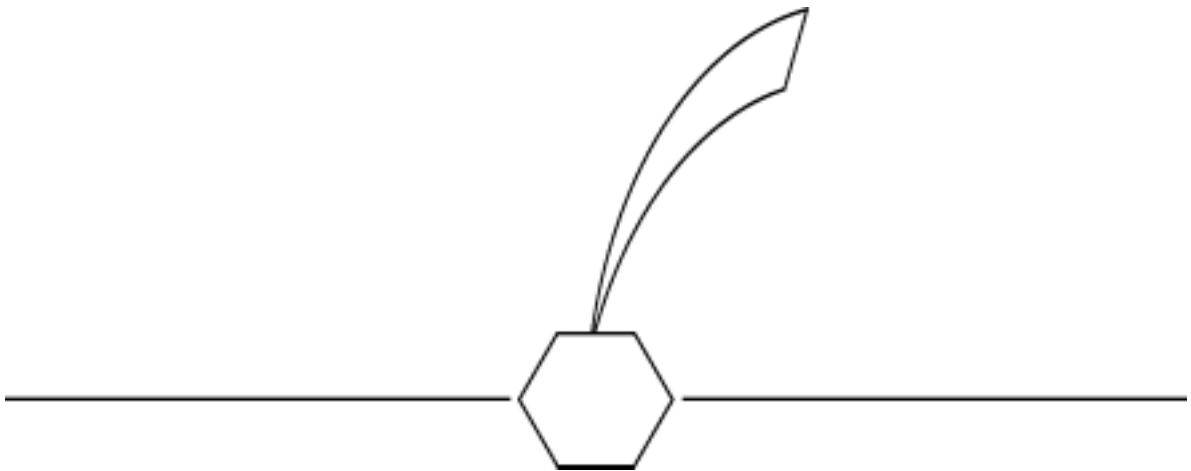


Red & Black: The Debtor/Creditor Relationship

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Instructor Guide

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Introduction

Speaking from my own experience, it is not easy for an attorney to become an effective teacher. Attorneys learn through law school and legal practice to be mysterious, bordering on incomprehensible. I had to overcome this mystical aura, and make the law understandable to students with little or no experience in the practice. In return, I got the added bonus of becoming a better lawyer. You see, I now have the ability to make my clients understand the basic principles of the debtor/creditor relationship, and my advice and counsel is more easily received and acted upon.

In my book, *Red & Black*, I wanted to carry this simplification process one step further-to produce a text with an uncomplicated, matter-of-fact presentation of the relationship between debtor and creditor for use in legal studies and paralegal programs. In this teacher's guide, I will share my techniques and suggestions for teaching a course on the debtor/creditor relationship, including sample exam questions. I hope that it will be useful in formulating your own method for conveying an interest in and understanding of these topics.

I never liked to be fooled, tricked or confused by teachers during my years of education. I am therefore very up front with my students regarding, which materials will be on the exam. I typically have sections of definitions, multiple choice, and short answer questions. I point out during class the types of material that I like to put on the exam. I am very broad in these hints. For example, I tell the students that I am fond of lists. If they hear me say, "Here is a list of the ways that debts arise," the students know the list should be written in their notes, perhaps with a Dallas Cowboy type star next to it, as it will surely show up later on a test. There are specific things that I want to make absolutely certain the students learn, and I don't like to make them guess what will or won't be on the exam. It also encourages the students to attend class, as those who do so will know exactly what will be on the test.

I am very interested in your comments, suggestions and techniques regarding teaching the topics of debtor/creditor law and bankruptcy. Feel free to send any suggestions, input, praise or constructive criticism to Pearson Publications Company, 9614 Greenville Avenue, Dallas, Texas 75243 or e-mail at pearsonpub@aol.com.

Barbara E. Kirby

Key Concepts Pages 1-8

After I have completed a discussion regarding the importance of the debtor- creditor relationship both inside and outside the legal profession, I move directly to a discussion of the basic terminology. This means assuring, in spite of the seeming simplicity of the concepts, that the students understand the difference between a **debtor** and a **creditor**.

Next, I spend a significant part of the first class discussing the four ways that debts arise, and involving the students in the discussion by asking for examples of each as they are discussed. It is a good opportunity to assess the level of comprehension your students bring to the class. Have they studied contracts? How about torts? Most students will recognize the basics of contract law when discussing debts that arise by contract, but may not have been exposed to the legal concept of “equity,” and may struggle to find an example of a debt that arises by quasicontract.

When explaining the difference between **liquidated** and **unliquidated debts**, introduce your students to the car loan as the ultimate example for practically everything they will discuss in this class. For most students, it is the first sophisticated credit transaction with which they have experience. You may even wish to outline the method for acceleration of a contract as you discuss liquidated debts, showing the students visually the process for determining the amount due. For example:

Hugh Manatee finances a computer system through a financing company, with the equipment as collateral. The financing details and amortization are as follows:

Principal	\$10,000.00
Annual interest Term	5.00%
Term	12 months
Start date	1/98
Monthly payment	\$856.07

Payment #	Payment Date	Interest	Principle	Ending Principle
1	1/98	41.67	814.41	9,185.59
2	2/98	38.27	817.80	8,367.79
3	3/98	34.87	821.21	7,546.58
4	4/98	31.44	824.63	6,721.95
5	5/98	28.01	828.07	5,893.88
6	6/98	24.56	831.52	5,062.37
7	7/98	21.09	834.98	4,227.39
8	8/98	17.61	838.46	3,388.92
9	9/98	14.21	841.95	2,546.97
10	10/98	10.61	845.46	1,701.51
11	11/98	7.09	848.99	852.52
12	12/98	3.55	852.52	0

Hugh makes the first four

payments, but his business never takes off, and he does not make the May and June payments. On July 1, the finance company accelerates the contract. What is the balance due?

