

**ESSENTIAL KNOWLEDGE
AND MANAGEMENT ISSUES
IN LAW FIRMS**

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Martin Apistola & Petter Gottschalk



Universal-Publishers
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Essential Knowledge and Management Issues in Law Firms

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I. KNOWLEDGE MANAGEMENT

1.1. Introduction

This book is about knowledge management in law firms. Knowledge has gained increased recognition in management literature as well as in management practice over the last decade as an important strategic resource and differentiating factor. Much academic effort has been directed at identifying different forms of knowledge and knowledge values, as well as mechanisms that support sharing and developing knowledge. Knowledge management consists of different knowledge processes: Employees in organizations collect, develop, share, evaluate and apply knowledge (Schreiber et al. 2001). Tools such as databases and the Internet support these processes. Environmental factors such as the goals of the organization and its employees influence the way knowledge processes are executed and how knowledge management tools are used. Knowledge management in law firms is about managing knowledge, knowledge processes, tools and environmental factors and the relations between these elements (Holsapple & Joshi 2000).

Law firms are organizations specialized in the application of legal knowledge to client problems. The client may want to prevent a problem or solve a problem. For this reason, law firms consist of social communities of lawyers specializing in speed and efficiency in the creation and transfer of legal knowledge (Nahapiet & Ghoshal 1998). In general, the mission statement of a law firm provides three main objectives: to deliver outstanding client service, to provide fulfilling careers and professional satisfaction to employees and to achieve financial success to grow (Hunter & Beaumont 2002). The final objective of such professional service firms is that they demand financial success and growth (Terrett 1998). This depends on a number of factors including the market in which they compete and the range of services they provide.

A law firm is also a business entity formed by one or more lawyers to engage in the practice of law. Lawyers are knowledge workers (Gottschalk 2002). They are professionals who have gained knowledge through formal education (explicit) and through learning on the job (tacit) (Gottschalk 2002). Lawyers are competent in gen-

eral legal principles and procedures and in the substantive and procedural aspects of the law and have the ability to analyze and provide solutions to legal problems. After completing their advanced educational requirements, most law students enter their careers as associates in law. In this role, they continue to learn and thus they gain significant tacit knowledge through learning by doing (Gottschalk 2002). In the existing framework of law firms, lawyers who are highly effective in using and applying knowledge in fee earning are eventually rewarded with partner status, and thus own stakes in the firm. These diverse occupations have distinct functions, yet these individuals must work together to achieve the desired outcome of adding value to the firm.

Law firms apply legal knowledge to client's unique problems to provide a solution. Lawyers represent their clients in legal matters by presenting evidence and legal arguments and provide counsel to clients concerning their legal rights and obligations. In its core the practice of law is the provision of specialized knowledge and services in a variety of ways. the primary service rendered by a law firm is to advise clients (individuals, corporations, or authorities) about their legal rights and responsibilities, and to represent clients in civil or criminal cases, business transactions, and other matters in which legal advice and other assistance is sought. Many law firms represent large corporate enterprises, organizations, or entrepreneurs with a need for continuous and specialized legal services that can only be supplied by a team of lawyers (Gottschalk 2002). The client is a customer of the firm, rather than a particular lawyer. Relationships with clients tend to be enduring (Galanter & Palay 1991). Such repeat clients are able to gain benefits from the continuity and economies of scale and scope enjoyed by the firm (Galanter & Palay 1991). Law firms often present themselves to clients as organizations with specific knowledge but seem to focus less on what clients in the market want (Kil 2010).

Researchers have more and more focused on knowledge management in law firms (Rusanow 2003; Edwards & Mahling 1997; Gottschalk 1999; Parsons 2004; Du Plessis 2004). This is not a surprise: Law firms represent an industry that seems well suited for knowledge management research: law firms are knowledge intensive organizations and lawyers are knowledge workers (Gottschalk 1999). What makes law firms particularly interesting is the fact that knowledge in this sector is both input and output (Forstenlechner 2005). Knowledge is in fact the raw material and the only product.

Knowledge management has even more potential in law firms than in similar organizations (Forstenlechner 2005).

