B8332  REAL ESTATE TRANSACTIONS:

Professors Jennifer Morgan and Rick Wolfe
Fall 2015
Monday/Wednesday 9:00 – 10:30 am
Room TBD

Real estate is a transaction business, and a thorough understanding of legal structure and transaction documentation is essential to successfully execution of all types of business strategies in real estate: Ask any seasoned investor! Decisions about the most effective format for owning real estate, layering debt, and structuring equity investments all involve legal considerations that shape the risk and return profile of real estate investments as well as control and decision making.

Our goal in the course is to provide you with an understanding of the institutional framework of commercial real estate transactions: business law, taxation, investment partnerships, and deal structures. It is the essential complement to the analytics of finance and investment. Real estate transactions draw upon a vast array of laws and regulations – property law, contract law, land-use law, environment law, securities law, constitutional law, corporate law, bankruptcy law, insurance law, and riparian law. Tax considerations similarly play a significant role in driving deal structure as real estate is highly sensitive to taxation at all levels of government and across all stages of property ownership. And investment structures shape who bears what type of risk.

How and why do transactions come out the way they do? This is the practical question underlying the structure of this course. You should finish the course knowing how the terms and conditions spelled out in a term sheet find their way into particular sections and provisions of a transaction’s legal documentation. To succeed in this business, you will need to be savvy consumers of legal expertise, notwithstanding the knowledge and expertise of your attorney.

The course is designed to address a broad range of considerations that arise as a real estate transaction moves from term sheet to legal documentation. This process typically involves the following tasks:

- creating and describing real estate interests,
- protecting real estate interests,
- defining default,
- assuring remedies,
- aligning economic interests,
- allocating financial risk and return,
- assuring financing feasibility,
- creating exit flexibility,
- providing for condemnation and casualty,
- establishing dispute-resolution mechanisms,
- establishing governance structure and decision making, and
- structuring to increase certainty of execution.

As a means of integrating theory and practice, the course links business strategy and legal structure. It draws heavily on cases and other materials specially designed for this course. Leading attorneys and investors bring their expertise and insights to class to discuss the legal risks, rights, and remedies
underlying contract transactions, financial structures for debt and equity, distress and restructuring strategies, and M&A transactions in today’s real estate markets.

The course is divided into four sections:

**Part I:** Asset Transactions  
**Part II:** Capital Structure Transactions  
**Part III:** Development Transactions  
**Part IV:** Complex Transactions

Each topic is addressed through a mix of formats: mini-lectures, case analysis, document review, and class discussion. Careful and diligent preparation for each session is imperative for thorough understanding and take-away learning from the skilled professionals who are giving their high-priced time and preparation for your education. You will learn from actual transaction documents the key issues necessary for successful negotiations and closings. It’s essential to do the required reading, which we have kept within reason.

**REQUIRED PREREQUISITES AND CONNECTION TO THE CORE (For Electives)**

The learning in this course will utilize, build on and extend concepts covered in the following core courses:

<table>
<thead>
<tr>
<th>Core Course</th>
<th>Connection with Core</th>
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<tr>
<td>Corporate Finance</td>
<td>1. Time value of money</td>
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<td>2. Opportunity cost of capital</td>
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<td>3. Risk</td>
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<td>Strategy Formulation</td>
<td>1. Creation of value vs. value capture</td>
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<td></td>
<td>2. Trade-offs</td>
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<td>Leadership Development</td>
<td>1. Ethics</td>
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<td></td>
<td>2. Decision making</td>
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<td>3. Influence &amp; Persuasion</td>
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<td>4. Negotiations</td>
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<td>Global Economic Environment</td>
<td>1. Inflation and the business cycle</td>
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<td></td>
<td>2. Fiscal policy</td>
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<td>3. Role of financial markets in the economy</td>
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Students will be expected to have mastered these concepts and be able to apply them in the course.

**Class Expectations**

Attendance is required at all sessions and for the duration of the session. If for some reason, you are not able to attend or have to leave early, please notify us as such. Missing more than two classes (other than for religious holidays) is likely to adversely affect your grade.

Class starts at 9am. Most students are able to be in their seats when class begins. Arriving late disrupts the class and is disrespectful to everyone who has arrived on time, especially our guests.
No Cell Phones, Laptops, iPads. Please place these items in a safe place where they cannot be touched in class. If you intend to take class notes on a computer during the semester, please let us know at the start of the course. Our guest speakers are volunteering their time and warrant your undivided attention; it is highly distracting—and quite obvious—to your fellow students, your professor, and guest speakers to use these devices in class to conduct your other business and personal relationships.

