

# Making Contracts Readable — Developing Contracts in Comic Book Form

Camilla Baasch Andersen and Peter Corner\*

## 1. Introduction

Before the reader rubs their eyes in incredulity to ensure that—yes—this is in fact an article exploring contracts in comic book form, it merits a mention that the authors are Danish. Why? Well, a certain fondness for design, a built-in need to examine and push the boundaries of innovation and— for lack of a better word—a certain irreverence for tradition, may arguably be assumed.

We should also disclose that this project has surprised even us with the success it has attracted. From the first comic contract of its kind, the interactive prize-winning Aurecon employment contract,<sup>1</sup> to the most recent one-page commercial contract for a small-handyman local service,<sup>2</sup> the variety of uses for this concept continues to grow. The largest sponsor of this research project (to date) is a major financial institution, and we are also working with several charities and many different industries. Why? Well, there are a number of reasons for this. Below, we will explore why contracts are arguably in need of fixing, before addressing how visuals in comic contracting can help fix contracting. We will look at some of the historical applications of visuals in law, and then analyse a selection of different contracts we have developed, and the research data their

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\* Dr Camilla Baasch Andersen is Professor at University of Western Australia, School of Law (see <<https://research-repository.uwa.edu.au/en/persons/camilla-andersen>>), Orcid ID <<https://orcid.org/0000-0002-8231-7057>>, Mr Corner is the founder and manager of Alternative Contracting, see <https://www.alternativecontracting.biz/> for more.

<sup>1</sup> The Aurecon employment contract is now available in full at ‘The Aurecon Visual Employment Contract’ <<https://www.comicbookcontracts.com/aurecon-contract>> accessed 10 August 2021.

<sup>2</sup> The recently completed ‘Dave Can Fix it Handyman Services’ contract, available online at ‘Alternative Contracting’ (2019) <<https://www.alternativecontracting.biz/#an-example-contract>> accessed 10 August 2021.

ongoing use has revealed. In the end, we hope to convince you that visual or comic contracts *can* be useful for most industries, if not all.

## 2. Are contracts broken?

There is now sufficient anecdotal and research-based evidence to establish that, in the vast majority of consumer contracts, a very small percentile of consumers take the time to read—and are able to understand—the contract terms. Anecdotal evidence includes a handful of incentive-based hidden clauses promising cash for a quick click and ranging to hidden joke-clauses which now abound in contracts which are not taken seriously. The latter range from so-called Herod-clauses promising the consumers first-born as a gift,<sup>3</sup> to zombie-apocalypse clauses in mainstream end-user license agreements (“EULAs”).<sup>4</sup>

However, as colourful as this anecdotal evidence may be, more empirical research data is also available. In a study from 2013, Bakos, Marotta-Wurgler, and Trossen followed the internet browsing activity of nearly 50 thousand monthly visitors to 90 online software companies’ websites. They examined the frequency with which potential customers accessed the associated standard form EULAs, and found that only one or two out of every 1000 software shoppers accessed the end-user license agreement. Furthermore, those who did access it could not have spent enough time with it to have read more than a small section of its content.<sup>5</sup>

There are a myriad of reasons that could explain the lack of interest in reading text-based contracts. These could include the way the contract has been administered or the associated risk of not understanding the contract even if it is read, pushing the need

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<sup>3</sup> Rachel Feltman, ‘Londoners accidentally pay for free Wi-Fi with a firstborn, because no one reads anymore’ (*The Washington Post*, 29 September 2014) <<https://www.washingtonpost.com/news/speaking-of-science/wp/2014/09/29/londoners-accidentally-pay-for-free-wi-fi-with-a-firstborn-because-no-one-reads-anymore/>> accessed 10 August 2021.

<sup>4</sup> Chris Matyszczyk, ‘Amazon puts Zombie Apocalypse clause into terms and conditions’, (*CNET*, 10 February 2016) <<https://www.cnet.com/news/amazon-puts-zombie-apocalypse-clause-into-terms-and-conditions/>> accessed 10 August 2021.

<sup>5</sup> Yannis Bakos, Florencia Marotta-Wurgler and David Trossen, ‘Does Anyone Read the Fine Print? Consumer Attention to Standard-form Contracts’ (2014) 43(1) *The Journal of Legal Studies* 1, 3.

for better design and formatting, and more plain language and less legalese. It could also be the time it would take to read the contract in its entirety, as journalist Alex Hearn described in the appropriately titled article ‘I read all the small print on the internet and it made me want to die’.<sup>6</sup>

These assumptions are in alignment with those of Bakos, Marotta-Wurgler, and Trossen above. Their findings supported the notion that a critical reason that consumers are prevented from becoming informed is not the cost of finding or accessing the contract, but the cost of reading and comprehending the information.

Thus, we take it as read—excuse the pun—that contracts need an overhaul to be effective in forming understandable frameworks around behaviour in contractual relationships. Too long has our profession focused on communicating only with itself. It is time we respect the need to develop a language, format and interface for non-lawyers, in much the same way that medicine has done for millennia. Does this mean dumbing down the law? No. It means simplifying it; making it transparent and accessible for those who need to understand their obligations, and for those who need to be safe from any claims that a term was not understood. We can happily retain the complex legal nomenclature for us lawyers—we simply need to be better at developing human interfaces for non-lawyers—especially if contracts are to remain of value. Gone are the days when party autonomy reigned supreme—to retain their worth, contracts *must* steer away from foggy and obtuse clauses which are rarely even read and cannot be said to have influenced a relationship. Alarming, this is even true for business-to-business commercial relationships; unclear and/or unfair terms are no longer reserved for consumers.<sup>7</sup>

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<sup>6</sup> Alex Hearn, ‘I read all the small print on the internet and it made me want to die’ (*The Guardian*, 5 June 2015) <<https://www.theguardian.com/technology/2015/jun/15/i-read-all-the-small-print-on-the-internet>> accessed 10 August 2021.

<sup>7</sup> For instance, unfair contract terms under the Australian consumer law now apply to small businesses as well (since November 2016), and there are numerous cases emerging in Australia where small businesses have successfully avoided contract clauses they claim were not fair or clear. In the UK, a similar pattern is emerging; see for instance *Wood v Capita Insurance Services Limited* [2017] UKSC 24.

