

#39.70

4/20/72

First Supplement to Memorandum 72-35

Subject: Study 39.70 - Attachment, Garnishment, Execution (Prejudgment Attachment Procedure--Property Exempt From Attachment)

Attached to this memorandum is a draft of Article 8 (Property Exempt From Execution). See Exhibit I (pink). This draft presents another attempt to define what property shall be exempt from attachment. You will note that Article 8 provides only the substantive standards for exemption. Articles 6 and 7 provide the procedures for applying these standards. In this regard, it should be noted that, where the plaintiff applies ex parte for the issuance of a writ of attachment, he must show affirmatively that the property which he seeks to attach is subject to attachment. See Sections 542.030(c), 542.040, 542.060(b). After the levy, the defendant, in turn, may claim an exemption if he believes that the prior (ex parte) determination was in error. See Section 542.010(b). Where the issuance of the writ follows a noticed hearing, the defendant has an adequate opportunity to claim the exemptions provided by Article 8 prior to any attachment. See Sections 543.030 through 543.090. In the light of these procedural provisions, we have not attempted to state whether certain exemptions are or are not "automatic." The issue whether certain property may be attached is always subject to prior judicial review, hence, we believe, the judicial officer need only be informed as to what standards to apply to the facts presented to him. These standards are discussed below.

Section 544.010. This section provides the basic exemptions from attachment. They are based for the most part upon existing statutory exemptions from both attachment and execution. One issue the Commission may wish to consider again is whether, or to what extent, it is desirable to provide

exemptions for attachment different from the exemptions for execution. This is not to imply that the exemptions from execution are necessarily satisfactory but rather that these exemptions might be revised in conjunction with the exemptions from attachment and that conformity, where possible, might be a desirable goal.

Earnings. Section 690.6 presently provides in part:

690.6. (a) all of the earnings of the debtor received for his personal services shall be exempt from levy of attachment without filing a claim for exemption

(b) One-half, or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption

(The Earnings Protection Law makes no change in the exemption from attachment. The changes made in the exemption from execution, you are familiar with.)

At an earlier meeting, the Commission suggested that the total exemption of earnings from attachment might be undesirable. We have, accordingly, in subdivision (a) of Section 544.010 suggested a possible alternative. Subdivision (a) would exempt a certain (unspecified) flat amount or such greater amount as is exempt from execution. (Section 690.6 would be revised to provide an exemption from execution only; i.e., subdivision (a) of Section 690.6 would be deleted or comparable changes would be made in the Employees' Earnings Protection Law). The alternative provided is based on a fixed dollar amount. A different alternative could be based on time; i.e., "all earnings received [for personal services rendered at any time] within 30 days next preceding the levy." Or a third, more restrictive alternative could combine the fixed amount and time limitations. What is the Commission's pleasure?

We have not attempted to provide for child support or alimony payments in this section. We think that these would be adequately protected under Section 544.020 if indeed an attempt were made to attach them at all.

Bank accounts. Subdivision (b) would simply exempt a fixed amount in every bank account. This exemption is not limited to bank accounts in the name of an individual; corporate, partnership, and other business accounts are afforded the same protection. Under existing law, only savings and loan and credit union accounts are protected and even the Employees' Earnings Protection Law provides only a very limited exemption (\$100) for bank accounts. The decision was made earlier that the exemption would not be an aggregate amount. However, this decision was before we had created the procedures now drafted. We think it would be possible now to have an aggregate exemption. It would, however, be less convenient and simple for the banks and would, of course, provide less protection to defendants. What does the Commission wish to do?

Household goods. Section 690.1 now makes the following exempt:

Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle. Works of art shall not be exempt unless of or by the debtor and his resident family.

Subdivision (c) is based on Section 690.1 but makes some significant changes. The draft attempts to make clear that the exemption is limited to personal property located at the defendant's principal place of residence and more importantly suggests that this exemption be limited to an aggregate fixed amount. The latter suggestion poses problems of valuation and the issue of who selects which property is to be protected. These problems can be explored

further if you wish to cut back the present total exemption. (Section 690.1 would appear to be limited to property "necessary" to the defendant. In fact, however, it seems that the section has been applied in a manner that, for practical purposes, makes the exemption total. See Independence Bank v. Heller, 275 Cal. App.2d 84, 79 Cal. Rptr: 868 (1969). See also Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer 155 (1972)(Exhibit II attached).) The draft adds the term "personal effects" but eliminates the partial enumeration of what is or might be exempt. Personal effects, we believe, would cover such items as jewelry and watches as well as perhaps guns, golf clubs, camping equipment, musical instruments, and so on. The staff believes that, if a dollar limit is provided, a defendant should be able to protect recreational equipment and the Comment to this section would so state. If "personal effects" is not a broad enough term, we may wish to be more specific in the statute. We do not, however, favor listing specific items such as shotguns and rifles.

Motor vehicles. Section 690.2 now makes the following exempt:

One motor vehicle with a value not exceeding three hundred fifty dollars (\$350), over and above all liens and encumbrances on such motor vehicle, provided that the value of such motor vehicle shall not exceed one thousand dollars (\$1,000).

Subdivision (d) adds a sentence based on Assemblyman Murphy's AB 1394. AB 1394 also would also increase the defendant's exempt equity to 600 dollars and the total value of the vehicle to 1,500 dollars. The staff believes that, even with these increases, the exemption from attachment would be too low. If a complete exemption for one vehicle is not desired, we suggest something in the area of 1,500 dollars equity, and 6,000 dollars total value would be a desirable exemption from attachment.

Mobilehome. Section 690.3 now makes the following exempt:

One house trailer in which the debtor, or the family of such debtor, actually resides, of a value not exceeding five thousand dollars (\$5,000) over and above all liens and encumbrances on that house trailer, provided neither such debtor nor the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

Subdivision (e) picks up the following definitions from the Vehicle Code:

362. A "house car" is a motor vehicle originally designed, or permanently altered, and equipped for human habitation, or to which a camper has been permanently attached. . . .

635. A "trailer coach" is a vehicle, other than a motor vehicle, designed for human habitation, or human occupancy for industrial, professional or commercial purposes, for carrying property on its own structure, and for being drawn by a motor vehicle.

9840.

(a) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

.

We have placed a ten thousand dollar limitation on this exemption. It should be noted that the comparable homestead exemption is 20,000 dollars for the head of a family or a person 65 years of age or older or 10,000 dollars for other persons. See Civil Code Section 1260. Inasmuch as we are concerned here with an exemption designed for the same purpose, the exempt amounts should perhaps be the same. In fact, AB 324, introduced this year would include a mobilehome under the definition of a homestead. One difficulty with that

approach lies in the homestead recording procedure. We are dealing here with property that is or can be moved around. Recording in the county where the property is situated hardly seems satisfactory. Do you want us to conform the limitation in subdivision (e)(and in Section 690.3) to those provided for homesteads?

