

2021 National Legal Research Teach-In Kit

Research Instruction & Patron Services Special Interest Section
American Association of Law Libraries

Citator Assignment: Cite-Checking a Brief

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I created this short assignment this year for my Advanced Legal Research class. Students completed this assignment after our second week of case law research (we also covered local court rules that week, so it has a few questions on that). I wanted them to get some hands-on experience with how they might use citators in practice, and I also wanted them to be exposed to Track Changes (every year I work with students who do not know how to turn it on, or properly use it). The assignment was designed to take less than an hour to complete.

To view the entire kit, please visit <URL for this year's kit: TBD>

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Intro from the author:

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Name: _____

Law 397: Advanced Legal Research

Assignment 5: Case Law (10 points)

Due: _____ – turn in electronically via CCLE by 11:59 p.m.

Assignment instructions:

The assignment is to review a brief, check the validity and accuracy of the citations, and answer a few questions. Please edit this document as directed below, and then upload the document to CCLE when you are done.

First, make sure “Track Changes” is on in Word. On the top ribbon, click Review, then Track Changes. If it is on, then when you type in the document it should appear (i.e., underlined, and in color; your color will likely be different than mine). Here’s a very short video on Track Changes: [Track Changes in Word](#)

For each case in the below brief, check its validity. Then, insert a comment (on the top ribbon, click Review, then New Comment) to explain whether we can cite the case and if there are any limitations.

For each question I’ve asked:

If possible, edit the brief to answer the question, so that your additions/revisions appear in Track Changes in the brief. You can delete my brackets or bracketed question, and add your changes. See paragraph 1 of the brief for an example of how your edits should appear.

If the question can’t be answered with a simple revision, put your answer in the comment.

In a comment, indicate **how** you found your answer. The research path you take is equally, if not more, important than the answer for this assignment.

Example: Searched on Westlaw in the “search for key numbers” search box; searched the Ninth Circuit case database on Lexis.

If you are unable to locate something, indicate the sources you tried. If you used Westlaw or Lexis, indicate what individual database or service you used (i.e., search for key numbers, Supreme Court case database, etc.) and what search language you used, e.g., *baseball & spectator & (assum! /2 risk)* in Westlaw Next; jurisdiction: California.

Remember, this is a pass/no pass class. Start early to avoid stress. Don’t spend too long on any question. Instead, ask for help from a classmate or a librarian.

UNITED STATES BANKRUPTCY COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

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-----X	:	
In re:	:	Chapter 7
	:	Case No. 20-555555
MARSHALL FIELD,	:	
	:	Debtor.
	:	
MARSHALL FIELD,	:	
	:	Plaintiff,
	:	
vs.	:	COMPLAINT TO DETERMINE
	:	DISCHARGEABILITY OF DEBT
	:	PURSUANT TO 11 U.S.C.
DEPARTMENT OF EDUCATION,	:	§ 523(a)(8)
	:	
Defendant.	:	
	:	
-----X	:	

COMPLAINT TO DISCHARGE STUDENT LOAN OBLIGATIONS
PURSUANT TO 11 U.S.C. § 523(a)(8)

This complaint seeks a ruling that certain student loan obligations are dischargeable pursuant to section 523(a)(8) of title 11 of the United States Code (the “Bankruptcy Code”) and seeks to obtain a permanent injunction enjoining the enforcement or collection of such student loan obligations.

Jurisdiction and Venue

1. This Court has jurisdiction over this Proceeding pursuant to [28 U.S.C. §§ 157\(a\) and 1334\(a\)\(1\)](#). This Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a) and 523(a)(8). This Proceeding is commenced pursuant to Rule 7003 of the Federal Rules of Bankruptcy Procedure. By initiating this Proceeding, the Plaintiff seeks to

discharge certain student loan obligations pursuant to Bankruptcy Code section 523(a)(8) and to obtain related relief. and

Parties

3. This adversary proceeding is initiated in conjunction with the petition for relief under chapter 7 of the Bankruptcy Code, which Marshall Field (the “Plaintiff” or the “Debtor”) filed on September 1, 2020, commencing the above-captioned bankruptcy case (the “Case”). On September 2, 2020, the Court appointed Mark Smith as Trustee. On September 4, 2020, the Court approved Debtor’s *Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or Installments*. The meeting of creditors was held on Monday, September 14, 2020. On September 18, 2020, the Trustee filed his chapter 7 report of no distribution.
4. Defendant, the United States Department of Education (the “DOE”) is a federal agency with an address of Lyndon Baines Johnson (LBJ) Department of Education Building, 400 Maryland Ave., SW, Washington, DC 20202.

Facts and Undue Hardship

5. Mr. Field attended the University of Phoenix online law school from September 2005 to May of 2006, where he studied to become an attorney. He met his academic obligations for seven months. However, due to complications that he experienced after minor surgery, he was unable to finish his studies or obtain bar admission.
6. Mr. Field applied for and received one loan in August of 2005 in the original disbursement amount of \$35,000 (the “Loan”) to finance his education at the University of Phoenix. However, he was unable to meet his repayment obligations and ultimately defaulted on the Loan in August 2008.