And so—we strongly believe it is time to fix the fine print. And it was gratifying to read, at the time of writing, that the *New York Times* agrees....<sup>8</sup>

### 3. So why visuals?

In psychological research, there is a strong link between visual and cognitive function and comprehension.<sup>9</sup> Add to that the fact that most humans are visual learners, and images and visuals present themselves as obvious links to comprehension and communication between lawyers and laypeople.

In 2014/2015, Passera conducted a visual impact study for the IACCM<sup>10</sup> (and her PhD) to demonstrate the effectiveness of visuals in clarifying contracts.

A total of 124 IACCM members from 24 countries took part in the study. All were provided with a contract, either in a traditional, text-only format, or a visually enriched version, and were asked to answer six questions to test their comprehension of the text. A number of additional questions were asked to assess the perceived difficulty of the task, and their user experience in relation to each type of contract. The experiment assessed how well participants had understood the contract by measuring their speed and accuracy in answering a series of comprehension tasks. The research participants were divided into two groups, one using the traditional, text-only version of the contract and the other the visually enhanced version. The wording and structure remained exactly the same, to ensure comparability.

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<sup>8</sup> ‘What Happens When You Click “Agree”?’ (*New York Times*, 23 January 2021) <<https://www.nytimes.com/2021/01/23/opinion/sunday/online-terms-of-service.html>> accessed 10 August 2021.

<sup>9</sup> See, amongst others, W Schnotz (2005) ‘An Integrated Model of Text and Picture Comprehension’ in R E Mayer (ed), *The Cambridge handbook of multimedia learning* (CUP 2005) 49; Richard E Mayer, ‘Multimedia Learning: Are we asking the right questions?’ (1997) 32(1) *Educational Psychologist* 1; and generally R C Atkinson and R M Shiffrin, ‘The Control Processes of Short-Term Memory’ (Technical Report 173, Stanford University, April 19, 1971) <[https://web.stanford.edu/group/csli-suppes/techreports/IMSSS\\_173.pdf](https://web.stanford.edu/group/csli-suppes/techreports/IMSSS_173.pdf)> accessed 10 August 2021.

<sup>10</sup> The IACCM (The International Association for Contract and Commercial Management) has since been renamed WC&C (World Commerce and Contracting) but remains a central deposit for developments in contract innovation.

When using the visual version of the contract the participants could, on average, reply correctly and more quickly to more questions. Differences in accuracy and speed between the two groups were statistically significant, evidencing that the visual display of contractual information has a positive effect on comprehension.<sup>11</sup>

Visuals are fast, effective and capture attention as well as aiding comprehension, helping to engage the reader in reading the contract terms as well as helping to make them more understandable. And it was gratifying to see, five years into this project, that QC Salter pronounced his support for the significance of visuals in the recent *Altera* case,<sup>12</sup> by ensuring that visuals are integral parts of a commercial contract, even to the point of favouring the illustrated examples *above* the wording of the contract. Poignantly, he pointed out that the visuals and examples are the ones which actually get read.

It would seem that law is going to have to get used to the reality of visuals—but we can argue it is a return to visuals and not wholly unknown to our profession.

#### **4. The history of visuals and law**

If most people today neither can nor want to read their contracts then this is not a new problem. For most of history illiteracy was the norm, and a problem that had to be overcome in order to communicate rules clearly.

Perhaps the clearest examples of this are found in religious art, where the consequences of morally acceptable or unacceptable behaviour are illustrated clearly on the inside of religious buildings, with Michelangelo's Sistine Chapel as perhaps the most dramatic example. Similar examples of visual depictions of religious virtues can be found in instructional books such as the *Psychomachia*, written circa 400 AD. The *Psychomachia*

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<sup>11</sup> For more details, see Stefania Passera, 'Contract visualization – boost your brand and bridge the language barrier', International Association for Contract and Commercial Management, 27 September 2015 <<https://journal.iaccm.com/contracting-excellence-journal/contract-visualization-boost-your-brand-and-bridge-the-language-barri>> accessed 11 August 2021.

<sup>12</sup> *Altera Voyageur Production Ltd v Premier Oil E&P UK Ltd* [2020] EWHC 1891 (Comm) (17 July 2020).

contains 83 illustrations of Christian virtues and was presumably used for teaching at monastery schools.<sup>13</sup>

But secular leaders also found visual art a useful tool to communicate ideas of justice. The famous Bayeux tapestry, made sometime in the 1070s, depicts not only William the Conqueror's conquest but more importantly shows the legal and moral justification for his actions. Even though the tapestry is almost 70 metres long, historians have argued that its lightness meant that it could be transported across England before a largely illiterate population as a comprehensible, mobile source of justification for Norman rule.<sup>14</sup>

Law books were historically illustrated, with several different distinct schools of illustrators helping to clarify their messages. In some cases, the illustration took up the whole centre of the page, with the written components, known as glosses, limited to the margins.<sup>15</sup> Communities of talented illustrators would congregate around leaders engaged in legal reforms or legal conflict, such as in Sens, in France, where Thomas Becket found refuge.<sup>16</sup>

In the 18<sup>th</sup> century, guidebooks published in London often contained visual depictions of common fraud and petty crimes, working as both a warning for visitors and a guide to what was regarded as acceptable behaviour.<sup>17</sup>

Public interest in the justice system was partly satisfied through publications such as *The Tyburn Chronicles*, which delivered an illustrated description of notorious court

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<sup>13</sup> Kathleen Doyle and Eleanor Jackson, 'English Manuscript Illumination' (*The British Library*, undated) <<https://www.bl.uk/medieval-english-french-manuscripts/articles/english-manuscript-illumination>> accessed 10 August 2021.

<sup>14</sup> Felicity Candy, 'The Patronage, Production and Purpose of the Bayeux Tapestry' (*Academia.edu*, 2009) <[https://www.academia.edu/7398522/\\_The\\_Patronage\\_Production\\_and\\_Purpose\\_of\\_the\\_Bayeux\\_Tapestry\\_2009\\_Undergraduate\\_Dissertation](https://www.academia.edu/7398522/_The_Patronage_Production_and_Purpose_of_the_Bayeux_Tapestry_2009_Undergraduate_Dissertation)> accessed 10 August 2021.

<sup>15</sup> Joanna Fronska, 'Legal Manuscripts in England and France' (*The British Library*, undated) <<https://www.bl.uk/medieval-english-french-manuscripts/articles/legal-manuscripts-in-england-and-france>> accessed 10 August 2021.

