

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 Sovereign immunity—Issues arising under Bankruptcy Code § 525
- § 1:20 Overview of the district court's exclusive jurisdiction over property of the estate
- § 1:21 Practical difficulties in exercising jurisdiction over property located in foreign countries
- § 1:22 Triggering events that result in a loss of exclusive jurisdiction over property
- § 1:23 The bankruptcy court's exclusive subject matter jurisdiction over disputes involving the employment of professional persons
- § 1:24 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

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

TABLE OF CONTENTS

§ 1:30	Proceedings arising under Title 11
§ 1:31	Proceedings arising in a case under Title 11
§ 1:32	Defining the scope of related to jurisdiction
§ 1:33	Related to jurisdiction—Suits based upon prepetition claims held by the debtor
§ 1:34	—Overview of third-party claims
§ 1:35	—Suits against officers and directors
§ 1:36	—Suits against guarantors of the debtor’s obligations
§ 1:37	—Suits against third parties who hold contractual indemnity rights from the debtor
§ 1:38	—Suits against third parties where equitable indemnity claims may be asserted against the debtor
§ 1:39	—Suits against bonding companies
§ 1:40	—Suits against the debtor’s insurer
§ 1:41	—Suits which may enhance or reduce the estate’s assets
§ 1:42	—Suits which may increase, decrease, or effect the claims asserted against the debtor
§ 1:43	—Suits establishing priority of lien rights and claims
§ 1:44	—Suits against purchasers of the debtor’s assets
§ 1:45	Supplemental jurisdiction
§ 1:46	Ancillary jurisdiction

VI. THE ROLE OF THE BANKRUPTCY JUDGE

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

- § 1:55 Core proceedings: 28 U.S.C.A. § 157(b)(2)(C)—
Counterclaims by the estate against persons
filing claims
- § 1:56 Core proceedings: 28 U.S.C.A. § 157(b)(2)(D)—
Orders in respect to obtaining credit
- § 1:57 Core proceedings: 28 U.S.C.A. § 157(b)(2)(E)—
Orders to turn over property of the estate
- § 1:58 Core proceedings: 28 U.S.C.A. § 157(b)(2)(F)—
Proceedings involving preferences
- § 1:59 Core proceedings: 28 U.S.C.A. § 157(b)(2)(G)—
Proceedings involving the automatic stay
- § 1:60 Core proceedings: 28 U.S.C.A. § 157(b)(2)(H)—
Proceedings involving fraudulent conveyances
- § 1:61 Core proceedings: 28 U.S.C.A. § 157(b)(2)(I)—
Dischargeability of debts
- § 1:62 Core proceedings: 28 U.S.C.A. § 157(b)(2)(J)—
Objections to discharge
- § 1:63 Core proceedings: 28 U.S.C.A. § 157(b)(2)(K)—
Validity, extent, or priority of liens
- § 1:64 Core proceedings: 28 U.S.C.A. § 157(b)(2)(L)—
Confirmation of plan
- § 1:65 Core proceedings: 28 U.S.C.A. § 157(b)(2)(M)—
Orders approving use or lease of property, use of
cash collateral
- § 1:66 Core proceedings: 28 U.S.C.A. § 157(b)(2)(N)—
Orders approving the sale of property
- § 1:67 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
- § 1:68 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

- § 1:69 Statutory grant of authority
- § 1:70 Is the bankruptcy court a court of the United
States?
- § 1:71 Inherent authority
- § 1:72 Contempt power
- § 1:73 Procedural aspects of contempt proceeding

TABLE OF CONTENTS

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

- § 1:74 Effect of dismissal of bankruptcy case on retention of jurisdiction over pending adversary proceedings
- § 1:75 Effect of dismissal on administrative matters and post-dismissal disputes
- § 1:76 Effect of closing of bankruptcy case on retention of jurisdiction over pending adversary proceedings
- § 1:77 Effect of debtor receiving a discharge on retention of jurisdiction over pending adversary proceedings
- § 1:78 Postconfirmation jurisdiction in Chapters 9, 11, and 12 cases

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

- § 1:79 Methods to seek alternative forums
- § 1:80 Motions to determine core/related nature of proceedings

X. WITHDRAWAL OF A REFERENCE

- § 1:81 Overview of withdrawal of reference
- § 1:82 Discretionary withdrawal
- § 1:83 Mandatory withdrawal
- § 1:84 Procedural issues pertaining to withdrawal of reference
- § 1:85 Stay of proceedings pending disposition of motion
- § 1:86 Appellate review

XI. REMOVAL AND REMAND

- § 1:87 Statutory authority for removal
- § 1:88 Procedure to effectuate removal
- § 1:89 Time periods governing removal
- § 1:90 Procedure following removal
- § 1:91 Process and procedure in removed actions
- § 1:92 Statutory authority for remand

- § 1:93 Remand procedure
- § 1:94 Review of requests for remand

XII. ABSTENTION

- § 1:95 Overview of abstention
- § 1:96 Discretionary abstention
- § 1:97 Discretionary abstention: Relying upon inapplicability of Rule 2 to justify relief
- § 1:98 Mandatory abstention
- § 1:99 Appellate review
- § 1:100 Abstention to permit arbitration

XIII. PROCEDURES FOR JURISDICTIONAL CHALLENGES TO SUBJECT MATTER JURISDICTION

- § 1:101 Overview of subject matter jurisdiction
- § 1:102 Procedural rules applicable to motions to dismiss adversary proceedings for lack of subject matter jurisdiction
- § 1:103 Timing of motion to dismiss for lack of subject matter jurisdiction
- § 1:104 Parties who can bring a motion to dismiss for lack of subject matter jurisdiction
- § 1:105 Distinction between facial and factual motions to dismiss for lack of subject matter jurisdiction
- § 1:106 Procedural rules applicable to motions to dismiss contested matters for lack of subject matter jurisdiction
- § 1:107 Burden of proof and hearing issues in motion to dismiss for lack of subject matter jurisdiction
- § 1:108 Examples where subject matter jurisdiction challenges are properly and improperly raised

XIV. RESTRICTIONS ON THE EXERCISE OF JURISDICTION

- § 1:109 Overview of the *Rooker-Feldman* doctrine
- § 1:110 The application of the *Rooker-Feldman* doctrine in bankruptcy cases
- § 1:111 Overview of international comity
- § 1:112 Application of international comity to bankruptcy proceedings
- § 1:113 Extraterritorial application of U.S. bankruptcy law

TABLE OF CONTENTS

- § 1:114 Extraterritorial application of state laws in bankruptcy cases

XV. SOVEREIGN IMMUNITY

- § 1:115 Overview of sovereign immunity
- § 1:116 Sovereign immunity—Limited abrogation with respect to bankruptcy claims
- § 1:117 —Issues arising under Bankruptcy Code § 105
- § 1:118 —Issues arising under § 303
- § 1:119 —Issues arising under § 502
- § 1:120 —Issues arising under Bankruptcy Code § 542
- § 1:121 —Issues arising under Bankruptcy Code § 544
- § 1:122 —Acts constituting waivers
- § 1:123 —Determining whether a judicial proceeding constitutes a suit against a sovereign
- § 1:124 —Offset rights
- § 1:125 —Limitation on types of damages
- § 1:126 —Procedural issues
- § 1:127 —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

TABLE OF CONTENTS

- § 2:40 Venue orders in personal injury and wrongful death cases
- § 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 in conformity with state law
- § 3:21 Service on the debtor and others in a foreign country
- § 3:22 Service of process on an insured depository institution
- § 3:23 Service of process by position or title

IV. CHALLENGING SERVICE OF PROCESS

- § 3:24 Motion to quash service or dismiss complaint
- § 3:25 Disputes over receipt of service by mail

