CHAPTER-10

LEGAL ASPECTS

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LEGAL ASPECTS

1. INTRODUCTION

"When a product idea is selected, it should always be considered if government has imposed any restrictions on its production (say environmental issues related with production of chemicals, defense related issues with national security etc.). The selected product idea should not violate any of the government rules and regulations. Once the product is finished, it should reach the customers as quickly as possible. Management has to establish distribution channels for the same. They have to appoint capable distributors, retailers, sales personnel for this function. Thus availability and feasibility of efficient distribution channels is an important consideration in product analysis."

For regulating the conduct of human beings and human actions in dealing with each other in the society, the set of rules are required. However, for achieving the uniformity and security in the application of these rules in the administration of justice, there needs an agency to enforce the same. The government is the agency, which gives recognition to the rules and takes the responsibility to enforce it. These rules, which are enforceable, are termed as ‘Law.’ As defined by Austin “A law is a rule of conduct imposed and enforced by the Sovreign.” The thinker Salmand defines law as “the body of principles recognized and applied by the State in the administration of justice.” The law regulates relations of individuals with others and with the Government. With the law and its enforcement agency, the welfare of the society and its people is possible. However, enactment of law cannot be done in isolation. The law and the legal system of the nation are inseparable from the country’s history, culture and its customs. The law is an enforceable set of rules and regulation that governs the conduct of an individual, group of people or an organization in the society in terms of their relationship with each other and the society as a whole. The legal system in the country provides certain rights, protection and freedom to the individuals and group of people or organizations. It specifies the boundaries for conduct and in the event of violation of these boundaries the penalties in terms of fines or imprisonment are imposed on the defaulters.

The laws across the nations in the world are commonly having the following broad features:

- Provides direction to the conduct of the individuals and organizations
- Preserves the social order by imposing penalties in the event of violation of the law.
- Evolves a common set of enforceable rule for all sections and segments of the society.
- Provides rights and freedom to individual and organizations in dealing with each other, within the legal boundaries.
- Provides guidelines to individuals and organizations to facilitate the economic, political and social exchange process.

The law is dynamic, which changes over the period of time with social, economic and political changes in the country. There may be differences in different societies regarding nature of law and its implementation because of the differences in the value, beliefs and
cultural background of the society. However, it was rightly said by US Supreme Court judge "law embodies the story of nation's development through many centuries".

2. TYPES & LEVELS OF LAW

The different countries across the world follow the different types of laws, which can be broadly categories into the following:

Common Law. The legal system is based on the precedence and the past experience to apply the law. The principles in written or in unwritten forms are used by the courts. The principles are interpreted based on the situation. The USA and Anglo-American countries follow this type of system.

Civil Law. It is more comprehensive and codified form of legal system covering every possible contingency. The courts have major role of applying the law. This type of system is followed in European as well Far East countries. India follows Civil Law System.

Religious Law. This is based on the texts, tenets and precedence depicted in religious books. The rules for all aspects of life are covered in the religious codes. Many Islamic countries follow this system.

The Indian laws can be broadly categorized into the following heads:
* Business and Corporate * Banking and Insurance * Consumer
* Criminal * Environments * Labour
* Tax laws * Family and Inheritance * Property
* Public utilities * National security * Constitutional
* National Heritage and Importance
* Procedural and Administration

In India civil law system, which is a legacy of British Rule is followed. The government enforces these laws through three levels such as Central, State and Local level. The most of the Indian States, in addition to Central Laws, have their own laws to protect consumer and industry. These laws are dealing with food, manufactured goods, financial sectors, cargo transportation and distribution and affect the firm's marketing mix. The local laws are enforced through the municipal corporations or the district authority, which controls the activities of industries in the region. These include entry taxes, registration of establishment, issuing licenses, pollution control, social cleanliness and public health and zoning etc.

3. LAWS & MARKETING

The laws and regulations of the land affect the marketing activities many ways. In the society to satisfy the needs, wants and demands of the individuals the business transactions are taking place and which involves activities such as manufacturing, storage, sales, distribution and finance. To regulate these activities in industry, trade and commerce in the State, the set of laws are required. These laws are called as 'Business Laws.' It includes laws relating to sale of goods, business contracts, company formation, unfair and restrictive trade practices, negotiable instruments, manufacturing, promotion and distribution etc. The business laws protect consumers, protect the businesses from each other and simultaneously protect the interest of the society.

