

The integration of technology into the legal curriculum: Issues and way forward

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1 Introduction

Over the years, changes in the legal educational system, curriculum, and teaching methods have been slow. However, in contrast, the availability and use of technology teaching tools are expanding rapidly in the 21st century. The world is becoming technologically driven with several sectors being affected by technological advancements. Digitalisation has not spared the legal field, necessitating the shift from the traditional legal education system which is teacher-centered to technology integration into the legal curriculum.

The integration of technology into the legal curriculum will prepare law students for today's changing legal market as technology has become a prerequisite to surviving in the 21st century as a lawyer. This is because this generation of law students cannot prepare for their future when the curriculum delivery is based on their lecturer's past lecturing experience.

The chapter examines the role of technology in modern legal practice and its integration, including how it enhances employability and its profound impact on legal education. This chapter further presents the challenges faced in integrating technology into the legal curriculum, and lastly the way-forward for advancing its effective incorporation into legal studies.

2 The role of technology in modern legal practice

In the 21st century, technological advances have proven to be a critical component in the world of work. The legal profession is not spared in this regard. It is within this context that technological competence for legal practitioners is no longer optional.¹ This is evident through the internet creating easy access to information that would previously not be easily accessible. Accessing such information would assist legal practitioners in their legal research or client's case. Therefore, legal practitioners cannot claim to be knowledge workers in the modern day without the knowledge of electronic resources in their legal research.²

The American Bar Association Commission on Ethics 20/20 report under Model Rule of Professional Conduct comment 8, stated that 'a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology'.³ Furthermore, O'Leary avers that this expectation changes the traditional legal system wherein clients now want a more multidisciplinary approach which includes technology and often more efficient.⁴ For some legal practitioners, the COVID-19 pandemic became a wake-up call to this notion that technology is a pre-requisite to surviving as a competent legal practitioner in the 21st century. Economic survival and professional competency reframe the use of technology, not for the sake of convenience but rather to improve the provision of service to clients and maintain control as the legal profession is given control over a particular body of knowledge.⁵

Electronic databases and media channels are technological advances which have benefited the legal sector. Therefore, it is imperative that all legal practitioners display a high level of competency in using resources such as Jutastat, Butterworth's/LexisNexis, Westlaw, SAFLII, CANLII

1 DL O'Leary "Smart" lawyering: Integrating technology competence into the "smart" lawyering: Integrating technology competence into the legal practice curriculum legal practice curriculum' (2021) *The University of New Hampshire Law Review* 197.

2 T du Plessis 'Competitive legal professionals' use of technology in legal practice and legal research' (2017) 4 *Potchefstroom Electronic Law Journal* 34.

3 O'Leary (n 1) 197.

4 As above.

5 Du Plessis (n 2) 41.

and WORLDLII, which are electronically based.⁶ Furthermore, 'smart' and efficient working is promoted through a variety of online tools such as Microsoft Office, e-discovery and computer analysed data, accelerating tasks at a speed that was not previously achievable.⁷ The integration of technology therefore reduces operating costs and enhances client interaction as meetings and cross-border consultation are now possible via online platforms⁸

3 The impact of technology on legal education

Technological advancements have become part of modern society, and its existence can no longer be ignored nor avoided. This is supported by the White Paper on education, which emphasised that the teaching and learning process has changed drastically because of the emergence of information and communication technologies.⁹ For instance, in the legal curriculum, it is virtually impossible to identify a module wherein technology does not have an impact e.g. data protection, cybersecurity, intellectual property and medical law to name a few.¹⁰ Legal practitioners and law students no longer have to visit the library but can access legal documents/cases via online repositories.¹¹ These technologies promote learning by facilitating accessibility, mobility and knowledge,¹² by making information available 24/7 and providing access to legal information that was previously not easily accessible.¹³ This further assists laypersons in gaining a fundamental understanding of the law that affects their rights as citizens and in turn justifies the legal maxim '*Ignorantia legis neminem excusat*'.¹⁴

6 Du Plessis (n 2) 42.

7 O'Leary (n 1) 197.

8 JTP Cruz and others 'Optimizing legal education through technology-driven pedagogy' (2021) 1 *International Journal of Learning and Teaching* 48.

