1-1-1974

Book Review: Wipe Out Your Debts and Make a Fresh Start (1973)

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Wipe Out Your Debts and Make a Fresh Start. By Jerome I. Meyers,[1] New York: Chancellor Press, Inc., 1973. Pp. 254.

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Most book reviews contain a brief discussion of the subject area of the book under analysis, combined with some criticism or praise of the author's approach. This book review contains unusually detailed subject area analysis and a great deal of incisive criticism. Although readers of book reviews deserve to be made aware of books which should be added to their library, they should also be made aware of books which should not be purchased. Professor Phillips has concluded that Wipe Out Your Debts and Make a Fresh Start *belongs in the latter category; however his review does more than this. In pointing out the substantive errors of the book, Professor Phillips describes several complexities of the bankruptcy laws which present problems for the unwary attorney, as well as the unwary author or layman.*

In nearly every ancient and modern state, the regulation of certain classes of debtors who have ceased to pay their debts as they mature is governed by special provisions of the law.[3] Bankruptcy developed in Italian cities as early as 1313[4] and was spread through Europe by the Lombards as part of the custom of merchants.[5] The first English Bankruptcy Act[6] allowed the seizure and pro-rata distribution of the assets of those persons who "suddenly flee to parts unknown or keep their houses, not minding to pay or to restore to their debtors, their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men for their own pleasures and delicate living, against all reason, equity and good conscience."[7] Although a subsequent statute limited the application of the bankruptcy law to traders, merchants and brokers, it increased the acts of bankruptcy by including the taking of sanctuary by debtor, collusion by the debtor in his arrest for a fictitious debt and the outlawing of the debtor.[8] Six months imprisonment for debt was added to the list of acts of bankruptcy in 1603.[9]

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[3] J. MACLACHLAN, HANDBOOK OF THE LAW OF BANKRUPTCY 10, 20 (1956); 2 *Kings* 4:1 (King James); *Matthew* 18:23-25 (King James); Vrooman, *Origin and History of the Bankruptcy Law*, 37 COMM. L.J. 127 (1932); McLaughlin, *Book Review*, 50 HARV. L. REV. 379 (1936).

[4] Levinthal, *Early History of Bankruptcy Law*, 66 U. PA. L. REV. 223, 242 (1918).

[5] 1 H. REMINGTON, A TREATISE ON THE BANKRUPTCY LAW OF THE UNITED STATES 4 (4th ed. 1934).

[6] 34 & 35 Hen. VIII, c. 4 (1542-43).

[7] *Id.*

[8] 13 Eliz. I, c. 7 (1570).

[9] 1 James I, c. 15 (1603).

These early statutes did not consider problems of dischargeability of debts; however a statute granting this privilege was enacted during the reign of Queen Anne.[10] Despite this early development, voluntary petitions in bankruptcy were not formally permitted in England until 1849,[11] some eight years after that right had been introduced in the United States.[12]

The Bankruptcy Act in the United States, as it exists today, is the fourth act covering this specific area of law passed by Congress since the birth of the nation.[13] Bankruptcy as a subject is traditionally a difficult and technical one and no approach known can change this fact. It is a federal system with specific constitutional authorization.[14] The precise bounds between the system and what the states can do in the same general field are still debatable. In the main, bankruptcy has three principle aspects: (1) The operating mechanism and its staff; (2) the material upon which the staff operates; and (3) what is done with the material. It is important to note that these divisions are not entirely separate. That is, sections dealing with one area may apply to another area, thus furnishing one explanation for bankruptcy's complexities. It is a subject with its own terminology and gives its own meaning to some words which have other uses and meanings in different contexts.

