

Preface & Acknowledgments

This book prepares future lawyers to advise clients on matters of business bankruptcy specifically and business debt generally. Bankruptcy is the main legal forum in which the debts of distressed business firms are repaid, adjusted, or canceled. The possibility of bankruptcy therefore shapes the legal analysis of almost any issue involving the issuance, exchange, or enforcement of business debt. Yet an effective business lawyer must understand more than black-letter bankruptcy law: he or she must also be familiar with basic principles of debt finance, and must appreciate how the economic interests of creditors, equityholders, and managers come into conflict when a firm is in distress. This book brings together the study of each of these elements.

Although this is an introductory bankruptcy casebook, it focuses exclusively on the reorganization of distressed business firms, either in bankruptcy or in out-of-court workouts negotiated in the shadow of bankruptcy. It therefore is unlike the numerous casebooks designed for survey courses that address both business (“commercial”) bankruptcy and consumer bankruptcy in a single semester. Business bankruptcies and consumer bankruptcies involve different debtors, facing different types of problems. For this reason, a survey course cannot give students a firm grasp of the financial and economic conflicts that businesspeople use bankruptcy to try to resolve. For law students who intend to advise clients on business matters—in my experience, the large majority of those who take an introductory bankruptcy class—a course that studies business bankruptcy in depth is more useful than a survey course, and more intellectually rewarding as well.

The best preparation for this book is not a survey bankruptcy course, but rather the standard law-school course on Business Organizations. In essence, Business Organizations is about equity interests: how the law protects equity investors in their conflicts with managers and controlling shareholders. Meanwhile, Reorg (as my students call my course based on this book) is about debt claims: how the law protects business creditors in conflicts with shareholders, managers, and each other. By taking the two courses in succession, students receive a full legal tour of the right side of

the corporate balance sheet and are well-prepared to advise clients on all matters relating to business investment and capital structure.

This book also does not assume previous knowledge of finance. In a manner carefully designed to overcome the typical law student's math phobia, the book clearly explains basic financial concepts (such as present value, expected value, and bond yields), and it employs hypothetical fact patterns that require students to apply these concepts to legal questions. These exercises reveal that, while a grasp of basic finance is paramount to the practice of business law, the necessary mathematical operations are those learned in primary school: addition, subtraction, multiplication, and division. In my experience, even the most math-averse students are able to solve the book's numerical problems, and take satisfaction in doing so.

Structurally, this book moves from economic concepts to legal doctrines. Thus, as it introduces basic financial concepts, Part I also describes different types of debt (secured, general unsecured, and subordinated), and it presents the general challenges facing creditors, including the collective-action problem in consensual workouts, and the tendency for a distressed firm's managers to act on behalf of equityholders at the expense of debtholders. Parts II through IV then cover the key structural elements of corporate bankruptcy, including the confirmation of a Chapter 11 plan, the operation and financing of a debtor in bankruptcy, and the various statutory and common-law measures used to disallow or re-order creditor claims.

The book's last two parts widen the focus beyond traditional Chapter 11 reorganization. Part V explores reorganization alternatives, including out-of-court workouts and going-concern asset sales under Bankruptcy Code § 363, which have become almost as common as confirmed Chapter 11 plans in cases involving large corporate debtors. Finally, Part VI addresses the special insolvency regimes that Congress has created for financial firms, and the special bankruptcy exemptions it has provided for financial contracts. Since the 2007-09 financial crisis, the concept of systemic risk has been a primary concern of policymakers; this last part describes this concern and shows how its implications now extend beyond traditional banks, affecting a wide variety of business debtors and debts.

The art of the casebook lies in the strategic selection of topics, producing a text that contrasts with a manual or hornbook which attempts to address every potential issue within a field. My exclusion criterion was whether a lawyer would need a general understanding of business bankruptcy law, and of the financial and economic conflicts that the law aims to resolve, to advise clients effectively on the issue. If the answer was no, then the issue was treated lightly or not at all. For example, hot topics such as venue and

jurisdiction (made prominent by the Supreme Court's decision in *Stern v. Marshall*) were passed over because, while interesting, they do not require special knowledge of business bankruptcy and debt finance to analyze. The topics that did make the cut are organized functionally rather than doctrinally: for instance, while there are no chapters devoted exclusively to classic bankruptcy topics such as the automatic stay, estate property, or claim allowance, these topics are considered throughout the book as they intertwine with other concepts and themes.

This book also omits the lengthy statutory excerpts that swell most bankruptcy texts. The assumption is that students will borrow or buy a complete copy of the Bankruptcy Code (lightweight versions can be purchased on line for \$25) and keep it handy as they read the book and work through its questions and problems. The Code is a machine with many moving parts, and students must hold the whole machine in their hands to understand how those parts work together.

As I developed this book, I field-tested it in classrooms at Columbia Law School, Yale Law School, and my home institution, Fordham Law School. It has benefitted greatly from student feedback, and from the work of the following research assistants, to whom I am especially grateful: John Conte, Katherine Cripsi, Elizabeth Downing, Dylan Diaz, Hannah Geller, Gabriel Gillett, Miriam Levi, Nina Liu, Constantine Pappas, and Foteini Teloni.

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