Mapping LegalZoom's Disruptive Innovation

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I. INTRODUCTION

Americans facing legal problems have two choices when it comes to legal representation. They can hire a lawyer, or they can represent themselves—informally, in situations outside of court, or formally, as pro se litigants, in court. This right is constitutionally protected in criminal cases and is almost universally recognized in typical civil matters. Traditionally, those representing themselves had few options for assistance. They could turn to the informal

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1 See AM. BAR ASS’N: Comm’n on NonLawyer Practice, NonLawyer Activity in Law-Related Situations 32 (1995) (describing “non-tribunal self-representation” as when individuals “act on their own behalf without the assistance of lawyers in myriad legal situations outside of courts and administrative tribunals” and “rely largely on their own expertise and skills”); id. at 33 (describing “self-representation before adjudicative tribunals.”).

2 See Farella v. California, 422 U.S. 806 (1975) (describing constitutional right to represent oneself in criminal trials); AM. BAR ASS’N, supra note 1, at 33 n.115 (describing criminal and civil right to represent oneself).
advice of “neighbors, friends, co-workers, religious advisors, teachers,” and the like, purchase a self-help book, or retain a scrivener or document preparer (although he or she would be prohibited from dispensing legal advice).

With the rise of the personal computer from 1980–2000, however, came the increasingly widespread availability of legal assistance enhanced in some way by technology. Such uses included low cost, installable software packages providing legal forms, pro se help kiosks in public buildings, and online advice available both from anonymous internet users and from lawyers. One of the most successful companies emerging from this “long-heralded computer revolution” is LegalZoom, a company that today employs more than 1,000 people and has serviced more than four million legal problems.

Founded in 2001 by Big Law lawyers Brian Liu and Brian Lee and internet entrepreneur Edward Hartman, LegalZoom gained early brand recognition by partnering with Robert Shapiro—one of O.J. Simpson’s defense attorneys—as its spokesman. The company first started at the low end of the legal market, targeting people who wanted help “draft[ing] simple legal documents when they [didn’t] want to pay an attorney,” and offering such forms as a living will, simple divorce documents, and “uncomplicated estate-planning documents.” As the company grew, it continued to serve these customers, but it also began to move up the market, targeting more valuable customers and offering, for example, business formation documents and patent application services.

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3 AM. BAR ASS’N, supra note 1, at 35–36.
4 Id. at 36–37.
5 Id. at 41 & n.137.
7 See, e.g., AM. BAR ASS’N, supra note 1, at 37–41 (describing the then-contemporary “long-heralded computer revolution” and attendant legal software).
8 See id. at 37–38.
9 See id. at 39–40.
10 See, e.g., BENJ H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION 91–98 (2015) (describing both “the truly free provision of advice in online communities” and other websites that “attempt to leverage free legal advice into business for the answering lawyers”).
11 AM. BAR ASS’N, supra note 1, at 37.
15 Berkman, supra note 14, at 42.
Those familiar with Clayton Christensen’s book *The Innovator’s Dilemma* will quickly note that LegalZoom’s trajectory appears to fit nicely within the book’s disruptive innovation framework. However, a few details separate LegalZoom and the disruptive technologies, such as the steel mini mill, described in Christensen’s work. First, there is the nature of legal work. The most complicated legal problems require creative and sophisticated professional legal services—services provided by what Christensen describes in his later work as “solution shops.” High end, complex legal problems call for these solution shops—in the form of lawyers and their professional training—to solve them. However, in the United States, services such as LegalZoom face a major barrier to partnering with lawyers or law firms in order to cater to solution shop-type problems: the prohibition against fee-splitting, which bars non-lawyers from owning parts of or partnering with law firms. Thus, until these bans are lifted, LegalZoom is limited to directly competing with what Christensen calls the “value-adding process” legal work—work that does not require a lawyer’s professional training to solve, instead taking something “incomplete and broken” and adding value to it.

Second, LegalZoom faces a hurdle in the form of unauthorized practice of law regulations in the United States. These regulations serve as a sort of artificially-imposed market ceiling on what services LegalZoom is able to provide. They are enforced primarily by the established bars of each state, which have an incentive to keep innovators out of the market. Of course, both the fee-splitting ban and unauthorized practice of law regulations are subject to judicial and legislative override, and LegalZoom, predictably, supports such change. This article incorporates hypotheses about reforming these barriers, and makes projections accordingly.

This article also maps LegalZoom onto the disruptive innovation framework in *The Innovator’s Dilemma*. It includes in this perspective the


*See id. at 87–93.


*See Business Models, supra note 19, at 8.


solution shop versus value-adding process business distinction, coupled with the fee-splitting prohibition and regulation of the unauthorized practice of law. It also discusses the distinction between low end market and new market disruption. Accordingly, the article moves forward in three parts in order to create a new LegalZoom *Innovator’s Dilemma* model.

First, this article describes *The Innovator’s Dilemma* framework. Next, it details the distinction between solution shops and value-adding process businesses and the related concept of the ban on fee-splitting. It also outlines the development of unauthorized practice of law regulations, especially with respect to technology-driven legal services. Finally, this article details how LegalZoom fits into *The Innovator’s Dilemma*’s disruptive innovation model through the use of several charts.

II. *THE INNOVATOR’S DILEMMA DISRUPTIVE INNOVATION MODEL*

In *The Innovator’s Dilemma*, Clayton Christensen seeks to answer a simple question: why do good companies that “stay atop their industries” fail “when they confront certain types of market and technological change,” i.e., disruptive innovation?\(^{25}\) In answering this question, Christensen discovered that disruptive firms “start by focusing on a segment of the market that is more low margin, frequently offering a worse product to these customers at much cheaper prices.”\(^{26}\) These firms possess a disruptive technology: one that initially “result[s] in worse product performance” than that offered by the established firm, but that offers a “very different value proposition than had been available previously,” as it is cheaper and simpler.\(^{27}\) The established firms are typically aware of the disruptive company’s actions in this lower market, but move away—upmarket instead of downmarket—because “[r]ational managers . . . can rarely build a cogent case for entering small, poorly defined low-end markets that offer only lower profitability” and are enticed by the upper market’s potential for “improved profitability” with “higher margins.”\(^{28}\)

This works at first: The high-end, established firms do not want the low-end market work, and may even see profit margins improve as they move upmarket.\(^{29}\) As time moves forward, however, the disruptive companies “master the low-margin work” in the low-value market and “gradually work their way up

\(^{25}\) *The Innovator’s Dilemma*, supra note 17, at ix.

