becomes a subtle distinction you have to deal with in order to determine whether hearsay internet evidence is admissible.

32. Under Para 639 dealing with documents the learned author said ***"the rule against hearsay applies equally to documents and it is relevant both to the authenticity of the document (that, for example it was signed by the person whose signature purports to be on it) and its content".***

33. In the case of Lorraine supra the court had to deal with provisions in a Statute – the Federal Rules of Evidence and the court advocated 5 steps analysis to deal with hearsay issues in internet printouts. There are 5 separate questions to be argued

1. Does the evidence constitute a statement as defined by rule 801(a)
2. Was the statement made by a declarant as defined by rule 801(b)
3. Is the statement being offered to prove the truth of its contents as provided by rule 801(c)
4. Is the statement excluded from the definition of hearsay by rule 801(1)
5. If the statement is hearsay is it covered by an exception identified by rules 803, 804 or 807

33. While these questions all make reference to Statute there is nothing stopping you from doing the self same analysis where there is no Statute. In fact, under the Common Law it is the first 3 questions that are most relevant and germane to these proceedings but we note too that under common law and statute, for instance the Evidence Documentary Act Cap 26 supra, there are definitions of what constitutes a statement or a declarant for purposes of documentary evidence. Our examination of what constitutes hearsay evidence for purposes of internet printout in the absence of a statutory provision dealing with internet evidence like in other countries is bound to include the first 3 questions. This is so because our law on hearsay has not received statutory modifications save as handed down. It may seem to us that whether Common Law or Statute, the kind of statements we are talking about in so far as the answer to these 3 questions herein fall under inadmissible hearsay meaning that those internet printouts did satisfy all the requirements herein documented as1-3 above. I will produce the questions as follows:

1. Does the internet evidence constitute a statement as defined by Evidence Documentary Act Cap 26 Laws of Sierra Leone - Yes

2. Was the statement made by a Declarant as defined by Evidence Documentary Act or the Common Law - yes
3. Was/is the statement being offered to prove the truth of its contents under Common Law - yes

34. Against the aforesaid scenario it ought not to have been admitted even though there were no objections. Worse still, it was not the requirement that it must be admissible, which being hearsay, it was not, but also the fact that the internet evidence was not authenticated before being admitted. The learned author Phipson on Evidence above making reference to the common law touched on it when he said the rule against hearsay applies equally to documents and it is relevant both to the authenticity of the document (that, for example it was signed by the person whose signature purports to be on it) and its content; and we could add that it was made by the person who purportedly made it; that the contents therein were actually made by him and so on and so forth. Authentication refers to whether the data or statement on the internet printout is what it purports to be. This requires establishing its reliability and integrity by proving its authenticity, reliability, completeness and accuracy. It has quite often been said The ease with which electronic evidence can be created, altered and manipulated gives rise to allegations of tampering or damage between the time they were created and adduced in court. The reliability of the computer programme, the identity of the author and even the compliances with certain processes makes it necessary for internet evidence to be authenticated before becoming admissible. See article by **ODIN FELDMAN PITTLEMAN on the NATIONAL LAW REVIEW OF TUESDAY 30TH JULY 2013 titled Internet Evidence Part I Authentication.**. In fact in the past because of those reasons such evidence were never admitted. In a particular case **ST CLAIR V JOHNNY'S OYSTER AND SHRIMP INC 76 F SUPP. 2D 773,774(SD TEX 1999) SEE ALSO NATIONAL LAW REVIEW supra** it was held that ***"any one can put anything on the internet. No website is monitored for accuracy and nothing contained therein is under oath or even subject to independent verification absent underlying documentation. Moreover the court holds no illusions that hackers can adulterate the content on the website from any location at any time. For these reasons , any evidence procured off the internet is adequate for almost nothing"*** But in the case of Lorraine 2010 supra where the plaintiff sought to recover damages to a boat that had been struck by lightning under his insurance policy the defendants paid the initial claim. However later there was a second claim when further damage was discovered to the hull of the boat. The parties then sought to rely on various

emails to prove their case. The court then had to scrutinise and analyse the evidential hurdles before electronically stored information could be admitted into evidence thereby bringing a change to the old process whereby such internet printouts were never admitted. Now they are admitted but within specific rules against hearsay and the proper authentication of the internet document.

