

Consumer Bankruptcy Seminar
UCI Law 5235
Fall 2011

Field Trip

You are required to attend a “meeting of creditors” for either chapter 7 or chapter 13 cases.

What to Do:

- *Before you attend*, please read 11 USC 341 (reproduced in this handout). Read over and print out (or figure out an alternate way to input) into the Assignment form.
- *Attendance* means staying for one hour. You do not need to dress professionally but please look presentable in a normal social situation. I encourage you to introduce yourself to the front desk staff at the meeting. Say that you are a student at [INSERT: your law school] enrolled in Professor [INSERT: your name] bankruptcy course, and that [INSERT: local trustees or US Trustees offices; I advise letting them know your students will be coming] are aware that you are observing. If any attorneys ask you to identify yourself, say the same thing.
- Sit in a spot where you can listen to the interaction between the trustee and debtors. Depending on the room configuration, this might be just at the front of one large room, or it might involve your taking a seat at a small table with the trustee.
- Your job is to listen, not to speak. In addition to what is being said, you might take a few moments to observe the people in the room and their interactions, the set-up of the room, etc. You should get copies of any freely available handouts for your reference, etc. Think like an anthropologist for this trip; remember the “bankrupt tribe” that opens Chapter 1 of Broke.
- *After attending*, complete the reflection and research sheet on the following page. It is most helpful if you use a different font than the worksheet to make your work stand out. When complete, the sheet should be between 1.5 and 3 pages. Turn it in by the due date per the submission process. Be prepared to talk about your experiences at our Sept. 8 class.

When to Go: The field trip is self-scheduled at your convenience but must be completed between the first day of classes and September 8. The exact dates and times of available meetings are below.

[INSERT a schedule of meetings, I am reproducing part of what I put below]

Tuesday, Aug. 23: Ch 7 meetings (Trustee: Marshack)

Wednesday, Aug 24: Ch 13 meetings (Trustee: Cohen)

The meetings are held between [INSERT times of meetings.]

Where to Go: Meetings of creditors are held at [INSERT: address of 341 meetings in your area]. The meeting room is [INSERT: directions, parking information, etc.]

Due Date: Sept. 8 by the start of class.

Submission Process: Please send your report to my assistant at _____. Please put Porter: Assignment 1 in the subject line of your email.

11 U.S.C. § 341; Meetings of creditors and equity security holders

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.

(b) The United States trustee may convene a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. Notwithstanding any local court rule, provision of a State constitution, any otherwise applicable nonbankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.

(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of—

(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

(2) the debtor's ability to file a petition under a different chapter of this title;

(3) the effect of receiving a discharge of debts under this title; and

(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.

(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

Writing Assignment #1: Field Trip to Meeting of Creditors

Your name:

Date you observed:

Time block you observed:

Name of trustee:

During your observation:

- 1) How many cases did the trustee call?
- 2) How many meetings were held?
- 3) At how many meetings (to the best of your estimate) had an attorney appear with the debtor?

Select one case in which a debtor appeared.

Provide its case number:

Provide the debtor's name:

Answer the below questions about the case you selected.

What questions did the trustee ask these debtors? Were the questions, and answers, similar to those in other cases?

If the debtors had an attorney, describe the role of the attorney before, during, and after the meeting? If the debtors did not have an attorney, describe how this may have affected the meeting.

Describe the debtors. Include anything that you can glean from your observations of them and comparison with other debtors.

Are these debtor's "middle class"? In answering this question, draw on the Chapter 2 reading from Broke by Warren and Thorne? State the bases for your conclusions.

General questions:

What is the role of the trustee at this meeting? What function is he or she performing in the system? Is it effective? Why or why not?

How were the meetings similar to what is described in the statute? How were they different?

Please list and describe the creditors that appeared in any cases you observed. What was their role at the meeting? Is it effective? Why or why not?

