

# **COURSE SYLLABUS BANKRUPTCY: DEBTOR & CREDITOR**

**UNIVERSITY OF CINCINNATI COLLEGE OF LAW**

**Hon. Jeffery P. Hopkins**

Adjunct Professor

Phone: 513-684-2572 ext. 146

email: Jeffery\_Hopkins@ohsb.uscourts.gov

## **1. REQUIRED BOOKS**

—Elizabeth Warren and Jay Lawrence Westbrook, *The Law of Debtors and Creditors: Text, Cases, and Problems* (Wolters Kluwer, 6th edition 2009) (“Text”)

—*Bankruptcy Code, Rules and Official Forms* (West 2010 Law School Edition) (“Statutory Supplement”)

## **2. RECOMMENDED REFERENCES**

—*Collier on Bankruptcy* (Alan N. Resnick & Henry Sommer eds. 15th ed.) (multi-volume treatise available in the library ) (“*Collier*”)

—Elizabeth Warren, *Chapter 11: Reorganizing American Businesses, The Essentials* (Wolters Kluwer, 2008)

**Note:** Although the recommended references may be of some assistance in understanding particularly difficult concepts, it is *not* necessary for you to supplement the class materials by referring to them or the many other publications dealing with debtors’ and creditors’ rights and bankruptcy law. I strongly recommend that you focus on the assigned readings and the matters covered in class because: (1) it will be a much more efficient use of your time/energy; and (2) you will only be tested on the subject areas drawn from the assigned reading and/or discussed in class.

There were substantial changes to bankruptcy law in October 2005. Therefore, materials published prior to that date may well be outdated and possibly dangerously misleading. Do not use ancillary/supplemental materials published prior to that date.

## **3. CLASS**

Class will meet in Room 100A from 9:00–10:25 a.m. on Tuesdays and Thursdays.

#### **4. OFFICE HOURS**

Unless otherwise announced, my office hours will be by appointment. I also will make myself available after class to the extent possible.

#### **5. COURSE DESCRIPTION AND OBJECTIVES**

This is a three-credit survey class focusing on the consumer and business bankruptcy process, principally in the context of cases commenced by individuals and business entities under Chapter 7, 11 and 13 of the Bankruptcy Code. The course is designed as an introductory course in consumer and business bankruptcy for the student who has not taken another bankruptcy course. I recommend that students either have taken a course on secured transactions or at least have some familiarity with that law.

#### **6. TEACHING METHOD**

We will not spend a significant amount of class time on traditional case analysis. You will need to analyze the cases in the Text (and supplemental cases that I will assign from time to time) on your own and be prepared to apply them, as well as the applicable sections of the Bankruptcy Code, in order to (1) contribute to the class discussion and (2) address the problems that will be assigned prior to each class (either at the conclusion of the previous class session or by e-mail). In other words, the class will be a synthesis of discussion and problem-solving methods of instruction. If you have questions about the cases, I will be happy to answer them, but I will assume that you have read and understood them, and I will proceed directly to applying what you have read rather than rehashing the case law.

#### **7. THE IMPORTANCE OF READING (AND RE-READING) THE CODE**

In many ways, bankruptcy is a world unto itself, with its own governing law (which is often counter-intuitive), court system and language. For new students, and long-time practitioners and judges alike, the Code's complexity and cross-referencing can be challenging. "Bankruptcy speak" often includes short-hand phrases, which sometimes include Code section numbers, to describe legal concepts -- *e.g.*, "cram down," "§ 363 sales," *etc.* Thus, analysis of bankruptcy concepts should *always* begin with the language of the Code. It is therefore imperative that you faithfully refer to the Statutory Supplement in conjunction with your reading assignments from the Text. Whenever the Text references a provision of the Code, you should look up the Code section in your Statutory Supplement and read it carefully. By the end of the semester, your Code should be well worn and well annotated.

