

## Analyzing the Role of Artificial Intelligence in the Legal Fiction

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### Abstract

*Artificial intelligence (AI), used hereinafter, is the novelty and vicissitude of the 21<sup>st</sup> century. AI is integrating in every facet of our life with a swift stride. The AI is utilized in wide range of fields such as, medical, business, Music industry, poetry writing, film making, designing industry, law enforcement and numerous other. As an outlandish entity, it flummoxes the law and the same can be perceived from extensive array of case laws around the globe apiece dealing and approaching the AI in quite unique manners. None of the legal systems discerns that precisely how the same should be dealt with. Consequently, for anterior few decades, handful of legal intellectuals agitated the point that AI should be cogitated for legal status. In this work, the principal theme of discourse is AI as a conceivable contesting candidate for the seat of legal personality. In this respect, same is considered utterly in the light of fiction theory. The research article will endeavor to answer the query that whether Fiction theory can be used to substantiate/ support AI as a candidate for legal status? If not, then what nature of alterations we need to make in the orthodox view of the fiction theory so to make it adept to confirm with this novel case of AI. The research methods espoused are that of descriptive, comparative, analytical and critical nature. To certain point reliance is also made on the dialectic approach. At the very end, article commends that fiction theory needs few trifling changes in its timeworn view in order to make it applicable to the newfangled case of AI and, at this point, application of the conventional view to AI is not a viable and practical option.*

**Keywords:** *Artificial intelligence, Fiction theory, legal person, law.*

## 1- Introduction

As Einstein articulated “Logic will get you from A to Z; imagination will get you everywhere.”<sup>1</sup> Imagination is free from the manacles of reality. In the realm of imagination anything is feasible. It makes us achieve remarkable feats. Fiction whether in literature or in other fields owes its subsistence to the demesne of imagination. Its feet touches the turf of imagination world, at the same time its body lies in the realm of reality. Fiction can be called the linking bridge amid the reality and imagination as it unites the two together. The Domain of law is not an exception. It is also beneath the shadow of this realm. Morsels and smidgens of fiction can be found in it.<sup>2</sup>

Fiction theory is one of the legal theories which deals with the fiction in legal province. It deals with fiction in case of persons only. This theory reckons that legal person can be fashioned and personality can be bestowed upon the same creation by mere legal fiction as per the wishes of law.<sup>3</sup> In case of corporation, the theory holds the view that there exists double fiction, first one is for creation of personality and the second one is for creation of fictitious will for the same. Legal person being just a mere stretch of imagination can be endowed to any entity if the law wishes so.<sup>4</sup> These are the kind of tenets which the fiction theory upholds and endorse.

Today, in this dawn of technological age, Artificial intelligence (AI is used hereinafter) stands in the similar place as corporation was standing few centuries ago. AI can be defined as the “Intelligence demonstrated by a machine or by software”.<sup>5</sup> AI is the contemporary contender contesting for the seat of legal personality as corporation then was. Significance of AI can be inferred from the datum that it is covering all the fields in its ambit. Its impact and role can be spotted in medical, engineering, music, films, law enforcements, space sciences and in myriad number of other domains.<sup>6</sup> Now, the question is, can fiction theory did what it did in case of

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<sup>1</sup> Goodreads, "A Quote by Albert Einstein," Goodreads | Meet Your Next Favorite Book, <https://www.goodreads.com/quotes/2837-logic-will-get-you-from-a-to-z-imagination-will>, accessed November 24, 2022,

<sup>2</sup> Maksymilian D. Mar, *Legal Fictions in Theory and Practice*, ed. William Twining (Basingstoke: Springer, 2015), 05.

<sup>3</sup> Katsuhito Iwai, "Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance," *The American Journal of Comparative Law* 47, no. 4 (Fall 1999): 608, accessed November 24, 2022, doi:10.2307/841070; Savigny and Rattigan, *Jural Relations*, 180, 204, 205.

<sup>4</sup> Susanna K. Ripken, *Corporate Personhood* (Cambridge: Cambridge University Press, 2019), 07; John W. Salmond, *Jurisprudence* (London: Stevens and Haynes, 1913), 280.

<sup>5</sup> Calum Chace, *Surviving AI: The Promise and Peril of Artificial Intelligence* (Three CS, 2015), 14.

<sup>6</sup> Yogesh K. Dwivedi et al., "Artificial Intelligence (AI): Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy," *International Journal of Information Management* 57 (2021): 1-2, <https://doi.org/10.1016/j.ijinfomgt.2019.08.002>, accessed November 25, 2022.

corporation back then? Can it apply to or rationalize AI as a viable candidate for legal personality? Can the erstwhile orthodox view of the fiction theory, as it is, can be applied to the instance of AI? All these queries are of vital prominence and can assist us further in a veracious direction.

## 2- From Folios of The Fiction Theory

Fiction theory, or the fictitious personality theory, was the leading theory propounded to expound the notion of the legal person or, to be more definite, that of corporate personality.<sup>7</sup> The artificer of the idea of a fictitious person (*persona ficta*) was Pope Innocent IV.<sup>8</sup> He, for the first time, used this expression in the year 1243.<sup>9</sup> As the name of the theory itself signifies, this theory advanced the proposition that a legal person/personality is the creation of mere legal fiction.<sup>10</sup> It has no palpable or natural existence. Due to the want of natural existence in the case of legal personality, this theory also came to be known as “Artificial personality theory”. This theory is also the lynchpin of the view that legal persons are the creation of the state’s law, and a legal person is born the moment the law of a state grants it legal recognition as a person.<sup>11</sup> The state holds power and discretion to grant legal personality and ascribe rights and liabilities therewith.<sup>12</sup> For the similar reason, the fiction theory is occasionally called the “Grant theory”.<sup>13</sup> There are three leading proponents of this theory, namely, Carl von Savigny, John Salmond<sup>14</sup> and Thomas Erskine Holland. The birthplace of this theory is Germany, where around the first half of the 19th century, Savigny laid the foundation of this theory.<sup>15</sup> However, the roots of this theory can be traced back

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<sup>7</sup> R. Harris, "The Transplantation of the Legal Discourse on Corporate Personality Theories: From German Codification to British Political Pluralism and American Big Business," *Washington and Lee Law Review* 63, no. 4 (Fall 2006): 1424, <https://scholarlycommons.law.wlu.edu/wlulr/vol63/iss4/7>, accessed November 14, 2022.

