Introduction

Private Law and Artificial Intelligence

Ernest Lim and Phillip Morgan

I INTRODUCTION

Much attention has been given in both academic work and the media to the social, economic, and political impacts of AI.[1] Unsurprisingly, several research handbooks have been published, exploring the benefits and risks of AI and addressing how AI impacts on democracy, privacy, free speech, and other fundamental freedoms in relation to legal and ethical rules, in a variety of domains (including but not limited to healthcare, armed conflict, finance, policing, and politics). AI also produces significant new legal challenges.[2] However, so far, there has been no dedicated treatment of the interface between AI and private law, and the challenges that AI will pose for private law.

It is not uncommon for the pace of technological development to initially outpace developments in the law.[3] Frequently the law needs to shift to reflect the pace of change.[4] However, a careful balance needs to be struck. Where legal change is too slow, it can create significant risks, whereas where it is too fast, and perhaps ill-thought through, it can stifle technological advances.[5] The introduction of AI has

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[1] Defining AI has proven problematic both for computer scientists and lawyers. There is no standard accepted definition (W Barfield, 'Towards a Law of Artificial Intelligence' in W Barfield and U Pagallo (eds), *Research Handbook on the Law of Artificial Intelligence* (Edward Elgar 2018) 21–22). For a detailed survey and taxonomy of existing definitions see Sofia Samoili and others, *AI WATCH. Defining Artificial Intelligence* (Publications Office of the European Union 2020) 11. For a detailed discussion of AI, how it works, and definitions see Chapter 1. Given proposed European Union regulation the EU has been at the forefront of legally defining AI. For an overview of attempts to legally define AI at an EU level see Chapters 22 and 29.

[2] Ryan Calo, 'Robotics and the Lessons of Cyberlaw' (2015) 103 *Calif LR* 513.

[3] See Lyria Bennett Moses, 'Recurring Dilemmas: The Law's Race to Keep Up with Technological Change' (2007) 2007 *U Ill JL Tech & Pol'y* 239.

[4] Deirdre Ahern, 'Corporate Law, Corporate Governance and AI: Are We Ready for Robots in the Boardroom?' in Ernest Lim and Phillip Morgan (eds), *The Cambridge Handbook of Private Law and Artificial Intelligence* (Cambridge University Press 2024). Note also Lyria Bennett Moses, 'Agents of Change' (2011) 20 *Griffith Law Review* 763.

[5] Gregory N Mandel, 'Legal Evolution in Response to Technological Change' in Roger Brownsword, Eloise Scotford and Karen Yeung (eds), *The Oxford Handbook of Law, Regulation and Technology* (Oxford University Press 2017) 226.

been widely described as the fourth industrial revolution.[6] Each previous indus-
trial revolution led to major challenges to private law, and significant legal develop-
ments.[7] Previously, technological changes and their accompanying social changes
radically reshaped a number of areas of private law.[8] New types of disputes arose,
and existing legal categories in some cases proved problematic.[9] No private law-
yer can ignore the legal developments which were driven by advances such as the
steam engine, motor car, mass production, the printing press, modern communica-
tions, photography, computing, and the internet.[10] AI appears to generate unique
challenges for private law. Features including autonomy, complexity, opacity, data-
drivenness, vulnerability, unpredictability, machine learning, openness, and the
distance between the systems and those responsible for them are commonly cited
as problems generated by AI technologies for the existing legal settlement,[11] and
which will disrupt key private law doctrines. In doing so, AI also threatens to under-
mine some of the key rights protected by private law. It is further likely that social
changes prompted by AI will also generate significant new challenges for private
law. Consequently, as the chapters of this Handbook demonstrate, it is likely that AI
will lead to new developments in private law.

Previous experience shows that such legal developments will also impact private
law doctrines more broadly and not simply when these doctrines interface with
the new technologies.[12] However, it is not just the challenges that AI causes to pri-
vate law doctrines that should be of interest to private lawyers. Private law also has
a regulatory role. This role may be pronounced in some fields such as consumer
law, competition law, or corporate law, but, at its core, law, including private law,
regulates relationships. How AI is regulated is of pressing concern to policymakers
who have proposed a range of ex-ante regulatory measures. This issue has addition-
ally attracted the attentions of human rights, anti-discrimination, and criminal law
scholarship, amongst others, but it is also important to consider the private law reg-
ulation of AI.

