PUTTING IDEAS TO PRACTICAL USE: JULIET MORINGIELLO AND THE UNIFORM ASSIGNMENT FOR THE BENEFIT OF CREDITORS ACT

by

Laura N. Coordes*

Introduction

Throughout her life, Juliet Moringiello wore many hats. She was a professor and associate dean, a Uniform Law Commissioner and an editor, a lawyer, a skier, and a leader—to name only a few roles.[1] Her impact was wide-reaching, and when she passed away, she left a stream of accomplishments, both personal and professional, in her wake.[2]

My own interactions with Juliet represent a small fraction of her life. She was a friend and a mentor. We shared an interest in studying and writing about municipal bankruptcy. And she inspired me to think about ways I could put my academic knowledge to practical use.

Our paths crossed several times over the years. We corresponded by email, met at conferences and on Zoom meetings, and, most recently, found ourselves both sitting on a Uniform Law Commission drafting committee. Juliet was well-known for her accomplishments as a Uniform Law Commissioner, most notably for her work on the Uniform Commercial Code's (UCC) Permanent Editorial Board and for her role as vice chair of the drafting committee that produced the 2022 UCC amendments.[3] My own work with her, on the drafting committee for the Uniform Assignment for Benefit of Creditors Act (UABCA or the Act), was more recent, and the approval of the UABCA by the Uniform Law Commission (ULC) came in July of 2025, after Juliet's death.[4]

---

* Professor of Law, Arizona State University Sandra Day O'Connor College of Law. Thanks to Kara Bruce and Melissa Jacoby for their work putting this issue together, to Jonathan Lipson and Melissa Jacoby for helpful comments, to Judge Michelle Harner and the staff of the American Bankruptcy Law Journal for publishing this special issue, and to the Sandra Day O'Connor College of Law for supporting my research.

[1] Richard G Paszkiet, *In Remembrance of Juliet M. Moringiello: A BLS Member Who Left a Radiant Legacy to the Section*, A.B.A. (Oct. 17, 2025), https://www.americanbar.org/groups/business_law/resources/business-law-today/2025-october/in-remembrance-of-juliet-m-moringiello/. Some of Juliet's other work involving private legislatures, like the ULC, appears in Jonathan C. Lipson, *Between Worlds: Juliet Moringiello, Private Legislatures, and the Future of Commercial Law Education,* 100 AM. BANKR. L.J. 617 (2026).

[2] *See supra* note 1.

[3] *Id*.

[4] *Assignment for Benefit of Creditors Act*, UNIF. L. COMM'N, https://www.uniformlaws.org

Copyright (c) 2026 the National Conference of Bankruptcy Judges

The purpose of the UABCA is to make assignments for the benefit of creditors (ABCs) a viable alternative to bankruptcy and to provide an additional resolution tool under state law for distressed debtors across all the U.S. States and Territories.[5] Although each state has an ABC law in some form (statutory, common law, or a hybrid), state approaches to ABCs vary widely,[6] and their use varies from state to state as well. Juliet was one of the Commissioners on the drafting committee for the UABCA; I was the Reporter for the committee. Consequently, I attended every drafting committee meeting, working closely with the Commissioners and observers to translate the committee's ideas into a practical law.

Juliet's participation during the drafting process was invaluable. Her thoughtful comments, questions, and additions helped shape the Act into what it is today. She participated in the initial reading of the draft act to the entire ULC in the summer of 2024. And she worked alongside members of the drafting committee to puzzle through issues raised during the drafting process.

Juliet's work with the ULC exemplifies a theme that she embodied, both in her mentorship of me and in her career more broadly: the value of taking academic ideas and putting them to practical use. Although Juliet was a law professor, she was never stuck in an ivory tower. She consistently sought to make her academic contributions useful, to work alongside practitioners, and to advocate for all scholars to understand the value of closing the gap between theory and practice.

Through this essay, I seek to highlight and honor this aspect of Juliet's life and work. Drawing upon the times when we worked most closely together, it combines personal reflection with some very practical messages. To help continue Juliet's legacy of inspiring legal scholars to get involved in shaping their fields on the ground, I describe the drafting process of a uniform act with the ULC and explain how interested readers can get involved with that process. To help carry forward the work of Juliet and the other members of the drafting committee, I also provide some information about the new UABCA and some of its key features.

