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BANKRUPTCY: A TIME SYNTHESIS

G. STANLEY JOSLIN*

To bring together the myriad time factors in the Bankruptcy Act in to an integrated whole is the purpose herein. The time factors to be considered are only those which express a definite number of days, months or years within which rights in bankruptcy differ from those which exist outside of the specifically designated period. Thus the question involving the time of perfection of a preference, which must be within four months of the petition,¹ will be considered, as will be the fraudulent conveyance "one year" period,² and the thirty day provision for paying the cash surrender value of a life insurance policy.³ Although many time factors in the Bankruptcy Act are as important as those designated by day, month or year units, they are not intended to be included in our present consideration. Therefore, numerous salient time problems such as the time at which the trustee is vested with the title to property of the bankrupt,⁴ and the time at which the right to recover damages in any pending action for negligence becomes provable⁵ are not to be included in as much as these have no time unit designation. The scope of this present synthesis is further limited to "straight bankruptcy" and will not go into the time elements in other Chapters of the Bankruptcy Act.⁶

UNIT COMPUTATION

The designated time units used in the Bankruptcy Act are days,⁷ months⁸ and years.⁹ The method of computing days is carefully spelled out in the Act itself in Section 31 where it is provided that the number of days will be computed by excluding the first if including the last. This section further specifies that if the last day falls on Sunday or holiday, the last day will be the day after the Sunday or holiday which is not a Sunday or holiday.¹⁰ To determine what holidays may toll the running of the time, Section 1 (18) defines a holiday by setting out

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¹ Bankruptcy Act §60(a) (1) & (2); 11 U.S.C. §96(a) (1) & (2) (1958).

² Bankruptcy Act §67(d) (2); 11 U.S.C. §107(d) (2) (1958).

³ Bankruptcy Act §70(a) (5) 2nd proviso; 11 U.S.C. §110(a) (5) 2nd proviso (1958).

⁴ Bankruptcy Act §70(a); 11 U.S.C. §110(a) (1958).

⁵ Bankruptcy Act §63(a) (7); 11 U.S.C. §103(a) (7) (1958).

⁶ Bankruptcy Act Chapters I, II, III, IV, V, VI & VII (1958).

⁷ *E.g.*, Bankruptcy Act §7(a) (8); 11 U.S.C. §25(a) (8) (1958).

⁸ *E.g.*, Bankruptcy Act §3(b); 11 U.S.C. §213(b) (1958).

⁹ *E.g.*, Bankruptcy Act §14(a) (5); 11 U.S.C. §32(a) (5) (1958).

¹⁰ Bankruptcy Act §31; See *In the Matter of Dorado Plastics Corporation*, 184 F. Supp. 283 (D. Puerto Rico 1960).

the well known holidays and then goes farther by including any day named as a holiday or day of public fasting or thanksgiving by the President or Congress, or by the Governor or Legislature of the State in which the proceeding is filed.¹¹ The computation of day units, then, is clearly set out and should cause little trouble. This also applies to time limits designated in the General Orders.¹² The computation of time, designated by month or year units, is not spelled out in the Act itself. However, the principle of excluding the first day and including the last is applied. A month is not determined as having a set number of days, but a period measured by months is simply computed as running from date to date. Thus an event occurring on the first of January is within the four-month period of a petition filed on the first of May, and an event taking place on the first of July is within a year of a petition filed on the first of the following July.¹³

I. MAJOR TIME COMPUTATIONS

The major time computations, at least from the standpoint of complicated involvement, are: 1. The requirement that a petition be filed against a person within four months after the commission of an act of bankruptcy;¹⁴ 2. The four months factor in determining a preference;¹⁵ 3. The four months time element in avoidance of judicial liens;¹⁶ and 4. The broad one year component of fraudulent conveyances.¹⁷

¹¹ Bankruptcy Act §1 (18) U.S.C. §1 (18) (1958).

¹² 2 COLLIER, BANKRUPTCY, §31.02 (14th ed. 1956). Rule 6 of the Rules of Civil Procedure was amended Jan. 21, 1963 to provide:

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule . . . , "Legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; See Bankruptcy Act Sec. 21(k); 11 U.S.C. §44(k) (1958).

¹³ See 2 COLLIER, BANKRUPTCY §31.02, p. 1303 (14th ed. 1956).

¹⁴ Bankruptcy Act §3(b); 11 U.S.C. §21(b) (1958).

¹⁵ Bankruptcy Act §60(a); 11 U.S.C. §96(a) (1958).

¹⁶ Bankruptcy Act §67(a); 11 U.S.C. §107(a) (1958).

¹⁷ Bankruptcy Act §67(d); 11 U.S.C. §107(d) (1958).

1. Time for Act of Bankruptcy

One of the necessary ingredients for an involuntary petition in bankruptcy is that an act of bankruptcy must have been committed within four months.¹⁸ The first act of bankruptcy is concealment of property or a fraudulent conveyance.¹⁹ However the four months does not start to run on the fraudulent conveyance until the transfer is perfected so that no bona fide purchaser from the debtor could acquire rights in the property superior to the rights of the transferee.²⁰ This, of course, was designed to prevent secret transfers made before the four months period from becoming effective by requiring some semblance of notice to come to creditors before the time would begin to run against him. A simple illustration of dating from time of perfection and not from the time of the transfer could be made by supposing a deed executed and delivered to a wife on July 1st and recorded on September 1st. Between these dates the husband could effectively deed the property to a bona fide purchaser, but after recording on September 1st, he could not. The transfer would then be perfected at the time of the recording of the deed and at that time the four months period would begin to run. The many, well established perfection dates for personal property transfers will be upset by the Uniform Commercial Code as it sweeps the country and the older treatment reanalyzed. For example, a fraudulent chattel mortgage on farm equipment under the Uniform Commercial Code will be perfected only upon the filing of a financial statement in the proper office in the county of the debtor's residence, or if not a resident of the state, then in the county where the goods are kept.²¹ In states, then, that have adopted the Uniform Commercial Code a new problem in determining perfection dates has arisen. It has generally been accepted that the concealment aspect of the first act of bankruptcy is not subject to the bona fide purchaser test and that the four months limitation begins to run on concealments only from the time of discovery.²² The second act of bankruptcy—the preference²³—is made within the governing four months period before the petition, if the transfer became perfected within that time.²⁴ To determine the time of perfection, a different standard is designated for real and personal property. A transfer of personal property is deemed to be made when so far per-

¹⁸ Bankruptcy Act §3(b); 11 U.S.C. §21(b) (1958).

