

Bankruptcy
University of Colorado School of Law
Judge Elizabeth E. Brown
Fall 2012 Semester

I. CONTACT INFORMATION

For security reasons, I will give you contact information in class. Once you have my contact information, please don't hesitate to send email or call. Sometimes that is the best way I learn if something was unclear in class.

II. REQUIRED TEXTBOOKS

- A. Casebook: Elizabeth Warren and Jay Westbrook, *THE LAW OF DEBTORS AND CREDITORS* (6th ed.).
- B. Statutes: MiniCode (AWHFY, L.P. 2010 ed.).

III. CLASS LOCATION AND SCHEDULE

Mondays and Wednesdays from 8:00 to 9:20 in Classroom 305.

IV. OFFICE HOURS

I have scheduled office hours for 1/2 hour following class on Mondays and Wednesdays. Admittedly, this is a short period of time, but I will also be available to you throughout the week by phone and email. In addition, when it gets close to finals, I will schedule myself to be available on campus for one or two days so that you may bring all your questions to me. Please remember that you can also ask to schedule a separate appointment.

V. COURSE AIMS & STRUCTURE

This is a general survey course. We will not get through the entire casebook, but students will acquire a good overview of the law of bankruptcy, including both consumer and business bankruptcy. We will cover the basics of the three major types of bankruptcies: Chapter 7, Chapter 13, and Chapter 11. We will also focus on developing your advocacy skills, creative problem solving skills, and identifying the social policies that underlie all debtor-creditor laws.

VI. WHAT TO READ

Our primary source of information will be the casebook, but this text book was published in 2008. The U.S. Supreme Court has made several pivotal rulings in bankruptcy matters since then and I would be remiss if I did not include these. I will include these cases and other supplemental materials through TWEN folders and the class assignment list that follows. Where I list Westlaw in the assignment list, you will be responsible for locating and reading the case or Colorado statute through Westlaw or other means. TWEN will also include some of the bankruptcy forms and other information that will help you picture what we are studying. You will not need to study these forms and you will not be tested on them. They are included for

informational purposes only. Finally, the TWEN postings include hypothetical problems that we will discuss in class.

I reserve the right to assign other readings from time to time, designed to broaden the context of the course materials. You are responsible for everything I assign, but I will endeavor to not exceed 30 or so pages for daily reading assignments. There are a few exceptions, a few days when it is a larger assignment and a few days with little or no assignment. These variations are due to the nature of the subject matter. Finally, I will adjust the assignment list from time to time to tie our progress to the speed at which the class is able to digest the material, but rest assured that we will get through all or substantially all of the material.

The readings in the casebook frequently refer to specific statutory provisions. Make sure you look up these statutes. You will be expected to have read and understood them in class, and you will be responsible for understanding them on the exam. In furtherance of this goal, be sure to bring your Mini-Code with you to class. One of the goals of this class is to learn how to parse a statute into its various sub-parts.

VII. PARTICIPATION, ATTENDANCE, SEATING AND GRADING

I will pass around a seating chart on the second day of class. Please stay in that seat for the remainder of the semester. It will help me to connect names with faces. Towards that end, I have also posted a short questionnaire on TWEN to be turned in immediately. Turning in a completed questionnaire is mandatory, but its only purpose is to allow me to get to know you better.

Your final grade for this course will be based on the following:

Final Exam 80% Class Participation 20%

By class participation, I mean that you are expected to be in class, willing and able to discuss the material assigned to date. I highly value class participation, and I will call on you without notice. I understand, however, that sometimes life gets in the way and you cannot always be as prepared as you like. Please attend class anyway, and just leave a note with your name on it on the desk at the front of the classroom before class begins, and I will not call on you. Please submit no more than three of these passes over the course of the semester. No pre-authorization is required for submitting a pass. I will observe the University's policy regarding 80% mandatory class attendance. Absences exceeding 20% may result in either a final grade reduction or the student being dropped from the class, at my discretion. Submitting more than three passes or being unprepared without submitting a pass may result in a final grade reduction. Notwithstanding the foregoing, a few of our classes fall on Jewish holidays and, if you wish to observe these holidays, I will make exceptions.

The Final Examination will be a modified open book, in-class written final exam. Closer to the exam, I will let you know specifically what materials may be brought to the exam. Generally, this will include the Mini-Code, outlines and notes prepared by you or with other students in the class (no commercial outlines), a simple calculator, and the supplemental materials provided through TWEN, including the Colorado exemption statutes. It will NOT include any books, including your text book, internet sources, law review articles, and the like. The final will likely consist of a mixture of short and long essay questions. Because the majority of bankruptcy law courses involve the problem solving method for learning the material, it is important that you prepare the problems in the daily readings unless otherwise noted. It will prepare you for the exam's format.

The daily assignments follow on the next page.