Describe anything that surprised you about the meetings or anything that you remember most vividly about the experience:

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Writing Assignment 2
Statutory Drafting

Task: Your task is to prepare a draft version of a statute for consideration by Congress for adoption into the Bankruptcy Code. The purpose of the statute is to create a new definition for a certain kind of consumer bankruptcy case. Choose only one of these two alternatives: a consumer-business bankruptcy or a medical bankruptcy. For the one that you chose, draft the definition in the form of a proposed statute. Then, in the accompanying statement, explain why this is the appropriate definition in light of the special considerations/data collection needs that these types of cases raise. The explanatory statement should explain the statute's purpose, describe competing considerations and why you took the approach proffered, make clarifications, etc. Your definition should reflect an awareness of the problems and challenges of these cases.

Background/Preparation: Use the appropriate reading (Lawless or Himmelstein et al.) to guide you on the definitional elements but add or eliminate criteria as you see fit. The endnotes and the bibliography to the book (in volume 2 of your reader) can guide you if you wish to conduct additional research, but this is primarily a writing, not research, project. You may find it helpful to review selected subsections of 11 U.S.C. § 101 or 109 in drafting your statute.

For the explanatory statement, you might find it helpful to look at statements introducing legislation by Congress people (although you can spare me the gratuitous statements about how your proposed bill is as American as apple pie, etc.). Think of the explanatory statement as a potential part of the legislative history of the law, reflecting its sponsor/drafter's intent.

Format: The statute will likely be anywhere from a few to a couple dozen lines in length. The statute itself should be single-spaced and should include appropriate punctuation and internal organizational structures (use of letters, numbers, etc.). Prepare your statute as a public law, Pub. L. No. 1, and give it a name. You might find looking at examples of public laws on Thomas useful. <http://thomas.loc.gov/home/LegislativeData.php?n=Browse>

Your statute should be accompanied by no more than 3 double-spaced pages that explain the statute.

Due Date: Sept. 29 by the start of class.

Submission Process: Please send your report to [INSERT your assistant's name/email or you own.] Please put Assignment 2 in the subject line of your email.

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Writing Assignment 3
Annotated Bibliography

Task: Your task is to prepare an annotated bibliography for a selected topic in consumer bankruptcy or consumer debt more broadly. The purpose of the bibliography is to assess the state of knowledge on the topic. Your bibliography does this in two ways: 1) identify the most useful sources through research; and 2) describe the quality and relevance of the sources. Your selection of sources and your annotations should reflect an awareness of the key issues in your chosen area, including the variety of approaches to studying the subject.

Topic selection: You are free to choose your own topic for the bibliography. Your topic should be considerably more detailed than “consumer debt” or “consumer bankruptcy” but it should not be so specific as to direct you to only one or two sources (“the history of chapter 13 between 1978 and 1984” or “payday loans in Massachusetts”). Please keep in mind that your topic for this bibliography should not be the same as your topic for the proposed further study (writing assignment 5).

You may choose a topic that we have already studied, one that we will study, or one that is closely related to the concerns of the course. **You should email me your topic by Friday, October 7.** If your topic is not approved, I will let you know immediately.

Here are some suggested topics:

- non-attorney petition preparers (as opposed to filing *pro se* or with an attorney)
- age of bankruptcy filers
- mandatory financial education in bankruptcy
- reaffirmation of debts
- repeat bankruptcy filings
- credit card debt in bankruptcy
- domestic partnerships in bankruptcy
- homestead exemptions
- longitudinal studies of bankruptcy filers
- ethical issues for consumer attorneys
- comparative consumer bankruptcy (pick a region of world)
- legislative history of bankruptcy law since 1978
- U.S. Trustee in bankruptcy
- history of U.S. consumer bankruptcy
- tax debt in consumer bankruptcy
- creditor recovery/losses in consumer bankruptcy
- bankruptcy crimes
- appellate bankruptcy jurisdiction/approaches

Research: Your research should reflect the use of multiple search strategies and databases. A strong bibliography is unlikely to result from either the isolated use of Westlaw or Lexis. Those are important resources for research on legal topics, but you should also use resources such as ssrn.com, HeinOnline, Thomas, JStor, and Google or a similar engine. Additionally, try things like actual books(!!!) and library catalogues, and use bibliographies from one source to locate other sources. To keep these assignments in check, you are limited to a maximum of 35 sources. I believe an excellent job could be done with as few as 15 sources for most topics. Note that good research is not just about finding sources but is also about evaluating sources. To this end, you need to review each book, article, website, etc. with a critical eye as to its usefulness.

