

SYLLABUS

REPRESENTING BORROWERS

IN ENERGY FINANCE

SPRING SEMESTER 2017

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1. ***Course Description.***

(a) **Transaction Scenario.** This two-hour course introduces students to a hypothetical project financing transaction (based on a real transaction) in the energy sector of the economy and includes (a) some commercial assignments and contracts for contributions and use of offshore drilling platform assets, including provisions for contract revenues sufficient to obtain a bank group financing supported by the contracts and revenues, and (b) the structure and customary documentation of a bank credit facility secured by the assets and contract revenues (comprising personal property collateral). The scenario involves a large offshore oil and gas exploration and drilling company that has operations at various sites around the world. This company will contribute an offshore drilling platform to a newly created, special purpose subsidiary—which in turn contributes the drilling platform to a second newly created, special purpose subsidiary—for use in drilling oil and gas wells in the Gulf of Mexico. Although the parent company is contributing ownership of the drilling platform “downstream” to a subsidiary, the parent will continue to operate and to use the drilling platform for drilling and exploration of its own oil and gas properties in the Gulf of Mexico. The “bottom-tier” subsidiary plans to use the asset value of the drilling platform and revenues from its contract with its indirect (“top tier”) parent company to support a borrowing large enough to cover the parent’s projected cost of drilling up to six wells in

an underwater area proven by geological studies to contain large deposits of oil and gas. The borrowing subsidiary will distribute upstream most of the borrowed funds, so that the top-tier parent can use the funds to cover its costs for the wells. The borrowing subsidiary will negotiate the terms of a secured loan with a commercial bank that plans to sell portions of the loan (*i.e.*, to syndicate the loan) to other lenders. The borrowing subsidiary will sign a credit agreement and a security agreement granting a lien in all its assets, including the drilling platform and the contract for the parent's use of the drilling platform. The mid-level subsidiary will pledge its ownership interest in the bottom-tier borrowing subsidiary as additional collateral and also will guaranty the loan. The loan will be made in multiple advances as the parent company successfully drills and completes producing oil and gas wells.

(b) **Transaction Analysis.** You will learn how these transactions are handled by lawyers, and you will at times play the role of counsel to the exploration and drilling company or the lead bank lender in negotiating, drafting, and closing the transaction documents. As part of the closing, you will prepare a legal opinion letter as counsel to the parent company and its two special purpose subsidiaries, addressed to the lenders, to the effect that the documents have been duly authorized and executed, and are enforceable against the parent company and its two special purpose subsidiaries. You will consider ethical issues and potential attorney liability in this kind of practice. You will use template documents based on actual transactions and model forms. You will consider alternative structures for the transaction, and you will discuss the typical concerns of borrowers (and their affiliates) and lenders in these types of deals. You will learn to identify recurring legal issues that need to be dealt with by the documents, as well as special issues for which you should be alert.

(c) **Practical Experience.** Most importantly, you will learn what it would be like for you to spend your first few years of legal practice working at a law firm with clients that are lenders or borrowers (or their affiliates) in commercial loan transactions and in related project financing. You will learn the fundamentals of negotiating and documenting commercial contracts generally. When you are given documents or tasks by the attorneys with whom you work, or are communicating directly with a client, you will be more sensitive to the situation, and how to respond.

(d) **Team Drafting.** Depending upon the number of students in the class, students may be divided into two to four-student teams (or as near to four students as possible) and complete six drafting exercises (i) an asset contribution agreement, (ii) an offshore platform use agreement, (iii) a credit (loan) agreement, (iv) a guaranty agreement, (v) a pledge agreement covering the equity interest in the borrower owned by the guarantor, a security agreement covering all the borrower's assets, and related UCC financing statements, and (vi) an attorney legal opinion with respect to the enforceability of the transaction documents and the attachment and perfection of the security interests created by the pledge agreement and security agreement.

(e) **Student Memoranda.** You (as an individual and not as a team member) will be asked to write a short memoranda (two or three pages) answering a question from an attorney or a client about the transaction. You will learn to consider your audience and the experience, interests, and needs of the addressee in your writing style and the points that should be made.

2. ***Opening Requirements:***

(a) **Eligibility.** Before the second class (January 26, 2017), you are to email to each of your professors a statement that you have taken, or are concurrently enrolled in, Corporations and Secured Transactions. Also indicate which of the following courses you also have taken or are concurrently enrolled in: Land Finance, Payment Systems, Agency and Partnership, and Oil, Gas and Mineral Law. If any of you has not taken Corporations or Secured Transactions, please consult with Professor Dole. He may be able to grant a waiver.

