

The Legality of Bankruptcy

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Bankruptcy is one of the most common legal processes occurring within the United States government. Over the past year, the Administrative Office of the U.S. Courts revealed that bankruptcy filings totaled 504112, a rise from the previous year. The legal process of bankruptcy allows individuals or businesses to discharge certain debts when they are unable to repay them. Additionally, a petition is filed with a bankruptcy court and different chapters within the U.S Bankruptcy Code provide paths for debt relief. Within this code, there exists many different types of bankruptcy such as liquidation, repayment, reorganization, and more.

To truly understand the process of bankruptcy, the design of the Bankruptcy Code needs to be learned. Every chapter of the Bankruptcy code is designed for a different situation, the most common are Chapter 7, 17, 11, 12, and 9. Chapter 7 involves liquidation and the selling of a debtor's assets in order to pay off creditors, Chapter 13 includes a repayment plan meant for individuals with a regular income. Chapter 11 proposes plans to reorganize businesses and repayment of creditors. Chapter 12 is designed to benefit family farmers and fishermen. Finally, chapter 9 is designed for municipalities, giving these areas opportunities to redistribute their debts.

Filing for bankruptcy is a lengthy process. Primarily, a debtor must file a petition for the bankruptcy court, including many personal legal documents. Then, the process of automatic stay is applied, protecting a debtor from repayment at the current time. Eventually, a meeting of creditors is called, a proposal is created, and confirmation is given. Filing for bankruptcy is a process designed to provide relief to individuals and businesses struggling with their finances. It is meant to protect an individual from creditor action and offers a fresh financial start for many.

To the common perspective, the policy of bankruptcy needs not to be questioned as the hard truths of the word are not experienced.

Every single legal document in the United States has been manipulated, creating loopholes for many to succumb to. Similar to this, the process of bankruptcy can manage to worsen a situation. The legality of bankruptcy is controversial due to several factors, including the potential for abuse, the impact on creditors, and debates surrounding the decision of bankruptcy courts. Concerns regarding the ability of debtors to manipulate the system for their benefit arise, often at the expense of individuals involved.

Abuses such as forum shopping, insider control, and more all impact the effectiveness of bankruptcy. The process of forum shopping occurs when certain companies file for bankruptcy in strategic manners, often in areas with more favorable laws, undermining the fairness of the court system. On the other hand, insider control refers to a situation in which individuals exert significant control over the restructuring process, possibly victimizing others and placing their personal interest above all.

A huge part of bankruptcy filing is the impact it puts on creditors. Oftentimes discharges of debts and priority of claims can occur. Certain bankruptcy laws allow for discharge of debts, which is obviously beneficial to the debtor, but can negatively impact creditors in need of such money. Additionally, the prioritizing of certain claims can leave specific creditors as victims, with little to no reimbursement.

The role of bankruptcy courts' leads to more significant questions on how effective bankruptcy is. Bankruptcy courts have unique powers, with the ability to mention other lawsuits and seal public records, which can be seen as an excessive ability that may undermine aspects of the legal system. Additionally, bankruptcy courts are not designed to handle complex legal

issues, which are almost always present in bankruptcy cases, leading to deprivation of justice for certain individuals.

Throughout history, financial struggles and bankruptcy have been major issues, often revisiting the Supreme Court. A key example is the case *Archer v. Warner*, questioning the application of the Bankruptcy Code. In 1991, Leonard and Arlene Warner sold the Warner Manufacturing Company to Elliot and Carol Archer. The Archers eventually sued the Warners for fraud regarding the sale. During the settlement of the lawsuit, the Archers eventually dismissed their accusations under the idea of a \$100,000 promissory note from the Warners. The Warners failed to make their first payment towards this note, and the Archers sued in the state courts. The Warners filed for bankruptcy under Chapter 7, which called for liquidation. Later, the Archers brought a claim asking the Bankruptcy Court to find the \$100,000 debt as nondischargeable.

The Bankruptcy Code clearly states that a debt shall not be dischargeable in bankruptcy “to the extent” or “for money obtained by false pretenses.” Through these lines, the Bankruptcy court denied the Archers’ claim, and other courts eventually affirmed.

Despite the controversies behind bankruptcy, one must realize that it is an important process, helping more than it is harming. The real issue with bankruptcy is the quality of the legislation behind it. Outlines need to be made, every circumstance must be underlined. Actions must be taken to ensure no question is left unanswered.

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