\(^{26}\) Barton, supra note 10, at 86. *See generally The Innovator’s Dilemma*, supra note 17, at 3–95.

\(^{27}\) *The Innovator’s Dilemma*, supra note 17, at xv.

\(^{28}\) Id. at 77.

\(^{29}\) *See Barton, supra note 10, at 86* (“Initially this strategy actually improves profitability, as market leaders abandon low-margin work to focus on the most profitable areas.”); *The Innovator’s Dilemma*, supra note 17, at 77 (“In good companies, resources and energy coalesce most readily behind proposals to attack upmarket into higher-performance products that can earn higher margins.”).
the chain to compete for the higher-margin work. As the disruptive firm’s mastery moves upmarket, it becomes increasingly threatening to the established firm and eventually overtakes the established firm as a market leader.

In short, “Disruption” describes a process whereby a smaller company with fewer resources is able to successfully challenge established incumbent businesses . . . Entrants that prove disruptive begin by successfully targeting . . . overlooked segments, gaining a foothold by delivering more suitable functionality—frequently at a lower price. Incumbents, chasing higher profitability in more-demanding segments, tend not to respond vigorously. Entrants then move upmarket, delivering the performance that incumbents’ mainstream customers require, while preserving the advantages that drove their early success.

Christensen offers several examples of firms’ behavior tracking his Innovator’s Dilemma framework, but this article focuses on the story of steel mini mills overtaking integrated steel mills. In the 1960s, steel mini mills, which create production steel out of scrap steel on a small scale, became commercially viable. Previously, integrated steel mills were the predominant way to create steel.

When it was first introduced, the mini mill produced steel of “marginal quality” because it used scrap steel. Thus, the early mini mills could only produce rebar—low quality concrete reinforcement—“right at the bottom of the market in terms of quality, cost, and margins.” The market for rebar was “the least attractive of those served by established steel makers,” who were “almost relieved to be rid of the rebar business.” However, the mini mill operators were happy to have the rebar business, as they had very low expenses (mini mills use “straightforward technology” that can make steel for “20 percent lower cost than an integrated mill”) and low overhead, and could “sell by telephone virtually all the steel they could make—and sell it profitably.”

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30 Barton, supra note 10, at 86.
31 See, e.g., The Innovator’s Dilemma, supra note 17, at 93 (“Sound managerial decisions are at the very root of [the established firms’] impending fall from industry leadership.”).
33 See generally The Innovator’s Dilemma, supra note 17, at 87–93; see also generally Barton, supra note 10, at 86–87 (describing Christensen’s example of the steel mill). To avoid repetition, this article does not provide parallel citations to Barton in the subsequent footnotes describing the steel mill example, but rather cites to the original source of The Innovator’s Dilemma.
34 The Innovator’s Dilemma, supra note 17, at 87.
35 Id.
36 Id. at 89.
37 Id.
38 Id.
40 The Innovator’s Dilemma, supra note 17, at 89.
After dominating the rebar industry, the mini mills began to look upmarket and saw “opportunities for greater profits and expanded sales,” whereas established firms looking downmarket at the same space were wholly uninterested.\textsuperscript{41} The mini mills began to improve their product and obtain better and larger equipment to move gradually upmarket.\textsuperscript{42} They “attacked the markets for larger bars, rods, and angle irons,” which was the market directly above rebar.\textsuperscript{43} Once again, the established integrated steel mills were “almost relieved to be rid of the business,” and ceded it to the mini mills.\textsuperscript{44} The mills moved forward to structural steel members and drove the integrated steel mills out of this market as well.\textsuperscript{45} Finally, the mini mills invested in continuous thin-slab casting machines, which allowed them to directly compete with the integrated mills’ sheet steel business, the product at the top of the market.\textsuperscript{46} The trajectory of the mini mills can been seen in Appendix A.

Thus, the mini mills were able to march from rebar—the lowest end of the market—to sheet steel—the highest end.\textsuperscript{47} While this was happening, the established integrated steel mills enjoyed “dramatically improving profit,” as they were “forsaking their lowest-margin products and focusing increasingly on high-quality rolled sheet steel.”\textsuperscript{48}

Due to rebar’s relatively small profits and low quality, the established firms had no interest in addressing the mini mills’ entry into and eventual domination of the rebar space.\textsuperscript{49} This thinking continued as the mini mills moved up the quality ladder until they were able to compete at the highest levels with quality sheet steel.\textsuperscript{50} By the time they realized that the mini mills developed the technology to compete in the sheet steel space, it was too late.

One contemplating the legal market and LegalZoom’s entry at the lower end can quickly realize that its story is somewhat analogous. However, in order to accurately map LegalZoom onto Christensen’s model, one must first understand how the legal market bifurcates into solution shops and value-adding process businesses, as well as understand unauthorized practice of law regulations. The next section of this article addresses these two issues. It also adds a theory from one of Christensen’s later works, \textit{The Innovator’s Solution}—the distinction between new market disruptions and low end disruptions.\textsuperscript{51}

\textsuperscript{41} \textit{Id.} at 89–90.
\textsuperscript{42} \textit{Id.} at 90 (“[T]hey worked to improve the metallurgical quality and consistency of their products and invested in equipment to make larger shapes.”).
\textsuperscript{43} \textit{Id.}
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} \textit{Id.} at 90–91.
\textsuperscript{46} \textit{Id.} at 91–93.
\textsuperscript{47} \textit{Id.} at 90.
\textsuperscript{48} \textit{Id.} at 91.
\textsuperscript{49} \textit{Id.}
\textsuperscript{50} \textit{Id.} at 90–91.
\textsuperscript{51} See \textit{The Innovator’s Solution}, \textit{supra} note 39.
III. WRINKLES IN CHRISTENSEN'S MODEL APPLICABLE TO THE LEGAL FIELD

To properly apply Christensen’s model to the legal field, one must first understand the distinction between solution shops and value-adding process businesses and also must appreciate unauthorized practice of law regulations. This Section takes each in turn. It then explains Christensen’s distinction between new market disruptions and low end disruptions.

