

From Unbundling to Bundling: A Network Analysis of Bankruptcy Law Evolution

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ABSTRACT

During reorganization, a firm faces two distinct types of decisions. In the early stage, it concentrates on operational decisions such as asset sales and securing financing. In the late stage, the firm tackles distributional decisions involving creditor payoffs under the reorganization plan. However, recent Chapter 11 case studies indicate that operational and distributional decisions are increasingly bundled. Distributional decisions, traditionally deferred until later, are now being made concurrently with operational decisions at the outset. This practice of bundling may sidestep established priority rules and procedural safeguards. Anecdotal evidence cannot answer whether this bundling is merely incidental or a broader trend, nor does it pinpoint when the shift occurred. Therefore, this paper employs network analysis to systematically examine this significant paradigm shift from unbundling to bundling.

Judges, when deciding cases, only cite statutes together that are doctrinally connected, similarly to how they co-cite related precedents. A shift from a section being rarely co-cited to frequently co-cited with another can thus signal a doctrinal evolution. Based on 6,439 opinions, this article constructs the first co-citation network of U.S. bankruptcy law. Through co-citation analysis and community detection, it reveals that prior to 2005, only sections of similar nature were frequently co-cited and thus located within the same community. Conversely, post-2005, operational sections such as Sections 363 and 364 began to be frequently co-cited with distributional sections like Section 1129. This resulted in their merging into the distributional section community. The transition of diverse sections from separate to unified communities verified the shift from unbundling to bundling.

This study provides the first empirical examination of a significant shift in bankruptcy jurisprudence. Furthermore, this paper introduces community detection to legal studies for the first time, with potential applications to other statutory fields.