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How to Enforce a Money Judgment in Wyoming

"A lawyer's opinion is worth nothing unless paid for." — English Proverb

Winning a lawsuit is only half of the battle for the practicing attorney. Indeed, a favorable outcome in a civil action can be a hollow victory, if the money judgment remains uncollected. In order to satisfy a money judgment, and thereby satisfy his client the judgment creditor, the attorney must do two things: first, locate the judgment debtor's assets, if any, and second, reduce them to cash. This comment is directed to the attorney who is unacquainted with collections work, and is intended to serve as a practical guide to the complicated process of enforcing a money judgment in Wyoming.¹

To enhance the practicality of this comment, a hypothetical is posed here and will be implemented where appropriate throughout. Assume that on August 10, 1984, District Court in the Second Judicial District of Wyoming (Albany County)² rendered a \$10,000 judgment³ in favor of the

1. In order to enhance the practical value of this comment, the author will use and cite those materials felt to be the most widely available to attorneys, for example, Am. Jur., A.L.R., and Nutshells. An appendix with relevant forms for use in the district courts is provided at the end.

2. The Wyoming district courts were established by WYO. CONST. art. 5, § 10, and are the courts of general jurisdiction according to *Murrell v. Stock Growers' Nat'l Bank*, 74 F.2d 827 (10th Cir. 1934). The district courts have exclusive civil jurisdiction in cases where the recovery sought is greater than \$7,000, and concurrent original jurisdiction with the county courts in civil cases involving amounts between \$4,000 and \$7,000. WYO. STAT. § 5-5-131(b) (Supp. 1984). The county courts, which were established by WYO. STAT. § 5-5-102 (Supp. 1984), have exclusive original jurisdiction in civil actions where the amount prayed for is less than \$4,000. WYO. STAT. § 5-5-131(a)(i) (Supp. 1984). Despite being governed by different statutes for enforcing judgments, discussion of the district court rules is relevant to practice in the county courts because the two sets of statutes are substantially similar in content. *See* WYO. STAT. § 5-5-131(c) (Supp. 1984). Where significant differences do exist, they will be noted. In contrast, judgments rendered in other states' courts are governed by a completely different set of rules, and will not be discussed in this comment. *See* WYO. STAT. §§ 1-17-701 to -707 (1977) (Uniform Enforcement of Foreign Judgments Act).

3. Money judgments are the exclusive focus of this comment. Those types of judgments which compel action, for example conveyance of land, will not be discussed. Remedies other than a judgment, such as repossession under a Uniform Commercial Code (U.C.C.) Article 9 security agreement, are also outside the scope of this comment.

A brief discussion of *pre-judgment* remedies is worth undertaking, however. *See generally* D. EPSTEIN, *DEBTOR-CREDITOR LAW IN A NUTSHELL* 20-41 (2d ed. 1980). Before Wyoming's Forty-eighth Legislature amended various statutes (*see infra* text accompanying notes 224-27), *pre-judgment* attachment was fraught with constitutional due process problems (*see, e.g.,* *Fuentes v. Shevin*, 407 U.S. 67 (1972); *North Ga. Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975)) because it is designed to prevent a judgment debtor from conveying— and other creditors from seizing— his assets while the suit is pending. WYO. STAT. §§ 1-15-101 to -407 (1977).

A judgment debtor's assets may be attached in civil actions for recovery of money only upon the showing of either of two basic grounds. *Id.* § 1-15-101. If the judgment debtor/defendant is defrauding his creditors, or if no personal service can be made upon him because he either has absconded or is a nonresident, then the court will issue a writ of attachment and assume control over his assets. *Id.* While *pre-judgment* garnishment has the same purpose as *pre-judgment* attachment, it is designed to reach judgment debtor's property that is in the possession of third parties. *Id.* § 1-15-110. The grounds for *pre-judgment* garnishment are also less demanding; the judgment creditor need only allege in writing that he has "good reason to believe" that the third party has judgment debtor's property. *Id.*

judgment creditor Jerry Chargeoff (JC), and against the judgment debtor Joe Dokes (JD).⁴ Presently, JC's judgment is ripe for enforcement; in other words, it is without technical defects, it is not dormant, and it has not been stayed or appealed.⁵ Insofar as he owns some assets in Wyoming, assume further that JD is not completely judgment proof. As a result, JC has decided to enforce his judgment in Wyoming, and must therefore act pursuant to rule 69 of the Wyoming Rules of Civil Procedure and the Code of Civil Procedure, Enforcement of Judgments.⁶

To enforce a money judgment in Wyoming, then, JC must first locate JD's assets; second, he must capture them; and third, he must convert them to cash. These actions will be analyzed in this comment by applying them to a three-part framework consisting of discovery, seizure, and satisfaction. After this review of Wyoming's enforcement of judgments process, the problems of the process, and recommended solutions to those problems will be addressed.

I. WYOMING'S ENFORCEMENT OF JUDGMENTS PROCESS

DISCOVERY

JC can satisfy his money judgment only if he can locate an equivalent dollar amount of JD's assets. To do this, JC must thoroughly investigate both JD, and any third party who either owes JD money, or has JD's assets in his possession. If the inquiry uncovers assets, their situs must be pinpointed, and their nature ascertained. Finally, any conflicting claims to that particular asset, for example a prior right of a creditor or bona fide purchaser, must be resolved.

*Information*⁷

JC should use both judicial and non-judicial means to locate JD and his assets, but he should focus on non-judicial methods for two reasons: they are less cumbersome and they are less costly. JC's first—and most important—task is to find JD, because most of a judgment debtor's property will usually be found nearby. JC can probably discover JD's whereabouts through such non-judicial sources as the post office (old and new address), neighbors at JD's old address, auto registration records,

4. For the purposes of this comment, the judgment creditor (JC) and the judgment debtor (JD) are assumed to be private parties. If the judgment is against a corporation, the attorney may face the additional problem of piercing the corporate veil. See generally Note, *A Prima Facie Case for Piercing the Corporate Veil*, 18 LAND & WATER L. REV. 823 (1983). If the judgment is against a public official, the judgment creditor must proceed according to separate rules. See, e.g., FED. R. CIV. P. 69(b).

5. A court may grant relief from enforcement of the judgment by staying execution. WYO. STAT. §§ 1-17-201 to -210 (1977).

6. *Id.* §§ 1-17-101 to -707.

7. See generally S. SHERWIN, HOW TO COLLECT A MONEY JUDGMENT (rev. ed. 1975), for a lengthier discussion of information gathering techniques.

the telephone book and directory assistance, and if appropriate, the personnel support detachment at JD's military command. To locate JD's property, JC should search real estate, tax, probate, and court records. JC can expedite this process, especially when searching for property of JD in other counties, by requesting information from title companies, because their research departments maintain these same records in one place and in more usable form. Unfortunately, access to records is at the discretion of the particular business. A request, however, could yield a wealth of information. Armed with the knowledge gained from non-judicial discovery, JC should subpoena all documents showing JD's ownership of property, then resort to the two judicial means of discovery: the debtor's exam and the garnishee's exam.

While the debtor's exam is intended to reveal both property in JD's possession and property in the possession of a third party, including equitable interests,⁸ the wise judgment creditor will use it as a tool to confirm his understanding of the judgment debtor's financial status. Under section 1-17-402 of the Wyoming statutes, the court may order JD to "appear before the judge...and answer concerning his property,"⁹ but only after execution has been returned unsatisfied,¹⁰ that is, only if the sheriff cannot find enough of JD's property to completely pay the judgment. Judicial discovery is delayed, therefore, while the sheriff attempts to seize JD's property, unless JC can prove that JD "has property which he unjustly refuses to apply toward the satisfaction of the judgment."¹¹ Of course, JC can only prove it if he already knows what property JD owns, which lends even greater importance to non-judicial means of discovery.

