

**Dissertation - The Malaysian Legal Profession & Globalization**  
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**DOCTOR OF BUSINESS ADMINISTRATION**

***THE MALAYSIAN LEGAL PROFESSION***  
***AND***  
***GLOBALIZATION***

***BY***

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## **OVERVIEW**

The World Trade Organization (WTO), with information technology as its catalyst, has globalize the world and has created a new world order with an open legal system of laws that links and coordinates activities from domestic to global levels. This has resulted in global and regional laws superseding in importance domestically created laws. This article now examines the positive and disruptive aspects of globalization on domestic laws and on the legal practice focusing specifically on the practice of law in West Malaysia. In view of the above the structure of this paper is set out as below.

*Part 1* is the introduction to this research paper outlining what this research paper is about.

*Part 2* deals with the literature about the current situation and of the impact of globalization on the different legal professions of the world. The research is based on major studies, reports, essays and policy papers from different jurisdictions. The rationale for this study emerged as a result of the opening of the markets of the world and the gradual loss of the monopoly of the legal services held by lawyers. With the opening of the markets, legal services have become more competitive. To remain relevant and without disrupting the core values of the legal profession there is a need to change the system of managing the legal profession.

The legal professions of advanced nations like the legal professions of the USA, European Union, Australia and Canada have responded to the challenges posed by globalization by encouraging lawyers to venture into the overseas markets and to diversify into new areas of legal practice by restructuring the legal profession. Rules of their profession have also been liberalized to provide a degree of flexibility to advertise and market their legal services. Legal education and legal practice models in the

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advanced nations have also been restructured. All these were done to remain competitive and to keep pace with the changing environment.

**Part 3** deals with the present position of the Malaysian legal profession in the light of globalization. The Malaysian legal profession has remained traditionally unchanged and has not kept pace with globalization. This has destabilized the profession. There has been no known research study on the effects of globalization on Malaysian lawyers. This part underlines the critical reforms that are needed to transform the profession. The research questions set out in this part were structured to study the reforms needed. To empower competitiveness of Malaysian lawyers without sacrificing the core values of the profession this study was aimed to identify how Malaysian lawyers could be allowed to join Multi Discipline Practices (MDP's) and restructure practice models.

**Part 4** deals with the methodology of this research. The respondents were all lawyers from the states of Penang, Kedah and Perlis. A total of 52 respondents were chosen at random. These respondents represented a broad spectrum of legal practice ranging from civil to criminal law and representing different levels of expertise and experience. The survey questionnaires were based on six identified issues with 92 questions. The individual interview was conducted personally by the researcher.

**Part 5** deals with the findings of the research questions. The implications of the findings showed that lawyers cannot be prevented from joining MDP's. The best solution for Malaysian legal profession would be to allow lawyers to form alliance with MDP's. This allows lawyers to share knowledge and skills with MDP's while retaining their separate legal practice. One positive implication of the findings is that lawyers be allowed to set up Limited Liability Partnerships practice models which provides flexibility to regulate their own working practice while retaining the benefits of a their legal corporate structure.. Another important implication of the findings is that there should be greater liberalization of the rules of the profession to improve competitiveness and reduce constrains in marketing legal services.

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*Part 6* deals with the conclusion of this research with emphasis on the need to change the policy of the Malaysian legal profession to concentrate more on global and regional activities. Suggestions for further research have also been recommended with the aim to reinforce some of the recommendations made in this study.

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## **1.0 INTRODUCTION**

The market forces associated with globalization and information technology have destabilized the traditional practice of law. With the impact of globalization on the sovereignty of states and with the emergence of an open system of laws, international and regional laws are superseding the importance of local laws. This has resulted in the legal professions of the world being destabilized. To face the challenges of globalization, the legal professions of advanced nations are diversifying into new areas of practice and have adopted new systems of management. The practice of law has developed into a profession and a business and this has affected the ethical values of the profession. This article explores how globalization has destabilized the legal professions in the world and proceeds to study its impact on the Malaysian legal profession with specific reference to the changes necessary to transform it into a modern one. .

## **2. LITERATURE REVIEW**

### **2.0 Globalization - its impact on the law**

#### **2.1 Globalization - the phenomenon**

Globalization is not a new phenomenon. Steven Mark (2003-p.3) said that, “globalization has occurred over thousands of years through the movement of people and cultures, the expansion of religions and the development of land and sea trading routes. There was a pause which occurred with the advent of the Depression till the end of the cold war in 1998”. Globalization supported by the internet technology, has since moved with tremendous speed, driven by politically and economically powerful states, large

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multinational corporations as well as hyper-rich individuals leading to the opening of the world markets (Kuthubal Zaman Bukhari 2004).