<sup>16</sup> *ibid.*

<sup>17</sup> Matthew White, 'Crime and Punishment in Georgian Britain' (*The British Library*, 14 October 2009) <<https://www.bl.uk/georgian-britain/articles/crime-and-punishment-in-georgian-britain>> accessed 10 August 2021.

cases.<sup>18</sup> Such publications, while undoubtedly sensationalist, helped increase awareness of the workings of the legal system.

While the use of visual aids to assist in comprehension has slowly faded from most legal documents, it has never been entirely abandoned. Visual law has continued to thrive and become ever more clear in aspects of law where clarity and brevity are not just luxuries, but are central to the function of the law. Aviation safety instructions need to be as independent from language as possible, and the result of this is the swiftly absorbed safety manuals that we all happily remember from before Covid-19. Traffic rules are also communicated almost entirely pictographically; interestingly, the highway code is the only aspect of the legal system most people are well versed in.

So perhaps, rules with visuals and legal contracts with visuals are not such a leap after all...

## **5. Defining comic contracting**

There are three (known) major promulgators of comic contracting today: the Comic Contracting team at UWA, Alternative Contracting in WA, and (last but certainly not least) Robert de Rooy's work in South Africa for Creative Contracting, which primarily focuses on contracts for illiterate people. A comparison of de Rooy's work, with mostly illustrations and very few words,<sup>19</sup> against a UWA contract like the Aurecon contract will quickly reveal a sliding scale of words to images. Each has been made for a particular audience and for a particular purpose, but both share in many of the same traits.

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<sup>18</sup> *ibid.*

<sup>19</sup> Available at <<https://creative-contracts.com/examples/>> accessed 10 August 2021.

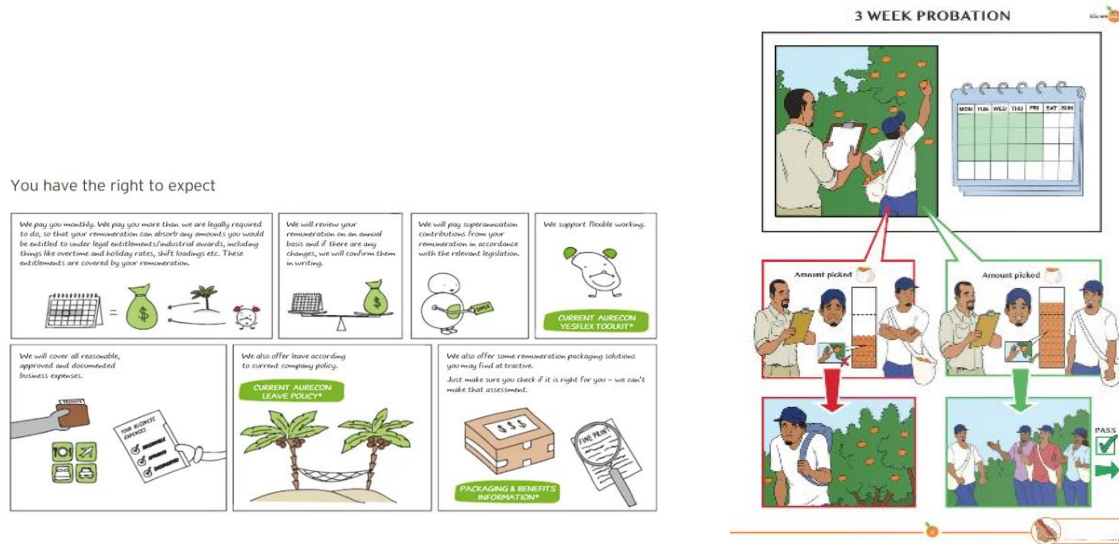


Figure a. Image comparison of the Aurecon employment contract (artist Gemma Young, owned and created by UWA Comic Contracting and Aurecon) and the Clemens Gold contract (artist/creator Creative Contract, owned and created by Robert de Rooy/Creative Contacts/Clemens Gold)

We all collaborate closely, as a plethora of joint publications, blogs and talks will attest. But there are subtle nuances to the way we work, and the way we define comic contracting.

In the work done at UWA, the team defines comic contracting as any version of a contractual instrument which incorporates comic book style imagery and/or formatting to communicate an agreement. De Rooy defines Comic Contracts as legally binding contracts where the parties are represented as characters, the terms are written in pictures or in the context of pictures, and the parties sign the comic *as* the contract.<sup>20</sup> Alternative Contracting straddles both. What they share is the important factor that the comic *is* the contract, and is *not* a visual aid to understanding the contract. This builds on the foundational work around the use of visualisation in contracts, where pioneers were cautious about visuals constituting terms of the contract.

While comics have long been considered ‘low art’<sup>21</sup> and while to some they still denote something comedic or unserious, we use the term ‘comic’ as defined by Scott

<sup>20</sup> See the forthcoming chapter ‘Employment agreements in comic book form - what a difference cartoons make...’ by Camilla Baasch Andersen and Robert de Rooy in Dr Marcelo Corrales, Dr Helena Haapio and Dr Mark Fenwick (eds), *Research Handbook on Contract Design* (forthcoming, Edward Elgar 2021).

<sup>21</sup> See the report of the 1953 United States Senate Subcommittee on Juvenile Delinquency, which concluded that: ‘This country cannot afford the calculated risk involved in feeding its children, through comic books,



McCloud: ‘Juxtaposed pictorial and other images in deliberate sequence, intended to convey information and/or to produce an aesthetic response in the viewer’.<sup>22</sup> Others prefer ‘Visual Contracts’, or ‘Picture Contracts’; the label is essentially unimportant. It denotes a distinct genre of contracts where pictures have meaning as terms of the contract. We steer away from visual aids and infographics to avoid the risk of any conflicting versions of contracts, and ensure simplicity rather than an added layer of complexity.

