COMMERCIAL REAL ESTATE LEASING (Law 5430)
Professor Wilson Freyermuth
Fall Semester 2020
MW 6:00-7:15, Room 332A
Office — 215 Hulston Hall
Office Phone — 882-1105

Course Information and Policies

COURSE DESCRIPTION: Commercial Real Estate Leasing is a three-credit-hour skills-development practicum that involves the study of selected topics involved in the negotiation, drafting, and interpretation of commercial real estate leases. The class will introduce students to the various parties involved in the process of commercial real estate leasing, their respective interests, and the dynamics of the negotiation and drafting process in which these parties attempt to ensure that the lease agreement appropriately memorializes their respective interests.

COURSE MATERIALS: The casebook is COMMERCIAL LEASING: A TRANSACTIONAL PRIMER (3d ed. 2020), by Daniel B. Bogart, Celeste Hammond, and Tanya Marsh. The book uses a representative commercial office lease form (promulgated by the American Bar Association) as a basis for studying the critical provisions of the lease, the leasing transaction, and the negotiation/drafting of the lease document, and also provides some treatment of issues that are more unique to the retail lease context. We will not cover every chapter in the casebook. At the end of this Syllabus, you will find a list of the topics that I expect to cover and the expected order of coverage.

COURSE WEB PAGE: I have established a Web page for this course. The URL for this page is http://mulaw.missouri.edu/freyermuth/Leasing/fall2020/index.html and you should refer to the home page prior to each class period for any announcements regarding class reading assignments, discussion prompts, skills assignments, or other relevant information regarding the course. A copy of this syllabus is posted on the Web page.

I have also established a Canvas page for this course. The Canvas page is available at
A copy of this Syllabus appears on the Canvas site. All recordings of class sessions will be posted on the Canvas site.

COURSE STRUCTURE: The class is a hybrid class that will involve a combination of face-to-face and virtual sessions. The class will not meet as a class, in person or virtually, every scheduled Monday and Wednesday evening. As discussed below, the class will involve a series of discrete assignments that involve document review, negotiation and/or drafting. These assignments are designed to enable you to develop and exercise some of the skills involved in a transactional practice. When you are working on the preparation of these assignments, it will sometimes be the case that we will not have a regular class meeting (which will be “released” to enable you to coordinate with your assigned partner or to meet with me as necessary in completing the project). Coordination with your assigned partner or with me can be either in-person or virtual. The class website will be updated each week to reflect the schedule for the following 3-week period, indicating the days we will have class meetings and the “release” days for assignment preparation.

On days where the class meets at 6:00 p.m., we will meet in person in Room 332A, unless otherwise noted on the course webpage. I am reserving the right to hold certain class sessions virtually via Zoom, at the request of guest speakers, some of whom may prefer to speak virtually either because of the pandemic, their lack of proximity to Columbia, or both.

DECREASING THE RISK OF COVID-19: If you are experiencing any COVID-related symptoms, or are otherwise feeling unwell, do not attend classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea. If you are unable to attend a scheduled class due to illness or medical reasons, course sessions will be recorded for your review. See the “Communication, Accommodation, and Pivot Plan” below for more information.

Likewise, please respect your assigned partner (and me) when completing class skills assignments. If you are experiencing any COVID-related symptoms or are otherwise feeling unwell, please do not meet in-person with your partner, or with me, but please limit those interactions to virtual interactions through Zoom, Teams, phone, e-mail, etc.

You must wear a face covering while in the classroom, unless you have a documented exemption due to a disability or medical condition. You are responsible for bringing your own mask; I will have an extra mask available for your use if you do not have one. You must maintain a 6-foot distance from each other at all times.

