

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

Jason J. Kilborn

John Marshall Law School

© Carolina Academic Press *forthcoming* 2019

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

We stand on the shoulders of giants

Summary of Contents

Foreword

-

Introduction

1

ANCESTRY

3

LOCATE

11

GRAB

14

SHIELD

22

BATTLE

27

CAPITULATE

30

EXERCISES

34

Appendix

37

New York

-

California

-

Illinois

IL-1 to IL-14

Table of Contents

Foreword

Introduction

1. ANCESTRY

- A. *The common ancestor: Rome*
- B. *Roman influence and the beginnings of English law*
- C. *Early American inheritance and revision of English enforcement procedure*
- D. *New primary sources: The Field Code and modern American procedure*

2. LOCATE

- A. *Registration and domestication of “foreign” federal and state judgments*
- B. *Immigration of non-US judgments and arbitral awards*
- C. *Timing ... and the time value of money*
- D. *Discovery*
 - 1. *Informal*
 - 2. *Formal*

3. GRAB

- A. *Restrain*
- B. *Record*
- C. *Levy*
 - 1. *Execution*
 - 2. *Garnishment*
 - a. *Bank accounts*
 - b. *Wages, salaries, commissions*
 - c. *Business property, receivership, and investment securities*
 - d. *Intangibles*
 - 3. *Turnover*
- D. *Monetize*
- E. *Expand*
 - 1. *Voidable Transactions*
 - 2. *Veil Piercing*

4. SHIELD

- A. *Shielding substance—property exemptions*
 - 1. *Texas*
 - 2. *Pennsylvania*

3. *New York*
4. *California*
5. *Illinois*

B. Shielding against procedure—Fair Debt Collection Practices Act

C. Shielding assets ahead of time—asset protection schemes

5. BATTLE

A. Liens

B. Judgment/execution liens on real estate

C. Judgment/execution liens on personal property

1. Creation

2. Third-party effectiveness (and priority)

6. CAPITULATE

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

B. The automatic stay

C. Limitations on relief: Objections and exceptions to discharge

D. Preference clawback within 90 days

7. EXERCISES

Appendices

A. NEW YORK CIVIL PRACTICE LAW & RULES (CPLR)

B. CALIFORNIA CODE OF CIVIL PROCEDURE (CCP)

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

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;¹ 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.²

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

¹ 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.

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

those rights 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 ... Illinois, which has entirely revolutionized its money judgment enforcement system to overcome the principal historical challenges in this process. ...

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 workaround 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.³

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.

³ 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.⁴

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 *exsecutor*. 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 his 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.

⁴ 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.⁵

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

⁵ 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 *fieri 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.⁶ 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

⁶ 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.⁷ 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 states⁸).

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 essence of modern American money judgment enforcement is finding money's worth in valuable property in which the judgment debtor has at least some degree of rights that can be seized and monetized for the judgment creditor. However the specific rules and procedures in any given jurisdiction might vary, the process involves several discrete steps that can be broken out and examined more or less in the order of the following discussion.

⁷ 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).

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

2. LOCATE

* * * 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.⁹ Thus, money judgments of the US District Court for the [Northern District of Illinois] are enforced in that court, but according to the enforcement rules of the State of [Illinois]—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. * * *

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

* * * [T]he 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. ... Illinois, for example, provide[s] for flat 9% per annum simple interest....¹⁰ * * *

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). ...[C]osts (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).... 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.

⁹ 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.

¹⁰ NY CPLR § 5004; 735 ILCS 5/2-1303; CA CCP § 685.010.

D. Discovery

[A]t 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.¹¹ Just as 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.”¹² Liability insurance might have to be disclosed,¹³ but beyond that, the nature and location of the defendant’s property interests are beyond the scope of pre-judgment discovery.

1. Informal

* * *

2. Formal

... 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....¹⁴ * * *

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.

¹¹ 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).

¹² Fed. R. Civ. P. 26(b).

¹³ Fed. R. Civ. P. 26(a)(1)(A)(iv).

¹⁴ Fed. R. Civ. P. 69(a)(2); CA CCP §§ 708.020, 708.030; Tex. R. Civ. P. 621a; Fla. Stat. § 56.30(1).

Served upon the judgment debtor¹⁵ 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).¹⁶ 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 proceeding can be pursued only once per respondent, however, without special leave of court.¹⁷

* * *

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.¹⁸ 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 ... 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.¹⁹ * * *

¹⁵ Individual (natural person) debtor-respondents must receive personal or abode service. 735 ILCS 5/2-1402(b-1); Ill. Sup. Ct. R. 105(b).

¹⁶ The officially approved forms are available online at http://www.illinoiscourts.gov/forms/approved/small_claims/post_judgment_collection.asp.

¹⁷ Ill. Sup. Ct. R. 277(a).

¹⁸ 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.

¹⁹ 735 ILCS 5/2-1402(d-5).

3. GRAB

Once value has been located, it must be obtained and realized for the benefit of the judgment creditor. ...

A. Restrain

The power to grab the judgment debtor's property can be complicated or vitiated by a last-minute transfer of that property to a new owner or custodian who is more difficult to reach by ordinary process. Recognizing this problem, the law ... provides a means of restraining both debtors and third parties from alienating the debtor's property before a judgment creditor can take the steps to formally grab it.

