

Building a 21st Century Legal Practice

By

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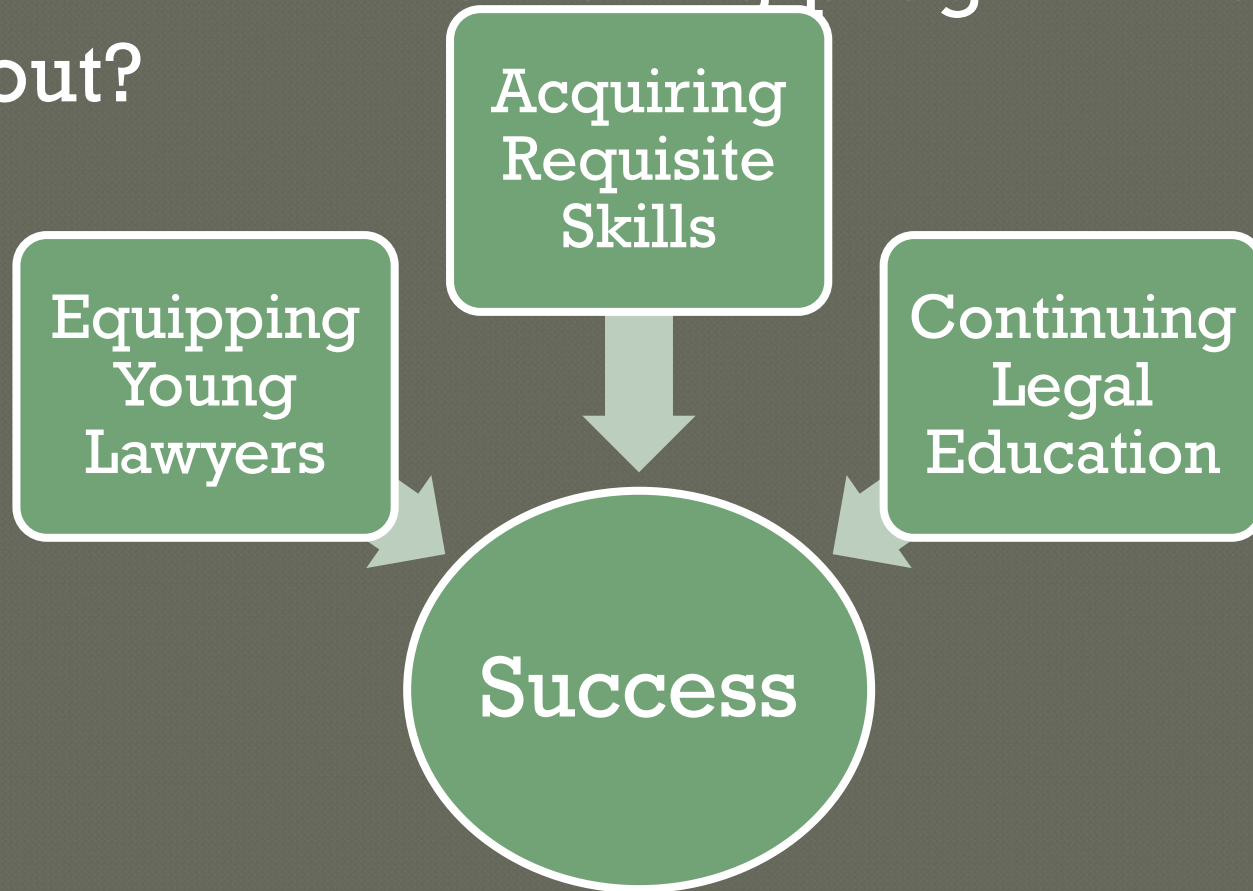
PRESENTATION SUMMARY

- Introduction
- The Evolution of Legal Practice in Nigeria
- Traditional Legal Practice
- Building a 21st Century Legal Practice
- Going to Court v Going Out of Court
- Concluding Remarks



1. Introduction

- ❑ What is this mentoring programme about?



2. The Evolution of Legal Practice in Nigeria

- Legal Practice in Nigeria is broken down into 3 phases: 1876-1914, 1914-1962 and 1962- till date.
- Phase 1: 1876-1914
 - Supreme Court Ordinance was enacted to regulate the legal profession and to define those who would engage in the practice of law
 - Those entitled were persons already been admitted as barristers or advocates in Great Britain or Ireland; or as solicitors or writers to the signet, in any of the courts at London, Dublin, or Edinburgh; those who were deemed amply conversant in the law flowing from association with legal practitioners.

