Personal Property Exemptions and the Uniform Exemptions Act

At common law, debtor exemptions were rarely recognized and, generally speaking, every species of a debtor's property was subject to execution for the payment of a debt. American legislatures, however, have had more compassion for the judgment debtor than did the common law. In an effort to protect a portion of the debtor's holdings, every state has passed personal property exemption statutes. These statutes are by no means uniform; even a brief overview reveals broad differences in construction, emphasis, and items exempted.

In response to this diversity and in an attempt to correct the inherent flaws in existing state exemption laws, "most of which are archaic, some of which are unduly generous, and some of which are extremely niggardly," the National Conference of Commissioners on Uniform State Laws has proposed the Uniform Exemptions Act. The Uniform Exemptions Act proposes, as an alternative to the morass of divergent state laws, a single schedule of exemptions to be applied to all debtors. Several of its sections apply specifically to personal property exemptions.

After presenting some background observations about the scope and purpose of personal property exemption laws, this Comment will examine the flaws of existing exemption statutes. An analysis of the Uniform Exemptions Act as an attempt to rectify those flaws will follow. Finally, this Comment will suggest modifications states might consider in adopting the Uniform Exemptions Act.

I. PERSONAL PROPERTY EXEMPTIONS: SOME INTRODUCTORY OBSERVATIONS

A. Scope of Personal Property Exemption Law

An exemption from execution has been defined as a debtor's legal right to retain a portion of his personal property, free from

2. Yale Law Journal sent questionnaires to 104 district court clerks requesting data concerning the status of those claiming exemptions, the type of claims, and the average value of the state exemption claimed by bankruptcy candidates. The results indicate a surprising degree of diversity in state exemption law. Note, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1504-07, 1515-16 (1959). See also 52 Ky. L.J. 456 (1964).
“seizure and sale under legal process for the payment of [his] debts.” In other words, when a debt is created, the creditor does not look and has no right to look to exempt property as a means of payment.5

It is essential to acknowledge initially that personal property exemption law does not exist in a vacuum. It is integrally related to, yet apart from, bankruptcy proceedings, debtor-creditor relationships, and coexistent exemption statutes. A brief overview of these related areas will help to clarify the scope of personal property exemption law.

1. Bankruptcy and state personalty exemption law

Although both bankruptcy and state exemption law offer relief to the improvident and impecunious, there are several factors which indicate that the two procedures are in fact different and should be treated as such. The first and most obvious consideration is that bankruptcy is a federal proceeding, whereas exemption law lies within the state’s special domain.6 But, despite a proposed Bankruptcy Act that would establish a policy affording all debtors the same exemption rights,7 the existing Bankruptcy Act provides that it “shall not affect the allowance to bankrupts of the exemptions which are prescribed . . . by the State laws in force at the time of the filing of the [bankruptcy] petition in the State” of domicile.8 Thus, even though bankruptcy proceedings are handled by federal courts and are subject to uniform congressional enactment, at present, substantive state exemption law is applied in most bankruptcy cases.

A second consideration demonstrating the diversity between bankruptcy and exemption law is the fact that the procedures involved in exemption and bankruptcy actions are different. One procedural difference is that state exemption statutes protect

6. The historical interplay between the two illustrates an interesting lesson in federalism and points out the conflicting interests that still exist. The Constitution grants Congress the authority to enact “uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. 1, § 8, cl. 4. In accordance with this power, Congress passed bankruptcy acts in 1800 and 1841 that contained exemption provisions. The Bankruptcy Act of 1898, still in force today, however, incorporates the exemption laws of the appropriate state. The Supreme Court upheld this reference to nonuniform state exemption law against a challenge that it breached the “uniform Laws” requirements of article one. Hanover Nat’l Bank v. Moyses, 186 U.S. 181, 188 (1902).
debtor's only temporarily from the collection efforts of their creditors by postponing payment of the debt, while bankruptcy permanently terminates the creditor's claim and, following discharge, grants the debtor a fresh start. Another dissimilarity is that bankruptcy requires a total liquidation of the debtor's nonexempt assets whereas state exemption law does not. These differences may combine to justify a greater exemption allowance under exemption statutes than bankruptcy proceedings since a debtor whose obligation to repay has been postponed through reliance on an exemption is more likely to rehabilitate his debt than one whose debt has been cancelled through discharge in bankruptcy. Thus, given a greater exemption allowance under state law, a debtor may forego bankruptcy and use his exempt property to produce income to rehabilitate the debt.10

2. Debtor-creditor relationship

The two categories of creditors most affected by exemption statutes are unsecured contract creditors and tort victims who have obtained judgments. Obviously, the debtors who will typically rely on exemption statutes are those who face possible execution against their property because of an inability to pay their debt. However, there may be any number of reasons for the

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9. Williams v. United States Fidelity & Guar. Co., 236 U.S. 549, 554-55 (1915). Williams was one of the first cases to state that "the one purpose of the Bankruptcy Act was to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." Id.