* * *

[In] Illinois, ... [a] citation to discover assets served upon any person "may" (and invariably does) prohibit the recipient from making or allowing any transfer of property (or payment of a debt), then or thereafter within that person's control, in which the debtor has a non-exempt interest.²⁰ This restraint continues for any property coming into the person's possession until termination of the citation proceeding, which occurs automatically six months after the respondent's "first personal appearance" in response to the citation, though citation proceedings are often "continued" to prevent this lapse.²¹ [W]ithholding double the amount due on the judgment satisfies this directive and allows free transfer and transaction in surplus value. Illinois law adds to the ... warning that violation of this restraining order can be punished as contempt, inviting the court instead to simply enter judgment against a third party for the amount due on the judgment or the value of any property improperly transferred, whichever is less.

* * *

B. Record

One of the first simple steps a judgment creditor can take to prepare to seize value requires little effort for a potentially great return. Even before launching into formal discovery, the creditor can likely develop a sense of whether the debtor has an interest in any real property and, if so, where. Land is tied down and subject to public records, so this pursuit is more manageable than the hunt for personalty. No more detail than the county in which such property might be located is necessary. With that one piece of information, a judgment creditor can grab at least the debtor's attention (and willingness to pay voluntarily) if not some serious value in the debtor's interest in realty.²²

²⁰ 735 ILCS 5/2-1402(f).

²¹ Ill. Sup. Ct. R. 277(f). For respondents who simply answer the questions in the citation in writing and return it to the creditor's lawyer without a hearing, the date of these answers is generally construed to be the "first personal appearance" of the respondent. The court can extend the six-month termination date "as justice may require."

²² Note that a short-term leasehold interest is likely a personal right, not realty, so pursuit of the debtor's right to occupy realty for a time-limited term might be a challenge. See CA CCP § 695.035.

In contrast to old English process, modern US judgment enforcement procedure generally makes realty interests an easy target. [F]iling a certified copy (or sometimes transcript, abstract, memorandum, or other embodiment) of a money judgment in the county real property records (wherever a mortgage would be filed) creates a property interest called a *lien*—or more specifically, a judgment lien—as discussed in greater detail below in chapter 5.²³ ... This judgment lien encumbers (affects) any interest of the judgment debtor in realty within the county of recording, both at that point and acquired in the future during the life of the lien.²⁴

... In some states, the lien is enforceable just like a mortgage, leading to sale of the property. In Illinois, the judgment lien is explicitly equated with a mortgage and can be enforced by the same foreclosure procedure applicable to a contractual mortgage.²⁵ * * *

C. *Levy*

Which finally brings us back to the traditional method of enforcing money judgments. Imported from England, the writ of *fieri facias*—now almost universally called by its simpler English name, *writ of execution*, or simply, *execution*—remains the central enforcement tool in most of the US today,²⁶ though usually having shaken off many of the limitations of old English usage. Its cumbersome process and significant expense have led many states [including Illinois] to implement more direct and effective procedures for commanding the transfer of identified value from debtors and third parties to judgment creditors, as discussed at the end of this section.

1. *Execution* * * *

2. *Garnishment*

The law historically has struggled with the special concerns raised by property of the debtor in the possession of a third party. This challenge has been especially acute in the context of property that has no physical embodiment, intangibles and especially debts owed by a third party to the debtor. The third party possessor/obligor has not been before the court and may have claims to the property or defenses to payment of the debt that have not been properly adjudicated. Seizing such property or debts from third parties is often still referred to by its historical name, *garnishment*, a statutory creation designed to fill a major gap in the common law.

²³ CA CCP §§ 697.310, 697.340; 735 ILCS 5/12-101.

²⁴ The life of the lien is generally coterminous with the life of the judgment, but both might have to be separately revived, preserved, or re-memorialized to avoid lapse.

²⁵ Louisiana law is even more explicit about this, as the recorded judgment creates what is called a *judicial mortgage*. La. Civ. Code art. 3300.

²⁶ Illinois law contains vestiges of this earlier process, though a certified copy of the judgment is substituted for the execution writ as the document delivered to the public officer to initiate a levy. 735 ILCS 5/12-110, 12-111. Since the more comprehensive process of turnover orders in the citation to discover assets proceeding was significantly enhanced in 2008, levy has been less commonly used.

[Garnishment] ... most often implicates four kinds of value sources that are among the first and best targets of enforcement efforts: (1) the debtor's bank account, (2) the debtor's right to receive payment of wages, salaries, commissions, or other payment for personal services, (3) the debtor's rights in a business, and (4) intangibles, such as the debtor's causes of action against third parties, as well as licenses and rights related to intellectual property. These standout categories of property warrant a bit more concentrated attention.

a. Bank accounts

Perhaps the lowest-hanging fruits and probably the most common targets of judgment enforcement efforts are bank accounts. If the judgment debtor is foolish or unfortunate enough to have left a chunk of money sitting in a bank account, what better source of value to seize by way of simple third-party levy/garnishment against the bank? Actually, to be technical, a bank account is not a box of money, and it does not represent tangible property of the debtor; rather, a bank account is a debt owed to the judgment debtor. Banks do not hold very much money on deposit; instead, they make their profits in part by promising depositors to return an equivalent amount of value later, lending it in the meantime to borrowers and charging fees and interest. A bank account is the depositor's intangible right to enforce the bank's promise to return the equivalent value for any money placed on deposit (therefore, a bank account is also called more accurately a *deposit account*).

* * *

b. Wages, salaries, commissions

A second piece of low-hanging fruit, and many individuals' primary source of value, is the periodic debt due from an employer to pay wages, salary, commissions, or other compensation for personal services. This is also a "debt owed" to the judgment debtor, but at any given moment of garnishment, the debt is both future and recurring, neither of which was dealt with well by classical garnishment proceedings.

