1975

Cases and Materials on Debtor and Creditor by Vern Countryman

Joseph Epps Claxton

Mercer University

Follow this and additional works at: https://uknowledge.uky.edu/klj
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Available at: https://uknowledge.uky.edu/klj/vol64/iss2/14

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
Book Reviews

CASES AND MATERIALS ON DEBTOR AND CREDITOR. By Vern Coun-

The debtor-creditor relationship is undoubtedly one of the most complex and sensitive with which any system of law must concern itself. It is a relationship that can arise in a multitude of totally unrelated situations, and in many instances (most notably those involving bankruptcy matters and secured transactions) it can seriously affect the rights of persons having no direct connection with it. The general area of debtor-creditor law is also one of the most difficult subjects with which to deal in a law school setting. This is due primarily to two factors. First, the topic involves an unusually large number of what the unsuspecting student may believe to be relatively distinct areas of the curriculum. For example, traditional state law rights and remedies, consumer protection, bankruptcy, the Uniform Commercial Code and constitutional law must all be considered to one degree or another. The net effect of this on the student is sometimes rather stunning. The second factor contributing to the difficulty of teaching debtor-creditor law is that many students bring into such a course ill-conceived but surprisingly firm philosophical views on the relative merits of debtor or creditor status. To some, the debtor is a scoundrel, while to others he is a victim of economic exploitation. The creditor is viewed, correspondingly, as either an innocent party seeking quick justice or an iron-hearted businessman acting without the slightest regard for the finer points of procedural due process.

It is an unfortunate fact of academic life that most casebooks are quite worthless. Nevertheless, every casebook author undoubtedly initiates his project with the genuine intention of providing the kind of concise, organized, and imaginative coverage he always sought but never found in casebooks prepared by others. That failure occurs so often merely illustrates the difficulty of the task. Contrary to this unfortunate circum-

1 Professor of Law, Harvard University Law School.
stance, however, recent casebooks centering on the debtor-creditor relationship have been uniformly good. In the last decade a surprising number of excellent casebooks have been available, though some are beginning to lose their usefulness because of age. However, the decline of these works has been eclipsed in recent months by the appearance of three very fine casebooks. The first of these was David G. Epstein’s Teaching Materials on Debtor-Creditor Relations, a 1973 volume which embodied among other virtues that most unusual of all qualities in modern casebooks—brevity. The second was Cases and Materials on Debtor-Creditor Law, prepared by the distinguished duo of William D. Warren and William E. Hogan and published in 1974. This casebook was the successor to an earlier effort entitled Cases and Materials on Creditors’ Rights and Secured Transactions Under the U.C.C., which appeared in 1967. As Warren and Hogan themselves acknowledge, the title of their first book apparently misled many academicians into the incorrect belief that it was better suited for a course on Article 9 of the Uniform Commercial Code than for one on the debtor-creditor relationship. In fact, however, Warren and Hogan need offer no apologies for the emphasis they place on the role of secured creditors in both their 1974 and 1967 casebooks. Far too many educators permit their students to concentrate so much on the rights of general unsecured creditors that the students—and sometimes the teachers as well—fall into the trap of ignoring the preeminence of secured creditors.

---

2 This is particularly true of Pierre R. Loiseaux’s Cases on Creditors’ Remedies, published in 1966. Stefan A. Riesenfeld, however, evidently recognized the need for revision of his 1967 casebook and has recently produced a second edition, Cases and Materials in Creditors’ Remedies and Debtors’ Protection, published in 1975. This edition appeared after the writing of this book review, and is therefore not discussed as one of the several recent textbooks.


4 An excellent analysis of the place of UCC security interests in a course devoted to the overall debtor-creditor relationship is provided by Warren and Hogan in the preface to their new casebook: A word is in order about the relationship of this course to other commercial law offerings. We believe that the interplay between the avoiding powers of the trustee in bankruptcy and the rights of creditors holding UCC security interests is one of the most important themes of a modern Debtor-Creditor course; however, in order to comprehend this material a student must have some grasp of the basic concepts of Article 9 (attachment, perfection, priori-
The third of the recent influx of casebooks in the debtor-creditor area, and the subject of this review, is the second edition of Professor Vern Countryman's *Cases and Materials on Debtor and Creditor*, published in 1974. Not only is this the most recent of the three texts, but it also has the most interesting background. The first edition of Countryman's casebook appeared in 1964 and represented a literary landmark in the development of debtor-creditor classroom materials. Prior to 1964, the leading casebook in the area was *Cases and Materials on Creditors' Rights and Corporate Reorganization*, by John Hanna and James A. MacLachlan. This very distinguished work was first published in 1939 and ran through no less than five editions, the last of which appeared in 1957. However, there has never been, in any field, a casebook of such outstanding quality so as to exclude the possibility of a competitive alternative. Indeed, the lack of worthy challengers to a dominant casebook is an intellectually unhealthy situation, no matter how outstanding the existing materials may be. In his first edition, Countryman certainly met, and perhaps even surpassed, the high standards set by Hanna and MacLachlan.

