MYKOLAS ROMERIS UNIVERSITY

Jurgita Spaičienė

BANKRUPTCY LAW DEVELOPMENT IN THE REPUBLIC OF LITHUANIA

Summary of the Doctoral Dissertation

Social Sciences, Law (01 S)

Vilnius, 2008

The dissertation has been written during the period of 2003-2008 at Mykolas Romeris University.

Scientific supervisor:
Assoc. Prof. Dr. Vytautas Andriulis (Mykolas Romeris University, Social Sciences, Law – 01 S)

The doctoral dissertation will be defended at the Law Research Council of Mykolas Romeris University:
Chairman of the Council:
Prof. Dr. Juozas Žilys (Mykolas Romeris University, Social Sciences, Law – 01 S)
Members:
Prof. Habil. Dr. Mindaugas Maksimaitis (Mykolas Romeris University, Social Sciences, Law – 01 S)
Prof. Habil. Dr. Pranas Žukauskas (Vytautas Magnus University, Social Sciences, Management - 03 S);
Assoc.Prof. Dr. Antanas Marcijonas (Vilnius University, Social Sciences, Law - 01 S);
Dr.Vigintas Višinskis, (Mykolas Romeris University, Social Sciences, Law – 01 S)

Opponents:
Prof. Habil. Dr. Borisas Melnikas (Vilnius Gediminas Technical University, Social Sciences, management and administration – 03 S)
Dr. Edita Gruodytė (Mykolas Romeris University, Social Sciences, Law – 01 S)

The public defense of the dissertation will take place at Law Research Council at Mykolas Romeris University on the 23th of May, 2008 at 1:00 PM in the CR-230 auditorium of Mykolas Romeris University.
Address: Ateities str. 20, LT-08303 Vilnius, Lithuania.

The summary of the Doctoral Dissertation was sent on the 17th of April 2008.

The Doctoral Dissertation is available at the library of the Mykolas Romeris University and Martynas Mažvydas National Library of Lithuania.

MYKOLO ROMERIO UNIVERSITETAS

Jurgita Spaičienė

BANKROTO TEISĖS RAIDA LIETUVOS RESPUBLIKOJE

Daktaro disertacijos santrauka
socialiniai mokslai, teisė (01 S)

Vilnius, 2008

Disertacija rengta 2003-2008 metais Mykolo Romerio universitete.

Mokslinis vadovas:

doc. dr. Vytautas Andriulis (Mykolo Romerio universitetas, socialiniai mokslai, teisė – 01 S)

Disertacija ginama Mykolo Romerio universiteto Teisės mokslo krypties taryboje:
Pirmininkas:
prof. dr. Juozas Žilys (Mykolo Romerio universitetas, socialiniai mokslai, teisė – 01 S)

Nariai:
prof. habil. dr. Mindaugas Maksimaitis (Mykolo Romerio universitetas, socialiniai mokslai, teisė – 01 S)
prof. habil. dr. Pranas Žukauskas (Vytauto Didžiojo universitetas, socialiniai mokslai, vadyba - 03 S);
doc. dr. Antanas Marcijonas (Vilniaus Universitetas, Socialiniai mokslai, teisė- 01 S);
dr.Vigintas Višinskis, (Mykolo Romerio Universitetas, Socialiniai mokslai, teisė – 01 S)

Oponentai:
prof. habil. dr. Borisas Melnikas (Vilniaus Gedimino technikos universitetas, socialiniai mokslai, vadyba ir administravimas 03 S)
dr. Edita Gruodytė (Mykolo Romerio universitetas, socialiniai mokslai, teisė – 01 S)

Disertacija bus ginama viešame Teisės mokslo krypties tarybos posėdyje 2008 m. gegužės 23 d.13 val. Mykolo Romerio universiteto CR-230 auditorijoje.
Adresas: Ateities g. 20, LT-08303 Vilnius.

Disertacijos santrauka išsiųsta 2008 m. balandžio 17 d.

Disertaciją galima peržiūrėti Mykolo Romerio universiteto ir Lietuvos nacionalinėje Martyno Mažvydo bibliotekose.

Jurgita Spaičienė

BANKRUPTCY LAW DEVELOPMENT IN REPUBLIC OF LITHUANIA

Introduction

Recently, companies' bankruptcy law in Lithuania is being changed most frequently. The experience in using formal laws is ignored by legislative power while paying no attention toward it as a new source of the law. Nowadays, the legal acts involve only procedure of bankruptcy of companies, there is few theoretical and conceptual basics of the bankruptcy law. Therefore Lithuania has had no research of bankruptcy and insolvency law. Because of the predictable basic changes there are no scientists being able to make precise forecast of some changes. Therefore the need for new law ideas and issues is evidently present. Today it is common to adopt the law of other states, but it is still required to conform it to the European Union's law standards as well as it is possible to create legal acts that are specifically accommodated to Lithuania. Nevertheless it is confirmed that many problems, which exist today, were also faced and solved in the past. That is why these solutions can be improved and used today.

Research problem: Acceptation of legal acts, which have had different experience of the bankruptcy law application and adjustment of the relations between insolvent debtors and their creditors, were influenced by the diversity of law that existed in 1918 – 1940 in the Republic of Lithuania and analysis of the most significant elements that influenced the development of bankruptcy law from 1918 to 2007. During all the research period the problem of bankruptcy, trade process acts that make uniform were not completely solved in Lithuania till 1940. Despite the fact that the inherited model of social relations was not made perfectly, the changes were being made in systematic recepted law acts.

During the research period (1918-1940), the disadvantages of legal adjustment concerning the debtors' insolvency and institutions of bankruptcy were determined, the problems were cleared and ways of solving them were suggested on the scientific level (while paying attention to the research of other states). Moreover, new ideas were offered, the attention was paid to the experience of neighbour states (e.g. Poland), which went through the same stage of development of bankruptcy law. The history of the bankruptcy legal institutes is greatly valuable not only because of the formed different institutes review, but it is rich in the experience in the law field in a variety of states (Germany, Russia, France), which could and should be used as a great source for the law creation. Recent bankruptcy law still has many unsolved issues, which were found out in the law during the researched period.

The essence of the paper: it is necessary refer to the knowledge related to the specific law field or history institute in order to get aware of existing law's occurrences and be able to evaluate it. Since 1992 the legal acts of bankruptcy law are being changed and enlarged rather often. At this time the new insolvency code preparation is being under consideration. This instability means the absence of conceptual basics that are not systematic or the lack of knowledge about the origin of the particular institutes. The analysis of legal acts that existed in the past as well as the research of the main views, taking revealed and solved problems into consideration, could be one of possible sources for new acts of law. The variety of investigated law enables to determine the features that are characteristic to all systems of law and reveal the basic features of bankruptcy law too.

Till now, the bankruptcy legal relationships, including acting law, have been analyzed very little in the scientific level; in addition Lithuania's scientists have never taken it as a research object.

This paper does not tend to reveal the influence of invalid law to recent Lithuanian bankruptcy law. The direct link between them has not been analyzed.

The object of the research involves bankruptcy law, i.e. a doctrine, legal ideas and norms, applied in Republic of Lithuania from 1918 to 1940 and from 1992 to 2007.

The matter of ***the research*** includes the development of the bankruptcy law and related institutes.

The purpose of the paper: to analyze and compare the existing bankruptcy legal relations, which regulated the rules of the law in Lithuania in 1918 – 1940 and factors that influenced bankruptcy law development in Republic of Lithuania from 1992 to 2007.

In order to reveal the determined research purposes, the following *tasks* have been formulated:

1) To describe the concepts of bankruptcy and competition (as one of bankruptcy elements in 1918-1940), to reveal their interaction and peculiarities of their application. To survey the development of the bankruptcy law principles and the sources of the law since ancient Rome, to discuss the very first law sources in Germany, Russia and France that have influenced the development of Lithuanian bankruptcy law since 1918;
2) To analyze and compare bankruptcy legal acts and particular institutes, that existed in 1918 – 1940 in Uznemune, Klaipeda region and in the rest of Lithuania, mentioning primary bankruptcy law sources and the papers related to XIX – XX centuries, to reveal the peculiarities of administration establishment and its interaction with bankruptcy law for the debtor, who has financial problems; to explore the peculiarities of debtor's responsibility in case of fraudulent bankruptcy, according to all existent legal acts in the Republic of Lithuania in 1918 – 1940,
3) To survey the peculiarities in the recent development of the bankruptcy law in Lithuania since 1992 and to propose some suggestions concerning recent legislative power, to analyze factors that determined the development of the bankruptcy law and particular changes of bankruptcy legal acts from 1992 and in accordance to heritage of the bankruptcy law to formulate legal suggestions to legislator.

Paper's novelty and it's significance: this paper is the first document in the history of Lithuanian jurisprudence, which analyzes the evolution of bankruptcy and competition (as a bankruptcy element) law institutes, their development, the influence of other states competitive law (in Russia, Germany and France) for the Lithuanian bankruptcy and legal acts related to the competition in 1918 – 1940. Today's published papers and investigations do not reveal the development of the main principles of bankruptcy law and reasons, why they are as important as they are for nowadays bankruptcy law, the legal regulation of relations between debtors and their creditors (when the debtor is insolvent) are presented pithily.

*The statements the paper defends***:** the thesis formulated and maintained in the paper:

1) The bankruptcy law, that was applied in the whole territory of Lithuania in 1918 – 1940, had not one legal theoretical ground, but the main principles were common.
2) Till the Soviet occupation in 1940, the legislative power of the Republic of Lithuania preferred using accepted competition and bankruptcy law to renewing it.
3) The historical experience of the development of bankruptcy law was not used, when Lithuanian legislators accepted new bankruptcy regulating legal acts after the independence was gained in 1990.

The survey of the research: The researches are given from the point of view of the development of bankruptcy and competition institutes and determination of the main law principles of the competition (debtor's insolvency) in the past existed law. At that time, when this law was accepted and applied, it was thoroughly studied by Russian scientists G.F. Šeršenevičius, A. Golmšteinas, N.A. Turas and D.V. Tutkevičius. In Lithuania, during the years of 1918 – 1940 some bankruptcy law researches were carried out by D. Gecas, V. Mačys, and I.M. Tiutriurmov (in the Russian language). Bankruptcy (then so called competition) law, as jurisprudence, was taught in Klaipeda Institute of Trade in 1936 – 1937, but existent M. Braks and K. Salkauskis lectures' conspectus were based on the earlier mentioned authors' papers and legal acts. "Historical survey at competition process" written by Russian scientist K.I. Malysevas was rather significant too, but the development of law, that has been analyzed in this paper was till 1871. Nowadays the most significant works about their own bankruptcy law evolution are done by M.V. Teliukina, V. Popondopulo, V. Stepanov (Russia), K. Gratzer (Sweden), D. Skeel

(USA) and D. Graham (United Kingdom). In Lithuania some aspects (usually - procedural of bankruptcy law were analyzed in the papers by R. Norkus, V. Višinskis, V. Nekrošius, E. Laužikas, E. Laužikas, V. Mikelėnas. S. Grigaravičius, J. Mackevičius, A. Rakštelienė and S. Silvanavičiūtė working on the bankruptcy prediction matters and financial evaluation of the insolvent debtor.