Even the free market economies like USA has the regulations to control the domestic and exports sales activities of the marketers in the interest of the consumers, society, industry
and the country at large. The country may have laws for restricting the certain class of goods leaving or entering the national boundary. For example in India exporting the live animal species is barred. Similarly, it is legally binding to print statutory warning of ‘Smoking is injurious to health’ on packages of all the tobacco products leaving the factory. The Indian law absolutely prohibits selling nuclear arms and narcotic drugs in the market. For the imported goods, the countries across the world have passed the antidumping laws and restricted the imports through quota system. The political and economic system in the country is basically responsible for creating the legal environment in the country. The classic example is liberalization of Indian economy in 1991 resulted into closure of ‘Licensed Raj’ with lot of restrictions on the business activities in the country then. The end of the protectionist policies then resulted into free economy with market orientation as driving force, considering ‘consumer as king’ and competition as guiding force.

The legislation is enforced to maintain the competitive business environment. The certain restrictions on business are must to serve the following purpose:
- Protect the consumers
- Equal access to markets by all competitors
- Protect the interest of the society.

**Protect the Consumers**
The companies with mal-intentions use deceptive sales practices such as misrepresenting the product, misleading advertising, deceive in packaging, manufacture and supply unsafe products for human consumption and use, supply the material with diluted specifications as against the one promised etc. To curb such practices, regulations are enforced through the legislation. The business laws protect the consumer from getting cheated or deceived and provide maximum access to the market.

**Equal Access to the Market by All Competitors**
The free market economy allows the healthy competition amongst the manufacturers or marketers. The competition is the fundamental strength of market driven economy. In the market place some companies are stronger than other and can take more risk and compete in the better way than others. However, the smaller companies because of lack or paucity resources are unable to take more risk and cannot compete with the bigger and stronger players. This results into overpowering of smaller companies by the large firms to dominate the markets. The bigger companies may go in for restrictive trade practices like creating barriers for market entry to smaller firms and further resulting into market domination by them. Hence the business laws need to curb such unfair trade practices and prevent the smaller fish being swallowed by the bigger ones.

**Protect the Interest of the Society**
The products and process of the manufacturers may cause the damage to the society by way of damage to the ecology, product waste generated, health problems to consumers at large. These damages are associated with cost, which the society has to bear by way of taxation to compensate for the same. The business laws protect the interest of the society by way of laws for environmental protection, prohibiting dealing with certain class of products or preventing to carryout certain activities by the industry.
TRANSACTION, A LEGAL RELATIONSHIP

Every marketing transaction involves two parties i.e. buyer and seller and the transaction between these two parties is a legal relationship. Right from the production to the consumption of product or services there are numerous stages involved, wherein the transfer of ownership title of the product takes place from manufacturer to wholesaler to stockiest to retailer and finally to consumer. The buying and selling process put the buyer and seller in contract, entails consideration of legal rights, obligations and available remedies for breach. In case the product is not performing as specified, there is breach of condition of 'performance guarantee.' In case the seller is not attending the faulty equipment within the warranty period, the supplier is at fault of 'deficiency in services' and can be sued in court of law for not fulfilling his obligation. The legal provisions are available for conflict resolution through arbitration, conciliation or mediation.

Figure:

SALES TRANSACTION PROCESS

For the sales transaction to become a valid contract, The Contract Act 1872, lays down the following essential elements.

1. Proposal and acceptance. Quotation from seller and order from buyer for the product or services.
2. Consideration. It is a promise for promise in return. Buyer realizes product or service form supplier for price. Hence, 'Price' is the consideration here.
3. Capacity of parties of contract. The contracting parties should be of age of the majority (18 years) and should have a sound mind (not insane or lunatic).
4. Free Consent. Both the buyer and seller have agreed upon on some terms and condition with regard to product quality, features, price, quantity, usage and output and terms of deliver and payments etc.
5. Documented. Any sales contract should be documented in writing and registered. The enquiry, quotation, order, order acknowledgements in writing and duly signed by buyer and seller are the documents of the sales contract between buyer and seller.
6. An agreement should not be void. An agreement should be enforceable by law. There may be agreement between the buyer and seller on the transaction, but this agreement cannot be called as contract unless it satisfies the above conditions. Hence all agreements are not contract but all contracts are agreement and are enforceable by law.
4. PUBLIC POLICY & DISTRIBUTION DECISIONS

For the most part, companies are legally free to develop whatever channel arrangements suit them. In fact, the laws affecting channels seek to prevent the exclusionary tactics of some companies that might keep another company from using a desired channel. Most channel law deals with the mutual rights and duties of the channel members once they have formed a relationship.