## **8. ATTENDANCE AND CLASS PARTICIPATION**

### **A. Attendance**

At the beginning of each class I will circulate an attendance sheet for you to sign. Attendance is mandatory and will be considered in grading.

### **B. Participation**

Given the problem-oriented approach to the course, your preparation for class and active participation are essential. I will therefore assume that you have read the assigned materials and worked through the problems prior to class. Class participation will be considered in grading.

## **9. EXAMINATION**

The final examination will be a three-hour test with a combination of multiple-choice and essay questions.

## **10. TWEN**

Please sign up for our course's TWEN page. If you have any questions about how to sign up for TWEN, please contact a librarian. Supplementary reading material (i.e., material not included in the Text or Statutory Supplement) -- which will, from time to time, include problems that we prepare to supplement or replace those in the Text -- will be posted on TWEN.

## **PART I. INDIVIDUAL DEBT COLLECTION**

(will not be covered during the semester)

## **11. TEACHER'S COMMENTS ON INDIVIDUAL DEBT COLLECTION**

*Note:* This course covers only Bankruptcy law. In the past, when I have taught this class, I have assigned reading addressing state law debt collection. Inevitably, despite my best efforts, the class tended to run out of time to cover Chapter 11. Thus, I have eliminated discussion of state debt collection law from this course. It has been my belief, that most law schools do not adequately teach students how to convert a judgement into collections. Part I, pp. 1-33 of the text provides a very comprehensive survey of state collection law. I recommend it for your reading. However, it will not be taught in this course, and hence not appear on your exam.

## **12. CLASS ASSIGNMENTS**

Because I want to make sure that I answer your questions and that you understand the material, I may have to make adjustments to this syllabus as the semester progresses.

Please note that the pages listed below will sometimes include problems that I have not assigned. If so, you will not be responsible for and need not read the unassigned problems.

## **Part II. CONSUMER BANKRUPTCY**

### **Tuesday, January 18 -- Introduction to Bankruptcy**

Please read the following: (1) the Text, pp. 101–111 (Introduction to Bankruptcy), 361–370 (Chapter 7 Liquidation); 387–406 (Chapter 11 Reorganization/Introduction to Business Bankruptcy); (2) Bankruptcy Code §§ 103, 109(a), (b) and (d), 301 and 303(a); and (3) Elizabeth Warren and Jay Lawrence Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 Mich. L. Rev. 603 (Feb. 2009).

I also would recommend that you review pp. 5–21, 29–42 and 71–77 of *Bankruptcy Basics*, a publication of the Administrative Office of the United States Courts, available at <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/FederalCourts/BankruptcyResources/bankbasics.pdf>.

### **Thursday, January 20 -- Elements Common to Consumer Bankruptcy --Property of the Estate, the Trustee and the Automatic Stay**

Please read the Text, pp. 113-128 (Property of the Estate), 128-139 (Automatic Stay) and Code §§ 521, 541 and 362

### **Tuesday, January 25 -- Liquidation Bankruptcy -- A Change in Philosophy, The Presumption of Abuse and The Formula: Income and Expenses**

Please read the Text, pp. 141- 160 (see notes) and Code §§ 101(10A)(B), 707(b), 726

### **Thursday, January 27 -- Liquidation Bankruptcy (con't) -- Policing the New Standards, Property Exempt from Seizure**

Please read the Text, pp. 160-167 (Policing the New Standards) , 167-189 (Property Exempt From Seizure) and Code §§ 101(10A), 101(12)(A), 522, 707(b)(1) - (b)(4) and (b)(6) - (b)(7), and 526

### **Tuesday, February 1 -- Liquidation Bankruptcy (con't) – Proceeds and Tracing, Partially Exempt Property, Security Interests in Exempt Property, Avoiding Judicial Liens and Non-PMSI Liens, Homestead Exemptions, Exemption Planning, Moving to Better Exemptions, Unlimited Exemptions and Asset Trusts, Who Cares About Exemptions?**

Please read the Text, pp. 189 - 217 and Code §§ 522(a), (b) and (f)(1)(A)(B) and 727.

