

SYLLABUS
BANKRUPTCY & CREDITORS' RIGHTS (Fall 2020)
Seton Hall University School of Law
Professor Lubben
stephen.lubben@shu.edu

This course is designed to provide a comprehensive overview of the law of bankruptcy. We start with a brief look at some key elements of state debtor-creditor law and then move on to the Federal Bankruptcy Code, which dominates this area of the law. The bankruptcy portion of the class will look at both consumer and business bankruptcy.

As further described below, because of the ongoing COVID-19 pandemic, this semester the course will be conducted fully online, in live and recorded components.

Course Materials

The text for this course is Warren et al., *The Law of Debtors and Creditors*, 7th ed. There is also a required supplement for the 7th edition (The ISBN for the supplement is 9781543820492).

You must also have a copy of the Bankruptcy Code and must have it at hand during every live class. I have asked the bookstore to stock copies of the Code (ISBN-13: 9781934852408). Any other copy of the Code will work. The Code was recently revised, so you will want to make sure your copy includes the Small Business Reorganization Act of 2019. You could also use your favorite online research platform – [the Bankruptcy Code appears in title 11 of U.S.C.](#)

I have also asked the bookstore to stock Lubben, [American Business Bankruptcy – A Primer](#), which was published (look for the paperback version, which is much cheaper). The book may provide useful supplemental reading, especially for the second half of the class. But you are under no obligation whatsoever to buy it.

If you find that you need more explanation of certain topics, I suggest the multi-volume treatise *Collier on Bankruptcy*, which offers in-depth discussions of bankruptcy law and is widely viewed by practitioners as the definitive word on the Code. Collier's is available on LEXIS, in the bankruptcy section.

Blum and Parikh's *Examples and Explanations* book is helpful, as is Nathalie Martin's *Glannon Guide To Bankruptcy* and the same author's *Inside Bankruptcy Law: What Matters And Why*, along with *Understanding Bankruptcy* by Jeffrey Ferriell and Ted Janger.

For a somewhat more theoretical take, see Douglas Baird's *The Elements of Bankruptcy*.

A core group of bankruptcy professors, along with a variety of guests, post about various current issues in bankruptcy, debtor-creditor law, and related matters at www.creditslips.org.

Those of you seeking to situate bankruptcy within the broader scope of American debtor-creditor law might be interested in my [other book](#). Other important outside readings on our topic include *As We Forgive Our Debtors: Bankruptcy And Consumer Credit In America* (1989), *The Fragile*

Middle Class (2000), *The Two-Income Trap: Why Middle Class Parents Are Going Broke* (2003), *Broke: How Debt Bankrupts The Middle Class* (2012), all by one or more of the authors of your textbook.

Structure of the Course

The class has four main components, which are designed to work in the following order to help you understand bankruptcy law:

1. **Readings.** The reading assignments are below. Reading assignments also include relevant Code sections and other statutory materials; I have attempted to note the relevant statutes with the reading assignments, but you should be conversant with the text of any statutes cited in the readings.
2. **Introductory lectures.** Short introductory lectures for each problem set are available on Blackboard, and **must** be viewed *before* you analyze the problem sets. The lectures help explain the readings, and related topics that I think will help you work the problem sets.
3. **Written assignments.** For each assigned problem in each problem set, using the reading and lectures to inform your analysis, draft a response and submit it to me by 4pm the day before we meet. Your work will vary in length depending on the problem set, but anticipate writing between a paragraph and a full page for each problem. Your answers should note the statutory provisions that are relevant to your answer.
4. **Live discussion sessions.** We will be meeting for live video sessions twice a week. Log-in details are posted on Blackboard. We will spend this time discussing the problem sets you have reviewed. These sessions will be subject to the School's policies regarding online classes, including the use of video.

Reading Assignments

Assignments are listed below. Please read the indicated pages in the text and the relevant statutory provisions. All handouts will be available on Blackboard.

Part I. Introduction

1. Bankruptcy in Context (Class 1)
 - a. W&W, assignment 1
 - b. http://www.njb.uscourts.gov/stats/data/2020_02_district.pdf
2. State Law Debt Collection (Class 2)
 - a. W&W, assignment 2
 - b. <https://goo.gl/h9Qv7R>
 - c. Key statutes: [15 U.S.C. §§ 1672-1674; 1681i; 1681o: 1692\(e\); 1692a; 1692b; 1692e, 1692f](#)

