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# IMPLEMENTATION OF MAGICBANDS AT THE WALT DISNEY WORLD

**Stephen Borkowski, Purdue University Calumet**  
**Carolyn Sandrick, Purdue University Calumet**  
**Katie Wagila, Purdue University Calumet**  
**Carolyn Goller, Purdue University Calumet**  
**Chen Ye, Purdue University Calumet**  
**Lin Zhao, Purdue University Calumet**

## CASE DESCRIPTION

*The primary subject matter of this case concerns information systems implementation at the Walt Disney World. Secondary issues examined include adoption of new mobile technologies, m-commerce, customer relationship management, information technology enabled organizational change, and big data. The case has a difficulty level appropriate for junior level courses or higher. The case is designed to be taught in three class hours and is expected to require four hours of outside preparation by students.*

## CASE SYNOPSIS

*Imagine a child watching Snow White and The Seven Dwarfs on DVD before visiting the Magic Kingdom in Orlando, Florida. Once on vacation, the child rides the Seven Dwarfs Mine Train. While on the ride, the child hears the same music played in the movie, visualizes the same characters, and smells the mine that was featured in the movie. Afterwards, the child attends a meet and greets with the Snow White princess and a couple of the dwarfs. Nowadays, with IT processes that will be discussed in this case study, Snow White can call on the child by their name if they are wearing a special RFID-enabled wristband known as a MagicBand. That personal touch and experience is something that the child will likely remember for many years to come.*

*This case examines the Walt Disney Company's use of information technology in the theme parks, especially, the recent introduction of MagicBands at the Orland Disney World. Disney has always prided itself on being one of the best service providers in the world. They have long used the slogan "happiest place on earth" to describe their amusement parks. The introduction of MagicBands exemplifies what Disney does so well in connecting their customers to a memorable personalized experience. Overall, this case illustrates a company's application of information technology to serve a customer-centric business model.*

# **HIDING IN PLAIN SIGHT: ORGANIZATIONAL SENSE- MAKING OF TOXIC LEADERSHIP AND FOLLOWERSHIP BEHAVIOR**

**Kelli Lynn Fellows, Ph.D., Pfeiffer University**  
**Bradford R. Frazier, Ph.D., Belmont Abbey College**

## **ABSTRACT**

*Organizational members – as leaders and followers – navigate a spectrum of uncertainty, relationship building while fostering trust – to collectively move toward organizational business goal attainment. Unfortunately, not all leaders or followers embark on this endeavor with transparency, authenticity, or noble goals. These individuals are often described in the literature as toxic and their impact on organizational and operational effectiveness is highly destructive. A complex web of interdependent behavioral patterns emerge between and among toxic leaders and toxic followers – each participating in strategic message construction, orchestrated internal situations or circumstances presented under the guise of organizational mission consistency. Comparable with rampant organizational bullying, both toxic leadership and toxic followership reflects a pervasive infiltration within organizational frameworks. This thought leadership paper examines narrative accounts of actual organizational members’ narrative accounts of seemingly normal daily organizational operations where toxic leaders and leaders hide in plain sight. The paper explores the similarities and variance of these narratives to discern the dynamics that distinguish assertive from toxic leadership and followership behavior. This paper examines the connection of toxicity within the organizational culture, intrapersonal mitigation of both leader and follower behavioral expectations, sense-making, deceptive communication, and ethical decision making as they inform and impact key business performance indicator measurement, interpretation and data driven strategic decision making. Finally, this paper illuminates the emergent challenges associated with development and implementation of frameworks designed to a thought leadership framework to organizational can use to identify, prevent, and eradicate toxicity – within the overarching organizational culture and among individual employees’ roles as leader and follower.*

# **SMALL TOWN ORGANIZATION – BIG CITY PROBLEMS: THE CASE OF STRATEGIC DECISION MAKING FOLLY**

**Bradford R. Frazier, Belmont Abbey College  
Kelli Lynn Fellows, Pfeiffer University**

## **ABSTRACT**

*This case follows the recent history of a small, liberal arts college struggling with declining enrollment and increasing employee turnover. The case facilitates students' situational analysis and application of sound decision-making strategies. According to the Rational Decision-Making Process, the first, and arguably the most critical component, is to correctly identify the root problem(s). However, many managers and executive-level leaders only identify and address the symptoms of the business problem. Students will consider a spectrum of variables contributing to the complexity of the organization's current situation. These include prior strategic organizational decisions, saturated market place, organizational communication, ethical leadership, and employee engagement. Their goal is to apply sound decision-making strategies through their discernment and identification of symptoms versus root business problems and development of recommendations to optimize both organizational and operational effectiveness. This case challenges senior undergraduate business students or first year MBA students to examine key business performance indicators, diagnose the root problem(s), and develop a comprehensive plan of action.*

