

***Eyes on the Prize:  
Procedures and Strategies for  
Collecting Money Judgments and Shielding Assets***

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*This book is dedicated to the memory of  
Stefan A. Riiesenfeld*

*We stand on the shoulders of giants*

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## Foreword

This is a book about the civil procedure that few talk about and many do not know exists. It charts the metamorphosis by which the caterpillar of a money judgment is transformed into the butterfly of ... money. Its primary audience comprises law students, to respond to the constant reproach in legal commentary that modern law schools do not teach students the methods and mechanics by which a money judgment is enforced. Designed to be inserted as a unit into a course on Civil Procedure, Remedies, Debtor-Creditor Rights, Bankruptcy, Secured Transactions, or perhaps other subjects, this book describes how lawyers achieve what civil litigation clients pay for—not a judgment declaring that the plaintiff is entitled to money, but actual money that the plaintiff can use to compensate for the contractual or tortious injury on which the lawsuit was based.

It is also addressed to practicing lawyers and even laypeople who want or need to understand the details of the critical point at which the rubber meets the road in a civil lawsuit. Most judgments in the US awarding money to a victorious plaintiff are not self-enforcing. Plaintiffs' lawyers and their clients need to have some sense from the very beginning of a lawsuit how a paper victory might ultimately (or not) be translated into lucre, most plaintiffs' real goal. Not to leave out the defense side, this book also describes the many ways by which defense counsel and their clients can invoke the law to protect themselves from expropriation of the defendant's assets by judgment creditors, not only while the judgment enforcement process is unfolding, but also in advance.

This book is a survey, not a treatise. It does not examine the multivariate laws of the 50 states, the District of Columbia, and the federal system. That being said, it does provide a detailed examination of the specific procedural rules implicated in the money judgment enforcement process, and it makes precise and fairly exhaustive reference to the statutes and jurisprudence of several key jurisdictions. Most references are to the state and federal law of three key, high-population states in which substantial collection activity takes place—New York, California, and Illinois—but other states' laws figure prominently here as well—Texas, Florida, and Pennsylvania in particular. Not all of the minute details of the money judgment enforcement laws of any of these states or the federal system are presented here, but all of the fundamentals are covered and arranged in logical order to allow readers to proceed to enhance their understanding by (1) finding the relevant additional details in these states' laws, and/or (2) anticipating and finding the relevant provisions in states whose law is not specifically analyzed. This is a guidebook, leading the reader to and describing the highlights, but leaving some of the adventure to be undertaken independently.

For teachers inclined to drill students on what lawyers really do, a series of hypothetical problem exercises is included in the end. These problems are designed to allow students to cut their teeth on putting this material into action, applying the

law to determine precisely which steps a plaintiff's lawyer would have to take to collect on a money judgment for a particular plaintiff, and how the law would or could protect the assets of a particular defendant (and the interests of third parties). These problems can be worked either by referring to the reading and the excerpts of the statutes included in the appendices, or by applying the rules of a different jurisdiction (state or perhaps non-US country) to which the commentary in this book will have guided the students—and to which a professor might make more precise reference.

Over my years of teaching this material to students in a one-week unit of my Civil Procedure course, I have been surprised at the degree of enthusiasm with which they have devoured the material. I have been equally surprised by the volume of gratitude expressed over the years as these students have encountered money judgment enforcement or defense issues in practice, either in a pre-graduation clerkship or in their later law practice. These students often report that they have been among the only members of their firms with any specific knowledge of these rules and their operation, knowledge that has served them and their clients well and frequently. I hope my publication of these materials arouses similar enthusiasm and provides similarly valuable knowledge to students, lawyers, and others whom I have not had the pleasure of meeting.

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Chicago, IL  
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## Introduction

Congratulations! After a grueling multi-year odyssey through pleadings, motions, discovery, and a trial, you've just obtained a judgment declaring that the defendant owes your client \$750,000, perhaps for breach of contract, a civil rights violation, or infringement of intellectual property rights. As you and your client toast your hard-fought victory, she asks you, "So when do I receive the money?" If this were a tort case involving a car crash, the answer would likely be, "The insurance company should send us a check in the next few weeks." Even more likely, the case would have ended like most do, not with a trial and verdict, but in a settlement, in which case the defendant would have agreed to send over money on an arranged schedule. But in the slightly fanciful, textbook case of an actual money judgment, the answer to your client's question is one that eludes many otherwise very talented and knowledgeable lawyers. The answer to this question has not been taught systematically in most US law school for over 40 years.

Despite what many lawyers and lay people believe, a money judgment is not an order to pay;<sup>1</sup> rather, it is a final determination of liability of defendant to plaintiff—now called *judgment debtor* and *judgment creditor*, respectively. To turn that judgment into money, someone has to be responsible for finding money's worth in valuable property belonging to the judgment debtor and transferring that value to the judgment creditor to satisfy the monetary demand awarded in the judgment.

From time immemorial, Western law has assigned this task to the judgment creditor, with only limited and legally constrained assistance from the court or other official authorities. The judgment creditor's task in enforcing a money judgment now poses several challenges that compose a new and discrete stage of civil procedure. As one commentary aptly puts it, "the entry of a judgment is often the beginning of a different process which can be just as arduous" as obtaining the judgment in the first place.<sup>2</sup>

A new series of questions now looms large. If the judgment debtor has valuable property or rights in property, how is the judgment creditor to find out about this? Once that property is located, can the creditor effectuate the forcible seizure and transfer of that value, or must the debtor be indirectly coerced into ceding that value "voluntarily"? What of intangible property rights and rights to property in the possession of third parties, perhaps located in distant fora—can the judgment creditor seize intangible property rights or intervene and seize value in a third party's hands, or must she wait until value has materialized and been turned over to the judgment debtor? And what of other creditors? If more than one creditor has current or contingent rights in the debtor's valuable property, how are those rights

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<sup>1</sup> With the exception of family support orders and perhaps criminal fines/fees/penalties/restitution orders, which are often *additionally* enforced by the court's contempt power.

<sup>2</sup> Robert L. Haig & Patricia O. Kahn, "Representing the Judgment Creditor," 16 *Am. J. Trial Ad.* 1, 1 (1992).

to be reconciled or prioritized to decide which creditor is entitled to that value if it is, as it often will be, insufficient to satisfy all claims?

Meanwhile, does the law have anything to say about protecting the judgment debtor? She might be suffering greatly from the siphoning off of all sources of value, including those needed to support a family. May all sources of value be coerced or seized, or does the law impose limits on the types of property that a creditor can pursue? Is there any check on the rapacious efforts of judgment creditors to pummel the debtor into submission? Indeed, anticipating these problems, can a defendant-to-be plan her affairs so as to put sources of value beyond the reach of judgment creditors?

The leverage effects of these complicating factors for both judgment creditors and judgment debtors—not only after, but crucially *before* a lawsuit is initiated—constitute a vital input into the decision to initiate a lawsuit or to settle one. Both sides (and their lawyers) need to have full information to assess these considerations accurately to gauge the value of pursuit or defense of a lawsuit. It makes little sense to commence a lawsuit against a debtor against whom a judgment cannot eventually be collected efficiently and effectively.

These and other issues will be examined here from the perspective of three modern, representative money judgment enforcement systems: New York, which has stuck fairly close to its historical roots; California, which came to the game a bit later and thus reflects a greater relaxation of historical constraints; and Illinois, which has entirely revolutionized its money judgment enforcement system to overcome the principal historical challenges in this process. These three states have the virtues of hosting large population centers with significant money judgment enforcement activity. They represent fairly distinct paradigms of enforcement procedures, each of which is likely to be reflected in any given other state's money judgment enforcement system. When these states' laws are not representative, other states' examples (Texas, Florida, Pennsylvania, and others) will often be presented to complete this overview of modern US judgment enforcement law and practice.

A hypothetical problem exercise follows the discussion of the law and allows for focused reflection on how these rules operate together. Nothing concentrates the attention or sharpens understanding like applying law to concrete facts, and that, after all, is what lawyers need to be able to do (not simply memorizing rules, but applying them in context). Indeed, you might read the problem in the final chapter now to have in mind the specific types of factual challenges that the laws in the following detailed discussion attempt to solve.

## 1. ANCESTRY

There are few places in modern law where the distant past is reflected more vividly than in the rules for enforcing money judgments. In this context in particular, modern procedures and terminology can be truly understood only by appreciating their origins. Western society has struggled with the same problems for millennia, and especially in the Anglo-American world, technical complications have prompted odd workaroud solutions that make little sense without a bit of background knowledge of how this all began.

### *A. The common ancestor: Rome*

The technical challenges of judgment enforcement rise from the earliest foundations of Western law. The structure of the earliest Roman dispute resolution system and the nature of a money judgment established a binary, bifurcated view of the process, distinguishing adjudication from collection. This approach would persist over the next 2500 years to the present.<sup>3</sup>

Roman procedure progressed through three stages, each with its own distinct approach to judgment enforcement. First, in the earliest Roman civil procedure of *legal actions (legis actiones)* from about 450-100 BCE, civil disputes between private parties were initiated by formalistic oral pronouncements that led to a hearing before a lay adjudicator nominated by the parties to serve as their private judge, or *iudex*. Because the *iudex* was not a public official, his pronouncement of a judgment in favor of the complaining party was not backed by official force.

If the losing defendant refused to pay the amount awarded in the judgment within 30 days, the judgment creditor could only invoke the procedure called *nexum* (via the action of *manus iniectio*) to coerce the debtor into paying the judgment “voluntarily” by seizing the body of the judgment debtor and locking him in chains in the creditor’s house! If the judgment were not satisfied during the next 60 days, the judgment debtor’s situation took a dire turn. Though the particulars of what happened next remain shrouded in the mists of history, the earliest practices reportedly allowed the judgment creditor to sell the debtor into foreign slavery “over the Tiber” to raise money to be applied against the judgment. Alternatively, rather than selling the judgment debtor for a one-shot payout, the judgment creditor might continue to hold the judgment debtor as a domestic slave to work off the unpaid judgment over time. Whatever the largely lost specifics of this frightening procedure might have been, it is clear that the debtor’s body in one way or another was the exclusive object of early Roman money judgment enforcement.

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<sup>3</sup> This section is based primarily on Max Kaser and Karl Hackl’s authoritative *Das Römische Zivilprozessrecht* (C.H. Beck 2nd revised ed. 1996), but see also J.H. Dalhuisen, *Dalhuisen on International Insolvency and Bankruptcy* (Matthew Bender 1986); Zachary Herz, “The Effect of Bankruptcy Law on Roman Credit Markets,” 2 *Bus. & Bankr. L.J.* 207 (2015); and Rafael Domingo, “Civil Litigation in Roman Law. An Overview” (2017 online at <http://ssrn.com/abstract=2942875>).

In the second, classical age of *formulary procedure (ordo iudiciorum)* from about 100 BCE to 200 CE, debtors still faced bodily seizure, but judgment creditors were granted direct access to the debtor's property as the preferred object of enforcement. The creditor on an unsatisfied judgment could now bring a new action, *actio iudicati*, before an official, the *praetor*. Unless the debtor established that the judgment was invalid, the *praetor* would issue a decree authorizing the now twice victorious judgment creditor to seize all of the movable goods of the judgment debtor (*missio in bona*) and, if the judgment were not paid within 30 days, to sell those goods (*venditio bonorum*) at public auction, though for the benefit of *all* of the debtor's creditors. While this procedure had the humane advantage of leaving the debtor's body and liberty intact, its overbroad application to the entirety of the debtor's movable effects, and its conscription of the enforcing creditor to vindicate the rights of free-riding other creditors, still left much to be desired.

The third, post-classical stage of Roman procedure introduced significant changes, foreshadowing modern approaches. In the first several centuries of the Common Era, *extraordinary cognition (cognitio extra ordinem)* gradually replaced formulary procedure, as the Emperor exerted greater control over the administration of justice via his magistrates and other public officers. One of these new public officers was the *exsecutor*, a court officer appointed later in this period to exercise exclusive administrative authority to enforce judgments. Individual creditors could now apply in writing to the imperial magistrate for an order directing the *exsecutor* to seize (*pignus in causa iudicati captum*) and sell (*distractio bonorum*) individual items of the judgment debtor's property at public auction. If movable property produced insufficient value, the *exsecutor* could now seize and sell immovable property (land), as well, but any value in excess of the judgment amount obtained at the auction would be returned to the judgment debtor, rather than distributed to other creditors.

### ***B. Roman influence and the beginnings of English law***

Most of the complications of modern US enforcement law trace their roots directly back to the beginnings of English law and procedure, which were themselves influenced by the Roman foundations just described. When the Angevin-English kings established the earliest royal law courts in the 1100-1200s, they created a centralized and highly formalistic system with procedures along the lines of the late Roman extraordinary cognition, though with even more carefully circumscribed remedies.

Money judgments were the only judgments ordinarily awarded by these royal law courts. As in the late Roman period, these judgments could be enforced only in a separate, subsequent procedure requested by the judgment creditor's formal application for official action initiated by one of the many "writs" issued in the King's name by his royal Chancellor. While proceedings in the law courts were conducted orally in Norman French, the Chancellor and his officers were among the

few literate members of early English society. They were principally Roman Catholic clerics and later others educated in Roman law in the first European universities in Bologna, Paris, and Oxford. These jurists thus wrote in the language of ancient Rome—Latin—leaving a linguistic imprint that persists to this day on Anglo-American law.

By the late 1200s, three writs had become the foundation of English enforcement law. In the King's name, they commanded action by the King's local officers, the sheriffs, to collect value from the judgment debtor with which that judgment could be satisfied. The Latin words that began the command in each writ came to be used as a shorthand reference to each.<sup>4</sup>

The primary execution writ, *fieri facias*, directed that the local sheriff "cause to be made" (*fieri facias*) from the goods and chattels (*de bonis et catallis*) of the judgment debtor a sum of money by seizing and selling the judgment debtor's movable effects and applying that sum to satisfy the creditor's judgment. This writ is the only one to survive to modern times (often abbreviated "*fi fa*"). It emerged from ancient origins, doubtless inspired by the late Roman procedures of seizure and sale by the *executor*. The process by which the sheriff seizes and sells property in execution of this writ is still today called *levy*, a word arising from the language of an even earlier writ of *levari facias* ("cause to be *raised*" or "levied"). The object of levy under *fieri facias* was limited to movable effects, not land. If the sheriff could not find sufficient chattels within a year and a day from the signing of the judgment, the creditor had to pursue a subsequent action (*debt*) or writ (*scire facias*, "make known" that the judgment remains unsatisfied) to renew the judgment or execution writ and obtain a new execution writ (called an *alias* or *pluries* writ). This process could go on indefinitely.

