

The Death of Big Law

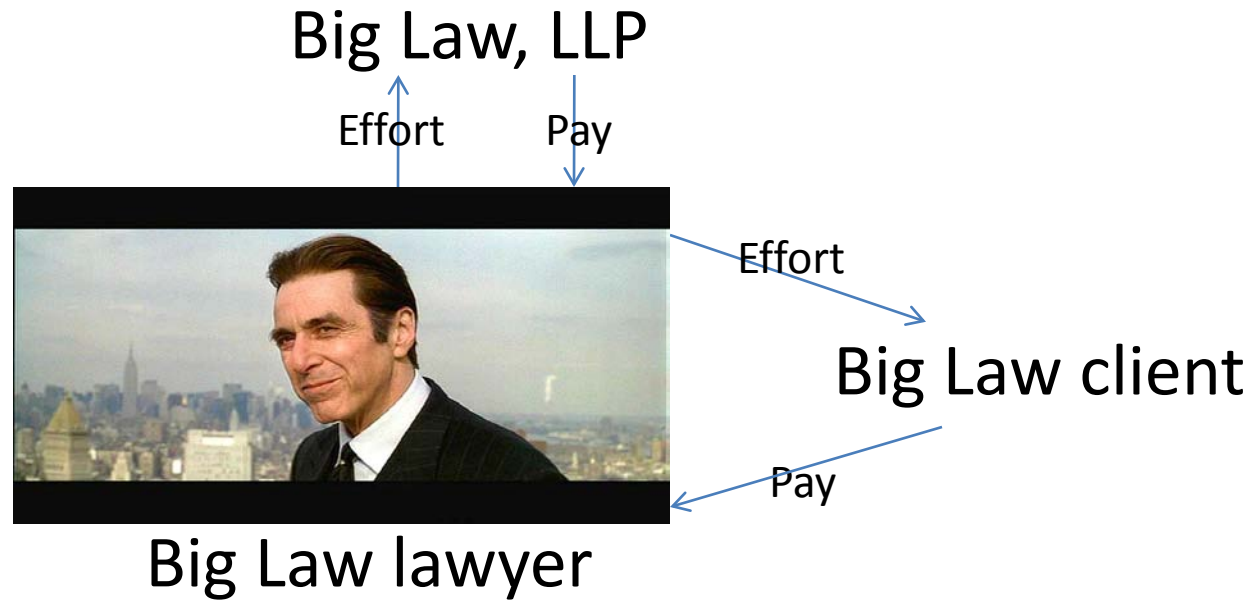
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Law Firm Evolution: Brave New World or Business as Usual?
Georgetown Center for the Study of the Legal Profession
March 22, 2010