Answer:	May payment	\$856.07
	June payment	\$856.07
	Principal after June	\$5,062.37
	Total due	\$6,774.51

This is a very basic example, but gets the job done. You can also use these figures for student assignments related to drafting demand letters and settlement agreements.

Warning: Any time you are performing math in front of students, work the equation out in advance. Lawyers are notoriously bad at math. I was once in a trial with at least three lawyers on each side, and a witness was questioned about the value of cattle. The judge said, “Well, how much would that be for this herd?” All of the lawyers just looked at each other. Then he said, “Doesn't anyone have a calculator?” Of course not! Very embarrassing. I also once decided extemporaneously to show a class how to accelerate a contract. I left them so confused that I had to eliminate any questions regarding the concept from my exam. To be absolutely safe, don't ever do math in public.

I always use this opportunity to have students write down the basic definitions of **security interest**, **security agreement**, **collateral**, and **secured creditor** (see page 4-5). I assure the students that they will learn much more about these concepts later in the course, but it is important to have a basic understanding of the difference between a secured and an unsecured creditor as soon as possible. Once again, the car loan is a great example for the students at this point:

You want to buy a car, and you want to finance the purchase. You are the **debtor**. You pick out the car, and the salesman takes you into the little room to get your financial information. The finance guy comes in—he is acting on behalf of the **creditor**. He approves your credit, and presents you with the **security agreement**. In the agreement, you grant the **secured creditor** a **security interest** in the car. If you default by failing to make payments, the secured creditor has an interest in the car. The car is the **collateral**.

Take a moment to ensure that the students understand the reality of the disparate treatment of **secured** and **unsecured creditors**. Emphasize that unsecured creditors frequently recover nothing when debtor businesses fail or liquidate under the Bankruptcy Code.

The final concept in this chapter is the **lien**. Conveniently, the first type of lien discussed, the **consensual lien**, still fits with the “car loan” example. A brief discussion of real estate liens may be appropriate (see page 6), but I prefer to leave more detailed discussion to the real estate instructor. I suggest that you find examples of **statutory liens** from the jurisdiction in which you are teaching. (For my Texas students, I discuss the mechanic and materialmen’s lien, the artisan's lien, and the landlord's lien, all found in various sections of the Texas Property Code.) The example in the book (page 7) is the federal tax lien, which helps the students understand how debtors frequently avoid paying other creditors, but eventually fall under the power of the federal tax lien. The discussion of the **judicial lien** is a good opportunity to familiarize the students with the vocabulary related to the

prejudgment liens available in your jurisdiction. (For example, do you call it replevin? sequestration? or what?)

You may encounter the matter of pronunciation. Do you pronounce it “leen” or “lynn?” For many years, my bankruptcy course followed a real estate instructor who said “lynn.” I could tell by the whisperings of the students when I said “leen,” that this instructor was quite adamant in his pronunciation. I went (of course) to Black's Law Dictionary. Luckily, the preferred pronunciation is “leen.” I tell my students this (because I like to be right) but I also tell them that, as they embark on a legal career, they must make their own decision about pronunciation of many terms. It is best to blend in. Pronounce it the way most people in your region do. Pronounce it the way the judge does. And, by all means, pronounce it the way your manager does!

I try to get the students to use root words to remember the three types of liens:

- Consensual -by **consent**
- Statutory -a product of a **statute**
- Judicial -by **judgment** of a court

Here are the important definitions from this chapter:

Debtor: A person who owes a debt that is due or will become due.

Creditor: A person who has a legal right to fulfillment of a debt or obligation.

Debt: A specific sum of money owed or an obligation to pay, owed by one person to another.

Liquidated

Debt: One in which the amount of money due can be calculated as a sum certain.

Unliquidated

Debt: One in which the amount due cannot be calculated as a sum certain, but instead a trier of fact must be engaged or an agreement reached as to the total amount due.

Secured

Creditor: One who has an interest or security in collateral.

Security

Agreement: An agreement, signed by both the debtor and creditor, that creates a consensual security interest in property.

Security

Interest: “... an interest in personal property or fixtures that secures payment or performance of an obligation.” UCC Section 1-201(37).

Collateral: The property that is subject to a security interest.

Unsecured

Creditor: A creditor having no collateral or security agreement to assure payment of its claim.

Lien: A charge on property that must be satisfied before the property or its proceeds are available for the satisfaction of the debts of general creditors.

Consensual

Lien: A lien granted by the debtor to the creditor through mutual consent, usually contained in a security agreement.

Statutory

Lien: A lien that is created by following particular processes and procedures outlined in a state or federal statute.

Judicial Lien: A lien obtained by judgment, levy, or other legal or equitable process, and issued by order from the court.

