



AS OF: NOV. 16, 2020

CORPORATE DISTRESS AND REORGANIZATION LAW
LGST 246X / 646X
SPRING 2021

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Canvas	https://canvas.upenn.edu/courses/1555407
Class Meetings	Mondays & Wednesdays, 4:30 – 5:50p Occasional evenings (guest speakers; attendance encouraged) [zoom link TBD]
Student Hours	TBD, or by appointment [zoom link TBD]

Course Description

[Note that regrettably this course will be offered online only in Spring 2021.]

Never does law play a more prominent role in investment and managerial decisionmaking than when a company faces financial distress. The value of claims on a distressed firm depends not only on business fundamentals, but also, crucially, on how the law can be expected to divvy up control and economic rights among parties with potentially conflicting aims. Managers face unique constraints. Working knowledge of the law is thus required for anyone who hopes to operate in distressed situations—whether as an investor, advisor, or manager. This course aims to develop that knowledge. By the end of the semester, students who take this course seriously should: (1) grasp the conceptual and historical foundations of law’s response to financial distress; (2) understand how the fundamentals of workout and bankruptcy law commonly play out (and determine creditor recoveries) in the modern environment; and (3) be familiar with cutting-edge practices and unresolved dilemmas at the forefront of distress today.

Familiarity with basic corporate finance principles may be helpful but is not required. Students willing to spend time on Wikipedia can thrive without any previous exposure.

Five or so guest speakers—professionals in distressed investing and restructuring—will come for late-afternoon / early-evening sessions on dates TBD. Attendance is encouraged, schedules permitting.

The course builds on ideas introduced and developed Day 1. Interested students should attend Day 1.

Assessment

- Professionalism (20%)
- Group Presentation—Case Study (40%)
- Final Exam (40%)

Idiosyncratic Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. Therefore, students are expected to read the assigned materials carefully and be ready to discuss them critically.

Three policies to note:

- *Electronic devices.* Electronic devices are not permitted in class. If an emergency requires that you have connectivity, confer with me before class.
- *Cold calling.* This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. Therefore, students are expected to have read the assigned materials carefully before class and to be ready to discuss them critically.
- *Unfinished readings.* Students should generally be in class and prepared to participate critically. It is not always feasible to complete readings before class. If you cannot finish an assignment, please let me know by email at least an hour before class, and I will not call on you (max four times during the semester). Please do not pretend to have read what you haven’t.

More generally, students are expected to behave like adults. Shirking and whining are especially discouraged.

Informal Get-Togethers

Let’s have coffee or lunch. We can but needn’t talk about financial distress!

Text

Course pack available from study.net

Suggested Additional Resources

- Podcasts: Reorg, Debtwire, The Deal
- Email newsletters: MoneyStuff, Petition, Highly Levered

// agenda on next page

Agenda (subject to change by announcement on Canvas)

1. INTRODUCTION; THE LEGAL BASES OF CAPITAL STRUCTURE AND CONFLICT

Readings TBD summary of secured & unsecured debt remedial law

2. BANKRUPTCY FOR MERCHANTS

Readings Tabb, *History of the Bankruptcy Laws* [pp. 5–14]

13 Eliz. c. 5

Twyne's Case

Assignment recoveries problem set

3. RAILROADS AND THE EQUITY RECEIVERSHIP

Readings Bond of the Washington Manchester Railroad Co.

Rosenberg, *A New Scheme of Reorganization* [pp. 523–29]

Railroad v. Howard

4. THE NEW DEAL VISION

Readings Skeel, *Debt's Dominion* [pp. 101–13; 119–27]

Case v. Los Angeles Lumber Products Co.

In re Atlas Pipeline Corp.

