

DISCHARGE AND ANNULLMENT FROM BANKRUPTCY
ITS PROCEDURE AND EFFECTS

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PREFACE

In the study of law little emphasis have been given on the subject of the law on Bankruptcy. Even if the subject is being taught as a subject by itself it is usually an optional subject and its importance being ignored. Few books are written on this subject and the majority of the public are ignorant of the procedures in a Bankruptcy. The only knowledge they know about bankruptcy is when they heard or read about somebody been made a bankrupt.

Thus, my main purpose of writing the project paper is not only to fulfill the partial requirement for the diploma in law but also to enlighten the readers that the most important aspect of the bankruptcy law is the law on the discharge of a bankrupt. This is so because, before a bankrupt person gets a discharge the stigma of being a bankrupt will always be with him and his life would be very strictly controlled and he would only be allowed to have the bare necessities of surviving which is very hard on the individual person to face. Once a bankrupt gets a discharge he is free from all restrictions imposed on a bankrupt.

Therefore the scope of my study is on the topic of discharge and annulments and is limited only to its procedure and effects. The background for my project paper is mostly based on my interview with the Official Assignee in Kuala Lumpur and Kuantan, research from books on bankruptcy and statistics kindly provided by the Official Assignee's office.

From my study on the discharge of a bankrupt I have found out that the process of discharge has been satisfactory

ABSTRACT

Once a debtor becomes insolvent and is unable to pay his debt when they are due because of the lack of cash or his deliberate refusal to pay the creditors either the debtor or the creditors can make a petition for the court to take over the administration of the debtor's estate and its distribution among creditors.

The bankruptcy petition can be presented once the debtor has committed an act of bankruptcy under s.3(3) and s.5(I) of the Bankruptcy Act 1965.

On the petition being received by the court the court will then make a receiving order together with the Adjudication Order under s.24(I). It is at this juncture that the Official Assignee's office will be instructed by the court to act on behalf of the bankrupt.

After undergoing the public examination and being adjudicated a bankrupt the bankrupt can under s.33 of the Bankruptcy Act apply for a discharge. But if the bankrupt can prove that he has paid his debts in full and ought not to have been adjudged a bankrupt then the bankrupt can apply for an annulment of the Adjudication Order.

The effect of the order of discharge is laid down in s.35 of the Bankruptcy Act. Once discharged a bankrupt's liability to the other creditors will be released but not those of the Government of the Federation and The States unless released by the Prime Minister and the Head of State respectively.

List of Cases

	<u>Page</u>
1) Buckwell v Lorman (1898) 1 Q.B. 622	12
2) Re Badcock exparte Badcock (1886) 3 Morr. 138.....	11
3) Re Davenport ,exparte the Bankrupt v Eric Street Properties (1963) 2 All E.R. 850.....	14
4) Re a Debtor No.612 (1964) 1 W.L.R. 807.....	10
5) Re a Debtor(No. 17 of 1966) Ch. 590.....	15
6) Re Karthigesu Arumugum exparte J.k.R Leonard (1940) N.L.J.71	10
7) Re Keet (1905) 2 K.B. 666.....	14
8) Re Fainter (1895) 1 Q.B. 85	15
9) Re Noble (1964) 3 W.L.R. 206	15
10) Re Taylor (1901) 1 K.B. 744.....	14
11) Tabrisky exparte Board of Trade (1947) Ch. 565	11
12) Re Wallis exparte Board of Trade (1891) 8 Morr. 110	7
13) Re Wenlock (1968) 112 S.J. 722	10

among creditors. The purpose of this bankruptcy procedure firstly is to obtain an equitable and fair distribution of available assets among creditors. Secondly is to relieve the debtors of his assets and lastly to investigate into the reasons for a person's insolvency.

The bankruptcy petition shall be presented to the bankrupt after the bankrupt has committed an act of bankruptcy. A person against whom a bankruptcy petition is presented must be a debtor within the statutory meaning of the term. A debtor includes any debtor proceeded against under the Act whether adjudged a bankrupt or not and also include a firm of partnership. The word debtor include any person who at the time when the act of bankruptcy was done or suffered by him was personally suffered in the Federation or ordinarily resided or had a place of residence in the Federation or was carrying on a business in the Federation personally or by his agent and was a member of a firm of partnership which carry on business in the Federation¹. However the creditor shall not be entitle to present a petition against the debtor unless the debtor is domicile in the Federation or in any other state or within a year before the date of the of the petition as ordinarily decided or had a dwelling house or a place of business in the Federation or has carried business in the Federation personally or with an aid of an agent or within the same period has been a member of a firm or partnership carrying on business in the Federation by means of partners or partners or an agent or manager².

Under the Court's Ordinance there are 3 methods in which the creditor can present a petition. The first method is by execution in which the creditor applies to the court for permission to auction the debtor's property. Secondly the creditor may go by way of judgement debtor summons. Under this method the affair of the bankrupt is examined and order to pay