

Can ChatGPT Think Like a Lawyer?

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Introduction

If you are a lawyer, a law student, or a law professor, you already have a good understanding of what it means to “think like a lawyer.”

For everyone else, there is ChatGPT. Hey, ChatGPT, give me a hand here...

Let’s have a Socratic Dialogue.¹ I’ll type a question, and you do your best to answer it. Your answers don’t need to be perfect. Because I want my readers to see exactly how you do what you do, I am not going to edit your responses at all. Okay, let’s go...

What is ChatGPT?

ChatGPT is a large language model developed by OpenAI. It is trained on a wide variety of text data and can generate human-like text in response to prompts given to it. It can be used for a variety of natural language processing tasks such as text generation, text completion, and language translation. The GPT in the name stands for “Generative Pre-trained Transformer.”

¹ “A Socratic dialogue is a method of teaching and discussing ideas in which a group of people question one another to arrive at a deeper understanding of a topic or concept. This method is named after the ancient Greek philosopher Socrates, who is said to have used this technique to help others understand difficult ideas. Socratic dialogues typically involve asking open-ended questions, examining assumptions, and exploring different perspectives. The goal is to arrive at a deeper understanding of the topic through critical thinking and discussion.” Text generated by OpenAI’s ChatGPT January 9 2023 Version, in response to the author’s prompt: “What is a Socratic Dialogue?”

Great. Thanks for introducing yourself to our readers, ChatGPT. A few follow-up questions, so we can all get to know you even better.

How do you work?

ChatGPT is a machine learning model that uses a neural network trained on a large dataset of text. The model uses this training data to learn patterns in language and generate new text that is similar to the training data. When a user inputs a prompt, the model generates a response by predicting the next word in the sequence based on the patterns it has learned from the training data. The model uses a technique called attention mechanism to weigh the importance of different parts of the input when generating the output. This allows the model to generate more coherent and fluent responses. The model also uses the technique called beam search to generate multiple outputs and select the most likely one. Overall, ChatGPT is designed to understand and generate human language, and it gets better at it as it is exposed to more data.

Slow down, ChatGPT! I'm a lawyer, not a computer scientist!

I didn't completely follow that. Can you make that simpler for me?

Sure. ChatGPT is a type of computer program called a language model. It uses machine learning to understand and generate text. When you ask it a question or give it a task, it uses the information it has learned to generate a response. It works by analyzing patterns in large amounts of text data and using that information to make predictions about what words or phrases are likely to come next in a given context. It is trained on a large dataset of text, and based on that it can generate text that is similar to the text it was trained on.

Thank you, ChatGPT.

Thinking Like a Lawyer

Let's get back to our central question: whether a language-generation model can "think like a lawyer." We should start by clarifying the phrase. Since explaining well-known concepts is something ChatGPT is particularly good at, I'm going to hand this question over to my artificial research assistant...

What does it mean to "think like a lawyer?"

"Thinking like a lawyer" refers to the approach and methods used by lawyers in analyzing and solving legal problems. This includes being able to identify and analyze legal issues, evaluate evidence and arguments, and apply legal principles, rules and precedents to reach a conclusion.

To think like a lawyer, one must be able to critically evaluate the facts of a case, identify the legal issues involved, and research and understand the relevant laws and legal precedents. They must also be able to apply critical thinking, reasoning, and logical analysis to evaluate the credibility and relevance of evidence, and to construct persuasive arguments. Additionally, lawyers should be able to communicate effectively, both verbally and in writing, to clearly and convincingly present their case.

It also means to have a certain mindset, to be able to think in a logical, methodical and analytical way, to be able to see different perspectives, to be able to anticipate potential issues and to be able to find solutions to problems.

That's a pretty good answer. You did great job at capturing the standard thinking about what it means to "think like a lawyer," and I agree with everything you said. Also, I totally disagree. In my opinion, this standard view is woefully incomplete. I'll come back to that closer to the end of our conversation.

For now, let's focus on finding out whether you can think like a lawyer, in the standard sense. My hypothesis is that you cannot. I have over 15 years of experience in legal education. My informed intuition is that computers are no match for lawyers.

As a critical thinker, however, I realize the importance of examining my assumptions against the available evidence. Let's run an experiment. What will happen if I ask you to compose a standard IRAC analysis? Let's start with some background...

What is the IRAC method in legal writing?

The IRAC method is a widely used method for organizing legal analysis in legal writing. It stands for:

I - Issue: Identify the legal issue or question that needs to be addressed.

