

*Opinion Article***Scope on bankruptcy, fraud and debt restructuring strategies**

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Received: 16-May-2022, Manuscript No. IJLLS-22-64471; Editor assigned: 19-May-2022, PreQC No: IJLLS-22-64471 (PQ); Reviewed: 02-Jun-2022, QC No: IJLLS-22-64471; Revised: 08-Jun-2022, Manuscript No: IJLLS-22-64471 (R). Published: 15-Jun-2022

ABOUT THE STUDY

Individuals who find themselves unable to pay their debts lose their creditworthiness and become bankrupt. States differ in how their outstanding liabilities can be recognised as discharged and the specific scope of the limitations put on their capacities during this time, but they are restored to full capacity after discharge. Some states in the United States have spendthrift laws, under which an irresponsible spender may be deemed incapable of entering into contracts (prodigality laws in Europe), and both sets of laws may be denied extraterritorial effect under public policy because they impose a potentially penal status on the individuals affected.

Bankruptcy is a legal procedure that allows people or other entities that are unable to pay their debts to creditors may seek relief from some or all of their debts. Bankruptcy is imposed by a court order in most jurisdictions, which is frequently initiated by the debtor. Because bankruptcy is not the only legal status that an insolvent individual might have, it is not a synonym for insolvency.

Modern law and debt restructuring

The primary focus of modern insolvency legislation and commercial debt restructuring methods is no longer rests on the elimination of insolvent organisations, but rather on the remodelling of debtors' financial and organisational structures to allow for the rehabilitation and continuation of the business. Some contend that simply dismissing debts after a specific period of time is insufficient for private households. It's critical to examine the underlying issues and reduce the probability of financial trouble recurring. Debt counselling, a supervised rehabilitation phase, financial education, and social assistance to locate new sources of income and better household expenditure control have all been underlined as essential during this period of rehabilitation.

In the United States, filing bankruptcy to discharge federal or federally guaranteed student loan debt is extremely difficult. Unlike most other debts, those student loans can only be cancelled if the person seeking discharge meets the Brunner test, which requires the court to consider three factors:

- The borrower will be unable to maintain a minimal standard of living; if the loan is needed to be repaid.
- The borrower's financial status is likely to persist for the duration of the payback period, if not the entire period.
- The borrower has attempted to repay the student loans in good faith.

Even if all three conditions are proven, a court may only provide a partial discharge of the student loan. Borrowers with student loans may benefit from reorganising their payments through a Chapter 13 bankruptcy repayment plan, but only a small percentage of borrowers qualify for a partial or complete discharge of their student loan debt.

Fraud

The crime of bankruptcy fraud is classified as a white-collar crime. Common criminal activities under bankruptcy statutes include asset hiding, document concealment or destruction, conflicts of interest, fraudulent claims, false representations or declarations, and fee fixing or redistribution arrangements. Perjury is frequently committed through falsifying bankruptcy forms. Multiple filings are not in and of themselves criminal, but they may violate bankruptcy laws. In the United States, bankruptcy fraud statutes place a strong emphasis on the mental state of the perpetrator. Strategic bankruptcy, on the other hand, is not a criminal conduct because it establishes a true (rather than a fictitious) bankruptcy condition. It may, however, act against the filer.

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Whether or not the debtor believes the asset has a net value, all assets must be listed in bankruptcy schedules. This is because, after a bankruptcy petition is filed, it is up to the creditors, not the debtor, to determine whether a specific asset is worth anything. The consequences of missing assets from schedules can be severe in the future for the offending debtor.

In the United States, a closed bankruptcy might be reopened on the application of a creditor or the United States trustee if a debtor tries to claim possession of an “unscheduled asset” after the bankruptcy has been discharged of all debts. The trustee can then take and liquidate the asset for the benefit of the (now-discharged) creditors.