

BUL6930; Section 01e3: Law for Entrepreneurs

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Dates: T/R
Periods: 5-6 (11:45-1:40)
Room: HGS 340

Course Description & Scope

This course examines the legal aspects in starting and growing a company (small or medium-sized business or SMEs); strategies for ensuring compliance with law; use of law and the legal system to increase predictability, maximize value, marshal resources, and manage risk in an entrepreneurial enterprise. Since law permeates every act of an entrepreneurship enterprise, the course will consist of a broad survey of legal issues confront a new—small or medium-sized business.

I. LEGAL ASPECTS OF ENTREPRENEURSHIP

Legal Aspects of Entrepreneurship focuses on the legal dimensions of entrepreneurship. In this course, the term “entrepreneurship” includes far more than start-ups. Instead, we will use Professor Howard Stevenson’s definition: “Entrepreneurship is the pursuit of opportunity without regard to the resources currently controlled.” Even the largest companies have to constantly review their value proposition and adjust to changing market conditions.

This course is designed to help students develop the managerial capability of legal astuteness. Legal astuteness is the capability of entrepreneurs and other managers to work effectively with counsel to solve complex problems and to protect and leverage firm resources (Constance E. Bagley, “Winning Legally: The Value of Legal Astuteness,” *Academy of Management Review*, 33 2008: 378-390). It requires a set of value-laden attitudes, a proactive approach, the exercise of informed judgment, and context-specific knowledge of the law and the appropriate application of legal tools. Like information technology, the legal dimensions of business should not be treated as an after-thought or add-on to the business strategy development process. As Tim Hinthorne explained, “Corporate leaders who understand the law and the structures of power in the U.S.A. have a unique capacity to protect and enhance share-owners’ wealth” (Tim Hinthorne, “Predatory Capitalism, Pragmatism, and Legal Positivism in the Airline Industry,” *Strategic Management Journal*, 17, 1996: 251-270). Conversely, managers who lack the ability to integrate law into the development of strategy and of action plans can place the firm at a competitive disadvantage and imperil its economic viability.

Ideally, entrepreneurs and managers work with counsel as partners to craft business solutions that maximize value while minimizing (and eliminating entirely all unnecessary) legal or business risk. Just as a lawyer needs a sufficient understanding of how business operates and the strategies for success to be an effective partner, entrepreneurs need to

have some knowledge of legal nomenclature and the legal principles most relevant to their business.

Consider an entrepreneur starting a new software company. That person will have to decide whether to bring a contact list from the prior employer and whether to hire an engineer employed by a key competitor. The wrong choice could result in the inadvertent misappropriation of trade secrets and derail a future venture capital round or an initial public offering. The public disclosure of an invention in Japan or the European Union before the filing of a patent application can result in the loss of the ability to charge monopoly rents in those jurisdictions. A start-up that issues stock to individuals or firms without regard for federal and state securities law requirements will, at best, be required to give purchasers a put option. At worst, the company will be fined and its founders imprisoned. As Judge Easterbrook explained when he affirmed the criminal sentences of two founders, “States are entitled to give corporate managers incentives to learn the law. No one with half a brain can offer an opportunity to invest in our company without knowing that there is a regulatory jungle out there” (Mueller v. Sullivan, 141 F.3d 1232, 7th Cir. 1998). Entrepreneurs who think that they can deal with all of these issues once the company has enough money to hire a good lawyer to handle all that “legal stuff,” are sorely mistaken.

The proper use of the law and the legal system can increase realizable value and limit the downside risk. First, understanding law helps entrepreneurs and their financial backers’ position enterprises in the legal posture most suitable for their business. Many legal organizational structures and governance models are available. The structures offer different degrees of flexibility and freedom for the parties to define their relationships. Second, law protects a business from destructive competition by others. Law encourages competition on the merits, not on fraud and manipulation. Third, law can protect innovations by granting the inventors or their firm’s limited property rights. Value in the Information Age is defined by what is proprietary and legally protectable. Microsoft Corporation’s market capitalism has nothing to do with the hard assets, the brick and mortar, on its balance sheet. It is based on its ability to use copyrights, patents, trade secrets, trademarks, and contracts to sell software at margins approaching 90 percent. The market capitalization of Amazon reflects not only its current earnings but also the value of its brand and a loyal customer base. That value would dissipate if the firm was unable to prevent others from using the Amazon.com name (a trademark) or current employees from selling the customer list (a trade secret). Finally, law offers managers the ability to make their own “private law” by entering into contracts enforceable by the power of the state.

II. COURSE OBJECTIVES

The overarching purpose of Legal Aspects of Entrepreneurship is to prepare students to meet the legal and regulatory challenges and opportunities they can expect to encounter as entrepreneurs, venture capitalists, and managers of private and public businesses. The course provides a conceptual framework for understanding both the societal context within which businesses are organized and operate, as well as the various legal tools available to managers engaged in evaluating and pursuing opportunities. Legal Aspects of

Entrepreneurship will offer strategies and tactics for working with counsel to use the law as a positive force to increase realizable value while managing the attendant risks and keeping the legal costs under control.

The objective is not to teach business students how to think like lawyers, but rather to teach students how to become more legally astute so they can handle with confidence the legal aspects of entrepreneurship and management. This includes developing legal literacy and learning what to look for when selecting an attorney and knowing when to call one.

Special Needs: Students requesting classroom accommodation must first register with the Dean of Students Office & provide documentation to the Instructor.

Worksheets

A worksheet will be provided for most of the substantive coverage of the course. It is important to bring a hard copy of the worksheet to each class. Using the worksheets as an outline to take notes is vital to exam preparation. **Note**, however, some of the material is not covered by worksheets so it will be your responsibility to take copious notes in their place.

