

UNIVERSITY OF PENNSYLVANIA: THE WHARTON SCHOOL LEGAL STUDIES & BUSINESS ETHICS DEPARTMENT
LGST-213-001: LEGAL ASPECTS OF ENTREPRENEURSHIP COURSE SYLLABUS, SPRING 2014
Professor E. Carolyn Hochstadter

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Office Hours: By appointment

Class Hours/Location: Tuesday/Thursday 10:30 a.m.-12:00 p.m. in SHDH 1201

Legal Aspects of Entrepreneurship is a practical course which prepares students to meet the fundamental legal challenges faced by entrepreneurs, investors, managers, directors, officers, or employees of private and public businesses and is equally applicable to start-up or mature companies. The course examines important legal principles confronting businesses from formation to growth to long-term operation or short-term sale. Issues regarding restructuring, unwinding and bankruptcy are also discussed from both creditor and debtor perspectives. The course provides an overview of how the law impacts business risk, deployment of resources and shareholder value. Case studies incorporate current legal issues, and real life client and courtroom experience.

Students will emerge from this course prepared to use the law as a positive force for the growth and success of their business plans and ventures, as well as to manage and mitigate legal risk. Students will 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 a hands-on analysis of legal cases, statutes, pleadings and contracts. They will be ready to work with legal counsel to draft Term Sheets and agreements tailored to their business plans. They will also learn to mitigate liability through risk-protective policies and insurance, as well as manage litigation through ADR or traditional means.

Topics cover copyrights, trademarks, trade secrets and patents; non-competition, confidentiality and invention assignment covenants in employment agreements; choice of the entity form and forum state including tax advantages/disadvantages of partnerships, corporations and limited liability companies; venture capital and private equity financing; mergers and acquisitions; creditor rights and bankruptcy; securities law; discrimination and harassment; independent contractors and employees; economics and process of a lawsuit; and managing risk via contracts and insurance.

Required Materials: (1) Bagley & Dauchy, *The Entrepreneur's Guide to Business Law* (4th ed. 2012) and (2) Readings posted on canvas in the **Files** folder. Note that certain materials are not required to be read ahead of class, but are for *in-class* discussion only, or should be *skimmed*, or are *supplemental*.

Supplemental Materials: For an economic perspective of the law: Cooter & Ulen, *Law & Economics* (6th ed. 2012). Suggested readings from this book will also be posted on canvas in the **Files** folder.

Canvas: In order to use canvas, students must have a Wharton account. Please go to JMHH F35 to set up an account or visit <http://accounts.wharton.upenn.edu>.

Readings, Assignments, and Class Topics listed in this Syllabus may be subject to change, depending on the pace of the course. **You should always check canvas for updated postings.**

Class Preparation, Attendance and Participation. This course is designed to be *practical*. Class attendance, timeliness and participation are mandatory, and will be graded. If you must miss or be late to a class, you are responsible for informing me in advance by email.

Blog Responses: Students are required to post a weekly Response on canvas by 11:59 p.m. Sunday in response to a question posted by me during the prior week in the **Discussions** folder. These Responses will be graded as part of Class Participation. The first Response is due 1/19.

Glossary: To assist students in developing a vocabulary of basic legal business terms, we will be compiling a class glossary, which will be graded as Class Participation. Terms/concepts from the slides/blackboard of each class will be assigned to groups of 2-4 students. I will review and edit each group's work, and each group will post its finalized work on canvas in the **Files/Glossaries** folder.

Timely Submission of All Assignments in Typewritten form: All assignments must be completed, typewritten, and handed in to me in class on their due dates, as well as emailed to me.

Exams: There will be one mid-term examination (**February 27, 2014 in class**) and one final examination (May 13, 2014 – **tentative date**). Each exam will be closed book and closed note. **There will be no exceptions regarding the dates/times scheduled for the exams.**

Grading: Grading will be broken down as noted below and posted in the **Grading** folder on canvas.

- Exams: 65%. The mid-term exam will constitute 30% and the final exam 35%.
- Assignments: 15%.
- Class Participation: Attendance and Timeliness; Participation; Blog; Glossary: 20%.
- Extra Credit: Students may research/present an additional project of their choice/interest.

