

Knowledge Management
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Lecture – 33
Legal Issues

Okay so okay the next topic that we are going to discuss after examining about how to measure assess the effectiveness of knowledge management using certain tools and techniques.

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2. Ethical, Legal and Managerial Issues

- Topics Covered-
- Knowledge owners
- Legal issues- liability, basis of liability, copyrights trademarks, trade names, warranties, strict liability, Legal disputes in KM, The malpractices factor
- The ethical factor- Ethical decision cycle, threats to ethics
- Improving the climate- code of ethics, Privacy factors
- Challenges
- Implications for KM

And you remember we talked about lot of tools and techniques to measure knowledge management system or its effectiveness like we talked about traditional financial measures. Then you talked about benchmarking, we talked about quality function deployment and ultimately we go to what we call the balanced scorecard approach right.

So measuring knowledge management system is one thing but ultimately they are certain other social and cultural legal ethical concerns when you are going to develop knowledge management system. So now level to take up certain legal ethical and managerial concerns okay. Because when you are going to develop certain systems you have to see that you are going to follow certain norms in terms of the Law of the land and you are going to be more ethical in your approach.

And you are going to also sought out certain managerial issues which are there at hand. It is

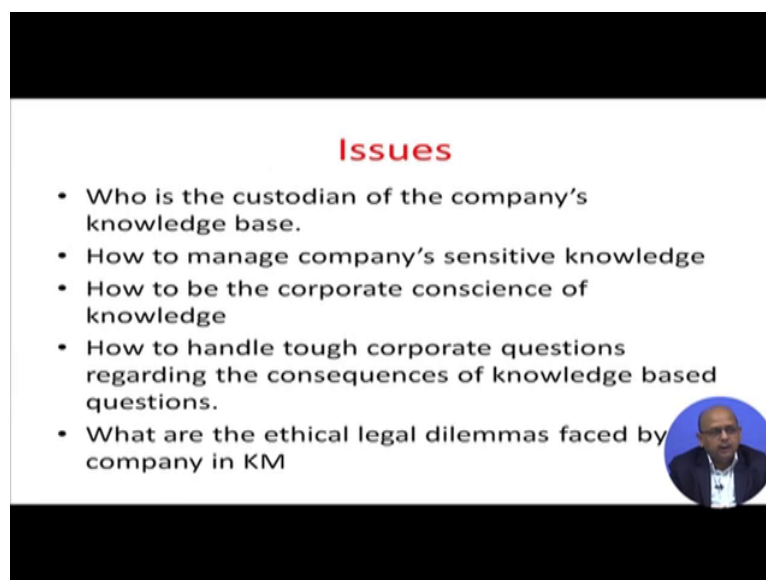
equally important. So what we are going to discuss here some of the topics that I am going to talk about it includes that the first issues is relate to the knowledge owners. Who are the knowledge owners? There could be issues where the person who is given knowledge is the owner, the developers is the owners okay.

Or the Organization is the owner. Similarly we will also discuss about the cost of ownership okay. For example suppose you have written a research paper okay. You have published it and if it is it gets copyrighted who is going to be the owner of the article. Is it you or once it is copyrighted it is the copyright is held with the publishers so they are going to be the owner of the knowledge that is created. And who is going to make use of it.

So there are lot of issues there are legal issues, there are ethical issues, Managerial issues which are involved that needs to be sorted out. So one by one we will talk about legal issues related to liabilities, copyrights, trademarks, and warranties okay. What will happen if there are legal disputes what are the different kind of malpractices if they are going to be there okay.


And then we will also talk about ethical factors okay and then how it can go about improving the ethics. And ultimately we will also look at some of the challenges which managers face in the process system. And ultimately we will talk about what are its implications for the knowledge management system.

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Issues

- Who is the custodian of the company's knowledge base.
- How to manage company's sensitive knowledge
- How to be the corporate conscience of knowledge
- How to handle tough corporate questions regarding the consequences of knowledge based questions.
- What are the ethical legal dilemmas faced by company in KM



So you are moving with some the issues which are important in this concern is who is the

custodian of the companies knowledge base? Because once the knowledge management system is developed there are number of stakeholders okay there could be experts whose knowledge has been tapped been transformed from tacit explicit. There are knowledge developers who have captured the knowledge put it in the systems.

They are professionals top management system they have invested money into the system and developed it for the benefit of the organization. So since there are number of stakeholders in the process each one of them may claim to be the owner of the knowledge right or the knowledge base that is being created right. So this question is to be sorted out who is the custodian of the company's knowledge base.

