

---

## TABLE OF CONTENTS

PREFACE .....	III
ACKNOWLEDGMENTS .....	V
TABLE OF CASES.....	XXV
TABLE OF STATUTES.....	XXVII
TABLE OF AUTHORITIES .....	XXIX
<b>Chapter 1. Introduction.....</b>	<b>1</b>
¶ 101: Introductory Note .....	1
¶ 102: The Shift in Business Technology at the End of the Nineteenth Century .....	5
¶ 103: The Equity Receivership .....	5
¶ 104: A Brief Anatomy of a Bankruptcy .....	7
<b>Chapter 2. The Value of the Debtor in Bankruptcy .....</b>	<b>11</b>
A. How Value Affects Distribution .....	11
¶ 201: Is Bankruptcy “Just” a Valuation Institution?.....	11
¶ 202: Schematic of Controls on the Corporation .....	12
¶ 203: Sample Balance Sheet.....	14
¶ 204: Seniority, Security, and Valuation.....	14
¶ 205: Who Gets What When the Business Sour? .....	17
¶ 206: A Brief Introduction to Reorganization in Chapter 11 .....	18
¶ 207: Christopher S. Sontchi, <i>Valuation Methodologies: A Judge’s View</i> , 20 American Bankruptcy Institute Law Review, Spring 2012, at 1–2 .....	19
¶ 208: Winners and Losers.....	20
¶ 209: The Limits of Judicial Expertise: Reliance on the Parties? .....	20
¶ 210: In re New York, New Haven and Hartford RR Co., 4 Bankr. 758 (D. Conn. 1980) (Zampano, J.) .....	21
¶ 211: The Implications of Valuation .....	23
B. How Bankruptcy Can Enhance Value .....	25
¶ 212 The Common Pool Problem in General .....	25
<b>Chapter 3. Priority .....</b>	<b>29</b>
A. The Concept: Absolute Priority .....	29
¶ 301: Contractual Priorities in Reorganization .....	29
¶ 302: The Setting of Reorganization .....	30
B. The Statute Today: Basics.....	31
¶ 303: Statement by the Hon. Dennis DeConcini, Chairman of the Subcommittee on Improvements in Judicial Machinery . . . , upon Introducing the Senate Amendment to the House Amendment to H.R. 8200, 124 Congressional Record S 17406 (Oct. 6, 1978) .....	31
¶ 304: Absolute Priority and Consent: The 1978 Bankruptcy Code Changes .....	32
¶ 305: Absolute Priority Today: Understanding § 1129(a)(8) .....	34

¶ 306:	Core Reorganization Statutory Provisions .....	34
¶ 307:	Absolute Priority and Consent in the Code: Plan Confirmation Problem 1.....	37
C.	Contractual Predicates to Code Priority.....	38
¶ 308:	Subordination .....	38
¶ 309:	Trade Creditors and Unfair Discrimination: Legislative History with Examples .....	39
	H.R. Rep. No. 95–595, at 415–18 (1977) .....	40
¶ 310:	Trade Creditors and Unfair Discrimination: Plan Confirmation Problem 2.....	43
¶ 311:	“Fair” Discrimination and Trade Creditors.....	44
¶ 312:	Dieglom: Plan Confirmation Problem 3 .....	44
D.	Secured Credit Predicates to Code Priority .....	49
¶ 313:	Secured Transactions: Donald W. Baker, A Lawyer’s Basic Guide to Secured Transactions 18–24, 67–69, 89–90 (1983).....	49
¶ 314:	The Secured Creditor Under the Code: Cram-Down and the Avoiding Power .....	55
E.	Further on the Statute: New Value, Gift Plans .....	57
¶ 315:	New Value, Gift Plans.....	57
¶ 316:	Other Creditors with Statutory Priority.....	59
¶ 317:	Miscellaneous Code Provisions.....	60
F.	A Note on Purposes.....	61
¶ 318:	Fresh Starts .....	61
¶ 319:	The Historical Development of Absolute Priority: <i>Los Angeles Lumber</i> .....	62
¶ 320:	Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939).....	62
¶ 321:	Notes on Los Angeles Lumber.....	64
¶ 322:	Section 1129(a)(7)—The Best Interests Test.....	66
<b>Chapter 4. Valuation in Principle .....</b>	<b>69</b>	
A.	Basic Valuation .....	69
¶ 401:	Discounting to Present Value: The Time Value of Money .....	69
¶ 402:	Present Values in More Detail .....	70
	Richard A. Brealey, Stewart C. Myers, and Franklin Allen, <i>Principles of Corporate Finance</i> 18–25 (11th ed. 2014).....	70
¶ 403:	Perpetuities .....	74
	Richard A. Brealey, Stewart C. Myers, and Franklin Allen, <i>Principles of Corporate Finance</i> 26 (11th ed. 2014).....	74
¶ 404:	Present Value Problems.....	75
¶ 405:	Application: Reinstatement in Dieglom.....	77
¶ 406:	Nonimpairment .....	79
B.	Risk and Diversification .....	79
¶ 407:	Risk .....	79
¶ 408:	Variance and Diversification .....	82
C.	Litigation Implications of Valuation in Theory .....	84
¶ 409:	Bankruptcy Implications of Risk and Diversification.....	84