Many producers and wholesalers like to develop exclusive channels for their products. When the seller allows only certain outlets to carry its products, this strategy is called exclusive distribution. When the seller requires that these dealers not handle competitors' products, its strategy is called exclusive dealing. Both parties can benefit from exclusive arrangements: The seller obtains more loyal and dependable outlets, and the dealers obtain a steady source of supply and stronger seller support. But exclusive arrangements also exclude other producers from selling to these dealers. This situation brings exclusive dealing contracts under the scope of the Clayton Act of 1914. They are legal as long as they do not substantially lessen competition or tend to create a monopoly and as long as both parties enter into the agreement voluntarily.

**Exclusive dealing** often includes exclusive territorial agreements. The producer may agree not to sell to other dealers in a given area or the buyer may agree to sell only in its own territory. The first practice is normal under franchise systems as a way to increase dealer enthusiasm and commitment. It is also perfectly legal—a seller has no legal obligation to sell through more outlets than it wishes. The second practice, whereby the producer tries to keep a dealer from selling outside its territory, has become a major legal issue.

Producers of a strong brand sometimes sell it to dealers only if the dealers will take some or all of the rest of the line. This is called full-line forcing. Such **tying agreements** are not necessarily illegal, but they do violate the Clayton Act if they tend to lessen competition substantially. The practice may prevent consumers from freely choosing among competing suppliers of these other brands.

Tying exists when a seller of a value offer that buyers want (the "tying value offer -product"), refuses to sell it unless a second ("tied") value offer (goods and services) is also purchased, or at least is not purchased from anyone other than the seller. A tying agreement in effect stops competing sellers from the opportunity of selling the tied commodity or service to the purchaser.

However, certain types of tying contracts are legal. There have been rulings that if two value offers are made to be used jointly and one will not function properly without the other, a tying agreement is within the law. (Shoes are sold in pairs, and automobiles are sold with tires.) In other cases, if a company's goodwill depends on proper operation of equipment, a service contract may be tied to the sale or lease of the machine.

Finally, producers are free to select their dealers, but their right to terminate dealers is somewhat restricted. In general, sellers can drop dealers "for cause." However, they cannot drop dealers if, for example, the dealers refuse to cooperate in a doubtful legal arrangement, such as **exclusive dealing or tying agreements**.
SALES TERRITORY “Geographical area or type of customers assigned to a sales unit such as salesperson, sales manager, franchisee, distributor, or agent.”

 Territory and Channel Management
 Organizations must be able to efficiently manage changes to sales territories and channels to control the costs of sales, target the right opportunities, and maximize revenue and profits. When sales organizations lack the ability to properly align sales force and distribution channel structures and strategy, they often experience territory infighting, undesired sales behaviors, low sales force productivity, missed opportunities, and unrealized sales potential. Challenges

NATURE OF TERRITORY MANAGEMENT

➢ Sales people are not only responsible for individual customers (account management) but also responsible for a group of accounts (territory management).
➢ It is defined as planning, implementation and control, of sales person’s activities with the goal of realizing the sales and profits potentials of their assigned territories.
➢ Although geographic considerations play a role in setting boundaries, sales territories are primarily based on customer grouping.
➢ Should the sales executive assigned a territory on the basis of the geographically area or customer base?
  • What if a customer has multiple plant location?
  • Or the clients shift its business area?

DISTRIBUTORSHIP AND DEALERSHIP

Distributorships and dealerships are in essence a license to distribute a product. Both dealers and distributors work with a manufacturer to get its goods to the buyer. Both dealers and distributors have a continuing relationship with the licensor of the product, but do not need to incorporate the entire business plan of the licensor into their own business. A dealer differs from a distributor in that a dealer will normally sell only to a retailer or a consumer, while a distributor can sell to a number of dealers or to the general public.

Dealerships and distributorships are known as product franchises. The term "franchise" refers to a variety of business opportunities in which the owner of a product, process, service, system, or name gives permission to a second party to use it in exchange for payment. Franchises are a popular method of starting a new business, and for good reason. Mitchell Stern, author of Buying Your Own Business, notes that the failure rate for new businesses is nearly 40 percent in the first year, compared to less than 5 percent of new franchise failures in that same year.

DISTRIBUTORSHIPS

A distributor is an independent selling agent who has a contract to sell the products of a manufacturer, but is not entitled to use the manufacturer's trade name as part of its trade
name. The contract may also limit the distributor to selling only that company's goods, rather than marketing different products and services from different firms. The manufacturer sells the distributor the products at wholesale prices.