To overcome these complications, and in light of the central importance of this value to most working judgment debtors, most states developed special *wage garnishment* procedures, with special sensitivity for the protection of the debtor and employer. Note that the protections here apply only to debts for personal service compensation owed to natural persons, so debts owed to business entities on any sort of contract (and debts owed on non-personal service contracts even to natural persons) should be subject to ordinary levy/garnishment, with no special restrictions. [A] wage garnishment order generally gives access to future such debts and is usually not a one-shot deal, remaining in effect in most states until the judgment is fully paid or the debtor's employment is terminated.²⁷

* * *

²⁷ NY CPLR § 5231(f); CA CCP § 706.022; 735 ILCS 5/12-808(b).

The ordinary process in Illinois is quite different, avoiding the sheriff entirely, and is discussed in the next section, on turnover orders. But the result is similar, with one notable distinction. If the employer fails to pay over any amount that was supposed to be deducted from the debtor-employee's wages, the court can enter a judgment against the employer not just for the missed payment, but for the entire balance due on the judgment, unless the employer can convince the judge that this draconian remedy should not be imposed.²⁸ A couple of less notable exceptions allow the employer to keep an inconvenience fee of 2% of any installment deduction ... and the creditor's attorney is required to account and report to the employer and the debtor quarterly as to the amount remaining unpaid; otherwise, the employer can hold the wage deductions and not pay them over until this certification is received.²⁹

* * *

The principal difference between “ordinary” and “wage” garnishment is a set of restrictions on the amount of the debt—wages—that can be seized. A set of especially complicated provisions designed to protect particularly low-income debtors applies in fairly few cases (suing a minimum-wage defendant is a fool's errand) and the complex procedures for debtors to assert their rights in such cases are seldom invoked—because a combination of terror, denial, ignorance, complexity, and inconvenience effectively prevents these protections from being applied. Consequently, these complex restrictions apply to only a relatively small subset of judgment debtors and will be mentioned here only in a footnote.³⁰ The discussion here will focus on debtors with moderate to higher incomes shielded by more straightforward garnishment limitations.

The amount of wages that can be expropriated from a working debtor is limited by both federal and state law. Whichever limitation allows the judgment creditor to collect *less* governs. In other words, whichever limitation provides greater protection to the debtor's wages is the one that controls how much of these wages are available to a garnishing creditor.

²⁸ 735 ILCS 5/12-808(f).

²⁹ 735 ILCS 5/12-808.5, 12-818(c).

³⁰ For low-income debtors, federal and state laws protect 100% of wages up to a poverty-line level measured by a multiple of the federal or state minimum-wage; e.g., 30 or 40 times the minimum weekly wage multiplied by the number of weeks in a pay period. 15 USC § 1673(a)(2) (30 times); CA CCP § 706.050 (40 times). So if the current minimum wage is \$7.25 per hour, no matter how many hours the debtor works, the first \$217.50 per week (\$435 for the standard every-two-weeks minimum-wage pay period) is 100% exempt under federal law, and possibly more under the state equivalent. Every dollar the debtor takes home beyond this is fully garnishable (in California, only 50%) until the garnishment amount reaches 25% of the debtor's disposable income, when the restriction discussed in the text kicks in. That is, the amount available to a garnishing creditor is the *lesser* of 100% (50% in California) of the excess of the debtor's take-home pay over 30 or 40 times the minimum wage, or 25% of her disposable income. Clear? (That's meant to be a joke ...)

Federal law establishes the floor of wage protection. It restricts creditors' access to no more than 25% of the debtor's "disposable income," meaning the debtor's total (gross) salary minus any deductions "required by law to be withheld."³¹ This might or might not be the equivalent of "take-home" pay, since if the debtor's paycheck is reduced for voluntary transportation or other deductions not required by law to be withheld, "disposable" income may be a bit higher.

For example, if the debtor earns \$60,000 per year (gross), her paycheck will be not \$5000 per month, but perhaps only about 70% of that (\$3500) after required withholding for federal and state income taxes, Social Security and Medicare (often called FICA), and perhaps mandated retirement and healthcare premiums. If that employee also allows her employer to withhold \$500 for "tax-sheltered" transportation expenses (the jury is still out on whether *voluntary* retirement savings are "required to be withheld"), the debtor's \$3000 take-home pay after *all* deductions is not the basis for the federal 25% garnishment ceiling; rather, it is the \$3500 net after *required* deductions. Note that the maximum garnishment amount of \$875 (25% of \$3500) is deducted from the employee's *take-home* paycheck, leaving the employee in our example with a reduced take-home pay of \$2625 (\$3500 - \$875)—the employee has had to pay tax and FICA on the amount garnished.

About half the states build up from this floor, providing greater protection. ... Illinois [is] among them. Creditors can garnish only 15% of a debtor's gross wages in Illinois....³² So in the example above, a creditor could garnish a monthly maximum of only \$750 per paycheck (15% of the gross, pre-deductions total of \$5000) in Illinois ... since [this is] less than the federal maximum of \$875....

c. Business property, receivership, and investment securities

* * *

d. Intangibles

... [Another] valuable intangible target is rights associated with intellectual property; e.g., patents and copyrights. In light of the requirements in (preemptive) federal law for transferring intellectual property rights,³³ the most likely, and perhaps only, effective state law method of seizing IP rights is not execution, but a *turnover order* (discussed immediately below) directing the debtor to convey those rights in writing to a receiver or execution sale buyer.³⁴ * * *

³¹ 15 USC §§ 1672(b), 1673(a).

³² 735 ILCS 5/12-803; NY CPLR § 5231(b).

³³ See *Ager v. Murray*, 105 US 126 (1881) (reasoning patents and copyrights assignable only by a writing executed by rights holder, so simple execution could not transfer, but acknowledging that court could order rights holder or trustee on his behalf to execute such a written assignment).

