

UNIVERSITY OF PENNSYLVANIA: THE WHARTON SCHOOL  
LEGAL STUDIES & BUSINESS ETHICS DEPARTMENT  
LGST-213001: LEGAL ASPECTS OF ENTREPRENEURSHIP  
COURSE SYLLABUS, SPRING 2012  
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Office Hours: Tuesday/Thursday, 10:00-10:30 a.m. or by appointment

Class Hours/Location: Tuesday/Thursday, 10:30 a.m.-12:00 p.m. in G90 JMHH

**Legal Aspects of Entrepreneurship** is a practical course which prepares students to meet the legal opportunities and challenges faced by entrepreneurs, investors, managers and chief financial officers of private and public businesses. The course examines critical legal issues confronting the lifecycle of start-up companies from formation to potential bankruptcy. The course provides perspective on how the law impacts business risk, deployment of resources, and shareholder value. ***It is strongly suggested that students already have completed LGST-101: Introduction to Law and Legal Process.***

Students will emerge from this course prepared to use the law as a positive force for growth, as well as to spot and mitigate the legal risks relating to managing, investing in, and selling start-up companies. Students will become more legally astute and learn when it is strategic and cost-effective to turn to legal counsel. They will develop this knowledge by a survey of relevant law, as well as by hands-on learning of the basic tools for analyzing legal cases and statutes. They will gain legal literacy and be ready to work side by side with legal counsel to effect the drafting of Term Sheets and final Agreements, as well as the handling of Employment, Intellectual Property, and other relevant issues. They will also have the tools for management of litigation through insurance, traditional means and ADR.

Course topics include the U.S. legal system, and the process and economics of a lawsuit; the risks created by basic business torts; how contract and insurance law can be used to manage risks; the nature and enforceability of non-competition and other restrictive covenants in employment agreements; choice of the legal form for the business, including the legal, financial and basic tax advantages and disadvantages of sole proprietorships, general and limited partnerships, corporations and limited liability companies; creditor rights and bankruptcy; securities law; venture capital and private equity financings; mergers and acquisitions; human resources issues, including compensation and benefits, as well as discrimination, sexual harassment and privacy; independent contractors v. employees; and intellectual property law including copyrights, trademarks, trade secrets and patents. Consideration will be given to law and economics, a field analyzing legal rules from the standpoint of economic efficiency.

Required Reading: (1) Bagley & Dauchy, *The Entrepreneur's Guide to Business Law* (4<sup>th</sup> ed. 2012); (2) webCafé **Course Materials** folder; and (3) Cooter & Ulen, *Law & Economics* (6<sup>th</sup> ed. 2012). The books are available in the Reserve section at Lippincott Library. In order to use the webCafé, students must have a Wharton account. Please go to JMH F35 to set up an account or visit <http://accounts.wharton.upenn.edu>.

Optional Reading: 1) As noted on each of the Syllabus and webCafé. 2) Cooter & Ulen: the Webnotes, which can be accessed at [http://www.pearsonhighered.com/cooter\\_ulen](http://www.pearsonhighered.com/cooter_ulen).

Reading, Written Assignments, and Class Topics listed in this Syllabus are illustrative of the topics to be covered, and the schedule listed is tentative and may be subject to change, depending on the pace of the course. A cushion of 2 classes is left for the end, which will consist of a topic of the class' choice and a review for the final exam, assuming that we timely complete the curriculum. We may also have guest speakers, and may add or substitute the curriculum in preparation for their lecture. **You should always check the webCafé for updated postings in the Assignment Updates subfolder of the Course Materials folder.** Certain initial written assignments are listed in the Syllabus. The remainder will be assigned in class and/or posted on the webCafé.

Regular Class Preparation, Attendance and Active Participation is expected. You should be prompt and remain in class until the end as a courtesy to your classmates and myself. Volunteers will be sought at the end of class for participation in the next class. In the event that you have to miss a class for some unavoidable reason, you are responsible for letting me know in advance by email, as well as for finding out from your classmates what topics were covered and what additional assignments were made, as well as to obtain a copy of any materials distributed in class. In the event of an absence, you are responsible for turning in a Response paper relating to the assignment for the missed class.

Blog Responses: Students are required to post a weekly Response on the webCafé in the **Class Response** folder by 11:59 p.m. Sunday, with comments (including any questions) on the course material and class discussions.

