

Digital Planning Podcast (Season 5, Episode 2): ChatGPT and the Legal Realm

Speakers: Justin Brown, Jen Zegel, and Ross Bruch

Justin Brown:

Welcome to the Digital Planning Podcast. This is Justin, and I'm here with my cohosts Jen and Ross. And today, we are going to be talking about artificial intelligence, specifically in the estate world. As many of you may know, ChatGPT recently came out, and it has really changed the way that a lot of us think about artificial intelligence. There are many people who believe that AI is going to take over a law practice, or a lot of what we do. So what we want to do today is talk about ChatGPT and give our own thoughts about it. So let's get started.

As a preliminary matter, Ross or Jen can you tell our listeners what exactly is ChatGPT?

Jennifer Zegel:

Sure. So ChatGPT is an artificial intelligence chat bot assistant that can answer questions or produce content based on the prompts typed into a search bar on a variety of topics, from cooking recipes to parenting tips, it can write poetry, it can write a chapter in a scifi novel, and it's even passed the bar exam, a medical licensing exam, and a Wharton Business School MBA exam. Now, ChatGPT is technology that was built by the private company based out of San Francisco, OpenAI, which is also responsible for the teams that created DALL-E, which is a platform that uses AI to create artwork based on search prompts.

Now, this technology is based on a language model program, and it's trained to predict the next word. So a lot of people think that the technology itself is actually thinking, but it's not. It's built on a neural network, which is essentially an algorithm that mimics a biological brain to process vast amounts of data, and the decision making processes are concealed by layers upon layers of artificial neurons. Which in some ways is like a black box, and the developers don't even always know why the AI does what it does, which could predict and cause humorous to weird outcomes, as well as dangerous ones, which we're going to be talking about today, such as promoting false news or incorporated biases into responses since the technology is based off of data and information that is programmed into it. And if that data and information has inherent biases, the responses that it generates could also carry out those biases.

Justin Brown:

So Jen, what I'm hearing you say is that the results from the AI, the inquiry that you put in ChatGPT, are only as good as the data that goes into it. So I guess a cautionary tale down the road is, we really need to be aware of who's giving the information for ChatGPT, or future competitors. So that we can kind of take what they're saying with a grain of salt, right? Anytime you do internet research, you always have to be careful because it's only as good as the website it's on, and it sounds like it's the same thing here. Is that right?

Jennifer Zegel:

Absolutely.

Ross Bruch:

But as we're also seeing in current events, we're seeing that competitors as well as partners to ChatGPT, mainly Microsoft, are going to try to increase the effectiveness of that input and give it better information, connect it to the internet to give it more accurate data. One of the legitimate complaints thus far about ChatGPT is that some of its answers are just flat out wrong, and it can mimic human language, it can mimic describing or writing about a subject that you ask it to opine on, but it doesn't necessarily mean that those words that they're stringing together are correct.

However, I'm optimistic that in the future, that will be fixed and/or improved. Jen, you mentioned before that it can write all sorts of things, from poetry, to a recipe, to what have you. You also mentioned that it can pass the bar. So are your jobs at stake right now? Can it write a will? Can it write a Pennsylvania will that will pass muster and be indistinguishable from anything that either of you would write?

Jennifer Zegel:

I've actually asked it to write a will, and it generated one that wasn't bad, but it certainly wouldn't incorporate any nuances in the laws or personal situations for families, and it was lacking some more important provisions that an attorney drafted would provide.

Ross Bruch:

But as Justin pointed out, it's also only as good as what the information it's fed, and right now it's pulling information from various sources. But you have the opportunity with ChatGPT, and I anticipate with many competitors down the road, of feeding it the information you want it to rely upon when it gives you an answer back. Thus, I envision a world where you could feed it your form will and have it learn what those clauses mean, and when to use them. So maybe down the road, it could be a world in which you say, "Here's my forms. Use these, and I'll describe the situation, and then you'll find the appropriate one." I guess this is a good segue to ask both of you, how do you envision ChatGPT or its successors will impact your near-term and long-term practice?

