

TABLE OF CONTENTS

PREFACE	v
ACKNOWLEDGMENTS.	vii
TABLE OF CASES.	xxi
TABLE OF FEDERAL STATUTES, RULES & FORMS.	lvii
TABLE OF UNIFORM STATUTES.	lxv
PART I: AN INTRODUCTION TO BANKRUPTCY LAW AND PRACTICE.	1
CHAPTER ONE: BACKGROUND ON STATE LAW AND DEBT COLLECTION.	3
CHAPTER TWO: BANKRUPTCY BASICS.	11
A. DEBTORS AND THE PROBLEMS THEY FACE.	11
<i>Problem 2-1.</i>	13
B. THE COUNSELING SOLUTION.	15
C. THE BANKRUPTCY SOLUTION.	17
1. <i>The Governing Law.</i>	17
(a) The Bankruptcy Code.	17
(b) The Bankruptcy Rules.	19
2. <i>The Leading Players.</i>	19
(a) The Bankruptcy Court.	20
(b) The Trustee.	26
(c) The Debtor.	27
3. <i>The Processes.</i>	28
(a) Chapter 7.	28
(b) Chapter 13.	32
(c) Chapter 11.	33
4. <i>The Supporting Cast.</i>	35
(a) The United States Trustee.	35
(b) The Debtor's Attorney.	36
(c) Secured Creditors.	37
5. <i>Bit Players.</i>	37
(a) Unsecured Creditors.	37
(b) Co-Owners.	38
(c) Co-Debtors.	38
(d) Prepetition Transferees.	38
(e) Equity Interest Holders.	39
(f) Employed Professionals.	39
D. THE POLICIES.	40
<i>Problem 2-2.</i>	41
E. STARTING THE CASE.	43
1. <i>The Petition and Schedules.</i>	43
2. <i>The Means Test.</i>	45
<i>Problem 2-3.</i>	48

3. Attorney Liability Issues.	50
F. CONVERTING TO ANOTHER CHAPTER.	52
CHAPTER TWO REVIEW QUESTIONS.	54
PART II: THE BANKRUPTCY PROCESS.	57
CHAPTER THREE: THE BANKRUPTCY ESTATE.	59
A. PREPETITION PROPERTY INCLUDED IN THE ESTATE.	59
<i>United States v. Whiting Pools, Inc.</i>	60
B. POSTPETITION PROPERTY INCLUDED IN THE ESTATE.	68
<i>Problem 3-1.</i>	70
C. PROPERTY EXCLUDED FROM THE ESTATE.	70
1. <i>Property Held in Trust.</i>	70
2. <i>Certain Education Savings.</i>	73
3. <i>Other Exclusions.</i>	74
D. ALLOCATION PROBLEMS.	74
1. <i>Tax Refunds.</i>	74
2. <i>Contingent Rights.</i>	76
<i>In re Dittmar.</i>	76
<i>In re Clay.</i>	84
<i>Problem 3-2.</i>	88
<i>Problem 3-3.</i>	89
<i>Problem 3-4.</i>	89
<i>Problem 3-5.</i>	90
<i>Problem 3-6.</i>	90
E. RECOVERED PROPERTY.	91
1. <i>Preferences.</i>	91
(a) The Six Elements.	93
<i>Problem 3-7.</i>	99
<i>Problem 3-8.</i>	101
(b) The Nine Defenses.	101
<i>Problem 3-9.</i>	104
<i>Problem 3-10.</i>	109
(c) Persons Liable.	109
2. <i>Fraudulent Transfers.</i>	111
(a) Actually Fraudulent Transfers.	115
<i>Problem 3-11.</i>	115
<i>Problem 3-12.</i>	115
(b) Constructively Fraudulent Transfers.	116
<i>Problem 3-13.</i>	117
<i>BFP v. Resolution Trust Corp.</i>	118
<i>Problem 3-14.</i>	124
<i>Problem 3-15.</i>	124
3. <i>Preferences Redux.</i>	127
4. <i>Postpetition Transfers.</i>	128
CHAPTER THREE REVIEW QUESTIONS.	129

