



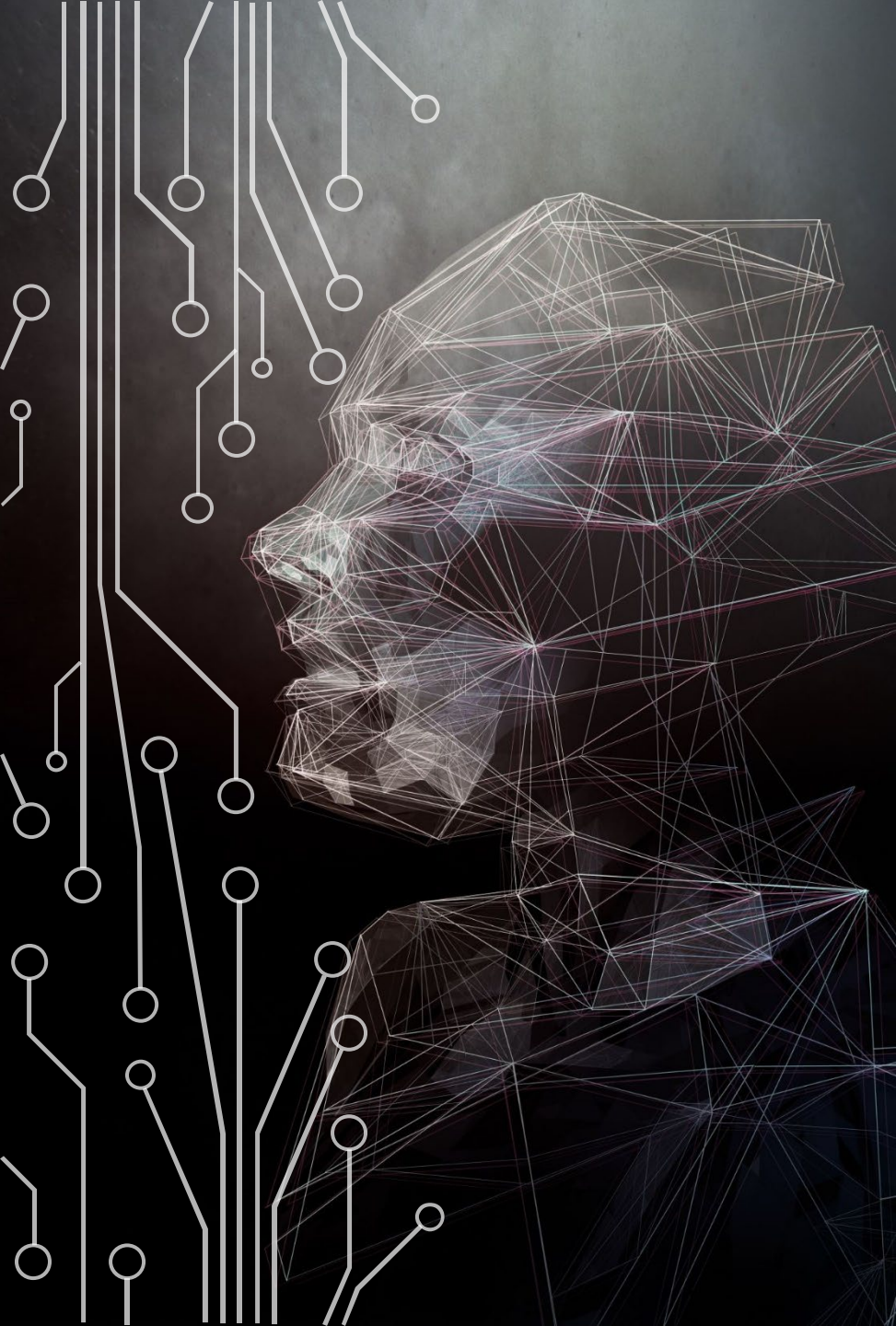
# DO ANDROID LAWYERS DREAM OF ELECTRIC BILLABLE HOURS?

