



PART

*Critical Elements
of Knowledge
Management*

3 Defining the Scope of Knowledge

Chapter Contents

Knowledge, Information and Data
Tacit and Explicit Knowledge
Knowledge for the Practice of Law
Knowledge for the Business of Law
Define the Broad Categories of Knowledge
Knowledge About the Law
Knowledge About the Firm and Its Practice Areas
Knowledge About Clients
Knowledge About the Commercial Market and Specific
Industries
Knowledge About Staff Skills and Expertise
Methodology and Processes
Past Projects and Lessons Learned
Knowledge About Third Parties
Knowledge About the Firm's Market Position

Chapter Contents (continued)

Knowledge About the Firm's Revenue, Costs and Profitability

The Value of Knowledge

The Owners of Knowledge

Define the Scope of Knowledge Your Firm Should Manage

A medium size commercial law firm focuses its knowledge management strategy on the capture of its best practice transactional documents and letters of advice. The firm builds a firm-wide repository of these documents. It implements a stringent manual review process to ensure that content meets a high standard of quality. The firm encourages lawyers to contribute content to the database through reward and firm recognition.

The work product repository provides a solid foundation to share key explicit knowledge within the firm. However, at best, the work product repository captures core explicit legal knowledge. Because the system only stores explicit knowledge, it does not provide a means of sharing tacit knowledge. For example, the repository does not provide a roadmap to the experts among its staff. It does not store knowledge about the firm's clients or the industries in which they operate.

Lawyers don't just read legal texts and draft documents; they must interpret the law in the context of their client's specific situation. The knowledge lawyers use to practice law extends well beyond black letter law. The work product repository only meets a fraction of the lawyers' knowledge needs.

Before a law firm can develop its knowledge management strategy, it must be clear about the knowledge it should manage. Understanding and defining the scope of knowledge used in a law firm is fundamental to developing a knowledge management strategy that reflects the business of the firm.

Legal knowledge is often the focus of law firm knowledge management initiatives—knowledge relating to the **practice of law**. Even in the practice of law, lawyers use non-legal knowledge, such as knowledge about their clients and the market. A law firm also uses many categories of non-legal knowledge to operate—knowledge relating to the **business of law**. Both elements must be considered in defining the scope of knowledge to be managed.

Law firms have also traditionally focused on capturing and leveraging the **explicit knowledge** of the firm, such as precedent and best practice documents. However, the intellectual capital of a law firm includes both explicit knowledge and **tacit knowledge**. While the work product of a lawyer is extremely valuable, it only represents a small portion of the knowledge and experience of its author.

A broad, all-encompassing approach will ensure that knowledge management initiatives reflect the work practices of law firm staff and drive the achievement of your firm's business

objectives. Once your law firm has a clear picture of the scope of knowledge it possesses and uses, it is able to develop a strategy for managing that knowledge effectively in order to provide real value to the firm.

This Chapter defines knowledge, considers explicit knowledge and tacit knowledge in the context of a legal environment, and describes the broad categories of knowledge used within a law firm.

Knowledge, Information and Data

Before defining the scope of knowledge, it's helpful to understand the meaning of data, information and knowledge. The terms are often used interchangeably, and while they overlap, there are differences in their meanings. Knowledge management is not a new name for information management. It is much more than information management.

Here are some basic definitions:

Data refers to unstructured, objective facts. Data can be in the form of numbers, words or symbols. The meaning of data will depend on the context in which it is used.

Information is data presented in a particular context. Information attaches meaning to data.

Knowledge is value added by people—context, experience and interpretation—to information. Knowledge is therefore human effort applied to information.

The following illustrates the differences between data, information and knowledge in the legal services context.

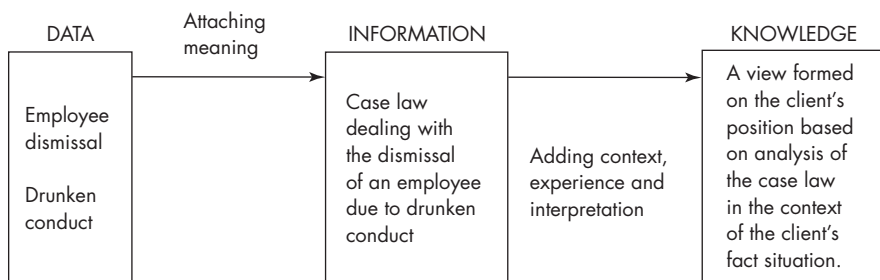
As an employment lawyer, you are asked to advise your client on the legal ramifications of dismissing an employee who was drunk and abusive at your client's holiday party.

