AI AND THE DEATH OF THE LEGAL PROFESSION: MUCH ADO OVER NOTHING

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ABSTRACT

This article examines the usage, risks, challenges, and potential legal liabilities of AI in legal practice. Using statutory interpretation, doctrinal analysis, and content analysis, the article examines the usage of artificial intelligence in legal practice and analyses the ethical and legal implications of such practice with a special focus on Malaysia, with useful precedents from the United States of America (USA) and the United Kingdom (UK). AI systems can be challenged for 'unauthorised provision of legal practice'. In Malaysia, only authorised persons can practice as advocates and solicitors, leaving out the position of AI tools as ambiguous. This article considers whether AI systems give legal advice and represent clients in courts in Malaysia. By tracing the development in the UK, US, and Europe, the article recommends regulating online legal advice and emphasising human oversight for using such AI systems. As the discourse on potential legal liabilities arising from the deployment of AI is still evolving, this article is confined to contemporary discourse on the issues. Countries may need to revisit their strict regulation on legal practitioners in lieu of the widespread use of AI tools to assist advisory and representation. AI systems may not be suited to professions that depend substantially on 'human professional conduct and etiquettes' such as legal practice. In such an instance, AI is best for 'human in the loop decision-making model' but not to replace the professional human.

Keywords: legal practice, artificial intelligence, advocate and solicitor, attorney, access to justice

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INTRODUCTION

Artificial intelligence (AI) is a set of enabling technologies that can contribute to a wide array of benefits across the entire spectrum of the economy and society.[1] A lot has been written on the usefulness of AI platforms in legal practice.[2] Almost all   highlight the pros and cons of with enough emphasis on the potential risks of using such tools.[3] Among the useful functions are: legal research and e-discovery; document automation; predictive legal analysis; case management; legal advice and expertise, automation, and information and marketing.[4]   As in other activities and industries, AI is expected to simplify legal work and boost access to justice as well.

This article is divided into 4 parts. Part I focuses on the value conferred by AI to legal practice. The various utilities of AI systems to legal practice are highlighted in this Part. Part II espouses the ethical challenges posed by the deployment of AI in legal practice. The discussion continues with legal liabilities arising out of activities done using AI systems in Part III. Part IV ends the discussion by looking at whether the various representations made by the AI system could amount to legal practice or at best, legal advice.

THE USEFULNESS OF ARTIFICIAL INTELLIGENCE TO LEGAL PRACTICE

Whilst all the debate on access to justice is based on physical access to the court system, the recurrent debate is on how AI assists in narrowing or reducing the access to justice gap. The wider availability of

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[1]   Preamble 3 of the Regulation (EU) 2024/1689 of the European Parliament and of the Council (of 13 June 2024).

[2]   Bryan J.F. Plat, "LawGPT: The Benefits and Drawbacks of AI in Legal Practice," *University of Richmond School of Law Journal of Law & Technology*, n.d., https://jolt.richmond.edu/2024/03/01/lawgpt/ .

[3]   British Institute of International and Comparative Law, "The Use of AI in Legal Practice," 2023, https://www.biicl.org/publications/use-of-artificial-intelligence-in-legal-practice.

[4]   The Law Society, "AI in Legal Practice," 2024, https://www.lawsociety.org.uk/topics/research/ai-artificial-intelligence-and-the-legal-profession.

technology promises more efficient and easier access to legal justice.[5] Tools that use natural language processing and machine learning are widely utilised in search engines, and chatbots could provide easy legal references and materials to users. Other tools that substantially assist users, lawyers included, are tools that facilitate writing, citation, and grammar checks. With the wide range of useful tools, Whalen divided them into four categories:

(i)   Generic technologies – these are general tools useful to everybody.

(ii)   Shallow legal tech – these are tools that assist legal practice such as legal search and retrieval in the form of databases or docket management systems, contract management systems, or patent prior art search engines. The feature of these tools is that it does not engage with the law directly, do not make legal determinations, and the bulk of the legal work is done by the practitioners themselves.

(iii)   Deep legal tech- these are technologies that 'afford primarily legal uses and that engage directly and deeply with the law'. These technologies make legal determinations, by enforcing the law, or perhaps updating the law itself.' The example given is tax preparation software, that processes inputting data and makes determinations about tax obligations. Another example is smart contracts that are designed to monitor conditions and self-execute as the agreement dictates.[6]

Macgrath examines how the AI-driven search tool, Case Genie assists in searching for unknown unknowns in particular case law research to assist a barrister in looking up authorities for his arguments. Unknown unknowns are cases that are not known to the barrister but may be relevant in developing his contentions. The cases may not be from an area that is obvious or identical but may be similar and relevant. However, interestingly, the AI platform works in an unknown way, not like a calculator. The way the system works is known as a

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[5]   The Law Society.
[6]   Ryan Whalen, "Defining Legal Technology and Its Implications," *International Journal of Law and Information Technology* 30, no. 1 (2022): 47–67.

closed or 'black box' system, and not as simple as two plus two. The author perceived that to be the limitation of Case Genie that adds mystery to the system.[7]

With the widely touted promises AI makes to the legal profession, it remains to be seen whether this is true on the ground. Can AI be the death of legal practice as said by Richard Susskin? The following discussion considers the level of adoption of AI in legal practice. The aim of the AI system developer is for these systems to replace lawyers to save clients' money. The ensuing part examines the ethical challenges faced in the process.

ETHICAL CHALLENGES

Despite the numerous benefits associated with chatbots (i.e., computer programs that facilitate interactions between people through 'chatting'), the issues of user privacy and their impact on customer service representatives must be approached with caution.[8]

Whelan, for example, posits the harm when technological tools could alter the substance of the law. The example given is speech screening software that classifies speech as either constitutionally protected free expression or regulatable unprotected speech. These types of technology require legislative oversight. For instance, when the law in question raises more important moral considerations, then there are more serious legal implications to be considered as right to a human decision.

