


Bankruptcy for Young & New Practitioners
General Session

The title slide features a blue background with a central image of the U.S. Capitol dome. To the left and right of the dome are smaller images: a stack of US dollar bills and a group of people in a courtroom setting.

Overview


- Sources of Bankruptcy Law, Jurisdiction and Venue
- Basic Bankruptcy Concepts
- Avoiding Powers



The slide has a light gray background with a faint image of the U.S. Capitol dome. The American Bankruptcy Institute logo is in the bottom right corner.

Jurisdiction and Venue

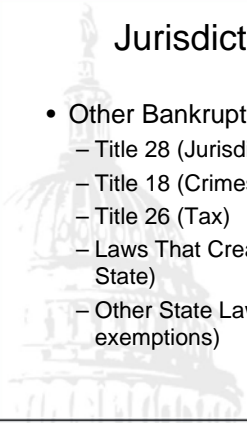

- The Bankruptcy Code and Rules
 - The Code (title 11)
 - Federal Rules of Bankruptcy Procedure
 - Local Rules and Standing Orders
 - Individual Judge's Rules



The slide has a light gray background with a faint image of the U.S. Capitol dome. The American Bankruptcy Institute logo is in the bottom right corner.

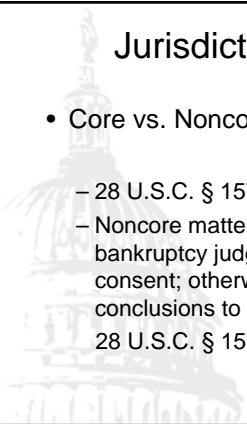

Jurisdiction and Venue

- Other Bankruptcy Laws
 - Title 28 (Jurisdiction)
 - Title 18 (Crimes)
 - Title 26 (Tax)
 - Laws That Create Liens (Federal and State)
 - Other State Laws (e.g., avoidance law, exemptions)



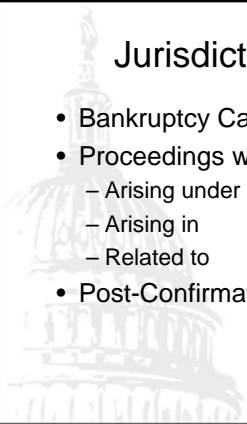

Jurisdiction and Venue

- Core vs. Noncore
 - 28 U.S.C. § 157(b)
 - Noncore matters can be decided by bankruptcy judge only with parties' consent; otherwise, proposed findings and conclusions to District Court.
 - 28 U.S.C. § 157(c)




Jurisdiction and Venue

- Bankruptcy Case
- Proceedings within a case
 - Arising under
 - Arising in
 - Related to
- Post-Confirmation Jurisdiction




Jurisdiction and Venue

- The Bankruptcy Court and Appellate Courts
 - Bankruptcy Courts
 - Appeal to District Court
 - Appeal to Bankruptcy Appellate Panel
 - Appeal to U.S. Court of Appeals




Jurisdiction and Venue

- Direct Appeal to Circuit Court
- 28 U.S.C. Section 158(d)
 - Applies if Bankruptcy Court, District Court or BAP or all appellants and appellees certify that:
 - (a) no controlling law in circuit or matter of public importance, or (b) question of law requiring resolution of conflicting decisions, or (c) immediate appeal materially advances the process of the case, and (d) Court of Appeals authorizes direct appeal.




Jurisdiction and Venue

- Ways Out of Bankruptcy Court
 - Withdrawal of reference (mandatory or discretionary)
 - Abstention
 - Remand (after removal)




Jurisdiction and Venue

- **Withdrawal of Reference**
 - Mandatory: Material issue of nonbankruptcy federal law affecting interstate commerce
 - Discretionary: Cause (convenience, efficiency, uniformity, expertise, anything else)
 - Jury trial




Jurisdiction and Venue

- **Abstention (entire case)**
 - Section 305
 - Interests of debtors and creditors would be better served (e.g., involuntary petition to upset workout), or
 - Chapter 15 case pending and abstention would serve purpose of chapter 15
 - Abstention not reviewable by Court of Appeals




Jurisdiction and Venue

- Abstention (any proceeding)
- 28 U.S.C. § 1334(c)
- Discretionary: Comity and deference to state courts
- Mandatory: “related to” (non-core) state law causes of action if no basis for federal jurisdiction other than § 1334 and action is commenced and can be timely adjudicated in State Court
- Not appealable to Court of Appeals other than denial of mandatory abstention