³⁴ CA CCP §§ 708.620, 708.630 (also requiring receiver for debtor's interest in alcoholic beverage license); David J. Cook, "Post-Judgment Remedies in Reaching Patents, Copyrights and Trademarks in the Enforcement of A Money Judgment," 9 *NW J. Tech. & Intellectual Prop.* 128 (2010).

4. Turnover

... Lawmakers in Illinois [have instituted] streamlined procedures in recent years to remove much of the complexity—and often the sheriff—from the process.

Recall that, in Illinois, post-judgment discovery is initiated by the judgment creditor's service of a simple *citation to discover assets* on either the debtor or any third party, including a bank or employer. Once the debtor or third party has responded to this citation, either in writing or by appearing and testifying at a citation hearing, if that process reveals property or debts subject to enforcement, the judgment creditor's attorney simply requests that the court issue an order "compelling the application of [precisely identified] non-exempt assets or income discovered toward the payment of the amount due under the judgment."³⁵ *Et voilà!* This can often be done by walking back into the courtroom and requesting the order on the spot. Judges are accustomed to these requests, Cook County has judges dedicated to just such procedures, and such orders are routinely entered against debtors and third parties, including banks and employers, producing swift and effective judgment enforcement and ensuring close court scrutiny of enforcement actions (and minimizing abuse) in most cases.

Such a turnover order can accomplish essentially everything that any other enforcement device could accomplish, as part of one concentrated procedure. The debtor can be compelled to relinquish any property, including "choses in action," for sale by the sheriff or other agent (see the section immediately below), or to pay directly to the judgment creditor installments of income (so long as the payments do not exceed the applicable state and federal wage garnishment limits discussed above) and even to execute documents to convey title to land or other property or assign (or resign) rights in tangible and intangible property (including memberships in clubs or exchanges, such as the Chicago Mercantile Exchange³⁶). Third parties can be similarly compelled (e.g., banks and employers directed to turn over money directly to the judgment creditor). With the citation to discover assets procedure, Illinois has transitioned from a multi-stage enforcement process run by sheriffs to a single-stage procedure directly supervised and controlled by the courts and their much more direct power to resolve disputes and punish for contempt.

* * *

D. Monetize

The Achilles heel of the execution/turnover process is the means by which the debtor's property is ultimately transformed into money. ... For liquid assets, the turnover-order process avoids [a] sheriff transaction cost by allowing transfer directly from employer or other third party to judgment creditor.

³⁵ 735 ILCS 5/2/1402(a), (c).

³⁶ *Cf.* Haig, above note 2, at 28 (suggesting garnishment under New York law might reach the debtor's right to occupy a seat on the New York Stock Exchange).

But if the levied property is land or illiquid property, real or personal, tangible or intangible, it has to be monetized, and enforcement laws generally provide little flexibility in the liquidation process.³⁷ [A] turnover order ordinarily will direct turnover of illiquid property to the sheriff for liquidation at public auction.³⁸

Despite elaborate rules requiring the sheriff to provide broad and repeated notice to the bidding public,³⁹ these sales are infamous for producing very depressed sale proceeds.⁴⁰ The value even of land is reduced by the existence in about half of the states of a post-sale right of *redemption*, by which the debtor can repurchase the land from the auction buyer for the price paid (with interest) within a period of six months to a year.⁴¹ Except in auctions involving items like cars with a robust secondary market, few public sheriffs' auctions produce spirited bidding at all, much less bidding by people expecting anything other than a "fire sale" bargain-basement discount. The most likely outcome of this public auction façade is that the judgment creditor will win the auction by bidding in a credit of a certain amount due on the judgment,⁴² pay the sheriff's fees and expenses for conducting the auction, and then resell the land/item later in a more commercially reasonable, privately negotiated sale for something approximating market value. The antiquated sheriff's auction procedure benefits only sheriffs and auctioneers; experts have long recognized that it harms everyone else involved, both debtors and creditors and potentially even the communities in which auctioned realty is located.⁴³

While it might have been common in 14th-century Italy to see public execution auctions of household items like clothing, bedding, and furniture,⁴⁴ such items in the modern US are likely to produce either no bidding or insufficient bids to cover the costs of sale. Ethical sheriffs will avoid levying on low-value items, and creditors achieve little more than wasted time and money pursuing levy on such items (the evil pleasure of seeing the judgment debtor's personal effects squandered is not a legitimate aim). ...

³⁷ Compare the flexibility in the foreclosure process in Article 9 of the UCC, which allows a secured creditor who has repossessed collateral to "sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing," so long as the disposition is "commercially reasonable." UCC § 9-610(a)-(b).

³⁸ 735 ILCS 5/2-1402(e).

³⁹ See, e.g., NY CPLR § 5233(b), 5236(c)-(d); CA CCP §§ 701.530-701.560; Tex. R. Civ. P. 647; Fla. Stat. § 56.21.

⁴⁰ William C. Whitford, "A Critique of the Consumer Credit Collection System," 1979 *Wisconsin L. Rev.* 1047 (noting prices at sheriff's auctions are "notoriously low" aside from automobile auctions).

⁴¹ New York and California abolished redemption rights in the mid-1900s, but Illinois has not. 735 ILCS 5/12-122 (6 months).

⁴² See, e.g., CA CCP § 701.590(b).

⁴³ Cohen, above note 45, at 1026; Ann M. Burkhart, "Fixing Foreclosure," 36 *Yale L. & Pol'y Rev.* 315 (2018).

⁴⁴ See Daniel Lord Smail, *Legal Plunder: Households and Debt Collection in Late Medieval Europe* (Harvard Univ. Press 2016).

