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Cartoon Contracts and the Proactive Visualization of Law

Michael D. Murray

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ABSTRACT

Contracts have always relied on text first, foremost, and usually exclusively. Yet, this approach leaves many users of contracts in the dark as to the actual meaning of the transactional documents and instruments they enter into. The average contract routinely uses language that only lawyers, law-trained readers, and highly literate persons can truly understand.

There is a movement in the law in the United States and many other nations called the visualization of law movement that attempts to bridge these gaps in contractual communication by using highly visual instruments. In appropriate circumstances, even cartoons and comic book forms of sequential narrative have been used to communicate contract terms to all parties, but particularly to contractors who are illiterate or less-than-fully literate in the language of the instrument.

The goal of this Article is to apply the lens of visual legal rhetoric and visual literacy to the current visualization movement in Proactive Law and Legal Design in their efforts to promote visual, non-verbal communication in contracts through cartoon, comic book, and highly pictorial legal instruments. The lens will be applied to evaluate and critique five aspects of proactive visual legal instruments:

- Immediate Visual Context
- Immediate Verbal Context
- Visual Cultural Context
- Mise en Scène and Arrangement
- Visual Rhetoric, Ethics and Professionalism

This Article analyzes whether highly visual contracts and legal instruments fulfill the potential for greater access to and understanding of contract terms particularly with audiences whose language skills and cultural experience might make the comprehension and acceptance of purely verbal contracts more difficult. When visuals can overcome barriers in communication that words alone cannot, contracts and other legal instruments can be made more universal in their application, interpretation, performance, and enforcement.

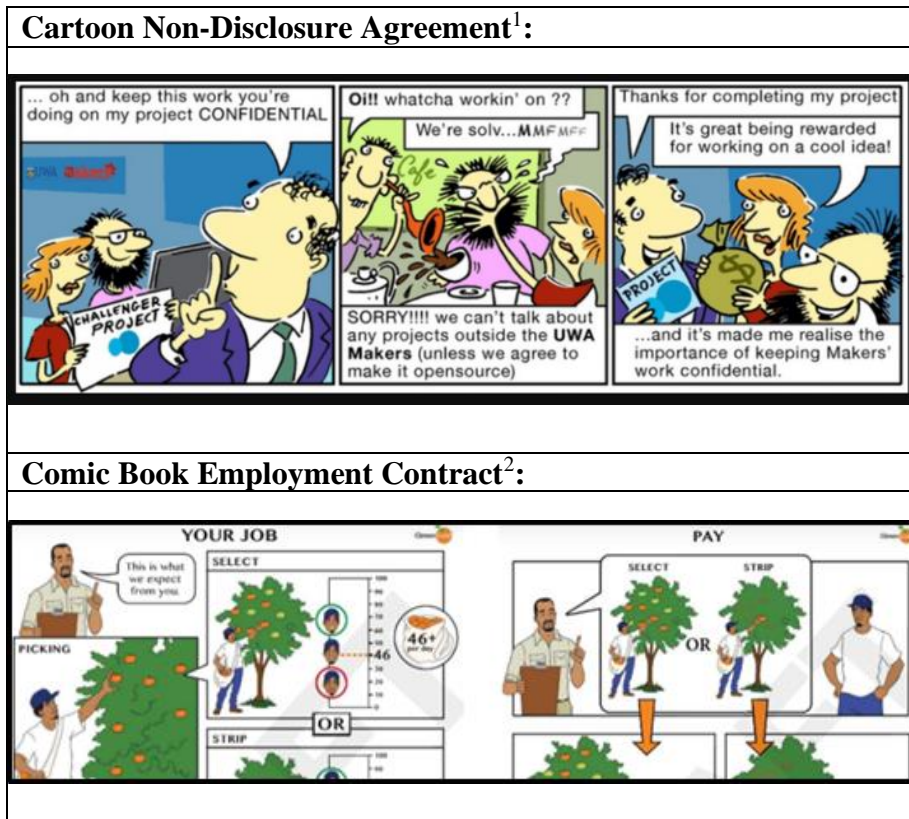
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The goal of this Article is to apply the lens of visual legal rhetoric and visual literacy analysis to the visualization of legal instruments, particularly in the Proactive Law movement, which uses visual, non-verbal elements to improve access to and comprehension of contracts through the creation of cartoon, comic book, and highly pictorial legal instruments, such as the examples shown here:



The lens will be applied to evaluate and critique five aspects of visual legal instruments: immediate visual context; immediate verbal context; visual cultural context; mise en scène and the rhetorical topic of arrangement; and visual rhetoric, ethics, and professionalism.³ This

¹ Camilla Andersen & Adrian Keating, *The Journey*, COMIC BOOK CONT., <https://www.comicbookcontracts.com/our-journey> [<https://perma.cc/PJS6-R2CM>]. See discussion *infra* pp. 66–70.

² Robert de Rooy, *ClemenGold Comic Contract*, CREATIVE CONT., <https://creativecontracts.com/clemengold/> [<https://perma.cc/BQM8-Y343>]. See discussion *infra* pp. 58–63.

³ See discussion *infra* Part IV.

Article will analyze whether highly visual contracts and other legal instruments generate greater access to and understanding of contract terms, particularly for audiences whose language skills and cultural experience might make it difficult to comprehend and meaningfully accept purely verbal contracts. Although legal communications in general, and contracts in particular, have been dominated by text for centuries, the contemporary study of visual communication in cognitive psychology and neuroscience, data visualization and rhetorical topics of arrangement, and contemporary visual legal rhetoric demands attention to the proactive approach to law and its call for increased visualization in legal communication. When visuals overcome barriers in communication that words alone cannot, contracts and other legal instruments can be made more universal in their application, interpretation, performance, and enforcement.

I. INTRODUCTION TO THE VISUALIZATION MOVEMENT IN PROACTIVE LAW

Proactive Law approaches the formation of contractual relationships prospectively and aims to anticipate issues and design legal instruments that secure a clearer understanding of the terms of the relationship, and better carry out the will and intentions of the parties.⁴ Building off of the 1950s “concept of Preventive Law,”⁵ this approach is

a future-oriented approach to law placing an emphasis on legal knowledge to be applied before things go wrong. It comprises . . . a set of skills, practices and procedures that help to identify opportunities in time to take advantage of them — and to spot potential problems while preventive action is still possible Proactive law seeks ways to use the law to create value, strengthen relationships and manage risk.⁶

⁴ See Gerlinde Berger-Walliser, *The Past and Future of Proactive Law: An Overview of the Development of the Proactive Law Movement*, in PROACTIVE LAW IN A BUSINESS ENVIRONMENT 13, 13, 17, 26–27, 30 (Gerlinde Berger-Walliser & Kim Østergaard eds., 2012); Helena Haapio, *Introduction to Proactive Law: A Business Lawyer’s View*, in 49 SCANDINAVIAN STUDIES IN LAW: A PROACTIVE APPROACH 21, 21–22 (Peter Wahlgren ed., 2010).

⁵ Gerlinde Berger-Walliser & Paul Shrivastava, *Beyond Compliance: Sustainable Development, Business, and Proactive Law*, 46 GEO. J. INT’L L. 417, 436 (2015). See generally LOUIS M. BROWN, MANUAL OF PREVENTIVE LAW (1950).

⁶ *Nordic School of Proactive Law*, NORDIC SCH. PROACTIVE L., <http://www.juridicum.su.se/proactivelaw/main/> [https://perma.cc/8ARM-7GV3].

Proactive Law seeks to apply the focus of legal design and the advice of lawyers toward anticipating and avoiding problems in the future rather than simply reacting and responding to problems in the past.⁷ In so doing, this method works to reduce the reliance on “legalese,” especially within a contract’s boilerplate terms, backward-looking conditions, and risk-avoiding disclaimers.⁸

In an effort to replace such boilerplate and legalese, the Proactive Law movement promotes the use of highly visual, illustrative, and explanatory content—a process referred to as visualization.⁹ Visuals provide a means of communicating the content, meaning, and implication of law and legal analysis within legal documents in a way that is accessible and understandable not only to those trained in the law, but also to non-law-trained parties and business people.¹⁰ A proactive approach will open up the terms of contracts for the benefit of all parties, and hopefully will allow all parties to see their goals met and avoid potential problems in the contract or the business relationship that previously might have been masked by legal terminology and boilerplate.¹¹ The proactive approach can also expand the comprehension of contracts to those who are not highly literate in the dominant language of an agreement. Through the introduction of visuals, these individuals might no longer be prevented from receiving

⁷ Berger-Walliser, *supra* note 4, at 13.

⁸ See Jay A. Mitchell, *Whiteboard and Black-Letter: Visual Communication in Commercial Contracts*, 20 U. PA. J. BUS. L. 815, 815, 851, 853, 857–58, 862 (2018). See generally Thomas D. Barton et al., *Visualization: Seeing Contracts for What They Are, and What They Could Become*, 19 J. L. BUS. & ETHICS 47 (2013); Stefania Passera et al., *Exploring Contract Visualization: Clarification and Framing Strategies to Shape Collaborative Business Relationships*, 2 J. STRATEGIC CONTRACTING & NEGOT. 69 (2016); Robert Waller et al., *Cooperation Through Clarity: Designing Simplified Contracts*, 2 J. STRATEGIC CONTRACTING & NEGOT. 48 (2016).

⁹ Gerlinde Berger-Walliser et al., *From Visualization to Legal Design: A Collaborative and Creative Process*, 54 AM. BUS. L. J. 347, 347 (2017). See also Richard K. Sherwin et al., *Law in the Digital Age: How Visual Communication Technologies are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. SCI. & TECH. L. 227, 230–35 (2006).

¹⁰ Gerlinde Berger-Walliser et al., *Promoting Business Success Through Contract Visualization*, 17 J. L. BUS. & ETHICS 55, 56–57 (2011); Mitchell, *supra* note 8, at 820, 822–24; Stefania Passera, *Why Do We Need Visualization in Contracts?*, STEFANIA PASSERA (Feb. 16, 2018), <https://stefaniapassera.com/2018/02/16/why-do-we-need-visualization-in-contracts/> [https://perma.cc/6HZN-M8R5].

¹¹ Berger-Walliser, *supra* note 4, at 16–18. See Haapio, *supra* note 4, at 21–22.

or understanding the legal advice, rights, or requirements contained in the agreement.¹²

My focus in this Article is to examine contracts and agreements that have implemented visual, non-verbal methods of legal communication in an attempt to improve communication, particularly in situations where significant language and cultural barriers previously prevented effective communication.¹³ The subjects of my study are several non-verbally-oriented contract genres: agreements that employ a variety of visuals, pictograms, and ideograms to illustrate the terms of the contract in place of text; cartoon and comic book contracts that use sequential narrative in a comic or graphic novel format; and multimedia contracts that combine images, text, video, and hyperlinks in the contractual instrument itself. In this Article, I continue my study of visual legal rhetoric that has examined cognitive psychology and the neuroscience of the brain,¹⁴ data visualization and rhetorical topics of invention and

¹² As described by Robert de Rooy, the founder of “Creative Contracts” and co-designer of its cartoon contracts, the visualization of contracts is designed to address and remedy the following: “[C]ontracts always seem to be documents ‘written by lawyers for lawyers.’ They are dense, complex and hard to read if you are very literate, and nearly impossible if you have low literacy skills.” Robert de Rooy, *Why Comic Contracts?*, CREATIVE CONT., <https://creative-contracts.com/why-we-do-it/> [<https://perma.cc/EGL3-6MQP>] (quoting Berger-Walliser et al., *supra* note 10, at 56). If

everyone understand[s] the contracts they must sign . . . [this will] improve contractual relationships and outcomes. At the same time, no one should be subjected to the indignity of having to sign a contract that they cannot reasonably be expected to read or understand. The best way to achieve this purpose is . . . to make contracts understandable for everyone, the more vulnerable people we will reach, and the more meaningful will be the difference we can make.

Robert de Rooy, *Our Story*, CREATIVE CONT., <https://creative-contracts.com/our-story/> [<https://perma.cc/S2GM-QWLZ>] [hereinafter de Rooy, *Our Story*].

¹³ The particular efficacy of legal works designed to overcome language and cultural barriers to communication is the subject of my forthcoming work. Michael D. Murray, *Toward a More Universal Visual Language of Law* (forthcoming 2021) [hereinafter Murray, *Toward a Universal Visual Language*].

¹⁴ On cognitive studies and brain science, see Michael D. Murray, *After the Great Recession: Law and Economics’ Topics of Invention and Arrangement & Tropes of Style*, 58 LOY. L. REV. 897, 901, 924–26, 929–35 (2012) [hereinafter Murray, *After the Great Recession*]; Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 LEGAL COMM. & RHETORIC: JALWD 107, 108, 124–30, 142, 146, 149, 152–54 (2016) [hereinafter Murray, *Ethics of Visual Legal Rhetoric*]; Michael D. Murray, *The Great Recession and the Rhetorical Canons of Law and*

visual arrangement,¹⁵ and modern argument theory in visual rhetoric.¹⁶ My lens in this study is developed from the discipline of visual literacy¹⁷ and guided by the overlapping principles of visual legal rhetoric¹⁸ regarding the communication, reception, and comprehension of law. Both concepts inform the topics of analysis that I will examine in the works: immediate visual context; immediate verbal context; visual cultural context; *mise en scène* and the rhetorical topic of arrangement; and visual rhetoric, ethics and professionalism.

II. WHY “VISUAL” AS A PROACTIVE IMPROVEMENT OF CONTRACTS?

The visualization movement in Proactive Law uses visual communication to make contracts more accessible and comprehensible to a wider range of audiences.¹⁹ With improved accessibility and comprehension of contract terms, visualization promotes greater

Economics, 58 LOY. L. REV. 615, 621–22, 629, 642, 646–49 (2012) [hereinafter Murray, *The Great Recession*]; Michael D. Murray, *Leaping Language and Cultural Barriers with Visual Legal Rhetoric*, 49 U.S.F.L. REV. F. 61, 62, 67–68 (2015) [hereinafter Murray, *Leaping Language*]; Michael D. Murray, *Mise en Scène and the Decisive Moment of Visual Legal Rhetoric*, 68 U. KAN. L. REV. 241, 251–58 (2019) [hereinafter Murray, *Mise en Scène*]; Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, 68 J. LEGAL EDUC. 64, 65, 72–73 (2018) [hereinafter Murray, *Sharpest Tool*]; Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 LEGAL WRITING: J. LEGAL WRITING INST. 185, 186, 193–200 (2016) [hereinafter Murray, *Visual Rhetoric: Topics and Tropes*].

¹⁵ On data visualization and rhetorical topics of arrangement, see Murray, *After the Great Recession*, *supra* note 14, at 905–23; Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 107–08, 143; Murray, *Leaping Language*, *supra* note 14, at 64, 66–69; Murray, *Mise en Scène*, *supra* note 14, at 249–50, 287–303; Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 209–18.

¹⁶ On visual rhetoric and modern argument theory, see Murray, *After the Great Recession*, *supra* note 14, at 905–18, 932; Murray, *The Great Recession*, *supra* note 14, at 620, 632; Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 197–98, 201.

¹⁷ Regarding visual literacy, see sources cited *infra* notes 26, 35, 38–43, 50, 54–55, 57, 59.

¹⁸ Visual legal rhetoric is the use of graphics, photographs, and other depictions for communication, for construction of knowledge and understanding, and ultimately for persuasion of the truth and rightness of a legal communication. See Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 109; Murray, *Leaping Language*, *supra* note 14, at 67.

¹⁹ Berger-Wallisier et al., *supra* note 10, at 57–58; Mitchell, *supra* note 8, at 831–32.

acceptance of contracts. This would lead not only to better and more predictable contract performance and enforcement, but also to stronger relationships between parties.²⁰ Even when contracting parties are skilled and knowledgeable in the business activity which is the focus of the contract, differences in language and culture pose challenges to communication in developing and executing it. Cultural and linguistic diversity is increasing in many developed and developing nations.²¹ While diversity in language and culture may inhibit verbal communication, developments in many fields indicate that visual communication has the ability to overcome many of these barriers.²²

Visuals are an effective tool to expand communication in contracts because humans “are neurologically wired with an overwhelmingly visual sensory ability.”²³ In addition, “[r]esearch estimates that eighty to eighty-five percent of our perception, learning, cognition, and activities are mediated through vision.”²⁴ Visuals are not only faster

²⁰ Mitchell, *supra* note 8, at 832–33. Studies have measured significant improvement in accessibility and comprehension of contract terms through the use of cartoons and other forms of visualization. See Marietjie Botes, *Using Comics to Communicate Legal Contract Cancellation*, 7 COMICS GRID 1, 14 (2017) (reporting study of increase in accessibility and comprehension of contract provision when expressed in cartoon form); Stefania Passera, *Enhancing Contract Usability and User Experience Through Visualization - An Experimental Evaluation*, 16TH INT’L CONF. ON INFO. VISUALISATION 376, 379–80 (2012) (reporting study of increase in accessibility and comprehension of contract terms after visualization was employed in the contract design).

²¹ UNESCO WORLD REPORT: INVESTING IN CULTURAL DIVERSITY AND INTERCULTURAL DIALOGUE 13–14 (2009); Rich Morin, *The Most (and Least) Culturally Diverse Countries in the World*, PEW RES. CTR. (July 18, 2013), <https://www.pewresearch.org/fact-tank/2013/07/18/the-most-and-least-culturally-diverse-countries-in-the-world/> [<https://perma.cc/98UJ-AJT6>].

²² See generally Mitchell, *supra* note 8, at 816–20; Murray, *Leaping Language*, *supra* note 14; Stefania Passera & Helena Haapio, *Transforming Contracts from Legal Rules to User-centered Communication Tools: A Human-Information Interaction Challenge*, 1 COMM. DESIGN Q. 38, 38 (2013).

²³ SUNNI BROWN, THE DOODLE REVOLUTION: UNLOCK THE POWER TO THINK DIFFERENTLY 222 (2014). See Paula Dewan, *Words Versus Pictures: Leveraging the Research on Visual Communication*, 10 PARTNERSHIP: CAN. J. LIBR. & INFO. PRAC. & RES. 1, 2 (2015); Christophe Morin, *The Biological Basis of Visual Perception*, LINKEDIN (Mar. 23, 2016), <https://www.linkedin.com/pulse/biologic-al-basis-visual-perception-christophe-morin-ph-d-> [<https://perma.cc/8DSD-RA2N>].

²⁴ Thomas Politzer, *Vision Is Our Dominant Sense*, BRAINLINE (Nov. 6, 2008), <https://www.brainline.org/article/vision-our-dominant-sense> [<https://perma.cc/JLL7-KLYU>].

than words in legal or non-legal communication, they are better than words.²⁵ Highly representational images (particularly photographs, film, and video that is non-animated and non-computer generated imagery (CGI)) draw nearly instantaneous comprehension and acceptance in viewers because the brain is hard-wired to process visual input quickly and efficiently.²⁶ The eyes are directly connected to the brain through the optic nerve, and sensation in the eyes follows a direct pathway to perception in the brain.²⁷ “[I]n visual perception the viewer’s imagination organizes and embellishes the mass of sensations that appear to come from ‘out there’ to ‘in here,’ as the viewer persuades

²⁵ Studies have found that the brain processes visual images roughly 60,000 times faster than it processes text. TIMOTHY GANGWER, VISUAL IMPACT, VISUAL TEACHING: USING IMAGES TO STRENGTHEN LEARNING 24 (2005); Daniel Newman, *Why Visual Content Will Explode in 2015*, FORBES (Dec. 23, 2014, 9:17 AM), <https://www.forbes.com/sites/danielnewman/2014/12/23/why-visual-content-will-explode-in-2015/> [<https://perma.cc/ZHJ5-S5VE>]. See also MICHAEL S. GAZZANIGA, NATURE’S MIND: THE BIOLOGICAL ROOTS OF THINKING, EMOTIONS, SEXUALITY, LANGUAGE, AND INTELLIGENCE 95–102 (1992); ALLEN NEWELL, UNIFIED THEORIES OF COGNITION 24 (1990) Mirjam Keetels & Jean Vroomen, *Perception of Synchrony Between the Senses*, in THE NEURAL BASES OF MULTISENSORY PROCESSES 147, 148 (Micah M. Murray & Mark T. Wallace eds., 2012) (noting that sounds “travel through air much slower than visual information”); Mirjam Keetels & Jean Vroomen, *The Role of Spatial Disparity and Hemifields in Audio-Visual Temporal Order Judgments*, 167 EXPERIMENTAL BRAIN RES. 635, 635–40 (2005); Douglas R. Vogel et al., *Persuasion and the Role of Visual Presentation Support: The UM/3M Study* (Mgmt. Info. Sys. Res. Ctr., Working Paper No. MISRC-WP-86-11, 1986), <http://misrc.umn.edu/workingpapers/fullpapers/1986/8611.pdf> [<https://perma.cc/5SED-UDXX>].

²⁶ See ANN MARIE SEWARD BARRY, VISUAL INTELLIGENCE: PERCEPTION, IMAGE, AND MANIPULATION IN VISUAL COMMUNICATION 15 (1997); DONIS A. DONDIS, A PRIMER OF VISUAL LITERACY 18 (1974); Nevzat Özel, *Developing Visual Literacy Skills Through Library Instructions*, in INFORMATION VISUALIZATION TECHNIQUES IN THE SOCIAL SCIENCES AND HUMANITIES 32, 37 (Veslava Osinska & Grzegorz Osinski eds., 2018).

²⁷ See JOHN E. DOWLING, THE RETINA: AN APPROACHABLE PART OF THE BRAIN 8 (1987); Robert Efron, *What is Perception?*, in 4 BOSTON STUDIES IN THE PHILOSOPHY OF SCIENCE 137, 139–41 (R.S. Cohen & M.W. Wartofsky eds., 1969); Lies De Groef & Maria Francesca Cordeiro, *Is the Eye an Extension of the Brain in Central Nervous System Disease?*, 34 J. OCULAR PHARMACOLOGY & THERAPEUTICS 129, 129 (2018). For further information on the connection of the retina to brain functioning and cognition, see generally JAMES T. ENNS, THE THINKING EYE, THE SEEING BRAIN: EXPLORATIONS IN VISUAL COGNITION (2004).

herself of the meaning of various features of the object she is seeing.”²⁸ Along this pathway, the brain has developed heuristics referred to as naïve realism,²⁹ or cognitive illiberalism,³⁰ which ensure that the input of highly representational images is sticky and particularly convincing.³¹ The brain is not only highly receptive to visuals,³² it stubbornly clings to the lessons learned from them.³³

²⁸ CAROL M. ROSE, *Seeing Property*, in PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY, AND RHETORIC OF OWNERSHIP 267, 278 (1994).

²⁹ See W.J.T. MITCHELL, PICTURE THEORY: ESSAYS ON VERBAL AND VISUAL REPRESENTATION 282, 307 (1994); Dale W. Griffin & Lee Ross, *Subjective Construal, Social Inference, and Human Misunderstanding*, 24 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 319 (1991); Varda Liberman et al., *Naïve Realism and Capturing the “Wisdom of Dyads”*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 507, 507 (2012); Lee Ross & Donna Shestowsky, *Contemporary Psychology’s Challenges to Legal Theory and Practice*, 97 NW. U. L. REV. 1081, 1090 (2003); Lee Ross & Andrew Ward, *Naïve Realism: Implications for Social Conflict and Misunderstanding* 103 (Stanford Ctr. on Conflict & Negotiation, Working Paper No. 48, 1995). See also Adam Benforado & Jon Hanson, *Naïve Cynicism: Maintaining False Perceptions in Policy Debates*, 57 EMORY L.J. 499, 513–14 (2008); Bryan D. Lammon, *What We Talk About When We Talk About Ideology: Judicial Politics Scholarship and Naïve Legal Realism*, 83 ST. JOHN’S L. REV. 231, 241 (2009); Natalie Frank, *Psychology and the Construction of Reality: Challenges to Naïve Realism*, OWLCATION (Sept. 3, 2018), <https://owlcation.com/humanities/Psychology-and-the-Construction-of-Reality-Challenges-to-Naive-Realism> [<https://perma.cc/H55D-2B4U>].

³⁰ Dan M. Kahan et al., *“They Saw a Protest”: Cognitive Illiberalism and the Speech-Conduct Distinction*, 64 STAN. L. REV. 851, 854, 861–62, 885–88 (2012); Dan M. Kahan et al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 843, 852–54 (2009). See also BROOKE A. ACKERLY, JUST RESPONSIBILITY: A HUMAN RIGHTS THEORY OF GLOBAL JUSTICE 104–27 (2018) (discussing cognitive constraints on individuals’ ability to perceive injustice).

³¹ See COLIN WARE, INFORMATION VISUALIZATION: PERCEPTION FOR DESIGN 2–6 (3d ed. 2012); Sabrina Bresciani, *Do You See What I See? The Effect of Culture on the Reception of Visual Communication*, in THEORETICAL TURBULENCE IN INTERCULTURAL COMMUNICATION STUDIES 81, 82 (Saila Poutiainen ed., 2014) (focusing on visuals in intercultural communication); GANGWER, *supra* note 25, at 24–25; Özel, *supra* note 26, at 37.

³² See sources cited *supra* notes 23–26.

³³ See DANIEL KAHNEMAN, THINKING, FAST AND SLOW 28 (2011). Daniel Kahneman, the Nobel Prize-winning cognitive psychologist and brain scientist, has described the process as the “System 2 Brain” (cognitive brain functions) overcoming the workings of the “System 1 Brain” (automatic, non-cognitive brain functions) that lead to rapid decisions and cognition, as well as to biases, heuristics, predictions, assessments, and judgments that are stubbornly adhered to and not easily overcome by logic and cognitive assessment. *Id.* at 21–25, 28.

A shift in focus toward more visual and less verbal communication in contracts coincides with changes in how audiences within the developed world receive and process information in the twenty-first century.³⁴ Observers have noted that “[v]isual images are becoming the predominant form of communication across a range of learning and teaching resources, delivered across a range of media and formats” and “the ratio of visual image to text is increasing.”³⁵ People in the contemporary world are living in a time of multimedia delivery and consumption of information and entertainment, and almost all media has a visual component.³⁶ Visual media are becoming the norm in day-to-day communication, and the medium that they replace is the static, verbal, textual medium known as the printed word.³⁷

III. VISUAL LITERACY AND THE PROCESS OF VISUALIZATION IN PROACTIVE LAW AND LEGAL DESIGN

“Visual literacy refers to a group of vision-competencies a human being can develop by seeing and at the same time having and integrating other sensory experiences.”³⁸ “Visual literacy [considers] what is seen with the eye and what is ‘seen’ with the mind.”³⁹ In general terms, “[v]isual literacy includes the group of skills which enable an individual ‘to understand and use visuals for intentionally communicating with

³⁴ See RICK WILLIAMS & JULIANNE NEWTON, *VISUAL COMMUNICATION: INTEGRATING MEDIA, ART, AND SCIENCE* xv-xvi (2007); Sherwin et al., *supra* note 9, at 230–34 (discussing how visuals are becoming more useful for communication in the legal profession).

³⁵ ANNE BAMFORD, *THE VISUAL LITERACY WHITE PAPER 2* (2003); Aric Sigman, *Does Not Compute, Revisited: Screen Technology in Early Years Education, in TOO MUCH TOO SOON?: EARLY LEARNING AND THE EROSION OF CHILDHOOD* 265, 266 (Richard House ed. 2011). See also FRANK SERAFINI, *READING THE VISUAL: AN INTRODUCTION TO TEACHING MULTIMODAL LITERACY* 1-3 (2014).

