
Contents

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxiii</i>
Introduction: Paralegals and the Bankruptcy System	xxvii
A. Role of the Paralegal	xxviii
B. Common Activities	xxviii
Part I. History and Introduction	1
Chapter 1. A Short History of Bankruptcy	3
A. Origins of Bankruptcy Systems	3
B. Bankruptcy in the Middle Ages	6
C. Early English Insolvency Laws	8
D. Bankruptcy in the United States	10
<i>Summary</i>	<i>12</i>
<i>Key Terms</i>	<i>13</i>
<i>Discussion Questions</i>	<i>13</i>
Chapter 2. Introduction to the Bankruptcy Code	15
A. Organization of the Bankruptcy Code and a Note on the Text	15
B. Overview of the Bankruptcy Code	17
C. The Bankruptcy System	20
D. Composition Agreements—A Bankruptcy Alternative	22
<i>Summary</i>	<i>23</i>
<i>Key Terms</i>	<i>23</i>
<i>Discussion Questions</i>	<i>24</i>

Chapter 3. Understanding the Client	25
A. The Client Interview	25
1. Intake	26
2. The Interview	26
B. The Fact Pattern	29
C. “Cash on the Rocks”	30
D. Initial Interview	38
<i>Discussion Questions</i>	39
 Chapter 4. Filing a Petition	 41
A. Gatekeeper Provisions in Individual Bankruptcies	42
1. Prepetition Credit Counseling	42
2. Debt Relief Agency Provisions	45
B. Voluntary Petitions	47
C. Involuntary Petitions	54
<i>Summary</i>	60
<i>Key Terms</i>	61
<i>Chapter 4 Checklist</i>	62
<i>Discussion Questions</i>	64
<i>Practice Exercises</i>	65
 Chapter 5. Chapter 1: General Provisions	 67
A. Notice and a Hearing	68
B. Rules of Grammatical Construction	72
C. Powers of the Court	73
D. Statutes of Limitation	74
E. Who May Be a Debtor	76
<i>Summary</i>	79
<i>Key Terms</i>	80
<i>Chapter 5 Checklist</i>	80
<i>Discussion Questions</i>	82
 Chapter 6. Needs Based Bankruptcy or “Means Testing”	 83
A. Introduction	83
B. Current Monthly Income	84
C. Deductions	86
D. Special Circumstances	89
E. “Totality of Circumstances”	89
F. Procedure	90
G. Needs Based Bankruptcy Examples	91
<i>Summary</i>	95
<i>Key Terms</i>	95

<i>Chapter 6 Checklist</i>	96
<i>Discussion Questions</i>	96
<i>Practice Exercises</i>	97
Chapter 7. Useful Definitions—Section 101	99
A. Affiliates	99
B. Claim	100
C. Community Claim	101
D. Corporation	101
E. Creditor	101
F. Current Monthly Income	102
G. Custodian	102
H. Debt	103
I. Debt Relief Agency	103
J. Domestic Support Obligations	104
K. Equity Security Holder	104
L. Individual with Regular Income	104
M. Insiders	105
N. Insolvent	105
O. Judicial Lien	106
P. Lien	107
Q. Median Family Income	107
R. Person	107
S. Security	108
T. Security Agreement	109
U. Single Asset Real Estate	109
V. Statutory Lien	110
W. Transfer	110
<i>Summary</i>	111
<i>Discussion Questions</i>	112
Part II. Debtor Relief	113
Chapter 8. Overview of Chapter 7	115
A. Employment and Compensation of Professionals	116
B. Bankruptcy Petition Preparers	123
C. The Chapter 7 Process	125
D. Rule 2004 Examinations	130
E. Discharge and Reaffirmation	131
<i>Summary</i>	136
<i>Key Terms</i>	138
<i>Chapter 8 Checklist</i>	138
<i>Discussion Questions</i>	140
<i>Practice Exercises</i>	140

Chapter 9. Conversion and Dismissal	143
A. Conversion	144
B. Dismissal	148
<i>Summary</i>	150
<i>Key Terms</i>	151
<i>Discussion Questions</i>	151
<i>Practice Exercise</i>	152
Chapter 10. Exemptions	153
A. Background	153
B. Selecting Exemptions	157
C. Federal Exemptions	159
D. Unaffected Claims	165
E. Lien Avoidance to Preserve Exemption	166
F. Claiming and Objecting to Exemptions	167
<i>Summary</i>	169
<i>Key Terms</i>	170
<i>Chapter 10 Checklist</i>	170
<i>Discussion Questions</i>	171
<i>Practice Exercises</i>	172
Chapter 11. Trustees, Examiners, and Creditors' Committees	173
A. Trustees	174
B. The United States Trustee	176
C. The Trustee's Duties	179
D. Debtor-in-Possession	182
E. Official Creditors' Committees	182
F. Chapter 11 Trustees and Examiners	185
G. Ombudsman	188
<i>Summary</i>	188
<i>Key Terms</i>	189
<i>Discussion Questions</i>	189
<i>Practice Exercises</i>	190
Chapter 12. Preparing a Proceeding for a Trustee	191
A. Prefiling Actions	192
B. Post Filing Actions	195
<i>Summary</i>	197
<i>Chapter 12 Checklist</i>	197
<i>Discussion Questions</i>	198
<i>Practice Exercises</i>	198

