

# 15.618 – Entrepreneurship, Innovation, Startups and the Law

## Fall 2017 – Preliminary Syllabus

Instructor: John Akula

Tuesday 4-6pm; E51-335;

(First class meets Tuesday September 12)

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

Students and researchers from ALL MIT departments welcome

Primarily for graduate students; undergraduates welcome

### Overview

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This course is a comprehensive “deep dive” into the crucial law-sensitive issues faced in the process of launching, financing, and growing a new venture. We will pay special attention to ventures making use of innovative 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 or lender in hi-tech startups or growth companies
- Working with a company that forms strategic partnerships with new 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

Although this course has a clear focus, it should also be of interest to students seeking a general introduction to law, because the best way to gain an understanding of how the law works is to focus on how it addresses certain specific problems.

Key topics will include the law-sensitive aspects of:

- Putting together an initial team for the venture
- Selecting and structuring a business entity
- Key contracts among founders and with employees
- Ownership, compensation and governance issues, including equity as compensation
- Financing the venture
- The legal framework of new technologies and business models, including intellectual property
- Managing financial distress
- Selling or buying the venture
- Transnational and immigration issues
- The role of legal counsel

Intellectual property (trade secrets and confidential information, patents, copyrights, and trademarks) are of special importance to innovation-driven ventures, so we will consider in-depth how intellectual property is developed, protected, and put to use. We will take an especially close look at cutting edge technologies involving software, digital communication, and life sciences.

Students will review sample documents and agreements, and participate in negotiation scenarios.

Top legal practitioners will participate as co-teachers with the instructor in many of the classes.

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.

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.”

## Prerequisites and prior experience

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There are no prerequisites required or recommended. You do not need background in law or business – any needed background will be provided. Students from departments outside of Sloan are welcome, and in the past have comprised a large proportion of the class.

## Grading

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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.

## Class-by-class topical outline

| Class/Date  | Topic  |
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| 1 Tue 9/12  | <b>Introduction:</b> Course overview.<br><b>Organizing the Business Entity:</b> Corporations and limited liability companies. Timing – when to get organized? The roles of counsel. Dividing ownership. Stock as compensation. Vesting and options. Founders and early employees. The governing board. |
| 2 Tue 9/19  | <b>Putting a team together:</b> The successful management of conflicting obligations to past and concurrent employees. Duty of loyalty. Trade secrets. Employment agreements. Provisions on non-competition, non-disclosure, invention assignment, and solicitation.                                   |
| 3 Tue 9/26  | <b>Early financing, including angel financing:</b> Very early financing, including self-financing, “friends and family,” and angel and seed rounds. Special focus on angel financing. The role of counsel.   |
| 4 Tue 10/3  | <b>New technologies, business models, and intellectual property (I):</b> Overview of developing and protecting forms of intellectual property. Fundamentals of patents trade secrets, copyright, and trademarks. Legal issues posed by new technologies.   |
| <i>No class Tues 10/10 – Columbus Day Holiday</i> |  |

|   |   |
|---|---|
| 5 Tue 10/17   | <b>New technologies, business models, and intellectual property (II):</b> Focus on patent law and its role in protecting IP and shaping business models. Recent developments in patentable subject matter; patent procedures; and patent litigation..                           |
| <i>No class Tuesday 10/24 – Sloan Innovation Period</i> |   |
| 6 Tue 10/31   | <b>New technologies, business models, and intellectual property (III):</b> A focus on software. Distinctive features of IP law as applied to software. Open source software.  |
| 7 Tue 11/7  | <b>New technologies, business models, and intellectual property (IV):</b> A focus on some key current technologies, including disruptive technologies and the legal response.   |
| 8 Tue 11/14   | <b>Financing the venture (II) – Focus on venture capital:</b> 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. Commercial lending. |
| 9 Tue 11/21   | <b>Managing financial distress and the winding down of a venture:</b> Planning for a “soft” landing for a failing venture. Company bankruptcy – preserving value and avoiding personal liability. Personal bankruptcy. Alternatives to formal bankruptcy.                       |
| 10 Tue 11/28  | <b>Selling and buying the venture:</b> Preparing for an acquisition. Deal structures. Negotiations and diligence. The process and the risks. Broken deals. Strategic and financial buyers.  |
| 11 Tue 12/5   | <b>Growing the venture (I):</b> Negotiating and managing contracts and strategic partnerships; managing business disputes and litigation risk; special issues in the life sciences..  |
| 12 Tue 12/12  | <b>Growing the venture (II) :</b> Comparative and transnational considerations, including immigration; marketing with special attention to digital platforms.<br><b>Wrap-up:</b>  |

## 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. The instructor was for many years a partner at a leading US law firm.

