



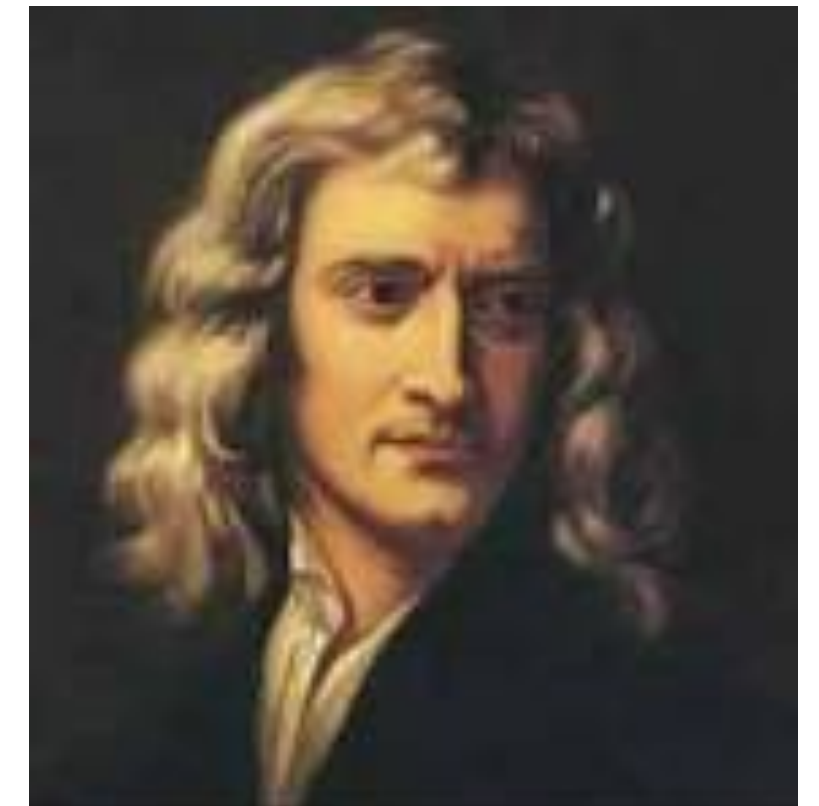
Corporate Legal Strategy: At the Frontier of Research and Practice

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J Q C K E O M T E G J H X U
T P W I N S T I T U T O V G T X Y F
L I V Q L T R X P K C **O M G** B
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The importance of strategy and this conference



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Michael E. Porter (Harvard) & David J. Teece (Berkeley)

- “A company can outperform rivals only if it can establish a difference that it can preserve over time.”
- Porter on differentiation as a key factor for achieving a sustainable competitive advantage



Michael E. Porter (Harvard) & David J. Teece (Berkeley)

- Innovation can be an important source of differentiation, but it often does not lead to sustainable competitive advantage.
- Teece on why many innovators fail
- Appropriability levels (legal resources such as IP rights) may be weak, or not respected
- Downstream complementary assets may be the strategic choke point

Free riding/ imitation as a barrier to competitive advantage

PRODUCTS INVOLVED IN THE TRIAL:

- iPhone 3G
- iPhone 3GS
- iPhone 4**
- iPad 2 3G
- iPod Touch

Photos: El Tiempo/Zuma Press (Galaxy S); Apple (iPhone 4)
The Wall Street Journal
Source: WSJ research

Samsung Says...

...THE IPHONE 4 INFRINGES THESE PATENTS:

PATENT '516
Manages the phone's resources and battery by prioritizing data

PATENT '941
Provides a way to package and transmit data more efficiently

PATENT '711
A method allowing multi-tasking while playing music on the phone

PATENT '460
Taking and emailing pictures using a scroll action

PATENT '893
Switching between pictures in a gallery and the camera

Apple Says...

