

This final examination consists of three (3) essay questions, to be answered in the accompanying blue book(s). I suggest that you read each question carefully, circle or highlight each of the important issues that needs to be discussed and discuss each issue as you progress through the fact pattern. Please do not repeat the facts unless you feel it is appropriate and necessary. Please write on only one side of each page in the blue book, in pen, **as legibly as possible**.

1. Sam and his wife Mary own a single family home in Georgetown, MA. They live there with their 2 children, ages 22 and 14. The 22 year old son is going to school and working part-time; their 14 year old daughter is not working. The house has been recently valued at approximately \$300,000.00. The first mortgage to Chase calls for monthly payments of \$2795 and Sam and Mary are 4 months behind. The current balance on the mortgage is \$315,000.00. They have asked repeatedly for a loan modification and Chase has just approved a “trial modification” for 3 months to see if they can make the payments. There is a second mortgage in favor of Beneficial Finance and the balance due is just over \$74,000.00. Because the payments on the second mortgage are only \$247.00 per month (interest only), Sam has kept that mortgage current.

Sam and Mary owe about \$65,000 in credit card debt, about \$18,000 in past due tax liabilities to the IRS, \$10,000.00 for 2005 and \$8,000.00 for 2009 and some government guaranteed student loans for their son. Their son is on the 7 year degree program – he can’t see the benefit of higher education because he is already making over \$50,000 per year playing in a rock band every other weekend as the “guest” drummer. Mary is furious, but thanks him for his regular help to the family finances.

Sam has been out of work for almost 9 months, having been laid off for the third time in the past 5 years. He is looking forward to getting another good paying job in his field (electromechanical biometrics and integrated physiognomy), but it’s been tough. He is waiting for a company in Wisconsin to make him an offer. Mary wants to sell the house if Sam gets the job, move to Wisconsin and rent an apartment until they get themselves back on firm financial footing. She is currently working for a dentist and earns almost \$60,000.00 per year, having landed this job in the middle of the summer after being laid off herself for almost a

year. She loves the job, and feels that her skills are portable (usable and valuable in any similar office).

Sam wants to file a Chapter 7 bankruptcy case, start all over and hope for the best. Both Sam and Mary have read some articles about bankruptcy, but they are confused about the different chapters and want some guidance.

Sam and Mary are actually current with all but one of their credit card bills, though it is costing them almost \$900.00 per month in minimum payments. The interest rates are between 12% and 29%, depending on whether they defaulted at all during the past year. One creditor is threatening to sue Sam for a credit card balance of \$11,000.00, though Sam doesn't remember ever using that card. In reality, Sam's son took the card two years ago and charged the purchase of all of his drum equipment.

Mary owns a 2004 Toyota Matrix which has a current value of \$6,000.00. The balance on the car loan is \$12,000.00 because she rolled the old car loan into this car loan when she purchased this used car (and financed it) in mid 2007. Sam owns his Land Rover outright – free and clear. It's worth over \$20,000 and he cleans it every week, whether it needs it or not. It is meticulous and in really beautiful condition, but it only gets 14 miles per gallon and Mary wants Sam to trade it for a more efficient and “green” vehicle. Sam is ignoring Mary. When Sam and Mary were doing well, they purchased a small truck for their son, which he still uses. The truck has always been titled in Sam's name and Mary wants to know if it would be a good idea to transfer the truck to the son, since it's really “his” vehicle.

Sam has a 401K retirement account with his former employer and the value is \$129,525.00. He rolled over each 401K account from employer to employer as he moved from job to job and has never borrowed from the fund. He made regular contributions and most employers matched those contributions dollar for dollar. Mary has an IRA, but the value has dwindled to just under \$19,000.00 from a high of \$37,000.00 - the market has not been kind to Mary's choice of investments.

Mary last week visited Attorney Buzz Lightyear to discuss her work related injury. Last year she slipped on a tomato that had been left on the floor in the small kitchen where she worked. She lost 4 months of work (no pay), though the workers compensation insurance company paid all the medical bills. And while she was in the hospital, she alleges that she was sexually harassed by a male nurse, who wouldn't take no for an answer, until his floor supervisor walked into the room and firmly told that nurse to leave. The supervisor offered Mary \$1,000.00 to

“forget what just happened”, but Mary made no promises. She did not take the money, but said she would consider \$10,000.00. She never heard any further from the floor supervisor.

Finally (had enough yet?) Sam and Mary inform you that they just received a letter from a law firm informing them that the firm has been engaged to begin foreclosure proceedings because they are 7 months in arrears on the house mortgage. They don't know whether to fight (they are 4 months in arrears), argue, hope that the loan modification people finally talk to the foreclosure people, keep the house, sell the house, let it go to foreclosure, stay in Mass or move...file a bankruptcy now or later or what!!

Advise Sam and Mary about the issues, how you can help them and the details they need to consider so that they can make a reasonably informed decision.

2. John and Liz are married and live in Methuen, MA in a single family home, with their four children, ages 21, 19, 7 and 5. Both older children work full time but contribute nothing to the household income because they are each paying for their own cars and supporting their extensive social lives. Each dates regularly and often hits either John or Liz up for some additional cash when they have little beer money left. The five year old just landed a job as a model with an advertising agency because she “smiles upon request”, which is a fabulous attribute for the photographer. Little Betsy earns as much as \$500.00 on a Saturday morning.

John and Liz own their house as tenants by the entirety and the house currently has one mortgage with a principal balance of \$88,000.00 and they have resisted every temptation to refinance over the past ten years, since they bought the home. They are current with the mortgage and all of the expenses relating to their house, including the taxes and insurance. At your request, (you spoke with them on the phone before the meeting) they obtained a Broker's Price Opinion which indicated that their beautiful home, in an excellent section of Methuen, even in this miserable real estate climate, has a current value of \$400,000.00.

Though John considers himself to be financially responsible, he borrowed money from his mother over the past two years and chose not to tell Liz. This past September, he used all of his \$5000.00 bonus to repay his mother the entire balance of what he owed her. Part of the reason why he needed to borrow money from his mom was to pay his ex-girlfriend Danielle to help support his two

children (now ages 6 and 4) that he had with her. Liz knows nothing about Danielle or the two little kids. Danielle, unbeknownst to John, recently obtained a court order requiring John to pay \$500 per month support for each of the two little kids. He has not given her any money since July 2009.

At your meeting with John and Liz, Liz tearfully admits that she has suffered from a secret shopping addiction and her credit card balances are quickly approaching \$90,000.00. Her most recent purchase last week was from Saks Fifth Avenue where she bought 2 pairs of designer skinny jeans - cost: \$600.00. She has hidden these jeans from John. Two years ago, Discover Card sued her for \$24,000.00 alleging that to be the balance on her Discover Card. She allowed the case to go to default (no response filed), Discover recovered judgment and recorded the execution (via the deputy sheriff) at the local Registry of Deeds, effectively placing a valid judicial lien on the real estate she and John own. The attorney for Discover has scheduled a hearing in court (Supplementary proceedings) to determine Liz's ability to pay and has also threatened that he will instruct the sheriff to sell the house to collect on the judgment. Liz is now freaking out.

Finally, John is currently unemployed, having worked for Merrill Lynch as a financial advisor – that is where he met Danielle. He has been receiving \$2000.00 per month unemployment compensation since March 2010, but those checks will run out at the end of March 2011. His prospects for re-employment in his profession appear bleak for the moment, but he feels confident for the future. Liz is currently working as a retail sales person at a high end specialty store and has been told that she needs to be concerned about the prospects for bonuses or raises. Otherwise, her job is stable. She earns \$32,000.00 a year. She has trouble not spending some of her paycheck on the latest fashions at the store where she works.

Discuss the various issues arising during your meeting with John and Liz and advise them.

3. Steve owns a three family home in Lawrence, MA . The house has a current market value of \$125,000, but has 3 mortgages totaling \$257,000, \$70,000, and \$125,000 respectively. The third mortgage was granted by Steve as security for a commercial business loan that he personally guaranteed to ABC Bank and the Small Business Administration (SBA). Steve, in 2006, set up a corporation and opened a bar/restaurant in downtown Haverhill. Initially, the business was quite successful but as the economy faltered, so did the business revenues. In

December, 2009 a fight broke out at the restaurant, patrons lit the place on fire and the business and the building were destroyed. Steve's insurance policy had lapsed the week before and no coverage was available.

Steve is currently unemployed and would like to rebuild his business. He has no capital with which to do that and, as mentioned above, no insurance proceeds. He would also like desperately to keep his home but he is now 5 months behind on each of the three mortgages. Even his live-in girlfriend has offered to help, but she feels that she needs most of her \$100,000 income (she is a very successful prostitute) to support her three children, who live with her mother in California. She sends money to them regularly.

Steve is current with his child support obligations to his two children from his first marriage, who live with his ex-wife in Worcester. However, he just last week found out that he is also father to 7 year old twins. Their mother has scheduled a hearing in probate court and is seeking retroactive support.

Steve owns a 2005 Ford Focus, on which there is a car loan. His regular monthly payments have been \$258 but he has not made any payments since September. The current balance on the car loan is \$7,950, but the vehicle is in poor condition and has a current fair market value of approximately \$3,000. Last week, the bank repossessed the vehicle and told Steve that under Mass law, he has 20 days to "redeem the vehicle" or it will be sold thereafter, likely at the car auction.

Any advice for Steve? He is currently looking for job and has been promised a terrific position managing his friend's dry cleaning business (6 locations) in the greater Boston area.

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1. Randy is a single mother who purchased her three family house in Lawrence, MA in 2006, at the height of the real estate market. Since her purchase, she refinanced the house and currently has two mortgages; the first mortgage has a principal balance of \$289,000.00 and is currently four months in arrears at \$2,900.00 per month (principal, interest, taxes and insurance). The bank has sent her a notice of default and has threatened to begin foreclosure proceedings if she doesn't get the mortgage caught up.

Randy also has a second mortgage with a principal balance of approximately \$78,000.00, which is currently eight months in arrears, but the bank has not communicated with Randy in quite some time. Randy is unable to catch up on either or both of the mortgages because her income is limited.