Tools of the trade. Section 690.4 now makes the following exempt:

To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances on such items at the time of any levy of attachment or execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood. [Emphasis added.]

Subdivision (f) differs from Section 690.4 in two significant respects. One, we have eliminated the requirement that tools of the trade be used exclusively in the defendant's work and two, the requirement of personal ownership has been substantially undercut by Sections 544.030 and 544.040. See below.

Accounts receivable and inventory. Subdivision (g) has no counterpart in the existing law. We have included it here as a focus for discussion. We merely note that it seems inequitable to exempt a workman's tools but not a storekeeper's stock in trade.

Property otherwise exempt from execution. Subdivision (h) is a catchall. It embraces not only the exemptions provided in the 690 series of the Code of Civil Procedure, but also homesteads, spendthrift trusts, and other special exemptions provided in other codes.

Section 544.020. This section provides an additional claimed exemption available to a defendant upon a showing of need. It is perhaps more broad

than the "essential for support" provision of the Employees' Earnings Protection Law and is based on a phrase from Randone suggesting that "necessities" should be exempt.

Sections 544.030 and 544.040. These sections present another approach to the problem of exempting property owned by a closely-held business. Here we permit certain shareholders or general partners to claim the same exemptions in corporate or partnership property that an individual defendant can claim in property which he owns. Two points might be emphasized. The shareholder or partner does not have to be a defendant but he must otherwise qualify for the exemption--e.g., as to tools of the trade, he must show that he personally uses the exempt property. See subdivision (f) of Section 544.010. The staff has not attempted to set forth the qualifications under Sections 544.030 and 544.040. That task we leave to the Commission if the basic approach appears promising.

At the May meeting, we hope to be able to review Article 8 and put it into satisfactory shape for inclusion in the tentative recommendation.

Respectfully submitted,

Jack I. Horton
Assistant Executive Secretary

EXHIBIT I

Article 8. Property Exempt From Attachment

§ 544.010. Property exempt from attachment

544.010. The following property of the defendant shall be exempt from levy of attachment.

(a) [] dollars (\$), or such greater amount as is allowed by Section 690.6, of the earnings of the defendant received for his personal services.

(b) [] dollars (\$), deposited in a deposit account, as defined in Section [], standing in a defendant's name, either solely or otherwise.

(c) Household furnishings, appliances, wearing apparel, personal effects, and provisions and fuel, [ordinarily and] reasonably necessary to, and personally used or procured for use by, an individual defendant and members of his household at his principal place of residence, to the maximum aggregate actual cash value of [] dollars (\$) over and above all liens and encumbrances on such property at the time of levy.

(d) One motor vehicle with a value of [] dollars (\$) over and above all liens and encumbrances on such vehicles at the time of levy [provided that the total value of such vehicle shall not exceed [] dollars (\$)]. The value of such vehicle shall be the lowest [wholesale][retail] blue book value for a motor vehicle of that year and model.

§ 544.010

(e) One housecar, trailer coach, or vessel (as defined in Sections 362, 635, and 9840 of the Vehicle Code), used as the principal residence of an individual defendant, with a value not exceeding ten thousand dollars (\$10,000) over and above all liens and encumbrances on such housecar, trailer coach, or vessel, provided neither the defendant nor his spouse has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code.

(f) Tools, implements, instruments, uniforms, books, equipment, commercial or farming vehicles, vessels, and other personal property [ordinarily and] reasonably necessary to, and personally used by, an individual defendant in the exercise of the trade, business, profession, or agricultural pursuit by which the defendant earns his livelihood to the maximum aggregate actual cash value of [] dollars (\$), over and above all liens and encumbrances on such property at the time of levy.

(g) Accounts receivable and inventory with an actual cash value not exceeding [] dollars (\$), over and above all liens and encumbrances on such property at the time of levy.

(h) To the extent not otherwise covered by this section, all property by rule of law exempt from execution.

§ 544.030. Claim of an individual in the property of a closely-held corporation carrying on a business or farm operation

544.030. (a) Where property held in the name of a corporation carrying on a trade, business, or farm operation is attached or sought to be attached, an individual (whether or not a named defendant) shall be entitled to claim the same exemptions in such property as an individual defendant may claim as to property owned by him upon a showing that:

(1) [20?] percent or more in value of the voting stock of the corporation is [owned by him][is held in his name].

(2) The corporation has [10?] or less shareholders.

(3) The corporation has [] or less employees [not including shareholders].

(4) The average annual net earnings of the corporation is not more than [] dollars (\$).

(b) For the purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the corporation, before federal and state income taxes, during the two taxable years immediately preceding the date of the levy, and includes any compensation paid by the corporation to any individual qualified to claim an exemption under this section, his spouse, or his dependents during such two-year period.

(c) No individual shall be entitled to make a claim pursuant to this section unless the corporation makes available its state income tax records, and its financial statements and accounting records, for audit for confidential use to determine the eligibility of the individual to claim an exemption.

§ 544.040. Claim of an individual in the property of a qualified partnership carrying on a business or farm operation

544.040. (a) Where property held in the name of a partnership carrying on a trade, business, or farm operation is attached or sought to be attached, an individual general partner (whether or not a named defendant) shall be entitled to claim the same exemptions in such property as an individual defendant may claim as to property owned by him upon a showing that:

(1) [20?] percent or more of the total capital interest in the partnership is [owned by him][is held in his name].

(2) The partnership has [10?] or less partners.

(3) The partnership has [] or less employees [not including the general partners].

(4) The average annual net earnings of the partnership is not more than [] dollars (\$).

(b) For the purposes of this section, the term "average annual net earnings" means one-half of any net earnings of the partnership, before federal and state income taxes, during the two taxable years immediately preceding the date of the levy, and includes any compensation paid by the partnership to any individual partner qualified to claim an exemption under this section, his spouse, or his dependents during such two-year period.

(c) No individual shall be entitled to make a claim pursuant to this section unless the partnership makes available its state income tax records, and its financial statements and accounting records, for audit for confidential use to determine the eligibility of the individual to claim an exemption

EXHIBIT II

CALIFORNIA'S NEW HOUSEHOLD GOODS
EXEMPTION AND THE PROBLEM OF
PERSONAL ACCOUNTABILITY

California is THE state in which to be a debtor or bankrupt.¹ Even though the judgment creditor has the legal remedy of levying against a debtor's property,² that right has been significantly limited. The California legislature has made ample provision for the protection of the debtor's personal wealth by allowing a generous amount of personal property to be exempt from levy of execution by creditors.³ The principal exemption statutes in California are Code of Civil Procedure sections 690 through 690.29,⁴ although many other statutes provide for exemptions.⁵ The California debtor can retain a sizeable amount of wealth while he remains indebted to others.⁶ The creditor who is without a perfected security interest must locate property of the debtor which will be both subject to levy of execution and valuable enough to provide a reasonable return at the sheriff's sale to warrant the costs involved.

