

Issue Spotting a Bankruptcy Question

- I. Is D eligible for relief under a particular chapter of the bankruptcy code?
 - a. May an involuntary petition be filed under the chapter, and is the debtor a person against whom an involuntary petition may be filed?
- II. After the filing of a bk petition, has any act been committed that violates the automatic stay? (362(a))
 - a. Does the act come w/in one of the exceptions to the stay? (362(b))
- III. What property comprises the bankruptcy estate?
 - a. Is there any property in the possession of third parties that is subject to turnover?
 - b. Are there any transactions that can be avoided by the trustee or debtor in possession, as a result of which additional property can be recovered to enlarge the estate for the benefit of creditors?
 - c. Is there any property that is burdensome or of inconsequential value to the estate and that may be abandoned by the trustee?
- IV. From the debtor's perspective:
 - a. Has the D filed all lists, schedules, and statements that are required?
 - b. What exemptions are available to an individual debtor under the Code or under applicable nonbankruptcy law? Has the applicable state law opted out of the federal exemption scheme?

- c. Does the debtor want to reaffirm any debts?
 - d. Does an individual Ch. 7 debtor want to redeem any property?
 - e. Is the Debtor entitled to a discharge under the applicable chapter?
 - f. If the debtor is an individual, are there any particular debts that will be nondischargeable? (523(a))
- V. What claims or interests have been filed in the case? Are they secured claims, unsecured priority claims, general unsecured claims, subordinated claims, or owners' interests?
- a. Is there any basis for objecting to the allowance of a claim that has been filed?
 - b. Is a particular claim fully secured? If not, an undersecured claim generally is bifurcated, resulting in two claims – one that is secured up to the value of the collateral and the other that is unsecured for the amount of the deficiency
 - c. Have any secured creditors requested relief from the automatic stay, and should such relief be granted?
 - i. Has adequate protection been provided as required by the Code?
 - ii. Does D have equity in the collateral, and is the property necessary for an effective reorganization?
 - d. How much will the holder of each claim or interest be paid on final distribution in a Ch. 7 case or pursuant to a confirmed plan in a case under Ch. 13?

VI. Under which chapter of the code has the case been filed?

a. If it is a Ch. 7 case:

- i. Under the circumstances, are there any reasons to consider converting the case to another chapter of the code (if the debtor is eligible) or dismissing the case entirely?
- ii. Is there any ground for denial of the debtor's discharge under Bk Code section 727(a)?

b. If it is a Ch. 13 case:

- i. Have any creditors sought relief from the co-debtor stay, and should such relief be granted?
- ii. Does the debtor's proposed plan include the mandatory Ch. 13 plan provisions? Which permissive provisions are appropriate to include in the plan?
- iii. Are the six requirements for confirmation satisfied? (1325(a))
 1. If an objection to confirmation is filed by an unsecured creditor whose claim the plan does not propose to pay in full, has the debtor committed all of his projected disposable income for the next three years to be used to make payments under the plan?
- iv. Has the debtor begun making payments w/in 30 days after the plan is filed?

v. Which debts are dischargeable under Ch. 13, and which ones are not?