The second statutory discovery device—the garnishee's exam¹²—is limited to gathering information concerning any of JD's property in the possession of a third party, or any debts owing to JD, such as wages. Inasmuch as a court will order the garnishee's exam only after return of execution upon JD's property, and proof by affidavit that the person has property of JD or is indebted to him,¹³ JC should use this exam to confirm the garnishee's possession or debt, not to discover it. Without a doubt, JC must aggressively use those non-judicial means to discover JD's property, because judicial means are of little use.

As a result of his non-judicial efforts, assume that JC has uncovered a number of JD's assets. Like most people, JD's two biggest assets are his house and his car, but he has quite a bit of other property as well. JC learned from JD's neighbors that JD and his wife own some expensive furniture, clothing, tools, and jewelry. JD also owns a motorcycle and a deluxe home entertainment system. By checking the civil index and probate records, JC discovered that JD is a beneficiary of his uncle's estate,

8. 30 AM. JUR. 2D *Executions* § 790 (1967).

9. WYO. STAT. § 1-17-402 (1977).

10. *Id.*

11. *Id.* § 1-17-403.

12. *Id.* § 1-17-405.

13. *Id.*

and that JD is a plaintiff in an ongoing personal injury action. Finally, JC found out from one of JD's relatives that JD works as a mechanic at a local garage.

Exempt Property

To prevent judgment debtors from becoming wards of the state, the Wyoming legislature exempted certain property from satisfaction of judgments.¹⁴ The largest of these exemptions is the \$10,000 homestead exemption, which is doubled if the homestead is owned and occupied jointly.¹⁵ By definition, however, the homestead exemption is of limited availability to the judgment debtor, because it only applies to "resident[s] of the state"¹⁶ who own and occupy¹⁷ "a house and lot or lots in any town or city, or a farm consisting of any number of acres, or a house trailer or other movable home."¹⁸ Apparently, the state affords little protection to the judgment debtor who rents an apartment or owns a condominium, or legally resides in another state.

Debtors not owning real property do have some protection, though. Any judgment debtor can exempt up to \$1,000 of his or her "necessary wearing apparel . . . not includ[ing] jewelry of any type other than wedding rings."¹⁹ The Wyoming statutes also exempt \$4,000 worth of other personal property.²⁰ The exemption includes such things as furniture, bedding, various household items, and tools or implements of a trade or profession.²¹ As a result, much of JD's property is unavailable to JC. If JD's net worth falls below \$25,000, which is the total of JD's homestead, clothing, furniture, and tools exemption, then JD is judgment proof.

Assume that JD's home is owned and occupied jointly by he and his wife, and is appraised at \$68,000. It would seem that JC's \$10,000 judgment could easily be satisfied from the \$48,000 that is non-exempt. Unfortunately, the house is subject to a \$45,000 mortgage. JD's car is financed, as well. What is more, up to \$2,000 worth of JD's furniture, up to \$2,000 worth of his tools, up to \$1,000 worth of his clothing, and a portion of his wages²² are exempted by statute. Consequently, JD's motor-

14. WYO. STAT. §§ 1-20-101 to -108 (1977 & Supp. 1984). See generally D. EPSTEIN, *supra* note 3, at 16-20.

15. WYO. STAT. § 1-20-101 (Supp. 1984); *id.* §1-20-102.

16. *Id.*

17. *Id.* § 1-20-102.

18. WYO. STAT. § 1-20-104 (1977). Note that a conflict exists between the old but still effective WYO. STAT. § 1-20-104 (1977), which lists a \$6,000 exemption figure, and the new WYO. STAT. § 1-20-101 (Supp. 1984), which lists a \$10,000 exemption figure.

19. WYO. STAT. § 1-20-105 (Supp. 1984).

20. See cross-references at beginning of chapter 20 of the Wyoming Code of Civil Procedure for a list of other, miscellaneous exemptions. WYO. STAT. §§ 1-20-101 to -109 (1977 & Supp. 1984). An exception to the exemptions exists for: 1) a purchase money security interest (so banks can foreclose), WYO. STAT. § 1-20-108(a) (1977); 2) a federal tax lien, 26 U.S.C. § 6321 (1980) (according to *Glass City Bank v. United States*, 326 U.S. 265 (1945)); and 3) a non-resident, WYO. STAT. § 1-20-108(b) (1977).

21. WYO. STAT. § 1-20-106 (Supp. 1984).

22. See WYO. STAT. § 1-17-411 (1977) and 15 U.S.C. § 1673 (1976) for limitations on the amount of a judgment debtor's wages that can be used to satisfy a judgment. See *infra* text accompanying notes 117-20, for a calculation of the garnishable amount.

cycle, home entertainment system, inheritance, and lawsuit are the only items of property belonging to JD not subject to a lien or an exemption.

Conflicting Claims

In today's credit based economy, much of a judgment debtor's property is likely to be subject to various third party interests. For example, the third party could own the property or have the right to its possession. The third party could also hold a superior lien or security interest against the property. Until a court determines the priority of interests in the property, the judgment creditor cannot use it to satisfy his judgment. In other words, a court cannot order that an item of JD's property be used to pay JC's judgment, unless JD's title to that property is clear and undisputed.²³ Thus, JC must often resort to some independent third-party proceeding to conclusively determine the competing rights to JD's property.²⁴

Obviously, the judgment creditor worries most about those conflicting claimants who possess superior rights in the property. Of greatest concern to the judgment creditor is the mortgagee, because a mortgagee usually has both a large and a well-protected interest in the property, whether it be a house, car, or appliance. Recall that JD's home was subject to a \$45,000 mortgage.²⁵ To purchase JD's home at an execution sale,²⁶ JC would have to make a cash bid²⁷ of at least \$65,000, which is the total of the mortgage and the homestead exemption. As JD's home is appraised at \$68,000, JC would only be able to apply \$3,000 to payment of his judgment, providing he could clear \$68,000 from the sale. With brokerage and finance costs, the net would most likely fall well below that figure, so JC should not undertake the sale.

Four other types of claimants may have rights superior to JC, as well.²⁸ First is the bona fide purchaser—a person who buys the property from the judgment debtor without knowledge of the judgment lien.²⁹ Next is the secured creditor whose priority is established by section 34-21-930(a)(ii) of the Wyoming statutes, but only if the security agreement is properly perfected.³⁰ After the secured creditor is the judgment creditor whose judgment has priority based upon the doctrine of first in time, first in right.

23. *First Nat'l Bank of Laramie v. Cook*, 12 Wyo. 492, 76 P. 674 (1904).

24. See generally Rudolph, *Collecting Money Judgments in Wyoming*, 6 Wyo. L.J. 159, 170-73 (1952).

25. See *supra* text accompanying notes 21-22.

26. See *infra* text accompanying notes 151-76, for a complete analysis of the execution sale.

27. WYO. STAT. § 1-17-314 (1977).

28. Other potential conflicting claimants include persons who hold a statutory lien, such as a mechanic's lien (*Id.* §§ 29-2-101 to -109), and a government that holds a tax lien. See *e.g., id.* §§ 29-1-101, 39-3-102.

29. *Snyder v. Ryan*, 39 Wyo. 266, 270 P. 1072 (1928).

30. The requirements for perfection of a security interest are set out in WYO. STAT. § 34-21-901 to -966 (1977 & Supp. 1984). If the security agreement is not perfected properly, the judgment creditor will have priority. *Id.* § 34-21-930(a)(ii) (Supp. 1984).

Finally, a joint payee of a bank account will often intervene in third party proceedings, and claim full ownership of the account.³¹

The judgment creditor has two options if a court recognizes interests superior to his. He can either execute on the property, and hope to receive any surplus proceeds from the sale, or he can pay the third party to release the superior lien, and sell the property unencumbered. In either case, the judgment creditor often faces an insufficient recovery. It behooves the judgment creditor, therefore, to discover property of the judgment debtor that is neither exempt, nor subject to the claims of others.