35. This court notes that the learned trial Judge admitted the internet evidence and would not waste time to determine whether the same was authentic. There is however nothing before this court to show that it was authentic. The author was not called to give evidence in circumstances where it would have been prudent and the proper thing to do to prove what was being said as correct and being put out, allegedly by the Appellants on international directories especially so as the 1st Appellant denied it was not her/ their deed or creation. See **THE CASE OF UNITED STATES V JACKSON 208F.3D 633 AT 638 7TH CIRCUIT 2000.** By admitting the internet evidence, and among other things, allowing the respondent counsel to make a heavy meal of it, the judge was saying the internet evidence which was proffered as truth of the Appellants holding out as capable of offering Legal services and consultancy services(which for the respondents meant offering services as barrister and solicitor / legal practitioner) contrary to the LPA was reliable, complete and accurate in other words, authentic whereas in actuality there were circumstances or facts which pointed otherwise. This was so because

1. Firstly, you cannot call something authentic, when on the face of it, it purports to be at variance from what it actually is; The requirement of authentication as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. In the US the Federal Rules of evidence set a fairly low threshold for authenticating evidence. See the case of **US V GAGLIARDI 506 F3D, 140150 2ND CIRCUIT 2007.** However, the proponent of the internet content must present evidence supporting a finding that the evidence is what it purports to be. **SEE US V TANK 200 F 3D 627, 630 (9TH CIR 2000).** This was not so presented in the case at hand

2. Secondly, you cannot call something as authentic when noting that it is internet evidence, with all its attendant problems as to reliability, completeness and accuracy, you have not called or had affidavit evidence of the person who made the statement and who alone is in position to clarify whether it was authentic.

3. Thirdly you cannot call something authentic when following the Respondents' affidavit of 30th January 2012 which puts out the allegation as contained in exhibits J K L P O Rand S above and yet the person to whom it is made against replies in her affidavit in opposition sworn to on the 24th February 2012 thus:

> ***"Class Legal Limited has for the past 5 years been recognised for its quality of service to clients. It is therefore referenced in a number of international directories <u>but this is through no intervention of the company contrary to the assertion of Mr Yada Hashim Williams in his affidavit of 30th January 2012. The company is not aware of its listing in the Sierra Leone.org Website and has NOT found / submitted its name among websites of solicitors and solicitors firms in the Sierra Leone .org Website.</u> The firm's only local advertisement is in the Yellow Pages Sierra Leone in which it is clearly listed amongst Consultancy firms and internationally, in the Corporate International Magazine where it is also profiled as a successful consultancy".***

36.But then after such a reply which to all intents and purposes is saying I/we have no part in the making of that statement / no part in the creation of that document – in your affidavit in reply of 2nd March 2012 there comes a blatant absence refusal or neglect of a rebuttal in reply. The reply in rebuttal should have come through producing the author of Chambers and Partners or through the very documents she allegedly must have filled and/or completed. There was none produced in the court below of such completed form. How then can you assume it or put it on the 1st, 2nd and 3rd Appellants. It could have been put by anybody. Assuming without conceding that as alledged 1st Appellant placed that document on the internet if she now the first appellant says it is not her deed it goes without saying that it is not true in the absence of evidence from the author of the site to disprove it.

37. In such a situation the reply to the affidavit of 30th January 2012 as evidenced in paragraph 19 of the affidavit of the Appellants becomes unimpeached and /or uncontroverted. This coupled with the fact that this court was not furnished with No completed submission form bearing any of their names or signature to show that indeed it was the appellants that put out the information in the internet only goes to show that information is unreliable.

38. The appellant's qualifications are undisputed. She is a Solicitor from England and Wales

but then the evidence from the printout says she is a lawyer. Did she ever claim to be lawyer in her application form to chambers and the other international directories? Where is the application form/submission filled or completed; what does it say? More importantly, Did the Appellant say anything to say she was a Legal Practitioner in Sierra Leone to Chambers and Partners. It does not mean because Chambers and partners puts out something it is God sent or God declared neither does it necessarily mean that because it is there it is not by accident. The proof to all these things is the author of the Internet Printouts and /or the documents leading to such Printouts which should have been laid before this court *duces tecum ad testificandum by the author himself*. What they put out was that CLASS LEGAL was a firm of lawyers when Class legal had never referred to themselves as firm of lawyers but consulting firm as seen in its description in pages 24,26 and 29 of the records and in its affidavit in opposition sworn to on the 24th of February 2017. As a matter of fact it was a consulting firm dealing with a whole lot of issues viz advice on investment, restructuring managerial, secretarial, accountancy and statistically services apart from legal services. It had an M and A which clearly shows that it was a Company Limited by shares. How can a Company Limited by shares end up being called a firm of lawyers. Were these not facts which point out that indeed what was being put out and in fact being used to embellish culpability were not reliable and had to be authenticated ? We would say yes and this is were the plaintiffs case now respondent falls apart. In the affidavit in opposition the 1st Appellant and 3rd Appellant did confirm that their profile was on local and international directories and she did say which ones, quite separate and distinct from the ones the respondents' counsel was relying on, were their creation which to all intents and purposes never offended the LPA.