/committees/community-home?CommunityKey=b7e5e644-b4b2-44eb-acbc-019859883add.

[5] *See id.* ("The Act creates a state law alternative to other procedures available to the assignor for winding up its business and provides benefits that are not available through a federal bankruptcy case or a state or federal law receivership.").

[6] *See* Carly Landon, Note, *Making Assignments for the Benefit of Creditors as Easy as A-B-C*, 41 FORDHAM URB. L.J. 1451, 1473 (2014) ("Common law ABCs are admittedly hard to summarize, because there are no comparable statutes and each state's case law differs from other states' case law.").

The essay proceeds as follows. Part I gives some personal reflections on Juliet, introduces the ULC, and explains ways to become involved with the ULC's processes for studying and drafting new uniform laws. Part II then introduces the UABCA and discusses some of its key features. Part III briefly concludes.

I. Juliet and the ULC

Throughout her life, Juliet Moringiello was involved in numerous professional organizations, including the American Bar Association, the American Law Institute, and the Uniform Law Commission.[7] She was also a friend and mentor to many, both within and outside of the legal field.[8] Although I cannot hope to capture the impact she had on so many groups and people, I would nevertheless like to focus on her impact as I saw it most closely, as a ULC Commissioner on the UABCA drafting committee, and as a personal friend and mentor.

A. Juliet as Friend and Mentor

I first got to know Juliet in 2017, near the beginning of my academic career. I had posted a draft article online about municipal bankruptcy, a topic Juliet had frequently written about and knew well.[9] Juliet saw the draft and reached out to offer feedback and suggestions.[10] She did this even though our paths had never crossed before. As a relatively new scholar, I recall being unsure of how to approach more senior scholars, like Juliet, for feedback on my work. Juliet made it easy, generously offering her time and advice on my current paper while expressing willingness—eagerness, even—to engage with any

[7] Paszkiet, *supra* note 1 (describing Juliet's work with these groups).

[8] *Id*. ("She inspired a whole generation of skiers in Pennsylvania!").

[9] *See, e.g.*, Juliet M. Moringiello, *Goals and Governance in Municipal Bankruptcy*, 71 WASH. & LEE L. REV. 403, 404 (2014) (urging policymakers to understand chapter 9 as part of an "integrated scheme for municipal financial recovery"); Juliet M. Moringiello, *Chapter 9 Plan Confirmation Standards and the Role of State Choices*, 37 CAMPBELL L. REV. 71 (2015) (exploring chapter 9 plan confirmation standards with a focus on the bankruptcies of Stockton and Detroit); Juliet M. Moringiello, *Decision-Making and the Shaky Property Foundations of Municipal Bankruptcy Law*, 12 BROOK. J. CORP. FIN. & COM. L. 5 (2017) (examining the roots of bankruptcy and municipal finance law to provide a decision-making framework for chapter 9 cases).

[10] The piece to which Juliet responded became Laura N. Coordes & Thom Reilly, *Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study*, 105 KY. L.J. 493 (2016–2017).

future projects I might be working on. After this initial interaction, I reached out regularly to her for feedback on additional articles. I always valued Juliet's feedback—she was thoughtful, rigorous, and critical when she needed to be, but always made me feel as though my work was valuable to her and to the field at large. I have tried to model her approach whenever I have the opportunity to review an article.

Although our first interactions were over email, we did eventually meet in person, and I later had the wonderful opportunity to collaborate with Juliet on a working group studying COVID-19's impact on municipal bankruptcies.[11] Through these interactions, I realized that Juliet was an active listener and a valued contributor, someone who made others feel heard and encouraged while also being focused on how to advance the discussion. As with her approach to written feedback, her approach to group work is something I have tried to model in my own professional interactions.

I was aware that Juliet was a ULC Commissioner from Pennsylvania; however, I did not really understand what that position entailed until I became involved with the ULC's efforts regarding a uniform assignment for benefit of creditors act. When I became the Reporter to the UABCA's drafting committee, I was surprised and pleased to learn that Juliet would also be serving on the committee as a ULC Commissioner.

