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Exemption Statutes--Yesterday's Protection at Today's Costs--An Update Needed

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STUDENT NOTES

**Exemption Statutes—Yesterday's Protection
At Today's Costs—An Update Needed**

Exemption statutes reflect legislative balancing of two opposing social forces. On the one hand, the creditor demands assurance that he will be able to collect from his debtor that to which he is entitled. Although a moral duty rests upon the debtor to pay, it is recognized that governmental sanctions are needed as a prod to the reluctant and as a sobering influence upon the thrifless. On the other hand, the state is interested in the well-being of its citizens and has an obligation to see to it that the unfortunate are not left destitute.¹ As a result, statutes exempting certain property of the debtor from execution have been developed by the various states so that the debtor can provide for the basic needs of him and his family. The purpose of the West Virginia personal property exemption statute² as declared by the West Virginia Supreme Court³ is "for the protection and benefit of a poor debtor and his helpless family, to give them the bread of life and a pillow whereon to lay the head, to save them from destruction and absolute want."

No two states are in complete agreement as to what a debtor should be able to exempt in order to "protect his helpless family" (without being relegated to the rolls of public welfare) and at the same time provide creditors with their fair and rightful share of the insolvent debtor's assets. However, the statutes exempting personal property generally can be grouped into three categories:⁴ (1) those which exempt certain enumerated items; (2) those which exempt specific items, plus whatever the debtor may choose up to a certain dollar limit; and (3) those which allow the debtor to choose the personal property he wishes to be exempt.

Under the first category,⁵ those items which are commonly exempted are wearing apparel, household goods, bibles, a church

¹Margolin, *Bankruptcy Exemptions: Critique and Suggestions*, 68 YALE L.J. 1459 (1958-59) and Joslin, *Debtor's Exemption Laws: Time for Modernization*, 34 IND. L.J. 355 (1959), as to the problem of "certainty" vs. "flexibility."

²W. VA. CODE ch. 38, art. 8, § 1 (Michie 1966).

³State v. Allen, 48 W. Va. 154, 162-63, 35 S.E. 990, 993 (1900).

⁴Note, *Debtor Exemptions in Personal Property—Proposals For Modernization*, 52 KY. L.J. 456 (1964).

⁵ARIZ. REV. STAT. ANN. §§ 33-1122-25 (1958) and TEX. CIV. STAT. ANN. art. 3832 (Vernon 1966) are examples of statutes which list numerous specific items with no dollar limit attached thereto. A variation of this

pew, livestock, and agricultural tools. The Texas family, for example, is entitled to exempt numerous livestock animals, all household and kitchen furniture, all farming equipment, all tools and books of a trade or profession, all wearing apparel, all food for the use of the family, cemetery lots, and one carriage.⁶ Furthermore, the Texas court held that a carriage and an automobile were essentially the same thing, and therefore exempted the latter as a "carriage."⁷ Kentucky also has this type of statute, but it exempts all household furniture up to \$1,500 in value and allows a farmer an exemption of up to \$1,500 for his livestock and equipment.⁸ Mechanics are allowed to exempt their tools up to \$300,⁹ and one in a profession can exempt his office equipment, library, and furnishings up to \$1,000.¹⁰ Kansas,¹¹ Kentucky,¹² and Wisconsin¹³ allow the debtor to exempt his automobile if he is engaged in farming, or if he uses his automobile in his employment or in traveling to and from his place of employment.

The second group of statutes are those which list a few items the legislature particularly feels should be exempt, and then allows the debtor to choose other property within a dollar limit which he also wishes to exempt from execution.¹⁴ Pennsylvania, for example, allows a family to exempt all wearing apparel, bibles, and school books, plus \$300 worth of personal property.¹⁵ Illinois exempts all

type is one which also enumerates the personal property which is exempt, but places a dollar limit on some of the items. For examples of this type, see CONN. GEN. STAT. REV. § 52-352 (1958); IDAHO CODE ANN. § 11-205(7) (1948); IOWA CODE ANN. § 627.6 (1966); KAN. GEN. LAWS ANN. § 60-2304 (Supp. 1971); KY. REV. STAT. ch. 427.010 (Baldwin 1971); MISS. CODE ANN. § 307 (Supp. 1971); WISC. STAT. ANN. § 272.18 (Supp. 1971).

⁶ TEX. CIV. STAT. ANN. art. 3832 (Vernon 1966).

⁷ Hickman v. Hickman, 149 Tex. 439, 234 S.W.2d 410 (1950).

⁸ KY. REV. STAT. ch. 427.010 (Baldwin 1971).

