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# Accelerating the Growth of the Next Generation of Innovators

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# ACCELERATING THE GROWTH OF THE NEXT GENERATION OF INNOVATORS

DANA THOMPSON\*

## I. INTRODUCTION

Business accelerators, such as Y Combinator, TechStars and 500 Startups, are hot commodities among aspiring entrepreneurs. Admission into these and other premium accelerators is often more competitive than admission into the United States' most respected business schools.<sup>1</sup> Entrepreneurs recognize that participation in these programs provides them with a wealth of resources, contacts and financing they may not have access to on their own, and that these resources may spell the difference between success and failure of their startups.

Business accelerators or incubators<sup>2</sup> serving student-led ventures are becoming more prevalent and sought after by student entrepreneurs.<sup>3</sup>

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<sup>1</sup> See J.J. Colao, *Eight Reasons Startup Incubators Are Better Than Business School*, FORBES (Jan. 12, 2012, 10:46 AM), <http://www.forbes.com/sites/jjcolao/2012/01/12/eight-reasons-startup-incubators-are-better-than-business-school/> ("With acceptance rates typically in the low single digits, your odds of getting a bid to Harvard Business School are about *three times* greater than nabbing a spot in a premium incubator.").

<sup>2</sup> The terms business accelerator and business incubator are often used interchangeably. But, business accelerators are commonly for-profit organizations that offer a short and intense incubation period (usually three to six months) to high-growth companies further along in development and provide capital, mentoring, business services, access to capital and other services to startups in exchange for receiving equity in the startups. Business incubators are often non-profit organizations that provide similar services as business accelerators but typically do not take equity in the businesses they incubate, they have a longer incubation period (several years) and their missions usually include job creation and economic development. See Fernando Sepulveda, *The Difference Between a Business Accelerator and a Business Incubator?*, INC. (July 31, 2012), [www.inc.com/fernando-sepulveda/the-difference-between-a-business-accelerator-and-a-business-incubator.html](http://www.inc.com/fernando-sepulveda/the-difference-between-a-business-accelerator-and-a-business-incubator.html) (stating that the focus of a business accelerator is on rapid growth, and working on organizational, operational and strategic challenges facing the business); see also DAVID A. LEWIS ET AL., INCUBATING SUCCESS. INCUBATION BEST PRACTICES THAT LEAD TO SUCCESSFUL NEW VENTURES 17 (2011) (defining a business accelerator).

Colleges and universities are developing campus incubators as well as other entrepreneurial programs such as entrepreneurship centers, entrepreneurship education classes and business plan competitions to cultivate the entrepreneurial and innovative nature of their students.<sup>4</sup>

Indeed, there is an upsurge of student entrepreneurial activity and entrepreneurship education classes offered on U.S. college and university campuses.<sup>5</sup> While in 1970, only sixteen U.S. business schools offered entrepreneurship education classes, today, according to the Ewing Marion Kauffman Foundation, more than 2,000 colleges and universities offer at least one entrepreneurship course.<sup>6</sup> Due to, among other factors, the shift of the structure of the U.S. economy from a manufacturing-based economy to an innovation and knowledge-based economy and the resulting economic uncertainty in the United States, U.S. colleges and universities and the students they educate recognize the need to foster entrepreneurial skills to survive in the new economy.<sup>7</sup> In fact, a recent Kauffman survey of young people indicates that forty-one percent of young adults are interested in starting a business.<sup>8</sup> Recent studies indicate that young people should focus on cultivating entrepreneurial skills and creating their own companies and that college and university leaders have good reason to establish programs that develop their students' entrepreneurial skills and support the creation of student startups. Studies show that business startups have been and continue to be a significant source of job creation in the United States.<sup>9</sup> In fact, from

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<sup>3</sup> Laura Pappano, *Got the Next Great Idea?*, N.Y. TIMES (July 19, 2012), [http://www.nytimes.com/2012/07/20/education/edlife/campus-incubators-are-on-the-rise-as-colleges-encourage-student-startups.html?\\_r=0](http://www.nytimes.com/2012/07/20/education/edlife/campus-incubators-are-on-the-rise-as-colleges-encourage-student-startups.html?_r=0) (discussing the growing number of U.S. campus incubators and the competitiveness to get into certain campus incubators such as University of Michigan's TechArb).

