

Chapter 7

UT Pro Bono Project Training
February 3, 2017

Introduction to Bankruptcy

Title 11 of the U.S. Code :
The Bankruptcy Code.

Federal Rules of Bankruptcy Procedure

Introduction to Bankruptcy

Title 11 of the U.S. Code :

1. The “Bankruptcy Code.”
2. Chapters 1-3-5 : these provisions apply to cases in all chapters unless specifically overridden.

Introduction to Bankruptcy

Title 11 of the U.S. Code :

1. The Bankruptcy Code.
2. Chapters 1-3-5 : apply to all chapters
3. Chapters 7-9-11-12-13-15
 1. Are the available substantive chapters
 2. Provisions apply only to cases under that chapter.

Introduction to Bankruptcy

Title 28 of the U.S. Code:

Contains jurisdictional provisions

and

statutes allocating judicial power to the
bankruptcy courts.

Bankruptcy Jurisdiction

Changed dramatically with the adoption of the Bankruptcy Reform Act of 1978.

Utilization of Article III power.

The Supreme Court decision in *Marathon*

28 U.S.C. § 1334.

Bankruptcy Jurisdiction

(a) Except as provided in subsection (b) of this section, the **district courts** shall have original and exclusive jurisdiction of all cases under title 11.

28 U.S.C. § 1334.

Bankruptcy Jurisdiction

(b) ... the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

28 U.S.C. § 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

28 U.S.C. § 157. Procedures

(b) (1)

[i.e., can I enter a final order?]

Bankruptcy judges may hear and determine all cases under title 11 and all **core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.**

Types of Bankruptcy Proceedings

“arises under” Title 11 -

proceeding created by a Title 11 statutory provision

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proceeding which could only arise in a BK case...no practical existence outside BK

Types of Bankruptcy Proceedings

“arises under” Title 11 - proceeding created by a Title 11 statutory provision

“arises in” a case under Title 11 – proceeding which could only arise in a BK case...no practical existence outside BK

“related to” a case under Title 11 - proceeding whose outcome could conceivably have an effect on BK estate

**UNITED STATES DISTRICT COURT
ORIGINAL JURISDICTION**

28 U.S.C. §1334(b) - Bankruptcy Jurisdiction Statute

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in or related to* cases under title 11. (emphasis added).



**28 U.S.C. §157(a)
Referral Statute**

Each district court may provide that any or all cases under title 11 and any or all proceedings *arising under* title 11 or *arising in or related to* a case under title 11 shall be referred to the bankruptcy judges for the district.



UNITED STATES BANKRUPTCY COURT

28 U.S.C. § 157(b)(5) - Exception for PI/Wrongful Death Claims
28 U.S.C. § 157(d) - Withdrawal of Reference
28 U.S.C. § 157(e) - Limited Power to Conduct Jury Trials

**UNITED STATES DISTRICT COURT
APPELLATE JURISDICTION**

28 U.S.C. §158
Appeals to District Court

The district courts of the United States shall have jurisdiction to hear appeals

- (1) from final judgments, orders and decrees;
- (2) from interlocutory orders and decrees issued under §1121(d)...and
- (3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection can be taken only to the district court for the judicial district in which the bankruptcy judge is serving.



28 U.S.C. §157(b) - Core Proceedings
28 U.S.C. §157(c) - Non-Core But Related To Proceedings

Recent Supreme Court Cases on Allocation Issue

Stern v. Marshall, 131 S.Ct. 2594 (2011)

§157(b)(2)(C) statutorily core, but not constitutionally core

-Unconstitutional to allow Art. I judge to enter final judgment on a common law counterclaim that did not require joint resolution with the creditor's proof of claim

Recent Supreme Court Cases on Allocation Issue

Stern v. Marshall, 131 S.Ct. 2594 (2011)
[claim statutorily, but not constitutionally core]

Executive Benefits Ins. v. Arkison, 134 S.Ct. 2165 (2014)

[deems Stern-type claim as non-core; BK court to tender proposed findings to District Ct for de novo review]

Recent Supreme Court Cases on Allocation Issue

Stern v. Marshall, 131 S.Ct. 2594 (2011)
[claim statutorily, but not constitutionally core]

Executive Benefits Ins. v. Arkison, 134 S.Ct. 2165 (2014)
[deems Stern-type claim as non-core; proposed findings]

Wellness Int'l Network v. Sharif, 135 S.Ct. 1932 (2015)
[litigants can give “knowing & voluntary” consent to adjudication by BK court ... expressly or impliedly]

Purposes of Chapter 7

The liquidation objective is the core of the Bankruptcy Code.

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- Must know Chapter 7 process in order to understand the other substantive chapters.

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The liquidation objective is the core of the Bankruptcy Code:

- Must know Chapter 7 process in order to understand the other substantive chapters.
- Take the core and “adjust” it to achieve other objectives --- i.e., reorganization in ch 11 or 13.

Purposes of Chapter 7

(1) For debtor: “fresh start”

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(1) For debtor: “fresh start”

(2) For creditors:

Equality of treatment for
similarly-situated creditors

Process of Chapter 7 - Debtor

Duties of the Debtor:

- (1) Disclose property & debts
-through schedules/statements
- (2) Relinquish non-exempt property to trustee.

Process of Chapter 7 - Debtor

- (1) Debtor discloses all property and all debts
- (2) Debtor relinquishes non-exempt property.

(3) in order to obtain a
DISCHARGE
(individual only)

Who can be a Chapter 7 Debtor?

