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The American Legal System – Law School

- I. Law School Requirements.
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- II. Law Schools.
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 - B. Courses
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 - D. Practical Experiences
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 3. Business
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Outline

Class 2

The American Legal System – The Courts

- I. Federal Courts.
 - A. Federal District Courts
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 2. Diversity of citizenship jurisdiction
 3. Class action jurisdiction
 - B. Bankruptcy Courts
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 - (b) Chapter 13 wage earner cases
 2. Business cases

(a) Chapter 7 liquidation cases

(b) Chapter 11 reorganization cases

C. Bankruptcy Appellate Courts (BAPs)

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II. State Courts.

A. Trial Courts

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C. Supreme Courts

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Outline

Classes 3 and 4

Chapter 11 Bankruptcy

- Fundamentals: Priority of Claims, Reasons for Chapter 11 and the Players

- I. Types of Cases
 - A. Voluntary
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- II. The Filing of Chapter 11
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 - B. Preparation

- III. Absolute Priority Rule
 - A. Secured Creditors
 - B. Costs and Expenses of Administration
 - C. Other Priority Claims: Employee Wages, Taxes
 - D. General Unsecured Creditors

E. Shareholders

IV. The Reorganization Process

A. Nature of the Process

B. What It Accomplishes

1. Allows Tempers to Cool
2. Allows the Debtor to Stabilize its Business
3. Levels the Playing Field
4. Allows for Long Look at Debtor's Finances and Operations
5. Allows Alliances to Form and Negotiations to Begin
6. Allows a Consensus to Build
7. Allows Time to Handle Holdouts

8. Centralizes Disputes in the Bankruptcy Court
9. Allows for Formulation and Confirmation of a Plan
10. Allows Debtor Time to Sink or Swim

C. Likelihood of Success

V. The Players and Their Roles.

A. Debtor-in-Possession (DIP)

B. Secured Creditors

1. Working capital lender
2. Equipment lessor
3. Real estate mortgage holder
4. Taxing authorities

C. Unsecured Creditors Committee

D. Equity Committee

E. Parties to Executory Contracts and Unexpired Leases

F. U.S. Trustee

G. Examiner; Trustee

1. Examiner – Grounds to appoint:

- fraud, dishonesty, etc.
- interest of creditors or shareholders
- grounds to dismiss or convert the case
- debts over \$5 million

2. Trustee – Grounds to appoint:

- fraud, dishonesty, etc.
- interest of creditors or shareholders
- grounds to dismiss or convert the case
- motion of U.S. Trustee on suspicion of management fraud, dishonesty or criminal conduct

H. Bankruptcy Judge

I. The Professionals

1. Lawyers
2. Ordinary Course Professionals
3. Accountants
4. Financial Advisors
5. Valuation Experts
6. Public Relations Specialists
7. Turnaround Specialists
8. Auctioneers

Outline

Classes 5 and 6

Chapter 11 Bankruptcy

- Planning, Venue and the Start of the Case

I. Planning an Exit Strategy

- A. The Business Problem
- B. Action Items to Achieve Exit Strategy
- C. Uses of the Bankruptcy Code to Implement Exit Strategy
- D. Prepackaged Bankruptcy

II. Venue

III. Let the Game Begin!

- A. The Order for Relief
- B. Bankruptcy Estate
- C. The Automatic Stay
 - 1. General
 - 2. Exceptions
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- a. For cause
 - b. Lack of equity
- D. First-Day Orders - Generally
- E. Employee Agreements
 - 1. Non-Senior Level Employees – Pre Plan Confirmation
 - 2. Senior-Level Executives – Post Confirmation
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Outline

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- Managing the Case

I. The Lawyers for the Debtor and the Lender

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- A. Stabilizing the Business
- B. Suppliers
- C. Ordinary Course of Business Transactions
- D. Statements and Schedules
- E. Interim Operating Reports and Fees
- F. Utility Companies
- G. Publicly – Held Companies
- H. Directors' and Officers' Exposure
- I. Environmental Claims
- J. Pension Matters
- K. Unpaid Withholding Taxes
- L. Retiree Benefits and Union Contracts

Outline

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Chapter 11 Bankruptcy

- Managing the Case (Cont'd)

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 - (a) Break-Up Fees
 - (b) Overbid Protection
 - (c) Window Shop Provisions
 - (d) Proof of Financial Ability
 - (e) Other Provisions
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B. The “Strong Arm” Powers – Preferences and Fraudulent Conveyances.

1. Preferences
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 - (b) Non-Preferential Transfers
 - (c) Defenses to Preference Claims
 - (1) New Value
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 - (3) Ordinary Course of Business

2. Fraudulent Conveyances
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 - (b) Constructive Fraud
 - (c) Time
 - (d) Remedies
 - (e) Leveraged Buyouts
 3. Secret Liens
 4. Statute of Limitations
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Outline

Class 9

Chapter 11 Bankruptcy

-The Plan of Reorganization

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- A. The Concept of Reorganization
- B. Defining Success in Chapter 11
- C. Quantifying the Debts – The Bar Date Order

II. Step One – The Negotiation Process.

- A. Generally
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- C. Understanding What Constituent Groups Want and Need
 - 1. Secured Creditors
 - 2. Unsecured Creditors
 - 3. Bondholders
 - 4. Shareholders

III. Step Two – Drafting the Plan.

- A. Types of Exit Strategies
- B. Parts of the Plan Document

IV. Step Three – The Disclosure Statement.

- A. Necessary Components of the Disclosure Statement
- B. Disclosure Statement Projections
- C. Valuations
- D. The Approval Process

V. Step Four – The Solicitation Process.

- A. The Solicitation Package
- B. Who is Entitled to Vote?
 - 1. Allowed Claims
 - 2. Impaired Claims
- C. Class Voting
- D. Bad Faith Votes
- E. Changing Votes
- F. The Tabulation Process

VI. Step Five – The Plan Confirmation Process.

- A. The 12 Requirements for Plan Confirmation
 - 1. Compliance with the Bankruptcy Code
 - 2. Good Faith
 - 3. Professional Fees
 - 4. Postconfirmation Officers and Directors
 - 5. Regulatory Approval
 - 6. Best Interests of Creditors Test
 - 7. Consensual Plan
 - 8. Administrative and Priority Claims
 - 9. Prohibition of Total Cramdown Plans
 - 10. Feasibility
 - 11. U.S. Trustee's Fees
 - 12. Retiree Benefits
- B. Non-voting Equity Securities
- C. Feasibility

- D. Cramdown
 - 1. Secured Creditors
 - 2. Unsecured Creditors
 - 3. Equity (Shareholders)
- E. Discharge
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 - 1. Actions Taken in Bankruptcy
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Outline

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I. Post-Confirmation

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II. Small Business Bankruptcies

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- B. Out-of-Court Liquidation
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