

# Design Thinking for the Legal Profession



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# Executive summary

There has never been a more exciting time to practice law. While artificial intelligence promises to minimize mundane tasks, clients' legal issues are becoming more complex. But, to successfully navigate these changes, legal professionals must better develop and exercise their creative problem-solving skills. For decades, companies in other industries have refined techniques to better understand their customers' needs, uncover insights, and develop new-to-the-world ideas, which are now products and services we use every day. Organizations have concluded that successfully adopting these methods, known as Design Thinking, have greater financial returns than pursuing more traditional ways of operating.

As the legal industry grapples with increased complexity, accelerated market deadlines, and budget constraints, design thinking holds promise to create a more delightful client experience while also increasing profitability.

The book's opening chapter, by Lann Wasson, associate director of legal project management and Rebecca Holdredge, innovations manager at Husch Blackwell, introduces the fundamentals of design thinking and identifies both challenges and opportunities for including design in the delivery of legal services.

The challenge of introducing such a radically different concept to what lawyers are used to is explored in chapter two, by futurist, John Alber. He argues that if ever there was a discipline ripe for correcting law's ivory tower self-absorption, design thinking is it. Design thinking's human-centered approach to innovation – once the province of professions typically associated with design, such as architects, urban planners, and industrial designers – is now seeing increasing use in businesses of all types, including even a few law firms (and it is being taught in a few law schools). These firms have descended from the ivory tower, and are, John argues, much the better for it.

In chapter three, Meghann Barloewen and Jason Dirx, Littler Mendelson, look at how design thinking is a user-centered, multi-stage methodology that advocates framing problems amidst deep user

empathy and rapid prototyping of creative solutions to service issues or barriers. Their chapter looks at how design thinking can help lawyers better understand their clients' work, overcome their own biases, and define clients' underlying and truest needs. Successful solutions require practiced emotional empathy. This chapter takes a deep-dive into two essential stages of the design thinking methodology: empathizing and defining the root problem. It includes practical experiences and perspectives learned through using design thinking in action.

Design thinking (or service design) is a methodology that has been used in manufacturing and many other industries for decades, but its entry into the commercial legal space has been slow. And yet law is a professional services industry, where success is predicated on client satisfaction. There are many reasons to use design thinking in law firms (and with in-house teams), but perhaps chief amongst these is the importance of re-orienting the practice of law around the needs of the client. The methodology can also be used internally to facilitate widespread culture change, and to instil an innovation mindset within a population of employees who may be set in their ways. Chapter four, by Nicola Shaver, managing director, innovation and knowledge at Paul Hastings, explores the reasons why design thinking can and should be used in law, and provides practical guidance to help newcomers get started.

Design thinking is a well-known methodology for producing work and collaborating in software development. More recently, we have seen other industries adopt design thinking as a way to improve collaboration, increase creativity, and remove bias from work product and process. The legal industry has become increasingly more competitive since the great recession of 2008, leaving firms and departments struggling to find ways to increase productivity, efficiency, recruit and retain talent as well as provide excellent customer service that provides a rich experience. By embracing design thinking and the theory behind it, the legal industry – from individual law firms to large government departments and everything in between – can begin to reimagine their workflows and offerings to be in line with current client expectations, moving into 2020 and beyond. In chapter five, Zena Applebaum, director of customer insights and engagement, Thomson Reuters Canada Legal Tax and Accounting, looks at the options.

Legal Lean Sigma® is the unique combination and application of Lean and Six Sigma methodologies, concepts, and tools so they are taught and applied specifically in the context of the legal profession. Legal Lean Sigma Design takes a similar approach. In chapter six, Catherine Alman MacDonagh, CEO and founder of the Legal Lean Sigma Institute LLC,

explains how the Institute combined elements of traditional design thinking, then layered in specific Lean Sigma methodologies and tools in order to develop a unique approach to their combined application to the legal field. Legal Lean Sigma Design is a completely new and distinct approach to improvement and design.