10. The assumption that exemption of occupationally related personalty would enable the debtor to provide for his immediate needs and ultimately to rehabilitate his debt is supported by Cleveland Arcade Co. v. Talcott, 22 Ohio App. 516, 154 N.E. 62 (1926), where the court recognized that execution against a lawyer-debtor's library and office furniture would "deprive the creditor of the very sources of production which would result in the payment of indebtedness." Id. at 517, 154 N.E. at 63. James v. Strange, 407 U.S. 128 (1972), also lends support to the above assumption by analogy. In the area of wage garnishment the Court noted that the indigent debtor will find "limited incentive to seek legitimate employment when . . . [he] knows that his wages will be garnished without the benefit of the customary exemptions." Id. at 139.

A statement by the National Conference, however, may lead to a different conclusion, i.e., that liberal exemption laws may prompt debtors to resort to bankruptcy:

The existence of discrepancies between the exemptions available under the Bankruptcy Act and those provided by state law would furnish an incentive for the invocation of relief under the Act; if the federal exemptions are more generous, a debtor will be encouraged to file a petition under the Act to obtain the enlarged benefits it affords against his creditors; if the federal exemptions are less liberal, creditors may be persuaded to precipitate involuntary bankruptcy in order to reach property not leviable under state law.

Uniform Exemptions Act, Prefatory Note at 7.
debtor’s inability to pay—improvidence, sudden medical emergencies, or loss of a job, to name a few.

Whether it is desirable to undercut the financial expectations of creditors to safeguard a debtor from total liquidation, therefore subjecting the creditor to a loss, is a frequently raised question. The answer would appear to depend on the basis of the creditor’s interest. For example, while contract creditors have an opportunity to select their debtors and extend credit in light of exemption law, tort victims have no such opportunity. Moreover, assumption of risk is an element of the creditor’s business that is reflected in his interest rates; it is not a factor in tort judgments. Therefore, while it would be unfair to penalize a tort victim through operation of exemption statutes, it is not as unfair to require the contract creditor to share the burden of his debtor’s financial distress.

3. Personal property and coexistent exemption law

Personal property exemptions are only one part of a complex exemption picture. Other exemption statutes, which include exemptions for homesteads, wages, and the proceeds from welfare funds and insurance policies, are also part of the panorama of exemption law. As a result, reference to these other exemption laws is necessary to understand exemptions in their totality. The views and proposals of this Comment, then, should not be read in isolation, but rather in connection with other relevant exemption procedures. With the scope of exemption law in mind, it is possible to analyze the concepts and policies upon which personal property exemption law is founded.

12. In early cases some courts refused to allow exemptions against tort claims, reasoning that such claims are not contemplated within the meaning of “debt.” See, e.g., Erlenbach v. Cox, 206 Ala. 298, 89 So. 465 (1921); Hill v. Bush, 192 Ark. 181, 90 S.W.2d 490 (1936). See also 25 Minn. L. Rev. 66, 77-78 (1940). But see Uniform Exemptions Act § 1(1) (defining “debt” as “a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise”).
B. The Purpose of Exemption Law

The purpose of exemption statutes has often been declared by the Supreme Court, state legislatures, and state courts. In the leading case of Bronson v. Kinzie,17 Chief Justice Taney stated that exemption law is intended "to secure [debtors] from unjust and harassing litigation, and to protect them in those pursuits which are necessary to the existence and well-being of every community."18 That the purpose of exemption law is founded on interests of humanity and generosity is reinforced as being "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 destitution and absolute want."19 Thus, there are three intended beneficiaries of exemption law: the debtor,20 the debtor's family,21 and the debtor's community.22

The purpose of exemption law can be more fully understood after a consideration of the emotional and economic considerations underlying exemption statutes. Also, in addition to humanitarian concern for the debtor, the economic rights of creditors must also be considered and the conflicting interests of the debtor and creditor carefully weighed. A consideration of these factors follows.

1. Emotional and economic considerations

Traditionally the debtor has been subject to harsh treatment and severe disciplinary penalties. Imprisonment for debt and other oppressive measures were known in Roman law,23 and were

17. 42 U.S. (1 How.) 311 (1843).
18. Id. at 315-16. A similar statement amplifying the purpose of exemptions is found in Schlaefer v. Schlaefer, 112 F.2d 177, 185 (D.C. Cir. 1940): "[T]he usual purpose of exemptions is to relieve the person exempted from the pressure of claims hostile to his dependents' essential needs as well as his personal ones . . . ."
23. Roman law provided that if a debt remained unpaid for a certain period of time "the debtor might be killed or sold into slavery, and competing creditors might divide the body into pieces proportionate to the amount of each one's claim." Ford, Imprisonment for Debt, 25 Mich. L. Rev. 24, 24-25 (1926).
utilized by the early English common law courts. Even though colonial insolvency acts recognized humanitarian objectives, America was not free from similar harsh measures.

The high incidence of default in the generation after the Revolution made the debtors' prison a visibly obnoxious feature of American life. The poor were the chief victims. About sixty percent of the prisoners owed no more than ten dollars. In some cases confinement dragged on for years, and inevitably there were instances of the grossest inhumanity—nursing mothers deprived of their liberty, aged Revolutionary veterans jailed for trifling amounts, prisoners crowded into tiny, foul cells, and cases of exploitation, brutality, and death.