Randy now works as an Administrative Assistant (just got the job two months ago) and earns approximately \$40,000.00 per year. Before that, she worked as a part time bartender in her local pub and earned \$15,000.00 per year, plus an additional \$15,000.00 in tips which she did not report. She has two children living at home with her, both of whom attend the Lawrence public schools. She receives occasional support money from the father of her two minor children, but those payments are irregular. The total amount of money that she has received in the past six months from support was \$2,400.00.

A broker just last week determined that the house is only worth \$145,000.00, since it is in fair to poor condition. However, Randy receives income from two tenants in the amounts of \$900.00 and \$850.00 respectively. These two tenants are stable and Randy feels that she can count on the rental income every month.

At your meeting with Randy she indicates that she has accumulated approximately \$40,000.00 of general unsecured credit cards, overdue medical bills and some personal family loans. She is constantly being harassed by debt collectors on behalf of the credit card holders and she has been using some of the rent money to make the minimum monthly payments to the credit cards. However, she has become extremely frustrated because the credit card balances are not going down since the annual interest rates on the cards have now each reached 29.99% (the applicable default rate, per the credit card agreements).

Randy wants to know what options bankruptcy may provide. She wants desperately to keep the house and feels that she can keep current if only she can reduce the amount on the mortgage.

2. John and Mary are married and live in Methuen, MA in a single family home, with their four children, ages 21, 19, 7 and 5. Both older children work full time but contribute nothing to the household income because they are each paying for their own cars and supporting their extensive social lives. Each dates regularly and often hits either John or Mary up for some additional cash when they have little beer money left. The five year old just landed a job as a model with an advertising agency because she “smiles upon request”, which is a fabulous attribute for the photographer. Little Betsy earns as much as \$500.00 on a Saturday morning.

John and Mary own their house as tenants by the entirety and the house currently has one mortgage with a principal balance of \$88,000.00 and they have resisted every temptation to refinance over the past ten years, since they bought the home. They are current with the mortgage and all of the expenses relating to their house, including the taxes and insurance. At your request, (you spoke with them on the phone before the meeting) they obtained a Broker’s Price Opinion which indicated that their beautiful home, in an excellent section of Andover, even in this miserable real estate climate, has a current value of \$400,000.00.

Though John considers himself to be financially responsible, he borrowed money from his mother over the past two years and chose not to tell Mary. This past September, he used all of his \$5000.00 bonus to repay his mother the entire balance of what he owed her. Part of the reason why he needed to borrow money from his mom was to pay his ex-girlfriend Danielle to help support his two children (ages 6 and 4) that he had with her. Mary knows nothing about Danielle or the two little kids. Danielle, unbeknownst to John, recently obtained a court order requiring John to pay \$500 per month support for each of the two little kids. He has not given her any money since July 2009.

At your meeting with John and Mary, Mary tearfully admits that she has suffered from a secret shopping addiction and her credit card balances are quickly approaching \$90,000.00. Her most recent purchase last week was from Saks Fifth Avenue where she bought designer t-shirts with contrasting long sleeves in each of the five available colors; cost: \$925.00 (!!). She has hidden these shirts from John. Two years ago, Discover Card sued her for \$24,000.00 alleging that to be the balance on her Discover Card. She allowed the case to go to default (no response filed), Discover recovered judgment and recorded the execution (via the deputy sheriff) at the local Registry of Deeds, effectively placing a valid judicial lien on the property. The attorney for Discover has scheduled a hearing in court (Supplementary proceedings) to determine Mary’s ability to pay and has also threatened that he will instruct the sheriff to sell the house to collect on the judgment. Mary is now freaking out.

Finally, John is currently unemployed, having worked for Merrill Lynch as a financial advisor – that is where he met Danielle. He has been receiving \$2000.00 per month unemployment compensation since August 2009, but those checks will run out at the end of March 2010. His prospects for re-employment in his profession appear bleak, for the moment, but he feels confident for the future. Mary is currently working as a retail sales person at a high end specialty store and has been told that she needs to be concerned about the prospects for bonuses or raises. Otherwise, her job is stable. She earns \$32,000.00 a year.

Discuss issues arising during your meeting with John and Mary and advise them.

Question 3

Roberto owns a single family home in Dorchester, MA . The house has a current market value of \$195,000, but has 3 mortgages totaling \$257,000, \$70,000, and \$125,000 respectively. The third mortgage was granted by Roberto as security for a commercial business loan that he personally guaranteed to ABC Bank and the Small Business Administration (SBA). Roberto, in 2004, set up a corporation and opened a bar/restaurant around the corner from his home. Initially, the business was quite successful but as the economy faltered, so did the business revenues. In December, 2008 a fight broke out at the restaurant, patrons lit the place on fire and the business and the building were destroyed. Roberto's insurance policy had lapsed the week before and no coverage is available.

Roberto is currently unemployed and would like to rebuild his business. He has no capital with which to do that and, as mentioned above, no insurance proceeds. He would also like desperately to keep his home but he is now 5 months behind on each of the three mortgages. Even his live in girlfriend has offered to help, but she feels that she needs most of her \$100,000 income (she is a very successful prostitute) to support her three children, who live with her mother in California. She sends money to them regularly.

Roberto is current with his child support obligations to his two children from his first marriage, who live with his ex-wife in Lawrence. However, he just last week found out that he is also father to 7 year old twins. Their mother has scheduled a hearing in probate court and is seeking retroactive support.

Roberto owns a 2004 Ford Taurus, on which there is a car loan. His regular monthly payments have been \$258 but he has not made any payments since September 2009. The current balance on the car loan is \$7,950, but the vehicle is in fair condition and has a current fair market value of approximately \$3,000. Last week, the bank repossessed the vehicle and told Roberto that under MA law, he has 20 days to "redeem the vehicle" or it will be sold thereafter, likely at the car auction.

Any advice for Roberto? He is currently looking for job and has been promised a terrific position managing his friend's dry cleaning business (6 locations) in the greater Boston area.

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Question 1

Five years ago, Iddy (husband) operated a Boston taxicab. He owned a taxi medallion issued by the city of Lawrence and was making monthly payments of \$1000. The payments were made to a private lender with the understanding (as is typical in any bank transaction) that upon payment in full of the underlying loan, the collateral (the taxi medallion) will then be released from the lender's security interest and Iddy will own it free and clear. 5 years ago, he and his wife Marie decided to buy a house where they and their 4 children could live. -

At that time, in 2005, the real estate market in the Boston suburbs was booming and Iddy and Marie worked with a mortgage broker to finance the purchase of their first home, in Melrose. They paid \$500,000 (a beautiful 2-family) and granted a first mortgage and a second mortgage to Wells Fargo Bank. They hired an attorney to assist them at the closing because they did not understand the procedure, this being their first real estate purchase.

At the closing, they signed a note for \$420,000, which was secured by a first mortgage on the premises; they also signed another note for \$100,000, which was secured by a second mortgage on the same house. Since then, they have been blessed with a tenant who pays regular rent for the sum of \$1,200 a month.

Unfortunately, after they purchased the home, they realized that homes need care and love – the house became somewhat of a money pit and by 2008, Iddy was unable to keep up with the obligations on his taxi medallion. The lender foreclosed but agreed that he would not look to Iddy for any deficiency.

While Iddy and Marie were doing quite well, before they purchased the home in 2005, they rented an apartment in Cambridge, where they raised their family. In fact, in 2002, they purchased a buildable lot in a small town in Florida where the weather more closely resembled their Caribbean hometown. Their intention was to eventually build a retirement house. They were also, around that time, able to visit their families (on a beautiful Caribbean island) on a regular basis, but that has not occurred for at least a few years. However, Iddy recently learned that his father deeded the family farm to Iddy and his 12 siblings. Iddy discloses all this information to you at your initial meeting.

Both Iddy and Marie are despondent because they just received a notice from the holder of the first mortgage (Wells Fargo) that the bank intends to accelerate the note (current balance approximately \$450,000) because they have not made payments since October 2008. Iddy has heard that he can request a mortgage modification. Marie has heard (from her hair dresser) that a Chapter 13 bankruptcy may well be able to assist her and Iddy with the house situation. Marie is currently working as a nurse's aid and earns \$32,000 gross per year. Iddy just set up a limo business, purchased a 2005 Lincoln Continental, but is really making no take-home money yet, after the expenses of operating the limo service. By the way, none of the kids is working, but everyone is in good health.

After you analyze Iddy and Marie's situation, tell them what they need to know.

3. Lisa is now divorced almost 3 years. She has an 8 year old little girl, whose father, Ben, is her ex-husband. Ben has been very well employed for some years now and until March 2010, was earning over \$200,000 per year. He has taken a leave of absence from work to deal with some medical issues, but he is ready to return to work in June. When Lisa got divorced, she and Ben signed an agreement whereby he would pay her \$2,000 per month support and she waived any claim for alimony. At the time, she was earning \$55,000 as a service writer for a Mercedes-Benz dealer, and her income has been steady ever since.

Three months ago, Ben informed Lisa that he had been served with papers from the Probate Court and his first ex-wife was asking that her support order be increased substantially, to the same level as what Lisa is receiving, for EACH of her two children she had with Ben. Lisa is fearful that if a Probate Judge increases the first wife's support, Ben will not be able to continue to pay her (Lisa) the same amount as she is used to getting.

When Lisa and Ben were married, they had purchased a single family home in No. Andover, MA. After the divorce, Ben did not keep up the mortgage payments, primarily because his new girlfriend preferred not to live in that house. They moved into an apartment in Wilmington. Lisa and her daughter had moved out some time before the divorce and are presently living in an apartment in Methuen. Ben and Lisa had granted two mortgages on the house and the first mortgagee foreclosed in May 2008 after payment demands were ignored. Both Lisa and Ben were just served with a suit filed by Bank of America seeking \$80,000, but Lisa does not know if this represents the deficiency due to the first mortgagee after the foreclosure, or the amount due the second mortgagee.

Lisa has a 2001 Mercedes E class, which she purchased from the dealership. She is current on her car loan (\$570.00 per month) and the balance due on the loan is about \$18,000. The car is worth considerably less. She uses the car regularly in her business and has been helpful to the dealership in closing sales, because of her personality and her perfectly maintained vehicle – she often picks up customers at their places of business or homes, as part of her “customer service program”.

