

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA

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BANKRUPTCY LAW Examination Registration & Preparation Packet

1. Examination fact sheet
2. Fillable registration form that can be mailed or faxed
3. Exam Specifications listing topics that may be tested on the exam
4. Sample essay questions from past examinations

Date	Tuesday, October 25, 2011, 8:00 a.m. – 5:30 p.m.
Application Filing Deadline	Must be received by 9/26/11; late registration if space allows
Examination sites (2)	Oakland Convention Center at Marriott City Center -or- Pasadena Convention Center (see website for information about special hotel rates at either site)
Examination Fee	\$350 for all applicants
Laptop Fee	\$125 Additional fee to use laptop PC to type answers.
Application Late Fee	\$150 late fee applies to applications received after 9/26/11. Additional “walk-in” fee applies after 10/17/11.
Examination Format	75 multiple-choice questions and eight 30 minute essay questions.
Reference	Examinees may use the following reference materials during the exam: <i>Bankruptcy Code and Rules</i> . Publications must be unannotated and free of any stray marks. Handwritten notations (other than underlining or highlighting) will not be allowed. The use of Post-It type tabs to mark specific book sections is acceptable, but the tabs must not have writing on them
Testing Accommodations	To apply for testing accommodations at either location, please contact the Legal Specialization Department at (415) 538-2120 or 711 for relay services or access the required forms online at: www.californiaspecialist.org

**Specifications for State Bar of California
Bankruptcy Law Certification Examination**

Purpose of the Examination: The Bankruptcy Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply the law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following subject areas may be assessed:

Skill 1: Professional Responsibility

- 1.1 Duties to clients, counsel, trustees, Court and other parties and interest
 - 1.1.1 Attorney's signature as certification
 - 1.1.2 FRBP 9011 sanctions against attorneys
 - 1.1.3 Debt Relief Agency requirements
- 1.2 Potential and actual conflict of interest
- 1.3 Professional employment and compensation
- 1.4 Attorney engagement agreements

Skill 2: Pre-Bankruptcy Considerations

- 2.1 Non-bankruptcy alternatives
- 2.2 Pre-bankruptcy planning
- 2.3 Disclosure and gathering of information
- 2.4 Attorney-client, attorney work product and other privileges and waiver
- 2.5 Determining client eligibility for Chapters 7, 11, 12, 13
- 2.6 Potential litigation issues
- 2.7 Reaffirmation/Redemption/Surrender/Retention
- 2.8 Involuntary petitions
- 2.9 Discharge and Dischargeability Issues

Skill 3: Automatic Stay Issues

- 3.1 Scope of Stay
- 3.2 Exceptions to Stay
- 3.3 Expiration of Stay
- 3.4 Terminating or Modifying Stay
- 3.5 Successive bankruptcy cases
- 3.6 Violation of automatic stay
- 3.7 Special rules for single asset real estate

Skill 4: Estate Issues

- 4.1 Property of the Estate
- 4.2 Exemptions
- 4.3 Use of Cash Collateral
- 4.4 Sale of Estate Property
- 4.5 Post-petition Credit
- 4.6 Abandonment of Estate Property
- 4.7 Debtor's Duties
- 4.8 Leases and executor contracts
- 4.9 Turnover and Avoidance Actions
- 4.10 Setoff and Recoupment
- 4.11 Administrative Expenses

Skill 5: Claims Issues

- 5.1 Scheduling and Filing Claims
- 5.2 Tax and Priority Claims
- 5.3 Claims Objections