---

¶ 410:	Value Uncertain: Practical Lawyers, Modern Delay, and the Advantages of the Valuation Hearing for Shareholders .....	87
¶ 411:	Rule 11 .....	88
¶ 412:	Standards of Professional Responsibility .....	89
<b>Chapter 5. Valuation in Practice .....</b>		<b>91</b>
A.	Failure .....	92
¶ 501:	Background to <i>Atlas Pipeline</i> .....	92
¶ 502:	The Distinction Between Financial Failure and Economic Failure .....	92
B.	Valuation of Atlas Pipeline .....	94
¶ 503:	Early in the Proceeding: First Trust Co. of Phil. v. Atlas Pipeline Corp., 29 F. Supp. 32 (W.D. La. 1939) (Aug. 7, 1939) (Dawkins, District Judge) .....	94
¶ 504:	The Rejected Sale: <i>Atlas Pipeline</i> .....	95
¶ 505:	In re Atlas Pipeline Corporation, SEC Advisory Opinion, Under the Corporate Reorganization Act, June 7, 1941, 9 S.E.C. 416 (1941): Part I .....	95
¶ 506:	Questions About Atlas Pipeline: Part I .....	97
¶ 507:	Atlas Pipeline SEC Advisory Opinion: Part II—Atlas’s Earnings .....	97
¶ 508:	Questions About Atlas Pipeline’s: Part II—Earnings .....	100
¶ 509:	Atlas Pipeline SEC Advisory Opinion: Part III—Operational Disposition and the Discount Rate .....	100
¶ 510:	Atlas Pipeline SEC Advisory Opinion: Part IV—Conclusion .....	102
¶ 511:	The Judicial Verdict: In re Atlas Pipeline Corp., 39 F. Supp. 846 (W.D. La. 1941) (July 15, 1941) (Dawkins, District Judge) .....	104
¶ 512:	Atlas Pipeline: More on the Decision .....	105
¶ 513:	After the Reorganization: The Historical Verdict .....	107
¶ 514:	After the Reorganization Questions .....	107
C.	Creditor Conflict .....	108
¶ 515:	Eastern Air Lines .....	109
¶ 516:	Practice Points: Psychology .....	111
D.	The Managers .....	112
¶ 517:	The Role of Managers in Chapter 11 .....	112
<b>Chapter 6. The § 363 Sale .....</b>		<b>115</b>
A.	Selling .....	115
¶ 601:	Sale of the Firm to Provide a Value? .....	115
¶ 602:	The § 363 Sale .....	116
¶ 603:	Statutory Provisions .....	118
¶ 604:	In re The Lionel Corp., 722 F.2d 1063 (2d Cir. 1983) .....	118
¶ 605:	Questions on <i>Lionel</i> .....	125
B.	The Sub Rosa § 1129 Plan via a § 363 Sale .....	126
¶ 606:	Side Deals Under § 363 .....	126
¶ 607:	A Simple § 363 Sale .....	128

