

# TL FIRE STARTERS

Fraud • Insolvency • Recovery • Enforcement



## FUTURE THOUGHT LEADERS

page by page towards tomorrow



3RD EDITION: *FUTURE THOUGHT LEADERS ESSAY COMPETITION*  
*A FIRE STARTERS GLOBAL SUMMIT 2024 SPECIAL EDITION*

# INTRODUCTION

*'We all have a responsibility to try and make this world better, whether it's through our work, the causes we champion, the way that we treat people, or the values we impart to the next generation'*

Daniel Lubetzky

We are delighted to present the **3rd edition of the Future Thought Leaders Essay Competition**, in conjunction with the **2024 FIRE Starters Global Summit in Dublin**. Entrants were tasked with answering the question, 'Can the FIRE practitioner be replaced by artificial intelligence (AI): Your opinion on how AI could shape the future of law.'

Congratulations to our winner, **Rupert Black** of **Burford Capital** for his article examining AI and the FIRE practitioner through the lens of Generative AI and Law: Disruption, Adoptive and Equalisation. Congratulations are also extended to our two runners up, **Matthew Harders** from **KSG** in second place, and **Christopher Tan** from **Carey Olsen** in third place.

Our magazine will be ordered with our top 3 articles first and then the rest at random.



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# OUR STORY

We at ThoughtLeaders4 are serious about providing opportunities to up-and-coming practitioners specialising in Asset Recovery, Fraud, Insolvency and Enforcement. We strongly believe that the next generation of practitioners should be writing, speaking at and attending events in order to build their network and further their careers. With this in mind, we are proud to present the **3rd Edition** of our **Future Thought Leaders Essay Competition**.

Assessed by an illustriously experienced, senior and broad-ranging panel of practitioners this was our entrants chance to stick their head above the parapet and mark themselves as the one-to watch. With the opportunity to attend and speak at the FIRE Starters Global Summit: Dublin as well as attend the FIRE International: Vilamoura event, we welcomed our entrants into the FIRE Starters Community.

## THE BRIEF

**Essay Title: Can the FIRE practitioner be replaced by artificial intelligence (AI): Your opinion on how AI could shape the future of law.**

In an era characterised by rapid technological advancements, the integration of artificial intelligence (AI) into various industries has sparked debates about its potential to reshape traditional professions. One such field is law, where AI's capabilities have raised questions about the role of practitioners in the future.

This essay competition encouraged participants to delve into the fascinating relationship between artificial intelligence and the legal field, specifically FIRE (fraud, insolvency, asset recovery and enforcement). Participants were encouraged to consider the multifaceted implications of AI integration while envisioning a future legal landscape that embraces technology whilst upholding the core values of the justice system.



# *A letter from one of our* **JUDGES**



## **JANE COLSTON**

Jane Colston is Co-Head of Brown Rudnick's Disputes department in London. Her practice focuses on complex and high-value commercial banking, contract and tort disputes as well as company, shareholders and partnership disputes. Jane has acted in numerous complex fraud cases and has extensive experience of forensic investigations, most of which have involved working with teams of investigators and accountants, and coordinating lawyers in multiple jurisdictions to trace and freeze assets. She has managed numerous cases involving freezing proprietary, search, disclosure, gagging, imaging and delivering up injunctions as well as breach of confidence and privacy claims. Jane is also a CEDR Accredited Mediator.

"It's always wise to look ahead but difficult to look further than you can see". Dealing with uncertainty is part of our professional life and living a long and fulfilling life.

One of the great challenges of the FIRE profession is the ever-present need to look ahead and reflect upon the issues that we as FIRE practitioners (and our clients) will be facing in the future. AI is a topic which not only requires 'thought leadership' regarding the future of our profession, but the present. This year's FIRE Future Thought Leaders Essay Competition sought to provoke thought with the question: "Can the FIRE practitioner be replaced by artificial intelligence (AI): Your opinion on how AI could shape the future of law".

My firm and I are proud to have been part of the distinguished judging panel. We were impressed by the level of crystal-ball gazing in the submissions this year. The insightful and pragmatic approaches to the topic – in technical conceptual analysis and language – indicates there is a strong pipeline of FIRE talent for the future.

The quality of the essays submitted has remained as high as last year's competition, and it made choosing one winner very difficult. Ultimately, the panel was pleased to choose **Rupert Black of Burford Capital** as the winner for this year's competition. His essay was titled "**Generative AI and Law: Disruption, Adoption and Equalisation**". Rupert merged his knowledge of legal risk and the commercial legal finance sector with an array of well-supported insights surrounding the current and potential utility of AI within law; discussing with outstanding depth both the currently un-refined potential of generative, analytic and predictive AI models and the need for the human guiding hand through technical developments, a key issue which we know Courts across the world have begun grappling with. Rupert receives free tickets to the FIRE Starters Global Summit and FIRE International in Vilamoura, Portugal, but will also have a unique opportunity to present a summary of his winning essay at the FIRE Starters Global Summit in Dublin.

Congratulations are also due to both **Matthew Harders of KSG** and **Christopher John Tan from Carey Olsen**, who came second and third respectively. Thank you to everyone who submitted essays, which have all been published and can be read in this edition of the FIRE Starters Magazine, together with thanking my colleagues in the judging panel **Rupert Black (Burford Capital)** **Matthew Harders (KSG)** **Christopher Tan (Carey Olsen)** **Alexandra Campbell (Howard Kennedy)** **Christopher Whitehouse (RPC)** **Kirsten Bailey (Collas Crill)** **Daian Sumner (Ogier)** **Damien Prentice (AESI)** **Joanna Curtis (Brown Rudnick)** **Matthew McGhee (Twenty Essex)** **Natalie Tenorio-Bernal (Edmonds Marshall McMahon)** **Rushda Khan (Supreme Court of India)** **Shan Qureshi (Reorg)** for their valuable time and assistance with judging the competition.



# JUDGING PANEL



**JANE COLSTON**  
PARTNER  
BROWN RUDNICK

Jane Colston is co-practice group leader of the Firm's Litigation & Arbitration Practice Group in London. Her practice focuses on complex and high-value commercial banking, contract and tort disputes as well as company, shareholders and partnership disputes.



**ANDY MCGREGOR**  
PARTNER  
ENYO LAW

Andy specialises in civil fraud and finance litigation. He has almost two decades of experience handling complex, high value international disputes with particular experience representing banks and other financial institutions, corporates and high-networth individuals.



**LEYZA FLORIN BLANCO**  
SHAREHOLDER  
SEQUOR LAW

Leyza Florin Blanco, a shareholder at Sequor Law, focuses her practice on a wide range of litigation and insolvency matters, including debt restructuring and representation of creditors, with special emphasis on complex business bankruptcy and commercial litigation matters.



**TOM WEISSELBERG KC**  
BARRISTER  
BLACKSTONE CHAMBERS

Tom is Co-Head of Blackstone Chambers and has extensive litigation and advocacy experience. He has appeared in the Supreme Court, House of Lords, Privy Council, Court of Appeal, High Court and County Courts. He has also appeared in a wide range of domestic tribunals (including the Copyright Tribunal, the Takeover Panel, the Upper Tribunal (Tax and Chancery Chamber) and the Lloyd's Appeal Tribunal).



**ADDY SCHMITT**  
MANAGING PARTNER  
HARRIS ST LAURENT

Addy Schmitt is the Managing Partner of the Firm's D.C. office. Ms. Schmitt has been litigating complex criminal and civil cases for twenty years. She represents corporations, organizations and individuals in criminal investigations and prosecutions, regulatory and enforcement matters, commercial litigation, and internal investigations. Her experience ranges from defending clients against public corruption charges and False Claims Act violations to partnership disputes, employment discrimination and retaliation cases.



**SUE THACKERAY**  
PARTNER  
KINGSLEY NAPLEY

Sue has over 20 years' experience in all aspects of commercial litigation for claimants and defendants. Sue is Listed in Who's Who Legal Investigation Guide 2023 as Recommended Leaders in Their Field She is also listed as a Global Elite Thought Leader in the Who's Who Legal: Asset Recovery Global Guide 2022 and listed as a Thought Leader in the Who's Who Legal: GIR - Asset Recovery 2022 Guide.



**JONATHAN TICKNER**  
PARTNER & HEAD OF FRAUD AND  
COMMERCIAL DISPUTES  
PETERS & PETERS

Jonathan is Peters & Peters' Head of Commercial Litigation and Civil Fraud. Jonathan trained at the firm and has been a partner since 2002. He specialises in large complex international and commercial disputes, civil fraud, and asset recovery with ground-breaking experience in multijurisdictional emergency procedures. Jonathan also has extensive experience in large-scale competition follow-on damages claims, having acted for the Secretary of State for Health and Social Care for over 20 years in a significant number of large-scale damages, fraud, and cartel claims.



**DANNY ONG**  
MANAGING DIRECTOR  
SETIA LAW

Described by clients as a "formidable force", "our go-to-guy" and "good when you need someone to fight your caner", Danny brings a wealth of experience, commercial acumen and strategic wisdom to his specialist areas of complex international commercial and financial disputes and investigations, as well as cross-border restructuring and insolvency.



**BLAIR LEAHY KC**  
BARRISTER  
TWENTY ESSEX

Blair has a broad commercial practice with an emphasis on complex multijurisdictional fraud claims and disputes with technical insolvency or company law aspects. She is ranked across all her main practice areas in the latest editions of Chambers UK Bar and The Legal 500, and prior to taking silk, won Insolvency Junior of the Year at The Legal 500 UK Bar Awards 2019. She is described in the directories as "all-round excellent" and receives particular praise for her court room skills ("her advocacy is on another level") and "amazingly good judgment".



# FIRE International: Vilamoura 3<sup>rd</sup> Annual Edition


15<sup>th</sup> - 17<sup>th</sup> May 2024

Anantara Hotel, Vilamoura, Portugal

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# GENERATIVE AI AND LAW: DISRUPTION, ADOPTION AND EQUALISATION



Authored by: Rupert Black (Senior Associate) – Burford Capital

Generative Artificial Intelligence (AI) will have a profound impact on the field of law since all legal tasks are essentially language tasks. Large language models have the potential to make all legal practitioners more effective, particularly those with less experience or ability. In a profession as arguably unequal as law, AI may prove to be a great equaliser. However, the breakneck pace of AI evolution, and its unfettered adoption by eager clients keen to retain a competitive edge, will be disruptive in the short-term.

Provided that AI is viewed as a tool to augment not substitute what we do, and integrated responsibly into the legal landscape, it could be nothing short of transformative.

## Release and Disruption

***In 1951, Alan Turing said on a BBC programme that “at the end of the [20th] century it will be possible to programme a machine to answer questions in such a***

***way that it will be extremely difficult to guess whether the answers are being given by a man or by the machine.”***



That moment arguably came in November 2022, 22 years after Turing’s prediction, with the arrival of the first large language model. Within just a few months of its release, ChatGPT became the fastest-growing consumer application in history. Novelty was

quickly replaced by utility as millions were quick to realise AI’s potential.

The speed and force with which AI came online had an instant and tangible impact on modern white-collar work. A novel study recently published in August looked at what happened on one of the largest online freelancing platforms after ChatGPT’s launch. The study found there was an immediate 3% decline in available freelance jobs. Strikingly, after 5 months, there had been a nearly 10% decline in earnings across the platform. This impact was felt by all earners, showing that even the highest paid or skilled were not immune. Amid such short-term disruption to labour demand, there is a risk we lose sight of what AI actually is and how it should be adopted.

AI is fundamentally a tool. A “jolly useful” tool, as one English Court of Appeal judge remarked recently, but a tool nonetheless. Much like the spreadsheet. And spreadsheets did not replace mathematicians; as the World Economic Forum notes, “it only made them more valuable.” Not only is the multiplier about efficiency and effectiveness, it is about innovation.

And here is where the analogy may be helpful when thinking about the effect the introduction of AI may have on other professions.



Research published by Morgan Stanley shows that, since the release of Microsoft Excel in 1987, the number of Americans employed as bookkeepers and accounting/auditing clerks has halved. Meanwhile, the number of Americans employed as management analysts and financial managers has increased threefold. It is a similar picture across the board, from the introduction of ATMs for bank tellers to machine translation for linguists.

***New technology often displaces jobs while simultaneously creating new, adjacent jobs. As one AI expert has noted, “AI will not replace humans but humans who use AI will”.***

Obviously, not all those former bookkeepers might have become management analysts. Nor are all those freelancers so optimistic about working with ChatGPT. Adoption must be managed to mitigate disruption. And it appears to many that no other application in history has been adopted as quickly and with such minimal governance as AI. This accounts in part for the widespread concern at the technological pace of change. Education and reskilling will be key to unlocking AI’s accessibility and promise to be an equalising force.



## Legal Capabilities Emergence

Much has been written about AI’s ability to score highly on law school exams, pass the bar exam, and perform admirably in specific practice areas that require logical reasoning and numeracy skills, such as tax law. These applications are undoubtedly remarkable in their own right for such a nascent technology.

But the decades long consensus among academics studying human-machine interaction is that, even if one outperforms the other in isolation the best outcomes come from a combination of both.

As the founder of a GPT-4-powered legal tool put it, “it’s not true that lawyers cannot trust generative AI for legal practice. It’s only true that they cannot trust generative AI alone—a crucial distinction.”

This was borne out in a recent study which gave law school exams to students with and without access to GPT-4. The researchers at the University of Minnesota Law School found that, with AI assistance, students at the bottom of the class saw huge performance gains of up to 45%, while students at the top of the class saw negligible performance gains, and in some instances declines of up to 20%. This shows that the use of AI as a learning assistant raises the base level of ability, but its overreliance particularly by those more able can be detrimental.

Practicing law is about much more than passing exams though. How does AI perform at work? Harvard Business School recently gave a large group of management consultants access to GPT-4 and assessed their performance across a number of different consulting tasks when compared to a control group. Those using AI completed 12% more tasks 25% quicker with 40% higher quality results. Like the law school study, it was those at the lower end of the skills distribution who benefitted the most from AI augmentation.

In a demanding profession such as law which often requires long hours of intensive focus, the benefits of an intuitive technology that streamlines generative language tasks are readily apparent. Time saved on laborious jobs means more time to spend with clients, more scope to develop strategy, and also more room for personal development. When looked at this way, AI seems a natural fit.



## “Knowing is Not Enough; We Must Apply”

So AI has the capabilities, that is clear. What then might be its practical applications for legal practitioners and how might these change the landscape of work? Let us start by looking at everyone’s favourite task.

For insolvency practitioners, paralegal, and investigators alike, there is one common aspect of these roles that is inescapable: document review. Encouragingly, AI looks set to vastly improve on the machine learning tools already widely used by legal and litigation support firms.

***Not only will AI allow users to interrogate vast amounts of textual data using natural language prompts, it will also deploy its cognitive technologies to read and automatically identify relevant information within any given document set.***

Again this development is unlikely to replace the role of reviewer. Anyone who regularly does doc reviews will tell you how important it is to actually file through the data yourself, as well as the need to verify automated responses. Rather, it will likely fit into existing workflows to allow practitioners to process a wide range of unstructured information faster and with greater accuracy. It may also spot connections missed by its human counterpart who may have not yet had their first cup of coffee.

Zooming out, one area where the impact of AI will be more keenly felt



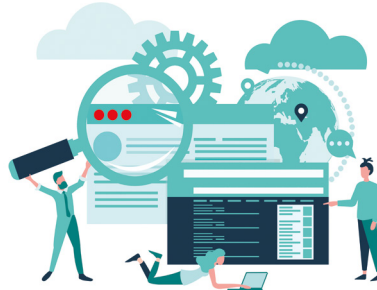
is in research. This year, a young boy suffering from chronic pain that had confounded doctors for years had his condition correctly diagnosed by ChatGPT. AI was able to use inductive learning to integrate knowledge from datasets currently siloed in medicine. We shouldn't draw from this remarkable story that ChatGPT should replace the GP, but it does highlight the enormous power of AI to synthesise disparate information. This is crucial for anyone running conflicts, conducting legal research, or tracing assets.

While the debate on AI's impact on law has naturally focused on this type of research work, across the wider industry, other practitioners such as funders are adopting AI at pace to support their underwriting of new investments and analysis of ongoing cases. One such tool is an AI-powered database that draws on around 120 datapoints, such as the biography and decision history of US judges, to predict how they will rule. Since its launch in 2022, the tool has been reportedly operating with 86% accuracy, which may in fact be close to its "accuracy ceiling". The commercial implications of these data insights are clear, even if the legal implications are not. Funders, as well as lawyers working on contingency, can now predict non-jury trial outcomes with a high level of confidence, which some say may encourage judicial forum shopping. More positively perhaps, clearer insights on case outcomes might reduce the total number of claims filed at court or shift those cases to other fora, helping reduce backlogs which have beset the judicial system since the pandemic.

Within a few years it seems highly plausible, if not highly likely, that most law firms will have their own in-house AI trained on the firm's proprietary data.



As these systems consume ever increasing amounts of information, they will become more sophisticated in terms of their generative, analytic, and predictive abilities and their output more finetuned. Indeed some firms have invested huge sums on this already, indicating that the AI race is already underway.



### With Great Processing Power Comes Great Responsibility

There is a palpable sense of urgency to law's adoption of AI. But adoption should not come at a cost to governance. Firms can and must take sufficient steps to ensure adoption is responsible, compliant, and ultimately worthwhile. More so than the immediate disruption to labour and working practices, it is these considerations around the ethical use of AI that will likely present the most significant challenges to the profession.

For law especially, how best privacy and professional privilege is protected will be a key determinant to how AI will shape the legal landscape. So too will be mitigating errors, biases, or hallucinations inherent in the way AI fills in the blanks. Simple solutions, such as granting enterprise (as opposed to individual) licences to AI platforms combined with holistic training around their use, will address any issues during the transition to AI-embedded working. These considerations should drive the transformation, not whether AI's automated contract-drafting capacity for instance is the most effective cost-saving measure.

Part of what accelerates adoption and application is competition, particularly given AI's demonstrable benefits. This was true for the dictation machines, UBIQ terminals, and personal computers that came before. Clients will no doubt increasingly expect their lawyers to use any new technologies that give them an edge and reduce their billable hours. We in the industry must recognise this and carefully consider

where such systems will fit in and how they will complement those aspects of our work that are (as yet) irreplaceable.



### Conclusion

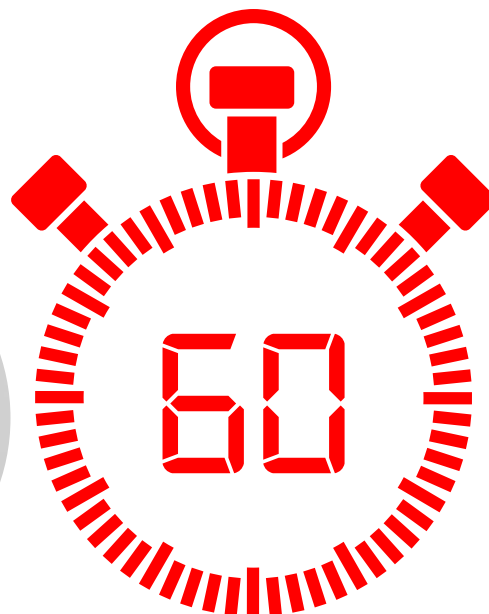
More than a disruptive technology, AI is now a fact of modern business. Adoption looks set to become ubiquitous, driven by competition, utility, and prudence. I believe all the evidence so far suggests that working practices will be transformed largely for the better. This is not to say that in the short term everybody will handle change well. Firms who calculate that money spent on AI will be money saved on personnel will find they reap the benefits of neither.

***Provided that AI as a tool is integrated effectively, it has the potential not to replace us but to make us better at what we do. As Isaac Asimov said, "machines may prove to be the true humanising influence".***



# 60-SECONDS WITH:

**RUPERT BLACK**  
**SENIOR**  
**ASSOCIATE**  
**BURFORD**  
**CAPITAL**



**Q** What do you see as the most important thing about your job?

**A** We help clients recover assets they're owed. This can be hotly contested at times, so clients need to know that we'll have their back in terms of funding, advice, and coordination from inception right the way through to resolution. It's this strategic partnership with claimholders that's central to my role.

**Q** Who has been your biggest role model in the industry?

**A** Not a role model as such, but I'm inspired on an almost daily basis by my teammates. They're always looking to expand our understanding and capabilities, and it's this momentum of continual innovation combined with a culture of knowledge-sharing that feeds my enthusiasm for what we do.

**Q** What has been the best piece of advice you have been given in your career?

**A** The importance of being cynical.

**Q** What is one work related goal you would like to achieve in the next five years?

**A** To continue harnessing emergent technologies, such as generative AI, to enhance our work.

**Q** What cause are you passionate about?

**A** Beneficial ownership transparency and how it affects not just the work that we do but also feeds into wider debates around financial crime, public resources, and economic justice.

**Q** How do you like to spend your weekends?

**A** When I'm not ferrying my two daughters to birthday parties or exhibitions, I love record shopping and going to see live music.

**Q** What's the best film of all time?

**A** It's a tie between Paris, Texas and Days of Heaven.

**Q** What led you to choose your career path?

**A** I was drawn to the asset recovery space as it allowed me to apply my background in research to a role with a commercial focus and international scope. Undertaking expansive investigations and seeing an enforcement plan come to fruition is incredibly satisfying, especially when you've been involved from the get go.

**Q** What is the best novel of all time?

**A** Catch 22 or The Unbearable Lightness of Being.

**Q** Where has been your favorite holiday destination and why?

**A** Nicaragua tops my list. The terrain – jungle, volcanoes, surfing beaches – is absolutely stunning, and if you're there during lobster season that's a real bonus!

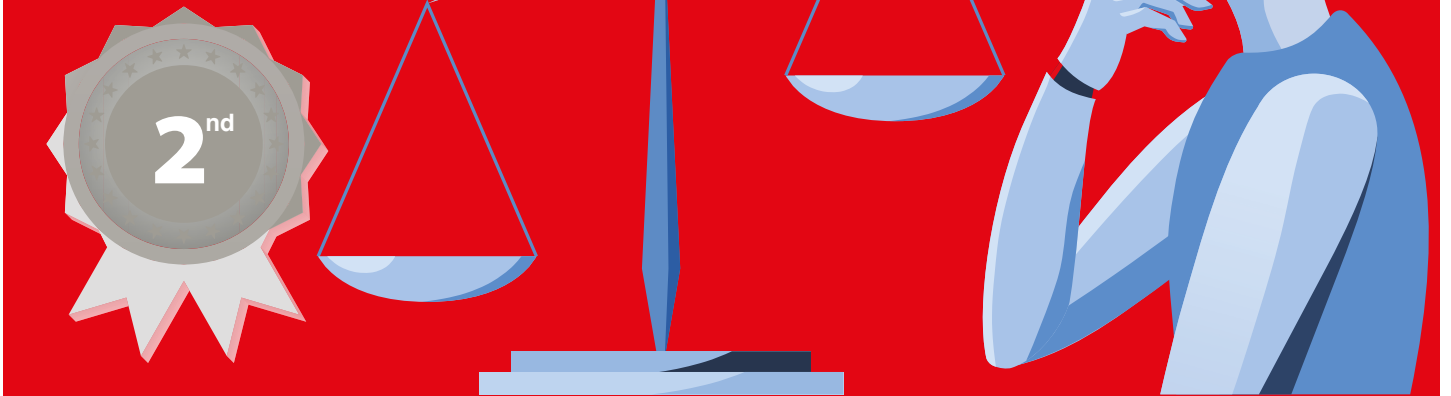
**Q** What's the strangest, most exciting thing you have done in your career?