According to Robert J. Howe (2003), the Internet is now firmly established as a major institution within the main cultures of the world while the General Agreement on Trade and Tariff (GATT), an arm of WTO that was set up in 1995, is now set to fully open the markets of the world with the aim of establishing a global economy by 2020.

Globalization is generally not confined to economics only, but as Geoff Gilbert (1995) observed, the present cycle of globalization is focusing on the world's economic issues with emphasis on the inter-dependence among the different economies. According to Michael Porter (1998), the more the market forces rule, the more efficient and flourishing an economy will be. Globalization has its own set of economic rules that revolve around opening, deregulating and privatizing an economy.

Harry W. Arthurs and Robert Krelewich (1996) observed that globalization and the internet have created a new world order with an open market system. With this, regional and global institutions like the European Union (EU), WTO, the World Bank and the International Monetary Fund (IMF) regulating the activities of nations, have set up new laws and systems of dispute-management processes to resolve cross-border conflicts.

### **2.2 Destabilizing effects of globalization**

Bruno Zeller (2001) observed that the forces of globalization have weakened many of the traditional institutions resulting in the deregulation of markets and financial processes. One of these traditional institutions is the practice of law which now requires re-examination and restructuring to remain relevant.

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Raymond Tang (2002) also observed that globalization has destabilized the traditional practices of businesses. The open markets of the world have provided more opportunities for businesses. The monopoly enjoyed by businesses and services like the practice of law is a privilege of the past. Their future depends on being competitive. Legal services are now being provided not only by licensed lawyers but also by foreign counsels, legal consultants, arbitrators and mediators.

Through the use of the internet, many aspects of legal services are being outsourced (The New Straits Times dated 18-12-04). Information on the law is readily available on the web. The Internet has decentralized legal knowledge. This makes it necessary to re-examine the existing institutional structures of legal practice (Robert J. Howe 2003).

While the Internet operates in “real time” over open networks, e-commerce is eroding economic and political boundaries, causing a surge in productivity and economic growth. Unlike off-line commerce, e-commerce has an impact on legal issues by extending the reach of commerce beyond the national borders. (Robert J. Howe 2003). This has a destabilizing effect on both the law and commerce.

### **2.3 Development of global and regional law**

Harry W. Arthurs and Robert Kreklewich (1996) explained that linking and coordinating activities at global, regional and domestic levels, the importance of global and regional laws have superseded that of local laws in the administration of justice. The United Nations (UN), the World Bank, the International Monetary Fund (IMF) and the World Trade Organization are international bodies to which nations apply for membership so as not to exist in isolation and to be able to reap the benefits of coordinating their activities within the global community. In accepting to be a member of these international bodies and accepting to be bound by their rules, the states have to surrender some of their domestic sovereign rights to these international bodies.

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Matthew T. DeMichele (2001) observed that because the various global legal systems have not converged to form a common global system of laws, international institutions like the World Trade Organization (WTO) are now regulating global trade disputes among member nations and with this type of development, a nation state, once the sole regulator of all activities within its own jurisdiction, has now been reduced to the point that it can now no longer make individual decisions in many areas of its activities without considering the international implications of such decisions. This was also noted by Loukas A. Mistells (2000).

Jan Enril (2003) found that cooperation for a common global system of laws normally starts with regional cooperation. The European Union (EU) is perhaps the best example of regional cooperation with the convergence of a common set of laws and regulations resulting in the setting up of the EU courts. Rober C.Beckman (2001) also observed a similar trend in the Association of South East Asian Nations (ASEAN) with the convergence of laws relating to trade and security. This has resulted in the improvement of inter- state free flow of goods and services and increased regional security coordination among the member nations.

Thus, for example, to fight international terrorism, Malaysia passed the Anti- Money Laundering Act 2001 in line with the directive passed by the Financial Action Task Force on Money Laundering set up by the Group of Seven (G-7) nations which has now been adopted by 26 member nations. Another example is the present position of Malaysia in drafting regulations to allow foreign lawyers to practise in Malaysia, pursuant to the GATT provisions.

### **2.4 Globalization – its effect on legal service**

The globalization of law has resulted in a concurrent push towards the globalization of legal practices. The expansion of multinationals globally and the increasing complexity

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of commerce have provided new challenges and created new problems. Legal issues have become global issues and legal arguments from one jurisdiction are imported more quickly and effortlessly into another. Stephen J. McGary (1994), referred that companies with global interests are increasingly seeking out law firms that can provide consistent *multi-local* support and integrated *cross-border* assistance for significant global business activities.