SEIZURE

Once they are located, and before the judgment is ultimately paid or satisfied, the sheriff must capture and hold JD's assets. By doing this, the sheriff creates a lien³² in favor of JC and freezes the priority among claimants of the property. For the lien to be effective, however, JC must choose the specific remedy designed for the particular asset. What is more, JC must ensure that the remedy is timely: not only must JC execute within five years after the date of judgment,³³ he must exhaust legal remedies before he can pursue any equitable remedies.³⁴ In deciding which assets to seize, and therefore, which remedy to use, JC should first determine his rights in a particular asset as against other creditors and transferees. If, as against other claimants, JC has superior rights in an asset, only then should he seize it for the satisfaction of his judgment.

The remedies available to JC for seizing JD's assets are grouped into two basic categories: execution³⁵ (remedy at law) and proceedings in aid of execution³⁶ (equitable remedy). Execution, which has been aptly termed

31. See *infra* text accompanying notes 121-30.

32. The Bankruptcy Reform Act of 1978 defines a lien as "a charge against or interest in property to secure payment of a debt." 11 U.S.C. § 101(28) (1978).

A lien may be created by agreement, common law, statute, or judicial proceeding. Consensual liens on personalty are governed by Article 9 of the [U.C.C.] . . . consensual liens on realty are generally called mortgages . . . [j]udicial liens result from . . . post-judgment efforts to enforce the judgment such as execution . . . and [c]ommon statutory liens include landlords' liens, mechanics' liens and tax liens.

D. EPSTEIN, *supra* note 3, at 3-4. Only judicial liens are discussed in this comment.

33. WYO. STAT. § 1-17-307 (1977). An attorney risks disbarment for making false entries to keep a judgment alive. *State Bd. of Law Exam'rs v. Strahan*, 44 Wyo. 156, 8 P.2d 1090 (1932).

34. The statutory exams, WYO. STAT. §§ 1-17-402, 405 (1977), or creditor's bill, *id.* § 1-17-401, against equitable interests are authorized only after a writ of execution on goods and chattels, followed by one on lands and tenements, has been returned unsatisfied, either in whole or in part. *Id.* § 1-17-308. *But see id.* § 1-17-403, for a more summary method of reaching equitable interests. According to WYO. STAT. § 1-17-339 (1977), the sheriff must return the execution within sixty days, which means JD will have that long to satisfy the judgment voluntarily. In county court, JD has thirty days to make payment. *Id.* § 1-21-504 (1977) (this statute applies by incorporation through *id.* § 5-5-131(c)(Supp. 1984). See *infra* text accompanying notes 187-90.

35. WYO. STAT. §§ 1-17-301 to -306 (1977).

36. *Id.* §§ 1-17-401 to -418.

"the fruit of the end of a lawsuit,"³⁷ is the basic remedy provided to enforce a money judgment.³⁸ An execution is not an independent action: the case for which the court issues a writ of execution is regarded as still pending, so that "all proceedings on the execution are proceedings in the suit."³⁹

Proceedings in aid of execution developed when execution proved to be inadequate.⁴⁰ Because equitable interests could not be reached by execution, "equity devised the judgment creditor's bill, and the legislatures . . . provided for supplementary proceedings in aid of execution."⁴¹ "[A]lthough [it] is by no means obvious upon a casual reading,"⁴² the Wyoming statutes provide three different proceedings in aid of execution—the creditor's bill,⁴³ the debtor's exam,⁴⁴ and the garnishee's exam.⁴⁵ In sum, the Wyoming statutes provide JC with a number of different remedies, but his choices are limited because he must exhaust the legal remedies of execution before he may employ the equitable remedies in aid of execution.

*Assets Subject to Enforcement*⁴⁶

Almost any property that is not exempted by statute can be used to satisfy JC's judgment. Property comprises real property, including mineral rights,⁴⁷ a vendee's interest under an executory land contract,⁴⁸ and even lands acquired by the judgment debtor subsequent to the judgment.⁴⁹ Property also includes "corporeal and tangible goods and chattels of whatever description,"⁵⁰ and such intangible or equitable interests as money, notes, bank accounts, negotiable instruments, contract rights (debts), or corporate stock.⁵¹ Third parties, employers for example, are another source for property subject to enforcement.⁵² Apparently, almost any conceivable non-exempt property interest belonging to JD is property for the purposes of satisfying a money judgment. Yet, the Wyoming statutes speak of vested legal interests,⁵³ so JD's inheritance, which is

37. 30 AM. JUR. 2D *Executions* § 1, at 63 (1967).

38. According to WYO. R. CIV. P. 69, "process to enforce a judgment for the payment of money shall be a writ of execution." See also 30 AM. JUR. 2D *Executions* § 1 (1967).

39. 30 AM. JUR. 2D *Executions* § 1 (1967).

40. Rudolph, *supra* note 24, at 166.

41. *Id.*

42. *Id.*

43. WYO. STAT. § 1-17-401 (1977).

44. *Id.* § 1-17-402.

45. *Id.* § 1-17-405. The Wyoming statutes actually create two kinds of garnishee's exams. See *infra* text accompanying notes 100-04.

46. For a detailed analysis of asset types, see generally 30 AM. JUR. 2D *Executions* §§ 88-206 (1967).

47. Annot., 68 A.L.R.2D 723, 735 (1959).

48. Annot., 1 A.L.R.2D 717, 740 (1948).

49. *Coad v. Cowhick*, 9 Wyo. 316, 63 P. 597 (1901) See *infra* text accompanying notes 232-36, for a discussion of whether certain other interests are subject to levy.

50. 30 AM. JUR. 2D *Executions* § 130 (1967).

51. Note that levy upon corporate stock is governed by different statutory provisions. WYO. STAT. §§ 1-19-101 to -108 (1977). See Rudolph, *supra* note 24, at 175.

52. Wages are property of the judgment debtor in the possession of a third party.

53. WYO. STAT. § 1-17-301 (1977).

a contingent remainder, and JD's lawsuit, which is a chose in action, are not subject to enforcement. Considering both this and the liens against JD's house and car, JC should proceed against JD's motorcycle, furniture, tools and home entertainment system.

Execution

*Execution Liens*⁵⁴

Entry of judgment creates a lien on all of JD's property, not upon any specific property.⁵⁵ Only levy in execution of the judgment establishes a lien against particular property. Unfortunately, some liens are automatic, while others are not. In other words, the priority of JC's interest as against other creditors, represented by his lien, depends upon the date when it attached. Obviously, the sooner it attaches, the better.

JC's interest is fixed when the lien attaches. Under the Wyoming statutes, attachment of the judgment lien to real property depends upon where the property is located, and when the suit was commenced.⁵⁶ "Judgments rendered at the same term in which the action [was] commenced shall bind the lands [in the county of judgment] only from the day on which the judgments [were] rendered."⁵⁷ If the action was commenced in one court term, and the judgment was rendered in another, then the judgment lien attaches to the judgment debtor's real property on the first day of the court term during which the judgment was rendered.⁵⁸ If the judgment debtor's real property is in a county different from that in which judgment was rendered, the lien dates from the time of filing a transcript of the judgment record with the clerk of court in the other county.⁵⁹

"[U]nder Wyoming law personal property is bound by a judgment, and a lien imposed thereon, upon execution, and not upon entry of judgment."⁶⁰ To paraphrase, the lien attaches when the sheriff seizes or levies upon the personal property for the purpose of satisfying the judgment creditor's judgment.⁶¹ As demonstrated above, a judgment lien attaches automatically only upon the judgment debtor's real property when the property is located in the county where judgment was rendered.⁶² In

54. See *id.* § 1-17-302 (1977).

55. D. EPSTEIN, *supra* note 3, at 47. In *Permian Corp. v. Armco Steel Corp.*, 508 F.2d 68 (10th Cir. 1974), the Tenth Circuit Court of Appeals said that "[a]n execution lien attaches to whatever title or interest the debtor has." *Id.* at 77.

56. WYO. STAT. § 1-17-302 (1977).

57. *Id.* The United States District Court for the District of Wyoming once contrasted "rendered" with "entered": "Rendition is the judicial act of the court in pronouncing the sentence of the law on the facts in controversy, as distinguished from entry, which is the clerical act of spreading the judgment on the record." *United States v. Hunt*, 373 F. Supp. 1079, 1082 (D. Wyo. 1974), *aff'd in part and rev'd in part*, 513 F.2d 129 (10th Cir. 1975).

