



2026

Rethinking the Legal Personality and Liability of AI-Negotiated Contracts

Jhalak Nandwani

Follow this and additional works at: www.beyondbriefslawreview.in

Published by Paperleaf International Media and Publications under the aegis of Dexon Global LLP

Recommended Citation

Nandwani Jhalak (2026) "Rethinking the Legal Personality and Liability of AI-Negotiated Contracts," *Beyond Briefs Law Review: Vol. 03, Issue 02, Article 7*.

This article has been brought to you for free and open access by Beyond Briefs Law Review. It has been accepted for inclusion in the Beyond Briefs Law Review by the Editorial Office of Beyond Briefs Law Review.



RETHINKING THE LEGAL PERSONALITY AND LIABILITY OF AI-NEGOTIATED CONTRACTS

Jhalak Nandwani¹

ABSTRACT

Artificial Intelligence (AI) has become a significant part of our daily lives and is even penetrating into the commercial aspects of our lives. AI tools, which is being used to enter into contracts, analyse risks, draft and analyse contracts, compile and analyse data, etc are leading to increased efficiency and productivity. However, the use of AI also gives rise to a number of questions regarding its legal personality and liability. This paper explores whether AI can be granted a legal personality and what would be the implications of granting legal recognition to AI. After exploring the issue of legal personality, this paper examines if AI can be held responsible in cases where one party to the contract is AI or a contract is negotiated by AI. Considering the principles of contract law, this study also investigates if the AI negotiated contracts fulfil the essential criterias of contact law, i.e., of offer, acceptance, meeting of minds, etc. This paper also explores legal perspectives across jurisdictions, highlighting key issues in attributing intent and accountability to AI negotiated contacts. As AI is becoming a crucial aspect of our economy, it is high time that the legislature formulates a framework for governing the AI systems. A comprehensive framework is required, which could be done either by updating the existing contract law or enacting a new legislation altogether.

Keywords: Artificial Intelligence, Contract, Legal Personality, Meeting of Minds, Liability.

¹ Research Scholar, Auro University. You may contact the author at this email address: jhalak.nandwani@aurouniversity.edu.in

Introduction

We believe AI to be a recent discovery, but in fact, the existence of AI dates back to the 1950s. In 1956, it was the first time when the term Artificial Intelligence was coined by John McCarthy. But the man responsible for making a breakthrough in the field of AI is Alan Turing, who devised a method for determining if computers are “intelligent”, during the second world war. He propounded a test known as the “Turing Test” which is based on a popular game, wherein two people are made to sit in different rooms and are made to answer questions asked to them and the audience has to guess who gave which answer. Turing claimed that this game could be played with a computer as well. He made it possible and concluded that when a computer can replace humans in certain activities, it definitely is “intelligent” (Wallace, R. S. (2009). *The anatomy of ALICE*. In R. Epstein, G. Roberts, & G. Beber (Eds.), *Parsing the Turing Test: Philosophical and methodological issues in the quest for the thinking computer* (pp. 184–185). Springer). By late 1960s, a new programme known as ‘Eliza’ was developed who would act as a psychotherapist and communicate with people, or to be precise, would respond to people’s queries by recognizing the common phrases used by them and using those phrases to create a reply. Imagine, the Snapchat AI that we talk to these days was already developed almost 60 years back.

Determining the Legal Personality of Artificial Intelligence

The field of Artificial intelligence is growing at an astonishing pace. One noteworthy example is of 2017 where a google computer programme AlphaGo was able to defeat a legendary player in a complex Chinese board game known as Go. AI is now being aggressively developed and we can find its application in all aspects of our lives. The personal assistants like Google assistant, Alexa, siri, that has now become a part of our routine lives is nothing but AI; also GPS that we use to navigate our way through cities; online shopping applications that suggests you products based on your browsing history; mHealth apps that tracks and monitor your health conditions and even your diet; ChatGPT, that we use these days to write our assignments or even our emails, etc. There are endless number of such examples. But what if something goes wrong with the technology? What if a technology commits a crime? In 1981, the first crime was committed by a robot. A robot that was undergoing some maintenance work detected an engineer as an obstacle and threw him, leading to death of that engineer. Now the question arose as to who shall be responsible for the death of the engineer. Or for instance, what if a computer enters into a contract with a client? In case of breach of such a contract, who shall be liable for the breach? The developers cannot be made liable as they had no intention to breach the contract or to commit a crime. Or taking an