A. Solution Shops vs. Value-Adding Process Businesses

In a 2010 paper, Christensen describes three types of business models: solution shops, value-adding process businesses, and facilitated network businesses.52 The first type, solution shops, are “institutions whose resources and processes are structured to diagnose and recommend solutions for complicated problems.”53 These firms provide clients with unique work product, requiring experts to “draw upon their deepest experience and intuition” and to diagnose their clients’ problems and provide solutions.54 Accordingly, customers “typically are quite willing to pay very high prices for the services of solution shops” and usually pay in a fee-for-service model.55

Conversely, value-adding process businesses “bring things in that are incomplete or broken, add value to them, and then ship them out, repaired or more complete.”56 These firms leverage “practiced processes” to deliver their product57 and “take consistent inputs and use consistent processes to deliver consistent results.”58 These firms can quote prices in advance and charge on a fee-for-outcome model.59

The third type of businesses are facilitated networks, which “do not themselves produce goods and services. Rather, their value is in connecting people together via a platform through which users can offer things to each other.”60 Thus, facilitated networks do not make money from producing something; they make money by connecting people to each other.61 Few legal

52 See Business Models, supra note 19, at 7.
53 Id.
54 Id.
55 Id.
56 Id. at 8.
57 Id.
59 Business Models, supra note 19, at 8.
61 Bean, supra note 60; Business Models, supra note 19, at 8.
services fall into this third category, although lawyer referral networks may qualify because they connect those needing legal help with attorneys.

Legal services, rather, are easily categorized into either of the first two business models: solution shops or value-adding process businesses. Many complex legal matters require expert diagnosis, a complex and unique solution, and professional experience to solve the problem. For example, complicated large-scale litigation, criminal defense, large commercial lawsuits, etc., all require the services of a solution shop. Numerous other legal problems, however, do not require a solution shop; they are driven by processes and repetitive tasks that take inputs from clients and deliver results accordingly. Wills, estate plans, basic patent filing services, contracts, etc., can all serve as examples of value-adding process businesses.

In the legal profession, it is tempting to draw the line between these two business models based on cost, with the most expensive services suitable only for solution shops and the less expensive services suitable for value-adding process businesses. However, this is not necessarily the case: even expensive and high-level contracting, for example, can be boilerplate in nature and thus may fall into the value-adding process businesses category rather than the solution shop category.\footnote{See, e.g., Mitu Gulati & Robert E. Scott, The 3 ½ Minute Transaction: Boilerplate and the Limits of Contract Design 6 (2013) (describing boilerplate transactions at the highest levels).}

The correct way to draw the line is to weigh the complexity of the legal problem and the required services, with the most complex cases requiring solution shops and the least complex cases being serviceable by value-adding process businesses.

Herein lies the importance of the distinction. It is readily apparent to most that value-adding processes in law can be automated by services such as LegalZoom: a computer can help a user select a template, ask the user a series of questions, and customize the template for his or her use. Solution shop legal problems, however, currently require the involvement of a person to solve them—we do not have computers that can litigate a complex case in open court or negotiate a complex business deal before a board of directors.

Accordingly, solution shop legal issues present a particular challenge for disruptive innovators in the legal field for two main reasons. First, most solution shop issues must be handled by a licensed attorney, and a nonlawyer would run

\footnote{See also Ben Barton, Lessons From the Rise of LegalZoom, BigLaw Bus. (June 18, 2015), https://bol.bna.com/lessons-from-the-rise-of-legalzoom/ [hereinafter Barton, Lessons] (citing same and asserting that “Big Law should certainly look beyond their near term competitors . . . and consider the disruptive possibilities of interactive forms.”) Id.}
afoul of unauthorized practice of law regulations if he or she attempted to work on these issues.\textsuperscript{63}

Second, solution shops in the United States cannot simply create a “hybrid” type business model and join forces with a law firm to handle the solution shop portions of their business. The fee-splitting provisions of the ABA Model Rules of Professional Conduct, which are widely followed in most states, prohibit this hybrid model because “[n]onlawyers are prohibited from creating, owning or managing law firms, either alone or in partnership with lawyers,” and “[m]ultidisciplinary practices combining legal services with nonlegal services are restricted.”\textsuperscript{64} Similar rules were recently relaxed in the United Kingdom, under what are known as Alternative Business Structure licenses, which allow law firms to share ownership with nonlawyers.\textsuperscript{65}

Thus, in the United States, solution shop-type legal problems are reserved exclusively for law firms. Non-law firm disruptive innovators must restrain their businesses to solving value-adding process legal problems; the fee-splitting rules prohibit their partnership with an attorney or law firm to handle solution shop portions of their business. However, this is not the only hurdle for disruptive innovators. As discussed in the next section, while the fee-splitting prohibition is a barrier to entry at the top of the legal market, the unauthorized practice of law can be a barrier at all levels of the legal market.