(b) **Personal Information.** Please (in the same email as above or separately) also email to each of your professors before the second class *a brief summary of your background and interests* to help us get to know you as well as possible during the course. Tell us your undergraduate major/minor, any graduate degrees, your work experience, whether/where you are currently working, your particular interest in and reasons for taking this course, when you anticipate graduating from the Law Center, and anything else you think relevant. We invite you (at your option) to include with your email a photo if you think that it may help us more easily to identify you and associate the information you provide with a face. Please include a phone number where we can reach you, if necessary. We have found in teaching this course that interpersonal interaction is very important in ensuring that we are conveying the material in an understandable way (and that you are receiving and processing it appropriately). Getting to know you helps that process. In addition, some of you may have backgrounds which would permit you to make significant contributions to the Class' and our understanding of parts of the transaction.

(c) **Communications.** *Throughout this semester, please check your Law Center email account, or have it forwarded into your personal account* (as we will be using group Law Center email distributions to post instructions and notifications, and to deliver documents, to the entire class.)

3. ***Class Meeting Times and Attendance:***

Class will meet on Thursdays at 8:30 – 10:20 p.m. In accordance with Law Center policy, attendance will be taken and is required. The subject is a large one, and there is a great deal of material to cover. Under the Law Center's attendance rule, no more than two unexcused absences are permitted.

4. ***Course Learning Outcomes:***

Students should acquire the following knowledge, skills, and values by the end of this course.

(a) Knowledge.

1. Transactional Documents: Upon completing this course, students will be able to (i) identify the typical kinds of legal documents employed in a commercial finance transaction where the borrower grants security interests in collateral (including an offshore drilling platform and contract revenues for its use), (ii) explain the function or functions each document performs in the transaction, and (iii) describe the rights and obligations of the parties to them.

2. Roles of Parties and Attorneys in Business Transactions. Upon completing this course, students will be able to (i) understand the roles played by the borrower and its affiliated companies, and by an agent bank and a syndicated group of lenders, and (ii) understand the professional responsibilities of attorneys for each party and the roles they play in a business transaction, including attorney legal opinions.

3. Finance Law: Upon completing this course, students will be able to state and explain the basic legal principles of Texas finance law, especially the relevant parts of Chapter 9 of the Texas Business and Commerce Code (Article 9 of the UCC), as well as relevant provisions of the Bankruptcy Reform Act of 1978 (as amended). Students will also become familiar with other principles of law often applicable to commercial financing transactions, including choice-of-law statutes and principles, usury law, indemnification law, commercial statutes of frauds, and guaranty and suretyship law.

4. Rationale: Upon completing this course, students will be able to explain and evaluate the purposes or social policy objectives of finance law and other laws and principles affecting the rights and responsibilities of the parties and their attorneys seek to achieve.

(b) Skills.

1. Statutory Analysis: Upon completing this course, students will be able to master a statutory provision relating to personal property financing law through use, as appropriate, of the statutory language, the Official Comments, the legislative history, the statutory purpose and policy, the regulations implementing the provision, and cases interpreting the provision.

2. Legal Analysis and Reasoning: Upon completing this course—involving a moderately complex but realistic set of facts involving a commercial financing of an offshore drilling platform based on expected revenues from a contract for use of the platform, accomplished through a bank lending arrangement with a special-purpose subsidiary of a large publicly held corporation that is prevented under its own borrowing documents from borrowing or guaranteeing the loan amount—students will be able to

- a. identify the possible structures of the transaction;
- b. assist a client in selecting the best transaction structure;

- c. identify legal issues and risks raised by particular structures, e.g., fraudulent transfer issues and compliance with existing contracts; and
- d. advise the client on how to mitigate various risks.

3. Written Communication: Upon completing this course, given a moderately complex but realistic problem—raising issues such as (i) whether the transaction would contravene restrictions in existing contracts of the borrower’s parent company, (ii) whether the transaction documents conform to the parties’ summaries of the terms of the transaction, and (iii) analyzing whether additional documents should be required (for example in this case, a ship mortgage covering the offshore drilling platform, or an additional agreement from the borrower’s parent corporation)—students will be able to compose an objective memorandum analyzing the legal issues presented and predicting the likely judicial or other resolution of each issue. The complexity of the legal issues presented in these problems will be at least comparable to that represented in questions that a first or second year lawyer at a law firm or in a corporate legal department would be expected to address. Students will learn to avoid the “law school exam approach” of listing every issue of which the student is aware, and to draft instead a succinct, logical and persuasive memorandum that sets out clearly the relevant facts, the issue, the conclusion, the reasons supporting the conclusion, and, if applicable, the recommendation. (A client usually wants to know what the lawyer thinks he or she should do.) The student will learn the different needs and expectations of different kinds of recipients of the student’s memorandum.

