

**Law 249.3 – Lec. 001**  
**Selected Topics in Venture Capital**  
**Spring 2020**  
**Syllabus**

**Instructor Information**

**Lead Instructor:** Herb Fockler  
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**Office Hours:** Either Zeb or Cafe Strada (across Bancroft) before class around 5:00 p.m. ***Call me that day to find out exactly where I'll be and when.***

**Additional Instructor:** Mark Reinstra  
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**Additional Instructor:** Steve Bernard  
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**Course Information**

**Classes:** 6:25 p.m. – 8:15 p.m., Tuesdays  
**Location:** Room 170  
**Credit Hours:** 2

**Textbook/Course  
Materials**

**Required:** ***Venture Deals: Be Smarter Than Your Lawyer and Venture Capitalist***, Brad Feld & Jason Mendelson.

Materials and links posted on *bCourses* for each week.

**Optional/Background:** Separate optional materials and links posted on *bCourses* for background and additional information. They will not be tested on and can be read later.

**bCourses**

**Site :** <https://bcourses.berkeley.edu/courses/1473957>

**Content:** Class website containing class information, syllabus, weekly reading assignments (other than in textbook), copies of lecture slides, answers to exercises and other class handouts (after class), etc.

**Course Description**

It's been said that Silicon Valley is the greatest creation of wealth in the history of the planet. This is a practice-oriented course focusing on the legal and business aspects of the day-to-day life of corporate attorneys who advise technology and emerging growth companies and their founders and investors.

The course covers key events in the life-cycle of a startup company:

- An entrepreneur's considerations in starting a technology development business;
- Choices and details in forming an entity to hold that business;
- Corporate structure and governance;
- Incentivizing employees;
- Seeking early stage funding;
- Raising venture capital;
- Fundamental concepts and basic mechanics of a venture capital financing; and
- Dealing with conflicts among the various constituents in the venture

-- all pointed toward a liquidity event, such as an acquisition or IPO.

In each case, the emphasis is on business realities and practical solutions, such as:

- What makes a good business to attract venture capital funding?
- How can entrepreneurs attract investment?
- The pros and cons of different investment sources.
- How founders and investors interact to allocate between them rewards of the venture.

The course is taught using many examples taken from the real world (to the extent you can describe Silicon Valley as the “real world”).

### **Learning Outcomes**

The ABA requires that the Berkeley Law as a whole, as well as individual instructors, adopt learning outcomes for students. Learning outcomes are not only required, but they are also an important step in creating an effective course.

#### *Berkeley Law Learning Outcomes*

Students in the course will be expected to achieve the following general Berkeley Law Learning Outcomes:

- (a) Knowledge and understanding of substantive law;
- (b) Legal analysis and reasoning, problem-solving, and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system;
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession; and
- (e) Using the law to solve real-world problems.

#### *Course-Specific Learning Outcomes*

Students in the course will also be expected to achieve the Course Specific Learning Outcomes listed on Attachment A for each class.

### **Exam**

Students will be evaluated substantially based upon a three hour, closed-book, in-class exam. We will provide additional details midway through the course and during the Review Session discussed below. The exam is currently scheduled for Saturday, May 9, 2020 at 8:30 a.m. at a place to be determined. **Check with the Registrar later in the semester for confirmation of the date and location.**

There will be a Review Session prior to the exam on Thursday, April 30, 2020 from 6:25 p.m. to 8:15 p.m. in Room 140. **Note that, even though the time of day is same as for regular classes, the day of the week and location of the review session are different.**

### **Grading**

Students will be graded on a combination of performance on the Exam and performance on out-of-class group exercises, with the Exam counting for 80% and the exercises counting for 20%.

On the group exercises, all group members will be given the same performance evaluation. If lack of participation by one group member makes you feel that this is unfair for a particular exercise, let

Professor Fockler know at the time you turn in the exercise. The performance evaluation for any exercise that is turned in late will be reduced automatically.

Class participation will also be taken into account, though generally to resolve borderline cases. Failure to attend all classes may also detrimentally affect your grade notwithstanding good performance on the exam.

### **School-wide Policies**

- 1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including:
  - (a) Classroom time,
  - (b) Time spent preparing for class,
  - (c) Time spent studying for, and taking, final exams,
  - (d) Time spent researching, writing, and revising papers and other written work, and
  - (e) Time spent preparing for and completing any other final project, presentation, or performance.

