Special Problems in Commercial Law:
Bankruptcy Litigation LAW 777
University of Alabama School of Law Spring 2015
Wednesdays- 6:00 pm to 7:50 pm
Room TBA

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Syllabus

Course Overview

This course is designed to equip the student with the practical skills to litigate many of the circumstances that arise after a Chapter 7 petition is filed. The student will learn to interview the debtor and analyze pertinent financial documents. The Professor will provide a set of mock financial documents and act as the debtor. The student will learn to review the documents, interview the debtor, draft and "file" a Chapter 7 petition.

The student will also learn skills from the points of view of the Debtor, the Chapter 7 Trustee and a Creditor to file and litigate various motions and adversary proceedings that typically ensue after a bankruptcy filing. The students will occasionally work together in groups (law firms), research fact situations during class and argue their positions in mock court settings. LAW 727 is a prerequisite for this course.

Required Materials

The students will need a laptop computer to access current Bankruptcy Code, West Law and the web for research to be conducted during class. Additional material will be forwarded to the student during the course of the semester.

Assignments

Assignments due "in class" **must be received at the beginning of the class in which they are due**. All work received after the beginning of such class will be considered untimely, with grade reductions as indicated below. You will use your anonymous exam ID number for all submitted assignments. **You should immediately email Karla Fuell in the Registrar's office and she will supply you with your anonymous exam ID number to use on all submitted assignments**. Her email is kfuell@law.ua.edu

Class Requirements

1. I will compile an Outlook group of the class to enable me to communicate messages and forward information to you. **Therefore the first thing you must do is email me from the address you will regularly check.**

2. Timeliness. Due dates and times for assignments are strict, barring verifiable illness or death in the family. Approach these assignments as you would preparing for a trial or filing a pleading before the running of a statute of limitations. If you see an emergency arising, you must make a request for an extension as soon as possible. If an assignment is untimely, one letter grade will be deducted. Any assignment turned in more than 24 hours late will be penalized an additional letter grade. Any assignment more than 4 days late will not be accepted. **Needless to say, just as in private practice, you should take all precautions to back up your work and assume your printer will malfunction when you wait to the last minute to print.**

3. Attendance is required. Remember we only meet once a week. All other Law School policies on attendance apply.

4. Class participation is encouraged. I reserve the right to raise or lower your final grade by 0.3 points based upon class participation, whichever is appropriate. Your participation in class discussion will make for a more meaningful experience for all.

5. You are expected to do your own work and not work in tandem with anyone else unless specifically authorized in your "law firm" setting during class. Your work product must always be your own and in compliance with our Honor Code.

Grading Policy

Your grade is based upon two things: class participation and performance on the required assignments graded on the Law School's letter grade scale. Assignments and their relative percentage to your overall grade are outlined in this syllabus. Some of the minor assignments will be collected and returned without a grade. Graded assignments will count toward your final grade as indicated below. Ungraded assignments will not factor into your final grade. Since many of you will be involved in job interviews and other activities that compete for your time I will drop your lowest grade, excluding the major assignments. The final grade will be calculated accordingly:

Chapter 7 petition:	Due 2-18-15	25%
Major assignment #1	Due 3-25-15	20%
Major assignment #2	Due 4-1-15	20%
Major assignment #3	Due 4-15-15	20%
Other assignments due 1-14-15; 1-21-15; 2-25-15; 3-4-15; 4-1-15		15%

Graded assignments will be returned to the student within 2 weeks of submission if not sooner.

In accordance with the May 2009 guideline implemented by the Law School grades are assigned as follows: for classes with 13 or more students, a mean grade of 3.3 is required for the class. If 12 or fewer students are enrolled, no more than 50% of the students will be eligible to receive a grade of A (including A+, A, and A-).

Periodically, we may critique each other's work. It is essential that we maintain the highest level of professionalism in class. Just as in real life and practice, constructive, appropriate comments are expected to be directed to the *work*, not the author. Remember, do unto others as you would have them do unto you.

ADA Accommodations

The Law School is committed to meeting the needs of students with physical, learning, and other disabilities, and provides appropriate accommodations and services tailored to each person's specific requirements. The Law School's assistant deans and the University's Office of Disability Services work together to help individuals with disabilities achieve and maintain individual autonomy. Students with disabilities are encouraged to contact Claude Arrington, Associate Dean for Admissions at (205) 348-2728 or carrington@law.edu so that the individual's needs for support can be evaluated and accommodated in a timely manner.

Uses of Technology

Students may use portable computing or other electronic devices in the classroom for education (or class) use only. Students shall not use portable computer or other electronic devices in an inappropriate manner during class. Inappropriate uses include any and all uses of a portable computing or other electronic device not directly related to the class in session. Examples include, but are not limited to, the following: displaying web pages, receiving, reading, composing, or sending e-mail or instant messages; making or receiving phone calls; taking photographs or videos or playing videos in any format; recording or making audio tapes or files; and playing games. If you have any question about this class rule, please feel free to contact me.

