Course Syllabus

University of Washington School of Law  
Spring, 2018  
Real Estate Transactions, A 523  
(3 credits)  
Class meets: 4:00 to 5:30 p.m., Mondays and Wednesdays, March 26 through May 16, 2018, Room 119

Instructor: Donald E. Percival  
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Office Hours: By appointment

SYLLABUS

Class Description

This course addresses legal structures, processes, participants, and documentation necessary to complete common commercial real estate transactions, including purchases and sales, mortgage loans, leases and real estate joint ventures.

The first four weeks will be devoted to purchases and sales, including letters of intent, purchase agreements, due diligence, title insurance, escrow, and closing. The last four weeks will be divided among mortgage lending, leasing, real estate joint ventures and easements.

Learning Objectives

Through lectures, class discussion, textbook readings, and review of actual transaction documents, students will become familiar with the business and legal issues that typically are addressed in bringing a commercial real estate transaction to a successful conclusion. Students will develop a basic understanding of legal issues that arise in real estate transactions, different ways in which those issues are typically addressed, and the roles played by legal, brokerage, title, escrow, engineering, environmental, insurance and lending professionals in resolving them.

Textbook and Supplemental Materials Binder


The textbook will be supplemented with materials provided by the instructor, including examples of documents used in commercial real estate transactions. The supplemental materials will be linked to this
syllabus electronically, and hard copies will be provided by the instructor free of charge in a three-ring binder with numbered tabs. For example, a reference to “Binder Tab 2” in a reading assignment below will be a live shortcut to the document, a hard copy of which will also appear behind Tab 2 in the hard copy binder provided by the instructor.

While the text discusses both residential and commercial transactions, this course will focus on commercial transactions. Nonetheless, the assigned portions of the text that involve residential transactions should be read and understood by students because the author’s discussions of commercial transactions are frequently based on his discussions of residential transactions. Assignments for readings in the text are made according to chapters of the text. Where specific page numbers within a chapter are listed, students need to read only the designated pages.

**Grading**

Classroom participation is expected, and will count for 15% of the final grade. The final exam will count for 85% of the final grade.

**Final Exam**

There will be no mid-term exam. The final exam will last 3 hours. The final exam is currently scheduled for Monday, May 26, from 8:30 – 11:30 a.m. You are responsible for reviewing the exam schedule to determine if there are any changes. The exam schedule for this quarter is posted at [http://www.law.washington.edu/Students/Exams](http://www.law.washington.edu/Students/Exams).

The final exam will be open-book. Students will also be allowed to consult their own hard-copy notes during the final exam, but will not be allowed access to the internet.

**Class Participation/Expectations**

Classroom attendance and participation is expected, and will count for 15% of the final grade. More importantly, regular interaction among the instructor and students will contribute tremendously to the learning experience and enjoyment of this course. Students should come to class prepared to discuss and ask questions about the reading materials.

**Course Evaluation**

Course evaluations are open online during the last week of classes. Class time will be made available on Wednesday, May 16, for filling out your evaluation. Please bring a laptop or other mobile device to class on this date to participate in the evaluation.

**Review Session**

The instructor will set aside time during the last day of class (Wednesday, May 16) for review prior to the final exam. If we stay on schedule, the instructor intends also to conduct a review session mid-way through the quarter, upon conclusion of the classroom sessions dealing with real estate purchases and sales.

**Cell Phones/Computers**
All cell phones must be placed on "silent" mode during class times. No calls may be taken in the classroom. Students should not browse the internet or send emails, texts, or other messages while in the classroom.

Students may use personal computers to take notes. However, all students in this course are encouraged to leave their laptops and tablets behind and instead take essential notes with pen and paper during class, so they can focus on listening and participating in the discussion, as they will do when they attend meetings as working professionals.

In addition, the Law School’s policy on exams, paper and use of computers on exams is set out here: https://www.law.washington.edu/students/academics/exams.aspx

Guests and Visitors

Guests and visitors are welcome during regular classroom sessions, subject to availability of classroom space.

Research Services Librarians

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library’s UW Law Students page (http://lib.law.washington.edu/students.html) for more information about their services generally. To get help, you can email the Research Services librarians directly at lawref@uw.edu (mailto:lawref@uw.edu). You are also welcome to visit the Reference Office on L1 to speak with the Research Services librarian on duty. If you have a detailed research question or would prefer to meet privately with a librarian, you may set up an individual appointment (http://guides.lib.uw.edu/law/refappt).