9 Government Notice 1869, GG, 26 August 2004, 26734 (White Paper on e-Education).

10 J Webb 'Information technology & the future of legal education: A provocation' (2019) 1 *Griffith Journal of Law & Human Dignity* 4.

11 Cruz and others (n 8) 50.

12 S Graben 'Teaching emerging technologies as legal systems: Proposals for a changing law school curriculum' 21 February 2019, <https://dx.doi.org/10.2139/ssrn.3339363> (accessed 2 October 2024).

13 Cruz and others (n 8) 50.

14 As above.

According to Craft, the outcomes of the integration of technological advancement into the classroom is twofold, on the side of students it provides relief as it reduces their workload whereas on the side of educators, it creates anxiety if not properly used, as it might promote laziness across the student body, worse cheating.¹⁵ This can be seen through the recent academic dishonesty incident at the University of South Africa. According to Professor Magano, the university's Acting Vice-Principal of Institutional Development, 1 456 students were found to have engaged in academic dishonesty.¹⁶

The aim of technological integration into legal education is not to have it applied in everyday classrooms or expect law students to become data security experts or teach them to code a legal app but rather to make them aware of technology lawyers use e.g. research, communication etc.¹⁷ Reference can be made to the 'Duty of Technology Competence' in Rule 1.1, which puts an emphasis on how technological skills are necessary for law students to stay competitive and how they should be incorporated into legal education.¹⁸ This rule further offers a practical guide for academics to teach five key areas in accordance with Part I – IV of Comment 8, Rule 1.1 namely; legal document proficiency, legal analytics, electronic discovery (eDiscovery), law practice technology, and data security.¹⁹

These technologies are effective as they increase the availability of legal knowledge thus leading to better access to justice.²⁰ According to Hilyerd in 2008, this changes how students are taught to excel in the modern-day practice as the web consists of a vast number of legal facts and opinions wherein, they can be exposed to both weaknesses and strengths and these better shape legal theories.²¹

15 BA Craft 'When you come to a fork in the road, take it, and the future ain't what it used to be: Lessons in living with ChatGPT' (2024) *Research Issues in Contemporary Education* 125.

16 N Mazibuko 'Unisa rocked by cheating, plagiarism as probes continue' 18 April 2024, <https://www.thesouthafrican.com/news/unisa-rocked-by-cheating-plagiarism-as-probes-continue/> (accessed 2 October 2024).

17 O'Leary (n 1) 197.

18 As above.

19 As above.

20 S Graben 'Teaching emerging technologies as legal systems: Proposals for a changing law school curriculum' 21 February 2019, <https://dx.doi.org/10.2139/ssrn.3339363> (accessed 2 October 2024).

21 Cruz and others (n 8) 50.

Some Law schools have more access to resources than others, however, technology can close the resource limitations gaps affecting lower economic academic institutions. This is so because schools can utilise virtual lecturers with speakers not being geographically present in the institution.²² In Philippines, databases such as CD Asia, Lexis Nexus, Westlaw, and Supreme Court Virtual Library are used which then balance knowledge output amongst law students no matter which law school they are at by providing the students with the same access to legal knowledge.²³ Furthermore, as English is used mostly as a mode of assessment in most institutions, students who cannot articulate it well face challenges in participation in face-to-face discussions however, online discussion boosts their confidence as it gives them sufficient time to draft thoughtful responses with the aid of resources like the dictionary and grammar tools. Therefore, online communication reduces cultural barriers that were traditionally there, making it easier for students from different cultures to engage lecturers.

Technological advancements are well received internationally, reference can be made to the recommendations for the development of Higher Education in the United Kingdom made under the Dearing Report (1997).²⁴ Chapter 13 of the report emphasised the use of online technology in higher education and the report outcomes further stated that this will enhance the effectiveness and flexibility of Higher education while maintaining the quality despite financial constraints.²⁵ For instance, Charles Darwin Law School in Australia is offering a Master of Laws degree over an online curriculum while DePaul University College of Law have revised their curricula to one which is more focused on technology and professionalisation.²⁶ Similarly, Havard, Stanford and Pritzker law schools have also revised their curricula to better prepare law graduates for a future that is technologically based e.g. evidence, communication, document repositories and more.²⁷

22 LA Greenbaum 'Re-visioning legal education in South Africa: Harmonising the aspirations of transformative constitutionalism with the challenges of our educational legacy' (2014) *SSRN Electronic Journal* 6.