...THE GALAXY S INFRINGES THESE PATENTS:

PATENTS '087, '677
Ornamental design of the iPhone

PATENT '305
Rounded square icons on interface

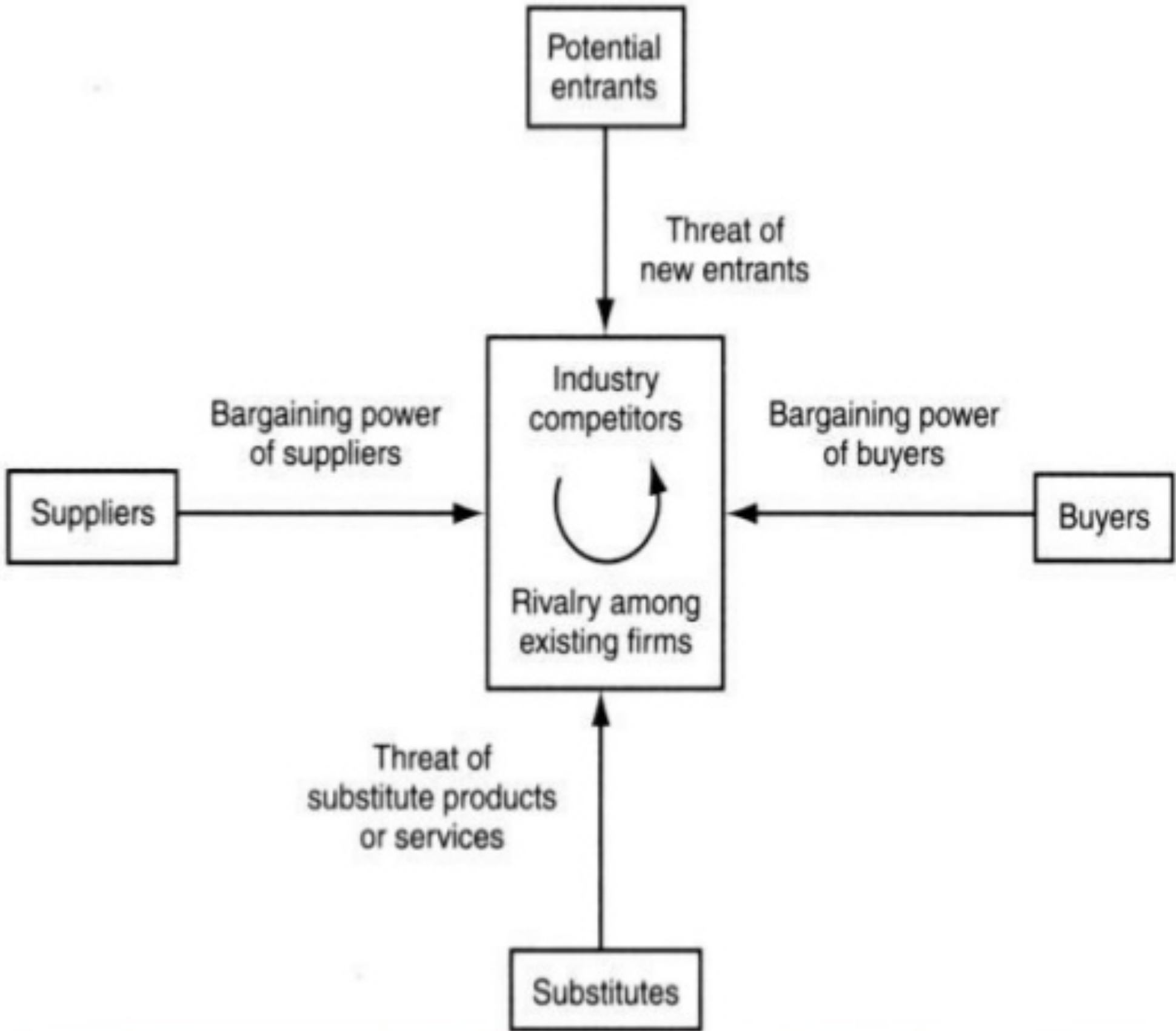
PATENT '163
Enlarging documents by tapping the screen

