**SYLLABUS**

**BANKRUPTCY (Spring 2022)**

PROFESSOR: Robert J. Rhee

CONTACT: Holland Hall # 378, 352-273-0958; rhee@law.ufl.edu

CLASSROOM: Holland 360

CLASS TIME: Wednesday & Friday: 1:00pm to 2:25pm

OFFICE HOURS: Wednesday & Friday: 12pm to 1pm

* + - * + Office hours will always be consistent with the prevailing UF policy.
        + Office hours can be through Zoom, telephone, or in person (if UF policy permits), and there are no restrictions on any of these methods.
        + In-person office hours are freely available (if UF policy permits). In-person office hours can be in the professor’s office, but because my office is a small physical space students must wear a mask in my office and abide by social distancing and the door must be kept open. If you do not wish to wear a mask in my office, we can hold in-person office hours outside or do it in a larger indoor space.

FINAL EXAM: TBD (4 hours)

**TEXTBOOKS**

Daniel J. Bussel, David A. Skeel & Michelle Harner, Bankruptcy (11th ed. Foundation Press 2020)

I do not assign a statutory supplement. I see no need to require students to purchase a statutory supplement when the statute is freely available online. Students are required to review all statutory materials as presented in the textbook and the syllabus. The U.S. Bankruptcy Code is available at: <https://www.law.cornell.edu/uscode/text/11>.

**COURSE DESCRIPTION**

Creditors’ Remedies and Bankruptcy (LAW 6052): This course is a study of individual collection of monetary judgments and administration of insolvent estates under the Bankruptcy Code and state law.

**NOTE ON COURSE COVERAGE**

In light of the Covid-19 pandemic, recently enacted federal statutes including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Consolidated Appropriations Act of 2021, and the COVID-19 Bankruptcy Relief Extension Act temporarily amended provisions in the Bankruptcy Code. These amendments largely address disruptions to persons and businesses during the Covid-19 pandemic. *See* The Impact of Recent Amendments to the United States Bankruptcy Code on Lenders (May 6, 2021), available at <https://www.jdsupra.com/legalnews/the-impact-of-recent-amendments-to-the-4192718/>; Richard A. Chesley & Oksana Kolko Rosaluk, *Covid-19 Alert*, DLA Piper (Jan. 25, 2021), available at <https://www.dlapiper.com/en/us/insights/publications/2021/01/the-consolidated-appropriations-act-of-2021-temporary-amendments-to-the-bankruptcy-code/>. Most of these amendments are temporary and have sunset dates, December 2022. In light of the short-term temporary nature of these amendments, this course will not cover these changes. This course will focus on the permanent provisions of the Bankruptcy Code.

**STUDENT LEARNING OUTCOMES**

After completing this course, students should be able to:

1. Know and analyze the laws applicable to creditors’ rights and bankruptcy in general.
2. Consider issues related to advising the debtor or creditors arising under federal bankruptcy law, including issues related to bankruptcy claims, making claims under bankruptcy, avoidance, and chapter 11 reorganization.
3. Know the basic transactional processes involved in the pursuit of creditors’ claims and bankruptcy.
4. Know and apply basic business concepts in accounting, finance, and economics specifically relevant and related to the understanding of bankruptcy.

**GRADING**

Grading will be consistent with College of Law policy. Your grade will be based on a final exam (100% of the final grade). Exam grades are done on a blind basis. All grades are final. There will be no regrading or revisions from me, except to correct any mathematical or clerical errors in computing the final score.

**FINAL EXAM FORMAT**

The final exam will be **open casebook**. There are no restrictions on what you can write into the book. You will also be permitted to bring **any personal notes or outlines**, **written by you as your or your study group’s workproduct** (i.e., no commercial outlines or any other published materials other than your textbook). There is no limitation on page count. Your notes and outline may include the statutory provisions that you believe will be necessary for the exam. The assembly of statutory materials, which is at your discretion, is recommended since this course is statute based.

The final exam may have essay, short answer, and multiple choice questions. Essay questions will be an issue-spotting, analysis, or problem-solving format typically seen in most law school exams. The issues and topics for exam questions will come from the course readings and class discussions. The exam will fairly reflect the work that is done in the course. This means that the best way to prepare for the exam is to do the class readings and to attend class. There are no prior exams.