¶ 608:	Selling Under § 363? .....	130
¶ 609:	Section 363 Sales and § 1129 Priority: Craig A. Sloane, The Sub Rosa Plan of Reorganization: Side-Stepping Creditor Protections in Chapter 11, 16 Bankruptcy Developments Journal 37 (1999) .....	131
¶ 610:	In re Continental Air Lines, Inc., 780 F.2d 1223 (5th Cir. 1986).....	132
¶ 611:	A Less Simple § 363 Sale .....	132
¶ 612:	Chrysler's 2009 Reorganization: Mark J. Roe & David Skeel, Assessing the Chrysler Bankruptcy, 108 Michigan Law Review 727 (2010).....	135
¶ 613:	Chrysler Appeal and § 363(m).....	136
¶ 614:	Credit Bidding and § 363(k) .....	137
¶ 615:	Claims Trading .....	140
¶ 616:	Frederick Tung, Confirmation and Claims Trading, 90 Northwestern University Law Review 1684 (1996) .....	141
C.	Chapter 7 Liquidations as Sales .....	142
	¶ 617: Conversion to Chapter 7?.....	142
<b>Chapter 7. Junk Bonds.....</b>		<b>145</b>
A.	Bond Indentures and Their Covenants .....	146
	¶ 701: Background to the Bond Indenture.....	146
	¶ 702: Dewing, The Financial Policy of Corporations (5th Ed. 1953) .....	147
B.	The Junk Bond .....	149
	¶ 703: Drum Financial Prospectus .....	149
	¶ 704: Questions on the Drum Financial Indenture, Subordinated as Guarantor? .....	155
C.	Financial Markets and Junk Bonds .....	156
	¶ 705: Jan Loeys, <i>Low-Grade Bonds: A Growing Source of Corporate Funding</i> , Federal Reserve Bank of Philadelphia, Business Review, Nov./Dec. 1986.....	156
D.	Bond Covenants: The Negative Pledge Clause .....	160
	¶ 706: The Negative Pledge Clause .....	160
	¶ 707: Chrysler Solicitation of Consents .....	161
	¶ 708: Questions About Chrysler's Negative Pledge .....	165
	¶ 709: Kelly v. Central Hanover Bank & Trust Co., 11 F. Supp. 497, Rev'd 85 F.2d 61 (2d Cir. 1936) .....	165
	¶ 710: The UCC, <i>Kelly</i> , and the Negative Pledge Clause .....	168
E.	Finance Theory of Security and Priority .....	172
	¶ 711: Security and Priority in Theory .....	172
F.	Low Priority.....	174
	¶ 712: Background Bases for Contractual Subordination.....	174
	¶ 713: Data on the Growth of the Junk Bond Market .....	175
	¶ 714: Practice Point: Drafting a Bond Indenture .....	177
<b>Chapter 8. Reranking: Fraudulent Transfers and Substantive Consolidation .....</b>		<b>179</b>
A.	Prebankruptcy Transfers Within Corporate Groups.....	179

