

UNIVERSITY OF VIENNA  
EXPOSÉ FOR THE DOCOTRAL DISSERTATION

**“Maneuvering in the Tech Era: Proposing a New Approach  
in Regulating Legal Technology  
Based on a Comparative Study of the US and EU”**

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Language of Dissertation

**English**

Research Area of Dissertation

**Technology Law, Business Law**

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**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>II.</b>	<b>PROPOSED TABLE OF CONTENTS FOR THE DISSERTATION</b>	<b>6</b>
<b>III.</b>	<b>RESEARCH OBJECTIVES AND METHODS</b>	<b>9</b>
<b>IV.</b>	<b>BIBLIOGRAPHY</b>	<b>11</b>
<b>V.</b>	<b>PROPOSED SCHEDULE OF THE DOCTORAL PROGRAM</b>	<b>16</b>
<b>VI.</b>	<b>COMPLETED MODULES AS OF JULY 10, 2017</b>	<b>17</b>
<b>VII.</b>	<b>FINANCIAL BUDGET AND OVERVIEW OF RESOURCES</b>	<b>19</b>

## I. INTRODUCTION

Legal technology, or legal tech, has been under the spotlight recently: ranging from the litigation to transactional work, it appears that legal tech companies are poised to disrupt the legal industry, so much so that scholars such as Richard Susskind have commented that lawyers must change to prevent being outsmarted by technology, and that the Boston Consulting Group together with Bucerius Law School published a brief on how legal technology will change the legal landscape in the years to come. The past few years have seen an exponential increase in the amount of legal tech present in all areas of the legal industry – from facilitative legal tech such as e-Discovery platforms and hi-tech case law search engines, to contract generators, software that can appeal parking tickets automatically, and ODR platforms that can provide ‘auto-resolution’ mechanisms. The impact of legal tech on the legal industry has become so pervasive that the Financial Times has even reported that there will soon be an “uberization” of lawyers.

Despite the popularity and hype over legal tech, little has been discussed or debated on how legal tech should be regulated. It is only very recently that the American Bar Association tendered an Issues Paper seeking comments and suggestions on how unregulated legal service providers should be regulated, while noting that they are regulated in a rather simplistic fashion – through consumer protection laws on software. The regulation of legal tech, however, is a tricky issue. Presently, the legal industry is heavily regulated, especially lawyers, so as to ensure consumer protection but also to achieve more altruistic goals, such as to ensure that everyone is guaranteed the basic human right of access to counsel. In this case, should legal tech that intends to replace the function of lawyers be regulated so as to ensure that these noble policy aims are achieved, and if yes, how should they be regulated?

The aim of this dissertation is therefore to provide a new standard or approach in regulating legal tech. However, before even proposing an approach to regulate legal tech, there is still an avalanche of questions, which need to be debated and answered – *why should we regulate legal tech? How should we regulate legal tech? What is the relationship between legal tech and the legal industry? How has legal tech affected the legal industry and to what degree?* In order to provide a solid background and reasoning for the regulation of legal technology, this dissertation will tackle these underlying questions in seven main chapters. Each chapter aims to tackle a different but fundamental question with regard to legal tech, the players in the legal industry, and the theory and impact of regulating the legal industry and legal tech itself. A brief summary of the issues to be discussed in each chapter is provided as follows:

*Chapter I: Legal Tech: Defining Legal Tech and Analyzing its Impact on the Legal Industry* – this chapter will provide an overview of the legal technology, a description of the legal industry and its players, analyzing the impact of legal tech on players in the legal industry, and summarizing the advantages and disadvantages of legal tech.

*Chapter II: Exploring the Legal and Policy Concerns Surrounding the Legal Industry and its Application to Legal Tech* – this chapter will provide an overview of legal and policy concerns behind legal service providers, analyze such legal and policy concerns, and evaluate legal tech's impact on the policies behind regulating legal service providers.

*Chapter III: The Theory of Regulation and the Basis for Regulating Legal Service Providers in the US and the EU* – this chapter will provide an overview on the theory of regulation (e.g. economic theory of regulation), the theory and practice of regulating legal service providers in the US and EU, followed by the regulation of lawyers admitted in other states.

*Chapter IV: Impact of Legal Tech on Existing Regulations and Current Approaches in Regulating Legal Tech in the US and the EU* – this chapter will analyze how legal tech has disrupted current regulations in the legal industry, provide an overview of current approaches in regulating legal tech in the US and EU, and give a comparison of US and EU approaches.