Because there could be various stakeholders who have participated and continued to create the knowledge base. Then another important issue is that how to manage companies sensitive knowledge. What I meant to say here by company's sensitive knowledge is that is critical knowledge. Because no company in the world is going to share its critical knowledge with others otherwise they would be losing the competitive advantage.

Can you ever expect KFC to share it ingredients with any organization or can you ever expect say Coke to share its ingredients that how the Coke is actually formed or made to his competitors, No. So it is very important to manage companies its sensitive knowledge and you have to see that there could be lot of issues legal issues, ethical issues for example if the companies databases is hacked and it is being used by another organization or it is being stolen okay.

Or there are certain frauds. So who is going to be responsible? So there are lot of issues that may come up okay. Similarly how to be the corporate conscience of the knowledge when unpacking what corporate conscience of the knowledge okay. When I am talking about the corporate conscience of the knowledge the idea is that whether consciously any corporate or the top management decides to use knowledge for particular use which is not going to be only productive okay.

But whether it is going to be harmful for us or not? Are we going to offer products because you are going to get benefit out of it. But you are not looking at the benefits that the community, the health and effects its effects on the community. So there are lot of issues

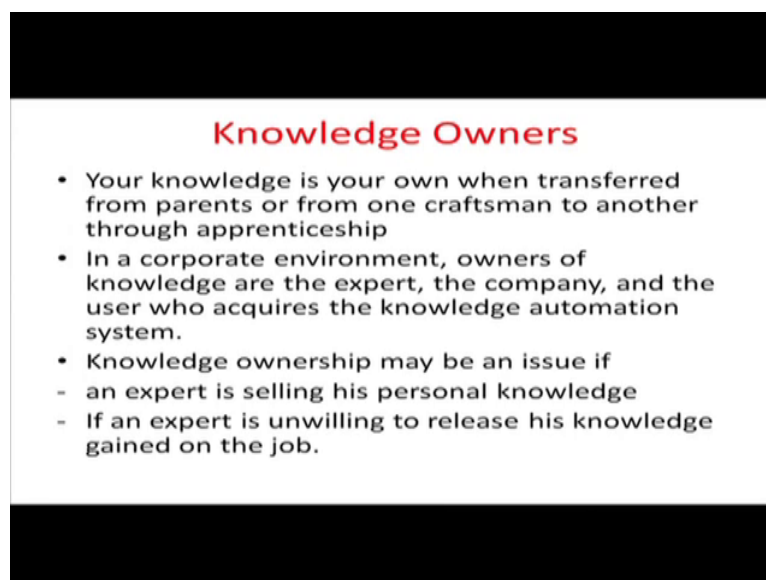
related to the conscience of the corporate in terms of using certain knowledge either for productive purposes or it could be for disruptive purpose as well.

Then who is going to answer questions related knowledge management. How to handle tough corporate questions. Because when you are going to develop knowledge management systems. How you would taken care of the legal issues, ethical issues, moral issues okay. So who is going to answer this question whether it is your knowledge management team is going to answer these questions.

The person who is at the helm of the face like you have a Chief Information Officer or Chief Learning Officer or a Chief in knowledge Officer they are going to be responsible or they are going to handle questions related to knowledge management system. So these are some of the issues that to be looked into okay.

Similarly, then there could be lot of Dilemmas ethical legal dilemmas that conveys when you are going to use certain knowledge management system in the company oaky. So how you are going to solve these issues. So basically what we are going to discuss here is that how to handle various issues in terms of law ethics and management right. Some of the issues that I have talked about here is related to that one.

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Knowledge Owners

- Your knowledge is your own when transferred from parents or from one craftsman to another through apprenticeship
- In a corporate environment, owners of knowledge are the expert, the company, and the user who acquires the knowledge automation system.
- Knowledge ownership may be an issue if
 - an expert is selling his personal knowledge
 - If an expert is unwilling to release his knowledge gained on the job.