*Makeup Exam Policy*: The law school policy on exam delays and accommodations can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

## **GRADING INFORMATION**

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |  |  |
| --- | --- | --- | --- |
| **Letter Grade** | **Point Equivalent** | **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.00 | C (Satisfactory) | 2.00 |
| A- | 3.67 | C- | 1.67 |
| B+ | 3.33 | D+ | 1.33 |
| B | 3.00 | D (Poor) | 1.00 |
| B- | 2.67 | D- | 0.67 |
| C+ | 2.33 | E (Failure) | 0.00 |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**WORKLOAD AND CLASS PREPARATION**

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

**ATTENDANCE**

Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

The single best thing that a student can do to maximize the possibility of doing well in the course in terms of a grade is to keep up with the class reading assignments and to attend class regularly. The final exam will draw from the work done in course and the class discussion.

Attendance will be taken online. A student may access the online attendance form at the beginning of class from the law school quick links page: <https://www.law.ufl.edu/student-life> or the <https://www.law.ufl.edu/attendance>. You will enter the requested information, including your UFID number, name and attendance code. Your professor will provide the attendance code for each class.  The submissions are recorded. It is an Honor Code violation for giving the attendance code to a study who is not present in the class, either in person or online. Please do not violate this policy.

**ACCOMMODATIONS**

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Also, with prior notification to the professor, students are entitled to be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students are entitled to have a reasonable amount of time to make up the material or activities covered in their absence. Students will not be penalized due to absence from class or other scheduled academic activity because of religious observances.

**ACADEMIC HONESTY**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**ONLINE COURSE EVALUATIONS**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner can be found here: <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\rmcilhenny\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\QH37XRU4\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students can be found here: <https://gatorevals.aa.ufl.edu/public-results/>.

**COVID POLICY**

The Covid-19 policy for the course is the prevailing University of Florida’s policy in effect during the entire pendency of the course. If the UF policy changes, the policy in effect for the course will also change. Additionally, your professor kindly asks all participants of the course that we consider the circumstances of our times and respect public health and the safety of our community. **Consistent with this aspiration, I kindly ask that students wear a mask, practice social distancing, and exercise pragmatic judgment.**

**RECORDING CLASS SESSIONS**

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.”

**ONLINE (ZOOM) CLASS SESSIONS**

Per law school policy, our course must be mostly in-person class sessions, at least 2/3 of all class sessions. Consistent with this policy, we can have at most 1/3 of class sessions online through Zoom or other means.

**CLASS CANCELLATION AND MAKEUP**

Class on Friday, February 11, is cancelled. Makeup class is on Tuesday, February 8, 5:00pm to 6:25pm, via Zoom.