It is virtually impossible to explain the complexities of the bankruptcy laws in a few brief paragraphs; however there are innumerable sources, including treatises and loose leaf services which may provide a starting point. In addition, the *The American Bankruptcy Law Journal* is a repository of information about current bankruptcy practice besides including reprints of leading law review articles. Certainly, the law reviews themselves provide much valuable aid to the understanding of most controversial issues. In short the task of understanding and construing the Bankruptcy Act is formidable, but as many have found, not impossible. Nevertheless, as others have opined, bankruptcy "separate[s] the men from the boys."[15]

Keeping in mind the background of bankruptcy sketched above, attention should be turned to Mr. Meyer's do-it-yourself approach. When I first held this book under review in my hands, three separate but related thoughts came to mind. First, I considered a portion of the preface Professor Black prepared for his book, *Perspectives In Constitutional Law,* which reads as follows: "He who holds in one hand a small volume on constitu-

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[10] 4 Anne, c. 17 (1705).

[11] 12 & 13 Vict., ch. 108 (1849).

[12] Act of Aug. 19, 1841, ch. 9, 5 Stat. 440.

[13] F. NOEL, A HISTORY OF THE BANKRUPTCY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA 36 (1918).

[14] U.S. CONST. art. I, § 8.

[15] J. HANNA & J. MACLACHLAN, CASES AND MATERIALS ON CREDITORS' RIGHTS 668 (5th ed. 1957).

tional law, written by himself, should clasp a prayer book in the other."[16] Secondly, I remembered Alexander Pope's timeless advice that "a little learning is a dangerous thing."[17] Thirdly, I agreed with the old proverb that "he who is his own lawyer has a fool for a client."[18]

In twelve brief chapters, the author of *Wipe Out Your Debts and Make a Fresh Start*[19] attempts to outline what one should do in order to gain the full benefits of the bankruptcy law. In seriatim fashion I shall turn my attention to each chapter. However, before examining Chapter I, I would like to note that even in the preface the author lays down a very shaky foundation by noting that "[t]his book is meant to enlighten those citizens who are not aware of their rights under the bankruptcy laws."[20] The statistics and quotations used throughout the book are the results of his survey and interviews of bankrupts and referees over a one year period. It is submitted that the one year period is not in and of itself subject to serious criticism; however, one key question is left unanswered: what kind of survey and what kind of interviews were conducted? Without doubt, conclusions reached by the author are, in no small measure, based on the questions posited to those being interviewed. Of special moment is the fact that of the bankrupt respondents (how many were asked to respond and how many responded?) twenty percent had been through bankruptcy more than once, and ninety-five percent indicated they would be willing to go through bankruptcy again.[21] Although these figures may be explained based on the statistical area of the author's analysis,[22] the experience of this writer indicates that the actual nationwide recidivism rate is quite low.[23]

Another general criticism may be based on the examples used by the author to illustrate typical bankruptcy problems. In short, they are extremely poor. In fact, they demonstrate an abysmal lack of understanding of the fine points of bankruptcy practice. Suffice it to say that this reviewer would have been pleased to have served as attorney for trustees in the cases cited by the author; although, in his opinion, they illustrate how simple and how easy one might relieve himself of debts created without, in many instances, any intention of paying for services or goods received.

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[16] C. BLACK, PERSPECTIVES IN CONSTITUTIONAL LAW vii (1963).

[17] A. POPE, ESSAY ON CRITICISM pt. 2, line 15 (1709).

[18] Alternatively, "he who treats himself has a fool for a patient." J. MONTAGUE, BROADWAY STOMACH 92 (1940).

[19] J. MEYERS, WIPE OUT YOUR DEBTS AND MAKE A FRESH START (1973) [hereinafter cited as WIPE OUT].

[20] *Id.* at 11.

[21] *Id.* at 11-12.

[22] *See* notes 32 & 65 and accompanying text *infra*.

[23] Out of over 9,000 bankruptcy cases I have been involved in, I am aware of only one involving a recidivist. Other statistics indicate that the number of repeat filings is comparably infinitessimal. *See* D. STANLEY & M. GIRTH, BANKRUPTCY: PROBLEMS, PROCESS, REFORM 58, 59 (Brookings Report) (1971).