⁹ *Id.*, ch. 427.030.

¹⁰ *Id.*, ch. 427.040.

¹¹ KAN. GEN. LAW ANN. § 60-2304 (Supp. 1971).

¹² KY. REV. STAT. ch. 427.010 (Baldwin 1971).

¹³ WISC. STAT. ANN. § 272.18 (Supp. 1971). Wisconsin places a limit of \$1,000 on the automobile exemption. In attempting to make its statute applicable to the needs of today's debtor, Wisconsin also exempts, among other things, one television set, one radio, and several items of farm machinery including a tractor of up to \$1,500 in value. In doing so, they have recognized the dependence of the twentieth century individual on transportation and mass communication.

¹⁴ For various examples of this type statute see ILL. STAT. ANN. art. 52 § 13 (Supp. 1971); MO. REV. STAT. ANN. § 513.435 (Vernon Supp. 1971); N.D. CENTURY CODE ANN. § 28-22-02 & 03 (Supp. 1971); N.Y. CONSOLIDATED LAWS CPLR § 5205 (McKinney 1971); OHIO REV. CODE ANN. § 2329.66 (Page Supp. 1971); PA. STAT. ANN. § 2161 (Purdon 1967); WASH. REV. CODE ANN. ch. 6.16.020 (Supp. 1970).

¹⁵ PA. STAT. ANN. tit. 12 § 2161 (Purdon 1951).

wearing apparel, family pictures, and school books, plus \$300 worth of other personal property for a single person and \$700 worth for a family.¹⁶ Washington has similar specific exemptions for families and single persons. In addition, a householder is allowed to exempt household goods up to \$1,000, food and fuel for three months, and other property not to exceed \$400.¹⁷

The third category of statutes are those which allow the debtor to choose the personal property he wishes to hold as exempt, up to a prescribed dollar limit. West Virginia's personal property exemption statute¹⁸ falls into this category. With respect to the dollar limitations, a wide range exists among the various statutes of this type, with the limitation running as low as \$200 in West Virginia¹⁹ to as high as \$1,600 in Georgia.²⁰

West Virginia first enacted a personal property exemption law in 1863.²¹ It provided that "[a]ny husband or parent residing in this State may set apart his personal estate not exceeding two hundred dollars in value, to be exempt from execution or other process."²² The legislature also provided that a "husband or parent" could set aside real estate to the value of five hundred dollars as a homestead exemption.²³ When the State Constitution was revised in 1872 it provided for exemption laws.²⁴ Subsequently, the legislature established a

¹⁶ ILL. ANN. STAT. art. 52, §§ 1, 13 (1957). See also Note, *Debtor Exemption in Personal Property—Proposals for Modernization*, 52 KY. L.J. 456 (1963-64) for a discussion of various state exemption laws and as a reference to the various state code citations.

¹⁷ WASH. REV. CODE ANN. ch. 6.16.020 (Supp. 1970).

¹⁸ W. VA. CODE ch. 38 art. 8, § 1 (Michie 1966).

¹⁹ *Id.*

²⁰ GA. CODE ANN. § 51-101 (1965). See also IND. ANN. STAT. § 2-3501 (Burns 1946) (\$600 limitation); MD. CODE ANN. art. 83, § 8 (Supp. 1971) (\$500 limitation); N.C. GEN. STAT. § 1-378 (1969) (\$500 limitation); S.C. CODE vol. 8, § 34-41 (1968) (\$500 limitation); TENN. CODE ANN. § 26-201 (Supp. 1970) (\$1,500 limitation).

²¹ Acts of the 2nd W. Va. Leg. ch. 29, § 1, Reg. Sess. (1864).

²² *Id.*

²³ *Id.*, ch. 29, § 7.

²⁴ W. Va. Const. art. 6, § 48 (1872).

Any husband or parent, residing in this State, or the infant children of deceased parents, may hold a homestead of the value of one thousand dollars, and personal property to the value of two hundred dollars, exempt from forced sale subject to such regulations as shall be prescribed by law. Provided, that such homestead exemption shall in no wise affect debts on liabilities existing at the time of the adoption of this Constitution; and provided further, that no property shall be exempt from sale for taxes due thereon, or for the payment of purchase money due upon said property, or for debts contracted for the erection of improvements thereon.

homestead exemption of \$1,000²⁵ and a personal property exemption at the 1863 statutory level of \$200.²⁶ The only change in West Virginia's exemption law to date came in 1882 when the legislature added an amendment²⁷ to the personal property exemption statute which allowed an exemption to mechanics and artisans, whether the head of a household or not, of up to \$50 for the tools of their trade. However, the entire personal property exemption could still not exceed the \$200 statutory limit.

