

FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B./BBA.LLB/LL.B.

Semester - II

SUBJECT: ALWS II

SUBJECT CODE: BAL-208/BBL-208/LLB-206

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Lecture-35



C

Capital offense

A crime punishable by death.

Case file

A complete collection of every document filed in court in a case.

Case law

The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions.

Caseload

The number of cases handled by a judge or a court.

Cause of action

A legal claim.

Chambers

The offices of a judge and his or her staff.

Chief judge

The judge who has primary responsibility for the administration of a court; chief judges are determined by seniority

Claim

A creditor's assertion of a right to payment from a debtor or the debtor's property.

Class action

A lawsuit in which one or more members of a large group, or class, of individuals or other entities sue on behalf of the entire class. The district court must find that the claims of the class members contain questions of law or fact in common before the lawsuit can proceed as a class action.

Clerk of court

The court officer who oversees administrative functions, especially managing the flow of cases through the court. The clerk's office is often called a court's central nervous system.

Collateral

Property that is promised as security for the satisfaction of a debt.

Common law

The legal system that originated in England and is now in use in the United States, which relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

Community service

A special condition the court imposes that requires an individual to work – without pay – for a civic or nonprofit organization.

Complaint

A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

Concurrent sentence

Prison terms for two or more offenses to be served at the same time, rather than one after the other. Example: Two five-year sentences and one three-year sentence, if served concurrently, result in a maximum of five years behind bars.

Confirmation

Approval of a plan of reorganization by a bankruptcy judge.

Consecutive sentence

Prison terms for two or more offenses to be served one after the other. Example: Two five-year sentences and one three-year sentence, if served consecutively, result in a maximum of 13 years behind bars.

Consumer bankruptcy

A bankruptcy case filed to reduce or eliminate debts that are primarily consumer debts.

Consumer debts

Debts incurred for personal, as opposed to business, needs.

Contingent claim

A claim that may be owed by the debtor under certain circumstances, e.g., where the debtor is a cosigner on another person's loan and that person fails to pay.

Contract

An agreement between two or more people that creates an obligation to do or not to do a particular thing.

Conviction

A judgment of guilt against a criminal defendant.

Counsel

Legal advice; a term also used to refer to the lawyers in a case.

Count

An allegation in an indictment or information, charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

Court

Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court reporter

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.

Credit counseling

Generally refers to two events in individual bankruptcy cases: (1) the "individual or group briefing" from a nonprofit budget and credit counseling agency that individual debtors must attend prior to filing under any chapter of the Bankruptcy Code; and (2) the "instructional course in personal financial management" in chapters 7 and 13 that an individual debtor must complete before a discharge is entered. There are exceptions to both requirements for certain categories of debtors, exigent circumstances, or if the U.S. trustee or bankruptcy administrator have determined that there are insufficient approved credit counseling agencies available to provide the necessary counseling.

Creditor

A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

D

Damages

Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

De facto

Latin, meaning "in fact" or "actually." Something that exists in fact but not as a matter of law.

De jure

Latin, meaning "in law." Something that exists by operation of law.

De novo

Latin, meaning "anew." A trial de novo is a completely new trial. Appellate review de novo implies no deference to the trial judge's ruling.

Debtor

A person who has filed a petition for relief under the Bankruptcy Code.

Debtor's plan

A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

Declaratory judgment

A judge's statement about someone's rights. For example, a plaintiff may seek a declaratory judgment that a particular statute, as written, violates some constitutional right.

Default judgment

A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.

Defendant

An individual (or business) against whom a lawsuit is filed.

Defendant

In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

Deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. See discovery.

Discharge

A release of a debtor from personal liability for certain dischargeable debts. Notable exceptions to dischargeability are taxes and student loans. A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor or the debtor's property to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including through telephone calls, letters, and personal contact.

Dischargeable debt

A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

Disclosure statement

A written document prepared by the chapter 11 debtor or other plan proponent that is designed to provide "adequate information" to creditors to enable them to evaluate the chapter 11 plan of reorganization.

Discovery

Procedures used to obtain disclosure of evidence before trial.

Dismissal with prejudice

Court action that prevents an identical lawsuit from being filed later.

Dismissal without prejudice

Court action that allows the later filing.

Disposable income

Income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as those amounts over and above what is necessary for the payment of ordinary operating expenses.

Docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process

In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

E

En banc

French, meaning "on the bench." All judges of an appellate court sitting together to hear a case, as opposed to the routine disposition by panels of three judges. In the Ninth Circuit, an en banc panel consists of 11 randomly selected judges.

Equitable

Pertaining to civil suits in "equity" rather than in "law." In English legal history, the courts of "law" could order the payment of damages and could afford no other remedy (see damages). A separate court of "equity" could order someone to do something or to cease to do something (e.g., injunction). In American jurisprudence, the federal courts have both legal and equitable power, but the distinction is still an important one. For example, a trial by jury is normally available in "law" cases but not in "equity" cases.

Equity

The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$60,000 is subject to a \$30,000 mortgage, there is \$30,000 of equity.)

Evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Ex parte

A proceeding brought before a court by one party only, without notice to or challenge by the other side.

Exclusionary rule

Doctrine that says evidence obtained in violation of a criminal defendant's constitutional or statutory rights is not admissible at trial.

Exculpatory evidence

Evidence indicating that a defendant did not commit the crime.

Executory contracts

Contracts or leases under which both parties to the agreement have duties remaining to be performed. If a contract or lease is executory, a debtor may assume it (keep the contract) or reject it (terminate the contract).

Exempt assets

Property that a debtor is allowed to retain, free from the claims of creditors who do not have liens on the property.

Exemptions, exempt property

Certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors. For example, in some states the debtor may be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption), or some or all "tools of the trade" used by the debtor to make a living (i.e., auto tools

for an auto mechanic or dental tools for a dentist). The availability and amount of property the debtor may exempt depends on the state the debtor lives in.