39. A third issue on the internet printout is that there is no law on the subject as the Evidence Documentary Act Cap 26 Laws of Sierra Leone falls short. One area it falls short is the issue of the originals being called in with reference to electronically stored information – internet printouts included. With internet evidence there is a rule established in Statutes covering same that ***"duplicates are co-extensively admissible as originals unless there is a genuine issue as to authenticity of the original or the circumstances show that it would be unfair to admit a duplicate in lieu of the original"***. In the case at hand we note that the Evidence Documentary Act Cap 26 supra says that the originals should be admitted and if the same where not produced, a certified true copy must be produced. See Section 3 thereof. We are also very certain too that it was not the original nor certified copy that was produced as there is nothing from the internet printouts which shows that it came from Chambers and Partners

for instance as originals or certified true copy thereof or that it could be used in the absence of such law. It would appear that when internet evidence are used in our courts today such law is waived by the parties but not where it could in a situation like this produce injustice. In the case of the **PEOPLE V HUEHN 53 P.3D733,738 (COLO CT OF APPEAL 2002 it** was held that duplicates of computer generated bank record is admissible to the same extent as original absent unfairness or lack of authenticity.

40.Juxta posing this case with the fact that it was not the originals produced and the fact that what was produced lacked authenticity there was no way or no reason why the computer print outs were admitted without injustice being the result.

41. Against the foregoing the only conclusion this court is able to come to is that the learned Trial Judge erred in law when she concluded that the Appellants held themselves out as capable of offering services as legal practitioners in Sierra Leone by relying on evidence obtained from the internet without authentication. Such internet evidence can by no stretch of imagination be termed holding out as capable of offering services as legal practitioners.

42.Turning to the other evidence which are not internet evidence they are two-fold a) the cases where she 1st appellant served for the Government of Sierra Leone and b) the case where she did not work for the Government of Sierra Leone. Regarding the cases where she worked for Sierra Leone Government there is no problem with these because even though she was unqualified to practice because she worked for Sierra Leone Government under the Attorney General's office she was pursuant to section 19 of the LPA exempted to practice as legal practitioner/lawyer but even then we do not know of her practicing as a legal practitioner within the context of the LPA. On b) when she did not work for the Government under the Attorney General's office her duties were limited to providing corporate advisory legal services i.e. advice and opinions which as solicitor from England and Wales she was equipped and qualified to do with no restrictions what so ever from the LPA as the Act in sections 18 and 24 detailed the restrictive activities for which proffering of legal advice and opinions was not one of them. That apart, there is nothing before this court to suggest that the 1st and 2nd Appellants did any of the restricted legal activities of audience, conduct of litigation drawing up and backing of legal instruments to suggest she being an unqualified person was offering herself as being capable of performing as a barrister and solicitor or legal practitioner.A company quite correctly cannot practice law as canvassed by Mr Yada

Williams and everybody knows that but a company can render corporate advisory and legal services such as giving opinions and advice through its agents and officers.

43. Much attention is paid on her affidavit she said she was a solicitor qualified in the UK. To be a solicitor in the UK, this court would take judicial notice that she must first attain a law degree then be involved in training as a solicitor. From exhibit G which was her creation we learn that she is a graduate from university of Keele with LLB Hons. As solicitors from Wales & England and as graduates from a university of law neither of them had the power to practice law by coming to court and arguing or representing clients as can a Legal practitioner /barrister and solicitor and this it appears to us they never did or ventured to do. When matters reached that stage what we saw from the evidence is that they outsourced to Barristers and Solicitors. Class Legal Ltd was a company and as a company that company cannot practice law but it can operate as a company / consulting firm and give advice and opinions not only in other areas but in law. In such situations it can render/offer legal services. While this was never beyond the remit of the 1st, 2nd and 3rd Appellants, the LPA is silent on this expressly or impliedly and it would be wrong to say the 1st and 2nd Appellants against these back ground held out as being capable of offering services as legal practitioners. The Appeal therefore succeeds on this ground on the 3 limbs argued by the Appellants' Counsel.

