Debtors sold nine pieces of jewelry. Seven pieces of jewelry were reported as lost. After filing for bankruptcy, Debtors sold some jewelry and pawned a Rolex watch for $3,000. Two creditors objected to Debtors' claimed exemptions. A complaint was filed, alleging that Debtors knowingly and fraudulently made false oaths and material omissions and transferred and concealed property of the estate in an attempt to hinder, delay, and defraud creditors. The remedy sought was an order that Debtors be denied discharge. Based on the facts of the case, should Debtors be denied discharge? *In re Jalajel*, **Web** 2010 Bankr. Lexis ___ (United States Bankruptcy Court for the Eastern District of Virginia)

13.4 Discharge Margaret Kawaauhau sought treatment from Dr. Paul Geiger for a foot injury. Dr. Geiger examined Kawaauhau and admitted her to the hospital to attend to the risks of infection. Although Dr. Geiger knew that intravenous penicillin would have been a more effective treatment, he prescribed oral penicillin, explaining that he thought that his patient wished to minimize the cost of her treatment. Dr. Geiger then departed on a business trip, leaving Kawaauhau in the care of other physicians. When Dr. Geiger returned, he discontinued all antibiotics because he believed that the infection had subsided. Kawaauhau's condition deteriorated over the next few days, requiring the amputation of her right leg below the knee. Kawaauhau and her husband sued Dr. Geiger for medical malpractice. The jury found Dr. Geiger liable and awarded the Kawaauhaus $355,000 in damages. Dr. Geiger, who carried no malpractice insurance, filed for bankruptcy in an attempt to discharge the judgment. Is a debt arising from a medical malpractice judgment that is attributable to negligent or reckless conduct dischargeable in bankruptcy? *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90, **Web** 1998 U.S. Lexis 1595 (Supreme Court of the United States)

13.5 Chapter 11 Reorganization UAL Corporation was the parent company of United Airlines, which was the largest scheduled passenger commercial airline in the world. On a daily basis, the airline offered more than 1,500 flights to twenty-six countries. The airline also offered regional service to domestic hubs through United Express carriers. Eventually, low-cost airlines began taking business from United. In response, United lowered fares to compete with the low-cost airlines. However, United's cost structure could not support its new strategy, and the company began losing substantial money on its operations.

UAL filed for Chapter 11 reorganization bankruptcy. At the time of filing the petition, UAL owned or leased airplanes, equipment, trucks and other vehicles, docking space at airports, warehouses, office space, and other assets. In many cases, UAL had borrowed the money to purchase or lease these assets. Most of the lenders too back mortgages or security interests in the assets fo which they had loaned money to UAL to purchase o lease. In addition, UAL owed unsecured creditors mone that it could not repay, and it had executory contracts an unexpired leases that it also could not pay. What shoul UAL propose to do in its plan of reorganization that it file with the bankruptcy court? *In re UAL Corporation*

13.6 Priority of Security Interests Paul High purchased various items of personal property and livestock from William and Marilyn McGowen. To secure the purchase price, High granted the McGowens a security interest in the personal property and livestock. Two and one-half months later, High borrowed $86,695 from Nebraska State Bank (Bank) and signed a promissory note, granting Bank a security interest in all his farm products, including but not limited to all his livestock. Bank immediately perfected its security agreement by filing a financing statement with the county clerk in Dakota County, Nebraska. The McGowens perfected their security interest by filing a financing statement and security agreement with the county clerk three months after Bank filed its financing statement. Three years later, High defaulted on the obligations owed to the McGowens and Bank. Whose security interest has priority? *McGowen v. Nebraska State Bank*, 229 Neb. 471, 427 N.W.2d 772, **Web** 1988 Neb. Lexis 290 (Supreme Court of Nebraska)

