

Table of Contents

Volume 1

CHAPTER 1. JURISDICTION

I. OVERVIEW OF THE PROBLEMS IN THE BANKRUPTCY JURISDICTION SCHEME

- § 1:1 Jurisdictional quagmires in bankruptcy cases and proceedings

II. APPLICATION OF THE CASE AND CONTROVERSY DOCTRINE AND PRINCIPLES OF JUSTICIABILITY

- § 1:2 Overview of the case and controversy doctrine and justiciability
§ 1:3 Ripeness requirements
§ 1:4 The restriction on advisory opinions
§ 1:5 Mootness
§ 1:6 Requirement of standing

III. HISTORICAL OVERVIEW AND CONSTITUTIONAL ANALYSIS OF THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984

- § 1:7 Overview of jurisdiction under the Bankruptcy Act of 1898
§ 1:8 Jurisdiction under the Bankruptcy Reform Act of 1978
§ 1:9 The Supreme Court's ruling in *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*
§ 1:10 The Emergency (Interim) Rule
§ 1:11 The grant of subject matter jurisdiction under the Bankruptcy Amendment and Federal Judgeship Act of 1984
§ 1:12 The constitutionality of BAFJA

- § 1:13 The Supreme Court's ruling in *Stern v. Marshall*
- § 1:14 Jurisdictional issues and challenges arising from *Stern v. Marshall*

IV. BANKRUPTCY MATTERS OVER WHICH THE DISTRICT COURT HAS EXCLUSIVE SUBJECT MATTER JURISDICTION

- § 1:15 Overview of exclusive jurisdiction
- § 1:16 Scope of district court's jurisdictional grant over bankruptcy cases
- § 1:17 Jurisdiction over cases with contested debtor eligibility issues
- § 1:18 Utilization of 28 U.S.C.A. § 1334(a) to preempt claims based upon state laws
- § 1:19 Overview of the district court's exclusive jurisdiction over property of the estate
- § 1:20 Practical difficulties in exercising jurisdiction over property located in foreign countries
- § 1:21 Triggering events that result in a loss of exclusive jurisdiction over property
- § 1:22 The bankruptcy court's exclusive subject matter jurisdiction over disputes involving the employment of professional persons
- § 1:23 The *Barton* doctrine: jurisdictional requirement to obtain bankruptcy court approval to sue trustee and related parties in nonbankruptcy court forum

V. CIVIL PROCEEDINGS OVER WHICH THE DISTRICT COURT HAS NONEXCLUSIVE SUBJECT MATTER JURISDICTION

- § 1:24 Defining civil proceedings
- § 1:25 Concurrent jurisdictions over proceedings where other federal courts have been granted exclusive jurisdiction
- § 1:26 Jurisdictional issues involving bankruptcy courts and agencies and the doctrine of primary jurisdiction
- § 1:27 Concurrent jurisdictions with state courts
- § 1:28 The import of distinguishing between proceedings arising in, arising under, or related to a case
- § 1:29 Proceedings arising under Title 11
- § 1:30 Proceedings arising in a case under Title 11

TABLE OF CONTENTS

§ 1:31	Defining the scope of related to jurisdiction
§ 1:32	Related to jurisdiction—Suits based upon prepetition claims held by the debtor
§ 1:33	—Overview of third-party claims
§ 1:34	—Suits against officers and directors
§ 1:35	—Suits against guarantors of the debtor’s obligations
§ 1:36	—Suits against third parties who hold contractual indemnity rights from the debtor
§ 1:37	—Suits against third parties where equitable indemnity claims may be asserted against the debtor
§ 1:38	—Suits against bonding companies
§ 1:39	—Suits against the debtor’s insurer
§ 1:40	—Suits which may enhance or reduce the estate’s assets
§ 1:41	—Suits which may increase, decrease, or effect the claims asserted against the debtor
§ 1:42	—Suits establishing priority of lien rights and claims
§ 1:43	—Suits against purchasers of the debtor’s assets
§ 1:44	Supplemental jurisdiction
§ 1:45	Ancillary jurisdiction

VI. THE ROLE OF THE BANKRUPTCY JUDGE

§ 1:46	Administration of bankruptcy cases and proceedings
§ 1:47	The reference of cases and proceedings to bankruptcy judges
§ 1:48	Effect of reference on prepetition and postpetition lawsuits
§ 1:49	Disputes heard and decided versus disputes heard but not decided
§ 1:50	Core proceedings: defining its parameters
§ 1:51	Core proceedings: determining whether contract claims are core
§ 1:52	28 U.S.C.A. § 157(b)(2)(A)—Matters concerning the administration of the estate
§ 1:53	Core proceedings: 28 U.S.C.A. § 157(b)(2)(B)— Allowance or disallowance of claims, exemption from property, and estimation of claims or interests
§ 1:54	Core proceedings: 28 U.S.C.A. § 157(b)(2)(C)—

- Counterclaims by the estate against persons filing claims
- § 1:55 Core proceedings: 28 U.S.C.A. § 157(b)(2)(D)—
Orders in respect to obtaining credit
- § 1:56 Core proceedings: 28 U.S.C.A. § 157(b)(2)(E)—
Orders to turn over property of the estate
- § 1:57 Core proceedings: 28 U.S.C.A. § 157(b)(2)(F)—
Proceedings involving preferences
- § 1:58 Core proceedings: 28 U.S.C.A. § 157(b)(2)(G)—
Proceedings involving the automatic stay
- § 1:59 Core proceedings: 28 U.S.C.A. § 157(b)(2)(H)—
Proceedings involving fraudulent conveyances
- § 1:60 Core proceedings: 28 U.S.C.A. § 157(b)(2)(I)—
Dischargeability of debts
- § 1:61 Core proceedings: 28 U.S.C.A. § 157(b)(2)(J)—
Objections to discharge
- § 1:62 Core proceedings: 28 U.S.C.A. § 157(b)(2)(K)—
Validity, extent, or priority of liens
- § 1:63 Core proceedings: 28 U.S.C.A. § 157(b)(2)(L)—
Confirmation of plan
- § 1:64 Core proceedings: 28 U.S.C.A. § 157(b)(2)(M)—
Orders approving use or lease of property, use of cash collateral
- § 1:65 Core proceedings: 28 U.S.C.A. § 157(b)(2)(N)—
Orders approving the sale of property
- § 1:66 Core proceedings: 28 U.S.C.A. § 157(b)(2)(O)—
Proceedings affecting the liquidation of assets of the estate or adjustment of debtor-creditor or equity security holder relationships
- § 1:67 Core proceedings: 28 U.S.C.A. § 157(b)(2)(P)—
Recognition of foreign proceedings and other matters under Chapter 15

VII. AUTHORITY OF THE BANKRUPTCY JUDGE

- § 1:68 Statutory grant of authority
- § 1:69 Is the bankruptcy court a court of the United States?
- § 1:70 Inherent authority
- § 1:71 Contempt power
- § 1:72 Procedural aspects of contempt proceeding

TABLE OF CONTENTS

VIII. EFFECT OF DISMISSAL, CASE CLOSURE, DISCHARGE, AND CONFIRMATION ON JURISDICTION

- § 1:73 Effect of dismissal of bankruptcy case on retention of jurisdiction over pending adversary proceedings
- § 1:74 Effect of dismissal on administrative matters and post-dismissal disputes
- § 1:75 Effect of closing of bankruptcy case on retention of jurisdiction over pending adversary proceedings
- § 1:76 Effect of debtor receiving a discharge on retention of jurisdiction over pending adversary proceedings
- § 1:77 Postconfirmation jurisdiction in Chapters 9, 11, and 12 cases

IX. LITIGATION CONSIDERATIONS: STEPS TO OBTAIN ALTERNATIVE FORUM TO RESOLVE BANKRUPTCY COURT DISPUTES

- § 1:78 Methods to seek alternative forums
- § 1:79 Motions to determine core/related nature of proceedings

X. WITHDRAWAL OF A REFERENCE

- § 1:80 Overview of withdrawal of reference
- § 1:81 Discretionary withdrawal
- § 1:82 Mandatory withdrawal
- § 1:83 Procedural issues pertaining to withdrawal of reference
- § 1:84 Stay of proceedings pending disposition of motion
- § 1:85 Appellate review

XI. REMOVAL AND REMAND

- § 1:86 Statutory authority for removal
- § 1:87 Procedure to effectuate removal
- § 1:88 Time periods governing removal
- § 1:89 Procedure following removal
- § 1:90 Process and procedure in removed actions
- § 1:91 Statutory authority for remand

- § 1:92 Remand procedure
- § 1:93 Review of requests for remand

XII. ABSTENTION

- § 1:94 Overview of abstention
- § 1:95 Discretionary abstention
- § 1:96 Mandatory abstention
- § 1:97 Appellate review
- § 1:98 Abstention to permit arbitration

XIII. PROCEDURES FOR JURISDICTIONAL CHALLENGES TO SUBJECT MATTER JURISDICTION

- § 1:99 Overview of subject matter jurisdiction
- § 1:100 Procedural rules applicable to motions to dismiss adversary proceedings for lack of subject matter jurisdiction
- § 1:101 Timing of motion to dismiss for lack of subject matter jurisdiction
- § 1:102 Parties who can bring a motion to dismiss for lack of subject matter jurisdiction
- § 1:103 Distinction between facial and factual motions to dismiss for lack of subject matter jurisdiction
- § 1:104 Procedural rules applicable to motions to dismiss contested matters for lack of subject matter jurisdiction
- § 1:105 Burden of proof and hearing issues in motion to dismiss for lack of subject matter jurisdiction
- § 1:106 Examples where subject matter jurisdiction challenges are properly and improperly raised

XIV. RESTRICTIONS ON THE EXERCISE OF JURISDICTION

- § 1:107 Overview of the *Rooker-Feldman* doctrine
- § 1:108 The application of the *Rooker-Feldman* doctrine in bankruptcy cases
- § 1:109 Overview of international comity
- § 1:110 Application of international comity to bankruptcy proceedings
- § 1:111 Extraterritorial application of U.S. bankruptcy law
- § 1:112 Extraterritorial application of state laws in bankruptcy cases

TABLE OF CONTENTS

XV. SOVEREIGN IMMUNITY

- § 1:113 Overview of sovereign immunity
- § 1:114 Sovereign immunity—Limited abrogation with respect to bankruptcy claims
 - § 1:115 —Issues arising under Bankruptcy Code § 105
 - § 1:116 —Issues arising under § 502
 - § 1:117 —Issues arising under Bankruptcy Code § 542
 - § 1:118 —Issues arising under Bankruptcy Code § 544
 - § 1:119 —Acts constituting waivers
 - § 1:120 —Determining whether a judicial proceeding constitutes a suit against a sovereign
 - § 1:121 —Offset rights
 - § 1:122 —Limitation on types of damages
 - § 1:123 —Procedural issues
 - § 1:124 —Indian tribes

CHAPTER 2. VENUE

I. VENUE OF BANKRUPTCY CASES

- § 2:1 Strategic considerations
- § 2:2 The controlling statute
- § 2:3 Domicile and residence
- § 2:4 Principal place of business and principal assets
- § 2:5 Pending bankruptcy of an affiliate, general partner, or partnership

II. VENUE OF PROCEEDINGS UNDER TITLE 11

- § 2:6 Strategic considerations
- § 2:7 The controlling statute
- § 2:8 Proceedings under § 1409(a)
- § 2:9 Proceedings under § 1409(b)
- § 2:10 Proceedings under § 1409(c)
- § 2:11 Proceedings under § 1409(d)
- § 2:12 Proceedings under § 1409(e)
- § 2:13 Venue of cases ancillary to foreign proceedings

III. MOTIONS TO TRANSFER OR DISMISS CASES AND PROCEEDINGS

- § 2:14 The controlling statutes

- § 2:15 Proceeding before the proper court
- § 2:16 Determining the statute that governs a related proceeding
- § 2:17 Intra-District transfers and intra-division reassignments
- § 2:18 Burdens of proof
- § 2:19 Cases or proceedings filed in an improper venue
- § 2:20 Potential venues where a case or proceeding may be transferred
- § 2:21 Sua sponte transfers
- § 2:22 Preparing the papers
- § 2:23 Appeals
- § 2:24 Forum non conviens

IV. MOTIONS TO TRANSFER BANKRUPTCY CASES

- § 2:25 Statutory standard
- § 2:26 Who must be served?
- § 2:27 Who has standing to be heard?
- § 2:28 Time within which to file the motion
- § 2:29 Determination of transfer motion where petitioner filed in multiple districts
- § 2:30 Effect on pending adversary proceedings

V. MOTIONS TO TRANSFER PROCEEDINGS UNDER TITLE 11

- § 2:31 Overview
- § 2:32 Factors considered
- § 2:33 Motions to transfer a portion of an adversary proceeding
- § 2:34 Motions to transfer venue of contested matters
- § 2:35 Who must be served?
- § 2:36 Time within which to file the motion
- § 2:37 Motions to transfer action pending when bankruptcy case filed
- § 2:38 Conflicting federal venue statutes

VI. CIRCUMVENTING VENUE CONTESTS

- § 2:39 Forum selection clauses
- § 2:40 Venue orders in personal injury and wrongful death cases

TABLE OF CONTENTS

- § 2:41 Obtaining a prepetition order directing where a bankruptcy case or proceeding must be filed
- § 2:42 Obtaining a postpetition order directing where a proceeding must be filed
- § 2:43 Motion to sever a party or claim

CHAPTER 3. SERVICE OF PROCESS AND NOTICES

I. OVERVIEW OF SERVICE OF PROCESS IN ADVERSARY PROCEEDINGS AND CONTESTED MATTERS

- § 3:1 Introduction
- § 3:2 Applicability of Rule 4; Bankruptcy Rule 7004
- § 3:3 Service issues relating to garnishment and enforcement of judgments
- § 3:4 In personam jurisdiction: defendants residing within the United States
- § 3:5 In personam jurisdiction: defendants residing outside of the United States
- § 3:6 Motion to dismiss for lack of personal jurisdiction
- § 3:7 Nationwide service of process
- § 3:8 Time limits for service

II. SERVICE BY FIRST CLASS MAIL

- § 3:9 Introduction
- § 3:10 Service upon an individual
- § 3:11 Service upon an infant or incompetent person
- § 3:12 Service upon a domestic or foreign corporation, partnership, or other unincorporated association
- § 3:13 Service upon the United States or an officer or agency of the United States
- § 3:14 Service upon a state or municipal corporation or other governmental organization
- § 3:15 Service upon an agent of the defendant
- § 3:16 Service upon the debtor
- § 3:17 Service upon the U.S. Trustee

III. ALTERNATIVE FORMS OF SERVICE

- § 3:18 Personal service
- § 3:19 Service by publication

- § 3:20 Service on the debtor and others in a foreign country
- § 3:21 Service of process on an insured depository institution
- § 3:22 Service of process by position or title