*Chapter V: Should Legal Tech be regulated in the US and the EU? An Analysis Based on Theoretical and Recent Experiences* – this chapter will suggest the considerations in regulating legal tech, the difficulties in regulating legal tech, discuss whether legal tech should be regulated, and summarize by providing key considerations when proposing a method to regulate lawyers.

*Chapter VI: Establishing a New Standard for the Regulation of Legal Tech in the US and the EU* – this chapter will discuss the current suggestions in regulating legal technology, other possible methods to regulate legal tech, consider whether there should be a joint US-EU approach in regulating legal tech, and finally propose a suitable approach in regulating legal tech.

*Chapter VII: A Perspective on the Future of Legal Tech and Legal Service Providers* – this will summarize the previous six chapters, and consider issues such as whether the proposed approach in Chapter V will last the test of time, debate about the future of legal tech and the legal profession, and rethinking legal technology in the era of robot lawyers.

All chapters are interrelated, and Chapters I-V serve as the backbone to answer the research question of this dissertation, i.e. to propose a new standard in regulating legal technology in the US and EU, which will be discussed at length in Chapter VI. Finally, in Chapter VII, this dissertation will provide a perspective on the future of the legal industry and legal tech, and predict the importance of regulating legal tech in the future. This dissertation will base its research on the US and EU, the former being the forerunner of legal tech, and the latter being one of the most developed and biggest trade blocs in the technology industry, when discussing how legal tech should be regulated.

Ultimately, legal tech is here to stay, and the legal industry must learn how to work with it – perhaps with some regulations in place to harness the full potential of legal tech while preventing legal tech from derailing the state's efforts in its existing regulation of the legal industry. In the next section, this exposé will provide the reader with a proposed table of contents for the doctoral dissertation. This exposé will also give further information on the research objectives and methods, bibliography, time schedules for the doctoral programme, and an overview of the financial budget for this dissertation.

## II. PROPOSED TABLE OF CONTENTS FOR THE DISSERTATION

### CHAPTER ONE: LEGAL TECH: DEFINING LEGAL TECH AND ANALYZING ITS IMPACT ON THE LEGAL INDUSTRY

- A. AN OVERVIEW OF LEGAL TECHNOLOGY OR LEGAL TECH
  - (i) *What is Legal Technology or Legal Tech?*
  - (ii) *The History of Legal Technology*
  - (iii) *Categories of Legal Tech*
- B. THE LEGAL INDUSTRY AND ITS PLAYERS
  - (i) *Legal Service Providers*
  - (ii) *Arbiters: persons who settle disputes or have ultimate authority in the matter.*
  - (iii) *Legal Academics*
- C. ANALYZING THE IMPACT OF LEGAL TECH ON PLAYERS IN THE LEGAL INDUSTRY
  - (i) *Legal Service Providers and the Struggle to Co-exist with Legal Tech*
  - (ii) *Arbiters*
  - (iii) *The Advent of Legal Tech: Giving Clients More Cherries to Choose From*
  - (iv) *Summary on the Advantages and Disadvantages of Legal Tech*
- D. CONCLUSION

### CHAPTER TWO: EXPLORING THE LEGAL AND POLICY CONCERNS SURROUNDING THE LEGAL INDUSTRY AND ITS APPLICATION TO LEGAL TECH

- A. OVERVIEW OF LEGAL AND POLICY CONCERNS BEHIND LEGAL SERVICE PROVIDERS
- B. ANALYZING LEGAL AND POLICY CONCERNS BEHIND LEGAL SERVICE PROVIDERS
  - (i) *Consumer protection*
  - (ii) *“Right to counsel” – Human Rights Aspect of Lawyers & Accessibility to Justice*
  - (iii) *Agents of the Administration of Justice*
  - (iv) *Other Policy Considerations*
- C. LEGAL TECH AND ITS IMPACT ON THE POLICIES BEHIND REGULATING LEGAL SERVICE PROVIDERS
  - (i) *Impact of legal tech on the existing policies on legal service providers.*
  - (ii) *New policy concerns arising from legal tech*

### CHAPTER THREE: THE THEORY OF REGULATION AND THE BASIS FOR REGULATING LEGAL SERVICE PROVIDERS IN THE US AND THE EU

- A. OVERVIEW ON THE THEORY OF REGULATION
  - (i) *Societal Theory of Regulation*
  - (ii) *Economic Theory of Regulation*

