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Book Review

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Debtor-Creditor Relations. By David G. Epstein. St. Paul: West Publishing Co., 1973. Pp. xxxii, 525.

Law teachers invariably welcome the arrival of a new casebook. There is something exciting (even exhilarating) about opening the new text and examining its contents, and for the busy teacher, the perusal provides a welcome and necessary opportunity for reflection about the course itself, and even the process of law teaching. It was in this spirit that teachers of creditors' rights welcomed Professor David G. Epstein's recent casebook on Debtor-Creditor Relations.[1] Actually, the casebook did not come in isolation, but as part of a package of teaching materials which also included a comprehensive teacher's manual, and a Debtor-Creditor Nutshell.[2]

Law professors are chronic complainers about casebooks. Perhaps this is partially a reflection of the individuality of the teaching effort and the obvious room for differences in viewpoint on suitable coverage in any given course. However, the complaints appeared to be especially well founded in creditors' rights. The existing casebooks suffered from age, an excessive concern with out-moded and increasingly irrelevant doctrine, overcomprehensiveness, and a preoccupation with the case method. None of the existing casebooks was built around the Uniform Commercial Code as a comprehensive statute regulating most personal property security transactions, and none seemed to take full account that today's student has had extensive experience with the Code and only a minimal and passing acquaintance with the security devices of a bygone era. In contrast, Professor Epstein has attempted to integrate creditors' rights with the earlier learning to which students were exposed in one or more basic courses in commercial law.

Professor Epstein brings to his work a definite conception of what students ought to know about creditors' rights. In the abstract, one could almost design separate courses in creditors' rights for students who were contemplating a large corporate practice and those who

1. D. EPSTEIN, DEBTOR-CREDITOR RELATIONS (1973).
2. D. EPSTEIN, TEACHING NOTES FOR DEBTOR-CREDITOR RELATIONS (1973); D. EPSTEIN, DEBTOR-CREDITOR RELATIONS IN A NUTSHELL (1973).

sought a smaller, locally oriented practice. The former course would emphasize an in depth examination of the trustee's avoidance powers, tax liens and priorities, and Chapters X and XI, whereas the latter course would focus upon problems of personal bankruptcies such as dischargeability issues, constitutional limitations on creditors' remedies, exemptions, and Chapter XIII proceedings. The easy way out of this dilemma would, of course, have been to adopt the widespread "throw in the kitchen sink" approach and provide a few thousand pages of materials and leave the rest to the professor.

It is to Professor Epstein's credit that he has not abdicated his responsibility for selection of materials, and instead, has taken a firm stand on the relative importance of various matters which compete for classroom coverage. He has pared his materials to a manageable 520 pages and still has avoided too much emphasis on either the corporate or local practice aspects of creditors' rights problems.

Professor Epstein has organized his casebook along conventional lines by examining creditors' remedies under state law before moving into the bankruptcy portion of the materials.[3] Within each of those two broad areas, however, Professor Epstein has somewhat departed from prior practice and has adopted a functional organization in terms of the respective interests of different parties involved in credit transactions, *viz.*, lien and secured creditors, governmental creditors, general creditors, and the debtor. Hopefully, students will see creditors' rights problems from the different perspectives of the disparate interests involved, and the teacher gets the added bonus of being able to return to many substantive areas with some frequency.

Professor Epstein has selected his materials with extreme care. He has isolated the key points necessary for substantive learning and classroom analysis and has done so largely in the context of current materials and the elimination of much of what is obsolete or only of historical or scholarly interest.

A few of the high points of this approach are worthy of particular note. First, the treatment of creditors' remedies takes account of recent constitutional developments without sacrificing the more pedestrian "how-to-do-it" aspects of obtaining attachments and executing judgments. The discussion eliminates much of the esoteric learning which

3. Professor Epstein does have a short introduction to the Bankruptcy Act at an early portion of the materials, and before his coverage of the State Law area. D. EPSTEIN, *supra* note 1, at 48-71.