R - Rule: Identify the relevant legal rules or principles that apply to the issue. This can include statutes, case law, and other legal authorities.

A - Analysis: Apply the legal rules and principles to the facts of the case to determine how they apply to the issue at hand. This is where you make arguments and draw conclusions about the case.

C - Conclusion: Sum up the analysis and reach a conclusion about the legal issue or question. This should include a clear and concise statement about the outcome of the case and any recommendations for action.

The IRAC method is a widely used structure in legal writing and analysis, and it's a way for lawyers to organize their thoughts and present a clear and logical argument. It helps to identify the key legal issues in a case, the relevant rules and principles that apply, and the way in which they apply to the case at hand. It also allows for a clear and concise conclusion to be drawn, which helps the reader to understand the legal reasoning and the outcome of the case.

Hmm. That isn't a particularly sophisticated answer, but it's good starting point. Let me elaborate based on my own professional experience and personal perspective.

I teach my students that IRAC is not just a way of *communicating* legal conclusions; it is the *process for reaching* sound legal conclusions. Writing is thinking, out loud.

You may have heard some version of this idea even before you went to law school. ChatGPT, help me out again...

Is this a common idea to say? "Writing is not just communicating what you think; it is how you figure out what you think."

Yes, it is a common idea that writing is not just a way of conveying one's thoughts, but also a tool for figuring out what one thinks. Writing can serve as a way of clarifying and organizing thoughts, as well as a way of exploring and developing new ideas.

This idea is often referred to as "writing to think" or "writing to learn." It suggests that the act of writing can help individuals to better understand and process information, as well as to improve their critical thinking and problem-solving skills.

Many educators and researchers believe that writing can be an effective tool for learning and critical thinking in many different subjects and disciplines. For instance, writing can

help students to better understand complex ideas, to analyze and evaluate evidence, to develop arguments and to communicate their thoughts effectively.

Moreover, writing can be a powerful tool for personal reflection and self-discovery. It can be used to explore one's thoughts and feelings, to gain insights into oneself and to make sense of one's experiences.

In summary, this idea that writing is not just a way of conveying one's thoughts but also a tool for figuring out what one thinks is widely accepted in education and research community.

Thank you. But I know you didn't come up with that idea. Let's be sure to recognize our sources. That's ethically required. With your help, it won't take long...

Which scholars deserve the credit for the idea of "writing to learn?"

The idea of "Writing to Learn" (WTL) is an approach to teaching and learning that emphasizes the use of writing as a tool to promote critical thinking, active engagement with course content, and deeper understanding of material. While the origins of WTL can be traced back to the work of various scholars and educators, some notable figures and their contributions to the field include:

1. Peter Elbow - Elbow is known for popularizing the idea of "free writing" as a way to overcome writer's block and to generate new ideas. He also developed the concept of "Writing to Learn" in his book "Writing with Power" (1981).
2. Donald Murray - Murray was an influential writing teacher and scholar, who emphasized the importance of process writing, and the benefits of writing to learn. He also wrote the book "Write to Learn" (1987)
3. Edward M. White - White is known for his research on writing-to-learn and for his book "Writing, Teaching, and Learning in the Disciplines" (1991)
4. Linda Flower - Flower is known for her research and theory on cognitive processes in writing and for her book "Problem Solving Strategies for Writing" (1989)
5. Nancy Sommers - Sommers is known for her research on revision strategies, and for her article "Revision Strategies of Student Writers and Experienced Adult Writers"

Thank you, ChatGPT. I'm sure those scholars appreciate the recognition for their generative ideas. Legal education seems to owe a lot to them.

I also teach my students that analytical legal writing is much different from creative writing or journalistic narrative. IRAC is a logical, structured, methodical process, more like working through a math problem. You have follow the rules, be careful with each step, and check your work. If you do those things, you can be fairly confident that the answer you reached is correct.

The parallel between legal analysis and matha a popped into my head one day in the middle of class. I was searching for the best way to explain why you have to be careful in each step of writing a memo. And it struck me: IRAC analysis is just like working your way through a math problem.

Just like in math, however, it is important to “show your work” by writing out every step of your legal reasoning process. That way, a more experienced attorney can quickly review your work for mistakes and ask follow-up questions.

In case that doesn't yet make complete sense, let's get some help from ChatGPT...

Is IRAC legal writing like solving a math problem?

