

Bankruptcy Law 889

Professor Stephen Ware
Spring 2023

This syllabus and other resources for this course are available at <https://sware.ku.edu/bankruptcy/>

Learning Outcomes. This course has two main purposes. One is to study the law and practice of bankruptcy and related debtor-creditor law. Successfully completing this course will advance students' knowledge of both individual and business bankruptcy. In addition, successfully completing this course will advance students' skills. An important purpose of the course is to improve—in the context of statutes—students' skills in legal analysis and reasoning, problem-solving, and written and oral communication, as well as heighten students' awareness of professional and ethical responsibilities to clients and the legal system.

Class Meetings. Our course is scheduled for 1:35-3:00, Tuesdays and Thursdays, in Room 203.

Talking with Me. Tuesdays and Thursdays, I intend to be fully available to students from 3:00 to 5:00. I will be available plenty of other times as well, and you are always welcome to schedule an appointment or stop by my office (414C), call 785-864-9209, or email ware@ku.edu. Please do not be shy. Talking with students is an important part of my job, and I enjoy it.

Required Reading and Grading. The required casebook is GREGORY GERMAIN, BANKRUPTCY LAW AND PRACTICE (4th ed. 2021). This book is free and available at <https://www.cali.org/books/bankruptcy-law-and-practice#>

Also required is a statutebook with current versions of these statutes: (1) Articles 1 and 9 of the Uniform Commercial Code, (2) the Uniform Fraudulent Transfer Act, and (3) the Bankruptcy Code. If your statutebook met the criteria for our Secured Transactions course, then it will work in this course as well.

You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. Syllabus changes to the assigned readings are possible, so please keep that in mind if you choose to read ahead. The sections of the Bankruptcy Code and other statutes referred to in the casebook are an integral part of each reading assignment.

Your grade for the course will consist of the final exam (55%), your classroom performance (15%), and the graded assignments discussed next (30%). Graded Assignments 1 and 5 are each 9% of the course grade, while Graded Assignments 2, 3, and 4 are each 4%. Graded assignments are scheduled below on this syllabus, and you must submit them on time to receive full credit for them. Only your initial submission will be graded; any follow-up will only be for learning, not grading. I may show what you submit to the entire class so please consider that lack of privacy in deciding what to send me.

Exam. The exam will be open laptop, so you may use your downloaded casebook and anything else on your computer. And you may use any written, hardcopy material during the exam, but you may not communicate with anyone during the exam except for me. All assigned reading and classroom discussion is fair game for testing on the exam. If you have questions about the

assigned reading after our class discussion of it, please do not hesitate to contact me. I try to make the exam correspond to the course so topics that receive a lot of attention in the reading and in class loom larger on the exam than topics that receive less attention in the reading and in class. But I am not able to make this correspondence perfect. I also try to make the exam emphasize the portions of the course not tested by the graded exercises.

I prefer that the entire class take the exam at its scheduled time. I will provide alternate exam times only to the extent the school's rules require me to do so for individual students.

Classroom performance. Key to your classroom performance in this course is frequently raising your hand and contributing your thoughts when I ask questions to the entire class, as well as when I direct questions to you individually. Questions to the whole class invite all students to volunteer, so the more hands that go up, the more smoothly our discussions can regularly include a variety of voices and viewpoints. And you individually benefit from contributing frequently, not only in your grade, but also in practicing the important professional skill of speaking about the law.

If you are unable to prepare for a particular class, no worries if you tell me ahead of class (“May I have a pass today?”) and you have been volunteering good contributions to our class discussion throughout the semester. By contrast, if you have gone a day or two without volunteering in class then you should not be asking me for a pass. If you have gone a day or two without volunteering and are unable to prepare for a particular class, then you should contact me to discuss.

Attendance and lateness. You may miss a class or two because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is no worry and you do not need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions about the material we covered. Similarly, you may be late once or twice for reasons like those listed above. Again, this is no worry and you do not need to contact me about it. By contrast, if you are going to miss class or be late more than a couple of times during the course that is a worry. If that happens, you should take the initiative and contact me to discuss how we can address the situation and keep you on track with the course and your classmates.

Computers and other electronics in class. Subject to exceptions I will announce, you may use a computer in class, but only for working on this course. Audio or video recording of class is prohibited without my written permission.

