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Continuing legal education in Germany – Digitalization

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Let me begin with a brief introduction to my home institution: Bucerius Law School in Hamburg, Germany. The school is named after Dr. Gerd Bucerius, a famous German publisher, politician and lawyer by training. Bucerius Law School, founded in 2000, is a private institution, which is atypical in Germany, where most of higher education institutions are publicly funded. In addition, Bucerius is rather small. We educate about 120 people per year and a total of 400-500 LL.B. students on our campus at any point in time. In addition, we offer a Master of Law and Business Program with 30 to 50 participants per year. Our master is a professional degree. It requires prior working experience and participants typically have one to two years of professional experience. Students can obtain either an LL.M. or an MLB, which is a Master of Law and Business. It targets professionals working at the intersection of law and business. We attract students from all over the world with Eastern Europe and South and Latin America often accounting for meaningful parts of the student population. While our LL.B. primarily targets Germany, our Master Program is also designed to add an international spirit to our campus. Bucerius Education GmbH is our for-profit subsidiary specializing in event management and continuing education. Compared to the wider landscape of higher education in Germany, Bucerius is atypically young (23), atypically organized (private) and atypically entrepreneurial as our core value is Mut (bravery). This is great for innovative topics and good for me personally, as it provides space for researchers like me with a somewhat atypical perspective on legal research and legal education.

Against that institutional background, these are the topics I would like to cover today. After a brief personal introduction so that you can assess my credibility, I want to provide some context in the form of current digital trends and developments in the legal industry. Thereafter, I will spend some time talking about relevant content for continuing legal education and finish this presentation with some thoughts on the appropriate teaching methods.

I am primarily affiliated with our Center for Legal Technology and Data Science. My research follows two very different approaches: One is doctrinal research in professional law and market regulation for legal services – including court organization and procedural law but with a focus on the legal profession. The second approach is legal data science, by which I mean research of legal questions with methods from computer and data science.

One recent example of the is a popular paper titled "GPT takes the bar exam". Michael J. Bommarito and Daniel M. Katz look at how well large language models including GPT-3 do with one part of the American Bar exam (and followed up shortly after the talk with the famous paper "GPT-4 Passes the Bar Exam"). If you prefer more of an introduction, we this is the paper titled "Natural Language Processing in the Legal Domain". It is a survey of more than 600 papers, ten years of NLP and law research, describing how we arrived at current achievements in the field of generative AI and law. Another method we frequently apply is network science as we are interested in societal relationships.

The final part of my research is conducted at our Center on the Legal Profession (CLP). To be as close to the market as possible, our CLP is organizationally situated with Bucerius Education – our for-profit subsidiary. If you were interested in an example of the type of work we produce, here are some of the reports that I co-wrote with Christian Veith from BCG, examining how technology influences and changes the market for legal services in in law firms. That is the first one on legal technology in law firms in 2016. Another edition provided an inhouse perspective in 2018, and most recently we looked at the digitalization of justice systems in 2022.

After this short introduction, let us turn to the question du jour on continuing legal education (CLE) and the role digitalization plays both as a topic and a method.

From a statutory perspective section 43a of the Lawyers Act (BRAO) contains the basic duties of the profession including an obligation to engage in continuing professional development in subsection six. One single sentence, six words. That is the legal situation. That is what lawyers are required to do. Given the importance of CLE one would assume that there must be more details specifying this requirement elsewhere. If you are with the organization of the legal profession in Germany, you would expect this to be at the self-governance level. This leads you to section 59b BRAO, which covers the competences of what the Federal Bar but unfortunately does not mention CLE at all. In other words, for the time being that one sentence is all we have. I leave it to

STEPHAN GÖCKEN, who will provide some of the historical background and discussions about this one sentence and the very unclear structures below it in another chapter. I can hardly think of a more competent expert to unravel the long discussions of and political reasoning for the current situation.

In contrast, however, we do currently have detailed regulations about CLE for lawyer-specialists in section 15 of the Specialist Lawyer Act (FAO). They may be obtained by writing qualified publications or attending conferences and seminars for minimum of 15 hours per year.