So first question that we have asked is that who is the custodian of the knowledge in terms of knowledge owners okay. So once knowledge is transform from 1 person to another person through any medium. Whether its apprenticeship whether it is through collaborations or

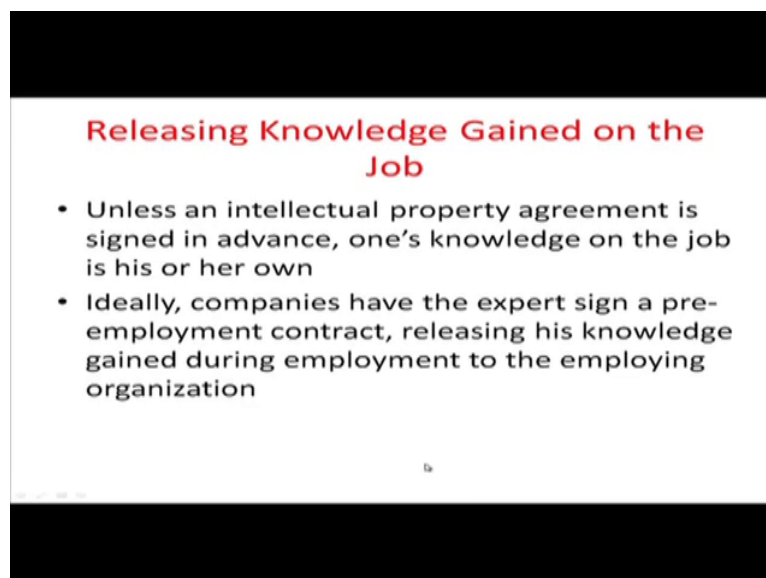
sharing okay. Where the knowledge is going to be who is going to be the owner of the knowledge okay. So if you look at in organizations the owner of the knowledge is the experts.

But when it is transformed into a document the owner of the knowledge become the company because they have the copyright okay. Similarly you have a knowledge automation system. Who is going to be the owner of that particular thing? So there could be a possibility that though the owners of the knowledge could be the people or the experts. But when it comes to knowledge management system it could be the organization okay.

Or when it comes to using your IT systems there could be IT people who could be there as owners of the system. So there could be lot of issues for example an expert who is going to sell his knowledge personal knowledge. So it is documented it is being used by the organization for the profit. Now the question is the legal question is that organizations make making profits but whether is being shared with the experts or not.

And whether it should share, how is it is going to share these are lot of issues okay. And suppose expert is not ready or reluctant to share the knowledge. Then whether organization is going to force it to share it to go for documentation or not there could be ethical issues or legal issues. So there will be lot of or could be lot of questions when it comes to knowledge owners that are to be resolved.

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Releasing Knowledge Gained on the Job

- Unless an intellectual property agreement is signed in advance, one's knowledge on the job is his or her own
- Ideally, companies have the expert sign a pre-employment contract, releasing his knowledge gained during employment to the employing organization

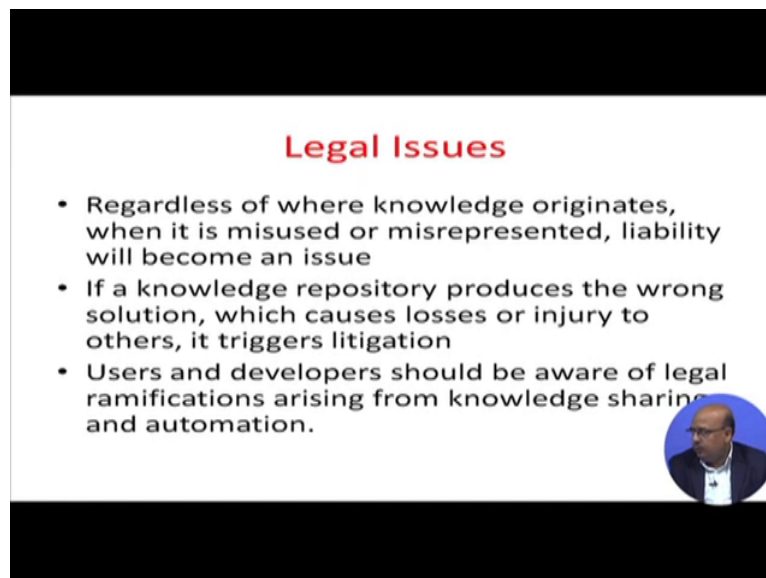
Now the question is that organization might say that you have gained this knowledge while working at this particular place okay. So this even if I have gained this knowledge while

working at this particular place this knowledge is mine. It does not become yours because you have been working in your organization okay.

Unless there is an agreement that okay this is a knowledge which has been created here and you are going to be the owner of this intellectual property. For example if I have written a research paper okay. The copyright may be with the publisher but I would be the owner of the knowledge I can use it and the way I want to do it. Suppose I have created something I invented something new or gone for a particular patent.