**ASSIGNMENTS**

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| **Class #** | **Topics, Issues, and Cases** | **Text pages** |
| 1 | Bankruptcy Basics | “Bankruptcy Basics” (excerpted) on Canvass |
| 2 | CHAPTER 1: INTRODUCTION   * Consensual liens * Judicial liens * Overview of bankruptcy   Bankruptcy Code (11 U.S.C.):  § 101(36), (51), (53)  § 362(a) | 1-25  Skim read: Section B on pp. 16-17 |
| 3 | CHAPTER 2: BANKRUPTCY ESTATE   * Butner doctrine * Defining property of the estate   + *United States v. Whiting Pools, Inc.* * Exempt properties   + *In re Silveira*   Bankruptcy Code (11 U.S.C.):  § 362(a)(4), (d)  § 522(b)(1)-(3), (c), (d), (f)(1)-(2)  § 541(a)  § 542(a) | 29-57 |
| 4 | * Exempt properties   + *Norwest Bank Nebraska v. Tveten*   CHAPTER 3: CLAIMS   * Rights to payments   Bankruptcy Code (11 U.S.C.):  § 101(5)  § 502(a), (b)  § 522(o)  § 523(a)(3)  § 524(g)(1) | 58-70, 73-87 |
| 5 | * Rights to payment   + *United States v. Apex Oil Co*. * Determining the amount of a claim * Secured claims   + *Associates Commercial Corp. v. Rash*   Bankruptcy Code (11 U.S.C.):  § 502(a), (b), (c)  § 506(a)(1), (d)  § 1325(a)(5) | 87-110 |
| 6 | * Priority claims   + *In re Jartran*   CHAPTER 4: DISCHARGE   * Denial of discharge because of debtor’s misconduct * Nondischargeable debts   + *In re Madaj*   + *In re Werthen*   + *Kawaauhau v. Geiger*   Bankruptcy Code (11 U.S.C.):  § 503(b)  § 507(a)  § 523(a)  § 726(a) | 110-139 |
| 7 | * Nondischargeable debts   + *American Express Travel V. Hashemi* * Protection of the discharge * Discrimination against debtors   + *In re Majewski*   + *Toth v. Michigan State Housing Dev. Auth.*   CHAPTER 5: STAYS AND INJUNCTIONS   * Applicability of the stay * Effect of violation of stay   Bankruptcy Code (11 U.S.C.):  § 362(a), (b)(1), (b)(4), (c), (d), (k)(1)  § 524(a)(2), (i)  § 525(a), (b)  § 727(a), (b) | 140-168 |
| 8 | * Effect of violation of stay   + *In re Soares* * Secured claims   + *Johnson v. First National Bank* * Actions against nondebtors   + *A.H. Robins v. Piccinin*   + *Credit Alliance Corp. v. Williams* * Relief from automatic stay for cause   + *In re Holtkamp*   Bankruptcy Code (11 U.S.C.):  § 105(a)  § 108(a)-(b)  § 524(a) | 168-199 |
| 9 | * Relief from stay and adequate protection rights for undersecured creditors   + *United States Savings Assoc. of Tex. V. Timbers of Inwood Forest Assoc.* * Prepetition waiver of stay   CHAPTER 6: EXECUTORY CONTRACTS AND LEASES   * Executory contracts   + *Lubrizol Enterprises v. Richmond Metal Finishers* (skim read, but case has been legislatively overruled by § 365(n))   + *In re Catapult Entertainment*   Bankruptcy Code (11 U.S.C.):  § 361  § 362(d)(1)-(3)  § 365(a), (b), (c), (e), (g), (h), (n)  § 507(b) | 199-238 |
| 10 | * Executory contracts   + *In re Pioneer Ford Sales*   + *Matter of Whitcomb & Keller Mortgage Co.* * Leases   + *Precision Industries v. Qualitech Steel SBQ*   Bankruptcy Code (11 U.S.C.):  § 363(b), (e), (f)  § 365(d), (f), (i) | 238-267 |
| 11 | * Leases   + *In re Trak Auto Corp.*   + *Matter of U.L. Radio Corp.*   + *In re Standor Jewelers West*   CHAPTER 7: AVOIDING POWERS   * Preferences   + *Union Bank v. Wolas*   Bankruptcy Code (11 U.S.C.):  § 547(b), (c), (e), (f)  § 551 | 267-300 |
| 12 | * Preferences   + *In re National Gas Distributors*   + *In re Powerine Oil Co.* * Setoffs   + *Citizens Bank of Maryland v. Strumpf*   Bankruptcy Code (11 U.S.C.):  § 362(a)(7)  § 506(a)(1)  § 550(c)  § 553(a), (b) | 300-327 |
| 13 | * Fraudulent transfer   + *BFP v. Resolution Trust Co.*   + *Robinson v. Wangemann*   + *In re Northern Merchandise*   Bankruptcy Code (11 U.S.C.):  § 548(a)  Uniform Fraudulent Transfers Act (UFTA) (also known as Uniform Voidable Transactions Act): § 4(a) | 327-354 |