Recently (2005 – 2006), three scientific – practical researches were carried out by the ministry of national economy and the department of bankruptcy control. They tended to determine the disadvantages of now existing law that were caused by the shake-up process, insolvency evaluation and the problems of insolvent persons. Nevertheless, the development of these institutes has not been revealed.

The methodology of the paper*:* this paper is based on the methodological grounds, which have been formulated in the doctrine of the law. Historical, logical, comparative jurisprudence, systematic analysis, pattering, personal experience and other theoretical and empirical methods have been used in order to reveal the development of bankruptcy law.

The structure of the paper Firstly, paper contains the definitions of bankruptcy and competition, the development of competition and bankruptcy law, which were taken from other states (Germany, Russia, France) by Lithuania in 1918 – 1940 and the rudiments of this law are given in Lithuanian. The problem of particularism has been revealed as well. The second part of the paper explores the institutes of bankruptcy law in 1918-1940 (competition, establishment of administration and bankruptcy as felony). Recent bankruptcy Lithuanian law and its changes since 1992 are analyzed in the third part.

I. The formation and elements of the bankruptcy law

Basic definitions In the interwar Lithuania the perception of bankruptcy law was similar to today's one. It is a complex law institute, inclusive the rules of the administrative, criminal, labour law. It involves the rules, which regulate the relations between debtor and creditor and sometimes, third persons, fine-tune the special status of the debtor. When the third persons is allowed to influence the activity of the debtor and apply special measures, provided by the court, to the debtor. The definition of bankruptcy during the interwar contained the cases of debtor's insolvency, which could be treated as a criminal. This definition meant that the criminal liability threatened because of bankruptcy. Analyzing the civil legal relations between insolvent debtor and creditors in Lithuania, till 1940 the definition of competition and process of competition was used only. Meanwhile, the definition of bankruptcy described the criminal actions. The meaning of the word "competition" that is related to the process of debtor's insolvency, is derived from the work (1645) about competition, in which, the competition of creditors concerning the debtor's property is analyzed. That is why, the majority of scientists thought that the number of creditors is essential condition of successful competition.

Therefore, after 1992 – definition of bankruptcy became a description of the legal relations between debtor and creditors. It should be noted that today's Lithuanian law does not contain the definition of the competition anymore, but it still exists in Russia *(Konkurs)*, the Republic of Czech *(Konkurs)*, Germany (*Das Konkursverfahren),* Austria *(Das Konkursverfahren),* Finland (*Konkurssi/konkurs*), Sweden (*Konkurs*) and Spain (*Concurso de acreedores*).

The survey of historical development of bankruptcy and competition law Historically every new rule in bankruptcy law appeared under the certain public, social and economical conditions. For a long while, it was possible to punish an insolvent debtor according to the legal norms. An insolvent debtor was compared to a thief and put into the pillory. In Ancient Rome, a debtor was taken into the custody of the creditor until the debt was fully worked out. The process of debt recovery itself was complicated. According to the legal rules in force in Ancient Rome the creditor himself had to bring the debtor into the court, however, there was also a valid rule proclaiming, "no one can be taken from his house by force". If this was the case, the creditors' interests were left legally unprotected. For this reason, a remedy for the creditors was developed

whereby they got the right to seize and administer the debtor's property. Later, in order to ensure that the seizure of property was done in the amount not exceeding the one needed to recover the debt for the period while the location of the debtor remained unknown there was a new independent curator of property position created. In the meantime norms of lien and mortgage law evolved as well. Petellius law (in the year 326) prohibited to put a mortgage upon a debtor's person or physically execute a debtor. The debtor's property was sold en bloc and not as separate items. Justinian's code shortened the terms for reclamation and included the rudiments of peace agreement institute. Thus, the ancient Roman's institutes of *venditio bonorum, distraction bonorum* and especially *cession bonorum and action Pauliana* formed the legal basis for further complicated historical development of bankruptcy law.

The first laws especially dedicated to govern bankruptcy appeared in *Italy* in the middle of the XIII century. This was due to Italy's economical development and political independence of its cities.

In *Great Duchy of Lithuania,* some elements of bankruptcy law were observed to originate since Lithuanian Statute in 1529. This was further developed in the year 1566 and 1588 Lithuanian Statutes in which the attention was paid to different aspects of a debtor and creditor's relations (despite this still lacking the features of a bankruptcy law as a separate legal institute). All these statutes included the right of a creditor to collect the debt from the indebted estate. However, according to the principle valid in law at that time - "first in time – first in law" - the first creditor or the creditor administrating the estate had the right to keep it while the other creditors had to reclaim their portion of debt from the debtor himself. In this way, another priority interest of the country – to avoid partition of property – was ensured. In Lithuania the original bankruptcy law as established in the uniform legal act did not develop then. The main reason is thought to be the fact that in the XIX century Lithuania was occupied, thus deprived of the opportunity to develop its national law, including bankruptcy law, while in other countries bankruptcy law developed into a separate legal institute.

In Germany, the written bankruptcy law originated in 1531. Relevant to Lithuania was uniform for all parts of Germany bankruptcy laws enacted on January 10, 1877, which, as amended on May 20, 1898, were valid in Klaipeda region in 1923-1939.

In France, separate bankruptcy rules were codified as early as in 1536. On January 1, 1808, *Code de Commerce* came into effect. In 1918 – 1940, this code was in force in Lithuania, in Uznemune. Nevertheless, non commercial insolvency remained undeveloped.

In *Russia,* the dawn of bankruptcy law is traced back to the beginning of the XVIII century. During this period, the liabilities and legal consequences for untimely payment were differentiated for a debtor who owed to a single creditor and for a debtor who owed to a number of creditors. First Charter on Bankrupt Entities was adopted only in 1800 (*Устав о банкротах*), in 1832 it was replaced with Trade Bankruptcy Charter (*Устав о торговой несостоятельности*) which was in force until 1917.

In the majority of economically developed and developing countries the need for legal bankruptcy regulation emerged only in the XIX century due to rapid growth in trade and production. Gradually a debtor's personal responsibility was replaced by property liability, thus transferring legal consequences for being insolvent from the scope of criminal law to private law. More legal rules were established which made it possible to enter into a peace agreement with a debtor and to restore a debtor's solvency. Furthermore, there were new legal rules created to regulate the establishment of bankruptcy procedures supervision agencies, the process of settlement of a creditor's claim, etc. That is why the XIX century is considered the commencement of studies on, analysis and development of the bankruptcy institute.

In the *Republic of Lithuania* in 1918-1940 the situation with standardization and implementation of bankruptcy law was rather complicated. Applicable rules of bankruptcy law were derived from three countries, different in the level of legal and economical development, namely Russia, France and Germany. Until the occupation of Lithuania in 1940, no national law on insolvency or bankruptcy was ever enacted. From the state point of view, bankruptcy law was

not a priority field. This was attributable to a relatively small number of competition, bankruptcy or assignee's appointment lawsuits as well as the lack of bankruptcy law specialists and creditors' inactive participation in the lawmaking process. In respect to diversity of bankruptcy law, the most similar situation to one in Lithuania was in Poland. Polish lawmakers having applied the laws and the newest experience of other countries unified the competition law in their country on January 1, 1935. The following provisions became the most outstanding achievements of the new bankruptcy law: a) in case of insolvency, a tradesman was obliged to apply for initiation of bankruptcy proceedings; b) a debtor could be imprisoned only if he was insolvent and attempted to flee to avoid his creditor or hide his property that could be used to satisfy the creditors' claims; c) extensive regulation of legal consequences in respect to a debtor's previously made contracts in case a bankruptcy was announced, void and voidable transactions were differentiated; d) in the district courts one judge – a commissioner - was appointed to process all bankruptcy cases, cassation became impossible; e) the property of an insolvent debtor was administered by an assignee in bankruptcy who could be assisted by a creditors' committee; f) the role of a meeting of creditors diminished and became relatively unimportant; g) the institute of compulsory conciliation was introduced.

II. The bankruptcy law in Lithuania in 1918-1940

Competition. The purposes of competition and bankruptcy were not directly named in the law that existed during the interwar in Lithuania. In order to identify them it was necessary to analyze the content of the competition law rules and the entire law, paying attention to the main principles of the competition law. It was not defined, that the main purpose of the competition was the elimination of an insolvent debtor, but, obviously, the liquidation was logical sequence of insolvency notification. One of the most important civil law principles "first in time – first in law" was denied, when the principle of the proportional satisfaction of creditors' demands was created.

Insolvency considered as the condition for the lawsuit to the debtor. The notification of insolvency was related to the specific knowledge of finance, but the law makers defined the very abstract features of insolvency.

Considering the fact, the basics of the insolvency appeared, two insolvency types were distinguished: *insolvency* and *impossibility to pay.* In the first case the debtor's credit was greater than his property. The second case showed the lack of circulating asset, that is: though the capital of debtor is greater than the debt, he still is not able to pay up, because of no liquidity of his property or the particular market conditions. In the law acts and scientific papers there were distinguished two categories of insolvency*:* *de facto* and *de jure*. Insolvency *de facto* means that debtor does not manage to pay up in time or his debt is higher than his entire property, but no lawsuits is commenced. In 1918-1940 it was difficult to notify the insolvency *de jure*, because of the high debt level that was 7500 LT in Lithuania.

The insolvency was *commercial* and *non commercial.* In Uznemune, only a trader could be notified as an insolvent debtor. It was considered that it was not necessary to have a non-commercial insolvency institute, because of the existence of Paulian's plaint. According to Klaipeda region law, the subject was not divided into traders and not traders.

The problem of insolvency of juridical persons (especially non limited reliability) became relevant. This question was not regulated by any legal acts. The source of law became the experience of courts. The court set the rule and the company, and its members had subsidiary obligations. Insolvency and competition process were conditionally attached to the civil process, but the lawsuits of the competition was not usual civil lawsuits.

