

SYLLABUS
REPRESENTING BORROWERS
IN ENERGY FINANCE
SPRING SEMESTER 2020

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Important: See course eligibility requirements on page 3.

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 (a “top tier” parent with many directly and indirectly owned subsidiaries) will contribute an offshore drilling platform to a newly created, special purpose subsidiary—that 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 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 subsidiary borrower will distribute upstream most of the borrowed funds, so that the top-tier parent can meet the requirements of its own credit agreements and use the funds to cover its costs for the wells. The subsidiary borrower (whose only officers are also officers of the top-tier parent company) 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 subsidiary borrower 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 top-tier parent’s use of the drilling platform. The mid-level subsidiary will pledge its ownership interest in the bottom tier subsidiary and also will guaranty the loan. The loan will be made in multiple advances as the top-tier 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 enrolled in the course, they will be divided into teams - ordinarily of four students each, but sometimes three students and rarely five students, as necessary to include all students. The teams will 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 security agreement covering all the subsidiary borrower’s assets and the related UCC financing statement, 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 security agreement.

(e) **Student Memorandum.** You (as an individual and not as a team member) will be asked to write a short memorandum (two or three double spaced 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 23, 2020), you must 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 Richard 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 a.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 from beginning to end, 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, 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 that those principles 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 paraphrase a statutory provision relating to personal property financing law through use, as appropriate, of the statutory language, the Official Comments or legislative history, statutory purpose and policy, regulations implementing the provision, and cases interpreting the provision.

2. **Legal Analysis and Reasoning:** Upon completing this course—given 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;
- d. advise the client on how to mitigate various risks; and
- e. react creatively, analytically and constructively to unexpected developments that often occur during the course of a transaction.

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, if applicable, 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 in regard to law-related considerations), but the business decision should remain with the client, not the lawyer. 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 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 security agreement and related financing statement 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:***

(a) 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. Please contact the reference librarian to view this book. You also can purchase this book. On Amazon.com, the price recently was \$21.78 in Kindle and \$22.93 in paperback (and less through other Amazon Marketplace sellers). Prices on Amazon may fluctuate daily.

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

(c) 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.

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 discussions of class material and documents your team has drafted. Active participation in class discussions is a very 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 is likely to be new to you and is being approached in this course differently than most of the courses you have taken in law school.

Occasionally, at the beginning of a class you can expect a 5 to 10 minute, closed-book (no computer use) pop quiz covering the assigned material for that class. Also, we may call upon a student to discuss a particular assigned case or statute. Moreover, we expect frequently to break the class down into teams or other small groups to discuss among themselves and then with your professors and the entire class issues arising from the weekly topics, including to ascertain how an author in the assigned reading or how a hand-out case or memorandum addresses the topic. Unlike the pop quizzes, the in-class discussions are on an open-book basis where you will be free to use your computers as needed. The in-class small-group discussions will focus on identifying issues, tasks and questions, and not necessarily on knowing answers—there may not be a single, correct answer. 20% of your grade will be based upon your grade on any pop quizzes and class participation.

You also will be expected to do a significant amount of detailed work in (i) drafting (with your student team) portions of transactional documentation based on forms that (in part) will be supplied and (in part) you will research or create yourself, (ii) preparing (individually and not as a team) a short memorandum in answer to an issue that will be presented to you during this course (and further described below); and (iii) preparing a closing list of documents and of things

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 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) a pledge agreement covering the equity of Aldebaran, (4) 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 (5) 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.

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.

Please note: Except for the final examination, anonymous grading will not be possible in this course. You will be graded in part on how well you follow the instructions in this Syllabus and other documents presented to you during this course. We will lower grades for each day that an assignment is turned in late (without acceptable excuse in the discretion of your professors). In real legal practice, you will have deadlines imposed by clients and other attorneys, or by courts or governmental agencies or the like.

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, where the facts usually are explained). Loan documents and offshore platform use and operating agreements don't read like John Grisham, Harlan Coben or Daniel Silva, so please feel free to inquire. We don't expect you to be sophisticated with regard to the transactional world; so please remember ***in this class, there are no stupid questions.*** ***On the other hand, when we ask you questions during class, we expect you to attempt to give a thoughtful answer, with your reasons, and to have prepared for class.*** 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 written memoranda) must be emailed as Microsoft Word attachments (not pdf copies) to your professors, but there are special instructions below as to team notebooks to be turned in at the end of the course. If any documents are revisions of documents previously given to you as forms, or are revisions of documents that you previously submitted, send the revisions in "Track Changes" marked from the originally distributed forms or from your initially submitted draft, as the case may be, so that your professor 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:

Primary assignment: **On the last day of classes, Thursday, April 23, 2020, your student team (generally, of four students, but sometimes three and rarely, five) must turn in two copies of a notebook, each with a CD or thumb drive containing the same contents, except that Notebook will contain "clean" documents, while the CD or thumb drive will contain "Track**

Changes” versions. LABEL BOTH THE NOTEBOOK AND THE CD WITH THE NAME OF EACH MEMBER OF YOUR TEAM. BE SURE THE CD IS IN A PAPER OR PLASTIC SLEEVE, AND PUT YOUR TEAM’S NAMES ON BOTH THE CD ITSELF AND ON THE SLEEVE. A thumb drive must be labeled likewise to the extent that space permits and must be contained or secured in a manner that it will not become an unidentified small thumb drive separated from the notebook. The notebook must contain the following:

(i) (a) A **checklist of closing documents** to be drafted and needed at closing for our financing transaction. You will be handed out in class a draft of this checklist. Your team needs to check it for completeness and delete any unnecessary parts. It will have been drafted by marking up a different transaction, and your team should delete any inapplicable portions of the list and make additions as necessary. We will discuss the closing list in class.

(b) 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 or law firm 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 transaction document that requires such closing document, and (4) the status of such document (e.g., “finalized” or “execution copy”). **You are to add an annotation (a few words or a sentence) 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 provide signatures for the closing, and what are the main purposes of the various documents.

(ii) An **Asset Contribution Agreement** (“Contribution Agreement”) for the contributions 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.

(iii) 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.

(iv) A **Credit Agreement** for the \$350,000,000 loan in multiple advances to Aldebaran, 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”), that 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 of Aldebaran’s assets (including the platform and Aldebaran’s rights against Zenith for payments under the Platform Use Agreement). The loans also will be secured by the equity interests constituting 100% of the ownership of Aldebaran.

(v) A **Guaranty Agreement** whereby Orion 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.

(vi) A **Security Agreement** from Aldebaran, as the Debtor², to the Agent, as the Secured Party, covering all of 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.

(vii) An **Attorney Opinion Letter** from your team 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 such opinion letters.

(viii) A **list of resource materials** (like a bibliography) that you consulted or could consult for forms, issues, analysis, check lists, and other assistance in future transactional matters. **For each item on the list you must briefly describe its contents or usefulness. This list should include all books and materials listed above for this course, to the extent relevant to the notebook documents listed in (i) through (viii) above, as well as others you locate.**

The purpose of requiring item (vii) 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 from each of you individually and not as a team. In week 5, you will be given a question or an issue. You are to submit a short memorandum on the question or issue. The due date for the assignment will be two weeks from its distribution. You will be given further instructions at the time of the handout. You will be informed 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 edit carefully. The client or more senior attorney will discount your conscientiousness, credibility and capability if he or she sees bad grammar, misspelling, 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. Keep in mind your audience, and you will need to adjust the content and style of your memorandum accordingly. Do not send a letter full of legal jargon and style to a non-lawyer client (nor,

² Remember that under Article 9 of the UCC, the grantor of a security interest is called the "debtor" even though it may actually be a guarantor or other third-party grantor that is not itself the borrower.

usually, to another lawyer). Do not waste time telling the addressee what he or she already knows (unless the letter is to be forwarded by the recipient to others who may not know). Come to a conclusion that does not leave the recipient hanging as to what to do or think. If there are viable alternatives, are we following the best approach? You will be graded equally on both editorial and substantive grounds. Documents with bad grammar, misspelling, or typos will result in a lower grade, irrespective of the substance.³

The written memorandum assignment is designed to fulfill two purposes to better prepare you for future work as an attorney: (1) You will, from your first year in practice, be asked to write memoranda to more experienced attorneys who will have asked you to research some matter or analyze some issue. Much of how the other attorneys see you professionally will depend on your timely responsiveness, your interest and attitude, and the quality of what you write. You must take responsibility for your own work quality, and don't expect to pass off the job of "getting it right" to someone else. Sometimes the requesting attorney hopes to forward your memorandum to the client, if it is written and reasoned well enough. Sometimes, the requesting attorney instructs you to send your memorandum directly to the client. In either case, your work product reflects upon you, and if sent to the client, reflects upon you, the partner or other senior attorney, and your law firm. (2) We really want to be sure you understand the deal in our Course Problem and the related issues and alternatives. If you are quiet or let other team members do most of the speaking—and maybe most of the team's writing—we have very little basis other than the memoranda to know if you are learning what you need to learn. In assigning grades for a team's first drafts and notebook, we can almost guaranty that some team members will receive final course grades above or lower than the grades of other members of the same team—and the reason will be differences in memoranda quality and class participation.

TEAM ASSIGNMENTS: In preparing and submitting your document drafts for review and your final notebooks you must work in teams as described in the Course Description above. You will be given two weeks from the first class to have arranged your own

³ 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 or to draft good documents. 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."