4. Legal Drafting: By the end of this course, using the information provided in documents called “Monetization of Offshore Facilities” (the “*Course Problem*”) and “Summary of Principal Terms and Conditions” (the “*Term Sheet*”), students should be able to draft agreements that accurately reflect the parties’ intentions and goals regarding a secured loan financing of an offshore drilling platform and its contract revenues. The drafting assignments include writing or editing portions of:

- a. an asset contribution agreement whereby the parent corporation transfers the platform (through an intermediary subsidiary company) to the borrower, and an offshore platform use and operating agreement whereby the borrower’s parent corporation agrees to use and to operate the platform and to pay fees or other amounts to the borrower (as owner of the platform), sufficient to repay the loan;
- b. a loan agreement and other loan documents, including a guaranty agreement, a pledge agreement, a security agreement and financing statements that meet the requirements of Article 9 of the UCC, and a guaranty agreement; and
- c. a third-party attorney opinion letter whereby the borrower’s counsel issues its professional conclusion to the agent bank and the lenders to the effect that the loan documents and the related contracts have been properly authorized and executed by the borrower and its affiliates and are enforceable.

d. Time Management: By the end of this course, students will demonstrate the ability to develop a system and procedures ensuring the efficient allocation of time, effort, and resources and the timely performance and completion of work.

(c) **Values—Professionalism:**

By the end of this course, students will demonstrate a commitment to the values of professionalism, including

1. attaining and maintaining a level of competence in the field of commercial financing and the law of personal property financing, as well as the customary practice and law of attorney opinion letters;
2. increasing the student's knowledge of the law and improving the student's lawyering practice skills; and
3. other aspects of professionalism, including honesty, integrity, reliability, team work, respect for others, hard work and diligence, and professional judgment.

5. ***Required Materials:***

Charles M. Fox, *WORKING WITH CONTRACTS – WHAT LAW SCHOOL DOESN'T TEACH YOU* (2D ED. 2008). The book is available online through the Bloomberg website. The link to our record is here: https://www.bloomberglaw.com/books_treatises/practice/search/results/135db9b1f197a3d436a009e5b3e1dc8b You also can purchase this book. On Amazon.com, the price is \$16.72 in Kindle, \$17.60 in paperback (and less through other Amazon Marketplace sellers). If you do not yet have a Bloomberg Law account, you can set one up for free at <http://www.bloomberglaw.com/activate>.

(a) O'CONNOR'S TX BUSINESS & COMMERCE CODE: (2016-2017) (THE STATUTORY SUPPLEMENT OR "SS"). This book will be provided to you free of charge.

(b) Cases and other printed material will be emailed to you by the Friday prior to the class to which they relate.

6. ***The Law of the Course.***

The Texas UCC in the SS is prima facie the Law of the Course. However, to the extent that non-UCC law (including selected Chapters from the Texas Business and Commerce Code and selected sections of the federal Bankruptcy Code, and usury statutes from the Texas Finance Code) will be provided to the class¹.

¹ We have excluded securities regulation, taxation, and certain other issues because they would greatly complicate the subject and make it very difficult to cover in a single semester. Furthermore, although a number of issues could be

present in any borrowing transaction involving a publicly-held company, they do not arise in significant ways in many

7. ***Evaluation Method (how you will be graded) and Nature of Assignments:***

There will be a two-hour final examination for this course, which will count 40% of your final grade.

You will be expected to be prepared for and to participate in class discussion and drafting sessions. Active participation in class discussions is an important aspect of the learning process in this course, since it greatly facilitates our ability to determine whether we are clearly conveying information about an area which may be new to you and is being approached in this course differently than most of the courses you have taken in law school. Up to 20% of your grade can be based on class participation.

You also will be expected to do a significant amount of detailed work in (i) drafting portions of transactional documentation based on forms that (in part) will be supplied and (in part) you will research or create yourself, (ii) preparing a short memorandum in answer to issues that will be presented to you during this course (and further described below); and (iii) preparing a closing list of documents and of things to be done for the transaction described in this course. The work referred to in this paragraph will collectively count approximately 40% of your grade.

The course is designed to give you at least an introduction to the way transactions are structured, documented and completed in contemporary transactional law practice and to introduce you to some legal and practical issues you are likely to face as transactional lawyers.