# HIPPA COMPLIANCE AND FRIENDSHIP CAN BE AT ODDS, A CASE STUDY

**Sarah J. Holt, Southeast Missouri State University**

**Judy A. Wiles, Southeast Missouri State University**

## ABSTRACT

*The case centers on a report of a HIPPA privacy rule breach at a surgical center. Even after signing compliance documents and undergoing training on HIPPA privacy rules, the desire to help a friend won out over complying with HIPPA rules and cost two employees their jobs and put the entire organization at risk.*

*Polly, a former employee of Southside Surgical Center called her friend, Donna, an office technician at the surgical center and said that she had been diagnosed with lung cancer. Donna then shared the news with Mary, a nurse at the center who suggested they pull up Polly's scans from St. John's Hospital. Mary located the scans from the St. John's site and then asked a physician at the Southside Surgical Center to take a look at the scan. The physician did not realize the situation he was in and noticed that after making a quick remark about the scan results there were 10 or more employees behind him.*

*When the CEO of Southside Surgical Center learned of the violation (same day of the occurrence), he knew he had to take immediate action and confronted the employees involved. Mary was informed that because of her actions she could be liable for a \$50,000 fine from the Office of Civil Rights and that Southside Surgical could also be fined for the same amount unless corrective action occurred. It was explained to Mary that a word of mouth request from someone who is not a patient is not sufficient to breach another organization's system to look up information. Both Mary and Donna were terminated.*

*This case underscores the power of "significant others" in the workplace and how their influence may cause a breach of ethics and laws. The cost of HIPPA privacy compliance is monetary as well as emotional. This case illustrates that the costs are born by the individual and the organization. Even with appropriate training, individuals may not recognize the full impact of their actions and put an organization at risk.*

# ABBOTT LABORATORIE'S STRATEGIC CHALLENGES

**Yona Kwon, Ewha Womans University**  
**Seungho Choi, Ewha Womans University**

## CASE SYNOPSIS

*Abbott Laboratories is a diversified healthcare company that was founded in 1888. It has four business segment that are diagnostics, medical devices, nutrition, and pharmaceuticals. With innovative products and success in emerging markets, the company is keeping its presence in the pharmaceutical industries. In the changing market and environment, to evolve the business, Abbott Laboratories split into two companies on January 2013. A research-based pharmaceutical business company, AbbVie was established. By separating a research-based pharmaceutical business, Abbott could focus on expanding to emerging markets and develop products from a concentrated environment. Abbott has a world's best-selling drug that generates almost 60 percent of sales which is Humira. It is a biologic drug that consists of human and/or animal materials compared to traditional drugs that are made of small-molecule, chemical processed drugs. The sales revenue of Humira have been growing and it is likely to stay in that way. However, the patent expiration of the drug is near. The product is still a market leader from the revenue they earn, but the biosimilar, which is a copy of biologic drugs, are launching by the competitors. Although it is not easy to produce biosimilar drugs, many companies are targeting to produce Humira's biosimilar drugs. To prevent declining sales of Humira and avoid the after-effect of patent expiration, what should Abbott Laboratories do to sustain their competitive advantage?*

# **TRANSFORMING A NONPROFIT ORGANIZATION: A CASE OF UTILIZING EFFECTIVE LEADERSHIP AND MANAGEMENT TO ACHIEVE MARKETING SUCCESS**

**Jill D. Moeder, Fort Hays State University**  
**Michael J. Martin, Fort Hays State University**  
**Mary C. Martin, Fort Hays State University**

## **CASE DESCRIPTION**

*The primary subject matter for this case is management and marketing of nonprofit organizations. Secondary issues examined include strategic management, marketing strategy, leadership, transformational leadership, and organizational change. The case has a difficulty level appropriate for first year graduate level courses. The case is designed to be taught in one class session equivalent to one and a half hours. It is expected to require between three and six hours of outside preparation by students.*

