

## Bankruptcy Law

Academic Year: ( 2019 / 2020 )

Review date: 06-05-2020

Department assigned to the subject: Criminal Law, Procedural Law and History Law Department, Private Law Department

Coordinating teacher: ZAFRA ESPINOSA DE LOS MONTEROS, MARIA

Type: Electives ECTS Credits : 3.0

Year : Semester :

## REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

The course is optional. It is suggested to the students because this course provides highly topical and practical value for all those who have a minimal knowledge of private law, and Civil procedure law. We refer a large scope of students, proceeding as an example, of the careers of Law, Business Administration, Economics, Business, Joint Studies of Law & Journalism, Law & Economics, Law & Business Administration, and even engineering.

## OBJECTIVES

This course aims to provide students with the skills and tools required to deepen and master, from a procedural perspective, the instrument of universal enforcement remedy, we know as "Insolvency proceedings". This procedure, the usefulness and relevance in the current economic crisis in which we find ourselves, is certainly transcendental, was implemented by the Insolvency Law 22/2003, of 9 July, which replaced the deficit, dispersed and chaotic legal regulation on this matter was then prevailing in our country. Recent reforms have been carried out by Royal Decree Law 3/2009, of 27 March, on urgent tax, financial and bankruptcy, Law 38/2011, of October 10 of the Law Reform bankruptcy and the recently operated by Royal Decree-Law 4/2014 of 7 March. The purpose of bankruptcy proceedings is to try to solve the problems posed by insolvency of a common debtor who can not face their regular duties, facilitating equal competition to satisfy creditors orderly credits. In this way we ensure both the survival of the economic business of the debtor concerned or, if possible, and protect the rights of creditors. It is ultimately the student becomes familiar with the procedural aspects of the bankruptcy process, through the study and analysis of issues relating to jurisdiction and the parties involved and the process with different phases and their effects, the concepts of active mass passive mass, sections, incidents and resources, and the problems that have arisen in its practical application as a result of deficiencies in procedural matters that have been detected by the courts since its entry into force in 2003. For this purpose, the analysis will be essential, understanding and implementation of the crucial Law 22/2003, of the bankruptcy and updated legislation and complementary.

## DESCRIPTION OF CONTENTS: PROGRAMME

1. Introducing the bankruptcy process
  - 1.1 Concept
  - 1.2 Purpose
  - 1.3 Legal framework
  - 1.4 Guiding Principles
  - 1.5 Procedures
2. Sections
3. Subjects
  - 3.1 The commercial court . Competencies
  - 3.2 The debtor
  - 3.3 The bankruptcy administration
  - 3.4 The Meeting of Creditors
  - 3.5 The prosecution
  - 3.6 The Mediator bankruptcy
4. Representation and defense
5. Pre bankruptcy. Refinancing agreements and extracourt settlements
6. Procedure
  - 6.1 Declaration of insolvency
  - 6.2 Request
  - 6.3 Bankruptcy declaration
7. Effects of bankruptcy

8. Common phase:
  - 8.1 Formation of the active mass and passive mass
  - 8.2 Report of the Bankruptcy Administration
9. agreement phase :
  - 9.1 Concept
  - 9.2 Early Motion agreement
  - 9.3 Ordinary Proposal
  - 9.4 Board of creditors
  - 9.5 Approval of the agreement
10. Liquidation process
  - 10.1 Plan of the bankruptcy settlement administration
  - 10.2 Liquidation's operation between creditors
11. The end of the bankruptcy process
  - 11.1 Bankruptcy qualification
12. Abbreviated Bankruptcy Procedure and the Incident

## LEARNING ACTIVITIES AND METHODOLOGY

The course "Bankruptcy Law" comprises a quarter of seven weeks with three hours of class a week, spread over an 1.5 hour lecture and practical complementary class of 1.5 hours. This general scheme may suffer, however, some variation in attention to the dynamics and development of the sessions.

A. Lectures. The lectures will be dedicated to the exhibition of the fundamental concepts of the program. Be sought also mark the thread of the various contents of the course and give an overview of the subject. Notwithstanding the above, the practical classes, complementary impinge on the essential points or more difficult, either through group work (groups of 3-5 people) or through individual practices.