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[6] For example, Klaus Schwab, *The Fourth Industrial Revolution* (WEF 2016).
[7] Donald Gifford, 'Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous
     Vehicles, and Accident Compensation' (2018) 11 *J Tort L* 71; Ken Oliphant, 'Tort Law, Risk, and
     Technological Innovation in England' (2014) 59 McGill LJ 819.
[8] Reinhard Zimmermann, *The Law of Obligations, Roman Foundations of the Civilian Tradition*
     (Clarendon Press 1996) 1130; Gert Brüggemeier, 'The Civilian Law of Delict: A Comparative and
     Historical Analysis' (2020) 7 *European Journal of Comparative Law and Governance* 339, 340; Gifford
     (n 7) 126.
[9] Mandel (n 5).
[10] Oliphant (n 7) 837; John Bell and David Ibbetson, *European Legal Development, The Case of Tort*
     (Cambridge University Press 2012) 38.
[11] See HLEG, 'Liability for Artificial Intelligence and Other Emerging Technologies' (Report from
     the European Commission's Group of Experts on Liability and New Technologies, 2019) <www.op
     .europa.eu/en/publication-detail/-/publication/1c5e30be-1197-11ea-8c1f-01aa75ed71a1/language-en>.
[12] Phillip Morgan, 'Tort Liability and Autonomous System Accidents – Challenges and Future
     Developments' in Phillip Morgan (ed), *Tort Liability and Autonomous System Accidents, Common
     and Civil Law Perspectives* (Edward Elgar 2023).

This Handbook brings together a global team of private law experts and computer scientists to deal with this problem and examine the interface between private law and AI, which includes issues such as whether existing private law can address the challenges of AI and whether and how private law needs to be reformed to reduce the risks of AI while retaining its benefits.

Private law can be generally and broadly understood as the rights that persons have against one another that are conferrable or enforceable judicially or extra-judicially. This can be further broken down into questions of who has the rights, what the rights are, and how these rights can be enforced.[13] However, rather than dividing the Handbook into these subcategories, it is more reader-friendly and neater to simply categorise the chapters into the traditional areas of private law (i.e., the law of obligations such as contract, torts, trusts, and unjust enrichment), property law (including intellectual property and information technology law), and the more regulatory aspects of private law (such as corporate law, insurance law, competition law, and consumer law). It should be noted that the regulatory aspects of private law are also covered in the leading compendium of private law work in the common law world.[14] At least nineteen distinct areas of private law, spanning major jurisdictions such as the UK, US, and EU are covered in this Handbook.[15]

II INITIAL CHAPTERS

Chapters 1 and 2 deal with general issues which straddle all areas of private law. Systems employing AI technologies are already in use, and it is likely that there will be an increase in the use of such technologies. Chapter 1 is written by three leading computer scientists. It aims to introduce basic concepts of AI to lawyers in order to assist lawyers in understanding how, if at all, the private law framework needs to be adjusted to enable AI systems to be treated appropriately by lawyers. This understanding of the technology is essential since it is important to base our analysis on the current state of the art, not scenarios unreflective of current or future technologies. The chapter deals with key concepts, and the capabilities and limitations of AI and identifies technological challenges which might require legal responses.

In Chapter 2, which deals with 'computable law', Harry Surden makes the case for law to be 'computable', in order to make retrieval and analysis easier. Computable

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[13] Andrew Burrows (ed), *English Private Law (Oxford Principles of English Law)* (3rd edn, Oxford University Press 2013) ix. The public law and private law divide has a long history, see WW Buckland, *Manual of Roman Private Law* (Cambridge University Press 1925) 30. However, the distinction is often blurred within the common law, note Steve Hedley 'Is Private Law Meaningless?' (2011) 64 *CLP* 89.

[14] For example, Burrows (n 13) includes family law, company law, property (including intellectual property), banking, insurance, insolvency, carriage of goods, civil procedure, and private international law.

[15] These include contract, torts, consumer law, product liability law, privacy law, agency law, trusts, unjust enrichment, property law, intellectual property law, corporate law, financial regulation, competition law, commercial law, insurance law, commercial dispute resolution, securities law, employment law, and data protection and governance.

