

Bankruptcy judges influenced by apologies, research finds

March 4 2013

(Phys.org) —Research by legal and psychological scholars has shown that apologies can result in better outcomes for wrongdoers in a number of legal settings, especially when the party perceived as the victim receives the apology. But new research conducted by a pair of University of Illinois law professors examines the influence of apologies on a different kind of legal decision – the decision of a bankruptcy judge to approve a debtor's proposed repayment plan.

Debtors who apologized were seen as more remorseful and were expected to manage their finances more carefully in the future compared to debtors who did not offer an apology, according to a study co-written by Jennifer K. Robbennolt and Robert M. Lawless, professors of law at Illinois. Robbennolt also is a professor of psychology.

"There is a fair amount of evidence that [apologies](#) can be beneficial in a variety of legal contexts – for example, in criminal law and in tort law," Robbennolt said. "We found that apologies have effects on judges in [bankruptcy](#) cases that are similar to the effects that apologies have on individuals in those other legal contexts."

In the study, a pool of federal bankruptcy judges was presented with a hypothetical scenario where a [married couple](#) with two minor children asked the [judge](#) to approve (or "confirm," in bankruptcy parlance) a proposed debt repayment plan under Chapter 13 of the bankruptcy code. Judges were presented with a version of the facts in which the couple either did or did not offer an apology.

"When our respondent judges believed that the debtor was more remorseful, they were more likely to approve the debtor's repayment plan in bankruptcy," Robbennolt said.

The scholars say the research expands the examination of apologies to a legal setting where there is no clear victim, presenting a different context for how apologies operate.

"We didn't know much about how apologies might operate in the context of bankruptcy," Robbennolt said. "Bankruptcy is different from many other areas of law because the harm is often spread across many creditors, so there is no single victim. In addition, the debtor initiates the case, so the filing of a bankruptcy petition itself may be perceived as an acceptance of responsibility by the harm-doer, as a way of 'owning up' to an unmanageable financial condition."

Those characteristics of bankruptcy cases could dampen any effect of an apology. But judges who thought that the debtors felt remorse were more likely to confirm the debtors' proposed repayment plan, according to the study.

"Judges were more likely to think that the debtors had taken responsibility for their financial situation, felt more remorse and were better able to manage their finances going forward when they apologized," Robbennolt said.

The paper's findings have practical implications for bankruptcy lawyers, the authors say.

"Our findings suggest that bankruptcy is, at least in part, about forgiveness, and that expectations about the rehabilitation of the debtor play a role in bankruptcy decision-making," Robbennolt said. "Attorneys should pay attention to the ways that their bankruptcy clients can

demonstrate remorse, whether that is through a formal apology or other opportunities for acknowledgement of responsibility and honest disclosure."

The study also has policy implications for the consumer bankruptcy system.

"While apologies are not part of the formal law of bankruptcy, they seemed to make a difference for judges," Robbennolt said. "The Bankruptcy Code directs judges to take into account whether the debtor will likely successfully complete the proposed repayment plan over a period of years, and remorse seems to appropriately influence those predictions."

At the same time, apologies also influenced judges' assessment of whether certain discretionary expenses were "reasonably necessary," an influence that is not contemplated by the law, Robbennolt says.

"In our hypothetical scenario, the apology did not directly affect how judges perceived the various expenses of the debtors," she said. "Judges' perception of the debtors' remorse, however, was related to how they viewed a claimed expense for their daughters' gymnastics fees, which were the most discretionary of the debtor's proposed expenses in our fictional narrative. And, perceptions of those fees turned out to have the largest effect on judges' confirmation decision."

Lawless, who also co-directs the Illinois Program on Law, Behavior and Social Science, which promotes interdisciplinary research and teaching at the intersection of law and the social sciences, says the study serves to remind bankruptcy judges and lawyers that borrowing and debt still have moral aspects, even in today's heavily commercialized credit markets.

"While the [law](#) still matters, our findings suggest, perhaps not

surprisingly, that judges' decisions can be complex and multidimensional."

More information: The article, "Bankrupt Apologies," is available online: papers.ssrn.com/sol3/papers.cfm?abstract_id=2208811

Provided by University of Illinois at Urbana-Champaign

Citation: Bankruptcy judges influenced by apologies, research finds (2013, March 4) retrieved 25 April 2024 from <https://phys.org/news/2013-03-bankruptcy.html>

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