Bankruptcy & Creditors' Remedies - Spring 2012

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Office Hours

Wednesday 3:00 – 5:00
Thursday 12:00 – 2:00
Feel free to stop by whenever I am in my office.

Required Reading

Warren & Westbrook, The Law of Debtors and Creditors (6th ed. 2009)
All statutes, additional problems, cases and other course materials are available on TWEN

Grading Policy

		Per Cent of Final Grade
Final Exam	Completely Open Book & Open Notes - Essay Covers entire course.	70 %
Mid Term II	Open or Closed Book – Multiple Choice The Mid Term will be at a date convenient for students in the week of October 17. It will cover everything up to and including the material scheduled for October 12.	30 %
Unexcused Lateness	Each time (above four) arriving after class begins	1% off
Cell phone or pager going off during class	Each time	1% off
Attendance	Students with more than five absences may not be permitted to take the exam. There are no excused absences without the express approval of the dean.	

I. The Problem: Getting Paid

A. Questions

1. In this class session we will use the questions below to talk about
   a) the basic tools available to creditors to collect from debtors
   b) the underlying policy behind the providing those tools and the policy behind the restrictions on those collection tactics.
2. Bernie Bishop wanted very badly to have a new television set. He went to Best Buy and bought the set, paying by check. Unfortunately there was insufficient money in his bank account and the check bounced. Now Best Buy wants it's money.
   a) Can they just take back the television? If you have had a course in Commercial Law you know the answer to this question. Given the facts of the problem, the answer is probably not. Best Buy appears to have not taken a security interest in the television, i.e. used the television as collateral for payment of the debt.
   b) Can Best Buy have someone break into Bernie's house and take his computer or first born child?
   c) Can Best Buy send Bernie a letter informaing Bernie that people who don't pay their debts could end up in jail for the rest of their lives. (See the Maryland Debt Collection Practices Act reprinted below.)
   d) Suppose Best Buy sends the letter discussed above and Bernie gets so frightened he pays Best Buy. What's wrong with that?
   e) Suppose Best Buy get's a judgment against Bernie but Bernie still refuses to pay. Can Bernie be put in jail until he pays?
3. Best Buy can sue Bernie and then institute proceedings to have the sheriff sell some of Bernie's property. Why should the government be involved in Best Buy collecting this debt?

B. Reading

Button v. James

Court of Appeals of Indiana 2009.

BARNES, Judge.

Case Summary

Herman Button appeals the trial court ordering him to pay $25.00 per month toward a $1,865.93 judgment for Sue James. We reverse and remand.

Issue

Button raises several issues, which we consolidate and restate as whether the trial court properly required him to pay $25.00 per month toward the judgment against him.

Facts

In 2001, the trial court entered a judgment against Button in the amount of $1,865.93 plus costs. On January 22, 2009, at an assets hearing, the following exchange took place between the trial court and Button, who appeared pro se.

The Court: So we're here today for you to explain what you're going to do to pay this off.
Mr. Button: I can't.
The Court: Okay, but you're going to. Mr. Button: I can't do it.
The Court: Okay, Mr. Button.
Mr. Button: Yes, Ma'am.
The Court: For some reason we're not communicating. Alright, you're not hearing me for some reason. I am telling you that, yes, you will. You're going to tell me how you're going to go about doing that. And I'm not going to accept I cannot, and if the next words out of your mouth are I cannot, Mr. Button, then you'll set with Mr. Glenn at the Sheriff's Department until you find a way that, yes, you can. So what kind of payments can you make to pay this down?
Mr. Button: Five dollars ($5.00) a month.
The Court: Five dollars ($5.00) a month is—I'm going to be an old woman before this is ever paid off.
Mr. Button: That's what I can afford, ma'am. I live on social security disability. I've got to pay my rent and my lights and my gas.
The Court: I'm going to order you pay twenty-five dollars ($25.00) a month until this is paid off. I'm going to show that we are to come back March 12, at

1 o'clock, at which time Miss James is going to tell me that she has already received fifty dollars ($50.00) towards this. Okay.
Mr. Button: Yeah.
The Court: Good luck to you, Mr. Button.
Button now appeals.

Analysis

Button argues that he cannot be held in contempt for his failure to pay a debt, that his assets should not be garnished to pay the judgment, and that he should not have to make another court appearance absent a change in his circumstances. Initially we observe that James has not filed an appellee's brief. "Under that circumstance, we do not undertake to develop an argument on the appellee's behalf, but rather may reverse upon an appellant's prima facie showing of reversible error." *Morton v. Ivacic*, 898 N.E.2d 1196, 1199 (Ind.2008). "Prima facie error in this context is defined as, 'at first sight, on first appearance, or on the face it.' " *Id.* (citation omitted). Article 1, Section 22, of the Indiana Constitution provides: The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted: and there shall be no imprisonment for debt, except in case of fraud. Relying on this provision, our supreme court has held that because a debtor may not be imprisoned for his or her failure to pay a judgment debt, the debtor may not be imprisoned for proposing the judgment remain unsatisfied until the debtor obtains attachable assets. Likewise, Button may not be imprisoned for either his failure to pay the judgment or his failure to propose a suitable payment plan. To the extent the trial court threatened Button with imprisonment, it erred.

Further, any order requiring Button to pay the judgment must be based on evidence of his ability to pay. Here, no evidence was presented indicating that Button had the ability to pay $25.00 per month toward the judgment. Button has established prima facie error. Therefore, we remand for an evidentiary hearing regarding Button's ability to pay the judgment prior to the entry of an order requiring him to make monthly payments toward it.

Conclusion

The trial court improperly threatened Button with imprisonment for his failure to propose a plan to pay the judgment, and any order requiring him to pay a judgment must be based on Button's ability to pay it. We reverse and remand.
Reversed and remanded.

Del Campo v. Kennedy

United States Court of Appeals, Ninth Circuit 2008.

Our question is whether a private company contracting with a district attorney for services related to a diversion program is entitled to state sovereign immunity. We decide that it is not.

I.

American Corrective Counseling Services ("ACCS"), a private corporation, contracted with the District Attorney for Santa Clara County, California, (the "DA") to run a bad check diversion program. The conduct of that program generated this litigation. California criminalizes the making, drawing, uttering, or delivery of any check, draft, or money order "willfully, with intent to defraud" and with knowledge that insufficient funds are available. CAL. PENAL CODE § 476a(a). California has authorized a DA to create a bad check diversion program in which the DA may agree not to prosecute for bad check offenses if the potential defendant provides restitution to the victim of the bad check, completes a course, and pays applicable collection fees. CAL. PENAL CODE §§ 1001.60-67. Such a program "may be conducted by the [DA] or by a private entity under contract." CAL. PENAL CODE § 1001.60. ACCS has built its business around such contracts, based upon the collection of program fees from participants in the diversion program, *id.* at § 1001.65, which ACCS shares with the DA.

This case grows out of ACCS's contract with the Santa Clara County DA. Under that contract, ACCS is entitled to collect a $100 class fee, 60% of all administrative fees, and various additional fees and late charges. In exchange for these fees, ACCS runs nearly every aspect of the bad check program. It provides "daily management of all clerical and accounting functions," including sending "demand notices to suspected bad check writers, collection and disbursement of victim restitution and administrative revenue and all financial reporting." It provides staff to contact county businesses about the program, runs financial education courses for bad check writers, and

maintains all program files. The DA provides "intake criteria"-a two-page checklist-designating the checks that are appropriate for the program. The contract imposes no obligation upon the DA initially to decide which overdrawn checks should be referred to the program because they appear to indicate that a crime has been committed, requiring only that the DA "review all cases transferred by ACCS [to the DA] for failure to comply" with its

The contract makes clear that ACCS is an "***INDEPENDENT CONTRACTOR***" (emphasis in original) and that "[n]othing within this agreement shall be construed as creating a relationship of employer or employee, or principal and agent, between the County of Santa Clara and ACCS" or its employees or agents. ACCS is required to indemnify the county, and must carry its own insurance. ACCS operated the program aggressively. When Elena del Campo bounced a check for $95.02, ACCS sent her a letter on the Santa Clara County DA's stationary, purporting to be from the DA's office, warning that his office had received "an INCIDENT REPORT ***alleging that you have violated Penal Code 476(a) of the California State Statute: Passing a Worthless Check***" (emphasis in original). It claimed that "***YOU MAY AVOID A COURT APPEARANCE if you agree to enroll*** [in the bad check program]" (emphasis in original) and demanded, after taking into account ACCS's various fees, $265.02 in payment. When del Campo sent payment only for the amount of her check, she received a second letter entitled "Notice of Failure to Comply" and warning that "[y]our failure to respond may now result in the filing of this incident report by the District Attorney in MUNICIPAL COURT!" (emphasis in original). Instead of paying, del Campo filed this action against the DA, ACCS, and several related companies and officials.[FN2]

FN2. Del Campo filed her suit as a class action. A class has not yet been certified. She alleged equal protection and due process violations under 42 U.S.C. § 1983, various violations of the California Constitution, violations of the California Unfair Business Practices Act ("CUBPA"), CAL. BUS. & PROF. CODE §§ 17200 *et seq.*, and violations of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*

The district court dismissed the causes of action under § 1983 and the California Constitution but allowed the FDCPA [FN3] and CUBPA causes of action to go forward.

FN3. The FDCPA creates civil liability for debt collectors who fail to comply with its provisions and grants federal courts jurisdiction to hear such cases. *See* 15 U.S.C. § 1692k.

The litigation was then stayed for several years because of an injunction issued by a district court hearing a similar case in the Southern District of Iowa. *See generally Liles v. American Corrective Counseling Services,* Civ. No. 4-00-CV-10497 (S.D.Iowa). During that time, new plaintiffs filed suit against ACCS and the Santa Clara County DA in the Northern District of California. After the stay was lifted in 2005, the second Santa Clara County case was consolidated with del Campo's in 2006 (we collectively refer to the plaintiffs as "del Campo"). The consolidated complaint realleges all the causes of action in the original complaint and adds allegations of conversion, negligent misrepresentation, and fraudulent misrepresentation.

The defendants then moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Both ACCS and the DA claimed state sovereign immunity. The district court declined to extend such immunity. The district court's decision turned in large part on its characterization of the bad check program. California DAs serve both state and county functions: They act as state officials, and so possess Eleventh Amendment immunity, when "acting in [their] prosecutorial capacity." *Weiner v. San Diego County,* 210 F.3d 1025, 1028 (9th Cir.2000); *see also Pitts v. County of Kern,* 17 Cal.4th 340, 70 Cal.Rptr.2d 823, 949 P.2d 920 (1998). The district court held that the bad check diversion program was one of several county-based diversion programs created by the California legislature, *see generally Davis v. Municipal Court for the S.F. Judicial Dist.,* 46 Cal.3d 64, 249 Cal.Rptr. 300, 757 P.2d 11 (1988) (describing such programs), and that the Santa Clara County DA's role in the program was administrative. It therefore held that the DA acted in his county capacity while administering the program and so was not entitled to state sovereign immunity. The court concluded, however, that its earlier dismissal of the § 1983 and California constitutional causes of action was *res*

judicata and dismissed them. Because the DA faced only those causes of action, the court dismissed the DA from the suit.

The district court's characterization of the bad check program also controlled its analysis of ACCS's claim of state sovereign immunity. ACCS argued that it acted as an arm of the state when implementing the diversion program. As the court had "determined that the diversion program in Santa Clara County is a county program and not a state program," it held that "ACCS's involvement in the diversion program cannot be a central function of the state government" and denied immunity. ACCS timely appealed the district court's immunity decision.

II.

ACCS contends that it is entitled to state sovereign immunity, even though it is a private entity. For the second time in four years "we decline the invitation to expand state sovereign immunity dramatically by extending it to corporate actors," *United States ex rel. Ali v. Daniel, Mann, Johnson, & Mendenhall* ("*DMJM*"), 355 F.3d 1140, 1147 (9th Cir.2004), or to private entities generally.

1. Jurisdiction and Standard of Review

2. Analysis

ACCS argues for immunity on the ground that the DA acted in his state capacity in administering the program and that it, therefore, is an arm of the state entitled to immunity. As the DA is no longer in this suit, we are reluctant to characterize his role or determine whether he would have been entitled to sovereign immunity had he remained in this case. As it turns out, we need not address that question. Affirming the district court on a different ground, we hold that even if the DA acted in a state capacity in administering the program, ACCS would not be entitled to state sovereign immunity.

As we discuss below, the analysis provided in *DMJM*, 355 F.3d at 1146-48, demonstrates why private entities' claims of state sovereign immunity must fail. To the extent that *DMJM* appeared to leave any analytic distance, as ACCS claims, between ACCS's case and that of the private contractor denied immunity in *DMJM*, we close that gap today. Extending state sovereign immunity to private entities is, as we now make clear, not supported by our law, by relevant Supreme Court cases, or by the cases of the other circuits to have considered similar questions.

a. Supreme Court Cases

State sovereign immunity, rooted deeply in our federal structure, is strong medicine. The phrase "Eleventh Amendment immunity," often used in lieu of "state sovereign immunity" in federal cases, *see, e.g.*, *Puerto Rico Aqueduct & Sewer Auth.*, 506 U.S. at 144, 113 S.Ct. 684, is "something of a misnomer, for the sovereign immunity of the States neither derives from, nor is limited by, the terms of the Eleventh Amendment." *Alden*, 527 U.S. at 713, 119 S.Ct. 2240. Instead, immunity is " 'a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution and which they retain today[,] except as altered by the plan of the Convention or certain constitutional amendments.' " *N. Ins. Co. v. Chatham County, Ga.*, 547 U.S. 189, 193, 126 S.Ct. 1689, 164 L.Ed.2d 367 (2006) (quoting *Alden*, 527 U.S. at 731, 119 S.Ct. 2240) (alteration omitted). "The preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities." *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 760, 122 S.Ct. 1864, 152 L.Ed.2d 962 (2002). In accord with this purpose, state sovereign immunity is also intended to protect state treasuries from suit.

[9] Recognizing the sweep and power of the doctrine, the Supreme Court has been cautious in extending state sovereign immunity even to many state- created and quasi-governmental entities. State sovereign immunity, for instance, "does not extend to counties and similar municipal corporations," even though they share some portion of state power. * * * * Given this background we should be extremely hesitant to extend this fundamental and carefully limited immunity to private parties whose only relationship to the sovereign is by contract. A contractor like ACCS may perform some functions for the state, but is certainly more removed from state power, and from democratic control, than a county or a Compact Clause organization. Private entities fit even less readily than those bodies into the theoretical framework supporting state sovereign immunity. It would thus be strange to award private entities sweeping immunity from suit. Our reluctance to expand sovereign immunity to private entities is reinforced by the consideration that the recognition of state sovereign immunity with regard to an entity results in restrictions on federal legislative as well as judicial authority with regard to that entity, including "restrictions on the power of Congress, acting under certain Article I powers, to create privately enforced

federal causes of action against the [entity]." So limiting Congress's power to regulate a private company simply because it has contracted with a state would radically alter the bounds and nature of federal authority, while, at the same time, calling into question the distinctive nature of states as sovereign entities. ****

b. Ninth Circuit Cases

In accord with these compelling considerations, our cases confirm that private entities have no place within the state sovereign immunity legal framework. The usual issue in our cases has been whether a governmental entity is an arm of the state or is better characterized as part of another level of government. Our inquiry has been careful, and we have often declined to extend immunity even to governmental entities. The factors we apply in the state sovereign immunity inquiry, drawn from *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir.1988), are thus designed to discriminate between governmental bodies, not to determine whether private entities are arms of the state. *See id.* ("To determine whether a *governmental agency* is an arm of the state, the following factors must be examined....") (emphasis added). Under *Mitchell,* courts look to five factors: "(1) whether a money judgment would be satisfied out of state funds; (2) whether the entity performs central governmental functions; (3) whether the entity may sue or be sued; (4) whether the entity has the power to take property in its own name or only in the name of the state; and (5) the corporate status of the entity." *DMJM,* 355 F.3d at 1147 (citing *Mitchell,* 861 F.2d at 201). This test was not meant for, is ill-adapted to, and loses its utility when performed upon a private entity. The negative result it generates will always be the same:

Only the second *Mitchell* factor could *ever* cut in favor of granting a private entity sovereign immunity, as *DMJM,* our sole case to apply the *Mitchell* factors to a private entity, amply demonstrates.

In *DMJM,* a private contractor repairing state university buildings asserted state sovereign immunity, deriving from its state contract, against a *qui tam* action under the False Claims Act, ****

Given *DMJM,* there is no reason to apply *Mitchell* every time a private entity under contract with the state asserts state sovereign immunity, as immunity will invariably be denied under that test. In each case, such an entity will fail at least four of the five *Mitchell* factors, and the possibility that it has contracted to perform a central governmental function will not be sufficient to convey immunity. ****

c. Cases from Other Circuits

Our conclusion is in accord with that reached by our sister circuits. All but the Eleventh Circuit have denied state sovereign immunity to private entities, more or less categorically. Many of the cases concerned entities that were somewhat more governmental in nature than a purely private contractor like ACCS, and so lend no support to granting immunity to such an entity. And even the Eleventh Circuit recently held that ACCS itself is not entitled to state sovereign immunity.****

III.

The law makes clear that state sovereign immunity does not extend to private entities. The district court was therefore right to let this suit proceed.

AFFIRMED.

Crosscut
News of the Great Nearby

State legislature moves to limit 'modern debtors' prison'

A bill, now headed to the governor for signature, removes incentives for debt-collection agencies to try to get people jailed, at least briefly, in disputes over debt repayment.

By Harris Meyer April 15, 2011.

Washington lawmakers have passed a bill that would make throwing debtors in jail less appealing to collection agencies.

