

Bagley and Dauchy
Chapter 7: Creditors' Rights and Bankruptcy
and
Chapter 8: Venture Capital

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Chapter 7: Creditors' Rights and Bankruptcy

consult the Adv. Bus. Law slides on
"Creditors' and Debtors' Relations"

reasonable expectations are context dependant
as a relationship evolves
the available options
may multiple or contract,
but usually are transformed

commerce clause and preemption

the specific controls the general

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Chapter 7: Creditors' Rights and Bankruptcy

often, "boilerplate" is an invitation to negotiate
reasonable expenses
assignment for the benefit of creditors
rent "due" the landlord

fiduciary duties: owed by and to who
bankruptcy trustee
officers and directors when insolvent

automatic stay
binds who?

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Chapter 7: Creditors' Rights and Bankruptcy

transactions in the ordinary course of business
defined p.174

adequate protection of secured creditors
proceeds

impaired class and 2/3 \$ & 1/2 # and cram down

What is the purpose of a secured transaction?
What is the purpose of bankruptcy?

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venture capitalist's criteria
substantial amount of money
not mere seed money
potential to grow quickly to significant size
40% annual ROI
expect half to yield zero ROI
liquid in 36 to 60 months
milestones
specialize
industry
stage of financing
seed v. early v. later v. mezzanine
valuation tilts toward control
conversion, anti-dilution, votes, co-sale

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What are your criteria?

These are very complex negotiations.

All issues prior to "close".

material adverse information
discover v. Change

Conflicts of interests are abundant.

Disclose and obtain approval for each conflict.

Pursue multiple VCs simultaneously.

trade secrets
promissory estoppel

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Due Diligence

“securities”

private issue

by and of all parties

once on notice of other party

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Venture Capital is a “clubby” process.

need introduction

business plan

simple

clear

short

meeting

jargon: unilateral mistake?

negotiations

multi-party

counter balance

people, people, people

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Valuation varies by the point of view.

past = future?

criteria for measuring success

time is of the essence

tax: one price per class of shares

preferred stock

any structure is feasible

liquidation preference

dividend preference

harmonize incentives with objectives

debt v. equity

closed downside, open upside
