

# Spring 2021 - 15.618 /15.6181

15.618 for graduate credit

15.6181 for undergraduate credit (meets with 15.618)

## Entrepreneurship, Innovation, Startups and the Law

### Preliminary Syllabus and Reading List

[As of Feb 1, 2021]

Instructor: John Akula

Meets full semester; Thursday 7:00-830pm; Fully Remote

6 units; Grading P/D/F only (as modified by special MIT rules for Spring 21)

First class meets Thursday Feb 18

No prerequisites required or recommended; No prior knowledge of law expected

Students from ALL MIT departments welcome

#### Overview

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This course is a “deep dive” into crucial law-sensitive issues faced in launching, financing, growing, and selling or winding down a new venture, especially a venture making use of a cutting-edge technology or business model.

This course is designed for you if:

- You are planning to launch or work in a startup,
- You are engaged in research that might be the foundation for a startup, or
- You are planning a career based on cutting-edge technical and analytic skills.

The instructor was for many years a practicing attorney, and practicing attorneys will be invited to most classes. The focus is on practical skills and tools and real-life issues. Classes will include sample documents and simulated negotiations.

There are no prerequisites. Whatever background you need in law or business will be provided. Students from outside Sloan are welcome, and have comprised a large proportion of the class. You do not need to participate in Sloan bidding.

The law has its own terminology, but the course materials are English-as-a-second-language-friendly.

#### Important adaptations to this semester’s special circumstances

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Some adjustments have been made to make this course more valuable and less burdensome in our current special circumstances. The key points:

- As has always been the case, consistent class attendance is critical, because most of the highest-value takeaways are communicated in class. You are expected to attend synchronously whenever feasible, but if you cannot, you can attend asynchronously. However, you are expected to attend ALL classes, one way or the other.
- Required readings are light, to focus on essential items directly relevant to class discussion. Students should expect to do all required readings before class.
- The main deliverable will be “e-Learnings” (short-answer exercises) designed to help students focus on key takeaways from the readings and discussions.

## Class-by-class topical outline

Class	Day Date	Topic
1	Thur Feb 18	<b>Organizing the business entity:</b> Timing – when to organize a formal business entity. How to set up a corporation or LLC. Critical early issues. Dividing ownership. Structuring the corporation and the governing board. Dealing with the complications of past and concurrent employment commitments. <b>Guests: William Perkins, Dinesh Melwani &amp; Sarah Palmer, from Mintz Levin</b>
2	Thur Feb 25	<b>Finding lawyers; negotiating contracts; picking a trademark; and other early concerns:</b> When and how to find a lawyer. Managing the relationship. Special problems of IP advice. Unusual legal challenges facing innovation-driven ventures. Early contracts and asymmetric negotiations. Picking a trademark and company name.
3	Thur Mar 4	<b>Negotiating with angles for early financing:</b> Raising money for the new venture. Reaching out to angels. How angels view startup opportunities. Critical negotiating points. Convertible notes. The sometimes-opaque meaning of alternative deal terms. <b>Guests: William Perkins, Dinesh Melwani &amp; Sarah Palmer, from Mintz Levin</b>
4	Thur Mar 11	<b>Critical career junctures for founders and early employees:</b> Key issues faced when entering the job market, changing jobs, or leaving an established company to set up a new venture. The real meaning of offer letters, non-competes and non-disclosure and invention assignment agreements. <b>Guest: Lou Rodriques, MIT Sloan</b>
5	Thur Mar 18	<b>Recruiting and managing the young venture's workforce:</b> Key employment issues for startups. Pay arrangements. Who is an employee and who is an independent contractor? Hiring and firing. Responsibilities for a non-discriminatory workplace. <b>Guest: Lou Rodriques, from MIT Sloan</b>
6	Thur Mar 25	<b>Raising venture capital:</b> Later rounds of financing, with a focus on venture capital. What is a venture capitalist looking for? What issues are most heavily negotiated? Interpreting and negotiating a VC term sheet. Investor roles in management and governance. <b>Guest: Ed Pease, from Mintz Levin</b>
7	Thur Apr 1	<b>Protectable trade secrets and confidential information – The impact on careers and companies:</b> What is a trade secret? How can a tech-savvy employee who has contributed to a company's trade secrets take another job or launch a competing venture? How can a young company protect its trade-secrets in negotiations with investors and strategic partners? Lessons from some recent cases. <b>Guest: Victoria Cundiff, from Paul Hastings</b>
8	Thur Apr 8	<b>Open Source software:</b> Licensing software. "Free software" contrasted with "open source." Different types licenses – "copyleft" and attribution. The "viral" effect of combining open source and proprietary code. In-house use of open source contrasted with distribution of open source. <b>Guest: James Talbot, from Skadden Arps</b>
9	Thur Apr 15	<b>Other copyright and software issues; A brief introduction to patents:</b> Why copyright protection for software is "thin" and fragmentary. Copyright and the internet. Why patents often don't provide hoped-for protection – the difference between patentability and freedom to operate. When copyright or patent protection is available, to whom does it belong – the company or the individual innovator?

