



WESTERN STATE COLLEGE OF LAW
AT ARGOSY UNIVERSITY

**BANKRUPTCY LAW
SECTION 414A
SPRING 2018
PROFESSOR JAMES A. HAYES, JR.**

COURSE SYLLABUS & POLICIES

TEXTS

- Required:** *Bankruptcy*, Tenth Edition,
 Bussel and Skeel
 Foundation Press
- 2018 Supplement to *Bankruptcy*, Tenth Edition
 Bussel and Skeel
 Foundation Press
- Bankruptcy Code, Rules and Official Forms*,
 2018 Law School Edition
 West Academic Publishing
- Recommended:** *Law of Bankruptcy*, Fourth Edition,
 Charles J. Tabb
 West Academic Publishing

SCOPE OF COURSE

This course is a survey of bankruptcy law. Its purpose is to acquaint the student with the fundamental elements of bankruptcy as they relate to the liquidation or reorganization of individuals and business entities. In addition, it will examine the economic and social policies which have influenced the development of the modern bankruptcy code.

The course will focus on the three main types of bankruptcy relief that the student will encounter in practice: Chapter 7 (liquidation); Chapter 13 (individual debt adjustment); and Chapter 11 (reorganization). Relief under Chapter 9 (municipalities), Chapter 12 (family farm reorganization), and Chapter 15 (cross-border insolvency) will not be discussed in detail.

EXAMINATIONS AND GRADING

Each student will receive a numeric grade based upon a three-hour final given during final

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examination week. There will be no midterm examination. The final examination will consist of a two-part essay question to be completed in three (3) hours. The examination will require analysis of the law and policy issues covered in the reading materials and class discussions. ***For the final examination you will be permitted to refer to your statute book and any outline or notes you have hand-written on the available pages in the statute book (additional pages may not be appended in any manner). You will be expected to precisely cite to and paraphrase applicable bankruptcy rules and statutes in your essay answers.***

PREPARATION REQUIREMENTS FOR CLASS

Please bring the required texts to all classes. The reading assignments refer to the Bussel and Skeel casebook ("BSK" in the assigned reading list) and the 2018 Supplement to the casebook ("Supp." in the assigned reading list). I have also assigned recommended readings from *Law of Bankruptcy* ("Tabb" in the assigned reading list). Most assigned rules and statutes may be found in your statute book. Those that are not in the statute book, as well as the official comments to the assigned provisions, may be found in the law library or on WestLaw or Lexis.

Pursuant to ABA Standard 310, you are required to devote at minimum two (2) hours of out-of-class time preparing for each hour of classroom instruction. The assigned readings each week have been calibrated for you to achieve this minimum requirement.

ATTENDANCE AND PARTICIPATION

In this course, the statutes, rules, and cases will be analyzed and illuminated through students' responses to questions during class. This can lead to spirited and stimulating discussion, but only if the students are thoroughly prepared. You will, therefore, be expected to have carefully read and briefed each case and reviewed the applicable model statutes in the weekly assigned reading.

Unless otherwise instructed, you are responsible for all materials assigned in the reading list and you are expected to prepare the readings assigned on the syllabus, regardless of where we are on the syllabus in the class discussions.

ATTENTION:

Your attendance and participation in all classes are required. It is solely the responsibility of the individual student to personally sign the attendance sheet for each class. Failure to prepare for a class will count as an absence. Students who are absent from more than THREE (3) classes will be academically withdrawn from the course. THESE ATTENDANCE AND PARTICIPATION POLICIES WILL BE STRICTLY ENFORCED.

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OFFICE HOURS

I will not have regular office hours on campus, but I will be available to meet by appointment only in the adjunct offices in the first-floor faculty suites. You may make an appointment with me by e-mail by contacting me at jamhayes@wsulaw.edu. The purpose of an appointment should be to discuss questions you may have about the substantive law of the course.

COURSE WEBSITE- MANDATORY ENROLLMENT

I have prepared a course website on Lexis/Nexis Webcourses. *You are required to enroll on the website as soon as possible after the beginning of the semester.* I will be regularly updating the website with articles, study materials, practice exams, links to sites of interest, etc. throughout the semester. *You are responsible for checking the website regularly and you will be responsible for all materials posted on it.*

CLASSROOM POWERPOINT SLIDES

I will post any PowerPoint presentations I use during class on the course website. **The PowerPoint presentations are solely for the purpose of guiding classroom discussion and are not intended to substitute for a student outlining, reading, briefing or otherwise preparing for class.**

BANKRUPTCY COURSE
SPECIFIC LEARNING OUTCOMES

Students will achieve the following specific competencies in insolvency and bankruptcy law:

(1) State Law Security Interests and Collection Remedies

Students will understand the creation of security interests in personal property under Article 9 of the Uniform Commercial Code and will learn different methods of collecting debts and judgments under state law.

(Links to Programmatic Learning Outcomes: Legal Analysis and Legal Research)

(2) Types of Federal Bankruptcy Relief

Students will understand the substance of and differences between Chapter 7, Chapter 13, and Chapter 11 bankruptcies with respect to the official and local forms, who is eligible to file, how creditors are paid, and when discharge occurs under each chapter.