A second writ was a statutory innovation arising in 1285 aimed at extracting value not only from the debtor's movable property, but also from interests in land. By the writ of *elegit* ("[he has] chosen"), the judgment creditor would literally elect to have the debtor's personal property transferred to him at an appraised value, and if this were insufficient to satisfy the judgment, to receive a tenancy in the debtor's interest in land entitling the creditor to collect one-half (a *moiety*) of the appraised value of the anticipated rents and fruits of the land for a period of time that would satisfy the judgment. In making this election, the judgment creditor had to forego other execution remedies, thereby running the risk that these dual appraisals might be depressed in comparison with what actual future sales of the debtor's movable effects might produce. Unlike the writ of *fieri facias* for movables, in no event could the judgment debtor's interest in land be forcibly liquidated by sale.

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<sup>4</sup> The remainder of this chapter is based largely on the landmark work of Stefan A. Riesenfeld, "Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus," 42 *Iowa L. Rev.* 155 (1957), and "Enforcement of Money Judgments in Early American History," 71 *Michigan L. Rev.* 691 (1973).

A final writ, *capias ad satisfaciendum* (“arrest in order to satisfy”) offered the option of having the sheriff seize and jail the judgment debtor in order to coerce him into paying the judgment “voluntarily.” The horrid conditions of English debtors’ prisons are legendary, but while this writ might have satisfied judgment creditors’ bloodthirsty desire to inflict suffering on their debtors, it did not satisfy many judgments. Imprisoned debtors, unable to earn a free living, were often unable to pay their judgments. This indirect coercion might have flushed out some hidden property or squeezed the debtor’s family or friends to apply their property to pay the debtor’s judgment, but it was productive in relatively few cases where *fieri facias* or *elegit* was not. Imprisonment for debt would eventually be abolished in the mid-1800s, but not before being exported to the American colonies, where it was also abolished at the same time and so will no longer be discussed in this book.<sup>5</sup>

As commerce and value in movable property grew, so did judgment creditors’ challenges in locating tangible, movable effects on which to levy. Judgment debtors became more adept at concealing the location of movable property, and many sources of value (anything other than tangible goods) were simply beyond the reach of the execution writs. A particular problem was the practice by judgment creditors of conveying their property to friends or relatives, alienating it beyond the reach of creditors, since the law courts would authorize levy only on property to which the debtor held legal title.

From the mid-1300s, to soften the rigidities of the common law and afford more flexible remedies (e.g., injunction, specific performance) when the law courts’ money judgments offered inadequate relief, a parallel justice system called *equity* grew out of the Chancellor’s office, later called *Chancery*. While the development of these equitable remedies is generally well known, less well known is the crucial role that Chancery’s equity jurisdiction played in assisting creditors in collecting their money judgments from hidden or otherwise unavailable assets.

If and only if creditors’ remedies at law had proven inadequate (that is, the sheriff returned the writ of *fieri facias* indicating that he had attempted to levy but found “no property,” *nulla bona*), equity offered additional recourse “supplementary to execution at law” in at least two crucial ways. First, by a late-1500s Statute Against Fraudulent Conveyances, judgment creditors were empowered to petition Chancery to use its equity power to seize movable property legally conveyed to third parties by judgment debtors fraudulently attempting to put value beyond the reach of a creditor executing a judgment. Second, around this same time, Chancery

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<sup>5</sup> For further exploration of the topic of imprisonment for debt, its 19th century abolition, and its 20th and 21st century reincarnation in limited but troubling contexts, see Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900* (State Historical Society of Wisconsin 1974); American Civil Liberties Union, *In for a Penny: The Rise of America’s New Debtors’ Prisons* (2010) (examining imprisonment of low-income debtors, principally racial and ethnic minorities, incident to collection of public debts for “legal financial obligations” relating to fines, fees, and costs associated with criminal sentences).

empowered judgment creditors to file *creditor's bills* in equity to gain access to equity's extraordinary discovery procedures to supplement the lack of such procedures at law. Only via such a *bill of discovery* could judgment creditors compel answers to questions posed to judgment debtors and third parties regarding the location of the debtor's assets, especially assets the debtor had concealed or transferred to avoid levy.

Equity's assistance only went so far, however. Jealous defense of the prerogative of the Common Law led Chancery to refuse assistance in extending the limited reach of the law writ of *fiery facias*. No seizure was possible, for example, of intangible and equitable interests in property (*choses in action*). This included increasingly common stores of value such as promissory notes, investments in business entities, and the judgment debtor's right to collect debts owed to him by his own debtors (eventually including, for example, the debt owed by a bank to return funds placed on deposit).

More fundamentally, equity's assistance came at great cost, as proceedings were infamously long, drawn out, and expensive. Like other proceedings in equity, discovery was conducted in writing. Judgment creditors could pose questions regarding the nature and location of assets and conveyances only by composing written *interrogatories*, which would be presented to the examinee in person by Chancery officials called examiners (or, outside London, by private commissioners), who recorded summarized answers to these questions in a document called a *deposition*. Only one set of these questions for all witnesses was allowed, and because lawyers thus could not supplement or clarify the record with further interrogatories once the answers in the deposition had been revealed through *publication*, lawyers felt compelled to pose countless "what if" and "suppose the following" interrogatories in an attempt to predict and respond to any eventual testimony relating to their or their opponents' interrogatories. In factually complex cases, the Chancellor might refer the matter to a master for more rounds of directed discovery and significant additional time and expense.<sup>6</sup> This laborious, time-consuming, and expensive process exacerbated rather than alleviated the challenges faced by creditors in finding value to apply in satisfaction of a judgment.

### ***C. Early American inheritance and revision of English enforcement procedure***

Before the American Revolution in the late 1700s, the American colonies were England (more or less), so the English law and practice just described applied (again, more or less) in the New World, as well. That would change after independence, of course, but even before then, significant differences in conditions in the New World would prompt substantial revisions to American execution

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<sup>6</sup> For the source of these details and a fascinating exploration of the evolution of equity discovery procedures in the United States, see Amalia D. Kessler, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800-1877* (Yale Univ. Press 2017).

procedure. And political independence did not mean necessary abandonment of longstanding English law and equity procedure; rather, the new United States began a never-ending process of tinkering with inherited common law and equity practices, including practices related to enforcement of money judgments.

With land being much more plentiful in America, the restrictive writ of *elegit* began to disappear almost immediately, as creditors were gradually allowed to seize not just a temporary tenancy, but ownership of land rights. Some colonies—and later, states—required creditors first to seek satisfaction from movable property, but if this proved insufficient, the execution writ of *feri facias* was expanded to encompass execution against land, as well.

A British statute in 1732 provided more broadly that creditors could execute judgments in the American colonies in the same way against both chattels and realty, including forced sale by writ of *feri facias*. Due to a severe shortage of money (*specie*), many colonies preferred to simply transfer either chattels or realty or both to creditors at an appraised value, rather than selling them at public auction. Both of these methods of value transfer continued to appear in later execution laws in various states. Alternatively, some colonies and later states modified the English rule to establish that a judgment gave rise to a *lien* on land (a concept discussed in more detail below in chapter 5). This lien was enforceable not only by collecting rents for a term of years, but by the ultimate equity procedure of foreclosure sale of the land.

In either case, some colonies and later states protected debtors' interests in land by allowing them to *redeem* (that is, repurchase) land lost through execution. Within, say, one year of the execution sale, debtors could pay the entire amount owed on the judgment and forcibly repurchase the land, even from a buyer at a sheriff's auction sale. These kinds of variations in state procedures would persist and grow in later years.

While land was perhaps less valuable in America, apparently time was more so. Another American innovation was a limitation on the effectiveness of a judgment, which soon after the Revolution several states began to limit to a maximum term of years. No longer could execution issue on a judgment indefinitely. Creditors were eventually restricted in many states by special statutes of limitations for judgments, such that after 10 or 20 years, for example, no further execution could issue on a judgment. These statutes were by no means uniform, and the limitations periods varied significantly among the states.

The most substantial American developments concerned equity proceedings. Until the mid-1800s, the states by and large retained the bifurcated justice system inherited from England, with law courts doling out money judgments at law and issuing execution writs, and chancery courts using their equity power to support creditors' efforts to find and seize sources of value not easily obtainable by execution

writ. While English equity practice had been reticent to help creditors access value in judgment debtors' choses in action, such as business investments (e.g., stocks and bonds) and debts owed to them (e.g., bank deposits and later wages and salaries), American legislators provided a statutory impetus for such assistance.

The most direct response was simply to extend the scope of the execution writ to intangible choses in action. This worked fine for stores of value that had some sort of physical embodiment, such as a stock certificate or a promissory note, but for debts owed to the judgment debtor, a statutory procedure called *garnishment* (or *trustee process*) was recruited. This existing process allowed creditors to seize property, including the amount owed on a debt, from the in-state obligors of debts and custodians of property owed/belonging to out-of-state judgment debtors. Legislators reoriented and broadened this garnishment procedure, making it available for judgments against all judgment debtors (in-state and out-of-state), invoked either by ordinary *fieri facias* execution writ or in a separate garnishment proceeding.

A more aggressive response was a substantial expansion of the use of *equity receivership*. Statutes most notably in New York expanded this ancient procedure into a nuclear remedy for judgment creditors who had been unsuccessful in enforcing judgments in ordinary execution proceedings. In response to a rise in commerce and defaults in the 1830s, commercial creditors increasingly sought to impose equity receiverships over their defaulting judgment debtors, placing all of their property under the control of a court-appointed receiver and threatening debtors with contempt if they continued to conceal or transfer any property to anyone other than the judgment creditor.

This was an especially effective remedy against large business interests, whose complex business dealings could be maintained by a receiver, all for the judgment creditor's benefit. When directed aggressively against individual debtors—often individuals having fallen on hard times through no fault of their own in an increasingly impersonal, market-driven economy—it provided political impetus for a wave of debtor-protection legislation, including statutes exempting a broader range of property, especially wages and salaries, from execution, along with the first permanent US bankruptcy statute.

#### ***D. New primary sources: The Field Code and modern American procedure***

The mid-1800s also saw a wholesale consolidation of the rules and practices of the judicial systems of most states, as law and equity were “fused” by statute into one unitary jurisdiction of courts of now both law and equity. An unruly mess of colonial and state statutes and centuries of both law and chancery precedents was consolidated and replaced, first by New York's 1848 adoption of David Dudley Field's organized code of rules on practice and pleadings in civil cases.

The organized elegance of the Field Code swept across the country like wildfire, adopted virtually verbatim by most states, especially those in the new West, by the turn of the next century.<sup>7</sup> For example, when California became the 31st state in 1850, it also adopted the Field Code at the urging of Stephen J. Field, a New York lawyer who moved to California in the Gold Rush, later justice of the California and US Supreme Courts, and brother of the principal author of the Field Code, David Dudley Field. While many variations can be observed in the Field Code provisions as adopted outside New York, the provisions on debt collection are quite uniform throughout the West, Midwest, and South, as the attraction of capital through powerful creditor remedies was the driving force behind the adoption of the procedural code of the great commercial center of New York.

In the new unitary system of the Field Code, proceedings formerly pursued by creditor's bill in equity to assist creditors in seeking judgment execution at law—such as discovery, garnishment, injunction, and receivership—were brought within the power of the unitary courts under the heading “proceedings supplementary to execution.” These proceedings were designed to minimize the former expense and delay associated with equity proceedings, making *supplementary proceedings* (sometimes called *supplemental proceedings*) simpler, cheaper, more expeditious, and therefore more effective for judgment creditors. Until recently, such proceedings generally still required an unsuccessful attempt at ordinary execution (sheriff's return of the *fieri facias* writ *nulla bona*), but eventually even this technicality would abate (though it is still a requirement in some states<sup>8</sup>).

The process of simplification and consolidation of judgment creditors' remedies continued in the 1900s and even 2000s, and it will doubtless continue to evolve as the cat-and-mouse competition between judgment creditors and debtors continues. The following chapters will examine the specifics of how that game plays out today as exemplified in the laws and procedures of several representative states.

While the following discussion will focus primarily on the fairly representative (and often governing) laws of New York, California, and Illinois, which are excerpted in the appendices to this book, it will also make reference to several other representative jurisdictions' rules (Texas, Florida, Pennsylvania), and you might want to find your state's version of these rules and see which of the various alternatives have been adopted. Today, most states' money judgment enforcement

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<sup>7</sup> For a revealing corpus linguistic study of the migration of the Field Code across the states in the 1800s, see Kellen Funk & Lincoln Mullen, “The Spine of American Law: Digital Text Analysis and U.S. Legal Practice” 123 *Am. Hist. Rev.* 132 (2018) (manuscript available online at <https://ssrn.com/abstract=3001377>). A map on page 12 of the manuscript reveals the years in which each state adopted a Code of Procedure modeled on the New York Field Code, as well as an indication of which states retained a traditional, local common law approach (e.g., Illinois, Pennsylvania, New Jersey, and Virginia) or adopted procedural reforms unrelated to the Field Code movement (e.g., Texas, Georgia, Massachusetts, Connecticut, and Louisiana).

<sup>8</sup> See, e.g., Iowa Code § 630.1; cf. Fla. Stat. § 56.29(1) (requiring an outstanding execution writ in order to initiate supplementary proceedings).

rules are readily available online, even without access to a paid database (we will see in the next chapter that there are no general federal enforcement rules).

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## 2. LOCATE

The first step in the process of enforcing a money judgment is locating sources of value that might be forcibly transferred from judgment debtor to judgment creditor. As usual in the American tradition, this responsibility is not *sua sponte* fulfilled by the court or other official institution; rather, it falls squarely on the judgment creditor. Outside the context of child support orders and perhaps criminal fines and penalties (neither of which is specifically treated in this book), no official authority commands debtors to turn over all sources of value to a prevailing creditor. Imprisonment for debt was an institution that essentially did this, as it was designed to compel debtors to reveal and apply whatever property value they might have to satisfy the judgment debt and be freed from prison. With the abandonment of that enforcement technique in the mid-1800s, the judgment creditor now bears the initial burden of identifying fairly specifically the form and location of potential value and invoking a procedure to get that specific value conveyed to the judgment creditor so it can be applied to satisfy the monetary demand in the judgment.

