

FACULTY OF JURIDICAL SCIENCES

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Lecture-37



F

Face sheet filing

A bankruptcy case filed either without schedules or with incomplete schedules listing few creditors and debts. (Face sheet filings are often made for the purpose of delaying an eviction or foreclosure)

Family farmer

An individual, individual and spouse, corporation, or partnership engaged in a farming operation that meets certain debt limits and other statutory criteria for filing a petition under Chapter 12.

Federal public defender

An attorney employed by the federal courts on a full-time basis to provide legal defense to defendants who are unable to afford counsel. The judiciary administers the federal defender program pursuant to the Criminal Justice Act.

Federal public defender organization

As provided for in the Criminal Justice Act, an organization established within a federal judicial circuit to represent criminal defendants who cannot afford an adequate defense. Each organization is supervised by a federal public defender appointed by the court of appeals for the circuit.

Federal question jurisdiction

Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

Felony

A serious crime, usually punishable by at least one year in prison.

File

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

Fraudulent transfer

A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

Fresh start

The characterization of a debtor's status after bankruptcy, i.e., free of most debts. (Giving debtors a fresh start is one purpose of the Bankruptcy Code.)

G

Grand jury

A body of 16-23 citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense. See also indictment and U.S. attorney.

H

Habeas corpus

Latin, meaning "you have the body." A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding, and to justify the prisoner's continued confinement. Federal judges receive petitions for a writ of habeas corpus from state prison inmates who say their state prosecutions violated federally protected rights in some way.

Hearsay

Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial

Home confinement

A special condition the court imposes that requires an individual to remain at home except for certain approved activities such as work and medical appointments. Home confinement may include the use of electronic monitoring equipment – a transmitter attached to the wrist or the ankle – to help ensure that the person stays at home as required.

I

Impeachment

1. The process of calling a witness's testimony into doubt. For example, if the attorney can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached;" 2. The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government, who are then tried by the Senate.

In camera

Latin, meaning in a judge's chambers. Often means outside the presence of a jury and the public.

In private.

In forma pauperis

"In the manner of a pauper." Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

Inculpatory evidence

Evidence indicating that a defendant did commit the crime.

Indictment

The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies. See also information.

Information

A formal accusation by a government attorney that the defendant committed a misdemeanor. See also indictment.

Injunction

A court order preventing one or more named parties from taking some action. A preliminary injunction often is issued to allow fact-finding, so a judge can determine whether a permanent injunction is justified.

Insider (of corporate debtor)

A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the debtor.

Insider (of individual debtor)

Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or corporation of which the debtor is a director, officer, or person in control.

Interrogatories

A form of discovery consisting of written questions to be answered in writing and under oath.

Issue

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

J

Joint administration

A court-approved mechanism under which two or more cases can be administered together. (Assuming no conflicts of interest, these separate businesses or individuals can pool their resources, hire the same professionals, etc.)

Joint petition

One bankruptcy petition filed by a husband and wife together.

Judge

An official of the Judicial branch with authority to decide lawsuits brought before courts. Used generically, the term judge may also refer to all judicial officers, including Supreme Court justices.

Judgeship

The position of judge. By statute, Congress authorizes the number of judgeships for each district and appellate court.

Judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

Judicial Conference of the United States

The policy-making entity for the federal court system. A 27-judge body whose presiding officer is the Chief Justice of the United States.

Jurisdiction

The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

Jurisprudence

The study of law and the structure of the legal system

Jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact. See also grand jury.

Jury instructions

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

L

Lawsuit

A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Lien

A charge on specific property that is designed to secure payment of a debt or performance of an obligation. A debtor may still be responsible for a lien after a discharge.

Liquidated claim

A creditor's claim for a fixed amount of money.

Liquidation

The sale of a debtor's property with the proceeds to be used for the benefit of creditors.

Litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

M

Magistrate judge

A judicial officer of a district court who conducts initial proceedings in criminal cases, decides criminal misdemeanor cases, conducts many pretrial civil and criminal matters on behalf of district judges, and decides civil cases with the consent of the parties.

Means test

Section 707(b)(2) of the Bankruptcy Code applies a "means test" to determine whether an individual debtor's chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring

dismissal or conversion of the case (generally to chapter 13). Abuse is presumed if the debtor's aggregate current monthly income (see definition above) over 5 years, net of certain statutorily allowed expenses is more than (i) \$10,000, or (ii) 25% of the debtor's nonpriority unsecured debt, as long as that amount is at least \$6,000. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income.

Mental health treatment

Special condition the court imposes to require an individual to undergo evaluation and treatment for a mental disorder. Treatment may include psychiatric, psychological, and sex offense-specific evaluations, inpatient or outpatient counseling, and medication.

Misdemeanor

An offense punishable by one year of imprisonment or less. See also felony.

Mistrial

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Moot

Not subject to a court ruling because the controversy has not actually arisen, or has ended

Motion

A request by a litigant to a judge for a decision on an issue relating to the case.

Motion in Limine

A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

Motion to lift the automatic stay

A request by a creditor to allow the creditor to take action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

N

No-asset case

A Chapter 7 case in which there are no assets available to satisfy any portion of the creditors' unsecured claims.

Nolo contendere

No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

Nondischargeable debt

A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. Some debts, such as debts for money or property obtained by false pretenses and debts for fraud or defalcation while acting in a fiduciary capacity may be declared nondischargeable only if a creditor timely files and prevails in a nondischargeability action.

Nonexempt assets

Property of a debtor that can be liquidated to satisfy claims of creditors.