

**Syllabus**  
**5241 - Advanced Transaction Drafting**

**Fall 2017**

Professor: Richard A. Ginsburg (Adjunct)

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Credits: 2

Course Area: Business and Commercial Law

Times: Tuesday, 5.30 pm – 7.30 pm<sup>1</sup>

Room: 121 TUII

Course Outline: This course is designed to prepare first year lawyers for a general corporate practice, whether in an in-house, law firm, or solo practice setting, by completing a simulated private company financing transaction. We will focus on learning how to analyze and draft credit documentation for a private company acquisition, focusing on how specific contract provisions advance the business objectives of both borrowers and lenders. Nevertheless, the course will be of particular interest to students pursuing any corporate or commercial law career, including an M&A or securities law focus, because the concepts being taught in this course are applicable to any aspect of a transactional practice.

To achieve these skills that are particularly helpful to first-year lawyers, students will work through a hypothetical finance transaction that will encompass the entire semester. The course will analyze all stages of the acquisition transaction, including considering the often divergent strategies and goals of lenders and borrowers. The fundamentals of structuring and negotiating varying aspects of a private company transaction will be stressed. The approach will begin at the financing commitments and term sheet stage at the beginning of a typical private equity-backed acquisition, advance through the negotiation of the credit agreements and related documents, and finish with the closing and required collateral filings. The professor will utilize his experience in global finance transactions and share provisions found in actual loan documentation – demonstrating how those fundamentals have been applied in recent transactions. The course will focus on how secured transactions law, bankruptcy law and corporate law influence the structuring and documenting of a typical secured bank loan. It will also address often-contested key

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<sup>1</sup> Note that there will be two (2) make-up classes required due to the professor's prior travel commitments. There will be **NO** classes on (i) Tuesday, August 29 or (ii) Tuesday, September 5. In accordance with the Law Center's policies, make-up classes for these two (2) classes will be at 5.30 pm to 7.30 pm on (1) Friday, October 6 and (2) Friday, November 3, both in the same classroom.

economic and legal deal terms, as well as common ethical dilemmas. The course will show how a lawyer adds significant value to a transaction by finding, analyzing, and resolving business issues.

Pre-requisites: Contracts  
Secured Financing  
Business Organizations

Helpful: Bankruptcy  
Mergers & Acquisitions

Satisfies Skills Course Requirement: Yes  
Satisfies Senior Upper Lever Writing Requirement: No

Course Materials:  
Textbook: Drafting for Corporate Finance by Carolyn E.C. Paris (#60412 – Practising Law Institute, New York City) (ISBN-978-1-4024-2313-0)  
Other: Various forms of documents and other materials will be distributed in class as needed.

Assignments: Assignments will include textbook reading and distributed materials. There will be various drafting assignments of documents and various provisions of documents as indicated in the Course Outline above and Topic Order below. Drafting assignments relating to each Tuesday class will be due by the end of the day on the immediately following Sunday.

Topic Order and Reading Assignments:

<b><i>Reading Assignments</i></b>	<b><i>Topics</i></b>	<b><i>Class Meeting(s)</i></b>
Text – Chapters 1 – 3 and Chapter 7	I. <u>Introduction to Advanced Finance Transaction Drafting:</u> a. Contract Fundamentals – A Refresher b. Corporate Finance in General c. Capital Structures d. Basics of Debt Documentation	Class 1
<u>Class Handouts:</u> <sup>2</sup> Handout 1 – Hypothetical Transaction Description Handout 2 – Hypothetical Corporate Structure		

<sup>2</sup> Handouts 1 and 2 are to be reviewed prior to the first class because this hypothetical corporate structure and transaction description will be used throughout the semester. The Transaction Description should be studied in depth because a working knowledge of the hypothetical transaction will be very helpful to you when completing your drafting assignments.