¹ "The bulk of the bankrupt's exemptions will be those allowed under the law of the state in which the case is filed. . . ."

"The variations in laws between the states is considerable. If a debtor has a substantial amount of assets, he may find it to his advantage to move to California and establish the necessary residence before filing bankruptcy, for that state is the most generous to debtors." D. COWAN, *BANKRUPTCY LAW AND PRACTICE* § 589 at 326 (1963).

² "The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk or judge, and be directed to the sheriff, constable, or marshal, and it must intelligibly refer to the judgment, stating the court . . . where the judgment is entered, and if it be for money, the amount thereof, and the amount actually due thereon . . . and must require the officer to whom it is directed to proceed substantially as follows:

1. Property or earnings of judgment debtor. If it be against the property of the judgment debtor, it must require such officer to satisfy the judgment, with interest, out of the personal property of such debtor . . . and if sufficient personal property cannot be found, then out of his real property . . ." CAL. CIV. PRO. CODE § 682 (West Supp. 1971).

³ *Id.* §§ 690-690.29 (West Supp. 1971).

⁴ *Id.*

⁵ For example, Teachers' Retirement Fund deposits, CAL. EDUC. CODE § 13808 (West Supp. 1971); property granted to public use, CAL. EDUC. CODE § 31067 (West 1969); deposits in a credit union up to \$1,500, CAL. FI. CODE § 15406 (West 1968); California Legislator's Retirement Fund deposits, CAL. GOV'T. CODE § 9359.3 (West 1966); California State Employee's Retirement Fund deposits, CAL. GOV'T. CODE § 21201 (West 1963); group life insurance policy payments, CAL. INS. CODE § 10213 (West 1955); insurance society and fraternal benefit society payments, CAL. INS. CODE § 11045 (West 1955).

⁶ The head of a family or a person 65 years of age or older can declare a homestead to the value of \$20,000 above all liens and encumbrances on his dwelling, and all other persons are allowed a homestead exemption of \$10,000. CAL. CIV. CODE § 1260(1, 3) (West Supp. 1971). If a homestead is not declared by the debtor or spouse, one house trailer to a value of \$5,000 above all liens and encumbrances is exempt. CAL.

This comment will examine one section of the exemption provisions,⁷ Code of Civil Procedure section 690.1.⁸ This section exempts from levy of execution, upon the filing of a claim by the debtor,

Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle. Works of art shall not be exempt unless of or by the debtor and his resident family.⁹

This provision was enacted in 1970 and greatly updates and modernizes the similar provision which was then section 690.2.¹⁰ The new code section removes outdated and nonfunctional provisions, such as the specific exemption of stoves and stovepipes, cows and their suckling calves and hogs and their suckling pigs. Even though it is a significant improvement over the section which it replaces, the new law is nevertheless inadequate.

Both the old and the new code sections exempt "necessary" furniture and wearing apparel.¹¹ Neither provision explains what is meant by that term. Both sections offer examples, but also require judicial interpretation. This vagueness is an unnecessary shortcoming in the statute and should be corrected by appropriate legislation.

Because the determination of the character, amount, and value of the property to be exempt from levy is purely a question of legislative policy,¹² the exemption statutes should be written clearly

Civ. Pro. Code § 690.3 (West Supp. 1971). Each person in the debtor's family may keep up to \$1,000 on deposit in any state or federal savings and loan association, CAL. CIV. PRO. CODE § 690.7 (West Supp. 1971).

⁷ For broader discussions of exemption statutes, and several sound recommendations for their modernization, see Abrahams & Feldman, *The Exemption of Wages From Garnishment: Some Comparisons and Comments*, 3 DE PAUL L. REV. 153 (1954); Gudge, *Debtor Exemptions in Personal Property—Proposals for Modernization*, 52 KY. L.J. 456 (1964); Joslin, *Debtor's Exemption Laws: Time for Modernization*, 34 IND. L.J. 355 (1955); King, *The Enforcement of Money Judgments in California*, 11 S. CAL. L. REV. 224 (1938); Rifkind, *Archaic Exemption Laws*, 39 CALIF. S.B.J. 370 (1961).

⁸ CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

⁹ *Id.*

¹⁰ The older version exempted "[n]ecessary household, table, and kitchen furniture belonging to the judgment debtor, including one refrigerator, washing machine, sewing machine, stove, stovepipes and furniture; wearing apparel, beds, bedding and bedsteads, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, and family portraits and their necessary frames, provisions and fuel actually provided for individual or family use, sufficient for three months, and three cows and their suckling calves, four hogs and their suckling pigs, and food for such cows and hogs for one month; also one radio, one television receiver, one piano, one shotgun and one rifle." CAL. STATS. 1935 ch. 723, § 3, at 1967 (1935).

¹¹ CAL. STATS. 1935, ch. 723, § 3, at 1967 (1935), as amended, CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

¹² *Spence v. Smith*, 121 Cal. 536, 538, 53 P. 653 (1898); *In re Klemp's Estate*, 119 Cal. 41, 50 P. 1062 (1897).

so as to provide maximum guidance to those responsible for their implementation; as will be shown, judicial interpretation may lead to unfair results. Case holdings on the household goods exemption provisions have generally provided for a liberal interpretation of the section for the benefit of the debtor.¹³ The problem is that the pendulum may have swung a bit too far in the debtor's direction, providing a result which is unsatisfactory for two reasons. First, the granting of excessive amounts of personal property within the household goods exemption significantly reduces the effectiveness of the creditor's legal remedy to execute against the personal property of the debtor. Second, an unfair and perhaps unconstitutional judicial discrimination between the rich and the poor debtor occurs when a relatively wealthy debtor claims the benefits of the exemption statutes. The wealthy debtor *because of his wealth* is allowed to retain most of his personal belongings, including luxury items, but, by contrast, no such protection is applicable to the poorer debtor. Two recent holdings of a California Court of Appeal, discussed herein, demonstrate this unequal application of the law.¹⁴

The purpose of this comment is to discuss the shortcomings of the newly revised household goods exemption statute and to suggest legislation which will better accomplish the goal of protecting the debtor from being denied the necessities of life by levying creditors. The statute, however, should not operate to insulate the debtor from his legal and moral obligations by making the creditor's enforcement remedies ineffective.