A distributor is also sometimes referred to as a wholesaler. Wholesalers resell the products to dealers. A contract distributor purchases a product from a manufacturer, consolidates it with other products, improves it, and resells the product. A contract distributor differs from a wholesaler in that a wholesaler merely purchases a product, along with other products from different manufacturers, and resells the product with little if any changes. A contract distributor may have a smaller geographic sales area to cover than a wholesaler may have. Generally speaking, the manufacturer of the product does not impose a method of operation on the distributorship. However, the company may provide training to the distributor in order to improve product information and sales techniques. The distributor can also provide the manufacturer with a number of services, in addition to the distribution of the product. These may include product inventory, modification of the product, adding value to the product, fabrication, warranty and servicing of the product, market feedback, consolidation of products and services, and marketing of the product.

DEALERSHIPS
A dealership is sometimes called a retail distributor. It is similar to a distributorship, except that a dealer usually sells only to the public. Unlike other types of franchisees, including distributors, a dealer is not usually restricted to carrying one product line. Most commonly, this type of arrangement is found in the automotive industry.

Just as in other franchise businesses, a prospective dealer will receive a product or service with a proven market, the ability to use trademarked names associated with the products or services, an accounting and inventory system, a marketing plan, and the ability to purchase and advertise in volume. In addition, a dealer may receive the following from the manufacturer: a prospectus covering their rights and responsibilities in the relationship, training and support, site selection criteria/assistance, and quality control information. For quality control across its dealerships, a manufacturer may also require regular onsite inspections of the facility and regular customer and vendor feedback.

BENEFITS OF DEALERSHIPS AND DISTRIBUTORSHIPS
There are differences in operating a distributorship and a dealership. A distributorship normally costs more than a dealership and requires leadership capability and a better knowledge of basic business skills. It will most likely have a larger territory than a dealership and may even extend to more than one location. A dealership tends to be local and requires less start-up capital. A dealer can focus his/her efforts on the management and success of one location. As a dealer, you work closely with a distributor so it pays to nurture that relationship as well. In the end analysis, the distributorship can be more lucrative, but with more effort and investment put into it.

CHALLENGES FOR DEALERSHIPS AND DISTRIBUTORSHIPS
One recent challenge for dealers and distributors are changes in the relationship with the original manufacturer or franchiser. For example, General Motors in the early 1990s wanted to establish 10 percent of their dealerships as factory-owned, according to Robert Ulrich in Modern Tire Dealer. GM was looking to maintain its brand name at its dealerships, many of
which had begun selling more than one car line under their roofs. Existing independent
dealerships were concerned that factory-owned dealerships would receive preferential
treatment in the areas of advertising, service agreements, promotions, and even inventory.
Dealerships viewed their ability to sell more than one brand as an opportunity for cross-
selling into the GM brand when the buyer may have been initially interested in another
brand.

The advent of the Internet has also changed the way that dealerships and
distributorships operate. Dealerships and distributorships emerged as businesses when
manufacturing companies were new and focusing on production, as opposed to distribution.
As production costs diminish with increased pressure for profits, many manufacturing
companies are looking for a bigger piece of the pie. Business-to-business selling has
increased dramatically. Manufacturers have begun selling their products directly to the
public, and the Internet is a relatively inexpensive method of doing so. While this may take
away some sales from the distributor, a manufacturer's web site can also benefit its
distributors. Many manufacturers use the site as a storehouse for information on the
company and its products, providing prospective sellers with needed information that its
distributors cannot deliver to unknown markets or sellers.
While they may engage in direct online sales, it is in the best interest of the manufacturer to
also direct visitors to the distributors themselves, providing another channel of opportunity
for the distributor. In order to improve their chances at getting that sale, a distributor
should establish its own web presence. While online purchasing capabilities are most likely
beyond the resources of a distributor, a site gives the manufacturer something to direct the
customer to and provides another marketing opportunity to the distributor.
Dealerships and distributorships can be great business opportunities for the prospective
entrepreneur. The benefits of established brands, no manufacturing costs, and marketing
and training support from a larger company come at a price, but may mean the difference
between success and failure.

SALES RESTRICTIONS (FTC ACT)

Deceptive Acts or Practices: Advertisement can’t contain an important misrepresentation
or omission that is likely to mislead a reasonable consumer.
Bait and switch: Merchant can’t advertise a product and then “not have any in stock” in an
effort to get customers to buy another product.
Unfair Practices: Obviously, business practices cannot harm a consumer in anyway, but it
must also be fair according to law and social norms (must not violate public policy).
Example: Ticketmaster sued over using “bait and switch” tactics.

CLIENT RESTRICTIONS
- Research any client specific restrictions (building restrictions, advertising etc.)
- Check patents and capabilities of specific products
- Asking clients for any product restrictions will prevent law suits and will help not
  waste time on projects that are not feasible.