SMU Science and Technology Law Review

Volume 26 | Number 2 Article 3

2023

Revolutionizing Justice: Unleashing the Power of Artificial Intelligence

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REVOLUTIONIZING JUSTICE: UNLEASHING THE POWER OF ARTIFICIAL INTELLIGENCE

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"There is no reason and no way that a human mind can keep up with an artificial intelligence machine by 2035." –Gray Scott

ABSTRACT

The practice of law is changing, and most lawyers are unprepared for this metamorphosis.[1] This statement is not an exaggeration but the acknowledgment that artificial intelligence ("AI") has altered the way lawyers do business. Instead of having a "battle of forms," attorneys will now be confronted with the "battle of computers."[2] Linking artificial intelligence and the law, however, is a natural progression. Both operate in similar fashions: each examines and applies "historical examples in order to infer rules to apply to new situations."[3]

While many attorneys are unsure how to integrate this new technology into their practices, they already use some form of AI without knowing it.[4] Conducting a Google search for opposing counsel or experts are examples of the use of artificial intelligence.[5] The same is true for using Westlaw or Lexis to retrieve a case on a particular point of law. Similarly, accessing a

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https://doi.org/10.25172/smustlr.26.2.3

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1. *7 Ways Artificial Intelligence Can Benefit Your Law Firm*, A. B. A. (Sept. 2017), https://www.americanbar.org/news/abanews/publications/youraba/2017/september-2017/7-ways-artificial-intelligence-can-benefit-your-law-firm/ [https://perma.cc/VN2W-D38P].

2. Rob Toews, *AI Will Transform the Field of Law*, Forbes (Dec. 19, 2019, 2:09 PM), https://www.forbes.com/sites/robtoews/2019/12/19/ai-will-transform-the-field-of-law/?sh=7ea745197f01 [https://perma.cc/8YUZ-PS8D].

3. *Id.*

4. Dean Dietrich, *Artificial Intelligence: How Much Do Lawyers Need to Know?*, State Bar of Wis. (May 1, 2020), https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=93&Issue=5&ArticleID=27716 [https://perma.cc/2558-48CZ].

5. *Id.*

court's website to look up a docket requires the use of computer learning.[6] These examples are simple applications, but artificial intelligence continues to evolve.[7] New uses allow attorneys to employ AI to write contracts and to use natural language to obtain answers about a point of law.[8] This evolution makes it essential for attorneys to ascertain what data is obtainable and how to utilize that material in representing a client.[9]

This article will provide a primer on how AI transforms the legal arena. Following an explanation of how the technology operates, various examples will be provided on how machine learning can benefit attorneys, from contract drafting to improving client relations.[10] The ethical and legal issues presented by AI will also be explored.

I. INTRODUCTION

Research by the Pew Foundation recently concluded that more than half of the adults surveyed think robots and computers will take over their jobs within the next several decades; attorneys are among those who share this belief.[11] However, one must be mindful that data is growing exponentially, and alternative methods of harnessing it must be found, especially since this enormous volume of material may contain helpful information.[12] Those who are tasked with sifting through data are also subject to the influences of "monotony, boredom, and frustration as they review and analyze the materials."[13] Couple these problems with the need for quickness to satisfy the requirements of litigation, the courts, and clients, the risk of making a mistake becomes readily apparent.[14]

In this context, the use of law-related technology offers a viable solution. Artificial intelligence and machine learning applications will not usurp

6. *Id.*

7. *Id.*

8. Gene Marks, *5 Things Every Small Business Owner Needs to Know about ChatGPT*, PHILA. INQUIRER (May 2, 2023), https://www.inquirer.com/business/chatgpt-small-business-when-to-use-20230502.html [https://perma.cc/HU68-WNJZ].

9. Dietrich, *supra* note 4.

10. *7 Ways Artificial Intelligence Can Benefit Your Law Firm*, *supra* note 1.

11. Mark Cohen, *The Future Keeps Happening to Legal Services*, LAW360 (Mar. 24, 2016), https://www.law360.com/articles/775358/the-future-keeps-happening-to-legal-services [https://perma.cc/UT9S-5QGJ].

12. *Id.*

13. *Id.*

14. *Id.*

"what lawyers do so much as enable them to be more efficient and better leverage their expertise."[15] Therefore, AI has the potential to become a fixture in the rendering of legal services.[16]

II. ARTIFICIAL INTELLIGENCE

Artificial intelligence is destined to change the way law is practiced. Still, it is hard to predict where computerization and analytics software will have the most influence and how quickly its use will be implemented in the legal arena.[17] The technology is destined to enhance or replace certain characteristics of the practice of law. Logic would suggest that this process will begin by machine learning performing the monotonous tasks that are customary in some areas of practice, thereby permitting attorneys to concentrate on "higher level analytical work."[18]

A. The Differences Between Machine Learning and Artificial Intelligence

As a precursor to examining its applications, one must ascertain the difference between AI and machine learning.[19] Artificial intelligence has been defined in many ways. A Google search will yield over 1,670,000,000 references to the term.[20] Alan Turing, the father of computer sciences, noted in the 1950s that it references "systems that act like humans."[21] A more recent definition refers to it as "the science and engineering of making intelligent machines, especially intelligent computer programs. It is related to the similar task of using computers to understand human intelligence, but AI does not have to

15. *Id.*

16. Mark Cohen, *How Artificial Intelligence Will Transform the Delivery of Legal Services*, Forbes (Sept. 6, 2016), https://www.forbes.com/sites/markcohen1/2016/09/06/artificial-intelligence-and-legal-delivery/?sh=20e7c05f22cd [https://perma.cc/3WHX-55GA].

17. Nicole Black, *How AI Will Change the Practice of Law*, Law Technology Today (Nov.1, 2016), https://www.lawtechnologytoday.org/2016/11/how-ai-will-change-the-practice-of-law-by-nicole-black/ [https://perma.cc/EW43-52QC].

18. *Id.*

19. Paul Riermaier, *ChatGPT and Other Technologies in the Study and Practice of Law*, Penn Carey Law: U. PA. (Feb. 6, 2023), https://www.law.upenn.edu/live/news/15538-chatgpt-and-the-law [https://perma.cc/L5XB-3SFG].

20. This number is derived from a search by the author of the term "artificial intelligence" in a Google search on May 10, 2023.

21. *What is Artificial Intelligence (AI)*, IBM, https://www.ibm.com/topics/artificial-intelligence [https://perma.cc/6JXD-345U] (last visited May 10, 2023).

confine itself to methods that are biologically observable."[22] In other words, the term refers to computers that think.[23] On the other hand, machine learning ("ML") is a form of AI and computer science that deals with the employment of data and algorithms to mimic the way humans learn without specific direction.[24] One might say that ML is the use of statistical models to examine and form deductions from configurations in the data.[25]

It must be noted that AI is more encompassing than ML. It can duplicate more multifaceted assignments than those traditionally performed by people, including visual observation, voice recognition, "decision-making, and translation between languages."[26] In other words, the computer can replicate individual-like actions, a task that ML cannot accomplish.[27] This difference makes it improper to use the terms interchangeably, even though it is done all the time.[28]

A uniform definition of AI does not exist, but specific characteristics of the tool can help better distinguish whether a particular technology has AI qualities.[29] Artificial intelligence infers that the technology employs instruments that involve a human-like thought process or logic that can produce innovative concepts.[30] These attributes exceed the competency of current AI applications.[31] Instead, it is better to discuss AI abilities as involving computers examining sizable data arrangements and recognizing arrays or other features in the information.[32] Instances of this technology in everyday use include

22. *Id.*

23. William Connell, *Artificial Intelligence in the Legal Profession – What You Might Want to Know*, 66 R.I. Bar J. 5 (2018).

24. *What is Artificial Intelligence (AI)*, *supra* note 21.

25. Augustus Calabresi, *Machine Learning and Artificial Attorneys: Conflicts in Legal Ethics with Complex Computer Algorithms*, 34 Geo. J. Legal Ethics 789, 791 (2021).

26. *Id.*

27. *Artificial Intelligence (AI) vs. Machine Learning (ML)*, Google cloud, https://cloud.google.com/learn/artificial-intelligence-vs-machine-learning#:~:text=Differences%20between%20AI%20and%20ML,-Now%20that%20you&text=While%20artificial%20intelligence%20encompasses%20the,accurate%20results%20by%20identifying%20patterns [https://perma.cc/R6EH-N3ZK] (last visited May 10, 2023).

28. *Id.*

29. Riermaier, *supra* note 19.

30. *Id.*

31. *Id.*

32. *Id.*

unlocking an iPhone with facial recognition software, performing a Google search, self-driving cars, and language translation.[33]

B. The History of the Technology

Technology first became available to lawyers in the early 1950s when dictating machines were used to transcribe an attorney's thoughts.[34] In the early 1970s, Bruce Buchanan and Thomas Headrick authored the article *Some Speculation About Artificial Intelligence and Legal Reasoning*.[35] At that time, there was very little integration of computer applications in the practice of law. However, the authors predicted that computer science could help counsel in the implementation of their practices.[36] They postulated that a legal research tool could be developed that might complete many customary tasks.[37] This included software that could retrieve legislation, court opinions, case synopsis, and other data, answer queries about that material, and converse with attorneys in a natural manner.[38]

The authors' prediction came true that decade when the way to conduct legal research changed dramatically. LexisNexis and Westlaw came into being and assembled their vast databases of legal data, creating algorithms that could search for legal documents and offer retrieval access through dial-up or hard-wired terminals.[39] Their "keyword" searches using natural language allows a computer to digitally scan large databases for relevant material in a fraction of the time that a manual search of a library's bookshelves would take.[40]

In the 1990s, another formative article was published that defined AI as "the study of cognitive processes using the conceptual frameworks and tools

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33. Steven McCann, *Artificial Intelligence and Law – An Overview and History*, LinkedIn (Apr. 16, 2020), https://www.linkedin.com/pulse/artificial-intelligence-law-overview-history-steve-mccann/?trk=read_related_article-card_title [https://perma.cc/W7E9-TJJK].

34. *A History of How Technology Has Transformed the Legal Field*, Zapproved (Sept. 9, 2021), https://zapproved.com/blog/a-history-of-how-technology-has-transformed-the-legal-field/ [https://perma.cc/29NY-ELMW].

35. Bruce Buchanan & Thomas Headrick, *Some Speculation About Artificial Intelligence and Legal Reasoning*, 23 Stan. L. Rev. 40, 40 (1970).

36. *Id.*

37. *Id.* at 41.

38. *Id.*

39. *LexisNexis Versus Westlaw Revisited*, LAC Group (Feb. 22, 2018), [https://perma.cc/32QS-S2V3].

