4.7 Discussion on Board of Trustees Directive to Explore Requiring Law School Courses on Artificial Intelligence and Potential State Bar Rules on the Bar Exam and Artificial Intelligence (Hounanian/Leonard)

The State Bar of California

Discussion on Board of Trustees Directive to Explore Requiring Law School Courses on Artificial Intelligence and Potential State Bar Rules on the Bar Exam and Artificial Intelligence

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Committee of Bar Examiners, October 11, 2024

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Background

Board of Trustees Directive

Office of Admissions and Committee of Bar Examiners to explore:

- Requirements for California-accredited law schools to require courses regarding the competent use of generative AI.
- Regulations or rules related to the bar exam and generative AI.

What is Artificial Intelligence?

- Generative AI
  - Large Language Models (LLM)
  - ChatGPT
- Machine Learning
  - Use sample data to recognize patterns.
  - Makes predictions, judgments, or decisions.
- Already used in everyday life: product recommendations, spam filtering, predictive text.

Efforts to Ensure Responsible Use

- White House Blueprint for AI Bill of Rights
- European Union AI Act
- California's Executive Order regarding Generative AI
- New bills in California legislature

COPRAC Practical Guidance

Considerations

AI has wide-ranging application for the practice of law and administrative functions.

Use must conform to professional responsibility.

A lawyer should understand the risks and benefits.

Existing Rules

Rule 1.1 (Competence):

"The duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology."

Practical Guidance

Duty of confidentiality

Duties of competence and diligence

Duty to comply with the law

Duty to supervise lawyers and nonlawyers

Communication

Charging for work and AI costs

Prohibition on discrimination, harassment, and retaliation

Recommendations to Board

Develop attorney education addressing generative AI.

Explore regulatory changes to protect the public.

Consider impact of generative AI on law students and bar applicants.

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Requiring AI Courses at California Accredited Law Schools

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Why AI Education Matters

Understand the risks of using AI tools.

Understand future needs of clients.

AI legal assistant tools are already in use.

Awareness of foundational questions: attorney-client privilege, unauthorized practice of law, compliance, bias.

ABA Task Force of Law and AI

- AI literacy from legal writing to clinical practice and familiarity with AI is essential for future professionals.
- 55% of law schools that responded to ABA's survey said they offer classes dedicated to AI.
- 83% said they provide other curricular opportunities for students to learn to use AI.
  - Legal writing, trial advocacy, litigation drafting and professional responsibility.
- Difference in resources and missions of ABA schools compared to CALS.

Law School Engagement

- 2023 Law School Assembly
  - Prepare students for a world in which AI is prevalent:
    - Submitting confidential information in tools
    - Copyright and IP
    - Labor market
    - Analysis, summaries, first drafts
    - Professional judgement
    - Communicating the use of AI to clients
- August 2024 - Law School Council
  - 1L Legal Writing
  - “AI in the Law” courses
  - Optional AI training
- 2024 CSBARS Meeting

CSBARS Feedback Summary

Jay Frykberg, Dean, University of West Los Angeles, and Chair, CSBARS

The Role of the State Bar

Accreditation Principles

- Consumer protection and transparency
- Student success
- Diversity, equity, and inclusion
- Preparation for licensure and professionalism

The Role of the State Bar

Accredited Law School Rules

- 4.160(D): A law school shall prepare JD students to become licensed attorneys and to practice law in an ethical and professional manner.
  - (2): Practice-Based Skills and Competencies
- 4.160(D)(4): There is no prescribed program of legal education. An effective program of legal education for the JD degree will include, but not be limited to:
  - (b): learning experiences that support the acculturation of program graduates to the mores and values of the legal profession, including service, preparation, responsiveness, confidentiality, excellence, civility, professionalism, and ethics
  - (c): knowledge of process and skills for legal research and writing…

Possible Next Steps

- **Option 1: Take no action at this time.**
  - Space is rapidly evolving.
  - Prudent to wait for new regulations and answers to tough questions.
- **Option 2: Guidance document for law schools choosing to offer courses in AI.**
  - Flexibility to adjust quickly to rapidly-changing environment.
  - Identify opportunities to incorporate AI competencies into existing courses.
  - Encourage course topics around core competencies and build foundation to meet professional responsibilities.
- **Option 3: Add to Guidelines for Accredited Law School Rules.**
  - Practice-based skills and competencies includes those related to technology and AI.
  - Knowledge of process and skills for legal research/writing includes competent use of AI.

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Review of Existing Exam Rules

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Review of Existing Exam Rules

- Existing rules can be applied to AI.
  - Guideline 4.70: Conduct required at examinations
    - (C)(2): Examination answers are submitted in violation of examination rules, policies, procedures, and/or instructions…
    - (C)(4): Applicant's conduct resulted in violation of security of… examination…
    - (E)(4): Evidence of suspected cheating on the examination…
  - Chapter 6 Decision Matrix
    - Suspected cheating

Possible Next Steps

- Add specificity regarding technology and AI within the rules currently under review.
- Expand rules to address submission of exam materials into AI tools and other risks related to exposure of exam materials.
- Review exam instructions and policies for opportunities to address the use of AI.
- Be prepared to revisit rules if a novel issue is presented by the use of AI.