Annotations: For each source that you decide warrants inclusion in your bibliography, prepare a citation (see “Format” below). Then write an accompanying annotation for the citation. The annotation should *briefly* summarize the main point of the work and explain why it is included in the bibliography by detailing what it adds to knowledge on the topic. The annotation should also do one or more of the following: 1) evaluate the reliability of the author or work; 2) identify the intended audience for the work or limitations on audience; and 3) compare or contrast the work with others that you cite. Annotations are both descriptive and critical; they reveal why the source is relevant, accurate, and useful. They go beyond mere summary and instead reflect succinct analysis and careful judgment.

Taken as a whole, your bibliography and its annotation should inform me of the people and disciplines that have produced the most comprehensive and reliable research on this topic. It should reveal the weaknesses of the existing knowledge and methods. Please include a 1-paragraph (no more than 5 sentence) description of your topic at the start of your bibliography. This could be as simple as “This is an annotated bibliography of _____.” (one sentence). For some topics, a few more sentences will be needed. The idea is to explain what you are trying to accomplish in your bibliography so I can assess its comprehensiveness and usefulness.

Format: Your bibliography citations should be in proper legal citation style. You are not being graded on “picky” Bluebook details but your format should be consistent and all citations should contain the necessary information to locate sources. The annotations should be single-spaced but please leave a space between each citation/annotation. You should set off each citation/annotation using either numbers or bullet points. Approximate length is 5-10 pages but this will vary significantly by topic. See the limitation on sources in “Research” above.

Due Date: **Thursday Oct. 20 by noon.** Please note this is a change; the prior deadline was Oct. 11, which is during break.

Submission Process: Please send your bibliography to [INSERT your assistant’s name/email or your own]. Please Assignment 3 in the subject line of your email.

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Writing Assignment 4

Proposed Bankruptcy Forms

Task: Your task is to review the new proposed forms for use in consumer bankruptcy cases and to prepare an assessment of the forms. The assessment is not descriptive (I too can look at the forms and see what they say); it is analytical. You can identify points for praise or criticism, make comparisons with the prior forms, and offer suggestions for improvements. Your assessment should reflect consideration of the purposes of the forms: providing information to creditors, trustees, and the court; gathering data on bankruptcy filers; and facilitating the administration of cases. You should also consider the concerns about accessibility of bankruptcy to consumers.

Background: In the past, business cases and consumer cases under all chapters used identical forms, with a very few exceptions (for example, form B22A and form B22C are for chapter 7 and chapter 13 respectively but are very similar; and schedules I and J only apply in consumer cases). A few years ago, the Bankruptcy Rules Committee began a multi-year Forms Modernization Project to develop recommendations for making the bankruptcy forms more user-friendly and less error-prone and taking better advantage of modern information technology. With help from the Federal Judicial Center, the Project is testing drafts of bankruptcy forms for individual debtors with career law clerks, law students, attorneys, lay people, and other groups. The goal is to publish for comment in August 2012 a package of new forms for individual debtors. For this project, you will use the most recently available version, made public in the Rules Committee's minutes from its Sept. 2011 meeting.

[NOTE to Professors: A more recent version may be available; email Katie Porter for a copy of the most recently published forms that you can distribute to students].

Sources: This is not a research project. Limit yourself to the following items for this project.

- Current bankruptcy forms: <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>
- Proposed forms: posted to website for course.
- Any assigned reading for the course, including those for October 27.
GAO report: Bankruptcy: Judiciary Should Take Further Steps to Make Bankruptcy Data More Accessible <http://www.gao.gov/new.items/d0928.pdf>

Format: Please double-space your report and limit yourself to 8 double-spaced pages. Try to identify any aspect of the form that you wish to reference with great specificity. If you wish, you may turn in selected pages of the forms with highlighting or numbering to help me identify your references.

Due Date: Wednesday Oct. 26 by noon. We will discuss the proposed forms in class.

Submission Process: Please send your report to [INSERT your assistant's name/email or your name/email]. Please put Assignment 4 in the subject line of your email.