To return briefly to statistical problems, in the very first chapter, having already demonstrated a lack of depth of understanding of the Bankruptcy Act,[24] the author likewise demonstrates a looseness with basic arithmetic. Witness the fact that he states there is a national average of nearly 200,000 personal bankruptcies each year.[25] The author then states the following: "Since any bankrupt is prohibited from seeking relief under the bankruptcy laws for another six years after going bankrupt, the national average indicates that 1,200,000 individuals have availed themselves of this relief over the past six years."[26] This statement is wrong for two reasons. First, the fact that bankruptcy relief may not be granted more than once every six years does not mean that persons may not *seek* such relief.[27] Secondly, notwithstanding a minor arithmetical error,[28] the author's 200,000 per year average is based on total bankruptcy filings, and not just *personal* bankruptcies. In fact, the correct average for non-business bankruptcies during the seven year period described was 177,658 cases per year.[29] This is a difference of over 22,000 cases per year, or an error of 132,000 cases over a six year period.[30]

Chapter II is entitled "Words From The Wise: What Bankrupts and Judges Have to Say."[31] Unfortunately, the author approached only bankruptcy judges in the metropolitan New York area and, as best as can be determined from the book, the same is true relative to the bankrupts contacted for input. It is submitted that with respect to personal bankruptcies, the state of New York, and particularly the Southern District of New York, is perhaps one of the poorest districts statistically for laying down broad conclusions relative to bankruptcy. One need only examine the national figures and pay some attention to case distribution around the country to immediately note that New York does not serve as a good example for brankruptcy.[32] Thus, the author's conclusion that the "myth of stigma, failure, and family disapproval is proved to be non-existent"[33] may not be extrapolated to the more than two hundred million Americans not residing in metropolitan New York. On the contrary, studies conducted by the Com-

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[24] This misunderstanding is evident in the following quotation: "Any person who is insolvent is entitled to seek relief through bankruptcy." WIPE OUT at 14. In fact, an individual owing a single debt may file a voluntary petition in bankruptcy.

[25] WIPE OUT at 25. The author derived this average from the number of cases filed from 1966-1972.

[26] *Id.* at 25-26.

[27] *See* note 54 and accompanying text *infra*.

[28] Using the figures cited by the author, the actual average is 194,000 cases per year.

[29] *See* JUDICIAL CONFERENCE OF THE UNITED STATES, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS table 75, at 240 (1972).

[30] In all fairness, the figure used by the author is probably designed to be a mere approximation; however he should clarify that point.

[31] WIPE OUT at 27.

[32] *See also* note 65 and accompanying text *infra*.

[33] WIPE OUT at 40.

mission on the Bankruptcy Laws of the United States revealed that seventy-five percent of the general populace would not file for bankruptcy, their reluctance being based either on a "stigma," an aura of failure, or family disapproval.[34]

Chapter III, "Sex and Bankruptcy: The Advantages of Being Married,"[35] is a hodgepodge of information. The author would have achieved his goal if he had stated that under the present Act, state law determines whether dower, curtesy, and similar statutory interests are property of the estate.[36] For instance, if a wife files a petition in bankruptcy, dower is an *asset* of the estate. On the other hand, if the wife owned property in fee simple capable of being inherited, curtesy would be a *liability* reducing the value of the property. Similar rules apply if the husband becomes bankrupt. This is not just a theoretical problem, since several states protect dower and curtesy interests as against transferees and creditors, although the extent of this protection varies greatly from state to state.[37] In addition, it is important to note that bankruptcy courts also look to the states to determine what happens to property jointly owned by husband and wife. Generally the trustee acquires title to the debtor's interest in property owned by the entirety only if the debtor could have transferred, or a creditor could have severed, the interest. Distinctions in this rule arise based on whether or not both spouses file petitions. If they do, the cases are ordinarily consolidated, a single trustee is appointed and property held by the entirety is administered and sold without reference to its transferability.[38] Difficulties arise when only one spouse files a petition. In that event, given that the outcome turns on local law, the results are not always uniform.[39]

The author's discussion of community property problems is nothing less than frightening. He should have stated that eight states recognize the form of marital ownership known as community property. The rules in each state vary, making it impossible to achieve uniformity in the absence of a general federal rule or a rule of limited applicability to community property states.