For all generalist, the absence of a statutory requirement of CLE does not equal the absence of regulation at all. Instead, lawyers are required to keep up to date through professional liability. The case law on section 49a BRAO contains mostly cases in which lawyers did not keep up with current legal developments and as a result were liable for damages incurred by their clients from adverse court decisions. Unfortunately, there is no clear idea of what lawyers must actually know to avoid liability. I will spare you a detailed analysis of the case law and instead turn to an area, in which we have a rather good idea about the required knowledge. It happens to be what our subsidiary, Bucerius Education, is selling most successfully even though it is not legally required at all:

The actual knowledge of legal practice or – in other words – the business of law. For a number of reasons, which I will come to in a moment, this increasingly means digitalization and the digital business of law.

The main macro societal development is the increase of legal complexity over time. The total amount of information and the interconnectedness of that information is rising much faster than what we can keep up with. In a recent paper titled "Complex Societies and the Growth of the Law" we have found that over those 25 years, since the mid 1990s the total amount of legal, regulatory information has grown both in the United States and Germany. We did look not only at numbers on the statutory level, but also on the level of regulations in the paper titled "Measuring Law over Time" and found similar growth. The sheer number of words of federal regulations and statutes in Germany has grown by a factor of 1.5 or more than 50% since 1995. While this indicates increased demand for legal services in general, a closer look reveals that this growth equally appears in structures – chapters, subchapters – which most readers of the law use for orientation. Both of these, however, are dwarfed by the growth of statutory and regulatory references.

Usually, when a section references another the user – often the lawyer trying to answer a legal question – must follow it and therefore read both the referencing and the referenced sections. When the number of references increases, the task of collecting and deciphering the relevant information becomes ever more difficult. The largest growth in references has occurred within the regulations in the United States, which have grown by over 150% or more than two and a half times. In addition, the United States show much more legislative activity in the regulations than in the laws, which could in part be explained by an increasingly divided congress. In conclusion, there is a lot more information, and it is much harder to navigate. Since this is precisely the job of lawyers, they must be equipped with proper tools to handle this complexity.

Also, in the United States my colleagues looked at reports by companies who are publicly traded that must report potential legal risks to their shareholders in what is called a 10-k form. The basic idea is that if a risk is realized and negatively affects the share price the company could avoid liability if it had previously reported said legal risk in this form. Some members of our research team examined this data in a paper titled "Measuring and Modeling the U.S. Regulatory Ecosystem" and counted all individual statutes for any given year and aggregated them. The number increases from around 50'000 such references in the mid-1990s to currently well over 200'000. That is a more than a four time increase of what companies report as relevant laws influencing their risk management and eventually their share price. From a different perspective, this is another observation showing that matters for lawyers are becoming more difficult, more tedious.

That complexity extends to our courts, too. In data compiled by the German Federal Statistical Office we have found that average duration of civil court proceedings in district courts (Landgerichte) has increased from six to over ten months (so by around 40%) in the last two decades. During that period the case load of these courts has luckily become much lighter, but it is only a matter of time until current developments such as mass litigation will overstrain the courts and break the system. In the courts an increase in legal complexity leads to longer proceedings because properly assessing the facts and navigating increasing amounts of regulation simply takes a lot of work. At constant levels of productivity, this leads to more time spent to resolve legal matters. But that does not have to be the case: the solution is that we need lawyers, judges and clerk to become more productive. They must be able to handle more units of legal complexity in the same amount of time. That is the core challenge and that should be the goal of continuing education for every sin-

gle legal professional. One productivity multiplier is technology, the other is division of labor and therefore standardization, process management and improvement.

It is by now a familiar notion that technology plays a relevant role in law firms. It has a dramatically important impact on the way they operate on their value proposition, their operating model and truly their entire business model. We know that clients no longer just come for legal advice, but that they need help with this overwhelming amount of regulatory information. We know that modern legal advice is more than just smart ideas, as BRUNO MASCELLO said earlier, but clients increasingly require factual information and mechanisms for gathering it to make legal decisions. For some clients this may require the design of an expert system.

