

Table of Contents

Volume 1

CHAPTER 1. BASIC CONCEPTS AND DEFINITIONS	1
§ 1:1 Overview	
§ 1:2 Solvency—Key indicium of fraudulent transfer	
§ 1:3 Types of fraudulent transfers	
§ 1:4 Fraudulent transfer analysis—Later events	
§ 1:5 —Step-transaction doctrine	
§ 1:6 Related preference payments	
§ 1:7 Applicable laws and statutes	
§ 1:8 —Common law	
§ 1:9 —Uniform Fraudulent Conveyances Act	
§ 1:10 —Bankruptcy Code	
§ 1:11 —Uniform Fraudulent Transfers Act	
§ 1:12 Uniform Voidable Transactions Act (2014)	
§ 1:12.50 Contempt for nonpayment of debt	
§ 1:13 Operative definitions	
§ 1:14 —Property	
§ 1:15 —Asset	
§ 1:16 —Must be an asset of the debtor	
§ 1:17 —Asset must have value—Injury to creditor required	
§ 1:18 — —Property having no value	
§ 1:19 —Transfer of exempt property	
§ 1:20 —Definition of “transfer”	
§ 1:21 — —Effective date of transfer	
§ 1:22 —Definition of creditor, claim, and debt	
§ 1:23 — —Future creditor	
§ 1:24 — —United Kingdom and other view of “future creditor”	
§ 1:25 —Existence of a claim	
§ 1:26 — —Successor liability	
§ 1:27 Transferee liability IRC § 6901	
§ 1:28 Operative definitions—Insider status and “affiliate”	
§ 1:29 Definition of “Person” and other definitions provided for by the new Uniform Voidable transactions Act	

CHAPTER 2. CATEGORIES OF FRAUDULENT TRANSFERS..... 231

- § 2:1 Types of fraudulent transfers
- § 2:2 Actual fraudulent intent
- § 2:3 —Determining presence of fraudulent intent
- § 2:4 —Scope of voidable fraudulent transfer—Includes
 hinder and delay
- § 2:5 —Mixed motivation transactions
- § 2:6 —Badges of fraud
- § 2:7 —Insolvency
- § 2:8 — —Assets
- § 2:9 — —Going concern vs. liquidation value
- § 2:10 — —Determination of the value of assets
- § 2:11 — —Liabilities
- § 2:12 — —Assessment of debts—From debtor’s view
- § 2:13 — — —Ongoing future obligations
- § 2:14 *[Reserved]*
- § 2:15 Constructive fraud
- § 2:16 —Causal connection required
- § 2:17 —Reasonably equivalent value
- § 2:18 — —Amount received
- § 2:19 — —“Bargained for” element as affecting
- § 2:20 — —Value to creditor
- § 2:21 —Common situations where the issue of adequacy
 of consideration arises—Stock redemption
- § 2:22 — —Executory contract
- § 2:23 — —Antecedent debt
- § 2:24 — —Bonuses and severance payments
- § 2:25 — —Gambling
- § 2:26 — —Ponzi scheme
- § 2:27 — —Sales compelled by economic necessity
- § 2:27.33 State court settlement as reasonably equivalent
 value
- § 2:27.66 Return of excess proceeds of a tax sale pursuant to
 the taking clause of the United States
 Constitution and equivalent state constitutional
 provisions
- § 2:28 Constructive fraud—Common situations where the
 issue of adequacy of consideration arises—
 Charitable contributions
- § 2:29 “Indirect benefit rules”
- § 2:30 Constructive fraud—Transfer by persons in
 business with unreasonably small assets
- § 2:31 —Transfers by persons about to incur debt

TABLE OF CONTENTS

§ 2:31.50	Transfers made etc. relative to a creditor whose claim arose before the transfer was made at a time the transferor was insolvent or thereby rendered insolvent
§ 2:32	Constructive fraud—Common types of transfers
§ 2:33	— — Intrafamily transfers
§ 2:34	— — Transfers supported by valid consideration
§ 2:35	— — Fraudulent transfers in divorce
§ 2:36	— — Services rendered
§ 2:37	— Corporate transactions
§ 2:38	— — Leveraged buyouts
§ 2:39	— — Payment to shareholders in LBOs protected
§ 2:40	— — Key customers
§ 2:41	— Transfers to partnerships and UFTA insider transactions
§ 2:42	Common types of transfers—Claims in bankruptcy—Certain employment contracts to insiders and others
§ 2:43	— — — Avoidance as actual and constructive fraud
§ 2:44	— — — Key-Employee Retention Plan (KERP) (§ 503(c)(1))
§ 2:45	— — — Severance payments to insiders (§ 503(c)(2))
§ 2:46	— — — Payments outside the ordinary course of business, etc
§ 2:47	Conflict of laws
§ 2:48	— Choice of law in state and federal courts
§ 2:49	— Real property
§ 2:50	— Tangible personal property
§ 2:51	— Intangible personal property
§ 2:51.33	Internal affair doctrine conflict of laws related to corporations, LLCs etc.
§ 2:51.66	Conflict of laws—Charging order; limited partnerships and LLCs
§ 2:52	— Nonspecific designation of law in agreement does not necessarily control
§ 2:52.33	— Compulsory arbitration
§ 2:52.66	— Forum selection
§ 2:53	— Bankruptcy vs. state law

CHAPTER 3. FRAUDULENT TRANSFERS— CREDITOR REMEDIES..... 509

§ 3:1	Creditor/bankruptcy trustee remedies
§ 3:2	— Bankruptcy Code
§ 3:3	— Property subject to avoidance as a fraudulent transfer as property of the estate/extraterritorial application of 11 U.S.C.A. § 548