Law School Attendance Policy

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor’s so indicating to the Academic Services Office.

An instructor may also impose stricter attendance standards or other sanctions for nonattendance, including lowering of a grade, provided that students are informed at the start of the course of the instructor’s attendance rules and possible sanctions.

As noted above, classroom participation is expected in this course, and will count for 15% of the final grade.

Access and Accommodation

Your experience in this course is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.
If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to: mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

CLASS MEETING / Topic(s) / Subtopic(s)

CLASS 1 – Monday, March 26
Course Administrative Matters
Purchases and Sales (Part 1): The Marketing Process
Broker Licensing; Listing Agreements
Readings / Assignments:
Lefcoe Chapters 1 (all) & 3 (pp. 29-56); Binder Tab 1 (CBA listing agreement form) and Binder Tab 2 (custom listing agreement)

CLASS 2 – Wednesday, March 28
Purchases and Sales (Part 2): Reaching Agreement
Letters of Intent; Statute of Frauds; Parties; Use of Special Purpose Entities; Introduction to Basic Elements of Commercial Purchase and Sale Agreements
Readings / Assignments:
Lefcoe Chapters 4 & 29; Binder Tab 3 (letter of intent)

CLASS 3 – Monday, April 2
Purchases and Sales (Part 3): Subject Property, Price and Payment Terms
Property Description; Legal Lots; Price, Earnest Money and Payment Terms; Financing Contingency; Risk of Loss; Casualty or Condemnation Prior to Closing
Readings / Assignments:
Lefcoe Chapter 5; Binder Tab 4 (CBA pre-printed real estate purchase and sale agreement [skim]) and Binder Tab 5 (custom commercial purchase and sale agreement (“PSA form”), Articles 1 & 9 only)

CLASS 4 – Wednesday, April 4
Purchases and Sales (Part 5): Diligence -- Title & Survey
Title Conditions; Title Insurance (Policy Forms, Exclusions, Exceptions, Endorsements); Introduction to Surveys
Readings / Assignments:
*Lefcoe* Chapters 7, 15 & 18; [Binder Tab 5](#) (PSA form, Article 2 only), [Binder Tab 6](#) (commitment for ALTA owner’s title insurance policy) and [Binder Tab 7](#) (final ALTA owner’s title insurance policy with endorsements); [Binder Tab 8](#) (ALTA/ASCM survey).

CLASS 5 – Monday, April 9

**Purchases and Sales (Part 4): Diligence -- Physical & Economic Diligence**
Disclosure Obligations of Sellers; Representations & Warranties; Environmental Site Assessments; Property Condition Assessments; Lease Review

Readings / Assignments:
*Lefcoe* Chapter 6; [RCW Ch. 64.06](#); [Binder Tab 5](#) (PSA form, Article 3 only), [Binder Tab 9](#) (acquisition due diligence checklist), [Binder Tab 10](#) (Phase 1 environmental site assessment report [skim]) and [Binder Tab 11](#) (tenant estoppel form)

CLASS 6 – Wednesday, April 11

**Purchases and Sales (Part 6): Representations & Warranties; Pre-Closing Remedies**
Representations & Warranties; Disclaimers; Closing Conditions; Covenants Pending Closing; Remedies for Failure to Close

Readings / Assignments:
*Lefcoe* Chapters 8 & 9; [RCW 64.04.005](#) (safe harbor for earnest money forfeiture); [Binder Tab 5](#) (PSA form, Articles 5-8 only)

CLASS 7 – Monday, April 16

**Purchases and Sales (Part 8): The Closing Process**
Closing Deliverables; Recording Statutes; Deed Requisites and Implied Warranties; Other Transfer Documents; Prorations; Transfer Taxes; Closing Statements; Escrow Instructions; Assignment