<sup>8</sup> George W. Paton, *A Textbook of Jurisprudence*, ed. David P. Derham (New York: Oxford University Press, 1972), 410; Visa A. Kurki, "Legal Person," *Encyclopedia of the Philosophy of Law and Social Philosophy*, February 2020, 05, doi:10.1007/978-94-007-6730-0\_810-1, accessed November 26, 2022.

<sup>9</sup> R. W. Dias, *Jurisprudence* (New Delhi: Butterworth & Co (Publishers) Ltd., 1985), 268.

<sup>10</sup> P. J. Fitzgerald, ed., *Jurisprudence* (Lahore: PLD Publisher, 2014), 169.

<sup>11</sup> Harris, "The Transplantation of the Legal Discourse" 1424.

<sup>12</sup> Krishna Bahadur, "PERSONALITY OF PUBLIC CORPORATION AND LIFTING THE CORPORATE VEIL," *Journal of the Indian Law Institute* 14, no. 2 (April/May 1972): 209, <https://www.jstor.org/stable/43950130>, accessed November 25, 2022.

<sup>13</sup> Harris, "The Transplantation of the Legal Discourse" 1424.

<sup>14</sup> Dias, *Jurisprudence*, 268.

<sup>15</sup> V. D. Mahajan, *Jurisprudence and Legal Theory* (Lahore: Law Book Publishers, 1987), 390; Arthur W. Machen Jr., "Corporate Personality," *Harvard Law Review* 24, no. 4 (February 1911): 255, accessed November 18, 2022, <https://www.jstor.org/stable/1324056>; E. A. Quintana Adriano, "The Natural Person, Legal Entity or Juridical Person and Juridical Personality," *Penn State Journal of Law & International Affairs* 04, no. 01 (December 2015): 379, <https://elibrary.law.psu.edu/jlia> accessed November 10, 2022, Paton, *A Textbook of Jurisprudence*, 410.

to the Roman Empire and the times when papal authority use to burgeon.<sup>16</sup> Shortly, after Savigny, his views were reinforced by numerous scholars around the globe, i.e. Salmond and Holland and many others. For further diluting on the conception of fiction theory and to comprehend the essence of this theory, the work of Savigny and Salmond will be brought under brief contemplation.

Savigny deems of hominids as the only beings capable of legal personality in the natural sense as they are the only beings upon whom the same is bestowed at very birth.<sup>17</sup> However, in his work, he also advances this point that in this suggestion the positive law made two modifications.<sup>18</sup> Here we can also refer to the same as exceptions. The first exception is that the law may, sometimes, divest an individual of some rights and privileges due to some blemish in his personality or even sometimes deny to recognize a human being as a person at all in the eye of the law.<sup>19</sup> The Second exception is that law occasionally extends the title of the person to something not by nature and complexion a human at all.<sup>20</sup> This second exception is the point of our concern at this juncture.

Savigny believed that the notion of person is extended to artificial beings as a result of pure fiction<sup>21</sup> to whom we call a juristic person or, in the words of Savigny, a juridical person. We did this to control the juridical affairs of the same artificial beings.<sup>22</sup> For him, juridical persons are just simple subjects who can own or have rights over property.<sup>23</sup> Capacity to property was the sole base upon which the edifice of Savigny's juridical person rests.<sup>24</sup> As per Savigny's conception, juridical persons can be naturally or artificially subsisting legal persons.<sup>25</sup> The endowment of a juridical personality is not subject to a capricious will of a person or persons. However, it can only be bestowed upon an entity when the sovereign desires so, either in express terms or tacitly<sup>26</sup> for

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<sup>16</sup> Dias, *Jurisprudence*, 268.

<sup>17</sup> Quintana Adriano, "The Natural Person," 379; Friedrich K. Savigny and Sir W. Rattigan, *Jural Relations: Or, The Roman Law of Persons as Subjects of Jural Relations : Being a Translation of the Second Book of Savigny's System of Modern Roman Law* (London: LINCOLN'S INN ARCHWAY, W.c.,Law Publishers, 1884), 2.

<sup>18</sup> Savigny and Rattigan, *Jural Relations*, 2; Quintana Adriano, "The Natural Person," 379

<sup>19</sup> Savigny and Rattigan, *Jural Relations*, 2, 17.

<sup>20</sup> Savigny and Rattigan, *Jural Relations*, 2; Bahadur, "Personality of Public Corporation, 207;

<sup>21</sup> Savigny and Rattigan, *Jural Relations*, 224; Quintana Adriano, "The Natural Person", 379; Bahadur, "Personality of Public Corporation, 207.

<sup>22</sup> Savigny and Rattigan, *Jural Relations*, 176. Quintana Adriano, "The Natural Person," 379

<sup>23</sup> Savigny and Rattigan, *Jural Relations*, 179,209.

<sup>24</sup> Quintana Adriano, "The Natural Person", 379.

<sup>25</sup> Savigny and Rattigan, *Jural Relations*, 180; Bahadur, "Personality of Public Corporation, 207.

<sup>26</sup> Savigny and Rattigan, *Jural Relations*, 204,205; Bahadur, "Personality of Public Corporation, 207.

specific purposes.<sup>27</sup> According to Savigny's notion, unlike a natural person, the ideal being, like a corporation's will or volition to act or perform, is provided by the very constitution of the same as mere fiction<sup>28</sup> and has no existence in reality.<sup>29</sup> At the same time, the will or volition of the juridical person is more confined and circumscribed to the extent demarcated and laid down at the time of its conception or constitution.<sup>30</sup> Thus, the will and volition of the members aggregate differ from the will and volition of the corporation they are forming part of.<sup>31</sup> Because the former naturally exists while a mere stretch of the imagination awards the latter at the time of its institution to it.

