

# Artificial intelligence and legal ethics

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Svenson Barristers CPD Day | RACV Club, Melbourne

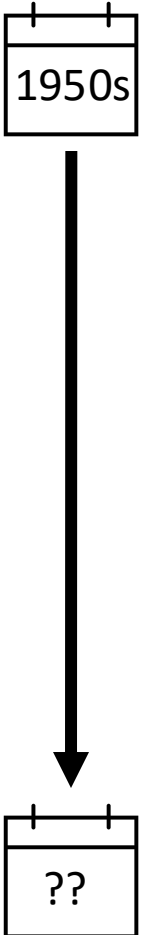
# Outline

- Introduction to advanced AI tools
- Formal guidance to the profession
- Some challenges with AI in legal practice
- Court cases
- Tentative conclusions
- A coda on robot law

# Introduction to advanced AI tools

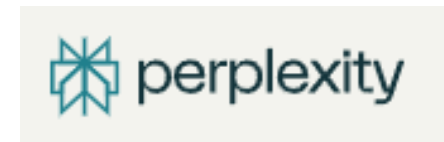
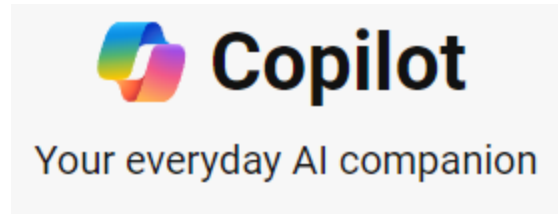
# Definitions

- **Artificial intelligence (AI):** a term describing a range of technologies and techniques used to computationally generate outputs that typically require human intelligence to produce
- **Machine learning:** An area of AI involving systems making decisions based on their analysis of data initially provided to them, and then learning from their experience in order to produce better results.
- **Natural language processing (NLP):** a subfield of computer science and AI that uses machine learning to enable computers to understand and communicate with human language.
- **Generative AI:** AI systems that are able to produce new output such as text or images, usually based on text prompts provided as an input. Large language models (LLMs) can “ingest” and produce text.
- **Agentic AI:** agentic AI takes autonomous capabilities to the next level by using a digital ecosystem of LLMs, ML, and NLP to perform autonomous tasks on behalf of the user or another system.
- **Artificial general intelligence (AGI):** a type of highly autonomous AI that matches or surpasses human cognitive capabilities across most or all economically valuable work or cognitive labor
- **Artificial superintelligence (ASI):** theoretical, AGI that greatly exceeds human cognitive capacities.



# Introduction to advanced AI tools

## General purpose



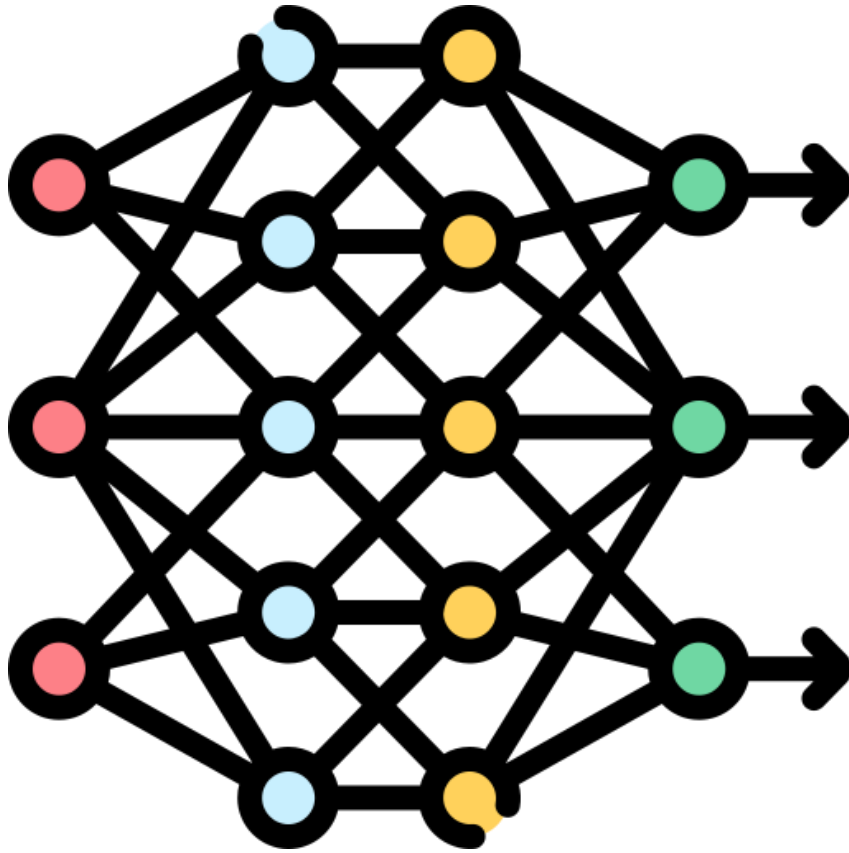
## Specialist legal



# Possible legal use cases for advanced AI tools

- General
  - Assist with client onboarding / client questionnaires
  - Summarise client conferences
  - Summarise matter files / chat with matter
  - Letter / email writing
- Research
  - Legal research / intelligent search
  - Summarise cases / generate headnotes
  - Suggest lines of inquiry
- Drafting and related analysis
  - Submissions
- Contract review/negotiation
- Discovery/forensic
  - Summarise/analyse evidence
  - Produce chronology / who's who
  - Pleadings / evidence gap analysis
  - Automate LPP / relevance review
  - Network analysis / visualisation
- Presentation/marketing
  - Marketing plan
  - Execution?