It was against this historical backdrop that alternative measures for treating insolvents evolved. "[T]he person, then the personal property, and finally the real estate were freed from control of the creditor through the abolition of imprisonment for debt, the extension of chattel exemptions and the adoption of the homestead exemption, with limitations." The repugnancy of imprisonment for debt unmistakably stands as an initial step toward the enactment of exemption statutes. This repugnancy advances a strong emotional argument in favor of exemption statutes, but there has long existed an economic as well as an emotional concern supporting the enactment of such statutes.

As early as A.D. 321, Emperor Constantine prohibited his tax
collectors from seizing "slaves, oxen, or implements used for the cultivation of the soil . . . by which act the payment of taxes may be delayed." Thus, the desire to maintain a constant source of tax revenue was recognized in ancient Rome as a justification for exempting occupationally related property of debtors from seizure. Similar economic justifications emerged in common law England, but, it was not until 1845 that benevolence prevailed over creditors' interests. In that year, the Small Debt Act was enacted "to protect the actual necessaries" of the debtor from execution.

The modern American counterparts of England's first exemption statutes recognize the practical economic aspects of exemption provisions and also square economic practicality with humanity. *Hollywood Credit Clothing Co. v. Jones* illustrates the delicate balancing required if economic reality and humanitarian interests are to be merged. In the *Hollywood* decision the court stated:

> [Exemption] laws are passed not only for protection of low income families, but also for the protection of the community at large. They are designed to give assurance that the wage earner shall always have enough, beyond the reach of attaching creditors, to support his family and to prevent them from becoming public charges.

2. **Balancing debtor and creditor interests**

Although modern courts have been quick to extend protection to the debtor, it must be conceded that creditors do have just and enforceable rights against the debtor. The importance of the creditor's rights, although often overlooked, has been well expressed.

Notwithstanding the benevolent provisions of the statute . . . creditors are still recognised as having some rights . . . . It

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30. See, e.g., Sunbolf v. Alford, 150 Eng. Rep. 1135 (Ex. 1838) (holding that a man's clothing could not be seized from his person to satisfy a debt); Hutchins v. Chambers, 97 Eng. Rep. 458 (K.B. 1758) (holding that an exemption existed for the tools, utensils, and animals by which the debtor earned his livelihood. The common law court apparently reasoned that to seize these possessions would be to deprive the debtor of the means necessary to rehabilitate the debt).
31. Small Debts Act, 1845, 8 & 9 Vict., c. 127, § 8. The "actual necessaries" were construed to include only bedding, wearing apparel, and tools of trade not to exceed the pittance of five pounds sterling.
33. *Id.* at 227.
frequently happens that the creditor is more in need of public sympathy than the debtor. When a poor man is unjustly kept out of money due to him, the distress arising from the want of it is often greater than that caused to the other party by its collection. If the suffering was but equal, it is plain that one man should not suffer for the follies or misfortunes of another. Every one should bear his own burthen.\(^{34}\)

It therefore becomes apparent that the scales weighing justice for the creditor on the one hand and mercy for the debtor on the other require careful balancing. Simply stated, to severely burden a debtor is to invite the emotional and economic arguments voiced above, yet to deny a creditor his just due is equally onerous.\(^{35}\)

Historical, economic, and emotional considerations constitute a portion of the crucible in which the need, justification, and purpose for exemption law were formed. These factors are still potent and state legislatures and national committees must continue to take them into account when weighing the conflicting interests of the debtor and creditor when drafting appropriate legislation.\(^{36}\)

\section*{II. CRITICISMS OF EXISTING EXEMPTION LAW}

The contention of several commentators and the thrust of the Uniform Exemptions Act is that the deference given the exemption enactments of the several states has resulted in gross diver-

\(^{34}\) Case v. Dunmore, 23 Pa. 93, 94-95 (1854). This quotation is used not to overstate the creditor’s case, but rather to suggest that the relative welfare of the parties may be part of the delicate balancing mechanism.

\(^{35}\) The balance between debtor and creditor interests is, however, extremely complex, due in part to the economic, historical, and political "anvil" upon which the state exemption laws were formed and fashioned, see Note, \textit{Bankruptcy Exemptions: Critique and Suggestions}, 168 Yale L.J. 1459, 1463 (1959), the states' interest in providing for the welfare of their constituencies, see, e.g., Slatcoff v. Dezen, 76 So.2d 792, 794 (Fla. 1954), and the public's demand for free availability of credit, see generally Kennedy, \textit{Limitation of Exemptions in Bankruptcy}, 45 Iowa L. Rev. 445, 450 (1960).

