

<http://www.gowerpublishing.com/isbn/9781409401001>

Proactive Law for Managers

A Hidden Source of Competitive Advantage

GEORGE SIEDEL
University of Michigan

and

HELENA HAAPIO
Lexpert Ltd

GOWER

Preface

This book is for managers who have responsibility for the success of their organizations. It's about discovering competitive advantage in the law and even in the legal challenges of doing business—discovering how a lawsuit against your firm can help you develop more profitable products and practices, how governmental restrictions might actually work to your firm's advantage, and why contracts are much more than a formality. For example, because your contracts are not only legal tools but are also management tools, your contracting process can become an important source of competitive advantage. In other words, this book can help you to revolutionize your business strategies related to law and contracts.

At the heart of this book is the Manager's Legal Plan™, a four-step process by which you can better defend against costly and wasteful litigation while turning your contracts and legal resources into competitive assets. The four steps are as follows:

Step One: Understand the law. This starts with an understanding of the legal dimensions of business. It goes beyond having legal resources available when an issue labeled “legal” arises. It involves recognizing the legal aspects of business, exercising informed judgment when managing them, and knowing when professional legal help is (and is not) required.

Step Two: Know how to cope with legal problems and learn from them. If you do face a legal problem, the book takes you through the choices of “fight or flight”: fighting or settling cases, ceasing or moving operations, or possibly seeking law reform. The book will explain how increasing globalization of law is greatly reshaping these choices. Even if you are fortunate enough not to face legal problems yourself, you can learn from legal concerns of others and use those learnings for the next step.

Step Three: Develop business strategies and solutions to prevent future problems. This step prompts you to think along three basic domains of prevention: first, prevent the cause from arising; second, prevent the cause from doing harm; and third, if harm occurs, limit the damage. Here legal solutions take a backseat to business solutions. For example, once a dispute over termination of an employment agreement has been resolved, your company's recruiting, contract and pre-termination practices should be reviewed, your company documents (including sample contracts and termination letters) should be revised, and your employees should receive training and support that will prevent them from taking actions that could result in business failure and unexpected liability.

Step Four: Climb to the balcony to see the big picture and become more proactive. This step takes you well beyond the usual responses to legal challenges and helps you adopt a wider view of the legal dimensions of business. With the broader perspective provided by your view from “the balcony,” you can see things differently. This starts with changing the belief that “the law” relates only to legal problems or someone threatening to sue, leading you from being reactive to becoming proactive. This step encourages you to focus not only on preventing what is not desirable, such as future legal problems and their causes, but also to promote what is desirable and to create and enhance future business opportunities. By incorporating legal issues into the normal strategic and operational

aspects of the business you can reframe issues and find new sources of innovative solutions. You may even note that what originally appeared to be a legal concern or a necessary evil may in fact represent a broader business opportunity that may enable you to gain new competitive advantage.

While these four steps address key concerns that arise in business operations and management decision making, this book is not meant to supply direction on how to handle legal issues; nor is it intended to provide or replace legal or other expert advice. Appropriate legal or other professional advice should always be obtained and relied upon before taking or omitting to take action in respect of any specific problem.

The book opens in Chapter 1 with a description of the Manager's Legal Plan™. This is followed in Chapters 2 to 4 with examples of how you can use the plan to address important stakeholder (customers, employees, and society at large) concerns. Chapter 2 deals with your customers, showing how you can not only prevent future legal problems and excessive liability exposure but also how product liability provides an opportunity for new product innovation. Chapter 3 deals with employees and shows how the Manager's Legal Plan™ enables you to attract and retain key talent while avoiding employment pitfalls. The chapter uses examples from two quite different legal systems, the European Union and the United States. Chapter 4 deals with government. For example, the chapter shows how stringent environmental regulations can create opportunities for competitive advantage through new business models and new product development.

Chapter 5 deals with innovation and intangible assets. To sustain your competitive advantage and thrive long term, you must know how to protect your valuable ideas. The chapter focuses on the important role intellectual property rights (IPR) play in today's business and how you can use them to seize strategic control of innovations, gain a legal monopoly, and attract new partners. Chapter 6 deals with contracts and contracting. The chapter shows their profound impact on business success and how you as a manager can design your contracts and contracting processes so that they promote business success while preventing problems.

Chapter 7 addresses a wide variety of management resources and tools that you can use to create competitive advantage while also encouraging ethical decision making within your company. This chapter, along with Chapters 1–4, have been adapted from chapters in *Using the Law for Competitive Advantage* by George J. Siedel (Wiley, New York, 2002). Special thanks to Professor Jeanne M. Logsdon, Regents Professor & Rust Professor of Business Ethics, Anderson School of Management, University of New Mexico, whose original suggestion led to the publication of *Proactive Law for Managers*.

This book is based on our work with managers, legal professionals, and academic thought leaders from North and South America, Europe, the Middle East, Asia, and Africa. This work, combined with our review of cutting-edge research, has led to three insights regarding the relationship between law and business. First, the legal environment is rapidly changing in response to the globalization of business. For example, there has been significant convergence of the law relating to contracts, environmental protection, and securities regulation.

Second, managers have an increasing appreciation for the importance of law. For example, an analysis of program evaluations completed by over 900 senior managers attending University of Michigan executive programs revealed that law is one of three most important subjects (along with finance and human resources) among business

school required courses. The reason is obvious: law touches almost every aspect of a manager's work.

Third, the combination of legal change and the ubiquity of law have created new opportunities for competitive advantage. Specifically, savvy managers can use the law to reduce their costs, develop products and services that are unique and/or priced lower than those of competitors, collaborate to innovate, and create value for their customers that is superior to the value offered by competitors. But to achieve competitive advantage, these managers need a plan.

This book provides the plan, the four-step Manager's Legal Plan™ designed for managers who have responsibility for their companies' success. The plan described in this book is also useful to business school students whose goal is to develop business leadership skills or to start a business, to corporate attorneys who work with managers in the pursuit of competitive advantage, and to law students who plan to specialize in business law.