Other clients might be required to produce many additional documents, for example in the context of ESG compliance. There is very little room for legal innovation in the form of better doctrinal ideas but a lot of potential for improving how documents are created, tracked and changed. Naturally, these altered needs influence the products lawyers, and their firms offer and the way they generate revenue. Traditionally, the billable hour revenue models are fairly straightforward as a production cost-based way of assigning value. Looking at alternative fee arrangements such as caps or lumpsum payments revenue models already seem to take into account an increase in complexity.

This is reflected also in ownership of a larger part of the advice/business of law value chain by law. Instead of a single person providing legal, more and more diverse people are involved. As an example, many law firms now offer post-merger integration management once the agreement is signed and the deal closed. Since an increase in diversity of roles is mirrored on the client side with technology and operations teams working in legal departments relationships and interfaces exist on these levels, too.

As a result, the cost-structure changes from only salaries to people and technology. The subsequent requirements for investments lead to meaningful and difficult discussions about access to capital. Who can own a law firm? Who can invest in a law firm and how to motivate and compensate non-owners appropriately? The answers to these questions likely contain a change in the organizational model: We go from a pyramid to the rocket scheme.

The model of the past is familiar. It's all lawyers on all levels. Many junior lawyers at the bottom, fewer senior lawyers towards and very few very senior lawyers at the top. This leaves no room for other types of professionals playing

increasingly important roles in law firms. There are, for example, business development and legal operations professionals, who create important revenue streams for the firm without formal legal qualifications. As they make their way through the ranks, they start to ask for influence and compensation mirroring their economic importance.

In Germany, there is an emergence of actively managed law firms whose senior business executives are not qualified as lawyers. They do not own any part of the law firm because our law currently forbids it, but firms usually find creative solutions to let them participate financially in the fate of the company. As a result of professional management, these firms are capable to distinguish themselves in the market. Their success is at least in part driven by the technological development. Because people who know about this, who know about process improvement and who can decide which technology to use can make very valuable contributions if they get a seat at the table.

This fact changes the value proposition. While the core remains similar with parts legal advice and part legal risk management, additional layers such as project management, technology consulting and software development complement the offering. As companies wonder for example about which contract lifecycle management software to buy, they increasingly turn to their legal services providers and are ready to pay for this type of advice. Managed law firms have an answer to this type of questions and therefore a business offering. There is a growing, latent market for auxiliary technologies increasing the speed visibility of legal services, but firms are offering tools that are not legal at the core but have compliance aspects such as KYC, AML or CTF checks. The result is that what used to be a services business is now much more a product-services-bundle business.

For example, Cooley, which is a renown Silicon Valley law firm, partnered with Carta in early February. Carta is a legal technology company providing equity and other startup financial management tools. In the current collaboration Cooley attorneys use Carta's tools and offer a combination of Carta's software with Cooley's advice to startup founders. Founders get access document drafts pre-approved by Cooley and augmented with the technology suite from Carta. They no longer send emails back and forth, but just pick a specific bundle. If founders encounter a specific legal problem, they already have a point of contact for legal advice from Cooley within the software while Cooley already has all relevant data for said advice. As such this product combines expertise on law with technology and uses a new design and delivery mechanism for legal services.

Alternative legal service providers (ALSPs) or law companies are non-law-firm providers of legal services. Bruno Mascello mentioned Elevate, Axiom and Unitedlex as examples for standalone law companies. Some ALSPs, called captive ALSPs, are owned by a law firm. They often engaging in tech consulting, operational consulting, compliance with use cases in the Know-Your-Customer, Anti-Money-Laundering and Counter-Terrorism-Financing domain or ESG.

In another twist, the German market has recently witnessed the emergence of mass litigation defense units as another type of legal providers. They were caused by a strong increase in mass litigation following the Volkswagen scandal (though other car manufacturer also mass defrauded their customers as a reaction to a very large number of cases filed by claimant attorneys, these companies were looking for legal providers, who could handle tens and hundreds of thousands of cases for them. While they initially started with a wide array of law firms, these firms over time launched specified subsidiaries. Most of them are not organized as law firms or even as a partnership and have as many employees from the tech side as they do have legal professionals. This is because handling tens and hundreds of thousands of cases requires both operational and technological expertise.