Summary

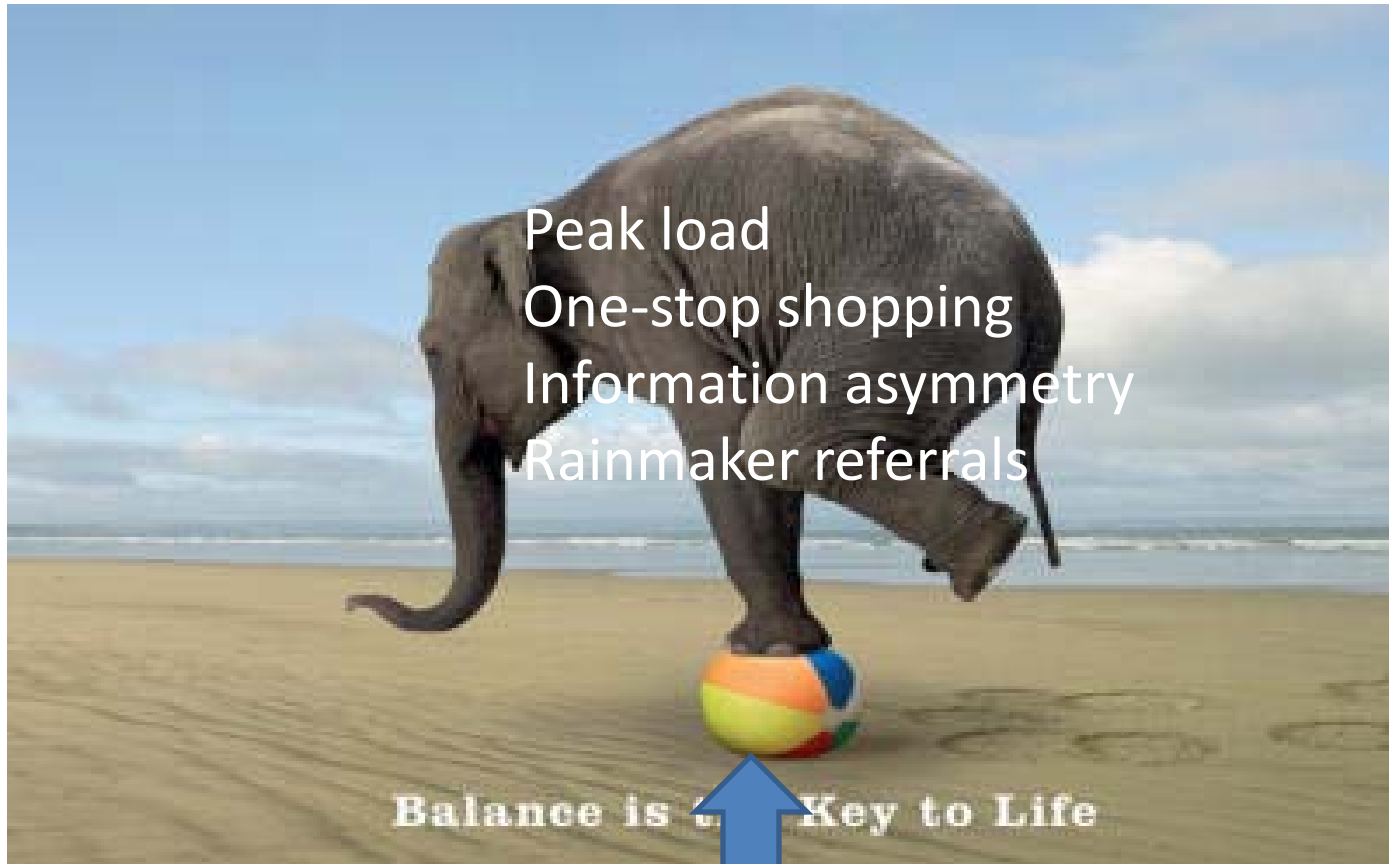
- Why big law firms: reputational capital
- This business model is inherently fragile
- And it's crumbling under pressure
- A new model needs new types of law firm property
- Ethical rules impede this development
- But markets will challenge these rules
- For whom the bell tolls

Reputational capital and the firm



- The firm's reputation
 - Bonds firm to clients
 - Produces profits, which binds partners to firm
- Created by monitoring, mentoring, screening
- Lawyers need incentive to work for firm rather than client
- Where's the payoff?
- The prisoners dilemma: what are the other lawyers doing?