With the rise of chatbots and tools to assist and simplify legal documents, scholars are quick to report the potential liabilities arising from such use. As reported by the BIICL Report, the potential liabilities for legal practice include accuracy and accountability; transparency, trust, communication, and duty of competent representation; bias and

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[7]   Paul Magrath, "The Genie and the Lamp: How Can Artificial Intelligence Help Us Find New Case Law?," *Legal Information Management* 22, no. 3 (2022): 114–18.

[8]   Ming-Hui Huang and Roland T Rust, "A Strategic Framework for Artificial Intelligence in Marketing," *Journal of the Academy of Marketing Science* 49 (2021): 30–50.

fairness; privacy, data protection, conflict of interests and duty of confidentiality, and lack of human judgment and interpretation.[9]

This part will delve into some of the ethical issues posed by AI systems.

Transparency

One elusive risk associated with AI systems is the lack of transparency.[10] The complexity of AI systems makes it difficult for legal professionals to comprehend how decisions are made. This can make it difficult to hold AI systems accountable for their decisions, which is problematic in legal contexts where transparency and accountability are crucial.

Dependency

In addition, there is the possibility that excessive reliance on AI systems will lead to a lack of critical thinking and human judgment. AI systems can aid in legal decision-making, but they should not replace the knowledge and discretion of attorneys.[11] A reliance on AI systems that is excessive can result in legal professionals becoming complacent and not interrogating the outputs of the AI system, leading to potentially erroneous decisions. Legal implications about data protection, intellectual property, and liability for decisions made by AI systems could be additional hazards. Legal professionals must use AI systems by applicable laws and regulations.

Lack of human judgment and interpretation

Despite the attractive promises that AI technologies offer to the practice of law, they cannot replace human lawyers. Specifically, AI cannot replace the moral conscience attributed to humans. AI would be incapable of understanding human social norms, empathy, and self-reflection, all of which are crucial in the legal profession. Importantly,

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[9] British Institute of International and Comparative Law, "The Use of AI in Legal Practice."

[10] Stefan Larsson and Fredrik Heintz, "Transparency in Artificial Intelligence," *Internet Policy Review* 9, no. 2 (2020).

[11] Jonathan Michael Spector and Shanshan Ma, "Inquiry and Critical Thinking Skills for the next Generation: From Artificial Intelligence Back to Human Intelligence," *Smart Learning Environments* 6, no. 1 (2019): 1–11.

the sound judgment that comes from years of experience cannot be readily replicated by AI. It has been said that the raison d'être of a counsel's expertise is that he possesses sound judgment. According to Yamane,[12] judgment is "the non-automobile collection of exclusively human qualities or capacities."

Current AI systems are limited in their abilities. For example, it cannot compete with human abilities in a complete sense.[13] Contrary to human attorneys, AI cannot reason contextually and cannot account for the non-legal considerations that frequently accompany legal decisions. AI cannot, for instance, assess the emotional impact of a decision on a family or the compromises that may be required for the benefit of children.

AI is also unable to explain or communicate its reasons.[14] In contrast, a lawyer can delve deeply into issues, comprehend human nature, and unearth information that may be concealed due to self-interest or other complex human factors. In contrast, AI may not be able to weigh these factors as effectively as a human attorney.

Furthermore, the AI system may not be able to reason contextually, consider non-legal concerns, communicate reasons, provide explanations, and establish a strong attorney-client relationship. These are all essential aspects of legal practice that require human skills and expertise.[15] While admittedly, AI can aid in legal decision-making, it cannot supplant the knowledge and discretion of human lawyers.

Yamane argues that, based on legal ethics, AI should not replace the work of a human lawyer; otherwise, this would violate their

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[12] Nicole Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands," *Geo. J. Legal Ethics* 33 (2020): 877.

[13] Juan José Gamboa-Montero et al., "Detecting, Locating and Recognising Human Touches in Social Robots with Contact Microphones," *Engineering Applications of Artificial Intelligence* 92 (2020): 103670.

[14] John McCarthy, "Generality in Artificial Intelligence," *Communications of the ACM* 30, no. 12 (1987): 1030–35.

[15] Milan Markovic, "Rise of the Robot Lawyers," *Ariz. L. Rev.* 61 (2019): 325.

obligation to provide competent representation.[16] Based on ethical principles, AI's role is limited to enhancing the work of attorneys. AI programs that do not include human attorneys should not provide legal advice, as doing so would constitute the unauthorised practice of law, such as using self-help apps and online forms. Unauthorised legal representation can be committed by AI which functions as an expert system and gives advice without involving human attorneys. Yamane emphasises that AI systems have the potential to reduce access to justice, given that the majority of those in need of legal assistance cannot afford an attorney.

The way forward: Ethically based algorithm platform

The legal vacuum in which AI systems operate compels lawmakers and policymakers around the world to create wholly new rules tailored to AI systems. The focus of the legislation may be liability, personhood, or the legitimacy of activities involving such instruments. The Artificial Intelligence Act [17], passed by the European Union in response to a proposal for an AI regulatory framework, is among the earliest regulatory frameworks to govern AI. The Act focuses on the responsibilities of the AI system's developer. The paramount concern is that the AI systems being developed are secure and adhere to existing fundamental rights laws. Such objectives highlight the underlying concern that intelligent systems could be designed to violate and evade fundamental rights. It is crucial that consumers can rely on developers to create systems that are not only secure but also trustworthy in terms of legal compliance, respect for fundamental rights, consumer protection, and algorithms based on transparent and proportional logic. The Act enumerates several fundamental liberties that are guaranteed to all individuals. These liberties include respect for private life and personal data protection, ensuring that one's personal information remains confidential and secure. The Act also guarantees equal rights for women and men, recognising that every individual should have equal access to opportunities and treatment regardless of their gender. Freedom of expression is also a fundamental right that is guaranteed, allowing individuals to freely express their opinions and ideas without fear of censorship or persecution.