Part of the reason for teaching this course is to give you the opportunity in an academic environment to ask questions and raise issues that you might be reluctant to ask in a working environment where client interests (and your reputation for acuity) might be at stake. Please ask questions without fear of looking unsophisticated or less than knowledgeable. Law school doesn't teach transactional work well, at least in part because there are so few narratives that explain transactions (unlike case law, which usually explains the facts). Loan documents and offshore platform use and operating agreements don't read like John Grisham, so please feel free to inquire. We don't expect you to be sophisticated with regard to the transactional world; ***in this class, there are no stupid questions. On the other hand, when we ask you questions, we expect you to attempt to give a thoughtful answer, with your reasons, and to have prepared for class.***

of the transactions you may experience in private practice with privately-held companies where the other issues we will cover are likely to be significant. In any event, you are likely to have or acquire in transactional practice enough of a general understanding of securities and tax issues to know when a securities attorney or tax attorney or accountant needs to be involved. Also due to time constraints, we have excluded some documents of a specialized nature that could be included in an actual transaction as described in our problem, including (1) a ship mortgage in favor of the lenders, covering the offshore drilling platform, (2) a deed of trust or mortgage covering the offshore pipelines from the platform, (3) an interest rate swap that would convert the borrower's net interest expense from a floating rate (which might significantly increase during the seven-year term of the loan) to a fixed rate of interest, and (4) a crude oil or natural gas price hedge that could lock in a range or floor for sales prices. However, we will discuss such arrangements as time permits.

We cannot overemphasize how much active class participation will make the experience better for all of us.

8. *Transaction Document Drafting Assignments:*

All documents to be drafted or revised by students in this course (including those listed below and the written memorandum) must be emailed as Microsoft Word attachments (not pdf copies) to all three professors. If any documents are revisions of documents previously given to you as student versions and forms, send the revisions in “Track Changes” marked from the originally distributed version or form, as the case may be, so that your professors may view your most recent work in both the redline and clean versions.

The documents in which there will be drafting assignments include the following:

(a) An *Asset Contribution Agreement* (“Contribution Agreement”) for the contribution of an offshore drilling platform initially owned by Zenith Oil & Gas, Inc. (“Zenith”) (i) from Zenith to one of its subsidiaries, Orion Holdings LLC (“Orion”), and (ii) from Orion to Aldebaran LLC (“Aldebaran”), a subsidiary of Orion (and therefore an indirect subsidiary of Zenith), as in our deal.

(b) An *Offshore Platform Use Agreement* (“Platform Use Agreement”) between Zenith and Aldebaran, providing for Zenith’s exclusive use of the platform and related pipelines and other assets, for a 12-year term with renewal options, plus an option whereby Zenith could reacquire ownership of the platform after seven years.

(c) A *Credit Agreement* for the \$350,000,000 loan in multiple advances to Aldebaran LLC, a subsidiary of Orion (and therefore an indirect subsidiary of Zenith), as described in the Course Problem and Term Sheet. The borrower is Aldebaran. There will be multiple lenders (“Lenders”), including Gulf Credit Bank, N.A. (“GCB”) which also will serve as agent for all the Lenders under the Credit Agreement (in such agency capacity, the “Agent”). The loan advances are repayable in quarterly installments over a term of seven years and are secured by all Aldebaran’s assets (including the platform and Aldebaran’s rights against Zenith for payments under the Offshore Platform Use Agreement. The loans also will be secured by the equity interests constituting 100% of the ownership of Aldebaran.

(d) A *Guaranty Agreement* whereby Orion, a direct subsidiary of Zenith, guarantees repayment to the Lenders of the Aldebaran loan, as well as the payment and performance of all other obligations of Aldebaran to the Lenders and the Agent.

(e) A *Security Agreement* from Aldebaran, as the Debtor, to the Agent, as the Secured Party, covering all Aldebaran’s personal property rights and assets, including the platform and related property rights and Aldebaran’s rights to Zenith’s payment and performance obligations under the Platform Use Agreement, securing repayment of the \$350,000,000 loan. This document must be precisely coordinated with the Credit Agreement and other documents, as it would be in practice.

(f) A *Pledge Agreement* from Orion, as the Pledgor/Debtor, to the Agent, as the Secured Party, covering all Orion’s ownership interest in its subsidiary, Aldebaran, securing

Orion's obligations under the Guaranty Agreement, the Pledge Agreement, the Contribution Agreement and any other transaction document to which Orion is a party.