Big Law's business model

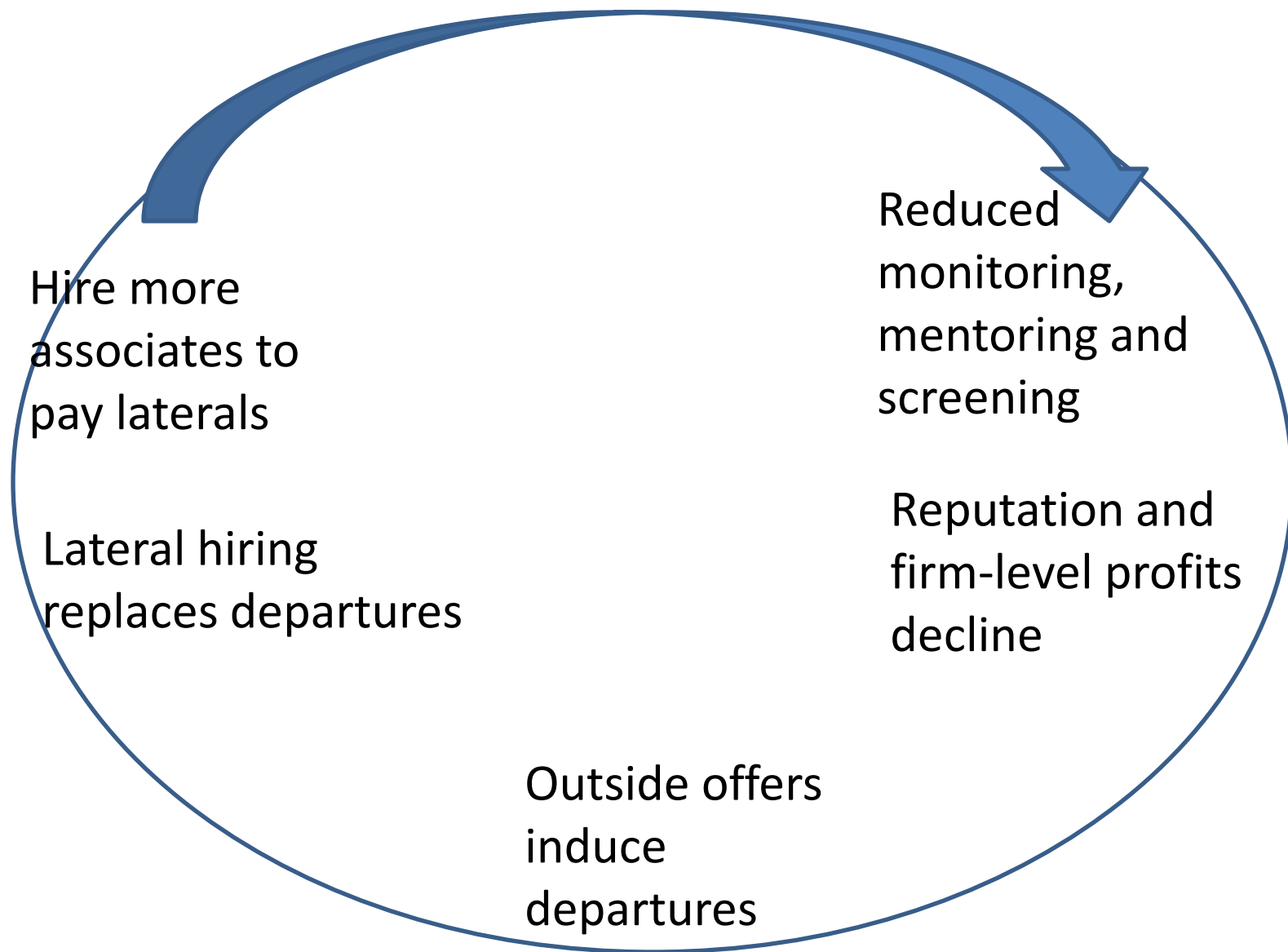


Balance is the Key to Life

Reputation

Equal or lockstep compensation
"Up-or-out" tournament
Vicarious liability

Big Law's fragile equilibrium



Pressures on the equilibrium

- **Short term economic climate** (client demand)
- **Rise of in-house counsel** (information asymmetry)
- **Technology and markets** (reducing size advantage)
- **Increased leverage** (reducing monitoring and bond)
- **Changing clientele** (and peak load demand)
- **Limited liability** (reducing monitoring and bond)
- **Global competition** (client demand)
- **De-professionalization** (client demand)
- **Decline of hourly billing** (effect of reduced bond, reduces profitability)

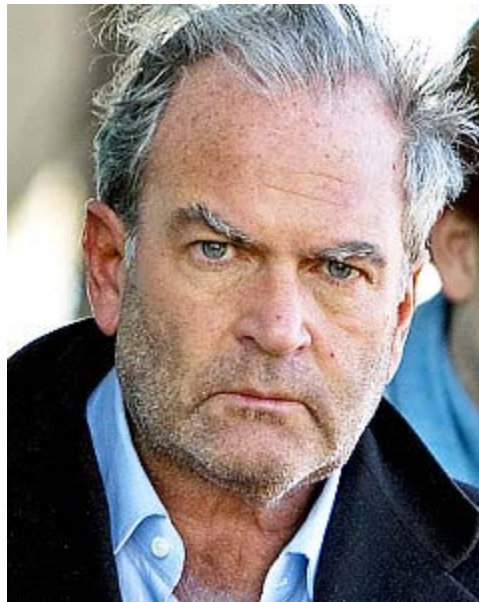
Unraveling

Alzheimer, Brobeck, Wolf Block, Thacher, etc.