Here are a few multiple-choice questions (answers in bold):

1. A promissory note with a clause for reasonable attorney's fees constitutes:
 - a) a liquidated debt
 - b) an unliquidated debt
 - c) a combination of liquidated and unliquidated debt**
 - d) an unenforceable debt

2. A person who owes a debt that is due or will become due is:
 - a) a banker
 - b) a debtor**
 - c) a creditor a trustee

3. A landlord's lien is a:
 - a) judicial lien
 - b) consensual lien
 - c) statutory lien**
 - d) mistake

4. A person who has the legal right to fulfillment of a debt or obligation is:
 - a) a banker a debtor
 - b) a creditor**
 - c) a trustee

Here are a couple of my favorite "list" questions:

1. Name four different ways that debts arise; give a brief explanation and an example of each.

Answer: By contract, by quasicontract, by tort, by statute. See pages 1-3 of text for explanations and examples.

2. List three different types of liens, and give an example of each type.

Answer: Consensual lien, example: car loan

Statutory lien, example: tax lien

Judicial lien, example: Judgment lien See pages 6-7.

A Typical Business Transaction (pages 8-20)

I like to refer to this class session as “MBA in a Nutshell.” The debtor-creditor relationship begins and ends in the world of business. Students need to understand how business really works, and I try to make this class session as interactive as possible. This chapter was derived from my method of teaching basic business practices. Here's how I do it:

- I explain the difference between business and consumer transactions, and tell the students that, for the purpose of our example, all transactions will be between businesses.
- I establish a fictional equipment-manufacturing corporation, and give it some amusing name. I remind the students what they learned in previous classes about business entities, and assure that all understand that we selected a corporate structure.
- I tell the students to assume that each one is the credit manager for this corporation. I ask them to consider the types of pressures they may be under from other parts of the business. This is a good way to draw out the experiences of students who have worked or are currently working. Some questions:
 - ✓ Have any of you ever worked in sales?
 - ✓ How about marketing?
 - ✓ If you were in sales or marketing, how would it affect you if your credit department would not approve a lease for that big, new customer you just found?
- I describe the different types of transactions, with special emphasis on the various types of lease agreements. I ask the students to remember any ads they may have seen or heard recently about lease agreements (car leases and cellular services both have great ads these days).
- Although it is a fairly difficult concept, I explain the difference between a “true lease” and a “disguised installment purchase,” (see page 12-13) and let the students know why this becomes important when a debtor becomes insolvent.
- The eyes of the students are probably pretty glazed over by this point. Bring them back around to the example. Now that the credit managers know what types of transactions are available, ask the students what kind of information they would want to know in order to make a good decision. Discuss the information available through credit applications and credit reporting agencies. Direct the students to Appendix 1 in the book for a sample credit application (page 113).
- OK, credit managers, you've seen the credit application and read a standard report. You still have a kind of sick feeling in your stomach about this potential customer. But the sales manager is applying extreme pressure. You are affecting the commissions and end-of-year bonus for everyone on the sales team if you don't approve this order. What protections can you ask for to lessen the impact of potential default? This is the place to explain the use of down payments, finance charges, personal guaranties (Appendix 2, page 115), and letters of credit (Appendix 3, page 117).

- All big companies these days like to “train cross-functionally.” This means that, after a year spent as credit manager, you now get a lateral move to accounts receivable. Now you get to try to collect on all those contracts you approved. I like to ask if anyone has ever been involved in collections. How do you start? Pages 13 through 15 describe the escalating process of collecting within the company.
- Now it's time for the demand letter (pages 17-19). Drafting of a demand letter makes a great assignment. Although there is a very simple form in Appendix 4-1 (page 119), I would encourage your students to draft a unique and creative demand letter for your imaginary company. Make your students aware of any statutory requirements your jurisdiction may have regarding prelitigation demands. Then just let the imagination fly! You can also review the other demands contained in the remainder of Appendix 4. A variety of written exercises can be formulated using these form demands.
- The final portion of the chapter deals with the confirmation of settlement agreements in writing (pages 19-20). Another good writing exercise is to come up with a settlement offer, and have the students assume it has been accepted by the debtor. The student drafts a letter agreement documenting the settlement.

The exercise at the end of Chapter 2 involves students looking at various leases, especially automobile leases. I have attached some information from the Internet regarding the new car leasing rules promulgated by the FTC and the Federal Reserve Board. I think these materials will be of great interest to your students, and will help bridge that gap between classroom materials and real life.

Here are the important definitions from this chapter:

Consumer: A person who purchases goods and services for personal, family and household purposes. Consumer transactions are treated differently from business to business transactions due to the uneven playing field facing consumers.

Consumer

Debt: A debt incurred by an individual primarily for personal, family or household purposes.

Default: The failure of a debtor to perform an obligation, typically by late payment or nonpayment of debts as they become due.

Deficiency

Balance: The difference between the amount owed on an obligation and the sum received from sale of collateral, plus any costs of sale. This is the balance that the creditor can seek to recover from the debtor.

Equity: Within the debtor/creditor context, the debtor's ownership interest in collateral as payments are credited against the principal balance owed.

Guarantor: A third party who guarantees performance of an obligation by the principal debtor. Differs from a co-signer in that a creditor must first seek payment from the underlying debtor before resort to collection from the guarantor.

Here is a sample short answer question, incorporating part of the “MBA in a Nutshell:”

1. Describe briefly the steps you would take to collect a past due account from a business, from the point that the account becomes delinquent to the point that a lawsuit is filed.

Answer: Begin with “soft collections” such as friendly reminders on the next invoice, customer-oriented telephone calls. Move on to “hard collections” such as telephone calls in which you attempt to get the customer to commit to payment by a certain date. If you cannot get a commitment from the customer, move the account to a person with authority to negotiate, negotiate, negotiate. Try to determine why the customer is not paying, and work out a payment plan or lump sum settlement that will resolve the account. If this fails, send a demand letter. Accelerate any contracts, and make a formal demand for the total balance outstanding. If the customer responds to this demand, make one final attempt to negotiate a settlement. If this fails, refer the matter to an attorney for suit.