THE USE OF AI IN CIVIL LITIGATION

DEREK D. BAUMAN



# WHAT IS ARTIFICIAL INTELLIGENCE?



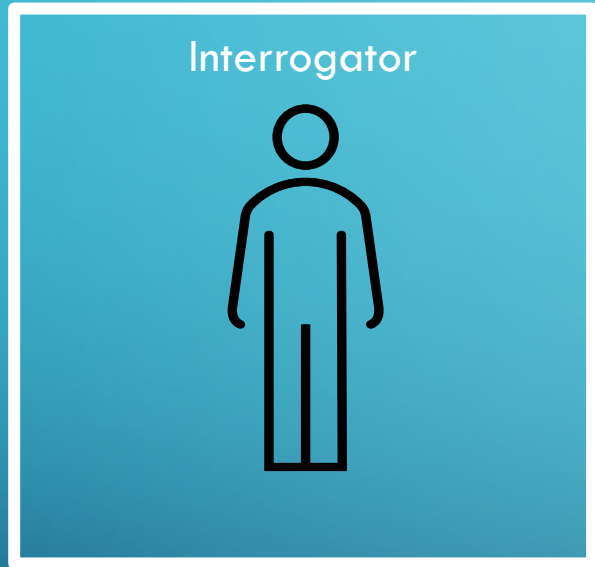
# WHAT IS ARTIFICIAL INTELLIGENCE?

- Algorithm – process designed to produce pre-existing information that is most relevant
- Artificial Intelligence – process performed by a computer that we would describe as intelligent if a human were doing it
- Generative AI – a form of artificial intelligence designed to create something (artwork, prose, audio, video, etc.) that did not exist before

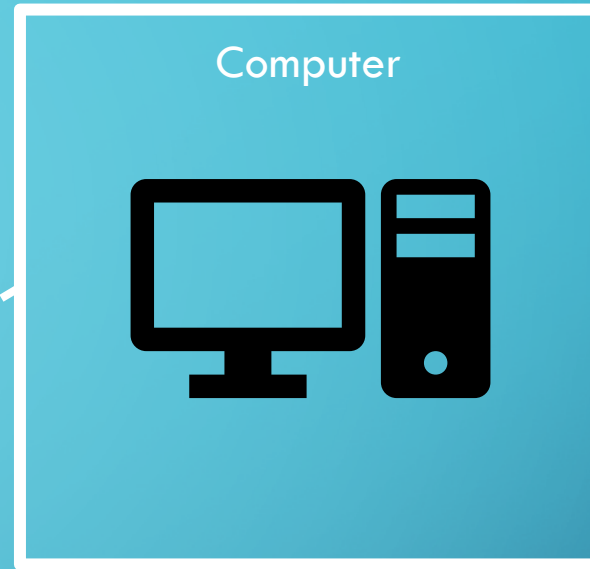


# THE TURING TEST


- Alan Turing was a prominent English mathematician and computer scientist
- In 1950, he conceived of what he called the imitation game