B. Drafting the Uniform Act

The ULC's drafting process is thorough yet efficient. Once a drafting committee is formed, it typically takes about two years for an act to be finalized and promulgated. The drafting committee for the UABCA first convened in 2023 and thereafter met twice a year in person and much more often on Zoom over the course of the next two years.[12] During this time, the participants on the drafting committee became intimately familiar with ABC law and practice. As always, Juliet was a thoughtful participant on the drafting committee. She was an attentive and active listener; when she spoke, her contributions were always insightful and practical. Although Juliet passed away before the drafting committee finished its work, her contributions to the committee and the Act that resulted from the committee's work should not be forgotten.

[11] *See Bankruptcy and COVID-19 Working Group*, HARV. BANKR. ROUNDTABLE (May 19, 2020), https://bankruptcyroundtable.law.harvard.edu/2020/05/19/bankruptcy-covid-19-working-groups-letter-to-congress/ (describing the group and one of its outputs). Juliet was a member of the working group's municipalities committee, which I co-chaired.

[12] An archive of the committee's work may be found at *Assignment for Benefit of Creditors Act*, *supra* note 4.

C. Stakeholder roles

As mentioned, Juliet was passionate about involving legal scholars in practical work, particularly through the uniform laws process. In 2025, she organized a session at the Association of American Law Schools (AALS) Annual Meeting on this subject.[13] In the spirit of continuing Juliet's efforts in this area, this essay now turns to an exploration of the various roles that legal scholars, and the public at large, can play in the effort to draft and reform uniform laws with the ULC.

When the ULC is considering a proposal for a new uniform or model act, it typically first commissions a study committee, comprised of ULC commissioners, a Reporter (usually a legal academic), and observers.[14] The study committee typically takes about a year to explore the need for a uniform act; if the committee recommends that an act be drafted, the ULC may then, after an internal approval process, appoint a drafting committee.[15] The composition of a drafting committee is similar to that of a study committee. The drafting committee itself is composed of ULC Commissioners. Each drafting committee also has a Reporter to assist the committee and to provide expertise in the relevant area of law.[16]

The committee and the Reporter also receive assistance from an American Bar Association (ABA) advisor.[17] The ABA advisor serves as a liaison between the committee and the ABA. Other organizations that have an interest in the act being drafted may also ask the ULC to appoint advisors.

The Reporter and the Chair of the drafting committee also solicit the participation of observers.[18] An observer is an individual that is interested in the act in question. These individuals often have salient practice experience or other expertise in the field that is the subject of the act. However, anyone with an interest in the act being drafted is encouraged and invited to be an observer. No formal observer qualifications are required. Observers receive all

[13] *See Program: 2025 AALS Annual Meeting*, THE ASS'N OF AM. L. SCHS., https://memberaccess.aals.org/eweb/DynamicPage.aspx?WebKey=9A60554C-42EB-400F-BF4D-145103FC7483&RegPath=EventRegFees&REg_evt_key=fbbeb278-acab-4e24-a658-54daa3f6fab8.

[14] *FAQs*, UNIF. L. COMM'N, https://www.uniformlaws.org/aboutulc/faq#How%20are%20subjects%20for%20new%20acts%20selected?.

[15] *Id*.

[16] *Id*.

[17] *Id*. ("Advisor(s) from the American Bar Association and observers from interested organizations and other entities are invited to assist on every Drafting Committee.").

[18] *Id*.

communications regarding meetings and all drafts exchanged by the committee.

The term "observer" can be misleading because, although observers may simply sit back and observe the drafting process, they can also do much more. They may provide input and feedback based on their own experience, and they may share their perspectives. They may attend meetings—either virtually or in person—and they are encouraged to speak during these meetings. The UABCA's drafting committee, for example, relied heavily on input from observers, many of whom were experts with years of ABC-related practice. Observers to the UABCA's drafting committee provided significant, valued feedback that shaped the Act into its final form.