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[16]   Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands."

[17]   Regulation (EU) 2024/1689.

In addition, the Act ensures that individuals have access to effective remedies and a just proceeding, including the right to a defence trial and presumption of innocence. This ensures that everyone is treated fairly and can defend themselves against any accusations. The Act also guarantees superior administration, ensuring that government agencies and public officials act in the best interests of the people they serve. Decent working conditions and consumer safeguards are also fundamental rights that are guaranteed, protecting individuals from exploitation and ensuring their safety.

The Act recognises the importance of protecting the rights of children, ensuring that they are treated with care and provided with appropriate education and support. The Act additionally acknowledges the importance of integrating individuals with impairments into society, providing them with equal opportunities and support. Added to that are environmental security and human health and safety, fundamental rights that are guaranteed, ensuring that individuals have access to a safe and healthy environment to live and work in. Finally, the Act recognises the freedom to engage in commerce and the freedom of science and art, allowing individuals to pursue their interests and contribute to society in their unique ways.

Furthermore, the Act recognises certain considerations and provides guidelines for developers of AI systems in regard to certain legal and ethical issues arising from AI. Specifically, the Act outlines matters that must be considered when building AI systems aiming to communicate with humans, detect emotions, or generate or manipulate content. When building AI systems that aim to communicate with humans, developers must ensure that the system is designed in a way that is respectful of human dignity and privacy. For example, a chatbot used in customer service should be programmed to provide respectful and accurate responses to users, while also ensuring that user data is kept confidential.[18]

The Act also recognises the need to consider the ethical implications of using biometric information to detect emotions or determine association with social categories. For example, an AI

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[18]   Saslina Kamaruddin et al., "The Quandary in Data Protection and Rights to Privacy of AI Technology Adoption in Malaysia," in *2021 Innovations in Power and Advanced Computing Technologies (i-PACT)* (IEEE, 2021), 1–5.

system used to analyse facial expressions to determine a person's emotional state must be designed in a way that respects the person's privacy and avoids any potential biases. In addition, the Act recognises the potential dangers of using AI to generate or manipulate content, such as deepfakes.[19] When building such systems, developers must ensure that the system is designed in a way that is transparent and accountable. For example, an AI system that is used to generate news articles must be designed in a way that indicates that the content is generated by an AI system and not a human writer.

As can be seen, the intention of the Act is to provide guidelines for developers to ensure that their AI systems are designed in an ethical and responsible manner. By considering the guidelines outlined in the Act, developers can create AI systems that are respectful of human dignity and privacy, avoid potential biases, and are transparent and accountable. This will help to ensure that AI technology is used in a way that benefits society.

LEGAL CHALLENGES FROM THE USE OF AI IN LEGAL PRACTICE

As the world is catching up with advances in technology, the legal evolution is even slower. Scholars are quick to extend legal principles developed for the physical world to online activities. The rate of litigation and legislative proposals is slow in the making. As a result, the legal norm setting is still a work in progress. Most proposals are targeted towards civil liabilities, as it is thought that conferring criminal liabilities to the AI system is too distant a possibility.

The use of an AI system comes with a variety of potential liabilities, including bias, privacy, moral quandaries, and interpretability.[20] If the AI system is only used as a practice instrument, the range of concerns includes competence, confidentiality, supervision, and unauthorised practice. While the AI system has the

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19   John Fletcher, "Deepfakes, Artificial Intelligence, and Some Kind of Dystopia: The New Faces of Online Post-Fact Performance," *Theatre Journal* 70, no. 4 (2018): 455–71.

20   Steven A Wright, "Ai in the Law: Towards Assessing Ethical Risks," in *2020 IEEE International Conference on Big Data (Big Data)* (IEEE, 2020), 2160–69.

potential to revolutionise the legal profession, it also poses several ethical and legal risks.[21] The potential for bias in AI systems is a significant concern. AI systems are only as objective as the data on which they are trained; if the data used to train an AI system is biased, the system will also be biased. This can have substantial effects on legal decisions and outcomes, potentially leading to the unjust treatment of certain groups. Whilst some of these are clear ethical concerns, some of the breaches can transcend into legal liabilities.

This part will analyse some of the issues with the evolving norms on civil liabilities.

Civil liabilities

The risks of using AI systems are well-developed and have been identified by many reports. On this point, the EU is leading the discourse by coming up with several legislative instruments on AI. On the grounds of technological neutrality, Prof Ryan Abbott[22] espouses that laws should regulate behaviour rather than technology. According to him, we should be more concerned with the behaviour itself rather than how that behaviour occurs. Calling the AI the 'reasonable robot' Ryan Abott argues that the law should not discriminate between people and AI when they are performing the same tasks. However noble his aspiration, it is not quite precisely clear what the implications on legal norm setting are.

In leading such discourse, the EU opts to view it from the 'risk' point of view. In a white paper on artificial intelligence, the EU espouses 'excellence' and 'trust' as the two core values to be achieved in any AI platform[23]. In the Guidelines of the High-Level Expert Group, there are seven key requirements for an expert system:

(i)   Human agency and oversight
(ii)   Technical robustness and safety

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[21]   Corinne Cath, "Governing Artificial Intelligence: Ethical, Legal and Technical Opportunities and Challenges," *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 376, no. 2133 (2018): 20180080.

[22]   Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press, 2020).

[23]   White Paper on Artificial Intelligence: A European approach to excellence and trust, Brussels, 19.2.2020; COM (2020) 65 final.