Chapter 3

Laws That Limit Collection Activity (pages 21-31)

I have led many lively class discussions revolving around the actions of debt collectors. The students frequently have personal experience, or relate stories of family and friends, and the variety of violations of the Act revealed in these class discussions is amazing. The only caution: Students must never be coerced to reveal personal information about their debts. It is best to let the stories flow, and let students participate as they wish. I try to lead with a story of my own. I have been a student before, and have experienced the companies that call when an account is barely 30 days old. In this credit-oriented society, we are all debtors. It is an excellent opportunity for students to understand their position in the debtor-creditor relationship, and to learn how to protect their own interest as they enter into credit transactions.

The entire text of the **Federal Fair Debt Collection Practices Act** is contained at Appendix 5, page 137. It is a good statute for students to read, especially the “laundry list” of prohibited actions contained in sections 1692d, 1692e and 1692f. In my class, I also require students to be familiar with the Texas Debt Collection Act, and I discuss the differences and similarities between the state and federal law. This is the reason I have included the Texas, California and Florida acts in Appendix 6 (beginning page 151). If you are not teaching in one of these jurisdictions, I suggest you provide your students with a copy of any relevant debt collection act from your state. It is important to explain the limitation of these laws to consumer transactions, and the rationale of the uneven playing field between consumers and businesses.

I have attached additional information (once again from the Internet) relative to fair debt collection. This question-and-answer material is from the Federal Trade Commission home page. Your students will find it a good study guide, as well as a personal resource should they need more information about the Fair Debt Collection Practices Act and its enforcement.

As this is basically a text for paralegal students, I have an extensive discussion of the implications of attorneys as “debt collectors,” and the ruling in *Heintz v. Jenkins*. I have attached the full text of this opinion to this manual, and it is a relatively easy case for students to read and absorb.

After discussing the various acts restricting the actions of debt collectors, I move to a discussion of **self-help repossession** (pages 28-31). This is another crowd pleaser, as all of the examples deal with automobile repossession, and the images of debtors clinging to the windshields of their cars as the repo man backs out of the driveway are very exciting. I have attached another good reference guide—materials from the Bureau of Consumer Protection on vehicle repossession.

The text does not contain information on credit reporting, but it seems that this class discussion always leads to questions regarding this topic. I have therefore attached some materials on the Fair Credit Reporting Act, with a good question- and-answer section.

Here are some definitions from this chapter:

Breach of the Peace: A disturbance of public peace, which can be brought about by attempts to repossess property or satisfy a debt. The UCC allows self- help repossession of collateral by secured parties as long as there is no breach of the peace.

Consumer Debt: A debt incurred by an individual primarily for personal, family or household purposes.

Default: The failure of a debtor to perform an obligation, typically by late payment or nonpayment of debts as they become due.

Self-help Repossession: Removal of collateral by the secured creditor without engaging in a formal legal process.

Here are a couple of multiple-choice questions:

1. A secured party who wants to take possession of collateral in the custody of a debtor without first filing a lawsuit may:
 - a) kill the debtor if the debtor does not cooperate
 - b) resort to self-help repossession if the creditor does not breach the peace**
 - c) hire an off-duty law officer and confront the debtor
 - d) not take any action at all without filing suit
2. The federal legislation created to protect consumers from abuses by debt collection agencies is the:
 - a) Bankruptcy Code
 - b) Fair Debt Collection Practices Act**
 - c) Deceptive Trade Practices Act
 - d) Uniform Commercial Code

Here are a couple of my favorite short-answer questions:

1. List three differences between the Fair Debt Collection Practices Act and the Texas Debt Collection Act.

Answer: The Texas Act has both civil and criminal penalties, while the FDCPA has only civil remedies. The Texas Act provides for filing of suit on behalf of consumers by the attorney general of the state, while the FDCPA requires suit be brought by an individual or class of plaintiff. The Texas Act was passed five years prior to the FDCPA. The Texas Act does not require the “Miranda” type warning outlined in the FDCPA (and so on...).
2. Describe the concept of “self-help repossession” and, in the context of automobile repossession, give an example that does not constitute a breach of the peace, and an example that does constitute a breach of the peace.

Answer: A secured creditor may attempt to repossess collateral without resort to the judicial process as long as there is no “breach of peace.” Repossession of a car from the street or a

driveway does not constitute a breach of peace. Using physical force or attempting to run the debtor off the road is a breach of peace. For other examples see pages 29-31.

Chapter 4

Prejudgment Remedies (pages 33-45)

I have taken great pains to write a chapter that explains these extraordinary remedies in an understandable way, without emphasizing the procedures of a particular state. I therefore emphasize the constitutional aspects of prejudgment remedies, to show the students the evolution of all of the statutes that allow creditors to take action before a [mal determination of the court as to the legitimacy of the debt. The constitutional analysis can then be followed by an examination of the remedies available in each particular jurisdiction.

Many paralegal programs do not place heavy emphasis on constitutional law, as it is not an area of practice that utilizes legal assistants, and as a course of study it is geared more to political science and advanced legal education. However, the concept of procedural due process is an important one within the debtor- creditor relationship. Give students examples of instances where a party may be deprived of property without due process, so they can see the need for the protections that prejudgment remedies provide to debtors. On the other hand, you can also have students imagine what would occur if creditors had to wait through the entire legal process before having access to property of the debtor. If you are teaching a postgraduate course, you may want to have the students read the cited cases regarding procedural due process. I remember reading this series of cases for the first time in law school—pretty heady stuff.