CHAPTER FOUR: EXEMPTIONS.	137
A. STATE V. FEDERAL.	138
<i>Problem 4-1.</i>	141
B. DETERMINING WHICH STATE'S EXEMPTION LAWS APPLY.	141
<i>Problem 4-2.</i>	142
C. EXEMPTIONS AVAILABLE TO ALL INDIVIDUAL DEBTORS.	143
D. THE PROCESS OF CLAIMING EXEMPTIONS.	143
1. <i>In General.</i>	143
<i>Problem 4-3.</i>	145
2. <i>Valuing Property and Calculating Exemptions.</i>	150
<i>Problem 4-4.</i>	151
3. <i>Exemptions in Recovered Property.</i>	153
4. <i>Post-Bankruptcy Effect of Exemptions.</i>	154
E. ABUSING EXEMPTIONS.	155
<i>Hanson v. First National Bank.</i>	156
<i>Norwest Bank Nebraska v. Tveten.</i>	160
<i>In re Sholdan.</i>	169
<i>Problem 4-5.</i>	174
<i>Problem 4-6.</i>	175
<i>Problem 4-7.</i>	177
<i>Problem 4-8.</i>	177
CHAPTER FOUR REVIEW QUESTIONS.	178
CHAPTER FIVE: CLAIMS.	181
<i>Problem 5-1.</i>	181
<i>Problem 5-2.</i>	182
A. THE FILING & ALLOWANCE PROCESS.	185
<i>Problem 5-3.</i>	187
1. <i>Calculating Claims.</i>	187
2. <i>Disallowed and Revived Claims.</i>	188
3. <i>Tardy Claims.</i>	190
B. CONTINGENT CLAIMS.	191
<i>In re Grossman's Inc.</i>	193
<i>Problem 5-4.</i>	201
<i>Problem 5-5.</i>	202
C. EQUITABLE RIGHTS.	202
<i>Problem 5-6.</i>	204
D. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.	205
<i>Problem 5-7.</i>	209
<i>Problem 5-8.</i>	209
<i>Problem 5-9.</i>	210
CHAPTER FIVE REVIEW QUESTIONS.	211
CHAPTER SIX: SECURED CLAIMS.	215
A. IN GENERAL.	215
B. LIEN STRIPPING.	218
C. LIENS ON COLLATERAL ACQUIRED POSTPETITION.	221

	<i>Problem 6-1.</i>	224
D.	POSTPETITION INTEREST AND EXPENSES.	224
E.	AVOIDING LIENS.	226
	1. <i>Strong-Arm Powers – § 544.</i>	227
	<i>Problem 6-2.</i>	230
	2. <i>Preferences Revisited – § 547.</i>	230
	(a) Prepetition Payments.	231
	<i>Problem 6-3.</i>	232
	(b) Creation of the Lien.	232
	<i>Problem 6-4.</i>	233
	<i>Problem 6-5.</i>	233
	<i>Problem 6-6.</i>	234
	<i>Problem 6-7.</i>	238
	<i>Problem 6-8.</i>	239
	<i>Problem 6-9.</i>	244
	3. <i>Liens Impairing Exemptions – § 522(f).</i>	247
	(a) Consensual Liens.	247
	<i>Problem 6-10.</i>	249
	(b) Judicial Liens.	250
	(c) Claiming Exemptions After Using the Trustee’s Avoiding Powers.	256
	<i>Problem 6-11.</i>	256
	4. <i>Statutory Liens – § 545.</i>	257
	5. <i>Liens Securing Fines & Penalties – § 724(a).</i>	257
F.	SETOFF.	258
	<i>Problem 6-12.</i>	259
	<i>Problem 6-13.</i>	261
	<i>Problem 6-14.</i>	262
	CHAPTER SIX REVIEW QUESTIONS.	263
CHAPTER SEVEN: THE AUTOMATIC STAY AND OTHER DEBTOR PROTECTIONS.		271
A.	THE AUTOMATIC STAY.	271
	1. <i>Scope of the Stay.</i>	272
	<i>Problem 7-1.</i>	273
	<i>Problem 7-2.</i>	274
	<i>Problem 7-3.</i>	274
	<i>Problem 7-4.</i>	275
	2. <i>Exceptions to the Stay.</i>	275
	<i>Problem 7-5.</i>	276
	<i>Problem 7-6.</i>	277
	<i>Problem 7-7.</i>	277
	<i>Problem 7-8.</i>	279
	<i>In re First Alliance Mortgage Co.</i>	281
	<i>Problem 7-9.</i>	289
	3. <i>Duration of and Relief from the Stay.</i>	290
	<i>Problem 7-10.</i>	291
	<i>Problem 7-11.</i>	292
	4. <i>Violations of the Stay.</i>	293

