

LEGAL PRACTICE MANAGEMENT: ATP 106

LECTURE 9

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INFORMATION AND COMMUNICATION TECHNOLOGY

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INTRODUCTION

- Information Communication Technology is a term that is encompassing of all technologies that are utilized for the machination and communication of information.
- Information Communication Technology is commonly abbreviated as ICT.

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"Information technology continues to have an ever-growing impact upon society and the way that society conducts its affairs. Information and communications technologies have permeated almost every professional, commercial and industrial activity and most organisations would find it difficult, if not impossible, to function without relying heavily on these technologies. As far as the law is concerned, computers and electronic communications networks have been a mixed blessing. They have become indispensable tools, allowing the use of massive information storage, processing, dissemination, searching and retrieval. On the other hand, information and communications technologies have posed and continue to pose novel and complex social and legal problems. Frequently, the law has been found wanting when dealing with the issues raised by these constantly evolving technologies, and legislators and the courts have often struggled to come to terms with the challenges raised by them."

Bainbridge, D., (2008), Introduction to Information Technology Law, (6th Edition), Pearson Education at page 1

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...the use of instructions to create a repeated process that replaces an IT professional's manual work in data centers and cloud deployments. Software tools, frameworks and appliances conduct the tasks with minimum administrator intervention. The scope of IT automation ranges from single actions to discrete sequences and, ultimately, to an autonomous IT deployment that takes actions based on user behavior and other event triggers."

Bigelow, S. (2019). IT Automation, available at <https://searchoperations.techtarget.com/definition/IT-automation>

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AUTOMATION

- Systems have to be put in place that are able to handle workload.
- Technology has come up with innovations that will solve issues borne by organizations due to globalization.
- IT automation has been defined as:
 - "...the use of instructions to create a repeated process that replaces an IT professional's manual work in data centers and cloud deployments. Software tools, frameworks and appliances conduct the tasks with minimum administrator intervention. The scope of IT automation ranges from single actions to discrete sequences and, ultimately, to an autonomous IT deployment that takes actions based on user behavior and other event triggers."

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Why automate?

- Incident management
- Application deployment
- Using IT automation, organizations can deploy their applications with confidence
- Security and compliance

❖ *What are the advantages of automation?*

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Advantages of Automation:

- Cost reduction strategy
- Competitive strategy
- Speed
- Accuracy
- Governance
- Reduced costs
- Increased productivity
- Increased availability
- Greater reliability
- Better performance

❖ *What are the disadvantages of automation?*

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Disadvantages of Automation:

- Errors and oversights are easily codified into an automated process
- Intent
- Flexibility
- Integration and interoperability
- Implementing IT automation does not guarantee results

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Kenya Communications Act (KCA) of 2013

- Originally enacted in 2009 but was replaced by the 2013 Act as an amendment.
- KCA (2013) addresses traditional broadcast media considerations that emerged in ICT.
- KCA (2013) created regulatory, advisory and dispute resolution mechanisms to enhance the implementation of the National ICT policy.
- The purpose of the amendment was to strengthen the role of Communications Commission Kenya within ICT sector.
- The Act requires that each telecommunication provider gives the Kenyan Communications Authority (KCA) access to "its systems, premises, facilities, files, records and other data" for inspection.

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Kenya Information and Communications (Registration of SIM-Cards) Regulations (2015)

- These Regulations requires telecommunication providers to transmit SIM-card registration information to the Communications Authority.

Science and Technology Act of 2012

- Originally science and technology was governed by and they Science and Technology Act of 1977.
- The substratum of the Act is to ease the advancement, conciliation and regulation of the furtherance of science technology and innovation within the Kenyan jurisdiction.
- The Act establishes the National Commission Technology and Innovation, Kenya National Research Fund, Kenya National Innovation Agency and the National Research Fund.

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Kenya Broadcasting Corporation (KBC) Act of 2012

- The Act establishes the Kenya Broadcasting Corporation which is a government-sponsored institution.
- The duties of the Corporation have been enumerated in section 8

Access To Information Act; 2015

- Defines:
 - Exempt information: information withheld by a public entity;
 - Information: records held by a public entity;
 - Personal information: information about an identifiable individual.
- Aspects of the Act include:
 - Access to full information
 - Timely access of information
 - Access to relevant information
 - Access to information in a language that can be easily comprehend
 - Access to information does not mean free of charge
 - Access does not include access to sensitive information
 - Information to be accessed / issued on request

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National ICT Policy

- Kenya has a National ICT Policy
- Main agenda is to ensure Kenyans are able to access efficient and reliable ICT services at a reasonable cost.
- Challenging to implement owing to the lack of appropriate resources and infrastructure.

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International Instruments:

- **Universal Declaration of Human Rights 1948:** Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. This includes attacks on the cyberspace.
- **United Nations Educational, Scientific and Cultural Organization) Declaration of 1978 on 'Fundamental Principles Concerning the Contribution of Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement of War':** See Article I.

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- **African Charter on Human and Peoples Rights:** Part II of the Model Law provides the scope of the right to access information as limited to information held by public bodies, relevant private bodies and private bodies that are obliged to create, keep, organize and maintain information in a manner that facilitates this right.

- **United Nations Development Programme:** has the principle of transfer of technology.

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- **International Covenant on Civil and Political Rights (ICCPR):** Article 17 of the ICCPR dictates that any interference with someone's privacy must be in accordance with the law, necessary and proportionate to achieve a legitimate aim.
 - Principles of right to information under ICCPR include: -
 - ✓ maximum disclosure,
 - ✓ obligation to publish,
 - ✓ promotion of open government,
 - ✓ limited scope of exceptions,
 - ✓ processes to facilitate access,
 - ✓ costs,
 - ✓ open meetings,
 - ✓ disclosure takes precedence and finally,
 - ✓ protection for whistle blowers.