While the provisions of GATS are still struggling to open up the legal market for foreign legal firms and dismantle the barriers to competition, the action of legal firms in forming affiliation with their foreign 'partners' has produced the desired result of opening the legal market for foreign lawyers and making it easier for lawyers to get involved in the practice of law outside their country. As such, there have been an increasing number of lawyers engaged in trans-national legal services. Ryszard Piotrowicz (1999 - p.791) stated that, "given the role of law as a critical feature in the infrastructure in national and international economic programmes, the implications of globalization for legal practitioners are even more far reaching and demand coherent strategies if practitioners are to be able to compete more effectively in the next century. A global battle for the delivery of legal services appears to be emerging".

The New York Bar Association (2000) reported that in the 1990's many American legal firms went to South and East Asia and to Europe to tap the growing economic markets there. Researches conducted by the association showed that in 1997, of the 250 largest legal firms in the USA, as many as 108 have legal offices outside the USA. An analysis of the survey done by the association also showed in the year 2000, legal firms in USA have 368 foreign offices mostly in the Pacific Area and in Europe. The report also noted a similar trend among legal firms in UK, though on a smaller scale.

Through these affiliations, foreign lawyers are able to penetrate the local legal market to provide supporting services to local firms. This process has opened the local legal markets for entry by foreign legal firms. The local firms benefit by being able to acquire

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advance legal knowledge and legal skills from their foreign 'partners' and at the same time promoting their marketing links.

With the growth of e-commerce, cross-border disagreements on taxation, jurisdictional rights and on conflicts of laws issues would be among the many legal problems facing the legal profession. With the open market system under the provisions of WTO, which is scheduled to be fully operative by 2020, legal services would be more competitive, subject to the forces of the open market system.

With the open market system, there would be a tremendous growth in new laws, as pointed out by the New York Bar Association Report (2000), which noted that there are already more than 2500 branches of the law for lawyers to specialize in and more and more laws being constantly created at regional and global levels.

Kuthubal Zaman Bukhari (2004), the chairman of Malaysian Bar Council, explained that globalization brings along with it new opportunities for Malaysian lawyers in new joint-venture agreements, licence agreements, turnkey projects, franchising, distribution agreements and merger and acquisition legal work. He stated that " a host of new developments in law on foreign investments, application of GATS provisions, corporation laws, taxation laws, data protection laws, currency transfer laws, product liability laws and other laws of different judicial systems are emerging to provide new opportunities for lawyers. Knowledge management will become common place among the activities of a legal firm with lawyers engaged in an increasingly interactive legal world. The link with other disciplines, for example, economics, politics, technology and biotechnology will become increasingly important (p.8-9)".

Raymond Tang (2002) noted that the failure of lawyers to diversify into new areas of the law, emerging from globalization and regionalization, has already destabilised the legal profession. He also noted that the legal service is now an open service with non-lawyers like accountants, consultants, arbitrators, and financial advisors getting involved in the

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provision of legal services. This was also observed by Wendy M. Becker (2001), who commented that in many jurisdictions, work that was once considered the exclusive domain of lawyers is now being handled by accountants, migration agents and a whole host of providers who do not have specific legal training and more importantly, are not covered by the professional regulations that govern the conduct and behaviour of lawyers.

Steven Mark (2003 p.15 -16) commented that “the definition of the ‘practice of law’ is frustratingly elusive. Indeed, aside from a few obvious functions (like the filing of pleadings in court or the rendering of formal opinions), it is almost impossible to define with precision what constitutes the practice of law in the United States today, at least in any exclusive sense; it is very difficult to come up with a comprehensive list of many things that lawyers only can do”.

### **2.5 Ethics-and legal issues associated with globalization**

Donald H. Rivkin (1998), Chairman of the American Bar Association’s Trans-national Law Practice Committee, observed that ethical codes and practices throughout the world cover largely the same ground and contain largely the same prescriptions for lawyers’ conduct; they should not serve as reason for excluding foreign lawyers, but lawyers engaged in trans-national practice must be scrupulous in their observance of their own and the host country’s ethical norms (referred by Steven Mark, 2003).

In attempting to define what legal professionalism is, the American Bar Association’s 1996 Commission on Professionalism noted that the profession is not a business. It is distinguished by the requirements of extensive formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the marketplace, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even

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in non-professional matters, to conduct themselves as members of a learned, disciplined, and honourable occupation.

