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Indiana Law Journal

Volume 34 | Issue 3

Article 1

Spring 1959

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Recommended Citation

Joslin, G. Stanley (1959) "Debtor's Exemption Laws: Time for Modernization," *Indiana Law Journal*: Vol. 34 : Iss. 3 , Article 1.
Available at: <http://www.repository.law.indiana.edu/ilj/vol34/iss3/1>

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INDIANA LAW JOURNAL

Volume 34

SPRING 1959

Number 3

DEBTORS' EXEMPTION LAWS: TIME FOR MODERNIZATION¹

G. STANLEY JOSLIN†

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 any debt

IND. CONST. art. 1, § 22.

Whether the need for some exemption of a debtor's property from seizure by his creditors is basically for the protection of a debtor, his family or for the benefit of the community generally, the institution is now universal and beyond challenge. The extent to which the exemptions should go, however, may be of considerable disparity when considered by reasonable men, and a modernized exemption law might well be considered controversial as to the amount of exemption which should be granted. The concern here is not primarily with a determination of the value of exemptions which should be given, but the problem of the neglect by the various jurisdictions to reconsider the exemption laws so as to give currently the protection which each jurisdiction intended to grant at an earlier time and would now grant if re-examined anew. In 1855 Massachusetts provided an exemption for tools, implements and fixtures necessary for carrying on a trade not exceeding one hundred dollars in value.² This has not been changed. Georgia currently exempts one

1. The general archaic condition of exemption laws has been a source of concern to the author for the last decade. To verify or dispel this apprehension, a current study (1958) was made of the exemption laws of twenty-two jurisdictions selected on a diversified geographical, economic and population base. The jurisdictions included in this sampling study were: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah, Virginia, and Wisconsin. After this survey, the apprehension as to the inadequacy of present day exemption laws was greatly increased. Generalizations and conclusions are based primarily upon the study of the exemption laws of these twenty-two states but it is believed to be a fair sampling and, in all probability, is an accurate picture of the general problem of exemptions in the United States today. Author.

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2. Mass. Ann. Laws ch. 235, § 34 (1955).

horse or mule or one yoke of oxen, and one loom and one spinning wheel.³ The contention here is not that exemption laws were ill advised but that the economic and social background has so radically changed that a re-evaluation of the exemption needs should be made and the whole area of exemptions revamped to reflect the present and probable future requirements of individuals, families and society generally in the inter-relationship between the debtor and his creditors. The exemption to the farmer of one horse was a very important right. The exemption of one tractor may now be just as important.

EXEMPTION LAWS AS TO FLEXIBILITY

Exemption laws generally may be classified into three types as to their flexibility in application to unfolding and changing economic conditions.⁴ The first may be designated the crystallized type. This is the old fashioned method of fixing exemptions by a name certain or specified fixed dollar amount. For example, Illinois exempts one hundred dollars worth of household furniture and, in addition, when the debtor is the head of a family and resides with them, three hundred dollars worth of other household furniture. This was last amended in 1933.⁵ Such a fixed dollar exemption cannot in any manner adjust itself to changing conditions and will be out of balance during much of its existence. The only currency comes from frequent legislative enactment or amendment which in fact does not keep pace but results in an ever expanding imbalance.⁶ The crystallization may also come through the naming of specific exempt articles. California, for example, exempts one stove and one radio, and added one television receiver in 1955.⁷ Maine exempts twelve cords of firewood,⁸ Missouri, spinning wheels,⁹ New Hampshire, one horse,¹⁰ and New Mexico exempts cabinets of natural history.¹¹ These expressed exemptions were laudible at the time made and may have some remote value at the present time, but it is clear that the real exemptions granted by the enactment have almost vanished,

3. GA. CODE ANN. § 51-1301(2), (7) (1937).

4. The economic changes referred to here are not the sudden or violent economic changes of the nature of 1929 and 1930, but the more gradual economic evolution of decades, as for example 1932 to 1958.

5. ILL. ANN. STAT. ch. 52, § 13 (Third) (Smith-Hurd 1951).

6. Massachusetts is a case in point on the attention necessary, and seldom found, to keep the statutory provisions current. Before 1947, wages not exceeding \$20 a week were exempt. In 1947, the exemption was changed to \$25 per week, in 1951 to \$30 a week, and in 1956 to \$40 a week. Ed. note to MASS. ANN. LAWS ch. 246, § 28 (1955).

7. CAL. CIV. PROC. CODE § 690.2.

8. ME. REV. STAT. ANN. ch. 112, § 67(1) IV (1954).

9. MO. REV. STAT. § 513.435(3) (1949).

10. N.H. REV. STAT. ANN. § 511.2 (1955).

11. N.M. STAT. ANN. § 24-5-1 (1953).

and unless supplemented, the debtors' minimum protective shield has withered or disappeared to the extent that the specifically named article is no longer a necessity in the individual's life. Other articles of as great a necessity, but not covered by the exemption laws, have taken their place.

This unyielding designation of exemptions by narrow names or fixed dollar amounts may in some respects be advantageous to the creditor as he is able to ascertain with relative certainty the extent of the debtor's assets which may be available to him. However, with the legislative lag evident in exemption legislation, it is clear that exemption laws should be modernized with more flexible exemption standards. For example, the life, usefulness and fair application of a flexible wage exemption such as one third of the monthly income is great, while the proper function of a one hundred dollar a month wage exemption, even if adequate when enacted, could well be in great imbalance within a few years. An example of an exemption statute which removes the obsolescence problems resulting from specific word designation is the California provision that exempts tools or implements used for a livelihood.¹² This designation gives a fluidity which permits adjustment to changing conditions, whereas the designation in another section of the California law exempting one piano¹³ illustrates the inflexibility of narrowly designated objects of exemption.

The second type of exemption laws based upon flexibility is the open designation, such as provisions exempting all necessary farm implements,¹⁴ books necessary for professional men,¹⁵ all life insurance payable to the wife irrespective of amount,¹⁶ earnings necessary for the use of the family,¹⁷ or wages of any laborers.¹⁸ It will be readily seen that such designated exemptions are extremely fluid and open-ended. The guide for determination is apt to be that which is found to be a reasonable exemption, or a blanket exemption with no limits. This type exemption will easily adjust its scope and effect to new situations as they develop and will give the same insulation to debtors in every decade. An exemption given a farmer, covering all necessary farm equipment, under a 1930 economy will be as equitable in 1960 as it was when enacted.

12. CAL. CIV. PROC. CODE § 690.4. North Carolina escapes from the rigidity of the specific article designation by exempting personal property to a specified value. See N.C. CONST. art. X, § 1.