\(^{36}\) That state legislatures are sensitive to conflicting interests and to the injustice that can result if one interest is weighed more heavily than the other is borne out by an official committee comment to the Michigan personal property exemption statute. In explaining why it increased the tools of the trade exemption from $350 to $1000, the committee stated:

With prices as they are today, it is difficult to see how a person could continue in business while keeping less than $1,000 of his stock or equipment. Of course, the amount will vary, but it is felt that $1,000 will tend to save the "little" man, and still subject those with larger businesses to payment of their debts.

sity and major flaws. The most frequently raised criticisms are the statutes’ lack of uniformity, their archaic nature and their unfortunate drafting.27

A. Lack of Uniformity

Even a quick glance at the state codes reveals that exemption law today is a crazy quilt of statutes reflecting influences based on dominant state industries,38 rising property values,39 and diversification of occupational trends40 within the individual states. Observers of state exemption law, many of whom are “astounded by the enormous disparity,”41 contend the disparity is unsatisfactory because: (1) decisions to move or stay within a state may be influenced by the amount of the exemption offered, (2) application of different standards between the several states may subject legitimate debts to increased jeopardy, and (3) fragmented exemption policy may impose an undue burden on interstate credit. Many, therefore, conclude that exemption law should be governed by a single uniform system.42

B. Obsolescence

Several commentators have accurately demonstrated that many of the state exemption statutes are badly in need of reform.43 Rising property values, a higher standard of living, and inflationary spirals all combine to make even the most recently revised statutes outmoded.44 Although some state legislatures

39. CAL. CIV. CODE § 1280 (West 1954 & Supp. 1977) (homestead exemption increased from $12,500 to $30,000 for head of family and from $5,000 to $15,000 for others); ILL. ANNOT. STAT. ch. 52, § 1 (Smith-Hurd 1967 & Supp. 1977) (homestead exemption increased from $5,000 to $10,000).
40. ARIZ. REV. STAT. § 33-1130(3) (Supp. 1974) (camping outfit of a prospector, including mining tools, saddle, and burro, exempted).
41. UNIFORM EXEMPTIONS ACT, Prefatory Note at 8.
42. UNIFORM EXEMPTIONS ACT, Prefatory Note at 7; Note, Bankruptcy Exemptions: A Full Circle Back to the Act of 1800, 53 CORNELL L. REV. 663, 665-70 (1968).
44. See, e.g., ARIZ. REV. STAT. ANN. § 33-1124 (West 1974) (two horses or two mules and their harnesses); MISS. CODE ANN. § 85-3-1 (1972) (two work horses or mules and one yoke of oxen).
have responded to the cry for reform, the majority still lags behind.

This problem of obsolescence is not new to exemption law. Nearly three decades ago one federal judge sharply criticized a state statute, declaring that certain sections literally went "back to the yoke of oxen days." The judge urged that "[t]he entire section should be forthwith modernized, fairly as to the various classifications, with a factual appreciation of present-day times, needs and values." Sadly enough, it is this urgent need for a "factual appreciation of present-day times" that still plagues modern exemption law.

C. Problems in Statutory Structure

Modern exemption statutes are flawed not only by references to wagons, carriages, and yokes of oxen—indicia of gross obsolescence—but also by inept statutory structure. The methodology of a majority of state enactments falls within one of three general approaches: specific enumeration, restricted selection from specified categories, or open-ended exemption based on necessity. Each of these categories suffers from its own particular ailments. In the following evaluation of the effectiveness of the statutes within each category, particular attention will be given to the manner in which the type of exemption employed is able to meet the conflicting interests of the debtor and creditor.

I. Specific enumeration

Many personal property exemption statutes endeavor to list specific items a judgment debtor can withhold from execution. Typical examples of specifically enumerated items are the family Bible, a church pew, a burial lot, and wearing apparel. This type of statute is desirable in that it provides the debtor and creditor with a maximum degree of certainty—both know exactly what is

47. Id.
48. These twin flaws of obsolescence and poor statutory structure are common to both the specific-enumeration and restricted-selection-from-specified-categories approaches.
49. Similar categories have been previously enumerated by several commentators. See generally 52 Ky. L.J. 456, 457 (1964); 74 W. Va. L. Rev. 370, 370 (1971).
to be excluded should a judgment be rendered against the debtor. Specific enumeration, however, fails to grant the debtor the flexibility necessary to meet his individual needs. For example, although the specifically itemized exemption may have been necessary at the time the legislation was passed, its utility may have become obsolete, or another item, not within the exemption, may have taken its place as a household necessity.\footnote{51} It is no comfort in such circumstances for the debtor to be able to exclude an item that has no practical value. Despite the efforts of a conscientious legislature, therefore, enactments which list items of marginal necessity are soon outdated and, as a result, fail to accurately reflect a debtor's immediate needs.

2. Restricted selection from specified categories

Several statutes allow the judgment debtor to select which of his holdings within a specified category will be exempt up to a certain monetary limit. Common examples are "[t]ools of his occupation to the value of six hundred dollars"\footnote{52} and "[h]ousehold furniture not exceeding two hundred dollars in value."\footnote{53}

Allowing the debtor to select the items most valuable to his family at a given time is a major advantage of this type of statute. Another desirable feature is that the fixed amount, although perennially and notoriously low, gives the parties a definite indication of the type and value of personality that can be withheld.

Unfortunately, however, the areas in which selection is allowed are often very narrowly prescribed.\footnote{54} Such an enactment not only limits the debtor's flexibility, but also restricts the debtor's freedom of choice, making the selection process some-

\footnote{51} The automobile is a prime example. A number of turn-of-the-century exemption statutes excluded wagons, teams, and other horse-drawn vehicles from execution. Following the advent of the automobile some controversy was generated as to whether it should fit within the exempt category. Jurisdictions split on whether emphasis should be placed on the necessity of the auto in modern life or whether the statutes drafted before the invention of the auto should be given a strict construction. For cases exempting automobiles as carriages, buggies, or like vehicles, see Patten v. Sturgeon, 214 F. 65 (8th Cir. 1914); Hickman v. Hickman, 149 Tex. 439, 234 S.W. 2d 410 (1950). For cases taking a more literal view, see In re McEuen, 19 F. Supp. 924 (W.D. Ky. 1937); Posnanovic v. Maki, 209 Minn. 379, 296 N.W. 415 (1941).

