

**Santa Clara University  
School of Law**

**Debtors' and Creditors' Rights  
Professor Neustadter  
Syllabus  
Spring 2004**

**Course description**

3 units, graded, no prerequisites

Class meets MW 11:00 - 12:15 p.m., Bannan 139

Final examination: May 5, 2004, 1:15 p.m., 3 hours

The course explores the methods by which unsecured creditors may seek satisfaction of debt through use of the state judicial process or in a debtor's bankruptcy, and explores the methods by which debtors may seek relief from or discharge of debt under both state law and federal bankruptcy law. A substantial portion of the course considers these issues in the context of consumer debtors. Many of the legal issues raise fundamental questions about our views on personal responsibility, forgiveness, and compassion. The course also explores some of the rights of secured creditors in a debtor's bankruptcy. The rights of secured creditors under state law are the subject of two separate courses: Secured Transactions and Real Estate Finance .

The course qualifies as an elective for the Certificate in Public Interest and Social Justice Law.

**Required reading materials**

Warren and Westbrook, *The Law of Debtors and Creditors* (4th Ed., Aspen Law & Business)

*Bankruptcy Code, Rules and Official Forms* (West, 2003 Law School Edition)

Additional materials posted on electronic reserve

**Recommended reading** (At times indicated in the reading assignments below, I recommend that you read the following law review articles. Each is on special reserve or may be viewed or downloaded through Lexis or Westlaw)

- Whitford, A Critique of the Consumer Credit Collection System, 1979 Wisc. L. Rev. 1047 (1979)
- Culhane and White, Debt After Discharge: An Empirical Study of Reaffirmation, 73 Amer. Bkry. L.J. 709 (1999)
- Neustadter, When Lawyer and Client Meet: Observations of Interviewing and Counseling Behavior in the Consumer

Bankruptcy Law Office, 35 Buff. L. Rev. 177 (1986)

- LoPucki, A General Theory of the Dynamics of the State Remedies/Bankruptcy System, 1982 Wisc. L. Rev. 311 (1982)

### **Selected reference materials**

Blum, *Bankruptcy and Debtor/Creditor, Examples and Explanations* (2d Ed. Aspen Law and Business 1999) (on special reserve)

Epstein, Nickles and White, *Bankruptcy* (West 1993) (on special reserve)

*Collier on Bankruptcy*, 15th Ed. (a comprehensive treatise, with forms, in about 8 volumes) (general stacks)

West's Bankruptcy Reporter (general stacks)

### **Electronic communication**

Please take advantage of several available means of electronic communication:

1. Web site: Please visit and explore the materials (including past examinations) and links available at my web site (<http://www.scu.edu/law/FacWebPage/Neustadter/>).

2. Electronic reserve (ClaraNet): I will post reading assignments for each class, other announcements, supplemental assigned reading, or other items of interest on the ClaraNet page for this course. You will find a link to that page on my web site.

3. E-Mail: Please feel free to communicate with me by e-mail ([gneustadter@scu.edu](mailto:gneustadter@scu.edu)).

### **Attendance and participation**

I expect regular class attendance and consistent preparation of assignments in anticipation of class discussion. Please let me know prior to the start of class if you are not prepared for class discussion because of illness or for other appropriate reasons.

### **Classroom etiquette**

The classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology undermine that goal. Accordingly, during class, in addition to the usual courtesies, kindly

- disable and refrain from using cell phones, pagers, and any other communication device except for your laptop computer
- refrain from connecting to the Internet and from using a laptop, pda, or other electronic device except in a manner related to classroom activity
- refrain from displaying wallpaper, screen savers, or other material on your laptop

computer that you can reasonably expect to be offensive to other students

## **Grading**

There will be one final examination, administered on May 5, 2004. It will be a limited open book essay examination, for which you will be permitted to refer to the two assigned books for the course (including your annotations in them), any materials downloaded from the ClaraNet page for this course, and any materials (such as notes, outlines, charts) that you have prepared yourself or in collaboration with other students in the class. You will not be permitted to refer to any other materials. Your final course grade will be your grade on the final examination, except that I reserve the right to adjust your final course grade downward for excessive absenteeism or frequent lack of preparation.