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[34] REPORT OF THE COMMISSIONERS ON THE BANKRUPTCY LAWS OF THE UNITED STATES pt. 1, at 47 (1973).

[35] WIPE OUT at 48.

[36] *See* 4A W. COLLIER, BANKRUPTCY ¶ 70.17[5]-[11] (J. Moore ed. 1971).

[37] *See generally* 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 213 (P. Rohan ed. 1971).

[38] *E.g.*, Reid v. Richardson, 304 F.2d 351 (4th Cir. 1962). *See also* Note, *The Effect of Bankruptcy on Estates by Entireties*, 89 U. PA. L. REV. 1073, 1074-76 (1941).

[39] In one state nothing passes to a wife's trustee, but the husband's trustee presumably acquires the husband's interest in the right to use the property during the life of both spouses, subject to defeasance upon the husband's prior death. In four states, irrespective of whether the debtor is the husband or the wife, the trustee acquires full use of the property to the extent of the debtor spouse's interest, subject to the other spouse's right of survivorship. In 12 states and the District of Columbia, the trustee acquires nothing. In two states, the trustee acquires only the right of survivorship. *See* Huber, *Creditors' Rights in Tenancies by the Entireties*, 1 B.C. IND. & COM. L. REV. 197, 200-05 (1960). *See generally* Bienenfeld, *Creditors v. Tenancies by the Entirety*, 1 WAYNE L. REV. 105 (1955).

The Commission on the Bankruptcy Laws of the United States has recommended that community property of a debtor be included in the estate only if it is "generally liable for the debtor's postnuptial contractual debts."[40] Such an approach preserves the result in bankruptcy which generally prevails today in most community property states; however, proposed sections are intended to overrule the present result in Washington and Arizona bankruptcy cases in which community property is not liable for antenuptial debts of the husband. Under the proposed sections, which deal with claims and priorities, all debts of the bankrupt are allowable, and no priority with respect to the distribution of any property is given to a postnuptial debt. Similarly, antenuptial debts would also be allowed and would share equally with postnuptial debts, if any. It should be noted that under the new proposals, the peculiar rule in New Mexico, which makes one-half of the community property liable for the wife's torts but not her contracts,[41] would also be corrected.

Chapter IV, "How to Feather Your Nest Without Laying An Egg: Property Exempt From Surrender,"[42] contains its share of errors. Without a detailed examination of all references with respect to the allowance of exempt cash, it should be noted that the author's citation to Georgia as allowing $1,600 in cash is incorrect. Actually, Georgia does not allow cash in any amount.[43] Several other errors in this chapter are worthy of note. First, as a "word of warning," the author makes the following confusing statement: "If you make a fraudulent transfer of exempt property and this transfer is later discovered, you cannot then claim that the property fraudulently transferred was or is exempt."[44] How does one fraudulently transfer exempt property? Shortly thereafter, the author states that "[t]oday, practically all states have adopted the Uniform Commercial Code (UCC)."[45] Although not a critically misleading error, it might have been more reassuring to have stated that only one state, Louisiana, has *not* adopted the code. The author does make a critical error, in fact he makes two of them, when he adds the following conclusion to his discussion of waiver of exemptions: "In all cases the exempt property *must* be claimed as exempt in Schedule B-5. . . . Otherwise the court will consider the exemption to have been waived."[46] First, if one considers this statement to mean that use of the wrong form will result in a waiver of claimed exemptions, then the author's specification of schedule B-5 is erroneous under the New Bankruptcy

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[40] *See* § 5-203(c) of the proposed Bankruptcy Act, REPORT OF THE COMMISSIONERS ON THE BANKRUPTCY LAWS OF THE UNITED STATES pt. 2, at 190, 191 (1973).