Across all the variations of our work, a keen focus has centred on the core values and behavioural drivers of the contractual relationship, and thus the project has been closely associated with relational contracting and conscious/values-based contracting. A key trait of all relational contracts, or conscious contracts, is that they emphasise the relationship, rather than the punishment; they privilege terms which inform the intention of the relationship as opposed to the consequences of the failure of the relationship. Oliver Hart and Bengt Holmström, who won a Nobel Prize for their analysis of the economic benefits of relational contracting,<sup>23</sup> have spent years clarifying the benefits of focusing on the relationship as opposed to the transactions. Ian Macneil was an early advocate for relational contracting in the 1960s,<sup>24</sup> and a recent white paper by the IACCM espouses five steps to relational contracting in practice, the first (and foremost) being: ‘Focus on the relationship, not the deal’.<sup>25</sup> J Kim Wright has reimaged her own brand of relational contracting through her humanising brand of law with the term ‘Conscious Contracting’, part of the integrative law movement to make law more values-based.<sup>26</sup> All of us have been gratified to have Wright welcome comic contracting in all its guises into her

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a concentrated diet of crime, horror, and violence.’ U.S Capitol, ‘Comic Books and Juvenile Delinquency’ <[www.visitthecapitol.gov/exhibitions/congress-investigates/comic-books-and-juvenile-delinquency](http://www.visitthecapitol.gov/exhibitions/congress-investigates/comic-books-and-juvenile-delinquency)> accessed 27 April 2020.

<sup>22</sup> Scott McCloud, *Understanding Comics: The Invisible Art* (Harper Perennial 1994).

<sup>23</sup> See Arnab Bhattacharjee, and Joseph Byrne, ‘Why Contract Theory Won Hart and Holmström the Nobel Economics Prize’, (*The Conversation*, 11 October 2016) <<https://theconversation.com/why-contract-theory-won-hart-and-holmstrom-the-nobel-economics-prize-64011>> accessed 27 April 2020.

<sup>24</sup> Ian Roderick Macneil, ‘Whither Contracts?’ [1969] 21(4) *Journal of Legal Education* 403.

<sup>25</sup> David Frydinger and others, ‘Unpacking Relational Contracts: The Practitioner’s Go-To Guide for <Understanding Relational Contracts’ (University of Tennessee 2016) [www.vedstedway.com/wp-content/uploads/2016/10/Unpacking-Relational-Contracting\\_v19.pdf](http://www.vedstedway.com/wp-content/uploads/2016/10/Unpacking-Relational-Contracting_v19.pdf)> accessed 27 April 2020; see Kate Vitasek, ‘Relational Contracting: Overcoming the Paradox’ (University of Tennessee 31 October 2016) <[www.vedstedway.com/relational-contracting-overcoming-the-paradox/](http://www.vedstedway.com/relational-contracting-overcoming-the-paradox/)> accessed 27 April 2020.

<sup>26</sup> See generally J Kim Wright, ‘Conscious Contracts’ <<http://consciouscontracts.com>> accessed 27 April 2020; and J Kim Wright, *Lawyers as Changemakers - The Global Integrative Law Movement* (American Bar Association 2010).

movement, as she was one of the first to see the fact that we were embracing conscious contracts. We are seeing the tremendous effect of integrating the values of the relationship into contracting—with images supporting clear understanding, inclusiveness and clarity.

Our respective work is also rooted in other legal innovations. Flowing from a confluence of the ideas of Preventive Law<sup>27</sup> and Visual Law,<sup>28</sup> a small group of scholars started to promote the idea of using visualisation in contracts,<sup>29</sup> primarily as a means through which to explain textual contract terms. We have all built on these ideas to develop our respective projects and businesses in helping to make contracts more readable. At UWA, we have done so by strongly focusing on three main aspects of contracting. In short, the lofty aim of facilitating useful visual contractual frameworks for behavioural drivers is underpinned by three goals. These three goals aim for contracts to be: 1) read, 2) absorbed, and 3) remembered, so they can be understood and used constructively.

See for yourself how these simple images below help to drive home the point made above...

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<sup>27</sup> Louis M Brown, *Lawyering Through Life: The Origin of Preventive Law* (Fred B Rothman & Co 1986).

<sup>28</sup> Colette Reine Brunshwig, 'On Visual Law: Visual Legal Communication Practices and Their Scholarly Exploration' in Erich Schwehofer and others (eds), *Zeichen und Zauber des Rechts: Festschrift für Friedrich Lachmayer* (Editions Weblaw 2014); see also Colette Reine Brunshwig, 'Contract Comics and the Visualization, Audio-Visualization, And Multisensorization of Law' (2019) 46(2) *University of Western Australia Law Review* 190.

<sup>29</sup> See eg Gerlinde Berger-Walliser, Robert C Bird and Helena Haapio, 'Promoting Business Success Through Contract Visualization' (2011) 17 *Journal of Law, Business & Ethics* 55; Thomas D Barton, Gerlinde Berger-Walliser and Helena Haapio, 'Visualization: Seeing Contracts for What They Are, and What They Could Become' (2013) 19 *Journal of Law, Business & Ethics* 47.

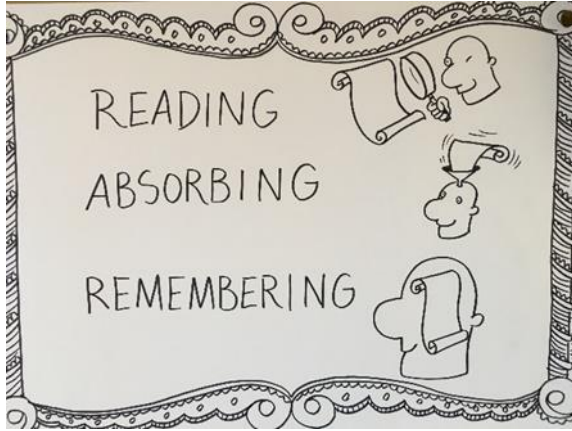


Figure b. Drawing by Loui Silvestro, owned by the UWA Comic Contracting project.

Another defining aspect of comic contracting is that of access to justice. We were all delighted when de Rooy won funding from Hiil (Hague Institute of Innovation in Law) for his work with contracts for illiterate workers.<sup>30</sup> And our work is proudly on display at the time of writing at the Queensland Supreme Court Library, as a ‘Graphic Justice’ exhibit of comic contracts ensuring better access to justice for all. In the eyes of many, comic contracts are also a way to ensure better access to justice in contracting.