Jennifer Zegel:

So before I answer that, I do want to point out that right now, there is a free version of ChatGPT and there is also a premium version that can, for a subscription fee you can get priority in searches, and faster results. And I'm not sure because I haven't been able to play around with the paid version as to how well you can customize it, and then essentially carry out what you just suggested, by feeding it forms and preferred language that you would want to use in contracts. I certainly see it now being able to redline documents or spot inconsistencies more quickly than in a traditional reviewing process, so I think that could be implemented right away. Justin, what are your thoughts?

Justin Brown:

So I look at this technology as a starting point for the work that I do, and I don't view it as a replacement for what I do. So Ross, you had said can you just feed it forms and it will kick out wills. Yes, I think it will be able to get to that point, but I still don't think that that is a replacement for will drafting. I think currently, most estate planners have some type of form that they work off of, but I think every client is different, and every client's will is different. So I view this technology as the starting point for drafting, but not the endpoint of drafting.

Ross Bruch:

The analogy I've heard that I really love about ChatGPT is that it's like having at your disposal 1,000 mediocre interns. And if you can picture that, it would mean that you can produce a lot of information, or a lot of data, or a lot of work product very, very quickly, but it's going to be extremely mediocre and not really understood what it stands for, and what's right and what's wrong. And that you can envision, or at least I can envision a world in which that saves some time, but also requires a new set of skills; asking better questions, refining the answer that is given back to you.

And you have that ability, so in current ChatGPT form, you can ask for an answer, you can ask for a speech, you can ask for a summary on something, and then use that and say, no, take what you've just written and refine it in this capacity, or make it a higher level, make it easier to understand, remove this ambiguity. And it will continue to refine. So even if we are skeptical of this technology, I think it's worthwhile to get familiar with it, because asking AI questions or AI related questions could become an important skill to use this successfully. I think it's also necessary to understand where its strengths and weaknesses are. I agree with you Justin, I think that every will is different. I think especially as you get into working with more sophisticated clients, or more sophisticated or complex situations where it's just not there yet. But at the same time, I think

that there's a lot of activity in the legal office which some of it is form documents, some of it is just emails to clients or marketing materials or what have you, that this could lend a hand in speeding it up.

Justin Brown:

Yeah, I'll give you an example of that, Ross. We put out a letter typically at the end of the year to clients just saying a reminder of the end of the year is coming, and if you're going to be making any gifts then now's a great time to do it, or the estate tax exemption may be changing next year, so just things on your radar screen. Any income tax changes. So I think that's a standard letter that we typically send anyway.

I tried out ChatGPT and asked it to write that type of letter for me, and it did a good job as a first draft. Am I going to use that exact draft for my clients? No. But it may have saved me a good amount of time in the drafting process. And I think for me, that's where I see the tremendous value to this. I see value in reducing some of the time that estate planners or planners in general are spending on some of these things that you can automate. Again, I don't think it's going to take my job. I don't think it's a replacement for consultation with a lawyer. But it can make lawyers more efficient.

Ross Bruch:

Here's where I think the real existential threat comes to estate planners, or to other forms of attorney, is that the uneducated client who has never been through the process to see the value of talking to you in a one on one or a two on one conversation about their plan, about their long-term goals, doesn't understand why that's important. And so when they think, "Oh, I can just ask ChatGPT for this will," and it prints out something that looks sort of like a will, they might not know the difference and know why that's insufficient, and just sign that.

And you don't have enough hours in the day to educate everybody on that difference, so that's where technology is thrilling and scary at the same time, because it is the threat of people just not realizing why this is insufficient. And at the same time, ChatGPT could talk to a million people in the same hour that you just talked to one client. And so it has the benefit of time on its side, and the efficiency of reproducing the same thing over and over again, and that becomes the hurdle that scares me as somebody who wants to see clients and individuals walk away with correct planning documents, or the correct advice, that... I don't know what the future of that holds.

So crystal ball it, both of you. What does 10 years from now look like? That's to me a scary world.

Justin Brown:

Well before we get into the crystal ball, I think you have the same problem right now without ChatGPT, right? Anybody can go to a Staples and buy a will out of a box, and make that their will. I think the only difference now is that instead of doing that, you can now ask the computer to do it, and you can get the same output. So I think it just makes it easier to be able to access this, we'll call it erroneous information. But I don't think it changes anything all that much.

