

George W. Kuney

Center for Entrepreneurial Law
University of Tennessee College of Law
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Knoxville, TN 37996
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LEGAL CAREER

Clayton Center for Entrepreneurial Law
University of Tennessee
College of Law
Knoxville, Tennessee

Lindsey Young Distinguished Professor of
Law, Director of the James L. Clayton
Center for Entrepreneurial Law
December 2000 to present

Allen, Matkins, Leck, Gamble & Mallory
San Diego, California

Partner
September 1993 to December 2000

California Western School of Law
San Diego, California

Adjunct Professor, Bankruptcy, Legal Drafting
1997 to 2000

Howard, Rice, Nemerovski, Canady,
Robertson, Falk & Rabkin
San Francisco, California

Business Department, Associate
April 1992 to September 1993

University of California
Hastings College of the Law
San Francisco, California

Adjunct Instructor, Research & Writing
Program, Moot Court & Advocacy Program
1990 to 1993

Morrison & Foerster
San Francisco, California

Business Department, Associate
September 1989 to April 1992

EDUCATION

University of San Diego
San Diego, California

M.B.A., New Venture Management
Emphasis, 1997

University of California
Hastings College of the Law
San Francisco, California

J.D., *cum laude*, 1989
HASTINGS LAW JOURNAL, 1987-1988
COMM/ENT; Senior Note Editor
1988-1989
Milton T. Green Top Ten Award
Thurston Society

University of California
Santa Cruz, California

B.A., Economics, 1986, Honors in the Major

George W. Kuney

COURSES TAUGHT

Bankruptcy, Business Associations, Commercial Law, Contracts I, Contracts II, Contract Drafting, Commercial Leasing, Consumer Bankruptcy and Finance Seminar, Debtor-Creditor Law, Mergers & Acquisitions, Introduction to Business Transactions, Property, Remedies, Representing Enterprises, and Workouts & Reorganizations.

BOOKS AND TREATISES

Co-author, *A Civil Matter* (open source UT BE Press 2023, with Donna C. Looper).

Co-author, *Bankruptcy in Practice* 6th ed. (ABI 2022, with Michael L. Bernstein).

Co-author, *Legal Drafting: Processes, Techniques, and Exercises*, 4th Ed. (West 2021, with Donna C. Looper)

Co-author, *Legal Drafting in a Nutshell*, 5th Ed. (West 2021, with Donna C. Looper).

Author, *The Elements of Contract Drafting with Questions and Clauses for Consideration* 5th ed. (text and teachers manual, West 2020).

Co-author, *Contracts: Transactions and Litigation* 5th ed. (West 2019, with Robert M. Lloyd).

Co-author, *Entrepreneurial Law* (West 2019, with Brian K. Krumm).

Co-author, *California Law of Contracts* (University of California CEB Treatise 2007-2018, with Donna C. Looper, updated annually).

Co-author, *Contracts: Transactions and Litigation* 5th ed. (West 2019, with Robert M. Lloyd).

Co-author, *Legal Drafting: Processes, Techniques, and Exercises* (West 2017, with Donna C. Looper).

Co-author, *A Transactional Matter* (West 2017, with Brian K. Krumm).

Co-author, *Legal Drafting in a Nutshell* 4th Ed. (West 2016, with Donna C. Looper).

Author, *Experiencing Remedies* (West 2015).

Co-author, *Bankruptcy in Practice* 5th Ed. (ABI 2015, with Michael Bernstein).

Co-author, *A Civil Matter: A Guide to Civil Procedure and Litigation* (West 2013, with Donna C. Looper).

Author, *Judgment Collection in Tennessee* (Amazon/Center for Entrepreneurial Law 2013).

Co-author, *Business Reorganizations* 3d ed. (Lexis 2013, with Michael Gerber).

George W. Kuney

Co-author, *The Entrepreneurial Law Clinic Handbook* (West 2012, with Brian K. Krumm).

Author, *Bamboozled? Bowers v. Baystate and Its Aftermath* (West 2012).

