

---

# Contents

<i>Acknowledgments</i>	<i>xix</i>
Chapter 1: <b>A Very Short Introduction</b>	1
Chapter 2: <b>The Secured Versus Unsecured Distinction: A Brief Introduction</b>	5
A. Types of Secured Claims or Liens	6
Chapter 3: <b>State Collection Law</b>	9
A. State Court Collection Process	9
1. <i>The execution process</i>	9
B. State Law Exemptions	12
1. <i>State law exemptions and bankruptcy</i>	15
C. Fraudulent Transfers Under the Uniform Fraudulent Transfer Act	16
1. <i>The purpose of fraudulent transfer law</i>	16
2. <i>The history of the Uniform Fraudulent Transfer Act</i>	16
3. <i>The elements of a fraudulent transfer</i>	17
D. The Closer: Chapters 2 and 3	21
Chapter 4: <b>Introduction to Bankruptcy</b>	23
A. The Bankruptcy System: The Basics	24
1. <i>Chapter 7</i>	25
2. <i>Chapter 13</i>	26
3. <i>Chapter 12</i>	27
4. <i>Chapter 11</i>	27
5. <i>Chapter 9</i>	28
B. Definitions and Learning to Read the Code	29
Chapter 5: <b>Jurisdiction and the Powers of the Bankruptcy Court</b>	37
A. Introduction	37
B. Bankruptcy Court Jurisdiction over Bankruptcy Cases	37
C. Appeals from the Bankruptcy Court	41

	D. Preemption and the Relationship Between Federal Bankruptcy Law and State Law	43
	E. The Court's Equity Power Under §105(a)	43
	F. Sovereign Immunity of States and Tribes	44
Chapter 6:	<b>Case Administration and Structure of the Code</b>	49
	A. Changes in Case Administration Under the 2005 Amendments	50
	1. <i>More documents</i>	50
	a. Overview	50
	b. The details	50
	2. <i>New attorney obligations</i>	52
	3. <i>The creditors' meeting</i>	53
	B. Basic Chapter 7 Administration	53
	C. Basic Chapter 13 Administration	54
	D. Basic Chapter 11 Administration	54
	E. The Structure of the Code	55
	F. The Closer: Chapters 4, 5, and 6	55
Chapter 7:	<b>The Automatic Stay</b>	59
	A. Exceptions to the Automatic Stay	60
	B. Multiple Filing Cases: When the Stay Is Not So "Automatic"	65
	1. <i>One prior dismissed case</i>	66
	2. <i>Two or more dismissed cases</i>	66
	3. <i>Extending the 30-day stay under §362(c)(3)</i>	66
	4. <i>Obtaining a stay under §362(c)(4)</i>	68
	5. <i>Which stay does the repeat filer NOT get?</i>	68
	C. Relief from the Automatic Stay	70
	D. The Closer: Chapter 7	71
Chapter 8:	<b>Property of the Debtor's Estate</b>	73
	A. Breadth of the Estate	73
	B. Legal and Equitable Interests in Property	74
	C. Retirement Funds	76
	D. Post-Petition Assets	78
	1. <i>Chapter 7 post-petition assets</i>	78
	2. <i>Post-petition assets in a Chapter 13 or a Chapter 11 case</i>	80
Chapter 9:	<b>Exemptions in Bankruptcy</b>	81
	A. State Versus Federal Exemption Schemes	82
	B. New Limitations on the Homestead Exemption	87