13. CAL. CIV. PROC. CODE § 690.2.

14. MO. REV. STAT. § 513, 453(1) (1949); OKLA. STAT. tit. 31, § 1(4), (5) (1951).

15. MO. REV. STAT. § 513.435(11) (1949).

16. See, *e.g.*, New Hampshire, N.H. REV. STAT. ANN. § 408:1 (1955) and New York, N.Y. INS. LAW § 166.

17. N.C. GEN. STAT. § 1-362 (1953).

18. PA. STAT. ANN. tit. 42, § 886 (1930).

The principal objection to the uncharted exemption grant is the uncertainty on the part of creditors as to the extent of a debtor's available assets. What, for example, is the extent of an exemption which provides "all implements of husbandry used upon the homestead,"¹⁹ or "earnings [necessary] for the use of a family"?²⁰ It does seem that such unguided exemption, left only to the current courts' interpretation of that which is necessary, if extended to a broad area of debtor's assets, would militate strongly against the ability to obtain unsecured credit.

The third type of exemption law gives reasonable flexibility with some degree of certainty of ascertainment. These are the attempts to draft the exemption law so as to give effect to that degree of exemption the legislator believes desirable now and in future decades under changing economic conditions, whether they be inflationary or recessive. An illustration of this type exemption law which is more frequently used in present modernization is Indiana's statute, which provides that income or profits of whatever nature of not more than fifteen dollars per week shall be exempt, but if such income or profits exceed fifteen dollars a week, then ninety per cent of such income and profit in excess of the sum of fifteen dollars per week is exempt and ten per cent is subject to execution.²¹ This provision was enacted in 1937 when a sixty dollar a month exemption may well have been adequate. Today, with a very disparate economic situation, that exemption expands with the income, and provides a substantial protective shield to the wage earner for maintaining himself and his family as against the claims of his creditors. This type exemption is not wide open as the "reasonably necessary" exemption and not closed as the absolute, one value exemption, but gives an adjustable base which adapts itself to changing circumstances. In 1949 Alabama changed from a twenty-five dollar a month wage exemption to a sixty per cent exemption.²² This provides greater fluidity downward than does the Indiana type statute.

Although the percentage type exemption may give the greatest controlled fluidity, there are other methods of giving the guided adaptability of the type three exemption. This may be done by the catch all exemption with a dollar value limit. For example, the exemption not of specific items such as oxen, rakes, or plows, but of farming utensils,²³ and not of a horse and buggy, but a vehicle used for transportation.²⁴ The dollar

19. *E.g.*, OKLA. STAT. tit. 31, § 1(4) (1951).

20. See note 17 *supra*.

21. IND. ANN. STAT. § 2-3501(d) (Burns 1946).

22. ALA. CODE tit. 7, § 630 (1940).

23. See UTAH CODE ANN. § 78-23-1 (1953).

24. *Ibid.*

value limit may be important, for the broader the class of items exempted, the greater the probability that in changing times, selected or designated items would extend the exemption beyond its intended scope. For instance, an unlimited exemption of a vehicle used for transportation could well extend an exemption far beyond any justification.

Under this third type an extremely broad exemption area with selective privilege is used in some jurisdictions.²⁵ Instead of detailed, descriptive, itemized exemptions, or exemptions to narrow classes of items, a broad exemption is given, as "real and personal property . . . to be selected by [the debtor] . . . to the value of not exceeding two thousand dollars."²⁶ This gives adequate elasticity as to the selected items deemed necessary with changing times and for persons in varying occupations, but the dollar value limitation is apt to be out of date within a few years after enactment.

Although the concern here is primarily with an automatically adjustable exemption so that the changing economic pattern will be met, there is another area of needed flexibility in even a constant economic situation. This type exemption is also included in the "type three" herein used for pigeonholing purposes. This exemption expands and contracts its coverage in escalator fashion as certain situations develop with respect to the persons to be aided and protected by the exemption. Examples of this are found in Utah where a homestead exemption not exceeding two thousand dollars for the head of the family is allowed, with a further sum of seven hundred fifty dollars for a spouse and three hundred dollars for each member of the family,²⁷ and in Virginia where wages are exempt to seventy five per cent but never less than one hundred dollars per month, nor more than one hundred fifty dollars per month, provided the minimum and maximum is increased by fifteen dollars per month for each dependent child.²⁸ A statute of the Virginia type gives great flexibility in both its capacity to adapt itself to the general change in economic conditions and at the same time adjust its coverage to meet the changing situation of the individual beneficiary of the exemption laws. This elastic type exemption, which adjusts both to the general economic climate and also the changing needs of the individuals, is deserving of careful consideration in any plan for the modernization of exemption laws.

Basically the conflicting pressures from which exemption laws are amalgamated seem to be certainty vs. flexibility. The hypothetical credi-

25. VA. CODE ANN. § 34-4 (1950).

26. *Ibid.*

27. UTAH CODE ANN. § 28-1-1 (1953).

28. VA. CODE ANN. § 34-29 (1950).

tor demands to know exactly what items and how much are exempt. The hypothetical debtor and those interested in his well being desire a reasonable minimum protection to be afforded at all times no matter what changes take place. Legislative currency being unlikely, the problem is one of devising a legislative pattern which treats both interests in an equitable manner. The crystallized closely defined exemption of type one gives the creditor certainty but is inadequate to give the debtor needed relief in changing times. The uncharted exemption of type two keeps pace with the debtor's needs but leaves the creditor bewildered and with little possibility at any given time of knowing just what assets are available to him. Thus there is the likelihood that any levy will be nullified by the selection of the object of the levy as exempt property. Such a situation inevitably would militate against unsecured credit. The guided flexibility of type three seems to be the answer, wherein there is substantial fluidity yet with charted limitations which make the ascertainment of available assets reasonably calculable. In a consideration of specific exemption areas, such as life insurance, homestead, wage exemptions, professionals' exemptions, laborers' and farmers' exemptions, hereinafter to be discussed, the possibility of the use of the semi-flexible exemption in modernizing each will be explored.

A RE-EXAMINATION OF EXEMPTION AREAS

Wage or Income Exemption. Some exemption of wages, salaries, income or profits is universally recognized in the United States.²⁹ The variance in scope of the exemption given, however, is great. Florida at one extreme exempts all money due for the personal labor or services of any person who is the head of the family and residing in that state,³⁰ and Pennsylvania exempts wages of any laborers, or the salary of any person,³¹ while Virginia has a maximum exemption of one hundred fifty dollars a month.³² It is not the purpose here to dispute the amount of exemption but to discuss methods of modernizing wage exemption statutes so that the determined exemption need will be available over a long period of time. The trend of the last several years has been to meet the rapidly increasing wage and salary income, and greatly increased cost of

29. See, e.g., CAL. CIV. PROC. CODE § 690.11; FLA. STAT. ANN. § 222.11 (Supp. 1958); GA. CODE ANN. § 46-208 (Supp. 1958); IND. ANN. STAT. § 2-3501(d) (Burns 1946); MASS. ANN. LAWS ch. 246, § 28 (Supp. 1957); N.M. STAT. ANN. § 26-2-27 (Supp. 1957); N.C. GEN. STAT. § 1-362 (1953); OHIO REV. CODE ANN. § 2329.66(F) (Baldwin 1953); OKLA. STAT. tit. 31, § 1(16) (Supp. 1957); PA. STAT. ANN. tit. 42, § 886 (1930); S.C. CODE § 10-1731 (1952); UTAH CODE ANN. § 78-23-1(7) (1953); VA. CODE ANN. § 34-29 (Supp. 1958).

