

Course	LAW 827B
Section	LS1
Professor	David Jargiello
Term	Fall 2014
Meetings	Wednesday 6:30 pm to 9:10 pm

Professor's Contact Information

Office Phone	650-472-3994
Office Location	Faculty Adjunct Office
Email Address	david@jargiello.com
Office Hours	Before or after class, or by appointment
Faculty Assistant	Kirk Vader kvader@ggu.edu (415) 442-6694

General Course Information

Required Texts & Materials	<ol style="list-style-type: none"> 1. <i>Venture Deals: Be Smarter Than Your Lawyer and Venture Capitalist</i>, Second Edition (2013), Brad Feld and Jason Mendelson 2. <i>Startup Communities: Building an Entrepreneurial Ecosystem in Your City</i>, First Edition (2012), Brad Feld 3. Cases and materials as indicated in the syllabus and posted on TWEN.
Suggested Texts, Readings, & Materials	<ol style="list-style-type: none"> 1. Delaware General Corporation Law 2. Securities Act of 1933, as amended 3. General Rules and Regulations, Securities Act of 1933

	<ol style="list-style-type: none"> 4. Securities Exchange Act of 1934, as amended 5. General Rules and Regulations, Securities Exchange Act of 1934 6. California Corporations Code and California Corporate Securities Law of 1968, as amended 7. Report on Selected Legal Opinion Issues in Venture Capital Financing Transactions, The Business Lawyer, Vol. 65, November 2009, David Jargiello, Editor. 8. California Rules of Professional Conduct 9. ABA Model Rules of Professional Conduct 10. Suggested list of blogs to follow: <ul style="list-style-type: none"> • askthevc.com • avc.com • bhorowitz.com • feld.com • jargiello.com • onstartups.com • redeye.firstround.com • saastr.com
<p>Pre-requisites, Co-requisites, & other restrictions</p>	<ol style="list-style-type: none"> 1. LAW 802A (Business Associations) or an equivalent thereof is a pre-requisite for this course. In other words, if you have not completed a course in substantive corporate law then you will not be allowed to enroll. Note that the following do not satisfy the pre-requisite: (a) any “survey” or “comparative” courses regarding corporate law systems generally, (b) business school courses or business experiences, (c) c o-registration in a business associations or corporate law class, or (d) corporate tax courses. 2. Prior completion of a course regarding federal securities laws and regulations is advisable but not required.
<p>Course Objectives</p>	<p>This course will cover the practical mechanics of how business transactions are structured and implemented from term sheet to closing. As a transactional model we will study the documentation, legal issues, business issues and mechanical process of closing a preferred stock financing of a venture-backed start up. Students that prepare, attend and participate will gain (1) a basic understanding of venture capital deal “lingo” and structure, (2) an understanding of venture capital transaction agreements, (3) exposure to practical venture capital lawyering, and (4) exposure to practical transactional lawyering in general.</p>

Course Policies

Final Exam	There will be a take home final exam.
Other Assignments	Negotiating Exercise: We will divide the class into a “startup” negotiating teams and “venture capital” negotiating teams. Each team will consist of two students. Each two person “startup team” will negotiate a venture capital term sheet with a two person “venture capital team” during a timed, in-class session. The results of each two-on-two session will be de-briefed and discussed in the immediately following class session. Some meaningful preparation and a modest written work product will be involved in this exercise.

Assignments & Academic Calendar

Apx Class #	Topic and Assignments
#1 Wed Aug 20	<p>Course Introduction: General <u>Reading:</u> None</p>
#2 Wed Aug 20	<p>Course Introduction: Venture Capital Terminology <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapters 1, 2, 3, 11, 12, 14 and Glossary
#3 Wed Aug 27	<p>Deal Participants: The Corporate Issuer / Delaware Law <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Vantage Point Venture Partners 1996 v. Examen, Inc.</i>, 871 A.2d 1108 (Del. 2005) • <i>Lidow v. Superior Court</i>, 206 Cal App 4th 351 (2d Dist. 2012)
#4 Wed Aug 27	<p>Deal Participants: The Corporate Issuer / Convertible Preferred Stock <u>Reading:</u></p> <ul style="list-style-type: none"> • §151 of the Delaware General Corporation Law • <i>Greenmont Capital Partners I LP v. Marys Gone Crackers Inc.</i>, C.A. No. 7265-VCP (Del. Ch. Sept. 28 2012) • <i>Shintom Co., Ltd. v. Audiovox Corp.</i>, C. A. No. 693-N, (Del. Ch. May 4, 2005) • <i>Harbinger Capital Partners v. Granite Broadcasting</i>, C. A. No. 2205-N (Del. Ch. June 29, 2006) • <i>In re Trados Incorporated Shareholder Litigation</i>, C.A. No. 1512-CC (Del. Ch. July 24, 2009) • <i>LC Capital Master Fund, Ltd. v. James</i>, C.A. 5214-VCS (March 8, 2010)