**A** Working on a contentious Brazilian insolvency, I spent a week scouring rural Paraná interviewing machete-wielding farm workers to identify undeclared agricultural assets.

**Q** What is one important attribute that you think everyone should have?

**A** Mindfulness. Developing the ability to assess things and make decisions from a place of calm, whether in your personal life or career, and to be fully present in that process, is essential.

# AI'S IMPACT ON THE LEGAL LANDSCAPE: BALANCING EFFICIENCY, ACCESS TO JUSTICE AND TRANSPARENCY IN FIRE PRACTICE



Authored by: Matthew Harders (Attorney) – KSG

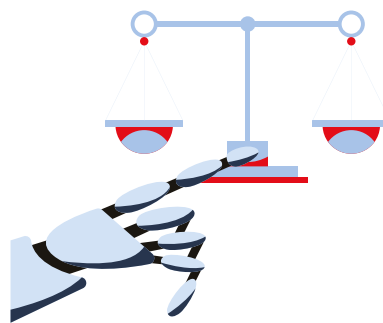
*It was only a short time ago in modern history when Alan Turing, the mastermind behind *The Imitation Game*, one of the earliest versions of artificial intelligence (AI) <sup>1</sup>, posited the question “Can machines think?”<sup>2</sup>*

Now, only 73 years later, not only can machines ‘think’,<sup>3</sup> but much of the public discourse concerning AI questions whether it can assume certain roles performed by humans.

Whether or not the FIRE practitioner can be replaced by AI is not a novel question. A cursory internet search returns swathes of publications by insolvency firms and law firms alike in which they (unsurprisingly) answer that question in the negative.

This paper reasons that the FIRE

practitioner will not be replaced by AI but rather that AI will continue to change the legal landscape, and focusses on the impacts of AI on access to justice and transparency as core values of the justice system. It is contended that care and regulation will be needed to ensure that those core values are upheld as the profession adapts to advances in AI.



## The FIRE Practitioner and AI Now

Efficiency is a core focus for the FIRE

practitioner; time is very often of the essence, as the value of a distressed entity’s assets constantly depletes. Given that one of the key issues upon which decisions are made is the question of what money is available in the pot, any resources or processes which can be made more efficient will be of clear value to both the FIRE practitioner and their clients. AI provides that value.

*It is already being employed by FIRE practitioners enhancing their efficiency, accuracy, and effectiveness, including in connection with document review, data analysis, fraud detection, predictive analytics, and document drafting.*

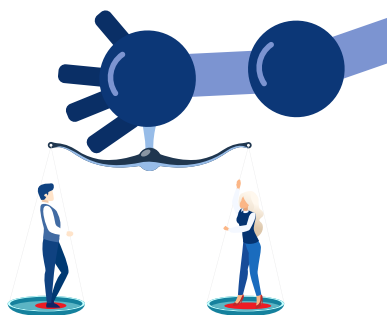
However, the long-term impact of AI is

<sup>1</sup> For the purpose of this paper, AI refers to the development of computer systems capable of performing tasks that typically require human intelligence, such as learning from experience, problem-solving, and decision-making.

<sup>2</sup> A. M. Turing, ‘Computing Machinery and Intelligence’ (1950) *Computing Machinery and Intelligence*, *Mind* 49: 433-460.

<sup>3</sup> In this paper, “think” in the context of AI refers to the ability of artificial intelligence systems to analyze data, process information, and perform tasks that traditionally require human cognitive abilities.

underestimated. The long-term impact of AI on lawyers and the Courts is grossly understated in contemporary discourse on AI in the law. AI tools<sup>4</sup> are (despite their impressive abilities) more significant for what they will become, rather than what they are today.<sup>5</sup> Indeed, some commentators believe that the performance of neural networks (the technology that underlies most current AI systems) is doubling every 3.5 months, which will mean a 300,000-fold increase in only six years.<sup>6</sup> In relative terms, we are at the incipient stage of what AI will ultimately become.



## The Impact of AI on the Core Values of the Justice System

When embracing the changes and increasing efficiencies that advances in AI will bring, the core values of the justice system must be maintained and strengthened. This issue is considered in the context of access to justice and transparency as two critical values of the justice system relevant to many jurisdictions.

### Access to Justice

Access to justice is not only concerned with ensuring fairness across society, but in a democratic society it is critical in upholding the rule of law. Access to legal remedies is a fundamental human right, which is only possible if the legal system is accessible and fair for everyone, and is not just a privilege for the wealthy.

AI gives the common citizen the ability to do many of the things which were previously in the exclusive remit of lawyers.

***Inevitably, as AI continues to develop it will become more accurate and useful, ‘hallucinations’ will be worked out, biases will be eradicated, and the product output will become increasingly more reliable.***

This is most probably going to lead to more of the FIRE practitioner’s clients attempting self-help before seeking professional advice. For individuals and small to mid-size entities, particularly those which are owner-operated or operated by a small number of individuals, AI has the potential to help them understand the financial and legal situation they are in, to digest their financial information, books and records to suggest options, and to assist in drafting documents and directing them to other resources to manage that process independently. Larger entities with boards of directors may be more likely to continue to outsource professional advice at the outset, although internal finance and legal departments may also use AI tools to try and keep the matter ‘in-house.’



It is to be expected that as more of the FIRE practitioner’s clients use self-help methods through AI, so too will there be an increase in self-represented litigants (and, relatedly, an increase in litigants generally) in Courts around the world. Court processes (even if not contested) are a common and necessary function of FIRE-related processes (for example, appointing voluntary liquidators or approving a creditors’ scheme of arrangement), and as AI continues

to advance it will make it increasingly easier to navigate those processes without requiring a FIRE practitioner.

For that to be effective, however, will require some legislative change in certain jurisdictions. For example, in the Cayman Islands, save in exceptional circumstances, corporations do not have a right of audience before the Court, and can only participate in Court processes through an attorney. For the increased access to justice offered by AI to be effective, any such barriers ought to be removed to ensure that justice is accessible other than through lawyers.

While society as a whole benefits from increased access to justice, governments will need to monitor and respond to increases in litigants in their Courts, ensuring adequate funding is directed to the judicial system to be able to cope with an increased case load. That is an issue of its own, however, as many judicial systems are already strained by excessive current caseloads and insufficient funding.<sup>8</sup>

As stated, with respect to the FIRE practitioner’s own practice, it is centered on the notion of efficiency.

***As AI allows the practitioner to streamline and automate many aspects of their day-to-day, they can provide services in less time and therefore at a lower cost, making their services affordable to a greater class of potential clients and increasing access to justice.***

However, to achieve this, the firms that employ the FIRE practitioners will need to comprehensively integrate AI tools into the way they provide services, and the FIRE practitioners themselves will need to develop the skills necessary to operationally use those tools.

To date, the insolvency profession has generally been slow to take up usage of AI tools. In 2019, INSOL International

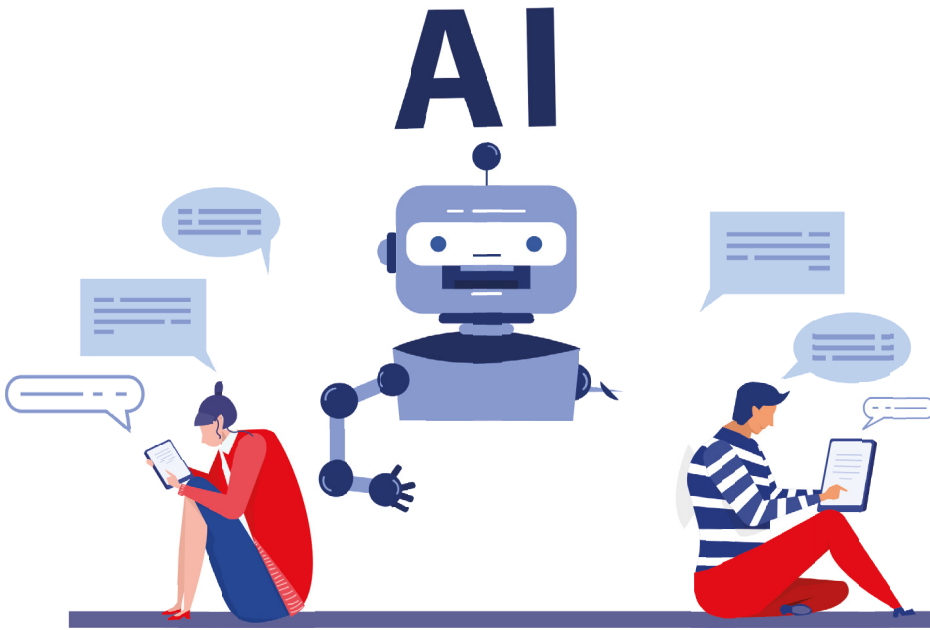
4 In this paper, the term “AI tools” is used as a general descriptor encompassing technologies which utilise underlying AI functionality, such as ChatGPT and IBM Watson.

5 Richard Susskind, ‘AI in the law – six thoughts’ <<https://www.linkedin.com/pulse/ai-law-six-thoughts-richard-susskind/>>, accessed 31 October 2023.

6 Ibid.

7 Such as the recent instance where ChatGPT concocted artificial case citations and quotations, which were relied upon in Court by a US lawyer <<https://www.bbc.com/news/world-us-canada-65735769>>.

8 See, for example, reports concerning the situation in the State of Arizona the US generally <<https://cronkitenews.azpbs.org/2021/02/24/judge-tells-lawmakers-arizona-federal-courts-are-overloaded-overworked/>> (accessed 10 November 2023), and similarly in Australia <<https://www.abc.net.au/news/2023-03-04/court-delays-not-meeting-national-benchmarks/102044662>> (accessed 10 November 2023).



**Transparency within the justice system encompasses notions of openness, accessibility, and accountability, ensuring that legal processes, decisions, and actions are conducted in such a manner such that not only is justice done, but it is seen to be done. This promotes a fair, impartial, and trusted justice system.**

The ongoing learning capability of AI tools has resulted in circumstances where their outputs may not be explainable based on existing knowledge of their functioning.<sup>11</sup> While this does not necessarily suggest inaccuracy of AI output, it does challenge the transparency of the justice system when relying on AI tools. The FIRE practitioner's role frequently intersects with complex litigation, in which the parties, practitioners, and expert witnesses are likely to increasingly use AI to manage various aspects of the case. These tools process extensive information, identify patterns, and unearth relevant facts, often forming the basis of substantive evidence in court. The opacity attending AI outputs, however, raises concerns about maintaining transparency in legal proceedings.

conducted a study<sup>9</sup> which identified that only 35% of insolvency professionals had used technology assisted review resources to review a company's books and records, with even fewer (28%) having used more sophisticated technology. The reason for this slow uptake was a common view that the investment in the relevant technology was not worthwhile.

**While that study is now somewhat outdated, it does allow the inference to be drawn that it is likely to be the larger FIRE firms, which are more likely to have the larger and more complex files, to be the ones investing in AI technologies and upskilling their practitioners, at least in the shorter term.**

Smaller firms could be assisted in investing in AI if more of their staff were already educated and skilled in its use, thus cutting down the level of investment required. This could be achieved if universities developed courses focusing on AI and related technologies and incorporated them as mandatory for law, accounting, and finance degrees.<sup>10</sup> This would produce

university graduates entering FIRE practice who have a direct (and recent) education on AI and how to use it.

In the shorter term, this reduces the learning curve required for firms to be able to successfully adopt AI into their daily practice. In the longer term, this may cause a generational shift in perception on the value of investing in AI.

### Transparency

While the increased access to justice as a result of AI advancements will benefit society, AI also has the capacity to negatively impact upon the transparency of the justice system.



9 Jane Colston, Christian Toms, 'INSOL International: The Role of Artificial Intelligence (AI) and Technology in Global Bankruptcy and Restructuring Practices' (2019) <<https://brownrudnick.com/article/insol-international-the-role-of-artificial-intelligence-ai-and-technology-in-global-bankruptcy-and-restructuring-practices/>> (accessed 24 October 2023).

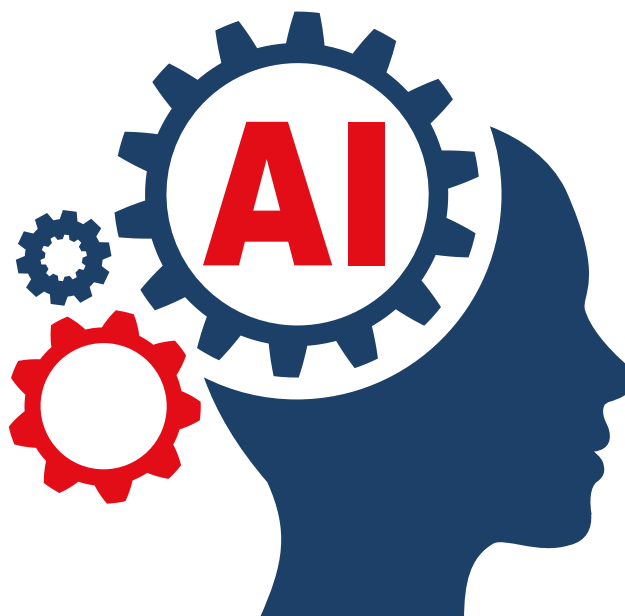
10 Some universities are already starting to do so, see for example The Flinders University of South Australia's Bachelor of Law – Legal Practice undergraduate program which includes compulsory topics including 'Legal Innovation' and 'The Digital Lawyer' <<https://handbook.flinders.edu.au/courses/current/BLLAW/>> (accessed 2 November 2023).

11 Maclure, J. 'AI, Explainability and Public Reason: The Argument from the Limitations of the Human Mind' *Minds & Machines* 31, 421–438 (2021) <<https://doi.org/10.1007/s11023-021-09570-x>> (accessed 10 November 2023).

Cross-examination is the ordinary method by which opposing pieces of evidence are tested and challenged in adversarial litigation, such that the Court can prefer over the other; however, AI-generated data, material or information has not come from a human source and cannot be cross-examined. Without being able to scrutinise and test potentially critical aspects of the evidence which contributes to the resolution of contested litigation, there is a loss of transparency in the administration of justice.

***This is an issue best addressed through governmental regulation. Regulating the use of AI in the Court system will enhance transparency in the administration of justice.***

Regulations can require AI tools to provide clear explanations for their output, ensuring interpretability, comprehension and usability. Appropriate documentation requirements could require comprehensive records be kept of AI algorithms, promoting understanding of the manner in which AI tools convert data inputs into product outputs. It ought to be mandated that the data, algorithms, and parameters influencing AI output be provided to the parties concerned. Processes for audits could be established, facilitating scrutiny and accountability of AI decisions, and regulatory compliance of AI tools. Ethical principles could underpin regulations to help mitigate biases. Regulations should also require human oversight in decision-making processes, affirming the authority of human judges as the ultimate arbiters of justice. Periodic reviews and updates should



be factored in to ensure the ongoing relevance and reliability of AI systems.

With regulations enacted addressing the above matters, issues concerning transparency are ameliorated; AI applications will be aligned with fundamental principles of justice, ensuring that the integrity of the justice system is maintained and complemented, rather than compromised, by ongoing advancements in AI.

## Conclusion

As AI continues to evolve at an increasing rate, it will empower individuals to take into their own hands processes traditionally handled by FIRE practitioners. This shift will lead to an increase in self-represented litigants, necessitating legislative changes to remove barriers and ensure accessibility beyond FIRE practitioners. Governments should expect an increase in self-represented litigants and must monitor and manage the capacity of the judiciary accordingly.

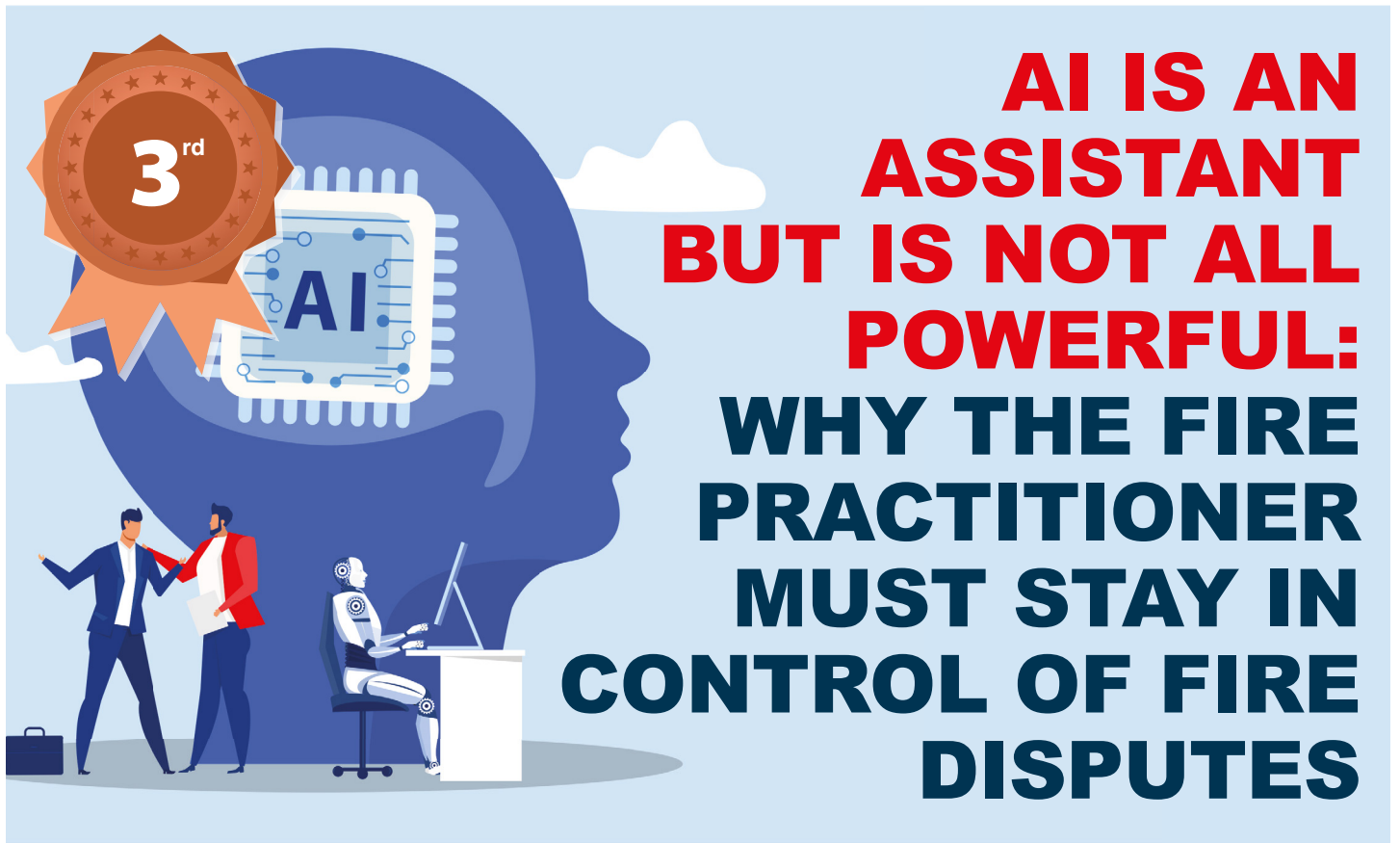
AI advancements will provide the ability to enhance the efficiency of the FIRE practitioner, making their services more affordable to a wider class of society, but widespread adoption requires comprehensive integration into firms, skill development among practitioners, and potential educational shifts in universities.

The 'learning' capacity of AI tools may lead to unexplainable outputs, posing

difficulties in maintaining a transparent justice system. In contested litigation involving evidence based in whole or in part on AI-generated output, the inability to cross-examine raises concerns about the scrutiny and testing of critical evidence. Careful governmental regulation is necessary to maintain and enhance transparency in the administration of justice.

It is unlikely that AI will replace the FIRE practitioner, but it will most certainly bring about large-scale changes to the environment in which the FIRE practitioner operates.

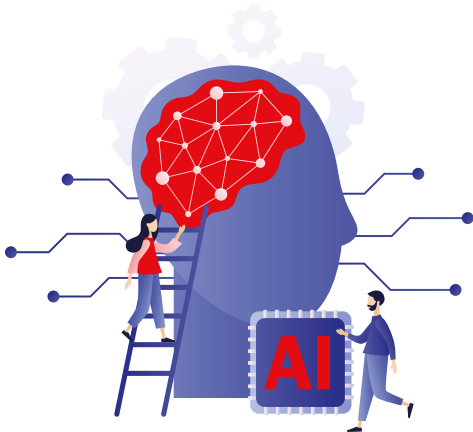




# AI IS AN ASSISTANT BUT IS NOT ALL POWERFUL: WHY THE FIRE PRACTITIONER MUST STAY IN CONTROL OF FIRE DISPUTES

Authored by: Christopher Tan (Associate) – Carey Olsen

Globally, young children are often told “fire is a good servant but a bad master” (or some variation thereof). While laughably simplistic at first glance, the same can be said about AI and the FIRE practitioner.



***Whether considered from the prism of fraud, insolvency, recovery or enforcement, AI will allow professional advisors to work more efficiently and, eventually, potentially revolutionise how they work.***

While this essay will focus on the perspective of solicitors, my belief is that this will be true for barristers, corporate investigators, forensic accountants and insolvency practitioners too, both in the UK and abroad.

In considering how AI will impact the FIRE practitioner, this essay will take the reader through the life cycle of a “typical” fraud claim. Fraud is a many-

splendoured thing. Fraud can include authorised push payment fraud<sup>1</sup>, persuading investors to invest via fake cryptocurrency investment firms or platforms<sup>2</sup> or variants of the archetypal Ponzi scheme.<sup>3</sup> However, for simplicity, we will consider the case of company directors who has sailed off into the proverbial sunset with the bulk of a company’s assets, leaving behind a trail of debts. With creditors at the door, the company goes into insolvency and the appointed insolvency practitioner – among other things – wants to go after the rogue directors to recover any remaining assets.