13.7 Fraudulent Transfer Peter and Geraldine Tabala (Debtors), husband and wife, purchased a house in Clarkstown, New York. They purchased a Carvel ice cream business for $70,000 with a loan obtained from People's National Bank. In addition, the Carvel Corporation extended trade credit to Debtors. Two years after getting the bank loan, Debtors conveyed their residence to their three daughters, ages 9, 19, and 20, for no consideration. Debtors continued to reside in the house and to pay maintenance expenses and real estate taxes due on the property. On the date of transfer, Debtors owed obligations in excess of $100,000. Five months after conveying their residence to their daughters, Debtors filed a petition for Chapter 7 bankruptcy. The bankruptcy trustee moved to set aside Debtors' conveyance of their home to their daughters as a fraudulent transfer. Who wins? *In re Tabala*, 11 B.R. 405, **Web** 1981 Bankr. Lexis 3663 (United States Bankruptcy Court for the Southern District of New York)

13.8 Guaranty Contract Murphy Oil USA, Inc. (Murphy Oil), entered into a contract to sell petroleum products to Price Oil, Inc. In order to do so, Murphy Oil required and obtained written guaranty contracts signed by Elmer Myers Armstrong and Frieda Armstrong (Armstrongs), guaranteeing that if Price Oil did not pay for oil delivered by Murphy Oil, they would pay the unpaid amount. Murphy Oil sold and delivered petroleum products to Price Oil for the price of $259,585.75. Price Oil did not thereafter make payment on this debt. Price Oil declared bankruptcy, and Murphy Oil received $66,246.28 from the bankruptcy proceeding. The Armstrongs did not make payment to Murphy Oil for the unpaid debt. Murphy Oil instituted a legal action against the Armstrongs to enforce the guaranty agreement against them to recover Price Oil's remaining debt owed to Murphy Oil, which at the time of the lawsuit was $193,339.47. Do the Armstrongs, as guarantors of Price Oil's debt to Murphy Oil, owe Murphy Oil the amount of the unpaid debt of Price Oil? *Murphy Oil USA, Inc. v. Armstrong*, **Web** 2006 U.S. Dist. Lexis 46289 (United States District Court for the Middle District of Alabama)

Ethics Cases

13.9 Ethics Jessie Lynch became seriously ill and needed medical attention. Her sister, Ethel Sales, took her to Forsyth Memorial Hospital in North Carolina for treatment. Lynch was admitted for hospitalization. Sales signed Lynch's admission form, which included the following section:

> *The undersigned, in consideration of hospital services being rendered or to be rendered by Forsyth County Memorial Hospital Authority, Inc., in Winston-Salem, N.C., to the above patient, does hereby guarantee payment to Forsyth County Hospital Authority, Inc., on demand all charges for said services and incidentals incurred on behalf of such patient.*

Lynch received the care and services rendered by the hospital until her discharge over 30 days later. The total bill during her hospitalization amounted to $7,977. When Lynch refused to pay the bill, the hospital instituted an action against Lynch and Sales to recover the unpaid amount. *Forsyth County Memorial Hospital Authority, Inc.*, 82 N.C.App. 265, 346 S.E.2d 212, **Web** 1986 N.C.App. Lexis 2432 (Court of Appeals of North Carolina)

1. What is a guaranty contract?
2. Did Lynch act ethically in denying liability?
3. Is Sales liable to Forsyth County Memorial Hospital Authority, Inc.?

13.10 Ethics Donald Wayne Doyle (Debtor) obtained a guaranteed student loan to enroll in a school for training truck drivers. Due to his impending divorce, Debtor never attended the program. The first monthly installment of approximately $50 to pay the student loan became due. Two weeks later, Debtor filed a voluntary petition for Chapter 7 bankruptcy.

Debtor was a 29-year-old man who earned approximately $1,000 per month at an hourly wage of $7.70 as a truck driver, a job that he had held for 10 years. Debtor resided on a farm, where he performed work in lieu of paying rent for his quarters. Debtor was paying monthly payments of $89 on a bank loan for his former wife's vehicle, $200 for his truck, $40 for health insurance, $28 for car insurance, $120 for gasoline and vehicular maintenance, $400 for groceries and meals, and $25 for telephone charges. In addition, a state court had ordered Debtor to pay $300 per month to support his children, ages 4 and 5. Debtor's parents were assisting him by buying him $130 of groceries per month. *In re Doyle*, 106 B.R. 272, **Web** 1989 Bankr. Lexis 1772 (United States Bankruptcy Court for the Northern District of Alabama)

1. What legal standard must be met to have a student loan discharged in bankruptcy?
2. Did Doyle act unethically in trying to have his student loan discharged in bankruptcy?
3. Should Doyle's student loan be discharged in bankruptcy?