<sup>4</sup> See Jonathan Ortman, *University and Startup Junkies Come to Washington?*, ENTREPRENEURSHIP.ORG (Oct. 8, 2012), <http://www.entrepreneurship.org/Blogs/Policy-Forum-Blog/2012/October/Universities-and-Startup-J> (discussing how "America's colleges and universities have been retooling as engines of entrepreneurship and education" and have been creating more entrepreneurship centers, incubators and accelerators).

<sup>5</sup> See Linda Knopp, *Campus Entrepreneurship*, 23 NBIA REV., No. 5, Oct. 2007, at 1.

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*; see also LEWIS ET AL., *supra* note 2, at 21 (discussing how the U.S. higher-education system has become more engaged in forming the future economy and how they should play a role in economic development through business incubation).

<sup>8</sup> See KAUFFMAN FOUND., YOUTH PULSE 2010 (2010) (stating that the survey shows that interest in starting a business is consistent among tweens (age 8–12 (thirty-nine percent)), teens (13–17-year-olds (thirty-nine percent)) and young adults (age 18–24 (forty-one percent))).

<sup>9</sup> See DANE STANGLER & ROBERT E. LITAN, KAUFFMAN FOUND., WHERE WILL THE JOBS COME FROM? 1 (Nov. 2009) (reviewing United States Census Bureau data

1980 to 2005, largely all net job creation in the United States was from companies less than five years old, and without startups, net job creation in the U.S. economy would be negative except for a few years.<sup>10</sup> These studies show that startups are the job creators of the U.S. economy and the drivers of American economic growth.

Due to the increasing interest among youth and college-aged students in entrepreneurship and the possibility of creating their own employment opportunities, college and university student-led venture incubators and accelerators play an important role in nurturing campus entrepreneurship, and the growth and development of student-led ventures. Many college and university incubators provide similar resources and support to student-led ventures that commercial business incubators offer to startup companies.

Well-designed commercial business incubators cultivate nascent companies by providing them with mentoring, training on business basics, marketing assistance, work space, networking opportunities with other startup companies and entrepreneurial experts and access to capital, legal and accounting and other technical resource providers.<sup>11</sup> These organizations allow growing ventures to mature in an environment free from many of the obstacles confronted by small, startup ventures operating in a non-incubation environment. Studies show that business incubators decrease the likelihood that small businesses involved in their programs will fail and help to produce more viable businesses.<sup>12</sup>

As with commercial business incubators, many college and university incubators also offer student-led ventures mentoring and networking opportunities, work space, and access to capital and technical service providers.<sup>13</sup> Student-led ventures often face additional challenges to establishing their companies which include issues with time management, a

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from 2006–2007 and examining net new job creation in terms of firm age rather than firm size).

<sup>10</sup> See *id.* at 2.

<sup>11</sup> See LEWIS ET AL., *supra* note 2, at 6.

<sup>12</sup> *Business Incubation FAQ*, NBIA, [http://www.nbia.org/resource\\_library/faq/index.php](http://www.nbia.org/resource_library/faq/index.php) (last visited Nov. 5, 2013) (stating that business incubators “reduce the risk of small business failures” and that business incubators that are members of the National Business Incubation Association “have reported that 87 percent of all firms that have graduated from their incubators are still in business”).