For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

- 2) Students who need classroom accommodations or want to discuss implementation of their accommodations in this class are advised to contact Kyle Valenti, Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) as soon as possible.

Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. PROFESSORS DO NOT HAVE THE AUTHORITY TO RESCHEDULE EXAMS. Any student who seeks an accommodated or rescheduled exam for documented medical reasons or for religious observance should contact Student Services in 280 Simon Hall, 510-643-2744, [kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu).

- 3) The Academic Honor Code (<https://www.law.berkeley.edu/academics/registrar/academic-rules/academic-honor-code/>) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law.
- 4) If you are in need of economic, food, or housing support, you can find help at [basicneeds.berkeley.edu](http://basicneeds.berkeley.edu). You may be eligible for money to buy groceries via [calfresh.berkeley.edu](http://calfresh.berkeley.edu) or our [Food Assistance Program](#). If you are in need of food immediately, please visit our UC Berkeley Food Pantry at [pantry.berkeley.edu](http://pantry.berkeley.edu).
- 5) The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University

programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior ("Prohibited Conduct") that violates law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance and procedures, please access the full text: <http://policy.ucop.edu/doc/4000385/SVSH>.

Resources: If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email [ask\\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu).

Path to Care Center Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including: sexual harassment, emotional abuse, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone (510) 642-1988 or email <http://sa.berkeley.edu/dean/confidential-care-advocate>.

### **Course Policies**

Many of the matters covered in this course cannot be found in books, including the assigned materials, or even on the Internet. The transactions and solutions to issues that we will be discussing almost always have to be learned by doing or, as in this case, by learning from someone else who has done it.

#### *Attendance*

Most of the substantive law school content of the course will be provided in the lectures, class discussions and group exercises. Given the foregoing, class attendance is extremely important. We expect all students to attend every class and participate as an active listener and contributor, and we will be taking attendance. **If you cannot make a class, please let Professor Fockler know in advance by email.**

#### *Preparing for Class*

After almost 100 years of combined experience practicing in this area, we can easily talk for a full 110 minutes for 15 weeks. Nonetheless, we -- and we hope you too -- will find it more interesting if things are more interactive. Accordingly, we strongly hope to foster interactions between professors and students, and among students yourselves, through general class discussion during lecture, including responses to our questions and the hypotheticals we present and questions from you about the group exercises, most of which will require some out-of-class work. We will also be

setting aside a portion of some class sessions to discuss issues presented in the lectures and materials.

We therefore expect all students to prepare for and participate in all classes. Notwithstanding the first paragraph of this section, discussing some of these issues intelligently will require you to have gone through the assigned materials in advance. We expect everyone to be familiar with what is in the assigned materials, so that we can refer to them during lecture with a minimum of back-filling explanation. **If, because of an unusual circumstance, you are unable to prepare for a particular class you attend, please let one of us know in person before the start of that class.**

### *Electronics*

Students may use laptops or other devices to access reading assignments during class. However, Berkeley Law strongly encourages you to take handwritten notes, as research has shown that students absorb information better this way.

Using laptops for any other purposes, including emailing, web-browsing, chatting, social media, shopping, playing games, viewing blogs, etc., is not permitted. You cannot do any of the foregoing and at the same time make meaningful contributions to class.

Cellphone use is not permitted at all. If, due to an emergency personal circumstance, you need to monitor your email or your cellphone during class, please let one of us know in advance.

## **Professors' Biographies**

### *Professor Fockler*

Herb Fockler is a partner in the Corporate and Securities Department of Wilson Sonsini Goodrich & Rosati, the leading legal adviser to technology and emerging growth enterprises worldwide. He has been with WSGR for over 35 years, representing entrepreneurs and the businesses they create at all stages of development -- from newly formed companies seeking their initial VC funding to multibillion-dollar global enterprises. He has worked with hundreds of public and private companies across the technology industry, from computers, software, Internet and semiconductors through biotechnology, medical devices and clean technology. During the first half of his career he handled many large transactions and relationships with many leading technology companies, including Dolby Laboratories, Autodesk, Netscape, Sun Microsystems, Silicon Graphics, WordPerfect, Flextronics and Philips Microelectronics. Since 2000, however, he has focused on representation of entrepreneurs and early stage startups. He is a member of the California State Bar's Advisory Committee of Legal Opinions and a former chair of the ABA's Venture Capital Transaction Issues and Documents Committee. He has taught courses and lectured on venture capital, startup companies, initial public offerings and acquisitions at Berkeley Law for many years, as well as at Santa Clara University Law School and Business School, the Wharton School's San Francisco campus, Harvard Law School and Harvard iLab, and Stanford University's Ignite Program. Outside of law, he was a computer programmer before and during law school, he holds an undergraduate degree in physics, and he doesn't ski as much as he'd like to.

