VALIDATING THE RELATIONSHIP OF LAW AND ENTREPRENEURSHIP: COMPELLING COMMENTARY AND PROGRAM DEVELOPMENT AS ENTREPRENEURSHIP BECOMES AN OFFERING AT LAW SCHOOLS AROUND THE COUNTRY

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“An entrepreneur must be able to distinguish between the legal expertise offered and the bias that accompanies it.” (Goossen, 2004, p. 10)

ABSTRACT

At times the perspectives of the business, and that of their legal counsel, fail to align. This paper provides a justification for entrepreneurship education as a part of a law school curriculum and provides an overview of an entrepreneurship course designed specifically for law students. The purpose of the course is to provide perspective attorneys with an understanding of the decision-making process high-growth ventures go through, and how counsel can best contribute to the venture. The course incorporates the business planning process with heavy emphasis on legal issues at the time of company formation, intellectual property, contracts from a business decision-making perspective and the harvest.

History

In October of 2006 the author approached the Dean of the School of Law about teaching a course that would expose aspiring attorneys to the decision-making of high growth ventures. It had become evident over many years of working with entrepreneurial startups that counsel approached that legal recommendations purely from a legal perceptive, with little or no regard to the business impact of their recommendations. For example, a lotion startup company was advised to not make claims regarding product efficacy because the claim may run afoul of FDA guidelines. The problem is, adhering to a strict interpretation of the law severely limited this very effective product’s reach from everything from incest bites to bedsores. The challenge for the venture was twofold: first, the FDA guideline is vague and open to interpretation, and
second, and possibly most important, separate from ethical considerations, the industry has basically ignored the FDA guideline in this area and thus, the product’s long list of competitors advertises the claims. The venture took the ethical high road. Over the next year the company added an FDA approved active ingredient to the product and can now make the claims within the guidelines.

The meeting with the dean at the law school that day in October 2006 included the Dean and Associate Dean of the School of Law. What was outlined was a business planning course with greater emphasis on the legal implication. During the meeting, the Dean on three occasions uttered, “I love it”. At that time, the Associate Dean was unaware of similar courses being taught at other Schools of Law. The following summer the course was offered to 11 law students. In 2008, 15 students enrolled and successfully completed the course.

**Legal v. Entrepreneurial Thought**

Historically, when lawyers are engaged to assist a business in settling differences with suppliers, customers, and employees they relied upon the legal process as the primary means to resolve disputes. An alternative would be a business focused approach, which would address the dispute from the strategic objectives of the company. To employ the business focused approach, “an entrepreneur must understand and manage four components of the legal process - the law, the legal subculture, lawyers, and litigation. Managing the legal process is of greater concern to entrepreneurs then to other business operators. They have scarcer resources and a fragile administrative infrastructure that is less stable to withstand a significant drain on human or financial resources”. (Goossen, 2004, p. 3)
Goossen goes on to state, “Students of entrepreneurship accept the notion that there is an entrepreneurial mind or personality, and its values and norms constitute an entrepreneurial subculture. Similarly, there is a legal subculture. This is reflected in the objective of law schools to have their graduates “think like lawyers”. Because of the different subculture from which their perspectives emerge, lawyers and entrepreneurs have different ways of resolving issues. (Goossen, 2004, p. 5)

Goossen contends that, “Legal training focuses on what can go wrong rather than what will go wrong. This leads lawyers to see the negatives in a business transaction. ….. Lawyers can see what can go wrong, while entrepreneurs think of all that can go right. This is a variation of the glass is half empty, glass is half full adage…. Entrepreneurs gain sustenance from the psychological disposition, while lawyers are rooted in the technical aspects of their skills. ” (Goossen, 2004, p. 6)

It is also suggested that the lawyer is committed to completing the task, such as reviewing a contract to protect the rights of the client, rather than being concerned about whether the transaction been consummated or not. The entrepreneur seeks a solution and the law only provides part of the problem solving equation. The nature of the legal profession fosters individuals who are risk averse while entrepreneurs exist in an environment fraught with risk. (Goossen, 2004)

What Needs to Happen with Legal Education

According to the Ewing Marion Kauffman Foundation (2001), “Today, more than 1500 colleges and universities offer some form of entrepreneurship training… Interest in entrepreneurship
education has spread to non-business disciplines, where students in engineering, like sciences and liberal arts are interested in becoming entrepreneurs.”