preceded the merger of law and equity[4] and the adoption of a procedural rule such as rule 18 of the Federal Rules. Second, Professor Epstein has given us the first integrated coverage of governmental claims and tax liens. Third, Professor Epstein has done what many considered well nigh impossible in covering such matters as property passing to the trustee, assumption of contracts, proof and allowance of claims, and questions of right to discharge and dischargeability of debts in a concise yet comprehensive manner. Fourth, the materials on Chapter XIII are sufficiently succinct so as not to require a disproportionate amount of time, and yet, present most of the important features of this area. The discussion covers eligibility, formulating a plan, securing the necessary acceptances, and most importantly, dealing with secured creditors. Fifth, Professor Epstein has distilled the essence of the law of summary jurisdiction into two short excerpts from articles. Gone from the casebook are the vagaries of *Williams v. Austrian*[5] (which took at least a day to cover adequately), the debate about the nature of plenary bankruptcy jurisdiction,[6] and much of the squabbling about what constituted property in the constructive possession of the bankrupt including cases involving colorable claims.[7] Professor Epstein introduces the concepts and leaves it at that. In the years I have attempted more detailed treatment, I am not convinced that students even mastered the basic learning.

In addition to its content strengths, the book is an excellent teaching vehicle. Students obviously appreciate the realistic size, the ability to "finish the book," and the integration with basic commercial law courses. But, their enthusiasm extends beyond these features.

Professor Epstein has made broad use of problems and questions as aids to mastering the cases, statutes, and concepts involved. The problems are well conceived, and are realistic in that students perceive that they resemble situations which might be encountered in actual practice. A major strong point of the problems used is that many are readily soluble by students. This contrasts with the questions in many case-

4. *See, e.g.*, Shuck v. Quackenbush, 75 Colo. 592, 227 P. 1041 (1924).

5. 331 U.S. 642 (1947). Some of the implications of *Williams* are developed in S. RIESENFELD, CREDITORS' REMEDIES AND DEBTORS' PROTECTION 434-35 (1967).

6. *Compare* 2 W. COLLIER, BANKRUPTCY ¶ 24.10 (14th ed. 1971), *with* MacLachlan, *Protection and Collection of Property of Bankrupt Estates*, 39 MINN. L. REV. 626, 645 (1955).

7. In the past, I have used *In re* American S. Publishing Co., 426 F.2d 160 (5th Cir.), *cert. denied*, 400 U.S. 903 (1970); *In re* Process-Manz Press, Inc., 369 F.2d 513 (7th Cir. 1966), *cert. denied*, 386 U.S. 957 (1967).

books which require a level of sophistication far beyond that possessed by the average (or even well above average) student. For the professor's benefit, the teacher's manual has most of the answers.

The broad use of questions has an additional advantage: most students taking creditors' rights are third year students who, if they have not learned to read cases carefully by that time, seem to benefit little from additional nagging. Indeed, third year students frequently regard a point-by-point restatement of cases and legal issues as insulting and irrelevant. These same students are receptive to, and excited by, the problem approach which brings an air of realism to the course which is absent from the case method.

As might be expected, there are some areas in which greater coverage appears to be in order even if some other materials must be sacrificed. The coverage of preferences is somewhat inadequate since it limits the learning to a textual note, one case which discusses the reasonable cause requirement, and one case considering the possibility of a preference attack on the UCC's floating lien. Missing from the discussion is any coverage of indirect preferences,[8] an examination of the difference between a preference and a nonsimultaneous cash transaction,[9] reference to the concept of diminution,[10] and discussion of the bankruptcy meaning of insolvency.[11] Similarly, there is no coverage of the section 68[12] a set-off notwithstanding its frequent use in bankruptices and the difficult concept of mutuality which it employs.[13] Finally, Professor Epstein's treatment of bankruptcy procedure is somewhat inadequate, and greater coverage of the mechanics of bankruptcy —filing a petition, involuntary cases, election of the trustee, etc.— seems in order. In this connection, there is no coverage of the newly adopted Bankruptcy Rules which affect much of bankruptcy procedure.

There are also some organizational difficulties in the book. I am not sure that students fully understand the approach of looking at cred-

8. *See, e.g.*, National City Bank v. Hotchkiss, 231 U.S. 50 (1913); Engstrom v. Benzel, 191 F.2d 689 (9th Cir. 1951).