Internet Exercises

1. There are three major credit reporting agencies from which you can obtain a copy of your credit report. Go to each of the following websites to see how to order a free credit report. If you want, order your credit report.

a. Equifax, at **www.equifax.com**
b. Experian, at **www.experian.com**
c. TransUnion, at **www.transunion.com**

Some states' laws provide for the use of a *deed of trust and note* in place of a mortgage. The **note** is the instrument that evidences the borrower's debt to the lender; the **deed of trust** is the instrument that gives the creditor a security interest in the debtor's property that is pledged as collateral.

note
An instrument that evidences a borrower's debt to the lender.

deed of trust
An instrument that gives a creditor a security interest in the debtor's real property that is pledged as collateral for a loan.

Recording Statute

Most states have enacted **recording statutes** that require a mortgage or deed of trust to be recorded in the county recorder's office in the county in which the real property is located. These filings are public record and alert the world that a mortgage or deed of trust has been recorded against the real property. This record gives potential lenders or purchasers of real property the ability to determine whether there are any existing liens (mortgages) on the property.

recording statute
A statute that requires a mortgage or deed of trust to be recorded in the county recorder's office of the county in which the real property is located.

The **nonrecordation of a mortgage** or deed of trust does not affect either the legality of the instrument between the mortgagor and the mortgagee or the rights and obligations of the parties. In other words, the mortgagor is obligated to pay the amount of the mortgage according to the terms of the mortgage, even if the document is not recorded. However, an improperly recorded document is not effective against either (1) subsequent purchasers of the real property or (2) other mortgagees or lienholders who have no notice of the prior mortgages.

By no means run in debt.
George Herbert
The Temple (1633)

Deficiency Judgment

Some states permit a mortgagee to bring a separate legal action to recover a deficiency from the mortgagor. If the mortgagee is successful, the court will award a **deficiency judgment** that entitles the mortgagee to recover the amount of the judgment from the mortgagor's other property.

deficiency judgment
A judgment of a court that permits a secured lender to recover other property or income from a defaulting debtor if the collateral is insufficient to repay the unpaid loan.

Example Kaye buys a house for $800,000. She puts $200,000 down and borrows $600,000 from a bank, which takes a mortgage on the property to secure the loan. Kaye defaults, and when the bank forecloses on the property, it is worth only $500,000. There is a deficiency of $100,000 ($600,000 loan – $500,000 foreclosure sale price).The bank can recover the $100,000 deficiency from Kaye's other property. The bank has to bring a legal action against Kaye to do so.

Debt is the prolific mother of folly and of crime.
Benjamin Disraeli
Henrietta Temple (1837)

Several states have enacted statutes that prohibit deficiency judgments regarding certain types of mortgages, such as loans for the original purchase of residential property. These statutes are called **antideficiency statutes**. Antideficiency statutes usually apply only to **first purchase money mortgages** (i.e., mortgages that are taken out to purchase houses). Second mortgages and other subsequent mortgages, even mortgages that refinance the first mortgage, usually are not protected by antideficiency statutes.

antideficiency statute
A statute that prohibits deficiency judgments regarding certain types of mortgages, such as those on residential property.

Example Assume that a house is located in a state that has an antideficiency statute. Qian buys the house for $800,000. She puts $200,000 down and borrows $600,000 of the purchase price from First Bank, which takes a mortgage on the property to secure the loan. This is a first purchase money mortgage. Subsequently, Qian borrows $100,000 from Second Bank and gives a second mortgage to Second Bank to secure the loan. Qian defaults on both loans, and when she defaults, the house is worth only $500,000. Both banks bring foreclosure proceedings to recover the house. First Bank can recover the house worth $500,000 at foreclosure. However, First Bank has a deficiency of $100,000 ($600,000 loan – $500,000 foreclosure sale price). Because of the state's antideficiency statute, First Bank cannot recover this deficiency from Qian; First Bank can only recover the house in foreclosure and must write off the $100,000 loss. Second Bank's loan, a second loan, is not covered by the antideficiency statute. Therefore, Second Bank can sue Qian to recover its $100,000 deficiency from Qian's other property.

