Entrepreneurship, Innovation, Startups and the Law

Preliminary Syllabus and Reading List

[as of 11/26/18]
Instructor: John Akula
Tuesday 7-9pm; E51-345;
(First class meets Tuesday February 5)
Meets full semester; 6 units; P/D/F only; No prerequisites
Students and researchers from ALL MIT departments welcome

Note: It is expected that an audiovisual recording will be made of all of the sessions in this course. These recordings will be made available to class participants unable to attend a regularly-scheduled class. The recordings may also be used to develop digital learning materials to be used in this course in future years. The recordings will focus on the teachers, and not on other participants in the class. However, student questions will normally be audio-captured, and there may be some incidental capture of student images. If this is a concern for you, please inform the TA, and seating arrangements will be made to minimize the likelihood of any capture of your image.

Overview

This course is a comprehensive “deep dive” into the crucial law-sensitive issues faced in the launching, financing, growing, and selling or winding down a new venture. We will pay special attention to innovation-driven ventures, which make use of cutting edge technologies and business models. The course is designed for you if you are (or are planning to be):

- An entrepreneur or founder of a start-up
- A student or researcher working with an innovation or new technology with the potential for commercial or social impact
- An early employee of a start-up
- An advisor, board member, or consultant
- An investor in or lender to an innovation-driven startup or growth company
- Working with a company that forms strategic partnerships with such ventures
- Involved in buying or selling such ventures
- Interested from a public policy perspective in how government policy and law can nurture an ecosystem friendly to entrepreneurship and innovation

The instructor was for many years a practicing attorney, and attorneys who are currently practicing will be invited in to most of the classes. The focus throughout is on realistic opportunities and problems, and practical skills and tools.
The law of intellectual property (trade secrets, patents, copyrights, and trademarks) is often of special importance to an innovation-driven venture as it plans a strategy to acquire and exploit new technologies. This course will take a close look at intellectual property (IP) and its implications for the success of the venture. We will take an especially close look at cutting edge technologies involving software, digital communication, and life sciences.

The course will include reviewing sample documents and agreements, and simulated negotiations.

Students from all departments at MIT are welcome. Students from outside Sloan who do not participate in the Sloan bidding process can show up for the first class and, space permitting, will be admitted.

Although this course focuses on innovation-driven startups, such companies and their managers confront many of the same law-sensitive issues that are crucial to managers of any organization, and so this course also provides the general law-related competencies any manager needs. If you are wondering if this is the right law course for you, see the Addendum to this Syllabus on “Picking the right law course.” This instructor also offers 15.615, which covers many of the same topics but has a tilt towards mature companies, finance, and complex deals, and requires a greater commitment.

**Class-by-class topical outline**

Note: Each semester when I put this course together, the topics are arranged at first in a logical order. However, practitioner guest lecturers are a vital part of this course, and they have complicated schedules which sometimes require juggling of the order of topics (before or during the semester). If the order looks scrambled or is scrambled later, that is why. Apologies in advance, but I think it is worth it to have their hands-on expertise.

Also Note: Some of the guest lecturers have not yet been confirmed.

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<th>Class/Date</th>
<th>Topic</th>
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| 1 Tue 2/5  | **Introduction:** Course overview.  
**Organizing the business entity:** Corporations and limited liability companies. Timing – when to get organized? The roles of counsel. Dividing ownership. Founders and early employees. The governing board.  
Guest: TBA |
| 2 Tue 2/12 | **Financing the venture (I) – Early steps:** Very early financing, including self-financing, “friends and family,” and angel and seed rounds. Special focus on angel financing.  
Guest: TBA |
|            | *No class on Tuesday 2/12 – MIT open but for a Monday class schedule* |
| 3 Tue 2/26 | **Putting a team together:** The successful management of conflicting obligations to past and concurrent employers. Duty of loyalty. Trade secrets. Employment agreements. Provisions on non-competition, non-disclosure, invention assignment, and solicitation.  
Guest: TBA |
| 4 Tue 3/5  | **New technologies and intellectual property (I) - Overview:** Intellectual property as a tool for developing and exploiting your technology. Fundamentals of patents, trade secrets, copyright, and trademarks.  . |
| 5 Tue 3/12 | **New technologies and intellectual property (II) - Software:** Distinctive features of IP law as applied to software. Open source and free software. “Copyleft” and permissive licenses. Implications for competitive and collaborative business models.  
Guest: TBA |