\footnote{52} N.H. REV. STAT. ANN. § 511:2 (Supp. 1977).


\footnote{54} E.g., MINN. STAT. ANN. § 550.37 (West Supp. 1978)(exempting "all wearing apparel, one watch, household furniture, utensils, household appliances, phonographs, radio and television receivers, and foodstuffs of the debtor and family, not exceeding $3,000 in value").
what less than meaningful.

More favorable legislation would abolish narrow selection areas and allow the debtor to choose to withdraw from execution any of his personalty within a reasonable monetary limit. Moreover, since a fixed monetary amount is also subject to becoming obsolete in inflationary periods, this type of legislation could be made more effective by requiring periodic readjustment or by tying the monetary limitation to an accurate price indicator.

3. **Open-ended exemption based on necessity**

A few jurisdictions have passed laws allowing exemption of "[a]ll implements of husbandry used upon the homestead," or "[t]he tools of a mechanic necessary for carrying on his trade." This formulation is very fluid and assures the debtor of needed accommodations despite changing circumstances and needs.

The creditor, however, is placed in the difficult position of having his claim compromised by a court decree determining which of the debtor's holdings are "reasonably necessary" and therefore excluded. Additionally, the determination of what is necessary to the debtor is likely to be a source of much litigation and the time and cost involved in a case-by-case adjudication of "necessity" is burdensome and disadvantageous to both debtor and creditor.

Lack of uniformity, obsolescence, and poor statutory structure are severe weaknesses of the current personal property exemption scheme. Uniform exemptions legislation is a vehicle by which needed changes can be made and innovative exemption policy established.

**III. THE UNIFORM EXEMPTIONS ACT**

The Uniform Exemptions Act (UEA) is a concerted attempt to rectify the faults that undeniably exist in many state exemption schemes. It proposes a single system of exemptions applicable to all debtors. In considering the UEA's application to per-

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55. See, e.g., IND. CODE ANN. § 34-2-28-1 (Burns Supp. 1977) (area of selection includes real estate, "tangible personal property," and "intangible personal property").
56. Adjustment of dollar amounts as provided for in § 1.106 of the UNIFORM CONSUMER CREDIT CODE is also recommended by the UNIFORM EXEMPTIONS ACT § 2.
58. MISS. CODE ANN. § 85-3-1 (1972).
59. Litigation over what is necessary may be, however, a necessary evil especially if the delicate balance between debtor's and creditor's interests involved in the administration of exemption law is to be adequately considered.
sonal property law it will be helpful to review the history, the relevant sections, and the advantages and disadvantages of the uniform legislation.

A. History

Perhaps the most persuasive factor leading the National Conference of Commissioners on Uniform State Laws (National Conference) to propose the UEA was the introduction of a bill in Congress that would prescribe a single schedule of federal bankruptcy exemptions. In response to this congressional action, the National Conference decided in 1974 to prepare draft uniform exemptions legislation. Several drafts were submitted by a special drafting committee during 1974 and 1975, and the final draft was "considered, amended, promulgated and recommended to the several states for enactment" when the National Conference convened at its 1976 annual meeting. Since its promulgation, however, no state has enacted the UEA.

B. Relevant Sections

Although the Uniform Exemptions Act covers many areas of exemption law, only section 2 (adjustments of dollar amounts), section 5 (property exempt without limitation), section 6 (property exempt to extent reasonably necessary for support), and section 8 (exemptions of personal property subject to value limits) are directly applicable to personal property exemption law. A brief summary of these sections will clarify their potential impact on the current status of exemption law.

1. Adjustment of dollar amounts

Section 2 of the UEA, patterned after section 1.106 of the Uniform Consumer Credit Code, requires that all dollar amounts be adjusted by reference to either: (1) the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, compiled by the United States Department of Labor Statistics, (2) a regional consumer price index, or (3) any state statute

60. UNIFORM EXEMPTIONS ACT, Prefatory Note at 7.
61. Id. at 9.
63. These sections are relevant to personal property exemption law even though §§ 5 and 7 include as "property" items not generally thought to constitute tangible personality such as veteran's benefits, awards under a crime victim's reparation act, death benefits, and unemployment compensation.
of general application providing for periodic adjustment of dollar amounts by reference to a price or other economic index. This section is one of the most innovative and useful provisions of the Act and introduces a simple but effective answer to the very real problem of coping with the "ravages of economic . . . changes" that have plagued state exemption statutes for too many years.

2. Property exemption without limitation

The provisions of section 5 grant absolute exemption status to two classifications of tangible personal property. Subsection (1) exempts "a burial plot for the individual and his family" and subsection (2) excludes from execution "health aides reasonably necessary to enable the individual or a dependent to work or to sustain health." These provisions are somewhat similar to specific enumeration statutes but avoid the obsolescence problem because they represent a narrow group of items that are of unchanging necessity.