All creditors had to give the requirements to the court during 4 months. The court had to set the jury tutors from the persons, recommended by the creditors, and arrest the property that belonged to the debtor. In the process of prosecution surcharged sums were sent to the district court and included to the entire competition capital. This rule was applied not only for the

exaction from the collateral. The court applied the legal acts of penal code, in case the features of malign bankruptcy were revealed during the trial process. The process was different from the existed plaint law as well as from the modern bankruptcy process. There was no rush in competition lawsuit that is: a creditor was not a plaintiff and a debtor was not a defendant. The essence of the process was to point out and satisfy the requirements of creditors.

There were two main ways to commence an insolvency lawsuit in the European competition law in XIX – XX century. They were voluntary and involuntary. However attempts were made to legitimate the possibility of court *ex officiio* to commence an insolvency lawsuit. This alternative was reasoned by purposes of competition process and public interest. The debtor was announced as insolvent, in case he did not have enough property to redeem the debt.

The announcement of insolvency caused social as well as juridical consequences. First, since the moment of announcement, the debtor lost the right to be a plaintiff and defendant. Second, he lost his right to dispose his property. In Lithuania, the insolvent person or his representative was not allowed to make any property transaction, including the loan, to ensure, to guarantee or mortgage the property. Third, during the interwar in Lithuania the doctrine of automatic stay was in action. Paying up, according to debt papers, was forbidden. Fourth, the announcement of insolvency had the sequence – the creditors got the right to demand in case the demands were not out of time. Fifth, one more sequence was that creditors lost their right to claim individually. Only total satisfaction of creditors' demands was possible. This sequence is one of the main competition principles of defence interests of all creditors. Sixth, the personal debtor's freedom can be limited in case the lawsuit was commenced.

The process and the results of the competition case depended on the participant subjects. The main subjects were: the court, unprejudiced persons, appointed by the court (jury guardian, syndics, and tutors), competition board and the creditors' assembly. During the interwar in Lithuania, the lawsuits of insolvency, competition and bankruptcy were judged by the district court depending on the debtor's habitation. In Uznemune, the court had the primary role. There the court could commence the insolvency lawsuit on their initiative. The judged, who were nominated as commissioners of the insolvency lawsuit, had to make debtors finance accountability as quickly as possible in order to call the assembly of creditors and take control of the tutors and syndics activity.

The prevention of the debtor's position depravation and defence of creditor interest was carried by an unprejudiced person. He had to be competitive at property administration and business control. This person was called an administrator. The functions of administrator were being developed gradually: in the beginning (in XIX century) the administrator was only the guardian of the property. In Lithuania, administrator was called a jury guardian. He was set by the court before the competition lawsuit began (the court had enough data about the debtor's insolvency). In Uznemune, the court set one or more administrators, who were called tutors. In Lithuania, the jury guardians were set by a district court. The nominated tutor or guardian had to agree and swear. This adjuration had to ensure the detachment, independence from the debtor and creditors, and the honest exercise of functions. The relatives of the debtor could not be jury guardians. According to Uznemune law, a creditor could be a tutor as well as an unprejudiced person, who had the guarantee of honest debtors' property control. Everywhere the requirement of honesty was raised to the guardian. It was allowed to serve as a guardian only once a year. Special knowledge, education and qualifications were not defined by any legal acts. Only the male could be the manager of the competition. In Klaipeda region there was the requirement of age. As usual, the courts chose the advocates for these duties.

The problem, whose interests – the creditors' or the debtors' - were represented by the tutor, had been solved for a long time. He was treated as "temporary manager of competition's mass property, who had the limited rights". According to the France's law, tutor had to represent the creditors as well as debtors. The lawyers of Germany preferred the defence of creditors' interests. To sum up, the tutor had to carry the complete satisfaction of creditors' demands and to defend the insolvent debtors' interests according to the possibilities. The main purpose of the

jury tutor was to look after the property not to be hidden, to determine if it was passive or active according to "a careful master's" standard.

The tutor, who did not managed to carry his duties properly, could be fined. The fine could not be more than a quarter of a salary. One more right as well as duty of the tutor is to plead the court in order to contest the damaging transaction. Even the transactions, which were made 10 years ago, could be contested, in case both of transaction sides knew about the damage for the creditors. If no one knew about the damage, the transaction could be contested during the last two years.

The debtor had to sign, that any part of his property was not and would not be hidden. Otherwise, the penal code could be applied because of malign insolvency. His wife or children could be interrogated, in case the debtor kept hiding. The balance that was given to the court often was approximate, because the tutor could not know all the positions of the balance.

There were no orbicular list of the guardian's rights and duties in the legal acts. If he noticed, that the sum of stated demands is more than half of debtor's property, the competition's board was called. The competition's board had more rights than jury guardian. In Uznemune, the tutor finished his job, when the balance was given to the court. After them, the temporary syndics were stated. These ones were changed by the mandatory syndics, after the certification of creditors' demands. This fluctuation was criticized. Precocious nomination of the guardian should be appreciated. He was nominated at a dash when the debtor appeared insolvent. In this way, the possibility to waste or dispose the property of the insolvent debtor was prevented.

The administration's functions was trusted for more than one person, implementing one the main principles – to except the debtor from the control of his business and property in order to ensure the fairness of the nominated person. The final tasks of the competition were implemented by the board of the competition. The board of the competition was chosen in the assembly of creditors. The competition's board was made of two tutors and president. The members of board were not allowed to buy the requirements of other creditors. The board was treated as a public institution. It means that it had all features of the juridical person: it was able to make the transaction on its own name, represent or guide in insolvency lawsuit in the court, to correspond with the public institutions ant its persons. The board had its office and stamp. It made a function of the issues' salvations.

In case the board could not be elected, its functions were committed to the court. It was suggested to legitimate the commission of board's functions to the guardian. The main functions of competition's board were: the control of the debtor's property; the exaction of the property and debts from the third persons; the evaluation of the property; making a plan of the payment for creditors; making the conclusions about the notification of debtor's insolvency; the control of the actions during all period of competition.

In Uznemune, the board of the competition was not elected. Its functions were made by fixed syndics, who had to represent the interests of the creditors. Syndics' functions were: to sell the debtor's movable and unmovable property, to make a report of the insolvency of the debtor (about the trades, about the exacted recourses in the till, which are laid to pay up with creditors) and give it to the judge – commissar monthly. The board of the competition had the right to decide, which transaction, made by debtor, would be implemented, it had the right to claim for the contesting the transactions, made by the debtor, in case these transactions made any damage to the debtor's creditors. Despite the civil legal acts, the act of the contesting the damaging for creditors debtor's acts was applied and it allowed to contest the transaction which were made even ten years ago, in case it was possible to prove, that the debtor wanted to blemish his creditors, and the creditors did not know any intention about it.

The board of the competition had to finish its work during a year and a half. The decisions could be claimed to the properly district court, in two weeks since the presentation of the decision's copy.

The rights, given to the creditors, were divided to individual (a separate creditor) and collective (the assembly of creditors). The first category of the rights was more meaningful in the

pre-trial stage of the debtor's insolvency. When the procedure of insolvency or bankruptcy was started – the principle of the equality and indiscrimination of creditors was preferred. This principle, in case of multiple creditors, became the main basic of the implementation of all creditors' rights.

Individual rights of creditors could be divided into: the right to proceed the lawsuit of insolvency or bankruptcy; the right to claim; the right to appeal the debtor's transactions; the right to join the already started lawsuit; the right to decide should the debtor's freedom be restricted or not. Individual creditors were divided to two categories: the creditors, whose requirements were ensured by the mortgage (secured creditors), and the creditors, whose requirements were not ensured (unsecured creditors). The mortgage was divided to the hypothec and the pawn. Those, who had the mortgage, were super ordinate to the other creditors.

The majority of the individual rights could be implemented till the first creditors' assembly was called. Later, the implementations of these rights were possible with the condition, the other rights of all creditors were not broken; it means, acting collectively. It was reflected by the adjustment of the creditor's requirements' proportion and implementation of representation of all creditors' principles.

The collective rights were implemented in the assembly of creditors. The main purpose of first assembly was to elect the board of the competition. The right to vote was not given to the debtor or the participants of juridical body. Later, the meetings were called by the board in case the improperly acts or activity of a jury guardian and in the insolvent debtor's financial responsibility was defined by the board of competition. The assembly of creditors had these rights: to appeal the actions of a jury guardian; to check the balance of insolvent debtor's property and obligations; to determine the account's example concerning the satisfaction of creditor's requirements; to determine the format of insolvency (unfortunate, negligent, malign); to determine the terms and the order of the sale of insolvent debtor's property; to check the peace treaty; to get the reports, written by the competition board, about the course of competition.

In Uznemune, the assembly of creditors was not a separate institution. The creditors were called to the assembly by the judge – commissar, in order to present the list of candidates to the temporary syndics. In case, the peace treaty was not signed, the creditors met to sign the agreement of the guild. They elected the main syndic to represent their interests, and paymaster, responsible for all payouts to the creditors. The court gave all reports about the course of the lawsuit; the conclusions of the debtor's abilities to restore its solvency were given to the guild of creditors as well.

One of the purposes of the insolvency notification was to divide the debtor's property to the creditors. In order the property could be divided, it was necessary to cumulate it. The property divided in the competition was called „the mass of competition's property". The debtor's property was considered to be not only its capital, but the whole property, that was mortgaged or transferred for free in ten years, the debtor was declared to be insolvent, in case the debts were larger than half of his property and later the financial status of the debtors did not improve.

According to the Klaipeda region bankruptcy law, „the mass of the competition"was made only by the debtor's property he had till the competition's process started. The property could not contain: the clothes and personal things of the debtor's wedded; half of the furniture and dishes; half of silverware and other flatware; half of carriage, horses and harness; the clothes of the children. „The competition's mass"could not contain the debtor's things, which could not be the object of the court decision's implementation. The borrowed property, used by the debtor (to save, mortgaged or taken to recast), had to be returned to the proper master, after he had proved his possession. The debtor's requirements for the third persons were included to „the competition's mass". In case the damaging transactions were contested, while applying the restitution, the property could be returned to the debtor's property. In case it was not possible to return it in kind, it was necessary to compensate its value.

In Uznemune, the duty to exact and sell the debtor's property was given to the syndics. The way of selling the property (in public competition, helped by exchange broker, or by himself), was chosen by the syndics. It was the presumption that all transactions, made by the debtors in 10 days till the notification of debtor's insolvency, was unfair and could be deleted, in case the unfairness of the other sides was proved.

The competition (insolvency lawsuit) could be finished in three ways: the debtor pays up to its creditors or creditors refuse their requirements (or do not care about it), the peace treaty and the liquidation of the debtor (after the procedure of insolvency).