40. Alarie et al. *How Artificial Intelligence Will Affect the Practice of Law*, 68 U. Toronto L. J. 106, 114 (2018).

of computer science."[41] The projected goal of this research was to link AI with a program that would articulate arguments and descriptions and incorporate alterations in the base of legal knowledge.[42] It was also at this point that the first online electronic filing system was made available, eradicating the need to file documents in person.[43]

Interest in the link between AI and the law waned in 2000[44] because of the fear that the turn of the century would generate software and hardware malfunctions.[45] However, time-tracking and billing software became available, eradicating the tiresome procedure of computing billable hours by hand.[46] Five years later, the term "big data" was coined to reference large volumes of material that AI could now organize.[47]

The 2007 recession became a significant impetus for lawyers to investigate the use of AI in the legal arena.[48] The recession caused firm services to stagnate, and there was an accompanying decline in attorney productivity, leading to reduced profits.[49] There was also a decrease in enrollments in law schools, making the job market exceptionally competitive.[50] These factors caused law firms to utilize technology "to either automate or semi-automate tasks previously performed by teams of lawyers."[51] For instance, a number of attorneys and law firms started to employ technology with greater frequency to perform legal research, e-discovery, and contract analysis.[52]

The use of AI by law firms had a significant uptick in 2010.[53] Custom apps were developed to track an attorney's time and create invoicing and

41. Sergio D. Becerra, *The Rise of Artificial Intelligence in the Legal Field: Where We Are and Where We Are Going*, 11 J. Bus. Entrepreneurship & L. 27, 34 (2018).

42. *Id.*

43. *A History of How Technology Has Transformed the Legal Field*, *supra* note 34.

44. Alžbeta Krausová, *Intersection Between Law and Artificial Intelligence*, 27 I.J.C. 55, 55 (2017).

45. Becerra, *supra* note 41, at 28.

46. *See generally id.* at 30.

47. *Id.* at 36.

48. *See id.* at 28–29.

49. *Id.* at 29.

50. *See id.*

51. Becerra, *supra* note 41, at 30.

52. *Id.*

53. Krausová, *supra* note 44, at 55.

billing records.[54] Apps for document scanning and securing the storage of documents also emerged.[55] The major development, however, was the creation of chatbots or customer service applications.[56] A chatbot is a computerization device that helps navigate websites, locate data, and link-up with business representatives.[57] This development allowed firms to create websites that offered automated services for existing and potential clients, and others who accessed their site.[58] These chatbots were able to answer rudimentary legal queries, offer case updates, secure contact data, schedule appointments, and offer the ability to speak with a lawyer.[59]

In 2014, three law school professors developed an algorithm to predict the outcome of matters before the United States Supreme Court.[60] Their accuracy rate was pegged at 70 percent involving 7,700 decisions over a sixty year period.[61] One year later, an entrepreneur released the computer application DoNotPay to fight traffic tickets with a claimed success rate of sixty-four percent.[62] This vendor then coined the term "Robot Lawyer" to describe his computer application.[63] The business subsequently expanded its offerings to provide such things as petitions for flight delay compensation, annul marriages, and to draft demand letters for overdue bills.[64]

November 30, 2022, saw the introduction of ChatGPT, a tool that some say represents a sea change involving artificial intelligence and the practice of law.[65]

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54. Becerra, *supra* note 41, at 7.

55. *Id.*

56. *Id.* at 8.

57. Gibson Toombs, *5 Best Legal Chatbots*, Codal (Feb. 10, 2022), https://www.codal.com/insights/blog/5-best-legal-chatbots [https://perma.cc/J5CX-F6ED].

58. *Id.*

59. *Id.*

60. *The Next Evolution of SCOTUS Predictions: Predicting 7,000 Cases over 60 Years with 71% Accuracy*, Josh Blackman LLC (July 29, 2014), https://joshblackman.com/blog/2014/07/29/the-next-evolution-of-scotus-predictions-predicting-7000-cases-over-60-years-with-71-accuracy/ [https://perma.cc/M925-T9RV].

61. See *id.*

62. Cohen, *supra* note 16.

63. *DoNotPay – Your AI Consumer Champion*, DoNotPay, https://donotpay.com/about [https://perma.cc/9DPH-MA7E] (last visited Sept. 8, 2023).

64. *Features*, DoNotPay, https://donotpay.com [https://perma.cc/XH63-HNJ3] (last visited Sept. 8, 2023).

65. Riermaier, *supra* note 19; Kyle Wiggers & Alyssa Stringer, *ChatGPT: Everything You Need To Know About the AI-powered Chatbot*, TechCrunch (Aug. 29, 2023, 7:00 AM), https://techcrunch.com/2023/08/29/chatgpt-everything-you-need-to-know-about-the-open-ai-powered-chatbot/ [https://perma.cc/D6BG-26ZM].

This artificial language model, created by OpenAI, provides human-like responses to natural language questions.[66] ChatGPT is revolutionary because it can understand and answer a vast array of queries, and offer almost-immediate replies, including the ability to create documents.[67]

What makes the product unique is that it can field open-ended questions and generate responses without the need for attorneys to conduct research.[68] Basically, the system digests the user's prompt and then provides a litany of words that it believes will best respond to the inquiry, premised upon the data it was trained on.[69] ChatGPT works because its database incorporates books, articles, and other documents spanning a multitude of subjects, styles, and categories—and a vast amount of materials available from the internet.[70] "Basically, it was allowed to crunch through the sum total of human knowledge."[71]

Various vendors offer this product with different features and pricing.[72] OpenAI provides a flexible pricing model depending upon a customer's use. The vendor offers $5 in free credit that can be utilized during the first three months of experimentation, and a customer is only charged for the resources used after that.[73]

Chatbots also continue to evolve. For instance, Microsoft's BingChat uses a more sophisticated adaptation of ChatGPT that was released in

66. Sabrina Ortiz, *What Is ChatGPT and Why Does It Matter? Here's What You Need to Know*, ZDNET (Aug. 14, 2023), https://www.zdnet.com/article/what-is-chatgpt-and-why-does-it-matter-heres-everything-you-need-to-know/ [https://perma.cc/Q44L-GEYH].

67. Nicole Black, *Chat GPT for Lawyers: Upsides and Downsides*, MINN. LAWYER (Mar. 10, 2023), https://minnlawyer.com/2023/03/10/chat-gpt-for-lawyers-upsides-and-downsides/ [https://perma.cc/KY2Z-SC33].

68. *ChatGPT for Lawyers: Everything Lawyers Need to Know About ChatGPT*, APP4LEGAL, https://www.app4legal.com/chatgpt-for-lawyers-everything-lawyers-need-to-know-about-chat-gpt/ [https://perma.cc/R77C-H4R9] (last visited Sept. 8 2023).

69. Harry Guinness, *How Does ChatGPT Work?*, ZAPIER (Sept. 6, 2023), https://zapier.com/blog/how-does-chatgpt-work/ [https://perma.cc/P8DP-33XM].

70. *Id.*

71. *Id.*

72. Jenna Lambert, *Chat GPT for Lawyers, Revolutionizing the Legal Profession with AI*, BRANDALYTICS (Mar. 31, 2023), https://brandalytics.co/chat-gpt-for-lawyers/ [https://perma.cc/XU8Z-JFS8].

73. *Pricing*, OPENAI, https://openai.com/pricing#language-models [https://perma.cc/6QP5-R5R2] (last visited May 10, 2023).

February 2023.[74] In addition to responding to queries, it can undertake a varied assortment of tasks, such as authoring poems, narratives, and codes, examining data, playing games, and everything else a digital assistant can accomplish.[75]

In an interesting development to test the system's prowess, a law professor put BingChat through its paces by asking it fifteen difficult questions dealing with legal ethics.[76] The chatbot answered twelve questions correctly with exceptional analysis.[77] The incorrect responses were still done with sophistication.[78] The professor rated the performance on the level of a B/B+ law student, with answers he predicted would improve with time.[79] At present, this application may only be accessed through Microsoft Edge or the Bing mobile app.[80]

Some of the major players in the development of AI include OpenAI, Microsoft, Google, and Meta.[81] However, new products continue to flood the market as businesses create and incorporate AI and massive language model technologies into their offerings with the potential to transform the way legal professionals work.[82]

III. USE OF ARTIFICIAL INTELLIGENCE IN THE LEGAL ARENA

It is estimated that about forty-four percent of legal tasks can be easily automated by AI, making lawyers much more productive and cost-efficient.[83] Nevertheless, a survey by Thomson Reuters revealed that AI or ChatGPT for law firm use is infrequent; merely three percent of respondents reported its utilization in their offices while another thirty-three percent contemplate

74. Mauro Huculak, *What Is Bing Chat? An Introduction to Microsoft's AI Chatbot*, Windows Central (Apr. 14, 2023), https://www.windowscentral.com/software-apps/bing/what-is-bing-chat-an-introduction-to-microsofts-ai-chatbot [https://perma.cc/5V93-HTM6].

75. *Id.*

76. Andrew Perlman, *The Implications of ChatGPT for Legal Services and Society*, Harv. L. School C.L.P. (Apr. 2023), https://clp.law.harvard.edu/knowledge-hub/magazine/issues/generative-ai-in-the-legal-profession/the-implications-of-chatgpt-for-legal-services-and-society/ [https://perma.cc/BA9H-MKYS].

77. *Id.*

78. *Id.*

79. *Id.*

80. Huculak, supra note 74.

81. Dennis Dimka, *AI and Lawyers*, LexWorkplace (Apr. 13, 2023), https://lexworkplace.com/ai-and-lawyers/ [https://perma.cc/9PQR-2C2Z].

82. *Id.*

83. *Id.*

its employment.[84] Surprisingly, sixty percent noted that their firms currently have no interest in using generative AI.[85] These skeptics enunciated apprehension about the system's accuracy and security, with concerns over how privacy and client confidentiality issues will be tackled.[86]

Despite these reservations, the recent interest in generative AI has soared primarily because of the publicity surrounding ChatGPT and its potential applications.[87] Reuters reported that OpenAI users had reached 100 million monthly customers just two months after its launch, making it "the fastest consumer application in history."[88] It is little wonder that predictions are surfacing that this new technology, with its human-like language abilities, could perform much of the legal work in the future.[89]

As a caveat, the technology's uses in the legal arena do not alter the tasks of lawyers but allow them to be more productive and better leverage their specialized knowledge.[90] In other words, attorneys are increasingly providing legal advice from "technologically and process-driven business models – not law firms – that are faster, cheaper, and better."[91] It is predicted that law offices that do not take advantage of this changing tide will be unable to remain competitive, losing clients and damaging their capacity to entice and keep talent.[92] This dire prediction is premised upon the fact that lawyers are wordsmiths and the new technology can understand words and produce texts in seconds.[93]

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84. *ChatGPT and Generative AI Within Law Firms*, Thompson Reuters 4, https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/04/2023-Chat-GPT-Generative-AI-in-Law-Firms.pdf [https://perma.cc/6MTU-VLG5] (last visited May 10, 2023).

85. *Id.*

86. *Id.* at 5.

87. *Id.* at 6.

88. Krystal Hu, *ChatGPT Sets Record for Fastest-Growing User Base*, The Globe and Mail (Feb. 1, 2023), https://www.theglobeandmail.com/business/article-chatgpt-sets-record-for-fastest-growing-user-base-analyst-note-says/ [https://perma.cc/RNN6-TKRL].

89. Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. Times (Apr. 10, 2023), https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html [https://perma.cc/4T99-AEY4].

