

CORPORATE & COMMERCIAL LAW SEMINAR (LAW 807)
(3 OR 4 CREDITS)
Spring 2023

Tuesday 1:20pm to 3:50pm, *Room 2*

Jan 10 to April 25, 2022

Professors:

Robert Rasmussen, Room 456, rrasmussen@law.usc.edu

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Administrative Assistant: Hannah Pae, HPae@law.usc.edu

Course Objectives

After completing this course, we would like you to:

- Think critically about arguments regarding how capital structure creates or reduces corporate value
- Understand why certain types of businesses might prefer certain types of capital structures over others
- Understand the factors involved in raising various forms of capital
- Understand how investors at different levels in the capital structure come into conflict with one another and how they resolve those conflicts
- Understand why investors might specialize in, prefer, or be restricted to investments at one level of the capital structure or another
- Gain greater awareness of finance-related issues that can arise at various stages of a business's lifecycle
- Think about how taxation, regulation, information rights, control, and risk tolerance drive choice of capital structure

Course Description

This course will examine leading legal and economic theories regarding corporate finance. Students will read foundational articles from leading scholars, prepare reaction papers, and actively participate in class discussions. Students will also read work in progress reflecting the cutting edge of corporate finance research and presentations from practitioners about current topics. Students will engage with and provide feedback to guest speakers.

Prerequisite: Business Organizations (Law 603).

The course is a three (3) unit course with a (4) unit option.

Course Work & Grading

Grades will be awarded based on class participation and weekly student reaction papers to the assigned reading. Students taking the course for four credits will be required to write a 20 page (~5,000 word) scholarly article on a topic of their choosing, related to the class, and approved by the professors. This course may only be taken for a grade (no pass-fail option). Reaction papers are due at noon on the day before the seminar (i.e., on Monday for a Tuesday seminar).

Enrollment Cap:

Enrollment will be capped at 25 students.

Office Hours:

After class or by appointment.

Name Placards and Seating

Please bring a name placard to class and place it in front of you. If you have lost your name placard, you may obtain a free replacement from Hannah Pae, HPae@law.usc.edu, Room 465. Please keep the back-row empty for guests and visitors.

Syllabus Revisions

We may post revisions to the syllabus or announce changes in class. Please check the course website regularly!

Course Outline

Foundational Classic Articles

Week 1: January 10: Debt versus Equity

- Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305–360 (1976).
<https://www.sciencedirect.com/science/article/pii/0304405X7690026X>
- Anne P. Villamil, THE MODIGLIANI-MILLER THEOREM, THE NEW PALGRAVE DICTIONARY OF ECONOMICS. (6 PAGES)
https://link.springer.com/content/pdf/10.1057/978-1-349-95121-5_2455-1.pdf

Week 2: January 17: The Debt Overhang Problem

Guest Speaker: George Triantis (Stanford) (Zoom or in person)

- Stewart C. Myers, Determinants of corporate borrowing, 5 JOURNAL OF FINANCIAL ECONOMICS 147-175 (1977)
- <https://www.sciencedirect.com/science/article/abs/pii/0304405X77900150>
- FTX Files Bankruptcy
<https://www.dropbox.com/s/9pdp2xun723qyst/Sam%20Bankman-Fried%20%80%99s%20%2432bn%20FTX%20crypto%20empire%20files%20for%20bankruptcy%20%20Financial%20Times.pdf?dl=0>
- George Triantis, *Financial Slack Policy and the Laws of Secured Transactions*, 29 J. FIN. STUDIES 35 (2000)
<https://www.jstor.org/stable/10.1086/468063>
 - Note: focus on Part I pages 35-top of 44; Part IV 46-52 and 55-59.

Week 3: Jan. 24: Entrepreneurial Finance

Guest Speaker: Douglas Cumming (Florida Atlantic) (Zoom)

Paper:

- Douglas Cumming, Sofia Johan, & Robert Reardon Governance and Success in U.S. Securities-Based Crowdfunding, October 2022 (See blackboard for latest draft)

Background article to skim:

- Douglas Cumming & Sofia Johan, The Problems with and Promise of Entrepreneurial Finance, 11 STRATEGIC ENTREPRENEURSHIP JOURNAL, 357-370 (2017) <https://doi-org.libproxy1.usc.edu/10.1002/sej.1265>

Week 4: Jan. 31: Private Equity Overview

Guest Speaker: Aly Jeddy @ McKinsey & Company (Zoom)