As entrepreneurs drive innovation in business practice and technology, they also drive changes in the practice of law. Entrepreneurs often force questions about where it legal boundaries are drawn, and provide opportunity’s to set new boundaries through interpretation and legislation. (entrepreneurship.gmu.edu/law)

Entrepreneurship studies and research are of relatively recent vintage, and they attended be confined to business schools and economics and engineering departments. To date we have not used entrepreneurship adequately in our study of the law. As a result, when entrepreneurship scholars think about law in connection with the entrepreneurship, they usually think about patents or trademarks, but this is too narrow in light of the rule of law. (Smith, November 16, 2003)

In the 1991 the British law firm of Berwin Leighton introduced a novel opportunity for law students to prove their potential and develop their teamwork and decision-making skills. The program entitled “Boardroom Blitz” assembles a team that assumes control of a fictional company and steers it toward profitability. The program, designed for second year law students, is an attempt to create strategic decision-making skills in the lawyer of the future. (The Lawyer, 1997)

Siers (1998) suggests that the commercial or transactional side of the legal profession needs less risk-averse and more entrepreneurial and more mobile trainees who are prepared to see the law as a practical tool to achieve commercial ends rather than treating it as an academic exercise.
She also suggests the aspiring attorneys should demonstrate evidence of commercial acumen or general business awareness.

Triantafillou (2008), in addressing the overall curriculum at law schools, speaks of significant change and paradigm shifts to create new ways for lawyers to think outside of the box. She then points out an interesting observation, that as new curriculum may be developed it will be delivered by the same existing faculty.

Hines (2005) proposes, “Entrepreneurship is a legitimate area of scholarly inquiry and a curricular opponent that need not be limited to certain departments or schools or colleges of business”. And then goes on to state, “a liberal arts education might be viewed as a metaphor for entrepreneurship”.

While much entrepreneurship research focuses on the characteristics of entrepreneurs or on performance of entrepreneurial firms, law and entrepreneurship studies should focus on the legal structure and regulation of entrepreneurial firms. Many entrepreneurship scholars emphasize the importance of organization to the study of entrepreneurship. (Smith, November 6, 2006) Smith goes on to say, “The study of entrepreneurship in law schools is primitive.” (Smith, July, 17, 2008)

Michael J. Kelly, dean of the University of Maryland School of law said the goal is to produce lawyers “who know what’s involved in helping young companies to merge and mature. It makes sense from an educational standpoint to educate a generation of lawyers with an understanding of the special problems of startup companies” (Washington Times, 1989).

The Geoffrey H. Palmer Center for Entrepreneurship and Law at Pepperdine University recognizes that law students seek alternative careers and require education and training in the
fields such as business, finance, intellectual property, technology and others. The reason needed to supplement the traditional law school curriculum even for students pursuing traditional legal careers. (law.pepperdine.edu/palmer)

**Validating the Relationship of Law and Entrepreneurship: Progress**

Recently a number of universities’ entrepreneurship programs have struck up relationships with their corresponding schools of law. A few examples are as follows:

*University of Arizona*

The University of Arizona has in place a mock law firm which allows law students to engage with Mason level firms from the earliest business development phase through innovation exploration and actual venture planning, development, funding applications, and launch. The program lists a series of key goals. First for the law students (University of Arizona, 2008):

- Law students gain practical experience counseling clients involved in simulated startup ventures
- Law students learn how to apply their legal skills and knowledge in a context that requires them to integrate their knowledge from several areas of law
- Law students develop the substantive legal and business knowledge and skills needed to work with entrepreneurs in startup companies, possibly including when to take an equity stake in lieu of traditional payment

And for the entrepreneurship students (University of Arizona, 2008):

- Entrepreneurship students learn how to engage the legal community throughout all stages of venture planning
Entrepreneurship students learn, and legal issues/elements of new ventures, including basics of IP, early in the venture planning life.

Entrepreneurship students are positioned to plan for IP and other relevant legal issues alongside all other elements of the venture plan.

University of Oregon

The University of Oregon hosts three programs associated with law and entrepreneurship. The program professes “educating lawyers to create value for business” and offers three distinct programs:

- the small business clinic (SBC),
- the technology entrepreneurship program (TEP), and
- the law and entrepreneurship student association (LESA).

The small business clinic is a community-based outreach program, while the TEP, in collaboration with the business school’s Lundquist Center for Entrepreneurship, combines the talents of MBA and law students to develop market assessments on emerging technologies. Portions of this program began as early as 1995 and are initiated out of the school of law, Center for Law and Entrepreneurship. (University of Oregon, 2008)

University of North Carolina

The Cato Research and Cato BioVentures established a law and entrepreneurship program in collaboration with the University of North Carolina at Chapel Hill law school in October of 2006. Cato Research is a leading international pharmaceutical research organization with an affiliated venture capital group. The program they developed is intended to provide law
students within opportunity’s to gain hands-on legal experience in the areas of corporate law, the Life Sciences, and venture capital. Through this practical experience, students will gain valuable skills in areas such as negotiation, contracts, intellectual property, and corporate governance. (Cato, 2006)

The Course

Traditional teaching methods, such as lectures and examinations, are not the most effective means of encouraging entrepreneurial skills set development. (Gibb, 2002; Sogunro, 2004) In entrepreneurial learning, traditional teaching methods need to complemented (Gibb, 1993; 1996; 2002) by activities such as learning by doing and engaging students in active learning or that participate in the control and mold the learning situation (Gorman et al, 1997; Fiet, 2000).

