

CHAPTER ONE

INTRODUCTION

1.1 Background

The last decade of the 20th century witnessed an increasing recognition of the importance of knowledge besides the traditional resources of land, labour, and capital. Knowledge can take many different forms and has different meanings to each individual organisation. It can be stored in databases, printed on paper, integrated into an organisation's policies, procedures and reports, or contained within an employee's memory. As a result of the growing awareness of knowledge and its value in organisations in recent years, there has been a growth of the vocabulary around its management recognised in the emerging discourse known as knowledge management.

The concept of knowledge management is certainly not new. It has been around us as long as one can remember. One may even refer to it as God's own idea. The Holy Bible is a revelation of the knowledge and wisdom of GOD to Humanity that has evolved from ancient scrolls to compact print digital Bibles "...the word came to Jeremiah from the Lord saying take a scroll of a book and write on it all the words that I have spoken to you ...against all the nations from the day I spoke to you...even to this day" (Jeremiah 36 1-2: 11572¹). Also, parents have passed down knowledge and wisdom to their children; and for centuries, family businesses continue to exist from knowledge handed down and workers have exchanged ideas and know-how on the jobs.

As the growing body of published literature on knowledge management underscores the role of knowledge management in organisations in enhancing organisational performance, competitive advantage, positioning, economic success and economic viability this makes it imperative for organisations to formalise their knowledge management practices. For instance, Nonaka & Takeuchi (1995) link knowledge management to organisational success, while Prusak (1997) points out that firms that leave knowledge to its devices put themselves in severe jeopardy.

Knowledge intensive organisations such as law firms have always intuitively appreciated the value of knowledge even though their knowledge management activities have been accomplished without substantial change in how these firms conduct their business. Buckler (2004), notes that some of what is now called knowledge management has been

1 The Holy Bible, The New King James Study Bible for women (2003).

with lawyers since the time of the manual typewriter. Lambe (2003) posits that from the Code of Hammurabi, almost four thousand years ago, to modern law reports and Lexis Nexis, the practice of law has been a practice of knowledge requiring accurate, effective, and objective use of information.

The changes faced by the legal industry in recent years amongst which are advances in information communication technology, changes in the nature of legal practice, intense competition for clients, partners and law graduates, globalisation and mergers with other consulting companies have added pressure on law firms to maintain a competitive edge. This has resulted in law firms investigating alternative ways of improving the cost effectiveness of their services.

As law firms learn that acquiring and leveraging knowledge effectively within the client organisations can propel the firm to become more adaptive, innovative and competitive, knowledge management has increasingly become a topic of discussion in many competitive law firms. Nathanson & Levison (2002) observe that many United Kingdom and United States firms are funding or anticipating funding major knowledge management initiatives. A 2003 global law firm knowledge management survey report revealed that knowledge management organisation of leading law firms in the United Kingdom, United States and Australia recognised knowledge management as a key business driver even though many of the participant firms had embryonic knowledge management organisations (Curve Consultant Survey Report, 2003). Leading United Kingdom law firms now have well-developed precedents and know how systems maintained by full time professional support lawyers who are senior lawyers and experts in their field (Kay, 2002).

In spite of the increasing body of literature on knowledge management by practitioners and researchers reflecting the immense potential for the use of knowledge management in law firms, the gap between theory and research is wide. A lot still needs to be done in the form of extending, refining, and empirically validating models, and developing theories and concepts in knowledge management in general and in law firms in particular. Grover & Davenport (2001) noted that very few studies have emphasised knowledge generation and realisation processes, and advocate the need to study the different levels of knowledge management that consists of integrating it into business strategy, process, structure, culture and behaviour.

Most previous empirical studies on knowledge management have emphasised technology-based initiatives. For example, a series of research studies carried out by Gottschalk on

knowledge management in law firms (Gottschalk, 1999; Gottschalk, 2000; Gottschalk, 2002; Khandelwal & Gottschalk, 2003) emphasised the role of information communication technologies to knowledge management in the law firms and suggests that knowledge management in law firms begins and ends only with information technology. Although technology has been a catalyst to the recent resurgencies of interest in knowledge management, knowledge management is not all about technology. Other notable empirical studies on knowledge management in law firm include: knowledge management practice in Scottish law firms (Hunter et al., 2002); applying knowledge management in law firm alliances (Carine, 2003); information and knowledge management in support of legal research in a digital environment (du Plessis, 2004); a survey of knowledge management in South African law firms (du Plessis & du Toit, 2005); and knowledge management on law firm performance (Forstenlechner, 2006). Besides, most of these knowledge management studies are skewed towards experiences and studies of industrialised nations, which are already becoming knowledge economies. There is very little information on knowledge management and law firms in Africa. Studies identified on knowledge management in law firms in Africa are du Plessis (2004) and du Plessis & du Toit (2005) studies on South African law firms. However, the major focuses of du Plessis' studies are on information and knowledge management in support of legal research in a digital environment. Other few empirical studies conducted on knowledge management in Africa have focused on the financial, business, public and research organisations (Ndlela & du Toit, 2001; Okunoye, 2002; Squier & Snyman, 2004). The main settings for African studies on knowledge management have been South Africa and Nigeria. There is little information on knowledge management in other smaller countries such as Botswana and less still on guidelines and techniques of knowledge management in law firms in African countries.

Most knowledge management initiatives in law firms seem to have focused solely on large firms. In a study of knowledge management in Virginia law firms, it was found that most of these law firms were waiting to see how the large firms fared before adopting knowledge management (Gonzalez, 2002). Though large firms may be seen as logical users of sophisticated knowledge management systems, it is crucial for large and small firms alike because knowledge is becoming an essential survival weapon in any business organisation. Law firms in Botswana are small professional service firms, ranging from two to a dozen partners and having less than 100 employees (Fombad, 2002). These firms may therefore provide an appropriate setting for understanding knowledge management in small professional service firm context. It is against the above backdrop, that the main question of this study is formulated.

1.2 Main research question

In the light of the changing legal environment what are the practices and trends related to knowledge management that can provide guidelines for knowledge management in law firms in Botswana?

1.3 Sub questions

In order to shed light to the main problem, the following five sub problems are presented in this study

- ▶ How is the legal environment changing and what challenges do these changes have for law firms?
- ▶ How can knowledge management assist law firms in addressing these challenges?
- ▶ What is the current status and scope of knowledge management in law firms in general?
- ▶ What is the current status of knowledge management in law firms in Botswana?
- ▶ How can knowledge management be implemented successfully in law firms in Botswana?

1.4 Research questions

1.4.1 Research questions for sub problem 1 (the changing legal environment and its consequences to law firms)

- ▶ How is the legal information environment changing?
- ▶ What are the consequences of the changing legal information environment to the law firm?