example of a breakthrough in the field of AI, which is the launch of Tesla's autopilot and self-driving mode. In case of a crash when the car is in self-driving mode or autopilot mode, the liability could be placed on either the manufacturer or the driver, depending on the facts and circumstances of the case. But why should the manufacturer/ developer of technology or the driver be made liable when they are not at fault. These perplexities call for the need to address the issue whether liability could be imposed on AI, or going a step ahead, whether AI could be considered to be a legal person.

To decide upon the issue of whether liability could be attributed to AI, a scrutiny of the legal personality of AI becomes essential. As opined by jurists Salmond, Holland and Pallock, and as per the Merriam Webster dictionary, a legal person is one to whom legal rights and duties can be attributed. Over the years, our legal jurisprudence has extended the status of legal persons to include corporations, animals, idols, etc, as well. These days, interaction between humans and AI has increased and infact AI is now becoming an integral part of the human world. But whether AI can be granted the same status, is still a point of discussion.

The jurisprudence surrounding AI is not developed enough so as to determine if legal rights and duties can be attributed to it. This ongoing speculation around the legal personality of AI came to a rest for a while in 2017 when Saudi Arabia granted citizenship to a robot named Sophia and when Japan granted residency to an online system. Despite this, the position surrounding legal personality of AI has not been settled and the debate is still ongoing. Till date, as no legal personality is attributed to AI, it cannot be held liable. An analogy that could be drawn in this regard is the development of jurisprudence wherein corporations were given the status of having 'legal personality' so as to limit the liability of individuals and to place the liability on the corporation itself, instead, enabling individuals to take risks and engage effectively in commercial activities. In similar fashion, in order to make AI accountable just like corporations, AI should also be given the status of a legal person. This will enable to shift the liability on AI itself and tackle with the risks that the technology could pose.

There is no determined position regarding the recognition of AI, it rather differs from jurisdiction to jurisdiction. Certain countries have granted partial recognition to AI, such as a robot was granted a citizenship of UAE, Japan had also granted residency to a chat bot and in 2021, an AI system DABUS was granted a patent in South Africa for inventing a liquid packaging system (Zuykov and Partners. (2023, October 17). *AI legal personality: Is it possible? Legal and moral-ethical aspect*. Zuykov and Partners.). Further, the Russian Federation does not have any law for regulating AI, which implies AI does not have any legal personality. However, the Russian Federation is in the process

of giving recognition to the concept. On the other hand, considering the position in European Commission, they had laid down a proposal for harmonizing rules for Artificial Intelligence Act (European Commission. (2021, April 21). *Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts* (COM/2021/206 final). EUR-Lex) which places responsibility on the developers and users of the technology, hence conferring no liability or legal personality to AI. Even the German Traffic Act places responsibility on the owners of the self-driving vehicles in case of any accident.

Analysing AI -Negotiated Contracts from the Lens of Contract Law

The fundamental issue for consideration here is whether the contracts that have been negotiated by AI can be included within the purview of the existing contract law regime. This question has direct implication on the issue that whether liability could be attributed to AI. In a landmark case of Singapore jurisdiction (*Quoine Pte Ltd v B2C2 Ltd*, [2020] SGCA(I) 2), a securities transaction was executed by a computer software and it was held by the Singapore court of appeals that as the computer programmes do not have a mind of their own, and software programmes cannot be held liable. Any mistake made by the programme would be considered to be the mistake of the programmer. Another argument that came up here was that that such softwares or machines should be treated as agents of the programme, who are in a way entering into contract on their behalf. This argument was also rejected by the Singapore courts stating that machines or algorithms are not legal agents. However, a solution that scholars propose to this stumbling block is AI could be considered as legal agents of the people for whom they are entering into the contract. If AI is to be treated as a legal agent, the contract negotiated by AI could hold some substance, in the sense that a liability could be attributed to someone.