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#5 Wed Sep 3	<p>Deal Participants: The Corporate Issuer / Federal Securities Law Basics</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • §§ 1 through 5 of the Securities Act of 1933, as amended • § 10(b) of the Securities Exchange Act of 1934, as amended • SEC Rule 10b-5, General Rules and Regulations, Securities Exchange Act of 1934
#6 Wed Sep 3	<p>Deal Participants: Founders and Founding Teams</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Startup Communities (Feld)</i> - Chapters 1 through 8
#7 Wed Sep 10	<p>Deal Participants: Venture Capital Funds</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapter 9 • Kauffman Foundation - <u>We Have Met The Enemy And He Is Us</u> – White Paper, May 2012 • Mulcahy – <u>Six Myths About Venture Capitalists</u> – Harvard Business Review May 2013
#8 Wed Sep 10	<p>Deal Participants: Venture Capital Economics</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapter 9 • Kauffman Foundation - <u>We Have Met The Enemy And He Is Us</u> – White Paper, May 2012 • Mulcahy – <u>Six Myths About Venture Capitalists</u> – Harvard Business Review May 2013

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#9 Wed Sep 17	<p>Deal Participants: Deal Counsel / Negotiation <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapter 10 • Rule 4.1 of the Model Rules of Professional Conduct • COPRAC Formal Opinion Interim No. 12-0007 (Puffing in Negotiations) • <i>Vega v. Jones Day Reavis & Pogue</i>, 121 Cal. App. 4th 282 (2d Dist. 2004)
#10 Wed Sep 17	<p>Deal Participants: Deal Counsel / Deal Ethics <u>Reading:</u></p> <ul style="list-style-type: none"> • Rules 3-300, 3-310 and Rule 3-600 of the California Rules of Professional Conduct • <i>Singhania v. Venture Law Group</i> (2002) (Unpublished)
#11 Wed Sep 24	<p>Deal Mechanics: Term Sheet and Due Diligence <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapters 4, 5, 6 and 7 • Sample venture capital due diligence checklist (to be posted on TWEN) • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Preferred Stock Purchase Agreement (NVCA Online Forms) • <i>SIGA Technologies, Inc., v. PharmAthene, Inc.</i>, CA 2625-VCP (Del Ch Sept 22, 2011) • <i>SIGA Technologies, Inc., v. PharmAthene, Inc.</i>, No. 314, 2012 (Del. May 2013)
#12 Wed Sep 24	<p>Deal Mechanics: Documents and Closing <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapters 4, 5, 6 and 7 • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Preferred Stock Purchase Agreement (NVCA Online Forms) • <i>MFI-DPLH LLC vs. Jesse Ingram</i>, Civil No. WDQ-09-2358, N.D. Maryland (April 29, 2011) and <i>Charges, In Re Jesse Ingram</i>, District of Columbia Court of Appeals Bar Docket No. 2011-115 (Dec 29, 2011) • Supplemental reading – counsel as escrow agent (to be posted on TWEN)

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#13 Wed Oct 1	<p>Deal Mechanics: Use of Forms</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • <i>ASB Allegiance Real Estate Fund v. Scion Breckenridge Managing Member, LLC</i>, C.A. No. 5843-VCL (Del. Ch. May 16, 2012) • <i>Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund</i>, No. 437, 2012 (Del. May 9, 2013)
#14 Wed Oct 1	<p>Deal Terms: Valuation</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson)</i> - Chapters 4 and 7 • NVCA Model Term Sheet (NVCA Online Forms) • <i>Venture Capital Deal Algebra</i>, Feld Thoughts Blog (Valuation Reading Link).
#15 Wed Oct 8	<p>Deal Terms: Voting Power / Delaware Law</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • §216, §242(a) and §242(b) of the Delaware General Corporation Law • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Voting Agreement (NVCA Online Forms) • §A(1), §A(2) and §B(3) of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • <i>FGC Holdings Ltd. v. Teltronics, Inc.</i>, Case No. C.A. 883-N (Del. Ch. Sept 14, 2005)
#16 Wed Oct 8	<p>Deal Terms: Voting Power / Agreements and Drag Alongs</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • §216, §242(a) and §242(b) of the Delaware General Corporation Law • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Voting Agreement (NVCA Online Forms) • §A(1), §A(2) and §B(3) of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • <i>Fletcher Intl Ltd. v ION Geophysical Corp.</i>, C.A. No. 5109-VCP (Del. Ch. May 28, 2010) • <i>Benchmark Capital Partners v. Vague</i>, C.A. No. 19719 (Del. Ch. July 15, 2002)