PATENT '915
Distinguishes between single-touch and multi-touch gestures

PATENT '381
'Bounce-back' feature when scrolling beyond the edge of a page

Captivate
Continuum
Droid Charge
Epic 4G
Exhibit 4G
Fascinate
Galaxy Ace
Galaxy Prevail
Galaxy S
Galaxy S 4G
Galaxy S II (AT&T)
Galaxy S II (19100)
Galaxy S II (T-Mobile)
Galaxy S II (Epic 4G)
Galaxy S II (Skyrocket)
Galaxy S Showcase
Galaxy Tab
Galaxy Tab 10.1 (WiFi)
Galaxy Tab 10.1 (4G LTE)
Gem
Indulge
Infuse 4G
Intercept
Mesmerize
Nexus S 4G
Replenish
Transform
Vibrant

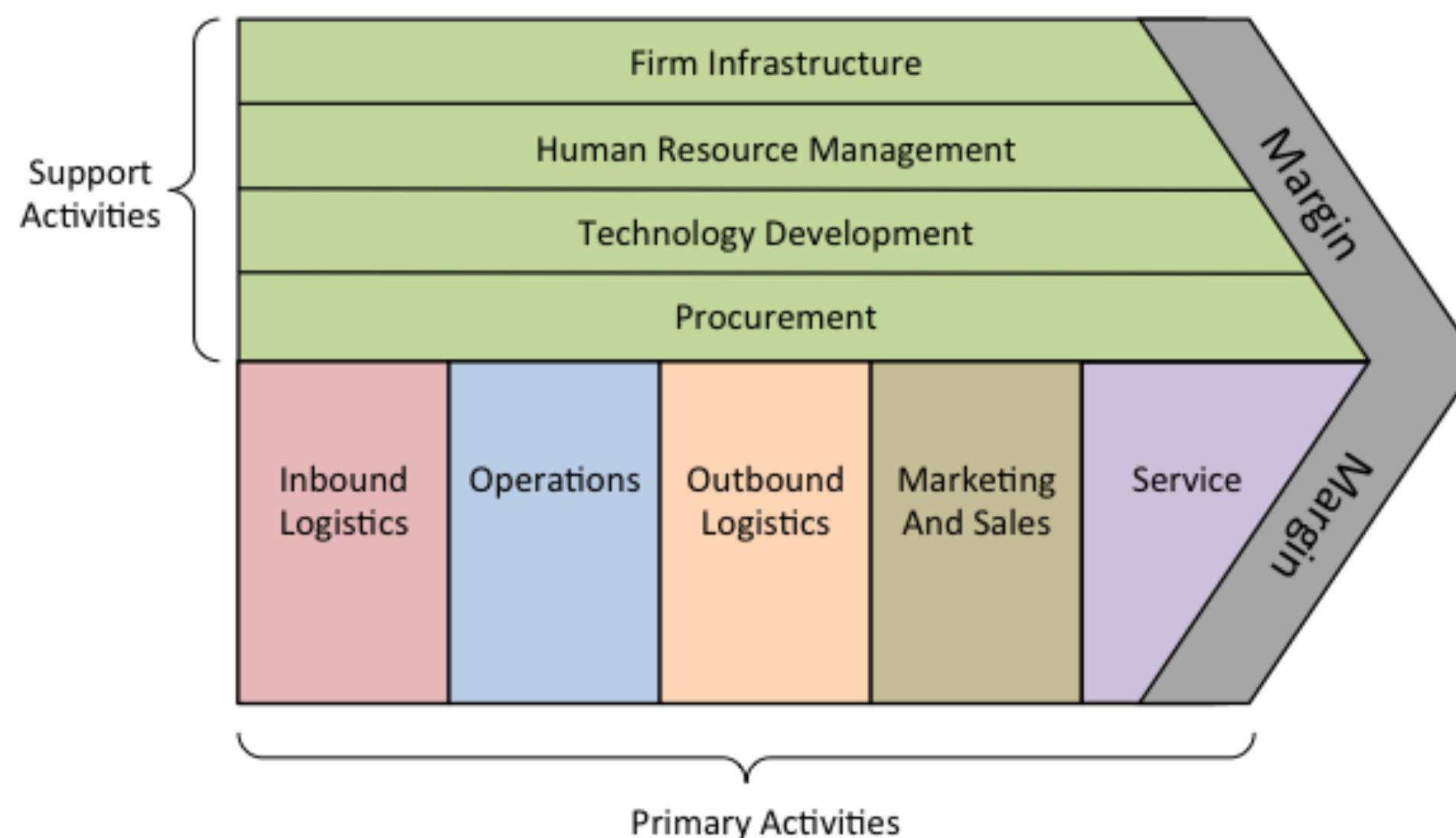
Porter's 5 Forces





Porter's value chain activities

Strategic Complementary Assets



Non-market strategy (Baron)

