

**Early Stage Capital F03
15.391**

**Lawyer Simulation Round:
Translate the Jargon, Build the Strategy**

Premise

Based on a provided set of facts and background, you and your team members will assume the role of founders in a startup company. You are to assume that your company has shaken hands on its first round of venture capital funding, and received a term sheet summarizing the terms of the VC's proposed investment. In the role of founders, you and your teammates will meet with your lawyer to review the term sheet proposed by the VC, and to discuss legal and negotiating strategy.

Goals

Your (and the lawyer's) goal will be to form a strategy so that you can close your first round on the best terms possible for your company. Your team will gain practical experience dealing with outside professional advisers and working knowledge of term sheet norms and practices.

Mechanics

- The background for the roles that you are to play in the simulation is contained in the "MITunes, Inc. Fact Packet for Simulations" document posted in the "Simulation Materials" folder on the Sloan class server. Please review it carefully and prepare the work product outlined below.
- The term sheet that you will be analyzing with your lawyers (and later negotiating with your VCs) will also be posted on the server. For your convenience, it is posted in both the "Simulation Materials" and the "Model Term Sheets" folders. After you have reviewed the term sheet individually, your team should meet to talk about the questions and issues it raises, and to define a set of priorities to discuss with your lawyer.
- The simulation will last approximately 60 minutes. This session is then immediately followed by 30 minutes of feedback and Q&A with the lawyer.
- The other information necessary to prepare all work product for this round is described in this document. (see below)
- Signup for lawyer rounds will be done by an online survey. Your team must be signed up by **8:00 pm, Thursday, October 30.**
- The lawyer rounds will take place from Wednesday, November 5-Wednesday, November 19. All simulations take place in the evening. You must provide the course TA with all pre-meeting documents (see below) 24 hours before your scheduled round. The TA will then forward these documents to the individual lawyers with whom you will be meeting.

- It is your responsibility to manage schedule conflicts among team members and to schedule sufficient time between your lawyer and VC rounds to allow adequate preparation.
- The meetings will take place at the lawyers' offices. You must coordinate transportation with your team members. Testa and Bingham are downtown and easily accessible by T train. Hale & Dorr is located in Waltham and can be reached only by car.
- We will notify you of all relevant security and clearance requirements for each firm.
- As you will only have 60 minutes for your simulation, use that time to get as much substance as possible. Arrive a little early.
- Most teams tend to wear jacket and tie, to add to the seriousness of the exercise. Attire is at your discretion, however.

Work Product

Pre-Meeting Work Product

Teams will collectively prepare the following 3 pre-meeting documents. **Each should be submitted to the course TA at least 24 hours prior to your scheduled round.**

1. *Firm profile.* This is a half-page summary. The requirements are set out in the “Firm Profile” section of this document.
2. *Meeting agenda.* This document articulates your team’s priorities regarding the term sheet. There is no required template; use any format you deem appropriate. The other requirements are described in the “Framing the Agenda” section of this document.
3. *Term Sheet.* Your team should fill in the blanks contained in the “Term Sheet for Simulations” in the “Materials for Simulations” folder. Don’t change the terms; this is simply an exercise in filling in the blanks appropriately so that the lawyers and VCs can refer to it in your rounds. Thus, add in your team members’ names, assign stock holdings to the team members, fill in your company name, etc., where there are blanks.

Post-Meeting Work Product

1. *Meeting evaluation.* A collective appraisal of the simulation overall, the appropriateness of the agenda, and your team’s effectiveness in the meeting. Provide to the course TA **within 48 hours after** your meeting.
2. *Peer evaluation.* Individual confidential appraisals of the constructive participation (or otherwise) of the other members of your team. This will take place at the end of the course and cover all aspects of team work. These will be done by email and be reviewed by me only.

MITunes, Inc.: Firm Profile

The firm profile is a one-page document that each team will prepare to supplement and personalize the standard Fact Packet document that all teams will be using. It is intended primarily as background and preparation for the lawyers and VCs you will be meeting. In other words, they use it as a cheat sheet when they meet with you.

The Fact Packet uses the company name “MITunes, Inc.”. Change “MITunes” to whatever company name your team adopts for all references.

Each team member should be listed, as in a regular business plan, with the following blurb:

- a MITunes title
- a former job at Apple doing something related
- 2 or 3 key phrases summarizing your real work experience, education or other expertise.

You should each assume a MITunes title that matches (or is close to) your actual skill set. In other words, what job would a start-up hire you to do? The education/work experience should mirror as much as possible your team members’ real backgrounds (please don’t puff excessively).

As a practical matter, you should name someone from your team the CEO; the lawyers and VCs will look for the decisionmaker. (The CEO’s assumed background, however, should still be his or her actual background.) It is helpful to have a technical person or engineer (CTO or otherwise) as well. Assign other executive titles as your team sees fit.

For example:

- Sally Brewster: MITunes CFO; formerly Senior Manager, Apple finance department, 4 years. BBA, accounting, Georgetown University; MBA, Sloan; CPA.
- Dougal McPherson, MITunes CTO; formerly Senior Software Engineer at Apple, 7 years. BSEE, MIT. Drummer, Kiwi Fuzz, 12 years.