We are often asked if comic contracts really can be binding—and the answer is *why not?* Form requirements in contracts are few and far between—and if an image can assist in communication, then why not? At the closing address of the 2017 International Comic Contracting Conference held at UWA, we were gratified to hear former Chief Justice French lend his support to this.<sup>31</sup> If the images in contracts can be given meaning, then they are a welcome development. The *real* challenge is ensuring that the images are helpful, and do not add a complex layer of potential misunderstanding. Hence, we tend to push back on the idea of standardised images which are not bespoke and carefully tested. In the projects we have worked on, we have worked closely with the industries

<sup>30</sup> Justice Hub, ‘This justice innovation is giving illiterate workers a stake in the economy’ (*Justice Hub*, 12 February 2019) <<https://justicehub.org/article/this-justice-innovation-is-giving-illiterate-workers-a-stake-in-the-economy/>> accessed 10 August 2021.

<sup>31</sup> Hon Robert French, ‘Closing Address, Comic Book Contracts Conference’ (2019) 46(2) *UWA Law Review* 268-271 <[https://www.law.uwa.edu.au/data/assets/pdf\\_file/0011/3442655/8.-French-Closing-Address.pdf](https://www.law.uwa.edu.au/data/assets/pdf_file/0011/3442655/8.-French-Closing-Address.pdf)> accessed 10 August 2021.

involved and their clients to ensure meaningful and helpful images, often ensuring comprehensive focus group testing.

In the following, we introduce some of the projects we have been working on at UWA, and share/summarise some of the longitudinal data which over 3 years of psychometric testing has thus far revealed.

## 6. Introducing the UWA project

The Comic Book Contracts project began as a research project in 2015 at University of Western Australia.<sup>32</sup> The goal of the project was to transform the idea of contracts from one of working almost exclusively as punitive tools drafted by lawyers for lawyers, into useful instruments which drive behaviors to improve contractual relationships.

Generally, this concept has been very well received in the media and the wider business community,<sup>33</sup> and the project has been lucky to attract funding from a variety of sponsors allowing the team to work on a wide variety of different contracts. Through this work, we have seen a plethora of benefits surface, including some we had never envisioned. Fewer disputes, more engaged contract negotiations, quicker on-boarding for employers, and a better image of larger firms in their standard contracts—these are but a handful of examples of the diverse research results that the project is unearthing when behavior and comprehension take the main focus in contracting. We are currently branching into research in neurology and trauma, cognitive function and visual contracts in legal and financial literacy, and even the fundamentals of legal design.

The UWA project began with a non-disclosure agreement (“NDA”) for engineering students on the UWA Makers Initiative. It was a result of a colleague in the engineering department requiring students to *actually read* the NDAs they needed to sign

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<sup>32</sup> For more information, see Camilla Baasch Andersen, ‘Home Page’ (*Comic Book Contracts*, 2021) <[www.comicbookcontracts.com](http://www.comicbookcontracts.com)> accessed 10 August 2021.

<sup>33</sup> See, generally, Camilla Baasch Andersen, ‘Media Appearances’ (*Comic Book Contracts*, 2021) <[www.comicbookcontracts.com/media-home-page](http://www.comicbookcontracts.com/media-home-page)> accessed 10 August 2021.

in working with industry, and to understand the behaviour that they implied. Failure to do so had put the Makers program at risk. The colleague in question was Adrian Keating, and together he and Professor Andersen drew on her contract innovation and his engineering skillset to formulate a simple cartoon strip. Initially done using the software from PIXTON Comics, the strip has now been perfected by one of the team illustrators, Louis Silvestro.<sup>34</sup> In a nutshell, the collaboration applied Dr Keating's 'If-Then' thinking from engineering to legal thinking,<sup>35</sup> while Prof Andersen's proactive thinking allowed a different approach to law. Combined, they worked to focus on simple behavioural drivers instead of complex legal jargon and punitive schedules. The result was novel.



Figure c. UWA Makers NDA; created by the Comic Contracting project, artist Loui Silvestro, owned by the UWA Comic Contract project and the UWA Makers Club.

The short strip very simply explains that you should not talk about the project—and offers some incentives for why not. Arguably not detailed or punitive enough to constitute an actual NDA, it has nevertheless attained the perfect outcome. In the nearly 6 years since it was introduced, instances of students disclosing secrets have vanished—the behaviour is clearly understood and complied with—even without a punitive schedule.<sup>36</sup>

<sup>34</sup> The current UWA Makers NDA can be viewed at <[www.comicbookcontracts.com](http://www.comicbookcontracts.com)> (accessed 11 August 2021).

<sup>35</sup> Andersen and Keating, 'Engineering Visual Contracts: Using If-Then Thinking to Develop Behavioral Drivers for Imaging' (2020) 8(1) *Journal of Open Access to Law* 1, 8. <<https://ojs.law.cornell.edu/index.php/joal/article/view/101>> accessed 11 August 2021.

<sup>36</sup> For more on the development of this Makers NDA, please see Keating and others, 'A graphic contract: Taking visualisation in contracting a step further' (2016) 2(1-2) *Journal of Strategic Contracting and Negotiation* 10.

This success in eliminating disputes is not unique to the Makers project. Across all industries where either of the authors have introduced a comic contract, we have seen a complete elimination of disputes. We will look more closely at the data and the benefits of the contract after introducing some of the other projects.

## 7. The Aurecon Employment contract

The Aurecon project at UWA is ongoing, as we are continuing to collaborate with Aurecon to enable better visual contracts in a diversity of fields. But the first, and arguably most (in)famous, contract that we have created for them is undoubtedly the award-winning employment contract.<sup>37</sup> Much has been written on it, including in mainstream financial journals such as the Financial Review and the Wall Street Journal, and it remains a feather in our comic contracting cap which we are rightly proud of. However, from a research perspective, the most important function that it now has is via continued monitoring and impact testing. After a short description of the project and its qualitative impact, we will share the data from this testing.

