

LLI's Oath of Justitia

The student competition



Let's design the future. Together.

Competition winner

Dear reader,

this submission won the LLI's Oath of Justitia student competition. It is one of the first ideas towards the creation of an Oath of Justitia.

The team says this about their participation: "We were drawn to the competition by the incredible chance to design an oath for the legal profession which could impact how law is practised all over the world! In addition, amidst COVID-19, we were excited to have an excuse to work together (even though we were never physically with each other) and have a social connection in a time of physical distancing. Our philosophy in writing the oath was that even if the present was bleak, the future of law was bright! Our commitment to optimism also inspired our team's name — good feelings all around!"

The Oath complements and supplements existing legal and professional obligations by taking account of new technological developments, and both reassures the public and spurs action from lawyers by ensuring that innovations in technology are used to the benefit of individual clients, the legal profession generally, and society at large.

Any comments and suggestions are welcome.

We wish you a joyful reading,

The Sentinels of Good Feelings Team & the Liquid Legal Institute

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OATH OF JUSTITIA

IN THE NAME OF JUSTICE¹,
AND WITHOUT PREJUDICE
TO MY EXISTING OBLIGATIONS,
I SWEAR,²
UPON MY HONOUR AS A JURIST³,
AS FOLLOWS:

§ 1 THE CLIENT

- (1) I shall continually review and update the technology I use to safeguard client data, ensuring that my clients' confidentiality and privacy are maximally protected.
- (2) I will embrace new technology to more sustainably provide client experience and comprehension, enhancing the equal level of service and comfort that I provide to my clients.
- (3) I shall endeavour to provide a fully integrated bespoke service, according to each client's individual needs.

§ 2 SOCIETY

- (1) I shall use algorithms and AI as tools, but never as decision-makers. Instead, I shall always

¹ Substitutable (eg, with the *Basmala*)

² Substitutable (eg, with 'affirm')

³ Substitutable (eg, with 'barrister')

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consider human principles when making decisions.

(2) Recognising that the legal profession is but one component of civic society, I will collaborate with the public and other professions which seek to improve societal wellbeing.

(3) I shall always conduct myself online in such a way as to elevate the public's esteem for the law and its practitioners.

§ 3 THE PROFESSION

(1) I shall always stay abreast of technological and professional developments in all fields, and endeavour to innovatively make use of any new tool in the interests of justice.

(2) I shall share new insights and innovations with others in my profession, and never keep secret any advancements which could advance the public good except where otherwise obligated.

(3) I shall, aided by technology, ensure that I have diverse professional contacts inside and outside of the legal industry, so that I may learn from the experiences of those with backgrounds different to my own.

*[FIAT JUSTITIA!]*⁴

Word count: 300 words

⁴ Substitutable (eg, with 'so help me God!')

EXPLANATORY ESSAY

THE OATH GENERALLY:

In virtually every jurisdiction, legal professionals are *already* required to swear some sort of oath, which may often include ethical obligations (see, for instance, the Lawyer's Oath in the US state of Michigan). Furthermore, lawyers in any jurisdiction must follow specific ethical rules set by their respective regulatory and professional bodies. There would be no point in reduplicating these obligations in a further oath. Therefore, we instead sought to create a *supplementary* oath, which would complement these existing obligations by covering lacunæ created by new developments in legal technology and practice. The purpose of the oath is thus to swiftly and dynamically respond to new developments in law which have still stymied regulators. The oath thus seeks to provide 'added value' to legal ethics by reassuring both jurists and clients that innovation and digitisation will not negatively affect the high standard to which lawyers have historically been held.

One challenge in designing the Oath was that it must be pan-jurisdictional, and of use to legal professionals subject to vastly different professional responsibilities and legal climates. This meant that we had to guard against Oath any parochialisms specific to one jurisdiction; in this, we were helped by our diverse backgrounds (we each come from different countries). It also meant we had to be conscious of the fact that, while all lawyers must prevent harm to their clients and generally uphold, many—indeed, perhaps a majority—of the world's lawyers work in systems where the rule of law is, by international standards, tenuous at best. As we did not want to exclude lawyers from non-democratic or transitioning countries from this global process, we were careful to focus the oath on the obligations of individual lawyers, and make its tenets achievable by any committed jurist, regardless of the state of the legal system in his or her country.

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The universality of the Oath required us to take special care in the language and syntax used, because the Oath needed to be easily translatable into other languages. This meant we generally used clear, formal English and avoided idioms or metaphors which might have given rise to difficulty in translation. In this, we were aided by our multilingual background as a team. Within this constraint, we modelled the syntax and style on existing international legal professional instruments, such as the International Bar Association's various published rules for international commercial arbitration, so that the language used would feel familiar and understandable to lawyers around the world. However, we equally avoided using recondite words or legal jargon which would be outside a layperson's vocabulary, since it is important that lay readers are able to understand the Oath (and, we hope, be comforted by the professional obligations it imposes).

THE PREAMBLE:

The preamble is, as is footnoted in the Oath's text, designed to be a flexible instrument into which any oath taker can substitute relevant tenets or words which make the oath more meaningful to her, and to avoid any conflict with various religions' rules on the taking of oaths. The oath taker should feel free to edit and modify the preamble in whichever way best symbolises her commitment to the values set out in the Oath. The only essential and non-modifiable clause in the preamble is the savings clause, which notes that the oath does not affect existing professional or legal obligations; this ensures that the oath retains its intended supplementary character and cannot be mis-used to claim exemption from existing duties.

