

LEGAL PRACTICE MANAGEMENT: ATP 106

LECTURE 2

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HISTORICAL BACKGROUND OF LEGAL MANAGEMENT

- Law firms date back to the 19th century.
- Examples of professional organizations that assist lawyers / advocates in managing their practice.
 - American Bar Association - USA.
 - The Law Society (solicitors) – UK
 - The Bar Council (barristers) - UK. UK also has other recognized registered bodies e.g. Solicitors Regulation Authority, Bar Standards Board.
 - The Law Society of Kenya - Kenya
- Law Society was formed in 1948 by section 3 of the Law Society of Kenya Ordinance, 1949. This Act was repealed by the Law Society of Kenya Act, which came into force on 30th October, 1992.

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As the Law Society was formed in 1948, does this mean that before colonialism, there were no laws that were in place?

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HISTORY OF THE LEGAL PROFESSION IN KENYA

Pre-colonial period

- Traditional systems - the education was not codified.

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Colonial period

- In the very early days of colonialism, there were two branches of the legal profession: -
 - the colonial legal service and the judiciary - public service.
 - the private legal profession - advocates.
- Before 1895 - Kenya was declared a British Protectorate, the country had no structured legal system.
- 1890 - The first court in British East Africa was established by the IBEAC with A.C.W Jenner as its first judge.

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- 1895 - The East Africa Protectorate was established with Consular court to serve British and other foreign persons.
- 1896 - The territory became known as the East African Protectorate. It was then renamed Kenya Colony and Protectorate in 1920 and remained so until 1963 when Kenya became an independent state.
- 1897 - Her Majesty's court of East Africa, (later renamed 'the High Court of East Africa') was established; a court with jurisdiction over all persons in the territory.
- 1901 - Barristers and solicitors and pleaders from the Indian High Court were allowed to practice in Kenya. Disciplinary control over the advocates was exercised by the High Court.

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- 1907 – Native Courts Ordinance was promulgated
- 1911 - Non-lawyers were forbidden from practicing in Kenya. lawyers from the commonwealth were permitted to practice in Kenya.
- 1931 - The Supreme Court Building was built.
- 1949 - The Advocates Act and the Law Society of Kenya Act, were enacted.
- 1962 - The African courts were transferred from the Provincial Administration to the Judiciary. The independence Constitution established a Supreme Court with unlimited original criminal and civil jurisdiction over all persons, regardless of racial or ethnic considerations.

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- 1963 – Kenya gained independence
- 1964 - Kenya became a Republic
- 1964 - The Supreme Court was renamed the High Court.
- 1967 - The Judicature Act, the Magistrates' Courts Act and the Kadhis Courts Act were enacted to streamline the administration of justice.

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Post-Independence Bar

- Circa 1961 - Africans started fighting for a parallel way to enter into the legal profession through university education.
- Circa 1985 - Structural changes within the legal field started occurring.
- Early 1990's - LSK became divided (pro government advocates and those opposed to it).

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NATURE OF A LAW FIRM

- Advocates have started thinking about how organizations that offer legal services may be organized.
- Winslow inferred that advocates have been adopting Ronald Coase's thinking when trying to interpret the nature of law firms.

Winslow, E. C.; (2016); Nature of Law Firms – It's About the Client; Published on March 19, 2021 in The National Law Review (Volume XI, Number 78)

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- Coase argues that firms emerge because they are better equipped to deal with transaction costs compared inherent in production and exchange compared to their human counterparts.

Coase, R., (1937); The Nature of the Firm

- Supporters for aforementioned arguments: -

- Oliver Williamson

Williamson, O. E.; (1981), "The Economics of Organization: The Transaction Cost Approach; American Journal of Sociology, 87 (3); 548-577.

- Oliver Hart

- Douglas North

North, D. C.; (1982); Structure and Change in Economic History; London W W Norton (1st Edition)

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OFFICE DEFINED

Cambridge dictionary,

"A room or part of a building in which people work, especially sitting at tables with computers, phones, etc., usually as a part of a business or other organization....."

Or

A part of a company

Or

A position of authority and responsibility in a government or other organization."

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- Saleemi N.A.;

"Any place set aside for work of a clerical nature.... consist of a room or building which is used for the work of a clerical, administrative or communicative nature. Its purpose is to serve as an administrative Centre of an organization comprising of departmental offices responsible for their respective functions.....office is a unit where relevant records for the purpose of the control, planning and efficient management of the organization are prepared, handled and preserved."

Saleemi, N.A. (2015). *Office Organization and Practice Simplified*. Nairobi, Kenya: Devonshire College of Accountancy at page 20

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- Kapur, R.;

"An important place or section or an area for the conduct of any works, jobs, businesses or transactions.....a place for the operation of business, the room or department, where the clerical work is done, or it can be stated that is a place where professional and commercial transactions are implemented, or it is a place where all sorts of activities within the organization are dealt with. Office is the centre of the organization."

