

Table of Contents

CHAPTER 1. AN OVERVIEW OF BANKRUPTCY CHOICES UNDER CHAPTER 7, CHAPTER 11, CHAPTER 12, AND CHAPTER 13 1

- § 1:1 Introduction
- § 1:2 Nonbankruptcy alternatives
- § 1:3 Overview of Chapter 7 bankruptcy
- § 1:4 Overview of Chapter 11 bankruptcy
- § 1:5 Misuse of the bankruptcy process
- § 1:6 —Consumer abuse and the means test
- § 1:7 —Serial filings
- § 1:8 —Bad faith purpose and the new debtor syndrome
- § 1:9 Overview of Chapter 13 bankruptcy
- § 1:10 Overview of Chapter 12 bankruptcy
- § 1:11 Overview of Chapter 15 bankruptcy
- § 1:12 Conclusion

CHAPTER 2. INITIATING THE BANKRUPTCY CASE 65

- § 2:1 Introduction—Eligibility requirements
- § 2:2 The voluntary petition, particularly the means test and credit counseling
- § 2:3 The voluntary petition—Venue
- § 2:4 —Petition, schedules and statements
- § 2:5 —The order for relief
- § 2:6 —Abstention, conversion or dismissal
- § 2:7 The involuntary petition—In general
- § 2:8 —The grounds for an involuntary petition under section 303(h)
- § 2:9 —Creditors eligible to petition for involuntary bankruptcy
- § 2:10 —Sanctions imposed against unsuccessful petitioners
- § 2:11 —Abstention, conversion, or dismissal of the involuntary petition
- § 2:12 Joint administration or consolidation
- § 2:13 —Joint petition by spouses
- § 2:14 —The community claim and the estate
- § 2:15 —Subsidiaries and affiliates

CHAPTER 3. BANKRUPTCY COURT JURISDICTION OVER CASES AND PROCEEDINGS..... 125

- § 3:1 Introduction—Jurisdiction—In general
- § 3:2 Jurisdiction of the bankruptcy and district courts under the bankruptcy amendments and Federal Judgeship Act of 1984—Basic structure allocating jurisdiction
- § 3:3 —What are core proceedings?
- § 3:4 —What are related proceedings?
- § 3:5 —Consent, withdrawal, and proceedings involving personal injury
- § 3:6 —Mandatory and discretionary abstention—28 U.S.C.A. § 1334(c) and Bankruptcy Code § 305
- § 3:7 —Jury trial
- § 3:8 —Sovereign immunity
- § 3:9 —Venue
- § 3:10 —Appeals
- § 3:11 Conclusion

CHAPTER 4. DISTINCTIVE PERSONNEL IN THE BANKRUPTCY PROCESS 183

- § 4:1 Introduction
- § 4:2 U.S. bankruptcy judge
- § 4:3 Clerk of the U.S. bankruptcy court
- § 4:4 Trustee in Chapter 7
- § 4:5 Debtor-in-possession in Chapter 11—In general
- § 4:6 —Appointment of an independent trustee
- § 4:7 —Appointment of an examiner
- § 4:8 Creditors' committee
- § 4:9 Securities and exchange commission
- § 4:10 Debtor and trustee in small business Chapter 11, Chapter 12 and Chapter 13
- § 4:11 The U.S. Trustee
- § 4:12 Other special personnel

CHAPTER 5. THE AUTOMATIC STAY... 223

- § 5:1 Scope of the automatic stay—Section 362(a)—In general
- § 5:2 —Nondebtor injunctions and section 105
- § 5:3 Exceptions to the automatic stay—Section 362(b)
- § 5:4 Proceedings to relieve or modify the stay—Expedited and preliminary hearing
- § 5:5 —Cause and the equity cushion analysis
- § 5:6 Providing adequate protection
- § 5:7 Contempt and other sanctions for violation of the stay