(iii)   Privacy and data governance
(iv)   Transparency
(v)   Diversity, non-discrimination, and fairness
(vi)   Societal and environmental well-being, and
(vii)   Accountability

The core objective of the paper is to address the risks posed by AI systems on fundamental issues. Among the risks identified are:

(i)   Risks to fundamental rights, including personal data and privacy protection and non-discrimination
(ii)   Risks for safety and effective functioning of the liability regime

The White Paper emphasised that for high-risk AI applications, the need for human oversight cannot be underplayed. The second principle put forward is the transparency requirements. The principle underscores the importance of keeping accurate records of the data set used to train and test the AI systems, but also the programming used to validate the AI systems. Included within the parameters of the principle is the need to maintain safety and avoid bias, robustness, and accuracy. On this note, it has been noted that:

> 'The specific characteristics of AI including complexity, autonomy, and opacity (black box effect) – may make it difficult or prohibitively expensive for victims to identify the liable person and prove the requirements for a successful liability claim"

The same line of approach is adopted by the EU Digital Services Act Regulation 2022.[24]   The objective of the Act is to draw a comprehensive and fully harmonised framework for due diligence obligations for algorithmic decision-making by online platforms. Similarly, when legal advice given by autonomous bots turn out to be faulty or wrong, a person seeking compensation for damage suffered,in Member states using the fault-based liability rules, would have to prove negligence as well as a causal link between that fault and the relevant damage. These rules must be adapted to maintain trust in the judicial system.

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[24]   (EU) 2022/2065.

Liability for wrongful advice

There is a significant risk that these tools could be used as self-help remedies, like online medical sites that provide advice on diagnosis and medication based on symptoms provided by internet users. What would the developers of these autonomous systems be liable for if the advice turned out to be untrue, fraudulent, defamatory, or outright criminal? Due to the disparity in internet penetration between rural and urban areas, there is a significant risk that rural residents will be unable to utilise the bots' services.[25] Therefore, the autonomous system creates voids in access to justice, and the outcome would be identical if the physical court system were utilised. Fundamentally, it must be acknowledged that AI cannot replicate all human capabilities; therefore, it should not be viewed as a replacement for human attorneys but rather as their assistants.

Concerns are raised about using AI in legal practice, whether in the form of legal advice, legal representation, or judicial decision-making. Given that   regulations governing legal practice and judicial procedure focus on living people, with the increasing reliance on AI as an instrument in legal practice, there is a need to re-examine existing laws and determine if they need to be expanded to include non-human legal assistance.

Attribution of liability

Who is responsible for incorrect or careless advice or actions given by a human attorney or human-staffed law firm? This is the most fundamental issue in legal practice. Whilst the legal liabilities of human personnel are well documented in law and jurisprudence, the liabilities of expert intelligent systems have raised a wide range of liability concerns.[26] Some academics have advocated imbuing AI with legal personality. The personhood theory is circumstance-dependent. Where AI is only used as an instrument, the person operating the AI would bear sole responsibility, as the AI would be considered the operator's

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[25]   Sandra Monteiro et al., "Critical Thinking, Biases and Dual Processing: The Enduring Myth of Generalisable Skills," *Medical Education* 54, no. 1 (2020): 66–73.

[26]   Adrian A S Zuckerman, "Artificial Intelligence–Implications for the Legal Profession, Adversarial Process and Rule of Law," *Forthcoming in (2020)* 136 (2020).

property. With a system that is more sophisticated and intelligent, it may be possible to view the AI as the representative of the person managing it.[27] According to the principle of agency, the system's operator is the principal and the AI is the agent, making the operator liable as the principal offender. It is also conceivable that in the future we will have a more intelligent AI that can handle legal tasks without human supervision. Scholars argue that this is when AI became a legal person with legal personhood and legal rights and obligations.

With the heavy reliance on AI for the provision of services, several suits have arisen involving organisations that used them and even against the platform themselves. It was reported on 23 February 2024, that Air Canada was held liable when its chatbot gave passengers bad advice. The airline's line of argument is the chatbot is responsible for its actions as it is a separate entity that is responsible for its actions. In this case, the chatbot promised a discount that was not available. The decision by a civil resolution tribunal, i.e. British Columbia Civil Resolution Tribunal was that the chatbot had been wrong. The statements by the Tribunal are that 'Air Canada is solely responsible for the information put up on their website'.   The main problem that has been identified is the non-reliability of the advice given by the AI system which has been labelled as AI hallucinations. The Tribunal found that it is not right to place the entire blame on the chatbot. Instead, it is the responsibility of the website owner to make their chatbot reliable.[28]

The way forward: algorithm-based decision making

The evolution of civil labilities arising from activities conducted using AI systems can either be risk-based, fault-based, or entirely on faulty products. As the whole spectrum of liabilities is now being examined as to their suitability and extension to the digital world, the EU's position by imposing the responsibility on the developers of the AI to integrate ethical concerns into the system is laudable. Whilst we do not expect AI systems to behave like human beings, it is of the essence for

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[27]   Alyson Carrel, "Legal Intelligence through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional," *Ga. St. UL Rev.* 35 (2018): 1153.

[28]   BBC, 23rd Feb 2024.

them to be 'ethical by design' so that many of the risks associated with their use can be avoided.

THE NOTION OF A 'QUALIFIED PERSON' FOR THE PURPOSE OF PRACTICE IN MALAYSIA

The suitability of AI systems for legal practice has posed innumerable issues. The primary one is whether these systems can operate as full-fledged lawyers/legal firms to represent clients in court as what DoNotPay sought to do. This part examines the notion of a 'qualified person' for the purpose of practice in Malaysia.

"Qualified person" to practice

Is there a possibility that DoNotPay, ChatGPT, or another AI platform be acknowledged as a fully-fledged attorney or legal practitioner in Malaysia? Can a sophisticated system be considered a representative for an attorney to represent a client in court? This does not appear to be supported by the current legal framework governing legal practice in Malaysia. In Malaysia, the legal practice and judicial process are governed by statutes that emphasise the roles and responsibilities of human lawyers and judges. The Legal Profession Act 1976 ('LPA') stipulates that only "qualified persons" may be enrolled as High Court advocates and solicitors. In addition, only advocates and solicitors admitted and registered under the Act are permitted to provide legal representation and appear in court.[29] The person must possess a law degree from one of the universities recognised by the legal profession qualifying body to be qualified.