Here are the relevant definitions for the chapter:

Attachment: The seizure and taking into custody of the debtor's property by a sheriff or constable, in order to secure the debt or claim of a creditor.

Ex parte: A proceeding in which the court takes action on the application of only one side of a controversy, without notice or participation of the other party.

Garnishment : A procedure for obtaining property of a debtor that is in the possession or control of third parties.

Replevin: An action in which a creditor can seek removal of specific property from the possession of a debtor, pending judgment in the final action.

Writ: An order issued by a court requiring or authorizing the performance of a certain act.

The materials on prejudgment remedies are great for multiple-choice questions:

1. If you are attempting to obtain personal property of a debtor in the hands of a third party, the appropriate prejudgment remedy is:

- a) **garnishment**
 - b) attachment
 - c) sequestration
 - d) foreclosure
2. The sheriff or constable seizes personal property from the debtor for sale, and applies the proceeds to satisfy an existing judgment under a:
- a) writ of attachment
 - b) **writ of execution**
 - c) writ of garnishment
 - d) writ of sequestration
3. Texas allows garnishment of current wages for:
- a) secured debt
 - b) **child support**
 - c) all purposes
 - d) satisfaction of judgments
4. An action to take specific property out of the possession of a party to a suit and place it in the custody of the court pending [mal judgment determining who is entitled to the property is:
- a) **sequestration**
 - b) garnishment
 - c) attachment
 - d) execution

Chapter 5

Postjudgment Collection (pages 47-59)

The course so far has covered the origin of debt, its creation in a business context, attempts to collect debts without recourse to litigation, and the early stages of litigation (prejudgment remedies). This chapter presents an excellent opportunity to have a practical discussion of the pros and cons of utilizing litigation to collect debts. Paralegals working in this area are often involved in the analysis of cases prior to filing a lawsuit. A class discussion of the factors to consider prior to advising litigation is valuable, and the list on page 47 should help students to see that there are instances where it is just not practical to file suit.

I assume that, by this point in most paralegal programs, students have taken a course on litigation. Still, it is advisable to review the litigation process, including default judgments, summary judgments, and the discovery process. The focus should be on methods to reach a swift resolution, and utilization of the process to locate property of the debtor that may ultimately be available to satisfy the judgment.

While looking for assets of the debtor, students need to become aware that not all property of the debtor is available through the judicial process. The text contains the federal property exemptions, as listed in the Bankruptcy Code (pages 50-52). I have also included the exemptions for New York, Texas, California and Florida in Appendix 7 (beginning on page 189), and you may want to compare the exemptions of these states to your own. The discussion of property exemptions in Texas is always fun, since our pioneer heritage has left us with the most liberal (and sometimes outrageous) personal

property exemptions in the country. Have your students think about their own property. How much is exempt in your state? Under the Bankruptcy Code?

As for enforcement of judgments, I have outlined some generic processes. Once again, inform your students of the local processes for obtaining a judgment lien, obtaining execution or levy, and enforcing judgments against real and personal property. I like to walk through the entire process, with descriptions of the particular desks and clerks to visit, and helpful hints (such as personal delivery of writs to the sheriff or constable, so that you can request the recovery of particular property).

Appendix 8 (page 235) contains the Florida Fraudulent Transfers Act. I included this statute because it is a restatement of the Uniform Fraudulent Transfer Act (TUFTA). Students enjoy discussing fraud and fraudulent transfers, and are especially interested in the “badges of fraud” listed on page 57 of the text.

Here are a few definitions for Chapter 5:

Badges of Fraud:

Circumstances or facts accompanying a transfer of property by a debtor that the courts recognize as reliable indicators of fraudulent intent.

Discovery:

The process by which parties to litigation obtain information and facts relevant to the lawsuit, typically through depositions, interrogatories, admissions, document production requests, etc.

Execution:

The legal process of enforcing a judgment by seizing and selling the property of the judgment debtor.

Exempt assets:

Property of a debtor that is not subject to seizure by creditors under state or federal laws for satisfaction of creditor's claims against the debtor.

Foreclosure:

Procedure for sale of property by a creditor upon default by the debtor, in order to satisfy the outstanding debt on the property. Includes the process for sale of real property by the mortgagor upon default in payment by the mortgagee.

Fraudulent Transfer:

A transfer of property of a debtor made with the intent to defraud creditors, and is voidable by certain creditors.

Homestead Exemption:

Varying state and federal protections of a debtor's home from execution and foreclosure by creditors.

Nonexempt Assets:

Assets that are not protected from seizure by creditors for the satisfaction of debts under either state or federal law.

Nulla bona:

A sheriff's return of a writ indicating that no property of the judgment debtor has been found that is subject to execution and seizure for sale and satisfaction of the judgment.

Summary

Judgment: Judgment reached without trial on factual issues, in that the court has determined, based on the arguments of the parties, that there are no genuine issues of material fact, and one party is entitled to judgment as a matter of law.