Co-author, *Contracts: Transactions and Litigation* 3d ed. (text and teacher's manual, West 2011, with Robert M. Lloyd).

Co-author, *Mastering Appellate Process* (with Donna C. Looper, Carolina Academic Press 2011).

Co-author, *Mastering Legal Analysis and Drafting* (Carolina Academic Press 2009, with Donna C. Looper).

Co-author, *Sales, Negotiable Instruments, and Payment Systems: UCC Articles 2, 3, 4, 4A and 5* (text and teachers manual, Center for Entrepreneurial Law 2009, with Robert M. Lloyd).

Co-author, *Secured Transactions: UCC Article 9 and the Bankruptcy Code* (text and teacher's manual, Center for Entrepreneurial Law 2008, with Robert M. Lloyd).

Co-author, *Contracts: Transactions and Litigation* 2d ed. (text and teacher's manual, West 2008, with Robert M. Lloyd).

Co-Author, *Mastering Intellectual Property Law* (Carolina Academic Press 2008, with Donna C. Looper).

Author, *Mastering Bankruptcy* 2d ed. (Carolina Academic Press 2008).

Co-author, *Legal Drafting: Process, Techniques, and Exercises* (text and teacher's manual, West 2007, with Thomas Haggard).

Co-author, *Legal Drafting in a Nutshell*, 3d ed. (West 2007, with Thomas Haggard).

Author, *Norton Bankruptcy Practice and Proceedings, Chapters 28* (Meeting of Creditors—Section 341), *29* (Notice—Section 342), and *30* (Examination of Debtors—Sections 343/344) (West 2007).

Co-author, *Chapter 11-101: The Essentials of Chapter 11 Practice* (ABI 2007, with Jonathan Friedland, Michael Bernstein, and John Ayer,).

Author, *The Elements of Contract Drafting with Questions and Clauses for Consideration*, 2d ed. (text and teacher's manual, West 2007).

George W. Kuney

ARTICLES

Evading Effective Review in Bankruptcy: The Unique Intersection of the Divestiture Doctrine, Interlocutory Orders, and Equitable and Statutory Mootness, 2021 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 87 (West 2021, with co-author Aleah Reno-Demick).

Life Insurance and Bankruptcy, 2020 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 19 (West 2020).

When Liability Insurance Policy Proceeds are Property of the Estate -- Sometimes, Always, Never – and a Proposal for a Consistent Rule, 2019 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 1 (West 2019, with co-author Donna C. Looper).

Understanding and Taming the Doctrine of Equitable Mootness, 2018 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 1 (West 2018).

Should the Trustee in Bankruptcy Succeed to the “Equal Guilt” of the Debtor? Putting the Burden of Imputation on Wrongdoing Third Parties for In Pari Delicto Purposes, 2017 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 1 (West 2017).

To Avoid the IEDs, Mind the Ethical Touchtones, 19 Tenn. J. Bus. L. 261 (2017).

A Taxonomy and Evaluation of Successor Liability (Revisited), 18 Transactions 741 (2017).

Should the “Innocent Trustee” in Bankruptcy Succeed to the “Equal Guilt” of the Debtor? Putting the Burden of Imputation in Wrongdoing Third Parties for In Pari Delicto Purposes, 2017 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW (West 2017).

All Writs in Bankruptcy and District Courts: A Story of Differing Scope, 34 Litigation Review 255 (2015).

Kuney’s Corner, *Cramming Down a Chapter 11 Plan by Giving Secured Creditor Substitute Collateral*, <https://www.dailydac.com/commercialbankruptcy/investors/articles/kuneys-corner-cramming-down-a-chapter-11-plan-by-giving-secured-creditor-substitute-collateral> (May 28, 2014).

Kuney’s Corner, *To Cheat Perdition Under the Debtor’s Plan: The Secured Creditor’s Section 1111(b) Election*, <https://www.dailydac.com/commercialbankruptcy/litigation/articles/to-cheat-perdition-under-the-debtors-plan-the-secured-creditors-section-1111b-election> (April 14, 2014).