³⁶ See sources cited *supra* notes 23–26, 31.

³⁷ See generally PETER HINSSSEN, *THE NEW NORMAL: EXPLORE THE LIMITS OF THE DIGITAL WORLD* 13–14 (2011) (predicting the highly-visual digital world as being “our new normal”); Nicholas A. Kosar, *The New Normal in Professional Services Marketing*, *MARKETINGPROFS* (Nov. 7, 2013), <http://www.marketingprofs.com/articles/2013/12017/the-new-normal-in-professional-services-marketing#ixzz3IykkfRtj> [<https://perma.cc/RU37-YNFY>] (referencing statistics on visual and multimedia consumption by professionals).

³⁸ John L. Debes, *The Loom of Visual Literacy*, 14 *AUDIOVISUAL INSTRUCTION* 27 (1969); Maria Avgerinou & John Ericson, *A Review of the Concept of Visual Literacy*, 28 *BRIT. J. EDUC. TECH.* 280, 281 (1997).

³⁹ BAMFORD, *supra* note 35, at 1.

others.”⁴⁰ However, visual literacy is not just about viewing images—it encompasses the ability to design (envision), write, and create visual images.⁴¹ Visual perception and visual literacy are learned skills,⁴² and the education is informed and influenced by culture and community.⁴³

The visualization movement in Proactive Law has moved from the study of visualization theory to the practical design of documents and instruments, which is very similar to the work of the Legal Design movement in improving legal works through visualization techniques.⁴⁴ The contemporary visual communication norm puts high demand on attorneys and other communicators of legal information to design effective documents following the principles of visual rhetoric and persuasion.⁴⁵ Legal design firms and teams create forward-looking

⁴⁰ *Id.* (quoting Lynna J. Ausburn & Floyd B. Ausburn, *Visual Literacy: Background, Theory and Practice*, 15 PROGRAMMED LEARNING & EDUC. TECH. 291 (1978)).

⁴¹ See Kristen Harrison, *What is Visual Literacy*, VISUAL LITERACY TODAY, <https://visualliteracytoday.org/what-is-visual-literacy/> [<https://perma.cc/FMD3-DXDM>]. See also John A. Hortin, *Visual Literacy and Visual Thinking*, in CONTRIBUTIONS TO THE STUDY OF VISUAL LITERACY 99 (L. Burbank & D. Pett eds., 1983) (“Visual literacy is the ability to understand (read) and use (write) images and to think and learn in terms of images, i.e., to think visually.”).

⁴² See ROBERT B. BURNS & CLIFFORD B. DOBSON, INTRODUCTORY PSYCHOLOGY 406–09 (1984); AMY E. HERMAN, VISUAL INTELLIGENCE: SHARPEN YOUR PERCEPTION, CHANGE YOUR LIFE xv, 31 (2016); LEARNING TO SEE (BETTER): IMPROVING VISUAL DEFICITS WITH PERCEPTUAL LEARNING in FRONTIERS IN PSYCHOLOGY 2 (Gianluca Campana & Marcello Maniglia eds., 2015).

⁴³ That community and culture play a role in visual perception and comprehension of images has been a staple of cognitive development theory for decades. See PAUL MARTIN LESTER, VISUAL COMMUNICATION: IMAGES WITH MESSAGES 69–70 (6th ed. 2014); HANDBOOK OF VISUAL COMMUNICATION: THEORY, METHODS, AND MEDIA chaps. 29–30 (Ken Smith et al. eds., 2005). Neuroscience tests the theory that culture influences visual perception and cognition of images, and in fact, there is a sub-field of neuroscience referred to as cultural neuroscience and neuroanthropology. See generally CRITICAL NEUROSCIENCE: A HANDBOOK OF THE SOCIAL AND CULTURAL CONTEXTS OF NEUROSCIENCE (Suparna Choudhury & Jan Slaby eds., 2012); THE ENCULTURED BRAIN: AN INTRODUCTION TO NEUROANTHROPOLOGY (Daniel H. Lende & Greg Downey eds., 2012); THE OXFORD HANDBOOK OF CULTURAL NEUROSCIENCE 53 (Joan Y. Chiao et al. eds., 2016).

⁴⁴ See Berger-Walliser et al., *supra* note 9, at 348–50; Mitchell, *supra* note 8, at 816–20; Passera & Haapio, *supra* note 22, at 38–39, 41.

⁴⁵ See Patricia Redsicker, *6 Marketing Trends to Watch in 2013: New Research*, SOCIAL MEDIA EXAMINER (July 23, 2013), <http://www.socialmediaexaminer.com/marketing-trends-2013/> [<https://perma.cc/3D98-2BQ4?type=image>] (“Keep in mind that capturing your customers’ attention will become harder as media multitasking becomes the new normal. Your digital content will need to be

documents and instruments that are simplified, transparent, and more accessible to audiences that have greater visual literacy than verbal literacy.

To understand non-verbal communication through images, it is important to understand what an “image” is: *a sight which has been created, recreated, or reproduced*.⁴⁶ Images are authored, meaning they are human-made or human-designed appearances that have been detached from the place and time of the concepts they create, depict, or recreate.⁴⁷ Because they are authored, images embody the author’s way of seeing.⁴⁸ For example, a photograph is not a mechanical record of the world “as it is,” but rather, it is an author’s creation of an image that embodies and expresses the author’s way of seeing a part of the world.⁴⁹ As such, each image is distinguishable from the countless other ways that this part of the world could be envisioned and created in other images.

The visualization movement in Proactive Law and Legal Design require a fairly high level of visual literacy for the design of documents. The creators of legal documents in this movement do not only translate verbal text into visual communication, but often must envision purely visual methods of communicating a legal concept.⁵⁰ This is because communication through visual imagery is not simply verbal

smarter, more creative and more visual to connect and engage today’s audiences.”). See also Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 107–09, 122–26; Murray, *Mise en Scène*, *supra* note 14, at 247–54; Sherwin et al., *supra* note 9, at 230–34.

⁴⁶ See JOHN BERGER, *WAYS OF SEEING* 9–10 (Penguin Books 1973) (1972); *COMMUNICATION STUDIES: THE ESSENTIAL RESOURCE* 11 (Andrew Beck et al. eds., 2004); SUNIL MANGHANI, *IMAGE STUDIES: THEORY AND PRACTICE* xxv (2013).

⁴⁷ See BERGER, *supra* note 46, at 9–10; MANGHANI, *supra* note 46 at xxv.

⁴⁸ BERGER, *supra* note 46, at 9–10; Murray, *Mise en Scène*, *supra* note 14, at 244.

⁴⁹ See sources cited *supra* note 46. See also *Burrow-Giles Lithographic Co. v. Saroni*, 111 U.S. 53, 58 (1884) (discussing the elements of authorship of visual media); Michael D. Murray, *Post-Myriad Genetics Copyright of Synthetic Biology and Living Media*, 10 OKLA. J.L. & TECH. 1, 7, 39–42 (2014) (discussing the elements and protections of authorship of visual media).

⁵⁰ As discussed in this section, visual literacy encompasses reading and writing skills regarding visual works, and often the Gestalt of the work exceeds a simple verbal translation of the contents. See, e.g., J. Anthony Blair, *The Possibility and Actuality of Visual Arguments*, 33 ARGUMENTATION & ADVOC. 23, 25 (1996); Murray, *Mise en Scène*, *supra* note 14, at 244, 288.

communication by other means.⁵¹ “Visual communication . . . occurs without the mediation of words or language in the literal sense [W]hat is communicated visually can be described verbally [h]owever, such description or translation is not a reduction of the visual to the verbal. The visual communication stands on its own feet.”⁵² Therefore, a large part of visual literacy is the ability to create and derive meaning from visual images.⁵³

The following original and most-repeated conception of what it means to be “visually literate” was provided by John L. Debes, the Director of the Center for Visual Literacy at the University of Rochester and Coordinator of Visual Learning of the Eastman Kodak Company,⁵⁴ who also co-founded the International Visual Literacy Association⁵⁵:

[A] visually literate person [is able] to discriminate and interpret the visible actions, objects, and symbols, natural or man-made, that he encounters in his environment. Through the creative use of these competencies, he is able to communicate with others. Through the appreciative use of these competencies, he is able to comprehend and enjoy the masterworks of visual communication.⁵⁶

One important goal of the visualization movement is to carry out Debes’ concept by testing and critiquing examples of visual legal communication in legal instruments in order to develop the visual literacy of authors, thereby improving their design, creation, and selection of visual devices for legal communication. Images in static media, such as diagrams, pictures, and photographs, as well as images in active media, such as television, video, and film have a visual “language” that can be read and understood by even moderately visually

⁵¹ Blair, *supra* note 50, at 25–26.

⁵² *Id.* at 25. (“Visual communication may entail the use of conventions . . . [of] visual symbolism . . . however these conventions are not a language in the literal sense. There is no grammar, just signs and symbols: conventionalized images. Communication through visual imagery is not verbal.”).

⁵³ BAMFORD, *supra* note 35, at 1.

⁵⁴ John L. Debes, *John L. Debes III Collection 1964-1985*, ARIZ. ARCHIVES ONLINE, <http://www.azarchivesonline.org/xtf/view?docId=ead/asu/debes.xml> [<https://perma.cc/X326-EZ5B>].

⁵⁵ See *About Us*, INT’L VISUAL LITERACY ASS’N (2020), <https://ivla.org/about-us/> [<https://perma.cc/9XB6-C27C>].

⁵⁶ Debes, *supra* note 38, at 27.

literate viewers.⁵⁷ But the goal of visual literacy training is for the law-trained communicator to become a better designer and author of images not only to interpret others' images but to develop, create, or select visual devices that illustrate or replace words as a principal part of the communication.⁵⁸ Visual literacy and visual cultural literacy in the development, creation, and selection of images should be considered essential parts of the analysis of legal communication containing a visual component.⁵⁹

The power behind visualization is the power of visuals themselves. Visual images⁶⁰ can convey more information than words alone, and communicate the information faster, more effectively, and with greater impact on the audience than strictly verbal methods of communication.⁶¹ Visuals in contracts call upon us to draw from images in our visual memory⁶² that may be traced to the global visual culture⁶³ with its collective understanding of law, contracts, and legal

⁵⁷ See, e.g., *FILM THEORY AND CRITICISM: INTRODUCTORY READINGS 1–7* (Leo Braudy & Marshall Cohen eds., 5th ed. 1999) (discussing the ways in which film is a language); *RICHARD HOWELLS & JOAQUIM NEGREIROS, VISUAL CULTURE* xii (2d ed. 2012) (discussing the methods of interpretation of images obtained from the study of “iconography, form, art history, ideology, semiotics and hermeneutics”).

⁵⁸ See *HOWELLS & NEGREIROS, supra* note 57, at 1.

⁵⁹ *Id.* at ix, xi–xii (the same effort should be invested in the study and mastery of “reading” visuals as is invested in reading verbal texts); Naomi Mezey, *The Image Cannot Speak for Itself: Film, Summary Judgment, and Visual Literacy*, 48 *VAL. U. L. REV.* 1, 3–4 (2013); Christina O. Spiesel et al., *Law in the Age of Images: The Challenge of Visual Literacy*, in *CONTEMPORARY ISSUES OF THE SEMIOTICS OF LAW: CULTURAL AND SYMBOLIC ANALYSES OF LAW IN A GLOBAL CONTEXT* 231, 237 (Anne Wagner et al. eds., 2005) (“[V]isual stories use a different code for making meaning than do written texts or oral advocacy They are . . . rich in emotional appeal, which is deeply tied to the communicative power of imagery.”).

⁶⁰ In this Article, I will use the term “images,” “visuals,” and “visual images” interchangeably.

⁶¹ See sources cited *supra* notes 20–30.

⁶² See *HOWELLS & NEGREIROS, supra* note 57, at xi.

⁶³ See generally MARGARET DIKOVITSKAYA, *VISUAL CULTURE: THE STUDY OF THE VISUAL AFTER THE CULTURAL TURN* 59–60 (2005); NICHOLAS MIRZOEFF, *AN INTRODUCTION TO VISUAL CULTURE* 1–31 (1999); *VISUAL CULTURE* (Chris Jenks ed., 1995); *VISUAL CULTURE: IMAGES AND INTERPRETATIONS* (Norman Bryson et al. eds., 1994).

agreements. Thus, visuals potentially connect us to a global visual commons⁶⁴ in the reading and comprehension of contracts.

IV. THE LENS OF THE ANALYSIS: VISUAL LITERACY CONTEXTS, VISUAL RHETORICAL TOPICS OF INVENTION AND ARRANGEMENT, AND MISE EN SCÈNE PRINCIPLES

This Article applies the methodology I have developed for the analysis of highly visual multimodal works (employing both images and text in the same work).⁶⁵ The methodology is derived from visual

⁶⁴ See NICHOLAS MIRZOEFF, HOW TO SEE THE WORLD: AN INTRODUCTION TO IMAGES, FROM SELF-PORTRAITS TO SELFIES, MAPS TO MOVIES, AND MORE 94–97 (2016) [hereinafter MIRZOEFF, HOW TO SEE THE WORLD]; Nicholas Mirzoeff, *The Visual Commons: Counter-Power in Photography from Slavery to Occupy Wall Street*, in IMAGE OPERATIONS: VISUAL MEDIA AND POLITICAL CONFLICT 208, 208–17 (Jens Eder & Charlotte Klonk eds., 2017). See also Jussi Parikka, *The City and the City: London 2012 Visual (Un)Commons*, in POSTDIGITAL AESTHETICS: ART, COMPUTATION AND DESIGN 203, 203–18 (David M. Berry & Michael Dieter eds., 2015).

⁶⁵ I will employ the method of analysis described in Michael D. Murray, *A New Methodology for the Analysis of Visuals in Legal Works* (forthcoming 2021) (manuscript at 7–11), <https://ssrn.com/abstract=3657663> [<https://perma.cc/YY9B-GQGE>] [hereinafter Murray, *New Methodology for Analysis of Visuals*]. This method is used in each of my current works: Michael D. Murray, *Diagrammatics and the Proactive Visualization of Legal Information*, 43 U. ARK. LITTLE ROCK L. REV. (forthcoming 2021) [hereinafter Murray, *Diagrammatics*]; Murray, *Toward a Universal Visual Language*, *supra* note 13. On the cognitive and communication theory involving multimodal works, see generally ROLAND BARTHES, IMAGE-MUSIC-TEXT 39–41 (1977); JOHN BATEMAN ET AL., MULTIMODALITY: FOUNDATIONS, RESEARCH AND ANALYSIS – A PROBLEM-ORIENTED INTRODUCTION 47–51 (2017); JOHN A. BATEMAN, TEXT AND IMAGE: A CRITICAL INTRODUCTION TO THE VISUAL/VERBAL DIVIDE 5–49 (2014) [hereinafter BATEMAN, TEXT AND IMAGE]; GUNTHER KRESS & THEO VAN LEEUWEN, MULTIMODAL DISCOURSE: THE MODES AND MEDIA OF CONTEMPORARY COMMUNICATION (2001) [hereinafter KRESS & LEEUWEN, MULTIMODAL DISCOURSE]; GUNTHER KRESS & THEO VAN LEEUWEN, READING IMAGES: THE GRAMMAR OF VISUAL DESIGN 15–18 (2d ed. 2006) [hereinafter KRESS & LEEUWEN, READING IMAGES].

literacy studies,⁶⁶ visual rhetoric,⁶⁷ and mise en scène principles.⁶⁸ Specifically, for each example, I will employ the following steps of analysis⁶⁹:

Methodology for Analysis of Visuals in Legal Works	
Step	Description
A	Immediate Visual Context
1.	Analysis of Meaning
2.	Taxonomy of Purpose and Function
B	Immediate Verbal Context
C	Visual Cultural Context
D	Mise en Scène and the Rhetorical Topic of Arrangement
E	Visual Rhetoric and the Ethical and Professional Propriety of the Work

⁶⁶ Regarding visual literacy, *see* sources cited *supra* notes 26, 35, 38–43, 50, 54–55, 58, 60.

⁶⁷ Regarding visual legal rhetoric, *see, e.g.*, Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237, 264–66, 269 (2010); Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 14, at 108, 124–30, 142, 146, 149, 152–54; Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 186, 193–200; Richard K. Sherwin et al., *Law in the Digital Age*, *supra* note 10, at 260; Richard K. Sherwin, *A Manifesto for Visual Legal Realism*, 40 LOY. L.A. L. REV. 719 (2007); Kathryn M. Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010).

⁶⁸ Mise en scène literally translates from the French as “setting the stage” in the sense of staging or placing a scene in a production, but with regard to visual media of all kinds, it refers to the elements of authorship of a visual, including framing, composition, perspective and point of view, lighting, and visual design. *See* MICHAEL ASIMOW & SHANNON MADER, *LAW AND POPULAR CULTURE: A COURSE BOOK* 11, 14 (2007); DAVID BORDWELL & KRISTIN THOMPSON, *FILM ART: AN INTRODUCTION* 112 (8th ed. 2008); TIMOTHY CORRIGAN & PATRICIA WHITE, *THE FILM EXPERIENCE: AN INTRODUCTION* 64 (3d ed. 2012); JILL MARSHALL & ANGELA WERNDLY, *THE LANGUAGE OF TELEVISION* 84 (2002); Murray, *Mise en Scène*, *supra* note 14, at 251–58; Kimberlianne Podlas, *The Tales Television Tells: Understanding the Nomos Through Television*, 13 TEX. WESLEYAN L. REV. 31, 41 (2006); Gabe Moura, *Mise-en-Scène*, *ELEMENTS OF CINEMA: BLOG & PODCAST* (July 1, 2014), <http://www.elementsofcinema.com/directing/mise-en-scene-in-films/> [<https://perma.cc/3TML-TAGD>].

⁶⁹ Murray, *New Methodology for Analysis of Visuals*, *supra* note 65 (manuscript at 7–11).

A. Immediate Visual Context

Immediate visual context examines the communicative functioning of the visuals used in a work separate from any verbal components.⁷⁰ This step (and the terminology of “immediate visual context”) is derived directly from visual literacy studies.⁷¹ The visual context may contain a single image, a collage, or a sequence of images designed to tell a sequential narrative.⁷²

The analysis of immediate visual context has two parts: (1) analyzing the meaning of the visuals in the work,⁷³ and (2) identifying the roles played by the visuals within the taxonomy of function and purpose for visuals in a multimodal work.

1. Analysis of Meaning

In each example, I will attempt to discern the plain meaning and message of the visuals within the context of the narrative of the work in which it appears.⁷⁴ Courts have applied a plain meaning analysis to visuals in contracts, transactional documents, and other legal works.⁷⁵

⁷⁰ See Murray, *Mise en Scène*, *supra* note 14, at 259–312. See also sources cited *supra* notes 25 and 37–42.

⁷¹ See BARRY, *supra* note 26, at 15; DONDIS, *supra* note 26, at 18; GANGWER, *supra* note 25, at 24; WARE, *supra* note 31, at 2–6; Bresciani, *supra* note 31, at 82; Özel, *supra* note 26, at 37; Glenda C. Rakes, *Teaching Visual Literacy in a Multimedia Age*, 43 *TECHTRENDS* 14, 14–18 (1999).

⁷² Sequential narration (or sequential storytelling) is the format for cartoon and comic strip or comic book stories. See NEIL COHN, *THE VISUAL LANGUAGE OF COMICS: INTRODUCTION TO THE STRUCTURE AND COGNITION OF SEQUENTIAL IMAGES 1* (2013); WILL EISNER, *COMICS AND SEQUENTIAL ART 5* (2006); WILL EISNER, *GRAPHIC STORYTELLING AND VISUAL NARRATIVE: PRINCIPLES AND PRACTICES FROM THE LEGENDARY CARTOONIST WILL EISNER xvii* (Denis Kitchen ed., 2008); SCOTT MCCLLOUD, *UNDERSTANDING COMICS: THE INVISIBLE ART 5–9* (1994). The efficacy of the sequential narrative devices used (e.g., panels) will be evaluated in Step A of the analysis. The arrangement and positioning of the visuals in conjunction with other elements of the work, such as the text, will be analyzed in Step D.

⁷³ Murray, *New Methodology for Analysis of Visuals*, *supra* note 65 (manuscript at 7–9, 11–15).

⁷⁴ *Id.* (manuscript at 8–9, 15).

⁷⁵ See *United States v. Courtade*, 929 F.3d 186, 192 (4th Cir. 2019) (“we can dispose of this case based on the objective characteristics of the video alone.”), *cert. denied*, 140 S. Ct. 907 (2020); *Leader Commc’ns, Inc. v. Fed. Aviation Admin.*, 757 F. App’x 763, 769 (10th Cir. 2018) (applying plain meaning rule to “graphics, illustrations, and charts” in contract proposals); *United States v. Corp*, 668 F.3d 379, 389 (6th Cir. 2012) (“the court must determine, based on the contents within

Copyright, trademark, and patent law relies on the courts' and the fact finders' ability to examine visual works on their face and discern the content, meaning, and all other relevant aspects of the works.⁷⁶ Commentators have noted that, "[the] plain meaning rule comes as close as possible to representing the current prevailing interpretive method for images in law[.]"⁷⁷ The plain meaning rule also applies to litigation

the four corners of the image, [what] the circumstances being portrayed are"); *Blaylock v. City of Philadelphia*, 504 F.3d 405, 414 (3d Cir. 2007) (courts examine photographs on their face to determine if the photographs contradict a party's account of events); *Kasparian v. AvalonBay Cmtys.*, 66 Cal. Rptr. 3d 885, 894 (Ct. App. 2007) ("It is incumbent on the reviewing court to examine the photographs for itself and make its own determinations."). *See also* *City of Caruthersville v. Huffman*, 171 S.W. 323, 325 (Mo. 1914) ("In construing plats . . . , [courts] must give effect to the plain meaning and intent [that] they exhibit by their outlines as well as by their words."); *Weis v. Miller*, 805 S.W.2d 683, 684 (Mo. Ct. App. 1990) (discussing how the "language on the plat" in question was "clear and unambiguous"); 62 C.J.S. *Municipal Corporations* § 104 (2020).

⁷⁶ In copyright law, courts make substantive analyses of visual works by examining the works on their face. *E.g.*, *Tresóna Multimedia, LLC v. Burbank High Sch. Vocal Music Ass'n*, 953 F.3d 638, 650 (9th Cir. 2020). "In analyzing the second [fair use] factor, 'the nature of the copyrighted work,' [courts] examine 'whether the work is informational or creative.'" *Id.* (quoting *Worldwide Church of God v. Phila. Church of God, Inc.*, 227 F.3d 1110, 1118 (9th Cir. 2000)). Under the third fair use factor, the courts "examine[] whether 'the amount and substantiality of the portion used in relation to the copyrighted work as a whole . . . [is] reasonable in relation to the purpose of the copying.'" *Id.* (quoting *Campbell v. Acuff-Rose Music Inc.*, 510 U.S. 569, 586 (1994)). Trademarks, including visual and pictorial marks, are evaluated on the basis of their appearance, sound, and meaning determined by examining the mark itself. *E.g.*, *4SEMO.com Inc. v. Southern Ill. Storm Shelters, Inc.*, 939 F.3d 905, 910–11 (7th Cir. 2019) (analyzing the appearance of the two competing marks on their face); *Affliction Holdings, LLC v. Utah Vap or Smoke, LLC*, 935 F.3d 1112, 1115 (10th Cir. 2019) (utilizing various factors to evaluate the similarities in the appearance of the marks on their face). In patent law, the courts examine drawings, figures, and illustrations on their face in the process of claim construction. *Prima Tek II, L.L.C. v. Polypap, S.A.R.L.*, 318 F.3d 1143, 1148 (Fed. Cir. 2003) ("After identifying the plain meaning of a disputed claim term, the court examines the written description *and the drawings* to determine whether use of that term is consistent with the ordinary meaning of the term.") (emphasis added); *Day Int'l, Inc. v. Reeves Bros.*, 260 F.3d 1343, 1348 (Fed. Cir. 2001) (courts "examine the remaining intrinsic evidence" to discern whether the drawing holds a meaning "contrary to its ordinary meaning").

⁷⁷ Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1778 (2014). *See also* James Durling, Comment, *Diagramming Interpretation*, 35 YALE J. ON REG. 325, 335 (2018) (the court may visually diagram a contract to

documents including exhibits⁷⁸ and photographic and audiovisual works submitted in a legal proceeding.⁷⁹ Nevertheless, with visuals, sometimes the meaning is more obvious and accessible to viewers because of their background and life experience. Visuals have a great capacity for communication, but because the full interpretation of a visual often relies on a viewer's visual cultural experience, the analysis should look for more subtle, sometimes nuanced, and sometimes ambiguous meanings.⁸⁰ Where the meaning appears to be ambiguous, or even contradictory from the text, I will note the ambiguity or the contradiction.⁸¹

2. Taxonomy of Purpose and Function

Visuals can play many roles and serve various functions in a work beyond graphs or illustrations. The second part of the immediate visual context analysis places the visual elements of the work within a taxonomy of the purpose and function of visuals in a multimodal work, known as the Marsh and Domas White taxonomy.⁸² This taxonomy was further refined into the following concept map created by Annola, Haapio, and Koskela⁸³:

interpret its meaning); Mitchell, *supra* note 8, at 838–42 (stating factors regarding why courts are equipped to interpret images in contracts).

⁷⁸ *Ginsberg v. Lennar Fla. Holdings*, 645 So. 2d 490, 494 (Fla. Dist. Ct. App. 1994). *See also* *Griffin Indus. v. Irvin*, 496 F.3d 1189, 1205–06 (11th Cir. 2007).

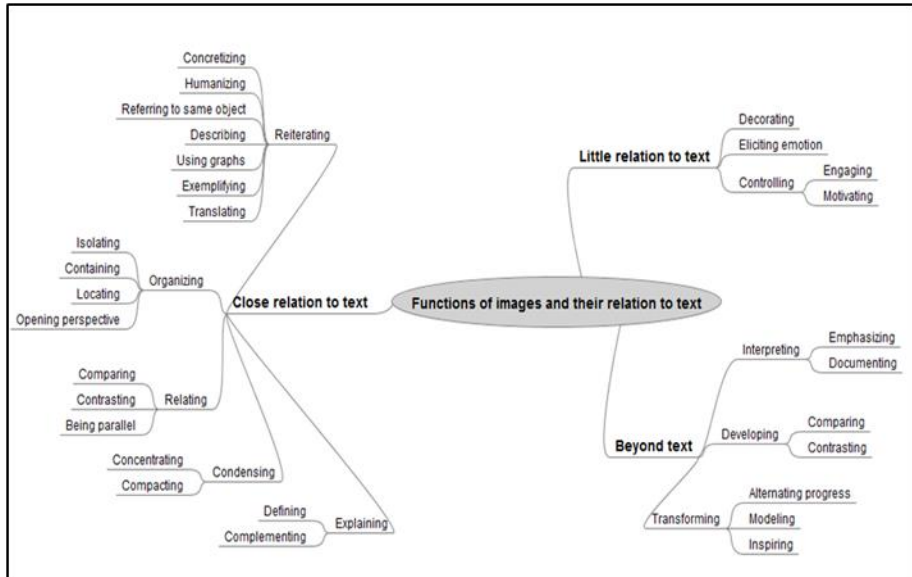
⁷⁹ *E.g.*, *Scott v. Harris*, 550 U.S. 372, 380–81 (2007) (The lower court “should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape.”).

⁸⁰ This “multiplication of meanings” is discussed generally in BARTHES, *supra* note 65, and BATEMAN, TEXT AND IMAGE, *supra* note 65, at 5–7. A viewer's visual cultural experience will be discussed in more detail in Section D *infra*.