State Rep. Derek Stanford, D-Bothell, had introduced a bill to end what he called "modern debtors' prison." On Thursday, the House approved his amended bill, HB 1864, which cleared the Senate earlier this week. The bill, which is supported by the collection industry trade group, now goes to the governor for her signature. Stanford said he doesn't anticipate any problems there. The bill would not bar collection agencies from asking judges to issue civil bench warrants for the arrest of debtors who fail to show up for hearings, which Stanford originally sought to do. But it would prohibit collectors from seizing jailed debtors' bail money to pay off the debt. In addition, it would require more detailed notice to debtors, and would increase the amount of personal assets exempt from garnishment. The asset exemptions for bank accounts and securities would not apply to collection actions by state agencies for six years.

Stanford, who said his bill was inspired by my reports last year for Crosscut and Northwest Public Radio (the latter co-reported with Doug Nadvornick), said his bill would fix loopholes used by collection agencies that are "bad actors" to abuse the system. "It's a step forward for consumer protection," he said. "It

will make it little less attractive for collectors to go through the process of jailing debtors if they can't seize the bail."

The bill, which previously had passed the House unanimously, was opposed by most House Republicans this time around because the Senate version included increased garnishment protections and the exemption for state agencies. The vote was 57-40. Stanford's office said that exemption for state agencies was necessary because otherwise the bill would have cost the state money, a deal- killer given the state's budget deficit.

House Republicans argued that it was unfair to the private sector to apply different rules to state agencies, even though the Washington Collectors Association supported the legislation. In the Senate, the vote was 37-12, with Republicans splitting over the measure because of the state agency exemption.

The final version of the bill raises the exempt amount in a debtor's bank account from $200 to $500, and also increases the exempt value of a debtor's vehicle, from $2,700 to $3,250.

In October, I reported in Crosscut that even though the constitutions of Washington and most other states explicitly prohibit jailing people for debt, many in Washington and throughout the country are still being incarcerated in civil debt cases. They typically are charged with contempt of court for failure to appear at a hearing to examine their finances and determine what assets can be seized.

In many cases, judges order that their bail money be turned over to the collection agency to satisfy their unpaid debt — a practice the Federal Trade Commission has urged Congress to halt. Sometimes bail is set at the same amount as the judgment debt, which makes the court look like an arm of the collection agency. Using bail money to satisfy judgments allows collectors to sidestep rules that block them from seizing exempt assets such as Social Security payments.

And, the FTC said, it gives the public "the misimpression that judgments debtors are being incarcerated for failing to pay the judgment creditor."

Stanford's bill, which borrows from proposals by the FTCand U.S. Sen. Al Franken, D-Minn., would require that courts and collection agencies provide fuller information to debtors in notifying them about court dates — including the name of the original creditor, proof that it's a valid debt, and the amount of the debt broken down by principal, interest, fees, and other charges.

There are no statistics available on how many people in Washington are jailed for contempt of court in civil debt cases. But observation of the Yakima County District Court's debt collection calendar hearings showed that bench warrants and arrests are routine. Experts say these practices are common in some other Washington counties as well.

Defenders of the practice say it's sometimes necessary for judges to issue bench warrants to enforce their orders for debtors to appear — though violators of other types of civil court orders are rarely if ever arrested. Collection agencies argue this is the only way to get the attention of people who have ignored repeated notices to pay up or appear in court.

But attorneys who represent debtors say incarcerating civil debtors, even briefly, is abusive, unfair, and often legally flawed. They say collectors are using the bench warrants as a way of harassing and pressuring people who often owe less than $2,000 and whose debts frequently arise from unpaid medical bills.

Stanford's bill, which amends the state Consumer Protection Act, would not create a new legal cause of action against collection agencies that violate the provisions. But he said debtors would be able to sue for alleged violations under the existing authority of that act.

Stanford said the original version of the bill, which would have barred collection agencies from seeking bench warrants for the arrest of judgment debtors who don't show up in court, would have taken away a "legitimate remedy" for collection agencies.

He said he will continue to study the issue to determine whether to seek tougher restrictions against jailing debtors in the future. In particular, he wants to gather data on the prevalence of debtors being jailed in the state. "That can drive where we need to focus our activity in the future," he said. "It's definitely an issue that needs to keep getting attention."

Detroit News

Civil rights group challenges 'Pay or Stay' sentencing

August 4, 2011 BY: *DOUG GUTHRIE*

Stay" rules by launching appeals to release people sent to Wayne, Oakland and Ionia county jails because they were too poor to pay fines and court costs for sometimes trivial The American Civil Liberties Union of Michigan is challenging the constitutionality of judges using "Pay or Stay" crimes.

Five emergency sentence appeals announced today come as a result of a two-year court- watching project by ACLU volunteer lawyers monitoring "Fine or Time" programs being used by judges in seven counties across Michigan. The ACLU claims the judge's actions are a direct result of the financial pressure and falling tax revenues some governments have suffered due to the bad economy. "The ACLU is putting judges on notice with these appeals that what they are doing is unconstitutional," said Michigan ACLU legal director Michael J. Steinberg. "It is the equivalent of a modern day debtor's prison." Attorneys have reported to the ACLU watching district and circuit court judges over the last two weeks issue "Pay or Stay" sentences in Wayne, Oakland, Macomb, Montcalm, Muskegon, Kent and Ionia counties.

The ACLU claim is that judges offer people convicted of misdemeanor crimes a choice, pay fines and fees or go to off the fines since June by mowing lawns, he turned himself in when he learned a bench warrant had been issued for his arrest. "When I went to court, they told me I had to pay $215 by five o'clock," Dewitt said. "I'm too poor to come up with $215 in five hours so I turned myself in." Ionia 64A District Judge Raymond Voet sent Dewitt to jail for three days on Tuesday. The ACLU got him released Wednesday by pointing out Dewitt had never actually pleaded guilty. Dewitt now is awaiting trial on the illegal fishing charge.

The ACLU claims judges are mandated by state law to try to avoid jail terms for crimes that otherwise don't call for incarceration, but offering long-term payment plans and or community service for those who can't pay."Long thought to be a relic of the 19th century, debtors' prisons are still alive and well in

Michigan," Kary Moss, ACLU of Michigan's executive director, said in a statement issued by the organization today. "Jailing our clients because they are poor is not only unconstitutional, it's unconscionable and a shameful waste of resources. Our justice system should be a place where freedom has no price and equality prevails regardless of a defendant's economic status."

Other cases appealed or being appealed according to the ACLU include:

— Kristen Preston, 19, sentenced Monday to 30 days in the Ionia County Jail by Voet for failing to pay a $125 alcohol assessment fee stemming from her conviction for being a minor in possession of alcohol. She also was released on Wednesday after ACLU intervention and is now awaiting sentencing for her conviction.

— Dorian Bellinger, 22, sentenced July 28 to 13 days in the Wayne County Jail by Livonia's 16th District Judge Robert Brzezinski for being unable to pay $425 in fines and costs for a misdemeanor marijuana charge.

"Pay or Stay sentences are no choice for the poor," said Steinberg. "They translate to rich people writing a check and going home and poor people going to jail. It's a modern day debtor's prison. This two-tiered system of justice is shameful, it's a waste of resources, it is unconstitutional, and it must be changed."

Kyle Dewitt, 19, couldn't afford to pay the $215 fine and court costs he was assessed for catching a small mouth bass out of season. So he was sentenced Tuesday to three days in the Ionia County Jail. Dewitt said he thought he legally caught a rock bass in Grand River in Portland. A Department of Natural Resources officer ticketed him for catching a smallmouth bass out

of season. Although the laid-off Meijer meat department employee said he had tried to pay

— Dontae Smith, 19, sentenced Aug. 2 to 41 days in the Oakland County Jail by Ferndale's 43d District Judge Joseph Longo for being unable to pay $415 in fines for driving offenses, including driving with a suspended license.

— David Clark, 30, sentenced Aug. 2 to 90 days in the Wayne County Jail by Wyandotte's 27th District Judge Randy Kalmbach for being unable to pay $1,250 in costs and fees for misdemeanor charges related to spanking his girlfriend's son. The girlfriend faced identical charges, but her parents paid her fines and costs to avoid jail.

McCARTNEY v. FROST

Maryland Court of Appeals 1978.

SMITH, Judge

For the second time this year we are involved in a subject on which there has been but little written in the reported opinions of this Court: the matter of a sheriff's sale.

We shall here hold that a trial judge erred in failing to set aside a sheriff's sale. Thus, we shall overrule the decision of the Court of Special Appeals, although we concur with the opening paragraph of that opinion, in which Judge Powers said for the court, "In law libraries in Maryland little can be found concerning a sale of real estate by a sheriff after levy of a writ of fieri facias on a judgment." We granted the writ of certiorari because of the sparsity of decisions by this Court on the subject.

The facts are fully detailed in the opinion of the Court of Special Appeals. We shall set forth only such facts as are necessary to a clear understanding of the issue presented.

Some years ago appellant, Irene J. McCartney (Mrs. McCartney), and her husband purchased a home in Baltimore County. They have since been divorced. Prior to that divorce they borrowed money from John A. Greene (Greene). He recovered a judgment against them. On December 18, 1975, Greene directed issuance of the writ of fieri facias to the Sheriff of Baltimore County for the purpose of satisfying that indebtedness. The writ showed that there was due the sum of $3,429 plus interest from July 29, 1971, together with costs, in addition to attorney's fees of $342.90. Pursuant to the writ, the sheriff seized and sold the home of those parties, then occupied by Mrs. McCartney alone.

The sale took place on the premises on April 20, 1976. There were but two bids placed, an opening bid of $1,500 and a second bid by Appellee, Rex A. Frost (Dr. Frost), in the amount of $2,000. He paid for the property, and the sheriff executed a deed to him. On May 10, 1976, Mrs. McCartney moved "to set aside the levy and execution sale made pursuant to the writ of fieri facias in this case." Grounds stated in her motion were that the property sold had "an estimated value of $25,000"; that it "was sold for $2,000, subject to an existing mortgage of approximately $6,000"; and that the sheriff "in conducting said sale, failed to do those things necessary to attract the bidders and promote the bidding, and otherwise failed to act in good faith to procure the highest possible bid, as required by law, thereby resulting in a selling price, which is grossly inadequate and unconscionable."

The matter ultimately came on for hearing. Dr. Frost, the purchaser, was permitted to intervene. At the hearing the court was advised that Greene, the judgment creditor, had counsel in court who authorized counsel for Mrs. McCartney "to inform the Court (that) they, too, (were) in favor of setting the sale aside . . . ." Uncontroverted evidence was adduced that the fair market value of the property in question at the time of sale was $24,000 subject to a $96 ground rent. No specific authority can be found in the record

for such a statement, but it appears that all of the parties, the trial court, and the Court of Special Appeals operated upon the hypothesis that the mortgage lien on the property in question is $6,000. There is no evidence and no intimation that there are any other liens. The trial judge observed in the process of the hearing that he could not "disagree (the selling price) was grossly inadequate as to the value of the property," adding that he was "not blind or naive." At another point he said he was "convinced the property was sold for far less than its value. It is a row house, a nice neighborhood. The price that was paid for it by way of the auction is far below the value of this home." He declined to set aside the sale, however. In his opinion he pointed out that "the Purchaser had not been permitted to inspect the interior of the premises"; that one purchasing "at a Sheriff's sale does not have the assurance of clear title that a buyer at a foreclosure sale has," since "the interest sold at a Sheriff's sale is much more likely to be subject to liens and encumbrances"; and that Dr. Frost "was truly buying a 'pig in a bag.' " For those reasons he said he could not "find the purchase price to be 'grossly inadequate.' "

The Court of Special Appeals said:

"(T)he price certainly appears to be inadequate, perhaps grossly so. But there are other factors. A sheriff in effect sells a quitclaim interest. He gives no assurance of good title. As the auctioneer put it in his testimony, at a sheriff's sale he is selling 'a pig in a bag'. Another factor was present here. Mrs. McCartney, apparently because of advice given to her by a lawyer she consulted, declined to permit inspection of the inside of the house." Id. at 499, 378 A.2d at 173 (footnote omitted).

It held "that there was no breach of duty by the sheriff in the sale of the property in this case," observing that "(t)he inadequate price, standing alone, did not invalidate the sale."

Counsel for judgment creditors desiring to produce the maximum amount possible for their clients and thus for the person whose land is being executed upon generally make it their business to examine the land records to ascertain what liens come ahead of the judgment under which they are selling. They then make some effort to verify the sums due. Thus, some information can be provided for prospective bidders. The attitude and circumstances under which the sale here was made were demonstrated in the testimony of the auctioneer who was hired by the sheriff to cry the sale. The auctioneer said at the hearing on the motion to set the sale aside, in response to a question as to what he told the public at this particular sale:

"Ladies and gentlemen, I am offering you a home, as it may appear, you are buying a pig in a bag, because I don't know what is against the property, which I have always stated at Sheriff's sales for the fifty-six years. They are buying a pig in the bag. I don't know what is in the house and nobody has been in to see it. I can't tell you. You are buying a pig in a bag. What do I hear?"

On cross-examination he was asked whether the sheriff ever indicated at such a sale how much he should "try for or where to start." He replied:

"No, they tell me to sell it. They don't say you have to get $2,000.00. You don't have to get $5.00. I have sold it as low as $25.00 at the Courthouse door as true as I sit here. I sold one for a thousand dollars at the Courthouse door that the man bought and could never get the title because they sold something they did not have the title to, so you are buying a pig in a bag. In fifty-six years, I have saw a lot. I am out to get every dollar I can get and nobody can say it, because I am working on commission. The court gives us commission. They set the fees. Every $500.00 we get, we make commission on."

A sheriff's sale is not a "judicial sale," the latter being defined by Maryland Rule BR 1 as "a sale of property which is subject to ratification by a court," although the definition specifies that it "does not include sales under Subtitle W (Foreclosure of Mortgages and Other Security Devices) except to the extent specifically provided therein." Rule W 74 e provides, however, that the procedure following a foreclosure sale "shall be as provided in Rule BR 5 . . . and Rule BR 6 . . . ." "The court is the vendor in the case of a sale under the power contained in a mortgage, just as it is a vendor in any other chancery sale." McCann v. McGinnis, 257 Md. 499, 505, 263 A.2d 536, 539 (1970), citing Warfield v. Dorsey, 39 Md. 299, 307 (1874).

Relative to a sheriff's sale, D. Rorer, Judicial and Execution Sales s 46 (1873), comments:

"In making ordinary execution sales, simply by virtue of his office, the sheriff or marshal acts as the ministerial officer of the law, not as the organ of the court. He is not its instrument or agent, as in judicial sales, and the court is not the vendor. His authority to sell rests on the law and on the writ, and does not, as in judicial sales, emanate from the court. The functions of the court terminate at the rendition of the judgment,

except where confirmation of the sale is the practice. The court does not direct what shall be levied or sold, or how the sale shall be made. The law is the officer's only guide." Id. at 25 (footnote omitted).

The same author observes in s 51 at 27, "The officer selling is for that purpose constituted by law the agent and attorney of the execution defendant . . . ." (Footnote omitted.) To like effect see W. Murfree, Law of Sheriffs and Other Ministerial Officers s 991 at 519 (1884), adding, "The rule of caveat emptor applies to all execution sales," citing, among other cases, Bolgiano v. Cooke, 19 Md. 375, 391 (1863). In Preissman v. Crockett, 194 Md. 51, 56, 69 A.2d 797, 799 (1949), Judge Grason observed for this Court that at such a sale "only the right, title and interest of the owner or owners of the property seized is sold."

Long ago our predecessors in Nesbitt v. Dallam, 7 G. & J. 494, 511 (1836), said, "It is the duty of the sheriff in making a . . . sale, to endeavor to obtain the best price in his power for the property to be sold . . . ." W. Murfree, op. cit., s 996 observes:

"The law confides in him as the agent of both plaintiff and defendant, and expects that his powers will be so exercised as to promote the interests of all concerned. He has a power to sell, but that does not confer a right to sacrifice property, he is not bound, acting under a writ of fieri facias, to sell without reserve, merely because he has received a bid. If he sees that a sacrifice may be prevented by a little delay, he may refuse to accept a bid, and under such circumstances may safely return that the property was not sold for want of bidders; and if a purchaser fails to comply with his engagement, it is the duty of the officer in the matter of making a re-sale to exercise a reasonable discretion." Id. at 526 (footnote omitted).

It is put in a slightly different manner in 2 J. Poe, Pleading and Practice s 661 (5th ed. H. Tiffany 1925):

"The sale should be publicly made at the time and place mentioned in the notice, and for the highest cash price. The sheriff is not absolutely bound, at the first public offer, to allow the property to be knocked down without regard to its fair market value, for there may be circumstances which will make it judicious for him to withdraw the property and report the circumstances to the court. The second offer will, however, usually be peremptory; nor can the sheriff justify himself for repeated refusals to let the property go for the best price he can get, upon the ground that in his judgment it is worth and ought to bring a larger price." Id. at 623.

The first edition of Professor Poe's work was published in 1880, and Maryland lawyers have regarded Poe as binding authority in their day-to-day practice of law for generations. Statements similar to that of Poe are found in 2 A. Freeman, Law of Executions s 283 at 1627 and s 288 at 1663-64 (3d ed. 1900). In fact, the latter author observes in s 288 that in the exercise of his discretion the sheriff "may and ought, even against the protest of the plaintiff, to adjourn the sale, or return that the property is unsold for want of bidders, whenever he sees that his proceeding with the sale is likely to operate as a sacrifice of the property in excess of that usually attendant on forced sales of like property." To like effect see Lankford v. Jackson, 21 Ala. 650, 653 (1852); and Todd & Rafferty v. Hoagland et al., 36 N.J.L. 352, 354 (1873). J. Crocker, The Duties of Sheriffs, Coroners and Constables s 488 (3d ed. J. Kerr 1890), states relative to the analogous situation of sale of personal property:

"If he cannot get a reasonable price for goods it is his duty to suspend the sale, and if for this cause he is unable to make the money by the return day, and is required by the plaintiff to return the execution, he must return there to that the goods levied on remain in his hands for want of bidders. And he must still retain possession of the goods, and when he is served with a venditioni exponas, he must sell them at whatever price he can obtain. But he will not be justified in selling upon the execution, greatly under the value of the property. And the sheriff is not, in this respect, bound to obey the direction of the attorney, if he sees that it will produce great sacrifice of property; but he should postpone the sale where the plaintiff cannot sustain any injury by the delay. The officer should take all necessary means to secure the sum directed to be levied, but as to the time, place, and manner of sale he is vested with a sound discretion." Id. at -29 (footnotes omitted).

