

The slide features several decorative light purple circles. One circle is positioned behind the word 'The' in the title. Another circle is behind 'Public'. A third circle is behind 'School'. Below the title, there are two more solid purple circles on the left side. On the right side, there are two circles: one behind 'July 17th 2010' and another behind 'Day 2'.

The Public School Writing a Business Plan

July 17th 2010

Day 2

Contracts & Leases



- West's Business Law
 - 10th Edition on Ebay for ~\$35 to \$40
 - Buy it, Read it !!!
- What is a contract?
- Samples: <http://contracts.onecle.com/>
<http://www.techagreements.com/>

Contracts & Leases



- Elements of a contract
 - Agreement/Offer
 - What's offered and what agreed to
 - Consideration
 - Sufficient consideration.
 - Capacity
 - Both parties have capacity. (not minors/incompetent, etc)
 - Acceptance
 - BOTH parties accept terms
 - Legality
 - Can't agree to do something illegal
 - Form
 - Written / Oral - except for certain things oral is valid.

Contracts / Areas to Watch



- Offers

- Become aware of the distinction of when you're making an offer and when you're not
- Terminating an offer
 - Revocation before acceptance
 - Rejection by offeree
 - Counteroffer - terminate first offer, makes 2nd

Contract Law / Areas to Watch

- Acceptance

- Third party can't substitute in without consent

- Word acceptance carefully.

- "I accept. Please send a written contract." is not the same as "I accept if you send a written contract."

- Material Conditions will be considered Counteroffer.

Contract Law / Areas to Watch

- Consideration

- Adequacy and legally sufficient are two separate things.
- Unless grossly inadequate, you'll be out of luck, even then, you'll fight up hill
- Conditional promises may be considered illusory. (illusion of a promise = unenforceable)
- Past consideration isn't.

Contract Law / Areas to Watch

- Form - What has to be in writing?
 - Contracts involving Land interests
 - Terms greater than 1 year.
 - Contracts for sale of goods over \$500
 - Third Party guarantors.

Legal Considerations



- Try to have meeting of the minds before bringing in the lawyers.
- Lawyers can be good ‘bad cops’
- Verbal Agreements
 - Follow up with Letter of Memorandum
- Advantage to the Drafter
 - Working from your base, not theirs.
 - Put everything in to begin with. Let the other side ‘chip away’
- Standard Contracts are bunk!



Legal Considerations

- Structure it so in case of dispute, they have to take you to court, not you taking them to court.
- Bail Out Clauses
 - Because the future is uncertain!
 - Contingency Clauses
- Beware of too many escape clauses.
- Liquidated Damages

Legal Considerations



- Who's Rules?
 - Different States, different rules
 - Try to keep it in your area
- Loopholes
 - Contingency clause not specifically written in as such.
- “Time is of the Essence”

Leases



- More than just office space
 - Off-Balance Sheet Financing
 - If you own something, it shows up as an asset and a liability
 - If you rent something, it's just an expense
 - Sheltering Assets
 - Operating company Leases from Holding Company, both owned by the same person.
- Term and Options
 - Don't build something good, then get held hostage by the landlord.



Leases

- Escalator Clauses

- Rents increase with Inflation? Do your sales?
- Often used to pass burden to tenant. Why fight a tax increase if the tenant has already agreed to pay it.

- Who does what?

- If the roof leaks, who pays for it?
- Emergency Maintenance?
- The unexpected?

Selecting Locations



- Corporate Location
- Plant Location
- Sales Office Location
- Distribution Center Location
- Retail Store Location
 - Location, Location, Location!!
 - Get what you pay for
 - Do extensive location research
 - Probably the most important decision for retail businesses.

Retail Locations



- Narrowing in on a Site
 - Determine the trade area
 - Community Growth patterns
 - Analyzing Traffic Patterns
 - Pinpoint the Competition
 - Local Support
 - Consumer buying patterns.

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The Concept

- Idea is not a concept.
- Concept is more detailed and concrete.
 - What values to be exchanged
 - To Whom
 - For What
 - How?
 - Where?
 - Made by Whom/ Marketed by Whom/ Financed by Whom?
- Can't convey it? Then it's not good.

