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Consumer Bankruptcy Law in Focus

Stephen P. Parsons

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Consumer Bankruptcy Law in Focus

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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

The Focus Casebook Series

Help students reach their full potential with the fresh approach of the **Focus Casebook Series**. Instead of using the “hide the ball” approach, selected cases illustrate key developments in the law and show how courts develop and apply doctrine. The approachable manner of this series provides a comfortable experiential environment that is instrumental to student success.

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Focus Casebook Features Include:

Case Previews and Post-Case Follow-Ups — To succeed, law students must know how to deconstruct and analyze cases. Case Previews highlight the legal concepts in a case before the student reads it. Post-Case Follow-Ups summarize the important points.

Case Preview



In re Hlavin

As the hypothetical of Mary Jones and her loaves of bread illustrates, the number of potential disputes about the kinds of debt that are or are not to be considered consumer debts is simply limitless. The lawyer has to recognize when the issue matters and can be contested. As you read *In re Hlavin*, a case involving the 11 U.S.C. §707(b) dismissal for abuse provision,

consider the following questions:

1. Why is it the debtors and not the bankruptcy trustee who are arguing that their home mortgage is not a consumer debt?
2. What does this court say about whether the mortgage is or isn't a consumer debt?

Post-Case Follow-Up



Is this opinion making a distinction between the reposessor himself disturbing the peace and his committing an act that motivates another to disturb the peace once the reposessor is gone? Would the result in this case have been different if the activities of the reposseors had awakened the debtor or the neighbor and the one awakened had shouted at them out of a window something like, “Stop, thief! I’ve called the police”?

See *Robinson v. Citicorp National Services, Inc.*, 921 S.W.2d 52 (Mo. Ct. App. 1996), and *Chrysler Credit Corp. v. Koontz*, 661 N.E.2d 1171 (1996). If the debtor’s husband had raced outside with a firearm while the reposseors were pulling away from the property? If he or the neighbor had fired a firearm at the fleeing reposseors? If a sleeping child had been in the car unseen by the reposseor when the car was driven off? See *Chapa v. Traciers & Associates*, 267 S.W.3d 386 (Tex. App. 2008)? If the reposseor had violated a driving ordinance in the course of repos-

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Real Life Applications — Every case in a chapter is followed by Real Life Applications, which present a series of questions based on a scenario similar to the facts in the case. Real Life Applications challenge students to apply what they have learned in order to prepare them for real-world practice. Use Real Life Applications to spark class discussions or provide them as individual short-answer assignments.

In re Hlavin: Real Life Applications

1. Would the result in *Hlavin* have been different if the loans secured by their home had originally been taken out to fund a failed business venture? What if they had been taken out for home improvement or a vacation but then actually used to fund a business venture? Would it matter if they told the bank the money was being borrowed for home improvement or vacation but intended it to be used to fund a business venture? What if the home loans had been taken out for mixed personal/business reasons?
2. If the debtors in *Hlavin* had 30 different consumer debts totaling \$75,000 and only one business debt totaling \$76,000, would that court find that they had "primarily consumer debts" under §707(b)(1)? What would be the result if a court utilized one of the alternative approaches to this question mentioned in *Hlavin*?

Applying the Concepts — These end-of-chapter exercises encourage students to synthesize the chapter material and apply relevant legal doctrine and code to real-world scenarios. Students can use these exercises for self-assessment or the professor can use them to promote class interaction.

Applying the Concepts

1. Assume you are consulted by the following potential bankruptcy clients. Which of these appear at first blush to be candidates for a consumer bankruptcy filing as opposed to a non-consumer or business filing?
 - a. The individual owners of an unincorporated video rental store whose business has plummeted due to the popularity of Internet movie-streaming services.
 - b. A married couple both employed but who have abused their credit card spending and now owe more than they make together in a year.
 - c. A recently divorced woman with two children whose ex-husband is unemployed and not contributing child support and who is having trouble paying her monthly living expenses.
 - d. A married couple, one of whom has suffered major health problems resulting in medical expenses in excess of what they can expect to earn in ten years.

Preface

Ensure student success with the Focus Casebook Series.

THE FOCUS APPROACH

In a law office, when a new associate attorney is being asked to assist a supervising attorney with a legal matter in which the associate has no prior experience, it is common for the supervising attorney to provide the associate with a recently closed case file involving the same legal issues so that the associate can see and learn from the closed file to assist more effectively with the new matter. This experiential approach is at the heart of the *Focus Casebook Series*.