1.4.2 Research questions for sub problem 2 (the role of knowledge management towards addressing the challenges in the changing legal environment)

- ▶ What is knowledge?
- ▶ What are the different approaches to knowledge?
- ▶ What are the different types of knowledge?
- ▶ What is knowledge management?
- ▶ What are the various approaches to knowledge management?
- ▶ What are the existing frameworks models and strategies for knowledge management?

- ▶ What are the technologies and techniques for knowledge management?
- ▶ What are the benefits of knowledge management?
- ▶ Which are drivers of knowledge management?
- ▶ What are the factors that inhibit the success of knowledge management?
- ▶ What are the enablers to knowledge management?

1.4.3 Research questions for sub problem 3 (the general status and scope of knowledge management in law firms)

- ▶ What are the different types and categories of knowledge existing in the law firms?
- ▶ What approaches do law firms mainly follow in knowledge management?
- ▶ Which tools and technologies are used for knowledge management in law firms?
- ▶ What are some of the techniques of knowledge management in law firms?
- ▶ What are the benefits of knowledge management for law firms?
- ▶ What models and framework exist for knowledge management in law firms?
- ▶ What factors inhibit the success of knowledge management in law firms?
- ▶ What factors are critical to the success of knowledge management in law firms?
- ▶ What are the guidelines for knowledge management in law firms?

1.4.4 Research question for sub problem 4 (the current status and scope of knowledge management in law firms in Botswana)

- ▶ What are the different categories of knowledge existing in the law firms in Botswana?
- ▶ What are the tools and techniques used for knowledge management in law firms in Botswana?
- ▶ How do law firms in Botswana approach knowledge management?
- ▶ What factors are critical to the success of knowledge management in law firms in Botswana?
- ▶ What are the perceived benefits of knowledge management to law firms in Botswana?
- ▶ What factors inhibit the success of knowledge management in law firms in Botswana?
- ▶ What is the role of other institutions and agencies in knowledge management in law firms in Botswana?

1.4.5 Research question for sub problem 5 (the guidelines for implementation of knowledge management in law firms in Botswana)

- ▶ What are the guidelines for successful knowledge management in law firms in Botswana?
- ▶ How can knowledge management be effectively implemented in law firms in Botswana?

1.5 Objectives of the study

The general objective of this study is to establish the guidelines for knowledge management in law firms in Botswana in the light of changing legal environment. From the sub problems stated above, the following is set out as the specific objectives of the study:

- ▶ Identify the types of knowledge generated and shared in the law firms
- ▶ Investigate the impact of the changing legal information environment on the law firm
- ▶ Assess the current efforts nature and scope of knowledge management in the law firms in Botswana
- ▶ Investigate the benefits in accomplishing knowledge management in the law firms in Botswana
- ▶ Determine the enablers and barriers to implementing knowledge management in the law firms in Botswana
- ▶ Investigate the role of other stakeholders in the knowledge management process in Botswana
- ▶ Establish guidelines for knowledge management in law firms in Botswana

1.6 Rationale of the thesis

As an emerging concept, knowledge management is highly valued in research and practice but at the same time relatively diffused and scattered into diverging concepts, perspectives and disciplines. Grover & Davenport (2001) remarked that research in knowledge management seems fragmented. A lot still needs to be done in the form of extending, refining, and empirically validating its models, and developing its theories and concepts. It is only by developing the theories and concepts of knowledge management across specific contexts and locations that a model can be understood. By drawing from the existing theories and concepts of knowledge management, this study complements and contributes to the body of knowledge management research and theory from an African context.

The writing by practitioners and researchers on the importance of knowledge management

in law firms (Kofoed, 2002; Leibowitz, 2002; Parsons, 2002; Curve Consultant Survey Report, 2003; Rusanow, 2003) reflects the immense interest of knowledge management in the legal profession. Lamont (2002) asserts that very few fields could benefit more from knowledge management than the legal profession. Law firms, due to the intensity of knowledge work involved in their operations provide a fruitful arena for knowledge management research. However, in spite of the enormous potential for the use of knowledge management in law firms, very little empirical study has been carried out on knowledge management and law firms and hardly any on knowledge management and law firms in Botswana. This study will therefore provide a holistic approach for the understanding of knowledge management in law firms in Botswana.

Most studies in knowledge management have emphasised technological-based initiatives. Though technology has been a catalyst to the recent resurgence of interest in knowledge management, knowledge management is not all about technology. Fahey & Prusak (1998), point out that technology can never be substituted for the rich interactivity communication and learning that is inherent in personal dialogue. Similarly, considerable emphasis has been placed on knowledge-based systems, particularly, tools and techniques for knowledge representation. Grover & Davenport (2001) underscore the need to study the cultural and technological-based initiatives to knowledge management. It is against this backdrop that this study draws from the multiple definitions and perspectives of knowledge management (information technology, personal, organisational and business perspective); in order to present a unique guideline for knowledge management in law firms in the light of the changing legal information environment. It is the hope that lawyers in Botswana will become aware of the opportunities of knowledge management in their firms and acquire some insights on how to effectively implement knowledge management.

There is currently an interest in information and knowledge-rich professional firms as potential role models for all firms yet they are relatively under-researched (Handy, 1995; Pinnington & Morris, 1996). Law firms are professional service firms. By looking at knowledge management in law firms, this study would make a contribution to the emerging knowledge base view of small professional service firms.

A previous study on the adoption and use of information technology in law firms in Botswana revealed that the adoption and use of information communication technology has not really taken its roots amongst lawyers but did provide new understanding on the basis of which corrective measures could be taken to enhance the implementation of

information communication technology (Fombad, 2002). As a follow up to the above study, and, considering that information communication technology have been a catalyst to the recent resurgence of interest in knowledge management, this study will therefore indicate how lawyers in Botswana are faring with information communication technology in the knowledge economy since the Fombad (2002) study.

This study hopes to add to the body of literature on knowledge management from an information science perspective. Knowledge management is also emerging as an area of interest to information scientist traditionally known as good managers of explicit knowledge. Some writers recognise knowledge management as a partial reincarnation or resurrection of familiar library and information processes and procedures (Broadbent, 1998; Ajiferuke, 2003). Increasingly, special sections of some library and information science journals are devoted to knowledge management issues and special sessions on knowledge management are increasingly being held in conferences organised by information scientists. Most library and information science schools now offer courses on knowledge management. However, the literature on library and information science directly related to knowledge management concepts has seldom been acknowledged in knowledge management literature.

