

## Mark S. Scarberry

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### Education:

California Institute of Technology, Pasadena, CA, 1971-73.

Occidental College, Los Angeles, CA, 1973-75, A.B., Magna cum Laude, Phi Beta Kappa.

UCLA School of Law, 1975-78, J.D., Order of the Coif, graduated first in class of 1978.

### Legal and Academic Employment:

Jones, Day, Reavis & Pogue, Los Angeles Office, Associate, 1978-82.

Pepperdine Univ. School of Law: Assoc. Prof., 1982-91; Professor, 1991 to present.

American Bankruptcy Institute's "Robert M. Zinman Scholar in Residence," Fall 2007.

### Selected Memberships and Positions:

Chair, AALS section on Constitutional Law, 2012; Chair-Elect, 2011; Executive Committee member, 2013.

Co-Chair, Association of American Law Schools (AALS) Law & Religion Section, 2006-07. Co-Chair Elect, 2005-06. Co-Chair of Section Annual Meeting Planning Committee, 2004-05. Member of Section Executive Committee (2014-16).

Executive committee member of new AALS Section on Election Law (assisted in formation of section).

Co-Reporter, Advisory Committee on Valuation for American Bankruptcy Institute Commission on Reform of Chapter 11, 2012-15.

Faculty member, American Board of Certification (a body that certifies bankruptcy lawyers as specialists), 2013-present. Wrote a substantial portion of the examination given to lawyers seeking certification.

Member, American Bankruptcy Institute Law Review Advisory Board, 2000 to present.

Member, Advisory Committee on Litigation of the Presbyterian Church (U.S.A.), 2000 to 2009. Moderator of Committee, 2002 to 2008.

Occasional peer reviewer for Election Law Journal. Provided peer review of election-law related article for Yale Law Journal.

Advisor, Journal of Business, Entrepreneurship & the Law (a Pepperdine Law School journal).

University Faculty Council (Pepperdine's version of a faculty senate): Chair at inception, 2001-02.

Helped to organize UFC to ensure meaningful faculty role in university shared governance.

Drafted UFC Charter. Member with various leadership roles during most of period from formation to present, including positions as Vice Chair, 2004-05, 2012-14; and Chair, 2014-16. Leadership role in drafting 2014 Shared Governance Vision Statement (providing for substantial faculty role in shared governance at the university level), 2014 University Political Activities Statement (providing explicit guarantee of freedom of faculty to engage with issues of public policy as Pepperdine faculty but not on behalf of Pepperdine), and 2013 UFC charter revision (clarifying role of UFC as independent faculty voice).

Other AALS Activities:

- Organizer and Moderator, 2013 AALS Annual Meeting Programs of Constitutional Law Section.
- Moderator, 2012 AALS Annual Meeting Program of Constitutional Law Section, “American Citizenship in the 21st Century” (Panel II, “Article V: To All Intents and Purposes”).
- Moderator, 2012 AALS Annual Meeting Program of Section on Law and Religion, “Blasphemy, Religious Defamation, and Religious Nationalism: Threats to Civil Society from Religious Speech and Its Suppression.”
- Speaker on Mortgage Modification in Bankruptcy (selected per call for papers), at Joint Program of AALS Section on Creditors’ and Debtors’ Rights and AALS Section on Real Estate Transactions, January 2009 AALS Annual Meeting (podcast available at [aals.org/events\\_am2009.php](http://aals.org/events_am2009.php)).
- Luncheon speaker for AALS Section on Financial Institutions and Consumer Financial Services, January 2008 AALS Annual Meeting.
- Moderator of panel on global issues in bankruptcy law at the meeting of the AALS Section on Creditors’ and Debtors’ Rights, January 2003 AALS Annual Meeting.

Law School Courses Taught Include:

- Arbitration Law; Business Reorganization in Bankruptcy; Creditors’ Rights & Bankruptcy; Commercial Law; Constitutional Law; Contracts; Jurisprudence; International Bankruptcy; Law & Economics; Mergers & Acquisitions; Products Liability; Religion & the Constitution; Remedies.

Selected Writings:

- Updates for 19 chapters of multi-volume treatise: DUNAWAY, *THE LAW OF DISTRESSED REAL ESTATE* (2014) (wrote updates, identified as co-author with Dunaway of updates in 2014 updates).
- SCARBERRY, KLEE, NEWTON & NICKLES, *BUSINESS REORGANIZATION IN BANKRUPTCY: CASES AND MATERIALS*, American Casebook Series, Thomson/West, 4th edition, 2012 (first edition, 1996; second edition, 2001; third edition, 2006).
- The Supreme Court’s Decision in Stern v. Marshall: Analysis & Implications*, prepared for American Bankruptcy Institute’s Southwest Bankruptcy Conference, September 8-10, 2011 (<http://ssrn.com/abstract=1888685>).
- Mortgage Wars Episode V—the Empiricist Strikes Back (or Out): A Reply to Professor Levitin’s Response*, 37 *Pepperdine L. Rev.* 1277 (2010) (<http://ssrn.com/abstract=1604144>).
- A Critique of Congressional Proposals to Permit Modification of Home Mortgages in Chapter 13 Bankruptcy*, 37 *Pepperdine L. Rev.* 635 (2010) (symposium issue) (<http://ssrn.com/abstract=1520794>).
- Historical Considerations and Congressional Representation for the District of Columbia: Constitutionality of the D.C. House Voting Rights Bill in Light of Section Two of the Fourteenth Amendment and the History of the Creation of the District*, 60 *ALABAMA L. REV.* 783 (2009) (<http://ssrn.com/abstract=1345744>).
- John Leland and James Madison: Religious Influence on the Ratification of the Constitution and on the Proposal of the Bill of Rights*, 113 *PENN ST. L. REV.* 733 (2009) (<http://ssrn.com/abstract=1262520>).
- Detailed Chart Comparing Provisions of Current Bankruptcy Bills Dealing with Modification of Home Mortgages, as of December 13, 2007*, 36 *N.Y. REAL PROPERTY L. J.* 58 (Spring 2008).
- Interpreting Bankruptcy Code Sections 502 and 506: Post-Petition Attorneys’ Fees in a Post-Travelers World*, 15 *AM. BANKR. INST. L. REV.* 611 (2007) (<http://ssrn.com/abstract=1022384>).
- Course materials for American Bankruptcy Institute’s Oct. 22, 2007 continuing legal education program entitled “Consumer Bankruptcy in Practice: A Webinar Series – Income, expenses, and