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 3:4 —Reimbursable creditor attorney’s fees in
bankruptcy
- § 3:5 —UFCA remedies
- § 3:6 —UFTA/UVTA remedies compared to UFCA
- § 3:7 Prejudgment attachment
- § 3:8 —Injunctive relief
- § 3:9 —Grupo Mexicano does not affect injunctive relief
under UFTA/UVTA
- § 3:10 Remedies beyond those specifically allowed under
the UFTA/UVTA and UFCA
- § 3:11 —Damages
- § 3:12 —Punitive damages
- § 3:13 — —States where punitive damages not allowed
- § 3:14 — —State allows punitive damages on basis of
UFTA provisions
- § 3:15 — —States imposing punitive damages on general
legal principles
- § 3:16 —Attorney’s fees
- § 3:17 Conspiracy or aiding and abetting
- § 3:17.25 UCC Article 4A preemption of claims against
certain financial institutions
- § 3:17.50 Breach of Fiduciary Duty
- § 3:18 Conspiracy or aiding and abetting—Conspiracy
- § 3:19 Does Conspiracy require tort or merely a wrong
- § 3:20 Conspiracy or aiding and abetting—Aiding and
abetting
- § 3:21 —Damages required to proceed on conspiracy
theory
- § 3:22 Officer and shareholder liability
- § 3:23 Postpetition attorney’s fees and interest and
prejudgment interest
- § 3:24 Concepts related to fraudulent transfers
- § 3:25 Concepts relate to fraudulent transfers—
Subordination, equitable subordination and
recharacterizing debt into equity
- § 3:26 Concepts related to fraudulent transfers—Equitable
subordination and recharacterizing debt into
equity—Recharacterizing “debt” into equity
- § 3:27 — —Subordination and equitable subordination
- § 3:28 Concepts relating to fraudulent transfers—
Equitable subordination and recharacterizing debt
into equity—Equitable subordination—No-fault
- § 3:29 — — —Subordination of certain claims relative to
securities of the debtor under Section 510(b)
- § 3:30 Concepts related to fraudulent transfers—
Deepening insolvency

TABLE OF CONTENTS

§ 3:31	— —As a tort or theory of damages
§ 3:32	— —Basis of liability against insiders
§ 3:33	— —Basis of liability against lenders
§ 3:34	— —Standing to bring the claim
§ 3:35	— —Fraudulent transfer as a remedy
§ 3:36	— —Equitable subordination as a remedy
§ 3:37	11 U.S.C.A. § 549—Avoidance of post-petition transfers
§ 3:37.16	Postpetition perfection of liens allowed under § 546(b)
§ 3:37.32	Treatment of avoidance of property subject to security agreement covering after acquired property, e.g., a floating lien, 11 U.S.C.A. § 552
§ 3:37.48	—The general rule
§ 3:37.64	—The general rule—The exception to the general rule 11 U.S.C.A. § 552(b)(1)
§ 3:37.80	—The general rule—Exceptions for rents to use property and similar payments—11 U.S.C.A. § 552(b)(2)
§ 3:37.96	Treatment of avoidance of property subject to security agreement covering after acquired property, e.g., a floating lien, 11 U.S.C.A. § 552, Avoidance claims as proceeds under § 552(b)
§ 3:38	Other causes of action
§ 3:39	—Contribution

CHAPTER 4. TRANSFER DEFENSES AND PROTECTION 881

§ 4:1	Transferee defenses and protections
§ 4:2	Protection for good-faith transferee for value
§ 4:3	—UFTA/UVTA and UFCA
§ 4:4	—Bankruptcy Code
§ 4:5	—Burden of proof to establish defense
§ 4:6	Payments to debtor that reduce recovery from transferee
§ 4:7	Initial transferee
§ 4:8	—Liability of initial transferee in bankruptcy contrasted with state law
§ 4:9	—Subsequent transferees
§ 4:10	—Identity of initial transferee
§ 4:11	— —Person who controls entity not initial transferee
§ 4:12	An intended beneficiary treated same as initial transferee
§ 4:13	UFCA protection of good-faith transferee

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 4:14 Good-faith requirement
- § 4:15 Good-faith in a Securities Investor Protection Act (“SIPA”) bankruptcy—Same standard applies
- § 4:16 Without knowledge of the voidability
- § 4:17 For value
- § 4:18 Innocent party defenses
- § 4:19 Salvaging part of avoidable transaction
- § 4:20 Denial of claim under 11 U.S.C.A. § 502(d)
- § 4:21 Statute of limitations
- § 4:22 —State law—Commencement of period—Transfer or judgment?
- § 4:23 —UFTA statute of limitations designed to be limitation of repose
- § 4:24 —One-year period—Reasonable discovery
- § 4:25 —Ways to extend limitations period
- § 4:26 — —Extending the limitations period under § 546 and other tolling concepts
- § 4:27 — —Extending the limitations period under § 108
- § 4:28 — —Aiding and abetting and conspiracy
- § 4:29 — —Resulting trust may extend limitations period
- § 4:30 —Bankruptcy trustee super creditor status—IRS claim
- § 4:31 — — —Saving statutes, renewal statutes and extension statutes
- § 4:32 —Amending complaint, relation back
- § 4:33 —Continuing concealment under § 727
- § 4:34 —Time for recovery action against transferee in bankruptcy
- § 4:35 Limitations on U.S. government claims
- § 4:36 Rooker-Feldman Doctrine
- § 4:36.12 USSC narrows scope of *Rooker-Feldman*
- § 4:36.16 Post-*Exxon Mobil* embrace of independent claim exception
- § 4:36.20 Clear cases
- § 4:36.24 General rule—Typical situation is not binding
- § 4:36.27 Seventh Circuit retains “inextricably intertwined” analysis
- § 4:36.33 Reasonable opportunity to raise the issue in state court—Second leg of Seventh Circuit’s analysis
- § 4:36.36 Post-*Exxon Mobil* Evolution to independent claims not subject to *Rooker-Feldman*—aka “the source-of-the-injury test.”
- § 4:36.48 Ninth Circuit’s combination of independent claims/ “the source-of-the-injury test” and two-step inextricably intertwined/reasonable opportunity analysis