Since the nineties scientific researchers study organizations as collections of knowledge (Spender 1996). Organizations are more and more approached from a knowledge-based perspective. In this approach, knowledge is considered as the most important resource in organizations (Grant 1996). More insight in knowledge helps organizations to grow and to survive (Kogut & Zander 1992). The most important competitive dimension of what organizations “know how to do” is developing and sharing knowledge. Organizations are social communities that convert individual and social knowledge into useful products and services. According to the knowledge-based perspective, the services of organizations depend on the way they combine and apply their resources (Alavi & Leidner 2001; Scarbrough & Swan 2001). In turn, this combination and application depends on the knowledge and skills in organizations. The organizational culture, routines, policies, Information Technology (IT), documents and individual employees help to share this knowledge in organizations. Knowledge resources offer competitive advantages because they are often difficult to imitate and because they are socially complex. Important for organizations are the skills to effectively apply existing knowledge, to develop new knowledge and to undertake actions to gain competitive advantage on basis of their knowledge.

This book applies the knowledge-based view of the firm as its main theoretical perspective (Spender 1996, Grant 1996, Kogut & Zander 1992). According to the knowledge-based theory of the firm, knowledge is the main resource for a firm’s competitive advantage. Knowledge is the primary driver of a firm’s value. Performance differences across firms can be attributed to the variance in the firms’ strategic knowledge. Strategic knowledge is characterized by being valuable, unique, rare, non-imitable, non-substitutable, non-transferable, combinable, and exploitable. Unlike other inert organizational resources, the application of existing knowledge has the potential to generate new knowledge (Garud and Kumaraswamy, 2005). The knowledge-based view considers knowledge as the critical input in production of legal services in the law firm. Knowledge is the primary source of value of the firm. Based on the assumption of bounded rationality, this view assumes that individual lawyers will never possess identical stocks of knowledge. Since each law firm has its unique set of human resources in terms of lawyers as knowledge workers, there will always be knowledge asymmetries between law

firms (Dibbern et al. 2008). Many law firms have transformed themselves from a professional model to a corporate business model. Knowledge is perceived as the resource on which the business is based. Unique, non-imitable, combinable and exploitable knowledge provides competitive advantage. Thus, their primary resources stem from the human capital and social capital of the individuals employed within them.

The knowledge-based view is part of the resource-based view of the law firm, which views the firm as a collection of productive resources. According to the resource-based theory of the firm, performance differences across firms can be attributed to the variance in the law firms' resources and capabilities. The essence of the resource-based theory of the firm lies in its emphasis on the internal resources - here knowledge - available to the law firm, rather than on the external opportunities and threats dictated by industry conditions and market change. Knowledge is considered an important resource in most law firms. The resource-based view of the firm posits that law firm competitiveness comes from unique bundles of tangible and intangible assets that are valuable; rare; imperfectly imitable; non-substitutable; combinable, and sustainable (Zheng et al., 2010).

The attention for a knowledge-based perspective on organizations has led to much scientific as well as practical interest in organizing firms with the help of knowledge management (Alavi & Leidner 2001). As argued by Sastrowardoyo and Metcalfe (2006), the importance of knowledge to organizations has been extensively established in the business and management literature as being the basis of future sustainable competitive advantage. Knowledge is the stock in trade for law firms and other professional service firms (Forstenlechner 2005).

The most important issue of knowledge management is to optimize the achievements of organizations by controlling knowledge (Van Engers 2001). Managing and using knowledge efficiently and productively are core competencies for lawyers. The law is a highly knowledge-oriented profession. Fundamental skills of lawyers are collecting, processing, storing and retrieving knowledge, including legal research and investigation, factual investigation, legal analysis, problem solving and the organization and management of legal tasks. Most lawyers, however, have been slow to adopt Information Technology (IT) for managing the knowledge, which is critical to their work.

Law firms have always been pure knowledge organizations, always conscious of the fact that their sustainable advantage is the expertise and knowledge of their lawyers, and their firms, rather than any physical factors of service production. The growing awareness of knowledge and its value in organizations from the last decade of the 20th century has resulted in progressive law firms investigating alternative ways of providing cost-efficient structures and high-quality services that may sharpen their competitiveness and broaden their influence within the legal industry and the global economy. The legal industry is a rather static sector with an evolutionary character (Kil 2010). Developments are slow and trends are followed with a delay.