Part II. Consumer Bankruptcy

3. Introduction to Bankruptcy (Class 3)
 - a. W&W, assignments 3 & 4
 - b. Handout: Bankruptcy Petition

- c. Please be prepared to discuss NY and NJ exemption laws (in addition to the laws in the book).
 - d. See also: https://www.dfs.ny.gov/industry_guidance/exemption_from_judgments
 - e. https://en.wikipedia.org/wiki/Marc_Harris
 - f. Key statutes: Bankruptcy Code §§ 101(12A); 104(b); 109(h); 341, 362(a), (b), (h); 366; 521; 522; 526; 541; 707(b)(4); 727(a)(2, (a)(5); [N.Y. Civ. Prac. Law & Rules](#) §§ 5205, 5206; N.J.S.A. [2A:17-19](#); N.J.S.A. [2A:26-4](#)
4. Exemption Planning (Class 4)
 - a. W&W, assignment 5
 - b. Key statutes: Bankruptcy Code §§ 303(b)(2); 522; Fla. Stat. Ann. § [222.20](#); Tex. Prop. Code Ann. § [41.002](#)
 5. Claims and Priority (Class 5)
 - a. W&W, assignments 6 & 7
 - b. Key statutes: Bankruptcy Code §§ 101(5), 101(14A), 106(b), 326(a), 330, 501, 502, 503, 506, 507, 523(a)(1), 523(a)(7), 523(a)(15)
 6. Discharge (Class 6) – **makeup class on Friday, September 11**
 - a. W&W, assignment 8
 - b. Key statutes: Bankruptcy Code §§ 521(i), 523, 727
 7. After Chapter 7; Introduction to Chapter 13 (class 7)
 - a. W&W, assignments 9 & 10
 - b. Key statutes: Bankruptcy Code §§ 109(e), 362(a)(6), 362(h), 521, 522, 524, 525, 722, 1301(a), 1302, 1306, 1321, 1322, 1325, 1326(a)(4), 1328
 8. Unsecured Creditors in Chapter 13 (class 8)
 - a. W&W, assignments 11
 - b. Key statutes: Bankruptcy Code §§ 1322(d)(1), 1325, 1329
 9. The Means Test and Choice of Chapters (class 9)
 - a. W&W, assignments 12 & 13
 - b. See the note about Assignment 12 on Blackboard
 - c. Key statutes: Bankruptcy Code §§ 101(10A), 362(c)(3), 342(b), 362(c)(4), 521(a)(1), 526, 527, 528(a)(4), 707, 727, 1328
 - d. <https://www.justice.gov/ust/means-testing>
 10. Consumer Bankruptcy Policy (class 10)
 - a. W&W, assignment 14 (focus on the final two problems in the problem set)
 - b. Key statutes: Bankruptcy Code §§ 329, 504; Bankruptcy Rules 2016(b), 9011; [Model Rules of Professional Conduct](#) 1.2, 3.3, 8.4

Part III. Business Bankruptcy

11. Introduction (Class 11)
 - a. W&W, assignments 15 & 16
 - b. Handout: Bankruptcy Petition
 - c. Key statutes: Bankruptcy Code §§ 101(9), 101(41), 102(a); 109(d), 303; 330(a)(1); 363; 503; 507; 1101 to 1104; 1107; 1108; Fed. R. Civ. P. 62
12. Operating in Chapter 11 (Class 12)
 - a. W&W, assignments 17 & 18
 - b. Consider the [21st Amendment](#) in connection with problem 17.3
 - c. Key statutes: Bankruptcy Code §§ 101(51B); 105; 363; 361; 362(a)(7), (d), (g), (k); 503(b); 506(a); 541(c); 546(c); 553(a);
13. The Going Concern Debtor (Class 13)

- a. W&W, assignment 19
 - b. **Key statutes:** Bankruptcy Code §§ 101(10); 361; 364; 552; *see also* 507(a)(1); 507(b); 726(b)
14. Liens (Class 14)
- a. W&W, assignments 20 & 21
 - b. **Key statutes:** Bankruptcy Code §§ 101(32); 101(53); 101(54); 544(a); 545; 547; 551
15. Preferences (Class 15)
- a. W&W, assignment 22
 - b. **Key statutes:** Bankruptcy Code §§ 510(c); 544(b); 550; 553(b)
16. Fraudulent Transfers (Class 16) – **makeup class on Friday, October 16**
- a. W&W, assignment 23
 - b. **Key statutes:** Bankruptcy Code §§ 544(b); 548; 550; [UVTA \(formerly UFTA\)](#) §§ 1-5, 7, 8, 10.
 - c. [Note on the UVTA](#)
17. More Fraudulent Transfers and Intro to Executory Contracts (Class 17)
- a. W&W, assignment 24, but skip *Frost* (page 556), and replace with:
 - i. [Merit Management Group, LP v. FTI Consulting, Inc.](#)
 - b. W&W, assignment 25
 - c. **Key statutes:** Bankruptcy Code §§ 101(22), 108(b)(2), 365, 502(b)(6), 544(b), 546(e); *see also* (with regard to 25.2) 101(25), 556
18. Executory Contracts Continued (Class 18)
- a. W&W, assignment 26
 - b. [Mission Product Holdings, Inc. v. Tempnology, LLC](#)
 - c. **Key statutes:** Bankruptcy Code §§ 101(35A), 365, 1141, *see also* 502(c)(2)
19. Chapter 11 Plans (Class 19) – **Note that Assignments 27 to 30 are in the Supplement**
- a. W&W, assignments **27 & 28**
 - b. **Key statutes:** Bankruptcy Code §§ 101(51D); 103(i), 341; 510; 704; 1102; 1121 to 1126; 1129(a); 1181; 1182; 1183; 1189; 1191, 1192; [18 U.S.C. § 152](#).
20. Introduction to Cramdown (Class 20)
- a. W&W, assignment **29**
 - b. **Key statutes:** Bankruptcy Code §§ 1104; 1112; 1115; 1121; 1129(b); 1188; 1194
21. Cramdown and Introduction to 363 Sales (Class 21)
- a. W&W, assignments **30 & 31**
 - b. **Key statutes:** Bankruptcy Code §§ 363; 1111(b); 1129(b)(2).
22. More on 363 Sales (Class 22)
- a. W&W, assignments 32
 - b. **Key statutes:** Bankruptcy Rule 2019
23. Professionals, Mass Torts, and beyond (Class 23) – **We are skipping Assignment 33**
- a. W&W, assignments 34, 35
 - b. **Key statutes:** Bankruptcy Code §§ 101(5); 101(14); 327; 328; 330; 502(c); 503; 524(g); 1141; Bankruptcy Rule 2014; [28 U.S.C. § 959](#); and [Fifth Amendment](#)
24. Non-traditional Debtors (and labor law too!) (Class 24)
- a. W&W, assignment 36
 - b. **Key statutes:** Bankruptcy Code §§ 101(32); 101(40); 109(c); 365(o); 901; 1113, 1114
25. Venue and Transnational Issues (Class 25)
- a. W&W, assignments 37 (starting with page 875 – Venue – and only prepare problem 4) & 38