By allowing the debtor to choose the property he wishes to hold as exempt, within the prescribed dollar limit, West Virginia's personal property exemption statute has the "flexibility" needed to be workable over a period of time.²⁸ As new items replace older goods as everyday necessities, such a statute will not become outdated as quickly as a statute exempting specific items such as 2 horses, 2 cows, 10 hogs, etc.²⁹ This type statute also gives the creditors the "certainty"³⁰ they require in making their loans. Since there is a prescribed dollar limit on the property which a debtor may hold as exempt, a creditor, when making a loan, knows the amount of a debtor's property which he can subject to execution. However, this type statute also requires periodic revision, as the dollar limitations may become unworkable. This is the case with the present West Virginia exemption statute.

The avowed purpose of the statute is "for the protection and benefit of a . . . debtor."³¹ Yet the present \$200 personal property limitation is self-defeating. It is, in fact, one of the most niggardly exemption statutes in the country. In West Virginia today a debtor is entitled to no more than the legislature of a century ago felt was needed for a debtor and his family to survive at that time. How can a statute geared to life in the nineteenth century be applied to the social and economic realities of 1972 and still achieve its humanitarian purpose? One must consider conditions as they were when the acts were passed 100 years ago—no gas, no electricity, no automo-

²⁵ W. VA. CODE ch. 38, art. 9, § 1 (Michie 1966).

²⁶ *Id.*, art. 8, § 1.

²⁷ Acts of the 15th Legislature of W. Va. ch. 19, § 23 Reg. Sess. (1881).

²⁸ See Joslin, *supra* note 1, at 359. For further discussions on the need for statutes which protect the debtor over a period of time without harm to the creditors see Abrahams and Feldman, *The Exemption of Wages from Garnishment: Some Comparisons and Comments*, 3 DEPAUL L. REV. 153 (1954) and Rombauer, *Debtors' Exemption Statutes—Revision Ideas* 36 WASH. L. REV. 484 (1961).

²⁹ See, e.g., MISS. CODE ANN. ch. 3, art. 307 (1942).

³⁰ See Joslin, *supra* note 1, at 359.

³¹ State v. Allen, 48 W. Va. 154, 162-63, 35 S.E. 990, 993 (1900).

³² W. VA. CODE ch. 38, art. 8, § 1 (Michie 1966).

biles, no appliances. The average person was a hard-working farmer who produced most of what he used. Debtors were generally considered to be lazy and thriftless. Since that time conditions have changed socially, economically, and culturally. We have attained a standard of living (and cost of living) unimaginable 100 years ago. Furthermore, governmental responsibility toward the needy and the welfare state has evolved.³³ There is much more to buy, at much higher prices—the dollar has depreciated and the cost of living skyrocketed. The *Consumer Price Index*,³⁴ for example, shows that the 1971 dollar in 1872 would have been worth about \$3.40. It follows that to exempt \$200 worth of 1872 goods at their present dollar value would require an exemption equivalent to about \$680. This should be considered in light of the fact that the \$200 was designed to cover personal property such as oil lamps, wash tubs, iron pots, etc. It was not designed for the necessities of a family in the twentieth century, such as automobiles, appliances, and clothing. The answer to the question of how it is possible to apply a 100-year-old socio-economic statute realistically to today's way of life is startlingly clear. It is not possible—at least not possible and still achieve the results which were intended by the statute. For when these factors are considered, it is apparent that the debtor of today is entitled to less than what the legislature of a century ago felt a debtor at that time needed to provide for his family.³⁵

The dollar limitations are not the only points of West Virginia's exemption statute in need of re-examination. At the present time a single person does not qualify for protection under the exemption

³³ See Margolin, *supra* note 1, at 1497.

³⁴ U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, BULL. NO. 1600, U.S. CITY AVERAGE FOR ALL ITEMS, 1800-1967, AND THE SELECTED GROUPS, AND PURCHASING POWER OF THE CONSUMER DOLLAR, 1913-67, at 236-37 (1968); U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, CONSUMER PRICE INDEX, UNITED STATES CITY AVERAGE FOR URBAN WAGE EARNERS AND CLERICAL WORKERS, at 15 (Dec. 1971).