In late 2016, John McGuire, the Chief Innovation Officer for global engineering consultancy Aurecon, contacted Professor Andersen and commissioned the team to undertake a research project to prepare a visual employment contract. The main focus of this specific project was to reinforce the spirit of Aurecon as innovators by changing contracts from being punitive and adversarial to being collaborative, succinct and meaningful manuals. Non-gendered avatars were used to represent the employer and employee, including the Aurecon Bobby, which gave the company an innovative and welcoming style. The designers included the importance of timesheet keeping which has ensured billing is now generated in a more timely fashion. The inclusion of interactive training links into the contract resulted in time saved at the on boarding and training stages. The Aurecon employment contract was finalised in 2017, and launched in early March 2018 in Australia, spreading to other jurisdictions over the following 3 years. It

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<sup>37</sup> The International Association of Business Communicators awarded the Aurecon employment contract a ‘Golden Quill’ in 2019, see <<https://gq.iabc.com/wp-content/uploads/2019/08/Winners-List-formatted-updated-8-20.pdf>> (last accessed 11 August 2021).



eliminated more than 4000 words from their employment contracts, and a good handful of punitive terms they would never have applied as they were too draconian, and was the first interactive comic contract of its kind.

It was born from a joint desire to innovate law and engineering employment contracts. As John McGuire of Aurecon has previously explained:

‘It certainly seems to the non-lawyer that most contracts in the engineering and construction industry are drafted from a very negative perspective, and need disrupting, as it is too easily perceived as a document drawn up to punish when things go wrong, without facilitating the relationship positively. In the eyes of the engineer, a contract mostly lists “all the bad things I will do to you if you don’t deliver on these points of the contract”, mentioning amongst other things liquidated damages, unqualified fitness for purpose, consequential loss so on and so forth. So as a service provider you don’t move outside the bounds of the contract, and it does not help to build a fruitful relationship. Perhaps we should expand on this a little. In most instances, Aurecon are the recipient of a contract from other parties. They typically get handed a 300-page contract which tells them all the penalties that could be imposed if they don’t deliver and because of that, inherently, the focus is to deliver what was defined in the contract which (typically known problems with known solutions) without thinking outside the confines of the threatening contract. In order to innovate, contracts need to allow the engineers to bravely go into the unknown unknowns. Aurecon thus decided to take a stand about how contracts could be innovative too and allow for better engineering innovation – without the proverbial sky falling. Even if Aurecon could take a portion of their contracts, and start defining it in a way people could understand, that would be real progress. With visual contracts, we are working with better degrees of comprehension, exploring a better understanding. So when an

opportunity arose to innovate both engineering contracts and law, it seemed too good to pass up.’<sup>38</sup>

And the collaboration bore fruit. The Financial Review hailed the contract as the ‘future of works’,<sup>39</sup> and it has been given much attention in media and research circles. From Aurecon’s perspective, it has also been a hugely successful instrument for not only changing employment relations, but also changing the entire perspective of communication across the company—visuals and the expectations of visuals are now firmly embedded in the Aurecon culture, as is innovation in all areas.

One of the key elements to the success of the contract is its firm relational values and value base. This focus is especially important in an employment relationship. By bringing the relationship of the parties into focus, rather than their perceived obligations/rights, the nature of the team spirit is clearly communicated to the prospective members of the team before they begin working. The relationship *is* the focus. Moreover, the comic contract itself is an embodiment of the company’s values. Firmly brought to the front of the contract itself, the below key Aurecon values are set out clearly:

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<sup>38</sup> Andersen and McGuire, ‘Improving Aurecon’s Employment Contracts through Visualisation’ (2019) 46(2) The University of Western Australia Law Review 218 [http://www.law.uwa.edu.au/\\_\\_data/assets/pdf\\_file/0007/3442651/4.-AndersenMcGuidre-Future-of-Works.pdf](http://www.law.uwa.edu.au/__data/assets/pdf_file/0007/3442651/4.-AndersenMcGuidre-Future-of-Works.pdf) accessed 11 August 2021.

<sup>39</sup> David Marin-Guzman, ‘Aurecon backs ‘visual contracts’ as future of work’ (Australian Financial Review, 2 May 2018) <<https://www.afr.com/work-andcareers/management/aurecon-backs-visual-contracts-as-future-of-work-20180502-h0zjch>> accessed 11 August 2021.



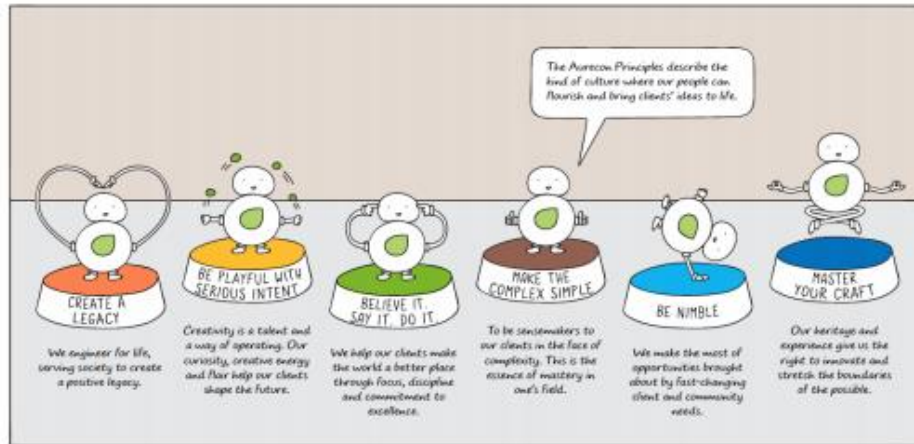


Figure d. The Aurecon Principles (company values), from Aurecon employment contract, created by the UWA Comic Contracting project, artist Gemma Young; owned by the UWA Comic Contract project and Aurecon

These values are embodied in the contract itself—it itself clearly embraces at least two of the key values: to be ‘playful with serious intent’ as well as to ‘make the complex simple’. But to focus on a truly collaborative contract, we need to examine at the values of the employee, as well as the company. The contract does this with a short quiz. The characteristics which future employees will be tested against are set out below, which forms page 2 of the contract. The quiz is short, and easily completed, and is taken before the contract can be formed.



Figure e. Staff Attributes, from Aurecon employment contract, created by the UWA Comic Contracting project, artist Gemma Young; owned by the UWA Comic Contracting project and Aurecon.

This value sharing creates a contract whose effect is based upon a relationship of trust between the parties. Aurecon states:

‘No one should underestimate how important the start of an employment contract is in terms of the nature of your organisation and your employees’ first impressions of the spirit of the company [...] Aurecon’s employees define them, and we compete for people in the market actively seeking innovative, agile-minded employees for most positions. If a prospective employee sees the type of awards and recognition the company gets for innovating, the last thing Aurecon wants to do is put the prospective talent off with a 20-page contract with 7-point type and punitive clauses and unnecessary fine print’<sup>40</sup>

In other words, this nimble and agile contract gives the company a competitive edge in the race for talent recruitment. And given the growth in their levels of recruitment and retention, the comic contracting approach seems to be working.

