CONTRACT AI

WHY DO WE NEED TO BRING ARTIFICIAL INTELLIGENCE TO CONTRACTS

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For the last two years, I have been working on a project named "Key Terms" which aims to bring artificial intelligence into contract drafting and negotiation. Several legal tech providers now offer artificial intelligence tools: Luminance, Kira, ContractPod and others offer AI-enabled tools that allow for the identification and compare clauses and other key indicators, such as the duration of certain obligations to determine if they match specified rules. For instance, imagine that your company is negotiating a supply contract; when you compare the supplier's proposal with your company's standard terms, you find that both have limitation of liability clauses, but there are differences which from your point of view are damaging to your organisation. An AI system can do that comparison for many documents and match clauses against pre-set criteria or business rules automatically.

AI serves to find patterns that identify similitudes and differences. Patterns, similitudes and differences can be algorithmically explored to show a hidden structure, a discrepancy, or a deviation from a rule. Still, the promise of a legal robot that would draft contracts on its own or even replace lawyers is not around the corner and, I believe, not even in the more distant future.

The problem with legal AI resides in the difficulties that data scientists have in understanding legal texts. Lawyers seem to use a language of their own. Lawyers are trained to master words and words may have multiple meanings. Words have a logical and an emotional significance. By moving from one synonym to another you may change the meaning of a proposition, like changing from one colour to an approximate colour in the rainbow you may start in blue and end in red or green or yellow. This ability of lawyers is always the demise of any logical attempt to take legal thought into a software application. We end up identifying patterns of use and behaviour without penetrating the inner structure of legal thinking.

To solve this problem, I propose a different approach. I propose to start by analysing the way lawyers think and work and how legal speech is built. To do this we need to look at the fundamental aspects of legal constructions, which may apply to a court brief, an administrative appeal or a contract.

In this article, I propose to introduce three concepts that are not commonly used together when analysing legal writing: precision, redundancy and indeterminacy.

Starting with "precision", we are all, of course, familiar with the idea that we must use words with precision and that changing from one word to another may change the effect and meaning of the entire sentence. Legal drafting aims for more; legal expressions aim to achieve "mathematical precision". Lawmakers and lawyers go to great lengths to that goal. Legal concepts are defined in laws, are analysed in great depth by law scholars, taught to exhaustion to law students and used with rigour in contracts, court briefs, opinions and memoranda.

The reason for that desire to achieve the perfect meaning of an expression results from the need for certainty, security and safety. Security and justice go hand to hand. For society to work well, people need security. If laws were not stable and changed every day, there would be no security and consequently no justice. Things would be left to the will of whoever

applied the law and laws would lose meaning and purpose. The need for precise legal concepts is at the heart of all legal professions.

The aim for precision has some practical consequences that people find odd and, many times, dislike. For instance, laws use many old words. This is because old words bring stability, their meaning is well established, even when they cease to be used in everyday language. Of course, laws change and are updated, but they change at a slower pace than language itself and society. Many times, laws get stuck in the past and disconnected from real life. This is not, however, true for all laws but the fact remains that this attachment to old and difficult words make legal professions more closed to the world.

The quest for precision extends from laws to contracts and other legal documents, which many times seem out of touch with everyday writing.

For instance, when using spell checkers and grammar review software, those applications suggest changing words and expressions by simpler one-word expressions which appear to have equal meaning. When we write "in accordance with…" the spell checker will suggest replacing it for "following…" or "by…", but these suggestions do not catch the entire meaning of the expression "in accordance with…", which is normally used in a legal text to state that an action must conform with a standard or a set of rules. If we were to replace the expression "in accordance with…" with "following…" courts might ask if that was done to downgrade the duty of care, tone down the prescriptive nature of the clause. It is possible that this will change in the future and that lawyers will replace the expression"in accordance with…" for "following…" without losing the prescriptive nature of the present "in accordance with…". Still, the point is that precision is a fundamental goal of legal thought and legal writing.

The second important concept to discuss is "redundancy". In the transmission of data through information systems, adding desired redundancy serves to detect and correct errors when communicating over a noisy channel of limited capacity. Lawyers do the same when using one or more synonyms in the same sentence. This ensures that the maximum significance is given and that nothing is lost. For instance, "authorisations, approvals and permits" mean approximately the same thing, but when used in a legal document, they mean that nothing can escape, even if the precise meaning of just one of these words would not catch all possible meanings that the expression "authorisations, approvals and permits" wants to capture. The multiplication of redundant expressions adds complexity and makes legal texts more difficult to understand. Many times, undesired redundancy adds noise and makes the text overcomplicated. In others, it leads to confusion because some other word was left out and may be interpreted as implying that whatever the omitted expression meant was excluded. This should be avoided, but some redundancy may still be necessary.

The third concept is "indeterminacy". Indeterminacy or vagueness contradicts the aim of precision, so it would seem to conflict to create secure and clear laws and contracts. However, the use of vague concepts pervades laws and contracts. This is because sometimes reality is impossible to encapsulate in a precise word.

Vague terms give judges, contract parties, or even ordinary citizens, general standards adaptable to an ever-changing world to. For instance, what is "reasonable" or "fair" today may be very different from what it meant thirty or one hundred years ago. Thirty years ago, Internet connections were slow and would break much more often, so it was "reasonable" not to require internet suppliers to offer a close to "flawless" connection, but not today. To kill someone in a duel seemed an "honourable" thing several hundred years ago, but not today.

The use of "vague" words leaves the interpretation of the desired outcome to a later moment and serves to close a discussion in a contract which, otherwise might break the will of the parties to close the deal.

Excessive use of outdated words, multiplication of synonyms, redundancy and indeterminacy are the main obstacles to implementing AI in legal software. They generate many false positives and negatives, which limits supervised AI systems to tagging precise terms and identifying discrepancies from accepted standards. This is what supervised legal AI software does today. Unsupervised AI is also limited because lawyers and data scientists need to work out what information to extract from data and to move away from tagging legal documents and finding simple discrepancies.

I believe legal AI can do more. AI can be used to look at the inner structure of legal documents and contracts and find meaningful communalities and discrepancies that will help lawyers to draft better contracts. I believe we can achieve greater clarity and preserve precision while making legal language more in tune with common people, reduce undesired redundancy and refine vague terms to suit their true purpose without overcomplicating legal documents. This should be the purpose of bringing AI to contracts.

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