



# The Smarter Legal Model: more from less

Written by Trevor Faure, Global General Counsel and Partner, Ernst & Young Global Ltd.

**COVERAGE  
COMPLIANCE  
CLIENT SATISFACTION**



**HEAD COUNT**

**COST  
INCLUDING  
LAWYERS AND LIABILITIES**

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# The Smarter Legal Model: more from less

Welcome to “The Smarter Legal Model: more from Less”, a Practical Law Company publication written by Trevor Faure, Global General Counsel of Ernst & Young Ltd. Previously, Faure was Vice-President and General Counsel of Tyco International, EMEA, and he has served as Legal Director, Dell Computer EMEA and as Senior Counsel, Apple Computer EMEA during his 22-year career.

This book should interest anyone with a stake in the successful delivery of legal services. It is a toolkit for those lawyers struggling to reconcile the often competing imperatives of legal risk management in the 21<sup>st</sup> century.

It covers an extremely wide range of issues faced by lawyers working in or with companies of all sizes, sectors and locations. Its goal is to draw on Faure's experiences of transforming the effectiveness and efficiency of a legal department, setting out approaches that have proved successful in real life, and also lessons learned from the front line.

Put simply, this book aims to be one weapon in the armoury of lawyers seeking to be better. This objective is also central to the work we do at Practical Law Company (PLC), and this is one reason for which we are proud to have been a part of the making of this book.

We hope this book will help lawyers find the right solutions to their challenges; and also that it will encourage debate and the asking of new questions about the role of the corporate lawyer in today's climate. Please contact us if you have any comments or feedback (see page 160).

PLC and Trevor Faure would like to thank Steven Kingston (Steven Kingston Associates) and Stephen Hopkins (Partner, Eversheds LLP) for offering their unique perspectives in their contributions to this book.

Robert Dow, CEO, PLC

## About Practical Law Company

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# The 21st century imperative of globalisation

While it might not always seem like it – to incumbents or observers – the role of the corporate lawyer could be the pivotal and most important role in modern business. This, at least, is its potential. Let me count the ways:

1. **Risk and protection.** The traditional role has become more complex and challenging in recent years with the convergence of international regulations and the extra-territorial application of laws on, for example, data privacy and corrupt practices. The increasing levels of fines for anti-competitive behaviour and the potentially catastrophic attendant publicity for major non-compliance illustrate the higher stakes; a consequence of a globally interconnected economy.
2. **Business partner and driver.** As all enterprises are being forced to become more efficient and competitive, the concept of a “back office” administrative function being somehow immune from this equation has been obliterated. At worst, functions that are not research, development, production, sales, marketing, distribution and so on are regarded as superfluous bureaucracy and subject to reduction with no theoretical minimum level, almost irrespective of the consequence. At best, the corporate lawyer can transcend such a calculation by adopting commercial methodology and translating legal services to mirror the “front office” activities, using the same, world-class business tools used to achieve higher efficiency in all other parts of enterprise.
3. **The human element.** The ideal corporate lawyer is a leader of people, wise and trusted counsel, statesperson, salesperson, politician, psychologist, surrogate judge or regulator, coach, conscience, executioner and best friend. To all people. At all times. And increasingly across an equally-disparate range of cultures, languages and time zones. Infallibility is essential; only the omniscient and omnipotent need apply.

No pressure then.

This dynamic explains why there remains a market for legal seminars (beyond continuing education points) where lawyers trade prescriptions for meeting one or two items on this daunting

list but never really leave convinced that they have discovered the formula to improve their lot, once the polite, social debates hit the reality of a budget crunch or an unco-operative client back at the office.

For the avoidance of doubt, this book does not promise the prospect of infallibility, omniscience, omnipotence or even a new best friend. However, what it does presume to do is to take a new, radical but tested look at the whole, true nature of the role of a lawyer in any modern enterprise. The reader will find that one of the first new elements here is that the lawyer’s role is always examined as a whole: 1., 2. and 3. above, never in one isolated aspect. The successful lawyer recognises that all actions are interconnected somehow, however indirectly: guaranteeing compliance is not done in isolation from managing cost and maintaining good client relationships; or else the simple answer would be to provide a 24-hour bodyguard lawyer to stand next to each individual client. Some paradigms set out in the book are strategic arrangements of the obvious, in a way that corporate lawyers always discuss but rarely find the time to analyse.

Hence this book will contain any number of triangular or other-patterned forms of interconnected relationships. Almost invariably these relationships are currently in tension, the “you lose: I win” zero sum game between clients and law firms being a particularly common and pernicious example. Beyond the radical step of identifying true interrelationships and tensions lies the breakthrough endeavour of reconciling and improving all of those elements within the profession.