Glossary of Legal Terms: To assist students in developing a vocabulary of basic legal terms that will be relevant to their business needs, we will be putting together our own class glossary. You are encouraged to contribute to the glossary by collecting these terms, as you prepare for class, reporting your findings in class, and posting them to the **Glossary of Legal Terms** folder in the webCafé. This will also count toward your class participation grade.

Timely Submission in Typewritten form: All assignments must be completed and handed in to me. They must also be typed (not hand-written) and submitted on their due dates.

Powerpoint Slides (if any) will be posted the day before class. These are meant to be an aid in the classroom. I will email you when they have been posted.

Exams and Grading: There will be one mid-term examination (**February 23, 2012 in class**) and one final examination (**May 3, 2012 @ 12:00-2:00 p.m. location TBD**). Each exam will be closed-book and closed-note, and constitute 40% of the students' overall grade. Class Participation, Blog Response, and Glossary postings/collection will comprise the remaining 15-20% of the grade, with 5% of the 20% potentially comprised of additional assignments, such as a Response paper, if a student can't make it to class. There may also be extra credit opportunities for a student to present something later in the semester depending on how the course plays out. **There will be no exceptions regarding the dates scheduled for the exams.**

Lunch and Learn Program for Students and Faculty: Wharton has a special program which encourages students to invite professors to lunch. A minimum of three students is required for the lunch up to a maximum of seven students. You have the option of selecting from the following restaurants this year: Baby Blues BBQ, Beijing, Mad4Mex, and Pattaya. The lunch program runs Tuesday through Friday, from 11:30 a.m. to 2 p.m., beginning the last week of January and concluding the first week of May (and providing for up to \$20 per person including tax and tip). Once you know which dates and times work best for your group, you should make the arrangements through the Undergraduate Division and confirm with me. Please also sign up in the **Lunch with Professor** folder located on the webCafé, so that everyone is aware of the lunch schedule.

For Library Links generally, please see: <http://www.library.upenn.edu/>.

## ASSIGNMENTS

### **CLASS 1: WELCOME AND INTRODUCTION; U.S. LEGAL SYSTEM I: THE STRUCTURE OF U.S. LAW**

Required Readings: WebCafé, Introductory Hypothetical

### **CLASS 2: U.S. LEGAL SYSTEM II: THE U.S. COURT SYSTEM, SUBJECT MATTER JURISDICTION OF COURTS AND THE LITIGATION PROCESS**

Required Readings: Bagley, Chapter 1

Cooter & Ulen, Chapter 3

WebCafé

- Comparing Federal and State Court Systems (2)
- Understanding Federal and State Courts (2a)
- Understanding the Federal Courts (2b)
- Telemarketer Abuse Statute (2c)

Optional Readings: Cooter & Ulen, Chapter 1 and Chapter 2 (if not already covered in a microeconomics course)

### **CLASS 3: U.S. LEGAL SYSTEM III: PERSONAL JURISDICTION OF COURTS; HOW TO BRIEF A LEGAL CASE**

Required Readings: Bagley, Chapter 10, pp. 355-359 (focus on "The U.S. Approach to Jurisdiction")

WebCafé

- *Burger King Corp. v. Rudzewicz* (3)
- *Vetrotex Certainteed Corp. v. Cons. Fiber Glass Prods. Co.* (3a)
- How to Brief a Case (3b)

Assignment: Written **Brief** of *Vetrotex* case prepared pursuant to guidelines in **How to Brief a Case**, both listed under webCafé. **Briefs will be discussed in class, are to be handed in after class, and will constitute part of your Class Participation grade.** Briefs are basic outlines of legal cases and will assist you in the analysis of legal cases.

Optional Readings: WebCafé, *Best Van Lines, Inc. v. Walker* (3c)

#### **CLASS 4: U.S. LEGAL SYSTEM IV: ALTERNATIVE DISPUTE RESOLUTION**

Required Readings: Bagley, Chapter 9, pp. 303-04

Cooter & Ulen, Chapter 10

WebCafé, Alternative Dispute Resolution (4)

Assignment: Prepare for in-class mock mediation of Vetrotex case; prepare to play the part of the parties or mediator. Review posted Power Points for background information in addition to Required Readings.