In an increasing cross-border activity, globalization poses interesting questions on the issue of ethics for lawyers. Although the general professional code and the practice of lawyers globally remains the same, the rules governing these vary according to their national needs. Thus, for example, contingency fees - defined as a percentage of the successful result of litigation - are unlawful in most nations while in the United States, they form the backbone of the civil litigation system. This disparity in legal ethics for lawyers poses significant problems to the trans-national legal firms and to multi-national clients. This is one of the grounds why some legal professions object to the opening of their legal markets to foreign lawyers under the GATS provisions. Foreign lawyers are now admitted on an ad hoc basis or on a reciprocal agreement basis, subject to the condition that the foreign lawyer abides by local ethical standards.

According to J.J.Spigelman (2000), there would be a market failure for legal services if legal professions of the world were allowed to globalize. Legal services are associated with the administration of justice and not associated with any business or trading bodies although the practice of law is both a business and a profession. The professional function of lawyers to uphold legal professionalism supersedes all other functions of lawyers including their personal financial interest. J.J.Spigelman observed that the legal profession should be separately and independently considered from other professional services in the preparation of multilateral regulations and mutual recognition standards under WTO/GATS provisions.

### **2.6 Foreign Legal Counsels**

Steven Mark (2003) observed that globalization is based on the principle that the opening of the markets would subject businesses and services to open competition. Competition policy is based on the axiom that all barriers to competition must be removed unless the

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cost of their removal is greater than that of their retention. This gives rise to a practical as well as an ethical dilemma. If the costs referred to in the axiom include the concept of social costs or indeed social capital, society may well benefit greatly from its application. If the costs considered are exclusively financial, such a policy may well prove to be extremely damaging.

According to Dr.Loukas (2000), for a common legal system for interaction among different nations, specialists in the different branches of comparative law need to be imported. Thus, the assistance of foreign legal counsels (FLC) and foreign legal firms specializing in comparative laws is needed for smooth cross-border transactions.

According to Chad W. King (2002), the failure of the legal profession to open its doors to foreign lawyers specializing in foreign laws has affected the promotion of trans-national economic activities of businesses. Consequently, the General Agreement in Trade and Services (GATS) has not succeeded in opening up the legal markets globally unlike the General Agreement on Trade and Tariff (GATT), which has opened the global markets for trade. This failure has forced international bodies like the WTO to encourage the development of an open system of laws which allows non-lawyers to provide the needed legal services.

The threat to the legal profession in allowing foreign lawyers to practise within the local jurisdiction is that, many local lawyers would be deprived of their work. Further, clients' interest may be affected because enforcing disciplinary action against FLC may be difficult. It is also difficult to access the quality of the services rendered by the FLC and hence its costs.

However, according to the New York Bar report (2000), globalization and the corresponding increased business activities have resulted in new laws and treaties which require businesses to depend on Foreign Legal Counsels (FLC) as in-house employees or as legal consultants to advise them on the complexities of the law. A report in the Strait

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Times Singapore dated 10<sup>th</sup> October 2004 pointed out that some aspects of their legal work are already being outsourced to other parts of the world.

While most nations do not permit FLC, some nations allow FLC to practise in their local jurisdiction but limit their practice to certain specialized areas of the law. They are bound by the same rules of the local legal profession, e.g. to be adequately covered by indemnity insurance for any misconduct. In this respect, the EU is perhaps the most liberal regional body that allows lawyers from one state to practise liberally in another EU state but subject to the rules of the local legal profession.

According to K.Shanmugam (2002), the Singapore Law Society allows FLC to practise in the areas of the law where the local lawyers lack the expertise such as in foreign laws and technology-related laws. This, however, has proven to have a positive effect, in that, Singaporean lawyers benefit by a transfer of new and complex legal skills and knowledge.

Andrew Pardieek (1996), observed that a number of countries including Britain, USA, and Japan have made reciprocal arrangements to allow lawyers from their respective jurisdictions to act as FLC in each other's local jurisdiction, to advise on foreign laws and in specialized branches of the law, like cyber and biotechnology laws. He also observed that in Canada, Foreign Legal Counsels who are employed to advise clients on complex laws are closely regulated by the Bar Council to protect clients.