V. NOTICE REQUIREMENTS UNDER BANKRUPTCY RULE 2002

A. GENERALLY

- § 3:26 Introduction

B. TWENTY ONE-DAY NOTICES

- § 3:27 Generally
- § 3:28 Meeting of creditors
- § 3:29 Proposed use, sale, or lease of property outside the ordinary course of business
- § 3:30 Compromise or settlement
- § 3:31 Conversion or dismissal
- § 3:32 Plan modification
- § 3:33 Compensation or reimbursement of expenses
- § 3:34 Claims bar date in Chapter 9 and Chapter 11 cases
- § 3:35 Objections to and hearing of confirmation of Chapter 12 plan
- § 3:36 Objections to confirmation of a Chapter 13 plan

C. ADDITIONAL NOTICE CONSIDERATIONS

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

TABLE OF CONTENTS

§ 3:44	Notices to committees
§ 3:45	Notices to the United States
§ 3:46	Notices to the U.S. Trustee
§ 3:47	Notice by publication
§ 3:48	Orders concerning notices
§ 3:49	Caption of notices
§ 3:50	Notices of order for relief in consumer cases
§ 3:51	Notice to a creditor with a foreign address
§ 3:52	Notice of petition for recognition of foreign proceeding and of court's intention to communicate with foreign courts and foreign representatives
§ 3:53	Computing and altering notice periods
§ 3:54	Contesting sufficiency of notice
§ 3:55	Notice traps: sale motions and plans of reorganization
§ 3:56	Notice and service by electronic transmission
§ 3:57	Local rule considerations

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

TABLE OF CONTENTS

- § 4:40 Attorney-client privilege: Application of federal or state privilege law
- § 4:41 Attorney-client privilege: Right of trustee to control the privilege
- § 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—Generally
- § 5:36 — —Of statutory time periods
- § 5:37 —Reduction
- § 5:38 —Motions—Affidavits
- § 5:39 —Time of service
- § 5:40 —Additional time after service by mail

TABLE OF CONTENTS

§ 5:41	—Grain storage facility cases
§ 5:42	Rule 7: Bankruptcy Rule 7007—Text of Rules
§ 5:43	—Application of rules
§ 5:44	Rule 7.1: Bankruptcy Rule 7007.1—Text of Rules
§ 5:45	—Application of Rules
§ 5:46	Rule 8: Bankruptcy Rule 7008—Text of Rules
§ 5:47	Claims for relief—Consent pleading requirement
§ 5:48	—Consent/implied consent to hear related proceedings
§ 5:49	Consent/implied consent to hear core proceedings
§ 5:50	Effect of non-debtor pleading core counterclaim in related proceeding
§ 5:51	Withdrawal of consent to entry of final order or judgment
§ 5:52	Private rights of action for violation of Bankruptcy Code sections
§ 5:53	Claims for relief—General pleading requirements
§ 5:54	Pleading requirements in light of <i>Twombly</i> and <i>Iqbal</i>
§ 5:55	Constructive trust claims—Restrictions imposed in bankruptcy cases
§ 5:56	Bankruptcy remedies: proceeding by complaint or motion
§ 5:57	Defenses: Form of denials—Pleading issues
§ 5:58	—Defenses of the estate: section 558
§ 5:59	Affirmative defenses: overview
§ 5:60	Affirmative defenses/estoppel—Elements
§ 5:61	—Estoppel based upon prepetition conduct
§ 5:62	—Estoppel based upon postpetition conduct
§ 5:63	—Estoppel defense asserted against government units
§ 5:64	Affirmative defenses/res judicata and collateral estoppel—Elements
§ 5:65	—Prepetition rulings
§ 5:66	—Postpetition rulings
§ 5:67	—Issues arising from plan confirmation
§ 5:68	— —Proof of claim uncontested in bankruptcy case
§ 5:69	Affirmative defenses/statute of limitations—Overview of governing statutes and Bankruptcy Rules
§ 5:70	—Section 546(a)

- § 5:71 —Section 549
- § 5:72 —Section 550
- § 5:73 —Section 727; statute of repose
- § 5:74 —Section 1228
- § 5:75 —Section 1328
- § 5:76 —Section 1144
- § 5:77 —Section 1230
- § 5:78 —Section 1330
- § 5:79 —Section 322
- § 5:80 —Bankruptcy Rule 4004
- § 5:81 —Bankruptcy Rule 4007
- § 5:82 —Statute of limitations on bankruptcy claims
with no express limitation provisions in
bankruptcy statutes and Bankruptcy Rules
- § 5:83 —Equitable tolling
- § 5:84 —Tolling agreements
- § 5:85 —Court ordered extension of limitations periods
- § 5:86 —Effect of § 108
- § 5:87 —Effect of § 108(a)
- § 5:88 —Effect of § 108(b)
- § 5:89 —Effect of § 108(c)
- § 5:90 Affirmative defenses/waiver—Elements
- § 5:91 —Prepetition waivers
- § 5:92 —Postpetition waivers; bankruptcy statutes and
rules addressing waiver
- § 5:93 —Postpetition waivers; waiver of substantive
rights
- § 5:94 Affirmative defenses/setoff and recoupment—As
affirmative defenses and counterclaims
- § 5:95 —Elements of setoff
- § 5:96 —Elements of recoupment
- § 5:97 —Statutory exceptions to exercise of setoff rights
and waiver of setoff rights
- § 5:98 —Court ordered restrictions on setoff rights
- § 5:99 —Defenses and avoiding action and turnover
claims
- § 5:100 —Effect of discharge
- § 5:101 Effect of sale order free and clear of recoupment
rights
- § 5:102 Affirmative defenses/setoff and recoupment—
Effect of failure to file or properly file proof of
claim
- § 5:103 —Effect of plan confirmation

TABLE OF CONTENTS

§ 5:104	—Effect of sale order
§ 5:105	—Debtor’s setoff rights
§ 5:106	—Postpetition setoff rights
§ 5:107	Affirmative defenses/accord and satisfaction
§ 5:108	Affirmative defenses/laches
§ 5:109	Affirmative defenses/release
§ 5:110	Affirmative defenses/statute of frauds
§ 5:111	Affirmative defenses/unclean hands
§ 5:112	Affirmative defenses/in pari delicto
§ 5:113	Affirmative defenses/sovereign immunity
§ 5:114	Affirmative defenses/immunity
§ 5:115	Affirmative defenses/advice of counsel
§ 5:116	Affirmative defenses contained in the Bankruptcy Code and Bankruptcy Rules
§ 5:117	Additional matters constituting affirmative defenses
§ 5:118	Effect of failure to deny allegations in complaint
§ 5:119	Rule 9: Bankruptcy Rule 7009—Text of Rules
§ 5:120	—Capacity to sue
§ 5:121	—Pleading fraud with particularity in bankruptcy proceedings
§ 5:122	—Bankruptcy claims that require compliance with Rule 9(b)
§ 5:123	—Bankruptcy claims that do not require compliance with Rule 9(b)
§ 5:124	Rule 10: Bankruptcy Rule 7010—Text of Rules
§ 5:125	—Issues pertaining to the caption
§ 5:126	—Pleading separate claims and transactions
§ 5:127	Rule 11: Bankruptcy Rule 9011—Text of Rules
§ 5:128	—Distinctions between the Rules
§ 5:129	—Signature requirement
§ 5:130	—Implied representations to the court
§ 5:131	—Imposition of sanctions
§ 5:132	—Verification
§ 5:133	—Appellate review
§ 5:134	—Alternative bases for sanction awards— Inherent power of the court and § 105
§ 5:135	— —28 U.S.C.A. § 1927
§ 5:136	—Nonmonetary sanctions
§ 5:137	Rule 12: Bankruptcy Rule 7012—Text of Rules
§ 5:138	—Time to respond to pleadings
§ 5:139	—Rule 12(b) issues in adversary proceedings
§ 5:140	—Rule 12(b)(6) issues