The Illinois citation to discover assets process contains a provision to avoid both the destruction of value in a public auction and the diversion of value to sheriffs and auctioneers. While the original, and still default, rule is that property will be ordered turned over to the sheriff for sale at public auction, the statute as of 2008 allows the court to order a sale “by the debtor, third party respondent, or by a selling agent other than the sheriff” in any case where “another method of sale is more appropriate.”⁴⁵ This still does not make for profitable pursuit of low-value personal items, but it does increase the efficiency and effectiveness of the property execution process involving items of moderate value.

E. Expand

* * *

1. Voidable Transactions

For hundreds of years, wily debtors have attempted to put their property beyond the reach of creditors by transferring it to friendly third parties for safekeeping. Such transfers might be formal and complete, conveying ownership of the property, or informal or incomplete, simply shifting the appearance of ownership—possession being nine-tenths of the law in the eyes of the public. Often, this allows the judgment debtor to continue to enjoy the benefits of owning the property without facing the danger of potentially losing it to an executing judgment creditor. In any event, such transfers harm creditors by making value that would otherwise be available to them unavailable, either technically or practically.

Also for hundreds of years, lawmakers have armed creditors with the ability to challenge these transfers and recover the value improperly alienated.... Today, state laws on “fraudulent transfers” are fairly uniform ... The first thing to note about these statutes is that they create a cause of action against *third-party transferees* of the debtor’s property, not against the debtor. A judgment against the debtor would do the creditor little good—the creditor already has a judgment against the debtor, who has thwarted its enforcement by transferring away property. These statutes expand the range of property reachable by enforcement by (1) treating property conveyed to third parties as still belonging to the debtor, (2) treating the conveyance as “avoided” so the property can be seized in the execution proceedings, or (3) awarding the creditor a money judgment against the third party for the value of the property the debtor conveyed away.

* * * [D]etails [of this law] are well beyond the scope of this book. A course in Bankruptcy or Debtor-Creditor Law is highly advised. For now, just recognize that ... [s]ignificant value previously transferred away (alienated) might be recovered ... if the potential return warrants the substantial expense and effort of such a further adversary lawsuit.

2. Veil Piercing

* * *

⁴⁵ 735 ILCS 5/2-1402(e).

4. SHIELD

Collecting judgments against individual, natural persons is complicated by ... important protections the law provides only to such people, and sophisticated individuals and business entities can make special arrangements to shield their assets from judgment creditors in advance. First, a range of property owned by individuals is shielded from the effects of judgment enforcement, *exempt* from seizure and sale. Second, ... a sub-industry of lawyers and accountants markets techniques for putting assets of high-net-worth debtors beyond the reach of creditors ahead of time. These asset protection schemes represent a final shield that should be borne in mind by creditors and debtors alike.

A. *Shielding substance—property exemptions*

The state is willing to underwrite the collection of private money judgments, but it is also concerned about judgment debtors being denuded of all assets and becoming public burdens. Long ago, a compromise emerged in Europe and has continued to this day to extend some degree of protection to judgment debtors to prevent their utter destitution at the hands of avaricious creditors. For reasons of both political expediency and moral conviction, all states place a range of any individual judgment debtor's property outside the reach of enforcement by private money judgment creditors. Such property is generally said to be *exempt* from actions to enforce a money judgment. Generally, only the property of natural individuals is protected; because business entities do not have families or souls, their property can be seized in its entirety and the entity brought to its bitter end.⁴⁶

While most of the exemption action is at the state level, federal law skims a range of liquid value sources off the top with preemptive exemptions of a wide variety of benefits payments. Essentially any portion of an individual's bank account that is attributable to federal benefits of any kind is exempt from creditor process, and federal law requires banks to track two months of electronic deposits of these benefits and sequester the funds, safe from private execution.⁴⁷ The list includes payments related to the following: (1) social security old age, survivors, and disability insurance benefits, (2) retirement benefits for federal employees and railroad workers, (3) lighthouse keepers' surviving spouse benefits, (4) longshore and harbor workers death and disability benefits, (5) military pay, retirement, and survivors benefits, and (6) veterans benefits.⁴⁸ Most states similarly exempt state benefits of a variety of kinds, such as unemployment benefits, workers compensation, and public assistance such as aid to families and children. There is an especially hot corner of Hell reserved for ordinary money judgment creditors who would pursue people reliant on these sorts of hardship aid, anyway.

⁴⁶ See, e.g., CA CCP § 703.020(a); Tex. Prop. Code § 42.001(a); 42 Pa. Cons. Stat. §§ 8123(b)(2); 735 ILCS 5/12-1001(j) (excluding property used for business purposes or not owned by an individual).

⁴⁷ 31 CFR § 212.1-212.12; 76 Fed. Reg. 9939 (Feb. 23, 2011), 78 Fed. Reg. 32,099 (May 29, 2013).

⁴⁸ See 5 USC §§ 8130, 8346, 8470; 10 USC §§ 1440, 1450; 22 USC § 4060; 28 USC § 376(n); 33 USC §§ 771-775, 916; 37 USC § 701; 38 USC § 5301; 42 USC §§ 407, 1383; 45 USC §§ 231m, 352(e).

The great majority of real and personal property exemptions are found in state law. The scope of these exemptions varies greatly from state to state, reflecting often deep-seated local political sentiment regarding debtors and creditors.... The notion of exempting a debtors' real property *homestead* from the reach of creditors began in Texas in 1839⁴⁹ and spread to most other states thereafter.... Personal property exemptions are much older, dating back millennia in some cases, but modern exemptions have become more and more generous in a few states in particular....

