# Table of Contents

## Volume 1


## PART I. INTRODUCTION TO BANKRUPTCY LAW AND PRACTICE

### SUBPART 1. THE DEVELOPMENT OF AMERICAN BANKRUPTCY LAW

### CHAPTER 1. HISTORY OF BANKRUPTCY LAWS

#### I. IN GENERAL

§ 1:1 Introduction
§ 1:2 Primitive Laws and Customs
§ 1:3 English antecedents

#### II. DEVELOPMENT OF UNITED STATES SUBSTANTIVE BANKRUPTCY LAW

§ 1:4 Bankruptcy clause of U.S. Constitution
§ 1:5 Development from creditor-based punitive model to affirmative debtor's remedy
§ 1:6 Bankruptcy Act of 1800
§ 1:7 Bankruptcy Act of 1867
§ 1:8 Bankruptcy Act of 1898
§ 1:9 Bankruptcy Code of 1979
§ 1:10 Bankruptcy Reform Act of 1994
§ 1:11 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
§ 1:12 2019 Amendments

#### III. EVOLUTION OF JURISDICTION AND ADMINISTRATION

§ 1:13 Introduction
§ 1:14 Bankruptcy Act of 1800
§ 1:15 Bankruptcy Act of 1841
§ 1:16 Bankruptcy Act of 1867
§ 1:17 Bankruptcy Act of 1898
§ 1:18 Post-1898 changes

# CHAPTER 2. LEGISLATIVE HISTORY AND THE BANKRUPTCY CODE SCOPE STATEMENT

## I. LEGISLATIVE HISTORY AND THE BANKRUPTCY CODE

### A. BACKGROUND

§ 2:1 Introduction
§ 2:2 The Commission on the Bankruptcy Laws

### B. THE BANKRUPTCY REFORM ACT OF 1978

§ 2:3 Generally
§ 2:4 Transition; effective dates
§ 2:5 Savings provisions
§ 2:6 Courts and judges
§ 2:7 Jurisdiction
§ 2:8 Bankruptcy Rules
§ 2:9 Studies and recommendations by judicial conference during transition
§ 2:10 Transfer to courts of bankruptcy

### C. AMENDMENTS SUBSEQUENT TO 1978

§ 2:11 1982 Amendments
§ 2:12 Bankruptcy amendments and the Federal Judgeship Act of 1984
§ 2:13 1986 Amendments
§ 2:14 1988 Amendments
§ 2:15 1990 Amendments
§ 2:16 1992 Amendments
§ 2:17 1994 Amendments
§ 2:18 2005 Amendments

## II. THE ROLE OF LEGISLATIVE HISTORY IN CONSTRUING THE BANKRUPTCY CODE

§ 2:19 Generally
§ 2:20 What is legislative history?
§ 2:21 Weight accorded to various extrinsic sources
§ 2:22 When is legislative history used?
§ 2:23 —Use where statute ambiguous, unclear, or open to dispute
§ 2:24 —Absence of legislative history
§ 2:25 —Subsequent legislative history
§ 2:26 How is legislative history used?

Appendix 2-A. Excerpts of the published legislative history of the 2005 Amendments

Appendix 2-B. Bankruptcy Rulemaking Materials

# CHAPTER 3. OVERVIEW OF PRESENT LAW

## I. IN GENERAL

§ 3:1 Generally
§ 3:2 Judicial structure (and jurisdiction)
§ 3:3 General provisions
§ 3:4 Commencement of a case
§ 3:5 Administrative officers
§ 3:6 Professionals
§ 3:7 Administration
§ 3:8 Administrative powers
§ 3:9 Claims and distribution
§ 3:10 Debtor duties and benefits
§ 3:11 The estate
§ 3:12 Chapter 7 liquidation
§ 3:13 Chapter 9 adjustments of debts of a municipality
§ 3:14 Chapter 11 reorganization
§ 3:15 Chapter 12 family farmer and fisherman debt adjustment
§ 3:16 Chapter 13 individual debt adjustment
§ 3:17 Tax considerations
§ 3:18 Special procedures
§ 3:19 Chapter 15 cross-border provisions
§ 3:20 Litigation

## II. RELATED LAWS AND ISSUES

§ 3:21 Generally
§ 3:22 Environmental laws
§ 3:23 Franchise cases
§ 3:24 Intellectual property
§ 3:25 Lender liability
§ 3:26 Mass torts
§ 3:27 Pension claims and ERISA assets
§ 3:28 Transnational insolvencies (Chapter 15)
§ 3:29 Partnership law
§ 3:30 Healthcare laws
§ 3:31 Small business debtors
§ 3:32 Single-asset real estate debtors
§ 3:33 Family farmers and family fishermen

Appendix 3-A. Chapter 9 Adjustment of Debts of a Municipality—Legislative History and Comment

Appendix 3-B. Chapter 11 Reorganizations —Legislative History and Comment

# SUBPART 2. THE JUDICIAL STRUCTURE IN BANKRUPTCY

# CHAPTER 4. JURISDICTION

## I. IN GENERAL

§ 4:1 Overview; principles of subject-matter jurisdiction
§ 4:2 Basic structure of bankruptcy jurisdiction
§ 4:3 Power of the court
§ 4:4 Code § 105 power
§ 4:5 Courts of equity
§ 4:6 Standing
§ 4:7 Summary-plenary jurisdiction
§ 4:8 The 1978 Act's overhaul
§ 4:9 *Northern Pipeline* required a further overhaul
§ 4:10 The enactment of BAFJA in 1984
§ 4:11 Limited impact by BAPCPA (the 2005 Amendments)

## II. HISTORICAL BACKGROUND

### A. JURISDICTION UNDER BANKRUPTCY ACT OF 1898

§ 4:12 In general
§ 4:13 Court of bankruptcy
§ 4:14 Limitations of 1898 Act
§ 4:15 Administrative role of judge
§ 4:16 Quality, scope, and magnitude of cases before bankruptcy judges
§ 4:17 Brookings Institution report
§ 4:18 Bankruptcy Commission
§ 4:19 House bills
§ 4:20 Danielson-Railsback amendment
§ 4:21 Senate bill
§ 4:22 Compromise

### B. JURISDICTION UNDER 1978 ACT

§ 4:23 District court (28 U.S.C.A. § 1471)
§ 4:24 Bankruptcy court
§ 4:25 Unconstitutionality of 28 U.S.C.A. § 1471(c)
§ 4:26 Jurisdiction under (Emergency) Model Local Rule

### C. JURISDICTION UNDER 1984 BANKRUPTCY AMENDMENTS

§ 4:27 History of 1984 structure and congressional options
§ 4:28 Overview of 1984 Amendments
§ 4:29 Code § 1334 is the exclusive source of bankruptcy jurisdiction

§ 4:30 Source of jurisdiction
§ 4:31 A jurisdictional nexus must exist
§ 4:32 The claims-allowance process
§ 4:33 Inherent jurisdiction
§ 4:34 Distinction between jurisdictional and substantive provisions
§ 4:35 Abstention (28 U.S.C.A. § 1334(c))
§ 4:36 Exercise of various powers by bankruptcy judges
§ 4:37 Withdrawal of the reference (28 U.S.C.A. § 157(d))
§ 4:38 Removal of proceedings (28 U.S.C.A. § 1452)
§ 4:39 The Rooker-Feldman doctrine
§ 4:40 Abstention (28 U.S.C.A. § 1334(c))
§ 4:41 Constitutionality of 1984 jurisdictional structure
§ 4:42 District court jurisdiction under 1984 Amendments
§ 4:43 Jurisdictional grant to the district courts (28 U.S.C.A. § 1334(a))
§ 4:44 Reference to the bankruptcy courts (28 U.S.C.A. § 157(a))
§ 4:45 Distinction between cases and proceedings
§ 4:46 Abstention (28 U.S.C.A. § 1334(c))
§ 4:47 Three jurisdictional nexuses
§ 4:48 Concurrent jurisdiction
§ 4:49 Theory of "independent basis" for bankruptcy jurisdiction
§ 4:50 Statutory preclusion of jurisdiction
§ 4:51 Impact of sovereign immunity of states on bankruptcy jurisdiction
§ 4:52 What is a "suit" against a state?
§ 4:53 Waiver of sovereign immunity
§ 4:54 Cases addressing the constitutionality of Code § 106(b)
§ 4:55 Cases addressing the constitutional scope of Code § 106(c)
§ 4:56 In rem exception to sovereign immunity: *Tennessee v. Hood*
§ 4:57 *Ex parte Young* exception—The "state officer" doctrine
§ 4:58 Local governments do not have sovereign immunity
§ 4:59 Withdrawal of the reference (28 U.S.C.A. § 157(d))
§ 4:60 Supplemental jurisdiction
§ 4:61 Probate jurisdiction limitation

## III. REFERRAL TO BANKRUPTCY COURT

### A. CORE PROCEEDINGS

§ 4:62 In general (28 U.S.C.A. § 157(b))
§ 4:63 Elements of "core" status
§ 4:64 Claim preclusion (res judicata) and issue preclusion (collateral estoppel)
§ 4:65 History of "core" proceedings
§ 4:66 Effect of filing a proof of claim
§ 4:67 Res judicata
§ 4:68 The statutory categories of "core" proceedings—In general
§ 4:69 Determination of "core" status by the bankruptcy judge
§ 4:70 Overview of 15 core proceedings

§ 4:71 Matters concerning administration of estate (28 U.S.C.A. § 157(b)(2)(A))
§ 4:72 Scope of Code § 157(b)(2)(A)
§ 4:73 Proceedings for injunctions
§ 4:74 Proceedings in aid of reorganization efforts
§ 4:75 Other types of proceedings
§ 4:76 Allowance or disallowance of claims (28 U.S.C.A. § 157(b)(2)(B))
§ 4:77 Counterclaims by estate (28 U.S.C.A. § 157(b)(2)(C))
§ 4:78 Scope of Code § 157(b)(2)(C)
§ 4:79 *Katchen v. Landy*
§ 4:80 Obtaining credit (28 U.S.C.A. § 157(b)(2)(D))
§ 4:81 Turnover orders (28 U.S.C.A. § 157(b)(2)(E))
§ 4:82 Avoiding and recovering preferences (28 U.S.C.A. § 157(b)(2)(F))
§ 4:83 Motions for relief from automatic stay (28 U.S.C.A. § 157(b)(2)(G))
§ 4:84 Proceedings involving fraudulent conveyances (28 U.S.C.A. § 157(b)(2)(H))
§ 4:85 Dischargeability of particular debts (28 U.S.C.A. § 157(b)(2)(I))
§ 4:86 Objections to discharge (28 U.S.C.A. § 157(b)(2)(J))
§ 4:87 Determination of validity, extent, or priority of liens (28 U.S.C.A. § 157(b)(2)(K))
§ 4:88 Confirmation of plans of reorganization (28 U.S.C.A. § 157(b)(2)(L))
§ 4:89 Use or lease of property (28 U.S.C.A. § 157(b)(2)(M))
§ 4:90 Orders approving sale of property (28 U.S.C.A. § 157(b)(2)(N))
§ 4:91 Other proceedings affecting liquidation, debtor-creditor relationship, or equity security holder relationship

## B. TITLE 11 NEXUSES

§ 4:92 "Arising under" and "arising in"
§ 4:93 "Arising under" nexus
§ 4:94 "Arising in" nexus
§ 4:95 "Related to"
§ 4:96 Function of the "related to" jurisdictional nexus
§ 4:97 Scope of "related to" nexus
§ 4:98 The seminal case: *Pacor, Inc.*
§ 4:99 Application of the *Pacor* test
§ 4:100 Indemnity claims by codefendants
§ 4:101 Miscellaneous cases
§ 4:102 Impact on the bankruptcy case
§ 4:103 Lack of impact
§ 4:104 Relatedness upheld
§ 4:105 28 U.S.C.A. § 157(b)(3)
§ 4:106 28 U.S.C.A. § 157(c)
§ 4:107 Withdrawal of the reference

### C. CONSENT JURISDICTION

§ 4:108 In general
§ 4:109 Consent pursuant to 28 U.S.C.A. § 157(c)(2)
§ 4:110 Appellate jurisdiction (28 U.S.C.A. § 158)
§ 4:111 28 U.S.C.A. § 157(c)(1) applies to "related" proceedings
§ 4:112 Certain aspects of consent jurisdiction
§ 4:113 Constitutionality of Code § 157(c)(2)
§ 4:114 Consent must be voluntary
§ 4:115 "Consent" resulting from filing a proof of claim

## IV. PARTICULAR TYPES OF JURISDICTION

§ 4:116 Personal jurisdiction: nationwide process (28 U.S.C.A. § 1334(b))
§ 4:117 Service of process (Bankruptcy Rule 7004)
§ 4:118 Notice of bar order
§ 4:119 Exclusive jurisdiction over property of debtor (28 U.S.C.A. § 1334(e))
§ 4:120 Postconfirmation jurisdiction
§ 4:121 Postconfirmation "relatedness"
§ 4:122 Retention of jurisdiction by a plan
§ 4:123 Return the debtor to the commercial world
§ 4:124 Postdismissal disputes
§ 4:125 *Zerand-Bernal Group, Inc. v. Cox*
§ 4:126 Miscellaneous postconfirmation decisions
§ 4:127 Mootness of appeals

## V. OTHER MATTERS

§ 4:128 Jury trial
§ 4:129 Contempt and sanctions
§ 4:130 Injunctions
§ 4:131 Declaratory judgments (28 U.S.C.A. § 2201)
§ 4:132 Compelling arbitration
§ 4:133 Receivers
§ 4:134 Time limits under the Bankruptcy Rules
§ 4:135 Bankruptcy court jurisdiction during pendency of an appeal
§ 4:136 FIRREA

# CHAPTER 5. BANKRUPTCY JUDGES AND COURT PERSONNEL

## I. BANKRUPTCY JUDGES AND STAFF

§ 5:1 Background
§ 5:2 Tenure and service of bankruptcy judges (28 U.S.C.A. §§ 152, 153, and 155)
§ 5:3 Division of business among judges (28 U.S.C.A. § 154)

§ 5:4 Bankruptcy court staff (28 U.S.C.A. § 156)
§ 5:5 Collection of bankruptcy statistics (28 U.S.C.A. § 159)

II. JUDICIAL ADMINISTRATION

§ 5:6 Judicial Conference of United States (28 U.S.C.A. § 331)
§ 5:7 Circuit judicial conferences and councils (28 U.S.C.A. § 332 and 333)
§ 5:8 Federal Judicial center (28 U.S.C.A. § 620)

III. RULES OF EVIDENCE AND PROCEDURE

§ 5:9 Rules of bankruptcy procedure
§ 5:10 Local rules of court (Bankr. Rule 9029)
§ 5:11 Federal Rules of Evidence

CHAPTER 6. VENUE

§ 6:1 Venue for case
§ 6:2 Venue for proceedings
§ 6:3 Change of venue

CHAPTER 7. REMOVAL

§ 7:1 Removal (28 U.S.C.A. § 1452(a))
§ 7:2 Remand (28 U.S.C.A. § 1452(b))

Appendix 7-A. Practice Aids

CHAPTER 8. WITHDRAWAL AND ABSTENTION

I. WITHDRAWAL FROM BANKRUPTCY COURT TO DISTRICT COURT

§ 8:1 Permissive withdrawal of the reference (28 U.S.C.A. § 157(d))
§ 8:2 Mandatory withdrawal of the reference (28 U.S.C.A. § 157(d))
§ 8:3 Caselaw applying withdrawal
§ 8:4 "Case or controversy"

II. ABSTENTION

§ 8:5 Introduction (28 U.S.C.A. § 1334(c))
§ 8:6 Permissive abstention (28 U.S.C.A. § 1334(c)(1))
§ 8:7 Mandatory abstention (28 U.S.C.A. § 1334(c)(2))
§ 8:8 Personal injury and wrongful death (28 U.S.C.A. § 157(b)(5))
§ 8:9 Abstention when arbitration is appropriate

Appendix 8-A. Practice Aids

# PART II. ANALYSIS OF THE BANKRUPTCY CODE

## SUBPART 3. GENERAL PROVISIONS OF THE BANKRUPTCY CODE (CODE §§ 101-112)

## CHAPTER 9. DEFINITIONS (CODE § 101)

## CHAPTER 10. RULES OF CONSTRUCTION (CODE § 102)

§ 10:1 After notice and a hearing (Code § 102(1))
§ 10:2 Claim against the debtor (Code § 102(2))
§ 10:3 Other general rules (Code § 102(3), (4), (5), (6), (7) and (9))
§ 10:4 Application of cross-references (Code § 102(8))

## CHAPTER 11. APPLICATION OF CHAPTERS (CODE § 103)

§ 11:1 Overview
§ 11:2 Application of specific chapters
§ 11:3 Effect of inconsistency in provisions

## CHAPTER 12. ADJUSTMENT OF DOLLAR AMOUNTS (CODE § 104)

§ 12:1 Legislative history
§ 12:2 Code provision (Code § 104)

## CHAPTER 13. POWER OF COURT (CODE § 105)

### A. OVERVIEW OF BANKRUPTCY COURT POWER UNDER CODE § 105

§ 13:1 Introduction
§ 13:2 Prior law
§ 13:3 Scope of Code § 105

### B. SPECIFIC APPLICATIONS OF BANKRUPTCY COURT POWER UNDER CODE § 105

§ 13:4 Equitable powers (Code § 105(a))
§ 13:5 Contempt powers (Code § 105(c))
§ 13:6 Injunctions (Code § 105(a))
§ 13:7 Judicial management of the case (Code § 105(d))
§ 13:8 Debtor's management
§ 13:9 Doctrine of necessity
§ 13:10 Other orders in furtherance of a plan

Appendix 13-A. Practice Aids

## CHAPTER 14. SOVEREIGN IMMUNITY (CODE § 106)

§ 14:1 General principles
§ 14:2 The original § 106 waiver
§ 14:3 Overview of 1994 Amendments
§ 14:4 Bankruptcy causes of action against the federal government (Code § 106(a))
§ 14:5 Bankruptcy causes of action against states
§ 14:6 Causes of action against states under former § 106
§ 14:7 Bankruptcy causes of action against the federal government—Causes of action against the federal government under former § 106
§ 14:8 Nonbankruptcy causes of action against federal government and all causes of action against state governments
§ 14:9 Claims filed by other agencies (Code § 106(b))
§ 14:10 Compulsory counterclaim waiver (Code § 106(b))
§ 14:11 Setoff (Code § 106(c))
§ 14:12 Other available waivers
§ 14:13 Waiver of administrative procedures
§ 14:14 Awards of interest
§ 14:15 Awards of attorney's fees
§ 14:16 Constitutionality—The 11th Amendment and the states
§ 14:17 —Abrogation of immunity
§ 14:18 —Waiver of immunity
§ 14:19 Jurisdiction and sovereign immunity in bankruptcy

## CHAPTER 15. PUBLIC ACCESS TO PAPERS (CODE §§ 107, 112)

§ 15:1 General rule (Code § 107(a))
§ 15:2 Protective orders (Code § 107(b) and (c))
§ 15:3 Disclosure of names of minor children (Code § 112)

Appendix 15-A. Practice Aids

## CHAPTER 16. EXTENSION OF TIME (CODE § 108)

§ 16:1 Termination provisions (Code § 108(a))
§ 16:2 Curing defaults (Code § 108(b))
§ 16:3 Action by a trustee
§ 16:4 Actions against the debtor (Code § 108(c))

## CHAPTER 17. ELIGIBILITY TO BE A DEBTOR (CODE § 109)

§ 17:1 In general
§ 17:2 Person (Code § 101(41))
§ 17:3 Individuals

§ 17:4 Residence, domicile, place of business or property
§ 17:5 Who may be a debtor under Chapter 7 (Code § 109(b))
§ 17:6 —Subsidiaries of noninsurance or nonbanking debtors (Code § 109(b)(2))
§ 17:7 Who may be a debtor under Chapter 9 (Code § 109(c))
§ 17:8 Who may be a debtor under Chapter 11 (Code § 109(d))
§ 17:9 Who may be a debtor under Chapter 13 (Code § 109(e))
§ 17:10 —Regular income requirement
§ 17:11 —Ability to make payments under plan
§ 17:12 —Debt limitations
§ 17:13 Who may be a debtor under Chapter 12—Family farmer (Code § 109(f))
§ 17:14 —Family fisherman
§ 17:15 Chapter 15 proceedings (Code § 109(b)(3))
§ 17:16 Repeat filing (Code § 109(g))
§ 17:17 Credit briefing (Code § 109(h))

Appendix 17-A. Practice Aids

## CHAPTER 18. BANKRUPTCY PETITION PREPARERS (CODE § 110)

### I. REQUIREMENTS

§ 18:1 Generally (Code §§ 110(a)–(g))
§ 18:2 Disclosures (Code § 110(b)(2))
§ 18:3 Fees (Code § 110(h))

### II. SANCTIONS

§ 18:4 Introduction (Code §§ 110(i), (j), (k))
§ 18:5 Damages (Code § 110(i))
§ 18:6 Injunctive relief (Code § 110(j))
§ 18:7 Fines (Code § 110(k))

## CHAPTER 19. CREDIT COUNSELING AGENCIES (CODE § 111)

§ 19:1 Credit counseling and instructional courses required under the Bankruptcy Code
§ 19:2 Nonprofit budget and credit counseling agencies (Code § 111)
§ 19:3 GAO study

## SUBPART 4. COMMENCEMENT OF A CASE (CODE §§ 301-306)

## CHAPTER 20. VOLUNTARY CASE (CODE §§ 301, 302(A))

§ 20:1 In general

§ 20:2 Filing of petition to commence case (Code § 301)
§ 20:3 Filing fees (28 U.S.C.A. § 1930)
§ 20:4 List of creditors, schedules, and statements (Code § 521(a)(1))
§ 20:5 Supplemental schedules (Bankr. Rule 1007(h))
§ 20:6 Amendments (Bankr. Rule 1009(a))
§ 20:7 Where to file (28 U.S.C.A. § 1408(1))
§ 20:8 —Individuals
§ 20:9 —Corporations
§ 20:10 —Partnerships
§ 20:11 Husband and wife (Code § 302)
§ 20:12 Bankruptcy remote entities
§ 20:13 Incapacity of a debtor

Appendix 20-A. Practice Aids

## CHAPTER 21. JOINT ADMINISTRATION, STATUTORY CONSOLIDATION, AND SUBSTANTIVE CONSOLIDATION OF CASES (CODE § 302)

§ 21:1 Joint Administration (Bankr. Rule 1015(b))
§ 21:2 Statutory Consolidation (Bankr. Rule 1015(a) and Code § 302(b))
§ 21:3 Substantive Consolidation
§ 21:4 Statutory Authority for Substantive Consolidation
§ 21:5 Substantive Consolidation Tests from the Appellate Courts
§ 21:6 Procedural Considerations
§ 21:7 Nunc Pro Tunc Treatment and the Applicable Petition Date
§ 21:8 Substantive Consolidation Pursuant to a Chapter 11 Plan
§ 21:9 Substantive Consolidation of Debtor and Non-Debtor Entities
§ 21:10 Distinguished from Veil-Piercing Actions

## CHAPTER 22. INVOLUNTARY CASES (CODE § 303)

§ 22:1 In general (Code § 303(a))
§ 22:2 Procedural requirements—Number of petitioners (Code § 303(b))
§ 22:3 —Contingent or disputed claims
§ 22:4 —Assigned claims
§ 22:5 —Excluded holders
§ 22:6 —Indenture trustee
§ 22:7 —Monetary minimum aggregate unsecured claim
§ 22:8 Adding petitioners (Code § 303(c))
§ 22:9 Partnerships (Code § 303(b)(3))
§ 22:10 Substantive grounds for involuntary relief—Historical background (Code § 303(h))

§ 22:11 —Code grounds for relief
§ 22:12 Procedure for involuntary petition (Bankr. Rule 1011)
§ 22:13 Handling debtor's affairs during involuntary gap period (Code § 303(f))
§ 22:14 —Trustee, appointment (Code § 303(g))
§ 22:15 Petitioner's bond (Code § 303(e))
§ 22:16 Postdecision proceedings (Code § 303(i))
§ 22:17 Dismissal (Code § 303(j))
§ 22:18 Penalties (Code § 303(k))

Appendix 22-A. Practice Aids

CHAPTER 23. CASES ANCILLARY TO FOREIGN PROCEEDINGS (ABROGATED CODE § 304)

CHAPTER 24. DISMISSAL OR SUSPENSION (CODE § 305)

§ 24:1 Best interests test (Code § 305(a)(1))
§ 24:2 Foreign proceedings (Code § 305(a)(2))
§ 24:3 Appeal (Code § 305(c))

Appendix 24-A. Practice Aids

CHAPTER 25. LIMITED APPEARANCE (CODE § 306)

SUBPART 5. ADMINISTRATIVE OFFICERS (CODE §§ 307-326)

CHAPTER 26. U.S. TRUSTEE (CODE § 307)

I. IN GENERAL

§ 26:1 Appointment (28 U.S.C.A. § 581)
§ 26:2 Nature of office
§ 26:3 Right to appear and be heard (Code § 307)

II. DUTIES OF THE U.S. TRUSTEE; EFFECT OF 2005 AMENDMENTS

§ 26:4 Generally (28 U.S.C.A. § 586)
§ 26:5 Supervision of budget and credit counseling and financial management instruction
§ 26:6 Enforcement of credit and budget counseling requirements
§ 26:7 Audits of individual debtors
§ 26:8 The "means test"
§ 26:9 Debt relief agencies
§ 26:10 Bankruptcy petition preparers
§ 26:11 Chapter 11 trustees and examiners

§ 26:12 Motions to convert or dismiss the case
§ 26:13 Small business debtors
§ 26:14 Healthcare provisions
§ 26:15 Consumer privacy ombudsman issues
§ 26:16 Chapters 12 and 13
§ 26:17 Chapter 15

## III. LITIGATION AGAINST THE U.S. TRUSTEE

§ 26:18 Generally
§ 26:19 Membership of Chapter 11 creditors' committees
§ 26:20 Chapter 7 trustees
§ 26:21 Refusal to approve expenses of Chapter 12 or 13 standing trustees
§ 26:22 Approval or disapproval of budget and credit counseling agencies and financial management instruction

## IV. UNITED STATES TRUSTEE SYSTEM FUND (28 U.S.C.A. § 589A)

§ 26:23 Generally
§ 26:24 Quarterly fees in Chapter 11 cases

# CHAPTER 27. DEBTOR REPORTING REQUIREMENTS (CODE § 308)

# CHAPTER 28. APPOINTMENT AND QUALIFICATION OF TRUSTEES (CODE §§ 321–325)

## I. BACKGROUND

§ 28:1 Changing role of trustee
§ 28:2 Differentiating roles of trustee and judge
§ 28:3 Absence of creditor control
§ 28:4 Burden on bankruptcy judge to administer bankrupt's estate
§ 28:5 Inconsistent procedural goals of economy, integrity, and efficiency
§ 28:6 Solution: Bankruptcy Reform Act