Ross Bruch:

Oh, I disagree because I think that the fact that I can do it from my phone, and it seems... when I go to Staples and I buy that form, to me, and obviously we all come in with our own experience of what estate planning looks like. But to me, that just feels unguided. When I ask my phone, somehow I have even though I know I shouldn't, I psychologically put more trust in the answers that my phone or some app that I'm going to use generate. Or maybe I trust AI more than I would doing it myself, and this is just enough of a training wheel to make me feel confident to ride that bike. I think the ease of access is what scares me.

Justin Brown:

Yeah, I think it comes back to what we said at the very beginning. We don't know who's feeding the information into the artificial intelligence. And I guess I would feel a lot better if it was an estate planning attorney feeding it information as opposed to some generalized information that somebody who doesn't know anything about wills is coming up with an idea of what a will should look like.

Jennifer Zegel:

I think we also then get into issues about the system itself and the unauthorized practice of law and other ethical issues. And there's a great need for regulation in this area, regulation in the development of this type of software and technology, and in policing it and its uses. Now, the EU has already proposed the AI Act, and the US has drafted an AI Bill of Rights. It's a very blueprint form. And what the AI Act is attempting to do is to detect potentially biased data and remove it from future analysis with high risk systems. And in that act, they define high risk systems as one that includes critical infrastructure, human resources, essential services, law enforcement, border control, jurisprudence issues, and surveillance.

And while the AI Bill of Rights blueprint also mirrors some of these concerns and addresses them, there's a lot more that needs to go into both of these proposed legislations to help shape the future of this technology, and curtail nefarious actors. And we haven't gotten into copyright issues or infringements, which we'll talk about in a minute, which needs to be dealt with completely separately.

Ross Bruch:

Before we go down the dark path of nefarious actions, because that's a world unto itself, let me propose a scenario to each of you and see if you're comfortable for it. Because you just mentioned unauthorized practice of law, and we already live in a world where we have third party, non-law firm entities who are drafting planning documents for people and we've gotten comfortable with that to some degree. But what if an AI system could spend a day with you and ask you a thousand questions about different planning scenarios, and ask you how certain elements of probate or planning work, and get your realtime answers that you would give to any client if they called and asked the same question? And from that, plus all the information that you feed it, it is a comprehensive overview or has in its system a comprehensive overview of the entire planning process.

Now would you be comfortable with using that system with all of that it learned from your brain to allow a client to interact with it online and ask it questions? Now, whether you're billing for that or not, put that aside. But would you be comfortable with the AI system giving answers to clients based on what you've already fed it? And then maybe there's a system, maybe there's a fail safe that if the AI system isn't sure about it, or doesn't exactly know the answer, or if there's a question that is novel that it hadn't come across before, then and only then does it ping you with a, "Hey Jen, hey Justin, you need to weigh in on this." Would you be comfortable?

And I'll point out that I think we live in a world where individuals are getting more and more comfortable every day with interacting with bots online to schedule things, to answer very basic questions, when I return something to a store and I just need that return label, yeah, I just talk to that bot on their website and I'm okay with that. I might be okay with it if I know that Jen-bot is going to give me legal answers, but would you be okay with that on the flip side?

Justin Brown:

I have no problem with using Justin-bot to get information from a client and start the process for me in advance, so that I can get background information on the client, and it saves me time in the meeting, because I know more about the client and I know what some of their issues are. I don't feel good about allowing Justin-bot to give legal advice. I think from an ethical perspective, I have a duty of supervision over anybody who is working with me on a matter. So if my paralegal is working, or my associate is working on a matter, or my secretary, whoever it is, I have a duty to supervise them. And I can't supervise Justin-bot if it is so to speak going rogue and giving legal advice.

Or if I'm spending the time supervising then it's defeating the purpose of using it, because I could just be spending that time talking directly to the client. So I go back to what I said at the beginning, of I think that AI is a great starting point and it is a great tool that lawyers can use, but I don't think that it can or should be a replacement.