## **CASE SYNOPSIS**

*The Downtown Development Corporation (DDC) in Fletcher, NE was a non-profit organization that organized events in downtown Fletcher, a small community that underwent a downtown revitalization. The DDC hired consultants to develop a marketing plan for downtown Fletcher and the plan was received well by the DDC Board. However, shortly after, a city commissioner publicly questioned the organization's mission and activities resulting in public scrutiny of the DDC. The DDC was asked to make a presentation to the commissioners in order to justify its existence and receive funding for the next year. They were successful in securing funding, but the DDC had done nothing with the marketing plan. The board president grappled with challenges in the organization's mission and vision, resources, management, and leadership. She did not know how the DDC would be able to successfully implement the marketing plan in light of the problems. She wondered, "How should the DDC proceed with the marketing plan? Would the city and community members support the marketing plan and continued funding? Do I have the right Executive Director in place to successfully lead the DDC? If we lose city funding and community support, will we have to dissolve the organization?"*

*The discussion questions included in the Instructors' Notes address the strategic management of a nonprofit organization (including its mission, vision, and strategic plan), the importance of a SWOT analysis in developing marketing strategy, the differentiation between management and leadership, and models of organizational change and transformational leadership in the context of a nonprofit organization.*

# **WE MUST INNOVATE...TOMORROW: THE PERILOUS JOURNEY TOWARD HEALTHCARE INNOVATION**

**Vivian Resnik, Pfeiffer University and Legacy Rehabilitation**  
**Danny Jackson, Pfeiffer University and Interstate Batteries**  
**Kelli Lynn Fellows, Pfeiffer University**

## **CASE DESCRIPTION**

*The primary subject matter of this case concerns operational and organizational effectiveness; ethics; diffusion of innovations; and strategic leadership. Secondary issues examined include change management, organizational communication, multigenerational workforce and stakeholders; and strategic decision making. The case has a difficulty level of five, appropriate for first year graduate level. The case is designed to be taught in three class hours and is expected to require two hours of outside preparation by students.*

## **CASE SYNOPSIS**

*Contemporary healthcare organizations drive innovation – charged with optimizing operational effectiveness and quality service delivery through technology. Riding the technological wave, administrators mandate handheld device (e.g., iPads; tablets) purchase, and require immediate use across patient-care delivery and documentation (e.g., electronic health records). Yet, clinicians' (e.g., occupational, physical, and speech therapists) work flow and service delivery is inhibited by conflicting physical expectations and productivity goals. With increasing productivity expectations accompanying each technological innovation requirement, one must consider at what cost?*

*Corporate level decision making often contradicts clinicians' implementation capacity. Further, business risks specific to technology remain including: (1) financial costs of emergent technology; (2) complying with strict patient information privacy and security regulations; (3) limited healthcare-specific technological vendor market. Increasing rates of masters of health administration and masters of business administration degrees expand organizational leaders' educational prowess. However, are these degrees actually creating a wider gap between corporate and clinical employees? Poised to address critical business issues, are they equally footed to address co-existing ethical dilemmas?*

*Doing the right thing is more important than doing things right. Is the technology expense providing optimal return on investment (ROI) toward patient and stakeholder needs? Are things being done right – buying the latest tablet, upgrading software, staff training for technology and emergent regulatory requirements? What is the best way to achieve technological relevance and optimized skilled patient care?*

*Written by MHA/MBA graduate students, this case provides students with tangible, current nuanced business and ethical dilemmas faced by contemporary health organizations, and the moderating role of continued graduate education therein.*

# DISCHARGING STUDENT LOANS IN BANKRUPTCY: GOOD LUCK WITH THAT

**Joseph Labatt, University of the Incarnate Word**  
**Michael Forrest, University of the Incarnate Word**  
**Robert Swartz**

## CASE DESCRIPTION

*This case speaks to the real financial fears resulting from burdensome student loan debt experienced by millions of students upon leaving college. Unlike other types of debt obligations held by creditors, student loan debt falls into a special category and is not readily dischargeable in bankruptcy, absent proof of “undue hardship” that precludes paying back the loans. The major topics of the case are bankruptcy, consumer protection, legal environment of business, and ethics. Given the applicability of the topic to students who will soon be obligated to make student loan payments, the case is appropriate for students from junior level and higher, including graduate studies. The case is designed to be taught in one class period, with the expectation that students will have spent two hours in preparation outside of the classroom.*

