

**SYLLABUS**  
**BANKRUPTCY & CREDITORS' RIGHTS (Fall 2018)**  
**Seton Hall University School of Law**  
**Professor Lubben**  
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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.

### **Course Materials**

The text for this course is Warren et al., *The Law of Debtors and Creditors*, 7th ed. You must also have a copy of the Bankruptcy Code and must bring it to class **every day**. I have asked the bookstore to stock copies of the Code (ISBN-13: 978-1934852361).

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. Bloomberg Law also has a [bankruptcy treatise](#) that can be helpful.

Bloomberg Law also has a series of [books published](#) by the American Bankruptcy Institute in the "Bankruptcy" practice center. Many may be useful study aids for this class – with the added benefit of being free.

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](http://www.creditslips.org).

Those of you seeking to situate bankruptcy within the broader scope of American debtor-creditor law might be interested in my [recently published 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

Problem Solving. The emphasis in the course will be on problem solving. We will spend most of our class time discussing the problems in the casebook.

We typically will not do any sort of traditional presentation of the cases in the book. Instead, I will begin with a short introductory lecture, answer any questions about the readings, and then we will look at the readings in context by working out the problems in class.

## Electronic Devices

You may not use electronic devices (computers, tablets, phablets, mobile phones, [Commodore PETs](#), and the like) in class. For those of you who are distressed by this, you may want to watch [this video](#).

## Assignments

Assignments are listed below. Please read the indicated pages in the text and prepare for class as described in the box below. **All handouts will be available on Blackboard.**

**All problem sets contained in the readings are also part of the assignment and should be prepared before each class.** Preparing the problems means not only reading them but reading and thinking about the relevant sections of the FDCPA, Bankruptcy Code, etc. and how they apply to the facts presented and how changes in those facts could change your initial analysis.

## Part I. Introduction

1. Bankruptcy in Context (Class 1)
  - a. Handout: State Debt Collection
  - b. W&W, assignment 1
2. State Law Debt Collection (Class 2)
  - a. W&W, assignment 2

## Part II. Consumer Bankruptcy

3. Introduction to Bankruptcy (Class 3)
  - a. W&W, assignments 3 & 4
  - b. Handout: Bankruptcy Petition
  - c. [N.Y. Debt. & Cred. Law § 282](#) (be sure to [read](#) the [cross references](#))

- d. New Jersey has not opted out of the federal exemption scheme. Therefore, New Jersey debtors have the choice of either the New Jersey exemptions or the federal exemption in § 522(d).
- e. Links to the relevant NJ exemptions can be found [here](#).
- 4. Exemption Planning (Class 4)
  - a. W&W, assignment 5
- 5. Claims and Priority (Class 5)
  - a. W&W, assignments 6 & 7
- 6. Discharge (Class 6)
  - a. W&W, assignment 8
- 7. After Chapter 7; Introduction to Chapter 13 (class 7)
  - a. W&W, assignments 9 & 10
- 8. Unsecured Creditors in Chapter 13 (class 8)
  - a. W&W, assignment 11
- 9. The Means Test and Choice of Chapters (class 9)
  - a. W&W, assignments 12 & 13
- 10. Consumer Bankruptcy Policy (class 10)
  - a. W&W, assignment 14

### **Part III. Business Bankruptcy**

- 11. Introduction (Class 11)
  - a. W&W, assignments 15 & 16
  - b. Handout: Bankruptcy Petition
- 12. Operating in Chapter 11 (Class 12)
  - a. W&W, assignment 17
- 13. The Going Concern Debtor (Class 13)
  - a. W&W, assignments 18 & 19
- 14. Liens (Class 14)
  - a. W&W, assignment 20
- 15. Preferences (Class 15)
  - a. W&W, assignments 21 & 22
- 16. Fraudulent Transfers (Class 16)
  - a. W&W, assignment 23
  - b. UFTA (on Blackboard)
  - c. <https://goo.gl/3DQh4T>
- 17. More Fraudulent Transfers and Intro to Executory Contracts (Class 17)
  - a. W&W, assignment 24, but skip *Frost* (page 556), and replace with:
  - b. [Merit Management Group, LP v. FTI Consulting, Inc.](#)
  - c. W&W, assignment 25
- 18. Executory Contracts Continued (Class 18)
  - a. W&W, assignment 26
- 19. Chapter 11 Plans (Class 19)
  - a. W&W, assignments 27 & 28
- 20. Introduction to Cramdown (Class 20)
  - a. W&W, assignment 29
- 21. Cramdown and Introduction to 363 Sales (Class 21)
  - a. W&W, assignments 30 & 31
- 22. More on 363 Sales (Class 22)

- a. W&W, assignment 32
- 23. Professionals and Mass Torts (Class 23)
  - a. W&W, assignments 34 & 35
- 24. Transnational Issues (Class 24)
  - a. W&W, assignment 38
- 25. Repeal Chapter 11? (Class 25)
  - a. W&W, assignment 39
- 26. Catch Up and Review Session (Class 26)

## Grading and Examinations

### Final examination

Your grade will be based primarily on an open-book final examination at the end of the course.

### 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.**

## 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 am in my office most days of the week, from approximately 10am to 5pm. Feel free to come by to discuss anything related to the class. Questions or requests to schedule a meeting at a specific time can be sent to my e-mail addresses shown at the top of the syllabus (my preferred means of communication). Please note that I generally prefer *not* to answer substantive questions in telephone calls.

Saturday, March 24, 2018