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# Visual Contracts: Contemporary Way of Writing Contracts

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## ABSTRACT

*A visual contract is a legally enforceable document that provides a better user experience, allowing people to make more independent legal decisions. A graphic contract gives people more legal power since it's easier to grasp, and it fosters trust through open communication. They have experienced significant growth and popularity, attracting attorneys, researchers, designers, and practitioners alike. The various causes for such contracts revolve around the goal of improving contract understandability and transparency.*

*Visual contracting's ingenuity and craftsmanship are remarkable. The philosophical shift that the movement symbolises, though, is what makes it so intriguing. When a business invests in visual contracting, it's because they want their contracts to be more than just legal documents. Rather, they want their contracts to transmit value to the people involved. It gives the contractual process more expression and communication.*

*The three authors, through this article elaborate on the concept of visual contracts and put forth the idea that they are the contemporary way of writing contracts. The authors firstly introduce this new concept and explains key aspects of it. Secondly, the authors delve into the need for such contracts and then numerous benefits of such contracts are discussed. The authors then in the third section makes a point that visual contracts are enforceable in India and elaborates on the law behind the same. Fourthly, potential contracts such as medical consent or sports agreements, which can be written in this format are talked about. Such contracts won't be without its pitfalls. Accordingly, the authors fifthly, ponder over various possible pitfalls and then provides solutions to avoid them as well. The authors then conclude the article by stating that visual contracts are the need of the hour and it's time to make the best out of them by taking inspiration from Australia, South Africa and United Kingdom.*

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## I. INTRODUCTION

As the name implies, visual contracts aim to replace extensive words and difficult legal jargon with simple, user-centric pictures and texts that make them more accessible and engaging for the reader. The impact and goal of visual contracts, on the other hand, is not just restricted to images and diagrams but a new way of contract formation that provides a better understanding of the terms, user experience, transparency, and ease of decision-making, as well as simplified language and accessible themes.

Contracts hold a plethora of information about a business's risks and prospects. Business users can easily understand these risks and opportunities thanks to visual contracting. This unleashes enormous value from what had previously been a repository of hardly comprehensible legal material. Flow charts, for example, can be used to determine how a supplier/vendor relationship affects a company's capacity to deliver a project to a client. Alternatively, based on contract metadata, create a map of where business is done.

## II. AGREEMENT STRAIGHT INTO DRAWER – NEED FOR VISUAL CONTRACTS

Only one out of ten people feel that contracts they read on daily basis are 'simple to understand' according to a survey done by the International Association of Contract and Commercial Management (IACCM).<sup>4</sup> Only 17% were pleased with the process of reaching and finalising an agreement. These figures and facts

are depressing. But what are the reasons behind this, what are the ramifications, and what can we do about it? This paper, attempts to answer these questions analysing the current state of Indian legal system and the need for transformation of the way we draft contracts.

Agreements that aren't user-friendly cause several issues. The most significant issue is probably that agreements are not easy to read and the terms can be misunderstood. Hard to understand agreements raise risk since they are basically organised communication intended to reconcile the parties' expectations. Expectations are often remained unfulfilled due to misunderstandings and different interpretations. And before you know it, you'll be caught in the legal proceedings, sometimes defending and the other times challenging the terms of an agreement.

Incomprehensible or too complex agreements are frequently filed away. As a result, the parties may adopt a practice that rewrites the contract. If the parties' practice deviates from the agreement over time, it may finally be considered as amended by such practise, based on any rules indicated in the contract or local legal doctrine. This could lead to even more misunderstandings, as well as changes in or elimination of regulations governing things like liability and responsibility division. This ambiguity raises risk and should be a motivator for reading and practising contracts in a way comprehensible for all the stakeholders. As a result, contract design has undergone a transformation in recent years.

contracting Survey, October 2016.

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<sup>4</sup> The International Association of Contract and Commercial Management (IACCM), Future of

The principles of ‘user experience’ or UX, as well as connection and trust-building, have found their way into the utilitarian legal realm. For years, plain-language advocates have fought for improvements. However, the rise of visual contracts is even more recent.