TABLE OF CONTENTS

§ 4:36.60	First Circuit: the crucial question is whether plaintiff's federal suit, in effect, is an end-run around a final state-court judgment
§ 4:36.72	Fraud exception to <i>Roquer-Feldman</i>
§ 4:36.75	Pre- <i>Exxon Mobil</i> Fraud exception embraced by Ninth Circuit; Sixth Circuit follows post- <i>Exxon Mobil</i>
§ 4:36.80	Circuits embracing the independent claim exception have likely embraced the fraud exception sub silentio
§ 4:36.84	In Bankruptcy Court
§ 4:36.96	Avoidance claims under Bankruptcy Code and UFTA/UFTA claims
§ 4:37	Securities and transactions that implicate financial markets—§ 546(e)
§ 4:38	—Application of § 546(e) to illegal transactions
§ 4:39	—Settlement payments, securities contracts and margin payments
§ 4:40	—covered entity/qualifying participant
§ 4:41	—Transactions shielded from setoff
§ 4:42	—Swap agreements
§ 4:43	—Forward commodity contract
§ 4:44	Other securities transactions not subject to the automatic stay (§§ 555, 556, 557, 559, 560 and 561)
§ 4:45	Other defenses
§ 4:46	Priority among creditors

CHAPTER 5. PREFERENCES AND PREFERENTIAL PAYMENTS 1295

§ 5:1	Avoidable preference payments
§ 5:2	—Creditor
§ 5:3	—Unsecured creditors
§ 5:4	—Debt
§ 5:5	—Antecedent
§ 5:6	—Insolvency
§ 5:7	—Effective date of transfer for antipreference
§ 5:8	—Creditor must receive more
§ 5:9	—Assumption of contracts—Creditor does not receive more
§ 5:10	—Amount of preference
§ 5:11	—Must be “an interest of the debtor in property”
§ 5:12	—Must be property of the estate—Converting nonstate property into preference payment
§ 5:13	Exceptions

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 5:14 —Ordinary business transaction
- § 5:15 — —Incurred in the ordinary course of the business or financial affairs of the debtor and creditor—11 U.S.C.A. § 547(c)(2)
- § 5:16 — —Transfer made in the ordinary course of business or financial affairs—11 U.S.C.A. § 547(c)(2)(A)
- § 5:17 — —Transfer made according to ordinary business terms—11 U.S.C.A. § 547(c)(2)(B)—Post-2005 Bankruptcy Act cases
- § 5:18 — — —*Pre*-2005 Bankruptcy Act cases
- § 5:19 —New consideration or value
- § 5:20 — —New value
- § 5:21 — —Contemporaneous
- § 5:22 —Purchase money loan/security interests
- § 5:23 —Exception for subsequent unsecured advances
- § 5:24 No net improvement for the holder of a floating lien on inventory and receivables—11 U.S.C.A. § 547(c)(5)
- § 5:25 Exceptions—Fixing of a statutory lien
- § 5:26 Alimony, Support, and Maintenance—11 U.S.C.A. § 547(c)(7)
- § 5:27 Exceptions—Small transfers: 11 U.S.C.A. § 547(c)(8)
- § 5:28 —Nonconsumer small transfers: 11 U.S.C.A. § 547(c)(9)
- § 5:29 —Schedule payments established through approved credit counseling
- § 5:30 —Other exceptions—Earmarking exception
- § 5:31 Recoupment and setoff compared
- § 5:32 Recoupment
- § 5:33 —Recoupment and federal taxes
- § 5:34 Setoff
- § 5:35 —Broad right of setoff
- § 5:36 —Waiver of the right to setoff
- § 5:37 —Mutuality requirement
- § 5:38 — —Same capacity
- § 5:39 —Time claim arises
- § 5:40 —Section 553 limitations on setoffs
- § 5:41 —Postpetition setoffs
- § 5:42 —Setoff discretionary
- § 5:43 —Setoff of federal tax refund
- § 5:44 Effect of § 502(d)
- § 5:45 “*Deprizio* waiver”
- § 5:46 Procedural aspects of preferential payments
- § 5:47 Criminal restitution

CHAPTER 6. SPECIAL CONCERNS FOR LAWYERS 1579

- § 6:1 Civil liability to clients, creditors and others

TABLE OF CONTENTS

§ 6:2	—Wrongful conduct
§ 6:3	Receipt of fraudulent funds
§ 6:4	Other sources of attorney liability
§ 6:5	—Sanctions and liability in connection with bankruptcy
§ 6:6	—Duty to advise on preservation of assets
§ 6:7	— —Duty to shield against liability
§ 6:8	— —Broader general duty to protect assets
§ 6:9	—Potential concern for lawyers—Obligations imposed on debt relief agencies (11 U.S.C.A. § 526)
§ 6:10	Liability for failure to advise on disclaimer
§ 6:11	Attorney defenses
§ 6:12	—Liability to client—In pari dilecto
§ 6:13	—Unclean hands
§ 6:14	—Attorneys can rely on statements of client
§ 6:15	Attorney-client privilege not applicable to defense
§ 6:16	Minimizing liability
§ 6:17	Criminal liability
§ 6:18	—Bankruptcy related crimes
§ 6:19	—Fraud in connection with foreign persons
§ 6:20	—Congress’s failed attempt to impose liability for elder self-improvement
§ 6:21	Potential criminal liability related to self-settled asset protection trusts
§ 6:22	—Applicable criminal law
§ 6:23	—Liability for aiding and abetting
§ 6:24	—No retroactive application of criminal law
§ 6:25	—Liability under RICO
§ 6:26	Ethical considerations
§ 6:27	—Model rules of professional conduct
§ 6:28	—Fraud in general
§ 6:29	—Violation of fraudulent transfer laws
§ 6:30	—Proper counseling on fraud related matters
§ 6:31	—Third-party considerations

CHAPTER 7. SPECIAL CIRCUMSTANCES.....