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Writing Assignment 5

Proposal for Further Study

Task: Your task is to draft a proposal for further study on an aspect of the consumer bankruptcy system to the National Bankruptcy Conference ["NBC"]. You can read more about the organization at www.nationalbankruptcyconference.org. Your proposal should identify and describe a problem or cause for concern in consumer bankruptcy. Using the literature that we have read, including works cited by that literature, your description should explain the nature and depth of the problem with references to empirical research if available (or explain why the lack of empirical knowledge is itself problematic). You should then explain the problem's importance: what harms may it be causing to the functioning of the consumer bankruptcy system (this could be a harm to creditors, debtors, attorneys, something contrary to bankruptcy policy, etc.). The last part of your proposal should be a detailed list of questions or issues that you see as important or necessary for the NBC to investigate or consider as part of its study. If it accepts (fictionally) your proposal, the NBC would assign a committee of leading lawyers, judges, and scholars to conduct research and discuss the problem; its work would culminate in a report of its findings and either conclusions to maintain the current system or recommendations to Congress or the appropriate lawmaker for legal reform.

Topic selection: You may choose your own topic. Many (but not all) of the topics for the bibliography would be appropriate. As additional ideas, I offer: 341 meetings, any aspect of the means test (see 11 USC 707 and 1325), pro se filers, attorneys fees, repeat filers, and role of the US Trustee. I am happy to discuss topics with you.

Assessment: The writing assignments together count for 85% of your total grade. This assignment will be 25% of your total grade. The remaining writing assignments (1-4, and 6) together will be the other 60%. This assignment will be graded on your ability to describe the issue in a clear and concise way, the analytical thought shown in the questions that you identify, and the effective use of research to support your points. Clarity of expression counts, so allow time to edit and proofread your proposal.

Format: Please double-space your report and limit yourself to 10 double-spaced pages.

Due Date: **Thursday, November 10, by 5pm.** (Reminder: no class that day).

Submission Process: Please send your report to [INSERT your name/email or your assistant's name/email.] Please put Assignment 5 in the subject line of your email.

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Writing Assignment 6

Reflection

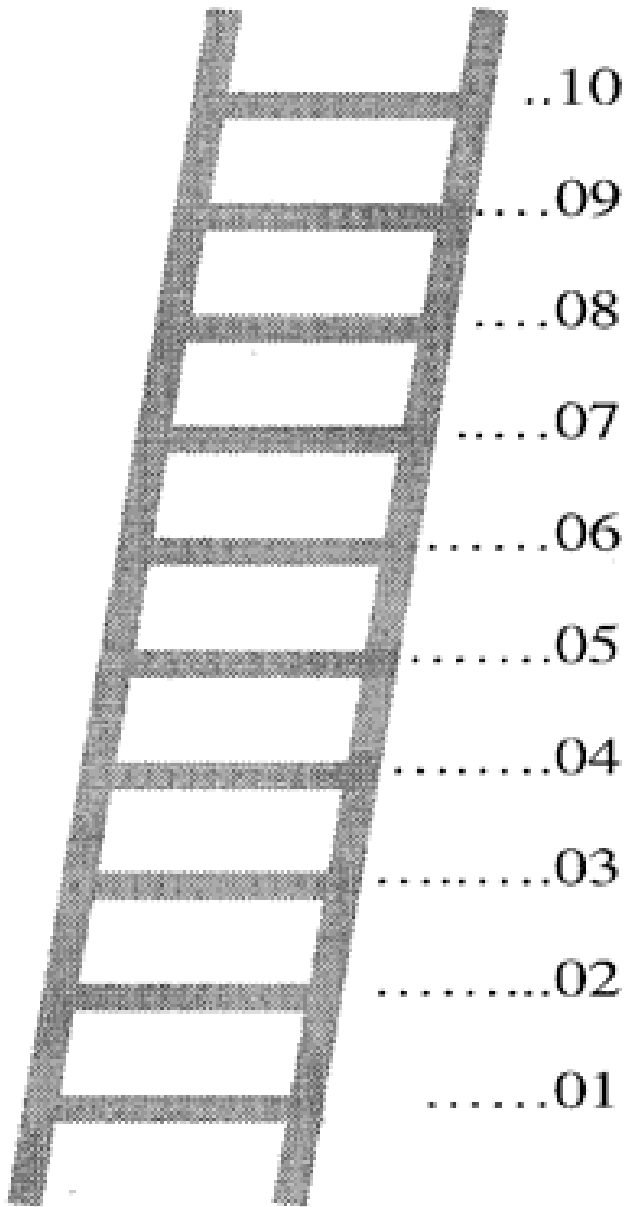
Task: Please write a critical reflection on the use of bankruptcy as a lens to study the problem of consumer debt and the economic security of the middle class. Critique the weaknesses and point out the strengths of researchers and policymakers using bankruptcy to study financial well-being. Identify and compare at least one alternative lens. This reflection piece should primarily be a response to the book's introduction and final two chapters (Leicht and Hacker) and related readings. You can and should refer to those works in your reflection but this is not a summary of those author's main points, but rather an original analysis that reflects your own conclusions and thoughts.

