

B8332 Real Estate Transactions
Fall 2021
Mondays & Wednesdays 5:40 – 7:10pm
Uris 142

Adjunct Professors

Jennifer Morgan and Karen Holdridge

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Office Hours: by appointment

COURSE/TEACHING ASSISTANTS TBD

Communications from professor and teaching assistants about the course will take place through Canvas. Students should make sure they regularly check for announcements and messaging notifications.

COURSE DESCRIPTION and REQUISITES

B6300 Corporate Finance is a prerequisite. B8306 Capital Markets and B8331 Real Estate Finance are corequisites.

This class is for students who are interested in pursuing a career in any aspect of the commercial real estate industry: investment, development, lending, construction, capital-raising or advisory.

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

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

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

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

The course is divided into four sections:

- Part I: Tax and Financing**
- Part II: Property Interests and Agreements**
- Part III: Capital Structure Transactions**
- Part IV: Distress and Disputes**

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

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

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

REQUIRED COURSE MATERIALS

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

For long-term reference, you might want to consider purchasing or borrowing **George Lefcoe, *Real Estate Transactions*, Sixth Edition (Newark, NJ: LexisNexis, 2009).**

CONNECTION TO THE CORE

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

| Core Course | Connection with Core |
|----------------------|---|
| Corporate Finance | <ol style="list-style-type: none"> 1. Time value of money 2. Opportunity cost of capital 3. Risk |
| Strategy Formulation | <ol style="list-style-type: none"> 1. Creation of value vs. value capture |

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| | 2. Trade-offs |
| LEAD | 1. Ethics 2. Decision making 3. Influence & Persuasion 4. Negotiations |
| Global Economic Environment | 1. Inflation and the business cycle 2. Fiscal policy 3. Role of financial markets in the economy |

Students will be expected to have mastered these concepts and be able to apply them in the course.

CLASSROOM NORMS AND EXPECTATIONS

Students are expected to adhere to CBS Core Culture in this class by being Present, Prepared, and Participating.

No Cell Phones, Laptops, iPads. Please place these items in a safe place where they cannot be touched in class. If you intend to take class notes on a computer during the semester, please let us know at the start of the course. Our guest speakers are volunteering their time and warrant your undivided attention; it is highly distracting—and quite obvious—to your fellow students, your professor, and guest speakers to use these devices in class to conduct your other business and personal relationships.

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

COURSE ROADMAP/SCHEDULE (*schedule and speakers subject to change*)

| Session | Topic(s) | Required Pre-Readings | Assignments Due (Type) |
|--|---|---|------------------------|
| 1 9/8 (W) | Course Overview and Themes | | |
| 2 9/10 MAKEUP CLASS (F) | Due Diligence Guest: Andrea Karp, Black Creek Group | | |
| PART I: PROPERTY INTERESTS AND AGREEMENTS | | | |
| 3 9/13 (M) | Real Estate Purchase and Sale Agreements Guests: Jon Mechanic and Ross Silver, Fried, Frank, Harris, Shriver & Jacobson LLP | Jonathan L. Mechanic, Esq. and Ross Z. Silver, Esq. "Negotiating Purchase and Sale Contracts for Commercial Real Estate," September 2014. Jonathan L. Mechanic, Esq. and Ross Z. Silver, Esq., "Seller's Representations and | |

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| | | Warranties in Purchase Agreements.” (This is attached to “Negotiating Purchase and Sale Contracts...”) | |
| 4 9/15 (W) | Real Estate Purchase and Sale Agreements Guests: Jon Mechanic and Ross Silver, Fried, Frank, Harris, Shriver & Jacobson LLP | <u>Case:</u> Lynne Sagalyn, <i>Zenith Center</i> , CaseWorks, Fall 2009. | Case Assignment 1 |
| 5 9/20 (M) | Ground Leases and Leasehold Transactions Guest: Rob Sorin, Fried, Frank, Harris, Shriver & Jacobson LLP | Required Preparation: Emanuel B. Halper, “Don’t Confuse A Ground Lease With A Ground Lease,” <i>Real Estate Review</i> , fall 1998 (vol 28, no. 3) (4 pages). Howard Peskoe and David Schumeister, “Is That Ground Lease Financeable?” <i>New York Law Journal</i> , October 3, 2006 (2 pages). Of Interest—for discussion in class: Meredith J. Kane, “Negotiating the Mega-Rebuilding Deal at the World Trade Center: The Investors’ Perspective,” <i>Transactions: The Tennessee Journal of Business Law</i> , fall 2008 (5 pages). Reference: Joshua Stein, “How Much Protection Does a Leasehold Mortgagee Need?” <i>The Real Estate Finance Journal</i> , spring 2003 (9 pages). | |
| 6 9/22 (W) | Property Management, Development and Construction Agreements | | |
| 7 9/27 (M) | Space Leases as Transaction Drivers Guest: Glen Weiss, Vornado Realty Trust | Required Preparation: 1290 Avenue of the Americas (2007 purchase and property transformation; term sheet to be distributed week prior) David L. Hoffman, Jr. “Loss factors in New York City commercial market, <i>Real Estate Weekly</i> , August 2, 2006 (3 pages). | |