Skill 6: Reorganization Issues

- 6.1 Basic knowledge
 - 6.1.1 Chapter 11
 - 6.1.1.1 Chapter 11 vs. 7 vs. 13 vs. 9 vs. Small Business
 - 6.1.1.2 Eligibility
 - 6.1.1.3 Debtor in Possession Trustee
 - 6.1.1.4 Creditor Committee
 - 6.1.1.5 Role of the U.S. Trustee
 - 6.1.1.6 Operational Issues and Compliance
- 6.2 Retention of Professionals/Compensation
 - 6.2.1 Employment
 - 6.2.2 Fee Applications
- 6.3 Chapter 11 Plans
 - 6.3.1 Exclusivity
 - 6.3.2 Disclosure Statement
 - 6.3.3 Classification of Claims
 - 6.3.4 Impairment of Claims
 - 6.3.5 Voting
 - 6.3.6 Admin and Priority Claims
 - 6.3.7 Secured Claims
 - 6.3.7.1 506 classification, valuation
 - 6.3.7.2 1111(b) election
 - 6.3.8 Best Interests of Creditors
 - 6.3.9 Feasibility
 - 6.3.10 Valuation
 - 6.3.11 Cramdown
 - 6.3.12 Absolute Priority/New Value
 - 6.3.13 Discharge
 - 6.3.14 Post-Confirmation Issues
- 6.4 Small Business in Chapter 11
 - 6.4.1 Eligibility
 - 6.4.2 Timing/Deadlines
 - 6.4.3 Differences from Chapter 11
- 6.5 Individuals in Chapter 11
 - 6.5.1 Property of the Estate
 - 6.5.2 Comparison with Chapter 13, 7
 - 6.5.3 Exempt Property
- 6.6 Dismissal/Conversion Issues
- 6.7 Conversion From Chapter 7 to Chapter 13
 - 6.7.1 Eligibility
 - 6.7.2 Co-Debtor Stay
 - 6.7.3 Property of the Estate
 - 6.7.4 3-5 Year Plan
 - 6.7.5 Avoidability Actions
 - 6.7.6 Discharge
 - 6.7.7 Plan Confirmation Issues
 - 6.7.8 Secured Claims
 - 6.7.8.1 Valuation Issues
 - 6.7.8.2 Cramdown Issues

Skill 7: Post Confirmation Issues

- 7.1 Chapter 11 -- Plan Modification
 - 7.1.1 Substantial Consummation
 - 7.1.2 Breach of Confirmed Plan
 - 7.1.3 Modifications in individual cases – “best effort” requirement
- 7.2 Chapter 11 Dismissal
 - 7.2.1 Failure to pay post-petition domestic support obligations
- 7.3 Chapter 11 Conversion
- 7.4 Chapter 13 -- Plan Modification
 - 7.4.1 Suspension Orders
 - 7.4.2 Hardship Discharges
 - 7.4.3 Outside Limit for Modification
 - 7.4.4 Modification to purchase health insurance
 - 7.4.5 Audits & Reviews
- 7.5 Chapter 13 Dismissal

- 7.5.1 Failure to pay post-petition domestic support obligations
- 7.5.2 Failure to file tax returns
- 7.6 Chapter 13 Conversion

Skill 8: Bankruptcy Litigation

- 8.1 Jurisdiction
 - 8.1.1 Jury Trial
 - 8.1.1.1 Waiver by Filing a Claim
 - 8.1.2 Stays/Injunctions
 - 8.1.3 Withdrawal of Reference
 - 8.1.4 Sovereign Immunity Issues
- 8.2 Removal and Abstention
 - 8.2.1 Timing and Procedure
 - 8.2.2 Remand
- 8.3 Res Judicata/Collateral Estoppel
 - 8.3.1 Effect of Final Judgment
 - 8.3.1.1 Grogan-Burden of Proof
 - 8.3.2 Default Judgment
 - 8.3.3 Settlement/Effect on Dischargeability
- 8.4 Discharge and Dischargeability Issues
 - 8.4.1 Timing and Procedure/Deadlines
 - 8.4.2 Availability of Discharge for Individuals, Corporations
 - 8.4.2.1 Chapter 7, 13, 11
 - 8.4.3 Bankruptcy Court Jurisdiction Over Discharge/Dischargeability Litigation
 - 8.4.4 Scope of Discharge/Discharge Injunction
 - 8.4.5 Impact of Denial of Discharge
- 8.5 Appeals and Appellate Issues
- 8.6 Practice and Procedure

STATE BAR OF CALIFORNIA BANKRUPTCY LAW CERTIFICATION EXAM

SAMPLE QUESTIONS

These questions are actual questions from past exams. These questions were designed to be read and answered within 45 minutes, though current examination questions are designed to be read and answered in 30 minutes. No 30 minute essay questions will be released publicly.

Sample Question #1

David and Cindy were married for five tumultuous years. After the police had been to their home for the second time to break up a physical brawl, Cindy filed for divorce. She and David were able to agree on a property settlement pursuant to which David gave Cindy a Promissory Note for \$30,000 bearing 7% per annum interest, amortized over five years with monthly payments of \$594.04. The final decree required David to pay \$2,000 per month in spousal support to Cindy.

