

BASIC BANKRUPTCY LAW FOR PARALEGALS



F I F T H E D I T I O N

DAVID L. BUCHBINDER

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Basic Bankruptcy Law for Paralegals

Fifth Edition

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Member, California, Pennsylvania,
and New Jersey Bars

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for Paralegals

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To my beloved father, Ralph

Preface

This book has evolved from a need to develop a nuts and bolts description of the bankruptcy system written to be understood by nonlawyers.

My 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, I have explained practice and theory together in as concise a format as possible. I have chosen this approach because practice is almost always dictated by the underlying theory, and it is easier to learn a practice when one has been provided with the basic theory behind it.

In the succeeding editions I have listened to the many thoughtful comments of paralegal instructors and students from all over the country, some of whom have gone to exceptional effort to hunt me down, to enhance the practical nature of the text, and to further simplify the subtleties and nuances of the Bankruptcy Code and system. Each new edition updates and revises the text to keep abreast of all statutory, case law, and rule changes that regularly take place.

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 my 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 the answers to common bankruptcy questions.

For example, by reading chapter 5 of the text, the forms accompanying chapter 5 in the forms manual, 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, learn about the documents and timing involved, and receive some guidance as to the existence of applicable local rules in a given district.

My philosophical goal in undertaking this work has been to describe the Bankruptcy Code as a comprehensive system of debtor relief and debt collection, as well as the organization and practical functioning of this system. I am honored to have been given the opportunity to evolve the original work from the laboratory of actual use.

Upon completing this undertaking I 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 such relief ever provided in the evolution of bankruptcy laws in Western civilization.

This book 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.

Finally, I am optimistic that having described the Bankruptcy Code in this manner I may aid, however slightly, in enhancing the efficiency of the system.

David L. Buchbinder

May 2004

Acknowledgments

Acknowledgments to the First Edition

In early 1987, my associate Lauren Austin made a wild suggestion that I taperecord my legal-assistant bankruptcy course at the University of San Diego and then transform the spoken word into a written text. After some thought, I decided to give it a whirl. My legal assistant at the time, Vicki Johnson, assisted me in the recording of my class during the spring of 1987.

Some 3,000 hours, 28 months, and five drafts later I take pleasure in gratefully acknowledging the encouragement and assistance of the many people who have aided me in this project.

My loyal long-distance typist, Joan Jackson, has been invaluable from the beginning of this project. She has been ably assisted by Lynn Williamson, Julie Rasmussen, and Mary Lou Staight, particularly in connection with the final manuscript draft. Numerous members of my staff have offered aid and sustenance with the footnotes and citation checking. Among them are Flora Calem, Beth Sandler, Adam Nach, and my friend and colleague, Mark R. Nims. Mr. Nims's comments were particularly instructive in helping me prepare a teacher's manual to accompany the text.

Susan Sullivan of the University of San Diego Legal Assistant Program has been a positive and encouraging force throughout. Indeed, but for her giving me an initial opportunity to teach, this book would never have been written.

Many of my colleagues, too numerous to mention individually, have also offered helpful advice and suggestions. I would particularly like to thank Kathryn Infante and Ted Simmons, Estate Administrators for the United States Bankruptcy Court for the Southern District of California, for their assistance. Ms. Infante provided me with the address of every Bankruptcy Court in the United States so the data resulting in the appendices could be obtained. Mr. Simmons regularly provided me with the statistical data contained in the footnotes regarding the numbers of annual bankruptcy filings nationwide. Mr. Larry Ramey of the United States Trustee Office provided me with this data for 1988.

The appendices turned out to be a project within a project. Ms. Austin rendered services above and beyond the call of duty in obtaining local rules from throughout the United States. Then she prepared preliminary tables from her own review of every set of rules. The effort involved has been considerable and the appendices would likely not exist but for her important contributions. Judge Keith M. Lundin of the Middle District of Tennessee gave me considerable encouragement when he caused an early draft of chapter 1, *A Short History of Bankruptcy*, to be published in the November 1988 issue of the *Norton Bankruptcy Advisor*.

The editorial staff at Little, Brown and Company has been most pleasant to work with. Richard Heuser, Elizabeth Kenny, Cathryn Capra, and Alistair Nevius have ably guided me through the actual publication preparation and process.

Finally, my thanks and love to my wife Deborah and my son Rafe for tolerating the many evening and weekend hours that have been devoted to this book.

Acknowledgments to the Second, Third, Fourth, and Fifth Editions

I would like to thank those whose continuing support and encouragement have helped me bring to fruition the subsequent editions of *Practical Guide*, now known as *Basic Bankruptcy Law for Paralegals*.

Lynn Williamson, Julie Rasmussen, and Catherine Forrest provided many skillful services in the manuscript preparation and updating of the appendices for the second edition. Kristen DiPaolo was invaluable in helping me redraft the tutorial for the third edition.

Carolyn O'Sullivan, Betsy Kenny, Carol McGeehan, Jessica Barmack, Anne Starr, and Pat Wakeley of Little, Brown and Company have always been a pleasure to work with.

For the fourth edition, I would like to thank Betsy Kenny for her continuing supervision, and Curt Berkowitz and Barbara Rappaport for their time and care in bringing this edition to press on an expedited basis.

For the fifth edition, I have continued to be ably supervised by Betsy Kenny, Cathi Reinfelder, and Elsie Starbecker in the production process. I have also received invaluable editorial assistance from my wonderful friends Kathleen A. Cashman-Kramer, Mark Gallagher, and William Hanafee III.

I am also grateful for the many constructive comments from instructors and students throughout the country who have kindly taken time to provide me with their thoughts on improving the text. I have made my best efforts to incorporate your suggestions into these latter editions.

Finally, my thanks and love to Deborah and Rafe for their continuing patience for the time it takes to keep these materials up to date.

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