IV. CHALLENGING SERVICE OF PROCESS

- § 3:23 Motion to quash service or dismiss complaint
- § 3:24 Disputes over receipt of service by mail

V. NOTICE REQUIREMENTS UNDER BANKRUPTCY RULE 2002

A. GENERALLY

- § 3:25 Introduction

B. TWENTY ONE-DAY NOTICES

- § 3:26 Generally
- § 3:27 Meeting of creditors
- § 3:28 Proposed use, sale, or lease of property outside the ordinary course of business
- § 3:29 Compromise or settlement
- § 3:30 Conversion or dismissal
- § 3:31 Plan modification
- § 3:32 Compensation or reimbursement of expenses
- § 3:33 Claims bar date in Chapter 9 and Chapter 11 cases
- § 3:34 Objections to and hearing of confirmation of Chapter 12 plan
- § 3:35 Objections to confirmation of a Chapter 13 plan

C. ADDITIONAL NOTICE CONSIDERATIONS

- § 3:36 Twenty-eight day notices
- § 3:37 Content of notices
- § 3:38 Notice to equity security holders
- § 3:39 Notice of no dividend
- § 3:40 Other notices
- § 3:41 Addressing notices
- § 3:42 Limiting notices to creditors who filed claims
- § 3:43 Notices to committees
- § 3:44 Notices to the United States

TABLE OF CONTENTS

- § 3:45 Notices to the U.S. Trustee
- § 3:46 Notice by publication
- § 3:47 Orders designating matter of notices
- § 3:48 Caption of notices
- § 3:49 Notices of order for relief in consumer cases
- § 3:50 Notice to a creditor with a foreign address
- § 3:51 Notice of petition for recognition of foreign proceeding and of court's intention to communicate with foreign courts and foreign representatives
- § 3:52 Computing and altering notice periods
- § 3:53 Contesting sufficiency of notice
- § 3:54 Notice traps: sale motions and plans of reorganization
- § 3:55 Notice and service by electronic transmission

CHAPTER 4. DISCOVERY

I. DISCOVERY ISSUES IN BANKRUPTCY CASES

- § 4:1 Pertinent Federal Rules and Bankruptcy Rules
- § 4:2 Discovery prior to the initiation of an adversary proceeding or contested matter
- § 4:3 Applicability of Federal Rules to adversary proceedings and contested matters
- § 4:4 Third party subpoenas
- § 4:5 Discovery disputes
- § 4:6 Expedited discovery
- § 4:7 Extensions of time to respond to discovery
- § 4:8 Location of depositions
- § 4:9 Depositions of counsel
- § 4:10 Discovery from the trustee
- § 4:11 Discovery from the examiner
- § 4:12 Discovery from U.S. Trustee
- § 4:13 Electronic discovery and spoliation of evidence

II. BANKRUPTCY CODE SECTIONS IMPACTING UPON DISCOVERY RIGHTS

- § 4:14 Examination of the debtor under § 343
- § 4:15 Restricted access to hearings
- § 4:16 Restricted access to filings: Business information and defamatory matters

- § 4:17 Restricted access to filings: Personal information
- § 4:18 Restricted access to governmental matters
- § 4:19 Impounding of lists required to be filed by
Bankruptcy Rule 1007
- § 4:20 Disclosure of list of equity security holders
- § 4:21 Turnover of records relating to the debtor's
property or financial affairs under § 542(e)
- § 4:22 Duties imposed upon the debtor
- § 4:23 Requests for information to the trustee, Chapter
11 debtor, and creditors' committee
- § 4:24 The effect of the automatic stay, § 362
- § 4:25 Discovery rights upon recognition of a foreign
proceeding, § 1521(a)(4)

III. EXAMINATIONS UNDER BANKRUPTCY RULE 2004

- § 4:26 Persons who can be examined and conduct the
examination
- § 4:27 Times within which an examination can be
scheduled
- § 4:28 Procedure for obtaining an order for examination
- § 4:29 Location of examination
- § 4:30 Opposing a motion or order for examination
- § 4:31 Obtaining an order to compel attendance
- § 4:32 Scope of examination
- § 4:33 Conduct of the examination
- § 4:34 Consequences of failure to testify or failure to
testify truthfully
- § 4:35 Bankruptcy Rule 2004 examinations where
litigation is pending or subsequently filed
- § 4:36 Utilizing the Bankruptcy Rule 2004 examination
transcript
- § 4:37 Right of appeal

IV. EFFECT OF BANKRUPTCY ON THE ASSERTION OF PRIVILEGES

- § 4:38 Overview
- § 4:39 Attorney-client privilege: Overview of application
of privilege
- § 4:40 Attorney-client privilege: Application of federal or
state privilege law
- § 4:41 Attorney-client privilege: Right of trustee to
control the privilege

TABLE OF CONTENTS

- § 4:42 Attorney-client privilege: Creditors' committee issues
- § 4:43 Attorney-client privilege: Waiver due to third party disclosures or lack of intent for information to remain confidential
- § 4:44 Attorney-client privilege: Crime fraud exception
- § 4:45 Attorney-client privilege: Fee application disclosure issues
- § 4:46 Attorney-client privilege: Express and implied waivers
- § 4:47 Attorney-client privilege: Effect of dissolution or appointment of a liquidating trustee
- § 4:48 Accountant-client privilege
- § 4:49 Privilege against self-incrimination
- § 4:50 Attorney work product privilege
- § 4:51 Joint defense and common interest privileges

CHAPTER 5. ADVERSARY PROCEEDINGS

I. ANALYSIS OF MATTERS CONSTITUTING ADVERSARY PROCEEDINGS

- § 5:1 What is an adversary proceeding?
- § 5:2 Proceedings to recover money or property
- § 5:3 Proceedings to determine the validity, priority, or extent of a lien or other interest in property
- § 5:4 Proceedings to obtain approval of the sale of property owned by the estate and a co-owner
- § 5:5 Proceedings objecting to or revoking a discharge
- § 5:6 Proceedings to revoke an order confirming a plan
- § 5:7 Proceedings to determine the dischargeability of a debt
- § 5:8 Proceedings to obtain an injunction or other equitable relief
- § 5:9 Proceedings to subordinate a claim or interest
- § 5:10 Proceedings to obtain a declaratory judgment
- § 5:11 Proceedings to determine a claim or cause of action removed to the bankruptcy court
- § 5:12 Matters where an objection to a proof of claim is joined with a demand for relief specified in Bankruptcy Rule 7001

II. ANALYSIS OF BANKRUPTCY RULES APPLICABLE TO ADVERSARY PROCEEDINGS

- § 5:13 Generally
- § 5:14 Comparison of the Bankruptcy Rules to the
Federal Rules of Civil Procedure, generally
- § 5:15 Bankruptcy rules applicable to proceedings tried
before the district court
- § 5:16 Rule 1: Bankruptcy Rule 1001—Text of Rules
- § 5:17 —Application of Rules
- § 5:18 Rule 2: no corresponding Bankruptcy Rule—Text
of Rule
- § 5:19 —Inapplicability of Rule
- § 5:20 —Overview of dual law-equity courts and the
creation of the merger rule
- § 5:21 —Inapplicability of the merger rule to
bankruptcy proceedings
- § 5:22 Bankruptcy Rule 7002: no corresponding Federal
Rule—Text of Rule
- § 5:23 —Application of Rule
- § 5:24 Rule 3: Bankruptcy Rule 7003—Text of Rules
- § 5:25 —Application of Rules
- § 5:26 Rule 4: Bankruptcy Rule 7004—Cross-reference
- § 5:27 Rule 5: Bankruptcy Rule 7005—Text of Rules
- § 5:28 —Application of Rules
- § 5:29 Rule 5.1: no corresponding Bankruptcy Rule—
Text of Rule
- § 5:30 —Inapplicability of Rule
- § 5:31 Rule 5.2: Bankruptcy Rule 9037—Text of Rule
- § 5:32 —Application of Rules
- § 5:33 Rule 6: Bankruptcy Rule 9006—Text of Rules
- § 5:34 —Computing and extending time; time for
motion papers
- § 5:35 —Enlargement
- § 5:36 —Reduction
- § 5:37 —Motions—Affidavits
- § 5:38 —Time of service
- § 5:39 —Additional time after service by mail
- § 5:40 —Grain storage facility cases
- § 5:41 Rule 7: Bankruptcy Rule 7007—Text of Rules
- § 5:42 —Application of rules
- § 5:43 Rule 7.1: Bankruptcy Rule 7007.1—Text of Rules

TABLE OF CONTENTS

§ 5:44	—Application of Rules
§ 5:45	Rule 8: Bankruptcy Rule 7008—Text of Rules
§ 5:46	Claims for relief—Consent pleading requirement
§ 5:47	—Consent/implied consent to hear related proceedings
§ 5:48	Consent/implied consent to hear core proceedings
§ 5:49	Effect of non-debtor pleading core counterclaim in related proceeding
§ 5:50	Withdrawal of consent to entry of final order or judgment
§ 5:51	Private rights of action for violation of Bankruptcy Code sections
§ 5:52	Claims for relief—General pleading requirements
§ 5:53	Pleading requirements in light of <i>Twombly</i> and <i>Iqbal</i>
§ 5:54	Constructive trust claims—Restrictions imposed in bankruptcy cases
§ 5:55	Bankruptcy remedies: proceeding by complaint or motion
§ 5:56	Defenses: Form of denials—Pleading issues
§ 5:57	—Defenses of the estate: section 558
§ 5:58	Affirmative defenses: overview
§ 5:59	Affirmative defenses/estoppel—Elements
§ 5:60	—Estoppel based upon prepetition conduct
§ 5:61	—Estoppel based upon postpetition conduct
§ 5:62	—Estoppel defense asserted against government units
§ 5:63	Affirmative defenses/res judicata and collateral estoppel—Elements
§ 5:64	—Prepetition rulings
§ 5:65	—Postpetition rulings
§ 5:66	—Issues arising from plan confirmation
§ 5:67	— —Proof of claim uncontested in bankruptcy case
§ 5:68	Affirmative defenses/statute of limitations— Overview of governing statutes and Bankruptcy Rules
§ 5:69	—Section 546(a)
§ 5:70	—Section 549
§ 5:71	—Section 550
§ 5:72	—Section 727; statute of repose
§ 5:73	—Section 1228

- § 5:74 —Section 1328
- § 5:75 —Section 1144
- § 5:76 —Section 1230
- § 5:77 —Section 1330
- § 5:78 —Section 322
- § 5:79 —Bankruptcy Rule 4004
- § 5:80 —Bankruptcy Rule 4007
- § 5:81 —Statute of limitations on bankruptcy claims
with no express limitation provisions in
bankruptcy statutes and Bankruptcy Rules
- § 5:82 —Equitable tolling
- § 5:83 —Tolling agreements
- § 5:84 —Court ordered extension of limitations periods
- § 5:85 —Effect of § 108
- § 5:86 —Effect of § 108(a)
- § 5:87 —Effect of § 108(b)
- § 5:88 —Effect of § 108(c)
- § 5:89 Affirmative defenses/waiver—Elements
- § 5:90 —Prepetition waivers
- § 5:91 —Postpetition waivers; bankruptcy statutes and
rules addressing waiver
- § 5:92 —Postpetition waivers; waiver of substantive
rights
- § 5:93 Affirmative defenses/setoff and recoupment—As
affirmative defenses and counterclaims
- § 5:94 —Elements of setoff
- § 5:95 —Elements of recoupment
- § 5:96 —Statutory exceptions to exercise of setoff rights
and waiver of setoff rights
- § 5:97 —Court ordered restrictions on setoff rights
- § 5:98 —Defenses and avoiding action and turnover
claims
- § 5:99 —Effect of discharge
- § 5:100 Effect of sale order free and clear of recoupment
rights
- § 5:101 Affirmative defenses/setoff and recoupment—
Effect of failure to file or properly file proof of
claim
- § 5:102 —Effect of plan confirmation
- § 5:103 —Effect of sale order
- § 5:104 —Debtor's setoff rights
- § 5:105 —Postpetition setoff rights
- § 5:106 Affirmative defenses/accord and satisfaction

TABLE OF CONTENTS

§ 5:107	Affirmative defenses/laches
§ 5:108	Affirmative defenses/release
§ 5:109	Affirmative defenses/statute of frauds
§ 5:110	Affirmative defenses/unclean hands
§ 5:111	Affirmative defenses/in pari delicto
§ 5:112	Affirmative defenses/sovereign immunity
§ 5:113	Affirmative defenses/immunity
§ 5:114	Affirmative defenses/advice of counsel
§ 5:115	Affirmative defenses contained in the Bankruptcy Code and Bankruptcy Rules
§ 5:116	Additional matters constituting affirmative defenses
§ 5:117	Effect of failure to deny allegations in complaint
§ 5:118	Rule 9: Bankruptcy Rule 7009—Text of Rules
§ 5:119	—Capacity to sue
§ 5:120	—Pleading fraud with particularity in bankruptcy proceedings
§ 5:121	—Bankruptcy claims that require compliance with Rule 9(b)
§ 5:122	—Bankruptcy claims that do not require compliance with Rule 9(b)
§ 5:123	Rule 10: Bankruptcy Rule 7010—Text of Rules
§ 5:124	—Issues pertaining to the caption
§ 5:125	—Pleading separate claims and transactions
§ 5:126	Rule 11: Bankruptcy Rule 9011—Text of Rules
§ 5:127	—Distinctions between the Rules
§ 5:128	—Signature requirement
§ 5:129	—Implied representations to the court
§ 5:130	—Imposition of sanctions
§ 5:131	—Verification
§ 5:132	—Appellate review
§ 5:133	—Alternative bases for sanction awards— Inherent power of the court and § 105
§ 5:134	— —28 U.S.C.A. § 1927
§ 5:135	—Nonmonetary sanctions
§ 5:136	Rule 12: Bankruptcy Rule 7012—Text of Rules
§ 5:137	—Time to respond to pleadings
§ 5:138	—Rule 12(b) issues in adversary proceedings
§ 5:139	—Rule 12(b)(6) issues
§ 5:140	—Consent pleading requirements
§ 5:141	—Special or limited appearances
§ 5:142	—Authority of bankruptcy judge to dismiss proceeding

