

Bankruptcy Law 3794 - A  
Professor Scarcella – Spring 2018  
Class Syllabus

**Professor Scarcella's contact information:**

Email: louis\_scarcella@nyeb.uscourts.gov

Telephone: 631-712-6278

Faculty Assistant: Ms. Jennifer Calautti – Office 223

**Class times and location:**

Tuesdays, 4:10 p.m. – 7:00 p.m.

Room 014

**Learning Objectives:**

By the end of this course, students should:

- Have acquired knowledge of business and consumer bankruptcy law, policy, and practice, and of fundamental legal concepts relating to debtor-creditor relationships, and have acquired an ability to apply such knowledge to advising financially distressed individuals and companies, as well as their creditors and other interested parties.
- Have advanced their proficiency in using, analyzing and interpreting a comprehensive statute, i.e., the Bankruptcy Code.
- Have acquired a general awareness of some of the current events, trends, politics, and developments relating to bankruptcy law and practice.

**Course Materials:**

- Epstein, Markell, Nickles & Ponoroff, BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES (4th ed.) (West 2015)
- 2017 Collier Portable Pamphlet (LexisNexis)

**Attendance Policy:**

The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly-scheduled classes in this course. There are 28 regularly-scheduled classes for this course during the semester. Thus, you may miss no more than four regularly-scheduled classes during the semester.

Sign-in sheets will be provided for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct. If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation.

If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners or other state bar examiners. That sounds If you believe you must be absent from class for more than the permitted number of classes, you should contact the Office of Student Affairs as soon as possible. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be made to the Office of Student Affairs and must be accompanied by appropriate documentation.

**Lateness:**

Students are expected to be on time to class. However, it is better to come to class late than not at all. You may walk in late if you have a good reason, as long as you don't abuse this privilege.

**TWEN (The West Education Network):**

This course uses "TWEN." Important course information, materials, and announcements will be available via TWEN. Please sign up for TWEN as soon as possible. The email feature on TWEN will be used to let students know when a scheduled class must be cancelled unexpectedly.

**Expected Student Workload:**

The American Bar Association requires that you spend at least six hours per week on average outside of class studying for this 3-credit course. This is in addition to the three hours per week we spend in class. You will meet this requirement by doing the assigned reading and working through the problems in advance of class.

**Final Grade for the Course:**

The final grade for the course will be determined by an in-class examination. The exam will be open book. "Open book" means you may bring and use the assigned texts, your notes, outlines, and any other materials you may have prepared. Class will be more enjoyable with your participation. I reserve the option to adjust your grade upward for class participation.

**Final Exam:**

The final exam may consist of essays and/or short answer questions (such as multiple choice questions). I will provide more information about the final exam later in the semester.

**Computer Policy:**

Computers are to be used during class 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. I will do my best to get back to you within 24 hours. While I do not maintain regular office hours at the law school, if you need to speak with me in person, we can set up an appointment time either before or after class.

**Assignments by Class (14 classes):**

All reading assignments listed below are in Epstein, Markell, Nickles & Ponoroff, *BANKRUPTCY: DEALING WITH FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES* (4th ed.) (West 2015). Also read the Bankruptcy Code sections discussed in the reading materials and as set forth below in the reading assignments. The Code sections are in *Collier Portable Pamphlet*. These assignments are subject to change during the semester.

The reading assignments are intended as background for the concepts that we will be discussing in class. Please do not feel obligated to outline the cases in the textbook. For the most part, we will spend a lot of our class time doing what lawyers do--working through problems to see how various rules apply to realistic fact scenarios. I strongly encourage you to spend some time working through the problems in advance. We will work through a number of these problems in class, although we will not have time to address every problem in the assigned reading.

Class Syllabus begins on the following page.

## Part One: The Basics

### Class 1 (January 16)

1. Introduction to Bankruptcy
  - a. pp. 34-36, 18-27, 87-89 (up to problem 4-1)
  - b. Sections 101(13), 109, 301, 303
  - c. Official Form No. 1
2. Basic Bankruptcy Concept: Claims
  - a. Official Form 6F
  - b. pp. 58-59, 131-34 (through problem 5-22); Sections 101(5), 501, 502(a), (b)(1), (2), (6)
  - c. pp. 136-38 (through problem 5-26); Sections 507(a)(1), (2), 503(b)(1), (2), 707(a)(3)
3. Basic Bankruptcy Concept: Secured Claims
  - a. Official Form 6D
  - b. pp. 73-78 (through problem 3-18); Section 506(a)(1)

### Class 2 (January 23)

1. Basic Bankruptcy Concept: Secured Claims (continued)
2. Basic Bankruptcy Concept: Equality of Distribution
  - a. pp. 51-52
3. Basic Bankruptcy Concept: Property of the Estate
  - a. Official Forms 6A and 6B
  - b. pp. 52-57 (up to problem 3-12)
  - c. Sections 541(a)(1), (6), 1115, 1306
4. Basic Bankruptcy Concept: Stay
  - a. pp. 107-110, 118-121 (omit problem 5-11)
  - b. Sections 362(a)(1)-(7), (b)(2), (c)(2)