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law takes aspects of law, which are implicit in legal texts and aims to model them as data, rules, or forms which are amenable to computer processes. He argues that we should supplement statutory language, proposing that laws should be labelled with computable structural data to permit advanced computational processing and legal analysis. For instance, this structural data could be used to indicate important features such as sunset provisions. His thesis is that the law itself should be changed to make it easier for computers to best administer it. Surden advances that these labels should be capable of unambiguous processing by a computer and simultaneously convey sensible information to the human reader.

Surden considers that even with current advances in natural language processing (NLP), the current error margins are still significant enough to warrant the use of computable legal data in certain contexts. However, he considers that recent advances in NLP AI technologies may generate a bridge between written law and computable law, through the ability to produce reliable first-draft translations of written law into comparable computer instructions and data. Through leveraging this technology, structured data may be more easily added to many existing natural language documents.

Whilst other chapters primarily focus on analysing law from the angle of how it can accommodate AI, the need to subject AI to regulation and law, and required legal reforms, Chapter 2 instead considers how law itself may be best served by AI and how law should change to adapt to this. However, Surden recognises limits on this notion of labelling and modelling, considering it not always beneficial or appropriate in every context. This model requires legislators to change their approach to drafting and enacting law. However, contract law may be one of the first potential applications, since parties can through their own private law-making render their own contracts computable.

III PART I: LAW OF OBLIGATIONS

Part I deals with the law of obligations, broadly defined. Chapter 3 deals with AI-infused contracting. In Chapter 3, TT Arvind advances that AI has the potential to overcome problems concerning the existing approaches to contract drafting, management, and implementation, whilst also having the potential to exacerbate these problems. To deal with this risk and to create AI which is trustworthy in relation to contracting Arvind argues that such systems require channelling in a new direction, which he terms 'transactional responsibility'. His chapter addresses how AI practices and contract law may be developed so that AI-infused contracting serves responsible and responsive ends rather than being extractive and oppressive.

Arvind notes that the nature of algorithmic systems may make it easy for these systems to lapse into contract law minimalism, unless the systems are expressly designed not to do so. Consequently, he argues that the legal regulation must be structured around the entirety of the socio-technical system which underpins AI.

He discusses questions that must be addressed by contract law for it to be able to regulate AI-infused contracting and related social concerns. To deal with these concerns, he proposes a relationally informed principle of transactional responsibility which he argues should be infused into the way in which AI contracting systems are designed, deployed, and regulated. He argues that systems of governance should consider all categories of transactors likely to be subject to a particular system. Further, he proposes that contract law itself will need to change, specifying disclosure and transparency requirements so as to require the provision of accessible explanations as to how the relevant AI-infused contracting system functions, makes decisions, exercises discretions, and is assured.

Chapter 4, which again concerns contract law, deals with self-driving contracts and AI. Anthony Casey and Anthony Niblett examine the role of AI in automated private contracts. They expand on their previous work on micro-directives, that is, legal technologies 'that use AI-augmented algorithms to translate the purpose of a law into a specific legal directive'.[16] Casey and Niblett have previously argued that these can be used to produce self-driving contract, that is, a contract which instead of relying on a human referee to fill gaps, update, or reform the provisions of the contract, use data-driven predictive algorithms to do so instead.[17] These micro-directives draw on real-world data and factor in the purpose of the contract.

Within Chapter 4, Casey and Niblett respond to scholarly criticisms of their previous work. They distinguish between self-driving contracts and mere smart contracts. Chapter 4 explores existing contracts and technologies and makes the case that not only are self-driving contracts possible, they are in fact already with us. They also examine existing AI augmentation and prediction technologies that are, or can be used, to create self-driving contracts. Numerous examples of current and potential self-driving provisions and technologies are considered in Chapter 4. These include dynamic pricing clauses using a pricing algorithm instead of a human arbitrator, refitting litigation prediction systems for the purpose of automating terms regarding contractual non-performance and also to fill contractual gaps, and using technology currently used to flag unlawful or problematic terms of a contract. They also consider the use of existing technologies which automate contractual negotiation and discuss the potential to use such technologies to update a contract during its lifespan.

Casey and Niblett also discuss the risks of such automation which include the replication of existing biases and party weaknesses and the problems of data manipulation and security. They also consider the question of who drafts the self-driving contract algorithms and potential solutions to ensure that these algorithms do not intentionally or systematically favour one party. By examining existing technologies and considering how they are or could be used to create self-driving contracts, Casey

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[16] Anthony J Casey and Anthony Niblett, 'Self-Driving Contracts and AI: Present and Near Future' in Lim and Morgan (n 4).