⁸¹ *See* Mezey, *supra* note 59, at 6–7; Mitchell, *supra* note 8, at 837–38 (explaining potential ambiguities in images in legal documents). “Ambiguity” is used narrowly here as a label for messages in visual elements that send two or more non-complementary meanings that potentially could cause confusion or doubt as the meaning of the visual elements.

⁸² The taxonomy I employ was developed by Emily E. Marsh and Marilyn Domas White, which appears in the Appendix to their article. Emily E. Marsh & Marilyn Domas White, *A Taxonomy of Relationships Between Images and Text*, 59 J. DOCUMENTATION 647, 666–72 (2003).

⁸³ Vesa Annola et al., *Interpreting Images in Contracts*, in RESEARCH HANDBOOK ON CONTRACT DESIGN (Marcelo Corrales et al. eds., forthcoming 2021) (manuscript at 6), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3738460.



As will be demonstrated in the analysis of the examples below, the use of this concept map to categorize the roles and functions of images prompts the viewer to engage in a more careful analysis of the impact of the visuals on the message of the work. An image, or series of images, might play several functions,⁸⁴ such as *Exemplifying*, *Describing*, *Using Graphs*, *Emphasizing*, or *Contrasting* parts of the message of the text. This “meaning multiplication” explains, in part, the power and flexibility of multimodal communication.⁸⁵

B. Immediate Verbal Context

The term “immediate verbal context” also comes from visual literacy studies.⁸⁶ It refers to the examination of the words of the work and how dependent the communication of the meaning, as well as the message of the work, is on words separate from the visual elements.⁸⁷ Multimodal communication using words and images in the same work

⁸⁴ Marsh & Domas White, *supra* note 82, at 652.

⁸⁵ See BATEMAN, TEXT AND IMAGE, *supra* note 65, at 5–49; Julia Kruk et al., *Integrating Text and Image: Determining Multimodal Document Intent in Instagram Posts*, 2019 PROC. OF THE 2019 CONF. ON EMPIRICAL METHODS IN NAT. LANGUAGE PROCESSING & 9TH INT’L JOINT CONF. ON NAT. LANGUAGE PROCESSING 4622, 4624–26, 4630.

⁸⁶ See, e.g., sources cited *supra* note 26.

⁸⁷ Murray, *New Methodology for Analysis of Visuals*, *supra* note 65 (manuscript at 8–9, 16–17).

has become the norm in contemporary media, and the use of multimodality is growing in legal communication.⁸⁸ At present, almost all “visualized” legal works in any category—contracts, instruments, litigation documents, legal sources, informational materials—are still highly dependent on words.⁸⁹ A completely visual legal instrument would most likely have to be extremely limited and simplified in its terms.⁹⁰ Therefore, very few examples of legal works completely eliminate the use of words.

Multimodal works require a separate examination of the communicative functioning of the words used in a work (the immediate verbal context) and how essential they are to the legal communication when used in combination with the visuals of the work (the immediate visual context).⁹¹ The analysis of the immediate verbal context first evaluates the meaning of the words themselves, anticipating any potential language or cultural difficulties regarding the anticipated audiences of the work.⁹² It then considers the entire work, words and images, in light of common goals and methods of Proactive Law and Legal Design (accessibility, illustration, simplification, engagement, inclusiveness).⁹³

C. Visual Cultural Context

The “visual cultural context” of a legal work is also a concept of visual literacy studies.⁹⁴ The study of visual culture in media and the social sciences was spurred by the vast increase and global spread of

⁸⁸ See, e.g., KRESS & LEEUWEN, MULTIMODAL DISCOURSE, *supra* note 65, at 20; KRESS & LEEUWEN, READING IMAGES, *supra* note 65, at 177; Ticien Marie Sassoubre, *Visual Persuasion for Lawyers*, 68 J. LEGAL EDUC. 82, 82–84 (2018). See generally JOHN A. BATEMAN, MULTIMODALITY AND GENRE: A FOUNDATION FOR THE SYSTEMATIC ANALYSIS OF MULTIMODAL DOCUMENTS (2008); Joddy Murray, *Composing Multimodality*, in MULTIMODAL COMPOSITION: A CRITICAL SOURCEBOOK 325 (Claire Lutkewitte ed., 2014) [hereinafter Joddy Murray, *Composing Multimodality*].

⁸⁹ Berger-Walliser et al., *supra* note 9, at 349–50, 372–73.

⁹⁰ See *infra* pp. 36–40.

⁹¹ See generally Joddy Murray, *Composing Multimodality*, *supra* note 88; Sassoubre, *supra* note 88, at 88–90.

⁹² See Murray, *New Methodology for Analysis of Visuals*, *supra* note 65 (manuscript at 9, 18–20).

⁹³ See sources cited *supra* notes 4, 5, and 7.

⁹⁴ See sources cited *supra* note 63; MIRZOEFF, HOW TO SEE THE WORLD, *supra* note 64, at 94–97.

“new media” (such as television) in the 1950’s and 60’s,⁹⁵ leading to a theory that the world was becoming a single “global village” linked by modern media.⁹⁶ The “global village” concept has been expanded into a “visual commons” theory where worldwide media allows for the same, or a very similar, cultural experience of visual and audiovisual sources to be shared by many people across the globe.⁹⁷

Visual culture is an important feature in perception and cognition of images. As noted above, the eyes and the brain are directly connected in the reception and processing of images.⁹⁸ The brain works at amazing speeds⁹⁹ and with automatic, non-cognitive functioning to both identify and form impressions and conclusions about visual input.¹⁰⁰ The brain draws on the knowledge gained from the viewer’s visual experience in the visual culture where those experiences occurred.¹⁰¹ The concept of visual cultural experience contributing to cognition connects the analysis with the lessons of Gestalt psychology regarding the perception and cognition of visual media. Gestalt psychology explains how a viewer’s life experience allows the person to expand the meaning and message of static media into a more complete narrative,¹⁰² and their visual experience contributes to the understanding of the connoted messages of the work.¹⁰³ What this means for the analysis of visual cultural context for visual creations in legal works is that the full

⁹⁵ JOHN CAREY & MARTIN C.J. ELTON, *WHEN MEDIA ARE NEW: UNDERSTANDING THE DYNAMICS OF NEW MEDIA ADOPTION AND USE* 160–61 (2010) (ebook).

⁹⁶ MARSHALL McLUHAN & QUENTIN FIORE, *THE MEDIUM IS THE MESSAGE* 63 (1967). *See also* MARSHALL McLUHAN, *UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN* x (1964).

⁹⁷ *See* sources cited *supra* note 64.

⁹⁸ *See* sources cited *supra* notes 23 and 27–28.

⁹⁹ *See* sources cited *supra* note 25.

¹⁰⁰ This is known as the “System 1 Brain.” *See* KAHNEMAN, *supra* note 33, at 20–21, 75, 85–88, 95–96, 118, 209 (These processes are variously described as “associative coherence,” the “what you see is all there is” effect, the “mental shotgun,” “jumping to conclusions,” and the “illusion of validity.”).

¹⁰¹ *See* sources cited *supra* note 43 and accompanying text.

¹⁰² *See* RUDOLF ARNHEIM, *ART AND VISUAL PERCEPTION: A PSYCHOLOGY OF THE CREATIVE EYE* 4–6 (rev. ed. 1974); E. BRUCE GOLDSTEIN, *COGNITIVE PSYCHOLOGY: CONNECTING MIND, RESEARCH AND EVERYDAY EXPERIENCE* 64–65 (3rd ed. 2010); BRUNO PETERMANN, *THE GESTALT THEORY AND THE PROBLEM OF CONFIGURATION* 29–34 (1932); PAUL THAGARD, *COHERENCE IN THOUGHT AND ACTION* 58–59 (2000); Lisa Graham, *Gestalt Theory in Interactive Media Design*, 2 *J. HUMAN. & SOC. SCI.* 1, 1–3 (2008).

¹⁰³ *See* BARTHES, *supra* note 65, at 17–20.

interpretation and appreciation of the visual may depend in part on the viewer's cultural experience.¹⁰⁴ Therefore, in this step of the analysis, works will be analyzed in light of the probable community and societal context of the target audiences which will influence the perception and interpretation of the images included in the works.¹⁰⁵

The works examined in this Article have highly visual components. Many are not highly pictorial, but they do rely on the viewer's experience and knowledge of stock features of illustration such as the sequence and progression of panels in a multi-panel work of sequential narrative (a comic strip)¹⁰⁶ or the general flow of a timeline or decision tree in an infographic.¹⁰⁷ Some comics, cartoons, or illustrations used in this Article contain visually coded messages¹⁰⁸ that require the viewer to tap into the visual culture of images to make sense of the visual and multimodal communication of the work.¹⁰⁹

D. *Mise en Scène* and the Rhetorical Topic of Arrangement

Visualization in legal works is closely associated with the rhetorical topic of *arrangement*.¹¹⁰ In classical rhetoric, the topic of arrangement pertains to the order and design of discourse for proper communication

¹⁰⁴ Murray, *Mise en Scène*, *supra* note 14, at 244–49; *see* BERGER, *supra* note 46, at 9–10; Blair, *supra* note 50, at 25.

¹⁰⁵ Murray, *Mise en Scène*, *supra* note 14, at 244; *see* BERGER, *supra* note 46, at 9–10; Blair, *supra* note 50 at 26–27. *See also supra* text accompanying note 52.

¹⁰⁶ *See* sources cited *supra* note 72.

¹⁰⁷ *E.g.*, Example 2, *infra* p. 26.

¹⁰⁸ *See infra* Part V.

¹⁰⁹ For a brief discussion of culture influencing perception *see supra* note 43 and accompanying text. *See also* sources cited *supra* note 57.

¹¹⁰ Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 202. Arrangement (Latin *dispositio*; Greek *taxis*) compares to the rhetorical topic of *Invention*, which reflects the author's search for the best available means of communication and persuasion in a rhetorical situation. *Id. Invention* (Latin *inventio*, Greek *heuristics* (Ευρητική)) parallels and overlaps *Arrangement*, *id.* at 203, and includes the same categorial breakdown of the modes of argument and persuasion that are invented or created by the author—the *entechnic pisteis* or “artistic” or “artificial” proofs known as *logos*, *pathos*, and *ethos*—and the modes of argument and persuasion that the author does not or cannot invent, but that are discovered or found—the *atechnic pisteis* or “non-artistic” or “non-artificial” proofs, which include facts and data, statistics and reports, documents and contracts, sworn testimony (including expert testimony), interviews, polls, and surveys. *Id.* at 202. The *Inventive* substantive content reported or depicted in a visualization will be analyzed in Step A and step E.

as well as acceptance of the meaning and implications of discourse.¹¹¹ Arrangement is driven by the context and purpose of the rhetorical situation.¹¹² Arrangement operates through two modes of *logos*-oriented communication and persuasion: the *Entechnic Pisteis* (Artistic) Modes and the *Atechnic Pisteis* or (Non-Artistic) Modes.¹¹³ “Put simply, artistic modes of . . . arrangement are [those] created . . . by the author, while non-artistic modes are not created by the author, but are found or identified by the author and employed in the discourse in furtherance of the author’s goals.”¹¹⁴ Thus, the author may create her own charts, diagrams, maps, and illustrations of data, or use works created by others.

Mise en scène principles define superior vs. inferior works of visual communication in terms of their framing, composition, perspective, point of view, lighting, coloration, and other spatial and formal characteristics of the visual elements of the work.¹¹⁵ Mise en scène analysis also considers the arrangement of visual elements in juxtaposition with other elements of the work.¹¹⁶ This step of the analysis will look at the mise en scène composition of the images and their placement and arrangement within the overall work.

When focusing on just two of the topics—perspective¹¹⁷ and point of view¹¹⁸—the effect and consequences of authorship become very

¹¹¹ EDWARD P.J. CORBETT & ROBERT J. CONNORS, CLASSICAL RHETORIC FOR THE MODERN STUDENT 20 (4th ed. 1999); Michael Frost, *Introduction to Classical Legal Rhetoric: A Lost Heritage*, 8 S. CAL. INTERDISC. L.J. 613, 618–19 (1999); Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 211.

¹¹² See Berger-Walliser, *supra* note 4 and *supra* text accompanying note 8.

¹¹³ Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 202.

¹¹⁴ *Id.* at 210–11.

¹¹⁵ See generally Murray, *Mise en Scène*, *supra* note 14.

¹¹⁶ *Id.*

¹¹⁷ By “perspective” in this context, I mean the line of visioning taken, and whether it is a single perspective (the line of vision of a single author or single camera), or multiple perspectives (lines of vision of multiple authors or cameras). See generally Trang Nguyen, *The Art of Perspective in Cinematography: One-Point Perspective, Symmetry, and the Golden Curve*, MEDIUM (May 5, 2019), <https://medium.com/@tuyettrangnguyen95/the-art-of-perspective-and-symmetry-in-cinematography-one-point-perspective-47158772a23e> [<https://perma.cc/4LPB-6CMB>].

¹¹⁸ By “point of view” in this context, I mean the scope of visioning taken to depict the image. In film and photography, this would be called the type of shot used, and includes:

apparent. The point of view can distort the importance of certain objects while emphasizing others.¹¹⁹ The perspective often allows only a single focal point of a scene to be analyzed and, thus, prevents a complete viewing of the scene.¹²⁰ When critiquing the communicative potential of images in making a point or persuading an audience of the rightness of the author's position, an attorney must consider the degree to which the point of view and perspective of the attorney's images may affect the audience's perception, reception, and cognition of the message. The attorney must be ready to act in the event that the perspective or point of view distracts from or distorts the scene, which potentially could lead to deception or obfuscation of the meaning of the scene.¹²¹

(1) Extreme long shot—taken from a great distance, showing much of the locale. If people are included in these shots, they usually appear as mere specks.

(2) Long shot—corresponds to the space between the audience and the stage in a live theater show[ing] the characters and some of the locale.

(3) Full shot[, or Wide shot]—range [shows] just enough space to contain the human body in full and a minimal amount of the locale.

(4) Medium shot—shows the human figure from the knees or waist up.

(5) Close-up—concentrates on a relatively small object [or a face] and show[s] very little if any locale.

(6) Extreme close-up—focuses on an unnaturally small portion of an object [or person], giving that part great detail and symbolic significance.

Heather Graves, *The Fifteen Points of Mise-en-Scene*, WALKABOUTLA.ORG, https://walkaboutla.org/robfilm2/15_Points_of_Mise-en-Scene.html [<https://perma.cc/WXC7-T52C>].

¹¹⁹ GRAHAM CLARKE, *THE PHOTOGRAPH* 191 (1997); 2 AM. SOC'Y OF PHOTOGRAMMETRY, *MANUAL OF REMOTE SENSING* 1266 (2d ed. 1983); SARAH HAMILL, DAVID SMITH IN *TWO DIMENSIONS: PHOTOGRAPHY AND THE MATTER OF SCULPTURE* 77 (2015).

¹²⁰ See JACQUELINE T. FISH ET AL. *CRIME SCENE INVESTIGATION* 56–57, 61 (2d ed. 2011) (benefits of multiple cameras shooting different perspectives, and video taking wide-angle shots followed by zooming in to capture both the entire scene and specific details); GERALD MILLERSON & JIM OWENS, *TELEVISION PRODUCTION* 149–51, 156–57 (14th ed. 2009) (benefits of moving the camera, panning, and zoom).

¹²¹ See generally STEVEN AGUILERA, *A NEW PERSPECTIVE: A NEW AND ESSENTIAL UNDERSTANDING OF PERSPECTIVE APPLICABLE TO: DIRECTING, CAMERAWORK, VISUAL EFFECTS, SET DESIGN AND SETTING UP SHOTS* 3–4 (2008) (“[A]nyone else that presents imagery to audiences, customers or clients” must deal with

E. Visual Rhetoric and the Ethical and Professional Propriety of the Work

The analysis of visual rhetoric considers each example of the study as a whole and evaluates how it functions as a work of visual communication or visual argumentation.¹²² It will evaluate how all the components of the text (visual, verbal, and visual cultural contexts; *mise en scène* and arrangement) interact together to fulfill the intended communicative objective of the work. An effective communication is dependent on four elements working in conjunction: the Speaker, the Message, the Audience, and the Context.¹²³ This step of the analysis will discuss the elements of the communication that are relevant to determining the potential efficacy and propriety of the design of a legal work. For example, the message will always be examined, and the speaker's goals and motivation will generally be important, but it can also be critical to consider the intended audiences for a legal work, because a multimodal visual work of a certain style might work well for one audience (parties with no legal representation, or clients with limited verbal literacy skills), but not for others (courts and other tribunals, or government agencies).

In this step of the analysis, I have added a special focus on ethics and professionalism. The phrase “ethical and professional propriety” refers to *ethos*, which is a classic term in rhetoric to refer to the good will, fairness, credibility, and integrity communicated by a work, but the term is no less apt a label for the positive or negative effects on communication that might be wrought by applications of images in a work. In other words, a careful, thoughtful, and highly professional application will boost the *ethos* of a work and its author, while a

perspective.); BARRY ANDERSSON, *THE DSLR FILMMAKER'S HANDBOOK: REAL-WORLD PRODUCTION TECHNIQUES* 117 (2d ed. 2015) (discussing the effects caused by choosing different perspectives or camera angles); ELSPETH KYDD, *THE CRITICAL PRACTICE OF FILM: AN INTRODUCTION* 123–25 (2011) (camera position and angle can implicate the perceived ideology of a scene).

¹²² Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 201–13.

¹²³ See JAMES L. KINNEAVY, *A THEORY OF DISCOURSE: THE AIMS OF DISCOURSE* 19 (W.W. Norton & Co. 1980) (1971); JAKOB WISSE, *ETHOS AND PATHOS: FROM ARISTOTLE TO CICERO* 7–8 (1989); Lloyd F. Bitzer, *The Rhetorical Situation*, 1 *PHIL. & RHETORIC* 1, 1, 6–8 (1968); Murray, *The Great Recession*, *supra* note 14, at 633–34 (“In modern argument theory, the author of the discourse (Speaker) codes the discourse (Message) for a particular receiver (Audience) according to the conditions, requirements, and limitations of the context of the discourse (Situation).”).

careless, thoughtless, improperly motivated, or deceptive application will detract from the *ethos* credibility of the work and its author.¹²⁴

V. THE FIRST DECISION: WHICH TYPE OF VISUALIZATION TO EMPLOY?

The first decision in employing a visualization strategy is choosing which type of visualization to employ. Visualization can appear in many different forms. Drawing on the principles of visual legal rhetoric and visual literacy, this Article will analyze three visual contract genres:

- Visual Illustration and Explanation of Terms in Contracts
- Sequential Narrative in Contracts: Cartoon and Comic Book Contracts
- Multimedia Contracts

A. Diagrammatics and Visualization of Data and Legal Information

The primary focus of this Article is analyzing whether contracts can be improved through the incorporation of graphic and pictorial elements, including visual images. However, a parallel track of the visualization movement involves diagrammatics, the visualization of data and legal information. This genre of legal communication is the specific focus of my concurrent work, *Diagrammatics and the Proactive Visualization of Legal Information*.¹²⁵ Because charts, tables, and diagrams are a common, if not essential, component of visualization in contracts and transactional legal agreements, I will provide a short excerpt and two examples from that article so as not to leave a gap in the discussion.

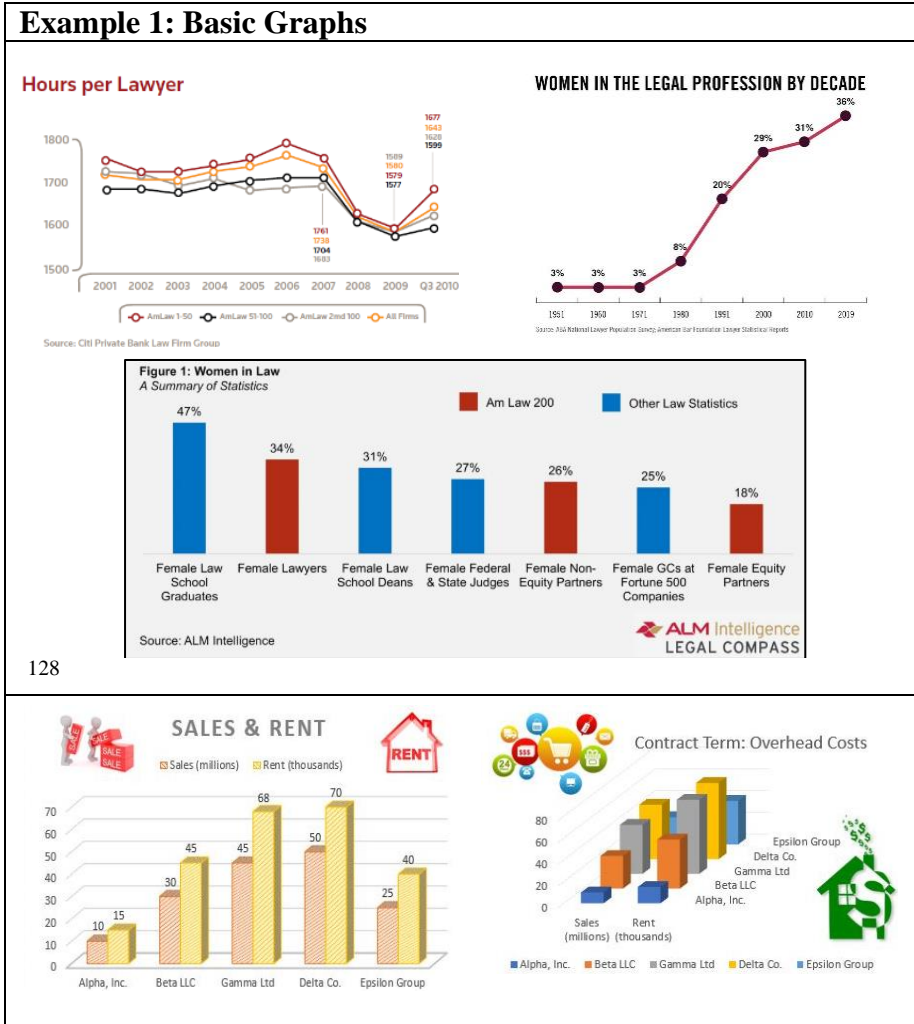
Diagrammatics communicates information about the law or legal system for contracts or other works in a graphical or tabular format.¹²⁶

¹²⁴ See Derek H. Kiernan-Johnson, *The Potemkin Temptation or, The Intoxicating Effect of Rhetoric and Narrativity on American Craft Whiskey*, 15 LEGAL COMM. & RHETORIC: JALWD 1, 35–39 (2018); Murray, *Great Recession*, *supra* note 14, at 634 (“Message is meant to achieve an efficient purpose”); Michael D. Murray, *Rule Synthesis and Explanatory Synthesis: A Socratic Dialogue Between IREAC and TREAT*, 8 LEGAL COMM. & RHETORIC: JALWD 217, 236–37 (2011); Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 213–14.

¹²⁵ Murray, *Diagrammatics*, *supra* note 65.

¹²⁶ Helena Haapio & Stefania Passera, *Contracts as Interfaces: Exploring Visual Representation Patterns in Contract Design*, in LEGAL INFORMATICS 13–14 (M.J. Katz et al. eds., 2017).

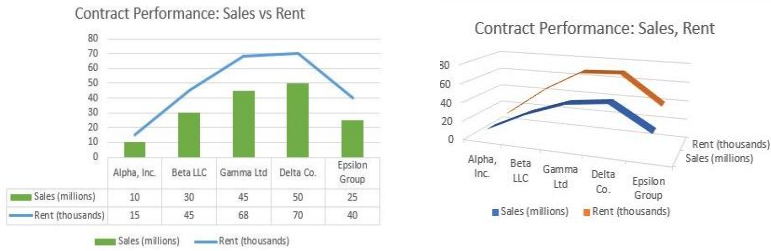
Typical examples of diagrammatics are charts, tables, graphs, flowcharts (sometimes formed as decision trees), or multimodal works using a combination of text and visual media.¹²⁷



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¹²⁷ See sources cited *supra* note 65 and accompanying text.

¹²⁸ Sources left to right and top to bottom: *Reducing Complexity, Costs of Legal Research Crucial to Law Firms' Long-Term Success*, LEGAL SOLUTIONS BLOG-THOMSON REUTERS, <https://info.legalsolutions.thomsonreuters.com/westlawnext/reducing-complexity-report.pdf> [<https://perma.cc/TH2Q-Z8WG>]; AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 46 (2019); ALM Intelligence, *Women in Law: A Summary of Statistics*, LEGAL MOSAIC (2019), <https://www.legalmosaic.com/graph-1/> [<https://perma.cc/SH8R-5QRD>].



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Visual Context: There are as many forms of graphs as there are ideas of what types of numbers or information should be reported graphically to improve viewers' access to and comprehension of the information. Visually, graphs are effective communication tools when they are not cluttered, when they do not try to communicate too many ideas, and when the spatial or linear relationships or comparisons are instantly recognizable and understood without a great deal of textual explanation. The seven graphs above have different **meanings**. The first three report various information on the legal profession. The last four are different styles of graphs visualizing a report of contract performance tracking sales of a group of entities in conjunction with the rent paid by the same entities. The **taxonomy** functions of the works include *Using Graphs*, of course, but also *Comparing*, and *Relating* the information presented.

Verbal Context: There is very little text in the examples I presented. Each graph above follows the general principle of less is more, reserving text for the titles, legends, and labels of the information reported in the graphs. This information is essential to understanding the information reported in each graph.

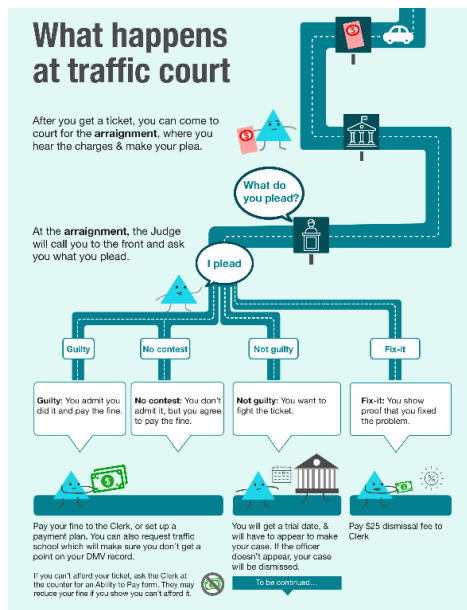
Visual Cultural Context: Graphs are a commonly used form for visualization of data and other information and should be recognized and understood by most viewers as graphs. If only one language is used for the verbal portions, then language and literacy barriers might remain in the comprehension of the verbal titles, legends, and labels used to identify the information reported in the graph.

¹²⁹ The four images are: Michael D. Murray, *Four Graphical Renderings of Sales vs Overhead Costs in Performance of a Contract* (2020). The top row of the four graphs, *Sales & Rent* and *Contract Term: Overhead Costs*, incorporate pictographs accessed through Microsoft Excel.

Mise en Scène and Arrangement: I specifically chose the first three graphs of this example for the simplicity of their message and content, and because they each communicate their message well. They are not cluttered, and the text readily identifies the contents without excessive legal jargon. I created the four graphs that follow the first three to demonstrate different graphical methods that might be employed to communicate the same information. All four of my graphs are based on the same, very limited set of data. Each lacks an important component—”time,” as in sale or rents over what time period—solely to keep the visuals simple and uncluttered.