*No class Tuesday 3/19 – Sloan Innovation Period  
No class Tuesday 3/26 – Spring Break*
6 Tue 4/2  New technologies and intellectual property (III) - Trade secrets: Protecting trade secrets in an environment of employee mobility and technical vulnerability. Managing the legal risks of hiring technology-savvy employees.  
Guest: TBA

7 Tue 4/9  New technologies and intellectual property (IV) - Patents: The role of patents in exploiting IP and shaping business models. Recent developments in patentable subject matter; patent procedures, and patent litigation.  
Guest: TBA

8 Tue 4/23  Financing the venture (II) – Venture capital: Later rounds of financing, with a focus on venture capital. Interpreting and negotiating a VC term sheet. Investor roles in management and governance. The interplay of sequential investors.  
Guest: TBA

Guest: TBA

Guest: TBA

11 Tue 5/14  Wrap-Up. A quick look at issues which were slighted earlier, including managing contracts and managing litigation risk.

Prerequisites and prior experience

There are no prerequisites required or recommended. You are not expected to have any prior understanding of law or of any particular business topics. Whatever background you need will be provided in class. Students from departments outside of Sloan are welcome, and in the past have comprised a large proportion of the class.

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 deliverables to minimize this problem – all of my courses are intended to be “English-second-language-friendly.”

Expectations of students

There is no final exam or any other course obligation after the last meeting of the class.

Students must take this course for credit. The general rule is that Listener status is not allowed. All students will be graded P/D/F.

Any student requiring an academic accommodation can contact the instructor.

It is generally assumed in Sloan courses that students are familiar with the guidance for course-related conduct provided by “Sloan Values in Practice.” However, since this course generally draws many students from outside of Sloan, those guidelines have been posted on Stellar under the “General” materials tab, and any student who is not familiar with those guidelines should read through them and plan to conduct himself or herself accordingly. The guidelines can also be found at

https://mysloan.mit.edu/offices/deans/values/Pages/CoreValues.aspx

Class attendance: Much of the most important material in this course is presented in class, so students should commit to attending ALL of the classes. If you miss a class and feel that you have a good reason (such as illness or a family obligation), please e-mail the TA before or shortly after the class, 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., illness.) To the
extent the classroom technology permits, I am hoping to be able to make available for a short time after each scheduled class a video of that that class, for viewing by students who for good reason missed that class. In such cases, viewing the video and submitting to the TA your notes from that viewing will count as attending that class.

Be advised that poor attendance will result in an unsatisfactory grade for the course.

Under no circumstances should a student sign in for anybody but himself or herself.

Please do not use laptops or cell phones during class.

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

Written exercises: There will be 3 short written exercises, to be done out of class. These exercise are all open book, and designed to help students master some key legal concepts. I would expect that a student who has done the assigned reading relating to an exercise could complete the exercise in less than one-and-a-half hours.

Each students has the option of doing any exercise individually or as part of a team of up to 3 members.

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<th>Preliminary Exercise Topics and Schedule</th>
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<td><strong>Topic</strong></td>
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*The exercises should be submitted electronically by 7pm on the date due, in keeping with a procedure which will be explained by the TA.

Grading

Grading will be Pass/D/Fail only. Students are expected to attend all classes, so you should not enroll if you think consistent attendance will not be possible for you. (See discussion of “Class attendance” under “Expectations of students” above.)

Textbook and Canvas

Students should purchase *The Entrepreneur’s Guide to Law and Strategy* by Constance Bagley and Craig Dauchy (5th ed.; 2018; Cengage Learning).

