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# Elucidation of the Theory of Lawyers' Technological Competence in the Context of China's Legal Technology Development

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## Abstract

Chinese lawyers have increased by more than 500,000 over the past two decades and have engaged in deep interaction with legal technology in practice. However, Chinese lawyers' professional ethics have lagged behind the development of legal technology practice, making it difficult for ethics to fulfill its functions of regulating, guiding, and protecting lawyers. The regulatory vacuum in professional ethics' response to technology also impedes lawyers from advancing "intelligently" alongside the legal professional community, including judges and prosecutors, and from engaging in dialogue with extraterritorial lawyers' technology competence rules. This article first clarifies the three modalities of lawyer-legal technology interaction, the scope of technologies related to lawyers' provision of legal services, and the existing professional competence tradition within the legal profession. Second, premised on the legal normative nature of lawyers' professional ethics, it constructs technology competence rules under the three modalities of lawyer-legal technology interaction using the logical structure of legal rules, namely "hypothetical conditions plus legal consequences." Finally, it elaborates on the theoretical positioning, theoretical significance, and implementation safeguards of technology competence rules within lawyers' professional ethics.

## Full Text

### An Interpretation of Lawyer Technical Competence Theory from the Perspective of China's Legal Technology Development

Over the past two decades, China's lawyer population has increased by more than 500,000, engaging in deep interactions with legal technology in practice. However, Chinese legal professional ethics have lagged behind the development

of legal technology practice, struggling to fulfill their role in regulating, guiding, and protecting lawyers. The regulatory vacuum in professional ethics' response to technology also makes it difficult for lawyers to advance “intelligently” in step with other legal professionals such as judges and prosecutors, and challenging to engage in dialogue with foreign lawyer technical competence rules. This article first clarifies three patterns of lawyer-legal technology interaction, the scope of technologies relevant to legal service provision, and the existing professional competence traditions in the legal profession. Second, premised on the legal normative attributes of lawyer professional ethics, it adopts the logical structure of legal rules—“assumptions plus legal consequences”—to construct technical competence rules under the three interaction patterns. Finally, it explains the theoretical positioning, significance, and implementation safeguards of technical competence rules within lawyer professional ethics.

**Keywords:** lawyer; legal technology; professional ethics; technical competence

## Introduction

In 2023, the *Global Legal Technology Industry Blue Book* was released, outlining the development of legal technology in three stages: the “law + informatization” stage represented by law firm management systems such as LexisNexis and FirmManager; the “Internet + law” stage represented by online legal service providers like LegalZoom and Rocket Lawyer; and the “law + technology” stage represented by legal tech products such as ROSS, eBrevia, Wusong, and Lymai. The Blue Book identifies three new characteristics of legal technology development: first, the integration of enabling technologies represented by artificial intelligence and blockchain; second, the integration of service models represented by pan-legal service institutions; and third, the extension of legal technology innovation from the legal service market to the judicial field. The use of these legal technology products has already reached considerable scale. For instance, “Yifatong, as a legal technology company and listed legal service platform, has provided legal consultation 2 million times over more than ten years, with 2 million registered users and services for over 100,000 enterprises.” Rocket Lawyer uses digital tools to provide affordable legal services to nearly 300,000 users. LegalZoom has created more than 30,000 estate planning documents and provided over 20,000 corporate legal services since 2001, continuously offering affordable and trustworthy online legal services. Janine Cerny and Steve Delchin categorize technology applications into Electronic Discovery, Legal Research, Litigation Analysis, Contract Management, Diligence Reviews, and Wrong Doing Detection. Legal Aid Western Australia uses ECM to establish files, record cases, and migrate documents to serve more clients. Lawyers using legal technology products for legal research, document management, due diligence, and litigation discovery can be liberated from tedious tasks, help clients save hourly billing costs, and have more time to communicate with clients to achieve their objectives, though technology use also carries risks.

## I. Identifying the Problem: The Lack of Normative Response to Legal Technology in Lawyer Professional Ethics

First, lawyer professional ethics codes lag behind the development of the legal profession's practice. From 1997 to 2022, China's lawyer population grew rapidly from over 90,000 to more than 650,000 (Figure 1 [Figure 1: see original paper]). The rapid expansion of lawyer numbers and practice activities requires professional ethics to provide behavioral guidance, norms, legal consequence prediction, and protection. However, Chinese lawyer professional ethics remain at a stage of "painfully seeking positioning and breakthroughs, justifying legitimacy, and clarifying research directions." Against the backdrop of law-technology interaction, China has already formed a legal technology product and market of considerable scale. Local bar associations have also organized business training and exchange activities related to legal technology in accordance with Article 46 of the *Lawyers Law*, and academia has conducted numerous discussions on technology application in the legal profession. Nevertheless, there is a lack of technical competence theory in the sense of professional ethics norms. Lawyer professional ethics remain stuck in the pre-technology era, failing to make normative responses regarding how lawyers should use legal technology products or participate in product design and governance.

[Figure 1: see original paper]

Second, the absence of professional ethics norms affects the legal professional community's technological advancement in unison. Compared with the legal profession's spontaneous equipping of its own legal technology "soft power," the development of courts and procuratorates demonstrates top-down state leadership characteristics. "Although online dispute resolution mechanisms and online courts have become a global phenomenon, China's smart courts are unique. As part of national informatization and modernization of national governance, courts' adoption of information and communication technologies is not the result of their own initiative but rather the result of strong promotion by Party and government policies." "Smart courts and smart procuratorial work receive support from important policy documents and scientific research projects, representing Chinese innovation led by state power that powerfully enables the construction of rule of law in China and closely couples judicial system reform with smart judicial innovation." The *13th Five-Year National Informatization Plan* proposed "building a well-governed and efficient national governance system and constructing smart courts." In terms of judicial interpretations, from 2015 to 2022, the Supreme People's Court and the Supreme People's Procuratorate issued 36 judicial interpretation documents and 81 work documents (Figure 2 [Figure 2: see original paper]). Additionally, Party regulations state that "smart court construction should serve democratic political construction and promote the modernization of national governance" and "promote judicial convenience for the people so that the people feel fairness and justice." In contrast, law firms and lawyers' use of legal technology products relies more on self-funded purchases. "Smart lawyer system construction has been relatively

slow compared to smart courts, smart procuratorial work, and smart public security. Although some achievements have been made, problems remain, including lack of unified national planning, insufficient data resources, and low lawyer participation in system construction.” Consequently, due to differing equipment capabilities for legal technology within the legal professional community, lawyers, judges, and prosecutors have not yet achieved “hand-in-hand advancement” in legal technology application, which contradicts the professional homogeneity the legal community seeks to pursue.

