

Syllabus

Technology, Innovation and the Law (TIL)

- **Instructor:** Caterina Sganga (sgangac@ceu.edu; +36 1 327 2248; personal consultations after class or during working hours, upon previous appointment. My office is in Nador utca 11, 5th floor, room no. 517)
- **Credits:** 2 (4 ECTS)
- **Term:** Fall 2017-2018
- **Course level:** MA/MSc
- **Prerequisites:** None

Course description (background and overall aims)

New technologies have had a revolutionary impact on the ways of doing business and on the pace of creation, modification and obsolescence of business models. Among other effects, they have dramatically affected the process of building a new venture, the balance between companies' tangible and intangible assets, and the nature of distribution channels and marketing strategies.

Examples of such epochal changes are everywhere. The fast constitution and growth of start-ups, built around one or more high-tech intellectual assets, represents a completely new phenomenon compared with the relatively slow establishment and development of a traditional company. At the same time, the fact that intangible assets of Fortune 500 firms account today for more than 75% of their total value is in sharp contrast with the former 20% they represented in the 1970s. In addition, on the side of commercialization, the advent of the Internet has opened the door for the abandonment of the traditional brick-and-mortar distribution of goods and services, offering a plethora of new market opportunities characterized by low entrance and maintenance costs and by a cross-border and virtually unlimited target of consumers.

While in the past law was considered in the business jargon as synonym of uncertainty and risk, today legal astuteness – defined as the capability to use legal tools as value generator - is more and more recognized as one of the most relevant managerial tools for creating innovative solutions and acquiring competitive advantage. In dealing with intellectual capital, a legally astute manager will be able to use the firm's intangible assets as strategic tools to pursue specific business goals, instead of limiting the role of patents, copyright and trademark to that of mere defensive weapons. In deciding whether and where to constitute a company, and which business form to opt for, a legally savvy entrepreneur will take into account all the opportunities offered by market globalization with a long-term perspective, instead of focusing on local, short-sighted tax concerns and simple prevention of legal risks. In exploring new digital commercialization channels offering or offering innovative high-tech products and services, a legally sophisticated entrepreneur or manager will build up consumer trust by using positively and creatively different legal rules in different geographical markets.

The aim of this course is to help students developing legal astuteness and a new, pro-active approach to law. Instead of proposing a traditional, static, review of business law topics, "Technology, Innovation and the Law" focuses on selected subjects relevant for innovative entrepreneurship, with a special two-pronged focus on the protection of the creation/development of intellectual capital and the rules regulating the digital marketplace. We will start with a brief introduction on the role played by law in the regulation of technology and innovation, and on the importance of learning how to cooperate at best with legal counsels for the achievement of specific business goals. Then, we will turn to the analysis of intellectual property rights, unanimously defined as the key engine of innovation. Here the discussion of the main features of

patent, copyright, trademark and trade secret will be coupled with an analysis of the main stages of their strategic management. After a study on how to structure the company's ownership and to select the right business entity, we will focus on the legal problems arising in doing business on the Internet, with particular regards to online contracting and the regulatory framework of e-commerce. Last, we will conclude with an overview of the opportunities offered by law to raise capital for the enterprise or to abandon a no-longer profitable or stimulating entity.

Learning outcomes

By the end of this course, students will be able to

- understand the key relevance of law for entrepreneurship and capture value from innovation; select and work with an attorney; connect legal strategies with business goals; use legal tools for risk management and as source of competitive advantage (**management skills**)
- understand the fundamental role played by law in the context of strategic management; cooperate with legal counsels in a pro-active way; have sound judgment in using legal tools to foster opportunities, and to preserve and increase the value created by the company (**legal astuteness**)
- use the acquired skills to strategically approach opportunities and challenges presented by the legal system, and to develop creative solutions (**problem solving**)
- predict, assess the impact of and prevent legal risks arising from selected entrepreneurial/managerial activities (**risk management**)
- talk about selected legal issues fundamental for entrepreneurship and innovation, and to use such skills in managing contacts with attorneys and other professionals having different backgrounds (**communication skills**)
- consider a number of ethical challenges arising when developing creative legal solutions (**ethics and responsibility**)

Reading list

The required readings are made available to registered course participants through the Moodle E-Learning platform. For a detailed list, see the section "Course schedule and materials for each session" below.