TABLE OF CONTENTS

CHAPTER 6. PROPERTY OF THE BANKRUPTCY ESTATE	263
§ 6:1 Introduction	
§ 6:2 Interacting federal and state law	
§ 6:3 Exclusions from the bankruptcy estate	
§ 6:4 Shared interests in property—Property encumbered by mortgage, security interest or other lien	
§ 6:5 —Jointly held property	
§ 6:6 —Community property	
§ 6:7 The problem of value	
§ 6:8 Postbankruptcy property—In a Chapter 7 case	
§ 6:9 —In Chapter 11, Chapter 12, and Chapter 13	
§ 6:10 —Floating liens, proceeds, products, and rental income	
§ 6:11 Abandoning valueless property or redemption by the debtor	
§ 6:12 Asset forfeiture versus bankruptcy	
CHAPTER 7. EXEMPT AND IMMUNE PROPERTY	311
§ 7:1 Sources of confusion—Terminology and history	
§ 7:2 —State opt-out	
§ 7:3 —Constitutional questions of the § 522(b) state opt-out	
§ 7:4 —The use of exemptions in Chapters 11, 12, and 13	
§ 7:5 The choice of law and state preemption—Choosing the property to exempt	
§ 7:6 Real property exemption as homestead or property held by tenants by the entirety	
§ 7:7 Personal property exemptions	
§ 7:8 Income as exempt	
§ 7:9 The acquisition of exempt property	
§ 7:10 Protecting exemptions impaired by liens or by transfer	
§ 7:11 Extra-territorial application of exemptions	
CHAPTER 8. CLAIMS BY CREDITORS AND DISTRIBUTION IN BANKRUPTCY	357
§ 8:1 Introduction—Legal and equitable, future and contingent, secured and unsecured claims	
§ 8:2 Future claims	
§ 8:3 Environmental cleanup orders	
§ 8:4 Secured creditors	
§ 8:5 The filing of claims—How and when (and when not) to file a claim	
§ 8:6 —Class claims	
§ 8:7 —Disallowance of claims	
§ 8:8 —Estimating the amount of the claim	

- § 8:9 —Claims with multiple components, the lessor as example
- § 8:10 Administrative and other priority claims
- § 8:11 —Family support
- § 8:12 —The administrative expenses
- § 8:13 —Professional fees
- § 8:14 —Involuntary gap creditors
- § 8:15 —Wage and fringe benefit claims
- § 8:16 —Grain producers and fishermen
- § 8:17 —Consumer deposits
- § 8:18 —Taxes
- § 8:19 —Capital maintenance by depository institution
- § 8:20 —Drunk driving
- § 8:21 Roving priorities through super priority and subordination

CHAPTER 9. ADMINISTRATION OF THE BANKRUPTCY ESTATE 421

- § 9:1 Introduction—Chapter 11 as the context
- § 9:2 Utility service—Bankruptcy Code § 366
- § 9:3 The use, sale, or lease of property of the estate—
Bankruptcy Code § 363—Sales in and out of the ordinary course
- § 9:4 —Judicial bankruptcy sale
- § 9:5 —Can a section 363 sale liquidate the Chapter 11 debtor?
- § 9:6 —The disposition of encumbered property
- § 9:7 Obtaining credit—Bankruptcy Code § 364—Credit for routine business needs
- § 9:8 Assuming or rejecting executory contracts—
Bankruptcy Code § 365—Defining the executory contract
- § 9:9 —Is the contract terminated before bankruptcy or is cure of default required?
- § 9:10 —How and when to reject an executory contract and with what effect?
- § 9:11 —Licenses of intellectual property—Bankruptcy Code § 365(n)
- § 9:12 —Contracts regarding the sale of land including time shares—Bankruptcy Code § 365(i) and (j)
- § 9:13 —The collective bargaining contract—Bankruptcy Code §§ 1113 and 1114
- § 9:14 —Contracts of financing for transportation equipment and oil production farmout—Bankruptcy Code §§ 541(b)(4) and 1110
- § 9:15 Assuming or rejecting unexpired leases—What is an unexpired lease?—Lease or financing agreement?

TABLE OF CONTENTS

- § 9:16 —Has the lease been terminated before bankruptcy?
- § 9:17 —Assuming the unexpired lease and curing default
- § 9:18 —The shopping center lease
- § 9:19 —The lessor as debtor and the rights of tenants

