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**COMMERCIAL LEASING**

**COLUMBIA UNIVERSITY**  
**Course No. PLA A6375**

**PROFESSORS**  
**MARTIN E. GOLD AND MITCHELL NELSON**

**COURSE SYLLABUS**

**SPRING 2017**  
**Part B**

**Tuesday, 9-11 A.M.**  
**Avery Hall 114**

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## **COMMERCIAL LEASING**

**COURSE PLA 6375**

**March, 2017**

### **OUR OVERALL PLAN**

We teach this course from a business and legal vantage point. We will focus on aspects of how business terms and building functions are integrated in the lease. Leasing is the means by which an owner makes money annually on his property, commercial and residential. These are really the sole means.

We cover both commercial and retail space, and try to look at each topic from the perspective of both the landlord and the tenant. You will learn that there is a large difference in perspective, and lots of give and take is possible during negotiations. Learning a little about negotiations is one of the goals of this course.

Course materials have been very carefully selected and will be available about a week before each class. The course materials will include sections from actual leases, published articles, and a few valuable court cases. Because they may not correspond exactly with what we cover in each class, we refer to each set of materials as a Volume. We will electronically project overheads for discussion and use them to have give and take on important issues.

We will give one mandatory final exam, which will be based on a set of facts and will give you a chance to show us what you have learned. Our exam has been always a take home and is not likely to change. Thoughtfulness will count, as will good writing and organization. We may also ask you to take a pop quiz on the reading or write a short paper.

Besides your written work, participation in class will count toward your grade. We plan to discuss and even debate issues and solutions with you, rather than just lecture. So we'd like you to take the time to familiarize yourself with each week's materials. Unless we say otherwise, participation will count for 30% of the grade.

## **COMMERCIAL LEASING**

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**March 7, 2017**

### **CLASS I: THE PARTIES AND THE CONTEXT**

We will begin with a look at the critical players and elements: the (potential) landlord, the (potential) tenant, and the (selected) brokers. We explore the fundamentals including what is needed to make a deal. As will be the case throughout the course, we will look at many issues from both the landlord's viewpoint and tenant's viewpoint. Since a space lease is an interest derived from the "owner's fee estate", and is "subordinate" to it, we need to understand the implications of a mortgage on landlord's fee, and/or a ground lease, to a space lessee.

- I. The Parties: Landlord and Tenant**
- II. The Market**
- III. Connecting the Parties: the Brokers**
- IV. Background Issues and Legal Structure: title, mortgages and ground leases**
- V. Non-Disturbance Agreements**
- VI. Covenant of Quiet Enjoyment**
- VII. Security Deposits and Guarantees**

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**March 21, 2017**

### **CLASS II: BASIC TERMS AND INDUCEMENTS**

We will review the basic terms of a lease arrangement and important factors relating to tenant requirements. These include: determinations of the amount of space, how it is measured, how the space is to be used, the period of usage, and inducements relating to the work required for the space to be useable. Landlord and tenant perspectives do not always coincide.

- I. Sample Term Sheet**
- II. Viewing the Market**
- III. Space: Measurements of square footage**
- IV. Use Wars**
- V. Term of the Lease**
- VI. Inducements**
- VII. Landlord's Work: Improvements to Building and Tenant's Space**
- VIII. Tenant Work Allowances**
- IX. Work Letters**

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**March 28, 2017**

### **CLASS III: RENT: REVENUES AND COSTS**

Class III focuses on the economics of leasing space, including the components and determination of rent. Attention will be paid to the protection of landlords from economic changes over the course of the term and various techniques used by landlords to protect and improve their return on investment and by tenants to minimize future increases and risks.

- I. The Components of Rent: Analysis of a Ten Year Deal**
- II. Fixed or “Basic” Rent**
- III. Additional Rent**
- IV. Real Estate Tax and Operating Expense Escalations**
- V. Alternative Escalations**
- VI. Percentage Rent and Participation Rent**
- VII. Renewal Rents and Reappraisals**
- VIII. Grossing-Up**
- IX. A Tenant’s Right to Audit?**
- X. Late Charges**

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**April 4, 2017**

### **CLASS IV: SERVICES, MANDATES AND CASUALTIES**

We will discuss fundamental issues concerning the operation of the building and of tenant's space, including the provision of services by landlord. Service interruption is a major concern to tenants and cause of disputes. Governmental and other third party requirements come into play here as well. This class includes our discussion of green lease provisions, and how casualties and eminent domain are addressed in a lease.

- XI. Utilities and other Services:**
- XII. Interruption of Services**
- XIII. Government Mandates/Statutory Requirements**
- XIV. Repairs, Maintenance, Insurance**
- XV. Green Lease Provisions**
- XVI. Casualty**
- XVII. Condemnation**

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**April 11, 2017**

### **CLASS V: CONTROL OF SPACE**

Both the tenant and landlord will have future needs that are unknowable at the outset. In this class we will focus on physical changes to the premises and the building. They may be made at the outset of the lease, during the term, or upon termination and surrender. We will also explore tenant's rights of assignment and subletting (an increasingly complex subject), and options for changing tenant's premises. The latter can include expansions, reductions in space, and/or relocations. As we will see, these matters affect landlord's ability to control and manage the building, and tenant's ability to conduct its business.

#### **XVIII. Alterations**

#### **XIX. Assignment and Subletting**

#### **XX. Space Options**

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**COURSE PLA 6375**

**April 18-25, 2017**

### **VOLUME VI: DEFAULTS, LIABILITY AND TERMINATION**

We will first look, briefly, at what happens if there is a bankruptcy of the landlord or the tenant. We will then look at failures to perform or comply with provisions of the lease, considering what happens when a default occurs and enforcement of remedies is sought. How landlord (and to a lesser extent, tenant) can limit exposure is an intertwined theme.

**XXI. Bankruptcy**

**XXII. Defaults**

**XXIII. Liability and Limitations on Liability**

**XXIV. Surrender**