- When reputational capital dissipates:
 - Partners leave because profits can't bind them
 - Group exits reflect personal networks
 - Dying firms try to hire profits
 - Undiversified firms are exposed to sector shocks
 - Short term bank debt can trigger quick collapse

Devolution

- Associates can't generate firm profits →
 - Horizontal (all partner) firms
 - Or vertical (one-partner) firms



Toward the new law firm

- Firms want outside equity capital because
 - Lawyers are inefficient risk-bearers
 - Revenues and expenses don't match
 - For incentive compensation and promotion
- But the supply of outside equity capital
 - Depends on firms' risk-adjusted ROI
 - Which depends on their business model →

Law practice byproducts

- Publications
- Legal ideas or processes
 - Poison pills
 - Litigation strategy kits
- Legal service technologies
- Research and development
 - Producing property vs. work for fees
 - Explaining legal puzzles: e.g., sticky contracts
 - Property rights?

Governing outside-owned law firms

Managers (lawyers?)

Society

Clients

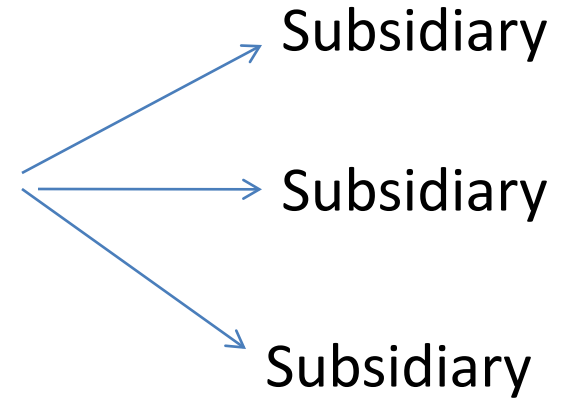
Owners

- Reconciling multiple duties
 - Independent directors?
 - Fiduciary duties?
 - Uncorporations/L3Cs?
- Does *public* ownership make a difference?