¹⁹ Bankruptcy Act §3(a)(1); 11 U.S.C. §21(a)(1) (1958).

²⁰ Bankruptcy Act §3(b); 11 U.S.C. §21(b) (1958).

²¹ UNIFORM COMMERCIAL CODE §9-302 and §9-401 (1958); see Hiller, *The Uniform Commercial Code in the Bankruptcy Courts*, 36 REF. J. 112 (1962); Kennedy, *The Impact of the Uniform Commercial Code on Insolvency*: 67 COM. L. J. 113, III, p. 117 (1962).

²² 1 COLLIER, BANKRUPTCY ¶2.702 (14th ed. 1956).

²³ Bankruptcy Act §3(a)(2); 11 U.S.C. §21(a)(2) (1958).

²⁴ Bankruptcy Act §3(b); 11 U.S.C. §21(b) (1958).

fectured as to be free from a lien by judicial process,²⁵ while a transfer of real property is deemed to be made when perfected against bona fide purchases from the debtor.²⁶ Thus we see that the time for the perfection of a fraudulent conveyance is the bona fide purchaser test and that it is applied to both real and personal property, while the test for perfecting a preference is the bona fide purchaser test for real property and the judicial lien test for personal property.²⁷

The third act of bankruptcy has three time elements. A judicial lien must be obtained within four months of the petition²⁸ and such lien must have continued for over thirty days or have not been vacated at least five days before the date set for sale. Although the four months period begins to run at the time the judicial lien is obtained, to justify involuntary proceedings, the lien must have continued over thirty days or have continued to within five days before the sale date.²⁹

The fourth act of bankruptcy to be available for involuntary proceeding must also have occurred within four months of the petition. To compute the time, the general assignment for creditors will be considered made when the assignment is perfected as against a bona fide purchaser.³⁰ The fifth and sixth acts of bankruptcy have no time computation problem other than that they must have occurred within four months of the petition.³¹

In computing the time factors involved in determining whether an act of bankruptcy has occurred within four months of the petition, the initial transaction in many instances does not start the time period running but later actions will start the count. The two determinative tests are either the bona fide purchaser test or the judicial lien test. These may be applied to both real or personal property or to one or the other. To recognize these differences makes charting a time problem through the various acts of bankruptcy a relatively simple matter.

Most time computation problems are affected by amendments to the document tolling the running of time. With our present problem it seems there has been a tendency to permit petitions filed within the four months period to be implemented by amendments after the four months limitation and thus to keep within the time within which an

²⁵ Bankruptcy Act §60(a)(2); 11 U.S.C. §96(a)(7) (1958).

²⁶ *Ibid.*

²⁷ Other time elements involved in preferences under §60 will be considered later herein.

²⁸ Bankruptcy Act §3(b); 11 U.S.C. 921(b) (1958).

²⁹ Bankruptcy Act §3(a)(3); 11 U.S.C. 921(a)(3) (1958). For a discussion of filing periods for Acts of Bankruptcy, see 1 COLLIER, BANKRUPTCY §3.702 through §3.707 (14th ed. 1956). A more detailed consideration of the 30 day, and 5 day element of this Act of Bankruptcy will be considered hereafter under "Time for vacating Judicial liens to avoid an act of Bankruptcy."

³⁰ Bankruptcy Act §3(b); 11 U.S.C. §21(b) (1958).

³¹ *Ibid.*

act of bankruptcy may be available for an involuntary proceeding, as the amendment will normally relate back to the time of the original petition.³² However, if an amendment is permitted setting for a new act of bankruptcy, it will normally date from the time of the amendment unless the bankrupt consented to such addition.³³

2. *Time Computations Involved in Determining Preferences*

The basic time computations involved in determining whether a preference has been made are the same as those considered in connection with the time within which a preference may be available as an act of bankruptcy for an involuntary petition. This has been considered in subsection 1 *supra*, and may be briefly restated as designating the time of transfer for personal property as determined by the judicial lien test and a transfer of real property by the bona fide purchaser test. However, there are other time elements of importance in determining preference matters. A preference must be a transfer within four months of the petition and all elements of a preference must have existed as of the time of the perfected transfer,³⁴ except the greater percentage element which will be determined as of the time of the bankruptcy.³⁵ However, the time computation in connection with preferences is complicated by the permissive relation back period of 21 days provided for in the Act. This provides, in determining a preference, that a transfer on account of a new and contemporaneous consideration which by applicable law may be perfected within twenty-one days or less, shall be deemed to be made at the time of the original transfer.³⁶ This, simply stated, recognizes state laws providing for a relation back period for recording of transfers at least if not over twenty-one days. Wisconsin has a ten day relation back period for conditional sales,³⁷ while Georgia has a thirty day relation back period.³⁸ Wisconsin's relation back period then will be fully recognized in preference time computations while that of Georgia's will only be recognized not to exceed twenty-one days. To give more meaning to the permissive twenty-one day relation back period of the bankruptcy act,

³² 1 COLLIER, BANKRUPTCY §18.23 (14th ed. 1956). Gen. Orders In Bankruptcy 11.