- § 5:143 Rule 13: Bankruptcy Rule 7013—Text of Rules
- § 5:144 —Issues involving compulsory counterclaims
- § 5:145 —Issues involving permissive counterclaims
- § 5:146 —Prevailing nondebtor counterclaimant
- § 5:147 —Counterclaims against the United States
- § 5:148 —Counterclaims, cross claims, and jurisdictional considerations
- § 5:149 Rule 14: Bankruptcy Rule 7014—Text of Rules
- § 5:150 —Jurisdictional considerations
- § 5:151 Rule 15: Bankruptcy Rule 7015—Text of Rules
- § 5:152 —Amendments and relation back of amendments
- § 5:153 —Amendments to conform to the evidence
- § 5:154 —Supplemental pleadings
- § 5:155 Rule 16: Bankruptcy Rule 7016—Text of Rules
- § 5:156 —Pretrial conference objectives
- § 5:157 —Scheduling order issues
- § 5:158 —Pretrial conference considerations in adversary proceedings
- § 5:159 —Defining the issues in the pretrial order
- § 5:160 —Sanctions for failure to comply with scheduling and pretrial order
- § 5:161 —Determinations by bankruptcy court
- § 5:162 Rule 17: Bankruptcy Rule 7017—Text of Rules
- § 5:163 —Real party in interest issues
- § 5:164 —Capacity to sue
- § 5:165 —Exception to rule
- § 5:166 Rule 18: Bankruptcy Rule 7018—Text of Rules
- § 5:167 —Joinder of claims
- § 5:168 —Joinder of remedies
- § 5:169 Rule 19: Bankruptcy Rule 7019—Text of Rules
- § 5:170 —Distinctions between rules
- § 5:171 —Joinder issues
- § 5:172 —Dismissal issues
- § 5:173 Rule 20: Bankruptcy Rule 7020—Text of Rules
- § 5:174 —Permissive joinder issues
- § 5:175 —Separate trials
- § 5:176 Rule 21: Bankruptcy Rule 7021—Text of Rules
- § 5:177 —Misjoinder issues
- § 5:178 Rule 22: Bankruptcy Rule 7022—Text of Rules
- § 5:179 —Interpleader issues
- § 5:180 Rule 23: Bankruptcy Rule 7023—Text of Rules

TABLE OF CONTENTS

§ 5:181	—Prerequisites to a class action and certification of class
§ 5:182	The authority of bankruptcy courts to preside over a class action of debtors
§ 5:183	Rule 23: Bankruptcy Rule 7023—Overview
§ 5:184	—Class action proceedings involving avoiding action claims
§ 5:185	—Proceedings against lenders for abusive practices
§ 5:186	—Proceedings brought by the debtor to address multiple claims
§ 5:187	—Class action objections to dischargeability of debts
§ 5:188	—Settlements
§ 5:189	—Attorney’s fees awards
§ 5:190	—Appeals
§ 5:191	Rule 23.1: Bankruptcy Rule 7023.1—Text of Rules
§ 5:192	—Standing issues
§ 5:193	—Settlement issues
§ 5:194	Rule 23.2: Bankruptcy Rule 7023.2—Text of Rules
§ 5:195	—Applicability
§ 5:196	—Settlement issues
§ 5:197	Rule 24: Bankruptcy Rule 7024—Text of Rules
§ 5:198	—Intervention as of right—Statutory right of intervention
§ 5:199	— —Intervention to protect rights or interests
§ 5:200	—Permissive intervention
§ 5:201	—Procedural issues
§ 5:202	Rule 25: Bankruptcy Rule 7025—Text of Rules
§ 5:203	—Death or elimination of a party
§ 5:204	—Incompetency of a party
§ 5:205	—Transfer of an interest
§ 5:206	Rules 26 to 37: Bankruptcy Rules 7026 to 7037—Cross-reference
§ 5:207	Rules 38 to 39: Bankruptcy Rule 9015—Text of Rules
§ 5:208	—Jury trial demand
§ 5:209	—Jury trial waiver
§ 5:210	—Consent to have bankruptcy judge preside over jury
§ 5:211	Rule 40: Bankruptcy Rule 7040—Text of Rules

- § 5:212 —Trial calendaring issues
- § 5:213 Rule 41: Bankruptcy Rule 7041—Text of Rules
- § 5:214 —Voluntary dismissals
- § 5:215 —Dismissal of complaints objecting to discharge
- § 5:216 —Involuntary dismissals
- § 5:217 —Effect of dismissal of bankruptcy case on
adversary proceeding
- § 5:218 Rule 42: Bankruptcy Rule 7042—Text of Rules
- § 5:219 —Consolidation issues
- § 5:220 —Separate trials of claims
- § 5:221 Rule 43: Bankruptcy Rule 9017—Text of Rules
- § 5:222 —Trial testimony
- § 5:223 —Evidence on motions
- § 5:224 —Interpreters
- § 5:225 Rule 44: Bankruptcy Rule 9017—Text of Rules
- § 5:226 —Applicability of Rules
- § 5:227 Rule 44.1: Bankruptcy Rule 9017—Text of Rules
- § 5:228 —Determination of foreign law issues
- § 5:229 Rule 45: Bankruptcy Rule 9016—Text of Rules
- § 5:230 —Issues
- § 5:231 Rule 46: Bankruptcy Rule 9026—Text of Rules
- § 5:232 —Assertion of position
- § 5:233 Rules 47 to 51: Bankruptcy Rule 9015—Text of
Rules
- § 5:234 —Jury trial rules
- § 5:235 Rule 52: Bankruptcy Rule 7052—Text of Rules
- § 5:236 —Findings and conclusions of law requirements
- § 5:237 —Amendments to findings and conclusions of
law
- § 5:238 Rule 53: no corresponding Bankruptcy Rule—
Text of Rule
- § 5:239 Bankruptcy Rule 9031: inapplicability of Rule
- § 5:240 Rule 54: Bankruptcy Rule 7054—Text of Rules
- § 5:241 —Judgments
- § 5:242 —Allowance of costs
- § 5:243 —Procedural issues for bill of costs
- § 5:244 —Recovery of prejudgment interest
- § 5:245 —Recovery of postjudgment interest
- § 5:246 Section 506(b) interest considerations
- § 5:247 Rule 54: Bankruptcy Rule 7054—Interest on
administrative expense claims
- § 5:248 —Authority to recover fees
- § 5:249 —Pleading requirement for fees

TABLE OF CONTENTS

§ 5:250	—Contractual right to recover fees
§ 5:251	—Section 506(b) fee considerations
§ 5:252	—Record keeping requirements for fees
§ 5:253	—Allowance of attorney’s fees
§ 5:254	—Revision of orders
§ 5:255	Rule 55: Bankruptcy Rule 7055—Text of Rules
§ 5:256	—Entry of defaults and default judgments
§ 5:257	—Default judgments and fresh start considerations
§ 5:258	—Authority of bankruptcy judge to enter default judgment in related proceeding
§ 5:259	Setting aside a default or default judgment
§ 5:260	Rule 56: Bankruptcy Rule 7056—Text of Rules
§ 5:261	—Procedural issues and evidentiary presumptions
§ 5:262	Rule 57: no corresponding Bankruptcy Rule—Text of Rule
§ 5:263	—Authority of bankruptcy judges to enter declaratory judgments
§ 5:264	Rule 58: Bankruptcy Rule 7058—Text of Rules
§ 5:265	Rule 58: Bankruptcy Rule 9021—Separate document requirement
§ 5:266	Rule 58: Bankruptcy Rule 7058—Extension of time to appeal due to noncompliance
§ 5:267	—Effect of lack of compliance on appeals
§ 5:268	Rule 59: Bankruptcy Rule 9023—Text of Rules
§ 5:269	—Procedural issues
§ 5:270	—Effect on time to file appeal
§ 5:271	—Related proceeding issues
§ 5:272	Rule 60: Bankruptcy Rule 9024—Text of Rules
§ 5:273	—Exceptions to Rule 60
§ 5:274	—Special bankruptcy considerations
§ 5:275	—Authority to relieve a party from a final order under Bankruptcy Rule 9024
§ 5:276	—Authority to relieve a party from an interlocutory order
§ 5:277	—Issues where challenges to order served by publication
§ 5:278	—Appellate issues
§ 5:279	Rule 61: Bankruptcy Rule 9005—Text of Rules
§ 5:280	—Application of Rules
§ 5:281	Rule 62: Bankruptcy Rule 7062—Text of Rules
§ 5:282	—Application and exceptions to stay proceedings to enforce a judgment

- § 5:283 —Inapplicability of stay of proceedings to enforce judgment to most contested matters
- § 5:284 —Contested matters subject to stay of proceedings to enforce judgment
- § 5:285 —Stay of orders involving injunctions
- § 5:286 —Stays and supersedeas bonds
- § 5:287 Rule 62.1: No corresponding bankruptcy rule—Text of Rule
- § 5:288 Rule 62.1: No corresponding bankruptcy rule—Application in bankruptcy cases
- § 5:289 Rule 63: Bankruptcy Rule 9028—Text of Rules
- § 5:290 —Application in bankruptcy cases
- § 5:291 Rule 64: Bankruptcy Rule 7064—Text of Rules
- § 5:292 —Enforcement of prejudgment remedies
- § 5:293 Rules 65 and 65.1: Bankruptcy Rules 7065 and 9025—Cross-reference
- § 5:294 Rule 66: no corresponding Bankruptcy Rule—Text of Rule
- § 5:295 —Restriction on appointment in bankruptcy cases
- § 5:296 —Appointment of receivers in adversary proceedings
- § 5:297 —Appointment of receivers in bankruptcy cases
- § 5:298 Rule 67: Bankruptcy Rule 7067—Text of Rules
- § 5:299 —Application of Rules
- § 5:300 Rule 68: Bankruptcy Rule 7068—Text of Rules
- § 5:301 —Application of Rules
- § 5:302 —Conflict with Bankruptcy Rule 9019
- § 5:303 Rule 69: Bankruptcy Rule 7069—Text of Rules
- § 5:304 —Application of Rules
- § 5:305 —Effect of automatic stay on enforcement of judgment
- § 5:306 —Authority of court to issue writs after case is closed
- § 5:307 —Jurisdictional issues related to bankruptcy court's issuance of writs of execution and garnishment orders
- § 5:308 —Issues pertaining to service of process for orders pertaining to supplementary proceedings
- § 5:309 —Enforcement of judgments against judgment debtors in different locales
- § 5:310 —Ability of creditor of creditor of debtor to garnish claim distribution
- § 5:311 Rule 70: Bankruptcy Rule 7070—Text of Rules

TABLE OF CONTENTS

§ 5:312	—Application of Rules
§ 5:313	Rule 71: Bankruptcy Rule 7071—Text of Rules
§ 5:314	—Application of Rules
§ 5:315	Rules 71.1 to 73: no corresponding Bankruptcy Rules—Overview
§ 5:316	Rule 77: Bankruptcy Rules 5001 and 9022—Text of Rules
§ 5:317	—Courts open for filing
§ 5:318	Bankruptcy Rule 5001—Proceedings in court and chambers
§ 5:319	—Clerk’s office
§ 5:320	Bankruptcy Rule 9022—Clerk’s duty to serve notice of entry of order
§ 5:321	—Effect of lack of notice on time to appeal
§ 5:322	—Notice of judgments or orders entered by district judge
§ 5:323	Rule 78: no corresponding Bankruptcy Rule—Text of Rule
§ 5:324	—Oral arguments
§ 5:325	Rule 79: Bankruptcy Rule 5003—Text of Rules
§ 5:326	—Docket entries and index
§ 5:327	Rule 80: Bankruptcy Rule 5007(c)—Text of Rules
§ 5:328	—Transcript and transcript fees
§ 5:329	—Admissibility of sound recording and transcript
§ 5:330	Rule 81: Bankruptcy Rule 9027(g)—Text of Rules
§ 5:331	—Applicability of Rules limited by Bankruptcy Rules
§ 5:332	Rule 82: Bankruptcy Rule 9030—Text of Rules
§ 5:333	—Application of Rules
§ 5:334	Rule 83: Bankruptcy Rule 9029—Text of Rules
§ 5:335	—Local Bankruptcy Rules
§ 5:336	—Bankruptcy judge’s rules
§ 5:337	Rule 84: Bankruptcy Rule 9009—Text of Rules
§ 5:338	—Application of Rules
§ 5:339	Rule 85: Bankruptcy Rule 1001—Text of Rules
§ 5:340	—Application of Rules
§ 5:341	Rule 86: Bankruptcy Rule 9032—Text of Rules
§ 5:342	—Application of Rules
§ 5:343	Bankruptcy Rule 7087: no corresponding Federal Rule—Text of Rule
§ 5:344	—Venue

III. PROCEDURE FOR OBTAINING REVIEW OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN RELATED PROCEEDINGS

- § 5:345 Overview of related proceedings and Bankruptcy Rule 9033
- § 5:346 Service of findings of fact and conclusions of law
- § 5:347 Time requirements governing objections
- § 5:348 Extension of time to file objections
- § 5:349 Review by district court
- § 5:350 Appellate issues

IV. SETTLEMENTS

- § 5:351 Court approval requirement
- § 5:352 Standing to bring motion
- § 5:353 Preparing the motion
- § 5:354 Notice requirements
- § 5:355 Court approved procedures for compromising controversies
- § 5:356 Approval of compromise via plan process
- § 5:357 Standards for approval of compromise
- § 5:358 Objections to motions to compromise and hearings
- § 5:359 Standing to object to settlements
- § 5:360 Special issues arising in settlements—De facto plan
 - § 5:361 —Cash payments to unsecured creditors
 - § 5:362 —Cash payments to secured creditors
 - § 5:363 —Settlement of § 727 claims
 - § 5:364 —Release of third party claims
 - § 5:365 —Injunctions
 - § 5:366 —Structured dismissals
- § 5:367 Contract interpretation issues
- § 5:368 Effect of conversion
- § 5:369 Res judicata effect of settlement
- § 5:370 Appellate issues
- § 5:371 Enforcement of settlement agreement

V. ARBITRATION

- § 5:372 The competing policies to enforce arbitration clauses and centralize bankruptcy proceedings

TABLE OF CONTENTS

- § 5:373 The enforcement of arbitration clauses in related proceedings
- § 5:374 The enforcement of arbitration clauses in core proceedings
- § 5:375 Factors to be considered when enforcement of arbitration clause is sought
- § 5:376 Enforcement of arbitration clauses in international agreements
- § 5:377 Enforcement of statutory arbitration rights
- § 5:378 Consensual agreements to arbitrate
- § 5:379 Procedural steps where arbitration rights contested

VI. STANDING

- § 5:380 General principles involving standing
- § 5:381 Chapter 7 trustee standing
- § 5:382 Chapter 7 debtor standing
- § 5:383 Chapter 11 debtor-in-possession standing
- § 5:384 Chapter 11 trustee standing
- § 5:385 Chapter 12 trustee standing
- § 5:386 Chapter 12 debtor standing
- § 5:387 Chapter 13 trustee standing
- § 5:388 Chapter 13 debtor standing
- § 5:389 Derivative standing for creditors' committees, creditors, and other parties in interest
- § 5:390 Standing of estate representative under § 1123(b)(3)
- § 5:391 Standing as assignee of claims assigned by the estate
- § 5:392 Standing as assignee of third party claims assigned to the estate or estate representative
- § 5:393 Standing to assert § 506(c) claims
- § 5:394 Standing to assert § 510(c) claims
- § 5:395 Standing to assert § 523 claims
- § 5:396 Standing to assert § 727 claims
- § 5:397 Standing to assert alter-ego claims
- § 5:398 Standing to intervene in adversary proceedings
- § 5:399 Standing to pursue abandoned or unasserted claims
- § 5:400 Standing to assert breach of fiduciary duty claims
- § 5:401 Standing to assert alter ego claims