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Opportunities for AI Support

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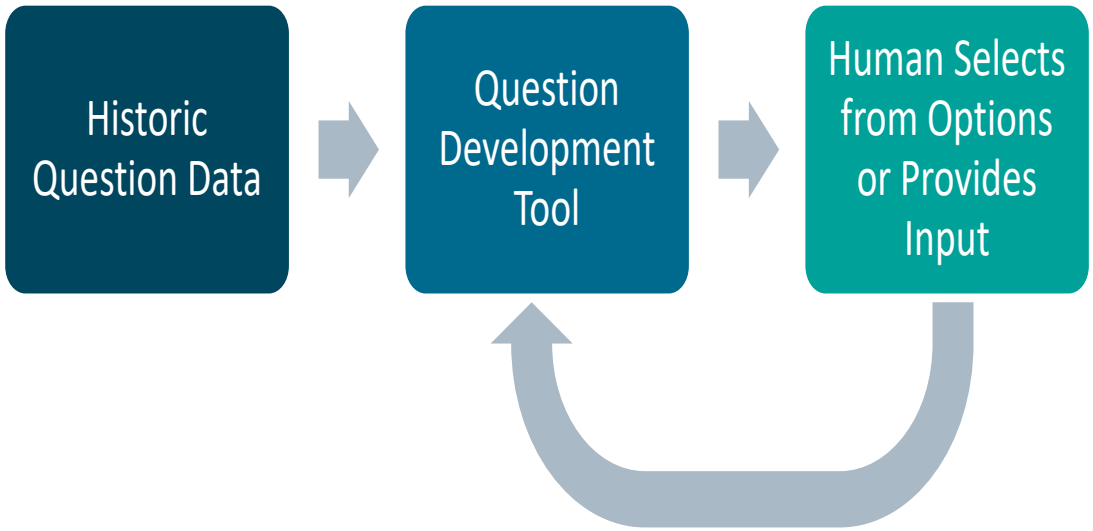
What's easy for robots is hard for humans.

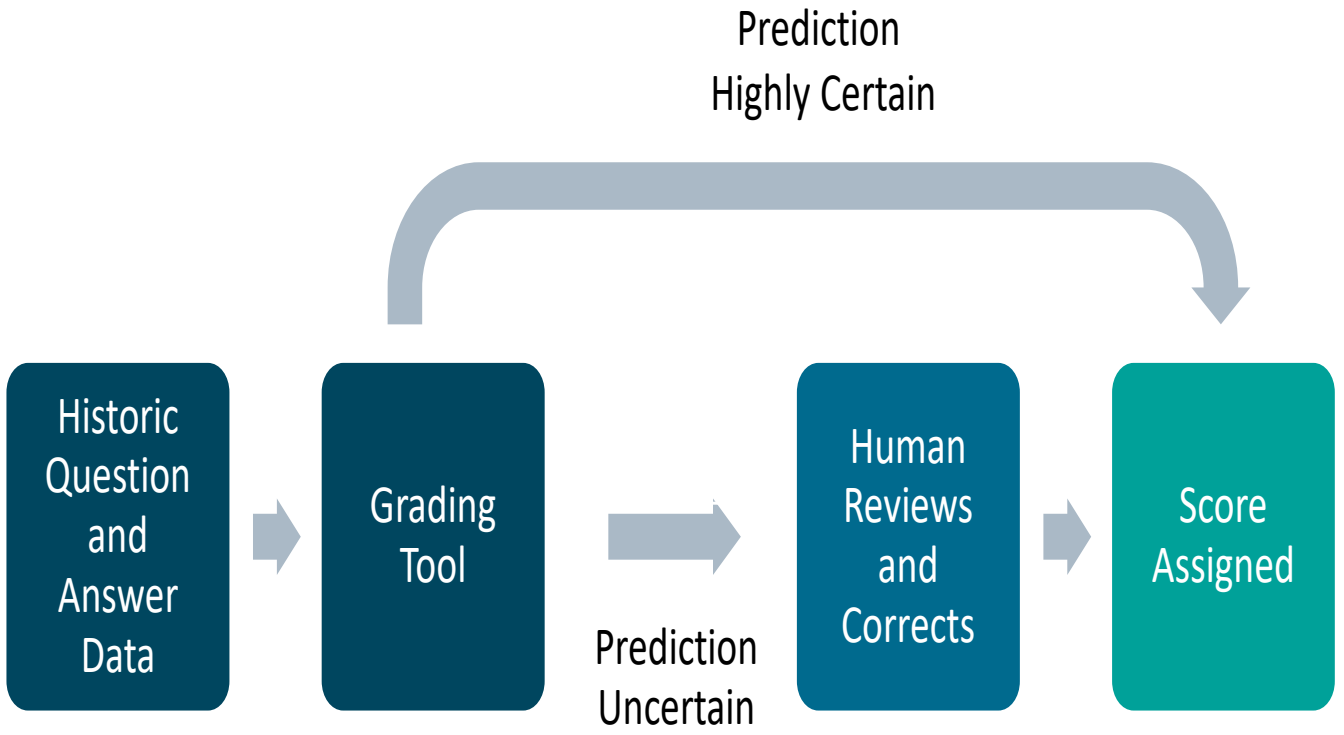
Possible Exam-Related AI Tools

- First draft exam question development.
- First pass exam grading.
- Cheating and plagiarism detection.

Human-in-the-Loop for Exam Development



Human-in-the-Loop for Grading



Risks Management and Trustworthiness

- Safe, secure, and resilient
- Explainable and interpretable
- Fair – with harmful bias managed
- Accountable and transparent
- Valid and reliable

Questions?

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