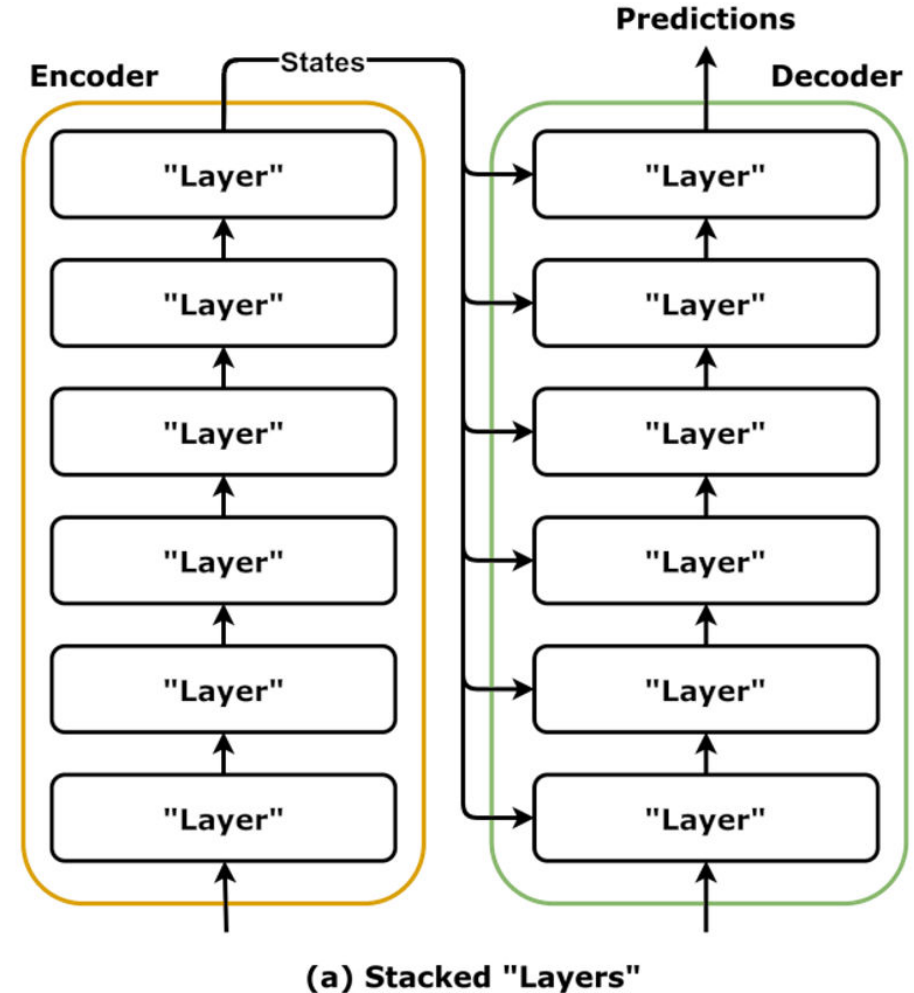
# Simple neural network architecture



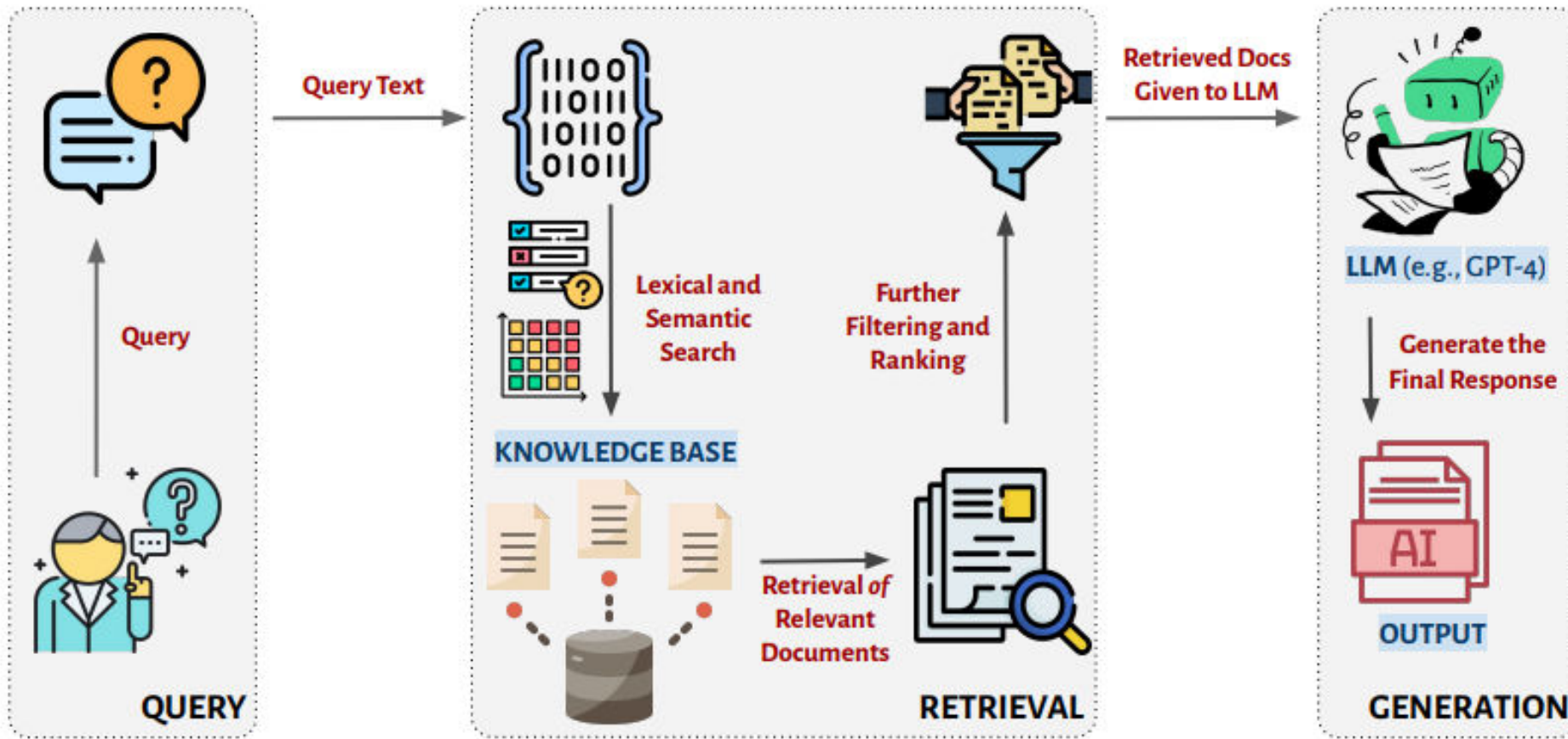
- Inputs (eg pixels) converted to outputs (eg “cat”)
- “Neurons” linked by connections of different strength (“weights”)
- Neurons are arranged in “layers”
- Weights are adjusted iteratively during training to maximise getting the right output for each input
- Correct classifications can be made for novel inputs – system has learned to generalise (achieved induction)

# Transformer models

- **Structure:** Transformer models use a mechanism called **self-attention**, which allows them to weigh the importance of different parts of the input data. They consist of encoder and decoder layers.
- **Key Feature:** The self-attention mechanism enables transformers to handle long-range dependencies in data more effectively than traditional neural networks.
- **Applications:** Transformers are particularly powerful in natural language processing (NLP) tasks, such as language translation, text generation, and sentiment analysis. The most well-known transformer model is the GPT series (like GPT-4).