First, the cases of *Independence Bank v. Heller*¹⁵ and *Newport National Bank v. Adair*¹⁶ will be discussed. They represent the judicial interpretation of the household goods exemption which produces the unsatisfactory results described above. Those cases will then be analyzed in depth to determine if they represent sound interpretations of the statute and the case law on which their conclusions are based. In an effort to identify the most effective method of construction for exemption statutes, a discussion of the approaches that other jurisdictions have used will then be presented. A proposed revision for California's household goods exemption statute will follow. The proposed statute will clarify the amount of property which will be exempt from levy and will alleviate the need

¹³ *Haswell v. Parsons*, 15 Cal. 266, 76 Am. Dec. 480 (1860); *Los Angeles Fin. Co. v. Flores*, 110 Cal. App. 2d Supp. 850, 243 P.2d 139 (1952); *North British & Mercantile Ins. Co. v. Ingalls*, 109 Cal. App. 147, 292 P. 678 (1930).

¹⁴ *Independence Bank v. Heller*, 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969); *Newport Nat'l. Bank v. Adair*, 2 Cal. App. 3d 1043, 83 Cal. Rptr. 1 (1969).

¹⁵ 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

¹⁶ 2 Cal. App. 3d 1043, 83 Cal. Rptr. 1 (1969).

for judicial interpretation. It will provide adequate protection to the debtor without curtailing the effectiveness of the creditor's legal remedies.

TWO LIBERAL INTERPRETATIONS: *Independence Bank v. Heller*
and *Newport National Bank v. Adair*

In *Independence Bank v. Heller*,¹⁷ the plaintiff bank, which had recovered a judgment of \$80,889.93 against defendant Heller, was precluded from levying execution against certain furnishings in Heller's Beverly Hills apartment. The value of the furnishings in question was in excess of \$22,000.00. Heller claimed exemption for the property as necessary household furnishings under the provisions of Code of Civil Procedure section 690.2.¹⁸ The debtor's apartment was tastefully furnished with many different pieces of furniture. The levy of execution was supervised by the bank's attorney, and under his direction, the marshal left a refrigerator, chair, settee, coffee table, couch, rug, bed, bedding, a television set, and kitchen utensils. The seized property was inventoried and photographed and amounted to about four hundred pieces.¹⁹

The bank appealed the trial court's determination that the property claimed by Heller fell within the exemption law. The facts were undisputed.²⁰

On appeal, the court recognized that there was no precedent on which to hold that a man who was unable to pay his debts should be allowed to remain ensconced in a luxuriously furnished apartment and rely on the state exemption statutes in resisting the efforts of his creditors to collect their debts. Nevertheless, the court upheld the determination of the lower court that nearly all of the property in question, which included a number of elaborately carved wood tables, sets of china, various styles and types of drinking glasses, and serving dishes and platters, was exempt from levy of execution.²¹

In so holding, the court reasoned that Heller intended to pay the debt as soon as he was able, and that the purchase of the exempted furniture was not made for the purpose of putting assets beyond the reach of creditors. Relying on a presumption in favor of honest and fair dealing and against fraud, the court said that it was not incumbent upon the debtor to prove that he had honest inten-

¹⁷ 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

¹⁸ Cal. Stats. 1935, ch. 723, § 3, at 1567 (1935), as amended, CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

¹⁹ 275 Cal. App. 2d at 86, 79 Cal. Rptr. at 870 (1969).

²⁰ *Id.*

²¹ *Id.*

tions, since the bank had introduced no evidence to show that Heller had acted with a fraudulent purpose.²²

The court mentioned that it was the policy of California courts to interpret exemption statutes liberally for the benefit of the debtor, and cited three cases as authority.²³ The court then said,

Heller testified he is the son of wealthy parents, was reared and had lived in an atmosphere of affluence and elegance which he has maintained in the furnishing of his apartment. This signifies that he is possessed of a desire to live in the midst of the finery to which he has become accustomed. . . .

It is well settled that in deciding whether furniture or wearing apparel is necessary and should be exempted from execution the court will consider the station in life of the owner and the manner of comfortable living to which he has become accustomed. . . . The rule fits into section 690.2 which protects the ownership of some possessions because of their artistic and cultural value as well as the things that are necessary for physical use. It is of common knowledge that people who take pride in their homes frequently furnish them with things that are beautiful and elegant as well as useful such as several sets of china of different patterns, a variety of crystal glasses of different styles and tables and chairs in excess of the number that are indispensable.

The word 'necessary' as used in the statute should not be given the meaning of indispensable.²⁴

The court said that this holding was not only for the benefit of Heller, but for "all persons who furnish their homes in a manner far above the average."²⁵ Rationalizing its new rule, the court suggested that since "these are people who pay their bills and will not often be found in court, claiming exemption of their furniture, . . . the [lower] court could not . . . restrict Heller's right [to furnish his home with luxuries] merely because he is apparently insolvent."²⁶

A judgment debtor's status *per se*, according to the *Heller* decision, should not affect an individual's right to furnish his home in a luxurious fashion, so long as the judgment creditor brings forth no evidence to show that the debtor was attempting to put his assets beyond the reach of creditors. The court attaches very little importance to the fact of the debtor's insolvency, but protects the debtor's right to add to the essentials of an adequately furnished home.

This case was followed later in the same year by another division of the same court. *Newport National Bank v. Adair*²⁷ held that

²² *Id.* at 87, 79 Cal. Rptr. at 870.

²³ *Id.* at 88, 79 Cal. Rptr. at 870. See also cases cited note 13, *supra*.

²⁴ 275 Cal. App. 2d at 87, 79 Cal. Rptr. at 871 (1969).

²⁵ *Id.* at 89, 79 Cal. Rptr. at 871.

²⁶ *Id.*

²⁷ 2 Cal. App. 3d 1043, 83 Cal. Rptr. 1 (1969).

a judgment debtor whose furniture was appropriate to furnish a fourteen room home in fashionable Hillsborough, California, which rented for \$1,250.00 per month, was exempt from levy. The debtor's claim of exemption stated that the furniture was necessary within the meaning of the statute²⁸ because it was used by the debtor, his wife and family, "in their normal, usual, and customary station in life."²⁹ The debtor, a self-employed financial agent, had been earning between \$40,000 and \$50,000 per year in recent years. His home was the base of his activities, and he occasionally entertained clients there. He did not, however, claim any of the furniture in question under the tools of the trade exemption statute.³⁰

The Newport Bank argued that the test of what is necessary to the judgment debtor should be determined in light of the standard of living that would be reasonable for a judgment debtor rather than the standard of living which was enjoyed before becoming a judgment debtor. The court disregarded this argument, allowing the exemptions.

The court relied on *Heller*,³¹ and on a report of the committee of the State Bar of California which had investigated the California exemption statutes.³² The committee report suggested that "items which are necessary for the care and maintenance of the debtor or his family should be exempt regardless of their value."³³ Since the legislature had not placed a dollar amount on the exemption provision, the court followed the test which was set forth in *Heller*, that furniture is necessary if it is appropriate to the "station in life of the owner and the manner of comfortable living to which he has become accustomed."³⁴ The court concluded by saying that "[p]laintiff's complaints about the alleged injustice of a judgment debtor's living in luxury when he owes money should be addressed to the Legislature and not to the courts."³⁵

²⁸ Cal. Stats. 1935, ch. 723, § 3, as amended, CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

²⁹ 2 Cal. App. 3d at 1044, 83 Cal. Rptr. at 2 (1969).

