JUNIOR LAWYERS’ DIVISION ESSAY 2014

Technology advances have dramatically changed the legal sector in recent years. How do you think solicitors can further adapt to accommodate these advances? Will there still be a place for solicitors in 20 years?

What would solicitors from 200, 100 or even 20 years ago make of modern legal practice? Video calls with Kazakhstan; textbooks on mobile phones; filing documents at court without leaving your bed. Despite such technologically-driven changes, the fundamentals of legal practice remain the same: solicitors advise, manage transactions and draft documents. This essay seeks to predict how long before technology disrupts those fundamentals and what this means for the profession.

The emperor’s new clothes

To understand how technology has “dramatically” changed the legal profession, we must first remind ourselves what lawyers do. Lawyers have specialised knowledge and experience which they monetise. The difference between what lawyers charge and their costs is profit. Technology has increased profit by improving productivity: work can be done more quickly (e.g. it is faster to search for a case on Westlaw than in the Law Society Library); and costs are cut (e.g. when you do your own typing, each person no longer needs a highly trained secretary). But we often overstate the effects of these advances. While technology has changed how solicitors operate, nothing changed overnight. Technology requires a critical mass of users before engendering change; email is useless when your clients do not have a computer.

Problems arise when firms put style above substance. Brands often get people unjustifiably excited. Eversheds announced its lawyers would be given iPads in a show of its cutting-edge commitment to mobile working. However, it is unclear exactly what productivity gains are made through iPads rather than laptops. The iPad’s functionality is only marginally better than the alternative. Many technological advances in the legal profession have only made incremental or evolutionary changes. The fax machine is a development of the letter; the email an update of the fax. Crucially, once everyone uses the technology, the productivity gains decrease relative to competitors.

The new Gutenberg?

More interesting than incremental productivity gains is to analyse how technology has changed a solicitor’s knowledge itself. Websites like Westlaw and Lexis have dramatically increased the potential information available to lawyers. Rather than relying on textbooks or memory, lawyers can easily access authorities which would previously have been consigned to obscurity. The internet engenders a greater

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1 Unless otherwise stated, all URLs were last accessed 30 July 2014.

2 http://www.lawgazette.co.uk/analysis/could-the-ipad-revolutionise-the-way-law-firms-do-business/56424.article

3 http://legalresearch.westlaw.co.uk/

4 http://www.lexisnexis.com
exchange of knowledge amongst jurisdictions too, creating more fertile international legal debate.

But the implications for legal learning are not revolutionary. Chapter 21 of Dickens’ *Pickwick Papers* recalls Victorian legal research, but the scene would hardly seem unfamiliar to today’s young solicitor:

“young men shut themselves up in those lonely rooms, and read and read, hour after hour, and night after night, till […] they sank beneath the unnatural devotion of their youthful energies to their dry old books.”

But access to more authorities and commentary arguably creates more work. Judges have been critical of irrelevant authorities cited in pleadings and skeletons. Finding and producing vast amounts of authorities would have been much more difficult before desktop printing and electronic resources.

The implications for legal training are overstated too. In the 21st century, knowledge is apparently less about rote learning and more about research skills. Why learn reams of cases when you can look them up online? But this point is not new either. In an article from 1950, L C B Gower criticises closed-book exams noting, “the inability to use the normal tools of our trade militates particularly against the effectiveness of written exam papers as a practical test in the professional examinations”.

**Shaking things up**

Perhaps then the dramatic changes are not within the profession but outside. In the USA, technology is disrupting traditional lawyer/client relationships. *Shake law* has developed an app which allows people to draft and execute documents without engaging a lawyer. The process is quick; the company’s demonstration video shows a lease being drafted in under a minute. In the UK, *Rocket Lawyer* offers similar services. It remains to be seen to what extent such start-ups will disrupt the legal profession. Thus far, the economic pressures on family law practitioners have not been due to the proliferation of online divorce providers (e.g. *Quickie Divorce*) but Legal Aid cuts and government pressure to use mediation to solve disputes.