58. WYO. STAT. § 1-17-302 (1977).

59. *Id.* § 1-17-304.

60. *Hunt*, 373 F. Supp. at 1082.

61. See WYO. STAT. § 1-17-302 (1977).

62. If a party desires to know whether a judgment debtor's land is subject to a judgment lien, he must either search the court judgment dockets, or look for notice of the lien on the property itself. Most title companies index money judgments by the name of the judg-

other instances, JC must act affirmatively to create the lien. For instance, before a lien attaches against JD's stereo, JC must ask the sheriff to levy upon it.

In the hypothetical, therefore, a lien attached to JD's house on August 10, 1984, because JC's court action was commenced, and judgment was rendered, in the same court term. Unfortunately, the lien on JD's home holds little practical significance for JC, because JD's house is mortgaged. A mortgagee's lien has priority over a judgment lien, so JC can collect only after the mortgagee's lien is completely satisfied. The same is true with JD's car; because it is financed, it too is subject to a prior right for payment of the debt. With regard to JD's personal property, however, the lien is very important, though it has yet to attach. JC must take additional steps in order for the lien to attach to JD's motorcycle, furniture, tools, and stereo system.

*Writ of Execution*⁶³

The writ of execution completes the process of seizure by directing the sheriff to levy upon particular property. The writ is required to list "[t]he exact amount of the debt, damages and costs for which judgment [was] entered."⁶⁴ Specifically, the writ must: 1) state the existence and amount of the judgment, including the place and date of its rendition; 2) recite the names of the parties to the action; and 3) direct the levying officer to satisfy the judgment out of the judgment debtor's goods and chattels, and failing that, out of his lands and tenements.⁶⁵ If the amount listed is incorrect, the writ is invalid.⁶⁶ Similarly, if the judgment is conditional, the writ will not issue.⁶⁷ Obviously, JC should take great pains to insure not only the accuracy, but the sufficiency of his writ.

The only person authorized to issue the writ of execution is the clerk of the court in which the judgment was rendered.⁶⁸ To have the writ issued, JC must deliver written instructions to the clerk,⁶⁹ as well as the writ. Upon direction by JC, the clerk *must* issue the writ, inasmuch as "his duty is purely ministerial, and not judicial or quasi-judicial."⁷⁰ The clerk then records the writ and delivers it to the officer to whom it is directed, normally the sheriff. If JC fails to specify particular items for levy, the

ment debtor, so checking these records is less time consuming than going through a number of court record books.

63. WYO. STAT. § 1-17-308 (1977). The same writ of execution is used in the county courts. *Id.* § 5-5-131(c) (Supp. 1984). See *infra* Appendix, Form 2, for a sample writ of execution.

64. *Id.* § 1-17-308. Note that the judgment creditor need not describe the property specifically, although one sheriff indicated that the task is made easier by a specific description. Interview with Lt. Fanning of the Albany Co. Sheriff's Department (October 12, 1984).

65. See generally 30 AM. JUR. 2D *Executions* §§ 221-65 (1967).

66. *Chittim v. Armco Steel Corp.*, 407 P.2d 1015, 1017 (Wyo. 1965).

67. *2-H Ranch Co. v. Simmons*, 658 P.2d 68 (Wyo. 1983).

68. *Wyo. Cent. Irrigation Co. v. Laporte*, 26 Wyo. 522, 188 P. 360 (1920). If JC seeks execution on property of JD that is in another county, he must direct the clerk to send the writ to the sheriff of that county.

69. These instructions are known as a *precipe*. See *infra* Appendix, Form 1.

70. 30 AM. JUR. 2D *Executions* § 37 (1967).

sheriff will search the public records to find JD's property; in any case, the sheriff will search the records to determine whether JD's property is subject to any liens.⁷¹

Following the search, the sheriff will proceed to levy upon JD's goods and chattels, and if none, upon JD's lands and tenements.⁷² Because JD's house and car are subject to prior liens, and because JD's furniture, tools, and clothing are at least partially exempt, the sheriff will levy upon JD's motorcycle and the home entertainment system. After taking the property into custody, the sheriff will make an inventory and give notice of a sale. The property will be disposed of at a public auction, with the proceeds to be paid to JC in satisfaction of his judgment.⁷³

Proceedings in Aid of Execution

The Wyoming statutes provide four distinct proceedings in aid of execution. First, is the creditor's bill,⁷⁴ which the Court of Chancery developed as an "equitable counterpart to execution,"⁷⁵ because, at early common law, executions were limited to estates and interests recognized at law, that is, real property.⁷⁶ Second, is the debtor's exam,⁷⁷ and third, is the garnishee's exam,⁷⁸ which the New York legislature created in the mid-nineteenth century as a simpler, more expeditious, substitute for the creditors' bill.⁷⁹ Fourth, is the "501 exam," which supposedly resolves the jurisdictional limitations of the garnishee's or "405 exam."⁸⁰ The Wyoming Territorial Legislature, borrowing from the Ohio code, first adopted these proceedings in 1886 as part of the original Code of Civil Procedure.⁸¹

The proceedings in aid of execution are all similar in purpose; each proceeding is meant to "afford to a judgment creditor the most complete relief possible in satisfying his judgment . . . [by reaching] property of judgment debtor which is concealed . . . [or] which cannot be reached by ordinary execution."⁸² The proceedings differ insofar as the creditor's bill and the "501 exam" are independent actions,⁸³ while the debtor's exam and the "405 exam" are summary actions.⁸⁴ Furthermore, the creditor's bill is an *in rem* action,⁸⁵ while the two summary exams are actions *in personam*.⁸⁶ In practice, this means that the debtor's exam and the "405

71. Interview with Lt. Fanning of the Albany Co. Sheriff's Department (October 12, 1984).

72. WYO. STAT. § 1-17-310 (1977).

73. See *infra* text accompanying notes 151-76 for an in-depth treatment of the sale.

74. WYO. STAT. § 1-17-401 (1977).

75. D. EPSTEIN, *supra* note 3, at 56.

76. See generally 21 AM. JUR. 2D *Creditor's Bills* §§ 1-93 (1981).

77. WYO. STAT. § 1-17-402 (1977).

78. *Id.* § 1-17-405.

79. D. EPSTEIN, *supra* note 3, at 58.

80. WYO. STAT. § 1-17-501 (1977). See *infra* note 104 and accompanying text.

81. 1886 Sess. Laws of Wyo. Territory 128-293.

82. 21 AM. JUR. 2D *Creditor's Bills* § 2 (1981).

83. D. EPSTEIN, *supra* note 3, at 58-60.

84. 30 AM. JUR. 2D *Executions* § 776 (1967).

85. D. EPSTEIN, *supra* note 3, at 58.

86. 30 AM. JUR. 2D *Executions* § 776 (1967).

exam" are quick remedies, although the judgment creditor must await return of execution before he can pursue them. Unfortunately, they are of little use if the judgment creditor cannot find either the judgment debtor or the third party, or if the third party raises a conflicting claim to the property. Of course, JC's decision to employ one of the proceedings in aid of execution hinges upon two prerequisites. First, JD must own some equitable interests. And second, JC must still need money to satisfy his judgment after execution upon JD's legal interests in real and personal property.

Debtor's Exam

Assume that JC's writ of execution was in fact returned unsatisfied. To confirm his initial analysis of JD's financial status, and to disclose additional property, JC decides, therefore, to ask the court for a debtor's exam. JC must first make a motion for the exam in the court of the county in which execution was issued.⁸⁷ Besides the motion, a complete request for an exam requires two other documents: the order for the exam, and a subpoena duces tecum for any documents indicating JD's ownership in property.⁸⁸ Service of the order upon JD constitutes a summons,⁸⁹ and probably a lien, as well.⁹⁰

JC's motion for the debtor's exam should allege that a judgment has been rendered for a specific amount, and that a writ of execution was issued and returned unsatisfied. In addition, the motion must request an order to examine JD to discover property available to satisfy the judgment.⁹¹ For a variety of reasons, however, the court may never hold the exam, even though the judge, or more likely, the clerk, has no discretion in approving or denying the request.⁹² The judgment debtor's failure to appear is perhaps the biggest reason, despite the court's power to enforce the order through contempt,⁹³ and arrest.⁹⁴ Indeed, the judicial process is meaningless if no one can even find the judgment debtor.

