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Private and Public Equity Investment in Law Firms by Non-Lawyers

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The American Lawyer [reports](#) that in 12 months, laws in the United Kingdom will permit equity investments in and ownership by non-lawyers of law firms.

This certainly is a profoundly interesting development that has been in the making for several years. As I am sure, you know, the ABA has had a committee looking in to this issue and the related issue of allowing non-lawyers serve as principals of law firms, allowing for the admission to law firm partnerships of accountants, investment advisers and the like. Milton Berle famously defined a committee as a group that takes minutes and keeps hours. Assuredly the ABA will spend many hundreds of hours watching developments in the UK.

The issue on this side of the pond is the general tightness of capital, which is the grease that keeps law firms operating. Traditional lenders to law firms have dramatically tightened their underwriting requirements and are following their borrowers' adherence to lending covenants extremely closely, with waivers, previously easily granted now rarely bestowed.

A few creative law firms have circumvented these accumulated restrictions by arranging for the issuance of publicly traded bonds for the construction of or expansion of office space, using an intermediary entity so that the firm is not the issuer of these debt instruments. In different eras, I suspect that these artifices would have been the subject of severe scrutiny, if not disciplinary action. Yet,

these bond offerings closed with nary a question, primarily, I believe, because law firms themselves were eager to explore every potential source of capital. Most law firms are now providing themselves with additional capital by increasing required capital contributions by partners and in some instances even by non-equity partners.

Australia was the first nation which, so far as I know, allowed law firms to be publicly held. The first law firm to do so was a large personal injury firm, which issued its annual report some months ago and reported astounding profitability. Interestingly, in the United States, there is one torts lawyer (if you are an habitu  of late night television, you know who he is), who spends a reported astounding \$90,000,000 annually on television advertising. It appears that he does not spend more than a moment or two practicing law; rather he has a network of law firms throughout the United States in which I gather he is nominally a partner and clients who respond to his advertised toll free line (calls are handled by a 24/7 call center) are routed to the affiliated lawyer in the relevant jurisdiction and the advertiser simply shares in the revenue produced. We have no idea what this lawyer earns annually, but one could safely assume his earnings justify his advertising expenditures. One could well imagine what this and similar tort lawyers who advertise broadly could do if they had access to additional capital.

An interesting side note is that, as the adage goes, money follows money: While large law firms are being pinched for capital, a whole industry has been spawned that provides funding for tort lawyers on individual cases (at steep interest rates to be sure) by a variety of different entities including [P&T Funding](#), [Litigation Funding](#), [Law Cash](#), [Oasis Legal Finance](#) and a host of other similar companies. There certainly has been some criticism of these funding entities, suggesting they are engaging in champerty, maintenance or other ethical violations and thus propagate burdensome tort litigation requiring tort reform. But, the real point is that financiers have already demonstrated a greater willingness to fund tort lawyers than commercial lawyers.

I personally pass no judgment on the propriety of this use of capital, but the fact is that increased access to capital is an elixir that will have broad ranging effect; not all of which will inure to the benefit of commercial law firms. My primary point is whether public investors would be more quickly drawn to successful tort lawyers with substantially and dramatically higher profit margins than staid corporate law firms. Public ownership of commercial law firms may not be quite the elixir that some may have hoped for.

Moreover, private or public equity investments in law firms raise a host of questions which are not susceptible to easy resolution, such as: (1) Will investor ownership of a law firm create an incurable conflict between a lawyer's undivided duty of loyalty to his or her clients and the lawyer's obligations to maximize profitability to the enterprise's owner? (2) Does investor ownership infringe upon a lawyer's independence? (3) To what extent should non-lawyer owners have managerial control of the firm? (4) How will the attorney/client privilege be maintained when non lawyers are actively involved in management?

But before you get too bogged down in pondering these questions, bear in mind that hospitals and other health care providers have been owned and controlled by non-medical personnel for decades.

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