

BANKRUPTCY

PROF. BROOK GOTBERG
SPRING SEMESTER 2020
HULSTON HALL ROOM 4
T/Th 10:00am – 11:15am

COURSE OVERVIEW

When individuals and businesses are unable to pay their debts as they come due, society requires an organized means of determining the method through which creditors will be satisfied. In the United States, the federal bankruptcy code establishes the rules for such a determination. Bankruptcy law is applicable to all students who anticipate serving clients or making policy in the general commercial marketplace, where bankruptcy laws play an indelible role in business practices, contract-making, and the use and extension of credit. Whether a client must file bankruptcy, participate as a creditor in bankruptcy, or simply plan for the possibility of a bankruptcy filed by others, that client's attorney should be prepared to advise on the laws and policies applicable in this field.

In this course, you will:

- Gain a working knowledge of the general provisions of the Bankruptcy Code;
- Learn the requirements associated with filing bankruptcy and the consequences for failing to meet those requirements;
- Develop an understanding of the bankruptcy process from the perspectives of both debtor and creditor; and
- Explore the policy rationale behind key bankruptcy provisions.

Bankruptcy is a rich and fascinating field, highly associated with issues of social justice, business relationships, and economic policy. The bankruptcy code has recently been amended, expanding bankruptcy relief for family farmers and improving the prospect of successful reorganization for small business owners. As an introductory course, this class will touch on many of these issues, but also leave ample opportunity for further exploration. This class will provide the basic building blocks for understanding and evaluating bankruptcy principles, and encourage students to continue in their study of bankruptcy law moving forward.

COURSE MATERIALS

The following materials are *required* for the course:

- *Casebook*: E. WARREN, ET AL., THE LAW OF DEBTORS AND CREDITORS (7th ed. 2014), Wolters Kluwer;
- *Statutory Supplement*: E. WARREN, BANKRUPTCY AND ARTICLE 9, Wolters Kluwer – 2018 version or later.

Keeping the Statute close at hand during your readings is highly recommended, so that you can refer directly to the Bankruptcy Code when applicable. You might also consider coming up with your own tabbing system to facilitate your access to different sections of the Code during class, and in preparation for the final, when quick reference to various Code sections will be valuable. For very recent amendments, handouts explaining the changes to the law will be provided.

At various times during the semester, additional reading may be assigned. Depending on length, these materials will be handed out in class or available as a course packet at the Mizzou Bookstore. You may also be expected to look up and review cases outside those found in the casebook. (You may use any reliable search engine to do so, including Westlaw or Lexis).

ATTENDANCE

Regular and punctual class attendance is required of all law students as a matter of school policy. Students are strongly encouraged to make every effort to attend all classes. Unexpected absences are sometimes necessary; accordingly, every student will have four automatically excused absences during the semester. More than four absences – for whatever reason – will result in the reduction of your grade, as explained below in the grading section. Consistent with the professional standards you will be expected to meet upon graduation, wherever possible you should notify me in advance of an absence. My contact information is provided below under *Office Hours*.

On March 19, Hulston Hall will be fortunate to host the Bankruptcy Court for the Western District of Missouri, Jefferson City Division, in the Courtroom. Please plan to attend *at least* during the time period class is normally scheduled, and preferably for the whole morning. More information will be forthcoming.

I will be out of town and accordingly will miss class on the following days. I have already scheduled makeup classes accordingly.

March 3 – make up class scheduled for 1:00 on February 25 in Room 4.

March 5 – make up class scheduled for 1:00 on March 10 in Room 4.

CLASS PARTICIPATION

I will use the Socratic Method and group discussion as the primary means of teaching this class. In my experience, students get the most out of the classroom experience when everyone is engaged in a structured dialogue. Each student should anticipate being called on at least once every class to give thoughts, explain a case, or interpret and apply a statutory provision. You should come to class prepared, attentive, alert, and ready to answer questions pertaining to the discussion. Every assignment will include problem sets intended to encourage thoughtful analysis of the topics at hand, and to help prepare students for the final exam. This form of participation may be more demanding than simply sitting and listening to a lecture, but it will also provide a bigger educational payout for you and your fellow students.

If you are not prepared to participate in class discussion, (i.e., because you have not done the reading, have developed laryngitis, or intend to spend the class pretending to listen while you answer emails) you may take a “pass” for the day. You may take a pass *twice* without it affecting your grade, as explained below in the grading section. Please note that in some classes we may not make it through all the assigned reading for that day. We will cover this information at the beginning of the next class period, accordingly, you should review the remaining material so that you are prepared to discuss it.

GRADING AND FINAL EXAM

There will be a written three-hour exam at the end of the semester that will form the basis for the final grade issued in this class. The exam will be “open book,” such that you will have access to your casebook, the statutory supplement, and any of your own notes. You may not use commercial outlines or materials prepared by other students. I will adjust grades to account for the attendance policy stated above with the reduction of one grade point per absence for more than four absences, and will adjust for class participation with the reduction of one grade point per pass after two freebies. I also reserve the right to adjust grades to reflect extremely poor or extremely good classroom participation, as well as for perfect attendance.