Here are a few multiple-choice questions:

1. Assets of a debtor that are protected from creditors under state or federal law are:
 - a) **exempt assets**
 - b) nonexempt assets
 - c) fixtures
 - d) quasi-tangibles

2. The act created to assist in execution on property of judgment debtors in other states is the:
 - a) Uniform Commercial Code
 - b) **Uniform Enforcement of Foreign Judgments Act**
 - c) Federal Fair Debt Collection Practices Act
 - d) Deceptive Trade Practices Act

3. The Texas exemption for an urban homestead is
 - a) up to one acre with a residence with a value of no more than \$500,000
 - b) **up to one acre with a residence of any value**
 - c) up to two acres with a residence for a family and up to one acre with a residence for a single person
 - d) any size lot, as long as there is a residence on it

The following are short-answer questions regarding Texas property exemptions. It can be geared toward any state, or the federal exemptions.

1. Regarding exempt assets: define exempt asset.
Answer: Property of a debtor that is not subject to seizure by creditors for satisfaction of debts.

2. Name five (5) items of personal under the Texas Property Code.
Answer: See the extensive list in Appendix 7-2, pages 204-205. I especially like to list 12 head of cattle, two firearms, and household pets (after all, I live in Texas).

3. What is the fair market value limitation on exempt personal property? For a single person? For a family?
Answer: \$30,000 for a single person; \$60,000 for a family.

Chapter 6

Secured Transactions Under the Uniform Commercial Code (pages 61-79)

The moment has arrived for the class to give an intense focus to the topic of secured transactions, and I am always prepared for all eyes to be glazed by the end of this lecture. How do you teach a subject in one or two class sessions for which law students take an entire course? (And do law students actually understand the difference between “attachment” and “perfection” until they encounter the issue in real life?) My answer is to make sure the students understand the terminology, get them to utilize the Perfection Table (page 73- 74), and try not to overwhelm them with complex hypothetical questions regarding priorities. In this regard, the text in Chapter 6 is written exactly like my class lecture on the topic. My suggestion is therefore to follow my book outline on this topic, and assure

that you address each item on the outline with definition, explanation and example. Here are my suggestions:

- Again give the students the general definitions, for security interest, secured transaction, collateral, and lien.
- Next, tackle attachment of a security interest. I repeat requirements for attachment of a security interest over and over, and always require a listing of these requirements in a test. I explain each element in detail in class, just as I do in the text.
- After students understand attachment, it is tempting to skip right to perfection. I have found that it is better to break down the types of collateral first, as perfection differs for various categories of collateral. I explain this to the students, and then embark on the breakdown of the collateral classifications. I hope you will find the examples on pages 65-68 adequate to convey the differences in the collateral types to your students.
- Now it is time for the difficult concept of perfection. I start by telling students the purposes: to give notice to the world of the existence of the interest in the collateral, and to establish priority between competing interests. This is followed by a listing of the three methods of perfection, and an in-depth description of the each type. I end by referring the students to the Perfection Table on page 73, which summarizes in chart form the types of collateral and the method of perfection for each type.
- End the class session by discussing priorities, beginning with the basic rules (page 75) and moving on to the specialized rules relating to purchase money security interests, security in inventory, and possessory statutory liens. This is an excellent segue to the study of bankruptcy that will follow, and I give a preview example of the various types of creditors that will be fighting over the bankrupt estate, and how the UCC priorities will affect the priorities in bankruptcy.

There are numerous terms related to secured transactions. I think this is a good area in which to have a short vocabulary test as part of your teaching program. Here is a good test to utilize for a quiz on secured transactions:

Account: “Any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.” UCC Section 9.106

After-acquired

Property Clause: A clause included in security agreements and UCC-1 financing statements that incorporates a security interest in collateral acquired after the date of the initial transaction.

Attachment: Under the Uniform Commercial Code, the simultaneous existence of all elements that render a security interest in property enforceable against a debtor.

Chattel paper: A writing or a group of writings that contains both a monetary obligation and a security interest in, or a lease of, specific goods. Chattel paper can therefore include a security agreement and any other documents transferring the rights contained under the agreement.

Document: A subcategory of quasi-tangible collateral limited to a specific type of document, defined under Section 1-201(15) as a “document of title.” In the course of business or financing, a document is treated as adequately evidencing that the person in

possession of the document is entitled to receive, hold, and dispose of both the document and the goods covered by the document. The classic examples are bills of lading and warehouse receipts.

Equipment: Goods that are used primarily in a business but are not inventory

Farm products: A classification of tangible collateral consisting of crops, livestock, supplies, etc., used or produced in farming operations, but only if they remain in the possession of a debtor engaged in farm operations.

Financing

Statement: A statement filed by a secured creditor in accordance with the UCC as adopted in each state, in order to perfect a security interest in collateral and establish priority as against other creditors.

Fixtures: Items of personal property that have become so affixed to real property that the law utilizes a different treatment than detached personal property.

General

Intangibles: A subcategory of collateral defined in the UCC as “any personal property... other than goods, accounts, chattel paper, documents, instruments, and money.”
Section 9. 106

Instruments: A subcategory of quasi-tangible collateral which includes negotiable instruments, as well as any other documents evidencing a right to payment in money that are transferred by delivery in the ordinary course of business. Common examples are checks and certificates of deposit.

Intangibles: A type of collateral with no physical form, but with well- recognized rights, categorized as either general intangibles or accounts.

Inventory: A type of tangible collateral consisting of goods held for sale or lease or furnished under contracts of service, as well as raw materials, work in progress, or materials used or consumed in a business.

Perfection: A method to provide public notice to parties contemplating doing business with the debtor that an enforceable lien exists against certain property. Perfection also establishes priority in the collateral among competing interests, including those holding statutory liens, judicial liens, and other consensual lienholders.

