SYLLABUS

Course Description:

Governments throughout the United States and globally are faced with acute demands for new or renewed infrastructure (e.g., highways, railways, courthouses, ports, bridges), but frequently the means and specialized expertise necessary to undertake and operate these critical facilities are deficient. Through public-private partnerships (“PPPs”), private actors can provide the capital necessary for public infrastructure, as well the expertise to construct and operate it. Properly structured, such transactions can offer significant cost savings of the life of the assets as well as significantly shorter development and construction periods (“speed to market”).

Drawing on the lessons and techniques developed for project finance, PPPs represent innovative cooperative arrangements between governments and private entities to provide such infrastructure. Through readings, class discussions and case studies, the course will equip students with the fundamentals needed to evaluate, structure and negotiate the legal aspects of PPP formation, implementation and management. Specifically, the course will:

(i) consider the necessary conditions for, and benefits in, the delivery of public services through private sector involvement;
(ii) evaluate the legal framework needed to the implement PPPs;
(iii) analyze the different types of PPP arrangements (such as, build-own-operate; buy-build-operate and build-operate-transfer) and key players involved;
(iv) examine financial and legal structuring issues; and
(v) address common PPP risks and mitigation techniques, while taking into account emerging sovereignty concerns.

Course Requirements:

- Class presentations (see instructions below) will account for 15% 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 75% of the total grade.
Class Presentation Instructions:

- Each student will be asked to make one short (no more than five minutes) presentation to the class that will analyze one of the case studies.

- Each presentation should cover, to the extent possible, 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.

- Please avoid presenting a summary of the case study, which students are expected to have read on their own prior to class.

- Please review the case studies noted below and pick your top three. At the second class, we will assign you one of your top three choices.

Readings:

- The required course textbooks are:

The Davis volumes, Project Finance: Practical Case Studies, Second Edition, are available for Xeroxing through the Law Library.

Additional case studies and other materials not in the above books are available on-line or 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 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.

Regular Class Meetings: • Wednesdays, 7:55 – 9:55 p.m.

Location: Room 5020, Hotung Building, 600 New Jersey Avenue, NW
Office Hours:

We will be available for discussion by prior appointment. We can be reached at:

Professor Khosharay:

Professor Glaser
CLASS 1  
Wednesday, January 20, 2016

INTRODUCTION TO PUBLIC-PRIVATE PARTNERSHIPS

Yescombe Chapter 1: What are Public-Private Partnerships? [pp. 1-14]  
Yescombe Chapter 8: Project Finance and PPPs [pp. 113-123]

Additional Materials:  
Practical Law Company, Project Finance & Development,  
• Checklists – Project Finance Checklist

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CLASS 2  
Wednesday, January 27, 2016

RISK EVALUATION, TRANSFER AND MITIGATION I

Yescombe Chapter 14: Risk Evaluation and Transfer [pp. 242 – 257]

Additional Materials:  

Case Study:  
Davis, Volume I, Chapter 15: Casecnan Water & Energy Company, Philippines (water and power) [pp. 226-237] [Presentation #1 – ]

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CLASS 3  
Wednesday, February 3, 2016

RISK EVALUATION, TRANSFER AND MITIGATION II

Yescombe Chapter 14: Risk Evaluation and Transfer [pp. 257 – 269]

Case Studies:  
Davis, Volume II, Chapter 17 and 18: Centragas, Colombia (pipeline) [pp. 226-236] [Presentation #2 - ]

Davis, Volume II, Chapter 18: TransGas, Colombia (pipeline) [pp. 237-245] [Presentation #3 - ]

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CLASS 4  
Wednesday, February 10, 2016

THE CASES FOR AND AGAINST PUBLIC-PRIVATE PARTNERSHIPS

Yescombe Chapter 2: PPPs – For and Against [pp. 15-28]
Additional Materials: Practical Law Company, Project Finance & Development,
- Practice Notes – Public Private Partnerships: Issues and Considerations
- Practice Notes – Advantages and Disadvantages of Project Financing

Case Study: Davis, Volume II, Chapter 4: PYCSA, Panama (toll road) [pp. 54 – 69]
[Presentation #4 - ]

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NO CLASS
FACULTY RETREAT
Wednesday, February 17, 2016