Why agreements entered into by AI cannot come within the definition of ‘contract’? The answer lies in the essentials of a valid contract. For a contract to be valid, an offer must be made by the offeror and the other party shall accept the offer. Also, the parties must give their free consent for the same. In a contract, the offeror proposes the terms of the agreement and gives an opportunity to the other party to accept or reject the same. When the other party accepts the offer, it becomes a binding on them. But what if one party to this transaction of offering and acceptance is a machine? The issue was addressed in *Thornton v Shoe Lane Parking Ltd* (*Thornton v Shoe Lane Parking Ltd*, 1 [All ER](#) 686) wherein the validity of contracts entered into by automated ticket machine to issue parking tickets was questioned. Court said that the placement of machine at the entrance signifies an offer being made by it wherein it is willing to receive money. When the

customer puts in money in the machine, it signifies acceptance of the offer. Another essential ingredient of a valid contract is that the parties must give their free consent for the same. If AI negotiates a contract on behalf of let's say, the owners of a business or an organisation, can we say that the owners have given their consent to the terms of the contract? If AI enters into a contract as legal agents, it would bind the principal even though they gave not expressly consented to it. According to scholars, as already discussed above, treating AI as legal agents can only solve the issue of enforceability of contracts negotiated by AI. This was considered to be a valid contract.

Computers or softwares entering into contract is not a new concept. E-contracts work in a similar manner and they have been in existence since the advent of technology. Browse wrap contracts or click wrap contracts are nothing but a contract entered into with a computer software, and these contracts are legally recognised and enforceable. In United States, the ESign Act, 2000 and the Uniform Electronic Transactions Act enable use of computers while making a contract. Section 101 of the ESign Act states that: "*a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form*". Further, section 7 of Uniform Electronic Transactions Act states: "*A record or signature may not be denied legal effect or enforceability solely because it is in electronic form; A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation*". These acts provide that even contracts made electronically can be considered legal and valid and they will be enforceable just like paper contracts. But such contracts do not alter the basic features of a contract, its just that they are entered into in electronic form. But do agreements negotiated by softwares or algorithms satisfy the basic conditions of a contract? If AI negotiated contracts could be classified as valid contracts satisfying the basic essentials, is still doubtful.

A. CONSENT AS AN ESSENTIAL OF CONTRACT

Mutual consent is an essential ingredient for a valid contract. Consent implies not just consent of the parties to enter into a contract, but also to be bound by the terms and conditions of the contract. When a contract is entered into by AI, it does not imply that the person on whose behalf AI has entered into the contract is aware of all the terms of the contract, and he has consented to abide by it. A famous instance relating to the issue is where cartier's website incorrectly listed 18 carat earrings worth \$14,000 at \$13.85. A Mexican man took the opportunity and bought the earrings at \$13.85. Initially, the company contacted the consumer and tried cancelling this order stating it to be a mistake on their end. But at the end, the company had to sell the earrings at \$28. Here, although the company had to abide by the terms on which a contract was entered into through their website, but the element of free consent was missing on the part of the company.

The company would never have freely consented to sell their earrings at such a low price. Also, there is no meeting of minds at the time of formation of the contract. Hence, according to the subjective theory of contract, where the specific intent of the parties is relevant, there is no contract that is formed here as there was no intention on the part of the company to sell the earrings for \$13.85. And according to the objective theory, which states that it is not the intent but the actual act of the parties that determine if there is existence of an agreement, there is no valid contract formed here as no reasonable person would be willing to sell \$14,000 worth earrings for \$13.85. Hence, the price that was displayed on the website cannot be considered to be a manifestation of the consent of the company.

This situation is different from the one discussed above in the Thornton case. The owners of the automated ticket machine have already prepared the terms and conditions of the agreement and they have just placed the machine which will communicate or offer those terms to the customer. The ticket machines do not decide the terms of the offer, it is the owners who are deciding the terms of the offer and so they are well aware of the terms and we can say that there is also an element of consent here. But if we consider the other case, the company did not give any consent to the pricing terms that were presented by the website. Therefore, we can conclude that when contracts are negotiated or entered into by AI, the element of consent or meeting of minds on part of both the parties may or may not exist, depending on the facts and circumstances of the case.