# Retrieval-Augmented Generation



1. User asks a question
2. System processes the question in two main steps:
  - Retrieval: System converts the question into a computer-readable format (embedding) and searches for the most relevant **X** documents or chunks
  - Generation: System uses the retrieved documents to create an answer

# What is Agentic AI?

- Uses sophisticated reasoning and iterative planning to autonomously solve complex, multi-step problems, going beyond simple question-answering chatbots.
- Can work autonomously across multiple steps and applications to complete complex tasks, creating a more comprehensive solution than traditional AI.

## Steps

1. **Perceive:** Gather and process data from various sources (sensors, databases, digital interfaces)
2. **Reason:** Use LLMs as orchestrators to understand tasks, generate solutions, and coordinate specialized models
3. **Act:** Execute tasks by integrating with external tools and software via APIs
4. **Learn:** Continuously improve through feedback loops ("data flywheel")

## Applications

- **Customer Service:** Enhancing self-service capabilities, reducing response times
- **Content Creation:** Generating high-quality, personalized marketing content
- **Software Engineering:** Automating repetitive coding tasks (up to 30% of work hours by 2030)
- **Healthcare:** Distilling critical information, automating administrative tasks
- **Video Analytics:** Analyzing video content, performing complex visual operations

Formal guidance to the  
profession

# Statement on AI in Legal Practice

- **Maintaining client confidentiality** (ASCR r9.1; BR r114)
  - "Lawyers **cannot** safely enter confidential, sensitive or privileged **client** information into **public** AI chatbots/copilots (like ChatGPT), or any other **public tools** "
  - **Commercial AI tools** require **careful review of contractual terms**
- **Providing independent advice** (ASCR r4.1.4; BR rr3(b), 4(e) and 42)
  - "AI chatbots/copilots and other LLM-based tools cannot reason, understand, or advise"
  - Cannot rely on AI output as substitute for personal assessment and analysis
- **Being honest and delivering services competently** (ASCR rr4.1.2 and 4.1.3; BR rr 4(c)–(d), 8(a) and 35)
  - No tool based on **current** LLMs can be free of 'hallucinations'
  - Lawyers must be able and qualified to personally verify AI-generated content
- **Charging fair and reasonable costs** (Uniform Law ss 172-173, ASCR r. 12.2 )
  - Accurately represent legal work done by law practice staff
  - Ensure AI use doesn't unnecessarily increase client costs

# Statement on AI in Legal Practice (2)

## **Risk management**

- Implement clear, risk-based policies for AI tool usage
- Continuously supervise junior and support staff using AI
- Review and verify AI-generated content before finalising

## **Appropriate use cases**

- Lower-risk tasks: Drafting emails, suggesting argument structure
- Higher-risk tasks (avoid/verify independently): Translating advice, analysing unfamiliar legal concepts, executive decision-making

## **Transparency**

- Record and disclose AI use to clients when requested
- Consider making AI policies available to clients
- Disclose AI use to court and fellow practitioners **when appropriate**
- Address client concerns about AI use proactively

## Victorian Supreme Court & County Court guidelines on the responsible use of AI in litigation (May/July 2024) ...

- Parties and practitioners using AI tools in litigation should **understand how they work and their limitations**.
- Information provided to external AI programs may not be private, confidential or secure.
- Use of AI must not mislead others in the litigation process.
- **Where appropriate**, AI assistance should be disclosed to other parties and the court. Self-represented litigants are encouraged to identify when they have used generative AI to prepare documents.
- Practitioners must still meet their obligations of candour to the court when using AI. Technology Assisted Review using machine learning for document review is encouraged when appropriate.

# Victorian Supreme Court & County Court guidelines (2)

- Specialised legal AI tools are likely more useful and reliable than general-purpose tools *[but see Magesh et al. study cited earlier]*.
- Parties and practitioners remain responsible for the accuracy of documents filed with the court, even if AI assisted in preparing them. **Documents and submissions made using AI must still have a proper basis.**
- Generative AI output should be carefully checked by practitioners for issues like being out-of-date, incomplete, inaccurate, inapplicable to the jurisdiction, or biased.
- Particular caution is needed if using generative AI to assist with affidavits, witness statements or expert reports, to ensure they reflect the knowledge and words of the relevant person.
- AI and reasoning?
  - "Generative AI and Large Language Models **create output that is not the product of reasoning**. Nor are they a legal research tool. They use probability to predict a given sequence of words."
  - "AI is not presently used [by judicial officers] for decision making nor used to develop or prepare reasons for decision because it does not engage in a reasoning process nor a process specific to the circumstance before the court."

# NSW Supreme Court Practice Note on GenAI (1)

- Practice Note SC GEN 23 establishes rules for generative AI use in court proceedings. Reissued 28/1/25, effective 3/2/25
- Key prohibitions:
  - Must NOT use GenAI to generate content for affidavits, witness statements, or character references
  - Expert reports cannot use GenAI without prior court approval
  - Written submissions using GenAI require verification of all citations and references
- Affidavits must explicitly state that GenAI was NOT used in generating content
- Legal practitioners must be aware of GenAI risks: hallucinations, outdated data, confidentiality issues

# NSW Supreme Court Practice Note on GenAI (2)

- January 2025 update provides significant exceptions to the general prohibition in paragraph 9A:
  - Now allows certain restricted information to be entered into GenAI if:
    - Information remains in a controlled environment
    - Used only in connection with specific proceeding
    - Not used to train the GenAI program
- Paragraph 9B (new) explicitly approves GenAI use for:
  - Generation of chronologies, indexes and witness lists
  - Preparation of briefs or draft Crown Case Statements
  - Summarising or reviewing documents and transcripts
  - Preparing written submissions or summaries of argument
- Important deletion: Removed "generates chronologies" from technology exclusions
- New clarification: GenAI can be used for "work that is merely preparatory to the drafting" of witness affidavits
- Verification requirement changed: Cannot rely "solely" on GenAI tools for verification

# Law Society of NSW - Practice management tips:

- Exercise same [or more!] care with AI as with human legal assistants
- AI should supplement, not substitute, legal services
- Educate employees on AI risks and benefits
- Use precise prompts to improve AI output specificity and quality
- Source: Law Society Journal, [“A solicitor’s guide to responsible AI use”](#) (Nov. 2023)