So I am able to sell it for commercial use but the actual knowledge owner is going to be with the person who has invented that particular patent. So there are a lot of issues that could be there so if an expert is going to sign a contract okay. And say that okay whatever knowledge is being obtained by me okay. It is going to be documented and you can use it the knowledge retains, remains with the owner of the person, owner of the knowledge or the person who has it okay. So this is the knowledge ownership issue.

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Legal Issues

- Regardless of where knowledge originates, when it is misused or misrepresented, liability will become an issue
- If a knowledge repository produces the wrong solution, which causes losses or injury to others, it triggers litigation
- Users and developers should be aware of legal ramifications arising from knowledge sharing and automation.

Now we are moving to another important issue that is legal issue. So the creator of legal issues so the rest of the fact that from the knowledge comes out okay. You have to make sure that how it is going to be used. Whether it is going to be used appropriately, stably in a manner that is befitting to the organization system, or it is going to benefit the community in the society or not.

Or it is being misused and misrepresented and if it is going to be misrepresented and misused

right it becomes a liability. For example there are lot of scientific inventions that is done by the organizations. Now these scientific inventions can also be done for the benefit of the community in the society and the similarly scientific invention has also been used or what you call misused or abused to harm the society.

So if that is so who is going to be responsible who is going to be liable for the harmful effect of those kind of things which, where you can say that the system or the knowledge management or the knowledge base has been misrepresented or misused by the people or the organization right. Another issue is that suppose you have a knowledge repository and her created certain knowledge okay, which is going to produce wrong solutions okay.

And which are going to cause a loss or injury to life or property or damage to certain things. So you are going to create certain legal issues that you might be sued in the court of law. So who is going to be responsible? You say that you this knowledgebase system has been used by you and the outcome is the knowledgebase system, not you.

So whether organization is going to face the litigation or you as individual who is the owner of the knowledge is or the knowledge management system which is owned by the organization is going to be sued or is going to be see you can say liable for that. And then any kind of litigation has to face by the organization. So it is very important to us that understand certain legal ramifications which is coming out of or rises out of what you call the uses and abuses of knowledge right.

And both the end-users and the developers must be aware about the legal ramifications that may come out of this kind of system okay. So it may come from automation where you are going to transform tacit knowledge into explicit knowledge. Or when you are going to share your knowledge through certain mechanism or the KM system the people who are going to make use of it right.

So both the developers and the users of the knowledge must know what could be the various legal ramifications of the knowledge sharing or explicit knowledge that is available with the knowledge management system.

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Some examples of legal issues

- A physician diagnoses a patient after consultation with his knowledge based system for treatment, but the patient dies as a result of misdiagnosis and treatment
- A knowledge based system used by an architect incorrectly determines the stress requirement of a new building and later on it collapses killing people.
- A lawyer using a knowledge base legal system advises his client of the tax forms to file and what to include in his return to get tax exemption. The client is later issued notice by the IT department for wrong information.

Now if you look at this knowledge management systems okay I give some examples here. Say for example you have a medical base knowledge base systems right. And you are going to a physician who is going to diagnose a patient after consultation with that medical base knowledge management system okay but what actually happens the patient dies, because he has used a system which has resulted in misdiagnosis and treatment.

Because of which the patient has died. Now who is going to be responsible for this? Is Doctor responsible for the death of the patient or the kind of system that has been used by him is responsible for it? Another important example that I have taken here is say for example you must have heard about a lot of building collapses or bridge collapses that happens okay.

Now whether the architect is at fault or the contractor is at fault, because architect had architecture has created the design that is used by the contractor and this architecture has created the design based on the knowledge base system okay for example he is going to determinate what could be the stress requirement of the new building or what kind of a stress it can be have or bare of a bridge or can bare right.