<sup>13</sup> See Larry Chiang, *Stanford Students Build Their Own Y Combinator*, TECHCRUNCH (June 10, 2010), <http://techcrunch.com/2010/06/10/sse-labs/> (describing StartX). StartX is a 501(c)(3) nonprofit, student-led accelerator created by Stanford students for the most innovative and promising Stanford student entrepreneurs. *Id.* StartX offers office space, housing, cash stipends, workshops, access to mentors, a rolodex of tier-one VCs, speaker training for Computer Science majors and distribution to industry conferences. *Id.*; see also, Knopp, *supra* note 5, at 3.

lack of cash flow and a greater need for networking due to the inexperience and youth of many college and university student entrepreneurs.<sup>14</sup> Some incubators working with student-led ventures create programs to address these unique issues that student entrepreneurs confront.<sup>15</sup>

A key resource offered by some college and university incubators, as well as commercial incubators, is access to legal resources. Legal issues, ranging from protecting the intellectual property of the venture, to properly structuring the startup's business entity, to understanding how to properly classify and engage workers, are critical for a startup to address at the earliest stages of its existence.<sup>16</sup> Receiving expert advice from well-trained attorneys is critical to the success of early-stage, student-led ventures, as well as all startups. If startups fail to address these legal issues, they may be subject to damaging lawsuits, penalties and fines and in severe cases imprisonment.<sup>17</sup> Furthermore, startups that do not appropriately handle legal issues such as creating business entities, fairly dividing up equity and transferring founders' intellectual property into the startups may jeopardize their ability to obtain venture financing and other forms of financing.<sup>18</sup>

In a recent study on the best practices of business incubators that contribute to the success of startups, one of the best practices asserted is to include a business lawyer on the advisory board of business incubators, who may suggest necessary legal issues for startups to address and connect the incubator startups with legal assistance.<sup>19</sup> Although many college and university incubators may have access to experienced attorneys who are able to provide advice, and who are able to represent student-led ventures, most do not have access to a university law clinic established to provide pro bono, direct legal representation and general legal education solely to their student-led ventures.

The University of Michigan Law School's Entrepreneurship Clinic (the "Entrepreneurship Clinic") is one of the first legal clinics of its kind created to provide legal representation and general legal education solely to

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<sup>14</sup> Knopp, *supra* note 5, at 3 (asserting that student entrepreneurs have unique challenges including problems with time management, little cash flow, becoming easily discouraged and having a greater need of networking to see how things work).

<sup>15</sup> See *id.* at 2–3.

<sup>16</sup> CONSTANCE E. BAGLEY & CRAIG E. DAUCHY, *THE ENTREPRENEUR'S GUIDE TO BUSINESS LAW* 3–4 (4th ed. 2011).

<sup>17</sup> See *id.* at 3.

<sup>18</sup> See Noam Wasserman and Lauren Barley, *A Note on the Legal and Tax Implications of Founders' Equity Splits*, HARV. BUS. REV., June 17, 2011, at 4. (quoting a partner at Wilson, Sonsini, Goodrich and Rosati, a leading firm representing technology and growth companies worldwide, who said about a company that not properly incorporate its company "if the mistake is significant, it can scare away potential investors").

<sup>19</sup> See LEWIS ET AL., *supra* note 2, at 11.

student-led ventures at the University of Michigan, including those ventures involved in the University's student venture accelerator, TechArb. This essay will generally discuss campus student incubators, and in particular TechArb, the University of Michigan's accelerator for student-led startups. The essay explores the particular types of governance issues that student-led ventures face and how lawyers, law firms and law school clinics help to address these issues. It will then discuss the Entrepreneurship Clinic and the role it plays in providing legal representation to University of Michigan student-led ventures on governance and other legal issues. The relationship between the University of Michigan's TechArb and the Entrepreneurship Clinic provides an example of the importance of collaboration among campus entrepreneurship programs, and illustrates how law schools should play a larger role in cultivating campus entrepreneurship and in developing a dynamic campus entrepreneurial ecosystem.