Bearing in mind that most lawyers in Botswana may still not fully understand the concept of knowledge management, studying this concept at the early phase of its implementation seems very appropriate. This is because it will enhance lawyers' understanding of the theories and methods employed in knowledge management practices. It is hoped that the extensive literature that would be provided and the recommendations that would be made may provide Botswana lawyers with valuable information that would be helpful in creating an appropriate environment for the smooth introduction and acceptance of knowledge management as a strategically important resource in the fast emerging knowledge environment.

The researcher's legal background also provoked an interest to explore the understanding of knowledge management in a knowledge intensive industry like the law firm.

1.7 Delimitation of the study

Knowledge management is relatively diffused and scattered into diverging perspectives and disciplines. This study will address only a few of the many different approaches to knowledge management by drawing on knowledge management literature as it relates to law firms.

Although this study determines the guidelines for knowledge management in law firms in Botswana, it is located within the discipline of information science where there has been an increased interest by information professionals in knowledge management activities.

1.8 Definition of terms

In most instances, the terms used are explained and discussed in relevant sections of the thesis. Some of these terms are also included in the Glossary that forms Appendix 1 of this study.

1.9 Overview of chapters

The thesis is structured into nine chapters. The flow of the diagram below gives a brief overview of the chapters.

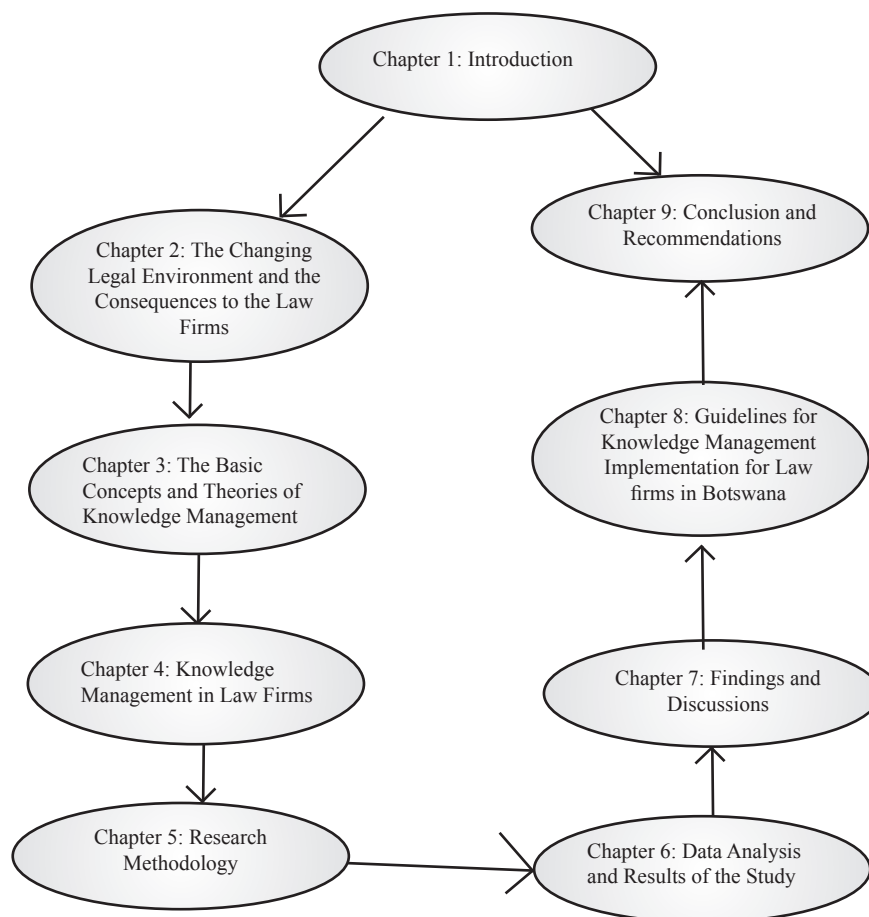


Figure 1.1 Overview of the chapters

The first chapter introduces the thesis and the particularities of the research and leads to the research questions, objectives and rationale of the thesis. Chapters 2, 3 and 4, locate the study theoretically. Chapter 2 focuses on understanding the nature and structure of the law firms and the consequences of the changing legal environment to the law firm. Chapter 3 places the study in the field of knowledge management and explores several concepts of knowledge management. Chapter 4 draws on the literature on knowledge management to locate the study in the context of the law firms. Chapter 5 focuses on the methodological framework and design used in the study. Chapter 6 presents the analysis of the results of the questionnaires and the interviews. Chapter 7 discusses the findings by relating all findings from previous chapters with each other. Chapter 8 presents guidelines for knowledge management in law firms. Chapter 9 concludes the thesis and provides recommendations and suggestions for further research. In essence, Chapter 9 is linked to chapter 1 because it shows that all the objectives of the study set out to accomplish in chapter 1 have been accomplished.

CHAPTER TWO

THE CHANGING LEGAL ENVIRONMENT AND THE CONSEQUENCES TO THE LAW FIRMS

2.1 Introduction

Several factors are challenging the ingenuity and creativity of lawyers and the legal environment compelling law firms to rethink their structures, roles, mission and the manner in which they carry out their business. Progressive law firms are adopting a business-oriented focus in the practice of law and are 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. The discussions in this chapter is centred around two research questions that seek to address the issues raised in sub-problem 1 of this study:

- ▶ How is the legal environment changing?
- ▶ What are the consequences and challenges of the changing legal environment to the law firm?

To put these issues in their perspective, it is proper to start with a brief description of a law firm.

2.2 What is a law firm?

A law firm can be described as a business entity formed by one or more lawyers to engage in the practice of law and the effective and efficient creation and delivery of legal services to clients. Lawyers are both advocates and advisors. As advocates, they represent their clients in criminal and civil matters by presenting evidence and arguing in court to support their client. As advisors, lawyers provide objective and learned counsel to clients concerning their legal rights and obligations. Lawyers are competent in general legal principles and procedures and in the substantive and procedural aspects of the law and have the ability to analyse and provide solutions to concrete legal problems.

Law is a knowledge-based profession and lawyers are classic knowledge workers (professionals with legal knowledge and skills superior to that of an ordinary person). Law firms apply a body of specialised knowledge to client's unique problem to provide a solution.

The general requirement to practice law in most jurisdictions is that one must have at least



a first degree in law after which he/she would be initially admitted to the profession as a student lawyer (pupil) depending on the regulations governing the lawyers' jurisdiction of practice. In Botswana the training of lawyers is a joint responsibility of the Law Society and the Department of Law at the University of Botswana. Competition for admission to study law is more intense than other areas of study in the social sciences at the university. To practice law in the courts of Botswana, a person must have completed a five-year law degree programme, be admitted on the roll of practitioners and must have obtained a practicing certificate unless he/she is exempted from obtaining the same. Sections 18-28 of the Legal Practitioners Act envisages a twelve months professional training period after the law degree. Commonwealth citizens are also allowed to practice law in Botswana provided they fulfill the requirements stipulated in Section 5 of the Legal Practitioners Act.

