

Basic Concepts in Consumer Bankruptcy
Local Practice Seminar
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1) Abandonment; 11 U.S.C. § 554

Abandonment is when the bankruptcy estate at the request of a party in interest releases its interest in property. *Catalano v. Commissioner*, 279 F.3d 682 (9th Cir. 2002).

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

2) Adequate Protection; 11 U.S.C. § § 361, 363, 364, 506, 552, 1205

A general concept of protecting a non-debtor's interest in property while it continues to be used or retained by the debtor.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

3) Attorney Fees and Expenses; Appointment of Professionals; 11 U.S.C. § § 327, 329, 330, 503, 504, 506, 507, 726

Absent a statutory basis, the award of fees or costs to successful litigants is not allowed unless specific exceptions apply (bad faith litigation, contractual provisions, equitable reasons). *Galam v. Carmel (In Re Larry's Apartment LLC)*, 249 F.3d 382 (9th Cir. 2001).

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

4) Automatic Stay; 11 U.S.C. § § 101, 102, 105, 108, 362, 365, 506, 523, 541

An automatic stay is an injunction which halts actions by creditors to collect debts from a debtor who has declared bankruptcy. A stay begins when the petition is filed.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

5) Bankruptcy Estate; 11 U.S.C. § 541

The bankruptcy estate consists of all a debtor's legal or equitable interests in property as of the date of filing. Despite the broad definition, in reality debtors are able to keep most of their property by claiming proper exemptions.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

6) Co-debtor Stay; 11 U.S.C. § § 101, 362, 1301

Prohibition against any act or civil action to collect a consumer debt from an individual who secured such debt with the debtor, unless the co-debtor secured such debt in the ordinary course of business. *Shaffer v. BC Nat'l Banks (In re Shaffer)*, 315 B.R. 90 (Bankr. W.D. Mo. 2004) (holding that loan for purchase of a pickup truck for use in farming operation and to be paid by farming income was not consumer debt subject to co-debtor stay of § 1301).

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

7) Contempt and Sanctions; 11 U.S.C. § § 105, 106, 363

Definition: “[T]he plain language of § 105 furnishes the bankruptcy courts with ample authority to sanction conduct that abuses the judicial process, including conduct that unreasonably and vexatiously multiplies bankruptcy proceedings.” *In re Volpert*, 110 F.3d 494 (7th Cir. 1997).

Debtor’s perspective:

Creditor’s perspective:

Trustee’s perspective:

8) Discharge; 11 U.S.C. § § 101, 501, 502, 506, 523, 524, 727, 944, 1111, 1141, 1328

A permanent order that releases the debtor from personal liability for certain specified types of debts.

Debtor’s perspective:

Creditor’s perspective:

Trustee’s perspective:

9) Exceptions to Discharge; 11 U.S.C. § § 362, 507, 523, 1225, 1328

Congress has seen fit to prevent certain types of debts from being discharged in bankruptcy. A debtor or creditor may file a complaint to determine dischargeability of a debt.

Debtor’s perspective:

Creditor’s perspective:

Trustee’s perspective:

10) Executory Contracts and Leases; 11 U.S.C. § § 101, 362, 363, 365, 1123, 1222, 1322

An executory contract is one which requires substantial performance by either party to the agreement other than the payment of money. *In re Seabrook Island Ocean Club, Inc.*, 118 B.R. 410 (Bankr. D.S.C. 1990).

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

11) Exemptions; 11 U.S.C. § § 522, 541

In bankruptcy, certain types of property are deemed so essential to a minimal standard of living that a debtor may claim them as exempt from the bankruptcy estate. Many states, including Indiana, have opted out of the federal exemptions and instead determine the types and amounts of exemptions by statute. Ind. Code § 34-55-10-2; Ind. Code § 27-1-12-14 (Insurance).

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

12) Lien Avoidance; 11 U.S.C. § § 101, 522

In some circumstances, a debtor may nullify certain types of liens encumbering property that he or she has claimed as exempt.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

13) Plans, Chapter 13; 11 U.S.C. § § 1321 - 1330

A plan is the crux of a Chapter 13 case. It lays out how much each creditor will get paid, how long the plan will last, the value of the debtor's property, and more. The plan must be confirmed by the bankruptcy court for a case to proceed.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

14) Preferential Transfers; 11 U.S.C. § § 101, 522, 547, 550

Under certain circumstances, a trustee may recover for the benefit of the bankruptcy estate transfers of property that have the effect of preferring one creditor over another.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

15) Reaffirmation of Debt; 11 U.S.C. § § 506, 524

A debtor may agree (in writing and filed with the court) to allow a debt that would otherwise be discharged to survive and remain enforceable.

Debtor's perspective:

Creditor's perspective:

Trustee's perspective:

Reference: *The Bankruptcy Handbook*
by John B. Butler III
Knowles Publishing Inc, 1997
Supplemental Material, 1998-2008