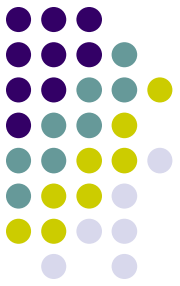
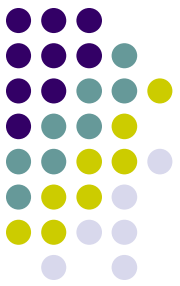


# Chapter 11: Reorganization



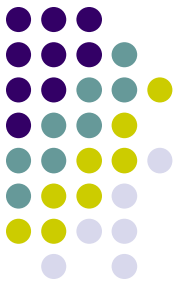
- This is the choice for a company that wants to stay in business.
- The debtor will usually keep the property during the proceeding (“debtor in possession”)
- **Steps:**
  - 1. The reorganization plan: For the first 120 days after filing, only the debtor may file a plan for reorganization. After that, the creditor can submit a plan as well.
  - 2. The creditors are divided into groups that will be paid off in various ways by a plan.
    - e.g. “Employees will get  $\frac{3}{4}$  of their wages over the next 3 years, and suppliers will get  $\frac{1}{2}$  of their money now. ‘Employees’ is one class, and ‘suppliers’ is another.”

# Chapter 11: Reorganization 2



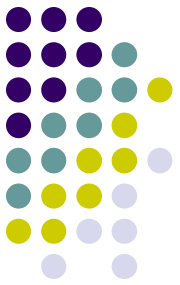
- **Steps (cont.):**
  - **3. The creditors for committees for each class that can negotiate on behalf of the class. If a committee doesn't like the plan, it can negotiate for it to be changed.**
  - **4. The plan must be approved:**
    - Only classes who are “impaired” in some way by the plan have to approve the plan.
    - A plan is approved by a class if  $\frac{1}{2}$  of the members and  $\frac{2}{3}$  of the debt interest within the class approve the plan.
    - If all classes approve the plan, the plan is approved.
    - If one class approves a plan, the court can force everyone to accept the plan (“cram down”), but only if the plan is fair to all classes.
  - **5. If no plan is approved, eventually there will be a motion to convert it into Chapter 7 liquidation.**
  - **6. Discharge of remaining debts (the debtor must pay out the money called for by the approved plan)**

# Chapter 13: Debt Adjustment

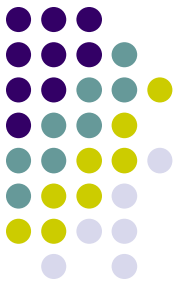


- Only for individuals, only voluntary, and not available for very large debts
- Used by individuals with jobs who can pay all or most of their debts eventually, just not as they come due
- Debtor keeps possession of property
- Can be converted into a Chapter 7, or a Chapter 7 can be converted into a Chapter 13, but only with the debtor's permission

# Steps in a Chapter 13 Proceeding

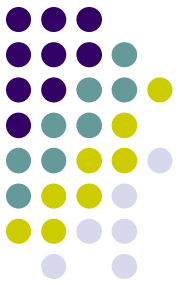


- 1. Debtor files a plan and begins making payments under that plan (even though it has not been approved yet)
- 2. Plan is submitted to each creditor for negotiation and, hopefully, approval. The plan must call for the payment of debts (or most of them) over the course of 3 years.
- 3. Creditors approve the plan:
  - When each creditor approves the plan, it is accepted as to that creditor.
  - Those that reject the plan can continue negotiating, or try to force the debtor into Chapter 7
  - A judge can force a plan on a creditor if the plan is fair, and they'll get paid off, or if the debtor really is paying all he can, based on his income.
- 4. Modification of the plan: Courts can allow reasonable modifications of the plan upon a request by the debtor.
- 5. Discharge: Court may even allow a “hardship discharge” if, through no fault of the debtor, the plan cannot be completed.



