

# Mastering Bankruptcy

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# Mastering Bankruptcy

**George W. Kuney**

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CLAYTON CENTER FOR ENTREPRENEURIAL LAW  
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# Series Editor's Foreword

The Carolina Academic Press Mastering Series is designed to provide you with a tool that will enable you to easily and efficiently “master” the substance and content of law school courses. Throughout the series, the focus is on quality writing that makes legal concepts understandable. As a result, the series is designed to be easy to read and is not unduly cluttered with footnotes or cites to secondary sources.

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We hope that you will enjoy studying with, and learning from, the Mastering Series.

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# Introduction

Bankruptcy law is fascinating. It is perhaps the last generalist field of law in that it encompasses virtually all other fields of law. The bankruptcy system processes all of America's business-related problems not solved by other social institutions, from personal over-indebtedness to mass tort liability, investment frauds to real estate market meltdowns, and even municipal insolvencies. These issues and many others are finally administered within the structure of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (FRBP).

In addition to the Bankruptcy Code and FRBP, the bankruptcy bench and federal judiciary in general play a robust role in the development of bankruptcy law—especially when the system is faced with unclear statutory language or factual contexts that appear inconsistent with the intent of Congress. For example, Bankruptcy Judge A. Jay Cristol in *In re Petit-Louis*, 338 B.R. 132 (Bankr. S.D. Fla. 2006) (*Petit-Louis I*), held that the § 109(h) credit counseling requirement—a product of the then-recent Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) amendments to the Code—cannot be imposed on a debtor with limited English-speaking ability in a jurisdiction with no approved counselors who speak the debtor's language. Judge Cristol concluded that the debtor's inability to obtain counseling in Creole, combined with the fact that he could not afford to hire a translator, created a barrier to the bankruptcy court that Congress did not intend to create when it mandated that debtors complete a credit counseling course before filing.

Each of the ninety-four federal judicial districts handles bankruptcy matters, and in almost all instances bankruptcy cases are filed and concluded in bankruptcy court rather than district court, although the district court may “withdraw the reference,” requiring the case to proceed in district court. Bankruptcy cases cannot be filed in state court.

Bankruptcy helps people who can no longer pay their creditors get a fresh start by liquidating non-exempt assets to pay their debts or by creating a repayment plan. Bankruptcy laws also protect troubled businesses and provide for orderly distributions to business creditors through reorganization or liquidation. These matters are covered under Title 11 of the United States Code, the Bankruptcy Code. The vast majority of bankruptcy cases are filed under three chapters of

the Bankruptcy Code: Chapter 7 (liquidation), Chapter 11 (reorganization), and Chapter 13 (individual rehabilitation). Cases can also be filed under Chapter 9, which addresses the restructuring needs of political subdivisions, public agencies, or instrumentalities of a state, and Chapter 12, a parallel scheme to that of Chapter 13 designed for family farmers and fishermen, whose debt and capital intensive business models often render them ineligible for Chapter 13 relief.

Often unexpectedly, the bankruptcy court addresses pressing social, commercial, and consumer disputes and controversies. Bankruptcy court is the forum of last resort for many, beginning a journey that may end in the true Court of last resort, the United States Supreme Court, which usually takes one or two bankruptcy cases per year. The steady issuance of important bankruptcy decisions by the circuit courts of appeal and the Supreme Court demonstrates bankruptcy's importance in United States law. Could there be a better set of reasons why you, as a law student or attorney, should seek to master bankruptcy?

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