Developing and Financing Infrastructure Projects
LL.M Course 847-09 | 3 credit hours

SYLLABUS

Course Description:

This course will explore the legal techniques and financial issues involved in developing and financing domestic and international infrastructure projects. Selected case studies will be the focus of many class discussions. Class size will be limited to 16 students.

Class discussions will include the legal, business, regulatory, political, environmental, ethical and dispute resolution challenges commonly arising in sophisticated project development and finance transactions. Coverage will include practical discussions on how projects are developed; actual documentation used for developing, constructing and financing projects; sources of project financing (including multilateral entities, banks and capital markets); corruption issues; negotiating techniques developed to achieve desired objectives; and managing troubled projects. The course will address unique aspects of energy projects, sports and entertainment facilities, telecom facilities and toll roads, among other types of projects.

The course is based on four major themes and aims to teach students to analyze issues in light of each theme: (i) allocation of risk, (ii) non-recourse or limited recourse arrangements, (iii) effective contract structures, and (iv) financeability. The class will focus on both theory (risk analysis and mitigation) and practice (critiquing and drafting agreements). Both the written assignment and the workshop will focus on practical matters relating to practice issues.

Classes will be a mix of lectures and discussions. One class session will be a Special Offsite Negotiation Workshop, on a Saturday, as specified below under “Course Requirements.”

All students should note that under the revised course withdrawal rules, you may withdraw from this class with an Academic Advisor’s permission only up until the first day on which you submit work for grading. That date is specified in the schedule below. Please refer to the Student Handbook for more information about requesting to withdraw from a course after add/drop.

Course Requirements:

- One short writing assignment (three pages, double-spaced, maximum) will account for 25% of the total grade. The assignment will be part of the course’s focus on practice methodologies, and will involve the review of a proposed project agreement or other document and the preparation of a short memorandum of advice to a client, or something similar.
- Class presentations (see instructions below) will account for 5% of the total grade.
- There will be a half-day Special Offsite Negotiation Workshop on a Saturday, as indicated in the schedule below, for which the class will be divided into groups and will negotiate a financing term sheet for a model transaction. This activity will also be part of the course’s focus on practice methodologies and will account for 15% of the total grade. Participation and attendance at this event are mandatory.
- Class participation is an important part of the course. Students are expected to attend all classes (unless excused), read the materials before class and participate actively in the general class discussion, which will account for 5% of the total grade.
• The final examination will be in-class, lasting three hours, open-book. It will account for 50% of the total grade.

Class Presentation Instructions:

• Each student will be asked to make one short (no more than five minutes) oral presentation to the class that will analyze one of the case studies.
• Each presentation should cover, as applicable, the following:
  o answers to the Questions posed at the end of the case study;
  o analysis of the success and/or failure of the project, and the positive and negative features of the transaction, including suggestions as to more effective ways to deal with the relevant issues;
  o explanation of significant legal, commercial and policy issues;
  o challenges encountered by the project sponsors and other key participants; and
  o risk identification, allocation and mitigation.
• Please avoid presenting a summary of the case study, which students are expected to have read on their own prior to class.
• Class presentations will be assigned at the second class. They are also noted in the descriptions of each class set forth below in this syllabus.

Readings:

• The required course textbook is:
  

Additional case studies, such as Henry A. Davis, ed., *Project Finance: Practical Case Studies, Second Edition* (two volume set: Volume I – Water and Power, and Volume II – Resources and Infrastructure), and other materials not in the above publication will be provided.

Certain of the readings referred to are from Practical Law Company, and are available without any charge to law students who sign up for access. Please go to the Law School page at [http://us.practicallaw.com/about/lawstudent](http://us.practicallaw.com/about/lawstudent) and sign up to get free access to the specified materials which are indicated as “Additional Materials” in this syllabus.

Regular Class Meetings:

• Thursdays, 7:55 – 9:55 p.m.
• In case there is a need to reschedule a class for snow or any other reason, please reserve the date specified at the end of this syllabus.