1663

§ 7:1	Special circumstances
§ 7:2	Gifts
§ 7:3	—Valid gifts
§ 7:4	— —Statutory rules regarding gifts
§ 7:5	— —Statutes altering the change-of-possession requirement
§ 7:6	—Presumption of gift

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 7:7 — —From husband to wife
- § 7:8 — —From wife to husband
- § 7:9 — —From parent to child
- § 7:10 Implied trusts
- § 7:11 — —Resulting trusts
- § 7:12 — —Interaction with presumption of gift
- § 7:13 — —Constructive trusts
- § 7:13.50 Implied trusts in bankruptcy
- § 7:14 Implied trusts—Transfers for illegal purposes
- § 7:15 — —Settlor cannot benefit
- § 7:16 — —Grantor less guilty than grantee
- § 7:17 — —Effect of existence or satisfaction of claim
- § 7:18 Subrogation, equitable subrogation and § 509
- § 7:19 Common estate planning concepts
- § 7:20 Disclaimers and related lapses of powers
- § 7:21 — —Effect of disclaimer
- § 7:22 — —Disclaimers and tax liens
- § 7:23 — —Extension of *Drye* to nullify state disclaimer laws
- § 7:24 — —*Crummey* powers and related powers of appointment
- § 7:25 — —Will the *Crummey* power render the trust self-settled?
- § 7:26 — —Disclaimer instead of lapse or waiver of *Crummey* power
- § 7:27 — —Special rule in bankruptcy
- § 7:28 Powers of appointment
- § 7:29 — —General power
- § 7:30 — —Limited or special powers
- § 7:31 — —Retained limited powers
- § 7:32 — —Nature power of appointment
- § 7:33 — —Bankruptcy
- § 7:34 — —General powers of appointment
- § 7:35 — —Testamentary general powers of appointment
- § 7:36 Joint tenancy
- § 7:37 Elder law
- § 7:38 Marital agreements and divorce
- § 7:39 — —Marital agreements
- § 7:40 — —Divorce
- § 7:41 — —Property division subject to scrutiny
- § 7:42 — —Divorce decree not a bar to bankruptcy court and creditors
- § 7:43 — —Bankruptcy aspects
- § 7:44 Sovereign immunity

TABLE OF CONTENTS

- § 7:45 Special purpose vehicles, aka, bankruptcy remote entities

Volume 2

CHAPTER 8. TAX AND NONTAX ASPECTS OF PONZI SCHEMES	1
§ 8:1 Summary of tax and nontax aspects of Ponzi schemes	
§ 8:2 —Distributions from Ponzi scheme as fraudulent transfer	
§ 8:3 —Liability of third parties	
§ 8:4 —Circumstance under which claw-back may occur	
§ 8:4.50 Claw-back from “foreign state” or deemed foreign state (e.g., agency or instrumentality of a foreign state); Effect of the Foreign Sovereign Immunities Act	
§ 8:5 Summary of tax and nontax aspects of Ponzi schemes—Exception for common business costs	
§ 8:6 — <i>Ponzi</i> scheme presumption	
§ 8:7 —Loans—Investors/and ordinary creditors	
§ 8:8 Summary of tax and nontax aspects of <i>Ponzi</i> schemes—Legal fees	
§ 8:9 —Commissions and other compensation	
§ 8:10 —Good faith and for value defense relative to “initial transferee” and “subsequent transferee(s)”	
§ 8:11 Summary of tax and nontax aspects of Ponzi schemes—Standing to bring fraudulent transfer claim	
§ 8:12 —Impact of Ponzi scheme on exemptions	
§ 8:13 —Status of charitable contributions	
§ 8:14 —Distributions subject to antipreference rules	
§ 8:15 —Tax consequences of a Ponzi scheme Good faith and for value defense relative to “initial transferee” and “first transferee”	
§ 8:16 —Tax consequences of a Ponzi scheme—Common law character of the loss	
§ 8:17 — —Amount of the loss	
§ 8:18 — —Timing of the loss	
§ 8:19 — —Net operating losses	
§ 8:20 — —Tax consequences of claw-back of profits and principal/investment; claim of right (IRC § 1341)	
§ 8:21 — —Amending return for open years	
§ 8:22 — —Nonapplication of mitigation rules	

- § 8:23 — —Losses discovered during administration of
decendent/victim's estate
- § 8:24 — —Losses by IRAs
- § 8:25 — —Rev. Proc. 2009-20 safe harbor
- § 8:26 — —Tax planning

CHAPTER 9. PROPERTY OF THE ESTATE..... 191

- § 9:1 Property of the bankruptcy estate
- § 9:2 Functional exemption—Exclusion from property of the
bankruptcy estate
- § 9:3 —Educational fund excluded from estate
- § 9:4 —Certain withholding from employees exclude