“The nonmarket environment consists of the social, political, and legal arrangements that structure the firm’s interactions outside of, and in conjunction with, markets.”

“The nonmarket environment is characterized by four I’s:

- Issues
- Institutions
- Interests
- Information

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Corporate Legal Strategy Today

- **Constance E. Bagley (Yale)**
Legal Astuteness as a capability
Legally astute managers
- **George Seidel (U. Michigan)**
Proactive law
- **Dan Ostas (U. Oklahoma)**
Legal strategy and ethics
- **Robert Bird (U. Connecticut)**
The 5 pathways of legal strategy

All members of the Academy of Legal Studies in Business
(alsb.org)

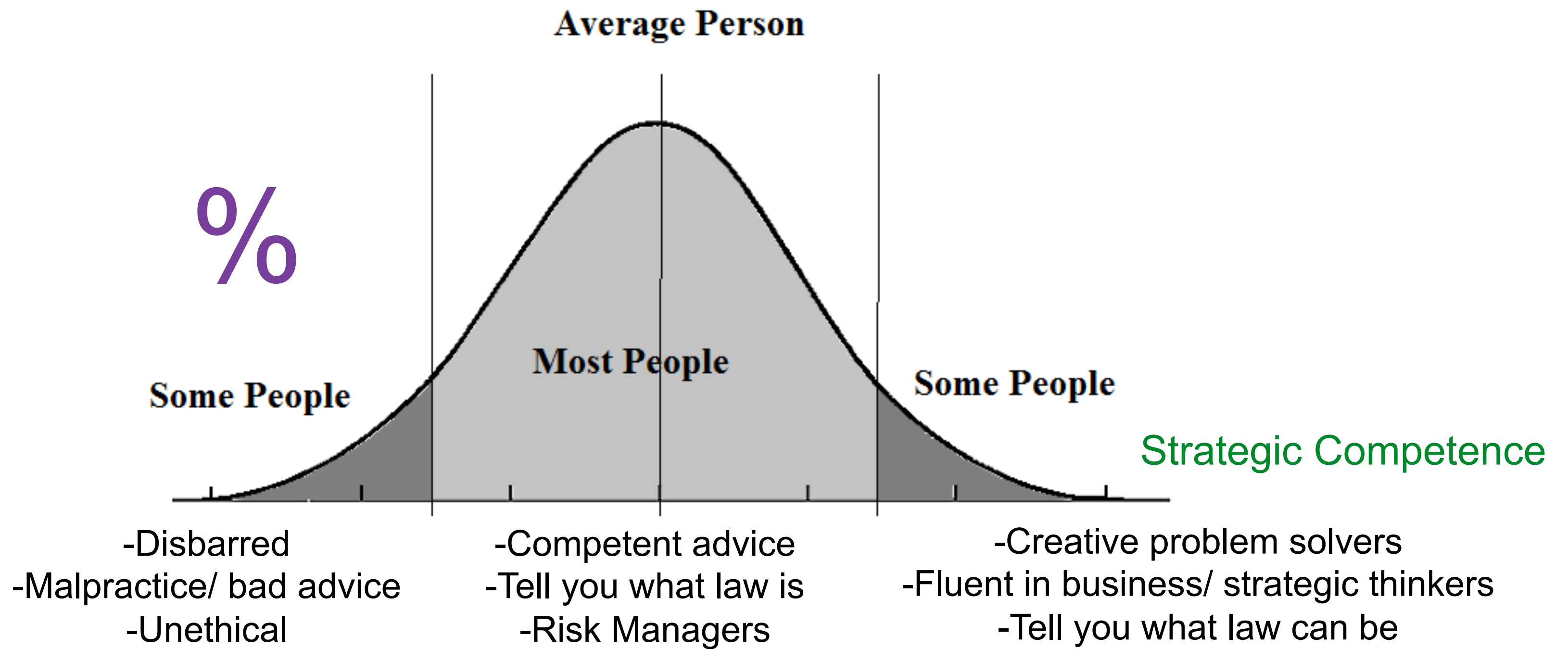
Law professors who teach primarily in business schools

