

## Table of Contents

---

INTRODUCTION .....	III
<b>Unit 1. Overview of Bankruptcy .....</b>	<b>1</b>
A. A Little (but Still More than You Care About) History .....	1
B. The Bankruptcy Reform Act of 1978.....	2
C. The Role of Nonbankruptcy Law in Bankruptcy.....	5
D. Procedure in Bankruptcy Cases .....	6
<b>Unit 2. Initiating (and “Uninitiating”) the Case .....</b>	<b>9</b>
A. Voluntary Filings .....	9
B. Involuntary Cases .....	11
1. I Can’t Be Put in an Involuntary Case (or at Least Not Under This Chapter) .....	12
2. You Don’t Have Standing to Put Me in an Involuntary Case.....	12
3. You Don’t Have Grounds to Put Me in an Involuntary Case.....	13
4. A Couple of Other Things About Involuntary Cases .....	14
C. Dismissal and Conversion .....	15
1. In General .....	15
2. Bad Faith Filings.....	17
<b>Unit 3. Core Concepts of Federal Bankruptcy Law .....</b>	<b>19</b>
A. Claims .....	20
1. Overview .....	20
2. Claims Allowance (and Disallowance) .....	22
3. Claims Estimation .....	26
4. Unsecured and Secured Claims.....	26
a. Unsecured Claims .....	27
i. Priority Claims .....	28
aa. Domestic Support Claims .....	29
bb. Administrative Expense Claims .....	30
cc. Employee Wage and Wage-Related Claims .....	33
dd. Tax Claims .....	34
ii. Subordination of Claims .....	36
aa. Contractual Subordination.....	36
bb. Securities Fraud Subordination .....	37
cc. Equitable Subordination .....	37

b.	Secured Claims .....	39
i.	Treatment of Secured Claims in Chapter 7 .....	40
ii.	Treatment of Secured Claims in Chapters 11 and 13 .....	42
B.	Property of the Estate.....	45
1.	The Importance of Property of the Estate and Who Decides .....	45
2.	So, What's Included in the Estate? .....	46
3.	What's Excluded from the Estate? .....	48
4.	Turnover .....	50
a.	Turnover Generally.....	50
b.	Turnover by Custodian.....	52
C.	The Automatic Stay .....	53
1.	Overview .....	53
2.	Scope of the Stay (What Acts Are Covered) .....	54
3.	Acts Excepted from the Stay (What Acts Are Not Covered).....	57
a.	Criminal Prosecutions.....	57
b.	Police Powers by a Governmental Unit.....	58
4.	Termination of the Stay .....	60
5.	Relief from Stay .....	62
a.	Relief Based on Section 362(d)(2).....	63
b.	Relief for "Cause" Under Section 362(d)(1) (Herein of Adequate Protection) .....	64
6.	Violations of the Stay.....	67
D.	Discharge .....	70
1.	Limitations on the Discharge .....	70
2.	The Discharge Injunction.....	71
3.	Protection Against Discriminatory Treatment.....	72
<b>Unit 4. Avoiding Powers .....</b>	<b>75</b>	
A.	Introduction.....	75
B.	Unrecorded Transfers (Herein of the Trustee's "Strong-Arm" Powers).....	77
C.	Fraudulent (Voidable) Transfers .....	81
1.	Actually Fraudulent Transfers .....	82
2.	Constructively Fraudulent Transfers .....	84
a.	In General .....	84
b.	Intracorporate Guaranties .....	87
c.	LBOs .....	89
3.	Use of State Fraudulent Transfer Law.....	90

D.	Preferential Transfers .....	92
1.	Distinguished from Fraudulent Transfers .....	92
2.	Elements of a Voidable Preference .....	93
3.	Time of Transfer .....	99
4.	Preference Exceptions (or Defenses) .....	101
a.	Substantially Contemporaneous Exchanges for New Value .....	102
b.	Ordinary Course Transfers .....	103
c.	Enabling Loans .....	105
d.	Subsequent Advances .....	107
e.	Net Improvement in Position .....	109
5.	Indirect Preferences .....	111
E.	Setoff .....	114
1.	What Is a Setoff and the “Right of Setoff”? .....	114
2.	Setoff in Bankruptcy .....	115
a.	The Section 553(a) Limitations .....	116
b.	Section 553(b) and Reduction in the “Insufficiency” .....	118
F.	Postpetition Transfers .....	119
G.	Statutory Liens and Reclamation .....	121
1.	Disguised State Priorities.....	121
2.	Seller of Goods’ Right of Reclamation .....	122
<b>Unit 5. Executory Contracts .....</b>		<b>125</b>
A.	What’s the Point? .....	125
B.	Just What Is an Executory Contract, Anyway? .....	127
1.	What Isn’t an Executory Contract .....	127
2.	Countryman Definition .....	128
C.	What Are the Three Things You Can Do with Executory Contracts, and What Are the Differences Among Them?.....	130
1.	Reject.....	130
2.	Assume and Retain .....	132
a.	If Contract Is Not in Default .....	132
b.	If Contract Is in Default .....	133
3.	Assume and Assign .....	136
a.	Requirements (and of Anti Anti-Assignment Clausles).....	136
b.	Sales of Assets .....	138
c.	Release of Liability.....	138
D.	What Are the Limitations and Exceptions? .....	138
1.	Restrictions Which Benefit the Estate.....	139
a.	Ipsso Facto Clauses Do Not Bar Assumption....	139