Location: Room 337, McDonough Building, 600 New Jersey Avenue, NW
CLASS 1
Thursday, January 19, 2017

INTRODUCTION TO PROJECT FINANCE

Yescombe Chapter 2: What is Project Finance? [pp. 5-27]


Case Study: Davis Volume I: Introduction (partial) [pp. 1-12]

Additional Materials: Practical Law Company, Project Finance & Development,
• Practice Notes – Advantages and Disadvantages of Project Financing [Course Doc. 1B]

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CLASS 2
Thursday, January 26, 2017

PROJECT RISKS I: MACROECONOMIC RISKS / REGULATORY AND POLITICAL RISKS / POLITICAL RISK INSURANCE AND CORRUPTION

Yescombe Chapter 10: Macroeconomic Risks [pp. 257-294]
Yescombe Chapter 11: Regulatory and Political Risks [pp. 295-311]

Case Study:
• Davis, Volume I, Chapter 10: CBK, the Philippines (power) [pp. 136-143] [Presentation #1 – ______________]

Additional Materials: Practical Law Company, Project Finance & Development,
• Practice Notes – Advantages and Disadvantages of Project Financing
• Checklists – Project Finance Checklist
• Practice Notes – Political Risk Insurance: Is it Necessary?
• Article – Protecting Overseas Investments: What Are the Options?

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NO CLASS
Thursday, February 2, 2017
Special Day Off
CLASS 3
Thursday, February 9, 2017

PROJECT RISKS II: COMMERCIAL RISKS

Yescombe Chapter 9: Commercial Risks [pp. 197-256]

Case Studies:
- Davis, Volume II, Chapter 4: PYCSA, Panama (toll road) [pp. 54-69] [Presentation #2 – ____________]
- Davis, Volume I, Chapter 11: Quezon Power, the Philippines (power) [pp. 144-170] [Presentation #3 – ____________]

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CLASS 4
Thursday, February 16, 2017

PROJECT OWNERSHIP ARRANGEMENTS AND PUBLIC PROCUREMENT

Yescombe Chapter 3: Project Development and Management [pp. 29-60]

Case Study:
“Intergen and the Quezon Power Project, Building Infrastructure in Emerging Markets,” Harvard Business School Case Study #9-799-057, 8/20/00 (power) [Course Doc. 4A] [Presentation #4 – ____________]

Sample Documents:
- Sample Partnership Agreement [Course Doc. 4B]
- Checklist of Issues for a Joint Venture Agreement [Course Doc. 4C]
- Sample Joint Development Agreement [Course Doc. 4D]

Assignment: Writing assignment distributed

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NO CLASS
Thursday, February 23, 2017
[Monday Classes meet instead of Thursday Classes]

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CLASS 5
Thursday, March 2, 2017

FINANCING AGREEMENTS

Yescombe Chapter 14: Project-Finance Loan Documentation [pp. 367-421]
Yescombe Chapter 8: Direct Agreements (§8.11 only) [pp. 194-196]

Case Study:
- Davis, Volume I, Chapter 14: Calpine, United States (power) [pp. 214-225] [Presentation #5 – ____________]

Sample Document: American Bar Association, Committee on Project Finance, Model Consent to Assignment with Commentary, [Course Doc. 5A]
Assignment:  
- Writing assignment due, both electronically and hard copy in class.

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CLASS 6  
Thursday, March 9, 2017
LENDERS AND FINANCIAL STRUCTURING

Yescombe Chapter 4: The Project-Finance Markets [pp. 61-77]  
Yescombe Chapter 12: Financial Structuring [pp. 313-343]  
Yescombe Chapter 5: Working with Lenders [pp. 79-101]  
Yescombe Chapter 16: Export-Credit Agencies and Development-Finance Institutions [pp. 443-480]  

Case Study:  
- Davis, Volume I, Chapter 3: TermoEmcali, Colombia (power) [pp. 45-68] [Presentation #6 – ____________]

Sample Document:  
Commitment Letter Outline [Course Doc. 6A]  

Additional Materials:  
Practical Law Company, Project Finance & Development,  
- Practice Note: Overview – Term Sheets Overview: Lending  
- Practice Notes – Project Finance: Sources of Available Financing  
- Practice Notes – The Equator Principles  

Assignment:  
- Instructions for Negotiations Workshop distributed. Designation of Borrower and Lender Groups.