³³ 1 COLLIER, BANKRUPTCY §18.26 (14th ed. 1956).

³⁴ Bankruptcy Act §60(a) (1) & (2); 11 U.S.C. §96(a) (1) & (2) (1958).

³⁵ 3 COLLIER, BANKRUPTCY §60.36 (14th ed. 1956).

³⁶ Bankruptcy Act §60(a) (7); U.S.C. §96(a) (7) (1958).

³⁷ Every provision in a conditional sale is void as to purchasers or levying creditors before the contract is filed unless filed within ten days. WIS. STAT. 122.05 (1957).

³⁸ Any conditional sale when filed or recorded within thirty days, has priority from the date of its execution. 20 GA. CODE ANN. 67-1403. This will be superseded by the Uniform Commercial Code scheduled to become effective in Georgia on April 1, 1963. Ga. Laws (Reg. Session 1962) 109 A-10-101, p. 426. The U.C.C. integrates well with the bankruptcy's preference relation back period. The longest period permitted under the Uniform Commercial Code is 21 days. See UNIFORM COMMERCIAL CODE §9-304(4), (5) & (6); for 10 days see UNIFORM COMMERCIAL CODE §9-301(2) and §9-306(3).

hypotheticals may be helpful. Under a state law permitting the filing of a conditional sale within ten days to be effective as of the date of its execution, a preferential transfer would not take place within four months of a petition filed November 5th if a conditional sale were executed on July 1st and recorded on July 9th. However, under a state law permitting a thirty day relation back period, a preferential transfer would be within four months of a petition filed on July 1st if a conditional sales contract were executed February 12th and recorded March 8th. Yet under the same thirty day state statute, a transfer would not be within the four months period of a petition filed on July 1st if executed February 16th and recorded March 4th. The act permits not over a twenty-one day relation back period but gives effect to that period where the state law, for its local purposes, provides a longer period of time.³⁹ The scope of the permissive relation back period is more limited than might first be noticed. It applies only to transfers for new and contemporaneous consideration.⁴⁰ Without this recognition, the time for computing preferences would run from the time of recording for the transfer would be deemed made at that time and thus be made on account of an antecedent debt, as the debt continues its original date.⁴¹

3. *Time Computations in Determining Fraudulent Conveyances*

Although a transfer which is a fraudulent conveyance under any State or Federal law is voidable by the trustee in bankruptcy if the right is not barred by a statute of limitations,⁴² the Bankruptcy Act itself designates certain transactions which will be deemed fraudulent conveyances if made within certain designated periods before the filing of the petition in Bankruptcy. Thus we see that certain transfers made or obligations incurred within one year of the petition are voidable by the trustee irrespective of any other State or Federal law.⁴³ A one year limitation is also placed on certain transactions by partnerships which are designated as fraudulent transfers⁴⁴ and a more restrictive time period of four months for certain transfers made in contemplation of bankruptcy proceedings.⁴⁵ The important thing to note here is that the time factor is an essential element in the trustee's right to avoid. The only transfers to which this part of the Act applies are those made within one year, or within four months of the petition.⁴⁶ Although

³⁹ Bankruptcy Act §60(a) (7) I; 11 U.S.C. §96(a) (7) (1958).

⁴⁰ Bankruptcy Act §60(a) (7); 11 U.S.C. §96(a) (7) (1958).

⁴¹ See 3 COLLIER BANKRUPTCY §60.39 (14th ed. 1956); see also *In re Burton*, 120 F. Supp. 148 (D. Maryland 1954).

⁴² Bankruptcy Act §70(e); 11 U.S.C. §110(e) (1958).

⁴³ Bankruptcy Act §67(d) (2); 11 U.S.C. §107(d) (2) (1958). See *Rader v. Lichtenthal*, 306 F.2d 195 (2d Cir. 1962).

⁴⁴ Bankruptcy Act §67(d) (4); 11 U.S.C. §107(d) (4) (1958).

⁴⁵ Bankruptcy Act §67(d) (3); 11 U.S.C. §107(d) (3) (1958).

⁴⁶ See footnotes 43, 44, and 45 *supra*.

all other elements of the fraudulent conveyance are therein set out, they would not be voidable by the trustee unless the transfer took place within the applicable restricted period before the petition.

The test for determining when a transfer is deemed to have been made for these specially created fraudulent conveyances must be noted because of its variance from other tests used in the Bankruptcy Act. As had been said *supra*, the test for determining when transfers are deemed to have been made for real estate and personal property differ.⁴⁷ However, the time computations here are based on the bona fide purchaser test applied to both real and personal property. Thus for these specially created fraudulent conveyances the transfers are deemed to have been made at the time when it became so far perfected that a bona fide purchaser could not acquire rights superior to the rights of the transferee.⁴⁸ A deed of land, or mortgage of personal property executed on December 10th and recorded on January 3rd, would under the laws of most states relative to bona fide purchasers, be within a year of a petition filed on the following January 2nd.

II. MINOR TIME COMPUTATIONS

Thus far the more basic and complicated time elements as they are involved in Acts of Bankruptcy, Preferences and Fraudulent Conveyances have been considered. This Section II will consider important but less troublesome time elements as they appear in myriad places in the Bankruptcy Act.

1. *Proper Venue*

Although the authority of the bankruptcy courts to entertain a bankruptcy petition is very broad,⁴⁹ the Act concisely designates the proper venue and this involves a time computation. The test is based upon a principal place of business residence, or domicile within the territorial jurisdiction for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction.⁵⁰ In most situations then, the principal place of business, domicile, or residence for the preceding six months determines the place where a petition should be filed. However, the computations for the more transient debtor may be more complicated. In this regard it should be noted that the computation, where the debtor has not established himself in one jurisdiction for at least six months preceding the petition, is to determine in which jurisdiction the debtor resided or had his principal place of business longer than in any other jurisdiction during the last preceding six months. There is no requirement that the contact with the jurisdiction be more than half the six months

⁴⁷ See footnote 18 and text *supra*.