\textbf{B. Unauthorized Practice of Law}

Unauthorized practice of law prohibitions rose to prominence in the 1930s.\textsuperscript{66} These regulations broadly prohibit the “unauthorized practice of law,” typically not defining the term.\textsuperscript{67} Although these rules “properly aim to protect consumers from nonlawyers who fraudulently present themselves as qualified legal services providers,” they also “have the effect of creating a monopoly for the legal profession.”\textsuperscript{68} This monopoly, in turn, “create[s] supra-competitive profits for licensed lawyers,” which “attract entry efforts by persons seeking to earn such profits.”\textsuperscript{69} Thus, the two sides of the regulation put opposite pressures on the unauthorized practice of law enforcement body: as those seeking entry to the market push for a looser unauthorized practice of law regime, lawyers in the

\footnotesize
\textsuperscript{63} These regulations are discussed in Section III.B.
\textsuperscript{64} Laura Snyder, \textit{Does the UK Know Something We Don’t About Alternative Business Structures?}, ABA J. (Jan. 1, 2015), http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures.
\textsuperscript{66} See AM. BAR ASS’N, \textit{supra} note 1, at 17.
\textsuperscript{67} Id.
\textsuperscript{68} Matthew Longobardi, \textit{Unauthorized Practice of Law and Meaningful Access to the Courts: Is Law Too Important to be Left to Lawyers?}, 35 CARDOZO L. REV. 2043, 2044 (2014).
\textsuperscript{69} McGOWAN, \textit{supra} note 22, at 871.
monopoly push for stricter enforcement.70

Traditionally, unauthorized practice of law jurisprudence focused on determining when a nonlawyer exceeded the scope of his or her profession and instead practiced law.71 For example, accountants offering legal advice may rise to the unauthorized practice of law,72 as can realtors offering legal advice,73 and even paralegals operating independently.74

The nature of unauthorized practice of law enforcement has changed with the rising availability of technology-driven legal assistance.75 Modern cases focus on when a computer encroaches on the lawyers’ monopoly and practices law.

The earliest prominent case addressing this issue was Parsons Technology.76 The case arose when Parsons Technology developed the software program Quicken Family Lawyer.77 The product offered “over 100 different legal forms,” including “employment agreements, real estate leases, premarital agreements, and seven different will forms,” and provided “instructions on how to fill out these forms.”78 Although the product broadly disclaimed upon installation that it did not provide legal advice, it also contained advertising noting that it was “developed and reviewed by expert attorneys,” and it would “interview [the consumer] in a logical order, tailoring documents to [his] situation,” providing “[h]andy hints and comprehensive legal help topics” along the way.79

Users of the program selected from one of the hundreds of forms and were then asked “a series of questions relevant to filling in the legal form . . . .” Sometimes users were shown a “separate text box explaining the relevant legal considerations the user may want to take into account in filling out the form.”80 During this process, the program would add, modify, and subtract clauses from the form in response to the user’s inputs.81

The Texas Unauthorized Practice of Law Committee brought suit against Parsons Technology, “alleging that the selling of [Quicken Family Lawyer]
violates Texas’ unauthorized practice of law statute” and seeking to enjoin its sale in Texas.\textsuperscript{82} Parsons Technology asserted that “the mere selling of books or software cannot violate the statute because some form of personal contact beyond publisher-consumer is required” by the unauthorized practice of law statute, and that barring the “mere sale and distribution” of the product would violate Parsons Technology’s freedom of speech.\textsuperscript{83}

The case, at its core, came down to a question of what “practicing law” means with respect to technological legal products. The Unauthorized Practice of Law Committee argued that Quicken Family Lawyer gave “advice concerning legal documents” and selected “legal documents for users, both of which involve[d] the use of legal skill and knowledge,” constituting the practice of law; in essence, Quicken Family Lawyer was a “high tech lawyer” or a “cyber-lawyer.”\textsuperscript{84}

The court agreed.\textsuperscript{85} Citing the “air of reliability about the documents, which increase[d] the likelihood that an individual user will be misled into relying on them[,]” the court found that the program went “beyond merely instructing someone how to fill in a blank form.”\textsuperscript{86} Rather, Quicken Family Lawyer “adapt[ed] the content of the form to the responses given by the user[,]” and “purport[ed] to select the appropriate health care document for an individual based upon the state in which she lives.”\textsuperscript{87} Because of the guidance in form selection and completion provided by the program, Quicken Family Lawyer ventured into the unauthorized practice of law.\textsuperscript{88}

Thus, Parsons Technology shows one of the earliest examples of unauthorized practice of law regulations serving as a barrier to innovation in the legal field. The district court case was not the end of the story, however. Soon after the district court’s ruling, the Texas state legislature amended the unauthorized practice of law statute, specifically exempting from the “practice of law” definition the “design, creation, publication, distribution, display, or sale . . . [of] computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney . . . .”\textsuperscript{89} Thus, Parsons Technology also provides one of the earliest examples of a legislature creating a “carve out” exception for the provision of legal services through technological means.

\textsuperscript{82} Id. at *3.
\textsuperscript{83} Id.
\textsuperscript{84} Id. at *4.
\textsuperscript{85} Id. at *6.
\textsuperscript{86} Id.
\textsuperscript{87} Id. at *7.
\textsuperscript{88} Id. at *6–7. The court also dismissed Parsons Technology’s constitutional defenses. Id. at *7–11.
\textsuperscript{89} Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., 179 F.3d 956, 956 (5th Cir. 1999) (alterations in original) (quoting H.B. 1507, 76th Leg., Reg. Sess. (Tex. 1999)).
C. The Distinction Between New Market and Low End Disruptions

An additional dimension to consider when plotting LegalZoom onto the Innovator’s Dilemma disruptive innovation framework is the distinction between new market disruptions and low end disruptions. Christensen explains these theories in his 2003 work, The Innovator’s Solution.90 First, new market disruptions compete against non-consumption, and thus create a market in “new customers who previously lacked the money or skills to buy and use the product.”91 These new market disruptive products are “so much more affordable to own and simpler to use that they enable a whole new population of people to begin owning and using the product, and to do so in a more convenient setting.”92 New market disruptive products address “a large population of people who historically have not had the money, equipment, or skill to do [a] thing for themselves, and as a result have gone without it altogether or have needed to pay someone with more expertise to do it for them.”93

New market disruptions typically do not alarm established firms early on.94 Rather, as the “incumbent leaders feel no pain and little threat until the disruption is in its final stages,” these established firms “actually feel . . . good” as they get to move upmarket toward higher-profit products.95 Eventually, however, the established firms come to regret this, as new market disruptive firms “ultimately become good enough to pull customers out” of the established market and into their newly created market with its cheaper and easier to use product.96

