

PARALEGAL SERIES

D. Buchbinder • R. Cooper

# BASIC BANKRUPTCY LAW FOR PARALEGALS

Abridged Edition

FOURTH EDITION



Wolters Kluwer

PARALEGAL SERIES

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# Basic Bankruptcy Law for Paralegals

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Abridged Edition,  
Fourth Edition

**David L. Buchbinder**

**Robert J. Cooper**



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# Preface to Abridged Edition

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This book evolved from a need to develop a nuts-and-bolts description of the bankruptcy system written in a manner that could be easily understood by nonlawyers.

Our primary intent has been to design this text as a basic primer for legal assistants or paralegal students to help them grasp the practical aspects of representing debtors or creditors within the bankruptcy system. To meet this challenge, we have explained practice and theory together in as concise a format as possible. We have chosen this approach because practice is almost always dictated by underlying theory, and it is easier to learn a practice when one has been provided with the basic theory behind it.

This Abridged Edition of *Basic Bankruptcy Law for Paralegals* reflects the many thoughtful comments of paralegal instructors and students from all over the country, some of whom have gone to exceptional effort to make sure their thoughts were heard, to enhance the practical nature of the text, and to further simplify the subtleties and nuances of the Bankruptcy Code and system. This edition focuses primarily upon consumer bankruptcy since the vast majority of bankruptcy cases are filed as consumer Chapter 7 or Chapter 13 cases. The generally Chapter 11 business related material has been significantly edited to provide just enough material to expose a consumer practitioner to the basic terms and concepts since they occasionally do appear in consumer practice.

Along with the now standard Practice Pointers and Practice Exercises features, this Fourth Revised Abridged Edition incorporates several innovations unique to this text and this edition, as well as utilizing the most up-to-date revisions to the Official Bankruptcy Forms and the most current dollar amount adjustments. The major revisions begin with a new Chapter 3, Understanding the Client, where we introduce client interview skills and the interview process. In this new chapter, we also present a detailed fact pattern designed almost like a short story to both develop the interview concept and also to provide a reference basis for the instruction to come. In conjunction with this “story,” throughout the book we have included “Fact Pattern” references to tie the material on a given page back to the fact pattern presented in Chapter 3. The hope is that this new design will help to facilitate the learning process

for the students as they can tie the new material presented in each subsequent chapter back to the underlying fact pattern. This edition is also the first to include the new Official Bankruptcy Forms adopted by Congress as part of the Forms Modernization Project beginning in December 2015, up to and including December 2016. In addition, this revised edition includes the most up to date statutory adjustment of dollar amounts, as revised triennially, most recently on April 1, 2016, to the exemption amounts and other provisions in the Code. Combined, these innovations and revisions represent the cutting edge in bankruptcy education.

Paralegals are invaluable in the bankruptcy system. Under proper legal supervision, paralegals can efficiently perform various tasks for clients at a substantial savings. Because much of bankruptcy practice is routine, presenting these routines and the reasons for them will help a paralegal be properly prepared to assist in a debtor or creditor bankruptcy practice. The introduction describes the role of paralegals in the bankruptcy system. The student should read the introduction twice, once at the beginning of the course and again at the end. In this way, the material will act as both an introduction and final review of the course.

It has not been our intent to analyze the complex subtleties of the Bankruptcy Code and its attendant case law interpretation, but rather to describe the routine events that occur in all bankruptcy proceedings, events that normally occur without dispute or litigation. These events account for a majority of bankruptcy practice, much of which is not problematic. Thus, law students and nonbankruptcy attorneys may also find this text a useful reference tool for finding answers to common bankruptcy questions.

For example, by reading chapter 4 of the Abridged Edition, the forms accompanying chapter 4 in the Forms Disk, and Appendix 1, any student or practitioner can quickly learn the basic principles of providing notices to creditors or parties in interest in bankruptcy proceedings, and learn about the documents and the timing involved, while receiving some guidance as to the existence of applicable local rules in a given district.

Our philosophical goal in undertaking this work has been to describe the Bankruptcy Code as a comprehensive system of debtor relief and debt system. We are honored to have been given the opportunity to evolve the original work from the laboratory of actual use.

Upon completing this undertaking we have reached the inescapable conclusion that the Bankruptcy Code exists first and foremost as a tool of debt collection and not of debtor relief. Conversely, the debtor relief afforded by the Bankruptcy Code is among the most liberal relief ever provided in the evolution of bankruptcy laws in Western civilization. Nonetheless, the 2005 legislation has been perceived by many to restrict debtor relief while enhancing the debt collection aspects of the Code.

This edition has also been prepared with the secondary purpose of aiding creditor representatives in understanding how the bankruptcy system may be properly utilized as a debt collection device to increase overall recovery rates.

We are optimistic that having described the Bankruptcy Code in this manner we may aid, however slightly, in enhancing the efficiency of the system.

We hope you find the text useful and practical as the teaching device it is intended to be.

Finally, please note that the text occasionally refers to a Forms Disk. For this edition, the forms are now available for download, rather than on a stand-alone CD. All forms can be accessed at the companion website to accompany this text at [http://www.aspenlawschool.com/books/Buchbinder\\_BankParaAbridged4e/](http://www.aspenlawschool.com/books/Buchbinder_BankParaAbridged4e/).

*David L. Buchbinder*  
*Robert J. Cooper*

January 2017

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# Acknowledgments to Abridged Edition

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I would like to thank all of those who have provided assistance, comradeship, and succor in creating an Abridged Edition of *Basic Bankruptcy for Paralegals*. First and foremost is Robert, who has made substantial and major contributions to the work. David Herzig and Troy Froebe from Aspen Publishers have worked long and patiently to bring this project to reality. Betsy Kenny, who has been my editor for almost 20 years, gets a special appreciation for her support and patience.