The lawsuit was no suit, in case the terms, during which the requirements had to be defined, no one of creditors responded, and the creditor, who started the lawsuit refused to exact the debt. The usual end of the competition during the interwar was a peace treaty. In case this treaty could not be confirmed, the debtor was declared insolvent. In Uznemune the peace treaty could be signed at the assembly of majority of creditors, who had no less than ¾ of the court's confirmed requirements' sum. The creditors, whose requirements were ensured by the hypothec or sawn, had no right to vote. The conditions of the treaty were necessary to the confirmed creditors of the competition only. If it was possible, the bankruptcy lawsuit could be sued, the question of peace treaty was not considered. According to the Klaipeda region law, the possibility to make a peace treaty existed during the all process. The usual way to make a peace treaty was to offer the part of the sum to the creditors; the creditors had to refuse the rest part of the sum or to agree to continue the term of paying the debts. When the competition's process was over, all confines of the debtor was deleted. The decision to make a peace treaty obtained for the creditors who did not vote as well. When the court confirmed a peace treaty, the competition was treated as never declared. In case, the peace treaty was not signed, the capital, cumulated during all competition process, was divided.

One of the main principles – the principle of the proportional creditor's requirement's satisfaction – meant, than no one of creditors could try to satisfy his requirements out of turn, in case, the property of the debtor was not big enough to satisfy all requirements. In length of time, it was noticed, that the status of creditors differed, it was not fair to make all creditors equal. As a rule, the creditors, who were the most exposed during the process of competition, were preferred. The legal status of the secured creditors had some singularities as well. In Klaipeda region the German law clearly defined the principle that allowed creditors to satisfy their requirements from the value of the mortgage. Meanwhile, the other part of Lithuania had the collisional regulation: on one hand the legal acts allowed the board of the competition to redeem the collateral property and pay up to the mortgage owner, on the other hand, in the creditor's requirement's queues, among the debts, that should be paid up at first, the debts "ensured by the mortgage" was mentioned as well. The requirements of other creditors were satisfied proportionally.

In case of the return of the rights, the debtors lost because of their insolvency that was called the rehabilitation. Nevertheless, the rehabilitation was impossible in case of the bankruptcy (i.e. criminal case in 1918-1940). In Uznemune, the trader could apply to the court to "return his honour" when all payments of the debts, interests and forfeit were proved. The right to apply for rehabilitation was given even to the subjects that had served its sentence after the bankruptcy. However, the rehabilitation in the main part of Lithuania was not possible in case of the malign bankruptcy. The traders who did not "retrieve the honour" were not allowed to play in the market.

The establishment of the rehabilitation institute was associated with the "fresh start" doctrine, applied to a natural person. In this doctrine the social – economical purposes were preferred to the juridical. The subject implemented all procedures of insolvency, after some time could make business and be fully-fledged participant of the economic relations again.

The administration of the subject, experiencing financial difficulties.

According to the representatives of the legislature, major commercial enterprises with sufficient human and production recourses at their disposition, even in case of disturbance, of payments, with the assistance of their creditors, who take over the management of the enterprise, have potential to restore their solvency, and pay out their creditors. The establishment of the administration was planned neither in Klaipeda region nor in Uznemune, therefore, it was possible only in the remaining parts of Lithuania.

Administration is a body consisting of a debtor and the representatives of the creditors, who accept the offer of the debtor and who are in charge of the debtor's business. The basis of the management is the contract between the debtor and the creditors. The creditors, who had not accepted the offer of the debtor, did not have to observe his contract, they had a right to declare the debtor's insolvent. The administration was defined as a juridical body, though, contrary to the board of the competition, deprived of the features, typical to the court of lower instance. The purpose of the establishment of administration was to improve the financial situation of the debtor instead of liquidating it and also after having paid out, all the creditors, to provide it with the conditions to continue its performance. What was in common with restriction of the capacity of the debtor, forbidding it to use its own property and the supervision and the control of the process was passed over to certain bodies. The administration could be *plain* and *forced*. The basis of the plain administration was the contract between the debtor and the creditors made by their own good will. The forced administration was usually created by the court and based on the request of the majority of creditors and on certain conditions: the debtor had to be a major commercial or industrial enterprise; its headquarters had to be in the capital or in the city, which had an exchange; "the deficit" had to amount to 50 percent.

The right to apply for the establishment of the administration was given exceptionally to creditors. The decision about the application to court the establishment of the administration in Lithuania was usually made by the House of Industry, Commerce and Craft. Its competence also was to make a list of the individuals declared insolvent debtors in commerce.

The cases of establishing of the administration were in the competence of district courts, which had no responsibility to control the legitimacy of the actions of the administration, its performance or demand any accounts. The court dealt with the complaints of the creditors, checked if the conditions of the administration act comply with the law and desirable purposes, determined the term of establishing of the administration.

The administration, consisting of three administrators, had the right to perform all commercial operations, but they had no rights to refuse to observe the contracts, made by the debtor. The administrators bore common responsibility for the harm they made. They were accountable to their creditors for their performance therefore they representing the debtor had to act as the representative of the creditors. Representing the debtor in cases debtor's property, it could act as a plaintiff as well as a defendant in court, though it had the right to give the case over to the debtor. The main purpose of the administration was to restore the solvency of the debtor. For the debtor the moment of the establishing of the administration, had immediate legal consequences: he would lose the right to manage and dispose of his own property. The restriction of the rights of the debtor was less evident than in case of the declaration of his insolvency. The capacity of the debtor was not restricted: he even had the right to make contracts, to get the upkeep from his own property for himself and for his family. On the other hand the debtor had the responsibility to provide with all the information related to the process, give over all material, bookkeeping and documents.

The administration had to observe the decisions, made at the meetings of the creditors. The creditors had the right to get the accounts about the performance of the administration. As well as during the competition process, the rights of the creditors could be divided into individual and collective. Individual creditors could express their demands, even though the terms were not defined. An individual creditor could apply to the administration for the compensation of the harm, but legal investigation of such an argument was dependable on the initiative of the administration. The creditors could get acquainted with the case, the documents

and the books of commerce, though only the conference of the creditors which also resolved the complaints about the performance of the administration had the competence to demand the account or explanation. Any of creditors had the right to put up the question about the end of the administration, appealing to court.

The operation of the administration could be terminated after the purpose to restore the solvency of the enterprise had been fulfilled or after it had been stated, that it was impossible to fulfil the purpose – to restore the solvency. The administration had to terminate its operation after the financial situation of the enterprise improved and it was possible to pay out to the creditors and it could continue its usual activity. In case the administration could not reach its goal, the court had to make the decision "to close" the administration and to initiate the lawsuit of the recognition of the insolvency of the debtor.

In spite of limited applicability of establishment of administration, the fact of this institute determined two different directions in bankruptcy law: liquidation (which purpose was to liquidate an insolvent debtor) and rehabilitation (which purpose – to re-establish solvency of the debtor).

The bankruptcy

The definition of bankruptcy and criminal liability for the activities of the debtor's appeared in the medieval times in two centres: in the cities of Italy, and in the cities, which had the rights of "Hanza" cities. The case of the debtor's insolvency was called a bankruptcy. This definition had the features, related to the debtor's treachery and negligence. However, in case of bankruptcy – the subject had to be a responsible adult person. The juridical body could not be declared as a subject of bankruptcy. Due to the criminal activities, the members of insolvent juridical body's board could be punished as well. Bankruptcy was analyzed as the crime of natural person. It could be *simple* and *malicious.*

The insolvency of a debtor is only one reason of bankruptcy. The court, that judged the lawsuit of insolvency, had the duty to define the sort of insolvency: commercial or non-commercial, unfortunate, negligent or malicious. The debtor could not be punished, till the sort of insolvency was not defined. The institute of bankruptcy was regulated by the penal code, but some rules of law, which regulated simple bankruptcy, was taken from the civil acts.

The main and most important source of the penal acts, during the interwar in Lithuania there was the Penal statute, made in Russia in 1903 and obtained in whole territory of Lithuania. In Klaipeda region the 1871 Penal code of Germany - *Srafgesetzbuch* - was left. Due to the fact, the legal bankruptcy relations were mixed, both – the civil and the penal acts were applied to the institute of bankruptcy.

There were few lawsuits that left from that time, that's why the statistics should be followed. In 1937, 534 persons were sentenced because of malicious bankruptcy, in 1938 – 337, in 1939 – 346. In the general Lithuania's encyclopaedia there are some data, laid by J. Bivainis, about the bankruptcy of the enterprises in 1929 – 1938 (every year from 8 to 171 enterprises).

Simply bankruptcy was the negligent bankruptcy, when the trader's airily actions and the waste of property became a reason of his poverty. The subject of this crime could be a natural person (trader) only. The subject had the duty to order carefully the property he had. The necessary condition for applying the liability was the decision of the court which declared a person to be insolvent.

The waste was treated as the disposition of the property, inconsistent with medium wary and careful owner standard. The examples of the waste: the gambling games, the undue subscription, the buying of pieces of art, even the big outgoings for home and food. The features of inappropriate business management were significant to negligence as well, but it was related with the breach of the main economical rules, that means, try to reach the best results on the cheap. It was not enough to determine the negligence and waste in order to declare the simple bankruptcy: the causality between waste or negligence and insolvency had to be defined. The

debtor could be sentenced to imprisonment if he made this criminal; moreover, the court could forbid trading for 5 years or even termless.

In Uznemune, besides the Penal statute, the French Commercial Code (FCC) was applied as well, in order to regulate the bankruptcy. According this code, the bankruptcy could be treated as a special, properly qualified and punishable case of insolvency. In FCC the conditions of insolvent trader's simple bankruptcy were distinguished – material and procedural. The procedural conditions of insolvent trader's simple bankruptcy: the insolvent trader did not inform about his insolvency the court in three days, defined by the code; having no important reason, he did not come to the court in time, when his property's tutor was set; the trader brought negligently carried account book, etc. All these features could be defined as a negligence, which was proved according to the facts. The imprisonment from a month to two years, publishing this fact, was intended because of the simple bankruptcy by the FCC. The penal code could be applied for the debtor's unfairness as well.

The legal acts of the competition were called *Konkursordnung.* In Klaipeda region the application of penal code was provided for the acts, which were coincident with the content of malicious bankruptcy. These criminal acts were defined in the penal rules. According to the German Penal Code, the bankruptcy was declared and the imprisonment to two years was applied to the debtors, who had wasting the property, participated in gambling games or matches or played in the exchange, wasting the "immoderate sums of the money", sold the mortgaged stocks or goods too cheap, did not carry the account books or destroyed it, and the slub of household could not be determined. The creditor, who was paid to vote positively to the debtor, could be punished as well.

