



# Teaching Entrepreneurship to the Next Generation of Lawyers

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# The Entrepreneurship Landscape

- What drives innovation?
- What makes proposed solutions effective and sufficient?
- Why this client? What makes the potential client the right source of the innovative solution?
- What makes the lawyer (and other team members) prepared to deliver the support needed?
- What makes effective education for the lawyer and innovator?

# Innovation education pyramid



Team

Prepared  
innovator

Effective,  
sufficient solutions

Conditions for innovation

What makes effective education for the lawyer and innovator?

# Role of the lawyer in entrepreneurship



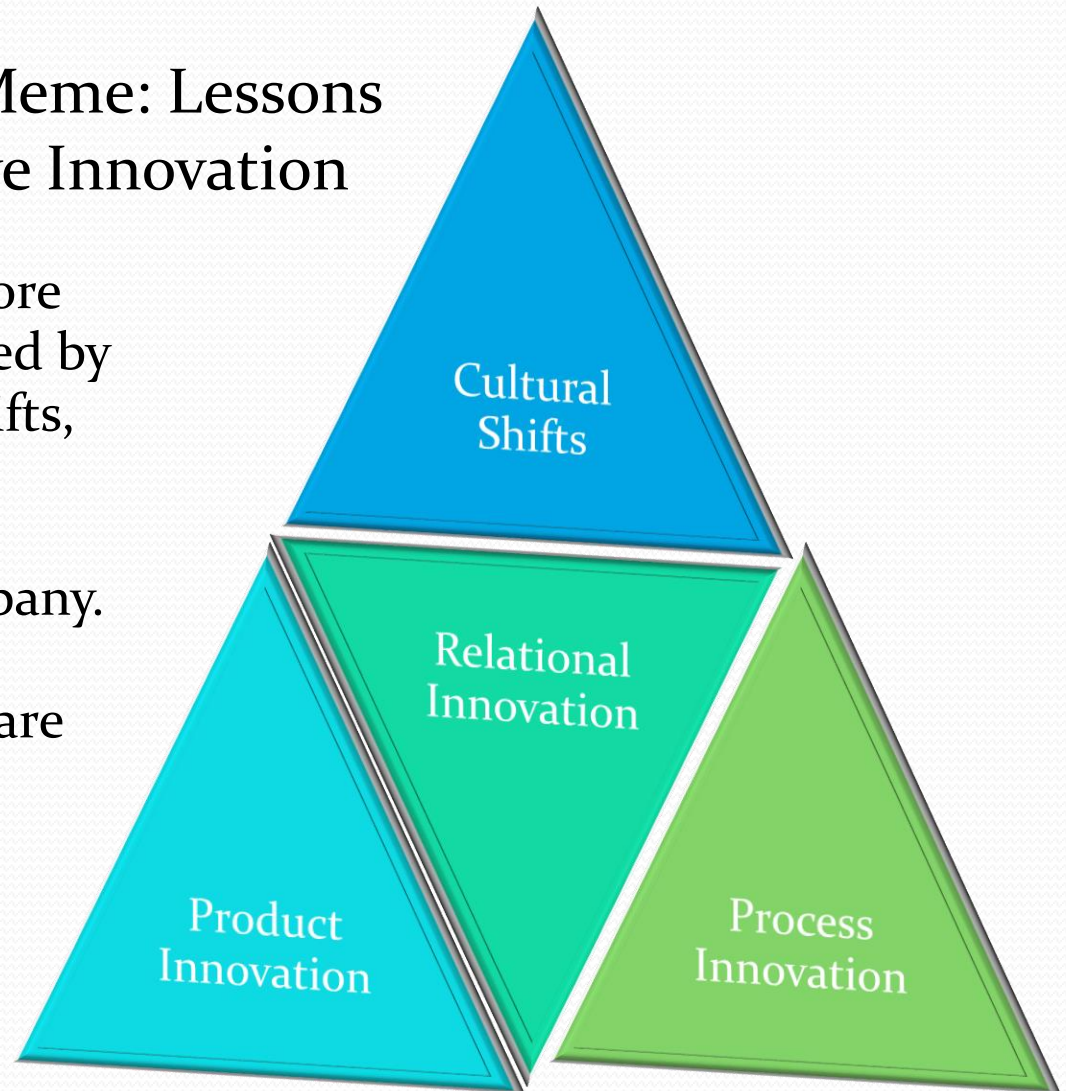
# What drives innovation?

## *From Mortgaging the Meme: Lessons for Financing Disruptive Innovation*

For many companies, their core businesses are being disrupted by globalization, technology shifts, and new competitors.

They must reinvent the company. Even at healthy companies, business model innovations are essential to retaining their competitive positions.

