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■ Stephen P. Parsons

THE ABCs OF DEBT

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

SECOND EDITION



Wolters Kluwer

Law & Business

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

Second Edition

STEPHEN P. PARSONS, J.D.



Wolters Kluwer

Law & Business

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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 debt is created (Part A) and collected (Part B) preparatory to the in-depth study of bankruptcy law and procedure that follows (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, post-petition 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 of Debt (Chapters Two through Six)

Part B: The Collection of Debt (Chapters Seven through Eleven)

Part C: The Discharge or Reorganization of Debt in Bankruptcy (Chapters Twelve through Twenty-Four)

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 begins with a general overview of the various ways debt is created. It then focuses on particular categories of contractual debt, including the traditional loan, the line of credit loan, revolving credit arrangements, consumer payday loans, installment sales, and rent-to-own transactions. Credit reports and credit reporting agencies are examined, along with key provisions of the Fair Credit Reporting Act. Surety and guaranty contracts are addressed next, followed by an in-depth look at mortgages and security interests in personal property. Finally, Part A addresses nonconsensual statutory and equitable liens.

Part B begins by considering prelitigation efforts to collect delinquent debt, including the demand letter. Comprehensive coverage of the Fair Debt Collection Practices Act, as

well as tort remedies for abusive collection tactics, is included. The text then walks the student step-by-step through a collection lawsuit, from the filing of the complaint through final judgment. Coverage is given to how a default judgment is taken, common defenses, the role of formal discovery, and alternative dispute resolution. Extraordinary prejudgment remedies and fraudulent transfers are covered in depth, as is entitlement to prejudgment and postjudgment interest. Finally, Part B addresses execution on a final judgment, including the appeal process and how a stay of execution is obtained. The role of exemptions, joint property, and trust arrangements in execution is examined, along with postjudgment discovery, methods of executing on a judgment, and how to enforce a foreign judgment.

Part C begins with an overview of the Bankruptcy Code and modern bankruptcy practice. It then introduces three new case studies with realistic assignment memos set forth in the appendices and complete **Case Files** provided for students on the disc accompanying the text. The case studies utilized in Part C illustrate how cases under Chapters 7, 13, and 11 are handled from beginning to end. Bankruptcy concepts and procedures are addressed as they actually arise in real cases. The case files on the disc accompanying the text 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. Though cases under all chapters of the Code are covered in Part C, detailed consideration is given to those most commonly filed: the Chapter 7 liquidation, the Chapter 13 reorganization for individuals with regular income, and the Chapter 11 business reorganization.

The disc accompanying 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 **Drafting Exercises (DE)** to students as well. There are two DEs to accompany Part A of the text relating to the creation of debt and two to accompany Part B of the text relating to the collection of debt. There are ten DEs to accompany Part C of the text relating to bankruptcy. Five of the ten bankruptcy DEs for Part C involve a Chapter 7 consumer bankruptcy case; two of the ten involve a Chapter 13 case; and three of the ten involve a Chapter 11 business reorganization case. To assist with evaluating and grading student work on the ten bankruptcy DEs, the IM also provides the instructor with **Model Documents** for each of those exercises prepared with Best Case software and a suggested grading matrix for each as well.

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 Parts A and B. 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 Parts A and B enables students to get to know these clients and their financial circumstances. Three additional case studies with case files are utilized in Part C to illustrate bankruptcy concepts and procedures being covered in Part C. The disc accompanying the text contains exhaustive case files to accompany the bankruptcy case studies used in Part C.

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. At the end of each chapter is a **Conclusion** that serves as a bridge to the next chapter, 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, and a comprehensive test bank with answer key. The TLMs are included in the IM as well since the instructor may wish to utilize some of them for graded assignments.

The substantive content of each chapter of the text, the illustrations, the forms used in the Case Files and in the Model Documents for the Drafting Exercises, and the TLMs are updated and supplemented by the author via postings on the Author Updates and Professor Materials links to the text website at http://www.aspenparalegal.com/books/parsons_abcdebt/default.asp.

The text is designed for use by both law students and paralegal students. Thus the comprehensive term, legal professional, is used throughout to refer to the student.

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. As with all the pedagogical features of this text it is hoped this will make the task of mastering debtor/creditor relations and bankruptcy law as easy as A, B, C.

New for the Second Edition

For the second edition, the popular section on consumer predatory lending in Chapter Three has been expanded and a discussion added regarding the new Consumer Financial Protection Bureau created by the Wall Street Reform and Consumer Protection Act of 2010. Similarly, coverage of the Great Recession and consequent mortgage foreclosure crisis has been expanded in Chapter Four, including a discussion of the not-so-successful Helping Families Save Their Homes Act of 2009. The likely impact on credit card debt resulting from passage of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 and amendments by the Federal Reserve to its Regulation E are discussed in Chapter Three. That chapter also contains a new section on the burgeoning debt settlement industry and related consumer scams. The growing problem of student loan debt and the impact of the U.S. Department of Education's new Direct Loan Program mandated by the Health Care and Education Reconciliation Act of 2010 is discussed in Chapter Seventeen.

During its 2009–2010 term, the United States Supreme Court decided no fewer than seven cases that bear on debtor/creditor relations, four of them dealing with the Bankruptcy Code. All of those SCOTUS decisions are addressed in the second edition, as are numerous lower court decisions interpreting the 2005 BAPCPA amendments to the Code. In particular, Chapter Twenty contains an expanded discussion of the

Chapter 13 cramdown and current interpretations of the infamous “hanging paragraph” of 11 U.S.C. §1325(a). Chapters Thirteen and Nineteen contain expanded discussions respectively of the Chapter 7 means test calculated using Official Bankruptcy Form 22A and of the Chapter 13 determination of disposable monthly income and commitment period using OBF 22C, both supplemented by recent decisions interpreting some of the head-scratching provisions of those complex forms.

The bankruptcy material in Part C of the text has been further revised to reflect the changes wrought by the Statutory Time-Periods Technical Amendments Act of 2009, the April 2010 adjustments in dollar amounts for allowed exemptions, and the most recent amendments to the Federal Rules of Bankruptcy Procedure. The bankruptcy forms used in the Case Studies have been updated using the most current official forms issued by the Administrative Office of the U.S. Courts. As a result of the various revisions of the bankruptcy material, Part C of the text has been expanded by two chapters and now consists of Chapters Twelve through Twenty-Four.

Textbook Resources

The companion website for at [website address] 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.

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

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 on a CD-ROM or 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.

A special thanks to Best Case Solutions for allowing the author to utilize its excellent bankruptcy software in connection with the case file documents created for use in Part C of the text and included on the disc accompanying the text. The author is grateful for the expertise and guidance provided on this project by three exceptional members of Aspen’s editing team: Betsy Kenny, David Herzig, and Kaesmene Banks. True professionals, all.

And, as always, love and appreciation for the patience and support of the home team: Marcia, Andrew, and Emily.

THE ABCs OF DEBT



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