10	Thur Apr 22	<b>A more advanced look at patents and your business strategy:</b> Do you want a patent? Understanding the importance of other companies' patents. Recent developments in patentable subject matter, patent procedures, and patent litigation. Provisional patents. The risks of early disclosure. <b>Guest: Jim Lampert, formerly of WilmerHale</b>
11	Thur Apr 29	<b>Selling the hi-tech venture:</b> Preparing for an acquisition. Critical target company risks during the sale process. Compromised confidential information and poaching of employees. Preliminary negotiations and diligence. Deal structures. The definitive agreement. Post-closing contingencies. <b>Guest: Erica Rice, from Foley Hoag</b>
12	Thur May 6	<b>When things go wrong: Commercial disputes; liability; litigation; financial distress; and winding down a venture (I):</b> What you need to know about liability and accountability. When is a company liable; when is an individual manager liable; and when both? How litigation and arbitration work. Managing the risks of regulatory non-compliance.
13	Thur May 13	<b>When things go wrong: Commercial disputes; liability; litigation; financial distress; and winding down a venture (II):</b> Planning a "soft" landing for a failing venture. Different winding-down strategies. The "acquihiere." Company bankruptcy – preserving value and avoiding personal liability. Personal bankruptcy and liability. How to minimize personal risks relating to company obligations.
14	Thur May 20	<b>Wrapping Up and Key Takeaways</b>

### Expectations of students

There is no final exam or any other course obligation after the last meeting of the class.

Listener status is not available for any student enrolled in a degree program, unless your degree program does not permit P/F courses to be counted towards the degree.

Any student requiring an academic accommodation should please contact the instructor.

Students should conduct themselves in accordance with the "Sloan Values in Practice," as posted on the course Canvas site and also at:

<https://mysloan.mit.edu/offices/deans/values/Pages/CoreValues.aspx>

**Class attendance:** Much of the most important material in this course is presented in class, so students should attend **ALL** classes, synchronously or asynchronously. You should attend synchronously whenever practical.

If it is not practical for you to attend a class at the usually scheduled time, you should, prior to that class or shortly thereafter, email the TA and explain your absence. (You do not need to include in the e-mail any personal details -- just a general statement of the reason, e.g., time zone problem, illness, or family obligation.) If the reason applies to more than one meeting of the class, your email can explain that and will be sufficient for missing multiple classes. If you have missed a scheduled class meeting, you should, within 72 hours of the scheduled class, watch the video of that class and email to the TA a copy of your notes from viewing the video. Your notes can be typed or handwritten. (For handwritten notes, photos of the notes will be sufficient.) When this procedure is followed, a student will be considered to have attended the class.

**Class preparation:** Students are expected to do the all required readings before the class for which they are assigned.