³⁰ See CAL. CIV. PRO. CODE § 690.4 (West Supp. 1971).

³¹ Independence Bank v. Heller, 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

³² 2 Cal. App. 3d at 1045, 83 Cal. Rptr. at 2 (1969); Committee on Debtor and Creditor, *Modermination of Statutory Exemptions*, 42 CALIF. S.B.J. 369 (1967).

³³ 42 CALIF. S.B.J. at 875. The committee report stressed the difficulties involved in making valuations on certain property and suggested that the exemption statute would be more effective if items rather than their value were at issue. The committee overlooked the problem of quantity, however. In *Heller* there were over 400 items at issue, clearly in excess of the debtor's needs. In *Adair*, the issue was whether pieces of furniture sufficient to complement a fourteen room home were properly exempt. These cases present problems which the committee might have failed to envision.

³⁴ 2 Cal. App. 3d 1043, 1046, 83 Cal. Rptr. 1, 3 (1969).

³⁵ *Id.*

EVALUATION OF THE HELLER RATIONALE

These two cases illustrate that the exemption provision as enacted by the legislature provides no clear standard for judicial interpretation. The central argument in *Heller*³⁶ is based neither upon the code section itself nor upon prior case holdings, but rather upon a new rule which the court creates to justify the holding. The rule is that the property of the debtor is exempt if it was purchased by the debtor for an honest and forthright purpose—this is presumed—and not for the purpose of placing assets beyond the reach of creditors. The rule misses the point of the exemption provisions. The intent with which the property was purchased is not important. What matters is whether the property is necessary to maintain a basic standard of living.³⁷

The court in *Heller* cites several cases as authority for the proposition that exemption statutes should be liberally interpreted for the benefit of the debtor.³⁸ However, these cases do not support the conclusions reached by the court, as will be shown below.

In *Harwell v. Parsons*,³⁹ the court held that the exemption statute should not be so strictly read as to exempt only the number of beds which would be in constant use by the debtor and his family. The court upheld exemptions for six or seven beds, the total value of which was \$128. The debtor was a farmer in Yuba County and lived with his wife and three children in a sparsely furnished building which had once been a hotel.

In *North British & Mercantile Ins. Co. v. Ingalls*,⁴⁰ the court allowed an exemption for the debtor's widow by granting that certain proceeds from a life insurance policy, which would not be exempt for the debtor himself, were exempt for the beneficiary, since she was a stranger to the indebtedness. The *Ingalls* holding relied heavily on *Holmes v. Marshall*,⁴¹ which explained the policy behind the liberal interpretation of exemption statutes for the benefit of the debtor.⁴²

³⁶ 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

³⁷ *Perfection Paint Prod. v. Johnson*, 164 Cal. App. 2d 739, 330 P.2d 829 (1958).

³⁸ See cases cited, note 13, *supra*.

³⁹ 15 Cal. 266, 76 Am. Dec. 480 (1860).

⁴⁰ 109 Cal. App. 147, 292 P. 678 (1930).

⁴¹ 145 Cal. 777, 79 P. 534 (1905).

⁴² "Statutes exempting property from execution are enacted on the ground of public policy for the benevolent purpose of saving debtors and their families from want by reason of misfortune or improvidence. The general rule now is to construe such statutes liberally, so as to carry out the intention of the legislature, and the humane purpose designated by the lawmakers." 145 Cal. at 778-79, 79 P. at 535 (1905).

In *Los Angeles Fin. Co. v. Flores*,⁴³ the court recognized that the word "necessary" could have various meanings and applications and should be applied to the facts of a case to carry out the intent of the legislature. The court ruled against a debtor who had claimed exemption of the full amount of his wages. The statute provided for exemption of the wages if necessary to the debtor to provide for "the common necessities of life" for himself and his family.⁴⁴ The debtor had purchased a watch on credit and had defaulted. The creditor garnished his wages, applying the money to the purchase price. The court held that because the watch was neither necessary nor practical for the debtor to wear in his work, his wages could not be considered exempt with respect to the purchase of the watch. The court recognized that the statutes would be liberally interpreted for the benefit of the debtor, but held that the debtor in the present case did not qualify for such an interpretation.⁴⁵

These cases provide little authority for the holding in *Heller* that over \$22,000.00 worth of admittedly non-essential furnishings should be exempt from levy by a judgment creditor. Rather, they are holdings which merely protect the debtor from an interpretation of the statute which would be too harsh or unfair in the individual debtor's case. As will be shown below, the weight of authority would support a much less generous interpretation. The cases require that the debtor bear the burden of proof that the items claimed for exemption are necessary to his use.⁴⁶ They also require that the debtor bring himself within the spirit of the exemption laws.⁴⁷ They hold that what is exempt is often a function of the debtor's individual station in life, which includes his status as a debtor *per se*, but not necessarily social status.⁴⁸

The "station in life" test which the *Heller* court used was first mentioned in *Estate of Millington*.⁴⁹ However, *Millington* is shallow support for the conclusions reached by the *Heller* court which allow the debtor to remain ensconced in luxury even though insolvent.

The *Millington* case involves an interpretation of what is necessary wearing apparel, and provides a helpful parallel for deciding what is necessary household furniture. *Millington* states:

⁴³ 110 Cal. App. 2d Supp. 850, 243 P.2d 139 (1952).

⁴⁴ Cal. Stats. 1935, ch. 723, § 20, at 1970 (1935), as amended, CAL. CIV. PRO. CODE § 690.11 (West Supp. 1971).

⁴⁵ 110 Cal. App. 2d Supp. at 856, 243 P.2d at 144 (1952).

⁴⁶ *Murphy v. Harris*, 77 Cal. 194, 19 P. 377 (1888). See also, CAL. CIV. PRO. CODE § 690.50(i) (West Supp. 1971).

⁴⁷ *Bertozzi v. Swisher*, 27 Cal. App. 2d 741, 745, 81 P.2d 1016, 1019 (1939).

⁴⁸ *Estate of Millington*, 63 Cal. App. 498, 505, 218 P. 1022, 1025 (1923).

⁴⁹ 63 Cal. App. 498, 218 P. 1022 (1923).