C.	Exemptions for Individual Retirement Accounts	89
D.	The Valuation of Exempt Property	90
E.	Voiding Involuntary Liens, and Nonpossessory, Non-Purchase-Money Security Interests That Interfere with an Exemption	95
F.	The Closer: Chapters 8 and 9	97
Chapter 10:	<b>Priorities</b>	101
Chapter 11:	<b>The Treatment of Secured Claims in Bankruptcy</b>	111
A.	Secured Credit in General	111
1.	<i>Secured creditor remedies outside bankruptcy</i>	112
2.	<i>Secured creditor treatment in bankruptcy</i>	112
B.	The Comfort of Being Secured	113
C.	Undersecured and Oversecured Creditors: Learning the Lingo	114
D.	Practicing the Calculations	116
Chapter 12:	<b>The Avoiding Powers</b>	121
A.	Preferential Transfers	122
1.	<i>Preferential payments and transfers in consumer         bankruptcy cases</i>	129
2.	<i>Defenses to preference actions</i>	130
3.	<i>Ordinary course of business defense</i>	130
4.	<i>The new value exception to the preference statute</i>	130
5.	<i>The substantially contemporaneous exchange for new         value exception</i>	131
B.	Avoiding Fraudulent Transfers Under the Bankruptcy Code	133
C.	Avoidance of Unperfected Security Interests Under the Trustee's Strong-Arm Powers Contained in §544(a)	135
D.	The Closer: Chapter 12	136
Chapter 13:	<b>The General Bankruptcy Discharge</b>	139
A.	The Policy Behind Discharge for Individual Debtors	139
B.	The Timing of the Discharge	140
C.	The Scope of the Discharge	141
1.	<i>Only pre-petition debts are discharged</i>	141
2.	<i>Only claims are discharged</i>	141
3.	<i>Not all debtors get a discharge</i>	142
4.	<i>Some debts are not entitled to discharge</i>	142

Chapter 14:	<b>Exceptions to Discharge Under §523</b>	145
	A. Taxes	146
	B. Exceptions to Discharge Based on Fraud	147
	1. <i>Objections based on actual fraud</i>	147
	2. <i>Fraud based on the use of a false financial statement</i>	148
	3. <i>A presumption of fraud for charging luxury goods or taking cash advances within 60 days of the filing</i>	149
	C. Objections to Discharge Based on Fraud in the Fiduciary Capacity, Embezzlement, or Larceny	152
	1. <i>Fraud in the fiduciary capacity and embezzlement</i>	152
	2. <i>Larceny</i>	153
	D. Forgetting or Simply Failing to List a Creditor on the Bankruptcy Paperwork	154
	E. Domestic Support Obligations Under §523(a)(5) and (a)(15)	155
	1. <i>The difference between support obligations and property settlement obligations in bankruptcy</i>	155
	2. <i>Marital obligations and the automatic stay</i>	159
	3. <i>Two additional reasons why it matters whether a debt is support or a mere property settlement debt</i>	160
	F. Intentional Torts and Debts Stemming from Driving Under the Influence of Alcohol	160
	G. Student Loans	161
	H. Conclusion	162
Chapter 15:	<b>Objections to the Debtor's General Discharge</b>	165
	A. A Knowing and Fraudulent False Oath in or in Connection with a Bankruptcy Case	166
	B. Inexplicable Loss of Money	168
	C. Concealment, Loss, Destruction, Falsification, or Mutilation of Records, or a Failure to Keep Records	169
	D. Transfers Made with Intent to Hinder, Delay, or Defraud Creditors	170
	E. Prior Chapter Discharge Within Past Eight (or Six) Years	174
	F. Failure to Complete the Debt Management Course Under §727(a)(11)	175
	G. The Closer: Chapters 13, 14, and 15 (CODE READER)	175
Chapter 16:	<b>Keeping Secured Property in a Chapter 7 Case</b>	177
	A. Redemption	178
	B. Reaffirmation: When Is It Necessary or Advisable?	183