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### *Professor Reinstra*

Until recently, Mark Reinstra was also a partner in the Corporate and Securities Department of Wilson Sonsini Goodrich & Rosati. Recently, he became the General Counsel at Roblox. Prior to joining Roblox, he was with WSGR for almost 25 years. His practice at WSGR covered a broad range of general corporate, securities and transactional matters. His clients including Roblox, ApartmentList, Catalog, Healtheon/WebMD, Limelight Networks, Sanmina and numerous unheralded startups that never reached escape velocity. He also teaches New Venture Finance at Stanford Law School and has spoken at the Haas School of Business at Berkeley, Wharton School Entrepreneurs Workshop and at the University of Wisconsin. He is a former co-chair of two Practicing Law Institute seminars, "Understanding the Securities Laws" and "Counseling Clients in the New Economy." He is married to Susan Reinstra, the co-head of WSGR's Real Estate Department and who teaches "Real Estate Transactions and Litigation – Law 257" at Berkeley Law,

and they have two children. When not at work or Burning Man, Prof. Reinstra runs, bikes, hikes and drinks wine throughout the Bay Area.

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*Professor Bernard*

Steve Bernard is also a partner in the Corporate and Securities Department of Wilson Sonsini Goodrich & Rosati. He joined WSGR 26 years ago, and his current practice covers a broad range of corporate, securities and transactional matters for U.S. and non-U.S. technology companies, with a particular focus on late-stage financings, IPOs and M&A. His clients include Elastic, Infosys, Logitech, Talend and Zynga. He chaired the Practicing Law Institute seminar “Securities Filings” for nearly 20 years and often speaks on global capital markets matters. When he is not in the office or the classroom, he is likely in his kitchen, cooking for his family and friends or organizing amateur cooking competitions.

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### **Summary Course Schedule**

The following is a summary of dates and topics for each class in the course. Learning outcomes for each class as set forth in Attachment A. The topics, learning outcomes and assigned materials for each class are set forth in a separate Syllabus Details document for that. Note that minor changes may be made to the foregoing as the class progresses, so be sure to check the Syllabus Details document posted on *bCourses* the week prior to each class.

<b>Class</b>	<b>Date</b>	<b>Topics</b>
<b>1</b>	<i>January 14</i>	<i>Introduction to the World of Venture Capital Companies</i> <ul style="list-style-type: none"><li>○ <i>What makes Silicon Valley different?</i></li><li>○ <i>Silicon Valley and Venture Capital history</i></li><li>○ <i>The “Silicon Valley Venture Capital Model”</i></li></ul>
<b>2</b>	<i>January 21</i>	<i>Starting a New Venture, part I</i> <ul style="list-style-type: none"><li>○ <i>What makes for a good startup business?</i></li><li>○ <i>Pre-formation issues</i><ul style="list-style-type: none"><li>▪ <i>Leaving prior employers</i></li><li>▪ <i>Intellectual property matter</i></li><li>▪ <i>Initial organization of the new venture</i></li></ul></li><li>○ <i>Exercise #1 – Creating a Business Plan (due January 24)</i></li></ul>
<b>3</b>	<i>January 28</i>	<i>Starting a New Venture, part II</i> <ul style="list-style-type: none"><li>○ <i>Organizing the business</i><ul style="list-style-type: none"><li>▪ <i>Forms of business entities</i><ul style="list-style-type: none"><li>– <i>Typical structure of VC-backed companies</i></li><li>– <i>“Lifestyle Companies”</i></li></ul></li><li>▪ <i>Corporate naming issues</i></li><li>▪ <i>Incorporation mechanics</i><ul style="list-style-type: none"><li>– <i>Choice of domicile</i></li><li>– <i>Basic formation documents and process</i></li></ul></li></ul></li></ul>
<b>4</b>	<i>February 4</i>	<i>Starting a New Venture, part III</i> <ul style="list-style-type: none"><li>○ <i>Ownership of the New Venture</i><ul style="list-style-type: none"><li>▪ <i>Allocating among Founders</i></li><li>▪ <i>Stock and options</i></li></ul></li><li>○ <i>The Cap Table</i></li><li>○ <i>Exercise #2: Building a Cap Table (due February 14)</i></li></ul>