CHAPTER 10. FRAUDULENT TRANSFERS AND SELF-SETTLED TRUSTS 203

- § 10:1 Fraudulent transfers and self-settled trusts
- § 10:2 —Ten-year statute of limitations
- § 10:3 —Future creditors
- § 10:4 — —Categories of “future creditors” covered
- § 10:5 —Similar devices
- § 10:6 —Application of new Act to past trusts
- § 10:7 —Effect of new law on foreign trusts
- § 10:7.50 Asset Protection and tax aspects of private trust
company
- § 10:8 Involuntary bankruptcies
- § 10:9 —Qualifying creditor(s)
- § 10:10 —Eligible claims
- § 10:11 —Generally not paying debts requirement
- § 10:12 —Creditor bond, costs, and sanctions

CHAPTER 11. PREBANKRUPTCY PLANNING..... 293

- § 11:1 Prebankruptcy planning—Generally
- § 11:2 Bankruptcy and state law allow prebankruptcy
planning
- § 11:3 Use of fraudulent transfer laws to attack
prebankruptcy planning
- § 11:4 —Relation between ERISA and fraudulent transfer
laws
- § 11:5 — —State fraudulent transfer laws generally not
preempted by ERISA
- § 11:6 — —Laws affecting funding of ERISA plan preempted
- § 11:7 State statutory restrictions on prebankruptcy
planning

TABLE OF CONTENTS

§ 11:8	—Possible federal preemption of state restrictions on exemptions
§ 11:9	Denial of discharge
§ 11:10	—Badges of fraud
§ 11:11	— —Pattern of sharp dealing
§ 11:12	— —Amount of exempt property
§ 11:13	— —Use of asset for intended exempt purpose
§ 11:14	— —Adequacy of consideration for transferred property
§ 11:15	—Miscellaneous factors used to deny discharge
§ 11:16	— —Fraud directed at a specific creditor
§ 11:17	— —Converting borrowed funds and assets relied on by creditors
§ 11:18	— —Conversion of business assets
§ 11:19	— —Other indicia and factors supporting fraud
§ 11:20	—Conduct not constituting fraud
§ 11:21	— —Customary payments
§ 11:22	— —Reliance on attorney
§ 11:23	— —Miscellaneous conduct not considered fraudulent
§ 11:24	—Purging the fraudulent taint
§ 11:25	Denial of exemption under state law
§ 11:26	Denial of exemption in bankruptcy
§ 11:27	Dismissal of bankruptcy petition
§ 11:28	Preferential treatment for residence
§ 11:29	Summary

CHAPTER 12. EXEMPTIONS 367

§ 12:1	Exempt property
§ 12:2	—Nature of exemptions
§ 12:3	—Community property
§ 12:4	—Tracing of funds derived from exempt property
§ 12:5	—Enforcement of nondischargeable debts after closing
§ 12:6	Exemptions and liens
§ 12:7	—Security interests and statutory liens
§ 12:8	—Judicial lien
§ 12:9	— —Extent of removal—Impairment
§ 12:10	— —Liens that secure certain family obligations
§ 12:11	— —Removal of judicial lien requires ownership
§ 12:11.50	Validity of lien required under applicable state law
§ 12:12	Exemptions and liens—Judicial lien—Emanations of <i>Sanderfoot</i>
§ 12:13	—Exemptions granted under state constitutions
§ 12:14	—Conflicts of law
§ 12:15	Denial of exemptions

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 12:16 —Exemption denied for abuse curtailed by USSC decision in Law
- § 12:17 —Exemption denied when acquired with fraudulently obtained funds
- § 12:18 —Surcharge of exemptions curtailed
- § 12:19 —Exemptions not effective against certain claims/ including the “absolute priority rule”
- § 12:20 Exemptions for federal debts, civil and criminal
- § 12:21 State restrictions on exemptions
- § 12:22 —Statutory restrictions
- § 12:23 —State constitutional restrictions
- § 12:24 — —Federal supremacy strikes down state restrictions
- § 12:25 —Effect of retroactive amendments to exemptions
- § 12:26 Exemptions in bankruptcy
- § 12:27 —Qualifying for exemptions in bankruptcy
- § 12:28 —Exemptions in joint cases
- § 12:29 —Moving to state to obtain benefit of exemption
- § 12:30 —Bankruptcy trustee’s recovery of exempt property—11 U.S.C.A. § 522(g)
- § 12:31 — —Recovery of exempt property by debtor when trustee does not act
- § 12:32 —Validity of state bankruptcy-only exemptions
- § 12:33 —Time limits for objecting to and claiming exemptions
- § 12:34 — —Basic time limits and rules
- § 12:35 — —*Taylor* and *Schwab* decision
- § 12:36 — —Does intent controlling?
- § 12:37 — —Ambiguity
- § 12:38 — —Good faith; affect of *Law v. Siegel*
- § 12:39 — —Common custom
- § 12:40 — —In-kind exemptions
- § 12:41 — —Limiting exemption to value stated
- § 12:42 —Federal exemptions
- § 12:43 — —Other federal exemptions
- § 12:44 — —Discussion of select federal exemptions
- § 12:45 — — —Homestead
- § 12:46 — — —Motor vehicle
- § 12:47 — — —Household furnishings
- § 12:48 — — —Tools of the trade
- § 12:49 — — —Unmatured life insurance
- § 12:50 — — —Proceeds of life insurance policy
- § 12:51 — — —Health aids
- § 12:52 — — —Personal injury

TABLE OF CONTENTS

§ 12:53	— — —Unemployment compensation and local public assistance
§ 12:54	— — —Disability, illness, or unemployment benefits
§ 12:55	— — —Veterans' benefits
§ 12:56	— — —Alimony, support, or separate maintenance
§ 12:57	— — —Retirement and similar plans
§ 12:58	— — —Retirement funds exempt from taxation under IRC
§ 12:59	— — —Payment for loss of future earnings
§ 12:60	— — —Wildcard exemption
§ 12:61	— — —Potential overlapping exemptions
§ 12:62	— — —Crime victim's reparations
§ 12:63	—Waiver of exemptions
§ 12:64	—Use of the bankruptcy trustee's strong-arm powers relative to exemptions