Visual Rhetoric, Ethics and Professionalism: Graphs can be an effective visualization tool to communicate a discrete amount of information and still make important comparisons and contrasts to explain the information, or open new perspectives on correlation or causation regarding the information reported. Graphs can be professional and effective, but, as with other tools of visualization, the information and the lessons to be revealed should be honestly collected and reported so as not to obfuscate, distract, or distort the facts.

Example 2: Pathway and Instructions for Traffic Court



¹³⁰ Example 2, “What happens at traffic court,” from Stanford’s Justice Innovation-Legal Design Lab, reports the steps and decision points for a person receiving a

Visual Context: The **meaning** of the visual components of this infographic chart is to illustrate the process and procedures for traffic court. The infographic makes use of a pathway visual in the form of a highway, which certainly is apropos of the chart topic, “What happens in *traffic* court.” Friendly and inclusive icons are used in the form of a non-gender-specific, non-racially-suggestive triangle for the motorist, a rectangle with a dollar sign on it for the “ticket,” and some simplified symbols of a car, two different courthouses, a judge sitting at her or his bench, money, and a calendar (representing a date in time). In the **taxonomy**, the function of the graphics is to *Describe*, *Exemplify*, and *Concretize* the text, not just by saying in words, “Then you would go to traffic court and appear before a traffic court judge,” but by actually showing an image of the court building and a judge on the pathway toward resolution of a ticket. As with most legal works that are designed for a non-law-trained audience, there is a certain amount of *Interpreting* and *Translating* of the law into a more accessible and understandable format that is occurring in this chart. The graphics are light on *Decoration*, as each image has a specific function to explain the process of resolution of a ticket.

Verbal Context: Aside from the attractive highway pathway and decision tree, and the friendly, inclusive icons, all the information about court processes and procedures is provided in text, and in one language only, English. The text is straightforward and does not require the viewer to have attained an advanced reading level in order to grasp the information. There is no explicit legalese in the form; it is most likely too hard to avoid using the term “arraignment,” and the infographic used “no contest” in lieu of “nolo contendere.”

Visual Cultural Context: By intentionally using an inclusive, non-gender-specific, and non-racially-suggestive icon for the motorist, the infographic avoids excluding or alienating any viewer of the work; no-one should explicitly or implicitly be turned away because the information is not for them or not about them. The choice of a triangle

traffic ticket. Legal Design Lab at Stanford Law School, *What Happens at Traffic Court*, JUST. INNOVATION: VISUAL SELF-HELP, <http://justiceinnovation.law.stanford.edu/wp-content/uploads/2018/10/Traffic-Court-visual-guide-what-happens-at-traffic-court-pleading.png> [<https://perma.cc/X4Q3-8YEQ>]. While the jurisdiction is not identified, the information concerning the steps might be applicable in multiple states.

is a very neutral shape, and the minor personification elements (arms, legs, facial expressions) are also rendered in a neutral, broadly inclusive manner. Persons of most cultures should read the facial expressions of the triangle as those of a “concerned” motorist, perhaps one that is “determined” to get through the system, and little else. There is no further indication that the “triangle” is a reckless, irresponsible, or shameful person, and there is no suggestion that the “triangle” is fearful of using the governmental system to work through this traffic matter.

Mise en Scène and Arrangement: The design of this infographic chart is excellent. As previously mentioned, the use of a pathway visual in the form of a highway is apropos of the *traffic* court topic. The icons and images used are friendly and inclusive and complement the text by actually showing an image of the court building and a judge on the pathway toward resolution of a ticket. The imagery of a highway allows the message to neatly fork into different outcomes in a decision tree arrangement.

Visual Rhetoric, Ethics and Professionalism: As discussed above, a goal of visualization is to make legal works accessible to a broader range of audiences. Sometimes that means illiterate and less-than-fully literate audiences, and other times it means vulnerable and disadvantaged audiences. The graphical elements of this chart are inviting and potentially engaging, welcoming partially literate persons not only to look at but to look into the information on the chart, and the design elements welcome the potentially vulnerable or disadvantaged viewer with inclusive, non-gender-specific, and non-racially- suggestive icons, to help them stay engaged. There is no mention of police at all, in words or symbolically, nor is the ticket discussed or depicted as a crime or violation of law, which perhaps suggests to the viewer that the processes and procedures are routine and do not involve a heavy-handed governmental enforcement of “criminal” law and suppression of “illegal” behavior. It is true that the words “charges,” “plea,” “plead,” and “guilty” are mentioned, but not in the context of the words “crime,” “conviction,” or “offense.”

The category of diagrammatics includes infographics that possess highly visual content, such as the traffic court work of Stanford’s Legal

Design Lab.¹³¹ The work incorporates a pathway and flowchart formed as a decision tree, and it provides meaningful pictographs (car, motorist, money, courts, judge) and ideographs (paying the fine or fee for a ticket) in its communication.¹³² Visualization attempts to frame and present information in a manner that allows immediate recognition of parties, roles, requirements, paths or course of action. In legal transactional works, diagrammatic elements might show paths for two parties in a contractual relationship, punctuated by tasks or decision points for each party, and events where their paths intersect or interact in a certain way.¹³³

B. Graphical and Pictorial Forms in Contracts and Legal Instruments

When planning and designing visuals in a contracting setting, a choice must be made between a professional, business graphics style, an artistic and pictorial style (i.e., in the nature of a painting or drawing), a cartoony or comic style, or an even more abstract or symbolic style:

¹³¹ See generally *The Legal Design Lab*, STAN. L. SCH., <https://law.stanford.edu/organizations/pages/legal-design-lab/> [<https://perma.cc/9PKT-VQT7>].

¹³² Pictographs or pictograms are visualizations depicting the actual subject, be it a person, place, activity, or object, using simplified representations as symbolic imagery. (For example, using an outline or silhouette of a padlock to represent an actual padlock). Ideographs or ideograms are one step more abstract than pictograms and attempt to visually communicate a concept or idea through visual metaphor using a collage of symbols or shapes. (For example, using an outline of a lock with a dollar sign on it, combined with an outline of a person whose hand is moving a key toward the lock to communicate the concept of “locking up your money” or “securing your investment”). See GEORGE YULE, *THE STUDY OF LANGUAGE* 21 (3d ed. 2006). Pictographs and ideographs are further discussed throughout this Section.

¹³³ For further reading, see Murray, *Diagrammatics*, *supra* note 65.

<p>Professional Business Graphics¹³⁴</p>	<p>Artistic and Pictorial¹³⁵</p>
	
	
<p>Visual Context: Business graphics adopt a clean, professional image that does not rely on humor or exaggeration for communication or emphasis. In many contracting settings, business</p>	<p>Visual Context: Artistic and pictorial graphics often convey the meaning of the work with greater sense of style and perhaps more of the personality of the contract drafter, but they sacrifice</p>

¹³⁴ *Women at Work Royalty Free Vector Clip Art Illustration*, COOLCLIPS, http://clipart.coolclips.com/480/vectors/tf05090/CoolClips_peop2346.png [https://perma.cc/Y52Q-9KJA]; *Men Studying Construction Plans Royalty Free Vector Clip Art Illustration*, COOLCLIPS, http://clipart.coolclips.com/480/vectors/tf05040/CoolClips_peop0630.png [https://perma.cc/6BSH-CUE5]. The two business graphics images in the left column are royalty free clip art images offered for personal use by CoolClips.com. See *CoolClips Image License Agreement*, COOLCLIPS, <http://www.coolclips.com/licence.htm> [https://perma.cc/H5NG-NHVV].

¹³⁵ The top image in the right column is adapted from Ted Powell, *Power of Presence: In-Person vs. Virtual Team Meetings*, STOP AT NOTHING (Nov. 12, 2018), <https://stopatnothing.com/power-of-presence-in-person-vs-virtual-team-meetings/> [https://perma.cc/K8QF-55HQ]. The bottom image in the right column is adapted from T. Bryan Mulligan, *Building a New Home, Part 4: The Home Stretch*, PRIMARY LINE (Oct. 23, 2013), <http://theprimaryline.com/blog/2013/10/23/building-a-new-home-part-4-the-home-stretch/> [https://perma.cc/GK7G-ARVH].

graphics will communicate a very clear and straightforward **meaning** (including the setting, terms, expectations, etc.), with clear renderings of the imagery. As an illustration tool, they are an excellent genre for business settings.

Under the **taxonomy**, typical business graphics functions are to *Concretize*, *Humanize*, *Describe*, *Open Perspective*, and to *Define* the message of the work. Occasionally, they will perform other roles, such as to *Interpret*, *Develop*, or *Translate* parts of the text. Less frequently, they might be used to *Decorate*, or *Elicit Emotion*.

Verbal Context: The examples above use no words, and the exact message of the visuals is unclear. Here, it would be productive to add some verbal information—“Lawyers will review the plans for . . .”; “The architect will consult with the builder twice on site to . . .”

Visual Cultural Context: Business graphics will communicate best in contemporary, developed-world settings where the imagery, memes, and icons of a business relationship are well known to viewers. The style of attire in the top example will communicate “executive professionals” to many viewers in the developed world; laptops (even the boxier style of the laptop depicted here) will be identifiable; hard hats will communicate construction; and large sheets held by a person with a hard hat will be viewed as a blueprint or schematic drawing. With an audience

clarity and simplicity in favor of style and flair. The images above will communicate (at the top) a meeting and collaboration in a casual work setting, but what the persons are working on is not clear from the image; the second (bottom) image will communicate two persons in a construction setting; it is less clear what the two roles of the man and woman are (two architects, an architect and a builder, or an architect and a client, etc.).

Under the **taxonomy**, artistic and pictorial works can play the same roles as business graphics, to *Concretize*, *Humanize*, *Describe*, *Open Perspective*, and *Define* the message of the work, or to *Interpret*, *Develop*, or *Translate* parts of the text. Certain artistic rendering will be more effective than business graphics or cartoons in *Decorating* the work or *Eliciting Emotion* from the viewer.

Verbal Context: The examples above use no words but, as noted here, they cry out for verbal explanation because the actual message of the visuals, other than “collaboration in a meeting” and “two people at a construction site,” is unclear.

Visual Cultural Context: Artistic and pictorial graphics are often more attractive, and perhaps even eye-catching compared to business graphics. However, they sacrifice communicative potential because the abstraction or artistic embellishments

that is less sophisticated or less experienced with the imagery of business, whether due to a relatively less developed state of the local economy, or a difference in the style of business—rural vs. urban, agricultural vs. industrial, physical labor vs. service industry—the differences in culture and experience might defeat the communicative effects of certain business graphics. Even within a category of agriculture, there is a wide range of experiences from subsistence farming, to modern mechanized farming, to large scale agribusiness, and each has its own unique subjects, scenes, and farming imagery. The author of the business graphic should pay attention to the depiction of a setting appropriate for the culture and business experiences of the target audience.¹³⁶

Mise en Scène and Arrangement:

The images here were one panel works. The arrangement allowed the subjects to be readily identified.

Visual Rhetoric, Ethics and

Professionalism: The choice to use business graphics is a choice to keep the communication sober and businesslike. Unlike the cartoon and comic styles depicted in this column below, business graphics employ a minimum of distracting elements. They zero in on the dominant subjects whether they are

require more interpretation of what actually is being depicted in the scene. In addition to that critique, artistic and pictorial graphics have the same limitations as business graphics because they are dependent on an audience whose culture and experience pertains to the same modes of business depicted in the graphics. If the audience does not have a compatible set of cultural and experiential references of business settings to draw upon, then at best the graphics might fail to communicate, and at worst they might confuse or mislead the audience in a manner that is similar to providing verbal contract terms in a written language in which the audience is not literate.

Mise en Scène and Arrangement:

An artistic use takes a step forward on style but might take a step back on clarity of the image. Many artistic applications obscure the subjects of the work, as in the example at the top here. The two examples above show a fairly moderate level of artistic abstraction, less than “impressionistic,” and far less than truly “abstract” artistic renderings, and yet these two works still reveal a certain amount of ambiguity as to the actual content and message of the communication of the images. If an overall impression of a scene is all that you want to convey,

¹³⁶ An excellent example of a business graphics author paying attention to the culture and business experiences of the target audience, agriculture workers in a large-scale agribusiness, is South African attorney Robert de Rooy. His work will be discussed further in this Section and *infra* Part VI. See also de Rooy, *supra* note 2.





persons or objects, and reveal their message through faithful, representational imagery. Business graphics are somewhat stuffy, and because they soberly portray a scene with as little embellishment as possible, they might be viewed in some contexts as predictable and unimaginative.

Because of the sobriety of the imagery, business graphics communicate less emotion, meaning they are less likely to communicate enthusiasm or excitement, but are also less likely to offend.

then artistic and pictorial rendering might be exactly right for the task.

Visual Rhetoric, Ethics and

Professionalism: The choice to use artistic and pictorial graphics will likely be made to communicate a sense of style and imagination that might attract the target viewers, rather than sticking to a mode of the most direct, simplistic, and immediate forms of visual communication. Depending on the level of artistic abstraction, the communication may be slightly or greatly inhibited by the artistic approach. The interpretation of artistic and pictorial imagery is less predictable than that of standard business graphics, and therefore may be viewed both as stylish and imaginative, yet still fail to construct knowledge and understanding in the audience. A fairly simple solution is to use words in combination with these images. Artistic renderings in combination with verbal communication might garner attention for style and attractiveness while still communicating the right message for the contract setting.

Cartoon or Comic ¹³⁷	Abstract or Symbolic ¹³⁸
	
 <p data-bbox="233 846 615 871">"I'm used to fine print in a contract. But subtext..."</p>	

¹³⁷ The top image in the left column is adapted from CoolClips.com. See *CoolClips Image License Agreement*, *supra* note 135. The middle image is adapted from Mark Anderson, *Contract Cartoon #6986*, ANDERTOONS (2018), <https://andertoons.com/contract/cartoon/6986/im-used-to-fine-print-in-a-contract-but-subtext> [<https://perma.cc/NEQ5-JQGF>]. Bottom image collage is adapted from Murray Procter & Ben Keenan, *When a Picture Really is Worth 1000 Words – The “Comic Contract” Movement*, CLARKEKANN LAWYERS (May 10, 2018), <http://www.clarkekann.com.au/newsroom/the-comic-contract-movement> [<https://perma.cc/72CQ-Q5TR>].

¹³⁸ All three images top to bottom are adapted from CoolClips.com. See *CoolClips Image License Agreement*, *supra* note 135. See also *supra* note 132.

<p>Visual Context: Cartoon and comic style graphics can convey a great deal of style and personality (a fun-loving, good sense of humor or perhaps even a youthful, innovative, and imaginative personality) of the contract drafter, be it a person or entity, but they do so at the expense of clarity and nuance in the meaning of the communication. The image at the top (man screaming over a telephone call) employs a cartoonish style, with an emphasis on exaggeration to communicate action, emotion, and meaning. The middle image is a more subtle or stylized form of cartoon, what might be called a “New Yorker” magazine style of cartoon,¹³⁹ which typically is a single panel cartoon with no more than one line of text to give it meaning, usually conveying the irony of the scene. If irony or humor is your intended message in a contract situation, then this style of cartoon will work well for</p>	<p>Visual Context: Abstract or symbolic images in the form of pictograms and ideograms are, by definition, examples of the most abstract visuals in contracts. The meanings of the concepts or subjects have to be fairly simple in order to be communicated through this medium. In this column, all three images would be considered ideograms because they combine symbols and simple depictions to convey a concept rather than depicting in simplified form an actual object, person, or activity. The top image communicates profitable growth in a financial setting (it could be investments or sales or profits), but the chart plus the upward arrow with a dollar sign on it indicates growth of money. The middle example indicates locking up or securing money, investments, or something valuable. The bottom example, also</p>

¹³⁹ See generally *Humor & Cartoons*, NEW YORKER, <https://www.newyorker.com/humor> [<https://perma.cc/3MU4-GT39>].

that purpose. The bottom image of the column employs classic comic book style artwork. The work is itself a comic book page about comic book contracting, and thus is doubly on point for this discussion.

Under the **taxonomy**, the overarching decision to employ a comic or cartoon form in visualization is to achieve a certain “medium mood control.”¹⁴⁰ Comics are a friendly, nonthreatening form of communication, which should make them more accessible and engaging to readers than unadorned text, especially unadorned legal text. A comic theme will help the graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text. Cartoons can be effective at *Eliciting Emotion*, *Engaging*, and *Motivating* the reader. Most often, the genre will not be used simply to *Decorate* a text.

Verbal Context: The top example uses no words, and the image does not need it, assuming all that was to be communicated is a man shouting at a

the most metaphoric example, shows people (underlings?) working together to follow in the footsteps of a forward and upward moving larger (more important? Supervisor? Executive?) person who is dressed in more formal business attire as compared to the “smaller” persons in the scene.

Under the **taxonomy**, the brutally short form of pictograms, ideograms, and symbols limits the roles they can play, but they can *Exemplify*, *Interpret*, *Relate*, *Condense*, and *Model* the text. Most often, the genre will not be used simply to *Decorate* a text.

Verbal Context: As might be expected, the abstract and symbolic works here have no words. The messages of the works, as described in the paragraph above, are quite simple. Words are not necessary, as long as the viewer is literate in the symbolic language being employed in the works.

Visual Cultural Context: Symbolic communication through pictograms and ideograms employs a language for the communication. The entire

¹⁴⁰ The concept of “medium mood control” is attributed to Professor Michael Smith. MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* 14 (3d ed. 2013). This concept pertains to “an author us[ing] style to manipulate readers into a particular frame of mind.” Victoria S. Salzmann, *Honey, You’re No June Cleaver: The Power of “Dropping Pop” to Persuade*, 62 *ME. L. REV.* 241, 252 (2010). See Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 *LEGAL WRITING: J. LEGAL WRITING INST.* 57, 71 (2015).

woman through a telephone call. The middle and bottom examples each use few words, but the words are necessary to convey the actual message of the visuals. The characters in the panels are but spokespersons for the text. The text complements the images (in other words, the text is not incongruous or counterintuitive coming out of the mouths of the characters in the panels), but it is the text that is the most important vehicle for conveying the meaning of the work.

Visual Cultural Context: There is a certain set of rules—what might be called a schema¹⁴¹—for reading and interpreting cartoons and comics.¹⁴² Viewers familiar with these genres will accept the exaggerated forms and unrealistic depictions that convey emotion, action, and meaning. Simple directional movement (left to right, top to bottom) and the reading of panels (as frames), emanata (static lines that convey movement), sound effects, and speech bubbles as emanating from a subject of the image, are a learned skill that must be employed to stay on the same page with multipanel comics. The artwork can be attractive and eye-catching compared to business graphics, and perhaps more accessible compared to artistic and pictorial renderings. Comics and cartoons

ancient languages of Mesopotamia (cuneiform) and Egypt (hieroglyphs) are based on these symbolic forms, and modern Chinese and Japanese characters are in large part the heirs of the ideogrammatic language forms used in China thousands of years ago.¹⁴³ Because pictograms and ideograms are, in fact, a language, the viewers must be literate in the language. Viewers must be aware that certain business reports are done on charts, that arrows show movement of growth (increase) or decline (decrease), as opposed to actual arrows used for hunting or warfare. They must recognize locks and keys, as well as the dollar sign being metaphorically symbolic of money, investments, finances, or things of value. They must also recognize a conceptual depiction of important figures (leaders, owners, executives) dressed in formal business attire, and less important players in the scene, less formally attired but still dressed for a business setting, moving a smaller staircase (suitable for their stature) to match up with the leader's staircase. All of this knowledge, not only of the business setting, but also of the symbols and visual metaphors used to communicate aspects or ideas and concepts pertaining to the business

¹⁴¹ MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1110 (11th ed. 2004).

¹⁴² See MCCLLOUD, *supra* note 72, at 62–69; *English A: Language and Literature: Comics and Graphic Novels*, PHILPOT EDUC., <https://philpot.education/mod/page/view.php?id=91> [<https://perma.cc/G4SV-TLB7>].

¹⁴³ See DAVID DIRINGER, *Writing: ANCIENT PEOPLES AND PLACES* 35–53, 70–88 (1962).

certainly are less “high brow” than artistic and pictorial works or business graphics, if that is the mood that fits your contracting needs. Outside of business and contracting situations, cartoons and comics often are used to communicate humor, or at least irony, and so are less intense and less “pressured” than the more typical lawyer-driven business communications with fine print, disclaimers, and boilerplate. The casualness factor may make comics and cartoons more inviting for viewers, but perhaps less acceptable for serious business communication in a contracting setting. Because the reader must be generally experienced in reading and interpreting the cartoon form, in addition to reading and interpreting the symbols, images, and visual metaphors in the work, cartoon and comic graphics might sacrifice communicative potential because they require such a high level of skill and experience in interpretation. Beyond that critique, cartoons and comics are like business graphics and artistic and pictorial representations in that they still are susceptible to the same limitations in cultural and experiential references of business settings that might confuse a less experienced audience, or one whose culture and experience pertains to a different mode of business.

Mise en Scène and Arrangement: The arrangement of the cartoons allows the viewer to access the message immediately. There are no distractions,

setting, is a large “ask” for many audiences.

Mise en Scène and Arrangement:

It is difficult to break down the arrangement of the pictographs and ideographs. They each are one complete image.

Visual Rhetoric, Ethics and

Professionalism: The main purpose for employing highly symbolic and abstract images most likely is a time and space saving purpose—ideograms and pictograms can communicate large ideas and concepts in a relative small amount of space. They do this at a very high level of abstraction, which does limit the universality of the communication to many audiences. Audiences must be very literate in the symbolic language being employed before communication can occur. Ideograms and pictograms do not necessarily lighten the tone of the work, nor are they as inviting and accessible as cartoons and comics.

clutter, or extraneous contents in the cartoons.

Visual Rhetoric, Ethics and

Professionalism: The choice to use cartoons or comics most likely will be made to promote open and friendly accessibility of the work to the intended audience. Comics generally lighten the mood, and can convey a friendly and welcoming attitude in what would otherwise be a dry and unwelcoming situation—the entry into a contract with potentially grave consequences. Comics also can communicate a sense of style and imagination that might attract the target viewers, rather than sticking to a mode of the most direct, simplistic, and immediate visual communication. But depending on the level of artistic abstraction or exaggeration, the communication may be slightly or greatly inhibited by a cartoon-driven sequential narrative approach. The three examples above vary in the level of artistic abstraction and exaggeration—the top image is highly abstract and exaggerated; the middle is only mildly abstract; and the bottom image is fairly realistic at least in terms of its comic style. Aside from the verbal text, these bottom two works would still reveal a certain amount of ambiguity as to the actual content and message of the communication of the images. The interpretation of artistic and pictorial imagery is less predictable than standard business graphics, and therefore may be viewed both as stylish and imaginative, and

<p>still fail to construct knowledge and understanding in the audience in the absence of textual explanations. Artistic renderings in combination with verbal textual communication might reap attention for style and attractiveness while still communicating the right message for the contract setting.</p>	
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The choice of graphic form will depend on the target audience of the communication and the “image” that the author and creator of the work want to project: serious professionalism, artistic creativity, inventiveness, playfulness, or simplicity.¹⁴⁴ The examples above vary in the level of artistic abstraction and exaggeration, and without the benefit of words, all of the works reveal a certain amount of ambiguity as to their actual content and message. The interpretation of artistic, cartoony, or highly symbolic imagery is less predictable than the interpretation of standard business graphics, but more artistic forms might be viewed both as stylish and imaginative. In each case, graphic renderings in combination with verbal communication might reap attention for style and attractiveness while still communicating the right message for the contract setting.

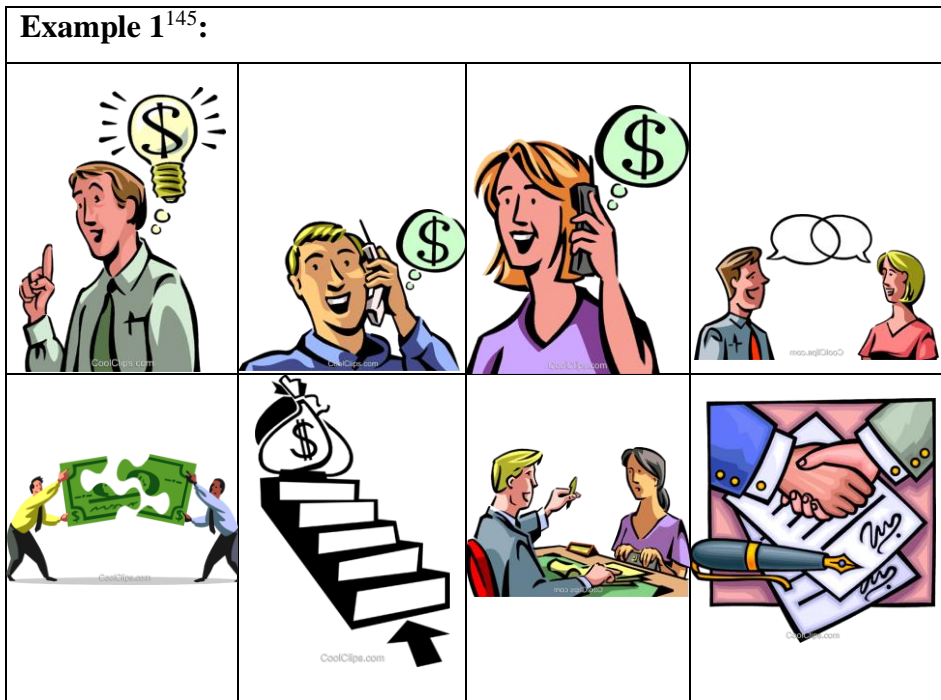
One side effect of a highly visual contract is that negotiation of terms is not contemplated to the same degree as would be conducted in an entirely textual contract. This may be fully acceptable because of the subject matter of the contracts—such as employment contracts, where there is an extreme imbalance in bargaining power between the employer and the employees. In the best examples thus far of cartoon contracts, the employer is a major agricultural business, and the employees are agricultural workers who pick and harvest the crops. It is easy to understand that a highly visual agreement with artwork and graphic design will present some enormous challenges for both sides if the agreement is to be altered through negotiation. In highly sophisticated settings, it might be feasible for one side to create visual counterproposals or a complete substitute visual contract, but at that level of sophistication in both contracts, negotiation, art, and graphic design, the proactive benefits of a visual agreement seem superfluous.

¹⁴⁴ See examples of the imagery employed in the actual contracts displayed in Parts V & VI.

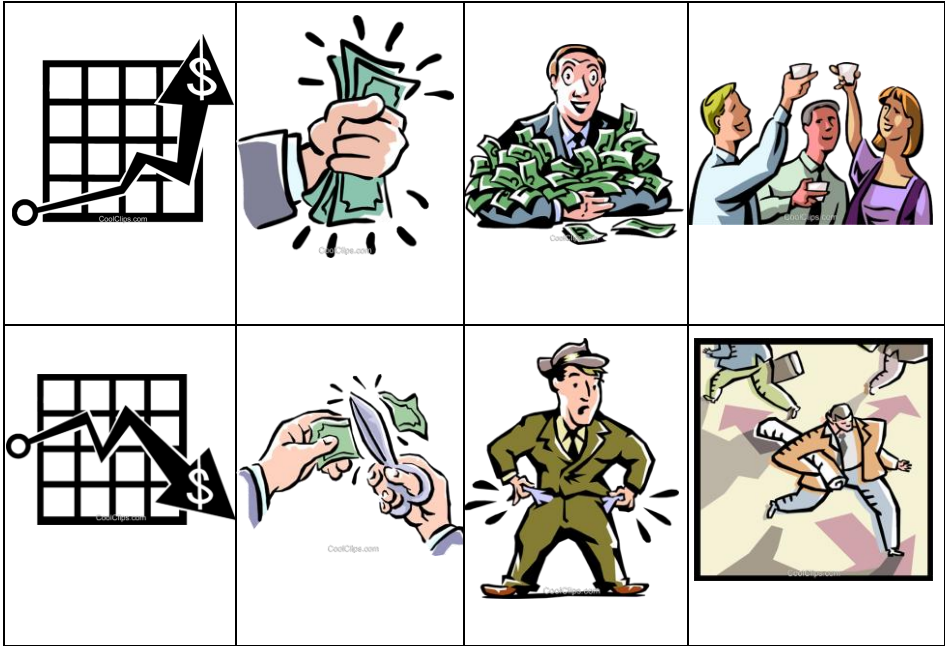
Both sides are equally competent to read and understand the verbal and visual components of the agreement. However, in the settings where cartoon contracts are used, the visual components bridge a gap in communication—one created by language and literacy skills or by a lack of general business sophistication or experience.