#### **CLASS 5: THE COMMON LAW AND BUSINESS RISKS I: THE BASIC "BUSINESS TORTS" AND MANAGING RISKS WITH CONTRACT LAW AND INSURANCE LAW**

Required Readings: Bagley, Chapter 9, focusing on p. 280, "Choice of Law," pp. 288-290, "Advantages of Putting a Contract in Writing," pp. 301-303, 304-305, "Allocating Risk," "Arbitration and Mediation," "Choice of Law and Forum" and "Attorneys Fees," and pp. 307-311, "Effect of Bankruptcy" and "Remedies"

Bagley, Chapter 10, focusing on pp. 319-331 (*skip* pp. 353-355 on "Unfair Competition" and pp. 355-359 on "Jurisdiction")

Cooter & Ulen, Chapter 4

Optional Readings: Cooter & Ulen, Chapter 9 (*skip* pp. 342-343, on "Incompetence," pp. 347-353, from "Necessity" up to "Mutual Mistake about Facts," and the Mathematical Appendix)

#### **CLASS 6: THE COMMON LAW AND BUSINESS RISKS II: THE BASIC "BUSINESS TORTS" AND MANAGING RISKS WITH CONTRACT LAW AND INSURANCE LAW**

Required Readings: Bagley, Chapter 11, focusing on p. 374, "Defamation," pp. 377-380, "Torts that Protect Certain Economic Interests and Business Relationships," pp. 382-383, "Vicarious Tort Liability and *Respondeat Superior*," and pp. 400-405 starting with "Insurance"

Cooter & Ulen, Chapter 6, pp. 187-199 (through Question 6.7)

WebCafé

- Dacey, Introduction to Insurance Law and Concepts (6)
- *Texaco v. Pennzoil* (6a)
- *White Plains Coat & Apron Co., Inc. v. Cintas Corp.* (6b)
- *Net2globe Int'l, Inc. v. Time Warner Telecom of N.Y.* (6c)

Optional Readings: Cooter & Ulen, Chapter 8, pp. 292-299 ("Default Rules" through "Monopoly")

Cooter & Ulen, Chapter 7, pp. 236-247 (through Web Note 7.3), pp. 257-261 (through Web Note 7.9)

Optional Readings: WebCafé, *Lama Holding Co. v. Smith Barney* (6d)

**CLASS 7: DUTIES TO YOUR CURRENT/FORMER EMPLOYER I: COMMON LAW DUTIES, NON-COMPETE AND OTHER RESTRICTIVE COVENANTS AND EMPLOYMENT-RELATED AGREEMENTS**

Required Readings: Bagley, Chapter 2, pp. 12-34

Bagley, Chapter 14, pp. 518-529, "Trade Secret Protection"

Cooter & Ulen, Chapter 5, pp. 112-116 (up until "Intellectual Property")

WebCafé, Trade Secret Law NJ

**CLASS 8: DUTIES TO YOUR CURRENT/FORMER EMPLOYER II: COMMON LAW DUTIES, NON-COMPETE AND OTHER RESTRICTIVE COVENANTS AND EMPLOYMENT-RELATED AGREEMENTS**

Required Readings: Bagley, Chapter 3

WebCafé

- Confidentiality and Non-Compete Agreement (8)
- *BDO Seidman v. Hirshberg* (8a)
- *Edwards II v. Arthur Andersen LLP* (8b)
- *Reed, Roberts Assocs., Inc. v. Strauman* (8c)
- *Ashland Mgt. Inc. v. Altair Invs. NA LLC* (8d)

**CLASS 9: CHOICE OF BUSINESS FORM I: SOLE PROPRIETORSHIPS, GENERAL PARTNERSHIPS AND LIMITED PARTNERSHIPS, INCLUDING BASIC TAX ISSUES**

Required Readings: Bagley, Chapter 4

WebCafé

- *Meinhard v. Salmon* (9)
- New York Partnership Law (focus on Secs. 10-11, 20, 24-26, 40-41, 43, 50-53, 60-69, 71, 72, 80) (9a)
- Delaware RULPA (focus on Secs. 17-108, 201, 218, 302-306, 401-406, 503-504, 702, 704, 801-804, 1101, 1105, 1109) (9b)

Optional Readings: WebCafé, California Uniform Partnership Act (9c)