	1. <i>General principles of reaffirmation</i>	183
	2. <i>The formal requirements of reaffirmation</i>	183
	3. <i>When is reaffirmation necessary? The “keep and pay” option</i>	184
	C. The Closer: Chapter 16	187
Chapter 17:	<b>Dismissal</b>	191
	A. Dismissal for Failure to Cooperate in the Case	191
	B. Dismissal Under the Means Test: The New Issue in Consumer Bankruptcy	194
	C. Dismissal for Abuse of Chapter 7: The Old Standard and the New Means Test	194
	1. <i>The old test</i>	194
	2. <i>The new test for abuse under §707(b): The means test</i>	195
	a. Income	196
	b. Allowable expenses	197
	c. Figuring out what’s left	199
	d. How can the debtor rebut the presumption?	200
Chapter 18:	<b>Involuntary Bankruptcy</b>	209
	A. The Anatomy of an Involuntary Bankruptcy Case	209
	B. The Closer: Chapters 17 and 18	213
Chapter 19:	<b>Overview of Chapter 13</b>	215
Chapter 20:	<b>Chapter 13 Eligibility</b>	219
Chapter 21:	<b>Secured Creditor Treatment Under Chapter 13</b>	223
	A. Treatment of Personal Property Loans and Other Secured Loans That Are Not Home Mortgages	224
	1. <i>Bifurcation and “stripdown” or “cramdown”</i>	224
	2. <i>New limitations on stripdown</i>	226
	3. <i>Valuation</i>	228
	4. <i>The present value interest rate</i>	229
	B. Treatment of the Home Mortgage in Chapter 13	231
	C. Recognizing When Stripdown Applies	232
	D. A New Approach to Stripdown	232
Chapter 22:	<b>The Treatment of Priority Claims in Chapter 13</b>	239
	A. The Closer: Chapters 19, 20, 21, and 22	242

Chapter 23:	<b>The Disposable Income Test in Chapter 13</b>	245
	A. The Prior Disposable Income Test	245
	B. The New Disposable Income Test	246
	1. <i>Below-median-income debtors and the new disposable income test</i>	247
	2. <i>The debtor's budget and the status quo: Class issues</i>	248
	3. <i>Payments to 401(k) plans for below-median-income debtors</i>	252
	4. <i>Above-median-income debtors and the new disposable income test</i>	253
Chapter 24:	<b>The Good Faith Test in Chapter 13</b>	255
	A. Overlap with the Disposable Income Test and Other Tests	255
	B. Good Faith Factor-Based Tests	256
	C. Multiple Filings	258
	D. Zero Percent Plans	259
Chapter 25:	<b>The Best Interest of Creditors Test</b>	261
	A. The Closer: Chapters 23, 24, and 25	266
Chapter 26:	<b>Chapter 13 Plan Feasibility</b>	269
	A. Do the Proposed Payments Meet the Plan Obligations?	269
	B. Can the Debtor Make the Payments?	270
Chapter 27:	<b>Modification of a Chapter 13 Plan or Dismissal of a Chapter 13 Case</b>	275
Chapter 28:	<b>Overview of Chapter 11 and Its Alternatives</b>	281
	A. Comparing the Out-of-Court Workout and Chapter 11	283
	B. Introduction to the Basic Chapter 11 Rules and Major Parties-in-Interest	289
	1. <i>Major players in a Chapter 11 case</i>	290
	a. The debtor-in-possession	290
	b. The United States Trustee's Office	291
	c. Creditors' committees	292
	d. Secured creditors	295

Chapter 29:	<b>Cash Collateral, Post-Petition Financing, and Other First-Day Orders</b>	299
	A. The Cash Collateral Motion and Order	300
	1. <i>What is cash collateral?</i>	301
	2. <i>Special rules for the debtor's use of cash collateral</i>	304
	3. <i>Cash collateral stipulations</i>	307
	B. Post-Petition Financing Orders	310
	C. Critical Vendor Orders and the Doctrine of Necessity	316
	D. Payment of Other Unsecured Claims Before Confirmation	320
	E. Applications to Be Employed as Counsel, Accountant, or Other Professional	321
	F. Cash Management Orders	324
	G. The Closer: Chapter 29	324
Chapter 30:	<b>The Automatic Stay and Adequate Protection</b>	327
	A. The Scope of the Automatic Stay	327
	B. Exceptions to the Automatic Stay	332
	C. Relief from the Automatic Stay	333
	D. Adequate Protection	341
	E. The Closer: Chapter 30	342
Chapter 31:	<b>Operating the Chapter 11 Debtor: The Rights and Goals of the Debtor-in-Possession, and the Grounds for Appointment of a Chapter 11 Trustee or Examiner</b>	345
	A. Activities that the Debtor-in-Possession Can Engage in Without Court Approval While in Chapter 11	346
	B. The Appointment of a Trustee	348
	C. The Appointment of an Examiner	351
	D. Maintaining the Debtor's Operations and Structuring a Successful Chapter 11 Case: The Basic Goals and Requirements	352
	E. Overview of Chapter 11 Treatment Rules	356
	F. Overview of Chapter 11 Procedural Rules	357
	G. The Closer: Chapter 31	358
Chapter 32:	<b>Claims Against the Estate</b>	361
	A. Definition of a Claim	361
	B. Administrative Claims Under Chapter 11	365
	C. The §506(c) Surcharge	368
	D. The Closer: Chapter 32	371

