

ASPEN COLLEGE SERIES

■ Stephen P. Parsons

THE ABCS OF DEBT

A Case Study Approach to Debtor/Creditor Relations and Bankruptcy Law

FOURTH EDITION

UNITED STATES BANKRUPTCY COURT

Name of Debtor (if individual, enter Last, First, Middle):

Other Names used by the Debtor in the last 8 years
(include married, maiden, and trade names):

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Con.

Address of Debtor (City, and Street, City, and State):

Address of Debtor (if different from above address):

Address of Debtor (if different from above address):

Name of Joint Debtor:

All Other (include name):

Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Con.:

Address of Debtor (City, and Street, City, and State):

Address of Debtor (if different from above address):

Address of Debtor (if different from above address):



Wolters Kluwer

ASPEN COLLEGE SERIES

THE ABCs OF DEBT

A CASE STUDY APPROACH TO DEBTOR/CREDITOR
RELATIONS AND BANKRUPTCY LAW

Fourth Edition

STEPHEN P. PARSONS, J.D.



Wolters Kluwer

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This book is dedicated to the memory
of Mr. and Mrs. William H. Parsons:

Bill and Juanita
Mom and Dad

Some debts can never be repaid

Preface

Approach

There are two fundamental premises underlying this book. The first is that the specialized study of bankruptcy requires an adequate foundation in other aspects of debtor/creditor relations that are too often ignored or treated only superficially in bankruptcy texts. Grasping bankruptcy concepts and procedures is challenging enough for those who understand loans, lines of credit, installment sales, consensual security arrangements involving real and personal property, surety and guarantor arrangements, statutory and equitable liens, and the priority issues that arise in all those debtor/creditor relationships. Without that foundation, the student undertaking the study of bankruptcy is at a serious disadvantage. Debt collection is another fundamental aspect of debtor/creditor relations that deserves much more attention than it usually receives in texts for this field. This book is unique in that it comprehensively addresses the topics of how consumer and business debt is created and collected (Part A) preparatory to the in-depth study of the consumer bankruptcy case under Chapter 7 or Chapter 13 of the Code (Part B) and the business bankruptcy under Chapter 11 of the Code (Part C).

The second fundamental premise of this book is that bankruptcy and related areas of debtor/creditor law are best taught using a realistic, **case-study** approach. While most current bankruptcy texts avoid the error of teaching too much theory, many err in utilizing a piecemeal approach, in which topics such as the automatic stay, adequate protection, turnover and avoidance powers, cramdown and impairment options, postpetition debt, the use of cash collateral, the assumption or rejection of executory contracts, etc., are presented in isolation, making it difficult for the student to understand when and how such concepts come into play in a particular bankruptcy case. This book is unique in that it uses realistic, current case studies to introduce, explain, and illustrate bankruptcy law and procedure. Students see how a bankruptcy case unfolds, from the moment a debtor makes contact with a lawyer until the case is closed. That chronological, step-by-step approach is used to study cases filed under Chapter 7, Chapter 13, and Chapter 11. This book aspires not just to teach students “about” bankruptcy, but to teach them how to “do” bankruptcy.

Organization of the Book

The text is divided into three parts:

- Part A:** The Creation and Collection of Debt Prior to Bankruptcy (Chapters Two through Five)
- Part B:** Consumer Bankruptcy under Chapter 7 and Chapter 13 of the Code (Chapters Six through Sixteen)
- Part C:** Business Bankruptcy under Chapter 11 of the Code (Chapters Seventeen through Twenty)

Following an introductory chapter that explains the learning approach to be used and debuts the three case studies utilized throughout Parts A and B of the text, Part A addresses the important distinctions between consumer and business debt and between secured and unsecured debt. Emphasis is placed on the creation, perfection, and enforcement of consensual security interests in real and personal property as well as the personal guaranty as a form of security for debt. An entire chapter is devoted to the often neglected subject of nonconsensual liens, both possessory and nonpossessory. Prelitigation efforts to collect delinquent debt are considered in Part A including comprehensive coverage of the Fair Debt Collection Practices Act as well as state legislative and tort remedies for abusive collection tactics. Part A concludes with a thorough examination of the judicial collection process and methods of executing on a final judgment and includes a discussion of the role of exemptions, jointly owned property, and trust arrangements as they impact on execution.