**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 family obligations), 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.) Be advised that poor attendance will result in an unsatisfactory grade for the course.

**Class participation:** All students are encouraged to participate in class discussion. The instructor may use what is sometimes called “soft” cold calling. (By a “cold call,” I mean calling upon a student to respond to a question even if the student has not volunteered by raising his or her hand. By a “soft” cold call, I mean that if the student does not wish to respond he or she can simply “pass” without penalty. Soft cold calling is a technique for encouraging widespread class participation.) There may be feedback polls on some of the classes for which you will be required to submit a response.

**Written exercises and deliverables:** There will be some short exercises involving negotiation simulations and the review of deal structures and documents. Students will have the option of doing any exercises individually or as part of a team of up to 3 members.

**Textbook and Course Readers**

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 Stellar or distributed in class.

**Contact Information**

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**ADDENDUM ON PICKING THE RIGHT LAW COURSE**

Here is some information you might find useful if you are considering bidding on one of my general enrollment law courses this year. The chart below provides an overview. All the courses are full-semester.

| <b>Fall 2017</b>  | <b>Spring 2018 (anticipated)</b>  |
|---|---|
| <b>15.615. Essential law for business.</b> 9 credits. M/W 8:30-10am. Usual grading.                   | <b>15.615. Essential law for business.</b> 9 credits. M/W 8:30-10am. Usual grading                    |
| <b>15.618. Entrepreneurship, Innovation, Startups and the Law.</b> 6 credits. Tues 4-6pm. P/D/F only. | <b>15.618. Entrepreneurship, Innovation, Startups and the Law.</b> 6 credits. Tues 7-9pm. P/D/F only. |
|   | <b>15.6181.</b> Undergraduate “meets with” listing for 15.618.  |

**As for key differences:** My two courses are not a sequence, but a choice. So you should pick the one most aligned with your interests or other commitments.

The key differences in content are these: 15.615 is the broader course. To the extent that it has a “tilt,” it is towards the legal problems of established organizations, including the law-sensitive aspects of complex deals and finance. The material relating to startups has been cut back a bit (but not eliminated), reflecting the expanded availability of 15.618. 15.618 is a deep-dive into the key law-sensitive issues faced by innovation-driven startups. We take a company

and its key stakeholders from organization through early financing and growth, and through sale or failure. We also take a close look at technology-related legal issues and intellectual property.

That said, it is important to note that both courses include a strong common core, designed to provide managers with the law-sensitive skills needed when their organizations or careers face key law-sensitive junctures. So these courses are more alike than their titles might suggest. (For example, both consider the legal issues that arise in financing companies, or managing financial distress, or in buying and selling companies, but with a tilt in 615 towards more mature companies and a tilt in 618 towards younger ones.) So If you have scheduling constraints, it is not a bad idea to let that guide your decision.

There are also some important differences in expectations of students. 15.618 is 6 credits; graded P/D/F only; and meets once a week. 15.615 is 9 credits; letter graded; and meets twice a week. 15.618 was designed to impose a lesser burden, in part to make available a law course to students under tight limits as to time and commitment.

**As for prerequisites and background:** There are no prerequisites required or suggested for any of the courses. No particular background is required or expected – any needed background will be provided in class. Technical legal language is kept to a minimum, and many students for whom English is a second language have taken these courses.

Students from any MIT division are welcome in these courses, and many students from outside of Sloan have enrolled (especially in 15.618). Undergraduates are also welcome in any of these courses.

**As for deliverables:** In both courses, students have the option of doing any deliverables as individuals or as part of a 3-4 member team.

If you have questions about your selection, feel free to chase me down ([jakula@mit.edu](mailto:jakula@mit.edu)).