### III. BENEFITS OF VISUAL CONTRACT TO VARIOUS STAKEHOLDERS

In an endeavour to better understand what benefits and advantages does the visual contracts cater to various of its stakeholders, let us see how does they perform in comparison with the traditional way of writing contracts.

- **The Layman/ Client:** Visual contracts are simple to comprehend. They improve the user experience by empowering them to grasp the contract’s conditions. Apart from matters requiring legal competence, this instils a fundamental awareness of the law and reduces user’s reliance on lawyers. The eye-catching visuals guarantee a ready reference understanding of the document in comparison with the 100% text-based documents.

- **Legal Counsel:** Visual contracts can help lawyers communicate their knowledge and skills in a fun and engaging way, while also expanding their client base. This expertise instils a different solution-building approach in lawyers because visual contracts are founded on design thinking, so to say, a user-centred, innovation-driven, and emphatic approach. Design thinking uses tools such as mind mapping, persona

profiles, bulls-eye diagrams and other strategies to help lawyers operate more effectively and better understand their clients.

- **Business:** By creating contracts that are simple to access and understand, visual contracts may help organisations boost transparency and user trust. The customers prefer companies which take care of the customer awareness with respect to the terms of a contract or agreement, of any type.

- **Simple and Quick Understanding:** Humans have been understanding visual information for millennia, long before text and languages were invented. As evidenced by prehistoric cave drawings, we have also been developing visual representations of information (infographics) for a long time. Our brains have perfected the ability to understand visual information instantly.

- **Impactful Delivery:** Visual information has a considerably greater influence on us than information that is read or heard. The McGurk Effect<sup>5</sup> is an interesting speech and visual perception experiment. It demonstrates how the visual information we receive from watching someone talk may override and alter what we hear.

- **Support for Non-Native Speakers and Persons with Disabilities:** Visual contracts are easier to understand for non-native speakers of a particular language as well as those with

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<sup>5</sup> The McGurk effect occurs when there is a conflict between visual speech, meaning the movements of someone's mouth and lips, and auditory speech, which

are the sounds a person hears. And it can result in the perception of an entirely different message.

cognitive disabilities, making them more user-friendly.

- **Nuanced Messaging:** The facial expressions of the persons shown in a visual contract, the layout of pictures, and even the colours used can all convey a great deal of information. Your company can appear friendlier or more professional just by how the visual information is conveyed and can be more engaging for stakeholders. The way visual information is delivered can make your organisation appear friendlier or more professional, and it can make stakeholders more engaged.

- **Shorter Discussions:** Because both sides (and a lot of non-legal persons on both sides!) would find it easier to read and understand a visual contract and grasp the implications of the provisions when utilising such contracts in comparison with contracts written with text solely, negotiations can be considerably easier and faster.

- **Identification of Conflicts and Gaps:** In a graphic contract, gaps in knowledge are more visible, and it's also much easier to spot clauses that could lead to future disputes.

- **Relationship Illustration:** One of the most important features of the visual contract is the emergence of relationships. The relationships between objects, people, locations, and data can come alive if you overlay the visual with data such as a supply chain that also indicates inventories, distances, delivery times, and so on.

- **Collaboration:** It's much easier for teams to process and collaborate on visual contracts than text. This is especially true for those outside the legal profession. The daily use of emojis and stickers goes on to prove the fact that humans have an intrinsic likeness for images over just text.

#### IV. VISUAL CONTRACTS – ENFORCEABLE IN INDIA

In India, a visual contract's enforceability is determined by whether it has all of the elements of a valid contract as set out in the Indian Contract Act, 1872 (“**Contract Act**”).

The Contract Act defines an agreement as ‘every promise and every set of promises, forming the consideration for each other’.<sup>6</sup> According to Section 10 of the Contract Act, all agreements are contracts if they are made with the free consent of parties competent to contract, for a lawful consideration and with a lawful intent, and are not expressly declared to be void.<sup>7</sup>

The following are the essential components of a legal contract:

- **A firm and unambiguous offer:** When one person communicates to another his desire to perform or abstain from doing anything, with the goal of securing the other's assent to do such act or abstinence, an offer is said to have been made.<sup>8</sup> As a result, the Contract Act does not require that an offer be presented in writing solely;

- **The offeree's unconditional acceptance of the offer:** Various types of acceptance are

<sup>6</sup> Section 2 (e), Indian Contracts Act, 1872.