Bad Concepts



- It won't work - technically infeasible.
- No real need (white bourbon.)
- Hidden Traps.
- Unfortunate Economics (hydrogen cars?)
- Easily Duplicated
- Obsolescence
- Require 'customer education'
- Require 'changing consumer behavior'
- Inconvenient

Good Concepts

- Great Savings
- Solves Serious Problem
- Convenience
- Fits in with existing world
- Newsworthy
- Clearly Identified Market
- Monopoly
- Big Upside, Low Downside.



Writing the Concept Chapter

- Distinct Function of Product/Service
- Proprietary Aspects (if any)
- Innovative Tech (if any)
- Position in Industry
 - Manufacturer/Retailers/Wholesaler
- Intended Customers
- Customer Benefits
- Market Penetration Methods
- Who will make or supply Product/Service

Competition Section



- Direct Competitors

- List who they are, strengths and weaknesses
- Their share of the market.
- Relevant Details - management, history, financials
- On what basis will you compete?
- What makes your venture superior?
- Are you a mortal threat to them?
- How do you retaliate?

Competition Section



- Indirect Competitors

- Who or what competes indirectly with your product or service

- Emerging Competitors

- What's on the horizon?

- Customer View Point

- In the eyes of the customer how does your product or service compare?
- What is learned by observing the competition's customers?

Competition Section



- Mistakes to Avoid

- Deciding there's no competition
- Failure to identify major known competitors
- Under or overestimating competitor
- Failure to differentiate yourself from comp.
- Lack of strategy for emerging competition.
- Failure to identify comp. market share
- Failure to discuss what you learned by studying your competitor.

Pricing Section



- Price Sheet

- Describe the price for each product or service

- Competition Pricing

- Compare your pricing to competitions

- Gross Margins

- How did you arrive at this number

- Standard Terms

- Cash up front Vs. Net 90; discounts/returns

Pricing Section



- Mistakes to Avoid

- Failure to defend your strategy
- Establishing prices based only on cost
- Setting price too high or too low
- Failure to recognize price sensitive market
- Not allowing for discounts, returns, defects

Customer Analysis



- Market Analysis vs. Customer Identification
- Customer might not be Consumer
 - Customer is the one who pays you
 - Consumer is the one who uses it.
- 4 “Whos” of marketing
 - Who uses the concept?
 - Who makes decision to buy?
 - Who does the actual buying?
 - Who influences the purchase?



Customer Analysis

- The Customer Profile

- Demographics

- Psychographics - (psychological profile)

- Characteristics of Use

- Heavy usage vs light usage

- At home consumption vs. out-and-about

- Professional user vs. amateur



Customer Analysis

- Buying Behavior

- Where

- What

- When

- When to Promote

- When to have Goods or service available

- How

- Why

- Market Factor

Customer Analysis



- Care and Feeding of Customers
 - Relationships are the life blood
 - Not what you know, but who.
 - It takes time for people to trust you and forge relationships.
 - Mutual Benefit - you must help them.
 - Loneliness - People are social (duh!)
 - Good Playmate
 - Make them Feel Important.
 - Service!
 - Employees will reflect the attitude of the boss.



Marketing Plan

- Industry Profile

- Size and Growth of potential Market
- Seasonality Factors
- Industry Trends
- Geographic Locations
- Profit Potential
- Sales Patterns

Marketing Plan

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- Venture's Marketing Plan
 - Customer Profile
 - Customer Needs
 - Product Benefits
 - Market Niche/Segmentation
 - Target Market and Size
 - Market Penetration Methods
 - Cost of Penetrating Market.
 - Advertising & Promotion
 - Packaging & Labeling
 - Service & Warranties



Marketing Plan

- Venture's Marketing Plan
 - Customer Reaction
 - Versus Competition's Marketing
 - Trade Shows/ Conferences (as applicable)
 - Future Markets
 - Internal Systems for identifying leads

Marketing Plan



- Mistakes to Avoid

- Unrealistic Market Share projections
- Failure to demonstrate a clear understanding of your target niches.
- Sales projection higher than capacity to produce.
- Pricing out of line with market needs
- Not properly accessing total market or changes in market
- Being too “universal” at expense of specifics.
- Inadequate sales force training.
- Underestimating cost of market penetration.
- Failure to market your unique aspects.
- Relying on ‘fairness’ of distribution channel
- Selecting largest niche instead of easiest niche.