⁴⁸ Bankruptcy Act §67(d)(5); 11 U.S.C. §107(d)(5) (1958).

⁴⁹ Bankruptcy Act §32(b) & (c); 11 U.S.C. §55(b) & (c) (1958).

⁵⁰ Bankruptcy Act §2(a)(1); 11 U.S.C. §11(a)(1) (1958).

time, but only the establishing that the selected jurisdiction had the contact for the longest period. Thus it is possible that one who has lived in the jurisdiction only a very short time could properly invoke it, and under a similar provision it was held that only one day in the district was sufficient if a person had not resided in any other district a longer period of time during the last six months.⁵¹ Where one has moved many times in the preceding six months, the establishing of the longest period of required contact to justify the proper venue may be a troublesome one, but it is suggested in such a case the petition be filed in any district where the debtor has had a contact and is most convenient to the instigator of the proceedings with the hope that the Judge may permit the proceedings to continue there, as he well may.⁵²

2. Time for Vacating Judicial Lien

To avoid an Act of Bankruptcy, as has been noted under "Major Time Computations" above,⁵³ the time for filing an involuntary petition based on a judicial lien expires four months after the date of the lien.⁵⁴ However, the debtor who has suffered such judicial lien or distraint may prevent its ripening into an act of bankruptcy and thus shut off any involuntary petition in bankruptcy on this ground by vacating the lien within thirty days after its date, or at least five days before the date set for sale. It will be seen that these two time elements act together. The five day period comes into play within thirty days of the lien to permit an involuntary petition after the thirty days even though no date for sale is made.⁵⁵ The debtor then, to avoid an act of bankruptcy based on the judicial lien, must vacate the lien within thirty days from its date if no date for sale is set, but if a date for sale is set which will be before the thirty days, he must vacate it at least five days before the sale. Thus it may be seen that a judicial lien obtained on July 1st with the date set for sale on July 6th would require the debtor to immediately have the lien vacated or an act of bankruptcy would be irretrievably consummated.

3. Time Computations in re Actions (Statutes of Limitations)

As a general thing, pending suits upon a claim from which a discharge would be a release will be stayed until adjudication and later determination of discharge.⁵⁶ However, a creditor may require the

⁵¹ See COLLIER BANKRUPTCY ¶2.13 (14th ed. 1956).

⁵² Bankruptcy Act §32(b); 11 U.S.C. §55(b) (1958).

⁵³ See footnote 29 *supra*. Statutory liens may be valid even though arising within four months of bankruptcy. Bankruptcy Act §67(b); 11 U.S.C. §107(b) (1958). A judicial declaration of a mechanic's lien within four months of the petition does not impair the lien. *Pittsburg Plate Glass v. Forbes*, 128 S.E.2d 875 (1963).

⁵⁴ Bankruptcy Act §§3(a) (3) & 3(b); 11 U.S.C. §§21(a) (3) & 21(b) (1958).

⁵⁵ See 1 COLLIER, BANKRUPTCY ¶3.310 (14th ed. 1956).

⁵⁶ Bankruptcy Act §11(a); 11 U.S.C. §29(a) (1958).

vacating of such stay so that he may proceed with his suit during the bankruptcy proceeding upon a showing that a proceeding under the Act was commenced within six years of the present petition and the debtor was granted a discharge or has had a composition confirmed in that proceeding.⁵⁷ The two elements to observe are the commencement of the former proceedings and the results of the proceeding. The time computation, however, runs from the commencement of the previous proceeding to the date of the present petition, and that presents little difficulty.

To prevent statutes of limitations from barring claims of the debtor which have passed to the trustee, the bankruptcy act extends the time within which the trustee may institute proceedings. Thus any claim which the debtor had at the time of the petition and which was not barred by a statute of limitation at that time, may be enforced by the trustee within two years after the adjudication. The time computation here is from the time of adjudication to the time of the institution of the proceedings and such must be within two years.⁵⁸ However, one must keep in mind that this two year period is used only to extend a period of limitations and not to shorten those provided by Federal or State law.⁵⁹ Thus a state law providing a six year period of limitations which started to run on January 2, 1960 will not be barred until January 2, 1966, although an adjudication in bankruptcy was made January 2, 1962.

The time within which certain acts, as distinct from claims, must be done is also extended by the bankruptcy act.⁶⁰ Thus where by contract the debtor was to give a notice within a certain number of days, or where by applicable law, outside of bankruptcy, an act was required to be done within a designated time and that period had not expired before the filing of the petition, the time within which the trustee may do the required act is extended to sixty days.⁶¹ Here again the time element is computed from the date of adjudication not the date of the petition and the sixty day period only extends the time within which an act may be done, but never shortens a longer permissive time. A common example is the short period of time within which notice of loss, etc., provided in insurance policies, must be given. If the time has not expired when the petition is filed, the trustee has sixty days

⁵⁷ Bankruptcy Act §11(a) proviso; 11 U.S.C. §29(a) proviso (1958).

⁵⁸ Bankruptcy Act §11(e); 11 U.S.C. §29(e) (1958).

⁵⁹ *Ibid.* The two year period does not start to run until the time the fraud reasonably should have been discovered, *Hooper v. Mountain States Securities Corporation*, 282 F.2d 195 (5th Cir. 1960). For the effect of this Section 11(e) on a State statute limiting the time an action may be brought to avoid a preference, see *In re Scott-Fredrick Motor Co.*, 177 F. Supp. 758 (E.D. Ky. 1959).