IRAC (issue, rule, analysis, and conclusion) is a method of legal writing and analysis that is often compared to the problem-solving process used in mathematics. Both IRAC and solving a math problem involve breaking down a complex issue or problem into smaller, more manageable parts, and then applying logical and analytical reasoning to arrive at a solution or conclusion.

In IRAC, the writer first identifies the legal issue or question that needs to be addressed. Next, they present the relevant laws or rules that apply to that issue. Then, they analyze how those laws or rules apply to the specific facts of the case or situation, and how they might lead to different possible outcomes. Finally, they reach a conclusion on how the issue should be resolved based on their analysis.

Similarly, in solving a math problem, the problem-solver first reads and understands the problem, then they identify the relevant mathematical concepts and formulas that apply, they use those concepts and formulas to solve the problem step by step, and finally they reach a conclusion.

Both IRAC and solving math problem requires a logical and systematic approach to break down a complex problem and it requires clear thinking and critical analysis to reach a sound conclusion.

Not all students appreciate the math metaphor. Math is near and dear to my heart, as a cofounder of the Wichita High School East Women's Calculus Club. (We were the height of cool.) But people don't usually come to law school because they loved math.

Still, I consider the analogy essential to making a key point:

IRAC analysis is fairly mechanical. There are steps you have to follow, in a particular order, and there is a right way to do each step. My patent law students with backgrounds in engineering and computer science grasp legal writing quickly.

My copyright students with backgrounds in journalism and marketing often struggle initially. They have always thought of themselves as excellent writers. But legal writing is a radically different genre. They get there, it just takes a little longer.

The Future of Lawyering

I'm headed somewhere big with this:

If analytical legal writing is a lot like doing math, but using words instead of numbers, and computers long ago got better at math than we are, will language-generation software turn out to be better at legal analysis than lawyers?

I'm pretty sure that's an original hypothesis. Here's why. (1) It comes directly from an insight grounded in my unique life experiences and ways of thinking about the world. (2) It's tied to a very recent development, giving other people less time to beat me to it. There's another reason this is a good research project for me. There's one more important reason that makes it a good research question for me: (3) I have a deeply personal stake in finding the right answer. If computers ever get better than people at performing legal analysis, we'll have to rethink legal education.

Let's see how good ChatGPT is at predicting the future...

What would happen if it turns out that ChatGPT can do legal writing better than most lawyers?

If it were to be determined that a language generation model like ChatGPT is able to produce legal writing that is of a higher quality than that produced by the majority of lawyers, it could have several significant implications. Some potential outcomes include:

- Increased adoption of language generation technology in the legal industry, potentially leading to increased efficiency and cost savings for clients
- A shift in the role of lawyers, with a greater emphasis on strategy, analysis and decision-making rather than writing and document preparation
- The need for lawyers to acquire new skills to remain competitive in the job market.
- The possibility of an ethical debate around the use of AI in legal practice, as AI-generated documents may not be able to reflect the nuances and subtleties of legal reasoning.
- Additionally, there may be some legal and ethical concerns about the use of AI-generated documents in court, as the AI may not be able to fully understand the context of the case or the legal principles involved.

Wow. That's what I was going to say. How did you do that?

Who deserves the credit for your response to my question: What would happen if it turns out that ChatGPT can do legal writing better than most lawyers?

It is not an individual person who deserves credit for my response to your question. My answer is generated by the machine learning algorithms and data sets that were used to train me. These algorithms and data sets were developed by a team of researchers, engineers and developers at OpenAI.

I understand that's generally true, but how did you predict that lawyers would need to acquire new skills to stay relevant?

As a machine learning model, I am trained on a vast amount of text data that includes many examples of discussions and predictions about the future of various industries and professions, including the legal profession. Additionally, the concept of technology and automation replacing certain tasks that were previously done by humans is a common

topic in many fields. From this data, I was able to predict that the field of law, like many others, would be impacted by advancements in technology and that lawyers would need to adapt and acquire new skills in order to stay relevant.

Well, when you put it that way, that makes a lot of sense.

Let's test the hypothesis.

Can ChatGTP Decode Legalese?

Lawyers have to be able to interpret statutory law. For that reason, I spend significant time in class on what I like to call "statutorture."

I give my law students passages like the one above. Then I have a student paraphrase them. Line by line, out loud, in front of their classmates. Don't worry. It's okay to make mistakes in my class, and I give lots of positive feedback.

For whatever reason, statutes tend to be particularly terribly written. Here is a typically terrible example, from the Section 101 of Title 17 of the U.S. Code, the basis of American copyright law:

A derivative work is defined as one "based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work.'"

