Developing and Financing Infrastructure Projects

LL.M Course 847-10 | 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 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, 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.

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 30% 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 10% of the total grade.
- 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 10% 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:
• 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;
• explanation of significant legal, commercial and policy issues;
• challenges encountered by the project sponsors and other key participants; and
  • risk identification, allocation and mitigation.
  • **Students should 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 textbooks are:


Additional case studies and other materials not in the above books 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.
Plagiarism Policy: Please note Georgetown University Law Center’s plagiarism policy set forth in the Student Handbook.

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Regular Class Meetings and Location:

Wednesdays, 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 dates specified in the list below.
Room 5020, Hotung Building, 600 New Jersey Avenue, NW

Office Hours:

By appointment.

Professor Glaser

Professor Khosharay:

CLASS 1

Wednesday, January 18, 2017

INTRODUCTION TO PROJECT FINANCE

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

Davis Volume I: Introduction (part) [pp. 1-12]
CLASS 2

Wednesday, January 25, 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 Studies:  Davis, Volume I, Chapter 5: Dabhol Power Company, India (power) [pp. 78-93] [Presentation #1 – ]

Davis, Volume I, Chapter 10: CBK, the Philippines (power) [pp. 136-143] [Presentation #2 – ]
CLASS 3

Wednesday, February 1, 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 #3 – ]

Davis, Volume I, Chapter 11: Quezon Power, the Philippines (power) [pp. 144-170] [Presentation #4 – ]
CLASS 4

Wednesday, February 8, 2017

PROJECT OWNERSHIP ARRANGEMENTS

Yescombe Chapter 3: Project Development and Management [pp. 29-44]

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 #5 – ]

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]
CLASS 5

Wednesday, February 15, 2017

PROJECT AGREEMENTS: SECURING REVENUE STREAMS AND PROJECT INPUTS

Yescombe Chapter 6: Types of Project Agreement ($6.1 - 6.3 only) [pp. 103-114]

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. 163-193]

Case Study: Davis, Volume I, Chapter 15: Casecnan Water & Energy Company, Philippines (water and power) [pp. 226-237] [Presentation #6 – ]

Additional Materials: Practical Law Company, Project Finance & Development,
• Practice Notes – Practical Considerations for Drafting Construction Contracts: Force Majeure Provisions

Sample Documents:  
  • Sample EPC Agreement [Course Doc. 5A]  
  • Sample PPAs [Course Docs. 5B, 5C and 5D]

Assignment:  
  Distribution of writing assignment

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NO CLASS

FACULTY RETREAT

Wednesday, February 22, 2017

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CLASS 6

Wednesday, March 1, 2017
LENDERS AND FINANCIAL MARKETS

Yescombe Chapter 4: The Project-Finance Markets [pp. 61-77]
Yescombe Chapter 5: Working with Lenders [pp. 79-101]

Case Study: Davis, Volume I, Chapter 3: TermoEmcali, Colombia (power) [pp. 45-68] [Presentation #7 – ]

Additional Materials: Practical Law Company, Project Finance & Development,

- Practice Note: Overview – Term Sheets Overview: Lending

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

Assignment: Writing assignment due, both electronically and hard copy in class
CLASS 7

Wednesday, March 8, 2017

FINANCIAL STRUCTURING AND THE FINANCIAL MODEL

Yescombe Chapter 12: Financial Structuring [pp. 313-343]

Case Study: Davis, Volume I, Chapter 14: Calpine, United States (power) [pp. 214-225] [Presentation #8 –]

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NO CLASS

RECESS WEEK

Wednesday, March 15, 2017

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CLASS 8

Wednesday, March 22, 2017

FINANCING AGREEMENTS

Yescombe Chapter 14: Project-Finance Loan Documentation [pp. 367-421]

Yescombe Chapter 8: Subcontracts and Other Related Agreements (§8.11 only) [pp. 194 – 196]

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Case Study: Davis, Volume II, Chapter 19: Oleoducto Central SA (Ocensa), Columbia (pipeline) [pp. 246-258][Presentation #9 – ]

Sample Documents: American Bar Association, Committee on Project Finance, Model Consent to Assignment with Commentary, [Course Doc. 8A]

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CLASS 9
Wednesday, March 29, 2017

SOURCES OF FINANCING / CREDIT ENHANCEMENT

Yescombe Chapter 16: Export-Credit Agencies and Development-Finance Institutions [pp. 443-480]

Case Study: Davis, Volume I, Chapter 6: PT Paiton Energy, Indonesia (power) [pp. 94-112] [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 – Project Finance: Sources of Available Financing
- Practice Notes – The Equator Principles
- Article – Protecting Overseas Investments: What Are the Options?

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CLASS 10

Wednesday, April 5, 2017
PUBLIC-PRIVATE PARTNERSHIPS AND PUBLIC PROCUREMENT

Yescombe Chapter 3: Public Procurement (§3.7 only) [pp. 45 - 60]
Yescombe Chapter 6: Types of Project Agreement (§6.4 and §6.5 only) [pp. 115-127]

Case Study: Davis, Volume II, Chapter 11: Integrated Accommodation Services for GCHQ [pp. 136 – 155][Presentation #12 – ]

Additional Materials: Practical Law Company, Project Finance & Development,
• Practice Notes – Negotiating Concession Agreements for Public Infrastructure Projects
• 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?

CLASS 11
Wednesday, April 12, 2017

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PROJECT SECTORS - I: PPP, TOLLROADS, AIRPORTS, PORTS, TELECOMMUNICATIONS

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Case Studies: Davis, Volume II, Chapter 5: A2 Motorway, Poland (toll road) [pp. 70-75] [Presentation #13 – ]

   Davis, Volume II, Chapter 6: SCL terminal Aéreo Santiago SA, Chile (airport) [pp. 76-84][Presentation #14 – ]

   Davis, Volume II, Chapter 8: Ancel, Uruguay (telecommunications) [pp. 91-103] [Presentation #15 – ]

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CLASS 12

Wednesday, April 19, 2017

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PROJECT SECTORS - II: RENEWABLES

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Case Studies: Clendenen, Thurston, et al., Coal, Nuclear, Natural Gas, Oil or Renewable: Which Type of Power Plant Should We Build, Case Research Journal (2010) [Presentation #16 – TBD] [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

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CLASS 13

Wednesday, April 26, 2017

PROJECT RESTRUCTURING AND MARKET TRENDS
Yescombe Chapter 17: Recent Market Developments and Prospects for Project Finance [pp. 481-497]


Additional Materials: Practical Law Company, Project Finance & Development,

- Articles – US Project Finance Round-Up: Mid-year 2015
- Articles – US Project Finance: Key Developments and Trends from 2014 and the Outlook for 2015
- Updates – The Changing US Electricity Market: The Role of Natural Gas and Renewable Sources
FINAL EXAM


6:00 p.m.