Because of the recent proliferation of high-quality course materials on debtor-creditor law, Countryman's new edition must necessarily be viewed from a somewhat different perspective than its predecessor. To put it bluntly, a reasonable observer might easily conclude that there is no crying need for another casebook in the debtor-creditor field. Yet the fact is that the new edition of Countryman's casebook does deserve serious consideration for classroom use. This is true because it

---

1 The topic of securities regulation provides a recent example of this problem. For years, one casebook—*Securities Regulation: Cases and Materials*, by Richard W. Jennings and Harold Marsh, Jr.—had completely preempted the textbook field. Fortunately, although the Jennings and Marsh volume is now in its third edition (1972), there is a new and potent challenger in *Securities Law: Cases-Text-Problems*, compiled by Harold S. Bloomenthal and Samuel E. Wing, published in 1973.
preserves and enhances the extraordinary degree of thoroughness which was the most noticeable characteristic of its predecessor. Primarily through an extensive system of textual notes, Countryman succeeds admirably in putting his principal cases in their proper perspective. These notes are much more readable than those in the first edition and represent a feature that is unmatched by any other casebook in the debtor-creditor field.

At first glance, it might appear that Countryman did not make enough changes in his collection of principal cases. Only 13 cases were deleted from the first edition, and only 14 new cases were added. However, the changes are completely adequate to deal with significant developments in the law. Indeed, since the volume contains relatively few principal cases, the changes that have been made are actually as significant in quantity as they are in substance.6

Like its predecessor and its present-day competitors, Countryman's second edition is divided into two major portions, one being devoted to the intricacies of state debtor-creditor laws and the other addressing straight bankruptcy.7 This superficially innocuous division actually deserves closer attention than any other aspect of the casebook, because it goes directly to the long-term usefulness of both the publication under review and all other existing classroom materials in the debtor-creditor field. The changes that have recently occurred and may yet occur in the area of bankruptcy are well summarized in Countryman's introduction of that topic:

[T]he Supreme Court has prescribed new rules and official forms for straight bankruptcy and for Chapter XIII

---

6 By limiting the number of principal cases, Countryman obviously recognizes that it is not the number of cases, but instead their nature and organizational arrangement which represent the most vital considerations in the preparation of a casebook. Far too many casebook authors seem to feel that an extremely large number of principal cases will compensate for serious structural weaknesses, when in fact a multiplicity of cases frequently contributes to an organizational breakdown.

7 The only recent casebook to vary noticeably from this pattern has been Cases and Materials on Debtor-Creditor Law (1974), prepared by Warren and Hogan, which is discussed in the text accompanying note 3 supra. It does so only to the extent that its authors make a greater, and probably more fruitful, effort to show a direct comparison between the rights and remedies provided to debtors and creditors under the Bankruptcy Act and state laws, respectively.
[wage earners' plans] cases, effective October 1, 1973. Rules
and official forms for cases under § 77 and the other chapters
are in process. Bankruptcy Rule 927 continues to authorize
supplementary local rules.

Meanwhile, Congress in 1970 created the Commission on
Bankruptcy Laws of the United States . . . to study and
recommend changes in the Bankruptcy Act. The commis-
(1973), recommends very extensive revision and includes a
tentative draft of a complete new "Bankruptcy Act of 1973,"
now introduced in the 93d Congress as H.R. 10792 and S.2562.8

If and when the proposed new Bankruptcy Act is adopted,9
all of the existing casebooks in the debtor-creditor field will
instantly be rendered obsolete. In many respects the ensuing
confusion is likely to rival that which developed among practi-
tioners as well as academicians in the wake of the Uniform
Commerical Code. Law professors prefer to view themselves as
innovative and imaginative, but in fact there is always a tempt-
ation in the teaching profession to rely upon the tried and true.
This is only natural, for unusual amounts of time and effort are
necessary to compile workable teaching materials in a new or
heavily revised field of law. The classroom impact of a new
Bankruptcy Act is likely to be especially painful, however, be-
cause it will necessitate the abandonment of all the fine recent
casebooks in the debtor-creditor area. In the preface to his
second edition, Countryman notes that his "intrepid pub-
lisher" (Little, Brown and Company) has chosen to take the
risk that his new casebook will fall victim to instant obsoles-
cence.10 Undoubtedly his publisher is prepared to deal with

---

8 V. COUNTRYMAN, CASES AND MATERIALS ON DEBTOR AND CREDITOR 261 (2nd ed.
9 Estimates on the possible date of adoption of the new act, or some variation
thereof, have ranged from 1976 to never. A reasonable guess would probably be that a
new law relatively similar to the proposal of the Bankruptcy Commission will be
enacted within the next two or three years. Obtaining final passage will not be an easy
task, however. In the words of Professor Frank R. Kennedy, who served as Executive
Director of the Bankruptcy Commission: "[T]he Commission did not suppose that it
could, and did not attempt to, propose legislation that would be noncontroversial."
Kennedy, The Report of the Bankruptcy Commission: The First Five Chapters of the
with great restraint.
10 COUNTRYMAN, supra note 8, at 1ix.
that eventuality through revision of the bankruptcy portion of
the casebook. It is to be hoped that law teachers are equally
prepared for the new Bankruptcy Act.

As for the specific merits of Countryman’s new edition,
there can be no doubt that it is a casebook of obvious quality.
Many law school teachers will prefer it over its competitors,
and even those who do not will find that it provides a strong
standard against which to evaluate other debtor-creditor case-
books.

Joseph Epps Claxton*

* Associate Professor of Law, Walter F. George School of Law, Mercer University.
A.B., Emory University, 1968; J.D., Duke University, 1972. Member of the State Bar
of Georgia.