

Legal Knowledge Management

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INTRODUCTION

Legal practice is primarily concerned with the transfer of legal knowledge from practitioners or clients. Whilst lawyers may draft contracts and make representations on behalf of their clients, their primary task is to advise their clients on appropriate remedies and courses of action. Rodríguez Morcón, Pérez García, and Sigüenza Pizarro Rodríguez (2002) claim that a lawyer sells what he knows, often in the form of a document (a contract, an opinion, a report) and much more often in a trial before a court or in a negotiation with a counterpart. Khandelwal and Gottschalk (2003) claim that lawyers can be defined as knowledge workers. They are professionals who have gained knowledge through formal education (explicit) and through learning on the job (tacit).

To carry out their daily work, lawyers also have to manage a great many sources of information. It is important for them to be aware of current changes in legislation and jurisprudence, and to consult books and articles. But it is also necessary to manage the information that is generated from within the practice in the course of lawyers' relationships with their clients. In a law firm's day-to-day work, a mass of information and knowledge is generated which has to be managed efficiently, so that it is easily, quickly, and intuitively accessible whenever it is needed by any of the firm's offices. Rusanow (2003) defines legal knowledge management as the leveraging of the firm's collective wisdom by using systems and processes to support and facilitate the identification, capture, dissemination, and use of the firm's knowledge to meet its business objectives.

We commence by emphasising the difficulty of developing generic legal knowledge management approaches given the multiplicity of different legal systems. We next focus on maintaining legal knowledge using an argumentation-based approach and building legal knowledge-based systems for World Wide Web. Since the goal of the legal process is to avoid litigation, we conclude by discussing how knowledge can be managed to provide Online Dispute Resolution.

BACKGROUND

One of the major difficulties in providing generic legal knowledge management tools is the fact that legal prac-

tice is very context dependent. Whilst the laws of gravity are fairly uniform throughout our earth, this is definitely not the case with legal norms. Even within Western Europe, Canada, and the United States, there are distinct legal traditions—namely Common Law and Civil Law.

David and Brierly (1985) note that common law and civil law legal traditions share similar social objectives (individualism, liberalism, and personal rights), and they have in fact been joined in one single family, the *Western law* family, because of this functional similarity. Other countries may have a code of law based upon tribal practice or religious principles.

Even within one country, there may be various modes of legal practice or major regional differences in the way law is practised. For example, in the United States, a state court determines Family Law. Because of the varying legislation between states, lawyers often engage in *forum shopping* to obtain an advantage for their client.

As well as regional differences, the different courts in the same region may rely upon distinct *burdens of proof*—the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause (Black, 1990). Except as otherwise provided by the common law, the burden of proof requires proof by a preponderance of the evidence (or the balance of probabilities). In a criminal case, the government must prove all the elements of the crime beyond a reasonable doubt. Except in cases of tax fraud, the burden of proof in a tax case is generally on the taxpayer.

Hence law is very domain specific. An ontology is an explicit conceptualization of a domain (Gruber, 1995). Legal ontologies represent legal norms and are very significant for developing legal knowledge-based systems on the World Wide Web.

Building generic legal ontologies is not possible. Breuker, Elhag, Petkov, and Winkels (2002) claim that unlike engineering, medicine, or psychology, law is not ontologically founded. They claim law is concerned with constraining and controlling social activities using documented norms. Zeleznikow (2004) conducts an overview of legal ontologies.

CLIME, e-COURT, and FFPOIROT are all legal ontology projects funded by the European Union. Because of the plethora of legal systems in Europe, there is a great need to develop legal ontologies that are applicable across the European Union.

Given the domain specific nature of legal knowledge, and the fact that law firms exploit their legal knowledge for commercial gain, legal knowledge management has often been conducted in-house. Perhaps the one exception to this rule has been legal aid organisations, which provide advice to a large number of indigent clients.

LEGAL KNOWLEDGE MANAGEMENT, DECISION SUPPORT, AND THE WORLD WIDE WEB

Gottschalk (1999) states that the use of advanced technologies enables the law firm to take advantage of the most appropriate tools to improve efficiency, increase effectiveness, streamline communication, and reduce costs for their clients. A law firm is a collection of fiefdoms—each lawyer has his or her own clients and keeps the information about them private. One of the greatest objectives of knowledge management in law firms seems to be consistency of work output in an increasingly global market. Knowledge management support systems in law firms are concerned with capturing and codifying knowledge, creating knowledge, distributing knowledge, and sharing knowledge (Edwards & Mahling, 1997).

Russanow (2003) claims that information technology creates an expectation of faster and alternative legal services. In the age of instantaneous communication, lawyers have been forced to find quicker ways to deliver traditional legal services. Knowledge management systems and processes enable lawyers to work more efficiently and provide legal services quicker than ever before.

The Internet has also opened a whole new market for lawyers to sell their services. Lawyers must examine how they will use technology to deliver services to their clients. Online advisory and drafting tools, developed and managed by law firms, are becoming commonplace. Knowledge management systems and processes provide the foundation of online services.

Ross (1980) states that the principal institution of the law in action is not trial: it is settlement out of court. Alternative dispute resolution involves alternatives to the traditional legal methods of solving disputes. It is difficult to construct a concise definition of alternative dispute resolution (to litigation) for resolving disputes. Online dispute resolution, the application of information communication technology in alternative dispute resolution, has become a new and enhanced technique for dispute resolution.

Russanow (2003) further claims that a large firm may find that there is little sharing of knowledge across practice groups and offices. There are a number of cultural

reasons for this. Where the partner compensation model rewards the individual rather than the firm, practice groups tend to operate as separate business units, focused only on growing their own practices. There is no incentive to share work with others, since there may be no reward for referring work to colleagues. Indeed, there may be overlap in areas of practice between lawyers in different practice groups. These groups may be competing with each other in the market. Lawyers may also believe that their knowledge base is their power base, and that sharing that knowledge would dilute their value.

This lack of knowledge sharing between individuals and practice groups means that the firm is not leveraging its multi-practice, multi-office infrastructure. Practice groups are not looking at cross-selling opportunities with other practice groups. These inefficiencies and lost business opportunities may directly impact the firm's revenue. In some instances, the lack of cross-referrals to other, more appropriate practice groups may even affect the firm's risk exposure.

Carine (2003) claims key elements of knowledge management are collaboration, content management, and information sharing. These elements can occur concurrently.

Collaboration refers to colleagues exchanging ideas and generating new knowledge. Common terms used to describe collaboration include knowledge creation, generation, production, development, use, and organisational learning

Content management refers to the management of an organisation's internal and external knowledge using information management skills and information technology tools. Terms associated with content management include information classification, codification, storage and access, organisation, and coordination.

Information sharing refers to ways and means to distribute information and encourage colleagues to share and reuse knowledge in the firm. These activities may be described as knowledge distribution, transfer, or sharing.

Effective information technology (IT) support for knowledge management can serve as a competitive advantage and as a professional aid to law firms. To examine IT support for knowledge management in Norwegian law firms, Gottschalk (1999) conducted a study that involved two phases of data collection and analysis. The first phase was an initial field study of the largest law firm in Norway to identify issues and attitudes towards IT and knowledge management in a law firm as a basis for the survey approach in the second phase. The semi-structured interviews conducted in the initial field study documented a strong belief in the potential benefits from knowledge management. The second phase was a survey of Norwegian law firms. Firm culture, firm knowledge, and use of information technology were identified as potential

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