## CASE SYNOPSIS

*In his 2016 State of the Union address, President Barack Obama argued that “We have to make college affordable for every American. No hardworking student should be stuck in the red.” Indeed, “stuck in the red” is an all too common condition for American students. Outstanding student debt in the United States, by some estimates, stands at \$1.2 trillion, held by borrowers numbering in the tens of millions. For these debtors, what began as an optimistic investment in higher education has turned to deep disillusionment and a sense of betrayal. High paying jobs students counted on too often fail to materialize. Instead, college graduates are caught in a perpetual struggle to manage high loan payments. What follows is a story of one such student.*

*The case chronicles the vicissitudes of Rory Grette, who borrowed money to pay for a prestigious undergraduate degree and graduate school that he did not finish. A family crisis, economic downturn, lost job, consumer debts, and unexpected medical bills left Rory in financial straits. He seeks to discharge his student loans and other debts in bankruptcy. The question is whether the required payment of his student debt constitutes an “undue hardship.”*

## CASE BODY

### The Facts

Middle class parents in a mid-sized town in the Midwest raised Rory Grette. Their dream was for him to go to college and maybe even get his M.B.A. someday. Because he was an excellent student, Rory had no trouble being admitted to a nearby state university. Rory had bigger dreams, however. He studied intensely for the SAT test, scored high, and chose an elite Eastern college over the hometown state school. Rory’s parents explained that had he chosen the

local option he could have lived at home, paid lower tuition, and earned a degree with little or no student loans hanging around his neck. Instead, Rory graduated in the middle of his class from “Ivy U” with \$150,000 in student loan debt, but kept his eye on the prize of owning a successful business someday. Apprehensive but undeterred by his financial obligations to a faceless State Higher Education Financial Services Corporation” (at least that was what was printed on student loan payback notices), Rory vowed to continue his education by returning home to get an M.B.A. at the neighborhood state school. “Defer and pay” was his mantra. More student loans paid for graduate school tuition, which seemed high to Rory even though he got the in-state rate.

While in graduate school, Rory quit his studies to help his parents who had suffered financial and health setbacks. His outstanding student loans then totaled \$175,000, for which he had to show a B.A. in Economics (not quite a business degree) and one-half an M.B.A. (not a degree at all).

Economic times in Rory’s area of the county were dire. Manufacturing plants had been closing steadily because of foreign competition and high labor and legacy costs under contracts made with unions struck in better times. Not to mention 40,000 pages of new government regulations added by the administration, which increased the cost of business. Rory’s parents were casualties of the downturn, both having been laid off from jobs long held. Neither had the will to continue looking for meaningful work, which led to the couple experiencing despair and depression. Determined to keep the family afloat, Rory took a job as a strategic planner with a defense manufacturer, even though the idea of working for the “military industrial complex” violated all of the ideals with which he had been inculcated in college. Nonetheless, his pay was more than enough to maintain his parents’ household and make regular payments on his student loans. Twelve months; twelve \$500 loan payments dutifully posted.

Things were sailing on an even keel until the federal budget was sequestered and the administration chose to gut the allocations for defense. Rory lost his job, his steady income, and his health insurance. He networked, searched, and applied for any job that might come his way, but his efforts to find employment were for naught. Even when he would get a nibble on a job lead, potential employers shied away because his Ivy League pedigree made him appear to be overqualified—if not desperate.

At wit’s end, Rory signed up to drive for Uber. This required that he get a late model car. He found a one-year-old Mazda that fit the bill and paid for it with a high-interest car loan in the amount of \$15,000 at 5% interest. All earnings went to pay down the car loan; he stopped all student loan payments. Dunning letters from the State Higher Education Financial Services Center went into the trash. Gas, food, and rent were the priorities for his family.