Lunch: I look forward to having lunch with you during the semester! Your group must consist of a minimum of 3 and a maximum of 7 students, and you may select from the following restaurants: Beijing, Mad4Mex, Pattaya or Hillel. Please sign up in the **Lunch with Professor** appointment in the calendar on canvas.

TOPICAL CLASSES, READINGS, AND ASSIGNMENTS

CLASS 1: INTRODUCTION; OVERVIEW OF BUSINESS LAW AND ENTREPRENEURSHIP ISSUES

Readings: Introductory Hypothetical on canvas

CLASS 2: U.S. LEGAL SYSTEM I: THE U.S. COURT SYSTEM; SUBJECT MATTER JURISDICTION; LIFECYCLE OF A LAWSUIT; HOW TO BRIEF A LEGAL CASE

Readings: Bagley, Chapter 1

U.S. Legal System I Materials on canvas

CLASS 3: U.S. LEGAL SYSTEM II: PERSONAL JURISDICTION OF COURTS

Readings: Bagley, Chapter 10, pp. 355-359 "The U.S. Approach to Jurisdiction"

U.S. Legal System II Materials on canvas

Assignment: Written **Brief** of Vetrotex case prepared pursuant to guidelines in **How to Brief a Case** (posted with U.S. Legal System I Materials).

CLASS 4: U.S. LEGAL SYSTEM III: ALTERNATIVE DISPUTE RESOLUTION

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

U.S. Legal System III Materials on canvas

In-Class Assignment: Prepare for in-class mock mediation of the Vetrotex case.

CLASS 5: THE COMMON LAW, UCC & BUSINESS RISKS I: MANAGING RISKS WITH CONTRACTS

Readings: Bagley, Chapter 9, focusing on p. 280, “Choice of Law,” pp. 288-290, “Advantages of Putting a Contract in Writing,” pp. 301-305 “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”)

The Common Law, UCC & Business Risks I Materials on canvas

In-Class Assignment: Prepare for in-class drafting of a 1 page contract about your current or hypothetical business, or any deal. It should include basic remedies and/or protective terms in the event of breach.

CLASS 6: THE COMMON LAW, UCC AND BUSINESS RISKS II: THE BASIC “BUSINESS TORTS”

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. 402-405 starting with “Strategic Compliance Management”

The Common Law, UCC & Business Risks II Materials on canvas

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

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

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

Duties to Your Current/Formal Employer I Materials on canvas

In-Class Assignment: Prepare for in-class drafting of Restrictive Covenants,

Confidentiality and Invention Assignment Agreements.

CLASS 8: DUTIES TO YOUR CURRENT/FORMER EMPLOYER II: COMMON LAW DUTIES, NON-COMPETE, RESTRICTIVE COVENANTS AND EMPLOYMENT-RELATED AGREEMENTS; MANAGING RISK WITH INSURANCE

Readings: Bagley, Chapter 3

Bagley, Chapter 11 pp. 400-402 starting with “Insurance”

Duties to Your Current/Formal Employer II Materials on canvas

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

Readings: Bagley, Chapter 4

Choice of Business Form I Materials on canvas

Assignment: Written Risk Management Policy for your existing, future, or hypothetical business.

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

Readings: Choice of Business Form II Materials on canvas

CLASS 11: CHOICE OF BUSINESS FORM III: CORPORATE GOVERNANCE, INCLUDING BASIC TAX ISSUES

Readings: Bagley, Chapter 5

Choice of Business Form III Materials on canvas

CLASS 12: CHOICE OF BUSINESS FORM IV: CORPORATE GOVERNANCE

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”

Choice of Business Form IV Materials on canvas

CLASS 13: MID-TERM EXAMINATION (February 27, 2014) IN CLASS. NO EXCEPTIONS. COVERS MATERIAL THROUGH CLASS 11.