## **Contact information and office hours**

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Phone (with voice mail): (408) 554-4378

E-mail: [gneustadter@scu.edu](mailto:gneustadter@scu.edu)

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Web site: <http://www.scu.edu/law/FacWebPage/Neustadter/>

My formal office hours are MW 3:00 - 5:00 p.m. I am on campus a significant portion of most weekdays except late Tuesday and Thursday afternoons and am happy to set appointments to meet with you at times other than formal office hours.

## **Reading assignments**

Reading assignments for the entire semester appear below. In advance of each class, I will identify the required reading for that class in the announcement section of the ClaraNet page for this course.

Most reading will be from the Warren and Westbrook casebook. During our study of bankruptcy, you should also study sections of the Bankruptcy Code, Bankruptcy Rules, and Official Bankruptcy Forms to which the casebook refers.

We will spend most class time discussing the assigned problems in the Warren and Westbrook casebook. Absent your request, we shall spend little time discussing the expository writing or the cases in the casebook, except as they may be relevant to resolution of the assigned problems. Generally, the casebook offers the cases for illustration only. Development of skills in reading and analyzing judicial opinions is not a course objective.

As we study enforcement of judgment, attachment, and wage garnishment, I encourage you to look at California Judicial Council Forms relating to those topics. The forms may be found at the web site of the [California Judicial Council](#) under the headings Enforcement of Judgment, Attachment, or Wage Garnishment. A few of the forms are also posted on the ClaraNet page for the course. To view these forms, you will need Acrobat Reader software. If you do not have that software, you may download it to your

computer free of charge from the following graphical link.



### A preliminary note about consumer bankruptcy reform

Congress has been considering significant reform of the Bankruptcy Code for the last several years. Reform of consumer bankruptcy law has been and continues to be the subject of much controversy. In the closing days of his second term and of the 106<sup>th</sup> Congress, President Clinton pocket vetoed a bill containing bankruptcy reform that had passed both the House and Senate.

Following the election of President Bush, both the Senate and House passed bills encompassing most of the same reform early in the 107<sup>th</sup> Congress. Differences in the bills required reconciliation in Conference Committee, a process delayed first by the 50/50 split in the Senate prior to the defection of Senator James Jeffords from the Republican Party and delayed thereafter by the terrorist attacks of September 11, 2001. In 2002, the Conference Committee issued its report reconciling the two bills, but the House refused to approve the Conference Report because of a provision in the Report affecting the ability of abortion clinic protestors to discharge debts by virtue of such protests. The 107<sup>th</sup> Congress thus ended without bankruptcy reform.

In the 108<sup>th</sup> Congress (running through the end of 2004), on March 19, 2003, by a vote of 315-113 (including 90 Democrats in favor), the House passed H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003. The bill is virtually identical to the 2002 Conference Committee Report except that it omits the controversial provision concerning the discharge of debts for abortion clinic violence that led to the defeat of the Conference Report in the House. The Senate failed to consider the bill in 2003 but may do so in 2004. The bill faces a more uncertain future in the Senate, in part because of greater support in the Senate for a provision making debts for abortion clinic violence nondischargeable.

You should keep tabs on the progress of these efforts as well as on other significant developments in bankruptcy law by periodically visiting the web site of the [American Bankruptcy Institute](#).

#### **A. The State Remedies System**

1. Introduction to debt collection in the state remedies system: Preface (pp. xxiii-xxvii), Special Notice (xxxiii), and pp. 3-10.

2. Post judgment remedies:

The following reading will be more meaningful if, while you read, you also peruse a sample of forms used to enforce judgments. A few of the key forms used in California are posted on my ClaraNet page for the course. All of the California forms are posted at the California Judicial Council web site noted above.

- a. Introduction: pp. 45-64.
- b. Priorities: pp. 64-81 (problems 4.1 - 4.2).
- c. Garnishment: pp. 81-86 (problems 5.1 and 5.2 at pp. 103-04).

3. Pre-judgment remedies: pp. 101-02, excerpts from the California attachment statute (posted on ClaraNet), and problem on attachment (posted on ClaraNet). Also see Judicial Council forms relating to attachment that are posted on ClaraNet or at the California Judicial Council web site noted above.

