LAW 255 – VENTURE CAPITAL FINANCE

Professor Robert Bartlett

**Administrative Matters:**

Instructor Name: Robert Bartlett (he/him)

Email address:  [rbartlett@berkeley.edu](mailto:rbartlett@berkeley.edu)

Class Meeting Times: Tuesday from 8:00 am to 9:50 am

Classroom: 132

Zoom classroom (if necessary): <https://berkeley.zoom.us/j/99617061607>

Office Hours: 9 am to 11 am Wednesdays and by appointment

Please sign up for office hours in advance using the calendar in bCourses. When signing up for an appointment, you may request a virtual meeting, in which case we will meet in this Zoom Room: <https://berkeley.zoom.us/j/93437465922>

*Note: All office hours through the end of August are required to be virtual.*

## Course Description

This 2-unit course examines the economics of U.S. venture capital finance and the contract structures that are used to achieve these economics. Special attention will be paid to developing pro-forma financial models that analyze how various contract provisions affect investor and founder cash flows. Among other things, students will study how VC contract provisions are designed to protect investors from economic and voting dilution, how they allocate merger consideration in an acquisition of a VC-backed startup company, and how they can be used to incentivize subsequent investment by a company’s VC investors. Consideration will also be given to how background legal rules interact with the VC contracting model.

## Learning Outcomes

This class is designed to provide a working knowledge of how and why venture capital financing transactions have the terms that are typically utilized in U.S. venture capital finance, as well as how these terms function in practice. As such, the course will focus on analyzing the economics underlying a standard VC “term sheet” as opposed to drafting specific venture capital contracts (though we will often dig into the nitty-gritty contract language used to reflect these terms). Special attention will also be given to understanding how to “model” these provisions (using Microsoft Excel) in order to understand their economic impact on investors and other company stockholders. Students will complete several “modeling” exercises throughout the semester that cover common modelling tasks expected of lawyers working in VC finance.

Because this class strives to prepare students for practice within the VC ecosystem, the class aims to impart a core set of practical skills that every VC lawyer should ideally master. To facilitate development of these skills, the course will cover 12 specific “Learning Objectives” listed in the Outline below.

**Required Materials:**

The required materials for this course are:

* Brad Feld & Jason Mendelson, *Venture Deals: Be Smarter Than Your Lawyer and Venture Capitalist*, 4th Edition.[[1]](#footnote-1)
* Access to a laptop computer for each class
* Microsoft Excel (any recent edition) (Berkeley students have access to Excel through [Windows 365](https://software.berkeley.edu/microsoft-365)).

I will also be distributing supplemental materials periodically on bCourses (see next).

While not required, I would strongly recommend that you subscribe to the following two daily newsletters that are widely followed within the venture capital industry:

[Pro Rata](https://www.axios.com/axios-pro-rata/) (by Dan Primack) (sign up [here](https://www.axios.com/newsletters/axios-pro-rata))

[Term Sheet](http://fortune.com/tag/term-sheet/) (by Lucinda Shen) (sign up [here](https://mynewsletters.fortune.com/term-sheet?utm_source=email&utm_medium=newsletter&utm_campaign=term-sheet&utm_content=2021081116pm&_ga=2.267341774.1728468327.1628700698-337590314.1627078767))

**bCourses; Reading Assignments:**

I manage course announcements and assignments through bCourses. You should already be enrolled in the course bCourse website located at:

<https://bcourses.berkeley.edu/courses/1506352>

If you are unable to access the bCourse site, please contact me as soon as possible. A copy of the syllabus, reading assignments, and copies of class materials can be found on the bCourse website. Reading assignments for each week will be posted on or before the preceding Thursday. Class slides and class recordings will be posted to bCourses after class.

**Policy on Class Recordings:**

Barring any changes to campus attendance policies, all classes will be held in person and attendance will be required for each class. However, all classes will be recorded to accommodate students who are unable to attend class for any number of reasons related to the current public health situation. Given the attendance requirement, please see the following section on Grading to ensure that your grade is not adversely affected in the event you are not able to attend a class.

Class recording will be automatically posted to the “Media Gallery” in bCourses following each class. Please feel free to view any class recordings that are posted there even if you attended that day’s class. Please note that sharing or redistributing any class recordings is prohibited by the Law School’s Academic Rules (Rule 7).

**Grading:**

Your grade in the course will be comprised of the following components: performance on the final exam and class attendance and participation.

*Exam.* Subject to any downward adjustment described below, your final grade for this course will be based on an in-class exam to be administered on Wednesday, December 8, 2021. Among other things, the exam will be designed to test your mastery of the learning objectives noted previously. The exam will be open book. I will provide more information regarding the format of the exam later in the semester.

*Class attendance and participation.* Much of our class discussion will be driven by the readings, exercises, and other materials assigned for each class. As such, absent special circumstances noted below, I expect students to attend each class session and to be prepared to discuss the assigned materials. To ensure robust class discussion, we will use a “panel system” in which approximately 4-5 randomly-selected students must be prepared to be called on during the class either to discuss the assigned materials or to otherwise facilitate discussion of relevant issues for that day. These panels will commence in Week 2. I will announce the names of these students when I post the Reading Assignments each week on bCourses. Please be advised that your assignment to a panel does not necessarily mean that I will call on you; it is instead a system for me to know that students are available to engage in discussion promptly.

**Failure to be prepared for discussion on your assigned “panel day” (or being absent when called upon without providing prior notice to me, as noted below) is highly likely to result in a downward adjustment of your grade**. *If you are unable to attend class and have been assigned to a panel for that day, please notify me of your expected absence in advance of class, if possible*. If you are unable to provide advance notice due to an emergency, please contact me as soon as possible with an explanation for the lack of advance notice so that it does not adversely affect your grade. Students who miss their assigned panel will be re-assigned to a later panel.

