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# Artificial Assent: Reviewing the use of AI in Contract Formation

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# Introduction

The pervasive integration of artificial intelligence (AI) into diverse industries, including the legal domain, underscores the critical necessity for a robust legal framework governing AI's role in contract formation. While the advantages of AI, such as heightened efficiency and accuracy in contract drafting, are evident, the escalating involvement of AI in this realm brings forth significant concerns regarding legal validity, liability, and transparency. This article aims to delve deeper into the legal lacunae surrounding AI-generated contracts, providing a comprehensive exploration of the challenges and proposing strategies for addressing them. This ensures the responsible, ethical, and effective integration of AI into the contract formation process.

## Legal Issues Surrounding AI-Generated Contracts

One of the central legal quandaries involving AI-generated contracts revolves around the intricate question of attribution. The conventional legal framework, grounded in the assumption of human agency and intent in contract formation, now grapples with the complexities introduced by AI. As we navigate this uncharted territory, considerations arise regarding responsibility in scenarios where an AI-powered contract drafting tool is employed to generate agreements. In the event of a dispute, determining who bears responsibility for the contractual terms, liability for breach, unconscionable or illegal terms, or any other ramifications—the AI developer, the deploying company, or the users—adds layers of complexity.

Another substantial challenge lies in ensuring transparency and accountability in AI-generated contracts. The intricate nature of AI algorithms can obscure the rationale behind contractual terms, potentially leading to disputes and unjust outcomes. This necessitates the implementation of robust mechanisms to elucidate AI-generated decisions and provide effective remedies for parties adversely affected by unfair contractual terms.

## Legal Validity in the Age of AI

In the evolving landscape of AI-generated contracts, questions surrounding the legal validity of these agreements become paramount. Traditional legal doctrines, developed within the context of human-driven contracts, may need reevaluation to accommodate the nuances introduced by AI. As we confront these challenges, legal scholars and practitioners must grapple with defining the parameters of validity in a space where the delineation between human and machine contribution blurs. This problem is further exacerbated by the all-too common issue of machine learning hallucinations of quotes, ratio, obiter and other sources for precedent that are misattributed or simply do not exist. Try this for yourself! This issue is pervasive with Google Bard, openAI's GPT versions and others, not merely for legal issues but for quotes from anyone, from any publication, on any topic. In any given list of quotes provided you are highly likely to find incorrect or wholly fabricated content, especially with prompts regarding niche or specialised topics.

## Implications for Contractual Dispute Resolution

The rise of AI-generated contracts prompts a rethinking of dispute resolution mechanisms. The traditional avenues of litigation or arbitration may not seamlessly fit the unique characteristics of AI-generated disputes. A specialised approach may be necessary, incorporating experts who understand both the intricacies of AI and the legal principles governing contracts. Adapting dispute resolution mechanisms to this new landscape will be essential for ensuring timely and just outcomes, as the technology simply isn't ready yet. Large

Language Models (LLMs) suffer issues with maintaining a firm grasp on context and recall for a complex set of facts and varied minutiae in any given dispute or case they are prompted with, and in large scale contentions involving extensive documentation, suffer bloat, alongside major cost to the user if an API is used, for the high number of tokens required in inputting context, or new fine-tuning training data, and drawing from it for responses.

## Strategies for Addressing Legal Challenges

Addressing the legal gaps surrounding AI-generated contracts demands a multifaceted approach that actively involves policymakers, AI developers, the legal profession, judiciary, and individuals.

### 1. Clear Legal Guidelines

Policymakers and the Legislative Branch must proactively formulate precise legal guidelines governing the use of AI in contract formation. These guidelines should comprehensively address issues such as attribution, transparency, and accountability. By providing a robust framework, one can facilitate the responsible development and deployment of AI-powered contract drafting tools.

### 2. Responsible AI Development

AI developers must prioritise the creation of transparent and accountable algorithms. This involves designing algorithms that can elucidate their reasoning, providing thorough documentation of the data and decision-making processes, and integrating mechanisms for auditing and rectifying biased or unfair decisions. It could be argued that the lack of a human element impacts the legal validity of any generated content, which would necessitate the strict curtailing of the scope of use of these tools and advanced detection software, alongside content integrity attestations. Scrupulous due diligence on information provided by models, by those developing them and the models themselves, will prove essential in building tools that can accurately serve the needs of those using them, rather than producing misinformation.

### 3. Empowering Individuals

Empowering individuals with a deeper understanding of AI-generated contracts - and the limitations of these models generally - is crucial for fostering a fair and informed contractual landscape. This necessitates the provision of comprehensive educational resources, training programs, and tools that enable individuals to effectively review, interpret, and negotiate AI-generated contracts.

## Role of the Legal Profession

The legal profession assumes a pivotal role in addressing the legal challenges surrounding AI-generated contracts. Lawyers can act as advocates for clear legal guidelines, promoters of responsible AI development practices, and educators who empower individuals with the knowledge and tools required to navigate the intricate landscape of AI-generated contracts.

### Ethical Considerations in AI-Generated Contracts

Beyond legal frameworks, ethical considerations arise concerning the use of AI in contract formation. The legal community must engage in a discourse about the ethical implications of AI-generated contracts, addressing issues of fairness, bias, and the potential impact on vulnerable parties, as well as paths to liability

and remedy, in the complex interplay between subcontracted parties or freelancers. Establishing ethical guidelines will contribute to a more principled integration of AI in the legal landscape.

## Ensuring Access to Justice in the AI Era

The advent of AI in contract formation raises questions about the accessibility of justice. Will the use of sophisticated AI systems inadvertently create barriers for individuals with limited resources or technological literacy, or break these barriers down to levels never hitherto seen? Legal professionals must actively work towards ensuring that the benefits of AI do not disproportionately favour certain segments of society, thereby upholding the principle of equal access to justice, as a disproportionate access to precedent is currently the reality for most jurisdictions, with paywalls limiting equitable access to a variety of legal and academic sources crucial to understanding a variety of areas of the law.

## Conclusion

AI holds the transformative potential to revolutionise contract formation by enhancing efficiency, accuracy, and accessibility. However, the burgeoning role of AI in this process necessitates a careful examination of associated legal concerns to ensure fairness, transparency, and accountability. By adopting a proactive and collaborative approach involving policymakers, AI developers, the legal profession, and individuals, we can effectively integrate AI into the contract formation process while upholding the fundamental principles of law and safeguarding contractual rights. This proactive stance will not only foster innovation but also ensure a legal landscape that resonates with the evolving dynamics of technology in contract law.

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