<sup>7</sup> Section 10, Indian Contracts Act, 1872.

<sup>8</sup> Section 2 (a), Indian Contracts Act, 1872.

recognised by Indian law which includes, oral acceptances,<sup>9</sup> electronic acceptance<sup>10</sup> and acceptance through performance.<sup>11</sup> While acknowledging that acceptance might take several forms, the Supreme Court of India in *Aloka Bose v Parmatma Devi & Ors*,<sup>12</sup> stated that an agreement of sale comes into existence when the vendor agrees to sell and the customer agrees to acquire, for an agreed consideration on accepted terms. Oral communication is an option. It could be done through the exchange of unsigned communications. It could be accomplished by a single document signed by both parties. It can also be done with a two-part contract, with each party signing one copy and then exchanging the signed copies, resulting in the purchaser having the seller's copy and the vendor having the purchaser's copy'; and

- ***The contract is supported by lawful consideration:*** A genuine contract must also include the purpose to form a legal connection, competent parties' voluntary assent to contract, and a lawful object, among other things.

Based on the foregoing, it might be argued that visual contracts are valid under Indian law as long as the Contract Act's fundamental parts are present in any contract to be executed and the parties agree on the contract's terms. In absence of any explicit provision in the Contract Act, to debar the usage of infographics and visual contract templates, one can hope that a law centuries ago anticipated that modern versions of

contract drafting may emerge and hence it was wisely thought to keep the definition of legally valid agreement as an open-ended space.

## V. POTENTIAL AREAS FOR VISUAL CONTRACTS

Though there are many considerable areas where visual contracts can be utilised, but this paper for convenience seeks to examine two such industry applications at length. One in the sports industry and the other in the medical field. Alongwith these two, other use cases and examples are also detailed for reference.

- ***Standard Player Contracts and Sports Participation Agreements:*** Athlete and player contracts have more often complicated terms and conditions, which are frequently laid out in long standardised agreements that reference and incorporate other lengthy documents. The National Rugby League ("NRL") Playing Contract, for example, is roughly 40 pages lengthy, including schedules, and contains volumes of regulations, codes, the NRL operations manual, and policies.

As a result, many athletes who aspire to be professional athletes or wish to represent their country may be unaware of their obligations and rights due to complex legal principles and contractual wording. This lack of awareness and comprehension may result in unexpected punishments (including termination) and/or damage to 'the game' and its commercial

<sup>9</sup> Nanak Builders and Investors Pvt. Ltd. vs. Vinod Kumar Alag AIR 1991 Delhi 315; Alka Bose vs. Parmatma Devi & Ors [CIVIL APPEAL NO(s). 6197 OF 2000].

<sup>10</sup> Trimex International FZE Ltd. v. Vedanta

Aluminium Ltd., (2010) 3 SCC 1.

<sup>11</sup> Vishnu Agencies (P) Ltd. v. CTO, (1978) 1 SCC 520.

<sup>12</sup> Aloka Bose v Parmatma Devi & Ors AIR 2009 SC 1527.

partners as a result of acts (on and off the sporting field). To fill these knowledge and understanding gaps, and to acknowledge that some individuals learn and think visually (regardless of their level of education or cultural background), sporting codes and player associations should consider the advantages of visual sports contracts.