7. Since the Loan was declared in default in 2012, Mr. Field has made total payments in the amount of \$45,120. He last made a payment on the Loan on June 5, 2020.
8. Despite having made payments over the past fifteen years that total at least \$45,120 and far exceed the original disbursement amount of \$35,000, Mr. Field continues to owe \$29,896.78 in principal and interest on the Loan.
9. In early 2008, Mr. Field began collecting Social Security disability benefits after suffering a nervous breakdown due to posttraumatic stress disorder and bipolar disorder that left him unable to work. His disability and subsequent illness have prevented him from working or attending school.
10. Mr. Field is currently in the process of applying to the United States Department of Education, Office of Federal Student Aid, for a voluntary discharge of the Loan due to his "total and permanent disability."
11. Mr. Field is 56 years old. Since 2008, Mr. Field has been unable to work due to his disability and does not generate sufficient income to support a minimal standard of living that would allow him to repay the Loan. As set forth in Schedule A, his monthly income exceeds his monthly expenses by only \$51.21. His expenses include caring for his grandson, of whom he has custody. Mr. Field has no prospect for future employment and relies upon monthly governmental assistance.
12. Mr. Field does not currently have any expendable income that he might use to repay the Loan. Furthermore, he does not have any foreseeable income increases, future assets, or job prospects that would improve his standard of living and allow for repayments on the Loan.

Argument

13. Mr. Field has met all of the requirements to establish that repayment of his student loan is an “undue hardship.” It should therefore be discharged.
14. The ability to discharge student loans in bankruptcy, thereby freeing a debtor of student loan debt upon completion of the bankruptcy case, has been severely restricted over the last thirty years. Prior to 1978, student loans were dischargeable in bankruptcy on the same terms as any other debt. But in 1978, Congress implemented the first of many future restrictions, and prohibited discharge in the first five years of repayment unless it would constitute an “undue hardship”; after that five years, the debt would be fully dischargeable without an additional showing. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 523(a)(8) (1978). In 1990, this “waiting period” was extended to seven years, and then, in 1998, it was eliminated entirely. See Federal Debt Collection Procedures Act of 1990, Pub. L. No. 101-647 (1990); Higher Education Amendments of 1998, Pub. L. No. 105-244, Title IX, § 971(a) (1998). Accordingly, today, “student loans may not be discharged in Chapter 7 or 13 cases, except for the one narrow circumstance when ‘excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents.’” Educ. Credit Mgmt. Corp. v. Mersmann (In re Mersmann), 505 F.3d 1033, 1042-43 (10th Cir. 2007) (citing 11 U.S.C. § 523(a)(8)).
15. This Court may discharge Mr. Field’s Loan as presenting an “undue” hardship where, pursuant to the standard set forth in Brunner v. New York State Higher Educ. Servs., 831 F.2d 395 (2d Cir. 1987), he can establish: (1) that he cannot maintain, based on current income and expenses, a "minimal" standard of living for himself and his dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state

of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that he has made good faith efforts to repay the loans. Id. at 396; see also [insert recent 9th Circuit case applying, adopting or approvingly citing the Brunner standard].

16. First, Mr. Field cannot maintain a minimal standard of living if forced to repay his Loan, as his expenses (which are quite frugal) are barely exceeded by his income. Although Mr. Field does own his home, it is not extravagant, and he has less than \$20,000 in equity in the home, well below the amount of California’s homestead exemption. See CCP § 704.730. Courts have ruled that a debtor’s equity in their home, if protected by the homestead exemption, should not be a dispositive factor in the minimal standard of living prong. See Schatz v. Access Group, Inc., 602 B.R. 411, 428-29 (1st Cir. B.A.P. 2019).

17. Second, additional circumstances – namely, Mr. Field’s disability – mean that his financial situation is likely to persist. In applying this prong “courts need not require a ‘certainty of hopelessness,’” but instead take a “realistic look . . . into the debtor’s circumstances.” Educ. Credit Mgmt. Corp. v. Polleys, 356 F.3d 1302, 1310 (10th Cir. 2004); see also []. Mr. Field’s permanent disability dates back to 2005, drastically limits his income capability, and is not expected to change. He has satisfied this prong.

18. Finally, Mr. Field has made good faith efforts to pay the loan, in fact paying down over \$45,000, exceeding even the original disbursement amount of \$35,000. Courts have found the good faith prong satisfied where, as here, the debtor has made significant payments on the loan. See Liposky v. United States Dep’t of Educ. (In re Liposky), Case No. 08-36335-F, 2010 Bankr. LEXIS 1036 (Bankr. E.D. Va. Mar. 30, 2010), at **3-4 (finding substantial repayment, and good faith, where debtor had made at least \$81,000 in

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Commented [4]: Please fill in case number (also sometimes called docket number). If you need a refresher for what a docket number might look like, check out Section 10.3 of Principles of Legal Research.

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payments, and had balances remaining of approximately \$148,000). Mr. Field has satisfied this prong.

19. For these reasons, this Court should order Mr. Field's Loan discharged.

Claim for Relief

Count I – Determination of Dischargeability Pursuant to 11 U.S.C. § 523(a)(8)

20. The Plaintiff restates and realleges, as if fully set forth herein, the allegations in the foregoing paragraphs of this complaint.

21. Based on the totality of the foregoing circumstances, the Plaintiff is unable to maintain a reasonable, minimal standard of living now or in the foreseeable future without the discharge of the Loan. Failing to discharge the Loan would cause an undue hardship for the Plaintiff.

WHEREFORE, Plaintiff respectfully requests entry of an Order against the Defendant:

- A. Declaring the Loan dischargeable pursuant to 11 U.S.C. § 523(a)(8);
- B. Granting the Plaintiff such other and further relief as the Court deems proper.

Dated: September [], 2020
Los Angeles, California

Respectfully submitted,

DEWEY HOWE LLP

By:
Mariko Tanaka
Counsel for Marshall Field

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A hint: If I'm looking up rules on a court's website, I usually download all the rules in one doc, and then use ctrl-F.