The Law Society in Botswana created on 2 August 1996, under the Legal Practitioners Act, 1996 is the supervisory professional body that regulates and oversees the conduct of lawyers in their professional work. Membership of the Law Society is compulsory for practitioners who hold practicing certificates; those in the Attorney General Chambers; and those employed by the Government or a statutory corporation (Section 56 of the Legal Practitioners Act). A lawyer sells his/her expertise and knowledge in legal matters. The main source of income is the lawyers' time that he/she spends in deploying knowledge in the service of clients (Lambe, 2003).

Lawyers acquire knowledge from internalising valuable information gathered during legal studies and legal research and through expertise and experience from learning on the job. Most often even after qualification from the law school, lawyers continue to develop their intellectual capacity and professional skills by acquiring specialised knowledge in particular areas of law and legal procedure and by solving legal problems. Law firms are learning organisations and lawyers are always in need of accurate, up to date information and "snapshots" of law at particular points in time. If a lawyer ceases to learn, he/she would not be able to provide precise, unbiased and expert advice to the client or present the client's case convincingly and confidently (Leckie, et al., 1996). This may explain why lawyers tend to address each other as "learned friend", "learned colleague" or "learned lawyer."

In order to be able to analyse and solve legal problems, lawyers are obliged to develop their intellectual capabilities, reasoning and textual analysis (Leckie, et al., 1996; Best, 2003). Professional skills such as legal research, judicial problem-solving, analysis, application



of the law to relevant facts, negotiation, drafting, advocacy, interviewing and general skills such as, business management, communication, team work, client relation skills, are skills required to build up a competent lawyer (Collins, 1994, Tjaden, 2001).

2.3 Organisation of law firm

Most law firms are organised around sole proprietorship and partnerships. In a sole proprietorship, a single lawyer is responsible for all the profit, loss and liability of the firm. A partnership is the relationship that subsists between two or more persons carrying on business in common with a view to profit (Mozley & Whiteley, 1998). Partnership is seen as a price in a tournament in which the winner forgo immediate returns to the value of their knowledge in order to reap the gains of property rights in the long term (Baden-Fuller & Bateson, 1991; Rebitzer & Taylor, 1999). In the traditional partnership model, the entire partners share equally in the profit of the firm after account has been taken of the cost of running the firm. Increasingly, modern law firms are adopting a two-tiered partnership model consisting of equity and non-equity partners (Susskind, 2003). Equity partners own stakes in the firm, share ownership and liability and are eligible to a share of the firms' annual profits. Non-equity partners on the other hand, are generally paid a fixed salary higher than that of lawyers working in law firms without partnership status and are granted certain limited voting rights with respect to the firm's operations. Lawyers working in law firms without partnership status are most often referred to as "associates," "fee earners" or "junior lawyers." In Botswana these lawyers are known as "professional assistants." Law firms are most often organised in such a way that each partner works closely with a number of associates and trainees who normally refer to that partner (Kofoed, 2002). One of the criteria for election into a partnership is for a lawyer to have demonstrated "thought leadership." That is, he/she will explicitly be assessed to have contributed significant knowledge and ideas to the firm.

Law firms may also employ paralegals (law librarians and legal assistance), clerical, and administrative staff to whom they delegate activities. Schoenberger (1995) outlines four organisational modes for legal practice: the mega-firm (large professional firms having more than 1000 lawyers) providing trans-national legal services; medium size firms (10 to 200 lawyers); the small firm with (2 to 10 lawyers) and the sole practitioner. Using the above distinctions as a rule of the thumb, all the law firms in Gaborone, Botswana could be classified as generally small because they have less than 10 lawyers. Statistics from the Botswana Law Society as at October 2007 shows that law firms in Botswana are either sole



proprietors or limited liability partnership and that the size of the firms varies from one to ten lawyers (Law Society of Botswana, 2007).

2.4 Changes in the legal information environment

Rapid advances in information communication technologies and changes in the business environment have resulted in accelerated changes in the legal environment. In the following section, the forces and the changes that it has brought about to the legal environment are identified and discussed.

2.4.1 The shift from paper-based to electronic sources of information

Traditionally, the practice of law has been built around law books and print technology. For a long-time, legal research facilities were centred on the paper-based law library, the precedent bank and the collection of press cuttings. Berring (1997) observed that the law library was considered as the centre for law firms, and clients considered it as an indication of the lawyer's prowess. Ten years ago in the United States, it was unusual to find a member of the legal profession with basic computer skills and the secretary was indispensable (Armitage, 1997; Brenells et al., 1997). In the same light, a report by the Bar Human Rights Committee of England and Wales (Library Resources for Lawyers Project Africa, 2001), explains, how the law firms used to operate before information communication technologies came into use. According to this Report, opinions, pleadings, and other legal documents were painstakingly drafted by hand and then typed by secretaries. First, drafts were amended and then carefully re-typed before signature. Legal research meant days in the library, searching for books and authorities in the hope that colleagues had not removed them. The quality of research, particularly in relation to new law, depended on the library collection being comprehensive and up to date. Hours over the photocopier followed in order to prepare bundles of authorities for the courts and colleagues. Sending copies to the court, solicitors, and interested parties required hours on the fax machine or an army of dispatch drivers and the journey to court involved a heavy bag of textbooks.

The situation is changing, albeit, gradually. The development of online computer-based research systems like LexisNexis and Westlaw (the first legal online databases) in the 1970s was an indication that legal practice had already entered an era not totally reliant on print (Katsh, 1995). Lawyers then began to find and download court decisions online and were able to carry out computerised searches through massive libraries for case reports, statutes and statutory instruments. Several other online databases such as Justastat, LexisNexis and



Dialog have rapidly emerged to provide important additional electronic research facilities to lawyers while online advisory and drafting tools are also becoming commonplace. Lawtel and the new electronic version of Sweet & Maxwell are recent legal databases containing summaries of legal material. Besides access to external databases, in-house research database systems (sometimes referred to as a know-how database system) have become available in the form of CD-ROM and online computer systems and assist in the storage and retrieval of valuable know-how generated within the law firm itself.