Ground 3

44. Turning to **Ground 3** which is that the learned trial Judge erred in law when she gave a wide interpretation to the term "legal consultants" and held that the Legal Practitioners Act as it is currently drafted applies to "legal consultants'. It relates to and has a bearing on orders 3, 5, 6, 7, 8 and 9 granted by the Honorable trial Judge and specifically relates to the 1st 2nd and 3rd Appellants allegedly purporting and or holding themselves out as capable of offering legal services and legal consultancies in Sierra Leone. This to my mind begs the question of firstly, what are "legal services" and who is a "legal consultant' and secondly, whether in fact holding out as capable of offering legal services and legal consultancies offends against the LPA . The Appellants' counsel argued as follows:

(i) That the Learned Trial Judge took on the role of the legislators by extending the Legal Practitioner's Act to cover legal consultants when the Legal Practitioner's Act makes no reference to legal consultants. He argued that nowhere in the Legal Practitioners Act 2000 was the term Legal Consultants used.

(ii) That the Learned Trial Judge's wide interpretation of the term 'Legal consultants' as referring only to legal practitioners is erroneous in that the drafters of the Legal Practitioner's Act did not envisage the regulation of "legal Consultants" within the context of the Legal Practitioner's Act 2000; and

(iii) That the Learned Trial Judge's wide interpretation of the term 'legal consultants' and holding that it is covered by the Legal Practitioner's Act 2000 leads to a restraint of trade and offends public policy. He argued that persons with LL.B. Degrees who have not been enrolled as Barristers & Solicitors to practice law in Sierra Leone had always been engaged as Legal Advisers/Consultants in-house in Public Institutors & Non-Governmental Organizations, Private Supervisors etc. in and out of Sierra Leone. Whilst these individuals write opinions for their employers, work regulated by the Legal Practitioner's Act is outsourced to qualified persons to undertake. Decreeing that persons who hold law degrees are not qualified to serve as legal consultants for companies, NGOs and other institutions would serve as a restraint of trade and would offend public policy.

45. In his response, the respondents' Counsel referred this Court to Section 9 of the LPA 2000 which provides that: "Subject to this Act, no person shall engage **in the practice of law in Sierra Leone** unless he has been admitted and enrolled as a legal practitioner under this Act". He argued further that "Unqualified person" has been defined in Section 1 of the LPA 2000 as ***"a person not enrolled under Section 16 of the LPA2000"*** noting that Section 16 provides for a Roll of Court where the names and particulars of those persons admitted to practice law in Sierra Leone are entered. He vehemently argued & submitted that the LPA 2000 **was "applicable to all persons who perform legal functions or offer legal services in the jurisdiction of Sierra Leone whether they refer to themselves as legal practitioners or not"**. Hence he concluded, **the jurisdiction of the LPA 2000 extends to legal consultants, legal advisors and legal officers** and therefore persons who are not admitted to practice law pursuant to Sections 10 – 16 of the LPA 2000 are not qualified and/ or authorized to provide legal services in any of the aforementioned capacities. Thus the Trial Judge's holding that the Appellants are legal consultants hence subject to the provisions of the LPA was not an extension of the LPA but an application of the same; and she was therefore correct in coming to the conclusion she made granting the several orders prayed for.

46. It is indeed true that nowhere in the LPA No 15 2000 and it amendments thereafter has the term legal services or legal consultant been defined. In the business of interpretation of

statutes the Judges do have the duty to discern the intention of parliament and in the process may make law; laws which pursuant to section 170 of the Constitution Act No 6 of 1991 do form part of the laws of Sierra Leone. So in general it would be wrong to say that the learned trial judge was wrong to come up with what she was convinced was the meaning of "Legal Services" and "Legal Consultant" but having done so, it is left with this court to determine whether the conclusion could be justified in view of what is provided under the LPA No15 of 2000.