B. THE AGENCY SOLUTION

Scholars believe that the only cogent solution to recognise the contracts entered into by AI is to treat AI as the legal agents of the company. If AI negotiates and enters into a contract on behalf of a person who himself has decided all the terms and conditions of a contract, such contracts are enforceable as the AI here is contracting on behalf of such person, acting as his agent. As discussed in the Thornton case, the contract was not entered into by the automated ticket machine independently, the terms and conditions in fact were pre-decided and the machine was solely acting a legal agent entering into contract. The relationship of agency allows a third person, the agent to work on behalf of the principal.

In the relationship of agency, the agent is either granted an express authority by the principal or the acts of the agent are, ratified by the principal. In either of the cases, the principal is bound by the acts of the agent, and hence there is creation of a valid contract. Also, the intent to create a legal relationship is immaterial and the conduct is sufficient.

In such contracts, the offer is given and acceptance is received by the AI. If the contract is entered into by AI as a legal agent, the principal is bound by such terms of the contract in all circumstances. Now considering the case where cartier mistakenly lists price of a pair of earrings as \$14 instead of \$14,000, in case the website or the computer software is considered to be a legal agent, the contract even though made for an unreasonable price is a valid contract and the principal is bound by such a contract. Hence, law of agency becomes a plausible solution here as setting up AI as a legal agent to contract on behalf of the seller, the seller has given an apparent authority to AI (Grimmelmann, J. (2021). Contracting by artificial intelligence: Open offers, unilateral mistakes, and why algorithms are not agents. *University of Chicago Law Review*, 88(1), 179–233.).

This agency solution, according to many scholars does not solve the problem and instead creates a further problem of consent. Here, the contract is entered into between AI and the buyer. According to the essential elements required for the formation of a valid contract, the consent of both the parties is essential. As the contract is entered into between the buyer and AI, although representing the seller as its legal agent, the consent of the buyer and that of the agent is also essential. But as agent here is a computer programme or AI, is it capable of giving consent?

The ‘Turing Test’, as discussed above, is a test to ascertain if machine is ‘intelligent’ enough to replace human beings. This test further led to the development of the objective theory of contract law which states that whether an entity is willing to be bound by a contract is determined according to the external circumstances and the actual intent of the parties is not a primary consideration. In *Woburn National Bank v Woods* (*Woburn National Bank v Woods*, 77 N.H. 172, 89 A 491, 492 (1914)), it was stated that it is not the internal intent of the parties that is relevant. When the contract law talks about meeting of minds as an essential criterion, it is not the internal intent but the external words and acts that are apparent. If we go by the objective theory of contracts where the intention for entering into a contract is irrelevant, we won’t need to dive into this question of ascertaining whether AI had given its consent. But, relying on the objective theory alone is not suffice, as it would not pose any reasonable solution as the intention of AI cannot be attributed to the intentions of the seller.

But, if we go a step forward and consider the internal element or the intention to not be irrelevant but of secondary importance, wherein we determine the intentions of an entity considering its overt acts. But not every person acts in a similar fashion, and it could be confusing to attribute a particular kind of behaviour to a certain mental state. We can link this argument with the Intentional Stance Theory of Daniel Dennett. According to this theory, a behaviour of a person explains his or her intentions. What a person’s intentions are could be attributed directly to his

behaviour. If we link this theory with AI, whenever a person contracts with an AI, let's say a website, the way a website behaves makes it reasonable for people to come to a conclusion that the website is intending to enter into a contract. Hence, it is the behaviour that helps us understand the presence of intentions. So, if we go by this Intentional Stance theory, not on the behaviour or external actions of a person is of significant importance, but it also helps us reasonably arrive at a conclusion that AI has the intention to enter into a contract.

