

# Winning Legally: The Value of Legal Astuteness

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# Research

- C.E. Bagley, “Winning Legally: The Value of Legal Astuteness,” *33 Academy of Management Review* 378 (2008).
- C.E. Bagley, “What’s Law Got to Do with It: Integrating Law and Strategy,” *47 American Business Law Journal* 587 (2010).



# Law and the Resource-Based View of the Firm

*Legal Astuteness*—the ability of a top management team to work with counsel to solve complex problems and to protect and leverage firm resources—is a valuable managerial capability and may be a source of sustained competitive advantage.

# What Is Legal Astuteness?

Four elements:

1. Set of value-laden attitudes
2. Proactive approach
3. Exercise of informed judgment
4. Context-specific knowledge of the law and the application of legal tools

# Value of Legal Astuteness

- The managerial capability of legal astuteness enhances firms' ability:
  - To realize and leverage value of firm assets
  - To create barriers to entry
  - To use contracts as complements to relational governance
  - To create valuable options



# Degrees of Legal Astuteness

		DEGREE OF LEGAL ASTUTENESS		
		Low	—————>	High
<b>CHARACTERISTICS</b>	<i>Attitude of TMT Toward Legal Dimensions of Business</i>	Not My Responsibility		Important Part of My Job
	<i>TMT View of Lawyers</i>	Necessary Evil		Partner in Value Creation and Risk Management
	<i>Role of General Counsel (GC)</i>	Cop	Counsel	Entrepreneur
	<i>Frequency of GC Contact w/CEO</i>	Low		High
	<i>Flow of Business Information and Legal Queries</i>	On a Discrete Issue-by-Issue Basis		Ongoing
	<i>GC Is Member of TMT</i>	No		Yes
	<i>TMT Approach to Legal Issues</i>	Reactive		Proactive
	<i>Involvement of TMT in Managing Legal Aspects of Business</i>	Hands Off		Hands On



