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# The implications and consequences of law without lawyers

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Centre for Professional Legal Education Resources     Centre for Professional Legal Education

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# The implications and consequences of law without lawyers

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# RESEARCH WEEK 2017
# 'LAW WITHOUT LAWYERS'
## Thursday 19 0ctober

### University Club (Building 6, Level 3)

*It has been predicted that emergent technologies such as artificial intelligence, 'lawbots', smart contracts, automated dispute resolution services and the like will soon replace human lawyers in the delivery of some, most or even all legal services. How persuasive is this claim, and if it does have merit, what are the implications of 'law without lawyers' for the rule of law, for justice, for the community, and for law students and lawyers themselves?*

*Bond University's Centre for Professional Legal Education (CPLE) will investigate these questions in a one day symposium titled 'Law Without Lawyers'. The symposium will explore in depth the likely impact of technological innovation on the practice of law, and the implications – both positive and negative – of the possibility that legal services will be delivered without the direct involvement of human lawyers. The symposium will include a keynote address, a panel discussion and debate, and an interactive workshop. Morning tea, lunch and afternoon tea will be provided.*

*Legal practitioners will be eligible to earn up to 3 CPD points for their attendance at the symposium.*

## Session 2: 12.30pm - 2pm

**PANEL DISCUSSION AND DEBATE: 'THE IMPLICATIONS AND CONSEQUENCES OF LAW WITHOUT LAWYERS'**

**Speakers:**

- **Associate Professor Kate Galloway – Bond University Centre for Professional Legal Education**
- **Assistant Professor Jackson Walkden-Brown – Bond University Centre for Professional Legal Education**
- **Dr Michael Guihot – Queensland University of Technology**
- **Dr Nigel Stobbs – Queensland University of Technology**
- **Mr Matthew Burgess – View Legal**
- **Ms Andrea Perry-Peterson – LawRight**

**Chair: Professor Nick James – Bond University Centre for Professional Legal Education**

*Accepting that at least some legal services will no longer be delivered by lawyers, a panel of legal academics and practitioners will discuss and debate the implications and consequences – both positive and negative – of the absence of human lawyers for clients, for the legal system, for the rule of law, for justice, for the wider community, and for lawyers and law students.*

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Session 2 will be a hypothetical set in 2022. The panel will explore the legal, social and practical implications of the technologies presented in Session 1. The hypothetical will touch upon the implications of the technologies for the quality and effectiveness of legal services, the rule of law, and access to justice.

Nick will walk the panel and the audience through the scenario. At various points in the scenario, the panellists will be asked to offer commentary or observations. These points are indicated in the scenario notes below. Other panellists are welcome – in fact, encouraged – to offer further commentary once the identified panellist has spoken.

# HYPOTHETICAL



It is 2022. Ling is a 21-year-old Taiwanese-Australian living on the Gold Coast. She has almost completed her LLB online at the newly created Google University. Ling lives with her mother in a high-rise apartment in Mermaid Beach. She is very comfortable with the integration of technology into every aspect of her personal life, and is an early adopter.



The scenario begins with Ling waking up at home. She is woken by the alarm in her smart watch, and immediately uses her smart contact lens to look at her daily schedule, check her emails and personal messages, and read various blog posts, social media posts and tweets

by her friends, family and favourite celebrities while she moves about her house. Meanwhile, her various devices and smart tattoos gather and store (in the cloud) data about her health and bodily functions: her weight, BMI, cholesterol level, blood pressure, blood alcohol level and the like.



**Ling Lin**
Acai Heaven – Gold Coast, Qld
Just purchased an Acai Super Smoothie ($12.50) for breakfast
100g , 160 cal

A balanced breakfast is the most important meal of the day!

👍 Like    💬 Comment    ↗ Share

When she walks to her local coffee shop to buy her breakfast (an acai smoothie), her devices also gather and store information about what she eats, how much she eats and the nutritional content of the food. A description of her meal, along with a high-resolution photo of the meal taken with her smart lens, is automatically uploaded to Facebook along with a caption dictated by Ling: 'A balanced breakfast is the most important meal of the day!' The status update automatically appears in the newsfeeds of members of her social network.

**Ling Lin**
Acai Heaven – Gold Coast, Qld
Just purchased an Acai Super Smoothie ($12.50) for breakfast
100g , 160 cal

A balanced breakfast is the most important meal of the day!