In this particular casebook, the author provides two “inactive” bankruptcy case files from 2016 on the Companion Web Site. The filings in the case files are referenced throughout the casebook to illustrate the concepts being learned just as the supervising attorney might assign the associate to prepare something for a current case.

Additional hands-on features, such as Real Life Applications, Application Exercises, and Applying the Concepts provide more opportunities for critical analysis and application of concepts covered in the chapters. Professors can assign problem-solving questions as well as exercises on drafting documents and preparing appropriate filings.

CONTENT SNAPSHOT

The casebook is divided into two sections. **Part I** includes Chapters 1 through 3 and introduces the distinct concept of consumer bankruptcy along with fundamental pre-filing concerns in a consumer case. **Part II** focuses on consumer bankruptcy practice. Specific chapter coverage is as follows:

Chapters 1-3: distinguishes between secured and unsecured debt, non-consensual liens, surety and guaranty arrangements, non-judicial debt collection, Fair Debt Collection Practices Act, and judicial debt collection.

Chapter 4: acquaints the student with the bankruptcy code, rules, and official forms; structure and basic jurisdiction of bankruptcy courts.

Chapters 5-11: follows the Chapter 7 bankruptcy case in chronological detail from the filing of the petition and completion of the means test for the individual consumer debtor through final discharge.

Chapters 12-16: follows the Chapter 13 bankruptcy case in chronological detail from the filing of the petition and determination of the applicable commitment period and projected disposable income through final discharge.

Chapter 17: looks at Chapter 12 bankruptcy proceeding, which can sometimes involve consumer debtors.

Chapter 18: provides detailed analysis of the thorny jurisdictional and procedural issues that arise in a modern bankruptcy case.

RESOURCES

Companion Web Site: Web site resources include “inactive” bankruptcy case files and information for two new bankruptcy clients, and a full Teacher’s Manual in addition to the classroom discussion questions in the text.

Casebook: The casebook is structured around text, cases, and application exercises. Highlighted cases are introduced with a *Case Preview*, which sets up the issue and identifies key questions. *Post-Case Followups* expand on the holding in the case. *Real Life Applications* present two to four opportunities to challenge students to apply concepts covered in the case to realistic hypothetical cases. *Application Exercises* offer a mix of problem solving and research activities to determine the law of the state where the student plans to practice. State law application exercises better prepare the student to actually handle bankruptcy cases. *Applying the Concepts* feature provides occasions for critical analysis and application of concepts covered in the chapter.

Other resources to enrich your class include: PracticePack exercises, Study Aid titles such as *Examples & Explanations: Bankruptcy and Debtor/Creditor* or *Glannon Guide To Bankruptcy: Learning Bankruptcy Through Multiple-Choice Questions and Analysis, 3e*. Ask your Wolters Kluwer sales representative or visit the wolters kluwer site to learn more about building the product package that’s right for you.

Acknowledgments

Returning to first things, I would like to express heart-felt appreciation to all of my professors at the University of Tennessee College of Law for providing me with the foundation for what has turned out to be a fortunate and fulfilling career as legal practitioner, professor, and author. Special thanks to the late Professor Forrest Lacy of UT Law who first terrified then mesmerized by introducing the fascinating world of contracts, secured transactions, and payment systems to my astonished mind. I will always be grateful to partners Glenn C. Stophel and E. Stephen Jett at the former Stophel, Caldwell & Heggie firm in Chattanooga, Tennessee who proved my mentors in bankruptcy practice. It was Glenn who first handed me a closed bankruptcy file and told me to “review it to get an idea of how these bankruptcy cases work in the real world” and Steve who first took me to bankruptcy court with him. And while I’m rummaging about in the attic of my memory, let me express gratitude to the late U.S. Bankruptcy Judge Ralph H. Kelly of the Eastern District of Tennessee whose “come in here prepared or don’t come in here at all” and “get to the point if you’ve got one” style of judging made me a much better advocate.

Many thanks to all of my law students at Appalachian School of Law over the years and to my learned colleagues there. What fun it’s been. A special word of appreciation goes to my debtor/creditor law and secured transactions students at ASL who proved such willing guinea pigs for much of this material.

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Consumer Bankruptcy Law in Focus

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