Kapur, R. (2018). Office Management; available at https://www.researchgate.net/publication/323731787_Office_Management/citation/download last accessed 23/03/2021

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ROLE OF AN OFFICE

- Fulfilling an organization's functions (subordinate role - same organization sets up the office for routine work).
- Complementary to the organization e.g. manufacturing industry whereby the organization will require a factory which in turn requires an office to keep records
- Controlling function.

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IMPORTANCE OF AN OFFICE

- Communication centre
- Information centre or memory centre.
- Administrative nerve centre
- Control centre
- Intermediary

One of the requirements during the registration process is that the physical address be provided, why is this?

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- Note section 35 of the Advocates Act which require that all instruments drawn by an advocate be endorsed with the name and address of the advocate and failure to do so acquires a penalty.

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FUNCTIONS OF AN OFFICE

- Divided into 2 main categories: -
 - Clerical / basic / routine functions
 - Administrative functions

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Clerical / basic / routine functions: -

- receiving information
- recording information
- sorting information
- distributing information
- sending information
- preparing and processing information
- storing information

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Administrative functions: -

- controlling and safeguarding company assets
- personnel functions
- developing and implementing policies and procedures
- forms design and control
- Selecting office appliances
- preparation of budgets and forecasts
- preparation of financial and cost accounts

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OFFICE MANAGEMENT

• An office as a tool of management, also requires to be managed. office management can be defined to mean planning, organization, co-ordination and controlling the activities of an office.

• Elements of office management : -

- Purpose
- Environment
- Personnel
- Means

Saleemi, N.A, (2015). Office Organization and Practice Simplified. Nairobi, Kenya: Devonshire College of Accountancy at page 26

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TYPES OF BUSINESS ORGANIZATIONS

• Law firms can be registered as: -

- sole proprietorship
- partnership
- company

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SOLE PROPRIETORSHIP

- Trading business owned by a single person.
- No distinction between the business and the individual carrying on the business.
- An advocate can start a firm as a sole proprietorship by registering it under the Registration of Business Names Act.

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Requirements for starting a sole proprietorship

- Name of the business (in our case, name of the law firm)
- Nature of the business
- Address of the principal place of business
- Postal address
- Nationality
- Age
- Gender

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- Usual place of residence
- Other business occupation
- Signature on the document
- Copy of ID or Passport
- Copy of KRA PIN certificate
- Recent passport photo

LSK Law Firm Management Manual (2018) at pages 7 and 8

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Registration steps: -

- Step 1 Application of a business name
- Step 2 Kenya Revenue Authority Registration
- Step 3 Registration of the business name
- Step 4 Application for a business permit
- Step 5 National Social Security Fund Registration
- Step 6 National Hospital Insurance Fund Registration

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Additional information

- The name of a law firm ought to be registered with the Registrar of Business Names within 28 days of the firm commencing to use the business name (Section 8, The Registration of Business Names Act).
- The Registrar of Business Names issues the law firm with a certificate - evidence of registration.
- The proprietor has to submit to LSK within 30 days of registration; a copy of the firm's registration certificate and details of the firm.

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PARTNERSHIPS

- Partnerships - formed due to the need to raise more capital with a view of making profits (Section 2, The Partnership Act 2012).
- See:
 - *Fort Hall Bakery Ltd v Wangoe (1959) EA 494*
 - *Patel v National Contractors (1954) 21 EACA 39*
 - *M W K & 2 others v R K K [2018] eKJLR*

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Types of partnerships

General partnership

- There is statutory recognition of general partnerships in the Partnerships Act
- Simplest types of partnerships.
- Easiest to form and the easiest to dissolve. Most often than not partners will not have official paperwork (see *Smith v Anderson (1880) 15 Ch 247*)
- May be need oral, in writing, or implied by conduct

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Disadvantages of general partnerships: -

- All partners face unlimited liability (Section 8(1), The Partnership Act.)
- There is no separation between the business and the partners (eg section 12(3) of the Partnership Act)
- If the partnership only consists of two parties, if one partner wants to exit or is declared bankrupt or dies, then the partnership ceases to exist (see *Mohammed v Hussain (1950) 17 EAC 1*)
- Partners are fully liable for each other's official actions (Section 17, The Partnership Act)
- Official decisions have to be made in consensus by the partners (Section 15(3), The Partnership Act, 2012)
- Profits have to be shared.