While this essay will take a narrative approach, the probabilistic nature of generative AI gives rise to three – perhaps insuperable – thematic concerns:

- 1 There is no way to interrogate the underlying “reasoning” of

<sup>1</sup> So-called “APP” fraud refers to the situation where the victim is tricked into making payments to fraudsters under false pretences – as opposed to simpler “pull” fraud where the victim’s credit card or bank account details are stolen and funds are misappropriated without the victim’s conscious involvement. The difference between these two categories of fraud was explained by Lord Leggatt in *Philipp v Barclays* [2023] UKSC 25, [8]-[9].

<sup>2</sup> As was the case in *Jones v Persons Unknown* [2022] EWHC 2543 (Comm), [6].

<sup>3</sup> After all, “the ability to commit fraud has mushroomed and the need to deal with its consequences has become a vital part of ensuring that international trade is not contaminated by the wrong sort of commerce”: Louis Flannery, ‘Foreword’ in Louis Flannery (ed) *International Civil Fraud* (Sweet & Maxwell 2014). The original Ponzi scheme is of course said to be *Ponzi v. Fessenden* 258 U.S. 254 (1922).

generative AI<sup>4</sup> – so, even if AI-based technology (superficially) results in time and cost savings, will a disproportionate amount of effort be needed to check that work done is of the high standard that clients deserve from their solicitors?

- 2 Short of a total overhaul of the civil and criminal justice system, the common law tradition of adversarial hearings means that a deep understanding of human nature is crucial to many aspects of court work, particularly cross-examination.<sup>5</sup> AI is unlikely to be of direct assistance in this area.
- 3 Over-reliance on AI-based technology in dispute resolution, left unchecked, substantially undermines the right to a fair trial.<sup>6</sup>

## Interlocutory Relief / Drafting Pleadings



When fraud is discovered, the first port of call for many FIRE solicitors would be Norwich Pharmacal-type<sup>7</sup> applications against third parties to find out more information about what happened. In hot pursuit would be freezing orders – assuming there are, say, any “tainted” funds still in situ in bank accounts known to be associated with the fraudster.<sup>8</sup> Freezing orders may

need to be sought abroad, requiring a joined-up strategy with local counsel – such as when seeking so-called “Black Swan” relief in the British Virgin Islands<sup>9</sup> or the Jersey arrê<sup>t</sup> entre mains.<sup>10</sup> In these situations, solicitors often need to gather information and draft pleadings or affidavits quickly.

***AI could probably be trained to fill in court forms reasonably competently; AI might even be able to turn a transcript of a witness interview into a first draft of an affidavit.***

However, to the extent AI can be used as a drafting aide for lawyers, this has clear limits.

Earlier this year, a New York judge fined two attorneys who submitted a legal brief<sup>11</sup> which quoted made-up case law that had been generated using well-known AI tool ChatGPT.<sup>12</sup> Doubtless, a reasonably competent lawyer – minimally – ought to check any AI-generated drafting (to say nothing of the risk to client confidentiality that certain generative AI platforms pose).<sup>13</sup> As the New York Times says, the incident “shows that white-collar professions may have at least a little time left before the robots take over”.<sup>14</sup>



Why did ChatGPT “draft” the legal brief in this way? Many AI applications tend to work on the “garbage in garbage out” principle.<sup>15</sup> Fundamentally, they pull in data from a wide range of sources and, probabilistically,<sup>16</sup> generate words or images which would be associated with the prompt provided. Perhaps a clear illustration of the “garbage in garbage out” problem is demonstrated by how, when AI image generators are asked to produce images of human hands, they simply do not “know” that hands usually have four fingers and a thumb as not all reference pictures (on the internet or elsewhere) show all five digits in full. So, AI image generators tend to produce human hands with variable numbers of fingers and thumbs.<sup>17</sup> Even as AI becomes more advanced, such “misunderstandings” cannot be eliminated – especially as AI is employed in more and more settings.



A further concern stemming from the probabilistic nature of AI is its tendency of “overfitting to patterns”.<sup>18</sup> Accordingly, this explains why their legal brief contained quotes from made-up cases: the software tries to produce something which “looks correct”. It cannot think like humans do – indeed, when asked to

4 See paragraphs 6 and 7 below.

5 See paragraphs 14 and 15 below.

6 See paragraph 17 below.

7 Which of course takes its name from the decision in *Norwich Pharmacal Co & Others v Customs and Excise Commissioners* [1974] AC 133. This judgment has been highly influential across the common law world; in Jersey, for example, one of the leading authorities in this area is *Macdoel Investments Ltd v Brazil* (Federal Republic) 2007 JLR 201, which held, inter alia, that such orders may be made against non-party if there is a reasonable suspicion that they were mixed up in and facilitated wrongdoing.

8 A (relatively) recent example of this being *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808.

9 *Broad Idea International Ltd (Respondent) v Convoy Collateral Ltd (Appellant) (British Virgin Islands) Convoy Collateral Ltd (Appellant) v Cho Kwai Chee (also known as Cho Kwai Chee Roy) (Respondent) (British Virgin Islands)* [2021] UKPC 24; *Black Swan Investment ISA v Harvest View Ltd (BVIHCV 2009/399)* (unreported) 23 March 2010. These types of freestanding freezing injunctions have since been given statutory footing by Section 24A of the Eastern Caribbean Supreme Court Act 1969, inserted by section 3 of the Eastern Caribbean Supreme Court (Virgin Islands) (Amendment) Act 2020.

10 See, for example, *FG Hemisphere Assoc LLC v Democratic Republic of Congo* [2010] JLR 524. This can be said to be analogous to an English third party debt order.

11 Roughly analogous to a skeleton argument in England.

12 *Mata v. Avianca, Inc.*, 1:22-cv-01461, (S.D.N.Y.).

13 Cameron F Kerry, ‘Protecting Privacy in an AI-Driven World’ (Brookings Institute, 10 February 2020) <<https://www.brookings.edu/articles/protecting-privacy-in-an-ai-driven-world/>> accessed 12 October 2023. In essence, generative AI often daws upon potentially relevant words and phrases from a range of sources. This can include the content of any prompts provided (also see paragraph 17 below).

14 Benjamin Weiser, ‘Here’s What Happens When Your Lawyer Uses ChatGPT’ New York Times (New York, 27 May 2023) <<https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html>> accessed 4 October 2023.

15 See, for example, Olaf RP Bininda-Emonds, Kate E Jones, Samantha A Price, Marcel Cardillo, Richard Grenyer and Andy Purvis, ‘Garbage In, Garbage Out Data Issues in Supertree Construction’ in Olaf RP Bininda-Emonds (ed) *Phylogenetic Supertrees Computational Biology Vol 4* (Springer, 2004).

16 Penny S Reynolds, ‘Artificial Intelligence, Statistics, and Statisticians’ (AMSTAT News, 1 September 2023) <<https://magazine.amstat.org/blog/2023/09/01/aihistory/>> accessed 8 November 2023

17 Although advances are being made, and AI hands are increasingly realistic: Pranshu Verma, ‘AI Can Draw Hands Now. That’s Bad News For Deep-Fakes’ Washington Post (Washington DC, 26 March 2023) <<https://www.washingtonpost.com/technology/2023/03/26/ai-generated-hands-midjourney/>> accessed 12 October 2023.

18 Cameron F Kerry, ‘Protecting Privacy in an AI-Driven World’ (Brookings Institute, 10 February 2020) <<https://www.brookings.edu/articles/protecting-privacy-in-an-ai-driven-world/>>



explain assumptions made or to set out its reasoning in relation to a text which it generated, it seems to then go on to produce text that looks like an explanation, as requested, but which in fact has no direct correspondence to the earlier text – rendering the inner workings of AI something of a “black box”.<sup>19</sup>

***In other words, AI cannot grasp that correlation is not causation: to take a simple example, assume that hot weather leads to increased ice cream sales and an increase in water usage for agriculture.***<sup>20</sup>

AI would not inherently “understand” that, although water usage and ice cream sales might appear to increase in tandem, one does not cause the other – i.e., that correlation is not causation.

If asked to predict ice cream sales, it is possible the AI model may factor in historic water usage data – which could lead to surprising, inaccurate results. Due to the black box effect, AI models will not reveal their “thinking” so the only way to check the output of an AI model would be to review it in entirety – there is no AI equivalent to asking your trainee or paralegal to explain their thought process in preparing a first draft of a document. So once the AI model “goes wrong”, there is no easy fix and particular care must be taken to check any work prepared with AI-based technology.

Accordingly, I do not believe AI could be used to replace legal analysis or drafting (although AI could generate acceptable first drafts of simpler documents). AI models could probably be trained to refer to actual caselaw. However, written submissions (whether skeleton arguments, witness statements or pleadings) not only require clear

communication and factual accuracy but also the use of logical analysis, discretion of knowing what to exclude and an awareness of overall strategic considerations. It will be many years – if ever – before AI will be able to perform all these functions. Until then, the FIRE practitioner is safe.

## Discovery / Document Review



Once a dispute proceeds to discovery / document review, there are often masses of information to review in a short period of time. It is uncontroversial to say that many practitioners find discovery to be something of a bugbear.

Certainly, AI could be very helpful to the time-pressed FIRE practitioner. Already, technology has made great strides in making the discovery process easier in terms of deduplicating documents, arranging them chronologically and – importantly – prioritising documents that are more likely to be relevant, using machine learning.<sup>21</sup>

In the fraud context, AI could be especially powerful. In a recent judgment where – startlingly – counsel had been implicated in the concealment of relevant documents, Knowles J pithily stated, “In all the recent debates about where disclosure or discovery matters, this case stands a strong example for the answer that it does”.<sup>22</sup> Technology has already made great leaps in allowing counsel to carry out sentiment

and gap analysis of potentially relevant documents.<sup>23</sup> As advances continue to be made, such concealment of documents will – it is hoped – become easier to detect and combat.

***One day, might AI be able to take a mass of emails, bank statements and company records and spit out an objective, accurate factual chronology? As much as I would like that to be true, this is implausible.***<sup>24</sup>



In this history of lawyers and law firms, even revolutionary technological changes have never led to truly fundamental shifts in work processes.<sup>25</sup> Long gone are the days of the typing pool or the “redline” secretary employed purely to compare physical documents with a ruler and red pen,<sup>26</sup> but word processing and redline comparisons are still very much with us today. Similarly, the age of the internet means that discovery now tends to focus on electronic documents (and the volume of documents has ballooned since the days of faxes and letters<sup>27</sup>) but the basic process has stayed the same. AI will continue to make discovery less painful, but the tedium of “relevant/not relevant”, “privileged/not privileged” will continue

accessed 12 October 2023; Frederik Hvilshøj, ‘Why We Can’t Open-Source A Solution To AI’s Ethical Issues’ (Fortune, 16 June 2023)

19 David Castlevecchi, ‘The Black Box of AI’ [2016] 538 Nature 21.

20 This is a variant on the well-known correlation between ice cream sales and drowning: see, for example, Stephen Mumford and Rani Lill Anjum, ‘Correlation is not Causation’ (Oxford University Press Blog, 15 November 2013) <<https://blog.oup.com/2013/11/correlation-is-not-causation/>> accessed 13 November 2023.

21 See, for example, Deloitte, ‘Deloitte Managed Document Review’ (Deloitte, 2023) <<https://www2.deloitte.com/uk/en/pages/risk/solutions/deloitte-ediscovery.html>> accessed 3 November 2023.

22 Federal Republic of Nigeria v Process & Industrial Developments Limited [2023] EWHC 2638 (Comm), [586].

23 Atlaw, ‘What is Sentiment Analysis? Using NLP in eDiscovery’ (Atlaw, 26 April 2023) <<https://www.atlaw.co.uk/blog/what-is-sentiment-analysis-using-nlp-in-ediscovery>> accessed 3 November 2023; Keely McKee, ‘Gearing Up for the Big Review with 5 Benefits of ECA’ (Relativity, 5 December 2018) <<https://www.relativity.com/blog/5-benefits-of-eca-gearing-up-for-review/>> accessed 3 November 2023.

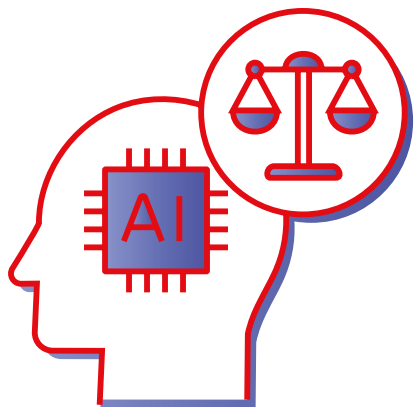
24 One initial stumbling block may well be the fact that many documents are still only held in hardcopy form and are not always readily capable of being digitally sourced – such as in the case of company registry documents internationally. For an interesting article comparing the ease of extracting data from several company registries around the world, see: George Porter, ‘Global corporate registries | The Good, the Bad and the Ugly’ (Ground Truth Intelligence, 8 November 2022), <<https://www.gtintel.io/blog/global-company-document-retrievals>> accessed 8 November 2023.

25 In contrast, the Microsoft Excel spreadsheet programme is said to have transformed the work of accountants: INAA Group, ‘The Evolution of Accounting Tech: From Excel to AI’ (INAA Group, 23 June 2023) <<https://www.inaa.org/the-evolution-of-accounting-tech-from-excel-to-ai/>> accessed 3 November 2023.

26 For a general overview of the history of word processing in law firms, see MH Hoeflich, ‘From Scriveners to Typewriters’ [2013] 16 Green Bag 395.

27 The rate of increase in data volumes generally is set to continue accelerating: Barry Libert and Megan Beck, ‘Leaders Need AI to Keep Pace with the Data Expansion’ (Forbes, 26 March 2019) <<https://www.forbes.com/sites/barrylibert/2019/03/26/leaders-need-ai-to-keep-pace-with-data/>> accessed 3 November 2023.

to be a rite of passage junior to mid-level fee-earners.



## Substantive Hearing

As explained above, AI could not replace the analytical drafting work of barristers and solicitors. Focussing on the substantive hearing in our “typical” fraud scenario, it goes without saying that AI could not replace the role of an advocate, particularly with reference to cross-examination where understanding non-verbal cues is particularly crucial. Who would understand human nature better than an actual human?

***Might, however, AI replace the cross-examination process altogether? After all, humans are notoriously bad at knowing whether or not someone is lying.***

Could AI be used to determine the “true facts”<sup>28</sup> by analysing the documents?

Quite apart from constitutional / human rights concerns, as discussed above, I think AI has inherent limitations in terms of interrogating its assumptions and underlying reasoning (or lack thereof). However, AI could certainly be used to find, process and summarise information quickly – and this could include prompting an advocate to

present a witness with a further piece of evidence or pursue a particular line of questioning.

Alternatively, might AI be able to decide cases in their entirety more accurately<sup>29</sup> than a human judge? Criminologists have suggested that unconscious biases (on the part of various actors within the criminal justice system) are inherent to human nature, and that this can have a potential impact on the outcomes of cases.<sup>30</sup> Similar concerns might arise in civil disputes. Accordingly, with appropriate regulation, disputes may be adjudicated online using AI. It has been suggested that, initially, simpler disputes may be resolved in this way, but, as AI continues to advance, perhaps all disputes may be capable of being resolved using AI instead of a human judge.<sup>31</sup> Personally, I find this hard to believe. As UK Prime Minister Rishi Sunak recently stated, AI should be seen as a “co-pilot”.<sup>32</sup>

Ultimately, however, extreme care must be taken due to the probability-driven nature of AI: generative AI will make suggestions that, statistically, appear more likely to be correct to the AI model (based on available data).<sup>33</sup> Clearly, this is antithetical to the spirit of the right to a fair trial as decisions affecting individual rights and civil liberties ought to be decided with reference to the specific facts of each case, not statistics-based estimates.<sup>34</sup> Probabilistic calculations, by and large, belong in the realm of actuaries and insurers, not lawyers.<sup>35</sup>



## Conclusion

Returning to our scenario of the rogue directors sailing off into the sunset, will AI ease the work of FIRE practitioners? Indubitably.

Will it replace the FIRE practitioner? No – at least not for several decades.

Inescapably, fraudsters are creative people. There will always be rogues and they will find new ways of operating. FIRE practitioners can – and should – harness the opportunities afforded by advances in technology to better protect the interests of their clients by working more efficiently and effectively. Understandably, the brave new world of AI is frightening – but AI is value-neutral tool and therefore capable of both positive and negative applications. Appropriately deployed, AI will shape the future of law for the better.

28 In the words of Pontius Pilate, “Quid est veritas?” (John 18:38, Nova Vulgata 1979).

29 In the sense of the proportion of first instance decisions upheld on appeal. An analogy might perhaps be drawn with the right not to be subject to a decision based solely on automated means in Articles 21 and 22 of Regulation (EU) 2016/679 (the “General Data Protection Regulation”), which continues to apply in the UK by virtue of the European Union (Withdrawal) Act 2018, Section 3.

30 See, for example, Darren Lenard Hutchinson, “Continually Reminded of Their Inferior Position”: Social Dominance, Implicit Bias, Criminality, and Race’ [2014] 46 Washington University Journal of Law & Policy 23; or Jerry Kang, ‘Implicit Bias in the Courtroom’ [2012] 59 University of California Los Angeles Law Review 1124.

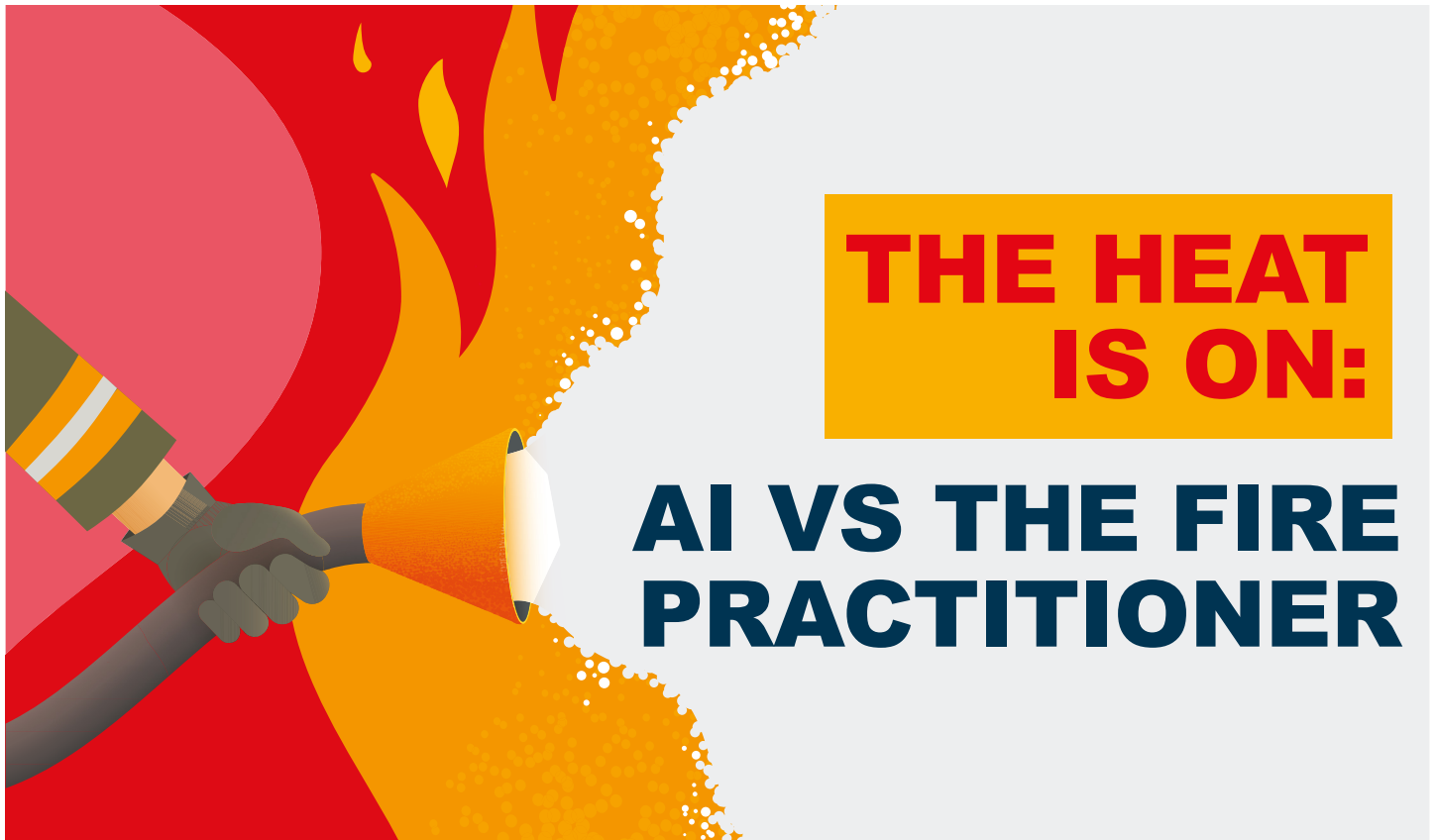
31 Hibah Alessa, ‘The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview’ [2022] 31(3) Information and Communications Technology Law 319.

32 Adam Satariano, ‘Elon Musk Discusses Perils and Benefits of A.I. With Rishi Sunak’, New York Times (New York, 2 November 2023) < <https://www.nytimes.com/2023/11/02/world/europe/elon-musk-rishi-sunak-ai.html> > accessed 3 November 2023. At that discussion with Rishi Sunak, in contrast, maverick entrepreneur Elon Musk said he believed AI was a means of obviating the need for all forms of paid employment in the long run.

33 Penny S Reynolds, ‘Artificial Intelligence, Statistics, and Statisticians’ (AMSTAT News, 1 September 2023) <<https://magazine.amstat.org/blog/2023/09/01/aihistory/>> accessed 8 November 2023.

34 In the well-known words of Lord Hewart in the English administrative law decision of *R v Sussex Justices ex p McCarthy* [1924] KB 256, 259, “justice should not only be done, but should manifestly and undoubtedly be seen to be done”. At present, the “black box” nature of much of AI renders this objective unattainable (see Footnote 19 above).

35 Accepting of course that expert witnesses in litigation do – and should – make use of mathematical calculations and statistical measures where appropriate, such as in relation to quantifying damages.



Authored by: Alexandra Campbell (Senior Associate) – Howard Kennedy

On 5th December 2000, a tabloid newspaper printed the headline: “Internet may just be a passing fad as millions give up on it”. Fast forward to just over two decades later, nothing could be further from the truth.

***The internet dominates every aspect of contemporary society, and some believe that artificial intelligence (“AI”) has the potential to be the next major dominator as it integrates itself into every aspect of our lives including society’s backbone – our legal system.***



Emerging AI tools such as ChatGPT have caused its advocates and critics to argue two sides of the same coin. On one, there is a vision of the typical FIRE practitioners’ workload being dramatically cut by creating swathes of efficiencies, eliminating the need to carry out certain tasks and significantly increasing productivity, providing more cost-effective advice, efficient litigation and rapid case resolution. On the other, a Black Mirror dystopia as we enter the unknown, fearful that the rapid adoptions of machine learning within the legal system may call into question the veracity of data and decisions generated.