Like the process of obtaining a judgment, the money judgment enforcement process requires us to return to square one and consider where the judgment can be enforced; that is, which precise court has the power (jurisdiction) to compel property to be seized and persons to cooperate. As a pronouncement of official sovereign power, a judgment can be enforced initially only by the sovereign whose territory currently hosts the value or person against whom enforcement is sought—and only using the enforcement techniques sanctioned by that sovereign.

This challenge is obvious when the judgment to be enforced within the US has been issued by a non-US sovereign (e.g., Canada or Germany). But also domestically, the American tradition of federalism raises issues of both interstate relations among co-equal state sovereigns and the delicate federal-state relationship that preserves the prerogatives of the state sovereigns in the face of encroachment by the federal union. Moreover, the states themselves also subdivide their territory into counties (and parishes), further delineating spheres of restricted authority of local courts and enforcement officers. Navigating the maze of potential enforcement sites and localizing a judgment in the proper site(s) is a crucial first step in the money judgment enforcement procedure.

### ***A. Registration and domestication of “foreign” federal and state judgments***

Until the introduction of the Federal Rules of Civil Procedure in 1938, the federal district courts followed the procedural rules of the various states in which they sat. The drafters of the new, unified federal rules must have been either tired after hammering out the dozens of rules regulating the process from pleadings to judgment, or they were overwhelmed at the challenge of unifying the widely disparate state rules on money judgment enforcement. For whatever reason, they

left in place the old deference to state procedure for the post-judgment enforcement phase.

Federal Rule of Civil Procedure 69 directs that federal money judgments are to be enforced according to the procedure for both execution and proceedings supplementary to and in aid of execution of the *state* where the federal court is located.<sup>9</sup> Thus, money judgments of the US District Court for the Central District of California are enforced in that court, but according to the enforcement rules of the State of California—with the one major exception that the federal courts cannot commandeer state officials, so the US Marshals are in charge of doing things that the state sheriffs would otherwise do, as discussed in the next chapter.

If the persons or property against which the judgment creditor wishes to pursue an enforcement action are subject only to the jurisdiction of a federal court in a different district, especially a district in a different state, the judgment must be migrated to that other district. For example, if the judgment debtor on the judgment from the US District Court for the Central District of California has a large bank account in a bank in New York City, enforcement proceedings against that bank and the account might have to be pursued in New York (given personal jurisdictional limitations).

This can be done relatively quickly and easily, however, by simple *registration* of a federal judgment in the target district. That is, a certified copy of the judgment can be filed in the US District Court for the Southern District of New York, and the “judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.”<sup>10</sup> The judgment can now be enforced in the New York federal court, using New York state enforcement rules, by the California judgment creditor.<sup>11</sup> As this example illustrates, given how frequently wealthy individuals’ and large companies’ assets are located in New York, California, and Illinois, it is often useful for litigators even from outside these states to have some knowledge of the enforcement laws of these three states ... which is one reason why these laws are the primary focus of this book.

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<sup>9</sup> Federal statutes govern, if one applies, but this is uncommon except in one context: The United States as a judgment creditor (e.g., for judgments related to recovery of student loans and benefit overpayments) has its own exclusive execution statute, the Federal Debt Collection Procedures Act, 28 USC §§ 3001 *et seq.* This statute is largely consistent with state enforcement laws, though providing various forms of preferential treatment to the US as judgment creditor.

<sup>10</sup> 28 USC § 1963.

<sup>11</sup> A similar local registration process exists for intra-state migration of state court judgments, which usually must be registered in a court and enforced by an official in a county where the relevant property or person is located or domiciled. *See* NY CPLR § 5221; CA CCP §§ 699.510, 708.160; 735 ILCS 5/12-106; *but cf.* Tex. R. Civ. P. 622 (“execution ... shall not be addressed to a particular county, but shall be addressed to any sheriff or constable within the State of Texas”); Fla. Stat. § 56.031 (providing that writs of execution “shall be in full force throughout the state”).

State court judgments can migrate to other states, as well, and the process is generally similar. The Full Faith and Credit clause of the US Constitution commands that states give the judgments of sister states the same effect such judgments would have in the state of origin. So no matter how bitter the rivalry between Ohio and Michigan or Wisconsin and Illinois or New York and New Jersey, these states all must recognize each others' courts' judgments as valid and subject to local enforcement. But this command is not self-executing. The states themselves decide what procedure they require for recognition of sister state judgments and the migration of those judgments into a new host state for enforcement using the latter's local rules.

The states are largely consistent in their adoption of the simple procedure under the Uniform Enforcement of Foreign Judgments Act<sup>12</sup> or an equivalent local rule.<sup>13</sup> First, a copy of the original state judgment has to be *authenticated*, which involves having the issuing court's clerk attest to the genuineness of the copy, put a seal on it, and provide a certificate from a judge of that court attesting that the clerk's attestation is in proper form.<sup>14</sup> Next, the judgment creditor must swear or affirm in an affidavit that the judgment has not been stayed, how much of the judgment remains unsatisfied (perhaps among other things, varying by state), and the last known name and address of the judgment debtor. When these two items are properly filed in a court in the target state, that court's clerk either "shall treat the foreign judgment in the same manner as a judgment of [the relevant trial court] of this state" or might enter a judgment of that clerk's own target-state court on the basis of the authenticated sister-state judgment. In either case, persons and property under the jurisdiction of the target-state courts are at the judgment creditors' disposal only 30 days after the judgment creditor mails notice of the filing of the sister-state judgment to the judgment debtor's last know address and files proof of such service.<sup>15</sup>

An important non-uniform quirk appears in the law of New York, which refuses automatic recognition to default or confession judgments.<sup>16</sup> An original lawsuit must be brought on the basis of the sister state judgment, which will likely produce another quick, New York judgment, perhaps again by default or a quick summary judgment (on the basis of *res judicata*, claim preclusion), but a bit more process is required in New York to import judgments on disputes that were not actively litigated.

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<sup>12</sup> See, e.g., NY CPLR art. 54.

<sup>13</sup> See, e.g., CA CCP §§ 1710.10 to 1710.65 (containing provisions almost identical to the Uniform Enforcement of Foreign Judgments Act, with minor modifications).

<sup>14</sup> 28 USC § 1738. Alternatively, the target court's local rules might allow for simpler procedures.

<sup>15</sup> This restriction does not seem to apply in the Illinois version of the law. 735 ILCS § 5/12-653(b). So much for the "uniform" statute.

<sup>16</sup> NY CPLR § 5401.

Finally, though state enforcement procedures apply as noted above in federal court, the judgment creditor might wish to domesticate a federal judgment in state court, so as to take advantage of the greater numbers, enthusiasm, or expertise of state sheriffs, as opposed to US Marshals. Here we begin to encounter significant non-uniformity. In Illinois, filing a certified copy of a judgment of a federal court *located in Illinois* gives rise to automatic recognition with the same effect as an Illinois state court judgment.<sup>17</sup> In New York and Illinois, in-state and out-of-state federal judgments can be domesticated in state court just as a sister-state judgment would be domesticated under the Uniform Enforcement of Foreign Judgments Act, described above.<sup>18</sup> In California, however, federal judgments—from California or elsewhere—are not entitled to registration and full recognition like sister-state judgments are. Instead, an ordinary action must be instituted in California state court on the federal judgment, which will in all likelihood result in immediate summary judgment on preclusion grounds and the entry of a full-fledged California state judgment. Here again, the end result is likely the same, but a bit more procedure is required. This is why procedural specialists get paid the big bucks!

### ***B. Immigration of non-US judgments and arbitral awards***

Yet more procedure is required for the importation of judgments of arbitral and non-US tribunals. Monetary awards of non-US courts are not entitled to full faith and credit and are generally importable only on the traditional basis of cooperation among nations, or *comity* (from Latin *comitas*, “courtesy”).<sup>19</sup> The courtesy to be afforded by *state* courts to non-US money judgments is subject to another uniform statute with a title similar to the one relating to sister-state judgments, the Uniform Foreign-Country Money Judgments Recognition Act.<sup>20</sup> Its requirements are more rigorous, however, and the states have much more leeway in this context to refuse to grant comity to the judgments of foreign sovereigns whose courts are regarded, rightly or wrongly, as less reliable in terms of due process. Nonetheless, New York’s highest court has announced that “New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts.”<sup>21</sup>

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<sup>17</sup> 735 ILCS § 5/12-501. A similar rule in New York, California, and Illinois allows for filing of a transcript, abstract, or certified copy of a judgment of *any* federal court, which has the same effect as filing a state court judgment; i.e., creation of a judgment lien on real (and in California, personal) property, as discussed in the next chapter. NY CPLR § 5018(b); CA CCP § 697.060; 735 ILCS § 5/12-502; *see also* 28 USC § 1963.

<sup>18</sup> The uniform act includes orders of courts of the United States, as well as orders of sister-state courts entitled to full faith and credit. NY CPLR § 5401.

<sup>19</sup> The classic case on comity in the federal courts is *Hilton v. Guyot*, 159 US 113 (1895).

<sup>20</sup> *See, e.g.*, NY CPLR art. 53. The title of the original uniform act was confusingly similar to that of the sister-state judgment recognition act, so a 2005 revision, adopted by both New York and California, added “-Country” after “Foreign” in the title to avoid this confusion.

<sup>21</sup> *CIBC Melon Trust Co. v. Mora Hotel Corp.*, 100 N.Y.2d 215, 221 (2003).

A full-fledged civil action, complete with service of process, must be initiated on the basis of the non-US money judgment, which again might lead to an immediate motion for summary judgment (perhaps even in lieu of a complaint). But the plaintiff-judgment creditor must prove that the judgment is final, conclusive, and enforceable in its home country (and is not for taxes or fines, which are not entitled to recognition due to the virtually universal so-called *revenue rule*, incorporated into the uniform statute). The defendant-judgment debtor can defeat recognition by establishing one of a number of grounds, such as entry of the original judgment despite lack of notice or personal jurisdiction, as defined in the statute, or that the non-US judgment “is repugnant to the public policy of this state” or “was rendered under a system which does not provide for impartial tribunals or procedures compatible with ... due process.”<sup>22</sup> This topic is explored at greater length in a class on Conflicts of Laws, which is highly recommended.

Increasingly, monetary awards result not from litigation, but from arbitration, domestic or international. If coercive enforcement of an arbitral award is necessary, such awards must migrate to the courts and become money judgments. An arbitral award is imported into the judicial enforcement system by virtue of a process called *confirmation* by a state or federal court, following the procedure laid out in the Federal Arbitration Act or a similar state statute.

The original award and a copy of the arbitration agreement are filed with a petition (or motion) for confirmation in the relevant court having jurisdiction over the parties and the subject matter of the dispute. This petition must be served on the adverse party and should, and perhaps must, be filed within one year of entry of a domestic arbitral award. Petitions for confirmation of international arbitral awards must be filed within three years of the award.<sup>23</sup> The grounds for refusing confirmation are quite narrow, and the judgment confirming an arbitral award is enforceable just like any other judgment.<sup>24</sup>

### *C. Timing ... and the time value of money*

In addition to locating the geographical limits of enforcement, the money judgment creditor must be sure to locate and act within the time limits for enforcement within any given state. Enforcement efforts are often constrained by both a beginning and an end date, though the latter in particular often depends upon the creditor’s timely action in extending a judgment’s life.

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<sup>22</sup> NY CPLR § 5304. In a recent case, a guarantor of bank debt, adjudicated liable on this debt in a Moscow court, asserted this defense, charging the Russian process as being unfair and repugnant to the public policy of New York. This attempt to impugn the Russian judicial process was predictably unsuccessful. *See* VTB Bank v. Mavlyanov, No. 650245/2017 (N.Y. Sup. Ct., Jan. 30, 2018).

<sup>23</sup> 9 USC §§ 9, 207.

<sup>24</sup> 9 USC §§ 10-11, 13, 207-208.

The location of the start line is delineated by two sometimes surprising rules. First, unlike in much of the rest of the world, an appeal in the US does not automatically prevent enforcement of a money judgment. Registration of a federal money judgment in another federal district, as discussed above, does require that the judgment have “become final by appeal or expiration of the time for appeal,”<sup>25</sup> but outside this context, an appeal generally will not delay enforcement of a money judgment.

Anticipating a successful appeal and hoping to avoid the inconvenience of interim enforcement measures, a judgment debtor may file a motion and bond for an order of *supersedeas* (Latin, “you shall desist”; that is, desist enforcing the judgment). Federal Rule of Civil Procedure 62(d) obliquely refers to this process, but the specific requirements of this bond are generally found in local court rules, likely requiring a bond from an approved surety company in an amount sufficient to cover the amount of the judgment plus costs and some period of post-judgment interest (as discussed below). State rules are usually similar.<sup>26</sup> In California, for instance, the supersedeas bond must be for 150% of the judgment amount.<sup>27</sup> The bond may be subject to an upper limit, as in Texas, where supersedeas bonds are capped at the lesser of \$50 million or 50% of the judgment debtor’s net worth.<sup>28</sup>

Second, in part to allow the judgment debtor time to obtain a supersedeas bond and order, federal law imposes a waiting period on the commencement of enforcement proceedings after entry of a *federal* judgment. A specific federal rule—which thus governs over the ordinarily applicable state enforcement rules—proscribes enforcement proceedings for federal judgments until 30 days after entry of the judgment.<sup>29</sup> Texas imposes a similar 30-day waiting period, as does California for small claims judgments.<sup>30</sup> Other state money judgments, in contrast, are ordinarily immediately enforceable upon entry unless the court grants a brief discretionary stay. Indeed, New York allows eager judgment creditors to apply for an order authorizing immediate examination and restraint of the debtor even before judgment is officially entered.<sup>31</sup>

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<sup>25</sup> 28 USC § 1963 (allowing the issuing court to override this delay by order for “good cause shown”).

<sup>26</sup> Statutes often allow an automatic stay for certain types of appeals or appellants (e.g., by state agencies) without the posting of a bond. *See, e.g.*, Fed. R. Civ. P. 62(e); La. Rev. Stat. § 13:4581. If such a non-bonded stay would be available to the appellant under state law, the appellant can take advantage of that stay in federal court via Fed. R. Civ. P. 62(f) if a judgment in that state is a lien on real property, which is quite common, as discussed in the next chapter.

<sup>27</sup> CA CCP § 917.1(b).

<sup>28</sup> TX Civ. Prac. & Rem. Code § 52.006(b); 735 ILCS 5/2-1306.