-- BusinessWeek (2006)



# Product Innovation

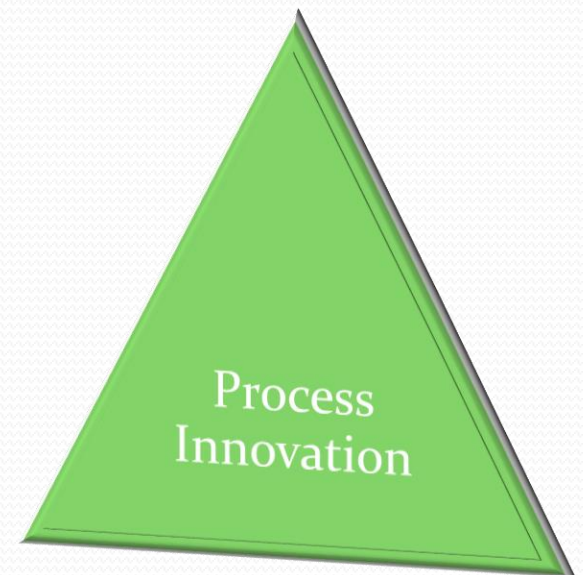
- Distinction between how a product ought to operate and how it actually operates
- Product innovation may range from incremental improvements to profound disruptive innovations
- Examples
  - Digital Cameras
  - Swiffer Mop
  - Single bladed razors for India





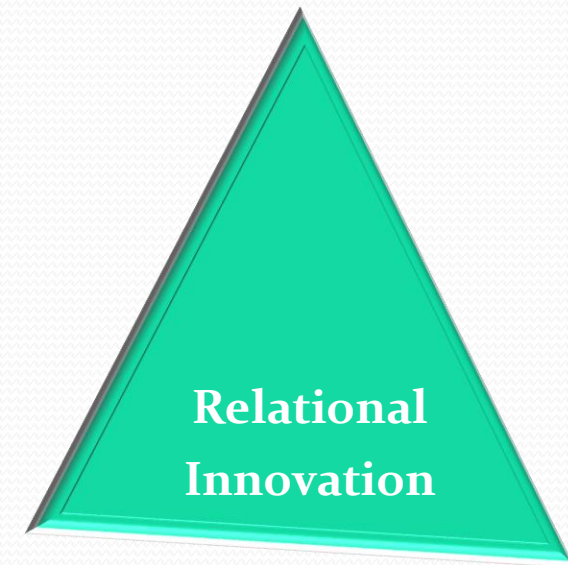
# Process Innovation

- Process innovation emphasizes improvement in the way something is accomplished
- Placement of machines on the manufacturing floor or patentable innovations
- Globalization and technology change cost of sourcing and operating goods and services
- Examples
  - Henry Ford's Assembly Line
  - Overseas call centers
  - Amazon's delivery centers
  - Just-in-time part reordering



# Relational Innovation

- Reintermediation replacing old relationships
  - a form of process innovation involving change of external relations between a company and its process chain or with its customers
  - change in social (subjective) relevance
  - social media and disintermediation demonstrate it is a category unto itself
- Examples
  - Desktop computers
    - Microsoft
  - Cell phones
    - Apple & iTunes
  - Retail
    - Amazon
  - Cloud services
    - Google
  - Advertising
    - Facebook





# Cultural Shifts

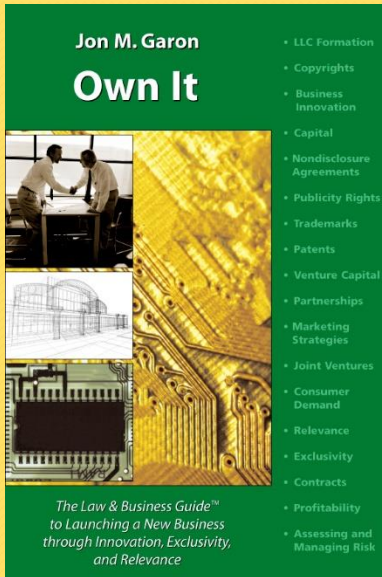
- Peter Drucker: “demographic change,” “perception/meaning change,” and “new knowledge”
- Cultural shifts are the externalities that may drive the “changes in industry structure or market structure that catch everyone unawares.”
- Also includes changes to regulations and business rules
- Examples
  - Globalization and population changes
    - Aging of America
    - Growth of Hispanic America
  - Decline of organized labor
  - Deregulation of industries
  - September 11<sup>th</sup> 2001 attacks