A new kind of awareness is emerging in the legal market. It is coming from both lawyers and business professionals. It is the recognition that new approaches to strategy, growth, and innovation must be found. More and more practice groups and in-house teams are experiencing significant structural, cultural, and financial stress within their organizations. They are struggling to operate their existing business platform while also exploring, testing, and launching new ways of working and new service models. Design thinking is a problem-solving opportunity-finding method that turns traditional business strategy-making on its head. Its popularity within legal has been growing exponentially recently. In chapter seven, Josh Kubicki of Bold Duck Studio argues that clients, firms, inhouse teams, and the entire legal ecosystem stand to gain from this new mindset and methodology, if – and only if – enthusiasm can be accompanied by actual execution. Design itself is not the cure-all, but is a potent tool to add to the leader’s arsenal that will better equip them to make real, sustainable, and desirable change happen. It is wonderful that there is a growing design-interested community in legal. It is imperative that this community advances its maturity and capabilities in order to tackle the systemic and cultural challenges that lie ahead.

Every day the legal industry is inundated with announcements about new innovative solutions. From all sides, organizations are pursuing new ways to deliver services, new products and even new business models. Yet, in the rush to adopt technology and appear “innovative”, organizations often lose sight of their customers and the needs they aim to solve. As a human-centered approach to innovation, design thinking starts with the customer and includes a number of mindsets and techniques to uncover insights that can lead to ideas, and ultimately solutions, that delight clients. Chapter eight, by Lann Wasson, focuses on the role that empathy, observation, and collaboration play in learning to see problems from different points of view. Examples of various ways to practice building one’s creative muscles and real-world examples of how to develop and communicate insights to teams are included.

Tess Blair, of Morgan, Lewis & Bockius LLP, writes about and lectures on legal design and delivers a program called a “Legal Design Jam” that uses elements of human-centered design thinking, six sigma, legal project management and a heaped helping of finesse to leverage what would

otherwise be unique constraints in the legal environment (i.e. lawyers) to maximize the potential outcome of a legal design exercise. Tess uses what she calls “psych-ops jujitsu” to turn the challenges in legal (i.e. lawyers) into assets that optimize the time, engagement, and outcomes of their exercises to deliver client-centered solutions. Tess has spent a lot of time observing lawyers in their natural habitat, studying the unique business structure of law firms, and speaking with and following the insightful work of Dr Larry Richard, the leading expert on the psychology of lawyer behavior. This, combined with her background in industrial design, led Tess to create the Legal Design Jam – outlined in chapter nine.

Partnership track, the “T-shaped lawyer,” the “Delta Model of Lawyer Competency”... there are models out there that tell you what you should want or how you should build your legal career. But as a law student, young lawyer, or accomplished attorney, what if you still haven’t really found “what you want to be when you grow up”? Chapter ten, by Amani Smathers, senior legal solutions architect at Davis Wright Tremaine, and Amy Monaghan, practice innovations manager at Perkins Coie, builds on Bill Burnett and Dave Evans’s *Designing Your Life* book to help those in the legal profession use design thinking to design a career that is personally fulfilling.

To conclude the book, consultant Duncan Hart offers a word of caution. Today’s market for legal services imposes considerable demands on firms to creatively address the way they operate. This includes not only the way they go about securing clients but also the processes they use to how they service clients. Design thinking is not necessarily the best approach for firms to adopt, however.

It highlights close attention to client needs and envisages a strong team-based approach to exploring those needs and the rapid development of experimental “prototypes”. This approach, however, must be tempered, particularly in the case of law firms, by a recognition that experimentation cannot often be conducted at what might be a potential cost to the client, let alone the firm’s insurers!

Firms need also to be aware of the “cultural” requirements that adopting design thinking demands. This requires careful assessment as to the specific context in which such a process can be appropriately deployed. Many teams within the firm may simply be unsuitable or unable to execute a design strategy in view of any number of dysfunctional elements that beset teams. In short, firms need to carefully assess whether design thinking is an appropriate response and process to the issues they are seeking to address. This chapter looks at the potential pitfalls of design thinking.



## About the authors

**Catherine Alman MacDonagh** is a former corporate counsel and law firm executive. She teaches and provides training and consulting services in process improvement and project management, strategic planning, marketing, and business development. A Legal Lean Sigma® Black Belt and a certified Six Sigma Green Belt, Catherine is the CEO and a founder of the Legal Lean Sigma Institute. It offers consulting and the first and only process improvement and project management certifications, courses, and workshops designed for the legal profession. Catherine created Legal Lean Sigma® and the award winning Legal WorkOut®.