*(iii) Theory of Regulating Technology*

B. THEORY AND PRACTICE OF REGULATING LEGAL SERVICE PROVIDERS IN THE US AND EU

*(i) History of regulating lawyers*

*(ii) Methods of Regulation*

*(iii) Legal Ethics and the Regulation of Lawyers*

C. REGULATION OF LAWYERS ADMITTED IN OTHER STATES: MOBILITY OF LAWYERS

D. CONCLUSION

**CHAPTER FOUR: IMPACT OF LEGAL TECH ON EXISTING REGULATIONS AND CURRENT APPROACHES IN REGULATING LEGAL TECH IN THE US AND THE EU**

A. LEGAL TECH AND HOW IT HAS DISRUPTED CURRENT REGULATIONS IN THE LEGAL INDUSTRY

*(i) Extensive Requirements to become a Lawyer – A Futile Exercise in Light of Legal Tech?*

*(ii) Disruption on Legal Ethics*

*(iii) Regulations on the Mobility of Lawyers*

B. OVERVIEW OF CURRENT APPROACHES IN REGULATING LEGAL TECH IN THE US

C. OVERVIEW OF CURRENT APPROACHES IN THE EU

D. COMPARISON OF US AND EU APPROACHES

**CHAPTER FIVE: SHOULD LEGAL TECH BE REGULATED IN THE US AND THE EU? AN ANALYSIS BASED ON THEORETICAL AND RECENT EXPERIENCES**

A. CONSIDERATIONS IN REGULATING LEGAL TECH

*(i) State- or Nation-wide? Member State's Discretion or EU Regulations?*

*(ii) Maximizing Advantages and Minimizing Disadvantages of Legal Tech*

*(iii) Broad Based or Narrow Approach?*

*(iv) Meeting Policy Concerns*

*(v) Addressing the Disruptive Quality of Legal Tech on the Legal Industry*

B. OTHER DIFFICULTIES IN REGULATING LEGAL TECH

C. DISCUSSION ON WHETHER LEGAL TECH SHOULD BE REGULATED

D. KEY CONSIDERATIONS WHEN PROPOSING A METHOD TO REGULATE LEGAL TECH

**CHAPTER SIX: ESTABLISHING A NEW STANDARD FOR THE REGULATION OF LEGAL TECH IN THE US AND THE EU**

A. CURRENT SUGGESTIONS IN REGULATING LEGAL TECHNOLOGY

*(i) ABA's proposal: entity regulation*

*(ii) Other Suggestions*

B. OTHER POSSIBLE METHODS TO REGULATE LEGAL TECH

- C. TOWARDS A JOINT US-EU APPROACH?
- D. PROPOSED APPROACH

## **CHAPTER SEVEN: A PERSPECTIVE ON THE FUTURE OF LEGAL TECH AND LEGAL SERVICE PROVIDERS**

- A. PUTTING THE PROPOSED APPROACH AGAINST THE TEST OF TIME
- B. THE FUTURE OF LEGAL TECH AND THE LEGAL PROFESSION
- C. RETHINKING LEGAL TECHNOLOGY IN THE ERA OF ROBOT LAWYERS



### III. RESEARCH OBJECTIVES AND METHODS

The key research objective of this paper is to propose a standard or approach in regulating legal technology based on a comparative study between the EU and the US. However, in doing so, this thesis hopes to achieve the following goals as well: (1) to build an interdisciplinary approach in studying technology and the business or practice of law; (2) provide a framework for future policymaking in this area; and (3) creating awareness in the legal industry on the advent of legal technology.

Firstly, this thesis hopes to build an interdisciplinary approach in studying technology and the business or practice of law. At the present moment, while much has been written about corporate law and technology law (e.g. Intellectual Property law, data privacy law), the amount of literature or academic studies on the use of technology in the practice of law can be further developed – e.g. the use of big data in litigation cases and its legal ethical considerations, or the use of automatic ODR methods to resolve conflicts. As this thesis will have to review the various permutations of legal tech at present in both the US and EU, this will be a good opportunity to study how technology can affect the practice of law and present concrete findings and conclusions on the impact of legal technology in the different practices of law, e.g. in corporate departments, litigation/arbitration departments, or even in pro bono legal clinics. This interdisciplinary research will hopefully be useful to future scholars in this field who would like to tap on the data collected and work on technology and business of law topics or courses.

Another objective of this thesis is that it intends to serve as a roadmap that stakeholders in the legal industry can consider when implementing legal tech policies. As the bulk of my US related research will be undertaken at Stanford Law School, and the EU sections and consolidation of the thesis will be undertaken at the University of Vienna, this thesis thus hopes to be a useful guideline that stakeholders such as bar associations, certain organs of the EU, or even practicing lawyers themselves can refer to when deciding to embark or implement certain legal technology practices in their firms. Furthermore, since this thesis includes a comparative study with the US and EU, it may be helpful to parties who are forming or promoting for certain regulations in the legal industry that affect both the US and EU.