Trust Indenture Act of 1939 [§ 316(b)]

5. REORGANIZATION UNDER THE BANKRUPTCY CODE (AS INTENDED)

Readings 11 U.S.C. §§ 109(d); 301, 303(b); 1107(a); 1112(b)(1), (4)

In re General Growth Properties

6. COLLATERAL PROTECTION AND ESTATE MANAGEMENT

Readings 11 U.S.C. § 362(a), (d)

United Savings Association v. Timbers of Inwood Forest

11 U.S.C. §§ 363(b); 364(a)–(d); 365(a), (b)(1)

In re Kmart

7. MARSHALING RESOURCES

Readings 11 U.S.C. §§ 547(b); 101(31)(B)
11 U.S.C. §§ 548(a)(1); 101(32)(A)
Metropolitan Life v. RJR Nabisco
In re Tribune Co. Fraudulent Conveyance Litigation

8. CLAIM SIZE AND PRIORITY

Readings 11 U.S.C. § 502(a), (b)(2), (c)
11 U.S.C. § 506(a)(1), (b); § 552(a), (b)(1)
In re Chateauguay
Momentive Performance Materials v. BOKF (In re MPM Silicones)

9. COMPLEX CAPITAL STRUCTURES

Readings *In re Owens Corning*
In re TOUSA

10. PLAN CLASSIFICATION AND VOTING

Readings 11 U.S.C. §§ 1122–26
In re Dune Deck Owners
Dish Network v. DBSD North America (In re DBSD)

11. PLANS AND SUBSTANTIVE ENTITLEMENTS

Readings 11 U.S.C. § 1129(a)(7), (b)
Bank of America Nat'l Trust & Savings v. 203 N. La Salle
Czyzewski v. Jevic Holding

12. THE 1990S: A CHANGING ENVIRONMENT

Readings *Weiss & Wruck, Chapter 11's Failure in the Case of Eastern Airlines*
11 U.S.C. § 1126(b)

13. CONTRACTING OUT OF BANKRUPTCY

Readings 11 U.S.C. § 541(c)(1)(B)
In re Franchise Service of North America
In re LTV Steel

14. SPIKING BANKRUPTCY

Readings *Salus Capital v. Standard Wireless (In re Radioshack)*
 In re LATAM Airlines

15. GOING-CONCERN SALES

Readings 11 U.S.C. §§ 1123(b)(4); 1141(c)
 11 U.S.C. § 363(b)
 In re Braniff Airways
 In re Chrysler

16. SUPPORT AGREEMENTS AND RIGHTS OFFERINGS

Readings 11 U.S.C. § 1125
 In re Indianapolis Downs
 11 U.S.C. § 1123(a)(4)
 Ad Hoc Committee v. Peabody Energy (In re Peabody)

17. CREDIT AGREEMENTS 1

Readings TBD

18. CREDIT AGREEMENTS 2

Readings TBD
Assignment credit agreement problem set

19. CREDIT AGREEMENTS 3 / HIGH-YIELD BOND INDENTURES

Readings TBD
 Kahan, *Rethinking Corporate Bonds* [pp. 1040–53]
Assignment credit agreement problem set

20. DEBT EXCHANGES AND MUSCULAR WORKOUTS

Readings 15 U.S.C. § 77ppp(b), redux
 Katz v. Oak Industries
 Marblegate Asset Mgmt. v. Education Mgmt. Finance
 CNH Diversified Opportunities v. Cleveland Unlimited

21. ASSET STRIPPING

Readings *Eaton Vance. v. Wilmington Savings Fund (Complaint)*
North Star v. Serta Simmons
[Neiman Kerfuffle](#)
[US Attorney Press Release](#)

22. LIQUIDITY FROM DERIVATIVES INVESTORS

Readings Paulos, Sulatnum & Tobin, *CDS Auctions: An Overview* [pp. 105–20]
Solus Alternative v. GSO (Complaint)
[Swap Seller Looks to Salvage Bad Bankruptcy Bet](#)

23. BONDHOLDER ACTIVISM

Readings *Wilmington Savings Fund v. Cash America Int'l*
U.S. Bank v. Windstream

24. CROSS-BORDER SITUATIONS

Readings Westbrook, *Chapter 15 at Last*
In re Ocean Rig UDW

25. SOVEREIGN DEBT I

Readings [The Real Story of How a Hedge Fund Detained a Vessel in Ghana](#)
NML Capital v. Republic of Argentina
Crystalex Int'l v. Bolivarian Republic of Venezuela

26. SOVEREIGN DEBT II

Readings Gray, *Collective Action Clauses*

27. GROUP PRESENTATIONS

Readings N/A

28. GROUP PRESENTATIONS

Readings N/A

FINAL EXAM: Date and time TBD