<sup>29</sup> Fed. R. Civ. P. 62(a) (increased from 14 days, effective Dec. 1, 2018). The requirements and timing of “entry” of a federal judgment are described in Fed. R. Civ. P. 58(b)-(c).

<sup>30</sup> Tex. R. Civ. P. 627; *see also* Tex. R. Civ. P. 628 (allowing for earlier execution upon affidavit that debtor about to remove, transfer, or secrete property); CA CCP § 116.810.

<sup>31</sup> NY CPLR § 5229.

The more important boundary is the finish line. At common law, there was no finish line, only a temporary roadblock. As mentioned in the previous chapter, after a year and a day, old English judgments became *dormant* and could no longer be enforced unless they were revived in a simple, special action called *scire facias*, but this process of dormancy and renewal could be repeated indefinitely.

Modern state laws take widely varying perspectives on the lifecycles of judgments. Texas continues to use the old English terminology and allow for immortal judgments, but for unwary creditors, judgments can expire. A Texas judgment becomes dormant ten years after it is rendered or after any execution writ is issued on that judgment, whichever is later, but a dormant judgment can be revived by a simple action of *scire facias* brought no later than two years after the judgment becomes dormant. The verb might as well be “must” be revived, however, as if ten years passes with no further execution writs, and another two years passes without a *scire facias* action, the judgment expires.<sup>32</sup> California has a similar system of dormancy and revival. California judgments become dormant after ten years, but they can be renewed for another ten years by filing a simple application with the rendering court (and mailing notice of renewal to the judgment debtor). Further renewal applications must be filed no earlier than five years—and no later than ten years—after the date the earlier renewal application was filed.<sup>33</sup> If ten years passes with no further renewal application, the judgment expires.

In Illinois, in contrast, judgments become dormant seven years after entry and can be revived for another seven years by petition (*scire facias* having been expressly abolished), but repeated revival is effective only for a maximum total life of 27 years (final renewal in year 20), after which Illinois judgments expire.<sup>34</sup> New York also imposes an outside limit of 20 years, but the clock is reset any time the judgment debtor acknowledges the debt in a signed writing or “makes a payment” on the judgment, which is oddly defined to include any instance of the judgment creditor’s acquiring property through the enforcement process.<sup>35</sup> And then there’s Florida. Until the late 1960s, Florida law was clearly parallel to Illinois law in that judgments became dormant after three years but could be renewed up to a total of 20 years, after which they conclusively expired. This clarity was repealed along with the governing statute in 1967, leaving potentially expensive confusion as to the outer limits of enforcement of a Florida money judgment today.<sup>36</sup>

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<sup>32</sup> TX Civ. Prac. & Rem. Code §§ 31.006, 34.001.

<sup>33</sup> CA CCP §§ 683.010-683.200.

<sup>34</sup> 735 ILCS 5/12-108, 5/2-1602(a) (allowing ongoing wage garnishment to continue post-expiration).

<sup>35</sup> NY CPLR § 211(b). *See also* NY CPLR §§ 5014, 5203 (requiring renewal of the judgment by action 10 years after docketing of the judgment roll to renew the real estate lien effect of docketing of the original judgment roll).

<sup>36</sup> Richard H.W. Maloy & Cynthia Lynne, “The Life of a Money Judgment in Florida Is Limited—For Only Some Purposes,” *Fla. Bar J.*, July-Aug. 2005, at 20.

On a final time-related note, the law recognizes that time is money, so judgment creditors are compensated for the time spent looking for assets. Generally from the day on which a money judgment is entered, interest begins accruing on the unpaid judgment amount at a rate established by statute. New York and Illinois, for example, provide for flat 9% per annum simple interest, while California sweetens the offer to 10%.<sup>37</sup> Federal judgments accrue interest at a floating rate determined by reference to the “weekly average 1-year constant maturity Treasury yield” published by the Federal Reserve, and Florida judgments similarly bear adjustable interest (adjusted annually) at 4% above the one-year average discount rate of the New York Fed.<sup>38</sup> Complicated enough for you? Luckily the courts usually figure and publish these rates. To make things more complex, a judgment on a contract that itself calls for interest might accrue post-judgment interest at the contract rate, at least if it does not exceed a statutory ceiling.<sup>39</sup>

The more pressing question is whether the costs and fees, especially attorney’s fees, incurred pursuing enforcement can be added to the judgment (or taxed to the judgment debtor, perhaps on noticed motion). California law is clear and sensible: costs (such as filing and application charges and other government fees) are recoverable from the judgment debtor and added to the judgment periodically, while the judgment creditor’s attorney’s fees for ongoing enforcement activity follow the American Rule; that is, creditors bear their own fees (reducing the net recovery on the judgment) unless the judgment includes a fee award (e.g., as a result of a contract).<sup>40</sup> The rule is likely the same in other states, which often mention “costs” to be charged to the judgment debtor, explicitly or implicitly excluding attorney’s fees.<sup>41</sup> Texas, in contrast, defines “costs” for this purpose as including attorney’s fees!<sup>42</sup> Attorney-fee shifting rules could have a substantial impact on the judgment creditor’s calculus as to the degree and nature of attorney action to authorize in pursuit of a money judgment recovery.

#### ***D. Discovery***

Once a location is chosen, the judgment domesticated in that location’s governing court, and the timing issues sorted out, at last the real process of finding and seizing value from the judgment debtor can begin. The finding part of that process is arguably the most important and the most challenging.<sup>43</sup> Just as

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<sup>37</sup> NY CPLR § 5004; 735 ILCS 5/2-1303; CA CCP § 685.010.

<sup>38</sup> 28 USC § 1961; Fla. Stat. § 55.03.

<sup>39</sup> See, e.g., Fla. Stat. § 55.03(1) (deferring to the contract rate); TX Fin. Code § 304.002 (limiting post-judgment interest on judgments on interest-bearing contracts to a maximum of 18%).

<sup>40</sup> CA CCP § 685.040 (seeming to exclude recovery of attorney’s fees provided by statute).

<sup>41</sup> 735 ILCS 5/2-1402(h); cf. Fed. R. Civ. P. 54(d); 28 USC § 1920.

<sup>42</sup> TX Civ. Prac. & Rem. Code § 31.002(e); see also *id.* § 38.001-006; Fla. Stat. § 56.29(8) (providing for reasonable attorney’s fees for supplementary proceedings to be taxed to debtor).

<sup>43</sup> Commentators have long recognized that discovery of the judgment debtor’s assets “comprises by far the most important area of judgment collection.” Isadore H. Cohen, “Collection of Money Judgments in New York: Supplementary Proceedings,” 35 *Colum. L. Rev.* 1007, 1007 (1935).

effective discovery is a crucial aspect of effective pre-judgment litigation, effective discovery is also essential to effective post-judgment enforcement process. Before a judgment is obtained, formal discovery is generally unavailable to help plaintiffs plan for the collection of any eventual money judgment, since the ability of a defendant to fulfill a judgment is not “relevant to any party’s claim or defense.”<sup>44</sup> Liability insurance might have to be disclosed,<sup>45</sup> but beyond that, the nature and location of the defendant’s property interests are beyond the scope of pre-judgment discovery.

### *1. Informal*

Nonetheless, any competent plaintiff’s lawyer will have evaluated the defendant’s ability to pay a money judgment using whatever informal means might be at hand, to avoid wasting the lawyer’s time and the client’s money obtaining a practically unenforceable judgment. The plaintiff may have done business with the defendant for some time, and the documents and other disclosures related to those business dealings may reveal important information about, for example, the location of the defendant’s bank account (e.g., checks and other forms of payment from the defendant), the location of business premises and other types of property the defendant might own in a variety of locations (e.g., addresses on letterhead, references in advertising or other media, and certainly in loan applications), and third parties who might be obligated to the defendant on business-related accounts (e.g., references to major customers in advertising or sales pitches). Public databases and records relating to land registration and personal property security interests, in particular, can reveal early on whether the defendant owns valuable real or personal (movable or immovable) property and whether that property is subject to major encumbrances (e.g., mortgages) that would stand in the way of a judgment creditor’s seizing value (a battle discussed in chapter 5 below).

Both before and especially after the defendant becomes a money judgment debtor, a creditor might have fee-based access to an especially valuable source of information: credit reports detailing the debtor’s other obligations and the banks and other businesses with whom the debtor has done business—and who might know something more about the debtor’s property. Business entity credit reports can be purchased from companies like Dunn & Bradstreet, Paynet, Experian Business, and Equifax Small Business.

Individuals’ financial information is protected, however, by the federal Fair Credit Reporting Act, which restricts the acceptable purposes for accessing consumer credit reports with agencies like TransUnion, Experian, and Equifax. Among the permissible purposes for accessing an individual’s credit report, the statute lists “review or collection of an account of the consumer.”<sup>46</sup> For years, debt

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<sup>44</sup> Fed. R. Civ. P. 26(b).

<sup>45</sup> Fed. R. Civ. P. 26(a)(1)(A)(iv).

<sup>46</sup> 15 USC § 1681b(a)(3)(A).

collectors took this as authorization to access an individual debtor’s credit report to assist with, for example, collection of a judgment. But a great controversy flared up around this topic in 2009 in light of other language, including a new definition, in the complex statute. The “review or collection of an account” language follows an introductory phrase, “in connection with a *credit transaction* involving the consumer.”<sup>47</sup> The Ninth Circuit in a hotly contested ruling held that the definition of “credit transaction” (inserted in March 2004) requires the consumer to have been involved at least initially in a credit transaction—a loan or other voluntary credit extension—which in that case was held *not* to include the collection of towing and impound fees relating to the debtor’s illegally parked car.<sup>48</sup>

Crucially in the Ninth Circuit’s view, the debtor’s obligation for these fees was not yet reduced to judgment; this was a pre-judgment debt collection case. Earlier Ninth Circuit precedent had explicitly allowed *judgment* creditors to access individual credit reports, even in judgments not pertaining to voluntary “credit transactions.”<sup>49</sup> But this ruling predated a 2004 revision to the statute, now defining “credit” as “the right granted by a creditor to a debtor to defer payment of debt.”<sup>50</sup> It is now not at all clear that a money judgment not related to an initial, voluntary “credit transaction” provides the basis for permissible access to an individual’s credit report, and several courts have reasoned that it does not.<sup>51</sup>

## 2. *Formal*

Which makes formal discovery all the more important. Fortunately for judgment creditors, modern procedure offers a very effective array of coercive discovery options not only pre-judgment, but also (especially) post-judgment. Often, the same discovery devices that were available pre-judgment remain available post-judgment, with a scope of permissible inquiry now delimited by relevancy not to the parties’ claims and defenses, but to the judgment creditor’s wide-ranging search for value to collect the judgment. The federal rules make this explicit, as do the rules of, for example, California, Texas, and Florida.<sup>52</sup> In contrast to the ordinary limitations on pre-judgment discovery, these limits might be imposed or relaxed in the context of post-judgment discovery. In California, for example, pre-judgment interrogatories are limited to 35 in *total*, but post-judgment interrogatories are

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<sup>47</sup> *Id.* (emphasis added).

<sup>48</sup> *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665 (9th Cir. 2010). This is the final in a series of three opinions, however, in which the Ninth Circuit flip-flopped on this confusing issue, with the other opinions reported at 504 F.3d 792 and 565 F.3d 1106.

<sup>49</sup> *Hasbun v. County of Los Angeles*, 323 F.3d 801 (9th Cir. 2003) (child support collection judgment).

<sup>50</sup> 15 USC § 1691a(d), incorporated by reference into § 1681a(r)(5).

<sup>51</sup> *Miller v. Trans Union LLC*, 2007 WL 641559 (N.D. Ill. Feb. 28, 2007) (child support); *Rodriguez v. Experian Info. Solutions, Inc.*, 2016 WL 3976564 (W.D. Wash. July 25, 2016) (parking violations); *Baron v. Mark A. Kirkorsky, P.C.*, 2017 WL 4573614 (D. Ariz. Oct. 13, 2017) (court costs imposed by judgment after dismissed case); *cf. Middlebrooks v. Sacor Fin., Inc.*, 322 F.Supp.3d 1300 (N.D. Ga. 2018) (allowing credit card judgment buyer to access consumer credit report to aid collection).

<sup>52</sup> Fed. R. Civ. P. 69(a)(2); CA CCP §§ 708.020, 708.030; Tex. R. Civ. P. 621a; Fla. Stat. § 56.30(1).

limited to 35 per *set*, with another (perhaps verbatim repeat) set of interrogatories allowed every 120 days.<sup>53</sup>

New York, in contrast, slightly alters its post-judgment discovery regime by funneling all requests through three kinds of subpoenas (deposition or *ad testificandum*, production or *duces tecum*, and information).<sup>54</sup> These subpoenas achieve the same objectives as ordinary discovery, but now the debtor receives these subpoenas (rather than simple discovery demands) just like third parties. Abuse of scattershot subpoenas directed to masses of third parties is averted by requiring the judgment creditor or attorney to certify her or his reasonable belief, after reasonable inquiry, that the recipient possesses information about the judgment debtor's assets.<sup>55</sup> Mass-mailed subpoenas to every bank in New York City or every current or former customer, friend, or relative of the debtor are no longer allowed. Similar to California, New York limits these inquiries directed to the judgment debtor to once per year.<sup>56</sup>

Another approach is to make specific (sometimes exclusive) provision for a probing, in-person examination concerning assets, often followed by an opportunity to obtain a court order directing the debtor or third party to turn over the value thus discovered. Illinois takes this approach, imposing direct court control over an expansive post-judgment discovery process. Virtually the entire post-judgment process in Illinois is concentrated in supplementary proceedings initiated by one flexible device, the *citation to discover assets*, issued (signed and sealed) by the clerk of the circuit court (and a hearing date assigned) upon presentment by the judgment creditor or attorney. As we will see in the next chapter, this citation achieves far more than simple discovery, but that is its starting point.

Served upon the judgment debtor<sup>57</sup> or any other person, a citation hales the respondent to a citation hearing before the court (or more likely an interrogation in a jury room or the hallway outside the courtroom) for a sworn personal and documentary examination concerning the debtor's assets and income. An individual judgment debtor must receive an income and asset form, directing the debtor to reveal in writing the nature and location of all manner of income and assets and directing him or her to bring documents evidencing employment and assets, including two years of tax returns (and other documents can be requested).<sup>58</sup> Third-party citations also request specific information regarding property and debts owed to the judgment debtor, and the debtor must be notified of such citations. Such a

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<sup>53</sup> CA CCP §§ 708.020; 2030.030.