One day while sitting in his car hoping to catch a fare, Rory had a revelation sparked by a TED video he watched on his iPad. The speaker encouraged listeners to look beyond their own circumstances and find ways to help people without resources improve their lives. Rory realized he was too caught up in his own misery over financial pressures and decided it was his mission to help denizens of the inner-city take control through sustainable initiatives. He immediately drove to the nearest church and walked up to the padre, who spoke in broken English. Rory pitched the idea of a community garden—small-plot gardening as a means to give people the skills to grow their own food, improve their diet, and make a contribution, however paltry, to the fight against world-wide famine and the scourge of global warming. This idea was fostered by discussions in an Economics class that followed a viewing of “An Inconvenient Truth.”

Rory was a new man. Even though his dreams of being a corporate giant were long ago extinguished, he reveled in his newfound mission to serve Mankind and Mother Nature. He

maxed out his available credit on two cards buying tools, bags of organic fertilizer and seedling trays full of vegetable sprouts. On an especially pleasant day, in the middle of demonstrating hoeing techniques at a planting clinic at the church, Rory suffered a minor injury to his foot. Just a scratch, really. A rambunctious youth had grabbed a three-pronged cultivator and, while stabbing at the ground, nicked Rory’s foot, through the boot. The skin was barely broken and thankfully his tetanus shot and booster were still current. A week later, Rory was in the emergency room. He foot was terribly swollen with the poison from the infection already up to the knee. That is where the doctors cut—at the knee. Rory was in the hospital for six weeks. His obligations on the medical bills (for deductibles, a prosthetic device, and rehabilitation) totaled \$30,000.

During his absence, the “Mankind and Mother Nature” program (as it was called) collapsed. Most recruits found it was a whole lot of bother for not much bounty. Instead of hoeing, planting, fertilizing, watering, and fighting insects, it was easier to go to the corner market to take advantage of government food stamps. The final straw was an early freeze that killed most of the plants.

Fortunately, Rory’s injury did not preclude his profession as an Uber driver. He has returned to picking up fares and brings in, on average \$2,000 a month. This amount barely pays for household expenses. He still resides with his aging parents, who are on Social Security. Rory receives demand letters from his creditors almost daily. Bankruptcy may be Rory’s best option for a chance to discharge his debts and get a fresh start.

**The Bankruptcy Proceeding**

Comes Now Rory Grette, under Chapter 7 of the United States Bankruptcy Code. He seeks to discharge debts that are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." Notably, the Bankruptcy Code at 11 U.S.C. § 523(a)(8)(B) also provides that educational loans can only be discharged if payment “would impose an undue hardship on the debtor and the debtor’s dependents.”

The schedule of Rory’s assets and liabilities is as follows:

NAME OF SCHEDULE	ASSETS	LIABILITIES	OTHER
Real Property	\$0		
Personal Property	\$10,000		
Secured Claims (Car)		\$15,000	
Unsecured Claim (Student Loans)		\$173,000 (loan payments made largely went to interest)	
Unsecured Claim (Credit Cards)		\$12,000	
Unsecured Claim (Medical Bills)		\$30,000	
Current Income (Monthly)			\$2,000
Current Expenditures (Monthly)			\$2,700
Total	\$10,000	\$230,000	

While waiting for fares, Rory has been researching the Internet for solutions to his financial dilemmas. He has learned that there is a “split in the circuits” on the legal test used by various federal courts in determining whether student loans can be discharged in the case of an undue hardship. Is there any hope he can get such relief? Here are the results of his research:

Kendall, Brent and Josh Mitchell (January 11, 2016). Supreme Court denies appeal on student-loan erasure. *Wall Street Journal*, January 11, 2016. Retrieved February 11, 2016, from <http://www.wsj.com/articles/supreme-court-denies-appeal-on-student-loan-erasure-1452527286>

Gubbiotti, Carmelia (2015). Student loans can be discharged (at least partially) in bankruptcy after all. 7 St. John’s Bankr. Research Libr. No. 12. Retrieved February 16, 2016, from [http://www.stjohns.edu/sites/default/files/documents/law/bankruptcy/2015-12-gubbiotti\\_carmella.pdf](http://www.stjohns.edu/sites/default/files/documents/law/bankruptcy/2015-12-gubbiotti_carmella.pdf)

# **INSTRUCTORS' NOTES**

## **DISCHARGING STUDENT LOANS IN BANKRUPTCY: GOOD LUCK WITH THAT**

**Joseph Labatt, University of the Incarnate Word**  
**Michael Forrest, University of the Incarnate Word**  
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### **CASE DESCRIPTION**

