



University  
of Michigan  
Business

School **Management Series**

INNOVATIVE SOLUTIONS TO THE  
PRESSING PROBLEMS OF BUSINESS

George J. Siedel

# Using the Law for Competitive Advantage





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**University  
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Business  
School Management Series**

**INNOVATIVE SOLUTIONS TO THE  
PRESSING PROBLEMS OF BUSINESS**

The mission of the University of Michigan Business School Management Series is to provide accessible, practical, and cutting-edge solutions to the most critical challenges facing businesspeople today. The UMBS Management Series provides concepts and tools for people who seek to make a significant difference in their organizations. Drawing on the research and experience of faculty at the University of Michigan Business School, the books are written to stretch thinking while providing practical, focused, and innovative solutions to the pressing problems of business.

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# Executive Summary

**T**his book is for managers who have responsibility for the success of their organizations. It's about discovering competitive advantage in the legal challenges of doing business—discovering, for example, how a lawsuit against your firm can help you develop more profitable products and practices, and how governmental restrictions might actually work to your firm's advantage. In other words, this book can help you to revolutionize your business strategies related to law.

At the heart of this book is the Manager's Legal Plan, a four-step process by which you can not only better defend against costly and wasteful litigation but can actually turn your legal resources into competitive assets. The four steps are as follows:

- *Step One: Understand the law.* This goes beyond the immediate legal challenge and involves more than calling the desperate meetings that managers often have with their lawyers when someone threatens to sue. It involves a broader process of legal education for managers aimed at preventing future litigation while also expanding managers' understanding of the legal terrain.

- *Step Two: React to legal problems through flight or fight.* That is, determine whether conventional legal approaches can be used to resolve your legal concerns. This step is where managers often stop when they try to cope with legal problems: choices among fighting or settling cases, moving the business to another state or country, or possibly seeking legal reforms. The book will explain how increasing globalization of law is greatly reshaping these choices.
- *Step Three: Develop business strategies and solutions to prevent legal problems.* Here legal solutions take a backseat to business solutions. For example, once a wrongful discharge lawsuit has been resolved, the company's hiring practices should be reviewed, company documents should be revised, and employees should receive training that will prevent them from making statements that could result in liability.
- *Step Four: Climb to the balcony to reframe legal concerns as business concerns.* This takes us well beyond the usual business responses to legal challenges. The balcony represents a broader perspective—an overview that can help you to see that what you originally thought was a legal problem in fact represents a broader business opportunity that may enable you to gain new competitive advantage.

Chapter One presents the Manager's Legal Plan in detail. The next three chapters provide examples of how it is used. Each chapter deals with one of your company's stakeholder groups: customers, employees, and society at large (represented by government).

Chapter Two deals with customers, emphasizing product liability lawsuits and new product opportunities arising from such litigation.

Chapter Three deals with employees, especially workers' compensation, wrongful discharge, and sexual harassment concerns. The chapter suggests how the changing nature of em-

ployment relationships can help you retain the talented people on whom success depends.

Chapter Four deals with government. The chapter shows, for example, how even stringent environmental regulations can create opportunities for competitive advantage.

Chapter Five addresses a wide variety of supportive legal strategies. Three principal topics are: ensuring that you have the best legal resources and are maximizing their value to you; applying the best available management tools for resolving disputes; and using the Manager's Legal Plan to encourage ethical decision making within your company.



To my sister, Karen E. Braaten,  
and to the memory of my father,  
George Joseph Siedel (1912–2001)

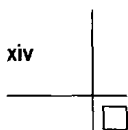
# Series Foreword



**W**elcome to the University of Michigan Business School Management Series. The books in this series address the most urgent problems facing business today. The series is part of a larger initiative at The University of Michigan Business School (UMBS) that ties together a range of efforts to create and share knowledge through conferences, survey research, interactive and distance training, print publications, and new media

It is just this type of broad-based initiative that sparked my love affair with UMBS in 1984. From the day I arrived I was enamored with the quality of the research, the quality of the MBA program, and the quality of the Executive Education Center. Here was a business school committed to new lines of research, new ways of teaching, and the practical application of ideas. It was a place where innovative thinking could result in tangible outcomes.

The UMBS Management Series is one very important outcome, and it has an interesting history. It turns out that every year five thousand participants in our executive program fill out a marketing survey in which they write statements indicating



the most important problems they face. One day Lucy Chin, one of our administrators, handed me a document containing all these statements. A content analysis of the data resulted in a list of forty-five pressing problems. The topics ranged from growing a company to managing personal stress. The list covered a wide territory, and I started to see its potential. People in organizations tend to be driven by a very traditional set of problems, but the solutions evolve. I went to my friends at Jossey-Bass to discuss a publishing project. The discussion eventually grew into the University of Michigan Business School Management Series—Innovative Solutions to the Pressing Problems of Business.

The books are independent of each other, but collectively they create a comprehensive set of management tools that cut across all the functional areas of business—from strategy to human resources to finance, accounting, and operations. They draw on the interdisciplinary research of the Michigan faculty. Yet each book is written so a serious manager can read it quickly and act immediately. I think you will find that they are books that will make a significant difference to you and your organization.