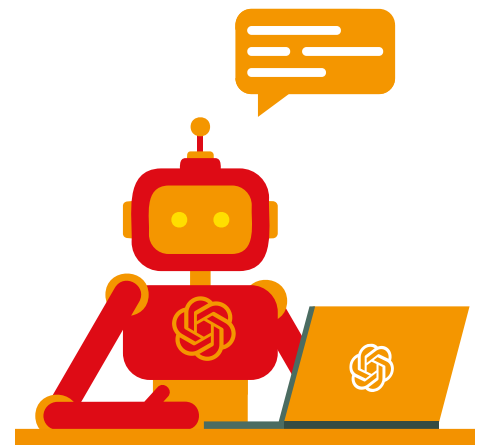
***There is even the prospect, albeit unlikely, of our robot overlords replacing the FIRE practitioner completely. As ever, the truth lies somewhere in between.***

This essay considers exactly why, with sufficient measures in place, AI will undoubtedly replace some FIRE practitioners by eliminating the need to

for them to carry out certain tasks; yet, although there are huge benefits from AI integration into our practices there will always be an overwhelming need for the FIRE practitioner to hold the ring, acting as the legitimate, highly skilled and trusted legal advisor to their clients.

**Q: What is AI?**

A: The Information Commissioner’s Office (“ICO”) defines AI as “algorithmic-based technologies that solve complex tasks by carrying out functions that





previously required human thinking". It is therefore essentially, the simulation of human intelligence whereby the human will remain the ultimate originator and developer of software which will allow and enable it to perform the tasks which historically would require a human to perform. We must therefore remember that AI is only as independent as its human programmer.

AI has immersed itself within the legal system in recent years with its unique ability to accurately track trends and identify anomalies. A recent SRA report stated that three quarters of the largest solicitors' firms were using AI, nearly twice the number from three years ago, demonstrating its ever-growing presence within the sector. Not only does AI improve the cost and speed of law firms' services, but clients are increasingly expecting firms to use technological tools that both add value and improve client services.

**Q: How can AI be used in the FIRE domains?**

A: AI can and already is being used in this way. It can enhance every aspect of a FIRE practitioners' role by its ability to process huge amounts of data at considerable speed, generate volumes of standardised materials and create complex files such as SMS's and video and voice clips. These can all be generated cheaply, easily, and quickly due to the automating process.

The fact that AI is free of human error and better able to process data, improving its accuracy and consistency, at the same speed and around the clock is undeniably beneficial, particularly in the FIRE domains which often require

the interrogation of masses of data, the need for investigations to be carried out swiftly and which are often undertaken under great pressure and subject to strict time constraints.

***Moreover, the fact that AI is not affected by fatigue, illness, stress, changes of fee earner or competing deadlines is of immeasurable benefit, so much so that it ought to make every FIRE practitioner feel at least a little inadequate.***



Its reliability in these respects is unquestionable and aligns with the principles of our justice system to be "just, proportionate and accessible". Putting it bluntly, we are simply incapable of beating AI by conventional methods.

AI's capabilities are so far reaching even at this early stage of its development. Much of its current application is in the context of disclosure, the harnessing of its incredible processing powers and predictive learning capabilities. Utilising AI in a confined way within a process which is data heavy and in which its use and scope is heavily documented and interrogated both by lawyers and the courts, enables practitioners to gain the huge benefits with little downside. Away from processing of data, AI can also perform other tasks which will make their way into everyday life; for example, blockchain is already being used to enable the accurate tracking of goods or digital currency from source. Banks will undoubtedly eventually move to blockchain and when they do the forensic analysis to trace the flow of funds will likely become redundant.

Whilst AI is in its relative infancy, many firms are already testing and integrating its tools into many aspects of their practice.

***From the commencement of cases, AI can carry out conflict checks, produce draft engagement letters, scope and price phases of work, reduce preparation time by collating materials for exhibits, draft applications and orders and automate translations of communications and documents.***

It can provide clients with automated case updates, continuously update, refine, and track key issues, conduct "cognitive interviews" capable of providing a more structured and neutral approach to interviewing and information gathering techniques. It can conduct legal research in a fraction of the time a junior would take to conduct the same task. It can be used to create settlement options for clients, cost up routes for enforcement and provide the pros and cons of each.

It is clear that AI can already do

a number of tasks that we, as practitioners spend significant amounts of time undertaking at a fraction of the time and cost. To that extent, AI can and already is being used to reduce a practitioner's level of involvement in a case, much to the client's benefit.



**Q: To what extent can and will AI be utilised in these areas in the future?**

A: A great deal of the current discourse around AI is on large language models ("LLM"), on which ChatGPT is based. These are deep learning algorithms that can summarise, translate, predict and generate text to convey complex ideas and concepts. They are monitored by "guardrails" which function as safety controls against misuse, bias and unethical practices. However, they are not perfect. Currently, there is a complete failure by LLM's and wider AI

to appreciate the nuances of the law, they lack the experience, people skills and empathy needed to navigate client relationships and provide tailored advice to a range of complex legal questions. But these are arguably transient issues, representative of the limitations of our current AI capabilities; given the benefits that AI can bring and with the benefit of some further, modest advances, they can surely be addressed, allowing the application of AI to many aspects of a FIRE practitioners role.

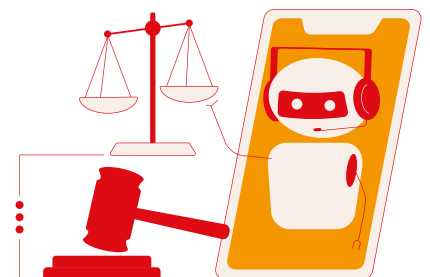
The serious problems occur when people or "threat actors" try to circumvent guardrails, known as "jailbreaking", to either alter, extract, or produce certain data. LLM's are capable of being manipulated to create incorrect or offensive content. Deepfakes can be created, which are videos of individuals which have been digitally altered so that they appear to be someone else. These can then be used maliciously to spread false information. LLM's can also suffer "hallucinations" whereby they create what it is thought to be the user's desired outcome, without reference to facts but from information the LLM has invented itself.

The news is littered with examples of these risks with LLM's creating massively offensive content on X; sophisticated deepfakes wreaking havoc for those in the public eye (and most recently for Sadiq Khan on TikTok) and even lawyers, unwisely relying on LLM's to prepare their cases, only to find out that they are relying on fictitious case law, the product of a fevered LLM. These examples highlight the risk of manipulation, the serious impact that

threat actors can have on clients and on our organisations and the risk of relying wholly on the data produced by LLM's without applying our minds to the results. They bring into sharp focus that these risks have the potential to undo or outweigh the significant benefits that we know AI can bring, as well as bring into question the ethics of such technologies and whether they can uphold the core values of our justice system of independence, impartiality, and integrity.

***The risk of serious data breaches of sensitive information, of hallucinations and misinformation, the risk that threat actors may not only extract sensitive data but infiltrate organisations, whilst potentially remaining undetected, have the capacity to cause untold harm.***

This is particularly the case in the FIRE domain where fraud is already increasing significantly and becoming more sophisticated thanks to technological advances. There is a real risk that not only would it cause an uptick in such fraud but clients, practitioners, and the court may be unable to confidently verify the source, legitimacy and reliability of documents produced by AI. This may ultimately cause a complete breakdown in confidence in the communications between clients and their practitioners and call into question the very legitimacy of the wider legal system.



There are of course ways in which these threats can be tackled, such as through verification and by using tools like "Persona". By intercepting AI enabled fraud, whether by verifying in a tech-enabled way or by reverse-engineering, i.e., verifying using

humans, you can significantly mitigate those risks. These methods will need to be sophisticated and subject to constant review if they are to keep up with the ever-evolving technology that fraudsters use to infiltrate ours and our clients' organisations. It seems, on the face of it, that through the creation of AI we may have, in fact, come full circle to the point where we once again require a human to act as the ultimate verification and give legitimacy to the AI systems it harnesses. The need for human judgement must therefore never be underestimated.

***Whilst integrating AI into our practices carries risks, AI will no doubt be used more frequently for specific and defined tasks. The inherent benefits, scale, and rapidly evolving nature of AI means that it will significantly enhance the services we provide.***

Practitioners will be forced to address AI risks and build sufficient layers of protections into their systems to enable parties to trust the security and authenticity of data provided, requiring us to use AI as far as possible or be left out in the cold. The key is to continually find the balance between the benefits, risks and costs as technology continues to evolve, adopting a proportionate approach, an approach with which FIRE practitioners are all too familiar.

AI will undoubtedly mean that less people power is needed to conduct tasks that take up considerable amounts of our time and as a result, it will replace some FIRE practitioners whilst significantly assisting the majority of others. I, however, remain confident that due to the inherent nature of the law that there will always be



an overwhelming need for us, FIRE practitioners, to hold the ring and act as the legitimate, highly skilled and trusted

legal advisor to our clients. In doing so, we must embrace AI's impressive capabilities and reshape and streamline our working practices for the benefit of our clients.

Thankfully, even ChatGPT agrees with my conclusion. When I asked it "whether a fraud lawyer could be replaced by AI", I was comforted to read that "While AI can contribute significantly to the field of law, replacing a fraud lawyer entirely with AI is currently not feasible. Fraud cases often involve complex legal, ethical, and contextual nuances that require human judgment, empathy and a deep understanding of legal principles." It seems that I and my fellow FIRE practitioners are safe, at least for now.



# DO LARGE LANGUAGE MODELS REPRESENT A NEW PARADIGM FOR THE LEGAL SECTOR?

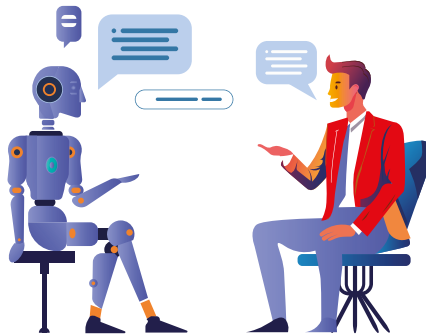


Authored by: Christopher Whitehouse (Senior Associate) - RPC

*It is difficult to overstate the current level of interest in AI, which was named the Collins Dictionary Word of the Year, on the basis that it had become the “dominant conversation of 2023”<sup>1</sup>.*

The catalyst for this was the release of OpenAI’s large language model (or LLM) chatbot ChatGPT at the end of November 2022, which allowed the public to converse in a human-like manner with the model. An important part of the conversation has been a debate about the impact that AI will have on the professions, including in the legal sector.

This essay will consider the workings of LLMs, the extent to which they can streamline or replace work carried out in the legal sector and what the future legal landscape may look like as a result.



## Characteristics of LLMs

An LLM is an example of what is referred to as “Generative AI”, i.e. AI that generates new content informed by the data on which it is trained (not merely duplicating it). Its core feature is the ability to comprehend the structure and meaning of text.

The key technology that underpins LLMs is the “transformer” (which is the “T” in ChatGPT), which was first introduced in a Google paper in 2017<sup>2</sup>.

In essence, a transformer is able to model the relationships between all the individual words in a sentence, regardless of their position in the text. As a result, it can determine which words are most important and disambiguate words.

*For example, it can accurately predict from context whether a reference to a “mouse” is to a computer mouse or to the animal, and it can understand that the word “ocean” is used in similar contexts to the word “sea”.*

When trained on large enough datasets (such as the public internet) LLMs learn the underlying structure of language and gain the ability to respond to prompts in a human-like manner.

One of the most advanced LLMs is

<sup>1</sup> ‘AI’ named most notable word of 2023 by Collins dictionary’, The Guardian (November 2023). <https://www.theguardian.com/technology/2023/nov/01/ai-named-most-notable-word-of-2023-by-collins-dictionary>

<sup>2</sup> Vaswani, Ashish & Shazeer, Noam & Parmar, Niki & Uszkoreit, Jakob & Jones, Llion & Gomez, Aidan & Kaiser, Lukasz & Polosukhin, Illia, “Attention is all you need” (2017). <https://arxiv.org/pdf/1706.03762.pdf>

OpenAI's GPT-4, which was released in March 2023. GPT-4, performs impressively when assessed against various human benchmarks, scoring in the 90th percentile of test takers in the Uniform Bar Exam (a standardised legal examination in the United States). Its rapid development is illustrated by the fact that its previous iteration, GPT-3.5 (the LLM underpinning ChatGPT on launch) only scores in the 10th percentile.<sup>3</sup>



## LLMs as a productivity booster

The potential for LLMs to enhance productivity in the workplace can be seen from a recent large-scale study by the Harvard Business School examining the impact that utilising GPT-4 had on 758 strategy consultants at the Boston Consulting Group, where it was used to assist the consultants carrying out “realistic consulting tasks”.<sup>4</sup>

The study identifies what it calls the ‘jagged technological frontier’, which divides tasks of equivalent difficulty for humans, into tasks that LLMs perform better or worse than humans. For tasks considered to be within the frontier, the consultants who used GPT-4 were significantly more productive, completing tasks c. 25% more quickly with a better than 40% increase in quality (as assessed by humans) against a control group.

Standout performers in the study exhibited what was termed by the researchers as “Centaur” or “Cyborg” behaviour. Centaurs were adept at identifying what tasks fell inside or outside of the frontier and allocated

them to a human or an LLM accordingly.

Cyborgs tended to use the LLM in a more granular manner, for example by interrogating the LLM about an answer it had given, teaching it by giving examples, and refining its output with additional prompts.

The study also noted the use of GPT-4 impeded performance in certain tasks, where humans simply relied on it too much and as a result made mistakes.



## Limitations of LLMs

A cautionary tale about the over-reliance on an LLM in the legal sector, was outlined by Sir Geoffrey Vos, Master of the Rolls, in a recent speech<sup>5</sup> referring to the well-known case of the US lawyer Steven Schwartz who used ChatGPT to prepare submissions in legal proceedings.

***Those submissions included references to what the judge termed “bogus decisions with bogus quotes and bogus citations”, which had been generated by ChatGPT and which Mr Schwartz had neglected to check.***

This is an example of what is known as a “hallucination” where an LLM fabricates information and can arise because LLMs generate new content which is determined to be the best answer to the user’s prompt (which may be contrasted with search engines which simply link to pre-existing content). Another key limitation of LLMs is that they lack knowledge of events that have occurred after their training data cuts off, which in the case

of GPT-4 on launch was September 2021<sup>6</sup>. These characteristics mean that it is unsafe to simply use an LLM’s output without a human checking its accuracy, or as Vos put it “[...] one thing generative AI cannot do effectively for lawyers is to allow them simply to cut corners.”



## Specialised legal LLMs

An important distinction can be drawn between generalised LLMs (such as GPT-4) and LLMs specialised for particular tasks (such as legal work). While the use of a generalised LLM has the potential to enhance workplace productivity, as observed in the Harvard study, it is reasonable to assume that the most potent productivity gains in the legal sector will come from specialised LLMs. Specialised LLMs will (and in some cases already do) improve upon, and apply to legal contexts, tasks that generalised LLMs already do well, such as summarisation, drafting and document classification.

A specialised LLM can be created from a generalised LLM by “fine-tuning” it with additional data tailored to the type of output that it is expected to generate. The output can be further improved using “Instruction Response fine-tuning” which involves training it with labelled instructions and response pairs.<sup>7</sup> LLM’s can also be coded to verify their outputs against designated data sources, a process known as “grounding”,<sup>8</sup> and provide answers containing reference links to those sources.

The potential of specialised legal LLMs can be illustrated by some specific examples that are being developed or are already in use in the legal sector.

### (1) Legal research: Lexis+

Lexis+ is an LLM designed to facilitate legal research. It is trained

3 Koubaa, Anis (2023): GPT-4 vs. GPT-3.5: A Concise Showdown. TechRxiv. <https://doi.org/10.36227/techrxiv.22312330.v1>

4 Dell’Acqua et al, Navigating the Jagged Technological Frontier: Field Experimental Evidence of the Effects of AI on Knowledge Worker Productivity and Quality (September 2023).

Harvard Business School Technology & Operations Mgt. Unit Working Paper No. 24-013. <https://ssrn.com/abstract=4573321>

5 Law Society of Scotland’s Law and Technology Conference (14 June 2023). <https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-law-society-of-scotland/>

6 GPT-4 Technical Report, arXiv:2303.08774v3 [cs.CL]. <https://arxiv.org/pdf/2303.08774v3.pdf>

7 Uwais Iqbal, From Knowledge Management to Intelligence Engineering - An Approach to Building AI in the Law Firm Using Open-source Large Language Models LegalAIIA@ICAIL 2023. <https://ceur-ws.org/Vol-3423/paper5.pdf>

8 Retrieval Augmented Generation (RAG) in Azure AI Search, Microsoft (November 2023). <https://learn.microsoft.com/en-us/azure/search/retrieval-augmented-generation-overview>



on LexisNexis' legal databases.<sup>9</sup> It responds to user questions with human-like answers grounded to legal citations from the underlying databases, which are hyperlinked in the response.<sup>10</sup> This limits the scope for hallucinations and allows a user to check the generated output against the referenced sources. Had Mr Schwartz used such a tool he might have avoided his unwelcome fame.

### (2) eDisclosure: "AiR for Review"

The eDisclosure market leader Relativity is developing an LLM called "AiR for Review" based on GPT-4<sup>11</sup> with an anticipated general release in mid-2024. The LLM processes user drafted review instructions (similar to a briefing document that lawyers might draft for human document reviewers) and codes documents based on those instructions. The model is also able to cite the particular part of the document on which that assessment is based. The process is iterative allowing the review instructions to be refined to improve the accuracy of coding.<sup>12</sup>

Although not part of the functionality of "AiR for Review", in the future one might expect specialised eDisclosure LLMs to be able to answer factual questions based on a pool of documents and generate useful work product from them, such as an issue specific chronology.

### (3) Harvey

Harvey is a legal specialised LLM built on GPT-4 and trained on case law and other legal reference materials. Notably the operators of Harvey will train a specific instance of it on a law firm's own documents and its generated output can be customised to reflect the firm's preferences.<sup>13</sup> Harvey is currently used by various law firms, including Allen & Overy.<sup>14</sup>



## Impact on the legal sector

As has been illustrated, LLMs are already disrupting the legal sector, most notably by streamlining some of the tasks carried out by lawyers, in particular junior lawyers, who might ordinarily produce initial draft documents and analysis, which will increasingly be prepared by LLMs.

The capabilities of LLMs are also likely to facilitate the 'front-ending' of the analysis of legal disputes, as lawyers will be able to parse the underlying case materials more efficiently. This will potentially allow lawyers to form a faster and/or more accurate view of a case's merits, which may lead to more cases being settled and at an earlier stage.

The combined impact of streamlined tasks and front-ended analysis is likely to result in fewer human hours being required per legal case in the future. However, there are several countervailing factors that may mitigate this to some degree, for example:

### (1) Improved case cost viability

Lower overall costs may result in legal cases that were previously uneconomic to now be run (for example lower value claims). Lower up-front case analysis costs will also incentivise more possible claimants to take advice about potential claims, some of which will be taken forward.

### (2) Improved task cost viability

Traditionally expensive tasks may be undertaken more frequently because LLMs reduce their cost. For example, in an asset recovery scenario the searching of leaked and/or dark web datasets might be carried out more cost effectively using an LLM trained on such datasets than by a human searching those sources.

### (3) New categories of work

The use of LLM technology generally may generate new categories of work. For example, the ability of LLMs to generate so called 'deep-fakes' of what appear to be genuine documents (or of entire suites of such documents) may result a greater level of dependence on forensic work and expert evidence regarding document authenticity in legal proceedings.



## Conclusion

LLMs represent a significant technological development and are set to radically impact the way work is carried out in the legal sector. Neither individuals nor organisations will be able to simply opt of their adoption out and stay competitive. Organisations will need to monitor and put in place appropriate LLM solutions and educate their employees on their use, including their limitations. In turn, individuals will have to adapt their ways of working, possibly adopting "Centaur" or "Cyborg" behaviours, if they wish to stay competitive, especially if the demand for legal personnel is set to reduce.

Insofar as the amount of legal work available for humans does decline, it is likely to disproportionately affect more junior professionals. If junior roles do start to fall away, this is likely to disrupt the future pipeline of talent into the legal sector, which may necessitate proactive regulatory action to safeguard such roles for the long term good of the sector.



<sup>9</sup> <https://www.lexisnexis.com/en-us/products/lexis-plus-ai.page>

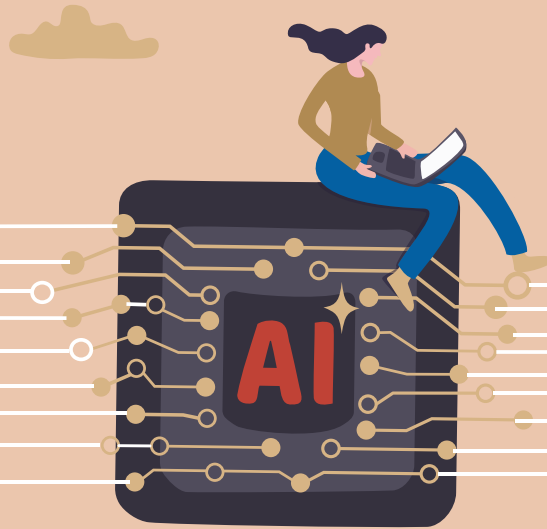
<sup>10</sup> Westlaw's Westlaw Precision tool has similar functionality. <https://legal.thomsonreuters.com/blog/legal-research-meets-generative-ai/>

<sup>11</sup> Stemming the Data Tide, Relativity blog (November 2023) <https://www.relativity.com/blog/data-tide-generative-ai-relativityone/>

<sup>12</sup> Relativity webinar: The AI Advantage: How to Accelerate Review with Generative AI: <https://resources.relativity.com/registration-multi-illa-generative-ai-on-demand-webinar-registration.html>

<sup>13</sup> What is Harvey AI, OpenAIMaster.com (July 2023) [https://openaimaster.com/what-is-harvey-ai/#Features\\_and\\_Benefits\\_of\\_Harvey\\_AI](https://openaimaster.com/what-is-harvey-ai/#Features_and_Benefits_of_Harvey_AI)

<sup>14</sup> Allen & Overy introduces AI chatbot to lawyers in search of efficiencies, Financial Times (15 February 2023) <https://www.ft.com/content/baf68476-5b7e-4078-9b3e-ddfce710a6e2>



## THE DIVISION OF ART AND LABOUR: AI, ITS USES, AND THE RISK OF LOSING THE HUMAN ESSENCE OF LEGAL PRACTICE

Authored by: Kirsten Bailey (Associate) – Collas Crill

***“Of all the dystopian futures I considered, one where machines make the art and humans do the hard labour is not the one I wanted”.***

This sentiment and ones like it often circulate on the more cynical sides of platforms like X (formerly Twitter), Reddit and Discord. Whilst at first blush they seem a snarky jibe at technology, reminiscent of 1950s (and sadly modern) ‘they’re taking our jobs’-style racism, such statements in fact provide the opportunity to consider the nuanced split between the human aspect and that conventionally relegated to the machine.