Foreign lawyers can practise alone, in partnership with local lawyers, or as a member of a Multi-Discipline Practice. But according to Kuthhuman Zaman, the chairman of the Malaysian Bar Council, the Bar has a responsibility to safeguard and promote public interest against any threat that may be posed by FLC. With this in view, the Malaysian

Bar has prepared new draft regulations to admit foreign lawyers on a limited basis, subject to restrictions aimed at protecting public interests.

According to Steven Mark (2003), foreign lawyers in Australia who are not registered can also be subjected to disciplinary action although the only penalty for disciplinary breaches by foreign lawyers appears to be a cancellation of their registration. Foreign lawyers who are registered in Australia can not only provide legal services in relation to foreign laws, but can also participate in proceedings before any court or other bodies like arbitration, where the knowledge of foreign law is required.

As a matter of fact, many lawyers are already rendering their services across national boundaries. This is reflected in the volume of cross border legal services provided by both large and small legal firms.

## **2.7 Arbitration**

The dilemma faced by the global business community in not having an appropriate legal process to resolve their legal problems has led to the development and growth of the arbitration process as an alternative dispute management process.

According to Michael Pryles (2001), the president of the Australian Centre for International Commercial Arbitration, arbitration, as a method for resolving international commercial disputes has become very popular. He also noted that business organizations, service organizations, and international bodies have their own arbitration centres at both international and domestic levels. With no single administrative body to regulate and control all the various different forms of international arbitration bodies, arbitration has developed into a very flexible system that can easily be adopted for a variety of different dispute management processes.

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Paul Ham (2003) observed that lawyers qualified to arbitrate in bilateral and trilateral arbitration cases involving different jurisdictions are in great demand. However, arbitration is also facing challenges from the mediation process that is comparatively cheaper than arbitration and is increasingly popular in many countries like Australia and Singapore. With the evolution of online international dispute resolving process through such bodies as E-resolution and Cyber court, international arbitration would become even cheaper and faster.

Another benefit of the arbitration process is that while most traditional court decisions can only be enforced within the jurisdiction of the courts, the arbitration awards can be enforced globally in many nations by virtue of the New York Convention 1995 (Jan-Erik Lane 2002). Thus, for example, the arbitration awards of the World Trade Organization (WTO), the International Chambers of Commerce (ICC) and of the International Court of Justice (ICJ) are now enforceable in the 96 nations that have ratified and gazetted the said 1995 Convention.

### **2.8 Multi Discipline Practice**

Steven Mark (2003-p.14) defines a Multi Discipline Practice as “a partnership, professional corporation, or other association or entity that includes lawyers and non-lawyers and has as one, but not all, of its purposes, the delivery of legal services to a client(s) other than the MDP itself or that holds itself out to the public as providing non-legal, as well as legal services. It includes an arrangement by which a law firm joins with one or more other professional firms to provide services, including legal services, and there is a direct or indirect sharing of profits as part of the arrangement”.

But the role of lawyers in a multi-disciplinary practice is a contentious one and the perceived benefits and disadvantages have been vigorously debated on a global scale.

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The American Bar Association Report 2001, the UK Law Society Report 2002 and the Canadian Report 2002 are among the numerous study reports that have discussed the issue as to whether lawyers should be allowed to join MDP's.

France, Germany and Italy are among the nations in Europe that have allowed lawyers to join MDP's. According to the New York Report (2000), more than 60% of the legal work in Europe is now being done by MDP's. Four of the world's five biggest MDP's are owned by accounting firms and the biggest of them, Anderson Legal Corporation, had over 2840 lawyers operating in over 102 countries in 2001.

One of the main justifications for permitting lawyers to engage in multi-discipline practice, aside from competition principles, is the notion of a one-stop integrated professional service to clients. A client of an MDP can secure advice from more than one discipline within the practice and the quality of the service is likely to be higher because of the "holistic" approach (Steven Mark 2003).

However, according to Steven Mark (2003), there are fundamental differences between the specialist professions such as lawyers and certified public accountants with regards to their systems of social responsibility, professional independence, professional ethics and consumer protection. Because of these differences, problems like the lack of protection and loss of benefits for clients may arise and this could be harmful to the judicial systems and lawyers themselves whose main institutional function is to protect public interest. For example the formation of multi-discipline partnerships between accountants and lawyers is seen to be a potential threat to the ethical standards of the legal profession. The auditor's duty is to disclose information to the public about the client. This duty conflicts with the lawyer's duty to protect information about clients from being disclosed to third party. This is especially so if the lawyer and the auditor act for the same client. The lawyer's information about the client is stored at the same work place accessible to the staff and other partners of MDP's. The lawyer's duty to protect the confidentiality of the client's information becomes affected. Further, the lawyer's right to act independently free from interference of the other MDP partners becomes an issue. .