On the client side, we have witnessed massive insourcing leading to increasingly large teams of in-house attorney at many companies. This, in turn has led to the need for management and operational improvement. The resulting professionalization of the in-house function is referred to as *legal operations*. What started with a couple of legal professionals in highly regulated industries about a decade ago has grown into a movement of thousands of people worldwide. The Corporate Legal Operations Consortium (CLOC) annual institute – an industry meeting and trade show – is a massive event filling some of the larges conferences spaces in the US. Typical activities and tasks of legal operations professionals include vendor, risk and knowledge management, financial planning and budgets, as well as technology landscaping, acquisition and implementation. They do this using a variety of technological approaches including data analytics and collaboration software. Approaches include process improvement and ideation methodologies such as Six Sigma and Design Thinking. Legal Operations has been shown to lead to tangible results in terms of cost effectiveness, efficiency, higher work quality and better talent retention.

There are estimates showing that introducing legal operations can lead to significant increases in key performance indicators and happier employees. Let's turn to a case study for a moment: JASON BARNWELLis the general manager for Digital Transformation of Corporate External and Legal Affairs at Microsoft. He conducted an experiment called the Microsoft Trusted Advisor Forum, where Microsoft asked all their panel law firms to come together and present an idea on how they could change the way they deliver legal services to Microsoft. Their market position as the best lawyers could get them on the panel. But once they were on the panel, Microsoft wanted to hear what they would do differently from their competitors. To make things a little more interesting, they should not only tell Microsoft, but also all their competitors working for Microsoft. The story goes that out of all providers only ¾ actually followed the invitation while the remaining slots were then quickly filled with alternative providers. After an enthusiastic initial presentation, the process has proven to require a lot of continued investment for all sides. While the outcome is still evaluated, this is a clear example of a client that is explicitly demanding a service, which goes beyond traditional legal advice or in Microsoft's words: "Innovation that demonstrably improves legal service delivery".

Another example is Merck, originally a German pharma company, a global corporation with a very forward-looking general counsel, who has invested in legal operations skills and built a contract management system, which they are now offering to other in-house departments. From a law firm's perspective suddenly, your clients become your competitors. Contract lifecycle management is something that law firms used to handle for their clients. Now the clients are selling software to other potential clients for this. It is obvious that this is highly relevant for the market of transactional legal services.

For legal professionals primarily active in the courts, here is an example for digitalization from the German judiciary today. There are a few dispersed, outdated solutions for interaction with the court, including is a dedicated email service for lawyers, the high cost of which (about 40 Mio. Euro) has made it somewhat famous. From a technology perspective the judiciary has been dormant for a long time, when even mere video hearings were difficult to impossible to conducts. However, this is rapidly changing with a new political appetite for change and digitalization.

There are a number of highly individual projects such as chatbots for court registries, automatic machine learning-based anonymization of court decisions, digital labor law courts etc. which bear witness to this development. Currently, there is discussion on fully virtual, online hearings, for certain civil

law claims and there is a proposal of video documentation of criminal law proceedings. While these are mere prototypes now, they will lead to tangible justice reforms. More importantly they demonstrate that there is suddenly a government, which sees value in digitalization. The current ruling coalition party sees potential to gain political capital by digitalizing the justice system and there is a wide-scale debate about it, much more than there in the past.

It is very likely that Germany will continue to travel in this direction over the next five to ten years. Some of the existing solutions will be improved. They will be integrated into a joint system. There will be additions, like a legal solution explorer and other self-service tools for parties. There will be online proceedings for different types of claims. Much hardware and software will be updated and specifically built for this.

For our purposes the most important takeaway is, that someone in the judiciary must make this a reality. IT in a typical court setting is like facility management today, not a very attractive job a more of a sanity factor for judges and clerks. This is changing. Within the judiciary, more and more people who emphasize digitalization, can build a career on it. As a result, digital justice is becoming an interesting topic for young judges, who often bringing in more experienced IT professionals. Increasingly, digital skills play a role in the training courses for future judges.