Lisa owes approximately \$15,000 to credit cards, plus about \$25,000 balance on a series of student loans, which she incurred when she was going to school for a nursing degree. She changed her mind about her career choice.

Lisa is very upset about her current situation and seeks your advice. Ask her the appropriate questions, discuss the issues with her and advise her regarding her choices.

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Unfortunately, after they purchased the home, they realized that homes need care and love – the house became somewhat of a money pit and by 2008, Iddy was unable to keep up with the obligations on his taxi medallion. The lender foreclosed but agreed that he would not look to Iddy for any deficiency.

While Iddy and Marie were doing quite well, before they purchased the home in 2005, they rented an apartment in Cambridge, where they raised their family. In fact, in 2002, they purchased a buildable lot in a small town in Florida where the weather more closely resembled their Caribbean hometown. Their intention was to eventually build a retirement house. They were also, around that time, able to visit their families (on a beautiful Caribbean island) on a regular basis, but that has not occurred for at least a few years. However, Iddy recently learned that his father deeded the family farm to Iddy and his 12 siblings. Iddy discloses all this information to you at your initial meeting.

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1. Randy is a single mother who purchased her three family house in Lawrence, MA in 2006, at the height of the real estate market. Since her purchase, she refinanced the house and currently has two mortgages; the first mortgage has a principal balance of \$289,000.00 and is currently four months in arrears at \$2,900.00 per month (principal, interest, taxes and insurance). The bank has sent her a notice of default and has threatened to begin foreclosure proceedings if she doesn't get the mortgage caught up.

Randy also has a second mortgage with a principal balance of approximately \$78,000.00, which is currently eight months in arrears, but the bank has not communicated with Randy in quite some time. Randy is unable to catch up on either or both of the mortgages because her income is limited.

Randy now works as an Administrative Assistant (just got the job two months ago) and earns approximately \$40,000.00 per year. Before that, she worked as a part time bartender in her local pub and earned \$15,000.00 per year, plus an additional \$15,000.00 in tips which she did not report. She has two children living at home with her, both of whom attend the Lawrence public schools. She receives occasional support money from the father of her two minor children, but those payments are irregular. The total amount of money that she has received in the past six months from support was \$2,400.00.

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Randy wants to know what options bankruptcy may provide. She wants desperately to keep the house and feels that she can keep current if only she can reduce the amount on the mortgage.

2. John and Mary are married and live in Methuen, MA in a single family home, with their four children, ages 21, 19, 7 and 5. Both older children work full time but contribute nothing to the household income because they are each paying for their own cars and supporting their extensive social lives. Each dates regularly and often hits either John or Mary up for some additional cash when they have little beer money left. The five year old just landed a job as a model with an advertising agency because she “smiles upon request”, which is a fabulous attribute for the photographer. Little Betsy earns as much as \$500.00 on a Saturday morning.

John and Mary own their house as tenants by the entirety and the house currently has one mortgage with a principal balance of \$88,000.00 and they have resisted every temptation to refinance over the past ten years, since they bought the home. They are current with the mortgage and all of the expenses relating to their house, including the taxes and insurance. At your request, (you spoke with them on the phone before the meeting) they obtained a Broker’s Price Opinion which indicated that their beautiful home, in an excellent section of Andover, even in this miserable real estate climate, has a current value of \$400,000.00.

Though John considers himself to be financially responsible, he borrowed money from his mother over the past two years and chose not to tell Mary. This past September, he used all of his \$5000.00 bonus to repay his mother the entire balance of what he owed her. Part of the reason why he needed to borrow money from his mom was to pay his ex-girlfriend Danielle to help support his two children (ages 6 and 4) that he had with her. Mary knows nothing about Danielle or the two little kids. Danielle, unbeknownst to John, recently obtained a court order requiring John to pay \$500 per month support for each of the two little kids. He has not given her any money since July 2009.

At your meeting with John and Mary, Mary tearfully admits that she has suffered from a secret shopping addiction and her credit card balances are quickly approaching \$90,000.00. Her most recent purchase last week was from Saks Fifth Avenue where she bought designer t-shirts with contrasting long sleeves in each of the five available colors; cost: \$925.00 (!!). She has hidden these shirts from John. Two years ago, Discover Card sued her for \$24,000.00 alleging that to be the balance on her Discover Card. She allowed the case to go to default (no response filed), Discover recovered judgment and recorded the execution (via the deputy sheriff) at the local Registry of Deeds, effectively placing a valid judicial lien on the property. The attorney for Discover has scheduled a hearing in court (Supplementary proceedings) to determine Mary’s ability to pay and has also threatened that he will instruct the sheriff to sell the house to collect on the judgment. Mary is now freaking out.

Finally, John is currently unemployed, having worked for Merrill Lynch as a financial advisor – that is where he met Danielle. He has been receiving \$2000.00 per month unemployment compensation since August 2009, but those checks will run out at the end of March 2010. His prospects for re-employment in his profession appear bleak, for the moment, but he feels confident for the future. Mary is currently working as a retail sales person at a high end specialty store and has been told that she needs to be concerned about the prospects for bonuses or raises. Otherwise, her job is stable. She earns \$32,000.00 a year.

Discuss issues arising during your meeting with John and Mary and advise them.

Question 3

Roberto owns a single family home in Dorchester, MA . The house has a current market value of \$195,000, but has 3 mortgages totaling \$257,000, \$70,000, and \$125,000 respectively. The third mortgage was granted by Roberto as security for a commercial business loan that he personally guaranteed to ABC Bank and the Small Business Administration (SBA). Roberto, in 2004, set up a corporation and opened a bar/restaurant around the corner from his home. Initially, the business was quite successful but as the economy faltered, so did the business revenues. In December, 2008 a fight broke out at the restaurant, patrons lit the place on fire and the business and the building were destroyed. Roberto's insurance policy had lapsed the week before and no coverage is available.

Roberto is currently unemployed and would like to rebuild his business. He has no capital with which to do that and, as mentioned above, no insurance proceeds. He would also like desperately to keep his home but he is now 5 months behind on each of the three mortgages. Even his live in girlfriend has offered to help, but she feels that she needs most of her \$100,000 income (she is a very successful prostitute) to support her three children, who live with her mother in California. She sends money to them regularly.

Roberto is current with his child support obligations to his two children from his first marriage, who live with his ex-wife in Lawrence. However, he just last week found out that he is also father to 7 year old twins. Their mother has scheduled a hearing in probate court and is seeking retroactive support.

Roberto owns a 2004 Ford Taurus, on which there is a car loan. His regular monthly payments have been \$258 but he has not made any payments since September 2009. The current balance on the car loan is \$7,950, but the vehicle is in fair condition and has a current fair market value of approximately \$3,000. Last week, the bank repossessed the vehicle and told Roberto that under MA law, he has 20 days to "redeem the vehicle" or it will be sold thereafter, likely at the car auction.

Any advice for Roberto? He is currently looking for job and has been promised a terrific position managing his friend's dry cleaning business (6 locations) in the greater Boston area.

This final examination consists of three (3) essay questions, to be answered in the accompanying blue book(s). I suggest that you read each question carefully, circle or highlight each of the important issues that needs to be discussed and discuss each issue as you progress through the fact pattern. Please do not repeat the facts unless you feel it is appropriate and necessary. Please write on only one side of each page in the blue book, in pen, **as legibly as possible**.

1. Sam and his wife Mary own a single family home in Georgetown, MA. They live there with their 2 children, ages 22 and 14. The 22 year old son is going to school and working part-time; their 14 year old daughter is not working. The house has been recently valued at approximately \$300,000.00. The first mortgage to Chase calls for monthly payments of \$2795 and Sam and Mary are 4 months behind. The current balance on the mortgage is \$315,000.00. They have asked repeatedly for a loan modification and Chase has just approved a “trial modification” for 3 months to see if they can make the payments. There is a second mortgage in favor of Beneficial Finance and the balance due is just over \$74,000.00. Because the payments on the second mortgage are only \$247.00 per month (interest only), Sam has kept that mortgage current.

Sam and Mary owe about \$65,000 in credit card debt, about \$18,000 in past due tax liabilities to the IRS, \$10,000.00 for 2005 and \$8,000.00 for 2009 and some government guaranteed student loans for their son. Their son is on the 7 year degree program – he can’t see the benefit of higher education because he is already making over \$50,000 per year playing in a rock band every other weekend as the “guest” drummer. Mary is furious, but thanks him for his regular help to the family finances.

Sam has been out of work for almost 9 months, having been laid off for the third time in the past 5 years. He is looking forward to getting another good paying job in his field (electromechanical biometrics and integrated physiognomy), but it’s been tough. He is waiting for a company in Wisconsin to make him an offer. Mary wants to sell the house if Sam gets the job, move to Wisconsin and rent an apartment until they get themselves back on firm financial footing. She is currently working for a dentist and earns almost \$60,000.00 per year, having landed this job in the middle of the summer after being laid off herself for almost a

year. She loves the job, and feels that her skills are portable (usable and valuable in any similar office).

Sam wants to file a Chapter 7 bankruptcy case, start all over and hope for the best. Both Sam and Mary have read some articles about bankruptcy, but they are confused about the different chapters and want some guidance.

Sam and Mary are actually current with all but one of their credit card bills, though it is costing them almost \$900.00 per month in minimum payments. The interest rates are between 12% and 29%, depending on whether they defaulted at all during the past year. One creditor is threatening to sue Sam for a credit card balance of \$11,000.00, though Sam doesn't remember ever using that card. In reality, Sam's son took the card two years ago and charged the purchase of all of his drum equipment.

Mary owns a 2004 Toyota Matrix which has a current value of \$6,000.00. The balance on the car loan is \$12,000.00 because she rolled the old car loan into this car loan when she purchased this used car (and financed it) in mid 2007. Sam owns his Land Rover outright – free and clear. It's worth over \$20,000 and he cleans it every week, whether it needs it or not. It is meticulous and in really beautiful condition, but it only gets 14 miles per gallon and Mary wants Sam to trade it for a more efficient and “green” vehicle. Sam is ignoring Mary. When Sam and Mary were doing well, they purchased a small truck for their son, which he still uses. The truck has always been titled in Sam's name and Mary wants to know if it would be a good idea to transfer the truck to the son, since it's really “his” vehicle.