Salmond expounded that the concept of personality is not so narrow to encompass humans only. According to him, not just in the legal sense but in the mundane and widespread sense also, the expression "personality" can sometimes signify persons who are not humans at all.<sup>32</sup> Being a person and being a human are two different and distinct things.<sup>33</sup> Because the word "person" can be considered the unit used by the legal system for introducing logic to the system, such as "one" is used as a unit in arithmetics, i.e. one banana. In this case, "one" as an independent unit cannot be confined just to mean banana. Similarly, "person" just being a mere unit of a legal system is independent of human.<sup>34</sup> The word "person" thus cannot just mean humans. It can be used by the law to denote other entities, just as the "one" can be used in arithmetics to count other things besides bananas. It is not an unqualified necessity that the former must follow the latter in its course, nonetheless, instead, there can be moments of aberration.<sup>35</sup> On the same basis, Salmond and numerous other jurists defined a legal person to be an entity which has the legal competence to have rights or duties.<sup>36</sup> Thus, in the eyes of the law, person/personality is not something to be concerned with humanity or being human.<sup>37</sup> But instead the yardstick for determining whether an entity is a legal person or not is to look for the capacity of having rights or duties, the only criteria

<sup>27</sup> *Braithwate and Co. v. E.S.I Corpn.*, A.I.R 1968 S.C 413, at 416; Savigny and Rattigan, *Jural Relations*, 231; Krishna Bahadur, "Personality of Public Corporation, 207.

<sup>28</sup> Savigny and Rattigan, *Jural Relations*, 232.

<sup>29</sup> Savigny and Rattigan, *Jural Relations*, 210.

<sup>30</sup> Savigny and Rattigan, *Jural Relations*, 233; Quintana Adriano, "The Natural Person," 379

<sup>31</sup> Savigny and Rattigan, *Jural Relations*, 210,211.

<sup>32</sup> Salmond, *Jurisprudence*, 272; Bahadur, "Personality of Public Corporation, 207; Mahajan, *Jurisprudence and Legal Theory*, 377.

<sup>33</sup> Salmond, *Jurisprudence*, 272; Paton, *A Textbook of Jurisprudence*, 392, 394.

<sup>34</sup> Paton, *A Textbook of Jurisprudence*, 394.

<sup>35</sup> Paton, *A Textbook of Jurisprudence*, 393.

<sup>36</sup> Salmond, *Jurisprudence*, 272; John C. Gray, *The Nature and Sources of The Law; The Carpentier Lectures* (New York: The Columbia University Press, 1909), 27; Arthur R. Peacocke, Grant Gillett, and Ian R. Centre, *Persons and Personality: A Contemporary Inquiry* (Oxford, UK ; New York, NY, USA: B. Blackwell, 1987), 122; Paton, *A Textbook of Jurisprudence*, 391; Bahadur, "Personality of Public Corporation, 217; Kurki, "Legal Person," 05.

<sup>37</sup> Mahajan, *Jurisprudence and Legal Theory*, 378.

with which the law concerns itself as per the conception of Salmond and contemporaries.<sup>38</sup> To the corporations, law extend the personality by pure legal fiction and thus, it is a fictitious person<sup>39</sup> in the eye of law due to its legally bestowed capability to have rights and duties.<sup>40</sup> Corporation, simpliciter, is a creation of mere legal fiction.<sup>41</sup> For the sake of ease, in law, person is further classified as a natural and legal person.<sup>42</sup> Natural persons are those who, by their very nature have the traits of personality in them and the law only gives its assent to what is already existing in truth and reality.<sup>43</sup> On the other hand, in the case of a legal person, the entity might be real or a mere stretch of the imagination to whom the law award attributes of personality which otherwise have none in reality or naturally. A kind of personality the forte of which is entirely derived from legal fiction.<sup>44</sup> The legal person are also known as juristic person, artificial person or juridical person. All the aforementioned terms are used interchangeably to denote the same class of entities.<sup>45</sup>

According to Salmond, the first requisite for ascribing legal personality is to personify something real and prevailing and then to bestow upon the same a fictitious personality.<sup>46</sup> At the same time, he was of the view that, in theory, personification is not required at all and law can assign a fictitious personality to a being which purely exists on the canvass of our imagination only, but in practice, it is not so. Therefore, a legal person is composed of a “Corpus”, which is a real thing personified and “animus”, the fabricated personality imbued into the thing personified.<sup>47</sup> The indispensable corollary here is that all legal personalities must contain personification as an unqualified component.<sup>48</sup> Elucidating further his point of contention, Salmond laid down that personification is not the only component of legal personality because, by mere personification, a thing is not awarded legal personality. However, the same is awarded the moment law recognizes the thing personified as a legal subject.<sup>49</sup> Similarly, in the case of corporations, the corpus consists of a pack of individuals working as a group in unison personified.<sup>50</sup> At the same time, the animus

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<sup>38</sup> Mahajan, *Jurisprudence and Legal Theory*, 378; Salmond, *Jurisprudence*, 272; Paton, *A Textbook of Jurisprudence*, 391.

<sup>39</sup> Mahajan, *Jurisprudence and Legal Theory*, 388; Gray, *THE NATURE AND SOURCES OF THE LAW*, 47, 48.

<sup>40</sup> Bahadur, "Personality of Public Corporation, 217; Mahajan, *Jurisprudence and Legal Theory*, 384.

<sup>41</sup> Salmond, *Jurisprudence*, 272; Mahajan, *Jurisprudence and Legal Theory*, 384-385.

<sup>42</sup> Mahajan, *Jurisprudence and Legal Theory*, 384; Salmond, *Jurisprudence*, 273; Kurki, "Legal Person," 01.

<sup>43</sup> Paton, *A Textbook of Jurisprudence*, 410; Salmond, *Jurisprudence*, 273; Mahajan, *Jurisprudence and Legal Theory*, 384.

<sup>44</sup> Salmond, *Jurisprudence*, 273, 279; Mahajan, *Jurisprudence and Legal Theory*, 384.

<sup>45</sup> Kurki, "Legal Person," 03; Fitzgerald, ed., *Jurisprudence*, 168.

<sup>46</sup> Mahajan, *Jurisprudence and Legal Theory*, 385; Salmond, *Jurisprudence*, 279; Fitzgerald, ed., *Jurisprudence*, 168.

<sup>47</sup> Fitzgerald, ed., *Jurisprudence*, 169; Salmond, *Jurisprudence*, 279; Mahajan, *Jurisprudence and Legal Theory*, 385.