<sup>54</sup> NY CPLR § 5223.

<sup>55</sup> NY CPLR § 5224.

<sup>56</sup> NY CPLR § 5224(f) (allowing more frequent repeated inquiry with leave of court).

<sup>57</sup> Individual (natural person) debtor-respondents must receive personal or abode service. 735 ILCS 5/2-1402(b-1); Ill. Sup. Ct. R. 105(b).

<sup>58</sup> The officially approved forms are available online at [http://www.illinoiscourts.gov/forms/approved/small\\_claims/post\\_judgment\\_collection.asp](http://www.illinoiscourts.gov/forms/approved/small_claims/post_judgment_collection.asp).

proceeding can be pursued only once per respondent, however, without special leave of court.<sup>59</sup>

California has a somewhat similar procedure, though it is an adjunct to the other, ordinary discovery devices, and it is somewhat limited with respect to third parties. The judgment creditor can apply to the court for an order for appearance and examination (OEX/ORAP) of any person, including the judgment debtor.<sup>60</sup> Once issued by the court, this order must be personally served on the respondent in the same manner as a summons, the debtor also must receive mailed notice, and the examination occurs in court (or before a court-appointed referee). Again to avert harassment and abuse, an order directed to a third party (or to the debtor within 120 days of a previous examination) is available only if the creditor submits an affidavit attesting that the third party has possession or control of property in which the debtor has an interest. A similar examination is an addition to the Florida rules of discovery, though the formalities for service and the details of the notice and procedure are less complex than in California and Illinois.<sup>61</sup>

While imprisonment for debt has been abolished in the US, one still hears stories about debtors being imprisoned in connection with civil money judgment enforcement proceedings. The explanation usually lies in this discovery stage.<sup>62</sup> Failure to comply with subpoenas, citations, and examination orders is punishable as contempt, eventually leading to the issuance of a bench warrant and the arrest of the contemptuously absent party. While many courts are reticent to engage their contempt authority in this context, some are not. Debtors who are confused or afraid of the orders to appear at these examinations risk incarceration if they fail to respond properly, and the Illinois and California rules require explicit, large-type warnings on the citation or order warning respondents that failure to appear may lead to arrest and imprisonment for contempt. These warnings should be taken seriously. Debtors will have an opportunity to assert legal protections for their property at these examinations (as discussed below in chapter 4), they should be sure to do so, and if the debtor is found to have no assets not legally protected, the Illinois rules call for the immediate dismissal of the enforcement proceedings.<sup>63</sup>

Note that the scope of questioning here need not be limited to *current* assets and documents directly relevant to them. Questioning can and should extend also to

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<sup>59</sup> Ill. Sup. Ct. R. 277(a).

<sup>60</sup> CA CCP §§ 708.110-708.170.

<sup>61</sup> Fla. Stat. § 56.30.

<sup>62</sup> Sometimes incarceration is the result of a contempt ruling for the debtor's failure to comply with an order to turn over property, discussed at the conclusion of the next chapter. Some debtors can be quite obstinate. One debtor (a Pennsylvania lawyer) insisted that he could not produce \$2.5 million awarded to his ex-wife in a divorce, because he had lost the money in bad investments. The judge disbelieved him, held him in contempt, and kept him in jail for 14 years (!) until another court held that further imprisonment was clearly ineffective to coerce the debtor into paying. Debra Cassens Weiss, "Lawyer Freed After Spending 14 Years in Jail on Contempt Charge," *ABA J.*, Jul. 13, 2009.

<sup>63</sup> 735 ILCS 5/2-1402(d-5).

*past* assets recently alienated, such as large payments made, as well as to value the judgment debtor expects to obtain in the *future*. Both of these kinds of value—past and future—might be recovered in enforcement proceedings, as discussed in the next chapter. Discovery should also encompass documents likely to make indirect reference to assets, such as home and business loan applications and tax returns, though the latter are often protected by privilege or other state law restrictions on access.<sup>64</sup> While the judgment debtor is likely *not* to answer these questions truthfully and fully, despite all the warnings about perjury, third-party testimony and documentary trails might lead more reliably to asset value than the debtor recently had or soon will have.

The judgment creditor can then seize this value using the techniques described in the next chapter. The scope and operation of the procedures for seizing value thus must be understood and borne in mind in formulating effective discovery questions. This requires a very different mindset, legal analysis, and skill set from the ones used to obtain the money judgment originally. For this reason, some lawyers specialize in enforcing money judgments on behalf of other lawyers' clients. This is an interesting practice area that few law students know exists but that can make for a very engaging and gratifying career.<sup>65</sup> Read on!

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<sup>64</sup> See, e.g., *Sav-On Drugs, Inc. v. Superior Court*, 123 Cal. Rptr. 283, 286-87 (Cal. 1975, en banc).

<sup>65</sup> An entertaining illustration of this appears in a guidebook that reads like a memoir by California debt collection lawyer David Cook, in which he revels in the drama of his pursuit of collection of the wrongful death money judgment obtained against O.J. Simpson by the family of Ron Goldman. David J. Cook, *The Debt Collector's Handbook: Collecting Debts, Finding Assets, Enforcing Judgments, and Beating Your Creditors* (ABA 2014).

## 6. CAPITULATE

The topic of money judgment enforcement has not been taught in US law schools for decades largely because, as soon as judgment creditors begin to turn up the heat, debtors since the late 1960s have increasingly retreated into the air-conditioned comfort of federal Bankruptcy Court. The relief provided by the federal Bankruptcy Code<sup>238</sup> has long provided a powerful safe haven to struggling debtors—both individuals and businesses. As a matter of federal law, it legally supersedes and has thus all but displaced the state law of money judgment enforcement in regulating the distribution of value in strained debtor-creditor relationships. Consequently, judgment creditors must understand at least a few basic concepts about the potential effects of a bankruptcy filing before, during, or even after the initiation of judgment enforcement efforts. This is an exceptionally technical area of law, so a course in Bankruptcy is highly recommended, but the key highlights are as follows.

### ***A. Bankruptcy as collection or relief ... and collection***

For about 2000 years since its inception in ancient Rome, bankruptcy was considered a collective creditors' weapon to be used against defaulting debtors. It was designed to prevent any one creditor from seizing all of the debtor's property and leaving others with nothing, instead equitably distributing the debtor's property among all creditors. In much of the world today, bankruptcy is still viewed and used in this way, as a collection tool.<sup>239</sup>

Not so in the US. In 1898 the US adopted the first bankruptcy law in the world with a primary aim to offer relief to “honest but unfortunate” debtors. Not only creditors, but debtors could initiate a case, and the result of a bankruptcy case was not only distribution of the debtor's current assets among creditors, but also *discharge* of those creditors' unpaid claims to the debtor's future assets and income. This discharge relief is the *sine qua non* of modern bankruptcy law and has come to dominate US bankruptcy policy. Creditors are able to initiate bankruptcy cases against debtors today—to prevent other creditors from advantaging themselves in the debtor's moment of weakness—but this is extremely rare.

Instead, debtors initiate the overwhelming majority of bankruptcy cases, choosing among three principal *chapters* that provide discharge relief on very different terms. Chapter 7 is the dominant choice among individual debtors. In exchange for relinquishing their non-exempt property (usually nothing of any value) to a trustee for distribution among all creditors, individual debtors receive an

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<sup>238</sup> The US Bankruptcy Code is codified in Title 11 of the US Code, 11 USC §§ 101 *et seq.*, not to be confused with Chapter 11 of the Bankruptcy Code, 11 USC §§ 1101 *et seq.*, which famously governs business reorganization.

<sup>239</sup> See, e.g., Jason Kilborn & Adrian Walters, “Involuntary Bankruptcy As Debt Collection: Multi-Jurisdictional Lessons in Choosing the Right Tool for the Job,” 87 *Am. Bankr. L.J.* 123 (2013).

immediate “fresh start” in the form of relief from creditor pursuit, and long-term discharge relief after a case administration period of about four months. Chapter 13 offers an alternative for debtors with valuable non-exempt property they wish to preserve. Debtors choosing chapter 13 agree to abide by a statutorily-determined payment plan by which they relinquish all of their disposable income for three to five years (almost always 60 months) to a trustee, who again distributes this value among all creditors. The discharge relief offered by chapter 13 is slightly broader than in chapter 7, as discussed below. Finally, chapter 11 is the ultra-sophisticated and vastly more expensive cousin of chapter 13. It is available to high-income and high-debt individuals, but it is used most often and most effectively by large business entities to rearrange and restructure their legal and business affairs pursuant to a plan of reorganization approved by creditor vote. Chapter 11 is a hugely complex procedure, but the basics from a judgment creditor’s perspective are largely the same as the other two chapters. Beyond the basics, good legal counsel is essential in any bankruptcy case, but especially in a chapter 11 proceeding.

While the generous default position is that individual debtors can choose either a fairly easy, asset-turnover chapter 7 “fresh start” or a more arduous, 60-month-payment-plan chapter 13 “earned start,” since 2005 that choice has been constrained by the so-called *means test*. Many in Congress were led to believe that too many individual debtors were choosing the easy way out and not doing their best to use future income to satisfy their responsibilities. Thus, the extraordinarily technical and complex means test was designed to identify those individuals who, if they only abided by a reasonable household budget, would have sufficient future disposable income to fund a reasonable payment plan.

The reality was and is that few “can-pay” individuals choose bankruptcy, and few debtors who choose bankruptcy can pay. Only about 1-3% of individuals seeking bankruptcy relief are denied chapter 7 relief, though these high-income, asset-rich people are the most likely group against whom it makes sense to have obtained a substantial money judgment. But chapter 13 is no panacea for judgment creditors, either. Of those choosing a chapter 13 payment plan, the vast majority offer payment primarily or only to secured creditors (those with liens, as discussed in the preceding chapter, that are not destroyed as discussed below in this chapter). Chapter 13 cases generally distribute little or nothing to judgment creditors and other “general unsecured creditors” like them.

The bottom line here is that bankruptcy is a real danger for creditors who push their debtors too far. Chapter 7 is available to most individual debtors, and unsecured creditors tend to collect very little in any form of bankruptcy, though perhaps slightly more in a chapter 13 case. Business entities can freely choose chapter 7 if pushed too hard, which generally means shutting down and producing no future income and little if any distribution to judgment creditors. Chapter 11 is an expensive rarity that usually results in conversion to chapter 7 and again paltry returns to judgment creditors. For high-net-worth individuals and asset-rich

businesses, bankruptcy is unnecessary, disruptive, and unhelpful, but it is difficult for a judgment creditor to discern whether a non-paying judgment debtor is just being obstinate or is in real financial distress. The latter case will likely lead to a bankruptcy filing, in which case the music stops for state judgment collection.

### ***B. The automatic stay***

The very first thing that occurs immediately and automatically upon the filing of a bankruptcy case is the imposition of a stay, an injunction, on any further collection actions.<sup>240</sup> This stay applies to all creditors, secured and unsecured, those with and without judgments, and even those with unmatured and unliquidated potential claims and causes of action. In terms of judgment collection, the stay clearly and in virtually all cases prohibits any further enforcement efforts of any kind against the debtor or the debtor's property. Violation of this stay is taken very seriously by the Bankruptcy Courts and can lead to severe sanctions against creditors.

Lesson number one about bankruptcy is this: The moment a judgment creditor learns of the judgment debtor's bankruptcy filing, *all collections activity of any kind must cease*. No formal notice is required for this stay to operate, and debtors need not offer creditors any proof or other information concerning their case to enjoy the stay's protection. Debtors are required to file lists and schedules that will result in notification to creditors mailed from the Bankruptcy Court, but even before receipt of this notice, any hint of a debtor's bankruptcy filing should bring any collections efforts to a halt. This includes not only formal but also informal action, including putting pressure on the debtor orally and even indirectly to try to get the debtor to pay the judgment debt. It also includes passive action, such as holding the debtor's property, which by law must be turned over to the trustee or, in chapters 11 and 13, to the debtor, such as cars and other property seized but not yet sold before the bankruptcy filing.<sup>241</sup>

Judgment creditors often believe their actions are excepted from this automatic stay. They are almost always wrong. There are a few collections-related actions that fall within explicit exceptions to the stay, but these are largely limited to government or police actions and family-support related collections.<sup>242</sup> Once again, if a money judgment creditor learns that the judgment debtor has initiated a bankruptcy case under any chapter, any further action to enforce that judgment (or even inaction, such as by allowing the sheriff to continue to execute a writ or an

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<sup>240</sup> 11 USC § 362(a).

<sup>241</sup> 11 USC § 542.

<sup>242</sup> 11 USC § 362(b). A creditor can also request that the Bankruptcy Court grant "relief" from the stay, but the bases for such relief are almost entirely limited to secured creditors pursuing the collateral securing their claims. 11 USC § 362(d). Unsecured judgment creditors in particular are unlikely to have any basis on which to credibly request relief from the stay.

employer to withhold or pay over garnished wages) is likely a violation, will be void, and will expose both creditor and attorney to sanctions, possibly severe. Don't do it.

### ***C. Limitations on relief: Objections and exceptions to discharge***

In the usual case, the automatic stay will become permanent when the case ends. Whether or not a distribution of any value is made to creditors, a bankruptcy case ordinarily concludes with a discharge of any unpaid liability of the debtor on monetary claims. The discharge is not universal, however, and the chapter 7 discharge can be challenged in appropriate cases. This relief is designed to be offered to “honest but unfortunate” debtors, so in chapter 7 cases involving dishonesty and other bad behavior, the discharge can be denied. It is automatically denied to any debtor who has received discharge relief under a previous chapter 7 (or 11) case within the past eight years, or after completion of a previous chapter 13 payment-plan case filed within the past six years.<sup>243</sup>

The other bases for the Bankruptcy Court to deny a chapter 7 discharge are mainly related to misconduct by the debtor during the bankruptcy case (failing to cooperate with the trustee, failing to keep proper records, destroying property, etc.), but one retrospective basis in particular is relevant to judgment creditors. A chapter 7 discharge can be denied if the debtor made an *actual* fraudulent transfer of property (as discussed in section E.1. of chapter 3 above) within the year preceding the bankruptcy filing.<sup>244</sup> Any creditor can object to discharge on this basis, though the evidentiary burden of proving the debtor's actual fraudulent intent is quite heavy and will likely fall on the creditor. The expense of pursuing such an objection is seldom worth the investment, especially since the debtor will emerge from the bankruptcy case denuded of assets and no more able than before to satisfy the judgment.