## II. CAMPUS INCUBATORS

A growing number of colleges and universities are establishing incubators for student-led ventures.<sup>20</sup> Schools across the United States, from those that are traditionally thought of as entrepreneurial and technology-oriented such as Stanford and MIT to others such as Syracuse, have created campus incubators to support student startups.<sup>21</sup> According to the National Business Incubation Association, about one-third of the 1250 business incubators in the United States are at universities, up from one-fifth in 2006.<sup>22</sup> Campus incubators play an important role in encouraging student entrepreneurship by connecting students with other student entrepreneurs and entrepreneurial activities on campus and, as with commercial incubators, by providing students with, among other things, the guidance, financial support, office space, accounting, marketing and legal advice they need to establish and grow.

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<sup>20</sup> See Pappano, *supra* note 3 (discussing the growing number of campus incubators on numerous campuses across the country, including TechArb at the University of Michigan).

<sup>21</sup> *Id.*; Jessica Savio, *UCLA Launches Its First Campus Affiliated Tech Incubator*, THE DISH DAILY (July 23, 2012, 12:24 AM), <http://thedishdaily.com/news/2012/07/23/ucla-launches-its-first-campus-affiliated-tech-incubator> (citing examples of university-focused incubators, which include Stanford's student-run StartX, Berkeley's Entrepreneurship Laboratory, Cornell's eLabs, Virginia Tech's Knowledgeworks and Syracuse's Raymond Van Dran IDEA and the Syracuse Student Sandbox at the Tech Garden).

<sup>22</sup> *Business Incubation FAQ*, *supra* note 12 (asserting that as of October 2012, there were over 1250 incubators in the United States).

Campus incubators may be run by professional staff and faculty or they may be student-initiated and operated.<sup>23</sup> The goals of these incubators are varied. Some may serve to further encourage and inspire the entrepreneurial ecosystem on campus by primarily offering office space and coffee, while others offer resources and services similar to those provided by commercial incubators and accelerators to bring to market innovative and disruptive technologies, products and services. For example, Stanford's StartX student accelerator offers the student ventures enrolled in its accelerator program housing, office space, cash stipends, trainings, access to prominent Silicon Valley mentors, venture capitalists, entrepreneurs and technical-resource providers such as lawyers and accountants.<sup>24</sup> Similar to many nonprofit commercial incubators, many campus incubators for student ventures do not take an equity stake in their student ventures.<sup>25</sup> The mission of these programs is primarily to educate student entrepreneurs about the process of entrepreneurship and to launch viable companies.

Because students are busy during the school semester with classes and other school-related activities, some colleges and universities have developed summer incubator programs to allow students the time, space and resources they need to work on their ventures during the summer.<sup>26</sup> Summer campus incubator programs include NYU's Summer Incubation Program, Syracuse's Sandbox, Northeastern's IDEA Accelerator, University of Chicago's Polsky Summer Accelerator and University of Michigan's TechArb.<sup>27</sup> Whether operating during the school year, the summer, or year round, campus incubators should and have adapted their programs to the needs of their student ventures.

For those campus incubators whose primary goal is to launch viable and successful student-led business ventures, the programs should understand the practices, policies and services that lead to top-performing business incubation programs. For example, top-performing incubation programs have management practices which include developing a written mission statement, choosing clients based on cultural fit and potential for success, determining client needs at admission of the incubation program and showcasing clients to the community and potential funders.<sup>28</sup> In

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<sup>23</sup> Stanford's StartX is a nonprofit student-run accelerator for Stanford affiliated students and faculty. *See, e.g.*, STARTX, <http://startx.stanford.edu/staff> (last visited Nov. 5, 2013).

<sup>24</sup> *See* Chiang, *supra* note 13.

<sup>25</sup> For example, Stanford's StartX and University of Michigan's TechArb do not take equity of the ventures enrolled in their programs.

<sup>26</sup> *See* Samantha Smith, *University Summer Startup Accelerators Come to a Close*, FORBES (Sept. 4, 2012, 11:54 AM), <http://www.forbes.com/sites/samanthasmith/2012/09/04/university-summer-startup-accelerators-come-to-a-close/>.