⁶⁰ Bankruptcy Act §11(e); 11 U.S.C. §29(e) (1958).

⁶¹ *Ibid.*

after adjudication within which to comply with the insurance agreement, even though the time otherwise would have expired shortly after the petition.⁶²

Not only are the rights of a debtor in bankruptcy existing at the time of the petition, protected from being barred by a statute of limitations until a reasonable time for the trustee to assert them, but claims against the bankrupt debtor are also preserved from the running of statutes of limitations for designated periods.

The Act provides that the operation of any statute of limitations affecting provable claims against the bankrupt is suspended for a designated period of time after the filing of the petition.⁶³ It should be noted here that the time computation begins with the filing of the petition, and not (as in the case of claims held by the bankrupt) from the time of adjudication. The computation ends with one of four points of time, depending upon the situation. Thus any statute of limitations is suspended: 1. From the date of the filing of the petition until the expiration of thirty days after the entry of an order denying discharge of such order is made;⁶⁴ 2. From the petition until the expiration of thirty days after the filing of a waiver of the right to discharge;⁶⁵ 3. From the petition until thirty days after the loss of the right to discharge if lost;⁶⁶ 4. From the petition until thirty days after the dismissal of the bankruptcy proceedings if dismissed, or whichever may first occur;⁶⁷ 5. And from the petition until thirty days after the time for a corporation to apply for discharge when no application is made.⁶⁸ This requires a dual type computation, as the time within a corporation must apply for a discharge is within six months after adjudication. It might be said then that a statute of limitations affecting claims against a corporation which has not applied for a discharge are suspended for a period of six months after adjudication plus thirty days.

It is important to note in regard to the computation of time in case of dismissal of the bankruptcy proceedings, that the thirty day suspension of the statutes of limitations may be shortened if one of the other suspension periods has already passed, or will be ended within the thirty days after the dismissal. It should further be noted

⁶² See 1 COLLIER BANKRUPTCY §11.13 (1956).

⁶³ Bankruptcy Act §11(f); 11 U.S.C. §29(f) (1958); The filing of a petition in bankruptcy does not suspend the requirement that statutory liens be perfected according to the requirements of state law. *Munson v. Resinger*, 114 So.2d 59 (1959).

⁶⁴ Bankruptcy Act §11(f)(1); 11 U.S.C. §29(f)(1) (1958).

⁶⁵ Bankruptcy Act §11(f)(2); 11 U.S.C. §29(f)(2) (1958).

⁶⁶ *Ibid.*

⁶⁷ Bankruptcy Act §11(f)(3); 11 U.S.C. §29(f)(3) (1958).

⁶⁸ Bankruptcy Act §§11(f)(2) and 14(a); 11 U.S.C. §§29(f)(2) and 32(a) (1958).

that these suspension provisions affect statutes of limitations only as to provable debts.⁶⁹

In passing, a statute of limitations protecting receivers and trustees from belated harassment may be noted. The Act provides that any suit brought upon any matter in connection with the administration of a receiver or trustee, must be brought within two years after the estate has been formally and finally closed.⁷⁰ It follows that if an estate is reopened, suits may be brought against the trustee, although more than two years have elapsed since the first closing if not subsequent to two years after the final closing.⁷¹ The time within which proceedings upon receiver's or trustee's bonds is also limited. The Act provides that such proceedings shall not be brought subsequent to two years after their discharge.⁷² Note here that the time element is computed from date of the receiver's, or trustee's discharge, not the closing of the estate.

4. Time Factors Involved in Discharge Proceedings

Although the adjudication of a person automatically operates as an application for a discharge, a corporation must file an application for the privilege within six months after adjudication.⁷³ The time set for filing objections to discharge may be somewhat complicated, especially where filing fees are permitted to be paid in installments, as no time for filing objections to discharge may be set until all filing fees are paid.⁷⁴ The court may give the bankrupt nine months to pay the filing fees,⁷⁵ and if that is the case, the order fixing the time for filing objections to discharge may not issue until that time. In any event, the court must fix a time for filing objections to the bankrupt's discharge not less than thirty days after the date set for the first creditor's meeting.⁷⁶ Notice of the order must be given by mail at least thirty days before the last day fixed for the filing of the objection,⁷⁷ thus in all probability the order determining the last day for filing objections should be sufficiently over thirty days to reasonably enable the notice to be effectively given. If objections are filed necessitating a hearing, a thirty day notice by mail of the time and place of the hearing is required.⁷⁸ Although these time periods seem

⁶⁹ Bankruptcy Act §11(f); 11 U.S.C. §29(f) (1958).

⁷⁰ Bankruptcy Act §§11(d) and 2(a)(8); 11 U.S.C. §§29(d) and 11(a)(8) (1958).

⁷¹ See 1 COLLIER, BANKRUPTCY ¶11.13 (14th ed. 1956).

⁷² Bankruptcy Act §50(m); 11 U.S.C. §78(m) (1958).

⁷³ Bankruptcy Act §14(a); 11 U.S.C. §32(a) (1958).

⁷⁴ Bankruptcy Act §14(b); 11 U.S.C. §32(b) (1958); Gen. Orders in Bankruptcy 35(4)(c).

⁷⁵ Gen. Order in Bankruptcy 35(4)(a) (1961). This G. O. in all probability will be slightly changed in the near future.

⁷⁶ Bankruptcy Act §14(b); 11 U.S.C. §32(b) (1958).

⁷⁷ Bankruptcy Act §58(b); 11 U.S.C. §94(b) (1958).

