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How to Use This Symposium

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HOW TO USE THIS SYMPOSIUM

All statutes are ambiguous; their meaning ultimately rests upon judicial interpretation often developed long after enactment. Although Congress enacted the first bankruptcy statute in 1800, the Bankruptcy Reform Act of 1978 is the most significant overhaul of this area in the last eighty years. Accordingly the interpretations of the law of bankruptcy must be forged anew through painstaking judicial considerations of this latest enactment. In the interim practitioners, academicians, legislators and judges must seek other sources for guidance. These sources as interpreted by these people will ultimately play a large part in shaping our bankruptcy law. To aid in the process, this two part Symposium, Part I of which appears in this issue, presents initial interpretations of practitioners, academicians and judges, many of whom were intimately involved in the legislative process as proposers, drafters or commentators.

After the language itself, statutory interpretation begins with the intent of the enacting legislature. Bankruptcy reform embarked on the congressional rollercoaster in the mid 1960s. Professor Kennedy's foreword takes us through the many studies, hearings, reports and floor remarks that culminated in the signing of the new Act into law by President Carter on November 6, 1978. Because delicate policy considerations underpin most of the provisions and because the law as enacted is the product of a plethora of differing proposals, drafts and amendments, any interpretation will necessarily include a consideration of this voluminous history. Professor Kennedy categorizes this history; his foreword therefore is an invaluable starting point in any research.

The remainder of Part I is concerned primarily with individual bankruptcy. Most individual bankruptcies involve a liquidation and distribution to creditors of the individual's nonexempt assets in exchange for a discharge of remaining debts. Kenneth Klee, a principal draftsman of the Act, along with fellow practitioner Marc Cohen explore the consumer debtor's posture in this liquidation process. In particular, their article provides an overview of an individual liquidation case, with an organization and commentary not available in the statute itself.

An individual's principal objective in bankruptcy proceedings is to receive a discharge of debts, thus allowing a fresh start. Therefore, a primary concern of an individual debtor will be the legal parameters of discharge, a concept with a lengthy evolution. To assess the legal effect

and extent of an individual's discharge under the new Act it is necessary to understand this evolution. Professor Rendleman, by comparing the prior theories of discharge to those embodied in the new Act, emphasizes the broader effect of the new discharge and envisions significant advances toward the goal of fresh start.

Also essential to an individual's fresh start is retention of property that is not subject to liquidation in satisfaction of creditors' claims. One of the most significant and controversial changes in individual bankruptcy was the adoption of federal bankruptcy exemptions, which in most cases will allow a debtor to exempt much more of his property from liquidation than those exemptions provided by state law. Professor Vukowich provides a detailed analysis of the federal exemptions contained in section 522 of the new Act. The article's emphasis on the ambiguities and problems with the new exemption scheme will be especially beneficial to practitioners in pre-bankruptcy planning and to state legislators who must consider the advisability of denying the new exemptions to debtors in their states.

Insolvent individual debtors with regular income have an alternative to liquidation in straight bankruptcy; under Chapter 13 they can make partial payment to their creditors pursuant to a court approved plan and still receive a discharge. Initially, the debtor's attorney must decide whether to pursue liquidation in a straight bankruptcy under Chapter 7 or an adjustment of debts pursuant to a plan under Chapter 13. Professor Wickham's article, by examining the differing requirements and effects of these two Chapters should aid the attorney in this crucial choice. As Judge Hughes points out, however, Congress in its zeal to encourage Chapter 13 adjustments may have opened the way for debtor abuse under this alternative to liquidation. His article details these possibilities in an effort to encourage congressional action or, in the meantime, to encourage the courts to interpret Chapter 13 provisions in a way that will preclude unintended results.

Part II of the Symposium will cover corporate reorganization including the crucial question of corporate valuation under the "cram down" provisions of Chapter 11. Also analyzed will be the appeals process under the new Act. Part II will appear in the next issue of this volume of the *Review*.