<sup>27</sup> *See id.*

<sup>28</sup> *See* LEWIS ET AL., *supra* note 2, at 7.

addition, having intellectual property (patent assistance and general legal expertise on incubator advisory boards) often leads to better-performing programs.<sup>29</sup> Furthermore, successful incubation programs provide access to legal assistance on issues including general legal services, intellectual property protection and incorporation or other legal business structures.<sup>30</sup>

An ideal way in which campus incubators may provide much-needed legal assistance to student entrepreneurs is through law school clinics. Schools that have law school programs should consider working with the law schools to establish legal clinics to provide direct legal assistance to student entrepreneurs, and general legal education to these ventures and the college and university entrepreneurial community. The collaboration between the University of Michigan's TechArb and the Entrepreneurship Clinic provides a useful model of the way in which the relationship between an on-campus incubator and its affiliated law school clinic may be structured.

#### A. *The University of Michigan and TechArb*

The roots of the University of Michigan's vibrant entrepreneurial ecosystem run deep. The University's Ross School of Business offered the United States' first course in entrepreneurship in 1927.<sup>31</sup> In 1999, with the launch of the Zell Lurie Institute, the University was among the first in the nation to establish a program completely dedicated to entrepreneurship.<sup>32</sup> The University has top ranking graduate programs in Engineering, Business, Law, Medicine and Public Policy and ranks number one in R&D spending among all public U.S. universities.<sup>33</sup> The University has two startup accelerators. The Michigan Venture Accelerator provides workspace and resources for new businesses based on the University's technology<sup>34</sup> and TechArb is the University's student venture accelerator.

TechArb is the University of Michigan's startup accelerator for University of Michigan student-led ventures.<sup>35</sup> It is a joint program of the University's Center for Entrepreneurship based in the College of

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<sup>29</sup> See *id.* at 7–8.

<sup>30</sup> See *id.* at 27.

<sup>31</sup> Ross Sch. of Bus., *University of Michigan's Ross School of Business and the Zell Lurie Institute Named Top Graduate Program in Entrepreneurship* (Sept. 19, 2013), [http://www.bus.umich.edu/NewsRoom/ArticleDisplay.asp?news\\_id=26058](http://www.bus.umich.edu/NewsRoom/ArticleDisplay.asp?news_id=26058).

<sup>32</sup> *Id.*

<sup>33</sup> Univ. of Mich., *Master of Entrepreneurship*, <http://entrepreneurship.umich.edu/why-michigan#university> (last visited Nov. 5, 2013).

<sup>34</sup> See Lee Katterman, *Venture Accelerator Opens at the University of Michigan* (Jan. 19, 2011), <http://innovate.umich.edu/2011/01/venture-accelerator-opens/>.

<sup>35</sup> See generally TECHARB, <http://www.cfe.umich.edu/techarb/index.html> (last visited Nov. 5, 2013).



Engineering and the Zell Lurie Institute based in the Ross School of Business. The accelerator was established in 2008 to empower the University's student entrepreneurs to create viable ventures and to further encourage the development of the University's entrepreneurial ecosystem.<sup>36</sup>

TechArb is a competitive program. Twenty-five teams applied for twelve spots for the summer 2013 session of TechArb.<sup>37</sup> Student founders of ventures are undergraduates and graduates in Engineering, Business, Law, Computer Information Science and other programs. To be admitted to the accelerator, founders must be currently enrolled students or alumni of the University of Michigan. These companies may apply if they are creating a new technology or have an idea for a new product or service. Student ventures in TechArb are innovating in a variety of industries including consumer internet, medical devices, retail and cleantech.