Jurisdiction and Venue

- Removal and Remand
- 28 U.S.C. § 1452
 - to District Court (but note minority view)
 - any case subject to 28 U.S.C. § 1334 jurisdiction
- Remand on “any equitable ground”
- Remand not appealable to Court of Appeals




Jurisdiction and Venue

- What Chapter to File Under
 - Businesses: 7, 11
 - Individuals : 7, 13, 11
 - Farmers: 12
 - Municipalities: 9
 - Foreign Rep. 15




Jurisdiction and Venue

- Businesses
 - Chapter 11 Reorganization
 - Chapter 11 Liquidation
 - Chapter 7 Liquidation
 - Conversion between 11 and 7




Jurisdiction and Venue

- Individuals
 - Chapter 7 Simple, no payments
 - Chapter 13 Payment plan
 - Chapter 11 Complex or High Dollars
 - Means Test 707(b)(2)




Jurisdiction and Venue

- Venue - Where to File
 - 28 U.S.C. §§ 1408 - 1410
 - Domicile, residence, principal place of business or principal assets for past 180 days
 - Location of affiliate's pending bankruptcy case
 - The "state of incorporation venue" debate




Jurisdiction and Venue

- Venue Strategy
 - Substantive law
 - First day issues
 - Convenience
 - Court's Procedures
 - Court's experience with comparable cases
 - Professionals' issues
 - Change of Venue



Jurisdiction and Venue


- Do Your Really Need to File? Are There Other Options?
 - Workout
 - State law liquidation / Sale outside bankruptcy
 - Assignment for the benefit of creditors
 - Receivership




Eligibility for Relief

- Section 109
- Chapter 7: No railroads, banks or insurance companies
- Chapter 9: Insolvent municipalities authorized by state law
- Chapter 11: Anyone who can file Chapter 7 plus railroads minus stockbrokers
- Chapter 12: Family farmers or fisherman
- Chapter 13: Individuals with regular income who are below the debt ceilings*
- New Credit Counseling Prerequisite for Individual Debtors
- Involuntaries only Chapter 7 or 11, and not against farmers or nonprofits