<sup>48</sup> Salmond, *Jurisprudence*, 279; Mahajan, *Jurisprudence and Legal Theory*, 385.

<sup>49</sup> Salmond, *Jurisprudence*, 280.

<sup>50</sup> Salmond, *Jurisprudence*, 280; Mahajan, *Jurisprudence and Legal Theory*, 385.

is that specific personality or legal capacity attached by the law to the same corpus.<sup>51</sup> Hence, in the eyes of the law corporation is a totally distinct person than its members individually or in aggregate.<sup>52</sup>

In the case of corporations, there are two facets of it. First is the corpus, which is composed of natural beings such as humans. This specific aspect of the corporation is the tangible and perceptible one, which can be seen, touched and felt by all the hominids. The second aspect is the animus, the unique personality of the corporation. This can be called the premium aspect of the corporation because only a limited class of human beings, e.g. lawyers etc., knows about it and understands it. The first aspect, namely corpus, in other words, human beings are subject to natural death, and they can die and perish at any moment. In a more straightforward form, it can be said that the corpus of a corporation is perishable.

On the other hand, the animus, i.e. fictitious personality being a pure creation of law, is not subject to death as the corpus. It can survive and flourish for eternity.<sup>53</sup> Even though if all of its members perish, it still remains the very same legal person intact and functional<sup>54</sup> because the very essence of this legal person lies in the “animus”, not in the “corpus” of the corporation.<sup>55</sup> Salmond used the term “dissolution” for the death of a corporation.<sup>56</sup> The only way which can cause death of a corporation as a legal person is by law or legal system.<sup>57</sup> Law being the author of this personality is the sole authority to decide its fate. Law can put an end to this personality either by dissolving it through an act of parliament or a court’s decision or by laying down a specific procedure for the dissolution of it or in other way prescribed.<sup>58</sup>

Further diluting on the topic, Salmond alleged that even though a corporation has a fictitious personality, the rights, duties and liabilities attached to it are genuine and occur in the real world. This is an acknowledged fact that a corporation is recognized as a legal person just for

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<sup>51</sup> Fitzgerald, ed., *Jurisprudence*, 170.

<sup>52</sup> Machen Jr., "Corporate Personality," 253,258; Salmond, *Jurisprudence*, 282; R. W. Dias, *Jurisprudence* (New Delhi: Butterworth & Co (Publishers) Ltd., 1985), 254; Mahajan, *Jurisprudence and Legal Theory*, 385, 386, 387, 388, 389, 390; Salomon v A Salomon and Co Ltd [1897] AC, 22; Paton, *A Textbook of Jurisprudence*, 404; Bahadur, "Personality of Public Corporation, 218.

<sup>53</sup> Salmond, *Jurisprudence*, 293; Dias, *Jurisprudence*, 251; Mahajan, *Jurisprudence and Legal Theory*, 386; Dias, *Jurisprudence*, 255.

<sup>54</sup> Salmond, *Jurisprudence*, 293; Mahajan, *Jurisprudence and Legal Theory*, 386,388, 391; Fitzgerald, ed., *Jurisprudence*, 171,172.

<sup>55</sup> Salmond, *Jurisprudence*, 293-294.

<sup>56</sup> Salmond, *Jurisprudence*, 293.

<sup>57</sup> Bahadur, "Personality of Public Corporation, 217; Salmond, *Jurisprudence*, 293.

<sup>58</sup> Salmond, *Jurisprudence*, 284, 293; Paton, *A Textbook of Jurisprudence*, 406; Dias, *Jurisprudence*, 253; Fitzgerald, ed., *Jurisprudence*, 172.

ease and the public good. In reality, it is the interest of a group of persons in a collectivity that is vested and represented through a corporation as a single legal being. In antithesis, the corporation also needs natural persons as representatives in the world of reality to represent and help the corporation interact in the real world.<sup>59</sup> From here, it can be implied that the corporation cannot have an interest as a legal being that is not the interest or for the benefit of the group of people it represents in collectivity. Therefore, the will of the corporation is mainly the collective will of its members, the acts of its members are the acts of the corporation, and the property held by a corporation is, at the very heart, the property of the members.<sup>60</sup>

Succinctly, to sum up everything, the fiction theory is the upholder of the view that in the case of legal persons, the personality so bestowed upon things, either real or imaginary,<sup>61</sup> is the sole prerogative of the law and law can award personality to it whenever it pleases so<sup>62</sup> or it feels the need for the same. Thus, the personality of a legal person is a mere fabric of legal fiction.<sup>63</sup> This fictitious personality being a sheer fiction has no existence in the tangible world. However, it is only perceptible to the law, and because of the same legal recognition, it stands tall as a person in the court of law. In the case of legal persons, law plays the central role because the law, the author and creator of this fiction, controls not only the creation but also the existence, survival and death of the very beings. So, the entire edifice of the fiction theory is erected on the conception that the idea of the “legal person/personality” is centrally powered by the law or the legal system. Therefore, without the backing of the law, there is no concept of legal personality, and there exists no legal person.

### 3- Research Analysis

“Artificial intelligence” is one of the potential candidates for the seat of legal status in today’s legal systems. The folios of the recent past hold some strewn words of numerous scholars who raised the idea of granting legal status to AI. In the bygone times, akin cases like the present AI were the innovation and novelty of its time and haunted the legal world and scholars. Corporations were one of the cases which were, in the end, recognized as a legal person by the law.<sup>64</sup> Fiction

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<sup>59</sup> Salmond, *Jurisprudence*, 285.

<sup>60</sup> Salmond, *Jurisprudence*, 286.

<sup>61</sup> Fitzgerald, ed., *Jurisprudence*, 168.

<sup>62</sup> Ripken, *Corporate Personhood* (Cambridge: Cambridge University Press, 2019), 07.

<sup>63</sup> Paton, *A Textbook of Jurisprudence*, 410.

<sup>64</sup> Bahadur, "Personality of Public Corporation, 207.



theory was one of the theories put frontward for the theoretical backing up of the corporation's legal status.<sup>65</sup> Currently, here the question of our concern is whether the same fiction theory can be used to provide the theoretical backup for the legal status of AI. Or does it need some modifications? A query worthy enough to catch the attention of an intellectual mind.