[41] *See* McDonald v. Senn, 53 N.M. 198, 204 P.2d 990 (1949).

[42] WIPE OUT at 63.

[43] *See* GA. CODE ANN. §§ 51-101, 601 (1965) (cash must be converted into personalty, and the total *value* of exemptions claimed may not exceed $1,600).

[44] WIPE OUT at 73.

[45] *Id.* at 74.

[46] *Id.* at 75.

Forms effective October 1, 1973.[47] Secondly, failure to claim exemption on the initial filing is not automatically fatal, given the fact that amendments are permitted.[48] At any rate, this misleading statement substantially weakens the author's other conclusions about waiver.

Chapter V, "Transferring Property For Fun and Profit: Fraudulent Conveyances,"[49] is the weakest chapter. The author devotes only four pages to this most complex and difficult subject matter. He would have made a greater contribution by simply quoting § 67d of the Act with a *caveat* that the reader should study it with care. Collier's treatise devotes over one hundred pages of fine print to a discussion and analysis of § 67d as it applies to individuals.[50] Even that kind of analysis leaves one filled with nagging doubts about fraudulent transfers. Chapter V also contains misleading information with respect to preferential payments. In particular, the author uses a misleading example from Judge Ryan's bankruptcy course at St. John's University Law School to illustrate that a potential bankrupt should not worry about repaying a long term debt shortly before filing a petition in bankruptcy. If made within four months of bankruptcy, such payments are normally declared preferences deemed voidable by the trustee.[51] The author, and apparently Judge Ryan, conclude that this problem may be easily avoided by delaying filing until four months after the payment. Although this example may be accurate in cases of voluntary filings, creditors do not have to wait four months in order to move against a debtor. In short, the example fails to recognize that the bankrupt payor would be vulnerable to an involuntary petition any time within the four months measuring period.

Chapter VI, "Alimony Forever, and Other Tales: Debts not Dischargeable,"[52] is, on the whole, the best chapter in this book. It is solid, brief and yet not misleading except for the following statement: "[A]t least six years must elapse before you can file a petition in bankruptcy again. . . ."[53] Actually, one may file a petition as often as finances will permit. The Bankruptcy Act simply gives creditors and/or the trustee the right to block a discharge within a period shorter than six years.[54]

Chapter VII, "How to Wipe Yourself Right Out of Court: Acts That Raise Grounds for Denial of Discharge,"[55] illustrates the grave danger of an individual attempting to represent himself in a bankruptcy proceeding. The prime reason, in fact, often the only reason, for filing a petition in bank-

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[47] The proper form is now Official Bankruptcy Form No. 6, Schedule B-4.

[48] *See* BANKRUPTCY R. 715.

[49] WIPE OUT at 77.

[50] 4 W. COLLIER, BANKRUPTCY ¶¶ 67.29-.43 (J. Moore ed. 1971).

[51] Bankruptcy Act § 60(a)(1), 11 U.S.C. § 96(a)(1) (1970).

[52] WIPE OUT at 82.

[53] *Id.* at 94.

[54] *See* Bankruptcy Act § 14(c)(5), 11 U.S.C. § 32 (c) (5) (1970).

[55] WIPE OUT at 95.

ruptcy is the hope of receiving a discharge from one's obligations. Because this goal is so important, caution must be exercised as one examines and applies Sections 14C and 17 of the Bankruptcy Act. Even a cursory examination of the literature on the subjects of discharge and nondischargeability illustrates the intricacies and complexities of these two sections. The author's discussion is much too brief and misleading in this most vital area. Considering the potential difficulties, it behooves the uninitiated to abandon his do-it-yourself project and seek the advice and assistance of competent counsel.

