

UPDATE I TO MINI-CODE AND MINI-RULE ANNOTATIONS SUBSEQUENT TO PUBLICATION OF 2010 EDITIONS

TITLE 11

SEC. 101

1st Cir. *Rederford v. US Airways, Inc.*, 589 F.3d 30 (1st Cir. 2009)(terminated employee's cause of action for reinstatement constituted a "claim" under 101(5)).

1st Cir. *Smith v. Pritchett (In re Smith)*, 586 F.3d 69 (1st Cir. 2009)(\$50/day penalty for late payment of alimony was not a nondischargeable "domestic support obligation" under 101(14A) despite contrary language of agreement and tax treatment as alimony).

SEC. 106

8th Cir. *Knudsen v. Internal Revenue Serv.*, 581 F.3d 696 (8th Cir. 2009)(government held to have waived sovereign immunity regarding tax claims which could be stripped of their priority under 1222(a)(2)(A)).

SEC. 327

5th Cir. *Kennedy v. MindPrint (In re Proeducation Int'l, Inc.)*, 587 F.3d 296 (5th Cir. 2009)(under Tex. Rules, attorney who had worked for firm which represented one creditor could, when no longer employed by firm, represent adverse creditor when he had no knowledge of client or confidential information at prior firm).

SEC. 362

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(26 USC 6503(h)(2) tolls 10 year IRS limitations on collection, plus an additional 6 months after stay is no longer in effect).

9th Cir. *Sterberg v. Johnston*, 582 F.3d 1114 (9th Cir. 2009)(attorney for nondebtor wife violated automatic stay by defending overbroad state court spousal support order after husband filed chapter 11; attorney's fee award limited to those incurred righting the stay violation, but do not cover those in the action seeking the damage award).

9th Cir. *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104 (9th Cir. 2009)(under BAPCPA, chapter 7 debtor who is current in car payments may not "ride-through" case without reaffirmation; under 362(h) and 521(d), she subjects collateral to repossession based on an *ipso facto* default clause in loan documents).

10th Cir. *Beaumont v. Dept. of Veteran Affairs (In re Beaumont)*, 586 F.3d 776 (10th Cir. 2009)(VA's postpetition reduction of benefits following prepetition overpayment was not violative of stay under recoupment doctrine).

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SEC. 502

2d Cir. *Ogle v. Fidelity & Deposit Co.*, 586 F.3d 143 (2d Cir. 2009)(an unsecured claim for postpetition attorneys' fees authorized by pre-petition contract is allowable and deemed to have arisen prepetition).

2d Cir. *ASM Capital, LP v. Ames Dept. Stores, Inc. (In re Ames Dept. Stores, Inc.)*, 582 F.3d 422 (2d Cir. 2009)(502(d) does not bar allowance of a postpetition administrative claim owed to an alleged preference recipient).

6th Cir. *PCFS Fin. v. Spragin (In re Nowak)*, 586 F.3d 450 (6th Cir. 2009)(informal proof of claim disallowed for creditor with avoided lien who failed to subsequently file unsecured claim when court determined distribution would be inequitable).

SEC. 506

2d Cir. *Ogle v. Fidelity & Deposit Co.*, 586 F.3d 143 (2d Cir. 2009)(unsecured claim for postpetition attorneys' fees authorized by prepetition contract is allowable and deemed to have arisen prepetition; 506(b), by negative implication, does not preclude such an unsecured claim).

6th Cir. *PCFS Fin. v. Spragin (In re Nowak)*, 586 F.3d 450 (6th Cir. 2009)(secured creditor not required to file claim to maintain collateral, but proof of claim is required to collect on unsecured deficiency).

9th Cir. *Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai)*, 581 F.3d 1090 (9th Cir. 2009)(506(b) entitles oversecured creditor to contractual attorney's fees prior to chapter 13 plan confirmation, preempting state law; Haw. state law governs post confirmation fees in which debtor was held to be prevailing party).

SEC. 507

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(taxes held nondischargeable under 523(a)(1)(A) and entitled to priority under 507(a)(8)(A)(i) when bankruptcy is filed less than 3 years after taxes were due).

SEC. 521

9th Cir. *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104 (9th Cir. 2009)(under BAPCPA, chapter 7 debtor who is current in car payments may not "ride-through" case without reaffirmation; under 362(h) and 521(d), she subjects collateral to repossession based on an *ipso facto* default clause in loan documents).

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SEC. 522

9th Cir. *Greene v. Savage (In re Greene)*, 583 F.3d 614 (9th Cir. 2009)(debtor's Nev. homestead exemption not limited by 522(p)(1) when property was acquired more than 1215 days prepetition, despite fact that homestead claim arose during that period; absent amendment of schedules, estate is entitled to retain sales proceeds in excess of scheduled petition date value).

SEC. 523

7th Cir. *Tidwell v. Smith (In re Smith)*, 582 F.3d 767 (7th Cir. 2009)(actual notice of debtor doctor's chapter 7 filing 17 days prior to dischargeability deadline was insufficient to bar late filing of such a complaint by unlisted plaintiff patients pursuant to 523(a)(3)(B)).