Kuney’s Corner, *Cram Down: An Impaired Class of Claims Says “No” But the Plan is Confirmed Anyway*, Commercial Bankruptcy Litigation, (March 12, 2014).

Leases and Licenses, Sections 363(f) and 365(h), 2014 Annual Survey of Bankruptcy Law 95 (West).

Legal Form, Style, and Etiquette for Email, 15 Transactions 59 (2013).

George W. Kuney

A Taxonomy and Evaluation of Successor Liability (Revisited) (August 7, 2013). Available at SSRN: <http://ssrn.com/abstract=2307190>

Contracting on the Internet, Vol. 34, Cal. Bus. L. Rptr. (September 2013).

Section 363 Sales and Successor Liability, 2012 Annual Survey of Bankruptcy Law 1 (West).

Fortify Thyself: Know Tennessee's Real Property, Rules & Tools Before Charging into Boundary Battles, 48 Tenn. B.J. 14 (October 2012).

Stern v. Marshall: A Likely return to the Bankruptcy Act's Summary/Plenary Distinction in Article III Terms, 21 J. Bankr. L. and Pract. 1 (2012).

Implied-in-Fact Contracts and Idea Submission in California, 33 CAL. BUS. L. RPTR. 4 (July 2011).

Contractual Mechanics: Covenants, Conditions, Representations, Warranties, Guaranties, and Indemnities, Vol. 25, No. 4 CAL. BUS. PRACT. 124 (Fall 2010).

Don't Mistake the Proxy for the Rule: Alter Ego Liability in Tennessee, 11 TRANSACT. 131 (2010).

Vacating Chrysler, 19 J. BANKR. LAW & PRACT. 123 (West 2010).

Non-Debtor Releases and Travelers v. Bailey: A Circuit Split that is Likely to Remain, 201 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 201 (West 2010).

Unethical Protection? Model Rule 1.8(h) and Plan Releases of Professional Liability, 83 AM. BANKRUPTCY L.J. 481 (2009).

Contractual Arbitration in California, 24 CAL. BUS. L. PRACT. No. 3, p. 113 (Fall 2009).

When a Defendant Goes Under, TRIAL Vol. 45, No. 7, p. 46 (AAJ May 2009).

A Proposal for Chapter 10: Reorganization for "Too Big to Fail" Companies, XXVIII, No. 2, AMERICAN BANKR. INST. J. 1 (March 2009, with Michael St. James).

Transactional Skills Training: Contract Drafting — the Basics, 10 TRANSACTIONS 139 (Special Report 2009, with Tina Stark).

Pedagogic Techniques — Multidisciplinary Courses, Annotated Document Review, Collaborative Work, and Large Groups, 10 TRANSACTIONS 73 (Special Report 2009 with Anthony J. Luppino and Jamison Wilcox).

Material Adverse Change Clauses, 23 CAL. BUS. L. PRACT. 101 (2008).

How Fast is Promptly? 23 CAL. BUS. L. PRACT. 98 (2008).

George W. Kuney

What Your Lender and Mortgage Broker Didn't Tell You: A Call for Disclosure of Loss of the Section 580b Antideficiency Protection Upon Refinancing, 4 HASTINGS BUS. L. J. 209 (2008).

Slipping into Mootness, NORTON ANN. SURV. BANKR. LAW Part 1, § 3 (West 2007).

To the Best of Whose Knowledge? 22 CAL. BUS. L. PRACT. 2 (2007).

A Taxonomy and Evaluation of Successor Liability, 6 FLA. ST. U. BUS. L. REV. 9 (2007).

Successor Liability in Illinois, 96 ILLINOIS BAR J. 148 (2008).

Successor Liability in Maryland, Volume XXXX MARYLAND BAR J. 4 (2007).

Successor Liability Louisiana, 55 LOUISIANA BAR J. 172 (2007).

Successor Liability in Michigan, 87 MICHIGAN BAR J. 32 (2007).

