BANKRUPTCY SURVEY
Law 7770-1, Class 11854
Professor Adelaide Maudsley

Wednesdays and Thursdays 7:35 a.m. to 9:00 a.m.
Room 105 (Law Building)

S.J. Quinney College of Law
FALL 2012

OVERVIEW

We will briefly survey the basic chapters of the Bankruptcy Code—chapter 7 (individuals and businesses liquidation), chapter 11 (business reorganization generally), chapter 12 (family farmers and fishermen), and chapter 13 (individual reorganization)—and also touch on chapter 9 (municipalities/governmental entities) and chapter 15 (international). We will also discuss current events, public policy, and legislation bearing on bankruptcy law.

REQUIRED TEXTS AND MATERIALS


11 U.S.C. § 101 et seq. (Read the Bankruptcy Code!)

Federal Rules of Bankruptcy Procedure.

ADDITIONAL REFERENCES

The casebook refers to statutes, other than the Bankruptcy Code, that may be accessed online (e.g., Uniform Fraudulent Transfer Act; Uniform Commercial Code).

Lawrence P. King et al., COLLIER ON BANKRUPTCY TREATISE (16th ed. 2010).

GRADING

Grading will be based on the following: 75% final exam; 25% class participation. The final exam will be comprehensive, consisting of multiple choice, fill in the blank, short answer, and short essay questions. You may bring your copies of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure to the final exam. No other texts, notes, or materials will be permitted. While all students should read each assignment and be prepared to discuss it during class, certain students will be designated for each class period to be particularly prepared to discuss the content, problems, and exercises. Given that this class is subject to the mandatory
mean under the law school’s grading procedures, class participation becomes particularly important and meaningful.

**ATTENDANCE**

The law school requires students to attend a minimum of 80% of regularly scheduled classes.

**EQUAL ACCESS**

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 South Central Campus Drive, Room 162, or you may call (801) 581-5020. All written information in this course can be made available in alternative format with prior notification.

**CONTACT INFORMATION AND OFFICE HOURS**

I may be reached by telephone or email as follows:

Adelaide Maudsley  
Chapman and Cutler LLP  
201 South Main Street, 20th Floor  
Salt Lake City, UT 84111  
Main: 801.533.0066  
Direct Office: 801.320.6731  
Email: maudsley@chapman.com

Office hours: By appointment.

**CLASS SCHEDULE AND READING ASSIGNMENTS**

In addition to the reading from the textbook, you will need to read the applicable sections of the Bankruptcy Code and the applicable rules of the Federal Rules of Bankruptcy Procedure. In connection with most assignments, I have included one or more questions or a topic that may help you focus your reading and preparation. Please note that I have, in some cases, omitted certain exercises or problems from the designated reading assignments from the textbook.

**Wednesday, August 22**  
Introduction to debtor and creditor law; bankruptcy overview; state law collection remedies—pp. 1-37.
Question 1: Compare and contrast state collection laws and remedies and bankruptcy law.

Question 2: How can bankruptcy, as opposed to state law debt collection remedies, be: (a) better for creditors? (b) better for individuals? (c) better for companies?


Question 4: How is the Bankruptcy Code organized?

Thursday, August 23

Filing for bankruptcy protection and eligibility to be a debtor—pp. 39-43, 51-54, 61-64, 65-68 (exclude problems from these sections of reading); Bankruptcy Code §§ 101, 109 [Last Names A-E].

Question 1: What are the basic differences between the chapters of the Bankruptcy Code?

Question 2: What are some key considerations and facts you would want to know from a client when advising about bankruptcy protection possibilities and specifically what chapter under which to file?

Question 3: Under what circumstances are individuals not permitted to file chapter 7?

Question 4: What circumstances might warrant the filing of an involuntary petition? Advantages and disadvantages of an involuntary petition filing?

Wednesday, August 29

Property of the bankruptcy estate—pp. 77-126; Bankruptcy Code § 541 [Last Names F-M].

Question 1: What is this concept called the “bankruptcy estate,” and how important is it?