The statute expressly makes distinctions in the exemption of property from execution, based on the occupation or calling of the debtor, but beyond such express provisions, there can be no distinction based upon the previous financial condition and social station of the insolvent debtor; otherwise the statute would operate unequally between the rich and poor.⁵⁰

The court uses a "station in life" test as a means of determining whether a certain article of clothing would be considered necessary, and explains that "[i]n determining whether any article of apparel claimed to be exempt by a debtor is necessary for his use, it would seem logical to inquire whether it is reasonable and proper for use in the home and in social intercourse in view of the debtor's insolvency."⁵¹ This point is ignored in *Heller*. Where the *Heller* court says that the previous social condition of the debtor is justification for a liberal interpretation of the statute, *Millington* states:

[T]he previous financial condition and social station of the debtor may properly be considered in determining whether the article sought to be exempted was acquired in good faith for the purpose for which the exemption is claimed, or for the purpose of defrauding creditors in contemplation of insolvency, but beyond this it is not conceived that they are material factors.⁵²

Millington further limits the "station in life" test by explaining that "[t]he purpose of the exemption laws is to save debtors and their families from want, not to enable them to wear luxurious ornaments at the expense of their creditors."⁵³

The parallel between the *Heller* case and the *Millington* case is clear. Where luxurious ornaments of wearing apparel should not be exempt, neither should admittedly non-essential pieces of household furnishings. The debtor's status as *debtor* should not be disregarded; the social status of the individual before he became a debtor is material only as evidence that he may not have purchased the items to defraud his creditors. The purpose of the exemption laws is to protect the debtor from losing the necessary appurtenances of life,⁵⁴ but not to maintain a lavishly furnished apartment, nor to wear luxurious ornaments while indebted to others.

In *Los Angeles Fin. Co. v. Flores*,⁵⁵ a case which *Heller* uses as authority for the "station in life" argument, the court states:

⁵⁰ *Id.* at 502, 218 P. at 1023.

⁵¹ *Id.*

⁵² *Id.* at 502, 218 P. at 1024 (emphasis added).

⁵³ *Id.* at 504, 218 P. at 1025.

⁵⁴ *Perfection Paint Prod. v. Johnson*, 164 Cal. App. 2d 739, 742, 330 P.2d 829, 831 (1958).

⁵⁵ 110 Cal. App. 2d Supp. 350, 243 P.2d 139 (1952).

Necessary wearing apparel, as used in Code of Civil Procedure, section 690.2, under the decisions, means necessary to the particular debtor considering all circumstances—his station in life, his particular type of employment, etc. . . . A tuxedo may be necessary wearing apparel to a waiter at a top notch cafe, but not to a laborer. . . .⁵⁶

"Station in life," then, refers to a particular need or occupation, not to social status. This indicates that a liberal interpretation should be given to the exemption statutes to assure that clothing which may be of special need to a debtor in earning his living would be exempt, but it certainly does not say that social status should be considered so that once one has accumulated a large quantity of luxurious furniture he therefore has a right to be undisturbed in his comforts, even when he is unable to pay his bills.

Heller's furniture probably could not reasonably be classified as necessary to his particular occupation. Even though he was an interior decorator, he did not claim any of the furniture under the tools of the trade exemption as he might have done.⁵⁷ Interior decorators normally conduct their business on the premises to be decorated, or often consult with clients in an office or furniture store.⁵⁸ The furnishings in the decorator's own home would very seldom have any relevance to the decorating problems of an individual client.

It might be argued that the necessary household goods exemption should be interpreted in light of the occupational needs of the debtor even where he does not claim the property under the specific tools of the trade exemption. The policy of the court should rightly be designed to protect the debtor who demonstrates a real need for a particular exemption. In the *Heller*⁵⁹ case, however, the debtor was not in need of court protection. He was a man living in comfort, even though insolvent.

The court misread the statute when it held that "[h]anging pictures, drawings, paintings . . . are included as household furniture not because they are suitable for physical use but because they contribute to the pleasure and comfort of the owner and perhaps his pride of ownership."⁶⁰ The court seems to place great importance on the aesthetic and decorative adjuncts to the debtor's condition. In fact, the statute provides only for the exemption of family art,

⁵⁶ *Id.* at 856, 243 P.2d at 143.

⁵⁷ CAL. CIV. PRO. CODE § 690.4 (West Supp. 1971).

⁵⁸ Telephone interview, December 21, 1971 with Mrs. Rhodes, interior decorator, Breuners furniture store, 525 East Hamilton, Campbell, California.

⁵⁹ *Independence Bank v. Heller*, 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

⁶⁰ *Id.* at 88, 79 Cal. Rptr. at 871.

not art *per se*.⁶¹ Pictures of the family or paintings done by the debtor himself are likely to have great sentimental value and probably little commercial value. The 1970 version of the exemption statute more clearly expresses the exemption, but it is nevertheless discernable in the older version.⁶² There is case authority which so holds. In *Hamaker v. Heffron*,⁶³ the court held that oil paintings which were not shown to be family portraits nor painted by a member of the family were not exempt.

The legislature did not intend that items should be considered necessary if they were decorative only.⁶⁴ Such an interpretation would not be easy to support, as can be seen when reading other sections of the exemption provisions. For example, the automobile of the debtor is exempt only if it is worth not more than \$1,000 and the debtor's equity is not greater than \$350.⁶⁵ The value of commercial equipment and tools of the trade exempted is limited to \$2,500.⁶⁶ A conclusion that the legislature intended that luxurious furnishings should be included within the meaning of necessary household furnishings would hardly be reasonable when the exemption provisions are read as a whole.⁶⁷

The court in *Heller* creates an invalid dichotomy when it states, "[t]he word 'necessary' as used in the statute should not be given the meaning of indispensable."⁶⁸ This reasoning suggests that there is no middle ground between luxury items and indispensable items. With the exception of *Heller* and *Adair*, the cases mentioned above are ample evidence that the courts can determine the amount of property which would be reasonable under the exemption provision.

Next in its analysis the *Heller* court refers to a "rule" under which the courts "give consideration" to the custom of some persons to embellish their homes by "adding to the bare essentials articles which they consider necessary to their pleasure, convenience, and comfort."⁶⁹ The court cited no authority which would suggest that such a rule had been recognized in the past. No court has held that what the debtor considers necessary to his pleasure, convenience, and comfort is necessarily controlling in determining whether certain property is exempt. Perhaps courts might reasonably "give consid-

⁶¹ Cal. Stats. 1935, ch. 723, § 3, at 1967 (1935), as amended, CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

⁶² *Id.*

⁶³ 148 F.2d 981, 936 (9th Cir.), cert. denied, 326 U.S. 757 (1949).

⁶⁴ CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

⁶⁵ *Id.* § 690.2.

⁶⁶ *Id.* § 690.4.

⁶⁷ *Id.* §§ 690-690.29.

⁶⁸ 275 Cal. App. 2d at 88, 79 Cal. Rptr. at 871 (1969).

