

## FINDING THE BUSINESS IN BUSINESS LAW

by Theodore E. Guth

We can't afford to disconnect business and business law. Yet all too often, we try: tasks are summarily divided into "legal issues" and "business issues", with the legal issues even further subdivided among specialists, each focused on a limited aspect of the problem: tax, labor, securities, etc. Businesspeople "make the deal" and then pass the project to a lawyer or lawyers (sometimes one to whom they have never even spoken) for documentation. Superficially resembling a modern factory, this division seems efficient, allowing everyone to operate independently, focused on issues on which each is expert.

That model ignores a critical issue: business deals are more than the sum of their isolated terms. In practice, compartmentalization too often leaves business owners and executives feeling overwhelmed and underserved. More than ever, lawyers can seem more focused on legal technicalities than on practical, or sometimes even understandable, advice. Legal costs—in time, money and complexity—seem out of control. Everything seems to be about what you can't do, or how you have to "document" one more thing before you do.

In today's economic climate, just "thinking like a lawyer" is not enough. Good advice does not deal with abstract projects and impersonal transactions; it is grounded in the strengths, challenges and goals of your business, its risk profile and tolerance and its culture and future. For practical legal advice with real world benefits, your lawyer must be able to speak to your business needs – literally – not just in abstract concepts cloaked in legal jargon. That requires cooperative problem solving, with you and your lawyer each aware of the other's thinking.

Fundamentally, we need more—and better—integration of business and law. That's not about spending more—it should be about spending less, but more efficiently. Like drafting plans before you start to build a house, you can actually save money by talking through your business rationale and the major pitfalls with your lawyer before making a deal. You need your lawyer to understand your business and be able to explain the risks in real world terms. Few businesses can afford the luxury of having a lawyer research and negotiate every issue. At the same time, ignorance is not blissful: risks can eliminate your profits in a heartbeat. You need your lawyer to focus

on helping you understand and manage the risks you decide to take, while identifying and avoiding those you don't. Each of you must understand enough about both your business and the risks to allocate limited resources—dollars, time and negotiating leverage—to the legal problems and risks that truly matter to your business.

You can't do this without communicating your vision. If you don't talk with your lawyer about your business goals, you can't be surprised when he or she focuses on legal issues and risks that don't matter to you. Disconnected from business need, every risk, even the most esoteric, seems too big to accept. There are times, of course, where a task is sufficiently repetitive that everyone understands the full context without communication, where the amount involved is so large that every risk must be eliminated or where your leverage is so great that you can dictate arbitrary terms divorced from business realities. But in a business community like Southern California, dependent on entrepreneurial middle market companies constantly adapting to maximize value, any quest to eliminate risk is unrealistic, even counterproductive. Business is about seizing opportunities and taking smart chances, not simply avoiding risk.

Effective legal advice also means getting value from your lawyer beyond mere legal compliance and risk management. Beyond controlling the costs by avoiding unnecessary analysis, beyond understanding the risks before you negotiate, an hour talking with the right lawyer at the beginning can add immense value, by including a fresh eye, experienced in disciplined analysis, leavened with experience with other businesses, to help formulate your negotiation approach and the deal structure.

Of course, it is easier to focus on what you know, and just let your lawyer handle the legal issues. It is not always easy to find a lawyer who can balance the benefits of any point against the freedom and flexibility you need to succeed, and neither is making sure that each of you understands the full context. But doing so can make a huge difference: legal advice that not only protects you, but actually empowers you.