from what works, and give the whole process clear and concrete goals. (Shanks, 2010, pág. 3) At last, definition is what gives meaning to the whole process.

**Ideate.** A proper definition gives to solution ideas in a very natural way because the reasoning that identified the problem is bound to produce a brainstorm of solutions. Ideation is working up the imagination to think on how to overcome the challenge that's before oneself, and this in the widest aggregate that the point-of-view allows. Then, select the criteria for lifting up the better ideas; it may be that the users value comfort the most, or endurance, or ease of use; either way, the insights that empathy provided should hit to the best ideas. In this stage the designer is no longer fixed on the problem; ideas are the fuel and source of solutions. (Shanks, 2010, pág. 4)



**Prototype.** Prototyping is making ideas real. By building models of the final solution, the designer may see what works with the idea and what is still lacking. Thus, iteration is key in this stage: first one ought to start cheap and simple, to test, and to refine the model. What allows this refinement is feedback, and as user-experience is the end of the design process the most valuable feedback comes from the user themselves. Furthermore, the best feedback is natural and sincere, so to design such that users have an accurate approximation of the final experience is key. (Shanks, 2010, pág. 5)

**Test.** Testing is having the prototype functioning to address the challenge. The best test exposes the model to the real-life situation it is supposed to address; if not possible, the to simulate those conditions accurately will is the next best option. The main goal of testing is feedback and, as stated before, the best feedback is natural and sincere; therefore, the test should introduce the model naturally and encourage the user to interact with it and the designer openly. The best way to achieve the optimal test is a show-not-tell approach; let the user interact with minimal explicit direction and to see if their experience matches up with the expected reactions. (Shanks, 2010, pág. 6)

### ***Activities of design***

Brown inserts the process of design thinking in a “system of spaces rather than a predefined series of orderly steps” (Brown, Design Thinking, 2008) He paints in broad strokes three core activities that make them up:

inspiration, ideation, and implementation. Inspiration begins by living in the world, the observation of things and people and their real experiences; by paying close attention, one will grasp their nature, their ends, and their elements. One might further identify their problems and the opportunity for their solutions. Ideation follows by filtering the information apprehended and brainstorming solutions; by asking how we might make what we have better or how we can fulfil what we lack and producing something new. Implementation, finally, is the making of ideas concrete and tangible, changing reality by making them part of actual living experience. Rinse and repeat; these spaces on which the design process develops are always in operation: by implementing, new inspiration may come forth, and ideas may be born through tinkering and experimenting with new solutions. (2008, pág.

4)

## **Design Thinking in the Legal Industry**

### **Legal Services**

As the legal industry is the object of this paper, the previous notions serve as a prelude necessary to fully comprehend our proposal for the betterment of the services provided by it. Hence, we endeavour to demonstrate the application of design thinking by following the process before-mentioned. First, we ought to understand the world of lawyering, empathise with its users and discriminate its elements; then, define the problems facing it and the opportunities for improvement. This is the purpose of this chapter. Further on we exemplify the solution to these problems and opportunities by marrying design thinking and the legal industry into a new discipline: legal design. For now, let us ponder about services in Law.

The lawyers occupy different professional spaces: they may be counsellors, advising clients on how to act lawfully; consultants, producing opinion on the interpretation of law; solicitors, procuring for their clients' interest; barristers, defending them in court; judges, ministering justice when deciding cases. All these offices have a common good, the lawyers' knowledge in the profession of justice and law, a basic principle of the living in society. The world of Law thus occupies a special space in society, it is as old as civilization; however, its pride of place has made its function static and sludgy.

Though there is value on the traditions of such an old profession, some of these are overexaggerated to the detriment of its users: the use of overly complicated or technical language to express simple concepts to their clients, the baffling extension of legal documents and the unnecessary repetitiveness, make it impossible for laymen to understand whatever is happening in their cause. The process of justice is intimidating, and judges, solicitors and barristers rarely try to ease the clients' anxiety in approaching it. What is even more concerning, they make it harder! It is difficult to get in contact with one's lawyer, let alone have him explain what is going on; they distance themselves from their clients as human beings, habitually reducing them to their casuistry.

## **Legal Design**

To approach a solution to the problems of legal services, we ought to recognise it for what it is a service. After recognising this basic fact, we may approach it from the service designer's perspective. Astrid Kohlmeier, lawyer and legal services designer, pioneer in the application of design in the legal industry, has understood legal design as a holistic method that brings elements from design discipline onto the legal one. Said understanding sparked form a section of her article "*Legal Design and Mastering Challenges in the Legal Market*" that reads this way: "Legal design is a combination of the expertise of lawyers with the expertise of designers, translating the thinking and process models of designers into legal issues" (2018, pág. 27). In the same direction

Margaret Hagan points out when illustrating it as the marriage of a human-centred design approach to the challenges and structures of the legal system (2020, pág. 3). contextual thinking, collaboration, problem understanding, quality of results and appearance.