Having never dealt with this specific issue, you enter the terms "employee dismissal" and "drunken conduct" into your firm's information systems to identify any references to this subject. In other words, you are searching for occurrences of the *data*, "employee dismissal" and "drunken conduct."

Your research leads you to eight cases dealing with this issue. The case law provides you with *information* about this question of law, by placing the data in context.

Your analysis of the case law and its application to your client's specific set of circumstances is the *knowledge* you have created.

There is a strong human element to knowledge. Since knowledge requires the application of human experience to information, there is an inherent **value** attached to knowledge that does not apply to information. Because of this, knowledge is often referred to as the "intellectual capital" of an organization. Viewing



knowledge as intellectual capital is particularly relevant to an organization where knowledge is its key asset—such as a law firm.

In defining the scope of knowledge a lawyer uses, data and information play a role—but the real focus must be on the knowledge created through the application of experience to that data and information. Any law firm can provide information systems to access external and internal information. The key is understanding how that information is applied to create knowledge—and capturing and presenting that knowledge in a way that supports the creation of more knowledge in your law firm.

Tacit and Explicit Knowledge

The knowledge or intellectual capital of a law firm consists of both explicit knowledge and tacit knowledge. Traditionally, law firms have focused on managing explicit knowledge. Little attention has been paid to tacit knowledge. This means that law firms are not leveraging this valuable component of their intellectual capital.

What is explicit knowledge?

Explicit knowledge is formal and systematic. It can be easily communicated and shared.¹ Typically, it has been documented. Lawyers use many examples of explicit knowledge in their practices—created externally or internally.

Legal texts, legislation, case law and commentary are the most common examples of externally created knowledge. Lawyers also create many categories of explicit knowledge. Letters of advice,

¹ Nonaka, "The Knowledge Creating Company," *Harv. Bus. Rev. on Knowledge Mgmt.* 31 (1998).

legal briefs, and transactional documents such as deeds and agreements are common examples.

Traditionally, law firms have focused their knowledge management activities on the management of external explicit knowledge (through library and on-line services) and internally generated explicit knowledge (through precedent collections and work product databases).

What is tacit knowledge?

Tacit knowledge on the other hand, is not so easily expressed. It is highly personal, hard to formalize and difficult to communicate to others.² It may also be impossible to capture. The challenge is to identify which elements of tacit knowledge can be captured and made explicit—while accepting that some tacit knowledge just cannot be captured. For tacit knowledge that cannot be captured, the goal is to connect the possessors of tacit knowledge with the seekers of that knowledge. An illustration follows.

The major projects practice group in the London office of a global law firm has been highly successful in its market and wants to expand its practice. Since the group is relatively small, and few outside the group have experience in managing major projects, the group must find ways to leverage its knowledge with other lawyers in the firm.

² *Id.*

So far, the partners have focused their knowledge management efforts on developing precedent documents. Senior partners have developed these documents by identifying best practice transactional documents and drawing upon their experience in managing these transactions. These precedents form the basis of any new major projects transaction.

Precedent documents are very helpful to a lawyer who is familiar with the process of a major project transaction. However, without knowledge of the process of how to manage a major project and when to use a particular document, the precedents on their own are not useful to others in the firm. The precedents only represent a very small part of the senior partner's knowledge—and on their own, have limited value.

The partners of the group possess an enormous amount of tacit knowledge about major projects acquired over years of managing these transactions. At the same time, it is highly likely that a partner could describe the key steps involved in managing a major project. By developing a methodology based on the partner's approach to managing major projects, the firm places context around the precedent documents. Inexperienced lawyers assigned to a major project can refer to the methodology, and consequently understand the process. With this context, the lawyer can confidently access the relevant precedent documents. For example, the partners develop a methodology for managing the construction of a shopping mall. The partners define the major steps of this project as:

- ◆ Acquiring land
- ◆ Seeking public authority approval for land development
- ◆ Constructing the shopping mall
- ◆ Leasing space in the shopping mall to retailers

For each step in the process, the partners describe which documents to use, and in which context to use those documents, as well as the relevant legislation and case law lawyers must consider.

A methodology sets out the basic steps in a matter—and provides context for the precedent documents—but what of the nuances of running a major projects matter? For example, in what circumstances should lawyers use one form of document over another? How should lawyers deal with public authorities? Are there negotiating tips for lawyers? The partners develop a training module on how to manage a major project—sharing their lessons learned with less experienced lawyers joining their team.