(g) ***Attorney's Opinion Letter*** from you as Counsel to Zenith, Orion and Aldebaran, addressed to the Agent and the Lenders, covering such matters as the valid existence of Zenith, Orion, and Aldebaran, the validity and enforceability of the loan and other transaction documents, the creation and perfection of security interests, and other matters customarily addressed in opinion letters.

(h) ***A checklist of closing documents***

1. To be drafted and needed at closing for our financing transaction. (The transaction is described in the Course Problem we will distribute to you.) Due to time constraints, we have excluded some documents of a specialized nature that could be included in an actual transaction, including (1) a Ship Mortgage in favor of the lenders, covering the offshore drilling platform, (2) a deed of trust or mortgage covering the offshore-to-onshore pipelines from the platform, (3) an interest rate swap that would convert Aldebaran's net interest expense from a floating rate (which might significantly increase during the seven-year term of the loan) to a fixed rate of interest, and (4) a crude oil or natural gas price hedge that could lock in a range or floor for sales prices. However, we will discuss such arrangements as time permits.

2. For each document on your checklist you must indicate or describe (1) the source of the document [who prepares or issues it] (e.g., the Secretary of State's Office or the attorney for one of the parties), (2) the parties to each document, (3) a cross-reference to the section of a the Credit Agreement or other loan or transaction document that requires this closing document, and (4) the status of the document (e.g., "finalized" or "execution copy"). You are to add an annotation for each closing document or group of similar closing documents stating the purpose that the document serves in our deal. We want you to demonstrate that you understand who needs to attend or to provide signatures for the closing, and what are the main purposes of the various documents.

The purpose of requiring item (g) is to introduce you to the world of the legal opinion practice, which is seldom addressed in the law school curriculum but which forms a very significant part of (and is virtually a discrete area of specialization) in the practice of commercial law.

9. ***Memorandum Assignment:***

A short, written memorandum is required. In week five, you will be given a pair of questions or issues. You are to select one of the pair and you are to submit a short memorandum on the question or issue selected. The due date for the assignment will be two weeks from its distribution. You will be given two questions/issues, and you will select one question from the pair. One question or issue may be harder than the other, and we will take this into account in the grading. You will be given further instructions at the time of the handout. You will be instructed as to whether the memorandum is to be written from you, as counsel to one of the parties, to your client, or to be written internally within a law firm, to the partner or senior associate who has given

you the assignment. You are to write and to edit carefully. The client or more senior attorney will discount your conscientiousness, credibility and capability if he or she sees bad grammar, typos, or poor logic. State succinctly what the relevant facts are, what the issue is, your conclusion and reasons, and if there are any viable alternatives. If there are viable alternatives, are we following the best approach? You will be graded on both editorial and substantive grounds. Documents with typos, poor grammar, or the like, will result in a lower grade, irrespective of the substance.²

Nature of transaction document drafting tasks assigned to each student. You will be asked to work on certain specific provisions in some or all of the documents listed above in this Syllabus. In most or all cases, you will receive by email or handout in class (1) a document that needs some work in order to correct, to improve or to complete it, and (2) a “tip sheet”, which is actually a list of detailed instructions and guidelines applicable to the specific document. In real practice, the entire document might need work (not just the portions we identify for you to work on), and you would not receive any “tip sheet”. Rather, you would have to figure out for yourself how to prepare or to fix a document, and you would probably have made notes from verbal explanations and instructions given to you by a more senior attorney working on the same transaction.

Most documents will have been prepared by your professors. Once we believe that the document works for our deal, we may refer to the document which we believe to be correct as the “instructor version”. Then we deliberately make a number of changes so that the document has inapplicable, incorrect or incomplete terms. We give you this resulting draft for you to work on, and we sometimes refer to it as the “student version” or “bugged version” of the document. In order to reduce the demands on your time and ours, most of the student versions of documents will have just a few areas requiring your work and your explanation and discussion in document review meetings. We will try to make these work areas focus on the most important points for the document or the transaction, especially where your mastery of those points will help you to understand the transaction and its most material requirements. However, in one or more documents, we may also create various typographical, formatting, and other errors that should be discernible on the face of the document—such as incorrect names of parties, document titles or

² While we won’t grade you in this course as strictly as in real legal practice, here is real life in a high-quality law firm, according to a note from Professor Keyes:

“As a law firm partner, if I read a memorandum from a new lawyer (or any other associate without a great track record), here is what I think. If I see poor grammar, I think the lawyer doesn’t know how to write, is not that smart or well-educated, or is careless, and in any event, I can’t trust the lawyer to be relied upon or to communicate in writing with clients. If I see typos, I have similar thoughts. We are all human, and there may be one or two typos occasionally—but not more and not often (although you are likely to find them in this Syllabus)! As a law partner, in my own mind, a poorly constructed document, irrespective of its substance, cannot grade higher than a “C” even if the document is substantively correct, and is easily a “D” or an “F”. I remember this for years, and am not likely to give any meaningful work to the authoring lawyer ever again.”