In Malaysia, the Legal Profession Qualifying Board has the authority to determine the requirements for entry into articles for the purpose of admission as an advocate and solicitor. The Act established additional criteria for a qualified person i.e. qualified person must have completed pupillage. Under section 29 of the LPA, only a human advocate and solicitor can be admitted to the court and maintain a certificate to practice as an advocate and solicitor. In section 3 of the LPA, the stringent requirements for the application of a practising certificate are outlined. According to section 37 of the LPA, no

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[29]   Ani Munirah Mohamad, Zaiton Hamin, and Mohd Bahrin Othman, "Organizational Implications of Technology Adoption at the Malaysian Civil Courts," *J. Legal Ethical & Regul. Isses* 22, no. 1 (2019): 1–5.

unauthorised person may operate as an advocate or solicitor. The ability to represent a client in court is outlined in Part IV of the Act. Specifically, section 35 confers the "exclusive right to appear and argue in all Courts of Justice in Malaysia." Section 36 stipulates that for an advocate or solicitor to practise, their name must appear on the roll and they must possess a valid practising certificate. Whoever is not so certified will be referred to as an "unauthorised person."

The LPA lists the following as activities relating to the legal profession that an "unauthorised person" is prohibited from performing, including:

(a)   Drafting documents pertaining to real property, legal proceedings, or a trust

(b)   Preparing documents related to probate or letters of administration

(c)   Preparing documents for company incorporation or formation.

(d)   Writing letters or notices on behalf of a claimant threatening legal proceedings other than a letter or notice that the matter will be handed to an advocate and solicitor for legal proceedings

(e)   Soliciting or negotiating for settlements for any claim arising out of personal injury or death and founded upon a legal right or otherwise.

As can be seen from the above, the list of duties to be performed by an "authorised person" under the LPA includes responsibilities typically performed by advocates and solicitors. One wonders whether this provision will be revisited in the future, given that some of these documents can now be prepared using an intelligent system.

There is no mention of technological instruments or systems used in the decision-making process in any of these laws and regulations. Order 5 rule 6 of the Rules of Court 2012 essentially reaffirms the principle that the standard method for filing a lawsuit is through a lawyer or in person. All these rules are in place to ensure that citizens receive equitable treatment within the normal judicial system, including the right to notice of charges and a hearing before an impartial judge.

In lieu of examining whether an AI can supplant a human lawyer, it is also possible to examine the function of the AI. If it is only to supplement a task typically performed by a human lawyer, such as document management, document review, and form automation, then the human lawyer who endorses the work could be held liable. This is possible for tasks that are not extremely complex, such as drafting legal documents, providing advice, communicating, and interacting with clients, investigating facts, and performing other repetitive tasks typically performed by junior lawyers.[30]

Some legal tasks involve multitasking, which necessitates human judgment, compassion, and wisdom; therefore, the combination of humans and machines will increase efficiency. In this instance, AI cannot supplant humans. In the end, the stringent professional ethics of the legal profession prevent AI from being accepted as fully-fledged attorneys. How does the law define the responsibilities and rights of AI? Can people believe that a robot judge has the authority to determine our lives or deaths? Once these concerns have been adequately addressed, it will be time to accept a fully committed AI lawyer.

Online platform information is not equivalent to a lawyer's advice

Several cases in the US illustrate the position that online platform information is not equivalent to a lawyer's advice. In *Mescall v Renaissance at Antiquity*[31], it was considered in the footnote that:

> [1] ⋯ Defendants allege that Plaintiff's response appears to have been partially written with the aid of *__artificial intelligence__* ("AI"). (Doc. No. 18 at 7, Doc. 20 at 1-2). The use of *__artificial intelligence__* to write pleadings is a novel issue and appears to be untread territory in the Fourth Circuit. However, recent caselaw from outside of this jurisdiction supports the common-sense conclusion that the use of *__artificial intelligence__* creates challenges, raises ethical issues, and may result in sanctions or penalties when used inappropriately. *__Mata v. Avianca, Inc., No. 22-cv-__*

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[30] Teng Hu and Huafeng Lu, "Study on the Influence of Artificial Intelligence on Legal Profession," in *5th International Conference on Economics, Management, Law and Education (EMLE 2019)* (Atlantis Press, 2020), 964–68.

[31] 2023 U.S. Dist. LEXIS 203028.

*1461, 2023 U.S. Dist. LEXIS 108263, 2023 WL 4114965, at
1 (S.D.N.Y. June 22, 2023) (finding "bad faith on the part
of [legal counsel] based upon acts of conscious avoidance
and false and misleading statements to the Court" and
imposing sanctions when counsel "submitted non-existent
judicial opinions with fake quotes and citations created by
the ***artificial intelligence*** tool ChatGPT").

In *Ex parte Lee*, a case brought to the Court of Appeals of
Texas,[32] the appellant cited three published cases that appeared to be
non-existent. The briefs were therefore found to be not in substantial
compliance with the Court rules. The legal arguments in the brief may
have been prepared by artificial intelligence (AI). However, in this
case, there was no information as to why the briefing was illogical and
the court in this case therefore refrained from asking for a show cause
letter, in particular a specific certification that none of the court briefs
were generated using artificial intelligence or that any language was
drafted by generative artificial intelligence or that any 'quotations,
citations, paraphrased assertions, and legal analysis, will be checked
for accuracy, using print reporters or traditional legal databases, by a
human being before it is submitted to the Court.'