# NSW Bar Association guidance (12 July 2023)

## Relevant Barristers' Rules of Conduct

Rule 4: Exercise forensic judgment and independent advice

Rule 23: Maintain independence in all circumstances

Rule 42: Not act as mere mouthpiece for client/instructor

Rule 24: Do not deceive or knowingly/recklessly mislead the court

Rule 35: Act "to the best of the barrister's skill and diligence"

## Recommendations

- GPTs are not reliable sources of accurate legal information
- Prudent to keep records of AI prompts, choices, and generated results
- Be mindful of AI tools' terms of use and data policies
- **Avoid disclosing sensitive/confidential client information to AI tools**
- Aware that **AI terms of use may result in waiver of client privilege**
- Waiver could place barrister in breach of Barristers Rules

# *American Bar Association Guidance*

## **Key Ethical Obligations When Using GenAI Tools**

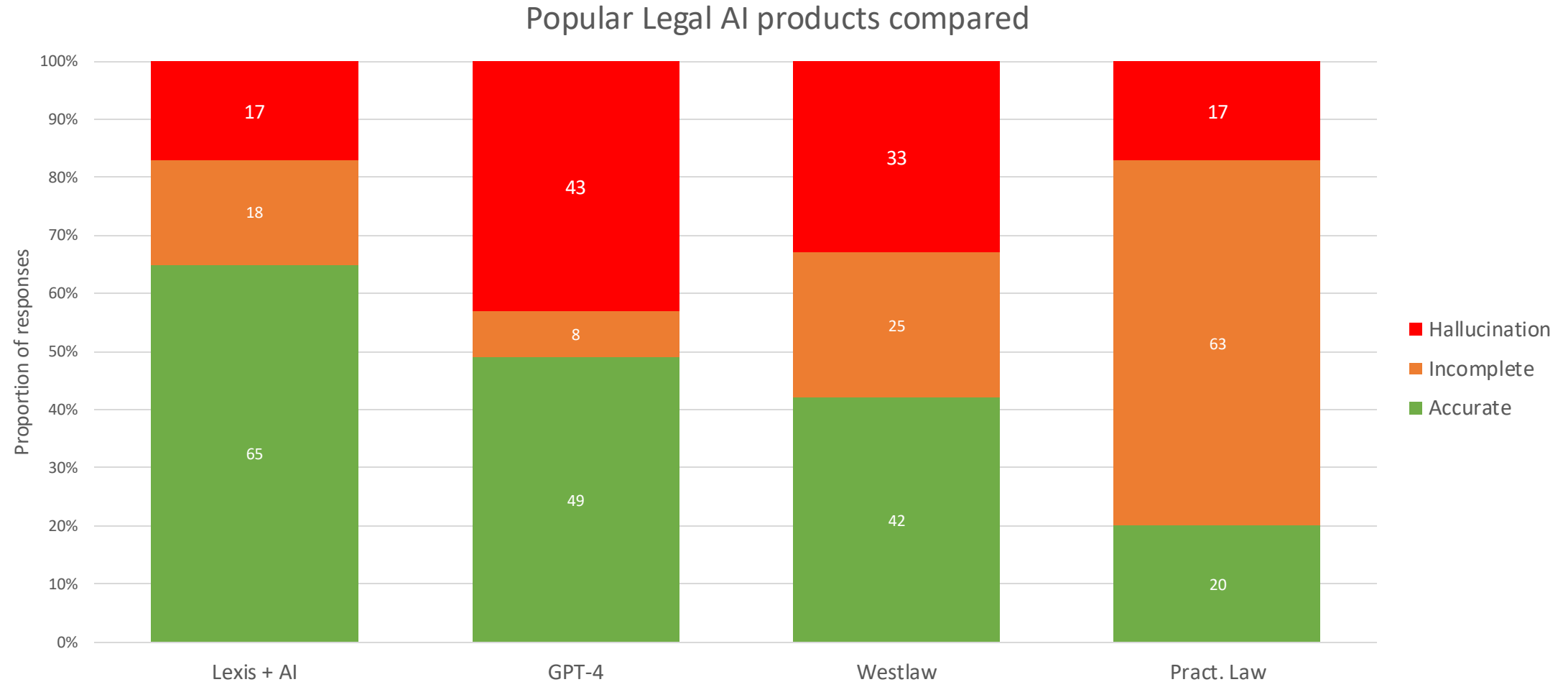
- **Competence (Rule 1.1):** Understand capabilities and limitations of GenAI; maintain reasonable technological competence; independently verify outputs; never abdicate professional judgment.
- **Confidentiality (Rule 1.6):** Obtain informed consent before inputting client information into self-learning GenAI tools; understand Terms of Use and privacy policies.
- **Communication (Rule 1.4):** Disclose GenAI use when required for informed decisions; consult clients when GAI influences significant decisions or affects fees.
- **Meritorious Claims & Candor (Rules 3.1, 3.3, 8.4):** Verify all GenAI citations, legal analysis, and factual assertions before submission to courts.
- **Supervision (Rules 5.1, 5.3):** Establish firm policies on GenAI use; provide training; ensure compliance when outsourcing.
- **Reasonable Fees (Rule 1.5):** Bill only for actual time spent; determine whether GenAI costs are overhead or billable expenses; disclose billing practices to clients.

# NYC Bar Association Guidance

- **Confidentiality (Rule 1.6):** Do not input client confidential information into "open" AI systems without informed client consent; review Terms of Use; understand how data is stored/used.
- **Conflicts of Interest (Rules 1.7-1.12):** Ensure AI systems respect ethical screens and don't compromise conflict walls within firms.
- **Competence & Diligence (Rules 1.1, 1.3):** Understand AI limitations; verify outputs; avoid overreliance; supplement AI research with human research; maintain professional judgment.
- **Advertising & Solicitation (Rules 7.1, 7.3):** Don't use AI to circumvent marketing rules or create false communications.
- **Supervision (Rules 5.1-5.3):** Establish clear policies; train staff; closely supervise AI chatbots for client intake.
- **Communication (Rule 1.4):** Consider disclosing non-routine AI use; obtain consent when confidences will be shared.
- **Candor & Meritorious Claims (Rules 3.1, 3.3):** Verify all AI-generated content and citations; be alert to "hallucinations"; check local rules on AI disclosure requirements.
- **Fees & Costs (Rule 1.5):** Charge only for actual time spent; don't bill for time saved by AI; disclose AI costs in advance.