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While there being no accepted definition of legal services, Professor Laurel Terry (1999) warned that if a regulator ignores the MDP phenomenon, the result would be parallel worlds of lawyers. One set of lawyers will practise in a traditional law firm setting and will be regulated by the rules on ethics while the other set of lawyers will practise in an MDP setting as referred by Steven Mark, 2003. Lawyers in a MDP may simply ignore the rules of ethics to promote their own welfare along with their MDP partners. This could bring about a greater isolation of the legal profession from the lawyers in the MDP's. There is thus a need for the legal profession to promote the welfare of lawyers while protecting public interests.

Although the trend of allowing lawyers to join MDP's is gaining momentum, the strongest objection comes from the USA. However, even in the USA, the states of Texas and Washington now allow lawyers to join MDP's. According to Stevens Mark , in all jurisdictions, rules preventing lawyers from sharing profits from legal practice with non-lawyers should be repealed to permit the formation of MDP's, subject to the adoption of appropriate rules of ethical and professional conduct to protect the interests of clients and the system of justice. This provides stability for the legal profession from the challenges posed by MDP's.

In New South Wales, Australia, lawyers are allowed to join MDP's, while in Singapore they are allowed to form joint venture alliances with MDP's. In the UK and in Australia, the trend is also to allow lawyers to join MDP's, following the proposals by the UK Law Society Report 2002 and the Australian Law Council recommendations of 2000.

The position in Malaysia remains uncertain on this issue. The present chairman of the Bar Council, Kuthubul Zaman (2004), said that the Bar Council does not support the concept of MDP's, while the previous Bar Council Chairman, Cyrus Das (2001), was non committal on the issue .This is an interesting and important matter for further study.

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### *2.9 Legal Corporations*

The restrictions on the types of business structures allowed in the legal profession not only affect a legal firm's competitiveness but can also have residual affects on the cost and access to legal services. The incorporated business models in New South Wales, Australia, Singapore and in the UK have the common feature in that the practitioner's liability to the client and to the profession remains unchanged. The practitioner remains personally liable for any misconduct and for any personal liability in tort or contract. Apart from these common features, the Legal Corporations from Singapore, New South Wales, Australia and UK have different functional structures. The differences in the structure of the Corporation affect its effectiveness to be a competitive force for lawyers to operate in the open market.

The corporation only becomes liable for acts where the practitioner is not personally liable. The client's interest remains protected as the corporation is covered by heavy and expensive insurance. Because of heavy insurance premium payment, this model is not popular among lawyers (Steve Mark 2002).

Incorporation of legal firms brings along with it the benefits associated with a corporation. It becomes easy for the incorporated body to raise capital for the management and for technological infrastructure. Further, legal firms can set up a better management structure that is based on the corporate model. There would also be a continuity of existence as the property of the corporation is vested in the corporation itself and not in the partners. Finally, the corporation can undertake greater risk ventures especially in the overseas market, as such risk is limited to the paid-up capital of the corporation and does not affect the personal assets of the practitioners and the shareholders.

In Singapore, the shareholders and the directors of the Law Corporation (LLC) model are all lawyers. As such the ethical values of the profession are retained and protected. Conflict of interest issues involving clients are avoided and the right of lawyers to act

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independently remains protected. This model is however not as flexible as the UK Limited Liability Partnership (LLP) Legal Corporation model. The LLP allows lawyers to vary the contractual relationship among themselves. Lawyers in the LLP's can thus take greater risk to venture into the different jurisdictions to provide legal services with minimum personal risk to themselves. The structure of the Singapore LLC model, on the other hand, is rigid. This model does not provide the flexibility needed for lawyers to venture into different jurisdictions.

Legal Corporation model as practised in New South Wales (NSW), Australia, is similarly not flexible. However, in the New South Wales Legal Corporation model, non lawyers can be owners and directors of the corporation. According to Steven Mark (2003), this creates ethical problems similar to the issues raised against lawyers joining MDP's. Steven Mark is of the opinion that Legal Corporations in New South Wales could be dominated by non-lawyers both in the Board of Directors and as equity shareholders. Conflict of interest issues may thus emerge between the shareholders and the corporation's clients. This affects the lawyer's right to act independently to protect his client's interests.