In *J.G v N.Y. Dep't of Educ*.[33], ChatGPT was used to get a
suggestion on the billing rates of a lawyer. In this case, ChatGPT-4 was
used as a cross-check and not used as the only source of the applicable
billing rates. In rejecting the submission, the court said:

> In claiming here that ChatGPT supports the fee award it
> urges, the Cuddy Law Firm does not identify the inputs on
> which ChatGPT relied. It does not reveal whether any of
> these were similarly imaginary. It does not reveal whether
> ChatGPT anywhere considered a very real and relevant data
> point: the uniform bloc of precedent, canvassed below, in
> which courts in this District and Circuit have rejected as
> excessive the billing rates the Cuddy Law Firm urges for its
> timekeepers. The Court therefore rejects out of hand
> ChatGPT's conclusions as to the appropriate billing rates
> here. Barring a paradigm shift in the reliability of this tool,

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[32]   673 S.W.3d 755.
[33]   2024 U.S. Dist. LEXIS 30403.

the Cuddy Law Firm is well advised to excise references to
ChatGPT from future fee applications.

In *Faridian v DoNotPay Inc.,*[34] Superior Court of the State of
California for the County of San Francisco, DoNotPay has been sued
for unauthorised legal practice. DoNotPay is an AI platform that assists
consumers in settling small legal claims. The suit is over the use of the
tool to draft demand letters, a small claims court filing, and LLC
operating agreements which were claimed to be poorly drafted. The
tool was first developed to settle parking tickets but later expanded to
include some legal services.[35]

In Lola v. Skadden, [36] the judge of the Second Circuit ruled that
the plaintiff, who solely engaged in document review, was not
practising law in North Carolina because her services could have been
performed by a machine. The court explained that practising law
requires "some degree of independent legal judgment," which was
lacking in this case. In *Janson v. LegalZoom.com*, Inc.[37], a Missouri
court ruled that filling out forms on LegalZoom's website did not
constitute the unauthorised practice of law in and of itself. The court
did note, however, that LegalZoom was not a law firm and should not
be substituted for an attorney or law firm. The court also noted that
LegalZoom includes a disclaimer to this effect on its website, thereby
confirming its conclusion that a website offering interactive legal
documents could never supplant a human attorney.

A lot of concerns have been raised on the potential problems
with ChatGPT e.g. risk to client confidentiality, privacy, and
intellectual property; the possibility of being manipulated to enable
unethical or criminal activity. The issue remains whether these
liabilities are already set in terms of general liabilities from the use of
AI, as the legal norms are still evolving and the discourses on them are
still brewing.

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[34]   No CGC-23-604987.
[35]   The Star, 3rd Oct 2023.
[36]   620 F.F.App'x 37 (2d Cir.2015).
[37]   802 F. Supp.2d 105.

These issues are not readily resolved and, as suggested by Sinshaw,[38] should be incorporated into the architecture of the bots themselves so that the resulting autonomous systems are at least ethically acceptable. In actuality, the service provided by bots cannot be regarded as legitimate legal practice. Traditionally, to effectively render legal services, one must be regarded as a member of the legal profession, i.e., a qualified individual for the purposes of the legal profession law. In Malaysia, autonomous systems cannot be regarded as qualified individuals and cannot be granted the full status of advocate and solicitor. In this regard, the legal profession should be able to impose restrictions on which categories of autonomous systems it will recognise and which it will not.

Legal advice privilege

In addition, the unique attorney-client relationship is a crucial aspect of legal practice that cannot be replicated by AI. The relationship is founded on confidentiality, confidence, and trust and is governed by professional ethical obligations, legal liability, and malpractice insurance.[39] A human lawyer must act in the client's best interest and be able to offer individualised advice and direction that is tailored to the client's particular needs and circumstances.

Stockdale[40] discusses the concept of professional privilege in the context of using autonomous online platforms. Professional privilege comes in two forms; i.e. litigation privilege and legal advice privilege. The rationale of the privilege is that complete disclosure is needed from the client for the solicitor to find the best solution. In exchange, the client is guaranteed complete confidentiality over the information given. This forms the crux of the client privilege notion. The question

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[38]   Drew Simshaw, "Ethical Issues in Robo-Lawyering: The Need for Guidance on Developing and Using Artificial Intelligence in the Practice of Law," *Hastings LJ* 70 (2018): 173.

[39]   Ana Lucic et al., "Reproducibility as a Mechanism for Teaching Fairness, Accountability, Confidentiality, and Transparency in Artificial Intelligence," in *Proceedings of the AAAI Conference on Artificial Intelligence*, vol. 36, 2022, 12792–800.

[40]   Michael Stockdale and Rebecca Mitchell, "Legal Advice Privilege and Artificial Legal Intelligence: Can Robots Give Privileged Legal Advice?," *The International Journal of Evidence & Proof* 23, no. 4 (2019): 422–39.

then is whether when an autonomous platform is used by individuals to solicit legal advice, the platform is enjoying the professional privilege defence as well. Even more so when the autonomous platform provides advice without the supervision of a human mentor.

The support for this contention is *R (Prudential plc and another) v Special Commissioner of Income Tax*[41], where the Supreme Court held that the legal advice privilege could potentially cover advice given by non-legal professionals, in this case, accountants, but this is a matter best left to the Parliament. Looking into what these autonomous platforms do – either in the form of preparing smart contracts for the client or provision of legal advice, the next question arises as to whether this advice amounts to professional legal advice as the latter entails the provision of service of a lawyer registered with a professional body as is being practised in most parts of the world. It is suggested that for this to happen then professional bodies would have to start accepting autonomous robots as their members. Secondly, some consumers may be willing to pay for cheaper legal advice even though it will not confer on them the comfort of professional privilege. It would be useful though for the protection of consumers that they receive mandatory early warning that reliance on autonomous platforms will be void of professional privilege protection. However, like many other online caveats or reservations, many of those are not read by consumers, let alone understand their consequences. Another arising issue is the implications of legal practice assisted with technological tools when solicitors relying on them have limited understanding of the technology. To resolve all these issues, Stockdale suggests that professional bodies should introduce rules to require solicitors that use technological tools heavily to introduce a minimum level of supervision by a lawyer.[42]