## II. ELIGIBILITY, APPOINTMENT, ROLE, AND REMOVAL OF TRUSTEES

§ 28:7 Eligibility to serve (Code § 321(a))
§ 28:8 Appointment
§ 28:9 Appointments in municipal cases
§ 28:10 Appointment in railroad reorganizations
§ 28:11 Qualification and bonds (Code § 322)

§ 28:12 Actions by or against trustees (Code § 323)
§ 28:13 Removal of trustees (Code § 324)
§ 28:14 Discharge and relief of sureties
§ 28:15 Criminal offenses
§ 28:16 Proceedings on trustees' bonds
§ 28:17 Notice
§ 28:18 Debtors' exemptions
§ 28:19 Termination on conversion of case

CHAPTER 29. TRUSTEE COMPENSATION (CODE § 326)

§ 29:1 Private trustees (Code § 326(a))
§ 29:2 Standing trustees (Code § 326(b))
§ 29:3 Compensation in cases with more than one trustee (Code § 326(c))
§ 29:4 Denial of compensation (Code § 326(d))

Volume 2

SUBPART 6. PROFESSIONALS (CODE §§ 327-333)

CHAPTER 30. EMPLOYMENT OF PROFESSIONALS (CODE §§ 327–329)

§ 30:1 Basic Code provisions
§ 30:2 Engagement agreements (Code § 328)
§ 30:3 Court authorization/disclosures by professional (Bankr. Rule 2014)
§ 30:4 Disinterestedness requirement (Code § 327(a))
§ 30:5 Adverse interest (Code § 327(a))
§ 30:6 Restriction of trustee self-employment (Code §§ 327(d) and 328(b))
§ 30:7 Employment as special counsel (Code § 327(e))
§ 30:8 Disclosure of compensation (Code § 329)
§ 30:9 Nunc pro tunc employment
§ 30:10 Retainer issues (§ 328)
§ 30:11 Employment of nonlegal professionals
§ 30:12 Employment of professionals by examiners
§ 30:13 Ombudsman

Appendix 30-A. Practice Aids

CHAPTER 31. PROFESSIONAL COMPENSATION (CODE §§ 330, 331)

§ 31:1 In general
§ 31:2 Compensation as administrative expense

§ 31:3 Awards of compensation under the Bankruptcy Act
§ 31:4 Rejection of the economy of administration standard
§ 31:5 Applying § 330 of the Bankruptcy Code
§ 31:6 Interim compensation under § 331 of the Bankruptcy Code
§ 31:7 Fee enhancements and bonuses
§ 31:8 Local versus out-of-town hourly rates
§ 31:9 Fee application process (Bankr. Rule 2016)
§ 31:10 Reimbursement of expenses (Code § 330(a)(1))
§ 31:11 Creditors' committee member expenses

Appendix 31-A. Practice Aids

## CHAPTER 32. OMBUDSMEN (CODE §§ 332, 333)

§ 32:1 Consumer privacy ombudsman (Code § 332)
§ 32:2 Patient care ombudsman (Code § 333)

# SUBPART 7. ADMINISTRATION (CODE §§ 341-351)

## CHAPTER 33. MEETING OF CREDITORS (CODE § 341)

§ 33:1 Generally
§ 33:2 Presiding officer (Code § 341(a))
§ 33:3 Scheduling of meeting (Bankr. Rule 2003(a))
§ 33:4 Representation at the meeting (Code § 341(c))
§ 33:5 Required disclosures to a debtor (Code § 341(d))
§ 33:6 Prepackaged plans (Code § 341(e))
§ 33:7 Equity security holders (Bankr. Rule 2003(b)(2))
§ 33:8 Record of meeting (Bankr. Rule 2003(c))
§ 33:9 Election of trustee (Bankr. Rule 2003(b)(3))
§ 33:10 Adjournment (Bankr. Rule 2003(e), (f) and (g))

Appendix 33-A. Practice Aids

## CHAPTER 34. NOTICE (CODE § 342)

§ 34:1 Requirement of notice; timing, address, and content, generally (Code § 342(a) and (c))
§ 34:2 Notice in cases with individual consumer debtors (Code § 342(b))
§ 34:3 Notice of abuse (Code § 342(d))
§ 34:4 Request for notice by a creditor (Code § 342(e) and (f))
§ 34:5 Effect of notice (Code § 342(g))

Appendix 34-A. Practice Aids

## CHAPTER 35. EXAMINATION OF DEBTOR (CODE §§ 343, 344)

§ 35:1 Scope of examination under Bankruptcy Rule 2004
§ 35:2 Compelling appearance

§ 35:3 Privileges and immunities of debtor
§ 35:4 Procedure for obtaining immunity
§ 35:5 Special considerations relating to the Fifth Amendment—General principles
§ 35:6 Designated representatives of the debtor
§ 35:7 Law under the former Bankruptcy Act
§ 35:8 Law under the Bankruptcy Code (Code § 344)

Appendix 35-A. Practice Aids

CHAPTER 36. MONEY OF THE ESTATE (CODE § 345)

§ 36:1 Deposit or investment (Code § 345(a))
§ 36:2 Restrictions (Code § 345(b))

Appendix 36-A. Practice Aids

CHAPTER 37. TREATMENT OF STATE AND LOCAL TAXES (CODE § 346)

§ 37:1 State and local taxes under Bankruptcy Code (Code § 346)
§ 37:2 Separate taxable estate (Code § 346(a) and (b))
§ 37:3 Partnership distributions (Code § 346(c))
§ 37:4 Short year (Code § 346(d))
§ 37:5 Accounting methods (Code § 346(e))
§ 37:6 Gain on transfer to or from the estate (Code § 346(f))
§ 37:7 State and local tax rates (Code § 346(g))
§ 37:8 Trustee withholding (Code § 346(h))
§ 37:9 Carryover and carryback of tax attributes (Code § 346(i))
§ 37:10 Cancellation of indebtedness income (Code § 346(j))
§ 37:11 Computation of tax and filing of returns (Code § 346(k))

CHAPTER 38. UNCLAIMED PROPERTY (CODE § 347)

§ 38:1 Distribution by a trustee (Code § 347(a))
§ 38:2 Distribution under a plan (Code § 347(b))

CHAPTER 39. EFFECT OF CONVERSION OR DISMISSAL OF CASES (CODE §§ 348, 349)

I. CONVERSION (CODE § 348)

§ 39:1 Introduction
§ 39:2 Conversion from Chapter 7
§ 39:3 Conversion from Chapter 11
§ 39:4 Conversion from Chapter 12
§ 39:5 Conversion from Chapter 13
§ 39:6 Procedure
§ 39:7 Conversion as new order for relief

§ 39:8 Automatic stay
§ 39:9 Assumption or rejection of executory contracts
§ 39:10 Prepetition claims
§ 39:11 Postpetition, preconversion claims
§ 39:12 Termination of services of the trustee or examiner
§ 39:13 Discharge and dischargeability complaints
§ 39:14 Property of the estate
§ 39:15 Exemptions
§ 39:16 Substantive avoidance powers

II. DISMISSAL (CODE § 349)

§ 39:17 Introduction
§ 39:18 Procedure
§ 39:19 Effect of dismissal
§ 39:20 Restoration of property

Appendix 39-A. Practice Aids

CHAPTER 40. CLOSING AND REOPENING CASES (CODE § 350)

I. CLOSING CASE

§ 40:1 Introduction (Code § 350(c))
§ 40:2 Unclaimed property

II. REOPENING CASE

§ 40:3 Introduction (Code § 350(b))
§ 40:4 To administer assets
§ 40:5 For cause
§ 40:6 To determine dischargeability
§ 40:7 To bring a lien avoidance action
§ 40:8 To amend schedules
§ 40:9 Procedure

Appendix 40-A. Practice Aids

CHAPTER 41. DISPOSAL OF PATIENT RECORDS (CODE § 351)

§ 41:1 Code § 351 Requirements

SUBPART 8. ADMINISTRATIVE POWERS (CODE §§ 361-366)

CHAPTER 42. ADEQUATE PROTECTION (CODE § 361)

§ 42:1 Constitutionality

§ 42:2 Policy grounds
§ 42:3 Value protected
§ 42:4 Statutory provisions (Code § 361)
§ 42:5 —Lump-sum or periodic payments (Code § 361(1))
§ 42:6 —Additional or replacement lien (Code § 361(2))
§ 42:7 —Realization of indubitable equivalent (Code § 361(3))
§ 42:8 Inadequate protection (Code § 507(b))

# CHAPTER 43. AUTOMATIC STAY (CODE § 362)

## I. BACKGROUND

§ 43:1 Historical perspective
§ 43:2 Former rules of bankruptcy procedure
§ 43:3 Bankruptcy Code changes

## II. AUTOMATIC STAY UNDER CODE (CODE § 362(a), (c))

§ 43:4 In general (Code § 362(a))
§ 43:5 Proceedings involving prepetition claims (Code § 362(a)(1))
§ 43:6 Prepetition judgments (Code § 362(a)(2))
§ 43:7 Actions for possession of estate property (Code § 362(a)(3))
§ 43:8 Postpetition lien creation, perfection, or enforcement (Code § 362(a)(4))
§ 43:9 Liens for prepetition claims in debtor's property (Code § 362(a)(5))
§ 43:10 Collection of prepetition debts (Code § 362(a)(6))
§ 43:11 Setoff of prepetition debts (Code § 362(a)(7))
§ 43:12 Tax Court proceedings (Code § 362(a)(8))
§ 43:13 Duration of automatic stay (Code § 362(c))
§ 43:14 Repeat filers (Code § 362(c)(3))

## III. EXCEPTIONS FROM AUTOMATIC STAY (CODE § 362(b))

§ 43:15 In general (Code § 362(b))
§ 43:16 Criminal actions or proceedings (Code § 362(b)(1))
§ 43:17 Collection of domestic support obligations from nonestate property (Code § 362(b)(2))
§ 43:18 Postpetition perfection (Code § 362(b)(3))
§ 43:19 Governmental, police, or regulatory power (Code § 362(b)(4))
§ 43:20 Setoffs of mutual debts and claims for commodity transactions (Code § 362(b)(6))
§ 43:21 Repurchase agreements (Code § 362(b)(7))
§ 43:22 HUD foreclosures under NHA (Code § 362(b)(8))
§ 43:23 Tax audits, notices of tax deficiency, demand for tax returns, and tax assessments (Code § 362(b)(9))
§ 43:24 Act to obtain possession of property under terminated nonresidential lease (Code § 362(b)(10))

§ 43:25 Presentment, notice of dishonor, and protesting dishonor of a negotiable instrument (Code § 362(b)(11))
§ 43:26 Merchant Marine Act foreclosure (vessels) (Code § 362(b)(12))
§ 43:27 Merchant Marine Act foreclosure (fishing facility) (Code § 362(b)(13))
§ 43:28 Accreditation of educational institutions (Code § 362(b)(14))
§ 43:29 Licensing of educational institutions (Code § 362(b)(15))
§ 43:30 Eligibility under higher education act (Code § 362(b)(16))
§ 43:31 Setoffs by swap participants (Code § 362(b)(17))
§ 43:32 Exception from stay for postpetition property tax liens (Code § 362(b)(18))
§ 43:33 Withholding income in order to repay certain qualified loans (Code § 362(b)(19))
§ 43:34 Previously granted stay relief pursuant to Code § 362(d)(4) (Code § 362(b)(20)
§ 43:35 Lien or security in circumstances when the debtor is ineligible (Code § 362(b)(21))
§ 43:36 Eviction proceeding against the debtor where the lessor has obtained a judgment (Code § 362(b)(22) & (l))
§ 43:37 Eviction proceeding against the debtor based on endangerment or the illegal use of a controlled substance (Code § 362(b)(23) & (m))
§ 43:38 Transfers not avoidable under Code §§ 544 or 549 (Code § 362(b)(24)
§ 43:39 Investigation or the enforcement of an order obtained by a securities self regulatory organization (Code § 362(b)(25))
§ 43:40 Setoff of certain income tax refunds (Code § 362(b)(26))
§ 43:41 Setoff of certain claims arising under a master netting agreement (Code § 362(b)(27))
§ 43:42 Proceeding against the debtor by the Secretary of Health and Human Services (Code § 362(b)(28))
§ 43:43 Acts taken in small business cases (Code § 362(n))

## IV. RELIEF FROM STAY (CODE § 362(d)-(h))

§ 43:44 In general (Code § 362(d))
§ 43:45 Lack of adequate protection as ground for relief (Code § 362(d)(1))
§ 43:46 Other causes as grounds for relief (Code § 362(d)(1))
§ 43:47 Lack of equity in property unnecessary to effective reorganization (Code § 362(d)(2))
§ 43:48 Single-asset real estate cases (Code § 362(d)(3))
§ 43:49 Special provision for bad-faith filings related to real property (Code § 362(d)(4))
§ 43:50 Expedited hearing (Code § 362(e))
§ 43:51 Preliminary hearing (Code § 362(e)(1))
§ 43:52 Final hearing (Code § 362(e)(2))
§ 43:53 Ex parte relief (Code § 362(f))

§ 43:54 Burden of proof (Code § 362(g))
§ 43:55 Appeals
§ 43:56 Automatic termination of stay regarding secured claims in personal property (Code § 362(h))

## V. VIOLATION OF STAY (CODE § 362(k))

§ 43:57 Damages for violation of the automatic stay (Code § 362(k))
§ 43:58 Contempt

Appendix 43-A. Practice Aids

# CHAPTER 44. USE, SALE, OR LEASE OF PROPERTY (CODE § 363)

## I. INTRODUCTION

§ 44:1 Legal framework in Bankruptcy Code

## II. PROPERTY OF THE ESTATE

§ 44:2 Definition
§ 44:3 Held by others (Code § 542)
§ 44:4 Held by custodians (Code § 543)

## III. CASH COLLATERAL

§ 44:5 Definition (Code § 363(a))
§ 44:6 Assignment of rents
§ 44:7 —Assignment agreements
§ 44:8 —State statutes
§ 44:9 —Postpetition enforcement
§ 44:10 —Rights in collected rents
§ 44:11 Preliminary hearing (Code § 363(c)(3))
§ 44:12 Adequate protection (Code § 363(e))
§ 44:13 Time limitations (Bankr. Rule 6004)
§ 44:14 Inconsistent relief prohibited (Code § 363(d))

## IV. USE, SALE, OR LEASE

§ 44:15 Ordinary course of business (Code § 363(c)(1))
§ 44:16 Other than ordinary course of business (Code § 363(b)(1))
§ 44:17 Sale of substantially all of the bankruptcy estate's assets
§ 44:18 Notice of use, sale, or lease other than in the ordinary course
§ 44:19 Selling consumer data (Code § 363(b)(1))
§ 44:20 Antitrust waiting period (Code § 363(b)(2))
§ 44:21 After-acquired property (Code § 552)
§ 44:22 Recovery of benefits to secured interests (Code § 506(c))
§ 44:23 Trustee's use, sale, or lease prevails over bankruptcy termination clause (Code § 363(c))

§ 44:24 Sale free and clear of interests (Code § 363(f))
§ 44:25 Successor liability
§ 44:26 WARN Act issues
§ 44:27 Procedure for Code § 363 sales
§ 44:28 Bidding incentives
§ 44:29 —Business judgment rule
§ 44:30 —Best interest of the estate
§ 44:31 —Administrative claim under § 503(b)
§ 44:32 —The substantial contribution alternative
§ 44:33 Bid and offset (Code § 363(k))
§ 44:34 Sale free and clear of dower or curtesy (Code § 363(g))
§ 44:35 Sale of joint tenancy, tenancy in common, or tenancy by entirety (Code § 363(h))
§ 44:36 Distribution to debtor's spouse or co-owners (Code § 363(j))
§ 44:37 Protection for good-faith purchasers or lessees (Code § 363(m))
§ 44:38 Liabilities for collusive bidding (Code § 363(n))
§ 44:39 Sale of interest in consumer credit transactions (Code § 363(o))
§ 44:40 Burden of proof (Code § 363(p))

Appendix 44-A. Practice Aids

## CHAPTER 45. OBTAINING CREDIT (CODE § 364)

§ 45:1 In general
§ 45:2 Unsecured debt in ordinary course of business (Code § 364(a))
§ 45:3 Unsecured debt other than in ordinary course of business (Code § 364(b))
§ 45:4 Credit given a superpriority claim or lien (Code § 364(c))
§ 45:5 Administrative expense priority (Code § 364(c)(1))
§ 45:6 Liens on property (Code § 364(c)(2) and (c)(3))
§ 45:7 Credit secured by previously encumbered property (Code § 364(d))
§ 45:8 Burden of proof
§ 45:9 Cross-collateralization
§ 45:10 Good-faith protection (Code § 364(e))
§ 45:11 Exemption from securities laws (Code § 364(f))
§ 45:12 Bankruptcy rules relating to the extension of credit (Bankr. Rule 4001(c))

Appendix 45-A. Practice Aids

## CHAPTER 46. EXECUTORY CONTRACTS AND UNEXPIRED LEASES (CODE § 365)

### I. INTRODUCTION

§ 46:1 In general

§ 46:2 Historical perspective: the assume-or-reject election
§ 46:3 Applicability of Bankruptcy Code § 365
§ 46:4 Overview of Bankruptcy Code § 365

## II. DEFINITION OF EXECUTORY CONTRACT

§ 46:5 In general
§ 46:6 —Countryman definition
§ 46:7 —Functional analysis approach
§ 46:8 Executory contracts and unexpired leases as property of the estate
§ 46:9 Application to specific categories of contracts

## III. GENERAL RULES RELATING TO ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

§ 46:10 Power of trustee or debtor in possession to reject or assume (Code § 365(a))
§ 46:11 Conditions and restrictions applicable to assumption and rejection generally (Code § 365(b))
§ 46:12 Procedural considerations for assumption and rejection generally (Code § 365(b))
§ 46:13 Procedural considerations for assumption and rejection generally—Overview of procedural considerations
§ 46:14 —Time limitations in Chapter 7 liquidation cases (Code § 365(d)(1))
§ 46:15 —Time limitations in Chapters 9, 11, 12, and 13 cases (Code § 365(d)(2))
§ 46:16 —Court approval
§ 46:17 Contracts which may not be assumed (Code § 365(c))
§ 46:18 Contracts which may not be assumed—Terminated contracts
§ 46:19 —Contracts to make loans, debt financing, and financial accommodations (Code § 365(c)(2))
§ 46:20 —Contracts for specialized performance (Code § 365(c)(1))
§ 46:21 —Employment agreements/employment of professional persons
§ 46:22 Bankruptcy and insolvency ipso facto clauses (Code § 365(e))
§ 46:23 Rejection of executory contracts and unexpired leases (Code § 365(g))
§ 46:24 Rejection of executory contracts and unexpired leases—Effect of rejection of executory contracts and unexpired leases
§ 46:25 —Rejection of executory contract following assumption
§ 46:26 —Effect when trustee rejects, but debtor desires to retain right to perform
§ 46:27 Assumption of executory contracts and unexpired leases (Code § 365(b))

§ 46:28 Assumption of executory contracts and unexpired leases—Executory contracts and unexpired leases in default
§ 46:29 — —Cure of defaults
§ 46:30 — —Compensation for losses
§ 46:31 — —Adequate assurance of future performance
§ 46:32 Assignment of executory contracts and unexpired leases (Code § 365(f))
§ 46:33 Assignment of executory contracts and unexpired leases—Effect of assignment on trustee's liability and on third parties
§ 46:34 Fate of executory contract or unexpired lease neither assumed nor rejected
§ 46:35 Unexpired lease in which debtor is lessor (Code § 365(h))

## IV. TREATMENT AND SPECIAL RULES RELATING TO LEASES OF NONRESIDENTIAL REAL PROPERTY IN WHICH DEBTOR IS LESSEE

§ 46:36 Introduction
§ 46:37 Determination of whether lease is lease of nonresidential real property
§ 46:38 Previously terminated lease of nonresidential real property (Code § 365(c)(3))
§ 46:39 Procedural considerations (Code § 365(d))
§ 46:40 Procedural considerations—Period in which to assume lease (Code § 365(d)(4)(A))
§ 46:41 —Extension of period in which to assume lease (Code § 365(d)(4)(B))
§ 46:42 —Debtor's interim responsibilities pending assumption or rejection (Code § 365(d)(3))
§ 46:43 —Procedure to assume or reject lease (Code § 365(a)
§ 46:44 Assumption (Code § 365(b))
§ 46:45 Assumption—Curing defaults (Code § 365(b))
§ 46:46 —Shopping center leases (Code § 365(b)(3))
§ 46:47 Assignment (Code § 365(l))
§ 46:48 Rejection (Code § 365(d))
§ 46:49 Rejection—Effect of rejection (Code § 365(g))

## V. SPECIAL TREATMENT OF CERTAIN EXECUTORY CONTRACTS

§ 46:50 Special treatment of certain executory contracts related to real property
§ 46:51 Special treatment—When debtor is seller (Code § 365(i))
§ 46:52 —When debtor is purchaser
§ 46:53 —Timeshare interests (Code § 365(h)(1))
§ 46:54 —Air carriers
§ 46:55 —Partnership agreements
§ 46:56 Special treatment of certain executory contracts not involving real property—Partnership agreements

§ 46:57 Special treatment—Intellectual property (Code § 365(n))
§ 46:58 —Insured depository institutions (Code § 365(o))
§ 46:59 —Personal property (Code § 365(d)(5))
§ 46:60 —Collective bargaining agreements (Code § 1113)
§ 46:61 —Collective bargaining agreements—Prohibition against unilateral changes
§ 46:62 — —Preliminary considerations
§ 46:63 — —Interim relief
§ 46:64 — —Protective orders
§ 46:65 — —Court involvement
§ 46:66 — —Time limitations
§ 46:67 — —Rejection
§ 46:68 —Collective bargaining agreements in railroad reorganization cases
§ 46:69 —Payment of retiree insurance benefits

**CHAPTER 47. UTILITY SERVICE (CODE § 366)**

§ 47:1 Background
§ 47:2 Definition of utility
§ 47:3 Restrictions on utility services (Code § 366(a))
§ 47:4 Adequate assurance (Code § 366(b))
§ 47:5 Procedures in Chapter 11 cases (Code § 366(c)(2))
Appendix 47-A. Practice Aids

**SUBPART 9. CREDITORS AND CLAIMS (CODE §§ 501-511)**

**CHAPTER 48. CLAIMS (CODE §§ 501, 502, 508, 509)**

**I. IN GENERAL**

A. GENERALLY

§ 48:1 Claim defined (Code § 101(5))
§ 48:2 When does a claim arise
§ 48:3 Claims arising after filing of the petition (Code § 501(d))

B. PARTICULAR LIABILITIES OR RIGHTS AS CLAIMS IN BANKRUPTCY

§ 48:4 CERCLA liability
§ 48:5 Homeowners' association dues
§ 48:6 Right to enforce covenant not to compete
§ 48:7 Right of recoupment
§ 48:8 Mortgage claims on debtor's principal residence
§ 48:9 Attorney fees

C. SETTLEMENT OR PRESERVATION OF CLAIMS

§ 48:10 Generally (Code § 1123(b))

§ 48:11 Preconfirmation
§ 48:12 Procedures (Bankr. Rule 9019)
§ 48:13 Estimation of claims (Code § 502(c))
§ 48:14 Transferred claims (Bankr. Rule 3001(e))
§ 48:15 Reconsideration of claim (Code § 502(j))
§ 48:16 Reduction of consumer debt

## II. PROOFS OF CLAIM OR INTEREST

### A. IN GENERAL

§ 48:17 Necessity of filing
§ 48:18 Form and content
§ 48:19 Attachments and supplements
§ 48:20 Amendments
§ 48:21 Evidentiary effect
§ 48:22 Effects of conversion on proof of claim

### B. WHO MAY FILE

§ 48:23 Generally
§ 48:24 Fuel tax claims

### C. TIME FOR FILING

§ 48:25 Generally (Bankr. Rule 3002)
§ 48:26 Timing after conversion (Bankr. Rule 1019(3))
§ 48:27 Late filings and extensions of filing deadlines

### D. OBJECTIONS

§ 48:28 Generally
§ 48:29 Burden of proof

## III. DISALLOWED CLAIMS

§ 48:30 In general (Code § 502(b))
§ 48:31 Claims unenforceable against debtor (Code § 502(b)(1))
§ 48:32 Unmatured interest (Code § 502(b)(2))
§ 48:33 Claim subject to setoff
§ 48:34 Tax claim exceeding value of property (Code § 502(b)(3))
§ 48:35 Services by insider or attorney (Code § 502(b)(4))
§ 48:36 Postpetition alimony, maintenance, or support (Code § 502(b)(5))
§ 48:37 Damages due from lease termination (Code § 502(b)(6))
§ 48:38 Claim under employment contract (Code § 502(b)(7))
§ 48:39 Employment tax claim (Code § 502(b)(8))
§ 48:40 Government claims (Code § 502(b)(9))
§ 48:41 Claim subject to avoidance of transfer (Code § 502(d))
§ 48:42 Claim of guarantor, surety, or codebtor (Code § 502(e))
§ 48:43 Effect of other distributions (Code § 508)

Appendix 48-A. Practice Aids

# CHAPTER 49. PRIORITY OF EXPENSES AND CLAIMS (CODE §§ 503, 507)

## I. INTRODUCTION (CODE § 507)

§ 49:1 General principles and overview

## II. SUPERPRIORITIES

§ 49:2 Chapter 7 "burial" expenses under Code § 726(b)
§ 49:3 Obtaining credit under Code § 364(c)
§ 49:4 Inadequate protection under Code § 507(b)
§ 49:5 Utility service assurance of payment under Code § 366(c)

## III. DE FACTO PRIORITIES

§ 49:6 Interim compensation under Code § 331
§ 49:7 Retiree benefits under Code § 1114(e)
§ 49:8 Collective bargaining agreements under Code § 1113(f)
§ 49:9 Nonresidential real property leases under Code § 365(d)(3)
§ 49:10 Compliance with environmental cleanup and other regulatory power orders

## IV. OTHER PRIORITIES OUTSIDE OF CODE § 507

§ 49:11 The Six Months Rule
§ 49:12 The Necessity of Payment Rule (Doctrine of Necessity)
§ 49:13 State-created priorities

## V. CODE § 507 PRIORITIES

### A. FIRST PRIORITY

§ 49:14 Domestic support obligation claims (Code § 507(a)(1))

### B. SECOND PRIORITY; ADMINISTRATIVE EXPENSES

#### 1. In General

§ 49:15 Generally (Code § 507(a)(2))
§ 49:16 Procedure and timing of payment
§ 49:17 Requirement of postpetition incurrence; exceptions
§ 49:18 Secured vs. Unsecured Claims
§ 49:19 Actual and necessary expense requirement (Code § 503(b)(1)(A))
§ 49:20 Rent (Code § 503(b)(6))
§ 49:21 Wages and other employee compensation (Code § 503(b)(1)(A)(i))
§ 49:22 Taxes (Code § 503(b)(1)(B))
§ 49:23 Other operating and "preservation" expenses (Code § 503(b)(1)(A))