**CLASS 10: CHOICE OF BUSINESS FORM II: CORPORATIONS AND LIMITED LIABILITY COMPANIES, INCLUDING BASIC TAX ISSUES AND CORPORATE GOVERNANCE**

Required Readings: WebCafé

- Delaware Corporation Law (skim) (10)
- Delaware Limited Liability Company Act (skim) (10a)
- *Netjets Aviation, Inc. v. LHC Communications, LLC* (10b)

Optional Readings: WebCafé, Delaware Corporation Franchise Tax (10c)

**CLASS 11: CHOICE OF BUSINESS FORM III: STRUCTURING OWNERSHIP, INCLUDING BASIC TAX ISSUES**

Required Readings: Bagley, Chapter 5

**CLASS 12: CHOICE OF BUSINESS FORM IV: CORPORATE GOVERNANCE**

Required Readings: Bagley, Chapter 6, pp. 128-132, "The Responsibilities of the Board" through "Business Judgment Rule"

Bagley, Chapter 8, p. 254, "Employer Liability for Employees' Acts"

Bagley, Chapter 9, pp. 283-284, "Authority" and pp. 297- 298, "Signatures"

WebCafé

- MF Global NYT Article 11-23-11 (12)
- MF Global NYT Article 11-29-11 (12a)
- MF Global NYT Article 12-6-11 (12b)
- MF Global NYT Article 12-21-11 (12c)
- MF Global Bloomberg Article 1-11-12 (12d)
- *Merola v. Exergen Corp.* (12e)

**CLASS 13: MID-TERM EXAMINATION (February 23, 2012) IN CLASS. NO EXCEPTIONS. COVERS MATERIAL THROUGH CLASS 12.**

**CLASS 14: FINANCING A BUSINESS IA: CREDITORS' RIGHTS AND DUTIES/BANKRUPTCY**

Required Readings: Bagley, Chapter 7, pp. 145-172 (through "Investors' Representations")

Bagley, Chapter 9, p. 316, "Loan Agreements"

WebCafé

- California: Uniform Fraudulent Transfer Act (UFTA) (14)
- New York: Debtor-Creditor Law (follows Uniform Fraudulent Conveyance Act (UFCA)) (14a)
- U. S. Bankruptcy Code: Fraudulent Transfers
  - §548 (Bankruptcy Code - 2 year reach back) (14b)
  - §544(b) (Brings in state law - reach back determined by State FT SL) (14c)
- U. S. Bankruptcy Code: Preferences §547 (14d)

**CLASS 15: FINANCING A BUSINESS IB: CREDITORS' RIGHTS AND DUTIES/BANKRUPTCY**

Required Readings: Bagley, Chapter 12

WebCafé

- Unwinding of Business under PA Law (15)
- *Vornado PS, L.L.C. v. Primestone Inv. Partners, L.P.* (15a)
- *Manufacturers Hanover Trust Co. v. Yanakas* (Part II-A on fraud may be skimmed) (15b)
- *RSL Communications PLC v. Bildirici* (15c)
- MF Global Bloomberg Article 1-11-12 (15d)

## **CLASS 16: FINANCING A BUSINESS IIA: SECURITIES LAW**

Required Readings: Bagley, Chapter 7, pp. 172-184 including Table 7.1

Bagley, Chapter 16, pp. 662-63 Restrictions on Resale, Rules 144-145

WebCafé:

- Securities Act of 1933 (selected portions) (16)
- SEC Regulation D, Safe Harbor Rules 504, 505, 506 and related Rules (selected portions) (16a)
- Rule 144 (Safe Harbor) (selected portions) (16b)
- Rule 145 (selected portions) (16c)

## **CLASS 17: FINANCING A BUSINESS IIB: SECURITIES LAW**

Required Readings: WebCafé, Facebook Article NYT 11-30-11 (17)

## **CLASS 18: FINANCING A BUSINESS IIIA: VENTURE CAPITAL AND PRIVATE EQUITY INVESTMENTS (GUEST LECTURER)**

Required Readings: Bagley, Chapter 13 (and-re-review Bagley, Chapter 7, pp. 165-172 as need be)

WebCafé

- *Vacold LLC v. Cerami* (18)
- National Venture Capital Association Model Preferred Stock Term Sheet (18a)
- Note on Limited Partnership Agreements (18b)