- § 5:141 —Consent pleading requirements
- § 5:142 —Special or limited appearances
- § 5:143 —Authority of bankruptcy judge to dismiss proceeding
- § 5:144 Rule 13: Bankruptcy Rule 7013—Text of Rules
- § 5:145 —Issues involving compulsory counterclaims
- § 5:146 —Issues involving permissive counterclaims
- § 5:147 —Prevailing nondebtor counterclaimant
- § 5:148 —Counterclaims against the United States
- § 5:149 —Counterclaims, cross claims, and jurisdictional considerations
- § 5:150 Rule 14: Bankruptcy Rule 7014—Text of Rules
- § 5:151 —Jurisdictional considerations
- § 5:152 Rule 15: Bankruptcy Rule 7015—Text of Rules
- § 5:153 —Amendments and relation back of amendments
- § 5:154 —Amendments to conform to the evidence
- § 5:155 —Supplemental pleadings
- § 5:156 Rule 16: Bankruptcy Rule 7016—Text of Rules
- § 5:157 —Pretrial conference objectives
- § 5:158 —Scheduling order issues
- § 5:159 —Pretrial conference considerations in adversary proceedings
- § 5:160 —Defining the issues in the pretrial order
- § 5:161 —Sanctions for failure to comply with scheduling and pretrial order
- § 5:162 —Determinations by bankruptcy court
- § 5:163 Rule 16.1: no corresponding Bankruptcy Rule—Text of Rule
- § 5:164 Rule 17: Bankruptcy Rule 7017—Text of Rules
- § 5:165 —Real party in interest issues
- § 5:166 —Capacity to sue
- § 5:167 —Exception to rule
- § 5:168 Rule 18: Bankruptcy Rule 7018—Text of Rules
- § 5:169 —Joinder of claims
- § 5:170 —Joinder of remedies
- § 5:171 Rule 19: Bankruptcy Rule 7019—Text of Rules
- § 5:172 —Distinctions between rules
- § 5:173 —Joinder issues
- § 5:174 —Dismissal issues
- § 5:175 Rule 20: Bankruptcy Rule 7020—Text of Rules
- § 5:176 —Permissive joinder issues
- § 5:177 —Separate trials

TABLE OF CONTENTS

§ 5:178	Rule 21: Bankruptcy Rule 7021—Text of Rules
§ 5:179	—Misjoinder issues
§ 5:180	Rule 22: Bankruptcy Rule 7022—Text of Rules
§ 5:181	—Interpleader issues
§ 5:182	Rule 23: Bankruptcy Rule 7023—Text of Rules
§ 5:183	—Prerequisites to a class action and certification of class
§ 5:184	The authority of bankruptcy courts to preside over a class action of debtors
§ 5:185	Rule 23: Bankruptcy Rule 7023—Overview
§ 5:186	—Class action proceedings involving avoiding action claims
§ 5:187	—Proceedings against lenders for abusive practices
§ 5:188	—Proceedings brought by the debtor to address multiple claims
§ 5:189	—Class action objections to dischargeability of debts
§ 5:190	—Settlements
§ 5:191	—Attorney’s fees awards
§ 5:192	—Appeals
§ 5:193	Rule 23.1: Bankruptcy Rule 7023.1—Text of Rules
§ 5:194	—Standing issues
§ 5:195	—Settlement issues
§ 5:196	Rule 23.2: Bankruptcy Rule 7023.2—Text of Rules
§ 5:197	—Applicability
§ 5:198	—Settlement issues
§ 5:199	Rule 24: Bankruptcy Rule 7024—Text of Rules
§ 5:200	—Intervention as of right—Statutory right of intervention
§ 5:201	— —Intervention to protect rights or interests
§ 5:202	—Permissive intervention
§ 5:203	—Procedural issues
§ 5:204	Rule 25: Bankruptcy Rule 7025—Text of Rules
§ 5:205	—Death or elimination of a party
§ 5:206	—Incompetency of a party
§ 5:207	—Transfer of an interest
§ 5:208	Rules 26 to 37: Bankruptcy Rules 7026 to 7037—Cross-reference
§ 5:209	Rules 38 to 39: Bankruptcy Rule 9015—Text of Rules

- § 5:210 —Jury trial demand
- § 5:211 —Jury trial waiver
- § 5:212 —Consent to have bankruptcy judge preside
over jury
- § 5:213 Rule 40: Bankruptcy Rule 7040—Text of Rules
- § 5:214 —Trial calendaring issues
- § 5:215 Rule 41: Bankruptcy Rule 7041—Text of Rules
- § 5:216 —Voluntary dismissals
- § 5:217 —Dismissal of complaints objecting to discharge
- § 5:218 —Involuntary dismissals
- § 5:219 —Effect of dismissal of bankruptcy case on
adversary proceeding
- § 5:220 Rule 42: Bankruptcy Rule 7042—Text of Rules
- § 5:221 —Consolidation issues
- § 5:222 —Separate trials of claims
- § 5:223 Rule 43: Bankruptcy Rule 9017—Text of Rules
- § 5:224 —Trial testimony
- § 5:225 —Evidence on motions
- § 5:226 —Interpreters
- § 5:227 Rule 44: Bankruptcy Rule 9017—Text of Rules
- § 5:228 —Applicability of Rules
- § 5:229 Rule 44.1: Bankruptcy Rule 9017—Text of Rules
- § 5:230 —Determination of foreign law issues
- § 5:231 Rule 45: Bankruptcy Rule 9016—Text of Rules
- § 5:232 —Issues
- § 5:233 Rule 46: Bankruptcy Rule 9026—Text of Rules
- § 5:234 —Assertion of position
- § 5:235 Rules 47 to 51: Bankruptcy Rule 9015—Text of
Rules
- § 5:236 —Jury trial rules
- § 5:237 Rule 52: Bankruptcy Rule 7052—Text of Rules
- § 5:238 —Findings and conclusions of law requirements
- § 5:239 —Amendments to findings and conclusions of
law
- § 5:240 Rule 53: no corresponding Bankruptcy Rule—
Text of Rule
- § 5:241 Bankruptcy Rule 9031: inapplicability of Rule
- § 5:242 Rule 54: Bankruptcy Rule 7054—Text of Rules
- § 5:243 —Judgments
- § 5:244 —Allowance of costs
- § 5:245 —Procedural issues for bill of costs
- § 5:246 —Recovery of prejudgment interest
- § 5:247 —Recovery of postjudgment interest

TABLE OF CONTENTS

§ 5:248	Section 506(b) interest considerations
§ 5:249	Rule 54: Bankruptcy Rule 7054—Interest on administrative expense claims
§ 5:250	—Authority to recover fees
§ 5:251	—Pleading requirement for fees
§ 5:252	—Contractual right to recover fees
§ 5:253	—Section 506(b) fee considerations
§ 5:254	—Record keeping requirements for fees
§ 5:255	—Allowance of attorney’s fees
§ 5:256	—Revision of orders
§ 5:257	Rule 55: Bankruptcy Rule 7055—Text of Rules
§ 5:258	—Entry of defaults and default judgments
§ 5:259	—Default judgments and fresh start considerations
§ 5:260	—Authority of bankruptcy judge to enter default judgment in related proceeding
§ 5:261	Setting aside a default or default judgment
§ 5:262	Rule 56: Bankruptcy Rule 7056—Text of Rules
§ 5:263	—Procedural issues and evidentiary presumptions
§ 5:264	Rule 57: no corresponding Bankruptcy Rule—Text of Rule
§ 5:265	—Authority of bankruptcy judges to enter declaratory judgments
§ 5:266	Rule 58: Bankruptcy Rule 7058—Text of Rules
§ 5:267	Rule 58: Bankruptcy Rule 9021—Separate document requirement
§ 5:268	Rule 58: Bankruptcy Rule 7058—Extension of time to appeal due to noncompliance
§ 5:269	—Effect of lack of compliance on appeals
§ 5:270	Rule 59: Bankruptcy Rule 9023—Text of Rules
§ 5:271	—Procedural issues
§ 5:272	—Effect on time to file appeal
§ 5:273	—Related proceeding issues
§ 5:274	Rule 60: Bankruptcy Rule 9024—Text of Rules
§ 5:275	—Exceptions to Rule 60
§ 5:276	—Special bankruptcy considerations
§ 5:277	—Authority to relieve a party from a final order under Bankruptcy Rule 9024
§ 5:278	—Authority to relieve a party from an interlocutory order
§ 5:279	—Issues where challenges to order served by publication

