

Design Thinking & Agile Development: What are they and how do they help Access to Justice?

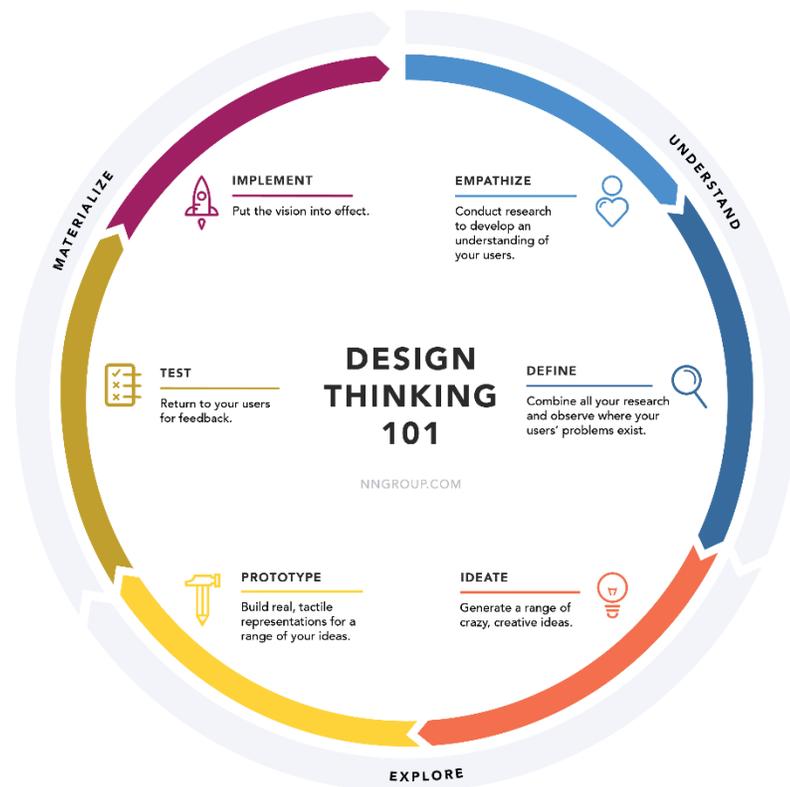
What is Design Thinking?

Design thinking or human centered design is a discipline and methodology that has developed in the technology space and is applicable across all disciplines and circumstances when one endeavors to provide optimized goods or services. It brings together the wisdom of marketing (identify and segment your audience to refine your pitch) with the intentionality and replicability of engineering (identify your goal and segment your processes).

In her article [Design Thinking 101](#), Sarah Gibbons writes:

Design thinking is an **ideology supported by an accompanying process**. A complete definition requires an understanding of both.

Definition: The **design-thinking ideology** asserts that a hands-on, user-centric approach to problem solving can lead to innovation, and innovation can lead to differentiation and a competitive advantage. This hands-on, user-centric approach is defined by the **design-thinking process** and comprises 6 distinct phases, as defined and illustrated below.



The design-thinking framework follows an overall flow of 1) understand, 2) explore, and 3) materialize. Within these larger buckets fall the 6 phases: empathize, define, ideate, prototype, test, and implement. Her article can be found [here](#).

What is Legal Design?

In the Access to Justice space, **Legal Design** is being increasingly embraced as a way to assess legal systems to design solutions that improve the way people access legal services and to improve and simplify the processes themselves.

Legal Design transforms how justice system professionals build solutions, deliver their services, and measure legal outcomes, which in turn allows for appropriate leveraging of technology. The learning generated during the design process can also lay the foundation for simplification to improve systems and law reform to eliminate antiquated statutory structures.

Key Players

- The User – the self-represented litigant / lay person with a legal need
- SRLN constituencies
 - Lawyers
 - Judges
 - Court Clerks
 - Court Staff
 - Human Services Providers
 - Other Helpers
 - Librarians
 - Technologists
 - Researchers
 - Other

*These players engage in solution building as **collaborators, innovators and designers.***

Qualities

- **User-centered:** emphasis on the user of the legal solution
- **Experimental:** prototype, get feedback, and redesign for solutions that work
- **Intentional:** operate consciously to modify approaches for better outcomes
- **Pause Feasibility:** not every idea has to be achievable at first -- solutions evolve overtime.

