15.617, Spring 2004
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Lecture 22: 5/5/04

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- The rights creditors are the underlying point for which these negotiations take place in reorganization.
- Basic concepts
- Liquidation transactions
- Chapter 11

- bankruptcy law (some rules apply only to bankruptcy code.

    - Title of US laws
        - Title 11 (organized in chapters)
        - Chapter 11 (general corporate reorganization)
        - Chapter 7 (business being liquidated)
        - Chapter 9 (municipal reorganization)

- A body of states for creditors' rights, sales.
    - Article 9: secured creditor's rights in personal property (everything that is not real estate)
    - Each state has a body of law dealing with mortgages.

- fraudulent convergence law
    - state component (uniform transfer act)
    - some states have landlord laws
    - all of the above needs to be taken into account for the rights of creditors.
    - The classes of creditors become significant if there are multiple problems between entities and creditors.

Second Creditor:
- leans on A/R
- lean on equipment
- bank has a lean on inventory, put mortgage on property

perfection: banks have done things that give them 1st claim to collateral rights that a secured party has.

Second party: when you grab a lean some collateral can only be perfected if you take it into possession.

* Example: special statues withholding taxes: if these taxes aren't paid, the withholder has to pay them.

General unsecured creditor = "everyone else"

- the landlord (in some cases, the supermarket guy)
- creditor's rights are set out in statues in bankruptcy code.
- Cost of administration done by the people who administer bankruptcy
- For example, you are company that is fairly have lots of debt you want to transfer assets, sell something worth $1M for 100,000
  - Fraudulent convergence: because it brings about an unfair advantage
  - But the company who buys it for cheaper price has to worry about the creditors among after him.

- insolvency: debts greater than assets
- in fraudulent convergence it means you don't have enough cash to run business.
- To be in bankruptcy: file a voluntary petition or involuntary petition.
- Preference: payment on an account of an antecedent debt that allows the creditor to receive more than they would with bankruptcy
  - 90 day
  - while insolvent
  - creditors get more money

"the automatic stay": special pros; creditors cannot take actions on their collateral to foreclose.

- "frozen": no transaction can occur
  - if someone does make a transaction, they violate the "automatic stay."
  - Automatic stay only guarantees the creditor.

- company and a lot of subsidiaries
- "substitute consolidation": treat many subsidiaries/parts as one entity.
- If holding company goes into bankruptcy, operating entities are treated as assets
- Chapter 7 Consolidation: lists assets, liabilities, creditors, etc.
  - Laborious process (couple of weeks)
- bankruptcy trustees: take on responsibility of liquidating assets, then distributes them.
- "trustee meets with creditors and bankruptcy person."
- Collecting assets is easier for equipment
  - More difficult for IP
    - Trustee figures this out
- Chapter 11: reorganize business. You are going to salvage the business
  - How is the business going to act in its salvaged form?
  - The debtor continues to run business in Chapter 11

- Where are you going to file bankruptcy?
    - Has to be in the area where you are incorporated or where your headquarters are.