ENTR 457/657: LEGAL AND BUSINESS ISSUES FOR ENTREPRENEURS

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Office Hours: By Appointment
Class Meetings: Wednesday, 5:00 pm – 8:00 pm
Location: Gore Hall, Room #204

Course Description

This course focuses on the identification, analysis and understanding of some of the more important legal and business issues related to establishing and growing a viable emerging growth company. The course will provide “hands-on” experience through mini-lectures, interactive class discussions and projects, and guest speakers. Readings will be assigned and students will work part of the time in teams. Students will be expected to prepare written deliverables, to participate in team projects and team presentations, and to defend their final paper.

Learning Objectives

By the end of the course, students will have: (1) improved their understanding of some of the more important legal and business issues related to establishing and growing a viable business venture; (2) gained practical experience in managing and identifying issues affecting the legal governance, equity financing, and sale of a business venture; (3) learned how to focus on value creation and enterprise alignment from the outset by avoiding common mistakes and focusing on legal issues; and (4) improved their planning, organization, project management and communication skills.

Lectures and Readings

Lectures will be held during each class and address specific topics and themes arising in the formation, funding, operation and exit of a business venture. While lectures will be facilitated by the instructor and/or subject matter experts, student participation is critical and attendance will be monitored. Prior to the lectures, students may receive relevant readings in the form of articles, sample documents and other materials. Sample documents will be provided to the students in Document Binder #1, Document Binder #2 and Document Binder #3, as noted in the Course Schedule.

In addition, students are required to read:

(1) *Get Backed*, by Evan Baehr and Evan Loomis (available through getbacked.com) prior to Class 4; and
(2) *Mastering the VC Game: A Venture Capital Insider Reveals How to Get from Start-up to IPO on Your Terms* (available at http://www.amazon.com/Mastering-VC-Game-Venture-Start-up/dp/1591844444) prior to Class 6.

Team Assignments

Project teams (the “Teams”) will be formed during the semester. The instructor will serve as a mentor to the Teams as they take the steps necessary to select, create, finance and govern a
Project teams (the “Teams”) will be formed during the semester. The instructor will serve as a mentor to the Teams as they take the steps necessary to select, create, finance and govern a hypothetical business venture (the “Company”).

**Grading**

Students will be evaluated and graded on a combination of the following factors:

- Individual written deliverables – written papers and in-class quizzes  
  Approximately 40%
- Team projects, presentations and negotiations  
  Approximately 40%
- Individual and team participation, which will include attendance, class participation, team participation, and an oral defense of the last paper submitted  
  Approximately 20%

There will be no final exam.

**Advice for High Performance**

- Arrive at class prepared and engage in discussions. Treat the classroom environment like a business meeting format.
- Take risks during class discussions. Respectful disagreement with your peers and the instructor are encouraged.
- Be clear, concise and direct in your oral and written work product. Good writing skills are not only essential in this course, they are essential in the business world. Typos and grammatical errors will not be viewed positively.
- Ask questions if you do not have a clear understanding of a concept being discussed in class or presented in a reading.

**Course Policies**

**Communication with the Instructor**

- Most communications with the instructor should occur immediately prior to, during or after class. For private communication (including grade inquiries), please utilize email. Failure to follow these policies may result in a delayed or non-response to the message. If a student does not receive a response within a 24-hour period, they should resend the message.

**Course announcements/modifications**

- All course announcements/modifications will be sent to the students’ email addresses furnished to the instructor. Students are responsible for providing the instructor with their correct email address and for checking their email regularly to ensure that they are receiving messages from the instructor.

**Deadlines**

- Assignments must be completed/submitted by the deadlines set forth in the Syllabus or as provided by the instructor. Late assignments will not be permitted (unless there is a well-documented excuse). Late assignments will be penalized at the discretion of the instructor relevant to the number of calendar days that the assignment is late.

**Plagiarism, dishonesty & cheating**
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Plagiarism, dishonesty & cheating

- Dishonest and/or unethical behavior will not be tolerated. The instructor will pursue all violations and remedies under the University of Delaware's Code of Conduct. Except for Team specific assignments, and unless otherwise noted by the instructor, all assignments in this course are to be completed by individual students. For further information and a statement of official University Policy, students should consult the "Official Student Handbook". Proper citations are expected for “borrowed” work.

Use of Electronic Devices

- Unless authorized in advance by the instructor, or in the case of an emergency, the use of electronic devices during class is strictly prohibited.

Course Schedule

Barring unforeseen circumstances or inclement weather, the course will follow the schedule set forth below. All deliverables and assignments should be completed and submitted to the instructor at the times set forth in this Syllabus or as communicated by the instructor.