30. FLA. STAT. ANN. § 222.11 (1943).

31. PA. STAT. ANN. tit. 42, § 886 (1930).

32. VA. CODE ANN. § 34-29 (Supp. 1958).

living by percentage exemptions.³³ Indiana gives a ninety per cent exemption of all income over fifteen dollars a week,³⁴ Alabama exempts sixty per cent,³⁵ California exempts one-half of the earnings,³⁶ Georgia, fifty per cent over three dollars per day,³⁷ New Mexico, eighty per cent,³⁸ Ohio, eighty per cent of first two hundred dollars and sixty per cent of the balance,³⁹ Oklahoma,⁴⁰ and Virginia,⁴¹ seventy-five per cent. Many of these statutes have limiting maximum and minimum provisions and this aspect will be considered later, but it will readily be seen that the percentage exemptions given are very disparate in the various statutes. The desirability of a percentage wage exemption statute does seem clear. This gives a fluidity of exemption coverage which over a period of time is adequate as to the debtor and yet gives the creditor a degree of certainty for his guidance in credit extension and the exercise of his remedies. If it were decided in 1930 that the need for wage exemption at that time was eighty per cent of the monthly wage, that same percentage exemption will in all probability be as necessary in 1960, even though the average wage in the 1930's may have been one hundred dollars a month and may be five hundred dollars a month in the 1960's. A definite exemption value, set for example at eighty dollars a month in the 1930's and justifiable then, would be totally inadequate today.

However, a completely open percentage exemption would not seem desirable. If wages were exempt to eighty per cent of the monthly wage, for example, and no minimum limitation were provided,⁴² each wage earner would be subject to process each month with the resultant procedural difficulties, delay, and the probability of friction between the particular employee and his employer, resulting from repetitious wage

33. See, *e.g.*, ALA. CODE tit. 7, § 630 (Supp. 1955); CAL. CIV. PROC. CODE § 690.11; GA. CODE ANN. § 46-208 (Supp. 1958); IND. ANN. STAT. § 2-3501(d) (Burns 1946); N.M. STAT. ANN. § 26-2-27 (Supp. 1957); OHIO REV. CODE ANN. § 2329.66(F) (Baldwin 1953); OKLA. STAT. tit. 31, § 1(16) (Supp. 1957); VA. CODE ANN. § 34-29 (Supp. 1958).

34. IND. ANN. STAT. § 2-3501(d) (Burns 1946).

35. ALA. CODE tit. 7, § 630 (Supp. 1955).

36. CAL. CIV. PROC. CODE § 690.11.

37. GA. CODE ANN. § 46-208 (Supp. 1958).

38. N.M. STAT. ANN. § 26-2-27 (Supp. 1957).

39. OHIO REV. CODE ANN. § 2329.66(F) (Baldwin 1953).

40. OKLA. STAT. tit. 31, § 1(16) (Supp. 1957).

41. VA. CODE ANN. § 34-29 (Supp. 1958).

42. *E.g.*, New Mexico provides, wages can be garnished for not more "than twenty per cent [20%] of any wages or salary due such defendant for the last thirty [30] days' service, unless the wages or salary due said defendant exceeds one hundred dollars (\$100) per month, garnishment may be had for twenty per cent [20%] of one hundred dollars (\$100) of such wages and salary and, in addition thereto, for full amount of the excess of such wages or salary above one hundred dollars (\$100)." N.M. STAT. ANN. § 26-2-27 (Supp. 1957). Oklahoma provides an exemption of 75% of the wages earned during the last 90 days and provides no lower limit. OKLA. STAT. tit. 31, § 1(16) (Supp. 1957).

garnishment or similar proceeding. On the other hand, with a minimum wage completely exempt and the percentage exemption applying only to the excess, many wage earners will be completely free from seizure processes while they are within the minimum level of absolute exemption. The minimum wage fully exempt in Indiana is fifteen dollars a week,⁴³ in Georgia, three dollars per day,⁴⁴ Ohio, sixty dollars a month,⁴⁵ Utah, fifty dollars a month,⁴⁶ and Virginia, a recently increased minimum, one hundred dollars a month.⁴⁷ These current statutes which do provide a completely exempt minimum wage seem to vary from fifty dollars a month to one hundred dollars a month. It is to be noted, however, that the exemption given the wage earner is extended upward by the percentage exemption allowed above the minimum. The evil in a too small minimum exemption is not that a sufficient over-all exemption is inadequate, but that the wage earner and his employer are subjected to process in a pestiferous manner and in piddling amounts. It might be said that no creditor would act where the available amount is small, but as a practical matter the right to use the process can be a weapon unjustly used. For example, the Indiana wage exemption statute gives a minimum exemption of fifteen dollars a week with ninety per cent exemption to all in excess.⁴⁸ The total exemption is very beneficent toward the debtor but he is subject to a possible weekly seizure of any wages over fifteen dollars a week for the ten per cent not exempt and all pressures which are exerted in such situations. It seems then that a modern wage exemption statute should provide a percentage exemption with an adequate minimum wage or income completely exempt. It is true that this stated crystallized minimum will get out of balance quickly if economic conditions change, but the effect of imbalance is minimized by the superimposed percentage exemption.

A device to avoid the rigidity of a crystallized minimum amount, or for that matter, any stated value exemption, would be to tie the statutory level to regularly published indices, such as cost of living and wage data. Economic changes each year would adjust the minimum exemption in relation to them, thus resulting in a current fair and adequate protection to the wage earner and at the same time give the degree of certainty and foreseeability essential to the creditor. No wage exemption statute of

43. IND. ANN. STAT. § 2-3501(d) (Burns 1946).

44. GA. CODE ANN. § 46-208 (Supp. 1958).

45. OHIO REV. CODE ANN. § 2329.66(F) (Baldwin 1953).

46. UTAH CODE ANN. § 78-23-1(7) (1953).

47. VA. CODE ANN. § 34-29 (Supp. 1958).

48. IND. ANN. STAT. § 2-3501(d) (Burns 1946).

this type is observed, but its possibility should be explored in a modernization of wage exemption laws.