If the court does hold an exam, it may be conducted either by the court, or by a court-appointed master,⁹⁵ and it can be by interrogatories, or by depositions, or by the questioning of witnesses.⁹⁶ Moreover, persons who

87. WYO. STAT. § 1-17-401 (1977). See also *id.* § 1-17-415 for requirements of the order.

88. JC must file the documents in the Albany County district court. A sample motion, order, and subpoena duces tecum are included in the Appendix. See *infra* Appendix, Forms 3-6.

89. *Id.*

90. This issue has not been addressed squarely in Wyoming, but in *First Nat'l Bank of Laramie v. Cook*, 12 Wyo. 492, 76 P. 674 (1904), the Wyoming Supreme Court inferred that a judgment creditor acquires a lien at some stage of the supplementary proceeding. In *Cook*, the court determined priorities between a mortgagee and a judgment creditor, which determination necessarily presupposed a lien in favor of the judgment creditor. Accord *Boswell v. First Nat'l Bank of Laramie*, 16 Wyo. 161, 92 P. 624 (1907). See generally Annot., 92 A.L.R. 1435 (1934).

91. See *infra* Appendix, Form 3, for a sample motion.

92. WYO. STAT. § 1-17-402 (1977).

93. *Id.* § 1-17-409.

94. *Id.* § 1-17-404.

95. *Id.* § 1-17-407. 30 AM. JUR. 2D *Executions* § 817 (1967).

96. *Id.* § 823. See *infra* Appendix, Form 6, for sample interrogatories.

testify may not refuse to answer on the grounds that it would incriminate them.⁹⁷ At the exam, JC should have both a fresh writ of execution and a turnover order⁹⁸ ready to immediately seize property that JD either confirms or reveals. Assume that JD's appearance under the exam order revealed that he: 1) works at Al's Garage as a mechanic; 2) maintains a joint savings account at Gem City National Bank; 3) sold his 1982 Dogasaki motorcycle to a friend; and 4) possesses an expensive home entertainment system, which includes a television, video cassette recorder, and a few stereo components. Presently, JD is under order to turn that property over to the sheriff.⁹⁹

Third Party Proceedings

Sections 1-17-405¹⁰⁰ and 1-17-501¹⁰¹ of the Wyoming statutes supply two types of third party proceedings: the "405 exam," which dates from 1886, and the "501 exam," which dates from 1901. Though the two exams are similar in purpose—reaching assets of the judgment debtor in the possession of third parties—they are opposite in nature. The 405 exam, which the statutes regard as a proceeding in aid of execution, is a short, concise, and immediate proceeding, contrasted with the 501 exam, which is a full-blown trial, and is regarded as garnishment in aid of execution.¹⁰² What is more, the 501 order is binding upon the garnishee,¹⁰³ while the 405 order is not.¹⁰⁴ Thus, the two sections are invoked at opposite times, depending upon whether the garnishee intends to assert a conflicting claim. In practice, this means that a judgment creditor will most often use the 405 exam merely for discovery, because if he seeks property which is subject to conflicting claims, he must use the 501 exam.

At this point, if JC's judgment remains unsatisfied, he should attempt to garnish JD's wages.¹⁰⁵ Normally, an employer does not dispute his liability, therefore, JC may proceed under the rules for the 405 exam. Upon proof by affidavit that Al's Garage employs JD, and that JD has wages due and owing, the court may order the garnishee to appear and answer

97. WYO. STAT. § 1-17-406 (1977).

98. *Id.* § 1-17-411.

99. *Id.* If JD had revealed the existence of additional real property, the court would have terminated the exam, and sent JC back into execution. Rudolph, *supra* note 24, at 169.

100. WYO. STAT. §§ 1-17-405 (1977).

101. WYO. STAT. §§ 1-17-501 (1977). The third party proceeding in the county court system is substantially similar to the "501 exam." *Id.* § 1-21-701 to -703 (these statutes apply by incorporation through *id.* § 5-5-131(c) (Supp. 1984)).

102. Compare *id.* § 1-17-405 (1977) with *id.* § 1-17-501 (1977).

103. The 501 exam "shall be taken to final judgment." *Id.*

104. Schloredt v. Boyden, 9 Wyo. 392, 64 P. 225 (1901); First Nat'l Bank of Laramie v. Cook, 12 Wyo. 492, 76 P. 674, 677 (1904); Graver v. Guardian Trust Co., 29 Ohio App. 300, 163 N.E. 502 (1928). The "501 exam" was created to resolve the unenforceability problem of the "405 exam," but the statute refers to procedures for attachment, which are not binding either. An amendment to one of these statutes may have cured this problem, though. WYO. STAT. § 1-15-301 (1977). *But see* Thex v. Shreve, 39 Wyo. 285, 267 P. 92 (1928), which seemingly continues the non-binding rule as before. Yet, according to Rudolph, *supra* note 24, at 172, the Wyoming Supreme Court, in *Thex*, did not consider the effect of the amendment, even though it was made one year earlier.

105. See Rudolph, *supra* note 24, at 174.

concerning JD's property.¹⁰⁶ A lien upon JD's wages—or upon any of JD's property in the possession or under the control of the garnishee—attaches when the sheriff serves the order on the garnishee.¹⁰⁷ Of course, the order also notifies Al's Garage that it is liable to JC for any of JD's wages.¹⁰⁸ Consequently, if JC wishes to garnish JD's wages, he must file both the garnishment order and an affidavit with the Albany County Clerk of Court.¹⁰⁹

Both state¹¹⁰ and federal law¹¹¹ restrict wage garnishment, however. In 1968, the members of Congress felt that wage garnishment "frequently result[ed] in loss of employment by the debtor."¹¹² In remedying this problem, Congress imposed two important restrictions on wage garnishment. First, no garnishment can be made for more than a specified maximum amount of wages.¹¹³ Second, no garnishment can be made on wages totalling less than a specified minimum amount.¹¹⁴ As a result, the amount garnishable under federal law is normally equal to about twenty-five percent of the judgment debtor's *disposable* wages, whereas under Wyoming law, it is about half of the judgment debtor's wages.¹¹⁵ Because it affords the wage earner more protection, the federal law controls in Wyoming.¹¹⁶

Figuring the amount garnishable from JD's wages under federal law requires the bookkeeper at Al's Garage to calculate the employee's net disposable earnings (ENDE) and the employee wages not subject to garnishment (EMW).¹¹⁷ EMW equals the number of days JD has worked to earn the wages presently due him, multiplied by sixty-five times the federal minimum wage.¹¹⁸ JC can garnish JD's wages only if JD's ENDE (gross wages less federal withholding and FICA) exceeds EMW. If it does, the amount garnishable is the lesser of twenty-five percent of ENDE, or the excess of ENDE over EMW.¹¹⁹ After the bookkeeper at Al's Garage makes the calculation, he may pay the amount to the Albany County Clerk of Court.¹²⁰

Suppose that JC also decides to proceed against JD's bank account, but the account is owned jointly with another person, his son. JD's son

106. WYO. STAT. § 1-17-405 (1977).

107. *Id.*

108. *Id.*

109. See *infra* Appendix, Form 7, for a sample affidavit, and Form 8, for a sample order.

110. WYO. STAT. § 1-17-411 (1977).

111. 15 U.S.C. §§ 1671-1677 (1976).

112. *Id.* § 1671.

113. *Id.* § 1673(a). Limitations do not apply to support orders. *Id.* § 1673(b).