(Links to Programmatic Learning Outcomes: Practice Skills, Legal Analysis and Legal Research)

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(3) Bankruptcy Jurisdiction

Students will understand the jurisdictional requirements of bankruptcy cases, and adversary proceedings and contested matters within bankruptcy cases, including the distinction between core and non-core proceedings.

(Links to Programmatic Learning Outcomes: Legal Analysis and Legal Research)

(4) Federal Bankruptcy System

Students will learn the administrative nature of the bankruptcy system under the supervision of the Department of Justice's Office of the United States Trustee, and the role of the court-appointed panel trustee.

(Links to Programmatic Learning Outcomes: Legal Analysis and Legal Research)

(5) Essential Features of a Bankruptcy Relief

Students will understand the major features of bankruptcy relief, including the automatic stay, the bankruptcy estate, exemptions, lien avoidance, claims and objections to claims, discharge and nondischargeability of debts, treatment of leases and executory contracts, denial of discharge and bankruptcy crimes.

(Links to Programmatic Learning Outcomes: Practice Skills, Legal Analysis, Legal Research, Communication, Advocacy of Legal Argument, and Legal Ethics)

(6) Powers of Trustees in Bankruptcy

Students will understand the scope of the strong-arm and avoidance powers of trustees in bankruptcy and recognize the factual scenarios giving rise to the use of such powers.

(Links to Programmatic Learning Outcomes: Practice Skills, Legal Analysis, Legal Research, Communication, Advocacy of Legal Argument, and Legal Ethics)

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:

(1) 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.

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(2) 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.

(3) 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.

(4) 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.

(5) 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).

(6) 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

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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.

(7) 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.

(8) 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 Competency

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

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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. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

AMERICAN BANKRUPTCY INSTITUTE MEDAL OF EXCELLENCE

Each year, I nominate the student who receives the highest grade in this course for the American Bankruptcy Institute's Medal of Excellence. The ABI is the nation's pre-eminent college of bankruptcy judges, lawyers, scholars and professionals. It awards its Medal of Excellence to top bankruptcy law students at ABA-accredited schools on a law professor's nomination. It is recognized in the bankruptcy community as a high mark of distinction for a law student to attain. I hope the prospect of this award will encourage each of you to excel in this course.

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COURSE CONTENT AND ASSIGNED READING:

| Week | Topic(s) | Casebook and Supplement Readings | Recommended Readings |
|-------------|---|--|-----------------------------|
| 1 | State Law Debt Enforcement Origins of Bankruptcy Law Modern Code and Rules Overview of the Bankruptcy System Commencement of Bankruptcy - Voluntary Bankruptcy - Involuntary Bankruptcy | BSK, 1-29 SUPP., 1 | Tabb, Chapters 1 and 2 |
| 2 | Jurisdiction and Venue Appellate Jurisdiction Right to Jury Trial | BSK, 751-813 SUPP., 91-92 | Tabb, Chapter 4 |
| 3 | The Automatic Stay - Exceptions - Relief from Stay and Adequate Protection | BSK, 161-212 SUPP., 15-21 | Tabb, Chapter 3 |
| 4 | The Bankruptcy Estate - Property of the Estate - Exempt Property | BSK, 29-72 | Tabb, Chapters 5 and 9 |
| 5 | Claims - The Legal Nature of Claims - Types of Liens - Secured Claims - Priority Claims - Equitable Subordination - Substantive Consolidation | BSK, 73-115; 383- 421 SUPP., 5-6; 41 | Tabb, Chapter 7 |
| 6 | Discharge - Exceptions to Discharge - Denial/Revocation of Discharge - Reaffirmation | BSK, 117-159 SUPP., 7-13 | Tabb, Chapter 10 |
| 7 | Executory Contracts and Leases | BSK, 213-282 | Tabb, Chapter 8 |
| 8 | Avoiding Powers of the Trustee - Strong Arm Clause - Statutory Liens - Preferences - Set Off | BSK, 374-382; 283-327 SUPP., 25-26; 40 | Tabb, Chapter 6 |

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| Week | Topic(s) | Casebook and Supplement Readings | Recommended Readings |
|-------------|---|--|-----------------------------|
| 9 | Avoiding Powers of the Trustee (cont'd) - Fraudulent Transfers | BSK, 327-374 SUPP., 26-40 | |
| 10 | Consumer Chapter 7 Bankruptcy | BSK, 423-458 | |
| 11 | Chapter 13 Alternative – Individual Rehabilitation | BSK, 458-521 | Tabb, Chapter 12 |
| 12 | Chapter 11 Bankruptcy - Debtor in Possession - Operating the Debtor | BSK, 523-565; 705-750 SUPP., 45-47 | Tabb, Chapter 11 |
| 13 | Chapter 11 Bankruptcy (cont'd) - Plan of Reorganization | BSK, 566-605 SUPP., 47 | |
| 14 | Chapter 11 Bankruptcy (cont'd) - Confirmation of Plan - Consummation of Plan and Final Decree | BKS, 607-703 SUPP., 49-73 | |