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CLASS 5
Wednesday, February 24, 2016

INVESTMENT DECISION-MAKING I

Yescombe Chapter 4: Cash Flow and Investment Analysis [pp. 48 – 57]
Yescombe Chapter 5: The Public – Sector Investment Decision [pp. 58 – 68]


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CLASS 6
Wednesday, March 2, 2016

INVESTMENT DECISION–MAKING II

Yescombe Chapter 7: The Private – Sector Investor’s Perspective [pp. 96 – 112]


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NO CLASS
RECESS WEEK
Wednesday, March 9, 2016
CLASS 7
Wednesday, March 16, 2016

PUBLIC PROCUREMENT AND CONTRACT FORMATION

Yescombe Chapter 6: Public-Sector Procurement and Contract Management [pp. 74-95]

Case Studies:
- Davis, Volume I, Chapter 7: Samalayuca II, Mexico (independent power project) [Presentation #8 - ] pp. 113-123
- Davis, Volume II, Chapter 11: Integrated Accommodation Services for GCHQ, UK (private finance initiative construction and operation) [Presentation #9 - ] pp. 136-154

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

Sample Document: Sample Request for Proposals

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CLASS 8
Wednesday, March 23, 2016

PPP AGREEMENTS: GETTING THE BENEFIT OF THE BARGAIN

Yescombe Chapter 13: Service Fee Mechanism [pp. 223 – 241]

Case Study:
- Davis, Volume II, Chapter 1: Highway 407, Canada (toll road) [pp.29-40] [Presentation #10 - ]
  The Melbourne City Link, Kennedy School of Government Case Program, CR14-99-1539.0 (1999) [Presentation #11 - ]

Sample Document: Sample PPP/Concession Agreement


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CLASS 9
Wednesday, March 30, 2016

CHANGED CIRCUMSTANCES AND TERMINATION EVENTS

Yescombe Chapter 15 Change in Circumstances and Termination: [pp. 270-288 only]

Case Study: Davis, Volume II, Chapter 6: SCL Terminal Aéreo Santiago SA, Chile (airports) [pp. 76-84] [Presentation #12 - ]

CLASS 10
Wednesday, April 6, 2016

FINANCIAL STRUCTURING I

Yescombe Chapter 9: Private-Sector Financing [pp. 124-142]
Yescombe Chapter 10: Financial Structuring: [pp. 143-169]

Case Studies: Davis, Volume I, Chapter 3: TermoEmcali, Colombia (power) [pp. 45-68] [Presentation #13 - ]

Sample Document: Commitment Letter Outline

Additional Materials: Practical Law Company, Project Finance & Development, Practice Note: Overview – Term Sheets Overview: Lending

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CLASS 11
Wednesday, April 13, 2016

FINANCIAL STRUCTURING II

Yescombe Chapter 12: Lenders’ Cash-Flow Controls, Security and Enforcement [pp. 202 – 220 only]


Additional Materials: American Bar Association, Committee on Project Finance, Model Consent to Assignment with Commentary

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CLASS 12
Wednesday, April 20, 2016

PPP FRAMEWORKS GLOBALLY

Yescombe Chapter 3: PPPs Worldwide [pp. 29-47]

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Case Studies: Davis, Volume II, Chapter 5: A2 Motorway Poland (toll road) [pp. 70-75] [Presentation #15 - ]
Crossrail (A): The Business Case, Kennedy School of Government Case Program, CR14-08-1898.0 (2008) [Presentation #16 - ]


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CLASS 13
Wednesday, April 27, 2016

FINANCING SPORTS FACILITIES

Case Study: FedEx Field (formerly Jack Kent Cooke Stadium), Washington, DC, Home of the NFL Washington Redskins

Sample Documents: • Debt Term Sheet for New Philadelphia Phillies Ballpark
• Baseball Stadium Agreement, Washington, D.C., Home of the MLB Washington Nationals
• Project Financed Stadium and Stadium Financing [PowerPoint presentation]

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POSSIBLE MAKE-UP CLASSES (IF NEEDED; PLEASE RESERVE DATES)

To be determined.

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FINAL EXAM
Saturday, May 7, 2:30 p.m.

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