You need to do good work, to do it on time, and to work well with other lawyers and clients—including your availability and your returning phone calls and replying to emails promptly. You should also treat the administrative and secretarial staff courteously and well. If you can do these things and also think, reason and in general act like a competent lawyer, your career should be a promising one. As to your competency as a lawyer, the good news is that most or all of your supervisors will not expect you initially to have any experience, and will understand that your skills will increase over time with your gaining experience. It is a purpose of this law school course to give you an introduction to transactional legal practice and a head start on drafting documents and understanding the building blocks and general requirements of common commercial transactions.

dates; or we may create blanks in the document for you to fill in the relevant names, dates, amounts or other information. Our purpose is to focus your attention on the high degree of care you must use with every document in actual practice. Not all the tasks will be of equal difficulty. Some might be regarded as easy for any student putting in a good faith effort; others are not easy but an average student can be successful; and a few may be challenging even for the brightest students. This variety of difficulty is likely to track degrees of difficulty in real practice. In some cases, in lieu of a student version or a bugged document, you may be given a standard or generic form, such as of a security agreement or pledge agreement, which you will need to adapt for use in our particular transaction.

In transactional practice after law school, there are a variety of methods for drafting documents. Sometimes you will draft a document “from scratch”—with nothing to guide you but the needs of the client and the transaction, plus what you have been able to learn from the facts and in discussions with other attorneys and the client. Sometimes you will find or be given a document that had been used in a different deal involving the same client or different parties (sometimes referred to as a “precedent” that could be used as a template from which to prepare the new deal). This document would have to be modified to conform to the new deal and parties. Caution would be in order, because the precedent probably contains some specially negotiated terms favoring one side or the other that should not be a starting point in the new deal. Sometimes you could be given a partial draft of the new deal. For example, another attorney or legal assistant may have started from a form or precedent by inserting the names of the parties and some dollar amounts and other details for the new transaction “to get something started”. You would have to figure out whether those changes were correct and what still needs to be done. At other times, you may find a generic or standard form. It might be a form prepared and used by your law firm, or it might be downloadable from an online source, such as from the Practical Law Company. You will be able to open a free student account from that source. Any such form would then have to be adapted to your new transaction. We will be giving to you several of these different types of drafting assignments, but time constraints are such that it is unlikely that we can give you practice in all of them.. Sometimes we may use a hybrid approach. For example, it is not realistic to expect you to draft an entire contract from scratch at this point in your legal career, but we might ask you to draft a paragraph or section to be inserted in a document.

Review of document drafts: To the extent that time permits, we will review all documents during regularly scheduled class hours. If we are unable to finish reviews, it may be necessary to find a mutually convenient time outside of class to complete reviews of some student documents. We will be working toward achievement of substantive understanding of the documents (why and how their provisions work to bring about identified results or to address identified concerns), AND to teach you the extraordinarily high level of attention to detail (read “quality control”) that is the hallmark of a transactional practice. We will hand out separately a set of General Instructions for Document Preparation.

10. *Students with Disabilities.*

The Americans with Disabilities Act is federal antidiscrimination legislation providing comprehensive civil rights protection for persons with disabilities. The University of Houston Law Center is committed to providing a learning environment meeting the needs of all students; and to that end it will provide reasonable accommodations to students who have physical, learning,

mental, or other disabilities. If you believe you have a disability requiring an accommodation, please contact advise the Instructors as soon as possible.

11. ***Weekly classes and assignments, which will be e-mailed by the Friday prior to the class session to which they relate.***
12. ***Weekly classes and assignments:***

Week 1 (January 19, 2017)—TOPICS: Introduction to the course and to the “monetization” of the Aldebaran floating platform. This is the transaction on which the course will focus. We will introduce, at a block diagram level, the structure of this deal. Discussion of offshore oil and gas drilling platforms and the business of exploring for, producing, transporting and marketing oil and gas and how our deal fits into this business and the related laws. **Read:** *Fox* Chapter 1.

