

15.619 – Fall 2015 – Preliminary Syllabus

Launching a Start-up: Legal Tools and Frameworks

[This course was offered for the first time Fall '14 under 15.S24, a temporary number.]

Instructor: John Akula

Monday 4pm-7pm (with a break, and snack provided); E51-335

(First class meeting: Monday 9/14)

Meets full semester; 6 units; P/D/F only; No prerequisites

Overview

This course is a comprehensive “deep dive” into the many crucial law-sensitive issues faced in the process of launching, financing, and growing an innovation-driven enterprise (IDE) from the perspective of all key stakeholders. It is designed to be of value to those who are (or may in the future be):

- Involved in research which may be of value to an IDE;
- Involved as an entrepreneur or founder in launching an IDE;
- Working for or seeking employment with such a venture;
- Involved with an IDE as an advisor, board member, or consultant;
- An investor or lender, including “friends and family,” angel, venture capital, and commercial lenders;
- Involved with a company that forms strategic partnerships with such enterprises;
- Involved in buying or selling IDEs;
- Interested from a public policy perspective in how government policy and law can nurture an ecosystem friendly to entrepreneurship and innovation.

Also, since the best way to understand how the law works is to analyze some law-sensitive problems in depth, this course should also be of interest to a student whose primary goal is to gain familiarity and understanding of the legal system, either in general or as it applies to business.

Key topics will include the law-sensitive aspects of:

- The legal framework of putting a team together.
- Selecting and structuring a business entity.
- Key contracts among founders and with employees.
- Ownership, compensation and governance issues.
- Developing and protecting intellectual property.
- Financing the venture.
- Growing the company.
- Managing financial distress.
- Buying and selling the venture.
- Other exits and long-term strategies.
- Transnational and immigration issues.
- The role of legal counsel.

Students will develop a clear understanding of the legal frameworks and analyses that apply to key strategic decisions from the perspectives of different stakeholders, and carefully review sample documents and agreements.

The format of the course will include negotiation and drafting exercises and other realistic simulations. Outside legal practitioners will participate as co-teachers with the instructor in many of the classes.

Students from all departments at MIT are welcome. Students who did not participate in the Sloan bidding process can show up for the first class and, space permitting (we have a very big room), you will be admitted. (There will be seats available even if the course is officially “closed,” because the room is much larger than the bidding-system enrollment cap.)

Prerequisites and prior experience

There are no prerequisites, required or recommended, for this course. You do not need any courses or other background in law or business. Students from departments outside of Sloan are welcome. Any needed background will be provided in the course.

The law has its own terminology, and this may be a concern for students for whom English is a second language. However, a special effort has been made in designing the readings and assignments to minimize this problem – all of my courses are intended to be English-as-a-second-language friendly.

Format, approach and expectations of students

Format and approach: This course will be an intellectually rigorous exploration of topics, but the law is a practical discipline, and this course is designed to provide frameworks and tools that will be of practical use to students involved in business ventures or research relating to cutting-edge technologies. The instructor was for many years a partner at a leading US law firm.

The class will meet for three hours with a break in the middle. Since the class runs through the dinner hour, there will be a break and snacks will be provided.

Stellar registration: During the semester you need to be signed onto the class electronic bulletin board on Stellar.

Class attendance: Much of the most important material in this course is presented in class and not in the readings, so students should plan on attending all of the classes. Classes will begin promptly at 4:05. If you miss a class and feel that you have a good reason (such as illness, job hunting or family obligations), please e-mail the TA before or shortly after the class in question, with a “cc” to the instructor, to explain your absence. (You do not need to include in the e-mail any personal details -- just a general statement of the reasons, e.g., job interview, family obligations.)

Please do not use laptops or cell phones during class.

Class participation: All students are encouraged to participate in class discussion.

Written exercises and deliverables: There will be some short exercises involving realistic negotiation simulations and the review of deal structures and documents. Students will have the option of doing these exercises individually or as part of a 3-4 member team. Some of these exercises will be done during class.

