

AMERICAN COLLEGE OF BANKRUPTCY

International Bankruptcy Course - 2020

Syllabus

INTRODUCTION

Today's bankruptcy practice seldom centers around one debtor filing one case in a single nation's bankruptcy court. Most corporations of any size have operations and assets in more than one country. In addition, many troubled corporations are part of a "corporate group" that includes affiliated entities operating in numerous countries, many of which will file their own insolvency proceedings in their countries of incorporation. The most obvious example of this trend is the Lehman Brothers group of companies: approximately 80 Lehman affiliates commenced insolvency proceedings in 16 countries. International Bankruptcy is a course designed to deal with this world of multi-jurisdictional insolvency.

The course consists of an introductory session followed by two modules, Managing Cross-Border Cases and Comparative Insolvency Law.

The introductory session covers two topics. First, it summarizes aspects of United States bankruptcy law that are applicable to many cross-border issues and are relevant to the comparative law portion of the course. Next, it explains the role of insolvency law in national economies and sets the framework for the rest of the course.

The Managing Cross-Border Cases module consists of seven sessions. The first four sessions will focus on chapter 15 of the U.S. Bankruptcy Code. Chapter 15 is based upon the Model Law on Cross-Border Insolvency promulgated by UNCITRAL (United Nations Commission on International Trade Law). Chapter 15 provides a mechanism by which U.S. courts can be accessed by foreign representatives charged with the administration of insolvency proceedings pending in other countries. If the foreign insolvency proceeding satisfies the requirements for recognition under chapter 15, litigation against the debtor can be stayed, U.S. business operations can be continued, information can be gathered, and assets can be collected and administered—all in aid of the administration of the foreign insolvency proceeding. Chapter 15 also facilitates cooperation among courts in countries in which related insolvency proceedings are pending.

The fifth Managing Cross-Border Cases session will focus on the use of U.S. Chapter 11 by foreign entities. The last two sessions of the Managing Cross-Border Cases module focus on the European Union's insolvency regulation that co-ordinates insolvency proceedings pending in EU nations.

The Comparative Insolvency Law module consists of five sessions. This module surveys the insolvency laws of Mexico, Canada, Western Europe (Austria, France & Germany), England and Wales, China and Japan. Common topics include prerequisites that must be satisfied before an insolvency case can be filed, whether an automatic stay of collection and other proceedings exists, how the case is administered (judicial, administrative or other), and whether the system is focused on liquidation or permits reorganization.

Each class session includes assigned reading materials, resource materials, and questions that will be posted in advance on the course's TWEN site. PowerPoint presentations accompanying the lectures will also be posted on TWEN. The syllabus contains a short description of the subject matter of each session along with the names and affiliations of the planned lecturers (Please note that the listed lecturers might be changed). A more detailed description of each session follows.

WEEK 1: GENERAL INTRODUCTION (January 21)

This session is divided in two parts. The first summarizes aspects of United States Bankruptcy Law that are relevant to many cross-border issues and to comparisons of foreign insolvency systems to that of the United States. The second explores the importance of insolvency systems to a country's economy and explains why many organizations such as the World Bank are expending considerable effort encouraging countries to modernize their insolvency laws. The second part sets the framework for the comparative law segment of the course by highlighting the factors that distinguish national insolvency systems and exploring the movement towards global harmonization of insolvency law.

Lecturers:

Donald S. Bernstein, Davis Polk & Wardwell LLP, New York, New York
Professor G. Ray Warner, St. Johns University School of Law

FIRST MODULE: MANAGING CROSS-BORDER CASES

WEEK 2: U.S. CHAPTER 15 – INTRODUCTION (January 28)

This session introduces the UNCITRAL Model Law on Cross-Border Insolvency, as embodied in Chapter 15 of the U.S. Bankruptcy Code. The session focuses on the history of the law and basic concepts.

Lecturers:

Daniel M. Glosband, Esq., Goodwin Proctor, Boston, Massachusetts
Hon. Martin Glenn, U.S. Bankruptcy Ct. (S.D.N.Y)

WEEK 3: CHAPTER 15 – COMMENCEMENT & RECOGNITION (February 4)

This session focuses on the commencement of a Chapter 15 case and the concept of recognition of a foreign representative.