114. *Id.* § 1673(a).

115. Compare *id.* § 1673 with WYO. STAT. § 1-17-411 (1977).

116. 15 U.S.C. § 1677(1) (1976).

117. See *infra* Appendix, Form 8, for a complete set of instructions.

118. 15 U.S.C. § 1673(b) (1976). This figure applies to an employee who is paid every two weeks or semi-monthly.

119. *Id.*

120. WYO. STAT. § 1-17-410 (1977). Though the statute refers to the sheriff, in practice, the money is administered by the clerk. In order to avoid the necessity of multiple garnishments, the court may appoint a receiver who will, in the future, accept payment of debts not due and payable at the time of the garnishment, for example, future wages. WYO. STAT. §§ 1-17-412, -413 (1977).

is a potential adverse claimant, so JC must resort to the 501 exam in order to conclusively determine the rights to the account. JC's right to the account, that is, his lien, attaches when the 501 order is served upon JD's son.¹²¹ After receiving the order, JD's son must file an answer which lists, in full, all of JD's property in his possession or under his control.¹²² The 501 exam will then be conducted like other civil cases,¹²³ and taken to a final judgment.¹²⁴

Inasmuch as his judgment is against only one of the account owners, JC faces many difficulties in attempting to garnish the account.¹²⁵ The general rule in regard to a joint bank account is that, while it may be seized by JC, JC's rights in the account are limited to the amount equitably owned by JD.¹²⁶ Identifying funds in this manner is difficult to do, so some courts create a presumption that the judgment debtor owns the whole account, and place the burden upon the co-depositor to prove otherwise.¹²⁷ In *Leaf v. McGowan*,¹²⁸ the court applied the presumption, but gave the whole account to the judgment creditor, holding that the other depositor had failed to overcome the presumption.¹²⁹ The same result is reached using the minority rule, which focuses on the contractual relationship between the co-depositors and the bank. Under that contract, either the judgment debtor or the other depositor may withdraw the entire balance of the account, so as subrogee, judgment creditor can seize the whole account.¹³⁰ No reported case deals with the issue in Wyoming, but it is likely that JC would be able to seize all, or at least part, of the account.

*Creditor's Bill*¹³¹

In Wyoming, JC may bring a creditor's bill before he pursues any of the three exams.¹³² As an equitable action, however, the creditor's bill is timely only if execution has been returned unsatisfied.¹³³ To illustrate the use of the creditor's bill, assume that, after the adverse judgment was rendered, JD "sold" his \$1,500 motorcycle to a friend for \$200. Recall that conflicting claims to JD's property cannot be conclusively resolved in the 405 exam.¹³⁴ Because JD's friend was not a party to the original suit, and

121. *Id.* § 1-15-118 (this statute applies by incorporation through *id.* § 1-17-501). See generally Rudolph, *supra* note 24, at 173.

122. WYO. STAT. § 1-15-301(a) (1977) (this statute applies by incorporation through *id.* § 1-17-501).

123. *Id.* § 1-15-301(c).

124. *Id.* § 1-17-501.

125. See generally Annot., 11 A.L.R.3d 1465 (1967). See also 30 AM. JUR. 2D Executions § 800, 831 (1967).

126. 30 AM. JUR. 2D Executions § 800 (1967).

127. See generally *id.* § 831.

128. 13 Ill. App. 2d 58, 141 N.E.2d 67 (1957).

129. *Id.*

130. Park Enterprises, Inc. v. Trach, 233 Minn. 467, 47 N.W.2d 194 (1951).

131. WYO. STAT. § 1-17-401 (1977). See generally 21 AM. JUR. 2D Creditors' Bills §§ 1-93 (1981).

132. Schlorede v. Boyden, 9 Wyo. 392, 64 P. 225 (1901).

133. WYO. STAT. § 1-17-401 (1977).

134. See *supra* note 104.

insofar as he may be a bona fide purchaser who, therefore, has a conflicting claim to the motorcycle, JC must resort to an independent action, such as the creditor's bill.

Because it is an independent action, JC may file a creditor's bill in a court other than the one in which judgment was rendered.¹³⁵ Of course, the court chosen must have jurisdiction; a creditor's bill requires in rem jurisdiction,¹³⁶ so JC should file in the court for the county where the motorcycle is located. As defendants, JC should name all parties whose rights should be ascertained with respect to the motorcycle.¹³⁷ Consequently, JC should file a complaint against JD, as well as against JD's friend.¹³⁸

After the two parties answer the complaint, the court will hear the action as a full-blown trial. JC can establish a prima facie case by proving three facts.¹³⁹ First, he must verify that the money judgment exists.¹⁴⁰ Second, he must show that a writ of execution was issued and returned unsatisfied.¹⁴¹ Third, and most importantly, he must demonstrate that the assets sought are in fact JD's property.¹⁴²

To prove that the motorcycle in fact belongs to JD, and not to JD's friend, JC must argue that the "sale" was actually a fraudulent conveyance.¹⁴³ Section 34-14-108 of the Wyoming statutes states that "[e]very conveyance made . . . with actual intent . . . to hinder, delay, or defraud either present or future creditors, is fraudulent as to both."¹⁴⁴ Where a fraudulent conveyance is found, a creditor may "[h]ave the conveyance set aside . . . to the extent necessary to satisfy his claim,"¹⁴⁵ unless the transferee is a "purchaser for fair consideration without knowledge of the fraud at the time of purchase."¹⁴⁶ Despite the difficulties of proving actual intent¹⁴⁷ and fair consideration,¹⁴⁸ assume the court determines that, indeed, a fraudulent conveyance was made.

The motorcycle, therefore, is property available to satisfy JC's judgment. Yet, the motorcycle might also constitute property for the satisfaction of other claimants. In that case, the priority of JC's lien against the

135. 21 AM. JUR. 2D *Creditor's Bills* § 65 (1981).

136. Because jurisdiction is *in rem*, JD can be a non-resident. The particular court, for example the county or district court, also depends upon the respective jurisdictional amount. JC is reminded to be diligent about pursuing this action insofar as he faces a statute of limitations and the equitable doctrine of laches. *Id.* § 67.

137. The court passes only upon the rights of the parties before it, so JC must join all potential adverse claimants to be confident with the judgment. Most courts will allow any judgment creditor to intervene. *Id.* § 72. Other courts will allow even non-creditors to intervene. *Id.*

138. See *infra* Appendix, Form 9, for a sample complaint.

139. 21 AM. JUR. 2D *Creditors' Bills* § 82 (1981).

140. *Id.*

141. *Id.*

142. *Id.*

143. See generally D. EPSTEIN, *supra* note 3, at 67-79.

144. WYO. STAT. § 34-14-108 (1977).

145. *Id.* § 34-14-110(a)(i).

146. *Id.* § 34-14-110(a).

147. D. EPSTEIN, *supra* note 3, at 68-72.

148. See WYO. STAT. § 34-14-104 (1977).

motorcycle is of paramount importance. If JC did not acquire a specific lien upon the motorcycle before the suit, he acquired one either when he filed the action, or when JD's friend was served.¹⁴⁹ JC probably obtained a lien against the motorcycle by virtue of the order served in the debtor's exam;¹⁵⁰ if not, JC's lien dates from filing of the the complaint. Regardless of the specific date, however, JC's lien will have a relatively late priority. Hence, if other claimants *do* exist, JC would be wise to forego the expense of the creditor's bill.

SATISFACTION

After seizure, the judgment is still not satisfied. Indeed, one last step remains in the process of enforcing a judgment: converting the judgment debtor's assets to cash. Usually, this requires a sale of the assets that the judgment creditor has seized. Sometimes, though, the judgment debtor will pay voluntarily, or a garnishee will make payment for him. In the hypothetical, JC must sell JD's motorcycle, some furniture, and the home entertainment system. He must also collect from the Gem City National Bank and Al's Garage.