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
<b><u>Learning Objectives:</u></b>	Following completion of this initial section of the course the student will be able to explain (i) how and why companies and private investors use debt to finance their acquisitions of companies or businesses and (ii) how companies and private investors generally fit those acquisitions within the typical corporate structure. Students will see and discuss the rationales for these corporate and transaction structures and analyze the suite of documents required to close the typical finance transaction.	
Text – Chapters 6 & 8	II. <u>The Transaction Structure:</u> <ol style="list-style-type: none"> <li>a. Coordinating Acquisition Agreements and Debt Documentation</li> <li>b. Commitment Letters and Term Sheets</li> <li>c. Types of Credit Agreements <ol style="list-style-type: none"> <li>1. ABL Credit Agreements</li> <li>2. Term Loan Credit Agreements</li> <li>3. Revolving and Letter of Credit Agreements</li> </ol> </li> <li>d. The Syndication Process</li> </ol>	Classes 2 & 3
<u>Class 2 Assignments:</u> <sup>3</sup> Assignment 1 – Commitment Letter Assignment 2 – Fee Letter <u>Class 3 Assignments:</u> <sup>4</sup> Assignment 3 – Term Sheet		
<b><u>Learning Objectives:</u></b>	This section of this course will examine the initial steps in documenting the financing of a corporate acquisition. Students will study the bank commitment letter and related documents, which are typically the first documents that a finance lawyer negotiates. Following the discussion and review of these agreements students will utilize actual examples of the major types of credit agreements, and contrast and compare their similarities and differences. Finally students will work through an actual acquisition agreement, following which they will be able to show how and why the debt documents coordinate with the acquisition agreement.	
Text – Chapters 4, 8 and 9 – 14	III. <u>Credit Agreements in Depth:</u> <ol style="list-style-type: none"> <li>a. Parties, Recitals and Definitions</li> <li>b. Borrowing Mechanics, including Interest Payments and Prepayments and Letters of Credit</li> <li>c. Use of Proceeds and Tax Provisions</li> <li>d. Replacement of Lenders and Incremental Facilities</li> <li>e. Representations and Warranties</li> <li>f. Conditions to Closing</li> <li>g. Affirmative and Reporting Covenants</li> <li>h. Negative and Financial Covenants</li> <li>i. Events of Default</li> </ol>	Classes 4 through 9

<sup>3</sup> Due 9/17

<sup>4</sup> Due 9/24

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
	j. Agency Provisions k. Amendment, Assignments and other “Boilerplate” Provisions l. Loan Guarantees	
<u>Class 4 Assignments:</u> <sup>5</sup> Assignment 4 – Borrowing Mechanics <u>Class 5 Assignments:</u> <sup>6</sup> Assignment 5 – Prepayment Provisions; Commitment Changes; Taxes <u>Class 6 Assignments:</u> <sup>7</sup> Assignment 6 – Conditions Precedent Assignment 7 – Representations and Warranties <u>Class 7 Assignments:</u> <sup>8</sup> Assignment 8 – Affirmative Covenants <u>Class 8 Assignments:</u> <sup>9</sup> Assignment 9 – Negative and Financial Covenants <u>Class 9 Assignments:</u> <sup>10</sup> Assignment 10 – Events of Default Assignment 11 – Agency Provisions, Amendments and Boilerplate		
<b><u>Learning Objectives:</u></b>	Following completion of this section the students will outline the entire content of an actual credit agreement for a finance transaction. The students will examine and discuss each section of the credit agreement in depth. At the end of this section students will experience the drafting challenges behind these lengthy and complicated agreements, and explain the importance of clarity in drafting and the need to focus on internal consistency throughout the agreement. As a result students will be able to avoid misunderstandings between lenders and borrower through better drafting.	
None	IV. <u>What You Need to Know About Ancillary Documents:</u> a. Pledge and Security Agreements b. Real Estate Security Documents c. Landlord and Bailee Waivers d. Intercreditor and Subordination Agreements e. Deposit Account Control Agreements f. UCC Financing Statements	10/11
<u>Class 10 Handout:</u> <sup>11</sup> Handout 3 – Security and Pledge Agreement <u>Class 11 Handout &amp; Assignment:</u> <sup>12</sup> Handout 4 – Intercreditor Agreement Assignment 12 – Deposit Account Control Agreement		

<sup>5</sup> Due 10/1

<sup>6</sup> Due 10/8

<sup>7</sup> Due 10/8

<sup>8</sup> Due 10/15

<sup>9</sup> Due 10/22

<sup>10</sup> Due 10/29

<sup>11</sup> Handouts 3 and 4 are to be reviewed prior to the applicable class, but do not require any markup.