3. Property exempt to extent reasonably necessary for support

Although section 6(a) enumerates certain monetary benefits and awards not commonly thought of as personalty, the relevant core of this section exempts from execution the property "required to meet the present and anticipated needs of the individual and his dependents." The determination of what constitutes property necessary for support is made by the court "after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual." This section incorporates, therefore, many of the desirable features of open-ended statutes while wisely giving the court some factors to analyze in weighing what is "necessary."

4. Exemptions of personal property subject to value limitations

The items enumerated under section 8 closely resemble and are fairly typical of existing state statutes allowing restricted selection from specified categories of personalty. Subsection (a) allows an exemption of up to $500 for each item of property constituting: (1) household furnishings and appliances found to be reasonably necessary; (2) wearing apparel, animals, books, and

64. Uniform Exemptions Act § 2(a), Comments (2) and (3).
65. Id., Prefatory Note at 10.
66. Id. § 6(b).
67. Id.
musical instruments reasonably held for personal use of the individual and his family; and (3) family portraits and heirlooms of particular sentimental value to the individual. Subsection (b) exempts up to $750 of jewelry if "held for the personal use of an individual or a dependent." Subsection (c) excludes from execution an aggregate value of $1,000 in "implements, professional books, and tools of the trade" and in addition "an exemption of one motor vehicle . . . of a value not exceeding $1,500." Finally, subsection (d) provides, in addition to any other exemption, an exemption of cash and other "liquid assets" (deposits, securities, notes, drafts, accrued vacation pay, refunds, and other receivables) of $500 if the individual claims a homestead or $1,500 if he does not.68 Section 8, like many state statutes, restricts the property exempted to set dollar amounts, but unlike most state statutes, permits the debtor to select that property from a rather broad classification range. More importantly, the section sidesteps the problem of crystallization of the dollar limits because section 2 requires periodic adjustment of all dollar amounts.

C. Evaluation of the Uniform Exemptions Act

1. Advantages

The Uniform Exemptions Act incorporates many important features that should be carefully considered by states contemplating its adoption. The greatest advantages of the UEA are those inherent in a uniform exemption system. Uniformity will guarantee certainty of procedure. Both the debtor and the creditor will benefit from knowing the type and value of exempt items and will be able to conduct their credit relationships accordingly. Importantly, a well-drafted uniform system will eliminate the diversity and flaws that have stemmed from the perpetuation of outmoded and poorly structured state statutes.

Another attractive feature of the UEA is its general conformity to the policy of the proposed Bankruptcy Act.69 This conformity is made all the more appealing by the fact that a bankruptcy proposal prescribing a uniform exemption has recently passed the House of Representatives.70

One of the most needed and desirable innovations made by the Act is the adjustment of dollar amounts through a tie-in to a

68. Id. § 8(a)-(d).
reliable price indicator. This provision introduces an easily administered and effective means of dealing with the old problem of dollar-limit obsolescence.

Several advantages also accrue through the operation of the recommended uniform schedule of exemptions. One of these advantages is that any exemption subject to the debtor’s selection must meet a standard of reasonable necessity. The operation of this requirement could well act to negate compulsive and unwise selection by the debtor of items that may prove to be unnecessary and thus hinder the rehabilitation of the debtor’s obligations. In addition, the UEA gives some direction in determining “necessity” to the court by requiring “consideration of the individual’s responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.”

The official comment following section 8 of the UEA indicates that another advantage in the operation of the Act is that the value limitation of $500 per item contained in that section will significantly reduce the administrative time and cost involved in obtaining an appraisal of all the personal property claimed by the debtor. This advantage will result because “most individuals do not have any property within the listed categories having a value close enough to the statutory maximum [of $500] to warrant appraisal.”

As is apparent, the draftsmen of the UEA have merged the most popular aspects of current exemption structure, including the absolute exemption of necessary items, restricted selection from specified categories, and open-ended exemption based on necessity. Significantly, this feat was accomplished without piggybacking a number of the undesirable features of the named structural modes.

2. Disadvantages

Notwithstanding its many positive aspects, the Uniform Exemptions Act is not free from blemish and in examining its provisions certain disadvantages should be considered. The primary contention against the uniform act is an argument against the very concept of a uniform system. Even though nonuniformity may cause confusion and lead to the application of different standards among the several states, it is arguable that exemption

71. Uniform Exemptions Act § 6(b).
72. Id. § 8, Comment (2).
Statutes are not the type of legislation that can best be regulated through a uniform national system. On the contrary, local concerns might so outweigh the desire for uniformity that the diversity of exemption law at the state level is not merely justifiable, but actually necessary. Even the National Conference recognized the strength of this argument.

Some variation in the exemptions provided by state law may be sought to be justified as related to different standards, costs, and modes of life that prevail in the different states. To the extent that the justification has validity, it affords warrant for variations in allowable exemptions within state boundaries...

A second area of concern centers around the rejection by the National Conference of the view that every debtor should be entitled to a "minimum grubstake." A few commentators have advocated that the best exemption policy would grant such a single cash allowance. It can also be argued that failure to grant this minimum allowance in addition to exemption rights may work a hardship on the poor or uninformed who may not, through the exercise of personalty exemptions, be able to salvage all of their actual necessities without a minimum grubstake.