Sam has a 401K retirement account with his former employer and the value is \$129,525.00. He rolled over each 401K account from employer to employer as he moved from job to job and has never borrowed from the fund. He made regular contributions and most employers matched those contributions dollar for dollar. Mary has an IRA, but the value has dwindled to just under \$19,000.00 from a high of \$37,000.00 - the market has not been kind to Mary's choice of investments.

Mary last week visited Attorney Buzz Lightyear to discuss her work related injury. Last year she slipped on a tomato that had been left on the floor in the small kitchen where she worked. She lost 4 months of work (no pay), though the workers compensation insurance company paid all the medical bills. And while she was in the hospital, she alleges that she was sexually harassed by a male nurse, who wouldn't take no for an answer, until his floor supervisor walked into the room and firmly told that nurse to leave. The supervisor offered Mary \$1,000.00 to

“forget what just happened”, but Mary made no promises. She did not take the money, but said she would consider \$10,000.00. She never heard any further from the floor supervisor.

Finally (had enough yet?) Sam and Mary inform you that they just received a letter from a law firm informing them that the firm has been engaged to begin foreclosure proceedings because they are 7 months in arrears on the house mortgage. They don't know whether to fight (they are 4 months in arrears), argue, hope that the loan modification people finally talk to the foreclosure people, keep the house, sell the house, let it go to foreclosure, stay in Mass or move...file a bankruptcy now or later or what!!

Advise Sam and Mary about the issues, how you can help them and the details they need to consider so that they can make a reasonably informed decision.

2. John and Liz are married and live in Methuen, MA in a single family home, with their four children, ages 21, 19, 7 and 5. Both older children work full time but contribute nothing to the household income because they are each paying for their own cars and supporting their extensive social lives. Each dates regularly and often hits either John or Liz up for some additional cash when they have little beer money left. The five year old just landed a job as a model with an advertising agency because she “smiles upon request”, which is a fabulous attribute for the photographer. Little Betsy earns as much as \$500.00 on a Saturday morning.

John and Liz own their house as tenants by the entirety and the house currently has one mortgage with a principal balance of \$88,000.00 and they have resisted every temptation to refinance over the past ten years, since they bought the home. They are current with the mortgage and all of the expenses relating to their house, including the taxes and insurance. At your request, (you spoke with them on the phone before the meeting) they obtained a Broker's Price Opinion which indicated that their beautiful home, in an excellent section of Methuen, even in this miserable real estate climate, has a current value of \$400,000.00.

Though John considers himself to be financially responsible, he borrowed money from his mother over the past two years and chose not to tell Liz. This past September, he used all of his \$5000.00 bonus to repay his mother the entire balance of what he owed her. Part of the reason why he needed to borrow money from his mom was to pay his ex-girlfriend Danielle to help support his two

children (now ages 6 and 4) that he had with her. Liz knows nothing about Danielle or the two little kids. Danielle, unbeknownst to John, recently obtained a court order requiring John to pay \$500 per month support for each of the two little kids. He has not given her any money since July 2009.

At your meeting with John and Liz, Liz tearfully admits that she has suffered from a secret shopping addiction and her credit card balances are quickly approaching \$90,000.00. Her most recent purchase last week was from Saks Fifth Avenue where she bought 2 pairs of designer skinny jeans - cost: \$600.00. She has hidden these jeans from John. Two years ago, Discover Card sued her for \$24,000.00 alleging that to be the balance on her Discover Card. She allowed the case to go to default (no response filed), Discover recovered judgment and recorded the execution (via the deputy sheriff) at the local Registry of Deeds, effectively placing a valid judicial lien on the real estate she and John own. The attorney for Discover has scheduled a hearing in court (Supplementary proceedings) to determine Liz's ability to pay and has also threatened that he will instruct the sheriff to sell the house to collect on the judgment. Liz is now freaking out.

Finally, John is currently unemployed, having worked for Merrill Lynch as a financial advisor – that is where he met Danielle. He has been receiving \$2000.00 per month unemployment compensation since March 2010, but those checks will run out at the end of March 2011. His prospects for re-employment in his profession appear bleak for the moment, but he feels confident for the future. Liz is currently working as a retail sales person at a high end specialty store and has been told that she needs to be concerned about the prospects for bonuses or raises. Otherwise, her job is stable. She earns \$32,000.00 a year. She has trouble not spending some of her paycheck on the latest fashions at the store where she works.

Discuss the various issues arising during your meeting with John and Liz and advise them.

3. Steve owns a three family home in Lawrence, MA . The house has a current market value of \$125,000, but has 3 mortgages totaling \$257,000, \$70,000, and \$125,000 respectively. The third mortgage was granted by Steve as security for a commercial business loan that he personally guaranteed to ABC Bank and the Small Business Administration (SBA). Steve, in 2006, set up a corporation and opened a bar/restaurant in downtown Haverhill. Initially, the business was quite successful but as the economy faltered, so did the business revenues. In

December, 2009 a fight broke out at the restaurant, patrons lit the place on fire and the business and the building were destroyed. Steve's insurance policy had lapsed the week before and no coverage was available.

Steve is currently unemployed and would like to rebuild his business. He has no capital with which to do that and, as mentioned above, no insurance proceeds. He would also like desperately to keep his home but he is now 5 months behind on each of the three mortgages. Even his live-in girlfriend has offered to help, but she feels that she needs most of her \$100,000 income (she is a very successful prostitute) to support her three children, who live with her mother in California. She sends money to them regularly.

Steve is current with his child support obligations to his two children from his first marriage, who live with his ex-wife in Worcester. However, he just last week found out that he is also father to 7 year old twins. Their mother has scheduled a hearing in probate court and is seeking retroactive support.

Steve owns a 2005 Ford Focus, on which there is a car loan. His regular monthly payments have been \$258 but he has not made any payments since September. The current balance on the car loan is \$7,950, but the vehicle is in poor condition and has a current fair market value of approximately \$3,000. Last week, the bank repossessed the vehicle and told Steve that under Mass law, he has 20 days to "redeem the vehicle" or it will be sold thereafter, likely at the car auction.

Any advice for Steve? He is currently looking for job and has been promised a terrific position managing his friend's dry cleaning business (6 locations) in the greater Boston area.

BANKRUPTCY

Spring, 2001

Jeff Kitaeff

5 Chapters in Bankruptcy Code: 7, 9, 11, 12, 13

- Chapt. 7: Liquidation chapter → No asset Bankruptcy usually
 - . a **"straight bankruptcy"**
 - . a **Trustee** will be appointed
 - . everything not exempt in the estate is liquidated & distributed to creditors
 - . You discharge and go on
 - . Trustee doesn't touch **"exemptions."**
 - A. Look at Fed exemptions under 522, → No Homestead
 - B. Look at state exemptions, → Homestead
 - C. Then decide which you will use to maximize the exemptions
 - . **Only individuals can claim exemptions, not corporations**
 - . **Not all debt is dischargeable** (not alimony, debts incurred by fraud, taxes within last 3 yrs, student loans)
- Goals:
 - 1. Maximize exemptions
 - 2. Discharge as much debt as possible
- . can be filed every 6 years
- . no required minimum amount of debt or maximum earnings
- Debtor can:
 - ~~reaffirm~~ the debt, w/creditor approval, or
 - ~~retire~~ the property (pay some value in lump sum), or
 - ~~surrender~~ the property & owe nothing

Ch. 13
Property of estate is extended
by Rule 541 + 1306

19425

Chapter 13: Like a personal reorganization

- . Available to any individual who has a **regular source of income** *f stockbroker or a commodity broker may not file*
- Voluntary only**

. Available to **individuals only**

Advantages:

. You make plan to **extend the time for paying** your debts, usually to 3-5 years

. Amount in mortgage or car loan ~~can't be more than 12 mo. or more~~

. debtor can **keep home, car & other possessions**

. debtor gets **broader discharge**

. You make periodic payments to a trustee who distributes to creditors (deducted from your pay if you are employed).

. **Creditors less less**

. less complex & less time consuming than Chapt. 11

. You can seek court's approval to incur new debt if reasonable.

. Plan can provide for any provision not provided by the Code (i.e. creative).

Ex: Plan can provide that debtor will retransfer property in kind if amounts of plan to pay off debt within the plan period.)

Disadvantages:

- ~~creditors can't force plan~~
- ~~debtor can't discharge~~
- property doesn't ~~have to be sold~~
- ~~if you have property with a lien, you have to disclose it to engage a professional (broker), then the income of income to sell & transfer of interest~~
- ~~Must get court permission for any transaction outside the normal course.~~

Two tests of Ch 13 Plan:

- 1- ~~Best efforts of client~~ (How much can he afford monthly?)
- 2- ~~Best interests of creditors~~ (The must get no less than if it were a Ch 7)

~~You can modify the plan prior to confirmation by the court, as long as~~

~~objection.~~

. No confirmation hearings in MA in a Ch. 13, but its optional.

. You file your plan with all creditors and a court (certificate of service). Court

~~sends back a proposed order of confirmation. If a creditor files an~~

~~objection, hearing w/b scheduled.~~

. Nothing is distributed by trustee until confirmation is received.

. ~~for tax lien, you can't avoid.~~

~~judicial lien, you can't rid of it if it impairs your exemption. (see 522(f), file a~~

Chapt 13 Liquidation Tests

In your plan, state what Creditors will get.
Must meet 2 tests:

A. ~~Best Interests of Creditors Test~~ → 1325 (A)(4)

- It must be no less than under Chapt. 7.

B. ~~Best Interests Test~~ 1325 (B)(1)(F)

- Debtor must pay as much as he can reasonably afford to.