In Home Owners' Loan Corporation v. Braxtan, 220 Ind. 587, 592, 44 N.E.2d 989, 991 (1942), the court stated, "The purpose of the sale is not to afford some stranger an opportunity to make off with the property of the judgment defendant to his own great advantage and to the great disadvantage of either the judgment defendant or the judgment creditor." To similar effect see Lankford, 21 Ala. at 653 (where a sale for $6 of land "worth one thousand dollars" was set aside); and City of St. Louis v. Peck, 319 S.W.2d 678, 682 (Mo.App.1959).

The recognized test of inadequacy is the price received in comparison with what the property would bring at a fair sheriff's sale.

Although the cases and the authorities indicate that a sale will not be set aside for mere inadequateness of price, they state that if the sale is so grossly inadequate as to shock the conscience of the court, or if there be but slight circumstances of unfairness in addition to great inadequateness of price, a sale will be set aside.

Virtually the same language has been used in our cases referring to judicial sales.. As a matter of fact, in Darraugh v. Preissman, 193 Md. 448, 452, 67 A.2d 262 (1949), and A. Freeman, op. cit., s 309 at 1808 n. 107, the citations given for such a statement with reference to sheriffs' sales are actually Maryland cases which involve judicial sales. The similarity between the two, aside from the fact that the court is the vendor in the case of a judicial sale, is demonstrated by the statement by Judge Eccleston for our predecessors in Manahan v. Sammon, 3 Md. 463 (1853):

"It has been very correctly said, that judicial sales are always favored by courts. That a purchaser under an execution upon a judgment subsequently reversed will, nevertheless, hold a valid title to the property; and that the result will be the same where a sale is made under a fi. fa., issued more than three years after the date of the judgment, without being revived by a sci. fa., unless the sale is set aside by some proceeding on the part of the defendant in that particular case." Id. at 470-71.

It will be seen from our discussion that a writ of fieri facias does not constitute a license to sell property of debtors without regard to its value in relation to the bids offered. The error into which the trial court and the Court of Special Appeals fell was in concluding that even though the sale price was grossly inadequate, they were powerless to act. One does not expect a price to be produced at a forced sale to be commensurate with fair market value. This is particularly true in a case such as this where bidders were not permitted to inspect the interior of the dwelling. However, the spread here between a fair market value of $18,000 ($24,000 appraisal less mortgage of $6,000) and the $2,000 sale price is indicative of an unfair sheriff's sale, such as shocks the conscience of the Court. See the numerous examples cited by H. Herman, op. cit. at 414-16. It follows that the trial judge erred in not setting the sale aside.

JUDGMENT REVERSED; CASE REMANDED TO THE COURT OF SPECIAL APPEALS FOR PASSAGE OF AN ORDER REVERSING THE ORDER OF THE CIRCUIT COURT FOR BALTIMORE COUNTY; THE PARTIES TO PAY THEIR RESPECTIVE COSTS

II. Property of the Bankruptcy Estate: Part One: Real Property Basics

A. Introduction

When a person files for Chapter 7 Bankruptcy an "estate" is created. The trustee has the job of assembling, protecting, and selling that property. The following excerpt from § 541 of the Bankruptcy Code contains the provisions that will be relevant for our first few discussions of property of the estate.

Please note that the Code refers to "interests of the debtor in property." This is language that is absolutely crucial. We should never speak of "the debtor's property" but rather "debtor's interest in property."

In Maryland, a plaintiff who obtains a judgment has obtains a lien on the real property of the debtor in the county of the court rendering the judgment. The lien arises from the moment of judgment. See the relevant Maryland law below.

B. Statutes

C. Problems

1. Dorrit's only property is Marshalacre which he owns free and clear of liens. Marshalacre is worth $100,000. If Dorrit files for Bankruptcy what will be the property of the estate and what will be the value of the estate. In this and in all subsequent problems ignore any possibility of exemptions.
2. Assume the above facts except that:

a) Dorrit owns the property as a tenant by the entirety with his wife.
b) Dorrit owns the property as tenant in common with his daughter Amy.
c) Dorrit owns the property as joint tenant with his daughter Fanny

3. Suppose in the above examples, Wife, Amy or Fanny died shortly before Dorrit filed his Bankruptcy petition.

4. Suppose in the above examples, Wife, Amy, or Fanny died shortly after Dorrit filed his Bankruptcy petition.

5. Dorrit's only property is Marshalacre, worth $100,000. On March 1, 2010, Dorrit borrowed $50,000 from First London Bank & Distrust (FIRSTBANK) and gives FIRSTBANK a mortgage on Marshalacre. If Dorrit files for Bankruptcy on March 15, 2011 what will be the property of the estate and what will be the value of the estate.

6. Assume the facts of #5 except that on March 10, 2010, borrows $25,000 from SECONDBANK and gives SECONDBANK a mortgage on Marshalacre. If Dorrit files for Bankruptcy on March 15, 2011, what will be the property of the estate and what will be the value of the estate.

7. Assume that the loan from FIRSTBANK was for $120,000. If Dorrit files for Bankruptcy what will be the property of the estate and what will be the value of the estate.

8. Dorrit's only property is Marshalacre, in Baltimore County, which he owns free and clear of liens. Marshalacre is worth $100,000. On March 10, 2010, Clenman obtained a judgment against Dorrit for $50,000. If Dorrit files for Bankruptcy on March 15, what will be the property of the estate and what will be the value of the estate.

9. Assume the facts of #8 above except that on March 12, 2010, Dickens got a judgment against Dorrit for $60,000. Dorrit filed for Bankruptcy on March 15. What will be the property of the estate and what will be the value of the estate. To how much will Clenman and Dickens be entitled?

III. Property of the Estate Part Two: Real Property Complications

A. Statutes & Rules

B. Multiple Jurisdictions

1. Multiglomerate, Inc. owns the Multiglomerate Building in Towson in Baltimore County, Maryland. The building is worth $2,000,000,000. March 15, 2011 was not a good day for Multiglomerate. On that day the following plaintiffs obtained the following judgments against Multiglomerate. On November 1, Multiglomerate will file a Chapter 7 Bankruptcy petition.
   a) What will be property of the state?
   b) To how much will each party be entitled?
   c) What must each party do to improve their position?
2. MegaBank obtained a $50,000 judgment in the Baltimore, City Circuit Court.
3. Widow Wilkins obtained a $4.86 judgment in Baltimore City District Court.
4. Uniglomerate Corp. obtained a $50,000 judgment in the Maryland Federal District Court.
5. Fred Fed obtained a $500,000 judgment in the Federal District Court in New Jersey.
6. Dominik Kinimod obtained a $1,999,999,912.50 judgment in the New Jersey District Court.
7. Rupert Murdoch obtained a $1,000,000 libel judgment in the appropriate court in London England. This suit resulted from statements Manuel Multi, the CEO of Multiglomerate, made while visiting in England. He stated that Rupert Murdoch had surreptitiously placed listening device in one of the fillings of his (Multi's) teeth. Murdoch sued Multiglomerate in England for libel under English law after Multi had returned to the United States. Pursuant to English law, Murdoch mailed a summons to Multiglomerate at Multiglomerate's office in Towson. The court rendered a default judgment against Multiglomerate.

C. Accruing Interest & Changing Values

1. Justin Fine owned a house in Baltimore city worth $100,000. On April 1, 2009, Dragon Inc. obtains a judgment against Fine for $200,000 in the Baltimore City Circuit Court. On June 1, 2009, Fine spent $50,000 to build an addition onto his house which increased the value to $150,000.
    a. If Fine does not file for Bankruptcy, how much is Dragon entitled.
    b. If Fine files a Chapter 7 Bankruptcy petition, what is the property of the estate?
2. Carol Chance owns a house in Baltimore city worth $100,000. On January 1, 2011 Chance granted FIRSTBANK a mortgage on the property to secure an $80,000 loan. The mortgage carries an interest rate of 12% per year (i.e., 1% per month – i.i.e.e., $8,000 per month). Assume that Chance makes no payments. To how much are Chance, FIRSTBANK and the Bankruptcy trustee entitle if Chance files for Bankruptcy on
    a. February 1, 2011
    b. March 1,2011
    c. April 1, 2011
    d. January 1, 2012

D. Transfers

1. Sandra and Pat are co owners of a large farm in Baltimore city, Maryland. Steven Mean obtains a judgment for $50,000 against Sandra in the Baltimore City Circuit court on July 5, 2011. On July 6, Sandra died. To what is Mean entitled, depending upon whether Sandra and Pat owned the property as

e. Tenants by the entirety
f. Tenants in common.
g. Joint tenants.

IV. Property of the Estate Part Three: Personal Property

A. Casebook

1. Pages 33-51
2. PS 2: 2.1, 2.2
3. Pages 113-128
4. PS 5: 5.1, 5.2, 5.5, 5.6

B. Statutes

C. Security Interests

1. On April 5, X obtains a $2,000 judgment against J. Press. A writ of execution is issued on May 7. On May 10, the sheriff levies on J. Press's printing press. On May 11, Y lends J Press $3,000 and obtains and perfects a security interest in the printing press. The printing press is only worth $2,500. Which lien has priority?

2. On May 5, X obtains a $2,000 judgment against J Press. A writ of execution is issued on May 7. On May 11, Y lends J Press $3,000 and obtains and perfects a security interest in J Press's printing press. The sheriff levies on the press pursuant to X's writ of execution on May 16. The printing press is only worth $2,500. Which lien has priority? (Same facts as last problem except that the sheriff levies on May 16 instead of May 10.)

3. On July 1, S sells D Cleaners $7,000 of new equipment on credit and obtains a security interest in the cleaning equipment to secure payment. On July 12, the sheriff levies on this new equipment pursuant to C's writ of execution. On July 16, S perfects its security interest. Which lien has priority?

D. Execution Liens

1. As creditor, what action would you instruct the sheriff to take to effect a levy upon:
2. The animals for sale by Debtor Pet Shop
3. The dental equipment of Dr. Debtor (most of which is built-in)

4. Martha Stewart's prison blog

5. C wins a judgment against the D Lumber Yard. C gets a writ of execution against D's property and has the sheriff levy on D's electric saw. Before the sheriff actually seizes the saw, D sells it to P. What are the rights of the parties? See CL § 2-403(2).

V. Prejudgment Attachments

1. Casebook 52-53

2. Ephraim Frisch operated a dry cleaning shop at 1420 North Charles Street, Baltimore, MD. On September 1, 2010, Frisch and Martha Onslo entered into an oral agreement whereby Onslo would remodel a portion of Frisch's building. The agreement provided that Frisch would pay Onslo $5.00 per hour for all work done plus 115% of the cost of materials installed. Onslo kept no written record of hours spent and has lost some receipts for materials installed but claims to have installed $200 in fixtures and to have spent two 8-hour days doing the work.

On February 1, 2011, Onslo mailed Frisch a bill. On March 1, Onslo called the store but was informed the phone was disconnected. Onslo went to visit the store but it was closed with a note on the door stating "pick up dry cleaning at Dairy Queen on corner." Onslo returned the next day and found the same situation. Onslo went to Frisch's home but no one answered the doorbell and there was no car in the driveway. Onslo returned to the store the next day but found the same sign. Onslo went to the Dairy Queen. The woman on duty said she didn't know where Frisch was but that she thought Frisch was in Florida

a) .Can Onslo obtain a prejudgment attachment?

b) Suppose Onslo's lawyer filed the necessary papers to obtain a prejudgment attachment of the equipment in Frisch's store. Frisch, although he disputes the debt, immediately pays. He is unable to carry on his business without use of the equipment and feels he cannot afford a lawyer to resist. What are the rights and liabilities of the parties?

3. Your client is trying to collect a $30,000 debt owed by Family Jewelers. Assuming you are able to obtain prejudgment attachment, which of the following would you direct the sheriff to seize? Why?

a) Real estate

b) Inventory

c) Business equipment (watch repair tools, cash registers, etc.)

4. At all relevant times, the only nonexempt property owned by D is Greenacre, which is worth $4,000, and miscellaneous personal property worth $3,000.

1/10	X sues D Corp. for $5,000.
	X obtains a writ of attachment that is directed to the sheriff.
1/13	Y sues D for $6,000.
	Y also obtains a writ of attachment, which is delivered to the sheriff.
1/14	Y instructs the sheriff to levy on Greenacre, which the sheriff does
1/16	the sheriff levies on Greenacre pursuant to X's writ of attachment.
4/15	X obtains a $5,000 judgment against D.
4/18	Y obtains a $6,000 judgment against D.

a) Whose judgment will be satisfied first: X's or Y's?

b) Suppose D files for Bankruptcy on 4/01?

c) Suppose D files for Bankruptcy on 4/16

5. On February 2, C sues D for $2,000, obtains a writ of attachment, and causes the sheriff to levy on D's horse, Fido. On March 3, B, who does not know of the attachment line, buys Fido from D for $3,000 without asking to see the horse. On April 4, C obtains a $2,000 judgment against D. Who has greater rights to Fido: creditor C or buyer B?

6. Ed Eaton has come to you with the facts listed below. He wants to satisfy his judgment by executing on the property. What are the priorities of the various parties to the property? Is any additional information needed?

April 10,2008 Harriet and Wilber Jones own property as tenants by the entirety in Baltimore County.

January 10, 2009	Charles Cole obtained a judgment in a contract action against Harriet Jones in the Baltimore County Circuit Court.
February 10, 2009	Donna Drake sued both Harriet and Wilber Jones, claiming that they (the Joneses) defrauded her (Donna) of $20,000 in the sale of vacationland in Arizona.
February 20, 2009	Donna obtained a prejudgment attachment of the Jones' land in Baltimore County.
March 10, 2009	Ed Eaton obtained a judgment against the Joneses in a tort action in the Baltimore County Circuit Court.
April 10, 2009	Harriet Jones became depressed by her legal troubles and decided to throw in the towel. She settled with Drake and confessed judgment in the Baltimore County Circuit Court. Wilber has proved feistier; So, Drake is still pursuing him.

VI. Lis Pendens

A. Statutes

B. Cases

Greenpoint Mortgage Funding v. Schlossberg

Court of Appeals of Maryland 2005.

Background: Receiver in divorce action filed complaint for declaratory and injunctive relief, alleging that notice of lis pendens filed in divorce action placed lenders, who had filed deeds of trust on husband's properties, on notice that wife's interest in the property was superior to lenders' interest. The Circuit Court, Washington County, Donald E. Beachley, J., found that lenders had constructive notice of the lis pendens, and lenders appealed.

Holdings: After the appeals were consolidated and writ of certiorari granted, the Court of Appeals, Cathell, J., held that:

(1) instruments affecting title to real property, including notices of lis pendens, were required to be recorded and indexed. . . . (2) filers bore the risk of mistakes in indexing instruments affecting title; and

(3) lenders did not have constructive notice of notice of lis pendens filed on husband's properties by receiver.

Reversed and remanded.

CATHELL, Judge.

In this consolidated appeal, Greenpoint Mortgage Funding, Inc., *et al.* and World Savings Bank, *et al.* (described variably hereafter collectively as "appellants" or "lenders") seek relief from the May 24, 2004, Memorandum Opinions and Orders of the Circuit Court for Washington County, which provided that the notices of *lis pendens,* filed by Preston S. Cecil and Curtis B. Hane as former receivers, along with Roger Schlossberg, current receiver and appellee, (hereafter "appellee," "Mr. Schlossberg" or "receiver"), with the Clerk of the Circuit Court for Montgomery County, and with the Clerk of the Circuit Court for Prince George's County, but not indexed correctly, served as sufficient constructive notice to appellants of a *pendente lite* lien against certain property.

Both Greenpoint and World Savings appealed to the Court of Special Appeals and, before that court could consider the appeal, we granted on our own initiative a writ of certiorari on March 11, 2005, in order to address the following questions:

> "I. Did the Circuit Court err by holding that the filing of the notices of *lis pendens* on behalf of the original receivers pursuant to Rule 12-102(b), Maryland Rules of Procedure, was sufficient to place the two mortgage lenders on constructive notice of the receivers' powers over the two parcels of real property?
>
> II. Did the failure to properly index the notices of *lis pendens* in the name of the owner of the properties negate the effect of filing the notices of *lis pendens* as to the appellants [Greenpoint Mortgage and World Savings Bank, the lenders]?"

We hold in respect to question one that the trial court erred. We answer the second question in the affirmative. Even if a *lis pendens* had been properly created by the express order of the judge in the underlying divorce case, [FN1] we hold that the failure to properly index the notices negated the effect of the filing as to the appellants. We further hold that Maryland statutes require that all instruments affecting title to real property that are recorded, must also be indexed. And we hold that a party seeking to establish a notice of *lis pendens* is charged with the duty to assure the correctness of the recording and indexing of the instrument he or she has filed. Failing correct indexing, the notice of *lis pendens* in the instant case was, or would have been, insufficient to provide constructive notice to appellants.

> FN1. Family Law Article, Title 1, Subtitle 2. *General Provisions,* § 1-203. **Special provisions of alimony, annulment, and divorce.** (b) *Lis Pendens,* provides:
>
> "*Unless the court* **expressly** provides otherwise, the filing of an action for ... an absolute divorce does not constitute lis pendens in respect to any property of a party."
>
> Md.Code (1984, 2004 Repl.Vol.), § 1-203 of the Family Law Article (emphasis added). Because of our resolution of this case we need not address the effect, if any, of this statute. We have found no express order in the record of this case. It was not addressed by the parties.