To make such a leap, the corporate lawyer must embrace and discuss shapes, human behaviours and statistical data, not just the usual finely-honed, linear dialectic of a legal opinion or research paper.

Another distinguishing feature is that while this book might be read as a thesis, all of the methodology described has been applied to major, multi-billion dollar corporations with empirical results to show their impact. Like all prescriptions, clinical trials have also shown that temporary side-effects can occur and not all of them positive!

## HOW TO USE THIS BOOK

It cannot be overemphasised that solutions, just like problems, are fundamentally interconnected; therefore an understanding of the whole sequence of the Smarter methodologies is ideal. This having been established however fleetingly, the book can just as well be used as a “tool kit” (or medicine cabinet, to stretch the prescription analogy). The user might adapt, adopt and apply one or two of the methods depending on the legal service’s particular weakness or imbalance (see Chapter 3). The health warning remains that each method is functionally connected to certain others and therefore might not work in complete isolation. The goals of the various methodologies are to achieve:

- More legal coverage with less headcount – achieved by increasing individual productivity and potential.
- More legal coverage for less cost – achieved by increasing the efficiency and impact of external spend.
- More compliance and client satisfaction at the same time – achieved by helping clients to help themselves.

It is hoped that this book might be useful to all business lawyers, either in-house or in private practice, by either helping those directly supporting a business in-house or providing those supporting a business externally with an understanding of the key drivers to success, which they might then adopt in their own service offerings and proactive initiatives with clients.

## A SALUTARY GLOBALISATION TALE – OF BENTLEYS AND BRAIN SURGERY

Shapes? Behaviours? Statistical data? Life certainly wasn’t always this complicated. Indeed, a pupil barrister in the cloistered surroundings of Essex Court in 1988 could only marvel at the sense of inviolable tradition quietly imposed by the 17th century architecture, the other-worldly stillness in the centre of late 20th century London and the combination of restraint and power that only those born or bred with noblesse oblige could carry. Such a combination was also present in the horseless carriages littering the Chambers’ courtyards; Jaguars, Aston Martins, Range Rovers and Bentleys all mirrored aspects of the barrister’s art: bespoke, powerful, quaintly antiquated, only for the select few who could afford it and proudly so.

The evolution of those motorised institutions perfectly mirrors the impact of economic evolution on the institution of the legal profession, albeit at a more rapid pace but with equal resistance from the traditional lawyer and client. Looking around now, all of those quintessentially British archetypes are owned and controlled by financial capital and nationals from India (Jaguar and Range Rover), Kuwait (Aston Martin) and Germany (Bentley).

The Bentley is a particularly acute example. A vehicle with a direct lineage from the 1918 Sopwith Camel, being stubbornly produced and assembled in some substantial part by hand craftsmen who, in turn, would pass their skills on to successive generations. Even as pretenders with lesser heritage began producing faster, more efficient cars at lower cost, Bentley could always rely on its hereditary customer base to maintain its own noblesse oblige despite its anachronistic deficiencies. After all, this was a bespoke and rare art, not a “product”. Talk of “Six Sigma”, “lean chain supply” and “brand diversity” would not have been received as sacrilegious but as simply somewhere between incomprehensible and inapplicable.

Then in 1998 amid financial losses, the single economic imperative of the modern world reached as far as this inviolable

institution, when the Bentley business was sold to Volkswagen (German for “People’s Car”) for £430 million by another noble British institution, the venerable Vickers plc, once wartime manufacturers of armaments, bombers and naval vessels. Leaving aside the Anglo-German cultural symbolism and the odd xenophobic protest, this transaction was hugely significant for its simple dilution of generations of heritage into one basic economic reality: the sale of a commodity.

One might imagine the conversation during the first meeting between the noblesse oblige and the new owners as follows:

“As you know (dear boy), Bentley is a bespoke item, it is a gentleman’s pursuit, encompassing rare skills which are bred and passed on rather than replicated and produced by ordinary folk; this mystique and unique character places it apart from the common calculus of commerce.”

“Well actually, you know what? In this world, “Bentley”™ is a brand, a collection of various intellectual property rights, goodwill and reputation. I didn’t mention technology as your physical product is a bit dated, so let’s leave aside those “items” you make for a minute. Instead, we reckon we could attach the Bentley brand onto a really, really big Volkswagen, produced with the same technology as the rest of our Golfs, Beetles and Phaetons and make a massive return on the capital we have just invested by selling it to hundreds more customers such as soccer players, rappers and Hollywood stars.”

This simplistic imagining of the transformation of a British institution into a German brand is shorthand for the impact of international capital market globalisation. Capital funds flow from China, Russia, the Middle East and so on, seeking only one thing: the highest return. The investor seeks to maximise this single, modern economic imperative: return on invested capital (ROIC).

