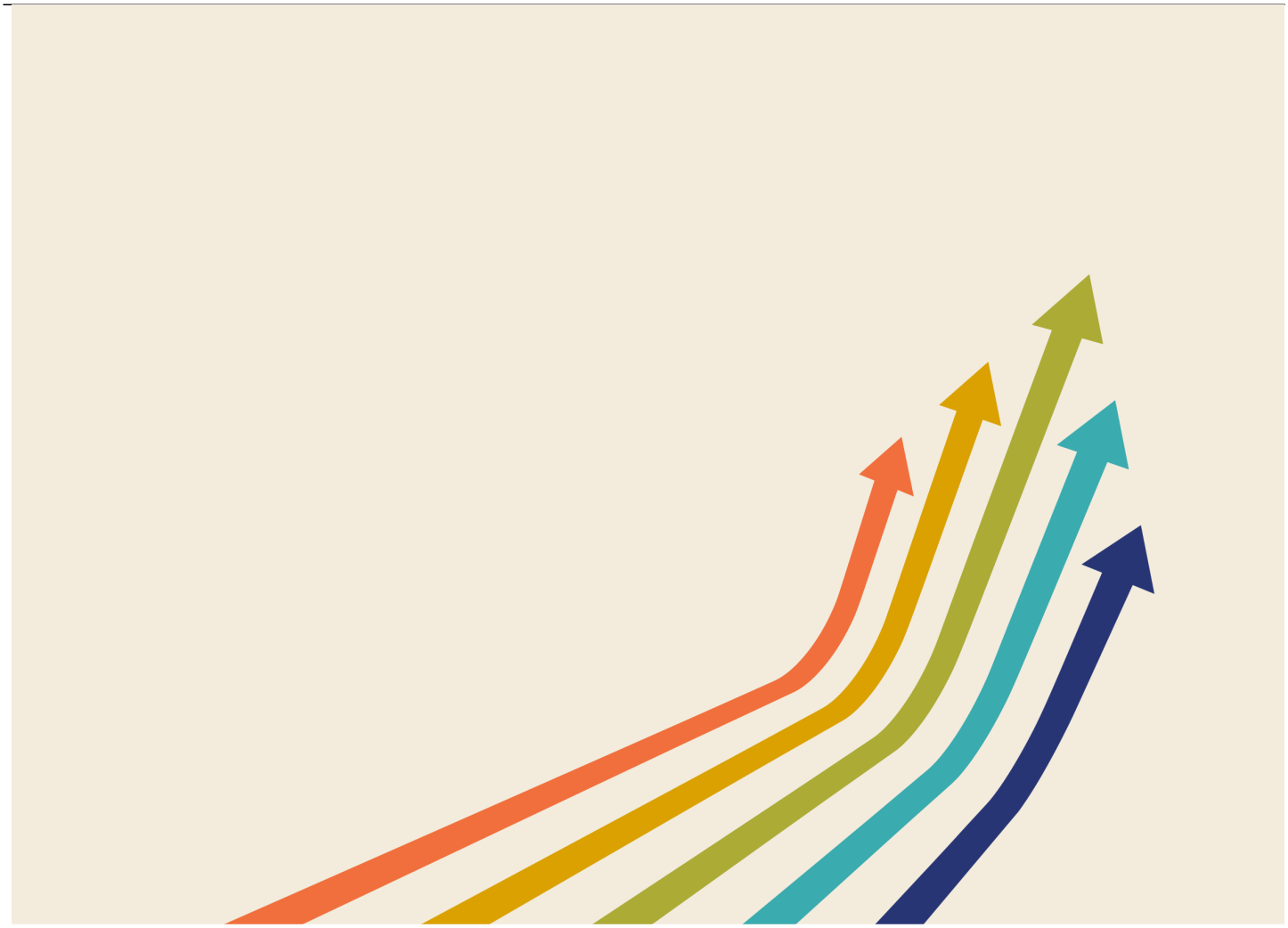


Legal Knowledge as a Source of Competitive Advantage

Law Department Management

Career Development



Banner artwork by SkillUp / *Shutter*stock.com

Cheat Sheet:

- **Untapped competitive advantage.** Legal knowledge can not only create a working environment that is more resistant to legal liability, but it can actively support the broader business goals of the organization.
- **Pathways of legal strategy.** By understanding these five distinct pathways, in-house counsel can identify and correct weaknesses in their organization's legal portfolio and leverage areas of strength.
- **Real-world applications.** The article highlights three legal issues companies commonly face and how each legal issue would be treated in an organization depending on the pathway applied.
- **Creating long-term value.** Skillfully deployed in partnership with businesspeople, legal knowledge can join other business domains as an important source of strategic value for the enterprise.