CHAPTER 10. THE AVOIDING POWERS OF THE TRUSTEE IN BANKRUPTCY..... 487

- § 10:1 Introduction—In general
- § 10:2 —Application by debtor, debtor-in-possession, creditors' committee and Chapter 13 debtor
- § 10:3 The turnover of the estate property—Bankruptcy Code §§ 542 and 543
- § 10:4 The strong arm power of the trustee as ideal creditor—Bankruptcy Code § 544(a)
- § 10:5 —Application to unperfected security interests
- § 10:6 —Application to real property transfers
- § 10:7 The trustee's right to invoke other state or federal laws on behalf of an actual creditor—Bankruptcy Code § 544(b)
- § 10:8 Preferential transfers—Bankruptcy Code § 547—Depletion of the estate
- § 10:9 —The elements of preference
- § 10:10 —The routine application to the easy preference
- § 10:11 —The hard preference to insiders
- § 10:12 —Exceptions to preference
- § 10:13 The set-off in Bankruptcy Code § 553
- § 10:14 Transfers in fraud of creditors—Bankruptcy Code § 548
- § 10:15 —Constructive fraud
- § 10:16 —Actual intent to defraud
- § 10:17 Avoidance of statutory liens—Bankruptcy Code § 545—Disguised priority
- § 10:18 The right of the trustee to preserve avoided liens to benefit the estate—Bankruptcy Code § 551
- § 10:19 Protecting the rights of claimants through Bankruptcy Code § 546
- § 10:20 Protecting the rights of claimants through Bankruptcy Code § 550
- § 10:21 Postpetition transactions and Bankruptcy Code § 549

CHAPTER 11. THE DISCHARGE OF CLAIMS..... 559

- § 11:1 Introduction—Scope of fresh start
- § 11:2 —What is the standard for establishing denial of or exception to discharge?
- § 11:3 Denial of discharge in Chapter 7—Bankruptcy Code § 727—Fraud and concealment

§ 11:4	Timely objections to discharge
§ 11:5	Prior bankruptcy discharge and filing fees
§ 11:6	Exceptions to discharge: Bankruptcy Code § 523— When the bankruptcy court has the exclusive right to determine
§ 11:7	Exceptions to discharge: Bankruptcy Code § 523(a)(2)—Common fraud and false financial statements
§ 11:8	Exceptions to discharge: Bankruptcy code § 523(a)(2)—Misuse of credit cards
§ 11:9	Exceptions to discharge: Bankruptcy Code § 523(a)(6)—Willful and malicious injury, conversion of collateral, medical malpractice, drunk driving
§ 11:10	—Excepting punitive damages from discharge
§ 11:11	Exceptions to discharge: Bankruptcy Code § 523(10)— Prebankruptcy judgment, res judicata, collateral estoppel, and preclusion
§ 11:12	Exceptions to discharge: Bankruptcy Code §§ 523 and 507—Tax obligations
§ 11:13	Exceptions to discharge: Bankruptcy Code § 523(a)(4)—Defalcating fiduciary
§ 11:14	Exceptions to discharge: Bankruptcy Code § 523(a)(5), (15)—Family support
§ 11:15	Exceptions to discharge: Bankruptcy Code § 523(a)(8)—Student loans
§ 11:16	Exceptions to discharge: Bankruptcy Code § 523(a)(3)—Unscheduled debts
§ 11:17	Exceptions to discharge: Bankruptcy Code § 523(a)(7)—Fines, forfeitures, and restitution
§ 11:18	Enforcement of the discharge—Reaffirmation of the discharged debt
§ 11:19	—Voiding judgments and enjoining collection
§ 11:20	—Prohibition of discrimination by governmental agencies
§ 11:21	Discharge through Chapter 11
§ 11:22	Discharge through Chapter 13

CHAPTER 12. THE CHAPTER 11 PLAN OF REORGANIZATION..... 637

§ 12:1	Introduction—The importance of negotiation
§ 12:2	Liquidating plan or rehabilitating plan
§ 12:3	Conversion to and from Chapter 11 and “good faith”
§ 12:4	Sale of the debtor’s assets without a plan
§ 12:5	Formulating classes—Impaired and unimpaired—To achieve plan acceptance
§ 12:6	— —Proper classification or gerrymander?
§ 12:7	—Impairment and nonimpairment—Curing impairment

TABLE OF CONTENTS

§ 12:8	Issuance of securities and the safe harbor provision
§ 12:9	Disclosure statement and hearing on adequate information
§ 12:10	Confirmation of the plan upon acceptance by the classes—Confirmation standards
§ 12:11	—Liquidation values for the “best interest of creditors” test
§ 12:12	—At least one affirmative class
§ 12:13	—Priority claims
§ 12:14	—Likelihood of further bankruptcy—Feasibility
§ 12:15	—Effective date of the plan
§ 12:16	—Effect of confirmation—Section 1141
§ 12:17	Cram down confirmation following rejection by one or more classes
§ 12:18	—Unfair discrimination
§ 12:19	—Fair and equitable generally
§ 12:20	—Fair and equitable as to secured creditors
§ 12:21	—Contribution of new value
§ 12:22	—Fair and equitable using exchange securities
§ 12:23	Section 1111(b) election
§ 12:24	Small business debtor, single asset real estate debtor, and individual Chapter 11 debtor
§ 12:25	Prepackaged plans