Knowledge management (KM) is a discipline that helps to reduce costs and mistakes of organizations (Coase 1937), to increase the commitment of employees (Olson 1971) and to improve the communication between employees (Hayek 1945). A number of developments in and around law firms have increased the intention for effective knowledge management. Investigating alternative ways of providing cost-efficient structures is also coupled with the changes in the business environment. The legal industry is faced with many changes in this environment. Some of the major changes are (Os-kamp, Apistola & De Mulder 2002):

- The increased availability and use of Information Technologies (IT) that may have led to an information overload in law firms; it is relatively easy to use IT to publish enormous amounts of information in different ways. Nowadays there is so much information available to lawyers that it is no longer possible for them to take note of all of it (Franken 2001).
- Furthermore, the size of law firms has increased in recent years. Law firms have merged or formed (inter)national networks. The growth of law firms makes the structure and organization complex, making it more difficult for lawyers to collect knowledge (Parsons 2004). Mountain (2001) suggests that lawyers typically introduce new technologies when driven to do so by their clients, so they are relatively good at managing sustaining technologies. One example is the use of e-mail. Sending documents by e-mail is a client expectation but it is also an easy thing for a firm to do and does not radically change the value proposition for the client. It can be expected that the next evolutionary step, toward extranets,

to be similarly implemented by lawyers through client pressure.

- In addition, as a result of globalization, legal problems have become increasingly diverse, requiring lawyers to specialize. The Internet for example causes existing legal issues to be looked at from a new angle. And, as a consequence of partner structures and internal conflicts we see that complete 'sections' of larger law firms separate to form a more specialized firm (Kil 2010)
- Moreover, legal knowledge often changes rapidly (De Mulder & Oskamp 1999).
- And, as law firms worldwide constantly strive for competitive advantage, major approaches and tools in pursuing their objectives are knowledge management (KM) and information technology (IT).
- According to Montana (2000), the established legal field finds itself under siege nowadays. Arbitrators, accounting firms, consultants, and many others are chipping into law's traditional bailiwick, offering services that are in direct competition with traditional legal firms, thereby eroding their client base. Although the legal establishment has had success in keeping these parties from encroaching on its turf, this is changing. Changes in the regulatory climate, based on the exploding costs of using the legal system, permit new service providers into previously forbidden territory. Such providers will also be consumers of new information services. The new competitors seem to be more technology-oriented than established law firms. Also Becker (2001) noted that competition among law firms is intensifying. As clients reward firms that have distinctive depth and breadth of expertise in their most valuable practices, the firms must be more and more willing to pay a premium to attract and retain partners in those specialties. According to Edwards and Mahling (1997, p.158), the market for providing sophisticated legal services was already in the 1990s intensively competitive: 'The number of lawyers has exploded and there are now fewer clients or potential clients per lawyer. The supply of lawyers has now exceeded the demand for their services and a viable competitive strategy is a requirement for economic survival'.

1.2. Knowledge Management

Knowledge management (KM) is mainly introduced to help companies create, share, and use knowledge effectively (Scarborough & Swan 2001). Organizational theorists have for example emphasized that information and knowledge acquired by one part of an organization must be communicated speedily to other parts. However, organization members collectively acquire enormous quantities of information on an ongoing basis; if all such information were to be transmitted to all parts of the organization, then its members might simply suffer from information overload. Methods for identification of information needs may be adopted from related areas such as executive information systems where legal tasks define knowledge needs. Effective knowledge management pays off in fewer mistakes, less redundancy, quicker problem solving, improved decision making, reduced research development costs, increased worker independence, enhanced customer relations, improved service and much more (Olson 1971, Hayek 1945, Coase 1937). Knowledge support functions have to be established to implement and continuously improve KM in an organization. Some knowledge organizations such as law firms have introduced the role of the Chief Knowledge Officer (CKO), which is not so much to provide KM facilities and services as to enable the organization to learn, to innovate and to gain from entrepreneurship. CKOs have to discover and develop law firms' implicit vision of how KM will make a difference.