This accelerating pace in justice digitalization naturally has effects on lawyers, who work primarily in civil and criminal litigation. They will have to figure out how to navigate a world, in which at least some proceedings may not require lawyers' participation anymore: The Civil Resolution Tribunal in Canada, which handles specific types of claims fully digitally and without the involvement of a lawyer is an example for a court, in which this is already taking place. While this sounds scary at first, there may also be profits from a new digital capability of courts as lawyers who embrace digitalization no longer hit a barrier when matters go to trial. In summary, digitalization has reached the judiciary in many parts of the world adding to a context of increased complexity in all parts of the legal profession.

For the final part, let us look at the content of continuing legal education on digitalization. I believe the foundation should be a thorough technical understanding and interdisciplinary readiness. Lawyers do not need to get a Ph.D. in computer science. However, they need to be capable to meaningfully in an interdisciplinary setting and should understand what computers can and cannot do. Most recently, lawyers should develop an intuition how to answers questions such as "How is Chat GPT going to change X, Y and Z?"

The second part concerns the business of law: strategy, governance, budgeting, leadership etc. These are some of the parts that – when you think back to BRUNO MASCELLO'S presentation – are more towards the mature end. But obviously, when integrating a new case management system in the courts or building a new tool for a practice, as Cooley has done, change, process and project management become equally important.

The third part is technology law as it provides the legal framework for many current developments. Companies and lawyers are increasingly willing to adapt law to existing technology. A lot of recent legal innovation for example around digital hearings in the judiciary were possible because people had the opportunity to experience first-hand an easy technology solution such as Zoom during the pandemic. Turning interim solutions into permanent, robust ones now requires a certain degree of technical understanding on the part of the legislator.

Those are the three pillars, the three types of skills I advocate for. Some of them being vast fields of knowledge, this begs the question how any level of understanding can be achieved by lawyers? For the foundations of technology, this should happen at the university level as this is typically the only place where people have sufficient time to understand them. At Bucerius Law School, we start with an introduction to Computer Science without programming and very little mathematics. We teach computer architecture, algorithmics and concepts of computer science. This content takes time to learn, and it is rather difficult, even more so since it requires different skills than a traditional law curriculum. This is also what makes learning it "on the job" incredibly difficult as it is far removed from the everyday business of legal practice.

This is equally true for our second class: Programming. At Bucerius Law School this is an introductory class to the programming language Python. It is important to note that law students do not train to become professional software developers. Rather, they are given time to think through the concepts from algorithmics, apply them to real world problems, write some actual code and familiarize themselves with a development environment.

Our third class, an introduction to Data Science contains entry-level statistics without mathematical proofs but with applications to legal problems. While the class won't make you a statistician, it is designed to provide data literacy. It covers mostly descriptive statistics and stops short of Bayesian concepts.

Finally, we teach an interdisciplinary, collaborative class with the Computer Science department at the University of Hamburg. It is designed for law students with some prior knowledge and an idea for an application in the legal technology space. They join computer science students in a software development internship to build and present a first prototype of the software. While the result won't we working programs, both student groups develop an understanding for the other discipline and learn to work together in a team.

Finally, our class on regulating technology, technology law and ethics is more on the legal side of the spectrum. Students discuss current technological developments from a technical, legal and ethical side. They examine existing laws and regulations and look for optimization potential and underlying technical misunderstandings.

Many of these topics could also be taught in continuing legal education but I would caution against it as the time from learning to being able to apply the content meaningfully is too long. When a senior associate comes back from a weekend at the University of Zurich, the firm having paid a significant amount for, the partner is likely going to ask: How does what you learned apply to our business? If the answer involves Dijkstra's algorithm's usefulness for navigating through a network, it is not very likely that the firm is going to book another class. Therefore, when we teach Introduction to Programming to lawyers, it has to be geared more towards practice: How could it be applied it in budget analysis, how you use it for designing research systems and how to integrate it into existing processes? While we have a rather successful programming workshop for current lawyers, it does not go as deep as the classes mentioned above.