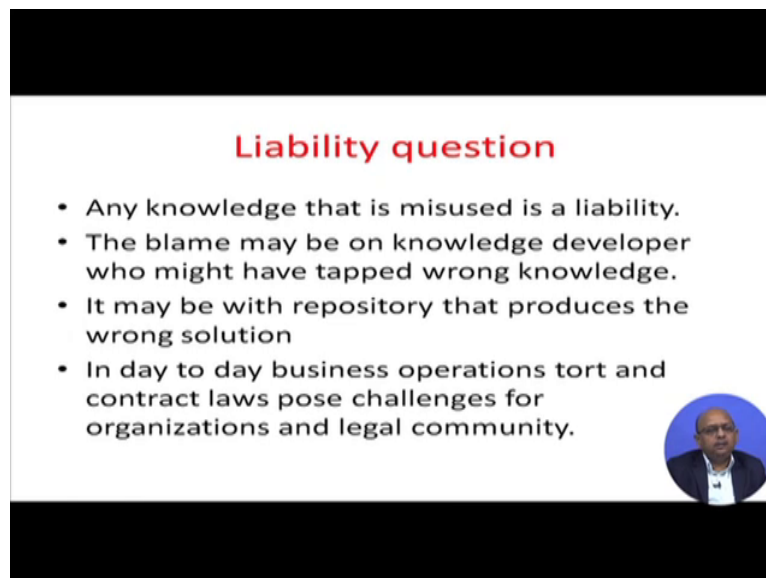
And suppose the collapses and the building collapses and kills a lot of people. So who is going to be responsible record there could be lot of issues. Whether you are going to arrest or take certain legal actions against the architect was he has designed the design the building or the bridge which was faulty. Or the KM system that is being used by him to that in order to design right. Or the contractor who is using the design that the user.

So whether the issue is whether the user or the developer should be held responsible and liable for legal actions. For example, let's take another example that is related to Lawyer okay. Suppose a lawyer is using illegal base system and he is going to advice his client regarding income tax returns.

That what you are going to include income tax return to get certain exemptions. But and he fills up the form and later on the income tax department sends him a notice okay. That you have given wrong information that the wrong deductions are there. And you are liable for punishment or penalty. So who is responsible whether knowledge management system is responsible okay.

So there could be lot of issues and you have different kind of knowledge management system. And in medical legal terms or in other terms you have to see that. How it is going to affect the people and what could be the legal ramifications both will not only legal but also the ethical ramifications that will take later. Now if you look at liability questions.

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Liability question

- Any knowledge that is misused is a liability.
- The blame may be on knowledge developer who might have tapped wrong knowledge.
- It may be with repository that produces the wrong solution
- In day to day business operations tort and contract laws pose challenges for organizations and legal community.

Liability means what liability is that when something is not useful or something that is being misused okay. And in KM system when we talk about liability means that any knowledge that is misuses is loyal reliability. And this could be attributed to either a developer who might have tapped wrong knowledge or it could be also attributed to the user who has not been able to properly use the knowledge right.

Because he not been able to understand the system properly that is why he is not been able to

use it properly okay. Or probably the repositories is there and he use certain systems automation systems and software which has created wrong system for example you have gone far wrong modeling the data that have used to data mining has created wrong solutions so what will you do?

Or use artificial intelligence systems to come out with certain decisions which may not be correct. So who is going to be responsible for that particular question? So there are two different kinds of laws that that is very important law of tort and law of contract and which created lot of challenges for organizations as well as legal communities. Now let us look at the liability of the knowledge of the knowledge developer.

See developer is always on lab vulnerable to the charge of personal liability under the doctrine of respondent's periods. So this is doctrine that is used in the law of contract because if the designers is an employee of the company which is the software? The firm is involved in the negligence part. Or that the company is responsible for certifying the system before it is released for commercial sale then the company is responsible right.

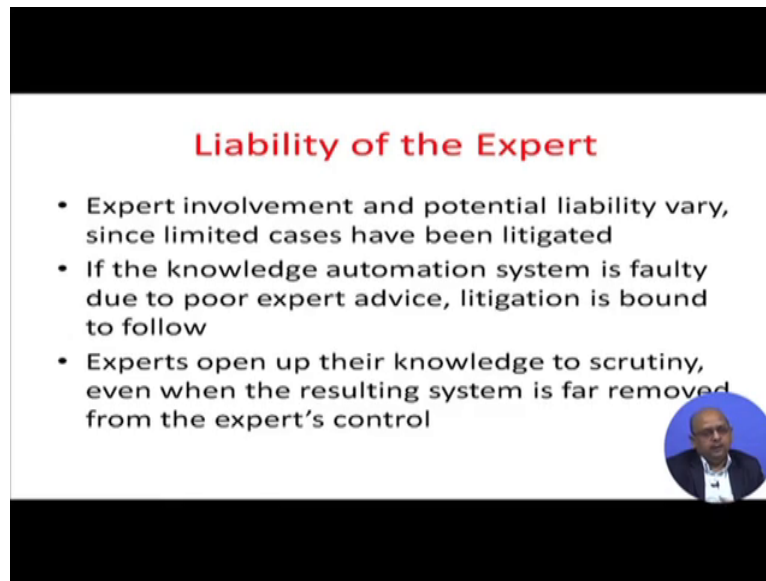
Because the company has certified that whatever software is releasing is good then and if it is not working are their certain misused or not properly handle then who is going to be liable whether the knowledge developer or the organization because knowledge developer ultimately is the part of the organization. So who is going to be responsible this is a major issue that needs to be looked into.