Until a year before the divorce, David had been a manager at a fast food restaurant, earning less than \$45,000 a year. He recently became an automobile salesman working on commission. He was doing quite well. During the 10 months prior to the divorce, he had made as much as \$10,000 per month, although he averaged \$5,000 per month. During the two months after the divorce decree had been entered, David's income appeared to be averaging \$7,000 per month.

After David and Cindy separated, but before the final divorce decree was entered, David used his own charge cards to buy expensive jewelry and take exotic vacations. Two months after the divorce, he had accrued \$170,000 in credit card debt.

Also while the divorce was pending, Cindy filed suit against David in state court seeking to recover \$200,000 in medical costs, plus emotional distress damages and punitive damages arising from David having allegedly assaulted her during the final fight that led to the divorce. Three months after the divorce decree had been entered, but before Cindy's state court action had been decided, David filed a chapter 13 bankruptcy. David's budget submitted with the plan showed a monthly income of \$7,000 per month and expenses of \$4,000 per month, which included \$2,000 a month in spousal support payments to Cindy. The note to Cindy is listed as a general unsecured debt which, under David's plan, will receive 18 cents on the dollar.

Cindy filed a claim for \$3 million based upon her state court action and objected to confirmation of the plan.

What issues should Cindy raise to defeat confirmation of David's chapter 13 plan? Discuss.

Sample Question #2

Wendy is the wife of Donald. Donald was the 100% shareholder and president of Dynamix, Inc., which was a contracting business that erected steel frame buildings for light commercial and industrial applications. Dynamix, Inc., filed a voluntary chapter 7 case on November 17, 2004. Prior to filing the bankruptcy, the following transactions occurred between Dynamix and Wendy:

Payments of Wendy to Dynamix, Inc.	Date	Payments of Dynamix, Inc. to Wendy
\$10,000	03/16/04	
10,000	04/26/04	
	04/28/04	\$10,250
12,000	05/19/04	
	06/02/04	15,000
	07/10/04	3,000
	08/03/04	12,000
15,000	08/15/04	
	08/18/04	18,000
12,000	09/20/04	
	09/25/04	12,500
\$59,000	TOTAL	\$70,750

Terrence is the chapter 7 Trustee of Dynamix, Inc., and has filed a lawsuit against Wendy seeking damages. Wendy comes to your office for a consultation and advises you of the following facts.

1. The advances made by her were to cover payroll shortages.
2. During the entire year of 2004, the assets of Dynamix, Inc. were exceeded by its liabilities.
3. No documentation exists as to the payments other than cancelled checks and corresponding deposits between her personal bank account and the Dynamix, Inc., general operating account. The payment of 4/26/2004 was paid directly to a payroll company handling the Dynamix, Inc. payroll.
4. Wendy considered the advances loans and Dynamix, Inc., attempted to pay her back whenever possible.

What is the basis, if any, for Wendy's liability and what defenses, if any, should she assert against the chapter 7 Trustee? Discuss.

Sample Question #3

David is the franchisee of a new car dealership which is located in California. Under the written franchise agreement, if the dealership remains closed for business for more than seven consecutive days, David's franchisor may terminate the franchise. The franchise agreement expires on December 31, 2010, and, under its provisions, David has been given an exclusive sales territory in return for David's agreement to purchase cars exclusively from the franchisor.

At the dealership, David duplicates car keys for his customers using a patented process involving a laser that David operates pursuant to a non-exclusive license which expires on December 31, 2009. Under the written license agreement, David pays the licensor one dollar for every key he duplicates and cannot assign the license without the licensor's consent. In the wrong hands, the laser could pose a serious danger to the public.

On September 30, 2004, David ran out of working capital and was forced to close the doors of the dealership. On October 11, 2004, David filed a voluntary chapter 11 petition. On October 18, 2004, the bankruptcy court granted David's emergency motion to approve debtor-in-possession financing and the dealership reopened that same day. All monetary defaults under both the franchise agreement and the patent license were then cured by David.