The next question is whether there should be some maximum limitation on the wage exemption. Although the point at which the exemption should cease would be a subject of diversified opinion, it is consistent with the philosophy of exemption laws to retain in the debtor a basic necessary income and to subject fully, income above that level to the claims of creditors. Virginia adopts the closed-end wage exemption by providing that wages in excess of one hundred fifty dollars are fully subject to creditors,⁴⁹ and New Mexico provides that any wage or salary above one hundred dollars for the last thirty days is liable to creditors to the full amount above one hundred dollars.⁵⁰ The problem presented by the closed-end wage exemption is the same as that raised by any crystallized exemption in that it tends to become obsolescent as the economic picture changes.

In adjusting wage exemption laws the most salutary legislation would provide an absolute fully exempt minimum wage, a maximum wage the excess of which would be fully subject to creditors' claims, and a percentage exemption of the wages between the minimum and maximum. The Virginia statute is an example.⁵¹ It provides an absolute full exemption of wages to one hundred dollars a month and no exemption on any excess over one hundred and fifty dollars, with a seventy five per cent exemption on intermediate sums.⁵²

Although the closed-end, intermediate percentage wage exemption statute considered above covers the general requirements of such an exemption, some variations have been used in an attempt both to allow a more fluid adjustment to general economic conditions and to adjust to the singular changes of the individual debtor. Thus, instead of a single percentage exemption an escalator type percentage exemption is used. The Ohio Code gives an example. Here eighty per cent of the first two hundred dollars earned within thirty days is exempted and sixty per cent of the balance.⁵³ The second escalator type adjustable wage exemption is levered to changing circumstances of the individual debtor. This attempts to give a fluidity of exemption which may expand or contract with the changing minimum need of the wage earner. One example of this type statute, extant today, provides that wages are exempt to seventy-five

49. VA. CODE ANN. § 34-29 (Supp. 1958). This statute has an escalator provision concerning dependent children which will be considered later herein.

50. N.M. STAT. ANN. § 26-2-27 (Supp. 1957).

51. VA. CODE ANN. § 34-29 (Supp. 1958).

52. *Ibid.*

53. See note 45 *supra*.

per cent, but never less than one hundred dollars nor more than one hundred fifty, provided such minimum and maximum shall increase by fifteen dollars per month for each dependent child.⁵⁴ Thus an absolute exemption of one hundred dollars a month for a wage earner with no children would progress with his developing family of five to one hundred and seventy-five dollars a month. The maximum limitation would similarly increase. Later as the children became independent, this sliding scale type exemption would retract as the wage earner's responsibility lightened. Although these escalator or sliding scale type exemptions give less prognosticability to the creditor, it does seem that their consideration in the drafting of modern wage exemptions is warranted as a closer reflection of the minimum basic needs of the wage earner both in his changing family situation and the vacillating general economy.

Homestead Exemption. The area of homestead exemption considered here is that broad area relative to exemptions of dwellings, or of real estate or personal property as substitute therefor. These existing homestead exemptions are to a large extent more archaic and outdated than the wage earner's exemptions. The usual homestead exemption provides an upper limit on the value exempt. This varies from a seven hundred dollar limit in Indiana⁵⁵ to one of twelve thousand five hundred dollars in California.⁵⁶ The desired homestead exemption will differ in various jurisdictions at any one time because of differing economic situations and because other exemptions may be allowed which make the homestead exemption less essential. Yet if a one thousand dollar homestead exemption was desirable in 1930, certainly the same exemption today is totally inadequate. For example, Maine,⁵⁷ New Mexico,⁵⁸ North Carolina,⁵⁹ Ohio,⁶⁰ and South Carolina⁶¹ today give only a one thousand dollar value homestead exemption. Arkansas has adjusted to a twenty-five hundred dollar value limit on the homestead,⁶² Missouri to fifteen hundred or three thousand,⁶³ and Oklahoma⁶⁴ and Mississippi,⁶⁵ five thousand. It is evident that these homestead exemption limits are antiquated in application to the average present day situation. The same

54. VA. CODE ANN. § 34-29 (Supp. 1958).

55. IND. ANN. STAT. § 2-3501(a) (Burns 1946).

56. CAL. CIV. CODE § 1260.

57. ME. REV. STAT. ANN. ch. 112, § 68 (1954).

58. N.M. STAT. ANN. § 24-6-1 (1953).

59. N.C. GEN. STAT. § 1-372 (1953).

60. OHIO REV. CODE ANN. § 2329.73 (Baldwin 1953).

61. S.C. CODE § 34-1 (1952).

62. ARK. CONST. art. 9, § 4.

63. MO. REV. STAT. § 513.475 (1949).

64. OKLA. STAT. tit. 31, § 1(1) (Supp. 1957).

65. MISS. CODE ANN. § 317 (1957).

problem arises here as in other exemption areas, and that is the inability of the homestead exemption limit to adjust adequately to the changing general economic climate. California has attempted to keep pace by frequent legislative adjustments made in 1949 and again in 1953.⁶⁶ It cannot be expected, however, that such exemption limits will be kept current by frequent legislation and as a result wholesale imbalance will continue. A possible remedy here too would be some self-adjusting, elastic exemption limit which would expand and contract according to a formula compiled from published economic data.

Although homesteads normally have a maximum exemption value, some jurisdictions give a blanket exemption covering all property qualifying as a homestead.⁶⁷ A complete exemption of the home owner's dwelling goes beyond the limits of the spirit and need of the homestead exemption and some dollar value limitation is necessary. Several jurisdictions have changed from the orthodox homestead exemption to an elective exemption which takes its place and permits the head of a family to select any real estate to a certain value as exempt, or to select personal property to that value if the debtor has no real estate or prefers the personal property exemption over that of the real estate.⁶⁸ This would tend to equalize the actual exemption coverage of the homeowner and the renter and is worthy of consideration.

There is a great need in most jurisdictions for a modernization of the homestead exemption laws. The upper value limitation should in almost every instance be increased to reflect the current situation and, if possible, to provide an adjustability which will prevent serious dislocation as later economic patterns develop. Serious consideration should also be given to extending some substitute exemption to those not qualified by ownership to receive a strict homestead exemption.

Occupational Exemptions. Historically, those engaged in certain occupations and professions have received specially designated exemptions of certain minimum articles deemed necessary in the particular occupation or profession. The most usual occupations thus specially treated are farming, the professions, mechanics, carpenters and generally those using tools and implements for a livelihood. It is to be kept in mind at this point that the specific exemption granted to certain occupational areas is being considered, and not the right of a debtor to select as exempt any tangible personal property up to a certain value as is provided in some

66. CAL. CIV. CODE § 1260. For an escalator type homestead exemption law, see UTAH CODE ANN. § 28-1-1 (1953), wherein a \$2,000 exemption and a further sum of \$750.00 for a spouse and \$300.00 for each member of the family is given.