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Advantages of general partnerships: -

- Generally benefit from pass-through taxation.
- Partners benefit from their partner's knowledge.
- There is less financial burden as expenses, losses etc. are split amongst the partners (Section 12(1), The Partnership Act, 2012)
- Business partners share work allocation (section 15(1), The Partnership Act, 2012)
- There is less paperwork compared to LLP and companies.

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Limited partnership

- Offers more protection to the partners compared to general partnerships as one partner takes on the unlimited liability (Section 56, The Partnership Act, 2012).
- To register, an application is delivered to Registrar of Companies.
- Application is accompanied by a statement that is signed by all the proposed general partners of the law firm (Section 68, The Partnership Act).

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The statement indicates: -

- The name of the partnership
- The location and address of the partnership
- Names of proposed general partners
- Addresses of proposed general partners
- Names of proposed limited partners
- Capital contributions made by the proposed limited partners
- If the application relates to an existing general partnership, date of formation of the partnership.

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limited liability partnership

- Coalesces the attributes of both a company and a general partnership.
- Easier to register as there are less formalities
- Has all the advantages and disadvantages accrued by incorporation.
- Income is taxed at an individual level
- Allows for the inclusion of body corporates as partners.
- Requires a manager to be appointed.

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Advantages of a Limited Liability Partnership

- All partners have limited liability
- There is no limit to the number of partners
- There are less formalities in terms of registration
- Partners can agree on their own structures and regulations.

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Risks associated with limited liability partnerships: -

- Partners are personally liable for their own negligence
- Partners are personally liable for the negligence of employees working under their supervision.
- There is liability for debts incurred by the partnership.

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Registration process.

- A Statement of Particulars is a requirement for registration of a limited liability partnership. This statement includes
- Proposed business names for search and approval
- Business details
- Details of partners
- Details of the manager of the firm

See LSK Law Firm Management Manual (2018) at pages 9 and 10

- Registration of limited liability partnerships has been given statutory recognition in Part IV of the Limited Liability Partnership Act (sections 16 to 23 – Registration of Limited Liability Partnerships).

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Registration steps: -

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Partnership deed

- A partnership deed is an agreement between the partners of the law firm that outlines the terms and conditions that will guide the partnership.
- A partnership may be formed by a partnership deed signed by all the partners.
- sometimes be called a Partnership Agreement or Articles of Partnership.

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Contents of a partnership deed: -

- The name of the firm.
- The names and addresses of the partners.
- The nature of the business.
- The term or duration of partnership.
- The amount of capital to be contributed by each partner.
- The drawings that can be made by each partner.
- The interest to be allowed on capital and charged on drawings.
- Rights of partners.
- Duties of partners

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- Remuneration to partners.
- The ratio in which the profits or losses are to be shared among the partners.
- Usage of partnership property – ideally all partnership property should be used for the benefit of the firm.
- The basis for the calculation of goodwill at the time of admission, retirement and death of a partner.
- The keeping of proper books of accounts and the preparation of Balance Sheet.
- Right of inspection.

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- Admission procedures for new partners (must include qualifications to be considered before admission of the partner)
- Settlement of amount on the dissolution of the firm.
- The procedure to be adopted in case of disputes among the partners.

The partners have to submit to the Secretary of the Law Society of Kenya; a copy of the firm's registration certificate and details of the firm no later than 30 days after executing the partnership deed.

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COMPANY

- A company as an association of people for a common object or objects.
- The objects of a company extend beyond profit making.

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Types of companies

- Chartered companies
- Statutory Companies
- Registered companies
 - Limited companies (Section 5, Companies Act)
 - ✓ Companies limited by shares (Section 6, Companies Act)
 - ✓ Companies limited by guarantee (Section 7, Companies Act)
 - Unlimited company (Section 8, Companies Act)
 - Private company (Section 9, Companies Act)
 - Public company (Section 10, Companies Act)

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Registration Process

- Incorporation and registration of companies is carried out via E-Citizen (<https://www.ecitizen.go.ke/>).
- To apply for registration, the applicant will fill in electronic forms available on <https://brs.go.ke/forms.php>

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- Are Kenyan Law firms allowed to be publicly traded?

There is no specific provision in law that prohibits law firms from being publicly traded. However, with the stringent requirements on transparency required for publicly listed companies, this will violate some of the requirements of the Advocates Act most notably the rules governing confidentiality.

- How do companies raise capital?

There are two types of capital that a company can use to fund operations: Debt and equity. Prudent corporate finance practice involves determining the mix of debt and equity that is most cost-effective.

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FIRM ASSIGNMENT

- Discuss the differences between the different types of business organizations.
- Identify the most common forms of business organizations preferred by legal practitioners and the reasons why they prefer them.
- Draft the Kenya School of Law organizational structure
- Discuss the features of a panoramic office.