In summary, it could be stated that the simple bankruptcy is the case of negligent insolvency, when the debtor is guilty, but his intentions were not malicious. The punishment of simple bankruptcy could be applied in case of commercial insolvency only, meanwhile the malicious bankruptcy could be declared in both cases – commercial and non-commercial insolvency.

The malicious bankruptcy was a crime, when the insolvent debtor intentionally hid his property, eluding to pay up the debts. All rules of the law were united by the malicious intentions, when the competition was started unnaturally, because the debtor was not really insolvent, but apparently being on the threat of insolvency, he reduced the assets that should be divided to the creditors, increasing his debts or reducing his own property. The necessary condition for the malicious bankruptcy was the malicious acts of the debtor that conditioned the false insolvency of the debtor.

The credit could be the object of other crimes as well. Therefore, having the purpose to determine the unique criminal object, typical to the bankruptcy, the conclusion is made eventually: *the object of bankruptcy is the property of an insolvent debtor – using this property debtor could make some damage to the legal interests of the creditors. It should be put in the mass, which should be divided to the creditors: in case of simple bankruptcy – this property was saved negligently and in case of malicious bankruptcy – it was hidden, wasted or transferred illegally to the third persons*. Herewith, bankruptcy is distinguished from the other cases of frauds or crimes.

III. The process of bankruptcy law in post-war Lithuania

The chapter "About juridical and natural-private persons' insolvency" of the civil code held true till 1940 in Soviet Russia, after Lithuania's becoming a part of USSR. This situation was approached as anomaly of juridical nexus because general economic result was defended in competitive proceeding in lieu of legitimate interests of creditors. The soviet competitive proceeding was invoked in Lithuania. Returning of market economy, collapse of target economy and restitution of Independence permitted the presumption to return to last legitimate system. It is possible to name the period of bankrupt legitimate evolution which was begun in 1992 modern period.

The first bankruptcy law of enterprises was run on the 20th of October, 1992 in Republic of Lithuania. Some principles, concepts, the content of competitive proceeding have changed. The adjustment of private persons' insolvency was eliminated from the law. The facile preparing of the law determined its problematic using that became clear in practice. The first legal proceedings were started only in 1993. It is absolutely clear that creators of the law did not use the historical experience, did not analyzed disadvantages of the bankruptcy law, which had been analyzed till 1940. The examples of unusual to bankrupt law norms could be: the 29th article there the creditors which have pawns were not divided into a separate group of creditors, so, they were subsumed to prerogative creditors; a court had to analyze the insolvency of enterprise and to adopt the decision about bankrupt proceeding starting during very short time – during only 7 days. Awry canons then all terms of creditors' demands are over timed after proceeding's initiating was practiced only in the cause of deliberate bankrupt. The procedure of administrator's imposing was not clear; the demands to his candidature were not described fully. A lot of new juridical acts were accepted in 1994, there were the corrections of the civil code, the law of stock companies. Above mentioned practice and clarified lacks of the bankrupt law kept law's creators at passing of kindly new edition of bankrupt bill. The project of which was introduced in 1996. The law came into force on the 1st of October, 1997. It instituted some innovations into the then bankrupt juridical base. There were legitimate imperative duty of insolvent enterprise's director to report about insolvency and to apply to the court about bankrupt proceeding starting, the expanded rate of subjects who could apply to the court for bankrupt proceeding starting, legitimate committee of creditors, approved procedure of enterprise's rehabilitation; it was planned special payoff foundation to pay to bankrupt enterprise's people which was coordinated with civil principles of law in the practice of payoff with creditors-pawn's possessors. The lacks of this edition of the law were clarified in practice using. The procedure of rehabilitation did not enough guaranteed defence of investigator's interests, the rate of the subjects who could apply to the court for bankrupt proceeding starting was too wide. All these points stimulated passivity of prerogative creditors to defence their own rights. The duplication of liquidation committee and administrator's activities was not purposed.

The enterprise law concerning the restructuring of the Republic of Lithuania was proceeded together with enterprises' bankrupt law in 2001. This law changed the bankruptcy law procedure of rehabilitation. The right of subjects deputized for creditors to apply about bankrupt proceeding starting reversed in 2001. (Let's see the original text). Only bankrupt enterprise liquidator was left instead the liquidation committee. The payoff with creditors was divided into two stages: debt and compound interest/ imposing a fine. The content of insolvency was changed substantially in reaching to enlarge creditors' possibilities. The insolvency of debtor was estimated by two funds (in the basing on the insolvency content as in a lot of states' valid law till 1940); there was suspension of balance and paying. The institution of simplified bankruptcy began to run in 2003; much more possibilities to start bankruptcy proceeding originated to penniless enterprises but some problems were not decided: we are talking about administrator's imposing clearness, judges' equity, insolvent debtor owner and director's responsibility for unrepresented in time application to start bankrupt proceeding and etc.

High impact on the formation of the modern bankruptcy law in Lithuania was put by the application of the European Union Law as well as law application regulations that evolved during the court praxis.

It is possible to make a conclusion about this institution rather both by parts or the whole is not only undeveloped in these aspects but and is in forming stage. This conclusion is based on the evaluation of the insolvency process. But only the conclusions' content of XIX century and modern period is different. The joint of trade and not trade insolvency by common norms was especially topical at that time and now in Lithuania there is more actual natural person's insolvency correction in an enterprise bankrupt situation.

The fundamental theoretical basis of the bankrupt (competitive) law was formed during a long evolutional period. The strongest influence to its formation was not by the state social

system, but mostly under economical state's condition, the development and enlarging of its economy, trade, producing, and business kind. The development of any new legitimate kind must be founded on the three main criterions:

1) Historical analysis in the kind of law or law institution;
2) Modern theory of suitable kinds of the law which is developed in some states with similar economical development;
3) The concrete peculiarities of concrete state's economical development.

This practice allows doing substantial changes in legitimate acts, to reach the creation of well-composed theoretical basis and to keep main principles for laws' creators.

The legislators must observe the fundamental theoretical basis of bankruptcy law during novelizing the main categories of bankrupt and defining the main meanings. The basis formed and being developed in a lot of states because theory, namely can share main concatenations and show events in direct sense.

Conclusions

1. The theoretical basics of the bankruptcy law developed through a long period of time. They were influenced not only by social order, but rather by economical status of the state, the development of its economy, industry and business. In 1918 the political origin of the independent Lithuanian Republic determined reception of the law system from three states: Germany, France, and Russia. Lithuania did not have its own legal regulation; thou had to avoid the vacuum in law. In original states bankruptcy law developed from XIX century. There lots of attempts to develop its own bankruptcy law in Lithuania during the period of 1918-1940, to use the best provisions of unoriginal law, but until soviet occupation Lithuanian legislation did not made it. The main reasons were that in the period of 1918 – 1940 in Lithuanian Republic the most significant attempts were made to promulgate public law. Private law, including regulation of insolvent debtor and creditors legal relations, were not prioritized because of economic reasons and reasons related with national and cultural aspects and tendencies to avoid to transplant foreign law into national legal acts.

2. In case of debtor‘s insolvency the main principles of law came into force: 1) satisfying the claims of creditors in pro rata basic; 2) presumption of expiration of terms of debtors obligations; 3) the principle of stopping executions of the contracts; 4) the removal of the insolvent debtor from the possession of its estate; 5) appointment of the unprejudiced person (so called administrator, trustee, syndic, curator, etc.) to operate the matter. In the first case all systems faced the priority of creditor's claims clause, so some groups of creditors were favoured. The second and the third principles were important to prevent the fraudulent contracts and to give equal chances to all creditors (even to those, who had not right to claim yet) to file the claims. The last ones were due obvious lack of determination of the administrator's competence (qualification and background) in the legal acts. In practice it was compensated by appointment of skilled attorneys at law to administrate the estate of the insolvent debtor. It is supposed, that the one of the reasons of such regulations: - the temporality of the appointment: they were not the subjects working during all insolvency case period. After performance of determined functions they were changed by other subjects: board, syndics, etc.

In the case of insolvency the court could determine one of the several kinds of insolvency: commercial, non-commercial, insolvency in balance basics, insolvency in cash flow basic. In Uznemune (In the left side of the Nemunas River) the competition procedures were applicable to insolvent merchants only. In other part of the Lithuania bankruptcy cases were commenced both for commercial and non commercial activities. Rehabilitation of the debtor was related to „*fresh start"doctrine*, which was applied to individual persons, and the main tasks of which were more social-economical than legal. This procedure showed that bankruptcy was not only the method to „withdraw debts" and meant not only moral „loose of honour" of the trader, but could make negative economic outcome to persons intending to start new business.

The Institute for the establishment of the administration was set in order to refresh the debtor's financial state as well as to avoid some insolvency. However its limited application was

conditioned by a small number of potentially possible to be administrated subjects, and the application only in that part of the Republic of Lithuania that had approved Russian bankruptcy law. In spite of limited applicability of establishment of administration, the fact of this institute determined two different directions in bankruptcy law: liquidation (which purpose was to liquidate an insolvent debtor) and rehabilitational (which purpose – to re-establish solvency of the debtor) ones.

3.During the years 1918-1940 when there was a bad financial state for a debtor in the Republic of Lithuania as one not able to account to creditors in time that could end in three ways: the announcement of insolvency that was followed by the competition case; general bankruptcy; purposeful bankruptcy. The latter two were considered being kinds of crime. The key criterion that distinguished the general and purposeful bankruptcy was the form of the guilt. The carelessness was characteristic to the general bankruptcy or indirect intention meanwhile in the case of the purposeful bankruptcy the form of the guilt could be only the direct guilt. In each case the defence of creditors' interests turned to be the underlying one, and it was related to the insolvent debtor's asset defence. However, the legal outcome and the debtor's liability were directly related to the debtor's honesty and guilt due to the fact that he or his trade enterprise had become insolvent.