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| | | <p>Reference: Arthur I. Segel, "Tenant and Landlord Rights, HBS 9-804-161. Rev. July 12, 2005.</p> <p>"Calculating Square-Footage Space: Three Different Approaches Applied in the Manhattan Office.</p> <p>Lynne B. Sagalyn, "Note on Lease Revenues," Columbia Business School MBA Real Estate Program, spring 2008.</p> | |
| <p>8 9/29 (W)</p> | <p>Rezoning and Value Creation Case: <i>SoHo Loft Building</i> Guest: Professor Emerita Lynne Sagalyn</p> | <p>Eric Hadar and Lynne Sagalyn, <i>SoHo Loft Building: Assessing the Entrepreneur's Development Risk</i>, 2012.</p> <p>Lynne B. Sagalyn, "Note on Zoning Regulation (with a focus on New York City)," 2008.</p> | <p>Case Assignment 2</p> |
| PART II: TAX AND FINANCING | | | |
| <p>9 10/4 (M)</p> | Transaction Tax Strategies I | | |
| <p>10 10/6 (W)</p> | Transaction Tax Strategies II | | |
| <p>11 10/11 (M)</p> | Transaction Tax Strategies III | | |
| <p>12 10/13 (W)</p> | Transaction Tax Strategies IV | | |
| <p>13 10/25 (M)</p> | <p>Mortgage Financing Transactions I: Security Interests, Lien Priorities, Lender Rights, Foreclosure</p> | <p>Lynne B. Sagalyn, "Note on the Mortgage as a Security Interest," CaseWorks, Fall 2009.</p> <p>Jennifer Morgan, <i>The Note for Pacific Tower</i>, (case exhibits in separate link), CaseWorks, Spring 2014.</p> | <p>Case Assignment 3</p> |

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| <p>14 10/27 (W)</p> | <p>Mortgage Financing II and Buying Notes</p> | <p>Jennifer M. Morgan, "Common Loan Categories," Kirkland & Ellis, Fall 2012.</p> <p>Mark S. Fawer and Michael J. Waters, "Purchasing Loan Participations: The Devil is in the Details," <i>Real Estate Finance Journal</i>, winter 2009: 38-46.</p> <p><u>3 Columbus Circle Materials:</u> Zeke Turner, "The King of Columbus Circle Has Plans," <i>The New York Observer</i>, December 6, 2010, p. 22.</p> <p>"Plaintiff German American Capital Corporation's Memorandum of Law in Opposition to Devash LLC's Motion for Consolidation, Cancellation and Discharge of Mortgage, Dismissal and Related Relief Pursuant to CPLR 3219." See Point III, pages 9-14.</p> | |
| <p>15 11/3 (W)</p> | <p>Legal Structure of the Capital Stack – In Normal Times and In Distress</p> <p>Guests: Steven Plavin, Blackstone Rick Jones, Dechert, LLC</p> | <p><u>The following Capital Trust documents:</u></p> <ul style="list-style-type: none"> • Crowne Plaza Time Square Restructuring chart (one page) • Special Servicing Business Plan Mortgage (6 pages) • Special Servicing Business Plan Mezzanine A&B (1 page supplement to Mortgage Plan) <p>Modification Term Sheets: Mortgage, Mezzanine A&B, Mezzanine C (6 pages total)</p> | |
| <p>PART III: CAPITAL STRUCTURE TRANSACTIONS</p> | | | |
| <p>16 11/8 (M)</p> | <p>Joint Ventures Part 1</p> | | |
| <p>17 11/10 (W)</p> | <p>Allocating Risk and Reward in a Joint Venture</p> | <p>Lynne B. Sagalyn, <i>The Burnswell JV</i>, CaseWorks. Fall 2009. Revised fall 2010.</p> | <p>Case Assignment 4</p> |