47. As stated the LPA does not define "legal consultants" but only "legal practitioners". It defines Legal Practitioner thus "Any person admitted and enrolled to practice law as Barrister and solicitor". Section 18 of the LPA goes further to explain what the role of the Barrister or solicitor/legal practitioner is under the LPA; the limits or parameters of his functions. Thus the role of a legal practitioner as could be seen from section 18 and the Interpretation Act of the LPA 2000 is a) to practice in any court of law or any other tribunal, legal proceedings or any matter where his services are required whether as barristers or solicitor or both as barrister and solicitor b) to operate as an officer of the Court of which he is one. From these provisions the impression formed is that for you to be a legal practitioner you must be enrolled in the Rolls of Court pursuant to section16 and be involved in court work and have an audience in court. Where you are not so involved, you are not involved in the practice of the law or a legal practitioner/ barrister and solicitor so called. The appellants, it would appear to this court, quite distinctly did nothing of the nature of a) or b) above. Section 24 of the LPA goes on to explain the limits of this function further by stating ***"Notwithstanding any enactment to the contrary no unqualified person shall draw or prepare any instrument or endorse or cause to be endorsed in any such instrument his name address or both".*** Clearly legal practitioners performing the above roles are performing legal services recognised by the LPA as to be performed by a legal practitioner or Barrister and Solicitor. But are these the only legal services known in the profession of law in Sierra Leone– what about the proffering of advice and opinions which are not listed in the LPA? Further still and for the Appellants what they claimed they were doing was Corporate advisory and legal services.The LPA, quite clearly and expressly is silent on this and does not in any way speak of persons being legal consultant neither does it say the Legal Practitioners- Barristers and Solicitors so described, were Legal Consultants. How and why then did the learned Trial Judge speak of legal consultants, let alone say the LPA cover all legal consultants? Or why did the respondents counsel argue that the LPA is **applicable to all persons who perform**

legal functions or offer legal services in the jurisdiction of Sierra Leone whether they refer to themselves as legal practitioners or not"

48. This no doubt calls for a determination of who a legal consultant is. Who then is a "legal consultant"? To get a proper definition of the word "legal consultant" one must note that it comprises 2 separate words "legal" and "consultant" as one word but unlike the definition of Legal practitioner which too comprised 2 separate words as one word but was defined in the interpretation section and section 18 of LPA, it was not so described. In the **OXFORD COMPANION TO LAW BY DAVID WALKER "**Legal" means ***"that which is lawful or according to or consistent with law and not contrary to law"***. **BLACKS LAW DICTIONARY 8TH EDITION** also defines legal as ***"of or relating to law falling within the province of law 2) established, required or permitted by law***." Consultant **in THE CONCISE OXFORD DICTIONARY THUMB INDEX EDITION – THE NEW EDITION FOR THE 1990'S** is defined as ***"a person providing professional advice for a fee"***. **IN THE OXFORD ADVANCED LEARNERS DICTIONARY** a consultant is defined as ***"a person who knows a lot about a particular subject and is employed to give advice about it to other people."*** Combining the two definitions to together a "legal consultant" by inference thus becomes *"a person providing professional advice according to or consistent with the law for a fee"*. So we see that the central theme of a "legal consultant" gravitates towards providing professional legal advice and opinions for a fee. It is worthy to note that while a legal practitioner is sometimes defined as a legal consultant this word was never used in the LPA 2000 to describe the Legal Practitioner. With similar tenor, while a legal practitioner is sometimes loosely and quite correctly referred to as a legal consultant because he is engaged in expert legal work of a kind called practice in the courts of Sierra Leone for which by law he receives professional fees, the converse has never been true, in that a legal consultant has never been referred to as legal practitioner **for the legal consultant may never be involved in the practice of law as the legal practitioner.** This again is why the LPA never used the word legal consultant to refer to legal practitioner or interchangeable vice versa. The legal practitioners' role vis a vis the LPA is restricted on practice for which the Legal Consultant plays no part. But this court will take judicial notice of the fact that the term "legal consultant" is not restricted to or exclusive to those in the practice of law in the courts as admitted and enrolled. That is in fact another reason why it was never used to define a Legal Practitioner whose role is Limited to practice in law as limited by the LPA. Against what we have seen as who constitutes a legal consultant it does include people that