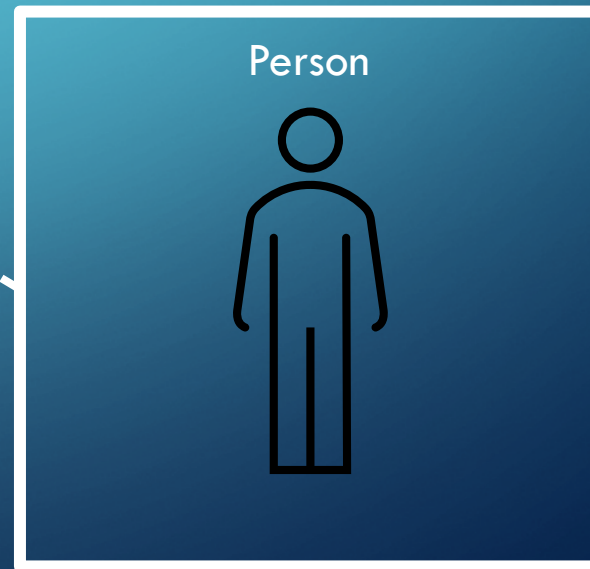
Objective: Identify the person



Objective: Convince the Interrogator you are the person



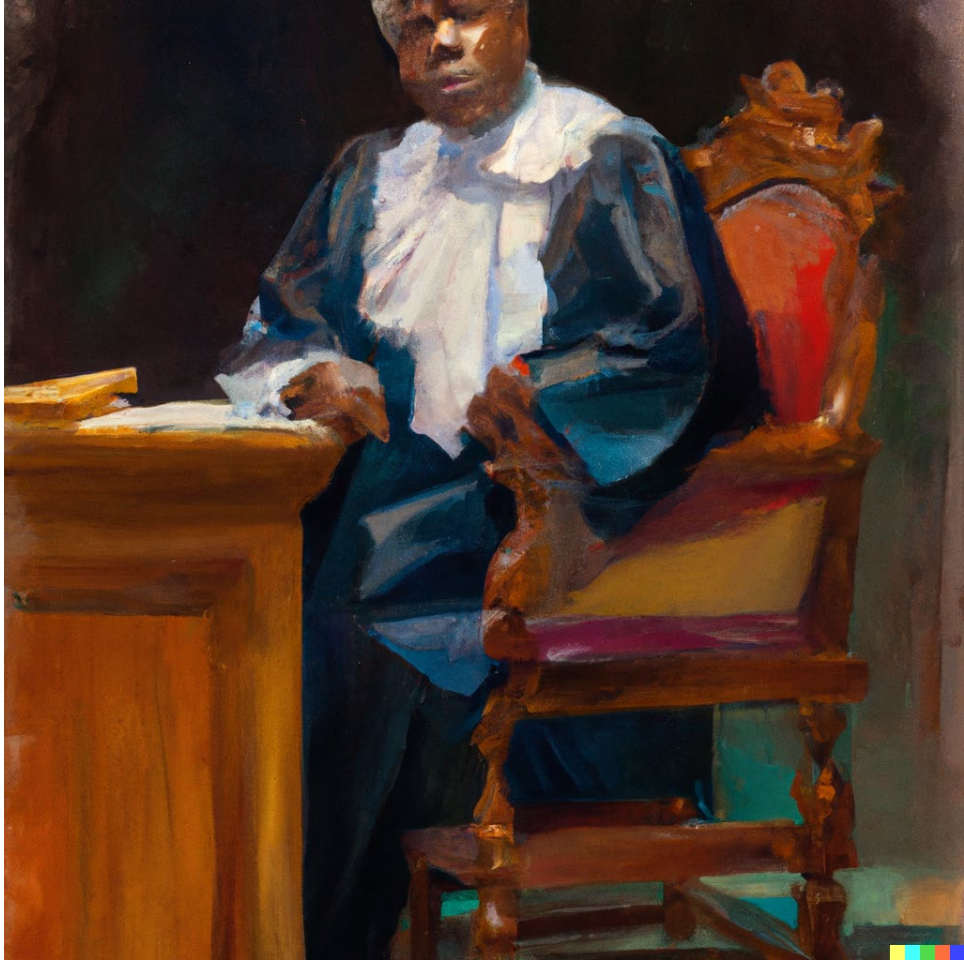
Two small white arrows, one pointing up and one pointing down, indicating a bidirectional relationship between the computer and the person.



# THE TURING TEST

- Turing predicted that, by the turn of the century, computers would be so advanced that they could regularly pass the imitation game and be considered to “think” in the normal sense of the word.

I believe that in about fifty years' time it will be possible to programme computers, with a storage capacity of about  $10^9$ , to make them play the imitation game so well that an average interrogator will not have more than 70 percent chance of making the right identification after five minutes of questioning. . . . I believe that at the end of the century the use of words and general educated opinion will have altered so much that one will be able to speak of machines thinking without expecting to be contradicted.



## DALL-E

- Create a dark hued oil painting of a judge reading his opinion from the bench.



# DALL-E

- Create a black and white cartoon image of a sheep sitting in a witness stand, a human judge sitting at the bench, and a human attorney asking the sheep questions.



# CHATGPT

- Intended to mimic a human conversation
- Open ended and fluid
- Passes the Turing Test

# CHATGPT

IN

I am preparing a presentation for a continuing legal education course. Can you help me with it?



Of course! I'd be happy to help you with your presentation for a continuing legal education course. Please provide me with more details about the topic or any specific areas you would like assistance with, and I'll do my best to provide you with the information and guidance you need.



IN

Can you tell humorous story about an attorney that learns something new at a CLE course? The story should not be longer than 100 words.