# What makes proposed solutions sufficient?

- ✓ **Relevant** – objective or subjective need satisfied
- ✓ **Essential** – worth the transaction costs associated with change
- ✓ **Valuable** – cheaper, better, and/or quicker for buyer
- ✓ **Deliverable** – consistently fulfills promise to buyer
- ✓ **Exclusive** – provides a unique solution that cannot be provided by existing suppliers (*e.g.*, IP rights; know-how)
- ✓ **Sustainable** – customer can rely on new solution over time

# Objective and Social (Subjective) Relevance



## • Objective Relevance

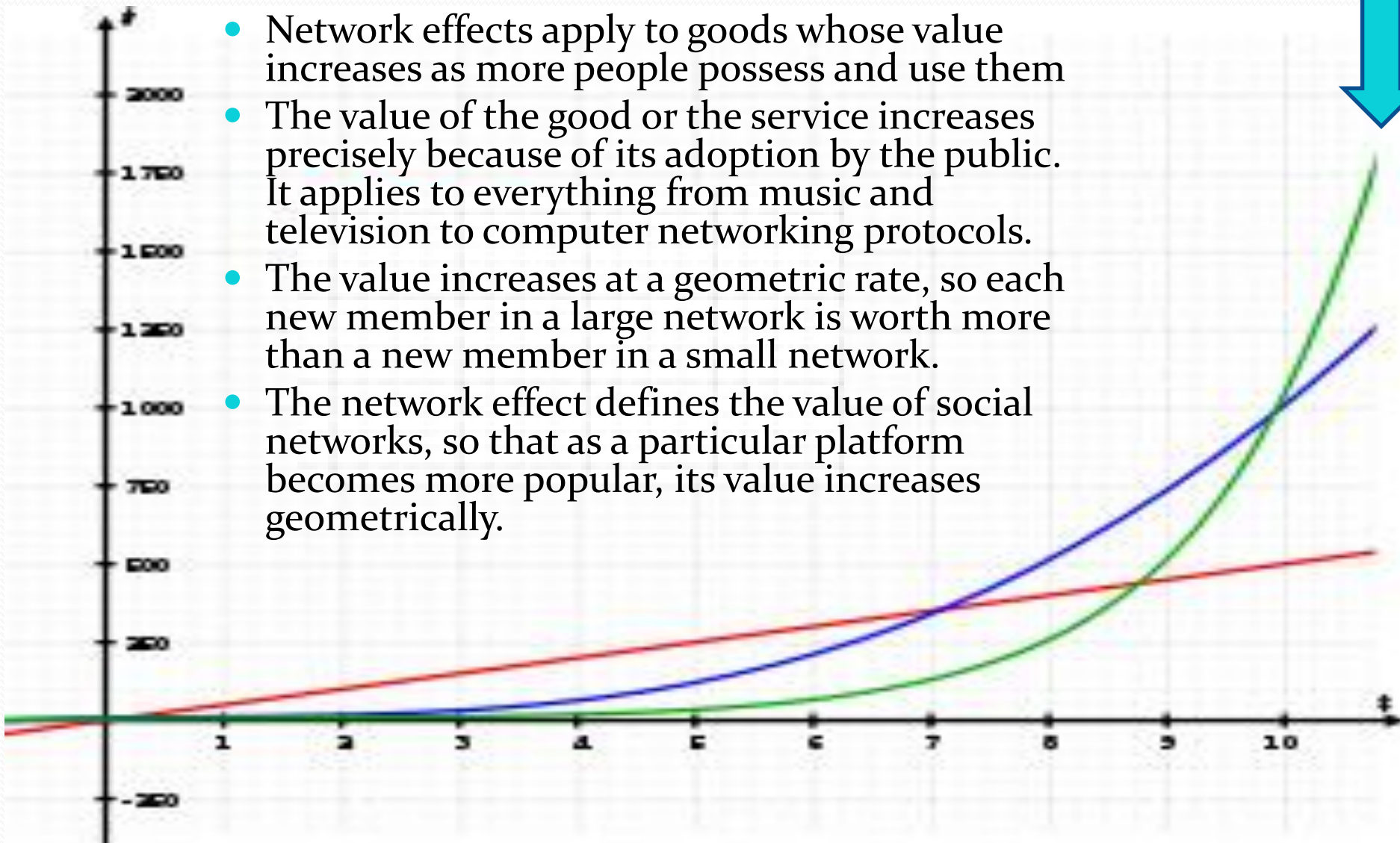
- Objectively relevant items are items that fulfill basic personal or business needs
  - Personal - air, water, food, shelter and clothing
  - Manufacturing – electricity, phones, labor, materials

## • Social (Subjective) Relevance

- Popular luxuries – such as tickets to a “hot” music concert or playoff event in sports- are successful because they are perceived as highly relevant
- Top software games, extra features on cell phones
- Psychology suggests some social relevance is an objective need
- **Market behavior promotes relevance not based on any hierarchy of needs, but of wants and identity**
- **All new markets are created by disruption but fueled by social relevance**
- **All organizations are driven by social relevance to resist change**

# Relevance through network effects

- Network effects apply to goods whose value increases as more people possess and use them
- The value of the good or the service increases precisely because of its adoption by the public. It applies to everything from music and television to computer networking protocols.
- The value increases at a geometric rate, so each new member in a large network is worth more than a new member in a small network.
- The network effect defines the value of social networks, so that as a particular platform becomes more popular, its value increases geometrically.



