

**Syllabus**  
**5241 - Advanced Finance Transaction Drafting**  
**Spring 2018**

**Professor:** Richard A. Ginsburg (Adjunct)

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(917) 428-4195

**Credits:** 2

**Course Area:** Business and Commercial Law

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

**Room:** [tbd]

**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 finance transaction. We will focus on learning how to analyze and draft credit documentation for an 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 taught in this course are contract fundamentals that are applicable to all aspects of a corporate transactional practice.

**Learning Outcomes:** As a result of this course, students will achieve skills that are particularly helpful to first-year lawyers by working through a simulated finance transaction that will encompass the entire semester. The simulated finance transaction will integrate doctrine, theory, skills and legal ethics that are fundamental to a successful legal career. During the semester, students will analyze all stages of a hypothetical acquisition transaction, including considering the often divergent strategies and goals of buyers and sellers, and lenders and borrowers. We will focus on structuring and negotiating varying aspects of the finance transaction. The approach will begin at the finance commitments and term sheet stage at the beginning of a typical private equity-backed acquisition, advance through the negotiation of the credit agreement and related documents, and finish with the closing and required collateral filings. The Professor will utilize his experience in leading global finance transactions and share provisions found in actual loan documentation – demonstrating how those fundamentals have been applied in actual transactions. The course will focus on how secured transactions law, bankruptcy law and corporate law influence the structuring and documenting of a typical secured finance transaction. It will also address often-contested key economic and legal deal terms, as well as common ethical

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<sup>1</sup> Note that there will be a make-up class required due to the Professor's prior travel commitments. There will be **NO** classes on April 9 or 16. In accordance with the Law Center's policies, a make-up class will be required to satisfy the total hours of classroom instruction on Friday, January 26 and Friday, February 23, each at 5.30 pm to 7.30 pm, in the same classroom.

dilemmas. The course will show how a lawyer can add significant value to a transaction by finding, analyzing, and resolving business issues.

**Pre-requisites:** Contracts

**Recommended:** Secured Financing  
Business Organizations

**Helpful:** Bankruptcy  
Mergers & Acquisitions

**Satisfies ABA Experiential Course Requirement:** Yes

**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 readings and distributed materials. The course provides an excellent opportunity for students to develop necessary drafting skills, with evaluation to be by way of completing a number of drafting assignments. These are reflected in the Course Outline above and the Topic Order below. Drafting assignments generally are due by 10.00 pm on the second Friday following class, as specifically shown on the below calendar. Your completed Drafting Assignments must be sent to the Professor by email to both of the above 2 email addresses. **NOTE: ASSIGNMENTS WILL NOT BE ACCEPTED LATE – YOU WILL NOT EARN POINTS FOR ANY ASSIGNMENTS NOT TURNED IN BY 10.00 pm ON THE SECOND FRIDAY FOLLOWING CLASS.**

**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 – 4 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> You must review Handouts 1 and 2 are 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 each of the Drafting Assignments.**

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
<b><u>Learning Objectives:</u></b>	Following completion of this section of the course, students 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 arrange the acquisition and financings of these transactions.	
Text – Chapters 6 & 8	II. <u>The Transaction Structure:</u> a. Coordinating Acquisition and Debt Agreements b. Commitment Letters and Term Sheets c. Types of Credit Agreements d. The Syndication Process	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, fee letter and term sheets, along with other related documents, which are typically the first documents that a finance lawyer negotiates. Following the discussion and review of these agreements students will understand the major types of credit agreements, and be able to 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> a. Parties, Recitals and Definitions b. Borrowing Mechanics, including Payments and Prepayments and Letters of Credit c. Use of Proceeds and Tax Provisions d. Replacement of Lenders and Incremental Facilities e. Representations and Warranties f. Conditions to Closing g. Affirmative and Reporting Covenants h. Negative and Financial Covenants i. Events of Default j. Agency Provisions k. Amendment, Assignments and “Boilerplate” Provisions l. Loan Guarantees	Classes 4 through 9

<sup>3</sup> Due 2/9

<sup>4</sup> Due 2/9

<b>Reading Assignments</b>	<b>Topics</b>	<b>Class Meeting(s)</b>
<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>	Handout 3 – Guaranty Agreement 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 have worked through the entire content of an actual credit agreement. The students will examine and discuss each section of the credit agreement in depth. At the end of this section, students will have experienced the drafting challenges behind these lengthy and complicated agreements, and be able to 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. Security Agreements b. Landlord and Bailee Waivers c. Intercreditor and Subordination Agreements d. Deposit Account Control Agreements e. UCC Financing Statements	10/11
<u>Class 10 Handout:</u> <sup>11</sup>	Handout 4 – Security and Pledge Agreement	
<u>Class 11 Handout &amp; Assignment:</u> <sup>12</sup>	Handout 5 – Intercreditor Agreement Assignment 12 – Deposit Account Control Agreement	

<sup>5</sup> Due 2/16

<sup>6</sup> Due 2/23

<sup>7</sup> Due 3/2

<sup>8</sup> Due 3/9

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

<sup>10</sup> Due 3/23

<sup>11</sup> Handouts 3 and 4 must be reviewed prior to classes 10 and 11, respectively, but neither handout requires any markup.

<sup>12</sup> Assignment 12 is due 3/30.

<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</li> <li>2. Bad Amendments</li> <li>3. Forbearance Agreements</li> </ol> </li> </ol>	12
<u>Class 12 Handouts:</u> <sup>13</sup> 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		
<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 must be reviewed prior to the applicable class, but none of these handouts 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 2.00 pm to 5.00 pm before class every week, and at other times by appointment. 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 any course or assignment questions during the week.

**Class Time:**

Most of the class time will comprise lecture by the Professor along with discussions with students on the topics being 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 course topics in the corporate world. Class time will also be used to review drafting assignments. Students will be expected to participate appropriately.

**Assessment:**

Your grade is based on a semester-long evaluation incorporating all aspects of the course. This will include attendance, class participation, drafting assignments and the final exam.

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 and class participation. Final grade distribution will be subject to any required grading protocols mandated by the Law Center.

**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 Law Center's honor code. The final exam will be distributed on Tuesday, May 1, 2018. It must be turned in at the library no later than 8.00 am on Thursday, May 3, 2018.

**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. See: [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).

# January 2018

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

# February 2018

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



# March 2018

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

# April 2018

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2 Class #12 5.30 pm- 7.30 pm	3	4	5	6	7
8	9 NO CLASS	10	11	12	13	14
15	16 NO CLASS	17	18	19	20	21
22	23 Class #13 5.30 pm- 7.30 pm	24	25	26	27 Last Class Day	28 Reading Day
29 Reading Day	30 Reading Day					

# May 2018

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2 FINAL	3 EXAMS	4	5
6	7	8 FINAL	9 EXAMS	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		