A practical problem in the application of the UEA is the adjudication of what is meant by "necessary for support." Even though courts are given a definition of necessity and other definitional guidelines, this provision will mandate the cost and delay inherent in case-by-case determinations.

Another practical problem is that the UEA, like current exemption statutes, fails to take into account many intangibles that are superimposed on debtor-creditor relationships. Consideration of these intangibles is the most vexing problem in the drafting of effective exemption legislation, because the written word of a statute cannot always balance the competing interests of the debtor and creditor in the individual case. A few of the host of intangible factors that should be considered are: (1) whether the debt judgment was founded in tort or contract, (2) whether the

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73. As early as 1851 the Supreme Court recognized that some fields of commerce were so fraught with local concerns that uniform national regulation was impractical. See Cooley v. Board of Wardens, 53 U.S. (12 How.) 299, 319 (1851).
74. UNIFORM EXEMPTIONS ACT, Prefatory Note at 8.
75. Id. at 9.
77. See notes 11-13 and accompanying text supra.
debtor can obtain support from his family, (3) whether the non-
payment of the debt was caused by improvidence or as a result of medical or other unforeseen expenses, (4) whether the debtor is also in possession of real property, and (5) whether the relative welfare of the debtor vis-à-vis the creditor demands special treat-
ment.78

The constitutionality of uniform exemption legislation, the
effect of which would modify existing practices and policies, is
another potential weakness. Such midstream alterations may re-
sult in constitutional challenges based on the due process clause of
the fourteenth amendment and the provision against impair-
ment of contracts found in article one, section ten of the Constitu-
tion. Debtors and creditors have both, on occasion, claimed a
vested interest in exemption statutes and argued that increasing
or decreasing the allotted exemption constitutes a violation of due
process.79 It is conceivable that enactment of the UEA would
trigger similar claims based on the due process clause.

Article one, section ten of the Constitution provides that no
state shall pass any “Law impairing the Obligation of Contracts.”
Originally, the Supreme Court closely scrutinized the effects of
alterations in exemption law,80 invalidating all such changes
where “the law which prevailed when the contract was made has
been so far changed that there does not remain a substantial and
reasonable mode of enforcing it in the ordinary and regular course
of justice.”81

With the passage of time, however, the strict scrutiny re-
quired by early Supreme Court interpretations of the contract
clause has gradually been eroded by exceptions,82 and in later
opinions the contract clause has been construed so as not to over-
ride valid exercises of the states’ police power.83 But notwith-

78. See notes 34-35 and accompanying text supra.
79. Cases in which debtor claims vested right: Petruilonis v. Dudek, 113 Ill. App. 2d
1001, 1006 (1911); Majors v. Carter, 175 Tenn. 450, 453, 135 S.W.2d 924, 925 (1940). Case
in which creditor claims such a right: Hooter v. Wilson, 256 So. 2d 808 (La. Ct. App. 1972),
rev’d, 273 So. 2d 516 (La. 1973).
81. Id. at 611-12 (Hunt, J., concurring).
82. See, e.g., El Paso v. Simmons, 379 U.S. 497 (1965); Home Bldg. & Loan Ass’n v.
Blaisdell, 290 U.S. 398 (1934); Atlantic Coast Line R.R. Co. v. Goldsboro, 232 U.S. 548
(1914); Manigault v. Springs, 199 U.S. 473 (1905).
83. The contract clause, if interpreted as precluding any state legislative action im-
pinging on contractual rights, has the capacity to stifle a state’s exercise of police power.
Likewise, the police powers, if interpreted to its broadest limits, has an equal capacity to
render the contract clause ineffectual. In both Atlantic Coast Line R.R. Co. v. Goldsboro,
232 U.S. 48 (1914) and Home Bldg. & Loan Ass’n v. Blaisdell, 290 U.S. 398 (1934), the
standing its declining impact, the contract clause may have been imbued with new life by United States Trust Co. v. New York, a recent Supreme Court decision. United States Trust Co. reversed the trend of recent years and for the first time in nearly four decades invalidated a state law as violative of the contract clause. Although the case involved impairment of state rather than private contracts, the decision may have future application to exemption law.

But, although blemished, the UEA does not appear to be fatally flawed. For example, even though due process arguments may be leveled at the Act, these contentions become somewhat dubious when one realizes that courts have been very hesitant to find that a vested right exists in exemption statutes. Moreover, although the United States Trust Co. case has apparently revitalized the contract clause, the rationale of the case may not apply to the alteration of private as compared to state contracts.

As for other weaknesses of the Act, the fact that the "necessity" of certain exemptions must be adjudicated does not, of itself, render the UEA undesirable. Not only does the Act give definitional guidelines, but through the implementation of innovative judicial techniques the burden of case-by-case adjudication can be lessened. Furthermore, the advantages of a uniform system—continuity of procedure, free flow of interstate credit, and certainty of application—all strongly favor the UEA. Therefore, despite its flaws, the UEA still stands as a well-worded and carefully researched proposal which, with appropriate modifica-

Court has issued broad statements that tend to subjugate the contract clause to the valid exercise of the police power. In Goldsboro the Court declared,

"It is settled that neither the "contract" clause nor the "due process" clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise.