**Class participation:** Students are encouraged to participate in class discussion. Students may be asked in advance to be “On Deck” for certain classes. An “On Deck” student should expect to be called on, and will be expected to prepare with care, which may include reading certain otherwise optional readings.

**e-Learnings:** There will be “e-Learnings” to assist students in focusing on key takeaways. Each e-Learning will be a short exercise utilizing multiple choice or short answers, and administered through Canvas. The exercises provide feedback as to whether an answer was right or wrong. Students must complete e-Learnings on time.

Each e-Learning should be completed by the end of the day of the due dates shown below, in Boston time. Students in other time zones must comply with the Boston time deadlines. If complying with the deadline is a hardship, please contact the TA in advance of the deadline.

The tentative schedule for the e-Learnings:

e-Learning	TOPIC	POSTED	DUE
1	Classes 1 & 2: Organizing the entity: Other early concerns	Friday Feb 26	Tues March 2
2	Classes 3: Negotiating with angels	Friday March 5	Tues March 9
3	Classes 4&5: Careers and managing workforce	Friday March 19	Thur March 25
4	Class 6: Venture capital	Friday March 26	Tues March 30
5	Class 7: Trade secrets and your career	Friday April 2	Tues April 6
6	Class 8 & 9: Copyright & software; Patent basics	Friday April 16	Thur April 22
7	Class 10: Patents – Advanced	Friday April 23	Tues April 27
8	Class 11 Selling the hi-tech venture	Friday April 30	Tues May 4

**The Canvas course site:** Sloan uses Canvas for on-line course sites. Students from outside of Sloan should be sure that they are registered on the Canvas site for this course.

## Grading

Grading will be Pass/D/Fail only, as modified by the special MIT rules for Spring 21.

To be assured of a satisfactory grade, a student should meet two benchmarks:

- You should not be absent for more than 2 classes and must complete in a timely manner all e-Learnings except those associated with the 2 missed classes. (A student who follows the appropriate procedure for asynchronous attendance will not be counted as absent, but any e-Learning associated with the asynchronous class must be completed on time.)
- The pattern of your e-Learning scores should be significantly better than the scores which would be expected from pure guesswork.

## Contact information

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## Preliminary Reading List

There is no textbook. Required readings will be posted on Canvas and available through StudyNet.

For students interested in delving deeper into this course's topics, the Reading List provides references to optional readings. Many of these references are to "Bagley," by which is meant The Entrepreneur's Guide to Law and Strategy by Constance Bagley and Craig Dauchy (paperback; 5th ed.; 2018; print year 2017; Cengage Learning; ISBN: 978-1-285-42849-9). Price for paperback new; about \$45, and e-book and rentals also available. There are some short selections from Bagley which are required, and these are posted on Canvas and included in the StudyNet packet.

**Note:** Some of the readings below are court cases. These are accessible on the internet but you should use the versions provided for this class, which have usually been heavily edited for length.

Class	Day Date	Topic
1	Thur Feb 18	<b>Organizing the business entity</b> Required: none Recommended for further study: <ul style="list-style-type: none"> <li>From Bagley: Ch 4, "Deciding Whether to Incorporate" (pp.55-78); and Ch. 5, "Structuring the Ownership" (pp. 79-126).</li> </ul>
2	Thur Feb 25	<b>Finding lawyers; negotiating contracts; picking a trademark; and other early concerns</b> Required: <ul style="list-style-type: none"> <li>Akula, "Contracts: The Law of the Deal in a Peanut"</li> <li>From Bagley – Section 14.4 "Trademarks" (pp. 541-551) and 14.5 "Domain Names and Cybersquatting" (p. 552)</li> </ul>
3	Thur Mar 4	<b>Negotiating with angels for early financing</b> Required: <ul style="list-style-type: none"> <li>From David Rose, <i>Angel Investing</i> (Wiley, 2014), Ch 10, "Investment Rounds and Their Forms," pp. 109-120</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>The rest of the David Rose book cited above.</li> </ul>
4	Thur Mar 11	<b>Critical career junctures for founders and early employees</b> Required: <ul style="list-style-type: none"> <li>Sample offer letter</li> <li>Sample employment on "Employee Noncompetition, Nondisclosure and Developments Agreement"</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>From Bagley: Ch 2, "Leaving Your Employer" (pp. 16-36)</li> </ul>