PRELIMINARY CLASS SCHEDULE

A tentative schedule for reading and discussion is below. Each listed assignment is designed to be covered in class on that date. However, reading assignments may change as a consequence of how far we get in the class discussion. The first priority is to understand the information in each lesson; getting through all the material is a secondary concern. If dramatic adjustments are required, a new reading schedule will be printed and distributed in class as well as posted online. Please also read the Problem Sets associated with each assigned reading and be prepared to discuss them in class.

In addition to reading from the Casebook, you should refer to the Bankruptcy Code and become generally familiar with its provisions in preparation for the final exam.

OFFICE HOURS

Because I have small children, my time in the office can be unpredictable. Accordingly, rather than assign set office hours, I will maintain an open door policy, meaning I will be generally available to visit with students while in the office. (Even if my door is shut.) On occasion, I may be tied up and unable to entertain student questions, in which case I will try to schedule an alternative time. It is always a good idea to contact me in advance if you would like to drop by with questions or thoughts. My office phone number is (573) 882-3914. My email address is gotbergb@missouri.edu.

ACADEMIC HONESTY

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

RECORDING CLASS

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

INFORMATION REGARDING DISABILITIES

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please contact Associate Dean David Mitchell as soon as possible. If disability-related accommodations are necessary (for example, a note taker, captioning), please register with the Disability Center (<http://disabilitycenter.missouri.edu>), S5 Memorial Union, 573.882.4696, and then notify Dean Mitchell or Law School Registrar Denise Boessen of your eligibility for reasonable accommodations. **(Please do not discuss examination accommodations with me. Notice of special accommodations may impair the “blind grading” policy we use at the law school.)** For other MU resources for persons with disabilities, click on “Disability Resources” on the MU homepage.

UNIVERSITY STATEMENT ON INTELLECTUAL DIVERSITY

The University community welcomes intellectual diversity and respects student rights. Students who have questions or concerns regarding the atmosphere in this class (including respect for diverse opinions) may contact the departmental chair or divisional director, the director of the Office of Academic Integrity, the MU Equity Office, or equity@missouri.edu. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the course.

TENTATIVE READING ASSIGNMENTS

- Jan. 21: Assignment 1: Fighting Over Money; Problem Set 1.1, 1.2, 1.3
- Jan. 23: Assignment 2: Collecting from Consumer Debtors; 2.2, 2.3, 2.4, 2.5, 2.6.
- Jan. 28: Assignment 3: The Bankruptcy Estate and the Automatic Stay; 3.1, 3.2, 3.3, 3.4, 3.5.
- Jan. 30: Assignment 4: Property Exempt from Seizure; 4.1, 4.2, 4.3, 4.4
- Feb. 4: Assignment 5: Exemption Planning; 5.3, 5.4
- Feb. 6: Assignment 6 & 7: Claims and Distributions & Priority Among Unsecured Creditors; 6.1, 6.2, 6.3, 6.4, 7
- Feb. 11: Assignment 8: Discharge; 8.1, 8.2, 8.3, 8.4, 8.5, 8.6.
- Feb. 13: Assignment 9: The Debtor's Position After Bankruptcy; 9.1, 9.2, 9.3, 9.4.
- Feb. 18: Assignment 10: Secured Creditors in Chapter 13; 10.1, 10.2, 10.3, 10.5, 10.6
- Feb. 20: Assignment 11: Unsecured Creditors in Chapter 13; 11.1, 11.2, 11.4, 11.5
- Feb. 25: Assignment 12: The Means Test; 12.1, 12.2, 12.3, 12.5
- Feb. 25 (make-up): Assignment 13: Chapter Choice; 13.2, 13.3, 13.4
- Feb. 27: Assignment 15: Recovering from Business Debtors; 15.1, 15.2, 15.3, 15.4
- March 10: Assignment 16: Reorganizing Businesses; 16.1, 16.2, 16.3
- March 10 (make-up): Assignment 17: Getting Started; 17.1, 17.2, 17.3, 17.4, 17.5

- March 12: Assignment 18: Running the Business; 18.1, 18.3, 18.4
- March 17: Assignment 19: Financing the Reorganization; 19.1, 19.2, 19.3
- March 19: Bankruptcy Court in Moot Courtroom: Attend in place of class.

[Spring Break – March 23-27]

- March 31: Assignment 20: Avoiding Liens; 20.1, 20.2, 20.3, 20.4
- April 2: Assignment 21: Preferences; 21.1, 21.2, 21.3, 21.4, 21.5; 21.6, 21.7, 21.8, 21.10
- April 7: Assignment 23: Fraudulent Conveyances I; 23.1, 23.2, 23.3, 23.4, 23.5, 23.6
- April 9: Assignment 24: Fraudulent Conveyances II; 24.1, 24.2
- April 14: Assignment 25: Executory Contracts I; 25.1, 25.2, 25.3, 25.4
- April 16: Chapter 12 Farm Bankruptcies (**Reading TBA**)
- April 21: Assignment 27: Negotiating the Plan; 27.1, 27.2, 27.3
- April 23: Assignment 28: Confirming the Plan; 28.1, 28.3, 28.4; Small Business Reorganization Act (**Reading TBA**)
- April 28: Assignment 29: Cramming Down Unsecured Creditors; 29.1; Assignment 30: Cramming Down Secured Creditors (pgs 665-671; 678-679; 684-688); 30.2.
- April 30: Assignment 31: Sales (pgs. 693-698; 702-705); 31.1.