Question 2: If you file bankruptcy, will the following be property of the bankruptcy estate: (a) the washer and dryer you loaned to your brother and sister-in-law? (b) your IRA and 401(k)? (c) the timeshare in which you hold a 1/8 interest?
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Page Ranges</th>
<th>Statutes Refs</th>
<th>Last Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thursday, August 30</td>
<td>The automatic stay—pp. 131-156; Bankruptcy Code § 362 [Last Names N-R].</td>
<td></td>
<td>§ 362</td>
<td>N-R</td>
</tr>
<tr>
<td></td>
<td><strong>Question 1:</strong> What, if anything, can a creditor do when the automatic stay is in place? If there is a question of the automatic stay’s applicability, would you advise a creditor to ask for permission before taking action or to ask for forgiveness after doing so?</td>
<td></td>
<td>§ 362</td>
<td>N-R</td>
</tr>
<tr>
<td></td>
<td><strong>Question 1:</strong> Can you identify instances where the bankruptcy process helped a company address potential liability for future tort claims?</td>
<td></td>
<td>§§ 501, 502, 503, 506</td>
<td>S-Z</td>
</tr>
<tr>
<td></td>
<td><strong>Question 2:</strong> What is the difference between “secured” and “unsecured” claims? How does one value secured claims for purposes of bankruptcy?</td>
<td></td>
<td>§§ 501, 502, 503, 506</td>
<td>S-Z</td>
</tr>
<tr>
<td></td>
<td><strong>Question 1:</strong> An individual debtor may have his or her discharge denied under section 727(a) or section 523(a). What is the difference between the two?</td>
<td></td>
<td>§§ 523, 524, 727, 1141, 1328</td>
<td>A-E</td>
</tr>
<tr>
<td></td>
<td><strong>Question 2:</strong> Are corporations or corporate entities eligible to receive a discharge in bankruptcy?</td>
<td></td>
<td>§§ 523, 524, 727, 1141, 1328</td>
<td>A-E</td>
</tr>
<tr>
<td>Wednesday, September 12</td>
<td>No class.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thursday, September 13</td>
<td>Avoidance powers—pp. 243-282; Bankruptcy Code §§ 544, 546, 547 [Last Names F-M].</td>
<td></td>
<td>§§ 544, 546, 547</td>
<td>F-M</td>
</tr>
<tr>
<td></td>
<td><strong>Question 1:</strong> What are the elements of a preference? What is the primary safe harbor for a preference?</td>
<td></td>
<td>§§ 544, 546, 547</td>
<td>F-M</td>
</tr>
<tr>
<td></td>
<td><strong>Question 2:</strong> Is there a “preference equivalent” under state law?</td>
<td></td>
<td>§§ 544, 546, 547</td>
<td>F-M</td>
</tr>
</tbody>
</table>
Question 1: Can a transaction ever be both a preference and a fraudulent transfer?

Question 2: Compare and contrast use of state law and federal law for fraudulent transfers?

Thursday, September 20
Chapter 13—pp. 309-394 (skim reading assignment).

Guest speaker on Chapter 13.

Wednesday, September 26
Chapter 13 continued [Last Names S-Z].

Thursday, September 27
Review and recap.

Wednesday, October 3
Current events, developments.

Thursday, October 4
Overview of the “lesser known” and “lesser used” chapters in bankruptcy—pp. 527-541; Bankruptcy Code §§ 901-946, 1201-1231, 1501-1532 (skim code sections and reading assignment) [Last names A-E].

Overview of chapters 9, 12, and 15.

Wednesday, October 10
No class; Fall break.

Thursday, October 11
No class; Fall break.

Wednesday, October 17
Chapter 11 overview procedures, powers—pp. 395-473; Bankruptcy Code §§ 1101-1116 (skim reading assignment and code sections) [Last names F-M].

Guest speaker on chapter 11.

Thursday, October 18
Chapter 11 plans—pp. 489-526; Bankruptcy Code §§ 1121-1146 [Last Names N-R].

Question 1: What is a “pre-pak” plan?

Question 2: Can one have a “plan of liquidation” under chapter 11, which is a chapter for reorganization?

Wednesday, October 24
Hypotheticals exercise.
Thursday, October 25  
Current events, developments.

Wednesday, October 31  
Financing ("bankrolling") a chapter 11 case—pp. 456-462; Bankruptcy Code §§ 361, 363, 364 [Last Names S-Z].

**Question 1:** What is "cash collateral"?

**Question 2:** Would you advise your client to be a DIP lender in a chapter 11 case? Why or why not?

Thursday, November 1  
Executory contracts and leases in bankruptcy—pp. 423-455; Bankruptcy Code § 365 [Last Names A-E].

**Question 1:** What is an executory contract?

**Question 2:** Is there anything a contract counterparty can do to speed up the executory contract assumption or rejection decision-making process?

Wednesday, November 7  
No class.

Thursday, November 8  
Selling assets in bankruptcy—pp. 463-473; Bankruptcy Code § 363 [Last Names F-M].

**Question 1:** How does a debtor determine what is and what is not outside the ordinary course of business?

**Question 2:** How much deference does the Bankruptcy Court give to a debtor in exercising the debtor’s business judgment to sell assets?

Wednesday, November 14  
Bankruptcy Court jurisdiction—pp. 543-570 [Last Names N-R].

Thursday, November 15  
Procedural issues; adversary proceedings; discovery and evidence in bankruptcy cases—Fed R. Bankr. P. 7001-7056 [Last Names S-Z].

Wednesday, November 21  
No class; Thanksgiving break.

Thursday, November 22  
No class; Thanksgiving break.

Wednesday, November 28  
Guest speaker on local bankruptcy codes and practice.
Thursday, November 29  
Final review; Exam preparation.

December 5-18  
Exam period.