* \$336,900 unsecured; \$1,010,650 secured

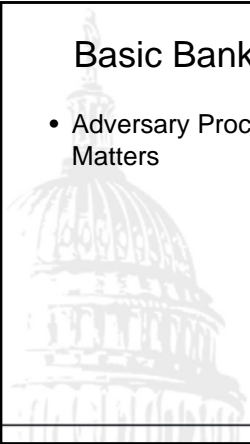


Basic Bankruptcy Concepts



Basic Bankruptcy Concepts

- Adversary Proceedings and Contested Matters



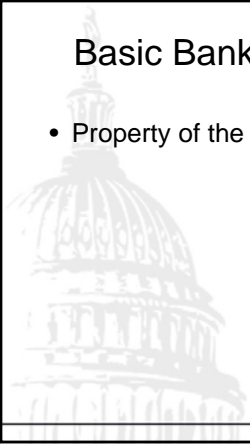
Basic Bankruptcy Concepts

- Discharge and Dischargeability



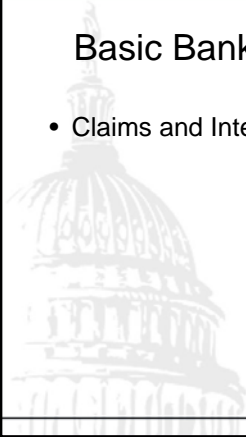
Basic Bankruptcy Concepts

- Property of the Estate



Basic Bankruptcy Concepts

- Claims and Interests



Basic Bankruptcy Concepts

- Secured Claims





Basic Bankruptcy Concepts

- Automatic Stay and Relief from Stay



Basic Bankruptcy Concepts



- **Cash Collateral**



AMERICAN
BANKRUPTCY
INSTITUTE

Basic Bankruptcy Concepts


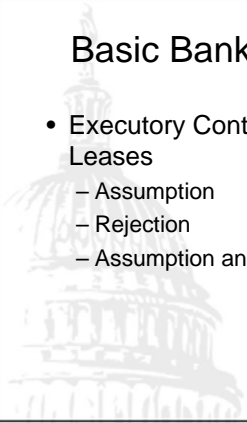
- **Adequate Protection**



AMERICAN
BANKRUPTCY
INSTITUTE

Basic Bankruptcy Concepts

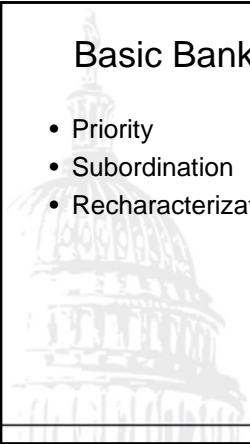
- **Executory Contracts and Unexpired Leases**
 - Assumption
 - Rejection
 - Assumption and Assignment



AMERICAN
BANKRUPTCY
INSTITUTE

Basic Bankruptcy Concepts

- Priority
- Subordination
- Recharacterization



Avoiding Powers




Avoiding Powers

- Preferences




Avoiding Powers

- Elements of a Preference
 - Payment to or for benefit of a creditor
 - Antecedent debt
 - While debtor is insolvent
 - Within 90 days (or 1 year for insiders)
 - Creditor gets more than it would in Chapter 7




Avoiding Powers

- Defenses to Preference (§ 547(c))
 - Contemporaneous exchange
 - Ordinary course of business
 - PMSI (perfected within 20 days)
 - Subsequent new value
 - Alimony and child support
 - Under \$600 for consumer debtor





Avoiding Powers

- Fraudulent Conveyances (federal)
 - Section 548
 - Actual fraud (intent to hinder, delay or defraud)
 - Constructive Fraud (insolvent and less than reasonably equivalent value)




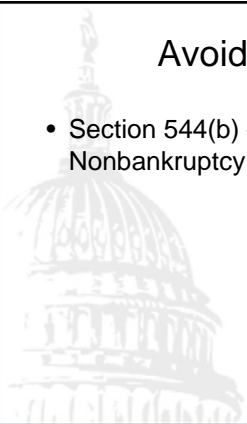
Avoiding Powers

- Fraudulent Conveyances
(state – UFTA & UFCA)




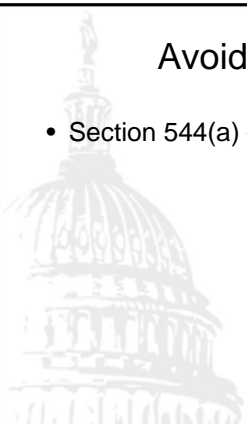
Avoiding Powers

- Section 544(b) – Trustee’s Use of
Nonbankruptcy Law





Avoiding Powers

- Section 544(a) – Hypothetical Powers




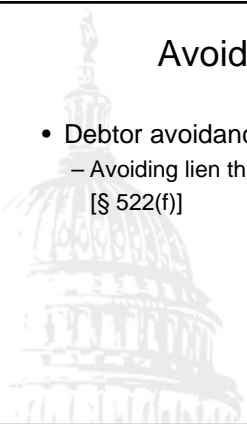
Avoiding Powers

- Unauthorized Postpetition Transfers (§549)




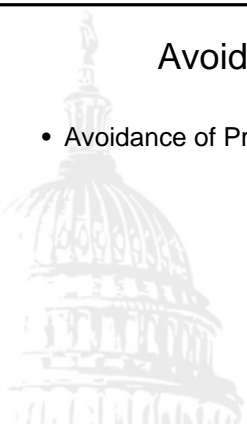
Avoiding Powers

- Debtor avoidance powers
 - Avoiding lien that impairs exemptions [§ 522(f)]




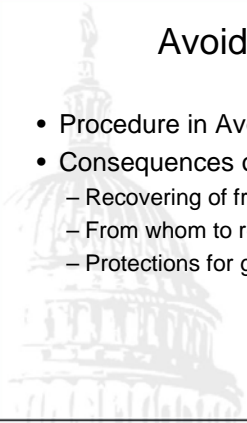
Avoiding Powers

- Avoidance of Prepetition Setoff



Avoiding Powers

- Procedure in Avoidance Actions
- Consequences of Avoidance [§550]
 - Recovering of fraudulent conveyance
 - From whom to recover
 - Protections for good faith transferee



Avoiding Powers

- Strategy in Bringing, Defending and Settling Avoidance Actions