I. Facts

In 1996, the Circuit Court for Washington County determined it prudent to appoint receivers in the pending divorce case of *Moses Karkenny v. Nahil Karkenny.*

By court order dated March 26, 1996, and clarified by order dated April 9, 1996, Curtis B. Hane and Preston S. Cecil were appointed receivers, and their counsel, Roger Schlossberg, was appointed co-receiver, for the purpose of preserving and liquidating properties located in Prince George's County and in MontgomeryCounty owned by *Moses* H. Karkenny.Messrs. Hane and Cecil, along with Mr. Schlossberg, then filed with the Clerk

of the Circuit Court for Montgomery County on April 30, 1996, what purported to be a Notice of *Lis Pendens* in Civil No. 151,150. They filed a similar notice with the Clerk of the Circuit Court for Prince George's County on May 1, 1996. The notices' captions, prepared by the appellee, i.e., the receiver, which were likely copied from the divorce complaint, displayed Moses Karkenny as the plaintiff/counter-defendant and Nahil Karkenny as the defendant/counter-plaintiff. Thus, Nahil Karkenny was the defendant in the original divorce action.[FN4]

> FN4. The caption of the notice in this particular case, in which the name of the person giving notice of a potential lien was situated where the person whose property is sought to be subject to the potential lien normally is placed, may have led the clerks in two separate counties to mis-index the notices.

Enumerated within the body of the Notices of *Lis Pendens* were several properties owned by Moses Karkenny, which were to be subject to the notices. In the body of the Montgomery County mis-indexed Notice of *Lis Pendens,* the listing of real property subject to the proceedings in the divorce case and asserted to be in the custody of the receivers included fourteen specifically designated properties as well as "any and all other property in which any interest is owned by or vested in the said Moses Karkenny." The Prince George's County notice listed five specific properties in addition to the more encompassing description of "any and all other property in which any interest is owned by or vested in the said Moses Karkenny."

Messrs. Hane and Cecil resigned from their receivership appointments in 1996 and 1999, respectively, and in both cases, Mr. Schlossberg was appointed as the sole successor receiver.

On September 29, 1999, Moses Karkenny, individually, executed and delivered a deed of trust apparently creating an encumbrance in favor of World Savings Bank and its trustee as to the Glaizewood Avenue property in order to secure a loan in the amount of $98,000.00. This deed of trust was recorded in the Land Records of Montgomery County on October 21, 1999.

Again, on November 24, 1999, Moses Karkenny executed in favor of Greenpoint Mortgage a promissory note for a loan in the principal amount of $45,500.00, secured by a deed of trust encumbering the Greenery Lane property. The deed of trust was then recorded among the Land Records of Montgomery County on May 25, 2000.

On August 30, 2002, Mr. Schlossberg filed in the Circuit Court for Washington County two "Complaint for Declaratory Judgment and Related Injunctive Relief," which included appended copies of the respective purported Notices of *Lis Pendens* the receivers had filed in mid-1996 and which bore the Clerk's "filed" stamp.

appellants urged that it was the responsibility of the Receiver and his or her predecessors to verify the proper recording and indexing of the notice of *lis pendens* by the Clerks of the Circuit Court, and either failing a correct indexing so as to provide constructive notice or failing appellants' actual notice of the Washington County suit, appellant's interests in particular property titled to Moses Karkenny were superior to any equitable claim that the receiver might then assert.

II. Discussion

A. Doctrine of Lis Pendens

Lis pendens, a doctrine with deep roots in the English courts of chancery, apparently can be traced to around 1618 during Sir Francis Bacon's time serving as Lord Keeper of the Great Seal. This doctrine is discussed in a multitude of cases and is formally defined as:

> "**1.** A pending lawsuit. **2.** The jurisdiction, power, or control acquired by a court over property while a legal action is pending. **3.** A notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome."

BLACK'S LAW DICTIONARY 950 (8th ed. 2004). Its essence, then, is one of notice to an otherwise unknowing party.

Lis pendens has no specific separate existence apart from its basic function to advise a person who seeks to acquire an interest in property subject to a *lis pendens* that he will be bound by the outcome of the noticed litigation. It was argued in an earlier case that "-'The principle of *lis pendens* is, that the specific property must be so pointed out by the proceedings as to warn the whole world that they meddle with it at their peril.' " *Feigley v. Feigley,* 7 Md. 537, 556 (1855) (citing 1 *Strob. Eq. Rep.,* 182, *Lewis v. Mew*). The Court apparently accepted the argument, stating that

> "The doctrine of *lis pendens* has no application whatever to this case. As well might a pending action at law, to recover an ordinary debt, be a *lis pendens* as to the property of a debtor, as a proceeding like the present, the purpose of each being to subject the property of the debtor to the payment of debts. *Lis pendens* is a proceeding directly relating to *the thing or property in question.*"

Thus, a party who purchases while the litigation ensues is deemed a "purchaser *pendente lite.*"

The rule of *lis pendens* generally arises in the context of disputes in which one or more parties have possession of real property and the potential of premature, precipitous, undue or untoward alienation of that property needs to be avoided. Some states limit its application to disputes affecting only title to real property while others allow application of the rule of *lis pendens* more generally to any dispute that touches on the possible alienation of property.

In our state, the *lis pendens* doctrine has its foundations in common law and remains mostly there. In our state the only procedural reference to *lis pendens* is set out in Md. Rule 12-102, which contains no substantive modification of the common law. Except for the statute in respect to divorce cases above noted, the Maryland General Assembly has not seen fit to enact further statutes modifying *lis pendens* as other states have done. Accordingly, Maryland's jurisprudence in respect to *lis pendens* generally has been developed through our case law.

In *Angelos v. Maryland Casualty Co.,* 38 Md.App. 265, 268, 380 A.2d 646, 648 (1977), this State's intermediate appellate court explained:

> "The chancellor entered judgment on behalf of Maryland Casualty Company under the doctrine of lis pendens. Lis pendens literally means a pending action; the doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered. Under the doctrine, one who acquires an interest in the property pending litigation relating to the property takes subject to the results of the litigation. *It is clear that the doctrine has no application except where there is a proceeding directly relating to the property in question, or where the ultimate interest and object of the proceeding is to subject the property in question to the disposal of a decree of*

the court." (Emphasis added.)

Accordingly, it is clear in Maryland that generally, prior to judgment, the nature of the action must be such that it directly involves the property, if the property is to be subject to a *lis pendens.*

As early as *Applegarth v. Russell,* 25 Md. 317, 327 (1866), involving an action in the county where the real property was located, we began to apply limits to the doctrine's application. In that case, appellee argued that "*is pendens* begins from the moment the bill is filed," but the Court held to the contrary, upholding a conveyance where the bill, "at the time of the purchase, did not disclose with sufficient certainty the land sought to be charged by it." *Id.* at 328. Much later, in *DeShields v. Broadwater,* 338 Md. 422, 659 A.2d 300 (1995), also a case where the pending action was in the county where the property was located and thus did not involve a "formal" notice of *lis pendens* because the action itself was required to be indexed in that county and was itself the *lis pendens* and not a mere notice, this Court discussed *lis pendens* in the context of a constructive trust. There we noted:

"The doctrine of *lis pendens* is well-established in Maryland. It literally means a pending lawsuit, referring to the jurisdiction, power, or control which a court acquires over property involved in a lawsuit pending its continuance and final judgment. Under the doctrine, an interest in property acquired while litigation affecting title to that property is pending is taken subject to the results of that pending litigation. Thus, 'nder the common-law doctrine of *lis pendens,* if property was the subject of litigation [FN8], the defendant-owner could transfer all or part of his or her interest in the property during the course of litigation, but not to the detriment of the rights of the plaintiff.' This Court stated the same proposition thusly, in *Inloes' Lessee,* 11 Md. at 524 (quoting I Story Eq.Jur. §§ 405, 406):

> FN8. Such as actions to remove clouds on title, actions for specific performance of contracts involving real property rights, actions involving adverse possession, dedication or prescription, custom, boundary line disputes and the like.

"*Lis pendens* has no applicability, therefore, except to proceedings directly relating to the title to the property transferred or in which the ultimate interest and object is to subject the property in question to the disposal of a decree of the court.

"A '*lis pendens* is a general notice of an equity to all the world,' not notice of an actual lien. Consequently *lis pendens* proceedings do not technically prevent alienation; they place a cloud on title to the property....

"Thus, when, after the complaint has been filed, the defendant transfers his or her interest in the property which is the subject of the lawsuit, *lis pendens* applies to subject that property to the result of the pending litigation whether or not the plaintiff is aware of the transfer...."

"When any person shall begin a suit in any court, whether by declaration or bill, or by cross-complaint, to enforce a lien upon, right to, or interest in, any real estate, unless the claim be founded upon an instrument which is recorded, or upon a judgment duly enrolled, in the county in which the real estate is situated, such person shall file with the clerk of the chancery court of each county where the real estate, or any part thereof, is situated, a notice containing the names of all the parties to the suit, a description of the real estate, and a brief statement of the nature of the lien, right, or interest sought to be enforced. The clerk shall *immediately* file and record the notice in the lis pendens record, and note on it, and in the record, the hour and day of filing and recording."

Based on our summary review of the cases it seems clear that, at a minimum, the amalgamated requirements for a notice of *lis pendens* call for the notice to state the names of the party against whom the *lis pendens* is claimed, to describe accurately the affected property, and to explain the nature of the lien right or the interest that the person filing the notice seeks to enforce and that it be properly recorded-and indexed.

B. Filing, Recording and Indexing Generally

A central issue to the case *sub judice* is which party should bear the burden, or possible loss, occasioned by an incorrect *indexing* of an apparently properly *filed* (although possibly mis-captioned) notice of *lis pendens.* The receiver argues "that the [Clerks'] improper indexing of the notices of lis pendens did not negate the effect of filing of said notices as to Appellants." In appellants' view, on the other hand, their inability to locate the filed but incorrectly indexed notices of *lis pendens* among the Clerks' records, prompts them to depict themselves, although they are not technically purchasers, as more akin to bona fide purchasers than to purchasers *pendente lite.*

Maryland Code (1974, 2003 Repl.Vol.), § 3-301 of the Real Property Article entitled "**Record Books"** combined with Real Property Article Section 3-302 "**Indexes,"** read together as they must be, express the intent of the Legislature in this area.

Section 3-301(a) *Land Records.,* provides in relevant part:

"..., the clerk of the circuit court of each county shall record every deed *and other instrumentaffecting property*in well-bound books to be named 'Land Records', if that is the practice in the county, or on microfilm, if that is the practice...."

Section 3-302(a) *In general.,* provides in relevant part:

"The clerk of the circuit court of each county shall make and maintain *a full and complete general alphabetical index* of every deed, *and other instrument* in a well-bound book in his office...." (Emphasis added.)

Section 3-302(e)(2) provides in relevant part:

"The clerk shall rely on the instrument that is accompanied by the intake sheet for indexing of grantor's and grantee's names."

A notice of *lis pendens* is intended to, and does, affect the title to property, in that its purpose is to notify any future purchaser of the title to the property that they will take the property subject to the result of the pending litigation. Because a notice of *lis pendens* affects title to real property, it is required by statute to be recorded *"in well-bound books* " to be named "Land Records." If it is required to be recorded in the Land Records, as we hold it is, then it comes under the provisions of the statute that require it to be maintained in a complete alphabetical index. The Legislature has required *any* instrument affecting title to real property, to be both recorded *and to be indexed.* The stated purpose of Md. Rule 12-102 is to facilitate the creation of constructive notice in respect to any action that "affects title to ... real property." Section (a) "Scope." This Court's adoption of Rule 12-102, and its language as to filing, must be considered in light of the requirements of the statutes and common law it was intended to facilitate, and thus must be read broadly as incorporating the indexing (and other) requirements of the various statutes.

Were the Court to hold that because the Rule does not contain a direct indexing requirement, it affords notice without indexing, we in effect, would overrule the statutory requirement that instruments affecting title must be indexed. Such an interpretation would change the statutory requirements for the placing of notices, i.e., instruments affecting title to real property in the land records of a county-and that they be indexed.

It is helpful to understand one of the important purposes of recording and indexing in the first instance. Instruments of conveyance (including mortgages) were, under the common law, valid as between the grantor and grantee even if never recorded. Recordation systems, as they relate to real property, evolved in order to insure that owners of property were not able to convey or mortgage the same property to several people at the same time. A primary purpose of the recording and indexing statutes that came into being was to provide a way to give notice to purchasers, mortgagors, lien holders and the like, of the prior conveyances of, or encumbrances on, the property of a particular person. Recording and indexing was not necessary to determine title to property as between the seller and buyer but only to determine priorities as between subsequent claimants to title interests, i.e., third parties, such as the banks in the instant case.

This Court long ago recognized the importance of recording *and indexing* in the case of *Plaza Corp. v. Alban Tractor Co.,* 219 Md. 570, 583, 151 A.2d 170, 176-77 (1959), where we were concerned with a legislative enactment relating to the recording and indexing of certain instruments in Baltimore County. A provision of the Baltimore County Code provided "that in cases where an instrument affects title to, or any interest in, both land and personal property that the clerk 'shall include a notation that such instrument has been recorded among such Land Records ...' " in the chattel index. As relevant to the instant case, the Court went on to note that the statutory provision "makes the entry or notation in the chattel index constitute an essential part of the actual recordation of the instrument in the Chattel Records." *Id.* We noted our reasons, reasons equally relevant in the real property indexing case *sub judice:*

> "If this were not so, we would have this anomalous situation: We would have a registry statute requiring the clerk to keep a set of Land Records, a set of Chattel Records and a separate general alphabetical index for each; when an instrument is presented for record that covers both real and personal property, the statute provides that it shall be spread upon the Land Records and *not* upon the Chattel Records, but a notation thereof shall be made in the general index of the Chattel Records, which shall have the same effect as though it were spread in full upon the Chattel Records; *if this [were to] be treated as a mere failure to index and not as a lack of a complete recording, there would be no possible way for a subsequent prospective purchaser or creditor to locate the instrument dealing with [the] personal property without a search of the Land Records, something that no one would do....*
>
> Tiffany, *op. cit.,* and the *American Law of Property* place Maryland in the first category with the case of *Brydon v. Campbell,* 40 Md. 331 [(1874)]. There, a deed conveyed a *four-tenths* portion of a tract of land. By mistake, the clerk transcribed it upon the register as a *fourteenth* part thereof. *This Court held that a third party was only chargeable with constructive notice of what the record disclosed.*
>
> s a practical matter it is impossible in a lifetime to examine every original document of every kind ever filed in the land and other records, which would be necessary if the buyer or lender is to be assured that the property is lien free and is owned by the person who is selling it, *if the buyer or mortgage lender is required to be responsible for non-indexing or mis-indexing.*
>
> serve that some states have held that the party filing the notice is not responsible for another's indexing and recording mistakes or omissions.

We decline to adopt the view taken by these jurisdictions that relieves the person seeking to record the instrument or file the lien from the burden of assuring the document's proper recording and indexing.

C. Mis-indexing

We have gleaned from the various cases of other states' requirements that a notice of *lis pendens,* in order to provide constructive notice, must be current, must directly relate to a disputed property, and must describe the property to a sufficient degree to identify the affected property and, generally, must be properly indexed. A notice which cannot be discerned or found, is no notice at all.

The question at the crux of the instant case is who should bear the loss when the notice intended by *lis pendens* is inadequate as the result of an indexing error. The illustrative case in Maryland on the results of mistakes in indexing is this Court's recent opinion in *Waicker v. Banegura,* 357 Md. 450, 745 A.2d 419 (2000), in which the judgment in favor of appellants, alleged to constitute a lien against appellees' real property, was indexed under "Banegu***n***a" instead of "Banegu***r***a." The Clerk of the Circuit Court for Baltimore County mailed a copy of the notice of recordation to the Waickers showing the incorrectly indexed judgment. The Waickers took no action to correct the mis-indexing. When the Baneguras later contacted Mystic Investments, Inc., in order to refinance their property and to satisfy other judgments, a search by Mystic revealed no judgments entered against the Baneguras. After the refinancing transaction was completed, the appellants sought to enforce their judgment and contended it had priority over Mystic's Refinance Deed of Trust based on the earlier filed notice. This Court affirmed the ruling of the Circuit Court for Baltimore County that Mystic had a priority interest over appellants because the indexing error caused appellants' judgment lien to fail to attach to the property. In *Waicker* we concluded:

> "We hold that notice will be found for judgment liens against a particular property, which are indexed under incorrect or misspelled names only when the facts and circumstances are such that the subsequent party has *actual* knowledge that the judgment is indexed under an incorrect or misspelled name, or has *actual* knowledge that an owner of property being subject to search has, or is commonly known by, the alternate name."
>
> *Waicker,* 357 Md. at 477, 745 A.2d at 433. Our additional *Waicker* explanation is instructive in the instant case:
>
> "A party who records a judgment in a judgment index has the duty of ensuring that the name entered into the index is spelled correctly and indexed correctly in order to protect the priority of their lien. Future persons involved with the property simply have no way to ensure the accuracy of indexing."
>
> *Waicker,* 357 Md. at 479, 745 A.2d at 434. We see no reason why a lesser standard should apply to notices of potential liens than applies to notices of actual liens.

In the present case, the lenders urge that this Court must consider "whether the mere filing of the suits [in Montgomery County and in Prince George's County] with respective clerks is

sufficient to establish constructive notice on the part of the two Appellants." Appellee contends that such a position overlooks the express language of Md. Rule 12-102(b) which requires only *filing* of the notice of *lis pendens* and that is precisely what the Receivers did. This Court undertook a similar examination in *Waicker* wherein we summarized the recording and indexing provisions of Md.Code (1974, 1996 Repl.Vol.), § 3-302(a) of the Real Property Article, and explained:

> "The system of indexing and recording judgment liens is designed, at least in part, to provide an organized and efficient method by which the general public can effectively determine whether there are money judgments that act as liens on a particular parcel of land. In the absence of actual knowledge, indexing and recording give constructive notice of any and all liens that may affect real property. To promote this goal, judgment liens are indexed and recorded alphabetically by surname. If there is more than one judgment indexed under the same surname against different persons, then they are organized alphabetically by first name. Additionally, if there is more than one judgment indexed under the same surname and first name against different persons, they are organized alphabetically by middle name. In other words, indexing and recording is done in basic alphabetical order. *See* Md.Code (1974, 1996 Repl.Vol.), § 3-302(a) of the Real Property Article ('The clerk of the circuit court ... shall make and maintain a full and complete general alphabetical index of every deed, *and other instrument* in a well-bound book in his office.' (Emphasisadded.)). The indexing requirement of alphabetizing of names in judgment indexes is the foundation by which judgment liens are researched. The reason is simple. If a judgment is not indexed in the proper fashion, i.e., in alphabetical order, a searcher may never find it."

