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THE LAWYER IN THE LOOP
THE LIMITATIONS OF CHATGPT AND WHY WE NEED HUMANS IN THE LOOP

ANTÓNIO DE MACEDO VITORINO

The announcement that ChatGPT had successfully passed the US bar exam with flying colours and the multiple examples of AI-generated contracts and legal documents spread fear among lawyers that a "killer application" had arrived and that robots would wipe out their jobs.

Some countries prohibited the use of ChatGPT, and Google delayed the launch of its generative AI solution, Bard, due to regulatory concerns.

Since November 2022, I have been testing ChatGPT and, for a few days, Bard, now available in Europe. Both ChatGPT and Bard have extraordinary capabilities, though we might say that they have different "personalities" and respond differently to the same question. One cannot say that either response is fundamentally better than the other.

Testing ChatGPT

In one of my tests, I asked ChatGPT to "improve the clarity" of a "force majeure" clause. For laymen, a force majeure clause is a contract provision that releases a party from liability (breach or delay in the performance of a contract) caused by an unforeseen, abnormal and uncontrollable event, such as war, earthquakes, etc.

The original clause submitted to ChatGPT stated:

"No party shall be considered to have breached its obligations under this Agreement or be held accountable for any delay if such party's failure to perform or delay is caused, in whole or in part, directly or indirectly, by war (whether war be declared or not), emergency, strike, industrial dispute, accident, fire, earthquake, flood, storm, tempest, any act of God or any other similar cause beyond its reasonable control."

ChatGPT presented the following text:

*"Neither party will be deemed to have **violated** their obligations or held responsible for any delays if the failure to perform or delay is directly or indirectly caused, in whole or in part, **by circumstances beyond their control. These circumstances may include war (whether declared or not), emergencies, strikes, labour disputes, accidents, fires, earthquakes, floods, storms, acts of God, or any other similar causes that are considered beyond their reasonable control.**"*

Some of the changes are irrelevant and do not improve the clarity of the text: "neither party" instead of "no party", "be deemed" instead of "be considered," and other changes, some of which are highlighted in the text above, seem innocuous.

Other changes, however, significantly change the text and the scope of what can be considered "force majeure". In its response, ChatGPT divided the sentence into two sentences to simplify readership. The first sentence defines "force majeure"

as "circumstances beyond" the parties' control. The second sentence gives examples of the circumstances beyond the parties' control, broadly reproducing the list in the original text with small changes that do not seem to change the text materially.

To a non-lawyer, the meaning of the two texts would seem identical, but that is wrong. ChatGPT's text considerably expanded the definition of force majeure and the situations in which the defaulting party would not be liable for the breach of contract. In ChatGPT's text, any circumstances beyond a party's control would release it from liability. The examples of the second sentence serve as examples to clarify the meaning but would not restrict the meaning of "circumstances beyond their control".

In the original sentence, "force majeure" only includes the events listed and other "similar" events. This means that the defaulting party would have to prove that the event causing the default was beyond its control and similar to the events listed in the clause. For instance, a delay caused by a supplier's default would be considered a force majeure event in ChatGPT's text but not in the original text because a supplier's default is not similar to an earthquake or a war.

The limitations (and dangers) of ChatGPT

This case is a good example of the limitations (and dangers) of ChatGPT. ChatGPT is a language model. The model identifies statistical patterns and relationships within its data set. ChatGPT *"learns to predict the probability of the next word in a sentence given the context of the preceding words"* (quote from ChatGPT).

In simpler words, ChatGPT generates text based on the information provided to it. This allows it to interpret a sentence and a request and give back an output based on the information that the model has digested from other texts. ChatGPT does not operate logically in the sense that we usually use the word "logic"; that is, ChatGPT does not "deduct" or "infer" on its own. ChatGPT compares and relates things in a different way than humans do.

Because ChatGPT feeds on information that is provided to it, if that information is wrong, incorrect or incomplete, ChatGPT's answers will be flawed. ChatGPT and other generative AI models are trained with large data sets to correct imperfections and further finetuned in specific subjects to eliminate errors.

Using our example above, ChatGPT can be taught that the general concept of "force majeure" is not, in principle, equivalent to any event outside the control of one party but to exceptional circumstances, thus avoiding misconstructions like the one cited above. However, this does not hide the fundamental fact: ChatGPT can generalize, can provide assertive answers, spot patterns and highlight differences, but (at least for now) ChatGPT cannot go to the deepest level of thought and identify a slight nuance that changes meaning in a fundamental manner. ChatGPT does not think. ChatGPT does not create.