Thus, although ULC Commissioners play an important role in the consideration and drafting of new acts, non-Commissioners can also be involved in many ways. In particular, Juliet encouraged academics to become involved as reporters and observers. Personally, my service as a Reporter with the ULC helped me grow as a scholar and writer and brought a new visibility to my career and work. I'm grateful to have had the opportunity and want to continue Juliet's good work in encouraging others to become involved.

II. The New UABCA

Juliet worked on many projects as a Uniform Law Commissioner. This Part introduces just one of those projects, the new Uniform Assignment for Benefit of Creditors Act, which Juliet worked on shortly before she passed away.

A. What is an ABC?

An ABC is a voluntary, state law liquidation tool. To commence an ABC, the "assignor," typically a business in financial distress, assigns all its assets to an "assignee." The assignee is a fiduciary with duties to the assignment estate, which is created for the benefit of the assignor's creditors. The assignee's job is to liquidate the assignor's assets and distribute the proceeds to those creditors. ABCs have a long history rooted in trust law. Indeed, an ABC functions like a trust, with the assignor's creditors as the beneficiaries. Many of the assignee's duties are similar to a trustee's duties.[19]

[19] Melvin Nathanson, *Assignments for the Benefit of Creditors*, 17 MD. L. REV. 18, 18 (1957) (stating that an ABC may also be called "a deed of trust for the benefit of creditors" and defining an ABC as a transfer by a debtor of "property to an assignee or trustee, in trust")

An ABC thus functions as an alternative to other state and federal procedures available to distressed businesses, including bankruptcy, receiverships, and out-of-court workouts. ABC law is currently highly inconsistent from state to state: some states have statutes governing the ABC process,[20] while ABCs are governed partially or wholly by the common law in other states.[21] The UABCA seeks to alter this inconsistency by providing a single statute that all states can adopt to uniformly administer ABCs.

There is not much Supreme Court jurisprudence about ABCs; however, the Court has recognized ABCs as a viable option for financially distressed businesses.[22] As state-law tools, however, ABCs cannot provide for a discharge of debts.[23] They are therefore primarily useful as liquidation tools for businesses and tend not to be favored by individual debtors or businesses seeking to continue as a going concern.[24]

B. Features of the UABCA

As indicated above, state approaches to ABCs are not uniform and in fact, they vary substantially from each other. Some states, notably Florida,[25] New York,[26] and New Jersey,[27] use detailed statutory schemes, which specify all or most aspects of the ABC process. Other states, such as Illinois and California, leave the ABC process mostly or completely up to common law.

(internal quotations omitted).

[20] *See, e.g.*, Fla. Stat. Ch. 727.101–727.116 (2017) ("General Assignments"); N.Y. Debt & Cred. Law §§ 1–24 (2014) ("General Assignments for the Benefit of Creditors"); N.J. Stat. Ann. §§ 2A:19-1 to 2A:19-49 (2009) ("Administration of Civil and Criminal Justice").

[21] For example, California repealed its ABC statutes in 1978 and did not replace them. Today, various provisions of California law, including provisions in the Civil Code, the Code of Civil Procedure, and the Uniform Commercial Code, are applicable to ABCs, but there is no overarching California ABC statute.

[22] *See, e.g.*, Pobreslo v. Joseph M. Boyd Co., 287 U.S. 518, 526 (1933) ("[I]t is apparent that Congress intended that such voluntary assignments . . . should be regarded as not inconsistent with the purposes of the federal act.").

[23] *Id.* at 523 (noting, with regard to an Arkansas statute that provided for a discharge, that "Congress intended to supersede these local enactments").

[24] A notable exception was documented by Andrew B. Dawson, *Better Than Bankruptcy?*, 69 RUTGERS U.L. REV. 137 (2016), which describes debtors using Florida's ABC law to reorganize rather than liquidate.

[25] Fla. Stat. Ch. 727.101–727.116 (2017).

[26] N.Y. Debt & Cred. Law §§ 1–24.

[27] N.J. Stat. Ann. §§ 2A:19-1 to 2A:19-49 (2009).