The appellee urges this Court to affirm the Circuit Court's determination:

> "Rule 12-102 (b) having been completely and correctly complied with so as to perfect constructive notice of the lis pendens, and no other requirements being set forth in either the Maryland Rules or in any Maryland statute ... this Court should uphold the ruling of the Circuit Court."

The Receiver emphasizes the fact of his proper and strict compliance with the stated language of Md. Rule 12-102(b) and he observes that "he Rule makes no reference to the indexes nor does it place any condition on the creation of constructive notice pertaining to the indexes." That is, according to appellee, there is "no additional requirement for indexing of notices of lis pendens." It is only the *filing,* according to appellee, that provides the constructive notice, not the *indexing*. We disagree.

When the constructive notice is not realized as intended, and cannot be reasonably discerned because of improper indexing, the constructive notice is never manifested. As to the triumvirate-the *lis pendens* filer, the clerk, and the party to be affected by the notice-at the time the *lis pendens* is filed, only one party has *no* power to ensure that the *lis pendens* is filed and indexed correctly and that is the future party for whom the notice is intended prospectively. He, she or it may not even be in existence at the moment the notice of *lis pendens* is filed but mis-indexed.

Thus, we hold that a party who records a judgment or a notice of *lis pendens* in a judgment index or *lis pendens* index has the duty of ensuring that the name entered into the index is spelled correctly and indexed correctly in order to protect the priority of that party's lien or potential lien. The person filing the notice does so to establish constructive notice in order to protect himself or the interests he represents. Thus, it stands to reason that the onus should be on him in order to assure that the notice is not only filed, but also recorded and indexed correctly, in order to provide the greatest protection.

Unless he has some exogenous knowledge or actual notice of other names or name variants by which to search, an examiner who searches the index for recorded instruments of judgment or other litigation, i.e., *lis pendens,* will search for the name under which the property is titled. The examiner must be able to rely upon the ability to match the name he or she seeks with names properly recorded and *correctly listed in the index.*

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR ENTRY OF AN ORDER CONSISTENTWITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

BELL, C.J., dissents and files opinion joined by WILNER and GREENE, JJ.

WILNER, J., dissenting in which BELL, C.J. and GREENE, J., join.

The common issue in these declaratory judgment actions is who should bear the risk of loss when a Notice of *Lis Pendens* arising from an action in the Circuit Court for County A is filed with the clerk of the Circuit Court for County B in precisely the manner this Court, by Rule, has directed, but the clerk of the County B court fails to index the Notice properly. Is it the person who filed the Notice as the applicable Rule directs or a person who subsequently extends credit and facially acquires a security interest in the property without actual notice of the *lis pendens?*

Maryland–National Capital Park & Planning Commission v. Town Of Washington Grove

Court of Appeals of Maryland March 12, 2009.

Background: Park and Planning Commission moved to intervene in town's condemnation action to acquire property adjacent to town that was outside town's municipal boundary, which property was allegedly dedicated to Commission. The Circuit Court, Montgomery County, Marielsa A. Bernard, J., denied motion. Commission appealed, and the Court of Special Appeals stayed condemnation action. Town petitioned for writ of certiorari.

Holdings: Upon grant of certiorari, the Court of Appeals, Harrell, J., held that:

(1) circuit court's denial of motion to intervene, to the extent it was predicated on untimeliness, amounted to an abuse of discretion;

(2) a sufficient legal and factual basis existed upon which Commission could be bound by a judgment in town's condemnation action;

(3) doctrine of lis pendens did not prevent Commission from intervening in condemnation action;

(4) disposition of condemnation action would potentially impair Commission's ability to protect its interest in property that was being dedicated to Commission, as required for intervention; and

(5) Commission was not adequately represented by developer in

condemnation action.

HARRELL, Judge.

This fracas over *lebensraum* is essentially between the Maryland–National Capital Park and Planning Commission ("MNCPPC"), an agency of the State of Maryland exercising "planning" and "park" functions in most of Montgomery and Prince George's Counties, Md.Code, Art. 28 (1957, 2003 Repl.Vol. & Supp.2008), and the Town of Washington Grove ("Town"), a municipal corporation located in Montgomery County. They joust here over the right to possess a parcel of real property adjacent to a boundary of the Town of Washington Grove. The MNCPPC posits its claim to the property on a purported " Legacy Open Space" ("LOS") dedication from the current owner of the parcel, Toll MD II, LLC ("Toll"), as part of Toll's subdivision development proposal for a tract of which the parcel is a part. The Town proposes to acquire the property by condemnation.

Lurking within this dispute is the issue, among others, of the Town's authority to condemn property lying outside its municipal boundary; however, that question will have to wait to receive our attention, if at all, for another day. For reasons to be explained, we shall reverse the judgment of the Circuit Court for Montgomery County with respect to its denial of the MNCPPC's motion to intervene as of right in the condemnation action initiated by the Town against Toll, and remand the case to the Circuit Court for further proceedings not inconsistent with this Opinion.****

b.

The Town also advances the notion that the MNCPPC was denied intervention properly under the Maryland doctrine of *lis pendens*. The doctrine of *lis pendens* is the subject of Md. Rule 12–102, which provides, in pertinent part,

> (a) Scope. This Rule applies to an action filed in a circuit court or in the United States District Court for the District of Maryland that affects title to or a leasehold interest in real property located in this State.
>
> (b) Creation—Constructive Notice. In an action to which the doctrine of lis pendens applies, the filing of the complaint is constructive notice of the lis pendens as to real property in the county in which the complaint is filed. In any other county, there is constructive notice only after the party seeking the lis pendens files either a certified copy of the complaint or a notice giving rise to the lis pendens, with the clerk in the other county.
>
> * * *

Md. Rule 12–102. The first issue we must address, which appears novel in Maryland law, is whether the doctrine of *lis pendens* applies to a condemnation action.

We previously have stated that "[i]n our state, the *lis pendens* doctrine has its foundations in common law and remains mostly there. In our state the only procedural reference to *lis pendens* is set out in Md. Rule 12–202, which contains no substantive modification of the common law." *Greenpoint Mortgage Funding, Inc. v. Schlossberg*, 390 Md. 211, 223, 888 A.2d 297, 304 (2005). In *Greenpoint,* we quoted approvingly from the intermediate appellate court's opinion in *Angelos,* that

> "Lis pendens literally means a pending action; the doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered. Under the doctrine, one who acquires an interest in the property pending litigation relating to the property takes subject to the results of the litigation. *It is clear that the doctrine has no application except where there is a proceeding directly relating to the property in question, or where the ultimate interest and object of the proceeding is to subject the property in question to the disposal of a decree of the court.*" (Emphasis added.)

Condemnation actions in Maryland are governed by Title 12 of the Real Property Article and Chapter 200 of Title 12 of the Maryland Rules. *See* Md. Code, Real Property § 12–101 (2003 Repl.Vol. & Supp.2008) ("All proceedings for the acquisition of private property for public use by condemnation are governed by the provisions of this title and Title 12, Chapter 200 of the Maryland Rules."). In particular, Md. Rule 12–201 provides that "[t]he rules in this Chapter govern actions for acquisition of property by condemnation under the power of eminent domain." Md. Rule 12–201. Md. Rule 12–205 sets out the required elements of a complaint for condemnation, providing

> An action for condemnation shall be commenced by filing a complaint complying with Rules 2–303 and 2–305 and containing:
>
> (a) The names of all persons whose interest in the property is sought to be condemned. If any person is a nonresident or not known, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.
>
> (b) A description of the property sought to be condemned. If the subject matter of the action is real property, the description shall be:
>
> (1) by lot and block or square when an entire lot, block, or square shown on a subdivision map, plat, or record is sought to be condemned; or
>
> (2) by metes and bounds when an entire tract is sought to be condemned; or
>
> (3) by metes and bounds clearly and legibly set forth on a plat showing the area and stating the amount of land sought to be condemned. The plat shall set forth the beginning point for the description, referenced to an existing marker, call, monument, or point outside the area sought to be condemned, in a recorded deed or plat identified by liber and folio. The deed or plat shall be in the chain of title to the property sought to be condemned, but if no marker, call, monument, or point can be found in the chain of title, reference may be made to the chain of title of adjoining property.
>
> (c) A statement of the nature of the interest that the plaintiff seeks to acquire by the proposed condemnation.
>
> (d) A statement of the purpose for which the property is sought to be condemned.
>
> (e) A statement that there is a public necessity for the proposed condemnation.
>
> (f) A statement that the parties are unable to agree or that a defendant is unable to agree because that defendant is unknown or under legal disability.
>
> (g) A statement of the amount of any money paid into court and the date of the payment.
>
> (h) A statement of the date of taking if a taking has occurred.
>
> (i) A request that the property be condemned.

Md. Rule 12–205. After appropriate discovery has occurred, Md. Rule 12–206, and upon conclusion of a trial in accordance with Md. Rule 12–207, the court shall enter a judgment determining whether a right to condemn the property exists. Md. Rule 12–209. Due to the specificity of the requirements and guidelines set out in Chapter 200 of Title 12, and the purpose and

effect of condemnation proceedings generally, it appears likely that condemnation actions in Maryland satisfy the *lis pendens* criteria set forth in *Greenpoint Mortgage Funding* that there be a "proceeding directly relating to the property in question," or a proceeding in which "the ultimate interest and object ... is to subject the property in question to the disposal of a decree of the court." *Greenpoint Mortgage Funding*, 390 Md. at 223, 888 A.2d at 304–05; *see also DeShields v. Broadwater*, 338 Md. 422, 435, 659 A.2d 300, 306 (1995) ("*Lis pendens* has no applicability, therefore, except to proceedings directly relating to the title to the property transferred or in which the ultimate interest and object is to subject the property in question to the disposal of a decree of the court."

The Town, and the League as *Amicus,* point to several other jurisdictions which have addressed this issue, all of which concluded that the doctrine of *lis pendens* is applicable to condemnation actions. *See Wilkinson v. District of Columbia*, 22 App. D.C. 289, 296 (1903) ("But by the filing of the petition for condemnation, and the assessment of benefits and damages, and the service of notice thereof on the parties then in interest, the lien undoubtedly attached to the property as it then stood, and with the divisions and subdivisions that then existed."); *Mills v. Forest Pres. Dist.*, 345 Ill. 503, 178 N.E. 126, 130 (1931) ("The effect of filing a petition for condemnation creates no different situation from that produced by the beginning of any other suit involving a lien upon or claim of title to the land superior to that of an apparent owner of the title in possession, whether he has an unincumbered title in fee or not. The apparent owner in such a case, however good his title, holds it subject to the result of the suit...."); *Lake Cent. Sch. Corp. v. Hawk Dev. Corp.*, 793 N.E.2d 1080, 1089 (Ind.Ct.App.2003) (finding that although Indiana General Assembly enacted statute providing for formal constructive notice of condemnation proceedings, common law doctrine of *lis pendens* is still applicable to condemnation actions); ****

Having resolved that the Maryland doctrine of *lis pendens* is applicable to the Town's condemnation action, the Town would have us further determine that, under *Stockett v. Goodman*, 47 Md. 54 (1877), and *Sinclair v. Auxiliary Realty Co.*, 99 Md. 223, 57 A. 664 (1904), the application of *lis pendens* to the present case operates as a bar to the MNCPPC's participation as a party in the Town's condemnation action. We shall decline to do so.****

C. Problem

February 1,	In a business transaction, A gives B a note promising to pay B $10,000 and a mortgage on A's property called Downsland.
February 14	A discovers that B engaged in fraud
March 3	A sues B to rescind the note and mortgage.
April 4,	B forecloses and sells Downsland to X.
May 5,	A gets a judgment against B.

Who has priority to the property?

VII. Statutory Liens

Simon has given First Bank a security interest in his collection of photographs by Mark Lens. On June 18, 2009, Simon notices that the frames were cracked on two of the photographs, "The Carrot Tree" and "The Noodle Harvest." Simon took them to Art's Repair Shop. Simon picked up "The Carrot Tree" when it was ready.

When the time came to pick-up "The Noodle Harvest," Simon was unable to pay the bill and Art refused to surrender the photograph. Simon also defaults in his loan to First Bank. Who has priority to the photographs? What argument would you make if you were First Bank as to both photographs?

VIII. EXEMPTIONS

A. Casebook

1. 167-194
2. PS 8: 8.1, 8.2, 8.3

B. State & Federal Exemptions

1. Webb is a coal miner. Webb raises and sometimes sells hogs. He lives with his wife and family in Butcher Hill, Maryland. In order to make ends meet Webb has borrowed money from Richard Scrooge, a local loan shark. He owes Scrooge $10,000, which requires him to pay $2,000 a year interest. Webb is unable to make the payments. He owns the following property. Except where indicated he is the sole owner of all property free of any liens.

Cabin – as tenant by the entirety with his wife	$ 25,000
1963 Ford – Collateral for a $400 loan from Van Lear.	800

Furniture 1 table @1000 8 chairs @800 2 televisions @2000 3 bookcases @ 300	$12,100
Wheel chair for one child	200
Shovel, Pick, Other miner's gear and clothes	1,200
Clothes for family	8,000
Bible	50
4 Hogs	4,000
Washing Machine	500
"Black Rock" their pet dog	10
Burial Plot	600
Copyright to song about life of the family	8,000

a) If Richard Scrooge sues Webb and obtains a judgment, what will Webb be able to keep?

b) If Richard sues Webb & wife, what will they be able to keep?

c) If Webb files Bankruptcy individually in a state that allows used of the §522(d) exemptions, what will he be able to keep?.

d) If Webb and wife file for Bankruptcy in a state that allows used of the §522(d) exemptions jointly what will they be able to keep?

C. Casebook

1. 198-216
2. PS 9: 9.1, 9.2, 9.3
3. 194-196
4. PS 8: 8.4
5. 58-62
6. PS 3: 3.3

D. LIEN AVOIDANCE

Fill in the following chart using §522(f)

	A	B	C	D
Property	Furniture	Furniture	Furniture	Auto
Value	$4,000	$8,000	$800	10,000
Potential Amount Of Exemption	$2,000	$2,000	$2,000	$5,000
Amount Of Debt	$8,000	$5,000	$8,000	$12,000
Type Of Lien	non-PMSI, non-possessory security interest.			Execution Lien
Amount Of Secured Claim				
Amount Of Unsecured Claim				
Amount Of Exemption Impaired By Lien				
Can Debtor Avoid Lien?				
Amount Of Lien That Can Be Avoided				
After Lien Avoidance				
Amount Of Secured Claim				
Amount Of Unsecured Claim				

IX. Automatic Stay

1. 130-138

2. Problem Set 6

X. Fraudulent Conveyances

A. State Law

1. Pages 71-79
2. Problem Set 4 (pages 91-92) (Answer questions with regard to the Uniform Fraudulent Transfer Act and the Maryland Uniform Fraudulent Conveyance Act.)

B. Bankruptcy Law

1. Pages 471-76
2. Suppose Larry Lean is owed $400 by Oscar Owen. Lean has a security interest in Owen's LadderAll brand utility ladder that is worth $300. Assume that in a Chapter 7 bankruptcy all of Owen's unsecured claims are paid 10 cents on the dollar.
    a) Given the above facts what is the amount of Lean's unsecured and secured claims.
    b) How much should Lean receive for the unsecured and secured claims.
    c) Suppose that the trustee is able to avoid Lean's lien on the Ladder All.
        (1) What would then be the amount of Lean's unsecured and secured claims.
        (2) How much should Lean receive for the unsecured and secured claims.
3. Problem Set 22: 22.1 (assume a Chapter 7 bankruptcy), 22.2, 22.3
4. Pages 553-565
5. The following problems involve §544(b) and §548 of the Bankruptcy Code. All parties live and events take place in Maryland. Boris filed a chapter 7 bankruptcy petition on September 1, 2009.
6. On January 1, 2008, Dudley obtained a judgment against Boris for $1,000. On February 1, 2007, Boris gave his daughter Natasha his (Boris') a gold watch because Boris wanted to prevent Dudley from having the sheriff seize the property to satisfy a judgment.
    a) What is "applicable law" referred to in §544(b)(1)?
    b) Under the 'applicable law' is there a creditor that has an unsecured claim?
    c) Who is that creditor?
    d) Has the statute of limitations expired on that creditor's claim?
    e) Does that creditor have the right to avoid the transfer under the applicable law?
    f) Under §544(b)(1), may the trustee avoid the transfer?
    g) Under §548, may the trustee avoid the transfer?
    h) If the transfer of the watch had been on January 1, 2008, may the trustee avoid the transfer under §548.
7. On January 1, 2008, Dudley obtained a judgment against Boris for $1,000. On August 9, 2008, Boris gave his daughter Natasha his (Boris') gold watch. On January 1, 2009, Boris paid Dudley back. Because of the payment, Boris had no creditors. Then, on February 1, 2009, Boris borrowed $10,000 from Rocky. Boris was unable to pay Rocky back.
    a) May the trustee avoid the transfer of the gold watch under §544(b).
    b) May the trustee use §548 to avoid the transfer of Boris to Natasha.
8. On January 1, 2008, Dudley obtained a judgment against Boris for $1,000. On August 9, 2008, Boris gave his daughter Natasha his (Boris') gold watch **because Boris wanted to prevent Dudley from having the sheriff seize the property to satisfy the judgment.** However, On January 1, 2009, Boris was able to pay Dudley back. Because of

the payment, Boris had no creditors. On February 1, 2009, Boris borrowed $10,000 from Rocky. Boris was unable to pay Rocky back.

a) Could the trustee avoid the transfer under §544(b)?

b) Could the trustee avoid the transfer under §548?