Course Materials

TEXT: Constance Bagley & Craig E. Dauchy, *The Entrepreneurs Guide to Business Law* (Cengage 4th ed. 2012). ISBN # 10: 0-538-46646-4

Please read assigned material before the class it is scheduled for discussion. Supplemental materials are on the [course website](#). It is the student's responsibility to periodically check the online materials. I reserve the right to alter and add reading assignments as the term progresses.

NOTE: WORKSHEETS & other MATERIALS will be e-mailed using the class listserv; it is the student's responsibility to regularly check e-mail for materials.

It is the STUDENT'S RESPONSIBILITY TO [RETRIEVE THESE MATERIALS WHEN NECESSARY \(for Class\)](#)

Laptop Policy

Experience has taught me that students who use their laptops during class to multitask (e-mail, work on projects, and less desirable pursuits) get less out of the class, are more dissatisfied with it, and perform less well. Therefore, in the interest of the greater good, **please do not use your laptops or other electronic devices during class.**

Attendance and Preparation: All assignments are to be read prior to class! Attendance is voluntary. However, attendance is an important part of the educational experience. If you do not attend you cannot participate in class discussions. Participation

is 10% of the course grade (see below). Students should be prepared to answer questions on the assigned materials and to contribute to the class discussions.

What to Expect

The reading assignments indicate the breadth and scope of the subject matter. The course will involve readings, class lectures, and class discussions. The final grade will be based on the following:

A. Mid-Term and Final Exams (45% each) (Total 90%)

Mid-Term Exam: January 25th

Final Exam (non-cumulative): February 22th

CLASS CANCELED: February 20th

Make-up Exams: Please, ensure attendance at the above two exam dates. Only a valid medical excuse will be allowed in order to qualify for a make-up exam. Please, do not schedule any job interviews on those dates. Any make-up exam will be a written answer format—problems, mini-essay, and essays.

B. Classroom Participation (10%)

Voluntary student participation is encouraged.

Grades: Grade standards are as follows:

A	=	4.0	92 or above
A-	=	3.67	89-91.9
B+	=	3.33	86-88.9
B	=	3.0	82-85.9
B-	=	2.67	79-81.9
C+	=	2.33	76-78.9
C	=	2.0	72-75.9
C-	=	1.67	69-71.9
D+	=	1.33	66-68.9
D	=	1.0	62-65.9
D-	=	0.67	59-61.9
E	=	0.0	58.9 or below

COURSE OUTLINE

I. Establishing the Enterprise

1. Going It Alone

Chapter 1: “Taking the Plunge”

Chapter 2: Leaving Your Employer

2. Using Professionals to Establish the Enterprise

Role of lawyers, accountants, and insurance agents

Managing the Legal Function

Choosing a Lawyer

Limiting Costs

Chapter 3: “Selecting and Work with Attorneys”

3. Selecting the Proper Business Form

General Partnership

The written partnership agreement

Corporations, Closed Corporations, & S Corporations

Protecting minority interests

Limited Partnerships and Limited Liability Companies

Chapter 4: “Deciding Whether to Incorporate”

Chapter 5: “Structuring the Ownership”

4. Raising Funds for the Venture

Bank Loans

Importance of Collateral

Role of Small Business Administration

Equity Funding

Venture Capitalists

Alliances, Joint Ventures & Network Contracting

Chapter 7: “Raising Money and Securities Law

Chapter 13: “Venture Capital”

II. Operating and Growing the Enterprise

1. Tort Liability

Business Torts

Negligence

Products Liability

Many types of insurance

Scourge of exclusions
Duty to defend

Chapter 11: “Operational Liabilities and Insurance”

2. Contracts

Many uses of contracts
Important contract clauses
Strategic contracting

Chapter 9: “Contracts and Leases”

Chapter 10: “E-Commerce and Sale of Goods & Services”

3. Independent Contractors

IC-Employee distinction
Leasing employees

4. Employment Law

Employment agreement
Key Personnel
Employment regulations
Employment discrimination

Chapter 8: “Marshaling Human Resources”

III. Protecting Assets of Enterprise

1. Trade Secrets Law

Confidentiality Agreements
Security Measures

2. Intellectual Property Law

Trademark, Patent, & Copyright
Licensing

Chapter 14: “Intellectual Property and Cyber Law”

IV. Doing Business Internationally

1. Exporting and Importing

Documentary Collections Transaction
Documentary Credit Transaction

2. Establish a Presence

Hiring Employees
Hiring a Foreign Distributor

Chapter 15: “Going Global”

A Note on the Instructor

Dr. DiMatteo is the Huber Hurst Professor of Legal Studies in the Graduate School of Business. He teaches courses in the legal environment of business, commercial law, law of international business transactions, and law for entrepreneurs. Dr. DiMatteo is a graduate of the Cornell and Harvard Law Schools. He earned a PhD from Monash University (Australia). Dr. DiMatteo is the author of more than sixty articles and ten books, most recently, *Chinese Contract Law: Perspectives* (Cambridge University Press 2018), *Comparative Contract Law* (Oxford University Press 2016), *International Sales Law: A Global Challenge* (Cambridge University Press 2014), *International Commercial Contracts: Transatlantic Perspectives* (Cambridge University Press 2013). Dr. DiMatteo was named the 2012 University of Florida Teacher-Scholar of the Year and served as a Fulbright Professor in Bulgaria (2012). He is a two-time winner of the Warrington Graduate Teacher of the Year.