§ 49:24 Credit under Code § 364(a) and (b) (Code § 503(b)(1)(A))
§ 49:25 Tort claims (Code § 503(b)(1)(A))
§ 49:26 Environmental claims (Code § 503(b)(1)(A))
§ 49:27 Assumed or new contracts (Code § 503(b)(1)(A))
§ 49:28 Professional compensation under Code § 330 (Code § 503(b)(2))
§ 49:29 Expenses of official creditors' committees (Code § 503(b)(3))
§ 49:30 Professional compensation under Code § 503(b)(4)
§ 49:31 Compensation for indenture trustees under Code § 503(b)(5)
§ 49:32 Witness fees and mileage under Code § 503(b)(6)
§ 49:33 Assumed real property leases (Code § 503(b)(7))
§ 49:34 Closing of a healthcare business (Code § 503(b)(8))
§ 49:35 Received goods (Code § 503(b)(9))
§ 49:36 Retention payments (Code § 503(c))

2. Expenses of Creditors and Other Third Parties under Code § 503(b)(3)

§ 49:37 Generally
§ 49:38 Creditor that files involuntary petition
§ 49:39 Creditor that recovers concealed property
§ 49:40 Creditor prosecuting criminal offense
§ 49:41 Creditor or other person making substantial contribution in reorganization case
§ 49:42 Custodians
§ 49:43 Committee members

C. THIRD PRIORITY

§ 49:44 Involuntary gap claims (Code § 507(a)(3))

D. FOURTH PRIORITY

§ 49:45 Wage claims (Code § 507(a)(4))
§ 49:46 WARN Act claims

E. FIFTH PRIORITY

§ 49:47 Contributions to employee benefit plans (Code § 507(a)(5))

F. SIXTH PRIORITY

§ 49:48 Grain producers and fishermen (Code § 507(a)(6))

G. SEVENTH PRIORITY

§ 49:49 Consumer deposits (Code § 507(a)(7))

H. EIGHTH PRIORITY; TAXES AND CUSTOMS DUTIES

§ 49:50 Generally (Code § 507(a)(8))

§ 49:51 Prepetition income or gross receipts taxes (Code § 507(a)(8)(A))
§ 49:52 Property taxes (Code § 507(a)(8)(B))
§ 49:53 Withholding taxes (Code § 507(a)(8)(C))
§ 49:54 Employer's share of employment taxes (Code § 507(a)(8)(D))
§ 49:55 Excise taxes (Code § 507(a)(8)(E))
§ 49:56 Customs duties (Code § 507(a)(8)(F))
§ 49:57 Tax penalties (Code § 507(a)(8)(G))
§ 49:58 Erroneous tax refunds under Code § 507(c)

I. NINTH PRIORITY

§ 49:59 Insured depository institutions (Code § 507(a)(9))

J. TENTH PRIORITY

§ 49:60 Death or personal injury

K. SUBROGEE OF PRIORITY CREDITOR UNDER CODE § 507(D)

§ 49:61 Generally

Appendix 49-A. Practice Aids

**CHAPTER 50. SHARING OF COMPENSATION (CODE § 504)**

§ 50:1 Restrictions on fee sharing

**CHAPTER 51. PROCEDURAL CONSIDERATIONS IN TAX MATTERS (CODE § 505)**

**I. JUDICIAL REMEDIES IN TAX MATTERS**

A. GENERAL CONSIDERATIONS

§ 51:1 Introduction
§ 51:2 Tax court jurisdiction
§ 51:3 Conflicts in jurisdiction
§ 51:4 Refunds
§ 51:5 Offers in compromise

B. BANKRUPTCY COURT JURISDICTION OVER TAX MATTERS

§ 51:6 Judicial remedies in bankruptcy court
§ 51:7 Judicial procedural options available to debtor taxpayer (Code § 505(a))
§ 51:8 Bankruptcy court discretion over tax matters (Code § 505(a))

§ 51:9 Bankruptcy court jurisdiction over tax refunds, setoffs, and counterclaims (Code § 505(c))
§ 51:10 Bankruptcy court procedures for postpetition taxes (Code § 505(b))
§ 51:11 Bankruptcy court postpetition jurisdiction

II. IRS ASSESSMENT AND COLLECTION

A. IN GENERAL

§ 51:12 Internal Revenue Service assessment procedures
§ 51:13 Special assessment provisions
§ 51:14 Postassessment procedures
§ 51:15 Assessment procedures in bankruptcy before the Bankruptcy Tax Act of 1980
§ 51:16 Procedural changes effected by the Bankruptcy Tax Act of 1980
§ 51:17 Effect of the automatic stay

B. TAX COLLECTION

§ 51:18 Generally
§ 51:19 Application of federal tax lien to particular persons or property; interest
§ 51:20 Filing of lien
§ 51:21 Duration of lien
§ 51:22 Collection by notice of levy
§ 51:23 Collection by seizure
§ 51:24 —Notice of seizure and sale

C. PRIORITY AND ENFORCEMENT OF LIENS OUTSIDE BANKRUPTCY

§ 51:25 Priority of liens outside bankruptcy
§ 51:26 Judicial enforcement of lien

D. TAX LIENS AND CLAIMS IN BANKRUPTCY

§ 51:27 Secured tax claims in bankruptcy (Code § 506)
§ 51:28 Bankruptcy procedures
§ 51:29 Survival of lien

Appendix 51-A. Practice Aids

CHAPTER 52. SECURED CLAIMS (CODE § 506)

§ 52:1 Extent of claim (Code § 506(a)(1))
§ 52:2 Exceptions under Chapter 13 (Code § 1325(a))
§ 52:3 Valuation standards (Code § 506(a)(2))
§ 52:4 —Exemptions (Code § 522(a)(2))
§ 52:5 —Redemption or plan treatment (Code § 722))
§ 52:6 —Property disposed of by sale
§ 52:7 —Property with rental income

§ 52:8 —Timing of valuation
§ 52:9 Postpetition interest (Code § 506(b))
§ 52:10 Penalties, costs, and charges (Code § 506(b))
§ 52:11 Calculation of postpetition interest (Code § 506(b))
§ 52:12 Postpetition attorney's fees (Code § 506(b))
§ 52:13 Surcharge claims (Code § 506(c))
§ 52:14 Effect on lien (Code § 506(d))

Appendix 52-A. Practice Aids

## CHAPTER 53. SUBORDINATION (CODE § 510)

§ 53:1 Subordination agreements (Code § 510(a))
§ 53:2 Rescission claims (Code § 510(b))
§ 53:3 Equitable subordination (Code § 510(c))
§ 53:4 Equitable subordination—Prerequisites for equitable subordination
§ 53:5 —General principles
§ 53:6 —Actions to subordinate

Appendix 53-A. Practice Aids

## CHAPTER 54. RATE OF INTEREST ON TAX CLAIMS (CODE § 511)

§ 54:1 Generally

# SUBPART 10. DEBTOR'S DUTIES AND BENEFITS (CODE §§ 521-528)

## CHAPTER 55. DEBTOR DUTIES (CODE § 521)

§ 55:1 Schedules and statements (Code § 521(a)(1))
§ 55:2 Additional duties imposed by the 2005 Amendments (Code § 521(a))
§ 55:3 Notices to creditors (Code § 342(c))
§ 55:4 Dismissal for failure to file required documents (Code § 521(i))
§ 55:5 Filing of federal income tax returns (Code § 521(f) and (j))
§ 55:6 Statement of income and expenses of Chapter 13 debtors (Code § 521(f)(4) and (g))
§ 55:7 Statement of intention regarding collateral (Code § 521(a)(2))
§ 55:8 Amendments to schedules (Bankr. Rule 1009)
§ 55:9 Impact of conversion
§ 55:10 Cooperation with trustee (Code § 521(a)(3) and (a)(4))
§ 55:11 Obligation to attend hearings (Code § 521(a)(5))
§ 55:12 Small business debtor reporting requirements (Code § 308)
§ 55:13 Collateral estoppel

Appendix 55-A. Practice Aids

# Volume 3

## CHAPTER 56. EXEMPTIONS (CODE § 522)

### I. LEGAL FRAMEWORK OF DEBTORS' EXEMPTIONS IN BANKRUPTCY

§ 56:1 Introduction
§ 56:2 Legislative history to Reform Act of 1978
§ 56:3 Debtors' exemption choices, generally (Code § 522(b))
§ 56:4 Exemptions in joint cases (Code § 522(m))

### II. THE STATE AND NONBANKRUPTCY FEDERAL LIST

§ 56:5 In general (Code § 522(b)(3))

### III. THE FEDERAL LIST

§ 56:6 Framework of the federal exemptions (Code § 522(d))
§ 56:7 —"Value" for purposes of Code § 522(d)
§ 56:8 —"Reasonable need" for purposes of Code § 522(d)
§ 56:9 —Tracing for purposes of Code § 522(d)
§ 56:10 Homestead exemption (Code § 522(d)(1))
§ 56:11 —Limitations added by 2005 Amendments (Code § 522(o), (p) and (q))
§ 56:12 — —Property interest acquired with proceeds of nonexempt property (Code § 522(o))
§ 56:13 — —Property value exceeds $214,000 (Code § 522(p))
§ 56:14 — —Felony conviction or debt arising from certain violations (Code § 522(q))
§ 56:15 Interest in motor vehicle (Code § 522(d)(2))
§ 56:16 Personal, family, or household property (Code § 522(d)(3) and (4))
§ 56:17 "Wildcard" exemption (Code § 522(d)(5))
§ 56:18 Tools of the trade (Code § 522(d)(6))
§ 56:19 Various interests in life insurance policies (Code § 522(d)(7) and (8))
§ 56:20 Health aids (Code § 522(d)(9))
§ 56:21 Spousal and other support benefits (Code § 522(d)(10))
§ 56:22 Awards for certain tort and crime losses (Code § 522(d)(11))
§ 56:23 Retirement accounts (Code § 522(d)(12))

### IV. POSTBANKRUPTCY STATUS OF EXEMPT PROPERTY

§ 56:24 General provision (Code § 522(c))
§ 56:25 Exceptions to the general provision (Code § 522(c)(1)-(4))

### V. POWERS TO AVOID TRANSFERS AND LIENS

§ 56:26 Lien avoidance in general (Code § 522(f))

§ 56:27 Powers of the debtor alone (Code § 522(f)(1))
§ 56:28 —Judicial liens (Code § 522(f)(1)(A))
§ 56:29 —Security interests in household goods (Code § 522(f)(1)(B))
§ 56:30 Powers debtor shares with trustee—Exemptions in property the trustee recovers (Code § 522(g))
§ 56:31 — —Exercise of powers by debtor where trustee fails to act (Code § 522(h), (i) and (j))
§ 56:32 Expenses associated with exempt property (Code § 522(k))

## VI. PREBANKRUPTCY EXEMPTION PLANNING

§ 56:33 Introduction
§ 56:34 The limits of permissible exemption planning (Code § 522(o))
§ 56:35 Remedy for impermissible exemption planning

## VII. PROCEDURAL AND OTHER CONSIDERATIONS

§ 56:36 Duties of the debtor (Code § 521(a)(1)(B))
§ 56:37 Exemption procedure (Code § 522(l))
§ 56:38 Avoidance procedure (Bankr. Rule 4003(d))
§ 56:39 Constitutional considerations

Appendix 56-A. Practice Aids
Appendix 56-B. Exemption Options for Nonresident Debtors
Appendix 56-C. Exemptions

# CHAPTER 57. DISCHARGEABILITY OF DEBTS (CODE § 523)

## I. INTRODUCTION

§ 57:1 In general
§ 57:2 Effect of other Code sections

## II. TAXES AND CUSTOMS DUTIES

§ 57:3 Categories of tax liabilities (Code § 523(a)(1))
§ 57:4 —Priority taxes (Code § 523(a)(1)(A))
§ 57:5 Categories of tax liabilities—Trust fund taxes and responsible parties
§ 57:6 —Unfiled and late-filed returns (Code § 523(a)(1)(B))
§ 57:7 —Fraudulent returns and tax evasion (Code § 523(a)(1)(C))
§ 57:8 Prepetition and postpetition interest
§ 57:9 Tax penalties
§ 57:10 Tax liens
§ 57:11 —Existing property
§ 57:12 —After-acquired property
§ 57:13 Loans incurred to pay a tax "to the United States" (Code § 523(a)(14))

## III. MONEY, PROPERTY, SERVICES, OR CREDIT OBTAINED BY FALSE PRETENSES, FALSE REPRESENTATION, ACTUAL FRAUD, OR MATERIALLY FALSE WRITTEN STATEMENT

§ 57:14 Liabilities based on improper acts (Code § 523(a)(2))
§ 57:15 Fraud (Code § 523(a)(2)(A))
§ 57:16 —Elements
§ 57:17 Credit card debts
§ 57:18 Written financial statements (Code § 523(a)(2)(B))
§ 57:19 Luxury goods and cash advances (Code § 523(a)(2)(C))

## IV. UNLISTED, UNSCHEDULED DEBTS

§ 57:20 In general (Code § 523(a)(3))

## V. FRAUD OR DEFALCATION BY FIDUCIARY

§ 57:21 Fiduciary and defalcation (Code § 523(a)(4))
§ 57:22 Contractual fiduciary
§ 57:23 Express or technical trusts
§ 57:24 Commercial relationships
§ 57:25 Statutory fiduciary
§ 57:26 Waiver of fiduciary relationship
§ 57:27 Officers and directors as fiduciaries
§ 57:28 Partners as fiduciaries
§ 57:29 What constitutes "defalcation"
§ 57:30 Embezzlement and Larceny

## VI. FAMILY SUPPORT OBLIGATIONS

§ 57:31 In general (Code § 523(a)(5))
§ 57:32 Duty of support
§ 57:33 Support obligations
§ 57:34 Discharge of duty
§ 57:35 —Nature of debt
§ 57:36 Intent of writing
§ 57:37 Third-party claims
§ 57:38 Third-Party claims—Excluded claims
§ 57:39 Property settlements and other debts (Code § 523(a)(15))
§ 57:40 Pension awards
§ 57:41 Attorney's fees
§ 57:42 Hold-harmless agreements
§ 57:43 Debts assigned to others
§ 57:44 Role of state court proceedings

## VII. INJURY TO PERSONS OR PROPERTY

§ 57:45 In general (Code § 523(a)(6))
§ 57:46 Willful and malicious
§ 57:47 Injury to persons

§ 57:48 Injury to property
§ 57:49 —Conversion of secured collateral

## VIII. FINES, PENALTIES, AND FORFEITURES

§ 57:50 In general (Code § 523(a)(7))
§ 57:51 Restitution (Code § 523(a)(13))
§ 57:52 Punitive damages

## IX. STUDENT LOANS

§ 57:53 In general (Code § 523(a)(8))
§ 57:54 —Hardship discharge
§ 57:55 Non-Title 11 exceptions

## X. UNLAWFUL OPERATION OF MOTOR VEHICLE BECAUSE OF INTOXICATION

§ 57:56 In general (Code § 523(a)(9))

## XI. PRIOR BANKRUPTCIES

§ 57:57 In general
§ 57:58 Discharge waived or denied (Code § 523(a)(10))
§ 57:59 Dischargeability determinations (Code § 523(b))

## XII. DEBTS RELATING TO INSURED DEPOSITORY INSTITUTIONS

§ 57:60 In general (Code § 523(a)(11) and (a)(12))

## XIII. CONDOMINIUM ASSOCIATION AND COOPERATIVE HOUSING FEES AND ASSESSMENTS

§ 57:61 In general (Code § 523(a)(16))

## XIV. FEES AND COSTS ASSOCIATED WITH COURT FILINGS

§ 57:62 In general (Code § 523(a)(17))

## XV. DEBTS TO PENSION PLANS

§ 57:63 In general

## XVI. VIOLATION OF SECURITIES LAWS

§ 57:64 In general (Code § 523(a)(19))

## XVII. LITIGATION ISSUES

§ 57:65 Nature of debts

§ 57:66 —Attorney's fees (Code § 523(d))
§ 57:67 Procedure for objecting to dischargeability; trial (Code § 523(c))
§ 57:68 Burden of proof
§ 57:69 Jurisdiction
§ 57:70 —Exclusive jurisdiction
§ 57:71 —Concurrent jurisdiction
§ 57:72 Bar dates (Code § 523(c))
§ 57:73 Extension of time to file
§ 57:74 —Excusable neglect
§ 57:75 Amendment to objection
§ 57:76 Preclusive effect of prebankruptcy litigation
§ 57:77 Role of U.S. Trustee
§ 57:78 Vicarious liability

Appendix 57-A. Practice Aids

# CHAPTER 58. EFFECT OF DISCHARGE; REAFFIRMATION (CODE § 524)

## I. INTRODUCTION

§ 58:1 Discharge: purpose and issues

## II. EFFECTS OF DISCHARGE

§ 58:2 Scope and definition
§ 58:3 Informal acts to collect (Code § 524(a)(1) and (2))
§ 58:4 Enforceable liens
§ 58:5 Third parties (Code § 524(a)(3) and (e))
§ 58:6 Injunction against asbestos claims (Code § 524(g))

## III. REAFFIRMATION AGREEMENTS

§ 58:7 Introduction
§ 58:8 Procedural issues (Code § 524(c) and (d))
§ 58:9 Disclosures (Code § 524(k))
§ 58:10 Redemption agreements (Code § 722)
§ 58:11 Litigation settlements

Appendix 58-A. Practice Aids

# CHAPTER 59. PROTECTION AGAINST DISCRIMINATION (CODE § 525)

§ 59:1 Overview and background
§ 59:2 Prohibition on discrimination by governmental units under Code § 525(a)
§ 59:3 Prohibition on discrimination by private employers under Code § 525(b)
§ 59:4 Prohibition on discrimination with respect to student loan programs under Code § 525(c)

§ 59:5 Remedies under Code § 525

Appendix 59-A. Practice Aids

## CHAPTER 60. DEBT RELIEF AGENCIES (CODE §§ 526–528)

§ 60:1 Definitions
§ 60:2 Required notice (Code § 527(a))
§ 60:3 Required statement (Code § 527(b))
§ 60:4 Required information (Code § 527(c))
§ 60:5 Written contract (Code § 528(a))
§ 60:6 Advertisements (Code § 528)
§ 60:7 Prohibited acts and penalties (Code § 526)

Appendix 60-A. Practice Aids

# SUBPART 11. THE ESTATE (CODE §§ 541-562)

## CHAPTER 61. PROPERTY OF THE ESTATE (CODE § 541)

### I. INTRODUCTION

§ 61:1 In general
§ 61:2 Changes from prior law
§ 61:3 Creation of estate

### II. PROPERTY INCLUDED IN ESTATE

§ 61:4 Legal or equitable interest generally (Code § 541(a)(1))
§ 61:5 —Real property
§ 61:6 Legal or equitable interest generally—Personal property
§ 61:7 —Property personal to debtor
§ 61:8 —Membership interest in LLC's
§ 61:9 Community property (Code § 541(a)(2))
§ 61:10 Recovered property (Code § 541(a)(3))
§ 61:11 Property preserved for estate (Code § 541(a)(4))
§ 61:12 After-acquired property of debtor (Code § 541(a)(5))
§ 61:13 Proceeds, product, offspring, rents, and profits (Code § 541(a)(6))
§ 61:14 After-acquired property of estate (Code § 541(a)(7))
§ 61:15 Personal injury and insurance proceeds

### III. EXCLUSIONS AND RESTRICTIONS ON ESTATE PROPERTY

§ 61:16 Exclusions from estate (Code § 541(b))
§ 61:17 Restrictions on transfers invalidated (Code § 541(c))
§ 61:18 —Enforceable restrictions on transfer of interest in trust
§ 61:19 Legal interests only (Code § 541(d))

## CHAPTER 62. TURNOVER OF ESTATE ASSETS (CODE §§ 542, 543)

§ 62:1 Introduction
§ 62:2 Comparison of prior and present law
§ 62:3 Elements of a turnover claim (Code § 542(a))
§ 62:4 —Property of the estate
§ 62:5 —Adequate protection and Code § 363(e)
§ 62:6 Collection of debts (Code § 542(b))
§ 62:7 Turnover of records by attorneys, accountants, and other third parties (Code § 542(e))
§ 62:8 Exceptions to Code § 542
§ 62:9 Who is a custodian under Code § 543
§ 62:10 Obligations of custodian after bankruptcy (Code § 543)
§ 62:11 Exceptions to Code § 543 (Code § 543(d))
§ 62:12 Property subject to Code § 543 turnover
§ 62:13 Compensation of custodian (Code § 543(c))
§ 62:14 Personal liability of custodian
§ 62:15 Jurisdiction over turnover claims
§ 62:16 Procedural aspects of turnover
§ 62:17 Turnover distinguished from other proceedings
§ 62:18 Prepetition termination of debtor's ownership
§ 62:19 Attached and sequestered property
Appendix 62-A. Practice Aids

## CHAPTER 63. TRUSTEE AS LIEN CREDITOR (CODE § 544)

§ 63:1 Nature and policy basis
§ 63:2 Summary of avoidance powers
§ 63:3 Nature of grant
§ 63:4 Standing to bring Code § 544 avoidance action
§ 63:5 Hypothetical lien creditor (Code § 544(a))
§ 63:6 Bona fide purchaser of real estate (Code § 544(a)(3))
§ 63:7 Successor to creditors (Code § 544(b))

## CHAPTER 64. INVALIDATION OF STATUTORY LIENS (CODE § 545)

§ 64:1 History and scope of statutory liens (Code § 545)
§ 64:2 Disguised priorities (Code § 545(1))
§ 64:3 Bona fide purchaser test (Code § 545(2))
§ 64:4 Tax liens (Code § 545(2))
§ 64:5 Landlord liens (Code §§ 545(3) and (4))
§ 64:6 Seller's reclamation right
§ 64:7 Standing
Appendix 64-A. Practice Aids

## CHAPTER 65. LIMITATIONS ON AVOIDING POWERS (CODE § 546)

§ 65:1 Statute of limitations (Code § 546(a)(1))

§ 65:2 Postpetition perfection (Code § 546(b))
§ 65:3 Reclamation by seller of goods prior to 2005 Amendments
§ 65:4 Reclamation by seller of goods after 2005 Amendments (Code § 546(c))
§ 65:5 Reclamation by producer of grain and U.S. fishermen (Code § 546(d))
§ 65:6 Margin payments, repurchase agreements, swap agreements, and netting agreements (Code § 546(e), (f), (g), and (j))
§ 65:7 Return of goods by the debtor (Code § 546(h))
§ 65:8 Warehouse lien (Code § 546(i))

Appendix 65-A. Practice Aids

CHAPTER 66. PREFERENTIAL TRANSFERS (CODE § 547)

I. INTRODUCTION

§ 66:1 Nature and scope of power
§ 66:2 Historical development

II. 90-DAY PREFERENCES (Code § 547(b))

A. GENERAL CONSIDERATIONS

§ 66:3 In general
§ 66:4 Abolition of requirement that creditor have "reasonable cause" to know of insolvency
§ 66:5 Economic impact analysis
§ 66:6 Avoidance of judicial liens

B. ELEMENTS OF PREFERENCES

§ 66:7 Transfer of property
§ 66:8 Effect on creditors (Code § 547(b)(1))
§ 66:9 Creditors with antecedent debts (Code § 547(b)(1))
§ 66:10 Antecedent debts (Code § 547(b)(2))
§ 66:11 —Security interests (Code § 547(b)(2))
§ 66:12 Preferential effect (Code § 547(b)(5))
§ 66:13 Insolvency (Code § 547(b)(3))
§ 66:14 Preference period (Code § 547(b)(4))

C. EXCEPTIONS AND DEFENSES

1. General Considerations

§ 66:15 Overview and historical development
§ 66:16 The earmarking doctrine
§ 66:17 Equitable liens
§ 66:18 Alternate repayment schedule (Code § 547(h))
§ 66:19 Temporary exception for rental and supplier arrearages

2. Statutory Exceptions (Code § 547(c))

a. Ordinary Course Payments (Code § 547(c)(2))

(1) In General

§ 66:20 Scope of protection, generally
§ 66:21 Construction and interpretation of phrase "ordinary course of business"
§ 66:22 —Subjective ordinariness (Code § 547(c)(2)(A))
§ 66:23 Construction and interpretation of phrase "ordinary course"—Objective ordinariness—(Code § 547(c)(2)(B))

(2) Particular Forms of Payment or Transactions

§ 66:24 Payment by check
§ 66:25 Payment by wire transfer
§ 66:26 Payment of taxes
§ 66:27 Service and wage contracts
§ 66:28 Credit transactions

b. Security Interests in After-Acquired Property

§ 66:29 Generally
§ 66:30 Enabling loans (Code § 547(c)(3))
§ 66:31 Floating liens in inventory and receivables (Code § 547(c)(5))
§ 66:32 Other collateral
§ 66:33 Proceeds from disposition of collateral

c. Small Transfers

§ 66:34 Payments on consumer debts (Code § 547(c)(8))
§ 66:35 Payments on nonconsumer debts (Code § 547(c)(9))

d. Other Exceptions

§ 66:36 Contemporaneous exchanges (Code § 547(c)(1))
§ 66:37 Subsequent new value (Code § 547(c)(4))
§ 66:38 Statutory liens (Code § 547(c)(6))
§ 66:39 Domestic support obligations (Code § 547(c)(7))

**III. INSIDER PREFERENCES (Code § 547(b)(4))**

§ 66:40 In general
§ 66:41 Insider defined (Code § 101(31))

**IV. LITIGATION ASPECTS OF PREFERENCES**

§ 66:42 Litigation considerations

Appendix 66-A. Practice Aids

**CHAPTER 67. VOIDABILITY OF PREPETITION FRAUDULENT TRANSFERS AND OBLIGATIONS (CODE § 548)**

§ 67:1 Background (Code § 548)

§ 67:2 Transfers as avoidable, generally
§ 67:3 Actual intent to harm creditors (Code § 548(a)(1)(A))
§ 67:4 Less than reasonably equivalent value—Debtor was insolvent (Code § 548(a)(1)(B)(ii)(I))
§ 67:5 —Debtor left with unreasonably small capital (Code § 548(a)(1)(B)(ii)(II))
§ 67:6 —Debts beyond debtor's ability to pay (Code § 548(a)(1)(B)(ii)(III))
§ 67:7 Transfers regarding financial transactions (Code § 548(d))
§ 67:8 Transfers to insiders under employment contracts (Code § 548(a)(1)(B)(ii)(IV))
§ 67:9 Partnership transfers (Code § 548(b))
§ 67:10 Transfers to trusts where the debtor is a beneficiary (Code § 548(e))
§ 67:11 Amount of recovery (Code § 548(c))
§ 67:12 Good faith of investors in Ponzi schemes
§ 67:13 Two-year limitation (Code § 548(a))
§ 67:14 Perfection
§ 67:15 Foreclosures and judicial transfers
§ 67:16 Procedure under Code § 548