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NO CLASS  
Thursday, March 16, 2017 – Spring Break

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CLASS 7  
Thursday, March 23, 2017
TROUBLED PROJECTS

Case Studies:  
- Davis, Volume I, Chapter 6: PT Paiton Energy, Indonesia (power) [pp. 94-112] [Presentation #7– ____________]
- Davis, Volume I, Chapter 5: Dabhol Power Company, India (power) [pp. 78-93] [Presentation #8 – ____________]
- “Enron Development Corporation: The Dabhol Power Project ‘B,’” Harvard Business School Case Study #9-596-099, July 6, 1998 [Course Doc. 7A] [Presentation #9 – ____________]
CLASS 8  
Thursday, March 30, 2017

PROJECT AGREEMENTS

Yescombe Chapter 6: Types of Project Agreement [pp. 103-127]  
Yescombe Chapter 7: Common Aspects of Project Agreements [pp. 129-161]  
Yescombe Chapter 8: Subcontracts and Other Related Agreements (§8.1 - §8.10 only) [pp. 163-194]

Case Studies:  
- Davis, Volume I, Chapter 15: Cacecan Water & Energy Company, Philippines (water and power) [pp. 226-237] [Presentation #10 – _____]
  - Davis, Volume II, Chapter 19: Oleoducto Central SA (Ocensa), Columbia (pipeline) [pp. 246-258] [Presentation #11 – _____________]

Additional Materials:  
Practical Law Company, Project Finance & Development,  
- Practice Notes – Negotiating Concession Agreements for Public Infrastructure Projects  
- Practice Notes – Understanding Project Finance Construction Contracts

Sample Documents:  
- Sample EPC Agreement [Course Doc. 8A]  
  - Sample PPAs [Course Docs. 8B, 8C and 8D]

CLASSES 9 and 10  
Saturday, April 1, 2017

SPECIAL OFFSITE NEGOTIATION WORKSHOP

8:00 AM – 2:00 PM  
Haynes and Boone, LLP  
800 17th Street  
Suite 500  
Washington, DC  20006

SPECIAL DAY OFF - NO CLASS  
Thursday, April 6, 2017
CLASS 11
Thursday, April 13, 2017

FINANCING SPORTS FACILITIES

Case Study:
- FedEx Field (formerly Jack Kent Cooke Stadium), Washington, DC, Home of the NFL Washington Redskins [Course Doc. 11A]

Sample Documents:
- Debt Term Sheet for Minnesota Vikings Stadium [Course Doc. 11B]
- Baseball Stadium Agreement, Washington, D.C., Home of the MLB Washington Nationals [Course Doc. 11C]
- Project Financed Stadium and Stadium Financing [PowerPoint presentation] [Course Doc. 11D]
- Stadium Finance Structure Case Study [Course Doc. 11E]

Article: Cobb County and the Braves

CLASS 12
Thursday, April 20, 2017

PROJECT SECTORS I: RENEWABLES AND REFINERIES

Case Study:
- Davis, Volume II, Chapter 20, Compañía Mega, Argentina (refinery) [pp. 259-285] [Presentation #12 – ____________]

Sample Document:
- Clendenen, Thurston, et al., Coal, Nuclear, Natural Gas, Oil or Renewable: Which Type of Power Plant Should We Build, Case Research Journal (2010) [Presentation #13 – ____________] [Course Doc. 12A]

Additional Materials:
- Practical Law Company, Project Finance & Development,
  • Practice Notes – Solar Energy Project Development Issues: Preliminary Considerations
  • Practice Notes – Understanding Renewable Energy: Solar
  • Practice Notes – Understanding Renewable Energy: Wind
  • Practice Notes – Wind Energy Project Development Issues: Preliminary Considerations
  • Practice Notes – Renewable Energy: Overview (US)
  • Practice Notes – Update on the US's "All of the Above" Energy Strategy

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CLASS 13  
Thursday, April 27, 2017  

PROJECT SECTORS II: PPP, TOLLROADS, AIRPORTS, TELECOM  

Case Studies:  
- Davis, Volume II, Chapter 5: A2 Motorway, Poland (toll road) [pp. 70-75] [Presentation #14 – ____________]
- Davis, Volume II, Chapter 6: SCL terminal Aéreo Santiago SA, Chile (airport) [pp. 76-84] [Presentation #15 – ____________]
- Davis, Volume II, Chapter 8: Ancel, Uruguay (telecommunications) [pp. 91-103] [Presentation #16 – ____________]

Additional Materials:  
- Practical Law Company, Project Finance & Development,  
  - Practice Notes – Public Private Partnerships: Issues and Considerations  
  - Articles – US PPPs: Trends and Developments from the Second Quarter of 2012 and Beyond  
  - Articles – US PPPs: Has the Long Awaited Surge Arrived?

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POSSIBLE MAKE-UP CLASS (IF NEEDED; PLEASE RESERVE DATE)  
Monday, May 1, 2017  
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FINAL EXAM  
May __________, 2017 [TBD]  
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