Bankruptcy Law 3794 – A
Professor Scarcella – Spring 2019
Class Syllabus

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Class times and location:
Tuesdays, 4:10 p.m. – 7:00 p.m.
Room 230

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 If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course.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

Credit Hour Policy
The Law School has adopted a “Credit Hour Policy.” A “credit hour” is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction (calculated as 50 minutes of classroom time) and two hours (120 minutes) of out-of-class student work per week for fifteen weeks (including one week for final exams), or the equivalent amount of work over a different amount of time. These requirements apply equally to all courses taught in the Law School, including distance education courses.

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 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: January 15
1. Introduction to Bankruptcy
   a. pp. 34-36, 18-30, 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. 136-39 (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: January 22
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. Serial bankruptcy filings – Bankruptcy Code §§ 362(c)(3),(4)

**Class 3: January 29**

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 3-4, 3-6, 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](http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics)

**Part Two: Issues in Consumer Cases**

**Class 4: February 5**

1. Issues in Consumer Cases: Overview of Chapters 7 and 13 (continued)
   a. pp. 211-215 (up to problem 7-3), 237-246, 255-258 (omit problems 8-5, 8-6, 8-7 and 8-8), 259-60 (omit problem 8-9)
   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 (omit problems 8-3 and 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), (6), (8), (15)

**Class 5: February 12**

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, 179-181 (omit problems 6-7, 6-9, 6-12, 6-13 and 6-14)
   b. Bankruptcy Code § 522(b)(1),(2),(3), (c), (d), (f), (g), (k), (l)

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”)

Class 6: February 19

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: February 26

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: March 5

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

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: March 12
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)

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: March 26
1. Leases and Executory Contracts

   b. Choices: Rejection, Assumption, Assignment
      pp. 497-499, 512-13; Bankruptcy Code §§ 365(a), 502(g), 365(k)
c. Limitations on Choice
      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: April 2
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)

Class 12: April 9
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: April 16
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: April 23
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
6. Appeals p. 591

Review Session