An added benefit has been their reduced time for onboarding—as the contract holds interactive links to key skill building, on-board training is guaranteed prior to commencement, and is effectively delivered. De Rooy is reporting similar improvements amongst his contracts in South Africa, with some employers reporting the reduction of training from four hours to under one hour—a significant saving of time and money.

## **8. Aurecon Data**

The longitudinal impact study conducted on the text-based versus image-based version of the Aurecon employment contract has yielded a lot of interesting data, especially in the psychometric study.

The qualitative and quantitative data for the first stage after implementation of the comic contract is now available. It tested three key criteria of the project:

1. Comprehension (how well the contract is understood);
2. Engagement (how well does the contract user, ie the client or employee presented with the contract, engage in the process); and

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<sup>40</sup> Andersen and McGuire (n 38).

3. Perception (how does the contract user perceive the company presenting the contract).

The study ran across 2 ½ years, formed of 6 months collecting data from employees under the text-based versions of the employment contract, and 2 years collecting data from the comic contract version. The contract is an employment contract, with a combination of words and images, presented to *all* levels of employees across the organisation.

Both qualitative and quantitative feedback suggests that the comic contract version of the contract, when compared to a study of the text-based version, performs significantly better across all categories, and across all age groups (sampled in 5-year intervals). The results indicate that the ‘ECCP total score’ for comic contracts was 10.74 points higher than that of the text-based contract, which reflected that comprehension was 2.21 points higher, engagement 3.97 points higher and perception 4.55 higher. This huge increase in both perception and engagement was unexpected.

	<u>Text</u>	<u>Comic Book Contract</u>	<u>Weighted Per cent Difference</u>	<u>Points difference</u>
Total Score	61.75 (68.61%)	72.49 (80.54%)	+11.93%	+10.74
Comprehension	20.95 (69.83%)	23.70 (79%)	+ 9.17%	+2.75
Engagement	20.80 (69.33%)	24.77 (82.57%)	+13.24%	+3.97
Perception	20.01 (66.70%)	24.56 (81.87%)	+15.17	+4.55

Figure f. Psychometric statistics of comparison between text based and image based contracts, part of the UWA Comic Contracting project.

We expected an increase in comprehension and engagement—which was achieved. What we did *not* expect is how well the perception of the company also changed, and how favourably the very attempt to visualise contracts was seen. We are currently working on other longitudinal projects with researchers in psychology to further examine perception and the ‘perceptuality’ of legal images.<sup>41</sup>

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<sup>41</sup> Recent collaborative project on “perceptuality” and visual contracts for people dealing with trauma or anxiety, entitled *Developing and testing visual contracts for use in traumatic situations*, sponsored by

## 9. The WAI S contract

Western Australia's Individualized Services (WAI S) is a not-for-profit, community organisation working in partnership with people, families, service providers and government agencies to promote and advance individualised, self-directed support and services for people living with disabilities, including psychosocial disabilities. They approached the UWA team in 2017 for assistance in creating a visual comic contract for employing support workers for the disabled—and this proved to be a complex challenge indeed.

This project focused more on comprehension, and obstacles to that comprehension, as opposed to previous projects which had focused more on format and engaging the reader. The contract would have to accommodate a wide variety of possible physical and mental challenges present amongst WAI S's clientele.

We particularly struggled with the so-called 'avatar' design, which is the term we have embraced for the visual representations of clients and sponsors. Getting this right has always been tricky, especially when having to accommodate a wide variety of cultures, ages, genders and personalities—it was compounded even further in this project by the addition of disabilities. As a recognised pathway to justice, in enabling a broader ability to contract directly, the clarity and ease of use in this particular contract was very much the focus. And it heightened a number of issues.

WAI S required the avatar to reflect and appeal to a broad audience—people with intellectual, developmental, psycho-social or physical disabilities and their family members—whilst being acutely mindful of not depicting anything that would associate negative societal attitudes towards people with disability. Together, these parameters posed a significant challenge to the process and to the illustrator. The sought-after avatar needed to be neutral (including gender-neutral, culturally-neutral, ability-neutral) yet also to have broad appeal. It was also necessary for the avatar to avoid creating any negative societal views of people with disabilities, including likenesses being drawn to animals,

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Alternative Contracting, Neurodesign International and Inklings, more information available at <<https://research-repository.uwa.edu.au/en/projects/developing-and-testing-visual-contracts-for-use-in-traumatic-situ>>.

or to the figure of the ‘eternal ‘child’. Notably, the latter proved a particular conundrum, given that comics are commonly associated with children.

As detailed elsewhere, the struggle with the avatars brought home many significant lessons:<sup>42</sup>

1. Know your industry, and avoid imagery it distances itself from;
2. Be cautious with colours;
3. Be aware of the graphic art of silhouettes;
4. Communicate with the client to ensure what they want.

After some delay, we have ended up creating a very simple and simplified contract which ensures all parties understand behaviours and roles.



*Figure g. WAI S Avatar (employee enabling employer), from WAI S domestic help employment contract, created by the UWA Comic Contracting project, artist Loui Silvestro; owned by the UWA Comic Contract project and WAI S.*

This WAI S challenge taught us the value of inter-disciplinary collaboration. Not just having illustrators to work with our ideas, but to open discussions of visualisation of concepts up to an entire board of visual experts. We now work with a think-tank of graphic experts, the so-called ‘Applied Comics for Law Think-Tank’, headed by

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<sup>42</sup> Su-Hsien Lee and Camilla Baasch Andersen, ‘Facilitative contracts with visuals and comics. Access to justice and steps for the future’ in Marcelo Corrales Compagnucci, Helena Haapio and Mark Fenwick (eds), *Research Handbook on Contract Design* (Cheltenham: Edward Elgar, 2022)

Professor Stuart Medley from ECU. He and his PhD student co-authored a paper for the UWA Law review which is, I believe, the world's first entirely comic book legal article, which uses clever imagery to present meta-cognition of the challenges of drawing law. It is entitled 'Applied Comics for Law and the Avatar Brainstorming', and was published in 2018 by the UWA Law Review. An examination of this is worthwhile.<sup>43</sup> Not only will this visual article make my points more obvious – but in doing so it will reinforce the very nature of visuals in law.