Student Conferences

I will make myself available before and after class should you have any questions or need anything from me. Also feel free to call my office during business hours or email me with any questions. Should you need, we can arrange a conference at my office during normal business hours to address your needs.

WEEK	**DATE**	**TOPIC**
1.	**1-7-15**	A. General Overview of course B. Understanding the debtor's emotional state i. *Field of Dreams* film clip. C. Educating the debtor as to general bankruptcy law i. The "Speech"

Assignment #1 (2 parts) due 1-14-15:

1. Compile a checklist of necessary information and documents you will need from the debtor to complete the bankruptcy petition. This can be from a commercial source (I don't expect you to create your own list, only

disclose your sources). A wealth of info can be gleaned from the Northern District Bankruptcy Court website located at http://www.alnb.uscourts.gov/

2. A mock Chapter 7 petition will be emailed to you after the first class. Read every word on the petition prior to class to get a feel for what is disclosed in a bankruptcy petition and the information you will need to get from the debtor.

2. **1-14-15** Class review of the sample Chapter 7 Petition.

Assignment #2 (2 parts) due 1-21-15:

1. Note the make, model (i.e. 2011 Ford Mustang), and the VIN of your personal vehicle to calculate valuation from NADA book on 1-21-15 (sample page to be emailed to you).

2. Complete Schedule J Current Expenditures of Individual Debtor(s) using your current monthly expenses. Schedule J can be accessed at B6J at http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx

3. **1-21-15**

A. Requirements to complete petition and fulfill debtor's duties.
B. Compiling a list of the debtor's assets and liabilities. Students to use their vehicle VINs to compute NADA values
- i. Examining County tax assessor's valuations: http://www.tuscco.com/
- ii. Review student's Schedule J monthly expenses
- iii. Any co-owners, co-debtors?
- iv. Determining FMV of HHG, etc.
- v. Obtain most recent tax return
  - a. Review sample of tax transcript, to be supplied.
- vi. Obtain actual statements/bills from debtor.
  - a. Avoid debtor's handwritten list if possible

C. Reviewing the debtor's financial documents
D. Client's Contract and Notices, to be supplied.
E. Setting fees and getting paid
F. Download education version of bankruptcy program provided by Best Case. Obtain at http://www.bestcase.com/edu/students.htm Student Download Instructions. Will have disc supplied by Best Case if preferred.

4. **1-28-15**

A. The Means Test.
- i. Illustrate using Best Case Bankruptcy Program. Can view official info at http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm
- ii. Input secured collateral into Schedule A and B and secured creditors into Schedule D

iii. Calculation of Monthly Income per §707(b) using real life examples, to be supplied in class.
v. Working through mock 7 petition**.**
vi. Additional examples of Means Test

Students will receive Bert Debteur's financial documents to question him next week (2-4-15) in preparation of filing his Chapter 7 petition, due 2-18-15 (25% of grade).

5. 2-4-15

A. Completing the rest of the petition
i. Particular problems with Schedule B and Statement of Financial Affairs
ii. Understanding exemptions
a. Exemption handout by Judge George S. Wright, retired Bankruptcy Judge (to be supplied)**.**
b. Review exemption info supplied in Best Case program.
B. Students to interview Bert Debteur (Professor Morgan) in class

You will need to register for CM/ECF prior to next week's class so you may access PACER during the training session. You are required to use your credit card but will not be charged if your account doesn't exceed $15.00 per quarter (which is 150 retrieved documents, way more than you will retrieve for this class). Go to https://www.pacer.gov/psco/cgi-bin/links.pl , **hit "Register" button (2nd from left) and complete application. Call should you have any problems (but don't wait until the day of class!).**

6. 2-11-15

A. CM/ECF training for electronic filing (training to be provided by Trainer/ Case Administrator, U S Bankruptcy Court, Northern District of Alabama, Western Division).
B. Suggested office procedure
i. Master case list
ii. Individual file organization/inner folders
iii. Phone sheet/how to answer your office phone
C. Obtaining the "ticket in." See info at https://www.cfefa.org/

Major Assignment: Complete the Chapter 7 petition for Bert and Lillie Debteur (25% of grade) due 2-18-15.

7. 2-18-15

A. Filing the petition
i. Using Best Case to file.
ii. File any necessary Suggestions of Bankruptcy; obtain release of pending garnishments (examples to be supplied).
B. Calendar important dates/information from debtor's perspective.
i. Filing date and case number in file

ii. 341 Meeting date
iii. Discharge bar date
iv. 30 days from scheduled 341 meeting for reaffirmations per §521(a)(2) & (6) and §362(h). (Will discuss the practicality of this from debtor's perspective).

C. Correspondence with client, retaining signed copy in file and providing copy of petition to client. See Administrative Order 04-01, located at http://www.alnb.uscourts.gov/forms/all-forms/other_documents Admin Procedures for Filing, Signing, Retaining and Verification of Pleadings and Papers in the Case.

