

WESTERN STATE
COLLEGE OF LAW

BANKRUPTCY LAW
Harlene Miller
Spring 2018

Class Syllabus

Course Description and Objectives

This is a foundational course in Bankruptcy Law focusing on individual and business bankruptcy in the context of Chapter 7, 11, and 13 of the Bankruptcy Code. The course is designed as an introductory course covering legal concepts relating to debtor-creditor relationships in bankruptcy as well as an introduction to state law collection as a comparison. Bankruptcy knowledge is not only useful but oftentimes critical for students pursuing a wide range of practice areas as the impact or potential of a bankruptcy is far reaching and potentially can touch most areas of the law.

Required Course Materials and Reading Assignments

- Epstein, Markell, Nickles & Ponoroff, BANKRUPTCY: DEALING WITH FINANCIAL FINANCIAL FAILURE FOR INDIVIDUALS AND BUSINESSES (4th Edition) (West 2015)
- 2018 Annotated Mini Code and Rules Western Edition (AWHFY, LP)

All 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 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. Additional material including handouts will be provided, and library research may be assigned during the semester.

Allowing for my possible over-estimation of what can be covered in each class, and depending upon the amount of class participation that I am hoping for, there may be some overflow of material from one class to another. In anticipation of this, I have planned “catch-up” and review time of Consumer Cases for Class 7, and Class 8 will focus on practice oriented activities and discussion.

Examination and Grading

Your grade will be based on the final examination which will be a combination of multiple choice and short answer. Applicable grading policies and procedures of the university will be implemented in producing the final grades.

Classroom Participation

Although you are not going to be graded on classroom participation, I expect regular attendance and full participation of all class members at each class. If you are prepared and engage with the material and the class, participation should be helpful to your understanding of the materials and will likely add to your enjoyment of the class.

Expectations Regarding Preparation Time for the Course

This course requires substantial work outside the classroom. It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours per class.

Office Hours

As an adjunct professor and full-time practicing attorney, I will not maintain regular office hours at the school. However, I will make myself reasonably available to any student who wishes to meet or talk with me. To schedule an appointment for a meeting or telephone call, please send me an email at harlene@harlenemillerlaw.com. Please provide at least two days prior notice to a requested meeting or conference call.

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

Doctrinal Knowledge: Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

Practice Skills: Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

Legal Analysis: Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

Legal Research: Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

Communication: Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

Advocacy of Legal Argument: Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

Client Sensitivity and Cultural Competency: Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

Legal Ethics: Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

Argosy University Institutional Learning Outcomes:

- 1. Analytical Reasoning** - Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.
- 2. Effective Communication** - Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.

3. **Information Competence** - Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.
4. **Interpersonal Effectiveness** - Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.
5. **Personal and Professional Integrity and Ethical Behavior** - Demonstrate a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.
6. **Professional Competence** - Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession.

Disability Services Statement

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu.

When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation.

If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Bankruptcy Law Spring 2018 – Class Assignments

THE BASICS OF BANKRUPTCY

Class 1 January 19, 2018

1. Overview of class
2. Alternatives to Bankruptcy for Debtors and Creditors
3. Introduction to Bankruptcy: Some history, BAPCPA, why bankruptcy, Bankruptcy Code & Rules and applicability of chapters; the players, language of bankruptcy, general eligibility to file, commencement of case; Debtor's duties, Trustees
4. Assignments: Code & Rules: review Table of Contents pp. 3-21
Epstein: pp. 1-7; pp.12-14 (skip Problems 1-2 & 1-6); pp. 15-16 A & B only;
pp. 22-34, through Item 6. pp. 87-89, 90-92
Code Sections 101(13), 103, 109, 301, 303, 323, 1302(a) & 704. Review 521
Handout: Official Forms 309A and 309I (Notice of case/7 and 13)

Class 2 January 26, 2018

1. Claims (Unsecured and Priority)
 - a. Overview of debt, types of claims, treatment of claims,
 - b. Assignments: Epstein: pp. 58-59, 131-134 (through problem 5-22)
Code Sections 101(5), 101(10), 501, 502(a),(b)(1), (2), (6)
Epstein: pp. 136-38 (through problem 5-26)
Code Sections 507(a)(1)(2), 503(b)(1), (2)
Epstein: pp. 146-50 (up to problem 5-35); Section 510(a).(c)
Handout: Official Form 106 E/F
2. Secured Claims
 - a. Overview of secured claim
 - b. Assignments: Epstein: pp. 73-78 (through problem 3-18); Section 506(a)(1)
Handout: Official Form 106 D

Class 3 February 2, 2018

1. Equality of Distribution
Assignment: Epstein pp. 51-52
2. Property of the Estate
 - a. Discussion of property/assets
 - b. Assignments: Epstein: pp. 52-57 (up to problem 3-12)
Code Sections 541(a)(1), (6), 1115, 1306
Handout: Official Form A/B
3. Automatic Stay
 - a. Operation of stay, what/who is protected, protection of third parties; exceptions and termination, notice to creditors, co-debtor stay in Chapter 13
 - b. Assignment: Epstein: pp. 107-110, #3 on 115-116 (no problems); #5 on 120-121
Code Sections 362(a)(1)-(8)), (b)(1),(2), (c)(1),(2); 1301
Epstein: pp. 111 (up to SAS case); Section 105(a) and problem 5-6 on page 115
Prior handout: Official Forms 309A and 309I