Acknowledging that not all tacit knowledge can be made explicit, the firm builds a “know-who” system to capture information about who possesses expertise. This system enables less experienced lawyers to identify the expert. Rather than memorializing every element of the partners’ knowledge, a know-who system, such as a skills and expertise locator, contains staff skills, a record of previous deals, client relationships and references to key documents or methodologies authored by staff. Most

importantly, it contains contact details. When an inexperienced lawyer is asked to work on a major project, he knows to contact one of the partners in the London based major projects group.

The combination of a skills and expertise locator, training sessions, methodology and precedent documents, leverages both the explicit and tacit knowledge of the major projects group.

Knowledge for the Practice of Law

Core explicit legal knowledge

In defining the scope of knowledge used in a law firm, lawyers typically place a heavy emphasis on core explicit legal knowledge, such as:

- ◆ Case law, commentary and interpretation
- ◆ Legislation and commentary
- ◆ Best practice (or model) documents
- ◆ Precedent (or form) documents

The first two categories—case law, commentary and interpretation, and legislation and commentary—are externally created and are typically made available by the library either electronically or in hard copy. The latter two categories—best practice documents and precedent documents—are internally created knowledge.

Best practice documents are matter specific documents that a firm has identified as a good example of its work product and could be used again in a similar fact situation. These documents, however, remain specific to the matter and cannot be applied broadly to multiple situations. Typically, these documents have been examined by a firm committee, which judges the quality of the work product before publishing it on the firm-wide work product repository. This process of quality control assures staff that the work product can be re-used.

Precedent documents are generic documents that the firm has typically invested in developing for use in many matters. Precedent documents ensure a baseline level of quality in the documents generated using the precedent. Drafting a document based on a firm-approved precedent saves time, eliminates duplication, ensures consistency and enables drafting to be delegated to junior lawyers.

While best practice documents and precedents are traditionally the focus of knowledge management initiatives, and are indeed important, there are two key limitations to this approach. First, using a precedent system or a work product repository assumes that lawyers know what they are looking for. However, if you are an inexperienced lawyer (the most likely person to use a precedent or a best practice document), this may not be the case.

Second, lawyers do not just draft documents. You do not provide legal advice in a vacuum. You listen to your clients and advise them on the law in the context of their specific circumstances. You consider black letter law and apply it to your clients' unique situation. The document tells only the end of a long story.

Non-legal knowledge

The categories of knowledge described above are critical to a lawyer's practice, though it is not an exhaustive list. There are many

categories of non-legal knowledge that are critical to a lawyer's business. This knowledge may be either explicit, or so deeply ingrained in the work practices of staff that it remains as tacit knowledge. Many law firms overlook these broader, and sometimes tacit, elements of knowledge so important to its business.

For example, in a commercial law firm, lawyers must know about their clients and the industries in which they operate. This knowledge enables lawyers to give commercially sound advice to serve the unique needs of the client. Knowledge about clients and their industries is therefore a key component of the knowledge used in a law firm.

Similarly, a litigation lawyer must often apply strategy in progressing a matter. In addition to knowledge about case law and legislation, a litigation lawyer also knows about the likely mindset of a judge, the tactics of opposing counsel and the most appropriate expert or external consultant. Knowledge about third parties therefore forms an essential part of the knowledge of a litigation lawyer.

Knowledge for the Business of Law

Like any business, a law firm must have a clear understanding of its market position and its business strategy. The categories of knowledge described above are used by lawyers in the practice of law. However, lawyers use a broader range of knowledge in managing their legal services businesses—knowledge relating to the business of law.

A law firm possesses knowledge about:

- ◆ Relative market strengths and weaknesses of its practice groups
- ◆ Clients

- ◆ Past projects
- ◆ Competitors
- ◆ Industry trends
- ◆ Market opportunities

In finding better ways to manage the knowledge used in the practice of law, lawyers should not exclude knowledge applied to the business of law.

Define the Broad Categories of Knowledge

To ensure that your firm's knowledge management strategy reflects your firm's business objectives, consider the broad categories of knowledge used by all staff in your law firm, for both the practice of law and the business of law—and both tacit and explicit knowledge about:

- ◆ The law
- ◆ The firm and its practice areas
- ◆ Clients
- ◆ The commercial market and specific industries
- ◆ Staff skills and expertise
- ◆ Methodology and processes
- ◆ Past projects and lessons learned
- ◆ Third parties (e.g., regulators, judges, counsel, experts, external consultants)
- ◆ The firm's market position
- ◆ The firm's revenue, costs and profitability