CHAPTER 13. THE ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME..... 723

§ 13:1	Introduction
§ 13:2	Choosing Chapter 13—As initial choice or by conversion
§ 13:3	Estate administration in Chapter 13—Overview and the problem of speed
§ 13:4	—Expanding and contracting estate
§ 13:5	—Automatic stay
§ 13:6	—Chapter 13 trustee
§ 13:7	Filing proofs of claim
§ 13:8	General creditors and their classification including priority creditors and postpetition creditors
§ 13:9	Modifying the rights of secured creditors—Filing of proofs of claim
§ 13:10	—Long term debt, deceleration and the residential mortgage
§ 13:11	—Cram down of the objecting secured creditor
§ 13:12	Confirmation of the plan—Payments inside and outside of the plan
§ 13:13	—Finding projected disposable income for the applicable commitment period

- § 13:14 Discharge, super discharge and good faith
- § 13:15 Change the plan: modify, convert or dismiss

CHAPTER 14. ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME..... 797

- § 14:1 Introduction
- § 14:2 Selecting Chapter 12—Distinguishing “family farmer” and “farmer”
- § 14:3 —Conversion to and from Chapter 12
- § 14:4 The Chapter 12 estate
- § 14:5 Administration of the Chapter 12 estate—
Introduction
- § 14:6 —The standing Chapter 12 trustee and the debtor-in-possession
- § 14:7 —The automatic stay and adequate protection
- § 14:8 —Cash collateral
- § 14:9 —Assumption or rejection of executory contracts and leases
- § 14:10 The Chapter 12 plan—Introduction
- § 14:11 —Payment and good faith
- § 14:12 —Classification, cure, and cram down
- § 14:13 Discharge

CHAPTER 15. THE WORK OF THE SUPREME COURT 829

- § 15:1 Introduction
- § 15:2 Initiating the bankruptcy case—Pending Chapter XI could not be re-filed as Chapter 11: *Central Trust Co., Rochester, N. Y. v. Official Creditors’ Committee of Geiger Enterprises, Inc.*
- § 15:3 —Serial filing is not barred: *Johnson v. Home State Bank*
- § 15:4 —Consumers are eligible for Chapter 11: *Toibb v. Radloff*
- § 15:5 —Puerto Rico is not a state empowered to enact a municipal bankruptcy law: Commonwealth of *Puerto Rico v. Franklin California Tax-Free Trust*
- § 15:6 Jurisdiction of bankruptcy cases and proceedings—Bankruptcy judges held judicial powers in violation of article III: *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*
- § 15:7 —Right to trial by jury in bankruptcy proceedings: *Granfinanciera, S.A. v. Nordberg*
- § 15:8 —States are immune from avoiding powers: *Hoffman v. Connecticut Dept. of Income Maintenance*