Class 1 will start with an organizational session, including:

- Introduction to the Course/Distribution of Syllabus
- Discussion of Expectations, Teams and Fictional Company Descriptions

After an entrepreneur has developed and vetted the business concept, it is time to organize the entity and seek funding. This part of the discussion will focus on the practical and legal considerations of starting a company. Before forming the entity, issues include:

- Discussion of entrepreneurship and the meaning of a “venture”
- Initial Founders'/Employment Issues
- Initial Intellectual Property Issues
- Assessing the Team and Resources
- Choosing a Company Name and Internet Address
- Selecting and managing the professionals
- Transition from an idea to a formal legal entity
  - Issues related to timing of formation
  - Issues related to protection of personal assets

Choosing the proper form of organization requires an understanding of the differences in tax treatment, liability, flexibility and governance, among other things. This part of the discussion will focus on the following:

- Issues related to the formation of a:
  - “C” Corporation
  - “S” Corporation
  - Limited Liability Company
- Issues related to primary governance documents:
  - Articles of Incorporation
  - Bylaws
  - Written Consent of Directors
At the beginning of class, students will identify their Teams. For purposes of this course, Teams will use a “C” Corporation formed in Delaware.

The Class 2 discussion will start with a review of the Organization Agreements in Document Binder #1.

The next part of the discussion will focus on creating and nurturing the right culture, building the management team, developing a Board of Directors/Advisory Board, and determining an HR strategy. Issues related to various corporate governance matters, as well as ownership and employee agreements, equity incentive plans and transfer restrictions will be discussed and the employment related agreements in Document Binder #1 will be reviewed.

The discussion will include:

- Ownership and Corporate Governance Issues
  Founders’ Contributions
  Board Issues – Fiduciary Duty, Duty of Care, Duty of Loyalty and Business Judgment Rule
- Team Building, Employee Issues, Benefits and Incentive Compensation
  Determination of which skills need to be employed by the Company, and which can be accessed through third party consultants, advisors, etc.
  Offer Letter and other agreements with Employees
  Option Plans/Profits Interests
  Vesting and 409A Considerations
  Recruitment and Retention Strategies

Assignment: Summaries of the fictional companies will be provided to the Teams for their review.

At the beginning of the class, the instructor will assign the fictional companies to the Teams.

Intellectual property often provides the basis for the economic viability of a venture. Just as important as understanding the fundamentals of patent and trademark law, the successful entrepreneur needs to develop and implement a successful “soft” intellectual property strategy (e.g., brand and name recognition and protection of confidential or sensitive information). This discussion will focus on the fundamentals of intellectual property law and the decision making process in developing an IP strategy.
entrepreneur needs to develop and implement a successful “soft” intellectual property strategy (e.g., brand and name recognition and protection of confidential or sensitive information). This discussion will focus on the fundamentals of intellectual property law and the decision making process that goes into an IP strategy, such as:

- Patent prosecution/Trademark registration/Copyrights
- Trade Secrets
- Barriers to entry
- Licensing
- Cost benefit analysis of IP
- Branding and Social Media
- Protection of confidential or sensitive information
- Privacy

Assignment: Students should prepare for Quiz #1, covering the lessons from Classes 1-3. An excerpt from the assigned reading “Get Backed” will be provided to the students. Students should review the excerpt and bring it to Class 4.

At the beginning of class, students will reveal the name of their fictional company and will take Quiz #1.

It is not enough to simply state that a company will be successful because of a robust market or technology trend. A company needs an effective strategy and a management team that can implement it. During class, Teams will learn how to prepare a high-level SWOT analysis (Strengths, Weaknesses, Opportunities & Threats) for their Company. This discussion will focus on the following aspects of preparing a SWOT and an effective Business Model:

- What is the purpose/who is the audience?
- What are the strengths and weaknesses of the Company’s strategy, opportunity and the Business Model itself?
- How to identify regulatory and other legal issues
- How to determine the appropriate market factors that will impact the Company’s products and investors’ decisions
- How to price the products/services
- What is the Company’s “go to market” strategy?

Once an entrepreneur has established the Company, has a full understanding of its Business Model and its competitive positioning, has proven the concept, and has chosen a path for funding, it is time to approach the market. The second half of this class will focus on the proper way to construct a “Pitch Deck” and to develop a relationship with potential investors. The instructor also will discuss strategies for working with legal and other representatives and advisors in the fund raising process.

Assignment: Teams will be expected to work on their SWOT and their Pitch Deck and bring two copies of each to Class 5. Teams will be given a Term Sheet to analyze and review and to bring to Class 5. Students will be given Document Binder #2 and should bring it to Class 6.