Class	Date	Topics
5	February 11	<i>Seeking Funding for a New Venture, part I</i> <ul style="list-style-type: none"> <li>○ Sources of funding generally <ul style="list-style-type: none"> <li>▪ Advantages and disadvantages of Venture Capital as a funding source</li> <li>▪ Other sources of funding</li> <li>▪ "Lifestyle Companies"</li> </ul> </li> <li>○ Seeking VC Funding <ul style="list-style-type: none"> <li>▪ The VC mating dance</li> <li>▪ Business plans and other solicitation materials</li> </ul> </li> </ul>
6	February 18	<i>Seeking Funding for a New Venture, part II</i> <ul style="list-style-type: none"> <li>○ Securities laws <ul style="list-style-type: none"> <li>▪ Private placement exemptions</li> </ul> </li> <li>○ Initial funding <ul style="list-style-type: none"> <li>▪ Convertible Notes and SAFEs</li> </ul> </li> </ul>
7	February 25	<i>Venture Capital Funds</i> <ul style="list-style-type: none"> <li>○ Guest lecturer: Neil Wolff, VantagePoint Venture Partners <ul style="list-style-type: none"> <li>▪ Structure and objectives of venture capital funds;</li> <li>▪ Current status of the venture capital business</li> </ul> </li> </ul>
8	March 3	<i>Venture Capital Financings, part I</i> <ul style="list-style-type: none"> <li>○ Dual-class stock structure</li> <li>○ Valuation and pricing</li> <li>○ Exercise #3: Calculating the Price per Share in a Venture Capital Financing (due March 13)</li> </ul>
9	March 10	<i>Venture Capital Financings, part II</i> <ul style="list-style-type: none"> <li>○ Control mechanisms</li> <li>○ Termsheets and specific terms <ul style="list-style-type: none"> <li>▪ Rights inherent in the Preferred Stock <ul style="list-style-type: none"> <li>– The liquidation preference</li> <li>– Conversion and anti-dilution protection</li> </ul> </li> </ul> </li> </ul>
10	March 17	<i>Venture Capital Financings, part III</i> <ul style="list-style-type: none"> <li>○ Termsheets, and specific terms, cont. <ul style="list-style-type: none"> <li>▪ Contractual rights</li> <li>▪ Other terms</li> </ul> </li> </ul>
11	March 31	<i>Venture Capital Financings, part IV</i> <ul style="list-style-type: none"> <li>○ Documents and mechanics <ul style="list-style-type: none"> <li>▪ Basic documents</li> <li>▪ Corporate approvals</li> <li>▪ Due diligence</li> </ul> </li> </ul>

Class	Date	Topics
12	April 7	<i>Venture Capital Financings, part V</i> <ul style="list-style-type: none"> <li>○ <i>Termsheet negotiations exercise</i></li> <li>○ <i>Exercise #4: Allocation of Acquisition Proceeds (due April 17)</i></li> </ul>
13	April 14	<i>When Things Go Wrong</i> <ul style="list-style-type: none"> <li>○ <i>Board fiduciary duties</i></li> <li>○ <i>Conflicts between Founders and Investors</i> <ul style="list-style-type: none"> <li>▪ <i>Alantec</i></li> </ul> </li> <li>○ <i>Conflicts between Old Investors and New Investors</i> <ul style="list-style-type: none"> <li>▪ <i>Benchmark</i></li> </ul> </li> <li>○ <i>Conflicts between Common and Preferred</i> <ul style="list-style-type: none"> <li>▪ <i>Trados</i></li> </ul> </li> </ul>
14	April 21	<i>Exits</i> <ul style="list-style-type: none"> <li>○ <i>Initial public offerings</i></li> <li>○ <i>Acquisitions</i></li> </ul>
	April 30	<i>Review session</i>
	May 9	<i>Exam</i>