Appendix 67-A. Practice Aids

# CHAPTER 68. LEVERAGED BUYOUTS AND THE FRAUDULENT CONVEYANCE LAWS

## I. IN GENERAL

§ 68:1 Introduction
§ 68:2 Structuring of LBOs; recent trends

## II. STATE FRAUDULENT CONVEYANCE LAWS, IN GENERAL

§ 68:3 Generally
§ 68:4 Fair consideration
§ 68:5 Insolvency
§ 68:6 Unreasonably small capital
§ 68:7 Incurring debts beyond ability to pay

## III. APPLICATION OF FRAUDULENT CONVEYANCE LAWS TO LEVERAGED BUYOUTS

§ 68:8 Generally
§ 68:9 Intra-group guarantees
§ 68:10 Loans associated with LBO acquisition loans

## IV. PARTICULAR FRAUDULENT CONVEYANCE ISSUES RELATIVE TO LEVERAGED BUYOUTS

§ 68:11 Reach-back period

§ 68:12 Who can institute suit?
§ 68:13 Defenses of selling shareholders and financial intermediaries
§ 68:14 Remedies—Priority of LBO-incurred debt if transaction is avoided
§ 68:15 —Recoveries of payments
§ 68:16 —Extent of avoidance
§ 68:17 Examiners
§ 68:18 Bankruptcy settlements
§ 68:19 Aiding and abetting breach of fiduciary duty
§ 68:20 Violations of third party contract rights
§ 68:21 Unjust enrichment and improvident lending

**V. STRUCTURING ENFORCEABLE LEVERAGED BUYOUTS**

§ 68:22 Generally
§ 68:23 Solvency letter

Appendix 68-A. Practice Aids

**CHAPTER 69. POSTPETITION TRANSACTIONS (CODE § 549)**

§ 69:1 General considerations
§ 69:2 Voidability of unauthorized postpetition transactions (Code § 549(a))
§ 69:3 Voidability of transactions that transferors are authorized to make (Code § 549(a)(2)(A))
§ 69:4 Involuntary cases (Code § 549(b))
§ 69:5 Good-faith postpetition purchasers of certain real estate (Code § 549(c))
§ 69:6 Immunity conferred by judicial order (Code § 549(a))
§ 69:7 Statute of limitations on exercise of voiding power (Code § 549(d))
§ 69:8 Litigation aspects (Bankr. Rule 6001)
§ 69:9 Transfer by check

**CHAPTER 70. LIABILITY OF TRANSFEREES (CODE § 550)**

§ 70:1 Avoiding powers subject to Code § 550
§ 70:2 General concepts of transferee liability (Code § 550(a) and (b))
§ 70:3 Conduit Theory, the Dominion Test, and the Control Test
§ 70:4 Alternative remedies of trustee and individual debtor (Code § 550(a))
§ 70:5 Liability of initial transferees and other entities benefited by initial transfer (Code § 550(a)(1) and (c))
§ 70:6 Deprizio and the Amendments
§ 70:7 Liability of subsequent transferees of initial transferees (Code § 550(a)(2) & (b))

§ 70:8 Lien for improvements by good-faith transferees (Code § 550(e))
§ 70:9 Statute of limitations for transferee liability (Code § 550(f))

## CHAPTER 71. PRESERVATION OF AVOIDED TRANSFERS (CODE § 551)

§ 71:1 Nature of and rationale for preservation for benefit of debtor's estate
§ 71:2 Automatic preservation rule (Code § 551)
§ 71:3 Termination of automatic preservation

## CHAPTER 72. POSTPETITION EFFECT OF SECURITY INTERESTS (CODE § 552)

§ 72:1 Security interests covered
§ 72:2 General invalidation of prepetition security interests in acquired postpetition property (Code § 552(a))
§ 72:3 —Exception (Code § 552(b))
§ 72:4 —Limitation on exception by judicial order

## CHAPTER 73. SETOFF (CODE § 553)

### I. INTRODUCTION

§ 73:1 History and principal features of the right of setoff
§ 73:2 Similarities and distinctions between setoff and recoupment

### II. LIMITATIONS ON SETOFF

§ 73:3 Generally (Code § 553)
§ 73:4 Prepetition and postpetition claims and debts
§ 73:5 Mutual debt
§ 73:6 —Corporate and governmental unit relationships
§ 73:7 —Loan participations and insolvent banks
§ 73:8 Determining allowability (Code § 553(a)(1))
§ 73:9 Assigned claims (Code § 553(a)(2))
§ 73:10 Debts incurred for purpose of obtaining setoff rights (Code § 553(a)(3))
§ 73:11 Automatic stay
§ 73:12 Adequate protection
§ 73:13 Administrative freeze
§ 73:14 Waiver of setoff
§ 73:15 Unliquidated, unmatured, and contingent claims
§ 73:16 Priority disputes

### III. IMPROVEMENT OF POSITION

§ 73:17 Calculating improvement of position (Code § 553(b))
§ 73:18 External factors affecting the improvement of position calculus

§ 73:19 Improvement of position outside banking context
Appendix 73-A. Practice Aids

## CHAPTER 74. ABANDONMENT OF PROPERTY OF THE ESTATE (CODE § 554)

### I. IN GENERAL

§ 74:1 History and purpose
§ 74:2 Effect of abandonment
§ 74:3 Procedure
§ 74:4 Basis for abandonment (Code § 554(a) and (b))

### II. LIMITATIONS ON ABILITY TO ABANDON

§ 74:5 Generally
§ 74:6 Violation of state and federal law, including environmental law considerations
§ 74:7 Tax considerations

### III. ABANDONMENT PROCEDURE

§ 74:8 Generally (Bankr. Rule 6007)
§ 74:9 Notice procedure
§ 74:10 Motion procedure
§ 74:11 Timing of notice or motion
§ 74:12 Who must be notified; Adequacy of description
§ 74:13 Checklist

### IV. OTHER MATTERS

§ 74:14 Unadministered property upon closing of case (Code § 554(c) and (d))
§ 74:15 Irrevocable nature
§ 74:16 Automatic stay considerations (Code § 362(a))
Appendix 74-A. Practice Aids

## CHAPTER 75. CONTRACTUAL RIGHTS (CODE §§ 555–557, 559–562)

§ 75:1 Liquidation of securities contract (Code § 555)
§ 75:2 Liquidation of commodity contracts (Code § 556)
§ 75:3 Disposition of grain assets (Code § 557)
§ 75:4 Liquidation of repurchase agreement (Code § 559)
§ 75:5 Termination of swap agreements (Code § 560)
§ 75:6 Termination of master netting agreements (Code § 561)
§ 75:7 Damages (Code § 562)

## CHAPTER 76. DEFENSES OF THE ESTATE (CODE § 558)

§ 76:1 Defenses pursuant to Code § 558

# SUBPART 12. LIQUIDATION (CODE §§ 701-727)

## CHAPTER 77. TRUSTEES (CODE §§ 701–704)

§ 77:1 Private trustee panels
§ 77:2 Interim trustees (Code § 701)
§ 77:3 Duties
§ 77:4 Election of trustees (Code § 702)
§ 77:5 Voting (Code § 702(c))
§ 77:6 Proxies (Bankr. Rule 2006)
§ 77:7 Calculating the vote (Code § 702(c))
§ 77:8 Contested elections (Bankr. Rule 2003)
§ 77:9 Entry upon office (Code § 702(d))
§ 77:10 Successor trustees (Code § 703)
§ 77:11 Specific duties under Code (Code § 704)
§ 77:12 Specific duties under Code (Code § 704))—Collect property and reduce to money (Code § 704(a)(1))
§ 77:13 Specific duties under Code—Account for property (Code § 704(a)(2))
§ 77:14 —Insure debtor performs intentions (Code § 704(a)(3))
§ 77:15 —Investigate debtor's financial affairs (Code § 704(a)(4))
§ 77:16 —Examine and object to claims (Code § 704(a)(5))
§ 77:17 —Oppose debtor's discharge, if advisable (Code § 704(a)(6))
§ 77:18 —Furnish information concerning estate and administration (Code § 704(a)(7))
§ 77:19 —File proper papers when operating debtor's business (Code § 704(a)(8))
§ 77:20 —File final report and final account (Code § 704(a)(9))
§ 77:21 —Notification in the event of a domestic support claim (Code § 704(a)(10))
§ 77:22 —Administrator of an employee benefit plan (Code § 704(a)(11))
§ 77:23 —Transfer patients of health care business (Code § 704(a)(12))
§ 77:24 —Rights against general partners (Code § 723)
§ 77:25 —Disposition of certain property (Code § 725)
§ 77:26 —Abuse under Code § 707(b)
§ 77:27 Immunity

Appendix 77-A. Practice Aids

## CHAPTER 78. CREDITORS' COMMITTEE (CODE § 705)

§ 78:1 Generally
§ 78:2 Election process (Bankr. Rule 2003)
§ 78:3 Use of proxies (Bankr. Rule 2006)
§ 78:4 Compensation of committee counsel

# CHAPTER 79. CONVERSION AND DISMISSAL (CODE §§ 706, 707)

## I. CONVERSION

§ 79:1 Introduction (Code § 706)
§ 79:2 Procedure (Bankr. Rule 1017)

## II. DISMISSAL

§ 79:3 Introduction
§ 79:4 Cause under Code § 707(a)
§ 79:5 Dismissal for abuse (Code § 707(b)(1))
§ 79:6 —The means test (Code § 707(b)(2))
§ 79:7 Attorney liability (Code § 707(b)(4))
§ 79:8 Crimes of violence or drug trafficking (Code § 707(c))
§ 79:9 Procedure (Bankr. Rule 7017)

Appendix 79-A. Practice Aids

# CHAPTER 80. OPERATING BUSINESS (CODE § 721)

§ 80:1 Authorization to operate business in liquidation
§ 80:2 Rights and powers of trustee operating business under Code § 721
§ 80:3 —To sell, use, and lease property
§ 80:4 —To incur debt and obtain unsecured credit
§ 80:5 —To assume or reject executory contracts and unexpired leases
§ 80:6 —To abandon property
§ 80:7 —To be compensated
§ 80:8 —To employ professionals
§ 80:9 —To receive utility service
§ 80:10 —To deposit or invest money
§ 80:11 Duties of trustee operating business under Code § 721—Record keeping
§ 80:12 —To administrate unclaimed property
§ 80:13 —To comply with state law
§ 80:14 Liability of trustee operating business under Code § 721

Appendix 80-A. Practice Aids

# CHAPTER 81. REDEMPTION (CODE § 722)

§ 81:1 Redemption from liens (Code § 722)
§ 81:2 Elements of Code § 722 redemption
§ 81:3 Consumer-related property and debt
§ 81:4 Nondischargeable debt
§ 81:5 Property exempted under Code § 522
§ 81:6 Property abandoned under Code § 554
§ 81:7 Payment of the allowed secured claim

§ 81:8 Extension to the whole of the property
§ 81:9 Cash or deferred payments
§ 81:10 Installment redemption through reaffirmation under Code § 524
§ 81:11 Redemption and reaffirmation as mandatory or optional
§ 81:12 Timing and procedure (Bankr. Rule 6008)

Appendix 81-A. Practice Aids

## CHAPTER 82. PARTNERSHIPS (CODE § 723)

§ 82:1 Rights of partnership trustees against general partners
§ 82:2 Liability of general partners (Code § 723(a))
§ 82:3 First recovery from nondebtor partners (Code § 723(b))
§ 82:4 Trustee claims against debtor partners (Code § 723(c))
§ 82:5 Distribution of surplus (Code § 723(d))
§ 82:6 Timing and procedure

## CHAPTER 83. TREATMENT OF LIENS (CODE § 724)

§ 83:1 Treatment of certain liens
§ 83:2 Avoidance of liens securing penalties (Code § 724(a))
§ 83:3 Subordination of tax liens (Code § 724(b))
§ 83:4 Order of distribution
§ 83:5 Distribution to multiple claimants (Code § 724(c))
§ 83:6 Treatment of certain statutory liens (Code § 724(d))
§ 83:7 Necessary conditions of subordination (Code § 724(e))
§ 83:8 Subordination of ad valorem tax liens for payment of certain administrative expenses (Code § 724(f))
§ 83:9 Continuing problems
§ 83:10 Conversion from Chapter 11 to Chapter 7

## CHAPTER 84. DISPOSITION OF PROPERTY (CODE § 725)

§ 84:1 Disposition of certain property
§ 84:2 Procedure of Code § 725 disposition

## CHAPTER 85. DISTRIBUTIONS (CODE § 726)

§ 85:1 Distribution of property of the estate
§ 85:2 Priority claims (Code § 726(a)(1))
§ 85:3 Superpriority (Code § 507(b))
§ 85:4 General unsecured creditors (Code § 726(a)(2))
§ 85:5 General unsecured claims filed tardily (Code § 726(a)(3))
§ 85:6 Punitive claims (Code § 726(a)(4))
§ 85:7 Postpetition interest (Code § 726(a)(5))
§ 85:8 Surplus property of the estate (Code § 726(a)(6))
§ 85:9 Payment of claims within a particular class (Code § 726(b))
§ 85:10 Priority of administrative fees in converted cases
§ 85:11 Distribution of community property (Code § 726(c))

# CHAPTER 86. DISCHARGE (CODE § 727)

## I. CONDITIONS ON GRANTING A DISCHARGE

§ 86:1 Introduction
§ 86:2 Type of debtor (Code § 727(a)(1))
§ 86:3 Wrongful conduct concerning property
§ 86:4 Fraudulent transfers and concealment (Code § 727(a)(2))
§ 86:5 —Intent of debtor
§ 86:6 Fraudulent transfers and concealment—Statutory period and property of the debtor/estate
§ 86:7 —Attempted undoing of fraudulent transfer or concealment
§ 86:8 —Prebankruptcy planning
§ 86:9 Inadequate or destroyed records (Code § 727(a)(3))
§ 86:10 Wrongful acts in the case (Code § 727(a)(4))
§ 86:11 —False oath or account
§ 86:12 Wrongful acts in the case—Withholding records
§ 86:13 —Presenting or using a false claim
§ 86:14 —Bribery and extortion
§ 86:15 Unsatisfactory explanations (Code § 727(a)(5))
§ 86:16 Failure to obey orders and testify (Code § 727(a)(6))
§ 86:17 Insider cases (Code § 727(a)(7))
§ 86:18 Prior discharge (Code § 727(a)(8) and (9))
§ 86:19 Waiver of discharge (Code § 727(a)(10))
§ 86:20 Failure to complete instructional course (Code § 727(a)(11))
§ 86:21 Guilty of a felony under Code § 522(q) (Code § 727(a)(12))
§ 86:22 Failure to provide tax documents
§ 86:23 Revocation of discharge (Code § 727(d) and (e))

## II. PROCEDURAL ISSUES

§ 86:24 Generally
§ 86:25 Time to file objections (Bankr. Rule 4004)
§ 86:26 Role of the U.S. Trustee
§ 86:27 Burden of proof

## III. DEATH OF THE DEBTOR

§ 86:28 Death prior to case filing
§ 86:29 Death after filing: Rule 1016 and continuing the Chapter 7 case
§ 86:30 Procedural hurdles following a debtor's death

Appendix 86-A. Practice Aids

# Volume 4

## SUBPART 13. SPECIAL LIQUIDATION PROCEEDINGS (CODE §§ 741-784)

## CHAPTER 87. STOCKBROKER LIQUIDATION (CODE §§ 741–753)

### I. INTRODUCTION

§ 87:1 Scope
§ 87:2 Relationship between stockbroker and customer
§ 87:3 Early preference cases
§ 87:4 Early reclamation cases
§ 87:5 Section 60(e) of Bankruptcy Act
§ 87:6 Reform efforts: 1963 to 1978
§ 87:7 Framework of Bankruptcy Code provisions concerning liquidations
§ 87:8 Applicability of Bankruptcy Code's stockbroker liquidation provisions versus SIPA
§ 87:9 Purpose of Securities Investor Protection Act (SIPA)
§ 87:10 Interrelationship of bankruptcy laws and SIPA
§ 87:11 Preemption of Bankruptcy Code's stockbroker liquidation provisions
§ 87:12 General Bankruptcy Code provisions applicable in Bankruptcy Code Liquidations
§ 87:13 Bankruptcy and local rules

### II. PROHIBITION AGAINST STOCKBROKER REORGANIZATION

§ 87:14 Stockbroker ineligible for Chapter 11 or 13

### III. DEFINITIONS

§ 87:15 Key terms (Bankruptcy Code § 741)
§ 87:16 Customer (Bankruptcy Code § 741(2))
§ 87:17 Recovery of securities under SIPA and the Bankruptcy Code (Bankruptcy Code § 741(3))
§ 87:18 Customer property (Bankruptcy Code § 741(4))
§ 87:19 Net equity (Bankruptcy Code § 741(6))
§ 87:20 Security (Bankruptcy Code § 101(49))
§ 87:21 Stockbroker (Bankruptcy Code § 101(53A))

### IV. BANKRUPTCY CODE LIQUIDATION OR SIPA LIQUIDATION

§ 87:22 Commencement of case
§ 87:23 Stay of Bankruptcy Code Liquidation (Bankruptcy Code § 742)

§ 87:24 Standing to invoke SIPA
§ 87:25 SIPA Liquidation subsequent to protective decree
§ 87:26 Debtor that is both stockbroker and commodity broker
§ 87:27 Notice (Bankruptcy Code § 743)

## V. EXECUTORY CONTRACTS

§ 87:28 Assumption or rejection under the Bankruptcy Code (Code § 744)
§ 87:29 Assumption or rejection under SIPA

## VI. TREATMENT OF CUSTOMER ACCOUNTS

§ 87:30 Customer accounts in different capacities (Bankruptcy Code § 745)
§ 87:31 Treatment of customer accounts of trust beneficiaries (Bankruptcy Code § 745(c))

## VII. CUSTOMER CLAIMS

§ 87:32 Eligibility for "customer" protection under SIPA
§ 87:33 Establishment of claims
§ 87:34 Postpetition transactions (Bankruptcy Code § 746(a))
§ 87:35 Capital or subordinated debt—Noncustomer status (Bankruptcy Code § 746(b))
§ 87:36 Enforcement of subordination arrangements
§ 87:37 Effect of subordination
§ 87:38 Subordination of claims of control persons (Bankruptcy Code § 747)
§ 87:39 Control persons
§ 87:40 Comparison of subordination provisions of the Bankruptcy Code

## VIII. REDUCTION OF SECURITIES TO MONEY

§ 87:41 Liquidation of securities under the Bankruptcy Code (Bankruptcy Code § 748)
§ 87:42 Securities held and distributed as estate property in SIPA Liquidations

## IX. VOIDABLE TRANSFERS (CODE § 749)

§ 87:43 Special provisions (Bankruptcy Code § 749)
§ 87:44 Comparison of stockbroker provisions with other preference provisions
§ 87:45 Prepetition transfers to customers
§ 87:46 Character of recovered property

## X. DISTRIBUTION OR DELIVERY OF SECURITIES

§ 87:47 Trustee's distribution (Bankruptcy Code § 750)
§ 87:48 Sales to customers

§ 87:49 No-market securities
§ 87:50 Delivery of customer name securities to customer (Bankruptcy Code § 751)
§ 87:51 Negative net equity

XI. DISTRIBUTION OF CUSTOMER AND OTHER PROPERTY (CODE § 752)

§ 87:52 Ratable distribution (Bankruptcy Code § 752)
§ 87:53 Priorities governing distribution
§ 87:54 Distribution of noncustomer property

CHAPTER 88. COMMODITY BROKER LIQUIDATION (CODE §§ 761–767)

I. INTRODUCTION; STRUCTURE OF COMMODITY BROKER REGULATION

§ 88:1 Historical background
§ 88:2 Description of commodity trading (Code § 761)
§ 88:3 Regulation of commodity trading industry
§ 88:4 Interface of bankruptcy law and Commodity Futures Trading Commission rules and regulations
§ 88:5 Interface of commodity broker liquidation provisions with stockbroker liquidation provisions

II. COMMODITY BROKER LIQUIDATION PROCEDURE

§ 88:6 Summary of commodity broker liquidation provisions
§ 88:7 Eligibility: Who is a commodity broker? (Code § 761)
§ 88:8 Who is a customer? (Code § 761(9))
§ 88:9 Commencement of the case and appointment of a trustee (Code § 762)
§ 88:10 Operation of the debtor's estate
§ 88:11 Customer property (Code § 766)
§ 88:12 Transfer of commodity contracts (Code § 764)
§ 88:13 Specifically identifiable customer property
§ 88:14 Nonspecifically identifiable customer property (Code § 766(e))
§ 88:15 Delivery (Code § 766(b))
§ 88:16 Pro Rata distribution (Code § 763)
§ 88:17 Limitations on trustee's power to avoid margin payments
§ 88:18 Liquidation of bankrupt customers' commodity contracts (Code § 556)

CHAPTER 89. CLEARING BANK LIQUIDATION AND REORGANIZATION (CODE §§ 781–784)

I. INTRODUCTION

§ 89:1 Generally

§ 89:2 Historical background

## II. ELIGIBILITY FOR CLEARING BANK LIQUIDATION

§ 89:3 Who qualifies as a clearing bank (Code § 781)
§ 89:4 Clearing bank eligibility for Chapter 7 liquidation (Code § 109(b)(2))
§ 89:5 Clearing bank eligibility for Chapter 11 reorganization (Code § 109(d))

## III. CLEARING BANK LIQUIDATION PROCEDURES

§ 89:6 Summary of Chapter 7 liquidation procedures for clearing banks
§ 89:7 Appointment of a clearing bank trustee (Code § 782)
§ 89:8 Powers of a clearing bank trustee (Code § 783)
§ 89:9 Rights of the Federal Reserve Board (Code §§ 782 and 784)

# SUBPART 14. ADJUSTMENT OF DEBTS OF A MUNICIPALITY (CODE §§ 901-946)

# CHAPTER 90. MUNICIPAL DEBT ADJUSTMENT (CODE §§ 901–946)

## I. INTRODUCTION

§ 90:1 Historical background
§ 90:2 Overview of Chapter 9
§ 90:3 Constitutional limits on jurisdiction and power
§ 90:4 Unique aspects of Chapter 9

## II. PROCEDURE

§ 90:5 Eligibility—Municipality
§ 90:6 —Requirements
§ 90:7 Venue, designation of judge
§ 90:8 List of creditors; Notice; Petition (§§ 921–924)
§ 90:9 Dismissal (§ 930)
§ 90:10 Municipal debt—Trade and other unsecured debt (§ 929)
§ 90:11 —Executory contract claims
§ 90:12 —General obligation bonds
§ 90:13 —Special revenue bonds
§ 90:14 —Administrative expense claims
§ 90:15 The Estate; Committees; US Trustee
§ 90:16 Automatic stay (§ 922)
§ 90:17 General case administration
§ 90:18 Post-petition borrowing
§ 90:19 Assumption and rejection of executory contracts and leases
§ 90:20 Avoidance powers (§ 926)

## III. THE PLAN OF ADJUSTMENT

§ 90:21 Filing (§ 941)
§ 90:22 Plan Contents
§ 90:23 1111(b) election
§ 90:24 Plan modification (§ 942)
§ 90:25 Disclosure and solicitation
§ 90:26 Voting and impairment
§ 90:27 Confirmation—Initial requirements (§ 943)
§ 90:28 —Good faith and compliance with applicable laws
§ 90:29 —Regulatory approval
§ 90:30 —Acceptance of plan by impaired classes
§ 90:31 —Additional requirements of Chapter 9
§ 90:32 Cramdown

## IV. POST-CONFIRMATION

§ 90:33 Effect of confirmation (§ 944)
§ 90:34 Retention of jurisdiction (§ 945)

# SUBPART 15. REORGANIZATION: OFFICERS AND ADMINISTRATION (CODE §§ 1101-1116)

# CHAPTER 91. INTRODUCTION TO CHAPTER 11 OF THE BANKRUPTCY CODE

## I. GENERAL CONSIDERATIONS

§ 91:1 Scope of Chapter 11 coverage
§ 91:2 Some special applications
§ 91:3 Parties to a Chapter 11 case
§ 91:4 Legislative history
§ 91:5 Chapter 11 in contrast to prior law

## II. STRUCTURE OF CHAPTER 11

§ 91:6 The administrative stage
§ 91:7 Litigated proceedings
§ 91:8 The plan process
§ 91:9 Postconfirmation matters

## III. COMMENCEMENT AND CONVERSION OF CASE

§ 91:10 Commencement of case (Code § 301)
§ 91:11 Conversion of Chapter 7 to Chapter 11 (Code § 706)
§ 91:12 Conversion from Chapter 13 to Chapter 11 (Code § 1307)
§ 91:13 Conversion from Chapter 11 (Code § 1112)
§ 91:14 Effect of conversion (Code § 348)
§ 91:15 Procedure for conversion of case (Bankr. Rule 1017)

## IV. ADMINISTRATIVE POWERS

§ 91:16 Generally

§ 91:17 Automatic stay (Code § 362)
§ 91:18 Use, sale, or lease of property (Code § 363)
§ 91:19 Credit (Code § 364)
§ 91:20 Executory contracts and leases (Code § 365)
§ 91:21 Utility service (Code § 366)

## V. CLAIMS AGAINST, AND PROPERTY OF, ESTATE

§ 91:22 Claims (Code § 502)
§ 91:23 Property of estate (Code § 541)
§ 91:24 Avoiding powers (Code § 544)
§ 91:25 After-acquired property (Code § 552)
§ 91:26 Setoff (Code § 553)

Appendix 91-A. Practice Aids

# CHAPTER 92. FILING OF A CASE

§ 92:1 Prefiling considerations
§ 92:2 Who may be a Chapter 11 debtor (Code § 109(d))
§ 92:3 Commencement of a voluntary case (Code § 301)
§ 92:4 Commencement of an involuntary case (Code § 303)

Appendix 92-A. Practice Aids

# CHAPTER 93. DEBTOR IN POSSESSION (CODE §§ 1101(1), 1107, 1108)

§ 93:1 Introduction (Code § 1101(1))
§ 93:2 Rights, powers, and duties (Code § 1107)
§ 93:3 Employment of professionals (Code § 327)
§ 93:4 Power to operate business (Code § 1108)

# CHAPTER 94. FINANCING THE DEBTOR IN POSSESSION

## I. GENERAL PROCEDURE

§ 94:1 Introduction
§ 94:2 Overview of Bankr. Rule 4001
§ 94:3 Motion to use cash collateral (Bankr. Rule 4001(b))
§ 94:4 Motion to obtain credit (Bankr. Rule 4001(c))
§ 94:5 Motions to approve cash collateral stipulations or agreements (Bankr. Rule 4001(d))

## II. FINANCING THE CASE WITH CASH COLLATERAL

§ 94:6 Cash collateral (Code § 363)
§ 94:7 Adequate protection in the context of cash collateral (Code § 363(e))
§ 94:8 Cash collateral agreements—Practical considerations
§ 94:9 —Structure of the agreement—In general