Conversely, low end disruptions do not create new markets.97 Rather, these disruptors are “simply low-cost business models that grew by picking off the least attractive of the established firms’ customers.”98 Their customers are at the low end of the established firm’s market and “would be happy to purchase a product with less (but good enough) performance if they could get it at a lower price.”99 Low end disruptors do alarm established firms, as their customers quickly realize that the disruptor firm serves them at the appropriate level, as opposed to the overprice of the established firm.100 Thus, these customers flock to the low end disruptor and its “lower-cost business model.”101 Of course, these are not strict categorizations, as “[m]any disruptions are hybrids,

90 See generally The Innovator’s Solution, supra note 39, at 43–49.
91 Id. at 44–45.
92 Id. at 45.
93 Id. at 49.
94 Id. at 45–46.
95 Id. at 46.
96 Id. at 45–46.
97 Id. at 46.
98 Id.
99 Id. at 50.
100 Id. at 45–46.
101 Id.
combining new-market and low-end approaches.”102 Accordingly, it is important to think of the new market versus low end market disruption distinction as a spectrum, rather than two separate categories.

Understanding the purpose and the mechanism of unauthorized practice of law regulations, along with the distinction between solutions shops and value-adding process businesses, allows for a more nuanced understanding of how technologically based legal services operate. Analyzing whether a disruptive innovation is creating a market or attacking the low but established market—or something between the two—assists this understanding as well. The next section incorporates this background into an application of Christensen’s disruptive innovation model to LegalZoom.

IV. APPLYING THE INNOVATOR’S DILEMMA TO LEGALZOOM

This section takes the barriers found in the United States—namely, the prohibition on fee-splitting and the enforcement of unauthorized practice of law regulations—and applies them to LegalZoom’s disruptive innovation trajectory in the context of Christensen’s framework. It does so by first creating a LegalZoom chart to parallel Christensen’s steel mill chart. Next, this section incrementally builds upon this chart by adding depictions of barriers to innovation: first the fee-splitting bans and the distinction between solution shops and value-adding process businesses and second the unauthorized practice of law regulations. Finally, the section adds the spectrum from new market disruption to low market disruption.

A. Initial Application (Appendix B)

LegalZoom, at first blush, neatly fits into Christensen’s Innovator’s Dilemma model. The company was founded in 2001 with a small offering of “simple legal documents” such as a living will, simple divorce documents, and “uncomplicated estate-planning documents.”103 This is similar to the mini mills’ initial offering of low-quality rebar in The Innovator’s Dilemma104—just as the rebar was of poor quality compared to the steel produced by the integrated steel manufacturers, the simple legal forms were not as tailored as one would get by going to a large law firm. However, neither the mini mills nor LegalZoom were concerned with competing with the high-end, established firms.105 Rather, they focused on capturing consumers at the lower end of the market who were

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102 Id. at 47.
103 Berkman, supra note 14, at 42; see also LEGALZOOM 2001 HOMEPAGE (Feb. 2, 2001), https://web-beta.archive.org/web/20010202092800/LegalZoom.com (offering incorporations, divorce, prenuptials, living trusts, wills, trademarks, copyrights, restraining orders, etc.).
104 See THE INNOVATOR’S DILEMMA, supra note 17, at 89.
105 Id.
looking for a cheap, simple, and convenient product.\textsuperscript{106}

By 2004, LegalZoom began moving upmarket from these products by adding new features, such as patent services.\textsuperscript{107} This slow, deliberate upmarket march tracks the mini mills’ movement into the market for larger bars and rods, the next market above rebar.\textsuperscript{108} By 2009, LegalZoom had added bankruptcy, provisional patents, patent search, and trademark search and monitoring,\textsuperscript{109} in striking similarity to the mini mills’ move toward structural steel members.\textsuperscript{110}

Finally, by 2015, LegalZoom signaled a move toward offering complex, in-person services in the United Kingdom: LegalZoom obtained an Alternative Business Structure license.\textsuperscript{111} This license allows a non-lawyer to be a manager of a firm or have an “ownership-type interest” in the firm.\textsuperscript{112} Subsequently, LegalZoom acquired a United Kingdom law firm in an effort “to build ‘a unique, next generation law firm’ that is a blend of technology, lawyers and other expertise.”\textsuperscript{113} This tracks the mini mills’ entry into the sheet steel market, which was the core product at the top of the market for the integrated steel mills.\textsuperscript{114}

Appendix B plots LegalZoom’s trajectory onto a chart.\textsuperscript{115} When comparing this chart to Christensen’s chart of the mini mills (Appendix A), we can see a clear resemblance. By obtaining an Alternative Business Structure license and acquiring a law firm, LegalZoom’s capability grew from low-complexity, low-market legal work—simple documents—to the highest complexity work.

The chart in Appendix B also bears resemblance to William Henderson’s.\textsuperscript{116} Henderson imposed The Innovator’s Dilemma framework onto the legal space, specifically focusing on legal support companies such as Clearspire and Axiom. He used a chart resembling Christensen’s mini mills chart reproduced in Appendix A.\textsuperscript{117} Rather than specific products, Henderson’s

\textsuperscript{106} See id. at xv.
\textsuperscript{108} See THE INNOVATOR’S DILEMMA, supra note 17, at 90.
\textsuperscript{110} See THE INNOVATOR’S DILEMMA, supra note 17, at 90–91.
\textsuperscript{112} See Alternative Business Structures, supra note 65.
\textsuperscript{113} Debra Weiss, LegalZoom Is Acquiring a UK Law Firm, ABA J. (Dec. 8, 2015), http://www.abajournal.com/news/article/LegalZoom_is_acquiring_a_uk_law_firm/.
\textsuperscript{114} See THE INNOVATOR’S DILEMMA, supra note 17, at 91–93.
\textsuperscript{115} See infra Appendix B.
\textsuperscript{117} See id.; see also BARTON, supra note 10, at 88 (reproducing Henderson’s Innovator’s Dilemma chart).
chart lists uses as “low, medium, or high” quality or the “most demanding use.” Further, Henderson’s chart does not focus on one company, such as LegalZoom, but rather denotes “disruptive technology” on the line curving upward.