(1) “person” other than a RR, an Ins. Co., or a bank

(2) Individual:

(1) Credit counseling requirement;

(2) Means test eligibility

Steps of Chapter 7 - Debtor

(1) Voluntary Petition =
“order for relief”

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- (3) §341 meeting of creditors;
Debtor examined under oath

Steps of Chapter 7 - Debtor

- (1) Voluntary Petition = order for relief
- (2) Filing of required schedules and statements, including claims of exemptions (Schedule C)
- (3) §341 meeting of creditors;
- (4) Other debtor options:
 - (1) Redeem personal property collateralizing consumer debt
 - (2) Reaffirm enforceability of particular debts

Steps of Chapter 7 - Debtor

- (1) Voluntary Petition = order for relief
- (2) Filing of required schedules and statements, including claims of exemptions (Schedule C)
- (3) §341 meeting of creditors;
- (4) Redemption/Reaffirmation
- (5) Wait.....pending discharge process.

Automatic Stay - §362

Universal self-effectuating injunction automatically & immediately invoked by the filing of a BK petition.

Freezes existing lawsuits; self-help remedies

Enforced by contempt & statutory penalties.

Automatic Stay - §362

Functions:

- (1) Provides Debtor with “breathing spell”
- (2) Maintains integrity of bankruptcy estate during pendency of case.

Automatic Stay - §362

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- (1) Provides Debtor with “breathing spell”
- (2) Maintains integrity of bankruptcy estate during pendency of case. §341 meeting of creditors;
- (3) Automatic stay (28 exceptions);

Automatic Stay - §362

Remains in place until...

- (1) Property is no longer estate property; or
- (2) Earlier of ...
 - (1) Individual receives a discharge;
 - (2) Case is dismissed
 - (3) Case is closed.

Unless....

Automatic Stay - §362

Court grants relief from stay...

(1) “for cause” or

(2) No equity in property and
property is not necessary for effective
reorganization

Chapter 7 – Debtor's Discharge

(1) Objection to Discharge (§727);

Complete **denial** of discharge of any debt

—

based upon debtor's misconduct....

failure to provide *quid pro quo* for relief.

Chapter 7 – Debtor's Discharge

(1) Objection to Discharge (§727);

(2) Exception to Discharge (§523);

Certain types of debts are excluded from scope of discharge – based upon how such debts were created

Chapter 7 – Debtor's Discharge

- (1) Objection to Discharge (§727);
- (2) Exception to Discharge (§523);

Most common excepted debts:

- (1) debt arising from fraud;
- (2) debt from fiduciary defalcation
- (3) debt from willful & malicious injury.

Chapter 7 – Debtor’s Discharge

- (1) Objection to Discharge (§727);
- (2) Exception to Discharge (§523);

- (3) Requires “adversary proceeding”
 - (1) Rule 7001 lists types of proceedings
 - (2) Greater procedural protections....generally under Federal Rules of Civil Procedure.

Process of Chapter 7 (case admin for creditors)

Controlled by chapter 7 trustee;
(§704)

Trustee administers an
“estate” (§541)

Purpose of Chapter 7 Case Administration

- Trustee administers property,
converts it to cash,
- And distributes cash to creditors
[holders of allowed claims]

What's in Chapter 7 Estate?

-All property interests of debtor;

-All avoidance actions

(§§ 544-545-546-547-548-549)

What's in Chapter 7 Estate?

- All property interests of debtor;
- All avoidance actions

- Subject to debtor's allowed exemptions (state or federal)

Debtor's Claims of Exemption

- DEF: Certain categories of property protected from seizure by creditors
- Homestead; vehicles; clothing; household goods; 2 mules; 12 cows

Debtor's Claims of Exemption

-Property protected from creditor seizure;

-Debtor must choose between
state exemptions OR
federal exemptions
(if federal available in that state)

Debtor's Claims of Exemption

- Property protected from seizure;
- Choose between state & federal (opt-out)

-“Opt-out” :

states decide whether fed
exemptions are available

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Obj to claim – 30 days after §341 meeting

What's in Chapter 7 Estate?

- All property interests of debtor;
- All avoidance actions
- Subject to debtor's allowed exemptions

Query: Anything left of the "pie"
for creditors?

Distribution of Ch 7 Estate

-Creditors file CLAIMS

only if trustee determines that there are sufficient non-exempt assets available for sale and distribution.

Distribution of Ch 7 Estate

-Creditors file CLAIMS

-Payment of claims is prioritized

administrative claims;

priority unsecured claims;

general unsecured claims

Distribution of Ch 7 Estate

- Creditors file CLAIMS

- Priority of payment

Administrative - Priority unsecured - General unsecured claims

- Creditors protected by collateral hold SECURED claims.

Understanding Value - §506

-Debt = \$5,000; Collateral Value=\$10,000

claim is OVERSECURED;

Trustee may elect to sell to realize equity
existing in the collateral

Understanding Value - §506

-Debt = \$10,000; Collateral Value=\$5,000

claim is UNDERSECURED;

Trustee likely to abandon Estate's interest;
or automatic stay will likely be modified to allow
secured creditor to foreclose upon collateral

Understanding Value - §506

-Debt = \$10,000; No property collateralizing debt

claim is UNSECURED;

some unsecured claims get payment priority

unsecured creditor can only look to a pro-rated share of cash distribution from Estate

End of Chapter 7 Case Admin

- Validity of all claims has been determined.
- All property of the estate has been liquidated or abandoned
- All accumulated cash is distributed to claim holders pursuant to statutory priority scheme.