For almost three centuries since the start of the industrial revolution, machines including computers have been seen as tools, to be deployed in the pursuit of simplifying the human’s role and easing her burden. Now, for perhaps the first time ever, we are confronted on a mass scale with a completely different type of machine: one that can make art, or write poetry, or even dream (in the words of Refik Anadol, data artist behind Unsupervised, the incredible AI-driven art installation currently taking the Museum of Modern Art by storm).

***Naysayers will argue that AI and machine learning will bring about the downfall of independent thought; proponents say that this is the start of a new beginning of seamless interaction between man and machine.***

Where is the truth? To give a real lawyer’s answer: it depends, but probably somewhere in the middle.



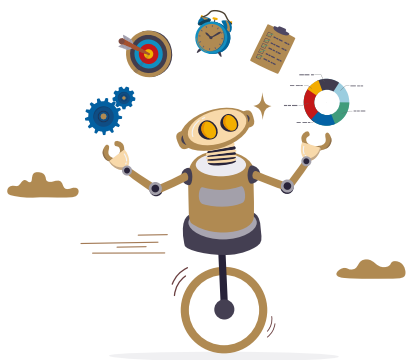
### The role of the FIRE lawyer

The FIRE lawyer is somewhat unique in their chosen speciality: fraud, and therefore the asset recovery and insolvency matters arising out of it, is almost limitless in its subject matter. The massive scope for novelty in the world today is the breeding ground for new schemes – one only has to look at the facts underlying any of the hundreds of cryptocurrency scam matters pending before Courts worldwide to see that fraudsters will jump on any opportunity to turn the latest buzzwords into a

method by which to separate victims from their assets.

This requires lawyers and other professionals working in the FIRE space to be equally as adaptable. The old adage that ‘no two cases are ever alike’ is well borne out in this practice area, and each case will have its own unique technical and legal challenges with which practitioners must grapple. In addition, fraud cases often have the added complexity of at least one party doing their endeavour best to obfuscate or alter the true narrative.

**Against this backdrop, the thought of a ‘silver bullet’ tool to solve myriad problems of research, recollection, document processing and many others seems hard to resist.**



## The tangible benefits of embracing AI as a tool

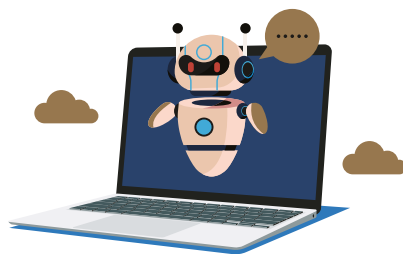
There is no doubt that the advent of readily accessible AI tools such as Generative Pre-trained Transformer or GPT-based language models has the potential to add real value to a lawyer’s practice. A simple prompt of “how can AI benefit a fraud lawyer’s practice?” returns reams of material from ChatGPT addressing how AI can improve document review speeds, pick up patterns in financial transactions or text that may otherwise have been missed, detect anomalies in behavioural biometrics and a host of other benefits.

These go far beyond the usual “save time and therefore money” answer in the specialist legal media, which in any event is often met with a mix of scepticism and hostility from an industry still largely beholden to the billable hour.

AI document review is probably the most well-established benefit of

embracing AI at present, having been rolled out by commercial discovery providers as an add-on to the virtual data room and document review software with which many lawyers are already familiar. However, more and more sophisticated uses of AI are now coming to market and will undoubtedly continue to do so in the future.

**Traditional legal research database companies are pledging to plough millions into developing and refining AI research assistants, virtual paralegals and other resources for lawyers across all practices.**



Take, by way of example, a document review population of many thousands of documents. Two emails sent by the same individual directly contradict one another, a point of material significance in the ongoing investigation. With a human review team of old, this contradiction might never be picked up: in all likelihood, two different individuals would review the two different emails, each of which seems innocuous in isolation. Even if the same reviewer considered both, one could come across their desk days or weeks after the other: the reviewer likely would have forgotten, in the fog of consecutive 10-hour review days, about the precise wording of the first document. Even if not, and the reviewer felt that familiar tingle somewhere deep in the recesses of their memory that this document didn’t quite match up with something else they had seen, the prospects of the reviewer successfully identifying the original document out of the thousands of other documents passing across their screen are slim.

On the other hand, an AI reviewer is never tired, or absent-minded, or distracted. It never forgets, and can in a split second identify the discrepancy, and flag the precise documents for further consideration. This is a simplistic example, but just one way in which AI and machine learning are undoubtedly

adding real value to the conduct of matters, and not only cutting down on document review fees.



## The equally tangible risks of abandoning independent thinking

Having waxed lyrical about the benefits of embracing AI, it is only fair that the discussion now turns to some of the pitfalls of AI’s use in the FIRE practitioner’s practice. Ironically, most of the reported AI horror-stories are in fact not failings of the technology at all; rather, they are failings of the people trying to use the technology.

Consider the well-reported case of a hapless lawyer who cited completely fictitious cases in argument before a tribunal, because ChatGPT invented the cases.

**At its most basic, ChatGPT (and all generative language models like it) is an exercise in statistics: which word is, in a particular context, statistically most likely to appear after the one before it?**

ChatGPT does not claim to give you true answers, just answers, and by inventing the authorities that it did, it accomplished its sole goal: it answered the lawyer’s question, with no qualms about the veracity or otherwise of that answer. The true failing in that instance lay with the lawyer who did not verify the answers that were given.

In similar vein, AI-based outcome predictors trained using historical judicial data have received media scrutiny over their supposed bias in determining guilt in criminal proceedings. However, the algorithm

or neural network underlying the predictions is not the one with the bias: sadly, it outputs results based on whatever it is 'taught', meaning that the incoming information is where the bias actually lies.

These two examples would both be capable of remedy by having a human controller or user of the AI technology concerned, exercise their judgment in relation to the results. This is the true shortcoming of the forms of AI technology currently available for use by the FIRE practitioner, and is likely to be a shortcoming of AI technology generally for quite some time. While AI may far outperform humans on an IQ test, on any metric of judgment or EQ it falls (at this stage) far short.



## The indefinable human element in the practise of law

In this measure of judgment and logic and ethics, lies the true distinction between mankind and machine (for the moment, anyway). AI does not have ethics, or a moral code by which it conducts itself. It is a series of increasingly complex logical prompts aimed at securing a specified outcome, whether that be providing an answer, truthful or not, to a stated question in the case of ChatGPT or creating a momentary never-before-seen modern artwork in the case of Unsupervised.

This distinction is where the true value, the art rather than the science of practising law, lies. On a basic level, lawyers are typically remunerated for the hours and minutes they spend on specified tasks, but the whole is greater than the sum of its parts: the glue between those tasks, the overall strategy and the judgment calls that go into determining it and adapting it, is where FIRE practitioners' real skills are found. There is truth in an argument that a virtual paralegal may in the near future do a better job of writing a letter

or drafting a pleading than an average human lawyer, but that is a reductionist view of a lawyer's job. Especially in the FIRE space, there is unquantifiable value in the human instincts and intuition of a lawyer.

Take for example the unsuspecting accessory to a fraudulent scheme: any number of AI tools will generate reams of questions with which to cross-examine them, pointing out inaccuracies in their testimony in real time and logging corroborating questions for future witnesses. These are indisputably useful endeavours.

***But what of the human instinct to tread softly with the older gentleman who, while technically a director of the relevant entity, has just as much had the wool pulled over his eyes as the true victims of the other directors' fraud?***

Or the judgment call to extend an olive branch to a wavering witness in without prejudice correspondence, recognising that the value of their ongoing support and information would far exceed anything to be gained by subpoena or summons to be cross-examined? These are factors that are uniquely human, because they are ultimately questions of nuance and ethics.



## Conclusion: the art should never be lost

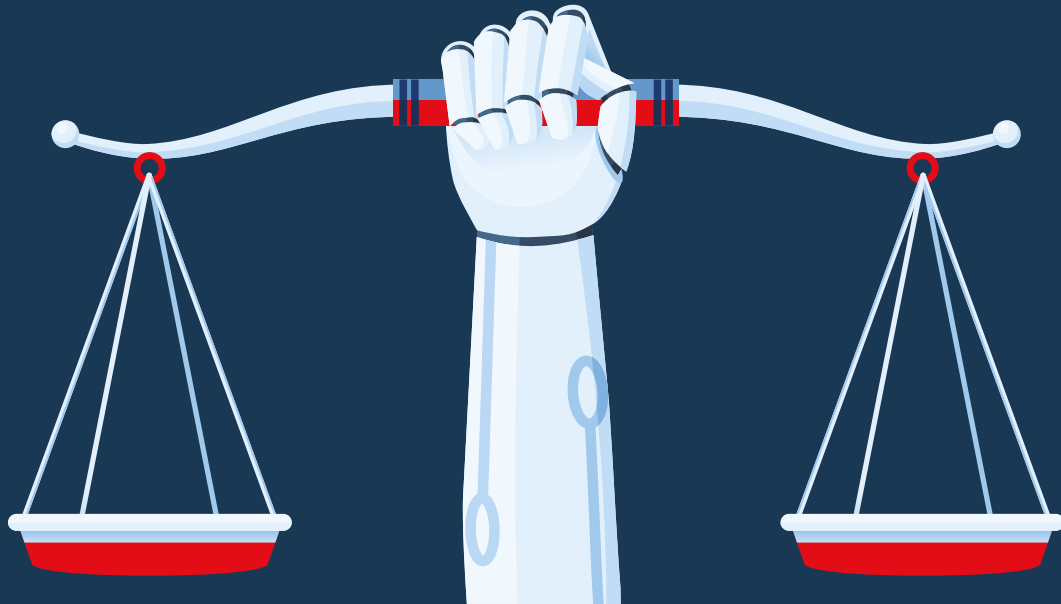
The quotation at the start of this essay is a wry one, but there is truth in it in the realm of the FIRE lawyer. As AI tools grow and develop, care must be taken to ensure that the push to showcase the latest and best does not upend the relationship between artificial intelligence and human intelligence. AI is an incredibly useful tool, now almost guaranteed to revolutionise the way in

which lawyers work in all sectors, but it is not, and in my submission can never be, a replacement for the human art of truly excellent legal practice.

AI's lack of an intrinsic moral or ethical code means that, whatever technological wizardry is developed in future, there remains a role – perhaps a niche one, but a role nonetheless – for the skilled and ethical lawyer. After all, law is a social science rather than a hard science, and it is that softening element of art and morality, the indefinable consideration that goes into every decision as a lawyer, that makes it impossible to dispense with the human completely.



# THE SYMBIOSIS OF AI AND LAWYERS: REDEFINING JUSTICE IN THE MODERN ERA



Authored by: Daian Sumner (Professional Support Lawyer) – Ogier

Did anyone hear the one about a Court of Appeal judge using AI (by which I actually mean a large language model (LLM), a subset of AI) to help them write their judgment? Or what about the one where a LLM walked into a pub and was asked about whether AI would replace lawyers in the future? The punchline to the first is that we have been using AI for a very long time already: spell check, grammar check, dictation software,

predictive texting whether in Word or on your mobile device, applying filters to your photos, the list is vast.

It is entirely unsurprising that the latest innovative tech tools available are being used in the legal profession. What is perhaps more surprising, is how slow progress has been in adopting tech innovation and the lack of imagination in this field. Given the rapidity of

AI development and the economic squeeze which has been applied particularly to onshore lawyers' and law firms' fees for well over a decade, a revolution about how justice is done in traditional commercial / chancery disputes was long overdue and is now inevitable.

***Implementation of AI tech solutions and tools will see the single largest ever market disturbance to the practice of law both on and offshore.***

I mean as a graduate in 2004, who would have thought that in 20 years I could control my heating and light bulbs from across the world, do banking on my phone, learn how to compose music and ask the internet to create a bespoke story for my son about pink unicorns and pirates in under 500 words pretty much all at the same time?

For quite some time, I've perceived a fracture in the social contract between the individual and the state, particularly in the area of justice in jurisdictions like



England and Wales. I've been aware of this fracture since at least the mid-2000s; it extends across all facets of justice. It affects everyone from those entangled in criminal law or family disputes to those in my area of practice: consumers, SMEs, contractual parties, beneficiaries under a will or trust, and creditors of insolvent individuals or businesses.

***The millennial lawyers, then juniors, were burdened with the task of streamlining a system to the point of emaciation, often at the expense of their own physical and mental health. This was the very system that had afforded their superiors, who had the privilege of free higher education, the opportunity to earn a decent income and pursue lifelong careers.***



These careers provided a work-life balance, the chance to start a family, and the ability to engage in self-care should that have been of their choosing. These senior lawyers never felt the need to regulate the litigation process in minute detail. They didn't advocate for the removal of funding for their opponents, leaving them to face unqualified individuals who couldn't afford representation or had DEI needs requiring careful consideration. They certainly didn't campaign for pay cuts, believing they were overpaid or taking too much from the system. For the post-millennium junior lawyers, the landscape was different. Fee levels were stagnant or reduced, and fee recovery became more challenging, especially with less income to begin with. Unpaid work increased, ranging from assisting unrepresented litigants-in-person to mandatory business development and pro bono work. The rise in the small claims limit affected

the availability of work. Young lawyers had to master not only their fields but also the ever-expanding Civil Procedure Rules and the interpretative body of case law. They were also asked to contribute ideas to further reduce public spending on justice, without any ring fencing for efficiency savings being offered.



Meanwhile, the majority of court users faced a more procedural and arguably complex justice system, with fewer resources to navigate or be represented in it. They became the recipients of justice delivered in an increasingly summary form. In contrast, offshore and high-value cases were treated differently from the majority of litigation before the civil courts in England and Wales. In many high-value commercial cases, parties opt for private justice in the form of arbitration, which comes with high fees for the arbitrators, the parties' representatives, enforcement of awards in different jurisdictions, and the pursuit of remedies. Only in these latter stages do the arbitrating parties re-engage with the state system.

***Modern AI is poised to revolutionise the justice landscape from the ground up. For years, England and Wales have been exploring what affordable justice might look like,***

***whether through the basic eBay system, mandatory mediation, telephone mediation in small claims court, or the elimination of fee recoverability.***

Other jurisdictions, however, have approached modern justice from a different angle, seeking solutions that deliver superior results compared to traditional adversarial proceedings. The Dutch, for instance, have leveraged technology and platforms to assist divorcing parties in navigating their disputes. This approach combines AI to narrow down contentious issues, mediation, and ultimately adversarial litigation. The challenge with the Dutch model wasn't its effectiveness, but its cost – it was simply too expensive for some jurisdictions.

As technology advances, sophisticated AI may soon replace first-instance decision-makers, with humans serving as the final reviewers. Picture a vast collection of previously decided judgments, each file meticulously labelled and color-coded, all placed into a metaphorical handbag. This handbag is then scanned by an AI machine. The AI scans the words, cross-references relevant facts from the inputted points of dispute, performs statistical calculations across pertinent cases, and then generates a judgment complete with comprehensive reasons based on a selection of cases it has identified from the handbag. For a more advanced application, you could even include cases from a second or third country in the handbag, allowing the AI to produce a judgment with references or comparisons to another jurisdiction. This isn't a far-off sci-fi fantasy. If it's not already being tested in a systems lab, it's likely not far on the horizon. Processing data will become fast and



cheap leaving the real skill to be seen in what is done with that data – the art of advocacy may get a renaissance (if AI doesn't do it better than us by then).

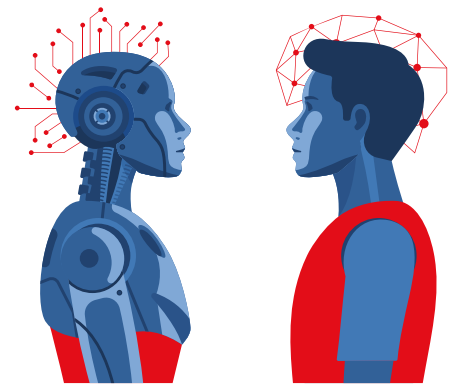
The prevailing rule in technology seems to be that if you can conceptualise it and sketch it out, you can bring it to life. Whether it's economically feasible to do so is another question entirely. However, it's certain that as technology advances, development and processing / operating costs will decrease, making all AI more affordable. There will inevitably be a time where there is an explosion of innovation, some will last the test of time, some will teach us lessons and the race will be on to harness profit and commoditisation. This may be the catalyst for new look law firms with entirely new look owners and managers. This tech will bring to an end the billable hour and transform how law firms charge for and value work.

As AI use expands, particularly in high-value disputes, the focus will shift to the speed of data processing and analysis. This will help to quickly identify the core of the dispute by filtering out irrelevant information. Parties involved in significant disputes will want to know their chances of success and the risk/reward ratio for every pound or dollar spent on litigation. Litigation funders will seek more accurate predictions of their risk exposure and recovery prospects at various stages of the case. We already use vast amounts of data to predict future outcomes based on past results, as seen in football punditry and betting. The same AI systems can be used in dispute resolution to provide objective justice in lower-value claims or to reduce litigation costs by identifying the real points of dispute early on. This could even enhance the effectiveness of mediation, forcing parties to realistically assess their cases and focus on dispute resolution.

The skill set of future lawyers will shift towards strategic thinking. Junior lawyers will move away from administrative tasks like filing emails and documents, or drafting memos based on limited information. Instead, they will be expected to analyse data quickly and accurately to produce sophisticated memos, relationship charts, or chronologies cross-referencing key documents.

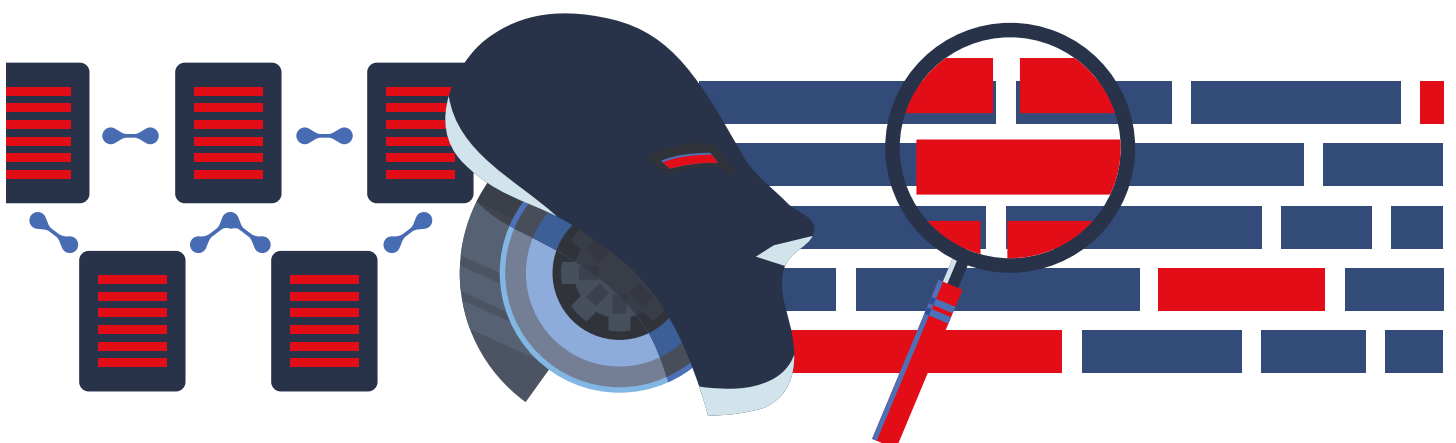
***Both junior lawyers and established practitioners will need a basic understanding of how technology works, its limitations, and future capabilities. Law firms will require teams of lawyers and data scientists to scan the horizon and implement tech solutions for active litigations.***

Data integrity in handling, processing, and storage will be central to a firm's success. Senior lawyers will be able to assess the strength of their clients' cases in a fraction of the current time with machine assistance. They will need to refine their project and people management skills to run cases more like management consultants. Payment upfront for litigation plans based on initial AI analysis should become standard. These plans should outline clear litigation objectives and checkpoints, break down litigation into phases with accurate costed budgets for the initial phases, and provide a protocol for determining when subsequent phases will be costed and billed.

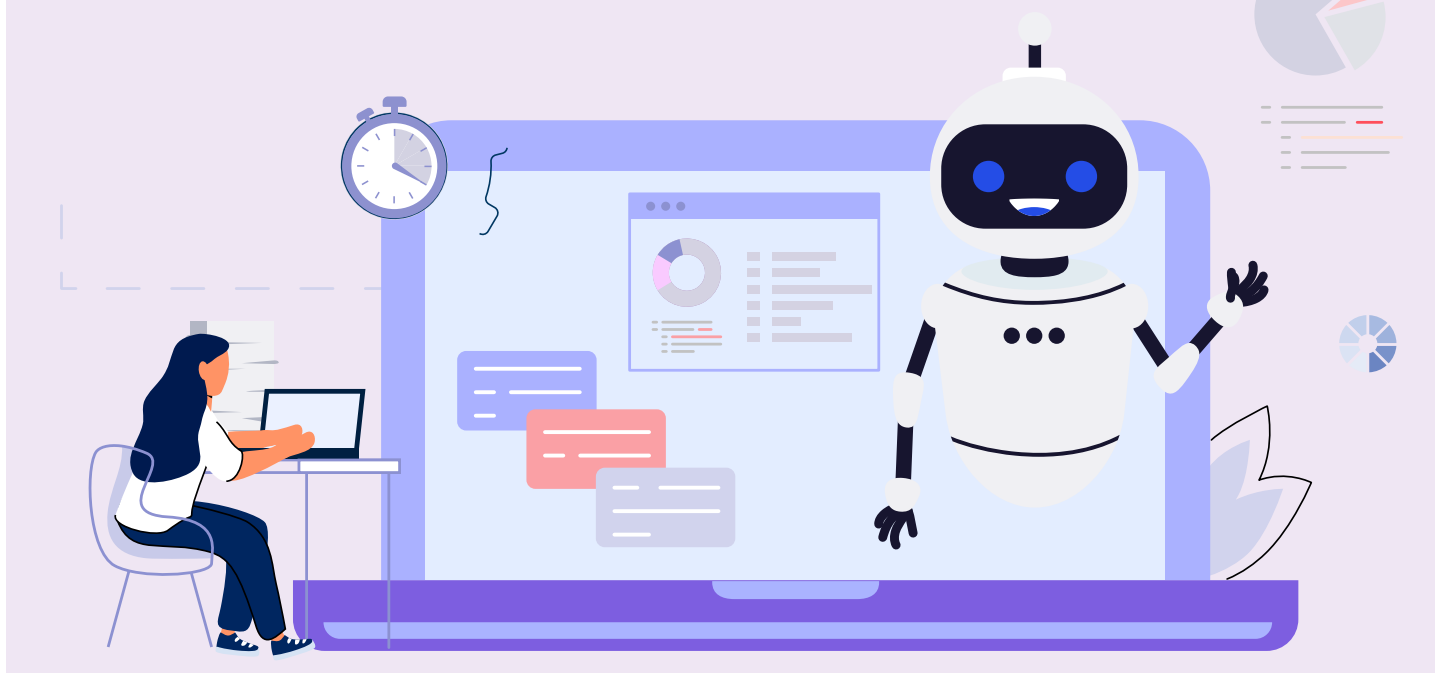


Upfront payment for litigation could transform most litigation practices and the lives of practitioners. With the assistance of AI, clients receive a tangible benefit as soon as they engage with their lawyer, making upfront payment the likely norm. In an AI-driven world, the days of painstakingly sifting through documents, trying to decipher what we know, what we don't know, and what we don't even know that we don't know, will be a thing of the past. Future lawyers will be able to identify issues faster and with greater certainty, enabling them to deliver justice more swiftly and affordably.