- **Medical Consent Contracts:** In order to respect the autonomy and dignity of patients and participants, ‘informed consent’ is essential in the practise of medicine and biomedical research.<sup>13</sup> As a result, informed consent techniques are designed to promote the entire sharing of information between two parties, such as a doctor and a patient, or a researcher and a participant, in order to fulfil the ethical precept of showing respect for persons.<sup>14</sup> “A person offers informed consent...if and only if the person, with significant understanding and in the absence of substantial control by others, intentionally allows a health professional to perform something” says Tom Beauchamp.<sup>15</sup>

In biomedical settings, this information transfer helps a patient become aware of any potential dangers associated with consenting to a procedure, as well as to examine whether and how consenting to the procedure might clash with their values or preferences. ‘Would a reasonable person in the circumstances of the patient be inclined to attach significance to the

risk?’ Practitioners and researchers must question. And ‘Does the doctor know, or should the doctor reasonably know, that this particular patient is likely to attach significance to that risk?’ Because a patient’s decision-making abilities might be influenced by who is informing them, practitioners and researchers should be conscious of any power imbalances that may occur between them and their patients and participants.<sup>16</sup>

Practitioners are also advised to evaluate if their patients have fully grasped what they have been told, which is critical in the context of this paper. One approach to accomplish this is to have patients explain what a procedure entails in their own words.

Practitioners are also advised to evaluate if their patients have fully grasped what they have been told. One approach to accomplish this is to have patients explain what a procedure entails in their own words. However, some features of medical and biomedical research techniques can remain partially or fully opaque, even to well-informed patients and participants, posing an epistemological difficulty. This potential for ineffective or incomplete transmission of critical information could be referred to as the transparency (or explanation) problem. The issue is particularly urgent because having a clear and open explanation is a prerequisite for gaining the

<sup>13</sup> Beauchamp, Tom L (2011) Informed Consent: Its History, Meaning, and Present Challenges. Cambridge Quarterly of Healthcare Ethics 20(4): 515-23.

<sup>14</sup> Bobek E, Tversky B (2016) Creating visual explanations improves learning. Cognitive Research: Principles and Implications 1(1): 27.

<sup>15</sup> Dresden GM, Levitt MA (2001) Modifying a

standard industry clinical trial consent form improves patient information retention as part of the informed consent process. Acad Emerg Med 8: 246-252.

<sup>16</sup> Nimmon L, Stenfors Hayes T (2016) The Handling of power in the physician patient encounter perceptions from experienced physicians. BMC Medical Education 16(1): 114.

ability to make an educated decision about any operation to which one may be asked to consent. Thus, it is critical that a ‘transfer of knowledge’ occurs between patients/research participants and doctors/researchers. Some of the most recent research on the usability of visual legal contracts could be used to create an alternative to the usual consent forms. In the United Kingdom, there has been some progress in the use of YouTube videos and illustrated forms for infographics, but the law has been slow to catch up, with information being shown but legal documents often not.<sup>17</sup> As a result, most medical permission forms continue to be written in medical or legal jargon, alienating users.

- **Other Use Cases:** The use of images in legally binding contracts is becoming more common in a variety of fields and around the world. Lawyer Robert de Roy has produced employment contracts for illiterate farm labourers that are primarily in cartoon format, and has been recognised by the Hague Institute for the Innovation in Law (“**HiIL**”) as an important initiative in access to justice.<sup>18</sup>

Simultaneously, the Comic Contract project at University of Western Australia (“**UWA**”) has generated multiple versions of various contracts, all of which are extremely graphic to varying degrees and styles.<sup>19</sup> These comic contracts have been shown to be beneficial in enhancing not only contract comprehension, but also engagement with and perception of the

contractual relationship, in a longitudinal impact research. Given that an important aspect of informed consent is the exchange of information and participation in a process that must be seen favourably, comic contracts may be useful because of their capacity to simplify complex material. After all, there is research to suggest that by simplifying medical consent decrees, information is better understood and retained.

## VI. COMMON PITFALLS OF VISUAL CONTRACTS

In addition to issues of certainty and variance, we believe there are a few other crucial considerations that stakeholders should address before updating their agreements with water colours.

- **Interpretation:** Is it possible to interpret the image in more than one way? How much supporting text or vocal explanation is required to go along with the image? Pictures, like words, are susceptible to misinterpretation. How would you define terms and ensure that they are utilised consistently throughout the contract? How would you verify that the visual agreement is in line with textual workplace standards and procedures, too?