Conclusion

These days, artificial intelligence has grown to a level where a computer programme or algorithm understands and interacts with large amount of data available to create or produce their own algorithm. And we use such machine learning algorithm for various commercial and financial transactions. We take the help of AI to contract with people and to decide the terms for such contracting. This is what Amazon, Uber, and other AI stimulated applications do, wherein they analyse the large amounts of data and display differentiated pricing, terms, etc at different situations. Even Google ads exchange is an advanced form of AI wherein they show advertisements on websites within milliseconds (Srinivasan, D. (2020). Why Google dominates advertising markets: Competition policy should lean on the principles of financial market regulation. *Stanford Technology Law Review*, 24, 55–128.). Though we have come to a stage where machines are intelligent enough to understand and process large amounts of data in order to create their own algorithm, but still the basic framework and data required for this process is created by humans. The primary role in the entire process of AI negotiating a contract is of humans, and so AI cannot be termed as a 'legal agent' of humans in real sense.

The advent of digitalisation has posed yet another challenge for the judicial systems to decode the contracts that are entered into by Artificial Intelligence, and how contract law doctrines can be applied to interpret and enforce such contracts. The research area for recognising the legal validity of contracts entered into by Artificial Intelligence has yet not reached any conclusive stage. There is no law regarding enforceability or recognising legal validity of contracts entered into by AI, however, contract law scholars have propounded various theories, though some of which are contradictory, to explain the validity and enforceability of AI-negotiated contracts. Some scholars are of the opinion that principles of contract law cannot be applied to AI-negotiated contracts and instead, it is the principles of agency that would be applicable in this case, the AI tool being the agent of the person on whose behalf the contract is entered into. However, there is also a contrary view wherein, depending on the facts of the case, an AI-negotiated contracts could be governed by contract law principles, but its applicability being subjected to the nature of the contract and it

is not a blanket rule that can be applied in all situations or for all contracts. How such contracts will be viewed, it all depends on how one treats the AI tools. Is it a mere software that helps you enter into contracts or it is a legal agent on which one is dependent and it helps negotiate contracts on behalf of individuals or corporates.

Where on one hand law has always been an essential part of the governance and functioning of the society, artificial intelligence on the other hand has also started rooting in the business and commercial ecosystem. It is the need of the hour that AI and transactions made by AI are started being governed by a law or some regulation, or else the existing contract law needs to be interpreted in a way so as to recognise AI as a party capable of entering into contracts. And it is not just the contract law principles that needs new interpretation and developments, but it is also the technology law that needs to undergo scrutiny so as to address technological infrastructure and data privacy issues. Granting legal personhood to artificial intelligence will not only ensure that our current legal system gets prepared for the technological change but it will also ensure that our interactions with these artificially intelligent beings are harmonious and benefits the human beings.

Hence, at this nascent stage where there is no legal or regulatory regime for governing contracts entered into by Artificial Intelligence, we cannot completely depend on AI for all business and commercial transactions. We can rely on AI significantly for standard contracts.

References

1. European Commission. (2021, April 21). *Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts* (COM/2021/206 final). EUR-Lex. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>
2. Zuykov and Partners. (2023, October 17). *AI legal personality: Is it possible? Legal and moral-ethical aspect*. Zuykov and Partners. <https://zuykov.com/en/about/articles/ai-legal-personality-is-it-possible-legal-and-moral-ethical-aspect/>
3. Wallace, R. S. (2009). The anatomy of ALICE. In R. Epstein, G. Roberts, & G. Beber (Eds.), *Parsing the Turing Test: Philosophical and methodological issues in the quest for the thinking computer* (pp. 184–185). Springer.
4. Quoine Pte Ltd v B2C2 Ltd, [2020] SGCA(I) 2
5. Thornton v Shoe Lane Parking Ltd, 1 All ER 686
6. Grimmelmann, J. (2021). Contracting by artificial intelligence: Open offers, unilateral mistakes, and why algorithms are not agents. *University of Chicago Law Review*, 88(1), 179–233).
7. Woburn National Bank v Woods, 77 N.H. 172, 89 A 491, 492 (1914)
8. Srinivasan, D. (2020). Why Google dominates advertising markets: Competition policy should lean on the principles of financial market regulation. *Stanford Technology Law Review*, 24, 55–128