Week 1 Handouts: (i) **this Syllabus;** (ii) **the General Instructions for Document Preparation;** (iii) **the Course Problem;** (iv) **a Chart (transaction diagram);** and (v) **the Term Sheet.** *Study the Course Problem and Term Sheet carefully, and feel free throughout this course to ask questions or suggest additions or modifications to the Term Sheet. These are your roadmaps for all the documents and analysis required for our deal. The Chart will help you visualize the deal. As with most deal charts, “follow the assets and follow the money” to understand the deal. You will continually refer to these documents throughout this course. In a real transaction, the facts that you are told or elicit from your client or others, plus a diagram and term sheet, are likewise in most cases your roadmap to do your job.*

STUDENTS PLEASE NOTE: This Syllabus, the Term Sheet and other documents e-mailed to you or handed out in this course may be revised from time to time. Be on the lookout. We will announce changes in class, or we will try to notify you of any changes or supplements by a group Law Center email.

Week 2 (January 26, 2017)—TOPICS: Continued discussion of the structure for our financing transaction. Discuss some basic issues leading to, and in, the structure of our deal, as well as common issues present in similar deals, to provide a conceptual framework for learning to draft the detailed provisions of the documents. We will assign the class to: (i) consider what are the borrower’s and its parent’s concerns and what are the lenders’ concerns, (ii) why is the deal structured as it is, and (iii) to what extent will the deal structure allay the borrower’s and lenders’ concerns, or raise additional concerns. **To prepare for this class, students must have read and studied: the Week 1 Handouts, as well as *Fox*, Chapters 2 and 4.**

Week 2 Handouts: (i) **samples of a loan or credit agreement, a guaranty agreement, a security agreement, and a pledge agreement;** (ii) **a sample loan commitment letter;** (iii) **a sample of a federal offshore oil and gas lease;** (iv) **a sample ship mortgage;** (v) **a memorandum explaining the difference between contractual and so-called “structural” subordination;** and (vi) **a handout on fraudulent transfers.** (The samples referred to in clause (i) above are for illustrative purposes only, so you will have something to look at while we talk about these

kinds of documents, and they are not the ones you will be expected to revise for our transaction.)

Week 3 (February 2, 2017)—TOPICS: Continue considering details of our transaction structure. Discuss memoranda distributed in Week 2 on fraudulent transfers and subordination. To what extent do they apply to our transaction? Focus on the lenders' concerns and the borrower's concerns and how these are addressed or affected by the deal structure. Discuss the Term Sheet generally. Does it appear sufficiently to describe the parties, transactions and material terms of our deal? Discuss letters of intent, term sheets and commitment letters generally. Discuss the concept of due diligence and its importance. Consider the identity, authority and capacity of agreement parties and how they sign agreements. Can agreements bind non-parties? Introduction to contract building blocks. **To prepare for this class, students must have read and studied: the Week 2 Handouts, as well as Fox, Chapters 3 and 6.**

Week 3 Handouts: (i) Contribution Agreement and Tip Sheet; and (ii) a memorandum intended to assist you in correctly setting up contract signature blocks.

Week 4 (February 9, 2017)—TOPIC: Focus on *the* Contribution Agreement. What are its main purposes? Consider in light of contract building blocks. Does it fit with the Term Sheet? Is it likely to fit with the Platform Use Agreement? How will it relate to the Credit Agreement? **To prepare for this class, students must have read and studied: the Week 3 Handouts, as well as Fox, Chapters 4, 5 and 8.**

Week 4 Handouts: (i) Platform Use Agreement and Tip Sheet; and (ii) excerpts from article on Equipment Leasing-Leveraged Leasing.

Week 5 (February 16, 2017)—TOPIC: Focus on the Platform Use Agreement. What are its main purposes? Consider in light of contract building blocks. Does it fit with the Contribution Agreement and the Term Sheet? How will it relate to the Credit Agreement and Security Agreement? **To prepare for this class, students must have read and studied: the Week 4 Handouts, as well as Fox, Chapter 2.**

Week 5 Handouts: (i) Credit Agreement and Tip Sheet; (ii) Excerpts from Zenith's guaranty and pledge restrictions in its own credit agreements; and (iii) the Memorandum Assignment.

Students turn in drafts of the Contribution Agreement and the Platform Use Agreement.