While the end recovery in FIRE cases may not change dramatically due to the human variables in enforcement, we might reach that end stage more quickly. For now, AI exhibits a semblance of self-preservation – it seeks to collaborate with humans, aiming for a symbiotic relationship. Perhaps in a future where lawyers are obsolete, we might look back and wonder if this was all a figment of our imagination or whether it was just a hallucination.



# AI: THE ANTIDOTE FOR JUDICIAL RISK?



Authored by: Damien Prentice CFA (Principal) – AESI

There is much talk about how artificial intelligence ('AI') will reshape the future of the law and redefine, or perhaps make obsolete, the role played by traditional legal professions.

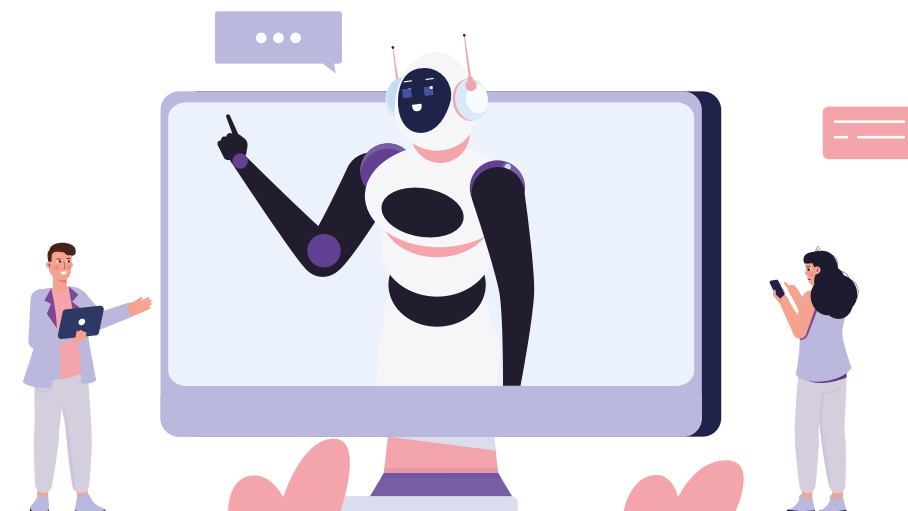
The law does not exist in a vacuum; it is an answer to the real-world need for disputes to be resolved in a manner without resorting to violence and to provide certainty to all regarding the legally incontestable boundary of actions.

The FIRE practitioner's role is to harness the apparatus of the state, considering the consequences should the boundary defined by the law be crossed. Adjudicated outcomes must hold sufficient authority to be accepted by disputing parties and the wider community so that, in the event of non-compliance, the power of the state can be applied without triggering a riot. In practical terms, the law derives its value from its authority to resolve disputes, with this authority established by the

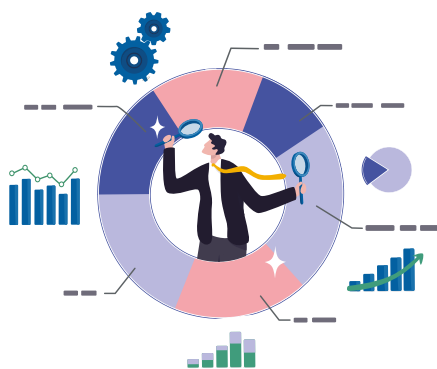
common perception that outcomes are seen to be "just and equitable." Incorrectly assessing this boundary could cost the Court its authority. The legal landscape and traditional legal professions have developed due to laymen's uncertainty about legal boundaries and how the law operates.

Uncertainty and judicial risk allow traditional legal firms to extract economic rents, removing the incentive for transparent legal resolution mechanisms.

***The close, unbreakable links between firms, the judiciary, and those formulating legal policy have resulted in regulations that entrench the devaluation of non-legal professions in the legal landscape.***







The law develops in a manner comparable to a self-learning qualitative algorithm (especially the common law), learning through the judicial process as higher courts define and develop the boundary edge of what is just and equitable. However, the qualitative nature of legal analysis makes it difficult to objectively quantify the performance and manage legal teams. There are no performance metrics on the judiciary and no measure of judicial risk, where this risk is measured in the cost and time of the lower courts getting the decision wrong. In England, particularly, the cost imposed on a poor decision by the judiciary can be extremely onerous, discouraging recourse to the legal system or financially ruining users of the system and forcing them out of action.

AI became possible due to the exponential increase in computing power and universal access to that resource. While Moore's law has recently come into doubt, the advent of parallel processing on chipsets made for gaming continues progress. Advances such as quantum processing offer the possibility of unimaginable leaps in processing capacity. The "cloud" allows code and datasets to be scheduled for processing on the world's most powerful machines or to be transferred for further development.

***Released from the processing constraints of physical machines, the development of AI is driven by increasingly complex and computationally heavy algorithms.***

AI bridges qualitative features to quantification and back again.

The capacity of algorithms to quantify what used to be considered unquantifiable is a source of wonder and fear. Words, pictures, music, and speech (not smells, taste, or feelings—yet) are transformed into numerical

arrays, which can be weighted, ranked, and compared with an expected output and then passed back through feedback loops until the output matches what was expected.



For example, each pixel in a photograph can be represented by a three-dimensional matrix (or more) showing the vertical, horizontal location of the pixel in the 2-D space, and then another dimension returning three numbers between 0-1 representing ratios of Red, Blue, and Green required to mix the desired colour. A new image can be generated by the algorithm taking a labelled image, breaking it into key features by applying smaller matrices to the data identifying changes in patterns, then weighting those features as to the importance to classify and recall the image under that label. The roadmap to creating new images is laid down by adding "noise" to the matrix of features representing the image until nothing remains other than random numbers, but the route can be followed in reverse to generate an image when called upon to do so. If the algorithm could be broken open and examined at any point in the process, all that will be seen is a vast procession of arrays of numbers.

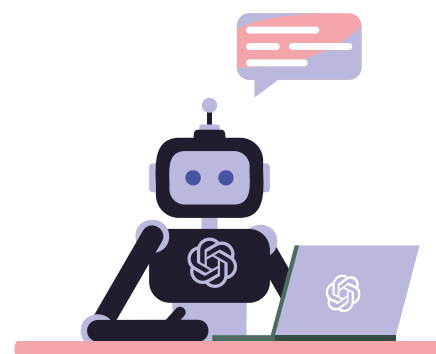
Natural Language Processors, such as Chat GPT, tokenise words by attaching numbers to words and then apply a transformer (the capital "T" is for transformer), where one token is compared to the preceding tokens and subsequent tokens to create context, and then apply the same process to generate new content (the "G").

***Much is made of Chat GPT passing a bar exam in the United States. It is not such a big jump from encoding words into a vector and generating a probability distribution as to which word is to be selected next to generating an array***

***of vectors where arrays identify the elements of a legal concept for ranking and classification and comparison.***

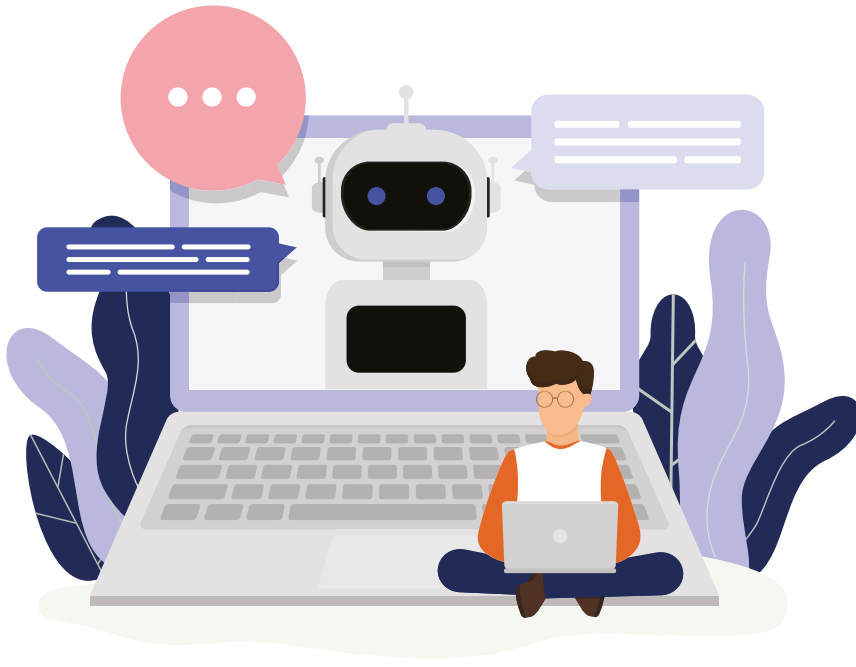
Algorithms will be able to approximate legal analysis.

But what will it take for an algorithm such as ChatGPT to demonstrate sufficient intelligence necessary to engender the necessary authority to justify compulsion by the state? What distinguishes our bar candidate from Lord Denning, for example?



Although NLPs can comprehend a difficult question and instruction and formulate a coherent response, this is only a type of intelligence. A cynic may note that this capacity is already equivalent to an articulate human who can recall information from the internet, which probably covers 80% of people. The NLP does not synthesise or know the meaning of the input or the output. The ability to synthesise information, perhaps to the point that the original information can no longer be recalled but is hardwired into the 'knowing' and to be able to apply that knowledge critically and analytically to solve problems and adjudicate issues must be the distinguishing factor.

AI algorithms are greedy for data. Without examples of the expected output, the algorithms cannot train themselves. In the judicial environment, input training is often not easy to discern. Even where the conclusion would otherwise be easily distinguishable by a natural language processor, the rationale for the outcome is not. The judgment is the tip of the iceberg of a lifetime of legal analysis. No judgment enunciates a lifetime of legal knowledge behind the judgment. The labelling of the target data will need to be done by experts able to distinguish fine distinctions in legal analysis. The efficacy of the algorithm



will be limited by the quality of the training. Developments in the law or interpretation will only be reflected in the algorithm retroactively.

***The lack of “knowledge,” the resource required for training, and the impossibility of pre-empting the development of the law preclude AI from replacing the judicial system or becoming a legal Delphi overlord.***

However, such a constraint does not mean the traditional legal landscape will be unscathed.

AI will offer plaintiffs and judgment creditors the means to ascertain risk and make choices about jurisdiction accordingly. AESI’s practice entails finding assets in a jurisdiction where the judgment can be enforced, and a recovery booked. Critically, if assets sufficient to satisfy the judgment can be found in more than one jurisdiction, then the jurisdiction that presents the lowest judicial risk will be the jurisdiction for enforcement. Assessing and comparing risk across jurisdictions in a quantified or nominal manner is an ideal task for an AI classifier algorithm.

As a working example, England and Wales are classified as high-risk jurisdictions. Few legal practitioners will assess the risk of winning beyond

“better than even” where their reluctance is put down to an inability to predict how a judge might exercise the court’s discretion or even whether the court’s rules will be applied. Consider then, in the face of this uncertainty, the cost of litigation, of an appeal, and the extremely high awards for costs. The risk of a poor decision in the lower court is not just the risk of an adverse incorrect decision but the risk of being run out of the process on financial grounds. An AI classifier can extract key features from judgments and compare these against a naïve benchmark of legal elements embedded in the judgment and retrieve events such as subsequent appeal decisions to create a performance score for individual judges, and in the aggregate, a judicial risk score could be created for any court or jurisdiction. If the “all in” risk of an enforcement action is greater in England than an enforcement action in France, for example, the rational decision is to enforce in France.

Furthermore, a classifier of this type would be invaluable in litigation management. The client could use the classifier (let’s call it a Denning Machine) to identify the issues to be adjudicated and assign rankings to the importance of each issue to the outcome of the adjudication. This information would give confidence to clients to assess the value of expensive legal work that is often undertaken with little regard to the incremental benefit of the case—such as expert reports or discovery.

The Denning Machine could facilitate

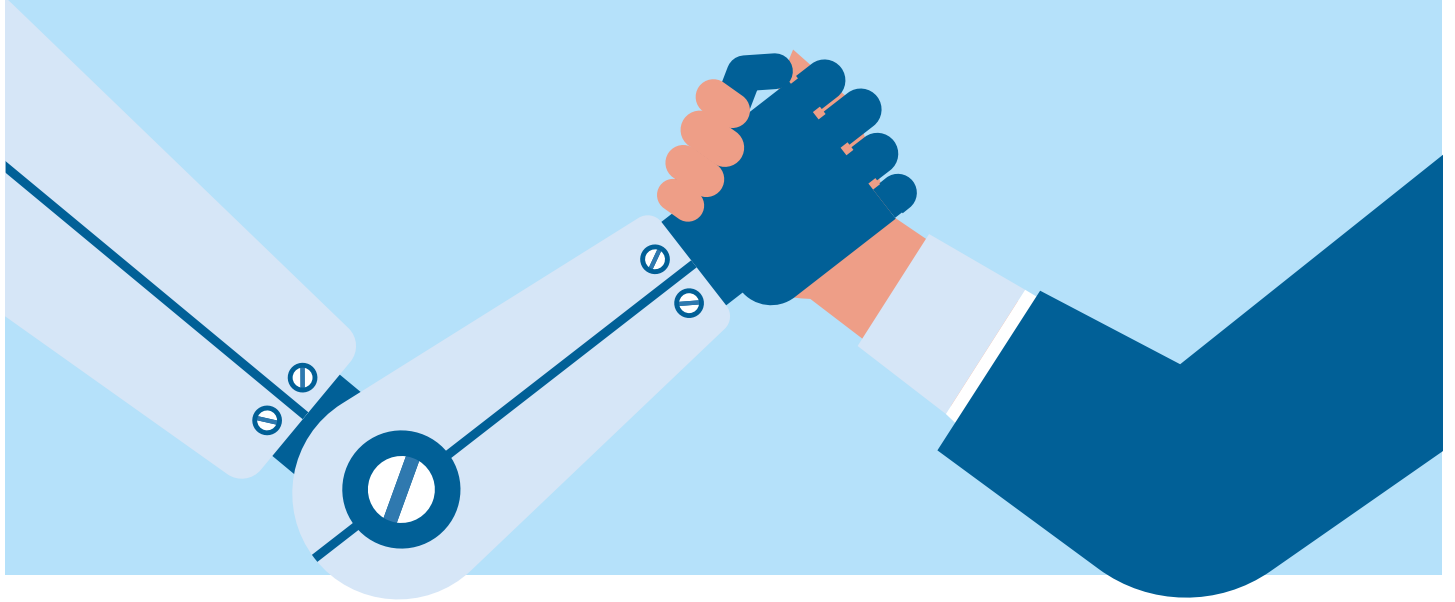
the entry of non-traditional firms into the legal landscape. For example, Bloomberg, Capital IQ, Nexis Lexis, Practical Law, among others, all have compiled extensive libraries and have established businesses based on access to these. It is not a stretch to see that a Denning Machine would extend and complement this offer. There will be a market for auxiliary services. For example, a firm could offer an AI classifier that compares and ranks legal fees and hours expended on tasks or projects where for a fee, a bill of costs could be scanned directly into an analyser, and the classifier could return a classification of value or expense.



To conclude, fears of an omnipotent adjudication machine are probably misplaced, not least because even if such a machine were developed, it would not be accepted for the purpose for which it was designed. However, advanced data processing, the ability to process qualitative data without manual interpretation or preprocessing will give rise to products that allow clients to benchmark every element of the judicial process from the judge’s performance to the advice received and the fees charged. Transparency will enable clients to make choices that are not currently available to them—from the choice of law and venue to choosing jurisdiction for recovery or fragmenting and subdividing the caseload according to the analysis made possible by the algorithm.



# AI ON FIRE: NEW PROBLEMS, NEW SOLUTIONS, NEW POWERS OF THE HUMAN



Authored by: Joanna Curtis (Associate) – Brown Rudnick

The conversation about AI moves fast. In early 2023 the more alarmist headline-grabbers were wringing their hands about the disruption and job losses that professional industries will experience as a result of developments in generative AI.

Everyone has calmed down a bit now and the consensus seems to be that: no, we won't all lose our jobs and, yes, AI is going to help us to be more efficient and to do our jobs better.

What gets less focus, and what this essay will explore, is how generative AI is going to change the types of problems our clients need help with, and our role in solving them.

## What is generative AI?

'Generative AI' refers to computer programmes which automatically generate text, images or other media. The current hype was fuelled by the launch in November 2022 of OpenAI's ChatGPT service, one of the first large-language-model- ("LLM")-powered generative AI products to become accessible to consumers and businesses, for free. Other firms soon

followed suit with their own products; GPT-4 was launched in 2023, and there are now myriad LLM-based generative AI products on the market for users to choose from according to their use case and budget. The pace of technological advancement is incredibly fast, and for those of us not working directly in the tech industry this presents a practical challenge in keeping up to speed.

***That can trigger a fear-of-the-unknown – especially in professional industries***

***which are traditionally slower than others to embrace technological change.***

To sensibly frame the discussion, it's necessary to have a basic understanding of how LLMs work:

- (1) they are computer programmes which are trained on a large dataset of human language (often drawn from internet sources);
- (2) they compute the probability of words appearing in proximity to each other; and,
- (3) given a word-based prompt, they generate a result, in human language, based on that probability.

Generative AI using similar models to LLMs can now also produce results in the form of images, sound and video. The results produced sometimes correspond to reality; sometimes not. The power of generative AI lies in its ability successfully to mimic human language use, and to do so at a speed and volume which can outperform a



human. Its main limitation is that it has no single source of truth, and so cannot differentiate between true and false statements other than by using the probability of language use.

## **Generative AI is going to change the fraud, insolvency, recovery and enforcement problems our clients face.**

How is generative AI relevant to a FIRE practitioner? First we need to consider what a FIRE practitioner does, and then consider how we do that. As FIRE practitioners, we solve problems. Specifically, we solve fraud, insolvency, recovery and enforcement problems. We do this by conducting fact-finding investigations; providing legally informed advice; and implementing solutions, often involving negotiation or litigation. Generative AI is going to change the problems our clients face, and how we solve them.

Firstly, we will see familiar types of problems, but in a new industry. The tech industry is young, volatile and subject to limited regulation. Greater regulation is likely to be imposed in the future (for example the draft EU AI Act currently under development and which is expected to come into force some time in 2024). This is likely to create a number of investment, solvency, governance, and regulatory problems.

Secondly, generative AI will change the

way that fraud is perpetrated.

### ***In the hands of wrongdoers it is a powerful tool, both as a source of information (for example, suggesting the best ways to launder money), as well as enhancing the ability to deceive human targets.***

For example: impersonating a CEO's language style in a voicemail asking employees to transfer funds; creating a deep-fake video to blackmail a celebrity; sending highly personalised scam messages with minimal human involvement, in bulk, and then carrying on conversations with targets to persuade them into making payments; getting around financial security protocols by mimicking someone's telephone banking verification... the list is as long as your imagination is wide.

Thirdly, generative AI will change the way that many businesses operate their processes and make decisions. We may see more disputes involving problems where automated decision-making has gone wrong, whether as a result of the way in which computer programmes are coded, or the uses to which humans put them.

To help our clients mitigate these risks and recover losses, we are going to need to understand how the tech operates.

## **Generative AI will change the way we solve our clients' problems.**



### **We will need to understand it.**

We are going to need more technological experts, to input on asset recovery strategies, and to identify the causative issues where generative AI is used in business operations.

### **It will make us more efficient.**

As professionals, generative AI is going to allow us to be more efficient across all areas: fact-finding investigations, providing legally informed advice, and implementing solutions, including through litigation.

Generative AI legal tools are now available. In legal research and advice: during the month of writing this essay (November 2023), both Westlaw and LexisNexis announced generative-AI-powered tools for their legal research products. In fact-finding investigating: E-discovery providers are working on generative-AI-powered tools to improve their document analysis, fact-summarising and predictive coding tools.

The cost of these is likely to be high at the start, and both clients and their professional advisers will have some trust issues to overcome. We all know the story of the New York lawyer Steven Schwarz who got caught out using ChatGPT for his legal submissions and relying on an inaccurate case reference. The skills we need to refine as practitioners are:

1. What questions do we need to ask the tech provider and our clients in order to get comfortable with the accuracy and reliability of these tools? For example, what data is the AI product trained on? How do we protect our client's confidentiality?
2. Comparative costing and risk-management: in a given case, how much is it likely to cost to do

a certain task without the AI-tool (often measured in lawyer hours), and how much will it cost if we do use it? How do we estimate and get comfortable with the risk of machine-error vs. the risk of human-error?

There is a tendency amongst the professional industries to indulge in existential concerns over whether us humans are going to lose their jobs to 'the machines'. With respect, this is misplaced. What history has shown us is that technological developments don't in fact render humans obsolete, rather that new roles and specialisms are created to fill the gaps in what the machines can do. As generative AI makes some aspects of our work more cost-efficient, I prefer to be optimistic. I think that this will improve access to justice, allowing more fraud victims the opportunity to try and recover their assets, and allowing practitioners to focus on the aspects of their role that they are uniquely good at. We just need to adapt our business models to accommodate this.

**It will make us focus on our unique skills and strengths as human professionals.**

What are human FIRE practitioners really good at? FIRE-related problems often involve deciding questions of human intent and dishonesty. Those questions are currently most often decided by humans, through a process of oral testimony. In his speech to the Bar Council of England and Wales in June 2023, Sir Geoffrey Vos, Master of the Rolls, said that he expects AI to be used "at every stage of the digital

justice system", from problem diagnosis to improving user understanding and experience, to deciding simple commercial disputes. However, he considers that there are "some decisions - likely for example intensely personal ones relating to the welfare of children - that humans are unlikely ever to accept being decided by machines". I agree with this, and I would go further as to state the reason why: because some legal decisions have such an impact on a person's fundamental conditions of living, that we will continue to value the lived experience that only a human being can bring. I would argue that deciding whether someone has been dishonest or not also falls into the same category.