§ 94:10 — —Adequate protection
§ 94:11 — —Recitals
§ 94:12 — —Reporting
§ 94:13 — —Budgets and other restrictions
§ 94:14 — —Miscellaneous limitations, concessions, and other provisions
§ 94:15 — —Default and remedies
§ 94:16 —Approval of the agreement (Bankr. Rule 4001(d))
§ 94:17 —The cash collateral order
§ 94:18 —The hearing
§ 94:19 Cash collateral litigation
§ 94:20 Unauthorized use of cash collateral

## III. DEBTOR IN POSSESSION FINANCING

§ 94:21 General considerations
§ 94:22 Overview of Code § 364
§ 94:23 Pitfalls under Code § 364(a) and (b)
§ 94:24 Financing under Code § 364(c) and (d)—In general
§ 94:25 —Other credit unavailable
§ 94:26 —Notice and a hearing
§ 94:27 —Adequate protection
§ 94:28 —Proof requirements
§ 94:29 —Scrutiny of lender incentives
§ 94:30 —Pitfalls
§ 94:31 Priming liens—Adequate protection (Code § 364(d))
§ 94:32 —Valuation issues
§ 94:33 Lender incentives—Generally
§ 94:34 —Cross-collateralization
§ 94:35 Nunc pro tunc approval of unauthorized loans
§ 94:36 Special lender protections—Appeals and mootness (Code § 364(e))
§ 94:37 The impact of second lien financings on DIP financing
§ 94:38 Practical considerations for debtor and postpetition lender

Appendix 94-A. Practice Aids

# CHAPTER 95. PAYMENT OF PREPETITION CLAIMS PRIOR TO PLAN CONFIRMATION

§ 95:1 Introduction
§ 95:2 Bankruptcy Act standards
§ 95:3 Guidelines under the Bankruptcy Code
§ 95:4 Case law guidelines
§ 95:5 Early decisions allowing preplan payments
§ 95:6 Early decisions denying or restricting preplan payments
§ 95:7 The necessity of payment doctrine
§ 95:8 Conclusion

# CHAPTER 96. CORPORATE GOVERNANCE

§ 96:1 Introduction and overview

§ 96:2 The clearly solvent corporation
§ 96:3 The corporation "in the vicinity of insolvency"
§ 96:4 The clearly insolvent corporation
§ 96:5 Deepening insolvency
§ 96:6 After the order for relief
§ 96:7 Postpetition election of board of directors
§ 96:8 A director's right to resign

Appendix 96-A. Practice Aids

# CHAPTER 97. NONBANKRUPTCY WORKOUTS AND PREPACKAGED PLANS

## I. INTRODUCTION

§ 97:1 In general
§ 97:2 Advantages of nonbankruptcy workouts
§ 97:3 Advantages of Chapter 11
§ 97:4 Liquidation as alternative

## II. IMPLEMENTING THE NONBANKRUPTCY WORKOUT

### A. IN GENERAL

§ 97:5 Generally
§ 97:6 Special considerations for public debt

### B. COMMON FORMS OF OUT-OF-COURT WORKOUTS

§ 97:7 Generally; exchange offers
§ 97:8 "Down round" venture financings
§ 97:9 "Washout" or "cramdown" venture financings
§ 97:10 Debt conversion deals
§ 97:11 Assignments for the benefit of creditors; informal wind downs

## III. ELEMENTS OF OUT-OF-COURT WORKOUT

§ 97:12 In general
§ 97:13 Ad hoc creditors' committee
§ 97:14 Moratorium
§ 97:15 Debt repayment
§ 97:16 Interest
§ 97:17 Collateralization
§ 97:18 Contributions from third parties
§ 97:19 Management changes
§ 97:20 Other considerations

## IV. POTENTIAL PITFALLS

§ 97:21 In general

§ 97:22 Preferences (Code § 547)
§ 97:23 Fraudulent conveyances (Code § 548)
§ 97:24 Insider status

## V. PREPACKAGED PLANS OF REORGANIZATION

§ 97:25 In general; rejection of prepetition workout agreement
§ 97:26 Prepetition solicitation
§ 97:27 Adequate information
§ 97:28 Bankr. Rules 3016(b) and 3018(b)
§ 97:29 Applicable nonbankruptcy law
§ 97:30 Other considerations

## VI. PREARRANGED PLANS OF REORGANIZATION

§ 97:31 In general
§ 97:32 The lockup agreement
§ 97:33 Execution
§ 97:34 Fiduciary duties of the board of directors
§ 97:35 Solicitation and disclosure
§ 97:36 Summary comparison of prepackaged and prearranged bankruptcies

# CHAPTER 98. COMMITTEES (CODE §§ 1102, 1103)

## I. APPOINTMENT, ORGANIZATION, AND OPERATION (CODE § 1102)

§ 98:1 Introduction
§ 98:2 Appointment of committees generally
§ 98:3 Appointment of prepetition committees
§ 98:4 —Challenging decision to appoint prepetition committee (Bankr. Rule 2007)
§ 98:5 Appointment of equity security holders' committees (Code § 1102(a)(1))
§ 98:6 Appointment of additional creditors' and equity security holders' committees—Generally (Code § 1102(a)(2))
§ 98:7 —Request for appointment
§ 98:8 Appointment of unofficial committees (Bankr. Rule 2019)
§ 98:9 Composition of committees
§ 98:10 Committee eligibility (Code § 1102(b))
§ 98:11 Change in committee membership or size (Code § 1102(a)(4))
§ 98:12 Decision to serve on committee—Generally
§ 98:13 —Reasons to serve on a committee
§ 98:14 —Reasons to decline position on a committee
§ 98:15 Committee governance—Generally
§ 98:16 —Confidentiality
§ 98:17 —Meetings

§ 98:18 —Decisions
§ 98:19 —Leadership
§ 98:20 Dissolution of committee
§ 98:21 —Effect of case conversion on committee
§ 98:22 Postconfirmation role for committees

## II. POWERS AND DUTIES (CODE § 1103)

### A. SELECTION OF PROFESSIONALS

§ 98:23 Selection upon court approval generally
§ 98:24 Role of counsel
§ 98:25 Role of accountants
§ 98:26 Selection process
§ 98:27 Application for authority to employ professionals; eligibility for appointment
§ 98:28 Compensation of professionals

### B. OTHER COMMITTEE FUNCTIONS AND DUTIES (CODE § 1103(C))

§ 98:29 Mandatory functions
§ 98:30 Permissive functions—Generally
§ 98:31 —Consultation with debtor in possession or trustee (Code § 1103(c)(1))
§ 98:32 —Investigation of debtor, debtor's business, and other matters (Code § 1103(c)(2))
§ 98:33 —Initiation of, or intervention in, adversary proceedings (Code § 1103(c))
§ 98:34 —Participation in formulation of plan (Code § 1103(c)(2))
§ 98:35 —Requesting appointment of trustee or examiner (Code § 1103(c)(4))
§ 98:36 Fiduciary duties
§ 98:37 Reimbursement of committee expenses

Appendix 98-A. Practice Aids

# CHAPTER 99. TRUSTEES AND EXAMINERS (CODE §§ 1104–1106)

§ 99:1 In general
§ 99:2 Who may request
§ 99:3 Standards for appointing a trustee (Code § 1104(a))
§ 99:4 Cause
§ 99:5 Best interests of creditors and others
§ 99:6 Appointment in lieu of conversion or dismissal
§ 99:7 Selection of a trustee
§ 99:8 Election of trustee (Code § 1104(b))
§ 99:9 Proxy solicitation
§ 99:10 Appointment gap period (Code § 1104(b))
§ 99:11 Qualified voting creditors

§ 99:12 Timing of qualifications
§ 99:13 Standing of the debtor
§ 99:14 Impact of delay
§ 99:15 Trustee's role and capacity
§ 99:16 Chapter 11 trustee duties (Code § 1106)
§ 99:17 Chapter 7 duties applicable under Chapter 11 (Code § 1106(a))
§ 99:18 Additional duties under Chapter 11
§ 99:19 Duties in small business cases (Code § 1116)
§ 99:20 Duties under Rule 2015
§ 99:21 Statutes of limitations for Chapter 11 trustees
§ 99:22 Termination of appointment (Code § 1105)
§ 99:23 Trustee liability
§ 99:24 Examiners, generally (Code § 1104(c))
§ 99:25 Grounds for appointment (Code § 1104(c))
§ 99:26 Duties, powers, and liability (Code § 1106(b))
§ 99:27 Procedure for appointing trustee or examiner (Code § 1104(d))
§ 99:28 Compensation (Code § 326)
§ 99:29 Compensation and retention of professionals

Appendix 99-A. Practice Aids

## CHAPTER 100. RIGHT TO BE HEARD (CODE § 1109)

§ 100:1 Securities and Exchange Commission (Code § 1109(a))
§ 100:2 Parties in interest (Code § 1109(b))
§ 100:3 Intervention (Bankr. Rule 2018)
§ 100:4 Child support creditors or representatives

## CHAPTER 101. AIRCRAFT EQUIPMENT AND VESSEL FINANCING ARRANGEMENTS (CODE § 1110)

### I. INTRODUCTION

§ 101:1 Overview and background
§ 101:2 Distinction between Code § 1110 and Code § 365

### II. RIGHTS OF DEBTORS AND SECURED PARTIES

§ 101:3 Secured party's rights, generally
§ 101:4 Retention of equipment by debtor under § 1110 (Code § 1110(a)(2))
§ 101:5 Extension of 60-day period in which to decide whether to retain equipment

## III. CONSTRUCTION AND APPLICATION OF CODE § 1110

### A. IN GENERAL

§ 101:6 Generally
§ 101:7 Transportation debtor
§ 101:8 Qualifying equipment
§ 101:9 Relevance of automatic stay during the 60-day period

### B. COVERAGE UNDER § 1110 OF PARTICULAR TRANSACTIONS

§ 101:10 Avoidable transactions
§ 101:11 Nonacquisition sale-leasebacks
§ 101:12 True lease
§ 101:13 Purchase-money security interests
§ 101:14 Substitution of engines and parts

### C. CLAIMS OF SECURED PARTY OR FINANCIER

§ 101:15 Standing to assert Code § 1110 rights
§ 101:16 Claim arising upon breach of return condition provisions
§ 101:17 Prepetition potential preferences
§ 101:18 Repossession actions

# CHAPTER 102. ELECTIONS FOR SECURED CLAIMANTS (CODE § 1111)

§ 102:1 Overview (Code § 1111(b))
§ 102:2 Policy
§ 102:3 Conversion of nonrecourse debt into recourse debt under Code § 1111(b)(1)(A)
§ 102:4 —Limitations on conversion
§ 102:5 The 1111(b) election, generally
§ 102:6 Binding effect of the election
§ 102:7 Deferred payments to the electing creditor
§ 102:8 Unavailability of § 1111(b)(2) election where creditor's interest in collateral is of inconsequential value
§ 102:9 Unavailability of § 1111(b)(2) election where debtor elects to sell property and creditor has recourse
§ 102:10 Classification of the claim under the plan
Appendix 102-A. Practice Aids

# CHAPTER 103. CONVERSION OR DISMISSAL (CODE § 1112)

## I. CONVERSION TO CHAPTER 7 OR DISMISSAL

### A. IN GENERAL

§ 103:1 Who may request (Code § 1112(a))

§ 103:2 —Right of debtor-in-possession
§ 103:3 Involuntary conversion barred in certain cases
§ 103:4 Effect of conversion on avoiding actions
§ 103:5 Procedure

B. GROUNDS (Code § 1112(b))

§ 103:6 Generally
§ 103:7 Loss to estate and unlikelihood of rehabilitation
§ 103:8 Gross mismanagement of the estate
§ 103:9 Failure to maintain appropriate insurance
§ 103:10 Unauthorized use of cash collateral
§ 103:11 Failure to comply with court order
§ 103:12 Failure to timely file or report
§ 103:13 Failure to attend Code § 341 meeting or Rule 2004 examination
§ 103:14 Failure to provide information or attend meetings requested by the trustee
§ 103:15 Failure to pay taxes or file returns
§ 103:16 Failure to timely file disclosure statement, file or confirm a plan
§ 103:17 Failure to pay fees or charges under Chapter 123 of Title 28
§ 103:18 Revocation of a confirmation order
§ 103:19 Inability to effectuate substantial consummation of a confirmed plan
§ 103:20 Material default by the debtor on a confirmed plan
§ 103:21 Termination of a confirmed plan by occurrence of a condition in the plan
§ 103:22 Failure of debtor to pay any domestic support obligation
§ 103:23 Equitable grounds
§ 103:24 Debtor's failure to perform Code § 521(a)(1) duties
§ 103:25 Structured Dismissals

## II. CONVERSION TO CHAPTER 12 OR 13

§ 103:26 Conversion to Chapter 12 (Code § 1112(c) and (d))
§ 103:27 Conversion to Chapter 13 (Code § 1112(d) and (f))

Appendix 103-A. Practice Aids

# CHAPTER 104. COLLECTIVE BARGAINING AGREEMENTS (CODE § 1113)

## I. TREATMENT OF COLLECTIVE BARGAINING AGREEMENTS BEFORE 1984

§ 104:1 Caselaw in lower courts
§ 104:2 U.S. Supreme Court decision in *NLRB v. Bildisco & Bildisco*

## II. ENACTMENT OF CODE § 1113 IN 1984

§ 104:3 Legislative history
§ 104:4 Approach adopted in Code § 1113

## III. PROCEDURES UNDER CODE § 1113

§ 104:5 Procedures for interim relief
§ 104:6 Procedures to reject collective bargaining agreements
§ 104:7 —The proposal
§ 104:8 —The meetings
§ 104:9 —Standards governing rejection and timetable
§ 104:10 —No unilateral terminations or alterations

## IV. CASE LAW DEVELOPMENTS

§ 104:11 Interpretation of Code § 1113 standards
§ 104:12 —Necessary modifications
§ 104:13 —Interested party
§ 104:14 An illustrative application of Code § 1113

## V. OPEN ISSUES

§ 104:15 Interplay with Code § 1114
§ 104:16 Treatment of claims arising out of collective bargaining agreements—Claims arising before rejection
§ 104:17 — —Claims arising from failure to pay prior to rejection
§ 104:18 — —Claims arising out of rejection
§ 104:19 Rewriting the collective bargaining agreement
§ 104:20 Right to strike after rejection of collective bargaining agreement

## VI. LITIGATION ASPECTS OF CODE § 1113

§ 104:21 Automatic stay
§ 104:22 Burden of persuasion

# CHAPTER 105. RETIREE BENEFITS (CODE § 1114)

§ 105:1 Introduction
§ 105:2 Interaction between ERISA, state law, and Code § 1114
§ 105:3 Unaccomplished goals of Code § 1114
§ 105:4 Definition of "retiree benefits" (Code § 1114(a))
§ 105:5 Authorized representative (Code § 1114(b)(1))
§ 105:6 Committee of retired employees (Code § 1114(b)(2))
§ 105:7 Labor organization (Code § 1114(c))
§ 105:8 Official retiree committee (Code § 1114(d))
§ 105:9 Obligation to pay benefits (Code § 1114(e))
§ 105:10 Priority claim (Code § 1114(e)(2))
§ 105:11 Necessary modifications (Code § 1114(f))

§ 105:12 Motion for modification (Code § 1114(g))
§ 105:13 Interim modifications (Code § 1114(h))
§ 105:14 No right of setoff (Code § 1114(i))
§ 105:15 No claim allowance limitation (Code § 1114(j))
§ 105:16 Hearing on application to modify (Code § 1114(k))
§ 105:17 Reinstatement of benefits where modification was made in anticipation of bankruptcy filing (Code § 1114(l))
§ 105:18 High-income employees (Code § 1114(m))

Appendix 105-A. Practice Aids

**CHAPTER 106. CHAPTER 11 CASES FILED BY INDIVIDUALS (CODE § 1115)**

§ 106:1 The Individual as a Fiduciary
§ 106:2 Attorney-client privilege
§ 106:3 Credit counseling
§ 106:4 Property of the estate
§ 106:5 Personal expenses
§ 106:6 Bankruptcy Code vs. the Internal Revenue Code
§ 106:7 Involuntary Chapter 11
§ 106:8 Confirmation after 2005 Amendments
§ 106:9 Chapter 11 v. Chapter 13
§ 106:10 Projected disposable income

**CHAPTER 107. SMALL BUSINESS AND SUBCHAPTER V CASES (CODE §§ 308, 1116, 1181-1195)**

**I. SMALL BUSINESS CASES (CODE §§ 308, 1116)**

§ 107:1 Introduction
§ 107:2 Automatic stay exception for multiple filings (Code § 362(n))
§ 107:3 Duties of the debtor (Code § 1116)
§ 107:4 Profitability reporting requirements (Code § 308)
§ 107:5 Duties of the U.S. Trustee (28 U.S.C.A. § 586(a))
§ 107:6 Dismissal or conversion (Code § 1112(b))
§ 107:7 Plan filing and confirmation (Code §§ 1121(e) and 1125(f))

**II. SMALL BUSINESS DEBTOR REORGANIZATION (SUBCHAPTER V, CODE § 1181-1195)**

§ 107:8 Introduction to Subchapter V
§ 107:9 Subchapter V appointment of trustee (Code § 1183)
§ 107:10 Subchapter V powers and duties of debtor in possession (Code §§ 1184 and 1187)
§ 107:11 Subchapter V professional persons and committees
§ 107:12 Subchapter V property of the estate (Code § 1186)
§ 107:13 Temporary provisions regarding nonresidential real property leases

§ 107:14 Subchapter V status conference and plan filing (Code § 1189)
§ 107:15 Subchapter V disclosure requirements
§ 107:16 Subchapter V plan requirements (Code § 1190)
§ 107:17 Subchapter V plan confirmation by cramdown (Code § 1191)
§ 107:18 Subchapter V plan payments (Code § 1194)
§ 107:19 Subchapter V modification of a plan (Code § 1193)
§ 107:20 Subchapter V discharge (Code § 1192)
§ 107:21 Closing the Subchapter V case

## SUBPART 16. REORGANIZATION: THE PLAN (CODE §§ 1121-1129)

## CHAPTER 108. WHO MAY FILE A PLAN (CODE § 1121)

§ 108:1 The debtor (Code § 1121(a) and (b))
§ 108:2 Duration of exclusivity period (Code § 1121(c))
§ 108:3 Extension or reduction of exclusivity period (Code § 1121(d))
§ 108:4 Small business debtors (Code § 1121(e))
§ 108:5 Other proponents of the plan

Appendix 108-A. Practice Aids

## CHAPTER 109. PLAN CONTENTS AND CLASSIFICATION (CODE §§ 1122, 1123, 1124)

§ 109:1 Classification of claims (Code § 1122)
§ 109:2 —Secured claims
§ 109:3 Classification of claims—Priority claims
§ 109:4 —Unsecured claims
§ 109:5 —Equity interests
§ 109:6 —Subordination
§ 109:7 Impairment (Code § 1124)
§ 109:8 Implementation of plan (Code § 1123(a)(5))
§ 109:9 Restrictions on the issuance of securities
§ 109:10 Executory contracts and unexpired leases (Code § 1123(b)(2))
§ 109:11 Postpetition earnings (Code § 1123(a)(8))
§ 109:12 Settlement or preservation of claims (Code § 1123(b)(3)(A))
§ 109:13 Settlement or preservation of claims—Settlement in the plan
§ 109:14 —Approval of plan settlements
§ 109:15 —Procedural requirements
§ 109:16 Retention and enforcement of claims (Code § 1123(b)(3)(B))
§ 109:17 Cancellation or modification of indenture

§ 109:18 Modification of secured claims in the debtor's principal residence (Code § 1123(b)(5))
§ 109:19 Exemptions of individual debtor (Code § 1123(c))
§ 109:20 Postreorganization control provisions
§ 109:21 Liquidating plan
§ 109:22 Other plan provisions and nondebtor releases

Appendix 109-A. Practice Aids

**CHAPTER 110. DISCLOSURE AND SOLICITATION OF VOTES (CODE §§ 1125, 1126)**

**I. THE DISCLOSURE STATEMENT (CODE § 1125)**

§ 110:1 In general
§ 110:2 Disclosure under prior law
§ 110:3 Inapplicability of nonbankruptcy law
§ 110:4 The concept of "adequate information" (Code § 1125(a))
§ 110:5 —What constitutes adequate information
§ 110:6 Necessity of disclosure statement
§ 110:7 Small business cases (Code § 1125(f))
§ 110:8 When to file the disclosure statement
§ 110:9 Disclosure by plan opponents
§ 110:10 Amendments to the disclosure statement
§ 110:11 Lack of disclosure in Code § 363 transactions

**II. THE DISCLOSURE STATEMENT HEARING (CODE § 1125(b))**

§ 110:12 In general
§ 110:13 Procedure
§ 110:14 Necessity of hearing
§ 110:15 Scope of hearing
§ 110:16 Right of government agencies to be heard

**III. SOLICITATION AND VOTING (CODE § 1126)**

§ 110:17 In general (Code § 1126(a))
§ 110:18 What constitutes solicitation
§ 110:19 Acceptance requirements
§ 110:20 Voting by holder of allowed claim (Code § 1126(c))
§ 110:21 Voting by holder of allowed interest (Code § 1126(d))
§ 110:22 Deemed acceptances (Code § 1126(f))
§ 110:23 Deemed rejections (Code § 1126(g))
§ 110:24 Changing votes
§ 110:25 Disqualification of votes
§ 110:26 Prepetition solicitation (Code § 1126(b))
§ 110:27 Safe harbor (Code § 1125(e))

Appendix 110-A. Practice Aids

# CHAPTER 111. MODIFICATION OF PLAN (CODE §§ 1101(2), 1127) AND SERIAL CHAPTER 11 FILING

§ 111:1 Prior to confirmation (Code § 1127(a))
§ 111:2 After confirmation (Code § 1127(b)–(f))
§ 111:3 Substantial consummation (Code § 1101(2))
§ 111:4 Serial filing

Appendix 111-A. Practice Aids

# CHAPTER 112. CONFIRMATION OF PLAN (CODE §§ 1128, 1129)

## I. CONTENTS OF PLAN

§ 112:1 Overview of Code § 1123
§ 112:2 Adequate means (Code § 1123(a)(5))
§ 112:3 Executory contracts (Code § 1123(b)(2))
§ 112:4 Sale of assets (Code § 1123(b)(4))
§ 112:5 Other appropriate provisions (Code § 1123(b)(6))
§ 112:6 Individual exemptions (Code § 1123(c))

## II. CONFIRMATION REQUIREMENTS

§ 112:7 Overview of Code § 1129
§ 112:8 Compliance with Title 11 (Code § 1129(a)(1))
§ 112:9 —By proponent of plan (Code § 1129(a)(2))
§ 112:10 Proposed in good faith (Code § 1129(a)(3))
§ 112:11 Disclosure of payments (Code § 1129(a)(4))
§ 112:12 Postreorganization control (Code § 1129(a)(5))
§ 112:13 Approval of rate changes (Code § 1129(a)(6))
§ 112:14 Best interests of creditors (Code § 1129(a)(7))
§ 112:15 Consensual plan (Code § 1129(a)(8))
§ 112:16 Priority claims (Code § 1129(a)(9))
§ 112:17 —Domestic support obligations
§ 112:18 Priority claims—Administrative expenses
§ 112:19 —Gap claims
§ 112:20 —Wage and related claims
§ 112:21 —Employee benefit plan contributions
§ 112:22 —Claims of grain producers and fishermen
§ 112:23 —Consumer deposits
§ 112:24 —Tax and customs duty claims
§ 112:25 —Claims against banking institutions
§ 112:26 —Death or personal injury claims arising from operation of vehicles or vessels while intoxicated
§ 112:27 Acceptance by one class (Code § 1129(a)(10))
§ 112:28 Feasibility (Code § 1129(a)(11))

§ 112:29 Payment of U.S. Trustee's fees (Code § 1129(a)(12))
§ 112:30 Payment of retiree benefits (Code § 1129(a)(13))
§ 112:31 Payment of domestic support obligations (Code § 1129(a)(14))
§ 112:32 Individual Chapter 11 (Code § 1129(a)(15))
§ 112:33 Compliance with state nonprofit corporation law (Code § 1129(a)(16))
§ 112:34 Multiple plans (Code § 1129(c))
§ 112:35 Tax or security regulation avoidance (Code § 1129(d))
§ 112:36 Deadline for confirmation of small-business plans (Code § 1129(e))

III. CONFIRMATION HEARING

§ 112:37 Generally

Appendix 112-A. Practice Aids

CHAPTER 113. CRAMDOWN (CODE § 1129(B))

I. IN GENERAL

§ 113:1 Purpose of Code § 1129(b)
§ 113:2 General principles
§ 113:3 Unfair discrimination
§ 113:4 Requirement that plan be fair and equitable
§ 113:5 Valuation under Code § 1129(b)
§ 113:6 Impact of settlements

II. ACCEPTANCE BY ONE IMPAIRED CLASS (CODE § 1129(A)(10))

§ 113:7 Generally
§ 113:8 Separate classification of deficiency claims; conflicting interests
§ 113:9 Nonrecourse secured claims
§ 113:10 Business reasons for separate classification
§ 113:11 Other classification strategies
§ 113:12 Criticisms of Code § 1129(a)(10) acceptance requirement

III. CRAMDOWN AGAINST SECURED CLAIMANTS (CODE § 1129(B)(2)(A))

§ 113:13 Generally
§ 113:14 Present value, generally
§ 113:15 Discount rates in determining present value
§ 113:16 —Market rate
§ 113:17 —Contract rate
§ 113:18 —Other rates
§ 113:19 Sale of property
§ 113:20 Indubitable equivalent

### IV. CRAMDOWN OF UNSECURED CLAIMS (CODE § 1129(B)(2)(B))

§ 113:21 Generally
§ 113:22 Present value
§ 113:23 Absolute priority rule
§ 113:24 New value
§ 113:25 —Does the "new value exception" exist under the Code?
§ 113:26 —What constitutes "value"; application of exception

### V. CRAMDOWN OF CLASSES OF INTERESTS (CODE § 1129(B)(2)(C))

§ 113:27 Generally
§ 113:28 Elimination of class of ownership interests

## SUBPART 17. REORGANIZATION: POSTCONFIRMATION MATTERS (CODE §§ 1141-1146)

## CHAPTER 114. POSTCONFIRMATION MATTERS (CODE §§ 1141–1144)

§ 114:1 Confirmation (Code § 1141(a) and (b))
§ 114:2 —The discharge (Code § 1141(c) and (d))
§ 114:3 —Nondischarge of Tax Claims
§ 114:4 —Effect of unlawful or proscribed treatment
§ 114:5 —Effect of confirmation—On nondebtors
§ 114:6 — —On parties with no notice
§ 114:7 Jurisdiction
§ 114:8 —Linked to Bankruptcy Code provisions (Code § 1142)
§ 114:9 —Liquidating plans
§ 114:10 —Retention provisions in the confirmed plan
§ 114:11 —Related to jurisdiction after confirmation
§ 114:12 Revocation (Code § 1144)
§ 114:13 Conversion
§ 114:14 Dismissal
§ 114:15 Closing of the case
§ 114:16 Res judicata