Part III. Bankruptcy Litigation	199
Chapter 13. The Automatic Stay—11 U.S.C. §362	201
A. The Automatic Stay	201
B. Activity Subject to the Automatic Stay	203
C. Activity Not Subject to the Automatic Stay	206
D. Duration of the Automatic Stay	211
E. Obtaining Relief from the Automatic Stay	214
<i>Summary</i>	222
<i>Key Terms</i>	223
<i>Chapter 13 Checklist</i>	223
<i>Discussion Questions</i>	225
<i>Practice Exercise</i>	225
Chapter 14. Objections to Discharge and the Dischargeability of Individual Debts	227
A. Distinguishing a Discharge from the Dischargeability of Individual Debts	227
B. Debts Nondischargeable Without Creditor Action	229
C. Debts Nondischargeable with Creditor Action	237
D. Complaints to Determine Dischargeability of a Debt	242
E. Objecting to Discharge	244
F. Complaints Objecting to Discharge	247
<i>Summary</i>	248
<i>Key Terms</i>	249
<i>Discussion Questions</i>	249
<i>Practice Exercises</i>	250
Chapter 15. Property of the Estate and Turnover Complaints	251
A. Property of the Estate	251
B. Turnover Complaints	258
<i>Summary</i>	260
<i>Key Terms</i>	262
<i>Discussion Questions</i>	262
Chapter 16. Avoiding Powers—Introduction	263
A. Function of the Trustee’s Avoiding Powers	263
B. Strong Arm Clause	264
C. Limitations on Avoiding Powers	266
D. Statutory Lien Avoidance	268
<i>Summary</i>	269
<i>Key Terms</i>	270
<i>Discussion Questions</i>	270

Chapter 17. Avoidable Preferences—11 U.S.C. §547	271
A. Introduction and Definitions	271
B. Elements of a Preference	274
C. Affirmative Defenses	278
D. Miscellaneous Provisions	283
<i>Summary</i>	284
<i>Key Terms</i>	285
<i>Chapter 17 Checklist</i>	285
<i>Discussion Questions</i>	287
<i>Practice Exercise</i>	287
Chapter 18. Fraudulent and Post Petition Transfers	289
A. Fraudulent Transfers	289
B. Post Petition Transfers	293
C. Liability of Transferees	294
D. Setoffs	297
<i>Summary</i>	298
<i>Key Terms</i>	299
<i>Discussion Questions</i>	299
<i>Practice Exercise</i>	300
Part IV. Liquidation and Claims	301
Chapter 19. Use, Sale, or Lease of Property	303
A. Liquidating Estate Assets	303
B. General Rules	304
C. Use of Cash Collateral	307
D. Effect of the Automatic Stay	308
E. Sales Free and Clear of Liens	309
F. Other Property Interests	311
G. Miscellaneous Provisions	314
<i>Summary</i>	315
<i>Key Terms</i>	316
<i>Chapter 19 Checklist</i>	316
<i>Discussion Questions</i>	317
<i>Practice Exercise</i>	317
Chapter 20. Executory Contracts and Leases	319
A. Executory Contracts	319
B. Assuming a Contract	322
C. Time Limits for Assumption	325
D. Miscellaneous Provisions	328
E. Real Estate Contracts	330

F. Intellectual Property	331
<i>Summary</i>	331
<i>Key Terms</i>	332
<i>Chapter 20 Checklist</i>	333
<i>Discussion Questions</i>	333
Chapter 21. Miscellaneous Provisions Regarding Property of the Estate	335
A. Preservation of Cash	335
B. Utility Service/Discrimination	337
C. Abandonment	338
D. Obtaining Credit	340
E. Health Care Bankruptcies	343
F. System Example	344
<i>Summary</i>	344
<i>Key Terms</i>	346
<i>Discussion Questions</i>	346
<i>Practice Exercise</i>	346
Chapter 22. Claims	347
A. Claim Determination	347
B. Filing a Proof of Claim	348
C. Claim Objections—Procedure	351
D. Claim Objections—Substance	352
E. Administrative Expenses	356
F. Fee Sharing Prohibition	358
G. Tax Claims Determination	358
H. Secured Claims	359
I. Statement of Intention	363
J. Redemption	365
K. Priority Claims	365
L. Partnership Claims	368
M. Codebtor Claims	368
N. Subordination	369
<i>Summary</i>	370
<i>Key Terms</i>	372
<i>Chapter 22 Checklist</i>	372
<i>Discussion Questions</i>	375
<i>Practice Exercises</i>	375
Chapter 23. Administration	377
A. Order of Distribution	377
B. Method of Distribution	380
C. Bankruptcy Administration Timeline	381