⁶⁹ *Id.*

eration" to the debtor's personal customs and habits, but certainly the court should not be bound by them. The determination the court must make is necessarily a subjective evaluation of what is ordinarily and reasonably necessary to the use of the debtor. Mr. Heller's furniture requirements would more appropriately be described as extravagant than necessary. The only case authority for the *Heller* rule might be the cases which suggest a liberal interpretation in favor of the debtor to insure effective compliance with the intent of the statute. As was shown above, however, those cases work to avoid hardships rather than to preserve a luxurious standard of living.⁷⁰

The most disturbing aspect of the court's new rule of recognizing this act of "adding to the bare essentials" is that the court elevates this practice to the status of a *right* which the court feels obligated to protect. The court feels that "[a]ll persons who furnish their homes in a manner far above the average"⁷¹ would be left unprotected without this judicial assistance. This notion of the court in *Heller* disregards the impact of the decision on the creditor. As precedent, this case effectively could be used to exempt almost all personal property which a debtor feels he would like to keep to remain comfortable. Having no fear that a creditor might deprive him of the comforts and pleasures of life, the debtor becomes insulated from personal accountability for his debts. Such a diminution of the creditor's leverage over the debtor increases the risk of loss. This risk increases the cost of credit, a cost which is almost inevitably passed on to the consumer. Thus, the attempt of the *Heller* court to protect the debtor can actually work against the debtor's best interests.

The *Heller* decision also represents judicial enforcement of invidious social discrimination. Innocent on its face, the holding in reality works unfairly against the poor. Under *Heller*, a rich man can keep his wealth merely by showing that he was wealthy before he became indebted to the levying creditor. The poor man, however, who has very little in the way of worldly goods would likely lose anything which might be inconsistent with his basic life style. A rich man could keep a Picasso drawing worth thousands of dollars because it brought him pleasure and was a tasteful addition to a beautifully furnished home. A poor man, who might be an art lover but lives in modest surroundings, would undoubtedly lose such an extravagant possession. The drawing might actually have much more meaning to the poor man because of its special prominence in an otherwise drab environment, but because the poor man would be

⁷⁰ See cases cited note 13, *supra*.

⁷¹ 275 Cal. App. 2d at 88, 79 Cal. Rptr. at 872 (1969).

unable to prove that the drawing fits in with his life style, it would not be exempt. Likewise, the more profligate spender who furnished his home with many luxury items would fare much better than the prudent man who spent his money on tools of his trade. He would be limited to only \$2,500 worth of tools,⁷² while the luxurious furnishings would remain exempt. Such unequal application of the law to the same class of citizen, i.e. the judgment debtor, is subject to question under the fourteenth amendment.⁷³

The Supreme Court has recognized that statutes which make discriminatory classifications based on wealth are suspect and require careful scrutiny by the Court to insure that they are not in violation of the fourteenth amendment.⁷⁴ The Court decided over twenty years ago that a court decision could be considered state action and thus within the purview of the fourteenth amendment.⁷⁵ A growing body of law under the equal protection clause to the fourteenth amendment has come to treat the unequal impact of certain state activities because of a citizen's individual wealth, or lack of wealth, as invidious discrimination which the amendment forbids.⁷⁶ Judgment debtors, whether rich or poor, are entitled to the equal protection of laws equally enforced, and the *Heller* doctrine cannot be reconciled with that requirement.

*Newport National Bank v. Adair*⁷⁷ closely follows the reasoning and parallels the results in *Heller*. It directly refutes the holding in *Estate of Millington*,⁷⁸ a case which emphasized that the status of judgment debtor is to be strongly considered in interpreting the statute.⁷⁹ *Adair* is significant only because it represents an affirmation of the reasoning and the conclusions reached by the *Heller* court.

EXEMPTION STATUTES: DESIGN AND POLICY

Because the statute which exempts necessary household furnishings and wearing apparel, even in its newly revised form, is

⁷² CAL. CIV. PRO. CODE § 690.4 (West Supp. 1971).

⁷³ U.S. CONST. amend. XIV, § 1; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁷⁴ See generally Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969).

⁷⁵ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁷⁶ Note, *Discriminations Against the Poor and the Fourteenth Amendment*, 81 HARV. L. REV. 435 (1967). This note discusses recent Supreme Court holdings invalidating state laws which effectively denied poor criminal defendants certain state services, such as reproduction of the transcripts of their trials, which were available to defendants who had money to pay the required fees.

⁷⁷ 2 Cal. App. 3d 1043, 83 Cal. Rptr. 1 (1969).

⁷⁸ 63 Cal. App. 498, 218 P. 1022 (1923).

⁷⁹ See text accompanying notes 53-54, *supra*.

inadequate to preclude further holdings such as *Heller* and *Adair*, section 690.1 of the Code of Civil Procedure⁸⁰ should be rewritten so as to better effect the legislative intent. Exemption provisions are purely matters of legislative policy,⁸¹ and should be written effectively so as to carry out that policy.

Exemption statutes in California are of three basic types. Those which exempt specific items,⁸² those which give specific dollar exemptions,⁸³ and those which combine an item description with a dollar limitation.⁸⁴

Statutes which name specific items give the greatest guidance to the levying officer. However, they can be unworkable when they employ broadly inclusive terms such as household goods. Specific mention of items can be helpful to the sheriff, for he knows that he cannot take the California debtor's piano, television set, shotgun, radio, or rifle. Those which give specific dollar exemptions are also clear. A look at the debtor's bank accounts will identify any non-exempt moneys. The combination provisions give maximum flexibility but involve the problems of the other types of statutes. Will retail, wholesale, or replacement value be used?⁸⁵ The sheriff has the burden of assessing the value, regardless of which standard is used. This type of provision allows the debtor to choose which items he would like to claim as exempt, possibly avoiding an unfair result. For example, the debtor under the tools of the trade exemption would be allowed to pick the tools he considers most valuable to him, up to the \$2,500.00 limitation.⁸⁶

The various states have devised many approaches to achieving the goals of the exemption statutes.⁸⁷ The federal government has

⁸⁰ CAL. CIV. PRO. CODE § 690.1 (West Supp. 1971).

⁸¹ *Spence v. Smith*, 121 Cal. 536, 538, 53 P. 653, 654 (1898); *In re Klomp*, 119 Cal. 41, 43, 50 P. 1062, 1063 (1897).

"Debtors have, of course, no common law or inherent right to exemptions, homesteads, or to withhold any of their property from levy by their creditors. . . . The exemptions and the homestead provisions are an attempt on the part of the legislature to reconcile the rights between creditor and debtor consistent with providing a modest home for the debtor and his family and the basic tools or equipment to enable him to earn a living for his family so as not to become a charge upon society." *Rifkin, Archaic Exemption Laws*, 39 CALIF. S.B.J. 370 (1964).

⁸² CAL. CIV. PRO. CODE §§ 690.5, 690.29 (West Supp. 1971).

⁸³ *Id.* § 690.7.

⁸⁴ *Id.* §§ 690.2-4.