are not legal practitioners within the context of LPA but are involved in proffering legal services i.e. advice and opinions. They have law degrees and solicitors' qualification but their duty stops at proffering advice and legal opinion without going to court. They are persons with legal qualifications of LLB Hons or LLM with no Barrister-at-Law certificates but are also regarded as legal consultants if they can proffer opinions on law and advise in law. Are we saying these legal qualifications/ law degrees are useless without such persons being called a lawyer/legal practitioner/barrister and solicitor within the context of the LPA – enrolled and admitted to practice law as Barristers and Solicitors? Perhaps this is the impression created by the respondents and that is why everybody wants to go to the law school after graduating from the University with a Law degree. It is wrong! Certainly from our reading of the LPA it was not the intention of parliament to make people with law degrees redundant in so far as giving opinions and advise (–that again is in fact why the word "legal consultant" was not used to describe legal practitioners in the Act) but rather to equip those with the special required qualification after law degree i.e. law school in Sierra Leone and the crowning BL certificate to be enrolled to practice in our courts. Because legal practitioners to wit "Barristers and Solicitors" give advice and opinion does not mean that they are the only ones that can give advice and opinion and offer legal services of that nature. The LPA does not in any way say Legal Practitioners are the only person that could give advice and opinion which does constitute legal services of a kind expressly and/or impliedly. Accepted that the Sierra Leone profession is fused meaning that when you qualify with a Barrister at law degree from the law school after admission and enrolment pursuant to section 16 you also are entitled to practice not only as barrister but as solicitor in filing papers etc, drawing up documents or instruments and in giving advice and opinion. Supposing a person is qualified only as a solicitor as happens in England and Wales which means he or she attained a law degree from a University of Law as a first step should not that person give advice and opinion. That is in fact what he or she is trained for as the main role unlike the lawyer/legal practitioner / barrister and solicitor for whom the main role is to go to court in addition to giving advice and opinion. The difference then between a legal consultant (not a legal practitioner) and a legal consultant (who is legal Practitioner /lawyer) is that a legal consultant not a legal practitioner can provide advice and opinion in some particular expertise but could not go and represent a client in court/tribunal or another legal proceedings except he or she outsources court matters to a legal practitioner. On the other hand a legal consultant who is a legal practitioner/lawyer is a legal consultant with a licence to practice i.e. enrolled

and admitted in the Rolls of Court to provide not only legal advice and opinion but to provide advocacy skills through an audience in courts other tribunals or legal proceedings .

49. We certainly do not know of any jurisdiction in the world where persons having acquired knowledge in law as a law graduate; law post graduates on the one hand or qualified as solicitor or enrolled as a solicitor with its attendant study of law in university of law as the first step thereto, and yet after all, fail to proffer advice or give opinions. While they cannot appear in court for clients they one way or the other provide legal services in the form of giving of advice and opinions – act as legal consultants. This they do in consulting firms or in NGO, Companies and other institutions. The LPA as it is currently does not apply to legal consultants and does not make any restrictions to such people expressly or impliedly and with reference to doing that kind of work. The only restriction is "to practice law" an expression which means to be admitted and enrolled pursuant to section 16 of the LPA in the Rolls of court and to do work as detailed in sections 18 and 24 of the LPA. The restrictions are to deal with barristers and solicitors services reference to courts that is in relation to any cause or matter and with reference to section 24 of the LPA.

50.By no stretch of imagination can legal consultancies and legal services be left alone to legal practitioners/barrister and solicitors as this would constitute a restraint of trade. Further there is nothing before this court to show that the Appellants were involved in such activities- the reserved activities by section 18 and 24 of the LPA. All along they have been said to be holding themselves out as being capable of offering legal services and legal consultancies in Sierra Leone but there is nothing wrong with that, so long as they do not offer themselves as being capable of offering legal services as legal practitioners or as barrister and solicitor reference their unqualification to practice law but their qualification with a university law degree to give advice and opinions- legal advisory. Under the Legal Services Act 2007 of UK where the legal profession is divided into Barristers and Solicitors, and separate and distinct, there is what is known as reserved legal activity as against legal activity. The reserved legal activities are as follows viz. a) exercise of right of audience b) the conduct of litigation c) reserved instrument activity d) probate activities e) Notarial activities and f) administration of Oaths; and legal activities does include giving of advice and opinions under the said Legal Services Act.