- b. *Optional*: Assignment 39 if you are interested in the theory behind chapter 11
 - c. Key statutes: Bankruptcy Code §§ 303(b)(4); 305; 1504, 1509, 1511 to 1517; 1519; 1520; 1524; 1532; [28 U.S.C. § 1408](#)
 - d. <https://en.wikipedia.org/wiki/Telex>
26. Catch Up and Review Session (Class 26)
- a. Review sessions slides (posted video)
 - b. Come with your questions about the class

Grading and Examinations

Final examination

Your grade will be based on the following components:

1. Written assignments. 25% of total grade. Graded on simple three-point scale (1= low; 2=medium; 3=high). Assignments that are significantly late will be reduced one scale level; I will not accept written assignments that are more than 24-hours late absent unusual circumstances.
2. 24-hour take-home exam. 75% of total grade. The format will be comparable to the in-class exams on file with the School from prior years. I have also posted some samples on Blackboard.

Attendance and preparedness

Especially given the problem-oriented approach to this course, your preparation for class and active participation during class are **essential**. Prior preparation of the assigned reading materials and problems will therefore be presumed and required, and I reserve the right to incorporate these factors into your final class grade.

I call on people in class and expect everyone to be prepared. If there is a day when you cannot be prepared let me know by email before class and I will not call on you that day. Excessive requests to “opt out” of class participation will affect your final grade.

In addition to reading the assigned pages in the text, you must read the other assigned materials, especially the statutes and rules. **I expect you to know (and be able to cite and explain) the assigned statutes.**

Objectives

Upon completion of this course, you should be able to:

1. Summarize the key sources of law applicable to insolvent individuals and business entities.
2. Explain how debtors and creditors fair under these laws.
3. Analyze the choices between insolvency systems for various types of debtors.
4. Develop strategies for debtors and creditors to achieve their goals under the Bankruptcy Code.
5. Evaluate proposed changes in the insolvency law and assess their implications for the American economy.

Upon completion of the personal bankruptcy unit, you should be able to:

1. Summarize the key sources of law applicable to insolvent individuals and business entities.
2. Explain how debtors and creditors fair under these laws.
3. Analyze the choices between insolvency systems for various types of debtors.
4. Develop strategies for debtors and creditors to achieve their goals under the Bankruptcy Code.
5. Evaluate proposed changes in the insolvency law and assess their implications for the American economy.

Upon completion of the business bankruptcy unit, you should be able to:

1. Summarize the key sources of law applicable to insolvent individuals and business entities.
2. Explain how debtors and creditors fair under these laws.
3. Analyze the choices between insolvency systems for various types of debtors.
4. Develop strategies for debtors and creditors to achieve their goals under the Bankruptcy Code.
5. Evaluate proposed changes in the insolvency law and assess their implications for the American economy.

Disability Support

If you have, or think you might have, a disability that requires an accommodation in order to maximize your prospects for success in Law School, please contact either our Assistant Dean of Students, Andrea Cascarano, or the Office of Disability Support Services (“ODSS”) at the University at (973) 313-6003.

All accommodations must ultimately be sought through and approved by ODSS. It will make every effort to accommodate documented disabilities of every kind. The deadline for submitting applications (including reports from physicians, psychologists and other professionals) to ODSS to establish eligibility for accommodations on exams for the Fall semester is on or about November 1st and on or about April 1st for the spring semester. This deadline ensures that the documentation review process will be completed and accommodations in place in time for final exams. More information is provided [online](#), but Dean Cascarano at the Law School can also advise you about the process.

Office Hours and Discussion

I will set up a regular Zoom session for office hours once the class gets underway. Details will be on Blackboard.

Saturday, July 11, 2020