⁸⁵ "[T]he word 'value,' when not qualified by context or circumstances, has often been defined as meaning 'market value,' which is not what the owner could have realized at a forced sale, but the price he could obtain after reasonable and ample time" *Wade v. Rathbun*, 23 Cal. App. 2d Supp. 758, 760, 67 P.2d 765, 766 (1937).

⁸⁶ CAL. CIV. PRO. CODE § 690.4 (West Supp. 1971).

⁸⁷ For example, Michigan limits its household goods exemption to a maximum of \$1,000 worth of furniture, utensils, books, and appliances. *MICH. COMP. LAWS ANN.*

also provided exemptions for the tax debtor.⁸⁸ The Internal Revenue Code describes the property exempt from levy as necessary wearing apparel, school books for the taxpayer and his family, fuel and provisions, and furniture and personal effects to a value of \$500.⁸⁹ To solve the problem of valuation, the Code directs the Secretary or his delegate to summon three disinterested persons who will make the valuation.⁹⁰ Finally, the section provides that no property or rights to property other than those which are specifically mentioned in the provision will be exempt.⁹¹

Congress has decided to limit the exemptions for tax debtors to a small and exclusive list of items, while the states have generally taken a less severe approach. Perhaps Congress feels that the federal government's interest in quick and efficient settlement of tax claims is of greater importance than the debtor's comfort. The state laws, on the other hand, reflect a greater concern for the individual debtor. The vested interest that the federal government is protecting in its exemption provisions is missing in the state setting. Moreover, the individual states must frequently bear the heavy cost of support for its indigents.

In general, federal and state exemption provisions are less generous than the California exemption laws. They represent a determination on the part of the various state legislatures and the Congress that certain necessary items should be exempt from levy. They certainly do not indicate that the debtor is to be granted immunity from the loss of items which are not necessary to the maintenance of a modest standard of living.

A RECOMMENDED STATUTE

In view of the inadequacy of the present exemption provision as discussed above, the following revision of Code of Civil Procedure

§ 600.6023 (1968); A basic estate of \$2,000 is allowed in Virginia, and in addition, all necessary wearing apparel, the family Bible, and pictures, etc. VA. CODE ANN. § 34-26 (1970); The State of Washington exempts all of the wearing apparel of each member of the family, the family library to the extent of \$500, and beds, bedding, and furnishings to the value of \$500. WASH. REV. CODE ANN. § 6.16.020 (Supp. 1971). Wisconsin exempts the family Bible, school books, and family pictures; it also limits the amount of wearing apparel to a value of \$400 and household goods and cooking utensils to only \$200. WISC. STAT. ANN. § 272.18 (1958). In Indiana, exemption laws are required as a matter of constitutional law: "The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of a debt . . ." IND. CONST. art. I § 22.

⁸⁸ INT. REV. CODE OF 1954, § 6334.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

690.1 is suggested. The property mentioned below would be exempt from execution:

690.1 Necessary Household Furnishings, Wearing Apparel, Family Art

(a) Necessary household furnishings and appliances ordinarily and reasonably used by the debtor and his resident family, not to exceed \$2,500.00 in value. Single items which would reasonably be expected to provide a high return at an execution sale shall not be exempt unless claimed by the debtor to be a family keepsake. Claim for such exemption is to be made according to the provisions of section 690.50.

(b) Necessary wearing apparel ordinarily and reasonably used by the debtor and his resident family, not to exceed \$500.00 in value for each member of the resident family. Single items such as jewelry, fur coats, and watches, in excess of \$100.00 in value, shall not be exempt unless claimed by the debtor to be a family keepsake. Claim for such exemption is to be made according to the provisions of section 690.50.

(c) Works of art shall not be exempt within section (a) unless of or by the debtor or his family. If the debtor or family artist sells his paintings or drawings as his primary occupation, however, only paintings of the family shall be exempt.

(d) The value of items claimed to be exempt will be measured by normal market retail price. Items will be assessed in value in their present condition, not by replacement cost or value when they were purchased. Disagreements as to valuation of specific items will be resolved as provided in section 690.50.

The above provision uses the combination approach of listing the type of items to be exempt, but limiting the total exemption by a dollar amount. As discussed above, this approach offers the greatest degree of flexibility while giving adequate guidance to those responsible for implementation and enforcement. The provisions of the present statute name the types of items to be exempt but omit a dollar limitation. The *Heller* and *Adair* cases illustrate the inappropriate results which are possible with such a statutory flaw. The proposed section will preclude such holdings.

Since used furniture and clothing seldom command the price originally paid, most of the furnishings and clothing of the average debtor should be protected by the suggested provision. The expensive individual items such as color television sets, pianos, and stereo phonograph systems should be subject to execution. These are

luxury items which the debtor should be expected to forgo when he is unable to pay his bills. Basic standards of fairness demand that the creditor have access to an effective legal remedy to enforce his judgment. Precluding the exemption of luxury items can hardly be considered unfair to the debtor.

The proposed statute provides an exception for the family keepsake, not presently available, which might be a valuable antique. In such case, the debtor may make a claim for the exemption as provided for in section 690.50.⁹² The burden of proof is on the debtor to convince the court that the item is a family heirloom or keepsake. An item which has been handed down through the generations should rightly be exempt, even though it may possibly bring a high return at an execution sale. An antique purchased by an extravagant debtor should be leviable.

Works of art should not be leviable if they are family portraits or works of the amateur family member. In all likelihood they would provide a modest return at an execution sale. A professional artist or photographer, however, should not enjoy an exemption that those in other businesses would not be allowed. A typical merchant's inventory is leviable; so should the artist's stock on hand. If the debtor makes it his business to sell his creations in the market, he should not be entitled to preferential treatment. If he has sold his works in the past and has his works on sale at the time of levy, he should not be heard to complain of their sale to satisfy his indebtedness.

CONCLUSION

The recommended statute will not be the panacea for all exemption problems. With time, the dollar amount will possibly have to be revalued to offer the same degree of protection. The debtor is still required to pick and choose which items he will claim as exempt and which items he will release to the levying officer for sale at auction. The purpose of the exemption statutes is not to avoid all unpleasantness which results from one's insolvency. The new section suggested herein would, however, avoid the inequalities inherent in the present code section. The Mr. Hellers and Mr. Adairs would be specifically limited in the amount of personal property they might keep under the exemption provisions, regardless of their present or past social status, station in life, or standard of living.

The law should be written and enforced to promote maximum fairness to both debtor and creditor. The law should not be written

⁹² CAL. CIV. PRO. CODE § 690.50 (West Supp. 1971).

so as to protect those who lend money or extend credit for profit from the risks of enterprise. The law is rightly invoked to protect the debtor from want due to improvidence or misfortune. However, the law should not be invoked so as to shield the debtor from personal accountability to his creditors while he enjoys the pleasures and comforts of wealth that are purely apparent.

Daniel H. Dahlen