

*B*ASIC  
BANKRUPTCY  
LAW  
*for*  
PARALEGALS

---

*Second Edition*

DAVID L. BUCHBINDER

---

# Basic Bankruptcy Law for Paralegals

---

Second Edition

**David L. Buchbinder**

Western State University College of Law

University of San Diego  
Lawyer Assistant Program

Buchbinder & Haynes



Little, Brown and Company  
Boston New York Toronto London

**Copyright © 1994 by David L. Buchbinder**

All rights reserved. No part of this book may be reproduced in any form or by any electronic or mechanical means including information storage and retrieval systems without permission in writing from the publisher, except by a reviewer who may quote brief passages in a review.

Library of Congress Catalog Card No. 93-80971

**ISBN 0-316-11441-3**

Second Edition

EB

Published simultaneously in Canada  
by Little, Brown & Company (Canada) Limited

**Printed in the United States of America**

---

# Basic Bankruptcy Law for Paralegals

---

---

# Editorial Advisory Board for Paralegal Education

---

Little, Brown and Company  
Law Books

**Therese A. Cannon**

Dean, School of Paralegal Studies  
University of West Los Angeles

**David A. Dye**

Legal Assistant Program  
Missouri Western State College

**Thomas E. Eimermann**

Coordinator of Legal Studies  
Professor of Political Science  
Illinois State University

**Susan K. Stoner**

Dean, Southeastern Paralegal Institute

**Susan M. Sullivan**

Director, Graduate Career Programs  
University of San Diego

*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 this second edition I have paid heed to the many thoughtful comments of my fellow instructors and our students to enhance the practical nature of the text and to further simplify the subtleties and nuances of the Bankruptcy Code and system. I have updated and revised the text to reflect all statutory, case law, and rule changes that have taken place since the initial 1990 publication, including a complete revision of chapter 29 to reflect the new forms that became effective in 1991. Additional graphic aids will help explain some of the more complex procedures.

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*

February 1994



---

# 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 Bank-

ruptcy 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 calendar year 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 Edition***

I would like to thank those whose continuing support and encouragement have helped me bring to fruition a second edition of *Practical Guide*.

I continue to be ably assisted by various members of my staff, including Lynn Williamson and Julie Rasmussen who provided many skillful services. Catherine Forrest has provided yeoperson service with citation-checking and in rendering invaluable aid in updating the databases that comprise the appendices.

Carolyn O'Sullivan, Betsy Kenny, Carol McGeehan, and Monte Van Norden of the Little, Brown and Company editorial staff are always a pleasure to work with.

I am also thankful for the many constructive comments from instructors and students from 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 their suggestions into this edition.

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

---

# Basic Bankruptcy Law for Paralegals

---

---

# Summary of Contents

---

<i>Contents</i>	<i>ix</i>
<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxi</i>
Introduction: Paralegals and the Bankruptcy System	1
<b>Part I. History and Introduction</b>	<b>7</b>
Chapter 1. A Short History of Bankruptcy	9
Chapter 2. Introduction to the Bankruptcy Code	19
Chapter 3. Alternatives to Bankruptcy Under State Law	27
Chapter 4. Filing a Petition	37
Chapter 5. Chapter 1 — General Provisions	53
Chapter 6. Useful Definitions — Section 101	67
<b>Part II. Debt Relief</b>	<b>77</b>
Chapter 7. Overview of Chapter 7	79
Chapter 8. Conversion and Dismissal	95
Chapter 9. Exemptions	101
Chapter 10. Trustees, Examiners, and Creditors Committees	117
Chapter 11. Preparing a Proceeding for a Trustee	131
<b>Part III. Bankruptcy Litigation</b>	<b>139</b>
Chapter 12. The Automatic Stay — 11 U.S.C. §362	141
Chapter 13. Objections to Discharge and Dischargeability of Debts	161

Chapter 14. Property of the Estate and Turnover Complaints	177
Chapter 15. Avoiding Powers — Introduction	187
Chapter 16. Avoidable Preferences — 11 U.S.C. §547	195
Chapter 17. Fraudulent and Postpetition Transfers	211

**Part IV. Liquidation Claims** **221**

Chapter 18. Use, Sale, or Lease of Property	223
Chapter 19. Executory Contracts and Leases — 11 U.S.C. §365	237
Chapter 20. Provisions Regarding Property of the Estate	251
Chapter 21. Claims	261
Chapter 22. Administration	285

**Part V. Reorganization Proceedings** **293**

Chapter 23. Chapter 13: Reorganization Proceedings	295
Chapter 24. Chapter 11: Introduction and Administration	317
Chapter 25. Chapter 11: Elements of a Plan	333
Chapter 26. Chapter 11: Plan Confirmation	349
Chapter 27. Chapter 12: Reorganization Proceedings	369

**Part VI. Review** **377**

Chapter 28. Introduction to Courts and Jurisdiction	379
Chapter 29. Statements and Schedules Tutorial	389
Chapter 30. Researching Bankruptcy Issues	419

<i>A Note on the Appendices</i>	425
<i>Appendix 1. Notice of Intent</i>	427
<i>Appendix 2. Relief from Stay Motions</i>	431
<i>Appendix 3. Sales Procedures</i>	435
<i>Appendix 4. Abandonment</i>	439
<i>Glossary</i>	443
<i>Table of Cases</i>	459
<i>Table of Statutes</i>	461
<i>Table of Federal Rules of Bankruptcy Procedure</i>	465
<i>Table of Secondary Authorities</i>	467
<i>Index</i>	469