The above paragraph was written in 2008. Now it is 2016. I take great pleasure in thanking first and foremost Bob Cooper for his invaluable contributions to this work. I would like to thank Kaesmene Banks at Wolters-Kluwers for her guidance and assistance during the publication process, and Christine Becker at Progressive Publishing Services who guided us through the actual production process. My colleague David Gerardi assisted in assembling the forms for this edition and deserves particular thanks. I would also like to acknowledge the instructors who teach and the students who learn from the work who have thought and think highly enough of it to give Robert and I the pleasure of keeping it up-to-date.

*David L. Buchbinder*

When David called and asked if I would like to co-author this Abridged Edition, my first thought was a resounding “Yes!” Later, the reality of already being overextended between working, teaching, coaching, and participating in several other projects and committees started to sink in. As they say, sometimes life gets in the way. When I hesitantly mentioned David’s offer to my wife, she was immediately excited and said, “Of course, you said yes! You’ve always wanted to write.” So of course, I said yes. Somehow, somehow, we made it work, and make no mistake: Writing takes its toll on the entire family. Without the support of my wife and my three boys, I could not have committed the time and effort to this project that it required and deserved. I knew that the original text was an excellent resource, and I only hoped that I would be able to make

some small contribution. Ultimately, it was a joy working and brainstorming with David, and I think that the quality of the final product shows just how successful the collaboration was between him and me. I will forever be grateful to him that he thought of me when it came time to tackle this project. It is amazing what one simple “Yes” can lead to. Thanks, Dave!

It’s eight years later, and I still think that it’s been a blast to work on this project. The focus of this “great writing adventure” has always been on the instructors and the students. Our goal was to provide them with a reference that they could use to help them navigate the ever-growing morass known as the Bankruptcy Code. I like to think that we have succeeded in at least giving them a paddle. This latest revision is the first to include all of the changes in the law, the Official Forms and the exemption amounts in the Code, as well as a brand new chapter focusing on client interviews and providing an underlying “fact pattern” for the entire book. It was a huge undertaking, but I think well worth the time invested in the end and a benefit for the students.

*Robert J. Cooper*

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# Introduction

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## **Paralegals and the Bankruptcy System**

The use of paralegals to assist bankruptcy counsel has grown commensurate with the growth and acceptance of paralegals within the legal system in general. Many basic services can be provided to clients at a substantial cost savings because of the low hourly billing rates of paralegals compared to associate or partner attorneys.

In this regard, however, it should be stressed that a paralegal may not operate independently of counsel in providing bankruptcy-related services to clients since the courts have consistently found such activities to constitute the unauthorized practice of law, which in many states can be prosecuted as a misdemeanor. See chapters 7 and 9 *infra*. The paralegal must always tread cautiously in the face of clients who will invariably seek to pressure the paralegal to provide legal advice.

### **A. ROLE OF THE PARALEGAL**

The role of paralegals in bankruptcy practice is similar to that of paralegals in other areas of legal practice. Paralegals may be required to research specific legal issues based on counsel's factual analysis of a matter. The research activity may be as simple as verifying the existence and amount of a particular exemption, or may involve complex issues of adequate protection in relief from stay motions. See chapters 10 and 12 *infra*. Regardless of the nature of a research assignment, the basic methodology presented in chapter 24 will allow many issues to be competently researched in minimal time.

In the area of document preparation, paralegals aiding in bankruptcy practice will often provide substantial assistance, and a majority of their services, to counsel in preparing Statements and Schedules and the Statement of Current Monthly Income for a debtor or proofs of claim for a creditor. See tutorial chapters 22 and 23 *infra*. In smaller firms, paralegals may also be asked to prepare preliminary drafts of motions for relief from stay, complaints objecting to the dischargeability of a debt or the discharge of a debtor, and motions to sell property. See chapters 12, 13 and 16 *infra*. In addition, paralegals may assist in

preparing preliminary drafts of all or a portion of briefs or memoranda in support of or in opposition to motions in any area of bankruptcy law.

In the realm of bankruptcy litigation, a paralegal will provide litigation support services similar to those performed in other areas of legal practice. Preparing digests of depositions, assembling and marking exhibits for a trial or evidentiary hearing, compiling factual data for counsel to prepare or respond to discovery requests, and making charts or other demonstrative aids are all activities that occur in bankruptcy practice.

## **B. COMMON ACTIVITIES**

When representing debtors, the most common activity performed by a paralegal is assisting counsel in the preparation of the basic documents required to be filed in a Chapter 7 bankruptcy (see chapters 4 and 8 *infra*) or with regard to a Chapter 13 proceeding (see chapter 18 *infra*). The checklists and forms accompanying these chapters will serve as useful practice aids for students in class and for practicing paralegals.

When representing creditors, paralegals will perform a number of basic tasks. Preparing a proof of claim, as described in chapter 17 *infra*, is by far the most common. A paralegal may also assist counsel in the preparation and prosecution of a motion for relief from the automatic stay, as described in chapter 12 *infra*, for creditor clients.

Preparing a preliminary report to counsel concerning the information contained in a debtor's Statements and Schedules is a task that is also regularly performed by paralegals for creditor clients. See chapter 22 *infra*. This analysis will help a creditor to determine the likelihood of a recovery, to decide how much effort to expend in attempting to recover a dividend from a bankruptcy estate.

Other than legal issues involving specific application of the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, the types of activity conducted will not vary from those in any other litigation: Facts and documents have to be investigated and organized, discovery may take place, depositions will have to be digested, briefs and motions may have to be written, and finally, the matter may have to be prepared for trial and actually tried. The value of paralegals in assisting with these services is well proven.

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