VII. RESOLUTION OF CONFLICT OF LAW ISSUES

- § 5:402 Conflict of law rules applied on state law-based claims
- § 5:403 Conflict of law rules applied on federal law-based claims
- § 5:404 Procedural considerations

CHAPTER 6. CONTESTED MATTERS

I. PROCEEDINGS IN BANKRUPTCY

- § 6:1 Overview
- § 6:2 Administrative proceedings
- § 6:3 Administrative proceedings: judicial review of acts of the United States Trustee
- § 6:4 Adversary proceedings
- § 6:5 Contested matters
- § 6:6 Effect of improperly initiating contested matter as adversary proceeding and vice versa

II. WHAT IS A CONTESTED MATTER?

- § 6:7 Overview
- § 6:8 Contested matters initiated by motion
- § 6:9 Proceedings designated in the Bankruptcy Rules as contested matters
- § 6:10 Proceedings initiated by motion
- § 6:11 Proceedings initiated by objections
- § 6:12 Proceedings initiated by application
- § 6:13 Proceedings initiated by plan

III. PROCEDURAL ASPECTS OF CONTESTED MATTERS

- § 6:14 Preparing the moving papers
- § 6:15 Serving the moving papers
- § 6:16 Notice requirements
- § 6:17 Notice pitfalls: executory contracts
- § 6:18 Procedural issues involving assumption of executory contracts where assumption amount disputed
- § 6:19 Ex parte procedures and expedited relief

TABLE OF CONTENTS

§ 6:20	Restrictions on expedited relief
§ 6:21	Retroactive relief
§ 6:22	Preparing the opposition papers
§ 6:23	Withdrawal of motion
§ 6:24	Preparing the reply brief
§ 6:25	Overview of procedural rules applicable to contested matters
§ 6:26	Discovery
§ 6:27	Requests to continue a hearing
§ 6:28	Relief granted without a hearing
§ 6:29	Hearings on contested matters
§ 6:30	Entry of judgment
§ 6:31	Recovery of attorneys' fees and costs

IV. STANDING AND INTERVENTION RIGHTS IN CONTESTED MATTERS

A. STANDING

§ 6:32	General principles involving standing
§ 6:33	Chapter 7 trustee standing
§ 6:34	Chapter 7 debtor standing
§ 6:35	Chapter 11 debtor in possession standing
§ 6:36	Chapter 11 trustee standing
§ 6:37	Chapter 12 trustee standing
§ 6:38	Chapter 12 debtor standing
§ 6:39	Chapter 13 trustee standing
§ 6:40	Chapter 13 debtor standing
§ 6:41	U.S. Trustee standing
§ 6:42	Derivative standing for creditors' committees, creditors, and other parties in interest
§ 6:43	Standing of parties in interest to appear and be heard
§ 6:44	Standing limitations on parties in interest to raise certain issues

B. INTERVENTION RIGHTS

§ 6:45	Permissive intervention
§ 6:46	Intervention by attorney general of a state
§ 6:47	Intervention by Secretary of the Treasury of the United States and states in Chapter 9 cases
§ 6:48	Intervention by labor unions on plan issues
§ 6:49	Service of intervention motions

C. PARTICULAR ENTITIES' RIGHT TO BE HEARD

- § 6:50 Right of government entities to be heard in railroad reorganizations
- § 6:51 Right of Commodity Futures Trading Commission to be heard in a commodity broker liquidation
- § 6:52 Right of Board of Governors of the Federal Reserve System and a federal reserve bank to be heard in a clearing bank liquidation
- § 6:53 Right of Securities and Exchange Commission to be heard in a Chapter 11 case

Volume 2

CHAPTER 7. INJUNCTIVE RELIEF

I. JURISDICTIONAL AUTHORITY TO ISSUE INJUNCTIONS

- § 7:1 Overview of injunctions
- § 7:2 Jurisdictional authority: 28 U.S.C.A. § 1334(a), (b)
- § 7:3 Jurisdictional authority in core proceedings: 28 U.S.C.A. § 157(b)(2)
- § 7:4 Jurisdictional authority in related proceedings: 28 U.S.C.A. § 157(c)(1), (2)

II. LEGISLATIVE INJUNCTIONS

- § 7:5 Overview of legislative injunctions
- § 7:6 Automatic stay: § 362
- § 7:7 Discharge injunction: § 524(a)(2), (3)

III. STATUTORY AUTHORITY TO ISSUE INJUNCTIONS

- § 7:8 Overview of statutory authority
- § 7:9 Enjoining negligent or fraudulent petition preparers: § 110(j)(2)(A), (j)(2)(B)(3)
- § 7:10 Enjoining asbestos claims in conjunction with confirmation order: § 524(g)
- § 7:11 Enjoining improper acts by debt relief agencies: § 526(c)(5)(A)
- § 7:12 Enjoining acts upon filing petition for recognition: § 1519(e)

TABLE OF CONTENTS

- § 7:13 Enjoining acts upon recognition of a foreign proceeding: § 1521(e)
- § 7:14 Section 105(a)—Generally
- § 7:15 —Relief consistent with other statutes in Title 11
- § 7:16 —Prohibition on creating substantive rights
- § 7:17 —Utilizing § 105 to “fill the gaps”
- § 7:18 —Addressing statutory time limits, Bankruptcy Rules, and procedural issues
- § 7:19 —Preventing interference with the administration of the estate or previously issued orders
- § 7:20 —Authority to enjoin state court proceedings
- § 7:21 —Waiver of relief
- § 7:22 Effect of 28 U.S.C.A. § 959(a) on postpetition claims

IV. EFFECT OF FEDERAL STATUTES LIMITING A COURT’S AUTHORITY TO ENJOIN PROCEEDINGS

- § 7:23 Overview of statutes limiting injunction authority
- § 7:24 26 U.S.C.A. § 7421(a): Tax Anti-Injunction Act
- § 7:25 12 U.S.C.A. § 1818(i)(1): Federal Reserve System
- § 7:26 12 U.S.C.A. § 1821(j): Federal Deposit Insurance Corporation
- § 7:27 29 U.S.C.A. § 104: Norris-LaGuardia Act
- § 7:28 Effect of 28 U.S.C.A. § 959(b)

V. PROCEDURAL REQUIREMENTS FOR OBTAINING INJUNCTIVE RELIEF

- § 7:29 Overview of procedural requirements
- § 7:30 Procedure for obtaining relief for a violation of the automatic stay
- § 7:31 Procedure for obtaining relief for a violation of an order of discharge
- § 7:32 Requirement to file complaint
- § 7:33 Temporary restraining order
- § 7:34 Standard for issuance of a traditional preliminary injunction
- § 7:35 Standard for preliminary injunction when there is statutory authority to issue an injunction
- § 7:36 Standard for § 105 preliminary injunctions
- § 7:37 Burden of proof
- § 7:38 Notice requirements

- § 7:39 Findings and injunction order
- § 7:40 Bonding requirements
- § 7:41 Effect of dismissal of adversary proceeding
- § 7:42 Obtaining relief other than by adversary proceeding
- § 7:43 Obtaining injunctive relief through a plan
- § 7:44 Enforcing an injunction order

VI. LITIGATION CONSIDERATIONS

- § 7:45 Checklist
- § 7:46 Asset freezes
- § 7:47 Appeals

VII. REQUESTS FOR INJUNCTIVE RELIEF: FREQUENTLY LITIGATED SUBJECTS

A. ENJOINING PROCEEDINGS RELATING TO THE AUTOMATIC STAY

- § 7:48 Overview
- § 7:49 Enjoining actions against third parties or property that have direct consequences to the debtor or estate
- § 7:50 Reimposition of the automatic stay
- § 7:51 Overview of proceedings excluded from the stay
- § 7:52 Enjoining criminal proceedings against the debtor
- § 7:53 Overview of governmental proceedings excluded from the stay
- § 7:54 Lawsuits or administrative proceedings
- § 7:55 Administrative actions

B. PRELIMINARILY ENJOINING CLAIMS AGAINST THIRD PARTIES

- § 7:56 Overview
- § 7:57 Jurisdictional authority to enjoin third party claims against third parties
- § 7:58 Enjoining third party claims that will deplete assets to fund a plan
- § 7:59 Enjoining third party claims that will divert management from formulating a plan
- § 7:60 Enjoining third party suits that may result in significant indemnity obligations for the debtor
- § 7:61 Enjoining third party suits that dissipate insurance coverage

TABLE OF CONTENTS

- § 7:62 Enjoining third party suits against defendants against whom the estate holds claims
- § 7:63 Enjoining third party claims that raise collateral estoppel issues
- § 7:64 Enjoining third party claims that threaten the discharge process

C. PERMANENTLY ENJOINING CLAIMS AGAINST THIRD PARTIES

- § 7:65 Overview
- § 7:66 Jurisdictional authority to permanently enjoin third party claims against third parties
- § 7:67 Enjoining third party claims against third parties in plans of reorganization
- § 7:68 Enjoining third party claims against third parties through exculpation clauses in plans of reorganization
- § 7:69 Enjoining third party claims against third parties in settlement agreements

D. ADDITIONAL INJUNCTIVE RELIEF

- § 7:70 Enjoining acts involving or relating to sale of property of the estate
- § 7:71 Enjoining discriminatory acts against the debtor
- § 7:72 Enjoining dissipation of fraudulently transferred assets
- § 7:73 Enjoining termination of utility service
- § 7:74 Enjoining running of statutory period of redemption

CHAPTER 8. BANKRUPTCY COURT TRIALS

I. OVERVIEW OF BANKRUPTCY COURT PROCEDURES IN TRIAL AND HEARINGS

A. OVERVIEW OF ADVERSARY PROCEEDING TRIALS

- § 8:1 Overview of procedural rules
- § 8:2 Consent to adjudication determination
- § 8:3 Expert witness retention

**B. HEARINGS AND THE BANKRUPTCY
JUDGE’S AUTHORITY**

- § 8:4 Hearings on contested matters
- § 8:5 Overview of bankruptcy judge’s authority
- § 8:6 Interpretation of orders

C. MEDIATION

- § 8:7 Use of alternative dispute resolution in bankruptcy proceedings
- § 8:8 Confidentiality Issues

**II. REPRESENTATION OF AND APPEARANCE
BY PARTIES**

- § 8:9 Appearing pro se
- § 8:10 Representation and appearance by counsel
- § 8:11 Limited appearances by counsel
- § 8:12 Pro hac vice applications
- § 8:13 Termination of counsel
- § 8:14 Substitution of counsel
- § 8:15 Withdrawal of counsel

**III. DISQUALIFICATION OF JUDGES AND
ATTORNEYS**

- § 8:16 Disqualification of judges
- § 8:17 Disqualification of attorneys
- § 8:18 Prohibition of ex parte contacts

IV. JURY TRIALS

A. HISTORICAL OVERVIEW

- § 8:19 Authority of bankruptcy judges to preside over jury trials
- § 8:20 Proceedings in which a party was entitled to a jury

**B. BANKRUPTCY PROCEEDINGS IN WHICH
A PARTY IS ENTITLED TO A JURY**

- § 8:21 Statutory right to jury trials
- § 8:22 The Legal/Equitable Test established in *Granfinanciera*

TABLE OF CONTENTS

- § 8:23 Loss of creditors' jury trial rights by filing a proof of claim
- § 8:24 Loss of creditor's jury trial rights by asserting counterclaims and certain affirmative defenses
- § 8:25 Loss of creditor's jury trial rights by effect of participation in bankruptcy proceedings
- § 8:26 A debtor's right to a jury trial
- § 8:27 Examples of claims where jury trial rights are recognized for parties sued by the debtor
- § 8:28 Examples of claims where a jury trial right is not recognized
- § 8:29 Effect of failure to make timely demand for jury
- § 8:30 Effect of failure to timely file motion to withdraw the reference
- § 8:31 Enforcement of contractual waiver of jury trial rights
- § 8:32 Bankruptcy court forum selection clause as waiver

C. AUTHORITY OF BANKRUPTCY JUDGES AND LITIGATION STRATEGY

- § 8:33 Authority of bankruptcy judges to preside over jury trials
- § 8:34 Litigation strategy relating to jury demand

V. EVIDENTIARY CONSIDERATIONS IN BANKRUPTCY COURT TRIALS

A. APPLICATION OF THE FEDERAL RULES OF EVIDENCE

- § 8:35 Sufficiency of evidentiary record
- § 8:36 Admissions in schedules
- § 8:37 Requests for judicial notice
- § 8:38 Debtor/trustee admission issues
- § 8:39 Admissibility of debtor's books and records
- § 8:40 Admissibility of examiner's report
- § 8:41 Direct testimony through declarations
- § 8:42 Stipulated facts and issues of law
- § 8:43 Motions in limine
- § 8:44 Application of Fed. R. Evid. 501 in bankruptcy proceedings: When do federal or state rules apply?
- § 8:45 *Daubert* challenge to expert testimony

§ 8:46 Parol evidence restrictions

B. PRESUMPTIONS AND BURDENS OF PROOF

- § 8:47 Overview of presumptions and burden of proof
- § 8:48 Section 101(31): Insider
- § 8:49 Section 107: Public access to papers
- § 8:50 Section 109: Who may be a debtor
- § 8:51 Section 303: Involuntary petitions
- § 8:52 Section 305: Abstention
- § 8:53 Section 328: Limitation on compensation of professional persons
- § 8:54 Section 329: Reasonableness of fee agreements
- § 8:55 Section 330: Fee applications
- § 8:56 Section 333: Appointment of patient care ombudsman
- § 8:57 Section 350: Reopening of cases and closing cases
- § 8:58 Section 362: Relief from the automatic stay
- § 8:59 Section 363: Use, sale, lease of property
- § 8:60 Section 364: Obtaining credit
- § 8:61 Section 365: Executory contracts
- § 8:62 Section 366: Utility service
- § 8:63 Section 502: Allowance of claims or interests
- § 8:64 Section 503: Allowance of administrative expenses
- § 8:65 Section 506: Secured claims
- § 8:66 Section 507: Priorities
- § 8:67 Section 510: Subordination of a claim
- § 8:68 Section 522: Exemptions
- § 8:69 Section 523: Dischargeability of a debt
- § 8:70 Section 524: Effect of discharge
- § 8:71 Section 542: Turnover of property to the estate
- § 8:72 Section 544: Avoiding action by trustee
- § 8:73 Section 546(c): Reclamation claims
- § 8:74 Section 546(e): Safe harbor defense
- § 8:75 Section 547: Preferences
- § 8:76 Section 548: Fraudulent transfers
- § 8:77 Section 549: Postpetition transactions
- § 8:78 Section 550: Liability of transferee of avoided transfer
- § 8:79 Section 552: Postpetition effect of security interest

