

Bankruptcy

Colorado Law School
JUDGE ELIZABETH E. BROWN

FALL 2011

INFORMATION, POLICIES & PRELIMINARY SYLLABUS

CONTACT INFORMATION:

Judge Elizabeth E. Brown
Wolf Office, Cell Phone & Email: For security reasons, I will give these to you in class, because I don't want a publicly-posted document to show them. Once you have them, please don't hesitate to send email or call. Sometimes that is the best way I learn if something was unclear in class.
Bankruptcy Court Office/Chambers Phone: 720-904-7346

REQUIRED TEXTBOOKS

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

CLASS SCHEDULE

Mondays and Wednesdays 8:00 to 9:20
Wolf 301

OFFICE HOURS

I have scheduled office hours for Mondays and Wednesdays, following class, from 9:30 - 9:50. Admittedly, this is a short period of time, but I promise to be available to you by phone and email. In addition, when it gets close to finals, I will schedule myself to be in the Adjunct Office for two whole days so that you may bring all your questions to me. Please remember that you can also ask to schedule a separate appointment.

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 also focus on developing your advocacy skills, creative problem solving skills, and identifying the social policies that underlie all debtor-creditor laws.

WHAT TO READ

You will see from the schedule below that our primary source of information will be the casebook. I will also supply handbook materials through TWEN. The 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 for you. TWEN will also include some 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 for informational purposes only. The TWEN postings will also include some hypotheticals 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 promise that I will not exceed the 30 or so pages you are used to having 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.

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.

OUTSIDE READING MATERIALS

If you find yourself having difficulty with an area that we have covered, and after talking it over with your study group or other students (or me), you find you still don=t understand, you might want to look at the following resources on reserve or in the stacks in the library: [Blum, Brian A., Bankruptcy and debtor/creditor : examples and explanations \(CALL # KF 1524.85\)](#); [Baird, Douglas G., The Elements of Bankruptcy \(CALL #KF 1524.85 .B35 2010\)](#); [Martin, Nathalie, The Glannon Guide to Bankruptcy : Learning Bankruptcy through Multiple-Choice Questions and Analysis \(CALL #KF 1524.85 .M374 2007\)](#); [Martin, Nathalie, Inside Bankruptcy Law: What Matters and Why \(CALL #KF 1524.85 .M375 2011\)](#); [Markell, Bruce A., Questions & Answers: Bankruptcy \(CALL #KF 1524.85 .M37 2010\)](#); or the loose-leaf treatise [COLLIER ON BANKRUPTCY \(15th ed. rev.\)](#). In addition, you may want to look at the bankruptcy materials on LexisNexis (you will find them by looking on the general research page, under AArea of Law B By Topic,@ then ABankruptcy,@ and then ATreatises & Analytical Materials@). A glossary of bankruptcy terms can be found at: <http://www.bankruptcylawfirms.com/Glossary-Bankruptcy-Terms.cfm>.

CLASS POLICIES

I will make every effort to reasonably and fairly deal with all students who, because of religious obligation, have conflicts with scheduled exams, assignments or required attendance. Please inform me of such absences in advance and in writing, so that we can work something out.

I also believe that both students and faculty have a responsibility to maintain an appropriate learning environment, in accordance with University discrimination and harassment policies. Students who fail to adhere to such behavioral standards may be subject to discipline from the University (and will lose class participation points from me).

Please note that class rosters are provided to me with your legal name, but I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

I strongly support the University's policy of accommodating people with disabilities. If you believe you might qualify for accommodations because of a disability, please contact Disability Services. Disability Services determines accommodations based on documented disabilities, so the sooner you contact them, the sooner your needs may be addressed.

Although the university does not have a policy regarding people who are pregnant, nursing, or taking care of young or elderly dependents, I will happily make reasonable accommodations for such students. Please see me if you fall into one of these categories.

Finally, I will expect complete adherence to all provisions of the Honor Code and this includes not signing the daily attendance sheet for a student that is not present.

PARTICIPATION, ATTENDANCE, SEATING AND GRADING

I will pass around a seating chart on the second day of class B please stay in that seat for the remainder of the semester. It will help me to connect names with faces. Towards that end, I will also post a short questionnaire on TWEN to be turned in to me by August 29, 2011. Turning in a completed questionnaire by its stated deadline will be mandatory, but its only purpose will be to allow me to get to know you better.