Teams will be given the opportunity to work on their SWOT and Pitch Deck.
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**Assignment:** Students should read “Mastering the VC Game” prior to Class 6.

Students will submit their final Pitch Decks to the instructor for grading.

There are many different strategies for financing a venture. This discussion will focus on the continuum of financing models for ventures and the implications of the choices, as well as the basics of a Term Sheet from an institutional investor. Sources of financing to be discussed will be:

- Founder/Angel investing
- Crowd funding under the new regulations
- Pre- and Post-Revenue Venture Funds
- Strategic Partnerships/Licensing
- Private Equity and Venture Debt
- Other sources of equity and non-equity funding

In addition to the discussion on funding, there will be an in-depth discussion on understanding a Capitalization Table.

The hope for many entrepreneurs is to one day receive a Term Sheet from an institutional investor. The next part of this class will focus on:

- The basics of a Venture Investment
- Understanding a Term Sheet
- Federal and State Securities law considerations

**Assignment:** Teams should work on their Term Sheets and bring two copies to Class 7.

At the beginning of class, students will take Quiz #2, covering the lessons from Classes 4-6. The instructor will give feedback on the Pitch Decks. Teams will submit their Term Sheets to the instructor, and work with the instructor throughout the class to improve their Term Sheet.

Emotions and anxiety levels are high upon receiving one or more Term Sheets for your venture. Now it is time to prepare to negotiate. This discussion will focus on the process and tips on negotiating to a successful completion, including:

- How to do diligence on the investor
- How to determine what is “market”
- Understanding the impact to the Cap Table, the “waterfall” and potential exit scenarios
- Negotiating Tips
- Issues related to uses of funds, including which functions to outsource
- How to manage your investment partner(s)

The instructor will discuss the process and suggest tactics for Negotiation Day.
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This will be a highly interactive session. During the class, and with the guidance of the instructor, Teams will take turns negotiating against one another, with the other Team playing the role of the potential investor, to come to an agreement for funding for their Company. Attendance at this class is mandatory.

**Assignment:** Teams will prepare a Term Sheet setting forth the agreements reached during negotiations and bring it to Class 9.

Students will submit their Term Sheets to the instructor.

The instructor will provide feedback on Negotiation Day.

The instructor will work with each Team to provide guidance regarding preparation of its final Term Sheet.

**Assignment:** Teams should finalize their Term Sheets and bring them to Class 10.

Students will submit their final Term Sheet to the instructor for grading.

Once funded, a management team must successfully implement the Company’s strategy. This discussion will focus on organic growth through licensing and acquisition, and the issues related thereto, as well as the business development “enterprise” in a technology venture. This discussion also will focus on issues related to choosing development and/or distribution partners and funding growth through debt financings. There also will be a discussion of key issues related to “follow-on financings”, both debt and equity.

During class, the instructor will discuss the final paper to be submitted by the students in Class 12 (likely 3-4 pages), which will focus on the primary issues discussed throughout the semester.

**Assignment:** Document Binder #3 will be distributed to the students and they should bring it to Class 11.

Selling a venture is complicated and emotional. Timing is a critical factor and often the desires of the founders and the investors conflict. Various exit scenarios will be discussed, such as an IPO and a sale of the Company. There will be a further discussion of how to manage your investment partners. Teams will discuss their exit strategies. This discussion also will focus on:

- Dealing with the various constituencies (i.e., founders, investors, employees)
investment partners. Teams will discuss their exit strategies. This discussion also will focus on:

- Dealing with the various constituencies (i.e., founders, investors, employees)
- Understanding the sale process and timing issues
- The role of management in the sale process
- The role of advisors/investment bankers

The instructor will review the sample M&A Letter of Intent and Investment Banking Engagement Letter in an interactive session.

Assignment: Students should bring Document Binder #3 to Class 12.

Understanding and negotiating the sale documents can be a daunting experience; particularly when the management team must still “run the business” concurrently. This discussion will focus on an explanation and detailed analysis of the documents in an M&A transaction, including the:

- Due Diligence Checklist
- Purchase and Sale Agreement
- Disclosure Schedules
- “Earn Out” and Escrow Terms
- Non-Competition Agreements

The class will conclude with an open discussion of key issues and unanswered questions, and an opportunity for Teams to discuss their preferred exit scenario and to give their feedback on the exit scenarios of the other Teams.

Assignment: Students should submit their final paper to the instructor on or before the date it is due.

This class will consist of individual meetings with students, at appointed times, where students will defend and receive feedback on their final paper.