TABLE OF CONTENTS

§ 8:80	Section 553: Setoff
§ 8:81	Section 554: Abandonment
§ 8:82	Section 706: Conversion
§ 8:83	Section 707: Dismissal
§ 8:84	Section 727: Discharge
§ 8:85	Section 943: Confirmation
§ 8:86	Section 1101(2): Substantial consummation
§ 8:87	Section 1104: Appointment of a trustee
§ 8:88	Section 1112: Conversion or dismissal
§ 8:89	Section 1113: Rejection of collective bargaining agreements
§ 8:90	Section 1121: Who may file a plan
§ 8:91	Section 1126: Acceptance of a plan
§ 8:92	Section 1127: Modification of plan
§ 8:93	Section 1129: Confirmation of a plan
§ 8:94	Section 1144: Revocation of confirmation order
§ 8:95	Section 1182: Definitions
§ 8:96	Section 1208: Conversion or dismissal
§ 8:97	Section 1225: Confirmation of a plan
§ 8:98	Section 1307: Conversion or dismissal
§ 8:99	Section 1325: Confirmation of a plan
§ 8:100	Section 1328: Discharge
§ 8:101	Section 1330: Revocation of an order of confirmation
§ 8:102	Section 1516: Presumption concerning recognition
§ 8:103	Section 1531: Presumption of insolvency
§ 8:104	28 U.S.C.A. § 157(d): Withdrawal of reference
§ 8:105	28 U.S.C.A. § 1334(c): Abstention
§ 8:106	State law claims
§ 8:107	Certified sound recordings or transcripts
§ 8:108	Substantive consolidation
§ 8:109	Doctrine of necessity
§ 8:110	Jurisdiction
§ 8:111	Service of process
§ 8:112	Venue
§ 8:113	Good faith filing
§ 8:114	Service by mail
§ 8:115	Notice
§ 8:116	Sanctions
§ 8:117	Recharacterization of lease
§ 8:118	Recharacterization of debt as equity
§ 8:119	Appeals—Equitable mootness

- § 8:120 Contract rate of default interest
- § 8:121 Expert testimony
- § 8:122 Claim preclusion
- § 8:123 Attorneys' fees
- § 8:124 Bankruptcy Rule 7056
- § 8:125 Bankruptcy Rule 9015
- § 8:126 Standing
- § 8:127 Law of the case doctrine

CHAPTER 9. BANKRUPTCY APPEALS

I. STRUCTURE OF THE BANKRUPTCY APPELLATE SYSTEM

- § 9:1 Overview
- § 9:2 BAPs
- § 9:3 District courts
- § 9:4 Courts of appeals

II. KEY STATUTES AND RULES

- § 9:5 Generally
- § 9:6 Title 28 of the United States Code
- § 9:7 BAPCPA
- § 9:8 The Bankruptcy Rules
- § 9:9 Rules of Civil Procedure

III. WHO CAN APPEAL?

- § 9:10 Standing
- § 9:11 "Person Aggrieved" standard
- § 9:12 Other standing limitations

IV. WHAT CAN YOU APPEAL?

A. FINAL ORDER VS. INTERLOCUTORY ORDERS

- § 9:13 Import of distinction
- § 9:14 Definition (or lack thereof) of finality
- § 9:15 Final orders in adversary proceedings
- § 9:16 Final orders in contested matters
- § 9:17 Exceptions to finality requirement in the statute
- § 9:18 Exceptions to finality requirement in the caselaw

TABLE OF CONTENTS

- § 9:19 Examples of final orders
- § 9:20 Examples of interlocutory orders

B. SEPARATE DOCUMENT RULE AND MINUTE ORDERS

- § 9:21 Separate document rule
- § 9:22 Minute orders

C. MOOTNESS AS JURISDICTIONAL ISSUE

- § 9:23 Generally
- § 9:24 Several kinds of bankruptcy court orders are often mooted pending appeal
- § 9:25 —Orders approving dispositions of property
- § 9:26 —Orders approving borrowings
- § 9:27 —Orders confirming plans
- § 9:28 —Orders terminating the automatic stay
- § 9:29 —Dismissal of the bankruptcy case
- § 9:30 —Conversion of the bankruptcy case
- § 9:31 —Failure to timely seek a stay pending appeal may be a factor in determining whether an appeal is moot
- § 9:32 —Dismissal of an appeal as moot may justify an instruction to vacate the original order
- § 9:33 Preventing mootness—Stays pending appeal
- § 9:34 — —Procedure to obtain stay pending appeal
- § 9:35 — —Application to obtain stay filed with district court or BAP

V. SHOULD YOU APPEAL?

A. GENERAL CONSIDERATIONS

- § 9:36 Generally
- § 9:37 Interlocutory orders
- § 9:38 Mootness
- § 9:39 Effect of appeal on bankruptcy court jurisdiction

B. STANDARD OF REVIEW

- § 9:40 Generally
- § 9:41 Clearly erroneous standard
- § 9:42 De novo review
- § 9:43 Abuse of discretion standard

§ 9:44 Appeals to the court of appeals

**C. WHETHER BAP AND DISTRICT COURT
PRECEDENT IS BINDING**

§ 9:45 Precedential effect of BAP decisions

§ 9:46 Precedential effect of district court decisions on
bankruptcy courts

D. MONETARY CONSIDERATIONS

§ 9:47 Costs

§ 9:48 Damages and costs for frivolous appeals

VI. WHERE DO YOU APPEAL TO?

A. INTRODUCTION

§ 9:49 Generally

B. DISTRICT COURTS VS. BAPS

§ 9:50 Generally

§ 9:51 Traditional considerations

§ 9:52 Appeals of interlocutory orders

§ 9:53 Whether BAP precedent is binding

§ 9:54 Duration of appeal

C. COURTS OF APPEALS

§ 9:55 Jurisdiction over appeals from BAPs and district
courts

§ 9:56 Jurisdiction over appeals directly from
bankruptcy courts

§ 9:57 Procedure for appeal to court of appeals

§ 9:58 Procedure for direct appeal to court of appeals

VII. WHEN CAN YOU APPEAL?

§ 9:59 Overview

§ 9:60 Timing in general

§ 9:61 Extension of the time to appeal

§ 9:62 Extension of time to appeal: prohibitions with
respect to certain orders

§ 9:63 Excusable neglect

§ 9:64 Tolling

TABLE OF CONTENTS

VIII. WHAT DO YOU NEED BEFORE YOU CAN APPEAL?

A. GENERALLY

§ 9:65 Introduction and record on appeal

B. USE OF POST TRIAL MOTIONS TO SUPPLEMENT THE RECORD

§ 9:66 Generally

§ 9:67 Motion to amend findings of fact and conclusions of law

§ 9:68 Motion to amend the judgment

§ 9:69 Motion for new trial

§ 9:70 Rule 60 motions

C. MATTERS WHICH MUST BE RAISED AT OR BEFORE TRIAL

§ 9:71 Generally

§ 9:72 Evidentiary objections

§ 9:73 Issues of fact

§ 9:74 Issues of law

§ 9:75 Subject matter jurisdiction: core versus noncore proceedings

§ 9:76 New developments while appeal is pending

IX. HOW DO YOU APPEAL?

A. GENERALLY

§ 9:77 Introduction

B. BANKRUPTCY RULES

§ 9:78 Generally

§ 9:79 Commencement of an appeal—Bankruptcy Rule 8003

§ 9:80 Time for filing notice of appeal—Bankruptcy Rule 8002

§ 9:81 Leave to appeal—Bankruptcy Rule 8004

§ 9:82 Service of the notice of appeal—Bankruptcy Rule 8003

§ 9:83 Procedure for obtaining a stay pending appeal—Bankruptcy Rule 8007

- § 9:84 Indicative rulings—Bankruptcy Rule 8008
- § 9:85 Submission of record on appeal—Bankruptcy Rule 8009
- § 9:86 Transmission of the record—Bankruptcy Rule 8010
- § 9:87 Filing and service—Bankruptcy Rule 8011
- § 9:88 Disclosure statement—Bankruptcy Rule 8012
- § 9:89 Preparation and filing of briefs—Bankruptcy Rules 8014 and 8018
- § 9:90 Form of briefs, appendices, and other papers—Bankruptcy Rules 8014 and 8015
- § 9:91 *Amicus Curiae* briefs—Bankruptcy Rule 8017
- § 9:92 Cross-appeals—Bankruptcy Rule 8016
- § 9:93 Post-appeal motions and intervention—Bankruptcy Rule 8013
- § 9:94 Review of judgement where bankruptcy court lacked constitutional authority
- § 9:95 Substitution of parties
- § 9:96 Expedited appeals
- § 9:97 Oral argument—Bankruptcy Rule 8019
- § 9:98 Costs—Bankruptcy Rule 8021
- § 9:99 Rehearing—Bankruptcy Rule 8022
- § 9:100 Motion to dismiss appeal—Bankruptcy Rule 8003(a)(2)
- § 9:101 Voluntary dismissal—Bankruptcy Rule 8023
- § 9:102 Duties of the clerk of the district court and BAP—Bankruptcy Rule 8024
- § 9:103 Stay pending further appeal—Bankruptcy Rule 8025
- § 9:104 Rules by circuit councils and district courts—Bankruptcy Rule 8026
- § 9:105 Suspension of the application of Bankruptcy Rules—Bankruptcy Rule 8028
- § 9:106 Mediation procedures—Bankruptcy Rule 8027
- § 9:107 Damages and costs for frivolous appeal and other misconduct—Bankruptcy Rule 8020
- § 9:108 En banc review

C. OFFICIAL FORMS

- § 9:109 Generally

TABLE OF CONTENTS

**CHAPTER 10. PROOF OF CLAIM
LITIGATION**

I. SCOPE OF ALLOWABLE CLAIMS

- § 10:1 Claim is broadly defined
- § 10:2 Claims against property of the debtor
- § 10:3 Contingent claims
- § 10:4 Equitable remedies which constitute a claim
- § 10:5 Claims arising after the petition date
- § 10:6 Distinguishing equity security from claims
- § 10:7 Import of determination of when a claim arises
- § 10:8 Tests employed to determine pre or postpetition nature of claim
- § 10:9 Contract claims
- § 10:10 Tort claims
- § 10:11 Claims for attorney's fees
- § 10:12 Secured claims

**II. PARTIES ALLOWED TO FILE A PROOF OF
CLAIM**

- § 10:13 Impact of filing a proof of claim
- § 10:14 The filing of a claim by the creditor or the creditor's authorized agent
- § 10:15 The filing of a claim by a guarantor or codebtor
- § 10:16 The filing of a claim by the trustee or debtor
- § 10:17 The filing of a class proof of claim
- § 10:18 Procedure for certifying class proof of claim
- § 10:19 Transfers of claims
- § 10:20 Place to file proof of claim

III. TIME TO FILE A PROOF OF CLAIM

- § 10:21 Time limitations under Chapters 7, 12, and 13
- § 10:22 Extension allowed for governmental unit
- § 10:23 Extension allowed for claim filing by an infant or incompetent person or their representative
- § 10:24 Extension allowed for creditor to file claim arising under 11 U.S.C.A. § 502(h)
- § 10:25 Extension allowed for claim arising from the rejection of an executory contract or lease
- § 10:26 Extension allowed in Chapter 7 cases where no asset notice previously provided to creditors

- § 10:27 Extension allowed for claim where notice was insufficient to allow the creditor a reasonable time to file a proof of claim
- § 10:28 Extension allowed for secured creditor with security interest in debtor's principal residence
- § 10:29 Extension allowed for debtor, trustee, guarantors, and codebtors to file a claim
- § 10:30 Time extensions not provided for in Bankruptcy Rules not permitted in Chapters 12 and 13 cases
- § 10:31 Tardy filed claims permissible in Chapter 7 cases
- § 10:32 Secured creditor claims in cases under Chapter 7, 12, or 13
- § 10:33 Secured creditor claims in cases under Chapter 7, 12, or 13 with interest in debtor's principal residence
- § 10:34 Deadline for filing proof of claims and proof of interests in cases under Chapters 9 and 11
- § 10:35 Secured creditor claims in cases under Chapter 11
- § 10:36 Motions to extend the bar date in Chapters 9 and 11 cases
- § 10:37 Administrative claims
- § 10:38 Effect of conversion of the bankruptcy case on unsecured claims
- § 10:39 Relying upon informal claims and amendments of claims where there are bar date or bar order issues
- § 10:40 Effect of defective service on bar dates
- § 10:41 Mailing of bar date notice does not extend time

IV. FORM OF A PROOF OF CLAIM

- § 10:42 General rules
- § 10:43 Redacted filing of proof of claim
- § 10:44 Additional requirements for secured claims
- § 10:45 Effect of failure to properly file claim
- § 10:46 Amendments to proofs of claims
- § 10:47 Administrative priority claimants

V. PARTIES WITH STANDING TO OBJECT TO CLAIMS

- § 10:48 Statute governing standing to object to claims

TABLE OF CONTENTS

- § 10:49 Standing of trustee or debtor in possession
- § 10:50 Standing of Chapter 7 debtor
- § 10:51 Standing of creditors and creditors' committees
- § 10:52 Standing of creditors of the general partner of a Chapter 7 debtor

VI. PROCEDURES FOR OBJECTIONS TO CLAIMS

- § 10:53 Timing of prosecution of objections to claims
- § 10:54 Effect of confirmation on ability to object to claims
- § 10:55 Objections to claims through means of the plan confirmation process
- § 10:56 Objections to claims as contested matters or adversary proceedings
- § 10:57 Objections to secured claims
- § 10:58 Pleading requirements for objections to claim
- § 10:59 Omnibus claim objections
- § 10:60 Arbitrability of proof of claim dispute
- § 10:61 Service of the objection to claim
- § 10:62 Acquisition of claims for strategic purposes
- § 10:63 Claimant's response to a claim objection
- § 10:64 Withdrawal of claim
- § 10:65 Resolution without a hearing or initial hearing on objection to claim
- § 10:66 Discovery
- § 10:67 Hearing on an objection to claim and burden of proof
- § 10:68 Recovery of fees and costs
- § 10:69 Claims estimation
- § 10:70 Reconsideration of orders allowing or disallowing claims
- § 10:71 Settlement of an objection to claim
- § 10:72 Motions to reduce unsecured consumer debt claims for failure to negotiate
- § 10:73 Appeals from orders allowing or disallowing claims
- § 10:74 Effect of dismissal of case on order allowing or disallowing claim
- § 10:75 Effect of order allowing or disallowing claim
- § 10:76 Litigation privilege with respect to proof of claim allegations