4. It is obvious that legislators have not applied the historic experience in the modern bankruptcy law of the Republic of Lithuania as well as they have not analyzed the drawbacks of the bankruptcy law that were discussed until 1940, and that conditioned the of the appearance norms that were not characteristic for the bankruptcy law and that were not powerful in praxis (such as the assign of the creditors, whose requirements are related to the security under the mortgage, to the first level creditors, and the assign of a temporary administrator in the presence of unimplemented conditions in praxis) in the enterprise bankruptcy law in the Republic of Lithuania in 1992. In the European Union there has not formed the bankruptcy law that is regulated by it and that were unified to all the member states. Under the EU legal acts it is sought to regulate only the certain fields that are the most meaningful socially (labour rights in the employer's insolvency case) or economically (the competition peculiarities of the governmental support to the economy subjects) as well as to conform the procedure peculiarities in international bankruptcy cases. Nevertheless the key adjustment of the bankruptcy law is to be left a law object of national state members due to versatile reasons (economic and cultural). The court praxis has contributed not only to the appearance of new legal norms, but it has also encouraged the development of the doctrine of the very bankruptcy law while fulfilling the drawbacks of the legal acts (e.g. through the definition of the purpose and objectives of the bankruptcy institute). The support of the court praxis, the definition of other insolvency (in order to achieve the economic efficiency of the bankruptcy procedure as well as the decrease of the insolvency costs under the indicated legal norm, enabled the faster proceeding of the bankruptcy case), the regulation of process concerning the proceeding of the bankruptcy cases and refusal to proceed them (there has been a possibility to refuse to proceed the bankruptcy case to enterprises that do not possess resources for the reimbursement of the administration and court costs) as well as there has been worked out accountancy priority with creditors, its proportion with the allocation of administration costs (while consolidating the priority of the administration cost payment against any other contributions to any level creditors while not taking into consideration the fact if their requirement rights have been secured with mortgage), etc.

5. The analysis of the bankruptcy law institute development is meaningful not only as one of the sources while preparing the law reform, but also new law acts, as well as developing the doctrine of the bankruptcy law in Lithuania, solving issues that arise in the modern bankruptcy praxis, as after having assessed the application experience of the bankruptcy law it is possible to avoid the mistakes that were characteristic in the past as well as the definition of bankruptcy norms that falsified in the past.

At the end of the dissertation there are provided proposals concerning the elements of the bankruptcy law – development of the doctrine and norms after having applied the outcome of

the analysis concerning the historic bankruptcy law as well as having assessed the factors that stimulate and impact the qualitative development of the bankruptcy law.

LIST OF ACADEMIC PUBLICATIONS

1. Spaičienė J. Legal regulation of simple and fraudulent bancruptcy in Lithuanian Republic in 1918-1940 //Jurisprudencija, 2006 Nr. 11 (89), P. 83-88.
2. Spaičienė J. Administration and preservation of the property of insolvent debtor in Lithuanian Republic in 1918-1940//Jurisprudencija, 2007 Nr. 4 (94), P. 61-66.

MOKSLINIŲ PUBLIKACIJŲ SĄRAŠAS

3. Spaičienė J. Paprastojo ir piktybinio bankroto teisinis reguliavimas Lietuvos Respublikoje 1918-1940 m.//Jurisprudencija, 2006 Nr. 11 (89), P. 83-88.
4. Spaičienė J. Nemokaus skolininko turto administravimas ir išsaugojimas Lietuvos Respublikoje (1918-1940 m.)//Jurisprudencija, 2007 Nr. 4 (94), P. 61-66.

CURRICULUM VITAE

NAME: Jurgita Spaičienė

DATE OF BIRTH: 2nd of March 1975

MARITAL STATUS Married, 2 children: Justina Spaicyte (1997), Nerija Spaicyte (1999).

EDUCATION:
Ph Student of Law (Mykolas Romeris University) from 2003;
Ph Student of Economics (Vytautas Magnus university) in 2002 - 2003;
Master in Law (Vytautas Magnus university) in 2001;
Bachelor in Business Administration (Vilnius University) in 1997.

LANGUAGES:	SPEAKING:	WRITTING:	READING:
English	Excelent	Good	Excelent
Russian	Excelent	Good	Excelent

COMPUTER LITARACY: User of Microsoft Office, Internet programs

WORK EXPERIENCE RECORDS:

01 2004 - till now	Lecturer (legal history) in Mykolas Romeris University;
01 2002- 02 2003,	Lecturer (bankruptcy law) in Vytautas Magnus University;
03 2006 - till now	Lecturer (bankruptcy law) in Kaunas College;
06 2002 - till now	Practicing Advocate, Law office of advocate Jurgita Spaičienė;
12 2003 – till now	Assistant of the Advocate, Law office of advocate Albertas Trumpulis
04 2002 – 12 2003	Lawyer in JSC "Kauno energija";
10 2000 – 04 2002	Manager in LJSC "Selinos dizainas";
05 1998 – 10 2002	Referent in SE "Lietuvos loto".
01 1998 – 05 1998	

AUTHORSHIP: From 2005: practical law seminars (6-8 a.h.) in JSC "Dorevi", Educational centre of State Tax inspectorate under the Ministry of Finance, "Business information centre of Rokiškis", "Business information centre of Šakiai", "Institute of Water regulation", JSC "Juridicalis", Lithuanian Army. *Themes of seminars and papers:* "Contracts. Drafting of contracts", "Security of the conctract enforcement", "The insolvency of the debtor: choices of the creditors", "Bancruptcy of the debtor" "Work with debts. Prevention. Exaction. Bad debts. Litigation" and oth.

SOCIAL ACTIVITIES: Membership in Lithuanian Lawyers Association;
Lecturer in Third Age University.

HOBBIES: Balroom and oriental dances, travelling

CURRICULUM VITAE

VARDAS, PAVARDĖ:	Jurgita Spaičienė
GIMIMO DATA:	1975 m. kovo 2 d.
ŠEIMYNINĖ PADĖTIS:	ištekėjusi, 2 vaikai: Justina Spaičytė (gim.1997), Nerija Spaičytė (gim.1999).
IŠSILAVINIMAS:	Nuo 2003 m. - Mykolo Romerio Universiteto doktorantė (teisė); 2002 - 2003 m. - Vytauto Didžiojo universiteto doktorantė (ekonomika); 2001 m. - Teisės magistras (Vytauto Didžiojo Universitetas); 1997 m. - Vadybos ir administravimo bakalauras (Vilniaus universitetas).

KALBOS:	KALBA:	RAŠYMAS:	SKAITYMAS:
Anglų	Puikiai	Gerai	Puikiai
Rusų	Puikiai	Gerai	Puikiai

KOMPIUTERINĖS ŽINIOS:	Microsoft Office, Internet programos vartotojo lygmenyje

DARBO PATIRTIS:

Nuo 2004 iki dabar	Mykolo Romerio Universiteto lektorė (teisės istorija);
Nuo 2002 iki 2003, nuo 2006 iki dabar	Vytauto Didžiojo Universiteto lektorė-asistentė (bankroto teisė);
Nuo 2002 iki dabar	Kauno kolegijos lektorė (bankroto teisė);
Nuo2003 iki dabar	Praktikuojanti advokatė, Advokatės Jurgitos Spaičienės kontora;
Nuo 2002 iki 2003	Advokato padėjėja, Advokato Alberto Trumpulio kontora;
Nuo 2000 iki 2002;	AB "Kauno energija" juriskonsultė;
Nuo 1998 iki 2002;	UAB "Selinos dizainas"vadybininkė;
Nuo 1998 01 iki 1998 05.	VĮ "Lietuvos loto" referentė.

AUTORINĖ VEIKLA:	Nuo 2005 m.: 6-8 ak. val. praktinio teisės taikymo seminarai UAB "Dorevi", VMI mokymo centre prie Finansų ministerijos, VšĮ "Rokiškio verslo informacijos centre", VšĮ "Šakių verslo informacijos centre", Všį "Vandentvarkos institute", UAB "Juridicalis", Lietuvos kariuomenėje. *Parengtos pranešimų bei seminarų temos*: "Sutartys. Sutarčių sudarymas", "Prievolių įvykdymo užtikrinimas", "Skolininko nemokumas: kreditoriaus veiksmų alternatyvos", "Skolininko bankrotas" "Darbas su skolomis. Prevencija. Išieškojimas. Skolų beviltiškumas. Bylinėjimasis" ir kt.
VISUOMENINĖ VEIKLA:	Lietuvos teisininkų draugijos narė, Trečiojo amžiaus universiteto dėstytoja (teisės istorija).
POMĖGIAI:	Sportiniai ir rytų šokiai, kelionės.

Jurgita Spaičienė

BANKROTO TEISĖS RAIDA LIETUVOS RESPUBLIKOJE

Reziumė

Tiriamoji problema. Bankroto teisės suvienodinimo galimybės ir vystymasis 1918-1940 m. Lietuvos Respublikoje bei galima to laikotarpio bankroto teisės ir kitų veiksnių įtaka šiuolaikinės bankroto teisės raidai. 1918-1940 metais Lietuvos Respublikoje reguliuojant nemokių skolininkų ir jų kreditorių teisinius santykius įvairiose Respublikos dalyse buvo recepuota kelių valstybių bankroto teisė. Tiriamuoju laikotarpiu egzistavo bankroto, konkurso (kaip vienos iš bankroto rūšių), prekybos proceso įstatymų suvienodinimo problema, kuri iki 1940 m. Lietuvoje taip ir nebuvo iki galo išspręsta. Tačiau nepaisant to, kad paveldėtas visuomeninių santykių modelis nebuvo pakeistas kokybiškai nauju, visgi susistemintuose recepuotuose teisės dokumentuose buvo daromos pataisos, užtikrinusios tolimesnį kokybinį bankroto teisės vystimąsi, atitikusį tuometinius socialinius – ekonominius poreikius Lietuvos Respublikoje. Nagrinėjamu laikotarpiu jau buvo aiškūs skolininkų nemokumo, bankroto bei konkurso institutų teisinio sureguliavimo trūkumai, apibrėžtos problemos, moksliniame lygmenyje (lyginamuoju aspektu pasinaudojant kitų valstybių mokslininkų darbais) pasiūlyti jų sprendimo būdai, suformuluotos naujos idėjos bei domimasi kaimyninių valstybių, išgyvenusių analogišką bankroto teisės raidos etapą (pvz., Lenkijos), patirtimi. Darbe, analizuojant bankroto teisės taikymo problemas 1918-1940 m., nagrinėjami trys pagrindiniai to laikotarpio teisės institutai, susiję su skolininko nemokumo paskelbimu: konkursas, administracijos įsteigimas bei bankrotas. Analizuojant 1992 – 2007 m. bankroto teisės raidos Lietuvos Respublikoje laikotarpį, vertinami veiksniai (Europos Sąjungos bei kitų užsienio valstybių teisės įtaka, teismų praktikoje nustatytos teisės taikymo taisyklės, ekonominių, politinių socialinių reiškinių įtaka), įtakoję šios teisės vystimąsi bei konkrečių bankroto normų atsiradimą ir pokyčius. Galiausiai apžvelgiamas istoriškai susiformavusių, taikytų Lietuvos Respublikoje 1918-1940 m. bei kitose valstybėse įgyvendintų bankroto teisės principų realus bei galimas (prognozuojamas) poveikis šiuolaikinės bankroto teisės raidai Lietuvoje.