Now another issue is that since the knowledge is being tapped and being transformed from the experts to make explicit from the tacit. so what is the liability of the experts because you know that experts have the tacit knowledge which is basically transformed into explicit knowledge okay.

They are also involved in basically some kind of liabilities but you cannot litigate that because that has been transformed into explicit form and whether the knowledge developer have been able to tap it well translate it properly into explicit form or not that question remains. So if the knowledge admission system is not a good or not faulty then it may not able to capture the expert knowledge properly.


So there is going to be certain litigations.

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Liability of the Expert

- Expert involvement and potential liability vary, since limited cases have been litigated
- If the knowledge automation system is faulty due to poor expert advice, litigation is bound to follow
- Experts open up their knowledge to scrutiny, even when the resulting system is far removed from the expert's control



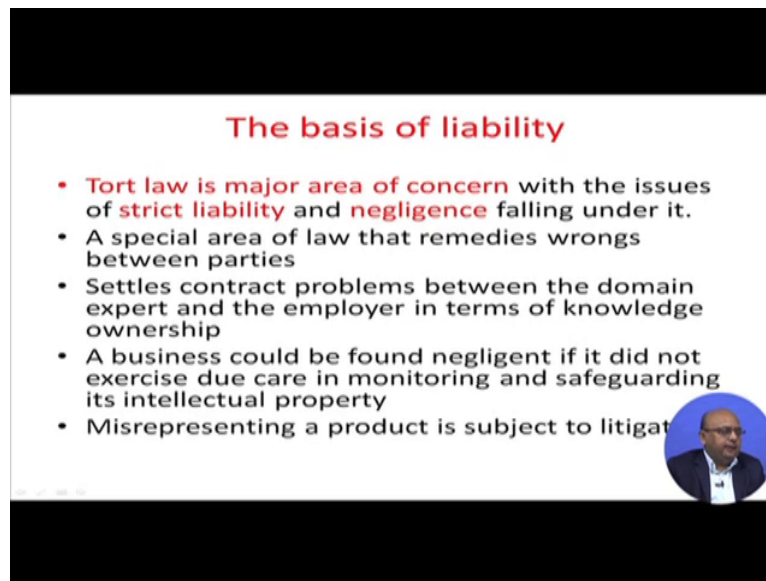
Similarly the knowledge of the experts is also open to scrutiny or when and which results from what you call use of the knowledge because there are certain things which are under the control of the expert certain things are not under the control of the experts. So when knowledge developer is transforming tacit knowledge of the experts into explicit form you have to see that it is done properly.

Otherwise even experts could be held liable and for the particular thing. Then apart from experts user could also be held responsible for certain cases okay because users are not immune to law right. For example a lawyer and architect are doctors of the user and the system okay.

So they must also not look at the KM systems because they are have their own experts and knowledge which they should try to apply because since you are using the system you could be held responsible for that. Because you are giving a medicine, you are responsible because you go for certain treatment and diagnosis based on certain principles is KM systems you are responsible right.

But if you are not going to use available resources properly okay then it is negligence on your part. But if you have gone for the system properly understood it well and then have decided it then you may not be held responsible right. So the liability of the user then what the basis of liability okay?

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The basis of liability

- Tort law is major area of concern with the issues of strict liability and negligence falling under it.
- A special area of law that remedies wrongs between parties
- Settles contract problems between the domain expert and the employer in terms of knowledge ownership
- A business could be found negligent if it did not exercise due care in monitoring and safeguarding its intellectual property
- Misrepresenting a product is subject to litigation

So there are two different laws as I told you the tort law and this Tort law is different in each nation okay. So you have to go through the Tort law I am not going to discuss basically here. But this talks about two important issues strict liability and negligence okay. So if there something wrong that goes on between two parties for example a doctor and a patient, a lawyer and a client okay, a consultant and a client right.