*This case speaks to the real financial fears resulting from burdensome student loan debt experienced by millions of students upon leaving college. Unlike other types of debt obligations held by creditors, student loan debt falls into a special category and is not readily dischargeable in bankruptcy, absent proof of “undue hardship” that precludes paying back the loans. The major topics of the case are bankruptcy, consumer protection, legal environment of business, and ethics. Given the applicability of the topic to students who will soon be obligated to make student loan payments, the case is appropriate for students from junior level and higher, including graduate studies. The case is designed to be taught in one class period, with the expectation that students will have spent two hours in preparation outside of the classroom.*

### **CASE SYNOPSIS**

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### **RECOMMENDATIONS FOR TEACHING APPROACHES**

This case should be introduced with a basic introduction into how federal bankruptcy operates to liquidate debt, albeit not all types of debt. The case examines the specific category of student loan debt and the limited remedies available for its discharge under bankruptcy. First, students should understand the goals of bankruptcy, who benefits from the process, and why certain categories of debt, such as student loans, receive less favorable treatment for the debtor.

Turning from the general to specific, students can explore news accounts and/or primary court opinions in the matter of *Tetzlaff v. Education Credit Management Corporation*, a case that inspired the creation of this case study. *Tetzlaff* was litigated in the federal courts at the trial and appellate levels, with published opinions in 2014 and 2015, respectfully. The United States Supreme Court, in January 2016, denied review of the issue of whether student loans can be discharged in bankruptcy, leaving some uncertainty in the law because different intermediate courts have provided varied approaches in assessing student debtors' financial hardships. As with most legal issues, the legal test applied to the facts determines the outcome. Thus, there are two major questions in this case: 1) what is the proper legal analysis to apply to the case facts; and 2) what is the predictable legal consequence from that application?

## **BACKGROUND OF THE LAW**

### **Bankruptcy Law 101: Providing a Fresh Start for the Debtor**

“The law of bankruptcy provides possible solutions to problems that arise when a person . . . is unable, or finds it difficult, to satisfy obligations to creditors” (Morgan, 2015, p. 820). Put plainly, bankruptcy gives a debtor the chance to start over, either by restructuring debt or liquidating it. The two federal laws controlling the process are the Bankruptcy Reform Act of 1978 and the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. These statutes set up three avenues to dispose of debt.

Under Chapter 13 of the Bankruptcy code, the debtor works under the supervision of a trustee to create a payment plan that reduces the amount of debt to a feasible amount that can be paid off under a payment plan extended over three to five years (Morgan, 2015, p. 828). Typical Chapter 13 plans apply to debtors with unanticipated large medical bills, out of control credit card balances, and other consumer debt.

Chapter 11 bankruptcy provides for a reorganization of debt such that creditors are paid over an extended period, based on a plan formulated in consultation with a committee of one's creditor (Morgan, 2015, p. 825). Rather than addressing consumer debt, Chapter 11 is usually applicable to businesses and rich people wanting to restructure their obligations to creditors.

Chapter 7 bankruptcy liquidates the debtor's obligations to creditors (Morgan, 2015, p. 825). Debts that are included in a Chapter 7 proceeding are satisfied in whole or part by a trustee who takes control of the debtor's assets, such as houses, cars, bank accounts, and personal possessions. The trustee then sets aside for the debtor certain items “exempt” from bankruptcy, such as the house with a homestead exemption, one car per driver in the family, furniture, clothing, and tools of one's trade. The remaining assets are divided among the creditors, with the class of secured creditors (those who took collateral in the loan) paid first, and the class of unsecured creditors (such as credit card companies) paid last. If the assets are not sufficient to satisfy all of the obligations of the class, the creditors take a pro rata share of the assets. In practice, this could leave the class of secured creditors receiving pennies on the dollar for the credit they extended, and the class of unsecured creditors with no satisfaction. The debtor, however, is debt free following the bankruptcy.

What complicates a Chapter 7 bankruptcy that is pertinent to this case study is certain categories of debt cannot be discharged in bankruptcy. Title 11, section 523(a)(8)(B) of the United States Code provides:

(a) A discharge under . . . this title does not discharge an individual debtor from any debt—

...

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

...

(B) any other educational loan . . . incurred by a debtor who is an individual . . . .