[Figure 2: see original paper]

Finally, lawyer professional ethics struggle to interact with foreign technical competence theories and integrate into the coordinated development of “domestic rule of law” and “foreign-related rule of law” due to the absence of technology-related conduct rules. Foreign jurisdictions have already made numerous normative attempts regarding lawyer technical competence. The American Bar Association’s *Model Rules of Professional Conduct* Rule 1.1, Comment 8, added “keep abreast of relevant technology” to its interpretation of competence. As of April 2023, 39 states, including Arizona, Florida, New York, and Illinois, have adopted technical competence language in their professional conduct rules (also called the Ethical Duty of Technology Competence), eight states have relevant commentary without direct provisions, and the remaining five states have no explicit provisions (Figure 3 [Figure 3: see original paper]). In contrast, China’s *Lawyers Law* and *Lawyers’ Professional Conduct Code (Trial)* contain no descriptions of science and technology whatsoever.

[Figure 3: see original paper]

## II. Analyzing the Problem: The Name and Reality of Chinese Lawyer Technical Competence Theory

“Lawyers must adapt to, understand, and use new technology. This is both a practical necessity and a requirement of broader professional obligations. As long as it can promote clients’ interests ethically, practicing lawyers can and should use technology in practice.” Where do these changes and problem sets brought by legal technology to the legal profession stand? Are these issues politically relevant, such as Party building in the legal profession? Are they procedural issues, such as lawyers’ rights to meet, review case files, and investigate evidence? Do they point to lawyers’ public welfare responsibilities, such as legal aid? Since new technologies continue to develop and their benefits require time to verify, one-sidedly summarizing the potential benefits and risks of technologies like artificial intelligence may result in theoretical lag. Therefore, more abstract conceptual and theoretical construction of lawyer technical competence is possible.

At the normative level, lawyer technical competence rules build upon existing lawyer competence rules. The *Lawyers Law* and *Lawyers’ Professional Conduct Code (Trial)* do not directly stipulate competence in their provisions, but many

provisions indirectly relate to competence, providing relatively detailed norms and interpretations of lawyer professional ethics and thus serving as references for determining whether Chinese lawyer professional ethics prescribe competence obligations. On the other hand, lawyer competence has long been used as the assessment result of the annual lawyer review system in professional ethics. Tension exists between practice and norms. As lawyer-legal technology interaction deepens, lawyers not only use legal technology products but also participate in product design and industry direction leadership, yet these law-technology practices lack normative guidance. Academic discussions partially focus on human free will and personal dignity issues; partially on legal liability issues such as civil and criminal liability; partially on basic legal theory issues such as legal subjects and declaration of intent under AI development; some views research the AI discussion itself, distinguishing “changes” and “challenges” under AI development and clarifying what constitutes a true “challenge.” In the field of legal professional ethics, existing views mainly focus on conflicts between AI-assisted adjudication and judges’ neutral exercise of judicial power and assumption of judicial responsibility, and whether AI will replace junior lawyers, while paying less attention to the technical connotation of lawyer competence obligations, which is precisely the focus of this article.

The above constitutes the background for constructing lawyer technical competence rules. This article focuses on this background, sequentially analyzing the tradition of legal professional competence, the distinction between competence in technical competence and annual lawyer review competence, the distinction from lawyer diligence, and what technologies technical competence encompasses.

### **(A) The Tradition of Existing Competence Rules in the Legal Profession**

In the *Modern Chinese Dictionary*, “competence” (称职) is an adjective meaning “the level and ability meet the requirements of the position held.” In Merriam-Webster dictionary, “competence” refers to the state or quality of having sufficient knowledge, skill, and judgment. These definitions show that the connotation of “competence” is closely related to “profession” and “position.” Competence requirements can be derived from the connotation of a profession. Competence is inherent in a profession itself, which represents specialized knowledge, skills, or abilities. Professionalism distinguishes professionals from laypeople and points to competence requirements.

Discussions about competence exist around professions such as certified public accountants, professional managers, enterprise technical personnel, and judicial psychiatric evaluators. Chen Jin and Xu Xiaojun analyzed technical title hierarchies in companies like Microsoft, Boeing, and Western Electric, proposing recommendations to establish multi-level technical title evaluation systems in enterprises. Liu Shumin argued that manager competence combines theory and experience, depending on morality, professional ability, and work methods. Liu Xin and Chen Xueyan argued that the psychiatric evaluation process depends

on the evaluator's personal experience, knowledge level, and work attitude, and that entry thresholds based on education, major, and work experience only provide formal qualification certification and are not the sole standard for evaluating evaluator competence.

Beyond discussions of legal professionals' competence, does Chinese legal professional ethics have competence requirements? At the normative level, China's *Civil Servants Law*, *Judges Law*, *Procurators Law*, *Supervisory Officials Law*, *Measures for the Training, Assessment, Reward and Punishment of People's Assessors*, *Measures for the Administration of Grassroots Legal Service Workers*, *Patent Agency Regulations*, and *Opinions on Further Improving the Restraint Mechanism of Enforcement Power and Strengthening Enforcement Supervision* all stipulate competence.

