

Bankruptcy

Professor Stephen Ware

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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, legal research, problem-solving, and written and oral communication, as well as heighten students' awareness of professional and ethical responsibilities to clients and the legal system.

Basics. The required casebook is ELIZABETH WARREN ET AL., *THE LAW OF DEBTORS AND CREDITORS* (7th ed. 2014).

The recommended statutebook is ELIZABETH WARREN, *BANKRUPTCY AND ARTICLE 9* (2013 or later). You may use a different statutebook if it has 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.

Also required is a photocopied supplement which I will distribute.

You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. 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 be determined by the final exam (55%), your classroom performance (15%), and the graded assignments discussed next (30% total: Graded Assignments 1 and 4 are each 10% of the course grade, while Graded Assignments 2 and 3 are each 5%). The graded assignments are noted on this syllabus and you must submit them on time to receive any 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. You may use any written material (such as outlines, books, notes) during the exam. It is completely “open book.” You may also use a calculator. You may take the exam on your laptop computer if you do so with the exam software supported by the law school. The exam software must be in the closed mode so that you cannot access any other program on your computer during the exam.

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 play a bigger role 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 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. Should law professors use class time to lecture or to question students? I believe some time devoted to lecture may be appropriate because lecturing can be an efficient way to convey information from someone who has it to someone who needs it. But you should not need to acquire much information during class. You can acquire nearly all the relevant information before class by doing the assigned reading, thinking about it, and discussing it with your classmates. In short, you should come to each class knowing the law that will be discussed in that class. You should know what the statutes say and what the courts have held. You should know the basic arguments in favor of those statutes and holdings and the basic arguments against those statutes and holdings.

If students know all this before class starts, then what is the purpose of our class time? One purpose is simply to test whether you have learned before class what you should have learned. If the professor asks straightforward, factual questions about the reading and you have trouble answering quickly and confidently then you are receiving feedback suggesting that your class preparation or your ability to speak under pressure is deficient. Either way, you benefit from getting that feedback throughout the semester, rather than learning on the exam or later about the deficiencies. Of course, it is not only questions directed to you personally that give you feedback. After each question directed to one of your classmates, you should think about how you would answer it and compare the answer you would have given to the answer your classmate gave. In a good law school class, much of the learning occurs through this process.

Another very important purpose of class time is to give you opportunities to "learn by doing." We lawyers are often good at learning by reading and that is good because many lawyers do a lot of reading for their jobs. But reading alone is not sufficient preparation for the practice of law. Nearly all lawyers' careers require them to engage in effective communication about the law. While *written* communication about the law is a large part of many lawyers' jobs, so is *spoken* communication about the law. In this course, written communication will be tested on the exam and other assignments, while spoken communication will be tested in the classroom throughout the semester.

During class, I may call on students who have not raised their hands, as well as students who have. Your classroom performance grade is based on the quantity and quality of both forms of participation. I want you to raise your hand and voluntarily contribute to class discussion because I believe doing this is good training for the practice of law and because class discussion tends to be better when many viewpoints are represented. So the classroom performance part of the grade rewards students who frequently raise their hands and say things that contribute to the education of the class. Students who raise their hands less frequently than their classmates are more likely to be called on when their hands are not raised.

If you are unable to prepare for a particular class, better for you to tell me ahead of class than to skip the class or risk being called on. If you ask ahead of class for a pass that day, I will grant it if your classroom performance throughout the semester has been adequate. By contrast, if you have gone a day or two without contributing to class discussion then you should not be asking me for a pass. If you have gone a day or two without contributing to class discussion and are unable to prepare for a particular class then you are not handling the course appropriately and should contact me to discuss solutions to the problem.

If you come to class without previously asking me for a pass then you are representing to me and your classmates that you are prepared and ready to contribute. If I call on you in class and you, at that point, ask for a pass or say that you are unprepared then your grade will suffer and your reputation for honesty will be jeopardized.