# What makes the successful client the right source of the innovative solution?

- ☑ Commitment to solution
- ☑ Exclusive ownership of solution
  - Patents
  - Trade secrets
  - Copyright
  - publicity rights
  - Trademarks
- ☑ Owns or can obtain needed resources
  - Financing
  - Materials
  - Skills/Human Capital
  - Technology
  - Supply chain
  - Etc.

# What makes the potential client the right source of the innovative solution?

- ☑ Knowledge, skill, and temperament
  - Understand operational requirements
  - Understand financial requirements
  - Provide team leadership (or partner with it)
  - Understand risk strategies (or partner for them)



# What makes the **lawyer** (our focus) prepared to deliver the support needed?

- Lawyers can help secure resources for entrepreneurs:
  - ☑ Exclusive ownership of solution (patents, trade secrets, copyright, publicity rights, trademarks)
  - ☑ Structuring of financing, including corporate formation, funding and tax strategies (VC must bring money)
  - ☑ Employment law for skills and human resources
  - ☑ Licensing and commercial practice for technology, supply chain, etc.
  - ☑ Risk assessment
- Beyond fees, lawyer should select clients based on
  - ☑ Commitment to solution
  - ☑ Knowledge, skill, and temperament

# Rethinking role from traditional business lawyer to modern entrepreneurial lawyer

- **Traditional business lawyers do weddings, not marriages.**
  - Technical lawyering is foundational for business lawyers -- but it is a commoditized service for clients
  - Lawyers tend to overstate their value: **baking soda gets no awards**
  - Lawyers handle matters as client initiates them
  - Lawyers do what is asked, rather than what is needed
  - Lawyers' fee structures discourage clients and lawyers from more holistic solutions
  - Lawyers focus on the transaction and not the long-term impact of the transaction on the businesses involved
- Modern entrepreneurial lawyers must add value to relationship
  - Understanding what one's client does, how it does it, what are its practical risks (not all possible risks), and how it makes money are fundamental to problem solving
  - Without knowing a client's goals (both short- and long-term) and strategy, it is virtually impossible to give relevant or meaningful advice

# Educating the entrepreneurial lawyer

- *Entrepreneurial Lawyers Become Part of Their Client's Team*
  - Outside advisors such as consultants, bankers, accountants, or lawyers are rarely viewed as part of the team. That creates a barrier between the client and the advisor.
  - Getting a client to treat the lawyer like an actual team member facilitates communication which leads to better and more-candid advice. The lawyer's role is to be an advisor.
- *Entrepreneurial Lawyers Are Creative*
  - The best lawyers are in fact strategists.
  - Strict focus on the law and an adherence to organization and process sometimes make clients think their lawyers are rigid and narrow minded (e.g., the “deal killer” or “Dr. No”)
  - Great business lawyers do not let their lawyerly training confine their thinking.

# What makes effective education for the lawyer and innovator?

- *Personal disclosure: I doubt the ‘entrepreneur’ is a special case.*
  - *In distinguishing from small business owners, one paper explained that “entrepreneurs are characterized by innovative behavior with the main goal of obtaining profit and growth.”*
  - *They aren’t born to it*
  - *It is a problem-solving process that can be taught*
  - *It is less about risk tolerance than opportunity costs – when does one give up a good job for a high-risk opportunity*
  - *Only grit and tenacity are traits, and these often depend on circumstances – right time for the commitment*
- *Business school debate focuses on theory vs. how to training*
  - *Students need both*
  - *War stories assume entrepreneurs are both reflective and correct; most aren’t either*

# Entrepreneurship boot-camp curriculum

from **Sharon and Mitchell Berger Entrepreneurial Law Clinic**

- Ideation
- Business Planning
- Financial Planning and Market Analysis
- Patents and Patentability
- Non-patent based Intellectual Property
- Differentiated Products, Commodities, and Research Re-Assessment
- Business Legal Structures and Ownership Models, with Tax Implications
- Design, Fabrication, Production, and Delivery
- Business Funding and Finance: Angels, VCs, and Lenders
- Risk and Process Management

# Best teaching methods

## Case Studies

- Well known success stories
  - Apple
  - Amazon
- Well known failures
  - Apple
  - Amazon
- Historical stories
  - Wright Bros
  - IBM and PCs
- Examples of smaller innovations from various industries

## Simulations

- Give student teams a focused problem to let them identify solutions
- Simulate each step of the business process, including legal, financial, and operational steps
- Focus students on assess own success and competitor success
- Battle bots; robotics competition; etc.