According to Cyrus Das (2001), the UK Limited Liability Partnership Model (LLP) has no shareholders and no directors but only members who are not partner either. The members of the corporation are all lawyers and they regulate their activities by way of contract among themselves although they cannot limit the liability of the corporation below the compulsory level of insurance that has to be taken to protect clients' interests. This LLP model is a flexible model in that while the rights of clients are protected, the model provides the flexibility needed for the members to regulate their activities according to the needs of the situation. Members can change their rights and relationship with each other within the LLP by way of contract. The LLP model can then adapt itself to the varying business situations and lawyers can venture into different markets with varying conditions. The risk is taken by the corporation itself while the practitioner's liability only remains in tort and in contract.

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The Malaysian Legal Profession Act 1976 is silent on how legal services are to be structured. Thus the views of Malaysian lawyers need to be sought on this issue.

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### **2.10 Technology for management**

The Internet is unique in its ability to combine with other forms of media. It is capable of freely mixing text, audio clips, photographs, motion pictures, computer programme and personal interaction (Robert J. Howe 2003).

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The internet allows practitioners to communicate with other lawyers and clients through video conferencing, in research work, in networking and file sharing; in marketing and advertising their services, in transferring documents and keeping pace with current developments in practice areas from all jurisdictions.

One of the latest tools available for lawyers is the Wireless Local Area Network (“WLAN”) system. The advantage of WLAN is that it enables the users to roam the office without losing connectivity to their in-house applications, files, e-mails and the internet. For lawyers, real time access to e-mails, files, and all of the other “tools of the trade” from anywhere translates into faster service for clients. For instance, the UK-based law firm, Clifford Chance, has developed the Cross-Border Acquisition Guide ([www.cliffordchance.com/online](http://www.cliffordchance.com/online)) which helps to identify and analyze the main legal and commercial issues that may arise during mergers and acquisitions involving more than one jurisdiction.

To assist clients online, *work rooms* and *deal rooms* have been developed for the clients to monitor the progress of the work done for them. On the other hand *deal proof* applications allow documents to be read and the summaries of documents and arguments would be provided. In Ontario, lawyers are able to do title searches and register transfer of properties online.

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Many legal firms do not have knowledge management systems and have not utilised the information technology adequately. Thus, as incubators of the legal profession, law schools are becoming more direct and pro-active in integrating the learning of research skills, tools, and methodologies. No longer would a course in legal research and writing be considered adequate professional preparation. In the UK, the Law Society and Council of the Bar issued a joint statement in 1999 requiring law schools to introduce to their undergraduates a basic range of IT skills. The University of Cambridge took the lead and now requires all first year students at the Faculty of Law to successfully complete a compulsory IT course.

### **2.11 Restructuring Legal Education**

According to Kuthubal Zaman (2004), when transnational businesses venture off-shore, they require specialized legal assistance and skills in joint venture agreements, license agreements, patent and technical mark agreements, outsourcing and distribution agreements, consortium teaming agreements, franchising, e-commerce, foreign laws, turnkey contracts and others. They also need dispute management services involving arbitration and mediation experts.

Kuthubal Zaman also said that Malaysian lawyers need to be specialized in foreign related laws, GATT provisions, foreign investment laws, corporation and partnership laws, taxation laws, data protection laws, currency and banking laws, anti-trust laws, and laws relating to petroleum exploration, Islamic banking and international trade. They also need to know the judicial process of foreign legal systems including knowledge of other disciplines like politics, environmental issues, economics, technology, and biotechnological issues.

According to the American Bar Association (ABA) Report 2001, specialization in the USA is not limited to big legal firms only. Small legal firms also are able to venture and

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compete in the global markets because of their skills in information technology, legal marketing abilities and their specialized knowledge in specific branches of the law.

While legal education in the USA and other advanced nations has changed with the time, the legal education in Malaysia has remained the same. According to Robert C. Beckham (2001), the Harvard Law School was one of the first law schools to have carried out reforms in their legal education programme. He said that the Harvard Strategic Plan aimed to reflect the effects of globalization on the nation's laws. Transactions are no longer isolated to a particular geographical area but touch on multiple jurisdictions simultaneously. According to Chad King (2002), it is important for lawyers to become more competent in areas of the law like foreign laws, international laws, treaty laws and trade laws. Likewise, England's Law schools are now giving greater importance to European laws and Comparative laws.

Information Technology has become an important tool for the legal profession. The management of the legal office, ranging from administration, marketing, communication, and research now depends on information technology. This was recognised by the Lord Chancellor of UK, who in 1999 directed that all students admitted to do law be competent in information technology.