51. In Sierra Leone the LPA is not as crystal but everyone could see that what sections 16, 18 and 24 gives as the role of the legal practitioner does impliedly cover almost all of the above

reserved legal activities. The legal profession is fused but the LPA in sections 16 and 18 gives right of audience and the conduct of litigation to legal practitioners to take part in ligation and to render solicitor services in any such court tribunal or matter where the practitioners services are needed; Section 24 deals with reserved instrument activities, probate activities etc. This is however as far as it goes. There is however no restriction on giving of advice and opinion under the LPA 2000. Giving of advice and opinion has never been specifically mentioned as within the specific or reserved purview of the legal practitioner. The LPA is expressly silent on that and this is a main function of qualified Solicitors, graduates and post graduates and professors of law who may be well versed in the knowledge of the law so as to give advice and opinion. This is their trade and source of living? Can you stop them when the LPA does not so provide? No. They are legal consultants in their own right at times more knowledgeable in the substantive law with regard to specific and expert issues than the legal practitioner and there to guide the legal practitioner when matters involving court on the expert issues arise. This no doubt exhibits the difference between the substantive law and the adjectival / procedural law. Giving of advice and opinion is a legal service/legal activity which all legal consultants do be they lawyers / legal practitioners/ solicitors from other jurisdiction or professors of law or even graduates ~~or under graduate~~ whereas practice of law is restricted to the highly placed professionals called Legal practitioners or barristers and solicitors so called. In such a situation I cannot agree more with the Appellants' counsel that it becomes a restraint of trade to say persons with law degrees like the appellants cannot offer legal services or legal advisory. In the House of Lords decision of **PHARMACEUTICAL SOCIETY OF GREAT BRITAIN VS DIXON 1970** Lord Morris had this to say on the subject of restraint of trade

"The law has always favoured freedom of trade and has discountenanced restraint on trade. Thus in the notable cases of Michel v Reynolds (1714) 1.P. WMS 181; 45 Digest REP1 395,110 ; Nagle v Feilden it was held that " In all restraints of trade where nothing more appears the law presumes them bad.' The same approach was adopted in NORDENFELT v MAXIM NORDEN FELT GUNS V AMMMUNITION CO LTD HL decision 1891-94 ALL ER Rep where it was said that to the general rules there are some exceptions as if a restraint is only particular as to time or place and if there is good consideration given to the one restrained. So likewise, if the restraint appear to be of a manifest benefit to the public. In more recent statement of what is after all a rule of public policy it was emphasised that to support a restraint of trade and interference with

individual liberty there must be sufficient justification ..... the restriction must be reasonable, or desirable, or necessary"

52. Putting the above into context, one could see that to say that people qualified in the law cannot give advice or opinions or act as legal consultants would of necessity be a restraint of trade and an interference with personal or individual liberty as they having qualified with their university degrees are prevented from displaying their intellectual prowess in helping people out or for the public's benefit. In the words of Lord Macnagten in **NORDENFELT V MAXIM NORDEN FELT GUNS V AMMMUNITION CO LTD HL decision 1891-94 ALL ER Rep "***trading is discouraged if a man who has built up a valuable business is not to be permitted to dispose the fruits of his labours to the best advantage*". The case before us never covered the exceptions of time, place or considerations being given to those giving advice and opinions nor would it be beneficial to the public or necessary in the given circumstances.

53. One may argue that one of the exceptions is as to place. Thus a Solicitor licensed to practice in Wales or in England may not practice as a Solicitor in Sierra Leone . But to this we say the place aspect will not apply reference to the appellants because this court takes judicial notice of the fact both the 1st and 2nd Appellants earned university degrees in law before becoming solicitors and this is what equipped them to give advice and opinion apart from their solicitors qualification/licence which may be restrictive to place. Also while their solicitors qualification may be restrictive to place there is nothing within the LPA expressly or impliedly which so restricts them from giving advice and opinion through the consulting firm Class Legal Ltd, the 3rd Appellant herein as what they were doing were not reserved solicitors work within the purview of the Legal Practitioners Act 2000. What appears to be reserved for a solicitor are the reserved instrument activities, to wit, drawing up and backing of instruments, extraction of LA, Letters of probate, backing of conveyances, leases etc –see definition of instruments as per Section 1- the Interpretation section of the LPA 2000. There is no evidence before this court whatsoever that any of these reserved instrument activities were done by the Appellants even though they were solicitors from England and Wales.

54. What the learned Trial Judge did in all honesty was trying to impute into the LPA what it did not contain in so far as legal practitioners being the only legal consultants envisaged under the Act. The LPA 2000 is not applicable to all persons who perform legal services in the jurisdiction of Sierra Leone whether they refer to themselves as Legal Practitioners or not

but to **those ONLY that** were legal practitioners having been enrolled & admitted pursuant to sections 10-16 to practice or become legal practitioners. For those unqualified persons they cannot practice Law but so long as they had a relationship with the law, to wit, a university law qualifications they are not governed by or restricted by the LPA and could give out legal services in the form of opinions and advice. Against the foregoing it becomes wrong to give a very wide meaning to the term legal consultancy to mean only legal practitioners when a whole lot of persons either as graduates postgraduates and even solicitors from other jurisdictions give advice and opinions and act as legal consultants

The appeal on this aground therefore also succeeds.