<i>Summary</i>	384
<i>Key Terms</i>	384
<i>Chapter 23 Checklist</i>	385
<i>Discussion Questions</i>	385
PART V. Reorganization Proceedings	387
Chapter 24. Chapter 13: Reorganization Proceedings	389
A. Introduction—Reorganization Proceedings	389
B. Special Chapter 13 Provisions	390
C. Dismissal or Conversion—Reorganization Provisions	393
D. Chapter 13 Plan Provisions	396
E. Confirmation Hearings	404
F. Confirmation Conditions	405
G. Feasibility Analysis	407
H. Cramdown	409
I. Effect of Confirmation and Chapter 13 Discharge	411
<i>Summary</i>	413
<i>Key Terms</i>	415
<i>Chapter 24 Checklist</i>	415
<i>Discussion Questions</i>	417
<i>Practice Exercise</i>	418
Chapter 25. Chapter 11: Introduction and Administration	419
A. Introduction to Chapter 11	419
B. Actions to Take Within 120 Days of Filing	424
C. Debtor-In-Possession Bank Accounts	425
D. Insider Compensation	427
E. Operating Reports	428
F. Reviewing Operating Reports	431
<i>Summary</i>	432
<i>Key Terms</i>	433
<i>Chapter 25 Checklist</i>	433
<i>Discussion Questions</i>	435
<i>Practice Exercise</i>	436
Chapter 26. Chapter 11: Elements of a Plan	437
A. Confirmation Process—Overview	437
B. Time to File a Plan	439
C. Plan Characteristics	441
D. Classification of Claims	442
E. Mandatory Plan Provisions	445
F. Permissive Plan Provisions	447

G. Impaired Claims	449
<i>Summary</i>	451
<i>Key Terms</i>	452
<i>Chapter 26 Checklist</i>	452
<i>Discussion Questions</i>	454
<i>Practice Exercises</i>	454
Chapter 27. Chapter 11: Plan Confirmation	455
A. Disclosure Statement	455
B. Plan Confirmation Packet	458
C. Voting Rules	459
D. Modification of the Plan	461
E. Balloting Report	462
F. Confirmation Conditions	462
G. Chapter 11 Cramdown	466
H. Effect of Confirmation and Chapter 11 Discharge	471
<i>Summary</i>	472
<i>Key Terms</i>	474
<i>Chapter 27 Checklist</i>	474
<i>Discussion Questions</i>	476
<i>Practice Exercise</i>	477
Chapter 28. Chapter 12: Reorganization Proceedings	479
A. Purposes of Chapter 12	479
B. Who May File Chapter 12	480
C. Comparison to Chapters 11 and 13	482
D. Unique Chapter 12 Features	483
E. Chapter 12 Plans and Discharge	484
<i>Summary</i>	485
<i>Key Terms</i>	486
<i>Discussion Questions</i>	486
Part VI. Review	487
Chapter 29. Introduction to Courts and Jurisdiction	489
A. Bankruptcy and Federal Judges	489
B. Activity within a Bankruptcy	490
C. BAFJA	491
D. Core and Noncore Proceedings	492
E. Removal and Appeals	495
F. Jury Trials	497
<i>Summary</i>	498
<i>Key Terms</i>	498
<i>Discussion Questions</i>	498

Chapter 30. Statements and Schedules Tutorial	499
A. Introduction	499
B. Ken and Bretony Bottomline	501
C. Schedules	503
D. Statement of Financial Affairs	528
<i>Summary</i>	539
<i>Discussion Questions</i>	540
Chapter 31. Means Testing Tutorial	541
A. Introduction	541
B. Current Monthly Income	543
C. Official Form B122A-2 Chapter 7 Means Test Calculation	547
D. Deductions—Internal Revenue Expense Standards	548
E. Deductions—Additional Expense Deductions	557
F. Deductions for Debt Payment	559
G. Determining Whether the Presumption Arises	562
<i>Summary</i>	564
<i>Discussion Questions</i>	565
Chapter 32. Researching Bankruptcy Issues	567
A. Traditional Methods	567
B. The Internet	570
<i>Chapter 32 Checklist</i>	572
<i>Discussion Questions</i>	572
<i>Appendix. Noticed Motions and Ex Parte Applications</i>	573
<i>Glossary</i>	575
<i>Table of Cases</i>	593
<i>Table of Statutes</i>	597
<i>Table of Federal Rules of Bankruptcy Procedure</i>	601
<i>Table of Secondary Authorities</i>	603
<i>Index</i>	605

Note on forms: The forms referenced in the text can be downloaded from the publisher's website for the book at www.AspenPublishing.com/Buchbinder-Bankruptcy12.