*Ling's current weight is 54kg, an increase of 5% in the past 30 days.*
*Ling's current blood pressure is 125 over 85, an increase of 2.5% in the past 30 days.*
*Ling's current BAC is 0%.*

👍 Like      💬 Comment      ➤ Share

Unfortunately for Ling, Facebook has updated its auto-posting settings overnight. Status updates on Facebook now automatically include any personal data gathered by the device used to make the update (users can opt out of this function). Without her knowledge and approval, Ling's Facebook post includes information about her weight and blood pressure, and the extent to which both have increased in the past month. She only becomes aware of this when she receives a Facetime call from her mother expressing concern about her health.

- ***Under current law, is Facebook legally permitted to publicise personal information in this way?***
- ***If not (e.g. according to the unfair terms provisions in consumer protection law), what can Ling do about it (without engaging a lawyer)?***
- ***What are the implications for our right to privacy of having devices gathering so much information about us? What if it was, for example, accessed and used by an employer or an insurer?***
- ***How does our legal system need to respond to address this issue?***
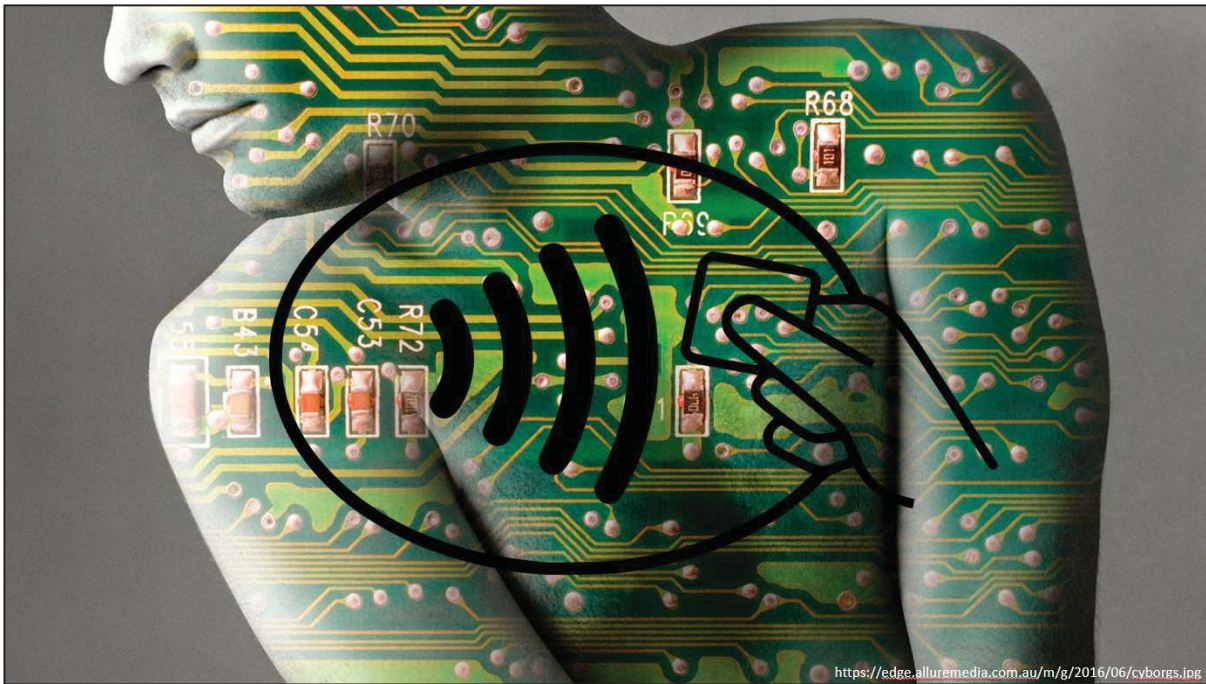
When Ling purchased her breakfast, she did not pay by cash, or swipe her credit card. Rather, the terminal in the shop communicated with her embedded devices to authenticate her identity, and funds were instantly transferred from her account to that of the shop. Ling is engaging in these sorts of micro transactions more and more frequently. For example, rather than monthly, she and her mother are charged for their utilities at home – power, water, Wi-Fi – constantly. Whenever she uses Uber to get a ride in someone else's (driverless) car, she is automatically charged by the owner of the vehicle for the service.

- ***How is the authenticity of these transactions ensured (i.e. blockchains) and are they contracts in the legal sense?***
- ***What could Ling do if something went wrong and she was charged for something she didn't use?***
- ***How will blockchains, etc. transform the need for and the role of lawyers?***

Ling is joined at the coffee shop by her friend Raj. Raj is an IT graduate, and also presently unemployed. Ling and Raj have been working together to develop a new app to assist people who are injured when they collide with another person because of one or both being distracted by AR. The app is called CARV: 'compensation for augmented-reality victims'. Users are charged a modest fee for using the app, which asks the user a series of questions and then uses the answers to draft a letter of demand for compensation from the other person. The letter is emailed to the other person. For an additional fee, documents are prepared by the app to facilitate the lodgement of a claim in the Small Claims Tribunal.