Since 1995, the *Judges Law* and *Procurators Law* have stipulated that annual assessment results are divided into four grades: excellent, competent, basically competent, and incompetent, based on criteria including "ideological and political quality, compliance with professional ethics, adjudication business ability, work style, sense of responsibility, integrity, work completion (such as case numbers), case-handling efficiency, and faults." Annual assessment results affect salary promotion, rank promotion, bonus distribution, and quota identity. These assessment factors reflect political discipline and professional ethics requirements, concretizing the abstract concept of professional competence, but multiple interpretation versions also indicate that the connotation and extension of competence are not clearly defined. For example, "accepting meals and gifts, improper interactions with lawyers, interfering in cases, fraud in entrusted evaluation, and leaking work secrets are also manifestations of incompetent judges."

## **(B) Technical Competence Distinguished from Lawyer Diligence and Annual Review System**

**1. Using the More General "Technical Competence" Rather Than "Technical Diligence"** Both competence and diligence are requirements for lawyers. The *Lawyer Practice Annual Assessment Rules* use competence levels as assessment results. The *UN Basic Principles on the Role of Lawyers* requires lawyers to "act freely and diligently in accordance with the law and recognized standards and ethics of the profession." Lawyers should uphold diligence and professionalism when assisting clients in drafting execution settlement agreements. Meanwhile, both competence and diligence are abstract concepts whose specific connotations are always changeable and uncertain. "Diligence can be traced to Roman law, including the diligence of a good father of a family, diligence in handling personal affairs, and extremely cautious diligence. The general standard for lawyer diligence includes doing one's best, timeliness, seeing things through from beginning to end, and not providing services discourteously."

However, competence and diligence are also distinct, based on the premise of acknowledging their coexistence and connection. The provision that "lawyers

should be diligent and responsible, fulfill their duties conscientiously, and provide services for securities transactions and related activities in accordance with relevant business rules” shows that “diligence” and “fulfilling duties conscientiously” are not interchangeable concepts but each has unique significance. Competence and diligence have the following distinctions:

First, competence is an expression of lawyers overall, while diligence is a special requirement for certain types of lawyers, such as duty lawyers, securities lawyers, lawyers serving as bankruptcy estate administrators, and futures service institution lawyers. Competence obligations derive from general lawyer profession requirements, including “safeguarding clients’ legitimate rights and interests, ensuring correct implementation of law, and maintaining social fairness and justice.” The *Lawyer Practice Annual Assessment Rules* use basically competent and incompetent to refer to annual inspection results for all lawyers, not specifically for certain lawyers. Diligence usage often carries special contexts: duty lawyers’ diligence obligations include “accurately and fully providing legal knowledge, timely safeguarding procedural rights, substantively fulfilling presence obligations, and providing targeted and constructive legal opinions.” Law firms serving as bankruptcy estate administrators and futures service institutions should be diligent and responsible. “Law firms in capital markets are gatekeepers who disclose information, protect investors, and promote normal capital market operation, and should be diligent and responsible.” “Law firms and their assigned lawyers engaged in securities legal business should be diligent and responsible, prudently perform verification and validation obligations, and ensure the authenticity, accuracy, and completeness of documents they issue.”

Second, although the specific content of competence and diligence are related, incompetence and failure to fulfill diligence obligations point to different consequences. For law firms as futures service institutions that “fail to be diligent and responsible, and produce documents with false records, misleading statements, or major omissions,” legal liability types include orders to correct, confiscation of business income, fines, warnings, and compensation for losses. For lawyers engaged in securities legal business who “fail to be diligent and responsible in verifying and validating the authenticity, accuracy, and completeness of documentary evidence,” legal liability types include measures by the China Securities Regulatory Commission and its dispatched agencies such as ordering correction, regulatory talks, and issuing warning letters. If they fail to be diligent and responsible and “produce or issue documents with false records, misleading statements, or major omissions,” legal liability includes warnings, fines, orders to correct, confiscation of business income, suspension or revocation of securities business service licenses, and revocation of practice qualifications. If a lawyer’s annual inspection result is “incompetent,” the bar association will “order the lawyer to correct in writing, require the lawyer to participate in training, issue criticism, publicly condemn, suggest administrative penalties from judicial administrative departments, suggest law firms terminate employment relationships, or remove from partner meetings” depending on circumstances.

**2. The “Competence” in Technical Competence Differs from Annual Review “Competence”** The “competence” referred to in this article differs from the “competence” in the annual lawyer practice review system. The latter has a larger, more comprehensive scope, representing a relatively macro-level interpretation of lawyer professional ethics. The “competence” in this article is similar to “the quantity, category, and service quality of legal services handled by lawyers, and the handling of major and group cases” in the *Lawyer Practice Annual Assessment Rules*. However, evaluating the quality of legal services provided by each lawyer is difficult. Therefore, current rules are more declaratory in nature and require supporting case evaluation systems for implementation. Lawyer competence connects at the normative level with “competent,” “basically competent,” and “incompetent” in the annual review system; at the theoretical level with lawyers’ duty of loyalty to clients and the public nature of the legal profession; and at the practical level with negative incidents of lawyer incompetence and irresponsibility that violate professional ethics. This article discusses lawyer professional competence from the following aspects.

At the normative level, the 2017 *Lawyers Law* and 2017 *Lawyers’ Professional Conduct Code (Trial)* do not directly stipulate competence, but many provisions indirectly relate to competence, providing relatively detailed norms and interpretations of lawyer professional ethics and thus serving as references for determining whether Chinese lawyer professional ethics prescribe competence obligations. For example, Article 2 of the *Lawyers Law* states that “lawyers accepting appointment or designation shall safeguard clients’ rights and interests, ensure correct implementation of law, and maintain social fairness and justice”; Articles 5 and 8 regarding “passing the national unified legal professional qualification examination and completing one-year internships at law firms” aim to ensure competence; Articles 14 and 15 requiring lawyers to “have more than three years of professional experience” ensure competence of law firm founders; and Article 46 regarding bar associations summarizing and exchanging lawyer work experience and organizing business training ensures competence from an industry self-regulation perspective.