Accommodations. Classroom and testing accommodations are available to eligible students registered with the Student Access Center. You may contact access@ku.edu or Associate Dean for Academic and Student Affairs, Leah Terranova, leaht@ku.edu or 785-864-4357.

Table of assignments. Reading assignments in the following table are sections of our casebook, GREGORY GERMAIN, BANKRUPTCY LAW AND PRACTICE (4th ed. 2021), unless specified otherwise. For example, the assignment for our first class is to read Germain casebook sections 1.1 – 1.3.2 (do Problems 1-4), 1.4 – 1.5, 1.7 – 1.8.2, and 1.10, as well as (outside the casebook) Kan. Stat. §§ 60-2307 – 60-2311.

| Class | Assignment |
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| Non-Bankruptcy Collection Law | |
| 1. | 1.1 – 1.3.2 (Problems 1-4), 1.4 – 1.5, 1.7 – 1.8.2, 1.10, Kan. Stat. §§ 60-2307 – 60-2311 |
| 2. | 1.9, 1.11 – 1.13, Kan. Stat. §§ 60-2301 – 60-2304 do 1.9.1 in Kansas and NY do 1.12.1 (Problems 1-3) under NY UVTA |
| The Bankruptcy Estate and Exemptions | |
| 3. | 3.2, 4.1, 4.3, 4.4 (Problems 1-8), 7.1 – 7.5, 7.6 Problem 1 |
| 4. | 5.1 – 5.2, 5.4.2, 5.5 – 5.6.2, 11 U.S.C. § 302 |
| The Automatic Stay | |
| 5. | 6.1, 6.2 Problems 1-4 and 7-10 |
| 6. | 6.2 Problems 11-15, 6.3.2, 9.14 |
| Claims | |
| 7. | 10.1, 10.2.8, 10.3, 10.4 Problems 1-2, 10.6, 10.7 Problems 1-2, 10.8, 10.12 |
| 8. | 9.1, re-read 7.5 and 11 U.S.C. § 363, 9.3 – 9.4, 9.6 – 9.11, Hall v. Ford Motor Credit |
| Discharge | |
| 9. | 11.1 – 11.4.2 (skip Davis) 11.5 – 11.6, 11.8.1 – 11.8.2 |
| 10. | 11.7, 11.8.3 – 11.8.7, 11.9 – 11.10 |

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| 11. | <p>Graded assignment #1. Read the Chapter 7 petitions and accompanying documents I provided. At least an hour before class, submit 2-3 single-spaced pages discussing each of the two debtors, so your total submission is a single Word doc of 4-6 pages. For each debtor:</p> <ol style="list-style-type: none"> 1. Briefly summarize the amount and types of the debtor’s income, expenses, property, and debts. Don’t just repeat what’s apparent from the face of the document. Instead, synthesize facts found throughout the document to draw conclusions that show you’ve penetrated behind the document to develop an educated guess about what is really happening in the debtor’s life. 2. Other than income, expenses, property, and debts, do any other facts revealed by these documents seem particularly important to the debtor? 3. How is this Ch. 7 bankruptcy likely to help the debtor? 4. Does anything important in the documents seem mysterious, suspicious, wrong, or inconsistent with material from earlier in this course? <p>Organize your submission with headings corresponding to the four questions above. Throughout your submission, cite page numbers of the pdf (not of the bankruptcy forms if they differ).</p> <p>Focus on the documents you read for this class session; if your writing contains more than two sentences in a row that could be written about most any Ch. 7 case, then you are writing too generally and need to discuss more specifically the unique contents of today’s documents.</p> |
| 12. | <p>Graded assignment #2. Read 13.12 of GERMAIN, BANKRUPTCY LAW AND PRACTICE and the “Thirteenth Circuit” decision for the Duberstein Bankruptcy Moot Court Competition, 2023. At least an hour before class, submit a question you, as a mock justice on the Supreme Court, would ask Petitioner and one you would ask Respondent. Each of your two questions must be on Issue 2. You must, during class, ask at least one of these questions to get full credit on this assignment. Your submission must end with a sentence stating that you developed your questions entirely on your own and did not discuss the substance of this assignment with anyone else.</p> |
| 13. | <p>Graded assignment #3. Read 13.13 of GERMAIN, BANKRUPTCY LAW AND PRACTICE and the “Thirteenth Circuit” decision for the Duberstein Bankruptcy Moot Court Competition, 2023. At least an hour before class, submit a question you, as a mock justice on the Supreme Court, would ask Petitioner and one you would ask Respondent. Each of your two questions must be on Issue 1. You must, during class, ask at least one of these questions to get full credit on this assignment. Your submission must end with a sentence stating that you developed your questions entirely on your own and did not discuss the substance of this assignment with anyone else.</p> |