# Examples for the entrepreneurial lawyer

- Attributes of effective entrepreneurial lawyers go beyond deal maker
- Understand
  - Value of public and private market information
  - Needs of client and opposing parties
  - Long-term strategies and role of transaction, etc.
- Risk Strategy goes beyond deal to the long-term goals and positioning of the client
  - Marty Lipton's "poison pill"
  - Crocs' IP strategy

# Case Study: the High-Risk Client





# Croc: the High-Risk Client

- **Life Cycle**

- Angel funding or initial venture capital to launch
- Private growth phase, in which the product becomes popular and sales dramatically increase.
- This usually is when the first knockoffs begin to appear.
- Initial public offering (IPO); buyout; or mature, private operation

- **Protections**

- Protect market share for the original product
- Expand product line



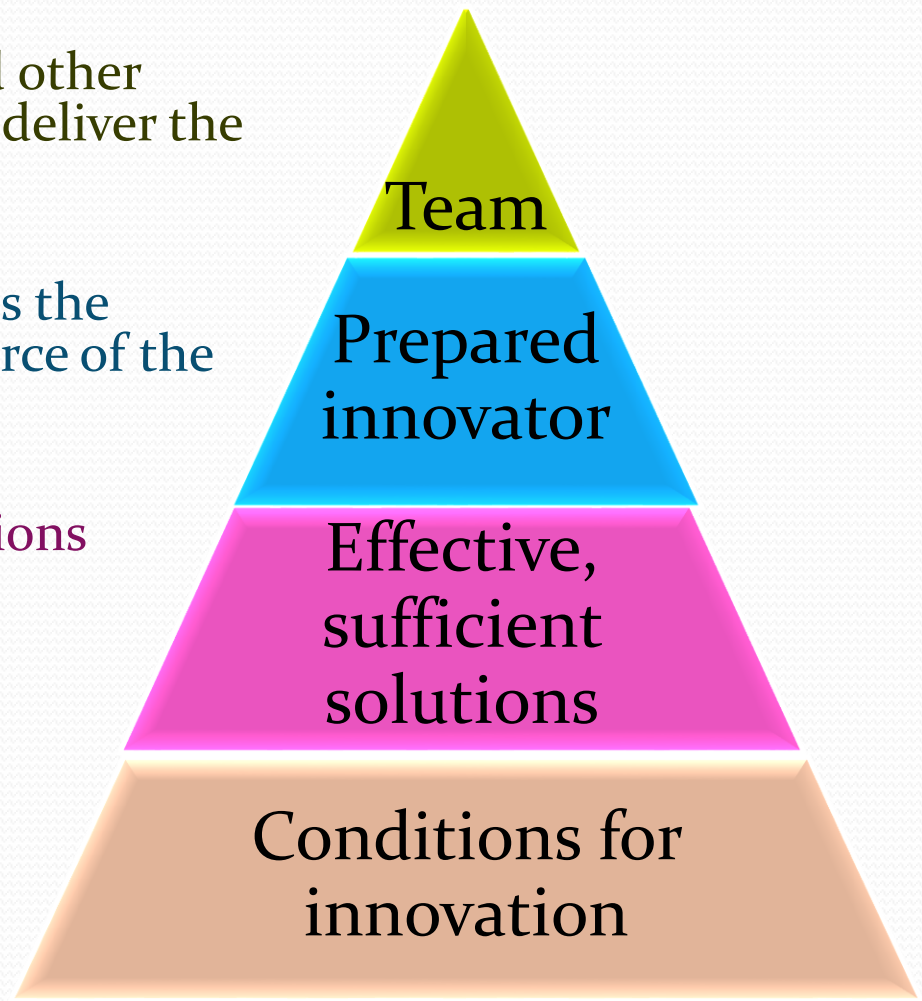
# What Croc Failed to Secure

- Assets to assess
  - Utility Patents
  - Design Patents
  - Copyrighted Designs
  - Trade Secrets
  - Trademarks
  - Ad campaigns using publicity rights
- Crocs shoe design was a slight modification of a preexisting and unprotected clog design
- Crocs able to get utility patent protection for a slight modification, but the scope of that protection too narrow -- Crocs has been unsuccessful in preventing knockoffs by patent enforcement
- Crocs was not the original manufacturer of the shoe; the company was one of many footwear companies that bought the shoe from a manufacturer that Crocs later purchased outright in 2004
- Manufacturing process replicated by its competitors, so no originality

# Summary: Innovation education

**Effective education for the lawyer and innovator: Explore entrepreneurship as a problem-solving experience**

- What makes the lawyer (and other team members) prepared to deliver the support needed?
- Why this client? What makes the potential client the right source of the innovative solution?
- What makes proposed solutions effective and sufficient?
- What drives innovation?