- § 5:280 —Appellate issues
- § 5:281 Rule 61: Bankruptcy Rule 9005—Text of Rules
- § 5:282 —Application of Rules
- § 5:283 Rule 62: Bankruptcy Rule 7062—Text of Rules
- § 5:284 —Application and exceptions to stay proceedings to enforce a judgment
- § 5:285 —Inapplicability of stay of proceedings to enforce judgment to most contested matters
- § 5:286 —Contested matters subject to stay of proceedings to enforce judgment
- § 5:287 —Stay of orders involving injunctions
- § 5:288 —Stays and supersedeas bonds
- § 5:289 Rule 62.1: No corresponding bankruptcy rule—Text of Rule
- § 5:290 Rule 62.1: No corresponding bankruptcy rule—Application in bankruptcy cases
- § 5:291 Rule 63: Bankruptcy Rule 9028—Text of Rules
- § 5:292 —Application in bankruptcy cases
- § 5:293 Rule 64: Bankruptcy Rule 7064—Text of Rules
- § 5:294 —Enforcement of prejudgment remedies
- § 5:295 Rules 65 and 65.1: Bankruptcy Rules 7065 and 9025—Cross-reference
- § 5:296 Rule 66: no corresponding Bankruptcy Rule—Text of Rule
- § 5:297 —Restriction on appointment in bankruptcy cases
- § 5:298 —Appointment of receivers in adversary proceedings
- § 5:299 —Appointment of receivers in bankruptcy cases
- § 5:300 Rule 67: Bankruptcy Rule 7067—Text of Rules
- § 5:301 —Application of Rules
- § 5:302 Rule 68: Bankruptcy Rule 7068—Text of Rules
- § 5:303 —Application of Rules
- § 5:304 —Conflict with Bankruptcy Rule 9019
- § 5:305 Rule 69: Bankruptcy Rule 7069—Text of Rules
- § 5:306 —Application of Rules
- § 5:307 —Effect of automatic stay on enforcement of judgment
- § 5:308 —Authority of court to issue writs after case is closed
- § 5:309 —Jurisdictional issues related to bankruptcy court's issuance of writs of execution and garnishment orders

TABLE OF CONTENTS

§ 5:310	—Issues pertaining to service of process for orders pertaining to supplementary proceedings
§ 5:311	—Enforcement of judgments against judgment debtors in different locales
§ 5:312	—Ability of creditor of creditor of debtor to garnish claim distribution
§ 5:313	Rule 70: Bankruptcy Rule 7070—Text of Rules
§ 5:314	—Application of Rules
§ 5:315	Rule 71: Bankruptcy Rule 7071—Text of Rules
§ 5:316	—Application of Rules
§ 5:317	Rules 71.1 to 73: no corresponding Bankruptcy Rules—Overview
§ 5:318	Rule 77: Bankruptcy Rules 5001 and 9022—Text of Rules
§ 5:319	—Courts open for filing
§ 5:320	Bankruptcy Rule 5001—Proceedings in court and chambers
§ 5:321	—Clerk’s office
§ 5:322	Bankruptcy Rule 9022—Clerk’s duty to serve notice of entry of order
§ 5:323	—Effect of lack of notice on time to appeal
§ 5:324	—Notice of judgments or orders entered by district judge
§ 5:325	Rule 78: no corresponding Bankruptcy Rule—Text of Rule
§ 5:326	—Oral arguments
§ 5:327	Rule 79: Bankruptcy Rule 5003—Text of Rules
§ 5:328	—Docket entries and index
§ 5:329	Rule 80: Bankruptcy Rule 5007(c)—Text of Rules
§ 5:330	—Transcript and transcript fees
§ 5:331	—Admissibility of sound recording and transcript
§ 5:332	Rule 81: Bankruptcy Rule 9027(g)—Text of Rules
§ 5:333	—Applicability of Rules limited by Bankruptcy Rules
§ 5:334	Rule 82: Bankruptcy Rule 9030—Text of Rules
§ 5:335	—Application of Rules
§ 5:336	Rule 83: Bankruptcy Rule 9029—Text of Rules
§ 5:337	—Local Bankruptcy Rules
§ 5:338	—Bankruptcy judge’s rules
§ 5:339	Rule 84: Bankruptcy Rule 9009—Text of Rules
§ 5:340	—Application of Rules

- § 5:341 —Official Forms and Director’s Forms applicable to adversary proceedings
- § 5:342 Rule 85: Bankruptcy Rule 1001—Text of Rules
- § 5:343 —Application of Rules
- § 5:344 Rule 86: Bankruptcy Rule 9032—Text of Rules
- § 5:345 —Application of Rules
- § 5:346 Bankruptcy Rule 7087: no corresponding Federal Rule—Text of Rule
- § 5:347 —Venue

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

- § 5:348 Overview of related proceedings and Bankruptcy Rule 9033
- § 5:349 Service of findings of fact and conclusions of law
- § 5:350 Time requirements governing objections
- § 5:351 Extension of time to file objections
- § 5:352 Review by district court
- § 5:353 Appellate issues

IV. SETTLEMENTS

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

TABLE OF CONTENTS

- § 5:370 Contract interpretation issues
- § 5:371 Effect of conversion
- § 5:372 Res judicata effect of settlement
- § 5:373 Appellate issues
- § 5:374 Enforcement of settlement agreement

V. ARBITRATION

- § 5:375 The competing policies to enforce arbitration clauses and centralize bankruptcy proceedings
- § 5:376 The enforcement of arbitration clauses in related proceedings
- § 5:377 The enforcement of arbitration clauses in core proceedings
- § 5:378 Factors to be considered when enforcement of arbitration clause is sought
- § 5:379 Enforcement of arbitration clauses in international agreements
- § 5:380 Enforcement of statutory arbitration rights
- § 5:381 Consensual agreements to arbitrate
- § 5:382 Procedural steps where arbitration rights contested

VI. STANDING

- § 5:383 General principles involving standing
- § 5:384 Chapter 7 trustee standing
- § 5:385 Chapter 7 debtor standing
- § 5:386 Chapter 11 debtor-in-possession standing
- § 5:387 Chapter 11 trustee standing
- § 5:388 Subchapter V trustee standing
- § 5:389 Chapter 12 trustee standing
- § 5:390 Chapter 12 debtor standing
- § 5:391 Chapter 13 trustee standing
- § 5:392 Chapter 13 debtor standing
- § 5:393 Derivative standing for creditors' committees, creditors, and other parties in interest
- § 5:394 Standing of estate representative under § 1123(b)(3)
- § 5:395 Standing as assignee of claims assigned by the estate
- § 5:396 Standing as assignee of third party claims assigned to the estate or estate representative
- § 5:397 Standing to assert § 506(c) claims

- § 5:398 Standing to assert § 510(c) claims
- § 5:399 Standing to assert § 523 claims
- § 5:400 Standing to assert § 727 claims
- § 5:401 Standing to assert alter-ego claims
- § 5:402 Standing to intervene in adversary proceedings
- § 5:403 Standing to pursue abandoned or unasserted claims
- § 5:404 Standing to assert breach of fiduciary duty claims
- § 5:405 Standing to assert alter ego claims

VII. RESOLUTION OF CONFLICT OF LAW ISSUES

- § 5:406 Conflict of law rules applied on state law-based claims
- § 5:407 Conflict of law rules applied on federal law-based claims
- § 5:408 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