they had all been lost. Miller demanded that *Newsweek* pay him $1,500 for each of the 72 lost photos. Assuming that the court finds Miller and *Newsweek* to be merchants, are the clauses in the delivery memo part of the sales contract? *Miller v. Newsweek, Inc.*, 660 F.Supp. 852, **Web** 1987 U.S. Dist. Lexis 4338 (United States District Court for the District of Delaware)

12.8 Risk of Loss Martin Silver ordered two rooms of furniture from Wycombe, Meyer & Co., Inc. (Wycombe), a manufacturer and seller of custom-made furniture. On February 23, 1982, Wycombe sent invoices to Silver, advising him that the furniture was ready for shipment. Silver tendered payment in full for the goods and asked that one room of furniture be shipped immediately and that the other be held for shipment on a later date. Before any instructions were received as to the second room of furniture, it was destroyed in a fire. Silver and his insurance company attempted to recover the money he had paid for the destroyed furniture. Wycombe refused to return the payment, claiming that the risk of loss was on Silver. Who wins? *Silver v. Wycombe, Meyer & Co., Inc.*, 124 Misc.2d 717, 477 N.Y.S.2d 288, **Web** 1984 N.Y.Misc. Lexis 3319 (Civil Court of the City of New York)

Ethics Cases

12.9 Ethics Alex Abatti was the sole owner of A&M Produce Company (A&M), a small farming company located in California's Imperial Valley. Although Abatti had never grown tomatoes, he decided to do so. He sought the advice of FMC Corporation (FMC), a large diversified manufacturer of farming and other equipment, as to what kind of equipment he would need to process the tomatoes. An FMC representative recommended a certain type of machine, which A&M purchased from FMC pursuant to a form sales contract provided by FMC. Within the fine print, the contract contained one clause that disclaimed any warranty liability by FMC and a second clause which stated that FMC would not be liable for consequential damages if the machine malfunctioned.

A&M paid $10,680 down toward the $32,041 purchase price, and FMC delivered and installed the machine. A&M immediately began experiencing problems with the machine. It did not process the tomatoes quickly enough. Tomatoes began piling up in front of the belt that separated the tomatoes for weight-sizing. Overflow tomatoes had to be sent through the machine at least twice, causing damage to them. Fungus spread through the damaged crop. Because of these problems, the machine had to be continually started and stopped, which significantly reduced processing speed.

A&M tried on several occasions to get additional equipment from FMC, but on each occasion, its request was rejected. Because of the problems with the machine, A&M closed its tomato operation. A&M finally stated, "Let's call the whole thing off" and offered to return the machine if FMC would refund A&M's down payment. When FMC rejected this offer and demanded full payment of the balance due, A&M sued to recover its down payment and damages. It alleged breach of warranty caused by defect in the machine. In defense, FMC pointed to the fine print of the sales contract, stating that the buyer waived any rights to sue it for breach of warranty or to recover consequential damages from it. *A&M Produce Co. v. FMC Corp.*, 135 Cal.App.3d 473, 186 Cal.Rptr. 114, **Web** 1982 Cal.App. Lexis 1922 (Court of Appeal of California)

1. Did A&M act morally in signing the contract and then trying to get out from under its provisions?
2. Was it ethical for FMC to include waiver of liability and waiver of consequential damages clauses in its form contract?
3. Legally, are the waiver clauses unconscionable and therefore unenforceable?

12.10 Ethics Executive Financial Services, Inc. (EFS), purchased three tractors from Tri-County Farm Company (Tri-County), a John Deere dealership owned by Gene Mohr and James Loyd. The tractors cost $48,000, $19,000, and $38,000. EFS did not take possession of the tractors but instead left the tractors on Tri-County's lot. EFS leased the tractors to Mohr-Loyd Leasing (Mohr-Loyd), a partnership between Mohr and Loyd, with the understanding and representation by Mohr-Loyd that the tractors would be leased out to farmers. Instead of leasing the tractors, Tri-County sold them to three different farmers. EFS sued and obtained judgment against Tri-County, Mohr-Loyd, and Mohr and Loyd personally for breach of contract. Because that judgment remained unsatisfied, EFS sued the three farmers who bought the tractors to recover the tractors from them. *Executive Financial Services, Inc. v. Pagel*, 238 Kan. 809, 715 P.2d 381, **Web** 1986 Kan. Lexis 290 (Supreme Court of Kansas)