The increased efforts in most law firms to improve their knowledge management are related to a number of changes in the legal industry (Parsons 2004, Rusanow 2003, Susskind 1998). First, there is a shift from paper-based to electronically based information and documents that lawyers work on. Second, advances in information and communication technology enable storing, transfer and exchange of information electronically, as a supplement to meetings and phone calls. Electronic services available on the Internet make lawyers interact with a number of external service providers electronically rather than interact through internal functions. Globalization of legal services requires law firms locally to act globally for corporate clients that are doing business in several parts of the world.

The drive towards specialization needs to be combined with generalization, where specialists share their understanding with other specialists as well as clients. Merging expertise advice and sometimes translating it into something understandable for the layman is ena-

bled in KM by putting together electronic pieces of text, images, videos and sound tracks.

Knowledge management is not at all something completely new to law firms. Law firms and lawyers have been doing knowledge work, and knowledge management, ever since legal work first began (Parsons 2004, Rusanow 2003). In every advice, in every transaction, in every call of a colleague to share an opinion or critique an idea, in every training session, in every practice team meeting, and in every work-related break-room conversation, lawyers have been building and sharing knowledge for centuries. Yet knowledge management has not always been a success in law firms, and knowledge management has become a challenge to firms that had half a dozen employees, while they now have hundreds and even thousands of employees. As noted, law firms have always been pure knowledge businesses, always conscious of the fact that their sustainable advantage is the expertise and knowledge of their lawyers, and their firms, rather than any physical factors of production (Parsons 2004). The growing awareness of knowledge and its value in organizations from the last decade of the 20th century, coupled with the changes in the business environment, has resulted in progressive law firms investigating alternative ways of providing cost-efficient services that may sharpen their competitiveness and broaden their influence within the legal industry and the global economy. And so, more and more law firms and academic researchers have focused on knowledge management (KM) in law firms. As Kay (2002) has outlined:

- KM will allow a firm to produce certain documents more efficiently thus resulting in a higher level of service.
- If specialist knowledge is captured in a document or system, it will allow a firm to provide more quality of service to their clients.
- Effective KM makes life much easier for lawyers and can result in increased productivity and reduced stress.
- Capturing knowledge in a system allows it to remain in the firm in case an individual leaves the firm.
- Effective KM supports the transfer of knowledge between lawyers, thus ensuring knowledge is retained and made available for re-sale.
- Effective KM can assist the integration of new lawyers into the firm.

- KM is a necessary component of risk management. Effective transfer of knowledge may help avoid professional negligence suits.

For these reasons, if a firm wants to survive and prosper in a competitive market, it is essential that they implement a KM program. A literature study by Du Plessis (2004) shows that law firm KM has the following benefits:

- Quicker problem solving.
- Increased lawyer work independence.
- Better decision making.
- Competitive advantage.
- Enhanced customer relations.
- Market visibility.
- Improved client service.
- Ability to direct work to skilled specialists.
- Productivity and efficiency.
- Consistency of work products.
- Knowledge sharing.
- Faster delivery times.
- Developing lawyer's research skills.
- Quality control.
- Fewer mistakes.
- Reduced frustration in searching for documents.
- Less work redundancy.
- Client collaboration.
- Reduced research development costs.

Research by Forstenlechner (2005) has also confirmed that there is a direct relationship as well as an indirect one via the value perception of KM amongst fee earners, i.e. fee earners with higher fee income also place a higher value on KM, or vice versa, the more valuable KM is considered to be, the higher the fee income of fee earners (Forstenlechner 2005). From interviews by Forstenlechner (2005) he was able to find the top benefits attributed to the implementation of KM in law firms as listed:

Top benefits mentioned	Percentages of interviewees (n=12)
• Efficiency	58%
• Quality	50%
• Risk management / differentiation	33%
• Long term benefits	33%
• Culture	25%
• Current awareness	25%
• Training	25%

Other drives mentioned include: job satisfaction, training, simplified processes, forward planning and client service.