Successor Liability in New York, 79 NEW YORK BAR J. 22 (2007).

Successor Liability in Vermont, 33 VERMONT BAR J. 40 (Spring 2007).

Successor Liability in Tennessee, 43 TENN. BAR J. 24 (May 2007).

Chapter 11-201: The Intersection of Chapter 11 and UCC Article 9, XXV AM. BANKR. INST. J. (July 2006).

Best Efforts and Reasonable Efforts Clauses: Couldn't You Try Just a Little Bit Harder, 21 CAL. BUS. L. PRACT. 64 (2006).

Jerry Phillips' Product Line Continuity & Successor Corporation Liability: Where are We Twenty Years Later?, 72 TENN. L. REV. 777 (2005).

Where We are and Where We Think We are: An Empirical Examination of Bankruptcy Precedent, 28 CAL. BANK. L.J. 71 (2005).

Successor Liability in California, 20 CAL. BUS. L. PRACT. 50 (2005)(co-authored with Donna C. Looper).

Boards Must Reduce Their Exposure to Creditor Suits, SAN FRANCISCO DAILY JOURNAL (May 7, 2004)(co-author).

Hijacking Chapter 11, 21 EMORY BK. DEV. L.J. 19 (2004).

Let's Make It Official: Adding an Explicit Pre-Plan Sale Process as an Alternative Exit from Chapter 11, 40 HOUSTON L. REV. 1265 (2004).

George W. Kuney

Bankruptcy Law and Recovery of Tort Damages, 71 TENN. LAW REV. 81 (2003).

Selling a Business in Bankruptcy Court Without a Plan of Reorganization, 18 CAL. BUS. L. PRACT. 57 (Summer 2003).

Further Misinterpretation of Bankruptcy Code § 363(f): Elevating In Rem Interests and Promoting the Use of Property Law in Bankruptcy-Proof Real Estate Developments, 76 AM. BANKR. L.J. 288 (2002).

Misinterpreting Bankruptcy Code § 363(f) and Undermining in the Chapter 11 Process, 76 AM. BANKR. L.J. 235 (2002).

The Fiduciary Duties of Officers and Directors of Insolvent Corporations, 17 CAL. BUS. L. PRACT. 73 (Summer 2002).

Co-author, *Single Asset Real Estate Under 11 U.S.C. § 362(d)(3): A Narrower Construction Than You Might Expect*, 26 CAL. BANK. J. 130 (2002).

Intellectual Property Licenses in Bankruptcy, 16 CAL. BUS. L. PRACT. 33 (Spring 2001).

Qualified Settlement Funds: A Tool to Shelter Gains and Taxable Income with Payments on Account of Disputed Claims, 24 CAL. BANKR. J. 137 (1999).

Co-author, *The Allowed Secured Claim: Accounting for Payment of Net Rents*, 23 CAL. BANKR. J. 111 (1996).

11 U.S.C. Sections 1125(a) and 1145: Going Public Via Chapter 11, 23 CAL. BANKR. J. 3 (1996).

Financial Reporting By Chapter 11 Debtors: A Limited Critique of SOP 90-7, 5 J. BANKR. AND PRAC. 311 (1996).

New Value Questions Remain, Whatever the Decision in Bonner Mall, 112 BANK. L.J. 383 (1995).

Claims for Attorney's Fees Under the Bankruptcy Code, 4 J. BANKR. L. AND PRAC. 203 (1995).

Interest on Nothing? 9 COMM. L. BULL. 30 (1994).

SPEAKING AND OTHER ENGAGEMENTS

“Bankruptcy and High Yield Debt,” Certified Financial Analysts of New York High Yield Debt Conference, New York, NY, June 6, 2022.

“Drafting Elegant Contracts,” Kingsport Bar Association, Kingsport, TN, May 8, 2018.

George W. Kuney

“Bankruptcy Meets Construction Law,” ABA Section on Construction Law Spring Meeting/Forum, New Orleans, LA, April 12, 2018.