23 Cruz and others (n 8) 50.

24 AD Crocker 'Blended learning: A new approach to legal teaching in South African law schools' (2006) *Journal for Juridical Science* 13.

25 As above.

26 Cruz and others (n 8) '50.

27 As above.

4 Challenges in integrating technology into the legal curriculum

The efforts made to integrate technology into the legal curriculum have thus far brought positive outcomes. However, it is not without negative side effects as it can result in several problems such as academic dishonesty, passive learning, loss of focus, misinformation and infringement of the right to privacy.²⁸

Technology seems all good however, it can also be a burden to learning if ineffectively used hence the degree of resistance on the side of academics. As a result of the vast number of information readily available on the internet, students no longer put efforts in their studies as they can access everything easily and this may become a difficult task when having to study as the information is a lot and unfiltered which then bombards the mind of students which may result to loss of focus.²⁹ Furthermore, this may also hinder the actual learning and full appreciation of the law as students may either copy someone's work or rely on case summaries available all over the internet rather than reading the full-text case.

There is resistance on the side of law academics who turned out fine through traditional methods, however, this has a negative impact on the kind of law students they produce as a society now craves lawyers with technical applications and fast-paced results whereas the classical way often produces law graduates that are more academic than useful leading to grandaunts having to take further studies or practical's before being relevant to the current market.³⁰ On the other hand, lack of technological knowledge by the lecturers may affect the students learning e.g. if PowerPoint slides contain a lot of information, teaching might become boring. This is so because technological integration leads to an increased intake in the number of students which will affect teaching and learning as larger classes decrease students' motivation as there will be less contact time with individual students which ultimately results in passive learning.³¹

ABA's commission on ethics 20/20 was tasked with examining the technological impact on the legal profession and the report findings were confidentiality and data security as we are transitioning from the

28 Cruz and others (n 8) 51 & 52.

29 Cruz and others (n 8) 51.

30 Cruz and others (n 8) 48.

31 Crocker (n 24) 5.

traditional filing systems to the digital which includes cloud-based storage.³² This is further corroborated by Section 2 of the Protection of Personal Information Act (POPIA)³³ which places emphasis on the constitutional rights to privacy and its protection.

These technological advancements further brought about the emergence of Artificial intelligence (AI) however, there is no specific legislation to regulate its use. This brings about a challenge of balancing innovation with compliance as these new technologies must comply with stringent legal and regulatory standards.³⁴ Although we have existing legislation such as POPIA³⁵ and the Copyright Act,³⁶ these two legislations do not adequately address issues that arise as a result of AI as the former does not cover personal information dissemination by AI while the latter does not cover the reproduction of copyrighted information by AI.³⁷

The processing of personal information which includes distribution or transmission is prohibited under Section 11(1)(a) POPI Act unless consent is provided.³⁸ Therefore, the use of ChatGPT constitutes 'further processing' particularly, by adding information to it as no consent was provided. ChatGPT is an AI tool that lacks critical evaluation skills as it relies on a pattern of previous information as it was trained on historical data.³⁹ This raises concerns about the accuracy and reliability of the information it generates. This was evident in the case of *Parker v Forsyth NO & Others*,⁴⁰ where it was emphasised that there is a need for human verification of information that is AI-generated. This is after the plaintiffs' attorney relied on ChatGPT when dealing with a client's

32 O'Leary (n 1) 197.

33 Act 4 of 2013.

34 M Ramashia & N Phiri 'The use of ChatGPT in legal practice' 18 October 2023, <https://ramsattorneys.co.za/the-use-of-chatgpt-in-legal-practice/> (accessed 6 October 2024).

35 Act 4 of 2013.

36 Act 98 of 1978.

37 As above.

38 Act 4 of 2013.

39 G Smit 'The perils of using ChatGPT in the South African legal practice' 2 November 2023, <https://mhilaw.co.za/2024/02/26/the-perils-of-using-chatgpt-in-the-south-african-legal-practice/> (accessed 4 November 2024).