⁷⁸ Bankruptcy Act §58(b)(3); 11 U.S.C. §94(b)(3) (1958).

arbitrary, there is the usual after-thought softness evidenced by routine authority for extension of the time for filing such objections.⁷⁹ Not only must the objection be filed, but in addition a specification in writing stating the grounds of opposition and this also must be filed on or before the time set for filing of objection to discharge.⁸⁰

Certain of the bars to a general discharge in bankruptcy have time elements within them. Thus it is noted that a fraudulent conveyance made subsequent to the first day of the twelve months preceding the filing of the petition is a grounds for refusing discharge. It has been suggested that a twelve month period and a one year period are the same, but that one might illogically argue that the phrase "the first day" meant the first day of the month, thus extending the time. The better interpretation is to hold "the first day" to mean the day arrived at from counting back twelve months even though that day be some other than the first of that month.⁸¹ The most popular time limitation in bankruptcy, of course, is the prohibition against more than one discharge within a designated period. It should be noted in passing that the time period runs from the commencement of a prior proceeding to the filing of the petition in the present proceeding. Thus it is possible to get two discharges within six years. The prior proceedings must have provided a discharge, or the confirmation of a composition to be the basis for the six year limitation. A later discharge will not be granted then, where a discharge has been granted in a proceeding commenced six years prior to the filing of the petition in the instant bankruptcy proceeding.⁸² The advantage of the time limitation, however, may be lost if the grounds for the refusal is not raised or does not come to the attention of the court and a second discharge is given.⁸³

5. *Time Computations In Determining The Property Rights of The Trustee*

One of the most basic points of time upon which rights in bankruptcy are fixed, is the date of the filing of the petition in bankruptcy, and virtually all property of the bankrupt as of that time vests in the trustee.⁸⁴ However, it may be surprising to a newcomer to bankruptcy to find that certain properties may come into existence or change form after the petition and within a designated period and be gathered into the distributable assets of the estate. Thus it is seen that many interests in real property which were not subject to be taken from the bankrupt at the time of the petition, may be taken by the trustee if they become assignable within six months after the filing

⁷⁹ Bankruptcy Act §14(b); 11 U.S.C. §32(b) (1958).

⁸⁰ General Order In Bankruptcy 32 (1961).

⁸¹ See 1 COLLIER, BANKRUPTCY ¶14.46, footnote 8 (14th ed. 1956).

⁸² Bankruptcy Act §14(c) (5); 11 U.S.C. §32(c) (5) (1958).

⁸³ 1 COLLIER, BANKRUPTCY ¶14.53 (14th ed. 1956).

⁸⁴ Bankruptcy Act §70(a); 11 U.S.C. §110(a) (1958).

of the petition. Contingent remainders, rights of reverter and executory devises are examples of these interests.⁸⁵ Furthermore all non-exempt property which comes to the bankrupt by bequest, devise or inheritance within six months after the petition, passes to the trustee to be administered in the bankrupt's estate.⁸⁶ Non-exempt property held by the entirety, which would not pass to the trustee as of the date of the petition, will also pass to him if it become transferable solely by the bankrupt within six months of the petition.⁸⁷

The cash surrender value of non-exempt life insurance payable to the bankrupt, who is a natural person, his estate or personal representative, passes to the trustee if the bankrupt does not pay to the trustee the surrender value within thirty days after the cash surrender value has been ascertained and stated to the trustee. Or putting it the other way, a bankrupt has that thirty days to pay the surrender value to keep the policy clear from participating creditors.⁸⁸ The events which start the thirty day period running here are unique. These are, "after the cash surrender value has been ascertained and stated to the trustee by the company."⁸⁹ It seems that starting the thirty day period running after the ascertained value is stated to the trustee and the bankrupt is given notice of its value and his rights of payment would be fairer. This would remove the possible element of loss of rights of a bankrupt through ignorance of them and certainly good practice requires the trustee to notify the bankrupt of this thirty day privilege.

The trustee should within thirty days after his appointment and qualification decide whether he will prosecute an application for a patent, copyright, or trademark submitted by the bankrupt and notify the applicant of his decision. If this notice is not given, the applicant within the thirty days may apply for an order revesting the title in the bankrupt and this will be granted unless the time for the trustee to make his decision is extended.⁹⁰ It should be noted here that the time period runs from the appointment and qualification of the trustee, not the date of the petition.

The trustee is required to assume or reject executory contracts within sixty days after adjudication or within thirty days after the qualification of the trustee, but if a trustee is not appointed the executory contract will be deemed rejected within thirty days after the

⁸⁵ Bankruptcy Act §70(a) (7) ; 11 U.S.C. §110(a) (7) (1958).

⁸⁶ Bankruptcy Act §70 (a) 1st unlettered par. and §1(13). 11 U.S.C. §110(a) 1st unlettered par. and §1(13) (1958).

⁸⁷ Bankruptcy Act §70(a) 2nd unlettered par.; 11 U.S.C. §110(a) 2nd unlettered par. (1958).

⁸⁸ Bankruptcy Act §70(a) (5) 2nd proviso; 11 U.S.C. §110(a) (5) 2nd proviso (1958).