(...) [Design thinking and design methods] demonstrate that legal design can reimagine how we undertake practical lawyering: in creating contracts, in adjudicating disputes, in integrating technology into legal operations and in extending laws protection to consumers and the most vulnerable. (Corrales Compagnucci, Haapio, Hagan, & Doherty, 2021, pág. 1)

As all design thinking does, legal design operates around on human experience, what makes it different from other applications of design thinking is its scope on the word of law, to make it more usable and satisfying (Hagan M. , Law By Design, 2017). Parameters like openness, decentralization, and creativity, which characterize design and make an important part in legal design, ensure how a design-based approach can serve the legal discipline (Hagan M. , 2020, pág. 3). Taking a human-centred or “costumer-experience” approach provides information that will later take the form of insights, from which teams will rely on when stablishing the base criteria for when ideating solutions (Liedtka, 2018).

Legal Design is still a relatively new discipline and can be divided into the following subareas: Legal Service Design, Legal Product Design and Embedded Legal in Product (and Service) Design (Kohlmeier, 2018). Design of legal services, on its broader approach, includes and questions access to justice or how legislation and case law may apply in the future, while from a

narrower perspective, encompasses the legal service itself and how it is provided. Improvement of Legal products, like its name reveals, consists of improving legal products, understood as the applications that bundle or process a variety of concurrent operations. Also, legal products can be the meaning result of an application of law (e.g. Contracts generated automatically). Finally, legal design can embed legal issues into products and services development of every industry. Legal issues are included in the development process so that users of artifacts or products can better understand which legal components the product or artifact contains.

### ***Implementation examples***

As we have established prior, legal design grounds its effectiveness and value in combining legal knowledge with design principles to better meet users' needs, whereas talking about law firm customers, Courts' users or the one that relate with legal departments. Legal services front the challenge of rapid and disruptive changes in society, especially as technology advances; therefore, legal professionals ought to adapt by introducing new methods and ideas (Brown, Blog, 2017). We put forward legal design a way forward relating some examples on how it has improved the industry:

**Finland Arbitration Institute.** The Finland Arbitration Institute (from now on, FAI) provides a detailed framework for extrajudicial dispute resolution. Said regulation is intended for business people, in-house counsels, attorneys or simply anyone, from which many complained about

understanding very little of it. This made the FAI, along with Dottir Attorneys, and design agency Hellon, embark on a legal design project, aiming to find a solution that would be engaging, functional and pragmatic, and that overall would help users to easily understand all of FAI services. For the project, they held an interactive workshop involving users, which allowed to understand the service from their perspective. From the results obtained, Dottir Attorneys and Hellon, ideated and made a prototype of an interactive web tool. The tool was then tested and validated by both senior in-house counsel and CEO's, and finally, implemented in FAI's website (Merikalla-Teir & Klemola, 2018)

**Wavelength.** Another case of study is Wavelength, which at the time was described as "the go-to legal engineering business in the World". This company acquired by Simmons & Simmons in 2019, has as its main function "bridging the gap between lawyers, legal technology, data and design - integrating creative solutions to meet any legal or business challenge." Specifically, in one of its projects and through legal design, they intervened in the review, renewal and reporting process related to contracts in the Real Estate area.

The intention is to reduce the time that lawyers must spend reading a large number of contracts and highlighting their important points, as well as to offer tools that allow, in a more efficient way, to move between the different pages of these documents and highlight, correct, comment and draft much more agile. At the same time, in this way, it was possible to access more clients or work more extensively, since unnecessary steps were eliminated from the process. To this end, Wavelength created a "work package" that eliminates the first half of the lawyers' work and allows them to concentrate specifically on the second part of this process. The first part consists of a "Marked-up", which

presents the contract with the most important clauses highlighted, saving the lawyers this first process. The second part consists of a "Draft lease report" which is a Word document showing the extracted clauses, alongside the relevant heading of the Report and the space for the lawyer to write his analysis. This second tool makes drafting much easier since, first, the relevant information is located in the same place, avoiding that the lawyer must be using search tools or jumping from page to page of the document to obtain the information he/she needs. Additionally, there is a cross-reference possibility when flipping back and forth in the document (Minzoni, 2020).

## **Conclusion**

Legal Design combines both design and legal disciplines to make legal services more human and customer centred. It does so through the implementation of the design thinking method, which puts the user in the centre of the equation, requiring elementally from legal professionals to understand the activity as a service. This new understanding will lead to a new metric for measuring success: satisfaction of users' needs and desires, and in that sense, will have us re-evaluating and re-creating the way our services are provided. Legal design finds its worth in enabling to articulate the definition of the problem and the formulation of the solution, while empathizing with the users experience and nurturing itself from its feedback. Furthermore, design thinking and legal design result in a valuable tool for agents in the profession as it offers a more competitive axis, since it makes us question and



care about the users' level of satisfaction, pulling us apart from the common frustration generated by legal services.

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