Preparation. Students must be prepared for all classes. Convenient as it might be, you cannot learn all you need to learn just from listening in class, and the questions you ask will not be as informed as they could be with preparation. Class discussion will be based on the assumption that you have thoroughly read these materials and are prepared to answer questions as well as pose questions in class. Sometimes students will be cold called.

Readings for the course are posted on the course website and the required readings for each session are clearly identified on the syllabus. We have been selective in the assigned readings, mindful of the fact they you are all taking other courses, yet there is more reading than is customary in MBA classes. Keep in mind that this is a business law course, and substantial reading rather than intense numerical calculations are the norm.


Grading Assessment:
Two (2) of four (4) case assignments 40%
Three class preparation assignments 15%
Take-Home final (ASSIGNMENT TYPE C) 30%
Class participation 15%

Submitting Assignments:
All assignments are individual work unless otherwise specified. All assignments are to be submitted hard copy or email at the start of class on the due date. If you are late, do not disrupt class to hand in your assignment. Assignments submitted after the specified time will be marked “late” and will be given partial credit. For group assignments, one submission from each group should be submitted with the names of the group’s members clearly stated on the first page. PLEASE DO NOT E-MAIL ASSIGNMENTS TO JUST THE PROFESSORS, BUT ALSO COPY THE TA.

TAKE-HOME FINAL EXAM DUE: TBD

On the first day of class the seat you select will be yours for the entire semester. This will allow us to identify everyone in this large class by name and get to know you on an individual basis. We appreciate your cooperation!

Teaching Assistant: TBD
Class Schedule

Aug 31 Course Overview and Themes

PART I: ASSET TRANSACTIONS

Sept 2 Acquiring and Transferring Title
Guests: Jon Mechanic and Ross Silver, Fried, Frank, Harris, Shriver & Jacobson LLP

Sept 7 No class – Labor Day

Sept 9 Space Leases as Transaction Drivers
Guest: Glen Weiss, Vornado Realty Trust

Sept 14 Acquisition Opportunity – WILL BE RESCHEDULED DUE TO RELIGIOUS HOLIDAY
Case Assignment #1: Zenith Center

Sept 16 Sale-Leaseback Transactions
Guests: Gordon Whiting ’94, Angelo Gordon
Michelle E. Williams, Esq. Sheppard Mullin Richter & Hampton LLP

Sept 21 Transaction Tax Strategies I

Sept 23 Transaction Tax Strategies II

Sept 28 Transaction Tax Strategies III

Sept 30 Transaction Tax Strategies IV

PART II: CAPITAL STRUCTURE TRANSACTIONS

Oct 5 Mortgage Financing Transactions I
Topics: Security Interests, Lien Priorities, Lender Rights, Foreclosure

Oct 7 Mortgage Financing II and Buying Notes

Oct 12 Ground Leases and Leasehold Transactions
Guest: Rob Sorin, Fried, Frank, Harris, Shriver & Jacobson LLP

Oct 21 Legal Structure of the Capital Stack – In Normal Times and In Distress
Guests: Steven Plavin, Capital Trust and Rick Jones, Dechert, LLC
Case Assignment #2: Legal Structure of the Capital Stack

Oct 26 Raising Equity via a Joint Venture

Oct 28 Allocating Risk and Reward in a Joint Venture
Case Assignment #3: The Burnswell JV
Nov 4  Private Equity Waterfall Structures  
Class Preparation Assignment #4: Understanding Incentives in PE structures  
Guest: David Sherman, Metropolitan Real Estate Equity Management, LLC

Nov 9  Structuring the Private Equity Fund  
Guest: A. Kelly Ryan, Kirkland & Ellis

Nov 11  Management Agreements in Hospitality Transactions  
Guest: John Vickers, Gary Buscemi, Tishman Hotel Corporation

**PART III: DEVELOPMENT TRANSACTIONS**

Nov 16  Controls on Property  
Guest: Stephen Lefkowitz, Fried, Frank, Harris, Shriver & Jacobson LLP

Nov 18  Rezoning and Value Creation  
Case: SoHo Loft Building  
Guest: Lynne B. Sagalyn, Columbia Business School

Nov 20  Coming to Terms – Negotiating Joint Ventures event

Nov 23  Structuring the Public/Private Development Deal  
Guest: TBD

**PART IV: COMPLEX TRANSACTIONS**

Nov 30  Distress and Bankruptcy  
Guest: Richard G. Mason, Wachtell, Lipton, Rosen, and Katz

Dec 2  Workouts of Distressed Debt  
Case Assignment #5: Battling Over a New York Workout: The W-Hotel Strategy  
Guest: Kevin O’Shea, Allen & Overy, LLP

Dec 7  Public REIT versus Private Market Transactions / Summing Up  
Hand-Out of Take-Home Final (due Dec __, 10 am)