The foremost contention of the fiction theory is that the legal personality is absolutely based on fiction and imagination; in reality, there is no such thing with such a personality.<sup>66</sup> In other words, it is the pure creation of legal imagination.<sup>67</sup> The same legal personality can be ceded to any entity if the law covets.<sup>68</sup> Savigny and Salmond laid down that there must be a corpus in which the law suffuses the animus (legal personality) of a fictitious person.<sup>69</sup> As per this proposition, the substantial form/body is a necessary constituent for the creation of a legal person. Nevertheless, being a necessary requirement means that a legal person cannot exist without it. Thus, if there is no corpus, it connotes there is no legal person. However, in practice, this is only sometimes the case so. Corpus is not always an indispensable prerequisite for a human or legal person to be recognized as such by the law. In other words, it is the animus, personality or soul or mind<sup>70</sup> for which the term “essence” will be preferred in this work, which is the critical ingredient in the eyes of the law for a person to be recognized in law. Now, if corpus is the necessary requirement, then why does the law fail to recognize the dead human as a legal subject because it still has the corpus, what is missing is the essence of the human being. In a totally inverse case, if a human being is alive, it means having essence (animus). However, the body is paralyzed, i.e. the case of the famous Stephen Hawkins,<sup>71</sup> or in another scenario, if all the limbs are amputated, and only the trunk of the body remains. It means that the body will be unable to execute any activities capable of creating rights or performing duties, but still, the law did not strip off the person of his

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<sup>65</sup> H. Wang and Ke Chin, "The Corporate Entity Concept (Of Fiction Theory) in the Year Book Period," *LQ. Review* 58, 1942, 498, <https://heinonline.org/HOL/LandingPagehandle=hein.journals/lqr58&div=44&id=&page> accessed November 25, 2022.

<sup>66</sup> Bahadur, "Personality of Public Corporation, 208; Fitzgerald, ed., *Jurisprudence*, 168.

<sup>67</sup> Paton, *A Textbook of Jurisprudence*, 391, 410.

<sup>68</sup> Iwai, "Persons, Things and Corporations", 608; Salmond, *Jurisprudence*, 2800.

<sup>69</sup> Mahajan, *Jurisprudence and Legal Theory*, 385; Salmond, *Jurisprudence*, 279; Paton, *A Textbook of Jurisprudence*, 410.

<sup>70</sup> The terms are used in the loose sense possible and the philosophical differences which exists between the terms must be avoided here.

<sup>71</sup> Stephen Hawking (1942-2018) was the scientist from Britain whose principal efforts are in the field of theoretical physics and cosmology. For further details, see also; Nola T. Redd, "Stephen Hawking Biography (1942-2018)," Space.com, accessed November 25, 2022, <https://www.space.com/15923-stephen-hawking.html>; Biography Editors, "Stephen Hawking," Biography, <https://www.biography.com/scientist/stephen-hawking>, accessed November 25, 2022.

personality. Even though the corpus is wholly or partially defective in the aforementioned cases, the essence is intact.

Similarly, in the case of a corporation, the corpus is provided by the collectivity of the shareholders or owners and the animus is provided by the legal fiction.<sup>72</sup> The above-given argument also holds ground in the case of a corporation because a corporation as a legal person too can survive without its corpus; when all the shareholders or owners die, the corporation as a legal person does not stop existing.<sup>73</sup> Even though the animus provided is mere fiction in the case of a corporation and the corpus is something tangible and real, the law still attaches more significance to the essence of the corporation instead of its corpus. All of the above scenarios indicate that animus, not the corpus is the critical requirement for the law to recognize or award legal personality. Some jurists also hold this view that the essence is the key component for legal personhood and the corpus is just *superfluum*.<sup>74</sup> Thus, this view of the proponents of the fiction theory can be considered correct as far as corporation is concerned as a legal person, but in case of AI, this might not be apt.

On close perusal, it can be seen that AI cannot entirely fit in this scenario. AI can be found in three primary forms, first, in robotic form; second, in the form of a device; and third, in the form of AI software.<sup>75</sup> In the first two forms, it can be seen that AI has both corpus and animus as requisite by the fiction theory for a legal person, but in the third form, AI swerves from the conception of fiction theory and only has an animus (essence). Moreover, nowadays, most of AIs are found in the third form, so we cannot just snub the same class of AI as an exceptional class. So, the supra stance mentioned that essence (animus) is the key thing for the law to recognize a being, either real or imaginary, as a legal person seems the suitable approach compared to the conventional view of fiction theory to encompass the AI in its ambit.

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<sup>72</sup> Legal Service India, "Meaning and Kind of Person," Legal Services India - Laws in India, Supreme Court Judgments, Lawyers in India, accessed November 27, 2022, <https://www.legalservicesindia.com/article/2316/Meaning-and-Kind-of-Person.html>; Toppr, "Persons," toppr.com, <https://www.toppr.com/guides/legal-aptitude/jurisprudence/persons-nature-of-personality/>, accessed November 27, 2022.

<sup>73</sup> Paton, *A Textbook of Jurisprudence*, 404; Salmond, *Jurisprudence*, 293; Mahajan, *Jurisprudence and Legal Theory*, 386, 388, 391; *Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank*, 170 N.E. 479, 482 (N.Y. 1930), Para no. 32; Fitzgerald, ed., *Jurisprudence*, 171.

<sup>74</sup> Gray, *The Nature and Sources Of The Law*, 28.

<sup>75</sup> At the very root all the AIs are in the form of software but in some cases this software is solely devised for a specific kind of robotic body, some are designed to specifically fulfil its purpose inside a specific device and others are found in the software form available on the cloud and can be accessed from around the globe on internet or you can install it on any computer or mobile device as you wish.

Added proposition that can be advanced in support of corpus as the essential component of a legal person is that a being is only deemed a legal subject if it is capable of having rights and duties.<sup>76</sup> This, in turn, means that a tangible form (corpus) is necessary to enforce rights and perform real duties. But for, interaction with real world corpus, in some cases, is not required at all. A corporation can interact through agents or representatives; it does not have to have a group of owners or shareholders as a corpus for this purpose. For example, if we have a corporation which is solely owned by the state itself and the state is its only shareholder, which means that a corporation is owned by another fictitious person, which in turn means that this corporation has no real or tangible corpus, but its corpus only consists of a fictional person which regulates and perform all the corporation doings through agents and representatives.