Still other states have laws governing ABCs, but these laws may be many decades old.[28]

There is also variation in the frequency with which ABCs are used in each state. For example, ABCs are widely used in Florida, Illinois, and California, suggesting that a lack of statutory guidance (as is the case in the latter two states) is not necessarily a deterrent to their use.[29] However, in other states, ABCs are not used frequently or at all, and practitioners may not have much knowledge of ABCs.[30]

Prior to the promulgation of the UABCA, the only true common legal thread among state ABC practice was the recognition that an assignee has the status of an Article 9 lien creditor for purposes of applying the priority rules of Article 9 of the UCC. However, this is a common thread only because UCC Article 9 explicitly provides for this.[31]

The UABCA represents an improvement upon the status quo. The Act creates a clear roadmap for the execution of an ABC. The discussion below summarizes many key features of the Act.

Eligibility. The UABCA describes the entities that are eligible to be assignors.[32] It also lists the qualifications necessary to be an assignee.[33] Critically, the assignee must be disinterested, and the Act lays out restrictions on the use of assignees that may have some inside tie to, claim against, or interest in the assignor.[34]

Interactions with Other Law. The Act explains how an ABC that proceeds under the Act interacts with existing federal and state statutes, including the Bankruptcy Code and the Uniform Voidable Transactions Act.[35] Notably, many of the definitions in the Act are drawn from the Bankruptcy

---

[28] Mich. Comp. Laws §§ 600.5201 (1963); S.C. Code Ann. §§ 27-25-10 to 27-25-160 (1962).

[29] Landon, *supra* note 6, at 1469 (noting that ABCs have been used "frequently" in California, Illinois, and Florida).

[30] *See id*. at 1482 ("Over time, the ABC process became too widely varied by state and too cumbersome, and, as a result, ABCs were not widely used in many states.").

[31] U.C.C. § 9-102(a)(52)(B).

[32] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 3 (2025).

[33] *Id.* § 4.

[34] *Id*.

[35] *See, e.g.*, *id.* § 2 cmt. (discussing definitions drawn from the Bankruptcy Code and the Uniform Voidable Transactions Act); *id.* § 9 cmt. (noting similarities in fiduciary duties between the UABCA and the Bankruptcy Code); *id.* § 15(f) (discussing priority claims in reference to bankruptcy law).

Code, the UCC, or other statutes and are intended to be understood consistently with the use of such terms under such other law.[36]

The Assignment Agreement. The UABCA sets forth the minimum contents of an assignment agreement.[37] Both the assignor and assignee must sign the assignment agreement.[38] In addition, the official comments to the Act provide detail on specific situations that may arise in connection with an assignment, such as the use of a lawyer as an assignee and the potential need for the assignor to access funds in order to wind up the business.[39]

Effect of the Assignment. The Act specifies the effect of an ABC on the assignor's property interests, noting that the assignee obtains the assignor's rights, title and interests in the assigned assets.[40] It also describes the procedures necessary for the assignor to convey assigned assets to the assignee.[41] In some circumstances, the assignment agreement itself may be all that is needed to convey property to the assignee. However, to the extent this is not the case, the assignor needs to comply with other applicable law to convey the asset to the assignee.[42]

Creditor Notification. The UABCA specifies how an assignee must notify creditors that an ABC has been commenced.[43] Creditors cannot be forced to participate in an ABC under the Act. If a creditor chooses not to participate in the ABC, it will preserve its rights under state law to collect on the claims it has against the assignor. However, if an unsecured creditor (or a creditor with an avoidable security interest) is seeking recourse to the assets of the assignment estate, the creditor's remedies may well be limited, given that the assignee has a lien on those assets.[44]

---

[36] *See id.* § 2 cmt.

[37] *Id.* § 4(c).

[38] *Id.*

[39] *Id.* § 4 cmt.

[40] *Id.* § 5(a).

[41] *Id.* § 5.

[42] *Id.* § 8(b)(3). This could include, for example, executing a deed in favor of the assignee to convey real property title, or taking steps needed under federal law to assign intellectual property to the assignee.

[43] *Id.* § 7.

[44] *Id.* § 10(d). *See* Clark v. White, 37 U.S. 178 (1838). Thus, the creditor's rights may be subject to the assignment. Reed v. McIntyre, 98 U.S. 507, 512 (1878) ("[T]he appellant would not have acquired priority over other creditors by the sheriff's levy, for the obvious reason that the right of property, in the goods seized under the execution, had previously passed" to the assignee under the ABC).

