

Morris  
Creditors' Rights  
April 30, 1982

(40points)

Fred and Betty Davis own and operate Big Scale Concepts (B.S. Concepts), an advertising agency that specializes in promoting weight-loss clinics. B.S. Concepts is not a corporation. The total trade debt owed by the business is \$160,000. Of this amount, \$20,000 is owed to Slim Whitman and \$32,000 is owed to Slim Pickens for acting in television commercials produced by B.S. Concepts. Whitman and Pickens were independent contractors with regard to their work. The Davis' also owe approximately \$20,000 to non-business creditors.

The Davis' were being pressed for payment by Whitman, and they told him that all they had was production equipment worth \$25,000, Greenacre worth \$48,000, and their house with a fair market value of \$66,000 subject to a mortgage of \$57,260.28. The Davis' offered to sell Greenacre to Whitman for \$5,000 cash and satisfaction of their debt to him. This sale was closed and the deed recorded on June 1, and on June 5, the Davis' borrowed \$50,000 from Second Bank and left to relocate in the Falkland Islands.

When the first quarterly payment due on the note to Second Bank was not paid, the Bank initiated an investigation and discovered the above facts. The Davis', after being contacted by the Bank, "got religion," and returned to Dayton, Ohio. After a brief period of reflection, the Davis' scanned the yellow pages and set up an initial interview with A.C. Ducey, a local

bankruptcy specialist. On October 6, Fred and Betty took a dip in the bankruptcy pool by filing a Chapter 7 petition.

As counsel for the debtor, what steps would you take on behalf of the Davis' assuming first that O.R.C. Sec. 2329.662 has not been enacted, and second that O.R.C. Sec. 2329.662 has been enacted.

As the trustee, what steps would you take to fulfill your Sec. 704 duties after the Ohio exemptions were allowed?

(40 points)

Your boss tells you that one of her clients, Richard Gossage, has reopened an old case. In July, 1973, Gossage recovered a \$100,000 judgment against Heathcliff Johnson in Montgomery County, Ohio. A certificate of judgment was properly indexed pursuant to Sec. 2329.02 of the Ohio Revised Code on July 26, 1973. No assets were ever discovered, however, and Gossage soon lost track of Johnson.

On April 20, 1982, Gossage ran across a front page newspaper story in the Piqua Bugle. The story indicated that Johnson's uncle, Raoul Johnson, had died leaving \$300,000 worth of real estate located in Montgomery County to Heathcliff. The administrator of the estate is a Piquette attorney named George Steinbrenner.

Gossage also gave your boss a notice dated

January 15, 1982, from the bankruptcy court for the southern district of Ohio indicating that Heathcliff had filed a voluntary Chapter 7 bankruptcy petition on January 4, 1982. Gossage was listed as a creditor, The notice set February 18, 1982, as the date for the Sec. 341 meeting of creditors and stated that May 19, 1982, was the final date for filing either objections to discharge or complaints to determine the dischargeability of certain debts. Gossage told your boss that he never brought this to her attention because he assumed that Heathcliff was a deadbeat with no assets.

Your investigation of the file shows that the Montgomery County action arose out of a dispute between Gossage and Heathcliff regarding an overhanging fruit tree. Rotten fruit from the tree located on Gossage's property would fall onto Heathcliff's property. Heathcliff, after several warnings to Gossage, became so angry over this that he took a shot at Gossage with a b.b. gun which resulted in the permanent loss of sight in Gossage's right eye. Johnson had been properly served, but did not respond to the suit. The court directed a verdict on the liability issue and the jury awarded \$100,000 damages to Gossage.

Your boss has expressed concern over sections 2329.07 and 2715.15, et. seq., of the Ohio Revised Code. She also has some other information concerning the case. Heathcliff has not informed the administrator about the bankruptcy, and the bankruptcy trustee is unaware of the bequest. Moreover, the bankruptcy trustee has indicated that the claims filed in the proceedings presently total \$360,000 and that no creditor has yet filed either an exception or objection to discharge. Finally, your boss has determined that Heathcliff appears to have started a new business which seems to be prospering.

Your boss asks that you prepare a memo outlining and explaining the steps you recommend to collect Gossage's judgment.

(40 points)

Sparkling Water, Inc. sells spring water to customers in the Miami Valley. The company was experiencing financial difficulties and began to "finance" its operations out of the withholding taxes which it had previously set aside for payment to the IRS. As a result, the company began to fall behind in its tax payments. This situation continued for approximately 9 months. At that time, the company owed \$46,000 for back taxes. IRS properly filed a tax lien on June 11. On June 16, the company borrowed \$18,000 from Second Bank, granting to Second Bank a security interest pursuant to a written agreement in all of its equipment. Second Bank properly filed a financing statement describing the equipment on June 16.

The loan by Second Bank was insufficient to get the company back on track. As a result, several of the company's trade creditors filed an involuntary bankruptcy petition against the company on August 18, and an order for relief under Chapter 7 based on the involuntary petition was entered on October 9.

The company's assets and liabilities are as follows:

Assets

Inventory	\$6,000
Accounts Receivable	1,500
Equipment	31,750
Total Assets	\$39,250
<u>Liabilities</u>	
Taxes	\$49,500
Second Bank	18,000
Wages	6,900
Customers Deposits	2,000
Trade Debt	43,000
Total Liabilities	\$119,400

The wages payable were all earned within the last month's pay period. The wages are due to the following employees in the following amounts:

A	\$2,600
B	400
C	3,000
D	400
E	500

The customer deposits represent the payments by customers of \$20 per household as a security deposit. The total amount recorded has already been adjusted to reflect setoffs for customer bills not paid. Therefore, the entire balance is a credit due to various customers.

You are the trustee of the debtor's estate. What action will you take to "collect and reduce to money the property of the estate" of Sparkilng Water, Inc.?

Assuming that you have incurred administration expenses of \$4,200 in collecting the estate, how would you distribute the funds in your possession?

(40 points)

When Ralph finished college in 1977, he had high hopes and \$9,000 in outstanding National Student Defense Loans. He searched all over for employment, however, he couldn't get a job. Finally, in November of 1977, he filed a voluntary bankruptcy petition. Ralph received a discharge of all of his debts at that time, except his student loans. He had made no payments on the loan up to that date.

Ralph got a job as a bus driver in December of 1979, and he has held this job ever since. His problem is, however, that he has not handled his finances very well. He has made only sporadic payments on his student loan obligation; he still owes \$8450, and he has a debt of \$12,000 outstanding on his credit cards. Ralph also owes his landlord \$1000 for 2 months rent, and he owes Flashy Rentals \$600 for 3 monthly payments due on his automobile lease. Ralph's only assets are an \$8,000 certificate of deposit, wearing apparel worth \$500 and household furnishings worth \$1,250. The household furnishings are subject to a non-purchase money securiy interest in favor of Hi

RisknRate Finance Co., which loaned \$2,000 to Ralph three months ago. In his loan application, Ralph stated that his total assets consisted of IBM stock with a value of \$131,000.

Ralph's current annual take-home pay is \$31,525. Ralph works a lot of overtime. He has scraped up \$750 and given it to you. He wants you to represent him in regard to his financial problems and is awaiting your advice. Suggest a course of action for Ralph, outlining and explaining to him his options under the Bankruptcy Code. Once again, assume that Ohio law applies to this situation.

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