The practice of law underwent a profound change when the first personal computers appeared in the law office. Computers are shouldering much of the burden of routine tasks that used to take an enormous amount of the law firms' time. Lawyers are now able to carry electronic libraries around with light, easy-to-use portable computers and it is becoming increasingly easy to find specific information that used to take lawyers and paralegals hours to locate. Complex and expensive computer programmes enable lawyers to manage the documents and testimony needed in trials and some lawyers use large screen television presentations before juries presenting convincing and vivid arguments.

The literature reveals that lawyers have historically been fearful and resistant to adopt modern technology. In 1996, Katsh observed that many lawyers in the United States, especially sole practitioners and small firms did not even subscribe to, much less use the electronic research opportunities provided by LexisNexis and Westlaw. Some lawyers, particularly the older ones, have barely departed from the use of law books, and still consider print materials as probably the medium of choice. Similarly, in 1999 Lauritsen noted that even though most lawyers in America are using information communication technologies, techno phobia still reigns in many quarters, and many lawyers consider computers to be a strange hybrid of a manual typewriter beneath their dignity and above their understanding. Parsons (2002) reported that older lawyers tend to rely on the research skills of younger lawyers hoping that they are familiar with the latest information communication tools that facilitate legal research. Dubin (2005) noted that most lawyers are resistant to adopt information communication technology.

The resistance to adopt new technology may be partly because lawyers are reluctant to abandon their personal working habits and tools. In a 2001 study, one lawyer commented, "I like the books I'm a little old fashioned that way" (Haruna & Mabawonku, 2001:79). Lawyers' resistance to adopt new technology could also be partly attributed to the legal mindset. With regards to the legal mindset, Koer (1989:28) refers to lawyers as professional



non-believers who in the first instance rather mistrust than trust and who do not take things for granted. It may also be due to the fact that lawyers are generally obsessed with security of electronic information from protecting client's documents to shielding privileged legal advice, and safeguarding accounting information and would apply high standards in terms of authenticity, quality and integrity of the information which they base their decisions to serve their clients. It is ironical to note that a lawyer's career demonstrates the ability to learn and acquire completely new areas of knowledge as observed in section 2.3 above yet when it comes to adopting new technologies they are one of the most reluctant. Another reason why some lawyers are not up to speed on information technology may be because many law schools have not integrated it in their curricula.

2.4.2 Advances in information communication technologies

It is becoming obvious in today's law firms that advances in information communication technologies is dramatically changing the method used by lawyers for processing knowledge and delivering legal services to clients. Information communication technology in law firms can be used administratively or operationally. A common categorisation of the use of technology in the law firm has been in the "back-office," for administrative functions, and "front-office" for operational functions (Widdison, 1993). This description has become colloquial, because advances in information communication technologies have resulted in a seamless operation of both front and back office functions. Nevertheless, categorising information communication technologies in law firms in this manner is still important for a clearer understanding of the ways in which information communication technology is used in the law firm.

Generally, the administrative uses of information communication technology involves the application of information communication technology by lawyers or support staff to tasks essentially concerned with the internal management of the firm and towards improving staff efficiency in matters such as word processing, calendaring, time recording, client billing, accounting, marketing and public relations. Reach (2006) noted that this is done with the use of specialised legal technology software for word processing, accounting systems, calendaring, case management, conflict checking, customer relationship management, document assembly, document management, practice management and time tracking in back-office operations.

Operational uses on the other hand, involve the application of information communication technology by lawyers to tasks directly related to their professional efforts such as legal



research, casework management, or as a tool to facilitate the legal process (Widdison, 1995). Typical applications used to facilitate front office operations are legal information systems, artificial intelligence, case analysis support systems, electronic learning management systems, and litigation support systems.

Nowadays, the adoption and use of information communication technology is moving beyond the automation of existing practices to innovative concepts and applications such as the intranet, internet deal rooms, extranet, document and content management, online depositions, real time chat, portals, groupware, expert systems and knowledge management systems (Hopkins & Reynolds, 2003; Reach, 2006).

2.4.3 The Internet

The internet is a major step forward in information technology and it is challenging most of the paper and print paradigm that supported the practice of law. It consists of almost every resource necessary for legal research. Legal databases such as Westlaw, LexisNexis, Jutastat and Shepard previously based on propriety software legislation now have sites on the internet where a lawyer can log on from any computer and do research. Besides these commercial databases that lawyers have to subscribe to, the internet also offers plenty of free legal information resources and electronic libraries comprising of full text documents. Examples of electronic sources freely available over the internet are the cases and legislation of the following institutions: The South African Legal Information Institute (SAFLII), Australasian Legal Information Institute (AUSTLII), British and Irish Legal Information Institute (BAILII), Canadian Legal Information Institute (CANLII), and the World Legal Information Institute (WORLIDLII) (du Plessis, 2004). An online directory for South African legal professionals known as Hortors is also available over the internet.

Due to the proliferation of legal resources on the internet, software programmes have been designed to assist the user in navigating through the World Wide Web. An example is the popular search engine, the Find Law "Law Crawler" designed to locate legal resources located at <http://www.lawcrawler.com/index.html>. Electronic libraries comprising full text documents are accessible across the internet and it is also possible to access a substantial number of law library catalogues across the Internet. The internet Law Library, compiled by INTRALAW Legal Navigator and created by internet Legal Services integrates with a web browser to provide the user with organised index of links to legal resources on the internet (McCauley, 2005).



The internet also provides a cost-effective medium for electronic communication amongst lawyers and between lawyers and their clients. Electronic communication and collaborative tools like e-mail, video and text-based conferencing, Lotus Notes, Voice-Over-IP, are recent groupware that provide shared experience, support real-time on-line meetings and have accelerated the speed by which client contact and communication with other lawyers can be achieved. E-mail enables lawyers to send memorandums, mull strategies with clients, mark off drafts or briefs with co-lawyers and obtain answers to burning issues or problems by participating in a number of law-oriented mailing lists specific to the issue at hand (EsqLawtech, 2002; Staudt, 2003). Lawyers may monitor new developments by subscribing to e-mail newsletters, and by reading legal newspapers on the web. Legal services are being marketed over the internet through law firm web sites, law department intranet sites, Usenet, and e-mail discussion groups. A host of online information and advisory services are available over the internet through internet law firms, free legal internet service providers and virtual deal rooms (Jean, 2000; Gahtan, 2001; Hamzah, 2001).

As internet technologies continue to emerge with increasing sophistication, it is triggering changes in the way law is practiced and delivered. In a 1999 study, Nye predicted that by the year 2025, the internet would change everything about the practice of law. The virtual court, electronic filing and litigation support systems are internet facilities that will characterise legal practice in the digital age.