---

B.	¶ 801: Introduction .....	180
	B. Fraudulent Transfer and Corporate Groups.....	184
	¶ 802: The Origins of Fraudulent Transfer Law .....	184
	Garrard Glenn, Fraudulent Conveyances and Preferences 79–87 (1940) .....	185
	¶ 803: Key Statutory Provisions .....	186
	¶ 804: Transfer Between Sister Companies .....	189
	¶ 805: The Corporate Group and Structural Seniority .....	190
	¶ 806: Richard Posner, The Rights of Creditors of Affiliated Corporations, 43 University of Chicago Law Review 449, 507–09 (1976) .....	191
	¶ 807: Fraudulent Transfers, LBOs, and Finance Companies.....	193
	¶ 808: Upstream Guarantees.....	195
	¶ 809: Richard Squire, Strategic Liability in the Corporate Group, 78 University of Chicago Law Review 605, 606–07 (2011).....	195
C.	Substantive Consolidation.....	197
	¶ 810: Introduction .....	197
	¶ 811: Consolidated Rock Prods. Co. v. DuBois, 312 U.S. 510 (1941).....	198
	¶ 812: Questions on <i>Consolidated Rock</i> .....	202
	¶ 813: Complex Corporate Structures and Seniority .....	204
	¶ 814: In re Commercial Envelope Mfg. Co., 3 Bankr. Ct. Dec. 647 (Bankr. S.D.N.Y. Aug. 22, 1977).....	205
D.	Contractual Anti-Consolidation: Special Purpose Vehicles .....	209
	¶ 815: Enron and the Special Purpose Vehicle.....	209
	¶ 816: The Special Purpose Vehicle.....	212
	¶ 817: Asset Securitization .....	213
<b>Chapter 9. Reranking: Preferences .....</b>		<b>217</b>
A.	Preferences .....	217
	¶ 901: Introduction to Preferences .....	217
	¶ 902: Preference Problems.....	218
	¶ 903: Priority Equalizations Across Time via Preference Rules: Lynn M. Lopucki & Christopher R. Mirick, Strategies for Creditors in Bankruptcy Proceedings 38–43 (6th ed. 2015) .....	219
	¶ 904: Preference Exceptions .....	222
	¶ 905: Indirect Preferences .....	226
B.	Intercorporate Preferences .....	227
	¶ 906: Deprizio Construction Co. v. Ingersoll Rand Financial Corp., 874 F.2d 1186 (7th Cir. 1989) .....	227
	¶ 907: <i>Deprizio</i> Exercise.....	235
	¶ 908: <i>Deprizio</i> Issues.....	236
<b>Chapter 10. Equitable Subordination of a Stockholder’s Claim ....</b>		<b>239</b>
A.	General .....	239
	¶ 1001: Introduction to Equitable Subordination .....	239
B.	Equitable Subordination of a Stockholder’s Debt Claim.....	240

¶ 1002:	Taylor v. Standard Gas & Electric Co., 306 U.S. 307 (1939).....	240
¶ 1003:	<i>Deep Rock</i> Problems .....	245
¶ 1004:	From <i>Northern Pipeline</i> to Stern v. Marshall.....	245
¶ 1005:	<i>Deep Rock</i> and Corporate Planning.....	246
¶ 1006:	Note re Washington Plate Glass Co., 27 B. R. 550 (D.D.C. 1982), 3 Bankruptcy News Letter (WGL), No. 6 (June 1986), at 1.....	249
¶ 1007:	Partnership Liability and Debt Recharacterization.....	250
C.	Subordination of Securities Law Claims .....	253
¶ 1008:	Oppenheimer v. Harriman Nat'l Bank & Trust Co., 301 U.S. 206 (1937) .....	253
¶ 1009:	John Slain & Homer Kripke, <i>The Interface Between Securities Regulation and Bankruptcy—Allocating the Risk of Illegal Securities Issuance Between Securityholders and the Issuer's Creditors</i> , 48 New York University Law Review 261 (1973)* .....	254
¶ 1010:	<i>Oppenheimer</i> , Slain & Kripke, § 510, Rescission and Fraud.....	259
¶ 1011:	The Stockholders' Fraud Claim in the Modern Financial Scandals: SEC v. Worldcom, Inc., 273 F.Supp. 2d 431 (S.D.N.Y. 2003).....	261
¶ 1012:	Questions on <i>Worldcom</i> .....	263
¶ 1013:	Does Subordination Make the Rescission or Damages Claim Useless, Always? .....	263
¶ 1014:	Reranking.....	264
¶ 1015:	Transition Problem.....	264
<b>Chapter 11. Equitable Subordination of the Creditor's Claim and Lender Liability.....</b>		267
A.	Equitable Subordination of a Creditor's Claim .....	268
¶ 1101:	In re American Lumber Co., 7 B.R. 519 (Bankr. D. Minn. 1979) .....	268
¶ 1102:	Questions on <i>American Lumber</i> .....	274
¶ 1103:	The Collapse of W.T. Grant Company.....	276
¶ 1104:	In re W.T. Grant Co., 699 F.2d 599 (2d Cir. 1983) .....	278
¶ 1105:	Questions on <i>W.T. Grant</i> .....	284
¶ 1106:	In re Clark Pipe & Supply Co., Inc., 870 F.2d 1022 (5th Cir. 1989) .....	286
¶ 1107:	Cross-Collateralization.....	293
B.	Lender Liability .....	293
¶ 1108:	Sources of Lender Liability .....	293
¶ 1109:	State National Bank of El Paso v. Farah Mfg. Co., 678 S.W.2d 661 (Tex. Ct. App. 1984).....	294
¶ 1110:	Questions on Lender Liability in <i>Farah</i> .....	303
¶ 1111:	A Comparative Note .....	305