Darbo aktualumas. Bankroto, konkurso, nemokumo ir panašiai vadinami teisės aktai, kaip taisyklė, pirmiausiai buvo priimti valstybėse, XIX a. – XX a. pradžioje pasiekusiose aukštą ekonominio išsivystymo lygį. Nuo šių aktų taikymo efektyvumo iš dalies priklausė ir priklauso net tam tikri svarbūs atitinkamos valstybės ekonomikos raidos aspektai. Remiantis teisine patirtimi galima suvokti, suprasti ir įvertinti dabartiniu laiku vykstančius teisinius reiškinius, rasti bendrų dėsningumų. Pasak V. Mikelėno, „geras istorijos išmanymas saugo nuo pirmtakų

padarytų klaidų, leidžia geriau suvokti dabartį ir ateitį“, o „norint geriau suprasti šiuolaikinės visuomenės teisinius reiškinius, būtina remtis teisės istorijos žiniomis“. Nuo 1992 m. bankrotą reguliuojantys teisės aktai Lietuvos Respublikoje keičiami ir pildomi pakankamai dažnai. Toks nepastovumas reiškia doktrinos nebuvimą arba tiesiog žinių apie tam tikrų institutų kilmę stoką. Šiuo metu Lietuvoje rengiamasi esminiams pokyčiams, susijusiems su nemokumo teisiniu sureguliavimu, svarstomas nemokumo kodekso ar jam prilyginamo teisės akto parengimo klausimas, atskirai rengiamas fizinių asmenų nemokumą reguliuosiantis teisės aktas. Rengiamasi atlikti ne galiojančių teisės taisyklių sisteminimą, o kokybiškai naujų taisyklių (arba jų rinkinio) sukūrimą, t.y. ne formalią, o materialią kodifikaciją. Vienas iš galimų šaltinių naujų teisės aktų parengimui – seniau galiojusios teisės normos, jų analizė, įtvirtintų principinių nuostatų ištyrimas, atsižvelgiant į iškilusias ir jau išnagrinėtas problemas. Tiriamos teisės įvairovė leistų nustatyti ir išskirti bendrus bankroto teisės bruožus visoms Lietuvos Respublikoje 1918-1940 m. taikytoms teisės sistemoms, bei įvertinti tuo metu galiojusios teisės pritaikomumą šiuolaikinėje bankroto teisėje. „Kodifikacija yra parsminga ir efektyvi tik tada, kai ji yra objektyviai reikalinga“. Objektyvaus reikalingumo kriterijus gali būti nustatytas tik ištyrus paskutiniojo laikotarpio tam tikros teisės šakos ar teisės instituto (šiuo atveju, bankroto) raidą, įvertinus teisės taikymo problemas, bei padarius išvadą, kad pastarųjų nebegalima išspręsti atliekant tik formaliąją kodifikaciją ar pavienių bankroto teisės normų pakeitimus. Įmonių restruktūrizavimo įstatymo normų neefektyvumas, fizinio asmens bankroto (nemokumo) teisinio sureguliavimo nebuvimas – pagrindinės prielaidos esminei bankroto teisės reformai. Bankroto teisės raidos tyrimas aktualus galiojančios teisės patobulinimui: tiek doktrininių aspektų, tiek konkrečių teisės normų požiūriu.

Tyrimo objektas **–** bankroto teisė, t.y. doktrina, teisinės idėjos ir bankroto, konkurso bei gimiringus teisinius su skolininko nemokumu susijusius santykius reguliavę teisės institutai bei atskiros teisės normos, galiojusios Lietuvos Respublikoje 1918-1940 m., bankroto teisės normos galiojusios ir tebegaliojančios Lietuvos Respublikoje nuo 1992 m.

Tyrimo dalykas – bankroto teisės bei atskirų su bankrotu susijusių teisės institutų raida Lietuvos Respublikoje nuo 1918 metų.

Darbo tikslas – išanalizuoti 1918-1940 m. Lietuvos Respublikoje taikytus bankroto teisės institutus bei ištirti bankroto teisės raidą sąlygojusius veiksnius Lietuvos Respublikoje nuo 1918 m. iki 2007 m.

Darbo uždaviniai: apibrėžti bankroto, konkurso, nemokumo sąvokas, atskleisti jų tarpusavio ryšį bei sąvokų vartojimo atitinkamu laikotarpiu ypatumus bei vartojimo pokyčių priežastis; apžvelgti bankroto teisės principų ir šaltinių raidą nuo senovės Romos teisėje atsiradusių atskirų bankroto teisės normų ir pagrindų bei aptarti pirmuosius bankroto teisės šaltinius Vokietijoje,

Rusijoje, Prancūzijoje, kurie vėliau buvo tiesiogiai naudojami kaip Lietuvos Respublikos bankroto teisės dalis nuo 1918 iki 1940 m.; remiantis pirminiais bankroto teisės šaltiniais bei XIX a. pabaigos - XX a. pradžios mokslininkų, nagrinėjusių skolininkų nemokumo, bankroto, konkurso teisės problemas, darbų apibendrinimu, analizuoti bei palyginti Užnemunėje, Klaipėdos krašte, likusioje Lietuvos Respublikos dalyje galiojusias bankroto teisės normas bei atskirus institutus 1918-1940 m. laikotarpiu; atskleisti 1918-1940 m. taikyto administracijos instituto finansinių problemų turinčiam skolininkui ypatumus bei administracijos įsteigimo procedūros santykį su šio laikotarpio konkurso teise, ryšį su šiuolaikine bankroto teise; išnagrinėti skolininko baudžiamosios atsakomybės jo bankroto atveju ypatumus 1918 – 1940 m. Lietuvos Respublikoje pagal visas galiojusias teisės sistemas; apžvelgti šiuolaikinės bankroto teisės vystimosi Lietuvos Respublikoje ypatumus nuo 1992 m. iki 2007 metų; išanalizuoti veiksnius, sąlygojusius bankroto teisės raidą ir bankroto teisės aktų pokyčius nuo 1992 m. bei atsižvelgiant į istorinį bankroto teisės paveldą, pateikti pasiūlymus šiuolaikiniam įstatymų leidėjui.

Ginamieji disertacijos teiginiai. Darbe suformuluotos bei ginamos šios tezės:

1) Bankroto teisės normos, taikytos visoje Lietuvos Respublikos teritorijoje 1918-1940 m. neturėjo vieningos teisės doktrinos, tačiau esminiai principai, taikomi recepuotoje bankroto teisėje buvo bendri.
2) Lietuvos Respublikoje iki sovietinės okupacijos 1940 m. nebuvo sukurtas nacionalinis teisės aktas, reguliuojantis nemokumo teisinius santykius, nes ekonominius – socialinius visuomenės poreikius patenkinamai atitiko recepuota bankroto teisė ir teisės novelizavimui šioje srityje nei teisės mokslininkai, nei įstatymų leidėjai neteikė prioriteto.
3) Lietuvos įstatymų leidėjai po nepriklausomybės atkūrimo 1990 m. priimdami naujus bankrotą reguliuojančius įstatymus bei vėliau vystydami bankroto teisę iš esmės nesinaudojo istorine bankroto teisės taikymo patirtimi, pirmuosius aktus priėmė skubotai, neištyrę jų efektyvumo, o didžiausią įtaką šiuolaikinei bankroto teisės raidai iki šiol darė ne užsienio valstybių bankroto teisė, o Lietuvos Respublikos teismų praktika bei teisinės kultūros ypatumai Lietuvoje.

Darbo naujumas. Darbo mokslinis naujumas pasireiškia tuo, kad Lietuvos teisės moksle pirmą kartą sistemiškai bankroto teisės raidos aspektu nagrinėjami bankroto teisei priklausę institutai (konkursas, skolininko administracija, bankrotas), jų raida, kitų valstybių (Rusijos, Vokietijos, Prancūzijos) bankroto teisės įtaka 1918 – 1940 m. Lietuvos Respublikoje galiojusiai bankroto teisei, tiriami veiksniai, įtakoję bankroto teisės raidą Lietuvos Respublikoje nuo 1992 m. Šiuo metu paskelbtuose darbuose, tyrimuose apie skolininko ir kreditorių santykių teisinį sureguliavimą, atsiradus skolininko nemokumui, pastarųjų santykių istorinės raidos aspektai

pateikiami labai glaustai, neatskleidžiant pagrindinių principų susiformavimo priežasčių bei jų reikšmės bankroto teisės vystimuisi. Iki šiol moksliniu lygiu bankroto teisiniai santykiai, įskaitant veikiančią teisę, nagrinėti minimaliai, o jų raida Lietuvos mokslininkų tyrimų objektu niekada nėra buvę.

Tyrimo praktinė reikšmė. Šio tiriamojo darbo praktinė reikšmė yra tiesiogiai susijusi su mokslinio darbo aktualumu. Tikimasi, kad darbas galėtų būti naudingas ne tik įstatymų leidėjams, pastaruoju metu kuriantiems materialiai naują nemokumo teisinių santykių koncepciją, paremtą jau seniai susiformavusiais bankroto teisės principais, nagrinėjantiems galimybes įvesti fizinių asmenų nemokumo institutą, bet ir teisininkams, istorikams, besidomintiems bankroto teisės atsiradimu ir pritaikymu įvairiose teisinėse sistemose, raida, teisės bei istorijos specialybių studentams.

Tyrimo rezultatų reikšmė. Esminiai mokslinio tyrimo rezultatai paskelbti Mykolo Romerio universiteto mokslo darbų žurnale „Jurisprudencija“. Autorei aktuali atliekamo tyrimo sklaida: darbo tema bei tuo metu gauti rezultatai buvo pristatyti Lietuvos nacionalinės bankroto administratorių asociacijos nariams, rengiantiems pastabas naujiems bankroto bei restruktūrizavimo įstatymų pakeitimo projektams, teikiantiems projektus Vyriausybės įgaliotai institucijai.

Darbo rezultatais remiamasi autorei Mykolo Romerio universitete dėstant “Teisės istorijos” bei “Lietuvos teisės istorijos” disciplinas, rengiant „Bankroto teisės“ modulį bei dėstant „Bankroto teisinį sureguliavimą“ Kauno kolegijoje, vadovaujant studentų kursiniams, baigiamiesiems darbams. Taip pat darbo rezultatai iš dalies panaudojami aiškinant šiuolaikinę bankroto teisę, konsultuojant kreditorius bei bankroto administratorius klausimais, susijusiais su tam tikrų bankroto teisės principų kilme ir esme.