1. What does the entrustment rule provide? Explain.
2. Did Mohr and Loyd act ethically in this case?
3. Who owns the tractors, EFS or the farmers?

for off-road use. When Denny was driving the vehicle on a paved road, she slammed on the brakes in an effort to avoid a deer that had walked directly into her SUV's path. The Bronco II rolled over, and Denny was severely injured. Denny sued Ford Motor Company to recover damages for breach of the implied warranty of merchantability.

Denny alleged that the Bronco II presented a significantly higher risk of occurrence of rollover accidents than did ordinary passenger vehicles. Denny introduced evidence at trial which showed that the Bronco II had a low stability index because of its high center of gravity, narrow tracks, and shorter wheelbase, as well as the design of its suspension system. Ford countered that the Bronco II was intended as an off-road vehicle and was not designed to be used as a conventional passenger automobile on paved streets. Has Ford Motor Company breached the implied warranty of merchantability? *Denny v. Ford Motor Company*, 87 N.Y.2d 248, 662 N.E.2d 730, 639 N.Y.S.2d 250, **Web** 1995 N.Y. Lexis 4445 (Court of Appeals of New York)

12.4 Implied Warranty of Fitness for a Particular Purpose Felicitas Garnica sought to purchase a vehicle capable of towing a 23-foot Airstream trailer she had on order. She went to Mack Massey Motors, Inc. (Massey Motors), to inquire about purchasing a Jeep Cherokee that was manufactured by Jeep Eagle. After Garnica explained her requirements to the sales manager, he called the Airstream dealer concerning the specifications of the trailer Garnica was purchasing. The sales manager advised Garnica that the Jeep Cherokee could do the job of pulling the trailer. After purchasing the vehicle, Garnica claimed that it did not have sufficient power to pull the trailer. She brought the Jeep Cherokee back to Massey Motors several times for repairs for a slipping transmission. Eventually, she was told to go to another dealer. The drive shaft on the Jeep Cherokee twisted apart at 7,229 miles. Garnica sued Massey Motors and Jeep Eagle for damages, alleging breach of the implied warranty of fitness for a particular purpose. Have the defendants made and breached an implied warranty of fitness for a particular purpose? *Mack Massey Motors, Inc. v. Garnica*, 814 S.W.2d 167, **Web** 1991 Tex. Lexis 1814 (Court of Appeals of Texas)

12.5 Limited Warranty Dean Solomon purchased a camera and lenses from a retailer that were manufactured by Canon USA, Inc. Both the camera and the lenses were accompanied by a one-year limited warranty issued by Canon that limited a purchaser's remedies to repair or replacement in the event of any defect in materials or workmanship. Approximately three months after Solomon purchased the items, he notified Canon that he had encountered problems with the lenses when he was on an overseas vacation when an "error" message appeared on the camera when he changed lenses. In response, Canon repaired the camera. Several months later, Solomon notified Canon that the same problem reoccurred while he was on a subsequent vacation. Canon offered to repair the camera and lenses. Solomon refused the offer and sued Canon to revoke his acceptance and recover his purchase price. Is Canon's limited warranty enforceable? *Solomon v. Canon USA, Inc.*, **Web** 2010 N.Y.Misc. Lexis 6267 (Appellate Term of the Supreme Court of New York)

12.6 Firm Offer Gordon Construction Company (Gordon) was a general contractor in the New York City area. Gordon planned on bidding for the job of constructing two buildings for the Port Authority of New York. In anticipation of its own bid, Gordon sought bids from subcontractors. E. A. Coronis Associates (Coronis), a fabricator of structured steel, sent a signed letter to Gordon. The letter quoted a price for work on the Port Authority project and stated that the price could change, based upon the amount of steel used. The letter contained no information other than the price Coronis would charge for the job. One month later, Gordon was awarded the Port Authority project. Four days later, Coronis sent Gordon a telegram, withdrawing its offer. Gordon replied that it expected Coronis to honor the price that it had previously quoted to Gordon. When Coronis refused, Gordon sued. Gordon claimed that Coronis was attempting to withdraw a firm offer. Who wins? *E. A. Coronis Associates v. Gordon Construction Co.*, 90 N.J. Super. 69, 216 A.2d 246, **Web** 1966 N.J.Super. Lexis 368 (Superior Court of New Jersey)