<sup>12</sup> Assignment 12 is due 11/12.

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
<b><u>Learning Objectives:</u></b>	Students will discuss and explain how and why there are a multitude of additional agreements required for a finance transaction after completing this section of the course. This will include recognizing the unique requirements for secured debt transactions and the steps required to ensure that the lenders actually have the perfected security interests they believe they have.	
Chapters 9 and 15	V. <u>Closing the Transaction and Thereafter</u> <ol style="list-style-type: none"> <li>a. The Mechanics of Closing the Transaction: <ol style="list-style-type: none"> <li>1. Finalizing Documents, Schedules and Exhibits</li> <li>2. Closing Checklist, Funds Flow, Notices of Borrowing Resolutions and Officer's Certificates</li> <li>3. Payoff Letters and Security Releases</li> </ol> </li> <li>b. Legal Opinions and What They Mean</li> <li>c. Post-Closing Amendments and Waivers <ol style="list-style-type: none"> <li>1. Good Amendments (basket increases, consents to transactions)</li> <li>2. Bad Amendments (covenant defaults, qualification of financials)</li> <li>3. Forbearance Agreements</li> </ol> </li> </ol>	12
<u>Class 12 Handouts:</u> <sup>13</sup> <p>Handout 5 – Corporate Resolutions  Handout 6 – Officer's Certificate  Handout 7 – Payoff Letter  Handout 8 – Legal Opinion  Handout 9 – Loan Agreement Amendment  Handout 10 – Forbearance Agreement</p>		
<b><u>Learning Objectives:</u></b>	Students will work with closing documents from actual transactions, and handle the many "behind the scenes" documents for which they will likely have direct responsibility as the junior lawyer on a finance transaction. The students will participate in the closing of the course's simulated finance transaction, following which they will examine and debate documents other than just credit agreements that are required to close the transaction.	

<sup>13</sup> All remaining handouts are to be reviewed prior to the applicable class, but do not require any markup.

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
Text – Chapter 5	VI. <u>Bankruptcy Fundamentals:</u> a. Understanding the Chapter 11 Process b. Lending in the Chapter 11 Process	13
<u>Class 13 Handout:</u> Handout 11—DIP Term Sheet		
<b><u>Learning Objectives:</u></b>	This analysis and discussion deals with one specific issue that lawyers frequently encounter after closing a finance transactions – namely when the relevant company experiences financial difficulties and considers the alternative of bankruptcy. Following this class discussion students will better understand and be prepared for the occasional client in that situation.	

**Office Hours:** The professor will generally be available in the Adjunct Professors’ office at the Law Center from 1.00pm to 5.00pm before class every week. Students wishing to meet with the professor should arrange to meet him during that time. Students should not hesitate to contact the professor by email with both course and assignment questions during the week.

**Class Time:** Most of the class time will comprise lecture by the professor and discussions with the students on the topics to be covered and the related forms of documents. Each class will begin with current “News of the Corporate World” information to show the applicability of the weekly topics in real situations. Class time will also be used to comment on drafting assignments. Students will also be expected to participate appropriately.

**Grades:** Grades will reflect all aspects of the semester course, including the final exam, drafting assignments, class participation and attendance. There is a possibility to earn up to 1,000 points as follows:

- Attendance 50 points
- Participation 50 points
- Drafting Assignments 600 points (50 points each)
- Final Exam 300 points

In addition, your grade may be raised (or lowered) one level from your calculated final grade based on (in the professor’s reasonable judgment) any significant (or below average) efforts in Class Participation. Final grade distribution will be subject to any required grading protocols mandated by the school.