b.	Non-Monetary Defaults and the Impossibility of Cure .....	140
2.	Restrictions Which Limit Assumption.....	141
a.	Personal Service and Other Non-Assignable Contracts Cannot Be Assumed or Assigned ...	141
b.	Contracts of Financial Accommodation Cannot Be Assumed or Assigned.....	142
c.	Adequate Assurance and Shopping Center Leases .....	143
E.	What Are the Time Limits for Accomplishing the Three Actions?.....	144
1.	Chapter 7 Cases .....	144
2.	All Other Cases .....	144
3.	What Happens in the Meantime?.....	145
a.	Business as Usual .....	145
b.	Nondebtor Rights and Remedies .....	146
F.	Exotic Situations .....	148
1.	Debtor as Lessor of Real Property; Rights of Lessee.....	148
2.	Debtor as Licensee of Intellectual Property; Rights of Licensee .....	148
G.	Basic Checklist for Executory Contracts .....	149
<b>Unit 6. Special Issues in Chapter 7 .....</b>		<b>151</b>
A.	Overview .....	151
B.	Why You Gotta Be So Mean? .....	152
C.	Keeping Property in Chapter 7 .....	154
1.	Exemptions .....	154
a.	Understanding Exempt Property .....	154
b.	Law Determining Exempt Property .....	157
c.	Application of Exemptions .....	159
d.	Conversion of Nonexempt Property to Exempt Form.....	160
e.	Avoiding Exemption-Impairing Liens.....	163
2.	Redemption .....	166
3.	Reaffirmation .....	167
a.	Compared to Redemption .....	168
b.	Why Reaffirm? .....	169
c.	Procedure for Reaffirming .....	170
4.	Ride-Through (Nevermore) .....	172
D.	The Chapter 7 Discharge .....	175
1.	In General .....	175

2.	Denial of Discharge .....	176
a.	Stuff the Debtor Did Before Filing .....	177
b.	Stuff the Debtor Did or Didn't Do on or After Filing .....	180
c.	Procedure for Objecting to Discharge .....	182
3.	Revocation of Discharge.....	183
4.	Dischargeability of Particular Debts .....	184
a.	Taxes .....	187
b.	Debts Incurred by Fraud.....	188
c.	Unscheduled Debts .....	192
d.	Debts Based on Fiduciary Misconduct, Embezzlement, or Larceny.....	193
e.	Domestic Support Obligations and Related Debts .....	194
f.	Debts Arising from Willful and Malicious Injury.....	195
g.	Educational Debt .....	196
<b>Unit 7. Special Problems in Chapter 13 .....</b>		<b>199</b>
A.	Policy Issues: The Reasons for Chapter 13.....	199
B.	Statutory Differences Between Chapter 7 and Chapter 13 Cases.....	201
1.	Qualifying for Chapter 13: Individuals, Income and Debt.....	201
2.	The Co-Debtor Stay (§ 1301).....	203
3.	Discharge Entered After Payments Completed (§ 1328).....	204
4.	Expanded Property of the Estate (§ 1306).....	206
5.	Discharge Has Different Scope than Chapter 7.....	206
6.	Ability to Cure, Reinstate, and Modify Secured Debt .....	207
7.	The Chapter 13 Trustee .....	208
C.	The Centerpiece: The Chapter 13 Plan .....	209
1.	What Is a Plan? .....	209
a.	Who Proposes? .....	209
b.	When Must the Debtor Propose the Plan? ....	210
c.	How Long Does a Plan Last?—of “Commitment Periods” .....	210
d.	What Can a Plan Propose?.....	212
i.	Payment of All Projected Disposable Income (§ 1325(b)) .....	212
ii.	Calculation of Projected Disposable Income and the Means Test (Again).....	213