12.7 Battle of the Forms Dan Miller was a commercial photographer who had taken a series of photographs that had appeared in the *New York Times*. *Newsweek* magazine wanted to use the photographs. When a *Newsweek* employee named Dwyer phoned Miller, he was told that 72 images were available. Dwyer said that he wanted to inspect the photographs and offered a certain sum of money for each photo *Newsweek* used. The photos were to remain Miller's property. Miller and Dwyer agreed to the price and the date for delivery. *Newsweek* sent a courier to pick up the photographs. Along with the photos, Miller gave the courier a delivery memo that set out various conditions for the use of the photographs. The memo included a clause that required *Newsweek* to pay $1,500 each if any of the photos were lost or destroyed. After *Newsweek* received the package, it decided it no longer needed Miller's work. When Miller called to have the photos returned, he was told that

Does Debtor's jewelry qualify as necessary and proper wearing apparel and therefore is exempt property from the bankruptcy estate?

Answer No, Debtor's jewelry does not qualify as necessary and proper wearing apparel and is therefore not exempt property from the bankruptcy estate. Mrs. Lebovitz's jewelry is part of the bankruptcy estate. Debtor argues that she should be able to exempt all of her jewelry as wearing apparel because the items are worn by Debtor regularly, have sentimental value to her because they were given to her by her husband, and were not purchased for investment. However, under Tennessee law, Debtor is not entitled to claim her jewelry as exempt because the items are neither necessary nor proper wearing apparel for a bankruptcy debtor. Thus, Debtor is not entitled to claim her jewelry as exempt from the bankruptcy estate. As difficult as this case is, given the unfortunate illness of Dr. Lebovitz that led to the bankruptcy filing, the law is clear: Whether Debtor's jewelry is valued at its wholesale value or retail value, the items constitute luxury items. The items constitute luxury items, not necessary or proper wearing apparel, and are not exempt property from Debtor's bankruptcy estate. Debtor's jewelry is property that must be included in the bankruptcy estate. *In re Lebovitz*, 344 B.R. 556, **Web** 2006 Bankr. Lexis 1044 (United States Bankruptcy Court for the Western District of Tennessee)

Critical Legal Thinking Cases

13.1 Financing Statement PSC Metals, Inc. (PSC), entered into an agreement whereby it extended credit to Keystone Consolidated Industries, Inc., and took back a security interest in personal property owned by Keystone. PSC filed a financing statement with the state, listing the debtor's trade name, "Keystone Steel & Wire Co.," rather than its corporate name, "Keystone Consolidated Industries, Inc." When Keystone went into bankruptcy, PSC filed a motion with the bankruptcy court to obtain the personal property securing its loan. Keystone's other creditors and the bankruptcy trustee objected, arguing that because PSC's financing statement was defectively filed, PSC did not have a perfected security interest in the personal property. If this were true, then PSC would become an unsecured creditor in Keystone's bankruptcy proceeding. Is the financing statement filed in the debtor's trade name, rather than in its corporate name, effective? *In re FV Steel and Wire Company*, 310 B.R. 390, **Web** 2004 Bankr. Lexis 748 (United States Bankruptcy Court for the Eastern District of Wisconsin)