Pledge: An oral grant of a security interest coupled with the transfer of the collateral to the creditor.

Primary Use

Test: Test for classification of collateral that is used by the debtor for multiple purposes, focusing on the primary use of the collateral.

Purchase Money

Security Interest: A security interest in specific collateral, securing an obligation created so that the debtor can actually purchase the specific collateral.

Quasi-tangible: A type of collateral characterized by having specific legal rights embodied in some type of written document. This document not only evidences the legal right, but also

carries its own legal significance. Three subcategories are instruments, documents, and chattel paper.

Tangibles: A classification of personal property that consists of goods such as inventory, equipment, consumer goods, and farm products.

Uniform Commercial

Code: A comprehensive set of statutes governing virtually all aspects of commercial transactions, adopted in some form by all states. The nine articles govern matters such as sales, bank deposits and collections, and secured transactions (Article 9).

Following are some samples of basic multiple-choice questions regarding security interests.

1. A security agreement between a debtor and a creditor creates what type of lien?
 - a) a judicial lien
 - b) a mechanic's lien a statutory lien
 - c) **a consensual lien**

2. Perfection of a security interest in equipment located in Texas is achieved:
 - a) by signing a security agreement automatically upon delivery
 - b) by filing an affidavit with the county clerk
 - c) **by filing a UCC-1 with the secretary of state**

3. A security interest in specific collateral created so the debtor can purchase that specific collateral is:
 - a) a blanket security interest
 - b) a perfected security interest
 - c) **a purchase money security interest**
 - d) all of the above

4. A creditor typically secures a debtor's performance by way of a security interest, through a lien on collateral that is personal property. Which of the following is an example of this concept?
 - a) **an automobile loan**
 - b) a mechanic's lien
 - c) a writ of attachment
 - d) Richard Nixon

Many effective short answer questions can be created from the materials in this chapter. Here are a few examples:

1. Under the general rules of priority, indicate who has priority in the collateral in each of the following situations.
 - a) A contest between two perfected secured parties. **Answer:** The first to perfect.
 - b) A contest between a perfected secured party and an unperfected secured party. **Answer:** The perfected secured party.
 - c) A contest between two attached but unperfected secured parties. **Answer:** The first party to attach

2. Under Article 9 of the Uniform Commercial Code, what elements must be present for attachment of a security interest to occur?
Answer: A pledge, or writing signed by the debtor that reasonably identifies the collateral. The debtor must have rights in the collateral; and the creditor must give value.

3. List the three general categories of collateral, and give an example of each type of collateral.
Answer: Tangibles, intangibles and quasi-tangibles. See the chart on page 73 for examples.

Chapter 7

Bankruptcy Basics (pages 81-100)

As I explained in my introduction to this book, my intent was to provide a basic understanding of the laws that apply to debtors and creditors, and not to write a comprehensive text on bankruptcy. My opinion was that the existing bankruptcy texts (at least the ones that I have read and utilized in the classroom) glossed over the foundation materials, but were more complicated and technical than necessary when it came to bankruptcy materials for the typical paralegal course of study. I therefore believe that, if you are willing to provide some supplemental materials, you can teach creditor's rights and bankruptcy with this text only. It depends, of course, on the level of sophistication of the students and the requirements of the particular program in which you are teaching. The outline I have attached is for a class covering both the debtor/creditor relationship and bankruptcy, in an undergraduate program. It can be taught with this text and supplemented either with sections from the Bankruptcy Code, or the Code itself.

The main problem with the Bankruptcy Code is its organization. This is also the main problem encountered by teachers of the topic. Some teach the different elements such as filing, discharge, the automatic stay, and explain the workings under each chapter. I prefer to give a basic overview, and then a comprehensive look at each chapter. Here is one of my teaching outlines, for materials I cover in approximately four class periods:

1. History and Policies of the Bankruptcy Laws
2. The Bankruptcy Code and its Structure
 - Administrative Sections
 - Types of Bankruptcy
3. Commencement of a Bankruptcy Case
 - Choosing a Chapter
 - Voluntary vs. Involuntary Proceedings
 - The Automatic Stay
4. The Chapter 7 Case
 - The Initial Filing and the Required Documents
 - Appointment and Duties of the Trustee
 - Involvement of the Creditors
 - ❖ Notice from Court and It's Content
 - ❖ Section 341(a) Meeting of Creditors
 - ❖ Filing of Proof of Claim
 - Scheduling of Assets and Liabilities
 - Liquidation of Assets
 - Distribution to Creditors and Discharge of Debts

- Reaffirmation Agreements
5. Reorganization Under Chapter 11
 - Concept of Debtor in Possession
 - Formulation of the Plan of Reorganization
 - Cash Collateral and other Cash Flow Issues
 - Assumption or rejection of Executory Contracts and Unexpired
 - Leases
 - Implementation of the Plan
 6. The Chapter 13 Case
 - Adjustment of debts for individuals with regular income
 - b) The unique role of the Trustee
 - The plan for repayment of debts

Bankruptcy law utilizes numerous forms, and it is often the responsibility of bankruptcy paralegals to prepare these forms. Although I do not include most bankruptcy forms with my text, I have included a sample of the Statement of Financial Affairs and the basic Schedules in Appendix 9. These forms have been filled out with a sample debtor. This means that you can come up with another hypothetical debtor, and your students can prepare their own forms, while having an example available in the text.