A more fine-tuned limitation on discharge is a range of debts that are excepted from discharge, either automatically or upon an objection and evidentiary showing by the affected creditor. Most of these are related again to government- and family-related debts, but a few could be the subject of an ordinary money judgment. Some of these debts are excepted only from a chapter 7 discharge, but some are excepted from *any* discharge at all. The latter group include debts for (1) money, property, services, or an extension, renewal, or refinancing of credit, obtained by the debtor's fraud, (2) “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny,” (3) death or personal injury as a result of the debtor's operating a vehicle under the influence of drugs or alcohol, (4) public and private student loans and other “educational benefits,” and (5) money judgments for restitution or damages for “willful or malicious [personal] injury” by the debtor to

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<sup>243</sup> 11 USC § 727(a)(8)-(9).

<sup>244</sup> 11 USC § 727(a)(2).

an individual person.<sup>245</sup> Only excepted from the chapter 7 discharge, in contrast, are debts for “willful or malicious injury” to an entity or property—as opposed to an individual person.<sup>246</sup> This expansive notion has been held to encompass virtually any intentional tort, including violation of intellectual property rights. Collection of even these claims is temporarily stayed by the filing of a bankruptcy case, but collection on a non-dischargeable claim can resume after the case is closed. Knowing that a money judgment is for a non-dischargeable claim certainly changes the leverage dynamic in dealing with a debtor threatening bankruptcy.

#### ***D. Preference clawback within 90 days***

For creditors whose claims are discharged at the conclusion of the case, it gets worse. Bankruptcy is designed to distribute among all creditors whatever non-exempt value the debtor has. One provision expands this pain/benefit equalization to transfers of value occurring in the period shortly *before* the bankruptcy filing. Any creditor who has received a transfer of an interest of the debtor in property within 90 days before the bankruptcy filing might have to give back that interest for redistribution among all creditors. Such a transfer has *preferred* one creditor over others, offering value to one and not all. Therefore, bankruptcy law provides for recovery by the trustee (or in chapter 11 and possibly 13, by the debtor) of any such *preferential transfer*, now preserved for the benefit of the *estate* and all creditors.<sup>247</sup>

The specifics here are eye-wateringly complex, but the basic idea is easy and important to comprehend: If a judgment creditor receives a transfer of *any* interest in the debtor’s property within 90 days of a bankruptcy filing, that interest is likely to be pursued and recovered in the bankruptcy case. It is impossible at the time of a transfer to predict whether or when the debtor might file for bankruptcy, but if the debtor seems financially wobbly, an imminent bankruptcy filing is always a possibility. What kinds of transfers are implicated? Once again, *all* transfers, voluntary and involuntary, affecting all kinds of property. This includes both payments of money and voluntary transfers of other property, as well as the involuntary transfer of a lien on the debtor’s property that occurs when a judgment creditor engages in collection efforts (as discussed in the preceding chapter). This is one of the most commonly litigated aspects of bankruptcy law, and judgment creditors lose recently acquired payment and lien rights regularly in contests with bankruptcy trustees and chapter 11 debtors-in-possession.

The proper strategic choices here are difficult to gauge. Act too quickly and aggressively, and you’ll push the debtor into bankruptcy and put recently acquired

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<sup>245</sup> 11 USC §§ 523(a), 1328(a). The fraud exception in particular is quite complex and subject to numerous conditions and exceptions, and an objection to discharge on this and a few other bases must be timely made in order for these exception to apply in chapter 7—unlike most, these few exceptions are not self-executing. 11 USC § 523(c).

<sup>246</sup> 11 USC § 523(a)(6).

<sup>247</sup> 11 USC §§ 547, 550, 551.

value in jeopardy. Move too slowly, and any transfer of value is more likely to have occurred within the 90-day lookback period before a bankruptcy filing. Careful evaluation of the debtor's financial stability and willingness ultimately to seek bankruptcy relief is crucial and very difficult to judge. *Caveat creditor!*

## 7. EXERCISES

Having covered a broad terrain of information, the time has come to look back and put that information to use. The following exercises are designed to illustrate how the elements discussed in this book come together, to concentrate your attention on a few key details of law-fact interaction, and to provide a basis for active review of the material by placing it in a practical context. Answer these questions by referencing the general discussion in this book and the details in the law of one of the states whose relevant provisions are excerpted in the following appendices (New York, California, or Illinois) or find the corresponding laws of another state, perhaps the one in which you are studying or practicing (or hope one day to study or practice) and apply that law to the degree it provides answers. Note well: any given state's law might *not* provide clear answers to some of these questions, much less to any number of other questions that could be spun off from the simple hypothetical.

**Your client, Paula Plaintiff, has obtained a \$750,000 federal judgment against David Defendant for copyright infringement. David's lawyer has ignored all of your calls inquiring as to a timetable for payment of this judgment. You know nothing about David other than his home address and telephone number (which you found on the internet). What, if anything, can you do to effectively enforce your judgment against David?**

1. Can you ask the court to put him in jail for contempt for failing to fulfill the judgment?
2. You want to find out what sources of value David might have against which you could enforce your judgment.
  - a. Can you ask David questions (preferably under oath) about the existence and location of any such sources of value?
  - b. Can you ask other people (again, preferably under oath) if they know of any sources of value belonging to David?
  - c. If you are able to question David under oath about the location of his assets, and he fails to appear for the examination, what then?
3. You discover that David owns the following valuable assets. What can you do to have them seized and their value applied to your client's judgment? In answering this question, consider what else you need to know about these assets, whether (and how) any of these assets might be protected from creditors by law, and what, if anything, David would have to do to take advantage of that protection. Consider in particular if it matters whether or not David is married, with or without children.
  - a. a four-bedroom home in your county/parish, valued at \$750,000 and subject to a \$735,000 recorded mortgage

- b. a two-year-old Lexus ES350 sedan, Kelly Bluebook value about \$26,000
  - c. a bank account at JPMorgan Chase Bank with a current balance of \$7854.19 (you know the routing number and account number but are unsure exactly where the money is held)
  - d. a series of retirement accounts with a total current market value of \$1.5 million, managed by various investment companies, along with an ordinary (non-retirement) investment account with E\*Trade, currently worth \$150,000
  - e. antique bedroom, dining room, and living room furniture likely to be worth at least \$25,000
  - f. the copyright to several books that, though not blockbusters, seem to have been selling well in recent years (around the order of \$3000 in royalties each)
4. You are concerned that the actions you might need to take to seize the value in the preceding question could take some time, and David might spirit away the assets in the meantime. What if anything can you do to prevent David or anyone else from transferring away these assets while you are preparing the action to seize them?
  5. You have heard from friends that it is important that you “put a lien on” David’s property. Which of the enforcement actions you’ve mentioned above “puts a lien” on some or all of David’s property, and what generally does that mean?
  6. You take legal action to enforce Paula’s judgment against David’s bank account by taking the proper actions, and a representative of the bank responds that, as of that day, the balance in David’s account is \$3765.23.
    - a. How much of this—at most and at least—will your client be able to seize?
    - b. One month later, you discover that David recently deposited \$10,000 more into that same account. Can you seize any of this?
    - c. Must you renew your enforcement efforts against this account to seize the \$10,000? May you do so?
    - d. What if another \$20,000 is deposited three months later?
    - e. Suppose you served the papers necessary to seize the \$10,000, but the bank paid out that \$10,000 on several checks presented against David’s account a few days later, before responding to the papers you served on the bank.
      - i. Can you take any action to recover that money for Paula?
      - ii. Would it matter if the bank argued that these payments were made in the “ordinary course of business” for both David and the bank?

7. You learn that Teresa Parks owes David \$2500 for some manuscript editing work that David performed for Teresa a few weeks ago.
  - a. Can you do anything to compel Teresa to make that payment to you rather than to David?
  - b. Can you demand that the payment be made directly to Paula, or must some enforcement officer intervene, and what impact might that have on the costs involved in seizing this value?
  - c. Can David invoke any legal protection for his right to receive this payment?
  
8. You learn that David has started working for a large corporate employer for a gross salary of \$120,000 per year (\$10,000 per month). You eventually discover that, after taxes and other required withholding, David's net take-home pay is \$7000 per month, paid twice monthly (on the 15th and last day of each month).
  - a. Can you do anything to compel David's employer to turn over all or some portion of David's recurring salary to Paula—or to an enforcement officer?
  - b. If so, does the law protect any portion of this salary for David? If so, what, if anything, must David do to take advantage of this protection?
  - c. How much, at most, can you collect from David's salary if you can collect anything, and on what timetable will you receive payments?
  - d. How much will David's take-home pay be reduced while this procedure is in effect?
  - e. Must you renew your efforts to seize David's salary every pay period, or will the action you've taken continue in effect for some time? How long?
  - f. Suppose David deposits his take-home pay in his bank account—can you seize that money using the techniques you used against the bank before?
  - g. If David's employer ignores your enforcement efforts, what remedy do you have, if any, against the employer?
  
9. Can you add to the judgment any of the ongoing expenses your client is incurring for all of this enforcement activity? In particular, what about your fees? Can you add any other amounts to the judgment as time passes?  
\*\* Note that this lawsuit was based on the Copyright Act, § 505 of which gives the court discretion to award reasonable attorney's fees to a prevailing plaintiff, which you were savvy enough to request and obtain for Paula. Nice!
  
10. Suppose the judgment debtor were not David, an individual, but David's business, a single-member limited liability company called David, LLC. How, if at all, would your answers to the preceding questions change, particularly questions 3, 7, and 8 with respect to the protections for the debtor's assets?

11. If you represent David or David, LLC, and your client tells you that the burden of Paula's enforcement actions has become too great to bear (destroying David's family life, business, etc.), is there an inexpensive and effective form of relief available to put an end to Paula's collection efforts? What form(s) of relief might be available, and what generally will David (or David, LLC) be required to do to obtain such relief? Would you advise David to seek that relief or not?

## Appendices

**A. NEW YORK CIVIL PRACTICE LAW & RULES (CPLR)**  
NY-1 to NY-28

**B. CALIFORNIA CODE OF CIVIL PROCEDURE (CCP)**  
CA-1 to CA-45

**C. ILLINOIS CODE OF CIVIL PROCEDURE (735 ILCS 5/  
& SUPREME COURT RULE 277**  
IL-1 to IL-14

***NB:** Dollar figures in square brackets indicate values indexed for inflation in New York as of April 1, 2018, and in California as of April 1, 2019, to be indexed again in each case at later three-year intervals.*

## NEW YORK CIVIL PRACTICE LAW & RULES (CPLR)

### Article 51

#### Enforcement of Judgments and Orders Generally

**§ 5101. Enforcement of money judgment ....** A money judgment and an order directing the payment of money, including motion costs, may be enforced as prescribed in article fifty-two. \*\*\*

\*\*\* [*special provisions on child support enforcement omitted throughout*]

**§ 5106. Appointment of receiver.** A court, by or after judgment, may appoint a receiver ... to carry the judgment into effect ....

### Article 52

#### Enforcement of Money Judgments

**§ 5201. Debt or property subject to enforcement; proper garnishee.**

**(a) Debt against which a money judgment may be enforced.** A money judgment may be enforced against any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state, to or from a resident or non-resident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a cause of action which could be assigned or transferred accruing within or without the state.

**(b) Property against which a money judgment may be enforced.** A money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the satisfaction of the judgment. ...

**(c) Proper garnishee for particular property or debt.**

1. Where property consists of a right or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association on behalf of the association, shall be the garnishee.

2. Where property consists of a right or interest to or in a decedent's estate or any other property or fund held or controlled by a fiduciary, the executor or trustee under the will, administrator or other fiduciary shall be the garnishee.

3. Where property consists of an interest in a partnership, any partner other than the judgment debtor, on behalf of the partnership, shall be the garnishee.

4. Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee; except that section 8-112 of the uniform commercial code shall govern the extent to

**CALIFORNIA CODE OF CIVIL PROCEDURE (CCP)**  
**Title 9. Enforcement of Judgments**

**Division 1. Definitions and General Provisions 680.010-694.090**

\* \* \*

**Chapter 7. Levying Officers 687.010-687.050**

**687.010.**

(a) The judgment creditor shall give the levying officer instructions in writing. ... The instructions shall contain the information needed or requested by the levying officer to comply with this title, including, but not limited to, all of the following:

- (1) An adequate description of any property to be levied upon.
- (2) A statement whether the property is a dwelling.
- (3) If the property is a dwelling, whether it is real or personal property.
- (4) The name of the judgment debtor. If the judgment debtor is other than a natural person, the type of legal entity shall be stated.

\* \* \*

**687.030.**

Except as otherwise provided by statute, where the method of levy upon property requires that the property be taken into custody or where the levying officer is otherwise directed to take property into custody, the levying officer may do so by any of the following methods:

- (a) Removing the property to a place of safekeeping.
- (b) Installing a keeper.
- (c) Otherwise obtaining possession or control of the property.

\* \* \*

**Division 2. Enforcement of Money Judgments 695.010-709.030**

**Chapter 1. General Provisions 695.010-695.221**

**Article 1. Property Subject to Enforcement of Money Judgment 695.010-695.070**

**695.010.**

(a) Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment.

\* \* \*

**695.030.**

(a) Except as otherwise provided by statute, property of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.

**ILLINOIS CODE OF CIVIL PROCEDURE (735 ILCS 5/)  
& SUPREME COURT RULE 277**

**735 ILCS 5/2-1402. Supplementary proceedings.**

**(a)** A judgment creditor, or his or her successor in interest . . . is entitled to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets or income of the debtor not exempt from the enforcement of the judgment, a deduction order or garnishment, and of compelling the application of non-exempt assets or income discovered toward the payment of the amount due under the judgment. A supplementary proceeding shall be commenced by the service of a citation issued by the clerk. The procedure for conducting supplementary proceedings shall be prescribed by rules. It is not a prerequisite to the commencement of a supplementary proceeding that a certified copy of the judgment has been returned wholly or partly unsatisfied. All citations issued by the clerk shall have the following language, or language substantially similar thereto, stated prominently on the front, in capital letters: “IF YOU FAIL TO APPEAR IN COURT AS DIRECTED IN THIS NOTICE, YOU MAY BE ARRESTED AND BROUGHT BEFORE THE COURT TO ANSWER TO A CHARGE OF CONTEMPT OF COURT, WHICH MAY BE PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL.” The court shall not grant a continuance of the supplementary proceeding except upon good cause shown.