90. Cohen, *supra* note 11.

91. *Id.*

92. John Villasenor, *How AI Will Revolutionize the Practice of Law*, Brookings (Mar. 20, 2023), https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/ [https://perma.cc/A4YU-JBPL].

93. Lohr, *supra* note 89.

IV. THE BENEFITS OF USING THE TECHNOLOGY

"Artificial intelligence offers numerous advantages in the practice of law, revolutionizing the way legal professionals work and enhancing their capabilities. Here are several compelling reasons to use AI in the legal arena:

A. Increased Efficiency

AI can automate routine and time-consuming tasks, such as legal research, document review, and contract analysis. By leveraging AI-powered tools, legal professionals can complete these tasks faster and with greater accuracy, allowing them to focus on more complex and strategic aspects of their work. This leads to increased efficiency and productivity within law firms and legal departments.

B. Enhanced Legal Research

AI-powered algorithms can sift through vast amounts of legal data, including case law, statutes, regulations, and legal opinions, in a fraction of the time it would take a human researcher. As a result, AI-based legal research tools can provide comprehensive and up-to-date information, helping lawyers find relevant precedents, assess legal arguments, and strengthen their case strategies.

Westlaw and Lexis/Nexis have been the torch bearers involving legal research for years. However, new players can offer even more advanced research platforms.[94] One such company is Ross Intelligence founded in 2018. The company advertises itself as "the world's first artificially intelligent attorney."[95] The system is built around IBM's cognitive computer Watson, and was empowered to read and comprehend natural language, suggest hypotheses when questioned, research, and then create answers that include references and citation to support its findings.[96] The platform also develops from use, gaining faster and acquiring information the more it is used.[97] It should be noted, however, that the company was sued by Thomson Reuters in 2021 for

94. Nicole Yamane, *Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands*, 33 Geo J. Legal Ethics 877, 879 (2020).

95. Matthew Griffin, *Meet Ross*, *the World's First AI Lawyer*, 311 Institute: Robo Revolution Blog (July 11, 2016), https://www.311institute.com/meet-ross-the-worlds-first-ai-lawyer/ [https://perma.cc/HP5A-QSHX].

96. *Id.*

97. *Id.*

copyright infringement and interference with a contract, and may have ceased operations as its fights the claim.[98]

C. Improved Document Review

Reviewing and analyzing documents is a critical part of legal practice. AI technologies, such as natural language processing (NLP) and machine learning, can automate the review process, quickly identifying relevant information, potential risks, and anomalies within contracts, agreements, and legal documents. This accelerates due diligence, reduces errors, and ensures greater consistency in legal document analysis.

D. Advanced Predictive Analytics

AI algorithms can analyze large datasets and identify patterns that may not be apparent to human analysts. In the legal field, this enables lawyers to make data-driven predictions about case outcomes, assess litigation risks, and provide more accurate legal advice to clients. AI can also help identify trends in judicial decisions, aiding in developing persuasive legal arguments and strategies.

E. Cost Savings

Automating and streamlining various legal processes through AI can result in significant cost savings for law firms and clients. By reducing the time spent on labor-intensive tasks, AI enables legal professionals to handle more cases efficiently. Moreover, AI can contribute to minimizing human error and preventing costly mistakes in legal research, contract drafting, or compliance, thus avoiding potential legal disputes and associated expenses.

F. Enhanced Decision-Making

AI technology can assist legal professionals in making well-informed decisions by providing comprehensive data, insights, and analysis. AI-powered tools can quickly identify legal information, uncover hidden relationships, and offer alternative legal strategies. By augmenting human judgment with AI-based recommendations, lawyers can make more informed decisions, ultimately leading to better client outcomes.

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98. Thompson Reuters Enter. Ctr. GmbH v. ROSS Intel. Inc., 529 F. Supp. 3d 303, 307 (D. Del. 2021) (The ABA Journal reported on December 20, 2020, that the company is stopping its operations in 2021 as it fights a lawsuit filed by Thompson Reuters for copyright infringement and tortious interference with a contract in the Delaware District Court.); Lyle Moran, *ROSS Intelligence Will Shut Down Amid Lawsuit from Thomson Reuters*, A.B. A. J. (Dec. 20, 2020), https://www.abajournal.com/news/article/ross-intelligence-to-shut-down-amid-thomson-reuters-lawsuit [https://perma.cc/ZM6Q-UPCA] (Nevertheless, information about the company can still be found on the Internet.).

G. Improved Access to Justice

AI has the potential to democratize access to legal services by making them more affordable and accessible. Virtual legal assistants and chatbots can provide basic legal guidance, answer common legal questions, and direct individuals to relevant resources. AI-powered tools can also help automate legal processes for pro bono work, public interest organizations, and legal aid clinics, allowing them to serve more clients effectively.

It is important to note that while AI offers numerous benefits in the legal field, it should not replace human legal professionals. Rather, AI should be seen as a powerful tool that compliments and augments their skills and expertise, enabling them to deliver more efficient and effective legal services."[99]

The author has a confession to make. After spending two days researching and writing about the benefits of using artificial intelligence in the legal profession, the author asked ChatGPT to explain why AI benefits attorneys. The software wrote the above explanation in seconds. While it is not a perfect response, it is well written and answers the question along multiple lines. The only limitation is that it provides no citations for its responses, nor does it incorporate any literature written after September 2021.[100] Therefore, the system may not always offer the most current or pertinent answer on a legal issue. This can cause conceivable mistakes or misinterpretations which may trigger significant repercussions in a legal framework.[101]

ChatGPT is multi-versed and can undertake many tasks involving natural language processing, such as:

- Text Generation: The technology can recite text that replicates human language in a variety of ways such as writing articles, novels, or poems.
- Finishing test: It can complete a thought or paragraph premised on the rest of the written words.
- Generate dialogue: ChaptGPT can create dialogue answers.
- Language translation: It can translate between several languages.
- Summary text: The product can condense lengthy texts into summaries.
- Answers: ChatGPT can answer questions and this function can be refined writing domain data.

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99. This subsection was written by ChatGPT pursuant to a question posed by the author on May 9, 2023, requesting the software's input on the benefits to lawyers by using the technology in the practice of law.

100. Amy Chen, *Attention: Be Aware of a Critical Cutoff Date Limitation of ChatGPT!*, Medium (Mar. 24, 2023), https://medium.com/@Amychen542022/attention-be-aware-of-a-critical-cutoff-date-limitation-of-chatgpt-c37516caeefd [https://perma.cc/3M47-XQGJ] One can phrase the question so that the response provides references.

101. Perlman, *supra* note 76.

- Chatbot: It can generate responses that appear to be written by a real person.
- Sentiment analysis: It can be directed to provide an analysis that is positive, neutral, or negative.[102]

This list is not all inclusive. ChatGPT can be directed to undertake additional natural language processing tasks.[103]

As for a demonstration of its versatility, it can be directed to create an html page, generate a mortgage calculator, author a headline, write a slogan for a product, create an employment contract, write a short story on a topic, create a 1,500 calories meal plan for one week, and construct a wedding speech for the best man.[104]

ChatGPT advanced to a new version of its language model software in April 2023.[105] It is known as GPT-4 and is classified as a multimodal model because it uses multiple mediums, such as text, image, and sound.[106] It is claimed that GPT-4 appears to be more functional, reactive, and safer than prior versions.[107] OpenAI, the creator of the product, claims that its new version scored in the top 10% of test takers on a simulated bar exam.[108] Nevertheless, users have been warned not to expect anything revolutionary with the new version.[109] A flaw with the prior version was that it made information up or provided "hallucinated" facts if its database was deficient on a question.[110] For example, when asked for the date when Leonard da Vinci created the Mona Lisa, it responded, "Leonardo da Vinci painted the Mona Lisa in 1815."[111]

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102. Hoz, *Chat GPT Examples: 78 Insane Things You Can Do with AI Right Now*, They Call Me Hoz, https://www.theycallmehoz.com/chat-gpt-examples [https://perma.cc/7WTY-XB8X] (last visited May 13, 2023).

103. *Id.*

104. *Id.*

105. Funmi Looi Somoye, *GPT-4 Release Date: When Is the New Model?*, PC Guide (Apr. 20 2023), https://www.pcguide.com/apps/chat-gpt-4-release-date/ [https://perma.cc/2R5Z-SRPR].

106. *Id.*

107. Tyler Weitzman, *GPT-4 Released: What It Means for the Future of Your Business*, Forbes (Mar. 28, 2023), https://www.forbes.com/sites/forbesbusinesscouncil/2023/03/28/gpt-4-released-what-it-means-for-the-future-of-your-business/?sh=560cb1e52dc6 [https://perma.cc/2KV3-ABAJ].

108. *Id.*

109. *Id.*

110. Bernard Marr, *ChatGPT: What Are Hallucinations and Why Are They a Problem for AI Systems*, Bernard Marr & Co. (Mar. 22, 2023), https://bernardmarr.com/chatgpt-what-are-hallucinations-and-why-are-they-a-problem-for-ai-systems/ [https://perma.cc/Y2U6-J8RA].

111. *Id.*

The artist started painting his masterpiece in 1503.[112] ChatGPT didn't know the answer, so it made one up.[113] Open AI asserts that its new version is "60% less likely to make stuff up."[114]

The reader is invited to test the system using the free trial version. Access is straightforward, and the process is easy to use. The first step is to open a browser, go to Open AI and create an account with an email address. Next, you will be asked to provide a phone number and to accept the terms and conditions. Once this is done, a code will be sent to that phone number which must be inputted in the space provided. After inserting the code, the user will be redirected to ChatGPT. At the bottom of the page, there will be a chatline for the user to insert a question or request.

A user may upgrade to ChatGPT Plus, the updated version of the product. GPT-4 is a quicker and bigger language model offered by Open AI at $20 a month.[115]

Vendors recognize this technology's advantages in the legal field and have started tailoring systems for this use. The following are some examples:

- Ironclad has created a tool known as "AI Assist." It uses ChatGPT technology to create redlined adaptations for contracts using vernacular gleaned from preapproved clauses.
- LawDroid developed LawDroid Copilot, which will help lawyers create content and documents, among other things.
- DocketAlarm permits users to hover their cursor over any docket retrieved through DocketAlarm and receive a three-bullet-point summary of the material.
- Lexion is a Microsoft Word product that offers a plug-in for ChatGPT technology that helps operators draft, negotiate, and summarize contract terms.[116]

V. APPLICATIONS

A. Predictive Coding

Electronic discovery is an area logically suited for AI use.[117] Its employment merely requires someone to instruct the computer on how to group

112. *Id.*

113. *Id.*

114. Weitzman, *supra* note 107.

115. Ortiz, *supra* note 66.

116. Nicole Black, *The Case for ChatGPT: Why Lawyers Should Embrace AI*, A.B.A. J. (Feb. 21, 2023), https://www.abajournal.com/columns/article/the-case-for-chatgpt-why-lawyers-should-embrace-ai [https://perma.cc/P5Q9-AB8S].