Chapter VIII, "The Mysteries of Court Procedures: How to Protect Yourself,"[56] is itself a mystery. This chapter fails to identify the mystery. Recognizing that the typical individual appearing in a bankruptcy court has, in more than ninety-nine percent of all cases, never before been in a courtroom, other than for a traffic violation, this chapter offers about as much help as a pirate's treasure map which fails to indicate whether latitude and longitudinal readings are north, south, east, or west.

Chapter IX, "Lawyers—Pros and Cons,"[57] operates from such a narrow base that I will limit my comment to one point. The author concedes that not every attorney is capable of handling a bankruptcy case. Of major importance is the author's statement that "[a]n experienced bankruptcy attorney will know at a glance whether your major debts are dischargeable."[58] In addition to the issue of dischargeability, the experienced attorney should also recognize innumerable problems that might be identified as possible stumbling blocks for the uninitiated.

Chapter X, "The Winners Game of Bankruptcy,"[59] provides a list of what you must do to play the game. In short, this chapter recommends that you convert all of your non-exempt assets to exempt assets, pile all of those in a purse, suitcase, automobile, truck, or moving van and head for California; but if you do not have enough money or gas, you might take detours to Texas, Vermont or Massachusetts. If the debtor is honest and has nothing to hide, why should it be necessary to cut all ties, burn all bridges and move across the nation in order to obtain a discharge? If, as the author stated, public pressure, or stigma relative to bankruptcy is a myth[60] why not obtain a discharge in one's own state? Apparently, the references to different states are designed to call attention to distinctions in different states' exemption laws rather than to the mobile nature of modern man. If so, the author makes a critical error when he states that one must reside in a particular district for three months and one day.[61] Section 2(a)(1) of the Bankruptcy

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[56] *Id.* at 118.

[57] *Id.*

[58] *Id.* at 123.

[59] *Id.* at 125.

[60] *See* notes 33-34 and accompanying text *supra*.

[61] WIPE OUT at 128.

Act[62] imposes a more flexible standard.

Chapter XI, "Filling Out The Forms,"[63] has, in large part, been replaced by the adoption of the Rules of Bankruptcy Procedure and Official Forms effective October 1, 1973.

Chapter XII, "The Wage Earner's Plan: Maybe It's For You,"[64] should have been entitled: "If You File a Chapter XIII Case You Are Stupid." The author demonstrates throughout the chapter that he is opposed to the use of Chapter XIII. This is understandable, since the interviews and questionaires apparently used for the publication of this book indicate that the author was exposed to essentially only input from the metropolitan New York area. In such an area the inhabitants are so sophisticated that the simple procedures of Chapter XIII are deemed to be an anathema. Interestingly enough, in the Western District of New York a strange phenomenon is developing—an unprecedented, but solid increase in Chapter XIII filings.[65] Perhaps the Bankruptcy Judge in the district is unsophisticated along with the members of the local bar, the debtors and the creditors. Is it possible that the same Bankruptcy Act is not being applied in the Southern District of New York as is being applied in the Western District? Is it possible that the state law in the Western District is different from that in the Southern District? The answer to these questions and to the author's position is that the attorneys and Bankruptcy Judges interviewed were simply opposed to the use of Chapter XIII plans in their district. Reasons for such opposition are, of course, legion, but the most important one is the fact that judges and attorneys in this area prefer a quick, in-and-out, simple, "no asset" case without the continuing responsibility required in a Chapter XIII case. Simply put, it is a matter of time and money.

Consistent with the tenor of this review, this book will add nothing to your law library holdings. It is so misleading that I strongly recommend against buying it. If you need reading material on this subject—go to the recognized treatises.

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[62] *See* 11 U.S.C. § 2(a)(1) (1970); *see also* Bankruptcy R. 116; Official Bankruptcy Form No. 1, para. 2, which reads as follows: "Petitioner has resided . . . within this district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district]."

[63] WIPE OUT at 132.

[64] *Id.* at 174.

[65] *See* JUDICIAL CONFERENCE OF THE UNITED STATES, *supra* note 29, Table F-2, at 412.