9. Assume Bernard Madoff made a sizable contribution to the Madoff Foundation to Support Incarcerated Financiers, protected by §501(c)(3), shortly before filing a bankruptcy petition.

a) Could the trustee avoid the donation under §544(b)?

b) Could the trustee avoid the donation under §548?

10. Pages 574-575. PS 30: 30.1, 30.2, 30.3

XI. Eligibility

A. Casebook

1. 141-155
2. 159-164
3. PS 7: 7.1., 72.2, 7.3, 7.4
   a) Read Supp L before doing problems.
   b) For IRS standards and median income information go to the following website: http://www.justice.gov/ust/eo/bapcpa/20110315/meanstesting.htm

Supreme Court of the United States

RANSOM v. FIA CARD SERVICES

Jan. 11, 2011

Background: Unsecured creditor objected to confirmation of above-median-income Chapter 13 debtor's proposed plan as not satisfying the Bankruptcy Code's "projected disposable income" requirement. The United States Bankruptcy Court for the District of Nevada entered order sustaining creditor's objection, and debtor appealed. The Bankruptcy Appellate Panel (BAP), affirmed, and debtor appealed. The Court of Appeals for the Ninth Circuit, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Kagan, held that:

(1) a debtor who does not make loan or lease payments may not take the car-ownership deduction in calculating his projected disposable income under the means test. . . ., and

(2) the car-ownership category encompasses the costs of a car loan or lease and nothing more.

Affirmed.

Justice KAGAN delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code enables an individual to obtain a discharge of his debts if he pays his creditors a portion of his monthly income in accordance with a court-approved plan. 11 U.S.C. § 1301 *et seq.* To determine how much income the debtor is capable of paying, Chapter 13 uses a statutory formula known as the "means test." §§ 707(b)(2) (2006 ed. and Supp. III), 1325(b)(3)(A) (2006 ed.). The means test instructs a debtor to deduct specified expenses from his current monthly income. The result is his "disposable income"—the amount he has available to reimburse creditors. § 1325(b)(2).

This case concerns the specified expense for vehicle-ownership costs. We must determine whether a debtor like petitioner Jason Ransom who owns his car outright, and so does not make loan or lease payments, may claim an allowance for car-ownership costs (thereby reducing the amount he will repay creditors). We hold that the text, context, and purpose of the statutory provision at issue preclude this result. A debtor who does not make loan or lease payments may not take the car-ownership deduction.

I

A

"Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA or Act) to correct perceived abuses of the bankruptcy system." In particular, Congress adopted the means test—"[t]he heart of [BAPCPA's] consumer bankruptcy reforms," and the home of the statutory language at issue here—to

help ensure that debtors who *can* pay creditors *do* pay them.

In Chapter 13 proceedings, the means test provides a formula to calculate a debtor's disposable income, which the debtor must devote to reimbursing creditors under a court-approved plan generally lasting from three to five years. §§ 1325(b)(1)(B) and (b)(4).[FN1] The statute defines "disposable income" as "current monthly income" less "amounts reasonably necessary to be expended" for "maintenance or support," business expenditures, and certain charitable contributions. §§ 1325(b)(2)(A)(i) and (ii). For a debtor whose income is above the median for his State, the means test identifies which expenses qualify as "amounts reasonably necessary to be expended." The test supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis, which led to varying and often inconsistent determinations.

FN1. Chapter 13 borrows the means test from Chapter 7, where it is used as a screening mechanism to determine whether a Chapter 7 proceeding is appropriate. Individuals who file for bankruptcy relief under Chapter 7 liquidate their nonexempt assets, rather than dedicate their future income, to repay creditors. If the debtor's Chapter 7 petition discloses that his disposable income as calculated by the means test exceeds a certain threshold, the petition is presumptively abusive. § 707(b)(2)(A)(i). If the debtor cannot rebut the presumption, the court may dismiss the case or, with the debtor's consent, convert it into a Chapter 13 proceeding. § 707(b)(1).

Under the means test, a debtor calculating his "reasonably necessary" expenses is directed to claim allowances for defined living expenses, as well as for secured and priority debt. §§ 707(b)(2)(A)(ii)-(iv). As relevant here, the statute provides:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS] for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I).

These are the principal amounts that the debtor can claim as his reasonable living expenses and thereby shield from creditors.

The National and Local Standards referenced in this provision are tables that the IRS prepares listing standardized expense amounts for basic necessities. The IRS uses the Standards to help calculate taxpayers' ability to pay overdue taxes. See 26 U.S.C. § 7122(d)(2). The IRS also prepares supplemental guidelines known as the Collection Financial Standards, which describe how to use the tables and what the amounts listed in them mean.

The Local Standards include an allowance for transportation expenses, divided into vehicle "Ownership Costs" and vehicle "Operating Costs."[FN3] At the time Ransom filed for bankruptcy, the "Ownership Costs" table appeared as follows:

FN3. Although both components of the transportation allowance are listed in the Local Standards, only the operating-cost expense amounts vary by geography; in contrast, the IRS provides a nationwide figure for ownership costs.

	Ownership Costs	
	First Car	**Second Car**
National	$471	$332

The Collection Financial Standards explain that these ownership costs represent "nationwide figures for monthly loan or lease payments," ; the numerical amounts listed are "base[d] ... on the five-year average of new and used car financing data compiled by the Federal Reserve Board." The Collection Financial Standards further instruct that, in the tax-collection context, "[i]f a taxpayer has no car payment, ... only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense."

B

Ransom filed for Chapter 13 bankruptcy relief in July 2006. Among his liabilities, Ransom itemized over $82,500 in unsecured debt, including a claim held by respondent FIA Card Services,

Among his assets, Ransom listed a 2004 Toyota Camry, valued at $14,000, which he owns free of any debt.

For purposes of the means test, Ransom reported income of $4,248.56 per month. He also listed monthly expenses totaling $4,038.01. In determining those expenses, Ransom claimed a car-ownership deduction of $471 for the Camry, the full amount specified in the IRS's "Ownership Costs" table. Ransom listed a separate deduction of $338 for car-operating costs. Based on these figures, Ransom had disposable income of $210.55 per month.

Ransom proposed a 5–year plan that would result in repayment of approximately 25% of his unsecured debt. FIA objected to confirmation of the plan on the ground that it did not direct all of Ransom's disposable income to unsecured creditors. In particular, FIA argued that Ransom should not have claimed the car-ownership allowance because he does not make loan or lease payments on his car. FIA noted that without this allowance, Ransom's disposable income would be $681.55—the $210.55 he reported plus the $471 he deducted for vehicle ownership. The difference over the 60 months of the plan amounts to about $28,000.

C

The Bankruptcy Court denied confirmation of Ransom's plan. The court held that Ransom could deduct a vehicle-ownership expense only "if he is currently making loan or lease payments on that vehicle."

Ransom appealed to the Ninth Circuit Bankruptcy Appellate Panel, which affirmed. The panel reasoned that an "expense [amount] becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense." "[W]hat is important," the panel noted, "is the payments that debtors actually make, not how many cars they own, because [those] payments ... are what actually affect their ability to" reimburse unsecured creditors.

The United States Court of Appeals for the Ninth Circuit affirmed. The plain language of the statute, the court held, "does not allow a debtor to deduct an 'ownership cost' ... that the debtor does not have." The court observed that "[a]n 'ownership cost' is not an 'expense'—either actual or applicable—if it does not exist, period."

We granted a writ of certiorari to resolve a split of authority over whether a debtor who does not make loan or lease payments on his car may claim the deduction for vehicle-ownership costs. We now affirm the Ninth Circuit's judgment.

II

Our interpretation of the Bankruptcy Code starts "where all such inquiries must begin: with the language of the statute itself." As noted, the provision of the Code central to the decision of this case states:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the [IRS] for the area in which the debtor resides." § 707(b)(2)(A)(ii)(I).

The key word in this provision is "applicable": A debtor may claim not all, but only "applicable" expense amounts listed in the Standards. Whether Ransom may claim the $471 car-ownership deduction accordingly turns on whether that expense amount is "applicable" to him.

Because the Code does not define "applicable," we look to the ordinary meaning of the term. "Applicable" means "capable of being applied: having relevance" or "fit, suitable, or right to be applied: appropriate." Webster's Third New International Dictionary 105 (2002). So an expense amount is "applicable" within the plain meaning of the statute when it is appropriate, relevant, suitable, or fit.

What makes an expense amount "applicable" in this sense (appropriate, relevant, suitable, or fit) is most naturally understood to be its correspondence to an individual debtor's financial circumstances. Rather than authorizing all debtors to take deductions in all listed categories, Congress established a filter: A debtor may claim a deduction from a National or Local Standard table (like "[Car] Ownership Costs") if but only if that deduction is appropriate for him. And a deduction is so appropriate only if the debtor has costs corresponding to the category covered by the table—that is, only if the debtor will incur that kind of expense during the life of the plan. The statute underscores the necessity of making such an individualized determination by referring to "*the*

debtor's applicable monthly expense amounts," § 707(b)(2)(A)(ii)(I) (emphasis added)—in other words, the expense amounts applicable (appropriate, etc.) to each particular debtor. Identifying these amounts requires looking at the financial situation of the debtor and asking whether a National or Local Standard table is relevant to him.

If Congress had not wanted to separate in this way debtors who qualify for an allowance from those who do not, it could have omitted the term "applicable" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Congress presumably included "applicable" to achieve a different result. ("[W]e must give effect to every word of a statute wherever possible"). Interpreting the statute to require a threshold determination of eligibility ensures that the term "applicable" carries meaning, as each word in a statute should.

This reading of "applicable" also draws support from the statutory context. The Code initially defines a debtor's disposable income as his "current monthly income ... less amounts *reasonably necessary to be expended*." § 1325(b)(2) (emphasis added). The statute then instructs that "[a]mounts reasonably necessary to be expended ... shall be determined in accordance with" the means test. § 1325(b)(3). Because Congress intended the means test to approximate the debtor's reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. If a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not "reasonably necessary" within the meaning of the statute.[FN5]

FN5. This interpretation also avoids the anomalous result of granting preferential treatment to individuals with above-median income. Because the means test does not apply to Chapter 13 debtors whose incomes are below the median, those debtors must prove on a case-by-case basis that each claimed expense is reasonably necessary. See §§ 1325(b)(2) and (3). If a below-median-income debtor cannot take a deduction for a nonexistent expense, we doubt Congress meant to provide such an allowance to an above-median-income debtor—the very kind of debtor whose perceived abuse of the bankruptcy system inspired Congress to enact the means test.

Finally, consideration of BAPCPA's purpose strengthens our reading of the term "applicable." Congress designed the means test to measure debtors' disposable income and, in that way, "to ensure that [they] repay creditors the maximum they can afford." H.R. Rep., at 2. This purpose is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment. Requiring a debtor to incur the kind of expenses for which he claims a means-test deduction thus advances BAPCPA's objectives.

Because we conclude that a person cannot claim an allowance for vehicle-ownership costs unless he has some expense falling within that category, the question in this case becomes: What expenses does the vehicle-ownership category cover? If it covers loan and lease payments alone, Ransom does not qualify, because he has no such expense. Only if that category also covers other costs associated with having a car would Ransom be entitled to this deduction.

The less inclusive understanding is the right one: The ownership category encompasses the costs of a car loan or lease and nothing more. As noted earlier, the numerical amounts listed in the "Ownership Costs" table are "base[d] ... on the five-year average of new and used car financing data compiled by the Federal Reserve Board." In other words, the sum $471 is the average monthly payment for loans and leases nationwide; it is not intended to estimate other conceivable expenses associated with maintaining a car. The Standards do account for those additional expenses, but in a different way: They are mainly the province of the separate deduction for vehicle "Operating Costs," which include payments for "[v]ehicle insurance, ... maintenance, fuel, state and local registration, required inspection, parking fees, tolls, [and] driver's license."[IRS Manual]-A person who owns a car free and clear is entitled to claim the "Operating Costs" deduction for all these expenses of driving—and Ransom in fact did so, to the tune of $338. But such a person is not entitled to claim the "Ownership Costs" deduction, because that allowance is for the separate costs of a car loan or lease.

The Collection Financial Standards—the IRS's

explanatory guidelines to the National and Local Standards—explicitly recognize this distinction between ownership and operating costs, making clear that individuals who have a car but make no loan or lease payments may claim only the operating allowance. Although the statute does not incorporate the IRS's guidelines, courts may consult this material in interpreting the National and Local Standards; after all, the IRS uses those tables for a similar purpose—to determine how much money a delinquent taxpayer can afford to pay the Government. The guidelines of course cannot control if they are at odds with the statutory language. But here, the Collection Financial Standards' treatment of the car-ownership deduction reinforces our conclusion that, under the statute, a debtor seeking to claim this deduction must make some loan or lease payments.[FN7]

FN7. Because the dissent appears to misunderstand our use of the Collection Financial Standards, and because it may be important for future cases to be clear on this point, we emphasize again that the statute does not "incorporat[e]" or otherwise "impor[t]" the IRS's guidance. The dissent questions what possible basis except incorporation could justify our consulting the IRS's view, but we think that basis obvious: The IRS *creates* the National and Local Standards referenced in the statute, revises them as it deems necessary, and uses them every day. The agency might, therefore, have something insightful and persuasive (albeit not controlling) to say about them.

Because Ransom owns his vehicle free and clear of any encumbrance, he incurs no expense in the "Ownership Costs" category of the Local Standards. Accordingly, the car-ownership expense amount is not "applicable" to him, and the Ninth Circuit correctly denied that deduction.

III

Ransom's argument to the contrary relies on a different interpretation of the key word "applicable," an objection to our view of the scope of the "Ownership Costs" category, and a criticism of the policy implications of our approach. We do not think these claims persuasive.

A

Ransom first offers another understanding of the term "applicable." A debtor, he says, determines his "applicable" deductions by locating the box in each National or Local Standard table that corresponds to his geographic location, income, family size, or number of cars. Under this approach, a debtor "consult [s] the table[s] alone" to determine his appropriate expense amounts. Because he has one car, Ransom argues that his "applicable" allowance is the sum listed in the first column of the "Ownership Costs" table ($471); if he had a second vehicle, the amount in the second column ($332) would also be "applicable." On this approach, the word "applicable" serves a function wholly internal to the tables; rather than filtering out debtors for whom a deduction is not at all suitable, the term merely directs each debtor to the correct box (and associated dollar amount of deduction) within every table.

This alternative reading of "applicable" fails to comport with the statute's text, context, or purpose. As intimated earlier, Ransom's interpretation would render the term "applicable" superfluous. Assume Congress had omitted that word and simply authorized a deduction of "the debtor's monthly expense amounts" specified in the Standards. That language, most naturally read, would direct each debtor to locate the box in every table corresponding to his location, income, family size, or number of cars and to deduct the amount stated. In other words, the language would instruct the debtor to use the exact approach Ransom urges. The word "applicable" is not necessary to accomplish that result; it is necessary only for the different purpose of dividing debtors eligible to make use of the tables from those who are not. Further, Ransom's reading of "applicable" would sever the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for (but only for) "reasonably necessary" expenses. Expenses that are wholly fictional are not easily thought of as reasonably necessary. And finally, Ransom's interpretation would run counter to the statute's overall purpose of ensuring that debtors repay creditors to the extent they can—here, by shielding some $28,000 that he does not in fact need for loan or lease payments.

As against all this, Ransom argues that his reading is necessary to account for the means test's distinction between "applicable" and "actual" expenses—more fully stated, between the phrase "*applicable* monthly expense amounts" specified in

the Standards and the phrase "*actual* monthly expenses for ... Other Necessary Expenses." § 707(b)(2)(A)(ii)(I) (emphasis added). The latter phrase enables a debtor to deduct his actual expenses in particular categories that the IRS designates relating mainly to taxpayers' health and welfare. According to Ransom, "applicable" cannot mean the same thing as "actual." He thus concludes that "an 'applicable' expense can be claimed [under the means test] even if no 'actual' expense was incurred."

Our interpretation of the statute, however, equally avoids conflating "applicable" with "actual" costs. Although the expense amounts in the Standards apply only if the debtor incurs the relevant expense, the debtor's out-of-pocket cost may well not control the amount of the deduction. If a debtor's actual expenses exceed the amounts listed in the tables, for example, the debtor may claim an allowance only for the specified sum, rather than for his real expenditures.[FN8] For the Other Necessary Expense categories, by contrast, the debtor may deduct his actual expenses, no matter how high they are.[FN9]Our reading of the means test thus gives full effect to "the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent.'

FN8. The parties and the Solicitor General as *amicus curiae* dispute the proper deduction for a debtor who has expenses that are *lower* than the amounts listed in the Local Standards. Ransom argues that a debtor may claim the specified expense amount in full regardless of his out-of-pocket costs. The Government concurs with this view, provided (as we require) that a debtor has *some* expense relating to the deduction. FIA, relying on the IRS's practice, contends to the contrary that a debtor may claim only his actual expenditures in this circumstance. We decline to resolve this issue. Because Ransom incurs no ownership expense at all, the car-ownership allowance is not applicable to him in the first instance. Ransom is therefore not entitled to a deduction under either approach.

FN9. For the same reason, the allowance for "applicable monthly expense amounts" at issue here differs from the additional allowances that the dissent cites for the deduction of actual expenditures. See *post,* at 731 – 732 (noting allowances for "actual expenses" for care of an elderly or chronically ill household member, § 707(b)(2)(A)(ii)(II), and for home energy costs, § 707(b)(2)(A)(ii)(V)).