5	Thur Mar 18	<b>Recruiting and managing the young venture's workforce</b> Required: <ul style="list-style-type: none"> <li>Bostock v. Clayton County (2020 Supreme Court decision on transgender employees and discrimination law)</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>From Bagley: Ch 8, "Marshalling Human Resources" (pp. 193-260)</li> </ul>
6	Thur Mar 25	<b>Raising venture capital</b> Required: <ul style="list-style-type: none"> <li>Sample venture capital deal term sheet</li> <li>NVCA (National Venture Capital Association) Sample VC Term Sheet – Not to be read before class – readings will be assigned after class</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>From Bagley: Ch. 13, "Venture Capital" (pp. 438-495)</li> </ul>
7	Thur Apr 1	<b>Protectable trade secrets and confidential information – The impact on careers and companies</b> Required: <ul style="list-style-type: none"> <li>From Bagley, Ch 14, Sec. 14.1 on "Trade Secret Protection" (pp. 498-509)</li> </ul>
8	Thur Apr 8	<b>Open Source software</b> Required: <ul style="list-style-type: none"> <li>From Bagley, Ch 14, Sec.14.2 on "Copyrights" (pp. 509-523); and Sec 14.9 on "Special Issues Associated with Software Licenses, Open-Source Software, and Online Terms of Use" (pp.564-568). Note: The material in Section 14.2 will be discussed primarily in Class 9, so you may want to postpone that reading.</li> </ul>
9	Thur Apr 15	<b>Other copyright and software issues; A brief introduction to patents</b> Required: <ul style="list-style-type: none"> <li>Lotus v. Borland (seminal case on the copyright treatment of software)</li> <li>J. Lampert, "Types of Intellectual Property"</li> </ul>
10	Thur Apr 22	<b>A more advanced look at patents and your business strategy</b> Required: <ul style="list-style-type: none"> <li>From Bagley, Ch 14, Sec. 14.3 on "Patents" (pp. 523-541)</li> </ul>
11	Thur Apr 29	<b>Selling the hi-tech venture</b> Required: <ul style="list-style-type: none"> <li>TBA</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>From Bagley, Ch 16, "Buying and Selling a Business" (pp. 615 - 689)</li> </ul>
12	Thur May 6	<b>When things go wrong: Commercial disputes; liability; litigation; financial distress; and winding down a venture (I)</b> Required: <ul style="list-style-type: none"> <li>Akula, "The Law of Duties: Non-Contractual Civil Liability (or "Tort Law") in a Peanut"</li> </ul> Recommended for further study: <ul style="list-style-type: none"> <li>Akula, "Business Crime: What to Do When the Law Pursues You" (Sloan Management Review – March 2010 update) (posted)</li> </ul>

13	Thur May 13	<p><b>When things go wrong: Commercial disputes; liability; litigation; financial distress; and winding down a venture (II)</b></p> <p>Required:</p> <ul style="list-style-type: none"> <li>• Akula, “The Legal Framework of Business Distress – Opportunities and Risks in a Peanut,” Parts I-III (pps. 1-20) (Note: Entire Peanut is posted, but not required)</li> </ul> <p>Recommended for further study:</p> <ul style="list-style-type: none"> <li>• Part IV of the Business Distress Peanut (pp. 20-43)</li> </ul>
14	Thur May 20	<p><b>Wrapping Up and Key Takeaways</b></p> <p>No readings</p>

**[end]**