4. Special issues involving consumer debtors (following conclusion of these issues, I recommend that you read the Whitford law review article referred to in the recommended readings).

- a. Fair credit reporting: pp. 10-14 (no class discussion).
- b. Collection practices: pp. 16-30 and F.T.C. Credit Practices Rule (on ClaraNet) (minimal class discussion).
- c. Restrictions on wage garnishment: pp. 86-88, wage garnishment problem (posted on ClaraNet), and problem 5.3 at p. 104. You may wish to peruse some of the California Judicial Council forms governing wage garnishment at the California Judicial Council web site noted above.
- d. Exemptions: pp. 104-26 (problem 6.1); California exemptions (posted on ClaraNet).

5. Lender liability: pp. 33-42 (no class discussion).

6. Fraudulent conveyances: pp. 127-50 (problems 7.1-7.6 at pp. 150-52, using the Uniform Fraudulent Transfer Act, reprinted in *Bankruptcy Code, Rules and Official Forms*).

7. State collective remedies: pp. 152-55 (no class discussion).

## **B. Consumer Bankruptcy**

8. Introduction, pp. 159-78.

9. Property of the estate: pp. 178-95 (problem 8.1).

10. The automatic stay: pp. 196-204 (problems 9.1-9.2).

11. Liquidation under Chapter 7. Copies of a sample consumer Chapter 7 file will be distributed in class for your review.

- a. Exemptions and lien avoidance: pp. 205-31 (problems 10.1-10.4), Cal. exemptions in bankruptcy (statute) (posted on ClaraNet), and Commentary on bankruptcy exemptions (posted on ClaraNet).

b. Claims and distribution: pp. 231-43 (problems 11.1-11.4, 12).

c. Discharge: pp. 243-284 (problems 13.1-13.7).

d. Redemption and reaffirmation: pp. 284-305, 313-16 (problems 14.1-14.4, 14.6-14.8); section 521 of Bankruptcy Code; Official Form 8; sample reaffirmation agreement required by one district's local rule (posted on ClaraNet). Following our discussion of reaffirmation, I recommend that you read the Culhane & White article on reaffirmation referred to in the recommended readings.

## 12. Adjustment of debts under Chapter 13

a. Introduction, pp. 317-21. Peruse the web site of a [standing Chapter 13 trustee in Illinois](#). Also, review a sample Chapter 13 plan (posted on ClaraNet).

b. Payments to secured creditors, including mortgagees: pp. 321-48 (problems 15.1-15.6).

c. Payments to unsecured creditors: pp. 349-70 (problems 16.1-16.5) and Chapter 13 problem (posted on ClaraNet).

13. Overview of the consumer bankruptcy system: pp. 417-64 (time permitting, I may assign portions of problem sets 20 or 21 or a debt counseling problem posted on ClaraNet). Following conclusion of this topic, I recommend that you read the Neustadter law review article referred to in the recommended readings.

## C. Business Bankruptcy

14. Introduction: pp. 469-76.

15. Involuntary bankruptcy: pp. 476-95 (problems 22.1, 22.2, 22.5).

16. Introduction to Chapter 11 reorganization: pp. 497-515.

17. The automatic stay revisited: pp. 515-16, 525-38 (problems 23.1-23.6).

18. Operating the business: pp. 538-39, 552-53, 570-72, 585 (bottom)-86.

19. Reshaping the estate: pp. 589-90

a. Strong arm clause: lecture.

b. Preferences: pp. 597-98, 609-612 (portions of Problem Set 27 to be assigned).

c. Time permitting, we may also consider some material on executory contracts and fraudulent conveyances.

20. Negotiating and confirming the plan:

a. Background: p. 732-33.

b. Best interest of creditors and feasibility: pp. 791-808 (problem 37.1).

c. Classification and voting: pp. 808-17 (problem 38.1 at p. 832).

d. Cramdown and the absolute priority rule: pp. 843-70 (problem 40.1).

I recommend that you read the Lopucki law review article referred to in the recommended readings as a useful retrospective on many of the topics covered in the course.

We will not have time to treat several additional bankruptcy topics presented in the casebook: environmental and mass tort claims in Chapter 11; selected ethical issues in Chapter 11; domestic jurisdiction; transnational bankruptcies; alternative approaches to bankruptcy.