Payment

JD can, of course, voluntarily satisfy the judgment by making payment to the clerk of court. In fact, JD has sixty days to do so, if judgment was rendered by the district court,¹⁵¹ and thirty days if judgment was rendered by a county court.¹⁵² To protect a judgment debtor who volunteers payment, the Wyoming Supreme Court decided that a sale conducted after tender of the amount needed to satisfy the judgment is illegal.¹⁵³ Where the judgment debtor desires to make payment, he and the judgment creditor will often contract for satisfaction of the judgment by installments. Although the clerk of court cannot enforce compliance with the contract, he will administer the funds received as a result.

Receivership

In order to avoid the necessity of successive proceedings in aid of execution, the court may appoint a receiver who will, in the future, accept payment of debts becoming due and payable after the particular proceeding.¹⁵⁴ A receiver is especially useful when wages are garnished, because only those wages due at the time of the proceeding are subject to garnishment. In other words, future wages cannot be reached. The receiver-

149. 21 AM. JUR. 2D *Creditor's Bills* § 92 (1981). The lien lasts until "final determination" of the action, and is not affected by dormancy of the judgment at law. *Id.* § 93.

150. *See supra* note 104.

151. WYO. STAT. § 1-17-339 (1977).

152. *See id.* § 1-21-502(a)(iii) (1977), which applies to county courts pursuant to WYO. STAT. § 5-5-131(c) (Supp. 1984).

153. *Chittim v. Armco Steel Corp.*, 407 P.2d 1015, 1017 (Wyo. 1965).

154. WYO. STAT. §§ 1-17-412, -413 (1977). *See also State ex rel. Avenius v. Tidball*, 35 Wyo. 496, 252 P. 499 (1927) (judgment creditor entitled to appointment of receiver under certain circumstances).

ship is also employed when the judgment creditor must collect from many different garnishees, such as when collecting accounts receivable, or when winding up the affairs of a business.¹⁵⁵

*Sale*¹⁵⁶

JC's main hope of satisfying his judgment lies in the forced conversion of any assets seized to cash. Inasmuch as an execution sale involves both an element of coercion, and potentially a large amount of money, the procedures for the sale are extensively prescribed by statute,¹⁵⁷ and are to be strictly followed.¹⁵⁸ Because the buyer faces many potential clouds on his title, property at an execution sale is often sold for an inadequate price.¹⁵⁹ The Wyoming legislature, therefore, built two safeguards into the sale procedures.¹⁶⁰ The first safeguard, appraisal, prevents the so-called "sacrifice" sale.¹⁶¹ The second safeguard, redemption, gives the judgment debtor the right to buy back real property during a time certain.¹⁶² Though they do not eliminate the unfair purchase prices, the safeguards do balance the execution sale to protect the judgment debtor.

As stated above, before the sale can be made, the sheriff must have the property appraised. With respect to real property, "three disinterested property owners . . . [shall] impartially appraise the property levied upon,"¹⁶³ while in the case of personal property, "three disinterested persons" will appraise the property, but only if a private sale is authorized by the court.¹⁶⁴ Once the property is appraised, the sheriff must advertise the sale.¹⁶⁵ To do this, the sheriff will place an ad in the "county newspaper" for four consecutive weeks before sale of real property,¹⁶⁶ and "at least ten days" before sale of personal property.¹⁶⁷

155. *But see* First Nat'l Bank of Laramie v. Cook, 12 Wyo. 492, 76 P. 674 (1904), where the Wyoming Supreme Court sharply restricted the role of the receiver in winding up the affairs of a business.

156. *See, e.g.*, WYO. STAT. §§ 1-17-312, -326, -414, -418 (1977).

157. Sale of real property is governed by WYO. STAT. §§ 1-18-101 to -112, -17-320, -321, -326 (1977). Sale of personal property is governed by *id.* § 1-17-314. Sale of equitable interests is governed by *id.* § 1-17-414, which is the same procedure as for the sale of real property. *See id.* §§ 1-18-101 to -112.

158. *Chittim v. Armco Steel Corp.*, 407 P.2d 1015 (Wyo. 1965). The sheriff who conducts the sale in a non-conforming manner faces a fine. WYO. STAT. § 1-18-101 (Supp. 1984).

159. *See* D. EPSTEIN, *supra* note 3, at 60-63. The sale is also made without warranties of title. *Id.* at 62.

160. *See* WYO. STAT. §§ 1-17-314, -316, -18-103(a) (1977 & Supp. 1984).

161. *See* D. EPSTEIN, *supra* note 3, at 61.

162. WYO. STAT. § 1-18-103(a) (Supp. 1984). The judgment debtor has three months in which to redeem. *Id.*

163. *Id.* § 1-17-316(a) (1977).

164. *Id.* § 1-17-314.

165. *See, e.g., id.* §§ 1-18-101, -17-312 (1977 & Supp. 1984). Pursuant to WYO. STAT. § 1-17-414 (1977), the sale of equitable interests is governed by the statute covering the sale of real property.

166. *Id.* § 1-18-101 (Supp. 1984).

167. *Id.* § 1-17-312 (1977).

Unless the court authorizes a private sale of personalty, all sales will be made by public auction.¹⁶⁸ The sheriff will conduct the sale by taking bids on the property chosen for sale.¹⁶⁹ Before accepting any bids, the sheriff must adequately describe and specifically identify or point out the property to the bidders.¹⁷⁰ It is the "policy of law to multiply bidders and promote competition [at an execution sale],"¹⁷¹ so naturally, the property is sold to the highest bidder. If the bids are not adequate, however, the sheriff can adjourn the sale.¹⁷²

The purchase price must be paid to the sheriff, and the clerk of court will administer it.¹⁷³ A sale of real property is final upon issue of a deed to the purchaser, but the court must first confirm the sale's propriety.¹⁷⁴ Once the paperwork is finished, the clerk will send the judgment creditor a check in the amount of the judgment,¹⁷⁵ or in the amount of the sale. If JC's judgment is wholly satisfied after this lengthy process, he's lucky. If the judgment is not satisfied, he must hope that JD has more assets available, as he begins the process over again.¹⁷⁶ Otherwise, the judgment remains unpaid, which means that, indeed, the courtroom victory was hollow.

II. PROBLEMS WITH THE ENFORCEMENT PROCESS AND RECOMMENDATIONS FOR CHANGE

The Wyoming enforcement statutes frustrate a collecting judgment creditor in two ways: procedural obstacles, and statutory gaps. For example, a judgment creditor can compel judicial discovery of the debtor only if the judgment remains unsatisfied after execution.¹⁷⁷ If the court *does* conduct the exam, the judgment creditor cannot be sure when his rights vest as against other interests in the judgment debtor's property.¹⁷⁸ These obstacles and gaps result primarily from old age. The Wyoming Territorial Legislature adopted the enforcement statutes in 1886.¹⁷⁹ Even

168. *Id.* §§ 1-17-314, -101 (1977 & Supp. 1984). The sheriff must conduct a sale of real estate at the courthouse. *Id.* § 1-17-326 (1977).

169. *Chittim v. Armco Steel Corp.*, 407 P.2d 1015, 1017 (Wyo. 1965). The judgment debtor has no choice as to which property is sold. The sheriff levies first upon goods and chattels (WYO. STAT. § 1-17-310 (1977)), so they will be the first sold. The judgment debtor's non-exempt real property will be sold only if the judgment is not satisfied after sale of personalty. *Id.* §§ 1-17-310, -315. Finally, any of judgment debtor's equitable interests will be sold, but only if the "interest can be ascertained as between [the judgment debtor] and [others] . . . without controversy." *Id.* § 1-17-414."

170. *Eggeman v. Western Nat'l Bank*, 596 P.2d 318 (Wyo. 1979).

171. 30 AM. JUR. 2D *Executions* § 361 (1967).

172. *Id.* § 369.

173. *See* WYO. STAT. § 1-17-321 (1977).

174. *Id.* "The deed is prima facie evidence of the legality and regularity of the sale." *Id.* § 1-17-324.

175. If any money from the sale remains after satisfaction of the judgment, the sheriff must pay it to the judgment debtor. *Id.* § 1-17-330.