The power of design lies in walking in the shoes of the user and seeing obstacles as opportunities to imagine new solutions.



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What is Co-Design?

While the user is a central focus in *Legal Design* thinking, the user's point of view or voice is often articulated through proxy experts who have researched user needs and insert user testing after the design process. *Co-operative Design* (co-design), sometimes called *Participatory Design*, is a more participatory process with all stakeholders engaging from the very beginning. It is a way to design that encourages collaboration in development processes. It can be messy, but its purpose is to combine at the outset the experiences of internal and external stakeholders to build solutions that benefit all parties involved. Methods that apply this approach use brainstorming workshops, open communication practices, and testing and feedback cycles to address complex issues. Using *co-design* principles empowers solution building by tapping into the expertise and experience of everyone involved. [Learn more about the co-design movement here.](#)

Key Players

- Users
- Internal & External Stakeholders
- Interdisciplinary Collaborators

*Collaborators come from initial designing phases to implementation and output as **investigators**, **experimenters**, and **creators**.*

Qualities

- **Interdisciplinary:** diverse perspectives nurture holistic solution building
- **Communication:** open channels let teams adjust for changing circumstances
- **Brainstorm:** every idea matters—protect against clogging the creative process
- **Experiment:** even failed experiments help identify ways to improve solutions

Co-designing relies on inclusive brainstorming to promote creative thinking.

What is Agile Development?

Agile Development (*Agile*) is another framework originating in the technology space that offers a systematic way to develop and manage services and tools.

Agile methods use short-term feedback loops to enable continuous quality control and collaborative organizational design. Applied in project management, *Agile* has the potential to address challenges in product development, including an imperfect understanding of user expectations and communication snafus between users and developers. *Agile* methods emphasize experimentation and adaptability.

Key Players

- Project Managers
- Development Teams
- External Stakeholders
- Product Owners

*These players contribute to product development as **planners, testers, and designers.***

Qualities

- **Communication:** clear and accessible channels to address problems as they arise
- **Collaboration:** early cross-functional teamwork provides solution building opportunities
- **Flexible Outcomes:** allows for projects outcomes to reflect changing circumstances
- **Evaluative Model:** predicated on notion that continuous improvement is a core principle and bakes in a feedback loop that allows for active and adaptive refinement and continuous improvement

Products that demand rigid and fixed outcome requirements may not be conducive to Agile methods.

How can these approaches help Access to Justice?

At the conclusion of this brief, we include a number of links to materials that discuss the value of these approaches to increase Access to Justice. As a concrete example of how design thinking can impact our practices, it may be helpful to sketch out how design thinking and agile could improve the process around and impact court forms, ATJ for the user, and court processes. This is not intended to be an exhaustive analysis, but rather an example of applying this design thinking to a core activity within our space.

In design thinking, the threshold question is “who is the user?” In the forms example, there are two primary users: the Self-Represented Litigant (SRL) and the Judge. The SRL needs questions written in plain language that solicit information in the SRL’s control. The judge needs questions that elicit legally relevant information ordered in a legally sensible way on an easy to navigate document so that he or she can discover whether all necessary elements of a claim have been addressed. The secondary users of forms are the court clerk and court staff who need the information necessary to maintain their records as required by law and to effectively and professionally manage court calendars. The tertiary users of court forms are lawyers, who can use forms to improve the efficiencies of their practices and better understand the practice guidelines of a local court. However, court form committees or processes rarely reflect this multitude of user perspectives and are often populated mostly by private attorneys, court attorneys and a judge or two.

Court forms should be a device to solicit legally relevant facts, they are not a tool for legal argument. Certainly text fields should be provided for legal argument, but the form questions are for facts. If a form is asking for argument, it ought to do so clearly, and perhaps include a prompt that legal advice is recommended for legal and here is a referral source for unbundled lawyers. While facts and argument might seem easily separated in the eyes of the SRL or judge, the lawyer’s training is to see the adversarial advantage or disadvantage in facts, and therefore the lawyer is very unlikely to appreciate the largely inquisitional nature of most SRL dominated proceedings today. For example, in a notice pleading state, lawyers often file divorce complaints that say nothing more than, “this is spouse 1, this is spouse 2, they were married on such-and-such a date at such-and-such place, there are irreconcilable differences such that they want a divorce, there are children and there is property.” This limited information approach ostensibly allows a lawyer to develop his or her case through discovery and think strategically about what/when/if they will divulge information. In practice, however, these non-information complaints often delay the process because there are no new facts to discover; the parties were in control of all relevant and required information at filing, but a lawyer’s traditional training tells them that must not be so.