³⁵ An example which also points out how antiquated West Virginia's exemption laws are can be seen in two West Virginia Supreme Court decisions. In *Moran v. Clark*, 30 W. Va. 358, 4 S.E. 431 (1887), the court ruled that when the State Constitution was written, the framers intended that the legislature should enact a homestead exemption of not less than \$1,000. The case of *In re White*, 185 F. Supp. 609 (N.D. W. Va. 1960), reiterated this principle in holding that the \$200 personal property exemption provided for in the State Constitution was not meant to be a *maximum* exemption. Therefore, any question as to whether the State's exemption laws can be changed without constitutional revision is solved, as the West Virginia Constitution placed a duty on the legislature only as to the minimum standards for the State's exemption laws. No maximum limits were intended.

laws³⁶ unless he happens to be a mechanic, artisan, or laborer.³⁷ Although a single person should not be afforded protection in the same amount as one with dependents, some protection is needed. Texas' statute³⁸ is characteristic of those states which provide exemptions to single persons. A single person in Texas is entitled to exempt all wearing apparel, all tools and books of his trade or profession, and cemetery lots.

Another glaring weakness of West Virginia's exemption statute is its lack of an effective occupational exemption. If a debtor is ever to become productive again, provisions must be made to allow him to carry on his work, whatever it might be. At present, the only occupational exemption allowed in West Virginia is \$50 worth of tools for a mechanic, artisan or laborer.³⁹ Two particularly objectionable aspects to this provision are apparent at a glance. First is the dollar limitation. Like the \$200 personal property exemption,⁴⁰ the dollar amount is unrealistic today. No longer are a laborer's tools a few hand tools; many are expensive, electric-powered tools, and the fifty dollar exemption is barely enough to cover the cost of a carpenter's hand power saw. Secondly, the provision is too narrow with regard to the persons covered. There is need of an occupational exemption, in addition to the general personal property exemption, which will allow a laborer, farmer, or professional person to exempt the tools, books, and office furnishings used in his trade, perhaps with a realistic dollar limitation attached. Furthermore, the exemption should extend to single individuals as well as to the family man. The state of Washington,⁴¹ for example, allows such an exemption to the classes just enumerated of up to \$1,500. Kansas⁴² has a similar provision exempting tools, books, etc., up to \$5,000 in value.

³⁶ *Stevens v. Carey*, 112 W. Va. 1, 163 S.E. 772 (1932).

³⁷ W. VA. CODE ch. 38, art. 8, § 1 (Michie 1966). Any mechanic, artisan, or laborer, regardless of whether he has dependents, qualifies for the \$50 exemption for the tools of his trade.

³⁸ TEX. CIV. STAT. ANN. art. 3835 (Vernon 1966). Many other states also provide exemptions for individuals without dependents, some placing a dollar limit on the exempted property. *See, e.g.*, KAN. GEN. LAWS ANN. § 60-2305 (Supp. 1971); MO. REV. STAT. ANN. § 513.430 (Vernon 1949); N.Y. CONSOL. LAWS CPLR § 5205 (McKinney Supp. 1971); OHIO REV. CODE ANN. § 2329.62 (Page Supp. 1971); TENN. CODE ANN. § 26-201 (Supp. 1971).

³⁹ W. VA. CODE ch. 38, art. 8, § 1 (Michie 1966).

⁴⁰ W. VA. CODE ch. 38, art. 8, § 1 (Michie 1966).

⁴¹ WASH. REV. CODE ANN. ch. 6.16.020 (Supp. 1970).

⁴² KAN. GEN. LAWS ANN. § 60-2304 (Supp. 1970). *See, e.g.*, ARIZ. REV. STAT. ANN. § 33-1124 (1958); KY. REV. STAT. ch. 427.010 (Baldwin 1971); N.Y. CONSOLIDATED LAWS CPLR § 5205 (McKinney Supp. 1971); TEX. CIV. STAT. ANN. art. 3832 (Vernon 1966).

Another part of West Virginia's archaic exemption law is its homestead exemption.⁴³ Like the personal property exemption statute, it has remained unchanged since 1872.⁴⁴ There are two basic reasons why this provision needs revision. Number one again is the dollar amount. The homestead exemption hardly serves its purpose of assuring the family of a home "and a pillow whereon to lay the head,"⁴⁵ for where the value of the property exceeds the \$1,000 exemption, it may be sold and the proceeds over that amount distributed to the creditors.⁴⁶ The second objectionable feature is that the exemption is waived by the debtor unless the homestead exemption is "declared." To declare the exemption, the owner of the property must file a deed claiming the exemption. This declaration procedure is required in only four states.⁴⁷ The fact that few such exemptions are recorded in West Virginia suggests that the procedures, or perhaps the exemption itself, is unknown to the average resident,⁴⁸ at least until it is too late, since the exemption is good only as to debts incurred *subsequent to recordation* of the homestead exemption.⁴⁹ The statute should be revised to permit the debtor to claim the homestead exemption just prior to the property being levied upon as permitted under the personal property exemption law. The credi-

⁴³ W. VA. CODE ch. 38, art. 9, § 1 (Michie 1966).