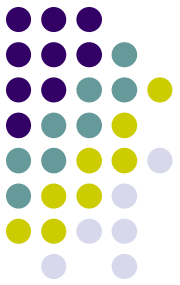
**QUIZ TIME!**

# If A Debtor Can't Make Plan Payments



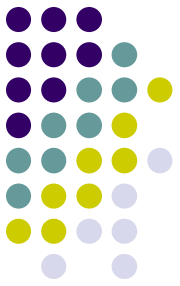
- If for some reason a debtor cannot finish a Chapter 13 repayment plan -- for example, the debtor loses his/her job six months into the plan and can't keep up the payments -- the bankruptcy trustee may modify the plan. The trustee may:
  - give the debtor a grace period, if the problem looks temporary
  - reduce the debtor's total monthly payments, or
  - extend the repayment period.
- If it's clear that there's no way the debtor will be able to complete the plan because of circumstances beyond his/her control, the court might let the debtor discharge his/her debts on the basis of hardship. Examples of hardship would be a sudden plant closing in a one-factory town or a debilitating illness.

# Debtor can't pay (cont.)



- If the bankruptcy court won't let the debtor modify the plan or give the debtor a hardship discharge, the debtor can:
  - convert to a Chapter 7 bankruptcy, unless he/she received a Chapter 7 bankruptcy discharge within the last eight years or a Chapter 13 bankruptcy discharge within the last six years, or
  - ask the bankruptcy court to dismiss his/her Chapter 13 bankruptcy case. The debtor would still owe his/her debts. However, any payments he/she made during the plan would be deducted from those debts. On the flip side, his/her creditors will be able to add on interest they did not charge while his/her Chapter 13 case was pending.

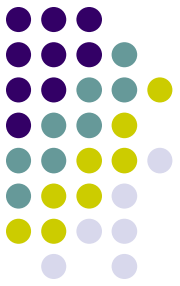
# How the New Bankruptcy Law Affects Chapter 13



- Under the old rules, people who filed under Chapter 13 had to devote all of their disposable income -- what they had left after paying their actual living expenses -- to their repayment plan.
- The new law adds a wrinkle to this equation: Although Chapter 13 filers still have to hand over all of their disposable income, they have to calculate their disposable income using *allowed* expense amounts dictated by the IRS -- not their actual expenses -- if their income is higher than the median in their state. These expenses are often lower than actual costs.

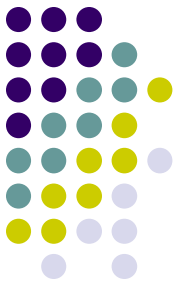


# How the New Bankruptcy Law Affects Chapter 13 (cont.)



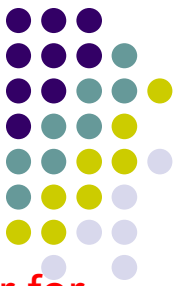
- These allowed expense amounts must be subtracted not from the filer's actual earnings each month, but from the filer's average income during the six months before filing.
- This means that debtors may be required to pay a much larger amount of "disposable income" into their plan than they actually have to spare every month -- which, in turn, means that many more Chapter 13 plans will fail.
- Like Chapter 7 filers, Chapter 13 filers must undergo requisite credit counseling in order to be able to file.

# Discharge



- This is the main point of a bankruptcy proceeding; when the court grants the bankruptcy discharge and thus releases the debtor for all existing debts and gives the debtor a fresh start
  - In a Chapter 7, this means wiping out all debt
  - In a Chapter 11 or 13, this means wiping out all debts except for whatever is called for by the plan

# Non-Dischargeable Debts



- Certain Taxes (such taxes for which a return wasn't filed or filed late, or for which a return was filed fraudulently)
- Debts for property received by false pretenses or actual fraud, or by use of a statement in writing that was intentionally false that a creditor relied on.
- Consumer debts that are incurred within 60 days before order for relief, are owed to a single creditor, and are for more than \$1,000 of luxury goods or services, or consumer cash advances that total more than \$1,000, also obtained within 60 days before the order
- Debts that aren't listed in debtor's schedule of debts filed with the court
- Debts arising from Debtor's fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny.
- Alimony, maintenance or child support if they arose pursuant to a divorce or separation.
- Willful and malicious injury caused to someone or their property
- Fines or penalties can't be discharged unless they're compensation for actual loss by a creditor A non-compensatory tax penalty or any tax penalty over 3 years old can't be discharged
- Student loans, or debts to fund education unless it became due 7 years before the filing or such a failure to discharge would cause undue hardship to the debtor.
- Debts from torts committed while drunk or drugged driving