[17] Anthony J Casey and Anthony Niblett, 'Self-Driving Laws' (2016) 66 *University of Toronto Law Journal* 429; Anthony J Casey and Anthony Niblett, 'Self-Driving Contracts' (2017) 43 *J Corp L* 1.

and Niblett demonstrate that the notion of self-driving contracts is not simply science fiction but also a genuine possibility for the present.

In Chapter 5, Jeannie Marie Paterson and Yvette Maker examine the interface between consumer protection law and AI. Consumers are at the forefront of market uses of AI, from targeted advertising, to differential pricing, and automated decision-making for services. There are also myriad consumer uses of AI products to assist them in their everyday lives. However, they have the potential to endanger consumer autonomy and welfare, ranging from erosions of consumer privacy, the perpetuation of undesirable bias and unlawful discrimination, susceptibility to hacking and security issues, to proving unreliable or unsafe. Such systems collect large volumes of data on consumers. The insights provided by such data may also be used to nudge consumers into making decisions that might not be welfare-enhancing, and which are not the autonomous decisions of the consumer.

Paterson and Maker note that consumer protection law justifies greater responses where the interactions involve significant risks and relevant consumer vulnerability. They argue that both such elements are present in the current and predicted AI uses concerning consumers. They advance that consumer protection law is likely to be able to be sufficiently flexible to adapt to AI, although there is a need to recalibrate consumer protection law for AI. They also suggest the possibility of fiduciary duties for some systems, such as digital assistants, or, given the potential intimate relationships between smart devices and consumers, that there may be scope to expand the doctrine of undue influence.

Chapters 6–10 focus on tort law. In Chapter 6, Phillip Morgan considers the difficulties in applying existing tort law to AI systems. He argues that AI will disrupt the existing tort settlement. Morgan introduces the notion of tech-impartiality within torts, that is, tort law should not encourage or discourage the adoption of new technologies where they generate the same level of risk, and victim rights should not be eroded by the use of new technologies in place of existing systems of work.

Chapter 6 advances that existing tort law is poorly suited to address some AI challenges. In particular, Morgan highlights the liability gap which will emerge as systems replace employees, as AI does not have legal personality and cannot commit a tort. The chapter identifies the key problems with various alternative claims in tort, from negligence, and non-delegable duties, to product liability, when applied in an AI context, and the UK's Automated and Electric Vehicles Act 2018. Chapter 6 argues that these alternative claims do not adequately address the liability gap, and the present law thus violates tech-impartiality.

Chapter 6 examines a wide range of alternative liability proposals including those based on liability for children, slaves, and animals, to no-fault funds and also proposed European-level reforms. Morgan argues for a form of AI statutory vicarious liability to apply in commercial settings to address the liability gap and as the tech-impartial solution. The chapter also explores what standards of care should apply in this statutory claim context.

Given the tort liability gap, which Chapter 6 discusses in detail, the UK Parliament has already pre-emptively legislated for a compensation solution for autonomous vehicle accidents. As the UK Parliament is one of the first movers on this issue, and since other jurisdictions may be tempted to transplant this approach, it is worth thorough consideration. In Chapter 7, James Goudkamp subjects the Automated and Electric Vehicles Act 2018 to a detailed analysis. The Act is a response to the fact that the ordinary approach to motor vehicle accidents cannot apply in an AV context. This is since there is no human driver. The Act plugs this gap in insurance coverage by providing AV accident victims with a direct claim against the vehicle's insurer. The Act contains a number of technical provisions and ambiguities.

Goudkamp situates the Act within the major shifts that tort law has undergone in response to motor vehicles, considering that we are again on the cusp of another motor-vehicle-inspired revolution in tort law. He also identifies a previously unarticulated statutory preference for victims of AV accidents. This preference does not appear to have been identified by the Act's architects, nor was its appropriateness considered, since it is a matter of luck whether a victim's claim is under the AEV Act or whether the victim needs to establish a claim in negligence against a human driver. Examining the Act's legislative history, Chapter 7 argues that there was inadequate consideration of alternative approaches.