According to the 2025 ACC Chief Legal Officers Survey, CLOs are increasingly adopting roles outside of traditional legal functions and taking more strategic ownership across the organization. This represents a promising opportunity for general counsel to leverage their legal knowledge as a strategic asset that can be deployed throughout the organization.

Legal knowledge is one of the last great sources of untapped competitive advantage in organizations. General counsel that realize its value can accelerate first-mover advantages as the legal environment evolves, and make better legal decisions with less uncertainty and risk. Legal knowledge can also create a working environment that is not only resistant to legal liability but also actively supports the broader business goals of the organization.

The strategic value of a competitive advantage

Traditionally in the domain of management, Michael Porter defines strategy as deliberately choosing a different set of activities that deliver a unique mix of value to the marketplace. What some call the "holy grail" of strategy is the generation of a sustainable competitive advantage, which is a long-term edge that a firm holds compared to competitors in an area of business operations.

Most importantly, these capabilities and resources cannot be easily matched by competitors, enabling the competitive advantage to remain while competitors struggle to catch up. Legal knowledge is a source of sustainable competitive advantage, and through application of a legal strategy firms can capture value otherwise overlooked.

Five pathways of legal strategy

Companies or individuals typically follow one of five pathways of legal strategy: avoidance, conformance, prevention, value, or transformation. Not all of these pathways generate a competitive advantage, but corporate counsel through their understanding of legal strategy can leverage legal knowledge into a source of value in their organizations.

By understanding these pathways, in-house counsel can candidly identify and correct weaknesses in their organization's legal portfolio as well as leverage areas of significant strength.

Avoidance – ignore or circumvent legal mandates

The goal of avoidance is to ignore or circumvent legal obligations. Practicing avoidance is not a good strategy, and in fact it is barely a strategy at all. Managers perceive law as a barrier to growth and see regulators as hostile adversaries to the enterprise. Companies that follow avoidance relegate legal and compliance experts to a defensive role whereby they are used primarily to oversee litigation, put out legal fires, and respond to government enforcement.

Evolution to the next pathway: Corporate counsel in the unenviable position of dealing with an

avoidance culture should impose a top-down command and control structure that stops indifferent or reckless behavior. That involves cultivating support from leadership, dismantling law-avoidant incentives, and rewriting rules to mandate compliant conduct. Managers who resist this change need to get with the program or leave. The goal is to stabilize the firm's legal practices in order to sustain organizational change to a higher legal pathway.

Conformance – checkbox compliance to meet legal minimums

The goal of the conformance pathway is to fulfill the minimum requirements that the law demands. Laws are just another cost of doing business that are addressed as quickly and as cheaply as possible. To the extent that regulators are thought about at all, they are seen as aloof rule makers indifferent to the challenges of business. Companies that practice conformance perceive legal and compliance experts as monitors who ensure rules are followed with appropriate deterrents. Practicing conformance is also not much of a strategy, but at least it keeps the company out of the crosshairs of regulators.

Evolution to the next pathway: Here, the business unit has the infrastructure necessary to follow the law, but that infrastructure may be inefficient, uncoordinated, or time-consuming. This leaves significant value unrealized. The goal of the corporate counsel in a conformance environment is to go beyond checkbox compliance to build an effective bureaucracy of regulation. Bureaucracies get a bad rap, but they enable a standards-based approach to rules that lowers costs and improves the effectiveness of company policies.

Prevention – solve legal problems with business policies

The goal of the prevention pathway is to frame legal problems as business challenges. The prevention pathway is a proactive approach to governance, and managers who practice it understand that legal rules are necessary for free and fair markets. The key benefit of prevention is that legal issues are addressed before actual problems arise. This requires managers and legal experts to recognize each other's contribution to the company. Prevention promotes operational effectiveness, which assimilates best industry practices into the operations of the company.

Evolution to the next pathway: Rising to the next pathway requires that lawyers and managers perceive legal knowledge as not just a basis for value protection but also as a source of value creation. The key task for the general counsel is to facilitate meaningful access and cooperation between legal experts and managers. Both legal experts and managers must be fully on board. Both legal experts and managers must also be able to fully appreciate one another's assumptions, incentives, and goals for the organization. General counsel who want to elevate their organization beyond prevention must establish shared responsibility for legal obligations between law and business domains.