- *Does the technology exist to provide legal services in this way? What is it likely to look like in 5 years' time?*
- *By developing this app, are Ling and Raj providing legal advice to members of the public? Who is responsible if something goes wrong? What is the place professional indemnity insurance here?*

Ling and Raj are now working on additional functionality for the CARV app. Again, for an additional fee, the app will generate for the judge and for other attendees in the courtroom a hologram of an animated lawyer (able to be customised by the user to look like any one of over 100 famous historical and fictional lawyers!) who presents the facts of the case and the legal argument in court. The app/hologram will even be able to draw upon its database of hundreds of thousands of negligence and personal injury precedents to answer simple questions about the law asked by the judge.

- ***Will AI be capable of this in 5 years' time?***
- ***Does this qualify as self-representation by the user of the app? If not, who is representing the client? If the hologram gets it 'wrong', who should be held responsible?***

Ling and Raj have an even better app in mind for their next project. They want to modify the functionality of CARV to create a virtual 'Judges Associate' to assist the judge to make a decision and calculate the quantum of any compensation to be paid.

- *Could an AI be used to assist judges in this way?*
- *Should it? (Refer to both benefits of and risks of relying upon technology in this way.)*
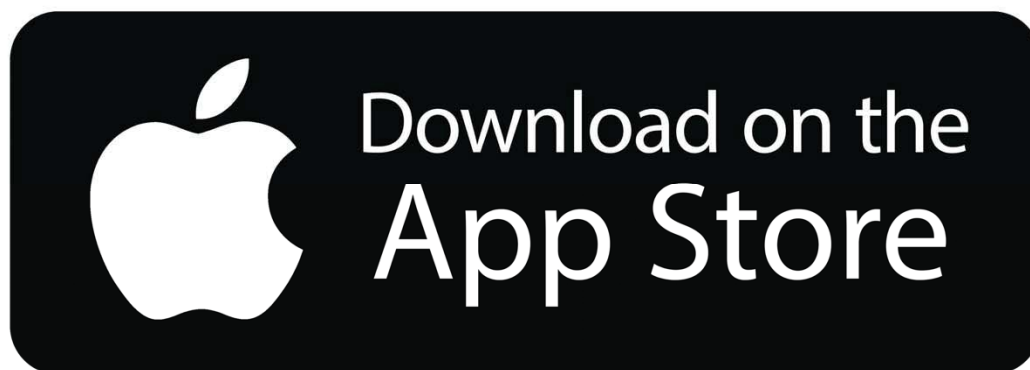


In discussing the app with Raj, Ling has an idea: why not cut out the judge and the judicial process entirely? Whenever an accident occurs, the app could review the facts as captured by the devices of the relevant pedestrians (as well as public surveillance footage and even

satellite images), review the precedents, determine fault, calculate the appropriate level of compensation, and immediately transfer the amount from one person to another.

- ***Any problems with this? (e.g. rule of law) Include exploration of differences between the app being private (and probably requiring consent of both parties) and being a public, mandated app that everyone must use.***



Ling and Raj head to a bar to celebrate their brilliant new idea. After a few drinks, Ling decides to walk home along the beach, and inadvertently infringes a new Queensland law that has made it illegal to be within 50 metres of the surf while intoxicated. (The law was passed following a spate of drownings of drunk tourists on the Gold Coast.) A police officer sees her trip over in the sand as she walks back up the beach towards the road, and detains her. He uses his own smart device to access Ling's personal data on social media, including her blood alcohol level and the path of her recent journey along the beach, and issues her with an infringement notice.

- ***Would such police action be legal under current laws?***
- ***Is police access to personal data in this way something that should be facilitated or prohibited?***

Ling begs the police officer to let the matter go. She is, after all, barely intoxicated, didn't actually go into the water, and is nearly home. The police officer uses an app recently issued by the Police Minister, called iDiscretion. The app analyses the facts of the situation, reviews previous exercises of discretion by other police officers, accesses Ling's social media profile and using parameters determined by the Department, tells the police officer how to exercise his discretion.

- ***Is it better for police officer discretion to be exercised in this way?***
- ***What are the wider implications of this, e.g. for the rule of law?***

The police officer lets her go. While finally walking down her own street towards her home, Ling Facetimes her mother to ask her to prepare a coffee for her – and while focussed upon the image of her mother on her smart lens, collides with another pedestrian.