TABLE OF CONTENTS

III. PROCEDURAL ASPECTS OF CONTESTED MATTERS

- § 6:14 Preparing the moving papers
- § 6:15 Official Forms and Director's Forms applicable to contested matters
- § 6:16 Serving the moving papers
- § 6:17 Notice requirements
- § 6:18 Notice pitfalls: executory contracts
- § 6:19 Procedural issues involving assumption of executory contracts where assumption amount disputed
- § 6:20 Ex parte procedures and expedited relief
- § 6:21 Restrictions on expedited relief
- § 6:22 Retroactive relief
- § 6:23 Preparing the opposition papers
- § 6:24 Withdrawal of motion
- § 6:25 Preparing the reply brief
- § 6:26 Overview of procedural rules applicable to contested matters
- § 6:27 Discovery
- § 6:28 Requests to continue a hearing
- § 6:29 Relief granted without a hearing
- § 6:30 Hearings on contested matters
- § 6:31 Entry of judgment
- § 6:32 Recovery of attorneys' fees and costs

IV. STANDING AND INTERVENTION RIGHTS IN CONTESTED MATTERS

A. STANDING

- § 6:33 General principles involving standing
- § 6:34 Chapter 7 trustee standing
- § 6:35 Chapter 7 debtor standing
- § 6:36 Chapter 11 debtor in possession standing
- § 6:37 Chapter 11 trustee standing
- § 6:38 Chapter 12 trustee standing
- § 6:39 Chapter 12 debtor standing
- § 6:40 Chapter 13 trustee standing
- § 6:41 Chapter 13 debtor standing
- § 6:42 U.S. Trustee standing
- § 6:43 Derivative standing for creditors' committees, creditors, and other parties in interest

- § 6:44 Standing of parties in interest to appear and be heard
- § 6:45 Standing limitations on parties in interest to raise certain issues

B. INTERVENTION RIGHTS

- § 6:46 Permissive intervention
- § 6:47 Intervention by attorney general of a state
- § 6:48 Intervention by Secretary of the Treasury of the United States and states in Chapter 9 cases
- § 6:49 Intervention by labor unions on plan issues
- § 6:50 Service of intervention motions

C. PARTICULAR ENTITIES' RIGHT TO BE HEARD

- § 6:51 Right of government entities to be heard in railroad reorganizations
- § 6:52 Right of Commodity Futures Trading Commission to be heard in a commodity broker liquidation
- § 6:53 Right of Board of Governors of the Federal Reserve System and a federal reserve bank to be heard in a clearing bank liquidation
- § 6:54 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

TABLE OF CONTENTS

- § 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)
- § 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

TABLE OF CONTENTS

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
- § 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

TABLE OF CONTENTS

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*
- § 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 Jury trial rights in contested matters
- § 8:28 Examples of claims where jury trial rights are recognized for parties sued by the debtor
- § 8:29 Examples of claims where a jury trial right is not recognized
- § 8:30 Effect of failure to make timely demand for jury
- § 8:31 Effect of failure to timely file motion to withdraw the reference
- § 8:32 Enforcement of contractual waiver of jury trial rights
- § 8:33 Bankruptcy court forum selection clause as waiver

C. AUTHORITY OF BANKRUPTCY JUDGES AND LITIGATION STRATEGY

- § 8:34 Authority of bankruptcy judges to preside over jury trials
- § 8:35 Litigation strategy relating to jury demand

V. EVIDENTIARY CONSIDERATIONS IN BANKRUPTCY COURT TRIALS

A. APPLICATION OF THE FEDERAL RULES OF EVIDENCE

- § 8:36 Sufficiency of evidentiary record
- § 8:37 Admissions in schedules
- § 8:38 Requests for judicial notice
- § 8:39 Debtor/trustee admission issues
- § 8:40 Admissibility of debtor's books and records
- § 8:41 Admissibility of examiner's report
- § 8:42 Direct testimony through declarations
- § 8:43 Stipulated facts and issues of law
- § 8:44 Motions in limine
- § 8:45 Application of Fed. R. Evid. 501 in bankruptcy
proceedings: When do federal or state rules
apply?
- § 8:46 *Daubert* challenge to expert testimony
- § 8:47 Parol evidence restrictions

B. PRESUMPTIONS AND BURDENS OF PROOF

- § 8:48 Overview of presumptions and burden of proof
- § 8:49 Section 101(31): Insider
- § 8:50 Section 107: Public access to papers
- § 8:51 Section 109: Who may be a debtor
- § 8:52 Section 303: Involuntary petitions
- § 8:53 Section 305: Abstention
- § 8:54 Section 328: Limitation on compensation of
professional persons
- § 8:55 Section 329: Reasonableness of fee agreements
- § 8:56 Section 330: Fee applications
- § 8:57 Section 333: Appointment of patient care
ombudsman
- § 8:58 Section 350: Reopening of cases and closing
cases
- § 8:59 Section 362: Relief from the automatic stay
- § 8:60 Section 363: Use, sale, lease of property
- § 8:61 Section 364: Obtaining credit
- § 8:62 Section 365: Executory contracts
- § 8:63 Section 366: Utility service
- § 8:64 Section 502: Allowance of claims or interests

TABLE OF CONTENTS

§ 8:65	Section 503: Allowance of administrative expenses
§ 8:66	Section 506: Secured claims
§ 8:67	Section 507: Priorities
§ 8:68	Section 510: Subordination of a claim
§ 8:69	Section 522: Exemptions
§ 8:70	Section 523: Dischargeability of a debt
§ 8:71	Section 524: Effect of discharge
§ 8:72	Section 542: Turnover of property to the estate
§ 8:73	Section 543: Turnover of property by a custodian
§ 8:74	Section 544: Avoiding action by trustee
§ 8:75	Section 546(c): Reclamation claims
§ 8:76	Section 546(e): Safe harbor defense
§ 8:77	Section 547: Preferences
§ 8:78	Section 548: Fraudulent transfers
§ 8:79	Section 549: Postpetition transactions
§ 8:80	Section 550: Liability of transferee of avoided transfer
§ 8:81	Section 552: Postpetition effect of security interest
§ 8:82	Section 553: Setoff
§ 8:83	Section 554: Abandonment
§ 8:84	Section 706: Conversion
§ 8:85	Section 707: Dismissal
§ 8:86	Section 727: Discharge
§ 8:87	Section 943: Confirmation
§ 8:88	Section 1101(2): Substantial consummation
§ 8:89	Section 1104: Appointment of a trustee
§ 8:90	Section 1112: Conversion or dismissal
§ 8:91	Section 1113: Rejection of collective bargaining agreements
§ 8:92	Section 1121: Who may file a plan
§ 8:93	Section 1126: Acceptance of a plan
§ 8:94	Section 1127: Modification of plan
§ 8:95	Section 1129: Confirmation of a plan
§ 8:96	Section 1144: Revocation of confirmation order
§ 8:97	Section 1182: Definitions
§ 8:98	Section 1208: Conversion or dismissal
§ 8:99	Section 1225: Confirmation of a plan
§ 8:100	Section 1307: Conversion or dismissal
§ 8:101	Section 1325: Confirmation of a plan
§ 8:102	Section 1328: Discharge