TABLE OF CONTENTS

- § 15:9 —The U.S. is immune from avoiding powers: *U.S. v. Nordic Village, Inc.*
- § 15:10 —Circuit courts of appeal may review the interlocutory orders of bankruptcy courts reviewed by the district court: *Connecticut Nat'l Bank v. Germain*
- § 15:11 —The Chapter 11 bankruptcy court has initial jurisdiction to enjoin collection on a supersedeas bond against a final judgment: *Celotex Corp. v. Edwards*
- § 15:12 —Remand orders are not reviewable by appeal: *Things Remembered, Inc. v. Petrarca*
- § 15:13 —A bankruptcy defense may not ground federal removal jurisdiction: *Rivet v. Regions Bank of Louisiana*
- § 15:14 —In rem jurisdiction to determine hardship discharge for student loan is not barred by the 11th Amendment: *Tennessee Student Assistance Corp. v. Hood*
- § 15:15 —In rem jurisdiction for ancillary preference proceeding is not barred by the 11th Amendment: *Central Virginia Community College v. Katz*
- § 15:16 —Probate exception does not prohibit bankruptcy court from hearing a tortious interference with inheritance claim: *Marshall v. Marshall*
- § 15:17 —Asbestos settlement extends to the insurers of the debtor in direct action by victims: *Travelers Indem. Co. v. Bailey*
- § 15:18 —A bankruptcy court may not constitutionally render final judgment upon a state common law action raised as a counterclaim to a filed proof of claim: *Stern v. Marshall*
- § 15:19 —Denial of confirmation is not a final order. *Bullard v. Blue Hills Bank*
- § 15:20 —Denial without reservation of a motion to lift the automatic stay is a final order. *Ritzen Group, Inc. v. Jackson Masonry, LLC*
- § 15:21 —Fraudulent transfer adversary proceedings, styled as “Stern claims,” are heard de novo by the district court: *Executive Benefits Insurance Agency v. Arkison*
- § 15:22 —Bankruptcy courts may adjudicate Stern claims with implied consent knowingly and voluntarily made: *Wellness International Network, Ltd. v. Sharif*
- § 15:23 —Failure to obtain a stay required by 11 U.S.C.A § 363(m) is not a jurisdictional bar to appeal: *MOAC Mall Holdings LLC v. Transform Holdco LLC*
- § 15:24 —Tribes are subject to the automatic stay as

- sovereign immunity does not apply: *Lac du Flambeau Band v. Coughlin*
- § 15:25 —Sovereign immunity precludes invoking state fraudulent transfer law against the Internal Revenue Service: *United States v. Miller*
- § 15:26 Distinctive personnel in bankruptcy—Chapter 7 trustee may waive corporate attorney-client privilege: *Commodity Futures Trading Com’n v. Weintraub*
- § 15:27 —A settlement trustee must pay the taxes: *Holywell Corp. v. Smith*
- § 15:28 —Only the trustee may surcharge the secured lender under Bankruptcy Code § 506(c): *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*
- § 15:29 —Attorneys assisting consumer debtors are properly regulated as debt relief agencies, which includes not giving advice to incur debt that would be an abuse of bankruptcy: *Milavetz, Gallop & Milavetz, P.A. v. U.S.*
- § 15:30 —Trustee’s fees applied differently in the two states using administrators violates the uniformity clause: *Siegel v. Fitzgerald.*
- § 15:31 Automatic stay—Compensation for lost investment opportunity is denied: *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd.*
- § 15:32 —Administrative proceedings by the federal reserve board are excepted from the automatic stay: *Board of Governors of the Federal Reserve System v. MCorp Financial, Inc.*
- § 15:33 —The administrative freeze of a bank account does not violate the automatic stay: *Citizens Bank of Maryland v. Strumpf*
- § 15:34 Automatic stay—Retaining property seized prior to the petition does not violate the automatic stay: *City of Chicago, Illinois v. Fulton*
- § 15:35 Property of the estate—Property seized prior to bankruptcy from an adequately protected secured creditor is subject to turnover: *U.S. v. Whiting Pools, Inc.*
- § 15:36 —Polluted property may not be abandoned: *Midlantic Nat’l Bank v. New Jersey Dept. of Environmental Protection*
- § 15:37 —ERISA qualified pension is excluded from the estate: *Patterson v. Shumate*
- § 15:38 Exempt property—Bankruptcy Code § 522(f) does not have retroactive effect: *U.S. v. Security Indus. Bank*
- § 15:39 —Judicial lien imposed on property acquired at divorce cannot be avoided under Bankruptcy Code § 522(f)(1): *Farrey v. Sanderfoot*