Powers and Duties. The Act lists the duties and powers of both the assignor and assignee.[45] It also sets forth limitations on the liability of both of these parties—for example, the assignor is not personally liable for the assignee's acts or omissions, and vice versa.[46]

Claims Process. The UABCA sets forth a clear process for the assignee to allow and dispute creditors' claims.[47] Under the Act, it is the assignee's responsibility to communicate to creditors the method and manner of claim submission.[48]

Court Intervention. The Act provides an option for parties to seek court intervention in an ABC process without mandating court involvement.[49] Under the Act, the enacting state has the discretion to select an appropriate court to hear disputes that arise out of an ABC that proceeds under the Act.[50] Notably, the Act also provides that an assignee's acceptance of the assignment constitutes the assignee's consent to court jurisdiction.[51]

Distributions. The UABCA sets forth a distribution waterfall for the assignee to distribute proceeds of the assigned assets.[52] Among other things, the Act specifies how proceeds are to be distributed to secured and unsecured creditors, as well as the payment of the assignee's expenses in carrying out the ABC.

Liability. The Act also sets out parameters for assignor and assignee liability. As mentioned, neither the assignor nor the assignee are personally liable for the acts and omissions of the other.[53] However, the assignee is personally liable for a breach of the assignee's fiduciary duty, although there is a carve-out of sorts if the assignee has relied in good faith on the assignor's records or information, or on the information of an expert the assignee has selected with reasonable care.[54]

Winding Up. The Act specifies how the assignee should proceed with winding up the assignment estate at the end of the assignment.[55] In particular,

---

[45] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT §§ 8–10.

[46] *Id.* § 17.

[47] *Id.* § 11–12.

[48] *Id.* § 7(b).

[49] *Id.* § 21.

[50] *Id.*

[51] *Id*. § 21(c).

[52] *Id.* § 15. In some respects, this waterfall tracks the Bankruptcy Code's distribution schemes. Note, however, that claims under the Federal Claims Priority Statute, 31 U.S.C. § 3713, are given third priority under the Act.

[53] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 17(a), (b).

[54] *Id*. § 17(f).

[55] *Id.* § 19.

the Act requires the assignee to send a final accounting to creditors so that they are informed of all material aspects of the assignment.[56] Note that, although the assignor will typically need to make dissolution filings under state entity law, the Act does not explicitly provide for this, either as part of making the assignment or as part of winding up. However, the Act does not preclude the assignment agreement from addressing the assignor's dissolution process or needs.

Out-of-State and Ancillary Assignments. One of the key features of the UABCA is its recognition that sometimes, assignors may have assets in multiple states. Thus, the Act provides a way for a court to recognize an out-of-state assignment.[57] Furthermore, the UABCA provides a process for a court to appoint an ancillary assignee to administer out-of-state assets.[58] These provisions pave the way for a smoother process for multi-state assignments.

The above discussion is not exhaustive, and readers are encouraged to consult the full Act for all of the details and nuances associated with the Act's various provisions. The goal here is merely to paint a picture of how an ABC might work under the Act.

Furthermore, the efforts of Juliet and others involved in the drafting process are coming to fruition. As of June 2026, the Act has been enacted in six states (Alabama, Arizona, Delaware, Iowa, Utah, and Nebraska) and has been introduced in three more (Oklahoma, Colorado, and West Virginia).[59] These enactments and introductions, coming less than a year after the Act was finalized, represent a strong start to the goal of achieving uniformity in this area of the law.

C. ABCs Compared to Bankruptcy

As illustrated by the preceding discussion, ABCs can be a valuable choice for debtors seeking an inexpensive and streamlined alternative to liquidating their business through a bankruptcy proceeding. To this end, the UABCA provides a relatively simple framework for these debtors. The goal of the UABCA is not to replicate bankruptcy law or practice with ABCs. Instead, the Act seeks to make ABCs an effective tool in all states, recognizing that ABCs are one of several possible tools a distressed debtor may consider. The

---

[56] *Id*. § 19(a).

[57] *Id.* § 20.