Readings / Assignments:
*Lefcoe* Chapters 14 (pp. 243-267 only), 16 (pp. 311-324 & 327-331 only) & 17 (pp. 335-354 only); [RCW 64.04.010-.050](#) (real estate conveyancing requirements; deed forms); [RCW 65.08.070](#) (race-notice recording statute); [Binder Tab 5](#) (PSA form, Article 4 only), [Binder Tab 12](#) (statutory warranty deed), [Binder Tab 13](#) (bargain and sale deed), [Binder Tab 14](#) (quit claim deed), [Binder Tab 15](#) (bill of sale), [Binder Tab 16](#) (assignment and assumption of leases), [Binder Tab 17](#) (excise tax affidavit), [Binder Tab 18](#) (closing statement) and [Binder Tab 19](#) (escrow instructions)

CLASS 8 – Wednesday, April 18

**Purchases and Sales (Part 8): Post-Closing Remedies; Mid-Term Review (No Mid-Term Exam)**
Post-Closing Remedies; Question and Answer Session Covering All Topics to Date

Readings / Assignments:
[Binder Tab 5](#) (PSA form, Articles 8 [review] & 11); no *Lefcoe* reading
CLASS 9 – Monday, April 23

**Real Estate Lending (Part 1) -- Introduction**

Types of Real Estate Financings (Residential vs. Commercial; Construction vs. Permanent; Fixed vs. Variable Rate; Mortgage vs. Mezzanine; Recourse vs. Non-Recourse); Economic Terms; Prepayment and Prepayment Penalties; Disbursement Conditions

**Readings / Assignments:**
*Lefcoe* Chapters 11, 12 & 13; *Binder Tab 20* (loan application/term sheet)

CLASS 10 – Wednesday, April 25

**Real Estate Lending (Part 2) – Covenants and Defaults**

Functions of Typical Commercial Loan Documents (Loan Commitment; Promissory Note; Deed of Trust; Assignment of Leases, Guaranty, Environmental Indemnity, Subordination Agreement); Loan Conditions; Loan Covenants (Property-Related vs. Financial, Affirmative vs. Negative); Events of Default and Cure Rights

**Readings / Assignments:**
*Lefcoe* Chapters 19 & 20; *Binder Tab 21* (promissory note); *Binder Tab 22* (deed of trust), *Binder Tab 23* (subordination, non-disturbance and attornment agreement) and *Binder Tab 24* (environmental indemnity agreement)

CLASS 11 – Monday, April 30

**Real Estate Lending (Part 3) -- Remedies**

Foreclosure (Judicial vs. Non-Judicial), Remedies in Lieu of Foreclosure, Recovery Against Guarantors, Non-Recourse Carve-Outs, Effect of Bankruptcy

**Readings / Assignments:**
*Lefcoe* Chapters 21 (pp. 429-452 only), 22 (pp. 463-468 only) & 23 (pp. 481-483 only); RCW 61.24.010-.020, 61.24.030 and 61.24.100; *Binder Tab 25* (guaranty) and *Binder Tab 26* (summary of Washington commercial real estate foreclosure procedures)

CLASS 12 – Wednesday, May 2

**Commercial Real Estate Leases (Part 1)**

Types of Commercial Leases (Gross vs. Net); Lease Term; Extension and Expansion Options; Rent (Basic Rent; Additional Rent; Percentage Rent); Operating Covenants; Financial Covenants; Duties of Landlord and Tenant; Assignment and Subletting

**Readings / Assignments:**
*Lefcoe* Chapter 32; *Binder Tab 27* (lease summary)

CLASS 13 – Monday, May 7

**Commercial Real Estate Leases (Part 2)**
Remedies for Breach; Mock Lease Negotiation  
Readings / Assignments:  
**Binder Tab 28** (commercial lease)

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**CLASS 14 – Wednesday, May 9**  
*Real Estate Joint Ventures (Part 1)*  
Capital Contributions; Control Rights; Distributions  
Readings / Assignments:  
**Binder Tab 29** (LLC agreement, Articles 3, 6, 8 & 9 only); no *Lefcoe* reading

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**CLASS 15 – Monday, May 14**  
*Real Estate Joint Ventures (Part 2)*  
Default and Remedies; Exit Mechanisms  
Readings / Assignments:  
**Binder Tab 29** (LLC agreement, Article 10 only)

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**CLASS 16 – Wednesday, May 16**  
*Other Common Real Estate Documents; Review for Final Exam; Course Evaluations*  
Easements; Question and Answer Session Covering All Topics to Date  
Readings / Assignments:  
**Binder Tab 30** (access easement); no *Lefcoe* reading

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**Course Summary:**

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