TABLE OF CONTENTS

- § 15:40 —State exemptions may not limit Bankruptcy Code § 522(f): *Owen v. Owen*
- § 15:41 —Exemption sustained without objection even though no colorable basis exists: *Taylor v. Freeland & Kronz*
- § 15:42 —I.R.A. is exempt: *Rousey v. Jacoway*
- § 15:43 —Exempt property which is subject to a value cap requires explicit notice to the trustee: *Schwab v. Reilly*
- § 15:44 —Bankruptcy court lacks authority to surcharge the debtor's homestead exemption for debtor's fraud: *Law v. Siegel*
- § 15:45 —Inherited I.R.A. is not an exempt retirement account within Bankruptcy Code § 522: *Clark v. Rameker*
- § 15:46 Claims—Cleanup order was dischargeable: *Ohio v. Kovacs*
- § 15:47 —Oversecured tax claims may collect postpetition interest: *U.S. v. Ron Pair Enterprises, Inc.*
- § 15:48 —Restitution is a debt as defined by Bankruptcy Code § 101(12): *Pennsylvania Dept. of Public Welfare v. Davenport*
- § 15:49 —Allocating plan payments to trust fund taxes: *U.S. v. Energy Resources Co.*
- § 15:50 —Bankruptcy Code § 506(d) may not be used by debtors to pare down undersecured mortgages: *Dewsnup v. Timm*
- § 15:51 —Debtor may not strip a junior mortgage that is wholly unsecured: *Bank of America, N.A. v. Caulkett*
- § 15:52 —A late filed claim in Chapter 11 may be excused even though the delay was culpable: *Pioneer Inv. Services Co. v. Brunswick Assoc. Ltd. Partnership*
- § 15:53 —A noncompensatory tax may not be subordinated but may be re-characterized as a penalty: *U.S. v. Noland* and *U.S. v. Reorganized CF & I Fabricators of Utah, Inc.*
- § 15:54 —The secured creditor's claim in Chapter 13 cramdown is measured by replacement value: *Associates Commercial Corp. v. Rash*
- § 15:55 —Only the trustee may surcharge the secured lender under Bankruptcy Code § 506(c): *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*
- § 15:56 —The burden of proof is a substantive element of the tax claim controlled by state law: *Raleigh v. Illinois Dept. of Revenue*
- § 15:57 —Workers' compensation premiums do not qualify as contributions to employee benefit plan within § 507(a)(5): *Howard Delivery Service, Inc. v. Zurich American Ins. Co.*

- § 15:58 —Contract to pay postpetition attorney’s fees not limited to litigating nonbankruptcy issues: *Travelers Cas. and Sur. Co. of America v. Pacific Gas and Elec. Co.*
- § 15:59 —Filing a proof of claim on a stale debt does not violate the Fair Debt Collections Practices Act: *Midland Funding, LLC v. Johns*
- § 15:60 Administration of the case—Rejection of collective bargaining agreements: *N.L.R.B. v. Bildisco and Bildisco*
- § 15:61 —Rejection of a Trademark License does not prevent Licensee from continuing to use the rejected Trademark: *Mission Prod. Holdings, Inc. v. Tempnology, LLC.*
- § 15:62 —The F.C.C., as secured party unpaid for the purchase price of bank license, cannot revoke the license: *F.C.C. v. NextWave Personal Communications Inc.*
- § 15:63 —The Chapter 7 debtor’s attorney cannot be paid by the estate: *Lamie v. U.S. Trustee*
- § 15:64 —Attorneys’ fees for defense of a fee award is not part of Bankruptcy Code § 330(a)(1): *Baker Botts LLP v. ASARCO LLC*
- § 15:65 Avoiding powers—Payments on trust fund taxes were not avoidable as preference: *Begier v. I.R.S.*
- § 15:66 —The exception to preference for ordinary course payments protects payments on long-term debts: *Union Bank v. Wolas*
- § 15:67 —A check is paid and creates preference when the bank honors the check: *Barnhill v. Johnson*
- § 15:68 —Mortgage foreclosure shows reasonably equivalent value conclusively if it is noncollusive and complies with state law: *BFP v. Resolution Trust Corp.*
- § 15:69 —Federal law controls the grace period for perfection of an enabling loan: *Fidelity Financial Services, Inc. v. Fink*
- § 15:70 —Financial institutions participating as conduits to a leveraged buyout are not a shield from avoidance as a fraudulent transfer: *Merit Management Group, LP v. FTI Consulting, Inc.*
- § 15:71 Discharge—Restitution orders are not dischargeable in Chapter 7: *Kelly v. Robinson*
- § 15:72 —Exceptions to discharge are proved by a fair preponderance standard: *Grogan v. Garner*
- § 15:73 —Excepting discharge for fraud requires justifiable reliance, not reasonable, reliance: *Field v. Mans*
- § 15:74 —A willful and malicious injury must intend harm: *Kawaauhau v. Geiger*
- § 15:75 —Punitive damages are subject to the same