Please be advised that I reserve the right to reduce the final raw score that I use for determining grades by up to 5% (per incident) for any student who misses an assigned “panel day” without advance notice or without otherwise securing my agreement that the missed class will not adversely affect the student’s grade. Please keep in mind that the basis for this policy is to minimize the disruption to the learning environment that occurs when a student on panel is not present when called upon to discuss the assignment materials.

**Technological Assistance:**

If technical difficulties prevent you from completing course work, please alert me immediately. However, understand that I cannot assist you with technical problems. Please use the technical support resources described below. Be sure to document all interactions with tech support (e.g., save emails and transaction numbers). The following instructions have been provided to me by the law school:

*“Berkeley Law students are entitled to general software support for their computers from the law school, and certain free software downloads from UC Berkeley, while enrolled.  If you have issues with internet access or computer equipment required to participate in classes remotely, they should contact* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu)*. Information, links, and instructions for many common computer/technical questions can be found in the* [*law library's online computing guide*](http://libguides.law.berkeley.edu/computing/home)*.*

*For bCourses, Zoom, and technical support questions, please email* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu) *or you can use the* [*Student Computing chat*](https://www.law.berkeley.edu/library/dynamic/internal/techChat.php)*. In both cases, someone will respond to you during our regular business hours.*

*If you have research-related questions, please contact the reference librarians by filling out the* [*reference request form*](https://www.law.berkeley.edu/library/dynamic/students/researchRequest.php)*. You can also reach reference librarians during business hours by using the* [*law library’s chat service*](https://www.law.berkeley.edu/library/dynamic/internal/chat.php)*.”*

## 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, including accommodated exams, in this class are advised to contact Kyle Valenti, Associate Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) or Kyle Kate Dudley, Assistant Director of Student Services, Accessible Education ([kylekatedudley@law.berkeley.edu](mailto:kylekatedudley@law.berkeley.edu)) as soon as possible.

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. We expect students to adhere to this code scrupulously. If you have any question about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

4) If you are in need of economic, food, or housing support, you can find help at [basicneeds.berkeley.edu](https://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 need food immediately, please visit our UC Berkeley Food Pantry at [pantry.berkeley.edu](https://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>.

**Class Outline (subject to change):**

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| **Date** | **Week/Class #** | **Topic** |
| 8/17 | 1 | -Introduction  - Course Overview  - Forming a Startup & Founder Financing  *Learning Objective #1:*  *Constructing a Cap Table* |
| 8/24 | 2 | - Overview of the Venture Capital Financing Model  - Who Are Venture Capitalists?  *Learning Objective #2:*  *Calculating VC Compensation* |
| 8/31 | 3 | - The Term Sheet: The Economic Terms  - Valuation and Pricing  *Learning Objective #3:*  *Pricing a VC Financing Using the Share Pricing Equation & “Backing Into” a Valuation* |
| 9/7 | 4 | - The Term Sheet: The Economic Terms (cont)  - Convertibility, Dividends, and Liquidation Preferences  - Modeling Simple Liquidation Waterfalls  *Learning Objective #4:*  *Constructing a Basic Liquidation Waterfall* |
| 9/14 | 5 | - The Term Sheet: The Economic Terms (cont)  - Dilution and Anti-Dilution Protection  *Learning Objective #5:*  *Calculating Preemptive Rights* |
| 9/21 | 6 | - The Term Sheet: The Economic Terms (cont)  - Dilution and Anti-Dilution Protection (cont)  *Learning Objective #6:*  *Pricing a Downround and Modeling Antidilution Provisions* |
| 9/28 | 7 | - The Term Sheet: The Control Terms  - Board and Stockholder Control Rights  - VC-VC & VC-Founder Conflicts  *Learning Objective #7:*  *Identifying Conflicts of Interests and Veto Rights* |
| 10/5 | 8 | - The Term Sheet: Terms Addressing Exit Risk & Employee Risk  - Intro to “Down-Round” Financings: Economic and Legal Implications  *Learning Objective Assignment #8:*  *Modeling a Downround with Pay-to-Play* |
| 10/12 | 9 | - “Down-Round” Financings: Economic and Legal Implications (cont)  *Learning Objective Assignment #9:*  *Advanced Liquidation Waterfall Issues - Calculating Conversion Points Following a Downround* |
| 10/19 | 10 | - Down-Round Financings (cont)  - VC’s Behaving Badly: Director Liability  *Learning Objective Assignment #10:*  *Determining the Proper Standard of Review for Board Decision-making* |
| 10/26 | 11 | - VC’s Behaving Badly: Director Liability (cont) |
| 11/2 | 12 | - VC’s Behaving Badly: Stockholder Liability  *Learning Objective Assignment #11:*  *Determining when a Stockholder Owes Fiduciary Duties* |
| 11/9 | 13 | - Convertible Debt  *Learning Objective Assignment #12:*  *Pricing a Financing with Convertible Debt* |
| 11/16 | 14 | - Case Study; Course Wrap Up |

1. The third edition of this book is [available online](https://onlinelibrary.wiley.com/doi/book/10.1002/9781119259794) for free through the Berkeley Law Library website. You may use the online edition if you wish, but please note that the chapter numbers are slightly different and third edition is slightly dated. When posting reading assignments, I will note the chapter title (and in some cases, section headings) so that you can read the correct assignments in either the 4th Edition or the 3rd Edition. [↑](#footnote-ref-1)