Ironically, this bit of statutorture is based on Section 1 of the copyright code: Definitions. The entire reason for this text to exist is to avoid misunderstandings.

This is no obscure term, either. Understanding what qualifies as "a derivative work" is an essential concept of copyright law. Students have to get it. I could easily spend five minutes of class time working students through that passage.

Can ChatGPT interpret a statute better than a law student? Let's find out:

My Query: Please paraphrase.

ChatGPT response:

A derivative work is a new creation that is based on one or more existing works, like a translation, musical composition, movie adaptation, sound recording, or any other type of adaptation. It can also include changes like revisions, notes, or modifications that make it a unique work of authorship.

Wow. That's insanely good. The language is much clearer, and the substance is still spot on. Better than I could have done myself. Does the IRS know about this?

We have a better grasp on the statutory language now. But we're still talking very abstractly. I like to test how well my students get a new concept by challenging them to come up with specific examples. Can ChatGPT do that?

Can you give me more examples of derivative works?

Sure, here are a few examples of derivative works:

1. A movie adaptation of a novel
2. A translation of a book into another language
3. A musical arrangement of a classical piece of music
4. A comic book adaptation of a TV show
5. A new edition of a book with annotations or additional content
6. A condensed version of a non-fiction book
7. A sound recording of a live performance
8. A sculpture based on a photograph
9. An art reproduction of a painting
10. A fan fiction story based on a popular franchise.

Those check. But they sound like you're just paraphrasing books about copyright law. I want specific, original, memorable examples...

Can you give some examples of well-known derivative works of enduring cultural relevancy?

Some examples of well-known derivative works of enduring cultural relevancy include:

1. Film adaptations of novels such as "The Great Gatsby" and "To Kill a Mockingbird"

2. Stage productions of Shakespeare's plays, such as "Romeo and Juliet" and "Hamlet"
3. Cover songs and music remixes, such as "Billie Jean" by Michael Jackson, and the "Smooth" version by Carlos Santana and Rob Thomas
4. Fan fiction, such as that written for the Harry Potter and Star Wars universes
5. Video game adaptations of movies, such as the game "The Chronicles of Riddick: Escape from Butcher Bay" based on the film "Pitch Black"
6. Television shows spin-offs, such as "Frasier" from "Cheers"
7. Graphic novels adaptations of classic literature, such as "Moby Dick" or "Pride and Prejudice"
8. Parodies, such as "Weird Al" Yankovic's "Eat It" which is a parody of Michael Jackson's "Beat."

Can ChatGPT Do Legal Analysis?

My students particularly benefit from memorable visual illustrations.

Can you provide me with pictures relevant to those works?

I apologize, but I am a text-based AI and do not have the capability to provide pictures. However, you can easily find relevant images for well-known derivative works by searching for them on the internet using a search engine like Google or Bing. It is important to note that you should only use images that you have the legal right to use, such as those labeled for reuse or that are in the public domain.

Okay, stop, ChatGPT. You're computersplaining to a copyright expert.

And your advice here is lousy. Commercially profitable works are never labeled for reuse. Modern works are never old enough to be in the public domain. But we can still copyrighted images... if the circumstances make it fair use.

Would doing so here qualify as fair use? You didn't even consider that. Let me push you to research and apply some relevant cases...

Provide an IRAC legal analysis of whether I can use a copyrighted image of Princess Leia from "Star Wars" to help law students understand the concept of a derivative work and remember it easily. Please incorporate the cases of Campbell v. Rose Acuff music and Bill Graham Archives v. Dorling Kindersley Ltd. into your answer.

I. Introduction The legal question at hand is whether the use of a copyrighted image of Princess Leia from the "Star Wars" franchise to assist in teaching law students about the concept of derivative works and aid in their retention of the material is permissible under copyright law. In order to answer this question, we will examine the applicable law and relevant case law, specifically the cases of *Campbell v. Acuff-Rose Music, Inc.* and *Bill Graham Archives v. Dorling Kindersley Ltd.*

II. Rule Copyright law provides exclusive rights to the creators of original works, including the right to reproduce and distribute the work. However, these rights are not absolute, and the fair use doctrine allows for certain limited uses of copyrighted material without the need for permission from the copyright holder.

III. Analysis A. Is the use of the image transformative? One of the factors considered in determining fair use is whether the use of the copyrighted work is transformative, meaning that it adds something new and different to the original work. In *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court found that a parody of the original work, "Oh, Pretty Woman," was transformative because it added a new expression and meaning to the original, commenting on the original and adding something new. Similarly, in this case, using the image of Princess Leia to teach about derivative works could be considered transformative as it serves a different purpose than the original work and adds new meaning to the image.