~~Both Chapt 7 & 13:~~

~~automatic stay order issues immediately & stops foreclosures, lawsuits,
garnishments, repossessions & phone calls.~~

- Chapt. 11

. Creditors vote on your plan, unlike a Chapt. 13

~~. Secured debt = one you owe w/ collateral involved. Unsecured = all others.~~

~~. A secured creditor is only secure to the extent of the value of the collateral. Any
overflow is unsecured.~~

Parties in a Bankruptcy

~~. Debtor = Formerly, the bankrupt. One who owes. Proponent of plan.~~

~~. Creditor = People who are owed by the debtor.~~

~~. Trustee = Fiduciary appointed by Office of Bankruptcy Trustee in District
Trustee becomes the Trustee unless Creditors object & vote out.~~

~~. Court = Implements the Chapter 12 rules, all judicial determinations.~~

. Fed Bankruptcy Court is an arm of the US District Ct.

~~. You can't split fees in a bankruptcy case. No referral fees.~~

~~. Trial only if a creditor objects and files complaint to revoke discharge.~~

235 MGL sec. 34: Mass list of exempt property

~~. 32 MGL sec. 19: Retirement accounts for municipal employees are exempt.~~

~~. 175 MGL sec. 149: Some insurance policies are exempt (group annuities).~~

Advantages of Chapt. 13 Over Chapt. 7:

Chapt. 13

- . Debtor can keep home, possessions
Contemplates continued use & deferred redemption of exempt & non-exempt property
- . Creditors get more
- . No creditors committee
- . No vote taken on debtor's plan
- . No mandatory disclosure statement
- . Co-debtor stay (protected during course of your plan only)
- . Voluntary
- . Absolute right to dismissal by debtor
- . Discharge is much broader (except child support, alimony, taxes)
- . No prohibition against multiple filings of Chapt. 13
- . Home mortgage defaults may be cured
- . Helps avoid stigma of bankruptcy
- . Helps debtors credit rating
- . As soon as you file, the interest stops on unsecured claims & taxes
- . You may be able to get rid of taxes over 3 yrs. old
- . Moral imperative: You don't screw your creditors.
- . Less complex, less costly than 7
- . Plan c/b modified prior to confirmation (Valuation of collateral, interest rate factors)

Chapt. 7

- . Debtor can only keep exempt possessions. All else is liquidated by Trustee
- . Creditors get less
- . A creditors committee w/ fees
- . Creditors vote on debtor's plan
- . A mandatory disclosure statement
- . No co-debtor stay
- . Voluntary or involuntary
- . Debtor must file petition to obtain dismissal
- . Can only file once

Advantages of Chapt. 7 Over Chapt. 13

Chapter 13

- . Debtor must file plan within 90 days of filing
- . You remain in payment plan 3-5 yrs.
- . Debtor must submit post-discharge earnings

Chapt. 7

- . You are discharged quickly (4-5 months)
- . Debtor keeps post-discharge earnings

1. Automatic stay goes into effect immediately on filing.
May be annulled or modified.
2. Creditor stay goes into effect on filing to prevent co-debtors from being pressured into paying.
3. Estate is created.
4. Trustee is appointed, who
 - is disbursing agent
 - appears at hearings
 - role in meeting of creditors
5. Repayment plan must be filed within 15 days.
6. Creditors meeting called.
7. Plan is confirmed.
8. Debtor is discharged after plan is successfully completed.

Diff Between Schedule F and Schedule J will determine whether debt is covered by Ch. 13.

- If income is greater than expenses so that debtor can pay debts, then debt is covered.
- If income is less than expenses, then needs to refile budget.

Chapt. 13 Plan

Requirements

1. Must contribute future earnings to assets.
2. Must pay in full the priority claims (no interest)
3. No unfair discrimination between creditors of a similar class

Options

1. Classification of unsecured claims (non-dischargeability alone is not enough to distinguish). For ex., where there's a co-debtor you can have those unsecured creditors receive 100 cents on dollar.
2. Can modify (pay less) to most creditors, but not priority or tax creditors. Can't modify home mortgage debt on single family home unless bank has some other collateral in addition. Sec. 1322(b)(2) - no cram downs.
3. Can provide that payment of arrearages will cure and/or waive default.
4. Concurrent payment to secured & unsecured creditors.
5. Payment of allowed claims that arise after case is filed (e.g., for illness)
6. Assumption or rejection of executory K's
7. Option of selling exempt property to pay debt
8. Any provision not included in Code (allows for creativity)

~~Section 541~~

~~Sec 541~~ debts of client not dischargeable because client's bankruptcy is ~~fraudulent~~

~~Sec 523~~ particular debts that aren't dischargeable (alimony, student loans unless extreme hardship)

You still owe after plan ends if not paid in full:

~~Tax liabilities~~ you must pay 100% but interest stops running

ch. 7
Ch. 13
1328 discharge

Carroll Down

= In chapt. 13, where value of collateral drops below debt, you may be able to bifurcate a secured debt into a secured portion and an unsecured portion:

. the portion over the current value is the now unsecured portion, gets included in other unsecured debts & you pay percentage

. You must pay the secured portion in full w/interest during plan.

. You must file a motion

. Only available for a multi-family or commercial property or car, not debtor's primary residence

Exemptions

. You can take either Code or Non-code (state and other fed law, which you can mix); but you can't mix Code and Non-Code.

. ex retirement plan is exempt to the extent reasonably necessary under Code

~~Sec 541(c)(9)~~. If you are younger, better to choose MA exemption sec. 235-34(a) - 7% of gross income for past 5 yrs.

Exemptions

. Cars

Have appraised or use Kelly's Bluebook.

. Household goods

What someone would expect to pay for used good + what client would expect to sell it for.

. Clothing

A general gross value; what trustee would get if liquidating. Have client assess. Expensive suits? Or mostly jeans?

. Automatic perfection on consumer goods when you charged them.

When you have a consumer debt you can:

1. ~~Redeem~~ the collateral.

(Pay off present value or balance due, whichever is less), or

2. ~~Reaffirm~~ the debt.

(Agreement by client to be legally obligated to pay despite bankruptcy), or

3. ~~Surrender~~ the collateral, or

4. ~~Retain~~ the collateral and continue to pay → ?

Think
Market
Value
What is reasonable
eyes would pay for
what would pay for
for

ch. 7
Ch. 13
3228
B. Summary

State Exemption
 Fed exemption only
 11,945
 2/11/94

Homestead Act - allows you to protect your primary residence, going forward, up to \$300,000 equity.

- If you put a Homestead on, then file bankruptcy, Code says you can go backward and protect pre-existing debt as well because fed law pre-empts state law.
- Only one spouse can take a Homestead

Chap. 11

- includes a **plan** (like 13), plus
- a detailed **disclosure statement** (5-50 pgs) that gives creditors info on way they should approve, plus
- a detailed **liquidation analysis** (more detailed than in 13).
- when plan is confirmed, debtor has **K w/creditors and is discharged** (unlike a 13 where you must complete the plan first)

Chapter 11 Timeline

1. file analysis
2. develop plan
3. file petition
4. you can file an emergency skeleton petition if so, then have 3 days to file matrix and 14 days to file remaining schedules & statements
5. get automatic stay
6. creditors meeting
7. file objections, plan is approved
8. order of confirmation is issued

After Filing Chapter 11

- If case is met w/objection, full case must be heard. Rules of evidence apply.
- If no objection, trustee's recommendation & appropriate records delivered, then confirmation hearing held & plan is confirmed.
- Order of confirmation is issued.
- Effect of order - debtor & creditors are bound to the plan; trustee has duty to collect, distribute & monitor.

universal in Bankruptcy procedure.

What Debts are NOT Dischargeable (sec. 523 & 1328)

1328

- | | |
|---|---|
| alimony, child support | alimony, child support |
| student loans | student loans |
| judgment/claim based on use of alcohol in an accident | judgment/claim based on use of alcohol in an accident |
| mortgage on home | mortgage on home |
| fraud, embezzlement, etc. | Not in 7c |

Confirmation Hearing:

- this is when judge first sees the plan

~~Requirements of Sec. 1325 apply:~~

1. Plan must comply with ~~Ch 13 provisions, including~~
Sec. 109(e) - maximum debt limits for a ch 13 debtor
(Has regular income + liquidated noncontingent unsecured debts of no
more than \$250,000 and secured of under \$25,000)
Liquidated - a sum certain 871,550
Noncontingent - you're not just a guarantor
2. ~~Fees have been paid~~
3. Plan is in good faith (generally, 10% is min.) & not forbidden by law.
(If a creditor objects, court will ensure debtor is supplying all disposable
income reasonable to meet obligations. Income of non-debtor spouse must
be included in determining what's reasonable.)
4. Plan is in best interests of creditors
(They receive no less than if under ch 7)
5. ~~Holder of secured claims has accepted the plan or is paid value in full~~
satisfaction.
6. ~~Plan must be feasible.~~

Conversion:

- debtor has absolute right to convert from 13 to 7. Court order not required:
 - it's then as if you had filed a 7 in the first place.
- undisbursed funds still held by trustee are returned to debtor in MA.
- new debt created during the 13 is then rolled into the 7 debt, t/b discharged.

Dismissal of Plan:

- Will be filed by trustee under 2 circumstances:

1. Debtor not keeping up w/ payments, or
2. Unreasonably.

(Creditor claims can't be pd based on claims filed - debtor's atty failed to
tally claims correctly after the 90 day period for creditors to file claims
(180 days for govt).)

- If you fail to comply w/ plan, you w/b dismissed with prejudice by court & can file
again for 6 months. All prior creditor rights re-established.

- debtor in 13 has absolute right to dismiss. But automatic stay w/b lifted.

- if debtor dies, becomes insane, may be dismissed or further administration as tho death
hadn't occurred if in best interest of parties. Rule 1016.

Discharge

- can seek a hardship discharge in some circumstances (fitness)

- ~~Good cause~~ ~~is~~ ~~complaint~~ ~~for~~ ~~nonresidence~~ ~~of~~ ~~debtor~~

~~Some~~ ~~debts~~ ~~still~~ ~~can~~ ~~be~~ ~~discharged~~ (Sec. 523)

If discharged in 13, debts for fraud, etc. are ~~oper~~ again → discharge of debts (132B)

- court can revoke discharge within 1 year, if obtained thru fraud. Sec. 1328(e)

- debts for luxury items incurred within 60 days exceeding \$1,150 can't be discharged.

1,150

Post-confirmation requirements

usually for fitness, etc.