At the theoretical level, lawyer competence obligations derive from entrustment contracts or client-lawyer relationships formed based on legal aid agency designations. As of June 2023, “China has 677,000 lawyers and 39,000 law firms.” In intense industry competition, incompetent lawyers may lose clients. Beyond civil legal relationships, lawyer competence relates to the commercial and public nature of the legal profession. “The legal profession not only makes money but is also a branch of judicial administration.” Lawyers should ensure correct implementation of law and maintain social fairness and justice. The legal profession also has commercial characteristics. “Law firms’ personnel and business pursue internationalization, while documents, processes, team division of labor, and knowledge management pursue standardization.” In this process, lawyers’ professional qualities improve, making them more competent in knowledge, skills, and experience.

Competence is not only a requirement of Chinese lawyer professional ethics but also discussed abroad. Chen Yi demonstrates that competence is an important component of lawyer professional conduct rules using the American Bar Association's *Model Rules of Professional Conduct* Rule 1.1 and the UK's *Barristers' Code of Conduct* Article 603. The ABA *Model Rules of Professional Conduct* (hereinafter *Model Rules*) preamble stipulates that "a lawyer should be competent, prompt, and diligent." Competence includes competence as a lawyer itself and quality and process competence in providing legal services. Competent lawyers should conduct thorough and meticulous preparation before providing legal services, receive continuing education throughout their careers, and should possess knowledge, skills, experience, and cooperation abilities. *Model Rules* Rule 1.1 requires lawyers to "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." This provision provides specific interpretation of the abstract competence concept. Australia's *Solicitors' Conduct Rules* Rule 4.1.3 requires lawyers to provide legal services competently and diligently within reasonable bounds.

At the practical level, lawyer competence is one factor in lawyer assessment. Unit assessments of government lawyers and corporate lawyers evaluate compliance with laws and regulations, professional ethics, fulfillment of job responsibilities, work quantity and quality, and propose opinions of competent, basically competent, or incompetent. Lawyer competence affects career mobility between civil servants, government lawyers, corporate lawyers, and private lawyers. For example, government lawyers or corporate lawyers with three years of work experience and a final assessment of competent may apply for private lawyer practice. Lawyer competence affects professional entry and exit. If lawyers are seriously incompetent, judicial administrative departments may disqualify them, and law firms may dismiss or expel them. Additionally, media exposure, public attention, and administrative penalties against lawyers trigger discussions about professional competence. For example, the China Securities Regulatory Commission's penalty against Xintai Electric Co., Ltd. triggered discussions about whether securities lawyers "comprehensively measure pros and cons professionally, strictly implement legal and duty standards, and do their jobs well." Finally, social development and changes lead to changes in the content of matters handled by professionals, and whether professionals can keep up with these changes also points to reflections on competence. With the broader application of legal technology products represented by legal artificial intelligence in the legal profession, this raises the following discussion about whether lawyer professional competence should have technical connotations.

### **(C) The Scope of Technology and Three Patterns of Lawyer-Legal Technology Interaction**

#### **1. Prioritizing Technologies Based on Relevance to Lawyer Practice**

"Under interdisciplinary discovery, besides a profession's core skills, marginal

skills from other professions are also important. The social construction process of professional skills is the practical process of interactive academic knowledge across different fields.” What is the scope of “technology” in lawyer technical competence obligations? Views have attempted to list technologies lawyers should master: “If lawyers cannot efficiently use email, the Internet, etc., they may miss clients.” Hedda Litwin argues lawyers should reasonably understand three types of technology: first, specific technologies related to current practice areas and legal matters handled. This includes not only technologies lawyers are actually using but also “ought-to-be” technologies commonly used by lawyers in the same industry. For example, if a lawyer’s case involves reviewing electronically stored information, the lawyer needs to master technologies for identifying electronically stored information custodians. Second, technologies used in legal practice, such as computers, tablets, scanners, printers and copiers, email and cloud storage, and software and programs specifically designed for lawyers and uniformly used by law firms. Third, technologies used by lawyers’ clients and client institutions. The New York Bar Association’s *Rules of Professional Conduct* defines technology as technology lawyers use to serve clients or related thereto, and technology used to store or transmit client confidential information during service provision.

The above views mainly come from foreign jurisdictions and are referential but not directly applicable, still requiring consideration of China’s actual legal technology application. This article has already used the scope of legal technology at the beginning. However, lawyers’ expertise lies in law, not technology. Indiscriminately requiring lawyers to master all popular legal technologies is unnecessary and impossible. How to further narrow down legal technology? The expression “technology related to the profession” itself suggests using the strength of relevance to lawyer practice to prioritize technologies. It can be said that while legal technology seems to challenge traditional lawyer professional purity theory, prioritizing technologies based on practice relevance also reflects respect for, compliance with, and strengthening of professional purity, demonstrating the instrumental nature of legal technology compared to law.

In summary, this article limits the scope of technology in lawyer technical competence to: First, the client principle. If clients have expectations and requirements for lawyers’ use of legal technology products, lawyers should learn them as much as possible. This principle directly derives from client-lawyer relationship requirements, reflecting lawyers’ compliance with their duty of loyalty to clients. Second, the legal matter principle. Lawyers should understand technologies directly related to legal services provided to clients, such as legal technology products for non-litigation matters and technologies actually involved in lawyers’ participation in mediation, litigation, and arbitration and other diversified dispute resolution processes. This principle derives from the need for interaction between lawyers and legal professionals such as judges, prosecutors, and arbitrators, and is also a requirement for technical advancement of the legal professional community. Third, the lawyer management principle. Lawyers should proficiently master legal technology products currently used by their law

firms and those required by judicial administrative organs and bar associations. This principle derives from Chinese lawyers' daily management by law firms, industry self-regulation by bar associations, and supervision and guidance by judicial administrative organs, representing the need for law firm supervision of lawyers' practice and the dual management system for lawyers.