13.2 Buyer in the Ordinary Course of Business Mike Thurmond operated Top Quality Auto Sales, a used car dealership. Top Quality financed its inventory of vehicles by obtaining credit under a financing arrangement with Indianapolis Car Exchange (ICE). ICE filed a financing statement that listed Top Quality's inventory of vehicles as collateral for the financing. Top Quality sold a Ford truck to Bonnie Chrisman, a used car dealer, who paid Top Quality for the truck. Chrisman in turn sold the truck to Randall and Christina Alderson, who paid Chrisman for the truck. When Chrisman filed to retrieve the title to the truck for the Aldersons, it was discovered that Top Quality had not paid ICE for the truck. ICE requested that the Indiana Bureau of Motor Vehicles (BMV) place a lien in its favor on the title of the truck. When ICE refused to release the lien on the truck, the Aldersons sued ICE to obtain title to the truck. The Aldersons asserted that Chrisman, and then they, were buyers in the ordinary course of business and therefore acquired the truck free of ICE's financing statement. ICE filed a counterclaim to recover the truck from the Aldersons. Are Chrisman and the Aldersons buyers in the ordinary course of business who took the truck free from ICE's security interest in the truck? *Indianapolis Car Exchange v. Alderson*, 910 N.E.2d 802, **Web** 2009 Ind.App. Lexis (Court of Appeals of Indiana)

13.3 Bankruptcy Mark Ahmed and Ann Marie Jalajel (Debtors) filed a joint petition for Chapter 7 liquidation bankruptcy. On the schedule of personal property, Debtors listed two cars worth $58,395, a bank account with a balance of $1,156, household furnishing and clothing valued at $6,550, interests in twelve limited liability companies valued at $1.00 each, a dog valued at $1.00, and the following jewelry:

Item	Owner	Value
Necklaces earrings, bracelets, and watch	Wife	$1,500.00
Wedding ring	Wife	$7,000.00
Watch	Husband	$100.00
Wedding band	Husband	$300.00

Within two years prior to declaring bankruptcy, Debtors purchased twenty-eight pieces of jewelry for approximately $120,000. Prior to filing bankruptcy, Debtors sold nine pieces of jewelry. Seven pieces of jewelry were reported as lost. After filing for bankruptcy, Debtors sold some jewelry and pawned a Rolex watch for $3,000. Two creditors objected to Debtors' claimed exemptions. A complaint was filed, alleging that Debtors knowingly and fraudulently made false oaths and material omissions and transferred and concealed property of the estate in an attempt to hinder, delay, and defraud creditors. The remedy sought was an order that Debtors be denied discharge. Based on the facts of the case, should Debtors be denied discharge? *In re Jalajel*, **Web** 2010 Bankr. Lexis ___ (United States Bankruptcy Court for the Eastern District of Virginia)

13.4 Discharge Margaret Kawaauhau sought treatment from Dr. Paul Geiger for a foot injury. Dr. Geiger examined Kawaauhau and admitted her to the hospital to attend to the risks of infection. Although Dr. Geiger knew that intravenous penicillin would have been a more effective treatment, he prescribed oral penicillin, explaining that he thought that his patient wished to minimize the cost of her treatment. Dr. Geiger then departed on a business trip, leaving Kawaauhau in the care of other physicians. When Dr. Geiger returned, he discontinued all antibiotics because he believed that the infection had subsided. Kawaauhau's condition deteriorated over the next few days, requiring the amputation of her right leg below the knee. Kawaauhau and her husband sued Dr. Geiger for medical malpractice. The jury found Dr. Geiger liable and awarded the Kawaauhaus $355,000 in damages. Dr. Geiger, who carried no malpractice insurance, filed for bankruptcy in an attempt to discharge the judgment. Is a debt arising from a medical malpractice judgment that is attributable to negligent or reckless conduct dischargeable in bankruptcy? *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90, **Web** 1998 U.S. Lexis 1595 (Supreme Court of the United States)

13.5 Chapter 11 Reorganization UAL Corporation was the parent company of United Airlines, which was the largest scheduled passenger commercial airline in the world. On a daily basis, the airline offered more than 1,500 flights to twenty-six countries. The airline also offered regional service to domestic hubs through United Express carriers. Eventually, low-cost airlines began taking business from United. In response, United lowered fares to compete with the low-cost airlines. However, United's cost structure could not support its new strategy, and the company began losing substantial money on its operations.