D. 341 Meeting
i. Understanding the debtor's psychological state
a. Contacting/preparing client
b. Providing "ticket out" info to debtor. See https://www.cfefa.org/financial_education/
ii. Conducting the 341 from Trustee's perspective
a. Sample questions asked of debtors

Assignment #3, due 2-25-15: From bankruptcy case numbers supplied to you in class, access CM/ECF and provide most recently filed pleadings of Trustee Morgan.

8. **2-25-15**

A. Trustee's Duties
i. File No Asset Report if appropriate
ii. Verify secured status of Schedule D creditors
a. Illustrate verifying mortgage info from Tuscaloosa County Probate Court website at http://www.tuscco.com/
iii. Calendar important dates
a. 30 days from first scheduled 341 meeting for §521(a)(2) & (6) and §362(h) purposes.
b. File 521 extension motions if necessary to preserve assets from leaving estate (to be supplied).
c. 30 days from held 341 meeting to object to any exemption problems per §522(l) and Bankruptcy Rule 4003(b).

B. Liquidating non-exempt assets
i. Attempt to sell back to debtor first
ii. Sample Motion to Sell (to be supplied).
iii. Utilizing liquidator and/or auctioneer
a. Sample Application to Employ (to be supplied).
iv. Changing Status/Notification for Creditors to File Claims (to be supplied).

Assignment #4, due 3-4-15: View "ticket out" DVD to be supplied in class and complete worksheet

9. **3-4-15** A. Trustee's Duties, continued.

i. Understanding Requirements for Hiring Professionals

a. 11 U.S.C. §327-329, Federal Rules of Bankruptcy Procedure Rule 2016 and Local Rule 2016.1, found at http://www.alnb.uscourts.gov/sites/default/files/forms/LR2016-1A.pdf

B. In Class Exercise

i. Will divide up into "law firms" and research conflicts of interest (facts to be supplied in class). We will always want to focus on 11th Circuit cases in our law firm exercises.

C. Burt Debteur's personal injury action

i. Contacting PI lawyer, ascertaining facts and posture of case

ii. Filing Motion to Employ Professional, sample to be supplied.

D. Settling Personal Injury action.

i. Estate's position on claim

ii. Trustee's Motion to Compromise Claim (to be supplied).

Major assignment # 1, due 3-25-15: Facts to be supplied in class (20% of grade). Student will be assigned either Trustee or Debtor's position for Summary Judgment motion.

10. **3-11-15** A. Trustee's Strong Arm Powers Under §544 and 547

i. Preferential payments made to unsecured creditors, Financial Affairs, Q

ii. Obtaining debtor's books/records and/or hiring accountant for the estate

iii. Sample demand letters, to be supplied.

B. Trustee Filing Adversary Proceedings

i. Review pertinent Federal Rules of Bankruptcy Procedure, Rule 7001, et seq

a. Service requirements per Rule 7005

b. Court costs waived/deferred for Trustee and debtor

C. Fact situation as to potential lien avoidance AP.

D. Split into law firms, one for Trustee, one for creditor. Research law (facts to be supplied in class). Argue case to Judge Morgan.

Major assignment # 2, due 4-1-15: Summary Judgment brief as to lien avoidance fact situation (20% of grade). Student will be assigned either Trustee or Creditor's position for SJ motion

3-18-15 Spring Break

11. **3-25-15** A. Creditor's Perspective

i. Filing Proof of Claim
ii. Calendaring Events
a. Discharge bar date
iii. Attendance at 341 Meeting
a. Possibility of 2004 Examination
iv. Obtaining/Requiring Reaffirmation Agreements

B. Objections to Discharge
i. Fact situation, to be supplied in class. Will split into law firms, research and argue from creditor's and debtor's perspective

Assignment #5, due 4-1-15: From facts supplied in class, prepare a creditor's proof of claim

12. 4-1-15

A. Creditor's Perspective, continued.
i. Motions to Lift Stay (facts to be supplied in class). Will split into law firms, research and argue from creditor and debtor's perspective.

B. Debtor's Attempts to Maximize Chapter 7 Filing
i. Surrendering Collateral to Secured Creditor
ii. Redeeming Personal Property per 722
iii. Realizing exemptions from Trustee's sale of collateral (example to be provided).
iii. Filing Proofs of Claim on behalf of creditors per Rule 3004.
iv. AP to determine dischargeability of tax liability (fact situation to be supplied in class). Will divide into law firms to research, argue tax dischargeability to Judge Morgan.

Major assignment #3, due 4-15-15 (20% of grade). Students will prepare Summary Judgment Motion from assigned position of the IRS or the debtor, arguing for or against dischargeability of tax liability.

4-8-15 NO CLASS

13. 4-15-15

A. Debtor's Motion/AP possibilities
i. Violation of the Auto Stay (fact situation to be supplied in class). Will divide into law firms to research, argue stay violation to Judge Morgan.
ii. 362 (c)(3) Motion when prior petition has been dismissed within one year (sample to be provided).
iii. Motion to avoiding non-PMSI in HHG per §522 (sample to be provided).