⁸⁹ *Ibid.*

⁹⁰ Bankruptcy Act §70(a) (2) ; 11 U.S.C. §110(a) (2) (1958).

order directing that a trustee not be appointed. The trustee is further required file a statement of contracts which are executory, within sixty days after adjudication or within thirty days after qualification. These time requirements, however, as usual are softened by permissive extensions.⁹¹ The time period here runs from adjudication, even though a trustee has not been appointed or qualified. This may require a trustee to immediately ask for an extension of time where his appointment is made belatedly after the adjudication, especially where the proceeding is a voluntary one and adjudication is automatic with the filing of the petition.⁹²

Thus far those time computations classed as major and those classed as minor have been considered in a detailed way consistent with their importance and intricate involvement. There are a myriad of other time factors which although important in determining rights, are uncomplicated in their application and which will be presented hereunder very briefly to round out a complete synthesis of this problem. The chief value of this further itemization of time factors in bankruptcy will be to make available a quick reference to prevent an unfortunate oversight by those involved in bankruptcy proceedings. Time factors primarily applicable to routine duties of referees and clerks will not be considered. It is in this area that rights and remedies may be governed by the rules of civil procedure. It is, therefore, important to keep in mind that where these rules do apply any time limitation therein may be shortened by the court to expedite hearings.⁹³

III. INCIDENTAL TIME FACTORS

The trustee is required to furnish a performance bond within *five days* after his appointment. This time may be extended, not to exceed *five days*, by the court. If the trustee, however, expects to perform official duties the five day period, he must furnish the bond before he enters upon them,⁹⁴ and a certified copy of the order approving the bond should be recorded in the proper office in each county where the bankrupt owns real estate, within *ten days* after his qualification.⁹⁵ Within *five days* after receiving notice of his appointment, the trustee should report exempt property set off to the bankrupt but this time may be extended by the court.⁹⁶ If this report is not filed *within five days* after it is due, the trustee may be removed from office upon a "show cause" served upon him *at least three days* before the hearing.⁹⁷

⁹¹ Bankruptcy Act §70(b), as amended by Pub. L. No. 87-681, 76 Stat. 570, Sept. 25, 1962.

⁹² Bankruptcy Act §18(f); 11 U.S.C. §41(f) (1958).

⁹³ Bankruptcy Act §21(k); General Order in Bankruptcy 37.

⁹⁴ Bankruptcy Act §50(b); 11 U.S.C. §78(b) (1958).

⁹⁵ Bankruptcy Act §47(c); 11 U.S.C. §75(c) (1958).

⁹⁶ General Order in Bankruptcy 17 (2) (1961).

⁹⁷ General Order in Bankruptcy 17 (3) (1961).

The law applicable in determining exemptions is the state of domicile for the *six months* preceding the filing of the petition or a longer portion of such period than in any other state.⁹⁸ Reports should be filed with the court within the *first month* after appointment and every *two months* thereafter, but these requirements may be altered by order of the court.⁹⁹ Dividends should be paid within *ten days* after they are declared,¹⁰⁰ and final accounts filed *fifteen days* before the final meeting of creditors.¹⁰¹

The trustee should examine all liens obtained by attachment, judgment, levy or other legal or equitable process within *four months* before the petition in bankruptcy to determine whether they are voidable.¹⁰² He may be somewhat surprised to find that receivers of trustee appointed outside of bankruptcy, assignees for the benefit of creditors and agents appointed to take possession or liquidate a person's property are not required to deliver property to the trustee in bankruptcy or account to the court for its disposition if the receiver or trustee was appointed, the assignment made or agent authorized more than *four months* prior to bankruptcy.¹⁰³

2. Of Special Interest to Creditors

The involuntary petition must be served at least *five days* prior to return day, and return day must be within *ten days*. These periods, however, may be extended for cause shown.¹⁰⁴ The first meeting of creditors should be held not less than *ten* nor more than *thirty days* after the adjudication or as soon thereafter as possible.¹⁰⁵ Creditors may request and the court must call a meeting within *thirty days* after the filing of the request.¹⁰⁶ The creditors are obliged to file a list of creditors within five days after the date of adjudication in cases of involuntary bankruptcy when the bankrupt is absent or cannot be found. Here again the court may extend this time.¹⁰⁷ At least a *ten day* notice of matters of importance to the creditors must be given them. However, property may be sold without notice upon cause shown the court,¹⁰⁸ and not notice of dismissal for failure to pay costs need be given creditors.¹⁰⁹ Objections may be made to the trustee's determination of exemptions *within ten days* after the filing of the report of exempt

⁹⁸ Bankruptcy Act §6; 11 U.S.C. §24 (1958).

⁹⁹ Bankruptcy Act §47(a) (12); 11 U.S.C. §75(a) (12) (1958).

¹⁰⁰ Bankruptcy Act §47(a) (11); 11 U.S.C. §75(a) (11) (1958).

¹⁰¹ Bankruptcy Act §47(a) (13); 11 U.S.C. §75(a) (13) (1958).

¹⁰² Bankruptcy Act §67(a) (1); 11 U.S.C. §107(a) (1) (1958).

¹⁰³ Bankruptcy Act §2(a) (21); 11 U.S.C. §2(a) (21) (1958).

¹⁰⁴ Bankruptcy Act §18(a); 11 U.S.C. §41(a) (1958).

¹⁰⁵ Bankruptcy Act §55(a); 11 U.S.C. §91(a) (1958).

¹⁰⁶ Bankruptcy Act §55(d); 11 U.S.C. §91(d) (1958).

¹⁰⁷ General Order in Bankruptcy 9 (1961).

¹⁰⁸ Bankruptcy Act §58(a); 11 U.S.C. §94(a) (1958).