117. Janine Cerny et al, *Legal Ethics in the Use of Artificial Intelligence*, Squire Patten Boggs 1, https://www.squirepattonboggs.com/-/media/files/insights/

documents in a search.[118] By use of predictive coding, the tool can classify records by categories such as relevant or irrelevant, among other identifiers. This process is accomplished after tagging matters gleaned from an exemplar document provided by a legal professional.[119] For example, the system can be told to identify all letters containing the name "John Jones" over a particular time frame. This predictive coding will then find similar materials.[120] As noted in *Dynamo Holdings, Ltd. Partnership v. C.I.R.*:

> Predictive coding is an expedited and efficient form of computer-assisted review that allows parties in litigation to avoid the time and costs associated with the traditional, manual review of large volumes of documents. Through the coding of a relatively small sample of documents, computers can predict the relevance of documents to a discovery request and then identify which documents are and are not responsive.[121]

B. Legal Judgment Prediction

A legal judgment prediction is an AI tool that forecasts the outcome of a lawsuit premised upon the facts and other relevant information, such as anticipated arguments and claims.[122] For example, LexisNexis makes available a service entitled "Lex Machina" that includes litigation analytics. This tool predicts the behavior of the courts, opposing counsel, and parties.[123] The system allows counsel to ascertain the damages awarded by a particular judge on an issue in a time span, the chances that a judge will grant or deny a motion, and the anticipated trial schedule that a court will impose on the litigants.[124] It

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publications/2019/02/legal-ethics-in-the-use-of-artificial-intelligence/legalethics_feb2019.pdf [https://perma.cc/36JG-VWWG] (last visited May 10, 2023).

118. *Id.*

119. *Id.*

120. Lauri Donahue, *A Primer on Using Artificial Intelligence in the Legal Profession*, Jolt Digital (Jan. 3, 2018), https://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession [https://perma.cc/WX9H-2T54].

121. Dynamo Holdings, Ltd. P'ship v. C.I.R., 143 T. C. 183, 190 (2014).

122. *See* Becerra, *supra* note 41, at 44; Yi Feng, Chuanyi Li, & Vincent Ng, *Legal Judgment Prediction: A Survey of the State of the Art*, 31 International Joint Conference on A.I. (2022).

123. *Predict the Behavior of Courts, Lawyers, and Parties with Legal Analytics*, Lex Machina, https://lexmachina.com/ [https://perma.cc/RQT8-Z44C] (last visited May 10, 2023).

124. *Legal Analytics Platform*, Lex Machina, https://lexmachina.com/legal-analytics/ [https://perma.cc/5C64-4FTY] (last visited May 10, 2023).

can also identify the litigation experience of opposing counsel, and construct potential litigation strategies within minutes.[125]

A perceived flaw with this prediction capability is that it may not be able to account for a future change in precedent due to political, social, or economic influences.[126] Also, a change in the composition of the court could render precedent suspect.[127] One merely has to look at how the Supreme Court overturned *Roe v. Wade* after many decades of precedent because the composition of the court changed.[128]

C. Legal Research

Attorneys spend about 16.3% of their time performing legal research.[129] Existing technology allows counsel to access records from a computer instead of spending hours in a law library. Services like Westlaw and LexisNexis have made this transition possible by using artificial intelligence to retrieve cases, statutes, and articles.[130] This retrieval system is premised upon creative keyword searches. A common complaint, however, is that this type of search engine will retrieve many references that must be reviewed to see if they have any relevance to the issue at hand.[131]

This process is changing with vendors who are constructing research platforms that use more advanced semantic comprehension of the meaning of a court decision.[132] These tools no longer merely match words but offer subtle characteristics on how various opinions relate to one another.[133] For example, Casetext is classified as a cloud-based, online legal research instrument that employs AI to "assist with brief review and inform search results to help

125. *Id*.

126. Becerra, *supra* note 41, at 50.

127. *Id.*

128. *See* Nina Totenberg & Sarah McCammon, *Supreme Court Overturns Roe v. Wade, Ending Right to Abortion Upheld For Decades*, NPR (June 24, 2022, 10:43 PM), https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn [https://perma.cc/S9SN-WT5G].

129. Sher Hann Chua, *Artificial Intelligence and Legal Research in the 21st Century*, Tilleke and Gibbins (Dec. 22, 2020), https://www.tilleke.com/insights/artificial-intelligence-and-legal-research-in-the-21st-century/ [https://perma.cc/CG37-TA8C].

130. Becerra, *supra* note 41, at 41.

131. *Id.*

132. Toews, *supra* note 2.

133. *Id.*

lawyers enhance their research process."[134] Its features include the ability to create legal documents, conduct sentence-based parallel investigations, add citations to a brief or motion, and organize case materials on a centralized portal.[135] Casetext also offers an index dubbed, SmartCite, that assists in locating the cases that are most on point to a specific fact-pattern.[136] Users may perform a search by using natural language, and SmartCite checks a citation to ascertain whether the case is still good law, or has been overruled or modified.[137]

D. Contract Analysis

AI has multiple applications in contract law, especially with document drafting, contract review, digital signature, legal and matter administration, legal analytics, job management, title supervision, and lease abstracts.[138]

As a starting point, contracts are often many pages long, and the review process is tedious and time-consuming.[139] Add to this undertaking the extra time needed to proofread the contract, especially when prepared by opposing counsel, to make sure the agreement reflects the understanding of the parties.[140] Unfortunately, the negotiating and execution of the document is only the first step. An entity may also have multiple agreements with others, with an untold number of different counterparts.[141]

For entities that are unaware of their contract specifics, AI provides a solution.[142] Databases can be constructed that identify and contextualize important information consisting of an entity's complete collection of contracts. This innovation offers a straightforward method for a company to

134. *What is Casetext*, Lawyerist, https://lawyerist.com/reviews/online-legal-research/casetext/#:~:text=What%20is%20Casetext%3F,lawyers%20enhance%20their%20research%20process [https://perma.cc/YLE3-7BVD] (last visited May 10, 2023).

135. *Casetext Pricing, Features, Reviews, and Alternatives*, GetApp, https://www.getapp.com/all-software/a/casetext/ [https://perma.cc/MTW5-HCQ5] (last visited May 10, 2023).

136. *What is Casetext*, *supra* note 1344.

137. *Id.*

138. Yamane, *supra* note 94, at 879.

139. How Does AI Contract Analysis Software Work?, DFin (May 3, 2021), https://www.dfinsolutions.com/en-gb/knowledge-hub/knowledge-resources/understanding-ai-contract-analysis [https://perma.cc/4U5E-AUQ7].

140. *Id.*

141. Toews, *supra* note 2.

142. *Id.*

comprehend the character of its business obligations.[143] Several companies employ AI to review their contracts as part of their daily tasks. These firms include Salesforce, Home Depot, and eBay.[144] The benefit of such a system is that it can "read contracts accurately in any format, provide analytics about data extracted from contracts, and extract contract data much faster than would be possible with a team of lawyers."[145]

Kira Systems is an example of a company that offers machine learning software that "identifies, extracts, and analyzes content in. . .contracts and documents with unparalleled accuracy and efficiency."[146] The system automatically translates documents into a machine-readable context and employs artificial intelligence to identify common clauses, provisions, and data points.[147] The program's search and analytics tools identify legal issues and tendencies within documents and generates abstracts and reports that can be disseminated and employed by others.[148] It also permits for a comparison of agreements with other documents to ascertain where alterations were implemented across an array of contracts.[149]

Brightleaf Solutions is an entity that offers contract management services involving software to analyze contracts and either extract data elements, clauses, provisions, obligations, and any custom attributes to client specifications."[150] The company refers to these qualities as "attributes," which can retrieve such things as the parties names, duration of the contract, expiration date, and jurisdiction.[151] Once the user identifies the key terms being looked for, the system "crawls" through all supplied documents and generates a directory of key terms, provisions, and obligations.[152] Other

143. *Id.*

144. Yamane, *supra* note 94, at 881.

145. *Id.* at 881.

146. *Truly Know What is in Your Contracts and Documents*, Kira, https://kirasystems.com/how-kira-works/ [https://perma.cc/9NWL-CMLR] (last visited May 10, 2023).

147. *Id.*

148. Becerra, *supra* note 41, at 46.

149. *Id.*

150. Our *Services*, Brightleaf Solutions, https://brightleaf.com/our-services/ [https://perma.cc/7YZS-WXBM] (last visited May 10, 2023).

151. *Id.*

152. *Automated Contract Abstraction*, Brightleaf, https://brightleaf.com/automated-contract-abstraction/ [https://perma.cc/QK6J-C4GK] (last visited May 10, 2023).

entities that offer these services include Lawgeex, Klarity, Clearlaw, and LexCheck.[153]

As a caveat, it must be remembered that these tools require human interaction. Counsel must still provide finishing input on the language employed in the document after the recommendations from the AI software.[154]

E. Use of Artificial Intelligence by the Courts

The courts serve an essential role in the criminal justice system by guaranteeing the fair and impartial administration of justice.[155] Currently, about sixty risk assessment tools are being used in the criminal justice system to fulfill this goal.[156] Uses range from assessing the risk of a defendant harming society to determining if a suspect should be released on bail based upon the likelihood they won't show up for trial.[157]

As AI increases in use, those in the criminal justice field are wondering if AI-created tools can assist in bettering the judicial system.[158] Artificial intelligence can help in the management of court operations just like any other business.[159] Risk assessment tools are also playing an increasing role in the courts. Advocates assert that these tools can decrease bias in decision-making.[160] Critics argue that there is systemic bias implanted in documents employed to create these systems.[161]

In any event, some courts are using algorithms to predict the risk of recidivism with a criminal defendant at the time of sentencing.[162] The system,

153. Yamane, *supra* note 94, at 881.

154. *Id.*

155. *Artificial Intelligence Applications for Criminal Courts*, Criminal Justice Testing & Evaluation Consortium 1 (Aug. 2020), https://cjtec.org/files/5f5f943055f95 [https://perma.cc/C3JM-MB97].

156. Abu Elyounes, *Bail or Jail? Judicial Versus Algorithmic Decision-Making in the Pretrial System*, Colum. Sci. Tech. L. Rev. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541967# [https://perma.cc/6CTS-CKJS].

157. *Id.*

158. *Artificial Intelligence Applications for Criminal Courts*, *supra* note 155, at 1.

159. *Id.* at 6.

160. *Id.* at 7.

