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The Characters



Marta Stewardess

- Graduate Student the Polytechnical College in San Francisco.
- Field of study: Chemistry
- PhD expected 2023
- Favorite movie: Sideways
- Favorite wine: Domaine Loubejac Pinot Noir Willamette Valley
- Hobby: winemaking

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The Characters



Britni Spearstein

- Graduate Student the Polytechnical College in San Francisco.
- Field of study: Computer Science and Business
- MBA expected 2022
- M.A. in Computer Science expected 2022
- Favorite movie: Sideways
- Favorite wine: Louis Bouillot Perle De Vigne Brut
- Hobby: Cooking and pairing her recipes with wine

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The Characters



Mayra Estefan

- Graduate Student the Polytechnical College in San Francisco.
- Field of study: Electrical Engineering
- M.A. expected 2022
- Favorite movie: Sideways
- Favorite wine: Mascota Vineyards Unanime Malbec, 2017
- Studies to be a sommelier one day.

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Their Story

- Marta's idea: refining the wine-making process, by building a device that would continuously monitor certain key chemicals during the process
- The device would use sophisticated software algorithms to determine exactly what quantities of which ingredients to add at what times during the process, in order to achieve an optimum balanced wine.
- Britni worked with Marta to refine the algorithms and develop the software code for such a device.
- Mayra produced a hardware design for the device (chemical-sensing probe inserted into the wine-making vat, attached to a computer input and readout device), and built a crude prototype of the device in the school's engineering lab.
- Britni programmed the device.
- Marta then tested on her next batch of "home brewed" wine. The results were surprisingly good!

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Their Story

- The trio dubbed their device the “Sideways Winemaker”
- They began holding “dorm parties” featuring their “Sideways Wine” made using the Sideways Winemaker.
- Mayra even designed a cute little label for the Sideways Wine bottles – with the letters “SiWi” written on it (for “Sideways Wine”).
- Britni created a little web page (SiWi.com) where she described the delicious taste of the Sideways Wine created using their Sideways Winemaker.



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Their Story

- Word soon got around, and other amateur winemakers began asking about the Sideways Winemaker, and if they could purchase one.
- Britni and Marta became excited about the prospect of setting up a business to manufacture and sell their Sideways Winemaker.
- However, changes were brewing under the surface...



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Their Story

- Mayra was graduating and had a nice job offer in New York that she wanted to pursue, so she wished Britni and Marta luck in their new venture and left.
- Britni and Marta scrapped together some funds of their own and received a nice \$20,000 infusion from Britni's parents to start up their business.



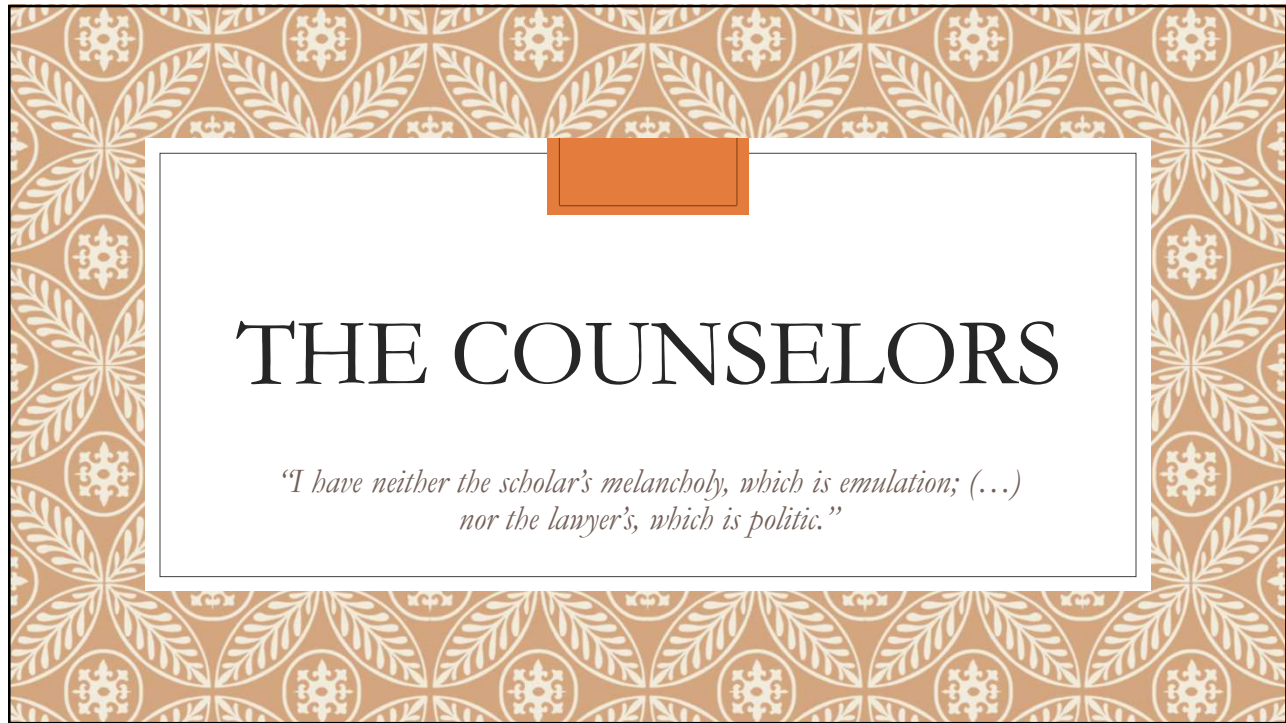
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Their Story