“Drafting Elegant Contracts,” Texas Bar Association, Section on Entertainment Law, Austin, TX, November 17, 2017.

“Transactional Drafting,” Jones Day LLP, Washington D.C., New York, NY, Atlanta, GA, March 14, 2007, December 9, 2015, November 8, 2017.

“Teaching Using the Case Study/Report Approach,” Legal Writing Institute Annual Conference, Knoxville, Tennessee, April 18, 2015.

“Risk Management: A Conversation,” and “Risk Management: Continuing the Conversation,” Scripps Interactive Network, Knoxville, Tennessee, November 2014 & January 2015.

“Capstone Courses,” American Association of Law Schools Conference, New Orleans, La., January 5, 2013.

“The Winds of Change in Civil Law Practice,” Miller & Martin, Chattanooga, TN, September 20, 2013.

“Transactional Drafting,” Miller & Martin, Chattanooga, TN, July 29, 2010.

“Ethical Issues” and “363 Sales,” Norton Bankruptcy Institute, Las Vegas, Nevada, March 26, 2010.

“Morality and Contract Law,” Spring Conference on Contracts, UNLV, Las Vegas, Nevada, February 27, 2010.

“The Present and Future of ‘One Size Fits All’: Do We Need a Chapter for Those ‘Too Big to Fail’”, American Bankruptcy Institute 2009 Legislative Symposium, Chapter 11 at the Crossroads, Does Reorganization Need Reform? A Symposium on the Past, Present, and Future of U.S. Corporate Restructuring, Georgetown University Law Center, Washington, D.C., November 16-17, 2009.

“Transactional Drafting Workshop: Venture Capital,” DLA Piper, Palo Alto, CA, July 22-23, 2008.

“Papering the Deal: Writing for Transactional Attorneys,” The New Lawyer Experience: Bridging the Gap Between Preparation and Practice, Tennessee Bar Association, Knoxville, Tennessee, February 15, 2008.

Amicus counsel in support of the plaintiff/appellant in *Shultz v. United States*, 369 B.R. 349 (E.D.Tn. 2007) and *Shultz v. United States*, 529 F.3d 343 (6th Cir 2008) (challenge to constitutionality of Bankruptcy Code’s “means test”).

George W. Kuney

Pro se appellant in *Kuney v. Bean*, 2008 U.S. App. Lexis 14686 (Fed. Cir 2008) (dissolving lower court protective order on grounds of over breadth to allow access to sealed documents for research purposes).

Member, Steering Committee, Contract Drafting Conference, Emory University Transactional Practice Center, May 2-3, 2008.

“Transactional Drafting,” Jones Day, Cleveland, OH, October 19, 2007; Chicago, IL, November 2, 2007; Dallas, TX, November 9, 2007.

“Advanced Contract Drafting,” DLA Piper US LLP, Chicago, IL, August 13, 2007.

“Drafting Concrete Contracts & Writing Better Brief,” Tennessee Bar Association Young Lawyers Division, Knoxville, TN, July 11, 2007.

“Transactional Drafting Workshop,” Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Nashville, TN, March 1, 2007.

“Recent Developments in State Law Issues Affecting Commercial Transactions that Every Bankruptcy Lawyer Ought to Know,” Mid-South Commercial Law Institute, Nashville, TN, November 16, 2006.

“Bankruptcy Proofing Techniques: Substantive Consolidation Opinions and Bankruptcy Remote Entities,” Mid-South Commercial Law Institute, Nashville, TN, November 17, 2006.

“Contract Law and Teaching: Transactions and Litigation,” panelist, SEALS, July 21, 2006.

Author and Publisher of “Living Off Campus: A Quick Guide to Town Living for University of Tennessee Students” (1st Edition 2005, 2nd Edition 2006).

“The Nuts and Bolts of Contract Drafting,” workshop speaker and “Drafting Rules, Adding Value to the Deal, and Ethical Issues in Contract Drafting,” speaker, Teaching Contract Drafting, Northwestern University School of Law, July 20-21, 2005.