Ross Bruch:

So let me refine that before, I'm going to jump in before Jen can answer because I want to hear the same reaction from Jen. But here's a specific scenario. Client calls, or interacts with Justin-bot and says, "Hey, I'm the trustee of this trust, and I see that there's a HEMS, a health, education, maintenance and support clause in there, and I can make distributions based on HEMS to the beneficiaries. I don't quite understand that. Can you explain it to me?" Now, Justin-bot has already heard your

specific answer on that, and you know from your career you've delivered that same answer probably a thousand times. Are you okay with that, as long as it's not giving specific legal advice?

Justin Brown:

I feel better if it is information that is more background information, and not legal advice. I think if the question is, does this distribution fall under the HEMS standard, that's a legal advice question. Because that takes interpretation of the HEMS standard and an analysis of the specific distribution, and weighing the needs of the current beneficiaries versus the remainder beneficiaries, and it involves a lot more than just spitting out information. But I feel a lot better if it's giving generic information that a client could look up in a search engine, such as Google or Bing or whatever, and get the same answer.

Jennifer Zegel:

I completely agree. I would only want to use Jen-bot in the same way Justin just articulated the use of Justin-bot. I would highlight though that certainly not giving any type or form of legal advice, and culling background information would save time. I also would be comfortable with, if the client was asking certain questions about more administration matters or issues that don't include legal advice. So if they wanted to know the date the inheritance tax is due and the correct date of death is in the system, the bot should be able to produce a date nine months from the time of passing. I would be okay with that. But anything really beyond that I would not be comfortable with.

Ross Bruch:

So I appreciate both of those answers, and I think I see a similar vision of what we might be moving to, of ChatGPT is not coming for either of your jobs. Today, at least. But what it could be doing is refining your workload so that it's reducing things that are not purely legal advice. When you're meeting with clients, it's not replacing that. When you're giving specific legal advice, that is not replacing it. But all of the other additional administrative activities that you do, it might lighten that workload, and there's a lot of potential there to make your jobs easier, or at least more efficient. At least that's the promise, right?

Justin Brown:

Well, I think one of the things that I'm concerned about from a lawyer perspective, and from the perspective of somebody who supervises junior attorneys, is what reliance are junior attorneys going to have on ChatGPT or AI? We're using ChatGPT because that's the one that's out there right now. But how much reliance are they going to have on their own work product in using this device, in using this technology? And I mean right now, I know if my junior associate knows the information based upon the information that she provides or he provides to me. But if they're relying upon AI to get the ball rolling on things, on their tasks or their work, I don't know what their knowledge level is, and that's concerning to me. There have been stories about how some professors in colleges and universities have said absolutely not, students should not be using this. They should be thinking for themselves. Whereas others have said, you know what? It's a great brainstorming tool. It's a start. It's not a replacement, but it's a great brainstorming tool to get people going when they're stuck starting a project.

So I guess I'm concerned about younger attorneys starting out who overly rely upon AI to get themselves going, and may not be learning foundations that they should otherwise be learning.

Jennifer Zegel:

And I think that's a risk that transcends industries across the board with the use of this type of technology. And you touched on the creation of the content, and not knowing if it's correct or not. And there's been a lot of examples of ChatGPT being inaccurate, but stating the response with such confidence that the user believes it to be the correct response when it's not. But let's talk a little bit about education generally and copyright issues. So as you mentioned, a lot of schools have banned the technology. Some are more embracing it, and there is a student at Princeton who's a senior, his name is Edward Tian, and he created over the winter break essentially an anti-ChatGPT app, which is to be used by educators to detect the use and misuse

of ChatGPT. And Edward, we did email you an invite to come on the show, so if you want to come on you're welcome to, and talk about your creation of this app and how educators are responding now that it's in the marketplace.

But going back to the copyright issue, who owns the content? Is it the OpenAI company that's generating the content? Is it the user who's prompting the system to generate the content? Is it the contributors whose information is in the system that the search engine is relying on? I mean, there could be all these various issues as to who has copyright of the content that is produced, and also who has liability if there's any type of infringement on that copyright, or if the content produced is infringing on another third party's copyright? So I'll pause there, I'd like to hear your thoughts about that.