B. Practice-up activities. Additional Practical classes which content will be as heterogeneous as possible, adapting to the peculiarities of the particular subject in which it is intended to deepen. Among the various activities scheduled in principle (subject to changes, inclusions or exclusions arising from the dynamics of the course) are provided as follows:

- Law enforcement exercises positive real assumptions.
- Analysis and review of jurisprudence.
- Preparation and presentation of certain items.
- Assistance to trials.
- Discussion and debate on controversial issues.
- Viewing of recordings of different bankruptcy process
- Determination of the responsibilities assigned to the various parties involved in the bankruptcy process.

It give over one hour of tutoring each week for questions and for preparing research papers. The tutorials will be held in the office of teacher or, where appropriate, in classrooms or pre-designated rooms.

## YEARBOOK OF BANKRUPTCY LAW

DIRECTIVE 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of insolvency, by Orellana CANO, Nuria A., Journal of Bankruptcy Law and Paraconcursal: Annals of doctrine, practice, jurisprudence and legislation, No. 10, 2009, p. 469-479.

REPORT of November 6, 2001 on the approximation of the civil and commercial law of the Member States (COM (2001) 398-C5-0471/2001-2001/2187 (COS). Committee on Legal Affairs and the Internal Market

## JOURNAL OF BANKRUPTCY LAW AND PARACONCURSAL

LEGAL REVIEW OF CATALAN, NO. 4, 2004 (A CASE STUDY OF BANKRUPTCY LAW 22/2003)

Finding information on:

<http://www.boe.es/>

<http://www.cgj.es>

<http://www.documentosjuridicos.com/cat.php?cat=11>

[http://www.difusionjuridica.com/economist/articulos\\_det.asp?id\\_articulo=63](http://www.difusionjuridica.com/economist/articulos_det.asp?id_articulo=63)

[http://www.estudios.lacaixa.comunicacions.com/webes/estudis.nsf/wurl/pbei025C0S\\_esp](http://www.estudios.lacaixa.comunicacions.com/webes/estudis.nsf/wurl/pbei025C0S_esp)

<http://www.europa.eu.int>

<http://www.ine.es>

<http://www.Leyconcursal.com>

<http://www.gescursal.com>

<http://mercantilunovalencia.blogia.com>

<http://www.njbosch.com>

<http://www.noticiasjuridicas.com>

<http://www.publicidadconcursal.es>

<http://www.refor.orghttp://www.unirioja.es/dptos/dd/procesal/concursal/apconcursal00.html>

#### BASIC LAW:

Law 22/2003, of July 9, of the bankruptcy (BOE No. 164, of July 10)

Organic Law 8/2003, of 9 July, the Bankruptcy Reform, by amending the Organic Law 6/1985, of July 1, of the Judiciary (BOE No. 164, of July 10)

Royal Decree-Law 3/2009, of 27 March, on urgent tax, financial and bankruptcy to changing economic conditions (BOE N.º 78, March 31, 2009)

Law 38/2011, de 10 de octubre

Ley de emprendedores 14/2013

Real Decreto-Ley 4/2014 de 7 de marzo

Regulation (EC) N.º 1346/2000, the Council of 29 May 2000 on insolvency proceedings (OJ L 160 of 30 June)

Regulation (EC) N.º 603/2005, the Council of April 12, 2005 by amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No. 1346/2000 on insolvency proceedings (OJ L 100, April 20, 2005)

UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment, adopted by UNCITRAL, the May 30, 1997, in [http://www.uncitral.org/uncitral/es/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/es/uncitral_texts/insolvency/1997Model.html)

#### ASSESSMENT SYSTEM

60%: Training activities (discussions, practical exercises, class presentations, etc..).

40%: Final exam theoretical

**% end-of-term-examination:** 40

**% of continuous assessment (assignments, laboratory, practicals...):** 60

#### BASIC BIBLIOGRAPHY

- AAVV BANKRUPTCY LAW SPAIN, [http://ec.europa.eu/youreurope/business/deciding-to-stop/handling-bankruptcy-and-starting-afresh/spain/index\\_en.htm](http://ec.europa.eu/youreurope/business/deciding-to-stop/handling-bankruptcy-and-starting-afresh/spain/index_en.htm), 2010

- ARNAIZ SERRANO, A; LÓPEZ JIMÉNEZ, R; MASRTÍNEZ SOTO, T; ALCOCEBA GIL, J Esquemas de derecho procesal civil.Tomo II, Tirant lo Blanch, 2016

- ARNAIZ SERRANO, A; LÓPEZ JIMÉNEZ, R; MASRTÍNEZ SOTO, T; ALCOCEBA GIL, J Esquemas de derecho procesal civil.Tomo II, Tirant lo Blanch, 2017

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