C. The Hypothetical Completely Visual Contract

There are no known examples of a completely non-verbal contract that has been used in an actual contracting setting. Such an agreement would necessarily have to employ symbolic communication in the form of pictograms, ideograms, cartoons, or visual memes to communicate even a basic agreement. In Example 1, I have attempted to use royalty free clipart to communicate a non-verbal agreement about a money-making project:



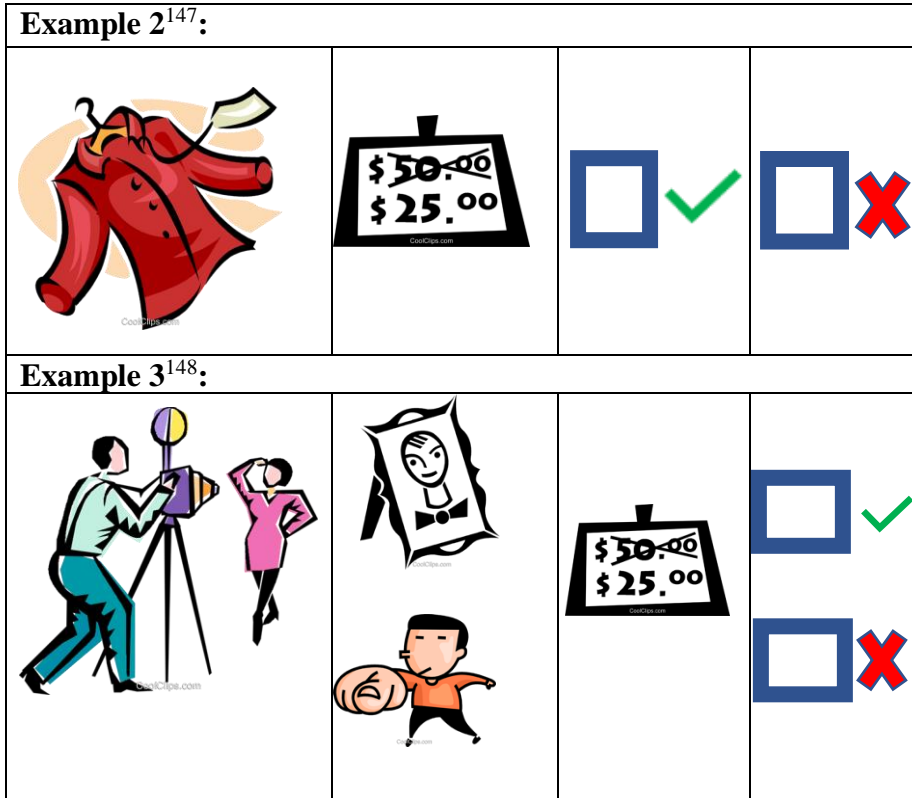
¹⁴⁵ Michael D. Murray, *Sample Non-Verbal Contract or Proposal* (July 2019). In this commentary and criticism for research and educational purposes, I have recontextualized individual CoolClips.com images, which are offered royalty free and are for personal use. See *CoolClips Image License Agreement*, *supra* note 134.



To the extent Example 1 can be read as an agreement (or a proposal for an agreement), it is not much of an agreement. It has something to do with an idea for making money, discussion of that idea, a meeting of the minds, a formalization of the agreement, and the consequences for making money (people collect, and everyone is happy) and not making money (money is cut and dries up, and people go their separate ways). However, by using pre-existing clip art images, the work does not present a consistent visualization of the parties, and, in fact, a fair reading of the images would indicate that as many as nineteen different persons are featured as potential parties in this proposal.¹⁴⁶

A completely non-verbal contract is likely to be unsatisfactory except for the simplest offer and acceptance situations.

¹⁴⁶ In a completely unscientific straw poll that I conducted at the Global Legal Skills Conference XIV, Phoenix, Arizona, Dec. 13, 2019, only 50% of those responding to my poll question could identify what this graphic, Example 1, was representing. The attendees of the session consisted of law professors from several states in the United States, and from the Czech Republic, Italy, and the United Kingdom. They could tell that my comic was depicting persons discussing and then carrying out some kind of money-making scheme. Others could not follow the narrative of the images, perhaps because there were too many characters depicted in the panels, or because my stock of borrowed images was not coherent enough.



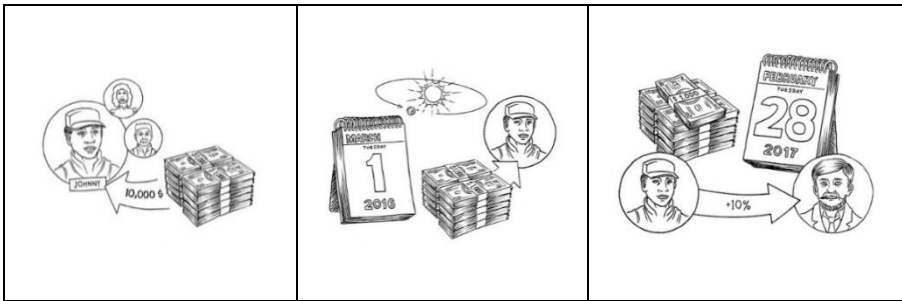
Examples 2 and 3 convey an offer and acceptance opportunity—one for the purchase of a coat at a discounted price of \$25; the other for the creation and sale of a photographic portrait, also at a discounted price of \$25. As noted, even though verbal language is not used, symbolic language is employed throughout: dollar signs; numbers; items such as coats and cameras; activities such as photographing; a foreshortened perspective on pointing; a green check for yes, a red “X” for no, as well as a combination of the check and “X” to indicate a Yes-No choice. All

¹⁴⁷ The unscientific straw poll I conducted with the law professor attendees at the conference referenced *supra* note 146 revealed that 90% of those responding to my poll question could identify that this graphic, Example 2, pertained to the sale of a coat at a discounted price.

¹⁴⁸ At the conference referenced *supra* note 146, the straw poll I conducted revealed that 75% of those responding to my poll question could identify that this graphic, Example 3, pertained to a cash transaction relating to photography, but none of them fully understood the cartoon to pertain to the creation and sale of a photographic portrait at a discounted price. It appeared that the second column of images—the framed “portrait” image, and the “man pointing out” image—were unrecognizable or confusing to the attendees of the session.

of these employ a simple language but one in which the viewer must be literate to make sense of the opportunities and the choices presented.

South African attorney Robert de Rooy,¹⁴⁹ a pioneer in the field of comic contracts, experimented with conveying the terms of a loan agreement using only minimal numbers and no words other than the months of the issuance, due date, and the name of the borrower. Nevertheless, the following depiction manages to convey that the loan amount is \$10,000; the interest rate is 10% per year; the term is March 1, 2016, to February 28, 2017; and co-signers may be required for the loan¹⁵⁰:



The problem is that once the contract extends beyond single concepts (sale of a dress for \$25; creation of a photographic portrait for \$25; a one-year loan of \$10,000 to be repaid with 10% interest), the complexity of terms and the ability to communicate clear and accurate concepts with pictures alone without verbal reinforcement or reiteration of the concepts becomes increasingly difficult. Most actual examples of legal agreements are a hybrid of words and visuals.¹⁵¹

VI. VISUAL ILLUSTRATION AND EXPLANATION OF TERMS IN CONTRACTS

Terms and requirements of contracts can be illustrated visually in the agreement with or without textual explanation. The first example below is an excellent starting place for this discussion because it borrows a sample illustration from a larger work—an agricultural workers employment contract—that falls into both categories of visual

¹⁴⁹ de Rooy, *Our Story*, *supra* note 12.

¹⁵⁰ *Id.* (Loan Agreement Panels 1, 2 & 3 illustrated by the German artist Felix Pestemer).

¹⁵¹ See generally *id.*; Murray, *Diagrammatics*, *supra* note 65.

illustration as well as explanation of contract terms and a full-form comic book contract. The form is a true hybrid because it employs all the techniques of visual illustration and communication of terms on a standalone basis but weaves them together in a sequential narrative (i.e., comic book or graphic novel form) starting from the initiation of the contractual relationship through performance issues as a sort of story of the relationship.

Excerpt from Employment Agreement: Successful and Unsuccessful Fruit Picking¹⁵²:

Visual Context: The visual contracts created by South African attorney Robert de Rooy employ graphical renderings to convey the **meaning** of the objects and subjects of the employment (trees, fruit, picking, equipment, supervisors with clipboards, male and female workers), pictograms (actual fruit as the “bar” in pictorial bar graphs for amounts picked), and comic style visuals (red and green direction arrows and green checks or red X’s for yes/no, good/bad; facial expressions of happiness and success, vs. shame and failure) that are very likely to communicate across many cultural and language divides. Under the **taxonomy**, the visuals *Concretize*, *Humanize*,

¹⁵² Camilla Baasch Andersen, *Comic Contracts and Other Ways to Make the Law Understandable*, CONVERSATION (Jan. 19, 2018, 12:15 AM), <https://theconversation.com/comic-contracts-and-other-ways-to-make-the-law-understandable-90313> [<https://perma.cc/R82Q-A3RX>] (showing an excerpt from the ClemenGold Agricultural Workers Employment Agreement created by Robert de Rooy). The full contract is discussed in Part VIII *infra*.

Describe, Use Graphs, Exemplify, Organize, Compare and Contrast, Define, Condense, Emphasize, and Model the message of the work. The comic form of the visual should help to *Engage* and *Motivate* the workers. The graphics are not used to *Decorate* the work.

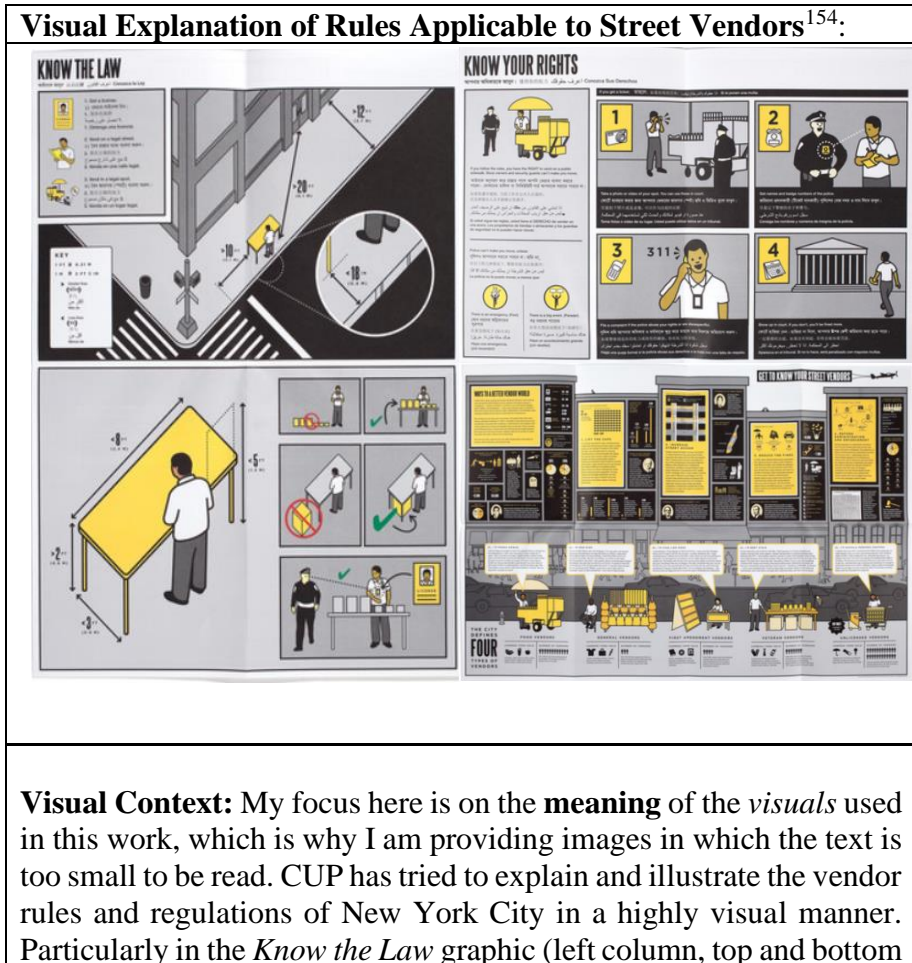
Verbal Context: The works do contain words, namely the heading for this section of the agreement, but there is much less reliance on the words to communicate the meaning than in other examples of comic contracts. The images do the work of communication in this example.

Visual Cultural Context: de Rooy, his designers, and artists paid careful attention to the content of the visuals so that they would be friendly, accessible, and immediately understandable to the target audience of agricultural workers. The symbols, pictograms, and comic visuals are very likely to communicate across many cultural and language divides. The characters in the depiction are rendered with culturally sensitive and racially- and gender-inclusive graphics so as not to be insulting, demeaning, or stereotypical in appearance. The racial and gender inclusiveness also matches the target audience who will be reading and, hopefully, agreeing to the employment contract.

Mise en Scène and Visual Rhetoric: By using high quality art that is culturally-, racially-, and gender-inclusive, and by paying careful attention to the use of symbols, pictograms, and comic visuals that are likely to communicate across cultural and language divides, this example of a cartoon illustration of one provision of an employment contract is very likely to be understood and accepted by a wide-range of partially literate or non-literate workers. Due to the enormous up-front investment in the art and graphic design, the contracts are, for all intents and purposes, completely non-negotiable, which, in the context of an employment agreement between a low-skill-level worker and a large agribusiness, is not remarkable. The work shows proactive attention to improving the comprehension and acceptance of the agreement and does not focus on the flexibility or alteration of its terms.

Visuals in contracts also can illustrate the meaning and application of laws that apply to the contract activity. One particularly good visual explanation and illustration of the New York City Vendor Licensing

Rules was created by the Center for Urban Pedagogy (CUP)¹⁵³ and attempts to explain the rules restricting the sales activities of street vendors:



Visual Context: My focus here is on the **meaning** of the *visuals* used in this work, which is why I am providing images in which the text is too small to be read. CUP has tried to explain and illustrate the vendor rules and regulations of New York City in a highly visual manner. Particularly in the *Know the Law* graphic (left column, top and bottom

¹⁵³ The Center for Urban Pedagogy (CUP) is a nonprofit organization whose goal is to engender civic engagement, especially within communities that are underrepresented, through the use of visual art and design principles. *About CUP*, CTR. FOR URBAN PEDAGOGY, <http://welcometocup.org/About> [<https://perma.cc/W49Q-N4AR>].

¹⁵⁴ The three graphics depicted here (entire left, right top, and right bottom) are from the CUP publication, *Vendor Power! A Guide to Street Vending in New York City*, CTR. FOR URBAN PEDAGOGY, http://welcometocup.org/file_columns/0000/0980/mpp_vendor_power.pdf [<https://perma.cc/7C37-JYC6>] (Showing a compilation of the images which, clockwise from left, are: (1) *Know the Law*, (2) *Know Your Rights*, and (3) *Get to Know Your Street Vendors*.)

images), the ratio of pictures to words is highly tilted toward pictures, or rather, pictograms, because the images are simplified renderings of the actual objects, persons, and activities involved in the communication. Using stock images as the basis for the pictograms—a street vendor at a table, a hot dog or food vendor’s cart, a police officer wearing a badge, a courthouse, a cell phone, an ID badge—the publication explains the different rules and steps a reader must take to comply with the law and to enforce their own rights. Under the **taxonomy**, the visuals perform roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the law communicated in the work. There is a certain amount of *Motivating* the reader to know and protect their rights that is communicated partly in the visuals but largely through the captions and text. There is no visual here used simply to *Decorate* the text.

Verbal Context: Upon examination of the actual document cited in footnote 155, it is apparent that the words fill in important details of information that is not depicted in the images, and each caption and explanatory bubble is translated into five languages—English, Hindi, Chinese, Arabic, and Spanish—for greater accessibility among literate users of the publication. If there were no text captions whatsoever, it would be more difficult for the reader to understand their rights or how the law actually operates, but in both the *Know the Law* and *Know Your Rights* sections shown here (left column, and right column, top image), the text is kept to a minimum.

Visual Cultural Context: The authors appear to have paid attention to depicting the vendor in the *Know the Law* and *Know Your Rights* sections as a generic “person of color,” a demographic that most likely is a large part of the target audience for this publication, but the figure is not distinctly of one race or another, i.e., not distinctly of African, Asian, European, or South or Central American ancestry. A small amount of racial or geographical identity is drawn into the separate vendors who have names and genders in the *Get to Know Your Street Vendors* section (right column, bottom image). The intent of this approach to the artwork most likely is to help a majority of the intended audience—actual and potential street vendors—easily identify with the central characters of the depictions. As noted above, the stock images of carts, vending tables, police officers, and other

aspects of the vending environment are well-rendered and should be easily identifiable by readers with even a small amount of familiarity with the street vending environment in New York City.

Mise en Scène and Arrangement: The arrangement and composition of the graphics is one of the strongest parts of the CUP works. Each graphic depicts just enough legal information, most of it visualized (proper placement of goods for sale, distance of vending table from corners and fixtures), and the limited color and grayscale imagery makes the panels clean, while the subjects of the panels are given the center of attention. As in good filmmaking, the perspective changes from medium-range, close-ups, and birds-eye views to the extent necessary to best depict the scene and the subjects performing the actions.

Visual Rhetoric, Ethics and Professionalism: The diagrams and visuals of the publication are rendered in a simple, accessible, but still highly professional style that is not cartoonish or comical. There is a certain bite to the history and commentary on New York City government and prior mayors of New York in the *Get to Know Your Street Vendors* section (right column, top image), which betrays a certain suspicion and criticism of the city and its leadership. This seems to be a bit of a detour from the overall empowerment and access to law motivations of the publication, but it is a minor detour and does not defeat the overall communication strengths of the work.

VII. CONTRACT MODES USING SEQUENTIAL NARRATIVE

Highly visual contracts can take advantage of the sequential narrative (sequential story-telling) form of comic books and graphic novels.¹⁵⁵ Comic strips, cartoons, and other narrative art forms (such as tapestries and woodblock prints) use a series of visuals, juxtaposed in a sequence, as the communicative media that both tells the narrative of single scenes and works together to advance the story as a whole.¹⁵⁶ To those initiated in the comic book and graphic novel genres, sequential narration tells a complete story. The story is interpreted as complete despite the visuals being separated into panels, with time and space compressed, because Gestalt principles of completion and closure allow

¹⁵⁵ See sources cited *supra* note 72.

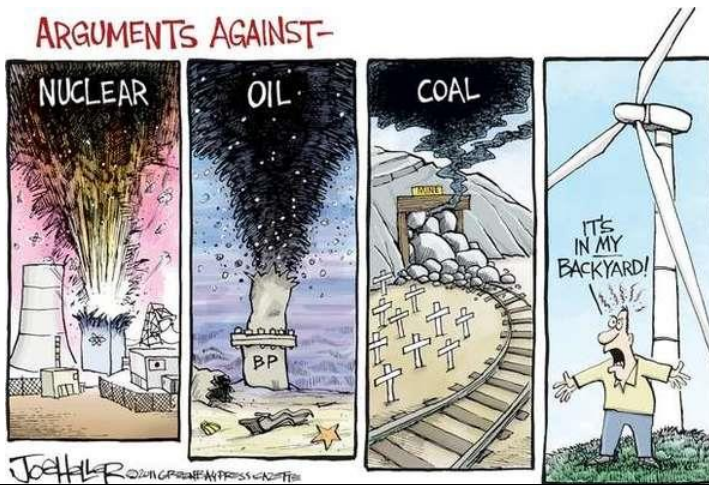
¹⁵⁶ See *Vendor Power! A Guide to Street Vending in New York City*, *supra* note 157.

the reader not only to connect the visuals in sequence and form a whole from the parts, but also to fill in the details not depicted. In other words, the mind will draw on its understanding of cultural history, myths, literature, stock stories, and familiar storylines to fill in the events not depicted so that the story beyond what is depicted will be a coherent whole.¹⁵⁷

A. Forms of Sequential Narrative

A very simple, non-legal example of sequential narrative is provided by cartoonist Joe Heller:

Example Cartoon Sequential Narrative¹⁵⁸:



Visual Context: In evaluating the **meaning** of this cartoon, we can observe that it uses sequential storytelling with an overwhelming pictorial, rather than verbal, rhetorical message to assert that the arguments raised against wind energy are trivial in comparison to the arguments against nuclear, oil, and coal energy. The cartoon makes use of examples of classic visual culture—the symbolic cooling tower and atomic symbol for a nuclear facility; a pipeline with a black substance erupting from it in an underwater environment (bubbles,

¹⁵⁷ MCCLOUD, *supra* note 72, at 62–69 (discussing closure in the sequential storytelling device of comics); Graham, *supra* note 102, at 7. See also KURT KOFFKA, *PRINCIPLES OF GESTALT PSYCHOLOGY* 171–72 (1955).

¹⁵⁸ This image of a visual argument against wind power has been depicted to demonstrate and comment on visual rhetoric relying primarily on images, not words. Joe Heller, *Energy Arguments*, POLITICALCARTOONS.COM, <https://politicalcartoons.com/sku/90741/> [<https://perma.cc/7C2Z-8JA7>].

seashells) to indicate an underwater oil pipeline leak; a wood framed entrance to a mountain or hillside with a railroad track leading to it to indicate a mine, while crosses and rocky blockage in the entrance indicate a deadly mining disaster; and a well-rendered cartoon image of a wind power generator. Visually, it is a supremely well-crafted visual communication of the points of argument being asserted. Under the **taxonomy**, the visuals *are* the argument and the message, but can be sorted as performing roles of *Describing*, *Comparing*, *Condensing*, and *Transforming* the message.

Verbal Context: There are only ten words and one set of initials in this entire cartoon. The words drive home the comparison being made, but as noted, the visuals do a remarkable job of communicating the points of argument being asserted. It might be indispensable to the message to explain in words why the man in the fourth panel does not like the wind power generator behind him. Simply illustrating symbols of anger or irritation over his head with a glare upon his face might indicate a number of messages—anger over a high power bill, anger over the noise, or anger over the aesthetic interruption of the generator in a green grassy space, or, as was intended, anger that the generator is in his backyard.

Visual Cultural Context: Although simplified, the imagery used by Heller does anticipate an audience in a developed nation that would recognize images and symbols that represent the dangers of nuclear power, offshore oil exploration, and coal mining, as well as the setting and scene of wind-generated power.

Mise en Scène and Arrangement: It is noteworthy that each panel has just enough content to convey the scene—nuclear accident, underwater pipeline leak, mine collapse, wind turbine—and no more. The visuals are compact yet highly communicative in this arrangement.

Visual Rhetoric, Ethics and Professionalism: The stock images, the settings, and the perspective chosen all work together to communicate that the arguments raised against wind energy are trivial in comparison to the arguments against nuclear, oil, and coal energy. As an example of sequential comic argumentation, Joe Heller's cartoon is an effective work of visual advocacy.

Sequential narrative is an ancient method of storytelling that is recognizable in works from ancient Mesopotamia, ancient Egypt, and, more recently, from modern day countries such as France, China, and the Netherlands:

Examples of Sequential Narratives from Ancient to Modern Times:



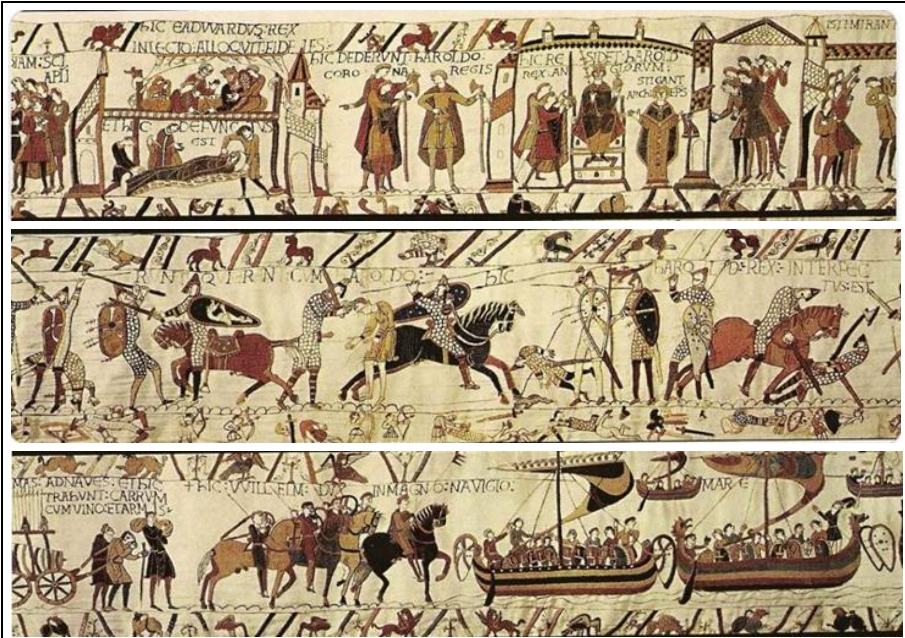
Mesopotamia: Royal Standard of Ur, War Panel (c. 2600 BCE)¹⁵⁹



Egypt: Hunefer's Judgment in the Presence of Osiris (c. 1275 BCE)¹⁶⁰

¹⁵⁹ War (detail), *The Standard of Ur*, circa 2600–2400 B.C.E., ©Trustees of the British Museum, available at <https://smarthistory.org/standard-of-ur-2/> [https://perma.cc/HT95-XUT2].

¹⁶⁰ *Page from the Book of the Dead of Ani*, circa 1275 B.C.E., Thebes, Egypt ©Trustees of the British Museum, available at <https://smarthistory.org/hunefers-judgement-in-the-presence-of-osiris/> [https://perma.cc/YL89-DCPQ]; *Page from the Book of the Dead of Hunefer*, circa 1275 B.C.E., Thebes, Egypt ©Trustees of the British Museum, available at <https://smarthistory.org/hunefers-judgement-in-the-presence-of-osiris/> [https://perma.cc/YL89-DCPQ].



France: Bayeux Tapestry¹⁶¹



¹⁶¹ *Bayeux Tapestry*, circa 1070, Normandy, France ©Bayeux Museum. The Bayeux Tapestry is a work of sequential storytelling that tells the narrative of “the events surrounding the conquest of England in 1066 by the Duke of Normandy Despite its name, the Bayeux Tapestry is actually an embroidery in wool thread on linen cloth.” *Discover the Bayeux Tapestry*, THE BAYEUX MUSEUM, <https://www.bayeuxmuseum.com/en/the-bayeux-tapestry/discover-the-Bayeux-tapestry/> [https://perma.cc/6HBK-NUMC]. The Bayeux work is 230 feet long, and 1.6 feet high. It is thought to date from the 11th century C.E., although the first known written reference to the work was not until 1476. *The Bayeux Tapestry*, HIST. LEARNING, <https://historylearning.com/medieval-england/bayeux-tapestry/> [https://perma.cc/G7PU-B24E].



