

## Commoditisation

**Title of Session:** Commoditisation and the Impact on the Development of Future Lawyers

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Young Lawyers Perspective

**Short Summary:** The development of information technology in the world today has led to a new wave of practice in the legal profession. In today's world of fast paced information and technology, it is only natural that the legal profession should also take advantage of this development by ensuring that lawyers provide fast, efficient and reasonably priced legal advice to clients. The combination of technological advancement and geographic expansion of business and finance has pushed lawyers and law firms to deepen their international presence. Commoditisation of the legal profession has led to it being run as a business in the areas of marketing, production and finance. In the face of evolving technological development, clients and the big law firms expect future lawyers to be technologically minded and educated, and still provide services that computers cannot provide. In view of this new trend, it is not in doubt that future lawyers will have to adjust to this change in order for them to survive and be successful within the legal profession.

**Keywords:** Commoditisation – Information Technology – Young lawyers – Legal Profession  
Continuing Legal Education (CLE) – Legal Advice – Law Firms – Law School.

## **COMMODITISATION AND THE DEVELOPMENT OF FUTURE LAWYERS YOUNG LAWYERS PERSPECTIVE**

### **Introduction**

Generally, commoditisation in law means the increased codification in work through the standardisation of processes, the increased use of Information technology (IT) systems which has led to improved workflow, the development of standards and standard operating procedures in law firms. It also involves the changing nature of employing lawyers around the world. The commoditisation of legal services trend has occurred over a period of time when supply began to exceed demand. The traditional notion of what a lawyer is perceived to be is one who uses his intellectual ability in the practical application of abstract legal theories and knowledge in solving specific or specialized problems and one who renders legal services. Law was thus seen as noble profession where individuals in their expertise helped defend individuals, before being commoditized into what it is perceived to be now, lawyers are now being repackaged into commodities needed for use in competition and to compete with other firms for money gotten for rendering legal services and legal advice. The role of a lawyer may vary from place to place, however, one significant role a lawyer plays is to provide non-lawyers with legal advice.

In understanding commoditization in the legal profession, an article by the Australian Law Society attempts to explain commoditization by dividing legal services into three categories.

1. Unique Services are those which require a specialised knowledge. In this instance, clients seek specific lawyers based on their expertise. These unique services are price inelastic, meaning that the price will have very little impact on demand - in effect, lawyers practising in these areas are price setters.
2. Branded Work is where the firm or a practice group has a specialisation or they have a relationship with their clients that extend beyond price. Clients are willing to pay a premium for this expertise or relationship.
3. Commodity Services are process based. In the eyes of clients it is very difficult to demonstrate value based on the work performed. These services have the lowest barrier to entry (in that they are not complex) hence there are a significant number of providers in the market. One of the key features of commodity services is that they are very price elastic. Small movements in price have a greater than proportional

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impact on the quantity demanded. In essence, if prices are lowered, the demand for services will increase significantly. Increase in prices leads to a drop in demand.<sup>1</sup>

In recent times, there is an over-abundance of lawyers in the profession, thereby creating more competition and price pressure in the marketing arena. Information technology is making the production function so rapid and efficient that clients consider legal services as replaceable commodities. In addition to this, the ongoing price pressure means firms need new sources of cash to grow.<sup>2</sup> The oversupply of lawyers has in turn impacted the marketing function and strained the human resource dynamic. The older lawyers are retiring later, and law schools continuing to churn out 6,000-plus new lawyers every year.<sup>3</sup>

Whilst these studies and numbers seem depressing and negative; however there are some proponents of commoditisation, who argue that in today's world of fast paced information and technology, it is only natural that the legal profession should also take advantage of this development. They argue that the legal profession should be able to take advantage of modern technologies to provide fast, efficient and reasonably priced legal advice. However, the opponents counter that the essence of a lawyer's job is to examine the intricacies of an issue and provide advice tailored to the needs of the client which is something pre-packaged or "fast-food" legal advice cannot do.<sup>4</sup>

It is worthy to note that due to the diversity of law, lawyers deal with different clients from different parts and areas even on a global scale. Thus, how they compete at this level amongst other lawyers or providers of legal services impact their development and the growth of the firms they represent, what brand do they have, any specialist skills to ease competition among themselves. Recent times have shown that today's legal education produces quite different opportunities for lawyers depending upon where the education occurs. The combination of technological advancement and geographic expansion of business and finance has pushed lawyers and law firms to deepen their international presence.<sup>5</sup> Commoditisation of the legal profession has led to it being run as a business, by business I mean marketing (securing new clients and maintaining existing ones), production (completing the legal work as efficiently and effectively as possible), and finance (collecting

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<sup>1</sup> Coupland, Sam. *The Commoditization of Law Continues*. The Law Society of New South Wales. Available at <http://www.lawsociety.com.au>.