Currently, clients are happy to pay for a solicitor to draft for peace of mind, but for how long? Given that drafting is one of a solicitor’s main functions, anything which takes that out solicitors’ hands will change the profession. While critics might

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5 C. Dickens, *Pickwick Papers* (London, 1837)
6 *Calder Trading Ltd v Leibson Corporations Ltd & Ors* [2014] EWCA Civ 935
8 [http://www.shakelaw.com/](http://www.shakelaw.com/)
9 [https://www.rocketlawyer.co.uk](https://www.rocketlawyer.co.uk)
10 [http://www.quickie-divorce.com/divorce-services.html](http://www.quickie-divorce.com/divorce-services.html)
question the reliability of such an approach, clients already borrow precedents from the internet without running them by solicitors. Rather than worrying about the dangers of cheap online contract providers, entrepreneurial solicitors should enter the market themselves to provide affordable, quality drafting in a way clients want.

And yet for all the talk of disruptive apps and start-ups, this analysis has hardly been dramatic; we need to reconsider the question posed. The question is interesting in its choice of words: how can lawyers “adapt” to changes? Adaptation presupposes an evolutionary, reactive change. It is unsurprising that Shake law’s staff is mainly from technology backgrounds. There is only one lawyer in the team of a dozen. The firm describes itself as solving “legal problems as a technology company, not as a legal company trying to understand technology”\textsuperscript{12}. Lawyers need be less legal and more technical. Far from adapting to dramatic technological changes, solicitors need to be proactive and revolutionary.

**Big data**

The legal profession is excited about alternative business structures and “Tesco law”, but perhaps we can learn from Tesco in other ways. Tesco’s Clubcard was revolutionary in allowing the company to tailor advertising and offers to each customer’s spending habits\textsuperscript{13}. Big data has revolutionised how industries relate to clients. What can it do for the law?

A recent study considered trends in Israeli parole hearings\textsuperscript{14}. It seems that prisoners are more likely to receive favourable decisions earlier in the day when the judges have more mental energy. Such analysis has profound implications for the rule of law, but also for litigation strategy. Let us imagine another scenario where a firm analyses which judges hand down which sentences in which type of cases: Judge A hands down a custodial sentence in 56% of assault cases compared to judge B who hands custodial sentences down 29% of the time. Rather than relying on practitioner’s instincts, lawyers could know the judges better than the judges know themselves.

As the name suggests, big data requires lots of data. The efficacy of such a system relies on a critical mass; prejudices or trends are only evident when one amasses big amounts of data. Electronic records make data aggregation easier but unless the under-funded and over-stretched courts keep and publish detailed data, the time is ripe for an enterprising firm to send staff to monitor and analyse judicial decisions.

**You know the law, your exposition/Hath been most sound**

Another way in which lawyers could utilise technology to change dramatically their understanding of the law is through advanced analytical computer modelling. A computer code is a logic game. It creates a series of options which when combined in certain ways and followed produce certain outcomes. Take a basic logic gate:

\textsuperscript{12} http://www.shakelaw.com/about/#purpose

\textsuperscript{13} http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/10577685/Clubcard-built-the-Tesco-of-today-but-it-could-be-time-to-ditch-it.html

\textsuperscript{14} http://www.pnas.org/content/108/17/6889
if (age > 18) {
    ACCEPT
} else {
    REJECT
}

In this simple code, the programme accepts those older than 18 and rejects those who are not. Legislation is essentially drafted in this way. Consider s. 19(1) of the Financial Services and Markets Act 2000:

(1)No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—

(a) an authorised person; or

(b) an exempt person.

Section 9(1) can easily be recast as a logic gate:

if (person = authorised OR = exempt) {
    PERMITTED TO CARRY ON REGULATED ACTIVITY
} else {
    FORBIDDEN TO CARRY ON REGULATED ACTIVITY
}

Plug in the relevant information and the programme will tell you if you are permitted to carry on a regulated activity. The programme could note a percentage rate of compliance, highlighting which parts of the statute a person may be breaching. Rather than going to a solicitor for advice, clients could run the information through internal statutory compliance programmes.