1. Monday, August 27, 2012: **Introduction to Class & Overview of Secured Transactions.**

No reading assignment for the first class, but there is a questionnaire you must complete and return by the next class. You will find the questionnaire form in a TWEN folder labeled Questionnaire. In addition to a general introduction to this class, I will present a very general overview of secured transactions in our first class. You do not need to have taken a course in secured transactions in order to do well in this class. This general overview is intended to give you just enough background for this class.

2. Wednesday, August 29, 2012: **Judicial & Statutory Liens**

Textbook: pp. 33-62; Problems 2.1, 2.2, 2.3, 3.1.

3. Monday, September 3, 2012: **Holiday -- No class.**

4. Wednesday, September 5, 2012: **Property of the Estate**

Textbook: skim pp. 101-111; read with care pp. 113-130; Problems 5.1 through 5.6. Please do not skip the skim reading as it will help you with background and terminology.
Code Sections: § 541(a)(1) - (7), (c), (d).

5. Monday, September 10, 2012: **Property of the Estate (continued)**

Supplemental Course Materials (always in TWEN): Property of Estate Folder. Review these forms used to file bankruptcy for general familiarity. Note especially how broad the requirements are for disclosure of assets.
Westlaw: *In re Nichols*, 491 F.3d 987 (9th Cir. 2007); *In re Graves*, 609 F.3d 1153 (10th Cir. 2010).

6. Wednesday, September 12, 2012: **Exemptions**

Textbook: read text only (not cases & statutes) pp. 167-168, 178-180, 184-189, 193-194.
Supplemental Course Materials: read hypotheticals in Exemptions Folder.
Westlaw: locate the following Colorado statutes on TWEN and print them off to use in class as we work the hypotheticals in class, applying these statutes: Colo. Rev. Stat. ' 13-54-101, -102, Colo. Rev. Stat. ' 38-41-201, -207.
Code Sections: ' 522 is the federal exemption statute, but Colorado has opted out of the federal exemptions and, thus, Colorado statutes control in our jurisdiction.

7. Monday, September 17, 2012: **Exemptions (continued)**

Textbook: pp. 193-196, 198-216 (text only on 216).

Westlaw: *In re Beaudin*, 2010 WL 3748735 (Bankr. D. Colo. 2010).

8. Wednesday, September 19, 2012: **Automatic Stay**

Textbook: pp. 131-138, 141-142.

Supplemental Course Materials: Auto Stay Folder, hypotheticals.

Westlaw: *In re Gagliardi*, 290 B.R. 808 (Bankr. D. Colo. 2003).

Code Section: ' 362 (a), (b)(1)-(4), (10), (22), (23), (k).

9. Monday, September 24, 2012: **Chapter 7 Eligibility - Means Testing**

Textbook: text only (not cases) pp. 141-145, 150-155, 160-163; Problems 7.1, 7.3, 7.4

Supplemental Course Materials: Means Test Folder, review the form.

Code Sections: ' ' 101(8), 101(10A), 101(15), 101(32), 101(41), 109(a), (b), 707(b)(1) - (3), (6), (7).

10. Wednesday, September 26, 2012: **Chapter 7 Eligibility - Means Testing (continued)**

No additional reading.

11. Monday, October 1, 2012: **Claims & Priorities**

Textbook: pp. 217-229; Problem Sets 10 & 11.

Code Sections: ' ' 101(5), 101(10), 101(14A), 101(37), 364 (c), (d), 501(a), 502(a), (b), 503(b)(1)(A)(i), (2), 506 (a), (b), 507(a)(1) - (5), (7), (8 in general only), (b), 726(a), (b).

12. Wednesday, October 3, 2012: **Discharge & Dischargeability**

Textbook: pp. 229-257; Problems 12.1 through 12.4, and 12.6.

Supplemental Course Materials: Discharge Folder, hypotheticals.

Code Sections: ' ' 101(14A), 523(a)(1) - (9), (15), (d), 727.

13. Monday, October 8, 2012: **Discharge & Dischargeability (continued)**

Supplemental Course Materials: Discharge Folder, "Questions."

Westlaw: *In re Jafari*, 401 B.R. 494 (Bankr. D. Colo. 2009).
Code Sections: § § 523 (a)(3), (a)(19), (c)(1), 1328.

14. Wednesday, October 10, 2012: **Chapter 13: Eligibility & Overview of Confirmation Requirements**

Textbook: pp. 326-334 (read about eligibility first), then 275 – 280, 284-302 (top of page).
Westlaw: *In re Flygare*, 709 F.2d 1344 (10th Cir. 1983).
Code Sections: ' ' 101(30), 101(32), 109(e), 1322, 1325.