Last but not least, this thesis also aspires to create awareness in the legal industry on the importance and potential impact of legal technology. As aforementioned in the introduction of this exposé, legal technology is here to stay, regardless of whether it is endorsed by the legal profession. This thesis thus hopes to create awareness in the legal industry by educating and

informing the various stakeholders in the industry of what is to come and what to expect, and more importantly, how to deal and manage the situation when the tide comes.

Depending on the circumstances and availability of reports at the time of writing the thesis, I may have to commence empirical studies based if this is necessary to formulate a reasonable answer to the research questions. Parts in the thesis that may require such an approach are as follows:

1. Number and type of regulations that has the potential to affect legal technology, defining what constitutes “affect”;
2. Number of European legal technology companies that have expanded from their home state to other parts of the EU, and if possible, the rate of expansion (i.e. within 1 year, 2 years, or longer);
3. The amount of negligence or breach of contract suits against legal tech companies in the past x years;
4. The amount of funding that an average legal tech startup receives in order to commence operations; or
5. The amount of legal tech startups that have ceased operations after a period of time, e.g. after 1 year, 2 year or 3 years and more.

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**V. PROPOSED SCHEDULE OF THE DOCTORAL PROGRAM**

<b>Summer Semester 2017</b>	380001 VO    Legal Methods 380031 VO    System and Methodology: The Ethics of Spinoza
<b>Winter Semester 2017</b>	Research of the thesis Completion of seminars / courses in the field of doctoral thesis
<b>Summer Semester 2018</b>	Research of the thesis Completion of seminars / courses in the field of doctoral thesis
<b>Winter Semester 2018</b>	Commencement of JSM Degree at Stanford Law School: research conducted at Stanford will be directly relevant to PhD at Vienna (US and comparative aspects of the thesis).
<b>Summer Semester 2019</b>	Completion of JSM Degree in May-June 2019 Completion of Thesis in June-July 2019 Thesis Defense in June-July 2019 Completion of PhD Degree in June-July 2019



**VI. COMPLETED MODULES AS OF JULY 10, 2017****030239 VO****European and International Business and Technology Law Seminar**

Summer Semester 2017

*This module was used for the submission of the exposé to the supervisor of my thesis, i.e. Professor Siegfried Fina.*

**251087 SE****European and International Business Law Seminar**

Summer Semester 2016

*This module was completed under the LL.M. European and International Business Law. Pursuant to §4(3) of the Curriculum of the Doctoral Programme in Law and the PhD Program in Interdisciplinary Legal Studies, as this module was not a requirement of the precedent study programme, I will be using this module to count for credit towards the Doctoral Programme on the basis that this course is beneficial to the work on the doctoral thesis.*

**251018 KU****European and International Intellectual Property Law**

Summer Semester 2016

*This module was completed under the LL.M. European and International Business Law. Pursuant to §4(3) of the Curriculum of the Doctoral Programme in Law and the PhD Program in Interdisciplinary Legal Studies, as this module was not a requirement of the precedent study programme, I will be using this module to count for credit towards the Doctoral Programme on the basis that this course is beneficial to the work on the doctoral thesis.*

**251019 KU****European and International Tax Law**

Summer Semester 2016

*This module was completed under the LL.M. European and International Business Law. Pursuant to §4(3) of the Curriculum of the Doctoral Programme in Law and the PhD Program in Interdisciplinary Legal Studies, as this module was not a requirement of the precedent study programme, I will be using*

*this module to count for credit towards the Doctoral Programme on the basis that this course is beneficial to the work on the doctoral thesis.*

**Supplementary Exam  
Austrian Private Law**

**Supplementary Exam on Austrian Private Law**

Summer Semester 2017

*Pre-requisite for completion of the PhD Programme.*

*Successfully completed in February 2017.*

**Supplementary Exam  
Austrian Constitutional  
Law**

**Supplementary exam on Austrian constitutional law**

Summer Semester 2017

*Pre-requisite for completion of the PhD Programme.*

*Successfully completed in June 2017.*

## VII. FINANCIAL BUDGET AND OVERVIEW OF RESOURCES

It is envisioned that this thesis will require research to be done in at least the US and EU. In the event that this dissertation proposal is approved, the following is a list of scholarships and grants that can be considered in order to support research in the US and EU:

No.	Name of Grant or Scholarship	Organization
1	Kurzfristige wissenschaftliche Auslandsstipendien	Universität Wien
2	Marietta Blau Stipendium	OeAD GmbH

- This section will be updated throughout the course of the doctoral programme.