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

Final Exam B 80% Class Participation B 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 can't 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 won't call on you. Please submit no more than three of these Apasses@ 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.

To facilitate class discussion, the class will be divided into small groups, with each group bearing the responsibility for carrying the day's discussion and for thoroughly preparing the assigned problems. The group assignments will be made after the seating chart is filled out. This format will not excuse everyone from being prepared for each class. I will still call on some students randomly. Keep in mind that this is for your benefit. If you fall behind in the readings, you will struggle to understand the concepts.

Laptop computers present a very real challenge to professors these days. No professor likes to look out at a classroom and see nothing but the top of each student's head, as they each have their noses buried in a computer. Having said this, I am not going to ban all laptops. You will be expected to exercise good judgment in the appropriate use of laptops. Anyone who fails to do so may lose the privilege of being able to bring one to class.

The Final Examination will be an open book, in-class written final exam. Closer to the exam, I will let you know what materials may be brought to the exam. Generally, this will include the textbook and Mini-Code, outlines and notes prepared by you or with other students in the class (no commercial outlines), and the supplemental materials provided through TWEN. It will be a mixture of short answer and long essay questions.

The daily assignments follow on the next page.

1. Monday, August 22 Introduction; Liens: Judicial & Statutory
Textbook: pp. 33-62; Problems 2.1, 2.2, 2.3, 3.1.
2. Wednesday, August 24: NO CLASS
Questionnaire posted in Course Materials, Questionnaire Folder. It is due next Monday.
3. Monday, August 29: Liens – Consensual (Brief Overview of Secured Transactions. You do not need to have taken a course in secured transactions. We will cover just enough to be sufficient for this class.)
No reading assignment necessary.

Consumer Bankruptcies

4. Wednesday, August 31: Property of the Estate (POE)
Textbook: skim pp. 101-111; read with care pp. 113-130. Please do not skip the skim reading. It will help you with background and terminology; Problems 5.1 through 5.6; See Course Materials, Property of Estate Folder, for examples of the forms used for filing bankruptcy -- simply skim for background and familiarity; *In re Nichols*, 491 F.3d 987 (9th Cir. 2007); *In re Graves*, 609 F.3d 1153 (10th Cir. 2010).
5. Monday, September 5: Labor Day holiday
6. Wednesday, September 7: Exemptions Part I: Property that is not turned over to the Trustee
Textbook: Read text only (as opposed to cases & statutes) pp. 167-68, 178-80, 184-189, 193-94; *Schwab v. Reilly*, 130 S.Ct. 2652 (2010) (my suggestion is to read the dissent first, as it is much more clearly written, and then to read the majority), briefly skim Colorado exemption statutes, Colo. Rev. Stat. § 13-54-101, Colo. Rev. Stat. § 13-54-102, Colo. Rev. Stat. § 38-41-201, Colo. Rev. Stat. § 38-41-207; See Course Materials, Exemptions Folder, for hypotheticals. We will work the hypotheticals in class.
7. Monday, September 12: Exemptions Part II: Prudent Use of Exemptions or Acts to Defraud Creditors? .
Textbook: 193-196 & 198-216 (text only on p. 216); *In re Beaudin*, 2010 WL 3748735 (Bankr. D. Colo. 2010).
8. Wednesday, September 14: What is the Automatic Stay?
Textbook: pp. 131-138 & 141-142; *In re Gagliardi*, 290 B.R. 808 (Bankr. D. Colo. 2003); See Course Materials, Auto Stay Folder, for hypotheticals we will work in class.
9. Monday, September 19: Chapter 7 Liquidations: Eligibility/Mean Test Overview

Textbook: text only (not cases) pp. 141-45, 150-155, 160-163; Problems 7.1, 7.3, 7.4; *In re Kagenveama*, 527 F.3d 990 (2008); *Hamilton v. Lanning*, 130 S.Ct. 2464 (2010); *Ransom v. FIA Card Serv., N.A.*, 131 S.Ct. 716; Course Materials, Means Test Folder, for Form 22A Means Test. Skim the form only.