● Phase 1 (cont'd)

- Thus the Ordinance created two categories of lawyers- the local attorney – those the Ordinance empowered the Chief of Justice of Nigeria to grant temporary licence to admit fit and proper persons to practice including experienced court clerks; and the professionally qualified attorney

Phase 2: 1914-1962

- Government began to consider the need for an autochthonous system of legal education capable of responding to the peculiar needs of Nigeria's indigenous community.
- Training in the UK did not take into account the Nigerian Legal System especially our customary law and Islamic Law

● Phase 2(cont'd)

- Supreme Court Ordinance 1914 repealed the Supreme Court Ordinance of 1876.
- In 1960, the British Government appointed a Committee on Legal Education for African Students headed by Lord Denning to review suitability of legal training offered in the Inns for Commonwealth countries.
- In Nigeria, the Unsworth Committee on the Future of the Nigerian legal profession was set up in April 1959.
- The recommendations of the Committee included setting up of the Nigerian Law School in Lagos and establishing a Faculty of Law in University College, Ibadan

- Phase 2(cont'd)

- In 1961, the University of Nigeria, Nsukka established the Faculty of Law, as the first in the country.

Phase 3: 1962-till date

- The Legal Education Act, 1962 setting up the Council of Legal Education was passed pursuant to the recommendation of the Unsworth Committee
- Another was the Legal Practitioner's Act, 1962
- The two Acts though amended severally remain substantially the same.

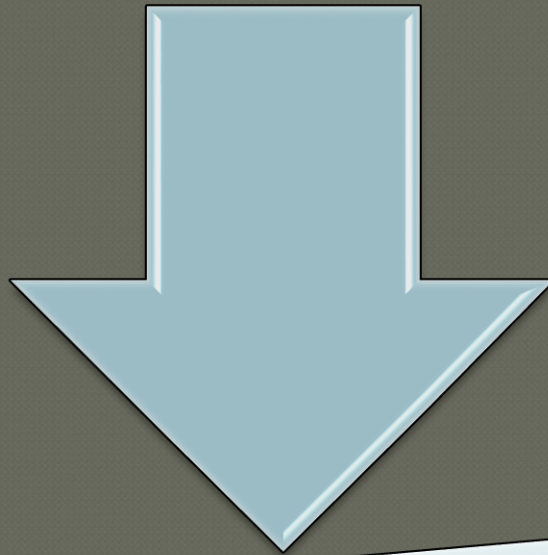
3. Traditional Practice

- After Law School, a new wig may :
 - ‘associate’ with a senior legal practitioner as a junior – reading in chambers, pure associateship or employed by the senior;
 - set up legal practice independently – sharing facilities with other lawyers. This may create problems of finance, clients, experience and skills;
 - may practice in partnership with other legal practitioners – consider formation of partnership (note: with lawyers and not non-lawyers).
 - Factors to note – number of partners, the partnership agreement and registration of business name under Part B of CAMA and the Partnership Act 1890 and Partnership Law of Lagos

➤ **Management of a Law Office**

- ❑ Legal practice should be treated as a business and organised as such.
- ❑ It should be impersonal and proper accounting records kept.
- ❑ The following should be taken into account:
 - Staff and salaries
 - Office hours – consultation hours?
 - Correspondence, filing and records
 - Fees, charges and accounts
 - Supervision and co-ordination
 - Scheduling of meetings
 - Research Skills and Facilities (including the Library)
 - Preparing of Briefs, Legal Opinions and Court Processes.





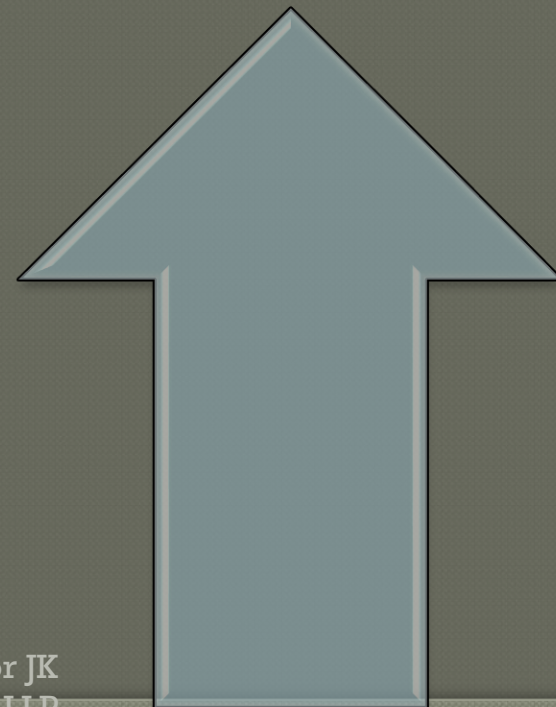
Traditional practice is characterised by:

- transactions limited by borders;
- limited use of ICT and E-commerce;
- trainings focused on Litigation.



21st Century legal practice is characterised by;

- Transnational transactions;
- Use of ICT and E-Commerce;
- Encouraged use of other means of settling disputes other than litigation



21st Century Legal Practice: Considerations.

- Lawyers require the acquisition of modern skills to succeed in the currently competitive global community.

1. Transnational Legal Practice

- Today, legal practice is borderless. What skills have you acquired to be part of this revolution?
- The legal training acquired from the Universities and Nigerian Law School is inadequate for transnational legal practice.
- You need to acquire more skills to cope in a competitive legal world where 'doing business' can be determined electronically.

- Consider that as,
 - a litigator, you need the licence to practice in various jurisdictions but in arbitration and drafting of commercial transactions, you may not.
 - you can stay in your jurisdiction and advise or draft a legal document for a client in another jurisdiction.

2. Drafting Commercial Transactions

- Training at the Universities and Nigerian Law School are geared towards litigation and not corporate commercial practice.
- To survive in a modern commercial world, you need to be trained on the drafting and negotiation of the following contracts:
 - ❑ Non-Disclosure and Confidentiality Agreement

Drafting Commercial Transactions (cont'd)

- ☐ Share Purchase Agreement
- ☐ Shareholders Agreement
- ☐ Power Purchase Agreement
- ☐ Gas Sale Agreement
- ☐ Disclosure Letters
- ☐ Request for Proposals
- ☐ Escrow Agreement
- ☐ Concession Agreement especially in the area of infrastructure – roads, rail, ports, airports, powers

3. Information Technology Law, Cyber Law and E-Commerce.

- A decade ago, these were esoteric specialty but today they are main field of study.
- What is E-Commerce? What is E-Signature?
- Where do the *UN Convention on the International Sale of Goods* and the *United Nations Convention on the Use of Electronic Communications in International Contracts* fit in?
- The general purpose of the Model Law - facilitation of e-commerce, validation of transactions and promotion of uniformity of law and commercial practice
- Provision of functional equivalents

➤ What are the challenges posed by internet transactions?

- ☐ Jurisdictional challenges
- ☐ evidential challenges

- How to deal with the jurisdictional and evidential challenges
- Governing Law of the Contract – express or choice of law in contract and tort
- Which court or arbitral tribunal has jurisdiction
- Admissibility of Electronic Transmission?
- Is writing required?
- Is a signature required, and if so, what constitutes a signature in an electronic transmission?
- Enforceability – court judgments and foreign arbitral awards



- The International Chamber of Commerce Terms (ICC) INCOTERMS
 - ❑ Incoterms explain trade terms reflecting business-to-business practice in contracts for the sale of goods – EXW, FAS, FOB, CFR, CIF
 - ❑ Incoterms describe mainly the tasks, costs and risks involved in the delivery of goods from sellers to buyers
 - ❑ They define the responsibilities of sellers and buyers for the delivery of goods under contracts
- For payment purposes: Letter of credit (L/C) or documentary credit (D/C) – UCP 600 and eUCP 600, Version 1.1. (Note: various types of LCs)
- What are Click-Wrap Agreements – are they enforceable?