**Zena Applebaum** is a competitive intelligence strategist, legal blogger, personal brand advocate, and trying to change the legal industry one design thinking workshop at a time. Having been one of the early pioneers of law firm competitive intelligence nearly 20 years ago, and authoring *Business Intelligence for Law Firms* published in November 2012, Zena shares her passion for the industry as a speaker, writer, and a contributor to blogs, including 3 Geeks and a Law Blog with topics ranging from competitive intelligence to change management, qualitative data analysis and personal branding. In 2015, Zena was inducted as a Fellow of the Council of CI Fellows and has been a sessional instructor at the University of Toronto iSchool, Rutgers University and a guest lecturer at law schools across North America. Zena honed her CI skills as the director of competitive intelligence at Bennett Jones LLP for over a decade prior to taking on her current role as national director, market insights and engagement at Thomson Reuters in Canada. In her role, Zena is responsible for client feedback and intelligence, market insights, and sales enablement.

**Tess Blair** is a litigator and legal entrepreneur who has practiced at the intersection of law, technology, and design for more than two decades. Tess is the founder and leader of Morgan Lewis's eData practice, a

data-driven practice that combines great lawyering with technology and design to enhance the delivery of legal services. A practicing litigator, Tess serves as national discovery counsel to some of the world's largest organizations alongside her client's trial counsel, and as a core member of the litigation team, she develops and executes all aspects of the client's discovery strategy as well as optimizes her client's evidence gathering, analysis, and presentation. Tess counsels a host of Fortune 500 companies, conducting risk assessments and guiding her clients as they develop internal information governance policies and controls to address privacy, security, retention, and disposition of information and data. As leader of eData, Tess works with her team, her colleagues, and clients to design and develop tools and techniques to improve the delivery of legal services. The eData team uses process design, automation, UX, product design, application development, machine learning, and augmented intelligence tools to develop technology, process, and service solutions built to meet our clients' needs. Tess lectures regularly on civil procedure, eDiscovery, and data privacy – including cross-border discovery and data minimization – and writes frequently on eDiscovery, information governance, and data privacy for a variety of legal publications. She is the lead author of the eData Deskbook, currently in its third edition. Tess also serves as Special Discovery Master to the Eastern District of Pennsylvania.

**Rebecca Holdredge** is the innovations manager at Husch Blackwell and an experienced data scientist, attorney and Six Sigma Black Belt. Rebecca leads the firm's innovation advisory team and the associates legal innovation team and encourages attorneys to create a culture of innovation, efficiency, and quality by developing best practices and leveraging technology. She also engages with clients and in-house counsel to better understand their needs, develop relationships, and collaborate on innovative and effective solutions. Rebecca is well versed in the approach and techniques of design sprints to encourage more collaborative ideation and experimentation.

**Nicola Shaver** is the managing director of innovation and knowledge at Paul Hastings, LLP. Her interest in design thinking was sparked in 2015 when she participated in one of Margaret Hagan's workshops and witnessed the power of empathy and user-centric design to solve problems in a more meaningful way. Since then, Nicola has introduced design thinking at two major law firms, both as an internal driver of change and as an external tool for improving client service and

engagement. Nicola is an IDEO-trained design thinking facilitator, and a 2019 graduate of the Helsinki Brainfactory Legal Design Workshop (in association with the Legal Design Summit). She is also the founder of the Legal Innovation and Design Association (LID), a support and education network for innovation professionals in US law firms with an interest in service design methodologies.

**Lann Wasson** is the associate director of legal project management at Husch Blackwell LLP and holds certifications in project management (PMP), Lean Six Sigma (Green Belt) and Design Thinking (IDEO). For the past 18 years he has worked closely with client teams, practice groups, and in-house counsel to understand their needs and guide the design and development of new solutions from technology platforms to new products and services to new business models. Lann conducts workshops with internal and external clients in the areas of artificial intelligence, legal project management, and service design. In 2017 and 2018 the ACC recognized two of his client projects as Value Champions.