Lawyer's workflow: the distinction between advisory and representation

Chew et al, argue that most AI solutions are not designed to make a judgment but rather, produce the necessary information to feed into the

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[41] [2013] UKSC 1.
[42] Stockdale and Mitchell, "Legal Advice Privilege and Artificial Legal Intelligence: Can Robots Give Privileged Legal Advice?"

judgment. The current AI systems are designed based on the 'human in the loop decision-making' model.[43]

The role of AI is to serve as a tool that enables lawyers to generate insights and make predictions about the outcomes of various courses of action. Whilst, the lawyer's role is to determine the implication of the insight or prediction for the client and decide on what strategy to take. On that basis, it is of paramount importance that lawyers need to understand technology, and more crucial than ever for legal firms to hire technologists to assist with the firm functions. Based on that premise, the suggestion that lawyers are slowly being replaced by AI is a false notion. Instead, the AI system's primary function is to assist with helping the clients in their practice, such as to organise and review data. The idea is that technology has transformed, and not displaced the role of lawyers.

Could the AI systems be treated akin to the role of non-lawyers? The role of non-lawyers is more widely practised in developed countries because of the liberalisation of legal services. Liberalisation permits the setting up of alternate business structures and non-lawyers. In Malaysia, the role of non-lawyers is not so well established.

The way forward: Regulate online legal advice

Realising that there is a necessity to come up with some kind of rules on the use of AI in legal practice, the Supreme Court of Washington came up with suggested amendments to General Rule (GR) 24 on the definition of the practice of law.[44] Chief Justice Fairhurst, came up with the ruling to give some clarification on the practice of law in Washington. The GR 24 defines the practice of law in Washington. The proposal is to add to section (b) permitting online self-representation legal service providers. The problem is that these online self-

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[43]   Chew, A. Lim, Wei Zhen J. & Ng, I (Huang Ying), "Analysing the Traditional Roles of Lawyers in Light of Technology in Singapore," The Law Society of Singapore, n.d., https://www.lawsociety.org.sg/publication/analysing-the-traditional-roles-of-lawyers-in-light-of-technology-in-singapore/.

[44]   Washington State Bar Association, "Regulation of Online Legal Services," 2024, https://www.wsba.org/connect-serve/committees-boards-other-groups/practice-of-law-board/proposed-amendments-to-gr-24.

representation legal service providers may not give accurate and fair representation to consumers, rendering them vulnerable to wrongful advice. To address these legitimate consumer concerns, it was suggested that the definition of 'practice of law' explicitly authorise information and document preparation services under clear limitations with the registration of such provider entities with the professional bodies. It was recognised that online advice and documentation are part and parcel of the fabric of life. The concept of a law office being an entity owned and run exclusively by lawyers is changing. Multi-jurisdictional practice is an inescapable consequence of technology. The traditional idea of the lawyer-client relationship is changing as disciplines start to merge and innovate to find more effective and efficient ways to solve complex problems that have a legal component.

By allowing these online platforms to continue to operate but under strict consumer law rules and regulations by the Bar and the Court, consumers can easily resort to the platforms for legal information, especially for those who cannot afford to pay legal fees. By not regulating, consumers may fall prey to these online platforms. Unfortunately, there are no existing rules that regulate the provision of interactive online legal assistance. The service given by legal counsel is often personalised to the needs of the client's situation. These online platforms may in the future provide personalised advice, so it is better that these platforms be regulated.

On this point, the Washington State regulatory authority has forwarded suggestions on the state rules on legal practice. The suggested amendment is to recognise an interactive AI system where consumers can obtain legal information either relating to civil law matters or to generate legal documents. Such recognition is regardless of whether the AI system constitutes a practice of law or not. Several strict conditions were set e.g. the consumers must have a means to view the blank template and the final document before finalising a purchase of that document. Secondly, there must be a review by an attorney licensed to practice law in the State of Washington. There must also be mechanism for the user to raise any consumer complaint and be provided with all the necessary information for consumer redress. The

online site is not allowed to undertake several activities such as using the consumer information for something else.[45]

The way forward: The need for human oversight

As lawyers start to depend on technological tools to take up some tasks, it is thus duty-bound on them to check on the quality of the work. Just like it is the responsibility of senior lawyers to check on the work of chambering students, likewise a lawyer should be responsible for the work done by artificial intelligence. On this point, Yamane calls for lawyers to maintain a baseline of knowledge about the AI programs they use including: (1) why the AI program produces its result and (2) what the AI program is and is not capable of.

Lawyers must use reasonable care in staying abreast of technological advances. AI results should not automatically be accepted as true. Lawyers must check that the AI program they are using is working properly and (2) review the program's result to provide competent legal representation.[46]

Checking on the AI system should be part and parcel of the evolving responsibilities of lawyers like the duty to check the work of non-lawyers or para-legals. On this point, Murray suggested that lawyers should embrace AI systems as a powerful tool that can enhance their efficiency and quality of work, but reminded as well of the importance of human oversight and judgment in the use of AI for law.[47] He is of the view that lawyers should not ask AI to perform tasks that the AI is good at and leave the talents and skills that are uniquely human to human lawyers.

In this light, AI does not portend the demise of the legal profession. As there is still a need for 'lawyer judgment,' which is comprised of prudence, knowledge, discernment, and foresight,

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[45] Washington State Bar Association, "Regulation of Online Legal Services."

[46] Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands."

[47] Michael D Murray, "Artificial Intelligence and the Practice of Law Part 1: Lawyers Must Be Professional and Responsible Supervisors of AI," *Available at SSRN 4478588*, 2023. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4478588

attorneys must become more tech-savvy.[48] Moses added that AI may result in the loss of employment for junior lawyers, but this could be easily compensated for by retraining the new lawyers on how to work with AI or even by incorporating their knowledge of legal rules and principles into the development of legal systems.[49] Humans are superior at reacting to unanticipated events, so it would be preferable to divide the task between humans and AI. Simultaneously, humans can learn to navigate unfamiliar terrain with the assistance of expert systems, data analytics, and machine learning. Humans can also extract useful information from large datasets using these expert systems, which would be beneficial for their practice.

