

Winter 1965

Cases and Materials on Debtor and Creditor, by Vern Countryman

Douglass Boshkoff

Indiana University Maurer School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>



Part of the [Bankruptcy Law Commons](#), and the [Commercial Law Commons](#)

Recommended Citation

Boshkoff, Douglass (1965) "Cases and Materials on Debtor and Creditor, by Vern Countryman," *Indiana Law Journal*: Vol. 40: Iss. 2, Article 6.

Available at: <http://www.repository.law.indiana.edu/ilj/vol40/iss2/6>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

CASES AND MATERIALS ON DEBTOR AND CREDITOR. By Vern Countryman. Boston and Toronto: Little, Brown and Company. 1964. Pp. x, 841. \$12.50.

Prior to the publication of Professor Countryman's *Cases and Materials on Debtor and Creditor* there was an urgent need for a current casebook covering this subject. The widespread adoption of the Uniform Commercial Code and continuing developments in the law of bankruptcy had either rendered other casebooks obsolete or made them difficult to use without the aid of supplementary materials. Professor Countryman has not only satisfied this need; he has gone much further by authoring an outstanding book that should soon find its way into many law school classrooms throughout the United States.

In form this casebook is orthodox, dealing with individual creditors' remedies (attachment, garnishment, execution, and the right to attack fraudulent conveyances), collective action under state law (composition agreements and assignments for the benefit of creditors), and the administration of insolvents' estates under the Federal Bankruptcy Act. In execution, this book is anything but orthodox. Its unusual and distinctive feature is the textual material that has been supplied to explain and connect the cases. The textual material is so comprehensive that it would justify a rearrangement of the title to read *Materials and Cases on Debtor and Creditor*. Those interested in sampling some of this material might look at the notes dealing with the procedures for securing writs of attachment (9-14), homestead exemptions (127-130), state insolvency laws (312-315, 319-324), the availability of bankruptcy (332-344), the operation of section 67(a), (b), and (c) (446-454), and field warehousing (575-583). All these notes are skillfully executed and provide rich and satisfying material for use in class discussion. The high level of performance demonstrated in the material cited is found throughout the book.

Of course, the richness and quantity of this textual material does pose some problems. In the preface, Professor Countryman states, "The pace must be swift, in view of the area to be covered and the increasing demands of other subjects upon the curriculum. . . . Hence I have pursued the course . . . of using principal cases sparsely and making extensive use of notes hopefully designed to present problems more efficiently and at least as provocatively as would a more extensive use of

cases. With varying emphasis on note material, the book may be used for a 2-, 3-, or 4-hour course during one semester."¹

I used this casebook during a three-hour course in the spring semester of 1964 and found this varying emphasis difficult to achieve. The notes and footnotes contain questions and comments, many of which merit class discussion. The instructor who spends as much time on them as they deserve stands no chance of covering the book even in a four-hour course. If he assigns the material and then skips over a substantial amount of it, student reaction may be adverse. Thus it seems that the varying emphasis will be best achieved by either thoroughly covering the note material or not assigning it at all. This means a good deal of cutting for most users of the book. The user will find that choosing the materials to be eliminated is a difficult task as the author has attempted to integrate the materials on the collection process with the bankruptcy part of the book.

If there is to be a large amount of cutting, the first part of the book, which is devoted to collection law, would appear to be the most logical portion to eliminate. One reason for this suggestion is that some of the cases in this part of the book present unduly complicated facts,² involve too much statutory construction of limited interest,³ or are just too long-winded⁴ to deserve detailed coverage. A more convincing argument for elimination is that collection law may be more easily studied within the confines of one jurisdiction. Of course, any book which is national in scope, as this one certainly is, must refer to the laws of many states; and Professor Countryman has lavished just as much attention on collection law as he has on the rest of the book. But the product is a mass of information that almost becomes unmanageable in the classroom. I think that the best way to treat this part of the course is to use supplementary materials dealing with the law of one jurisdiction and then employ the casebook as a reference work to demonstrate the variations found in sister states.

Those who plan to rely exclusively on the casebook may wish that Professor Countryman had included some forms. The nature of creditors' remedies is often difficult for the student to grasp and forms might have proved helpful. For instance, an execution may be more easily understood when the student sees it as a court order directed to a sheriff. The same can be said for writs of attachment and garnishment, returns of

1. COUNTRYMAN, CASES AND MATERIALS ON DEBTOR AND CREDITOR vi (1964) [hereinafter cited as COUNTRYMAN].

2. COUNTRYMAN at 82.

3. *Id.* at 98.

4. *Id.* at 143.

execution, notices of levy, and the like. Often a form may be worth a case or several pages of note material.

I found the bankruptcy part of the book more to my liking, and I would suggest very few changes. Probably the suggested changes are only a matter of personal preference as to the sequence in which the material is covered. For instance, *In re Quaker City Uniform Co.*⁵ appears in the section devoted to the trustee's right to avoid transfers for the benefit of creditors participating in the bankruptcy proceeding. This is not an unorthodox position. My feeling is, however, that study of this case might well be deferred until the students have a thorough grasp of the distributive portions of the act. If one counts the introductory material and notes, a study of pages 443-470 might be deferred until the material on priorities⁶ has been covered. An alternative would be to spend a great deal of time on *United States v. Saidman*,⁷ using it as a vehicle for a preliminary exploration of the distinctions between consensual liens, statutory liens, and priorities.

*Emil v. Hanley*⁸ follows the *Quaker City* case in a subsection entitled "Superseding Earlier Liquidation Efforts." I feel that the students get a better picture of *Emil* if they are acquainted with *Isaacs v. Hobbs Tie & Timber Co.*⁹ and *Straton v. New*.¹⁰ The author has placed these cases in Chapter Five, "The Bankruptcy Distribution," but I found it easy enough to assign pages 624-631 as additional reading when we came to *Emil v. Hanley*.

Also, I am sorry that Professor Countryman did not include the recent opinion of the Supreme Court of the United States in *Kessler v. Department of Public Safety*.¹¹ The effect of the discharge is the last item considered in the casebook; and for me, the *Kessler* opinion would have provided a good vehicle for reviewing the accommodation of state and federal interests under the Bankruptcy Act.

In conclusion, however, it must be emphasized that it is much easier to catalogue faults than to describe excellence. In writing a review of a good book, care must be taken that the listing of minor defects does not obscure the quality of the work reviewed. That is so here. Although I might wish that some things had been done a bit differently, this does not diminish in the least my enthusiasm for this book. It is a pleasure to have

5. *Id.* at 455.

6. *Id.* at 717-742.

7. *Id.* at 278.

8. *Id.* at 470.

9. *Id.* at 624.

10. *Id.* at 625.

11. *Id.* at 866.

a work of such high quality available. I am sure that all those who use it will share this opinion with me.

DOUGLASS G. BOSHKOFF†

† Associate Professor of Law, Indiana University.