In Chapter 8, Sandy Steel examines private law's causal rules in an AI context. This is an issue of particular importance in claims for compensation where a right holder must prove a causal connection between the relevant conduct and the harm. Chapter 8 identifies two core problems: (1) a problem of proof due to opacity and (2) autonomy. Steel notes that if AI is capable of being considered an intervening agent, this would mean that using AI would have liability-avoiding effects. He also considers the issue of foreseeability.

Steel identifies three kinds of causal uncertainty which also pertain to an AI context: uncertainty due to lack of expertise; uncertainty due to causation evidence being destroyed, tampered with, or not gathered; and finally uncertainty which is present even with sufficient expertise, and in the absence of evidence destruction, tampering, or non-collection. The first he considers does not pose a problem for the private law rules of causation. The second is not unique to AI, nor are we uniquely vulnerable to this problem in an AI context. Indeed, AI may in some contexts provide us with an enhanced ability to record and access relevant facts. However, Steel considers that there may be particular problems with informational and decisional AI, particularly where machine learning takes into account an extraordinarily large number of features, which are given subtle and complex weightings, and are not recoverable after a decision has been made. Chapter 8 discusses principles which have been developed for situations where a party bears some responsibility for a lack of causal evidence and also the EU Expert Group's proposals in relation to logging and recording data duties.

Chapter 8 argues that the third form of uncertainty is inevitable in any legal system and that most systems retain the orthodox burden of proof in this context, resulting

in a claimant losing the factual causation issue. However, some systems depart from this where the impossibility of proving causation is recurrent and predictable. Steel considers whether AI involves this form of uncertainty and if it justifies a departure from the ordinary principles. Chapter 8 also makes the case that the issue of the foreseeability of harm in an AI context is less problematic than sometimes suggested in the literature.

Increasing use of AI systems will mean that there will be a consequent shift from liability for human errors to liability for malfunctioning products, which will bring product liability to the fore. In Chapter 9, Vibe Ulfbeck focuses on product liability law and AI. She argues that AI will greatly challenge product liability, since it is based on assumptions as to physical objects distributed through organised linear value chains which do not necessarily apply in the AI context. Ulfbeck also argues that AI systems further challenge both liability compartmentalisation based on separate risk spheres and the notion of defectiveness.

Ulfbeck examines the current European product liability regime and proposed amendments. The regime is based on a linear value chain, and it channels liability to the producer as the best risk avoider. However, she notes that with AI, systems may be distributed differently, with more complex value chains which are more in the nature of a network. Further, AI blurs the line between product and service. Chapter 9 considers a range of other aspects of the current regime which are challenged by AI; for instance, later defect defences which are based on the fact that producers no longer have control of a product. She advances that the realities of new value chains call for a number of adjustments to central product liability concepts, which will widen the scope of product liability rules. Further, she considers that AI may in fact have the potential to ultimately dissolve the very notion of product liability itself.

Certain current uses of AI demonstrate the inadequacy of the current private law settlement to deal with new harms. In Chapter 10, John Zerilli focuses on the problem of deep fakes and the appropriation of personality. Deep fakes are a special kind of counterfeit image which are difficult to distinguish from an authentic image. They may be used to represent a person doing any act and are generated through using advanced machine learning techniques. Such techniques have become widely available through easy-to-use apps. Chapter 10 considers privacy law and demonstrates that currently, such an appropriation of personality is only actionable if the circumstances disclose one of a number of largely unrelated causes of action. Actions such as passing off, defamation, injurious falsehood, nuisance, intentional infliction of psychiatric injury, and trespass were never intended to cover such cases. Although he notes that given the manner in which deep fakes are created and the motivations behind their most objectionable uses, such actions may be more effective against deep fakes than with traditional photographs and video recordings. Nevertheless, Zerilli demonstrates the inadequacy of existing causes of action to protect claimants from the appropriation of their personality. He thus argues for

a new independent tort or statutory action for the appropriation of personality which is grounded in the protection of a person's dignitary interests.

AI systems will supplant and automate processes which formerly required human intervention. Such systems may also act in an extra-legal manner or take unanticipated actions. This raises questions as to how to characterise AI interactions. Underlying many of the problems identified in Part I concerning the interface between AI systems and tort and contract law, lays the issue of agency. In Chapter 11, Daniel Seng and Tan Cheng Han deal with this issue.