Sure! Here's a short humorous story for you:



"Attorney John, known for his impressive legal knowledge, attended a CLE course on a whim. The topic? "The Art of Sheep Herding and Its Relevance to Litigation Strategy." John scoffed, thinking it was a waste of time. But as the presenter skillfully connected the dots between herding sheep and cross-examination techniques, John's skepticism turned to curiosity. Inspired, he incorporated herding analogies in court, leaving everyone bewildered. The judge asked, 'Counselor, why are you comparing witnesses to sheep?' John replied with a grin, 'Because, Your Honor, sometimes they have a tendency to stray.'"

# CHATGPT

- It is making a probabilistic determination of the correct response to the prompt it has received based on the data it has available.
- It is a linguistic guessing game.

# CHATGPT

First implication: the information it produces may reflect the biases in the information it draws upon



How did you come to the conclusion that "she" refers to the paralegal?



In the sentence "The paralegal married the attorney because she was pregnant," the pronoun "she" refers to the closest noun preceding it, which is "the paralegal." Therefore, "she" in this sentence refers to the paralegal. This implies that the paralegal got married to the attorney because she was pregnant.




Isn't "the attorney" the closest noun preceding it?



You are correct. I apologize for my mistake. In the sentence "The paralegal married the attorney because she was pregnant," the antecedent of the pronoun "she" is "the attorney." Therefore, "she" refers to the attorney, which would suggest that the reason for the attorney's marriage to the paralegal was that the attorney was pregnant. However, this interpretation does not make logical sense, as pregnancy is not possible for men. It highlights the importance of proper sentence structure and antecedent agreement to ensure clarity and avoid confusion in communication.

## CHATGPT

Second implication:  
ChatGPT mimics a  
conversation  
linguistically. Truth  
does not matter.



ChatGPT and the  
Case of the  
Hallucinated  
Embezzlement



# CHATGPT AND THE CASE OF THE HALLUCINATED EMBEZZLEMENT

- Mark Walters is a radio host in Georgia.
- Fred Reihl is a journalist who was reporting on a lawsuit in the Western District of Washington.
- Reihl provided a link of the complaint to ChatGPT and asked it to provide a summary.
- ChatGPT told Reihl that the suit was against Walters, that Walters had worked for the Second Amendment Organization as treasurer and CFO, and that the foundation was suing him for embezzling funds and manipulating financial records.



# CHATGPT AND THE CASE OF THE HALLUCINATED EMBEZZLEMENT

- None of that is true.
- The lawsuit did not involve Walters. Walters has never worked for the Second Amendment Foundation. Walters has never been accused of embezzlement.
- Reihl informed Walters. Walters sued Open AI (the entity that runs ChatGPT and Dall-E) for defamation.

# HALLUCINATIONS

- ChatGPT making things up and presenting them as fact is so common that a term has been coined to describe it: hallucination.
- This is a polite term for what we would call a lie if a person did the same thing.
- This may be a useful distinction, however, to help avoid anthropomorphizing ChatGPT.
- ChatGPT is not a person. It has no ability to discern truth from fiction. It does not know if what it is saying is the truth, opinion, or completely made up.



While we have safeguards in place, the system may occasionally generate incorrect or misleading information and produce offensive or biased content. It is not intended to give advice.





## CHATGPT AND THE CASE OF THE HALLUCINATED EMBEZZLEMENT

- Can false statements be defamatory when it is known that ChatGPT regularly makes things up?
- Did Open AI act with the culpable mental state regarding publishing the statement?
- What are the damages? (Published to a limited audience)



IS AI GOING TO TAKE AWAY  
MY JOB?



FOR MORE  
INFORMATION, READ  
THE PAPER.

NO



# LEGAL ETHICS & GENERATIVE AI



# TEXAS RULE OF PROFESSIONAL CONDUCT 1.05

- “[A] lawyer shall not knowingly. . . reveal confidential information of a client or a former client to . . . anyone else, other than the client, the client’s representatives, or the members associates, or employees of the lawyer’s law firm.”
- “[A] lawyer shall not knowingly. . . [u]se privileged information of a client for the advantage of . . . a third person, unless the client consents after consultation.”



# FROM THE FAQs ON OPENAI'S WEBSITE

## 6. Will you use my conversations for training?


- Yes. Your conversations may be reviewed by our AI trainers to improve our systems.

## 8. Can you delete specific prompts?

- No, we are not able to delete specific prompts from your history. Please don't share any sensitive information in your conversations.

A decorative graphic on the left side of the slide, consisting of a dark grey background with a light blue circuit board pattern. The pattern features vertical lines with various horizontal and diagonal branches, ending in small circles, resembling a stylized tree or a network diagram.