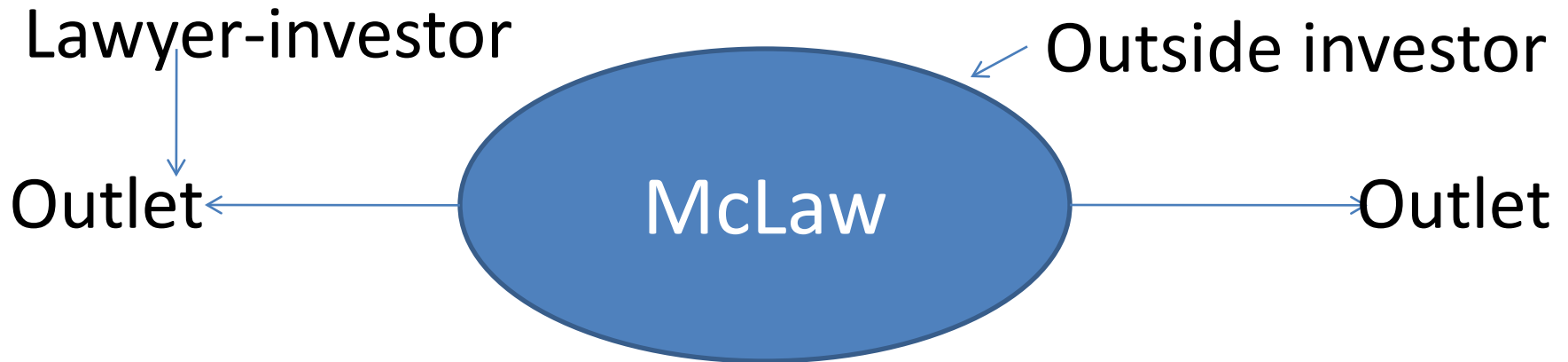


Partial integration

Holding company



Franchising: renting reputation



Joint venture

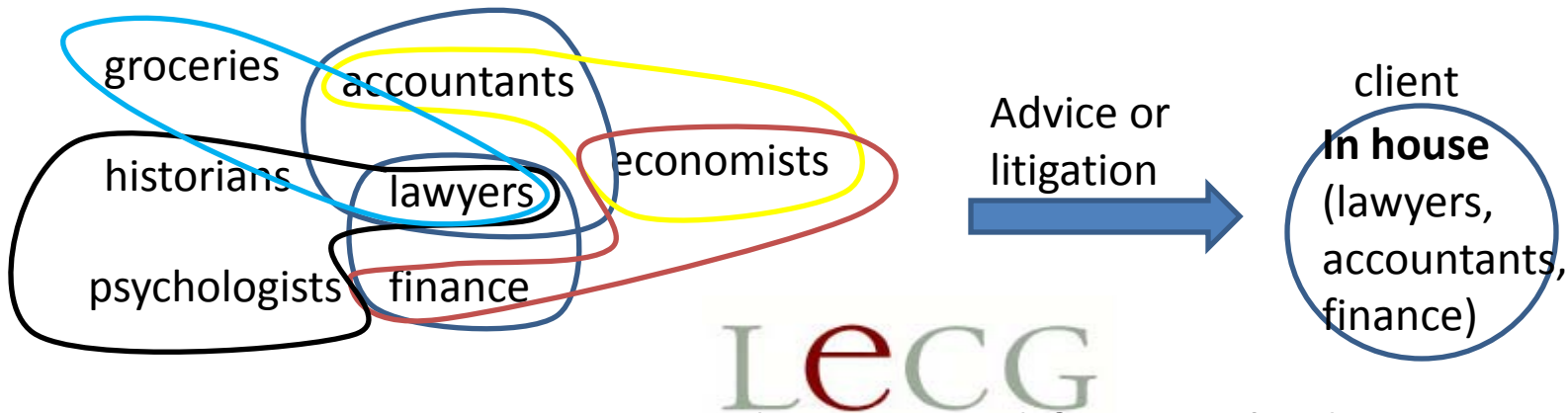


Beyond law firms

- Multidisciplinary
- Retailing
- In-house: make or buy?
- The “law firms” of the future may not be law firms .

accenture

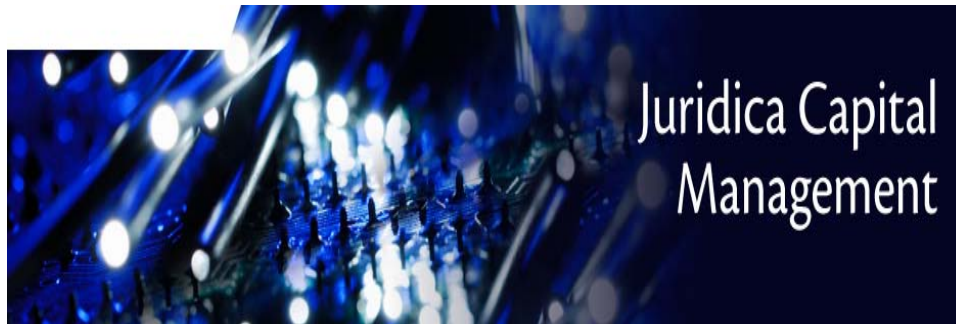
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Expert testimony, strategic advisory and financial advisory services, electronic discovery, assessment of data risk associated with litigation, regulatory, market, economic, and operational conditions

Beyond clients

Litigation finance



Financing contingent fee law firms, corporate legal departments, business claim stakeholders, intellectual property owners