Finally, Ransom's reading of "applicable" may not even answer the essential question: whether a debtor may claim a deduction. "[C]onsult[ing] the table[s] alone" to determine a debtor's deduction, as Ransom urges us to do, often will not be sufficient because the tables are not self-defining. This case provides a prime example. The "Ownership Costs" table features two columns labeled "First Car" and "Second Car." Standing alone, the table does not specify whether it refers to the first and second cars *owned* (as Ransom avers), or the first and second cars for which the debtor incurs *ownership costs* (as FIA maintains)—and so the table does not resolve the issue in dispute.[FN10] See *In re Kimbro,* 389 B.R. 518, 533 (6th Cir. BAP 2008) (Fulton, J., dissenting) ("[O]ne cannot really 'just look up' dollar amounts in the tables without either referring to IRS guidelines for using the tables or imposing pre-existing assumptions about how [they] are to be navigated" (footnote omitted)). Some amount of interpretation is necessary to decide what the deduction is for and whether it is applicable to Ransom; and so we are brought back full circle to our prior analysis.

FN10. The interpretive problem is not, as the dissent suggests, "whether to claim a deduction for one car or for two," but rather whether to claim a deduction for *any* car that is owned if the debtor has no ownership costs. Indeed, if we had to decide this question on the basis of the table alone, we might well decide that a debtor who does not make loan or lease payments cannot claim an allowance. The table, after all, is titled "Ownership *Costs* "—suggesting that it applies to those debtors who incur such costs. And as noted earlier, the dollar amounts in the table represent average automobile loan and lease payments nationwide (with all other car-related expenses approximated in the separate "Operating Costs" table). Ransom himself concedes that not every debtor falls within the terms of this table; he would exclude, and thus prohibit from taking a deduction, a person who does not own a car. In like manner, the four corners of the table appear to exclude an additional group—debtors like Ransom who

own their cars free and clear and so do not make the loan or lease payments that constitute "Ownership Costs."

B

Ransom next argues that viewing the car-ownership deduction as covering no more than loan and lease payments is inconsistent with a separate sentence of the means test that provides: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." § 707(b)(2)(A)(ii)(I). The car-ownership deduction cannot comprise *only* loan and lease payments, Ransom contends, because those payments are *always* debts.

Ransom ignores that the "notwithstanding" sentence governs the full panoply of deductions under the National and Local Standards and the Other Necessary Expense categories. We hesitate to rely on that general provision to interpret the content of the car-ownership deduction because Congress did not draft the former with the latter specially in mind; any friction between the two likely reflects only a lack of attention to how an across-the-board exclusion of debt payments would correspond to a particular IRS allowance.[FN11] Further, the "notwithstanding" sentence by its terms functions only to exclude, and not to authorize, deductions. It cannot establish an allowance for non-loan or -lease ownership costs that no National or Local Standard covers. Accordingly, the "notwithstanding" sentence does nothing to alter our conclusion that the "Ownership Costs" table does not apply to a debtor whose car is not encumbered.

FN11. Because Ransom does not make payments on his car, we need not and do not resolve how the "notwithstanding" sentence affects the vehicle-ownership deduction when a debtor has a loan or lease expense.

C

Ransom finally contends that his view of the means test is necessary to avoid senseless results not intended by Congress. At the outset, we note that the policy concerns Ransom emphasizes pale beside one his reading creates: His interpretation, as we have explained, would frustrate BAPCPA's core purpose of ensuring that debtors devote their full disposable income to repaying creditors. We nonetheless address each of Ransom's policy arguments in turn.

Ransom first points out a troubling anomaly: Under our interpretation, "[d]ebtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment." Indeed, a debtor with only a single car payment remaining, Ransom notes, is eligible to claim a monthly ownership deduction.

But this kind of oddity is the inevitable result of a standardized formula like the means test, even more under Ransom's reading than under ours. Such formulas are by their nature over- and under-inclusive. In eliminating the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses, on the ground that it leant itself to abuse, Congress chose to tolerate the occasional peculiarity that a brighter-line test produces. And Ransom's alternative reading of the statute would spawn its own anomalies—even placing to one side the fundamental strangeness of giving a debtor an allowance for loan or lease payments when he has not a penny of loan or lease costs. On Ransom's view, for example, a debtor entering bankruptcy might purchase for a song a junkyard car—"an old, rusted pile of scrap metal [that would] si[t] on cinder blocks in his backyard," —in order to deduct the $471 car-ownership expense and reduce his payment to creditors by that amount. We do not see why Congress would have preferred that result to the one that worries Ransom. That is especially so because creditors may well be able to remedy Ransom's "one payment left" problem. If car payments cease during the life of the plan, just as if other financial circumstances change, an unsecured creditor may move to modify the plan to increase the amount the debtor must repay.

Ransom next contends that denying the ownership allowance to debtors in his position "sends entirely the wrong message, namely, that it is advantageous to be deeply in debt on motor vehicle loans, rather than to pay them off." But the choice here is not between thrifty savers and profligate borrowers, as Ransom would have it. Money is fungible: The $14,000 that Ransom spent to purchase his Camry outright was money he did not devote to paying down his credit card debt, and Congress did not express a preference for one use of these funds over the other. Further, Ransom's

argument mistakes what the deductions in the means test are meant to accomplish. Rather than effecting any broad federal policy as to saving or borrowing, the deductions serve merely to ensure that debtors in bankruptcy can afford essential items. The car-ownership allowance thus safeguards a debtor's ability to retain a car throughout the plan period. If the debtor already owns a car outright, he has no need for this protection.

Ransom finally argues that a debtor who owns his car free and clear may need to replace it during the life of the plan; "[g]ranting the ownership cost deduction to a vehicle that is owned outright," he states, "accords best with economic reality." In essence, Ransom seeks an emergency cushion for car owners. But nothing in the statute authorizes such a cushion, which all debtors presumably would like in the event some unexpected need arises. And a person who enters bankruptcy without any car at all may also have to buy one during the plan period; yet Ransom concedes that a person in this position cannot claim the ownership deduction. The appropriate way to account for unanticipated expenses like a new vehicle purchase is not to distort the scope of a deduction, but to use the method that the Code provides for all Chapter 13 debtors (and their creditors): modification of the plan in light of changed circumstances. See § 1329(a)(1);

IV

Based on BAPCPA's text, context, and purpose, we hold that the Local Standard expense amount for transportation "Ownership Costs" is not "applicable" to a debtor who will not incur any such costs during his bankruptcy plan. Because the "Ownership Costs" category covers only loan and lease payments and because Ransom owns his car free from any debt or obligation, he may not claim the allowance. In short, Ransom may not deduct loan or lease expenses when he does not have any. We therefore affirm the judgment of the Ninth Circuit.

It is so ordered.

Justice SCALIA, dissenting.

I would reverse the judgment of the Ninth Circuit. I agree with the conclusion of the three other Courts of Appeals to address the question: that a debtor who owns a car free and clear is entitled to the car-ownership allowance.

The statutory text at issue is the phrase enacted in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), "applicable monthly expense amounts specified under the National Standards and Local Standards," 11 U.S.C. § 707(b)(2)(A)(ii)(I). The Court holds that the word "applicable" in this provision imports into the Local Standards a directive in the Internal Revenue Service's Collection Financial Standards, which have as their stated purpose "to help determine a taxpayer's ability to pay a delinquent tax liability," App. to Brief for Respondent 1a. That directive says that "[i]f a taxpayer has no car payment," the Ownership Cost provisions of the Local Standards will not apply.

That directive forms no part of the Local Standards to which the statute refers; and the fact that portions of the Local Standards are to be disregarded for revenue-collection purposes says nothing about whether they are to be disregarded for purposes of Chapter 13 of the Bankruptcy Code. The Court believes, however, that unless the IRS's Collection Financial Standards are imported into the Local Standards, the word "applicable" would do no work, violating the principle that " 'we must give effect to every word of a statute wherever possible.' " I disagree. The canon against superfluity is not a canon against verbosity. When a thought could have been expressed more concisely, one does not always have to cast about for some additional meaning to the word or phrase that could have been dispensed with. This has always been understood. A House of Lords opinion holds, for example, that in the phrase " 'in addition to and not in derogation of' " the last part adds nothing but emphasis.

It seems to me that is the situation here. To be sure, one can say "according to the attached table"; but it is acceptable (and indeed I think more common) to say "according to the applicable provisions of the attached table." That seems to me the fairest reading of "applicable monthly expense amounts specified under the National Standards and Local Standards." That is especially so for the Ownership Costs portion of the Local Standards, which had no column titled "No Car." Here the expense amount would be that shown for one car (which is all the debtor here owned) rather than that shown for two cars; and it would be no expense amount if the debtor owned no car, since there is no

"applicable" provision for that on the table. For operating and public transportation costs, the "applicable" amount would similarly be the amount provided by the Local Standards for the geographic region in which the debtor resides. (The debtor would not first be required to prove that he actually operates the cars that he owns, or, if does not own a car, that he actually uses public transportation.) The Court claims that the tables "are not self-defining," and that "[s]ome amount of interpretation" is necessary in choosing whether to claim a deduction at all, for one car, or for two. But this problem seems to me more metaphysical than practical. The point of the statutory language is to entitle debtors who own cars to an ownership deduction, and I have little doubt that debtors will be able to choose correctly whether to claim a deduction for one car or for two.

If the meaning attributed to the word by the Court were intended, it would have been most precise to say "monthly expense amounts specified under the National Standards and Local Standards, if applicable for IRS collection purposes." And even if utter precision was too much to expect, it would at least have been more natural to say "monthly expense amounts specified under the National Standards and Local Standards, *if applicable*." That would make it clear that amounts specified under those Standards may nonetheless not be applicable, justifying (perhaps) resort to some source other than the Standards themselves to give meaning to the condition. The very next paragraph of the Bankruptcy Code uses that formulation ("if applicable") to limit to actual expenses the deduction for care of an elderly or chronically ill household member: "[T]he debtor's monthly expenses may include, *if applicable,* the continuation of actual expenses paid by the debtor that are reasonable and necessary" for that purpose. 11 U.S.C. § 707(b)(2)(A)(ii)(II) (emphasis added).

Elsewhere as well, the Code makes it very clear when prescribed deductions are limited to actual expenditures. ***732**Section 707(b)(2)(A)(ii)(I) itself authorizes deductions for a host of expenses—health and disability insurance, for example—only to the extent that they are "actual ... expenses" that are "reasonably necessary." Additional deductions for energy are allowed, but again only if they are "actual expenses" that are "reasonable and necessary." § 707(b)(2)(A)(ii)(V). Given the clarity of those limitations to actual outlays, it seems strange for Congress to limit the car-ownership deduction to the somewhat peculiar category "cars subject to any amount whatever of outstanding indebtedness" by the mere word "applicable," meant as incorporation of a limitation that appears in instructions to IRS agents.[FN*]

FN* The Court protests that I misunderstand its use of the Collection Financial Standards. Its opinion does not, it says, find them to be incorporated by the Bankruptcy Code; they simply "reinforc[e] our conclusion that ... a debtor seeking to claim this deduction must make some loan or lease payments." True enough, the opinion says that the Bankruptcy Code "does not incorporate the IRS's guidelines," but it immediately continues that "courts may consult this material in interpreting the National and Local Standards" so long as it is not "at odds with the statutory language." In the present context, the real-world difference between finding the guidelines incorporated and finding it appropriate to consult them escapes me, since I can imagine no basis for consulting them unless Congress meant them to be consulted, which would mean they are incorporated. And without incorporation, they *are* at odds with the statutory language, which otherwise contains no hint that eligibility for a Car Ownership deduction requires anything other than ownership of a car.

I do not find the normal meaning of the text undermined by the fact that it produces a situation in which a debtor who owes no payments on his car nonetheless gets the operating-expense allowance. For the Court's more strained interpretation still produces a situation in which a debtor who owes only a single remaining payment on his car gets the full allowance. As for the Court's imagined horrible in which "a debtor entering bankruptcy might purchase for a song a junkyard car." That is fairly matched by the imagined horrible that, under the Court's scheme, a debtor entering bankruptcy might purchase a junkyard car for a song plus a $10 promissory note payable over several years. He would get the full ownership expense deduction.

Thus, the Court's interpretation does not, as promised, maintain "the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for

(but only for) 'reasonably necessary' expenses." Nor do I think this difficulty is eliminated by the *deus ex machina* of 11 U.S.C. § 1329(a)(1), which according to the Court would allow an unsecured creditor to "move to modify the plan to increase the amount the debtor must repay." Apart from the fact that, as a practical matter, the sums involved would hardly make this worth the legal costs, allowing such ongoing revisions of matters specifically covered by the rigid means test would return us to "the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses." If the BAPCPA had thought such adjustments necessary, surely it would have taken the much simpler and more logical step of providing going in that the ownership expense allowance would apply only so long as monthly payments were due.

The reality is, to describe it in the Court's own terms, that occasional overallowance (or, for that matter, underallowance) "is the inevitable result of a standardized formula like the means test.... Congress chose to tolerate the occasional peculiarity that a brighter-line test produces." Our job, it seems to me, is not to eliminate or reduce those "oddit [ies]," *ibid*., but to give the formula Congress adopted its fairest meaning. In my judgment the "applicable monthly expense amounts" for operating costs "specified under the ... Local Standards," are the amounts specified in those Standards for either one car or two cars, whichever of those is applicable.

Bankruptcy B 22A (Official Form 22A) (Chapter 7) (12/10)

In re _____
Debtor(s)

Case Number:
_____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI):

[ ] **The presumption arises.**

[ ] **The presumption does not arise.**

[ ] **The presumption is temporarily inapplicable.**

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

1A [ ] **Declaration of Disabled Veteran.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).

Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

1B **[ ] Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.**

1C [ ] **Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard.

a. [ ] I was called to active duty after September 11, 2001, for a period of at least 90 days and

[ ] I remain on active duty /or/

[ ] I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;

OR

b. [ ] I am performing homeland defense activity for a period of at least 90 days /or/

[ ] I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.

a. [ ] Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.**

b. [ ] Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.**

2 c. [ ] Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A (" Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**

d. [ ] Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**

	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		**Column A Debtor's Income**	**Column B Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**		$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part B.**			
	a. Gross receipts	$		
	b. Ordinary and necessary business expenses	$		
	c. Business income	Subtract Line b from a	$	$
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.**			
	a. Gross receipts	$		
	b. Ordinary and necessary operating expenses	$		
	c. Rent and other real property income	Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**		$	$
7	**Pension and retirement income.**		$	$
8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.		$	$
9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in			

Column A or B, but instead state the amount in the space below:

Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor $ _____	Spouse $ _____	$	$

10 **Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. **Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance.** Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.

a.	$		
b.	$		
Total and enter on Line 10		$	$

11 **Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through10 in Column B. Enter the total(s). $ $

12 **Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A. $

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13 **Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result. $

14 **Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)

a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____ $

Application of Section 707(b)(7). Check the applicable box and proceed as directed.

15 [ ] **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII.

[ ] **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16 **Enter the amount from Line 12.** $

17 **Marital adjustment.** If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero.

a.	$	
b.	$	
c.	$	
Total and enter on Line 17.		$

18 **Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result. $

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A **National Standards: food, clothing and other items.** Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. $

19B **National Standards: health care.** Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-

Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.

	Persons under 65 years of age		**Persons 65 years of age or older**	
a1.	Allowance per person	a2.	Allowance per person	
b1.	Number of persons	b2.	Number of persons	
c1.	Subtotal	c2.	Subtotal	$

20A **Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. $

20B **Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.**

a.	IRS Housing and Utilities Standards; mortgage/rental expense	$	
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	$	
c.	Net mortgage/rental expense	Subtract Line b from Line a.	$

21 **Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:

_____

_____

_____ $

22A **Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. $

[ ] 0 [ ] 1 [ ] 2 or more.If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)

22B **Local Standards: transportation; additional public transportation expense.** If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) $

23 **Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/ lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) [ ] 1 [ ] 2 or more .Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.**

	a.	IRS Transportation Standards, Ownership Costs	$	
	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	$	
	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	$

24 **Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23.Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.**

	a.	IRS Transportation Standards, Ownership Costs	$	
	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	$	
	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	$

25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$
26	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as voluntary 401(k) contributions.**	$
27	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare--such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service-- such as pagers, call waiting, caller ID, special long distance, or internet service--to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 19-32

Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.

	a.	Health Insurance	$	
34	b.	Disability Insurance	$	
	c.	Health Savings Account	$	
	Total and enter on Line 34			$

If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below:

$ _____

35	**Continued contributions to the care of household or family members.** Enter the total average actual monthly expenses that you wil continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$
36	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.**	$
38	**Education expenses for dependent children less than 18.** Enter the total average monthly expenses that you actually incur, not to exceed $147.92 [FN*] per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
39	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary**.	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1) - (2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40.	$

Subpart C: Deductions for Debt Payment

Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.

42	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
	a.		$	[ ] yes [ ] no
	b.		$	[ ] yes [ ] no
	c.		$	[ ] yes [ ] no
			Total: Add Lines a, b and c.	$

Other payments on secured claims. If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

43	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
	a.		$

b.	$		
c.	$		
	Total: Add Lines a, b and c		$

44	**Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. **Do not include current obligations, such as those set out in Line 28.**		$
	Chapter 13 administrative expenses. If you are eligible to file a case under chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.		
	a. Projected average monthly chapter 13 plan payment.	$	
45	b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	
	c. Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b	$
46	**Total Deductions for Debt Payment.** Enter the total of Lines 42 through 45.		$

Subpart D: Total Deductions from Income

47	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 33, 41, and 46.	$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	**Enter the amount from Line 18 (Current monthly income for § 707(b)(2)).**	$
49	**Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2)).**	$
50	**Monthly disposable income under § 707(b)(2).** Subtract Line 49 from Line 48 and enter the result.	$
51	**60-month disposable income under § 707(b)(2).** Multiply the amount in Line 50 by the number 60 and enter the result.	$

Initial presumption determination. Check the applicable box and proceed as directed.

[ ] **The amount on Line 51 is less than $7,025**. [FN*] Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.

52 [ ] **The amount set forth on Line 51 is more than $11,725**. [FN*] Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.