If you are teaching a comprehensive course in bankruptcy, I suggest spending a class period describing the actual responsibilities of a paralegal in a bankruptcy practice. I have a guest lecturer who is a bankruptcy paralegal teach this particular class, as she knows much better than I what is expected in this particular specialization. This session includes discussion of client interviews, utilization of checklists, counseling regarding bankruptcy choices and alternatives, drafting of forms, and ethical considerations in the practice.

Among the topics I do *not* cover: Chapter 12 (Bankruptcy for Family Farmers) Chapter 9 (Municipalities), or the appellate process. I give a cursory explanation of preferential transfers, but do not include this topic in testing.

Here are some definitions related to bankruptcy basics (nothing too complex):

Adequate

Protection: Protection afforded by the Bankruptcy Code for holders of secured claims. Lack of adequate protection of the creditor's interest in the collateral is the basis for relief from the automatic stay under section 362(d)(1), and for creditor protection from sale or use of the collateral under sections 363 and 364.

Adversary

Proceeding: A trial of a disputed issue held within a proceeding in the bankruptcy court.

Automatic Stay: Triggered by the filing of a bankruptcy petition, a device under Section 362 of the Bankruptcy Code under which all collection activity against the debtor is frozen, and

the bankruptcy estate is preserved to facilitate a more orderly liquidation or reorganization.

Bankruptcy Estate: All of the debtor's legal or equitable interest in property at the time of filing a bankruptcy petition, regardless of location of property or possession by other than the debtor.

Bankruptcy

Petition: The document filed in order to commence a bankruptcy proceeding.

Confirmation

Order: The final order of the bankruptcy court related to confirmation of a plan of reorganization under Chapter 11.

Debtor-in-

Possession: A debtor in a Chapter 11 case who continues in possession and control of the property of the estate, in lieu of the appointment of a trustee.

Discharge of

Debtor: In the context of bankruptcy, the release of the debtor from all debts as the culmination of the bankruptcy proceedings, and barring the collection of pre-bankruptcy claims against the debtor.

Executory

Contract: A contract under which both parties have unfulfilled future obligations other than the payment of money. Under Chapter 11 of the Bankruptcy Code, this type of contract can be assumed or rejected by the debtor-in-possession.

Insolvent: A person or entity that cannot pay debts as they become due, or whose liabilities exceed assets at a fair valuation.

Liquidation: Bankruptcy proceeding in which all of debtor's non-exempt assets are collected by the Chapter 7 trustee, reduced to cash, and the proceeds distributed to various creditors in accordance with the priority rules outlined in the Bankruptcy Code.

Objection to

Discharge: An attempt by a creditor to prevent the discharge of debts of a debtor under the Bankruptcy Code.

Plan of

Reorganization: Document filed by a Chapter 11 debtor, outlining the amounts and distribution proposed for the various classes of creditors to receive.

Priority Claim: Claim that receives more favorable treatment under the Bankruptcy Code than other unsecured claims.

Proof of Claim: Filing required of creditor in bankruptcy, outlining the basis of the claim, the amount due, and any features that may be relevant to the status or priority of the claim.

Reaffirmation

Agreement: An agreement between the debtor and a creditor under Chapter 7 of the Bankruptcy Code under which the debtor agrees to pay an otherwise dischargeable debt.

Reorganization: A type of bankruptcy, contained in Chapter 11 of the Bankruptcy Code, in which the debtor business is allowed to propose a plan for reduction of burdensome debts, repayment of creditors, and continuation of the business through implementation and performance of the plan of reorganization.

Trustee: A person who holds property for the benefit of another. Under the Bankruptcy Code, the trustee is appointed to administer collect, and liquidate the debtor's estate, and to assure the proper distribution of any proceeds to the creditors according to their priority .

Following are a few multiple-choice questions for a basic bankruptcy quiz

1. The successful completion of a Chapter 7 bankruptcy results in:
 - a) commencement of the automatic stay
 - b) an immediate hearing
 - c) no change in debtor's status
 - d) discharge of all debts**

2. Which of the following actions is not stopped by the automatic stay?
 - a) foreclosure on real property
 - b) repossession of personal property
 - c) payment of child support and alimony**
 - d) filing of civil lawsuits

3. Chapter 7 and Chapter 11 can be distinguished as follows:
 - a) Chapter 7 is reorganization, Chapter 11 is liquidation
 - b) Chapter 7 is for corporations, Chapter 11 is for individuals
 - c) Chapter 7 is liquidation, Chapter 11 is reorganization**
 - d) Chapter 7 is for municipalities, Chapter 11 is for family farmers

4. The bankruptcy estate is:
 - a) The mansion in which the debtor's attorney lives
 - b) The debtor's property owned at the time of filing**
 - c) The debtor's secured property
 - d) The debts owed to the creditors

5. In a Chapter 7 bankruptcy case, a trustee is appointed:
 - a) **automatically and always**
 - b) only when the debtor needs help with reorganization
 - c) never
 - d) at the request of creditors

6. Chapter 13 of the Bankruptcy Code provides a remedy available for:
 - a) family farmers who wish to liquidate their assets
 - b) **individuals with regular income**
 - c) banks and savings & loan institutions
 - d) corporations

7. Which document contains the filing date of the petition and the date of the creditor's meeting?
 - a) Disclosure Statement
 - b) Objection to Proof of Claim
 - c) Rule 2004 Examination
 - d) **Notice to Creditors**

8. A creditor asserts a claim in a Chapter 7 by filing
 - a) a Proof of Claim
 - b) an adversary proceeding a Motion to Lift Stay
 - c) a Plan of Reorganization