⁴⁴ W. VA. CONST. art. 6, § 48 (1872).

⁴⁵ State v. Allen, 48 W. Va. 154, 162-63, 35 S.E.990, 993 (1900).

⁴⁶ Moran v. Clark, 30 W. Va. 358, 4 S.E. 431 (1887). Generally the exemptions permitted by the western states are greater than those of the eastern states. See 68 YALE L.J. 1459 (1958-59). Texas, for example, allows a rural family a homestead exemption of 200 acres, with improvements. An urban family is allowed a lot or lots worth \$10,000, without regard to improvements thereon. TEX. CIV. STAT. ANN. art. 3833 (Vernon Supp. 1971). Kentucky, like West Virginia, has a homestead exemption of only \$1,000. KEN. REV. STAT. ANN. ch. 427.060 (Baldwin 1971). See also, ILL. STAT. ANN. art. 52 § 1 (Supp. 1971) (\$5,000 homestead exemption); MISS. CODE ANN. § 317 (Supp. 1971) (\$15,000 exemption); N.Y. CONSOL LAWS CPLR § 5206 (McKinney Supp. 1971) (\$2,000 exemption).

Ohio's statute is commendable in its attempt to save the debtor's home from forced sale. Where the value of the home exceeds the maximum allowed as an exemption, i.e., \$1,000, and the property cannot reasonably be partitioned, the creditor must accept all fair rental value of the property in excess of \$100 annually until the debt is satisfied. Failure to meet the rental fee then entitles the creditor to a forced sale of the property to satisfy his claims. OHIO REV. CODE ANN. § 2329.78 (page 1954).

⁴⁷ ME. REV. STAT. ANN. ch. 14, §4552 (1964); MASS. LAWS ANN. ch. 188, § 1 (1969); MCKINNEY'S CONSOL LAWS OF N.Y. CPLR § 5206 (1963). See Haskins, *Homestead Exemptions*, 63 HARV. L. REV. 1289, 1300-01 (1950).

⁴⁸ *Id.* at 1301 n.102.

⁴⁹ Linsey v. McGammon, 9 W. Va. 154, (1876); Speidel v. Schossen, 13 W. Va. 686 (1879).

tors would not be harmed by this change; they could plan for the exemption when making their loans as they now do with respect to personal property. This type statute would better protect the property owner from his own lack of diligence, for few people anticipate the possibility that someday they may be unable to pay their debts.

In revising the State's exemption laws thought should be given to the basic needs of the individual and his family. A statute which would exempt certain enumerated necessities and then permit the debtor to choose the other personal property he wished to hold as exempt may be the best overall approach. Items which ought to be specifically exempt are wearing apparel (excluding furs and expensive jewelry),⁵⁰ family pictures and keepsakes, food and fuel for the family use for a certain period,⁵¹ an automobile, and household goods. The latter two might have a reasonable dollar limitation placed upon them. The dollar limitation placed upon the amount of property the debtor could choose to hold exempt is a rather arbitrary figure, but Illinois has found \$300 for a single person and \$700 for a family to be a reasonable amount.⁵² As previously mentioned, the occupational exemption must be broadened, and the dollar amount updated. However, it would perhaps be better if no dollar amount were placed on this provision; for if a debtor is ever to become productive again, he must have tools nearly equal to those of his peers. This occupational exemption and a wearing apparel exemption should also be available to the single person. With better exemption statutes, the West Virginia debtor would stand a better chance of remaining off the welfare rolls and once again becoming a productive citizen.

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⁵⁰ The West Virginia Supreme Court in *Ohio Valley Bank v. Minter*, 108 W. Va. 58, 150 S.E. 360 (1929), held that a diamond ring worth \$1,000 and habitually worn by the person was not exempt from execution as wearing apparel. The court defined wearing apparel to include "all the articles of dress generally worn by persons in the locality and conditions of life of the claimant including whatever is necessary to decent appearances, and protection to the changes of weather, and also to what is reasonably proper and customary in that community in the way of ornaments." *Id.* at 63, 150 S.E. at 368.

⁵¹ See, e.g., IOWA CODE ANN. § 627.6 (1966); WISC. STAT. ANN. § 272.18 (Supp. 1971).

⁵² ILL. STAT. ANN. art. 52, § 13 (Supp. 1971).