Court forms also impact case flow management, the administrative burden to a court and the time and resource burden for the user. Forms designed with an eye to the hierarchy of users suggested above can bring about benefits to all involved and effect justice by facilitating decisions on the merits.



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Forms are best when they plead enough details to permit the court to identify at an initial status conference whether the divorce case is ready to close immediately (because the court has adequate financial and parenting information), needs some minor additional help (perhaps mediation to refine a parenting schedule or guidance in collecting necessary financial information or a QDRO form etc.), or will require proper discovery and litigation because the issues are too complex and/or the parties' positions are too polarized. The vast majority of cases fall in groups one and two, with very few SRL cases proceeding to litigation.

A Co-Design process that brings in SRLs, judges, clerks, lawyers and non-lawyer helpers would engage all of these points of view from the out start and likely produce better forms that resolve matters in the timeliest fashion possible and identify opportunities to streamline each stakeholder's process and purpose. Together, they are also likely to identify where technology can make a difference and where it cannot. If a forms process can inject agile/nimble feedback loop thinking and processes, the forms, self-help materials and technology can be actively refined as the judges (and other stakeholders) identify patterns in missing information. For example, after delaying a number of cases for missing QDROs, a judge could suggest the form include an explanation of QDROs and links to resources, or create early resolution calendars supported by pro bono attorneys and mediators as has happened in many jurisdictions.

Sustainable innovation in the access to justice space happens when design thinking is adopted and implemented in our core practices, and as part of that process we can effectively identify where technology can offer scalable and accessible resources. Hopefully this SRLN Brief has helped illustrate how the integration of these practices from the technology space are relevant and useful far beyond designing apps.

The following links may be helpful in understanding more about these concepts. This is not offered as an exhaustive list, but rather an introduction to some of the many practitioners active in this space today.



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Legal Design Supplementary Links

Law by Design & Open Law Lab

Margaret Hagen

<http://www.lawbydesign.co/en/home/>

<http://www.openlawlab.com>

Applying Design Thinking to Law

Sharon Driscoll

<https://law.stanford.edu/stanford-lawyer/articles/legal-design-lab-consumer-contracts/>

Legal Design Reading List

Legal Design Lab

<http://www.legaltechdesign.com/reading-list/>

Design Kit, *What Is Human-Centered Design*

Ideo

<https://www.ideo.com/post/design-kit>

<https://vimeo.com/106505300> (video)

Co-Design Supplementary Links

Human-centered Legal Tech

Dan Jackson, NuLawLab

<http://dx.doi.org/10.1080/03069400.2016.1146468>

Design Thinking and Law: A Perfect Match

Margaret Hagan, Law Practice Today

https://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/january14/design-thinking-and-law.html

Co-designing for Society

Deborah Szebeko & Lauren Tan, AMJ

<http://www.amj.net.au/index.php?journal=AMJ&page=article&op=viewFile&path%5B%5D=378&path%5B%5D=649>

Lawyers Can Innovate with Design Thinking

Leadership4Lawyers.org

<http://leadership4lawyers.com/lawyers-can-innovate-design-thinking/>

Agile Supplementary Links

The “New” In Legal Education

Ken Grady, Adj. Prof at MSU’s College of Law

<https://medium.com/the-algorithmic-society/the-new-in-legal-education-24b4f40de8ca>

Are You Agile?

Illinois Legal Aid Online and LSC

<https://www.slideshare.net/LegalServicesCorp/are-you-agile> (2015 TIG Conf.)

Scrum Reference Card

Michael James & Luke Walter, CollabNet, Inc.

https://www.collab.net/sites/default/files/uploads/CollabNet_scrumreferencecard.pdf

Trello

Task Management Software for Agile Development

<https://trello.com>