Appendix 114-A. Practice Aids

## CHAPTER 115. EXEMPTION FROM SECURITIES LAWS (CODE § 1145)

### I. IN GENERAL

§ 115:1 Applicability of securities laws in bankruptcy
§ 115:2 Historical background

## II. EXEMPTIONS FROM REGISTRATION (CODE § 1145)

§ 115:3 Offer or sale under plan (Code § 1145(a))
§ 115:4 Warrant, option, subscription right, or conversion privilege
§ 115:5 Subsequent sales

## III. WHO MAY BE AN UNDERWRITER FOR SECURITIES LAWS EXEMPTION PURPOSES

§ 115:6 Importance of characterization as an underwriter (Code § 1145(b))
§ 115:7 Purchaser with view to distribution (Code § 1145(b)(1)(A))
§ 115:8 Professional reseller (Code § 1145(b)(1)(B))
§ 115:9 Offeror for securities (Code § 1145(b)(1)(C))
§ 115:10 Issuer (Code § 1145(b)(1)(D))
§ 115:11 Exception for ordinary trading transactions (Code § 1145(b)(1))
§ 115:12 Exclusion of persons matching or combining fractional interests (Code § 1145(b)(2))

## IV. SPECIAL CONSIDERATIONS FOR NONEQUITY SECURITIES

§ 115:13 Nonequity securities in general
§ 115:14 Certificates of indebtedness
§ 115:15 Trust Indenture Act of 1939 (Code § 1145(d))

## V. FRESH CAPITAL SECURITIES

§ 115:16 Special considerations for fresh capital securities
§ 115:17 Potential exemptions for fresh capital securities
§ 115:18 Resales of fresh capital securities

## VI. SPECIAL PROBLEMS

§ 115:19 Portfolio securities
§ 115:20 Stockbroker transactions
§ 115:21 Public offering (Code § 1145(c))
§ 115:22 Solicitation of acceptance or rejection of a plan
§ 115:23 Reporting requirements
§ 115:24 Proxy regulations
§ 115:25 Approval of stock option and other employee benefit plans
§ 115:26 State securities laws

# CHAPTER 116. SPECIAL TAX PROVISIONS (CODE § 1146)

§ 116:1 Tax exemption (Code § 1146(a))
§ 116:2 Tax determinations (Code § 1146(b))

# Volume 5

## SUBPART 18. REORGANIZATION: RAILROAD REORGANIZATION AND OTHER SPECIAL CASES (CODE §§ 1161-1174)

## CHAPTER 117. RAILROAD REORGANIZATION (CODE §§ 1161–1174)

### I. INTRODUCTION

§ 117:1 Railroad bankruptcies and Chapter 11 generally
§ 117:2 Historical background
§ 117:3 Related statutes (Code § 1166)

### II. CASE PROCEDURE

§ 117:4 Eligibility for relief
§ 117:5 Applicability of Bankruptcy Code provisions (Code § 1161)
§ 117:6 Relationship between bankruptcy court jurisdiction and that of other regulatory bodies (Code § 1166)
§ 117:7 Appointment of trustee (Code § 1163)
§ 117:8 Right to be heard (Code § 1164)
§ 117:9 Protection of public interest (Code §§ 1165-1167)
§ 117:10 Collective bargaining agreements (Code § 1167)
§ 117:11 Rolling stock equipment (Code § 1168)
§ 117:12 Rejection of lease of railroad line (Code § 1169)
§ 117:13 Abandonment of railroad line (Code § 1170)
§ 117:14 Priority claims—Claims for injury and death (Code § 1171)
§ 117:15 —Six-months' creditor claims (Code § 1171); necessity-of-payment rule
§ 117:16 Contents of plan (Code § 1172)
§ 117:17 Confirmation of plan (Code § 1173)
§ 117:18 Liquidation (Code § 1174)

Appendix 117-A. Practice Aids

## CHAPTER 118. NONPROFIT REORGANIZATIONS

§ 118:1 Eligibility (Code § 109(d))
§ 118:2 Restrictions on transfers (Code § 363)
§ 118:3 Plan confirmation (Code § 1129(b)(2)(B)(ii))
§ 118:4 Healthcare nonprofits (Code § 101 (27A))

## CHAPTER 119. HEALTHCARE ENTITIES

### I. INTRODUCTION

§ 119:1 In general

§ 119:2 Hospital governance

## II. ELIGIBILITY OF HEALTHCARE ENTITIES FOR BANKRUPTCY PROTECTION

§ 119:3 Health maintenance organizations
§ 119:4 Nonprofit and municipal hospitals

## III. MEDICARE AND MEDICAID

§ 119:5 Medicare and Medicaid reimbursement
§ 119:6 Antikickback and antireferral laws
§ 119:7 Jurisdiction over Medicare disputes
§ 119:8 Recovery of Medicare and Medicaid overpayments
§ 119:9 Recoupment and setoff by private payors

## IV. REAL PROPERTY LEASES WITH HEALTHCARE PROVIDERS

§ 119:10 Lessor's rights upon termination of a hospital lease
§ 119:11 Conditions under which healthcare building lease need not be assumed within 60 days of commencement of bankruptcy
§ 119:12 Assumption of lease that was assigned prepetition
§ 119:13 Enforceability of cross-default provisions in multiple leases

## V. TRANSFERS OF HEALTHCARE PROVIDER ASSETS

§ 119:14 Introduction
§ 119:15 Hill-Burton obligations
§ 119:16 Licenses and regulatory approvals
§ 119:17 Antitrust considerations
§ 119:18 Medicare and Medicaid reimbursement on sale

## VI. CHANGES EFFECTED BY THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

§ 119:19 Patient care ombudsman
§ 119:20 —The debtor is not a health care business
§ 119:21 —The appointment of a patient care ombudsman is not necessary for the protection of patients
§ 119:22 —Retention of professionals by a patient care Ombudsman
§ 119:23 —Payment of patient care ombudsmen and their professionals
§ 119:24 Disposal of patient records

Appendix 119-A. Practice Aids

# CHAPTER 120. PARTNERSHIP CASES

## I. INTRODUCTION

§ 120:1 In general

## II. IMPACT OF GENERAL PARTNER AND PARTNERSHIP CASES

§ 120:2 Ipso facto provisions of contract law (Code § 365)
§ 120:3 Sale of debtor general partner's interest in partnership (Code § 363(l))
§ 120:4 Impact of partnership bankruptcy case
§ 120:5 Rights of partnership trustee against partners (Code § 723)

## III. STAY AND INJUNCTION PROCEEDINGS

§ 120:6 Scope of stay in partner and partnership cases (Code § 362(a))
§ 120:7 Injunction in partnership case
§ 120:8 Injunction pursuant to plan in partnership case (Code § 524(e))

## IV. NONRECOURSE DEBT

§ 120:9 Generally (Code § 1111(b))
§ 120:10 Nonrecourse debt and the liquidation test
§ 120:11 Recourse debt and the liquidation test

## V. AVOIDANCE ACTIONS

§ 120:12 Avoidance of fraudulent transfers of partnership and partner property (Code § 548)
§ 120:13 Preferential transfers of property of partnership and partner (Code § 547)

# CHAPTER 121. FRANCHISE CASES

## I. INTRODUCTION

§ 121:1 Overview

## II. FRANCHISEE AS A CHAPTER 11 DEBTOR

§ 121:2 Franchise agreements as executory contracts (Code § 365)
§ 121:3 Prebankruptcy termination
§ 121:4 "Without cause" prebankruptcy termination
§ 121:5 "For cause" prebankruptcy termination
§ 121:6 A flexible litigation strategy for the franchisor
§ 121:7 Compelling a franchisee's compliance
§ 121:8 Forcing a franchisee to assume or reject

§ 121:9 Franchisee's decision and ability to assume or reject a franchise agreement
§ 121:10 Franchise agreements that cannot be assumed or assigned
§ 121:11 A franchisee's decision to assume the franchise agreement—Assumption issues
§ 121:12 —Assignment issues
§ 121:13 A franchisee's decision to reject the franchise agreement
§ 121:14 Damages
§ 121:15 Post-termination provisions
§ 121:16 Bad-faith filing issues
§ 121:17 When a franchisee is also a lessee of its franchisor
§ 121:18 Pursuit of stay relief

### III. LITIGATION ISSUES IN CASES WHERE FRANCHISOR IS A CHAPTER 11 DEBTOR

§ 121:19 Code § 365(n)
§ 121:20 Other executory contract issues

## SUBPART 19. ADJUSTMENT OF DEBTS OF A FAMILY FARMER OR FISHERMAN WITH REGULAR ANNUAL INCOME (CODE §§ 1201-1231)

## CHAPTER 122. INTRODUCTION TO CHAPTER 12 OF THE BANKRUPTCY CODE

### I. BACKGROUND

§ 122:1 Scope of Chapter 12 coverage
§ 122:2 Farmers and bankruptcy laws
§ 122:3 Farmers and Chapter 7
§ 122:4 Farmers and Chapter 13
§ 122:5 Farmers and Chapter 11
§ 122:6 Farmers and Chapter 3
§ 122:7 Frazier-Lemke Acts
§ 122:8 Development of Chapter 12
§ 122:9 Legislative history

### II. OVERVIEW OF CHAPTER 12

§ 122:10 Summary of provisions
§ 122:11 Effective date
§ 122:12 Relationship of Chapter 12 to other Bankruptcy Code provisions
§ 122:13 Bankruptcy Rules
§ 122:14 Differences between Chapter 12 and Chapter 13
§ 122:15 Differences between Chapter 12 and Chapter 11

§ 122:16 Differences between Chapter 12 and Frazier-Lemke Acts

Appendix 122-A. Practice Aids

## CHAPTER 123. ELIGIBILITY TO FILE UNDER CHAPTER 12 (CODE § 109(f))

§ 123:1 Family farmer or fisherman with regular annual income (Code § 101(19))
§ 123:2 Individual family farmer (Code § 101(18)(A))
§ 123:3 Individual family fisherman (Code § 101(19A))
§ 123:4 Husband and wife (Code § 101(18)(A))
§ 123:5 Corporations and partnerships as family farmers (Code § 101(18)(B))
§ 123:6 Corporations and partnerships as family fishermen (Code § 101(19A)(B))
§ 123:7 Effect of prior filings (Code § 109(g))
§ 123:8 Good faith in filing

## CHAPTER 124. COMMENCEMENT OF A CASE UNDER CHAPTER 12

§ 124:1 Filing of petition (Code § 303)
§ 124:2 Filing fee
§ 124:3 Venue
§ 124:4 Statement of affairs and schedules
§ 124:5 Amendments to petitions and statements
§ 124:6 Retention and compensation of debtor's attorney

Appendix 124-A. Practice Aids

## CHAPTER 125. AUTOMATIC STAY, CODEBTOR STAY, AND UTILITY STAY (CODE § 1201)

§ 125:1 Automatic stay (Code § 362(a))
§ 125:2 Codebtor stay (Code § 1201)
§ 125:3 Utility service (Code § 366)

Appendix 125-A. Practice Aids

## CHAPTER 126. TRUSTEE (CODE §§ 1202, 1226)

§ 126:1 In general
§ 126:2 Appointment—U.S. Trustee districts (Code § 1202(a))
§ 126:3 —Other districts
§ 126:4 Compensation (Code § 326(a))
§ 126:5 Duties (Code § 1202(b))
§ 126:6 —Expanded duties upon dispossession of debtor (Code § 1202(b)(5))
§ 126:7 Removal
§ 126:8 Termination of appointment

## CHAPTER 127. DEBTOR IN POSSESSION (CODE §§ 1203, 1204)

§ 127:1 Introduction
§ 127:2 Duties
§ 127:3 Rights and powers (Code § 1203)
§ 127:4 Employment of professionals
§ 127:5 Authority to operate business
§ 127:6 Use of cash collateral
§ 127:7 Obtaining credit
§ 127:8 Dealing with leases and executory contracts
§ 127:9 Avoiding powers and other trustee rights
§ 127:10 Setoff
§ 127:11 Payments
§ 127:12 Removal of debtor from possession (Code § 1204)

Appendix 127-A. Practice Aids

## CHAPTER 128. EXAMINATION OF DEBTOR

§ 128:1 Meeting of creditors (Code § 341)
§ 128:2 Rule 2004 examination
§ 128:3 Self-incrimination

## CHAPTER 129. ADEQUATE PROTECTION (CODE § 1205)

§ 129:1 Adequate protection under Code § 361
§ 129:2 Lost opportunity costs
§ 129:3 Adequate protection under Code § 1205
§ 129:4 —Paying rent for use of farmland
§ 129:5 Adequate protection and confirmation

Appendix 129-A. Practice Aids

## CHAPTER 130. SALES (CODE § 1206)

§ 130:1 In general
§ 130:2 Procedure
§ 130:3 Sales free of interests (Code § 1206)
§ 130:4 —Farmland and farm equipment; commercial fishing equipment and vessels
§ 130:5 Protection of lienholders
§ 130:6 Discharge of taxes realized on sale of assets

## CHAPTER 131. PROPERTY OF THE ESTATE (CODE § 1207)

§ 131:1 In general
§ 131:2 Exemptions
§ 131:3 Rights of debtor in property of estate

Appendix 131-A. Practice Aids

# CHAPTER 132. CONVERSION AND DISMISSAL (CODE § 1208)

## I. CONVERSION TO CHAPTER 12

§ 132:1 Conversion of cases pending prior to November 26, 1986
§ 132:2 Conversion from Chapters 7 and 13
§ 132:3 Conversion from Chapter 11
§ 132:4 Effect of conversion to Chapter 12

## II. CONVERSION OF CHAPTER 12 CASE

§ 132:5 Request of debtor (Code § 1208(a))
§ 132:6 Request of party in interest (Code § 1208(e))
§ 132:7 Sua sponte conversion
§ 132:8 Effect of conversion from Chapter 12

## III. DISMISSAL

§ 132:9 Request of debtor (Code § 1208(b))
§ 132:10 Request of party in interest (Code § 1208(c))
§ 132:11 Sua sponte dismissal
§ 132:12 Effect of dismissal (Code § 349)

# CHAPTER 133. PLAN (CODE §§ 1221-1223)

## I. IN GENERAL

§ 133:1 Background
§ 133:2 Who may file
§ 133:3 When to file (Code § 1221)

## II. MANDATORY PROVISIONS

§ 133:4 Generally (Code § 1222)
§ 133:5 Submission of future income to trustee (Code § 1222(a)(1))
§ 133:6 Payment in full of priority claims (Code § 1222(a)(2))
§ 133:7 Equal treatment of classified claims and interests (Code § 1222(a)(3))
§ 133:8 Exception to payment in full of priority claims (Code § 1222(a)(4))

## III. PERMISSIVE PROVISIONS

§ 133:9 Division of unsecured claims (Code § 1222(b)(1))
§ 133:10 Modification of rights of creditors (Code § 1222(b)(2))
§ 133:11 Cure or waiver of defaults (Code § 1222(b)(3))
§ 133:12 Concurrent payments for secured and unsecured claims (Code § 1222(b)(4))
§ 133:13 Cure of defaults on long-term obligations (Code § 1222(b)(5))

§ 133:14 Assumption, rejection, or assignment of executory contracts and unexpired leases (Code § 1222(b)(6))
§ 133:15 Payment of claims (Code § 1222(b)(7))
§ 133:16 Sale of all or any part of property (Code § 1222(b)(8))
§ 133:17 Payment of secured claims (Code § 1222(b)(9))
§ 133:18 Vesting of property of estate (Code § 1222(b)(10))
§ 133:19 Payment of interest on domestic support obligations (Code § 1222(b)(11))
§ 133:20 Other provisions (Code § 1222(b)(12))

IV. PRECONFIRMATION MODIFICATION

§ 133:21 Generally (Code § 1223)

Appendix 133-A. Practice Aids

CHAPTER 134. CONFIRMATION OF PLAN (CODE §§ 1224, 1225)

I. PROCEDURAL ASPECTS

§ 134:1 Confirmation hearing (Code § 1224)
§ 134:2 Objection to confirmation
§ 134:3 Burden of proof

II. CONFIRMATION STANDARDS

§ 134:4 In general (Code § 1225)
§ 134:5 Compliance with code (Code § 1225(a)(1))
§ 134:6 Payment of all charges (Code § 1225(a)(2))
§ 134:7 Plan proposed in good faith free of illegality (Code § 1225(a)(3))
§ 134:8 Value of payments compared to Chapter 7 liquidation (Code § 1225(a)(4))
§ 134:9 Treatment of holders of secured claims (Code § 1225(a)(5))
§ 134:10 Treatment of domestic support obligations (Code § 1225(a)(7))
§ 134:11 Treatment of interests
§ 134:12 Ability to comply with plan (Code § 1225(a)(6))
§ 134:13 Disposable income
§ 134:14 Time limits on payments (Code § 1222(c))

Appendix 134-A. Practice Aids

CHAPTER 135. CLAIMS (CODE § 1226)

I. IN GENERAL

§ 135:1 Governing law
§ 135:2 Definitions—Claim

§ 135:3 —Creditor
§ 135:4 Proofs of interest

## II. PROOFS OF CLAIM

§ 135:5 Who may file
§ 135:6 What to file
§ 135:7 Where and when to file
§ 135:8 Necessity for filing
§ 135:9 Withdrawal of claims

## III. ALLOWANCE OF CLAIMS

§ 135:10 In general
§ 135:11 Objection to claims
§ 135:12 Disallowed claims
§ 135:13 Reconsideration of claims
§ 135:14 Postpetition claims
§ 135:15 Estimation of contingent and unliquidated claims and of certain rights to payment
§ 135:16 Claims for reimbursement or contribution
§ 135:17 Subordination of claims

# CHAPTER 136. POSTCONFIRMATION MATTERS (CODE §§ 1227, 1229, 1230)

§ 136:1 Effects of confirmation (Code § 1227)
§ 136:2 Financing of farming operations
§ 136:3 Sales of property of debtor and of estate
§ 136:4 Role of trustee (Code § 1228(e))
§ 136:5 Orders to third parties
§ 136:6 Retention of jurisdiction by court
§ 136:7 Modification of plan (Code § 1229)
§ 136:8 Revocation of confirmation (Code § 1230)

Appendix 136-A. Practice Aids

# CHAPTER 137. DISCHARGE (CODE § 1228)

## I. TIMING AND SCOPE

§ 137:1 Following completion of payments (Code § 1228(a))
§ 137:2 Scope of discharge
§ 137:3 Comparison with Chapters 7, 11, and 13 discharges
§ 137:4 Hardship discharge (Code § 1228(b))

## II. PROCEDURE

§ 137:5 Hearing (Code § 1228(f))
§ 137:6 Objections
§ 137:7 Revocation (Code § 1228(d))

Appendix 137-A. Practice Aids

## CHAPTER 138. TAX TREATMENT FOR CHAPTER 12 DEBTORS (CODE § 1231)

§ 138:1 Tax exemptions (Code § 1231(a))
§ 138:2 Tax determination (Code § 1231(b))
§ 138:3 Capital gains on the sale of farm assets (Code § 1222(a)(2) and § 1223)
§ 138:4 Government claims upon sale of property (Code § 1232)

## SUBPART 20. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME: ADMINISTRATION AND THE ESTATE (CODE §§ 1301-1308)

## CHAPTER 139. INTRODUCTION TO CHAPTER 13 OF THE CODE

### I. BACKGROUND

§ 139:1 Scope of Chapter 13 coverage
§ 139:2 Origins of wage earner adjustments
§ 139:3 Wage earner rehabilitation prior to 1938
§ 139:4 Former Chapter XIII
§ 139:5 Commission on Bankruptcy Laws
§ 139:6 1978 Legislative solutions to former Chapter XIII problems
§ 139:7 1984 Amendments to Chapter 13
§ 139:8 1986 Amendments to Chapter 13
§ 139:9 1990 Amendments to Chapter 13
§ 139:10 1994 Amendments to Chapter 13
§ 139:11 1998 Amendments relevant to Chapter 13
§ 139:12 2005 Amendments to Chapter 13

### II. OVERVIEW OF CHAPTER 13

§ 139:13 Summary of provisions
§ 139:14 Relation of Chapter 13 to other Bankruptcy Code provisions

Appendix 139-A. Practice Aids

## CHAPTER 140. VENUE IN CHAPTER 13 CASES

§ 140:1 Cases and proceedings
§ 140:2 Change of venue

# CHAPTER 141. ELIGIBILITY TO FILE UNDER CHAPTER 13 (CODE § 109)

## I. TYPE OF DEBTOR

§ 141:1 Individuals only
§ 141:2 Husband and wife
§ 141:3 Partnerships and corporations
§ 141:4 Trusts and trustees

## II. DEBT LIMITATIONS

§ 141:5 Generally
§ 141:6 Secured and unsecured debts
§ 141:7 Contingent, unliquidated, and disputed debts
§ 141:8 Joint debts

## III. OTHER REQUIREMENTS

§ 141:9 Regular income requirement
§ 141:10 Ability to make payments under plan
§ 141:11 Effect of debtor having multiple bankruptcy cases pending
§ 141:12 Good faith filing requirement
§ 141:13 Dismissal of prior bankruptcy case as bar to refiling under Code § 109(g)
§ 141:14 Prepetition briefing (Code § 109(h))
§ 141:15 Burden of proof
§ 141:16 Effects of ineligibility
§ 141:17 Effects of prior discharge

# CHAPTER 142. COMMENCEMENT OF A CHAPTER 13 CASE

§ 142:1 Filing of petition
§ 142:2 Filing fee
§ 142:3 Lists, schedules, and statements
§ 142:4 Compensation of debtor's attorney
§ 142:5 Amendments to petitions, schedules, and statements

Appendix 142-A. Practice Aids

# CHAPTER 143. AUTOMATIC STAY, CODEBTOR STAY, AND UTILITY STAY (CODE §§ 362, 1301 & 366)

## I. IN GENERAL

§ 143:1 Introduction
§ 143:2 Background

§ 143:3 Jurisdiction

## II. ELIGIBILITY AND THE AUTOMATIC STAY

§ 143:4 Code § 362(b)(21)
§ 143:5 Multiple bankruptcy filings within one year
§ 143:6 Credit counseling and the stay

## III. RELIEF FROM STAY (CODE § 362(D))

§ 143:7 Procedural requirements (Code § 362(e))
§ 143:8 Effect of confirmation (Code § 1327)
§ 143:9 Burden of proof (Code § 362(g))
§ 143:10 Cause under Code § 362(d)(1)
§ 143:11 No equity under Code § 362(d)(2)
§ 143:12 In rem relief under Code § 362(d)(4)

## IV. OTHER EXCEPTIONS AND LIMITATIONS

§ 143:13 Property of the estate concerns
§ 143:14 Good-faith purchasers (Code §§ 549(c) and 362(b)(24))
§ 143:15 Residential lessors: prepetition judgment (Code § 362(b)(22) and (l))
§ 143:16 Endangerment of property (Code § 362(b)(23) and (m))
§ 143:17 Automobiles
§ 143:18 Taxes
§ 143:19 Family law exceptions (Code § 362(b)(2))
§ 143:20 Criminal proceedings and fines
§ 143:21 Employee retirement plan loans (Code § 362(b)(19))
§ 143:22 Administrative freeze

## V. AUTOMATIC STAY VIOLATIONS

§ 143:23 Void/voidable/invalid
§ 143:24 Annulment of stay
§ 143:25 Damages for stay violations (Code § 362(k))

## VI. CODEBTOR STAY (CODE § 1301)

§ 143:26 Origin of the codebtor stay
§ 143:27 Scope of the codebtor stay
§ 143:28 Relief from the codebtor stay

## VII. STAY OF TERMINATION OF UTILITY SERVICES (CODE § 366)

§ 143:29 Scope of utility stay
§ 143:30 Adequate assurance of future payment

Appendix 143-A. Practice Aids

# CHAPTER 144. TRUSTEE POWERS AND DUTIES (CODE §§ 1302, 1326)

§ 144:1 In general

§ 144:2 Appointment and compensation (Code § 1302(a))
§ 144:3 Powers and mandatory duties (Code § 1302(b))
§ 144:4 Payments under plan (Code § 1326)
§ 144:5 Other powers and duties
§ 144:6 Removal and misconduct (Code § 324)
§ 144:7 Child support notice (Code § 1302(d))

Appendix 144-A. Practice Aids

## CHAPTER 145. POWERS AND DUTIES OF CHAPTER 13 DEBTOR (CODE §§ 1303, 1304, 1308, 1326(a))

§ 145:1 Meeting of creditors and discharge hearing
§ 145:2 Statements, schedules, plan, and cooperation
§ 145:3 Tax returns (Code § 1308)
§ 145:4 Use, sale, and lease of property and obtaining credit (Code § 1303)
§ 145:5 Debtor engaged in business (Code § 1304)
§ 145:6 Duty to commence payments (Code § 1326(a))
§ 145:7 Avoidance and recovery powers

## CHAPTER 146. CLAIMS (CODE § 1305)

### I. IN GENERAL

§ 146:1 Definition of claim (Code § 101(5))

### II. WHO MAY FILE

§ 146:2 Creditor (Code § 501(a))
§ 146:3 Debtor or trustee (Code § 501(c))
§ 146:4 Codebtor (Code § 501(b))

### III. PROOF OF CLAIM

§ 146:5 Necessity for filing (Bankr. Rule 3002)
§ 146:6 Form for filing (Bankr. Rule 3001)
§ 146:7 Place for filing (Bankr. Rule 5005)
§ 146:8 Time for filing (Bankr. Rule 3002(c))

### IV. ALLOWANCE OF CLAIMS

§ 146:9 Procedure and objections (Code § 502(b))
§ 146:10 Determination of secured status (Code § 506(a))
§ 146:11 Oversecured claims (Code § 506(b))
§ 146:12 Priority claims (Code § 507)
§ 146:13 Claims for attorney's fees
§ 146:14 Reimbursement, contribution, and other special claims (Code § 502(e))
§ 146:15 Estimation of contingent and unliquidated claims (Code § 502(c))

§ 146:16 Reconsideration of claim (Bankr. Rule 3008)
§ 146:17 Subordination of claims (Code § 510(c))
§ 146:18 Withdrawal of claim (Bankr. Rule 3006)

## V. POSTPETITION CLAIMS

§ 146:19 Filing (Code § 1305(a))
§ 146:20 Allowance (Code § 1305(b))

# CHAPTER 147. PROPERTY OF THE ESTATE (CODE § 1306)

## I. IN GENERAL

§ 147:1 Generally (Code § 1306)
§ 147:2 Exemptions (Code § 522(b))
§ 147:3 Lien avoidance (Code § 522(f))