CHAPTER 13. EXEMPTION FOR RETIREMENT PLANS..... 637

§ 13:1	Retirement plans
§ 13:2	ERISA protection for retirement plans
§ 13:3	—Bankruptcy exclusion for interests in retirement plan subject to ERISA
§ 13:4	—ERISA applicable in state court and nonbankruptcy federal court
§ 13:5	—Scope of protection for ERISA plans
§ 13:6	— —Spouses and other beneficiaries protected
§ 13:7	— —ERISA protects against wrongful conduct— Bad boy clauses invalid
§ 13:8	— —Plans excluded from ERISA coverage
§ 13:9	—ERISA requirement that one employee be covered
§ 13:10	—Bankruptcy court's jurisdiction over matters involving ERISA plans, e.g., payment of fees and adjudication of liability, in connection with plan sponsor's bankruptcy
§ 13:11	—Disputed other requirements for ERISA protection
§ 13:12	— —Trust required for ERISA protection
§ 13:13	— —Requirement of antialienation clause and IRC qualification
§ 13:14	Exemption under other federal law
§ 13:15	—IRC mandated antialienation clause may provide indirect protection outside of bankruptcy
§ 13:16	—IRC plan protected

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 13:17 —IRC mandated antialienation clause may provide indirect protection—I.R.C. § 457 plans
- § 13:18 Prohibited transaction and violation of other IRC rules disqualifies IRC plan and vitiates certain federal and state exemptions
- § 13:19 State exemptions
- § 13:20 —Statutory exemptions
- § 13:21 — —State exemption that makes reference to IRC
- § 13:22 — —State exemptions after distribution
- § 13:23 — —State exemption for beneficiaries other than participant
- § 13:24 — —Preemption of state statutes
- § 13:25 — —U.S. Supreme Court narrows ERISA preemption
- § 13:26 — —Statutes making specific reference to ERISA or IRC
- § 13:27 — —Neutral statutes making no reference to ERISA or IRC
- § 13:28 —Spendthrift protection
- § 13:29 — —Valid trust
- § 13:30 — —Antialienation provision
- § 13:31 — —Prohibition against self-settled trusts
- § 13:32 — —Self-settled rule under the ninth circuit
- § 13:33 — —Control as eliminating spendthrift protection
- § 13:34 — —Immediate access to trust assets
- § 13:35 Individual retirement accounts
- § 13:36 —Doubts regarding IRA exemption resolved
- § 13:37 —Liberal rollover rules renders distinctions among plans less important
- § 13:38 — —Rollover must follow technical rules
- § 13:39 State laws relative to retirement plans in bankruptcy
- § 13:40 —Bankruptcy exclusion for interests in retirement plan subject to state exemption
- § 13:41 —Funds borrowed from retirement plan
- § 13:42 —Retirement plan contributions as disposable income in Chapter 13 cases
- § 13:42.20 Retirement Plan Contributions as Disposable Income for Chapter 13.—Majority view—all retirement plan contributions are excluded from PDI
- § 13:42.40 —Exclusion from PDI limited to contributions made before the petition date—6th Cir. *Seafort* decision/ *Prigge* view
- § 13:42.60 —Seafort BAP approach—debtor may continue to

TABLE OF CONTENTS

	make recurring contributions that were being made prepetition	
§ 13:42.80	—The CMI interpretation	
§ 13:43	State laws relative to retirement plans in bankruptcy—Turnover and abandonment	
§ 13:44	Federal exemption	
§ 13:45	Concepts that apply generally to retirement plans	
§ 13:46	—Reasonably necessary standard	
§ 13:47	—Third-party approval requirement	
§ 13:48	Retirement plans not qualified under IRC (nonqualified plans)	
§ 13:49	—Reasons to create nonqualified plans	
§ 13:50	—Types of nonqualified plans	
§ 13:51	—State exemptions covering nonqualified plans	
§ 13:52	— —Employment relationship	
§ 13:53	— —Separate entity establishes plan	
§ 13:54	— —Deferred income until retirement	
§ 13:55	— —Restricted access to plan	
§ 13:56	— —Plan must administered as a retirement plan	
§ 13:57	—Must retirement fund be accumulated over time	
§ 13:58	— —Analysis of Eilbert and its progeny	
§ 13:59	—Spendthrift protection for nonqualified plans	
§ 13:60	—Restrictions on nonqualified plans	
§ 13:61	—ERISA aspects of nonqualified plans	
§ 13:62	— —Funding of nonqualified plans	
§ 13:63	—Secular trusts	
§ 13:64	—Top hat plans	
§ 13:65	— —Rabbi trust	
§ 13:66	—Excess benefit plans	
CHAPTER 14. EXEMPTION FOR HOMESTEAD		821
§ 14:1	Protection of the home	
§ 14:2	—Scope of exemption	
§ 14:3	— —Types of property that qualify for homestead	
§ 14:4	— —Fractional interests	
§ 14:5	Exempt proceeds	
§ 14:6	Protection of the home—Scope of exemption—Exemption subject to security interests	
§ 14:7	Prebankruptcy planning	
§ 14:8	Homestead in bankruptcy	
§ 14:9	—Restrictions on homestead in bankruptcy	
§ 14:10	— —Section 522(o) conversion of nonexempt assets into homestead	