TechArb is a six-month program that offers students accepted benefits which include: (i) networking with other student entrepreneurs on campus and with the local and national University of Michigan entrepreneurial ecosystem which includes angel investors, venture capitalists, serial entrepreneurs, lawyers and accountants; (ii) mentorship with experienced entrepreneurs and experts involved in the entrepreneurial ecosystem; (iii) weekly training sessions on topics ranging from equity distribution to legal formation, (iv) workspace, (v) funding, (vi) technical support; (vii) summer stipends; and (viii) free office space, Wi-Fi and conference rooms.<sup>38</sup>

One of the resources TechArb offers is access to the various legal services offered by the Entrepreneurship Clinic. These services include: direct legal assistance to TechArb companies who apply and are accepted to receive these services; weekly office hours held at TechArb, where Entrepreneurship Clinic faculty and law students answer general legal questions and provide general legal information to TechArb portfolio companies and other University of Michigan student entrepreneurs; and periodic training sessions during which Entrepreneurship Clinic faculty and law students discuss common legal issues startup companies confront, such as choice of legal entity, intellectual property protection, securities regulation issues involved when fundraising and employment issues.

#### *B. University of Michigan Law School Entrepreneurship Clinic*

The Entrepreneurship Clinic is a part of the University of Michigan Law School's Zell Entrepreneurship and the Law (ZEAL) program. ZEAL

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<sup>36</sup> *See id.*

<sup>37</sup> This information was provided by an e-mail dated September 10, 2013 from Amy Klinke, Interim Director of TechArb to the author.

<sup>38</sup> *See* TECHARB, *supra* note 35.

was established with a \$5 million donation to the Law School in the summer of 2011 by Sam Zell, a prominent entrepreneur and alumnus of the University and the Law School.<sup>39</sup> The Entrepreneurship Clinic was established to meet the need for a growing number of University of Michigan student entrepreneurs to have strategic and quality legal assistance.<sup>40</sup> The Entrepreneurship Clinic is operated by faculty who are licensed attorneys with experience in transactional, intellectual property and startup matters.<sup>41</sup> It is staffed by second and third year law students, interested in working with startups and working on transactional matters. The law students work directly with the student ventures who are clients of the Entrepreneurship Clinic and the law students have primary responsibility for interviewing, advising, and providing legal assistance to the clients. The law students are closely supervised by the Entrepreneurship Clinic faculty and also work with attorney affiliates who have extensive experience representing emerging companies.<sup>42</sup>

Before the Entrepreneurship Clinic was established, TechArb referred student entrepreneurs to attorneys who donated a few hours of their time to answer students' questions or to attorneys who they paid for legal services. However, if students had limited funds to pay for such legal assistance, they often could not obtain sufficient legal services to establish and operate their companies. As mentioned above, the Entrepreneurship Clinic provides student entrepreneurs admitted to TechArb, as well as student-led ventures at the University, with free legal assistance on a number of legal matters. These matters include choice of legal entity and entity formation, drafting legal entity governance documents, intellectual property protection, review of financing documents and assistance with financings, general contract drafting and review and advising on employment law matters.

Some of the most challenging legal issues confronting student-led ventures involve business entity governance. Business entity governance pertains to which individuals are involved with managing and operating a company and making major decisions such as those about company mergers, major strategic decisions such as accepting venture capital

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<sup>39</sup> See Suzanne Tainter, *Michigan Law Launches Groundbreaking Entrepreneurial Law Program* (Sept. 8, 2011), <http://innovate.umich.edu/2011/09/michigan-law-launches-groundbreaking-entrepreneurial-law-program/>.

<sup>40</sup> See *id.*

<sup>41</sup> See *Faculty*, U. OF MICH. L. SCH. ENTREPRENEURSHIP CLINIC, <http://www.law.umich.edu/clinical/entrepreneurshipclinic/Pages/Faculty.aspx> (last visited Nov. 5, 2013).