This article seeks to improve upon charts such as Henderson’s and the chart in Appendix B. By adding dimensions to the chart, including the obstacles imposed by fee-splitting rules and unauthorized practice of law regulations, this article aims to accurately map LegalZoom’s growth to Christensen’s Innovator’s Dilemma model. Further, this article makes targeted hypotheses regarding litigation and legislation pertaining to these two barriers and plots the conclusions from these hypotheses on the chart as well. Finally, the article considers The Innovator’s Solution’s distinction between new market and low market disruptors.

B. Adding Solution Shop vs. Value-Adding Process Problems and Fee-Splitting Rules (Appendix C)

The highest complexity work, which LegalZoom is now capable of, solves solution shop-type problems. LegalZoom entered this solution shop business model in the United Kingdom with its alternative business structure license. However, in the United States, this type of business structure is not yet permitted. Thus, we must separate the top line of this chart into two: the high complexity work in the United Kingdom and the high complexity work in the United States. Appendix C separates these two and expands the United States’s line for better clarity. Appendix C also adds the solution shop versus value-adding process problems dimension, with the most complex legal problems requiring solution shops.

Accordingly, although LegalZoom is capable (blue line) of solving these solution shop problems in the United Kingdom—as it has obtained an alternative business structure license—the fee-splitting rules (red line) currently bar LegalZoom’s entry into the United States market. Over time, however, I hypothesize that LegalZoom will fight fee-splitting rules and will push the legislature to allow it to have an alternative business structure license in the United States. This will be a state-by-state process that will cause the red line to

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118 See Henderson, supra note 116.
119 Id.
120 See infra Section IV.B.
121 See infra Sections IV.C & D.
122 See supra Section IV.A.
123 See supra Section IV.A.
125 See infra Appendix C.
gradually yield over time as each state’s fee-splitting rules are reformed in accordance to this hypothesis.

LegalZoom has already begun this process of reformation. For example, when the ABA formed the Commission on the Future of Legal Services in 2014 in an effort to “drive enhancements and improvements in the delivery of legal services” and to determine “what more the legal profession can do to serve the poor, near poor, and middle income,” it solicited public comments for consideration in its Alternative Business Structures Issues Paper. LegalZoom submitted a comment letter reminding the Commission of its core mission: “to create a new model for the delivery of legal services.” The letter asserted that the “alternative business structure is truly that new model,” because alternative business structure firms “can be fueled by corporate investment,” can harness technological innovations, and are “better suited to open up access to legal services in a way that we have not seen in the U.S.” LegalZoom also reminded the Commission of its alternative business structure license in the United Kingdom and held this license up as an example of what legal services can look like in the United States.

Of course, addressing the prohibition against fee-splitting in each of the fifty states would be an uphill battle. But the comment letter shows that LegalZoom has a United States alternative business structure model in the forefront of its mind and that it will work to bring this model stateside. Thus, after adding the fee-splitting rules to our diagram, Appendix C shows the fee-splitting rules (red line) eventually and gradually relaxing (moving up), and allowing LegalZoom to utilize its capabilities (blue line) in solving solution shop-type problems in the United States, as it can now do in the United Kingdom. The yellow square in Appendix C indicates the point at which the fee-splitting prohibitions no longer bar LegalZoom from realizing its full capability in any state in the United States. Note, however, that LegalZoom would be able to practice in an alternative business structure model as each state allows it, and the company would not have to wait to reach the yellow square.

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128 See AM. BAR ASS’N, supra note 1.
130 Id. at 1.
131 Id.
132 Id.
133 See infra Appendix C.
134 Id.
C. Adding Unauthorized Practice of Law Regulations (Appendix D)

Unauthorized practice of law regulations also stand in the way of LegalZoom’s innovation in the legal field.\textsuperscript{134} Unlike fee-splitting prohibitions, which affect only solution shop-type problems, unauthorized practice of law regulations can be a barrier at any level of the market.\textsuperscript{135} The enforcement of unauthorized practice of law regulations occurs on a state-by-state basis. It also varies in intensity over time, considering sparse prosecutorial resources and varying levels of concern over the issue in the organized bar.\textsuperscript{136}

Additionally, as LegalZoom is a disruptive innovation, we can expect that the organized bar did not mind that LegalZoom took market share at the low end of the market with its form wills and other simple documents—recall that established integrated steel mills were “almost relieved to be rid of the rebar business.”\textsuperscript{137} Similarly, as unauthorized practice of law enforcement primarily depends upon the interest of the organized bar of a state,\textsuperscript{138} LegalZoom should have seen little resistance to its entry to the lower markets.

Indeed, this was the case.\textsuperscript{139} Established firms “initially . . . paid little attention to the provision of legal services via the Internet,” allowing LegalZoom to go “about building their businesses and improving their forms and software with little notice or attention from the organized bar.”\textsuperscript{140} Since LegalZoom “was not . . . competing with private lawyers” initially—making it “the classic Christensen disruptive technology”—established firms were unconcerned with the company and did not seek to have unauthorized practice of law actions brought against it.\textsuperscript{141}

However, as LegalZoom’s capability began to rise, some organized bars sought to enjoin their activities through unauthorized practice of law litigation.\textsuperscript{142} The earliest state bar determination of LegalZoom’s unauthorized practice of law was made in 2008 when the North Carolina State Bar issued a cease and desist letter to LegalZoom.\textsuperscript{143} The State Bar found LegalZoom to be engaged in the unauthorized practice of law, and LegalZoom challenged this finding by asserting that “document preparation and filing” does not constitute

\textsuperscript{134} The Innovator’s Dilemma, supra note 17, at 89.
\textsuperscript{135} Id.
\textsuperscript{136} See generally Am. Bar Ass’n, supra note 1, at 16–32 (describing the history of enforcement of unauthorized practice of law regulations).
\textsuperscript{137} The Innovator’s Dilemma, supra note 17, at 89.
\textsuperscript{138} See, e.g., Am. Bar Ass’n, supra note 1, at 17–18.
\textsuperscript{139} Barton, supra note 10, at 89.
\textsuperscript{140} Id.
\textsuperscript{141} Id. at 90.
\textsuperscript{142} See id.
the unauthorized practice of law. The North Carolina State Bar did not sue to enjoin LegalZoom’s practices until approximately 2012. The court repeatedly declined to rule on the unauthorized practice of law issue by citing the lack of a developed factual record.