# Degrees of Legal Astuteness (cont.)

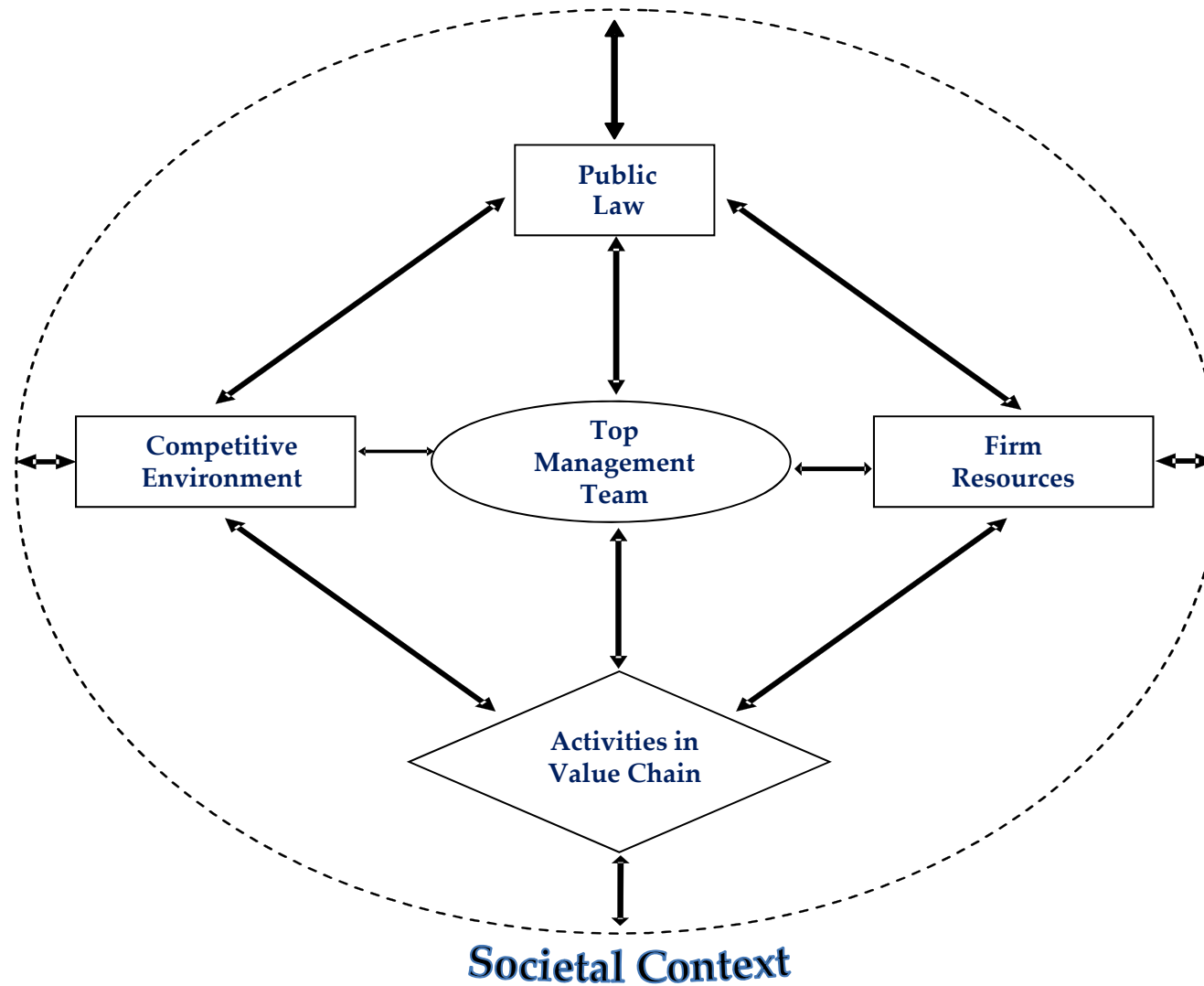
		DEGREE OF LEGAL ASTUTENESS		
		Low	—————→	High
CHARACTERISTICS	<i>TMT Approach to Regulation</i>	Do Minimum to Comply		Exceed Regulatory Requirements as Result of Operational Changes that Increase Realizable Value
	<i>Involvement of Lawyers in Strategy Formation</i>	Low		High
	<i>Involvement of Managers in Resolving Business Disputes</i>	Low		High
	<i>Involvement of Managers in Contract Negotiation</i>	Low		High
	<i>Involvement of Lawyers in Striking Deals</i>	Low		High
	<i>Legal Literacy of Managers</i>	Low		High
	<i>Business Acumen of Lawyers</i>	Low		High

# Law and the Value Chain

<b>Support Activities</b>	Firm Infrastructure	<i>Limited liability, corporate governance, choice of business entity, tax planning, and securities regulation</i>				
	Human resource management	<i>Employment contracts, labor laws, bans on discrimination, equity compensation, workers' compensation, and pension laws</i>				
	Technology development	<i>Intellectual property protection, nondisclosure agreements, assignments of inventions, covenants not to compete, licensing agreements, and product liability</i>				
	Procurement	<i>Contracts, commercial codes, Convention on the International Sale of Goods, bankruptcy laws, securities regulation, and bans on bribery</i>				
		<b>Inbound logistics</b> <i>Contracts</i> <i>Antitrust limits on exclusive dealing contracts</i> <i>Environmental compliance</i>	<b>Operations</b> <i>Workplace safety and labor relations</i> <i>Environmental compliance</i> <i>Process patents and trade secrets</i>	<b>Outbound logistics</b> <i>Contracts</i> <i>Environmental compliance</i>	<b>Marketing and sales</b> <i>Contracts</i> <i>Commercial codes</i> <i>Convention on the International Sale of Goods Consumer protection laws, including privacy protection</i> <i>Bans on deceptive or misleading advertising or sales practices</i> <i>Antitrust limits on vertical and horizontal market division, tying, and predatory pricing</i> <i>Import / export controls</i> <i>World Trade Organization</i>	<b>Service</b> <i>Strict product liability</i> <i>Warranties</i> <i>Waivers and limitations of liability</i> <i>Doctrine of unconscionability</i> <i>Customer privacy</i>
		<b>Primary Activities</b>				<b>Margin</b>



# An Integrated Theory of Law and Strategy



# Teaching Legal Astuteness

- Failures
  - Bechtel in Bolivia
  - BP in Russia
- Successes
  - USG's strategy for dealing with asbestos liability
  - Enel's acquisition of Endesa