## **CLASS 19: FINANCING A BUSINESS IIIB: VENTURE CAPITAL AND PRIVATE EQUITY INVESTMENTS**

## **CLASS 20: BUYING OR SELLING A BUSINESS I: MERGERS AND ACQUISITIONS AND "DEAL LITIGATION"**

Required Readings: Bagley, Chapter 16 (and re-review Bagley, Chapter 7, pp. 169-172 as need be)

WebCafé

- ABA Model Purchase Agreement (Skim) (20)
- National Venture Capital Association Model Stock Purchase Agreement (Skim) (20a)

- DGCL Sec. 251 (mergers; focus on paras. (b) and (c)) (20b)
- Merger AT&T and TMobile NYT Article (20c)

Optional Readings: WebCafé, Note on Leveraged Buyouts (20d)

**CLASS 21: BUYING OR SELLING A BUSINESS II: MERGERS AND ACQUISITIONS AND "DEAL LITIGATION" (GUEST LECTURER)**

Required Readings: WebCafé

- *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.* (21)
- *Guth v. Loft* (21a)

**CLASS 22: EMPLOYMENT LAW I: INDEPENDENT CONTRACTORS VERSUS EMPLOYEES; "AT WILL" VERSUS CONTRACT EMPLOYMENT; EMPLOYMENT DISCRIMINATION (RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, CITIZENSHIP, AGE, DISABILITY); HUMAN RESOURCES REQUIREMENTS, BENEFITS AND POLICIES; SEVERANCE**

Required Readings: Bagley, Chapter 8

WebCafé

- Critical Labor and Employment Issues (22)
- Employment Law (22a)
- Independent Contractor (22b)
- *Wagenseller v. Scottsdale Memorial* (22c)
- *Weiner v. McGraw Hill* (22d)

**CLASS 23: EMPLOYMENT LAW II: INDEPENDENT CONTRACTORS VERSUS EMPLOYEES; "AT WILL" VERSUS CONTRACT EMPLOYMENT; EMPLOYMENT DISCRIMINATION (RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, CITIZENSHIP, AGE, DISABILITY); HUMAN RESOURCES REQUIREMENTS, BENEFITS AND POLICIES; SEVERANCE**

Required Readings: WebCafé

- Civil Rights and Employment Discrimination (23)
- Statutory Prohibitions on Employment Discrimination (23a)
- Americans With Disabilities Act of 1990 (United States) (23b)
- Disability Discrimination (23c)
- Sexual Harassment (23d)
- *Griggs v. Duke Power* (23e)

- *McDonnell Douglas Corp. v. Green* (23f)
- *Sutton v. United Air Lines* (23g)

## **CLASS 24: INTELLECTUAL PROPERTY LAW I: COPYRIGHT, TRADEMARK, SERVICEMARK**

Required Readings: Bagley, Chapter 14 (except "Patents" and "Trade Secrets" to be covered for Class 25)

Bagley, Chapter 10, pp. 353-355, "Unfair Competition"

Cooter & Ulen, Chapter 5, pp. 116-135 ("Intellectual Property") and pp. 162-166 ("Unbundling Property Rights")

WebCafé:

- Copyright (24)
- Trademarks (24a)
- Choosing a Corporate Name (24b)
- *Viacom v. YouTube* (Complaint) (24c)
- *Madonna v. Parisi* (Domain Name) (24d)

## **CLASS 25: INTELLECTUAL PROPERTY LAW II: PATENTS, TRADE SECRETS**

Required Readings: Bagley, Chapter 14 pp. 542-558 on "Patents"; review pp. 518-529, "Trade Secret Protection," assigned for Class 8

WebCafé

- A Distance Runner's Guide to Trade Secret Protection Maintaining Secrecy (25)
- Patents (25a)
- Amgen Patent NYT 11-23-11 (25b)
- *Bilski v. Kappos* (25c)

## **CLASS 26: THE ECONOMICS OF THE LITIGATION PROCESS INCLUDING SETTLEMENT DECISIONS**

Required Readings: Cooter & Ulen, Chapter 10

## **CLASS 27: CLASS TOPIC OF CHOICE**

## **CLASS 28: REVIEW FOR FINAL EXAM. NO EXCEPTIONS.**