- § 8:103 Section 1330: Revocation of an order of confirmation
- § 8:104 Section 1516: Presumption concerning recognition
- § 8:105 Section 1531: Presumption of insolvency
- § 8:106 28 U.S.C.A. § 157(d): Withdrawal of reference
- § 8:107 28 U.S.C.A. § 1334(c): Abstention
- § 8:108 State law claims
- § 8:109 Certified sound recordings or transcripts
- § 8:110 Substantive consolidation
- § 8:111 Doctrine of necessity
- § 8:112 Jurisdiction
- § 8:113 Service of process
- § 8:114 Venue
- § 8:115 Good faith filing
- § 8:116 Service by mail
- § 8:117 Notice
- § 8:118 Sanctions
- § 8:119 Recharacterization of lease
- § 8:120 Recharacterization of debt as equity
- § 8:121 Business judgment rule
- § 8:122 Appeals—Equitable mootness
- § 8:123 Contract rate of default interest
- § 8:124 Expert testimony
- § 8:125 Claim preclusion
- § 8:126 Attorneys' fees
- § 8:127 Bankruptcy Rule 4004
- § 8:128 Bankruptcy Rule 7056
- § 8:129 Bankruptcy Rule 9015
- § 8:130 Bankruptcy Rule 9027
- § 8:131 Standing
- § 8:132 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

TABLE OF CONTENTS

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
- § 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 and equitable mootness issues
- § 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

TABLE OF CONTENTS

- § 9:51 Traditional considerations
- § 9:52 Appeals of interlocutory orders
- § 9:53 Authority of magistrate to preside over appeal
- § 9:54 Whether BAP precedent is binding
- § 9:55 Duration of appeal

C. COURTS OF APPEALS

- § 9:56 Jurisdiction over appeals from BAPs and district courts
- § 9:57 Jurisdiction over appeals directly from bankruptcy courts
- § 9:58 Procedure for appeal to court of appeals
- § 9:59 Procedure for direct appeal to court of appeals

VII. WHEN CAN YOU APPEAL?

- § 9:60 Overview
- § 9:61 Timing in general
- § 9:62 Extension of the time to appeal
- § 9:63 Extension of time to appeal: prohibitions with respect to certain orders
- § 9:64 Excusable neglect
- § 9:65 Tolling

VIII. WHAT DO YOU NEED BEFORE YOU CAN APPEAL?

A. GENERALLY

- § 9:66 Introduction and record on appeal

B. USE OF POST TRIAL MOTIONS TO SUPPLEMENT THE RECORD

- § 9:67 Generally
- § 9:68 Motion to amend findings of fact and conclusions of law
- § 9:69 Motion to amend the judgment
- § 9:70 Motion for new trial
- § 9:71 Rule 60 motions

C. MATTERS WHICH MUST BE RAISED AT OR BEFORE TRIAL

- § 9:72 Generally

- § 9:73 Evidentiary objections
- § 9:74 Issues of fact
- § 9:75 Issues of law
- § 9:76 Subject matter jurisdiction: core versus noncore proceedings
- § 9:77 New developments while appeal is pending

IX. HOW DO YOU APPEAL?

A. GENERALLY

- § 9:78 Introduction

B. BANKRUPTCY RULES

- § 9:79 Generally
- § 9:80 Commencement of an appeal—Bankruptcy Rule 8003
- § 9:81 Time for filing notice of appeal—Bankruptcy Rule 8002
- § 9:82 Leave to appeal—Bankruptcy Rule 8004
- § 9:83 Service of the notice of appeal—Bankruptcy Rule 8003
- § 9:84 Procedure for obtaining a stay pending appeal—Bankruptcy Rule 8007
- § 9:85 Indicative rulings—Bankruptcy Rule 8008
- § 9:86 Submission of record on appeal—Bankruptcy Rule 8009
- § 9:87 Transmission of the record—Bankruptcy Rule 8010
- § 9:88 Filing and service—Bankruptcy Rule 8011
- § 9:89 Disclosure statement—Bankruptcy Rule 8012
- § 9:90 Preparation and filing of briefs—Bankruptcy Rules 8014 and 8018
- § 9:91 Form of briefs, appendices, and other papers—Bankruptcy Rules 8014 and 8015
- § 9:92 *Amicus Curiae* briefs—Bankruptcy Rule 8017
- § 9:93 Cross-appeals—Bankruptcy Rule 8016
- § 9:94 Post-appeal motions and intervention—Bankruptcy Rule 8013
- § 9:95 Review of judgement where bankruptcy court lacked constitutional authority
- § 9:96 Substitution of parties
- § 9:97 Expedited appeals
- § 9:98 Oral argument—Bankruptcy Rule 8019

TABLE OF CONTENTS

§ 9:99	Costs—Bankruptcy Rule 8021
§ 9:100	Rehearing—Bankruptcy Rule 8022
§ 9:101	Motion to dismiss appeal—Bankruptcy Rule 8003(a)(2)
§ 9:102	Voluntary dismissal—Bankruptcy Rule 8023
§ 9:103	Substitution of parties—Bankruptcy Rule 8023.1
§ 9:104	Duties of the clerk of the district court and BAP—Bankruptcy Rule 8024
§ 9:105	Stay pending further appeal—Bankruptcy Rule 8025
§ 9:106	Rules by circuit councils and district courts—Bankruptcy Rule 8026
§ 9:107	Suspension of the application of Bankruptcy Rules—Bankruptcy Rule 8028
§ 9:108	Mediation procedures—Bankruptcy Rule 8027
§ 9:109	Damages and costs for frivolous appeal and other misconduct—Bankruptcy Rule 8020
§ 9:110	En banc review

C. OFFICIAL FORMS

§ 9:111	Generally
---------	-----------

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

TABLE OF CONTENTS

- § 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 Claims based upon a statute
- § 10:46 Effect of failure to properly file claim
- § 10:47 Amendments to proofs of claims
- § 10:48 Administrative priority claimants

V. PARTIES WITH STANDING TO OBJECT TO CLAIMS

- § 10:49 Statute governing standing to object to claims
- § 10:50 Standing of trustee or debtor in possession
- § 10:51 Standing of Chapter 7 debtor
- § 10:52 Standing of creditors and creditors' committees
- § 10:53 Standing of creditors of the general partner of a Chapter 7 debtor

VI. PROCEDURES FOR OBJECTIONS TO CLAIMS

- § 10:54 Timing of prosecution of objections to claims
- § 10:55 Effect of confirmation on ability to object to claims
- § 10:56 Objections to claims through means of the plan confirmation process
- § 10:57 Objections to claims as contested matters or adversary proceedings
- § 10:58 Objections to secured claims
- § 10:59 Pleading requirements for objections to claim
- § 10:60 Omnibus claim objections
- § 10:61 Arbitrability of proof of claim dispute
- § 10:62 Service of the objection to claim

- § 10:63 Acquisition of claims for strategic purposes
- § 10:64 Claimant's response to a claim objection
- § 10:65 Withdrawal of claim
- § 10:66 Resolution without a hearing or initial hearing on objection to claim
- § 10:67 Discovery
- § 10:68 Hearing on an objection to claim and burden of proof
- § 10:69 Recovery of fees and costs
- § 10:70 Claims estimation
- § 10:71 Reconsideration of orders allowing or disallowing claims
- § 10:72 Settlement of an objection to claim
- § 10:73 Motions to reduce unsecured consumer debt claims for failure to negotiate
- § 10:74 Appeals from orders allowing or disallowing claims
- § 10:75 Effect of dismissal of case on order allowing or disallowing claim
- § 10:76 Effect of order allowing or disallowing claim
- § 10:77 Litigation privilege with respect to proof of claim allegations

VII. LIMITATIONS TO JURISDICTION TO DETERMINE MERITS OF PARTICULAR CLAIMS

- § 10:78 Overview of bankruptcy court jurisdiction pertaining to proofs of claims
- § 10:79 The bankruptcy court is obligated to give effect to prepetition judgments
- § 10:80 Personal injury tort and wrongful death claims
- § 10:81 Personal injury tort and wrongful death claims: Bankruptcy court authority to preside over pretrial proceedings
- § 10:82 Claims litigation and withdrawal of the reference
- § 10:83 Abstention from determination of proof of claim litigation
- § 10:84 Relief from the automatic stay to permit liquidation of a claim in another forum

