

Bankruptcy Law 3794 – A  
Professor Scarcella – Fall 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 205

**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)
- Bankruptcy Code and Related Source Materials (West Academic)  
David G. Epstein and Steve H. Nickles

**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 14 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 If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course.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. 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).

Please read the Bankruptcy Code sections discussed in the reading materials and as set forth below in the reading assignments (the Bankruptcy Code sections are referred to below as “sections”). The Bankruptcy Code sections are in *Bankruptcy Code and Related Source Materials*. 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.

**Part One: The Basics**

**Class 1: August 21**

1. Introduction to Bankruptcy
  - a. pp. 34-36, 18-27, 87-89 (up to problem 4-1)
  - b. Bankruptcy Code §§ 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); Bankruptcy Code §§ 101(5), 501, 502(a), (b)(1), (2), (6), 1111(a)
  - c. pp. 136-38 (omit problem 5-27); Bankruptcy Code §§ 507(a)(1), (2), 503(b)(1), (2), (9), 707(a)(3)
  
3. Basic Bankruptcy Concept: Secured Claims
  - a. Official Form 6D
  - b. pp. 73-78 (through problem 3-18); Bankruptcy Code § 506(a)(1), (2)

**Class 2: August 28**

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. Bankruptcy Code §§ 541(a)(1), (3), (5), (6), 1115, 1306

4. Basic Bankruptcy Concept: Stay
  - a. pp. 107-110, 118-121 (omit problems 5-11 and 5-12)
  - b. Bankruptcy Code §§ 362(a)(1)-(7), (b)(2), (c)(1), (2)
  - c. Class discussion: serial bankruptcy filings and termination of stay

### **Class 3: September 4**

1. Basic Bankruptcy Concept: Stay (continued)
2. Protection of third parties: p. 111 (up to SAS case); Bankruptcy Code § 105(a) and problem 5-6 on page 115)
3. Basic Bankruptcy Concept: Discharge
  - a. pp. 37-39 (up to Section 523(a)(8), pp. 46-48 (problems 3-1 through 3-5, 3-7)
  - b. Bankruptcy Code §§ 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: September 25**

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. Bankruptcy Code § 101(10A) (“current monthly income”)
  - c. Bankruptcy Code § 101(39A) (“median family income”)
  - d. Bankruptcy Code §§ 1325(a)(4), 1325(b)
  - e. 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. Bankruptcy Code § 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. Bankruptcy Code § 523(a)(1), (2),(4),(5), (8), (15)

### **Class 5: October 2**

1. Issues in Consumer Cases: Discharge
  - a. pp. 161-63 (up to problem 6-5), Bankruptcy Code § 1328 (a), (b), (c), (f)
  - b. pp. 39-46 (includes *Greene v. US Dept. of Education*), Bankruptcy Code § 523(a)(8)
2. Issues in Consumer Cases: Exemptions
  - a. pp. 164-170, 179-180 (up to problem 6-12)
  - b. Bankruptcy Code § 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. Bankruptcy Code §§ 522(c)(2), 524(a)(1)
- 4. Issues in Consumer Case: Home Mortgages - Chapter 7
  - a. Bankruptcy Code § 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: October 9**

- 1. Issues in Consumer Cases: Home Mortgages – Chapter 13
  - a. pp. 264-65, 274-75 (up to problem 8-12)
  - b. Bankruptcy Code §§ 1325(a)(5), 1322(b)(2), (5)
- 2. Issues in Consumer Cases: Car Loans – Chapter 13
  - a. pp. 276-78 (omit problems 8-13 and 8-14)
  - b. Bankruptcy Code § 1325(a)(9) (“hanging paragraph”)
  - c. Problem 8-15
- 3. Issues in Consumer Cases: Car Loans – Chapter 7
  - a. pp. 230-36
  - b. Bankruptcy Code § 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: October 16**

- 1. Business Cases, pp. 287-97
  - a. Bankruptcy Code §§ 1102(a)(1), 1103(c), 1104(a), 1106(a)(5), 1107, 1108
- 2. Stay Relief and Adequate Protection, pp. 297, 121-25
  - a. Bankruptcy Code §§ 362(d)(1) and (2), 362(g), 361
  - b. 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
  - a. Bankruptcy Code §§ 361, 363(c), 363(e), 364, 552
  - b. Problems 9-5 (parts 1 and 2), 9-6, 9-7, 9-8 and 9-9

**Class 8: October 23**

- 1. End Game 1 – Selling the Business Overview
  - a. pp. 309-21 (up to problem 9-10) (reading includes *On-Site Sourcing* – sale to DIP lender)
  - b. Bankruptcy Code §§ 363(b), 363(m), 363(n), 1123(b)(4)

2. Sales of Encumbered Property
  - a. pp. 322-23
  - b. Bankruptcy Code § 363(f), 363(k)
  - c. Problem 9-11
  
3. After the Sale – Dismissal or Conversion to Chapter 7 or Chapter 11 plan
  - a. Bankruptcy Code § 1112
  - b. Structured Dismissals: *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017)
  