CONCLUSION

Richard Susskind, in his controversial treatise, 'The End of Lawyers? predicts that the future of legal service will be a world of virtual courts, internet-based global legal businesses, online document production, commoditised service, legal process outsourcing, and web-based simulated practice.[50] The future of legal practice has been and continues to be shaped by technological development. The old romantic notion of the 'wise' and 'know-all' lawyer continues in the digital era, substantiated to a considerable extent with the assistance of AI. Whether this assistance amounts to 'mere help' or 'mere tool' or a 'replacement' or 'agent' in legal parlance is still being evolved.

Within the context of Malaysia, the Legal Profession (Practice and Etiquette) Rules 1978 imposes stringent professional obligations on practising solicitors. The imposition of these obligations is justifiable because a transgression of professional conduct can result in severe consequences, including malpractice. In the Rules, professional ethics such as reverence for the court, upholding client's interests, justice, and the dignity of the profession, not deceiving the court, and

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[48]   Michael Legg and Felicity Bell, "Artificial Intelligence and the Legal Profession: Becoming the AI-Enhanced Lawyer," *U. Tas. L. Rev.* 38 (2019): 34.

[49]   Lyria Bennett Moses, "Artificial Intelligence in the Courts, Legal Academia and Legal Practice," *AUSTRALIAN LJ* 91 (2017): 561.

[50]   Richard Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Oxford University Press, 1998).

conducting oneself with candour, courtesy, and fairness are well-established. A practising attorney is also subject to stringent obligations in the conduct of litigation, such as maintaining professional independence, conducting defence and prosecution in a fair and honourable manner, and ensuring that no innocent person is convicted.

In Malaysia, the admission requirements for the practice of law are similarly stringent and demanding. A candidate must be a qualified individual who meets the citizenship requirements, has completed the required pupillage, has passed the Bahasa Malaysia Qualifying Examination, and has a law degree from one of the specified universities listed in the LPA.

Many law firms are utilising AI platforms to streamline their work and increase their efficacy as the use of AI in the legal profession becomes more widespread. This study found, however, that the current legal provisions in the country do not support the recognition of AI lawyers as 'qualified persons' under the law, so they cannot be legally referred to as 'advocates and solicitors' within the Malaysian legal context. This finding calls into question the legitimacy of the use of AI platforms in Malaysia and the legal profession. There are concerns about the impact on the legal profession and the potential risks associated with relying too heavily on technology, even though the use of AI in legal practice can offer many benefits, such as increased efficiency and accuracy.

An important issue raised by the study is the need to strike a balance between the legitimacy of AI tech tools and the community's need and desire for such services. In addition to ensuring that the legal profession maintains its standards and integrity, it is essential to consider the requirements of clients and the larger community. AI tech-tools lawyers may make legal services more accessible and affordable, especially for those who cannot afford traditional legal services. At the same time, it is essential to ensure that the use of tech-tools lawyers does not compromise the integrity of legal services or diminish the role of human attorneys. Human lawyers possess a variety of skills and expertise that cannot be replicated by AI, such as the ability to reason contextually, consider non-legal concerns, and develop a strong lawyer-client relationship.

Undeniably, the legal profession is one of society's most important occupations. It plays a crucial role in maintaining harmony, justice, and strong institutions, which are essential components of Sustainable Development Goal 16 (SDG 16). However, the legal profession faces numerous obstacles that hinder its ability to achieve this objective thoroughly. The increasing demand for legal services that cannot be met by the industry's limited number of attorneys is one of the most significant obstacles.

The advent of AI has provided a remedy for this difficulty. The AI systems, which are machines powered by AI, are increasingly being used in the legal profession to provide legal services that are typically provided by lawyers. These machines can perform a variety of legal duties, such as document review, contract analysis, legal research, and even legal counseling. The use of AI tools in the legal profession can substantially strengthen SDG 16's essential components of peace, justice, and strong institutions.

Even though the current legal system in Malaysia does not permit AI tools to practise law, it is crucial for future research to continue examining the use of AI tools and to develop appropriate legal provisions in Malaysia that strike a balance between the benefits and risks associated with their use. This may include the development of standards and guidelines for the use of AI in legal practice as well as consideration of the ethical and professional implications of relying on technology to perform legal tasks.

In conclusion, the findings of the study highlight the need for Malaysia to carefully consider the use of AI tools in the legal profession and to devise appropriate legal provisions that strike a balance between the benefits and risks of their use. While AI tools have the potential to increase the accessibility and affordability of legal services, it is essential that they do not compromise the quality of legal services or diminish the role of human lawyers.

Nonetheless, the lack of appropriate reporting of AI usage in legal practice in Malaysia is cause for concern in the context of Malaysia. Without appropriate reporting, it is difficult to determine the extent to which AI is being utilised in the legal profession and the potential risks associated with its use. In addition, the lack of distinct legal provisions governing the use of AI in legal practice raises

questions regarding the accountability of legal professionals who employ AI systems.

All court personnel, advocates, and solicitors play a crucial role in legal practice. Advocates and solicitors are now responsible to ensure that the integrity of the judicial system is not compromised should they employ AI technologies in their legal practices.[51] This necessitates legal firms to take measures to secure that their AI systems are transparent, accountable, and bias-free. In addition, legal professionals must be aware of the risks and limitations of AI systems. They must be willing to use their professional judgment when using AI-generated insights to inform legal arguments and decisions. Legal professionals must not rely solely on AI systems in their day-to-day practice. The way forward would be to collaborate to establish ethical guidelines for the development and use of AI systems in the legal profession.

ACKNOWLEDGMENT

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[51]   James A Cohen, "Lawyer Role, Agency Law, and the Characterization Officer of the Court," *Buff. L. Rev.* 48 (2000): 349.