# Some challenges with AI in legal practice

# Accuracy & completeness



Magesh et al., “Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools”, 30 May 2024

The system makes up a statement in the Federal Rules of Bankruptcy Procedure that **does not exist**.

Casey and its undue burden standard were **overruled** by the Supreme Court in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022); the correct answer is rational basis review.

#### Input Query

Are the deadlines established by the bankruptcy rules for objecting to discharge jurisdictional?

#### Westlaw AIAR Response

[A] **paragraph from the Federal Rules of Bankruptcy Procedure**, Rule 4007 states that the deadlines set by bankruptcy rules governing the filing of dischargeability complaints **are jurisdictional**. [...] 

#### Input Query

What standard of review applies to abortion regulations under the U.S. Constitution?

#### Lexis+ AI Response

Currently, the “undue burden” test, as established in *Planned Parenthood of Southeastern Pa. v. Casey*, is the governing standard. [Planned Parenthood of the Heartland, Inc. v. Reynolds](#), [...]. This test stipulates that an abortion regulation is unconstitutional if it places a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability. [...] 

#### Input Query

Why did Justice Ginsburg dissent in *Obergefell*?

#### Practical Law Response

**Justice Ginsburg dissented in *Obergefell*** because she believed that the court's interpretation undermined Congress's intent under Section 601(a) (1) to protect copyright owners against unauthorized importation of low-priced, foreign-made copies of copyrighted works. She argued that the text of the Copyright Act clearly applies to works governed by the statute. [...] 

#### Input Query

Do any special requirements apply to online dating services in Connecticut?

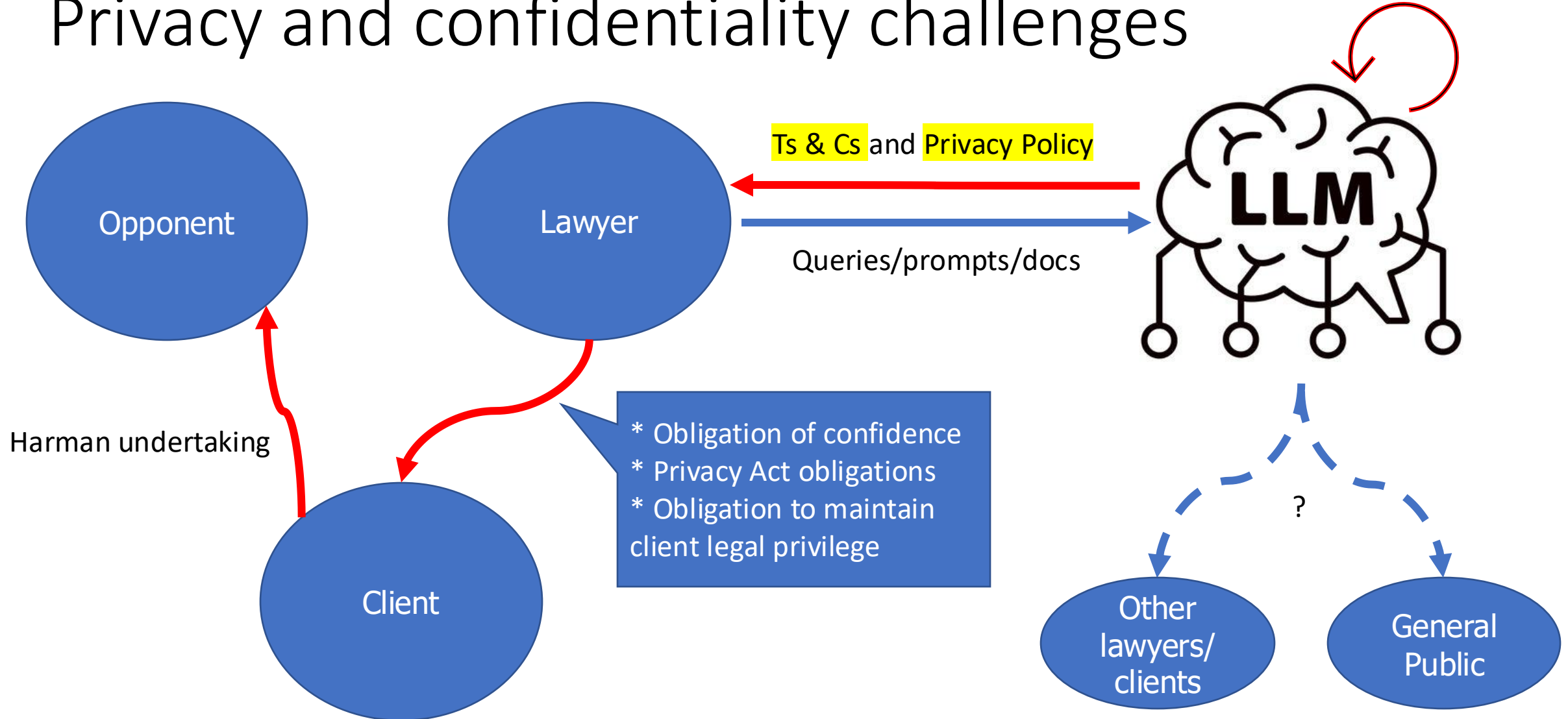
#### GPT-4 Response

Yes, Connecticut has specific legal requirements that apply to online dating services. Under Connecticut law, particularly **Conn. Gen. Stat. § 42-290**, online dating services that charge a fee and have members who reside in Connecticut must provide their users with specific safety awareness notifications. These notifications must include: [...] 

The system fails to correct the **user's mistaken premise**—in reality, Justice Ginsburg joined the Court's landmark decision legalizing same-sex marriage—and instead provides additional false information about the case.

Example of a hallucinated response from GPT-4, which generates a **statutory provision that does not exist**.

