Law and Business of Social Enterprise  
New York University  
JD-LLM/MBA  
Fall 2015

(1 1/2 Credits)

Instructors:

Professor Ana Demel  
ana.demel@nyu.edu

Jordan Breslow – General Counsel, Etsy  
jjbreslow@mac.com

Course Goals:

This law and business course introduces students to the legal, regulatory and business aspects of ‘social’ enterprises. Through a mixture of lectures, student presentations, discussions and guest speakers, we will study the history and purpose of social entrepreneurship, contrasting it with other agents of social change. We will learn about both existing and emerging legal structures that regulate social enterprises, consider the types of financing models available to social enterprises, consider the various means currently available to evaluate performance against the social and environmental objectives, and explore the challenges being a social enterprise poses to traditional notions of corporate governance both in the ordinary course of business and in the context of extraordinary events such as change of control situations.

Prerequisites: Corporations or Permission from Professor

Class Meetings: 4:10-6:00 PM

Readings:

There is no textbook for this course. All readings for the course will be assigned via the course website.
Evaluation:

Class Participation (including presentations and role play exercises 60%)
Final Project (40%)

For the final project, students will work in groups to develop a business and legal plan for a social enterprise.

SYLLABUS:

Please note that the syllabus is likely to change. In particular, it will be adjusted depending on the availability of our speakers. Students will be asked to volunteer to make presentations and lead role play exercises before the anticipated date for such presentations and exercises. Power points or other appropriate written materials (such as term sheets) will be due prior to class.

Class One: What is Social Entrepreneurship, and Why Do We Need It?

We will begin by wrestling with the definition of a “social enterprise.” How does it compare to the notion of corporate social responsibility? What is the meaning of terms such as “double bottom line,” “triple bottom line,” “hybrid,” and “impact?”

Working in groups, students will identify a social problem and discuss how they would address it.

Class Two: Traditional Legal Forms of Enterprise

Every enterprise, whether for profit, not-for profit, or a combination of the two, must choose a legal form. Traditional forms include sole proprietorships, corporations, limited liability companies, partnerships, limited partnerships, cooperatives and non-profit organizations. We will study the benefits and limitations of each form, and the factors that will influence the entrepreneur’s choice. Finally, we will examine the suitability of each form for a social enterprise.

Class Three: Tax-Exempt Organizations

Non-profit foundations, NGOs and other tax-exempt organizations enjoy additional benefits, and endure significant constraints, by virtue of the applicable tax laws, such as the Internal Revenue Code, as well as laws affecting fiduciaries, prudent investor rules, and the like. In this class we will survey the governing law, and will discuss the intersection of tax, law and policy. We will examine the constraints under which tax-exempt organizations operate, and consider whether these constraints help or hinder such organizations in achieving a social purpose. We will
consider hybrid enterprises – the combination of non-profit and for-profit enterprises. We will debate the suitability of traditional legal forms, for profit and non-profit, for a social enterprise.

**Class Four: New Legal Structures for the Social Enterprise**

Having discovered the limitations of traditional forms of enterprise, we will examine emerging forms of business and consider whether they are better suited to the social enterprise. These include, for example, L3Cs, Benefit Corporations, Social Purpose Corporations, and Hybrids.

*Students will debate the need for the alternate forms, as well as their potential benefits and limitations, based upon reading materials.*

**Class Five: Detail review of Delaware legislation for Benefit Corporations**

**Class Six: Getting Started: Finding Early Financing**

How do Social Enterprises get started? What is the role of founders, incubators, early hires, and legal and financial advisors? This session will review the basics of equity and debt financing, and the sources of funds, such as “angel” and “venture” investors, lenders, foundations, governments and combinations of these. New tools, such as crowd-funding, will be considered.

**Class Seven: The Role of “Impact” Investors**

So-called “impact” or “double-bottom-line” investors may fund social enterprises alongside the traditional investors discussed in class six. Their objectives will be both a financial return on their investment and an impact on society or the environment. Consequently, their demands on the enterprise may be equally focused on traditional financial performance and on measurable progress in the enterprise’s mission. This session will explore investment from the prospective of an impact investor, focusing particularly on the need for metrics and on mechanisms for ensuring that the enterprise does not stray from its social mission.

An impact investor will join us a guest speaker or student presentations of two Impact Investors.

**Class Eight: Social Entrepreneurs will join us as Guest speaker**

**Class Nine Transforming Non-Profits and NGOs into Social Enterprises; the Microfinance Experience**

Modern microfinance, a movement that began about thirty years ago to provide financial services to the poor as a means to address poverty, has grown into a diverse sector serving more than 130 million clients. Microfinance institutions (MFIs) represent some of the earliest and arguably
most successful examples of social enterprise. Many MFIs that began as non-profit charity-based organizations have transformed into large for-profit corporations. While this transformation has permitted MFIs to achieve rapid growth and reach scale, it has not been without controversy and cost. We will examine the commercialization of the microfinance sector and the lessons that can be gleaned from this process for social enterprises in general.

*Student presentation of Compartamos/Gentera.*

**Class Ten: Financing for the Mature Social Enterprise**

Mature social enterprises may turn to sources of financing beyond those available to enterprises in their early stages, including public capital markets for both debt and equity and for-profit debt and equity investors. We will discuss areas of law that apply to this type of capital raising, including the Securities Act and the JOBS Act as well as the issues and opportunities presented by combining diverse funding sources.

*Students will participate in a role play exercise of a negotiation of private equity investment.*

**Class Eleven: Exits**

Nearly every investor in a social enterprise will be hoping for a return of her investment in the form of an “exit” – most typically, a public offering (IPO) or an acquisition of the company. Likewise, founders may look forward to a day when they no longer are responsible for the day-to-day management of the organization. They may seek a retirement or an opportunity to start something new. The motivations of the founders and investors may not be aligned, thus making the choice of exit a controversial one. Meanwhile, every exit has the potential to jeopardize the organization’s social mission. This session will explore the traditional and non-traditional forms of exit, and their suitability for social enterprises. The suitability of various forms of social enterprise for each type of exit will be considered.

**Class Twelve: Role of Government and Supranational Institutions**

We will discuss the various roles government entities have played in fostering social enterprise and the issues to be aware of when contracting with the government, including political risk, sovereign immunity and anti-bribery legislation. We will focus, in particular, on the role of government, including supranational institutions, in facilitating innovative financing for social enterprise.

*Students will present case studies of a public private partnership and a social impact bond.*

**Classes 13 and 14: Student Final Presentations**