Value – leverage value-creating legal assets

The goal of the value pathway is to generate value from legal knowledge. This is a shift in thinking from value protection to value creation. The value approach understands that law can be a source of competitive advantage and that regulators create valuable market opportunities. Legal experts are no longer just defenders or monitors, as highlighted in earlier pathways, but are now treated as full partners in the organization. Legal experts are engaged in business planning processes and embedded in functions where important decisions are made. Disciplinary barriers break down as both

legal experts and businesspeople understand each other's assumptions and goals, and they are able to integrate both fully into key business functions. Any lingering stereotype of lawyers as naysayers is replaced with a shared respect for the power of legal knowledge in organizations.

Evolution to the next pathway: With legal knowledge as a source of value embedded in the organization, the next step is to broaden this value-oriented approach to include key strategic decisions. This requires a change in mindset from both managers and legal experts that integrates legal knowledge as a key driver of strategy. Through this mindset, managers and legal experts develop a legal agility that enables the firm to respond quickly to both legal threats and unexpected opportunities when the law changes. The result is an innovative mindset of legal astuteness, which instills four essential traits in managers: respecting the rule of law, recognizing legal issues, resolving problems proactively, and reporting complex legal issues to experts. These traits enable legal challenges and opportunities to move seamlessly between managers to legal experts to facilitate strategic planning.

Transformation – a source of sustainable competitive advantage

The goal of this fifth and highest pathway is to use legal knowledge to create a sustainable competitive advantage for the organization. Legal knowledge is fully embraced as a strategic asset of the firm by both legal experts and businesspeople. General counsel is fully integrated into the C-suite as an equal, and downline counsel are fully embedded with managers in their area of specialization. Transformation-oriented practitioners see regulations as a potential strategic asset and regulators as potential equitable partners in co-creation of standards. Lawyers in transformation firms are treated as strategists that are fully engaged in core decision-making of the enterprise.

Evolution of this final pathway: The firm that has achieved a transformative approach to legal knowledge must maintain essential traits to keep that capability effective. This involves sustaining a strategic legal mindset that enables both lawyers and managers to identify, engage with, and harvest value from legal opportunities. Legal counsel should also cultivate ethical values related to the use of legal knowledge through the development of lawtegrity. Lawtegrity (a combination of 'law' and 'integrity') is the quality of honesty, self-restraint, and respect for legal mandates and the regulators who enforce those mandates. Legal counsel act as stewards of these values, ensuring their continuing relevance and keeping those values current as the legal environment changes. Legal counsel should also remain mindful to not lose their objectivity. Succumbing to managerial pressure to approve deals or subordinating compliance to profit creates a dangerous precedent that can devolve even the best legal strategy into just another avoidance behavior.

Applications of pathway practice

The five pathways of legal strategy can be applied not just to individuals, but also specific legal challenges facing the organization. The table below highlights three legal issues companies commonly face — prevention of sexual harassment, protection of intellectual property rights, and implementation of anti-corruption requirements under the Foreign Corrupt Practices Act — and how each legal issue would be treated in an organization depending on the pathway applied.

!function(){"use strict";window.addEventListener("message",function(a){if(void 0!==a.data["datawrapper-height"]){var e=document.querySelectorAll("iframe");for(var t in a.data["datawrapper-height"])for(var r,i=0;r=e[i];i++)if(r.contentWindow===a.source){var

d=a.data["datawrapper-height"][t]+"px";r.style.height=d}}})}();

Organizations are subject to a dizzying array of legal mandates. While most view these mandates as just another burden, those who perceive value in the legal environment see opportunities where others do not. General counsel hold the key to unlocking competitive advantage in organizations. Skillfully deployed in partnership with businesspeople, legal knowledge can join other business domains as an important source of strategic value for the enterprise.

Join ACC for guidance on your in-house career!

Disclaimer: The information in any resource in this website should not be construed as legal advice or as a legal opinion on specific facts, and should not be considered representing the views of its authors, its authors' employers, its sponsors, and/or ACC. These resources are not intended as a definitive statement on the subject addressed. Rather, they are intended to serve as a tool providing practical guidance and references for the busy in-house practitioner and other readers.

Robert Bird



Professor of Business Law

University of Connecticut

Robert Bird is a Professor of Business Law and the Eversource Energy Chair in Business Ethics at the University of Connecticut. His book, “Legal Knowledge in Organizations: A Source of Strategic and Competitive Advantage” was published in 2025 by Cambridge University Press.