5 Pathways of Legal Strategy

(Bird & Orozco, MIT Sloan Mgmt. Review)

	MANAGERS' PERCEPTION OF THE LAW	MANAGERS' LEVEL OF LEGAL KNOWLEDGE	ROLE OF LEGAL COUNSEL	STRATEGIC OPPORTUNITIES
1. Avoidance	Law is viewed as a costly and random or arbitrary barrier to business.	Basic legal knowledge and awareness are often lacking. Legal knowledge is sought in limited cases to exploit regulatory loopholes and ambiguity.	Legal counsel often serves in an emergency role, fending off legal threats and crises in a reactionary mode. In some cases, attorneys consciously avoid providing guidance on business matters.	Regulatory arbitrage
2. Compliance	Law is viewed as a necessary constraint on managerial action.	Managers possess basic knowledge of law as the external "rules of the game."	Legal counsel plays a policing role, viewing its oversight role as necessary to police managerial conduct.	Limited to cases of strategic noncompliance
3. Prevention	Law can be used to preempt future discrete business-related risks.	Managers possess a good level of functional area-specific legal knowledge sufficient to coordinate a business-issue preemption strategy with attorneys.	Legal counsel works with managers to identify specific future business risks that can be addressed with the law.	Available when the legal and competitive landscapes are strategically assessed
4. Value	Law is used with the goal of creating tangible, identifiable value.	Managers have a high degree of legal knowledge and its impact on the company, although it can still be limited to functional areas, such as R&D and patent law.	Legal counsel is entrepreneurial and a partner in creating value.	Legal strategies that result in tangible value creation that can be accounted for in a financial statement, such as a cash-flow statement, income statement or balance sheet
5. Transformation	Law is an essential aspect of long-term strategic planning for the business.	Sophisticated and broad levels of legal knowledge often cut across functional domains, for example, linking R&D and patent strategy with branding and trademark strategy.	Legal counsel is entrepreneurial and a partner at the highest levels of strategic decision making.	Available as a long-term resource when law is combined with the business model and core competencies of the company

Strategically Qualified (SQ) Attorneys





TOTAL TICKET PRICE	\$	45.50

SUBTOTAL	\$	45.50
CONVENIENCE CHRG	\$	10.35
CONV. CHRG TAX	\$	0.52
ORDER PROCESSING	\$	3.15

TOTAL CHARGE	\$	59.52

At Ticketmaster, we strive to provide world-class service, one fan at a time.



