

2009

Debtor-Creditor: Creditor Remedies and Debtor Rights Under State and Non-Bankruptcy Federal Law

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**DEBTOR-CREDITOR:
CREDITOR REMEDIES AND
DEBTOR RIGHTS
UNDER STATE AND
NON-BANKRUPTCY FEDERAL LAW**

■ ■ ■

By

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610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-17229-7

PREFACE

Neither West nor Foundation has published a casebook on this subject in decades. Here is the reason why and here, too, is an explanation for ending the drought by publishing this book.

Until 1978, the usual debtor-creditor course focused on traditional, state-law remedies of creditors which had not changed significantly for ages. Bankruptcy was relatively uncommon, and bankruptcy law received little attention in the debtor-creditor course or anywhere else in the law school curriculum.

In 1978, the Bankruptcy Code replaced the Bankruptcy Act and triggered big changes. The new bankruptcy law significantly re-balanced the rights of debtors and creditors. The number of bankruptcies began to rise dramatically. The number of law firms and lawyers practicing bankruptcy law began to rise dramatically. Law professors adjusted their teaching and research to address many more issues of bankruptcy law and its economic and social impacts.

Eventually, the typical debtor-creditor course evolved into a course mostly about bankruptcy law. State, debtor-creditor law is covered sporadically, superficially, and almost anecdotally, as though it is entirely peripheral and only occasionally important.

Debtor-creditor and bankruptcy lawyers and teachers know, however, that almost entirely, bankruptcy is a reaction to the rights of debtors and creditors as defined and balanced by state and non-bankruptcy federal law. It is this other, non-bankruptcy law that gives reason and meaning to bankruptcy. Knowing this other law well is necessary to fully understand and appreciate bankruptcy.

Since 1978, non-bankruptcy, debtor-creditor law has changed, too. Most significantly, creditors' rights under state law have been amended, added to, and enhanced—by public and private legislation—to better protect creditors' interests against bankruptcy. The same goal of better protecting creditors has inspired new ways of transacting business, owning property, organizing entities, and settling debts. Non-bankruptcy, debtor-creditor law has also been affected by underlying revolutions in society, culture, and the economy caused by technology, mobility, and globalization.

Because of the scale of these developments, their fundamental effect on the interpretation and application of bankruptcy law, and how they historically complicate the relationship between state and federal law, studying and learning non-bankruptcy debtor-creditor law is more important than ever to understanding bankruptcy.

Non-bankruptcy, debtor-creditor law is also important for itself. Partly because of these changes in the law, partly because of changes in the

economy, creditors and business and individual debtors are finding in more and more cases that bankruptcy does not provide the answers to financial distress. In these cases, to protect fully the interests of creditors and debtors, their lawyers must know much more about the relevant state law than the anecdotes and cursory references they heard studying bankruptcy.

This book is intended for use in two kinds of courses. Use it in a course (maybe resurrected or redesigned) that focuses, as decades ago, on non-bankruptcy, mainly state, debtor-creditor law; or use the book as a supplement or reference in a bankruptcy course.

The coverage is modern and comprehensive so that, even in a two-or three-hour course dedicated to nonbankruptcy, debtor-creditor law, the teacher can select just those topics and materials that match her interests and priorities.

Certain themes run throughout the book; possible interconnections are everywhere; but required connections and interdependencies are not built in. Every chapter is independent and so, too, are most materials within each chapter. We purposively did not include chapter questions and problems because they tend to assume and dictate certain coverage.

And, even though we followed a certain logic in arranging the chapters and the materials within each chapter that makes sense to us, the book is not designed to impose this logic and our arrangement on anybody else. Any selection of materials can be taught in any order.

Bottom line: we hope this book helps revive an important but long dormant subject in the law school curriculum by providing a large, flexible inventory of topics and materials that allows a teacher many choices for building exactly the course or otherwise using the materials in a way that perfectly suits her purposes.

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