## ATTACHMENT A

### Course-Specific Learning Outcomes by Class

#### Class 1 – January 14, 2020

##### Introduction to the World of Venture Capital Companies

- Describe key elements underlying Silicon Valley that differentiate businesses here from traditional businesses
- Understand the historical context in which today's Silicon Valley, and the technology industry in general, developed
- Begin to understand basic structures and motivations of VCs, their funds and their portfolio companies
- Begin to understand what makes a Company attractive to VCs
- State the basic themes of the Course

#### Class 2 – January 21, 2020

##### Starting a New Venture, Part I

- Understand what features of a business make it suitable or not suitable for Venture Capital investment
  - Differentiate among ideas that are apps, technologies or full-blown companies
- Spot common issues and problems in starting a new technology venture, including with respect to:
  - Leaving prior employers
  - Creating a clean IP pedigree
- Suggest possible solutions to the foregoing

#### Class 3 – January 28, 2020

##### Starting a New Venture, Part II

- Recognize factors affecting the choice of business entity
  - Suggest entity type(s) that might and might not be suitable/attractive for a venture, based upon its business characteristics
  - Suggest when non-corporate entities might be more appropriate
- Understand the three different regimes affecting business names
- Describe the steps in the initial organization of a corporation

## **Class 4 – February 4, 2020**

### *Starting a New Venture, Part III*

- Understand what stock is and the multiple terms used to describe various aspects of it
  - Explain what vesting is and why it is used
  - Differentiate between options and restricted stock
  - Explain the differences between an ISO and an NSO
- Understand how the Capitalization Table for a new venture builds up through successive rounds of financing
- Build an actual Capitalization Table for a new venture through formation events and subsequent financing rounds

## **Class 5 – February 11, 2020**

### *Seeking Funding for a New Venture, Part I*

- Explain the advantages and disadvantages of Venture Capital as a financing source
- List other sources of funding and the advantages and disadvantages of each
- Describe what a “Lifestyle Company” is and identify businesses that might better be structured as one
- Discuss the steps in seeking VC funding
  - Describe the elements of a Business Plan

## **Class 6 – February 18, 2020**

### *Seeking Funding for a New Venture, Part II*

- Explain why Companies may choose to raise their initial funding with Convertible Notes or SAFEs rather than going straight to a Preferred Stock financing
- Describe the typical terms of a Convertible Note used by a startup
- Explain what a SAFE is and how it differs from a Convertible Note, both in theory and in practice
- Explain the risks to both Founders and Investors in using Convertible Notes or SAFEs and why each might prefer one over the other
- Understand the two fundamental principles of all securities law
- List the various exemptions available for private issuances of securities
  - Identify which exemptions are most useful for a VC financing and why
  - Describe the required elements of Rule 506(b)

## **Class 7 – February 25, 2020**

### *Venture Capital Funds – Guest lecturer: Neil Wolff, VantagePoint Venture Partners*

- Understand the basic terms used in the Venture Capital industry

- Understand the typical organization, structure and objectives of a Venture Capital fund and how they affect the funds actions in investing and dealing with its portfolio companies
- Understand the current state of the Venture Capital industry
- Understand the different types of VC funds, in terms of such things as size, industry focus, typical stage of company and typical size investment
- Understand the different types of VC funds, in terms of such things as size, industry focus, typical stage of company and typical size investment

## **Class 8 – March 3, 2020**

### *Venture Capital Financings, part I*

- Explain the reasons for the dual-class stock structure of VC-backed companies.
- Distinguish Venture Capital Preferred Stock from Public Company and Private Equity Preferred Stock
- Understand the terms "Fully Diluted Shares," "Pre-Money Valuation" and "Post-Money Valuation," how each is used and how the latter two differ.
- Discuss various ways the Pre-Money Valuation in a VC financing might be arrived at.
- Calculate the price per share in a VC financing.
  - Calculate the price where the Post-Money Option Plan Reserve is expressed as a percentage of the post-deal Fully Diluted Shares.
- Understand how the economic terms in a VC financing affect Founders' percentage ownership of the Company afterwards.