Class 3 February 2, 2018 (continued):

- c. Relief from the automatic stay
Assignments: Epstein pp. 121-122
Code Sections 362(d)(1) & (2), 362(g)
- 4. Discharge
 - a. "Fresh Start" and Discharge; Protection against Discriminatory Treatment
 - b. Assignment: Epstein pp. 37-39 (up to 11 U.S.C. §523(a)(8)); pp. 46-48
Problems 3-1 through 3-5; 3-7
Code Sections 524(a),(e); 525
Handout: Official Forms 318 & 318)W (Order of Discharge – Chapter 7 & 13)

ISSUES IN CHAPTER 7 AND 13 CASES

Class 4 February 9, 2018

- 1. Overview of Chapters 7 and 13
 - a. Ch. 7: Cost and benefits, distribution, abandonment, eligibility: means test
Assignment: Epstein: pp. 211-215 (up to problem 7-3)
 - b. Ch.13: Eligibility: debt limits; liquidation analysis (best interest test),
projected current monthly income and expenses, classifying claims;
Assignment: Epstein: pp. 237-246; ¶ b.255-260 (to Crawford)
Code Sections 101(10A); 101(39A); 109(e)
Problems 8-1, 8-2
Handouts: Income and Expense budget worksheets
 - c. Plan confirmation in Chapter 13 – general discussion.
- 2. Chapter 7 Discharge and Denial of Discharge
 - a. Assignment: Epstein pp. 159-160 (up to problem 6-1); pp. 219-222 (up to Bajgar case); problems 7-5 and 7-6
Code Sections 727(a)(1)-(11), (b),(c), and (e) (revocation of discharge)
- 3. Discharge and Non-dischargeable Debt
 - a. Assignment: Epstein pp.182-187, 189-194
Code Sections 523(a)(1), (2), (4), (5), (8), (9), (15)
Epstein pp. 39-46(Greene v. US Dept of Education, Section 523(a)(8),*Brunner*)
- 4. Chapter 13 Discharge
 - a. Assignments: Epstein: pp. 161-162, problem 6-4
Code Sections 1328(a), (b), (c), (f) and (e) (revocation of discharge)

Class 5 February 16, 2018

- 1. Exemptions
 - a. Discussion of Code and California exemptions; claiming exemptions;
limitations; avoidance of lien due to impairment of exemption, strategies for
selecting exemptions
 - b. Assignment: Epstein pp. 164-170, 179-180 (up to problem 6-1)
Code Sections 522(a); (b)(1),(2),(3); (c)(1); (f)(1)&(2); (l) (lower case L)
Problems 6-7 & 6-9
Code Section 522(p)(1)&(2); Bankruptcy Rule 4003 (a) (b)
Handout: California exemptions CCP 703 & 704

Class 5 February 16, 2018 (continued)

2. Home Mortgages
 - a. Personal liability versus lien; and general discussion
 - b.. Assignment: Sections 522(c)(2); 524(a)(1)
3. Home Mortgages – Chapter 7
 - a. Stripping liens
 - b. Assignments: Review Epstein pp. 73-74
Epstein: pp. 78-83 includes Dewsnup v. Timm
Code Section 506(a)(d)
Handout: Bank of America v. Caulkett 135 S.Ct. 1995 (2015)

Class 6 February 23, 2018

1. Home Mortgages – Chapter 13
Assignments: Epstein pp. 264-265 (to Till);
pp. 274 275 from Protected Secured Debts to problem 8-12
Problem 3-19 on p. 86
Code Sections 1325(a)(5); 1322 (b)(2)(3)&(5)
2. Car Loans – Chapter 13
Assignments: Epstein pp. 276-278 (starting with ¶ b.)
Problem 8-15
Code Section 1325(a) - “hanging paragraph” after (a)(9)
3. Car Loans – Chapter 7
 - a. Reaffirmation Issues
Assignments: Epstein pp. 230-236; Problems
Code Sections 722, 524(c) 524(k) (brief review), 362(h)(1)
Problems 7-8, 7-10, 7-13
4. Dismissal or Conversion
Assignments: Epstein: p. 94 only
Code Sections 707(a),(b)(1) – Chapter 7; 1307(a),(b),(c) – Chapter 13

Class 7 March 2, 2018

1. Bankruptcy Basics and Issues – Continued discussion from prior classes as needed and review.
2. Practical discussion and law practice activities regarding representation of debtors and creditors in Chapter 7 and Chapter 13 cases.

Class 8 March 9, 2018

Continued practical discussion and law practice activities regarding representation of debtors and creditors in Chapter 7 and Chapter 13 cases.

March 16, 2018 – Spring Break No Class