- Paul Gompers, Steven N. Kaplan, et al., *What do private equity firms say they do?* 121 J. Fin. Econ. 449-476 (2016)
<https://doi.org/10.1016/j.jfineco.2016.06.003> Get rights and content
- Shourun Guo, Edith S. Hotchkiss, Weihong Song, *Do Buyouts Create Value?* 66 J. FIN. 479 (2011), <https://www.jstor.org/stable/29789787>

Week 5: Feb. 7: Creditor Control versus Sponsor Control in Distress

Guest Speaker: Vince Buccola (Zoom)

- Douglas G. Baird & Robert K. Rasmussen, *Private Debt and the Missing Lever of Corporate Governance*, 154 U. PA. L. REV. 1209–1251 (2006).
https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1310&context=penn_law_review
- Vincent S.J. Buccola, *Sponsor Control: A New Paradigm for Corporate Reorganization* University of Chicago Law Review (2022)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4170249

Week 6: Feb. 14: Overview of Financial Infrastructure: Safety & Soundness Regulation

Guest Speaker: Meg Tahyar (Davis Polk Financial Regulation) (In Person)

Reading from Davis Polk—Overview of Financial Regulation Safety & Soundness
(See blackboard for reading)

Issues:

- Capital regulation encourages banks and insurance companies to hold highly rated or secured debt rather than corporate equity
- Diversification requirements limit equity holdings by banks and insurance companies
- Pension regulations may require debt or limit equity in some cases, or encourage equity holdings in other cases
- Securities regulation encourage the use of private loans or private equity rather than public equities or bonds

--Tax treatment encourages corporations to use debt and for non-taxable institutions (or tax-advantaged institutions) to hold onto that debt

Week 7: Feb. 28: Costs and Consequences of Securities Regulation

Guest Speaker: Rob Jackson (NYU) (In Person)

Reading: TBD

Week 8: Mar. 7 Tax avoidance, capital structure and investor constituencies

Guest Speaker: Ed McCaffery (USC) (In person)

- Alan J. Auerbach, Mervyn A. King, Taxation, Portfolio Choice, and Debt-Equity Ratios: A General Equilibrium Model, *The Quarterly Journal of Economics*, Volume 98, Issue 4, November 1983, Pages 587–609, <https://doi.org/10.2307/1881779>
- Graham, J.R. (2000), How Big Are the Tax Benefits of Debt?. *The Journal of Finance*, 55: 1901-1941. <https://doi.org/10.1111/0022-1082.00277>

Week 9: Mar. 21 Creditor-on-Creditor Conflict

Guest Speaker: Jared Ellias (Harvard) (Zoom)

Reading TBD

Current Research

Week 10: Mar. 28: Venture Capital, Startups and Capital Structure

Guest Speaker: Arthur Kortoweg (USC Finance) (In Person)

<https://www.marshall.usc.edu/personnel/arthur-kortoweg>

Reading TBD

Week 11: April 4: Loan Covenants and Bank Monitoring

Guest Speaker: Fred Tung (Boston University) (Likely Zoom)

- Frederick Tung, *Do Lenders Still Monitor? Leveraged Lending and the Search for Covenants*, 47 *JOURNAL OF CORPORATION LAW* 153 (2021)
https://scholarship.law.bu.edu/faculty_scholarship/1169/

Week 12: April 11: Short-selling and Securities Lending

Guest Speaker: Josh Mitts, Columbia (Probably Zoom)

- Index-Fund Governance: An Empirical Study of the Lending-Voting Tradeoff (revise & resubmit, J. LEG. STUD., 2021) (with Edwin Hu & Haley Sylvester), https://ssrn.com/abstract_id=3673531
- *Passive Exit*, Stanford Journal of Law, Business & Finance (forthcoming) (see blackboard for latest version), <https://www.dropbox.com/s/egpjj07azxkary3/20221211%20Mitts-Passive%20Exit.pdf?dl=0>
- Short and Distort, 49 J. LEG. STUD. 287 (2020), https://ssrn.com/abstract_id=3198384

Week 13: April 18: DIP Lending

Guest Speaker: Ken Ayotte, Berkeley (Zoom)

Reading:

“Bankruptcy’s Modularity” (see blackboard for latest version) [DIP lending article]

<https://www.dropbox.com/s/6v3bmv107i7g3nc/Bankruptcy%27s%20Modularity%2010-19-22.pdf?dl=0>

Note: Professor Ayotte will Join for the beginning of class, not the end.

Week 14: April 25:

Guest Speaker: Bobby Bartlett (Berkeley) (In Person)

Reading TBD, likely on Venture Capital or *The Misuse of Tobin’s Q*

USC Statement on Academic Conduct and Support Systems

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC – <https://diversity.usc.edu/> Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students