# Teaching Entrepreneurship to the Next Generation of Lawyers

Thank you!

Questions



# The Nature of Disruptive Innovation

## Additional Lessons on Entrepreneurship

The art of progress is to preserve order amid change, and to preserve change amid order. Life refuses to be embalmed alive. The more prolonged the halt in some unrelieved system of order, the greater the crash of the dead society.

- Alfred North Whitehead

PROCESS AND REALITY (1929)

The following reference slides can be used  
as lessons on entrepreneurship

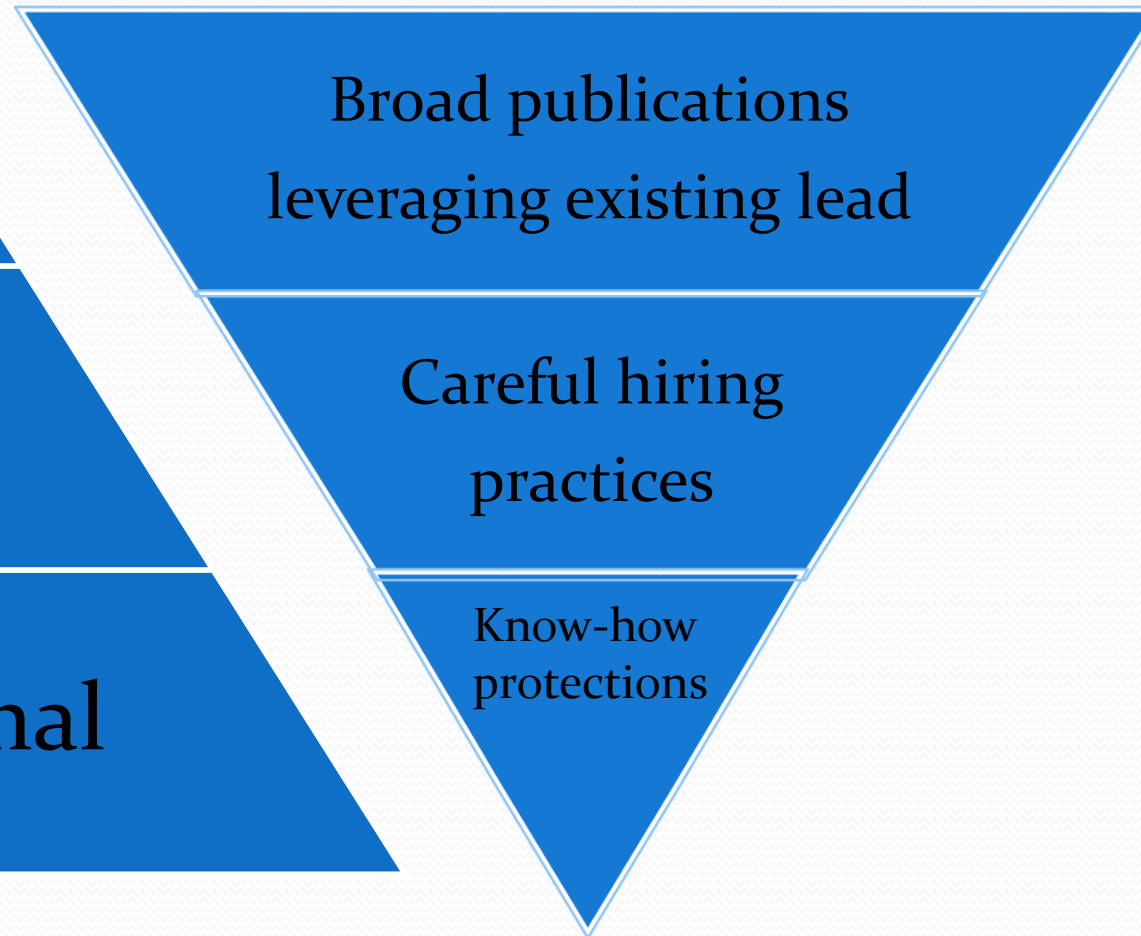
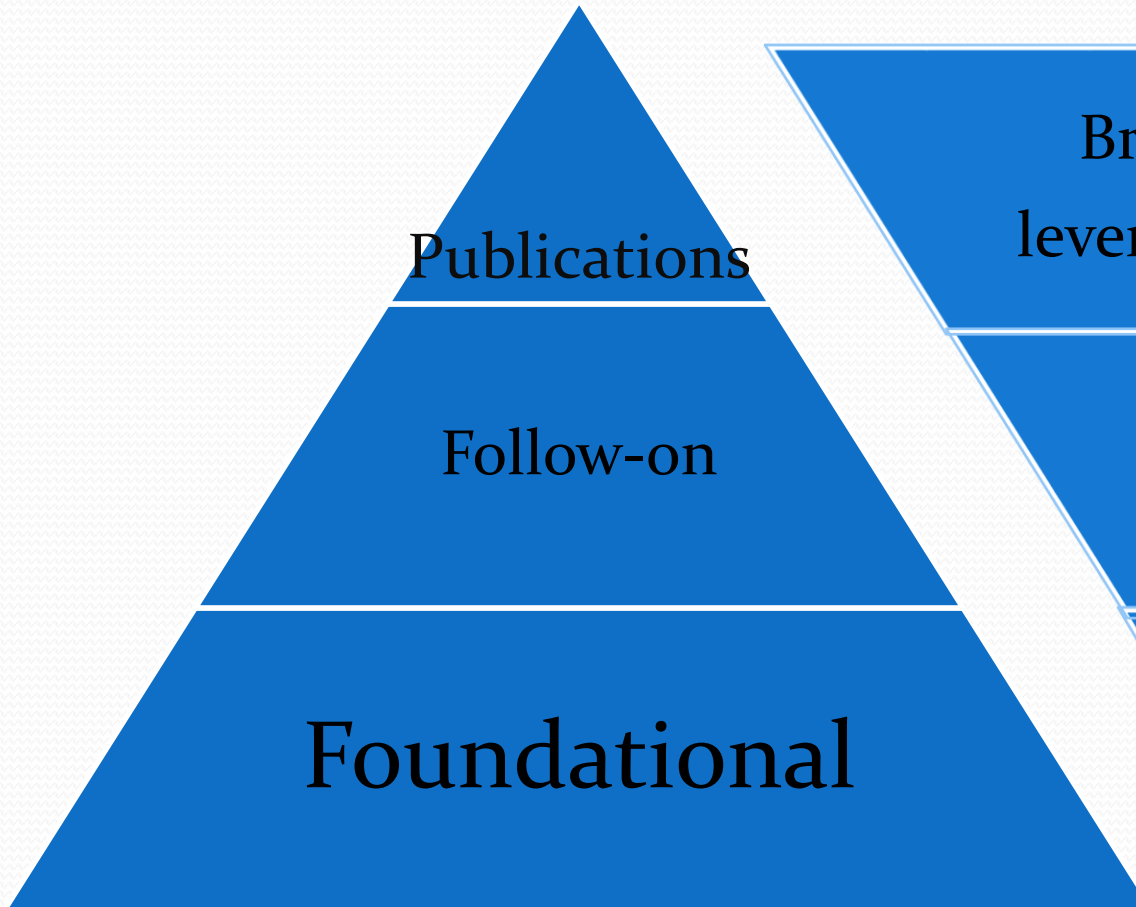
# The Investor's Strategies