COMMUNICATION, ACCOMMODATION, AND PIVOT PLAN: Please note the following:

- Communication. This Syllabus addresses how you may communicate with me during the course, both at the beginning and if it becomes necessary to transition the course to fully remote. See “Communication with Students” below for further details.
• **Accommodation.** If you are unable to attend a scheduled class in person due to illness or medical reasons, here is an explanation of how you should plan to participate:

  o If the scheduled class is already scheduled as a Zoom class (whether because of a guest speaker or otherwise), you should plan to participate live in synchronous fashion via Zoom.

  o If the scheduled class is a face-to-face class session, and you have advised me by 5:00 p.m. on the day of class that you will be absent, I will conduct the class in-person as scheduled, but with a simultaneous Zoom recording so that you can participate remotely via Zoom in real time.

  o If the scheduled class is a face-to-face session, and you have not advised me by 5:00 p.m. on the day of the class, I will record the class and post the recording on the class Canvas site for your review. I will treat you as “present” for the class once you have certified to me that you have reviewed the recorded class.

• **Pivot.** If pandemic-related circumstances require the course to be moved fully online, scheduled class meetings will simply shift to synchronous Zoom sessions. Any such sessions will be recorded and posted on the class Canvas site. Otherwise, the basic structure and coverage of the class will not change—other than after the pivot, any interaction with your assigned partner or with me in completing the skills assignments will need to be conducted in a fully remote manner.

**LEARNING OUTCOMES:** In compliance with Standard 301(b) of the American Bar Association’s Standards and Rules of Procedure for Approval of Law Schools, the following statement reflects the expected learning outcomes for this course. In the Commercial Real Estate Leasing course, students will:

• Review and/or learn the relevant provisions of law governing the creation and enforcement of contracts for the leasing of real estate.

• Become familiar with the identity, roles, and interests of the various participants in a commercial lease transaction (e.g., broker, mortgage lender, developer-landlord, tenant, and their respective lawyers).

• Become familiar with the structure and content of commonly-used commercial lease agreements, particularly those involving office and retail uses.

• Gain knowledge that will be useful for passing the Real Property portion of the bar examination, which includes coverage of landlord-tenant issues.

• Practice and develop skills useful in the negotiation, review, revision, and drafting of commercial leases and related transactional documents.
Learn the appropriate (and inappropriate) uses of form documents and the appropriate revision of form documents.

ASSESSMENT: Assessment in this course will be FORMATIVE in nature. It will consist of a series of graded skills-based assignments that will include negotiation, document review, client counseling, document drafting and revision. Each assignment will focus narrowly on discrete portions of a commercial lease and/or other documents encountered in real property transactions involving leased property (e.g., lease amendments, tenant estoppel letters, or subordination, nondisturbance and attornment agreements). For each assignment (other than the final one), you will have the opportunity to revise and resubmit your work product for re-grading based on comments on your initial draft. Some (but not all) of the assignments will be done with an assigned partner (either working together in teams, or negotiating against each other on behalf of the landlord or tenant, as assigned).

COURSE GRADE: The final grade in this course will be based upon the following:

A. Class Participation. I expect students to have read the assigned materials and discussion prompts and to be prepared to discuss them. Further, some of the class sessions will involve review and critique of student work on the skills assignments. Thus, consistent class attendance and participation is expected and encouraged. At the conclusion of the seminar, I reserve the right to add up to two (2) points to a student’s grade for consistent and exceptional class participation, as well as the right to reduce a student’s grade up to three (3) points for unexcused absences, unpreparedness, or lack of cooperative effort on team assignments.

B. Negotiation/Drafting/Lease Review Problems. During the semester, as noted above, there will be a series of discrete negotiation, lease review, and/or drafting problems. Some of these problems will be done in two-person teams; others will be individual. Some will require negotiation (either landlord v. tenant or lender v. tenant) between students on opposing sides of a hypothetical transaction. In some cases, your completed work product will be the basis for subsequent class discussion about the drafting process and the transactional dynamics involved in lease negotiation. Each problem (other than the final problem) will be revised and resubmitted based on initial feedback. Collectively, these problems will constitute 100% of your course grade (subject to adjustment with respect to participation as noted above). Each problem, when distributed, will indicate its relative weight as a determinant of the overall course grade.

ATTENDANCE POLICY: According to American Bar Association accreditation guidelines, class attendance is required and expected of all students. I will record your attendance at the beginning of each class session. If you have to miss a class because of illness or COVID-related symptoms, the “Accommodation” policy described above explains what you should do to satisfy the requirement of your attendance.