China: Imperial Hunting Party Hand Scroll¹⁶²



Netherlands: Sequential Narrative in Woodblock Prints¹⁶³

B. Sequence of Images in Sequential Narrative and the Kuleshov Effect

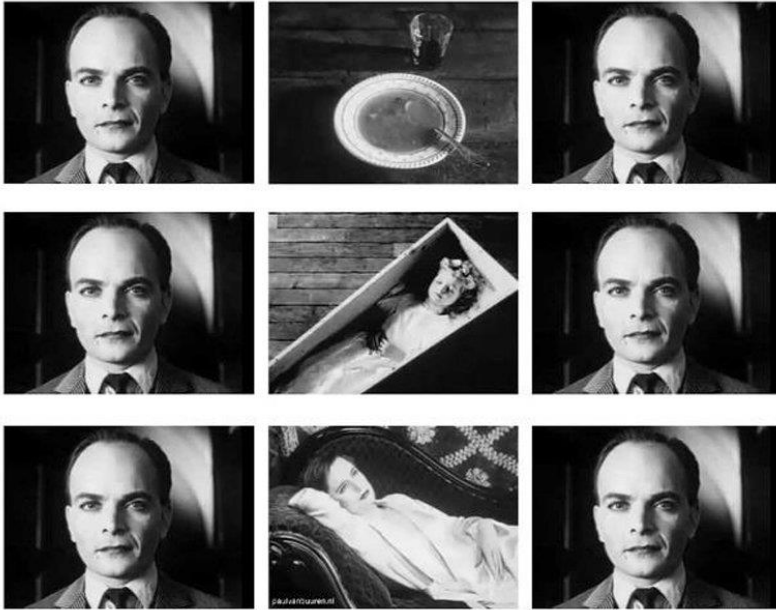
The selection and placement of images in sequential storytelling is essential to communicating the intended emotional appeal of the scene. In cinema, this is referred to as the “Kuleshov Effect,” named after the early twentieth century Russian cinematographer, director, and film theorist Lev Vladimirovich Kuleshov.¹⁶⁴ In the 1910’s and early 1920’s, Kuleshov tested his theories about film editing—referred to as montage—by using a few frames of film of a well-known Tsarist-era Russian film actor, Ivan Ilyich Mozzhukhin, showing the same neutral facial expression in each frame, but juxtaposed with frames of a bowl of soup, a young girl in a coffin, and an attractive woman reclining on a sofa.

¹⁶² *Imperial Hunting Party Hand Scroll, Qing Dynasty*, circa 1860–1870, (held in a private collection) image available at https://d2mpxrrcad19ou.cloudfront.net/item_images/271271/7386557_fullsize.jpg [<https://perma.cc/NL78-Y692>].

¹⁶³ FRANS MASEREEL, *PASSIONATE JOURNEY* 176–79 (1994) (ebook).

¹⁶⁴ See MOVIE ACTING, *THE FILM READER* 4 (Pamela Robertson Wojcik ed., 2004); MARIA PRAMAGGIORE & TOM WALLIS, *FILM: A CRITICAL INTRODUCTION* 162 (Richard Mason ed., 2005).

Sequence Testing Kuleshov's Theory¹⁶⁵:



After watching the sequence, the viewers were then asked to comment on the actor's performance to gauge their perception of the emotional impact of the sequence. The results were that the pairing of the neutral face with the soup was perceived as showing a strong expression of hunger, the pairing of the neutral face with the girl in the coffin was perceived as showing strong expressions of grief, and the neutral face juxtaposed with the attractive reclining woman was perceived as showing lust.¹⁶⁶

¹⁶⁵ Lauren McGrail, *What Is the Kuleshov Effect?: Discover the Power of Juxtaposing Shots*, LIGHTS FILM SCH., <https://www.lightsfilmschool.com/blog/what-is-the-kuleshov-effect-agj> [<https://perma.cc/X3BD-PZFE>]; see esteticaCC, *Kuleshov Effect / Effetto Kuleshov*, YOUTUBE (Mar. 10, 2009), https://www.youtube.com/watch?v=_gG13LJ7vHc [<https://perma.cc/5ERZ-84D3>] (depicting the film sequence of the Kuleshov Effect).

¹⁶⁶ McGrail, *supra* note 165. See also *State v. Skakel*, 888 A.2d 985, 1067–70 (Conn. 2006). Montage was an important part of the prosecution's closing argument presentation in *State v. Skakel*, the murder trial involving Kennedy cousin Michael Skakel. The prosecution used multimedia montage to suggest connections between images and recorded statements of the defendant which appeared to

Alfred Hitchcock referred to this montage editing effect as an important component of “pure cinema,” prompting him to create his own rendition featuring an elderly man (Hitchcock himself) making the same facial reaction but juxtaposed first with a woman and child (perceived as a loving old man) and then with an attractive younger woman in a bikini (perceived as a dirty old man).¹⁶⁷

Alfred Hitchcock Rendition of the Kuleshov Effect¹⁶⁸:



Present day cognitive neuroscience has confirmed that the Kuleshov Effect is indeed real. Not only do subjects express different perceptions and reactions to similar images placed in different contexts, but functional MRI (fMRI) imaging reveals that multiple areas of the

suggest culpability and guilt. The Connecticut Supreme Court allowed the use of montage for rhetorical effect. *See id.* The court stated:

We therefore never have categorically barred counsel’s use of such rhetorical devices, be they linguistic or in the form of visual aids, as long as there is no reasonable likelihood that the particular device employed will confuse the jury or otherwise prejudice the opposing party. Indeed, to our knowledge, no court has erected a per se bar to the use of visual aids by counsel during closing arguments.

Id. at 1067–70. *See also* discussion of the visual rhetoric employed in the Skakel trial in Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 207–08.

¹⁶⁷ *Telescope: Alfred Hitchcock’s Filmmaking Tips*, 13:00–14:00 (CBC television broadcast May 29, 1964).

¹⁶⁸ Jason Hellerman, *Everything You Need to Know About the Kuleshov Effect*, NO FILM SCHOOL (Jan. 30, 2019), <https://nofilmschool.com/Kuleshov-effect-definition> [<https://perma.cc/DU9C-R44P>].

brain—“the bilateral temporal pole, anterior cingulate cortices, amygdala, and bilateral superior temporal sulcus”—react differently to the same images when they are juxtaposed with different images.¹⁶⁹

The ability to draw on the Gestalt effects of completion and closure and the Kuleshov effect of montage and juxtaposed images, and thereby use visuals to tell a complete story without using any text, depends, of course, on the story you want to tell. The following images, derived from photographs of the 1963 civil rights marches in Birmingham, Alabama—the “Birmingham Campaign”—and subsequent marches and rallies, tell an emotional story of the struggle of protestors.¹⁷⁰ However, these images alone are unable to tell a complete story of the campaign or of the events and occurrences surrounding the campaign, at the time the images were captured.

Graphic Novel-Type Renderings of the Birmingham Campaign:



171



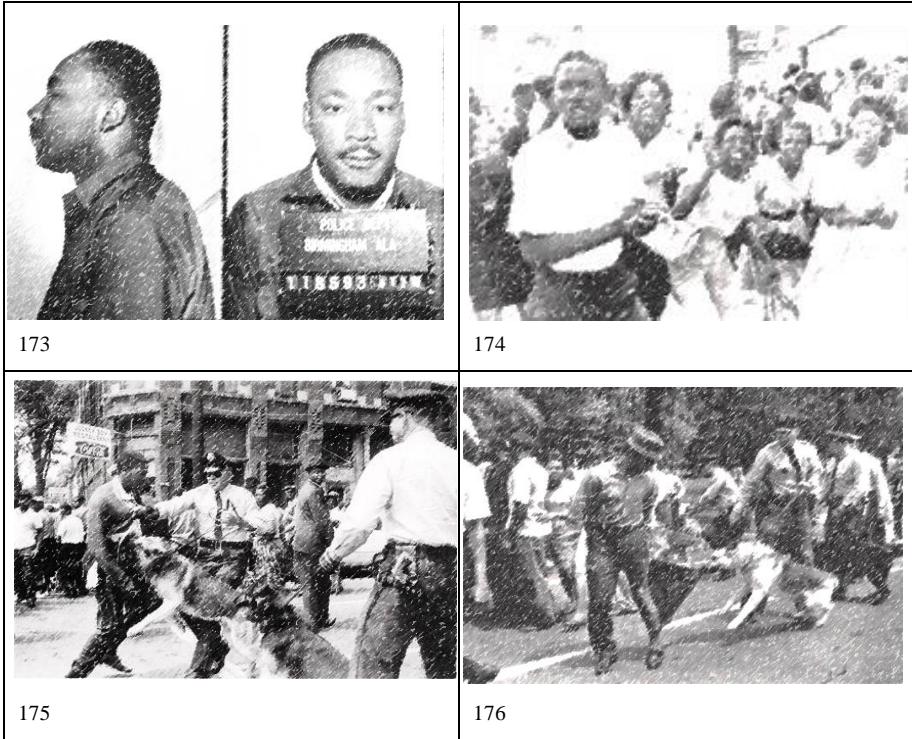
172

¹⁶⁹ Dean Mobbs et al., *The Kuleshov Effect: The Influence of Contextual Framing on Emotional Attributions*, 1 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 95, 95–106 (2006). See Marta Calbi et al., *How Context Influences Our Perception of Emotional Faces: A Behavioral Study on the Kuleshov Effect*, 8 FRONTIERS PSYCHOL., Oct. 4, 2017, at 2–3, 7.

¹⁷⁰ In this section, I have selected photographs I previously analyzed in an illustrated rhetorical analysis of the *Letter from Birmingham Jail* in Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14, at 218–47. Here, in the images accompanying notes 171–180 *infra*, I have created graphic novel-type line drawings based on each of the photographs.

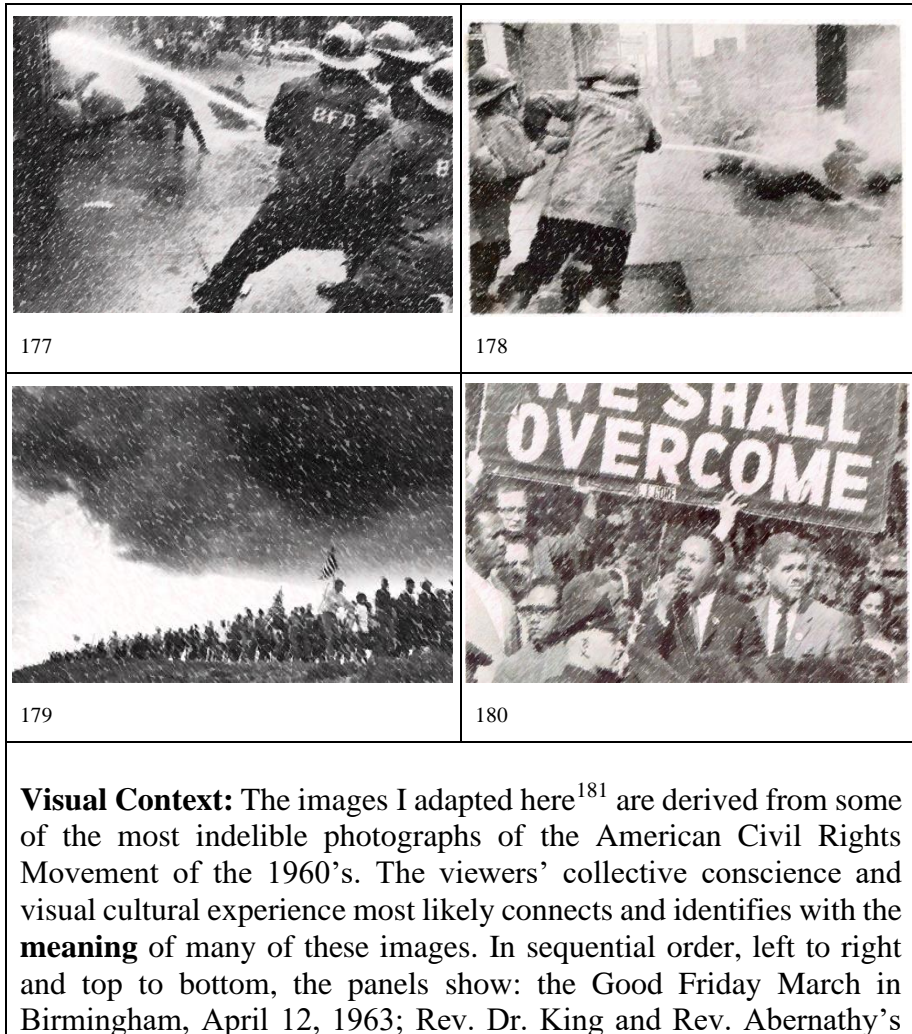
¹⁷¹ Horace Cort, Rev. Ralph Abernathy and Rev. Martin Luther King Jr. lead the March to Birmingham on April 12, 1963, QUARTZ (Jan. 18, 2015), <https://qz.com/328913/martin-luther-king-jr-s-1963-letter-from-birmingham-jail-remains-relevant-today/> [https://perma.cc/W6X3-27UU].

¹⁷² The Associated Press, Rev. Martin Luther King Jr. and Rev. Ralph Abernathy are Arrested in Birmingham on April 12, 1963, ATLANTIC (Jan. 19, 2015),



<https://www.theatlantic.com/photo/2015/01/remembering-martin-luther-king-jr-in-photos/384635/> [<https://perma.cc/EA5E-9VRY>].

- ¹⁷³ Birmingham, Ala. Police Dep't, *Martin Luther King Jr. Booking Photograph, April 12, 1963*, PRISON PHOTOGRAPHY (Jan. 18, 2016), <https://prisonphotography.org/2016/01/18/martin-luther-king-jr-s-two-arrests-and-stints-in-jail-in-birmingham-alabama/> [<https://perma.cc/EMU2-DKUN>].
- ¹⁷⁴ *African American Demonstrators in Downtown Birmingham Alabama*, LIBR. CONGRESS, <https://www.loc.gov/item/99402529/> [<https://perma.cc/NZ25-8XNW>].
- ¹⁷⁵ Bill Hudson, *Police Use Dogs to Quell Civil Unrest in Birmingham, Alabama, May 3, 1963*, NPR (June 18, 2013, 8:04 PM), <https://www.npr.org/sections/code-switch/2013/06/18/193128475/how-the-civil-rights-movement-was-covered-in-birmingham> [<https://perma.cc/2WQC-QC99>].
- ¹⁷⁶ Charles Moore, *Policemen Use Police Dogs During Civil Rights Demonstrations, Birmingham Protests, May 3, 1963*, SMITHSONIAN, https://nmaahc.si.edu/object/nmaahc_2011.49.8 [<https://perma.cc/K8PR-G4SJ>].



¹⁷⁷ Bill Hudson, *Police Use Fire Hose on Civil Rights Marchers in Birmingham, Alabama, May 3, 1963*, HIST. HUB, <http://sites.austincc.edu/caddis/17-civil-rights/> [<https://perma.cc/A9XS-9HL4>].

¹⁷⁸ Charles Moore, *Firefighters Aiming High-Pressure Water Hoses at Civil Rights Demonstrators, Birmingham, Alabama*, INT'L CTR. PHOTOGRAPHY, <https://www.icp.org/browse/archive/objects/firefighters-aiming-high-pressure-water-hoses-at-civil-rights-demonstrators-2> [<https://perma.cc/9X4F-8B6E>].

¹⁷⁹ James H. Karales, *Selma to Montgomery March, Alabama*, DUKE U. LIBR., <https://repository.duke.edu/dc/karales/kfpst0060070010> [<https://perma.cc/L9K8-RQL2>].

¹⁸⁰ Al Raia, *Dr. Martin Luther King with Long Island CORE*, CORE NYC, <http://www.corenyc.org/omeka/items/show/248> [<https://perma.cc/T9CQ-ZKXS>].

¹⁸¹ See *supra* note 170.

arrest and jailing during the Good Friday March for marching without a permit (during which Dr. King wrote the *Letter from Birmingham Jail*¹⁸²); the beginning of the Children’s Crusade (or Children’s March) in Birmingham on May 2-5, 1963; a series of violent images of police officers and fire fighters using police dogs and high pressure water hoses to disperse and contain those marching in the Children’s Crusade; the second to last image shows the Civil Rights movement continuing to struggle onward under a symbolic dark cloud of adversity, and the last image expresses the hope of “We Shall Overcome.” Under the **taxonomy**, the images *Open Perspective*, *Concentrate* (attention), *Locate*, *Describe*, *Emphasize*, *Humanize*, and *Elicit Emotion*. They may also be seen as *Engaging* and *Motivating* action, although what that action could be is not depicted or described in these works.

Verbal Context: Aside from the last image with its “We Shall Overcome” verbal message, the sequential narrative relies on images derived from photographs to communicate its message. There are perhaps a number of viewers of this compiled work who would not recognize the context of the images, except perhaps that they have something to do with Dr. King. A title or caption indicating the place (Birmingham, Alabama) and the time (1963) would help many of these viewers to place the images in their proper context—the American Civil Rights Movement.

Visual Cultural Context: The collective conscience and visual cultural experience of many Americans most likely contains and identifies with many of these images from the American Civil Rights Movement in the 1960’s. It is true that this visual cultural experience might be limited to Americans, and not all Americans, but only those old enough to have lived through or those who have studied this

¹⁸² Dr. King’s *Letter from Birmingham Jail* was first circulated in mimeograph form, then the letter was reprinted in various outlets. E.g., MARTIN LUTHER KING, JR., *WHY WE CAN’T WAIT* (1964) (This is King’s third book and a memoir of the Birmingham Campaign, which reprints the letter and provides King’s commentary on the text); Martin Luther King, Jr., *Letter from Birmingham City Jail* (Am. Friends Serv. Comm. 1963) (1963), <https://digital.lib.utk.edu/collections/islandora/object/volvoices%3A8254#page/1/mode/2up> [<https://perma.cc/256T-JPPJ#page/2/mode/2up>] (circulating the letter in pamphlet form); Martin Luther King, Jr., *A Letter from Birmingham Jail*, *EBONY*, Aug. 1963, at 23. For a full rhetorical analysis of the *Letter from Birmingham Jail* please see Murray, *Visual Rhetoric: Topics and Tropes*, *supra* note 14 at 218–47.

turbulent period of American history. Nevertheless, certain aspects of the visuals are more universal and not tied to one place and one occurrence—a peaceful protest march, police using extreme force and attack dogs, and firefighters using water cannons on young civilians will be recognized by people across the globe.

Mise en Scène and Arrangement: I derived these images from news photos, all of which were nicely framed and composed, although the ambient outdoor lighting was not always ideal. I made a deliberate choice to alter the images with a sketch-like filter to show the effect of a more “artistic” mode of visualization on the communicative potential of the works. This filter obscures some of the detail of the content, but I believe it still frames and displays the content well.

Visual Rhetoric, Ethics and Professionalism: The images individually tell a piece of each part of the story—peaceful, nonviolent protest; armed, actively aggressive resistance to the protest; demonstrators who are willing to sacrifice their bodies and their liberty for the cause; and perseverance through the violence. The individual design and composition of each photograph is effective on a communicative and emotional level. There is no doubt of the dominant subjects of the photograph, the lighting is adequate and effective, and the frames are properly filled and not overcrowded. The sequential narrative device brings into play the Gestalt effects of continuation and closure, and the Kuleshov effect of seeing the images one before the next creates a full story with meaning and emotions regarding the Birmingham Campaign in the mind of the viewer.



This Pulitzer Prize winning photograph¹⁸³ by Associated Press photographer Eddie Adams is credited with turning the tide of American public opinion on whether the Vietnam

¹⁸³ Eddie Adams, *Saigon Execution, 100 Photos: The Collection*, TIME, <http://100photos.time.com/photos/eddie-adams-saigon-execution> [<https://perma.cc/7DZ7-A2EV>].

War could or should be won.¹⁸⁴ Taken during the Tet Offensive in February 1968, the Adams photograph manages to capture in exquisite visual prose the moment of a summary street execution of a captured and hand-cuffed enemy combatant on February 1, 1968. As shown by my selection and adaptation¹⁸⁵ of other photographs taken by Adams on February 1, 1968, before and after the execution,¹⁸⁶ there is more to the narrative than one quick execution on a Saigon street.

Collage of a Street Execution During Vietnam War¹⁸⁷:



Image 1: American troops captured Viet Cong combatant, Nguyễn Văn Lém, and escorted him down a public thoroughfare in Saigon.



Image 2: The Americans are later joined by South Vietnamese troops, and then they encounter Brigadier General Nguyễn Ngọc Loan, South Vietnam's chief of National Police.

¹⁸⁴ The text in this discussion has been reproduced and adapted from Murray, *Mise en Scène*, *supra* note 14, at 268.

¹⁸⁵ I have created line drawings derived from Eddie Adams' photographs of events before, during, and after the execution of Nguyễn Văn Lém by Brigadier General Nguyễn Ngọc Loan on February 1, 1968. *100 Photos: The Collection*, TIME, <http://100photos.time.com/photos/eddie-adams-saigon-execution#photograph> [<https://perma.cc/5A6T-ZQQR>].

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* (click on the image box directly under "See the sequence of events that led to the execution").



Image 3: The impromptu execution of Nguyễn Văn Lém by General Loan happened right on a Saigon street.



Image 4: General Loan calmly puts away his pistol as the executed prisoner writhes on the ground at his feet.



Image 5: Nguyễn Văn Lém is left to bleed out in the street.

Visual Context: The most famous of these images—the street execution—is an indelible image for most Americans who lived through or studied the Vietnam War. The **meaning** of this collage of photos surrounding the street execution is important to understand because it was the plain brutality and injustice of this scene that caused Americans to seriously rethink American involvement in the war. I selected the other images and adapted them to complete the narrative as described in my captions above.¹⁸⁸ The pictures express most of the narrative without any captions or text, at least the “injustice in wartime” part. In the **taxonomy**, the pictures *Concretize, Humanize, Describe, Exemplify, Locate, and Condense* the story of the event, and in so doing they *Elicit Emotion*. It is noteworthy that the photographs themselves do not *Interpret, Develop, or Transform*

¹⁸⁸ The mise en scène features of the photographs were analyzed in Murray, *Mise en Scène*, *supra* note 14, at 268–69, 290.

the events of the narrative, but instead leave those processes to the viewer.

Verbal Context: The images have no verbal content. The message is communicated entirely by the images. I wrote captions for each image simply to orient the contemporary reader, but I do not intend the captions to be included in the “reading” of these images. The images require some familiarity with the Vietnam War, such as the fact that American soldiers were working alongside South Vietnamese soldiers and police, and the fact that there were un-uniformed combatants operating in major cities, such as Saigon. Without this knowledge, the images might imply that a random shooting of an arrestee by a military officer had occurred in some Asian nation, time period uncertain, and the connection to America and its military would be similarly uncertain.

Visual Cultural Context: The fame of the execution photograph would most likely make it recognizable to anyone in the world who has studied the Vietnam War. But as far as a common cultural experience of the “global village” variety, the power of the sequence of photographs might be limited to Americans of a certain age and experience who lived through or closely studied this turbulent period of American history.

Mise en Scène and Arrangement: Eddie Adams’ news photographs are amazing for their ability to capture, frame, and compose the scenes shown in the sequence of images. The perspective and point of view do not change (medium or wide shots from ground level are used throughout), but the ambient lighting was very good, and the framing follows classic “rule of thirds” arrangement principles.¹⁸⁹ For this Article, I altered the original Eddie Adams news photographs with a sketch-like filter, which obscures some of the vivid detail of the original photographs. This was done, as in the example above, to show the effect of a more “artistic” mode of visualization on the communicative potential of the works. If the details were essential, then my choice would have been a poor one.

Visual Rhetoric, Ethics and Professionalism: The photographs speak a message about war—its cruelty, injustice, and lack of

¹⁸⁹ See *id.* at 289–90.

civilized boundaries—and the images do it all without captions or explanation.¹⁹⁰ There is a background story to the images that Nguyễn Văn Lém was an un-uniformed armed combatant who purportedly was a member of a Viet Cong death squad that carried out multiple killings in Saigon in the days before he was captured and executed.¹⁹¹ Unless the viewer is a scholar of modern American history, or well-schooled in the events of the Vietnam War and the Tet Offensive of 1968, the viewer most likely will not know the full story. But, if the message is simply one concerning the brutality of warfare, or even of “policing” in the modern age in certain parts of the world, then no background is necessary. The Gestalt effect creates a complete narrative, and the Kuleshov effect assists the viewer to experience a full emotional reaction to the message of the images.

VIII. COMIC BOOK AND CARTOON CONTRACTS

Now we have arrived at the topic of comic book contracts as a highly visual form of agreement that employs sequential narrative. In the areas of contracts and employment agreements, visuals are used with deliberate attention to make the agreements easy to understand with little to no need for negotiation of terms.

As noted in Part I, visual contracts and agreements are a growing part of the Proactive Law movement.¹⁹² “Overall, proactive law [views a contract] as an enabling instrument to create success and foster sustainable[, cooperative] relationships” between parties, rather than a legal instrument filled with requirements, conditions, and disclaimers

¹⁹⁰ The Washington Post described the execution photograph as “a shot that would summarize in a millisecond the savage, seemingly mindless, violence of the war.” Michael E. Ruane, *A Grisly Photo of a Saigon Execution 50 Years Ago Shocked the World and Helped End the War*, WASH. POST (Feb. 1, 2018, 7:00 AM), <https://www.washingtonpost.com/news/retropolis/wp/2018/02/01/a-grisly-photo-of-a-saigon-execution-50-years-ago-shocked-the-world-and-helped-end-the-war> [<https://perma.cc/EL8C-36KH>].

¹⁹¹ *Eddie Adams’ Iconic Vietnam War Photo: What Happened Next*, BBC: NEWS (Jan. 29, 2018), <https://www.bbc.com/news/world-us-canada-42864421> [<https://perma.cc/XQ3K-CKAR>].

¹⁹² See Berger-Walliser, *supra* note 4 at 17, 27–30; Soile Pohjonen, *Proactive Contracting: In Contracts Between Businesses*, 12 IUS GENTIUM 147, 148 (2006); Adam Sulkowski, *Blockchain, Business Supply Chains, Sustainability, and Law: The Future of Governance, Legal Frameworks, and Lawyers?*, 43 DEL. J. CORP. L. 303, 340 (2019).

written in reaction to mistakes and disputes of the past.¹⁹³ The word “proactive” implies a forward-looking, *ex ante* focus to act in anticipation of areas of potential trouble and dispute, exercising self-initiative to create an agreement that handles the areas of concern prospectively, not in reaction to failures and shortcomings in past arrangements and relationships.¹⁹⁴ Thus, the proactive approach is designed to better fulfill the will and the intentions of the parties to the agreement, more than a reactive, lawyer-driven response to past failure and litigation.¹⁹⁵

As the examples below illustrate, none of the actual agreements discussed here eliminate all text and replace it with images. It is not anticipated that visuals will completely replace words in contracts.¹⁹⁶ Instead, the effort is to illustrate and explain the terms of the agreement, especially for those parties whose ability to read the language of the verbal terms of the agreement is either poor or nonexistent.