What is the "Estate" for Bankruptcy Purposes? (threshold question)

= everything the debtor owns, has an interest in, as of the date of

commencement of the case:

we must
out-let
the assets
pre-11/01

within 180
days or 6
months, property
of estate

assets that may be recovered and property he's entitled to within 180 days

of the date of filing of the petition (date of death, date of property, etc.)

of the date of commencement of the case

- 401K not part of estate while debtor is working because it's ERISA qualified so not

accessible

you are required
to you need to file
credit account
creditors
now 11/01
the estate

If you can not get it
your retirement plan
Neither can the trustee

Consumer Bankruptcy

In re Palmer p. 221

I: Whether a post-petition salary and bonus paid by debtor's employer as property of estate or belongs to the debtor.

H: Not part of estate because it was earned and paid after the filing - it was discretionary in its payment depending on performance. The salary had been earned prior to date of bankruptcy, he couldn't have sued for it. It was earned and was entitled to be paid for it & then you file, it's an account receivable from an asset of the estate.

In re Orkin p. 227

F: Debtor was sole proprietor w/own retirement plan; claimed it was not part of the estate.

I: Was it ERISA qualified & therefore not part of the estate?

H: Because he was the employer and sole participant both, it wasn't ERISA qualified so part of estate. Purpose of ERISA is to protect the retirement funds from the employer. Here he could terminate any time so he had control. ERISA qualified, participants have no right to withdraw, such as a 401K (not IRA or Keogh).

↓
can not control
Plans

Threshold Questions:

1. Is it property of the estate?
2. If so, can it be exempted?
3. If not, disclose it but you don't have to worry about losing it.

~~Automatic Stay~~

~~Andrews Univ. v. ...~~ p. 236

F: Student had loan from University & defaulted. She filed ch.7, then asked school for copy of her transcript.

I: Whether school's refusal to provide transcript for her failure to pay violates the automatic stay provisions Sec. 542(a)(5).

H: Refusal to provide the transcript is an act to collect or enforce a claim of the automatic stay.

Sec. 562: The Automatic Stay exceptions. Everything stops once you file bankruptcy, criminal actions, paternity actions, alimony proceedings, etc.

~~Rule: How can you get rid of student loans in bankruptcy just because you're old? Must show undue hardship~~

~~Kansas v. Concordia Lumber~~ p. 238

F: Merchant bought lumber on credit, then couldn't pay. Creditor obtained judgment, attached his equipment. Before court's sale, merchant filed for bankruptcy, and demanded return of the equipment. Merchant refused.

I: Whether the refusal was a willful violation of the autom. stay.

H: Creditor's refusal to return the property of the debtor is a violation of the automatic stay.

Secure transaction = a transaction where some collateral secures the repayment.

~~Rule: A secured party's only recourse to the value of the collateral.~~

Preference = a payment or transfer on account of an antecedent (old & cold) debt, made within 90 days of the bankruptcy, whereby a creditor gets a leg up over the other unsecured creditors. (To be fair, any payment s/b pro-rata.)

If the recipient is an insider, then trustee look back one year. Trustee will demand return of any preferential payment. Sec. 546.

This creates a relatively level playing field for creditors.

The time for calculation starts when the check is paid, not when it's written.

Lots of exceptions to the Preference Rule.

If a payment was made on account of a new debt (new sale/give), then it's not a preference.

CHAPT. 7: Liquidation

Exemptions

Taylor v. DeBartolo p. 247

F: Davis listed in her bkrcy petition, then exempted, monies anticipated from a pending discrimination lawsuit. The trustee failed to object within 30 days.

H: ~~The settlement was deemed exempt property because trustee failed to timely object. Fair market value is not applicable.~~

In re Estate p. 251

F: A dispute re: valuation of property the debtor claimed as exempt. Trustee seeks ~~fair market value~~ liquidation value.

I: Whether the property s/b valued at fair market or liquidation value.

H: ~~Value for exemption purpose = fair market value as of the date of filing bankruptcy.~~

Definition of FMV varies w/ the circumstances. Here, court said FMV same as liquidation value.

~~Fair Market Value = the price at which a willing seller and willing buyer will trade in an open market for a reasonable period of time.~~

In re Ruback (MA) "Ruback Decision"

~~H: When a bank liquidates its collateral (house), has obligation to sell in a way that minimizes debtor's loss.~~ Bank must get fair price or it's not fair to the other creditors. Approx. 70% of appraised value is reasonable. Result of this case was greater effort in foreclosure auctions.

~~Ruback rule has changed. Now a creditor only has to do what the state requires.~~

- just a tombstone ad in paper (reasonable effort)

- ~~sale in a commercially reasonable manner~~ (not held in a snowstorm)

Any deficiency is the bank's unsecured claim in a bankruptcy.

Bank will take out a larger ad to improve bids and ensure "commercially reasonable."

Value is defined for different purposes in different ways.

~~Value is not necessarily the liquidation value, nor necessarily the FMV, probably in between.~~

- Household goods: what you would reasonably expect to get if you exposed it to the market in a reasonable manner with reasonable effort.

- Car: Mid value in Kelly blue book (for ex., the trade in value)

In re Mitchell

F: Dispute over valuation of debtors' ring. Debtor claimed \$7800, the alleged liquidation value; creditor claimed \$36,000, the FMV.

H: Appropriate valuation standard is FMV, exposure of the item to the appropriate market for a reasonable period of time.

Disputed Claims

In re Lanza p. 264

F: When a couple filed bankruptcy, a dispute arose over the amount and security of 3 loans in their names. H died and W had no financial records and no knowledge of the transactions. But the bank also had poor records.

H: Court held burden of proof is on the objecting party - have the debtors to disprove the claim for which there is a presumption of validity. Bank got lesser amount it could prove.

Sec 507 - Priorities

- Most bankruptcies are "no asset" cases - no assets for distribution to creditors because of secured or exempt property. But if there are assets, Sec. 507 sets priorities for distribution.

1. Administrative Expenses

- trustees, appraisers, attorneys, brokers, etc.

- every professional must have their application to be engaged approved by the bankruptcy court.

A. debtor's application to engage accountant

B. Certificate of disinterestedness

C. Fee sharing affidavit (no splitting allowed)

2. Claims in involuntary cases that are created between date the case is filed & date he is declared a debtor.

- in these cases, an individual is served w/a summons & complaint

3. Particular wage claims against the debtor

- debtor usually a corp.

- claims by former employees

- up to limit of \$4,300

- must have been earned w/in 90 days of filing (unsecured as to the rest)

4. Contributions to employee benefit plans w/in 180 days before filing (up to limit)

5. Consumer security deposits

- up to \$1,950 - the rest is unsecured

- rent deposits, layaways, etc.

6. Alimony, child support w/o limit

7. Taxes

Unsecured creditors

Shareholders

Discharge

In re Harron p. 274

F: A discharge case. Debtor was sole stockholder in 3 service corps. His creditors objected to his discharge in bankruptcy because he c-mingled business and personal funds, listed corp. debt as his personally and suspicious undocumented loans to or from family members and poor recordkeeping.

H: ~~Discharge was disallowed. Rule 729.~~

Need to keep books and records

Proof of Claim Form:

- ~~was required by a creditor in timely fashion to get paid a dividend, whether secured, unsecured or general creditor.~~

- in chapt. 7, 11 or 13

- when you mail in a proof of claim, send dup copy for time stamping & SASE

- if a creditor doesn't file, his portion inures to the other creditors

- ~~date for filing objections to exceptions - 30 days from 341 meeting. Rule 4003.~~

- ~~Bar date: date by which you must file or be barred from claiming.~~

A. ~~Chapt. 7: 60 days from the 341 meeting~~

Most ch 7's are no asset cases so notice goes out that no assets and no need to file proof of claim until you receive notice. So no bar date set in that case.

B. ~~Chap. 13: 90 days from filing~~

Except **govt claims - 180 days from filing of case**

Notice goes to creditors

- Case # is assigned.

0-1 YY-1xxxx Eastern div. (Boston)

0-4 YY-4xxxx Western div.

Adversary proceedings get 2nd case #

In re [redacted] p. 278:

F: **Creditor objection to discharge of debt.** An unemployed woman w/2 children on S.S. received 7 credit cards and charged \$100,000 on luxury items. AMEX objected to her ch 7 discharged.

H: ~~Creditor's objection to discharge under sec 523 allowed. Burden of proof is on the objecting creditor. Here proved debtor knew when she ran up cards that she couldn't pay.~~

~~Sec. 523 = objection to the particular debt~~

~~Sec. 727 = objection to the entire case. Hard to burden to meet.~~

> ch. 7

In re Reed p. 283

F: Sole prop got loan, guaranteed by the SBA. When business went sour he began converting nonexempt business property to exempt. So less available for trustee.

H: ~~Discharge denied.~~

Q: Is it fraud or just use of allowed protections of assets?

Discharge under Ch 7

- unless there is an objection by a creditor it is automatic
- Rule 4004: A creditor wishing to object must do so no later than 60 days after the 1st day set for the meeting of creditors.
- 60-90 days after 341 meeting discharge will come

Objection to Discharge under sec. 541

- sec. 541 is objection to discharge of a debtor
- anyone has standing to object - trustee or creditor
- grounds include fraud, concealment of financial records
- also see sec. 523 - objection to discharge of a particular debt

Appeals Process

- Bankruptcy court is an Article I court - can't issue final orders, decisions are subject to review by an Art. III court.
- always a right of appeal to Bankruptcy Appellate Panel or to US Dist. Ct.

How to Object to a Discharge

- Rule 7001 - adversary proceedings
- Rule 7014 - contested matters
- Contested matters (e.g. discharge of a particular debt)
- Adversarial matters (e.g. objection to discharge) by a creditor - Summary judgment, discovery, etc.

In re D'Ettore p. 294 (an adversary proceeding)

F: Debtor plaintiff asking whether a particular debt w/b discharged.

Debtor w/student loans couldn't find employment in her field, sought discharge of her student loan debt under Ch 7.

H: Not discharged. Some debts are not dischargeable, including student loans. Can only be discharged by showing of extreme hardship & court said this was garden variety.

In re Hill p. 297

F: Debtor husband had some debts under a divorce settlement agreement, sought to have them discharged. Plaintiff ex-wife challenged the dischargeability because his indemnification of her for this debt in the agreement was in exchange for a reduction in alimony.