The case eventually settled, and as part of the settlement, the North Carolina State Bar agreed to support a bill modifying the state’s definition of “practice of law.” This bill exempts from the definition of “practice of law” the “operation of a Web site by a provider that offers consumers access to interactive software that generates a legal document based on the consumer’s answers to questions presented by the software,” subject to conditions, including that the consumer can see the blank template before paying for it; a North Carolina attorney reviews the blank template; the online company provides a disclaimer and discloses its name; and the online provider does not disclaim warranties or put a forum selection clause in the terms of service. The bill was signed into law in June 2016, all but permanently ending any potential unauthorized practice of law challenges to LegalZoom in North Carolina. This is similar to the Texas Legislature’s override of Parsons Technology, allowing Quicken Family Lawyer and other software providers to continue business in the state of Texas.

Similarly positive outcomes for LegalZoom (albeit without the sweeping legislative override) occurred in Washington, when LegalZoom and the state “settled by paying $20,000 in costs and agreeing not to violate Washington law, while continuing to operate in the state with no changes in its business practices,” and in South Carolina—where the state’s Supreme Court “approved the company’s business practices” and found that its documents “were like ones already offered by various state and local agencies.” Rare is a court’s finding of unauthorized practice of law by LegalZoom, although the United States District Court for the Western District of Missouri did find that LegalZoom engaged in the practice of law, mainly because “LegalZoom employees intervene at numerous stages of the so-called ‘self-help services.’”

__Notes__

144 LegalZoom.com, Inc., 2014 WL 1213242.
145 Id. at *3.
146 See id. at *9–10.
147 Joan C. Rogers, Settlement Allows LegalZoom to Offer Legal Services in N.C., BLOOMBERG BNA (Nov. 18, 2015), https://www.bna.com/settlement-allows-LegalZoom-n57982063694/.
150 Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., 179 F.3d 956 (5th Cir. 1999).
151 BARTON, supra note 10, at 91.
152 Terry Carter, LegalZoom Business Model OK’d By South Carolina Supreme Court, ABAJ. (Apr. 25, 2013), http://www.abajournal.com/news/article/LegalZoom_business_model_okd_by_south_carolina_supreme_court; see also BARTON, supra note 10, at 91.
153 Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1064 (W.D. Mo. 2011); see also BARTON, supra note 10, at 91 (describing same).
However, LegalZoom quickly settled that case and was allowed to continue doing business in the state.\textsuperscript{154} In short, unauthorized practice of law regulation, in and of itself, is unlikely to actively prevent LegalZoom from doing business at its current level in the United States.\textsuperscript{155} In the event that a lawsuit alleging the unauthorized practice of law succeeds, legislative overrides, as in Texas in \textit{Parsons Technology} or in North Carolina in \textit{North Carolina State Bar}, would likely soon follow.\textsuperscript{156}

Rather, the threat of unauthorized practice of law enforcement against LegalZoom’s current practice represents both uncertainty and liability in the form of potential litigation expenses.\textsuperscript{157} Indeed, LegalZoom listed several unauthorized practice of law proceedings against it in its S-1 filing’s “Commitments and Contingencies” section when it considered going public.\textsuperscript{158} Thus, when adding the threat of the enforcement of unauthorized practice of law regulations to LegalZoom’s \textit{Innovator’s Dilemma} model (see Appendix D), it appears as a dotted (pink) line beneath each of the value-adding process problem lines. It is dotted because the risk is unlikely to be a true barrier to innovation in the value-adding process problem space, as LegalZoom typically prevails in unauthorized practice of law actions. Rather, instead of a true barrier, these actions burden LegalZoom with a hindrance in the form of uncertainty and expense. The lines drop off in the future, as state bars will likely tire of pursuing enforcement actions against LegalZoom for these low-market products, especially as a body of caselaw authorizing LegalZoom’s actions accumulates.

However, note that the line representing the enforcement of unauthorized practice of law regulations becomes solid as LegalZoom moves toward solution shop problems in the United States. This represents my hypothesis that organized bars will be hesitant to allow LegalZoom’s entry into the higher-end legal market. Even after fee-splitting regulations give way and allow LegalZoom to partner with a law firm, the organized bars will still be hesitant to cede this ground, as it threatens their entire existing model. Thus, they will attempt to rein in LegalZoom using unauthorized practice of law regulations.

Additionally, future technology may allow LegalZoom to automate processes currently reserved for solution shops.\textsuperscript{159} This would remove the

\textsuperscript{154} Debra Cassens Weiss, \textit{LegalZoom Can Continue to Offer Documents in Missouri Under Proposed Settlement}, ABAJ. (Aug. 23, 2011), http://www.abajournal.com/news/article/LegalZoom_can_continue_to_offer_documents_in_missouri_under_proposed_settle; see also BARTON, supra note 10, at 91 (describing same).

\textsuperscript{155} North Carolina Lawyers Weekly, \textit{ supra} note 24.

\textsuperscript{156} Id.


protections of the fee-splitting rules because there would be no need for LegalZoom to partner with another company; its computers would handle the work, and thus there would be nobody with whom to split the fee. In this scenario, the organized bar would certainly fall back to unauthorized practice of law regulations in an effort to protect this traditional market segment.

However, just as LegalZoom has its sights set on reforming the fee-splitting prohibition by enacting alternative business structure rules in the United States, LegalZoom will eventually overcome most, if not all, unauthorized practice of law obstacles in its path, either by winning or settling court cases, or through legislative overrides. Thus, the artificial restrictions imposed by fee-splitting prohibitions and unauthorized practice of law regulations will eventually cease to hinder LegalZoom’s capabilities. This point is represented in Appendix D by a yellow triangle.