**Thursday, February 3 -- Liquidation Bankruptcy (con't) – Claims and Distributions**

Please re-read: (1) the Text, 217-229 and Code §§ 502, 503, 506, 507 and 726 and Rules 3001-3008, 9014 and 7001.

**Tuesday, February 8 -- Liquidation Bankruptcy (con't) --**

Please read the Text, pp. 229-251 (Exceptions to Discharge) *In re Bronsdon*, 2010 WL 3655972 (1st Cir. BAP (Mass.)); pp. 251-258 (Tax Priorities and Discharge) (Bankruptcy Crimes) and Code §§ 507(a)(7)(8), 523(a), 727 and 105(a).

**Thursday, February 10 -- Liquidation Bankruptcy (con't) -- The Debtor's Post-Bankruptcy Position: Reaffirmation**

Please read the Text, pp. 258-267 (Reaffirmation of Secured Debt); pp. 267-271 (Reaffirmation of Unsecured Debt); pp. 271-273 (Nondiscrimination) and Code §§ 524, 525, 722 and 521(a)(2).

**Tuesday, February 15 -- Chapter 13 Bankruptcy -- Elements of an Acceptable Plan, Payments to Secured Creditors**

Please read the Text, pp. 275-279 (Overview of Chapter 13); pp. 279-301 (Payments to Secured Creditors) and Code §§ 1322, 1325, 362(d), 361 and 1303.

**Thursday, February 17 -- Chapter 13 Bankruptcy (con't) -- Payments on the Home Mortgage, Payments to Unsecured Creditors**

Please read: (1) the Text, pp. 301-327 (Payments on the Home Mortgage); pp. 307-326 (Payments to Unsecured Creditors) and Code §§ 707(b)(2)(A) and (B), 1322, 1325, 506 and Rule 1007.

**Tuesday, February 22 -- Chapter 13 Bankruptcy (con't) -- Threshold Eligibility for Chapter 13, The Consumer Bankruptcy System**

Please read the Text, pp. 326-336 (Eligibility for Chapter 13); pp. 336-348 (The Consumer Bankruptcy System) and Code §§ 109(e) and (g), 101(30), 362(c)(3) and 526-528.

**Thursday, February 24 -- Chapter 13 Bankruptcy (con't)**

Please read: (1) the Text, pp. 348-357 (Consumer Bankruptcy System - con't) and (Make Up and Review)

### **PART III. BUSINESS BANKRUPTCY**

**Tuesday, March 1 -- Chapter 7 Liquidation** -- Business Liquidations, Initiation, Involuntary Bankruptcy

Please read: the Text, pp. 361-368 (Chapter 7 Business Liquidations); pp. 368-386 (Involuntary Bankruptcy) and Code §§

**Thursday, March 3 --** Property of the Estate, Claims, the Automatic Stay and Adequate Protection

Please read: the Text, pp. 116–117 (The Estate); 217–229 (Claims and Distributions), bottom of page 279–280 (Payments to Secured Creditors), 406–427 (The Automatic Stay and Adequate Protection); and Bankruptcy Code §§ 101(5), 101(10), 101(12), 102(2), 361, 362(a), 362(d)(1) & (2), 502(a), 507(a) & 541(a).

**Tuesday, March 8 --** Use, Sale or Lease of Property of the Estate; Setoff; Post-petition Financing; First-Day Motions

Please read: the Text, pp. 438–452 (What Happens to the Cash?), 452–471 (Post-petition Financing and Other First Day Orders); Bankruptcy Code §§ 363, 364, 553; (3) debtor-in-possession financing order to be assigned from an actual case; and (4) local rules and guidelines governing asset sales and cash collateral/financing motions in the Southern District of New York.