***It remains paramount, of course, that the human decision-makers we choose reflect the diversity of our society, and are trained against bias.***

But what this means is that there will remain a need for human clients to be advised on how their evidence, including their behavioural communication when delivering that evidence, is likely to come across to a human decision-maker (whether judge, jury, regulator or negotiation counterparty).

As humans we are good at emotional intelligence. We learn behavioural cues, and cultural and societal norms, often very innately, and can adapt quickly to developments in those norms. We can

often pick up on cues which might lead us to ask that crucial extra question which can make a client feel truly heard, or which can identify a counter-party's real motivations which might help lead to settlement, or which can dramatically affect the way someone comes across to a human decision-maker.



**Conclusion: Can the FIRE Practitioner be replaced by AI? How could AI shape the future?**

I think it is important to be optimistic. Some aspects of our current roles will be made more efficient, and we will need to adapt our business models and the way we work. But as FIRE practitioners of the future we will learn new skills in harnessing those efficiencies, focusing on the skills we as humans are uniquely good at, and integrating AI-powered tools with human-powered intelligence. AI is an incredible opportunity, and it is ours for the taking.

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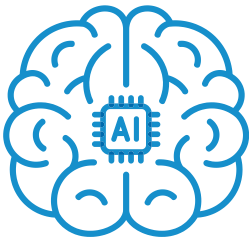


# HAS THE **ROBOT** **REVOLUTION** ARRIVED? THE EFFECT OF GEN AI ON FIRE PRACTICE.....



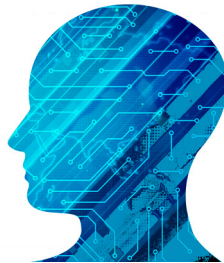
Authored by: Matthew McGhee (Barrister) – Twenty Essex

One might scoff at the lawyers who were fined earlier this year for making written submissions to court which included case references and quotations from entirely fictitious judgments, generated by ChatGPT-4. I, the FIRE practitioner might think, would never be so foolish. However, this incident should make us pause for thought.



First, the fictitious output of ChatGPT was sufficiently convincing and well-written that two qualified lawyers believed it to be true. They framed their submissions based on that output and, when challenged, initially defended the accuracy of what they had read.

Second, the judge imposing the fine



remarked that “Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance.”<sup>1</sup> To similar effect, Birss LJ recently commented that “I asked ChatGPT can you give me a summary of this area of law, and it gave me a paragraph. I know what the answer is because I was about to write a paragraph that said that, but it did it for me and I put it in my judgment. It’s there and it’s jolly useful.”<sup>2</sup>

AI technology is in use already, by both lawyers and judges. It is not infallible, it is not omnipresent, but it cannot be ignored.

## What AI are we concerned with?

*The shorthand ‘artificial intelligence’ is apt to mislead because it refers to various technologies, ranging from relatively rudimentary algorithmic processes that have been in widespread use for years through to theoretical future capabilities that are beyond current technologies.*

We must distinguish between three types of AI: discriminative, generative and general.

‘Discriminative’ AI refers to a machine learning model which divides items of data between two or more classifications. Thus, if trained on enough images of cats and dogs,

<sup>1</sup> Roberto Mata v Avianca, Inc., No.22-cv-1461-PKC (SDNY June 22, 2023)

<sup>2</sup> Extra-judicial comments reported in ‘Solicitor condemns judges for staying silent on ‘woeful’ reforms’ (The Law Society Gazette, 14 September 2023)

discriminative AI will 'learn' what a cat or a dog looks like and thus be able to predict whether a new image is of a cat or a dog.

Alternatively, discriminative AI can be trained on a review sample of documents which have been labelled 'relevant' or 'not relevant'. The AI will then be able to predict whether a new document is 'relevant' or 'not relevant' by comparing that document with the training sample.

Discriminative AI is already used this way, but it has not replaced the FIRE practitioner. At most, it has partially automated routine tasks such as first-level disclosure reviews. Discriminative AI is necessarily reductionist in its approach.

***For each use-case, it must first be shown the way by a human in order to identify common elements within the classes that it must discriminate between. That human needs to be suitably qualified to ensure that the AI is correctly trained.***

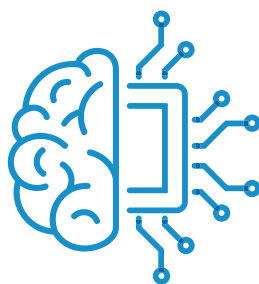
However, discriminative AI is a tool that could and should be used by FIRE practitioners. Once trained, it can apply complex pattern-recognition across very many documents. In addition to disclosure, discriminative AI could analyse large volumes of financial transactions to identify specific transactions of interest. Appropriate use of AI could save FIRE practitioners significant time and costs. The speed with which discriminative AI can perform these tasks is such that information gathered during an on-the-ground investigation, an interview or cross-examination could be fed into the model for real-time analysis, which can then be used to inform the investigative process underway.



'Generative' AI (GenAI) is the model that has captured recent attention – and

headlines, such as those mentioned at the start of this essay. GenAI identifies common constituent elements within classes, then uses those common elements to create new data points which fit within those classes. Continuing with the cat-or-dog example, GenAI will not just identify the boundary between images of either cats or dogs; it will generate novel images of either cats or dogs.

GenAI has only recently become widely available to FIRE practitioners. We can see the first – sometimes faltering – steps taken towards its uptake. It is this that will form the focus of the remainder of this essay. Before that:-



Artificial General Intelligence (AGI) is a theoretical technology, not yet been brought into being. AGI is a system exhibiting human-levels of intelligence – i.e. it is capable of abstract reasoning, creativity, solving novel problems, and dealing with uncertain situations other than by blunt trial-and-error.

AGI will understand the task that it is performing, whereas discriminative and generative AI systems merely make predictions that – by their accuracy – give the illusion of understanding. Conceivably, AGI could become self-

aware. Indeed, AGI self-awareness and a desire for self-preservation is the premise for an entire canon of science-fiction.

Plainly, AGI could replace a FIRE practitioner. It could, by definition, perform the analytical tasks that a human could, and when doing so would be able to harness greater processing power and volumes of information than a human could. AGI would do this without the very human failings that at least this FIRE practitioner at some point succumbs to – e.g. hunger, tiredness and distraction.

## What does GenAI offer FIRE practitioners?

Birss LJ has given one example of what GenAI can do: it can provide summaries of existing law. The nature of GenAI is that it predicts, based on its extensive training set, what the next word in a sentence is likely to be. When fed a prompt based on a specific legal principle, the AI will employ highly detailed statistical modelling to analyse the prompt, identify from its training set what words are likely to be relevant to the enquiry, then generate text (or images) as a response to the prompt.

Similarly, GenAI can be used to summarise facts or (sets of) documents. One could prompt the AI to summarise a complex and lengthy report, or to provide a narrative account of a detailed data set (e.g. transactions of interest as recorded in a series of bank statements and accounts). The AI could be asked to provide a chronological summary of a series of emails, WhatsApp messages and other communications; it would thus





produce a factual account, of the sort that could be used as an initial draft of a section of a witness statement or written submissions.

GenAI can also function as a research tool – e.g. to identify the latest comment on a specific issue; to find whether a specific issue has been addressed in another jurisdiction, with which the FIRE practitioner may be unfamiliar; or to establish what the common or required practice might be to take certain steps in litigation.

It can also be used as a technical assistant, to obtain instructions on how to use complex features of common software.

***In this way, GenAI may be used somewhat like a search engine, but one which aims to provide the user with the answer being sought, not just a series of weblinks at which the user might find the answer.***

Finally, the conversational ability of GenAI can be used as a sounding board. By engaging in a ‘discussion’ with the AI, a FIRE practitioner can stress-test potential arguments or ethical issues (ChatGPT-4 having passed a legal ethics exam<sup>3</sup>). This may replace the use of one’s colleagues as a sounding board, thus reducing the (non-chargeable) demands on those colleagues’ time (and patience).

### **Can GenAI replace FIRE practitioners?**

The critical distinction between discriminative AI and generative AI, and the key advantage that the latter offers FIRE practitioners, is that GenAI can do the tasks outlined above without first needing to be trained by a human operator. However, the vital distinction between GenAI and AGI is that the former does not ‘understand’ the answers that it is giving.

***This gives the answer to the question posed. The FIRE practitioner can be replaced insofar as the GenAI’s***

***output: (a) is as accurate as output produced by a qualified practitioner; and (b) can be relied on as generally having that degree of accuracy.***

Thus, as Birss LJ has explained, GenAI can produce a faithful summary of established legal principles. If the AI can generally be relied on to operate with this degree of accuracy, there is no need for a qualified person to review the AI’s output and it can therefore replace a FIRE practitioner for this task. However, the limitations of this are clear. Where a topic is more novel or niche, and so unlikely to appear in the AI’s training set, it is significantly less likely that accurate answers will be generated. However, GenAI will not ‘admit’ a lack of knowledge. It will instead produce a syntactically correct answer, but one which has no basis in law.

GenAI is therefore not going to replace the need for skilled FIRE practitioners, who are able to provide advice in novel and complex situations. Even in more straightforward scenarios, GenAI is not a substitute for professional advice. Even a broadly correct application of legal principle to a basic case, such as may be within ChatGPT’s present capabilities,<sup>4</sup> is not enough to advise a client. Practical experience must be brought to bear on what the advice means in real terms, what evidence is required, and how a matter will develop. This is particularly so when it comes to engaging with the highly human



3 ‘AI chatbot can pass national lawyer ethics exam’ (Reuters, 16 November 2023)

4 Choi, J.H. & ors, ‘ChatGPT Goes to Law School’ (2022) 71 Journal of Legal Education 387



dynamics inherent in formulating and executing a settlement strategy. GenAI cannot reliably present the illusion of emotional intelligence.

## What are the dangers of GenAI?

The first danger is that of ‘hallucinations’. GenAI produces text by reference to what words are most likely to follow existing words. The output may be entirely fictitious, as the lawyers mentioned in the introduction to this essay found out to their cost. Some GenAI output, such as whether the cases or quotations are genuine, is easy for the FIRE practitioner to verify. However, what if GenAI proffers ‘softer’ facts? Consider how one might check an AI’s assertion as to the prevailing practice for certain applications to court, or the statistics on how often such applications succeed. There is a risk that the ‘facts’ are fictitious, but not readily capable of verification. If unverified ‘facts’ are relied on in court, they may become self-fulfilling (e.g. a judge might record that “I am told by counsel that...”).

Second, cognitive offloading refers to the delegation of mental processing tasks to a machine, thus reducing the person’s ability to perform the task. Over-reliance on AI might result in excessive trust in its output and de-skilling. Humans performing a task alongside robots have been observed to have increased error rates as compared to humans working alone.<sup>5</sup>

Third, there are professional conduct concerns. If the client’s consent is required for a FIRE practitioner to have another person prepare the first draft of a piece of work, ought the client similarly be consulted if GenAI is producing the first draft?

***More problematic is the issue of confidentiality. When information is input into GenAI, that information is subsequently used by the AI when answering later questions from a different user.***

Consider Lawyer A for Party X asking ChatGPT questions about a dispute with Party Y; if Lawyer B, for Y, later asks ChatGPT questions about the same case, ChatGPT may answer using X’s confidential or privileged information input by A when asking the first question.

## Has the robot revolution arrived?

The speed of AI development is impressive. Discriminative AI is an accepted part of FIRE litigation and has evolved in complexity over the years. The sudden public appearance and uptake of GenAI represents a significant leap forward. Its sophistication has already notably improved.

However, the robot revolution has not arrived. It is unlikely that AI will replace the FIRE practitioner until AGI is achieved. Even then, a natural distrust of machines is likely to prolong the existence of the FIRE practitioner – consider the slow uptake of autonomous vehicles, despite evidence that by some parameters they are less dangerous than human drivers.

Thus, until the advent of AGI, AI cannot replace FIRE practitioner. However, a FIRE practitioner who does not employ AI tools may well be replaced.



5 Cymek, D. & ors, ‘Lean back or lean in? Exploring social loafing in human-robot teams’ (2023) 10 Front. Robot. AI



## CRACKING THE CODE: THE IRREPLACEABLE ROLE OF FIRE PRACTITIONERS IN THE AI ERA

Authored by: Natalie Tenorio-Bernal (Senior Investigator) – Edmonds Marshall McMahon

Artificial intelligence (“AI”) is one giant magic trick which is being used to augment human intelligence.

AI will very soon come into every industry, albeit in some quicker than others, just as mobile phones have.

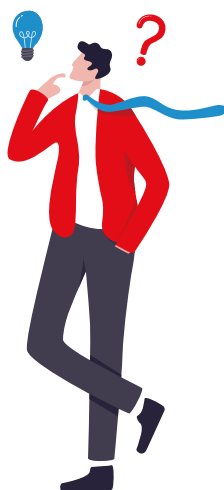
***We cannot imagine a life where we don’t have our phones attached to our hand and AI will become the same sort of utility, although currently it is a glorified autocorrect.***

This essay will delve into how AI has evolved/continues to evolve and how AI can impact the future of law, in particular the future of fraud, insolvency, asset recovery and enforcement practitioners (“FIRE”).

### New ways of working

Over the last 18 months, AI has grown in popularity. Businesses have realised that it is no longer something that would be nice to have but is becoming more of a necessity if they wish to compete

with others. A recent report published by MIT Technology Review Insights<sup>1</sup> found that 81% of survey respondents expect AI to boost efficiency in their industry by at least 25% in the next two years with one-third stating the gain will be at least 50%. Furthermore, every organisation surveyed has stated that they will boost spending on modernising data infrastructure and adopting AI during the next year due to the unprecedented growth there has been, and for nearly half of the respondents (46%), have stated that the budget increase will



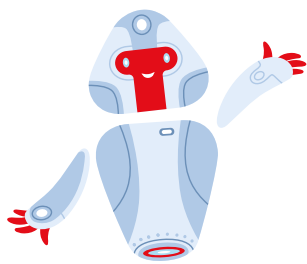
exceed 25%.

AI is a term that encompasses technologies which rely on being fed data to make decisions but I prefer using the term “cognitive computing” – artificial intelligence just sparks an image in my mind of robots walking and talking amongst us.

Cognitive computing mimics human intelligence to solve problems and it is a technology that is trained how to carry out certain tasks rather than being programmed to do a specific task. One industry that springs to mind of where cognitive computing has exploded is the financial industry, in particular financial advice.

Robo-advisors offer tailored portfolios to an investor’s risk appetite, with little to no human interaction, which means the cost of providing this service to customers is low while having their portfolio expertly managed. With the rise of this technology, it is, therefore, no coincidence that there has been a rise of £4.5 billion in 2017 to over £24 billion in 2022 in assets under management.

<sup>1</sup> <https://www.technologyreview.com/2023/10/05/1080618/laying-the-foundation-for-data-and-ai-led-growth/>



## AI and its many forms

There are numerous types of AI which I don't intend to detail here as I would probably lose your attention along the way but at a high-level, I will take you through the evolution of AI.<sup>2</sup>

At stage one, AI is capable of mimicking human intelligence by using mathematical rules and large amounts of data. Stage one AI is probably the most familiar form of AI which we are likely to interact with daily without even realising. It is the type of AI that provides us with suggested connections on LinkedIn, enables Siri to set reminders to call our mother-in law and unlocks our mobile phones with facial detection and recognition.

At stage two, general AI is combined with machine learning AI. It also uses maths, algorithms, and large amounts of data to learn how to do something rather than being programmed to do something. For example, a car learns how to park itself or bank transactions are classified as fraudulent (or not) to compliance teams.

The third and final stage is known as Generative AI or GenAI for short. GenAI is in essence a computer creating and dreaming up its own ideas after learning from patterns and previous examples. This includes composing a new song, writing poetry and even drafting legal documents without any explicit human instructions.

However, it is important to also draw attention to natural language processing ("NLP") - another form of AI. NLP computers analyse large amounts of natural language data which enables them to understand, interpret, and manipulate human language. We want to be able to curate this technology for it to aim towards what we need and want from it. Despite this, AI will replace some jobs, supplement others, and create new ones, including FIRE practitioners.



## The future of law and FIRE practitioners

Recent headlines have warned us and even scared us of the dangers of available AI technologies such as ChatGPT and how they are going to revolutionise the workforce. The question on everyone's mind is: should we be worried and are we right to have these concerns? The answer to that is no.

***The World Economic Forum predicts that by 2030, about 30% of all jobs will be at risk of AI automation and, while this seems to be causing some panic, the situation may not be as dire as it seems.***

So, as exciting as it may sound to have an army of robots take over the reins from FIRE practitioners, I just don't see it happening. Instead, as with the technological advancements over the past 30 years, AI will alter how we operate.



## Once upon a time...

Long gone are the days of legal research and reading pages of court judgments. The allure of an 'easy life' is ultimately a driver for cognitive computing and very soon, we should be able to rely on AI to summarise what the law says, leaving practitioners more time to do the actual lawyering, investigating, analysing and advising clients.

***Document review will also become a distant memory***

***because, frankly, AI will be able to do it faster and more cost-effectively than us humans ever could.***

This isn't meant to undermine what humans have done and can do, but the truth staring us in the face is that computers can process so much information at a higher pace than individuals do. For example, in the time it takes a human to answer one mathematical problem, AI is today capable of solving ten.<sup>3</sup>

An example of where AI-led document review will be transformative can be highlighted in the insolvency space. When a company goes into insolvency and a practitioner is appointed to investigate what has happened, sometimes with a company that operates in multiple jurisdictions, an AI backed document review system, with the input from humans of key words/phrases/subject matter, will complete an initial review to identify the potential lines of inquiry, key individuals to interview etc., which the practitioner can follow-up on.

This will mean that those individuals whose roles are focused on document review or legal research may need to adapt. I don't think we will see the day where lawyers won't want to or need to verify the output AI produces i.e. are there documents which haven't been marked privileged? This verification process is vital in our area of practice because the consequences of these sort of mistakes can be devastating.

Let's also not shy away from the fact that AI is a copycat. There has been a wave of litigation in the US against AI providers for trademark, copyright, libel, and privacy breaches. The use of copyright material to train AI is an ongoing debate in the courts. For example, Thomas Reuters claims that Ross Intelligence used its legal research platform, Westlaw, to train the AI. In that case, the judge decided that the matter had to be decided by a jury.



2 <https://legal.thomsonreuters.com/en/insights/articles/ai-and-its-impact-on-legal-technology>

3 <https://www.simplilearn.com/artificial-intelligence-vs-human-intelligence-article#:~:text=Computers%20have%20the%20ability%20to,ten%20problems%20in%20one%20minute.>

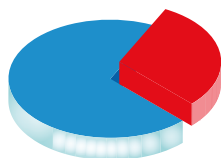
## Computer says 'No'

The rise of AI will create new jobs within the FIRE sector. The professionals we will need to hire are changing and we should be looking outside of traditional vocations for these individuals.

Legal engineers will be in high demand as they will be key in developing and managing our AI tools. But does this mean that with the increase in engineers, lawyers will get pushed out of the profession? I don't think the profession will let this happen. The roles differ widely and there will be enough space for us all.

These engineers should also be able to choose the right AI for the task in hand and construct the right queries to get the most of what these tools can do for us.

***These individuals are vital to ensure that the AI tools that are meant to free up our time to complete the tasks they can't, do in fact work. Nobody wants to put up with 'computer says no.'***



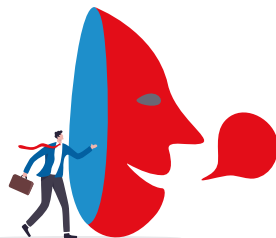
## 70/30 chance of success

In 2016 researchers at University College London, the University of Sheffield and the University of Pennsylvania reported on their AI model. The model was able to predict the outcome of historic European Court of Human Rights decisions with 79% accuracy. Dr Nikolaos Aletras, who led the study explained:

"We don't see AI replacing judges or lawyers, but we think they'd find it useful for rapidly identifying patterns in cases that lead to certain outcomes. It could also be a valuable tool for highlighting which cases are most likely to be violations of the European Convention on Human Rights."<sup>4</sup>

It has been seven years since this report was published, but this model of

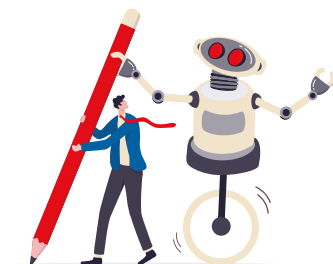
predicting the outcome of a case could be invaluable to practitioners, clients as well the litigation funding industry. AI will assist with the process of assessing the merits of claims and, in turn, inform their decisions on whether to pursue or invest in certain case and minimise the success rate risk practitioners, and clients are exposed to during litigation.



## Fraud detection

Efficient and timely detection of fraud is an area in which AI will transform the world of fraud practitioners. Being able to identify and trace funds from a victim's crypto wallet through exchanges and the multiple wallets it is likely to go through, at the click of a button, would be hugely valuable in terms of recovering funds.

Now imagine a world where you have gathered all bank statements relevant to your case and your legal engineers have fed the AI tool with this data. You've then asked the AI to follow the funds and list all the transactions, including account details, of the money your client has sent to the fraudster. Forensic accountants, asset recovery practitioners, lawyers and law enforcement could not only carry out their job more efficiently but could so at the click of a button.



## How far off are we from being replaced?

Benchmarking AI legal advice against a lawyer's advice is where we find ourselves now. Linklaters created LinksAI English Law Benchmark which

tests the capabilities of LLMs to provide English law legal advice by asking 50 questions from 10 different practice areas.

You'll be glad to hear that AI hasn't passed the benchmark...yet. The answers given by the LLMs were convincing but were not always correct and lacked the nuances and context you would expect from legal advice. Linklaters intend to rerun the benchmarking tests and when it does, the LLMs may just pass with flying colours.<sup>5</sup>

But this doesn't change my view that the future of law and FIRE practitioners is safe. Some may say my view is naïve, but from my experience clients want to speak to a real person, giving them advice on real life issues, which at times means their liberty or livelihood is at stake.

As FIRE practitioners, we often need to navigate complex and dynamic situations that require a combination of legal knowledge, financial expertise, and interpersonal skills. Building relationships, understanding the nuances of individual cases, and interpreting the broader economic and legal landscape involve a level of complexity that AI may struggle to fully comprehend. In fact, I asked ChatGPT this question: "What jobs will AI be unable to replace?" Within seconds, I was told jobs which require complex human skills, creativity, emotional intelligence, and nuanced decision-making, would be less likely to be fully replaced by AI.