In the case of human beings, if both the hands of a person are missing and he interacts with the world through bionic arms. In this case, the acts done through these bionic arms are still acts of that human being, even though not performed by his natural body but by the artificial hands, but the animus of the human provided the command. Let's make it further limpid, assume a robot is designed which can be controlled directly by the mind of a human being: no hands and other parts of the human corpus are involved. The human used the robot to kill a person just by using its mind. Now, the question is, who is the murderer, the robot or the human? The answer is obvious. In this case, an act is attributed to a human being because his animus is involved, not the corpus. Take another scenario, if a person took a pistol, make an unconscious person hold it in his hand and use his finger to pull the trigger and killed a person. The person is not killed by the unconscious man but by the one who used his body as a tool. In this case, the corpus (body) of the comatose person is used, but his animus (essence) is not involved, so the act of killing is not attributed to him but to the person whose animus was involved. In the first example, the act of killing was attributed to the person, not to the robot, because the animus of the human was involved even though his body did not play any part in it. So, from here, the concept of the person in a strictly legal sense gyrates around the sole pillar of animus (essence). It is this animus around which the whole edifice of the legal person is built. It is the unqualified necessity for the creation and survival of a legal person.

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<sup>76</sup> Bahadur, "Personality of Public Corporation, 207; Salmond, *Jurisprudence*, 272; John C. Gray, *The Nature and Sources of The Law; The Carpentier Lectures* (New York: The Columbia University Press, 1909), 27; Arthur R. Peacocke, Grant Gillett, and Ian R. Centre, *Persons and Personality: A Contemporary Inquiry* (Oxford, UK; New York, NY, USA: B. Blackwell, 1987), 122; Paton, *A Textbook of Jurisprudence*, 391.

In the case of AI, if it has no tangible form, in other words, corpus, then how it will express itself in the world of reality? The answer is simple, in the case of AI, which resides inside the robotic body. It can interact with tangible things through the robotic body. For example, it will have a duty not to harm anyone with its robotic limbs and so on. But, on the other hand, it will have a right that its robotic body and program will not be damaged.<sup>77</sup> In the case of AI inside a device, like a smart home control system, it can interact with all the devices in your home and can bring real-world changes like turning on and off the lights, opening and closing the doors, controlling the room temperature and ventilation of the house.<sup>78</sup> All these are examples and proof of the real world interaction of AI in this form. The last and most frequently found form of AI is software form. It has no corpus of its own but interacts with the real world through other devices like computers, mobile and the internet. In this regard, it is just a parasite, using others to its advantage. For example, an AI software designed by a companies that closely observes the stock market and all the news about the world online from the internet and, based on the same data, autonomously invests in and sells the shares on the stock market without any human control.<sup>79</sup>

On the other hand, AI software is used by companies to help negotiate terms and perform online contracts on their behalf.<sup>80</sup> Both of the above-mentioned AI software does have an impact of their decisions in the real world, and that's their way of interacting with the real world. Therefore, AI can interact with the real world even if it has no corpus or physical form for its animus to express itself. Again it is a plausible outcome that animus is the only unqualified requisite for the fictitious person. Corpus is not of much importance and an essential requirement, especially in the case of AI.

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<sup>77</sup> Here, the mentioning of Legal status of a person for an AI can be justified on the same ground as that of corporation. Recognizing AI as legal person, and granting rights and duties within a limited sphere does not mean that AI stands shoulder to shoulder with humans in the legal arena but instead it is far from that position so far. Granting limited legal personality to AI at this stage is at very root level for the good and benefit of public at large both economically and technologically. Same as the corporation was recognized as the legal person for law to attain legal economical ends and to provide a protective shield for business men from unlimited liability. Similarly, recognition of AI as legal person will help business men and people investing in technological development grow and at the same time burden of liabilities of those AI will shift from their shoulders to that of the AI.

<sup>78</sup> Google, "Build a Helpful Home, One Device at a Time," Googlehome.com, accessed November 29, 2022, <https://home.google.com/what-is-google-home/>; A.I. Home Solutions, "Smart Homes," A.I. Home Solutions, accessed November 29, 2022, <https://aihomesolutions.com/>; Josh, "Josh Smart Home System," Josh.ai, accessed November 29, 2022, <https://www.josh.ai/>; Wesley Baker, "Using AI for Smart Homes," Canterbury AI, last modified September 28, 2021, <https://canterbury.ai/using-ai-for-smart-homes/>.

<sup>79</sup> Jessica Powers, "How AI Trading Technology Is Making Stock Market Investors Smarter," Built In, last modified July 21, 2022, <https://builtin.com/artificial-intelligence/ai-trading-stock-market-tech>.

<sup>80</sup> Beverly Rich, "How AI Is Changing Contracts," Harvard Business Review, last modified February 12, 2018, <https://hbr.org/2018/02/how-ai-is-changing-contracts>; Jessica Sweet, "From Creation To Analytics: How Artificial Intelligence Is Changing The World Of Contracts," IT Supply Chain, last modified October 4, 2021, <https://itsupplychain.com/from-creation-to-analytics-how-artificial-intelligence-is-changing-the-world-of-contracts/>.

In the case of a legal person, “will” is another point of consideration because, being totally an imaginative creation of law, there exists no will at all. A natural person has will by its very nature, but that is not the case in a legal person. So, to overcome this impediment, the fiction theory again took resort in the term fiction. It provided the fictitious will to a legal being. Thus in the case of a corporation, there exists double fiction. It is equipped with a will of its own by one fiction, and by the second one, it is awarded the personality.<sup>81</sup> It means that the will of the legal person is different and unique. It is not the collective will of the shareholders or owners of a corporation. It is so because the shareholders cannot do a thing in the corporation's name if it infringes the articles of association or law, even if they collectively agree on it. If they did something like that, the act would not be considered the act of the corporation because the corporation cannot will something out of its willing domain.<sup>82</sup> It is the same as a human cannot will something unknown to his mind or of which he does not know. Therefore, this act of the shareholders will be considered an act of the shareholders, not the corporation and that is the point where the concept of “lifting the corporate veil” kicks in.