For both real and personal property, *equity* is the value in property that is not encumbered by another third-party interest. Exemption laws often apply only to a limited amount of this equity value, rather than to an item or series of items themselves, as we will see below. For example, most people buy their home with money borrowed from a bank, and to secure their promise to repay that money, they grant the bank a mortgage (or deed of trust), a property interest that allows the bank to seize the property if the loan is not timely paid. The amount of the unpaid bank loan backed by this mortgage is value the property owner has reserved for the mortgagee bank (temporarily, on a contingent basis). Any unreserved value in excess of the mortgage encumbrance (and any other similar temporary give-aways or *liens*, as discussed in the next chapter) is the debtor's equity. Any equity in excess of a value-limited exemption is consequently unprotected and available for judgment creditors. * * *

5. Illinois

The outdated exemptions⁵⁰ in Illinois are fairly middle of the road,⁵¹ ... The homestead exemption covers only \$15,000 in equity value (\$30,000 if two or more judgment debtors own the property) in real or personal property "occupied by him or her as a residence."⁵² If the property is owned by a married couple who have planned ahead and hold title specifically "in tenancy by the entirety," however, the property is fully exempt unless both spouses are liable on the judgment.⁵³

The Illinois personal property exemption statute has no provisions for tracing and safeguarding exempt public or private benefits (or wages) deposited directly or otherwise into a bank account (though federal law accomplishes this for *federal* benefits now, as described above),⁵⁴ and it has no burden-shifting provisions for the debtor to claim or the creditor to oppose any exemptions. The exemptions not

⁴⁹ Lena London, "The Initial Homestead Exemption in Texas," 57 *Sw. Hist. Q.* 432 (1954).

⁵⁰ For a scathing indictment of outdated enforcement laws, including exemption laws that have long trailed economic developments, see Alfred F. Conard, "An Appraisal of Illinois Law on the Enforcement of Judgments," 1951 *Univ. Ill. L. Forum* 96.

⁵¹ 735 ILCS 5/12-901, 12-1001.

⁵² 735 ILCS 5/12-901.

⁵³ 735 ILCS 5/12-112.

⁵⁴ Illinois law exempts payments of retirement benefits ... 735 ILCS 5/12-804, [and] the proceeds of the sale of exempt property also remain exempt, 735 ILCS 5/12-1001(j), but the statute makes no reference to tracing exempt funds once deposited into a bank account....

limited by dollar value are self-executing, imposing a duty on the sheriff (or court) to disregard such things as necessary wearing apparel, bibles, school books, family pictures, and professionally prescribed health aids, along with several sources of benefit funds.⁵⁵

But three exemptions are limited by dollar value of equity (not indexed for inflation), including \$2400 in a motor vehicle, \$1500 in tools of the debtor's trade, and a \$4000 wildcard exemption in any other property.⁵⁶ For these, the debtor might have to choose which item(s) to exempt. The statute suggests the sheriff will select the property to exempt unless the debtor files "a schedule of all of his or her personal property of every kind and character," prompting the court to "summon 3 householders [to] impartially appraise the property of the debtor," from which the debtor must choose the item(s) she or he wishes to exempt and retain.⁵⁷ In light of the paltry values and the complex procedure involved here, it seems highly doubtful that this process ever unfolded as described in the statute with any regularity. With the advent of the citation to discover assets, the debtor's assertion of exemptions now usually occurs at the citation hearing, under court supervision.⁵⁸

B. Shielding against procedure—Fair Debt Collection Practices Act

* * *

C. Shielding assets ahead of time—asset protection schemes

A small subset of judgment debtors will have anticipated the challenge of facing down judgment creditors, and they will have attempted to avert the negative effects of judgment enforcement in advance. These are people with substantial assets and/or income—sufficient both to be worth protecting from creditors and to warrant the substantial expense of paying a lawyer to set up and maintain special asset protection arrangements. They also tend to be people who face higher than average litigation risk, such as doctors, corporate executives, and perhaps husbands planning on dumping their spouses without dividing their substantial wealth.

For these people, an industry of lawyers offers to set up *asset protection* schemes of a variety of kinds. The basic idea here is to separate legal ownership and control of assets from most of the benefits of the value of those assets. That is, make someone else the owner of the property with the legal power of control, but retain practical control and enjoyment of the benefits of that property to a greater or lesser degree.

Once again, the complex and varying details are far beyond the scope of this overview, but the common point of departure is the creation of an artificial entity ... commonly a trust, and a transfer of assets (usually liquid, like money or investment securities) to the entity, to be controlled by ... an "independent" trustee. The

⁵⁵ 735 ILCS 5/12-1002.

⁵⁶ 735 ILCS 5/12-1001(b)-(d).

⁵⁷ 735 ILCS 5/12-1002.

⁵⁸ 735 ILCS 5/2-1402(b), (c-5), (l) (noting the debtor's opportunity to assert exemptions).

transferor (... *settlor* of a trust) retains little or no legal right to manage or control the assets—though perhaps maintaining practical control if the manager is a friend or relative—ostensibly retaining only a beneficial interest in a stream of limited payments to be distributed from the ... trust from time to time.

* * *

This is a fascinating and creative area of law practice that can draw on the laws of many jurisdictions and sometimes call for visits to interesting and beautiful places like Aruba, Bermuda, and the Cayman Islands, or at least electronic communication with even more exotic locales, such as the tiny South Pacific Cook Islands—all of which are (in)famous havens for asset protection trusts. Less costly and complex asset protection schemes also abound closer to home, using simple domestic entities, perhaps managed by friends or family members.