2.4.4 Electronic publishing

Legal publishers are increasingly becoming brokers and vendors of information and are reshaping their markets by using web technologies to provide lawyers with ready access to vast amount of current as well as retrospective legal information resources (Paliwala et al., 1997; Perton, 1998; Hoover, 1999). Though it is apparent that electronic publishing will not completely displace traditional paper-based publishing technologies, it is increasingly an important medium to be taken into account in the provision of legal services and needs to be carefully managed.

2.4.5 Information overload

The proliferation of information and electronic resources coupled with the internet and online decisions from courts has aggravated the problem of information overload. The production and dissemination of information has become so cheap and easy that the flow has become greater than one's ability to process. Lawyers are sometimes overwhelmed



with the amount of random and unorganised information and are drowning in a pool of sometimes irrelevant information. Parsons (2002) noted that in the “knowledge economy,” the explosion of content and the increasing demands for speed in the provision of legal services has ironically led to information anxiety and attention deficit amongst lawyers. Consequently, tracking relevant information and knowledge amongst lawyers within the firm may be very time consuming as lawyers spend time duplicating research that has already been carried out elsewhere, or creating new agreements and documents when models of such agreements already exist; often resulting in frustration.

2.4.6 Globalisation of legal services

As advances in information communication technology enables law firms to increase their horizons, the decline of centralised economies and globalisation of business practices have broken geographical boundaries, leading to an increase in international collaborative legal practice worldwide. Law firms are growing beyond their traditional local markets to global markets with large corporate firms having offices or federation of national firms in many countries conversely facing increased competition from other global players (Wall, 1998). The interaction of different cultures, the integration of processes and procedures while nurturing a sense of corporate identity presents practical problems. Also, the fact that the services of alternative law firms may be sought anywhere in the world poses a threat to the local law firms (Jackson, 2001:33; Rusanow, 2003). Firms are compelled to differentiate themselves from their competitors and develop business strategies to manage knowledge about their market position, competitors, and key clients.

2.4.7 Consolidation of law firms

There has also been an exponential growth in the size of law firms in recent years resulting in the growth of national and regional law firms. As these national and large size firms become anxious to capitalise on rapidly growing practice, they continue to present merger offers to well-positioned small firms (Bradlow, 1988; Susskind, 2003). It is evident that the “bigger is better mentality” is attractive to many law graduates such that many of them are opting to work in large law firms (Susskind, 2003).

2.4.8 The drive towards specialisation

Legal practice is shifting from the general practitioners’ model to the development of specialised divisions within the areas of law. Increasingly, the clients’ choice of a law firm



is no longer based purely on the firms' reputation, but rather on the lawyer's expertise and experience in a particular speciality (Susskind, 2001). Specialisation is perceived as a means of fostering the growth of law firms in an era when lawyers are being overwhelmed with the amount of information to grapple with. Intellectual property, information technology, conflict resolution, banking, and international trade, are hot areas of specialisation in legal practice (Bradlow, 1988; Lauritsen, 1999). Internet lawyering is also emerging as a major career path. There are new internet-based networks of lawyers consisting of virtual teams of specialists, and independent practitioners who are assembled to conduct a given piece of work and are disbanded on completion (Susskind, 2003).

2.4.9 Competition amongst firms

The continuous rise in the number of lawyers and law firms has put pressure on law firms to maintain a competitive edge against each other for partners, clients and law graduates. This is particularly so as the supply of lawyers is far exceeding the demand for their services. Statistics from the American Bar Association in 2003 indicated a 25% increase in the number of licensed lawyers in the United States from the previous decade (Susskind, 2003). Financially viable law firms in an attempt to attract the best and brightest lawyers are making large salary offers to many freshly qualified and talented lawyers. This may imply that only firms that provide unique proactive value added services to its clients and make its lawyers smarter may survive.

2.4.10 Pressure on law firm from clients

Clients are becoming sophisticated consumers of legal services. They expect lawyers to have technologies in place that may enhance their effectiveness and are not willing to pay lawyers to deliver work in what they consider as inefficient and expensive ways (Dubin, 2005). Most clients are computer literate, connected to the Internet and may even conduct an Internet search on the legal issue at stake before consulting a lawyer. Bradlow (1988); Nye (1999); and Kofoed (2002) observed that clients have become increasingly fee-conscious and will not hesitate to shop around for the best fees or question billings. Susskind (2003) points out that an emerging trend in the legal business is for clients to access the firm's knowledge electronically. Wall (1998) observed that the "trustee" relationship between the lawyer and the client has been superseded by a relationship in which lawyers are no longer seen to provide a legal service in the traditional sense but are now perceived as conducting legal business with the client.



2.4.11 Disintermediation

New technologies, legal databases and the Internet have accelerated what is referred to as the disintermediation process (Bradlow, 1988; Nye, 1999; Susskind, 2001) Disintermediation consists of any activity that eliminates or bypasses an intermediary (middle man) such as a specialist, professional, or institution from the delivery of a service or transaction that it normally performed (Drucker, 2000; ESQlawtech, 2002). Lawyers are classic examples of an intermediary because they serve as agent, broker and representative between the client and the legal system. The internet, legal technology, and legal self-help books are increasingly taking the place of lawyers by providing lots of answers to most clients' needs. The legal software market has also been flooded with programmes that produce legally acceptable wills, binding residential leases, guidance through divorces, articles of incorporation, real estate documents, and legal contracts (Nye, 1999). Similarly, Legal Web Advisor offer interactive legal advice delivered via extranet using artificial intelligence (Mountain, 2001). The electronic law library (<http://www.lectlaw.com>) is also a site that is filled with legal advice on every imaginable topic.

In sum, disintermediation may not necessarily lead to the extinction of lawyers because lawyers have the unique expertise to recognise and deal with complex situations when a problem arises. However, the thoughts of disintermediation has given clients the feeling that law is not so complex and that they are paying for the management skills of the lawyer rather than the legal knowledge. It is thus becoming clear in many jurisdictions that the best way for lawyers to survive and thrive in the new paradigm is to make use of these same legal technologies and the Internet and provide cost effective, efficient and unique high-quality services that cannot be easily replaced by computer-delivered services.

2.4.12 The foray of professional service firms in the legal information environment

Closely associated to disintermediation, is the foray of professional service firms into the legal information environment. Law firms are professional service firms and like other professional service firms, their basic mission is to deliver outstanding client service, provide fulfilling careers and professional satisfaction and achieve financial success and growth (Maister, 1993:46; Hunter et al., 2002). Professional service firms like accountancy, management and consultancy firms have long realised the need to consolidate their resources, promote a culture of knowledge-sharing, and expand their services to meet the need of the changing client base. These firms have started to provide online multidisciplinary



services based on the needs of the clients. Accountants, financial planners, consultants, trust officers, mediators and a host of other professional service providers are pirating the work traditionally done by law firms such as tax work, employee benefits; management consulting and litigation support (Susskind, 2001). Thus, clients would not bother to seek the services of lawyers when professional service providers are acting as intermediaries and performing the traditional legal services previously done by lawyers even at a much cheaper rate. Law firms are therefore under threat from these professional service firms to expand their services and to meet the needs of their clients.