VII. LIMITATIONS TO JURISDICTION TO DETERMINE MERITS OF PARTICULAR CLAIMS

- § 10:77 Overview of bankruptcy court jurisdiction pertaining to proofs of claims
- § 10:78 The bankruptcy court is obligated to give effect to prepetition judgments
- § 10:79 Personal injury, tort and wrongful death claims
- § 10:80 Claims litigation and withdrawal of the reference
- § 10:81 Abstention from determination of proof of claim litigation
- § 10:82 Relief from the automatic stay to permit liquidation of a claim in another forum

VIII. APPLICABLE SUBSTANTIVE LAW RELATING TO ALLOWABILITY OF CLAIMS

- § 10:83 General rules
- § 10:84 Disallowance of claim unenforceable under applicable nonbankruptcy law
- § 10:85 Present valuing claims for future damages
- § 10:86 Disallowance of claims for unmatured interest
- § 10:87 Disallowance of claims for taxes that exceed the value of property
- § 10:88 Disallowance of claims for services by an insider or attorney of the debtor that exceed their reasonable value
- § 10:89 Claims for unmatured debt excepted from discharge under 11 U.S.C.A. § 523(a)(5)
- § 10:90 Disallowance of portion of claim arising from termination of real property lease
- § 10:91 Disallowance of claims arising under terminated employment contracts
- § 10:92 Disallowance of claims for reductions for tax credits because of late payment
- § 10:93 Disallowance of late filed claims
- § 10:94 Disallowance of claims of creditors who have received avoidable transfers
- § 10:95 Disallowance of claims for reimbursement or contribution by codebtors and guarantors
- § 10:96 Equitable disallowance of claims

TABLE OF CONTENTS

- § 10:97 Reduction of claim through assertion of time barred counterclaim or offset
- § 10:98 Reduction of consumer claim for unreasonable refusal to negotiate with credit counseling agency

IX. SUBORDINATION OF PARTICULAR CLAIMS

- § 10:99 Overview of subordination
- § 10:100 Contractual subordination
- § 10:101 Subordination of punitive damage claims
- § 10:102 Subordination of claims arising from purchase or sale of a security
- § 10:103 Equitable subordination of claims
- § 10:104 Recharacterization of a claim

CHAPTER 11. LITIGATING INVOLUNTARY BANKRUPTCY PETITIONS

I. CONSIDERATIONS PRIOR TO FILING AN INVOLUNTARY BANKRUPTCY PETITION

- § 11:1 Introduction
- § 11:2 Should an involuntary petition be filed?
- § 11:3 Consequences of entry of an order for relief
- § 11:4 Consequences of unsuccessful litigation
- § 11:5 Anti-bankruptcy injunction

II. CREDITORS' COUNSEL: PREREQUISITES TO PREVAILING ON AN INVOLUNTARY PETITION

- § 11:6 Parties subject to an involuntary petition
- § 11:7 Parties who can file an involuntary petition
- § 11:8 Parties who can file an involuntary petition: Partnerships
- § 11:9 Parties who can file an involuntary petition: Limited liability companies
- § 11:10 Parties who can file an involuntary petition: Foreign proceeding
- § 11:11 Parties who can file an involuntary petition: Claim transfers

- § 11:12 Choosing the bankruptcy chapter under which to file
- § 11:13 Prerequisite number of petitioning creditors
- § 11:14 Holder of a claim
- § 11:15 Excluding claims subject to a bona fide dispute
- § 11:16 Excluding contingent claims
- § 11:17 Excluding claims where there are less than three petitioners
- § 11:18 Small, recurring debts
- § 11:19 Secured claims
- § 11:20 Good faith filing requirement
- § 11:21 Standard for relief: generally not paying debts as they become due
- § 11:22 Claims considered when applying standard
- § 11:23 Single creditor disputes
- § 11:24 Standard for relief: appointment of a custodian

III. CREDITORS' COUNSEL: PREPARING THE INVOLUNTARY PETITION

- § 11:25 Utilization of Official Forms
- § 11:26 Alleging facts sufficient to warrant entry of an order for relief
- § 11:27 Verification of the involuntary petition
- § 11:28 Jury trial rights

IV. CREDITORS' COUNSEL: INITIATING THE CASE

- § 11:29 Filing the involuntary petition
- § 11:30 Propriety of joint involuntary petition
- § 11:31 Serving the involuntary petition
- § 11:32 Filing an amended involuntary petition

V. ALLEGED DEBTOR'S COUNSEL: RESPONDING TO THE INVOLUNTARY PETITION

- § 11:33 Determining whether to litigate the involuntary petition
- § 11:34 Preparing a responsive pleading
- § 11:35 Standing to respond to the involuntary petition
- § 11:36 Joinder and consolidation of cases
- § 11:37 Motion for abstention

TABLE OF CONTENTS

§ 11:38 Motion for bond

VI. REMEDIES FOR CREDITORS PENDING TRIAL

§ 11:39 Appointment of an interim trustee

§ 11:40 Court ordered restrictions on alleged debtor's rights

VII. PREPARING FOR TRIAL: DISCOVERY, MOTION PRACTICE, JOINDER, DISMISSAL

§ 11:41 Discovery

§ 11:42 Pretrial motions

§ 11:43 Joinder of additional petitioners

§ 11:44 Withdrawal of petitioners

§ 11:45 Dismissal of the involuntary petition

VIII. TRIAL

§ 11:46 Burden of proof and evidence

IX. POSTTRIAL CONSIDERATIONS

§ 11:47 Postjudgment pleadings

§ 11:48 Prevailing petitioners

§ 11:49 Prevailing alleged debtor

§ 11:50 Prevailing alleged debtor: Time within which to bring claim

§ 11:51 Prevailing alleged debtor: Proceeding by motion or complaint

§ 11:52 Prevailing alleged debtor: Joinder of unnamed petitioners

§ 11:53 Prevailing alleged debtor: Recovery of fees and costs

§ 11:54 Prevailing alleged debtor: Recovery of damages

§ 11:55 Prevailing alleged debtor: Bad faith determinations

§ 11:56 Prevailing debtor: Claims under additional legal theories

§ 11:57 Prevailing debtor: Claims against persons other than the petitioning creditors

§ 11:58 Remedies for a debtor who is an individual where there is fraudulent involuntary petition

- § 11:59 Third party claims and intervention rights
where debtor prevails
- § 11:60 Appeals

CHAPTER 12. LITIGATING RELIEF FROM STAY ACTIONS

I. ACTIONS STAYED BY § 362

- § 12:1 Effect of stay upon filing of petition
- § 12:2 Waiver of the automatic stay
- § 12:3 Scope of the automatic stay
- § 12:4 Interplay between the automatic stay and other
Bankruptcy Code sections
- § 12:5 The automatic stay and contract rights
- § 12:6 The automatic stay and foreign proceedings
- § 12:7 The automatic stay and corporate governance
issues
- § 12:8 Section 362(a)(1)—Stay of actions against the
debtor
- § 12:9 —Interpretation of “actions against a debtor”
and “a claim against a debtor”
- § 12:10 —Accrual of claims against the debtor
- § 12:11 —Types of actions affected by the stay
- § 12:12 —Continuation of proceedings
- § 12:13 —Removal of pending state court action
- § 12:14 —Exception for ministerial acts
- § 12:15 —Inapplicability with respect to claims pursued
by the debtor
- § 12:16 Inapplicability with respect to third party
discovery of a debtor
- § 12:17 Section 362(a)(1)—The automatic stay and
nondebtor coparties
- § 12:18 Claims of debtors against debtors
- § 12:19 Section 362(a)(1)—Stay of actions against
codebtors in Chapters 12 and 13 cases
- § 12:20 Application of the automatic stay in Chapter 15
proceedings
- § 12:21 Section 362(a)(1)—Appeals involving a debtor
- § 12:22 —Inapplicability with respect to execution of
judgment rendered on postpetition claim
- § 12:23 Section 362(a)(2): Stay of enforcement of
judgments

TABLE OF CONTENTS

§ 12:24	Section 362(a)(3)—Overview of stay of acts to obtain possession or control over property of the estate
§ 12:25	—Acts constituting attempts to obtain possession of property of or from the estate
§ 12:26	—Attempts to exercise control over property of the estate
§ 12:27	Section 362(a)(4): stay of acts to create, perfect or enforce liens against property of the estate
§ 12:28	Section 362(a)(5): stay of acts to create, perfect, or enforce liens against property of the debtor
§ 12:29	Section 362(a)(6): stay of acts to collect, assess, or recover prepetition claims against the debtor
§ 12:30	Section 362(a)(7): stay of setoffs based on prepetition claims
§ 12:31	Section 362(a)(8): stay of commencement or continuation of proceedings before the United States Tax Court

II. EXCEPTIONS TO THE AUTOMATIC STAY

§ 12:32	Introduction to exceptions
§ 12:33	Section 362(b)(1): criminal actions or proceedings against the debtor
§ 12:34	Section 362(b)(2): collection of alimony, maintenance or support
§ 12:35	Section 362(b)(3): postpetition perfection of interests in property that relates back to a prepetition interest
§ 12:36	Section 362(b)(4): acts by governmental units to enforce police or regulatory powers
§ 12:37	Section 362(b)(6), (7): setoffs in commodity broker and stockbroker liquidations
§ 12:38	Section 362(b)(8): commencement of an action by Department of Housing and Urban Development to foreclose a mortgage or deed of trust of property
§ 12:39	Section 362(b)(9): issuance of a notice of tax deficiency by a governmental unit
§ 12:40	Section 362(b)(10): acts by a lessor of nonresidential real property to obtain possession of property
§ 12:41	Section 362(b)(11): giving notice and protesting dishonor of a negotiable instrument
§ 12:42	Section 362(b)(12), (13): acts to foreclose on

- vessels under the Ship Mortgage Act that
involve Chapter 11 debtors
- § 12:43 Section 362(b)(14) to (16): exceptions relating to
educational institutions
- § 12:44 Section 362(b)(17): setoffs relating to swap
agreements
- § 12:45 Section 362(b)(18): ad valorem property tax liens
- § 12:46 Section 362(b)(19): retirement plan repayment
- § 12:47 Section 362(b)(20): in rem orders
- § 12:48 Section 362(b)(21): liens against or security
interests in real property
- § 12:49 Section 362(b)(22): action by lessor against
residential tenant-debtor when lessor has
obtained judgment for possession
- § 12:50 Section 362(b)(23): eviction action by lessor
against residential tenant-debtor based on
endangerment or illegal use of controlled
substances
- § 12:51 Section 362(b)(24): transfers not avoidable under
§§ 544 and 549
- § 12:52 Section 362(b)(25): actions by securities self-
regulatory organizations
- § 12:53 Section 362(b)(26): income tax setoff
- § 12:54 Section 362(b)(27): setoff by master netting
agreement
- § 12:55 Section 362(b)(28): exclusion from federal health
care program
- § 12:56 Additional exceptions to the stay not contained
within § 362(b)

III. GROUNDS FOR RELIEF FROM THE AUTOMATIC STAY

- § 12:57 Overview of grounds for relief
- § 12:58 Termination of the automatic stay by operation
of law
- § 12:59 Termination of stay under § 362(c)(1) and (2)
- § 12:60 Termination of stay for repeat filers under
§ 362(c)(3) and (4)
- § 12:61 Section 362(c)(3), (4)—Presumption of bad faith
and motions to extend the stay
- § 12:62 —Notice and hearing requirements
- § 12:63 —Burdens and standards of proof
- § 12:64 Refiling after case dismissed for failure to get
prebankruptcy counseling

TABLE OF CONTENTS

§ 12:65	Issuance of comfort order following stay termination under § 362(c)
§ 12:66	Termination of stay under § 362(d)
§ 12:67	Lack of adequate protection as cause for relief
§ 12:68	Value of collateral
§ 12:69	Factors relating to adequate protection
§ 12:70	Additional ways of providing adequate protection
§ 12:71	Cause for relief from the automatic stay
§ 12:72	Bad faith filings as cause for relief
§ 12:73	Cause to pursue litigation pending in other forums
§ 12:74	Cause to pursue discovery
§ 12:75	Grounds for relief: no equity in the property and property is not necessary for reorganization
§ 12:76	Section 362(d)(2)(A): issues pertaining to calculation of equity
§ 12:77	Section 362(d)(2)(B): issues pertaining to property necessary for reorganization
§ 12:78	Section 362(d)(3): grounds for relief in single asset real estate cases
§ 12:79	Section 362(d)(4): in rem relief from stay
§ 12:80	Section 362(h): termination of stay as to personal property or unexpired leases in Chapter 7 cases
§ 12:81	Grounds for relief from the codebtor stay in Chapters 12 and 13 cases
§ 12:82	Section 362(n): grounds for relief in cases where the debtor was involved in a small business case

IV. CREDITOR'S COUNSEL: INITIATING THE CASE

§ 12:83	Deciding whether to request relief
§ 12:84	Standing to seek relief
§ 12:85	Form of request for relief
§ 12:86	Retroactive relief from stay
§ 12:87	Assertion of additional claims in addition to request for relief
§ 12:88	Proper parties to and service of the request for relief
§ 12:89	Forum to request relief
§ 12:90	Ex parte relief from the stay

V. DEBTOR'S COUNSEL: RESPONDING TO THE REQUEST FOR RELIEF

- § 12:91 Preparing a responsive filing
- § 12:92 Standing to oppose relief
- § 12:93 Issues collateral to the motion for relief from the stay
- § 12:94 Effect of an order granting relief from the stay
- § 12:95 Joinder of parties
- § 12:96 Third-party intervention
- § 12:97 Discovery
- § 12:98 Settlements

VI. HEARINGS ON REQUESTS FOR RELIEF FROM THE AUTOMATIC STAY

- § 12:99 Scheduling of preliminary and final hearings
- § 12:100 Preliminary hearing
- § 12:101 Extension of 30-day period for final hearing
- § 12:102 Waiver of 30-day requirement
- § 12:103 Final hearing
- § 12:104 Reimposition of the stay
- § 12:105 Power of court to raise issues of the stay sua sponte
- § 12:106 Burden of proof
- § 12:107 Use of appraisers

VII. POST-HEARING CONSIDERATIONS

- § 12:108 Rights of the prevailing party
- § 12:109 Costs and attorney's fees
- § 12:110 Post-hearing motions
- § 12:111 Effect of conversion or refiling of the bankruptcy case
- § 12:112 Effect of dismissal on subsequent refiling
- § 12:113 Effect of dismissal due to debt repayment program
- § 12:114 Appeals
- § 12:115 Mooting of appeal