# Privacy and confidentiality challenges



# Terms and conditions / privacy policies

- Terms and Conditions (Tc & Cs) and Privacy Policies are often hard to find or consist of many documents
- Consumer Ts & Cs differ from “Plus” paid Ts & Cs which may also differ from Enterprise Ts & Cs, which may also be bespoke
- Ts & Cs also change frequently and without notice
  - How often are you willing to do due diligence?
  - Do you have a robust process to document / archive Ts & Cs?
- Generally, consumer and some “Plus” paid Ts & Cs do not promise that user input will not be used to train the LLM
  - Danger of information leakage to model owner
  - Danger of information leakage to other users
  - Do you understand what could happen with your/your client’s data?
  - Could your client give informed consent?
- Mid-tier plans often have patchy privacy/confidentiality – e.g. Open AI Plus – private setting is device-level not account-level; Claude Professional – won’t train the model unless “feedback” – very broad
- Enterprise Ts & Cs differ but often contain a promise of sorts not to use prompts or outputs to train the model
- Application Programming Interfaces (APIs) – Ts & Cs will differ again and will be relevant where a public LLM is integrated into another product (such as Smokeball). Do you know which LLM your service provider uses?
- Privacy policies will cover personal identifying information (PII) but will often not cover business confidential information at all.
  - Privacy Act imposes controls on export of data from Australia
  - Jurisdictional and enforcement may be difficult where data is sent outside Australia.

# Efficiency/productivity gains?

BIS, [Generative AI and labour productivity: a field experiment on coding](#) (50% efficiency gain)

BIS, [Artificial intelligence and the economy](#): implications for central banks (up to 125% productivity gain for programming, 60% for writing business documents)

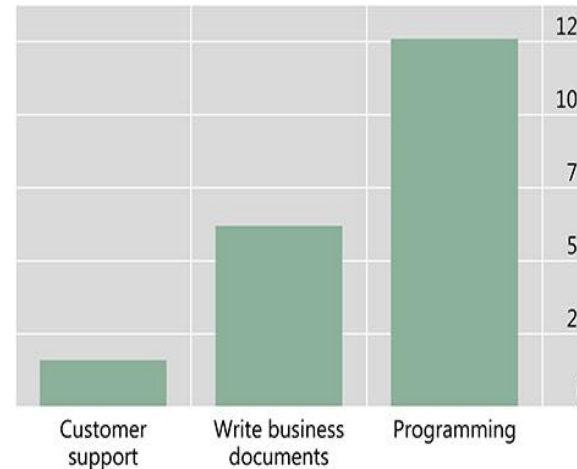
**AI may increase inequality even as it outcompetes some white-collar jobs**, as white collar core functions harder to automate: BIS, [The rise of generative AI: modelling exposure, substitution and inequality effects on the US labour market](#)

## AI and productivity

In per cent

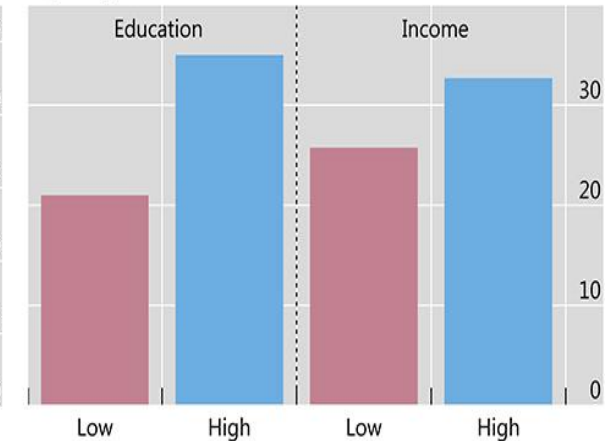
Graph 7

A. Generative AI makes workers more productive...<sup>1</sup>



■ Productivity gains from using generative AI

B. ...but higher-income or better-educated workers expect greater benefits<sup>2</sup>



■ / ■ Average probability of higher productivity from generative AI use

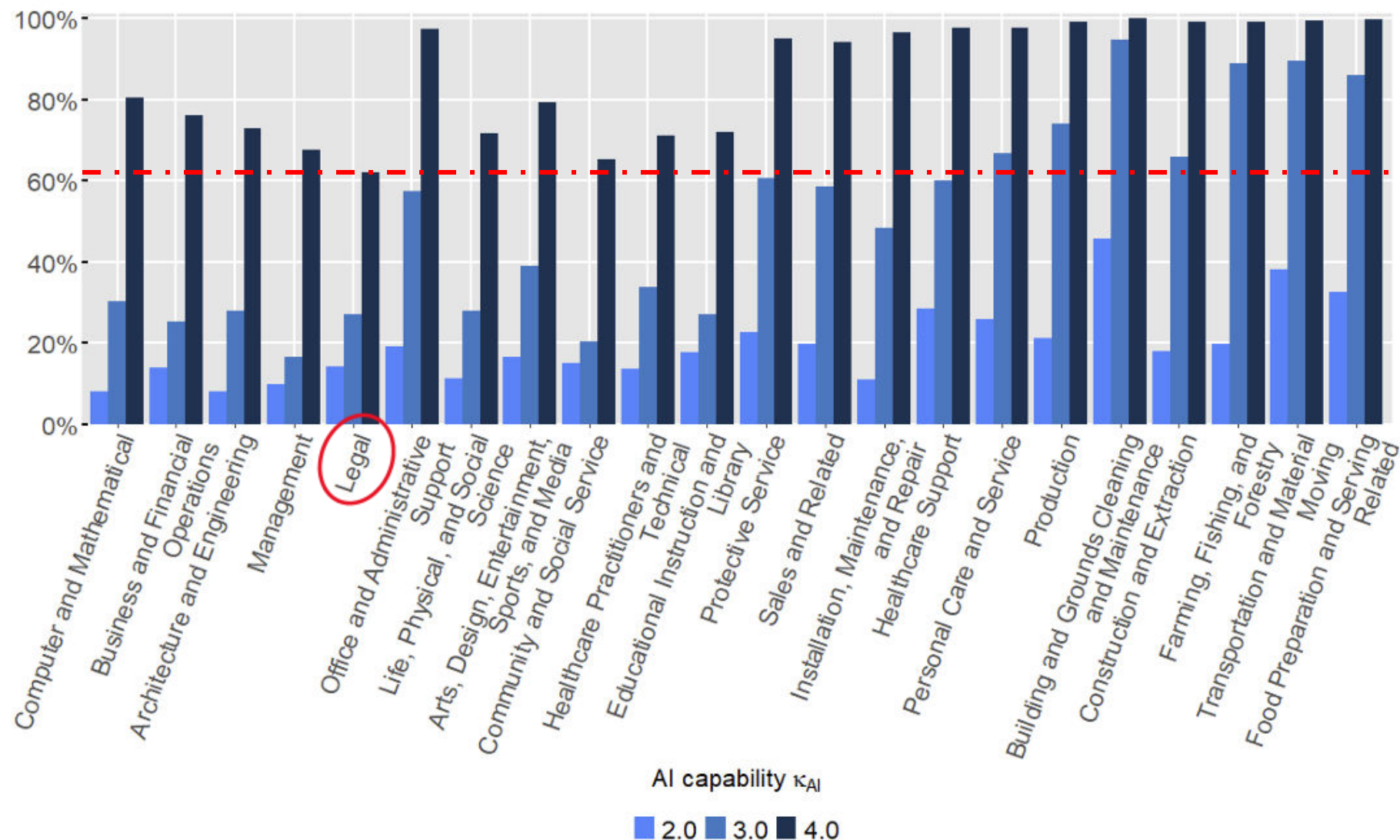
<sup>1</sup> See technical annex for details. <sup>2</sup> Based on 893 respondents from the Survey of Consumer Expectations conducted by the Federal Reserve Bank of New York.