9th Cir. *Severo v. Comm'r of Internal Revenue*, 586 F.3d 1213 (9th Cir. 2009)(taxes held nondischargeable under 523(a)(1)(A) and entitled to priority under 507(a)(8)(A)(i) when bankruptcy is filed less than 3 years after taxes were due).

10th Cir. *Johnson v. Riebesell (In re Riebesell)*, 586 F.3d 782 (10th Cir. 2009)(loan owed by lawyer-debtor to client held nondischargeable under 523(a)(2)(A) for failure to meet state imposed disclosure obligations for lawyers; postjudgment interest should be calculated at statutory rate rather than contract default rate since there was no contract postjudgment rate).

10th Cir. *Melnor, Inc. v. Corey (In re Corey)*, 583 F.3d 1249 (10th Cir. 2009)(doctrine of issue preclusion rendered default fraud judgment in Va. federal district court preclusive in nondischargeability action under 523(a)(2)(A)).

SEC. 524

10th Cir. *Beaumont v. Dept. of Veteran Affairs (In re Beaumont)*, 586 F.3d 776 (10th Cir. 2009)(VA's postpetition reduction of benefits following prepetition overpayment was not violative of discharge injunction under recoupment doctrine).

SEC. 547

1st Cir. *National Lumber Co. v. Riley (In re Reale)*, 584 F.3d 27 (1st Cir. 2009)(property held in joint bank account was an interest of the debtor in property since he could control its use, and, therefore, "earmarking" doctrine was inapplicable).

SEC. 548

7th Cir. *Boyer v. Crown Stock Distribution, Inc.*, 587 F.3d 787 (7th Cir. 2009)(trustee was entitled to recover payment and "dividend" from shareholders who benefited from leveraged buyout, which had been structured as an asset sale and in which debtor did not receive reasonably equivalent value).

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SEC. 552

3d Cir. *Wawel Sav. Bank v. Jersey Tractor Trailer Training, Inc. (In re Jersey Tractor Trailer Training, Inc.)*, 580 F.3d 147 (3d Cir. 2009)(factor whose lien search did not reveal prior secured creditor may have been a holder in due course who acted in good faith; case remanded to resolve good faith issue under NJ law).

SEC. 727

11th Cir. *Coady v. D.A.N. Joint Venture III, LP (In re Coady)*, 588 F.3d 1312 (11th Cir. 2009)(discharge could be denied under 727(a)(2)(A) when debtor concealed interest in wife's business to which he diverted his uncompensated labor and in which he personally participated).

SEC. 1101

10th Cir. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1328 (10th Cir. 2009)(substantially consummated plan can be reviewed on appeal and is not singularly dispositive of equitable mootness).

SEC. 1122

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(classes must contain "substantially similar" claims, but similar claims may be classed separately for good business reasons not include gerrymandering for voting; review of this issue was held equitably moot).

SEC. 1109

D.C. Cir. *Advantage HealthPlan Inc. v. Potter (In re Greater Southeast Cmty. Hosp. Found., Inc.)*, 586 F.3d 1 (D.C. Cir. 2009)(courts do not extend broad standing of 1109 to appellate standing; corporate president of creditor was not "person aggrieved", and corporation needed attorney).

SEC. 1112

3d Cir. *In re 15375 Memorial Corp. v. BEPCO, LP*, 589 F.3d 605 (3d Cir. 2009)(filing chapter 11 for tactical advantage in litigation with no bankruptcy purpose supports dismissal for bad faith filing).

SEC. 1127

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(equitable mootness does not apply to entire appeal and did not preclude review of treatment of specific claims).

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10th Cir. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1328 (10th Cir. 2009)(neither constitutional nor equitable mootness prevented review on appeal of plan confirmation despite substantial consummation).

SEC. 1129

5th Cir. *Bank of N.Y. Trust Co. v. Off. Unsec. Creds. Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009)(absolute priority rule and fair and equitable standard must be satisfied to cram down plan over a dissenting class; secured noteholders received indubitable equivalent by cash payment of court-determined value of collateral and were not entitled to credit bid).

SEC. 1141

1st Cir. *Boston and Maine Corp. v. Mass. Bay Transp. Auth.*, 587 F.3d 89 (1st Cir. 2009)(under 1898 Bankruptcy Act, claim for environmental liability contribution was barred for contamination which occurred prior to bankrupt's discharge).

6th Cir. *Tam Travel, Inc. v. Delta Airlines, Inc. (In re Travel Agent Comm. Antitrust Litigation)*, 583 F.3d 896 (6th Cir. 2009)(reorganized debtor is generally liable for its post confirmation conduct; however, reorganized debtor's maintenance of its prepetition commission policy held not to be a continuing antitrust violation).

SEC. 1222

8th Cir. *Knudsen v. Internal Revenue Serv.*, 581 F.3d 696 (8th Cir. 2009)(pre and postpetition sales of hogs, held to be farm assets, gave rise to resulting tax claims which could be stripped of their priority under 1222(a)(2)(A); marginal method rather than proration method was appropriate to allocate tax liability).