**2. Determining Technical Competence Context Based on Three Interaction Patterns** Based on different degrees of lawyer-technology interaction, three levels can be distinguished: lawyers understanding the benefits and risks of profession-related technology, lawyers participating in related technology design, and lawyers leading legal technology product design and research and development.

The first pattern is the pure usage pattern, where lawyers understand the benefits and risks of profession-related technology. More specifically, regarding legal technology currently used by lawyers and law firms, lawyers should be aware of its risks. For example, Freshfields Bruckhaus Deringer law firm proposed risks when legal technology products output results, including whether there are copyright infringement and indirect infringement claim risks, whether there are risks of inaccurate, negligent, and fraudulent advice causing client losses, and whether there is reasonable balance between collecting large amounts of data to train systems to improve accuracy and following data minimization principles.

The second pattern is the participation pattern, referring to lawyers participating in legal technology product research and development design. Here, lawyers as product designers must exercise more cautious duty of care. "Developers and users of AI legal technology products should pay attention to the following matters to avoid risks and ensure compliance: review potential intellectual property infringement from product use, review training data sources, ensure systems are tested and validated before release, detect product use and timely address issues, implement appropriate data processing measures to ensure data security, document and backup system design, use, and risks, and purchase insurance for legal technology products."

The third pattern is the leadership pattern, referring to lawyers leading legal technology product development and application. In this context, lawyers' understanding of technology is not limited to usage but focuses more on how technology combines with legal services to generate benefits, representing deep interaction between law and technology. However, a distinction must be made: lawyer professional ethics requires law firms not to engage in business activities beyond legal services to maintain focus on legal services themselves and sufficient solvency. Therefore, although lawyers have a dominant position here, this dominance is within the legal technology product system, and the product itself must serve the ultimate purpose of lawyers providing legal services—that is, lawyers' duties of loyalty, public welfare, and truthfulness.

### III. Solving the Problem: Constructing Lawyer Technical Competence Rules

#### (A) The Logical Structure of Lawyer Technical Competence Rules as Legal Rules

To enable lawyer technical competence connotations to differ according to the depth of lawyer-legal technology interaction and regional economic development levels, lawyer technical competence rules should have flexibility based on different practice scenarios. When constructing rules, considering that lawyer technical competence rules essentially belong to lawyer professional ethics, and lawyer professional ethics have legal attributes, specific rules should possess the character of legal rules. Therefore, this article draws on the logical structure of legal rules—“assumptions, conduct patterns, and legal consequences”—to construct lawyer technical competence rules.

##### 1. Justifying the Legal Rule Nature of Technical Competence Rules

Legal professional ethics have long been considered special moral requirements for legal professionals. However, from a normative perspective, legal professional ethics should have legal attributes. “Legal professional ethics are essentially law. Only by being law can they transcend the narrowness of individual legal professions and achieve broad application, and can they adapt to legal contexts in practice. Unlike general morality, violating legal professional ethics should entail legal consequences such as criminal, civil, administrative, and industry liability; otherwise, legal professional ethics will be shelved due to lack of enforcement mechanisms.” The evolution of legal professional ethics from lacking independent status to becoming an independent second-level legal discipline and gradually being included in the legal professional qualification examination scope confirms the strengthening trend of its legal attributes.

As a special professional ethics, lawyer professional ethics also have legal attributes. The *Lawyers Law*, *Interim Regulations on Lawyers*, *Criminal Procedure Law*, and other laws, the *Lawyers Practice Management Measures*, *Measures for Punishing Illegal Acts of Lawyers and Law Firms*, *Law Firm Management Measures*, and other departmental regulations, the *Provisions on Legally Safeguarding Lawyers’ Practice Rights* and other judicial interpretations, and the *Lawyers’ Professional Conduct Code (Trial)*, *Lawyer Practice Annual Assessment Rules*, *Lawyers’ Professional Ethics and Practice Discipline Code*, and other industry norms further demonstrate the legal normative attributes of lawyer professional ethics. This legal normative attribute is also reflected in practice through the Lawyer Studies Research Center of China University of Political Science and Law, the Lawyer School of Renmin University of China, and the Lawyers Law Research Association of the China Law Society.

Lawyer technical competence rules, as content of lawyer professional ethics, also possess the possibility of being legal rules. More importantly, introducing technical competence rules into China’s existing lawyer professional ethics itself

responds to the problems mentioned at the beginning of this article: lawyer professional ethics lag behind legal technology practice and struggle to play a guiding, normative, predictive, and protective role in guiding lawyers' interaction with legal technology practice. Therefore, from this perspective, technical competence rules should adopt a legal norm construction model rather than a general moral obligation cultivation model. Additionally, technical competence rules are constructed under lawyer competence rules and mainly target specific practice scenarios, not yet abstract enough to reach the height of basic professional ethics principles such as independently performing duties according to law and matching power with responsibility. Therefore, they are primarily constructed as legal rules.

**2. The Logical Structure from Constitutive Elements to Legal Consequences** Lei Lei's *The Logical Structure of Legal Rules* systematically reviews the traditional three-element theory, two-element theory, and new three-element theory in the history of legal rule logical structure, responds to them in turn, and proposes a new two-element theory of "constitutive elements T  $\rightarrow$  legal consequences OR." Drawing on this view and combining it with lawyer practice scenarios, this article analyzes the possible logical structure of lawyer technical competence rules to select a logical framework for technical competence rules.