An obvious problem is coding what certain words actually mean. The s. 9(1) logic gate above only concerns those who are carrying on a permitted activity. The difficulty is in establishing whether one is “purporting to” carry on an activity. Case law clarifies the meaning of ambiguous wording in statutes but replicating the nuances of case law clarifying “purporting” is a difficult task but not an insurmountable one. IBM’s Watson computer programme beat the contestants of the US game show.\textsuperscript{15} A general knowledge question would be read out which consisted of a series of clues. Watson would break up the clues into fragments to find statistically-related phrases; the more matches, the more likely the answer was correct. Much has

\textsuperscript{15} http://www.ibm.com/smarterplanet/us/en/ibmwatson/
been made of the potential impact of artificial intelligence in law\textsuperscript{16}, and Watson demonstrates the capacity of computers analyse in a non-linear way. Watson had access to a 15-terabyte data bank of human knowledge; a computer with access to the entirety of English (or indeed common law jurisdictions’) legal knowledge could soon analyse whether a client is complying with common law as well as statutory law. If this happens, what role is there for their expertise in such a world where even legal analysis can be done by a machine?

\textbf{Qui custodiet custodiem?}

What happens if something goes wrong with this impressive machine? “It’s the computer’s fault,” will not impress clients. Distrusting of technology, solicitors will manually check the machine’s work – removing the incentive to use it in the first place! But such manual checking may not in fact be reliable. Recently developed software which checks for accuracy in precedent contracts found that no leading firms’ precedents were error-free\textsuperscript{17}. In a profession where accuracy and attention to detail is paramount, perhaps technology is in fact a safer option than manual proof-reading. The professional liability insurers may insist on it.

But can solicitors work like this? Lord Hope noted, “one of the strengths of the common law is that it can take a fresh look at itself so that it can keep pace with changing circumstances.”\textsuperscript{18} The courts have been willing to embrace clients’ changing commercial practices (e.g. permitting virtual or electronic contract signings\textsuperscript{19}) but solicitors are still constrained by regulation. As we might expect, the SRA’s Code of Conduct\textsuperscript{20} is silent on machines giving advice but then again analytical software which can verify compliance with the law does not exist yet. On a more practical level, current regulation prevents solicitors from conducting business in a way clients (or consumers) want. It is unclear how auto-drafting apps or legal advice websites satisfy SRA client care outcomes. Rocket Lawyer states that it does not provide legal advice to users\textsuperscript{21} thus avoiding such regulation. Clients do not just want cheaper services but also convenience. Regulation is ultimately there to protect clients, but if such protections are causing them to avoid solicitors, perhaps the regulation has allow solicitors to work in a way clients want.

\textbf{2034 and all that}


\textsuperscript{17} \url{http://www.rollonfriday.com/TheNews/EuropeNews/tabid/58/Id/2938/fromTab/58/currentIndex/10/Default.aspx}

\textsuperscript{18} \textit{Chartbrook Ltd v Persimmon Homes Ltd and others} [2009] UKHL 38

\textsuperscript{19} \textit{R (on the application of Mercury Tax Group Ltd and another) v HMRC & Others} [2008] EWHC 2721

\textsuperscript{20} \url{http://www.sra.org.uk/solicitors/handbook/code.page}

\textsuperscript{21} \url{https://www.rocketlawyer.co.uk/terms.rl}
Dickens observed that “the one great principle of the English law is to make business for itself”\(^{22}\) is as recognisable today as it was in 1853. When technology replaces lawyers, lawyers panic. But such changes may be no bad thing: anything that reduces the tedious, administrative or clerical aspects of a solicitor’s job has to be welcomed. Despite the potential disruption that modern computer analytics threatens, it is difficult to foresee the law without human expertise. Our most advanced computers can *analyse* but they cannot yet *think* or *create*, and that is where the true value of a solicitor lies, whether now or in 20 years. For the profession to survive it will have to at least keep up with technological changes, especially those embraced by clients. But for the profession to *thrive*, professionals and regulators must anticipate the technological changes which are coming in 20 years and embrace them when they arrive.

**Word count:** 2000 (excluding title, question and footnotes)

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\(^{22}\) C. Dickens, *Bleak House* (London 1852)