---

<b>Chapter 12. Rejecting Pre-Bankruptcy Contracts and Regulatory Obligations.....</b>	<b>307</b>
A. The Trustee's Right to Reject or Assume .....	307
¶ 1201: The Debtor's Contracts.....	307
¶ 1202: Administrative Priority for Assumed and Postpetition Contracts.....	310
¶ 1203: Efficiency Considerations.....	312
¶ 1204: Critical Vendor Payments.....	313
¶ 1205: <i>In re Kmart Corp.</i> , 359 F.3d 866 (7th Cir. 2004) .....	315
¶ 1206: Reclamation and Other Rights of Suppliers re Eve-of-Bankruptcy Shipments .....	318
¶ 1207: Specific Performance .....	318
¶ 1208: Assignment.....	319
¶ 1209: Technology Licenses .....	320
B. Labor.....	322
¶ 1210: <i>Truck Drivers Local 807, Int'l Brotherhood of Teamsters v. Carey Trans. Inc.</i> , 816 F.2d 82 (2d Cir. 1987) .....	323
¶ 1211: <i>Wheeling-Pittsburgh Steel Corp. v. United Steelworkers of Am., AFLCIO-CLC</i> , 791 F.2d 1074 (3d Cir. 1986).....	328
C. Mass Tort Claims .....	336
¶ 1212: The Problem of Mass Compensation .....	336
¶ 1213: The Results Thus Far .....	338
D. Setoff .....	341
¶ 1214: Balancing Debtor and Creditor Interests.....	342
¶ 1215: Setoff as Security .....	343
¶ 1216: John C. McCoid, Setoff: Why Bankruptcy Priority?, 75 Virginia Law Review 15 (1989) .....	344
<b>Chapter 13. Government Entities.....</b>	<b>347</b>
A. Government Regulation: Environmental Clean-Up Obligations.....	348
B. Government Licenses.....	351
¶ 1301: <i>FCC v. Nextwave Personal Comm. Inc.</i> , 537 U.S. 293 (2003).....	353
C. State Regulatory Policy .....	359
D. Municipal Bankruptcy .....	360
¶ 1302: Omer Kimhi, <i>Chapter 9 of the Bankruptcy Code: A Solution in Search of a Problem</i> , 27 Yale Journal on Regulation 351 (2010) .....	361
<b>Chapter 14. Interest .....</b>	<b>363</b>
A. The Statute .....	363
¶ 1401: Interest Accruals and Nonaccruals in Bankruptcy for Unsecured Creditors .....	363
¶ 1402: Interest Accruals.....	364
B. Creditors Versus Stockholders.....	366
¶ 1403: Chaim Fortgang & Lawrence King, The 1978 Bankruptcy Code: Some Wrong Policy Decisions, 56 N.Y.U. L. Rev. 1148 (1981)* .....	366
¶ 1404: Case Law, and Then Congress Acts .....	370