§ 1 THE CLIENT

§ 1(1) Data Protection

Lawyers already have a duty to safeguard their clients' data under national laws,

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but these can vary enormously between jurisdictions, and often lag behind the speed of change in the sort of information which can be stored digitally. As part of the Hippocratic principles of the Oath, we wanted to ensure that lawyers were clear (and clients could see) that they had taken on an *affirmative* commitment to take positive steps to employ the most cutting-edge tools and best practices to put the security of the clients' data first. This recasts data protection from a negative statutory obligation to an ethical commitment and requires that lawyers take positive actions to put the welfare of the client data first (just like the Hippocratic Oath enjoins doctors to put patient welfare first).

§ 1(2) Equal Treatment

Non-discrimination laws already impose extensive obligations on lawyers to treat clients equally, but the shift to new technologies in law (accelerated by the pandemic) has highlighted an omission in the scope of these equalities injunctions. Clients, both individual and institutional, should be able to be confident that they will receive the highest levels of care and services, no matter what technology is used, and even if they are never once in the same room (or, indeed, country) as their lawyer. Additionally, the commitment made in this clause is intended to spur lawyers to take positive steps to use technological changes in a sustainable manner, pursuant to their obligations as global citizens of our shared Earth.

§ 1(3) Liquid service delivery

Developments in design thinking and management theory, combined with technological innovations, mean that legal service providers now have a wide flexibility in how they can deliver their products. The Hippocratic ethic—putting the patient first—obliges lawyers to use these insights and innovations to tailor and design their services in a human-centric manner appropriate to each client. Instead of rigid hierarchies and working procedures, legal service providers should use an

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adhocratic, liquid model, analogous to how personalised medicine is revolutionising healthcare.

§ 2 SOCIETY

The Hippocratic injunction to prioritise the welfare of the individual patient translates neatly to lawyer-client interaction. However, lawyers have relational duties which ignore the privity found in doctor-patient interaction. The position of lawyer is analogous to—or in some jurisdictions literally is—a public office under the aegis of the judicial system. A Hippocratic Oath for lawyers must, therefore, cast a wider net.

§ 2(1) Algorithms

The rise of artificial intelligence, new methods of data analysis, and improved machine learning all present fantastic opportunities for the development of the legal profession. However, these new tools, like any tools, must be used in a moral and ethical fashion. As existing legal codes of ethics do not cover these developments, we took inspiration from principles in European Union legislation (*viz*, the Charter of Fundamental Rights & the General Data Protection Regulation) to remind lawyers that with great technological power comes heightened responsibility to prioritise the welfare of *all* individuals affected. This clause of the Oath is designed to prevent lawyers from ever regarding human beings as merely data points in a model. It instead requires, in the spirit of the Hippocratic injunction to only ever regard the patient as a fellow creature in need of healing, that takers have regard to the dignity and worth of every individual. As computers provide easier and more powerful ways of aggregating humanity, this positive injunction is necessary and timely.

§ 2(2) Civic collaboration

Lawyers have often seen themselves as part of a separated profession, but collaboration is the essence of progress and disruptive transformation. Only

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teamwork across all elements of civil society can confront the problems the world faces today, and we sought to use this element of the Oath to operate as a positive command to be a force for good as an equal partner with other civic institutions. Legal expertise can be most efficiently and productively used when combined with the expertise both of other professions and the lived experience of ordinary citizens, and it is an ethical duty of lawyers, included in this Oath, to actively work to achieve this synergy.

§ 2(3) Online conduct

The need to inspire public confidence in justice applies just as much to online conduct outside the courtroom. Once again, this is an area where national rules may be inconsistent or lag behind. Lawyers should not be inhibited from expressing themselves online or involving themselves in the world's digital cultures, but this clause requires them to take a positive commitment to never forget that they are always, in some way, a representative of the legal system as a whole. As officers of public trust, they must, in the Hippocratic spirit, put the welfare of the public before their own digital desires.

§ 3 THE PROFESSION

Medicine relies on collaboration and mutual trust to promote the welfare of patients everywhere. Although law involves adversarial confrontation between lawyers, it too requires its practitioners to work with one another to promote public welfare.

§ 3(1) Following new developments

While many jurisdictions' rules provide for mandatory continuing professional development, the pace of new technological developments requires a greater

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commitment to perpetual learning. The insular nature of law and the depth of legal history mean that it is especially important for lawyers to make an affirmative commitment to continually look for how they can employ technological innovation to prioritise the public good. This clause is designed to push lawyers to view adopting new technology as a continual and iterative process in dialogue with both fellow lawyers and other fields.

§ 3(2) Sharing insight

The adversarial nature of legal practice can cause lawyers to jealously guard lawtech innovations they create, viewing them not as a public good but a source of competitive advantage. This mindset cuts against the Hippocratic principle to view law as an instrument of societal good first, in contrast to a device primarily for personal advancement. This clause of the Oath reminds lawyers that the legal community can only help society if sharing is the norm.

§ 3(3) Diversity

The world of law, particularly in élite circles, can be very homogeneous. Furthermore, lawyers inherently have a parochial instinct, because they, by definition, specialise in the law of the jurisdiction(s) to which they are admitted. Yet, in an interconnected world, lawyers must be prepared to view their profession as part of a truly global community which transcends smaller divisions, and take active, positive steps to engage with their partners from different backgrounds and vocations. This relates to the Hippocratic injunction because where professional engagement is limited by geography, personal characteristic, or other non-relevant factors, a lawyer risks missing out on vital information and dialogue which could be used to advance the welfare of clients and society.

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