<sup>42</sup> See *Affiliate Attorney Information*, U. OF MICH. L. SCH. ENTREPRENEURSHIP CLINIC, <http://www.law.umich.edu/clinical/entrepreneurshipclinic/Pages/Becoming-an-Affiliate-Attorney.aspx> (last visited Nov. 5, 2013).

investment and making day to day company decisions. Many student entrepreneurs, like non-student entrepreneurs, do not focus on governance issues because they are focused on developing their technology, product, or service, engaging in customer discovery and working on other aspects of their ventures.<sup>43</sup> They often may not understand the number and type of issues they need to assess to operate their companies.<sup>44</sup> Governance issues are critical to address at the earliest stages of a company's existence because they impact among other things how each of the founders engage with the company and how the company is managed and is operated. Without clarity on these issues, founder disagreements may arise which may threaten the company's existence.<sup>45</sup>

### C. TechArb Student-Led Ventures: Governance Issues

To better understand the typical governance issues that arise with TechArb student-led ventures and many startups, consider the following fictional example.<sup>46</sup> Cool Technologies is a student-led venture created by three University of Michigan engineering graduate students who developed an interesting technology in one of their engineering classes. After the class ended, they decided that the technology had some teeth and they agreed to continue to develop the technology and establish a company. To further develop the technology, the founders needed additional funding and additional workers. The three founders knew about TechArb and applied to the fall session of the program to get further guidance on commercializing the technology and developing the business.

Cool Technologies was accepted to the fall program and they were assigned a mentor and had access to the TechArb workspace. During their first meeting with the mentor, Cool Technologies informed her that the founders had very limited funds and that they were pursuing funding offered by a University of Michigan business plan competition and funding offered by a local, nonprofit, entrepreneurial organization giving startups seed funding. They also wanted to bring on some unpaid student interns. The mentor suggested they establish the business as a separate entity such as a limited liability company or a corporation before working with the interns. She also advised the founders to attend the Entrepreneurship Clinic's office hours to learn more about entity selection and other legal

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<sup>43</sup> See BAGLEY & DAUCHY, *supra* note 16, at 78.

<sup>44</sup> See *id.* at 121 (discussing that when entrepreneurs were asked about the most difficult aspect of starting a company they said they never realized the number of details they need to be aware of and the need to do many things simultaneously).

<sup>45</sup> See *id.* at 78.

<sup>46</sup> The example provided is fictional and is not based on an actual TechArb student-led venture. Names, characters and incidents either are products of the author's imagination or are used fictitiously. Any resemblance to actual events or persons, living or dead, is entirely coincidental.

issues. Additionally, she suggested they apply to be a client of the Entrepreneurship Clinic. Before attending office hours or applying to the Entrepreneurship Clinic, the founders read some materials concerning entities for startup companies and based on what they read, they decided to establish Cool Technologies as a Michigan limited liability company (LLC) because of the ease of creating and operating the LLC.

A few weeks after they set up the LLC, the founders of Cool Technologies attended one of the office hours that the Entrepreneurship Clinic held at TechArb. During the office hours, they had fifteen minutes to talk with Entrepreneurship Clinic law students and a faculty member about entity choice and working with interns. During the session they learned that LLCs and corporations are the typical entity choices for startups. They also learned that for the company to be taken seriously by certain angel investors and to attract venture capital financing, they should establish the company as a Delaware C corporation. In addition, the founders discovered that while LLCs are relatively easy to form, the company should draft an operating agreement to further define the equity ownership of the founders and their roles and responsibilities. The Entrepreneurship Clinic informed the founders that they should have legal counsel create the operating agreement, rather than create the agreement on their own because to draft an operating agreement, one needs to understand the Michigan LLC Act and the default statutory rules.

After the office hours, the founders decided to apply to the Entrepreneurship Clinic to receive direct legal representation. The Entrepreneurship Clinic accepted Cool Technologies application and the company's founders met with two students and a faculty member for an initial interview. During the initial interview, the founders gave the students a more thorough background of the company, further discussed the founding team and their roles as well as their short-term and long-term goals. Before the initial meeting with the Entrepreneurship Clinic, the founders felt that they were all devoting equal time and effort to the company and they should split their ownership interest or equity evenly. But during the initial meeting with the Entrepreneurship Clinic, the student attorneys asked the founders to take a realistic look at each of their contributions to the company and to seriously consider their future involvement in Cool Technologies. As the founders were discussing their roles and contributions during the meeting, it became apparent that they were contributing different amounts of time and energy to the venture.