According to Parsons (2004), knowledge management is important for law firms because:

- Lawyers can now become bewildered by the blizzard of information “*is the right information on a CD-ROM, on a Web site, or in a book in the library?*” (Parsons 2004).
- In simpler times, a lawyer was confident that he knew the sources of knowledge in his profession (Parsons 2004). He knew where to find the casebooks, which he first encountered at law school. He knew where to find the textbooks in the library. He knew where to find the one filing cabinet of the firm’s previous important advices. He knew where to find the forms and precedents that had been created for use by the firm’s lawyers. Today, firms are much larger and growing larger by international merger (Parsons 2004).
- And, as Parsons (2004) mentions, in the past, it was possible in most firms for lawyers to pop their heads around colleague’s doors, asking “has anyone done one of these or seen one of these cases before?” Although some firms do simulate this process through electronic mail, as most firms have grown larger, it has not been possible to dip into colleagues’ expertise so easily. Instead, internal organizational structures – such as departments, units, and groups – have led to firms becoming clusters of rather self-contained islands, with insufficient sharing of know-how. The result has been internal inefficiency and failure to deliver value for money in the provision of services to clients (Parsons 2004).

- As legal information and guidance become available on the global information infrastructure, many individuals and organizations beyond the legal profession are likely to want to compete in this marketplace and provide legal and quasi-legal services themselves. Accountancy firms, telecommunication providers, legal publishers and electronic publishers are likely to be the main competitors (Susskind 1998).

A literature study by Fombad et al. (2009) shows that the increased attention for knowledge management is related to a number of changes in law firms:

- The shift from paper-based to electronic sources of information.
- Advances in information communication technologies.
- The Internet.
- Electronic publishing.
- Information overload.
- Globalization of legal services.
- Consolidation of law firms.
- The drive towards specialization.
- Competition among firms.
- Pressure on law firms from clients.
- Disintermediation.
- The foray of professional service firms in the legal information environment.

In an environment where clients are most cost conscious, providing high value services at lower cost can help in providing the services that clients are looking for. This point was confirmed by Forstenlechner (2005) throughout interviews, such as by the following interviewee:

“When I draft contracts for the constantly changing needs of clients, I usually get three or four contracts out of the know-how system that provide useful suggestions for the drafting of at least some clauses. As I am mostly dealing with contracts concerning more than one jurisdiction it is very helpful being able to have a look at contracts drafted in different offices.”

According to research by Forstenlechner (2005), current awareness by dedicated KM staff saves the fee earners time and effort to

keep up with developments themselves. As an interviewee of Forstenlechner (2005) commented on this:

“It is simply not feasible to maintain by yourself the level of expertise needed to do this job and rightly expected by the clients. These changes in law of course also need to be reflected in the standard forms and someone very knowledgeable needs to work on that.”

Staff as inquirers is an interesting knowledge management approach suggested by Sastrowardoyo and Metcalfe (2006). Even if a very personal perspective of knowledge is assumed, knowledge can indeed be managed. This approach focuses on organizing the staff as inquirers by facilitating and creating an environment for those who engage in the act of seeking information. Knowledge, when construed as the outcome of an orchestrated inquiry process, needs a particular perspective in management.

And, last but not least, success can be the enemy of innovation; many larger law firms have done very well without any recourse to KM or even particularly innovative use of IT.

1.3. Definitions of Knowledge Management

There is no single definition of knowledge management, but in general the idea relates to unlocking and leveraging the knowledge of individuals so that this knowledge becomes available as an organizational resource, which is not dependent on the particular individual to be applied in law firm business. Many publications provide other definitions of knowledge management, for example:

- Knowledge management is a broad and multi-faceted topic involving socio-cultural, organizational, behavioral, and technical dimensions (Alavi & Tiwana 2003).
- Knowledge management covers a loosely connected set of ideas, tools and practices centering on the communication and exploitation of knowledge in organizations (Scarbrough & Swan 2001).
- Organize and manage operational processes within the knowledge value chain in such a way that the organization’s collective ambition, objectives and strategy are realized (Weggeman 1997).
- A framework and tool set for improving the organization’s knowledge infrastructure, aimed at getting the right

knowledge to the right people in the right form at the right time (Schreiber et. al. 2000).

- A method to simplify and improve the process of sharing, distributing, creating, capturing and understanding knowledge in the company (Khandelwal & Gottschalk 2003).