<sup>2</sup> *ibid*

<sup>3</sup> These are numbers that apply to Nigeria as at December 2015

<sup>4</sup> Commoditization of Legal Services—A Perspective. Here's to these lawyer-heroes of the New Normal: the system builders, Casey Flaherty, *LEGAL, ABA Journal*, Jan. 8, 2014.

<sup>5</sup> see Educating Lawyers for the Global Economy: National Challenges

'Carole Silver' <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1029&context=facpub>  
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enough money to keep the firm in operation).<sup>6</sup> It is not in doubt that the young lawyers of today have to adjust to this change in order for them to survive and be successful within the legal profession.

### Impact of Commoditisation in the Legal Profession

The development of information technology in the world and in everyday life is a growing phenomenon. Just as it has reshaped how we communicate with each other and do business, it has led to a shift towards IT driven processes and has encouraged standardisation of legal processes and documentation, there is now easier access to and methods of legal services online alongside the necessary court procedures. With the proliferation of automated legal tools, we are witnessing a wave of new methodologies that reduce or eliminate tedious legal tasks<sup>7</sup>. For instance, we have been conducting legal research by using search engines with complex algorithms unlike in the past when it involves going to libraries and thumbing leather-bound books; e-discovery tools automatically sift through millions of pages to identify relevant documents; for decades, redlining software has been performing document comparison, a process previously done by hand. We often take for granted automated tasks precisely because we no longer have to concern ourselves with doing them manually. Although technology is taking over many aspects of lawyers' jobs, automated tools are adept at rescuing lawyers from low-level and repetitive tasks, such as document management, contract review, filing, docketing, billing, and accounting, which bear little connection to law practice but increasingly consume much of lawyers' time. Software designed to monitor expenses and improve the work process is gaining in popularity among corporate legal departments. Technology now has allowed change from the way legal teams prepare cases to the way lawyers and law firms communicate with their clients.

Law schools are beginning to develop curriculums that incorporate technology as part of a larger interdisciplinary approach to enhance the practice of law and, in particular, to train future lawyers to more effectively and efficiently deliver legal services. Recently, we are beginning to see Law schools offering coursework, clinics, internships, and conferences that focus on legal technology. An example is the Stanford Program in Law, Science & Technology, which positions Stanford Law School to be a leader in shaping the trajectory of

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<sup>6</sup> see Transforming the Three-Dimensional Law Firm Business Model - <http://www.lawbiz.com/three-dimensional-law-firm-article.php> Accessed 7 August 2016

<sup>7</sup> See "What is the future of law today as it coverages with technology" Adam Nguyen <http://www.lawtechnologytoday.org/2015/04/future-of-law-technology/> Accessed August 5th 2016

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legal technology, as well preparing its students to be innovative legal practitioners and thinkers.<sup>8</sup>

Apart from going to university and attending law school, due to vast amount of lawyers that are entering the job market as qualified lawyers, there is need for young lawyers to start asking themselves, which area of law to specialise, as specialization now plays a big role in terms of employability in the legal profession. For example, the big firms in Nigeria and in Africa generally are beginning to ask, what the young lawyer is bringing to the table besides his basic law degree. Specialisation has become a key part in the commoditisation of law and young lawyers need to be aware of this, if they don't want to be left out.

### **Factors to Aid the Development of Young Lawyers**

#### **Technology Training**

Law has a changing technologically driven landscape that young lawyers are now exposed to, compared to several years ago when technology was not so developed in the area of the law profession. Technology has liberated legal education so that students can now do an online law degree/Graduate Diploma in Law.<sup>9</sup> Today, in order to run a successful law practice, it is necessary to understand and use the current technologies that are part and parcel of any thriving modern business enterprise with respect to computers, software, and electronic communications and record keeping. This means that young lawyers need to be trained in skills that may be outside their areas of expertise, but are, nonetheless, crucial to surviving in a competitive marketplace.<sup>10</sup> Lawyers are going to need to know how to present their services and information in on-line ways and collaborate with other professionals in solving client's problems.<sup>11</sup> Since technological advancement is becoming a platform for competition amongst law firms, it has become crucial for young lawyers to be knowledgeable in ICT skills for their survival and success in the legal profession.

There are increasingly too many law graduates and not enough jobs to cater for the number of people coming out with a law degree. Because advancements in technology are occurring at an exponential rate outside of the traditional law firm model, lawyers must overcome "irrational rejectionism", a concept the Legal Technology Specialist, Richard Susskind describes as a rejection of ideas before giving them a chance, a common attitude within the

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<sup>8</sup> *ibid.*

<sup>9</sup>David Edmonds (2011) Training the lawyers of the future – a regulator's view, *The Law Teacher*, 45:1, 4-17, DOI: 10.1080/03069400.2011.546960 Accessed August 10th 2016.