When you enter law practice and throughout your career, 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.

teams. Usually, the first teams to request certain meeting times are the teams who are assigned the requested times. At the end of that two-week period we will arbitrarily divide you into teams if the entire class has not already accomplished this task.

Nature of the drafting tasks assigned to each team. Your team 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 work in order to correct, improve or 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 likely 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 in this course 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 no more than 3 or 4 areas requiring substantive analysis and work by your team and an explanation and discussion in class. We will try to make these work areas focus on some of 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, but you must recognize that in an actual transaction ALL provisions of transaction documents are likely under some circumstances to be important.

In some documents, we may also create typographical, formatting, and other errors that should be discernible on the face of the document—such as incorrect names of parties, document titles or 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 should be of a nature where the average student can be successful; and a few may be challenging even for the brightest of our 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 a published online form of a guaranty agreement, a security agreement or a UCC Financing Statement. It will need to be adapted by your team for use in our particular transaction.

In transactional practice after law school, you will find 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 can actually learn things from the clients or attorneys on the “other side” of a deal, if only you will listen carefully

to their statements. 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). Such a 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. If you represent a large bank, you are likely to find that it requires that you work from its own standardized forms. We will be giving to you, for your team assignments, 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 these types. 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. We may tell you that the student version does not require work in various areas that we specify, where we request only that you look at those areas generally to learn the topics that are addressed. In those instances, those portions of the student version would be identical to our instructor version.

Upsides/Downsides of Team Participation: A principal reason for having you work in teams is that doing so simulates actual practice; law firms staffing major transactions typically organize groups of lawyers to work on them. Another is that it permits students to rotate among the team’s members principal responsibility for particular tasks, such as preparation and subsequent management of particular documents (as might also be the case in practice). The results improve in a collaborative process. Experienced attorneys will tell you that “two heads are better than one.” A risk of working in teams, however, is the temptation, when major responsibility for a particular task lies with another team member, to “let George do it”; we remind you that your grade (relating to the team projects) will be a team grade, and irrespective of which team member has frontline responsibility in a given case, we urge each team member to participate actively in the review and comment process with respect to each documentary assignment before it is handed in. Failure of each team member to do so places at risk not only his or her grade but that of the entire team. ALL TEAM MEMBERS ARE RESPONSIBLE FOR EACH DOCUMENT. YOUR PROFESSORS WILL VIEW A TEAM VERY NEGATIVELY, AND GRADES WILL BE REDUCED, IF IT TURNS OUT THAT A DOCUMENT IS NOT RESPONSIVE TO THE ASSIGNMENT, OR HAS BEEN VERY POORLY DRAFTED, OR ONE TEAM MEMBER DID ALL THE DRAFTING WHILE THE OTHER TEAM MEMBERS HAVE NOT EVEN LOOKED AT IT. In planning your work as the primary drafter of a document, you must allow time for all team members to review and comment on your document, and for yourself to make the necessary improvements. In actual law firm practice, if your name is associated with a document, you are responsible for it. Moreover, in actual law practice where a team is created for a project, we can virtually

guarantee to you that each individual's work is being evaluated by more senior attorneys (as well as by your peers) in a law firm or law department, and often by the clients. "Riding coattails" on someone else is a very bad practice that could be detrimental to a career.

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.

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. ***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.us.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.

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

13. ***Weekly classes and assignments:***

Week 1 (January 16, 2020)—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 Course Problem; and (iii) a Chart (transaction diagram) illustrating the nature of the transactions to occur in our course. These, together with a Summary of Terms (Term Sheet) to be provided in week 5, 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 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 e-mail.

Week 2 (January 23, 2020)—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) a sample of a federal offshore oil and gas lease; (ii) a memorandum explaining the difference between contractual and so-called “structural” subordination; and (iii) a handout on fraudulent transfers.

Week 3 (January 30, 2020)—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. 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) the Contribution Agreement and Tip Sheet; and (ii) a memorandum intended to assist you in correctly setting up contract signature blocks.

Week 4 (February 3, 2020)—TOPICS: Focus on *the* Contribution Agreement. What are its main purposes? Consider in light of contract building blocks. 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) the Platform Use Agreement and Tip Sheet; and (ii) excerpts from article on Equipment Leasing-Leveraged Leasing.

Week 5 (February 13, 2020)—TOPICS: 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? 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) the Term Sheet (containing a summary of terms for our transaction); (ii) a sample form of loan commitment letter reflecting our transaction; (iii) the Credit Agreement and Tip Sheet; (iv) Speech outline of “How to Interpret a Complex Business Contract,” including in Part IV thereof containing excerpts from the existing Big Co (Zenith) credit agreement⁴; and (v) the Memorandum Assignment.