VIII. DEBTOR'S COUNSEL: RECOVERY FOR WILLFUL VIOLATION OF THE STAY

- § 12:116 Civil contempt as grounds for remedy

TABLE OF CONTENTS

§ 12:117	Section 362(k): actions for willful violations of the stay
§ 12:118	Standing to assert a claim under § 362(k)
§ 12:119	Standard of proof for willful violation
§ 12:120	Test for willful violation
§ 12:121	Defenses to action for willful violation under § 362(k)
§ 12:122	Liability of the federal or state governments
§ 12:123	Recovery of actual damages
§ 12:124	Punitive damages
§ 12:125	Section 362(k)(2) limitation
§ 12:126	Preemption of state law claims

CHAPTER 13. DISCHARGEABILITY OF DEBT LITIGATION

I. EXCEPTIONS TO DISCHARGE

§ 13:1	Overview
§ 13:2	Scope of discharge
§ 13:3	Categories of nondischargeable debts
§ 13:4	Unenforceability of prepetition waivers of discharge
§ 13:5	Effect of prepetition settlement agreements on nondischargeable claims
§ 13:6	Section 523(a)(1)(A)—Taxes and customs duties
§ 13:7	—Tax or customs duty specified in § 507(a)(3)
§ 13:8	—Tax or customs duty specified in § 507(a)(8)
§ 13:9	—Penalties and interest
§ 13:10	—Property that can be levied upon for nondischargeable taxes and customs duty
§ 13:11	—Suspension of time periods
§ 13:12	Section 523(a)(1)(B)—Failure to file return or tardily filing return within two years of filing petition
§ 13:13	—Failure to file a return
§ 13:14	—Filing a late return less than two years from petition date
§ 13:15	Section 523(a)(1)(C)—Fraudulent return or willful attempt to evade or defect taxes
§ 13:16	—Filing a fraudulent return
§ 13:17	—Attempts to evade or defeat a tax
§ 13:18	—Claim preclusion and defenses

- § 13:19 Section 523(a)(2)(A)—Fraud
- § 13:20 —Money, property, services, or credit
- § 13:21 —False pretenses
- § 13:22 —False representation
- § 13:23 —Actual fraud
- § 13:24 —Negligent misrepresentation
- § 13:25 —Fraudulent concealment
- § 13:26 —False promises
- § 13:27 —Measure of damages
- § 13:28 —Carve out for oral statement respecting
debtor’s or insider’s financial condition
- § 13:29 Section 523(a)(2)(B)—False financial statements
- § 13:30 —Statement in writing
- § 13:31 —Statement must be materially false
- § 13:32 —Respecting the debtor’s financial condition
- § 13:33 —Reasonable reliance
- § 13:34 —Debtor caused publication with intent to
deceive
- § 13:35 —Damages
- § 13:36 Section 523(a)(2)(C)—Consumer debtors—
“Loading up”
- § 13:37 Section 523(a)(3)—Failure to list a creditor
- § 13:38 Section 523(a)(4)—Defalcation by fiduciaries,
embezzlement, or larceny
- § 13:39 —Fiduciary relationship requirement
- § 13:40 —Fraud or defalcation requirement
- § 13:41 —Claims due to embezzlement or larceny
- § 13:42 Section 523(a)(5)—Domestic support obligations
- § 13:43 —Creditors within the scope of the statute
- § 13:44 —Determining whether debts are in the nature
of alimony, maintenance, or support
- § 13:45 —Domestic support obligations—Examples
- § 13:46 Section 523(a)(6)—Willful and malicious injury
- § 13:47 —Willfulness
- § 13:48 —Malice
- § 13:49 —Collateral estoppel
- § 13:50 Section 523(a)(7)—Fines, penalties, and
forfeitures
- § 13:51 — —Owing to the government
- § 13:52 — —Exceptions for tax penalties
- § 13:53 Section 523(a)(8)—Educational loans
- § 13:54 — —Debtors who cannot maintain a minimal
standard of living

TABLE OF CONTENTS

§ 13:55	— —Additional circumstances indicating an undue burden will continue
§ 13:56	— —Good-faith efforts to repay the loan
§ 13:57	Section 523(a)(9): debts arising from injuries sustained in vehicles where the debtor engaged in substance abuse
§ 13:58	Section 523(a)(10): prior waiver or denial of discharge
§ 13:59	Section 523(a)(11): fraud or defalcation by bankers
§ 13:60	Section 523(a)(12): failure to fulfill commitments to federal depository institutions
§ 13:61	Section 523(a)(13): criminal restitution
§ 13:62	Sections 523(a)(14) and (a)(14)(A): debts incurred to pay taxes
§ 13:63	Section 523(a)(14B): fines or penalties imposed under federal election law
§ 13:64	Section 523(a)(15): marital property settlements
§ 13:65	Section 523(a)(16): condominium and homeowner association fees
§ 13:66	Section 523(a)(17): prisoner filing fees
§ 13:67	Section 523(a)(18): retirement loans
§ 13:68	Section 523(a)(19): securities violations

II. PROCEDURE

§ 13:69	Jurisdiction
§ 13:70	Venue
§ 13:71	Proper parties
§ 13:72	Vicarious liability
§ 13:73	Exemplary damages
§ 13:74	Attorney's fees and costs
§ 13:75	—Debtor prevailing on a consumer debt
§ 13:76	—Fees awarded as sanctions
§ 13:77	—Fees provided by contract
§ 13:78	Costs—Debtor prevailing on a consumer debt
§ 13:79	Interest
§ 13:80	Preparing the complaint
§ 13:81	Defenses
§ 13:82	Counterclaims
§ 13:83	Default by debtor
§ 13:84	Timeliness of complaint—Practical considerations
§ 13:85	—Section 523(a)(2), (4), or (6) actions

- § 13:86 —Converted and dismissed cases
- § 13:87 —Extensions of time under Bankruptcy Rule 4007(c)
- § 13:88 —Waiver, estoppel, equitable tolling, and extraordinary circumstances
- § 13:89 —Other nondischargeability actions
- § 13:90 —Intervention or joinder
- § 13:91 Amendments to pleadings and relation back
- § 13:92 Claim preclusion (res judicata)
- § 13:93 Issue preclusion (collateral estoppel)
- § 13:94 Burden of proof
- § 13:95 Jury trial
- § 13:96 Effect of automatic stay
- § 13:97 Stay of dischargeability proceeding
- § 13:98 Assignment and subrogation of dischargeability claims
- § 13:99 Settlement
- § 13:100 Appeals

Volume 3

CHAPTER 14. DENIAL OF DISCHARGE LITIGATION

I. OVERVIEW OF DISCHARGES AND ISSUES PERTAINING TO WAIVERS

- § 14:1 Introduction
- § 14:2 Procedure for granting of discharge
- § 14:3 Effect of discharge
- § 14:4 Limitations on waivers—Requirements of § 727(a)(10)
- § 14:5 —Relief
- § 14:6 —Distinction between waiver and reaffirmation
- § 14:7 Comparison of application of dischargeability sections of the Bankruptcy Code

II. GROUNDS FOR DENIAL OF DISCHARGE

- § 14:8 Section 727(a)(1): Limitation to individuals
- § 14:9 Section 727(a)(2)—Elements of the claim
- § 14:10 —Transfer, removal, destruction, concealment

TABLE OF CONTENTS

§ 14:11	—Property of the debtor or estate
§ 14:12	—Timing of prepetition transfers
§ 14:13	—Postpetition transfers
§ 14:14	—Continuing concealment doctrine
§ 14:15	—Establishing fraudulent intent
§ 14:16	—Transfers to relatives
§ 14:17	—Effect of retransferring property
§ 14:18	—Conversion of nonexempt assets into exempt assets
§ 14:19	—Prebankruptcy advice
§ 14:20	—Liability of counsel for prebankruptcy advice
§ 14:21	Section 727(a)(3)—Elements of claim
§ 14:22	—Recordkeeping standards
§ 14:23	—No intent requirement
§ 14:24	—Justification defense
§ 14:25	—Burden of proof
§ 14:26	Section 727(a)(4)—Elements of the claim
§ 14:27	—Fraudulent intent
§ 14:28	—Lack of requirement of harm or intent to injure creditors
§ 14:29	—Effect of amendments to schedules
§ 14:30	—Materiality
§ 14:31	—Information pertaining to value of the assets
§ 14:32	—Claims under § 727(a)(4)(C)
§ 14:33	—Claims under § 727(a)(4)(D)
§ 14:34	Section 727(a)(5): loss or deficiency of assets
§ 14:35	Section 727(a)(6): refusal to testify or obey court order
§ 14:36	Section 727(a)(7): previously nondischargeable acts
§ 14:37	Section 727(a)(8), (a)(9): prior discharge
§ 14:38	Section 727(a)(11): failure to complete instructional course concerning personal financial management
§ 14:39	Section 727(a)(12): felonies, security laws violations, and acts resulting in physical injury or death

III. REVOCATION OF DISCHARGE

§ 14:40	Overview of revocation
§ 14:41	Section 727(d)(1) claims
§ 14:42	Section 727(d)(2) claims
§ 14:43	Section 727(d)(3) claims

- § 14:44 Section 727(d)(4) claims
- § 14:45 Time limitations to bring claim

IV. PROCEDURE

- § 14:46 Preparing the complaint
- § 14:47 Service of process
- § 14:48 Time to object
- § 14:49 —Intervention
- § 14:50 Preparing a motion objecting to discharge under
§ 727(a)(8) and (9)
- § 14:51 Amending complaint after filing documents
- § 14:52 Time to respond to complaint
- § 14:53 Motion to dismiss
- § 14:54 Answering the complaint
- § 14:55 Overview of affirmative defenses
- § 14:56 Affirmative defenses—Failure to state a claim
- § 14:57 —Time limitations to bring claim
- § 14:58 —Advice of counsel
- § 14:59 —Release
- § 14:60 —Justification
- § 14:61 —Estoppel
- § 14:62 —Laches
- § 14:63 —Collateral estoppel
- § 14:64 Counterclaims
- § 14:65 Burden and standard of proof
- § 14:66 Standing
- § 14:67 Substitution of plaintiff
- § 14:68 Summary judgment motions
- § 14:69 Jury trial
- § 14:70 Trial
- § 14:71 Damage awards
- § 14:72 Settlement
- § 14:73 Attorney’s fees
- § 14:74 Appeals
- § 14:75 Effect of denial of discharge on pending
nondischargeability proceedings
- § 14:76 Enforcing violation of the discharge injunction

TABLE OF CONTENTS

**CHAPTER 15. STRATEGIES AND
TACTICS FOR CREDITORS'
COMMITTEES**

I. COMMITTEE FORMATION AND DUTIES

- § 15:1 Scope of chapter
- § 15:2 Overview of Committees and their functions
- § 15:3 Fiduciary duties of Committees and Committee members
- § 15:4 Trading orders
- § 15:5 Information sharing obligations
- § 15:6 Powers of a Committee
- § 15:7 Committee standing
- § 15:8 Derivative standing
- § 15:9 Objectives of Committees
- § 15:10 Committee professionals
- § 15:11 Timing of Committee appointment
- § 15:12 How a Committee is selected—The rules
- § 15:13 —Practical tips
- § 15:14 Alternatives for creditors not selected to Committee
- § 15:15 Serving on a prepetition Committee
- § 15:16 Multiple Committees
- § 15:17 Organization and governance of the Committee
- § 15:18 Bankruptcy Court review and/or modification of Committee appointment
- § 15:19 Disbanding a committee
- § 15:20 Effect of conversion, dismissal, or confirmation
- § 15:21 The Committee's role in reviewing and potentially contesting first day motions and applications
- § 15:22 The Committee's role in reviewing and potentially contesting cash collateral and debtor-in-possession financing issues
- § 15:23 The Committee's role in reviewing and potentially contesting carveouts
- § 15:24 The Committee's role in reviewing and potentially contesting critical vendor motions
- § 15:25 The Committee's role in reviewing and potentially contesting employee retention motions
- § 15:26 The Committee's role in reviewing and potentially contesting sale motions

II. TACTICS: MOTION TO APPOINT A TRUSTEE

- § 15:27 Moving for the appointment of a Chapter 11 trustee
- § 15:28 When will a trustee be appointed?
- § 15:29 Section 1104(a)(1): “for cause”
- § 15:30 Section 1104(a)(2): best interests
- § 15:31 Section 1104: deadlocked board
- § 15:32 Acrimonious relations with creditors and other parties in interest
- § 15:33 Strategic considerations in moving for a Chapter 11 trustee
- § 15:34 Duties and powers of a Chapter 11 trustee

III. TACTICS: MOTION TO APPOINT AN EXAMINER

- § 15:35 Moving for the appointment of a Chapter 11 examiner: overview
- § 15:36 The examiner appointment process
- § 15:37 Examiner: discretionary appointment
- § 15:38 Examiner: mandatory appointment
- § 15:39 Waiver of the right to seek appointment of an examiner
- § 15:40 Examiner: discretion to deny under § 1104(c)(2)
- § 15:41 Whether invocation of § 1104(c)(2) requires a prior motion under § 1104(a)
- § 15:42 Duties and powers of an examiner
- § 15:43 Examiners with expanded powers
- § 15:44 An examiner’s ability to sue
- § 15:45 An examiner’s ability to run a business

IV. TACTICS: MOTION TO DISMISS OR CONVERT THE CASE

- § 15:46 Seeking dismissal or conversion
- § 15:47 Hearing on a dismissal and/or conversion motion
- § 15:48 Effects of dismissal
- § 15:49 Effects of conversion
- § 15:50 Dismissal or conversion and the “best interests of creditors”

V. TACTICS: PLAN CONFIRMATION ISSUES

- § 15:51 Means for attacking a debtor’s plan strategy

TABLE OF CONTENTS

- § 15:52 Overview of exclusivity
- § 15:53 Challenging extensions of exclusivity
- § 15:54 Filing a competing plan
- § 15:55 Potential grounds for opposing confirmation

VI. TACTICS: MOTION FOR SUBSTANTIVE CONSOLIDATION

- § 15:56 Overview of substantive consolidation
- § 15:57 Legal standards governing requests for substantive consolidation
- § 15:58 Practical considerations regarding substantive consolidation

CHAPTER 16. PREFERENCES

I. ELEMENTS OF A PREFERENCE

- § 16:1 Introduction
- § 16:2 The concept of the transfer
- § 16:3 Interest of the debtor in property
- § 16:4 Payments to creditors arising from asset sales
- § 16:5 Fully encumbered property
- § 16:6 Escrow accounts
- § 16:7 Payments made by issuer of letters of credit
- § 16:8 Property held in trust by the debtor
- § 16:9 To or for the benefit of a creditor
- § 16:10 Antecedent debt
- § 16:11 Insolvency
- § 16:12 Preference period
- § 16:13 Comparison with liquidation dividend
- § 16:14 Prefiling diligence
- § 16:15 Diminution of estate as necessary element of avoidable preference
- § 16:16 Determination of transfer date
- § 16:17 Payment by standard check
- § 16:18 Payment by cashier's or certified check
- § 16:19 Payment by credit card
- § 16:20 Transfer of personal property and real property
- § 16:21 Transfer of personal property and fixtures
- § 16:22 Transfer of real property
- § 16:23 Posttransfer perfection issues