<sup>10</sup>Tech Training Adriana Linares <http://www.americanbar.org/publications/techreport/2014/technology-training.html> Accessed August 9 2016.

<sup>11</sup>Law education with a growing technological twist <https://www.lawsociety.org.nz/news-and-communications/latest-news/news/law-education-with-a-growing-technological-twist> accessed August 9 2016.

legal community. Instead, young lawyers need to embrace an entrepreneurial mindset.<sup>12</sup> What does this all mean for the future of legal jobs?" Richard Susskind explained that while technology will diminish the need for the traditional legal advisor, new types of jobs will become available, including those with titles we may not yet understand. Perhaps "legal knowledge engineer," "legal technologist" and "legal process analyst." New nontraditional employers will emerge, such as CPA firms, publishing companies, legal consultancies and tech start-ups. One can describe this as an "exciting time to be a lawyer" because as the traditional drudge work of lawyering begins to disappear, what is left is work more challenging, creative and forward-thinking.<sup>13</sup>

### **Online and Expanded CLE (continuing legal education) programmes**

Continuing legal education (CLE) is not a new concept. It was originally implemented as a voluntary scheme after World War II to integrate lawyers returning to practice after a lengthy absence in the military and to meet the needs of increased numbers in the profession.<sup>14</sup> Overtime, it has become part of the development of young lawyers around the world. In some countries, it is now compulsory for young lawyers to participate in CLE programmes. For example, it is compulsory in some states in the USA for lawyers to complete certain hours of the CLE program during a given period of time after their law degrees.

National Bar Associations owes its members a duty to assist young lawyers in their professional development by doing more than the present level of providing CLE programmes. CLE connotes the concept of expanding a lawyer's knowledge in areas in which he is practicing, and keeping him up to date with new developments in those areas. There is need to expand the CLE programmes into providing training in new areas of law. There can be no greater role for a Bar Association than to strive to equip lawyers for the modern challenges involved in the legal practice. National Bar Associations must anticipate and react to change and help their members through the provision of educational and support services which will help young lawyers become better informed and more efficient in the legal profession.

### **Programs to Enhance lawyer/client relations**

Formal representations of lawyer–client relations are often characterised by their regulative aspects, including codes of ethics and practice. Because lawyers often help clients through

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<sup>12</sup> The Future of Lawyers: Five Big Ideas by Heidi Alexander <https://www.attorneyatwork.com/the-future-of-lawyers-five-big-ideas-from-the-suffolk-law-institute-on-law-practice-technology-and-innovation/> Accessed August 10 2016

<sup>13</sup> Ibid.

<sup>14</sup> see hein-online journal 'the mandatory continuing legal education, is it improving lawyer competence or just busy work' 12 BYU J. Pub. L. 417 1997-1998 page 3 Accessed 10th August 2016

difficult moments in their lives, relationships with lawyers can be influential on clients' lives.<sup>15</sup> Lawyer/client relationship is an important aspect and tool to keeping and attracting old and new clients, and also in keeping and maintaining a good name for the firm or the lawyer. Competition for clients can be stiff and clients would not hesitate to move or change if they are not getting the required legal service they need from the present law firm. One needs to become more effective at reaching clients because of the strong trend toward seeking self-help on legal issues. Individuals and business people are more frequently using freely available legal resources instead of consulting lawyers.

Computer programs such as Client Relationship Management (CRM) software go beyond simply storing contact information. These computer programs assist young lawyers the tools they need to stay in touch with clients through scheduled phone calls, correspondence, meetings, and other activities. CRM software is continually evolving, and can support young lawyers in a number of ways as they manage their client relationships. Young lawyers need to understand that while studying law is relatively straightforward, it is much harder to cultivate the other qualities and skills that lead to success for a lawyer/client relationship in the legal profession.

### **Expanded mentoring for Young Lawyers**

While the lawyer has knowledge of procedural and substantive laws through his legal training at the university and law school, he however, must learn the skill of how to apply this knowledge to solve practical legal issues. Skills such as research, drafting, communication, advocacy, client-service, time management, teamwork are best learnt through mentoring and years of experience. Mentoring creates an opportunity for an experienced lawyer to provide professional guidance and to share practical knowledge and skills with a young lawyer during the critical transition period from law student to legal practitioner.

How the Mentors introduce young lawyers to the profession form a foundation for their continued growth and development as practitioners. Strong mentors stretch and expand the young lawyer's abilities and capacities for critical thinking and problem solving. By building relationships between new and experienced lawyers, the fundamental skills and core values of professionalism essential to the practice of law are passed on to a new generation of lawyers.