[ ] **The amount on Line 51 is at least $7,025, [FN*] but not more than $11, 725**. [FN*] Complete the remainder of Part VI (Lines 53 through 55).

53	**Enter the amount of your total non-priority unsecured debt**	$
54	**Threshold debt payment amount.** Multiply the amount in Line 53 by the number 0.25 and enter the result.	$

Secondary presumption determination. Check the applicable box and proceed as directed.

55 [ ] **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.

[ ] **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$

c.	$
Total: Add Lines a, b and c	$

XII. Discharge

A. Casebook

1. 229-258
2. Problem Set 12
   a) Problem 1
      (1) Be sure to answer all three questions.
      (2) Suppose Mr. Loyman had been a successful physician until a year prior to filing the bankruptcy? Are there additional facts necessary and why?
   b) Problem 2
   c) Problem 3
   d) Problem 4
   e) Problem 5:
      (1) In addition to the charges listed in the problem, the Lujans obtained cash advances from FirstBank MasterCard ($600) and SecondBank Visa ($500). Instead of the question in the problem answer the following questions:
      (2) Prior to the charges indicated in the second paragraph of the problem Maria was told that she would get her old job back and that her income would be increased. Would the credit card debts be nondischargeable under §523(a) (2) (A)? §523(a) (2) (B)?
      (3) Prior to the charges indicated in the second paragraph of the problem Maria developed a serious physical disability and was told she would not be able to work for several years. At the same time Reynaldo lost his job. Would the credit card debts be dischargeable under §523(a) (2) (A)? §523(a) (2) (B)?
      (4) When applying for her credit cards Renaldo gave the following information. Would any of the items be grounds for nondischargeability under §523(a) (2) (a)? §523(s)(2)(B)

      (a) He was a professional dancer when in fact he was a prostitute/

      (b) He was President of the United States.

      (c) He earned $400,000 a year when in fact he earned only $40,000 a year.

      (d) He promised to repay the debts according to the terms of the credit plan. In fact he was crossing his fingers when signing the agreement. He never intended to pay back any of the money he borrowed.
   f) Problem 6
3. Pamela Pen telephoned N Bank to apply for a line of credit and a credit card. During the ensuing conversation, the N Bank loan representative asked questions about Pen's financial condition, the name of her employer, her title, and salary. Pen orally responded to all of these questions, and as the answers were given, the loan representative entered the information into a loan application form on her computer screen. The loan representative then read the figures back to Pen who orally verified their accuracy. Pen neither saw nor signed the application form entered into the computer. N Bank issued her a MasterCard. Sometime later, Pen filed a petition for relief under Chapter 7 of the Bankruptcy Code seeking to discharge the debt to N Bank as

well as debts owed to other creditors. Claiming the information supplied was fraudulently rendered, N Bank filed an adversary proceeding to have its debt declared nondischargeable. Discuss.

4. ???????Suppose in Problem 5, Pen had entered the information on the internet from her home computer?

5. Discuss whether the following student loans are dischargeable.

a) Ed has a student loan debt of $24,000. Ed has an undergraduate degree in physics and a graduate degree in science education. He is unemployed, suffers from post-traumatic stress disorder resulting from his service in Iraq, and has a daughter from a prior marriage he is required to support. Ed's wife makes $12,000 a year but he claims he cannot rely on that income for support since the marriage is troubled. Ed received $220 a month from the Veterans Administration for a 30% disability due to the post-traumatic stress disorder. Ed's psychiatrist testified that Ed might improve within a year. Discuss whether Ed's student loan is dischargeable

b) Sheila has student loans of approximately $69,000 incurred to finance medical school tuition. Sheila is married with 2 children, aged 2 and 4 years old. Since dismissal from medical school for academic failure, Sheila has worked in a small town as a chimney sweep, a bartender, a satellite dish salesperson, with an average income of only $2,000 per year. Sheila received a disability check from the government for a psoriasis problem that developed while she was in the Army. Currently she operates a tire business which is losing money and is pessimistic as to whether there would be any substantial increase in her income in the near future. Sheila's husband works for the police department earning approximately $7,000 a year and the family is in good health.

6. Clara filed for Chapter 7 Bankruptcy and received her discharge. None of her creditors objected to her discharge. Several months later, the following creditors asked the court to deny her discharge for the following debts. What result? (Indicate where more facts are needed and why.)

a) Edubank for
   (1) Student loans.
   (2) Credit card debts
b) Dr. Needle for medical treatment.
c) Clara's ex-husband for
   (1) unpaid alimony
   (2) Property settlement payments.
d) Maryland for
   (1) Unpaid taxes.
   (2) Parking fines
e) Myron Meek for injuries suffered when Clara
   (1) Hit him over the head with a Whiskey bottle.
   (2) accidentally ran over him in the parking lot of the bar
f) Clara's son for using money in his trust fund to pay for her clothes.

7. Clara filed a Chapter 13 petition and satisfactorily completed payments on her plan. Which of the above debts are non dischargeable in Chapter 13? See §1328(a). (Indicate where more facts are needed and why.)

8. PROBLEM SET 13 13.7

9. Simon works for the United States Good People Administration, an agency of the Federal Government. Simon filed a Chapter 7 Bankruptcy petition. After receiving his discharge, Simon was called into the office of Director Nice and told that Rush Limbaugh had complained that many of the employees of the Good People Administration were not good at all and had, in fact, filed Bankruptcy to stiff their creditors. Director Nice fired Simon. Can he do that?

XIII. Claims & Distributions

A. Instructions

1. Read 212-228
2. Do these problems ????????????
3. Then do Problem Sets 10 & 11

B. SECURED CLAIMS

1. Owen has borrowed $5,000 from Lenny. Owen has given Lenny a security interest in his robot which Owen calls Myron. Owen has filed a Chapter 7 bankruptcy. Assume Owen's unsecured claims will be paid at a rate of 10% in the bankruptcy distribution. Using ONLY §506(a)(1), complete the following chart.

	VALUE OF MYRON	(A) LENNY'S ALLOWED SECURED CLAIM	(B) LENNY'S ALLOWED UNSECURED CLAIM	(C) AMOUNT LENNY WILL RECEIVE FOR THE UNSECURED CLAIM	(D) AMOUNT LENNY WILL RECEIVE FOR THE SECURED CLAIM
(1)	$1,000				
(2)	4,000				
(3)	6,000				
(4)	7,000				

2. Owen has borrowed $5,000 from Lenny at 120% interest. Owen has given Lenny a security interest in his robot which Owen calls Myron. Owen files a Chapter 7 bankruptcy on 2/15/2011. Assume Owen's unsecured claims will be paid at a rate of 10% in the bankruptcy distribution. Myron is worth $5000,using ONLY §506 and , §502(a)(2,) complete the following chart.

	DATE	EVENT	(E) LENNY'S ALLOWED SECURED CLAIM	(F) LENNY'S UNSECURED CLAIM
	1/1/2011	$500 interest accrues		
	2/1/2011	$500 interest accrues		
(5)	2/15/2011	BANKRUPTCY		
(6)	3/1/2011	$500 interest accrues		
(7)	4/1/2011	$500 interest accrues		
(8)	5/1/2011	$500 interest accrues		
(9)	6//1/2011	Lenny's lawyer does work billable at $600.		

C. ALLOWED UNSECURED CLAIMS

1. Debtor filed bankruptcy on July 1, 2011. Using section 502 indicate the amount of the allowed unsecured claim.

		(G)
(10)	Debtor borrowed $1,000 from A, Debtor's brother. On 1/1/2011. The contract provides for no interest.	
(11)	Debtor fulfilled contract with B to murder C for $10,000.	
(12)	Debtor borrowed $5,000 from E on January 1, 2010. The contract provides for interest at the rate of 10% per month. Assume that means $500 per month.	
(13)	Debtor bought a Timex computer from F for $500 on 1/1/2000 and has not yet	

	paid for the computer.			

2. Ditribution How much will each creditor get in a Chapter 7 Bankruptcy distribution filed on 2/16/2011. Use §§ 507 & 726.

			(H)	(I)
	The Bankruptcy estate has this amount for distribution for allowed unsecured claims.		**$1,060**	**$2,000**
(14)	The trustee has had expenses protecting the property of the estate.	$1,000		
(15)	The debtor did not pay worker W1 for work done on 2/1/2011.	$100		
(16)	The debtor did not pay worker W2 for work done on 2/15/2011	$200		
(17)	The debtor did not pay worker W3 for work done on 2/1/2009	$1,000		
(18)	The debtor has not paid his bill to the Shop & Shop grocery story for groceries bought on 3/1/2009	$400		

XIV. Reaffirmation/Redemption

1. 258-270
2. Problem Set 13: 13.6, 13.7

XV. Chapter 13

1. 275-301
2. Problem Set 14
3. 301-306
4. 307-324
5. Problem Set 15 (except 15.6)
6. Modificataion: 15.6

	MONTHS						YEARS						
	1	**2**	**4**	**5**	**6**	**1**	**2**	**3**	**5**	**10**	**15**	**20**	**30**
APR													
2%	$100.17	50.13	25.10	20.10	16.76	8.42	4.25	2.86	1.75	0.92	0.64		0.37
3%	$100.25	50.19	25.16	20.15	16.81	8.47	4.30	2.91	1.80	0.97	0.69		0.42
5%	$100.42	50.31	25.26	20.25	16.91	8.56	4.39	3.00	1.89	1.06	0.79		0.54
6%	$100.50	50.38	25.31	20.30	16.96	8.61	4.43	3.04	1.93	1.11	0.84		0.60
7%	$100.58	50.44	25.37	20.35	17.01	8.65	4.48	3.09	1.98	1.16	0.90		0.67
8%	$100.67	50.50	25.42	20.40	17.06	8.70	4.52	3.13	2.03	1.21	0.96	**.84**	0.73
9%	$100.75	50.56	25.47	20.45	17.11	8.75	4.57	3.18	2.08	1.27	1.01	**.90**	0.80
9.59										**1.3**		**.94**	**.85**
10%	$100.83	50.63	25.52	20.50	17.16	8.79	4.61	3.23	2.12	1.32	1.07	**.97**	0.88
11%	$100.92	50.69	25.58	20.55	17.21	8.84	4.66	3.27	2.17	1.38	1.14		0.95
12%	$101.00	50.75	25.63	20.60	17.25	8.88	4.71	3.32	2.22	1.43	1.20		1.03
13%	$101.08	50.81	25.68	20.65	17.30	8.93	4.75	3.37	2.28	1.49	1.27		1.11

14%	$101.17	50.88	25.73	20.71	17.35	8.98	4.80	3.42	2.33	1.55	1.33		1.18
15%	$101.25	50.94	25.79	20.76	17.40	9.03	4.85	3.47	2.38	1.61	1.40		1.26
20%	$101.67	51.25	26.05	21.01	17.65	9.26	5.09	3.72	2.65	1.93	1.76		1.67
25%	$102.08	51.57	26.32	21.27	17.90	9.50	5.34	3.98	2.94	2.27	2.14		2.08
30%	$102.50	51.88	26.58	21.52	18.15	9.75	5.59	4.25	3.24	2.64	2.53		2.50
48%	104	53.02	27.55	22.46	19.08	10.66	6.56	5.29	4.42	4.04	4.00		4.00

XVI. Preferences

1. This is designed to walk you through §547, the preference provision of the Bankruptcy Code. Essentially, this provision attempts to reverse a particular type of conveyance that may not be fraudulent in terms of the UFTA, but that also defeats the purpose of Bankruptcy by favoring some creditors above others. The basic scenario is this: Debtor owes many debts and knows he will be in the bankruptcy. Therefore, he pays off some creditors before filing.

2. For example, if Debtor owes creditors $1,000,000 and has $10,000 in assets, each creditor will get paid 10% of their claim. One of Debtor's creditors is Knuckles Kaboon. Debtor owes Kaboon $5,000. Fearing what might happen to him if he does not pay Kaboon in full, Debtor pays Kaboon in full $5,000. If Debtor hadn't done this Kaboon, would have obtained only $500 in the bankruptcy distribution. However, Kaboon got $5,000. In addition, there is now only $5,000 in assets for the other creditors with claims of $995,000. Thus, now each creditor will get only about 5% of their claims. It doesn't seem fair that Kaboon gets so much more (percentage wise) than the other creditors.

3. Therefore, bankruptcy law considers that payment a preference. Kaboon has to give the money back, get in line like everybody else, and get his measly 10%. Section 547 of the code provides for the avoidance of preferences. Below are the relevant provisions of §547 with notes indicating the application of the facts.

§ 547. Preferences

(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property--	←Giving Kaboon the money was a transfer of property.
(1) to or for the benefit of a creditor;	←It was to the benefit of Kaboon
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;	←It was on account of an antecedent debt. Kaboon was owed the money before the transfer was made.
(3) made while the debtor was insolvent;	← [see presumption in §547(f)]
(4) made--	
(A) on or within 90 days before the date of the filing of the petition; or	←This transfer was made within 90 days.
B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and	
(5) that enables such creditor to receive more than such creditor would receive if--	←This transfer enabled Kaboon to receive $500.
(A) the case were a case under chapter 7 of this title;	.
(B) the transfer had not been made; and	
(C) such creditor received payment of such debt to the extent provided by the provisions of this title.	←In a Chapter 7 case, Kaboon would have received $500. Therefore, the transfer enabled Kaboon to receive more than he would have received in the Chapter 7 distribution.

4. Problem

Debtor filed a Bankruptcy petition on June 1. On that day, Debtor had the following debts and property.

Nonexempt Property		Debts	
Cash	$100,000	Bank A	$10,000
		Store B	40,000
		Neighbor N	50,000
		Florist F	$100,000

Alternative I On May 1, Debtor pays Neighbor $50,000.

1. What percent of their claims would each creditor have received if the transfer had not been made? _____
2. Therefore, how much would Neighbor have received if the transfer had not been made? _____
3. As a result of the transfer, did Neighbor receive more that he would have received had the transfer not been made? _____

Alternative II On May 1, Debtor pays Neighbor $30,000 of Neighbor's claim. Debtor now only owes Neighbor $20,000

4. What percent of their claims would each creditor have received if the transfer had not been made? _____
5. Therefore, how much would Neighbor have received if the transfer had not been made? _____
6. After the transfer was made, what percentage of each remaining claim would be paid _____
7. As a result of the transfer, how much will Neighbor receive? (i.e., combine the amount Neighbor received before bankruptcy and the amount Neighbor will receive after bankruptcy) _____
8. As a result of the transfer, did Neighbor receive more that he would have received had the transfer not been made? _____

5. Problem

Debtor filed a Bankruptcy petition on June 1. On that day, Debtor had the following debts and property.

Nonexempt Property		Debts		
Household Goods	$ 40,000	Bank A	$ 10,000	A has a security interest in BMW
Stamp Collection	$ 10,000	Store B	$ 40,000	
BMW	$ 30,000	Neighbor N	$ 50,000	N has a security interest in the stamp collection
Log Cabin	$ 10,000	Florist F	$ 100,000	
Cash 10	$10,000			

9. Bank A has a $_____ unsecured claim and a secured claim and a $_____
10. Neighbor has a $_____unsecured claim and a secured claim and a $_____

Alternative III On May 1, Debtor pays Neighbor $10,000. Now how much will each creditor get?

13. What percent of their unsecured claims would each creditor have received if the transfer had not been made? _____
14. Therefore, how much would Neighbor have received if the transfer had not been made? (Total secured claim and unsecured claim) _____
15. After the transfer was made, what percentage of each remaining unsecured claim would be paid _____
16. As a result of the transfer, how much will Neighbor receive? (i.e., combine the amount Neighbor received before bankruptcy and the amount Neighbor will receive after bankruptcy) _____
17. As a result of the transfer, did Neighbor receive more than he would have received had the transfer not been made? _____

Alternative IV On May 1, Debtor pays Bank A $10,000 of A's claim.

18. What percent of unsecured claims paid if no transfer? _____
19. How much would A receive if no transfer? _____
20. After transfer what percent of unsecured claims paid? _____
21. As a result of the transfer, how much will A receive? _____
22. Did A receive more than if transfer not made? _____

Alternative V On May 1, Debtor grants F a security interest in his Household Goods. Note the definition of *transfer*.

18. What percent of unsecured claims paid if no transfer? _____
19. How much would F receive if no transfer? _____
20. After transfer what percent of unsecured claims paid? _____
21. As a result of the transfer, how much will F receive? _____
22. Did F receive more than if transfer not made? _____

6. These problems involve §547 (c)(1), (2), (7), (8), (9)

7. Debtor purchases heating oil from Carbona. Carbona's invoices state that bills must be paid within 5 days of delivery. Unfortunately Debtor has been unable to pay the heating bills promptly and has paid each bill for the last 5 months 28 days after delivery.

Delivery	**Amount**	**Payment**
11/01/09	$1,000	11/28/09
12/01/09	$600	12/28/09
1/01/09	$400	1/28/09
2/01/09	$400	2/28/09
3/01/09	$800	
3/15/09	**Bankruptcy Petition Filed**	

Can the trustee recover the payments to Carbona as preferences?

8. Debtor went to Lawyer and engaged her services to file his bankruptcy petition, agreeing to pay her $800 for handling his case. She insisted on payment up front, and he told her he could borrow that amount from his brother and have it in her hands the next day. That same day the two of them sat in her office and filled out the schedules using the computer program she had devised for this purpose, though he was missing certain records that he had failed to bring with him. The next day he brought in those records, along with a check for $800, and she finished filling out his schedules. The petition was filed later that afternoon, immediately after she had cashed his check. On learning this, Lawyer's trustee in bankruptcy wanted Angelina to cough up the $800, on the theory that she had received a preference. Is the trustee right?

9. A week before filing the petition Debtor paid his ex-wife the amount he owed on their divorce court order.

XVII. Professional Responsibility

A. Code

1. §§101(12A), 110, 521(a), 526, 527,528, 707(a)(4)&(5)
2. Bankruptcy Rule: 9011