**(b)** Any citation served upon a judgment debtor or any other person shall include a certification by the attorney for the judgment creditor or the judgment creditor setting forth the amount of the judgment, the date of the judgment, or its revival date, the balance due thereon, the name of the court, and the number of the case, and a copy of the citation notice required by this subsection. Whenever a citation is served upon a person or party other than the judgment debtor, the officer or person serving the citation shall send to the judgment debtor, within three business days of the service upon the cited party, a copy of the citation and the citation notice, which may be sent by regular first-class mail to the judgment debtor's last known address. In no event shall a citation hearing be held sooner than five business days after the mailing of the citation and citation notice to the judgment debtor, except by agreement of the parties. The citation notice need not be mailed to a corporation, partnership, or association. The citation notice shall be in substantially the following form:

“CITATION NOTICE

(Name and address of Court)

Name of Case: (Name of Judgment Creditor), Judgment Creditor v.

(Name of Judgment Debtor), Judgment Debtor.

Address of Judgment Debtor: (Insert last known address)

Name and address of Attorney for Judgment Creditor or of Judgment Creditor (If no attorney is listed): (Insert name and address)

Amount of Judgment: \$ (Insert amount)

Name of Person Receiving Citation: (Insert name)

Court Date and Time: (Insert return date and time specified in citation)

NOTICE: The court has issued a citation against the person named above. The citation directs that person to appear in court to be examined for the purpose of allowing the judgment creditor to discover income and assets belonging to the judgment debtor or in which the judgment debtor has an interest. The citation was issued on the basis of a judgment against the judgment debtor in favor of the judgment creditor in the amount stated above. On or after the court date stated above, the court may compel the application of any discovered income or assets toward payment on the judgment.

The amount of income or assets that may be applied toward the judgment is limited by federal and Illinois law. The JUDGMENT DEBTOR HAS THE RIGHT TO ASSERT STATUTORY EXEMPTIONS AGAINST CERTAIN INCOME OR ASSETS OF THE JUDGMENT DEBTOR WHICH MAY NOT BE USED TO SATISFY THE JUDGMENT IN THE AMOUNT STATED ABOVE:

(1) Under Illinois or federal law, the exemptions of personal property owned by the debtor include the debtor's equity interest, not to exceed \$4,000 in value, in any personal property as chosen by the debtor; Social Security and SSI benefits; public assistance benefits; unemployment compensation benefits; worker's compensation benefits; veteran's benefits; circuit breaker property tax relief benefits; the debtor's equity interest, not to exceed \$2,400 in value, in any one motor vehicle, and the debtor's equity interest, not to exceed \$1,500 in value, in any implements, professional books, or tools of the trade of the debtor.

(2) Under Illinois law, every person is entitled to an estate in homestead, when it is owned and occupied as a residence, to the extent in value of \$15,000, which homestead is exempt from judgment.

(3) Under Illinois law, the amount of wages that may be applied toward a judgment is limited to the lesser of (i) 15% of gross weekly wages or (ii) the amount by which disposable earnings for a week exceed the total of 45 times the federal minimum hourly wage or, under a wage deduction summons served on or after January 1, 2006, the Illinois minimum hourly wage, whichever is greater.

(4) Under federal law, the amount of wages that may be applied toward a judgment is limited to the lesser of (i) 25% of disposable earnings for a week or (ii) the amount by which disposable earnings for a week exceed 30 times the federal minimum hourly wage.

(5) Pension and retirement benefits and refunds may be claimed as exempt under Illinois law.

The judgment debtor may have other possible exemptions under law.

THE JUDGMENT DEBTOR HAS THE RIGHT AT THE CITATION HEARING TO DECLARE EXEMPT CERTAIN INCOME OR ASSETS OR BOTH. The judgment debtor also has the right to seek a declaration at an earlier date, by notifying the clerk in writing at (insert address of clerk). When so notified, the Clerk of the Court will obtain a prompt hearing date from the court and will provide the necessary forms that must be prepared by the judgment debtor or the attorney for the judgment debtor and sent to the judgment creditor and the judgment creditor's attorney regarding the time and location of the hearing. This notice may be sent by regular first class mail.”

**(b-1)** Any citation served upon a judgment debtor who is a natural person shall be served by personal service or abode service as provided in Supreme Court Rule 105 and shall include a copy of the Income and Asset Form set forth in subsection (b-5).

**(b-5)** The Income and Asset Form required to be served by the judgment creditor in subsection (b-1) shall be in substantially the following form:

#### INCOME AND ASSET FORM

To Judgment Debtor: Please complete this form and bring it with you to the hearing referenced in the enclosed citation notice. You should also bring to the hearing any documents you have to support the information you provide in this form, such as pay stubs and account statements. The information you provide will help the court determine whether you have any property or income that

can be used to satisfy the judgment entered against you in this matter. The information you provide must be accurate to the best of your knowledge.

If you fail to appear at this hearing, you could be held in contempt of court and possibly arrested.

In answer to the citation and supplemental proceedings served upon the judgment debtor, he or she answers as follows:

Name:.....

Home Phone Number:.....

Home Address:.....

Date of Birth:.....

Marital Status:.....

I have.....dependents.

Do you have a job? YES NO

Company's name I work for:.....

Company's address:.....

Job:

I earn \$..... per.....

If self employed, list here your business name and address: .....

Income from self employment is \$..... per year.

I have the following benefits with my employer: .....

I do not have a job, but I support myself through:

Government Assistance \$.....per month

Unemployment \$..... per month

Social Security \$.....per month

SSI \$.....per month

Pension \$.....per month

Other \$.....per month

Real Estate:

Do you own any real estate? YES NO

I own real estate at....., with names of other owners .....

Additional real estate I own:.....

I have a beneficial interest in a land trust. The name and address of the trustee is:.....

The beneficial interest is listed in my name and.....

There is a mortgage on my real estate. State the mortgage company's name and address for each parcel of real estate owned: .....

An assignment of beneficial interest in the land trust was signed to secure a loan from .....

I have the following accounts:

Checking account at .....; account balance \$.....

Savings account at .....; account balance \$.....

Money market or certificate of deposit at.....

Safe deposit box at.....

Other accounts (please identify):.....

I own:

A vehicle (state year, make, model, and VIN):.....

Jewelry (please specify):.....

Other property described as:.....

Stocks/Bonds.....

Personal computer.....

DVD player.....

Television.....

Stove.....

Microwave.....

Work tools.....

Business equipment.....  
Farm equipment.....  
Other property (please specify): .....

Signature:.....

\* \* \*

**(c)** When assets or income of the judgment debtor not exempt from the satisfaction of a judgment, a deduction order or garnishment are discovered, the court may, by appropriate order or judgment:

(1) Compel the judgment debtor to deliver up, to be applied in satisfaction of the judgment, in whole or in part, money, choses in action, property or effects in his or her possession or control, so discovered, capable of delivery and to which his or her title or right of possession is not substantially disputed.

(2) Compel the judgment debtor to pay to the judgment creditor or apply on the judgment, in installments, a portion of his or her income, however or whenever earned or acquired, as the court may deem proper, having due regard for the reasonable requirements of the judgment debtor and his or her family, if dependent upon him or her, as well as any payments required to be made by prior order of court or under wage assignments outstanding; provided that the judgment debtor shall not be compelled to pay income which would be considered exempt as wages under the Wage Deduction Statute. . . .

(3) Compel any person cited, other than the judgment debtor, to deliver up any assets so discovered, to be applied in satisfaction of the judgment, in whole or in part, when those assets are held under such circumstances that in an action by the judgment debtor he or she could recover them in specie or obtain a judgment for the proceeds or value thereof as for conversion or embezzlement. A judgment creditor may recover a corporate judgment debtor's property on behalf of the judgment debtor for use of the judgment creditor by filing an appropriate petition within the citation proceedings.

(4) Enter any order upon or judgment against the person cited that could be entered in any garnishment proceeding.

(5) Compel any person cited to execute an assignment of any chose in action or a conveyance of title to real or personal property or resign memberships in exchanges, clubs, or other entities . . . .

(6) Authorize the judgment creditor to maintain an action against any person or corporation that, it appears upon proof satisfactory to the court, is indebted to the judgment debtor, for the recovery of the debt, forbid the transfer or other disposition of the debt until an action can be commenced and prosecuted to judgment, direct that the papers or proof in the possession or control of the debtor and necessary in the prosecution of the action be delivered to the creditor or impounded in court, and provide for the disposition of any moneys in excess of the sum required to pay the judgment creditor's judgment and costs allowed by the court.

**(c-5)** If a citation is directed to a judgment debtor who is a natural person, no payment order shall be entered under subsection (c) unless the Income and Asset Form was served upon the judgment debtor as required by subsection (b-1), the judgment debtor has had an opportunity to assert exemptions, and the payments are from non-exempt sources.

**(d)** No order or judgment shall be entered under subsection (c) in favor of the judgment creditor unless there appears of record a certification of mailing showing that a copy of the citation and a copy of the citation notice was mailed to the judgment debtor as required by subsection (b).

**(d-5)** If upon examination the court determines that the judgment debtor does not possess any non-exempt income or assets, then the citation shall be dismissed.

**(e)** All property ordered to be delivered up shall, except as otherwise provided in this Section, be delivered to the sheriff to be collected by the sheriff or sold at public sale and the proceeds thereof applied towards the payment of costs and the satisfaction of the judgment. If the judgment debtor's property is of such a nature that it is not readily delivered up to the sheriff for public sale or if another method of sale is more appropriate to liquidate the property or enhance its value at sale, the court may order the sale of such property by the debtor, third party respondent, or by a selling agent other than the sheriff upon such terms as are just and equitable. The proceeds of sale, after deducting reasonable and necessary expenses, are to be turned over to the creditor and applied to the balance due on the judgment.

**(f)** (1) The citation may prohibit the party to whom it is directed from making or allowing any transfer or other disposition of, or interfering with, any [nonexempt] property ... belonging to the judgment debtor or to which he or she may be entitled or which may thereafter be acquired by or become due to him or her, and from paying over or otherwise disposing of any moneys not so exempt which are due or to become due to the judgment debtor, until the further order of the court or the termination of the proceeding, whichever occurs first. The third party may not be obliged to withhold the payment of any moneys beyond double the amount of the balance due sought to be enforced by the judgment creditor. The court may punish any party who violates the restraining provision of a citation as and for a contempt, or if the party is a third party may enter judgment against him or her in the amount of the unpaid portion of the judgment and costs allowable under this Section, or in the amount of the value of the property transferred, whichever is lesser.

(2) The court may enjoin any person, whether or not a party to the supplementary proceeding, from making or allowing any transfer or other disposition of, or interference with, [non-exempt] property of the judgment debtor ...

**(g)** If it appears that any property, chose in action, credit or effect discovered, or any interest therein, is claimed by any person, the court shall, as in garnishment proceedings, permit or require the claimant to appear and maintain his or her right.

...

**(h)** Costs in proceedings authorized by this Section shall be allowed, assessed and paid in accordance with rules, provided that if the court determines, in its discretion, that costs incurred by the judgment creditor were improperly incurred, those costs shall be paid by the judgment creditor.

**(i)** This Section is in addition to and does not affect enforcement of judgments or proceedings supplementary thereto, by any other methods now or hereafter provided by law.

**(j)** This Section does not grant the power to any court to order installment or other payments from, or compel the sale, delivery, surrender, assignment or conveyance of any property exempt by statute from the enforcement of a judgment thereon, a deduction order, garnishment, attachment, sequestration, process or other levy or seizure.

\* \* \*

**(k-5)** If the court determines that any property held by a third party respondent is wages pursuant to Section 12-801, the court shall proceed as if a wage deduction proceeding had been filed and proceed to enter such necessary and proper orders as would have been entered in a wage deduction proceeding including but not limited to the granting of the statutory exemptions allowed by Section 12-803 . . . .

**(k-10)** If a creditor discovers personal property of the judgment debtor that is subject to the lien of a citation to discover assets, the creditor may have the court impress a lien against a specific item of personal property, including a beneficial interest in a land trust. The lien survives the termination of the citation proceedings and remains as a lien against the personal property in the same manner that a judgment lien recorded against real property pursuant to Section 12-101 remains a lien on real property. If the judgment is revived before dormancy, the lien shall remain. A lien against personal property may, but need not, be recorded in the office of the recorder or filed as an informational filing pursuant to the Uniform Commercial Code.

**(l)** At any citation hearing at which the judgment debtor appears and seeks a declaration that certain of his or her income or assets are exempt, the court shall proceed to determine whether the property which the judgment debtor declares to be exempt is exempt from judgment. At any time before the return date specified on the citation, the judgment debtor may request, in writing, a hearing to declare exempt certain income and assets by notifying the clerk of the court before that time, using forms as may be provided by the clerk of the court. The clerk of the court will obtain a prompt hearing date from the court and will provide the necessary forms that must be prepared by the judgment debtor or the attorney for the judgment debtor and sent to the judgment creditor, or the judgment creditor's attorney, regarding the time and location of the hearing. . . .

**(m)** The judgment or balance due on the judgment becomes a lien when a citation is served in accordance with subsection (a) of this Section. The lien binds nonexempt

personal property, including money, choses in action, and effects of the judgment debtor as follows:

(1) When the citation is directed against the judgment debtor, upon all personal property belonging to the judgment debtor in the possession or control of the judgment debtor or which may thereafter be acquired or come due to the judgment debtor to the time of the disposition of the citation.

(2) When the citation is directed against a third party, upon all personal property belonging to the judgment debtor in the possession or control of the third party or which thereafter may be acquired or come due the judgment debtor and comes into the possession or control of the third party to the time of the disposition of the citation.

The lien established under this Section does not affect the rights of citation respondents in property prior to the service of the citation upon them and does not affect the rights of bona fide purchasers or lenders without notice of the citation. The lien is effective for the period specified by Supreme Court Rule. . . .