TABLE OF CONTENTS

**VIII. APPLICABLE SUBSTANTIVE LAW
RELATING TO ALLOWABILITY OF
CLAIMS**

- § 10:85 General rules
- § 10:86 Disallowance of claim unenforceable under applicable nonbankruptcy law
- § 10:87 Present valuing claims for future damages
- § 10:88 Disallowance of claims for unmatured interest
- § 10:89 Disallowance of claims for taxes that exceed the value of property
- § 10:90 Disallowance of claims for services by an insider or attorney of the debtor that exceed their reasonable value
- § 10:91 Claims for unmatured debt excepted from discharge under 11 U.S.C.A. § 523(a)(5)
- § 10:92 Disallowance of portion of claim arising from termination of real property lease
- § 10:93 Disallowance of claims arising under terminated employment contracts
- § 10:94 Disallowance of claims for reductions for tax credits because of late payment
- § 10:95 Disallowance of late filed claims
- § 10:96 Disallowance of claims of creditors who have received avoidable transfers
- § 10:97 Disallowance of claims for reimbursement or contribution by codebtors and guarantors
- § 10:98 Equitable disallowance of claims
- § 10:99 Reduction of claim through assertion of time barred counterclaim or offset
- § 10:100 Reduction of consumer claim for unreasonable refusal to negotiate with credit counseling agency

**IX. SUBORDINATION OF PARTICULAR
CLAIMS**

- § 10:101 Overview of subordination
- § 10:102 Contractual subordination
- § 10:103 Subordination of punitive damage claims
- § 10:104 Subordination of claims arising from purchase or sale of a security
- § 10:105 Equitable subordination of claims
- § 10:106 —Procedural issues

- § 10:107 Recharacterization of a claim
- § 10:108 —Procedural issues

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

TABLE OF CONTENTS

- § 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 Default issues: failure to timely respond
- § 11:35 Preparing a responsive pleading
- § 11:36 Standing to respond to the involuntary petition
- § 11:37 Joinder and consolidation of cases
- § 11:38 Motion for abstention
- § 11:39 Motion for bond

VI. REMEDIES FOR CREDITORS PENDING TRIAL

- § 11:40 Appointment of an interim trustee
- § 11:41 Court ordered restrictions on alleged debtor's rights

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

- § 11:42 Discovery

- § 11:43 Pretrial motions
- § 11:44 Joinder of additional petitioners
- § 11:45 Withdrawal of petitioners
- § 11:46 Dismissal of the involuntary petition
- § 11:47 Service of the motion to dismiss the involuntary petition or motion to abstain

VIII. TRIAL

- § 11:48 Burden of proof and evidence

IX. POSTTRIAL CONSIDERATIONS

- § 11:49 Postjudgment pleadings
- § 11:50 Prevailing petitioners
- § 11:51 Prevailing alleged debtor
- § 11:52 Prevailing alleged debtor: Time within which to bring claim
- § 11:53 Prevailing alleged debtor: Proceeding by motion or complaint
- § 11:54 Prevailing alleged debtor: Joinder of unnamed petitioners
- § 11:55 Prevailing alleged debtor: Recovery of fees and costs
- § 11:56 Prevailing alleged debtor: Recovery of damages
- § 11:57 Prevailing alleged debtor: Bad faith determinations
- § 11:58 Prevailing debtor: Claims under additional legal theories
- § 11:59 Prevailing debtor: Claims against persons other than the petitioning creditors
- § 11:60 Prevailing alleged debtor: Sovereign immunity defense
- § 11:61 Remedies for a debtor who is an individual where there is fraudulent involuntary petition
- § 11:62 Third party claims and intervention rights where debtor prevails
- § 11:63 Appeals

CHAPTER 12. LITIGATING RELIEF FROM STAY ACTIONS

I. ACTIONS STAYED BY § 362

- § 12:1 Effect of stay upon filing of petition

TABLE OF CONTENTS

§ 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	—The automatic stay and nondebtor coparties
§ 12:18	—Claims of debtors against debtors
§ 12:19	—Stay of actions against codebtors in Chapters 12 and 13 cases
§ 12:20	—Application of the automatic stay in Chapter 15 proceedings
§ 12:21	—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
§ 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	— —Insurance policies
§ 12:27	—Attempts to exercise control over property of the estate
§ 12:28	Section 362(a)(4): stay of acts to create, perfect or enforce liens against property of the estate
§ 12:29	Section 362(a)(5): stay of acts to create, perfect, or enforce liens against property of the debtor

- § 12:30 Section 362(a)(6): stay of acts to collect, assess,
or recover prepetition claims against the debtor
- § 12:31 Section 362(a)(7): stay of setoffs based on
prepetition claims
- § 12:32 Section 362(a)(8): stay of commencement or
continuation of proceedings before the United
States Tax Court

II. EXCEPTIONS TO THE AUTOMATIC STAY

- § 12:33 Introduction to exceptions
- § 12:34 Section 362(b)(1): criminal actions or
proceedings against the debtor
- § 12:35 Section 362(b)(2): collection of alimony,
maintenance or support
- § 12:36 Section 362(b)(3): postpetition perfection of
interests in property that relates back to a
prepetition interest
- § 12:37 Section 362(b)(4): acts by governmental units to
enforce police or regulatory powers
- § 12:38 Section 362(b)(6), (7): setoffs in commodity
broker and stockbroker liquidations
- § 12:39 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
- § 12:40 Section 362(b)(9): issuance of a notice of tax
deficiency by a governmental unit
- § 12:41 Section 362(b)(10): acts by a lessor of
nonresidential real property to obtain
possession of property
- § 12:42 Section 362(b)(11): giving notice and protesting
dishonor of a negotiable instrument
- § 12:43 Section 362(b)(12), (13): acts to foreclose on
vessels under the Ship Mortgage Act that
involve Chapter 11 debtors
- § 12:44 Section 362(b)(14) to (16): exceptions relating to
educational institutions
- § 12:45 Section 362(b)(17): setoffs relating to swap
agreements
- § 12:46 Section 362(b)(18): ad valorem property tax liens
- § 12:47 Section 362(b)(19): retirement plan repayment
- § 12:48 Section 362(b)(20): in rem orders
- § 12:49 Section 362(b)(21): liens against or security
interests in real property

TABLE OF CONTENTS

§ 12:50	Section 362(b)(22): action by lessor against residential tenant-debtor when lessor has obtained judgment for possession
§ 12:51	Section 362(b)(23): eviction action by lessor against residential tenant-debtor based on endangerment or illegal use of controlled substances
§ 12:52	Section 362(b)(24): transfers not avoidable under §§ 544 and 549
§ 12:53	Section 362(b)(25): actions by securities self-regulatory organizations
§ 12:54	Section 362(b)(26): income tax setoff
§ 12:55	Section 362(b)(27): setoff by master netting agreement
§ 12:56	Section 362(b)(28): exclusion from federal health care program
§ 12:57	Additional exceptions to the stay not contained within § 362(b)

III. GROUNDS FOR RELIEF FROM THE AUTOMATIC STAY

§ 12:58	Overview of grounds for relief
§ 12:59	Termination of the automatic stay by operation of law
§ 12:60	Termination of stay under § 362(c)(1) and (2)
§ 12:61	Termination of stay for repeat filers under § 362(c)(3) and (4)
§ 12:62	Section 362(c)(3), (4)—Presumption of bad faith and motions to extend the stay
§ 12:63	—Notice and hearing requirements
§ 12:64	—Burdens and standards of proof
§ 12:65	Refiling after case dismissed for failure to get prebankruptcy counseling
§ 12:66	Issuance of comfort order following stay termination under § 362(c)
§ 12:67	Termination of stay under § 362(d)
§ 12:68	Lack of adequate protection as cause for relief
§ 12:69	Value of collateral
§ 12:70	Factors relating to adequate protection
§ 12:71	Additional ways of providing adequate protection
§ 12:72	Cause for relief from the automatic stay
§ 12:73	Bad faith filings as cause for relief