- CLASS 14: FINANCING A BUSINESS IA: CREDITORS' RIGHTS AND DUTIES/BANKRUPTCY**
Readings: Bagley, Chapter 7, pp. 145-172 (through “Investors’ Representations”)

Bagley, Chapter 9, p. 316, “Loan Agreements”

Financing a Business Materials IA on canvas

Assignment for In-Class Discussion: Compose either a 6 word description or a limerick of the holding/main point of one of the assigned cases.
- CLASS 15: FINANCING A BUSINESS IB: CREDITORS' RIGHTS AND DUTIES/BANKRUPTCY**

Readings: Bagley, Chapter 12, pp. 425-457

Financing a Business Materials IB on canvas
- CLASS 16: FINANCING A BUSINESS IIA: SECURITIES LAW**

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

Bagley, Chapter 16, pp. 662-663 Restrictions on Resale, Rules 144-145

Financing a Business Materials IIA on canvas
- CLASS 17: FINANCING A BUSINESS IIB: SECURITIES LAW**

Readings: Financing a Business Materials IIB on canvas

Assignment: Draft a plan of liquidation or reorganization for a hypothetical distressed business or municipality. You can choose any appropriate chapter of the federal Bankruptcy Code.
- CLASS 18: FINANCING A BUSINESS IIIA: VENTURE CAPITAL AND PRIVATE EQUITY (GUEST)**

Readings: Bagley, Chapter 13 (re-review Bagley, Chapter 7, pp. 145-172 if needed)

Financing a Business Materials IIIA on canvas
- CLASS 19: FINANCING A BUSINESS IIIB: VENTURE CAPITAL AND PRIVATE EQUITY**

Readings: Financing a Business Materials IIIB on canvas
- CLASS 20: BUYING OR SELLING A BUSINESS I: MERGERS AND ACQUISITIONS**

Readings: Bagley, Chapter 16 (review Bagley, Chapter 7, pp. 169-172 as needed)

Buying or Selling a Business I Materials on canvas

CLASS 21: BUYING OR SELLING A BUSINESS II: MERGERS AND ACQUISITIONS (GUEST)

Readings: Buying or Selling a Business II Materials on canvas

Assignment: Structure your business of choice. Draft a basic outline of a hypothetical business; pick a form, forum state, capital structure, voting rights, preferred stock if you anticipate VC financing, management and employee structures, describe the tax treatment, draft charter documents, state why you picked this form, and add any other attributes, as needed, such as stock options or vesting.

CLASS 22: ENTREPRENEUR AND VC GUEST LECTURERS

CLASS 23: EMPLOYMENT LAW I: INDEPENDENT CONTRACTORS V. EMPLOYEES; “AT WILL” V. CONTRACT EMPLOYMENT; DISCRIMINATION (RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, CITIZENSHIP, AGE, DISABILITY); HUMAN RESOURCES, BENEFITS, POLICIES, SEVERANCE

Readings: Bagley, Chapter 8

Employment Law I Materials on canvas

CLASS 24: EMPLOYMENT LAW II: INDEPENDENT CONTRACTORS V. EMPLOYEES; “AT WILL” V. CONTRACT EMPLOYMENT; DISCRIMINATION (RACE, COLOR, RELIGION, GENDER, NATIONAL ORIGIN, CITIZENSHIP, AGE, DISABILITY); HUMAN RESOURCES, BENEFITS, POLICIES, SEVERANCE

Readings: Employment Law II Materials on canvas

CLASS 25: PE GUEST LECTURER

CLASS 26: INTELLECTUAL PROPERTY LAW I: COPYRIGHT, TRADEMARKS, SERVICEMARKS

Readings: Bagley, Chapter 14 (except “Patents” and “Trade Secrets”)

Bagley, Chapter 10, pp. 353-355, “Unfair Competition”

Intellectual Property Law I Materials on canvas

CLASS 27: INTELLECTUAL PROPERTY LAW II: PATENTS, TRADE SECRETS (GUEST)

Readings: Bagley, Chapter 14 pp. 542-558 on “Patents”; review pp. 518-529, “Trade Secret Protection,” assigned for Class 7

Intellectual Property Law II Materials on canvas

CLASS 28: EXTRA-CREDIT PRESENTATIONS