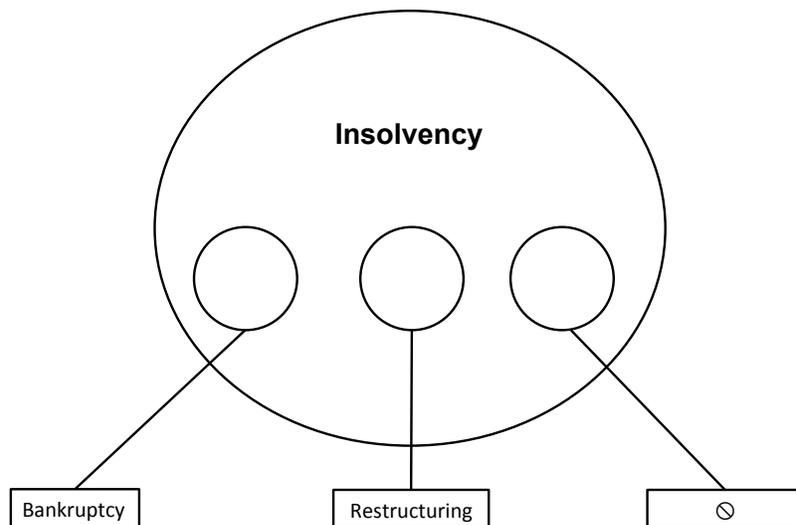**Bankruptcy & Insolvency – Law 445**
Fall Term 2019

Lecture Notes No. 1

DESCRIPTION OF THE COURSE

This course deals with some of the consequences of insolvency of individuals and corporations.

The governing statute that we will consider, the ***Bankruptcy and Insolvency Act***, R.S.C., 1985, c. B-3, defines an ***insolvent person*** in s.2 as follows:

> *insolvent person* means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

> (a) who is for any reason unable to meet his obligations as they generally become due,

> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

There are no consequences merely for being insolvent. For example, it's common for a company to be trading at a loss and fit the definition of an "insolvent person", but it may well find itself solvent once again when it's fortunes change. An insolvent corporation or person might find itself being sued by a creditor for payment.

If the company or its creditors raise the issue of insolvency, it might be that the company may be "restructured" under the *Bankruptcy and Insolvency Act*. If the indebtedness is over $5million, it may possibly be restructured under the ***Companies' Creditors Arrangement Act***, R.S.C., 1985, c. C-36. A "restructuring" is a re-arrangement of the company's structure, debt, operations, or ownership (just to name a few) to allow the company to be "rescued" from bankruptcy. The premise here is to recognize that the company might be saved in the interests of all stakeholder.

"Bankruptcy" is different. Bankruptcy is a recognition of a sort of financial death, with the bankrupt's assets being used to pay its creditors part of what is owed. Under the *Bankruptcy and Insolvency Act*, being a ***bankrupt*** merely means that one "has made an assignment or against whom a bankruptcy order has been made or the legal status of that person" and ***bankruptcy*** simply "means the state of being bankrupt or the fact of becoming bankrupt;" both definitions can be found in section 2 of the *Bankruptcy and Insolvency Act*. Where the decision is made to use the bankruptcy process, a "Licensed Insolvency Trustee" is appointed by creditors (persons "having a claim provable as a claim under" the *Bankruptcy and Insolvency Act*) and a process begins to identify which creditors have valid claims against the bankrupt, what property of the bankrupt can be realized upon to make a payment to creditors (some property is excepted or exempted) with the bankrupt eventually being "discharged". That means that a Court will issue a "certificate of discharge is issued to a bankrupt by a the trustee upon the bankrupt completing all of its duties in bankruptcy and is released from all debts except those matters referred to in s. 178(1)" of the *Bankruptcy and Insolvency Act* (for example, child or spousal support or a damages award ordered against the bankrupt for sexual assault).

Policy plays an important role in this area, principally in balancing the claims of all creditors with the public interest in rehabilitating the "honest but unfortunate debtor". This is articulated in what sorts of debts survive bankruptcy, how the bankrupt's property might be exempted from seizure and sale, and how the law should treat the class of creditors during the bankruptcy process itself (for example, by staying the ability of creditors to jump the queue by suing the bankrupt).

ASSESSMENT

There are two parts to your assessment: a 50% written assignment on a policy issue (1000 words or less; no research; set topics) and a 50% final exam (2 hours) which will be an application of the law to one or more fact patterns.