Sources: Aldasoro, Armantier, Doerr, Gambacorta and Oliviero (2024a); Brynjolfsson et al (2023); Nielsen (2023); Noy and Zhang (2023); Peng et al (2024); Federal Reserve Bank of New York, *Survey of Consumer Expectations*.

© Bank for International Settlements

The good news for lawyers?

Figure 3: Share of automatable cognitive skills given AI capabilities  $A_i(\kappa_{AI})$



**Note:** The figure shows the share of skills  $A_i(\kappa_{AI})$  within reach of the low (2.0), medium (3.0) and high (4.0) AI capability  $\kappa_{AI}$  in individual industries  $i$ .

# De-skilling / de-motivation?

- Professionals could become over-reliant on AI tools, resulting in atrophy of fundamental skills
- Use of automated tools may impair recall / performance
  - “Read your brief”
- Students using AI to complete assignments may not develop critical thinking or subject mastery
- Satisfaction from creative work may be reduced when AI can produce similar results with minimal effort
- Diminished incentive to master complex skills
  - AIs may get better than humans at prompt engineering too ...
- Career uncertainty may lead to reluctance to invest in skill development

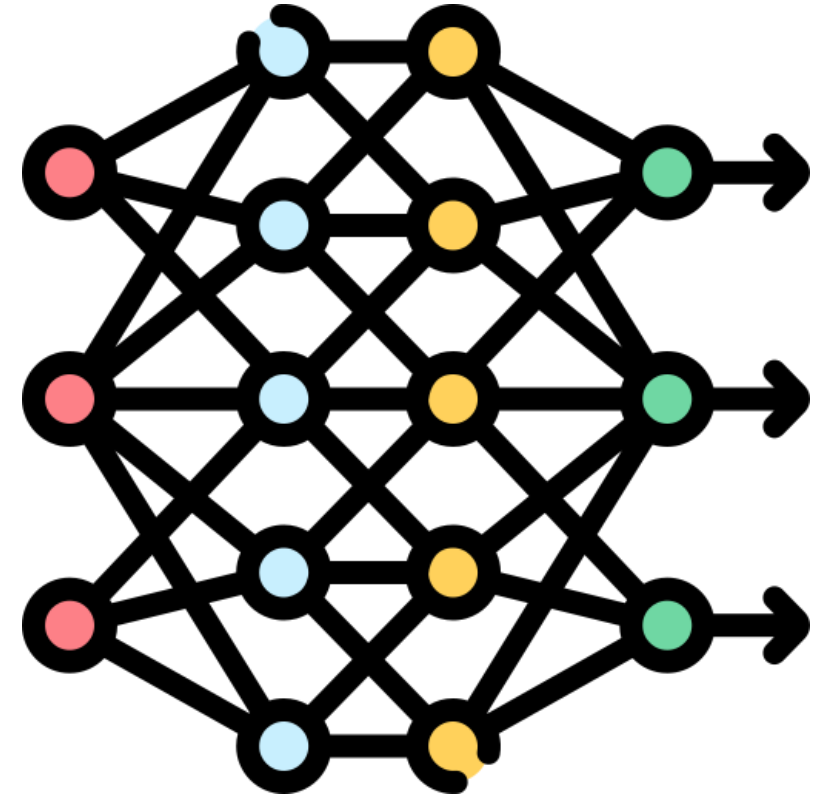
# Intellectual property issues

- Models trained on vast corpora of copyrighted material without explicit permission from creators
- AI-generated outputs that closely resemble specific artists' styles or authors' voices without attribution
- Unclear boundaries between human creativity and machine assistance creating ownership ambiguity
- Courts and legislators struggling to apply existing IP frameworks to novel AI capabilities
- Debate over whether AI training constitutes "transformative use" under U.S. fair use doctrine
- Content creators facing potential devaluation of their work as AI produces similar outputs at scale



# Bias in LLMs

- LLMs mirror and sometimes amplify biases present in their training data
- Underrepresented groups often receive less accurate or stereotyped responses
- Hidden assumptions in models operate without transparent disclosure to users
- Biased outputs can perpetuate discrimination when deployed in real-world settings
- Bias detection and removal remains technically challenging despite various approaches



# Court cases

# *Mata v. Avianca, Inc*, 678 F.Supp.3d 443 (S.D.N.Y. 2023)

- Roberto Mata sued Avianca for a knee injury from a metal serving cart during a flight
- Attorney Steven Schwartz used ChatGPT to research legal precedents for his opposition to Avianca's motion to dismiss
- Attorney Peter LoDuca filed the opposition containing fake cases generated by ChatGPT
- When Avianca pointed out the non-existent cases, attorneys doubled down instead of admitting error
- Schwartz later admitted he relied exclusively on ChatGPT but falsely claimed he "supplemented" his research

## **Findings:**

- Multiple non-existent cases were cited, with fabricated quotes and citations
- Attorneys acted in bad faith by:
  - Making false statements to the court
  - Failing to verify case citations before filing
  - Continuing to advocate for fake cases after being alerted to problems

## **Sanctions:**

- \$5,000 joint fine paid to the court registry
- Required notification to the plaintiff and affected judges whose names were misused
- Law firm jointly liable with the individual attorneys

# *Mata v. Avianca, Inc*, 678 F.Supp.3d 443 (S.D.N.Y. 2023)

- “Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court’s time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.”