## II. CASELAW INTERPRETATION OF PROPERTY OF THE ESTATE IN CHAPTER 13 CASES

§ 147:4 Generally
§ 147:5 Property of personal corporations and partnerships
§ 147:6 Pension benefits
§ 147:7 Entitlement program benefits
§ 147:8 Tax refunds and levies
§ 147:9 Contracts and leases
§ 147:10 Insurance policies and proceeds
§ 147:11 Rights of redemption
§ 147:12 Interests in real property
§ 147:13 Marital property; support obligations
§ 147:14 Causes of action
§ 147:15 Garnished wages

# CHAPTER 148. CONVERSION AND DISMISSAL (CODE § 1307)

## I. CONVERSION OF CHAPTER 13 CASE

§ 148:1 Conversion from Chapter 13 to Chapter 7 (Code § 1307(a))
§ 148:2 Conversion from Chapter 13 to Chapter 11 or 12 (Code § 1307(d))
§ 148:3 Effects of conversion (Code § 348(f))

## II. DISMISSAL OF CHAPTER 13 CASE

§ 148:4 Dismissal of Chapter 13 on request of debtor (Code § 1307(b))
§ 148:5 Dismissal of Chapter 13 case on request of other party in interest (Code § 1307(c))

§ 148:6 Effects of dismissal (Code § 349)
§ 148:7 "Reinstatement" of a Chapter 13 plan

### III. CONVERSION TO CHAPTER 13

§ 148:8 Conversion from Chapter 7 to Chapter 13 (Code § 706(a))
§ 148:9 Conversion from Chapter 11 to Chapter 13 (Code § 1112(d))
§ 148:10 Effects of conversion to Chapter 13

Appendix 148-A. Practice Aids

## SUBPART 21. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME: THE PLAN (CODE §§ 1321-1330)

## CHAPTER 149. CHAPTER 13 PLAN (CODE §§ 1321, 1322)

### I. IN GENERAL

§ 149:1 Who may file and when (Code § 1321)
§ 149:2 What constitutes a plan

### II. MANDATORY PROVISIONS

§ 149:3 Future income (Code § 1322(a))
§ 149:4 Priority claims (Code § 1322(a)(2))
§ 149:5 Uniform payment of claims within a class (Code § 1322(a)(3))

### III. PERMISSIVE PROVISIONS

§ 149:6 Classification of claims (Code § 1322(b)(1))
§ 149:7 Modification of rights of creditors (Code § 1322(b)(2))
§ 149:8 Curing or waiving of defaults (Code §§ 1322(b)(3) and 1322(c))
§ 149:9 Concurrent payments to secured and unsecured claimants (Code § 1322(b)(4))
§ 149:10 Curing default and maintaining payments on long-term obligations (Code § 1322(b)(5) and (e))
§ 149:11 Payment of postpetition claims (Code § 1322(b)(6))
§ 149:12 Assumption, rejection, or assignment of executory contracts and unexpired leases (Code § 1322(b)(7))
§ 149:13 Payment of claims from property (Code § 1322(b)(8))
§ 149:14 Vesting of property (Code § 1322(b)(9))
§ 149:15 Postpetition interest on a nondischargeable debt (Code § 1322(b)(10))
§ 149:16 Pension loans (Code § 1322(f))
§ 149:17 Other provisions (Code § 1322(b)(11))

## IV. DURATION OF PLAN

§ 149:18 Limitation on payment period and "cause" for extension (Code § 1322(d))

Appendix 149-A. Practice Aids

# CHAPTER 150. MODIFICATION OF PLAN (CODE §§ 1323, 1329)

§ 150:1 Modification before confirmation (Code § 1323)
§ 150:2 Modification after confirmation (Code § 1329)
§ 150:3 —Treatment of secured claims
§ 150:4 Temporary provision regarding COVID-19

Appendix 150-A. Practice Aids

# CHAPTER 151. CONFIRMATION OF PLAN (CODE §§ 1324, 1325, 1327, 1330)

## I. PROCEDURE

§ 151:1 Confirmation hearing (Code § 1324)
§ 151:2 Objection to confirmation (Bankr. Rule 3015)

## II. CONFIRMATION STANDARDS

§ 151:3 In general (Code § 1325(a))
§ 151:4 Compliance with Code (Code § 1325(a)(1))
§ 151:5 Payment of all charges (Code § 1325(a)(2))
§ 151:6 Good faith (Code § 1325(a)(3))
§ 151:7 —Complete and accurate disclosures
§ 151:8 Good faith—Payments to unsecured creditors
§ 151:9 —Debts nondischargeable in Chapter 7
§ 151:10 —Cases by circuits
§ 151:11 "Best interests of creditors" test (Code § 1325(a)(4))
§ 151:12 Holders of secured claims (Code § 1325(a)(5))
§ 151:13 —Valuation of secured claims
§ 151:14 Holders of secured claims—Interest
§ 151:15 Feasibility (Code § 1325(a)(6))
§ 151:16 The petition was filed in good faith (Code § 1325(a)(7))
§ 151:17 Domestic support obligations (Code § 1325(a)(8))
§ 151:18 Filing of tax returns (Code § 1325(a)(9))
§ 151:19 "Disposable income" test (Code § 1325(b))
§ 151:20 —Projected disposable income (Code § 1325(b)(1)(B))
§ 151:21 "Disposable income" test—Calculating the Chapter 13 debtor's income
§ 151:22 —Expenses
§ 151:23 —Applicable commitment period

## III. EFFECTS OF CONFIRMATION

§ 151:24 Income deduction orders (Code § 1325(c))

§ 151:25 Binding effect, vesting of property, and lien survival (Code § 1327)
§ 151:26 Revocation of confirmation (Code § 1330)
Appendix 151-A. Practice Aids

## CHAPTER 152. PAYMENTS UNDER THE PLAN (CODE § 1326)

§ 152:1 Amount of preconfirmation payments (Code § 1326(a)(1))
§ 152:2 Retention of preconfirmation payments by trustee (Code § 1326(a)(2))
§ 152:3 Postconfirmation payments by the trustee (Code § 1326(b))

## CHAPTER 153. DISCHARGE (CODE § 1328)

§ 153:1 After completion of payments (Code § 1328(a))
§ 153:2 Conditions and limitations for completion discharge (Code § 1328(g) and (h))
§ 153:3 Debts excepted from completion discharge (Code § 1328(a))
§ 153:4 Hardship discharge (Code § 1328(b))
§ 153:5 Postpetition claims (Code § 1328(d))
§ 153:6 Effect of prior discharge (Code § 1328(f))
§ 153:7 Revocation of discharge (Code § 1328(e))
§ 153:8 The deceased debtor: Rule 1016's application to the Chapter 13 case
§ 153:9 The deceased debtor: Case management and representation
§ 153:10 The deceased debtor: Procedural hurdles
§ 153:11 Temporary provision regarding discharge pending default
Appendix 153-A. Practice Aids

# SUBPART 22. ANCILLARY AND OTHER CROSS-BORDER CASES

## CHAPTER 154. CROSS-BORDER INSOLVENCIES (CODE §§ 306, 1501–1532)

### I. INTRODUCTION

§ 154:1 International insolvency and the scope of Chapter 15
§ 154:2 Applicability of other Bankruptcy Code sections and the Bankruptcy Rules to Chapter 15 cases (Code § 103)
§ 154:3 Who may be a debtor under Chapter 15 (Code §§ 109(a), 1501(b))

### II. JURISDICTION AND VENUE

§ 154:4 Venue for Chapter 15 cases
§ 154:5 Bankruptcy court subject matter jurisdiction in cross-border insolvencies

§ 154:6 Bankruptcy court in rem jurisdiction in cross-border insolvencies
§ 154:7 Bankruptcy court personal jurisdiction over the foreign representative (Code §§ 306 and 1510)
§ 154:8 Forum non conveniens
§ 154:9 Service of process outside the U.S. (Rule 7004)

## III. CHAPTER 15

§ 154:10 The policies governing Chapter 15 (Code §§ 1501, 1506, 1507 and 1508)
§ 154:11 "Foreign proceeding" and "foreign representative" (Code §§ 101(23), 101(24))
§ 154:12 Permitted actions of foreign representatives before recognition (Code § 1509)
§ 154:13 Recognition of a foreign proceeding (Code § 1515); COMI issues
§ 154:14 Modification, revocation or termination of recognition (Code §§ 1506, 1517)
§ 154:15 Treatment of foreign creditors in Chapter 15 cases (Code §§ 1513, 1514, 1532)
§ 154:16 Provisional relief (Code § 1519)
§ 154:17 The effect of recognition (Code §§ 1520, 1521)
§ 154:18 Automatic relief upon recognition of a foreign main proceeding (Code § 1520)
§ 154:19 Additional relief (Code §§ 1521, 1507)
§ 154:20 General principles of comity
§ 154:21 Standards for additional assistance: just treatment of all claim holders (Code § 1507(b)(1) and former § 304(c)(1))
§ 154:22 Standards for additional assistance; protection of U.S. claim holders against prejudice and inconvenience (Code § 1507(b)(2) and former § 304(c)(2))
§ 154:23 Standards for additional assistance: prevention of preferential or fraudulent dispositions (Code § 1507(b)(3) and former § 304(c)(3))
§ 154:24 Standards for additional assistance—Distributions of proceeds of the estate substantially in accordance with Title 11 (Code § 1507(b)(4) and former § 304(c))
§ 154:25 —Opportunity for a fresh start (Code § 1507(b)(5) and former § 304(c)(6))
§ 154:26 Protection of creditors and other interested persons (Code § 1522)
§ 154:27 Cooperation with foreign courts and foreign representatives (Code §§ 1518, 1525)
§ 154:28 Concurrent proceedings (Code §§ 1511, 1531)
§ 154:29 Coordination between U.S. and foreign courts (Code §§ 1529, 1530)
§ 154:30 Abstention (Code § 305)

# Volume 6

# PART III. ANALYSIS OF RELATED LAWS AND ISSUES

## SUBPART 23. TAX CONSIDERATIONS

## CHAPTER 155. GENERAL TAX CONSIDERATIONS RELATING TO BANKRUPTCY

### I. IN GENERAL

§ 155:1 Introduction
§ 155:2 Exceptions to automatic stay

### II. RESPONSIBILITY FOR FILING INCOME TAX RETURNS

§ 155:3 Prior Law
§ 155:4 Partnerships
§ 155:5 Individuals
§ 155:6 Corporation

### III. TAX ISSUES REGARDING THE ESTATE

§ 155:7 Tax attributes
§ 155:8 Accounting period
§ 155:9 Estate's deductions, credits, and employment taxes
§ 155:10 —Administrative expenses
§ 155:11 Net operating losses and credits
§ 155:12 Tax liability
§ 155:13 Abandonment

### IV. TAX ISSUES REGARDING THE DEBTOR

§ 155:14 Short-year election
§ 155:15 Attribute carryover to debtor

## CHAPTER 156. INCOME FROM CANCELLATION OF INDEBTEDNESS

### I. GENERAL CONSIDERATIONS

§ 156:1 Introduction
§ 156:2 General rules
§ 156:3 Debt discharge v. debt modification
§ 156:4 Attribute reduction

§ 156:5 Basis reduction under § 1017
§ 156:6 Determination of insolvency

## II. INCOME CONSEQUENCES OF DISCHARGE OR CANCELLATION OF INDEBTEDNESS IN PARTICULAR SITUATIONS

§ 156:7 Discharge of qualified farm indebtedness
§ 156:8 Purchase money reduction
§ 156:9 Discharge of qualified real property business indebtedness
§ 156:10 Qualified principal residence indebtedness
§ 156:11 Use of mortgaged property to cancel debt
§ 156:12 Discharge of nonrecourse debt
§ 156:13 Partnership: cancellation of indebtedness
§ 156:14 S corporation: cancellation of indebtedness
§ 156:15 Issuance of stock for debt
§ 156:16 Issuance of partnership equity for debt
§ 156:17 Original issue discount (OID)
§ 156:18 Other debt discharge provisions

# CHAPTER 157. TAX CONSEQUENCES OF BUSINESS REORGANIZATIONS UNDER CHAPTER 11

§ 157:1 Introduction
§ 157:2 Tax treatment of corporate reorganization in general
§ 157:3 Tax-free reorganization provisions
§ 157:4 —Types of tax-free reorganizations
§ 157:5 —Effect of tax-free reorganization
§ 157:6 Internal Revenue Code carryover rules
§ 157:7 Judicial restrictions on tax-free reorganizations
§ 157:8 —Business purpose
§ 157:9 —Continuity of shareholder interest
§ 157:10 —Continuity of business enterprise
§ 157:11 Business reorganizations under Chapter 11
§ 157:12 —State and local tax consequences
§ 157:13 —Treatment of tax claims
§ 157:14 —Effect of confirmation of plan
§ 157:15 —Carryover of corporate tax attributes
§ 157:16 —Cancellation of indebtedness income
§ 157:17 —Determination of tax effect
§ 157:18 "G" reorganization
§ 157:19 —Transfer of assets
§ 157:20 —Continuity of interest
§ 157:21 —Continuity of business
§ 157:22 —Business purpose
§ 157:23 —Dominance of "G" reorganization
§ 157:24 —Tax treatment

§ 157:25 Liquidating trusts

## CHAPTER 158. NET OPERATING LOSS

§ 158:1 Introduction
§ 158:2 Change of ownership
§ 158:3 —Owner shift
§ 158:4 —Equity structure shift
§ 158:5 —Indirect ownership
§ 158:6 —Options
§ 158:7 Section 382 limitation
§ 158:8 —Built-in gains and losses
§ 158:9 —Reductions in Section 382 limitations
§ 158:10 Bankruptcy exception—I.R.C. § 382 (l)(5)
§ 158:11 —I.R.C. § 382(l)(6)
§ 158:12 Other attribute
§ 158:13 Worthless stock deduction
§ 158:14 Summary of net operating loss provisions
§ 158:15 Example: impact of the net operating loss carryover in negotiating a plan of reorganization

## CHAPTER 159. THE TRUST FUND (100%) RECOVERY

§ 159:1 Introduction
§ 159:2 Nature of trust fund recovery (100% penalty)
§ 159:3 Responsible person
§ 159:4 Bankruptcy court determination
§ 159:5 IRS procedure
§ 159:6 Designation of payments
§ 159:7 Enforcement of liability against officers
§ 159:8 Interest during bankruptcy

# SUBPART 24. LITIGATION

## CHAPTER 160. INTRODUCTION TO BANKRUPTCY LITIGATION

### I. GENERAL CONSIDERATIONS

§ 160:1 Introduction
§ 160:2 Bankruptcy case
§ 160:3 Bankruptcy proceeding

### II. TYPES OF MATTERS OR PROCEEDINGS

§ 160:4 Adversary proceeding (Bankr. Rule 7001)
§ 160:5 Contested matters (Bankr. Rule 9014)
§ 160:6 Uncontested matters
§ 160:7 Contested involuntary proceedings

§ 160:8 Core and noncore proceedings

## III. NAMING ACTIONS OR DOCUMENTS THAT ARISE IN CASES AND PROCEEDINGS

§ 160:9 Generally
§ 160:10 Initiatory pleadings
§ 160:11 Claim
§ 160:12 Request
§ 160:13 Motion
§ 160:14 Application
§ 160:15 —Objection

## IV. ROLE OF THE JUDGE

§ 160:16 History
§ 160:17 Diminished administrative role
§ 160:18 Supervisory role: specific exceptions

# CHAPTER 161. PLEADINGS

§ 161:1 Procedural overview
§ 161:2 Bankruptcy Rules applicable to adversary proceedings
§ 161:3 Bankruptcy Rules applicable to contested matters
§ 161:4 Effect of Bankruptcy Rule 7001
§ 161:5 Adversary/contested matter classification issues
§ 161:6 Types of pleadings; corporate ownership statements (Bankr. Rule 7007, 7007.1)
§ 161:7 Drafting the complaint (Bankr. Rule 7008)
§ 161:8 Responding to the complaint (Bankr. Rule 7012)
§ 161:9 —Affirmative defenses
§ 161:10 The counterclaim and reply thereto (Bankr. Rule 7013)
§ 161:11 Entry of default and default judgment
§ 161:12 Relief from Judgments

Appendix 161-A. Practice Aids

# CHAPTER 162. SERVICE OF PROCESS (BANKR. RULE 7004)

§ 162:1 Introduction
§ 162:2 Summons; Service; Proof of Service (Bankr. Rule 7004(a))
§ 162:3 Methods of serving process—Federal Rule 4
§ 162:4 —Service by first class mail (Bankr. Rule 7004(b))
§ 162:5 —Service on an insured depository institution
§ 162:6 —Service by publication (Bankr. Rule 7004(c))
§ 162:7 Nationwide service of process (Bankr. Rule 7004(d))
§ 162:8 Time limit for service within the United States (Bankr. Rule 7004(e))
§ 162:9 Defending against improper service
§ 162:10 Service and filing of pleadings and other papers (Bankr. Rule 7005)

Appendix 162-A. Practice Aids

# CHAPTER 163. DISCOVERY

## I. IN GENERAL

### A. PRELIMINARY MATTERS

§ 163:1 Introduction
§ 163:2 General rules of discovery

### B. GENERAL PROVISIONS CONCERNING DISCOVERY

§ 163:3 Required disclosures; methods to discover additional matter (Bankr. Rule 7026(a))
§ 163:4 Discovery scope and limits (Bankr. Rule 7026(b))
§ 163:5 Protective orders (Bankr. Rule 7026(c))
§ 163:6 Timing and sequence of discovery (Bankr. Rule 7026(d))
§ 163:7 Supplementation of disclosures and responses (Bankr. Rule 7026(e))
§ 163:8 Meeting of parties: planning for discovery (Bankr. Rule 7026(f))
§ 163:9 Signing of disclosures, discovery requests, responses, and objections (Bankr. Rule 7026(g))
§ 163:10 Stipulations regarding discovery procedures (Bankr. Rule 7029)

### C. DEPOSITIONS

§ 163:11 Before actions and pending appeal (Bankr. Rule 7027)
§ 163:12 Persons before whom depositions may be taken (Bankr. Rule 7028)
§ 163:13 Depositions upon oral examination (Bankr. Rule 7030(a))
§ 163:14 —Notice; recording; accompanying documents; depositions of organizations and telephone depositions (Bankr. Rule 7030(b))
§ 163:15 —Improper objections at depositions (Bankr. Rule 7030(c))
§ 163:16 —Motion to terminate or limit examination (Bankr. Rule 7030(d))
§ 163:17 —Submission to witness; changes; signing (Bankr. Rule 7030(e))
§ 163:18 —Certification and filing by officer; exhibits; copies; notice of filing (Bankr. Rule 7030(f))
§ 163:19 —Failure to attend or to serve subpoena; expenses (Bankr. Rule 7030(g))
§ 163:20 Depositions upon written questions (Bankr. Rule 7031)
§ 163:21 Use of depositions in court proceedings (Bankr. Rule 7032)
§ 163:22 Effect of errors and irregularities in depositions (Bankr. Rule 7032(d))

§ 163:23 Situs of depositions

## D. OTHER DISCOVERY METHODS

§ 163:24 Interrogatories to parties (Bankr. Rule 7033)
§ 163:25 Production of documents and things, and entry upon land (Bankr. Rule 7034)
§ 163:26 Physical and mental examination of persons (Bankr. Rule 7035)
§ 163:27 Requests for admission (Bankr. Rule 7036)

## E. DISCOVERY OF ELECTRONICALLY STORED INFORMATION

§ 163:28 Overview of digital electronic data
§ 163:29 Types of e-data
§ 163:30 Unique characteristics of e-data
§ 163:31 Creation, storage, and management of e-data
§ 163:32 Software
§ 163:33 Fraud, alteration, and misuse of e-data— Alteration
§ 163:34 Fraud, alteration, and misuse of e-data—Deletion
§ 163:35 —Steganography
§ 163:36 —Encryption
§ 163:37 —Concealment
§ 163:38 —Tampering with hardware
§ 163:39 Special issues of e-mail and instant messaging
§ 163:40 Retrieval and recovery of e-data
§ 163:41 Deleted data
§ 163:42 E-data retrieval
§ 163:43 —Time is of the essence
§ 163:44 —Preliminary disclosure of hardware and software applications
§ 163:45 —Creating a forensic image
§ 163:46 —Using the forensic image—Search tools
§ 163:47 —"Best practices" are imperative
§ 163:48 Digital forensics
§ 163:49 —Deleted data
§ 163:50 —Metadata
§ 163:51 —Encrypted data and steganography
§ 163:52 Duty to preserve electronic data
§ 163:53 Initial discovery of hardware, systems, and software
§ 163:54 Establishing a search protocol
§ 163:55 Narrowing the focus of discovery
§ 163:56 Objections; relevance
§ 163:57 Privilege
§ 163:58 Proportionality and cost
§ 163:59 —Factors to consider—Responding party's cost
§ 163:60 — —Requesting party should bear burden
§ 163:61 — —Multi-factor balancing test
§ 163:62 Protective orders

§ 163:63 Special issues regarding discovery of e-mails and instant messaging—"De-duplication"
§ 163:64 Compelling discovery of digital data
§ 163:65 Appointing a neutral expert
§ 163:66 Rule 2004 examination
§ 163:67 Section 341 meeting of creditors
§ 163:68 Use of digital electronic data by trustees

F. SANCTIONS

§ 163:69 In general
§ 163:70 Particular sanctions

II. RULE 2004 EXAMINATIONS

§ 163:71 Introduction
§ 163:72 Procedure for obtaining authorization from the court
§ 163:73 Scope of examination
§ 163:74 Persons who may conduct exams
§ 163:75 Persons who may be examined
§ 163:76 Document discovery (Bankr. Rule 2004(c))
§ 163:77 Appeals

III. SECTION 341 MEETING OF CREDITORS

§ 163:78 In general

IV. PRIVILEGES IN BANKRUPTCY

§ 163:79 Introduction
§ 163:80 Attorney-client privilege
§ 163:81 —Trustee in Chapter 7
§ 163:82 —Trustee in Chapter 11
§ 163:83 —Individuals versus corporations
§ 163:84 —Improper assertion of attorney-client privilege
§ 163:85 Accountant-client privilege
§ 163:86 Fifth Amendment privilege

V. PROTECTION FROM DISCOVERY

§ 163:87 In general (Code § 107(b))
§ 163:88 Identity theft (Code § 107(c))

VI. MISCELLANEOUS

§ 163:89 Introduction
§ 163:90 Schedules and statement of affairs
§ 163:91 Trustee or debtor-in-possession reports (Bankr. Rule 2015)

Appendix 163-A. Practice Aids

## CHAPTER 164. PRETRIAL AND TRIAL PROCEDURES

§ 164:1 Pretrial motions and issues
§ 164:2 Evidence and witnesses at trial (Bankr. Rule 9017)
§ 164:3 Proposed findings of fact and conclusions of law in noncore proceedings (Bankr. Rule 9033)
§ 164:4 Form of judgment (Bankr. Rule 7054)
§ 164:5 Costs
§ 164:6 Interest on damages
§ 164:7 Attorney's fees
§ 164:8 Entry of judgment
§ 164:9 Posttrial motions (Bankr. Rules 7059, 9023, 9024)
§ 164:10 Effective date of order or judgment

Appendix 164-A. Practice Aids

## CHAPTER 165. JURY TRIAL

§ 165:1 Introduction
§ 165:2 Bankruptcy Act of 1898
§ 165:3 Bankruptcy Reform Act of 1978
§ 165:4 *Northern Pipeline Const. Co.*
§ 165:5 Emergency Rule
§ 165:6 1984 Amendments
§ 165:7 1983 Bankruptcy Rules
§ 165:8 1987 Bankruptcy Rules
§ 165:9 Caselaw prior to *Chase & Sanborn Corp.*
§ 165:10 *Granfinanciera, S.A. v. Nordberg (In re Chase & Sanborn corp.)*
§ 165:11 1994 Amendments
§ 165:12 Jury trials in core proceedings: four-part test
§ 165:13 Jury trials in noncore proceedings

## CHAPTER 166. INJUNCTIVE RELIEF

§ 166:1 Statutory authority (Code § 105)
§ 166:2 Procedural requirements (Bankr. Rule 7065)
§ 166:3 Appeals

## CHAPTER 167. SETTLEMENTS (BANKR. RULE 9019)

§ 167:1 Procedural requirements (Bankr. Rule 9019)
§ 167:2 Substantive considerations

Appendix 167-A. Practice Aids

## CHAPTER 168. MEDIATION

§ 168:1 Introduction
§ 168:2 Origins of and authority for bankruptcy court mediation
§ 168:3 Confidentiality issues arising in bankruptcy mediation

§ 168:4 The judicial role
§ 168:5 The mediator's role—Qualifications and training programs for mediators
§ 168:6 —Mediator's oath and ethical responsibilities
§ 168:7 —Techniques and strategies in mediation sessions
§ 168:8 —The mediator must close the deal
§ 168:9 The role of attorneys—Preparing for the mediation
§ 168:10 —Ethical considerations
§ 168:11 —Conduct of the mediation session
§ 168:12 —Concluding the mediation process
§ 168:13 The application of mediation to large Chapter 11 bankruptcies—Generally
§ 168:14 —Mass claims against the Chapter 11 estate
§ 168:15 The application of mediation to large Chapter 11 Bankruptcies—Negotiation of the plan of reorganization
§ 168:16 Arbitration as an alternative to mediation

Appendix 168-A. Practice Aids

## CHAPTER 169. ARBITRATION

§ 169:1 Competing policies of the Bankruptcy Code and the Federal Arbitration Act
§ 169:2 Underlying principles of the FAA
§ 169:3 Procedure for enforcing an arbitration agreement
§ 169:4 The treatment of arbitration agreements in bankruptcy
§ 169:5 Bankruptcy court review of an arbitration award or decision
§ 169:6 Drafting an arbitration provision

Appendix 169-A. Practice Aids

## CHAPTER 170. APPEALS

### I. INTRODUCTION

§ 170:1 Overview

### II. APPEALABILITY

#### A. REVIEW OF BANKRUPTCY APPELLATE PROVISIONS

§ 170:2 1898 Bankruptcy Act
§ 170:3 1978 Bankruptcy Code
§ 170:4 Bankruptcy Amendments Act of 1984

#### B. APPEAL TO BANKRUPTCY APPELLATE PANEL

§ 170:5 Overview
§ 170:6 History
§ 170:7 Constitutionality

§ 170:8 Limitations on jurisdiction and authority—Arising from status of bankruptcy courts
§ 170:9 —Under Title 28
§ 170:10 Strategic considerations in making opt-out decision

C. APPEAL TO DISTRICT COURT

§ 170:11 Overview (28 U.S.C.A. § 158(a))
§ 170:12 Final orders—Core proceedings
§ 170:13 —Noncore proceedings (28 U.S.C.A. § 158(c))
§ 170:14 Interlocutory orders—Core proceedings
§ 170:15 —Noncore proceedings
§ 170:16 Appeal of exclusivity orders

D. BINDING EFFECT OF FIRST LEVEL APPELLATE DECISIONS

§ 170:17 Generally

E. DIRECT APPEAL TO COURT OF APPEALS UNDER CODE § 158(d)

§ 170:18 Generally (28 U.S.C.A. § 158(d)(2))