Other topics such as technology landscaping are much more important for practitioners. The usefulness is obvious: As a lawyer you have to know what technology is out there. The diversity of legal technology providers can be intimidating. The tech index at Stanford CodeX lists more than 2000 providers. Making sense of this for attorneys in all different types of contexts, classifying what types of solutions and software are available and how they can be used is something that sells rather well in a professional education context. From a provider's perspective it is an intriguing product as it should be repeated regularly – every six to twelve months ideally – to be most useful.

There is another field of products in executive education, which I classify as "Big Picture". One example would be the Bucerius Open Innovation Lab. It brings people in leadership positions from different parts of the market such as general counsels, managing partners and legal startups together to discuss

industry trends. They tackle questions such as: What does digitalization mean for your firm? How do you compare to your competitor? What do clients think about? How do law firms price innovation products? All these point to un- solved problems, so there is a market for people who want to think about this jointly under some guidance. This is for people who want to think through the strategic implications of this changing world for their business, who want to develop and test ideas and who want to be able to – whenever that happens – ask someone who is knowledgeable about the market. Would a specific idea work? Would you buy this? Would you consider developing this together?

While this is a rather successful product for a traditional continuing legal education setting, it sometimes crosses into consulting. For our subsidiary this means developing capabilities on consulting on legal operations, law firm management or product development.

For similar providers, there is an entire market for universities, law societies or bar associations. Building and providing expertise on digital legal services is a commodity in strong demand. So, while legal tech landscaping is on the lower end of the spectrum, this is a more difficult offering to design, but something that lawyers would obviously buy as a CLE product at rather attractive rates.

For an academic scholar of the legal profession being involved in these pro- grams is both challenging and exciting. It provides very useful data for applied research as I hear from people in the field and get unfiltered knowledge about what they are interested in, where their problems lie and what they intend to solve them. Oftentimes I can instantly take their comments, write up case studies and integrate them into my classes. This is of immense value: If we want to prepare students for practice, we must know what people in manage- ment positions worry about. We want to know what skills senior associates lack. We want to know where the industry is headed. These insights feed into the greater university curriculum as well, hence making it a very productive way to spend time.

I will end with some remarks on how we deliver these educational offerings. One thing that we have developed inhouse at the school and for which we are about to establish a separate company is *dskrpt* – a platform for text-based le- gal education. For a while university believed that we had it all figured out with videos and podcasts. But our most important teaching materials still come in PDF form. PDFs are static, collect no data about their usage and are somewhat inflexible. This is why we were unhappy with their role to provide students with texts in both a university and a continuing legal education setting.

It took us about two years to build *dskrpt*. Now you get this sleek, modern looking application that has all your materials in one place and stores them. So, if you want to go back to that seminar five years ago you will find it there. It is very text-centric and text-based. You can mark the text up, you can chat with other people that were in the seminar, you can chat with the instructor right next to the text and anchored to the relevant parts of it. In addition, court decisions, statutes and other materials are integrated in the same interface. In the future, the main purpose of this platform is to gather user interaction data and to see what helps people and what they understand easily, to give feedback to the people writing these materials and to hopefully be able to use machine learning to guide people and create more individualized types of materials.

The second product I want to share is Bucerius Legal Tech Essentials. It is an unusual offering for Bucerius Law School because it is entirely free to participants. As we believe that education has a value we normally always charge for our classes. During the pandemic however, we started this massive open online course for which you could just sign up and participate from our living room. You would hear from people in the innovation field, in legal operations, in legal tech, founders of legal tech companies, regulators, bar associations and legislators. Both lecturers and participants had an opportunity to connect with each other and leave the solitude of lockdowns all over the world.

While we did not intend it, this turned out to be the greatest brand building and marketing tools that you could possibly imagine. From 2020 to 2022, we a hand over 12'500 participants from over 120 countries. In marketing terms these are high quality leads. Participants really liked it, and our net promoter score is extraordinarily high (85,58) while the median overall satisfaction is 10/10. For a continuing legal education provider, it had additional benefits: It was a way of keeping in touch with our lecturers and try out new ones at very little cost in both a normal and continuing educational context. But it also had very tangible results for us: Participants have gone on to take part in fee-based programs such as our Summer Program Legal Technology and Operations, our Master Program and Executive Education offerings. If you count raw participant numbers Bucerius Law School reached more people during these three years than during its entire history.