### Class 3 (January 30)

1. Basic Bankruptcy Concept: Stay (continued)
2. Protection of third parties: p. 111 (up to SAS case); Section 105(a) and problem 5-6 on page 115)
3. Basic Bankruptcy Concept: Discharge
  - a. pp. 37-39 (up to Section 523(a)(8), 46-48 (problems 3-1 through 3-5, 3-7)
  - b. Sections 524(a), (e), 525
4. Issues in Consumer Cases: Overview of Chapters 7 and 13

- a. <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics>
- b. <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>

## **Part Two: Issues in Consumer Cases**

### **Class 4 (February 6)**

1. Issues in Consumer Cases: Overview of Chapters 7 and 13 (continued)
  - a. pp. 211-215 (up to problem 7-3), 237-246, 259-60
  - b. Section 101(10A) (“current monthly income”)
  - c. Section 101(39A) (“median family income”)
  - d. Problems 7-1, 7-2, 8-1, 8-2, 8-3 (omit 8-4)
2. Issues in Consumer Cases: Discharge
  - a. pp. 219-222
  - b. Sections 727(a)(1)-(11), (b), (c)
  - c. Problems 7-5 and 7-6 on p. 229
3. Issues in Consumer Cases: Discharge
  - a. pp. 159-160 (up to problem 6-1)
  - b. pp. 182-187, 189-94
  - c. Sections 523(a)(1), (2),(4),(5), (8), (15)

### **Class 5 (February 13)**

1. Issues in Consumer Cases: Discharge
  - a. pp. 161-63 (up to problem 6-5), sections 1328 (a), (b), (c), (f)
  - b. pp. 39-46 (includes *Greene v. US Dept. of Education*), section 523(a)(8)
2. Issues in Consumer Cases: Exemptions
  - a. pp. 164-170, 179-180 (up to problem 6-12)
  - b. Sections 522(b)(1),(2),(3), (c), (d), (f), (k), (l)
  - c. Omit problems 6-7 through 6-9
3. Issues in Consumer Cases: Home Mortgages
  - a. Sections 522(c)(2), 524(a)(1)
4. Issues in Consumer Case: Home Mortgages - Chapter 7
  - a. Sections 506(a), (d)
  - b. Review pp. 73-74
  - c. pp. 78-83 (includes *Dewnsup v Timm*) (“strip down”)
  - d. Class handout: *Bank of America v. Caulkett* 135 S.Ct. 1995 (2015) (“strip off”)

### **Class 6 (February 20)**

1. Issues in Consumer Cases: Home Mortgages – Chapter 13
  - a. pp. 264-65, 274-75 (up to problem 8-12)
  - b. Problem 3-19 on p. 86

- c. Sections 1325(a)(5), (b)(2), (5)
- 2. Issues in Consumer Cases: Car Loans – Chapter 13
  - a. pp. 276-78 (omit problems 8-13 and 8-14)
  - b. Section 1325(a)(9) (“hanging paragraph”)
  - c. Problem 8-15
- 3. Issues in Consumer Cases: Car Loans – Chapter 7
  - a. pp. 230-36
  - b. Sections 722, 524
  - c. Problems 7-8, 7-10, 7-13
- 4. Introduction to Part Three of the Course – Business Cases

### **Part Three: Business Cases**

#### **Class 7 (February 27)**

- 1. Business Cases, pp. 287-97  
Sections 1102(a)(1), 1103(c), 1104(a), 1106(a)(5), 1107, 1108, 1123(a)(5)(D)
- 2. Stay Relief and Adequate Protection, pp. 297, 121-25  
Sections 362(d)(1) and (2), 362(g), 361  
Problems 5-13, 5-15, 5-16, 5-17, 5-18, and problem 5-20 (parts 1-5) on p. 130
- 3. Funding an Operating Business in Chapter 11, pp. 302-09  
Sections 361, 363(c), 363(e), 364, 552  
Problems 9-5 (parts 1 and 2), 9-6, 9-7, 9-8 and 9-9

#### **Class 8 (March 6)**

- 1. End Game 1 – Selling the Business Overview, pp. 309-21 (up to problem 9-10)  
(reading includes *On-Site Sourcing* – sale of business to DIP lender)  
Sections 363(b), 363(m), 363(n), 1123(b)(4)
- 2. Sales of Encumbered Property, pp. 322-23  
Sections 363(f), 363(k)  
Problem 9-11
- 3. After the Sale – Dismissal or Conversion to Chapter 7 or Chapter 11 plan  
Section 1112
- 4. End Game 2 – Plan Preparation, pp. 340-45  
Sections 1121, 1122, 1123(a)(1), 1123(a)(3), 1124  
Problem 9-13 on p. 345 and problem 9-14 on p. 347
- 5. Future Claims, pp. 65-66, and Successor Liability