67. *E.g.*, FLA. CONST. art. X, § 1; OKLA. STAT. tit. 31, § 1(1) (Supp. 1957).

68. *E.g.*, VA. CODE ANN. § 34-4 (1950).

jurisdictions.⁶⁹ There is no question but that these occupational exemptions by-and-large are antiquated and stultifying. A casual reading of these exemption statutes seems to be a part of the world of Davy Crockett. Spinning wheels are exempt in Missouri,⁷⁰ agricultural implements not exceeding two hundred dollars in Ohio,⁷¹ and one horse used by a physician, surgeon or minister in the practice of his profession in California.⁷² When the legislature gave these exemptions they were seriously given as needed protection for a debtor. The pathos in the picture is the farmer of today with only a two hundred dollar implement exemption or the exemption of a minister's non-existent horse and not his existing car.

The specific item delineation is the method most frequently used in granting personal property exemptions to the farmer, such as two mules, harness, two wagons, food for mules, seed, etc.⁷³ If the exemption by specific item designation is used, it is of great importance that the legislature revise the listed items so as to give the needed protection to the farmer in his current economic situation. California has done much in this way by adding one refrigerator and one television receiver,⁷⁴ one truck,⁷⁵ and one car⁷⁶ to the items exempt. Virginia in 1956 added one tractor to a former two horse exemption.⁷⁷ It is evident that a farmer's exemption granted by naming specific items must be periodically revised to meet the farm debtor's needs, but whether this specific item exemption is the desirable method of granting a farmer's exemption is questionable. With the rapid change in farming methods and equipment, this type statute will almost certainly be outdated before it will be revised.

Another, and more serviceable type farm exemption is the selective property exemption whereunder the farmer may elect up to a certain value the personal property essential to him in his particular farming endeavor. A maximum exemption value is necessary as the value of trucks, tractors and power equipment of the farmer may be far beyond any justifiable exemption. An example of this selective type farmer's exemption is evidenced in the Utah Code wherein, "farming utensils . . . not exceeding"⁷⁸ are exempt, and Ohio⁷⁹ provides an exemption of tools and implements necessary for carrying on farming up to a certain value

69. *E.g.*, IND. ANN. STAT. § 2-3502 (Burns 1946).

70. MO. REV. STAT. § 513.435(3) (1949).

71. OHIO REV. CODE ANN. § 2329.66(E) (Baldwin 1953).

72. CAL. CIV. PROC. CODE § 690.7.

73. CAL. CIV. PROC. CODE § 690.3.

74. CAL. CIV. PROC. CODE § 690.2.

75. See note 72 *supra*.

76. CAL. CIV. PROC. CODE § 690.24.

77. VA. CODE ANN. § 34-27 (Supp. 1958).

78. UTAH CODE ANN. § 78-23-1(3) (1953).

79. OHIO REV. CODE ANN. § 2329.66(E) (Baldwin 1953).

level. Many of these value limitations are badly in need of upward revision. For example, Ohio exempts selected farm implements not exceeding two hundred dollars in value,⁸⁰ and Utah exempts farm utensils not exceeding three hundred dollars in value.⁸¹ However, an open-end implement exemption as that found in Oklahoma, extending to all farm implements of husbandry used on the homestead,⁸² is too broad an exemption unless "implements" means only items of small value such as tools.

To analyze the true exemption position of a farmer in any jurisdiction, the scope of his homestead exemption, his household exemptions, and other exemptions granted to broader classes in which he falls must be included, but the farmer should have a personal property exemption coverage especially extended to him. A modernized farmer's exemption statute should grant to a farmer a selective exemption base under which he could choose the tools, implements, and machinery which he wished to have exempt. This would not only give the elasticity necessary because of the multifarious kinds of farming, but also an adaptability to progressive changes made in farming methods. A maximum value of the selected items should be specified. No one figure could be suggested, but it seems it should be substantially more than those now provided. Over and above this selective exemption area, a farmer should be given some specific item exemptions. These should include a truck and a tractor each to a certain maximum value. Virginia, for example, exempts a tractor to the value of five hundred dollars.⁸³

The usual exemption laws also give special consideration to those who earn their living by labor and those engaged in a profession. The shortcomings of these exemptions are basically the same as in the farmer exemption provisions. They have not been re-examined and modernized for many years. Maine⁸⁴ and Massachusetts⁸⁵ provide an exemption of tools necessary for carrying on a business not exceeding one hundred dollars in value. The Massachusetts one hundred dollar exemption was fixed in 1855.⁸⁶ On the other hand, Missouri,⁸⁷ Mississippi,⁸⁸ and Cali-

80. *Ibid.*

81. See note 78 *supra*.

82. OKLA. STAT. tit. 31, § 1(4) (Supp. 1957).

83. VA. CODE ANN. § 34-27 (Supp. 1958). Oklahoma in 1957 amended its Act so as to remove a yoke of oxen from the exemption, but continued the exemption of two horses and two mules. Nothing was said as to trucks or tractors. See OKLA. STAT. tit. 31, § 1 (8), (9) (1951), as amended (Supp. 1957).

84. ME. REV. STAT. ANN. ch. 112, § 67(1) VI (1954).

85. MASS. ANN. LAWS ch. 235, § 34 (1955).

86. See historical note to MASS. ANN. LAWS ch. 235, § 34 (1955).

87. MO. REV. STAT. §§ 513.430, 513.435(7) (1949).

88. MISS. CODE ANN. § 307 (1957).

fornia⁸⁹ provide open-end exemptions covering all tools necessary in carrying on a trade or used for a livelihood. Professional books necessary to a practice are exempted in Missouri,⁹⁰ while New Mexico exempts doctors' books and instruments not exceeding one hundred dollars in value,⁹¹ and Ohio exempts implements necessary for carrying on a profession not exceeding two hundred dollars in value.⁹²

These illustrations are fair samples of current exemptions provided for mechanics and professional men and emphasize the need for modernization. In all probability a generalized exemption allowing the professional man or the mechanic the privilege of selecting up to a stated amount the tools, equipment, implements, and books which he desires to keep free from his creditors is satisfactory. An alternative method of perhaps greater utility is to establish a flexible limitation by exempting the *necessary* tools, implements, and books. This limitation may be opposed as being too vague, and not giving the creditor a sufficiently clear picture of available assets. On the other hand, an absolute dollar value limitation is likely to become totally out of balance before it is again considered for revision. Under a flexible limitation a court could survey each debtor's particular situation and grant protection sufficient to enable him to keep together the essentials of his trade or profession, as they were found to be necessary at the time. Such an exemption would also lend itself to adequate treatment of the various types of mechanics and the diversified nature of the professions.