I recognize that many students find law school classes stressful if classroom performance is graded and the professor may call on any student at any time. If you find this sort of classroom environment stressful then I encourage you to reconsider whether your preparation for class is adequate. If you are well prepared for class then you have anticipated the issues raised by the questions the professor is asking and are ready to use the “book learning” you did before class. That said, even well-prepared students sometimes find speaking in class somewhat stressful. Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, the law school classroom is a relatively safe, low-stakes environment in which to develop important professional skills. Please get the most out of it, rather than shying away from it. I am here to help you with that. If you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

Attendance and lateness. You may miss a class or two during the semester because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is nothing to worry about and there is no need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions. Similarly, you may be late once or twice during the semester for reasons like those listed above. Again, this is nothing to worry about and there is no 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 semester that is a worry. If that happens then you should contact me to discuss how we can address the problem and keep you on track with the course and your classmates. Missing or being late for more than a couple of classes without contacting me would make things more difficult for all concerned.

Computers and other electronics in class. You may use a computer in class but only for working on this course. Any other use of your computer during class is prohibited. And I reserve the right to declare some of our class time “computer-off periods.” Please silence computers, phones, and any other electronic devices you bring to class. Audio or video recording of class is prohibited without my written permission.

Miscellaneous. In addition to our regularly-scheduled sessions, our class will meet Jan. 27 and 31 at 12:30. I am sorry for any inconvenience this causes. Our class will not meet March 2 or 3, however you have graded assignments scheduled for those dates.

If you have a disability for which you intend to request a classroom or exam accommodation, you may contact the Assistant Dean for Academic and Student Affairs, Leah Terranova, at leaht@ku.edu or 785-864-4357.

I like to have lunch with students. We can go across the street to the DeBruce Center Cafe and, within limits, the school will buy our lunches. To avoid crowds, I prefer to go at 11:45 or 12:45. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group and please copy the other student(s) on that email message.

My office is Room 414C, my email is ware@ku.edu and my phone number is 785-864-9209. Please do not hesitate to contact me about this course or anything else.

<u>CLASS</u>	<u>ASSIGNMENT</u>
Non-Bankruptcy Collection Law	
1.	Casebook pages 1-5, 40-44. Do 2.3 and variation of 2.3 in which the debt is \$10,000. Do 4.3 (p.103) both as is and assuming no mortgage; ignore question about bankruptcy.
2.	Casebook 44-48, do 2.6-7. In photocopied supplement: 15 U.S.C. §§ 1671 - 1677 and Kan. Stat. §§ 60-2310 - 2311.
Introduction to Bankruptcy	
The Estate	
3.	14-15, 55-67, do 3.1-2. Read 11 U.S.C. § 554. Read <i>Chambers</i> for the big picture, not the specific holding about campaign funds.
The Automatic Stay	
4.	67-73, do 3.5 and think about it from the perspective of each creditor, as well as the debtor.

Chapter 7 Liquidation	
Property Exempt From Seizure	
5.	77-90, 99-102 (skip TX & WY statutes and instead read in photocopied supplement: KS & MO exemptions), 105-126 and read <i>Chadwick</i> (in photocopied supplement). Do 4.1-2 (but change TX and WY to KS and MO).
Claims and Distributions	
6.	129-141, 149, do 6.1-4
7.	153-154, 295 last ¶; do Prob. 7. First, do the problem assuming bad facts for Sue and then good facts for Sue.
Discharge and the Debtor's Post- Bankruptcy Position	
8.	155-157, 185-195, do 9.2,4-5; In photocopied supplement: Kansas Statutes 16a-5-109; <i>Hall v. Ford Motor Credit Co. LLC</i>
9.	195-201, do 9.1,3,6
10.	157-178, do 8.4

11.

Graded Assignment #1. Read the Chapter 7 petitions and accompanying documents I provided. Write 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:

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?

Focus on this assignment's documents. 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 the documents for this assignment.

Throughout your submission, cite page numbers of the pdf. Organize your submission with headings corresponding to the four questions above.

