

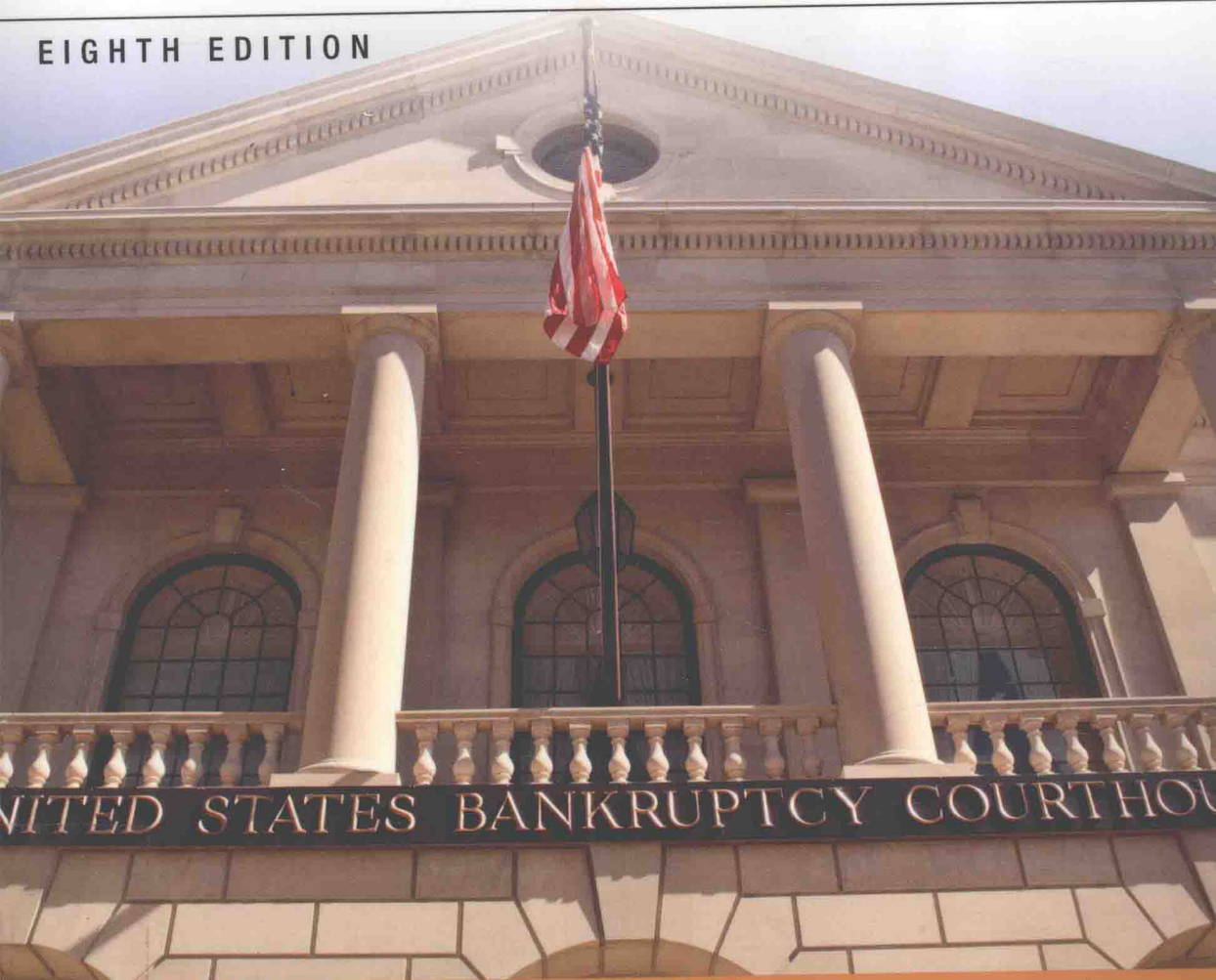
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■ David L. Buchbinder

BASIC BANKRUPTCY LAW FOR PARALEGALS

EIGHTH EDITION



Wolters Kluwer
Law & Business

ASPEN COLLEGE SERIES

Basic Bankruptcy Law for Paralegals

Eighth Edition

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David L. Buchbinder

Member, California, Pennsylvania,
and New Jersey Bars



Wolters Kluwer

Law & Business

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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 the practice.

In subsequent 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 4 of the text and the forms accompanying chapter 4 in the forms disk, any student or practitioner can quickly learn the basic principles of providing notices to creditors or parties in interest in bankruptcy proceedings, and learn about the documents and timing involved.

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 time and 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 provided by the Bankruptcy Code is among the most liberal relief that has existed in the evolution of bankruptcy laws through Western history. The 2005 legislation will be perceived by many to restrict debtor relief while enhancing the debt collection aspects of the Code, particularly in consumer bankruptcy cases.

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

April 2011

Acknowledgments

Acknowledgments to the First Edition

In early 1987, my associate Lauren Austin made a wild suggestion that I tape record 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. (In 2008,

anyone can access all of this data on the Internet 24 hours a day, but that's not how it was in the "old days.")

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 friends Mark Gallagher, and William Hanafée 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.

Acknowledgments to the Sixth Edition

The sixth edition has been daunting. Hard on the heels of the publication of the fifth edition in November 2004, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the most radical and sweeping modifications to the Bankruptcy Code since its adoption in 1978. This has required the most thorough revision of this text in record time. I have been most ably assisted in this process through these many months by Betsy Kenny. In the final production, I have been further ably assisted in this rush process by Carmen Corral-Reid. Finally, my thanks and love to Rafe for putting up with me.

Acknowledgments to the Seventh Edition

The seventh edition incorporates the evolution of the BAPCPA statute in case law and actual practice. This is particularly the case in the new area of “means testing,” in which case law evolution would be necessary to flesh out the words in the statute. In addition, the means testing form has evolved, along with attendant case law, which now permits a meaningful means testing tutorial chapter.

The seventh edition also incorporates innovations made to the text in development of an abridged edition. The Practice Pointers and Practice Exercises are the invaluable contribution of the abridged edition co-author Robert Cooper. Thank you Robert so very much. Robert also contributed extensively to many of the text revisions.

Betsy Kenny and I have been working on this material together for almost 20 years. That speaks for itself. Thank you Betsy.

Acknowledgments to the Eighth Edition

I would like to thank Betsy Kenny at Aspen Publishing for her eternal editorial assistance. I would also like to thank Robert Cooper for his contributions to the work through the Abridged Edition. I would like to thank Jay Harward at Newgen for his tutelage during the production stage of this edition. Finally, I would like to thank the many instructors and students who think highly enough of this work to give me the continuing honor and privilege to say, “Thank you.” I hope that in the process I have made a valuable contribution to the bankruptcy system.

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