

AUTOMATIC DISCHARGE FOR BANKRUPTCY: REVIEWING
BANKRUPTCY ACT 1967 IN MALAYSIA

By

Nur Akmar Shamira bt Shamsudin (2010192303)

Zaidatul Aqilla bt Mohd Zainuddin (2010918285)

Cartaz Ummu Hani bt Jaiman (2010956389)

Noor Fadhlin bt Mohd Fuad (2010140609)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor in Legal Studies (Hons)

Universiti Teknologi MARA

Faculty of Law

Jun 2013

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others

ACKNOWLEDGEMENT



Praise be to Allah s.w.t for his blessing through our journey in completing this research. We would like to take this opportunity to thank our family for the moral and physical support given along the way.

This research project has been carried out by a team which had included Nur Akmar Shamira bt Shamsudin, Cartaz Ummu Hani bt Jaiman, Noor Fadhlina bt Mohd Fuad and Zaidatul Aqilla bt Mohd Zainuddin.

Special thanks for the kindness and corporation given by our respondents namely Puan Munirah, the Penolong ketua Pengarah Jabatan Insolvency Shah Alam and Tuan Raja Shahrul Anuar, the Deputy Registrar of Taiping High Court. The information given has help us in forming some of the solutions for the dilemma in implementing the Automatic Discharge of Bankruptcy process in Malaysia. We felt very grateful and would also like to thank all the relevant authors for all the sources that they have contribute through journals, books etc.

We also felt indebted to our supervisor, Mdm Syuhaeda Aeni bt Mat Ali, for much valuable aid and suggestions at appropriate stages during the writing of this project paper and especially for being so patient with us.

To the many others instrumental to the complete fulfillment of this project paper, the writers are much obliged.

ABSTRACT

A bankruptcy is often seen as the one who caused the debt-virus among the society. It is indeed, an allergic word that has been traumatized among the nation for ages. Although there are several steps had been forwarded however, the numbers keep increasing. A total of 243,823 people have been declared bankrupt in the country as according to the Malaysia Department of Insolvency, between 2005 and June 2012. This can be summarized as about 52 people are declared bankrupt every day compared with 36 in 2007. Due to the reason of non-payment of business loans, housing, personal, or car loans the people below 45 are the conqueror of this statistics and this is of no good.

Thus, in enhancing the law that has been implemented, several provisions need to be reviewed as to erase this lacuna and several countries were made as a reference to comprehend our legislation. Generally, these two ways of discharging and annulling the procedure would not suffice the objectives of lessen the statistics. Although in such a way, the financial institution may make serious effort to assist the borrower, then in initiating the bankruptcy proceeding is not going to be the first at a time. Plus, several consideration need to be taken on when only the Director General of Insolvency (DGI) has to act upon and also the right of being a bankrupt.

List of Cases

1. *Chin Kon Nam v. Chai Yun Phin Development Sdn Bhd* 4 MLJ 271. (1996).
2. *Dato' Hj Mohd Muslim bin Othman v. Shuaib Lazim & Anor* 2 CLJ 177. (1993).
3. *Ex parte Goule* 63 LT 29. (1890).
4. *Financial Information Services V Haji Salleh Haji Janan* 8 CLJ 885. (2012).
5. *Hill Holdings Sdn Bhd V Dr Amir Farid Datuk Isahak* 2 AMR 749. (2005).
6. *Ho Ken Seng V Progressive Insurance Sdn Bhd* 2 CLJ 601. (2013).
7. *Kwong Yik Bank Bhd v. Hah Chiew Yin* 2 MLJ 452.(1985).
8. *Mirror Group Newspapers Plc v Maxwell & ors* All ER (D) 706. (2000)
9. *Mohamed Hanifa Mohamed Yusoof V Sikandar Batcha Abdul Majeed* 7 CLJ 77. (2002).
10. *Ng Kok Wah V UMW Industries Sdn Bhd* 2 CLJ 284. (1995).
11. *Public Bank Bhd v Kok Lee Wah* 4 MLJ 433. (2004).
12. *Re Ang Ah Kang* 2 CLJ 738. (1994).
13. *Re Noble* 3 WLR 206.(1964).
14. *Re Joshua Tan Pin Pin Ex-parte William Jacks & Co (M) Sdn Bhd* 3 CLJ 153. (2007).
15. *Re Keet* 2KB 666.(1905).
16. *Re Khoo Kim Hock*, supra revolves around an undischarged bankrupt's application to annul bankruptcy orders under ss. 92 (1) and 105 (1) of the Act and do not require the previous sanction of the Official Assignee. *Re Lim Tai Nian EX P Kewangan Utama Bhd* 1 CLJ 41. (2002).
17. *Re Lau Kah Lay & Tang Kuong Tiew; Ex-parte Cold Storage (M) Bhd* 3 CLJ 960.
18. *Re Siah Ooi Choe* 1 SLR 903. (1998).
19. *Re Stern, ex parte Kayser Ullman & Ors* 2 ALL ER 600. (1982).
20. *Re Tengku Reza Shah Tengku Chaidzir Shah; Ex P Panglobal Properties Sdn Bhd* 10 CLJ 485. (2010).
21. *Sardar Mohd Roshan Khan V Perwira Affin Bank Bhd* 2 CLJ 661. (2010).
22. *Soo Kok Loong v. Hong Kong & Shanghai Banking Corporation Ltd* 6 CLJ 62. (2009).
23. *Storey V Lane* 147 CLR 549 (1981).
24. *Ting Nguk Yong v. Bank Utama (Malaysia) Bhd High* 1 CLJ 173. (1999).

TABLE OF CONTENTS

Acknowledgment	ii
Abstract	iii
List of cases	iv

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.1	Background of Research	1
1.2	Problem Statement	4
1.3	Objectives	7
1.4	Significance of the Research	7
1.5	Scope	8
1.6	Limitations of the Research	9
1.7	Research Methodology	9

CHAPTER TWO: LITERATURE REVIEW

2.0	Introduction	13
2.1	Malaysian Bankruptcy law	14
2.2	Problems in Malaysian Bankruptcy Law	15
2.3	Discharge of Bankrupt in Other Countries	22
2.4	Conclusion	31

CHAPTER THREE: LAWS RELATING TO DISCHARGE OF BANKRUPT AND

ANNULMENT OF RECEIVING ORDER AND ADJUDICATION ORDER IN MALAYSIA

3.0	Introduction	33
3.1	Discharge of Bankrupt	34
	3.1.1 Introduction	34