161. *Id.*

162. *See* State v. Loomis, 881 N.W.2d 749, 761 (Wis. 2016), *cert. denied*, 582 U.S. 933 (2017).

known as COMPAS,[163] is a risk assessment algorithm.[164] The idea of using such a tool has various support around the country; For instance, the American Bar Association has counseled states to use risk assessment tools to decrease recidivism and boost public safety.[165] It did note concern about the jailing of low-risk defendants because their incarceration with medium and high-risk criminals may exacerbate instead of mitigating the danger of recidivism.[166] However, the details on how the system works are not made available to the public.[167] This non-disclosure has led to constitutional challenges based on a violation of a defendant's due process rights.[168]

For example, *State v. Loomis* involved the operator of a vehicle in a drive-by shooting. He was charged with various crimes and entered a guilty plea to two of the lesser offenses.[169] His pre-sentence investigation included a COMPASS assessment which indicated he was at a high-risk for recidivism.[170] Accordingly, the court imposed the maximum sentence allowed by law.[171] At a post-conviction hearing attacking his sentence, the defendant presented an expert who opined that the use of a COMPAS risk assessment at sentencing offers a "tremendous risk of overestimating an individual's risk and . . . mistakenly sentencing them or basing their sentence on factors that may not apply. . .."[172] He went on to opine that the "Court does not know how COMPAS compares that individual's history with the population that it's comparing them with."[173]

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163. *Practitioner's Guide to COMPAS Core 1,* Northpointe, Inc. (Mar. 19, 2015), http://www.northpointeinc.com/files/technical_documents/Practitioners–Guide–COMPAS–Core–_031915.pdf [https://perma.cc/YR8Q-6LPJ] (COMPAS is a risk-need assessment tool created by Northpointe, Inc. to offer decisional advice for the Department of Corrections when formulating placement decisions, managing convicts, and planning treatment. The tool is premised upon data collected from the defendant's criminal file and talking to the defendant.).

164. Ellora T. Israni, *When an Algorithm Helps Send You to Prison*, N.Y. Times (Oct. 26, 2017), https://www.nytimes.com/2017/10/26/opinion/algorithm-compas-sentencing-bias.html [https://perma.cc/V2LQ-7WCC].

165. *Loomis,* 881 N.W.2d at 752.

166. *Id.*

167. *Id.* at 756–57.

168. *Id.*

169. *Id.* at 754.

170. *Id.*

171. *Loomis*, 881 N.W.2d at 756.

172. *Id.*

173. *Id.*

The court denied the post-conviction motion, and the defendant appealed, claiming his due process rights were violated because: (1) COMPAS infringes upon his right to be sentenced premised upon correct information because the proprietary nature of computer program stopped him from evaluating its accuracy; (2) it violates a person's right to a personalized sentence; and (3) it incorrectly employed gendered evaluations in the penalty phase.[174]

On appeal, the court disagreed.[175] It noted that the risk scores do not state how the COMPAS software utilizes the collected data to compute the defendant's risk scores.[176] However, an accompanying guide indicates that the calculations are premised mainly on criminal history and the narrow employment of variables such as criminal associations and substance abuse.[177] This information is public knowledge, such as a listing of the defendant's criminal history.[178] As for its accuracy, several other jurisdictions that use COMPAS have performed validation studies and determined that the software is a sufficiently precise risk assessment instrument.[179]

Another court use of artificial intelligence involves bail decisions. Some judges are using an algorithm dubbed PSA that estimates how likely a person is to skip a hearing or perpetrate another crime.[180] For example, New Jersey adopted an algorithmic risk assessment in 2014, and the Pretrial Justice Institute has supported the employment of the technology in place of cash bail.[181]

VI. DISADVANTAGES

Not everyone is enamored with the rapid full-scale implementation of AI. For instance, Elon Musk cautions that artificial intelligence could foster the destruction of civilization.[182] In fact, several of the world's leading scientists,

174. *Id.* at 757.

175. *Id.* at 765.

176. *Id.* at 761.

177. *Loomis*, 881 N.W.2d at 761.

178. *Id.*

179. *Id.* at 762 (The matter was appealed to the United States Supreme Court, but the justices refused to hear the appeal).

180. Tom Simonite, *Algorithms Were Supposed to Fix the Bail System. They Haven't*, Wired (Feb. 19, 2020), https://www.wired.com/story/algorithms-supposed-fix-bail-system-they-havent/ [https://perma.cc/B5UH-M7N4].

181. *Id.*

182. Clare Duffy & Ramishah Maruf, *Elon Musk Warns AI Could Cause 'Civilization Destruction' Even As He Invests In It*, CNN Bus. (Apr. 17, 2023), https://www.cnn.com/2023/04/17/tech/elon-musk-ai-warning-tucker-carlson/index.html. [https://perma.cc/H86E-AR59].

scholars, engineers, and writers espouse the same distress and predict a society controlled by robots.[183] While these views seem extreme, there are disadvantages and risk involving the use of the technology.

A. Disclosure of Confidential Information

One of the major problems involving this tool involves intellectual property.[184] The system must use various data accumulated from many sources, as this is the only way to obtain a knowledge foundation to answer an inquiry. The problem is that this data may involve copyrighted and other intellectually protected material.[185] The system will also retain whatever information the user enters to fabricate its knowledge base. These materials could then be employed as part of an answer imparted to another customer, creating the risk of revealing personal or confidential information to third parties.[186]

B. Misuse of Information

Generative AI allows the user to complete tasks in a fraction of the time. However, this efficiency provides a powerful incentive for misuse.[187] Workers might utilize these systems to claim the computer's output as their work product.[188] Academics have also expressed apprehension that students may use artificial intelligence to pen answers to their assignments.[189]

C. Inaccurate Results

AI technology learns as it goes along and constantly needs updated information. This means that a computer-generated answer may contain inaccurate or outdated data, such as a case being used in an analysis that has been overturned.[190] For instance, ChatGPT has not updated its database since

183. Amit Paul Chowdhury, *10 Well Known Personalities Who Fear the Rise of Artificial Intelligence*, AIM (May 19, 2017), https://analyticsindiamag.com/10-well-known-personalities-fear-rise-artificial-intelligence/ [https://perma.cc/4RZ3-6UL2].

184. *The Flip Side of Generative AI: Challenges and Risks Around Responsible Use*, KPMG, https://advisory-marketing.us.kpmg.com/speed/pov-generativeai-challenges.html [https://perma.cc/DYK3-7JK2] (last visited May 14, 2023).

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *The Flip Side of Generative AI*, *supra* note 184.

September 2021.[191] These types of inaccuracies could result the production of misinformation that could affect business advice or subject the user to liability concerns.[192] For instance, in November 2022, Meta released the AI bot Galactica to assist scientists.[193] This is an extensive language model educated on 48 million examples of scientific and educational materials.[194] The product "can summarize academic papers, solve math problems, generate Wiki articles, write scientific code, annotate molecules and proteins, and more."[195]

The product only survived three days on the market because it issued large quantities of misinformation – it was discovered to have made up fake papers, sometimes attributing them to real authors.[196] It could not differentiate between accurate and false information, and this is a foundational prerequisite for a language model intended to create scientific copy.[197]

D. External Risks

Third parties can also create issues with the technology. The system can create a deep fake image or video that seems real but has been fabricated by AI intelligence.[198] The image appears so authentic that it is impossible to detect that it is fake, especially since no forensic trail is left behind to show it is edited digital media.[199] For instance, a deep fake picture can be produced showing the law firm's senior partner engaged in a sexual act. The technology can also be used to submit a fraudulent insurance claim by generating fictitious images of a casualty loss.[200]

E. Loss of Jobs

A significant drawback across most fields of employment is the potential loss of jobs. The various document review tools can create less of a demand

191. Perlman, *supra* note 76.

192. *The Flip Side of Generative AI*, *supra* note 184.

193. Will Douglas Heaven, *Why Meta's Latest Language Model Survived Only Three Days*, MIT Technological Review (Nov. 18, 2022), https://www.technologyreview.com/2022/11/18/1063487/meta-large-language-model-ai-only-survived-three-days-gpt-3-science/ [https://perma.cc/53AE-HEEW].

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. *The Flip Side of Generative AI*, *supra* note 184.

199. *Id.*

200. *Id.*

for a person to manually sift through the materials.[201] In fact, Deloitte projects that approximately 100,000 law-associated jobs can be automated by 2036.[202]

VII. ROBO ETHICS

Lawyers are bound to follow the Code of Professional Responsibility. These pronouncements establish ethical standards of conduct owed to individuals and society.[203] The utilization, or lack of use, of artificial intelligence in the legal profession raises a host of ethical issues.[204] Two primary areas of concern involve the obligation of an attorney to provide competent representation and the unauthorized practice of law by AI programs.[205]

The Model Rules of Professional Conduct, which serve as ethics guidelines for legal practitioners, were crafted by the American Bar Association in 1983.[206] This was before sophisticated AI tools existed.[207] Therefore, the application of AI to writing briefs, contracts, and performing other legal tasks is uncertain.[208] This lack of clarity makes it is necessary to explore the interplay between ethics and AI technology.[209]

The full implementation of AI in the law is far away. Nevertheless, accounts have emerged of ethical problems with the utilization of the technology.[210] These matters have focused on deep-seated prejudices in the algorithms, concerns

201. *Impacts and Drawbacks of Artificial Intelligence (AI) in the Legal Field*, Attorneys & Legal Affairs, https://validlaws.com/impacts-drawbacks-of-artificial-intelligence-ai-in-the-legal-field/ [https://perma.cc/Y776-FQCU] (last visited May 14, 2023).

202. Lyle Solomon, *The Advantages and Disadvantages of AI in Law Firms*, Venture Beat (April 6, 2022, 2:07 PM), https://venturebeat.com/datadecisionmakers/the-advantages-and-disadvantages-of-ai-in-law-firms/ [https://perma.cc/QM6K-Z489].

203. *What are Legal Ethics and Professional Responsibility?*, Findlaw (June 20, 2016), https://www.findlaw.com/hirealawyer/choosing-the-right-lawyer/ethics-and-professional-responsibility.html [https://perma.cc/N4CP-KFPA].

204. Yamane, *supra* note 94, at 889.

205. *Id.*

206. *Model Rules of Professional Conduct*, Legal Information Institute, https://www.law.cornell.edu/wex/model_rules_of_professional_conduct [https://perma.cc/KS85-PJ35] (last visited May 11, 2023).

207. Yamane, *supra* note 94, at 889.

208. *Id.* at 877.

209. *Id.*

210. Greg Wirth, *Why the Legal Profession Needs to Care About Ethics in AI*, Thomson Reuters (Feb. 25, 2021), https://www.thomsonreuters.com/en-us/posts/legal/ai-ethics-tr-takeover/ [https://perma.cc/W7FS-JUC8].

about security and privacy, and doubts over the influence of human judgment.[211] "It's even created a new field called "robo-ethics."[212]

The ethical concerns generated by AI are similar to the ethical issues that counsel have faced previously.[213] As noted by David Curle, Director of the Technology and Innovation Platform at the Legal Executive Institute of Thomson Reuters, "[w]hen using tools in their work, whether AI-powered tools or any others, lawyers still have the same duties, including duties of supervision and independent judgment."[214] Nevertheless, AI and comparable technologies generate unique circumstances that are not expressly addressed in the Model Rules of Legal Ethics.[215]

A. ABA Resolution 604

The first formal attempt to address transparency and lack of AI guidance occurred at the 2023 Midyear Meeting of the American Bar Association when it passed Resolution 604.[216] This pronouncement deals with how "lawyers, regulators, and other stakeholders should assess issues of accountability, transparency, and traceability in artificial intelligence."[217]

The ABA requested those involved in the AI arena follow the following principles.

