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BOOKS RECEIVED

Environmental Obligations in Bankruptcy. By Kathryn R. Heidt. Boston, Massachusetts: Warren Gorham Lamont. 1993. Looseleaf Volume. \$130.00.

Kathryn R. Heidt's *Environmental Obligations in Bankruptcy* examines the unique interplay of two seemingly conflicting areas of law: bankruptcy and environmental law. The book is in the form of a manual, or desktop reference, and it is meant to provide a guide and framework that will allow attorneys to analyze problems that arise at the intersection of environmental and bankruptcy law. *Environmental Obligations in Bankruptcy* analyzes the types of environmental obligations in bankruptcy proceedings, from the perspectives of the environmental creditor, the debtor, secured creditors, and general unsecured creditors. The book consists of ten chapters, each one focusing on a specific subject matter involving environmental issues in bankruptcy. A group of appendices containing applicable state and federal statutes completes the book.

Chapters one and two act as basic introductions and overviews to the two areas of law that the book addresses. Chapter one provides an overview of bankruptcy law. The purposes behind bankruptcy law are discussed and an overview of common bankruptcy provisions is given. The various bankruptcy proceedings that are available under the Bankruptcy Code are examined, with attention paid to Chapter 7, 11, and 13 proceedings. Chapter 7 proceedings, providing for liquidations under the Code, are noted as the areas of bankruptcy that commonly involve environmental issues.

Chapter two gives an overview of environmental law, concentrating on the laws and acts that tend to intersect with bankruptcy cases. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is discussed. The categories of liable parties under CERCLA as well as the consequences liability under the act can have on debtors are examined. Information on the Resource Conser-

vation and Recovery Act (RCRA) and its possible role in bankruptcy proceedings is also provided.

Key issues in understanding the appropriate treatment of environmental obligations in bankruptcy are addressed in chapter three. In particular, the author addresses two key questions that attorneys should ask themselves when facing possible environmental concerns in bankruptcy: (1) Is the particular obligation a "claim" within the meaning of the Bankruptcy Code, and if so, (2) when did the claim arise? Environmental obligations are complex, and often do not fit neatly into the categories found in the Bankruptcy Code. Chapter three aims at addressing this problem, giving guidance on how to determine whether environmental obligations can be discharged, or whether they are subject to an automatic stay proceeding or some other treatment under the Code. Guidance on what constitutes a claim under the Code is provided, as well as a discussion on the importance of when such claims arise.

The government's role as a pursuer of environmental obligations is examined in chapter four. Courts generally have been lenient in permitting governments to pursue environmental obligations in bankruptcy. Heidt considers the problems that debtors face when pursued by the government, and she proposes several arguments debtors can implement in their defense. The arguments aim at obtaining automatic stays under the Code provisions, and are helpful for attorneys representing debtors with environmental obligations.

Chapter six discusses administrative priority under the Code, focusing primarily on administrative expenses, which are given first priority under the Code. Heidt details the certain environmental obligations that can be entitled to an administrative priority, and the standards attorneys can use in order to determine whether particular obligations can fall under administrative expenses.

Chapter seven discusses the various types of lien laws that grant the government a lien to secure environmental obligations. The approaches that various states take in implementation of environmental liens are examined, including the superlien laws that New Hampshire, Massachusetts, and New Jersey possess. Heidt examines how liens are established against debtors and how such liens are treated under the Bankruptcy Code. The constitutionality of lien laws is

addressed, with attention paid to issues such as deprivation of property without due process and takings without just compensation.

Jurisdictional issues are examined in chapter nine. A bankruptcy case that includes environmental obligations can give rise to issues such as whether the district court has jurisdiction over the matter, whether the bankruptcy court has the authority to hear the case, or whether the reference should be withdrawn from the bankruptcy court. Such issues are important to the outcome of a case and are to be considered in all bankruptcy cases involving environmental obligations. Heidt provides an overview of these issues and how they affect both the creditor and the debtor.

Chapter ten discusses how liability attaches for environmental obligations. When a site is contaminated with toxic waste, the liability that arises from the event can attach to multiple parties. Parties that can be held liable by the government include the current owner of the site, the owner of the site at the time of contamination, those who arranged for the disposal, and those who transported the waste to the site. Where the responsible party is unable to pay, liability can attach to third parties who are related to the responsible person. Heidt examines how liability attaches to each of these parties. Particular attention is paid to the liability of lenders for environmental obligations. Heidt provides strategies that lenders may follow to ensure that they are not found liable for costs associated with toxic spills or other environmental disasters.

Environmental Obligations in Bankruptcy succeeds in grouping the many issues and problems that arise when environmental obligations are brought into the bankruptcy arena. Heidt's manual is commendable not only for its compilation of information, but also for the helpful strategies it provides for both the creditor and the debtor.

The Law of Personal Property Leasing. By William H. Lawrence and John H. Minan. Boston, Massachusetts: Warren Gorham Lamont. 1993. Looseleaf Volume. \$145.00.

The industry of personal property leasing has grown dramatically in the last forty years. During the 1980's, business equipment leasing expanded twice as fast as overall business

investment in equipment. In the last several years, leasing has accounted for one-third of all business investment in the United States. Important as it is, the area of personal property leasing has been without any organized legal guidance until 1987, when Article 2A of the Uniform Commercial Code (UCC) was promulgated. As a fairly new article, the impact and success of Article 2A is still being debated. *The Law of Personal Property Leasing*, by William H. Lawrence and John H. Minan, examines the emergence of personal property leasing and the subject matters covered by Article 2A of the UCC. The authors present a clearly written, one-volume analysis of the principles involved in leasing law, with the purpose of providing guidance for attorneys dealing in leasing transactions. The book is comprised of fifteen chapters, each one addressing a specific area of personal property leasing. Also included for convenience are the texts of UCC Articles 2A and 2, as well as relevant cases.