Financial analysis

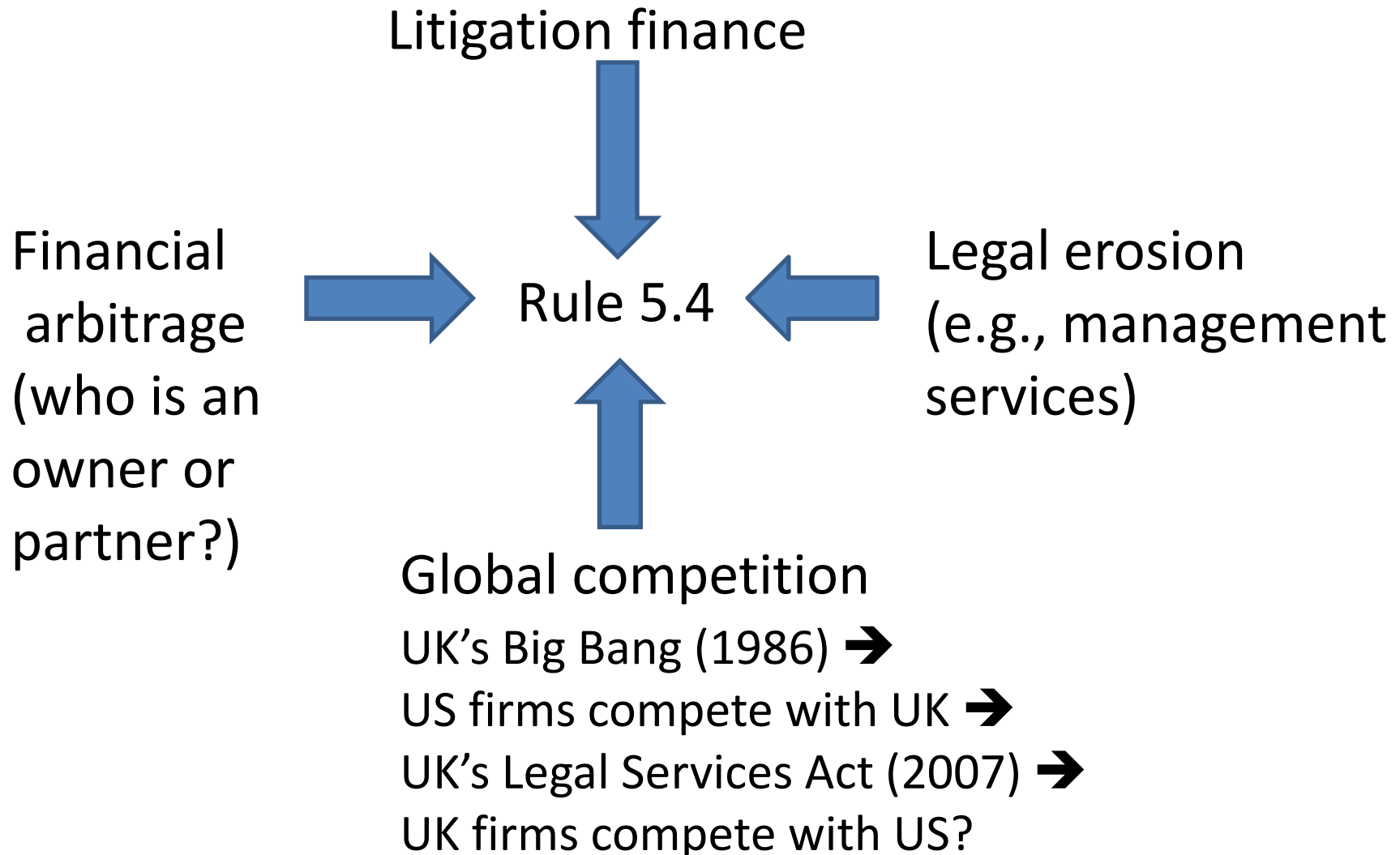


“creatively analyzes the indentures, credit agreements, and other contracts that determine creditor rights.”

Regulatory impediments

- Non-lawyer ownership
- Restrictions on non-competes
- Lawyer licensing
- Choice of law rule

Pressures on regulation



Effects of the death of Big Law

- On legal education
 - Price of law school
 - Amount of training
 - Type of training
- On the creation and dissemination of law