Lecturers:

Daniel M. Glosband, Esq., Goodwin Proctor, Boston, Massachusetts
Hon. Allan L. Gropper, U.S. Bankruptcy Court (S.D.N.Y.) (Ret.)

WEEK 4: CHAPTER 15 – ACCESS TO COURTS AND RELIEF (February 11)

This session focuses on the relief available to a foreign representative from the bankruptcy court and the foreign representative's access to other U.S. courts.

Lecturers:

Daniel M. Glosband, Esq., Goodwin Proctor, Boston, Massachusetts
Hon. Allan L. Gropper, U.S. Bankruptcy Court (S.D.N.Y.) (Ret.)

WEEK 5: CHAPTER 15 – COMITY AND AVOIDANCE ACTIONS (February 18)

This session analyzes the principle of comity and the limits on assistance given by U.S. courts. It also explores the special rules for avoidance actions (e.g., preference actions) in Chapter 15 cases.

Lecturers:

Daniel M. Glosband, Esq., Goodwin Proctor, Boston, Massachusetts
Hon. Martin Glenn, U.S. Bankruptcy Court (S.D.N.Y.)

WEEK 6: FOREIGN COMPANIES FILING FOR CHAPTER 11 (February 25)

This session explores the extent to which a non-U.S. entity can use the U.S. Bankruptcy Code to restructure its worldwide operations.

Lecturers:

Zack Clement, Esq., Fulbright & Jaworski (Ret.), Houston, Texas
Richard Mason, McGuire Woods, Chicago Illinois

WEEK 7: E.U. REGULATION ON INSOLVENCY PROCEEDINGS (March 3)

This session introduces the E.U. Regulation and analyzes the principles it establishes for cross-border coordination of insolvency proceedings in the European Union.

Lecturer:

Adrian J. Walters, Ralph L. Brill Professor of Law, IIT Chicago-Kent College of Law, formerly the Geldards LLP Professor of Corporate and Insolvency Law at Nottingham Law School, Nottingham Trent University, United Kingdom
Professor Michael Veder, Business & Law Research Centre of the Faculty of Law, Radboud University Nijmegen, The Netherlands

WEEK 8: E.U. REGULATION (Continued) (March 10)

This session continues the exploration of the E.U. Regulation and adds a continental perspective of the Regulation.

Lecturers:

Adrian J. Walters, Ralph L. Brill Professor of Law, IIT Chicago-Kent College of Law, formerly the Geldards LLP Professor of Corporate and Insolvency Law at Nottingham Law School, Nottingham Trent University, United Kingdom

SECOND MODULE: COMPARATIVE INSOLVENCY LAW

WEEK 9: MEXICO (March 17)

This session provides a comprehensive overview of the Mexican insolvency process.

Lecturer:

Agustin Berdeja-Prieto, Esq., Berdeja y Asociados, S.C., Mexico City, Mexico

WEEK 10: CANADA (March 24)

This session provides a comprehensive overview of the Canadian insolvency process.

Lecturer:

Justice Geoffrey B. Morawetz, Ontario Superior Court of Justice

WEEK 11: WESTERN EUROPE (March 31)

This session provides a comprehensive overview of the Austrian, French and German insolvency processes.

Lecturer:

Alexander Klauser, Esq., Brauneis Klauser Prändl (BKP), Vienna, Austria

WEEK 12: ENGLAND AND WALES (April 7)

This session provides a comprehensive overview of the English insolvency process.

Lecturers:

Adrian J. Walters, Ralph L. Brill Professor of Law, IIT Chicago-Kent College of Law, formerly the Geldards LLP Professor of Corporate and Insolvency Law at Nottingham Law School, Nottingham Trent University, United Kingdom

WEEK 13: CHINA AND JAPAN (April 14)

This session provides a comprehensive overview of the Japanese and Chinese insolvency processes.

Lecturer:

Professor Charles D. Booth, University of Hawaii, William S. Richardson School of Law
Hon. Allan L. Gropper, U.S. Bankruptcy Court (S.D.N.Y.) (Ret.)