4. End Game 2 – Plan Preparation, pp. 340-45  
 Bankruptcy Code § 1121, 1122, 1123(a)(1), 1123(a)(3), 1123 (a)(5)(D), 1124  
 Problem 9-13 on p. 345 and problem 9-14 on p. 347
  
5. Future Claims and Successor Liability
  - a. pp. 65-66
  
6. Subordination
  - a. pp. 148-50 (up to problem 5-35); Bankruptcy Code § 510(a), (c)

**Class 9: October 30**

1. Plan Approval by Creditors
  - a. pp. 351-52, 357-59
  - b. Bankruptcy Code §§ 1125(b), 1126(c)
  
2. Plan Approval by Court
  - a. pp. 392-94
  - b. Bankruptcy Code §§ 1128, 1129(a)(8), 1129(a)(9)(A), 1129(a)(10), 1129(b)
  - c. 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; Bankruptcy Code § 1125(g)
  - b. Small Business Cases, pp. 414-15 (up to problem 9-33)
  - c. Single Asset Real Estate, pp.416-17; Bankruptcy Code §§ 101(51B), 362(d)(3)
  - d. Individual Chapter 11, pp. 423-29
  - e. Bankruptcy Code § 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: November 6**

1. Leases and Executory Contracts
  - a. Official Form 6G – Schedule G: Executory Contracts and Unexpired Leases
  
  - b. Choices: Rejection, Assumption, Assignment  
 pp. 497-499, 512-13  
 Bankruptcy Code §§ 365(a), 502(g), 365(k)

- c. Limitations on Choice
  - i) Lack of Effect of Contract Provisions  
pp. 527-30 (through problem 12-15), Bankruptcy Code § 365(e)(1), (f)(1)
  - ii) Role of Bankruptcy Judge  
Bankruptcy Code § 365(a)
- 2. What is an Executory Contract? What is Rejection, pp. 549
- 3. Leases and Executory Contracts
  - a. Length of Gap and Gap Period Duties  
pp. 511, 526, Bankruptcy Code § 365(d)
  - b. Requirements for Assumption  
pp. 515-17 and problem 12-7 on p. 523  
Bankruptcy Code § 365(b)(1), (3)
  - c. Requirements for Assignment  
pp. 530-35, including *In re U.L. Radio* (tv sales store assigning lease to bistro)  
Bankruptcy Code § 365(f)(2), (k)

**Class 11: November 13**

- 1. Leases and Executory Contracts -- Limitations on Assignment (and Assumption)
  - a. 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)
  - b. Bankruptcy Code § 365(c)(1), (2)
- 2. Leases and Executory Contracts -- Debtors Who Are Landlords or IP Licensors
  - a. pp. 545-49 (through problem 12-20)
  - b. Bankruptcy Code §§ 365(h), 101(35A) (definition of “intellectual property”), 365(n)
- 3. Introduction to Avoiding Powers
  - a. Official Form 7 – Statement of Financial Affairs
  - b. Bankruptcy Code § 341
  - c. pp. 445-49 (omit problem 11-3)
  - d. Bankruptcy Code §§ 550(a), (b), 541(a)(3), 502(d), 502(h)
- 4. Introduction to Fraudulent Transfers and Obligations
  - a. pp. 449-54 (up to Corporate Transactions – Intracompany Transfers)
  - b. Bankruptcy Code § 548(a), (d)
  - c. 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: November 20**

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

**Class 13: November 27**

1. Preference Exceptions
  - a. Bankruptcy Code § 547(c)(2), (4), (7), (9)
  - b. pp. 476-77, 478-80, 480-81 (up to Protection for "Floating Liens")
  - c. Omit "Near Contemporaneous Changes" on pp. 477-478
  - d. Omit problems 11-22 and 11-23
2. Indirect Preferences
  - a. Bankruptcy Code §§ 547(b)(1), 550(a)(1)
  - b. pp. 474-76
3. Other Voidable Pre-Bankruptcy Transactions
  - a. Mortgages That Are Not Timely Recorded
  - b. Security Interests That Are Not Timely Perfected
  - c. Sections 544(a), 547(e)
  - d. pp. 483-87 (omit part (b) of problem 11-28 and omit problem 11-29)

**Class 14: December 4**

1. Other Voidable Pre-Bankruptcy Transactions (continued)
  - a. Setoffs
  - b. Bankruptcy Code §§ 553(a)(1), 506(a)(1), 362(a)(7)
  - c. pp. 487-89 (omit problems 11-31 and 11-32)
2. Statutory Liens
  - a. Bankruptcy Code §§ 101(53), 547(c)(6)

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

1. Introduction – Where Does All of this Happen and Who Makes it Happen?
2. Basics of Procedure, Jurisdiction and Venue, Appeals
3. Procedure: Bankruptcy Rules 7001, 9014; pp. 30-33
4. Jurisdiction: 28 U.S.C. §§ 1334(a), (b), 151, 152(a), 157; pp. 559-68



5. Venue 28 U.S.C. § 1408; pp. 589-91 (omit problem 13-1)
6. Appeals p. 591

### **Review Session**