

INTRODUCTION TO 2025–2026 UPDATE

Highlights of new developments:

- The special rules relative to self-settled trusts and *In re Cyr* are discussed. See App. B.
- The procedural prerequisites for utilizing IRC § 6901, relating to successor liability, were discussed in *ACI Constr., LLC v. United States*. See § 1:27.
- The law of forum state may also govern “whether a given issue is substantive or procedural.” See § 2:47.
- New section: Internal affair doctrine conflict of laws related to corporations, LLCs, etc. See § 2:51.33.
- New section: Conflict of laws—Charging order; limited partnerships and LLCs. See § 2:51.66.
- When equitable estoppel allows a nonsignatory to compel arbitration. See § 2:52.33.
- A state law restraining notice, which is similar to “an asset freeze or injunctive relief” and the interaction thereof with bankruptcy and Barton doctrine considerations is discussed. See § 3:8.
- When damages are granted as a remedy for a UFTA/UVTA claim is discussed. See § 3:11.
- New section: UCC Article 4A preemption of claims against certain financial institutions. See § 3:17.25.
- California’s “continuing violation doctrine,” which, under certain circumstances, causes the statute of limitations to run after the last act of a series of wrongs, is discussed. See § 4:2.
- The limitation on federal jurisdiction relative to state probate matters is discussed. See § 4:36.20.
- In connection with determining whether new consideration was contemporaneous, the Tenth Circuit Court of Appeals, in *In re Chuza Oil Co.*, viewed “the transaction as a whole” rather than focusing only on a discrete aspect of the transfer; if the result was that the bankruptcy estate was enhanced, and not diminished, the exception to the anti-preference rules would attach. See § 5:21.
- In numerous circuits, “whether the earmarking doctrine applies” is resolved on the basis of “whether the debtors retained an interest in the transferred property.” *In re Chuza Oil Co.* “applied two methods” to resolve the “interest” issue. See § 5:30.
- The special rules applicable to when recoupment seeks affirmative recovery are discussed. See § 5:31.

- The right to setoff “extends to claims that have been subordinated.” See § 5:34.
- Whether subrogation requires tracing and *In re Black Elk Energy Offshore Operations, LLC*, are discussed. See § 7:18.
- The gap period relative to involuntary petitions, i.e., before “an order for relief” is issued, is discussed. See § 10:8.
- In connection with state law claims for damages sustained as the result of an involuntary petition, the Eighth Circuit Court of Appeals in *Stursberg v. Morrison Sund PLLC* found dismissal a simpler solution compared to preemption. See § 10:12.
- “[T]he protection afforded by ERISA’s anti-alienation mandate applies even if the rules thereof are ‘brazenly’ violated.” See § 13:13.
- Contributions to an IRA that are not tax deductible, plus the earnings thereon, are not exempt. See § 13:16.
- Rules regarding the definition of assets for purposes of applying the prohibited transaction rules, e.g., certain “transaction[s] between a ‘disqualified person’” and the plan or “assets of the plan” are discussed. See § 13:18.
- In the Ninth Circuit, establishing the Ponzi scheme presumption “will have preclusive effect in the [Bankruptcy] Trustee’s forthcoming trial against [that transferee relative to distributions from the Ponzi scheme which may result in] disallow or equitably subordinate ... [of the transferee’s] proofs of claim” against the bankruptcy estate (*In re EPD Inv. Co., LLC*). See § 8:6.
- The various views regarding which laws govern exemptions are discussed. See § 12:14.
- The specificity required in claiming an exemption is discussed. See § 12:14.
- The Ninth Circuit Court of Appeals has rejected the view that “a debtor could obtain an exemption for an amount in excess of the exemption... by listing the exempt value as ‘full fair market value (FMV)’ or ‘100% of FMV’” (*In re Masingale*). See § 12:33.
- A denial of discharge on the grounds of fraud can be avoided if the transfer has a legitimate purpose, such as satisfying a tax liability (*In re Wylie*). See § 17:3.
- The breadth of the trustee’s 11 U.S.C.A. § 544(b)(1) powers extends beyond fraudulent transfers and includes claims that a hypothetical creditor could bring for the benefit of all creditors, such as alter ego and successor liability. See § 18:1.
- In connection with the trustee’s assignment of a claim, the possibility of champerty should be considered (*Silverman, Tr. of Estates of Natl. Events Holdings, LLC v. Citibank, N.A.*). See § 18:4.
- Although there is authority that the alter ego procedure belongs to the creditor, a claim that include alter ego may be

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brought “[if accompanied by] ‘some allegation of injury to the corporation’ itself that ‘giv[es] rise to a right of action’ held by the corporation” (*Int’l. Petroleum Products and Additives Co., Inc. v. Black Gold S.A.R.L.*). See § 18:10.50.

- The analytical framework that is applied to distinguish between direct and derivative injuries was enunciated by the Delaware Supreme Court in *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, which has been adopted by numerous jurisdictions. See § 18:10.

- New section: Corporate registration in a state as conferring general jurisdiction. See § 18:18.35.

- Revised and renamed: § 18:18.56 Purposeful availment; purposeful direction.

- Personal jurisdiction can also be acquired over the transferee if the transferee is liable pursuant to applicable state law concepts of successor liability. See § 18:18.84. The same result can attach under Rule 25(c) of the Federal Rules of Civil Procedure. See § 18:18.77.

- New section: Effect of internet and e-commerce. See § 18:18.99.

- The USSC refined its view of when a money judgment triggers a right to a jury trial in *SEC v. Jarkesy*. See § 18:20.

- There is a division of authority relative to whether the usual four factors normally required to obtain an injunction apply to an SEC-sought injunction, specifically, whether the SEC must show irreparable harm and the unavailability of remedies at law. See § 18:22.

- The USSC’s decision in *Harrington* prohibiting the release of non-debtor may not apply in connection with a Chapter 11 plan that has been substantially consummated. See § 18:22.

- Consent, expressed or implied, will validate the release of a non-debtor (*In re Murray Energy Holdings Co.*). See § 18:22.

- If the plan is treated as a contract, then validity depends on whether the contract is enforceable under applicable non-bankruptcy law (*In re Tonawanda Coke Corp.*). See § 18:22.

- Relative to the privilege that attaches to common interests, if the parties have adverse interests, then that privilege attaches only insofar as their interests are in fact identical (or perhaps “nearly identical”). See § 18:29.

- There is a division of authority regarding whether the common interest privilege extends to a prospective purchaser of company. (*Hewlett-Packard Company v. Bausch & Lomb, Inc.*) See § 18:29.

- New section: Litigation privilege. See § 18:32.25.