On October 28, 2004, David filed a motion to assume and assign to Carla Competitor: (1) the new car dealership franchise agreement; and (2) the non-exclusive license. In his motion, David notes that the franchise agreement has yet to be terminated by the franchisor in writing and that Carla has obtained a lawful permit to operate the laser. David's franchisor filed an opposition to the motion on the basis that David is in non-monetary default of the franchise agreement as the dealership was closed pre-petition for more than seven days. David's licensor also filed an opposition to the motion and correctly points out that, under federal patent law, non-exclusive patent licenses are personal and non-delegable.

Is the license executory? If so, may it be assumed and assigned? Discuss.
Is the franchise agreement executory? If so, may it be assumed and assigned? Discuss.
Should David's motion be granted in whole or in part? Discuss.

Sample Question #4

Wil and Grace come to see you for advice about their financial situation. Last month, they received a discharge and their chapter 7 bankruptcy closed. During the chapter 7:

- Wil and Grace jointly had a debt owing to Grace's mother held nondischargeable under 11 U.S.C. §523(a)(2) in the amount of \$390,000.
- Payroll taxes owed by Wil totaling \$310,000 were not discharged, although no lien has been filed.

- None of the wildcard exemption was used in exempting the pre-petition assets of Wil and Grace and is available.

Wil now works at the local grocery store as a checker. He makes just enough money to pay the family's living expenses. His wages are being garnished by the IRS. He has three minor children living at home.

In February 2005, Grace had a major movie studio take an option on a script she had written and sent to the studio one year before the bankruptcy was filed. The terms of her contract with the studio will be reduced to writing next week. Grace is to receive \$10,000 per month for helping develop the script, up to a maximum of \$60,000, with a \$400,000 additional bonus if the script is made into a movie. The script was not listed as an asset in the bankruptcy proceeding or on the schedules based on the 25 rejection letters Grace had received following its submission to numerous movie producers. She had discussed the script and the rejections to the non-attorney petition preparer who had prepared the bankruptcy schedules filed by Wil and Grace.

Wil has been told by his elderly father that Wil will inherit \$1,000,000 when his father dies. Wil's father is in failing health and may die within 90 days.

Discuss what Wil and Grace should do in regard to each debt and asset or potential asset.

Sample Question #5

Richard comes to see you the day after his first meeting of creditors in his chapter 7 bankruptcy case. He filed to discharge a large judgment against him resulting from his negligence in an auto accident while he was uninsured. He wants to retain you as his bankruptcy counsel. He filed his case in pro per after studying about bankruptcy on the Internet. Based on your interview with Richard, you discover the following irregularities with his bankruptcy schedules:

- a. Richard is married. His wife did not file bankruptcy. He did not list any assets which were titled in his wife's name, although several may be community property. These include a leased car, a timeshare in Cabo San Lucas, clothing, a \$10,000 bank account, and the community property residence.
- b. Richard receives social security as his only income. It is not listed on his Schedule I. His wife's income from her ERISA qualified retirement plan of \$10,000 per month is not listed.
- c. Numerous creditors are not listed, including credit cards, family members and taxing agencies who are creditors of Richard. He intended to pay these entities and thus did not list them.

At yesterday's meeting of creditors, the trustee learned about the facts in paragraph a. The trustee told Richard that a criminal investigation might be instituted against him based on concealment of assets.

Assume that you take Richard's case and that it remains a chapter 7 case.

What actions should you advise Richard to take and why?

Sample Question #6

Joseph, a professional with a salary of \$10,000 a month from his corporation, comes to see you about filing a bankruptcy to reorganize his tax debt. He has over \$100,000 in a 401(k) and \$50,000 equity in his house. The stock in Joseph's business is all owned by him and has been valued at \$75,000. The value of all his other personal assets is \$15,000.

The IRS has filed a personal tax lien for \$100,000. In addition, the IRS and the Franchise Tax Board have priority tax claims of \$45,000. Joseph has a \$550,000 unsecured bank loan and he owes \$15,000 to his divorce attorney. Both of these debts are dischargeable.

Joseph's average monthly expenses include \$2,000 in child support and \$1,500 to his unemployed former spouse on a marital equalization judgment of \$75,000. His other ordinary and necessary living expenses average \$5,000 a month.

Joseph is certain that his former spouse will object to the dischargeability of the marital equalization judgment.

Discuss the options Joseph may have under chapters 7, 11 and 13 and the advantages and disadvantages of each option.