C.	Seniors Versus Juniors.....	371
	¶ 1405: Subordination .....	371
	¶ 1406: In re King Resources, Inc., 528 F.2d 789 (10th Cir. 1976) ...	372
D.	Guarantors Versus Guaranteed.....	375
	¶ 1407: In re Bruno, 747 F.2d 53 (1st Cir. 1984) .....	375
	¶ 1408: The Lawyers.....	377
E.	Secured Versus Unsecured.....	377
	¶ 1409: Adequate Protection for Secured Creditors .....	377
	¶ 1410: United Savings Ass'n v. Timbers of Inwood Forest, 484 U.S. 365 (1988) .....	380
F.	Original Issue Discount .....	385
G.	What Rate? .....	386
	¶ 1411: Unsecureds with High Interest Rates Versus Those with Low Rates .....	386
	¶ 1412: What Rate for the Oversecured Creditor?.....	387
	¶ 1413: What Rate in Cramdowns? .....	388
<b>Chapter 15. The New Finance in Bankruptcy.....</b>		<b>391</b>
A.	Derivatives and Repo 101.....	391
	¶ 1501: Basic Definitions.....	391
	¶ 1502: Economic Significance .....	393
B.	Safe Harbors for Derivatives and Repos .....	395
C.	Development of the Safe Harbors .....	398
	¶ 1503: Early Treatment .....	398
	¶ 1504: Legislative History and Justification for the Safe Harbors .....	398
	¶ 1505: Policy Skepticism.....	400
	¶ 1506: Mark J. Roe, The Derivatives Market's Payment Priorities as Financial Crisis Accelerator, 63 Stanford Law Review 539, 541–43 (2011) .....	401
D.	Congressional Reaction After the 2007–2008 Financial Crisis .....	402
E.	The Empty Creditor .....	402
<b>Chapter 16. Debtor-in-Possession Financing .....</b>		<b>405</b>
	¶ 1601: Operating the Business in General .....	405
	¶ 1602: Operating the Business, Getting Inventory.....	405
	¶ 1603: Credit Outside the Ordinary Course of Business.....	406
	¶ 1604: Debtor-in-Possession Financing .....	407
	¶ 1605: Statutory Principles Limiting DIP Financing; Contractual Over-Rides of Prebankruptcy Debt Covenants .....	409
	¶ 1606: Chapter 11 Melt-Downs and Administrative Insolvency....	410
	¶ 1607: George W. Kuney, Hijacking Chapter 11, 21 Emory Bankruptcy Developments Journal 19 (2004) .....	412
	¶ 1608: DIP Lender with Control.....	415
	¶ 1609: Cross-Collateralization and Roll-Ups.....	415

---

¶ 1610: Loan-to-Own DIP Lending—David A. Skeel, <i>The Story of Saybrook: Defining the Limits of Debtor-in-Possession Financing</i> , in <i>Bankruptcy Law Stories</i> 177, 197–98 (Robert Rasmussen ed., 2007) .....	418
¶ 1611: Using Cash to Operate the Business .....	419
<b>Chapter 17. Corporate Governance and Chapter 11 .....</b>	<b>421</b>
A. Who Runs the Bankrupt Debtor? .....	422
¶ 1701: Displacing Management with a Trustee .....	422
¶ 1702: The Creditors Committee, the U.S. Trustee, and the Examiner .....	422
¶ 1703: Dep’t of Justice, About the U.S. Trustee Program & Bankruptcy .....	422
¶ 1704: The Examiner .....	423
¶ 1705: The WorldCom Examiner’s Report .....	424
B. Who Sues? .....	427
C. Squelching Pre-Bankruptcy Lawsuits? .....	428
¶ 1706: The Status of Corporate Lawsuits .....	428
¶ 1707: Robert H. Mnookin & Robert B. Wilson, Rational Bargaining and Market Efficiency: Understanding <i>Pennzoil v. Texaco</i> , 75 Virginia Law Review 295 (1989) .....	433
D. Managerial Compensation in Chapter 11 .....	438
<b>Chapter 18. Duties to Creditors? .....</b>	<b>443</b>
A. Duties of the Trustee .....	443
¶ 1801: Trustees Under the Trust Indenture Act .....	443
¶ 1802: The Depression-Era SEC Investigation into Trustees .....	445
¶ 1803: The Notion of Trustee: Fiduciary or Contracted—For Agent? (From Brudney & Chirelstein, <i>Corporate Finance</i> 148–49 (3d ed. 1987)) .....	446
¶ 1804: Passage of the Trust Indenture Act .....	447
¶ 1805: <i>Broad v. Rockwell Int’l Corp.</i> , 642 F.2d 929–30 (5th Cir. 1981) .....	447
¶ 1806: Questions on <i>Rockwell</i> .....	448
¶ 1807: Edward Fleischman, Proposed Amendments to the Trust Indenture Act of 1939 (SEC Memorandum Aug. 10, 1987) .....	449
¶ 1808: Amendments to the Trust Indenture Act .....	451
¶ 1809: The Trust Indenture Act’s New Conflicts Provision .....	452
B. Duties of the Company .....	452
¶ 1810: <i>Metlife v. RJR Nabisco</i> .....	452
¶ 1811: Bondholder Reaction .....	460
¶ 1812: <i>Credit Lyonnais Bank Nederland, N.V. v. Pathé Commc’ns Corp.</i> , 1991 Del.Ch. LEXIS 215 at N.55 (Dec. 30, 1991) .....	461
¶ 1813: Questions on <i>Credit Lyonnais</i> .....	462
¶ 1814: <i>Credit Lyonnais</i> , Vicinity of Bankruptcy .....	465
¶ 1815: <i>N. Am. Catholic Educ. Programming Found. v. Gheewalla</i> , 930 A.2d 92, 103 (Del. 2007) .....	466