9. *See* Aulick v. Largent, 295 F.2d 41 (4th Cir. 1961); *cf.* Rutledge v. Johansen, 270 F.2d 881 (10th Cir. 1959); Smyth v. Kaufman, 114 F.2d 40 (2d Cir. 1940).

10. *In re* Hygrade Envelope Corp., 393 F.2d 60 (2d Cir. 1968).

11. A good case for discussion of both the concept of insolvency and reasonable cause to know is *In re* Schindler, 223 F. Supp. 512 (E.D. Mo. 1963), *rev'd sub nom.* American Nat'l Bank & Trust Co. v. Bone, 333 F.2d 984 (8th Cir. 1964).

12. Bankruptcy Act § 68, 11 U.S.C. § 108 (1970).

13. *See, e.g., In re* Interstate Record Distribs., Inc., 307 F. Supp. 1142 (S.D.N.Y.), *aff'd sub nom.* Interstate Record Distribs., Inc. v. Columbia Broadcasting Sys., Inc., 430 F.2d 1017 (2d Cir. 1970).

itors' rights from the perspective of the different parties involved, and at least in the bankruptcy coverage, some thought might be given to a time sequential coverage—petition, collection of property, distribution of property, and discharge.

A further organizational difficulty is the typical placement of the materials on fraudulent conveyances in the state law section. This seems unfortunate both from an analytical and a practical point of view. Although the law of fraudulent conveyances was originally state law, most fraudulent conveyance cases now arise in the bankruptcy context. Moreover, the concept of a fraudulent conveyance is related to that of a preference, thus suggesting treatment on an integrated basis. Indeed, many students have considerable difficulty in understanding the differences; and such an explanation is far more difficult when several months have elapsed between coverage of preferences and fraudulent conveyances. At least some questions are overlapping as the use of a perfection clause to postpone unperfected transfers, the use of a special concept of insolvency, and the obvious relationship in cases similar to *Dean v. Davis*.[14]

Despite the popular conception of creditors' rights as a moribund area of the law, this field has recently evidenced the same type of dramatic growth and progression as have other areas. The last five years alone have been witness to a number of Supreme Court decisions in the debtor-creditor field, and perhaps more significantly, an apparently greater willingness to enter this area.[15] The recent adoption of the Bankruptcy Rules, the Report of the National Commission to Study the Bankruptcy Law, the recent introduction of the Committee's product as legislation, and an increasing focus on the rights of the poor and downtrodden, all provide ample possibilities for digestion and consideration. Indeed, at many points Professor Epstein pauses and asks students to consider the likely efficacy of various reform proposals which have been introduced.

14. 242 U.S. 438 (1917); Bankruptcy Act § 67d(3), 11 U.S.C. § 107(d)(3) (1970).

15. In the current term, the Supreme Court has already agreed to review three cases presenting bankruptcy issues. Baker v. Gold Seal Liquors, Inc., 484 F.2d 950 (7th Cir. 1973), *cert. granted*, 94 S. Ct. 913 (1974) (validity of set off by creditor of railroad involved in reorganization proceedings); *In re* Freedomland, 480 F.2d 184 (2d Cir. 1973), *cert. granted sub nom.* Otte v. United States, 94 S. Ct. 912 (1974) (trustee's obligation to withhold taxes on wages earned but not paid prior to bankruptcy); *In re* Kokoska, 479 F.2d 990 (2d Cir.), *cert. granted sub nom.* Kokoska v. Belford, 94 S. Ct. 721 (1973) (questions whether income tax refund of bankrupt individual is an asset passing to the trustee, and if so, whether the Consumer Credit Protection Act's limitation on garnishment was applicable).

But quite apart from the future, Professor Epstein has given us a casebook which combines a solid foundation in basic principles with the analytic and conceptual problems which lawyers dealing with creditors' rights problems must face. It is presented in an interesting and timely manner and even attempts to bring an air of levity to bankruptcy if this is not an inherent contradiction. Finally, his approach is innovative and even exhibits a degree of courage generally absent from casebook authors. With all these qualities, some of our colleagues may even begin to share the excitement of teaching creditors' rights.

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