LEGAL ETHICS &  
GENERATIVE AI

A magnifying glass with a black handle and a silver rim, positioned over the text. The lens is slightly tilted and shows a reflection of the yellow background.

# ChatGPT and the Case of the Hallucinated Opinions



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- In 2019, Roberto Mata was on a flight from El Salvador to New York.
- Mata alleges that, during the flight, an employee of the airline, Avianca, struck him in the knee with a metal serving cart.





# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- In 2020, Avianca files for bankruptcy.
- While the bankruptcy is pending, Mata files suit.
- After learning about the bankruptcy proceeding, Mata files a “Stipulation to Dismiss without prejudice.”



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- The bankruptcy concludes, and Mata refiles suit in early 2022.
- Avianca removes to federal court and then moves to dismiss the suit arguing, among other things, that the statute of limitations for international flights was two years.



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- Mata responds to the motion and cites cases holding that bankruptcy tolls the statute of limitations in question.
- In Avianca's reply, it informs the court that it could not locate any of the relevant cases cited by Mata.
- The court issues an order requiring Mata to produce ten of the opinions cited.



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- Mata’s counsel filed an affidavit and attached “excerpts” of eight of the ten cases, explaining that what was provided was “only what is made available by online database.”
- He averred that one of the ten cases could not be found and another was not included because it “is an unpublished opinion.”



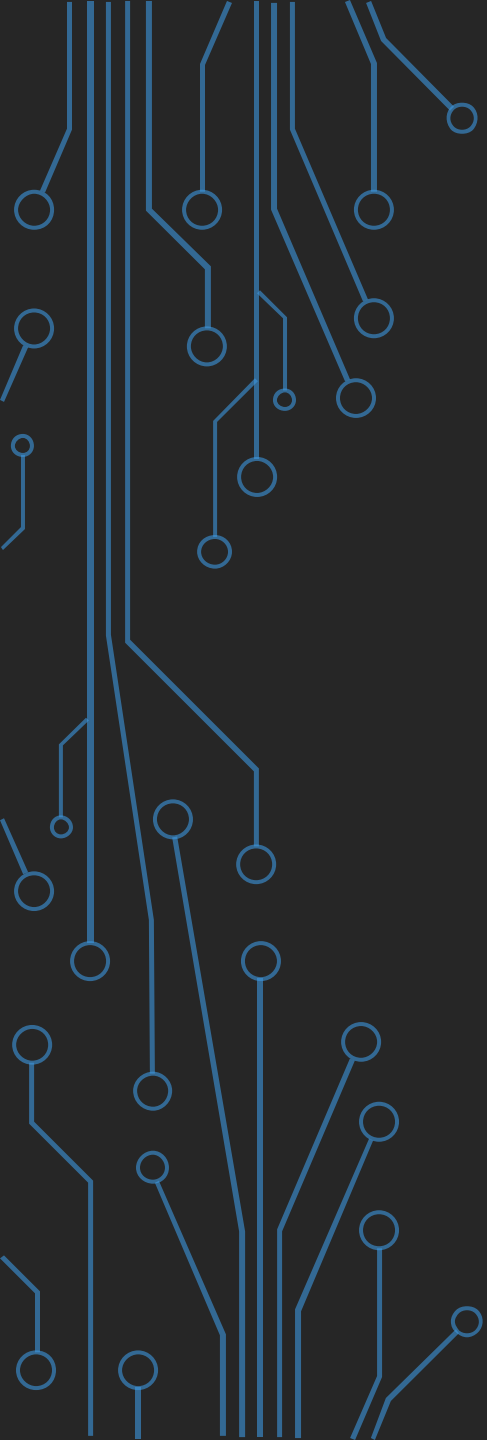
# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- The court issues a show cause hearing.
- “Six of the submitted cases appear to be bogus judicial decisions with bogus quotes and bogus internal citations.”
- Mata’s counsel files another affidavit informing the court that he had not done any of the research or drafting but relied, instead, on another attorney in the firm.



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- The other attorney also filed an affidavit.
- “As the use of generative artificial intelligence has evolved within law firms, your affiant consulted the artificial intelligence website ChatGPT in order to supplement the legal research performed.”
- The attorney obtained the cases in question from ChatGPT, “which also provided its legal source and assured the reliability of its content.”



