Purpose of the Course: The purpose of this course is to introduce you to the bases for potential environmental liabilities in the context of a variety of commercial transactions and to learn the contractual and other measures to manage the risks and costs presented by these liabilities. By the end of the course you should be able to understand the use of a variety of contractual mechanisms to minimize or avoid environmental liability in connection with acquisitions and divestitures of businesses, real estate interests, and product lines.

Course Materials: There is no appropriate casebook for this course at this time. We will use a variety of materials that will be available on-line. Students should independently locate these materials using the provided citations. During the course of the semester, certain materials may be held on reserve in the Law Library, made available in hard copy form, or posted on TWEN. This Syllabus will be revised during the course of the semester to reflect the inclusion of additional material.

Classes: This class is scheduled to meet for two hours per week, on Thursdays, from 10:10 am to 12:00 pm in Room 227.

Attendance and Preparation: Students are expected to be punctual, attend each class, and to prepare for classes conscientiously. If you miss class frequently or are unprepared several times, your grade may be lowered. Alternatively, I may ask the Registrar to withdraw you from the course. If you know in advance that you will be missing a class for a compelling reason, or if you have missed a class due to illness or emergency, please send me an email, briefly explaining the situation. A sign-in sheet will be available for each class.

“TWEN” (The West Education Network): I have set up a course page for this class on TWEN. TWEN gives me a quick way to reach all of you with any announcements, Syllabus changes, handout materials, interesting links, etc. It also gives me a way to extend class discussion beyond the classroom hours.

Final Grade for the Course: The final grade for the course will be determined as follows: Classroom participation 25% and a Memorandum of Law 75%. The criteria for an acceptable Memorandum of Law will be discussed during the semester.
**Computer Policy:** Computers are to be used during class solely for taking notes and no other purpose. They are not to be used to “surf the net” or send email or instant messages. Violations of this rule may lead to you being prohibited from using a laptop during class.

**Communications:** The best way to communicate with me is by email at the above email address. I will get back to you within 24 hours; 48 hours if the email is sent over the weekend. While I do not maintain regular office hours, if you need to speak with me in person, we can set up an appointment either before or after class.

**Week 1 August 20, 2009**

Overview of course and semester: weeks 1-3 will cover the bases for liability; weeks 4-7 will cover disclosure concepts and relevant transactional provisions; weeks 8-14 will pull it together in specific transactional contexts and relevant special topics.

Bases for Liability - Review of relevant common law doctrines: nuisance, trespass, negligence, strict liability for abnormally dangerous activities, *caveat emptor*

New York v. Shore Reality Corp., 759 F. 2d 1032 (2nd Cir. 1985)

**Week 2 August 27, 2009**

Bases for Liability - Overview of relevant environmental statutory and regulatory provisions: Hazardous substances release and clean up (e.g., CERCLA and state law cost recovery analogues); Operational Permitting (e.g., RCRA; NPDES; CAA; Storm water)

Berz, Spracker, Strochak, *Environmental Law in Real Estate and Business Transactions*, Chapter 1, §§1.01-1.04 (available via Lexis)

**Week 3 September 3, 2009**

Bases for Liability - State transactional statutes (e.g., New Jersey ISRA, CT Transfer Act) and other environmentally oriented state law restrictions on commercial transactions (e.g., liens, deed restrictions, notifications)

Berz, Chapter 12, §§12.01-12.07 (available via Lexis)
Week 4 September 10, 2009

The Due Diligence Process: Treasure Hunt or Inquisition? - Seller’s Disclosure; obligatory, voluntary.

Materials: TBD

Assignment: Identify and be prepared to discuss the environmentally related disclosures made by a large, global manufacturing company through SEC 10K filings.

Week 5 September 17, 2009

The Due Diligence Process: Treasure Hunt or Inquisition? - Buyer’s Audit


Other Materials: TBD

Week 6 September 24, 2009

Basic document provisions: Application of contractual provisions and remedies to environmental issues in transactions. Definitions, conditions, representation and warranties, covenants, purchase price holdbacks indemnities and releases.

Materials: TBD

Week 7 October 1, 2009

Basic document provisions: Application of contractual provisions and remedies to environmental issues in transactions. Definitions, conditions representation and warranties, covenants, purchase price holdbacks, indemnities and releases.

Materials: TBD

Week 8 October 8, 2009

Environmental aspects of product line transactions: Packaging, labeling, environmental marketing claims Proposition 65, TSCA, FIFRA, chemical registration, and disposal.

Guides for the Use of Environmental Marketing Claims http://www.ftc.gov/bcp/gmrule/guides980427.htm

Other materials: TBD
Week 9 October 15, 2009

Commercial and residential real estate transactions: Focus on New York Law

*Guest lecturer:* Miriam E. Villani, Esq. Partner
Sahn, Ward Baker PLLC
Location: 333 Earle Ovington Blvd., Uniondale, NY
http://www.sahnwardbaker.com/AttyMVillani.html

*Bonus Practice Insight: Environmental law practice in a small firm*

- NYS Department of Environmental Conservation Environmental Cleanup and Brownfields
  http://www.dec.ny.gov/chemical/brownfields.html
- 6 NYRCC §618.3
- Other Materials: TBD

Week 10 October 22, 2009

The implication of pre-existing environmental obligations – Judicial/administrative orders; operating permits

Materials: TBD

Week 11 October 29, 2009

Reputation issues: Environmental issue impacts to brand and reputation

  www.elr.info

- IBM

Week 12 November 5, 2009

Representing banks and financing entities; Lender liability

Week 13 October 29, 2009

Environmental liabilities and obligations within the Bankruptcy Process

Guest lecturer:
Neil E. Herman, Esq.
Partner, Restructure Group
Morgan Lewis & Bockius, LLP
Location: 101 Park Avenue, NY, NY
http://www.morganlewis.com/index.cfm/personID/8f630889-a7ac-46fc-85d8-96ce2aa0d8d4/fromSearch/1/fuseaction/people.viewBio

Bonus Practice Insight: Practice in a large national firm

Materials: TBD

Week 14 November 19, 2009

Pulling it all together: Large corporate mergers and divestitures

Guest Lecturer:
Merrill E. Fliederbaum, Esq.
Assistant General Counsel
Pfizer Inc
Bonus Practice Insight: Environmental law practice in a corporate setting

Pfizer 200810K
Other Materials: TBD