“Transactional Training Clinic: Simulation of \$50,000,000 Asset Acquisition and \$40,000,000 Senior Secured Term Loan,” lead instructor, Sheppard, Mullen, Richter & Hampton LLP, June 8-22, 2005.

“Putting ‘Business’ Back Into the Education of Business Lawyers,” panelist, American Bar Association, Business Law Section Spring meeting, Nashville, TN, March 31, 2005.

“U.S.C. Section 363(f): What Can You Sell Free and Clear Of?,” panelist, American Bar Association, Business Law Section Spring meeting, Nashville, TN, March 31, 2005.

“Collaboration,” panelist, Pedagogy to Practice: Maximizing Legal Education with Technology Conference, American Bar Association, Newark, NJ, October 15, 2005.

George W. Kuney

“Ethical Considerations in the Formation and Representation of Entities,” Partnerships, LLCs and LLPs: Organization and Operation in Tennessee, October 8, 2005.

“Teaching Contract Drafting: The Whereases and Wherefores,” Legal Writing Institute, annual conference, Seattle, WA, July 23, 2004.

“The Intersection of Law and Business,” panelist, Southeastern Association of Law Schools Annual Meeting, August 1, 2004.

“Ethical Considerations in the Formation and Representation of Entities,” panelist, Partnerships, LLCs and LLPs: Organization and Operation in Tennessee, Knoxville, TN, October 9, 2003.

“Bankruptcy and the Tort Lawyer: What You Need to Know,” Damages in Tort Law Symposium speaker, University of Tennessee College of Law, Knoxville, TN, April 3, 2003.

“Contract Drafting: Fundamentals, Plain English & Papering the Deal,” sole instructor, United States Department of Energy BWXT Y-12, LLC, December 4, 2002.

“Teaching Entrepreneurship,” panelist, Southeastern Conference AALS Annual Meeting, July-August 2002.

“Combining Academic and Practical Training Through an Entrepreneurship Program,” Co-Lead Panelist, Kaufman Center for Entrepreneurial Leadership, April 2002.

“Legal Issues, Problems and Guidelines for Small Businesses: What You Don’t Know Can Hurt You!,” coordinator and designer of curriculum and visual aids, co-sponsored by the Knoxville Bar Association, Clayton Center for Entrepreneurial Law, the Pellissippi State Small Business Development Center, and the Knoxville Area Chamber Partnership, Knoxville, TN, October 2001 and March 2002.

“Doing Business on the Internet,” panelist, sponsored by the Business Law Section of the State Bar of California, June 1998.

“Attorney vs. Client: Working Toward Better Client Relations,” panelist, sponsored by the Business Law Section of the State Bar of California, June 1996.

SELECTED AFFILIATIONS AND AWARDS

Tina L. Stark Award for Excellence in the Teaching of Transactional Law and Skills, Emory Conference on Transactional Law and Skills, June 1, 2021.

University of Tennessee Research Spotlight Award 2019.

Faculty Advisor to *Transactions: The Tennessee Journal of Business Law* (2000 – present).

Chancellor’s Excellence in Graduate Mentoring and Advising Award (2017).

George W. Kuney

Carden Award for Outstanding Achievement in Scholarship (2007, 2016).

Harold C. Warner Outstanding Teacher Award (2005).

Carden Award for Outstanding Service to the Institution (2004, 2010).

W. Allen Separk Faculty Scholarship Award (2003)

Research Fellow, Center for Corporate Governance, University of Tennessee.

American Bar Association, Member.

American Bankruptcy Institute, Member.

California Bankruptcy Forum; CALIFORNIA BANKRUPTCY JOURNAL, Editor Emeritus, Editor in Chief (1999-2003), Managing Editor (1997-1998), Contributing Editor (1996).

Admitted to the bar and state and federal courts of California and Tennessee and the Federal District Court for the District of Arizona, the Federal Court of Appeals, Sixth and Ninth Circuits, and the Supreme Court of the United States.