

TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1:	
STUDENT LOANS AND STUDENT LOAN DEBT	5
A. Student Loan Debt and Delinquency	5
B. Types of Loans	13
1. <i>Federal Student Loan Programs</i>	13
2. <i>Private Loans</i>	17
C. Federal Loan Repayment	19
D. Deferment and Forbearance	23
E. Loan Rehabilitation and Compromise and Settlement.....	23
CHAPTER 2:	
SECTION 523(a)(8): TREATMENT OF EDUCATIONAL DEBT UNDER THE BANKRUPTCY CODE	33
A. The Development of the Current Statute.....	34
B. The Current Statute	35
1. <i>Obligations Within the Operation of § 523(a)(8)</i>	36
2. <i>Creditors Within the Protection of § 523(a)(8)</i>	55
C. Policy Arguments Supporting the Nondischargeability of Student Loan Debt	57
CHAPTER 3:	
UNDUE HARDSHIP	61
A. The Majority Test: <i>Brunner v. New York State Higher Education</i>	

<i>Services Corp.</i>	61
1. Brunner's <i>First Prong</i>	62
2. Brunner's <i>Second Prong</i>	64
3. Brunner's <i>Third Prong</i>	68
4. <i>Critique of Brunner</i>	70
B. The Totality of the Circumstances Test: Eighth Circuit and Courts in the First Circuit	71
C. Partial Discharge	73

**CHAPTER 4:
SPECIAL ISSUES IN CHAPTER 13 CASES 77**

A. A Brief Introduction to Chapter 13	78
B. Undue-Hardship Determinations in Chapter 13	80
1. <i>Discharge by Confirmation</i> : United Student Aid Funds Inc. v. Espinosa.....	81
2. <i>Timing the § 523(a)(8) Complaint in Chapter 13</i>	84
C. Plan Treatment Issues in Chapter 13	87
1. <i>Post-Petition Interest</i>	87
2. <i>Separate Classification of Student Loan Debt in Chapter 13</i>	91
3. <i>Education Debt as Special Circumstances</i>	101
4. <i>Debtor's Use of Excess "Discretionary" Income</i>	103
5. <i>Modification of Loan Terms in Chapter 13</i>	104

**CHAPTER 5:
A PRACTICE GUIDE TO STUDENT LOAN LITIGATION
IN BANKRUPTCY COURT 107**

A. When Is Litigation the Best Option?.....	108
B. Initial Filing Considerations.....	110
1. <i>Section 523(a)(8) Requires an Adversary Proceeding</i>	110
2. <i>Objections to the Creditor's Claim</i>	111
3. <i>Impact of Stern v. Marshall</i>	112

C. Timing of the Action	114
1. <i>Bankruptcy Rule 4007(b)</i>	114
2. <i>Special Timing Considerations for Chapter 13 Debtors</i>	115
3. <i>Reopening a Closed Case to File the Complaint</i>	116
D. Pleading Considerations	119
1. <i>Who May File a Complaint under § 523(a)(8)?</i>	119
2. <i>Identifying the Creditor</i>	122
E. Burdens of Proof	123
F. Stating a Claim	124
G. Discovery	126
H. Motions for Summary Judgment	129
I. Trial	133
1. <i>Evidence Issues</i>	133
2. <i>Attorneys' Fees</i>	137
3. <i>Jury Trials</i>	138
J. Standard of Review on Appeal	139
CHAPTER 6: FUTURE OUTLOOK	141
A. Recent Legislative Initiatives	141
B. Proposals for Change	143
APPENDICES	145
Appendix A: Motion to Reopen	147
Appendix B: Pleadings	149
Appendix C: Discovery	171
Appendix D: Motion for Summary Judgment	223

Appendix E: Trial	239
INDEX	277