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| 18 11/15 (M) | Joint Ventures Part III | | |
| 19 11/17 (W) | Real Estate Funds/Private Equity Waterfall Structures <u>Guest: David Sherman, BGO</u> | Joseph L. Pagliari, Jr., "An Overview of Fee Structures in Real Estate Funds and Their Implications for Investors," PREA, 2013. | |
| 20 11/19 (F) | Coming to Terms – Negotiating Joint Ventures Workshop | | |
| 21 11/22 (M) | REITs <u>Guest: Matt Lustig, Lazard</u> | | |
| PART IV: DISTRESS AND DISPUTES | | | |
| 22 11/29 (M) | TBD | | |
| 23 12/1 (W) | Underwater Real Estate <u>Guest: Sarah Borders, King & Spalding</u> | | |
| 24 12/6 (M) | Litigation/Arbitration <u>Guest: Janice Mac Avoy, Fried, Frank, Harris, Shriver & Jacobson LLP</u> | | |
| 25 12/8 (W) | Final Class/Summation | | |

METHOD OF EVALUATION

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| Three (3) of Four (4) case assignments* | 55% |
| Take-Home Final (ASSIGNMENT TYPE C) | 30% |
| Class participation** | 15% |

*(we will take the highest 3 grades if all 4 are prepared)

** (preparation of all 4 case assignments will also be weighed in class participation assessment)

ASSIGNMENTS

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

All of your assignment submissions are subject to the CBS Honor Code. Violations of the CBS Honor Code may lead to failing the assignment, failing the course, suspension, and/or dismissal. In order to avoid ambiguity that may lead to unintentional violations of the Honor Code, assignment description types have been standardized and specified below.

| <u>Type</u> | <u>Designation</u> | <u>Grade</u> | <u>Preparation of submission</u> | <u>Discussion of Submission*</u> | <u>Discussion of Concepts**</u> |
|----------------|--|----------------------------------|----------------------------------|--|---------------------------------|
| A | Group Work | Same grade for all group members | By the group | Permitted to discuss (within group) | Permitted |
| B ¹ | Individual w/ Discussions of Concepts and Submission | Individual grade | Individual preparation | Permitted to discuss; sharing solutions or submission files is not allowed | Permitted |
| B ² | Individual w/ Discussions of Concepts Only | Individual grade | Individual preparation | Not permitted to share/discuss solutions or submission | Permitted |
| C | Individual | Individual grade | Individual preparation | Not permitted to share/discuss solutions or submission | Not permitted*** |

* The designated group can be either an assigned study group or a self-selected one.

Case Assignments: Submit three (3) of four (4), including Case Assignment #4 in all cases:

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|--------------|---|--|
| September 15 | Case Assignment #1: <i>Zenith Center</i> | ASSIGNMENT TYPE C |
| September 29 | Case Assignment #2: <i>Soho Loft Building</i> | ASSIGNMENT TYPE C |
| October 25 | Case Assignment #3: <i>The Note for Pacific Tower</i> | ASSIGNMENT TYPE C |
| November 10 | Case Assignment #4: <i>Burnswell JV</i> | ASSIGNMENT TYPE A; REQUIRED OF ALL . GROUP OF 2 ONLY; NO DISCUSSION ACROSS GROUPS |

CASE ASSIGNMENT #1 (Type C): Assume you are an acquisitions officer for a pension fund interested in bidding on Zenith Center. In a short (one-page max) business memo, identify the transaction and due diligence issues you must consider and note any particular issues you want your lawyer to resolve; please explain your reasoning. (*For this assignment, you are not expected to work through financials*)

CASE ASSIGNMENT #2 (Type C):

Understanding the full content and import of the legal documentation of a mortgage financing is crucial for any borrower (mortgagor). With nonrecourse financing, the mortgage lender (mortgagee) clearly has a big stake in using documents that safeguard its security interest.

Assume you are a newly hired associate at a real estate private equity firm and have been asked to draft an abstract of the mortgage documentation in preparation for the firm's bid on the Pacific Tower note. Using case materials and any other materials readily available, address the following questions in your one-to-two page abstract of the mortgage document:

- Which features of the mortgage documents evidence protection of the mortgagee's security interest in Pacific Tower? Please identify specific provisions in the different documents and – in your own language – explain how these provisions act as protections for the lender.
- In the case, the master lease is an agreement between related parties. Is this affiliated transaction a problem for the lender – why or why not? In what way(s) does the master lease appear to be tailored to the mortgagee's needs? The mortgagor's?
- The rider to the master lease provides for a guaranty (see Exhibit E). What is the difference between a guaranty of payment and performance and a guaranty of collection ?
- What is the difference between a payment default and a technical default ? What actions can the Pacific Tower lender take in the case of a payment default? What actions can a lender take (or not) if the mortgagor is in violation of one or more of the loan covenants?
- REOF is being asked to bid on the Note with a minimum of due diligence. What provisions should REOF expect to find in the legal documents that will ensure its rights and remedies as the successor note holder of the \$80-million mortgage?
- Are defaults in the Loan Agreement and the Deed of Trust the same? These documents are supposed to work together; do they?
- What is a strategic default ?
- What type of foreclosure procedure prevails in California? Why is this of potential importance to REOF?