[58] *Id.* § 22.

[59] *Assignment for Benefit of Creditors Act*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=b7e5e644-b4b2-44eb-acbc-019859883add.

UABCA has many differences from bankruptcy law. A few of these differences are highlighted below.

No (mandatory) court involvement. Unlike in a bankruptcy case, the involvement of a court is not required under the UABCA.[60] Nevertheless, the Act allows for states to specify a court to hear and resolve issues arising under the Act and to issue orders relating to assignment estate administration and the exercise of the assignee's powers and duties, among other things. Some parties may want court oversight of an ABC under the Act if they are used to proceeding in a jurisdiction that previously provided for such oversight. In other instances, the assignee, or a transferee, may want a court order confirming a transfer of assets from the assignee to the transferee. The Act strikes a balance by allowing for court involvement if it is desired but not mandating court involvement for those who would prefer to proceed without it.

No reorganization. The Act recognizes that the purpose of an ABC is liquidation.[61] Although ABCs have occasionally been used for the purpose of reorganization,[62] the Act does not provide for this type of use. Indeed, debtors seeking to reorganize may be better off pursuing a bankruptcy, where they can receive a discharge of debts.

No discharge. Existing Supreme Court jurisprudence appears to indicate that a discharge of debts would raise constitutional and preemption issues.[63] Consequently, the Act seeks to steer clear of these issues and does not provide for a discharge of debts.

No automatic stay. Some state ABC statutes contain an automatic stay of limited duration.[64] However, the drafters of the UABCA were concerned that adding an automatic stay to the Act would raise constitutional and preemption issues. This means that, practically speaking, a debtor should have the agreement of its major creditors to commence an ABC. If creditors do not want to move forward with an ABC, they are free to begin or continue their debt collection efforts.

---

[60] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 21.

[61] *See* Bob Eisenbach, *Running Out of Cash? Your Duties and Options for Winding Down*, COOLEY GO (Feb. 26, 2021), https://www.cooleygo.com/running-out-of-cash-your-duties-and-options-for-winding-down/ (observing that an assignee in an ABC "is charged with liquidating the company's assets for the benefit of creditors").

[62] Dawson, *supra* note 24 (discussing debtors in South Florida using ABC laws to reorganize).

[63] *See* Sturges v. Crowninshield, 17 U.S. 122 (1819) (providing that state laws dealing with bankruptcy cannot impair the obligation of contracts within the meaning of the U.S. Constitution).

[64] *See, e.g.*, Minn. Stat. § 576.45 (2016) (staying some creditors from pursuing some claims against the assignor, assignee, or assignment estate outside of the ABC process).

Different treatment for contracts. The Act does not allow an assignor or assignee to override anti-assignment terms in a contract.[65] Instead, the assignor or assignee must obtain the consent of the contract counterparty to any assignment. Nor may an assignee assume an executory contract in the way that a trustee or debtor-in-possession in a bankruptcy case could under § 365 of the Bankruptcy Code.

Different consequences for asset sales. The UABCA permits assets to be sold free and clear of the assignee's lien and all subordinate liens.[66] However, assets cannot be sold completely free and clear of all liens if there is a lienholder with rights senior to those of the assignee.[67] This means that a sale of assets under the Act will be subject to perfected security interests and mortgages, unless, of course, the perfected party consents to the sale free and clear of their interest or encumbrance. In addition, the Act does not protect against successor liability claims. Finally, although some legal scholars have noted that ABCs, particularly under Florida law, have been used effectively to facilitate going concern sales,[68] the UABCA does not specifically contemplate such an outcome, even as nothing in the act itself would prohibit it.[69]

No preference avoidance. Many commentators believe that the preference avoidance power is exclusive to bankruptcy.[70] At the very least, there is no legal consensus on whether state actors can have preference avoidance powers. Although the U.S. Court of Appeals for the Ninth Circuit has held that a statute allowing an assignee to avoid preferential transfers was preempted by the Bankruptcy Code, other courts have disagreed.[71] Consequently, although some state laws purport to give state actors preference

---

[65] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 2 cmt. ("If an asset is not assignable by its terms or under other law, that asset is not part of the assignment estate unless either the counterparty assents or other law overrides the anti-assignment provision.").