Students turn in drafts of the Contribution Agreement (one per team).

Week 6 (February 20, 2020)—TOPICS: Discuss letters of intent, term sheets and commitment letters generally. Discuss the concept of due diligence and its importance. Begin discussion of the Credit Agreement and of Zenith’s existing credit agreement and trust indenture. 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 and the Security Agreement; (iii) excerpts from the Credit

⁴ You are to assume that “Big Co” is Zenith, and that Zenith’s existing credit agreement and trust indenture restrictions and permissions are identical to the ones for Big Co in Part IV of the speech outline. You will need to consider these permissions and restrictions carefully, because Zenith has to comply with them in being able to do the transactions in our deal. The speech outline tells you an efficient way to proceed in this analysis. Part IV is actually a collection of excerpts from a 125-page credit agreement of Big Co (Zenith). In an actual transaction in your first years as a lawyer, you will likely find yourself having to read actual credit agreements or other potentially restrictive contracts, to identify potentially relevant provisions yourself, and to prepare your own excerpts for further review and study.

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) case: *Dresser Industries, Inc. v. Houston Fishing Tools Co.*; (ix) case: *Shumway v. Horizon Credit Corp.*; (x) case: *In re Prudential Ins. Co.*; (xi) case: *Moayedhi v. Interstate 35/Chisam Road*; and (xii) memorandum on Overview of Texas Usury Laws.

Students turn in drafts of the Platform Use Agreement (one per team).

Week 7 (February 27, 2020)—TOPICS: Continuation of Credit Agreement discussion. Discuss the cases handed out in week 6. Discuss how to interpret the permissions and restrictions applicable to Zenith. Begin discussion of the statutes, cases and other materials 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 or the Security 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) the 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 5, 2020)—TOPICS: (1) Finish discussion of the Credit Agreement and of the restrictions and permissions in Zenith's existing credit agreement and trust indenture. (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 for Orion to sign. Does it fit with the other transaction documents and the Term Sheet? If the lenders also were to receive the benefits of a pledge of the equity of Aldebaran would a guaranty agreement be necessary or desirable in this transaction (*i.e.* could the Term Sheet and transaction details have omitted the guaranty and relied solely on Orion's Pledge Agreement)? **To prepare for this class, students must have read and studied: the Week 7 Handouts.**

Week 8 Handouts: (i) the Security Agreement and Tip Sheet; (ii) the form of Financing Statement; and (iii) a sample ship mortgage.

Students turn in drafts of the Credit Agreement (one per team).

Spring Vacation March 9 - 13, 2020

Week 9 (March 19, 2020)—TOPICS: Focus on the Security Agreement. What is the main purpose of the Security Agreement? Does it 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 Guaranty Agreement (one per team).

Week 10 (March 26, 2020)—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 2, 2020)—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 and the related UCC Financing Statement (one set per team).

Week 12 (April 9, 2020)—TOPICS: Discussion of the student revisions to the Guaranty Agreement and the Security Agreement. In addition, we will discuss the UCC financing statement.

Students turn in team drafts of the Opinion Letter.

Week 13 (April 16, 2020)—TOPICS: (1) Discussion of the student revisions to the Opinion Letter and (2) various opinion scenarios

Week 14 (April 23, 2020)—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? How does the culture

of Houston law firms differ from the New York and other “Big City” law firms? What are the similarities? What should you expect when you enter legal practice? (3) Course Evaluation.

Student notebooks and CDs turned in—each team turns in two copies of a notebook, each with a CD or flash drive containing the same contents plus some additional documents described below. One notebook and CD or flash drive should be delivered to each of Prof. David Keyes, Prof. Richard Dole and Prof. Linda Dole. The Notebook is to contain only clean copies of each of your documents. The CD or flash drive should include redline copies (in “Track Changes”—so we can see on screen either clean or marked versions showing changes from the drafts that were discussed in the team meetings).⁵ The files copied onto the CD or flash drive should be in Microsoft Word (which permits the professor to produce a cumulative redline of the final documents back to the original student versions of documents handed out before the team meetings), and NOT as pdf copies. **PUT THE NAMES OF EACH TEAM MEMBER ON THE NOTEBOOK, THE CD SLEEVE, AND ON THE CD ITSELF (NOT JUST ON THE CD SLEEVE). IF YOU USE A FLASH DRIVE, FIND A WAY TO LABEL IT OR AT LEAST KEEP IT IN A LABELED CONTAINER.**

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

⁵ When you use “Track Changes”, please “Accept All” changes in the drafts discussed at the team meetings, so that the CD or flash drive will show the changes made in response to the comments at the team meetings, as well as any other subsequent improvements that you have made.