Justin Brown:

Yeah, I think that's a great point Jen, because if I'm going to use AI to create my end of year letters to clients, but it is based upon somebody else's letter, does that create a problem for me? And I don't know the answer to that. I'm not an IP or a copyright lawyer. But it raises the question that we should all be aware of when we're using it and in what way we're using this technology.

Ross Bruch:

But that same scenario could exist without ChatGPT right? You could copy someone else's letter. It's just putting it at the forefront of using the technology, making it easier to access wherever ChatGPT is pulling this information from. So it's just an evolution of that same debate. And again, like you I'm not an IP attorney and don't have an answer there. It's a great question Jen raised on what restrictions do you have to watch out for, what land mines are out there in terms of your use of a system like this for your work product.

Justin Brown:

Let's go back to, Ross, a question that you had asked earlier, and your question was if we were to look at a crystal ball, where do we see this technology five, 10, 15, 20 years down the road. And Jen, I'm going to ask you that question first. What do you see in your AI crystal ball?

Jennifer Zegel:

In my AI crystal Jen-bot ball, I see just a lot more automation across the board, and the technology becoming more and more intuitive. I also see a lot more regulation on the horizon to really police activities and police the development of these different AI systems. Because they are so powerful already, and as the technology continues to advance, their power is only going to strengthen.

Interestingly, from an estate administration perspective, right now the platform Empathy has already integrated ChatGPT technology into its platform for users to be able to create obituaries of loved ones that have passed with just implementing some information through prompts into the system. So I think that's going to continue to develop and advance, and there could be a lot more automation of different estate administration processes as we continue down this path.

Justin Brown:

So in my crystal ball, I feel as though there are so many opportunities for this to help in the practice of law, and specifically in the estates world. Whether it's letters to clients in the short term, or as will drafting software is integrated into AI software, I think it can cut down on a lot of the inefficiencies of the practice of law and make the practice so much more efficient. But I still see this, whether it's five years or 10 years or 20 years down the road, I still see this as a starting point and not a replacement for the work that estate planning attorneys do. I think AI can only go so far in having conversations with clients, and having meaningful conversations with clients where they're willing and ready to open up to you and disclose things that they may not be able to feel comfort with a computer.

Ross Bruch:

So I'll pick up on that thought, and I think our willingness and our comfort level to have some of those conversations with an entity that we know is AI or a computer, or digital, are going to be continuously blurred over the next 10 years. I think we will get more and more comfortable with processes that involve giving information to a third party that is not a human, and being comfortable with a return of information. Some sort of guidance. Yes, there's the threat of unauthorized practice of law and where regulation can curb this, and so that's a variable I just don't know enough about. But I do think the general public's willingness to participate in such planning activities will grow.

I think at the lower levels, that is especially a relevant threat. At the higher levels, like I said at the beginning of the podcast, when things are more complex, when things are more complicated and iffy, yeah, I don't see this replacing that. And so I think at the high end levels, you two will have a fine career without ChatGPT threatening that.

But I think at the commodity level, especially at the lower end where people just need the most basic will, this is going to be a tool that's going to factor into the planning world. There will be third parties who are not law firms who will continue the march toward digital planning, meaning digital in the sense of everything's done online, everything's done through an app, everything's done through a bot. That Justin-bot might be a very powerful planning tool for those types of clients. And because ChatGPT does not sleep, and can talk to so many more people per hour than any human being can, that especially at the less complex level becomes dangerous as well as opportunistic. So hopefully that regulation is right in guiding what should and shouldn't be allowed. And I think that that is going to be playing out maybe even faster than 10 years.

Another thing that would be really interesting though is, we all are subject to the limits of our own brains, and we make decisions, we offer advice based on our experiences plus our knowledge. And sometimes we as individuals don't have full access to everything that we should or want to say to a client, and we're not thinking through the entire process. Maybe you have a meeting in late afternoon with a client, and you're just not on top of every single planning scenario that you've ever had with all previous clients, and able to pull up, oh, well this one time we did this and it worked really well. ChatGPT, other AI systems don't have that problem. They have full access to their entire database of information. What would be really interesting is if you as individual attorneys were able to utilize AI in a way that's aiding your decision process. You feed it a scenario, and then it says, "Well Jen, 87% of the time you prescribed this type of plan, and 13% of the time, you used this." And then you use that information to better decipher how you're going to advise the client, almost being a second brain to you. I think that that would be an interesting use case for how this could develop as well.

