AI in Law

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BREAKING

Lawyer Used ChatGPT In Court—And Cited Fake Cases. A Judge Is Considering Sanctions

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I cover breaking news.

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TOPLINE The lawyer for a man suing an airline in a routine personal injury suit used ChatGPT to prepare a filing, but the artificial intelligence bot delivered fake cases that the attorney then presented to the court, prompting a judge to weigh sanctions as the legal community grapples with one of the first cases of AI "hallucinations" making it to court.

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British judge admits using 'jolly useful' ChatGPT to write ruling

Lord Justice Birss, a Court of Appeal judge, said he had confidence in ChatGPT's generated answers - but stressed the importance of not relying on AI for topics on which you know nothing about.
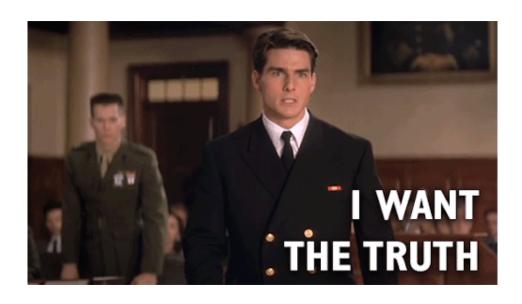
🕐 Friday 15 September 2023 17:26, UK

How are Damages Quantified?

➢ **Independent experts usually retained when**
   ➢ In common law jurisdictions and most international arbitrations
   ➢ Damages are complex / high value

➢ **Experts usually retained by both sides**

➢ **Opinions communicated:**
   ➢ Firstly in expert reports
   ➢ Lastly at trial/hearing where experts are usually subject to cross examination by the opposing parties' counsel and to questions from the judge/tribunal

➢ **Court/tribunal needs to determine when experts don't agree**

Requirements for Expert Evidence

➤ Varies between jurisdictions and tribunals

➤ Common themes:
  - ➤ Overriding duty to the court/tribunal
  - ➤ Opinions should be unbiased
  - ➤ Experts should state the facts and assumptions upon which his/her opinion is based
  - ➤ Experts should not omit to consider material facts
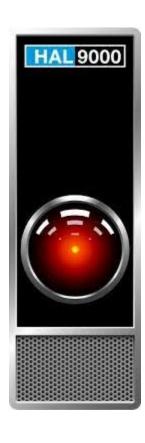 - ➤ Experts should make it clear when an issue falls outside their expertise

Key Opportunities

➢ Experts are expensive and it can take them a long time to review documents and prepare opinions

➢ Courts and tribunals often concerned that experts' stated opinions are biased in favour of the party instructing them

➢ Quality of experts can vary significantly
  ➢ Experts aren't always current on latest developments in their field
  ➢ Experts are human and make human mistakes

Key Challenges

➢ Tools exist to calculate damages and tools exist to extract relevant data from large volumes of material – nothing yet that offers true understanding

➢ Reliability and reproducibility of opinions generated by stochastic models

➢ Sourcing of information relied upon (not just quoted)

➢ How to choose between the opinions of competing AI models?

➢ How to cross examine an AI model and assess the impartiality and truthfulness of its responses?

    ➢ What is at stake for the model?

Where are we… Now?

- Identification of relevant documents and relevant information within documents (Technology Assisted Review)

- Google Translate and ChatGPT
  - Currently inadequate awareness of security/confidentiality issues

- Combinations of TAR and language translation tools have been groundbreaking

- Generative AI models trained specifically for legal work

- ML models to predict damages quantum for high-volume low-value disputes (e.g. motor accident claims) already being used

Near Future?

➢ Development of existing predictive quantification models so that they can be employed for quantifying more varied and complex claims

    ➢ Unlikely to be used as expert evidence

    ➢ May be used to test opinions

    ➢ Parties may agree to be bound by the outcome

➢ Improved tools for identifying relevant market data which might assist with damages quantification exercises

➢ Development of trained models for testing expert reports and opinions before they are finalized (similar to existing contract review tools for lawyers) to identify:

    ➢ Unsupported statements

    ➢ Inconsistent reasoning

    ➢ Logic errors

Long Term?

➢ Once capable of understanding the problem and generating robust 'opinions', it might be hoped that models would initially be implemented in parallel or to test traditionally generated opinions – possibly wishful thinking

➢ At the point at which expert opinions on complex claims are automated, one might also expect the roles of lawyers and judges/arbitrators to also have incorporated an increased level of AI-driven automation

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Closing Thoughts

➢ Many experts are already using some AI or AI-like tools for narrow tasks

➢ Increasingly, heavy users of dispute resolution services are looking at cost saving solutions to automate some damages calculations
  - ➢ For now this is for narrow use cases, however expansion seems likely
  - ➢ In situations where large volumes of novel similar claims need to be processed quickly and training/oversight can be provided, it may be worth exploring whether models could be employed

➢ The need for sourcing and reproducibility will likely limit AI tools to serving in an assisting role insofar as expert evidence is concerned

➢ Courts and tribunal are likely to be very uncomfortable with opinions that have come from a 'black box'

Bio & Disclaimer

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Iain Potter is a Chartered Accountant, qualified in both the UK (ICAEW) and Singapore (ISCA), specializing in complex loss of profit and valuation engagements and he has been based in Singapore since 2014.

Iain has been appointed as an expert on dozens of occasions, regularly provides testimony under cross examination before courts and arbitral tribunals and has experience of both common law and civil law proceedings. He is recognized as a leading expert in Who's Who Legal's guides for arbitration and litigation, with clients praising his *"matter-of-fact approach to drafting reports and giving testimony"*, adding that *"He is a fantastic expert witness for quantum valuation and forensic accounting."*

Outside of his expert appointments, Iain is a member of the adjunct faculty at the National University of Singapore's Business School, where he lectures on damages quantum and business valuation disputes. He is also pursuing a number of lines of research, currently including a PhD focusing on the extent to which awards of damages reflect risk and uncertainty.

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