Hence, sometimes visual contracts can be proven to be a double-edged sword, because the message of an illustration to different readers would differ on the basis of their knowledge, age, level of education and sometimes background.

<sup>17</sup> Passera S (2017) Beyond the wall of contract text, Aalto Dissertation Press, Espoo, Finland pp.221.

<sup>18</sup> RAGCP (2019) Informed Consent: Information Sheet, RAGCP ORG, Australia.

<sup>19</sup> RANZCOG (2018) RANZCOG Medical Schools

Curriculum in Obstetrics & Gynecology (AMC Alignment). The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, Albert Street, East Melbourne, Australia pp. 254-260.

- **Discrimination:** What is the portrayal of employees in the photographs in employment agreements? Are they represented in such a way that any prospective accusations of unlawful discrimination are avoided? Just as it is in your staff, diversity would need to be reflected in the agreement.

An image may convey a lot of information in a short amount of time. The possibilities seem limitless in the age of emoticons and gifs. Will the typical thumbs up emoji in a reply email be sufficient approval of the terms if the employment agreement itself is a cartoon? We'll have to wait and see. Until then, here's another George Herbert quote "*Good words are worth much and cost nothing.*" A well-written agreement can not only help to ensure that things go smoothly, but it can also save a lot of time (and money) if things go wrong.

## VII. SOLUTION TO AVOID THE PITFALLS

Consider the Nordic agreement drafting tradition as a first step toward simpler and more intelligible agreements. The traditional Nordic agreement approach has been to keep it short, simple, and modular (i.e., divided into annexes). This has reduced transaction costs and made it easier for laypeople to grasp — all of which are essential in tiny economies.

A common denominator among the agreements listed above appears to be that newer agreements are lengthier than older ones, aside from the fact that most commonly used agreements are lengthy. Some of this may be due to today's more complex deliveries than in the past. The key

causes, in my opinion, are those indicated above, particularly impact various and distinct provisions have in a contract.

In a nutshell, one should use:

- **An agreement framework that is modular:** For an overview, a brief agreement document (one to four pages of text) with attachments for delivery description, prices, progress, general terms, and so on.

- **Use fewer words, sentences should not exceed 25 words:** The standard should be 15 to 20 words average. Use bullet points or one message per sentence. Sentences of more than 100 words, often more than 200 or 300 words, are common in common law agreements.

- **General principles:** Many situations are difficult to control, and the majority do not result in disputes. Much drafting might be avoided by relying on generic contractual rules, whether in your local jurisdiction or in well-established frameworks like The International Institute for the Unification of Private Law ("UNIDROIT") principles of International Contracts. Of course, fundamental regulation, such as damages, would have to be included in the contract, but other ancillary regulation may be left out. When a project fails, it is almost never due to a lack of fine print.

- **KISS (Keep It Super Simple):** The idea behind graphical agreements is to avoid having employees or counterparts sign pages of legalese that they may not be able to comprehend. This is a valid point, but good agreements do not have to be complicated. Simple, uncomplicated English should be used to draft agreements. The more

straightforward the agreement is (for everyone, not just lawyers), the better.

### **VIII. CONCLUSION**

The movement toward simplifying contracts is not new and visual contracts are an innovative step in that direction. Businesses jurisdictions like Australia, South Africa and the United Kingdom have adopted visual contracts or include visuals in their standard form contracts. A popular example is that of Royal Dutch Shell which has standardised the use of images depicting the obligations of parties in its maritime contracts.

The rise of visual contracts represents a significant shift in how modern lawyers think about contracts. They are increasingly aware that contracts must set all parties up for success, ensuring that everyone is on board with the new relationship and assisting them in contributing in the most positive and productive way possible. Visual contracts' work is described as 'proactive visual contracts', which ensure long-term, conflict-free relationships.

Visual contracts go hand-in-hand with plain language. Both provide opportunities for legal drafters to simplify, empower, and nurture at a time when these traits are more important than ever. Thus it is time to adopt visual contracts in India as well. We have this one life – let us not spend it on senseless drafting.

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