Personal Insurance Exemptions. The exemption of life insurance has long been considered essential to protect the family of the insured and to provide funds after death to its members. Few would question the desirability of such exemption and the liberal construction of the courts has to some extent vitalized life insurance exemptions and adapted them to changing insurance concepts without the aid of legislative change. Yet it is important at this time for most jurisdictions to carefully re-evaluate their life insurance exemption provisions and adjust them to today's needs and today's insurance practices.

The familiar problem of the amount of the exemption is present here. Many jurisdictions exempt life insurance and do not restrict the amount exempt. For example, Alabama, Arkansas, Florida, Georgia, Indiana, Maine, New Hampshire, New York, North Carolina, Ohio,

89. CAL. CIV. PROC. CODE § 690.4.

90. MO. REV. STAT. § 513.435 (11) (1949).

91. N.M. STAT. ANN. § 24-5-6 (1953).

92. OHIO REV. CODE ANN. § 2329.66(E) (Baldwin 1953). Utah exempts one vehicle used by a physician, surgeon or minister in making professional visits. UTAH CODE ANN. § 78-23-1(6) (1953).

Oklahoma and Pennsylvania provide no limitation on the amount of life insurance which is exempt.⁹³ Other states circumscribe the exemption scope to a maximum dollar value. Mississippi exempts life insurance not exceeding ten thousand dollars,⁹⁴ while South Carolina exempts to twenty-five thousand dollars.⁹⁵ It is interesting to note that the Mississippi ten thousand dollar limitation was last amended in 1930,⁹⁶ while the South Carolina twenty-five thousand dollar maximum exemption was granted in 1947.⁹⁷ It is obvious that the coverage intended to be given in 1930 is largely dissipated today and even that of 1947 is no longer reflected in 1959. Some states limit the amount of life insurance exempt by premium payment restrictions. Thus, California, Missouri and Utah exempt life insurance up to the amount which is purchased from an annual premium not exceeding the sum of five hundred dollars.⁹⁸

There is danger in the wide open exemption where the scales are weighted in favor of the debtor and his family. There is also a proved danger in any fixed maximum exemption as it is quickly outdated with the resultant shrinking of the true exemption protection. This, as history shows, is weighted to the advantage of the creditor. There is no question, however, that most of those states providing a value limitation on life insurance exemptions are in need of reevaluation and modernization. The basic concern of life insurance exemption being the family unit, it seems no limitation should be provided on this exemption; thus as the position of the individual changes with the general economic trends, he will be able to provide exempt insurance coverage which he deems necessary for his family. The wholesale misuse of such an unlimited exemption will be prevented under the usual fraudulent conveyance remedies.⁹⁹

It would be expected that only life insurance coming to the insured's estate or naming members of the family as beneficiaries would be exempt. This is not the usual situation, however, as most life insurance exemption laws exempt the proceeds and cash surrender value of any life insurance

93. ALA. CODE tit. 7, § 624 (1940); ARK. STAT. ANN. § 30-208 (1947); FLA. STAT. ANN. § 222.13 (Supp. 1958); GA. CODE ANN. § 56-905 (1935); IND. ANN. STAT. § 39-4210 (Burns 1946); ME. REV. STAT. ANN. ch. 60, § 232 (1954); N.H. REV. STAT. ANN. § 408:1 (1955); N.Y. INS. LAW § 166; N.C. CONST. art. X, § 7; OHIO REV. CODE ANN. § 3911.10 (Baldwin Supp. 1955); OKLA. STAT. tit. 36, § 211 (1951); PA. STAT. ANN. tit. 40, § 517 (1954).

94. MISS. CODE ANN. § 308 (1957).

95. S.C. CODE § 37-169 (1952).

96. See historical note to MISS. CODE ANN. § 308 (1957).

97. See historical note to S.C. CODE § 37-169 (1952).

98. CAL. CIV. PROC. CODE § 690.19; MO. REV. STAT. § 376.560 (1949); UTAH CODE ANN. § 78-23-1(8) (1953).

99. *E.g.*, N.Y. INS. LAW § 166(4).

policy, regardless of the named beneficiaries.¹⁰⁰ Some jurisdictions do reflect a narrower coverage and extend the life insurance exemption only to policies taken out for the benefit of the wife or children, or any relative dependent upon the insured, or a creditor,¹⁰¹ or some other designated members of the family class.¹⁰² Because life insurance contracts normally are intended to cover such long periods of time and the circumstances of the insured and his marital and family status change, it is probably desirable that the life insurance exemption should be granted irrespective of the named beneficiary. Although members of the family may not at a particular time be named beneficiaries, the probability is that they will benefit at some later time if the insurance is not forfeited under pressure of the insured's creditors.

In considering a modern life insurance exemption, the question as to the creditors who are precluded from seizing the insurance or its proceeds should be considered. A loosely designated provision exempting insurance benefits from execution leaves the problem as to whose creditors are precluded. This is illustrated in an early California case which liberally extended the exemption from execution to include an exemption from the creditors of the party to whom the insurance was payable.¹⁰³ There are three classes of creditors to be considered in determining the scope of the exemption of life insurance. They are the creditors of the insured, the creditors of the person effecting the insurance and the creditors of the beneficiary. The usual statutory provision recognizes the creditors of the insured and exempts the policy, its cash surrender value and proceeds from them only.¹⁰⁴ Others, intending to give a broad scope of coverage to the exemption, permit the beneficiary to receive the proceeds of life insurance free also from the creditors of such beneficiary.¹⁰⁵ Florida provides that life insurance and its proceeds are in no case liable to attachment, garnishment or any legal process in favor of any creditors of the person whose life is insured.¹⁰⁶ Georgia exempts life insurance from creditors of the insured and of the person effecting the

100. *E.g.*, ARK. STAT. ANN. § 30-208 (1947); FLA. STAT. ANN. § 222.14 (1943); GA. CODE ANN. § 56-905 (1935); MISS. CODE ANN. § 308 (1957); N.Y. INS. LAW § 166(1); OKLA. STAT. tit. 36, § 211 (1951).

101. IND. ANN. STAT. § 39-4210 (1946); OHIO REV. CODE ANN. § 3911.10 (Baldwin Supp. 1955); PA. STAT. ANN. tit. 40, § 517 (1954).

102. N.H. REV. STAT. ANN. § 408.1 (1955) exempts life insurance payable to a married woman. N.C. CONST. art. X, § 7 exempts life insurance for wife and children. Mo. REV. STAT. § 376.560 (1949) exempts policies for the benefit of the wife of the insured.