COMMUNICATION WITH STUDENTS: I have traditionally maintained an “open-door” policy. This is more challenging, obviously, during a pandemic. You are welcome to communicate with me in any of the following ways:
• I will have at least two (2) virtual Office Hours for this course on Zoom at varying times each week (including at least one during evening hours). Check the class webpage for each week’s times.

• If you need to set up a specific appointment time for a virtual office visit, send me an e-mail to schedule a time.

• You are welcome to communicate with me by e-mail to raise questions or concerns at any time, if that is convenient for you. My address is freyermuthr@missouri.edu.

• If I am in the building and in my office, you are welcome to stop by my office with a question (subject to your compliance with the University’s social distancing and masking protocols).

ACADEMIC INTEGRITY: Academic integrity is fundamental to the activities and principles of a university. All members of the Law School community must acquire, develop, and present their work responsibly and honorably. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include grade sanctions (up to and including failing the course) and disciplinary sanctions ranging from probation to expulsion. I encourage you to make sure that your work in this and other courses complies in all respects with the Law School’s Honor Code. If you have any question regarding whether your conduct complies with the Honor Code, you should contact me for clarification. If you become aware that you or another student have violated the Honor Code, you MUST report the violation promptly to me or to Dean Mitchell.

RECORDINGS: UM System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations of the University of Missouri. In this class, students may make audio recordings of course activity. However, any distribution or redistribution of such recordings of statements or comments from the course to individuals who are not students in the course (including, but not limited to, any posting of a recording to social media) is prohibited without my express permission and the permission of any other student in the class who was recorded. Students who violate this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. Note: Each class session will be recorded, and the recording posted on the course Canvas site.

INTELLECTUAL PLURALISM: The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact Dean Lidsky or Dean Mitchell, the director of the Office of Students Rights and Responsibilities, the MU Equity Office, or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.
TOPICS: In the course, I expect to address the following topics, in roughly the following order:

Brokers/Commercial Leasing Brokerage [Chapter 17] and Letters of Intent [Chapter 1]
Premises [Chapter 2]
Term [Chapter 3]
Rent [Chapter 4]
Use [Chapter 5]
Assignment and Sublease [Chapter 7]
Maintenance/Repair and Building Services [Chapters 8/11]
Rules and Regulations/Rights Reserved to Landlord [Chapters 9 and 12]
Alterations [Chapter 10]
Fire/Casualty [Chapter 13]
Insurance [Chapter 14]
Default and Remedies [Chapter 15]
Subordination and Estoppel [Chapter 16]

As the course proceeds, I may modify the order of the topics covered, so you should refer to the course website for updated information on the order of future assignments.

ASSIGNMENT FOR CLASSES #1 and #2, MONDAY, AUGUST 24, 2020 and WEDNESDAY, AUGUST 26, 2020:  Read pages xxv-xxxiii (the Introduction to the Casebook), Chapter 1 (Letter of Intent), pages 3-11, and Chapter 17 (Brokers), pages 473-486.

On Monday, August 24, we will begin class with a Guest Speaker, Tom Ray. Tom is a 1994 J.D. graduate of Mizzou Law, and is the First Vice President for CBRE in St. Louis, and has many years of experience with brokering office lease transactions in the Creve Coeur and Westport areas. Tom will be talking about the economic foundations of the commercial lease transaction, the various parties involved in the lease negotiation, the role of the broker in facilitating the lease, the “components” (in a financial sense) of the base rent due under an office lease, and how the pandemic has affected the market for commercial office leases. He will also be happy to entertain questions about professional opportunities in the commercial brokerage field (how he got into commercial brokerage, how his legal training prepared him for that career, and his perspective on opportunities in that field).

On Wednesday, August 26, the class session will focus on Chapters 1 (Letters of Intent) and 17 (Brokerage). By e-mail, I will circulate a set of discussion questions/problems for this discussion. I will circulate this set of discussion questions by Wednesday, August 19.