\* \* \*

### **Illinois Supreme Court Rule 277. Supplementary Proceedings**

**(a) When Proceeding May be Commenced and Against Whom; Subsequent Proceeding Against Same Party.** A supplementary proceeding authorized by section 2-1402 of the Code of Civil Procedure may be commenced at any time with respect to a judgment which is subject to enforcement. The proceeding may be against the judgment debtor or any third party the judgment creditor believes has property of or is indebted to the judgment debtor. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether he is the judgment debtor or a third party, no further proceeding shall be commenced against him except by leave of court. The leave may be granted upon *ex parte* motion of the judgment creditor, but only upon a finding of the court, based upon affidavit of the judgment creditor or some other person, having personal knowledge of the facts, (1) that there is reason to believe the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor, (2) that the existence of the property, income or indebtedness was not known to the judgment creditor during the pendency of any prior supplementary proceeding, and (3) that the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

**(b) How Commenced.** The supplementary proceeding shall be commenced by the service of a citation on the party against whom it is brought. The clerk shall issue a citation upon oral request. In cases in which an order of court is prerequisite to the commencement of the proceeding, a copy of the order shall be served with the citation.

**(c) Citation—Form, Contents, and Service.** The citation by which a supplementary proceeding is commenced:

(1) shall be captioned in the cause in which the judgment was entered;

(2) shall state the date the judgment was entered or revived, and the amount thereof remaining unsatisfied;

(3) shall require the party to whom it is directed, or if directed to a corporation or partnership, a designated officer or partner thereof, to appear for examination at a time (not less than 5 days from the date of service of the citation) and place to be specified therein, concerning the property or income of or indebtedness due the judgment debtor; and

(4) may require, upon reasonable specification thereof, the production at the examination of any books, documents, or records in his or its possession or control which have or may contain information concerning the property or income of the debtor.

The citation shall be served and returned in the manner provided by rule for service, otherwise than by publication, of a notice of additional relief upon a party in default.

**(d) When Proceeding May Be Commenced.** A supplementary proceeding against the judgment debtor may be commenced in the court in which the judgment was entered. A supplementary proceeding against a third party must, and against the judgment debtor may, be commenced in a county of this State in which the party against whom it is brought resides, or, if an individual, is employed or transacts business in person, upon the filing of a transcript of the judgment in the court in that county. If the party to be cited neither resides nor is employed nor transacts his business in person in this State, the proceeding may be commenced in any county in the State, upon the filing of a transcript of the judgment in the court in the county in which the proceeding is to be commenced.

**(e) Hearing.** The examination of the judgment debtor, third party or other witnesses shall be before the court, or, if the court so orders, before an officer authorized to administer oaths designated by the court, unless the judgment creditor elects ... to conduct all or a part of the hearing by deposition as provided by the rules of this court for discovery depositions. The court at any time may terminate the deposition or order that proceedings be conducted before the court or officer designated by the court, and otherwise control and direct the proceeding to the end that the rights and interests of all parties and persons involved may be protected and harassment avoided. Any interested party may subpoena witnesses and adduce evidence as upon the trial of any civil action. Upon the request of either party or the direction of the court, the officer before whom the proceeding is conducted shall certify to the court any evidence taken or other proceedings had before him.

**(f) When Proceeding Terminated.** A proceeding under this rule continues until terminated by motion of the judgment creditor, order of the court, or satisfaction of the judgment, but terminates automatically 6 months from the date of (1) the respondent's first personal appearance pursuant to the citation or (2) the respondent's first personal appearance pursuant to subsequent process issued to enforce the citation, whichever is sooner. The court may, however, grant extensions beyond the 6 months, as justice may require. Orders for the payment of money continue in effect notwithstanding the termination of the proceedings until the judgment is satisfied or the court orders otherwise.

**(g) Concurrent and Consecutive Proceedings.** Supplementary proceedings against the debtor and third parties may be conducted concurrently or consecutively. The termination of one proceeding does not affect other pending proceedings not concluded.

**(h) Sanctions.** Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule may be punished for contempt. Any person who refuses to obey any order to deliver up or convey or assign any personal property or in an appropriate case its proceeds or value or title to lands, or choses in action, or evidences of debt may be committed until he has complied with the order or is discharged by due course of law. The court may also enforce its order against the real and personal property of that person.

**(i) Costs.** The court may tax as costs a sum for witness', stenographer's, and officer's fees, and the fees and outlays of the sheriff, and direct the payment thereof out of any money which may come into the hands of the sheriff or the judgment creditor as a result of the proceeding. If no property applicable to the payment of the judgment is discovered in the course of the proceeding, the court may tax as costs a sum for witness', stenographer's, and officer's fees incurred by any person subpoenaed, to be paid to him by the person who subpoenaed him, and unless paid within the time fixed, enforcement may be had in the manner provided by law for the collection of a judgment for the payment of money.

**735 ILCS 5/12-101. Lien of judgment.** With respect to the creation of liens on real estate by judgments, ... a judgment is a lien on the real estate of the person against whom it is entered in any county in this State . . . only from the time a transcript, certified copy or memorandum of the judgment is filed in the office of the recorder in the county in which the real estate is located. The lien may be foreclosed by an action . . . under Article XV in the same manner as a mortgage of real property, except that . . . the real estate homestead exemption under Section 12-901 shall apply. ... A judgment is not a lien on real estate for longer than 7 years from the time it is entered or revived, unless the judgment is revived within 7 years after its entry or last revival and a memorandum of judgment is filed before the expiration of the prior memorandum of judgment.

\* \* \*

**735 ILCS 5/12-108. Limitation on enforcement.** (a) Except as herein provided, no judgment shall be enforced after the expiration of 7 years from the time the same is rendered, except upon the revival of the same by a proceeding provided by Section 2-1601 of this Act; but real estate, levied upon within the 7 years, may be sold to enforce the judgment at any time within one year after the expiration of the 7 years.

\* \* \*

**735 ILCS 5/12-112. What liable to enforcement.** ... Any real property ... held in tenancy by the entirety shall not be liable to be sold upon judgment entered . . . against only one of the tenants \* \* \*.

\* \* \*

**735 ILCS 5/12-801. Definitions.** As used in Part 8 of Article XII of this Act: \* \* \*  
“Employer” means the person named as employer in [a citation to discover assets].

\* \* \*

“Judgment creditor” means the recipient of any judgment ....

“Judgment debtor” means a person against whom a judgment has been obtained.

“Wages” means any hourly pay, salaries, commissions, bonuses, or other compensation owed by an employer to a judgment debtor.

\* \* \*

**735 ILCS 5/12-803. Wages subject to collection.** The wages, salary, commissions and bonuses subject to collection under a deduction order, for any work week shall be the lesser of (1) 15% of such gross amount paid for that week or (2) the amount by which disposable earnings for a week exceed 45 times the Federal Minimum Hourly Wage prescribed by Section 206(a)(1) of Title 29 of the United States Code, as amended, or ... the minimum hourly wage prescribed by Section 4 of the Minimum Wage Law, whichever is greater, in effect at the time the amounts are payable. This provision (and no other) applies irrespective of the place where the compensation was earned or payable and the State where the employee resides. No amounts required by law to be withheld may be taken from the amount collected by the creditor. The term “disposable earnings” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

**735 ILCS 5/12-804. Exemptions from deduction orders.** Benefits and refunds payable by pension or retirement funds or systems and any assets of employees held by such funds or systems, and any monies an employee is required to contribute to such funds or systems are exempt and are not subject to a deduction order under Part 8 of Article XII of this Act. A plan governed by the Employee Retirement Income Security Act of 1974 shall be considered a retirement fund for purposes of this Part 8.

\* \* \*

**735 ILCS 5/12-807. Failure of employer to appear.** (a) If an employer fails to appear and answer as required by Part 8 of Article XII of this Act, the court may enter a conditional judgment against the employer for the amount due upon the judgment against the judgment debtor. \* \* \*

**735 ILCS 5/12-808. Duty of employer.**

(a) An employer served as herein provided shall pay the employee the amount of his or her exempt wages.

(b) To the extent of the amount due upon the judgment and costs, the employer shall hold, subject to order of court, any non-exempt wages due or which subsequently come due. The judgment or balance due thereon is a lien on wages due at the time of the service of summons, and such lien shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid, except that such lien on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated or modified.

\* \* \*

(e) Pursuant to answer under oath to the interrogatories by the employer, an order shall be entered compelling the employer to deduct [the “wages subject to collection,” determined pursuant to section 12-803] from wages of the judgment debtor . . . . The order shall further provide that deducted wages shall be remitted to the creditor or creditor's attorney on a monthly basis.

(f) If after the entry of a deduction order, the employer ceases to remit funds to the plaintiff pursuant to the order without a lawful excuse (which would terminate the employer's obligation under the deduction order such as the debtor having filed a bankruptcy, the debtor having left employment or the employer having received service of a support order against the judgment debtor having priority over the wage deduction proceedings), the court shall, upon plaintiff's motion, enter a conditional judgment against the employer for the balance due on the judgment. \* \* \*.

**735 ILCS 5/12-808.5. Certification of judgment balance.** Whenever a wage deduction order has not been fully satisfied by the end of the first full calendar quarter following the date of service of the wage deduction summons:

(1) The judgment creditor or his attorney shall prepare a certification that states the amount of the judgment remaining unsatisfied as of the last calendar day of each full calendar quarter for which the wage deduction order continues in effect.

(2) The certification shall be mailed or delivered to the employer by the judgment creditor or his or her attorney within 15 days after the end of each calendar quarter for which the wage deduction order continues in effect. The employer shall hand deliver or mail by first class mail a copy of the certification to the judgment debtor at the judgment debtor's last known address.

(3) In the event that the plaintiff fails to provide the certification required by this Section, the employer must continue to withhold funds from the defendant's wages but may hold the funds without remitting to the plaintiff until such time as it receives a certification required by this Section. A certification of judgment balance need not be filed with the court.

(4) Any party to the wage deduction proceeding may, upon motion with notice to all other parties, ask the court to review the balance due claimed by the judgment creditor.

**735 ILCS 5/12-809. Offsetting claims.** The employer is entitled to assert against indebtedness due to the judgment debtor offsetting claims against either or both the judgment creditor and the judgment debtor .

\* \* \*

**735 ILCS 5/12-814. Costs and fees.**

(a) The costs of obtaining a deduction order shall be charged to the judgment debtor, unless the court determines, in its discretion, that costs incurred by the judgment creditor were improperly incurred, in which case those costs shall be paid by the judgment creditor.

(b) No fee shall be paid by an employer for filing his or her appearance, answer or satisfaction of judgment against him or her.

(c) A fee consisting of 2% of the amount required to be deducted by any deduction order shall be allowed and paid to the employer, and the amount so paid shall be charged to the judgment debtor.

\* \* \*

**735 ILCS 5/12-818. Discharge or suspension of employee prohibited.**

No employer may discharge or suspend any employee by reason of the fact that his or her earnings have been subjected to a deduction order for any one indebtedness. Any person violating this Section shall be guilty of a Class A misdemeanor.

\* \* \*

**735 ILCS 5/12-901. [Homestead exemption] Amount.** Every individual is entitled to an estate of homestead to the extent in value of \$15,000 of his or her interest in a farm or lot of land and buildings thereon, a condominium, or personal property, owned or rightly possessed by lease or otherwise and occupied by him or her as a residence, or in a cooperative that owns property that the individual uses as a residence. That homestead and all right in and title to that homestead is exempt from attachment, judgment, levy, or judgment sale for the payment of his or her debts ... If 2 or more individuals own property that is exempt as a homestead, the value of the exemption of each individual may not exceed his or her proportionate share of \$30,000 based upon percentage of ownership.

\* \* \*

**735 ILCS 5/12-1001. Personal property exempt.** The following personal property, owned by the debtor, is exempt from judgment, attachment, or distress for rent:

- (a) The necessary wearing apparel, bible, school books, and family pictures of the debtor and the debtor's dependents;
- (b) The debtor's equity interest, not to exceed \$4,000 in value, in any other property;
- (c) The debtor's interest, not to exceed \$2,400 in value, in any one motor vehicle;
- (d) The debtor's equity interest, not to exceed \$1,500 in value, in any implements, professional books, or tools of the trade of the debtor;
- (e) Professionally prescribed health aids for the debtor or a dependent of the debtor;
- (f) All proceeds payable because of the death of the insured and the aggregate net cash value of any or all life insurance and endowment policies and annuity contracts payable to a wife or husband of the insured, or to a child, parent, or other person dependent upon the insured, or to a revocable or irrevocable trust [naming one of these people primary beneficiary];
- (g) The debtor's right to receive:
  - (1) a social security benefit, unemployment compensation, or public assistance benefit;
  - (2) a veteran's benefit;
  - (3) a disability, illness, or unemployment benefit; and
  - (4) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (h) The debtor's right to receive, or property that is traceable to:
  - (1) an award under a crime victim's reparation law;
  - (2) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor;
  - (3) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor or a dependent of the debtor;
  - (4) a payment, not to exceed \$15,000 in value, on account of personal bodily injury of the debtor or an individual of whom the debtor was a dependent; and
  - (5) any restitution payments made to persons pursuant to the federal Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act, P.L. 100-383.

For purposes of this subsection (h), a debtor's right to receive an award or payment shall be exempt for a maximum of 2 years after the debtor's right to receive the award or payment accrues; property traceable to an award or payment shall be exempt for a maximum of 5 years after the award or payment accrues; and an award

or payment and property traceable to an award or payment shall be exempt only to the extent of the amount of the award or payment, without interest or appreciation from the date of the award or payment.

- (i) The debtor's right to receive an award under Part 20 of Article II of this Code relating to crime victims' awards.
- (j) Moneys held in an account invested in the Illinois College Savings Pool of which the debtor is a participant or donor \*\*\*.

Money due the debtor from the sale of any personal property that was exempt from judgment, attachment, or distress for rent at the time of the sale is exempt from attachment and garnishment to the same extent that the property would be exempt had the same not been sold by the debtor.

If a debtor owns property exempt under this Section and he or she purchased that property with the intent of converting nonexempt property into exempt property or in fraud of his or her creditors, that property shall not be exempt from judgment, attachment, or distress for rent. . .

The personal property exemptions set forth in this Section shall apply only to individuals and only to personal property that is used for personal rather than business purposes. . . .

### **735 ILCS 5/12-1006. Exemption for retirement plans.**

- (a) A debtor's interest in or right, whether vested or not, to the assets held in or to receive pensions, annuities, benefits, distributions, refunds of contributions, or other payments under a retirement plan is exempt from judgment, attachment, execution, distress for rent, and seizure for the satisfaction of debts if the plan (i) is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986 ... or (ii) is a public employee pension plan created under the Illinois Pension Code ....
- (b) "Retirement plan" includes the following:
  - (1) a stock bonus, pension, profit sharing, annuity, or similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan;
  - (2) a government or church retirement plan or contract;
  - (3) an individual retirement annuity or . . . account; and
  - (4) a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended. \* \* \*