The book will be at the Coop, and is available new for about $113 on Amazon. Other material will be posted on Canvas or distributed in class.
## Contact Information

**Instructor:**
John Akula  
E62-316  
617-452-3619 (office)  
857-928-4488 (cell)  
jakula@mit.edu  
https://tinyurl.com/JAkulaAtSloan

**Course Teaching Assistant:**  
TBA

**Faculty Administrative Assistant:**  
Patty Curley  
E62-355  
617-253-5701  
pcurley@mit.edu

## PRELIMINARY READING LIST

**Note:** For the classes with heavy readings, I will generally point out in advance which readings are important to do before the meeting of that class, and which can be put off.  
**Note:** You do not need to read the “Putting It Into Practice” segment at the end of each Bagley chapter.  
**Note:** Items to be posted on Canvas indicated with [C].

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<thead>
<tr>
<th>Class/Date</th>
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| 1 Tue 2/5 | Introduction  
• Akula, “The US Legal System in a Peanut” (optional) [C]  
Organizing the Business Entity  
• Bagley, Ch 4 (“Deciding Whether to Incorporate”) and Ch. 5 (“Structuring the Ownership”).  
Note: This is a long reading assignment. You do not need to do it in advance of the first meeting of the class, but you should plan on doing it at some point during the semester – these chapters contain very fundamental material that is relevant throughout the semester. |
| 2 Tue 2/12 | Financing the venture (I) – Early steps  
| 3 Tue 2/26 | Putting a team together  
• Jim Lampert Video on IP overview (link to be provided)  
• Bagley, Ch 2 (“Leaving Your Employer”)  
• Sample employment agreement titled “Employee Noncompetition, Nondisclosure and Developments Agreement” |
| 4 Tue 3/5 | New technologies and intellectual property (I) - Overview  
• Bagley, Ch 14 (“Intellectual Property and Licensing”). Note: This is a long chapter, and is the basic background for classes 4-7. Sections especially relevant to classes 5, 6 and 7 are as noted below.  
• Lotus v. Borland [C] |
| 5 Tue 3/12 | New technologies and intellectual property (II) – Software  
• From Bagley, Ch 14, pp. 509-523 (Sec. 14.2 on “Copyrights”) and pp.564-568 (Sec 14.9 on “Special Issues Associated with Software Licenses, Open-Source Software, and Online Terms of Use”) |

*No class Tues 2 19 or Tuesday 3/26*
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<tr>
<th>Date</th>
<th>Lecture Topic</th>
<th>Reading Sources</th>
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<tr>
<td>6 Tue 4/2</td>
<td>New technologies and intellectual property (III) – Trade secrets</td>
<td>From Bagley, Ch 14, pp. 498-509 (Sec. 14.1 on “Trade Secret Protection”)</td>
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<td>7 Tue 4/9</td>
<td>New technologies and intellectual property (IV) – Patents</td>
<td>From Bagley, Ch 14, pp. 523-541 (Sec. 14.3 on “Patents”)</td>
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<td><strong>No class Tuesday 4/16</strong></td>
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<td>8 Tue 4/23</td>
<td>Financing the venture (II) – Venture capital</td>
<td>Bagley, Ch 13 (“Venture Capital”)</td>
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<td>NVCA Sample Venture Capital Term Sheet (to be reviewed in class; not for reading in advance) [C]</td>
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<td>9 Tue 4/30</td>
<td>Selling and buying the venture</td>
<td>Bagley Ch 16 (“Buying and Selling a Business”)</td>
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<td>BUT SKIP Sec 16.9 (“Securities Law Requirements” at pp 651-658); and Sec 16.10 (“Accounting Treatment” at p 658); and STOP AT p. 681</td>
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<td>10 Tue 5/7</td>
<td>Managing financial distress and the winding down of a venture</td>
<td>Bagley, Ch 12 (“Creditors Rights and Bankruptcy”)</td>
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<td>Chapter 1 (pp. 5-30) from Stephen Elias and Leon Bayer, “The New Bankruptcy” (Brief introduction to personal – as contrasted to business – bankruptcy) [C]</td>
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<td>Akula, “The Legal Framework of Business Distress – Opportunities and Risks in a Peanut.” Optional reading. Will be of interest mainly in the context of a reorganization (as opposed to a liquidation), when it is possible to salvage substantial value from the distressed venture and perhaps continue forward as a going concern.</td>
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<td>Review (from class 1) Akula, “The US Legal System in a Peanut” (optional) [C]</td>
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