---

# Contents

---

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxi</i>
Introduction: The Role of Paralegals in the Bankruptcy System	1
<b>Part I. History and Introduction</b>	<b>7</b>
Chapter 1. A Short History of Bankruptcy	9
A. Origins of Bankruptcy Systems	9
B. Bankruptcy in the Middle Ages	12
C. Early English Insolvency Laws	13
D. Bankruptcy in the United States	15
<i>Summary</i>	<i>17</i>
<i>Key Terms</i>	<i>18</i>
<i>Discussion Questions</i>	<i>18</i>
Chapter 2. Introduction to the Bankruptcy Code	19
A. Organization of the Bankruptcy Code and Note on the Text	19
B. Overview of the Bankruptcy Code	20
C. The Bankruptcy System	23
<i>Summary</i>	<i>25</i>
<i>Key Terms</i>	<i>26</i>
<i>Discussion Questions</i>	<i>26</i>
Chapter 3. Alternatives to Bankruptcy Under State Law	27
A. Article 6 UCC Bulk Sales	28
B. Assignment for the Benefit of Creditors	32
	<b>ix</b>

C.	Composition Agreements	33
	<i>Summary</i>	34
	<i>Key Terms</i>	35
	<i>Chapter 3 Checklist</i>	35
	<i>Discussion Questions</i>	36
Chapter 4.	Filing a Petition	37
A.	Voluntary Petitions	37
B.	Involuntary Petitions	42
	<i>Summary</i>	48
	<i>Key Terms</i>	49
	<i>Chapter 4 Checklist</i>	50
	<i>Discussion Questions</i>	52
Chapter 5.	Chapter 1 — General Provisions	53
A.	Notice and a Hearing	53
B.	Rules of Grammatical Construction	58
C.	Powers of the Court	59
D.	Statutes of Limitations	60
E.	Who May Be a Debtor	61
	<i>Summary</i>	63
	<i>Key Terms</i>	64
	<i>Chapter 5 Checklist</i>	64
	<i>Discussion Questions</i>	65
Chapter 6.	Useful Definitions — Section 101	67
A.	Affiliates	67
B.	Claim	68
C.	Community Claim	68
D.	Corporation	69
E.	Creditor	69
F.	Custodian	69
G.	Debt	70
H.	Equity Security Holder	70
I.	Individual with Regular Income	70
J.	Insiders	70
K.	Insolvency	71
L.	Judicial Lien	72
M.	Lien	72
N.	Person	73
O.	Security	73
P.	Security Agreement	74
Q.	Statutory Lien	74

R. Transfer	74
<i>Summary</i>	75
<i>Discussion Questions</i>	76
<b>Part II. Debtor Relief</b>	<b>77</b>
Chapter 7. Overview of Chapter 7	79
A. Employment and Compensation of Professionals	80
B. The Chapter 7 Process	84
C. Rule 2004 Examinations	88
D. Discharge and Reaffirmation	89
<i>Summary</i>	92
<i>Key Terms</i>	93
<i>Chapter 7 Checklist</i>	93
<i>Discussion Questions</i>	94
Chapter 8. Conversion and Dismissal	95
A. Conversion	95
B. Dismissal	98
<i>Summary</i>	98
<i>Key Terms</i>	99
<i>Discussion Questions</i>	99
Chapter 9. Exemptions	101
A. Background	101
B. Selecting Exemptions	103
C. Federal Exemptions	105
D. Unaffected Claims	110
E. Lien Avoidance to Preserve Exemptions	110
F. Claiming and Objecting to Exemptions	111
<i>Summary</i>	112
<i>Key Terms</i>	113
<i>Chapter 9 Checklist</i>	114
<i>Discussion Questions</i>	115
Chapter 10. Trustees, Examiners, and Creditors Committees	117
A. Trustees	117
B. The United States Trustee	119
C. The Trustee's Duties	121
D. Debtor-in-Possession	122
E. Official Creditor Committees	123
F. Chapter 11 Trustees and Examiners	125
<i>Summary</i>	128



<i>Key Terms</i>	129
<i>Discussion Questions</i>	129
Chapter 11. Preparing a Proceeding for a Trustee	131
A. Prefiling Actions	131
B. Postfiling Actions	135
<i>Summary</i>	136
<i>Chapter 11 Checklist</i>	136
<i>Discussion Questions</i>	137
<b>Part III. Bankruptcy Litigation</b>	<b>139</b>
Chapter 12. The Automatic Stay—11 U.S.C. §362	141
A. Introduction to Bankruptcy Litigation	141
B. The Automatic Stay	142
C. Activity Subject to the Automatic Stay	143
D. Activity Not Subject to the Automatic Stay	145
E. Duration of the Automatic Stay	149
F. Obtaining Relief from the Automatic Stay	150
<i>Summary</i>	156
<i>Key Terms</i>	157
<i>Chapter 12 Checklist</i>	158
<i>Discussion Questions</i>	160
Chapter 13. Objections to Discharge and Dischargeability of Debts	161
A. Distinguishing Discharge and Dischargeability of Debts	161
B. Debts Nondischargeable without Creditor Action	162
C. Debts Nondischargeable with Creditor Action	167
D. Complaints to Determine Dischargeability of a Debt	170
E. Objections to Discharge	171
F. Complaints Objecting to Discharge	173
<i>Summary</i>	174
<i>Key Terms</i>	175
<i>Discussion Questions</i>	176
Chapter 14. Property of the Estate and Turnover Complaints	177
A. Property of the Estate	177
B. Turnover Complaints	182
<i>Summary</i>	184
<i>Key Terms</i>	185