And something goes wrong then they are covered in the law of Tort okay. Now when I am talking about strict liabilities or basically you are going to held that particular person responsible for the misuse or for the acts right. Similarly you also need to see whether it is falling under negligence or not okay. So you have to see whether it is related to because expert problem is there or whether it is related to the knowledge ownership right.

Or it is on the negligence on the KM system, or the users, or the business because they did not exercise proper monitoring caring and safeguarding its intellectual property and that is being used by others okay. That could be important issue. Similarly misrepresenting a product is subject to litigation. Now you know that in the medical systems lot of misrepresentation happens okay of the product.

Same medicine could be is given for different things which is wrong and there are certain medicines which are not supposed to be given in certain things okay. Which may be banned but is still being used by the doctors that could be again our misrepresentation right? And then it could be subject to litigation because if you give a wrong medicine which is banned


which is dumped in a particular country then you are going to be covered under the law.

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Knowledge—A Product or a Service?

- If knowledge is what you say, not what you see, it can be viewed as a service
- If knowledge is codified and packaged as a mass-marketed item, it is viewed as a product
- Many legal experts want knowledge-based systems to be considered as services in order to avoid the strict liability associated with products



Then another important issue comes out whether knowledge is a product or a service okay. So it is a service if you cannot see it. If it is a product if it is visible to you right. If it is codified and packaged as a market product okay. Then you can see that is a product. For example if there is a software okay. It is packaged nicely and its written okay. Say it is a statistical package or it is a software package which does certain statistical analysis then it is a product.

But if knowledge is used for doing certain things right. Then it is used as a service right. For example going to use your knowledge is to serve the customers okay. And their manuals and guidelines which they are using it. So the manual and guideline is a product right because you are using it as a base to provide our services okay. Or you are using these softwares to analyze data. So this could be the product right.

So but there is a, you can say what I call that contradiction among the experts some they differ in their opinions some of them know it is a product. Some of them say that knowledge and service okay. And if you call it a service the idea is that you can avoid certain liabilities which are associated with this right. But if you call it a product then it could be certain liabilities related to or associated with that one.

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Knowledge—A Product or a Service?

Knowledge as a Product	Knowledge as a service
Off the self software	Custom design software
Mass marketing software	
Custom designed but affects a large number of customers	Negligence principles used
Proving negligence unnecessary to holding developer	Negligence caused of action more difficult for plaintiff to prove
Uniform commercial code liability limit allowable via disclaimer of warranty	For liability law of state applies rather UCC

Source: Awad and Ghaziri: Knowledge Management (2007)

Now look at the difference between a product and service when in which case you are going to call it a product or in which case you are good call it a service okay. It is going to be a product if it is a software okay. Is a it is designed but effects a large number of customers for example a software or proving negligence unnecessarily to holding developer or there is a uniform commercial code liability limit which and you have this disclaimer of warranty for that particular product.

It is going to surveys for example it is a custom design software okay. So there is a difference between off the self software and customer design software right. And if it is service then negligence principles are applied and if it is not a survey then you are going to have liability principles okay.

So negligent cause of action is more difficult operatives to prove because it is very difficult to prove that whether I have been able to provide you the quality service that you expect and what kind of negligence is there it is very difficult to prove. Because in that case you have to go for some kind of observations to prove that yes, negligence has happened right.

And basically if you look at liabilities lot of state applies other than uniform commercial code because uniform commercial code is restricted only to the U.S. but each state which is the each nation actually is covered with its own law or contract. And then you have to see whether these liabilities are applied in case of negligence or not. For example you are driving and you met with an accident right.

Whether it has been accident accidentally or it is out of negligence okay. It is very difficult to be proved in a court of law right. If it is act of negligence probably the quantum of punishment is going to be very less but if it is known attitude and done intentionally and then you have done certain things which are wrong because of this accidental happening.

Then probably you are liable legal actions so that is improved similarly in case of knowledge also the distribute site.

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Copyrights, Trademarks, and Trade Names

- An area that falls under intellectual property law
- Copyright is ownership of original work created by an author
- Copyright law gives author the right to exclude others from using the finished work

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Now will unpack about knowledge in what form it comes out they, it could be copyrights, it would be trademarks or trade names and because that shows your intellectual property okay, because the knowledge that is created takes the form of patents, property, copyright, state names, trademarks in this kind of things, so all these things can are covered under the intellectual property law okay.

And copyright is nothing else but is the ownership of the original but created by the now sometimes what happens with couple nontransferable copyright were the for example if I research writing a research paper so the cop there is a class that you can retain the copyright with you are you can transfer the copyright to the publisher, so if you sign an agreement to transfer the copyright to the publisher.