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INSTITUTIONS THAT INFLUENCE KENYAN ICT POLICY FORMULATION AND IMPLEMENTATION

- Ministry of Information and Communication
- National Communication Secretariat
- Parliamentary Committee on Energy Communications and Public Works
- Communications Commission Kenya (CCK)
- Kenya ICT Board
- Government Information Technology Service
- Directorate e-government
- Monopolies and Prices Commission

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ICT APPLICATION IN OFFICE MANAGEMENT: AN ANALYSIS OF THE EFFECT OF ICT IN THE LEGAL PROFESSION IN KENYA

- Organizations are slowly moving away from the old school paper system to a modern digital system.
- Applicable in both public and private organizations.
- ICT has enhanced access to information, transparency and accountability.
- Stakeholders within the legal profession who have been impacted by ICT include: -
 - Judiciary
 - Advocates
 - Paralegals
 - Law lecturers and law students

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JUDICIARY

- A study was conducted by the Judiciary Committee on Information Communication Technology at the Milimani Law Courts which had implemented a pilot ICT project.
- Judicial Information Communication Technology Committee was created with the mandate of having oversight on all ICT matters touching on the judiciary.
- This committee is guided by the judiciary's strategic plan.
- So far the committee has managed to: -
 - digitize court processes,
 - create case management systems,
 - develop an ICT policy and strategic plan,
 - establish a communication infrastructure,
 - hardware and software acquisition, and
 - tele-presence court sessions.

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- ICT Achievements within the Judiciary: -
 - installed teleconferencing court system;
 - installed networking facilities;
 - created a data center and installed important ict devices;
 - leased ict hardware devices and barcoded purchased devices;
 - Trained staff on ICT.
- Effect of ICT on the Judiciary. ICT has enabled: -
 - the digitization of court records;
 - efficient records management;
 - efficient management of the court;
 - automation and diversification of revenue and deposits.

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- Effect of ICT on Court Personnel: -
 - enhanced research;
 - impacted the mode of service of court documents.
- Criticism: -
 - ICT equipment is expensive;
 - There is a lot of wastage due to lack of training for purposes of utilization of the ICT equipment.

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- ADVOCATES**
- Advocates are now able to apply for the practicing certificates online through the Law Society of Kenya website.
 - There are additional job opportunities for advocates online
 - Advocates are now able to advertise
 - See: *Okeyo Omwanza George & another v. Attorney General & 2 others* [2012] eKLR
 - Revolutionized research can be conducted
 - Effective communication has also been enhanced

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- Advocates cont....
- ICT has enhanced documentation and record keeping.
 - Advocates are able to produce electronic recordings as evidence in court
 - See: section 106B of the Evidence Act
 - It is easy to confirm the status of an advocate with regard to the practice areas as well as eligibility to practice.
 - Criticism: work has been taken away from advocates as laypeople are able to generate legal documents online.

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PARALEGALS

- Paralegals are tasked to be the researchers, analysts, typesetters, editors and rapporteurs; which work is performed through ICT utilization.
- Paralegals sit in with an advocate during client interviews for purposes of note taking; which is made easier through utilization of ICT.
- Automation has made it easy for the paralegal to manage records

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LAW LECTURERS AND STUDENTS

- Law lecturers are able to record lectures, teach online classes, access online materials etc.
- Law students utilize ICT for research purposes.

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EMERGING ISSUES IN ICT

- Admissibility of electronic evidence
 - See section 106B of the Evidence Act
- e-government and its impact on advocates
- ICT and advocate advertising
 - See: *Okeyo Omwanza George & another v. Attorney General & 2 others* [2012] eKLR
- Digital migration
- Online defamation
 - See: *Duncan Muriuki v. Baobab Resort* (petition no. 223 of 2021)
- Electronic signatures:
 - See: The Kenya Communications (Amendment) Act
- Cybercrime
 - See: Kenya Information and Communication Act
 - section 67 of the Penal Code

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ADVOCATES LIABILITY FOR STATEMENTS POSTED ON SOCIAL MEDIA

- Social media refers to websites such as Facebook, Twitter, LinkedIn, WhatsApp etc.
- It is important to discuss the ethical issues surrounding utilization of these social media platforms in relation to advocate-client relationship, relationship between advocates and judges and relationships with other professionals.
- Law Society of Kenya can take disciplinary action against advocates who misuse social media
- Advocates are bound by the International Bar Association Principles on Social Media Contact for the Legal Profession.

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ELECTRONIC DOCUMENT MANAGEMENT SYSTEMS

- An electronic document management system is an automated software solution utilized by organizations for organizing, securing, capturing, digitizing, tagging, approving, and completing tasks.
- Most document management systems store data in the cloud.
- Organizations customize their electronic data management systems to their specific needs.

❖NOTE: additional information was provided during record management.

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Considerations for the Best Electronic Data Management System:

- Whether it can be supported by the major browsers;
- How user-friendly the system is, manageable and easy to learn;
- Whether it has flexible pricing: per user, license, or subscription based;
- Whether it comes with a cloud document management and / or on-premise / server with its own IP address;
- Whether the system can support integration without any development;

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Considerations cont.....

- Whether the system is easily customizable through graphical user interface;
- Ease of use of the cataloging and searching features;
- Whether the system accepts digital & electronic signatures;
- Whether the system supports mobile support applications – iOS and Android;
- The level of security: bit encrypted file repository

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