There have been a number of scholarly proposals that AI systems should in some contexts be treated as legal agents and also to recognise such systems as legal persons. Engaging with these proposals Seng and Tan reject the arguments for AI agency. They argue that the AI agency problem is overstated and that many of the issues concerning AI contracting and liability can be solved by treating artificial agents as instrumentalities of persons or legal entities. In particular, they reject characterising AI systems as agents for liability purposes (cf Morgan in Chapter 6). Seng and Tan advance that this approach best accords with their functionality and places the correct duties and responsibilities on their human developers and operators.

In Chapter 12, which addresses trust law, Anselmo Reyes makes the case that AI will greatly assist in the administration of express and charitable trusts and also be of significant benefit to trust law in acting as an adjudicator – by forcing a clarification and simplification of the law of constructive trusts.

Reyes considers that AI should be able to act as an acceptable trustee of an express trust. He also makes the case that resulting trusts do not insurmountably challenge AI, either as trustees or adjudicators. He rejects the proposition that discretionary trusts are unsuited to AI administration and further rejects the notion that the discretionary nature of remedies makes this area of law unsuited to AI adjudication. Reyes acknowledges that constructive trusts may pose some difficulties for AI. Whilst he suggests that determining when a constructive trust has arisen can be ascertained by reference to a database of case patterns, he accepts that there are difficulties in assessing the respondent's mental state. However, Reyes notes this is also a problem for human adjudicators and criticises the current system of elaborate states of minds used within the law of constructive trusts which cannot be easily implemented by either human adjudicators or AI. His solution is to suggest legal reform to simplify the tests used.

In Chapter 12, Reyes strongly advocates for AI trustees. He argues that the difficulties they will create are not incapable of practical solutions. For instance, whilst lack of personality may be an obstacle, he considers practical workarounds, including a proposed form of in rem claim against trust property which would operate by analogy to the Admiralty jurisdiction in rem.

Chapter 13 concerns unjust enrichment. Data is key to AI. It is a valuable commodity which is collected and sold. This theme will also emerge in Part II of this Handbook. In Chapter 13, Ying Hu addresses whether data subjects should be

allowed to seek gain-based remedies against defendants who collect or use their
data to train, develop, or improve their systems or who have sold their data for such
purposes. Hu argues that one advantage of a gain-based remedy in this context is
that it may be relatively easy to ascertain the gain, but demonstrating loss will be
considerably harder. Further, a defendant may seek to defeat a class action (for
losses) by requiring individualised evidence of loss from each putative class mem-
ber, whereas the benefits received by a defendant from unauthorised data collection
or use can often be established without requiring each claimant to provide individu-
alised evidence.

Hu advances that unjust enrichment is a plausible cause of action for individuals
whose data has been collected and used without their consent, and that disgorge-
ment of profits may be possible in some situations where the defendant has unlaw-
fully collected or used personal data. However, Hu acknowledges that contractual
pre-emption may limit the utility of claims in unjust enrichment, where the defen-
dant collects personal data pursuant to a valid and binding contractual provision.
The chapter considers a range of scenarios, and how such claims would operate.

IV PART II: PROPERTY

Part II deals with property law. Data, agency, and personhood again emerge as key
themes in this part. In Chapter 14, Kelvin Low, Wan Wai Yee, and Wu Ying-Chieh
probe the divide between property and personhood, examining AI through both
lenses. They consider the arguments for legal personhood for (some) AI systems and
the challenges that this would create. They note that the conferral of personhood
is a choice made by legal systems but argue that just because it can be done, does
not mean that it should. They advance that the analogies which are made between
AI systems and corporations are superficial and flawed. For instance, the demand
for asset partitioning does not apply to AI systems in the same way that it does to
corporations, and it may in fact lead to moral hazards. Chapter 14 considers that
conferring personhood on AI systems would also need to be accompanied with gov-
ernance structures equivalent to those that accompany corporate legal personhood.
The authors also explore the issues that would arise if legal personality was granted
to some AI systems. In particular, they consider the mechanisms used in corporate
law to prevent exploitation of the corporate form, and how they might apply (if at
all), to an AI context. The authors also consider the interface between data and
property, arguing that it is time that the metaphorical ghost of data as property be
exorcised.

In Chapter 15, Dev Gangjee examines data from an intellectual property per-
spective. Data is one of the most valuable resources in the twenty-first century,
seemingly straddling the divide between goods and services. Property rights are a
tried and tested legal response to regulating valuable assets. Chapter 15 considers
whether non-personal, machine-generated (or generative AI) data is protected by