II. DEFENSES TO A PREFERENCE CLAIM

- § 16:24 Overview

- § 16:25 Contemporaneous exchange exception
- § 16:26 New value
- § 16:27 New value: intent
- § 16:28 Substantially contemporaneous
- § 16:29 Ordinary course of business exception
- § 16:30 Debt incurred in the ordinary course of business
- § 16:31 The subjective prong—Ordinary between the parties
- § 16:32 Length of business relationship
- § 16:33 Unusual collection activity
- § 16:34 Manner of payment
- § 16:35 The objective prong—Ordinary business terms
- § 16:36 Enabling loan exception
- § 16:37 New value exception
- § 16:38 What is new value
- § 16:39 Timing
- § 16:40 Paid new value
- § 16:41 Floating lien exception
- § 16:42 Statutory lien exception
- § 16:43 Familial support exception
- § 16:44 Small preference exceptions
- § 16:45 Reclamation rights exception
- § 16:46 Margin payment exception
- § 16:47 Swap agreement exception
- § 16:48 Rental arrearages and supplier arrearages exception
- § 16:49 Earmarking
- § 16:50 Recoupment and setoff
- § 16:51 Statute of limitations
- § 16:52 Assumption of contract defense
- § 16:53 Foreclosure sales

III. TRANSFeree AND SURETY LIABILITY

- § 16:54 Overview
- § 16:55 Initial transferee or entity benefited by transfer
- § 16:56 Immediate or mediate transferees
- § 16:57 Statutory defenses for immediate and mediate transferees
- § 16:58 Surety liability
- § 16:59 Lien rights of transferees

IV. INITIATING THE PROCEEDINGS

- § 16:60 Preparing the complaint

TABLE OF CONTENTS

- § 16:61 Preparing the complaint and pleading requirements
- § 16:62 Amending the complaint and the “relation back” doctrine
- § 16:63 Standing
- § 16:64 Assignability of claims
- § 16:65 Venue

V. RESPONSE TO THE COMPLAINT

- § 16:66 Preparing a responsive pleading
- § 16:67 Affirmative defenses
- § 16:68 Statute of limitations
- § 16:69 Jury demand

VI. PRETRIAL PROCEEDINGS

- § 16:70 Discovery
- § 16:71 Consolidation of adversary proceedings
- § 16:72 Summary judgment
- § 16:73 Settlements

VII. TRIAL AND POSTTRIAL CONSIDERATIONS

- § 16:74 Burden of proof and presumptions
- § 16:75 Recovery of transfer
- § 16:76 Entry of judgment
- § 16:77 Recovery of interest, costs, and attorney’s fees
- § 16:78 Filing of proof of claim
- § 16:79 Appeal

CHAPTER 17. LITIGATING FRAUDULENT CONVEYANCE CLAIMS

I. ORIGINS OF FRAUDULENT CONVEYANCE LAW AND TYPES OF FRAUDULENT CONVEYANCES

- § 17:1 Statute of 13 Elizabeth and *Twyne’s Case*
- § 17:2 Badges of fraud in Lord Coke’s report on *Twyne Case*
- § 17:3 Evolution of constructive fraud: from punishing evil to remedying an injury

§ 17:4 Where we are today: the UVTA and the
Bankruptcy Code

II. FRAUDULENT CONVEYANCE AND OTHER LEGAL CONCEPTS: PREFERENCE, REPUTED TITLE, BULK SALE, DIVIDEND RESTRICTIONS, AND STOCK REDEMPTION RESTRICTIONS

§ 17:5 Fraudulent conveyance and the hiding of assets
§ 17:6 Fraudulent conveyance and preference
§ 17:7 Fraudulent conveyance and reputed title
§ 17:8 Fraudulent conveyance and bulk sales
§ 17:9 Dividends, distributions and redemptions of
insolvent entities and partnerships

III. FRAUDULENT CONVEYANCES; TYPES AND PRINCIPLES

§ 17:10 Types of fraudulent conveyances: statutory
provisions
§ 17:11 Common elements of a fraudulent conveyance

IV. ACTUAL INTENT TO HINDER, DELAY, OR DEFRAUD CREDITORS

§ 17:12 Actual intent
§ 17:13 Hinder and delay
§ 17:14 What it means to defraud a creditor: a transfer
that diminishes the debtor's estate
§ 17:15 Proof of actual intent: badges of fraud
§ 17:16 The UVTA and UFTA non-exclusive list of
badges of fraud
§ 17:17 Badges of fraud under § 548
§ 17:18 Absence of any one badge or factor is not a
complete defense
§ 17:19 Imputation of intent: insiders and persons in
control
§ 17:20 UFVA, UFTA and Bankruptcy Code definitions
of insider
§ 17:21 No discharge if debtor transferred with
fraudulent intent

TABLE OF CONTENTS

**V. CONSTRUCTIVE FRAUDULENT
TRANSFERS AND REASONABLY
EQUIVALENT VALUE AND FAIR
CONSIDERATION ISSUES**

- § 17:22 Constructive fraud or fraud in law
- § 17:23 Overview of reasonably equivalent value
- § 17:24 Reasonable equivalence: securing and satisfaction of antecedent debt
- § 17:25 Satisfaction of antecedent debt: transfers to insiders and the UVTA and UFTA
- § 17:26 Securing debt: disproportionately large security
- § 17:27 Reasonable equivalence: foreclosure sales
- § 17:28 Reasonable equivalence: marital dissolution proceedings
- § 17:29 Timing for the measurement of reasonably equivalent value
- § 17:30 Bargaining and reasonably equivalent value
- § 17:31 Reasonably equivalent value: guaranties and suretyship obligations
- § 17:32 Reasonably equivalent value: overview of things useless to unsecured creditors
- § 17:33 Reasonably equivalent value: love, affection, and support
- § 17:34 Reasonably equivalent value: gambling and psychic value
- § 17:35 Reasonably equivalent value: payment of college tuition for children
- § 17:36 Reasonably equivalent value: the loan commitment and economic benefit
- § 17:37 Reasonably equivalent value: the unperformed promise
- § 17:38 Reasonably equivalent value: professional services in aid of a fraudulent conveyance
- § 17:39 Reasonably equivalent value: prepetition settlements and release of claims
- § 17:40 Reasonably equivalent value: satisfaction of illegal or unenforceable obligations
- § 17:41 Reasonably equivalent value: transfer of exempt property
- § 17:42 Transfer to or for the benefit of an insider under an employment contract
- § 17:43 Transfers to charities
- § 17:44 Other protected transactions under 11 U.S.C.A. § 548

VI. TRANSFER OF ASSETS OF THE DEBTOR

- § 17:45 Defining the concept of transfer in fraudulent transfer statutes
- § 17:46 Transfers resulting in a diminution of the assets of the debtor
- § 17:47 Transfers of valueless asset
- § 17:48 Transfers of exempt assets and the creation of exempt assets
- § 17:49 Transfers of exempt property to third parties
- § 17:50 Transformation of nonexempt property into exempt property

VII. TRANSFER TIMING ISSUES

- § 17:51 Transfer timing
- § 17:52 Purpose of timing rules
- § 17:53 Effect of timing rules
- § 17:54 Transfer timing under 11 U.S.C.A. § 548(d)(1) and a fraudulent conveyance attack on personal property security interests
- § 17:55 The vulnerability of security interests for debt of another under 11 U.S.C.A. § 548(d)(1)
- § 17:56 Incurrence of an obligation and timing issues

VIII. INVOLUNTARY TRANSFERS, FORECLOSURES, AND CONTRACT TERMINATIONS

- § 17:57 Transfer to a third party
- § 17:58 The involuntary transfer
- § 17:59 Involuntary fraudulent conveyances and the UFCA
- § 17:60 *Durrett* and *BFP*: the limits of involuntary fraudulent conveyances
- § 17:61 Open questions under *BFP*: tax foreclosures
- § 17:62 Open questions under *BFP*: U.C.C. foreclosures; strict foreclosures; land sale contracts; lease cancellations; executory contract terminations
- § 17:63 Private sales under Article 9 of the Uniform Commercial Code
- § 17:64 Public sales under Article 9 of the Uniform Commercial Code
- § 17:65 Strict foreclosure
- § 17:66 Forfeiture of a land sale contract

TABLE OF CONTENTS

- § 17:67 Lease cancellation
- § 17:68 Disclaimer of property interest
- § 17:69 Termination of executory contracts

IX. INSOLVENCY AND UNREASONABLY SMALL CAPITAL

- § 17:70 Definition of insolvency
- § 17:71 Timing of insolvency: retrojection and projection
- § 17:72 Assets: inclusion, exclusion and valuation
- § 17:73 Contingent obligations
- § 17:74 Time barred and future claims
- § 17:75 Unreasonably small capital and incurring excessive debt

X. SECTION 544(B): VOIDING POWERS BASED UPON STATE OR OTHER LAW VOIDING CLAIMS

- § 17:76 Section 544(b): Overview
- § 17:77 Section 544(b): Existence and allowability of creditor claim
- § 17:78 Section 544(b): Creditor standing under the UFCA, the UFTA and the UVTA
- § 17:79 Section 544(b): Scope of estate's recovery and the doctrine of *Moore v. Bay*
- § 17:80 Section 544(b): Future creditors

XI. LIABILITY OF INITIAL AND SUBSEQUENT TRANSFEREES AND PERSON FOR WHOSE BENEFIT TRANSFER IS MADE

- § 17:81 Characterization of transferee: initial transferee, subsequent transferee, or mere conduit
- § 17:82 Persons for whose benefit a fraudulent conveyance is made
- § 17:83 Recovery against subsequent transferees: UVTA, UFTA, UFCA
- § 17:84 The trustee's strong arm powers and transferee liability: the interplay of 11 U.S.C.A. §§ 544 and 550
- § 17:85 The trustee's strong arm powers and transferee liability: potential pitfall for trustee to a broad reading of 11 U.S.C.A. § 550

XII. RIGHTS AND DEFENSES OF TRANSFEREES

- § 17:86 The transferee: exchange value and good faith
- § 17:87 Different approaches to transferee liability
- § 17:88 Recovery of property or its value
- § 17:89 Setting aside conveyance against initial transferee: actual fraud
- § 17:90 Good faith transferee
- § 17:91 Initial transferee's lien rights for value given: actual fraud
- § 17:92 Setting aside a conveyance against an initial transferee: constructive fraud
- § 17:93 Initial transferee's lien rights for value given: constructive fraud
- § 17:94 Judgment against initial transferee for value of asset and initial transferee's offset rights for value given
- § 17:95 Good faith initial transferee's lien/offset rights for improvements
- § 17:96 Recovery against subsequent transferees: lien and offset rights
- § 17:97 Recovery against subsequent transferees: limitations under 11 U.S.C.A. § 550(b)
- § 17:98 Securities safe harbor defense under § 546(e)
- § 17:99 Repurchase agreement safe harbor defense under § 546(f)
- § 17:100 Swap agreement safe harbor under § 546(g)
- § 17:101 Master netting agreement safe harbor under § 546(j)
- § 17:102 Prohibition on duplicate recovery

XIII. SPECIAL SITUATIONS: LBOS AND PONZI SCHEMES

- § 17:103 Leveraged buyout defined
- § 17:104 Leveraged buyouts and the collapsing doctrine
- § 17:105 Leveraged buyouts and reasonably equivalent value
- § 17:106 Leveraged buyouts and insolvency related issues
- § 17:107 Leveraged buyouts and actual fraudulent transfers
- § 17:108 Leveraged buyouts and claims against lenders

TABLE OF CONTENTS

§ 17:109	Ponzi scheme defined and scope of transfers subject to avoidance
§ 17:110	Considerations underlying actual fraudulent transfer claim arising from Ponzi scheme
§ 17:111	Considerations underlying constructive fraudulent transfer claims arising under a Ponzi scheme
§ 17:112	Issues arising from claims against investors in Ponzi schemes
§ 17:113	Issues arising from claims against brokers and salespersons in Ponzi schemes
§ 17:114	Issues arising from claims against trade and other ordinary course creditors in Ponzi schemes
§ 17:115	Issues arising from claims against lenders in Ponzi schemes
§ 17:116	Issues arising from claims against professionals in Ponzi schemes

XIV. PROCEDURAL AND TACTICAL CONCERNS

§ 17:117	Drafting the complaint: determining whether to pursue avoidance, recovery, or both
§ 17:118	Drafting the complaint: determining which transferees to sue and parties to name
§ 17:119	Drafting the complaint: applicable Bankruptcy Rules for pleading actual and constructive fraudulent transfer claims
§ 17:120	Drafting the complaint: pleading actual intent to hinder, delay or defraud under § 548
§ 17:121	Drafting the complaint: pleading constructive fraudulent transfer claim under § 548
§ 17:122	Drafting the complaint: pleading a claim under § 544(b)
§ 17:123	Drafting the complaint: pleading claims against subsequent transferees
§ 17:124	Drafting the complaint: the collapsing doctrine
§ 17:125	Drafting the complaint: punitive damage requests
§ 17:126	Drafting the complaint: additional theories of recovery or grounds for relief
§ 17:127	Aider, abettor, and co-conspirator liability in fraudulent conveyance law
§ 17:128	Responsive pleadings: answer, motion to dismiss and counterclaim

§ 17:129	Responsive pleadings: affirmative defenses
§ 17:130	Statute of limitations/ statutes of repose: § 546 time to commence action
§ 17:131	Statute of limitations/statute of repose: § 548 reach back period
§ 17:132	Statute of limitations/statute of repose: § 544(b) state law reach back period from date of transfer or if actual intent claim, from date of reasonable discovery
§ 17:133	Statute of limitations/statute of repose: § 544(b) state law reach back period under applicable law
§ 17:134	Statute of limitations/repose: § 550(f) claim for recovery
§ 17:135	Contribution and indemnity among transferees and benefitted parties
§ 17:136	Jurisdictional issues and allegations
§ 17:137	Standing to file complaint
§ 17:138	Jury trial
§ 17:139	Choice of law issues
§ 17:140	Arbitration
§ 17:141	Amending the complaint
§ 17:142	Burden of proof and burden of production
§ 17:143	Evidentiary presumptions
§ 17:144	Injunctive relief: enjoining further transfers of fraudulently transferred property
§ 17:145	Injunctive relief: competing claims to fraudulently transferred assets
§ 17:146	Valuation issues
§ 17:147	Settlement issues
§ 17:148	Recovery of attorney's fees
§ 17:149	Recovery of interest
§ 17:150	Remedy for a transferee for value where transfer avoided
§ 17:151	Secured creditor's claims to fraudulent transfer recoveries

Table of Laws and Rules

Table of Cases

Index