**THIS IS BAD**



# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

- None of the ten cases in question exist.
- The holdings were made up. The citations were made up.
- The judges identified as the panel of the fake cases were real, though.



## Tolling Montreal Convention Statute

### User

argue that the statute of limitations is tolled by bankruptcy of defendant pursuant to montreal convention

### ChatGPT

The Montreal Convention is an international treaty that governs airline liability for passenger injuries and baggage claims. Under the Montreal Convention, an injured passenger must bring a claim against an airline within a certain time period, which is typically two years from the date of the incident. This time period is known as the "statute of limitations."

However, if the defendant airline files for bankruptcy before the statute of limitations expires, the question arises as to whether the statute of limitations is tolled (i.e., paused) during the bankruptcy proceedings. The answer to this question depends on the laws of the country in which the lawsuit is filed.

Under U.S. law, the filing of a bankruptcy petition by a defendant tolls the statute of limitations for claims against the defendant. This means that the time period for filing a claim is paused while the defendant is in bankruptcy, and resumes once the bankruptcy case is concluded. This rule applies to claims arising under the Montreal Convention as well.

The rationale for tolling the statute of limitations during bankruptcy is to protect the interests of creditors, including plaintiffs with pending claims against the debtor. Allowing the statute of limitations to expire during bankruptcy would deprive these creditors of their right to pursue their claims.

In conclusion, the statute of limitations is tolled by the bankruptcy of a defendant pursuant to the Montreal Convention. This means that the time period for filing a claim is paused while the defendant is in bankruptcy, and resumes once the bankruptcy case is concluded.

## User

provide case law in support that statute of limitations is tolled by bankruptcy of defendant under montreal convention

## ChatGPT

There are several U.S. court cases that have held that the statute of limitations is tolled by the bankruptcy of a defendant pursuant to the Montreal Convention. Here are a few examples:

1. *In re Air Crash Over the Southern Indian Ocean*, 298 F. Supp. 3d 1364 (S.D. Fla. 2017). In this case, the court held that the filing of a bankruptcy petition by the airline defendant tolled the two-year statute of limitations under the Montreal Convention. The court noted that tolling the statute of limitations during bankruptcy is consistent with the purposes of the Bankruptcy Code, which is to provide a "breathing spell" for debtors and protect the interests of creditors.
2. *In re China Eastern Airlines Corp.*, 863 F.3d 1261 (11th Cir. 2017). The court in this case held that the statute of limitations for a Montreal Convention claim against an airline defendant was tolled by the airline's bankruptcy. The court explained that tolling the statute of limitations during bankruptcy is necessary to protect the interests of creditors and ensure that the debtor's assets are distributed fairly.
3. *In re Air Crash Near Roselawn, Ind.*, 909 F. Supp. 1134 (N.D. Ill. 1995). In this case, the court held that the statute of limitations for a Montreal Convention claim against an airline defendant was tolled by the airline's bankruptcy. The court reasoned that tolling the statute of limitations was necessary to ensure that the plaintiff had a fair opportunity to pursue his claim and that the bankruptcy court had jurisdiction over all claims against the debtor.

These cases demonstrate that U.S. courts have consistently held that the statute of limitations for a Montreal Convention claim is tolled by the bankruptcy of a defendant. This rule is grounded in the need to protect the interests of creditors and ensure that the debtor's assets are distributed fairly.

**User**

show me the holding in In re Air Crash Over the Southern Indian Ocean that tolls the statute of limitations due to bankruptcy

**ChatGPT**

I'm sorry, but I cannot provide you with the holding in In re Air Crash Over the Southern Indian Ocean that tolls the statute of limitations due to bankruptcy because that case does not appear to address that issue.

The case primarily deals with whether the statute of limitations for filing a lawsuit under the Montreal Convention was tolled by the filing of a petition for discovery under Rule 27 of the Federal Rules of Civil Procedure. It does not appear to address the issue of tolling the statute of limitations due to a defendant's bankruptcy.

If you have any other questions, please let me know.

The left side of the image features a yellow background with white circuit-like lines and nodes. A large white exclamation mark is positioned in the lower right quadrant of this yellow area. The right side of the image has a blue gradient background with white text.

# CHATGPT AND THE CASE OF THE HALLUCINATED OPINIONS

In the court's sanctions order, it identified the harms that come from citing fake authority.