Because these schemes are designed to put property beyond the reach of creditors, they are susceptible to being unwound as fraudulent conveyances, as discussed in the preceding chapter.⁵⁹ But if the custodian of the property is in a jurisdiction that refuses to cooperate with US authorities, much less judgment creditors, the risk of legal unwinding can be minimized. And increasingly, US states are enacting statutes that insulate certain asset protection trusts from the precise danger of fraudulent conveyance ... attack....

Moreover, to execute on assets or engage a fraudulent conveyance action, one has to know that the assets exist in third-party custody, and one has to finance the pursuit of expensive and possibly complex litigation to retrieve that value, either domestically or abroad. Sometimes ownership of assets need not even have been relinquished. It might be sufficient simply to park value in a jurisdiction whose banking and other authorities assiduously refuse to cooperate with or provide information to foreign interlopers, like foreign tax authorities, but especially judgment creditors. Simple moves that make information gathering more challenging, and especially strategies that require expensive litigation, are often practically sufficient to defeat judgment creditors even if the strategies are built on a legally vulnerable foundation.⁶⁰ These hurdles alone are often sufficient for asset protection schemes to achieve their creditor-rebuffing goal.

⁵⁹ See, e.g., Bruce A. Markell, “Comments on Selfishly-Settled Trusts: Fulminations Over Fraud and Asset Protection Trusts,” 37 *Bankr. L. Letter*, No. 11, Nov. 2017 at 1. A much simpler form of asset protection for the other 99% is simple exemption planning; that is, a debtor anticipating a judgment might sell non-exempt assets and invest the proceeds to buy exempt property, thus laundering the non-exempt value and shielding it from judgment creditors. Some states explicitly label this fraud and deny the debtor the benefit of an exemption so obtained. 735 ILCS 5/12-1001(j). Elsewhere, less aggressive and obvious exemption planning is often accepted if it withstands application of the aphorism, “when a pig becomes a hog, it gets slaughtered.” In other words, debtors who don’t push it might get away with a bit of asset shielding in this way.

⁶⁰ See Cook, above note 140, at 150 n.97 (noting that OJ Simpson conveyed the copyright to his book, *If I Did It*, to a corporation owned by his children, in part to evade enforcement of the wrongful death judgment obtained by the parents of Ron Goldman, the victim of the murder described in the book).

The creditor parry to this debtor dodge is to engage the coercive power of the court against the judgment debtor. If the property cannot be retrieved without the debtor's consent, that consent can be compelled via a *turnover order* directed at the judgment debtor, as discussed in part C.3. of the preceding chapter. If information will be released by foreign banking or other authorities only with the debtor's consent, the debtor can be compelled to sign a *consent directive*,⁶¹ authorizing foreign authorities to release the sought after information. Even if the debtor actually lacks the legal and practical ability to retrieve the assets themselves, a judgment creditor might access the future payment stream in advance by obtaining an *assignment order*, similar to a wage garnishment order, directed not at the payor, but rather directing the debtor to make an advance assignment of rights to payment in the future.⁶² The effectiveness of any of these techniques depends on the state and the judge involved, but for every evasive maneuver today, many states continue to develop countermeasures to leverage courts' authority (and contempt power) over any persons within the ambit of their personal jurisdiction.

⁶¹ *See Doe v. US*, 487 US 201 (1988).

⁶² CA CCP §§ 708.510.

5. BATTLE

If ... the judgment debtor is not paying one judgment creditor, there is a fair chance that other creditors are similarly being left unpaid. It is highly likely in most coercive judgment enforcement scenarios that the enforcing creditor will face competition from *other* creditors for the limited value in the debtor's property. The outcome of such battles hinges on the *order of priority*—the place in line—of the various competing claims with respect to various sources of value. Another vital aspect of money judgement collection, then, is to understand how creditors arm themselves for this battle and how their priority is determined.

Note that the battle here is over value in specific items of the debtor's property. A judgment creditor has no rights in any specific property simply by virtue of having recovered a money judgment. The creditor has to legally connect the *in personam* rights represented by a judgment to *in rem* rights in a specific item or source of value belonging to the judgment debtor. The legal connection established between a judgment or other debt and a property interest is called a *lien* (pronounced "leen"), a word deriving from the French word *lien*, meaning tie, binding, or connection.

A. *Liens*

Liens come in several varieties. The one discussed here is called a *judgment lien* (or *execution lien*), created by the judgment creditor's enforcement action to bind an unpaid judgment debt to an interest in specific property that was the object of the enforcement action. Many other liens are consensual; that is, the debtor grants the lien to a creditor, usually a bank lender, in a contract to bind a debt, usually a loan, to an interest in specific property. For example, a debtor who borrows money from a bank to buy a house might grant the bank a lien to tie the debt to the house—if debtor fails to repay the loan, bank can follow the lien to grab the house. This lien is called a *mortgage*. If the property tied to a loan debt is personal property (including intangibles), the lien is called a *security interest*, governed by Article 9 of the Uniform Commercial Code (UCC), as adopted by every state. Finally, the law sometimes imposes a lien on some item(s) of the debtor's property automatically whenever the debtor enters into a credit transaction. For example, if the debtor buys an item on credit, or rents an apartment or office space, or has a car repaired without paying in advance, the law automatically grants a lien to tie some item(s) of the debtor's property (the purchased item, all personal property in the rented space, the repaired car) to the debt for the price of the sale, lease, or repair. This lien arises automatically by statute or common law and so is called a *statutory lien* or *common law lien*. Public authorities also often impose a lien on *all* of a taxpayer's property, tied to many unpaid public debts, especially federal taxes.