Assessment

- **40% of your grade** will be awarded for one **Individual Assignment**, to be submitted by Moodle by Friday, October 13, 11.59 pm (the night BEFORE Sessions 5-6). Late assignments will **NOT** be accepted. For more details see the Memo "Instructions for the Individual Assignment".
- **30% of your grade** will be awarded for your **class participation**, graded on a 0 to 5 scale.
- **30% of your grade** will be awarded for the **final group presentation**. Your individual grade will be calculated on the basis of the final group score and the average percentage of individual participation as stated by your group fellows. For more details see the Memo "Instructions for the Final Group Presentation".
- Since the above-mentioned elements can effectively assess your preparation and learning progress, neither a midterm nor a final exam will be given.

Course schedule and required readings for each session

All classes will be interactive in format. You are required to thoroughly prepare and actively participate. Each session will be structured in two parts. In the first half we will discuss foundational concepts and

theories of each subject; in the second half, we will apply the theoretical tools to the analysis of a case study.

- 1. The strategic importance of law for entrepreneurs and managers. Select and work with an attorney (September 23, 12:15-15:00)**
 - a. C.E.BAGLEY, *Winning Legally: The Value of Legal Astuteness*, 33 *Academy of Management Review* (2008), pp.378-390
 - b. **CASE STUDY:** *Human Resource Management at Hal GmbH* (CIBER, 2000)
 - 2. Protect your intellectual capital: the key role of intellectual property rights (September 23, 15:15-18:00)**
 - a. J.G.CONLEY, D.OROZCO, *Intellectual Property – The Ground Rules*, Kellogg School of Management, 2005, pp.1-24
 - b. **CASE STUDY:** *Cadence vs. Avant! (A)*, (Stanford, 2003)
 - 3. Capture value from your intellectual capital: selected issues of intellectual property management (September 24, 8:30-11:15)**
 - a. K.G.RIVETTE, D.KLINE, *Discovering New Value in Intellectual Property*, *Harvard Business Review*, Jan.-Feb. 2002, pp.2-12
 - b. **CASE STUDY:** *Valuation and Management of an Intellectual Property Based Company. The Case of Anchorus SA* (CEFS, 2007)
 - 4. Structure your company and ownership (September 24, 11:30-14:30)**
 - a. H.HANSMANN, R.KRAAKMAN, *What is Corporate Law?*, in KRAAKMAN et al., *The Anatomy of Corporate Law: a Comparative and Functional Approach*, Oxford University Press, 2004, pp.1-19.
 - b. **CASE STUDY:** *H&S Company* (University of Virginia, 2010)
- Individual Assignment due by Friday, October 13 at 11.59 pm (submit it on Moodle)**
- 5. From the brick and mortar environment to the Internet: legal aspects of e-commerce (October 14, 12:15-15:00)**
 - a. C.PACINI, C.ANDREWS, W.HILLISON, *To Agree or Not to Agree: Legal Issues in Online Contracting*, *Business Horizons*, Jan-Feb 2002, pp.43-51.
 - b. **CASE STUDY:** *Yahoo!, Hate Groups, Censorship, and the Internet* (Case Research Journal, 2003)
 - 6. E-commerce and regulatory constraints. Consumer protection, product liability, advertisement, privacy, and other legal risks (October 14, 15:15-18:00)**
 - a. R.REINSCH, *E-Commerce: Managing the Legal Risks*, 47 *Managerial Law* 168 (2005)
 - b. **CASE STUDY:** *EBay: Private Ordering for an Online Community* (Stanford, 2001)
 - 7. Of fast paced industry sectors and Rubik cubes of legal opportunities: collaborate, buy, sell, restructure, liquidate (November 4, 12:15-15:00)**
 - a. **CASE STUDY:** *GenPharm International* (Stanford, 2002)
 - 8. Dispute resolution (1.5 h) – Group presentations (1.5 h) (November 4, 15:15-18:00)**
 - a. T.B.CARVER, A.A.VONDRA, *Alternative Dispute Resolution: Why it Doesn't Work and Why it Does*, *Harvard Business Review*, May-June 1994, pp.120-130
 - b. See Memo "Instructions for the Final Group Presentation"