103. *Holmes v. Marshall*, 145 Cal. 777, 70 Pac. 534 (1905).

104. See, *e.g.*, IND. ANN. STAT. § 39-4210 (Burns 1946); OHIO REV. CODE ANN. § 3911.10 (Baldwin Supp. 1955); PA. STAT. ANN. tit. 40, § 517 (1954).

105. See, *e.g.*, VA. CODE ANN. § 38.1-482 (1950).

106. FLA. STAT. ANN. § 222.13 (Supp. 1958).

insurance.¹⁰⁷ Ohio exempts from all claims of the creditors of the insured,¹⁰⁸ as also do Pennsylvania,¹⁰⁹ Mississippi,¹¹⁰ and Indiana.¹¹¹ On the other hand, New York carefully sets out the exemption coverage in respect to these three classes by freeing the insurance policy and its proceeds under designated circumstances from creditors of the person insured, from the creditors of the person effecting the insurance, and the creditors of the beneficiary.¹¹² Virginia goes far in exempting certain life insurance policies and proceeds from creditors of the insured and of the beneficiary both before and after payment.¹¹³ Whether the life insurance exemption should extend to exclude creditors of the beneficiary from the right to seize the proceeds of the policy is debatable. If the beneficiary is to be protected as against his own creditors, the exemption should only be extended to certain members of the insured's natural bounty, as his wife and children.

In recent years, the personal insurance contracts have changed substantially in form. Endowment and annuity contracts have become commonplace. With legislative inaction, the "life insurance" exemption in early statutes lost its clarity and mongrelized insurance contracts raised the issue of whether the life insurance exemption extended to them. By a flexible approach, the courts are able to extend a necessary exemption coverage to these varying insurance contracts,¹¹⁴ but the problem should be carefully settled by legislative action. Some jurisdictions have considered this problem. New York specifically exempts life insurance and annuity contracts,¹¹⁵ as do Massachusetts¹¹⁶ and New Mexico.¹¹⁷ Georgia provides that life or endowment insurance is exempt,¹¹⁸ while Ohio, in modernizing its insurance exemption law, provides for the exemption of life insurance contracts, endowment insurance or annuity contracts.¹¹⁹ At the present time, however, most jurisdictions provide an exemption by the indefinite term—"life insurance." If the exemption is to be extended to these newly developed types of insurance contracts, it may be

107. GA. CODE ANN. § 56-905 (1935). The entire insurance code of Georgia is now in the process of revision by a legislative committee (1959). The author has appeared before this Committee.

108. OHIO REV. CODE ANN. § 3911.10 (Baldwin Supp. 1955).

109. PA. STAT. ANN. tit. 40, § 517 (1954).

110. MISS. CODE ANN. § 308 (1957).

111. IND. ANN. STAT. § 39-4210 (Burns 1946).

112. N.Y. INS. LAW § 166.

113. VA. CODE ANN. § 38.1-482 (1950).

114. See, *e.g.*, Fox v. Swartz, 235 Minn. 237, 51 N.W.2d 80 (1952).

115. N.Y. INS. LAW § 166(3).

116. MASS. ANN. LAWS ch. 175, § 119(A) (1955).

117. N.M. STAT. ANN. § 24-5-3 (1953).

118. GA. CODE ANN. § 56-905 (1935).

119. OHIO REV. CODE ANN. § 3911.10 (Baldwin Supp. 1955).

desirable to define the nature of the contract to be exempt as has New York,¹²⁰ or to state only the general type of insurance, as endowment or annuity contracts, and thus leave to the courts the job of characterizing the conglomerate insurance policies as they develop.

Other types of personal insurance have become common today which are not included in the broad area of life insurance. These are the growing volume of disability, health, and accident insurance contracts. Most exemption statutes in effect today, were enacted before the use of such insurance coverage was common and make no provision for them. Thus no protection to the debtor at the time of sickness or disability is granted. California has considered the problem and exempts all money or benefits growing out of disability or health insurance to the amount of a five hundred dollar annual premium,¹²¹ while Florida exempts disability income benefits under any policy or contract of health or accident insurance.¹²² Several other jurisdictions have recognized an exemption need in this area of health and accident insurance and have granted such exemptions.¹²³ It is important for those many jurisdictions which have not considered this area to do so promptly, and it is likely such consideration would result in extending the exemption at least in some degree to the health, accident and disability contracts of the debtor.

EXCEPTIONS FROM EXEMPTIONS

Many classes and types of creditors have been permitted to pierce the protective shield of the exemption or have not been excluded by its coverage. These creditors may be differentiated on the basis of their claim, such as contract on the one hand, or tort on the other, or according to certain types of claims such as claims arising on the furnishing of necessities, claims arising for wages earned, claims arising on alimony obligations, etc. Most jurisdictions do grant special exceptions to the exemption coverage, and some currently have a very restricted group of creditors against whom the general exemption is effective.

Indiana's general exemption statute provides an exemption to stated amounts for any debt growing out of or founded upon a contract express or implied.¹²⁴ Alabama also extends its general exemption coverage to protect from the collection of debts,¹²⁵ and thus gives no protection to

120. N.Y. INS. LAW § 166(3).

121. CAL. CIV. PROC. CODE § 690.20.

122. FLA. STAT. ANN. § 222.18 (1943).

123. See, *e.g.*, ARK. STAT. ANN. § 30-208 (1947); ME. REV. STAT. ANN. ch. 60, § 232 (1954); MASS. ANN. LAWS ch. 175, § 110(A) (1955); N.M. STAT. ANN. § 24-5-3 (1953); N.Y. INS. LAW § 166(2).

124. IND. ANN. STAT. § 2-3501 (Burns 1946).

125. ALA. CODE tit. 7, § 629 (1940).

the debtor as against *ex delicto* claims.¹²⁶ However, the current approach to this problem has been to grant the exemption protection as against both tort and contract claims. To implement the philosophy of reserving unto the debtor certain basic necessities, the blanket exemption from both tort and contract creditors is preferable.