D. Adding New Market versus Low Market Disruption (Appendix E)

A final dimension in the application of The Innovator’s Dilemma framework is the spectrum from new market disruptors to low market disruptors. In a new market disruption, the disruptor is creating a new market for its product—customers could not afford the product offered by the established firms. Conversely, in a low market disruption, the disruptor entices customers at the low end of the established firm’s base with lower prices and “good enough” products.

Appendix E adds the spectrum between these two modes of disruption, and shows that LegalZoom is a hybrid—it is both a low market and a new market disruptor. At the low end of the complexity scale—simple documents such as form wills—LegalZoom trends toward being a new market disruptor. Before products like LegalZoom came to market, the services of a lawyer were too expensive for many Americans to afford, as “even relatively inexpensive lawyers charge quite a bit by the hour or transaction, and even for straightforward work[,] those hours add up.” Thus, at the time when LegalZoom began offering simple documents, “anyone willing to incorporate their company or write their will on the Internet was very unlikely to be able to afford a lawyer anyway.” LegalZoom created the market for online, low cost legal forms—these needs were unmet by the law firm model. This classic example of a new market disruptor is represented in Appendix E by the light blue color.

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161 The Innovator’s Dilemma, supra note 17, at 2.
162 The Innovator’s Solution, supra note 39, at 44–46, 49.
163 Id. at 45–47.
164 See infra Appendix E.
165 Barton, supra note 10, at 90.
166 Id.
However, as time goes forward and LegalZoom becomes “good enough” at more complex legal services, it will also begin to threaten the low market of established firms’ work, rather than create a market on its own.\textsuperscript{167} For example, Benjamin Barton hints that certain Big Law transactions, which “work off of templates,” could eventually be disrupted by LegalZoom-type interactive forms.\textsuperscript{168} Thus, as current established firm customers realize that LegalZoom offers the service they would have purchased from the firm, they “[will] be happy to purchase a product with less [but good enough] performance,” as they can get it at a lower price.\textsuperscript{169} This is a classic example of a low market disruption—the customers would have hired an attorney but for LegalZoom’s “good enough” product and lower price.\textsuperscript{170} These services are represented in Appendix E by the dark purple color.

Of course, there are hybrid disruptors, which show both new market and low market tendencies.\textsuperscript{171} LegalZoom is certainly a hybrid, especially toward the low and middle end of the market. In the wills space, for instance, there are some customers who would not have written a will at all but for LegalZoom.\textsuperscript{172} However, there are also some customers who would have hired a lawyer, but then found LegalZoom—indeed, LegalZoom is “crowding into the market and hurting small firm and solo practitioners.”\textsuperscript{173} This is both a new market and low market scenario—LegalZoom is both servicing customers who would not obtain legal assistance otherwise and taking customers from established firms. This hybrid nature is represented on Appendix E by the light green color.

Note that neither the solid light blue nor the solid dark purple areas of Appendix E indicate absolutes—LegalZoom remains a hybrid at each end. Rather, the spectrum on the chart stands for the hypothesis that as the complexity of the legal problem increases, it becomes more likely that LegalZoom is displacing a law firm customer (a low market disruption) instead of creating a new customer base (a new market disruption). Thus, as LegalZoom’s capability increases, established firms’ concern should increase as well, as since LegalZoom is moving toward displacing its low market customer base.

\textsuperscript{167} See Barton, Lessons, supra note 62.
\textsuperscript{168} See id. (“Law should certainly look beyond their near-term competitors (in house counsel, alternative law firms, outsourcing, and computerized discovery services) and consider the disruptive possibilities of interactive forms.”).
\textsuperscript{169} Id. at 47.
\textsuperscript{170} Id. at 47.
\textsuperscript{171} Barton, supra note 10, at 91.
\textsuperscript{172} Barton, Lessons, supra note 62.
V. Conclusion

This article applied Christensen’s *Innovator’s Dilemma* model directly to LegalZoom’s disruptive innovation in the legal marketplace. It did so by first explaining *The Innovator’s Dilemma* paradigm, specifically highlighting Christensen’s example of the steel mini mill, which disrupted the established integrated steel manufacturers in the United States. Next, this article explained two concepts that modify the disruptive innovation model in LegalZoom’s case: the solution shop versus value-adding process business and the related prohibition against fee-splitting, and the establishment and enforcement of unauthorized practice of law restrictions in the United States. It also explained the distinction between low market and new market disruption. Finally, this article plotted LegalZoom onto The Innovator’s Dilemma model—first in a manner analogous to Christensen’s mini mill example in Appendix B, then adding fee-splitting rules and the solution shop versus value-adding process business distinction in Appendix C. It then added the risks behind the enforcement of unauthorized practice of law regulations in Appendix D, and finally added the spectrum from low market to new market disruption in Appendix E.

The chart in Appendix E represents a more complete model of *The Innovator’s Dilemma* framework as it applies to LegalZoom. Previous research resulted in diagrams only extending as far as Appendix B, a simplistic model that does not fully capture LegalZoom’s disruptive innovation trajectory. Rather, by fully incorporating obstacles faced by LegalZoom, Appendix E better encapsulates its *Innovator’s Dilemma* pathway to high-market dominance.
APPENDIX B

Note: This figure is adapted from the chart in CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA 90 (1997), and incorporates the theories present throughout the book and in other works, specifically those cited in Part IV.A.
APPENDIX C

Appendix C: Legal Zoom’s Capability Over Time, Adding Fee Splitting Rules

Note: This figure is adapted from Appendix B and the chart in CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA 90 (1997), and incorporates the theories present throughout the book and in other works, specifically those cited in Parts III.A and IV.B.
APPENDIX D

Note: This figure is adapted from Appendix C and the chart in CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA 90 (1997), and incorporates the theories present throughout the book and in other works, specifically those cited in Parts III.B and IV.C.
APPENDIX E

Appendix E: Legal Zoom’s Capability Over Time, Adding Fee Splitting Rules, Unauthorized Practice of Law Regulation, and Low Market versus New Market Disruption

Note: This figure is adapted from Appendix D and the chart in CLAYTON M. CHRISTENSEN, THE INNOVATOR’S DILEMMA 90 (1997), and incorporates the theories present throughout the book and in other works, specifically those cited in Parts III.C and IV.D.