This provision proscribes discharge of student loans except where requiring payment would constitute an undue hardship. Courts in different jurisdictions of the country have interpreted and applied “undue hardship” in three different ways. This has led to a “split in the circuits” (a term of art for when two or more appellate courts rule differently on the same legal issue). Oftentimes, when there is a circuit split, the U.S. Supreme Court takes up the issue on a petition for *certiorari* to settle the matter. The High Court had such an opportunity with *Tetzlaff* and declined. Thus, an air of uncertainty clouds this area of the law.

An instructive article by Gubbiotti (2015) outlines the split in the circuits over discharge of student loans in bankruptcy.

### **1. The Totality of the Circumstances Test**

The totality of the circumstances test is applied in the Eighth Circuit. There are 13 judicial circuits. The Eighth comprises federal courts in the following states: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. The controlling law in federal courts sitting in this Midwestern region is *Long v. Educational Credit Management Corporation (In re Long)*, 322 F.3d 549 (8th Cir. 2003). Long was a chiropractor who financed her education with student loans. She practiced for several years but had to quit because of extreme fatigue, depression and declining mental capacity. The bankruptcy court found that her mental condition was persistent and interfered with her earning potential. Long moved in with her parents, took a job unrelated to her training as a chiropractor, and spent the bulk of her earnings on household expenses and community college classes in a new field of study. Fortunately for Ms. Long, the bankruptcy court granted her an undue hardship discharge so that she would not be “sentenced” to 25 years of payments on a debt she would not likely retire or reduce. (*In re Long*, 2003.)

In evaluating the totality-of-the-circumstances, courts in the Eighth Circuit consider:

- (1) the debtor's past, present, and reasonably reliable future financial resources;
- (2) a calculation of the debtor's and her dependent's reasonable necessary living expenses; and
- (3) any other relevant facts and circumstances surrounding each particular bankruptcy case. (*In re Long*, 2003, p. 554.)

What this boils down to is whether the debtor's future financial prospects will produce enough money to pay down student loans and in addition to cover expenses required to maintain a minimal standard of living. While the *Long* court was focused on establishing the guiding law in that case, and made no specific findings on Ms. Long's circumstances, the opinion indicates that she should not be expected to pay back loans on her training to be a chiropractor when her physical and mental states precluded her from making a living in that profession. (Gubbiotti, 2015.)

## **2. The Johnson Test**

The case of *In re Johnson*, 5 Bankr. Ct. Dec. 532 (Bankr. E.D. Pa 1979), came out of Pennsylvania, which is in the Third Circuit, comprising federal courts sitting in Delaware, New Jersey, Pennsylvania, and the Virgin Islands. It sets forth a three-pronged test to determine undue hardship. First, can the debtor maintain at least a subsistence level of living over the lifetime of the loan if making regular payments? If so, there is no undue hardship. Second, was the debtor careless in efforts to maximize income and minimize expenses—and if so, would more responsible financial management have affected prospects of paying down the loan? In such case, the debtor has not acted in good faith and should not have the loan discharged. Third, is the bulk of the debt the debtor seeks to discharge from the student loan (or is the loan just part of greater non-student-loan categories of debt), or has the debtor benefitted financially from the education that was financed by loans? (Gubbiotti, 2015.) The court will make a policy judgment on whether the debtor benefitted financially from the education. A petitioner can prevail on a claim of undue hardship by satisfying any one of the prongs of the test.

Ms. Johnson, the petitioner in the case, had her student loans discharged because her student loan debt was less than 30% of her overall indebtedness and she did not benefit financially from the education for which she took out loans; she did not complete even one year of college classes (*In re Johnson*, 1979, p. 57-58). While Johnson received relief from her bankruptcy proceedings, the three-part inquiry used by the court to assess undue hardship is a somewhat complicated analysis that lacks a bright line to guide consistent results. Because of its subjectivity in application, many courts have rejected the *Johnson* approach (Fratini, 2001, p. 555).