Among Dutch lawyers there are varying definitions of the term knowledge management (Apostola 2006):

- The distribution of information and knowledge to support practice.
- Knowledge of the law firm, an overview of present knowledge, access to knowledge, knowledge sharing and applying knowledge.
- Facilitating the work with up-to-date and reliable information. In particular context information.
- A department that provides books and texts.
- The legal information facility (formerly the library) that manages the database, collects information and discloses this information.
- The flow of information at different levels.
- A way to make sure everyone knows who does what and where knowledge is.
- The management and access of knowledge within the organization.
- Streamlining and providing knowledge, including education.
- There is probably no general definition of knowledge management in the office.

Interviews with lawyers from Dutch law firms also indicate that there is no universally accepted definition of knowledge management in law firms, while at the same time there is indeed an understanding of what it is all about (Apostola 2006). Lacking a clear definition of knowledge management could lead to wrong knowledge management expectations amongst lawyers and it could lead to knowledge management islands in law firm. Without a clear definition it is also difficult to measure the achievements of knowledge management in law firms. On the other hand, Dean and Gottschalk (2007) showed that the concept of KM was well understood in a Norwegian law

firm, as responding lawyers were asked to express their own definitions of knowledge management:

- Combine experience and data/information in an effective business process.
- Make information more available to all.
- Systematic collection and storage of knowledge for reuse by others.
- Make knowledge accessible.
- Organize the knowledge we already have.
- Collect and present information from various sources.
- Managing and structuring information/data so that data/info become available.
- How to manage our knowledge resource.
- Development of new competencies.
- Shared memory of the organization.
- Utilization of the tools we have.

Several factors appear to have influenced the diverse definitions of knowledge management (Fombad 2008). First, there is a wide difference in perspectives of the subject by different authors. For example, some may have a human resource perspective, while others may have a systems perspective. Second, knowledge management is looked at from a wide spectrum of disciplines such as economics, sociology, philosophy, psychology, management, information technology and information science each attributing different meanings to the term. Third, it is also a collection of concepts borrowed from information management, artificial intelligence, knowledge support systems, software engineering, business process re-engineering, personnel training, learning, and organizational behavior. Fourth, the phrase knowledge management implies that knowledge can be managed when in reality the management of knowledge is about the management of people, processes and systems through which knowledge can be shared. Finally, like knowledge, knowledge management is an evolving, broad, vague, conceptual, recursive and highly theoretical concept.

Because there are so many definitions of knowledge management, the following definitions are just a representative sample of what has been suggested in knowledge management literature. For

example, KM mainly involves the processes of identifying what information and knowledge a lawyer needs and where it can be found, then making that information and knowledge available in the required format in a suitable fashion. Furthermore, knowledge management is to organize and manage operational processes within the knowledge value chain in such a way that realization of the organization's collective ambition, objectives and strategy is advanced. Also, KM is a framework and tool set for improving the organization's knowledge infrastructure, aimed at getting the right knowledge to the right people in the right form at the right time.

Furthermore, knowledge management is the leveraging of a firm's collective wisdom by creating systems and processes to support and facilitate the identification, capture, dissemination and use of the firm's knowledge to meet business objectives. Knowledge management can be understood as the name given to a set of systematic and disciplined actions that an organization can take to obtain the greatest value from the knowledge available to it. KM is not only based on the management of information and knowledge, but also entails managing the balance of people, processes and technology that determines the organization and its relationship with its markets and other stakeholders. It is about creating an environment where knowledge, creativity and innovation is valued, by facilitating communication between people in different locations and from different departments and creating an organization that encourages ideas, rewards success, while allowing people to fail and learn from failure. KM might also include all efforts to optimize the achievements of organizations by controlling knowledge. Knowledge management is a young discipline that helps to reduce costs and mistakes of organizations, to increase the commitment of employees and to improve the communication between employees.

Law firms exist because they can more efficiently and effectively coordinate collective learning than individual lawyers on a market are able to do. In particular, if organization-specific knowledge is required to perform a task, using the external market becomes increasingly inefficient since an external supplier would first have to adopt this knowledge before being able to perform that task (Dibbern et al., 2008). This is in line with the knowledge-based view of the firm, which is the theoretical perspective applied in this book.