Part B of the text focuses on the consumer bankruptcy case including the Chapter 7 liquidation proceeding for a consumer debtor and the Chapter 13 debt adjustment case for an individual with regular income. We begin with an overview of the Bankruptcy Code, modern bankruptcy practice, and the organization and jurisdiction of the U.S. bankruptcy courts. Two realistic bankruptcy case studies are introduced and used throughout Part B, one a case under Chapter 7 and the other a case under Chapter 13. Complete **Case Files** for both case studies are provided for students on the companion website to the textbook at http://aspenlawschool.com/books/Parsons_Debt4e/ and referred to throughout the chapters that make up Part B. The case studies utilized in Part B illustrate how consumer cases under Chapters 7 and 13 of the Code are handled from beginning to end. Bankruptcy concepts and procedures are addressed as they actually arise in real cases. The case files accessible on the companion web site allow students to actually see completed petitions, schedules, statements, motions, objections, notices, and orders, all of which are routinely drafted by paralegals for review by an attorney and filed in bankruptcy cases.

Part C of the text focuses on the business bankruptcy case under Chapter 11 of the Code. It also utilizes a realistic business bankruptcy case study with complete case files accessible to students on the companion web site. As with the Chapter 7 and 13 cases in Part B, the Chapter 11 case in Part C is studied step-by-step from filing of the petition through order closing the case.

The companion website to the text also contains numerous **To Learn More (TLM)** activities for each chapter. The TLMs are designed to challenge and enable the student to do further research on issues raised in the text or to consult additional resources for further learning. Some of the TLMs are historical (e.g., Debtor/creditor tensions in the newly independent United States were a major factor in the decision to convene the meeting in Philadelphia that became the Constitutional Convention of 1787). Some are policy oriented (e.g., Debt collection work is increasingly being outsourced to India and countries in South America; the financial services industry spent more than \$100 million lobbying for the passage of BAPCPA in the eight years it was under consideration by Congress). Most require the student to locate and apply local law or procedure to the general topics raised in the text (e.g., Does your state regulate the interest rate that can be charged by payday loan companies? What property exemptions are recognized in your state?). As every instructor knows, it is not enough for students to learn what the law is generally around the

country—they need to know the law of their particular state. It is not enough for them to learn the different procedures bankruptcy courts or trustees across the nation may follow—they need to know the procedures followed by the bankruptcy courts and trustees in the federal district where they will work.

The **Instructor's Manual (IM)** contains material that the instructor can use to assign optional **Drafting Exercises** to students as well. There are four optional exercises to accompany Part A of the text relating to the pre-bankruptcy creation and collection of debt and ten to accompany Parts B and C of the text, including five for a Chapter 7 consumer bankruptcy case, two for a Chapter 13 case, and three for a Chapter 11 business reorganization case.

Key Features

As noted, the book utilizes realistic, current case studies. The first three case studies are introduced in Chapter One and are used throughout Part A. The characters in each case study are given sufficient history, personality, and context that they become real people for students, not just names on a page. Debt-related problems happen to real people in the real world, and students should be taught to see clients as real people with unique stories and circumstances. Following the same three case studies throughout Part A enables students to get to know these clients and their financial circumstances. Three additional case studies with case files are utilized in Parts B and C of the text to illustrate bankruptcy concepts and procedures studied there. The companion website to the text contains exhaustive case files to accompany all three bankruptcy case studies utilized in Parts B and C.

Each chapter begins with a short list of **Key Concepts**. Numerous **Examples** are provided throughout each chapter, along with timely and relevant **Illustrations**. In addition, a number of **Problem-Hypothetical (P-H)** activities appear throughout each chapter, presenting the student with the opportunity to immediately apply what is being read in the text. Similarly, a number of **Ethical Considerations (EC)** appear periodically, drawing the student's attention to a relevant ethical or professional challenge presented by the topic under discussion. New to the fourth edition are the more than twenty **Highlighted Cases** sprinkled through the text that give students the opportunity to see how courts have applied the concepts being studied in actual cases. Each highlighted case is followed by **Real-Life Application Exercises** challenging students to apply the analysis and rule announced in the highlighted case. Also new to the fourth edition are periodic **Information Boxes**, providing students with interesting historical information to supplement the text. At the end of each chapter is a comprehensive **Chapter Summary**, 10 to 15 open-ended **Review Questions**, and a list of **Words and Phrases to Remember**.

