Bankruptcy Law

I. Chapter 7 – liquidation

II. Chapter 11 – reorganization

a. Advantages

i. Automatic stay –
   1. prevents creditors from pursuing debt collection
   2. only have to continue to pay secured debt

ii. Protection from lawsuit

iii. Get out of bad contracts
   1. Kmart and leases – able to reject leases
   2. American Airlines – threatening to get labor contract rejected

b. Disadvantages

i. Full financial disclosure

c. UCC filing

i. Uniform Commercial Code Article 9 –
   1. scheme for secured transactions
   2. rights of secured party as against other creditors of debtor
   3. creditor can perfect its security interest by
      a. filing a CUU-1 Financial Statement.
      b. By possession of collateral
      c. By control

ii. Secured creditor can have lien placed on debtor’s assets

iii. No lender can “prime” a properly filed UCC

d. Involuntary bankruptcy

i. Requires 3 creditors to file

ii. Secured creditors wouldn’t do – can get collateral

e. Priority of Distribution

i. Secured creditors
   1. continue to be paid while company is in bankruptcy
   2. oversecured (collateral worth more than debt); undersecured (worth less)
   3. can ask for relief by getting collateral

ii. Administrative fees for bankruptcy actions – legal
   1. cost is huge

iii. Priority creditors
   1. wage claims
   2. taxes
iv. Unsecured – trade debt
v. Bond holders
vi. Equity

f. Debtor in possession – DIP
   i. Can find new lender to provide funds to survive
      1. superpriority position over other debtors –
         a. requires approval bankruptcy courts
         b. lien only on assets purchased after Chapter 11

g. Out of court workouts – negotiate with creditors to stave off bankruptcy

h. Preferences and Fraudulent Transfer Claims
   i. Payments made to unsecured creditors within 90 days of going insolvent
      on pre-existing debt
   ii. Creditor can be sued to return payment

i. Bankruptcy auctions - Liquidating under Chapter 11
   i. can get company better deals – going concern
   ii. more control over auction process

III. Reorganization process

a. Plan of Reorganization
   i. Contract between creditors and debtor – dictates how pre-petition debt will
      be repaid
   ii. Broken down into classes
      1. administrative
      2. secured
      3. trade
      4. impaired – class will not receive all of its state-law rights (ex.
         Terms of repayment changed by the plan)
   iii. unasserted claims
      1. Proof of claim – creditor files with court what's owed
      2. if creditor doesn't file proof of claim, claim can be barred

iv. Creditors Committee
   1. committee of unsecured creditors
   2. 2/3 of $ amount and majority of number of creditors voting need to
      vote to approve
   3. debtors need impaired class to vote in favor
      a. if can get 1 impaired class that votes in favor, courts can
         cram down other impaired classes

b. Disclosure Statement
   i. Document like prospectus
      1. Business under bankruptcy
      2. Projections
c. Plan and disclosure statement filed at same time – both need to be accepted  
  i. Once court approves, sent to creditors for a vote  
  ii. Exclusivity period – 120 days post bankruptcy filing during which debtor has exclusive right to propose plan of reorganization