iii.	Other Terms (§ 1322) .....	218
e.	What Can't a Plan Propose?.....	219
2.	Plan Confirmation Standards (§ 1325).....	221
a.	No Voting in Chapter 13 .....	221
b.	Basic Requirements (Good Faith; Feasibility; Best Interests) .....	221
c.	Handling Unsecured Claims .....	224
d.	Handling Secured Claims (of Cars and Houses) .....	224
i.	Consent (§ 1325(a)(5)(A)).....	224
ii.	Surrender (§ 1325(a)(5)(C)) .....	225
iii.	Cram Down (§ 1325(a)(5)(B)).....	225
aa.	Value— <i>Rash</i> .....	227
bb.	Interest Rates— <i>Till</i> .....	228
cc.	Special Rules for Homes (§ 1322(b)(2) & (5)).....	229
dd.	Special Rules for Cars (the So-Called “910 Provision”) .....	231
3.	Effect of a Confirmed Plan .....	233
D.	Post-Confirmation Issues .....	234
1.	Modification of Plan (§ 1329) .....	234
2.	Revocation of Plan (§ 1330).....	236
E.	Conversion and Dismissal (§ 1307) .....	236
F.	Review of Chapter 13—What to Look for on Exams .....	238
<b>Unit 8. Special Problems in Chapter 11 .....</b>	<b>241</b>	
A.	Eligibility, Players and Procedure in a Chapter 11 .....	242
1.	Eligibility .....	242
2.	Players .....	242
3.	The Debtor in Possession .....	243
4.	Chapter 11 Trustees and Examiners .....	244
5.	The Creditors Committee .....	245
6.	The Office of the United States Trustee .....	246
7.	Procedure and Timelines.....	247
B.	Operating the Business During the Case .....	248
1.	Critical Vendors, Priorities, and Administrative Expenses.....	248
2.	Hiring Professionals .....	249
3.	Secured Creditors: Stay Relief and Cash Collateral Issues (§§ 362 and 363) .....	250
4.	Postpetition Financing (§ 364).....	254

C. Section 363 Sales.....	257
1. General Requirements: Ordinary Course and the Business Judgment Rule .....	257
2. All or Just Some of the Assets? .....	259
3. The Power of Selling Free and Clear (§ 363(f)) ....	259
4. Structured Dismissals .....	264
D. Plans (§ 1129).....	265
1. What Is a Chapter 11 Plan? .....	265
2. Classes and Classification (§ 1122).....	266
3. Substantive Content (§ 1123).....	267
4. Impairment and Effect (§ 1124) .....	268
5. Plan Process.....	269
a. Exclusivity and Who May Propose a Plan (§ 1121) .....	270
b. Disclosure Statement (§ 1125).....	271
c. Pre-Packaged Plans .....	272
d. Voting (§§ 1126 and 1129(a)(8)) .....	273
6. Consensual Confirmation Standards (§ 1129(a)) ...	275
a. Voting (§§ 1126 and 1129(a)(8) with a Little Bit of § 1124).....	275
b. Good Faith (§ 1129(a)(3)) .....	276
c. Best Interests Test (§ 1129(a)(7)) .....	276
d. Feasibility (§ 1129(a)(11)).....	277
e. Full Payment of All Administrative Claims (§ 1129(a)(9)) .....	277
f. At Least One Consenting Class (§ 1129(a)(10)) .....	278
g. Other Confirmation Standards.....	278
7. Non-Consensual Confirmation Standards (§ 1129(b)) .....	279
a. All Consensual Requirements Except Voting .....	279
b. No Unfair Discrimination (§ 1129(b)(1)) .....	280
c. Fair and Equitable—Cram Down of Secured Claims (§ 1129(b)(2)(A)(i)-(iii)) .....	282
d. Fair and Equitable—the Effect of the Dreaded § 1111(b) Election .....	285
e. Fair and Equitable—Cram Down of Unsecured Claims and the “Absolute Priority Rule” (§ 1129(b)(2)(B)(ii)).....	289
f. Fair and Equitable—Cram Down of Equity Interests (§ 1129(b)(2)(C)) .....	291
E. Dismissal and Conversion (§ 1112).....	291

F.	Exotic Forms of Chapter 11.....	292
1.	Individuals and Chapter 11.....	292
2.	Small Business Debtors .....	293
a.	What Is a “Small Business”?.....	294
b.	Standard Small Business Cases .....	295
c.	Subchapter V Small Business Cases .....	296
i.	Consensual Confirmation of a Subchapter V Plan .....	298
ii.	Nonconsensual Confirmation (Cramdown) of a Subchapter V Plan .....	298
3.	Single Asset Real Estate Debtors.....	301
G.	Discharge and Dischargeability (§ 1141) .....	302
H.	Post-Confirmation Issues.....	302
1.	Equitable Mootness .....	302
2.	Revocation of Confirmation .....	303
I.	Review of Chapter 11.....	303
<b>Unit 9. Bankruptcy Jurisdiction.....</b>		<b>307</b>
A.	Bankruptcy Jurisdiction .....	307
B.	Bankruptcy Venue.....	312
C.	Jury Trials and Bankruptcy .....	313
D.	Everything Else: Removal, Abstention, Withdrawal of the Reference, and Appeals .....	314
1.	Removal .....	314
2.	Abstention.....	314
3.	Withdrawal of Reference .....	315
4.	Appeals .....	316
<b>TABLE OF CASES .....</b>		<b>319</b>