2.4.13 Increase mobility in the legal profession

The competitive business environment, advances in information communication technology coupled with the possibility for an open market for professional workers have revolutionised lawyers' mobility in recent years. Young lawyers are becoming highly mobile. Some are opting for changes to improve on their curriculum vitae, others in search of greener pastures, and others still in search of high value added jobs that will satisfy their personal tastes and aspirations (Hunter et al., 2002). Furthermore, lawyers sometimes leave their jobs because they are susceptible to problems of low morale and alienation or because the working conditions are not intellectually stimulating and challenging (Rusanow, 2003). Quite clearly, the traditional law firm environment of exceedingly long hours involving low value added work is becoming less attractive to lawyers who are presented with many options. The security and indefinite long-term contract of employment that lawyers enjoyed in the past is no longer guaranteed and it is very normal for lawyers to spend less than three years at the firm. Dubin (2005) observed that new generation of lawyers with high expectations and reliance on information communication technology may be unwilling to stay in firms that do not use the recent information communication technology tools. In addition, senior lawyers in the law firms belong to the aging demography that may retire and carry along with them vast amount of knowledge that they have acquired over the years (Sinotte, 2004).

It is apparent from the different factors examined in this section that the legal environment is currently experiencing several changes. It is therefore necessary to investigate the consequences and challenges of all these changes to the law firm.

2.5 The consequences and challenges of the changing legal information environment to the law firms

The preceding section identified the factors that are responsible for changes in the legal



environment and discussed the changes these factors have brought about in the law firm. These changes are affecting the lawyers' routine, challenging their inefficiencies and practices and are putting pressure on law firms to find faster ways of delivering legal services. In order to successfully manage the above, lawyers need to rethink their traditional strategies and seriously focus on new models of lawyering. The survival and growth of a law firm depends on its ability to find easy cost-effective ways that lawyers may access and share critical information and best practices, and provide proactive services to clients. In light of the rapid changes taking place, a number of challenges are faced by law firms today.

- **Coping with information overload**

The explosion of the large amounts of (often redundant) information that is increasingly available in law firms is a major problem to lawyers because they are overwhelmed with large amount of irrelevant information (du Plessis & du Toit, 2005). In essence, though a vast wealth of information and knowledge resides amongst lawyers and within the law firm, most lawyers do not know where to get it. In order not to miss out on critical pieces of information, lawyers require some skills, strategies, and assistance in seeking, collecting, storing, managing and processing relevant information from many sources in a retrievable fashion (Parson, 2002; Rusanow, 2003).

- **Dealing with technological concerns**

The ubiquitous presence of information communication technology electronic resources and the internet is transforming the legal industry and putting pressure on law firms to find faster ways of delivering legal services (Hopkins & Reynolds, 2003; Reach, 2006). Lawyers cannot afford to continue to rely only on traditional print resources because they may run the risk of not having the best and most current information that could influence the position of his/her client. Law firms are therefore challenged to design effective strategies to deal with advancement in information communication technology examine ways of using technology in improving on their work, delivering better services to the clients and meeting the internet-driven needs of the client.

- **The need to provide proactive legal services to clients**

Clients want more value for money and law firms want to deliver better value without putting more strain on lawyers. As law firms shift their practice from the provision of



informational, transactional, and documentary services that may be handled by sufficiently advanced technology, to more interactive services like client counselling, trial, advocacy, taxation and security, they are compelled to provide efficient, proactive and specific legal services to clients (Susskind, 2003). In order to attract and retain clients and improve on their productivity and profitability law firms are challenged more than ever before to be more efficient, responsive and effective, in the provision of proactive cost-effective services and up to date legal information to potential clients.

- **Increased competition from globalisation, specialisation and the consolidation of legal practices**

The drive to specialisation, the need to operate globally and the consolidation of law firms have increased competition amongst law firms (Bradlow, 1998; Dubin 2005). This is putting pressure on law firms to differentiate themselves from multiple markets and multiple competitors. Global management, virtual offices, flatter management structures and focus on business processes are some of the responses to these challenges (Rusanow, 2003). Law firms are compelled to collect enough information about their businesses and adopt a strategic approach to their future growth, market position, competitors, and key clients and effectively process and analyse these information in robust and reliable ways. Collaboration and communication amongst lawyers with and within other disciplines and community of practice is becoming crucial for the survival of the law firm. As law firms grow bigger and scattered, they encounter cultural resistance to share knowledge across offices and practice groups.

- **Pressures from other professional firms**

The foray by a host of other professional service providers into the work traditionally done by law firms is compelling law firms to define the unique scope of its knowledge, understand its value and leverage and diffuse it in ways that will not replicated by competitors (Hunter et al., 2002). Consequently, law firms must be clear on their business objectives and define those objectives in context to the firm's wider goal.

- **The challenge to acquire new skills and competencies**

Lawyers can no longer afford to be computer illiterate, consider information communication technology as the province of the support staff or consider information communication technology as something only for the information technology department.

Lawyers are compelled to acquire information literacy² and information communication technology literacy skills (Chitwood & Gottlieb, 1998; Jackson, 2001:34). Other skills that may be expected from lawyers are information and knowledge management skills, computer and information literacy skills, digital lawyering, electronic publishing skills, and skills in the use of programmes that enhance legal service. Lawyers are also challenged to develop a corporate capability - a unique mix of skills, expertise, processes, management and intellectual capital that would enable it to respond to the changes and develop its markets.

- **Meeting the information and knowledge needs of the lawyer**

As the legal information environment is changing, so too are law firms challenged to fully identify and leverage the different information and knowledge needs of junior and senior lawyers. Lawyers' needs are diverse and constantly changing and most often reflected by the stages of professional development, and the needs of a particular client. Leckie et al. (1996) observe that within the universe of potentially relevant information, what is required by a particular lawyer would vary and individual demographics such as age, specialisation, professional development, frequency of need, importance of the issue at hand, and complexity of the problem will influence the needs of the lawyers.

- **Lawyer mobility**

The increased mobility amongst lawyers from one firm to another poses a threat to law firms (Bradlow, 1998; Hunter et al., 2002). Lawyers leave the firm carrying along expertise that has not yet been captured and preserved in the firm to share with others. The specificity of a lawyer's knowledge, and the close relation he/she enjoys with a client also places the law firm at a risk because an expert may "grab and go" with the client (Morris & Pennington, 1998). There is therefore a growing awareness that if measures are not taken, a vast quantity of vital knowledge and expertise would walk out of the door. Law firms are compelled to improve and solidify retention rates, capture and retain some of the knowledge, wisdom and experience of lawyers and attract and develop the best staff.