Assessment: The writing assignments together count for 85% of your total grade. This assignment will be 10% of your total grade. The remaining writing assignments (1-5) together will be the other 75%. This assignment will be graded on your ability to describe the issue in a clear and concise way, the analytical thought shown in the questions that you identify, and the effective use of research to support your points. Clarity of expression counts, so allow time to edit and proofread your piece.

Format: Please double-space your report and limit yourself to 4 double-spaced pages.

Due Date: Thursday, November 17 by 8am.

Submission Process: Please send your report to [INSERT your assistant's name/email or your name/email.] Please put Assignment 6 in the subject line of your email.



Here is a ladder. There are ten rungs in total from the bottom to the top.

Think of this ladder as representing where people stand in the United States. At the top of the ladder are the people who are the best off – those who have the most compared to others in the United States. At the bottom are the people who are the worst off – those who have the least compared to others in the United States.

The higher up one is on this ladder, the closer they are to the people at the very top; the lower one is, the closer you are to the people at the very bottom.

Where would you place bankrupt people on this ladder? Please indicate it by circling one rung.

Where do you think you are on this ladder? Please indicate it by placing a star on the rung that represents your status.

Martha and her husband Doug are considering chapter 7 bankruptcy. They own a two-bedroom home valued at \$150,000 and owe \$140,000 on their mortgage. They are current on their mortgage and the state homestead statute protects up to \$20,000 in home equity. Their major financial problem is that they owe \$45,000 in credit card debt, run up after their son, now a 4th grader, needed surgeries. While the couple had insurance, it had a \$5,000 deductible and a \$10,000 out of pocket maximum, and Martha took off several months from work to care for the son. He is fully recovered and doing well and enjoys playing with his sister, who is in 6th grade. Martha and Doug's marriage has been troubled for a few years, and they are visiting a bankruptcy attorney upon the advice of a divorce attorney. She suggested that cleaning up the debt by filing a joint petition would make it easier to divide property and prevent arguments about liability on the cards after the separation. The tentative plan is for the children to live with Martha after the divorce and for Martha to keep the house. The monthly mortgage payment is \$1,500 and Martha's gross pay is \$2,000. Doug earns \$3,000 most months but his factory has rolling layoffs and his income over the last year averages \$2,000. Should this couple try to keep their house in bankruptcy?

Janice is a 67-year old widow. Her income of \$2,000 monthly comes from Social Security and a pension from her husband's job. She owns a house worth \$78,000 in a rural area. When her husband passed away 10 years ago, Janice refinanced the house twice to withdraw cash. She lived on that income while waiting for the Social Security and pension to kick in; during that period she also worked part-time at a Wal-Mart 30 miles away. Today Janice owes \$80,000 on her mortgage, of which \$20,000 is arrears, much of which is fees and interest. She has not made a mortgage payment in 15 months. Her monthly payment is \$800 for her mortgage. She came to see a bankruptcy attorney because she just received a foreclosure complaint. She has only \$2,000 in other consumer debt and has stopped using her credit cards, making slightly more than the minimum payment each month to slowly bring down the balance on her cards. Should Janice file bankruptcy to keep her house?