H: Discharge allowed. This was a property settlement, not alimony & support (which are nondischargeable). Prop. settlement can be discharged if inability to pay. Wife's remedy is to file bankruptcy herself.

In re Millbank

H: Bankruptcy debts of ex husband hold not dischargeable where the loans from his ex wife and ex father-in-law were obtained under false pretenses (He was having an affair at the time.)

Taxes:

- are given priority.
- Some are dischargeable under Ch 7.
- If the tax is dischargeable, so are the interest & penalties.
- Auto stay prevents IRS collection actions but post-petition interest continues to accrue.

Krikava p. 308

F: Farmer w/bank loan secured by his farm & hogs got behind in payments & sold some hogs under another family member's name in violation of security agreement. In bankruptcy proceedings he lied, was sentenced for perjury.

H: Because of the perjury, loan held not dischargeable.

Rule: Only the debt is discharged in bankruptcy, not the net. (If farmer above had sold the pigs, bank would still be secure in the amount of the proceeds.)

In re Robinson p. 314

F: Tenant in public housing paying \$22/mo. got behind in rent. Housing Authority got judgment on same day she filed bankruptcy. Tenant claims their refusal to renew her lease is a discrimination for reason of bankruptcy.

H: Housing authority didn't violate the Code because they commenced the action before she filed her petition. (A private person is not subject to this Code bar against discrimination, only a govt authority.)

4 Options for Ch 7 Debtors After Discharge

1. ~~Reaffirm~~ the debt & again become bound, notwithstanding the discharge.
2. ~~Redeem~~ the collateral - pay for it's 506 value. 506 → Secured to the amount of the collateral
3. ~~Surrender~~ the collateral
4. ~~Keep~~ the collateral w/o a reaffirmation, pay in installments (not allowed in MA)

In re Pendlebury p. 324

F: To avoid surrendering their mobile home to creditor bank, debtor filed motion for court to strike a provision in their reaffirmation agreement, which they'd signed voluntarily.

H: Bank allowed to foreclose. Court won't interfere in reaffirmation agreement. Parties have right to bargain & K.

Ch 7/Ch 13: 2 main differences:

1. Ch 13: repayment plan and discharged after 3-5 yrs.
Ch 7: liquidation & immediate discharge
2. Ch 13: debtor keeps property
Ch 7: debtor gives all non exempt property to trustee for liquidation

CHAPTER 13: Reorganization

Payments to Unsecured Creditors

In re Radden p. 340

F: Debtor bought car on installment K, failed to pay, bank lawfully repossessed. Then debtor filed ch 13 & sought return of car, saying he needed it for effective reorganization. His ch 13 plan called for bifurcation of the debt - payment in full on the secured amt, 70 cents on dollar on unsecured.

H: Turnover of car to debtor ordered.

~~Ch 13 plan provides for full payment of priority claims, may provide for modification of other claims (unsecured). See sec. 1322.~~

~~Preference = \$ paid by the debtor to a creditor within 90 days of filing bankruptcy (1-yr. for insiders) on account of an unsecured debt.~~

~~Exceptions to the 90-day Preference Rule:~~

- ~~If new value was given~~
 - Shipping new product and not getting paid
- ~~Ordinary course of dealing between the parties~~
 - Where normal payment terms between these parties is payment delayed by more than 90 days

~~Sec. 520:~~

- trustee gets paid percentage
- trustee gets paid for administrative costs
- if legal work is needed, trustee can either hire an atty or do it himself, but must file an application to engage counsel

~~TRUSTEES~~

~~Chapt. 7~~

Trustee is automatically appointed by clerk at time of filing of petition. Person filing isn't told who is trustee, to prevent trustee shopping and avoidance of creditors meeting w/ name of trustee.

Chapt. 11:

No trustee.
Every debtor is automatically a debtor-in-possession.
If you see a trustee appointed, it indicates a management problem.

~~Chapt. 13:~~

~~Standing trustee in every jurisdiction~~
Boston: Doreen Sullivan
West: Denise Papallardo

~~MLBR - MA Local Bankruptcy Rules~~

- ~~every jurisdiction has its own rules~~
- ~~exempt, bankrupt can avoid 1) a judicial lien other than a mortgage, to the extent it impairs his equity or 2) a security interest if the security interest is a purchase \$ or non-possessory interest that impairs an exemption. But bankrupt must file a very specifically drafted motion to avoid under MLBR 4003-1.~~

Very important

~~Rules 220: You get either Code or NonCode exemption~~

← NonCode includes Homestead.

~~Federal law (non-Code) says Homestead protection is both prospective and retroactive if you put it in before filing.~~

~~State case law (non-Code) says Homestead is only prospective. Fed trumps.~~

Elements of an Acceptable Ch 13 plan

In re Smith p. 344 (1984)

F: Debtor bought car, financed by Hub Motor & secured. Debtor filed bankruptcy. Debtor disputed 1) valuation of car by trustee @ bluebook price since he'd received 2 offers @ lesser amount, and 2) 22% interest rate set for the monthly payments under the plan. Court's expert appraiser said value is even more than bluebook.

I: What rate of interest can a Ch 13 debtor be required to pay on a purchase \$ car loan?

H: ~~Rule: Debtor has power to modify the terms of a secured debt in a Ch 13, but Code restricts that power by setting minimum terms to which the secured creditor is entitled.~~

Trustee establishes the valuation and interest rate, but debtor can file an objection. Interest rate held reasonable here in light of the extension of time debtor given for payment and the risks involved for the creditor. ~~Rule: The amount allowed on a Ch 13 secured claim is limited to the value of the collateral.~~

Rule: Code exempts home mortgages from the power of a Ch 13 debtor to modify. The only relief in Ch 13 for a home mortgage is "cure and maintain."

Payments to Home Mortgagee

In re Taddeo p. 352

F: Debtor bought home from creditor who took a 2nd mortgage. Debtor found defects in home & told creditor they'd only deposit monthly payments w/their atty until resolved. Creditor refused to negotiate & accelerated the loan for default. Debtor filed ch 13, got automatic stay. Plan called for cure of arrearages over 3 yrs + reinstatement of original pmt schedule going forward. Creditor filed for relief from stay to foreclose.

H: Favor of debtors. ~~Example: Code exempts home mortgage debt from debtor's rights to cure and maintain.~~

Chapt. 13 Plan Example

<u>Debt</u>	<u>Monthly Payment</u>
A. Arrears due mortgagee	
\$60,000	60 mo. = \$100/mo.
B. Priority (no interest or penalties going forward)	
IRS \$1,000	
DOR \$ 500	
Total \$1,500	60 mo. = \$ 25/mo.
C. Unsecured debt	
\$60,000	x 10% = \$6,000 60 mo. = \$100/mo.
	(10% unwritten min. in MA)
Total	\$225/mo.
	divided by 90% for trustee fee
	= \$250/mo. + current mortgage payments

*5 yr plan
normal is three yrs
36 months*

~~If some unsecured creditors don't file claims then the unsecured payments will be distributed among those that do.~~

Burden is on debtor's counsel to provide accurate addresses for creditors. Debtor's atty's return address goes on the creditors notices, not the bankruptcy's clerk's.

In Ch. 11, only the top 20 creditors are notified initially (creditor's committee). But all creditors' names and addresses go on matrix.

Client has continuing obligation to convert all surplus income during the term. (But MA has no followup, in fact.) If your client later can pay more than the amount set in the plan, choices:

1. Amend the plan to increase the rate on creditors, or
2. Shorten the term of the plan down to 3 yrs. minimum, or
3. A combination of the 2.

Code only requires Ch. 13 debtor to pay no less than the creditors would get under a *first* doesn't require debtor to pay over a longer period just so that the creditors get a little more.

If income ~~is~~ exceeds expenses, client should consider Ch. 13.
If expenses exceed income, client should be in a Ch. 7.

Reaffirmation

- A secured creditor's remedies, in personam, in the other bankruptcy is filed only by the individual debtor.
- If client reaffirms debt, he has an obligation as if he didn't file bankruptcy.
- If client doesn't reaffirm, redeem or surrender the property, the bankruptcy is a default and the secured creditor may exercise their in person remedies.
- There's no reason client should reaffirm.
- You have 30 days to reaffirm within 45 days of 341 meeting if you choose to.



Melendez Decision:

- For our court, whether a client should reaffirm debt. Burden is on the creditor to understand implications of signing a reaffirmation agreement.
- Amt. of the debt? Value of the collateral?
- Hardship?
- Will creditor only possess?

Impaired 20% can cure the arrearages on any secured debt, and must be on a 1/2%.

Priority of Claims

- can't do anything to family unless creditor accepts additional collateral.
- value of the property increases the secured portion
- remainder of the debt is deemed unsecured.

There are no preference rules re secured debt, only unsecured.

~~Payments to Unsecured Creditors~~

In re Greer p. 359

F: Debtors' Ch. 13 plan was for 3 yrs. Secured creditors would be paid but unsecured would on receive nominal payment even tho total was \$18,000. Trustee objected to the amt the unsecureds would get and the 3 year plan- wanted it extended so unsecureds would get reasonable amount.

I: Is nominal payment to unsecureds enough reason to extend a plan?

H: No. There is no Code minimum for unsecureds, but in MA there's a minimum 10% - as long as the plan is in good faith, unsecureds get nothing, but courts will sometimes allow to extend the plan. Code only requires ch 13 debtor to pay no less than if under ch 7. Here, a very austere budget so court said nothing should go to the unsecureds.

DOR Visit 4/11

- tax liabilities are priority claims.
- priority claims are not dischargeable in a ch. 7?
- dischargeability is statutory
- taxes within 2 yrs of petition are non dischargeable
- trustee taxes are non-dischargeable (withholding, sales)
- govt has 180 days to file a creditors claim, other creditors have just 90.
- DOR is subject to the automatic stay because it trumps state law.

Chapter 11:

- Corp. can create plan under any parameters; no limitations on amount or time.
- But tax liabilities must be paid no later than 6 yrs from date of assessment. Clock starts the day tax is assessed, not day of filing as with a chapt. 13. (In a 13, 100% of the taxes within 3 yrs must be paid + interest + penalties; over 3 yrs old is treated as general unsecured.)
- If tax is more than 6 yrs old, call DOR and do a workout
- Plan becomes a court sanctioned K.