2 Information literacy entails techniques and processes that involve the ability to locate evaluate and manage the use of information for problem solving, decision-making and research from a range of sources (Bruce & Lampson, 2002; Owusu-Ansah, 2003). Information communication technology literacy on the other hand entails the ability to use information communication technology tools and devices but stops short of being able to find, evaluate and use the information to which computer provides access. An information literate person generally acquires information communication technology skills in the process of becoming information literate.



- **Developing the firm's organisational memory**

Law firms are challenged to develop an organisational memory that will increase the firms' ability to retrieve their previous experiences so that the knowledge and competencies representing the past and present collective learning of lawyers are transferred across generations of learning. Organisational memory also referred to, as the firm's intellectual capital is the knowledge and knowing capability of an organisation. It has been defined as the knowledge from an organisation stored and distributed across different retention facilities that can be retrieved, remembered and brought to bear on present decisions (Fiol & Lyles, 1985; Walsh & Ungson, 1991).

- **A learning organisation**

As the need for growth and career development is becoming an alternative for lawyers to leave the firm, law firms are compelled to become effective learning organisations in order to stay innovative and be resilient to weather uncertainties. A learning organisation will generally encourage the development and progression of staff to new areas where growth and career development become alternatives to leaving the organisation (Argis & Schon, 1978: 2-3, 27; Cross & Baird, 2000:69; Delphi, 2001).

- **Ethical and legal challenges**

The rapidly evolving legal information environment has presented some ethical and legal challenges to the practice of law. Potential areas of ethical dilemma include: e-mail and attorney-client relationship (Blades & Vermynen, 2004; Schnell, 2005); e-mail and attorney client privilege and the issue of confidentiality (Weingarten & Weingarten, 2002); lawyers' online comments and unauthorised practice of law (Blades & Vermynen, 2004); lawyer advertising and solicitation over the internet (Hill, 2002; Bencivengo, 2003; Blades & Vermynen, 2004; McCauley, 2005); the misdirected e-mail and inadvertent receiver (Simko, 2002; Bencivengo, 2003); the admissibility of electronic evidence (Boone et.al., 2002; Giordano, 2004) and the use of electronic evidence in trial (Flaherty, 1996; Widdison, 1997; Girvan, 2001). In the search for newer and more efficient ways of delivering legal services and information to the public, it is important for lawyers to explore the use of this rapidly changing media in a way that properly balances professionalism and ethics.

2.6 Conclusion

In an attempt to address research question one of the study, this chapter examined the law firm, the changing legal information environment and the consequences and challenges of these changes to the law firm. The above changes in the international legal environment



provide the basis from which the changing legal information environment in Botswana will be empirically investigated in order to establish the guidelines for knowledge management in the law firms.

It was seen that law firms are knowledge intensive organisations in which lawyers are sophisticated managers of information and knowledge. The law firm's knowledge resource is its collective insight, specialised expertise and experience. Lawyers collect use and generate large stores of information and knowledge on a daily basis and are basically engaged in the sale of their specialist expertise.

Rapid advances in information communication technology and other significant changes in the business environment have resulted in accelerated changes in the legal information environment. Amongst the factors that have triggered these changes in the legal information environment are globalisation, electronic publishing, information overload, increased client sophistication, internalisation of business practices, competition amongst firms, the drive towards specialisation and an increased mobility rate amongst lawyers.

Amidst these changes, law firms are compelled to rethink their traditional mode of legal practice. The survival and growth of law firms depends increasingly on amongst other things factors such as, the ability to find easy cost effective ways for lawyers to access and share critical information and best practices, deliver high value services to clients, explore the use of the rapidly changing media in ways that properly balances professionalism and ethics. Good academic credentials and legal competence by themselves are no longer sufficient for a lawyer. Lawyers are challenged to acquire information literacy and information communication technology skills that would facilitate information retrieval (Chitwood & Gottlieb, 1998; Jackson, 2001:34).

The realities of these changes, coupled with the increased recognition in recent years of the value of knowledge management and the fact that acquiring and leveraging knowledge can propel the firms to be more innovative and competitive has focused the attention of law firms to harnessing knowledge management in legal practice. A proper implementation of knowledge management will transform the legal practice and fundamentally alter the way lawyers interact and exchange critical legal information across their extended enterprise. Knowledge management is becoming crucial for the creation of an environment conducive for knowledge creation and sharing. It will promote trust, and foster teamwork, enhance consistency and ensure that lawyers across practice groups are working together to identify clients' need and provide uniform advice to the client (Chester, 2002; Rusanow, 2003;



Wesemann, 2006). Law firms in Canada, United States, United Kingdom and Australia are considering knowledge management as a necessity for meeting emerging client demand for efficiency, accountability, and controlled legal cost (Chester, 2002; Nathanson & Levison, 2002). Leading United Kingdom law firms have well-developed precedents and know-how systems maintained by full time professional support lawyers who are senior lawyers and experts (Kay, 2002). Becerra-Fernandez (1999); Whitfield-Jones (1999); Curve consulting (2003); Kay (2002); Leibowitz (2004); and Opp (2004) have noted that a successful implementation of knowledge management in law firms may result in the following benefits:

- ▶ Foster innovation and encourage the free flow of ideas;
- ▶ Improve learning and the ability to stay ahead of competition and changes in the legal information environment;
- ▶ Provide higher quality knowledge work;
- ▶ Improve individual and group competencies;
- ▶ Provide more effective networking and collaboration;
- ▶ Improve customer service by streamlining response time ;
- ▶ Boost revenues by getting products and services to market faster ;
- ▶ Reduce redundancy and enhance employee retention rates by recognising the value of employees' knowledge and rewarding them for it ;
- ▶ Streamline operations and reduce costs by eliminating redundant or unnecessary process;
- ▶ Improve productivity;
- ▶ Facilitate decision-making, and the achievement of other business objectives;
- ▶ Provide better integration of practice across firms;
- ▶ Provide better client service; and
- ▶ Provide a more rewarding working environment.

The main conclusion that can be drawn from this chapter is that the legal information environment is changing and is putting pressure on law firms to seek ways of redefining their traditional mode of lawyering by harnessing knowledge management in the law firm. The next chapter therefore focuses on the concept and theories of knowledge management. An understanding of the theories and principles of knowledge management would provide a solid background for the investigation of knowledge management in law firms - the subject of this research.