1. Developers, integrators, suppliers, and operators ("Developers") of AI systems and capabilities should ensure that their products, services, systems, and capabilities are subject to human authority, oversight, and control;
2. Responsible individuals and organizations should be accountable for the consequences caused by their use of AI products, services, systems, and capabilities, including any legally cognizable injury or harm caused by their actions or use of AI systems or capabilities, unless they have taken reasonable measures to mitigate against that harm or injury; and

211. *Id.*

212. *Id.*

213. David Lat, *The Ethical Implications of Artificial Intelligence*, Above the Law, https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/ [https://perma.cc/BE8A-HXAK] (last visited May 11, 2023).

214. *Id.*

215. *Id.*

216. Amanda Roberts, *ABA House Adopts 3 Guidelines to Improve Use of Artificial Intelligence*, A.B.A. J. (Feb. 6, 2023), https://www.abajournal.com/web/article/aba-house-adopts-3-guidelines-to-improve-use-of-artificial-intelligence [https://perma.cc/93AR-A8GW].

217. *Id.*

3. Developers should ensure the transparency and traceability of their AI products, services, systems, and capabilities, while protecting associated intellectual property, by documenting key decisions made with regard to the design and risk of the data sets, procedures, and outcomes underlying their AI products, services, systems and capabilities.[218]

The American Bar Association noted in the comments section of the pronouncement that these guidelines are essential in making sure that artificial intelligence is created and used in harmony with the law and generally accepted legal standards.[219] It further noted that individual and business responsibility, human control, and supervision are mandated, and it is unacceptable to transfer "legal responsibility to a computer or an 'algorithm' rather than to responsible people and other legal entities."[220]

The comments to Resolution 604 went on to discuss the importance of accountability in using AI technology. A significant concern dealt with the potentially discriminatory impact of AI schemes.[221] After all, the technology is based on algorithms and machine learning to examine data and construct forecasts. However, suppose the materials utilized to educate these systems are biased. In that case, the technology will continue that prejudice, causing unfair results.[222] For instance, Amazon started hiring people automatically by employing an algorithm to assess resumes.[223] However, this initiative was halted after learning that women were subject to discrimination in some technical jobs, such as software engineer. It learned that the computer reviewed the qualifications of its employees, which were comprised mainly of men.[224] Researchers also discovered that sex and skin-type bias was present in facial analysis programs, with a mistake rate of 0.8% for light-skinned men, as opposed to 34.7% for dark-skinned females.[225]

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218. *American Bar Association House of Delegates Resolution 604*, A.B.A. (Feb. 6, 2023), https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2023/604-midyear-2023.pdf [https://perma.cc/4TGY-QCHP].

219. *Id.*

220. *Id.*

221. *Id.* at 4.

222. *The Ethics of AI in the Law: Debates and Regulations*, PATSNAP, https://www.patsnap.com/resources/blog/the-ethics-of-ai-in-law-debates-and-regulations/#:~:text=One%20of%20the%20primary%20debates,bias%2C%20resulting%20in%20unfair%20outcomes [https://perma.cc/3MDZ-S764] (last visited May 11, 2023).

223. *Id.*

224. *Id.*

225. *Id.*

This systematic bias has led to recent remedial methods to prevent AI software from violating anti-discrimination and privacy laws.[226] For instance, the Equal Employment Opportunity Commission started an initiative to guarantee that AI utilized in employment determinations does not run afoul of the anti-discrimination laws.[227] The FTC has also issued advice on the commercial employment of AI systems. It, too, addressed the harmful risks of the technology, including improper or discriminatory consequences or the continuation of current disparities.[228]

The ABA requested the judiciary and legal profession to tackle the ethical and legal issues related to using AI in law practices. Listed concerns include "(1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; (3) controls and oversight of AI; and (4) vendors that provide AI."[229]

Resolution 604 is not binding, nor does it appear that any state bar associations have issued formal ethics decisions dealing with the utilization by attorneys of artificial intelligence.[230] Nevertheless, several ethics rules have potential application; (1) competence, (2) communication, (3) confidentiality, and (4) supervision.

B. Rules of Ethics

The first applicable Rule of Conduct deals with lawyer competence.[231] Model Rule 1.1 provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[232] While nothing is said about maintaining competence in technology, that element was added to Comment 8 of the Rule:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with *relevant technology*, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.[233] (emphasis added.)

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226. *Id.*

227. *Id.*

228. *The Ethics of AI in the Law*, *supra* note 222.

229. *Id.*

230. Cerny et al., *supra* note 117, at 3.

231. Yamane, *supra* note 94, at 883.

232. Model Rules of Pro. Conduct r. 1.1 (Am. Bar Ass'n 1983).

233. Model Rules of Pro. Conduct r. 1.1 cmt. 8 (Am. Bar Ass'n 1983).

The duty of competence involving developing technology to provide competent representation to clients is now made clear by this comment.[234] This means that attorneys must generally comprehend the technological tools in use to better the legal representation they offer to clients.[235] This principle suggests that lawyers are tasked with two ethical obligations; they must possess a basic comprehension of the AI tools they use in their practice.[236] In this regard, at least thirty-six states have enacted rules on technology utilization.[237] For example, Pennsylvania added verbatim the addition to Comment 8 which provides:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with *relevant technology*, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.[238] (emphasis added.)

The second ethics element is that a competent lawyer should not automatically accept AI output as being accurate.[239] This requires an attorney to check the AI-generated materials to make sure the software is working correctly and to assess the results to provide competent representation.[240]

Model Rule 1.4 (a)(2) deals with a lawyer's duty to communicate with clients, including the obligation to "reasonably consult with the client about the means by which the client's objectives are to be accomplished." This obligation requires the attorney to discuss with clients the decision to employ AI in their representation.[241] At least one author takes this advice a step further and opines that counsel should obtain the client's approval before using AI and that permission must be informed. [242]

Rule 1.6 (c) deals with the duty of confidentiality and provides that an attorney must make reasonable efforts to avoid the unintentional or unauthorized

234. Yamane, *supra* note 94, at 883.

235. Cerny et al., *supra* note 117, at 3-4.

236. Yamane, *supra* note 94, at 884.

237. *Id.*

238. *How Technology is Changing an Attorney's Duties Under the Pennsylvania Rules of Professional Conduct*, Ruppert Manes Narahari, https://lawkm.com/technology-changing-attorneys-duties-pennsylvania-rules-professional-conduct/ [https://perma.cc/Q54X-K7LQ] (last visited May 11, 2023).

239. *See* Yamane, *supra* note 94, at 883-84.

240. *Id.* at 884.

241. Cerny et al., *supra* note 117, at 4.

242. *Id.*

disclosure of material involving the representation of a client.[243] The problem with AI in this context is that the tool may require client information to be provided to third party providers.[244] This risk means that lawyers must take the necessary steps to make sure that their client's data is properly shielded.[245]

Model Rule 5.5 imposes upon a lawyer an obligation to supervise non-lawyers within their employ and non-employees outside the organization for whom they are responsible and to take reasonable steps to make sure that such person's actions are aligned with the professional obligations of the lawyer.[246] A comment to Rule 5.3 references technology vendors as a nonlawyer under this section.[247] While this note does not discuss what constitutes reasonable steps, counsel should undertake due diligence to appreciate the product's limitations and abilities.[248] This duty includes ascertaining whether the technology will result in non-compliance with an attorney's obligations.[249]

This section raises a philosophical question. AI is not a natural person. Instead, it is a machine that replicates the neural network of the brain, and the computer's output will be incorporated into the "thinking" of the attorney's work.[250] Under Rule 5.3, will AI be labeled as a nonlawyer, triggering an obligation to make sure the work product generated by the software is competent?[251]

One of the more intriguing ethics questions deals with the unauthorized practice of law. Model Rule 5.5 (b) notes:

> [A] lawyer who is not admitted to practice in this jurisdiction shall not: 1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or 2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.[252]

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243. Model Rules of Pro. Conduct r. 1.6(c) (Am. Bar Ass'n 1983).

244. Cerny et al., *supra* note 117, at 4.

245. *Id.*

246. Model Rules of Pro. Conduct r. 5.3(b) (Am. Bar Ass'n 1983).

247. Linda Henry, *The Intersection of Artificial Intelligence and the Model Rules of Professional Conduct*, JD Supra (Feb. 5, 2019), https://www.jdsupra.com/legalnews/the-intersection-of-artificial-87577/ [https://perma.cc/J78M-GU4H].

248. *Id.*

249. *Id.*

250. Yamane, *supra* note 94, at 884.

251. *Id.*

252. Model Rules of Pro. Conduct r. 5.5(b) (Am. Bar Ass'n 1983).

This presents the question as to whether legal work solely performed by a computer violates Rule 5.5. Lawsuits have been instituted against AI program developers, averring that they engaged in the unauthorized practice of law.[253] The primary principle gleaned from the reported decisions involving this section of the Code of Ethics is that many jurisdictions require the use of some legal judgment as a critical requirement of the practice of law.[254]

In *Lola v. Skadden*, the Second Circuit Court of Appeals "implied that machines could not engage in the practice of law."[255] The *Lola* decision involved a contract lawyer who conducted a document review for a law firm participating in multi-district litigation.[256] He used no independent legal judgment in performing the work, so the court determined that he was not engaging in the practice of law.[257] As noted, "[t]he 'practice of law' means the exercise of professional judgment in applying legal principles to address another person's individualized needs through analysis, advice, or other assistance."[258] Many jurisdictions also require the use of some legal judgment as a critical requirement of the practice of law.[259] Applying the lesson learned from this decision, software that does not exercise any independent judgment in the performance of its work is not engaged in the practice of law.[260]

DoNotPay, the self-help company, which started its business by helping people fight parking tickets, became embroiled in a controversy when it announced that it was taking its AI-powered "robot lawyer" into court to litigate a matter.[261] The firm also offered $1 million to any attorney "willing to let its artificial intelligence argue a case before the U.S. Supreme Court."[262] These actions would squarely test the Rule of Ethics concerning the unauthorized practice of law.

Following a host of complaints from the legal community, the company did not proceed with its plans.[263] Nevertheless, a class action lawsuit was

253. Yamane, *supra* note 94, at 887.

254. *Id.* at 888.

255. *Id.* at 887.

256. Lola v. Skadden, 620 Fed. App'x. 37, 39-40 (2nd Cir. 2015).

257. Calabresi, *supra* note 25, at 792.

258. *Lola*, 620 Fed. App'x at 45.

259. *Id.*

260. Yamane, *supra* note 94, at 887–88.

261. Lauren Leffer, *DoNotPay, the 'Robot Lawyer,' is Being Sued*, Gizmodo (Mar. 13, 2023), https://gizmodo.com/donotpay-robot-lawyer-speeding-ticket-ai-1850218589 [https://perma.cc/YJW2-QGFZ].