F. APPEAL TO COURT OF APPEALS FROM JUDGMENTS BY DISTRICT COURTS AND BANKRUPTCY APPELLATE PANELS

1. In General

§ 170:19 Overview

2. Final Orders

a. In General

§ 170:20 Introduction

b. Core Proceedings

§ 170:21 Generally
§ 170:22 Disputes resembling general civil litigation
§ 170:23 Remand
§ 170:24 Two layers of review
§ 170:25 Federal Rule of Civil Procedure 54(b) certification
§ 170:26 Irreparable injury
§ 170:27 Separable disputes over priority or amount of claim
§ 170:28 Areas of conflict
§ 170:29 Litigation pointers

c. Noncore Proceedings

§ 170:30 Generally

3. Interlocutory Orders

§ 170:31 Generally

§ 170:32 Core proceedings
§ 170:33 Noncore proceedings

## III. STANDARD OF REVIEW

### A. IN GENERAL

§ 170:34 Generally
§ 170:35 History

### B. CLEARLY ERRONEOUS STANDARD

§ 170:36 Constitutionality
§ 170:37 Application

### C. ABUSE OF DISCRETION STANDARD

§ 170:38 Generally

### D. DE NOVO REVIEW

§ 170:39 Generally
§ 170:40 Appellate review distinguished
§ 170:41 Trial de novo distinguished
§ 170:42 Waiver

## IV. APPELLATE PROCEDURE

### A. IN GENERAL

§ 170:43 Introduction
§ 170:44 Manner of taking appeal
§ 170:45 Appeals to district courts from bankruptcy court orders—Appeals as of right
§ 170:46 —Appeals by leave
§ 170:47 —Litigation pointers
§ 170:48 Appeals to Bankruptcy Appellate Panels from bankruptcy court orders
§ 170:49 Direct appeals to circuit courts of appeals from bankruptcy court orders
§ 170:50 Appeals to courts of appeals from appellate decisions of district courts or Bankruptcy Appellate Panels
§ 170:51 —Appeals of right
§ 170:52 —Appeals by leave
§ 170:53 —Litigation pointers
§ 170:54 Non consent to bankruptcy court jurisdiction
§ 170:55 Effect of appeal on trial court's jurisdiction
§ 170:56 Who takes appeal
§ 170:57 Standing
§ 170:58 Appellants
§ 170:59 Appellees
§ 170:60 Perfecting appeal

§ 170:61 Motions and Briefs
§ 170:62 Oral argument

B. TIME FOR FILING NOTICE OF APPEAL

1. In General

§ 170:63 Generally
§ 170:64 Separate judgment rule
§ 170:65 Effect of timely filed motion for reconsideration
§ 170:66 Multi-party appeals
§ 170:67 Government appeals
§ 170:68 Which days count in determining when filing period ends

2. Requests for Extension of Time

§ 170:69 Generally
§ 170:70 Reasonable reliance on official action
§ 170:71 Uncontrollable events
§ 170:72 Failure to receive notice of judgment
§ 170:73 Misunderstanding of law; carelessness
§ 170:74 *Consolidated Freightways* test
§ 170:75 Frivolous appeals

C. STAYS PENDING APPEAL

1. In General

§ 170:76 Generally
§ 170:77 Bonds or other security

2. Discretionary Stays

§ 170:78 Generally
§ 170:79 Likelihood of success on merits
§ 170:80 Irreparable injury to applicant
§ 170:81 Absence of harm to other parties
§ 170:82 Public interest

3. Effect of Failure to Obtain Stay

§ 170:83 Generally
§ 170:84 Sale orders mooted by failure to obtain stay pending appeal
§ 170:85 Postpetition financing orders mooted by failure to obtain stay pending appeal
§ 170:86 Other orders mooted by failure to obtain stay pending appeal
§ 170:87 Equitable Mootness

Appendix 170-A. Practice Aids

# SUBPART 25. RELATED LAWS AND ISSUES

## CHAPTER 171. ASSIGNMENT FOR THE BENEFIT OF CREDITORS

§ 171:1 Nature of a general assignment
§ 171:2 Commencement of an ABC
§ 171:3 Preemption by bankruptcy law
§ 171:4 Involuntary bankruptcy (Code § 303)
§ 171:5 Abstention (Code § 305)
§ 171:6 Standing of assignee
§ 171:7 Bankruptcy Code recognition of assignments
§ 171:8 Distribution scheme in ABCs
§ 171:9 Receivers as custodians under the Bankruptcy Code
§ 171:10 Receiverships under federal law
§ 171:11 Requirement that receivers provide an accounting
§ 171:12 Advantages of ABCs
§ 171:13 Disadvantages of ABCs

Appendix 171-A. Practice Aids

## CHAPTER 172. ETHICAL RESPONSIBILITIES

### I. FIDUCIARY DUTIES OF THE DEBTOR IN POSSESSION (DIP) AND DIP COUNSEL

§ 172:1 Sources of applicable law
§ 172:2 Fiduciary duties, in general
§ 172:3 Management of the estate
§ 172:4 DIP duties with respect to asset sales
§ 172:5 Drafting a reorganization plan
§ 172:6 Duties of DIP counsel

### II. QUALIFICATION TO SERVE AS DIP COUNSEL

§ 172:7 Disinterestedness and lack of any adverse interest
§ 172:8 Representation of multiple, affiliated entities
§ 172:9 Attorney direction by management
§ 172:10 Fee-related disqualification
§ 172:11 DIP counsel's representation of the estate's creditors
§ 172:12 Attorney's ownership interest or prior connections with the debtor
§ 172:13 Effectiveness of curative measures
§ 172:14 Disclosure is mandatory
§ 172:15 Sanctions for conflicts, nondisinterestedness, and nondisclosure
§ 172:16 Conclusive effect of fee award and indemnity for ethical violations

### III. PREPETITION RETAINERS

§ 172:17 Source of retainer

§ 172:18 Earned on receipt retainers
§ 172:19 Installment retainers and other Chapter 7 and 13 fee arrangements
§ 172:20 Limiting the scope of representation

## IV. REPRESENTATION OF CREDITORS AND COMMITTEES

§ 172:21 Conflicts of interest with bankruptcy estates
§ 172:22 Representation of multiple creditors
§ 172:23 Fiduciary duties of creditors committee members
§ 172:24 Committee counsel's fiduciary duties

## V. CLIENT MISCONDUCT AND IMPROPER REQUESTS

§ 172:25 Prepetition counseling
§ 172:26 Illegal client conduct during a bankruptcy case

## VI. ABUSIVE LITIGATION TACTICS

§ 172:27 Standards under Rule 9011 and related rules
§ 172:28 Obtaining sanctions
§ 172:29 Reporting bankruptcy misconduct
§ 172:30 Judicial disqualification

# CHAPTER 173. BANKRUPTCY CRIMES

§ 173:1 Introduction
§ 173:2 Detecting bankruptcy fraud—Red flags
§ 173:3 Criminal bankruptcy referrals (18 U.S.C.A. § 3057)
§ 173:4 Criminal bankruptcy investigations
§ 173:5 Indictment and discovery
§ 173:6 Venue
§ 173:7 Stay of civil proceedings
§ 173:8 Key bankruptcy crime statute (18 U.S.C.A. § 152)
§ 173:9 Criminal bankruptcy fraud (18 U.S.C.A. § 157)
§ 173:10 Other bankruptcy crime and related statutes (18 U.S.C.A. §§ 153 to 156)
§ 173:11 Aiding and abetting (18 U.S.C.A. § 2) and conspiracy (18 U.S.C.A. § 371)
§ 173:12 Obstruction of justice (18 U.S.C.A. § 1519)
§ 173:13 Defenses to bankruptcy crimes
§ 173:14 Fifth amendment privilege and immunity
§ 173:15 Sentencing in federal criminal bankruptcy cases
§ 173:16 Examples of bankruptcy crime prosecutions

# CHAPTER 174. LENDER LIABILITY

## I. BREACH OF CONTRACT

### A. BREACH OF A CONTRACT TO LOAN

§ 174:1 Generally

§ 174:2 Breach of an oral contract to loan
§ 174:3 —Definiteness
§ 174:4 —Statute of frauds
§ 174:5 Breach of a written contract to loan
§ 174:6 Liability based on promissory estoppel

### B. WRONGFUL DETERMINATION OF DEFAULT

§ 174:7 Generally
§ 174:8 Determining the standard of performance
§ 174:9 —Excuse of a condition through waiver
§ 174:10 —Completion of promise by substantial performance
§ 174:11 Determining the terms of the agreement
§ 174:12 Willful failure to account for modified terms under a bankruptcy plan

### C. BREACH OF THE DUTY OF GOOD FAITH

§ 174:13 Generally
§ 174:14 Standard
§ 174:15 Applicability
§ 174:16 —Good-faith duty to negotiate open terms
§ 174:17 —Good-faith duty to negotiate a refinancing agreement
§ 174:18 —Good-faith duty when terminating a loan

## II. TORT LIABILITY

§ 174:19 Fiduciary duties
§ 174:20 Negligence
§ 174:21 Fraud
§ 174:22 Deepening insolvency
§ 174:23 Defamation
§ 174:24 Interference with contractual relationship
§ 174:25 Interference with prospective advantage
§ 174:26 Duress
§ 174:27 Tortious breach of duty of good faith
§ 174:28 Intentional infliction of emotional distress
§ 174:29 Instrumentality
§ 174:30 —Agency
§ 174:31 —Partner/joint venturer
§ 174:32 —Alter ego
§ 174:33 Conversion
§ 174:34 Prima facie tort
§ 174:35 Aiding and abetting liability
§ 174:36 In pari delicto

## III. STATUTORY LIABILITY

### A. INTRODUCTION

§ 174:37 Generally

B. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

§ 174:38 Generally
§ 174:39 Secured creditor exemption
§ 174:40 Participating in the management
§ 174:41 Indicia of ownership to protect security interest
§ 174:42 Innocent purchaser defense
§ 174:43 Aiding and abetting liability

C. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

§ 174:44 Generally
§ 174:45 Pattern of racketeering activity
§ 174:46 Control of an enterprise
§ 174:47 Participate in an enterprise's affairs
§ 174:48 Invest in enterprise

D. SECURITIES LAWS

§ 174:49 Generally
§ 174:50 Controlling person liability
§ 174:51 Aiding and abetting liability

E. INTERNAL REVENUE CODE

§ 174:52 Generally
§ 174:53 Liability for supplying payroll funds
§ 174:54 Responsible person

F. FAIR LABOR STANDARDS ACT

§ 174:55 Generally

**IV. LITIGATION STRATEGIES**

A. PRETRIAL MOTIONS

§ 174:56 Generally
§ 174:57 Enforceability of arbitration clauses
§ 174:58 Enforceability of forum selection clauses
§ 174:59 Enforceability of choice-of-law provisions
§ 174:60 Motion to dismiss for lack of standing
§ 174:61 Motion to dismiss tort claims
§ 174:62 Motion to dismiss for failure to state a claim
§ 174:63 Collateral estoppel/res judicata
§ 174:64 Waiver of claims
§ 174:65 Motion to strike jury demand
§ 174:66 Summary judgment considerations

B. POSTTRIAL MOTIONS

§ 174:67 Motion for directed verdict

# CHAPTER 175. DOMESTIC RELATIONS

## I. BACKGROUND

§ 175:1 Generally

## II. AUTOMATIC STAY PROVISIONS AFFECTING DOMESTIC RELATIONS

### A. IN GENERAL

§ 175:2 Introduction
§ 175:3 Exceptions to the automatic stay
§ 175:4 —Prior to the 2005 Amendments
§ 175:5 —After the 2005 Amendments
§ 175:6 Relief from the automatic stay
§ 175:7 Actions in violation of the automatic stay
§ 175:8 Waivers of the stay by the debtor
§ 175:9 —Postbankruptcy waivers
§ 175:10 —Prebankruptcy waivers
§ 175:11 The stay's implications in reorganization cases

### B. EFFECT OF STAY IN SPECIFIC DOMESTIC RELATIONS SITUATIONS

§ 175:12 Generally
§ 175:13 Obtaining a divorce—Prior to the 2005 Amendments
§ 175:14 —After the 2005 Amendments
§ 175:15 Child custody and visitation—Prior to the 2005 Amendments
§ 175:16 —After the 2005 Amendments
§ 175:17 Establishment or modification of alimony, maintenance, or support—Prior to the 2005 Amendments
§ 175:18 —After the 2005 Amendments
§ 175:19 Paternity
§ 175:20 Collection of alimony, maintenance or support—Prior to the 2005 Amendments
§ 175:21 —After the 2005 Amendments
§ 175:22 Criminal actions, including criminal contempt
§ 175:23 Collection of attorney's fees
§ 175:24 Determinations of property of the estate and marital property

## III. PROPERTY OF ESTATE ISSUES AFFECTING DOMESTIC RELATIONS

§ 175:25 Generally
§ 175:26 Legal and equitable interests of debtor
§ 175:27 Community property
§ 175:28 Tenancy by entirety and other joint tenancies
§ 175:29 Property recovered by a trustee

§ 175:30 Postpetition property
§ 175:31 Exclusions from property of the bankruptcy estate
§ 175:32 Marital property
§ 175:33 Effect of trusts
§ 175:34 Exemptions

## IV. PRIORITY CLAIM ISSUES AFFECTING DOMESTIC RELATIONS

### A. PRIOR TO THE 2005 AMENDMENTS

§ 175:35 Introduction
§ 175:36 Legislative background
§ 175:37 Code § 507(a)(7)
§ 175:38 Requirements for allowance
§ 175:39 Priority treatment

### B. AFTER THE 2005 AMENDMENTS

§ 175:40 Generally
§ 175:41 Code § 507(a)(1)
§ 175:42 Requirements for allowance

## V. DISCHARGE AND DISCHARGEABILITY ISSUES AFFECTING DOMESTIC RELATIONS

§ 175:43 Introduction
§ 175:44 Exception to discharge of particular debt
§ 175:45 Time of complaints—Prior to the 2005 Amendments
§ 175:46 —After the 2005 Amendments
§ 175:47 Standard and burden of proof
§ 175:48 Waivers of discharge
§ 175:49 Revocation of discharge
§ 175:50 Preclusion and related doctrines—Res judicata and collateral estoppel
§ 175:51 Procedure
§ 175:52 Burden of proof
§ 175:53 Legislative background of Code § 523(a)(5)—Prior to the 2005 Amendments
§ 175:54 —Under the 2005 Amendments
§ 175:55 "Obligation payable to"
§ 175:56 Legislative background of Code § 523(a)(5)—Obligee prior to the 2005 Amendments
§ 175:57 —Obligee after the 2005 Amendments
§ 175:58 "In connection with"—Prior to the 2005 Amendments
§ 175:59 —After the 2005 Amendments
§ 175:60 Alimony, maintenance, or support in nature
§ 175:61 —Federal law controls
§ 175:62 —Substance of obligation
§ 175:63 —Intent of parties or state court

§ 175:64 —Factors used by courts to determine support intention
§ 175:65 —Distinguishing between property division and support
§ 175:66 —Changed circumstances
§ 175:67 —Hold-harmless or debt-assumption obligations
§ 175:68 —Specific expenses
§ 175:69 —Education expenses
§ 175:70 —Medical and health insurance expenses
§ 175:71 —Life insurance
§ 175:72 —Attorney's fees
§ 175:73 —Effect of assignment—Prior to the 2005 Amendments
§ 175:74 — —After the 2005 Amendments
§ 175:75 —Professional fees
§ 175:76 — —Effect of 2005 Amendments
§ 175:77 — —Standing
§ 175:78 — —Attorney's fees for spouse or child of debtor
§ 175:79 — —Attorney's fees for postdivorce proceedings
§ 175:80 — —Attorney's fees for custody disputes
§ 175:81 — —Debtor's own professional fees
§ 175:82 — —Children's own attorney's fees
§ 175:83 — —Guardian ad litem fees
§ 175:84 — —Attorney's fees and paternity suit fees for unmarried mother
§ 175:85 — —Psychologist's fees
§ 175:86 — —Accountant's fees
§ 175:87 Legislative background of Code § 523(a)(15)—Prior to the 2005 Amendments
§ 175:88 —After the 2005 Amendments
§ 175:89 Timing of complaint—Prior to the 2005 Amendments
§ 175:90 —After the 2005 Amendments
§ 175:91 Jurisdiction—Prior to the 2005 Amendments
§ 175:92 —After the 2005 Amendments
§ 175:93 Standing—Before the 2005 Amendments
§ 175:94 —After the 2005 Amendments
§ 175:95 Standard and burdens of proof
§ 175:96 —Initial burden on nature of debt—Prior to the 2005 Amendments
§ 175:97 — —After the 2005 Amendments
§ 175:98 —Burden of proof on defenses—Applicable only to cases filed prior to the 2005 Amendments
§ 175:99 —Burden shifting to defendant
§ 175:100 —Burden remains on plaintiff
§ 175:101 —Burden on defenses split
§ 175:102 —Burden of going forward shifts
§ 175:103 —Rebuttable presumption
§ 175:104 Elements of Code § 523(a)(15) exception
§ 175:105 Date for determination under Code § 523(a)(15)(A) and (B)
§ 175:106 Ability to pay test
§ 175:107 Greater benefit test

§ 175:108 Consideration of the totality of the circumstances
§ 175:109 Partial discharge
§ 175:110 —Impact of the 2005 Amendments

## VI. DOMESTIC RELATIONS CLAIMS IN REORGANIZATION CASES

§ 175:111 Generally
§ 175:112 Chapter 11 plans
§ 175:113 Chapter 12 plans
§ 175:114 Chapter 13 plans
§ 175:115 Effect of confirmation
§ 175:116 Modification of plans

# CHAPTER 176. PENSION CLAIMS AND ERISA

## I. PENSION BENEFITS IN BANKRUPTCY

§ 176:1 Introduction
§ 176:2 Statutory background
§ 176:3 Cases leading to *Shumate*
§ 176:4 The Supreme Court's decision in *Shumate*
§ 176:5 "ERISA qualified" plans
§ 176:6 Plans not governed by *Shumate*
§ 176:7 Plans subject to ERISA but not subject to ERISA § 206(d)(1)
§ 176:8 Plans not subject to ERISA
§ 176:9 —Plans without employees
§ 176:10 —Plans covering substantial numbers of nonemployees
§ 176:11 Challenges to a plan's tax-qualified status
§ 176:12 Qualified domestic relations orders
§ 176:13 The effect of a turnover order on innocent plan beneficiaries
§ 176:14 Other applications of Code § 541(c)(2)
§ 176:15 Exemption of retirement benefits under Code § 522
§ 176:16 Prebankruptcy planning and fraudulent intent
§ 176:17 Potential avoidance actions available to trustee
§ 176:18 Employee termination and severance benefits
§ 176:19 Bonus programs

## II. PENSIONS AND THE PENSION BENEFIT GUARANTY CORPORATION

### A. ERISA BACKGROUND

§ 176:20 Introduction
§ 176:21 Types of pension plans
§ 176:22 Statutory scheme
§ 176:23 —Description of PBGC
§ 176:24 —Controlled-group concepts

§ 176:25 Plan terminations—Voluntary terminations
§ 176:26 — —Standard terminations
§ 176:27 — —Distress terminations
§ 176:28 —Involuntary terminations
§ 176:29 —Mandatory terminations
§ 176:30 —Termination dates
§ 176:31 —Restorations
§ 176:32 Minimum funding requirements—Contribution requirements
§ 176:33 —Minimum funding waivers

B. BANKRUPTCY CONSIDERATIONS

§ 176:34 Making pension contributions during bankruptcy
§ 176:35 PBGC claims: overview
§ 176:36 Employer liability claim: amount
§ 176:37 Employer liability claim: priority
§ 176:38 PBGC claims for minimum funding contributions
§ 176:39 Premium claims
§ 176:40 Strategies in resolving pension liabilities

CHAPTER 177. INTELLECTUAL PROPERTY

I. AN OVERVIEW OF INTELLECTUAL PROPERTY

A. GENERALLY

§ 177:1 Introduction
§ 177:2 Categories of intellectual property
§ 177:3 Intellectual property and cyberassets

B. DEFINITIONS AND DISTINCTIONS

1. Trademarks

§ 177:4 Meaning
§ 177:5 Functions
§ 177:6 Abandonment
§ 177:7 Enforcement

2. Copyrights

§ 177:8 Meaning
§ 177:9 Computer software
§ 177:10 Database protection
§ 177:11 Enforcement

3. Patents

§ 177:12 Meaning
§ 177:13 Enforcement

4. Trade Secrets

§ 177:14 Meaning

§ 177:15 Enforcement

5. Other Definitions and Distinctions

§ 177:16 Bankruptcy Code definition of "intellectual property" (Code § 101(35A)
§ 177:17 "License" v. "assignment"

C. CONVEYANCES

§ 177:18 Conveyances of marks and goodwill
§ 177:19 Sales of other types of intellectual property

D. SECURITY INTERESTS

§ 177:20 Generally
§ 177:21 Copyrights
§ 177:22 Trademarks
§ 177:23 Patents
§ 177:24 Trade secrets

**II. DEBTOR'S RIGHTS IN BANKRUPTCY**

A. IN GENERAL

§ 177:25 Property of the estate
§ 177:26 Valuation of rights in intellectual property and cyberassets

B. RIGHTS IN INTELLECTUAL PROPERTY AS EXECUTORY CONTRACTS

§ 177:27 Generally
§ 177:28 Timing of bankruptcy filing
§ 177:29 Preservation of executory contract rights
§ 177:30 Rights which are "personal" in nature
§ 177:31 Patent and copyright licenses; special considerations
§ 177:32 Marks; special considerations
§ 177:33 Domain names; special considerations
§ 177:34 Noncompetition covenants
§ 177:35 Trade secrets; special considerations
§ 177:36 Software licenses

**III. NONDEBTOR RIGHTS IN BANKRUPTCY**

A. IN GENERAL

§ 177:37 Technology escrow
§ 177:38 Rejection under Code § 365(n)
§ 177:39 The automatic stay

B. INJUNCTIVE RELIEF

§ 177:40 Generally

§ 177:41 Preliminary injunctions
§ 177:42 Hearing procedure
§ 177:43 Injunction bond
§ 177:44 Appellate review of preliminary injunctions
§ 177:45 Code § 105 as an alternative to Rule 65's requirements
§ 177:46 Right to a jury trial

## IV. OVERVIEW OF CYBERSPACE AND CYBERASSETS

§ 177:47 Overview of the Internet
§ 177:48 Websites as assets
§ 177:49 —Security interests in websites
§ 177:50 Domain names as assets
§ 177:51 —Security interests in domain names
§ 177:52 Relationship between domain names and trademarks

## V. OTHER TECHNOLOGY ISSUES

### A. ELECTRONIC DOCUMENTS AND TRANSACTIONS

§ 177:53 Generally
§ 177:54 Revised Uniform Commercial Code Article 9
§ 177:55 Uniform Electronic Transactions Act (UETA)
§ 177:56 The Electronic Signatures in Global and National Commerce Act (E-SIGN)

### B. COMPUTER INFORMATION TRANSACTIONS

§ 177:57 Uniform Computer Information Transactions Act (UCITA)

### C. TREATMENT OF CUSTOMER DATA IN BANKRUPTCY

§ 177:58 Generally
§ 177:59 Sale under Code § 363
§ 177:60 The consumer privacy ombudsman (Code § 332)

# CHAPTER 178. ENVIRONMENTAL LAW

## I. COMMON ENVIRONMENTAL ISSUES IN BANKRUPTCY CASES

§ 178:1 Introduction
§ 178:2 Release of hazardous substances
§ 178:3 Potentially responsible parties
§ 178:4 Strict liability
§ 178:5 Joint and several liability
§ 178:6 Parent-subsidiary theories of liability

## II. ENVIRONMENTAL LIABILITY AND BANKRUPTCY

§ 178:7 Introduction

§ 178:8 Contingent claims
§ 178:9 —Effect of disallowance (Code § 502(e)(2))
§ 178:10 Estimation of claims under Code § 502(c)
§ 178:11 Code § 502(c) versus Code § 502(e)(1)(B)
§ 178:12 Abandonment
§ 178:13 Effect of automatic stay
§ 178:14 Priority of environmental claims—Over unsecured claims (Code § 502(a)(1))
§ 178:15 —Indemnification or contribution as administrative Expense (Code § 502(a)(1))
§ 178:16 —Priority accorded to governmental costs (Code § 502(a)(1))
§ 178:17 Liens against estate property (Code § 502(c))
§ 178:18 Discharge of CERCLA claims (Code § 101(5))
§ 178:19 Nondischargeability—Personal performance (Code § 101(5))
§ 178:20 Obligations that run with the waste (Code § 101(5))
§ 178:21 Dischargeability (Code § 523(a))
§ 178:22 Mandatory withdrawal of reference to bankruptcy court (28 U.S.C.A. § 1334(c))
§ 178:23 Concurrent jurisdiction
§ 178:24 Global settlements involving EPA
§ 178:25 Eleventh Amendment protections for state governments (Code § 106)

## CHAPTER 179. MASS TORTS

§ 179:1 Introduction
§ 179:2 Environmental matters
§ 179:3 Personal injury/property damage distinction
§ 179:4 Contingent and unliquidated claims
§ 179:5 Prepackaged plans
§ 179:6 Present and future claims; state and federal law
§ 179:7 —When do present claims arise?
§ 179:8 —Future claims
§ 179:9 —"Cause of action" vs. "right to payment"
§ 179:10 Statutes of repose and limitations
§ 179:11 Bar dates, notices, and proofs of claims
§ 179:12 Class and group claims—Generally
§ 179:13 —Class claims
§ 179:14 —Group claims
§ 179:15 Class actions
§ 179:16 Valuation of claims, generally
§ 179:17 Estimation of value
§ 179:18 Jury trials
§ 179:19 Claims resolution facilities
§ 179:20 Designated/qualified settlement funds; tax considerations
§ 179:21 Channeling injunctions
§ 179:22 Channeling injunctions/Code § 524(g) trusts in practice
§ 179:23 Application for payment from trust

§ 179:24 Judicial panel on multidistrict litigation
§ 179:25 Conflicts of interest

# CHAPTER 180. ACCOUNTING GUIDE FOR ATTORNEYS

## I. BACKGROUND

§ 180:1 Introduction to accounting
§ 180:2 Brief history of accounting
§ 180:3 History of numbers
§ 180:4 Numeric agility

## II. ACCOUNTING BASICS

§ 180:5 Four basic transactions
§ 180:6 The accounting formulae
§ 180:7 Types of books and records

## III. ACCOUNTING CASE STUDY

§ 180:8 Introduction
§ 180:9 Case study exercise

## IV. ACCOUNTING CONCEPTS AND MEASUREMENT

§ 180:10 Accounting concepts, terms and definitions

## V. FINANCIAL ANALYSIS

§ 180:11 In general
§ 180:12 Financial analysis—Break-even
§ 180:13 —Ratio analysis
§ 180:14 —Comparative analysis
§ 180:15 —Application to case study subject