SEC. 1325

2d Cir. *Reiber v. GMAC, LLC (In re Peaslee)*, 585 F.3d 53 (2d Cir. 2009)(portion of car sale attributable to trade-in's negative equity was part of PMSI and entitled to secured treatment).

5th Cir. *Ford Motor Credit Co. v. Dale (In re Dale)*, 582 F.3d 568 (5th Cir. 2009)(under Tex. law, claim which included financing of negative equity in traded auto, gap insurance, and extended warranty constituted purchase money obligations entitled to protection of 1325(a) hanging paragraph)

8th Cir. *Ford Motor Credit Co v. Mierkowski (In re Mierkowski)*, 580 F.3d 740 (8th Cir. 2009)(claim which included financing of negative equity in traded auto was still entitled to purchase money security interest protection of 1325(a) hanging paragraph); *accord Nuvel Credit Co. v. Callicott (In re Callicott)*, 580 F.3d 753 (8th Cir. 2009).

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9th Cir. *Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai)*, 581 F.3d 1090 (9th Cir. 2009)(506(b) entitles oversecured creditor to enforce contractual attorney's fees up to date of chapter 13 plan confirmation, preempting state law; "effective date" of plan is date when plan becomes binding by court order of confirmation).

10th Cir. *Hamilton v. Lanning*, 545 F.3d 1269 (10th Cir. 2008), *cert granted* 130 S. Ct. 487 (2009)(review limited to question of effects of income and expense changes during plan period on "projected disposable income").

SEC. 1327

1st Cir. *Smith v. Pritchett (In re Smith)*, 586 F.3d 69 (1st Cir. 2009)(\$50/day penalty for late payment of alimony was not a nondischargeable "domestic support obligation" under 101(14A) despite contrary language of agreement and tax treatment as alimony).

TITLE 18

18 USC 152

7th Cir. *United States v. Arthur*, 582 F.3d 713(7th Cir. 2009)(violation of 152(5) found despite marital agreement that non debtor wife claimed entitled her to property; court found agreement fraudulent and also held debtor husband 152(2) for nondisclosure of assets).

TITLE 28

28 USC 158

9th Cir. *Congrejo Invs., LLC v. Mann, (In re Bender)*, 586 F.3d 1159 (9th Cir. 2009)(determination of finality of remanded case must be based on *Vylene* factors - avoid piecemeal litigation; judicial efficiency; preserving bankruptcy court as fact finder; and irreparable harm to party).

28 USC 1452

2d Cir. *Orange County Water Dist. v. Unocal Corp.*, 584 F.3d 43 (2d Cir. 2009)(party waived improper bankruptcy removal by failing to raise issue within 30 days under 28 USC 1447(c); improper removal did not affect subject matter jurisdiction).

4th Cir. *MR Crescent City, LLC v. Draper (In re Crescent City Estates, LLC)*, 588 F.3d 822 (4th Cir. 2009)(28 USC 1447(c) does not permit recovery of legal fees from attorney who erroneously removes action from state court; statute applies solely to litigants).

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BANKRUPTCY RULES

RULE 1009

9th Cir. *Greene v. Savage (In re Greene)*, 583 F.3d 614 (9th Cir. 2009)(court may disallow amendment of schedules only upon showing of bad faith or 3d party prejudice).

RULE 3001

5th Cir. *APS Capital Corp. v. Mesa Air Group*, 580 F.3d 265 (5th Cir. 2009)(under TX law, enforceable agreement to sell bankruptcy claim must resolve all essential terms and leave no material matters for future negotiations).

RULE 7015

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(court may deny motion to amend complaint based on delay, bad faith motivation, or prejudice to other party).

RULE 7065

5th Cir. *Ingalls v. Thompson (In re Bradley)*, 588 F.3d 254 (5th Cir. 2009)(remedial civil contempt may be based on violation of oral injunction order).

RULE 8006

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(appellate record cannot be supplemented with evidence not presented in the bankruptcy court through attachment to brief).

RULE 8009

3d Cir. *Madera v. Ameriquest Mtge. Co. (In re Madera)*, 586 F.3d 228 (3d Cir. 2009)(appellate record cannot be supplemented with evidence not presented in the bankruptcy court through attachment to brief).

RULE 9024

5th Cir. *Heller v. Tex. Real Estate Comm'n (In re Marinez)*, 589 F.3d 772 (5th Cir. 2009)(default order could be set aside when defendant's failure to answer was not willful, attempts were made to resolve litigation, and no prejudice to plaintiff resulted).

UPDATE I TO MINI-CODE AND MINI-RULE ANNOTATIONS
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RULE 9028

1st Cir. *National Lumber Co. v. Riley (In re Reale)*, 584 F.3d 27 (1st Cir. 2009)(successor judge to nonjury trial not required to recall witnesses without request from party).

Through Vol. 52 and Vol. 9