The course at our law school is designed like most business planning courses where the class is split into teams. There are a number of ways to create teams, random, complimentary backgrounds, outside work schedule, but in this setting, they self select. The first day of class a short interactive lecture helps the students differentiate from hobby, lifestyle, and small businesses and they then begin their focus upon high-growth ventures – those growing at an annual rate of 20% or more per year, creating above average wage positions and the need for a venture team.
Once the teams form, we go into great depth on factors that can contribute to disproportionate distribution of initial stockownership. This is a critical topic, frequently not covered in traditional business planning courses, but essential as aspiring counsel advises founders at the point of business formation. Some factors that can come into play include (Timmons, 2007):

- The idea
- Cash contribution
- Commitment to the execution of the plan
- Prior entrepreneurial experience
- Prior experience in the industry

The next area of discussion focuses upon intellectual property (“IP”). An IP attorney is invited into the class to highlight trademark, copyright, patent and trade secret issues faced by high-growth startups. The students are required to perform a patent and trademark search surrounding their products/services.

Much of the course then proceeds through the traditional sections of the business plan (Abrams, 2003):

- Industry Analysis
- Target Market
- Competitor Analysis
- Marketing Plan
- Operations Plan
- Critical Risks
- Etc.
The composition of the typical class is very unlike the typical MBA class. Though some MBA programs have as few as 25% of the class represented by undergraduate business majors (www.mba-courses.com/mba.htm), there tends to be an adequate smattering of business talent to help “carry” the other team members who may not have yet taken certain critical courses to excel across the spectrum of business disciplines necessary to construct a business plan. Of the 11 in year one there were two undergraduate accounting majors and two students, one of the accounting majors, enrolled in the joint MBA/JD degree program. In year two, of 15 students one was an undergraduate finance major and one student was a marketing major. The rest of the class was comprised of English, journalism, sociology and even two biochemistry majors.

The point being, when the class gets to the financial assignment, many do not know how to build a spread sheet in excel. They tend to be well outside their comfort level. Usually classes in the business school create spreadsheets in excel but at the law school they are allowed and encouraged to use templates.

Throughout the course emphasis is placed on legal issues including contractual relationships, negotiations with suppliers and manufacturers, lease agreements, marketing issues (much like the FDA concern discussed at the start of this paper) and many other legally-based venture concerns. The term sheet, the letter of intent between the investors and the venture, is also covered in some detail, with a venture capitalist participating in the discussion.

The students turn in sections of the business plan incrementally throughout the course, receive feedback and make corrections or changes for submission of a final revised business plan at the conclusion of the course. The last day is reserved for presentations in front of a community-
based panel. The panels’ skill sets range from current entrepreneurs to investors to business professionals.

**Outcomes**

Specific outcomes from the Law and Entrepreneurship course:

- The students gain a much greater understanding of the venture decision-making in light of perceived or actual legal constrains.

- A student letter of thanks to the faculty member highlighted the growing nature of the legal profession to participate as transactional representation for early-staged high-growth ventures. These ventures can prove to be high return clients if they grow and the legal relationship is nurtured. The student went on say that the course provided tremendous insights into venture valuation, dilution and the term sheet. All of which were topics of discussion during his interview process. (Walker, 2007)

- A team from the 2007 class entered the 2008 Reynolds Governor’s Cup Business Plan Competition and was selected, along with 5 other teams, to participate in the graduate competition. The team competed directly with MBA student teams from across Arkansas and though not finishing in the top three, was awarded $1000.

- Members of that team continue to pursue the venture and recently raised a $50,000 first round of funding.
Implications

Courses like the one discussed above, and others, provide the essential cross-perspective necessary to adequately represent a client in the world of high-growth ventures. The key is making the aspiring attorney aware and sensitive to the needs of the client and not solely dependent upon the historic “legal perspective” as discussed by Goossen (2004).

We are beginning to see cross compatible competencies, where academics bring entrepreneurial experience, law degrees and business degrees to bear on business students, law students, researchers, and others. Entrepreneurship has become a dynamic way of teaching the marketplace to all discipline areas of study. This is evidenced by the monumental efforts of organizations like the Kauffman Foundation Campuses Initiative (Kauffman, 2008).

Conclusion

A guest speaker for the course, Allen Engstrom (2008), CEO of CFO Networks and former head of strategic acquisitions for Intel, asked the class “what is business”? A number of answers were shared but none provided the answer Allen was looking for. He said business is nothing more than a series of contracts; contracts with suppliers, customers, employees and others. Attorneys deal with business related issues in almost every aspect of their practice from divorce settlements to estate planning. Should our aspiring practitioners have greater access to entrepreneurship education? Has the legal profession realized how business-oriented their legal practices have become?
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