**Final Exam:** The final exam will be open book (including personal notes, class handouts, drafting assignments and class PowerPoint materials, but not access to the Internet), consisting of short answer questions and contract interpretation and drafting challenges. Students will, of course, be subject to adherence to the school’s honor code. The final exam will be distributed on Friday, December 1, 2017. It is due to be turned in at the library no later than 8.00 am on Monday, December 4, 2017.

**Disability Statement:** The University of Houston Law Center strives to assure equal access and full participation by Nellums-Goosby, Academic Records Coordinator in the Office of Student Services, in person in room 44A TU II, by e-mail at [SNellums@central.uh.edu](mailto:SNellums@central.uh.edu), or by phone at 713-743-2187. This voluntary self-identification allows the University to prepare any necessary and appropriate support services to facilitate your learning.

Any requests for exam accommodations should be directed to Linda Lee at [LLee@central.uh.edu](mailto:LLee@central.uh.edu) or 713-743-1751 and should be made as soon as possible to allow adequate time to document and process the request.

**Religious Holy Day Statement:** Section 51.911(b) of the Texas Education Code provides excused absences for religious holy days. A student who intends to observe a religious holy day should make that intention known in writing to the professor prior to the absence. A student who is absent from classes for the observation of a religious holy day shall be allowed to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence. A student who is excused from the class under this policy may not be penalized for the absence; however, the professor may respond appropriately if the student fails to complete the assignment satisfactorily.

**Counseling and Psychological Services (CAPS):** CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service at convenient locations and hours around campus.  
[http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).

# August 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21 <i>First Day of Classes</i>	22 Class #1 5.30 pm- 7.30 pm	23	24	25	26
27	28	29 <i>No Class</i>	30	31		

# September 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4 <b>LABOR DAY</b>	5 <i>No Class</i>	6	7	8	9
10	11	12 Class #2 5.30 pm- 7.30 pm	13	14	15	16
17 Assignments 1 & 2 Due	18	19 Class #3 5.30 pm- 7.30 pm	20 <b>EREV ROSH HASHANAH</b>	21	22	23
24 Assignment 3 Due	25	26 Class #4 5.30 pm- 7.30 pm 23	27	28	29 <b>EREV YOM KIPPUR</b>	30



# October 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
<b>1</b> Assignment 4 Due	2	<b>3</b> Class #5 5.30 pm- 7.30 pm	4	5	<b>6 (Make-up)</b> Class #6 5.30 pm- 7.30 pm	7
<b>8</b> Assignment 5, 6 & 7 Due	9	<b>10</b> Class #7 5.30 pm- 7.30 pm	11	12	13	14
<b>15</b> Assignment 8 Due	16	<b>17</b> Class #8 5.30 pm- 7.30 pm	18	19	20	21
<b>22</b> Assignment 9 Due	23	<b>24</b> Class #9 5.30 pm- 7.30 pm	25	26	27	28
<b>29</b> Assignments 10 & 11 Due	30	<b>31</b> Class #10 5.30 pm- 7.30 pm				

# November 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	<b>3 (make-up)</b> Class #11 5.30 pm- 7.30 pm	4
5	6	<b>7</b> Class #12 5.30 pm- 7.30 pm	8	9	10	11
<b>12</b> Assignment 12 Due	13	<b>14</b> Class #13 5.30 pm- 7.30 pm	15	16	17	18
19	20	21	22	<b>23</b>  THANKSGIVING	24	25
26	<b>27</b>  <i>Last Day of Classes</i>	<b>28</b>  <i>Reading Day</i>	<b>29</b>  <i>Reading Day</i>	<b>30</b>  <i>Reading Day</i>		

# December 2017

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1 <i>Final Exam Distributed</i>	2
3	4 Final Exam Due – by 9.00 am	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	23 CHRISTMAS	26	27	28	29	30