- There are several Model Laws that we need to domesticate –
 - ❑ UNCITRAL Model Law on E-Commerce
 - ❑ UNCITRAL Model Law on E-Signature
 - ❑ UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation
 - ❑ Convention on International Sale of Goods
 - ❑ UN Convention on the Use of Electronic Communication in International Contracts
- Use of computer and internet facilities – search engines like Google, Mozilla Firefox



Going to Court v Going Out of Court

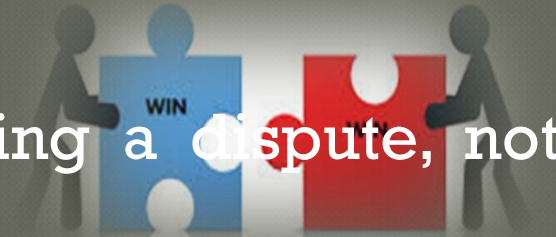
- ◉ You must as a Counsel know when to go to court and go out of court
- ◉ Does not mean a weak case
- ◉ You must learn how to establish a nexus between a dispute and a process
- ◉ It is debatable whether in an African setting, litigation has been the main forum for resolution of disputes.

Going out of court

- If we concede that litigation was the main forum for dispute resolution, from resolving disputes in a fixed and identifiable place called a court or courtroom, it is often that some disputes can be taken away from the court to any place – “out of court” for neutrals to resolve.
- When disputes are settled ‘out of court’, the focus on interests and needs of the parties and the society, rather than the rights of the individual changes the way in which disputes are categorized, analyzed and processed.
- This requires a total re-orientation and change of attitude and hence the concept of Alternative Dispute Resolution (ADR) processes.

4. Negotiate, don't' Litigate

- Negotiating, a first step to resolving a dispute, not litigation
- Definition – means of getting what you want from others – concessions, persuasion, etc
- Negotiating in the shadow of law
- Negotiating Strategies – competitive or collaborative or principled - and tactics – opening statements, venue, agenda, lack of authority, deadline, caucus
- The Preparation, process, qualities and skills
- Personal Styles – hard or soft/tough
- Psychological Aspects – emotions, use of agenda
- Selecting Negotiating Teams
- Understanding your Best Alternative to a Negotiated Agreement (BATNA)



4. Mediate, don't' Litigate

- Mediation (or Conciliation) defined – UNCITRAL Model Law on International Commercial Mediation.
- The Holy Books support mediation/conciliation (Genesis 18:16-33, Matt: 5:9, Matt 18:15-17 and Holy Quran 49:9)
- Meaning of Alternative Dispute Resolution - a confluence with many tributaries – arbitration, mediation and negotiation
- Mediation – General Principles
- Use of mediation
 - ❑ Civil and Commercial Mediation
 - ❑ Divorce and Other Family Mediation
 - ❑ Neighbourhood and Community Mediation
 - ❑ Restorative Justice and Practices
 - ❑ Workplace and Employment Dispute Resolution
 - ❑ Environmental and Public Issue Mediation
- Enforcement
- Mediation/Conciliation – a condition precedent to arbitration



5. Arbitrate, don't Litigate

- Meaning of Arbitration
- Types – ad hoc or institutional
- Types – Commercial, Investment Treaty, Sports, Intellectual Property, Construction, Maritime and Small Claims
- Fundamental principles – party autonomy, separability, arbitrability, competence of the tribunal and minimal court intervention
- Mediation and Arbitration Compared

- Arbitration and Litigation Compared
- Role of courts in arbitration: before, during and after proceedings
- Enforcement of Arbitral Awards
 - ❑ Arbitration and Conciliation Act
 - ❑ 1958 New York Convention on the Recognition and Enforcement of Foreign arbitral awards
 - ❑ The 1965 ICSID Convention on the Settlement of Disputes

5. Concluding Remarks

- In this presentation, we have examined traditional legal practice and modern legal practice.
- You must know the kind of legal practice that you would like to set up – local or international.
- You must understand E-Commerce, E-signature and Internet Law.
- You must know the purpose of the UNCITRAL Model Laws
- You must understand the UN Convention on International Sale of Goods and the UN Convention on Electronic Communications in International Contracts.

- To meet the challenges of modern legal practice, legal training must be reformed.
- You must be involved in continuing legal education, training and re-training
- It is imperative that Nigerian Bar Association begins to enforce its Continuing Legal Education mandatory requirement as contained in the Rules of Professional Conduct (RPC).
- Institutions such as Nigerian Institute of Advanced Legal Studies can provide the requisite trainings.
- As a legal practitioner, you must move from the analogue age to the digital age – are you IT savvy?

A close-up photograph of a red ballpoint pen with a silver tip, positioned diagonally from the top right. The pen is in the process of writing the words 'Thank you' in a black, cursive script on a plain white background. The pen's tip is at the end of the word 'you'.

Thank you