- Now the Sideways group has formed two entities to run their affiliated businesses: a limited liability company for wine making and a corporation for manufacturing their wine making monitoring device. The LLC will make wine with the SiWiWi (the Sideways Wine Widget) and host demonstrations and tastings.
- They have raised funds for the corporation through venture capital financing.
- They found an industrial location to lease in which they will operate their businesses.
- After they signed the lease, they considered the next steps: insurance, vendor agreements, and the ins and outs of operating a small business.



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The Insurance Broker



- **Chantal Rees**
- Founder and President of Rees & Rees Insurance Services Inc.
- Specializes in custom commercial coverage for California business owners.
- Experience of over 14 years
- Her offerings include liability insurance, worker's compensation, bonds, commercial auto insurance, property coverage, life insurance, and group benefits.
- One of the top 15 producers with her partner agency, Orr & Associates.
- She was a cyber liability insurance panelist for the Women in Construction event in 2019,

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The Lawyer



- **Laurie Dennen, Esq.**
- Principal of Law Office of Laurie Dennen
- Laurie practices transactional business and commercial real estate law. Laurie's business practice includes: entity formation, structuring, negotiating, and preparing various types of contracts for the operation of privately held businesses, mergers and acquisitions, and dissolutions. Laurie often acts as general counsel to her business clients.
- Laurie's commercial real estate practice includes: leasing (retail, office, industrial, and shopping centers), entity formation for rental and investment properties, and the purchase or sale of real property (developed or undeveloped).
- Laurie also acts a neutral in mediation matters including: business owner disputes, breach of contract, and real estate matters.

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The Operations Specialist



- **Diane L. Camacho**
- Founder of DLC Consulting Services, LLC
- Provides on-demand legal management and operations services to small and solo law firms.
- Certified Legal Manager with over 30 years of legal management experience and a degree in organizational behavior and leadership.
- Diane teaches in the paralegal program at San Francisco State University. She speaks on a variety of operational topics to attorney and legal organizations.
- Hosts Bar Association solo and small firm roundtable discussions on operations and management issues.

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CCCBA Sideways Start-Up Panel

Operational Liabilities

April 12, 2022

Now that the Sideways group has formed 2 entities to run their affiliated businesses (wine making) and manufacturing (a wine making monitoring device), they have raised funds through financing, they found an industrial location to lease in which they will operate their 2 businesses, now they need to start looking at their operational liabilities...they need to obtain multiple types of insurance to protect their businesses (i.e. they need insure for their businesses, employees, leased premises, products, etc.) So, let's start with what kinds of insurance they need to put into place....

[Insurance Video]

Contracts section:

- A. There are a number of different kinds of contracts that will be needed to get these two businesses started. Internal contracts and external contracts.
 - 1. Internal contracts are those contracts:
 - a. between Owners of the businesses (Buy-Sell Agreements (corporations); Operating Agreements (LLCs)). They outline restrictions on the transfer of the ownership interests, identify various triggering events (death, disability, divorce, termination of employment or association, etc.), provide for methods of valuation, and payment methods depending on the triggering event.
 - b. with Employees: Employment agreements, invention agreements, non-disclosure agreements are some examples. Remember...in CA, non-compete agreements are not enforceable except in specific instances...but Invention agreements...and non-disclosure of trade secrets are enforceable.
 - 2. External Contracts (some examples):
 - a. Design Contracts – for the device.
 - b. Manufacturing related contracts: Supplies/sourcing;
 - i. Wine:—grapes; juice.
 - ii. Device: raw materials to be used in the manufacture of the product.
 - c. Distribution:
 - i. Wine: To restaurants? – requirements contracts.
Wine Club Memberships?
 - ii. Device: how will they be selling the device? Through retailers? Specialty? Website?
- B. With regard to sourcing materials and distributing the devices and wine (these contracts deal with the QUANTITY of the product under the contract:

1. Types of contracts when the specific quantity is not stated:
 - a. **Requirements contract:** where the parties agree that the buyer must purchase its requirements of goods exclusively from the Seller. Is this a good type of contract for Marta and Britni when they are the “buyers”? When Marta/Britni are sourcing their wine (grapes and juice) or their raw materials? A requirement contract may be great for the vineyard selling the grapes or juice to have all that Marta/Britni need purchased from them. But, do Marta and Britni want to give an “exclusive” to that vineyard?