6. Subordination, pp. 148-50 (up to problem 5-35); Section 510(a), (c)

**Class 9** (March 13)

1. Plan Approval by Creditors, pp.351-52, 357-59  
Sections 1125(b), 1126(c)
2. Plan Approval by Court, pp. 392-94, 397-402  
Sections 1122(a), 1128, 1129(a)(7), 1129(a)(8), 1129(a)(9)(A), 1129(a)(10), 1129(b)  
Problem 9-25 on p. 400; problems 9-30 and 9-31 on p. 406
3. Special Forms of Chapter 11
  - a. Prepackaged Plans, pp. 355-57; Section 1125(g)
  - b. Small Business Cases, pp. 414-15 (up to problem 9-33)
  - c. Single Asset Real Estate, pp.416-17; Sections 101(51B), 362(d)(3)
  - d. Individual Chapter 11, pp. 423-29
  - e. Section 706(b) – conversion of chapter 7 case to chapter 11: “involuntary individual” chapter 11

**Part Four: Impact of Bankruptcy on Pre-Bankruptcy Transactions**

**Class 10** (March 20)

1. Leases and Executory Contracts  
Official Form 6G – Schedule G: Executory Contracts and Unexpired Leases  
  
Choices: Rejection, Assumption, Assignment, pp. 497-499, 512-13  
Sections 365(a), 502(g), 365(k)  
  
Limitations on Choice  
Lack of Effect of Contract Provisions, pp. 527-30 (through problem 12-15),  
  
Sections 365(e)(1), (f)(1)  
Role of Bankruptcy Judge, Section 365(a)
2. What is an Executory Contract? What is Rejection, pp. 549
3. Leases and Executory Contracts  
Length of Gap and Gap Period Duties  
pp. 511, 526, Section 365(d)  
  
Requirements for Assumption  
pp. 515-17 and problem 12-7 on p. 523  
Sections 365(b)(1), (3)  
  
Requirements for Assignment  
pp. 530-35, including *In re U.L. Radio* (tv sales store assigning lease to bistro)  
Sections 365(f)(2), (k)

**Class 11 (April 3)**

1. Leases and Executory Contracts -- Limitations on Assignment (and Assumption)  
pp. 536-45, including *In re Pioneer Ford Sales* (Rhode Island statute limiting assignment of car dealership franchises) and *In re Catapult Entertainment, Inc.* (assumption of intellectual property licenses)  
Sections 365(c)(1), (2)
2. Leases and Executory Contracts -- Debtors Who Are Landlords or IP Licensors  
pp. 545-49 (through problem 12-20)  
Sections 365(h), 101(35A) (definition of “intellectual property”), 365(n)
3. Introduction to Avoiding Powers  
Official Form 7 – Statement of Financial Affairs  
Section 341  
pp. 445-49 (omit problem 11-3)  
Sections 550(a), (b), 541(a)(3), 502(d), 502(h)
4. Introduction to Fraudulent Transfers and Obligations  
pp. 449-54 (up to Corporate Transactions – Intracompany Transfers)  
Section 548(a), (c), (d)  
Problem: In 2015, the board of directors of D Corp. declares a dividend and D Corp. distributes \$700,000 to D Corp’s shareholders, S1, S2 and S3. In 2016, D Corp files a Chapter 11 petition. What is the possible relevance of 548(a)?

**Class 12 (April 10)**

1. Bankruptcy Code’s Incorporation of State Fraudulent Transfer Law  
pp. 467-68 (omit, for now, problem 11-12 on p. 468)  
Section 544(b)(1)
2. Three Party Fraudulent Transactions  
Section 548(a)(1)(B) (“if the debtor . . . received less than a reasonably equivalent value”)  
p. 454 (Corporate Transactions – Intracompany Transfers)  
pp. 465-67 (Leveraged Buyouts) (omit problem 11-10)
3. Preferences  
Elements of a Preference  
Sections 101(54), 547(b),(f), (g)  
pp. 469-73 and problem 11-12 on p. 468

**Class 13 (April 17)**

1. Preference Exceptions  
Sections 547(c)(2), (4), (7), (9)  
pp. 476-77, 478-80, 480-81 (up to Protection for “Floating Liens”)  
Omit “Near Contemporaneous Changes” on pp. 477-478  
Omit problems 11-22 and 11-23
2. Indirect Preferences  
Sections 547(b)(1), 550(a)(1); pp. 474-76



3. Other Voidable Pre-Bankruptcy Transactions

Mortgages That Are Not Timely Recorded

Security Interests That Are Not Timely Perfected

Sections 544(a), 547(e)

pp. 483-87 (omit part (b) of problem 11-28 and omit problem 11-29)

**Class 14** (April 24)

1. Other Voidable Pre-Bankruptcy Transactions (continued)

2. Setoffs

Sections 553(a)(1), 506(a)(1), 362(a)(7)

pp. 487-89 (omit problems 11-31 and 11-32)

3. Statutory Liens

Sections 101(53), 547(c)(6)

**Part Five: Procedure, Jurisdiction and Venue**

Where Does All of this Happen and Who Makes it Happen?

Basics of Procedure, Jurisdiction and Venue, Appeals

Procedure: Bankruptcy Rules 7001, 9014; pp. 30-33

Jurisdiction: 28 U.S.C. 1334(a), (b), 151, 152(a), 157; pp. 559-68

Venue 28 U.S.C. 1408; pp. 589-91 (omit problem 13-1)

Appeals p. 591

**Review Session**