232 U.S. at 558 (emphasis added). See also Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. at 429-30.

85. The suit involved the 1974 repeal of a 1962 statutory covenant between New York and New Jersey that limited the ability of the New York Port Authority to subsidize rail passenger transportation from certain bond revenues and reserves. Mr. Justice Blackmun's opinion indicated that a state that has enacted a law impairing its own rather than a private obligation must meet a strict scrutiny standard—the enactment must be shown to be both "reasonable and necessary to serve an important public purpose" in order to pass muster under the contract clause. Id. at 25.

86. Id.
87. See notes 89-91 and accompanying text infra.
tions and following careful study, should be implemented by all states.

D. Possible Modification of the UEA

The following represent a few of the modifications a ratifying state may incorporate into the UEA to make it a more effective piece of legislation. These modifications would help the ratifying state cope with two areas that loom as potential trouble spots in the Act—providing a "minimum grubstake," and balancing the competing interests of debtor and creditor.

1. Guaranteed minimum exemption

In addition to exemptions granted by the UEA, a state adopting the Act could also guarantee a minimum exemption.88 This modification could be accomplished by expanding the number of items awarded absolute exemption. Such items as family books and pictures, all wearing apparel, a television or radio receiver, ordinary kitchen utensils and place settings, and one year's supply of provisions and fuel could be added. Another approach would be to determine a set monetary allowance, such as $1,000, which would be absolutely exempt from execution. The figure would have to be made subject to mandatory adjustment either by frequent legislative review or by a tie-in to a reliable price index.

2. Innovative judicial administration

In order to effectively balance the interests involved in debtor-creditor relationships and to adequately determine what constitutes "reasonable necessity" under the Act, the adopting state could incorporate one of a number of developing judicial administrative techniques. The practices best suited to meet the needs of exemption law are supplementary proceedings and the neighborhood court system.

a. Supplementary proceedings. Once a claim has been filed and an exemption exercised, a state could provide for a supplementary proceeding at the election of either the debtor or creditor in which the legal ritual and evidentiary requirements would be relaxed. The arbiter would be given broad discretion in such proceedings to weigh the underlying factors in making a fair decision.

88. A set minimum exemption would have the advantage of guaranteeing the debtor's subsistence without the need for a judicial determination.
Despite procedural difficulties, meager court facilities, and enforcement problems, in 1935 New York had limited success with its supplementary proceedings.\textsuperscript{89} It is feasible that such an action could have application to uniform exemption law.

\textit{b. Neighborhood court system.} An even more novel approach to judicial administration of exemption law has been suggested by Edgar and Jean Cahn, who advocate a neighborhood court system.\textsuperscript{90} Cahn and Cahn state:

There is a clear need for the creation, on a neighborhood level, of mechanisms for settling disputes, dispensing remedies and enunciating norms of conduct. Those needs cannot be dealt with by any single means. Some conflicts can best be resolved by adjudication; others can be amicably settled by mutual consent; still others are pseudo-conflicts based on false assumptions or lack of knowledge about alternatives, resources and sources of assistance.

We believe that a neighborhood court system so constructed as to utilize a variety of approaches to conflict resolution would make a substantial contribution to the rule of law, and would constitute a tangible and significant response to the demand for a share, a voice, and a role in the new dispensation of justice.\textsuperscript{91}

In their observations, the Cahns recognize inherent problems in the administration and enforcement of a quasi-judicial neighborhood court system, but it is conceivable that these problems could be alleviated and a neighborhood proceeding used to make exemption law a better vehicle for balancing the conflicting needs of the debtor and creditor.

Both the neighborhood court system and supplementary proceedings could be incorporated into the UEA system as elective provisions and could be used either as an alternative to a formal levy and execution action or as an additional factfinding hearing. The eligibility requirements for these provisions should be left to the adopting state, but may include minimum and maximum debt and exemption limits, a showing that the party is entering with clean hands, or a minimum bond requirement to insure that the proceedings are held in good faith. A less formal atmosphere would prevail at these proceedings and the parties would be en-


\textsuperscript{91} Id. at 950.
couraged, through the mediation of an arbiter, to resolve their conflicts and arrive at an equitable plan of restitution or partial repayment. Ideally, the resolution will take into account the unique factual underpinnings of the conflict and will do so without favoring the debtor or burdening the creditor. The decision of the arbiter would be judicially reviewable upon a showing of fraud, misrepresentation, or other indicia of bad faith.

IV. Conclusion

Since the enactment of the Bankruptcy Act of 1898, state personal property exemption law has evolved under the auspices of the individual state legislatures. For nearly a quarter of a century, commentators and observers have decried the resulting lack of uniformity, along with the gross obsolescence and faulty statutory structure, of state exemption laws. After carefully studying the evolution and current status of state exemption statutes, the National Conference of Commissioners on Uniform State Laws decided in 1974 that uniform legislation was overdue and in 1976 promulgated the Uniform Exemptions Act. Since the UEA has been successful in overcoming many of the flaws present in existing state personal property exemption statutes, the UEA, modified by innovative judicial administration techniques, is the best way to effectuate the purposes of exemption law and balance the competing interests of the debtor and creditor.

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