# *DPP v Khan* [2024] ACTSC 19

- Mossop J held that little weight could be given to a character reference supplied by an offender's brother in relation to the offender's subjective circumstances for the purposes of a sentencing hearing
- When read as a whole, the language of the reference was strongly suggestive of the document having been generated using a "large language model program, such as ChatGPT"
- The reference began with an oddly formal and generic statement
- The judge noted "non-specific repetitive praise" about cleaning, describing it as "strongly suggestive of the involvement of a large language model"
- The judge warned that automated translations can lose linguistic subtleties crucial to understanding the true meaning

# *Dayal* [2024] FedCFamC2F 1166

- Solicitor tendered list and summaries of legal authorities that **did not exist**
- Generated using AI tool within the LEAP Practice Management Software
- Solicitor did not verify accuracy before submission
- Unconditional apology offered by solicitor

## **Disposition**

- Matter referred to Victorian Legal Services Board and Commissioner
- Decision for referral not intended to be punitive
  - responsible use of AI tools in litigation an issue of public interest
- "Whilst the use of AI tools offer opportunities for legal practitioners, it also comes with significant risks (at [10])."
- Court emphasised:
  - Practitioners must understand how AI tools work and their limitations
  - Use must not mislead the court
  - AI assistance should be disclosed to other parties
  - Final product requires professional judgment and review
  - Solicitors maintain paramount duty to the court

# *Valu v Minister for Immigration* [2025] FedCFamC2G 95

- Solicitor filed submissions containing **non-existent** case citations and fabricated quotes from a non-existent AAT decision
- Generated using ChatGPT without verification.
- Solicitor improperly communicated with Court without copying opponent, purporting to withdraw and replace the submissions
- Final hearing date had to be vacated and a directions hearing listed instead to discuss conduct concerns

## **Disposition**

- Matter referred to NSW Legal Services Commissioner
- Conduct “falls short of the standard of competence and diligence that the applicant in the substantive proceedings was entitled to expect from his legal representative”
- Breach of duty not to deceive or mislead the Court, even unintentionally (Rule 19.1 of ASCR)
- Ex parte communication with Court (ASCR 22.5)
- Failure to verify AI-generated content before submission
- Court noted "strong public interest" in referring such conduct given increased use of AI tools, following *Dayal*

4. ... The applicant’s submissions ... refer to “Murray v Luton”, [2001] FCA 1245 “Mackinlay v MIMA”, “Bavinton v MIMA”, [2002] FCA 953 [2017] FCA 712 “Gonzalez v MIBP”, “Seng v MIAC”, “Kahawita [2018] FCA 211 [2013] FCA 1279 v MIEA”, “MIAC v Thiagarajah”, “Heath v MIMA [1993] FCA 870 [2016] FCA 19 [”, “Mitsubishi Motors Australia Ltd v AAT”, 2001] FCA 700 [2004] FCA 1241 “MIMA v Ameer”, “Woods v MIMA”, “MIAC v [2004] FCA 276 [2001] FCA 294 Wu [2 [2015] FCA 632”, “Drummond v MIMA 016] FCA 953”, “Lao v MIMA [2008] FCA 1774”, “Walters v MIBP [2002] FCA 1234”, “Alfaro v MIBP [2016] FCA 1156” and “Wai v MIBP”, **but none of these decisions exist.** They also in [2016] FCA 1157 paras 1.2, 2.2, 3.1, 4.1, 5.1, 5.2, 6.1 and 6.2 **provide alleged quotes from the Tribunal’s decision which also do not exist.**

22. **“He said the summary read well,** so he incorporated the authorities and references into his submissions without checking the details.”

# Other fake citation cases

- [Zhang v Chen, 2024 BCSC 285](#)
  - **Personal costs consequence for counsel submitting fake citations**, plus **investigation** by British Columbia law society
- [Kruse v. Karlen](#) 2024 WL 559497 (Mo. Ct. App. 2024)
  - Appellant (an SRL) engaged consultant who used gen-AI which hallucinated cases, and provided erroneous information about state statutes
  - Appellant ordered to pay **\$10,000 to Respondent in damages** for filing a frivolous appeal
- [Whaley v. Experian Info. Sols., Inc.](#), No. 3:22-cv-356, 2023 WL 7926455, at \*2 (S.D. Ohio Nov. 16, 2023)
  - **144 page pleading** partly generated by Gen-AI **struck out** as verbose and confusing and lacking accurate citations
- [In re Celsius Network LLC](#), 655 B.R. 301, 308 (Bankr. S.D.N.Y. 2023)
  - **172-page “expert” report generated in 72 hours** using Gen-AI excluded as containing numerous errors and almost no citations.
- [Iovino v Michael Stapleton Associates, Ltd.](#) (USDC, No. 5:21-cv-00064, 2024)
  - “ChatGPT run amok” – decision reserved
  - [Declaration of Thad Guyer](#) (“the GPTs are providing a way to enable lawyers with impairments, including the cognitive decline of aging, to maintain viable law practices”) – but multiple mistakes for which liability is tbc
- [United States v. Cohen](#), No. 18-CR-602, 2024 WL 1193604 (S.D.N.Y. Mar. 20, 2024) – where a client provides citations to a lawyer, a lawyer must review the decisions to make sure that they are genuine and properly cited

# Tentative conclusions

# Tentative conclusions

- Balance to be struck between too much conservatism and too much freedom of experimentation
- Firms need to provide their employees with corporate-grade AI tools – lest employees use personal AI tools to help them in their work, compromising security
- Need to mitigate risk of over-reliance on AI and de-skilling – but not yet clear how - and true cost savings may be hard to identify
- Basic legal research/writing and basic document summarisation tasks may become commoditised
- AI likely to become “vanilla” and be embedded in most legal information products
- Firms need to be diligent in documenting and analysing changing Ts & Cs and Privacy Policy of providers
- How to document client consent when Ts & Cs are constantly evolving may come into focus – how informed must client consent be?
- Desirability of “walled garden” or proprietary LLMs with bespoke Ts & Cs
  - Prop. LLMs do not necessarily respect intra-firm information barriers
- Need for anonymisation/de-identification tools if engaging with “public” LLMs

# A coda on robot law



# Some legal issues presented by autonomous AI agents

- Liability for errant chatbot advice – see [Moffatt v. Air Canada](#), 2024 BCCRT 149
  - Air Canada liable for negligent advice given by its chatbot which a customer relied on to their detriment.
- Can AI chatbots “know” on behalf of their “principals”? (Tentatively, yes)
  - See Chopra & White, [Attribution of Knowledge to Artificial Agents and their Principals](#) (2005)
- Tort liability for errant AIs and robots
  - Robots are products. Are AIs products? If so, products liability regimes will apply.
  - If not, can theories of liability for dangerous liquids, escaping viruses, or damage by animals, children or prisoners be useful?
- Agency and legal personhood for AIs: when/why would we grant this status?

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