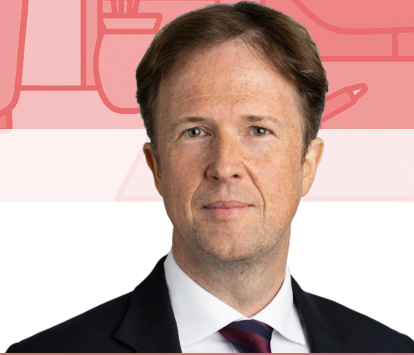


Day 5

by Paul Schwartzfeger



When AI Signs on the Dotted Line: Contracts

Artificial intelligence is no longer just drafting contracts. It's concluding them.

In 2018, a UK TV advert for Amazon's Echo Dot triggered a viewer's Alexa device to start ordering cat food after it "overheard" the command in the ad. Similar incidents in the US saw Alexa attempt to buy dollhouses after hearing them mentioned on TV. These examples show how systems can take contracting steps autonomously.

As AI moves deeper into procurement, negotiation and acceptance of terms, the potential for disputes over what was agreed, and by whom, is only going to grow.

Applicable legal principles

A binding contract under English law requires offer, acceptance, consideration and an intention to create legal relations. These principles apply whether actions are carried out by humans or machine.

In *Thornton v Shoe Lane Parking Ltd* [1971] 2 QB 163, the Court of Appeal held that a contract was formed at the moment a machine issued a ticket, not when the customer later read the terms. This illustrates that binding agreements can arise from automated processes without any human actively reviewing the terms at the point of formation.

A more recent example comes from *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02, in which cryptocurrency trades executed by algorithms were challenged on grounds of mistake. The Singapore Court of Appeal applied ordinary contract principles, focusing on whether the algorithms reflected their programmers' intentions. While not binding in the UK, the decision illustrates judicial willingness to treat machine-generated agreements as valid where human actors intended this.

Automated contracting raises some distinctive legal issues though. One is the attribution of intent. That is, whose intention

is relevant: an end user, a developer, or an organisation deploying AI? Closely linked is the question of authority. Who authorised the AI to make contracts on their behalf, and if the AI acts outside its parameters, is the resulting agreement binding or voidable?

Concerns about mistake and fairness also arise. If an AI tool accepts terms it "assumes" are standard but which are unfavourable, can this engage doctrines such as unilateral mistake or unconscionability?

Finally, the timing of formation can be critical. As illustrated in *Thornton*, contracts may be concluded earlier than expected, which could affect whether key terms are properly incorporated.

Potential defendants

Liability could attach to the party on whose behalf the AI purported to act, particularly if the system was authorised to conclude contracts. AI developers may face claims where errors cause unintended commitments. Overseas providers and parties may add complexity to the analysis though, as the server location and place of performance may all influence the applicable law.

Evidence and interim remedies

Key evidence in an AI contract dispute will include system configuration records, prompt and output logs, API call records showing the decision chain and audit trails capturing when and how terms were generated or accepted. In some cases, network or server logs may be useful to pinpoint when "acceptance" occurred.

Interim relief may involve orders under CPR Part 25 to preserve digital records or to suspend enforcement of a disputed contract pending trial.

Potential defences

Defendants may argue the system lacked actual or apparent authority to contract,

that no meeting of minds occurred or that any apparent agreement was vitiated by mistake. They may also argue that terms were not incorporated or were unfair under the Unfair Contract Terms Act 1977.

In cross-border AI contracting matters, jurisdiction and governing law clauses will also be key battlegrounds, as will conflict-of-laws rules if no clear choice was made.

Remedies

Possible remedies include rescission, declarations as to non-binding effect, damages for breach or restitutionary awards where one party obtains a benefit under an unenforceable agreement.

In urgent cases, interim injunctions may be sought to prevent further automated contracting on disputed terms.

Conclusions

AI contracting sits at the intersection of contract law and fast-moving technology. Courts will apply orthodox principles, although AI alters when contracts form, who is bound and how mistakes arise. Lawyers must grasp these shifts to help clients prevent and resolve disputes.

5 Days, 5 Disputes

Inspired by the release of OpenAI's GPT-5 and the rapid evolution of tools like it, *5 Days, 5 Disputes* highlights five types of legal dispute where artificial intelligence is testing established legal principles, offering insights for those handling AI claims.

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