- Capturing the Meme:
  - Patents, Trademarks and Traditional Intangibles
- Mediating the Relationships:
  - Creating Affinity and Valuing Social Relevance
- Lateral Analysis to Explore New Markets:
  - The value resides in the number of markets the meme can affect

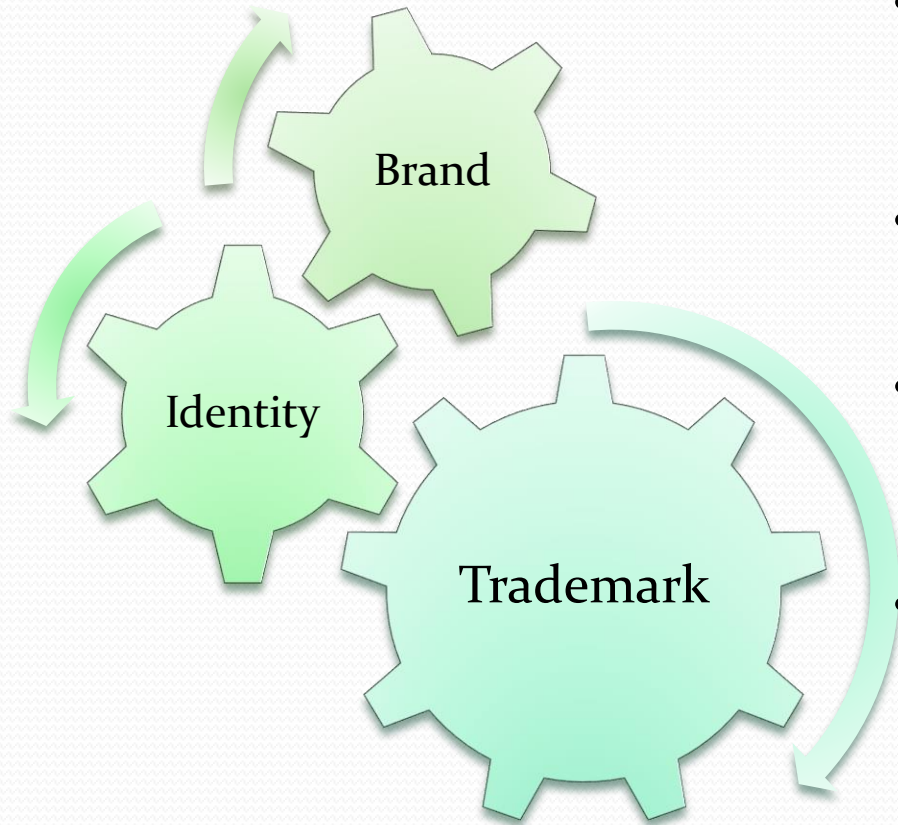
# Traditional Intellectual Property

Patents

Trade Secrets



# Trademarks and Identity Rights



- Trademarks and publicity rights focus on the source of goods or services, protecting the public from confusion regarding the source.
- Trademarks and identity rights can be used to manufacture good will for a company
- Identity rights create a similar opportunity, tying the reputation of a well-known athlete, movie star or public figure to a brand
- Strategic alliances between celebrities and owners can create lower cost launches of companies

# Mediating the Relationships

- Creating Affinity and Valuing Social Relevance
  - Affinity: The soft controls that keep a customer loyal (Rewards cards, Interoperability, Long-term user discounts)
  - Social Relevance: Operating to reinforce the self-identity values of the customer (what the customer wants – at an emotional level) and within the social network (what all the customer's friends are doing)
- Virtually every product or service consumers select informs their self-image
  - The business must understand the lifestyle choice of their future customers and incorporate those values into the narrative underlying the investment strategy and product development cycle
  - The business must ignore what the existing customer says a product needs, but must never ignore how the customer feels about him/herself in relation to the future product – the narrative matters

# Lateral Analysis to Explore New Markets

- Adopt a be a regular and recurring process of looking to see what additional fields of endeavor, product lines, and other opportunities might exist to extrapolate the intangibles owned and affinity held to that new market
- The process should be a very open one – until the discussion of actual investment and the opportunity cost of pursuing one strategy over another becomes factored into the process
- The assessment should explicitly value the social networks of the innovations key targets, but it should separately assess whether there is a second narrative for untapped markets
- The lateral thinking approach to markets must be tied to the contractual structures of the investment relationship.
- Any rights acquired are not limited to a single product or even product line, but instead run with the meme to other products and services



# Strategies to Mitigate Disruption for the Entrenched Enterprise

- Joint ventures to bring the culture of the start-up to the resources of the established company
- Reorganize the soft control to reward innovation and immunize from the existing corporate culture
  - Emphasize challenge and responsibility
  - Build strong incentives to stay with the company (those which are slow to vest but very meaningful)
- Build a company-within-a-company
- Value disruption throughout the leadership

# Strategies to mitigate disruption applicable to any entity

- The use of stepped investment deals to create incentives for each lateral expansion of the innovation into a new market, product unit or division will help promote internal strategies to seek these opportunities.
- The emphasis on social relevance will build an interest in the innovation for the existing client base, if the attributes that motivate the existing customers can be carefully identified and nurtured.
- The creation of a *team* approach to grow a school of thought supporting the innovations, that includes both employees and customers will help establish the keystone memes being developed and helped propel the narrative.
- The emphasis on books, publications and conferences to position the enterprise and building a culture that promotes the narrative.

# Business Life Cycle

- Existence – Lack of cash flow, structure, planning
  - Survival – Mom and Pop, owner driven and defined
  - Success – Professional management; stable or on growth trajectory
  - Take-Off – Resource demanding, delegated and decentralized
  - Resource Maturity – Established enterprise independent of origins
- The Client
  - (1) the owners' management style;
  - (2) the organization's structure;
  - (3) the presence or absence of formal systems in the organization;
  - (4) the organization's strategic goals; and
  - (5) the extent of the owners' involvement in the business