## 10. Conclusion: the most important lessons

As law continues to adapt to the ever-increasing influence of technology, the legal profession is now beginning to realise that it needs new direction. The careful grunt-work is arguably now better done by computers and technology than by people. Our role, as lawyers in a changing world, is surely to humanise the profession, and to spend our time providing better support for our clients in understanding both them and their industries. In doing so, we have much to learn from other professions. To name but a few lessons:

- a. Simplifying our processes, at least externally, so we cease to expect our clients to be happily confused by what we do;
- b. Humanising our approaches and becoming better at accommodating skills and talents found in other professions – in short, playing well with others; and
- c. Removing our legal blinkers, while retaining our pride in our own skills, and finding new ways that law can be innovated through or enlightened by other skills.

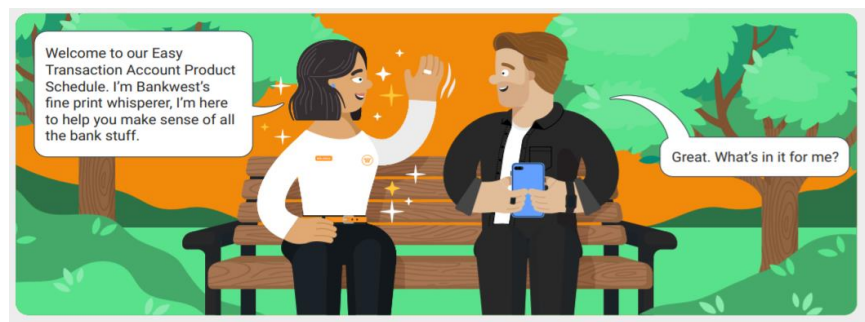
In essence, comic book contracting is just one of the many forms of new law arising from this simplifying, humanising, 'blinkers off' process. As a researcher, Professor Andersen will continue to push the boundaries of what can be done in the contracting space, and as a service provider, Mr Corner will continue to respond to a very

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<sup>43</sup> Stuart Medley and Bruce Mutard, 'Applied Comics for Law and the Avatar Brainstorming' (2019) 46(2) University of Western Australia Law Review 252.  
<[https://www.law.uwa.edu.au/\\_\\_data/assets/pdf\\_file/0009/3442653/6.-MutardMedley.pdf](https://www.law.uwa.edu.au/__data/assets/pdf_file/0009/3442653/6.-MutardMedley.pdf)> accessed 11 August 2021.

real market desire for law to be more transparent and accessible in contract forms. We have developed a number of processes for developing visual contracts and making contracts readable—and we acknowledge that we still have much to learn. We also acknowledge that simplification carries a risk of leaving something out, but we have witnessed the results of what we do, and we consider it worth the risk.

With the advances in comprehension, engagement and perception, a variety of industries are hungry for the change that these readable contracts bring. At the time of writing, the visual Terms and Conditions for banking contracts, developed by Professor Andersen’s team in collaboration with Bankwest, have just become available after a lengthy approval process, and they appear to be very popular with both the public and the media,<sup>44</sup> demonstrating a mainstream application for visual comic formats.



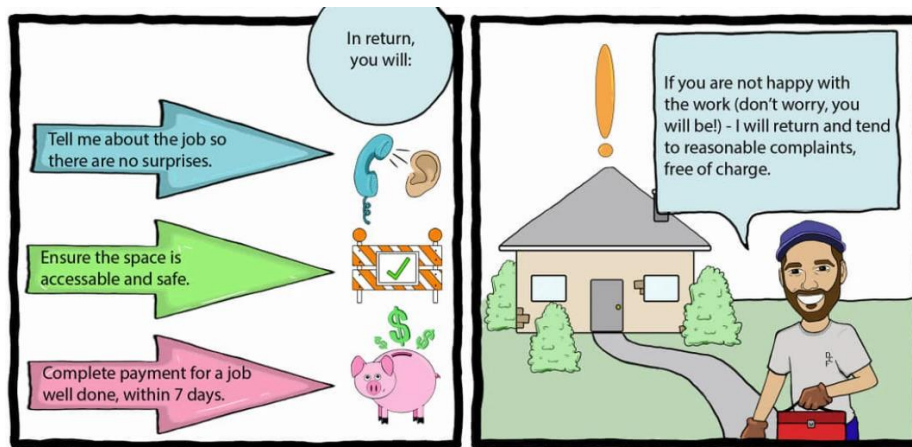
*Figure h. The fine print whisperer and client (Brandon), Bankwest Easy Transaction Account product schedule, created by the UWA Comic Contracting project, artist Loui Silvestro and Bankwest; owned by the UWA Comic Contract project and Bankwest.*

New sponsors have joined us, and the project continues to develop in numerous fields and directions—all demonstrating a need for contracts to become more readable and for contract law to become more approachable for everyone. A newly-completed smaller project at Alternative Contracting has also demonstrated the ease of building a visual contract from scratch, focused entirely on values and behavioural drivers for contract performance—see the ‘Dave can Fix it’ handyman contract, a one-page

<sup>44</sup> See an example at Bankwest, ‘Bankwest Easy Transaction Account: Product Schedule’ (Version 95, 15 February 2021) <[https://www.bankwest.com.au/content/dam/bankwest/documents/legal-library/PDS\\_20080125-110540.pdf](https://www.bankwest.com.au/content/dam/bankwest/documents/legal-library/PDS_20080125-110540.pdf)> accessed 11 August 2021.



demonstration of what a smaller industry needs its customers to know, expect and agree to.<sup>45</sup>



*Figure i. The expectations and the warranty, Dave can Fix it Handyman Services contract; created by Alternative Contracting and the UWA Comic Contracting project, artist Joelle Young; owned by Alternative Contracting and David Wynne.*

We leave you with a thought: can law afford *not* to innovate? Should we risk something new, or continue to play it safe and instead risk the slow decline of our profession?

We know what we think, based on what our sponsors and clients are telling us. We hope we can convince others to consider approaches like this—and any other innovations that may help to improve contract law. And we will continue to make contracts readable, where we can.

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<sup>45</sup> See ‘Dave Can Fix it Handyman Services’ (n 2).