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#17 Wed Oct 15	<p>Deal Terms: Maintaining Position / ROFR Basics</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • §202 and §220 of the Delaware General Corporation Law • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Right of First Refusal and Co-Sale Agreement (NVCA Online Forms) • <i>Latesco, L.P. v. Wayport, Inc., C.A. No. 4167-VCL (Del. Ch. July 24, 2009)</i> • <i>In re Wayport, Inc. Litigation, Cons., C.A. No. 4167-VCL (Del. Ch. May 1, 2013)</i> • <u>Trouble in ROFRville: Court of Chancery Makes a Finding of Fraud in the Exercise of a Venture Capital Right of First Refusal</u>, posted on jargiello.com May 26, 2013 (link)
#18 Wed Oct 15	<p>Deal Terms: Maintaining Position / Strategic ROFR'ing</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • §202 and §220 of the Delaware General Corporation Law • NVCA Model Term Sheet (NVCA Online Forms) • NVCA Model Right of First Refusal and Co-Sale Agreement (NVCA Online Forms) • Complaint - <i>Alpha Investment LLC v. Zynga Inc. and Andrew Trader</i>, Filed June 3, 2011 (C.D. California).
#19 Wed Oct 22	<p>Deal Terms: Maintaining Position / ROFO's, Gobble Ups and Antidilution</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • NVCA Model Term Sheet (NVCA Online Forms) • §(B)(4) of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • §4 of the NVCA Model Investor Rights Agreement (NVCA Online Forms)
#20 Wed Oct 22	<p>Deal Terms: Maintaining Position / Pay to Play</p> <p><u>Reading:</u></p> <ul style="list-style-type: none"> • NVCA Model Term Sheet (NVCA Online Forms) • §(B)5A of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • <i>Watchmark Corp v. ARGO Global Capital, No. 711-N (Del. Ch. Nov 4, 2004)</i> • <i>Watchmark Corp v. ARGO Global Capital, No. 711-N (Del. Ch. Nov 19, 2004)</i>

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#21 Wed Oct 29	<p>Deal Terms: Maintaining Position / Washouts <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Michael Kalashian et al v. Advent VI Limited Partnership et al, Case No. CV-739278 (Sup. Ct. Santa Clara Co., filed March 23, 1994)</i> • <i>Weiss Peck & Greer et al v. Hummer Winblad Venture Partners, C.A. No. 19893-NC Del. Ch.)</i> • <i>Carsanaro v. Bloodhound Technologies Inc., C.A. No. 7301-VCP (Del. Ch. March 15 2013)</i>
#22 Wed Oct 29	<p>Deal Terms: Cashing Out / The Liquidation Preference <u>Reading:</u></p> <ul style="list-style-type: none"> • NVCA Model Term Sheet (NVCA Online Forms) • §(B)(2) of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • <i>Alta Berkeley VI C.V., et al v. Omneon, Inc., C.A. No. N10C-11-102 (Del. Sup. Ct. March 5, 2012)</i>
#23 Wed Nov 5	<p>Other Topics: Convertible Notes as an Alternative Financing Structure <u>Reading:</u></p> <ul style="list-style-type: none"> • <i>Venture Deals (Feld & Mendelson) - Chapter 8</i>
#24 Wed Nov 5	<p>Other Topics: Board Seats, Observers and Rights to Information <u>Reading:</u></p> <ul style="list-style-type: none"> • NVCA Model Term Sheet (NVCA Online Forms) • §3 of the NVCA Model Investor Rights Agreement (NVCA Online Forms) • §A(2) and §B(3) of the NVCA Model Certificate of Incorporation (NVCA Online Forms) • <i>Klaasen v. Allegro Development, C.A. No. 8626-VCL (Del. Ch. Nov 7, 2013)</i> • <i>Klaasen v. Allegro Development, No. 583, 2013 (Del., March 14, 2014)</i> • <i>Quantum Technology Partners v. Ploom, C.A. No. 9054-ML (Del. Ch. May 14, 2014)</i>

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#25 Wed Nov 12	Negotiation Exercise
#26 Wed Nov 12	Negotiation Exercise Debrief
#27 Wed Nov 19	Wrap Up: 10 Legal Reasons Startups Fail <u>Reading:</u> None
#28 Wed Nov 19	Wrap Up: The Startup Ecosystem <u>Reading:</u> <ul style="list-style-type: none"> • <i>Startup Communities (Feld)</i> - Chapters 1 through 8 (revisit) • <i>Startup Communities (Feld)</i> - Chapters 9 through 14