In re Davies p. 366

F: Debtor's amended plan wasn't objected to by creditors but court looked at it and said looking at all factors together it should be denied.

I: What is a "good faith" plan under Ch. 13?

H: Plan denied. Reasons: \$0 payments to unsecured creditors, misstatement of debts and assets on a loan application 6 months before filing, some budget items not reasonably necessary.

In re Kourtakis p. 376

F: Creditor objected to ch 13 plan as not in good faith where creditor had a criminal and civil assault & battery judgment against the debtor that would be discharged.

H: Not a good faith plan. Court said you can't use a ch 13 to avoid a jury verdict, particularly for something a criminal jury would find intentional tort.

Chapt 13 Dischargeability

- debt from willful & malicious injury ~~is dischargeable~~
- alimony ~~not dischargeable~~
- student loans ~~not dischargeable~~
- debt from death or personal injury ~~caused by operating a vehicle while intoxicated not dischargeable~~
- ~~can't discharge taxes~~
- ~~can't discharge criminal fines~~

Chapt 7 Dischargeability

- debt from willful & malicious injury ~~not dischargeable~~
- alimony ~~not dischargeable~~
- student loans ~~not dischargeable~~
- debt from death or personal injury ~~caused by operating a vehicle while intoxicated not dischargeable~~
- ~~can't discharge taxes~~
- ~~can't discharge criminal fines~~

Classifying Unsecured Debts

Groves v. LaBarge p. 381

F: Debtors appeal court's refusal to confirm their ch 13 plan. Plan fully paid unsecured student loans as a separate class; other unsecured creditors got only partial repayment.

~~Dischargeability of a particular debt is not alone enough reason for separate classification. You have to treat nondischargeable student loan debt the same as all other unsecured.~~

~~What debt can you separately classify? Sec. 1322: debt for which there is a guarantor or co-maker (but not debt for which you co-signed for someone else who got all the consideration). What unsecured debt you can't classify is dischargeable.~~

~~Serial filing: file ch 7 to get rid of all dischargeable debt, then a ch 13 to deal with remaining debt.~~

Modification/Dismissal of Chapt 13 Plans

In ch 7 you can only deal with already acquired assets.

In ch 13 you project future income, expenses. **If projections don't come about, plan may be modified or dismissed.**

~~In re Burtland p. 386~~

F: 1/2 way thru ch 13 plan, debtor missed 2 payments. Trustee & creditors moved to convert him to a ch 7 or dismiss as a material default under the plan.

I: Was missing 2 payments a material default?

H: For debtor: ~~Before dismissing or converting, court will look beyond the fact of default to the cause. Here, factors beyond debtor's control - unreasonable weather and seasonal occupation.~~

~~If client goes to ch 13 and 1) case is dismissed because debtor willfully failed to abide by court orders to appear, or 2) debtor got dismissal of the case following the filing of a request for~~

~~rejection of automatic stay, then debtor can't refile for 6 months - dismissed as nonjudicial 110(g)~~

~~In re Bond~~ p. 387

F: Hardship petition by the trustee. Ch 13 debtor died partway thru plan, 2 minor children.

H: Hardship discharge allowed to protect probate estate for minor children. ~~Hardship discharge is appropriate where:~~

- 1) debtor has been ~~making payments faithfully, and~~
- 2) now can't because of reasons ~~beyond debtor's control, and~~
- 3) creditors ~~can't get less than under ch 7, and~~
- 4) ~~modification of plan is not a feasible alternative~~

~~Threshold Eligibility for Chapter 13~~

In re McMonagle p. 393

F: Debtors, the M's, filed a ch 7, reporting no assets. Their family corporation also filed a ch 7 and was discharged. Bank filed complaint for nondischargeability against the M's personally & got judgment of nondischargeability. The M's then converted to ch 13.

I: Is the debtor eligible for a ch 13?

H: Yes. Meets ~~threshold eligibility requirements under ch 13:~~

- ~~an individual~~
- ~~regular income~~
- ~~noncontingent, unsecured debt is less than the statutory limit.~~
(Current maximum is \$392,900)

Contingent = claims the debtor may have to pay eventually.

Unliquidated = liability admitted but amount is in dispute

In re Walton p. 410

F: Debtor filed ch 7 with monthly income surplus of \$500 & unsecured debt of \$26,000.

H: ~~This is substantial abuse under sec. 707(b). Debtor could propose a plan and pay off more than 2/3 to creditors in 3 years.~~

Substantial abuse under sec 707(b) calls for ~~dismissal, not conversion to a 13, where debtor has ability to pay something.~~ Only the debtor can voluntarily convert.

Chapt 13 Incentives

1. Property Incentives

- opportunity to keep property subject to a security interest, by payment of present value, sometimes w/ or w/o monthly payments over longer time.
- Keep home, even where foreclosure proceedings have begun, by paying off arrearage.
- ~~Chapt 7 limits the amount of prop debtor can keep as exempt.~~

2. Discharge Incentives

- broader discharge under 13

3. Access to Chapt 7 is Limited

- can only file once 7, 8

~~court can deny if filing is a substantial abuse~~ ✓ v. 2-2707(b)

In re Carvillac p. 417

F: Debtor proposed a 16 mo. plan under a chapt 13 whereby unsecured creditors each received only \$1 (minimal payment). The only reason for filing a 13 instead of a 7 is because the attorneys wanted fees up front under a 7, but he could pay the fee over time w/a 13.

L: Is debtor's 13 plan a lack of good faith?

H: ~~Confirmation denied. Minimum plan is 36 mos. These debtors could pay over 36 mo. to allow more to the unsecureds. file a 7 for a clean start.~~

In re Saylor p. 423

F: ~~Couple filed a ch 7, got discharge. Then filed a 13 to deal w/ the mortgage arrears. Bank objected to the successive filings (as 20) as not in good faith.~~

H: ~~A "20" is permissible. Even tho the filing of the 13 prevented the secured creditor from foreclosing it was in good faith.~~

Risks of filing a "20" (a 7 first, then a 13)

- If you have ability to do a 13, you'll be denied a 7 discharge. v. 2-2707(b)
- If client is close to foreclosure, bank may hold sale before you get the 7 discharge to allow you to file a 13.

Rule 609(g): Dismissed w/prejudice: You can't file again for 180 days.

A debt *excepted* from discharge is one you have to pay.

An asset *exempted* is one the debtor can keep.

Business Bankruptcy

- . ch 7 liquidation or ch 11 reorganization
- . a business that files a 7 intends to go out of business, unlike an individual
- . Exemptions are not available to a business as w/an individual.
- . Discharge isn't granted to a corp., only to an individual.

Involuntary Bankruptcy => Ch. 11

- . Can be filed against a debtor who is unable to pay debts as they mature.
- . If **at least \$10,000 is owed and fewer than 12 creditors**, then **one creditor can file**.
- . If **more than 12 creditors**, **3 must file together**.
- . If debtor doesn't answer, order for relief will enter.
- . Purpose = to recover 90 day preference \$'s.

In re Gibraltar p. 453

F: Involuntary bankruptcy petition filed.

I: Whether 2 corps w/a close relationship can count as 2 separate creditors for purpose of filing involuntary bankruptcy petition against debtor.

H: In this case, yes.

REVIEW

~~2 goals in bankruptcy:~~

- ~~get discharge of as much debt as possible~~
- ~~retain as much of your property as possible~~

Exempt property = the property of the estate you are permitted to keep from the trustee (put on Schedule C).

2 possible exemption scenarios & you must choose one:

- fed bankruptcy **code**
- **non-code** (state, other fed laws such as fed rr. Act) 522(b)

2 Tests of a Plan:

1. **Best Efforts**

income

- reasonable expenses

= what should go to creditors

2. **Best Interests**

You must pay creditors no less than what they'd get under ch 7 (i.e., more over time than what they'd get now, taking into consideration the time value of \$).

Secured v. NonSecured

Ch 7: Even tho the secured debt is discharged, the underlying lien is not & creditor can evoke remedies against the collateral. Creditor is only secured to the value of the collateral tho.

Ch 13: Same rule. If you're current, keep paying. If not, the auto stay lets you take time to pay arrears as you keep current going forward. If you have a note, you can only cure arrears over period left on the note.

Auto Stay

- Designed to create a level playing ^{field} filed among creditors as of date of filing.
- Must provide adequate protection to secured creditor so he doesn't suffer any further loss from deterioration of prop.
- Auto stay stops both secured and unsecured collections

1322(b)(2): You can cram down or bifurcate a mortgage but **not if it's a principal residence** (unless there's some additional collateral).

A creditor can file **motion for relief from auto stay** in order to foreclose before debtor attempts cram down, but if debtor is making regular pmts its not worth it.

Once crammed down, debtor must pay full amount of amount crammed down over term of plan.

Co-debtor stay: Co-debtor on a secured debt is protected during term of plan in a 13, not a 7, and only if the debtor is going to pay 100% is co-debtor off the hook. ✓

3 Categories of Debt

1. **Secured**
prop you pledged as collateral for the debt:
Ch 13 plan must **guarantee payment equal to balance of loan or value of collateral.**
2. **Priority**
100% payment required.
Income taxes, past child support, legal costs, administrative costs.
3. **Unsecured**
Medical bills, credit cards, etc.
Only get what's left, on a pro rata basis.
Can separately classify co-debtor debt (can have 100% payment on these; if plan doesn't include 100% payment of these, creditor can go after co-debtor for difference.)

Qualifying for a Ch 13: Max is \$807,000 secured + \$269,000 in unsecured.

Dismissal of your case:

You may dismiss voluntarily at any time. Trustee may dismiss if you do not keep up your plan payments. Consequences: secured can foreclose, unsecured can sue for judgment, co-signers lose protection.

Discharge

Under a 13, all debts listed are discharged upon completion. But *not*:

- home mortgage
- alimony
- death caused by your drunk driving
- student loans

IRS

- All tax returns must be filed or you won't be discharged.
- if you have a refund coming, IRS may send to trustee or offset a prior tax obligation.