Then the copyright remains with the publisher but still can make use it, okay but you cannot commercialize the fraud better than but they have the copyright it is written by then you can commercialize it and do whatever you want with the product that to have other people like to

have so because if look at the copyright law to give author the right to exclude others from using access to right.

But you have transferred the copyright give then in that case you lose that are basically right. So for example that when you are going to transfer the copyright transferred but it comes trademarks and trade names the these are specific intellectual properties which is written by the organizers have for example a say Tata, so Tata is a trade and right because all your products will be our services are being sold in the name of Tata.

And trade name has certain characteristics associated with it could be quality, it could be product, it may nothing right certain characteristic that you associate and that is why were going to buy this product, because you know that this are in the that particular name is associated which is trusted in the market.

Then you also create trademarks so the each company has its own trademark and trade not names which must be protected by a because it is intellectual property further right.

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Copyrights, Trademarks, and Trade Names (cont'd)

- In KM, a knowledge repository and the way it is organized are copyrightable
- Logos and trademarks are also copyrightable
- On the Web, images and banners are protected by copyright laws

And knowledge management so knowledge repositories basically the copyright of the always right, now was which I planned there arm for different organization because each Imation has its own logo and trademarks also copyright law copyright is retained by the organization okay. So when on the WebPages imager manner supported by the copyright is okay.

So if look at and knowledge man system is any kind of repositories that is where the

knowledge management system is a copyrightable material, which it is retained by the organization so they have they are the owners of the intellectual property which is being created by the organization.

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Copyrights, Trademarks, and Trade Names (cont'd)

- A trademarks means registration of a company's trade name so that others cannot use it.
- A trademark is also a symbol or a word that distinguishes a good from other goods
- An outsourced Web site is intellectual property and belongs to the company under contract



So if you look at the trademark it is nothing else but registration company statement so the Tata cannot use it so that cannot be used in case a name can and will many the formation so it is also a symbol our award that distinguishes it from others goods and services right a example a announcers website will also and little property because it belongs to the company under the contract.

Your WebPages is being designed and management of but it is also you are having the copyright, now not outsource companies bizarrely issues relate copyrights.

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Warranties

- An assurance made by seller about the goods sold
- An express warranty is offered orally or in writing by the maker of the product
- An implied warranty is part of a sale that has been made that the good will do what it is supposed to do—implied warranty of merchantability
- A DISCLAIMER is the seller's intention to protect the business from unwanted liabilities



Now, the warranties is also part of it so hard is that nothing is absolute Midwesterner about the warranty so you winner will celeb productive you warranty one-year or two-year warranty is given okay, so it could be or are it could be writing by the product right so warranties nothing else but and that is whatever it if there is a to basically give an assurance of the quality of the product.

And you say that if they nothing goes wrong then you are going to held responsible for the goods and services right, the idea is to protect the business from unwanted liabilities right, so was warranty is that over and suppose you given one-yard warranty and it is over then in that case what happens if anything goes wrong with the products and services you may not be held liable are that particular.

And that is why these warranties are used to by organizations to protect themselves from unwanted liabilities.

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STRICT LIABILITY


- Joint & several liability for developers, manufacturers & distributors if tort theory applies
- Protects web visitor regardless of whether anyone is at fault
- **TAXATION ISSUES-** Controversial
 - Different jurisdiction
 - Consumers' reaction

Then we have strict liability, could be joined or several liabilities were more than one people could be held responsible like the developers, manufacturers and others I have it basically have protect we have websites survey visitors regardless of whether anyone is at fault are not good with write access taxes will issues will go via main case of taxation my you have jurisdiction, different kind of jurisdictions, it in the consumers actions to be different so it is a controversial issues, liability.

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Legal disputes in knowledge based system

- In KM several disputes issues may arise having legal implications
- An expert owns the knowledge of the work if there is no prior agreement.
- If a knowledge developer builds the system and a problem arises, he is subject to charges of personal liability under the doctrine of respondent superior.



Then if you look at legal disputes in the knowledge management system can are them a lot of for legal disputes a like lot of examples are now are at who is going to the owner knowledge expert other system and argument owner is the expert right when it comes knowledge available efficiency of the visible in developer and will the system and if there is a problem with a knowledge management system he is subjected to liabilities right.

And are also under the doctrine of respondents pitifully should be held responsible right,
thank you.