UAL filed for Chapter 11 reorganization bankruptcy. At the time of filing the petition, UAL owned or leased airplanes, equipment, trucks and other vehicles, docking space at airports, warehouses, office space, and other assets. In many cases, UAL had borrowed the money to purchase or lease these assets. Most of the lenders took back mortgages or security interests in the assets for which they had loaned money to UAL to purchase or lease. In addition, UAL owed unsecured creditors money that it could not repay, and it had executory contracts and unexpired leases that it also could not pay. What should UAL propose to do in its plan of reorganization that it files with the bankruptcy court? *In re UAL Corporation*

13.6 Priority of Security Interests Paul High purchased various items of personal property and livestock from William and Marilyn McGowen. To secure the purchase price, High granted the McGowens a security interest in the personal property and livestock. Two and one-half months later, High borrowed $86,695 from Nebraska State Bank (Bank) and signed a promissory note, granting Bank a security interest in all his farm products, including but not limited to all his livestock. Bank immediately perfected its security agreement by filing a financing statement with the county clerk in Dakota County, Nebraska. The McGowens perfected their security interest by filing a financing statement and security agreement with the county clerk three months after Bank filed its financing statement. Three years later, High defaulted on the obligations owed to the McGowens and Bank. Whose security interest has priority? *McGowen v. Nebraska State Bank*, 229 Neb. 471, 427 N.W.2d 772, **Web** 1988 Neb. Lexis 290 (Supreme Court of Nebraska)

13.7 Fraudulent Transfer Peter and Geraldine Tabala (Debtors), husband and wife, purchased a house in Clarkstown, New York. They purchased a Carvel ice cream business for $70,000 with a loan obtained from People's National Bank. In addition, the Carvel Corporation extended trade credit to Debtors. Two years after getting the bank loan, Debtors conveyed their residence to their three daughters, ages 9, 19, and 20, for no consideration. Debtors continued to reside in the house and to pay maintenance expenses and real estate taxes due on the property. On the date of transfer, Debtors owed obligations in excess of $100,000. Five months after conveying their residence to their daughters, Debtors filed a petition for Chapter 7 bankruptcy. The bankruptcy trustee moved to set aside Debtors' conveyance of their home to their daughters as a fraudulent transfer. Who wins? *In re Tabala*, 11 B.R. 405, **Web** 1981 Bankr. Lexis 3663 (United States Bankruptcy Court for the Southern District of New York)

13.8 Guaranty Contract Murphy Oil USA, Inc. (Murphy Oil), entered into a contract to sell petroleum products to Price Oil, Inc. In order to do so, Murphy Oil required and obtained written guaranty contracts signed by Elmer Myers Armstrong and Frieda Armstrong (Armstrongs), guaranteeing that if Price Oil did not pay

1. Research Paper

Read the call-of-the-question carefully, and follow the instructions for each subject. Prepare four briefing papers using the APA format for research papers, and upload them as one document for your response.

Briefing Paper 1: Critical Legal Thinking

Instructions:

Read Section 13.8 Guaranty Contract of the Murphy Oil USA, Inc. Synopsis in your Cheeseman textbook on pages 285-286.
There is no need to read the case. Determine how your business would protect itself from a discharge of the debt identified in the case.
Assume your readers know the facts of the case and are only seeking your opinions as on the discharge issue. Argue both sides of the issue.

Briefing Paper 2: Law Case with Answers

Instructions:

Read Deficiency Judgment in your Cheeseman textbook on page 268.
Determine whether your jurisdiction (state) has an anti-deficiency statute.
Assume your readers understand the facts provided in the example. Provide your opinions on the efficacy of the anti-deficiency statue as if it is your business that is in the position of First Bank (as in the example). Argue both sides of the issues presented.

Briefing Paper 3: Critical Legal Thinking Cases

Instructions:

Read the following sections in your textbook:
Sections 13.4 Discharge (p. 285),
12.8 Risk of Loss (p. 263),
12.5 Limited Warranty (p. 262), and
13.3 Bankruptcy (pp. 284-285).
Check the decisions of the highest appellate courts, if a case is cited, for each fact pattern.
Assume your readers know the facts of each scenario and are seeking your opinions on whether or not each of the four subjects affect business in the United States. If so, provide the worst and best case scenarios.

Briefing Paper 4: Ethics Case

Instructions:

Read Section 13.10 Ethics in your Cheeseman textbook on page 286. Assume your readers know the facts of the case and are only seeking your opinions on the three questions found at the end of Section 13.10. Argue both sides of all issues.