Justin Brown:

I see that as great for solo practitioners who may need or crave another sounding board in their practice that they don't necessarily have, and using the AI as a sounding board of, what should I do in this situation? What are some planning techniques that I could be using?

Ross Bruch:

Yeah, what do you do right now? You both at larger law firms have the opportunity to go talk to colleagues. We are all members of certain professional organizations where we have opportunities to use their database of information successfully. We get on Listservs and message boards and ask those questions. Well, what if I had at my disposal a platform where ChatGPT knew how most attorneys would solve for this problem, but also gave me ranges of options of outliers that I could consider the benefits and disadvantages of? I think that could be very, very powerful. That goes far beyond a thousand mediocre interns helping you make your decisions, and makes you a better attorney when you have full range of viable options at your disposal and aren't limited by the restrictions of your own brain.

So more to come on that. We'll see. Maybe we'll play this back in 10 years and wonder just how we got so much of it wrong. In the meantime, the evolution of this industry is very rapid. Other players that are on the field just since the announcement of ChatGPT back in November of 2022, Bard from Google is viewed as a competitor and recently released, and also I mentioned before Microsoft, in their involvement with ChatGPT they have made an investment in ChatGPT, and are using some of its features within its own search functions. We believe that Bing, Microsoft's search engine, is going to incorporate ChatGPT functionality in its use in the near future. Which would also change the usefulness of ChatGPT itself, because as we talked about earlier, it's not necessarily tied to great data, but with Microsoft's involvement, with other competitors coming online,

the access to greater data, to current events, to better information, might be there and thus improve the usefulness of this product.

Justin Brown:

Which also raises the question that we posed at the very beginning, if you've got all these different players in the market and they're getting their information from different players and different sources, how reliable are the different types of search engines going to be? Maybe you use one AI software if you're searching a specific area, and you use another AI software if you're doing something else. So the competition's going to be very interesting to see, and the data sources are going to be very interesting to see.

Ross Bruch:

Yeah, and that's, just to reiterate, I think one of the best things that you could do right now, even if you completely dismiss it as a fad or something that is not going to be useful to you, it's worth your time to play around. It's worth your time to get familiar with the way in which asking questions to AI and refining those answers is going to be a very, very powerful skill going forward if this does take off in the legal world the way it has appeared to be useful going forward for things like marketing, education, other realms where AI can provide a significant impact.

Jennifer Zegel:

One final thought though, kind of in a different vein but all connected, I want to bring up that OpenAI had an iteration prior to ChatGPT which was called GPT-3, which was not as user friendly as ChatGPT. But what I want to point out is, in this prior iteration, the software allowed people to type in some information about a deceased loved one and then the artificial intelligence software would then mimic the deceased loved one's responses to anything that was posed to it. And OpenAI ultimately shut this down, because there was a lot of ethical issues and just emotional, and fraught with potential psychological issues if people were talking to chat bots of deceased loved ones and what that does to their psyche, if it's good for closure or if it goes down a very slippery slope.

So while that project was shut down, it's only a matter of time before similar type projects do evolve, and I think it will be very interesting to see how this develops, and we have a very important responsibility to define what ethically we do and don't want this technology to do.

Ross Bruch:

Yeah. I'll just add to that that none of us are AI experts by any means, but what I'm picking up from the technology and AI experts that I do follow is the surprise around just how rapid the evolution of this technology has been. Jen mentioned GPT-3, which the current version is light years ahead. And I think it took everybody by surprise who's in this industry how rapidly this is occurring. So more to come on this for sure.

One, we want to hear from listeners. If you have experience, if you have expertise in this field, please chime in. We'd love to hear from you, we'd love to have you on the podcast. We will revisit this subject in different iterations going forward because it's both exciting and evolving so quickly, so more to come. In the meantime, for Jen and Justin, I'm Ross. Thank you so much, and we'll catch you on the next Digital Planning Podcast.