The agreements are not necessarily going to be written in the form of a graphic novel—meaning a long-form sequential storytelling device. Several examples below of employment contracts do communicate a narrative of the job, its requirements, and responsibilities. However, a shorter form of visual communication is used that employs symbols, pictograms, some cartoon images, or visual memes relating to the contract or its subject matter.

Robert de Rooy was one of the first attorneys to develop cartoon contracts—a hybrid combination of text and comic artwork—designed to simplify the content of the agreements and communicate that content to audiences with limited literacy skills in the native verbal language of the agreements.¹⁹⁷ His initial works were created for his clients, major South African agricultural growers, who employed persons with little education and very limited literacy skills in English—the language of

¹⁹³ Sulkowski, *supra* note 192, at 340–41.

¹⁹⁴ Berger-Walliser et al., *supra* note 10, at 58; Pohjonen, *supra* note 192.

¹⁹⁵ Berger-Walliser et al., *supra* note 10, at 58, 61–62; Pohjonen, *supra* note 192. *See generally* George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641, 656–58 (2010) (comparing the European Proactive Law Movement to the American “Law for Competitive Advantage”).

¹⁹⁶ *See* Berger-Walliser et al., *supra* note 9, at 371–72.

¹⁹⁷ *See, e.g.*, Kate Vitasek, *Comic Contracts: A Novel Approach to Contract Clarity and Accessibility*, FORBES (Feb. 14, 2017, 7:00 AM), <https://www.forbes.com/sites/katevitasek/2017/02/14/comic-contracts-a-novel-approach-to-contract-clarity-and-accessibility/> [https://perma.cc/4FFL-34E7].

the original agreements.¹⁹⁸ de Rooy and his clients wanted to communicate the expectations, rules, and basic human resources concepts (salary, benefits, sick leave, disciplinary procedures) to the employees with cartoons and pictograms, and very little text.¹⁹⁹ The following works are the result of this effort.

¹⁹⁸ *See id.*

¹⁹⁹ Robert de Rooy explained the project as follows:

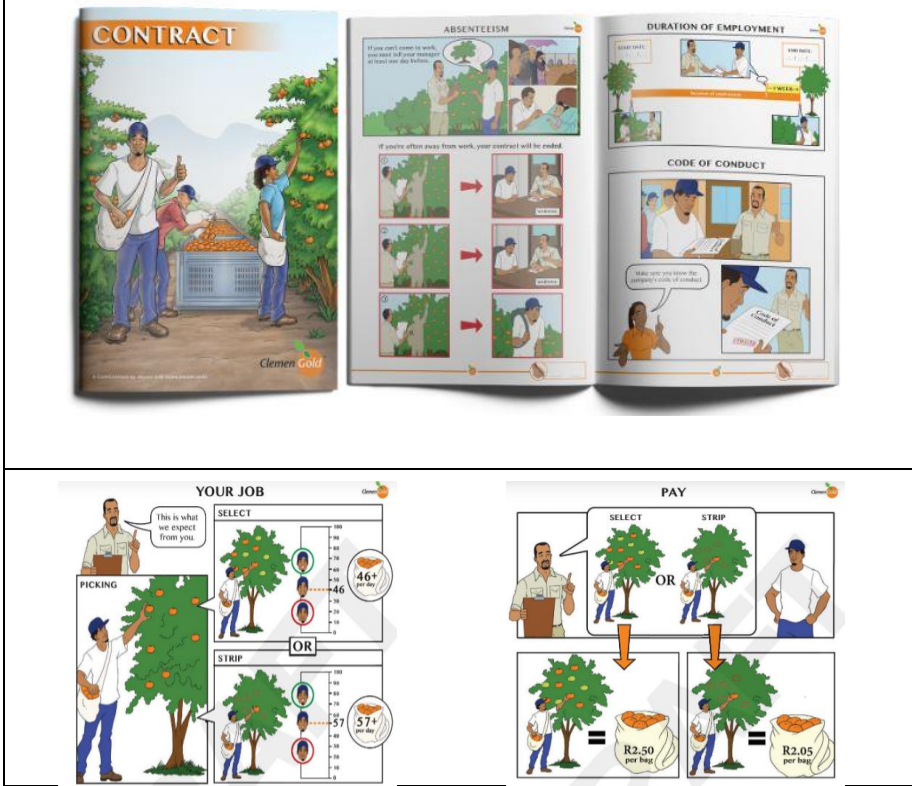
[T]he contract was created for a citrus farming operation called Clemengold, and the contract was used to capture the agreement between the company and their fruit pickers, which are seasonal workers, low income and what we would call vulnerable employees with low levels of literacy. Traditionally when the harvest starts they have an induction where they would traditionally have been presented with a normal text agreement. The text agreement was in English, although the local languages there are languages called Tsonga and Shangaan. And the text agreement would be explained to them by someone who would stand in front of this group of people and translate the English to the local languages, ask them if there's any questions and so work their way through the agreement. And this process would take up to 4 hours.

With the comic contract, everyone had a copy of the agreement, they could page through it, everyone was given an opportunity to ask questions about any of the pictures or any of the sections of the agreement. But the process took 40 minutes. The content was much more accessible, there were very few questions. I was quite nervous that the workers might feel patronised by being offered a visual agreement instead of a text agreement, but I specifically asked, I tried to elicit such responses, but no one felt that they preferred a text agreement over a visual agreement. They liked pictures.

....

I think the company understood that it is important for their workers to understand what they are committing too [sic]. It's beneficial for both parties to have your workers understand their rights and their obligations. If they signed agreements and they don't understand, then the misunderstandings arise. For example, the workers have the right to compassionate leave. A lot of the fruit pickers, for example, are women. So imagine a young daughter is sick at home, and if they don't know that they are entitled to compassionate leave, they would go to work but be distracted, or they might decide not to go to work, in which case they end up being disciplined for simply failing to arrive at work. But if they know that they've got the right to compassionate leave and they understand

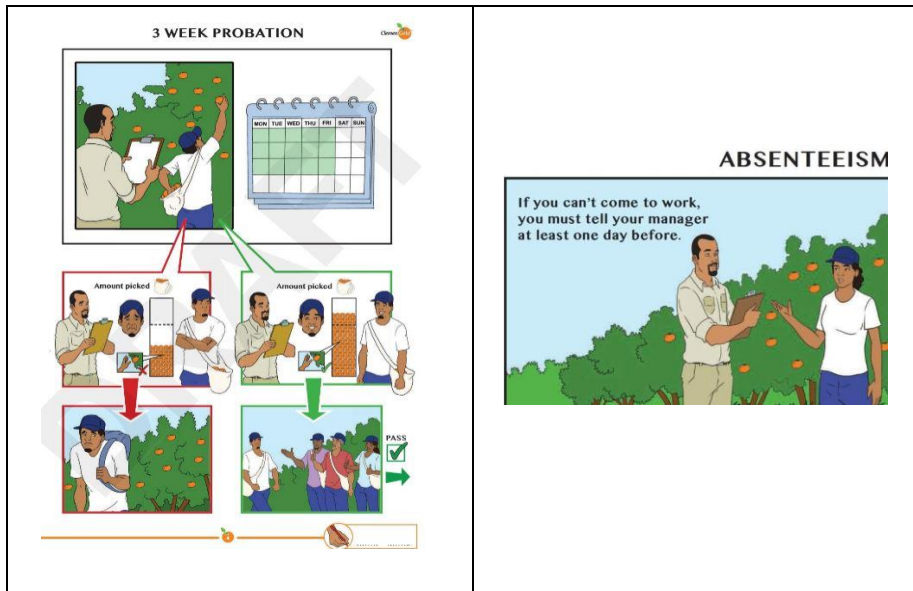
Excerpts of Robert de Rooy’s Cartoon Employment Contract²⁰⁰:



that they just have to notify the employer, then both parties are happy.

Rachel Carbonell, *Comic Contracts*, ABC: LAW REPORT (Oct. 4, 2016, 5:40 PM), <https://www.abc.net.au/radionational/programs/lawreport/comic-contracts/7898330> [https://perma.cc/62Z2-3Z73] (select the “Transcript” dropdown option).

²⁰⁰ de Rooy, *supra* note 2.



Visual Context: Robert de Rooy and his Creative Contracts team designed contracts that could be shared with and comprehended by persons with very low literacy skills. The **meaning** of the visuals in the cartoon contracts was for the images of the workers to be reflective of the actual persons who worked in the positions, and rendered with dignity and respect for the employees.²⁰¹ The visuals employ graphical renderings of the actual objects and subjects involved in the employment (trees, fruit, picking, IDs, equipment; different levels of managers—executives with ties, supervisors with clipboards; male and female workers), pictograms (calendars; sliding scales, and pictorial bar graphs using actual fruit as the “bar” representing the amounts picked), and typical comic art visuals (red and green direction arrows and green checks or red X’s for yes/no, good/bad performance; facial expressions show happiness and success vs. shame and failure) that are very likely to communicate across many cultural and language divides.

Under the **taxonomy**, the overarching decision to employ a comic or cartoon form in visualization is to make the legal works into a more user-friendly and nonthreatening form of communication, which should make them more accessible and engaging to readers compared to the unadorned legal text of the original agreement. A comic theme

²⁰¹ See de Rooy, *Our Story*, *supra* note 12.

and carefully limited text helps the graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text even to readers who are largely illiterate in the verbal language of the agreement. With the use of accessible, comprehensible visuals (and text), the visuals also can be viewed as *Engaging*, and *Motivating* the reader. In the case of de Rooy's works, the comic genre is not used merely to *Decorate* the text.

Verbal Context: The de Rooy works do contain words, particularly headings, for the various sections of the agreement, but there is much less reliance on the words to communicate the meaning compared to other works in this Section. It is presumed that other variable terms of the employment arrangement—the exact hourly wage or salary, specific benefits, or other personal details—can be covered in a separate engagement or salary letter.

Visual Cultural Context: As noted, de Rooy and his design team paid careful attention to the content of the visuals so that they would be friendly, accessible, and immediately understandable by the target audience—agricultural workers. The symbols, pictograms, and comic visuals are very likely to communicate across many cultural and language divides. The characters were designed with culturally sensitive, racial, and gender inclusive graphics so the depictions of the workers were not insulting, demeaning, or stereotypical. The racial and gender inclusiveness also matches the target audience who will be reading and, hopefully, agreeing to the employment contract.

Mise en Scène and Arrangement: The de Rooy and Creative Contracts works are true comic books, not simply a few panels or a pamphlet. The graphics and directional flow of the narrative are clear. There is a story of employment told in these works, starting from hiring and induction, moving through to the performance of the job, and finally to special circumstances such as sick days and leave policies. As noted, de Rooy and his team made exemplary use of business graphics-style artwork that is in no way “cartoony,” and instead is dignified, respectful, and inclusive, which should improve the works’ accessibility and comprehension within the target audience.

Visual Rhetoric, Ethics and Professionalism: As discussed, the artistic decisions of the works’ design teams were made mindfully, thus it is very likely the resulting agreements will be understood by a wide-range of partially literate or non-literate workers. Unfortunately, these contracts are for all practical purposes non-negotiable because of the enormous investment in their creation. However, as this is in the context of an employment agreement between a low-skill-level worker and a large agribusiness, that fact is unremarkable. Important to this analysis, the works show proactive attention to comprehension of the agreement rather than a focus on the flexibility of the terms.

Outside of the agribusiness industry, Robert de Rooy has also created a sample financial services provider contract that attempts to visualize and illustrate the basic aspects of a financial planning agreement with a broker or investor.²⁰²

Excerpts of Robert de Rooy’s Financial Services Provider Contract²⁰³:

The image displays excerpts from a 'FINANCIAL SERVICES PROVIDER CONTRACT'. On the left is a blue cover with the title 'FINANCIAL SERVICES PROVIDER CONTRACT' and the 'creative CONTRACTS' logo. On the right are three diagrams:

- Disputes:** Shows two people shaking hands. Text: 'Disputes will be referred for arbitration. An arbitrator must be agreed upon within 5 days before arbitration takes place.' A timeline below shows 'Day 1' and 'Day 5'.
- Arbitration:** Shows a person in a suit. Text: 'The President of the Law Society of the Northern Provinces.' A location pin icon indicates 'SANDTON'.
- Arbitrator:** Shows a person in a suit. Text: 'Arbitrator* must be an attorney or advocate with 10 or more years of experience, know insurance law and have no interest in the proceedings.' Icons include 'NO', 'FAS Act 2002', and a scale of justice.

*Can be guided by the requirements of the Financial Advisory and Intermediary Services Act 2002 and all applicable ancillary legislation.

²⁰² Robert de Rooy, *Financial Services Provider*, CREATIVE CONT., <https://creative-contracts.com/fsp/> [<https://perma.cc/5UPC-ETYN>].

²⁰³ All images in this table are excerpted from Robert de Rooy’s *Financial Services Provider Contract*. *Id.* (follow right arrow through embedded hyperlink, click twice to see pages 3–4).

PARTIES TO THE CONTRACT

Hello. This is your contract on investment advice.

This contract is between:

The advisor **AND** You, the potential investor

Title: _____
 Initials: _____
 First name/s: _____
 Surname: _____
 Date of birth: DD / MM / YYYY
 Gender: M F
 Identity/passport number: _____

An Authorised Financial Services Provider

Company: _____ Physical address: _____
 Reg no: _____ Postal address (if not same as physical address): _____
 Physical address: _____
 Contact no: C - _____ H - _____ W - _____
 Email: _____

What paperwork do I need to give?

- ID copy / passport copy (if foreign) / birth certificate (if minor)
- Proof of address (any money sent to your address within last 3 months)
- Bank Statement
- SARS Registration No.

The laws that apply to this contract include the Pension Funds Act 24 of 1956; the Collective Investment Schemes Control Act 45 of 2002; the Long-term Insurance Act 52 of 1998; the Prevention of Organized Crime Act 121 of 1998; the Financial Intelligence Centre Act 38 of 2001; and the Financial Advisors and Intermediary Services (FAIS) Act 37 of 2002.

What am I agreeing to?

1 Answering questions from the advisor about your money and what you want to do with it so they can create a **Risk Profile** for you.

RISK PROFILE: your risk profile shows what kind of investor you are and what investment products could work for you.

Conservative (Low Risk) **Medium Risk** **Risk Taker** (High Risk)

2 The advisor giving you **advice** on how to invest your money (based on risk profile).

OPTIONS A B C ?

RECORD **ADVICE**

3 The advisor helping you invest your money **AND** giving the advisor **permission to act on your behalf**.

The advisor **NOT** performing a full **analysis** on your financial situation (record of advice is limited in terms of Section 84(3)(a) of the general code).

4 The advisor advising you to invest in either a **Cash/ Money Market** OR **Unit Trusts** OR a combination of the two options.

The advisor could not perform a full analysis of your financial situation because:

(a) You, the client, didn't wish to give all the necessary information; or

(b) There wasn't enough time because of reasons outside of the advisor's control.

Cash/Money Market: These accounts trade often at higher interest rates than bank-savings and bank accounts can be accessed for money via ATM 24 hours.

OR

UNIT TRUSTS: Unit trusts invest your money in a variety of different assets (stocks, bonds, property) and when it makes a profit you share in the returns.

5 The advisor providing you with the best possible advice available at the time, but **not** taking responsibility for poor investment performance.

NO

6 **Paying an annual fee for the advice** and help received. Please note that you, the client, **don't** pay an invoice or transfer money to the advisor; the payment is deducted by the investment product provider from your investment and paid directly to the advisor.

MONTHLY X12

Investment **Annual Fee**

YEAR 1 **YEAR 2** **YEAR 3**

BPS - What are Basis Points: BPS measures interest rates or other percentages, including fees, in finance.
 1bps = 0.01% and 100bps = 1%.

For example: Let's assume an investment value of R100 and a charge of 50 basis points. This would mean the advisor would charge a fee of R0.50 per year for providing investment advice, excluding tax.

Visual Context: The meaning of de Rooy's sample financial services comic contract is similar to the comic contracts he prepared for his

agribusiness clients in that it employs racially and culturally inclusive images of clients and service providers, and the images are done in a professional, business graphics style, as opposed to a cartoony, comic style. The visuals employ pictograms (bar graphs, directional arrows, cash bundles for “money,” single bills for “commissions” or “service fees,” a graduation cap for “education,” a house for “home,” palm tree and sun for “vacations”), ideograms (calendars with bundles of cash for “growth or loss over time,” sliding scales and pictorial bar graphs for “investment performance” or “risk tolerance”), and comic art visuals (red and green direction arrows and green checks or red X’s for yes/no, good/bad; facial expressions of happiness and success, vs. caution, or confusion; one hand up with palm forward for “no” or “stop talking”) that are likely to bridge any communication gaps created by culture or language.

Under the **taxonomy**, the comic graphics here make the agreements more friendly and unthreatening, which should help improve their reception among readers. The graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating*, *Relating*, *Condensing*, and *Explaining* the text. Like the other de Rooy works examined, the comic genre is not used simply to *Decorate* the text.

Verbal Context: The works do contain a significant amount of text, more than was used in the agricultural employment contracts. Much of the communication and explanation of terms is made through text, with the visuals functioning more as illustrations than content communicators.

Visual Cultural Context: The target audience for the sample form is financial service providers, with the understanding that ultimately the completed agreement will be offered to financial services customers. In both cases, the target audience is expected to be fairly literate and skilled in, or at least informed about, many aspects of the financial world. The model agreement, therefore, dedicates the most attention to illustrating some of the lesser-known aspects of the financial service provider–client relationship, and details the benefits and risks of investing. As with other comic book-style sequential narrative examples, this model agreement relies on an audience that can read and interpret comic books (the panels are connected, and are to be read left to right and roughly top to bottom—sometimes with help of directional arrows), and that, when seen together (with a little Gestalt

closure and completion), can tell a full “story” of the broker–client relationship.

Mise en Scène and Arrangement: As with the agribusiness contracts, the financial services provider agreement is a true comic book, not simply a few panels or a pamphlet. The graphics and directional flow of the narrative are clear. There is a story of a client investor and his investment advisors told in the work, covering concepts of investing (risks vs. returns, investments strategies, risk tolerance, etc.) and other aspects of the relationship (dispute resolution).

Visual Rhetoric, Ethics and Professionalism: By using high quality, business graphics art, and paying careful attention to the use of symbols, pictograms, and comic visuals that are likely to communicate across cultural and language divides, the cartoon financial services contract is very likely to be understood by a wide range of potential service providers and investors.

An early effort to reduce words and make the content of a contractual agreement more accessible by adding visuals and using less text was coordinated by Professor Camilla Baasch Andersen, a law professor at the University of Western Australia.²⁰⁴ Her task for the university’s engineering department was to explain the terms of a non-disclosure agreement for student engineers and designers (“makers”) who worked on projects with developers, some of whom, presumably, were from outside the university. Although the university students were presumably literate in the verbal language of the agreement, Professor Andersen was told by her engineering colleagues that the student makers did not take the time to read or absorb the meaning of the completely verbal non-disclosure restrictions used in the past. As a result, the student makers did not pay attention to or comply with the terms of the agreement. To remedy this, she engaged the services of an artist and graphic designer, Loui Silvestro, to render the basics of the agreement in a comic strip format:

²⁰⁴ See Andersen, *supra* note 152; Carbonell, *supra* note 199.

Comic Strip Non-Disclosure Agreement: Version 1



Comic Strip Non-Disclosure Agreement: Version 2



Visual Context: The **meaning** of these works is made clear by the *text* as opposed to the visuals. The images are meant to replace a purely verbal non-disclosure agreement with a cartoon-style three-panel non-disclosure warning so that student “makers” would be more likely to read it. The creators of these two examples chose to express the visuals in a highly “cartoony” format. Unlike the de Rooy contracts, the characters and scenes here are distorted in a humorous way—eyeballs are merged with the eyeglass lens, facial features are exaggerated, coffee goes flying—and most of these choices seem to have been made for comic value, rather than for expression. Other symbols and cartoon memes (such as an ear horn for “listening in,” and a finger over pursed lips for “keep quiet about this”) are used purely for visual communication of content.

Under the **taxonomy**, Andersen’s use of the cartoon form in the visualization of the non-disclosure terms did *Transform* the legal jargon into a more friendly and unthreatening form of communication, which made the warnings more accessible and

engaging to readers than the unadorned legal text that they replaced. The graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text. Because the graphics made the terms more accessible and comprehensible, the graphics also can be viewed as *Engaging* and *Motivating* the readers. However, as mentioned in the preceding paragraph, the works seem to have employed certain cartoon conventions simply for comic value, and, in this respect, the comic genre of the images also *Decorates* the text. This is not a negative thing because the whole point of the project was to make graphics that would catch students' eyes and cause them to stop and read the work's message.

Verbal Context: Even with only three panels, the non-disclosure terms contain a lot of words. The visuals do supplement the terms and illustrate certain aspects—shutting up a chatty worker, coming away with a bag of money—but the communication relies almost entirely on the words used. The target audience was presumptively literate and highly skilled in the native language of the communication, so verbal communication and comprehension of the terms was possible with or without the visuals. Here the visuals are used to make the text more accessible and enjoyable for the audience to engage with.

Visual Cultural Context: True cartoons, such as the two versions of this non-disclosure warning, require an audience that can read and interpret the cartoon form in addition to reading and interpreting the symbols, images, and visual metaphors in the work. Cartoon and comic graphics might sacrifice communicative potential because they require such a high level of skill and experience in interpretation. Also, cartoons and comics are like business graphics and artistic and pictorial representations (discussed in Section V), because they are susceptible to the same limitations in cultural and experiential references of business settings (who are “makers,” who are “challengers,” what are “challenger projects,” what is confidentiality in a collaborative business setting) that might confuse a less experienced audience, or one whose visual cultural experience is from a different mode of business.

Mise en Scène and Arrangement: The three-panel cartoon form is a wonderfully succinct vehicle to communicate the most basic and

most important terms relating to non-disclosure and confidentiality: “Shut up about the project you are working on.” The cartoon form looks fun and inviting, and it reportedly did the trick in getting university students to actually read the non-disclosure terms and follow them, which is exactly what the client (the engineering department) wanted from the project. As noted, the creators of the works chose to use very “cartoony” graphics (as compared to business graphics), but this seems to have been a calculated decision given that the goal of the project was to grab students’ attention long enough to communicate a serious topic; for that, the graphics’ mission was accomplished.

Visual Rhetoric: The intent of Andersen’s project was to communicate the non-disclosure requirements to students in a form that the students would be willing to read and easily understand, and the panels accomplish that task.²⁰⁵ The use of cartoon memes (facial exaggeration and simplification of human forms; slapping a hand across a mouth for “shut up,” finger over pursed lips for “keep quiet,” ear horn for “listening in”), symbols (bag with dollar sign for “money”), pictograms (simplified placards for “projects”), and comic visuals (meeting clients; having coffee in a café where third parties are present) will allow the images to illustrate and communicate the verbal terms for audience members who might have some cultural and language difficulties understanding the verbal non-disclosure terms.

Granted, the message of the three panels in the above examples is clear and simple—“Don’t talk about projects”—but as admitted by Professor Andersen, the comic contract terms have significantly less nuance and detail than would be found in a traditional written contract.²⁰⁶ The primary motivation for the project was to get those who would be bound by the terms to actually look at the terms; it was not intended to communicate details, conditions, limitations, exceptions, or other more complicated aspects of the non-disclosure concept.

In other works, Professor Andersen explores concepts of how student designers and engineers (“makers”) at Western Australia University can share in intellectual property rights regarding their projects:

²⁰⁵ Andersen & Keating, *supra* note 1; Carbonell, *supra* note 199.

²⁰⁶ Carbonell, *supra* note 199.

Cartoons on Preserving Intellectual Property Rights²⁰⁷:

Version 1



Version 2



Visual Context: These intellectual property examples again use highly “cartoony” artwork, but of a different style compared to the sample non-disclosure agreement above. Characters and scenes are distorted, but the distortions do not appear to have been made for comedic value. Pictograms and cartoon memes (notebooks and journals, flash drives, two thumbs up) were used for visual communication of content. Although the top three panels are commonly displayed over the bottom three panels in a single image file,²⁰⁸ I believe the top three panels are a separate work from the bottom three, given the different style and coloring of the comic artwork, and the repeating messages of the top and bottom panels

²⁰⁷ Camilla Andersen & Loui Silvestro, *Practical Examples of Comic Book and Creative Contracting*, COMIC BOOK CONT., <https://www.comicbookcontracts.com/overview-practical-examples> [<https://perma.cc/ZH76-GCZY>].

²⁰⁸ *Id.*

(starting to help with a project; finding a solution; sharing in the rewards).

Under the **taxonomy**, the use of the cartoon form in these visualizations of steps to preserve and protect IP rights did *Transform* the legal jargon into a more friendly and nonthreatening form of communication, which made the warnings more accessible and engaging to readers. The graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text. Because the graphics made the terms more accessible and comprehensible, the graphics also can be viewed as *Engaging* and *Motivating* the readers.

Verbal Context: The three IP terms panels still contain many words. The visuals supplement the terms by illustrating that more than one person is involved, discussions are held, collaboration is anticipated, and the participants should keep a record in a journal or flash drive, but the communication relies almost entirely on the words used. The target audience was presumably literate and highly skilled in the native language of the communication so as to allow verbal communication and comprehension of the terms with or without the visuals.

Visual Cultural Context: These IP rights cartoon panels rely on the audience's visual cultural experiences of the particular kind of business setting discussed in the examples, perhaps even more than the non-disclosure agreement above. Understanding who are "makers," who are "challengers," what are "challenger projects," and even the concept of "IP" in a collaborative business setting turns on the reader's visual cultural experience (note that nowhere in either example are the actual words "intellectual property" used, only the initials "IP"). These terms alone might confuse a less experienced audience, or one whose cultural and visual experiences pertain to a different area of business. Added to that is the general requirement that the audience be skilled in reading comics—that the panels are connected, and are to be read left to right; that the images will be distorted with exaggerated representations used for emphasis and for the communication of emotion.

Mise en Scène and Arrangement: Many of the same choices in arrangement and composition that were made in the non-disclosure warnings are present in the IP rights panels. There is less background and “atmosphere” in these works, no friendly little scene of possible disclosure in a café, for example. The three-panel cartoon form operates as a vehicle to concisely communicate the most basic and most important terms relating to protecting and preserving IP rights. The cartoon form looks fun and inviting and should therefore be more accessible and engaging than any unadorned text it replaced.

Visual Rhetoric, Ethics and Professionalism: The intent of the project was to communicate to student makers the basic need to keep a record of inputs to preserve the IP rights on a project, and to communicate these recommendations in a form that the students would be willing to read and easily understand.²⁰⁹ The panels accomplish that task. The choice to use stylized cartoon art most likely was made to make the work both enjoyable and accessible to its audience. The use of cartoon memes (facial exaggeration and simplification of human forms; two thumbs up for strong approval), symbols (paper for project plans), pictograms (flash drives, journals), and comic art visuals (meeting clients; collaborating on work; keeping and proffering journal records) will allow the images to illustrate and communicate the verbal terms for audience members who might have some cultural and language difficulties understanding the verbal text of the non-disclosure terms.