## **Class 9 – March 10, 2020**

### *Venture Capital Financings, part II*

- Discuss different ways VCs can exert control over a VC-backed company.
  - Describe the typical allocation of Board of Director seats.
  - Describe typical corporate actions that require stockholder votes, either by law or as negotiated terms.
  - Discuss why Series votes of Preferred stockholders are to be avoided.
- Review and comment on a Termsheet for a Venture Capital Financing
  - Recognize all the standard terms
  - Differentiate between rights inherent in the Preferred Stock and rights granted by contract and the implications of the difference
  - Differentiate between those that really matter and those that matter less
    - Identify the crucial terms in each of an upside exit and a downside exit.
  - Identify what is most common in typical Silicon Valley deals for each of the major terms
- Understand how Liquidation Preferences work
  - Discuss the three different types of Liquidation Preference and explain how each works
  - Recommend which type of Liquidation Preferred is better for the holders of Common Stock, the holders of early series of Preferred and the holders of later series of Preferred

- Calculate how the proceeds from an acquisition are distributed to stockholders as a result of various types of Liquidation Preferences
- Understand the various implications of Preferred Stock being convertible into Common Stock
- Understand what Anti-dilution Protection is
  - Differentiate between Structural Anti-dilution and Price-based Anti-dilution and describe the purpose of each
  - Describe the different types of Price-based Anti-dilution Protection
  - Calculate Price-Based Anti-dilution adjustments under each of the different types of such protection
  - Recommend which type of Anti-dilution Protection is better for the holders of Common Stock, the holders of early series of Preferred Stock, and the holders of later series of Preferred Stock

### **Class 10 – March 17, 2020**

#### *Venture Capital Financings, part III*

- Explain what Registration Rights are, what the typical types are, and whether any of them really matter
- Explain the possible effects and relative importance of Pre-emptive Rights
- Describe the typical limitations over Founders' sales of their stock that Investors require
  - Explain what Co-Sale Rights are
- Discuss whether a Company should agree to an Exclusivity clause

### **Class 11 – March 31, 2020**

#### *Venture Capital Financings, part IV*

- Describe the multiple documents used in a Venture Capital Financing and the purpose and general contents of each
- Understand what goes on in the Due Diligence process and why it is important
- Explain the corporate approvals necessary for a Company to complete a Venture Financing and how the process works to obtain these
- Explain the purpose of obtaining a Legal Opinion from the Company's Counsel in connection with a financing
  - List some of the matters commonly covered in such Opinions and those that should not be

## **Class 12 – April 7, 2020**

### *Venture Capital Financings, part V*

- Understand more deeply the economic, control and other terms in the Preferred Stock sold in Venture Capital Financings
- Understand which terms are important and which terms matter less
  - Understand how business considerations may cause some terms to be more or less important
- Develop strategies for negotiating a Venture Capital Financing Termsheet

## **Class 13 – April 14, 2020**

### *When Things Go Wrong*

- Identify the various types of conflicts that can arise among the various groups in a VC-backed company
- Describe the two main Fiduciary Duties of Directors
  - Distinguish between Fiduciary Duty issues and Standard of Review issues
  - Discuss the Business Judgment Rule and the conditions for obtaining its protections
  - Describe why the protections of the Business Judgment Rule are important and what happens if they are lost
- Identify the main legal issues in a Down-Round Financing
  - Recommend ways to address these issues, reduce risk to the Board and protect the interests of the Common
- Understand the different interests that may arise between Old Investors and New Investors
  - Understand what duties a Board owes to Preferred stockholders in contrast to the duties it owes to Common stockholders
- Describe what a Pay-to-Play is, when it might be used and what issues it raises
- Identify the issues that arise when a Company is sold for proceeds below or barely above the aggregate Liquidation Preference of the Preferred Stock
  - Recommend ways to address these issues, reduce risk to the Board and protect the interests of the Common

## **Class 14 – April 21, 2020**

### *Liquidity and Exits*

- Understand the motivation of each of the stakeholders – investors, founders, management and employees – to seek (or not seek) a liquidity event
- Discuss concepts of time to liquidity, certainty of liquidity and certainty of value in relation to potential “exit events” – that is, a sale of the company versus and IPO
- List the key participants and key steps in the IPO process
- Describe the benefits and drawbacks of going public



- Explain whether certain stakeholders disproportionately experience the benefits/drawbacks
- List the key steps in the sale process
- Describe the key considerations in how to structure the sale transaction
  - Explain how the structuring considerations may benefit certain stakeholders relative to others