In addition to tying a debt to specific property, a lien reserves a place in line if more than one claimant is pursuing value in that item of property. A lien is like a reservation at an exclusive restaurant with only a few seats. Seats are generally allocated in the order in which reservations are received in time (though some VIPs can get special priority even if they call in late). If 12 parties of two, or one large party of 24, have already reserved all the seats, no dinner for you! If only one seat remains unreserved when you call, you can take that seat if you are willing to ditch your dinner partner—you can make it up to him or her later at a different restaurant. Likewise in property execution, if a valuable item, like a bank account, is already encumbered by liens for claims exceeding its value, that bank account is unavailable for late-arriving lien claimants. But if a bit of value is unencumbered by previous liens, a late-arriving judgment creditor can collect a partial recovery from that value, and the remainder can be pursued by making connections—liens—to other items of value using the techniques discussed in this book.

Any lien must be analyzed in terms of three steps: (1) creation (or *attachment*), (2) effectiveness against other third parties with various types of claims to the specific property subject to the lien (or *perfection*), and (3) *priority* of the liens on that specific property. A lien that has first (or higher) priority is called *senior*, whereas a lien with lower priority is called *junior* or *subordinate*.

... Note that the debtor's equity exemption, discussed in the preceding chapter, is a special set-aside that stands before judgment liens, but behind contractual liens like mortgages and security interests. The proceeds of the sale/collection of the liened property are distributed to the claimants and the debtor in the order of priority of their liens and exemptions. Priority among liens is usually a simple matter of timing: the first lien or other interest that is effective against a particular third party has priority over that third party's claim or lien.⁶³

B. Judgment/execution liens on real estate

This three-step analysis is quite simple for liens on realty. Real property judgment liens are created by recording or docketing the judgment as described in section B of chapter 3 above. The effective date of the lien is the moment of recording of the operative document (abstract of judgment, docket, memorandum) and it reaches all rights of the debtor in real property in the county of recording, not only rights existing at that time, but also rights acquired any time in the future for the life of the lien, which is generally coterminous with the life of the judgment. This recording provides record notice of the judgment creditor's lien to the world, so these liens on realty are immediately effective against all other claimants. With few exceptions, the first recorded documents create the higher priority, senior liens; in other words, first in time, first in right.

⁶³ The few complex exceptions to these rules, especially in the context of contractual security interests, are beyond the scope of this book—they are covered, e.g., in a Secured Transactions class.

C. Judgment/execution liens on personal property

The analysis for liens on personal property (tangible and intangible) is slightly more complicated. Such liens can be created in a variety of ways, their third-party effective dates vary depending upon the competing claimant, and their durations vary. But if the three-part creation-effectiveness-priority analysis is conducted step-by-step, the analysis flows quite logically.

1. Creation

[In Illinois, service of a] citation to discover assets creates a lien on *all* of the debtor's *personal* property in the possession or control of the respondent (debtor or third party), as well as in all debts owed by a third-party respondent to the judgment debtor.⁶⁴ ... The lien of an Illinois citation to discover assets ... lasts only until disposition of the citation (six months, though often continued), but this lien also encumbers any such property acquired later during the citation lien period.⁶⁵ [This] six-month duration can be extended by the court; otherwise, specific property must be located and subjected to a turnover order within these periods, or the liens are lost. To avoid a citation lien expiring, Illinois allows the judgment creditor to request that the court "impress a lien against a specific item of personal property" with a duration just like the judgment lien of a recorded judgment, coterminous with and renewable for the life of the judgment.⁶⁶ * * *

2. Third-party effectiveness (and priority)

Recall that one of the twin purposes of a lien is to reserve a place in a line of claimants all clamoring for the value of an item of the debtor's property. For a lien to do this job, the law sometimes requires that third-party competing claimants have some way of knowing that the lien exists and stands before them; otherwise, the lien is not effective as to such claimants.... But the world receives no notice when execution is carried out privately by serving the debtor or a third party with ... a citation to discover assets.... However, if at the point when ... competing claimants obtained their interests in the debtor's property, they had notice [that] the judgment creditor already had made a reservation for a seat, these late-comer VIPs are not allowed to exercise their "favored" rights and occupy the earlier judgment creditor's reserved seat. How would they receive such notice? Rarely. But a recent amendment to the Illinois citation lien statute suggests an answer. If the temporary citation lien has been perpetuated on specific property by the court's "impressing" a lien on that property, as discussed above, such a lien "may ... be recorded" in the UCC records "filed as an informational filing."⁶⁷ This presumably provides constructive notice to the world For detailed examination of this challenging and intellectually stimulating topic, take Secured Transactions.

⁶⁴ 735 ILCS 5/2-1402(m) (including "choses in action").

⁶⁵ 735 ILCS 5/2-1402(m).

⁶⁶ 735 ILCS 5/2-1402(k-10).

⁶⁷ 735 ILCS 5/2-1402(k-10).

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 Code⁶⁸ 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 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.⁶⁹

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 ... 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 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,

⁶⁸ 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.

⁶⁹ 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).

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. * * *

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.⁷⁰ 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.

⁷⁰ 11 USC § 362(a).

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.⁷¹

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.⁷² 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 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.⁷³

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

⁷¹ 11 USC § 542.

⁷² 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.

⁷³ 11 USC § 727(a)(8)-(9).

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.⁷⁴ 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 an individual person.⁷⁵ 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.⁷⁶ 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

* * *

⁷⁴ 11 USC § 727(a)(2).

⁷⁵ 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).

⁷⁶ 11 USC § 523(a)(6).

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 [statutory appendix] and apply that law to the degree it provides answers. ...

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, 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?

Appendix

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

**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 chases 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. * * *