262. *Id.*

263. *Id.*

filed in California against the startup, claiming that it deceived its users and misrepresented its software.[264] The complaint averred that the "Robot Lawyer" was practicing law without a license, and their services were of poor quality.[265] More specifically, it was claimed "[u]nfortunately for its customers, DoNotPay is not actually a robot, a lawyer, nor a law firm". [266] DoNotPay "does not have a law degree, is not barred in any jurisdiction, and is not supervised by any lawyer."[267]

A question that the court will have to address is what constitutes the practice of law. There does not seem to be a consensus definition on this question.[268] As a result, it is not surprising that entities have tried to tap into the lawyers' market by offering products that will help people prepare their own legal documents.[269]

Legal Zoom has been repeatedly sued for allegedly engaging in the unauthorized practice of law.[270] This online do-it-yourself service provider allows users to generate legal documents without needing to hire an attorney.[271] While the Pennsylvania Bar Association Practice of Law Committee determined that LegalZoom was employed in the unauthorized practice of law, the firm has been very successful in court fighting off challengers.[272]

How the courts handle the challenges involving artificial intelligence and the unauthorized practice of law remains to be seen. As one author noted, "As long as lawyers use AI to augment rather than replace their work and AI programs that do not involve human attorneys refrain from giving legal advice, AI

264. *Id.*

265. William Hicks, *'Robot Lawyer' Donotpay Sued for Practicing Law Without a License*, The Business Journal (Mar. 16, 2023), https://www.bizjournals.com/sanfrancisco/inno/stories/news/2023/03/15/robot-donotpay-sued.html#:~:text=The%20San%20Francisco%20startup%20that,provided%20him%20with%20shoddy%20services [https://perma.cc/5PWR-3LSC].

266. Lauren Haughey, *World's First Robot Lawyer is Being Sued by a Law Firm—Because it 'Does Not Have a Law Degree'*, Daily Mail (Mar. 14, 2023), https://www.dailymail.co.uk/sciencetech/article-11857529/Worlds-robot-LAWYER-sued-law-firm-does-not-law-degree.html [https://perma.cc/AM3K-H8ZH].

267. *Id.*

268. Thomas E. Spahn, *Is Your Artificial Intelligence Guilty of the Unauthorized Practice of Law*, 24 Rich. J.L. & Tech. 2, 4 (2018).

269. *Id.* at 28–29.

270. *Id*. at 40.

271. Natalie Cusson & Kelly Main, *LegalZoom Review (2023): Services, Pricing, Pros and Cons*, Forbes Advisor (Aug. 1, 2023), https://www.forbes.com/advisor/business/software/legalzoom-llc-review/ [https://perma.cc/BFX6-H5WX].

272. Pa. Bar Ass'n Unauthorized Prac. of L. Comm., Op. 2010-01 (2010); Spahn, *supra* note 268, at 43.

can be an effective tool to improve the quality of legal services and increase individual access to justice while operating well within the parameters of legal ethics."[273]

VIII. LEGAL LIABILITY

It was once noted, "[n]o complex computer program has ever been marketed that did not have some defect, somewhere."[274] Accordingly, those who are involved in the development and distribution of artificial intelligence systems should be apprehensive about their potential liabilities.[275] While the technology offers essential and lasting changes to the practice of law, it has risks.[276] The systems are imperfect and can make mistakes or issue flawed information. For instance, an AI algorithm that is employed to make hiring decisions automatically premised upon biased or improper information that uses race as a factor or applies law that has been overturned are examples of incorrect actions.[277] Who is responsible, and what theory of liability will be most successful? Tort and contract principles offer various options with different degrees of viability.

A. Tort Law

A tort is premised upon principles of agency, control, and foreseeability.[278] In this regard, a wrongdoer able to foresee the harm should be responsible for compensating an aggrieved party for that injury.[279] A mistake made by AI presents an assortment of questions that are problematic through current principles of responsibility.[280] For example, how do you determine an error created by a "black box" response?[281] After all, a variety of parties are involved in the decision-making process from the manufacturer and designer of the system to

273. Yamane, *supra* note 94, at 877.

274. Marguerite E. Gerstner, *Liability Issues with Artificial Intelligence Software*, 33 Santa Clara L. Rev. 239, 246 (1993).

275. *Id.*

276. John Villasenor, *Products Liability Law as a Way to Address AI Harms*, Brookings (October 31, 2019), https://www.brookings.edu/articles/products-liability-law-as-a-way-to-address-ai-harms/ [https://perma.cc/YUV8-CUB4].

277. *Id.*

278. *See* Kyle T. Jorstad, *Intersection of Artificial Intelligence and Medicine: Tort Liability in The Technological Age*, 3 J. Med. A.I. 1, 8 (2020).

279. *Id.*

280. *Id.* at 3.

281. *Id.* at 21.

the attorney who follows the advice provided by the technology.[282] The apportionment of liability among the tortfeasors, when no single party is accountable for the error, makes judicial resolution difficult.[283]

It is also hard to ascertain breaches of the duty of care when the AI software is untested.[284] For instance, a black box will respond to a lawyer's question, but it does not explain how it reached that answer.[285] Current tort principles can be used to resolve some of these issues, but not to the degree sought by the courts, who want established methods used for measuring liability and allocating that responsibility.[286]

The cause for this uncertainty occurs because it is not possible to discover the cognitive thought process used by the algorithm.[287] This inability creates a dilemma; should traditional products liability rules apply to hold the technology manufacturer liable, or is the lawyer using the AI tool responsible?[288]

1. *Responsibility of the Lawyer*

The question of a lawyer's liability, when an AI tool makes a mistake, is the easiest to answer. An attorney can never blindly rely on the advice generated by a computer program.[289] The device is only one instrument in counsel's toolbox, and this legal representative has the ultimate responsibility to make sure that advice is accurate.[290] Even if the algorithm is viewed as an employee of the firm, the rules of ethics demonstrate that counsel must accept responsibility for the computer under the obligation of supervision.[291]

Symbionics v. Ortlieb presents an analogous situation.[292] The plaintiff filed an untimely appeal, and claimed the mistake was caused by a "quirk" in

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282. *Id.*

283. Samuel D. Hodge, Jr., *The Medical and Legal Implications of Artificial Intelligence in Health Care—An Area of Unsettled Law*, 28 Rich. J. L. & Tech. 405, 436 (2022).

284. Jorstad, *supra* note 278, at 12.

285. *Id.* at 13.

286. *Id.*

287. Sarah Kamensky, *Artificial Intelligence and Technology in Health Care: Overview and Possible Legal Implications*, 21 DePaul J. Health Care L. 1, 3 (2020).

288. *Id.*

289. Michael Loy, *Legal Liability for Artificially Intelligent "Robot Lawyers"*, 26 Lewis & Clark L. Rev. 953, 957 (2022).

290. *Id.*

291. *Id.*

292. *Id.*; *see* Symbionics v. Ortlieb, 432 F. App'x 216, 217-18 (4th Cir. 2011) (per curiam).

counsel's use of a Microsoft Window's calendar to calculate the deadline.[293] His defense was "excusable mistake" which occurs when there is a "1) danger of prejudice to the [opposing party], 2) the length of delay and its potential impact on judicial proceedings, 3) the reason for the delay, including whether it was within the reasonable control of the movant, and 4) whether the movant acted in good faith." [294] In evaluating plaintiff's tardiness, the appellate court noted that such an excuse can only be found when the excusable negligence is caused by "inadvertence, mistake, or carelessness."[295] The court determined that counsel's reliance on a computer application to determine the filing deadline is neither "extraneous" to nor "independent" of his negligence.[296] Counsel's failure to discover that the calendar failed to advance the date thereby resulting in the incorrect deadline computation is "the very essence of counsel's negligence."[297] This conduct is the type of "run-of-the-mill inattentiveness" that the court has consistently refused to excuse in the past.[298]

The lesson learned from *Symbionics* is that a lawyer who fails to check the work generated by an artificial intelligence program will bear the ultimate responsibility for the error.[299] Such a mistake is not excusable negligence.[300]

2. *Products Liability*

A software consumer will find product liability to be the most advantageous theory of responsibility.[301] This remedy does not require proof that the software developer, programmer, or vendor was at fault.[302] In fact, claims of harm suffered because of defective or unreasonably dangerous products are routine matters.[303]

Product liability deals with a manufacturer, distributor, or seller's responsibility for a defective product. In other words, all those in the chain of distribution are responsible.[304] A product, therefore, must meet the reasonable

293. Loy, *supra* note 289, at 957; *Symbionics*, 432 F. App'x at 219.

294. *Symbionics*, 432 F. App'x at 219.

295. *Id.*

296. *Id.* at 220.

297. *Id.*

298. *Id.*

299. *Id.*

300. Loy, *supra* note 289, at 958.

301. Gerstner, *supra* note 274, at 254.

302. *Id.*

303. Hodge, *supra* note 283, at 439.

304. *Id.*

expectations of the consumer.[305] This mandate is violated when the product has an unexpected defect or danger.[306] This development enlarges the chances the law of product liability relates to software.[307] In addition, public policy considerations such as risk-allowing are advanced by applying product liability principles when a defective item harms someone.[308]

The law of product liability only exists in state law, and theories of liability sound in negligence, strict liability, and breach of warranty.[309] Regardless of the approach, an injured party must show the product that caused the harm was defective when it left the possession of the seller and that defect caused the injury.[310]

Anyone in the chain of distribution of an AI tool may be sued under a products liability theory "if an error involving the technology occurs."[311] The foundation for this concept is that someone, like a manufacturer or seller, that profits from the distribution of a defective product should assume the expenses of compensation when it harms another.[312] Liability will be premised on the idea that AI caused the harm, and the injury is inherent proof of a defect within that technology.[313]

A key question is whether AI technology is a product, service, or a combination of both.[314] Strict liability pertains to defects in "product design, manufacture, or warnings that cause personal injury or property damage to others; negligence applies to services, such as data analysis to determine

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. *What is Product Liability?*, Findlaw (Mar. 2, 2023), https://www.findlaw.com/injury/product-liability/what-is-product-liability.html#:~:text=Product%20liability%C20refers%C20to%C20a,are%C20in%C20the%C20distribution%20chain [https://perma.cc/H7CC-6SRM].

310. *Id.*

311. David Goguen, *Product Liability Claims Involving Medical Devices*, Nolo, https://www.nolo.com/legal-encyclopedia/product-liability-claims-medical-devices-29684.html [https://perma.cc/BJW7-BYTN] (last visited Sept. 27, 2023) (discussing product liability as applied to medical devices).

312. Sara E. Dyson, *Medical Device Software & Products Liability: An Overview (Part I)*, Medical Tech Intelligence (Sept. 15, 2017), https://www.medtechintelligence.com/feature_article/medical-device-software-products-liability-overview-part/ [https://perma.cc/Q92Q-T7GM].