The traditional three-element theory includes assumptions, handling, and sanctions. However, in constructing lawyer technical competence rules, the consequences of handling are not necessarily only sanctions with state coercive power. For example, they could include a law firm's improper use of legal technology products causing losses to clients, which should be compensated. Or, if a lawyer has prepared and practiced to learn legal technology in their practice area, they should not be easily determined to be technically incompetent and suffer other adverse consequences. The result here is protective rather than punitive.

The traditional two-element theory includes conduct patterns and legal consequences, abandoning assumptions. However, lawyers and legal technology have different levels of interaction, whose depth often points to different rights and obligations for lawyers. Technical competence rules themselves aim to respond to the lack of specific rule guidance in practice, so assumptions should not be vague or omitted. Moreover, sometimes lawyers' use of legal technology products is not necessarily a "legal act," and conduct patterns cannot cover types of lawyer legal technology practice.

The new three-element theory includes assumptions, conduct patterns, and legal consequences. The new two-element theory includes constitutive elements and legal consequences. After considering lawyer-legal technology interaction practice, this article chooses the new two-element theory as the foundation for technical competence rule construction.

First, whether lawyers use legal technology products, participate in legal technology product design, or ultimately lead legal technology product development,

all may involve legal events that cannot be included in the conduct patterns of “may do,” “should do,” and “must not do” under the new three-element theory, but legal events can be included in the constitutive elements of the new two-element theory. Second, if lawyer technical competence rules are constructed according to the new three-element theory: Example 1: “If a lawyer has understood and mastered legal technology in relevant fields as much as possible, the lawyer should not be easily determined to be technically incompetent (by adjudicators).” This rule is an adjudication rule guiding adjudicators. The first half, “the lawyer has made considerable efforts to understand and master legal technology,” involves lawyer conduct patterns, while the second half involves adjudicator legal consequences. Example 2: In litigation adversarial proceedings, if the prosecutor enjoys legal technology products provided and equipped by the state, and technology use relates to case issues, the lawyer has a more urgent need to understand, learn, and use relevant technology. This rule is a conduct rule directed at lawyers, where the first half is an assumption regarding the prosecutor or opposing counsel, and the second half is a conduct pattern directed at lawyers.

Combining Examples 1 and 2, Example 1’s adjudication rule includes conduct patterns and legal consequences, while Example 2’s conduct rule includes assumptions and conduct patterns. If it is necessary to distinguish legal rules according to different conduct rules and adjudication rules and construct “assumptions + conduct patterns” and “conduct patterns + legal consequences” or other combinations, the three elements pursued by the new three-element theory cannot simultaneously exist in their ideal state and apply to both conduct rules and adjudication rules. The new two-element theory abandons the conduct pattern-centered construction paradigm, only distinguishing the logical structure of legal rules into constitutive elements and legal consequences, adapting to the concise needs of legal rules as small units and the interpretive needs of both conduct rules and adjudication rules.

**3. Specific Development of Technical Competence Rules** Following the selection of legal rule logical structure in Part II, this article adopts Lei Lei’s new two-element theory containing constitutive elements and legal consequences as the logical structure for lawyer technical competence rules, integrating previous discussions on “client principle, legal matter principle, and lawyer management principle for technology prioritization in technical competence” and “three patterns of lawyer-legal technology interaction: usage, participation, and leadership.”

Constitutive elements include the subjects of technical competence rules (lawyers, law firms), acts and events, and scenarios (three patterns of lawyer-legal technology interaction). Legal consequences are the results of evaluating and assigning consequences to lawyer legal acts, including consequences for evaluating lawyers’ legal acts and legal consequences imposed on lawyers due to legal events.

Rule 1: Under the pattern of lawyers using legal technology, lawyers should prioritize understanding and proficiently using client-related technology, legal service-related technology, and lawyer management-related technology. Supplement: If a client has expectations for a lawyer to use certain legal technology, and there are reasons to prove the lawyer's expectations, the lawyer should satisfy these expectations and master the technology as much as possible. Generally, if a lawyer has evidence proving they have made efforts to understand, learn, and participate in training for technology mastery, the lawyer should not be easily evaluated as technically competent (emphasizing lawyer protection). In emergencies, if technology proficiency urgently relates to the direction and outcome of legal matters and the lawyer cannot prove they have made attempts and efforts to use technology, the lawyer may be evaluated as technically incompetent (emphasizing client protection).

Rule 2: Under the pattern of lawyers participating in legal technology product design, lawyers should leverage legal professional advantages to detect and address training data bias issues, ensure products are tested before release, comply with existing standards, industry practices, or undergo peer review. If lawyers intentionally or with gross negligence cause product defects that result in losses to clients or third parties, lawyers should bear civil and criminal legal liability and may receive corresponding industry discipline and administrative penalties. Supplement: When lawyers participate in product design, they have dual identities corresponding to different conduct rules. Lawyer technical competence rules should connect with relevant laws and regulations on information protection and tort liability.

Rule 3: When lawyers lead legal technology product development, application, and future direction, besides focusing on specific legal technology product details, lawyers should also pay attention to macro-level issues such as technology dependence, bias, and algorithmic dictatorship. The obligation source of this rule is lawyers' public welfare duty as legal professionals to "ensure correct implementation of law and maintain social fairness and justice." The International Association for Artificial Intelligence and Law conference discussions on legal AI have shifted from specific AI applications like legal retrieval and legal prediction to AI's status, risk, responsibility, and regulation, confirming this trend.