At least an hour before class, send ware@ku.edu your writing. Be sure both your email message and the attached writing show your first and last names.

Current Bankruptcy Issues	
12.	<p>Graded Assignment #2, part 1. Read 569-573 and https://drive.google.com/file/d/1ifv-xYGIhUeTjeKIwEP5ZPmsoA2-W7/view (“Thirteenth Circuit” decision for the Duberstein Bankruptcy Moot Court Competition, 2020)</p> <p>At least one hour before class, send ware@ku.edu two questions you, as a mock justice on the Supreme Court, plan to ask Respondent (Under My Thumb, Inc.) at oral argument. Your two questions must include one on each of the two issues.</p> <p>You must, during class, ask at least one of these questions to get full credit on Graded Assignment #2.</p> <p>Your email 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 #2, part 2. At least one hour before class, send ware@ku.edu two questions you, as a mock justice on the Supreme Court, plan to ask Petitioner (Tumbling Dice, Inc.) Your two questions must include one on each of the two issues.</p> <p>In the same email, state the question you asked in Class 12 and the answer you received. Assess the answer.</p> <p>Your email 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>
Chapter 13 Bankruptcy	
Secured Creditors	
14.	203-220 (skip <i>Dale</i>), do 10.1-2,4
15.	220-225, do 10.5-6
Unsecured Creditors	
16.	229-242, do 11.1-2,4
Chapters 7 and 13 as a System	
The Means Test	
17.	251-278, do 12.1 (complete Official Bankruptcy Form B 122A-1 for Marissa).

18.	do 12.2-3 (for 12.2 complete Form B 122A-2).
19.	289-302, do 13.1A-B, do 11.3; 246-247.
20.	Graded Assignment #3, part 1. Instead of our usual class session, attend a U.S. Bankruptcy Court for at least two hours between Feb. 27 and March 3, 2020.
21.	Graded Assignment #3, part 2. Instead of our usual class session, by the time it would have ended: send ware@ku.edu 2-3 single-spaced pages explaining what you observed completing the assignment for Class 21. Your explanation should integrate law from this course and note whether anything you observed in court went beyond what you would have expected from material from earlier in this course. Your first paragraph should state the date, time, city, and judge of your court attendance.
22.	<p>Graded Assignment #4. Read the Chapter 13 petitions, plans, and accompanying documents I provided. Write approximately 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>Focus on this assignment's documents. 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 the documents for this assignment. Throughout your submission, cite page numbers of the pdf. Organize your submission with headings corresponding to the four questions above.</p> <p>At least an hour before class, send ware@ku.edu your writing. Be sure both your email message and the attached writing show your first and last names.</p>

Non-Bankruptcy Collection Law and Business Liquidation	
23.	331-343 (skip <i>Office Depot</i>), do 15.2; 746-747; supplement: Kan. Stat. §§ 17-6808a, 6810
24.	343-355
Business Reorganization	
Introduction to Chapter 11	
25.	359-379, do 16.1
The Estate and Stay	
26.	381-387, 390-397, do 17.3
27.	397-409, do 17.1
Running the Business	
28.	413-433, do 18.1
Financing the Reorganization	
29.	435-449, do 19.1
Avoiding Powers	
30.	453-464, do 20.1; 469-488 (skip cases), do 21.1
Fraudulent Transfers	
31.	491-492, 523-528, 535-539 do 23.2 (including remedies) under both the Uniform Fraudulent Transfer Act and the Uniform Voidable Transactions Act.
Executory Contracts	
32.	561-562 (bottom of page), read § 365, do 25.1
Negotiating the Plan	
33.	595-617 (skip <i>Mangia</i>), do 27.1

Confirming the Plan	
34.	623-635, do 28.1
Cramdown	
35.	639-661, do 29.1
36.	665-685, do 30.1 ignoring the last sentence
Sales	
37.	691-705
Corporate Law in Bankruptcy	
38.	741-749
Review and Synthesis	
39.	Review entire course.