An overview of the development of leasing is provided in chapter one. The authors discuss the various factors affecting the decision to lease by businesses. These factors include tax considerations, accounting procedures, and conservation of working capital. The various laws that govern over-leasing are examined. The authors point out that, until recently, there was no comprehensive law governing leasing. Instead, personal property leasing was subject to an amalgamation of laws, including the law of bailments. Chapter one provides an overview of all applicable laws that have governed personal property leasing, from the law of bailments to the newly enacted UCC Article 2A.

Chapter two provides guidance in characterizing leases. The authors discuss how leases are distinguished from other similar transactions under the UCC, such as sales and security interests. Special attention is paid to describing the various types of leases that have evolved in the law. While several types of leases are discussed and defined in Article 2A, there are many other forms of leases that have simply evolved in the leasing trade itself. The authors discuss all major forms of personal property leases, such as finance leases, operating leases, consumer leases, and purchase money leases.

Chapters three through five of *The Law of Personal Property Leasing* address basic concerns in forming, modifying,

and enforcing lease contracts under the UCC. The authors discuss formation under Article 2A, which resembles contract formation under Article 2, and address the issues of modification, rescission, and waiver of lease contracts under Article 2A. Chapter four addresses the statute of frauds and the parol evidence rule. The authors discuss how Article 2A incorporates the two rules, particularly with respect to the differences that exist in the interpretations of Article 2 and Article 2A. The doctrines of unconscionability and good faith are addressed in chapter five. Both concepts are applied in Article 2A, and the authors again relate the differences and similarities between how the concepts are defined and implemented under Articles 2 and 2A. The rule on risk-of-loss under Article 2A is the focus of chapter six. The rule provides that the risk-of-loss is retained by the lessor and does not pass to the lessee. This is a substantial deviation from the risk-of-loss allocation rules under Article 2, and the authors discuss how it affects personal property leasing. The chapter also discusses the risk-of-loss rules that governed personal property leasing prior to Article 2A, essentially involving the standards imposed under the common law.

Chapter seven discusses the warranty provisions of Article 2A. Generally, the warranty provisions in the article parallel those found in Article 2 concerning the quality of the goods. These warranties include express warranties, the implied warranty of merchantability, and the implied warranty of fitness for a particular purpose. The chapter discusses how Article 2A warranties can be modified or disclaimed. Discussion is also provided on what warranties existed for personal property leases prior to the enactment of Article 2A, again focusing on the common law.

Chapter eight addresses alienability of interests and priorities under Article 2A. Part three of Article 2A addresses potential conflicts among lessors, lessees, and parties claiming through them. The authors examine the provisions of part three, which include rules concerning the alienability of lease interests and special rules establishing priorities for competing claimants.

Fixtures and accessions are the scope of chapter nine. Affixed goods have a close relationship with either the goods or the real property to which they are attached. This relationship results in conflicts when someone with an interest in

the other goods or in the real property asserts a claim that covers the leased goods that have been affixed. The authors address these problems and the rules governing them under Article 2A. The chapter provides an overview of the concepts of fixtures and accessions, discussing the code sections that apply to both.

Chapter eleven concerns impairments of the reasonable expectations of parties to a lease contract. The most common form of impairment to a party's expectation occurs when the other party either does not perform when performance is due or fails to perform fully. Either scenario constitutes default under Article 2A, and the injured party has various remedies. The authors address the options available to aggrieved parties, including anticipatory repudiation and the demand for assurances of performance.

The option of the lessee in a personal property lease contract either to accept or refuse the tendered goods is explored in chapter twelve. Different legal standards govern the right to reject or revoke under Article 2A, and the standards are discussed fully in the chapter. Acceptance, rejection, and revocation are all addressed by the authors, with attention paid to how each option is implemented under the Code, as well as under common law.

Chapters thirteen and fourteen focus on particular forms of personal property leases. Chapter thirteen examines finance leases, in which the lessor is simply engaged in financing the acquisition of assets by the lessee, rather than providing the lessee with goods from an inventory maintained by the lessor. The chapter analyzes the provisions of Article 2A that deal specifically with finance leases, with attention given to topics such as the scope of warranties available for such leases, and how the risk-of-loss concept is implemented in them. Consumer leases are the subject of chapter fourteen. The Article 2A approach to consumer leases is minimalist, providing limited consumer law protection. The special provisions on consumer protection under the article are discussed, with attention paid to the special unconscionability provisions Article 2A contains with respect to consumer leases. Also included in chapter fourteen is a discussion of various state consumer protection laws.

The final chapter addresses what remedies are available to an aggrieved party under Article 2A. The particular reme-

dies available for lessees and lessors are addressed, as well as the availability of liquidated damages under the Article. The authors discuss the differences between remedies under Article 2, which are based on forms of breach by the seller or buyer, and remedies under Article 2A, which are stated in terms of default by the lessor or lessee. The chapter provides the reader with a comprehensive overview of the remedial options available in personal property leasing.

The Law of Personal Property Leasing is an excellent resource for attorneys who regularly handle personal property leasing transactions. The book blends detailed discussions of substantive law and principles with critical analysis to aid the reader in understanding the fundamentals of personal property leasing law. The value of the book lies in its ability to compile and analyze information succinctly, in an area of law that has not been the subject of much analysis.