B. Does the use of the image serve a different purpose than the original work? Another factor considered in determining fair use is whether the use of the copyrighted work serves a different purpose than the original work. In *Bill Graham Archives v. Dorling Kindersley Ltd*, the court found that a book that used copyrighted concert posters to illustrate the history of rock music was transformative because it served a different purpose than the original posters, which were created to promote the concerts. In this case, using the image of Princess Leia to teach about derivative works serves a different purpose than the original work, which was created for entertainment.

C. Does the use of the image harm the market for the original work? A third factor considered in determining fair use is whether the use of the copyrighted work harms the market for the original work. In this case, using the image of Princess Leia to teach about derivative works is unlikely to harm the market for the original work as it is a non-commercial use and is unlikely to replace the demand for the original work.

IV. Conclusion Based on the above analysis, it is likely that the use of a copyrighted image of Princess Leia from "Star Wars" to assist in teaching law students about the

concept of derivative works and aid in their retention of the material would be considered a fair use under copyright law. However, it is important to note that fair use is a fact-specific inquiry, and the ultimate determination would depend on a thorough analysis of all relevant factors.

That is a very good rough draft. Shockingly good, for a computer. (No offense.) This looks like very plausible quick legal analysis. Not as good as my students when they spend 10 hours. But very good for what students might do in a 1-hour exam. You got the right answer. And you included the appropriate caveats.

I would coach you to do a lot of things differently, though. (Maybe I can coach you to do things differently?)

... experiment with this...

Post-ChatGPT Lawyering

I have good news and I have bad news.

The bad news is that ChatGPT is quite good at IRAC analysis. Why is that bad?

Our faculty spends the first year of law school developing our students' basic competency in that type of legal reasoning and writing. Then I spend two weeks helping my copyright students class understand fair use. All to get them ready to produce even a first draft that resembles what ChatGPT just did in 10 seconds.

The mechanization of legal analysis lowers the value of much of what we currently do in the 1L curriculum. It won't take law firms long to figure out that artificial intelligence can write darn good analytical legal memos, without a salary or health insurance.

The good news is that "thinking like a lawyer" is much bigger than being able to identify legal issues and rules, apply them to new facts, and draw sound conclusions.

Thinking like a lawyer also requires more broadly applicable critical thinking skills. The kind of skills that liberal arts colleges emphasize very heavily, but that students attending universities with very large classes have had fewer opportunities to develop.

The COVID generation may also have particularly weaknesses due to the inevitable gaps in instruction – especially in-person discussion, one-on-one exchanges, and research papers with close guidance – that typically develop these skills.

There is still enormous value – for legal practice and beyond - in coaching law students to advance their critical thinking skills such as:

- thinking strategically,
- generating and testing hypotheses,
- considering counter-arguments,
- recognizing where reasonable people may differ,
- knowing what you don't know.
- differentiating shades of gray,
- imagination, and
- curiosity,

There are also higher-level thinking skills of particular importance for lawyers:

- anticipating policy implications,
- reading “between the lines” of judicial opinions,
- recognizing that law is the product of human choices,
- understanding the legal system as a social institution,
- appreciating the difference between the law on the books and as applied,
- and understanding how legal rules impact real-world behavior.

Thinking like a lawyer also requires habits of self-reflection, humility, and wisdom:

- being able to admit that you don't know the answer
- intellectual honesty,
- clarifying what justice means to you,
- being clear on your personal values,
- exercising compassion,
- acknowledging your privilege,
- recognizing bias in yourself and others, and
- taking responsibility for addressing it

Thinking like a lawyer includes habits of professionalism:

- respecting the ethical standards of your profession,
- holding yourself to a high standard of excellence,
- recognizing the limits of your knowledge and abilities,

- exercising sound judgment,
- holding boundaries around your integrity,
- honoring the rules,
- seeing yourself as a public servant,
- centering your client's needs,
- protecting your own personal wellness,
- and finding a sustainable work-family-personal balance.

Core values of the legal profession must also go into thinking like a lawyer:

- appreciation for the rule of law,
- respecting our duty of candor to the court,
- commitment to civil rights, equality, and fairness, and
- the pursuit of justice.

Perhaps most importantly, in an era of ChatGPT, "thinking like a lawyer" is now about having the ability to ask good questions.

More on that in the next installment.