When Marta/Britni are the sellers? Advantages; Disadvantages. See below.

Buyer's Advantages: secure a stable supply of goods; secures better pricing; secure consistent service and product quality; reduces the number of vendors it needs to manage.

Seller's Advantages: Secures an exclusive customer; manages inventory risk; manages credit risk; manages cash flow.

Buyer's Disadvantages: The buyer is Locked into a contract; the buyer is then prohibited from securing better terms and conditions from a different seller; difficult to secure alternative suppliers (if the seller cannot supply the buyer with the buyer's requirements; forgoes the opportunity to secure higher quality product.

Seller's Disadvantages: Seller is locked into a contract and burdened with: unsellable inventory if buyer's requirements decline b/c demand from the buyer's customers declines; uncollectible receivables if the buyer's credit declines.

Other terms used for requirements contracts (not all contracts will state that they are a “requirements contract”? “as ordered” “as released” “blanket order”.

- b. Or an **Output contract** -- where the parties agree that the Buyer must purchase the seller's entire output of the goods. Discuss pros and cons for each type of business --- wine and device.

C. **Quick review of the basic (and necessary) elements of a contract** and best practices/helpful hints:

1. Offer;
2. Acceptance;
3. Valuable consideration, mutuality of obligation, and, in some cases, a written contract is required (FYI—oral contracts/agreements may be enforceable however it may be difficult to establishing the mutual agreement of the parties - #6 below);
4. All parties must have legal capacity to contract (i.e. 18 years or older; Mentally competent);

5. Lawful subject matter;
6. Mutuality of Agreement.

D. **There are other contract terms that are necessary...**my view is that a contract should tell a story; each section should answer: who, what, where, when, and how. The contract terms should be specific and as self-executing as possible. Each paragraph should look like a decision tree...(i.e. if this happens; then so and so happens; etc.):

1. Identify the parties;
2. Addresses of the parties;
3. Purpose of the contract;
4. Duties of each of the Parties to the contract;
5. Dates, price, quantities;
6. Payment terms;
7. Taxes – especially with the wine business;
8. Defaults and remedies;
9. How will disputes be settled?
10. Warranties, disclaimers, limitations on liability; risk of loss;
11. General provisions – do not skip over this section as it is where a lot of important operational and enforcement type of provisions are noted: (i.e. governing law, venue, jurisdiction, attorneys' fees, modification/amendment, no waiver, entire agreement, notice, counterparts, etc.)

E. **Other operational liabilities/issues –Discuss knowing the client's specific business. For the wine business:**

1. **Licensing; Permitting of the wine business.** Federal TTB permits; CA ABC permits; there are various classes of licenses: winegrower; wholesaler; retail; on premises; off premises.
2. **Reporting.** Wine sales and the movement of the wine product is very controlled and the facility where the wine is made or stored must be bonded, and the movement of the wine between facilities must be reported;
3. **Taxes paid...**to both federal and state agencies for alcohol.
4. **If Marta/Britni decide to sell through a wine club...**then they will need the proper licensing from each state where they ship their wines; they may need to qualify to do business in certain states (those rules are state specific); taxes must be also paid to the states directly and each state has their own rules for reporting the sale of alcohol.

Bottom Line: KNOW YOUR BUSINESS INSIDE AND OUT; HIRE THE RIGHT PROFESSIONAL ADVISORS WITH THE CORRECT AND APPLICABLE SKILL SETS.

###



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Our Consultants

Diane L. Camacho, CLM

Diane is the founder of DLC Consulting Services. She has spent more than 25 years as a legal manager in San Francisco for firms of various sizes. Since 2013 she has consulted solo and small firms around the country on a multitude of management and operational issues. She speaks in the legal community on a variety of operational issues. Diane is a Certified Legal Manager and holds a degree in Organizational Behavior and Leadership from the University of San Francisco.

Jennifer Connon, CLM, Senior Operations Consultant

Jennifer brings over 30 years of legal management experience to DLC Consulting Services, LLC. She has extensive expertise running legal operations for global law firms. Jennifer understands how to structure firm processes for all operational functions of law firms from client intake to employee on-boarding. Jennifer is a Certified Legal Manager, has a Bachelors in Finance from the University of Oregon and an MBA, with a focus on Human Resources from Golden Gate University.

Suzanne Lawler, Senior Operations Consultant

Suzanne is also an experienced legal manager. Prior to joining DLC Consulting Services, LLC, she spent 28 years in the finance department for a mid-sized law firm in San Francisco. As the Accounting Manager, she was responsible for all finance and accounting functions.

Louis Tullius, Senior Operations Consultant

Louis began his legal management career in the 1990s and has worked in large AMLAW firms managing branch offices and firm wide programs. Louis also has a deep understanding of law firm compensation from not only managing human resources in all of his positions, but managing the nationwide compensation program of an international law firm. He has a bachelor's degree in Political Science from Humboldt State University and has a Green Belt in Six Sigma Lean Process Management, .