

BANKRUPTCY

NINTH EDITION

WILLIAM D. WARREN

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DAVID A. SKEEL, JR.

FOUNDATION PRESS

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by

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PREFACE TO THE NINTH EDITION

Like its predecessors, the NINTH EDITION of BANKRUPTCY endeavors to be as current as possible in the remarkably dynamic field of bankruptcy law. In structure and method, however, the NINTH EDITION remains a classic casebook presenting students the full canon of bankruptcy law under the 1978 Bankruptcy Code explicated through carefully selected and edited principal cases and thoughtful notes and problems connecting current cases with the rich history of bankruptcy law.

Developments in the bankruptcy case law, already occurring rapidly in light of BAPCPA and the massive economic dislocations caused by the financial panic of 2008 and the ensuing Great Recession, further accelerated in 2010-11. Of late, the Supreme Court's contributions have been particularly important. *Stern v. Marshall* (2011), only the most notorious of these Supreme Court decisions, completely upended the consensus that grew up around the constitutionality of the 1984 BAFJA Amendments, re-raising numerous questions regarding the scope of bankruptcy court authority long thought settled. In the consumer area, *Hamilton v. Lanning* (2010) and *Ransom v. FIA* (2011) import more flexibility into the disposable income test at the heart of Chapter 13, recognizing that sensible administration of the "objective" standards set out in BAPCPA requires Chapter 13 plans to take into account the practical reality of the debtor's income and expenses—whatever the statute might seem to say otherwise. This tension between "objective" statutory standards and statutory purpose and policy also continues to play out in the lower courts as BAPCPA provisions such as the "hanging paragraph" and the "means test" spawn litigation throughout the system.

The key developments on the Chapter 11 front are the continuing ferment over section 363 sales and gifting generated in part by the Chrysler and GM cases and some of the reaction against the limiting construction on section 363(f), (m) imposed by *In re PW*. We reprint the Second Circuit decisions in *Chrysler* and *DBSD*, and include a new note on *Pacific Lumber* and *Philadelphia Newspapers*, the controversial decisions of the Third and Fifth Circuits authorizing sale under a plan without secured creditor consent or credit bidding on the basis of the indubitable equivalent language in section 1129. The Seventh Circuit declined to follow its sister circuits down this road, setting up the issue for Supreme Court resolution in *RadLAX Gateway Hotel v. Amalgamated Bank* which should be decided before the Court recesses in July 2012. We substantially revised the equitable remedy/claim material using the Seventh Circuit decision in *Apex Oil* as a new principal case in lieu of *Ward*. We took the opportunity afforded by the preparation of a new edition to update the equitable subordination materials with *SI Restructuring*, the preference materials with *National Gas Distributors*, and to introduce extensive new Notes directed at the pressing current issues raised by such diverse matters as Ponzi

schemes, regulation of the Chapter 11 process to create greater transparency through disqualification and disclosure requirements, the avoidance and stay exemptions for derivatives and other protected financial contracts, and transnational bankruptcy.

The most important new feature of BANKRUPTCY, however, is the introduction in this NINTH EDITION of our co-author David A. Skeel, Jr. of the University of Pennsylvania. David's scholarship combines the very best historical work in the field with an unerring instinct for making that history relevant to the most important and controversial current issues facing the bankruptcy system. This NINTH EDITION has already been greatly enriched by his contributions and keen critical eye. We are proud to have him join BANKRUPTCY and look forward to his participation in future editions as they become necessary (and they seem to be increasingly frequently necessary) given new developments in the field.

Kristoffer Garrison, UCLA Law '12, and Elizabeth Hendee, Albert Lichy and David Payne, all of Penn Law '11, provided excellent research and editing assistance in connection with this NINTH EDITION. Tal Grietzer, as usual, prepared the camera-ready manuscript of these materials. His skill and care made timely publication of the NINTH EDITION possible and we are once again grateful for his dedicated efforts in our cause.

Finally we thank our adopters and users for their support, comments and criticism all of which are critical to maintaining and improving these teaching materials. If you have questions, comments or suggestions relating to this NINTH EDITION please do not hesitate to contact any of us at the addresses, emails and phone numbers below.

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