## **(B) Positioning of Technical Competence in the Lawyer Practice Conduct Rule System**

Lawyer technical competence is a subordinate concept of lawyer competence, essentially belonging to lawyers' professional conduct rules. Just as the *Lawyers Law* states that "lawyers should safeguard clients' legitimate rights and interests, ensure correct implementation of law, and maintain social fairness and justice," professional competence derives from lawyers' professional requirements to maintain the rule of law procedure and justice, as well as from entrustment contracts, legal aid agency designations, and consultation and other factual acts. This theoretical construction of loyalty duty, public welfare duty → competence

→ technical competence is planar. However, considering lawyer confidentiality obligations, lawyer-client communication, and rules on lawyers cooperating with other technology-proficient lawyers, these rules together with technical competence rules constitute the proper response of lawyer professional conduct rules to legal technology application, making technical competence rule positioning evolve from simple to complex and systematic.

Specifically: First, lawyers cooperate with other lawyers to achieve technical competence. Chinese lawyer professional ethics require law firms not to engage in business activities beyond legal services and lawyers not to help non-lawyers practice indirectly. However, it does not prohibit lawyers from cooperating with accountants, cost engineers, tax agents, and others to provide one-stop legal services for clients. Furthermore, can lawyers cooperate with others on legal technology product use to better meet technical competence expectations? The Florida Bar's commentary on technical competence rules states that "lawyers may need the assistance of non-lawyers with technological competence." This also means that before exhausting all efforts, lawyers cannot easily be exempted from technical competence requirements due to insufficient personal technical ability.

Second, lawyer confidentiality obligations. When law firms use legal technology products to provide legal consultation to potential clients, because of the instrumental nature of legal technology products, lawyers and law firms are the subjects bearing confidentiality obligations. "Accurately predicting what purposes AI may use data for and how they will learn is impossible, so ensuring data protection beforehand is crucial." Legal technology products collecting client information must follow the *Personal Information Protection Law's* principles of "legality, propriety, necessity, and good faith."

Third, lawyer-client communication. Lawyers should inform clients about relevant information based on their reliance on legal technology products and the products' influence on service provision, respecting clients' choice regarding product use. Meanwhile, lawyers should focus on providing more personalized professional services. "Future lawyers will provide four basic functions that AI cannot provide: judgment, empathy, creativity, and adaptability."

Finally, although technical competence theory is relatively "new," it needs to be "demystified." From the perspective of more than thirty years of AI application in the legal industry, as early as 1970, Buchanan and Headrick published "Some Speculation about Artificial Intelligence and Legal Reasoning" in the *Stanford Law Review*. "Creating systems that simulate legal reasoning faces challenges such as the difference between natural language and programming languages, understanding lawyers' decision-making processes and programming them, and how to formulate rules so computers can better execute them." The Heuristic DENDRAL program could help simulate lawyers' legal decision-making processes of determining goals, identifying facts, selecting rules, and making analogies. "Carole Hafner published articles on legal information retrieval applications in the bill domain. Donald Waterman and others built expert systems

to help with liability issues in tort product cases.” In 1987, the International Conference on Artificial Intelligence and Law (ICAIL) held its first symposium on AI and law, discussing text retrieval systems and natural language-based legal expert consultation and tutoring systems. Since then, ICAIL has held a symposium every two years. Under legal AI technology development, “expert systems based on legal rules for logical reasoning initially faced challenges. Addressing expert system deficiencies, Rissland and Kevin Ashley designed the HYPO case analysis program simulating adversarial legal reasoning. After the HYPO program, Thomas F. Gordon constructed the Carneades argumentation model supporting both rule-based reasoning and multiple rule reasoning.” Legal technology products have disturbed but not yet absolutely disrupted the legal profession. Discussions on legal technology-related issues need universality, which is precisely why this article’s technical competence theory does not target any specific technology but adopts a “legal technology” perspective and attempts to explore the general theory of Chinese lawyer technical competence.

### (C) Theoretical Significance of Technical Competence

As part of lawyer professional ethics, lawyer technical competence rules guide lawyers’ professional conduct and provide deterministic guidance and stable expectations for lawyers’ use of legal technology products. Additionally, legal professional ethics have a protective function for legal professionals. Lawyer technical competence rules belong to the development of lawyer competence rules within lawyer professional ethics. Therefore, if lawyers have acted according to technical competence professional ethics rules, they will not be defined as incompetent.

Constructing lawyer technical competence theory not only serves lawyer-legal technology interaction but also points to lawyers’ duty of loyalty to clients. The purpose of analyzing lawyer technical competence is not only to require lawyers to understand and master technology and participate in technology design and governance. Just as in smart court construction, “if machines handle case management and document filling, judges can be more relaxed and clear-headed, truly focusing time and energy on adjudication.” Lawyer technical competence theory helps clarify the boundaries of lawyer profession-legal technology interaction and the division of labor between the two parties, leaving time and energy for lawyers and clients to conduct legally professional, client-oriented personalized, and humanistic exchanges, ultimately pointing to lawyers’ duty of loyalty to clients.

Finally, the subject of lawyer technical competence theory is human beings. Humans should always be involved in the “loop” of legal technology practice. Building technical competence theory in China provides theoretical responses to existing and future legal technology practices, and ultimately reflects humanistic care focusing on lawyers’ subjectivity. “Work is not only tasks; people also learn and gain satisfaction from it. Students and junior lawyers will learn how to cooperate with machines and achieve their sense of accomplishment. Tools

change the nature of legal practice and human contribution, but tools can never replace humans and prompt reflection on how to cultivate and motivate lawyers' creativity and analytical ability.”

#### **(D) Consequences of Technical Incompetence**

What consequences might lawyers face if they lack technical competence?

First, the legal profession has commercial characteristics. Especially against the backdrop of rapid lawyer population growth, incompetent lawyers may fail to meet clients' needs and expectations and will be negatively evaluated by the market.

Second, China's current lawyer professional ethics use “excellent,” “competent,” “basically competent,” and “incompetent” as annual inspection assessment results. Annual assessment itself is a “red-line assessment” and basic evaluation of lawyers' practice conditions. Precisely because lawyer annual inspections examine broad and detailed scopes, representing a “comprehensive” assessment of lawyers' compliance with almost all professional conduct rules, it can be said that wherever professional conduct rules prescribe, lawyer annual inspections assess. In the future, if lawyer technical competence is incorporated into lawyer professional ethics, lawyers' performance in technical competence will also be implicitly incorporated into lawyer annual inspections as part of comprehensive assessment.