¶ 1816: E. Norman Veasey, <i>Counseling the Board of Directors of a Delaware Corporation in Distress</i> , American Bankruptcy Institute Journal, No. 1, at 64 (2008) .....	466
C. Contract Theory .....	467
¶ 1817: Allan Farnsworth, <i>Disputes Over Omission in Contracts</i> , 68 Columbia Law Review 860, 891 (1968)* .....	467
<b>Chapter 19. Workouts to Avoid a Bankruptcy .....</b>	<b>469</b>
A. General .....	469
¶ 1901: Workouts to Avoid Bankruptcy .....	469
¶ 1902: Arthur S. Dewing, <i>The Financial Policy of Corporations</i> (5th Ed. 1953) .....	470
B. Modification of the Indenture .....	470
¶ 1903: Aladdin Hotel Co. v. Bloom, 200 F.2d 627 (8th Cir. 1953)...	470
¶ 1904: Questions on <i>Aladdin</i> .....	473
C. Holding Out and Buoying-Up .....	475
¶ 1905: Collapse of a Workout .....	475
¶ 1906: The Economics of Holding Out .....	479
¶ 1907: Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106 (1939) (again).....	481
¶ 1908: Notes on Los Angeles Lumber .....	484
D. Exit Consents .....	485
¶ 1909: Exit Consents.....	485
¶ 1910: Katz v. Oak Industries, Inc., 508 A.2d 873 (Del. Ch. 1986).....	487
¶ 1911: <i>Katz</i> and the Trust Indenture Act .....	494
¶ 1912: Section 316(b) Litigation .....	497
¶ 1913: Assénagon Asset Management v. Irish Bank Resolution Corp., No. HC11C01320 (British High Court of Justice, Chancery, July 27, 2012) (Mr. Justice Briggs) .....	498
¶ 1914: Fidelity Investments Petition to the SEC .....	505
¶ 1915: Questions on Fidelity Application .....	509
¶ 1916: The Fidelity Hypothetical .....	510
¶ 1917: The Allowed Amount of the Claim: Before and After an Exchange.....	511
¶ 1918: Exchange Offer Prospectus (The <i>Chateaugay</i> Problem).....	515
¶ 1919: Original Issue Discount.....	518
¶ 1920: Subsequent Developments ( <i>Chateaugay</i> on Appeal).....	519
¶ 1921: Exchange Offers and Original Issue Discount.....	522
¶ 1922: Exchange Offers and Original Issue Discount, OID Chart .....	523
¶ 1923: Debt Overhang Again: Chrysler on the Verge of Shut-Down, 1978–1979.....	523
¶ 1924: Mergers .....	528
<b>Chapter 20. Jurisdiction and Venue.....</b>	<b>531</b>
A. The Limited Jurisdiction of the Bankruptcy Court .....	531
¶ 2001: Constitutional Background: Article III Courts and Article I Courts .....	531