313. Hodge, *supra* note 283, at 441; Kamensky, *supra* note 287, at 12.

314. *Mitigating Product Liability for Artificial Intelligence*, Jones Day (Mar. 2018), https://www.jonesday.com/en/insights/2018/03/mitigating-product-liability-for-artificial-intell [https://perma.cc/KVF7-7HN8].

maintenance."[315] Several jurisdictions have defined a "product" for the purposes of product liability law.[316] Still, this task is usually left up to the courts, a distinction that is not always readily ascertainable.[317]

AI technology that is a product, or a combination of a product and a service, may be held to the same strict liability criteria as other products.[318] This includes the ability to sue the manufacturer for damages generated by a defect in the technology.[319] If AI software is classified as a service, it is not certain if the court would subject the AI to the same legal standards.[320]

Generally, a contract for an AI system will be governed by Article 2 of the Uniform Commercial Code (UCC), which pertains to a contract for the sale of goods under Article Two.[321] The UCC suggests that there is a distinction between mass-produced software which is a "good," and a specific system created for a user which is a service.[322]

An attorney who is harmed by AI technology will immediately think of suing the technology vendor for the resulting harm. That, however, might be a challenging task.[323] The UCC provides for express warranties, implied warranties of merchantability, and fitness for a particular purpose.[324] However, it is common for AI system developers to include contract language with the sale that waives these warranties or sells the product "as is" to

315. *Id.*

316. *Id.*

317. *Artificial Intelligence Key Legal Issues: Overview*, Thomas Reuters Practical Law 7, https://anzlaw.thomsonreuters.com/w-018 1743?transitionType=Default &contextData=(sc.Default) [https://perma.cc/6753-WAYH] (last visited May 13, 2023).

318. *Id.*

319. *Id*.

320. *Id.*

321. William Tanenbaum et al., *Theories of AI Liability: It's Still About the Human Element*, Reuters (Sept. 20, 2022, 11:53 AM), https://www.reuters.com/legal/litigation/theories-ai-liability-its-still-about-human-element-2022-09-20/ [https://perma.cc/9SS8-ZS9P].

322. Jones Day, *supra* note 314

323. Lance Eliot, *When You Use ChatGPT You Could Be Legally Liable, AI Ethics and Law Experts Warn*, Forbes (Apr. 10, 2023, 7:00 AM), https://www.forbes.com/sites/lanceeliot/2023/04/10/when-you-use-chatgpt-you-could-be-legally-liable-ai-ethics-and-law-experts-warn/?sh=48d3560f7c34 [https://perma.cc/X7YU-SW4Z].

324. *Artificial Intelligence Key Legal Issues*, *supra* note 317, at 9.

reduce their liability.[325] Vendors often include an indemnification clause.[326] For example, Open AI's Terms of Use contains the following language:

> You will defend, indemnify, and hold harmless us, our affiliates, and our personnel from and against any claims, losses, and expenses (including attorney's fees) arising from or relating to your us of the Services, including your Content, products, or services you developed or offer in connection with the Services, and your breach of these Terms or violation of applicable law.[327]

This clause continues with an exclusion of all warranties and a limitation of liability of "the greater of the amount you paid for the service that gave rise to the claim during the 12 months before the liability arose or one hundred dollars ($100)."[328] However, the enforceability of these disclaimers is another story.[329] As one can see, the application of products liability law to an AI system is not an easy undertaking.[330]

A creator or designer of the system cannot always foresee how the technology will be used once a legal professional utilizes it.[331] An expected defense is that it is unreasonable to blame the company whose labors were removed from the actual employment of the technology.[332] It is anticipated that the courts will be reluctant to apply products liability law to implicate software designers.[333] However, some scholars maintain that products liability law should not be exempt from software-related damages.[334] Along these lines, a seller of AI technology would be responsible for the harm resulting from the product's failure, despite the use of reasonable care when the software was created.[335]

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325. Jones Day, *supra* note 314.

326. *Id.*

327. *Terms of Use*, OpenAI (Mar. 14, 2023), https://openai.com/policies/terms-of-use [https://perma.cc/Z7BW-KM3E].

328. *Id.*

329. Jones Day, *supra* note 314.

330. Hodge, *supra* note 283, at 442.

331. *Id.* at 452; Kamensky, *supra* note 287, at 13.

332. Kamensky, *supra* note 287, at 13.

333. *Id.*

334. Randolph A. Miller & Sarah M. Miller, Clinical Decision Support: The Road Ahead 425 (Robert A. Greenes ed., 2007).

335. *Id.* at 439; Hodge, *supra* note 283, at 442-43.

Another thing to consider is that strict liability usually only applies to physical harm, such as personal injury or property damage, caused by the product.[336] In a traditional context, economic loss is usually not enough to create responsibility.[337] Such a claim against the seller may be meritless if the defective software results in a user's monetary loss or an attorney offering poor legal advice.[338] Moreover, a disclaimer of liability with strict liability is not permissible.[339] Warnings or disclaimers may also not be valid if they are buried in an extensive operator's manual.[340]

B. Breach of Warranty

Breach of warranty claims are usually governed by statute and consist of an express warranty, the implied warranty of merchantability, and the implied warranty of fitness for a particular purpose.[341] If the aggrieved party can demonstrate that the technology is a product and not a service, it must then show that (1) the product was purchased from the defendant; (2) the seller provided an express warranty, or one was implied by operation of law; (3) the seller breached the warranty because the item did not perform as warranted; and (4) the plaintiff was injured.[342]

A warranty may arise by an affirmation of fact or a promise made by a seller which relates to the product.[343] The language forming a warranty does not need to contain unique phrases or formal terms such as a guarantee or warranty.[344] In fact, an advertisement may create an express warranty in certain situations.[345] Nevertheless, a distinction must be made between a product and a service.[346] A computer program can be moved and transferred to a third party

336. Gerstner, *supra* note 274, at 251.

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.* at 253.

342. Joe Fornadel & Wes Moran, *Predicting Liability Risks Based on the Existing Regulatory and Legal Framework*, For the Defense 48, 52 (Sept. 2020), https://digitaleditions.walsworth.com/publication/?i=671743 [https://perma.cc/E54M-E26A].

343. *See* U.C.C. § 2-313 (Am. L. Inst. & Unif. L. Comm'n 2002).

344. Overstreet v. Norden Lab'ys, Inc., 669 F.2d 1286, 1290 (6th Cir. 1982).

345. *Id.* at 1291.

346. Gerstner, *supra* note 274, at 252.

at the time of sale, so "it is arguably a good."[347] However, if the program is determined to be a hybrid, such a classification may not be accurate.[348]

In RRX Industries, Inc. v. Lab-Con, Inc., the court considered whether a software sale was a good or service.[349] The matter stems from the defendant's supplying RRX with software for use in its medical laboratories.[350] The agreement required the defendant to remedy any malfunction that developed in the system, but limited the defendant's responsibility to the contract price.[351] After installation, the system did not work correctly, and the manufacturer was unable to fix the bugs.[352]

A lawsuit was instituted, and a question arose over the classification of the software for breach of warranty purposes.[353] The court opined that in ascertaining whether a contract is one for sale or to provide services, it must resort to the spirit of the agreement.[354] "When a sale predominates, incidental services provided do not alter the basic transaction."[355] Software packages differ based upon the requirements of the user, so the courts will apply a case-by-case determination.[356] In this matter, the sales part of the contract predominated.[357] Employee instruction, repair responsibilities, and system upgrading were incidental to the selling of the software package and "did not defeat characterization of the system as a good."[358] Likewise, software has been found to be a good under the Uniform Commercial Code in other cases.[359]

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347. *Id.*

348. *Id.*

349. RRX Indus., Inc. v. Lab-Con, Inc., 772 F.2d 543, 546 (9th Cir. 1985).

350. *Id.* at 543.

351. *Id.*

352. *Id.*

353. *Id.* at 546.

354. *Id.*

355. *RRX Indus., Inc.*, 772 F.2d at 546.

356. *Id.*

357. *Id.*

358. *Id.*

359. SoftMan Prods. Co. v. Adobe Sys., Inc., 171 F. Supp 1075, 1083 (C.D. Cal. 2001); *Advent Sys. Ltd. v. Unisys Corp.,* 925 F.2d 670, 676 (3d Cir. 1991); *Step-Saver,* 939 F.2d 91, 99-100 (3rd Cir. 1991); *Microsoft Corp. v. DAK Indus.,* 66 F.3d 1091, 1091 (9th Cir. 1995); *U.S. v. Wise,* 550 F.2d 1180, 1180 (9th Cir.1977); *Downriver Internists v. Harris Corp.,* 929 F.2d 1147, 1150 (6th Cir. 1991) (quoting "It is well-settled that in determining whether a transaction is a sale, a lease, or a license, courts look to the economic realities of the exchange.").

IX. CONCLUSION

The legal profession is on the cusp of a revolutionary way that law will be practiced. This is not an exaggeration, but a statement that reflects how artificial intelligence will and has altered how lawyers do business. Many attorneys already use some form of AI without knowing it, such as doing a Google search on an expert or using Westlaw to retrieve a case.[360] Now, attorneys can use technology to draft a contract, predict how a court will rule on a case, or learn the success rate of opposing counsel in similar litigation.[361]

Artificial intelligence refers to computers that think like humans.[362] Its uses have been discussed since the 1950s.[363] While computerized legal research using keyword searches was the major AI player used by attorneys, the past year has seen the implementation of a new tool, ChatGPT, that changed the playing field.[364] This OpenAI provides a human-like response to natural language questions.[365] This makes the product unique because it can entertain open-ended questions and generate answers without attorneys conducting the necessary research.[366] This innovation has caused an explosion of new products utilizing this technology for attorney employment, and it is only the start of what is to come.[367] It is estimated that about four percent of legal tasks will be able to be automated, making lawyers much more productive and cost-efficient.[368]

The systems, however, are not without their problems.[369] They can run afoul of intelligent property laws, provide incorrect information, and result in the loss of jobs in the legal field.[370] It also presents unique ethical issues involving several Rules of Ethics from lawyer's competence to practicing law

360. Dietrich, *supra* note 4.

361. *Artificial Intelligence Key Legal Issues*, *supra* note 317, at 2.

362. Connell, *supra* note 23, at 5.

363. Graham Oppy & David Dowe, *The Turing Test*, The Stanford Encyclopedia of Philosophy (Apr. 9, 2003), https://plato.stanford.edu/archives/win2021/entries/turing-test/ [https://perma.cc/THA5-WN9].

364. Alarie, *supra* note 40, at 7; *ChatGPT for Lawyers: Everything Lawyers Need to Know About ChatGPT*, *supra* note 68.

365. Black, *supra* note 67.

366. *ChatGPT for Lawyers: Everything Lawyers Need to Know About ChatGPT*, *supra* note 68.

367. *Artificial Intelligence Key Legal Issues*, *supra* note 317, at 2.

368. Huculak, *supra* note 74.

369. *The Flip Side of Generative AI*, *supra* note 184, at 2.

370. *Id.* at 3–4; Solomon, *The Advantages and Disadvantages of AI in Law Firms*, *supra* note 202.

without a license.[371] One must also be concerned with the novel and unanswered question about legal liability involving those in the development and distribution of these AI products and the legal professionals who use them. It will take years of litigation before these difficult questions are sorted out.

What is known is that the use of AI in the legal arena will forever change the practice of law. This transformation is coming, and lawyers must be ready to embrace it or be left at a competitive disadvantage. The technology is in its infancy, and innovative uses are being created regularly. Whether lawyers will be replaced by AI technology or improve their efficiency remains to be seen.

371. See Model Rules of Pro. Conduct r. 1.1 (Am. Bar Ass'n 1983); Model Rules of Pro. Conduct r. 5.5 (Am. Bar Ass'n 1983).