

THE LAW OF DEBTORS AND CREDITORS

Text, Cases, and Problems

Second Edition

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PREFACE

The good news for us is that we made it to a second edition. For those who wondered whether a book could survive with a heavy emphasis on problems, a great deal of explanatory text, a record amount of empirical and contextual information, and only a few Supreme Court opinions, the proof is here. We note that the second edition has newer problems, more text, and roughly the same number of high court pronouncements.

Writing the second edition has been a different kind of fun from writing the first edition. To keep the book to manageable size, we have had to make more hard decisions about what to leave out in order to balance the new material that goes in. That's been particularly hard in a field that has continued to develop and change the way bankruptcy has. But we have done our best, with due apologies to everyone who lost a favorite problem or case.

The second edition follows the basic structure of the first. We still teach state law first to show background collection system information. We teach consumer bankruptcy as a complete system, followed by thorough analysis of the business bankruptcy system. Developments in recent years have left us more convinced than ever that these two functionally different systems use one Bankruptcy Code and courthouse. By dividing along functional lines, we can explore the social and empirical elements of the bankruptcy system along with the doctrinal structure.

Some of the changes in the second edition are made to reflect changes in the legal system and the caselaw. Other changes are second (and, we hope, better) attempts to teach sections that did not work well in the first edition. And still other changes reflect some additions to the scholarly literature, including the availability of a substantial amount of new empirical data about both the consumer and business bankruptcy systems.

Debtor-creditor law continues to evolve rapidly and in the most surprising directions. Within these covers the student will find lenders

who ended up owing money to borrowers, debtors shot in parking lots, and financiers losing the leverage in their leveraged buyouts. We hope the new edition brings the student up to date more completely, makes classes go more smoothly, and exposes everyone to more perspectives on the bankruptcy system. But just as important, we hope the new book makes the course even more fun.

Warren & Westbrook
Professors of Law

Philadelphia, Pennsylvania
Austin, Texas
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This section is the most fun to write because as we write it we know we are finished. It is also fun to write because it causes us to reflect on how much this book has been the product of wonderful students, helpful colleagues, supportive spouses, tolerant friends, and patient children. For all the help and support, we are grateful.

Some people have given extraordinary help and they deserve a special thanks. We are grateful to Dick McQueen, Ray Nimmer, Paul Razor, and Doug Whaley who taught from early versions of the text and pointed out a frightening number of errors. We owe a debt to Alan Axelrod who read and commented on early outlines and sample chapters. Barry Cass has been a special friend, teaching our classes—and us—a great deal about tax implications in business bankruptcy. Teresa Sullivan, our sociologist co-author on a National Science Foundation empirical research project, has helped us develop a view of consumer bankruptcy that looks beyond legal doctrine to difficult social and policy implementation issues. Our colleague Doug Laycock has given the best kind of support—always willing to argue a point, challenge a premise, and enjoy a new insight. We have gotten helpful comments from many colleagues around the country who have used the book. Among those especially generous with their useful criticism have been Douglass Boshkoff, Robert Lloyd, and Lynn LoPucki.

The student support at the University of Texas has been overwhelming. We have been blessed with intelligent, dedicated research assistants: Karen Cheyney, Brian Farney, Bruce James, Catherine Nicholson, and Kimberly Winick. Ms. Winick stayed with the project for two full years, working well into the night and even making the emergency runs for Chinese food. Several debtor-creditor and bankruptcy classes deserve a special thanks for putting up with loose pages, missing text, dim copy, and wrong-headed problems. Students have remained unfailingly cheerful—even enthusiastic—about helping us with the book, and many of the successful problems and comments

in the following pages stem from interesting discussions with them. One student, Ronald Mann, provided a particularly helpful critique.

We have had excellent technical support. Consuelo Akin, Missy Baker, Colleen Geary, Pam Grisham, and Marle Hoepken put many hours into preparing the manuscript in its various incarnations. Dena Bruce helped us with computer support and we are grateful for her time. We have also shared in the blessings of the Tarlton Law Library and its talented staff, especially Eleanor Delashmitt.

Finally, thanks to our friends and families who patiently listened to alternative versions of how to teach section 1111(b) elections and the merits of learning voidable preferences in a business rather than consumer context. Polly Westbrook actually read the book and still smiled. Bruce Mann gave more loving support than anyone could ask. Joel Westbrook, Amelia Warren, and Alexander Warren tolerated all this with good grace, and asked the ultimate question: Will it sell?

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- Whitford, *A Critique of the Consumer Credit Collection System*, 1979 Wis. L. Rev. 1047.

SPECIAL NOTICE

The problems in this book are filled with debtors, creditors, lawyers, trustees, and others who are the products of our imaginations. Any resemblance to any real person, solvent or insolvent, is purely coincidental.

We have edited cases and articles for the sake of smoother reading. Citations and footnotes have been deleted without indication. Footnotes that were not eliminated retain their original numbers; asterisks indicate editors' footnotes.

The Bankruptcy Code is referred to as "the Code," and citations to it are by section number only. "The Act" refers to the Bankruptcy Act of 1898 and "Amendments Act" to the 1984 Amendments to the Bankruptcy Code.

Citations to various federal consumer law acts are to the USCA and the original public law number; references are to the public law sections only because this conforms to popular usage.

The latest edition of Collier on Bankruptcy (15th) is referred to simply as "Collier's." Occasionally we cite the fourteenth edition as "Collier's (14th)."

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