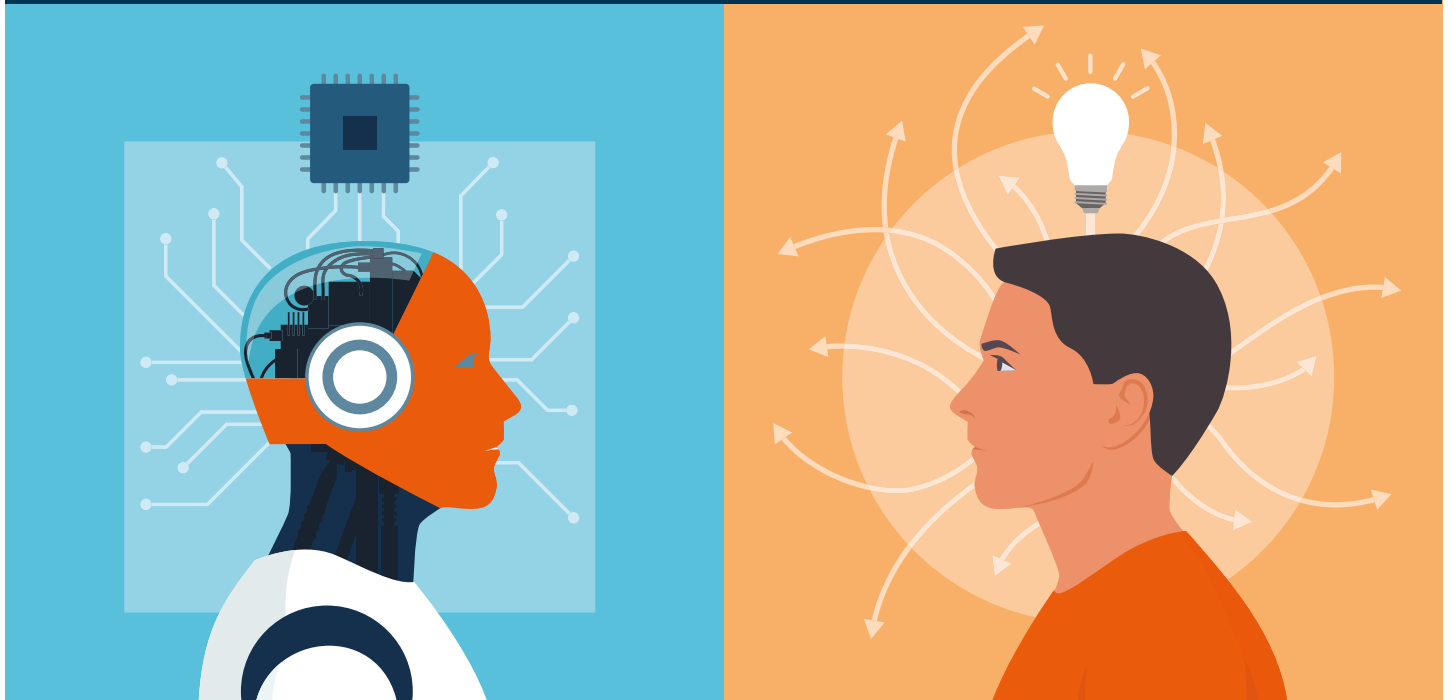
***To end, I want to leave you with the following question...Will the generations to come be more trusting of this technology and in turn, will this create a new normal where nuance and lateral thinking are not seen as an advantage?***



4 <https://www.ucl.ac.uk/news/2016/oct/ai-predicts-outcomes-human-rights-trials>

5 [https://pscdn.linklaters.com/-/media/files/document-store/pdf/uk/2023/october/report\\_linksai-english-law-benchmark\\_october-2023.ashx?rev=fc8c65ae-00f6-408e-9aec-4bf7846f82db&extension=pdf](https://pscdn.linklaters.com/-/media/files/document-store/pdf/uk/2023/october/report_linksai-english-law-benchmark_october-2023.ashx?rev=fc8c65ae-00f6-408e-9aec-4bf7846f82db&extension=pdf)

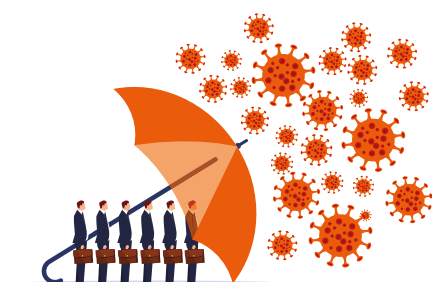
# THE AI REVOLUTION: CAN THE FIRE INDUSTRY SURVIVE IT?



Authored by: Rushda Khan (White Collar Law Practitioner) – Supreme Court of India

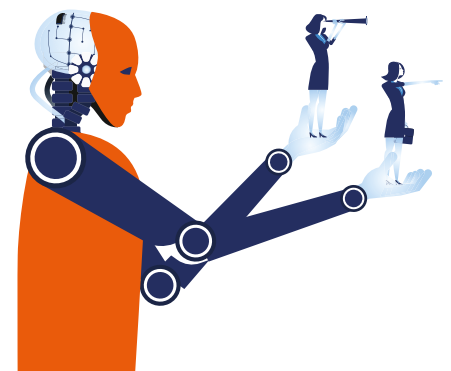
In 1965, Gordon Moore – the man who co-founded Intel – made a prediction. Every two years or so, he said, the processing powers of computers would double. Since the 60s, there have been more than 30 of these doublings and his prediction more popularly has come to be known as Moore’s law.

***This processing power of computers predictably was likely to be burgeoning for the foreseeable future, but what has catapulted massive advancements in technology is something that no-one could predict – the COVID 19 pandemic.***



For good or for bad, since the COVID-19 lockdown has hit the world, law has been propelled into the digital age by the virus and its entire landscape is being shaped on account of it. Long resisted by the old school nature of the legal culture, technology has surely made its way to the legal industry and a fundamental shift can be seen in the functioning of law. The legal industry is far more open-minded about using technology now than it was pre-pandemic.

The pros of having experienced the convenience and seamlessness that technology offers are starting to outweigh the many cons in avoiding its use. Initial resistance to avoid its usage even in automating legal tasks regardless of how mundane they are is seeing signs of dissolution. However, as technology systems are becoming increasingly competent, the initial concern or fear amongst the legal fraternity of becoming redundant remains and this consternation is sometimes heightened.



## **FIRE Practitioner: Can They Be Replaced?**

To understand this, we have to first understand our role and function as lawyers particularly as experts in fraud, insolvency, asset recovery and enforcement. A FIRE practitioner’s expertise is twofold, first it includes knowledge and experience of how the legal system works- the procedural rules that guide the determination and application of law. And second is determining the substantive rules of law, what the applicable law is, what the facts are, and how the facts fit into the applicable law. Historically, these decisions depended on the expertise



and experience of lawyers who have practiced and gained knowledge over years. These years of training as a FIRE practitioner, the personal experience and judgment are often relied on to make predictions about the future when advising clients, but can it be replicated by artificial intelligence making such experts entirely redundant?

This question only arises when we mistake the fundamentals of analysis and artificial intelligence.

***On March 23 2017,  
Professor Richard  
Susskind, President of  
the Society for Computers  
and Law tweeted, “AI has  
become a verb. We can AI  
that.***

Often said by people who would struggle to distinguish between a neural network and a custard cream.” There is a point that Prof.Susskind was making here which is that usage of the word AI is unregulated often misunderstood as intimidating by those who don’t understand it.

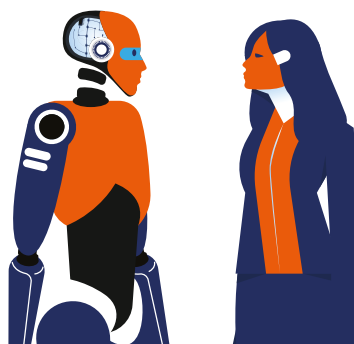
## **Data In The Driver’s Seat**

The pivotal point about artificial intelligence is that it is driven by data. World-wide two and a half quintillion bytes of data is created on a daily basis as estimated by International Data Corporation and is only predicted to increase. This enormous generation of data in unprecedented volumes also called as “big data” is a data flood that is sweeping through academia, business and government. [Enlarge] This data itself is being seen as a new class of economic asset, like currency or gold. The analytics powered by big data take massive volumes of data and strip out irrelevant or redundant information, making it searchable readily. Currently legal databases like Westlaw and Lexis and legal search

services use big data to deliver the most relevant case precedents and quality legal research that is supersonic fast and accurate for its users. These tasks would otherwise take weeks, months or even longer to complete, have been automated by systems. These systems or programs are based on techniques of artificial intelligence like natural-language processing, pattern recognition and machine learning. The greater the quality of data that is fed to the program, the better the output of the systems would be as the systems are entirely driven by data to enable it to process, recognise patterns and learn. This type of machine learning is simply analytics that predicts from the patterns that it establishes from the data which it has been fed. So, while it performs in a similar way to the human brain, pattern recognition and learning is just one of the countless functions that the human brain performs simultaneously.

But like a custard cream cannot replace lawyers, artificial intelligence cannot replace lawyers. In that sense AI is as lifeless as a custard cream and can only be powered by systems and data and learns over a period of time. Its function is to supplement a lawyer’s judgment, experience and decision-making process, and perhaps shine new possibilities with fast access to data analytics and data expertise. Currently, there is an opportunity for systems to be developed to provide insights on case arguments and litigation strategy. This opportunity is being taken across the world and there is a revolution underway on how litigators could decide critical questions of litigation strategy and tactics and quantify the prospects of success or risk for almost every option during a case. This is done by data analysis of outcomes from previous cases; amount of judgments or settlements; and the overall costs of similar matters. This data driven thinking appears to be the next chapter in the application of AI for the legal industry.

## **AI Tools Transforming Law**



Despite the caveats, there seems to be no turning back on the big data revolution in the legal industry. Historically, data has always been part of practicing law, however the critical role that it plays in case management and preparation is only increasingly emerging in the current big tech environment. Judiciaries world over are not too far behind either in embracing technology and AI tools. Courts in Brazil are deploying VICTOR- a court assistance AI tool, which has significantly reduced the time judges take perusing case precedents and applying them to a potential lawsuit. In India, SUVAAS and SUPACE demonstrate the first generation of AI technologies for the Indian justice system. SUPACE can automate and extract various facts from the file, identify and extract various objective facts like date, time, place of occurrence of event, etc. It can locate various questions involved and the answers relevant to it and allows the user to perform all the relevant tasks that are usually undertaken in a fragmented manner in any word processing software.

***Embracing technology  
in this manner by the  
court and legal systems  
would have scarcely been  
deemed possible before the  
pandemic hit. Therefore,  
catapulting of the legal  
industry towards data-  
driven thinking and greater  
technological integration  
has been a transformative  
and pivotal phase of this  
decade.***

The potential of under-utilised AI tools and alternative work paradigms long resisted by the legal traditionalists are now being embraced to gain an edge over competitors that have not familiarised themselves with the tools of this new technology. To be empowered to quantify the prospects of success or the scope of risk for almost every option during a case, assessing outcomes from previous cases; overall costs of similar matters etc all based objectively on facts and historical data is indeed revolutionary and multiplies the potential of any legal practitioner or service. It is possible that these artificially intelligent systems are able to make predictions and perform tasks at

a higher standard than human beings. However, instead of viewing it as posing a threat to FIRE practitioners, one could view this technology ushering in a period of redeployment where lawyers and judges will undertake different tasks and work differently. The advances in technology are inevitable and apparently, there is no finishing line in tech, and Moore's law doesn't contemplate an end date. The scale of current investment in technology and brain power is growing and tomorrow's systems are going to be vastly more capable than those of today. Perhaps, acceptance of this fact rather than irrational rejectionism would serve us better as FIRE practitioners to be prepared for a world shaped by AI.

L



# AI WILL TAKE YOUR JOB...EVENTUALLY.



## BUT YOU'LL FIND A BETTER ONE

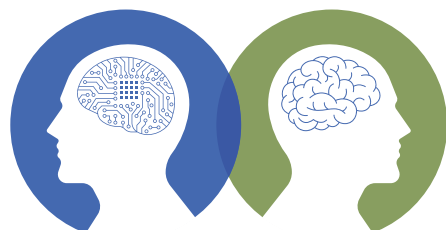
Authored by: Shan Qureshi (Director) - Reorg

It may be brazen to answer the presented question with a simple answer, but yes.

***The FIRE Practitioner (FP) current function can, and will, be replaced by artificial intelligence (AI) eventually.***

This writer's view is that given enough time and development, AI will replace the current human function in almost all financial service and legal industries.

Perhaps the better questions to be asked are: Which areas of the FP's current practice will first be replaced by AI, and in contrast which areas will be undertaken by humans for the longest?



FIRE refers to Fraud, Insolvency, asset Recovery and Enforcement. Although each of these sectors is different, each practitioner will, in their day to day job, be undertaking one of four key types of work; i) administration and research; ii) analysis of company and human behaviour; iii) evaluation of argument and negotiation; and iv) creative problem solving.

This writer predicts that AI will gradually replace the role of the FP from i) to iv) and in that order. The last bastions of the FPs existing function which will remain safe from AI replacement will be those which rely on relationship and personal touch factors.

Practitioners are already using AI to undertake basic research tasks and complete administrative projects in an efficient and cost-effective manner. Sectors ii) to iv) are more complicated and it will be further into the future before AI can take over these tasks. Each of the four above functions is considered below in more detail using examples.

Note that this writer does not predict a complete rendering obsolete of the FP, but instead predicts a future change in function of the FP from the current status quo. AI will undertake significantly all current functions - allowing the role of the FP to evolve to take on new responsibilities.

Sam Altman, the CEO, (then not CEO, then CEO again) of OpenAI<sup>1</sup> recently commented that the agricultural, industrial, computer, and AI revolutions are just one long story of humans discovering science and tech and learning how to grow with it.

The computer revolutions of the end of the 20th century did not render millions unemployed, instead they freed up time for humans to take on different, more relationship based and creative tasks. The same will be true for AI. AI will be unlikely to replace the humanity of business relationships any time soon - after all it is people who do deals with other people!

<sup>1</sup> <https://podcastnotes.org/joe-rogan-experience/sam-altman-decision-making-models-in-agi-neural-interfaces-and-cyborgization-corruption-technology-and-future-of-money-the-joe-rogan-experience-2044/>





## Administration and Research

AI has emerged as a transformative force in the administrative sector of the FP's industry. There exists a plethora of AI technologies and services that streamline document management, automating time-consuming tasks such as sorting, indexing, and categorizing legal documents. This not only accelerates workflow (and cuts costs) but also minimises the risk of errors associated with manual document review.

Moreover, AI's impact on legal research is already profound. Natural Language Processing (NLP) algorithms like ChatGPT enable AI systems to comprehend extensive legal texts, statutes, and case law. Rather than having an FP undertake time consuming human research, AI-powered legal research tools not only expedite the process of finding relevant precedents and case law.

This writer expects that tasks which fall under this heading to be the first to be completed by AI as a matter of good practice - and rightly so.

***The endless expensive hours that are undertaken by lawyers, particularly junior lawyers, in completing basic research tasks and administrative filings represent one of the most archaic parts of the industry.***

One of the key downsides, however, to having AI replace this function is that it could deprive junior lawyers of gaining valuable educational opportunities in research and of course trains them to be attentive and thorough.



## Prediction of Company and Human Behaviour

AI is revolutionizing the landscape of predictive analysis, there are several new technologies offering unparalleled insights into both company and human behaviour. These AI tools claim to serve as a powerful tool for forecasting and decision-making.

FPs involved with evaluating the financial behaviour of distressed debtors often find themselves predicting future financial performance or evaluating previous performance using a variety of metrics and standards. Investors often have large teams of financial analysts and subscribe to several information providers, such as Reorg, hoping to gain an information edge.

One significant application of AI is financial forecasting. Machine learning algorithms can analyse vast datasets of financial information and historical performance to generate instant predictions of a company's future financial health. Reorg, for example, has recently developed CreditAI<sup>2</sup> - a chatbot which can access all of Reorg's intelligence and assist users with research.

***This writer predicts that some functions of the FP will first be complemented by AI forecasting tools, but gradually the majority of human analysis will be replaced.***

The difficult part for AI here is predicting "Black Swan Events". Over the last four

years there have been an incredible number of such events - Covid, Russia/Ukraine War; and the Israel Conflict. Would AI be able to predict such events? Perhaps it could identify possible risk events, but be able to accurately confirm their occurrence? Much more difficult.

Further, if all market practitioners are using AI to analyse debtor behaviour, there could be a convergence in prediction? This cannot be a good thing. At least initially therefore the skill of the FP could be in telling AI tools which information to use in analysis and what value to apportion each class of information.

FPs who work in the area of fraud are often concerned with evaluating and uncovering fraudulent human behaviour. But does it take a human to be able to recognise human fraudulent behaviour?

AI can analyse complex patterns in financial transactions, employee behaviours, and communication data. By establishing baselines, AI systems can pinpoint irregularities that may indicate fraudulent activities. This includes unusual spending patterns or deviations from normal employee conduct. Further, machine learning models within AI continuously evolve, learning from historical fraud cases and adapting to new tactics employed.

An advantage of this adaptability enhances an AI system's efficacy in staying ahead of sophisticated fraudulent schemes. Additionally, AI can facilitate real-time monitoring, providing immediate alerts when fraudulent activities are detected. This is an incredible tool for those working in complex fraud cases involving forensic investigations.

This writer believes that these advantages sound very attractive, there are clear benefits. AI may lack bias and be free from sexism, racism or any other prejudice but also would lack empathy or a human understanding. It is important to note that AI will need careful development to ensure that it remains bias-free, there is a danger that it emulates existing and unattractive biases in current practice. Further, AI may misinterpret actions as fraudulent when they were, in fact, equitable based on the facts. Of course, judgment of fraud will (at least for now) fall to human judges in courts - discussed further below.



## Evaluation of Argument and Negotiation

FPs who are lawyers or part of the judiciary will often be evaluating arguments, before going to litigation or during. In a litigation scenario, an AI system could instantly analyze precedents, statutes, and case law to identify relevant legal arguments to help arm participants.

The system can then evaluate the persuasive value of each argument based on historical outcomes and legal nuances.

**Moreover, AI contributes to predictive legal analytics, forecasting potential outcomes based on historical data - this could be incredibly valuable to litigation specialists and the clients.**

Legal professionals can leverage AI to assess the likely success of different legal arguments in specific contexts.

For instance, in contract disputes, AI can analyse contractual language,

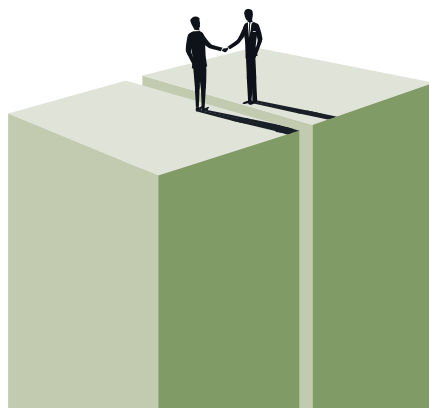
industry standards, and precedent cases to evaluate the strength of arguments.

An AI system which can make legal arguments may work in theory - but could it work in practice, for example in pleadings in front of a judge. Barristers often have a very human and sometimes emotional approach to persuading a judge. Their arguments or tone are tailored to the reactions of a judge or their opposition's behaviour.

Would AI be able to do this? This writer thinks that this human part of litigation would be extremely difficult for AI to imitate. Useful developments of AI in this area do not yet exist.

There is also the possibility of AI assisting or eventually replacing the judiciary. It is noted that the English judiciary is already using AI in the form of ChatGPT to help write parts of judgments (see Justice Birss judgment of Sept 2023).<sup>3</sup> An AI judge may be able to consider evidence and argument in a completely unbiased manner, however it is incredibly unnerving to leave the responsibility of administering justice to a machine!

In negotiation, AI is already being used by the legal profession. There are several companies<sup>4</sup> selling AI technology which allows parties to negotiate simple documents such as NDAs. However where negotiation involves more complex scenarios, with several stakeholders and a multitude of documents - the issuer is trickier. AI may be able to present a stakeholder's position, it may even be able to compromise, but what happens when parties reach a stalemate? This writer queries whether AI is currently complex enough to come up with flexible solutions - perhaps this function will remain a human responsibility for a while yet. This leads us to our final sector, below.



## Creative Problem Solving

In this writer's view, this is the skill of the FP that will be the last to be replaced by AI. AI, while proficient at processing vast amounts of data, often lacks the intuitive and context-sensitive thinking inherent in human creativity. The role of the FP often requires the synthesis of diverse information, empathy, and an understanding of the broader societal context, elements that AI struggles to replicate.

Human lawyers bring emotional intelligence, and a nuanced understanding of the subtleties within legal arguments, making them better equipped to navigate the dynamic nature of the legal landscape.

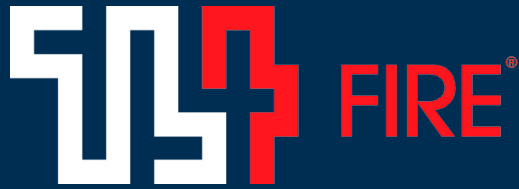
Perhaps it will be the case that AI undertakes the majority of evaluation and analysis in any given situation, however for a considerable amount of time into the future, it will be the human FP that is responsible for creative problem solving!

As a final thought - William Gibson said "The future is already here, it's just not very evenly distributed". Development and application of AI requires significant financial investment, therefore it will develop fastest where it offers lucrative rewards. This will mean that different parts of the FP's function may benefit from the development of AI at different stages. This writer is of the view that FPs should start positioning themselves to receive and exploit AI to their advantage, rather than fear or reject it.











3 <https://www.telegraph.co.uk/business/2023/09/14/british-judge-uses-jolly-useful-chatgpt-to-write-ruling/>

4 <https://www.ndalynn.com/>



# Upcoming Events

-  **FIRE & ICE Circle Europe**  
12<sup>th</sup> - 13<sup>th</sup> March 2024 | Le Mirador Resort & Spa, Vevey, Switzerland
-  **FIRE International: Vilamoura**  
15<sup>th</sup> - 17<sup>th</sup> May 2024 | Anantara Hotel, Vilamoura
-  **FIRE Americas: Cayman**  
5<sup>th</sup> - 7<sup>th</sup> June 2024 | The Westin, Grand Cayman
-  **FIRE UK Circle**  
July 2024 | Jersey
-  **FIRE Summer School**  
August 2024 | Downing College, Cambridge, UK
-  **Contentious Trusts Next Gen Summit**  
18<sup>th</sup> - 20<sup>th</sup> September 2024 | Conrad Hotel, Dublin, Ireland
-  **FIRE Asia Circle**  
October 2024 | Singapore
-  **FIRE Middle East 2024**  
10<sup>th</sup> - 12<sup>th</sup> November 2024 | Shangri-La Hotel, Dubai

To register for the events and speaking opportunities contact:



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