The student attorneys then discussed the various provisions contained in a multi-member operating agreement including management of the LLC, allocations of profits and losses, capital contributions to the LLC and buy-sell provisions. They discussed the management of the company in more detail with the founders and explained the difference between

member-managed and manager-managed LLCs and what may work best for Cool Technologies, given how the founders actually work together. They explained that a member is an owner of an LLC and a member-managed LLC allows all of the members to make strategic and day-to-day decisions about the LLC. Furthermore, all of the members in a member-managed LLC are able to bind the LLC contractually. They also informed them that the manager-managed LLC allows the LLC to be governed by managers who may or may not be members. They suggested that the company consider this structure if the founders want to bring on additional members who they do not want to have the ability to contractually bind the LLC and make company management decisions.

The law students also discussed the concept of vesting with the founders and informed them that if they adopted this concept, it would help to incentivize each of the founders to continue to work on the technology and remain with the company. Given the number of issues covered in the initial meeting, the founders and the law students decided to postpone a discussion about the steps to convert to a Delaware C corporation, the governance documents of a Delaware C corporation and the role of a board of directors, officers and shareholders in a Delaware C corporation, until after the founders determined how they would operate the LLC and finalized the multimember operating agreement.

The law students met with the founders numerous times to further explain the concept of vesting and how it would impact the founders' equity interests, to clarify how they would manage the company and to help them understand the fiduciary duties of a manager in a manager-managed LLC, as well as a member in a member-managed LLC. The student attorneys explained that fiduciary duties are heightened duties of care and loyalty that a manager in a manager-managed LLC and a member in a member-managed LLC owe to the other members and the LLC. As a result of the legal assistance the students attorneys offered, the founders were able to better establish their respective roles in the company and create a productive management structure. The founders established a positive working relationship with the law students because the founders trusted that the students were working in their best interests. The founders could more easily relate to the law students as peers because they were closer to the founders' ages.

After working through the foregoing issues, the founders of Cool Technologies signed the operating agreement, continued to develop their technology, conducted customer discovery and sought financing. The founders eventually met with an angel investor who was interested in their technology, and the team, and wanted to give the company \$50,000 in convertible debt. The angel investor required the company to convert to a Delaware C corporation before making the investment. The company

sought the advice of the Entrepreneurship Clinic on this issue. The Clinic agreed to work on the convertible debt issuance and review the debt financing documents.

This scenario provides a realistic picture of the types of issues student ventures at TechArb encounter and that many early stage student and non-student ventures encounter. From the beginning stages of Cool Technologies' existence, the venture needed quality legal and non-legal advice on governance and numerous other legal issues. Given the fact that the founders of Cool Technologies were working with limited funds, without the Entrepreneurship Clinic's pro bono legal assistance, the company would likely not have been able to afford to pay for the legal representation they needed to properly set up the governance structure, convert to a Delaware C corporation and protect their interests in a financing. The Entrepreneurship Clinic provided much-needed legal services that are critical to the successful creation of a student-led venture and to help the venture be better prepared for a future financing.

### III. CONCLUSION

Many young people and campus leaders, administrators and faculty perceive entrepreneurship as a path to economic opportunities. Well-structured campus incubators connect student ventures with mentors, funding, workspace and access to a number of other valuable resources such as legal assistance. It is essential that these ventures receive legal assistance at the earliest stages of their development to increase their viability, ensure they properly own and protect their intellectual property rights and create well-developed governance structures. Given that student ventures often have little funding and inconsistent access to quality legal services, campus incubators should consider establishing a relationship with a law school clinic similar to the model the University of Michigan's TechArb has with the Entrepreneurship Clinic, so that their student ventures have access to free, high-quality legal assistance. Student ventures may be able to better relate to law students whom they view as peers and this connection could improve the delivery of legal services to the student venture. Law school clinics should play a role in enhancing the services of campus incubators by providing legal assistance to student-led startups which will in turn strengthen the startups and bolster the continued development of a university or college's entrepreneurial ecosystem.