- § 14:11 — —Section 522(p) limitation imposed on amount of exemption for property acquired 1,215 days before filing
- § 14:12 — —Section 522(q) limit on homestead by debtor subject to certain criminal and civil liability
- § 14:13 —Effect of debtor's domicile
- § 14:14 —Time to determine homestead
- § 14:15 —Postbankruptcy petition appreciation
- § 14:16 —Joint bankruptcy petition
- § 14:17 —Sale of undivided interest in property
- § 14:18 —Excessive mortgages—Chapter 20
- § 14:19 Loss of homestead exemption
- § 14:20 —Abandonment of homestead
- § 14:21 —Fraudulently obtain funds used to acquire homestead

CHAPTER 15. EXEMPTIONS FOR LIFE INSURANCE, ANNUITIES, AND SOCIAL SECURITY 911

- § 15:1 Life insurance
- § 15:2 —Federal exemption
- § 15:3 —State exemption
- § 15:4 Annuities
- § 15:5 —Exclusion in bankruptcy
- § 15:6 —Variety of annuities
- § 15:7 — —Estate planning annuities
- § 15:8 —State exemptions
- § 15:9 — —Florida's annuity exemption
- § 15:10 — —Texas annuity exemption
- § 15:11 — —California's annuity exemption rules
- § 15:12 Social security

CHAPTER 16. TENANTS BY THE ENTIRETIES 947

- § 16:1 Jointly held interests
- § 16:2 Tenants by the entireties
- § 16:3 Types of protection
- § 16:4 —Claim against one spouse
- § 16:5 —Joint debt
- § 16:6 —Joint bankruptcy petition
- § 16:7 Sale of entireties property in bankruptcy
- § 16:8 Transfer to spouse
- § 16:9 Treatment in bankruptcy of transfers involving entireties property exempt under state law

TABLE OF CONTENTS

- § 16:10 Attempted conversions into exempt entireties property
- § 16:11 —Special bankruptcy provisions relative to inheritance
- § 16:12 —Denial of discharge

CHAPTER 17. DENIAL OF DISCHARGE AND NONDISCHARGEABLE DEBTS..... 989

- § 17:1 Denial of discharge—Nondischargeable debts in bankruptcy
- § 17:2 Denial of discharge on grounds of fraud
- § 17:3 —Actual fraudulent intent
- § 17:4 —Property of the debtor
- § 17:5 —Wrongful conduct
- § 17:6 —Statute of limitations—Continuing concealment
- § 17:7 Willful and malicious injury
- § 17:8 —Background
- § 17:9 —Fraudulent transfer as willful and malicious
- § 17:10 Debt excepted from discharge for actual fraud—11 U.S.C.A. § 523(a)(2)
- § 17:11 Costs and punitive damages

CHAPTER 18. PROCEDURES..... 1047

- § 18:1 Standing to bring a fraudulent transfer action
- § 18:2 Reservation of claim in Chapter 11
- § 18:3 Asserting claims related to fraudulent transfers in bankruptcy
- § 18:4 —*Caplin's* continuing vitality
- § 18:5 —Trustee's standing under § 541
- § 18:6 — —Nature of in pari delicto
- § 18:7 —Trustee's standing under § 544
- § 18:8 —Application of *Caplin's* to § 541 and § 544(a)
- § 18:9 —Continued vitality of *Caplin* to "rights and powers" clause of § 544(a)
- § 18:10 —Application of *Caplin* to alter ego claims
- § 18:10.25 Courts retreat from personal vs. general claim dichotomy
- § 18:10.75 Piercings procedure (claims)
- § 18:11 Asserting claims related to fraudulent transfers in bankruptcy—Alter ego of wrongdoer results in loss of standing
- § 18:11.75 —RICO
- § 18:12 [*Reserved*]
- § 18:13 Parties and necessary parties
- § 18:14 Trustee/creditor has the burden of proof

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

- § 18:15 Burden of proof
- § 18:16 Bankruptcy court’s jurisdiction
- § 18:17 Personal jurisdiction over transferor as way of
obtaining power over property
- § 18:17.50 Separate entity rule
- § 18:18 Personal jurisdiction over parties
- § 18:18.14 Extended jurisdiction over transferee—Due
process
- § 18:18.28 —Standards for finding general jurisdiction
- § 18:18.35 Corporate registration in a state as conferring
general jurisdiction
- § 18:18.42 Extended jurisdiction over transferee—Specific
jurisdiction
- § 18:18.56 — —Purposeful availment; purposeful direction
- § 18:18.70 — —Substantial connection requirement; claim
must arise out of or relate to the defendant’s
forum conduct
- § 18:18.77 Application of Walden to fraudulent transfer
claims in Bankruptcy Court; nationwide
jurisdiction under Rule 7004
- § 18:18.84 Extended jurisdiction over transferee—Specific
jurisdiction—Miscellaneous ways to obtain
personal jurisdiction
- § 18:18.98 — —Continued vitality of “effects test”
- § 18:18.99 Effect of internet and e-commerce
- § 18:19 Application of alter ego doctrine to obtain personal
jurisdiction
- § 18:19.50 Conspiracy as a basis of obtaining personal
jurisdiction
- § 18:20 Right to jury trial
- § 18:21 Res judicata, collateral estoppel and issue
preclusion
- § 18:21.25 Privity
- § 18:21.50 Governing law in federal court, including
bankruptcy
- § 18:21.75 Consequences of state judgments
- § 18:22 Confirmation of Chapter 11 plan as binding
- § 18:23 Discovery—Attorney-client privilege and work
product doctrine
- § 18:24 Scope—Attorney client privilege and work product
rule
- § 18:25 Discovery—Communications intended to be
disclosed
- § 18:26 —Crime-fraud exception
- § 18:27 —Reliance on counsel waiver—at issue doctrine
- § 18:28 Waiver by inadvertent disclosure and
miscellaneous waivers and considerations