Mark Levin (2000) observed that a nation needs lawyers who can provide quality services. In Japan, law is primarily taught as an undergraduate course while in the USA, it is a post graduate programme. According to Mark Levin, Japan, with a population of 130 million, had 150,000 students studying law in 2000, while in the USA, with a population of 270 million, only 130,000 students took up law in the same year. Thus in the USA, fewer lawyers enter the legal profession yearly and this helps to reduce competition within the industry. More importantly, the lawyers trained in the USA are in a better position to contribute towards the advancement of the regulatory provisions governing their basic disciplines be it in economics, computer science, or international

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trade. For example, a lawyer with a basic degree in agricultural science would be in a better position to improve and develop the laws governing the agriculture industry.

Avrom Sherr (2001) is of the view that legal education should not only look at how legal needs are changing, but also how legal firms would function in the future. With the globalization of legal services, legal firms are adopting business corporate structure. Instead of one lawyer attending to the work of a client, the work is now shared by many specialist lawyers within the firm. Lawyers are beginning to specialize in different aspects of the work process. Specialist lawyers are required for legal drafting, for research, for advocacy, for arbitration, for mediation, for office management and for legal marketing and advertisement. These trends pose new challenges to the Malaysian legal education system.

### **2.12 Legal advertisement and marketing**

According to the Australian National Competition Council Report (2001), a number of market failures could have been avoided, had regulations of the professions not remained obsolete but had changed with the times. To prevent the legal profession from becoming obsolete, it would be better for the profession to improve their competitiveness by liberalizing the rules of the profession especially in legal marketing and advertisement.

With the global competition for the delivery of legal services becoming more intense, many major legal firms in the USA have established their own legal marketing departments and have adopted open competitive advertisement processes. According to Linda Sedloff Orto (1996), “supermarket” legal firms are now hiring professionals for marketing and information technology management services, while the smaller legal firms appoint in-house marketing professionals to guide them in their daily business activities. With the introduction of professional legal marketers and the reduction of the influence of the middleman providing marketing services, legal firms have become more

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competitive, accountable and transparent in their services and this has improved the public image of the profession.

Linda Sedloff Orto (1996) also said that big legal firms in the USA have adopted the marketing structural model as that used by big manufacturing and business bodies. They set up a separate marketing department headed by a director who is normally a lawyer, and employ specialist professionals to market each of their services. These legal marketing departments often have links with international networks, enabling them to market their services globally. With these developments, the legal professions of advanced nations have been able to penetrate the various global legal markets.

In the globalize world, clients need instant information from different parts of the world. If law firms could not provide the information needed instantly, then other professions would be willing to do it. Thus, for example, a client may need to determine the latest taxation position about a corporation that has branches in many countries and needs this information immediately. If the legal firm has a global network, this form of information could be obtained quickly via fax or by e-mail. Global networking is thus an important marketing tool for the present-day legal firms (Stephen J. McGarry 1994).

According to J. Parker McCarthy (2000), legal services are complex commodities for which the quality and cost of such services cannot be ascertained without the necessary legal knowledge on the part of consumers. Consumer awareness and expertise on the issue of quality and cost of legal services would be the deciding factor whether public interest can be protected in allowing lawyers to advertise and market their services. In the USA and Canada, lawyers are allowed to market and advertise their services because of the high degree of consumer awareness and legal knowledge that enables consumers to assess the value and cost of the services provided to them. This has resulted in increasing competition among lawyers, resulting in reduced cost and better services to clients together with greater transparency and accountability.

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Commenting on the issue of lawyers being allowed to advertise and market their services, J.J.Spigelman (2000) said that this can lead to a market failure if clients are not able to assess the quality and cost of services provided to them. He referred to the example of the New South Wales Legal Profession Act of 1987 that was amended in 1997 to allow lawyers the freedom to advertise without restrictions. This led to unhealthy advertisement and marketing competition among lawyers doing personal injury cases. This market failure was addressed by amendments to the said regulations in 2002 that limit and regulate legal advertisements in personal injury claims matters.

It thus depends on the degree of consumer awareness of the quality and cost of legal services if lawyers are to be allowed to advertise and market their services. However, faced with increased competition from global service providers, international marketing and lobbying would become more effective and sophisticated with time. To prevent unethical and illegal marketing activities cropping up from offshore jurisdictions, it would be better for the legal profession not to prohibit legal marketing but to have it regulated in a reasonably balanced manner that would protect the interests of all parties concerned as referred by Wendy R. Leibowitz 2002.

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