[66] *Id.* § 14.

[67] *Id*.

[68] Dawson, *supra* note 24, at 157 (describing this process under Florida's ABC law).

[69] The assignee is of course empowered to sell assets of the assignment estate but must exercise its powers consistent with its fiduciary duties. UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT §§ 9 (a), 10(b)(5).

[70] *See, e.g.*, Matthew S. Barr, *Examining Assignments for the Benefit of Creditors*, LAW360 (May 1, 2013, 4:01 PM), https://www.law360.com/articles/433794/examining-assignments-for-the-benefit-of-creditors (cautioning that giving the assignee statutory authority to avoid fraudulent transfers or recover preferences may be preempted by the Bankruptcy Code).

[71] *Compare* Sherwood Partners, Inc. v. Lycos, 394 F.3d 1198 (9th Cir. 2005) (finding preemption) *with* Haberbush v. Charles & Dorothy Cummins Family Limited Partnership, 43 Cal. Rptr. 3d 814 (2006) (holding that California's statute is not preempted by the Bankruptcy Code); Ready Fixtures Co. v. Stevens Cabinets, 488 F. Supp. 2d 787 (2007) (holding that Wisconsin's insolvency preference statute was not preempted by the Bankruptcy Code).

avoidance powers, the UABCA steers clear of any potential preemption conflict by not giving the assignee the power to avoid preferential transfers. Note, however, that an assignee under the act does have the ability to recover insider preferences under the Uniform Voidable Transactions Act and other fraudulent transfer laws, as well as the right to avoid certain other voidable transactions.[72]

Rejection of Moore v. Bay. In *Moore v. Bay*,[73] the Supreme Court held that a bankruptcy trustee's right to avoid a transfer under bankruptcy law is not limited by the amount of the claim of the creditor whose avoidance right the trustee was enforcing. By contrast, under the UABCA, the assignee's recovery in the exercise of avoiding any voidable transaction cannot exceed what the creditor whose right the assignee is enforcing could have obtained by the avoidance.[74]

Application of the federal priority statute. Unlike the Bankruptcy Code, the UABCA explicitly includes the federal priority statute in the distribution waterfall.[75] Claims entitled to priority under the statute are to be paid after distributions to secured creditors and after payment of administrative expenses.

The above list is not exhaustive, but rather illustrative of some of the key differences between an ABC under the Act and a bankruptcy under the Bankruptcy Code. Although some of the differences may limit the utility of an ABC compared to a bankruptcy, other differences showcase the flexibility of ABCs. Indeed, especially if court involvement is not utilized or is minimal, an ABC may well be faster and cheaper than a bankruptcy case.[76]

Conclusion

Juliet Moringiello was an integral part of the UABCA drafting process, and her contributions live on as states consider and enact the Act. Serving on the ULC's drafting committee for the UABCA was one small part of Juliet's illustrious career. By no means is it her only or even her most important career

---

[72] *See* UNIF. VOIDABLE TRANSACTIONS ACT § 5(b) (2014); UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 10(b)(12).

[73] 284 U.S. 4 (1931).

[74] UNIF. ASSIGNMENT FOR BENEFIT OF CREDITORS ACT § 10(c) ("A recovery by the assignee in the exercise of this power [to avoid a transfer] must be for the benefit of the assignment estate but may not exceed the amount, asset, or other value the creditor could have obtained by the avoidance.").

[75] *Id.* § 15(e).

[76] Landon, *supra* note 6, at 1466–67 (providing a comparison of ABCs to chapters 7 and 11 of the Bankruptcy Code and concluding that ABCs take less time and are less expensive, less public, less subject to oversight, and generally faster and more flexible due to fewer requirements with respect to documentation and judicial involvement).

highlight. However, Juliet's work on the drafting process is proof of a core principle that animated Juliet's life and work: that academics can and should be involved in shaping the laws in their field of study. When legal scholars apply their knowledge and expertise to impact law and policy, they can bring a unique perspective and make a profound difference. I am forever grateful to Juliet for teaching me this insight, and I am honored to be a part of the continuation of her work and legacy through this UABCA project.

***