related issues under BAPCPA,” and revised materials for Jan. 28, 2008 program of same name. Materials on Selected Issues in Consumer Bankruptcy in California (2003). This 41 page document (prepared for a continuing legal education program in which I was a presenter) is an update of the 1998 and 1999 pro bono training materials noted immediately below.

Pro Bono Representation of Low Income Chapter 7 Debtors: An Overview, 1998 (materials written for use in training attorneys to work in pro bono bankruptcy program); 1999 Update.

Works were cited during 2012-16 in:

American Bankruptcy Institute Law Review  
American Univ. Law Review  
Arizona Law Review  
Arizona State Law Journal  
Brookly Law Review  
Cardozo Law Review  
Consumer Finance Law Quarterly  
First Amendment Law Review  
Florida Law Review  
Georgetown Law Journal  
Howard Law Journal  
Illinois Law Review  
Northwestern Univ. Law Review  
Northwestern Univ. Law Review Online  
NYU J. Law & Liberty  
University of Chicago Legal Forum  
Washington Law Review  
Washington and Lee Law Review  
Wisconsin Law Review  
Yale Law Journal

Congressional Testimony:

Senate Judiciary Committee, Subcommittee on Administrative Oversight and the Courts, March 24, 2009, Hearing on “Abusive Credit Card Practices and Bankruptcy.”

Senate Judiciary Committee, Dec. 5, 2007, Hearing on “The Looming Foreclosure Crisis: How To Help Families Save Their Homes.”

House Judiciary Committee, Subcommittee on the Constitution, July 22, 1997, Hearing on H.J. Res. 78, “Proposing an Amendment to the Constitution Restoring Religious Freedom.”

Selected Conferences, Activities, Training Programs, and Short On-Line Works:

Panelist (as co-reporter) for Valuation Advisory Committee report to American Bankruptcy Institute Commission on Reform of Chapter 11 (Feb. 11, 2014).

American Bankruptcy Institute Interview on Controversial Proposal to Use Eminent Domain to Provide Relief for Underwater Homeowners (July 26, 2012 podcast with ABI Executive Director Sam Gerdano).

Panel Moderator for session on “The Ministerial Exception” at “Competing Claims” conference sponsored by the Herbert and Elinor Nootbaar Institute on Law, Religion and Ethics, Pepperdine Univ. School of Law, Feb. 25, 2012.

Panelist for program sponsored by J. Reuben Clark Law Society. “Romney, Religion, and the 2012

- Republican Presidential Primaries,” 2012.
- Presenter and Moderator, Annual Meeting of Ninth Circuit Bankruptcy Appellate Panel Judges, Nov. 17, 2011, and Jan. 23, 2015.
- Panelist, “The Supreme Court Takes on Bankruptcy: Clarity and Confusion,” National Association of Attorneys General bankruptcy conference, 2011.
- Panelist, “Implications of Recent Supreme Court Decisions,” American Bankruptcy Institute Southwest Bankruptcy Conference, 2011.
- Panelist, “Hot Topics in Mortgages,” National Association of Attorneys General bankruptcy conference, 2010.
- Presenter, “CLS v. Martinez: Education, Religion, and Sexuality,” UCLA Law School Williams Institute, 2010 (sponsored by: OUTLaw and Christian Legal Society).
- Co-Organizer and Speaker, Pepperdine Law Review Symposium, April 17, 2009, entitled “Bringing Down the Curtain on the Current Mortgage Crisis and Preventing a Return Engagement.”
- Boston College Law School Law and Religion Program Symposium, March 18, 2008. Presented paper on influence of Baptist minister John Leland on James Madison’s election to the Virginia ratifying convention and on James Madison’s election to the First Congress.
- Program Coordinator, Participant, and Presenter: Global Judges Forum — Commercial Enforcement and Insolvency Systems, May 19-23, 2003, Pepperdine Univ. School of Law, Malibu, California. This program was cosponsored by the World Bank and by Pepperdine University School of Law and was attended by approximately 105 judges from 60 countries.
- Taught in Training Program on Bankruptcy for Romanian Syndic Judges, May 25-27, 1999, Timisoara, Romania (co-sponsored by U.S. Agency for International Development and the Romanian Ministry of Justice).
- Sino-U.S. Symposium on Bankruptcy Law, November 3-6, 1998, Beijing, PRC. Assisted in organizing symposium on bankruptcy law designed to assist the PRC in revision of its business bankruptcy laws. Taught two week training program prior to conference for Chinese lawyers and professors. Conference was co-sponsored by Pepperdine University School of Law and the China University of Political Science and Law, and supported by the Ministry of Justice and the State Bureau of Foreign Experts of the PRC.

#### On-Line Academic and Practice Discussion Lists

Moderator of Conlawprof list. Active participant: Bankr-Law, Electionlaw, and Religionlaw e-mail lists.