Darbo struktūrą nulėmė suformuluoti uždaviniai: darbą sudaro įvadas, trys dėstomosios dalys, išvados ir pasiūlymai. Pirmoje dalyje apibrėžiamas bankroto ir konkurso sąvokų vartojimas, apžvelgiama bankroto ir konkurso teisės raida nuo pirmųjų šios teisės principų atsiradimo senovės Romos teisėje. Antra disertacijos dalis, skirta bankroto teisei Lietuvos Respublikoje 1918-1940 metais. Trečioje dalyje nagrinėjama šiuolaikinė Lietuvos bankroto teisės raida: vertinamos 1992 m., 1997 m. 2001 m. Įmonių bankroto įstatymų redakcijos bankroto teisės normų pokyčio aspektu, analizuojami veiksniai (Europos Sąjungos teisės aktų, kitų valstybių bankroto teisės, besiformuojančios teismų praktikos įtaka), sąlygoję Lietuvos Respublikos bankroto teisės normų pokyčius, numatomos tendencijos bei rekomenduojama, kokia istorine patirtimi galėtų pasinaudoti įstatymų leidėjas rengiantis materialiai naują nemokumo (bankroto) teisės kodifikaciją.

Darbo metodologija. Darbas buvo rengiamas remiantis teisės doktrinoje suformuluotais metodologiniais pagrindais. Atskleidžiant bankroto teisės bei atskirų jo institutų raidą, pasinaudota istoriniu, loginiu, lyginamosios teisėtyros, sisteminės analizės, kritinės analizės, dokumentų analizės, modeliavimo, asmeninės patirties ir kitais teoriniais bei empiriniais mokslo metodais.

Tyrimo pabaigoje buvo padarytos ***išvados*** ir pateikti ***pasiūlymai***.

1) Teoriniai bankroto teisės pagrindai susiformavo per ilgą teisės evoliucijos periodą: bankroto instituto progresą ir pokyčius labiausiai skatino ekonominiai, ir šiek tiek – politiniai veiksniai, o ne valstybių visuomeninė santvarka. Politinis nepriklausomos Lietuvos Respublikos susiformavimas 1918 m. nulėmė, kad Lietuva, tuo metu neturėjusi savo nacionalinės teisės ir siekdama išvengti teisinio vakuumo, priėmė trijų valstybių (Rusijos, Prancūzijos, Vokietijos) bankroto teisės pagrindus bei bankrotą reguliuojančias teisės normas, iš esmės atskirų teisės aktų ar atskirų skyrių įstatymų kodifikacijose pavidalu originalios kilmės valstybėse susiformavusius dar XIX a. 1918 – 1940 m. laikotarpiu Lietuvos Respublikoje nuo pirmųjų valstybės atkūrimo dienų pagrindinės pastangos buvo nukreiptos politinių institutų sudarymui, t.y. viešosios teisės formavimui. Privatinės teisės institutai, tame tarpe numatantys nemokių skolininkų ir kreditorių teisinių santykių sureguliavimą, nebuvo priskiriami prie prioritetinių tiek dėl ekonominių priežasčių, tiek dėl priežasčių, susijusių su lietuvių teisinės kultūros ypatumais, pasireiškiančiais užsienio valstybių teisės institutų transformavimo į nacionalinę teisę vengimu. Motyvaciją skubiai reformuoti įvairialypę bankroto teisę mažino ir palyginus nedidelis skolininkų nemokumo bylų kiekis. Dėl šių priežasčių visumos iki 1940 m. Lietuvoje nebuvo spėta parengti skolininkų nemokumą reguliuojančio nacionalinio teisės akto.

2) Pagal 1918-1940 m. Lietuvoje galiojusią teisę, pagrindiniais principais konstatavus skolininko nemokumą buvo: a) proporcingo kreditorių reikalavimų patenkinimo principas; b) prievolių įvykdymo terminų suėjimo prezumpcijos; c) sandorių vykdymo sustabdymo principas; d) nemokaus skolininko nušalinimo nuo disponavimo turtu bei nešališko turto administratoriaus, kurio vaidmenį atlikdavo prisiekę rūpintojai, sindikai, kuratoriai, konkurso valdyba, skolininko turtui skyrimas. Visus principus siejo pačio bankroto proceso ekonominio naudingumo doktrina.

3) Keliant konkurso bylą bei vertinant skolininko būklę buvo nustatomos skirtingos nemokumo rūšys: prekybinis, neprekybinis, „neišsigalėjimas“ ir „negalėjimas mokėti“. Užnemunėje konkurso procedūros taikytos tik nemokiems prekybininkams, kai tuo tarpu kitoje Lietuvos dalyje nemokumo bylos galėjo būti keliamos tiek prekybininkams, tiek ne prekybininkams. Reabilitacijos instituto atsiradimas sietas su „naujos pradžios“ *(fresh start)* doktrina, taikyta ir tebetaikoma fiziniams asmenims, kurios tikslas yra labiau socialinis-ekonominis nei teisinis. Reabilitacijos procedūra užtikrino, kad bankrotas nebūtų vien „skolų

nurašymo“ priemonė, ir jo paskelbimas reiškė ne vien moralinį prekybininko „garbės praradimą“, bet ir galėjo sukelti neigiamas ekonomines pasekmes nemokiam skolininkui, ketinusiam pradėti naują verslą. Administracijos įsteigimo institutas, buvo nustatomas siekiant atstatyti skolininko finansinę būklę ir išvengti nemokumo, tačiau jo ribotą taikymą sąlygojo: mažas potencialiai galimų administruoti subjektų kiekis, taikymas tik toje Lietuvos Respublikos dalyje, kuri buvo priėmusi rusų bankroto teisę. Nepaisant riboto panaudojimo, administracijos įsteigimo instituto atsiradimo faktas nulėmė, kad bankroto teisėje atsirado ir išsiskyrė dvi kryptys: likvidacinė (kurios tikslas – likviduoti nemokų skolininką) ir reabilitacinė (kurios tikslas – skolininko mokumo atstatymas). 1918-1940 m. Lietuvos Respublikoje sunki skolininko finansinė padėtis, kuomet jis nebegalėdavo laiku atsiskaityti su kreditoriais, galėjo baigtis trejopai: nemokumo paskelbimu, kurį sekdavo konkurso byla; paprastu bankrotu; piktybiniu bankrotu. Paskutinieji du buvo laikyti nusikaltimais. Pagrindinis kriterijus, skiriantis paprastąjį ir piktybinį bankrotą, buvo kaltės forma. Paprastam bankrotui buvo būdingas neatsargumas bei netiesioginė tyčia, tuo tarpu esant piktybiniam bankrotui kaltės forma galėjo būti tik tiesioginė tyčia. Kiekvienu atveju prioritetine tapdavo kreditorių interesų gynyba, sieta su nemokaus skolininko turto apsauga. Tačiau teisinės pasekmės bei skolininko atsakomybė tiesiogiai sieta su skolininko sąžiningumu ir kalte dėl to, kad jis ar jo prekybos įmonė tapo nemokūs.

4) Akivaizdu, kad įstatymų leidėjai šiuolaikiniuose Lietuvos Respublikos bankroto teisės aktuose istorine patirtimi nesinaudojo, netyrė bankroto įstatymo trūkumų, kurie buvo aptarti dar iki 1940 m., ir tai sąlygojo bankroto teisei nebūdingų ar praktikoje neveikiančių normų (tokių, kaip kreditorių, kurių reikalavimai užtikrinti įkeitimu priskyrimas pirmos eilės kreditoriams, laikinojo administratoriaus skyrimas esant praktikoje neįgyvendinamom sąlygoms) atsiradimą 1992 m. Lietuvos Respublikos Įmonių bankroto įstatyme. Europos Sąjungoje nėra susiformavusi jos reguliuojama bankroto teisė, kuri būtų vieninga visoms valstybėms narėms. ES teisės aktais siekiama sureguliuoti tik tam tikras, labiausiai socialiai (darbuotojų teisės darbdavio nemokumo atveju) ar ekonomiškai (valstybės pagalbos ūkio subjektams, konkurencijos ypatumai) reikšmingas sritis, suderinti tarptautinių bankroto bylų proceso ypatumus, tačiau principinį bankroto teisės sureguliavimą dėl įvairių priežasčių (ekonominių, kultūrinių) paliekant nacionalinės valstybių narių teisės objektu. Teismų praktika efektyviai prisidėjo ne tik prie naujų teisės normų atsiradimo, bet ir paskatino pačios bankroto teisės doktrinos vystimąsi, užpildydama teisės aktų spragas (pvz., apibrėždama bankroto instituto paskirtį ir tikslus). Teismų praktikos pagalba kito nemokumo apibrėžimas (siekiant ekonominio bankroto procedūros efektyvumo bei nemokumo kaštų sumažinimo nustatyta teisės norma įgalino paspartinti bankroto bylos iškėlimą), bankroto bylų iškėlimo ar atsisakymo jas iškelti proceso sureguliavimą (nustatyta galimybė atsisakyti iškelti bankroto bylą įmonėms, neturinčioms lėšų administravimo

ir teismo išlaidoms padengti), buvo išaiškintas atsiskaitymo su kreditoriais eiliškumas, jo santykis su administravimo išlaidų paskirstymu (įtvirtinant administravimo išlaidų apmokėjimo prioritetą prieš bet kokios rūšies išmokas bet kurios eilės kreditoriams, neatsižvelgiant į tai, ar jų reikalavimo teisės užtikrintos įkeitimu) ir kt.

5) Bankroto teisės instituto raidos analizė reikšminga ne tik kaip vienas iš šaltinių rengiant bankroto teisės reformą bei naujus teisės aktus, bet ir plėtojant bankroto teisės doktriną Lietuvoje, sprendžiant šiuolaikines bankroto praktikoje kylančias problemas, nes įvertinus bankroto teisės taikymo patirtį, galima išvengti praeityje išaiškėjusių klaidų bei praktikoje nepasiteisinusių bankroto normų nustatymo.

Disertacijos pabaigoje yra pateikiami pasiūlymai dėl bankroto teisės elementų – doktrinos ir normų tobulinimo, panaudojus istorinės bankroto teisės analizės rezultatus, bei įvertinus veiksnius skatinančius ir veikiančius bankroto teisės kokybinį vystimąsi.

Disertacija baigiama literatūros ir mokslinių publikacijų sąrašu.