B. ACTIONS AGAINST NONDEBTORS.	296
C. PROHIBITIONS ON DISCRIMINATION.	297
D. TOLLING RULES.	299
<i>Problem 7-12.</i>	300
<i>Problem 7-13.</i>	300
CHAPTER SEVEN REVIEW QUESTIONS.	301
PART III: LIQUIDATION IN CHAPTER 7.	303
CHAPTER EIGHT: ADMINISTERING ESTATE PROPERTY.	305
A. DEALING WITH ESTATE ASSETS GENERALLY.	305
B. WHAT HAPPENS TO COLLATERAL.	308
1. <i>Sale by the Trustee.</i>	308
<i>Problem 8-1.</i>	309
2. <i>The Four Rs.</i>	310
(a) Reaffirmation.	311
<i>In re Riggs</i>	312
<i>Problem 8-2.</i>	314
(b) Redemption.	314
(c) Repossession.	315
(d) Retention.	318
<i>Problem 8-3.</i>	321
CHAPTER NINE: PRIORITIES AND DISTRIBUTION.	323
A. PRIORITIES.	327
1. <i>Support Claims.</i>	327
2. <i>Administrative Expenses.</i>	330
<i>In re Resource Technology Corp.</i>	331
(a) The Trustee’s Compensation.	335
(b) Compensation for Employed Professionals.	336
<i>In re Leitner.</i>	337
<i>Problem 9-1.</i>	343
(c) Allocation Problems.	344
3. <i>Wage and Benefit Claims.</i>	344
<i>Problem 9-2.</i>	344
4. <i>Taxes.</i>	346
<i>Problem 9-3.</i>	346
<i>Problem 9-4.</i>	347
5. Other Priorities.	347
<i>Problem 9-5.</i>	347
B. DEALING WITH JOINTLY HELD AND COMMUNITY PROPERTY.	348
CHAPTER NINE REVIEW QUESTIONS.	353
CHAPTER TEN: DISCHARGE AND DISMISSAL.	355
A. DENIAL OF DISCHARGE.	355
<i>In re Mitchell.</i>	358
<i>In re Mitchell.</i>	360

	<i>Problem 10-1.</i>	371
	<i>Problem 10-2.</i>	371
	<i>Problem 10-3.</i>	371
B.	NONDISCHARGEABLE CLAIMS.	372
	1. <i>Unscheduled Debts.</i>	373
	<i>Problem 10-4.</i>	373
	2. <i>Certain Priority Claims.</i>	374
	(a) Taxes.	374
	(b) Claims for Incident to Divorce.	375
	3. <i>Misconduct Claims.</i>	376
	(a) Willful and Malicious Injuries.	376
	(b) Fraudulently Incurred Obligations.	380
	<i>In re Hashemi.</i>	382
	<i>Problem 10-5.</i>	385
	<i>Problem 10-6.</i>	386
	(c) Embezzlement, Larceny & Fraud in Connection with a Fiduciary Duty.	386
	<i>Problem 10-7.</i>	388
	4. <i>Educational Loans.</i>	389
	<i>In re Gerhardt.</i>	391
	<i>Problem 10-8.</i>	396
	5. <i>Litigating Nondischargeability Issues.</i>	397
	<i>Problem 10-9.</i>	400
C.	DISMISSAL FOR ABUSE OR CAUSE.	400
D.	EFFECT OF THE DISCHARGE.	402
	<i>In re Vogt.</i>	402
	<i>Problem 10-10.</i>	407
E.	TAX IMPLICATIONS OF THE DISCHARGE.	408
F.	BANKRUPTCY CRIMES.	408
	CHAPTER TEN REVIEW QUESTIONS.	410
	PART IV: REORGANIZATION.	415
	CHAPTER ELEVEN: INDIVIDUAL DEBT ADJUSTMENT IN CHAPTER 13.	417
A.	IN GENERAL.	417
	1. <i>Eligibility.</i>	421
	<i>Problem 11-1.</i>	422
	2. <i>The Mechanics of Chapter 13.</i>	423
	3. <i>The Stay.</i>	424
	<i>Problem 11-2.</i>	425
	4. <i>The Co-Debtor Stay.</i>	425
B.	THE PLAN.	426
	1. <i>General Requirements.</i>	426
	2. <i>Disposable Income.</i>	428
	<i>Problem 11-3.</i>	434
	3. <i>Treatment of Secured Claims.</i>	435
	(a) In General.	435