In addition to the Drafting Exercises previously mentioned, the IM contains suggested approaches to teaching with the text including testing and grading, suggested answers to the P-H and Real-Life Application Exercises that follow the Highlighted Cases, answers to the end of chapter review questions, and a comprehensive test bank with answer key.

A note on the dates used in the text: To keep the dates as current as possible, the illustrations and case file documents utilize a dating system in which YR00 is always the current year. YR-1 is last year, YR-2 is two years ago, YR+1 is next year, YR+2 is two years from now, and so on.

New for the Fourth Edition

The fourth edition has been substantially revised and reorganized to enable more efficient and focused instruction. The pre-bankruptcy chapters in Part A of the text have been revised and streamlined with extraneous material previously included in them moved to the To Learn More feature located on the companion website for optional use by the instructor. The bankruptcy chapters included in Parts B and C of the text are now organized around **consumer bankruptcy** under which heading both Chapter 7 and Chapter 13 bankruptcy cases are considered in Part B and **business bankruptcy** where Chapter 11 business reorganization is the focus of Part C. With these revisions it should be easier to cover the material in a single semester and the bankruptcy material is more clearly presented in a way that emphasizes the important consumer/business bankruptcy distinction.

The forms used in the three bankruptcy case studies utilized in Parts B and C of the text and available to the student on companion website have all been updated to comply with the important December 2015 amendments to the official bankruptcy forms. Likewise, the dollar amounts utilized for allowed federal exemptions, the standardized means test expenses, debtor qualifications to file under certain chapters, and other Bankruptcy Code provisions subject to the triennial dollar adjustment mandate of §104 have all been updated to reflect the amounts that went into effect on April 1, 2016. Examples and P-Hs throughout the book have been freshened and updated as have all statistics cited regarding consumer and business bankruptcy filings. As mentioned in the Key Features section of this Preface, major new features for this edition include the Highlighted Cases followed by Real-Life Application Exercises, the Key Concepts that now appear at the beginning of each chapter, and the entertaining Information Box feature.

The new edition has been updated to include discussion of every bankruptcy decision of the U.S. Supreme Court announced since the last edition appeared, including *Bank of America, N.A., v. Caulkett* which put the kibosh on the lien stripping option in a Chapter 7 case, *Law v. Siegel* which nixed the idea of surcharging a debtor's homestead exemption to pay administrative costs of trustee, *Harris v. Viegelaahn* which quashed the practice of including undistributed funds in the hands of a Chapter 13 standing trustee in the property of debtor's Chapter 7 estate when the debtor converted the case from Chapter 13 to Chapter 7, as well as *Executive Benefits Ins. Agency v. Arkison*, and *Wellness International Network, Ltd., v. Sharif* which together, while not resolving the thorny constitutional jurisdiction issues raised for bankruptcy courts by *Stem v. Marshall*, at least work around them in such a way that bankruptcy courts can continue to function. In addition to new Supreme Court decisions, there are numerous citations to new lower court decisions throughout Parts B and C of the text as questions about the 2005 BAPCPA amendments to the bankruptcy code are slowly but surely being dealt with.

Textbook Resources

The companion website at http://aspenlawschool.com/books/Parsons_Debt4e/ includes additional resources for students and instructors, including:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other hand-held device.
- Instructor resources to accompany the text
- Links to helpful websites and updates.

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, PowerPoint slides, and sample exercises for use with Best Case bankruptcy software. All of these materials are available for download from our companion website.

Appreciation

The author wishes to thank the law students at the Appalachian School of Law in Grundy, Virginia, and the paralegal students in the Walters State Paralegal Program in Morristown, Tennessee, for serving as the amenable guinea pigs for the development of the materials and approach used here. Appreciation is also expressed to the many clients who entrusted the author with various debtor/creditor issues over the past 30 years—especially those who paid their bill.

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Stephen P. Parsons

September 2016

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