Now, does for AI the double fiction as provided for the corporation the indispensable requisite? It is an undisputed fact that the autonomy of AI is what makes it unique from other machines. AI is at liberty to make its own decisions and make a choice in a limited domain as marked out for its functioning, for which it is specifically programmed. If “will” is defined generally and not in a specific philosophical context, it means the ability to make free choices or to take free decisions.<sup>83</sup> Here, in the case of AI, it has quite an ability to make free choices and take decisions for itself within its domain of functioning. For example, an AI designed to invest in the stock market keeps on observing the stock market and the internet for news around the globe, and it invests its owner's money the moment it feels suitable for investment.

Similarly, it withdraws money from the market the moment it considers it necessary to do so. It takes all these decisions on its own, free from the whims of any human controller. An objection usually raised against the will of AI is its exercise in a limited domain and will must be free, not restricted. The answer can be two-fold, firstly the will of the AI must not be compared with that of the will of a human being because the will of a human is something naturally existing

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<sup>81</sup> Legal Service India, “Meaning and Kind of Person”; Mahajan, *Jurisprudence and Legal Theory*, 385.

<sup>82</sup> Paton, *A Textbook of Jurisprudence*, 411; Fitzgerald, ed., *Jurisprudence*, 172.

<sup>83</sup> California State University, “Chapter 8: The Case Against Free Will,” California State University, Sacramento | Sacramento State, <https://www.csus.edu/indiv/g/gaskilld/intro/free%20will.htm>, accessed November 26 2022.

while the will of an AI is an artificially created will which is just an attempt to mimic the will of humans. Besides that, the will of the creation must always lag behind the creator's will. Secondly, if one still wants to compare both will of humans and an AI. The question worth pondering is whether the will of humans is free and not limited. The answer is an apparent “No” because the human will, too, has its limitation, i.e. a human cannot will to grow branches like trees or grow wings instead of limbs because it is something for which it is not created or programmed. So, on the same footing, AI can will and act in the domain for which it is designed and programmed. So, for AI, it is not required to provide for a fictitious will because it has a will of its own. Hence, in the case of AI, there is no need for double fiction. The end of fiction theory can be achieved by providing just a single fiction, and that is in the case of personality only.

As a sole creation of law, the fictitious person owes its birth and demise to the law.<sup>84</sup> In other words, the law decides its fate from the very inception to the end. The corporation forms the moment the law wants it to be created and continues to flourish and thrive till the law wants it. The legal ways for the birth of a corporation are, by royal charter, by member's agreement obtained as per the form laid down by the statutory law and regarding the ways and limitations laid down by the statutes, by statute or by registration under companies regulating statute.<sup>85</sup> AI can also be created the same way a corporation as a legal person is created. AI, as a legal person, will come into being the moment the law recognizes it in the ways mentioned above. In other words, the above-mentioned ways of creating a legal person will *mutatis mutandis* apply to AI. Here, the term created or born does not mean that the corporation or AI is created at that very moment, but it means that the legal personality the law attaches to the corporation or AI is born the moment law recognizes it. The creation or birth here under consideration is that of the legal personality of that already existing entity. So, the corporation may have been created by its members in 2018. However, it was not in proper form as the law wants it to be, so the law does not recognize it as a legal person; it will become a corporation in the eyes of the law the moment it satisfies the criteria laid down for the corporation as a legal person if the corporation created by the member in 2018 but meet the legal requirements for a corporation as a legal person in 2020. Then from the perspective of law, this corporation was born in 2020, not in 2018. The same corporation for the

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<sup>84</sup> Bahadur, "Personality of Public Corporation, 217.

<sup>85</sup> Paton, *A Textbook of Jurisprudence*, 406; Salmond, *Jurisprudence*, 293; Dias, *Jurisprudence*, 253.

last two years was just a multi-member partnership in the eyes of the law and nothing more. The same *mutatis mutandis* applies to the case of AI.

After its creation, the fiction theory believes there is no end to the corporation as a legal person. It is not subject to natural death. It is a fictitious entity that lives incessantly.<sup>86</sup> Even though it is true that the corpus of a corporation is in the grip of natural death, being a fictional entity, the animus of a corporation goes on living by changing the corpus from time to time. For example, the shareholders and owners die from time to time, and new members keep on adding from time to time, which means that the corpus keeps on changing, but the legal person (corporation) survives these changes and keeps on living for eternity. In this regard, reference can be made to a myriad number of corporations which are centuries old and are still thriving.<sup>87</sup> The main reason for the eternal life of a corporation is that the animus allotted to a corporation is a mere fabric of legal fiction that is not subject to death. The point that for law, the animus is essential of a person and not the corpus is already *supra* dealt with. So, the animus of a corporation is not of a perishable nature which in turn makes the legal personality of a corporation eternal. In the case of AI, it is evident, as aforementioned, that it does not need the corpus like a corporation which, in most cases, must be made up of natural persons.<sup>88</sup> In some cases, the corpus of AI is a robotic body, in some cases, it is a specially designed device body like a computer. However, in some cases, it has no specific corpus; instead, it uses different mediums like the internet, computers, mobiles or other smart devices like smart watches for real world interactions. In all the aforementioned classes of AI, one common thing is that it uses corpus, which is not a natural being, i.e. humans but instead, it uses things which are not subject to natural death like humans. And AI is also able to change its corpus from time to time if the corpus is damaged or becomes unable to function. This is the reason which makes AI able to live and thrive persistently. In this regard, AI and corporations are on the same footing and can be treated alike. Here, an objection can be raised against this proposition that if animus in the case of AI and corporation is eternal, then animus in the case of humans is also

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<sup>86</sup> Salmond, *Jurisprudence*, 293; Mahajan, *Jurisprudence and Legal Theory*, 386,388, 391; Fitzgerald, ed., *Jurisprudence*, 171,172.

<sup>87</sup> Victor Eaton, "10 Oldest Companies in the World," Oldest.org, last modified April 7, 2022, <https://www.oldest.org/technology/companies/>; Editorial Staff, "21 Oldest Companies In The World (All You Need To Know)," Incorporated.Zone, last modified June 25, 2022, <https://incorporated.zone/oldest-companies-in-the-world/>.