The globalised search for the highest ROIC drives and is served by two, linked phenomena: commoditisation and homogenisation.

The Bentley heritage and its bespoke art became commodities to be reproduced in the form of a hugely rebodied and augmented VW Phaeton, the original platform for the Bentley Continental GT. VW could take advantage of the economies of scale by using as many of its mass-produced components as acceptable for its up-market Bentley. As a commodity, its German owners sought to use the IP and reputational value alone, transferring the brand to a VW product or, alternatively, a Breitling watch and a \$20,000 Windows laptop.

Other successful business models such as the Dell direct, build-to-order model were highly dependent on the commoditisation of IT technology to maximise its ROIC. Simply put, the more commonly available, mass-produced and ubiquitous the technology components became, the cheaper the end product became to produce and thus - provided there was enough quality, invention and distinctiveness in the sum of the parts (the whole PC) - the end price could remain relatively high compared to its constituent components. Alternatively, Dell could use a continual decline in commoditised component pricing to reduce its own end price, taking advantage of the fact that the components themselves were acquired only after a consumer had provided the working capital (the nirvana of a negative cash-conversion cycle) and later than its competitors.

We see innumerable examples of globalisation driving this commoditisation through harmonisation and homogenisation. Increasingly global brands; identical Main Streets; the internationalisation of big movie blockbusters so as to appeal to (and equally so as not to offend) as many nationalities, cultures, traditions and demographics as possible; the spread and impact of MTV. In all of these examples, the intended objective is to create larger addressable markets and therefore higher potential ROIC for any harmonised, homogenised commodity.

As lawyers we see EU convergence, the extra-territorial application of the Foreign Corrupt Practices Act, the direct and indirect application of Sarbanes Oxley, and the harmonisation of international product standards following the same trend to facilitate the free movement of capital and goods. Similarly, accountants see the spread of International Financial Reporting Standards to the same aim.

The pervasive reach of the internet means that consumers may compare products and shop across time zones, read newspapers from any country at any time without moving (or, indeed, while moving with the benefit of a handheld device such as an iPhone or Blackberry); newspapers which themselves are being updated on a real-time basis rather than in a once-a-day print cycle. The gradual reduction in the cost of international travel over the past two decades has meant that we are used to seeking out compatible, homogenised products and services in many

different countries, whether it is an appropriate mains adaptor, Starbucks or our domestic TV channels in a foreign hotel.

Soccer fans in the UK have become used to concerning themselves with the economic and political stability of the Russian oil markets, a corruption trial in Thailand or the global branding strategies of the state of Dubai when it comes to predicting their favourite team's chances of success on the soccer pitch itself. Their owners, investors and spending power - or those of their rivals - are driven by international capital markets. The Vatican modernises and synthesises its messages to compete for attention with this week's dancing kitten video on YouTube. [www.youtube.com/vatican](http://www.youtube.com/vatican) really does exist, albeit without dancing kittens.

Globalisation has become the 21st century imperative and despite the intermittent calls for protectionism - particularly during times of economic hardship - this appears to be a one-way process of socio-economic evolution.

Hence the question for us Bentley-lawyers is not whether our own bespoke art, rare craft and precious heritage will be impacted by globalisation, any more than we can claim to be immune from the other global phenomenon of climate change. If our client base operates in any open market then so do we. Lawyers who perhaps do not realise or accept this yet may be brought into this century by the acquisition of one of their cherished clients or client's assets by Chinese, Russian, Japanese or Middle Eastern capital. It would be reasonable to assume that almost no one outside of the US domestic finance community knew what a "sub-prime mortgage market" was in 2007 and yet very few people were not subsequently affected by it, directly or indirectly. As with the most cloistered of lawyers, we just did not know it at the time.

The most telling sign of commoditisation for lawyers at this time is where a client says to lawyer "I need to cut my legal spend by [fill in random, rounded-number here] %." At that point, the lawyer is being told "Whatever it is you produce, continue doing so in substance but at a reduced, across-the-board cost unrelated to the value or quality of the components it contains; just reduce the total by X%". This is the realm of office stationery, bottled water and travel expenses: we expect the net result to be by and large the same but just at a percentage lower cost; there's some interchangeability possible, some excess to cut out, we just need to get our basic photocopying, quench our thirst, get from A to B and deal with the same legal issues we always have. Welcome to commoditisation. To contrast this in the extreme, which one of us would demand an across-the-board percentage reduction in cost with our brain surgeon? In advance?

The only question us lawyers have is how we address our legal services to meet the overarching imperative of globalisation and its concomitant demand of commoditisation for a return on invested capital.