¹⁰⁹ Bankruptcy Act §59(g); 11 U.S.C. §95(g) (1958).

property and the time may be extended by the court.¹¹⁰ Bail may be required for the appearance of the bankrupt, but not exceeding *ten days*.¹¹¹

There are a great number of time periods of interest to creditors in regard to their claims. Their claims must be filed within *six months* after the first date set for the first meeting of creditors, to be allowed. However, the court may extend the time, if application is made before the six months period has expired, for the United States, a State or State subdivision. Claims of infants and insane persons may be extended *six months* longer and claims arising in favor of another by reason of certain recoveries or avoidances by the trustee may be filed within *thirty days* from the date of the avoidance or recovery. However, a claim by one who refused to pay money or deliver property to the trustee pursuant to a final judgment within thirty days from such judgment will not be allowed.¹¹² Certain claims have time period factors incident to their determination. Thus claims of a landlord resulting from rejection of a lease on real estate are allowed only to amount of the rent for the *year succeeding* the surrender or re-entry of the landlord plus accrued rent up to that surrender or re-entry.¹¹³ Then, too, claims for wages not to exceed \$600 earned *within three months* before the petition have a priority in payment¹¹⁴ and a landlord has priority for rent which accrued within *three months* of the petition in bankruptcy.¹¹⁵ The use of assigned claims is restricted by the provision that a set-off or counter claim purchased by or transferred to a creditor *within four months* before the petition in bankruptcy will not be allowed if received for such use and with knowledge that the transferor was insolvent or had committed an act of bankruptcy.¹¹⁶ The assignor of a claim assigned after the petition has been filed must make any objection that he may have within *ten days* after notice is given him by the referee subject, however, to an extension of time made by the referee.¹¹⁷

Certain time computations involve the declaration and payment of dividends. Thus creditors will note that the first dividend should be declared *within thirty days* after the first date set for the first

¹¹⁰ General Order in Bankruptcy 17 (2) (1961).

¹¹¹ Bankruptcy Act §10(a); 11 U.S.C. §28(a) (1958).

¹¹² Bankruptcy Act §57(n); 11 U.S.C. §93(n) (1958). If a national holiday falls on Sunday and thus is observed on Monday, Monday becomes a holiday. In time computations the next day which is not a Sunday or a holiday would be a Tuesday which would be included in the time computation. *In Re Dorado Plastics Corporation*, 184 F. Supp. 283 (D. Puerto Rico, 1960).

¹¹³ Bankruptcy Act §63(a) (9) 1st proviso; 11 U.S.C. §103(a) (9) 1st proviso (1958).

¹¹⁴ Bankruptcy Act §64(a) (2); 11 U.S.C. §104(a) (2) (1958).

¹¹⁵ Bankruptcy Act §64(a) (5) proviso; 11 U.S.C. §104(a) (5) proviso (1958).

¹¹⁶ Bankruptcy Act §68(b); 11 U.S.C. §108(b) (1958).

¹¹⁷ General Order in Bankruptcy 21 (3) (1961).

meeting of creditors. Certain restrictions are placed upon payment of dividends until *six months* have expired since the first date set for the first meeting, and the final dividend must not be declared until *three months* after the declaration of the first dividend. However, if no dividends are declared for over *six months* after the first date set for the first meeting of creditors, only one dividend need be declared.¹¹⁸ Dividends or other monies not claimed for *sixty days* after the final dividend is declared and distributed will be deposited and shall not be subject to escheat laws of any state.¹¹⁹

3. *Of Special Interest to the Bankrupt*

The bankrupt should answer the involuntary petition within *five days* after the return day, but the time may be extended.¹²⁰ Under certain circumstance the court may permit payment of fees in installments. The final installment must be payable not more than *six months* after the petition in bankruptcy. The time for the payment of any installment, however, may be extended by the court, but not to exceed *three months*. The total time for payment of fees then may be *nine months*.¹²¹ A statement of affairs should be filed by the bankrupt at least *five days* prior to the first meeting of creditors;¹²² his claim for exemptions should be filed within *five days* after adjudication;¹²³ and a demand for a jury trial if desired should be made within *five days* after the return day.¹²⁴ These last three periods, however, are softened by a permissive extension, as are so many of the time periods in the Act.

4. *Time Periods in Appeals*

A petition for review of a referee's order should be filed within *ten days* after its entry, but this time may be extended if requested by a petition filed within the *ten day* period.¹²⁵

Appeals to the United States Courts of Appeal must be taken within *thirty days* after written notice to the aggrieved party. If no such notice is served and filed, the appeal may be taken *within forty days* from the entry of judgment. Proof of notice where given must be filed within *five days* after service. It will be noted that the maximum time for appeal is forty days from the judgment or order.¹²⁶

This concludes the bringing together of all time periods within, before, or after which certain rights exist or actions must be taken.

¹¹⁸ Bankruptcy Act §65(b); 11 U.S.C. §105(b) (1958).

¹¹⁹ Bankruptcy Act §66(a); 11 U.S.C. §106(a) (1958).

¹²⁰ Bankruptcy Act §18(b); 11 U.S.C. §41(b) (1958).

¹²¹ General Order in Bankruptcy 35(4)(a) (1961).

¹²² Bankruptcy Act §7(a)(8); 11 U.S.C. §25(a)(8) (1958).

¹²³ *Ibid.*

¹²⁴ Bankruptcy Act §19; 11 U.S.C. §42 (1958).

¹²⁵ Bankruptcy Act §39(c); 11 U.S.C. §67 (1958), as amended, 11 U.S.C. §67 (Supp. III, 1962).

¹²⁶ Bankruptcy Act §25(a); 11 U.S.C. §48(a); See 2 COLLIER, BANKRUPTCY §25.04.

Only those periods applicable to proceedings in straight bankruptcy have synthesized. A very few periods, of interest only to the court or some administrative officer, have been omitted from consideration,¹²⁷ but these are few and insignificant. Time factors with only one point, such as "the date of the petition," were not considered. Only those having two points, as "4 months after the petition" were synthesized. Time factors involved in the one point type, justify a separate catenation and were not within the scope of the present article. One word of warning in closing to the novice in bankruptcy practice. Be sure to note the point from which the time is calculated. It may be five days from: the petition, the adjudication, the first meeting of creditors or any other of many starting points.

¹²⁷ *E.g.*, see Bankruptcy Act §§34 & 40(a) & (b); 11 U.S.C. §§62 and 68(a) & (b) (1958). See also General Order in Bankruptcy 53 (3) (7) & (10) (1961).