To this basic description, the items marked with an asterisk (*) in the excerpt below from the “Firm Profile” section of the “Lawyer Simulation Round” document should be assigned among the team members and added to the individual profiles:

Your financial and legal positions:

- You are each members of the board of directors*, and together, you constitute the whole board.
- After HealthSouth’s stock tripled in value, one* of you sold your long-term holdings in April 2002 right before leaving Apple and loaned the company around \$250,000.

- Another* of you has skipped paychecks altogether since the 4th of July as a way of contributing to the financial survival of MITunes.
- The CEO* owns 300,000 shares of MITunes common stock; the other founders* each own 150,000 shares.

Provide your profile (along with the filled-in term sheet and agenda) to the course TA at least 24 hours prior to your lawyer meeting. He will provide copies of the profiles directly to both the lawyers and the VCs prior to their respective rounds for their reference.

Framing the Lawyer Simulation Round Agenda

Fixing the lawyer agenda

- As with the find-a-lawyer assignment, there is no “correct” agenda or “proper” meeting. One acceptable example of an agenda would call first for a quick overview of the 3 or 4 critical issues you are most concerned with, and then an exercise in “flipping the pages,” going page by page over the entire document, asking questions as you go.
- The actual topics covered in the meeting are wholly at your team’s discretion. While the vast majority of teams elect to focus on the term sheet—for example, asking questions about unfamiliar terms or legal concepts, soliciting advice on negotiating strategy, discussing what’s typical and what constitutes “market practice” in negotiations—your team can adopt a different approach.

***You’re the client; you’re paying the lawyer;
you get to ask the questions.***

- Especially for those teams involved in a real venture, you may prefer to gain some practice negotiating fees and billing practices or understanding other issues. Be aware that the opportunity cost of this approach may put you at some disadvantage in your VC negotiation round. Discuss with me if you have any questions.
- In fixing your priorities, avoid goals tied too closely to fact-specific issues. Focus rather on understanding the basic concepts that affect your ownership (current and future), your control, your obligations and the downside and upside implications of each. Keep the focus of your agenda on larger principles that will apply not only to these simulation rounds, but also to the real-life deals you will do in the future.
- Teams determine the roles and responsibilities of the members in the simulation. For example, each team member may speak for 20 minutes about a particular issue or concern, or one member may act as an obsessive CEO and do all the talking. This decision should be reflected in the agenda.
- The agenda document itself does not have any particular format. It should be an outline or working script to keep your team and your lawyer focused during the meeting. Any template you are comfortable or familiar with should be fine.
- Your work will be graded on your team’s ability to articulate an agreed set of priorities in the agenda, discuss them constructively with your adviser, and as appropriate, integrate what you learn into your VC round.

The Lawyer Simulation Round: Cooperative, Not Adversarial

- One of the goals of this simulation is to defuse some of the stereotypes and misconceptions that exist when entrepreneurs begin working with professional service providers. No one is born knowing how to use—and extract maximum value from—a lawyer. It is surprising how often clients waste their money trying to impress their lawyers. While it can be difficult to own up to areas of ignorance when you're a new CEO in "pitch mode," it is truly critical to do so with advisers to get the full benefit of their experience.

***Every dumb question you ask in this round
will make you look better in your VC round.***

- It bears repeating that this is a cooperative meeting with your paid professional adviser. Your lawyer gets paid to educate you and advise you on things like blue sky and green shoes--things you've never paid much attention to or perhaps even heard of. Good lawyers are good teachers; they educate and inform easily and without arrogance. They are also good team players, able to contribute their skills and tools to your overall goal.
- Come to the office "in character." Introduce yourselves as founders of your firm, not MIT students. (Receptionists will know only that you are new clients. Act the part.) This all enhances the value of the simulation, and makes it much easier to get the meeting started. (No awkward metamorphoses before the lawyer's eyes.)
- On the other hand, any simulation must balance the value of role-playing and verisimilitude against the goal of education. As this is not a course on negotiation, the role-playing should yield to opportunities to learn more, even if it takes you "out of character."
- The feedback period, after the simulation, is not structured. The lawyer will give his or her impressions, and then allow for team members to ask questions. You should not be playing any roles. This is the time to exchange your real MIT business cards with the lawyer.
- Going forward, your team will meet to discuss your lawyer's advice within the broader context of your business, as legal advice must always be kept in perspective. But an important first step in developing business judgment is knowing how to listen to a lawyer's pure legal advice and how to translate that advice into data to assist you in forming your own business-based decisions.

Notes

- Visit the law firm's website. The participating law firms are high-profile, Boston-based practitioners in venture and high-tech fields: Testa, Hurwitz & Thibault: www.tht.com; Bingham McCutchen: www.bingham.com; and Hale & Dorr: www.haledorr.com.
- We will in most cases be able to tell you the names of the lawyers you will be meeting with prior to the round. Check their backgrounds on the firm website.
- Remember, you're the client and you're paying for the meeting. Have the answers to your questions repeated or clarified until you are sure you understand.

Real World

- While we have participants at all levels of seniority, use this opportunity to make connections that will follow on after this course. In the time available, you may find a peer with whom you can build an informal network—they ping you with a business question, you ping back with an occasional law question. You're both smarter, for free, and you've got a good start on knowing a good lawyer when you're ready to do your next start-up.