15. **Friday, October 12, 2012 Make-up Class, 7:40 to 9:00 a.m.: Chapter 13 Plans Part II & Projected Disposable Income**

Textbook: pp. 308-321; Problem 14.3.
Supplemental Course Materials: Chapter 13 Plans Folder, skim the sample plan form.
Westlaw: *Hamilton v. Lanning*, 130 S.Ct. 2464 (2010); *Ransom v. FIA Card Serv., N.A.*, 131 S.Ct. 2464 (2010).
Code Section: ' ' 1325(b).

16. Monday, October 15, 2012: **Chapter 7 Business Cases & Involuntary Filings**

Textbook: pp. 361-383; Problems 18.1, 18.2, 18.5 through 18.7.
Code Section: 101(32), 303(a), (b), (f) - (i).

17. Wednesday, October 17, 2012: **Debtor-in-Possession & Cash Collateral**

Textbook: pp. 387-406, 430-450. **Note: skip Earthlite 439-443.**
Supplemental Course Materials: DIP & CC Folder for hypotheticals.
Westlaw: *In re Kelvin Pub., Inc.*, 72 F.3d 129 (6th Cir. 1995); *In re Morningstar Ranch Resorts, Inc.* 64 B.R. 818 (Bankr. D. Colo. 1986).
Code Sections: ' ' 101(51C), (51D), 363(c), 552, 1101(1), 1104, 1107, 1108, 1112, 1116.

18. Monday, October 22, 2012: **Debtor-in-Possession Financing & Reclamation**

Textbook: pp. 452-468; Problems 21.1 through 21.4.
Code Sections: ' ' 364(a) - (e), 546(c).

19. Wednesday, October 24, 2012: **No Class**

Judge Brown is speaking at National Conference of Bankruptcy Judges in San Diego. Make-up class will be/was held on **Friday, October 12, 2012 from 7:40 to 9:00 a.m.**

20. Monday, October 29, 2012: **Relief from Automatic Stay & Adequate Protection**

Textbook: pp. 406-427; Problems 19.1 through 19.6.
Code Sections: ' ' 101(51B), 361, 362(d).

21. Wednesday, October 31, 2012: **Asset Sales**

Supplemental Course Materials: Asset Sales Folder, General Overview & hypotheticals.
Westlaw: *In re Psychrometric Sys., Inc.*, 367 B.R. 670 (Bankr. D. Colo. 2007); *In re Reliant Energy Channelview LP*, 594 F.3d 200 (3rd Cir. 2010); *Clear Channel Outdoor Inc. v. Knupfer*, 391 B.R. 25 (9th Cir. BAP 2008)(ignore: footnotes, ' B.1 on AGuidance on Interpretation,@ and last ' C).
Code Section: ' 363(a), (b)(1), (e), (f), (h), (k) - (n), (p).

22. Monday, November 5, 2012: **Executory Contracts & Unexpired Leases**

Textbook: pp. 523-545; Problems 26.1, 26.4, 26.5, 27.1, 27.6.
Code Section: ' 365(a), (b)(1) - (2), (c), (d) - (h)(1)(A) & (B), (k).

23. Wednesday, November 7, 2012: **Chapter 11 Plans Part II: Classification & Voting**

Textbook: pp. 628-643; Problem 33.1.
Supplemental Course Materials: Chapter 11 Plan Folder, sample plan excerpts showing classes.
Code Sections: ' ' 1122, 1123, 1124, 1126, 1129.

24. Monday, November 12, 2012: **Chapter 11 Plans Part III: Disclosure, Absolute Priority Rule, and New Value Corollary**

Textbook: pp. Skim 653-661; read closely 662-677.
Supplemental Course Materials: Chapter 11 Plan Folder, hypotheticals.
Code Sections: ' ' 1125, 1129(b).

25. Wednesday, November 14, 2012: **Chapter 11 Plans continued.**

No additional reading assignment.

26. Monday, November 19, 2012: **Fall Break**

27. Wednesday, November 21, 2012: **Fall Break**

28. Monday, November 26, 2012: **Preferences**

Textbook: pp. 477-487; Problems 23.1 through 23.8, 23.10.

Code Section: ' 101(31), 101(32), 101(54), 547(a), (b), (e) - (g).

29. Wednesday, November 28, 2012: **Defenses to Preferences**

Textbook: pp. 492-506; Problems 24.1 through 24.4.

Code Section: ' 547(c)(1) - (4), (8), (9), (e) - (g).

30. Monday, December 3, 2012: **Fraudulent Conveyances**

Textbook: pp. 71-90, 553-565.

Code Sections: ' ' 101(32), 101(54), 544(a), (b)(1), 548(a)(1), (c), (d)(1), (d)(2)(A), 550.

31. Wednesday, December 5, 2012: **Review Session**

32. Monday, December 10, 2012 at 1:15 p.m.: **Final Exam**

33. Wednesday, January 9, 2013: **Grades Due**