TABLE OF CONTENTS

§ 18:29	Common interest privilege
§ 18:30	Waiver by the bankruptcy trustee
§ 18:31	Waiver in prebankruptcy planning
§ 18:32	Act of production privilege
§ 18:32.25	Litigation privilege
§ 18:32.50	Consent directives; fugitive disentitlement doctrine—searching for, e.g., overseas accounts
§ 18:33	Pleading fraud
§ 18:34	Jurisdiction of the Bankruptcy Court; Stern claims and restrictions on jurisdiction
§ 18:34.20	Statutory basis of Bankruptcy Court’s jurisdiction
§ 18:34.25	Related to jurisdiction
§ 18:34.30	Supplemental or ancillary jurisdiction
§ 18:34.35	Close nexus test relative to post-confirmation jurisdiction
§ 18:34.40	Abstention
§ 18:34.60	Withdrawal of reference
§ 18:34.80	Stern claims
§ 18:34.90	Consent and waiver to defects in jurisdiction

Volume 3

APPENDICES

Appendix A. State Bankruptcy Exemptions

Appendix A1.	State Bankruptcy Exemptions—Commentary	5
Appendix A2.	State Bankruptcy Exemptions—Alabama (Opt out state)	7
Appendix A3.	State Bankruptcy Exemptions—Alaska	19
Appendix A4.	State Bankruptcy Exemptions—Arizona (Opt out state)	29
Appendix A5.	State Bankruptcy Exemptions—Arkansas	43
Appendix A6.	State Bankruptcy Exemptions—California (Opt out state)	57
Appendix A7.	State Bankruptcy Exemptions—Colorado (Opt out state)	97
Appendix A8.	State Bankruptcy Exemptions—Connecticut	

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

		113
Appendix A9.	State Bankruptcy Exemptions—Delaware (Opt out state)	121
Appendix A10.	State Bankruptcy Exemptions—District of Columbia	125
Appendix A11.	State Bankruptcy Exemptions—Florida (Opt out state)	135
Appendix A12.	State Bankruptcy Exemptions—Georgia (Opt out state)	199
Appendix A13.	State Bankruptcy Exemptions—Hawaii	219
Appendix A14.	State Bankruptcy Exemptions—Idaho (Opt out state)	223
Appendix A15.	State Bankruptcy Exemptions—Illinois (Opt out state)	235
Appendix A16.	State Bankruptcy Exemptions—Indiana (Opt out state)	261
Appendix A17.	State Bankruptcy Exemptions—Iowa (Opt out state)	271
Appendix A18.	State Bankruptcy Exemptions—Kansas (Opt out state)	287
Appendix A19.	State Bankruptcy Exemptions—Kentucky	297
Appendix A20.	State Bankruptcy Exemptions—Louisiana (Opt out state)	303
Appendix A21.	State Bankruptcy Exemptions—Maine (Opt out state)	317
Appendix A22.	State Bankruptcy Exemptions—Maryland (Opt out state)	327
Appendix A23.	State Bankruptcy Exemptions—Massachusetts	339

TABLE OF CONTENTS

Appendix A24.	State Bankruptcy Exemptions—Michigan	367
Appendix A25.	State Bankruptcy Exemptions—Minnesota	385
Appendix A26.	State Bankruptcy Exemptions—Mississippi (Opt out state)	401
Appendix A27.	State Bankruptcy Exemptions—Missouri (Opt out state)	409
Appendix A28.	State Bankruptcy Exemptions—Montana (Opt out state)	427
Appendix A29.	State Bankruptcy Exemptions—Nebraska (Opt out state)	435
Appendix A30.	State Bankruptcy Exemptions—Nevada (Opt out state)	441
Appendix A31.	State Bankruptcy Exemptions—New Hampshire	453
Appendix A32.	State Bankruptcy Exemptions—New Jersey	463
Appendix A33.	State Bankruptcy Exemptions—New Mexico	469
Appendix A34.	State Bankruptcy Exemptions—New York (Opt out state)	481
Appendix A35.	State Bankruptcy Exemptions—North Carolina (Opt out state)	513
Appendix A36.	State Bankruptcy Exemptions—North Dakota (Opt out state)	521
Appendix A37.	State Bankruptcy Exemptions—Ohio (Opt out state)	531
Appendix A38.	State Bankruptcy Exemptions—Oklahoma (Opt out state)	551
Appendix A39.	State Bankruptcy Exemptions—Oregon	565
Appendix A40.	State Bankruptcy Exemptions—Pennsylvania	

FRAUDULENT TRANSFERS, PREBANK PLAN AND EXEMPT

		575
Appendix A41.	State Bankruptcy Exemptions—Rhode Island	581
Appendix A42.	State Bankruptcy Exemptions—South Carolina (Opt out state)	589
Appendix A43.	State Bankruptcy Exemptions—South Dakota (Opt out state)	603
Appendix A44.	State Bankruptcy Exemptions—Tennessee (Opt out state)	609
Appendix A45.	State Bankruptcy Exemptions—Texas	619
Appendix A46.	State Bankruptcy Exemptions—Utah (Opt out state)	669
Appendix A47.	State Bankruptcy Exemptions—Vermont	679
Appendix A48.	State Bankruptcy Exemptions—Virginia (Opt out state)	691
Appendix A49.	State Bankruptcy Exemptions—Washington	713
Appendix A50.	State Bankruptcy Exemptions—West Virginia (Opt out state)	729
Appendix A51.	State Bankruptcy Exemptions—Wisconsin	735
Appendix A52.	State Bankruptcy Exemptions—Wyoming (Opt out state)	751
Appendix B.	Summary of State Laws That Authorize Self- settled Asset Protection Trusts	759
Appendix C.	Practitioner’s Overview and Checklist	815

Table of Laws and Rules

Table of Cases

Index