**It’s the business, stupid**

Law schools do not teach anything about business, as opposed to business law.

As a result, lawyers learn about business legal forms and contracts, but nothing about finance, marketing, corporate strategy, or anything else about actually running a business. This means that there is a significant knowledge gap between lawyers and business. Furthermore, as members of an inherently conservative profession many lawyers resist engaging in any topic that goes beyond the four corners of their legal brief (“I only give legal advice”).

In some cases lawyers address this gap by specializing in a particular industry, but more often the scale of the knowledge gap is masked by the natural hubris of the legal profession—lawyers who are at the pinnacle of every information and decision making tree they are associated with often suffer from the illusion that they know more, not less, than their clients.

This is a problem for business because every legal problem comes within a business context, and lawyers who are not willing or able to understand that context cannot give good advice.

For example, in a litigation context the focus of lawyers should not be on winning cases but on solving the underlying business problems—the disputes which were the reason clients came to them in the first place. One very simple example of this would be to compare the cost of litigation with the cost of buying the other side’s company—if the two numbers have some similarity then a rare opportunity for a litigator to participate in value creation instead of value destruction may exist.

Business clients want to know how much their case will cost, what the risks are, how long it will take, and the probable result. These four basic elements—cost, risk, time, and reward, are the foundation of the financial analysis of any business proposal, and there is no reason why lawyers cannot make reasonably reliable assessments of these elements—the law is no more uncertain than many other projects undertaken by business, and in many cases is substantially more certain.

Once we have attached numbers, or a range of numbers, to the four elements then we can financially model them the same way we can model any other business proposal. By using financial analysis and some strategy tools, lawyers can develop a multi-disciplinary approach to the delivery of legal services, and develop a much better, and value-adding, relationship with their clients.

**Transcending Legal**

Lets return to the knowledge gap. Innovation typically arises in the gaps between well established fields. Can it be that there is still room for innovation in the relationship between lawyers and business?

Bringing legal expertise into the strategy development process is the natural result of lawyers becoming more nuanced and practical business advisors. These lawyers give high value, and value-creating, strategic advice about the direction of a business—they have transcended Richard Susskind’s metaphor of lawyers either building a fence at the top of a cliff, or delivering ambulance services at the bottom.

Lets say you are sitting in a strategy meeting at Apple, and you are considering options for the company’s next big strategic move. Sitting at the confluence of the telecoms, media, entertainment, and internet sectors, there are a lot of good ones to consider. Someone is give a report that recommends option 1 because it promises the largest long term revenue stream.

Seems to make sense, says the strategy lawyer, but look at option 2. Option 2 has a significantly smaller revenue stream, but because of its competition law implications… or intellectual property rules, or… the specific sector regulation regime, it has a good chance of locking out competitors or locking in further options for still further new product launches in yet another sector…. In the long run option 2 looks better because it further delays commoditization and creates better opportunities for further investment….

Of course this is a fanciful and incomplete example, but it illustrates an important point.

**A New Approach to Strategy**

The management consulting industry—firms like McKinsey, Bain, and Accenture—are the keepers of the business strategy profession. Most of these firms developed out of the accounting profession, and over time moved up the value chain into the high-level advisory businesses that they are today.

However, coming from the accounting profession, these firms typically consider the legal context only as a fixed part of the environment upon which a business strategy is built.

This approach misses important opportunities. There are many situations in which the legal environment of a business is variable, and wherever this is true then legal is a variable that can be managed just like any other business variable. Furthermore, there are many fields of law in which the legal environment is fundamental to the business environment of a company:

* Tax
* Contracts
* Intellectual Property
* Competition (Anti-Trust in the United States)
* Securities
* Bankruptcy and restructuring
* Product Liability
* Sector-specific regulation—e.g. food, medical & drug, energy, telecoms, transportation, professional services

Given the impact of the law on business, no business strategy development process can be complete without incorporating legal strategy. However, business schools generally teach very little about the law, and legal as a function in a company is mostly left out of the strategy development process – the McKinsey Quarterly for example studies neither legal as a function nor professional services as an industry, and a search for “legal strategy” reveals almost nothing.

This suggests that those companies which do integrate legal strategy with business strategy can create significant and unique competitive advantage. Just as accountants gave rise to McKinsey, so can the right lawyers create competitive advantage for their clients.