10. Wednesday, September 21: Guest Speaker Mr. Steve Berken & More Means Testing
No additional assignment.
11. Monday, September 26: Claims & Priorities
Textbook: pp. 217-229; Problem Sets 10 & 11.
12. Wednesday, September 28: Discharge & Dischargeability of Debts
Textbook: pp. 229-257; Problems 12.1 through 12.4, and 12.6; *In re Jafari*, 401 B.R. 494 (Bankr. D. Colo. 2009).
13. Monday, October 3: Chapter 13 Eligibility & Plans Part I
Textbook: 275-279, 326-34; Problems 16.1 & 16.2; *In re Flygare*, 709 F.2d 1344 (10th Cir. 1983); Course Materials, Chapter 13 Plans Folder, for the sample plan form. Skim it only.
14. Wednesday, October 5: Chapter 13 Plans Part II & Projected Disposable Income (PDI)
Textbook: pp. 279-80, 284-306 (text only of 306).

Business Bankruptcies

15. Monday, October 10: Chapter 7 Business Cases & Involuntary Filings
Textbook: pp. 361-383; Problems 18.1, 18.2, 18.5 through 18.7; Course Materials, Chapter 7 Business Folder, for hypotheticals.
16. Wednesday, October 12: NO CLASS
17. Monday, October 17: Concept of Debtor-in-Possession (DIP) & Cash Collateral (CC)
Textbook: pp. 430-50; Problems 20.1, 20.4; *In re Kelvin Pub., Inc.*, 72 F.3d 129 (6th Cir. 1995); Course Materials, DIP & CC Folder, for hypotheticals (skim and we will work them in class).
18. Wednesday, October 19: Debtor-in-Possession Financing (DIP \$) & Reclamation
Textbook: pp. 452-468; Problems 21.1 thru 21.4; Check Course Materials, to see if I have added the DIP \$ Folder. If so, it will contain hypotheticals.
19. Monday, October 24: Relief from the Automatic Stay & Adequate Protection (A/P)

- Textbook: pp. 387-92, 396-427; Problems 19.1 thru 19.6.
20. Wednesday, October 26: Asset Sales
In re Psychometric Sys., Inc., 367 B.R. 670 (Bankr. D. Colo. 2007); *In re Philadelphia Newspapers, LLC*, 599 F.3d 298 (3rd Cir. 2010); *In re Reliant Energy Channelview LP*, 594 F.3d 200 (3d Cir. 2010); *Clear Channel Outdoor Inc. v. Knupfer*, 391 B.R. 25 (9th Cir. BAP 2008) (ignore footnotes, § B.1 on “Guidance on Interpretation”, and last § C); Course Materials, Asset Sales Folder, for hypotheticals.
 21. Monday, October 31 Executory Contracts & Unexpired Leases
 Textbook: pp. 523-45; Problems 26.1, 26.4, 26.5, 27.1, 27.6.
 22. Wednesday, November 2: Chapter 11 Plan Confirmation Part I (Best Interest of Creditors Test (BIC) & Feasibility)
 Textbook: pp. 614-627.
 23. Monday, November 7: Chapter 11 Plan Confirmation Part II (Classification; Voting; Impairment)
 Textbook: pp. 628-643; Problem 33.1; Course Materials, Chapter 11 Plan Folder, for sample plan excerpts.
 24. Wednesday, November 9: Chapter 11 Plan Confirmation Part III (Disclosure; Absolute Priority Rule (APR))
 Textbook: pp. skim only 653-661; read closely 662-677; Course Materials, Chapter 11 Plan Folder, for hypotheticals.
 25. Monday, November 14: Preferences
 Textbook: pp. 477-87; Problems 23.1 thru 23.8, 23.10.
 26. Wednesday, November 16: Defenses to Preferences
 Textbook: pp. 492-506; Problems 24.1 thru 24.4.
 27. Monday, November 21: FALL BREAK
 28. Wednesday, November 23: FALL BREAK
 29. Monday, November 28: Fraudulent Conveyances (F/C)
 Textbook: pp. 71-90, 553-565; Problems to be assigned later & possibly Course Materials. If there are any, it would be in a folder entitled “Fraudulent Conveyances.”
 30. Wednesday, November 30: Review & Judge Brown available at C.U. all day for questions.
 31. Wednesday, December 5: Reading Day & Judge Brown available at C.U. all day for questions.
 32. Friday, December 9: Final Exam in Room 301 at 1:15 p.m.
 33. Wednesday, January 11: Grades Due.