Week 6 (February 23, 2017)—TOPIC : *Discuss student revisions to the Contribution Agreement and the Platform Use Agreement.* Begin discussion of the Credit Agreement and Promissory Notes. Describe the basic provisions of a contract such as a loan or credit agreement and the common issues such provisions address. Compare the Credit Agreement's contract building blocks to those of the Contribution Agreement and the Platform Use Agreement. Does the Credit Agreement fit with the Term Sheet, and with the Contribution Agreement and Platform Use Agreement? **To prepare for this class, students must have read and studied: the Week 5 Handouts, as well as Fox, Chapter 9.**

Week 6 Handouts: (i) Section 26.02 of Texas Business and Commerce Code; (ii) a sample "Notice of Final Agreement" clause for inclusion in the Credit Agreement, the Guaranty Agreement, the Security Agreement and the Pledge Agreement; (iii) excerpts from the Credit Agreement related to statute of frauds and negation of oral agreements; (iv) memorandum on the Texas loan agreement statute of frauds, (v) case: *John Wood Group USA, Inc. v. Ico, Inc.*, (vi) Chapter 271 of Texas Business and Commerce Code; (vii) Section 15.020 of Texas Civil Practice & Remedies Code; (viii) Statement on Legal Opinions Regarding Indemnification and Exculpation Provisions under Texas Law; (ix) case: *Dresser Industries, Inc. v. Houston Fishing Tools Co.*; and (x) memorandum on Overview of Texas Usury Laws.

Week 7 (March 2, 2017)—TOPIC: Continuation of Credit Agreement discussion. Discuss the cases handed out in week 6. Focus on some of the questions for consideration in the Tip Sheet. (We won't have time for all, and so if you have particular Tip Sheet questions you would like us to cover in class, please let us know before or during class.) Which provisions should go in the Credit Agreement and which in the Guaranty Agreement, the Security Agreement or Pledge Agreement, e.g., insurance? **To prepare for this class, students must have read and studied: the Week 6 Handouts, as well as Fox, Chapter 10.**

Week 7 Handouts: (i) Guaranty Agreement and Tip Sheet; (ii) memoranda on guaranties; (iii) memorandum on Usury Savings Clauses; and (iv) LSTA Model Credit Agreement Provisions.

Students turn in drafts of the Memorandum Assignment.

Week 8 (March 9, 2017)—TOPIC: (1) Finish discussion of the Credit Agreement. (2) Focus on the Guaranty Agreement. Discuss different types of guaranties and the general aspects of guaranty and suretyship law, including defenses available to guarantors, and waivers of such defenses. Consider the type of guaranty we need Orion to sign. Does it fit with the other transaction documents and the Term Sheet? Is a guaranty agreement necessary in this transaction

(i.e., could the Term Sheet and transaction details have omitted the guaranty while relying on Orion's Pledge Agreement)? **To prepare for this class, students must have read and studied: the Week 7 handouts.**

Week 8 Handouts: (i) Security Agreement, (ii) Pledge Agreement, (iii) Security and Pledge Agreement Tip Sheet, (iv) Financing Statement examples, and (v) cases: *Shumway v. Horizon Credit Corp.*, *In re Prudential Ins. Co.*, and *Moayed v. Interstate 35/Chisam Road*.

Week 9 (March 23, 2017)—TOPICS: Discuss the cases handed out in week 8. Focus on the Security Agreement and Pledge Agreement. What are the main purposes of each document? Do they fit with the other transaction documents and the Term Sheet? **To prepare for this class, students must have read and studied: the Week 8 Handouts.**

Students turn in drafts of the Credit Agreement and the Guaranty Agreement.

Week 10 (March 30, 2017)—TOPICS: Discuss the student revisions to the Credit Agreement.

Week 10 Handouts: Drafts of “high-quality” Opinion Letter and of “bugged” Opinion Letter, together with opinion letter study materials and Tip Sheet.

Week 11 (April 6, 2017)—TOPICS: Review of attorney opinion letters and drafting an attorney opinion letter. What sort of opinions will be necessary in this transaction? **To prepare for this class, students must have read and studied: the Week 10 Handouts, as well as the materials referenced in the handouts.**

Students turn in drafts of the Security Agreement, Pledge Agreement and UCC Financing Statements (one set per team).

Week 12 (April 13, 2016)—TOPICS: Discussion of the student revisions to the Security Agreement and the Pledge Agreement. In addition, we will discuss the UCC financing statements.

Students turn in team drafts of the Opinion Letter.

Week 13 (April 20, 2017)—TOPICS: (1) Discussion of the student revisions to the Opinion Letter and (2) various opinion scenarios

Week 14 (April 27, 2017)—TOPICS: (1) Discuss questions or unfinished or open points from class or team meetings on all documents. (2) This is your opportunity to discuss any questions you may have. What is the practice of business law really like? What is the culture of Houston law firms and how does it differ from the New York and other “Big City”? What are the similarities? What should you expect when you enter legal practice? (3) Course Evaluation.

~Focus on the journey as much as the goal.~