TABLE OF CONTENTS

- discharge as the compensatory damages: *Cohen v. de La Cruz*
- § 15:76 —Settlement of fraud claim does not preclude raising nondischargeability in subsequent bankruptcy: *Archer v. Warner*
- § 15:77 —Bankruptcy stay equitably tolls the three-year limit to look back for nondischargeable taxes: *Young v. U.S.*
- § 15:78 —Timely objection to discharge required by Rule 4004(a) is not jurisdictional and may be forfeited: *Kontrick v. Ryan*
- § 15:79 —Defalcation by a fiduciary is excepted from discharge only if knowledge or gross recklessness is found: *Bullock v. BankChampaign, N.A.*
- § 15:80 —The exception to discharge for “actual fraud” in Bankruptcy Code § 523(a)(2)(A) is not limited to obtaining property through fraudulent representation: *Husky International Electronics Inc v. Ritz*
- § 15:81 —A materially false statement describing a single asset must be in writing: *Lamar, Archer & Cofrin, LLP v. Appling*.
- § 15:82 —Contempt for violation of a discharge order is denied if the creditor had a fair ground of doubt that the discharge applied: *Taggart v. Lorenzen*
- § 15:83 —Fraud supporting exception to discharge may be imputed to the partner who did not personally commit the fraud: *Bertenwerfer v. Buckley*.
- § 15:84 Business reorganization—Contribution of new value in Chapter 11 cramdown: *Norwest Bank Worthington v. Ahlers*
- § 15:85 —Allocating plan payments to trust fund taxes: *U.S. v. Energy Resources Co.*
- § 15:86 —Debtor ordered to assume more pension liabilities: *Pension Ben. Guar. Corp. v. LTV Corp.*
- § 15:87 —A late filed claim in Chapter 11 may be excused even though the delay was culpable: *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*
- § 15:88 —The new value contribution should be measured by the market: *Bank of America Nat’l Trust and Sav. Ass’n v. 203 North LaSalle Street Partnership*
- § 15:89 —§ 1146(a) stamp tax exemption requires sale after the confirmed plan: *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*
- § 15:90 —Absolute priority rule in Chapter 11 requires credit bidding: *Radlax Gateway Hotel, LLC v. Amalgamated Bank*
- § 15:91 —Absolute priority rule in Chapter 11 prohibits

- structured dismissal to change priority: *Czyzewski v. Jevic Holding Corp.*
- § 15:92 —Capital gains on sale of farm during Chapter 12 was not a tax incurred by the estate: *Hall v. United States*
- § 15:93 —Deference to the bankruptcy court that the voting creditor was not an insider and his vote counted to satisfy an affirmatively voting impaired class: *U.S. Bank NA v. Village at Lakeridge, LLC*
- § 15:94 —Chapter 11 plan may not release non-debtors without consent by the creditors. *Harrington v. Purdue Pharma, L.P.*
- § 15:95 —Insurer is a Party in Interest entitled to be heard on Plan of Reorganization: *Truck Ins. Exchange v. Kaiser Gypsum Co., Inc.*
- § 15:96 Plans for individuals with regular income—Bankruptcy Code § 1322(b)(2) bars bifurcating undersecured home mortgages: *Nobelman v. American Sav. Bank*
- § 15:97 —Installment cure of home mortgage in default requires the payment of interest: *Rake v. Wade*
- § 15:98 —The appropriate cramdown interest rate is a formula of prime rate plus an adjustment for risk: *Till v. SCS Credit Corp.*
- § 15:99 —Conversion from Chapter 7 to Chapter 13 is tempered by good faith: *Marrama v. Citizens Bank of Massachusetts*
- § 15:100 —A plan which confirms the discharge of a student loan without adversary hearing on undue hardship is final: *United Student Aid Funds, Inc. v. Espinosa*
- § 15:101 —Calculating projected disposable income may include future events: *Hamilton v. Lanning*
- § 15:102 —No deduction for car ownership costs without actual loan or lease payments: *Ransom v. FIA Card Services N.A.*
- § 15:103 —Upon conversion from Chapter 13 to Chapter 7, undistributed post-petition assets are returned to the debtor: *Harris v. Viegelaahn*

CHAPTER 16. CROSS-BORDER INSOLVENCIES

1013

- § 16:1 Introduction: the Chapter 15 gateway
- § 16:2 The first gateway: the U.S. as the center of main interest
- § 16:3 The second gateway: the U.S. as the place of nonmain foreign proceedings
- § 16:4 Sympathetic rhythm if not conscious parallelism: UNCITRAL model law and European regulation
- § 16:5 Individuals are eligible to use Chapter 15

TABLE OF CONTENTS

Table of Laws and Rules

Table of Cases

Index