| 14 | * Fraudulent transfer   + *Bay Plastics v. BT Commercial Corp.* * Strong-arm clause   + *McCannon v. Marston*   Bankruptcy Code (11 U.S.C.):  § 541(a)(3)  § 544(a)  § 546(b)  § 548(c), (e)  UFTA § 2(a), § 5(a), 8 | 354-382 |
| 15 | CHAPTER 8: EQUITABLE SUBORDINATION AND SUBSTANTIVE CONSOLIDATION   * Equitable subordination   + *Matter of SI Restructuring*   + *Matter of Clark Pipe & Supply Co.* * Substantive consolidation   + *In re Owens Corning*   + *In re LTV Steel Co.*   Bankruptcy Code (11 U.S.C.):  § 510(c) | 383-421 |
| 16 | CHAPTER 9: THE CONSUMER DEBTOR IN CHAPTERS 7 AND 13   * Introduction to consumer bankruptcy * The consumer debtor in Chapter 7 before BAPCPA * BAPCPA   + *Ransom v. FIA Card Services*   Bankruptcy Code (11 U.S.C.):  § 707(b) | 423-458 |
| 17 | * Chapter 13 as an alternative for the consumer debtor   + *Hamilton v. Lanning*   + *In re Crawford*   Bankruptcy Code (11 U.S.C.):  § 101(30)  § 109(e)  § 341(a)  § 521(a)(1)  § 706(a)  § 1307(a)  § 1322(b), (d)  § 1326(a)(1)(a) | 458-488 |
| 18 | * Discharge * Reaffirmation of discharged debts * Secured claims in personal property   + *In re Jones*   + *In re Wright* * Secured claims in debtor’s residence   + *Nobelman v. American Savings Bank*   Bankruptcy Code (11 U.S.C.):  § 506(a)  § 521(d)  § 524(c)  § 722  § 1322(b), (d)  § 1325(a)  § 1328(a), (b) | 488-521  Skim read: section H.3. “The Home Loan Crisis” on pp. 516-17 |
| 19 | CHAPTER 10: OPERATING THE DEBTOR AND PROPOSING A PLAN OF REORGANIZATION   * Management and control * Operating the business from petition to confirmation   Bankruptcy Code (11 U.S.C.):  § 323(a)  § 363(c), (e)  § 552(a), (b)  § 1101(a)(1), (b)(1)  § 1103(c)  § 1107(a)  § 1108  § 1112(b) | 523-524  529-543  Skip: Section A.2. “Reorganization under Previous Law” on pp. 525-29 |
| 20 | * Operating the business from petition to confirmation   + *Matter of Kmart Corp.*   + *General Electric Credit Corp. v. Levin & Weintraub*   + *Hartford Underwriters Ins. Co. v. Union Planters Bank*   + *Matter of Saybrook Manufacturing Co.*   Bankruptcy Code (11 U.S.C.):  § 364(a), (b), (c), (d)  § 506(c)  § 1121(b), (c)(3)  § 1129(a) | 543-568 |
| 21 | * Proposing the plan   + *Century Glove v. First American Bank of New York*   + *In re Figter Limited*   + *In re U.S. Truck Co.*   + *Matter of Greystone III Joint Venture*   Bankruptcy Code (11 U.S.C.):  § 1122  § 1123(a)  § 1125(b)  § 1126(c)-(d)  § 1129(b)(1) | 568-601  Skip: notes following *Matter of Greystone III Joint Venture* on pp. 601-05 |
| 22 | CHAPTER 11: CONFIRMING A CHAPTER 11 PLAN   * Feasibility   + *In re Orfa Corp. of Philadelphia* * Treatment of priority claims * Treatment of secured claims   + *Till v. SCS Credit Corp.*   + *RadLAX Gateway Hotel v. Amalgamated Bank*   Bankruptcy Code (11 U.S.C.):  § 1129(a)-(b) | 607-641  Skip: note on Chapter 12 Family Farmers on pp. 632-34 |
| 23 | * Treatment of secured claims   + *In re Arnold & Baker Farms*   + *Great Western Bank v. Sierra Woods Group* * Treatment of unsecured claims and ownership interests   + *In re DBSD North America*   Bankruptcy Code (11 U.S.C.):  § 1111(b) | 641-663 |
| 24 | * Treatment of unsecured claims and ownership interests   + *Bank of America v. 203 North LaSalle Street P’ship* * Effect of confirmation of plan * Modification of plan   Bankruptcy Code (11 U.S.C.):  § 1129(b)(2)(B) | 663-694,  698-703  Skip: “The Future of Chapter 11 Reorganization” on pp. 694-98 |
| 25 | CHAPTER 12: SALE ALTERNATIVE UNDER SECTION 363   * Sale or lease of property in ordinary course * Going concern sales under section 363   + *In re Chrysler LLC* * Selling free and clear under section 363(f)   + *In re PW*   + *In re Trans World Airlines* * Break-up fees and bidding procedures   Bankruptcy Code (11 U.S.C.):  § 363 | 705-747  Skip these pages:   * Notes following *In re Chrysler LLC* (pp. 714-17) * Notes following In re PW (pp. 731-35) * Note personal identifiable information (p. 744) |
| 26 | OPEN CLASS |  |
|  | **FINAL EXAM** |  |