Ground 4

55. On the last ground of appeal that the judgment is against the weight of the evidence, this court would note that there is nothing before it to suggest that the Appellants did activities that were reserved legal activities for barristers and solicitors / legal practitioners only. They did legal work of a kind but this was never representing client in court, any other tribunal or legal proceedings nor backing instruments such as conveyances or court documents nor doing probate or letters of ministration which incidentally are court orders See **MELLOWS ON THE LAW OF SUCCESSION 2ND EDITION AT PAGE 235 e**xcept providing consultancy services i.e. corporate, legal and advisory services. It is indeed from our considered view way below the mark for them to have been held as offering themselves as capable of performing legal services and legal consultancies in Sierra Leone which according to the 1st respondent erroneously meant performing services as legal practitioners / barristers and solicitors work.

56. Further nowhere was it seen from the evidence before us that the 1st, 2nd and 3rd Appellants acted or purported to act as legal practitioners so defined by the LPA 2000 in Sierra Leone. In exhibit I for instance the 2nd Appellant was noted to be a legal consultant and solicitor of England and Wales. It was therefore erroneous to say that they being unqualified have been holding themselves as capable of performing services as legal practitioners.

57. Heavy reliance was put on the case of **MERRY V BATSON 1964 GLR 409**. This case has no relevance in the current proceedings as it is easily distinguishable from the case at hand. In that case the facts are that *the defendant was an inquiry agent. At a meeting between his clients and the police he led the police to believe that he was representing a firm of*

solicitors. He did not call himself a solicitor but said that he was a legal adviser. He was charged before justices that he being an unqualified person wilfully pretended to be qualified as a solicitor contrary to section 19 of the Solicitors Act 1957

58. In that case the defendant was an inquiry agent. An inquiry agent is another name for a detective or an investigator. He had nothing to do with law. **There is nothing to show that he studied law before becoming an inquiry agent and he did not call himself a solicitor.** In this case the 1st appellant in her affidavit did say she was a solicitor and a qualified one from UK – She studied law and became one after going through the training which training is different from pupillage as would a person wanting to become a barrister and solicitor. It was the same more or less with the 2nd Appellant. Further it is noted from the case that the inquiry agent did not call himself a solicitor but said he was a legal adviser. That in itself – the way it is couched, does suggests being a solicitor you are a legal adviser. She having university of law qualification and she being a solicitor and he also having qualifications in essence the same, meant they, unlike the inquiry agent, can offer legal advice because of their study of law as against the *MERRY v BASTON* case where the accused was not even equipped to offer legal advice.

59. The Inquiry Agent is not a person knowledgeable in law to give legal advice but yet he was pretending to be a solicitor whose duty is to give legal advice and therefore was rightly found guilty. But you cannot say the solicitor is pretending to give legal advice in a situation where the solicitor's duty in the first place is to give legal advice as they have not submitted anything within the expressed purview of a barrister and solicitor services within the LPA2000 that was done.

60. The Appellants were a company limited by shares to offer advisory and or legal services and advisory legal services it did offer. There is no evidence before this court that this company or its servants or agents were engaged in the practice of law not having been enrolled and admitted to practice law. The issue about attending meetings of clients does not in any way offend against the LPA as in order to give advice and opinions -consultancy services the consultant may be required to be present. They however did not go beyond their consultancy work and in no way violated any provision of the LPA to wit putting or holding themselves out as persons capable of offering legal services as legal practitioners. The Appeal therefore succeeds on this ground.

61. We would say that this is a case where the General Legal Council the 1st respondent meant so much good for all legal practitioners but quite frankly they were overstepping the boundaries demarcated by the LPA 2000 and its amendments . If the 1st respondent wants to go beyond the remit of the LPA2000 and its amendments they would have to amend it. Any amendment however will no doubt have to take into consideration the law on restraint on trade.

All things considered the Appeal succeeds. All orders given in the court below to wit 1-12 0 supra for reasons as detailed herein are overturned forthwith.

Costs awarded against the 1st respondent to be taxed if not agreed.

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Justice Nyawo Matturi- Jones JSC

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Justice Desmond B. Edwards JA

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Justice Alusine S. Sesay JA