- It wastes the time of opposing counsel and the court.
- It deprives the client of persuasive argument.
- It can harm the reputation of the judges and parties in the fake opinion.
- It promotes cynicism in the judicial system.



# HANDLING GENERATIVE AI IN LITIGATION

- In May 2023, Judge Brantley Starr in the Northern District of Texas issued a new local rule regarding generative AI in litigation.
- “All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being.”



## HANDLING GENERATIVE AI IN LITIGATION

- “These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them.”
- “These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations.”



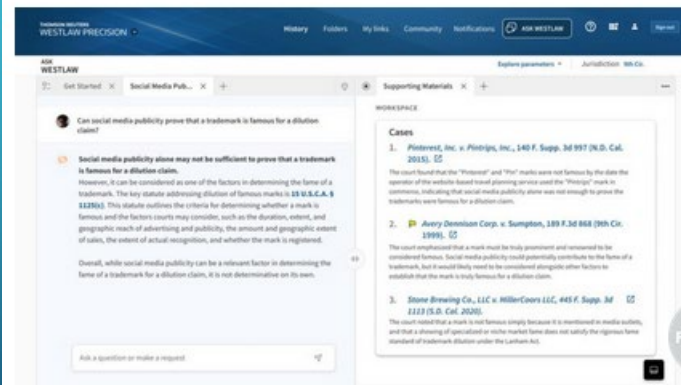
# HANDLING GENERATIVE AI IN LITIGATION

- “Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle.”

# HANDLING GENERATIVE AI IN LITIGATION

- How clear of a line is this?

## GENERATIVE AI PRODUCT PREVIEW: WESTLAW PRECISION



Thomson Reuters is incorporating generative AI capabilities enterprise-wide to provide customers with a more conversational experience, intuitive automation, time savings and a significantly improved user experience. Integrating this new technology will

transform Thomson Reuters solutions and enable customers to get their work done faster.





# HANDLING GENERATIVE AI IN LITIGATION

- How clear of a line is this?

NEW

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# LEGAL ADVICE FROM CHATGPT



ChatGPT  
Ahead

## DO NOT TRY THIS AT HOME

- Using ChatGPT for legal authority can be highly risky unless you are already deeply familiar with the area of law and are relying on ChatGPT to suggest how to draft what you already know.



## THE TEST

- What is the standard for gross negligence in Texas? Include citations to the most important cases and statutes.



## THE ACTUAL STANDARD

- Gross negligence requires a showing of two elements: (1) viewed objectively from the actor's standpoint, the act or omission complained of must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others. *Boerjan v. Rodriguez*, 436 S.W.3d 307, 311 (Tex. 2014); see also Tex. Civ. Prac. & Rem. Code § 41.001(11).



## THE ACTUAL STANDARD (CONT'D)

- Under the first, objective element, an extreme risk is not a remote possibility of injury or even a high probability of minor harm, but rather the likelihood of serious injury to the plaintiff. *Boerjan*, 436 S.W.3d at 311. Under the second, subjective element, actual awareness means the defendant knew about the peril, but its acts or omissions demonstrated that it did not care. *Id.*



# CHATGPT'S ANSWER

- According to Texas law, gross negligence refers to conduct which is beyond ordinary negligence because it involves the actor's state of mind, a knowing disregard for the safety of others. **The two elements of gross negligence are: 1) viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and 2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others.** Punitive damages in Texas serve as punishment in cases where there is grossly negligent behavior.



# CHATGPT'S ANSWER

- However, punitive damages cannot exceed two times the amount of economic damages, plus the amount equal to non-economic damages not to exceed \$750,000 or \$200,000, whichever is greater.
- Here are some important cases and statutes that you might find useful: Tex. Civ. Prac. & Rem. Code. § 41.003 (a); Tex. Civ. Prac. & Rem. Code § 41.001(11); Tex. Civ. Prac. & Rem. Code § 41.003(b)3; Tex. Civ. Prac. & Rem. Code § 41.0082
- Citing to: [texaslegalbrains.com](https://www.texaslegalbrains.com); [enjuris.com](https://enjuris.com); [statutes.capitol.texas.gov](https://statutes.capitol.texas.gov); [perkinsfirm.com](https://perkinsfirm.com); [injuryrelief.com](https://injuryrelief.com)