	<i>Problem 11-4.</i>	442
	<i>Problem 11-5.</i>	443
(b)	Limitations on Modification of Secured Claims.	443
	<i>Problem 11-6.</i>	448
(c)	Payments “Outside the Plan”.	449
(d)	A Word of Caution for Secured Creditors.	451
4.	<i>Treatment of Unsecured Claims.</i>	451
	<i>Problem 11-7.</i>	451
5.	<i>Good Faith.</i>	456
(a)	Minimal Payment Plans.	456
	<i>Problem 11-8.</i>	458
(b)	Repeated Filings.	458
	<i>Problem 11-9.</i>	460
6.	<i>Avoidance Powers.</i>	460
C.	THE EFFECT OF CONFIRMATION.	462
	<i>In re Carona.</i>	463
1.	<i>Paying Postpetition Obligations.</i>	467
	<i>In re Leavell.</i>	467
2.	<i>Modifying a Confirmed Plan.</i>	472
	<i>Problem 11-10.</i>	474
3.	<i>The Scope of the Chapter 13 Discharge.</i>	476
	<i>Problem 11-11.</i>	476
	<i>Problem 11-12.</i>	477
	<i>Problem 11-13.</i>	477
D.	CONVERSION TO CHAPTER 7.	478
	<i>Problem 11-14.</i>	480
	CHAPTER ELEVEN REVIEW QUESTIONS.	481
	CHAPTER TWELVE: THE CHAPTER 11 PROCESS.	485
A.	STARTING A CHAPTER 11 CASE.	485
1.	<i>Theory of Chapter 11.</i>	485
2.	<i>Filing the Chapter 11 Case.</i>	488
3.	<i>Immediate Considerations.</i>	492
	<i>In re Kmart Corp.</i>	493
	<i>Problem 12-1.</i>	497
B.	MANAGING A CHAPTER 11 CASE.	498
1.	<i>Using Assets of the Estate to Generate Income.</i>	498
(a)	Section 364: Obtaining Credit.	498
	<i>In re Saybrook Manufacturing Co.</i>	500
(b)	Section 363: Using and Selling Assets.	504
	<i>Problem 12-2.</i>	507
	<i>In re Jevic Holding Corp.</i>	509
	<i>In re Motors Liquidation Co.</i>	520
(c)	Section 365: Executory Contracts and Unexpired Leases.	533
	<i>Thompkins v. Lil’ Joe Records, Inc.</i>	536
	<i>Problem 12-3.</i>	542
(d)	Lien and Transfer Avoidance.	543

2.	<i>The Costs of Administering the Estate</i>	544
	(a) Distinguishing Prepetition Claims from Administrative Expenses. . .	544
	<i>In re Lucre, Inc.</i> ,.....	544
	<i>Problem 12-4</i>	553
	<i>Problem 12-5</i>	554
	(b) Employment of Professionals in Chapter 11.	554
3.	<i>Creditors' Involvement in the Chapter 11 Case</i>	555
	(a) Individual Creditors.	555
	(b) The Creditors' Committee.	557
	(c) Appointment of a Trustee or Examiner.	557
	(d) Dismissal or Conversion of the Chapter 11 Case.	558
4.	<i>Role of the U.S. Trustee</i>	559
	<i>Problem 12-6</i>	559
C.	CONFIRMING A CHAPTER 11 PLAN.	560
	1. <i>Overview of Confirmation Process</i>	560
	2. <i>Exclusive Period for Filing a Plan</i>	561
	3. <i>Preparing a Disclosure Statement</i>	562
	4. <i>Confirmation Requirements</i>	564
	(a) Consensual Confirmation.	564
	<i>In re DBSD North America, Inc.</i>	565
	(b) Cramdown.	575
	<i>Bank of America National Trust & Savings Ass'n v. 203 N.</i>	
	<i>LaSalle Street Partnership</i>	578
	<i>In re DBSD North America, Inc.</i>	588
	<i>Problem 12-7</i>	594
	5. <i>Effect of Confirmation</i>	596
	6. <i>Modification of a Confirmed Plan</i>	596
D.	SPECIAL CASES.	597
	1. <i>Prepackaged Chapter 11 Plans</i>	597
	2. <i>Single Asset Real Estate Cases</i>	597
	3. <i>Small Business Cases</i>	598
	CHAPTER TWELVE REVIEW QUESTIONS.	600
	PART V: ANSWERS AND EXPLANATIONS TO REVIEW QUESTIONS	603