The last example moves beyond comic book length treatment of contract terms. In his work *Terms and Conditions the Graphic Novel*, Robert Sikoryak presents an entire graphic novel devoted to the Apple iTunes terms and conditions.²¹⁰

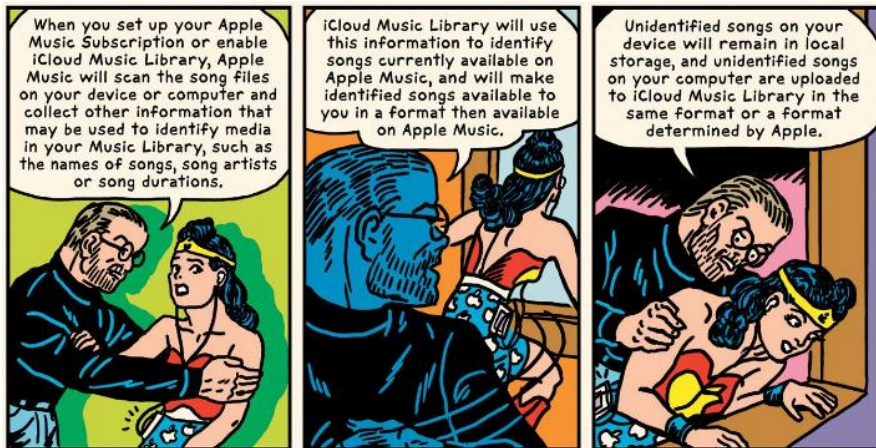
²⁰⁹ *Id.* See also Andersen & Keating, *supra* note 1; Carbonell, *supra* note 199.

²¹⁰ ROBERT SIKORYAK, *TERMS AND CONDITIONS THE GRAPHIC NOVEL* (2017).

Excerpts of *Terms and Conditions the Graphic Novel*:



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²¹¹ Henry Chamberlain, *Interview: Artist Robert Sikoryak*, COMICS GRINDER (June 9, 2019, 10:00 PM), <https://comicsgrinder.com/2019/06/09/interview-artist-robert-sikoryak/> [<https://perma.cc/2NFC-ERCS>] (Termination and Disclaimer of Warranties Provisions Panels depicted in the style of Marvel Comic’s “The Silver Surfer” comic featuring Steve Jobs as the “Surfer”).

²¹² Joe Coscarelli, *An Artist Helps iTunes’ User Agreement Go Down Easy*, N.Y. TIMES (Mar. 6, 2017), <https://www.nytimes.com/2017/03/06/books/itunes-terms-conditions-comic-book.html> [<https://perma.cc/APB3-B7YT>] (depicting the

Visual Context - Meaning: Robert Sikoryak has adapted Apple's iTunes terms and conditions, all 20,669 words of the 2015 version, into a 108-page graphic novel. The main character is Steve Jobs, albeit appearing in various cartoon and comic character forms.²¹³ Sometimes Jobs is drawn as a muscle-bound superhero, and other times, inhabits famous cartoon characters, such as Snoopy (from *Peanuts*), Homer Simpson (from *The Simpsons*), *Garfield*, and *Family Circus* cartoon characters, along with characters from DC Comics' *Wonder Woman* and *Batman*, and Marvel Comic's *Spiderman* and *The Hulk*.²¹⁴ As with most graphic novels, the text is more than merely complemented by the visuals. The illustrations expand the content and meaning of the original text to audiences who either would not care to read the original or would struggle greatly with the stilted, legal-centric text. Sikoryak gives the reader an incentive to actually turn the pages and read the terms in the panels and speech bubbles of what appears to be a lively looking sequential narrative, but, in truth, it is not a narrative; it is contractual terms and conditions.

Under the **taxonomy**, the work is long and wide-ranging, but the visuals are largely unconnected to the actual contract terms, other than constantly reminding the reader that Steve Jobs imposed these terms. The functions of the visuals are *Decorative*, but in the best possible meaning of the term. The decorative nature is the feature that attracts the reader's attention and holds it. The images occasionally *Exemplify* the text and are used to *Engage* and *Motivate* the reader. It is worth noting what the images *do not* do: they do not *Describe*, *Interpret*, *Transform*, *Translate*, *Relate*, *Condense*, or *Explain* the text. Instead, the terms and conditions are provided in full, word for word, with no translations, and often with little relationship to the visuals other than *Locating* them within the speech bubbles of the graphic novel's main character—Steve Jobs. Having a human being utter all of the terms may *Humanize* them in some way, although probably not in a way the real Steve Jobs would have intended. Other characters in the graphic

iCloud Music Library Provisions Panels in the style of DC Comic's "Wonder Woman" comic).

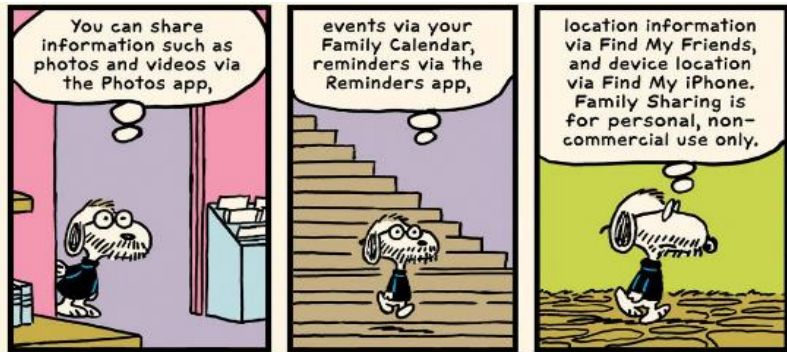
²¹³ Sian Cain, *How the 20,699-Word iTunes T&Cs Became This Year's Hottest Graphic Novel*, GUARDIAN (Mar. 8, 2017, 1:19 PM), <https://www.theguardian.com/books/2017/mar/08/terms-and-conditions-itunes-t-and-c-graphic-novel-robert-sikoryak-interview> [https://perma.cc/7EP8-KK62].

²¹⁴ *Id.* See also Coscarelli, *supra* note 212.

novel do react to Steve Jobs when he speaks the terms and conditions, but the terms are all coming out of his mouth.



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²¹⁵ Cain, *supra* note 213 (showing the Payment of Fees Provision Panels depicted in the style of Marjorie Henderson Buell’s “Little LuLu” comic strip).

²¹⁶ Coscarelli, *supra* note 212 (showing the Family Sharing Provision Panels depicted in the style of the Charles M. Schulz’s “Peanuts” comic strip, featuring the character “Snoopy” as Steve Jobs).

²¹⁷ *Id.* (showing the Album Cover Art Provision Panels depicted in the style of Matt Groening’s “The Simpsons” animated television program, featuring the character “Homer Simpson” as Steve Jobs).

Verbal Context: True to its title, the words of the work are the Apple iTunes terms and conditions, so the verbal context is essential—*if* the actual purpose and motivation of the work were to communicate the iTunes terms and conditions. The graphics do nothing substantively to communicate the terms, but the graphics are the most interesting, accessible, and engaging part of the work. The graphics turn the dry and clumsy legal terms into an entertaining visual stroll down comic and cartoon memory lane, *and also* communicate the actual terms along the way.

Visual Cultural Context: The words are not translated from their original legalese and would pose a challenge to any reader whose native language is not English; even then, they would challenge a native English speaker who does not have at least a high school reading level. Sikoryak covers a lot of American comics and cartoon history in his visuals, but even if readers were not experienced or schooled in comic and cartoon culture, they would still appreciate the cartoon art for what it is. Very little of the engaging and accessible nature of the work is dependent on knowing the history of the actual cartoon and comic characters Steve Jobs inhabits throughout the graphic novel.

Mise en Scène and Arrangement: *Terms and Conditions* is a very skillfully executed work, with masterful comic artwork, and plenty of characters, images, and memes borrowed from other cartoons, comic books, and comic strips. The framing, composition, and arrangement of each panel or page cannot be summarized; all of them are as creative, varied, and communicatively advantageous as the best examples of the graphic novel genre.

Visual Rhetoric, Ethics and Professionalism: Compared to the original text, the *Terms and Conditions* graphic novel is a magnificent work of art, and successfully provides a vehicle that is engaging enough for Apple consumers to more easily read the iTunes terms and conditions. In some ways the comic art may be a parody of the comic and cartoon genres as much as it is a parody of Apple's wording of its terms and conditions, but it is a loving and skillful parody. For the comic genre, the parody is, "How ridiculous it is when our beloved cartoon and comic characters are forced to speak the serious and lengthy terms and conditions of Apple's iTunes service." For Apple, the parody is, "Look how ridiculously long and overly verbose your

terms and conditions are,” and “How much more could you improve the delivery of your terms and conditions if you couched them in a more interesting medium, such as visual sequential storytelling.” It is unlikely that Sikoryak created the work as a public service or simply to help Apple reach its own customers, and instead intended to make the contract terms into an artistic statement. In this, he succeeded. His obvious effort and attention to comic detail gives the work a very high *ethos* rating.

In visual contract design, much can be learned from Sikoryak’s efforts. His visuals did not attempt to *Describe*, *Interpret*, *Transform*, *Translate*, *Relate*, *Condense*, or *Explain* the contract terms. Yet, the terms are more accessible and engaging because they are *Located* in the speech bubbles of beloved characters in an extended sequential narrative that varies in style in interesting and nostalgic ways. However, it may be difficult for Apple, as a client, to accept the varied styles and humorous characters used by Sikoryak as a vehicle for communicating its important terms and conditions. Apple’s own company *ethos*, reportedly dictated by the late Steve Jobs himself, prides itself on sleek and clean design,²¹⁸ and probably would dictate a consistent artistic style and genre throughout the work. Nevertheless, the Sikoryak work gives a powerful example of how a visual design can attract and engage an audience in a contract whose terms matter, but which are not generally considered fun, or even desirable, to read.

IX. MULTIMEDIA CONTRACTS WITH PICTORIAL CONTENT

Another approach to proactive contract design involves multimedia visualization within agreements.²¹⁹ When the door is opened beyond static media to multimodal instruments employing the full range of multimedia communication tools, then the use of visual and audiovisual media can be made a systematic component of the agreement. Such agreements can contain:

- Animated diagrams and charts containing pictograms, cartoons, or visual memes

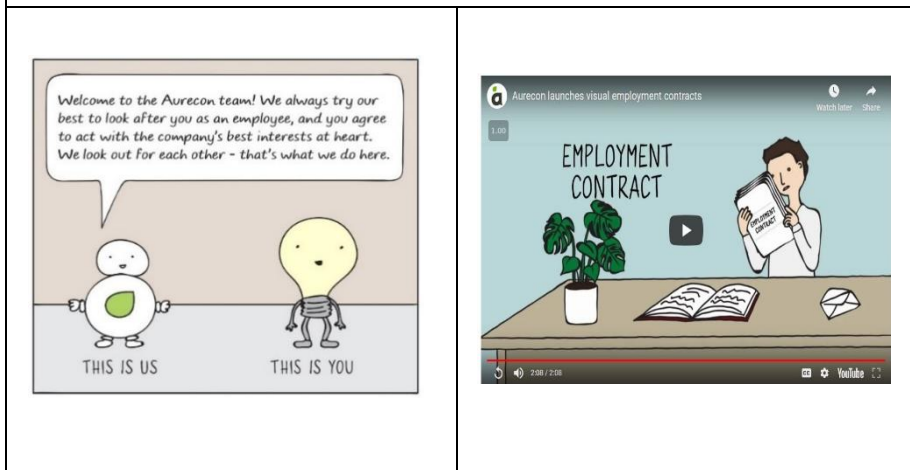
²¹⁸ See Walter Isaacson, *How Steve Jobs’ Love of Simplicity Fueled a Design Revolution*, SMITHSONIAN MAG. (Sept. 2012), <https://www.smithsonianmag.com/arts-culture/how-steve-jobs-love-of-simplicity-fueled-a-design-revolution-23868877/> [<https://perma.cc/Q2Y4-UK5Q>].

²¹⁹ See generally Mitchell, *supra* note 8.

- Video and film
- Hyperlinks to external or internal content in any media
- Hybrid verbal and visual content delivered in text, slideshows, voiceover narration, or fully animated media

In Australia, the Aurecon Group, “an engineering, design, and [infrastructure] advisory company,”²²⁰ has taken the cartoon employment concept one step further with a multimedia contract. As with the other visual contract projects, the Aurecon employment contract anticipated problems in reception and comprehension of terms and employed visuals to communicate those terms.²²¹ The contract is designed to be viewed on mobile media, and has videos and hyperlinks embedded.

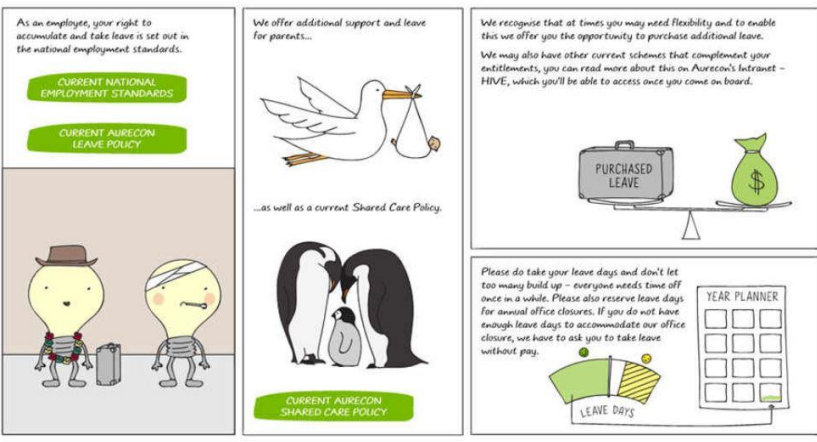
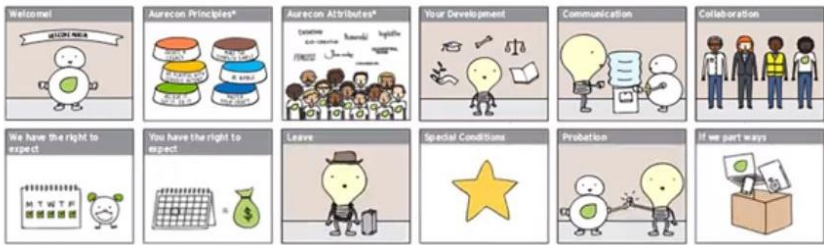
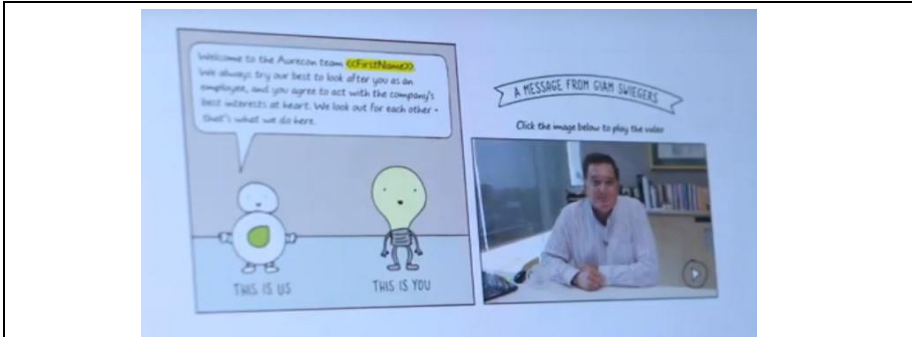
Excerpts of Aurecon Employment Contract and Introductory Video²²²:

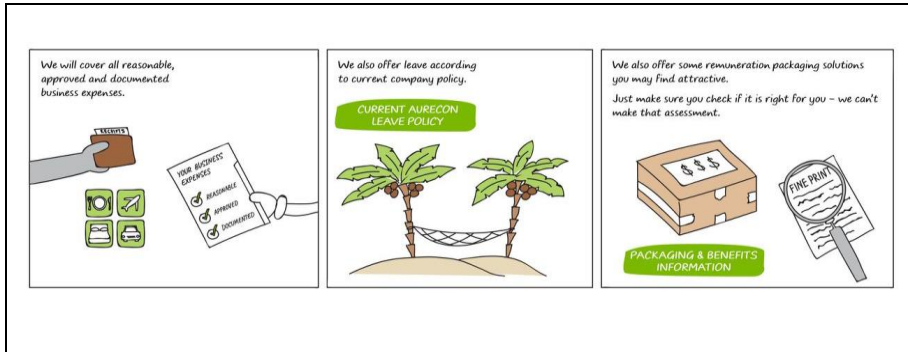


²²⁰ *About Aurecon*, AURECON GROUP, <https://www.aurecongroup.com/about> [<https://perma.cc/37J7-2BPN>].

²²¹ *Australia's First Visual Employment Contracts Launched*, AURECON GROUP (May 5, 2018), <https://www.aurecongroup.com/about/latest-news/2018/may/visual-employment-contract> [<https://perma.cc/V7AJ-SQR2>]. Aurecon consulted with Professor Camilla Baasch Andersen in designing their visual contract. *Id.*

²²² All images in this table are captured from Aurecon's press release and introductory video. *Id.*





Visual Context: The **meaning** behind this project is that Aurecon wanted to break new ground with a multimedia employment agreement that reflects the “cutting edge” innovative image that the company attempts to project about itself. Aurecon chose to render the images in a highly stylized and simplified form of sequential narrative. The images are not “cartoony” in a comic book sense, but instead resemble illustrated storybooks designed for children. Humans are most often depicted as blobby lightbulb figures with minimal facial or anatomical features and only what is necessary to personify the lightbulb shapes. In only one section (“Collaboration”) are the humans rendered in a more humanlike form. Other creatures (penguins) are illustrated with lifelike detail. Aurecon itself is represented as a kind of snowman with the company logo on its belly. Pictograms and cartoon memes (calendars, checklists, dollar signs for “money,” watercooler where “Communication” takes place, palm trees and hammock as “vacation,” magnifying glass to show “looking closely” at fine print) are used for visual communication of content.

Under the **taxonomy**, the use of the storybook graphics as a visualization to cover every aspect of the employment relationship did *Transform* the legal jargon into a more friendly and unthreatening form of communication. The graphics fulfill the roles of *Describing*, *Exemplifying*, *Interpreting*, *Transforming*, *Translating* (especially from complex legal text to plainer, more comprehensible communications), *Relating*, *Condensing*, and *Explaining* the text. Because the graphics made the terms more accessible and comprehensible, they can also be viewed as *Engaging* and potentially *Motivating* the viewers.

Verbal Context: Although highly visual and containing audiovisual content through embedded video and links to outside videos, the

Aurecon employment agreement still contains a lot of words. The visuals do supplement the terms, and illustrate many concepts, such as travel policies, leave, compensation, and benefits—but the actual communication relies almost entirely on the words used. The target audiences were present and future employees of the company—“ideas people,” which explains the lightbulb symbolism²²³—who are presumably literate in the native language of the communication. This high skill level allows for verbal communication and comprehension of the terms with or without the visuals. The visuals apparently are used to make the text more accessible and enjoyable to engage with.

Visual Cultural Context: Perhaps part of Aurecon’s goal in selecting a children’s picture book as the graphics style for their multimedia employment agreement is to make the illustrations more readily identifiable to audiences in the countries where Aurecon operates. The graphics are simplistic enough to be read and understood by many people across many cultures. Even with the multimedia approach, the text used is critical in communicating the specific terms of employment, which presumes a certain educational level, literacy, and general experience with modern business settings and corporate business terminology in the target audiences. Because the target audiences are groups of highly skilled people, these presumptions are entirely reasonable. But the skills and educational level of the target audiences are a bit incongruous with the choice to use the style of graphics of a children’s story book.

Mise en Scène and Arrangement: As noted above, Aurecon chose to render the graphics of this multimedia “employment agreement experience” in a highly stylized and simplified form of sequential narrative in the style of a child’s illustrated storybook. The multimedia approach certainly is eye-catching and innovative. The individual images and panels are so simplified as to be minimalistic. The text and graphics are comfortably arranged in each panel so as not to crowd out or distract the reader from the message of the panel. Aurecon prides itself on being a company of “human-centered designers” (of buildings, infrastructure, and architectural works), and this “human-centered” theme matches the theme of the Legal Design movement, which strives to open agreements up to wider audiences.

²²³ See *Australia’s First Visual Employment Contracts Launched*, *supra* note 221.

Visual Rhetoric, Ethics and Professionalism: The intent of the project was to communicate Aurecon’s employment policies and provisions in a form that current and prospective employees would be happy to read and easily understand. The project also aimed to impress prospective and current employees and clients with Aurecon’s innovative and out-of-the-box vision of “the future of work.”²²⁴ The company prides itself on its freethinking, and even “playful,” culture.²²⁵ In designing the contract, Aurecon also acted proactively in anticipation of contract interpretation problems arising from its multicultural and polylingual workforce and client base: “Aurecon is an Australian firm operating across New Zealand, Asia, South Africa and the Middle East, with a culturally diverse workforce. Meaning can often be lost between offices, countries, cultures, and languages.”²²⁶ The choice to use simplified, child-friendly art most likely was made in the spirit of the company’s “playful” culture,²²⁷ rather than for increasing the communicative power of the visuals. A children’s picture book format might also make the work both enjoyable and accessible to its audience. The use of cartoon memes, symbols, pictograms, and comic visuals will allow the images to illustrate and communicate the verbal terms for employees and clients who might have some cultural and language difficulties understanding the verbal text of the employment terms.

X. CONCLUSIONS

The recognition that visuals are a rapid, efficient, and persuasive form of communication reveals their potential to construct meaning and inform and persuade audiences of legal documents. Visual images inspire inventive thinking about the law and can bridge gaps in communication through cultural memory and collective experience, assisted by the Gestalt psychology heuristics of continuation, closure, and completion, and the Kuleshov Effect of montage editing and sequencing of images. Visuals are a more universal language because they can communicate to illiterate audiences, or to those that are both culturally and linguistically challenged.²²⁸

²²⁴ *Id.*; *About Aurecon*, *supra* note 220.

²²⁵ *Australia’s First Visual Employment Contracts Launched*, *supra* note 221.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ See Bud Ward, *This Photographer is Documenting Radical Change in the Arctic*, YALE CLIMATE CONNECTIONS (Sept. 13, 2017), <https://www.yaleclimateconnect>

Lawyers are expected to resist moving to include highly visual content in contracts, as well as in pleadings, briefs, and other legal documents, for several reasons: the practice of using visuals is unfamiliar, untested, and potentially expensive and time-consuming.²²⁹ This is particularly so because, on average, attorneys are not skilled or experienced in visual creation and artistic design. Therefore, at the outset of their adoption of visual content, they will need to hire artistic and graphic support personnel to carry out the design and creation of their contracts and transactional documents. Most lawyers shy away from visuals in any legal document,²³⁰ and are not expected to make exceptions for contracts and business agreements.

Highly visual, proactive, and multimedia contracts may at times trade complexity, specificity, and nuance in their terms for ease of access and understanding by literate and less-than-fully literate persons who may struggle with cultural and language confusion.²³¹ Highly visual contracts may also be rendered as incomplete agreements. Aurecon Group prides itself on having eliminated over 4,000 words from its employment agreement, but as its press release video indicates, the eliminated terms prevented the agreement from providing extended and nuanced coverage of many important concepts.²³² Some employees

ions.org/2017/09/photographer-luca-bracali-documents-change-in-the-arctic/
[<https://perma.cc/N8A7-7EPQ>] (Photographer Luca Bracali states, “Photography is the most international language of all.”).

²²⁹ See, e.g., Mitchell, *supra* note 8 at 827; Adam L. Rosman, *Visualizing the Law: Using Charts, Diagrams, and Other Images to Improve Legal Briefs*, 63 J. LEGAL EDUC. 70, 71 (2013).

²³⁰ James Parry Eyster, *Lawyer as Artist: Using Significant Moments and Obtuse Objects to Enhance Advocacy*, 14 LEGAL WRITING: J. LEGAL WRITING 87, 101 (2008) (“Attorneys are wordsmiths and feel more comfortable with words than with images.”); Charles Alan Wright, *Forward to the Second Edition* of BRIAN A. GARNER, *THE ELEMENTS OF LEGAL STYLE*, at xvi (2d ed. 2002) (“The only tool of the lawyer is words.”).

²³¹ Cartoon comics

may influence how contracting parties may choose to communicate complex legal issues in future, specifically to consumers with little formal education or when parties are confronted with severe language barriers, which is highly relevant in a country such as South Africa with eleven official languages and generally low levels of education.

Botes, *supra* note 20, at 1.

²³² *Australia’s First Visual Employment Contracts Launched*, *supra* note 221 (“cumulative covenants, breach of duty, waive any moral rights, and execute all instruments”).

and contractors may find the cartoon or comic book approach to be insulting, demeaning, or simply incomplete.²³³ Other critics opine that highly visual contracts may be unnecessary, and what is needed is better wording:

[C]artoon contracts are ‘especially handy in situations where people lack a formal education, have limited literacy skills or aren’t knowledgeable about the legal system.’

....

If you go straight to cartoon contracts from dysfunctional traditional prose, you’re missing a sensible intermediary step: clear prose. Once you have clear prose, you can then assess what, if anything, legal design has to offer.²³⁴

This critique ignores the fact that even clear prose cannot be read or understood by disadvantaged and vulnerable persons barred from the text by illiteracy and cultural confusion. The increased use of highly visual devices for communication in contracts may result in decreased content, but that may be an acceptable trade-off in the situations where highly visual contracts are being used—namely when there is no need or expectation of contract negotiation.²³⁵ The use of standard terms and set forms is to be expected in unequal bargaining power situations, such as between a major agricultural corporation and its low-skill-level employees, or between a university and its students working at a university-sponsored design and production facility. When the effort is made to illustrate and visualize terms so that they can be readily engaged

²³³ For example, a disgruntled Aurecon employee disliked the visual contract, stating that the “super trendy visual contract (that looks like a comic book) . . . was an absolute joke, and simply masks detailed company and employee responsibilities with pictures.” *Glassdoor Employee Review of Aurecon*, GLASSDOOR (Sept. 12, 2018), <https://www.glassdoor.com/Reviews/Employee-Review-Aurecon-RVW22452553.htm> [<https://perma.cc/8FSP-2S7Q>].

²³⁴ Ken Adams, *Cartoon Contracts? Yeah But*, ADAMS ON CONT. DRAFTING (June 2, 2019), <https://www.adamsdrafting.com/cartoon-contracts-yeah-but/> [<https://perma.cc/Y2J3-GGNT>].

²³⁵ Although supportive of the enforceability of cartoon contracts in principle, the former Chief Justice of the High Court of Australia Robert French AC acknowledged “that the concept was not without its potential flaws, including the difficulty of imagining a counterparty ‘drawing pictures on the spot to suggest variation of terms.’” Aaron Goonrey & Coral Yopp, *Visual Contracts and Pitfalls of Employment Agreements*, INT’L L. OFF. (June 27, 2018), <https://www.internationallawoffice.com/Newsletters/Employment-Benefits/Australia/Lander-Rogers/Visual-contracts-and-pitfalls-of-employment-agreements> [<https://perma.cc/48PR-BEAF>].

with and understood, it can only increase the potential for an improved and strengthened contractual relationship between the parties. This is a worthy end-goal for contract design.

The visualization movement is not a revolution aimed to throw out verbal communication. There is an interim step where visualization augments and increases the accessibility and comprehension of contract terms, replacing or illustrating text while maintaining the same terms of the agreement. Visuals expand documents; they invite audiences to get engaged and stay engaged in the communication. These outcomes are goals in and of themselves. Professor Andersen acknowledged that her three-panel non-disclosure agreements were a success *simply because the student employees read them* and understood their contractual duties. Even if there is unequal bargaining power, and the highly visual contract will not be negotiated or amended, the document is still readable and comprehensible by many more vulnerable and disadvantaged persons than a traditional text-only, legalese-and-boilerplate-ridden document that is an “agreement” in name only. A contract that only one party can properly read, or even wants to read, is a dismal instrument indeed.