This limitation can fundamentally impact how ChatGPT can be used to provide legal advice or draft a contract clause. If, in some cases, a change in a definition to include an element that is generally not within its usual meaning, although still acceptable, can be intentional, intent is not part of ChatGPT's construct.

ChatGPT may make suggestions that, while not being outright errors, can impact the ultimate result. A human must take the decision and bear the responsibility for accepting, rejecting or correcting ChatGPT's suggestion.

ChatGPT raises the bar for lawyers using it because they need to approve or correct ChatGPT's outputs. ChatGPT's suggested wordings are different from contract templates bought from a legal book of precedents. Lawyers have an extra

duty of care when using ChatGPT. Lawyers have to decide if ChatGPT's suggestion is acceptable or not. Lawyers must turn ChatGPT's outputs into legal advice. So, while ChatGPT can massively improve the productivity of lawyers, when used without care it can lead to professional liability claims.

Lawyers must think and apply their knowledge and experience in providing legal advice based on ChatGPT's outputs.

Basic rules for using ChatGPT

The limitations and dangers of ChatGPT raise many issues beyond the general ethical and policy considerations that have appeared in the media.

The limitations and dangers of ChatGPT require a different approach and mindset when using ChatGPT and generative AI.

ChatGPT is a powerful tool. ChatGPT can lift heavy weights. ChatGPT can flatten the terrain like a bulldozer. ChatGPT can turn a stone into a perfect sphere or a perfect pyramid, but it cannot create La Pietà of Michelangelo. ChatGPT is a tool that can be like the chisel in Michelangelo's hands. We need to learn how to use it without harming ourselves and others.

For lawyers, ChatGPT can do a lot of the heavy lifting, ease work and help to achieve better results for clients. To do so, here are a few rules on how to use ChatGPT:

1. **Ask ChatGPT for information.** Do not ask ChatGPT for advice.
2. While ChatGPT's answer may appear valid and sound, **check the sources of ChatGPT's results.** Do a basic Google search and look for information from authoritative sources before using ChatGPT's outputs.
3. **Start small.** Do not ask ChatGPT to draft a contract or provide advice. Ask ChatGPT to make minor changes to a piece of text. Ask to draft a paragraph with specific information. Given suitable prompts and using the right models, ChatGPT can help you achieve impressive results.
4. **Use ChatGPT to put you in the right direction.** Do not ask for more than you can chew. If you do not know anything about a subject matter, learn about it before using ChatGPT's outputs.
5. **Build on ChatGPT's outputs.** ChatGPT is a formidable tool. It can provide you with information almost instantly that will spark your intelligence and show different solutions (sometimes wrong) that make you think better about what you want to achieve.

To end, I asked ChatGPT to review these rules. Here is ChatGPT's answer:

Overall, the text is correct in providing guidelines on how to use ChatGPT effectively and responsibly for lawyers. It emphasizes using ChatGPT as a valuable tool to aid legal work and achieve better results for clients. Let's analyze each point:

"Ask ChatGPT for information. Do not ask ChatGPT for advice." *This advice is sound. ChatGPT can provide factual information based on its training data, but it is not a substitute for professional legal advice.*

"While ChatGPT's answer may appear valid and sound, check the sources of ChatGPT's results. Do a basic Google search and look for information from authoritative sources before using ChatGPT's outputs." This is a crucial point. Since ChatGPT generates responses based on patterns in its training data, cross-referencing its answers with reliable external sources helps verify accuracy and avoid potential misinformation.

"Start small. Do not ask ChatGPT to draft a contract or provide advice. Ask ChatGPT to make minor changes to a piece of text. Ask to draft a paragraph with specific information. Given suitable prompts and using the right models, ChatGPT can help you achieve impressive results." This is good advice to limit the scope of tasks assigned to ChatGPT. Starting with small, well-defined tasks can enhance the quality of the results and make better use of the AI's capabilities.

"Use ChatGPT to put you in the right direction. Do not ask for more than you can chew. If you do not know anything about a subject matter, learn about it before using ChatGPT's outputs." This is another important reminder. ChatGPT can provide useful insights, but users should have some foundational knowledge of the subject matter to evaluate and interpret the outputs properly.

"Build on ChatGPT's outputs. ChatGPT is a formidable tool. It can provide you with information almost instantly that will spark your intelligence, show different solutions (sometimes wrong) that make you think better about what you want to achieve." This point acknowledges the potential of ChatGPT as a valuable resource for generating ideas and exploring various perspectives. However, it also highlights that the generated responses should be critically evaluated before implementation, as they might not always be entirely accurate.

In conclusion, the text provides appropriate guidance for lawyers or any users using ChatGPT, promoting responsible and effective use of the tool to enhance their legal work and decision-making process.

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