Chapter 1

Law, Value Creation, and Risk Management

This first chapter lays the foundation for the modern corporate manager who is swimming in a “sea of law.” It sets forth a framework for the legally astute manager to better understand the intersection between law and management, while introducing a systems approach to business, law, and society. And finally, this chapter, can help managers become more legally astute by understanding how to legally protect a company’s value, while managing legal risks.

**1-1 The Systems Approach to Business and Society**

Because we live in a social system, managers must anticipate, understand, and respond to changing policy and social perceptions of ethical management.

**1-1a Meeting Societal Expectations**

Business decisions are a series of interrelated economic and moral components, as well as systems of shareholders and community stakeholders.

**1-1b Effect of Law on the Competitive Environment and Firm’s Resources**

*(i)* Law shapes competitive environment with five forces that determine a company’s attractiveness to customers: (1) buyer power, (2) supplier power, (3) the competitive threat posed by current rivals, (4) the availability of substitutes, and (5) the threat of new entrants.

*(ii)* *Resource-based view (RBV)*: firm’s resources can sustain competitive advantage if they are valuable, rare, and hard or expensive to imitate by competitors.

*(iii)* Consider the corporate scandals beginning in 2000 with Enron, and continuing to the recent JP Morgan “London Whale Trades.”

*(iv)* Legally astute management teams are proactive, and practice *strategic compliance management*.

**1-1c Law and the Value Chain**

Each activity in the value chain has legal aspects: design, manufacturing, distribution, sales and warranties.

**1-1d Law Is Dynamic**

Systems approach recognizes that the law is not static and changes based on court decisions, federal, or state laws. Managers should be proactively involved in lobbying for law that gives them competitive advantage, and be self-policing to avoid unnecessary regulations.

**1-2 Law and Public Policy**

American law seeks to enhance economic activity, commerce, and for-profit corporations through the pursuit of four key public policy objectives:

**1-2a Promoting Economic Growth**

Protects and enforces private property rights, enforces contracts, and develops incentives.

**1-2b Protecting Workers**

**1-2c Promoting Consumer Welfare**

**1-2d Promoting Public Welfare**

**1-2e Policy Conflicts**

**CASE 1.1** ***Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011).**

Vermont statute prohibited pharmacies from selling prescriber-identifying information for marketing prescription drugs without the prescriber’s consent. Vermont data miners and others challenged the statute as a violation of their free-speech rights under the First Amendment.

HELD: For the data miners. The statute violated the First Amendment because it was too broad and engaged in “content-based discrimination.”

**1-3 The Legally Astute Manager**

Legally astute managers (LAMs) know how to communicate and work with counsel to solve legally complex problems. LAMs know how to: (1) negotiate contracts, (2) protect and enhance the firm’s value (3) create legal options, and (4) convert regulatory barriers into value.

\* \* \* \* \*

**The Responsible Manager: Teaching Suggestions**

1. How should the legally astute manager deal with gossip circulating around the company via emails about possible legal or ethical wrongdoing?

2. Discuss the cultural dilemmas that face managers in the global economy: Are gifts of money or services illegal or unethical, or culturally neutral? Discuss, for example, in China whether *Guanxi* is social networking, or is it mere bribery. Or, in Latin America, whether paying officials directly is a way to “expedite” service, or whether it is bribery.

3. Discuss the possible conflicts between legally doing business and selling fast-food, given the increasing evidence of how it is a significant contributing factor in public health, obesity, and diabetes facing many Americans. Do you agree with how McDonalds and the Disney Company are handling the issue? What ethical obligations, if any, do fast food companies have to consumers?