- § 12:74 Cause to pursue litigation pending in other forums
- § 12:75 Cause to pursue discovery
- § 12:76 Grounds for relief: no equity in the property and property is not necessary for reorganization
- § 12:77 Section 362(d)(2)(A): issues pertaining to calculation of equity
- § 12:78 Section 362(d)(2)(B): issues pertaining to property necessary for reorganization
- § 12:79 Section 362(d)(3): grounds for relief in single asset real estate cases
- § 12:80 Section 362(d)(4): in rem relief from stay
- § 12:81 Section 362(h): termination of stay as to personal property or unexpired leases in Chapter 7 cases
- § 12:82 Grounds for relief from the codebtor stay in Chapters 12 and 13 cases
- § 12:83 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

- § 12:84 Deciding whether to request relief
- § 12:85 Standing to seek relief
- § 12:86 Form of request for relief
- § 12:87 Seeking order clarifying whether automatic stay applies
- § 12:88 Retroactive relief from stay
- § 12:89 Assertion of additional claims in addition to request for relief
- § 12:90 Proper parties to and service of the request for relief
- § 12:91 Forum to request relief
- § 12:92 Ex parte relief from the stay

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

- § 12:93 Preparing a responsive filing
- § 12:94 Standing to oppose relief
- § 12:95 Issues collateral to the motion for relief from the stay

TABLE OF CONTENTS

§ 12:96	Effect of an order granting relief from the stay
§ 12:97	Joinder of parties
§ 12:98	Third-party intervention
§ 12:99	Discovery
§ 12:100	Settlements

VI. HEARINGS ON REQUESTS FOR RELIEF FROM THE AUTOMATIC STAY

§ 12:101	Scheduling of preliminary and final hearings
§ 12:102	Preliminary hearing
§ 12:103	Extension of 30-day period for final hearing
§ 12:104	Waiver of 30-day requirement
§ 12:105	Final hearing
§ 12:106	Reimposition of the stay
§ 12:107	Power of court to raise issues of the stay sua sponte
§ 12:108	Burden of proof
§ 12:109	Use of appraisers

VII. POST-HEARING CONSIDERATIONS

§ 12:110	Rights of the prevailing party
§ 12:111	Costs and attorney's fees
§ 12:112	Post-hearing motions
§ 12:113	Effect of conversion or refile of the bankruptcy case
§ 12:114	Effect of dismissal on subsequent refile
§ 12:115	Effect of dismissal due to debt repayment program
§ 12:116	Appeals
§ 12:117	Mooting of appeal

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

§ 12:118	Civil contempt as grounds for remedy
§ 12:119	Section 362(k): actions for willful violations of the stay
§ 12:120	Standing to assert a claim under § 362(k)
§ 12:121	Standard of proof for willful violation
§ 12:122	Test for willful violation
§ 12:123	Defenses to action for willful violation under § 362(k)

- § 12:124 Liability of the federal or state governments
- § 12:125 Recovery of actual damages
- § 12:126 Punitive damages
- § 12:127 Section 362(k)(2) limitation
- § 12:128 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

TABLE OF CONTENTS

§ 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
§ 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

TABLE OF CONTENTS

§ 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
§ 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

TABLE OF CONTENTS

§ 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

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	Appointment of committees in small business cases and cases under subchapter V
§ 15:4	Fiduciary duties of Committees and Committee members

- § 15:5 Trading orders
- § 15:6 Information sharing obligations
- § 15:7 Powers of a Committee
- § 15:8 Committee standing
- § 15:9 Derivative standing
- § 15:10 Objectives of Committees
- § 15:11 Committee professionals
- § 15:12 Timing of Committee appointment
- § 15:13 How a Committee is selected—The rules
- § 15:14 —Practical tips
- § 15:15 Alternatives for creditors not selected to Committee
- § 15:16 Serving on a prepetition Committee
- § 15:17 Multiple Committees
- § 15:18 Organization and governance of the Committee
- § 15:19 Bankruptcy Court review and/or modification of Committee appointment
- § 15:20 Disbanding a committee
- § 15:21 Effect of conversion, dismissal, or confirmation
- § 15:22 The Committee’s role in reviewing and potentially contesting first day motions and applications
- § 15:23 The Committee’s role in reviewing and potentially contesting cash collateral and debtor-in-possession financing issues
- § 15:24 The Committee’s role in reviewing and potentially contesting carveouts
- § 15:25 The Committee’s role in reviewing and potentially contesting critical vendor motions
- § 15:26 The Committee’s role in reviewing and potentially contesting employee retention motions
- § 15:27 The Committee’s role in reviewing and potentially contesting sale motions

II. TACTICS: MOTION TO APPOINT A TRUSTEE

- § 15:28 Moving for the appointment of a Chapter 11 trustee
- § 15:29 When will a trustee be appointed?
- § 15:30 Section 1104(a)(1): “for cause”
- § 15:31 Section 1104(a)(2): best interests
- § 15:32 Section 1104: deadlocked board

TABLE OF CONTENTS

- § 15:33 Acrimonious relations with creditors and other parties in interest
- § 15:34 Strategic considerations in moving for a Chapter 11 trustee
- § 15:35 Duties and powers of a Chapter 11 trustee

III. TACTICS: MOTION TO APPOINT AN EXAMINER

- § 15:36 Moving for the appointment of a Chapter 11 examiner: overview
- § 15:37 The examiner appointment process
- § 15:38 Examiner: discretionary appointment
- § 15:39 Examiner: mandatory appointment
- § 15:40 Waiver of the right to seek appointment of an examiner
- § 15:41 Examiner: discretion to deny under § 1104(c)(2)
- § 15:42 Whether invocation of § 1104(c)(2) requires a prior motion under § 1104(a)
- § 15:43 Duties and powers of an examiner
- § 15:44 Examiners with expanded powers
- § 15:45 An examiner's ability to sue
- § 15:46 An examiner's ability to run a business

IV. TACTICS: MOTION TO DISMISS OR CONVERT THE CASE

- § 15:47 Seeking dismissal or conversion
- § 15:48 Hearing on a dismissal and/or conversion motion
- § 15:49 Effects of dismissal
- § 15:50 Effects of conversion
- § 15:51 Dismissal or conversion and the "best interests of creditors"

V. TACTICS: PLAN CONFIRMATION ISSUES

- § 15:52 Means for attacking a debtor's plan strategy
- § 15:53 Overview of exclusivity
- § 15:54 Challenging extensions of exclusivity
- § 15:55 Filing a competing plan
- § 15:56 Potential grounds for opposing confirmation

VI. TACTICS: MOTION FOR SUBSTANTIVE CONSOLIDATION

- § 15:57 Overview of substantive consolidation

- § 15:58 Legal standards governing requests for substantive consolidation
- § 15:59 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

TABLE OF CONTENTS

§ 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
§ 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

TABLE OF CONTENTS

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

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

TABLE OF CONTENTS

- § 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
- § 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

TABLE OF CONTENTS

§ 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
§ 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

TABLE OF CONTENTS

§ 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	Joint and several liability
§ 17:137	Jurisdictional issues and allegations
§ 17:138	Standing to file complaint
§ 17:139	Jury trial
§ 17:140	Choice of law issues
§ 17:141	Arbitration
§ 17:142	Amending the complaint
§ 17:143	Burden of proof and burden of production
§ 17:144	Evidentiary presumptions
§ 17:145	Injunctive relief: enjoining further transfers of fraudulently transferred property
§ 17:146	Injunctive relief: competing claims to fraudulently transferred assets
§ 17:147	Valuation issues
§ 17:148	Settlement issues
§ 17:149	Recovery of attorney's fees
§ 17:150	Recovery of interest
§ 17:151	Remedy for a transferee for value where transfer avoided
§ 17:152	Secured creditor's claims to fraudulent transfer recoveries

Table of Laws and Rules

Table of Cases

Index