Chapter 33:	<b>Reshaping the Estate Through the Assumption or Rejection of Executory Contracts and Unexpired Leases Pursuant to §365, and Through Asset Sales Pursuant to §363</b>	373
	A. Assumption or Rejection of Executory Contracts and Unexpired Leases	374
	1. <i>What are executory contracts and unexpired leases?</i>	374
	2. <i>Ipso facto clauses</i>	376
	3. <i>Rejection of executory contracts and unexpired leases</i>	380
	4. <i>Assumption of executory contracts and unexpired leases</i>	382
	5. <i>Assuming and assigning executory contracts and unexpired leases</i>	384
	a. Adequate protection in shopping center leases	385
	B. Sales of Assets Pursuant to §363(b) of the Code	387
	C. The §363 Sales Process: Seeking Out Highest and Best Bids	391
	D. Successor Liability and §363 Sales	393
	E. The Closer: Chapter 33	394
Chapter 34:	<b>Introduction to the Plan and the Minimum Chapter 11 Plan Requirements</b>	397
	A. Introduction to the Chapter 11 Plan Process	398
	1. <i>Consensual plans versus cramdown plans</i>	398
	2. <i>Basic Chapter 11 requirements</i>	399
	B. Priority Treatment Under Chapter 11	400
	C. The Best Interest Test in Chapter 11: Treatment of General Unsecured Claims	404
	D. Feasibility	408
	E. Secured Creditor Treatment Under Chapter 11	412
	1. <i>The treatment of oversecured and undersecured claims after the filing but before confirmation of a Chapter 11 plan</i>	413
	2. <i>Secured creditor treatment under the plan</i>	413
	F. The Closer: Chapter 34	416
Chapter 35:	<b>Voting and Classification: Soliciting Votes for the Plan</b>	419
	A. The Disclosure Statement	420
	B. Plan Voting	425
	C. Classification	428
	D. Impairment	431
	E. The Closer: Chapter 35	432



Chapter 36:	<b>Forcing the Plan on Dissenting Creditors: A Different Kind of Cramdown</b>	435
	A. Cramdown of a Secured Class	436
	B. The Specific and General Requirements of the Fair and Equitable Test	436
	1. <i>Duration of payments to the secured party</i>	437
	2. <i>General fairness and §1129(b)(1)</i>	439
	3. <i>The present-value interest rate</i>	440
	4. <i>Obtaining positive votes from at least one accepting class: If you are stripping down, this is harder than it looks</i>	444
	C. The Absolute Priority Rule When Forcing the Plan on Classes of Unsecured Creditors	446
	D. The Closer: Chapter 36	454
Chapter 37:	<b>Small Business Cases Under Chapter 11</b>	457
	A. A Brief History of Small Business Bankruptcy	457
	B. Shorter Deadlines for Small Business Debtors	459
	C. Additional Reporting Requirements and Oversight	461
	D. Simplification of the Plan Process	462
	E. Higher Risk of Conversion or Dismissal	462
	F. The Small Business Reorganization Act of 2019 (“SBRA”)	464
Chapter 38:	<b>Post-Confirmation Issues: The Effect of Confirmation</b>	471
	A. The Confirmation Order Is Res Judicata as to All Issues Dealt with in the Plan and Also Discharges All Claims Except as Otherwise Provided for in the Plan	472
	B. Enforcing the Plan	478
	C. The Closer: Chapter 38	481
Chapter 39:	<b>Closing Closers: Some Practice Questions</b>	483
	<i>Index</i>	509