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| 14-15. | Graded assignment #4, part a. Attend U.S. Bankruptcy Court for at least two hours March 1-8. Our class will not meet during those days. |
| 16. | Graded assignment #4, part b. At least an hour before class on March 9, submit 2-3 single-spaced pages discussing what you observed in court. How did what you observed relate to material we have studied in this course. Any observations seem inconsistent with that material? The first paragraph of your writing should state the date, start time, end time, and location of your court attendance. |
| Spring Break | |
| The Means Test | |
| 17. | 3.11, 3.21 – 3.25.1 |
| Chapter 13 Bankruptcy | |
| 18. | 12.1 – 12.6.4 |
| 19. | 12.7 – 12.10 |
| 20. | <p>Graded assignment #5. Read the Chapter 13 petitions, plans, and accompanying documents I provided. At least an hour before class, submit 2-3 single-spaced pages discussing each of the two debtors, so your total submission is a single Word doc of 4-6 pages. For each debtor:</p> <ol style="list-style-type: none"> 1. Briefly summarize the amount and types of the debtor’s income, expenses, property, and debts. Don’t just repeat what’s apparent from the face of the document. Instead, synthesize facts found throughout the document to draw conclusions that show you’ve penetrated behind the document to develop an educated guess about what is really happening in the debtor’s life. 2. Other than income, expenses, property, and debts, do any other facts revealed by these documents seem particularly important to the debtor? 3. How is this Ch. 13 bankruptcy likely to help the debtor? 4. Does anything important in the documents seem mysterious, suspicious, wrong, or inconsistent with material from earlier in this course? <p>Organize your submission with headings corresponding to the four questions above. Throughout your submission, cite page numbers of the pdf (not of the bankruptcy forms if they differ).</p> <p>Focus on the documents you read for this class session; if your writing contains more than two sentences in a row that could be written about most any Ch. 13 case, then you are writing too generally and need to discuss more specifically the unique contents of today’s documents.</p> |

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| Business Bankruptcy | |
| Post-Petition Finance and Executory Contracts | |
| 21. | 9.12, 7.5, 7.8 – 7.9, 7.11, 11 U.S.C. § 365(a)-(b) do 7.16 Problem 7 and Petro Co. problem |
| 22. | 7.13, 11 U.S.C. § 365(c)-(d) do 7.16 Problems 1-4, and assignment by Petro Co. estate |
| Enhancing the Estate with Avoiding Powers | |
| 23. | 8.2 – 8.4 Problems 1-5, 8.6 - 8.6.1, 8.7, 8.8 Problems 1-5, 7-17 |
| 24. | 8.10, 8.12 Problems 2-5, 8.13 - 8.14 |
| Business Reorganization | |
| 25. | 13.1 – 13.6, 13.8.2, 13.9 |
| 26. | 13.10.1 – 13.10.2, 13.10.3.2, 13.11 – 13.12 |
| <p>Review and Synthesis Submit a paragraph describing what happens (in terms of property and payment) with respect to creditors and owners of an insolvent business entity in each of these situations, so six paragraphs total:</p> <ol style="list-style-type: none"> 1. all creditors independently try to collect outside of BR; 2. all creditors cooperate with each other outside of BR; 3. dissolution of the business entity under state corporate law; 4. Chapter 7, voluntary or involuntary under BR Code § 303; 5. a Chapter 11 plan that basically says, “Sell D’s property to the highest bidder and use the proceeds to pay creditors according to priorities of Ch. 7”; 6. sale of all D’s property under BR Code § 363 with proceeds paying creditors according to priorities of Ch. 7. | |