Furthermore, since technical competence norms have not yet been established in China's lawyer professional ethics, it is even more difficult to discuss whether lawyer technical incompetence will lead to administrative penalties or industry discipline. But is there room for discussion about the higher-level concept of lawyer competence? From the Ministry of Justice's publicly available government information from 2019 to 2021 (Figure 4 [Figure 4: see original paper]), the Ministry of Justice issued six administrative penalty decisions based on “gross irresponsibility,” all related to judicial appraisers. There were no documents penalizing lawyers for “gross irresponsibility,” “incompetence,” or “irresponsibility.”

[Figure 4: see original paper]

#### **(E) Implementation Safeguards for Technical Competence**

First, bar associations should proactively provide convenient and intensive locations for lawyers. Smart court and smart procuratorial work construction requires lawyers to have matching technology use capabilities and office conditions. In this regard, local bar associations can fully play their industry self-regulation role by providing convenient and intensive office locations for lawyers. Costs paid by law firms to purchase legal technology products may be passed on to clients. Under the trend of law firm scale development, bar associations can learn from intensive development policies such as “lawyer buildings”

to save infrastructure and operational costs, provide opportunities for small and medium-sized law firms to purchase and use legal technology products, and create conditions for cultivating lawyer technical competence.

Second, coordinate and advance development across different regions. There is a “two hemispheres” theory within the legal profession, referring to differences in geographical location, business types, income, and professional status between lawyers engaged in high-end foreign-related and non-litigation legal services and lawyers in small towns and rural areas. Similarly, the “two hemispheres” theory is also reflected in law firms’ intelligent development. The legal profession as a whole is developing intelligently, but individual law firms have different levels of intelligence due to differences in economic strength, scale, and organizational structure. Taking legal AI as an example, law firms engaged in high-end foreign-related and non-litigation business have funds to invest in legal AI product R&D and purchase, while small law firms lack funds to purchase legal AI products (Figure 5 [Figure 5: see original paper]). Therefore, legal technology application may solidify and exacerbate stratification within the profession. Given different development levels of regional legal professions, technical competence requirements for lawyers should be differentiated and region-specific. As the two ends of the “dual management system,” judicial administrative organs and bar associations should emphasize coordination and overall planning of gaps within the legal profession when formulating departmental regulations and industry norms related to legal technology.

[Figure 5: see original paper]

Third, bar associations should play a positive selection and encouragement role. As mentioned above, lawyer technical incompetence rarely leads to administrative penalties, but bar associations can fully conduct positive selections to encourage legal technology product development in the legal profession. For example, Chambers’ 2023 *Legal Technology Report* began evaluating legal technology consulting firms, legal technology incubators and accelerators, and legal technology suppliers in the legal technology field. These evaluations can provide decision-making references for law firms equipping themselves with legal technology products, but currently focus mainly on foreign legal technology products and suppliers, with less attention to the Asia-Pacific region, which is precisely the direction for future Chinese legal technology development.

Fourth, develop training oriented toward lawyer technology participation. The 2017 State Council *New Generation Artificial Intelligence Development Plan* proposed “conducting AI skills training in higher education institutions, vocational schools, and social training institutions to substantially improve employees’ professional skills and meet the needs of high-skill, high-quality job positions brought by China’s AI development.” In recent years, bar associations across China have conducted legal technology-related training. For example, in 2023, the Beijing Bar Association’s Technology and Big Data Legal Professional Committee shared lectures on “Lawyers’ Use of and Risks of AI Systems.” The Beijing, Tianjin, and Guangdong Bar Associations jointly held an online

seminar for lawyers from the three regions on legal protection of AI-generated content like ChatGPT, with approximately 2,900 lawyers participating online and offline. The Beijing Bar Association's Technology and Big Data Committees held special training sessions at the Beijing Lawyers Academy, discussing that "frontier technologies represented by new-generation generative AI are promoting human scientific and technological innovation to a higher level." In the future, as legal technology consulting firms develop, one-stop legal technology training for legal professionals like cenza will also emerge.

## Conclusion

To respond to the interaction between Chinese lawyers and legal technology in practice, fill the regulatory vacuum of zero response to technology in lawyer professional ethics, highlight the legal normative attributes distinguishing legal professional ethics from general morality, and play the role of technical competence rules in guiding, evaluating, and protecting lawyers, this article constructs three types of technical competence rules based on the three patterns of usage, participation in design, and leadership in development when lawyers interact with legal technology. Using the client principle, legal matter principle, and lawyer management principle to prioritize technologies, and employing the logical structure of legal rules as the skeleton for lawyer technical competence rules, it respectively constructs technical competence rules under lawyers' usage of legal technology, participation in legal technology design, and leadership in industry development. Theoretically, technical competence rules connect with the competence of legal professional community members such as lawyers, judges, and prosecutors, engage in dialogue with foreign lawyer technical competence rules, and serve as a theoretical response of lawyer professional ethics to legal technology development alongside lawyer confidentiality rules and client-lawyer relationship rules. Finally, "law alone is insufficient to enforce itself." As a subordinate rule of competence rules, although lawyer technical competence rules can find theoretical origins in lawyers' duty of loyalty and professionalism, they are not core rules in lawyer professional ethics. Therefore, their implementation requires additional safeguards—not only negative evaluation of technical incompetence through legal norms, but more importantly, bar associations playing an active role in industry self-regulation by proactively providing convenient and intensive conditions for lawyers to learn and use legal technology, coordinating and advancing development across different regions, and establishing positive evaluation and selection mechanisms related to technical competence.

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