There are many specific types of creditors' claims which may be the basis for seizing property protected by the general exemption laws. This may be in the nature of a removal of the general exemption protection from the specific claim,¹²⁷ or the removal of the exemption of a specific item as against a specific claim.¹²⁸ Thus Illinois withdraws its exemption from all personal property as against a debt for wages of any laborer,¹²⁹ and Massachusetts, although exempting disability insurance benefits as a general matter, provides that the exemption shall not apply for necessities contracted during disability.¹³⁰

An exception for necessities is common.¹³¹ The scope of this exception is usually circumscribed by providing that all debts incurred by the debtor, his wife or family, for common necessities, are not subject to exemption provisions.¹³² It is suggested that special consideration be given the claim based on the furnishing of necessities, but with some maximum limitation, or by providing that some minimum assets be protected even from this necessity based claim. This would not only give a debtor a basis for obtaining necessities on credit during critical times, but would in general recognize the merit of the credit base. California has a controlled "necessaries" exception wherein it is provided that, although benefits growing out of disability or health insurance are exempt from creditors, debts incurred for the common necessities of life may be satisfied out of one-half of such benefits.¹³³ New York also has a provision which excepts, from the general exemption of benefits payable under disability insurance, liabilities incurred for necessities furnished after the commencement of the disability.¹³⁴ The exception of debts based upon the furnishing of necessities should be limited to those contracted within a certain period of time so that years of accumulated necessity obligations

126. *Brown Shoe Co. v. Schaefer*, 242 Ala. 310, 6 So. 2d 405 (1942).

127. See, *e.g.*, FLA. CONST. art. X, § 1.

128. See, *e.g.*, CAL. CIV. PROC. CODE §§ 690.02, 690.11.

129. ILL. ANN. STAT. ch. 52, §§ 16, 18 (Smith-Hurd 1951).

130. MASS. ANN. LAWS ch. 175, § 110(A) (1955).

131. CAL. CIV. PROC. CODE §§ 690.11, 690.20; N.M. STAT. ANN. § 24-6-7 (1953) and § 26-2-27 (Supp. 1957); N.Y. INS. LAW § 166(2).

132. See, *e.g.*, CAL. CIV. PROC. CODE § 690.11; N.M. STAT. ANN. § 24-6-7 (1953).

133. CAL. CIV. PROC. CODE § 690.20.

134. N.Y. INS. LAW § 166(2).

would not steam-roller the debtor long after the furnishing of the necessities.

Debts incurred for manual labor are also obligations frequently given special consideration in the exemption laws. Thus, California and New Mexico, although exempting earnings of the debtor, provide that no earnings are exempt as against claims for personal services or manual labor rendered for the debtor,¹³⁵ and Illinois provides that no personal property shall be exempt from a debt for wages of any laborer or servant.¹³⁶ Ohio subjects the homestead to claims for manual work,¹³⁷ Pennsylvania provides no exemptions against certain claims for wages or manual labor,¹³⁸ and Virginia withdraws its homestead exemption as to claims for services rendered by a laboring person or mechanic.¹³⁹ The fault of the provisions is that they allow the wage claimant to subject the debtor's assets to claims not limited in amount. Some curtailment of this exception should be provided. This could be done by providing that certain assets, or assets to a certain value, are to be exempt even from the claims based on personal services. The result would be that certain property exempt by the general exemption laws would be made subject to claims for wages earned, but certain other exempt property would not be liable to such claims. The wage claim exception may also be narrowed by a provision limiting the amount of wage claims which will be permitted against otherwise exempt property. Both Ohio¹⁴⁰ and Pennsylvania¹⁴¹ illustrate such a limitation on the exception to wage claims by providing that only claims for wages or manual labor for one hundred dollars or less are to receive the special privilege of seizure of otherwise exempt property. The amount of the claim over one hundred dollars is subject to the general exemption provisions.

Tax claims are normally excepted from exemption provisions.¹⁴² Some jurisdictions have singled out married women's maintenance claims, or alimony liabilities as deserving of favorable treatment.¹⁴³ Thus, Pennsylvania provides that any person against whom alimony, or wife or child support is claimed is not entitled to the benefit of any exemption

135. CAL. CIV. PROC. CODE § 690.11; N.M. STAT. ANN. § 24-6-7 (1953).

136. ILL. ANN. STAT. ch. 52, §§ 16, 18 (Smith-Hurd 1951).

137. OHIO REV. CODE ANN. § 2329.72 (Baldwin 1953).

138. PA. STAT. ANN. tit. 43, § 232 (1954).

139. VA. CODE ANN. § 34-5 (1950).

140. OHIO REV. CODE ANN. § 2329.73 (Baldwin 1953).

141. PA. STAT. ANN. tit. 43, § 232 (1954). Missouri provides no exemption as against laborers' claims for wages up to ninety dollars. MO. REV. STAT. § 513.470 (1949).

142. See, *e.g.*, IND. ANN. STAT. § 2-3515 (Burns 1946) and § 64-1511 (Burns 1951); FLA. CONST. art. X, § 1; OKLA. STAT. tit. 31, § 5 (1951).

143. *E.g.*, MO. REV. STAT. § 452.140 (1949) and PA. STAT. ANN. tit. 48, § 136 (1954).

law as against such claims,¹⁴⁴ and Missouri provides that no property shall be exempt as against a married woman's claim for maintenance or alimony.¹⁴⁵ Certainly this area of wife and child support obligations is one which could logically and justifiably be granted special attention, giving a wife or children a better status than other creditors as against the property of the husband or father. Whether all exemptions should be withdrawn from one obligated under support or alimony decrees is another matter. Some minimal necessities should be exempt even from these highly meritorious claims.

SUMMARY AND CONCLUSIONS

From the current study and review of the exemption laws of twenty-two states selected on a diversified geographical, economic and population base,¹⁴⁶ certain generalizations and conclusions may be drawn. It is evident that nearly every jurisdiction is long overdue a re-evaluation and analysis of its exemption laws. Some few jurisdictions have periodically reviewed and adjusted certain portions of their exemption laws so as to reflect current needs, but none were found to have reconsidered the full scope of the exemption problem so as to give an over-all modern perspective to the general institution granting exemptions to the personal debtor. Too often the legislative lag has permitted the debtor-creditor relationship to be crystallized so that current needs and institutions are no longer reflected. It is evident that there is an urgency for a modernization of exemption laws, an urgency singularly and forcefully shown by even a casual observation of the archaic provisions and values still extant in the laws of most jurisdictions. A general review and modernization of the exemption laws would prevent such anachronism, fairly adjust the debtor-creditor relationship in the area of exemptions, and give some elasticity of application in the future.

In step with current economic and social realizations, the exemption laws should insofar as possible be flexible in nature so that with economic changes the same real exemption will continue to be available to debtors. The old crystallized exemption provisions which become outmoded in a few short years should, as far as possible, be abandoned. The risk of fluid exemption laws to creditors seeking a future certainty is recognized. A more extensive use of some intermediate type of exemption law which gives fluidity in the changing economic picture and still gives the creditor reasonable grounds for forecasting available assets is the present need.

144. PA. STAT. ANN. tit. 48, § 136 (1954).

145. MO. REV. STAT. § 452.140 (1949).

146. See note 1 *supra*.

Escalator and percentage exemption provisions should be more extensively utilized and experimentation with current, reliable indices to which exemption values could be tied is advisable.