<sup>88</sup> Gray, *The Nature and Sources of The Law*, 49.

eternal because there is no death or end for the soul.<sup>89</sup> If this is the case, then why humans, as a legal subject, is exposed to death? The objection holds ground and is logical. It is spot-on that animus in both cases, whether a legal or natural person, has no end. So far, legal persons and natural persons are on the same footing. These two deviate from each other at the point when the corpus of human perishes; the law declares the natural being dead, but in the case of a legal person, even if the corpus meets its end, the person still lives thereafter. The main reason is that in the case of humans, there is only one corpus which is naturally allotted to a human being. This corpus is the sole way for the human soul to interact with the outer world. When this corpus meets its fate and perishes, the animus's only medium of interaction with the external world vanishes, which in turn makes the human animus unable to perform his duties or enforce rights because it has lost its connection with the tangible world. Law being only concerned with the real world thus loses its interest in human animus beyond this point and strips it off of its personality. In the case of a corporation, there is not just one corpus, but it can change its corpus from time to time, and thus its medium of interaction with the tangible world remains intact. Even in the case of AI, it can change the robotic body, the device in which it is functioning, and in the third case, it already has no corpus of its own, but instead, it uses other mediums like the internet, computer and mobile devices for interaction with the real world. The natural person, too, can live for eternity just like a corporation or AI if the problem of being only provided with one corpus is solved, and somehow if it has become possible that human animus can change corpus just like AI and corporation. In this regard, reference can be made to a science fiction web series, "Altered Carbon",<sup>90</sup> in which the concept of sleeving was introduced. Through which the human consciousness (animus) can be transferred from one sleeve (body) to another sleeve. It is fitting that this is just fiction or found in theory, but who knows what baffling things the morrow's technological age of this world holds.

Now, the death of a legal person is also in the hands of the law. A legal person enjoys legal status till the law sanctions it to do so. The death of a corporation is specifically called dissolution in a legal context.<sup>91</sup> The dissolution of a corporation can be the result of a unanimous decision

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<sup>89</sup> Inayat Khan, *The Soul's Journey* (Lebanon: Omega Publications, 1999), 192; Vaniquotes, "Soul is Eternal (Lectures)," Vaniquotes, accessed November 27, 2022, [https://vaniquotes.org/wiki/Soul\\_is\\_eternal\\_\(Lectures\)](https://vaniquotes.org/wiki/Soul_is_eternal_(Lectures)); Cold Case, "The Brief Biblical Case for the Eternal Life of the Soul," Cold Case Christianity, last modified March 26, 2019, <https://coldcasechristianity.com/writings/the-brief-biblical-case-for-the-eternal-life-of-the-soul/>.

<sup>90</sup> *Altered Carbon*, directed by Miguel Sapochnik. (2018; New York, NY: Netflix Streaming Services, 2018), Web-series.

<sup>91</sup> SECP, "Winding Up Procedure," Security and Exchange Commission of Pakistan, accessed November 29, 2022, <https://www.secp.gov.pk/company-formation/closing-a-company/winding-up-procedure/>; Saylordotorg,



taken by the corporation's owners.<sup>92</sup> In this type of dissolution or winding up of a corporation, the legal procedure laid down for the same should be followed *stricto sensu*. The state can also put an end to the life of corporation if found in violation of state policy and due to numerous other reasons.<sup>93</sup> Another way of dissolving a corporation is by the court of law when the court, in a legal proceeding due to some legal misconduct or legal deficiency, orders the dissolution of the same.<sup>94</sup> The exact ways can be applied, with appropriate changes therein, for putting an end to the legal personality of an AI. For example, the owner of the AI can formally apply to the state authorities to end the legal personality of his owned AI.

On the other hand, if AI violates the legal rules laid down for regulating its activities, the court can also order to put an end to AI as a legal person. The court can also order the death of an AI if it violates its domain of functioning or if owners use it as a cover for their unlawful activities. Therefore, in both cases, whether of birth or death, the concept of fiction theory can be extended to this new contestant for legal status, which is the AI.

#### **4- Conclusion and Recommendations**

In a nutshell, fiction theory can be used to justify AI as a candidate to qualify for the seat of a legal person. But this theory has to make slight amendments in its approach, which it has taken in the case of a corporation. The stress on both animus and corpus as an essential ingredient for a legal person seems like they are only fit in some cases of AI. Only animus, as the sole unqualified essential, will do the job in the case of AI. Even though the corpus can be added as a supplementary ingredient for the legal person but not an essential component, another point is that there is no need for the use of a natural person for the sake of interaction with the tangible world in the case of AI which the proponents of fiction theory considered necessary in the case of a corporation. In this regard, changes have to take place in the fiction theory because AI can make interaction possible with the tangible world by the mere use of the internet or other mediums. Besides that, the fiction theory is the upholder of double fiction in the case of a legal person. By one fiction, personality is

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"Dissolution," GitHub Pages, [https://saylordotorg.github.io/text\\_legal-aspects-of-corporate-management-and-finance/s21-03-dissolution.html](https://saylordotorg.github.io/text_legal-aspects-of-corporate-management-and-finance/s21-03-dissolution.html), accessed November 27, 2022.

<sup>92</sup> SECP, "Winding Up Procedure,"; Saylordotorg, "Dissolution."

<sup>93</sup> Saylordotorg, "Dissolution."

<sup>94</sup> SECP, "Winding Up Procedure,"; Saylordotorg, "Dissolution."

awarded to a thing, and then a will is bestowed upon it by second fiction. That is what the fiction theory did in the case of the corporation, but, as already previously touched upon, AI does not need double fiction at all; it just needs one single fiction, and that is in the case of personality. AI does not require a fictitious will because it has its own will. In other aspects, AI completely fits in the frame of the fiction theory and thus does not need as such significant amendments. Such as, fiction theory holds that a legal person's birth and death are in the hands of law; it has eternal life, the domain in which the legal person will function and will exercise rights and perform duties is to be determined by law, the limitation of the legal personality will be in accordance to the wishes of law and so on. In all these aspects, AI fits perfectly. Thus, it will not be a futile but a fruitful effort to use fiction theory for the purpose to justify and support AI as a candidate for the seat of legal personality, but the same must be subject to certain changes, as supra mentioned.

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