**Thursday, March 10 --** Strong-Arm Clause; Preferences

Please read: Text, pp. 471–492 (Reshaping the Estate, Strong-Arm Clause, Preferences); and Bankruptcy Code §§ 101(32), 101(54), 544(a), 547(b).

**Tuesday, March 15 --** Preferences (continued)

Please read: the Text, pp. 492–522 (The Exceptions to Preference Avoidance).

**Thursday, March 17 --** Fraudulent Conveyances

Please read: the Text, 71-90 (Fraudulent Conveyances), bottom of page 553–574 (Fraudulent Conveyance and Other State Law Avoidance Laws in Bankruptcy); and Bankruptcy Code §§ 544(b), 546, 548, 550, 551.

**Tuesday, March 22 -- Spring Break**

**Thursday, March 24 -- Spring Break**

**Tuesday, March 29 -- Executory Contracts and Unexpired Leases**

Please read: the Text, pp. 523–547 (Executory Contracts); and (2) Bankruptcy Code § 365.

**Thursday, March 31 -- The Debtor in Possession; Appointment of a Chapter 11 Trustee or Examiner; Committees; Retention of Professionals; the United States Trustee**

Please read: the Text, pp. 430–438 (Who’s Running the Show); 708–717 (Management Change), 767–795 (Ethical Issues); and Bankruptcy Code §§ 101(14), 101(31), 307, 327, 503(c), 548(a)(1)(B)(ii)(IV), 1101(1), 1102(a), 1103, 1104(a)(c), 1106(a) & (b), 1107 & 1108.

**Tuesday, April 5 -- The Chapter 11 Plan: Negotiating and Confirming the Plan, Tax Implications, Best Interests, Feasibility and Other Confirmation Requirements**

Please read: the Text, pp. 596–628; and Bankruptcy Code §§ 1123 & 1129(a).

**Thursday, April 7 -- Classification and Voting; Claims Trading; Solicitation and Disclosure**

Please read: the Text, pp. 628–661; and Bankruptcy Code §§ 1122, 1124, 1125 & 1126.

**Tuesday, April 12 -- Non-Consensual Confirmation (Cramdown); the Absolute Priority Rule; the “New Value” Exception and Related Issues; the § 1111(b) Election; Exclusivity**

Please read: the Text, pp. 662–681; and Bankruptcy Code §§ 1111(b), 1121, 1129(a)(8), 1129(a)(10) & 1129(b).

**Thursday, April 14 -- The Small Business Debtor**

Please read: the Text, pp. 686–697; and Bankruptcy Code §§ 101(51C), 101(51D), 308(b), 1116, 1121(e) & 1125(f).

**Tuesday, April 19 -- Post-confirmation Issues**

Please read: the Text, pp. 751–top of page 766; and Bankruptcy Code §§ 1123(b)(4) & 1141.

**Thursday, April 21 -- The Functions of Bankruptcy Law**

Please read Douglas Baird, *The New Face of Chapter 11*, 12 Am. Bankr. Inst. L. Rev. 69 (2004) and be prepared for a discussion of Baird’s position in contrast to the view adopted by Warren and Westbrook in the article that was assigned for the first class. Also, please read: (1) the Text, pp. 881–899 (The Functions of Bankruptcy Law); (2) Stephen J. Lubben, *No Big Deal: The GM and Chrysler Cases in Context*, 83 Am. Bankr. L.J. 531 (2009); and (3) Barry E. Adler, *Chapter 11 at the Crossroads: Does Reorganization Need Reform? A Reassessment of Bankruptcy Reorganization After Chrysler and General Motors*, 18 Am. Bankr. Inst. L. Rev. 305 (2010).

**Tuesday, April 26 -- Semester Review/Questions and Answers**

**PART IV. THE FUNCTIONS AND BOUNDARIES OF BANKRUPTCY LAW**  
(will not be covered during the semester)