*Robert E. Quinn, Consulting Editor  
M.E. Tracy Distinguished Professor  
University of Michigan Business School*

# Preface



**D**uring my career as a professor at the University of Michigan Business School, I have directed and taught in degree and executive programs offered at the University of Michigan and at other locations in Europe, Asia, and South America. These programs have enabled me to work with colleagues who are leaders in their fields, such as C.K. Prahalad in corporate strategy and David Ulrich in human resources, and with managers from the world's leading corporations.

I have also had the opportunity to serve in a managerial role as associate dean in charge of the University of Michigan Executive Education Center, which has been recognized by the business press as the leading provider of executive education in the world. In this role, I worked with senior executives from global corporations and consulting firms in designing customized programs for their managers. During my service as associate dean, the Executive Education Center expanded internationally by establishing offices in Europe and Asia.

These two experiences—working with talented colleagues and managers from around the world and heading a large international center devoted to executive education—have led to



three insights regarding the relationship between law and business. First, business law is rapidly changing in response to the globalization of business. For example, there has been significant convergence of the law of various countries relating to contracts, environmental protection, and securities regulation.

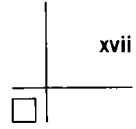
Second, managers have an increasing appreciation for the importance of law. For example, an analysis of program evaluations completed by over nine hundred senior managers attending University of Michigan executive programs revealed that law is one of three most important subjects (along with finance 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 just noted has created new opportunities for competitive advantage. Specifically, savvy managers can use the law to reduce their costs and develop products that are unique or priced lower than those of competitors. But to achieve competitive advantage, these managers need a plan.

This book provides the plan, a four-step process called the Manager's Legal Plan, which is 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 attain a business leadership position, to corporate attorneys who work with managers in the pursuit of competitive advantage, and to law students who plan to specialize in business law.

The four steps of the Manager's Legal Plan enable managers to use law for competitive advantage as they address legal concerns on a daily basis. The steps are

1. Understand the law.
2. React to legal problems through flight or fight.
3. Develop business strategies and solutions to prevent legal problems.



4. Climb to the balcony to reframe legal concerns as business concerns.

The Manager's Legal Plan and its rationale are explained in Chapter One. Chapters Two through Four illustrate how the process can be used to address several of the most vexing problems facing managers today: product liability, workers' compensation, wrongful discharge, sexual harassment, and environmental regulation. The book concludes in Chapter Five with a review of three topics that apply to a wide range of legal concerns: obtaining and using the best legal resources, resolving disputes in a cost-effective manner, and using the Manager's Legal Plan to encourage ethical decision making.

### ■ Acknowledgments

I want to acknowledge and thank Bob Quinn, the M.E. Tracy Distinguished Professor at the University of Michigan Business School, for conceiving and developing the UMBS Management Series. Thanks also to the Jossey-Bass team for the professional support that led to the publication of this book. Through this project, I have had the privilege of working with Alan Venable, one of the best developmental editors in the country. Other team members who played an important role in the completion of the book are Cedric Crocker, Kathe Sweeney, Cheryl Greenway, Rachel Anderson, and Sheri Gilbert.

I owe a special debt of gratitude to the managers with whom I have worked in the United States, Europe, Asia, and South America. The Manager's Legal Plan is the result of their advice and encouragement. This book reflects their success in achieving competitive advantage for their companies.

*January 2002*

George J. Siedel  
*Ann Arbor, Michigan*

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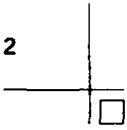
# Seizing Competitive Advantage

A Legal Plan for Managers

**C**ongratulations! Last year the chief executive officer of your company named you general manager of one of the firm's most important divisions. Your first year as head of the division has been a success, as you have exceeded the goals set by corporate headquarters.

Condolences! You have no time to savor your early success. You and the CEO recently analyzed business trends. You both anticipate that the market for your products will become much more competitive, especially with a recent increase in foreign competition. The CEO emphasizes that your division must gain competitive advantage over rival companies in order to survive.





Beyond concerns about the survival of your division, you have other worries. If you fail as leader of the division, it will be difficult to return to a lower-level position—and in the current economic climate you may be unable to find a general manager position at another company. You also feel responsible for the division's employees. The division is the largest employer in your town, and a shutdown would devastate the local economy, as well as the families of your employees.

As you plan for the coming year, you develop a list of your goals. High on your list are attracting, developing, and retaining the best employees, thinking and planning more strategically about the future, maintaining a high-performance climate in your division, and improving the satisfaction of your customers. To this list you add a personal goal—managing time and stress—because your work increasingly pulls you away from your family and you have little time for recreation.

You then list three key legal obstacles that might prevent you from achieving your goals (while also increasing your stress levels). These problems are increased workers' compensation costs, high product liability insurance premiums, and major costs incurred in complying with environmental regulations.

Beyond these general concerns, you are worried about a lawsuit that might have a significant impact on the company and on you personally. A year ago, when you took over leadership of the division, you fired an employee who was not performing to your expectations. The employee has now sued you and the company, claiming breach of contract. The employee also claims that you defamed him by making untrue statements about his performance. As a result of this lawsuit, you are reluctant to terminate other poor performers, for fear that they might also file suit. Therefore, you write down a fourth problem—the wrongful termination lawsuit. Your goals and obstacles are listed in Exhibit 1.1.