## **3. The Brunner Test**

The Seventh Circuit follows the case of *Brunner v. New York State Higher Education Services Corporation*, 831 F.2d 395 (2d Cir. 1987). Federal courts in the Second Circuit sit in Connecticut, New York, and Vermont. *Brunner* is considered the majority approach to the undue hardship analysis (Sparrow, 2007, p. 332). The *Brunner* test also has a three-part analysis the debtor must satisfy to prove undue hardship:

- (1) that the debtor cannot maintain, based on current income and expenses, a "minimal standard" of living for herself and her 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 the debtor has made good faith efforts to repay the loans
- (*Brunner*, 1987, p. 396).

All three elements must be proved to merit having the student loan discharged (Gubbiotti, 2015). The *Brunner* court noted that debtors may have difficulty in proving undue hardship because part of the test requires looking into the future to prove that current inability to make loan payments will extend throughout much of the loan period. Because Ms. Brunner was not disabled, elderly,

or responsible for the care of dependents, her future job prospects were on the positive side, particularly in light of the fact that she had a master's degree. Moreover, the court found a lack of good faith on her part based on her filing for bankruptcy in the month that her first payment on the loan was due.

In summary, Gubbiotti (2015) offers a quick review of the various legal tests just discussed. For an in-depth legal analysis of the issue, Frattini (2001) gives a scholarly treatment of bankruptcy law history, the tests for undue hardships, and explication on a wide range of case law.

## **DISCUSSION QUESTIONS**

### **Application of the Totality of the Circumstances Test**

1. What are the debtor's past, present, and future resources?  
 Pro discharge in bankruptcy: Family obligations to take care of parents; lifestyle choice to serve others does not pay well.  
 Con: Economic downturns turn around; debtor has chosen mission work and unstable employment.
2. Can the debtor meet reasonable living expenses?  
 Pro discharge in bankruptcy: Monthly expenses exceed monthly income.  
 Con: Has unstructured income as an Uber driver.
3. Any other relevant facts?  
 Pro discharge in bankruptcy: Disabled. Liabilities greatly exceed assets.  
 Con: Has higher earning potential with prestigious degree in Economics.

### **Application of the *Johnson* Test (affirmative on any one of the questions will show an undue hardship)**

1. Can the debtor make student loan payments and still subsist?  
 Pro discharge in bankruptcy: Monthly expenses exceed monthly income.  
 Con: Has higher earning potential with prestigious degree in Economics; has unstructured income as an Uber driver.
2. Has the debtor maximized income and minimized expenses?  
 Pro discharge in bankruptcy: Unable to get better job due to economic downturn; financed a reasonably modest car.  
 Con: Could have gone to nearby state school and lived at home; would not need car loan if Uber position not chosen.
3. Is the greater percentage of the indebtedness from student loans?  
 Con: 2/3 of debt is in student loans.

### **Application of the *Brunner* Test (affirmative needed on all three to show an undue hardship)**

1. Can the debtor make student loan payments and still subsist?  
 Pro discharge in bankruptcy: Monthly expenses exceed monthly income.  
 Con: Has higher earning potential with prestigious degree in Economics; has unstructured income as an Uber driver.
2. Will the current financial hardship continue into the future?

Pro discharge in bankruptcy: Yes, if he continues with Uber position and mission work.

Con: Economic downturns turn around; debtor has chosen mission work and unstable employment.

3. Has the debtor made a good faith effort to pay back the student loans?

Pro discharge in bankruptcy: Paid loans for one year when had steady employment

Con: No payments made while in Uber position.

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## JUST JOKING OR SEXUAL HARASSMENT?

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### CASE SYNOPSIS

*The primary subject of this case concerns human resource management as it pertains to instances of sexual harassment in the workplace. Data were gathered for the case from field research, and names of the company and the individuals were changed. The case has been class room tested. Marilyn Belcher is faced with what appears to be a case of sexual harassment at Bailey Lumber Company. Susan Morris, a college student hired for the summer, seems to be a victim of sexual harassment at the hands of one of an older, more experienced worker, Dave Netto. The episode was reported by Jon Dickinson, who was also harassed by Dave but this was never reported.*

*The purpose of the case is to provide students with an example of sexual harassment, to provide an opportunity to examine the consequences of not having explicit policies to cope with problems before they arise, to develop sexual harassment policies, and to recommend strategies to cope with this episode properly.*

*The case can be taught in a 45-minute class. The case study can be used in an undergraduate class in human resource management, principles of management, or business and society. The case could be used as a role play exercise with Marilyn attempting to mediate between Susan, Dave, and Jon.*