CASE ASSIGNMENT #3 (Type C): Class discussion will be based on this preparation. Address the following questions in a concise (no more than two pages) business memo:

- Why is Devilla interested in purchasing this mortgage note?
- What are the key decisions Devilla must make and the skills needed to execute on the opportunity?
- What are the transactions risks of the business plan?
- Devilla is pursuing two regulatory options in order to complete the conversion to condominiums. What is the significance of securing a rezoning versus a special permit? What is the legal basis of each appeal? How will these approvals shape the acquisition opportunity?

Note: You do not need to work through detailed DCF financials to address the issues in the case for the assignment for Real Estate Transactions, though you might want to rough out some numbers to get a handle on the financial implications of Devilla's business plan. To ballpark an acquisition price, back-of-the-envelope valuation calculations will suffice.

Reference:

New York City Department of City Planning, *New York City Zoning Handbook*, January 2006. Read pages 1-9, 51, 67, 97-99, 123-128.

Gerald Lebovitz and Linda Rzesniowiecki, "The New York Loft Law," forthcoming, *New York Real Property Law Journal*, accessed via SSRN.com/abstract=1539285. Reading useful for future reference.

CASE ASSIGNMENT #4 (GROUP): [Burnswell] (Type A, Group of 2, REQUIRED OF ALL): Class discussion will be based on this preparation. Address the following questions in a concise (no more than three pages) business memo:

- Why does the acquisition of the Burnswell Buildings from MIP make sense? Be sure to discuss the fundamentals of the asset.
- What specific investment risks does the JV face in the 24-month period post acquisition?
- How should interim tenancy and operating shortfalls during the hold period be factored into the financial structure of the investment?
- How should the partnership returns be structured and prioritized? Make sure you explain the rationale for your proposed structure and how it relates to the particulars of the case.

Most importantly, the memo should explain how a deal with MIP would address the following concerns:

- Development capability and RexCapital's doubts about MIP – who will have responsibility for the development process should the partnership decide to go forward with redevelopment?
- Incentive structure for MIP – what role(s) will MIP play in the joint venture in the near term and under any possible redevelopment scenario?
- Timing of the redevelopment decision – how should the JV decide whether to go forward with this option?

Note: Put yourself in each position as you think through the case problem. This is not an exercise in running DCFs, however, you do need to make general sense of the market context and financials given in the case.

Please ignore the guidance in the case on the 2-part structure.

ATTENDANCE POLICY

Attendance is required at all sessions and for the duration of the session. Students should reach out to the instructors or CA regarding excused absences (for religious observances; personal, medical, and family emergencies; military service; court appearances such as jury duty). Unexcused absences and missing more than two classes (other than for excused absences) will affect your course grade.

Class starts at 5:40pm. Arriving late disrupts the class and is disrespectful to everyone who has arrived on time, especially our guests.

INCLUSION, ACCOMMODATIONS, AND SUPPORT FOR STUDENTS

At Columbia Business School, we believe that diversity strengthens any community or business model and brings it greater success. Columbia Business School is committed to providing all students with the equal opportunity to thrive in the classroom by providing a learning, living, and working environment free from discrimination, harassment, and bias on the basis of gender, sexual orientation, race, ethnicity, socioeconomic status, or ability.

Columbia Business School will make reasonable accommodations for persons with documented disabilities. Students are encouraged to contact the Columbia University's Office of Disability Services for information about registration. Students seeking accommodation in the classroom may obtain information on the services offered by Columbia University's Office of Disability Services online at www.health.columbia.edu/docs/services/ods/index.html or by contacting (212) 854-2388.

Columbia Business School is committed to maintaining a safe environment for students, staff and faculty. Because of this commitment and because of federal and state regulations, we must advise you that if you tell any of your instructors about sexual harassment or gender-based misconduct involving a member of the campus community, your instructor is required to report this information to a Title IX Coordinator. They will treat this information as private, but will need to follow up with you and possibly look into the matter. Counseling and Psychological Services, the Office of the University Chaplain, and the Ombuds Office for Gender-Based Misconduct are confidential resources available for students, staff and faculty. "Gender-based misconduct" includes sexual assault, stalking, sexual harassment, dating violence, domestic violence, sexual exploitation, and gender-based harassment. For more information, see <http://sexualrespect.columbia.edu/gender-based-misconduct-policy-students>.