40 2023 (1585/20) ZAGPRD 1.

matter which generated fictitious cases.⁴¹ This led to punitive costs being ordered against the plaintiff.⁴²

5 Way-forward with the integration of technology into legal the curriculum

The effects of technology can no longer be avoided as the 21st-century law students grew up in the era of technology and would, therefore, expect its use in education and this renders the traditional methods obsolete. COVID-19 became an awakening call to many with the abrupt switch to online learning which saved the academic year. The concept of technology might be scary to legal educators/scholars however, its integration into the legal curriculum requires no technological background but the urge and eagerness to learn.⁴³ According to Pillay and MacFarlane's observations, failure to move online by either public or private institutions will result in them heading for oblivion.⁴⁴

The gap between those with access to and able to use modern technology and those without remains, particularly for institutions with limited staffing resources and finances. To reduce this gap, institutions should rather invest in developing their existing staff on the effective use of these technological resources. This is already in implementation in certain institutions as the University of Pretoria offers training to its lecturers on the production model of online learning.⁴⁵ On the other hand, the University of Free State is offering support to all lecturers involved or interested in e-learning.⁴⁶ Therefore, other institutions should try implementing same as well train educators, as this will better impart the knowledge of effectively using online resources. According to Barnes when using online resources, one should consider the source, author and site not forgetting important factors such as accuracy and credibility.⁴⁷

41 M Ramashia & N Phiri 'The use of ChatGPT in legal practice' 18 October 2023, <https://ramsattorneys.co.za/the-use-of-chatgpt-in-legal-practice/> (accessed 6 October 2024).

42 As above.

43 O'Leary (n 1) 197.

44 Crocker (n 24) 2.

45 Crocker (n 24) 10.

46 As above.

47 Crocker (n 24) 20.

Policies and timeframes should be established for the implementation and use of digital technologies within the legal curriculum. The University of the Free State has an online policy for WebCT and e-learning, aiming for an online presence in every module within a few years.⁴⁸ Similarly, the University of Stellenbosch has a detailed, uniform approach to implementing online technology across disciplines, with specific goals and timeframes.⁴⁹ Furthermore, the purpose and limitations of the use of ChatGPT should be cleared out particularly with integrating AI into the legal curriculum and ultimately the legal practice. This will assist in balancing innovation with regulatory compliance and further address the existing challenges of regulating AI-related tools to the inclusion of ChatGPT and support the call that law to regulate AI tools must be developed as a matter of urgency. In this context, valuable lessons can be drawn from the University of Johannesburg guidelines on the use of ChatGPT in legal research.⁵⁰

Institutions and law firms should further develop policies surrounding the do's and don'ts when using Generative AI. This will assist in dealing with AI hallucination as Mr Aziz-Ismail pointed out that in New Zealand a legal practitioner found a case through AI which later was found to be non-existent by the Law Society in New Zealand.⁵¹ This shows that the use of AI does not affect only South Africa but rather the global community as well. Therefore, ChatGPT should be viewed as a technological tool to assist law students and legal professionals rather than a complete replacement for human expertise and judgment.

6 Conclusion

The integration of technology into the legal curriculum is not just a passing trend but a necessary evolution to equip future legal professionals with the skills they need in a rapidly advancing digital world. The shift from traditional teaching methods to the incorporation of digital

48 Crocker (n 24) 10.

49 Asabove.

50 University of Johannesburg 'Practical guide to ethical use of ChatGPT in essay writing' 15 March 2023, <https://news.uj.ac.za/news/a-practical-guide-to-ethical-use-of-chatgpt-in-essay-writing-2> (accessed 19 January 2025).

51 K Ramotsho 'Law firms should develop policies on the use of AI' 23 September 2023, <https://www.derebus.org.za/law-firms-should-develop-policies-on-the-use-of-ai/> (accessed 6 November 2024).

tools and resources ensures that future legal practitioners are equipped with the necessary skills to thrive in an increasingly technology-driven world. While challenges such as academic dishonesty, resistance from educators, the regulation of AI and concerns over data security remain, the benefits of incorporating technology into legal curricula far outweigh these obstacles. Moving forward, law schools must continue to invest in training both students and educators, establish clear policies for the use of digital tools, and address emerging issues related to the use of artificial intelligence in legal practice. Ultimately, embracing technology in legal education is crucial for closing knowledge gaps, enhancing access to justice, and ensuring that law students are well-prepared to navigate the complexities of the 21st-century legal landscape.