---

¶ 2002: The Broad Jurisdiction That Congress Wanted .....	532
¶ 2003: The Supreme Court Narrows Jurisdiction: Core vs. Noncore Proceedings .....	533
B. The Wide Venue Possibilities in Bankruptcy .....	535
¶ 2004: The Venue Statute and Forum Shopping .....	535
¶ 2005: <i>Patriot Coal</i> and Limits to Forum Shopping .....	536
¶ 2006: Venue in Congress: Michael L. Cook & Jessica L. Fainman, <i>No Time for Bankruptcy Venue Hypocrisy</i> , Law Journal Newsletters, June 2005 .....	537
¶ 2007: Subsequent Venue Efforts in Congress .....	538
¶ 2008: U.S. Jurisdiction Over Foreign Firms .....	539
<b>Chapter 21. Modigliani-Miller, Bankruptcy Costs, and Taxes .....</b>	<b>541</b>
¶ 2101: Why Then Debt? .....	541
¶ 2102: Richard Brealey, Stewart Myers and Franklin Allen, Principles of Corporate Finance 427–31, 440, 442–43 (11th Ed. 2014) .....	544
¶ 2103: Leverage, Value, and Modigliani-Miller .....	550
¶ 2104: With Risk .....	551
¶ 2105: With Corporate Taxes .....	551
¶ 2106: With Owner-Level Taxes .....	553
¶ 2107: Some Stages of the Trade-Off Analysis .....	553
¶ 2108: Tax Consequences of Recapitalizations in Bankruptcy .....	554
¶ 2109: General Motors NOL Motion to Bar Claims Trading .....	557
¶ 2110: Could the Market Produce a Bankruptcy-Avoiding Security? .....	560
<b>Chapter 22. The LBO .....</b>	<b>563</b>
A. The Leveraged Buyout .....	563
¶ 2201: LBOs and the Prospect of Fraudulent Conveyance Liability .....	563
B. The LBO Lender and Fraudulent Conveyance Liability .....	566
¶ 2202: United States v. Tabor Court Realty Corp., 803 F.2d 1288 (3d Cir. 1986) .....	566
¶ 2203: Questions on <i>Gleneagles</i> .....	574
¶ 2204: Lending to an Insolvent Firm .....	577
C. The LBO Stockholders and Fraudulent Conveyance Liability .....	578
¶ 2205: Wieboldt Stores, Inc. v. Jerome M. Schottenstein, 94 Bankr. 488 (Bankr. N.D. Ill. 1988) .....	578
¶ 2206: Questions on <i>Wieboldt</i> .....	585
D. The Settlement Payment Safe Harbor in LBOs .....	587
¶ 2207: Kaiser Steel Corp. v. Charles Schwab: § 546(e) .....	587
<b>Chapter 23. Markets and Chapter 11.....</b>	<b>603</b>
¶ 2301: Robert C. Clark, <i>The Interdisciplinary Study of Legal Evolution</i> , 90 Yale Law Journal 1238 (1981) .....	603
¶ 2302: Mark J. Roe, Bankruptcy and Debt: A New Model for Corporate Reorganization (1983, 1987) .....	604
¶ 2303: Questions on Roe .....	610

¶ 2304: Douglas Baird, <i>The Uneasy Case for Corporate Reorganization</i> , 15 Journal of Legal Studies 127 (1986) .....	611
¶ 2305: Questions on Baird .....	614
¶ 2306: General Problems with Using the Market to Replace Chapter 11 .....	614
¶ 2307: Douglas G. Baird & Robert K. Rasmussen, <i>Chapter 11 at Twilight</i> , 56 Stanford Law Review 673 (2004) .....	617
 <b>Appendix. The Statutes.....</b>	
Bankruptcy Act of 1978.....	621
Trust Indenture Act of 1939.....	652
Uniform Fraudulent Conveyance Act.....	653
Uniform Fraudulent Transfer Act .....	655
Uniform Commercial Code.....	656
 INDEX.....	
	659