Grading

Grading will be Pass/D/Fail only. However, students are expected to attend class regularly. Excessive absences will result in an unsatisfactory grade.

Textbook and Course Readers

Students should purchase *The Entrepreneur's Guide to Business Law* by Constance Bagley and Craig Dauchy, 4th ed, (2011; South-Western); ISBN-10: 0538466464; ISBN-13: 978-0538466462.

The book will be at the Coop, and is available new for about \$60 on Amazon. Other material will be posted on Stellar or distributed in class.

Picking a law course

Many Sloanies take a law course, but only a few have time for more than one. My law courses are not designed as a sequence. Rather, they are an array of choices. For information about all of my courses, check out my personal website at:

<http://jakula.scripts.mit.edu/>

which can also be accessed from my official Sloan website.

Contact Information

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(over for class-by-class outline)

Topical class-by-class outline

Class/Date	Topic
1 Mon 9/14	<p>Introduction: Course overview. Some business law basics.</p> <p>The legal framework of putting a team together to work on a new venture. The successful management of conflicting obligations to past and concurrent employees. Duty of loyalty. Trade secrets. Non-competition and other agreements.</p>
2 Mon 9/21	<p>Organizing the Business Entity:</p> <p>Selecting and structuring a business entity. Corporations and limited liability companies. Limited and unlimited liability. Tax and control features. Organizational documents. Timing – when to get organized? Selecting a name and trademarks. The roles of personal and company counsel.</p> <p>Key contracts, including among founders and with employees. Invention assignment, non-competition, non-disclosure, and shareholder agreements. The legal framework of the employment relationship. Contract formation, interpretation and disputes. Contracts with accelerators and incubators.</p> <p>Ownership, compensation and governance issues. Dividing ownership. Stock as compensation. Vesting and options. Tax. Timing. Founders and early employees. The composition and role of a governing board.</p>
3 Mon 9/28	Organizing the business entity (cont.)
4 Mon 10/5	<p>Financing the venture. Debt and equity. Capital from founders. Friends and family. Angels. Venture capital. Strategic investors. Crowd funding. Interpreting and negotiating a term sheet. Investor roles in management and governance. The interplay of sequential investors. The role of counsel.</p>
<i>No class Monday 10/12 – Columbus Day holiday – But Monday classes meet on Tuesday</i>	
5 Tu 10/13	Financing the venture (cont.)
<i>No class Monday 10/19 – SIP week at Sloan – Regular classes suspended</i>	
6 Mon 10/26	<p>Technology and intellectual property. Developing and protecting intellectual property (IP). Technology transfer and licensing. Patents. Trade secrets. Copyright. Scope of protection and realistic remedies. IP counsel.</p> <p>Special issues relating to software, business methods, digital communications and life sciences. The changing framework of patentability. Software and open source. Genetics-related IP.</p>
7 Mon 11/2	Technology and intellectual property (cont.)
8 Mon 11/9	<p>Growing the company. Shifts in governance as the enterprise matures. Changes in management. Pressures to replace a founder. Managing an expanding workforce. Negotiating and administering contracts. Digital outreach and marketing. Litigation risks. Regulatory risks.</p>
9 Mon 11/16	<p>Growing the company (cont.)</p> <p>Transnational issues. Visa and immigration issues under US law. How young companies manage a multinational footprint. Comparative and transnational perspectives on IDEs.</p>
10 Mon 11/23	<p>Selling and buying the venture. Preparing for an acquisition. Financial and strategic buyers. The negotiation process. Diligence. The process and the risks. Broken deals.</p> <p>Other exits and long-term strategies. Going public. Strategic partnerships.</p>
11 Mon 11/30	<p>Selling and buying the venture (cont.)</p> <p>Other exits and long-term strategies (cont.). Strategic partnerships and joint ventures. Preparing for an IPO.</p>
12 Mon 12/7	<p>Managing financial distress. Managing through financially lean times. Common pitfalls associated with financial distress. Planning for a “soft” landing. Company bankruptcy and reorganization – preserving value and avoiding personal liability. Personal bankruptcy. Alternatives to formal bankruptcy.</p>