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Ticketmaster today



- 37-year old company
- Started at Arizona State University
- 83% market share in 2010
- Revenues of \$8,000,000,000 +



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Industry timeline

Dates	Description
1966 – 1967	The first computerized ticketing system is developed by Ticket Reservation Systems (TRS); The technology becomes a reality.
1967 – 1982	The emergence of a homogenous industry business model; A shake-out process ensues and Ticketron emerges as the industry leader.
1982 – 1991	Fred Rosen joins start-up company Ticketmaster. Rosen and Ticketmaster initially struggle then validate and scale a pioneering business model.
1991 – 1998	Ticketmaster absorbs failing Ticketron and is the undisputed industry leader. Pearl Jam initiates antitrust suit and loses. Fred Rosen exits the company as it grows through an online sales model.



A transformative CEO and attorney



Fredric D. Rosen

Business model:

- An explanation of how a company creates, delivers and captures value.
- What is Ticketmaster's business model?




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Industry Value Chain



Law and Strategy

How did Mr. Rosen rely on the law to sustain its business model?



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Strategic Contracting Behavior

- He developed a contract-enabled business model
- Technology was not the differentiator
- Focus on the value chain choke-points
- Turned a cost into a benefit
- Made it difficult to imitate

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Contractually waived the inside charge

(a) **Inside Charges:** Ticketmaster shall be entitled to assess and receive from gross Ticket proceeds collected by it as an agent of Principal an Inside Charge with respect to each Ticket sold through Outlets, Telephone Sales and Internet Sales. The amount of the Inside Charge shall be as follows:

Type of Transaction	Inside Charge
Outlet sales	\$0.00 per Ticket
Telephone Sales and Internet Sales	The credit card charge set forth in Section 5 below
Other Tickets (including complimentary Tickets) printed by or on behalf of Principal	\$0.00 per Ticket

Contractually designed shared convenience fees

(b) **Convenience Charge (Per Ticket):** Subject to the provision of Section 5 of this Agreement, Ticketmaster shall assess a Convenience Charge against purchasers of Tickets for Tickets to all Attractions sold by Ticketmaster. The amount of the Convenience Charge for each applicable category of Ticket sale shall be as follows:

Face Value of Tickets	Convenience Charges – Outlets, Internet Sales and Telephone Sales
\$14.99 and below	\$3.50
\$15.00 to \$24.99	\$6.25
\$25.00 to \$44.99	\$7.25
\$45.00 and above	\$7.75

Contractually designed shared convenience fees, cont.

(e) **Principal's Royalties:** Principal shall be entitled to receive Ticket sales royalties (collectively, "Royalties") from Ticketmaster with respect to each Convenience Charge and Processing Fee; all to the extent received (and not refunded) by Ticketmaster. The amount of the Royalties are as set forth below:

<u>Type of Royalty</u>	<u>Amount of Royalty</u>
Convenience Charge	35% of the Convenience Charge
Processing Fee	35% of the Processing Fee

Other strategic terms

Section 6. Exclusive Rights.

(a) Principal hereby grants to Ticketmaster, and Ticketmaster accepts from Principal, the exclusive right during the term of this Agreement to sell, as Principal's Agent, all tickets for any Attraction scheduled or presented by Principal at the Facility and made available generally to the public, via any and all means and methods, including, but not limited to, telephone, computer, television, and outlet sales.

Section 3. Term of Agreement. The term of this Agreement shall retroactively commence on March 1, 2012, and terminate on February 28, 2017. Thereafter, the Term of the Agreement shall automatically be renewed for successive three (3) year periods unless either party hereto notifies the other party in writing, not less than ninety (90) nor more than one hundred and twenty (120) days prior to the end of the then-current renewal period, of its intention not to renew this Agreement. Each twelve (12) month period commencing on March 1 and continuing through the following February 28 shall be a "Contract Year" as such term is used herein.

Which pathway?

- Avoidance
- Compliance
- Prevention
- Value
- **Transformation**

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A main goal in business

Achieve “sustainable competitive advantage”

Ticketmaster has achieved this for 30+ years using strategic contracting practices

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**Thank you for your time
and attention!**

dorozco@fsu.edu



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