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<sup>15</sup> See Hein Online Journal "All is well that ends well , the importance of full and effective closure in lawyer-clients relationships" Gail E Silverstein 19 Clinical L. Rev. 555 2012-2013 [page 3 Accessed 10th August 2016](#)

### **Training in new areas of legal practice (specialisation)**

New fields of law springs up every day, and there is a wide area of law in which young lawyers can consider specializing. Specialisation simple means gaining expertise and professional knowledge in a particular field of law.<sup>16</sup> To retain clients, law firms are specialising, outsourcing work and insourcing lawyers to fill gaps in expertise. Lawyers are working in clients' offices, in teams and in ways that most would not have anticipated when they were in law school. Young lawyers need to think more broadly now beyond legal skills and legal knowledge, as to how they can manipulate what they know to suit a more aware and mature client.<sup>17</sup>

The importance of young lawyers being specialist compared to being generalist in the legal field cannot be measured. In the business of law, marketing oneself as a generalist does not persuade, distinguish, or differentiate the young lawyer in a sea of lawyer advertising. You are just one more name competing with well-branded lawyers. The more narrow your niche, the easier it is to establish oneself as an authority in that specialised area of law and for people and web crawlers to regard you as a more relevant choice in that area of law. Also, the easier it is for your clients, potential clients, and referral sources, including other lawyers, to know and more easily remember exactly what it is you do. Specialisation works in the internet age and focusing on an area of law allows the young lawyer to allocate scarce resources in a more efficient and resourceful manner.<sup>18</sup>

### **Conclusion**

It is not in doubt that commoditisation in the legal practice has resulted to easier and cheaper access to legal services. Clients expect young lawyers to be broad, open minded and innovative. The future of the legal practice is in cross culture and cross border work, enveloping clients from different walks of life. Young lawyers should be able to evaluate and appreciate situations effectively and be able to proffer the best solution that will be advantageous to the client. In view of this, it becomes crucial for a young lawyer to specialize as it enables him to be more focused to his client's needs. With specialisation, a lawyer becomes skilled in a particular area and he becomes better suited to deal with his client's needs in that area of law.

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<sup>16</sup> see Murdoch University Electronic Journal of Law ,<http://www.austlii.edu.au/au/journals/MurUEJL/1994/11.html> Accessed August 10th 2016

<sup>17</sup> see What essential skills will lawyers need to succeed in the future legal market?

<https://www.collaw.edu.au/insights/essential-skills-will-lawyers-need-succeed-future-legal-market/> Accessed August 2016

<sup>18</sup> see 'Niche Specialisation for Lawyers 'by Steven M Gursten

[http://www.americanbar.org/publications/law\\_practice\\_today\\_home/law\\_practice\\_today\\_archive/march11/niche\\_specialization\\_for\\_lawyers.html](http://www.americanbar.org/publications/law_practice_today_home/law_practice_today_archive/march11/niche_specialization_for_lawyers.html) Accessed 10th August 2016



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In the face of evolving technological development, Clients and the big law firms expect young lawyers to be technologically minded and educated, and still provide services that computers cannot provide. The first thing young lawyers need to do is embrace commoditization as a part of their own legal practices. This means researching and implementing tools that speed up and replicate their own work. Law firms should not become electronic sweatshops and churn out completed form after completed form; the intricacies of the profession should be preserved. Clients will be expecting more efficiency and will have less patience for firms that insist on dragging out work by using outdated tools. Clients will also want and expect real-time updates via client portals, after-hour services, and instant delivery of completed work. Lawyers should be able to invest in tools that provide document automation, thereby ensuring that there will never be a need to type the exact same information twice.<sup>19</sup> Technology companies like e-discovery vendors and outsources have taken over many of the functions that once provided a steady stream of income to law firms both small and large, resulting in fewer openings for new attorneys and a shrinking pool of income for the law firms.

Whether viewed as a positive or negative trend, commoditization of the legal profession does not seem to be slowing down. It is the nature of the world we live in, now where everything seems to be at our finger tips. Advances are made every day in information technology, it is the duty of the future lawyers to catch up with these developments and make the best of it. In order to effectively do that, young lawyers need to tap into the vast opportunities offered by technology. In the wake of technologies fast disposing human and manual work, young lawyers need to make their presence felt and be irreplaceable in a 21<sup>st</sup> century technologically dubbed world.

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<sup>19</sup> Lenon, Joshua. *Approaches to the Commoditization of legal practice*. (15<sup>th</sup> February 2016) Available at <https://www.linkedin.com/pulse/20140716163844-29065348-two-approaches-to-the-commoditization-of-legal-practice>