176. *Id.* § 1-17-315 (additional levy authorized).

177. The judgment creditor can, however, get the court to order the debtor's exam if the judgment debtor has property, but refuses to turn it over. *Id.* § 1-17-403.

178. *See supra* note 90.

179. 1886 Sess. Laws of Wyo. Terr. 128-293.

worse, they were patterned after Ohio statutes, which were passed as early as 1853.¹⁸⁰

Furthermore, the statutes' draftsmen faced an economy vastly different from today's. One hundred years ago, the nation's economy was land-based; today, it is credit-based. Fewer and fewer people ever own real property now, investing instead in more liquid assets such as savings accounts, certificates of deposit, and corporate stock. The Wyoming statutes have not evolved to reflect this change. As a result, a Wyoming judgment creditor must employ a collection process that often yields insufficient results.

Wyoming's problems are not unique, though. California was once plagued with almost identical problems:

[T]he statutory law [fell] far below the standards of the modern California codes. There [were] long and complex sections that [were] difficult to read and more difficult to understand. . . . Judicial decisions interpreting the statutory language [were] conflicting and obscure. Important matters [were] not covered at all in the existing statute or [were] covered inadequately. The principles and terminology of the [Uniform] Commercial Code [were] not recognized in the statutes governing enforcement of judgments, even though portions of [it] deal[t] with the same subject matter.¹⁸¹

Aiming to "streamline procedures to the extent practicable in an effort to . . . provide better remedies for creditors and protections for debtors where needed,"¹⁸² the California Legislature recently enacted legislation that worked a complete overhaul of the enforcement of judgments process.¹⁸³ The result is a very specific, very intelligible, and hence, very practical set of statutes that govern the enforcement of money judgments in the nation's most populous state.

The Wyoming Legislature would be well advised to revamp the enforcement of judgments statutes, and an excellent model for such a reworking is the California system. The following analysis exposes the many problems created by the Wyoming statutes. Some of the problems are illustrated with the use of the hypothetical, while others are of a general nature and need no such elaboration. Regardless of the problem, however, the new California statutes usually provide a solution.

PROCEDURAL OBSTACLES

One hundred years ago, when Wyoming's enforcement statutes were drafted, courts distinguished between actions at law and actions in equi-

180. OHIO REV. CODE ANN. User's Guide 14 (Baldwin 1983).

181. 1982 Creditors' Remedies Legislation, 16 Cal. L. Revision Comm'n Reports 1001, 1029 (1982) [hereinafter cited as Recommendations].

182. *Id.*

183. 1982 Cal. Stat. ch. 1364.

ty. Observing this distinction, the Wyoming Legislature required a judgment creditor to exhaust legal remedies before pursuing equitable remedies. In terms of the hypothetical, JC was forced to seize JD's most illiquid asset, real property, before his more liquid assets, such as wages and bank accounts. Not only *should* the equity and law distinction be eliminated, it already *has* been. In 1957, the Wyoming Supreme Court adopted rules of civil procedure substantially similar to the Federal Rules of Civil Procedure.¹⁸⁴ In both sets of rules, the distinction was eliminated by providing "for one form of action to be known as a 'civil action'."¹⁸⁵ Likewise, "[w]henever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action."¹⁸⁶ Thus, for almost thirty years, Wyoming court rules have blended law and equity, while Wyoming statutes have segregated them.

Discovery

Recall that JC's goal in discovery was to locate sufficient unencumbered and non-exempt property to satisfy his judgment.¹⁸⁷ Wyoming's enforcement statutes were of little use, however. In other words, JC relied upon non-judicial methods of discovery to locate JD's property, because the debtor's exam— Wyoming's main statutory discovery device— could not be held until after the sheriff returned an unsatisfied execution on JD's real and personal property. Unfortunately, the prerequisite of resort to execution causes a delay, which in many cases, affords a judgment debtor the opportunity to conceal or convey his assets. It also gives the judgment debtor's secured creditors more time to repossess their collateral or force bankruptcy, where the judgment creditor is in the back of a long line of creditors.

Instead of waiting for return of execution, JC should have attempted concurrent discovery of the *potential* judgment debtor.¹⁸⁸ That is, he should have investigated the defendant's assets during the normal discovery process for trial. Failing that, however, he may have been able to proceed without regard to the enforcement statutes. Rule 69 of the Wyoming Code of Civil Procedure specifies that "[i]n aid of the judgment or execution *and in addition to the proceedings provided by statute*, the judgment creditor . . . may obtain discovery from any person, including the judgment debtor, in the manner provided by [the discovery rules (26-37) of the Wyoming Rules of Civil Procedure]."¹⁸⁹ Seemingly, a judgment creditor could conduct discovery under the liberal rules of civil procedure, rather than under the archaic enforcement statutes, but he should

184. Wyo. R. Civ. P. 86.

185. *Id.* 2.

186. *Id.* 18(b).

187. See *supra* text accompanying notes 7-31.

188. The court could also examine the defendant regarding his assets when it renders judgment.

189. Wyo. R. Civ. P. 69 (emphasis added).

be cautious because the discovery rules fail to provide for a lien against the judgment debtor's property.

If the Wyoming statutes ignored the distinction between law and equity, the judgment creditor could avoid this. The California judgment creditor may obtain any of the miscellaneous creditor's remedies—the debtor's exam, the garnishee's exam, and the creditor's bill—at any time.¹⁹⁰ If the same had been true in Wyoming, JC would have found out about JD's motorcycle before it was sold to JD's friend, and therefore, may have been able to prevent the "sale." In any case, JC would have been able to satisfy his judgment in a much shorter time.

Seizure

The Wyoming enforcement statutes establish a three step procedure for seizure. First, the sheriff must levy upon the judgment debtor's personal property.¹⁹¹ Second, if the judgment remains unsatisfied by the judgment debtor's personal property, the sheriff will levy upon his real property.¹⁹² Third, failing satisfaction of the judgment by real and personal property, the sheriff will levy upon such equitable interests as the judgment debtor's wages and bank accounts.¹⁹³ As demonstrated in the hypothetical, these procedural obstacles merely result in a needless delay, because a judgment debtor's real and personal property is usually either exempt or subject to a prior lien, and therefore not available for levy.¹⁹⁴

Without these obstacles, the judgment debtor's liquid assets would be available, in the first instance, for satisfaction of the judgment. In other words, JC could have immediately reached JD's wages and bank accounts, instead of being forced to wait for return of execution on JD's real and personal property. Inasmuch as a check from an employer or bank can be converted to cash quicker and easier than a house or car, a judgment creditor avoids cursory and fruitless procedures under this enforcement scheme. What is more, the judgment debtor has less time to conceal or convey his assets. The California Legislature established this more practical procedure by allowing the judgment creditor to pursue any of the available remedies at anytime.¹⁹⁵ Consequently, the California judgment creditor is likely to achieve more favorable results, at an earlier stage, than the Wyoming judgment creditor.

Satisfaction

The Wyoming judgment creditor faces significant procedural obstacles in the final stage of enforcement, as well. Though the legislature most likely designed two of these obstacles—the requirement of a cash sale,

190. See generally Recommendations, *supra* note 181, at 1123-43.

191. WYO. STAT. § 1-17-310 (1977).

192. *Id.*

193. *Id.* §§ 1-17-401, -402, -405, -501.

194. See *supra* text accompanying notes 14-31.

195. See, e.g., CAL. CIV. PROC. CODE §§ 708.010, .110, .120, .210 (West 1984). See generally, Recommendations, *supra* note 181, at 1124-29.

and the right of redemption—to ensure the integrity of the execution sale, in practice, they merely undermine it. Under Wyoming law, the sheriff can only accept cash for an execution sale.¹⁹⁶ As a result, many potential bidders cannot participate in a sale, because most people do not have rapid access to large amounts of cash. Fewer bidders mean less upward force on the sale price, so the sale yields a smaller amount of cash—to the detriment of both the judgment creditor and the judgment debtor.

The California statutes protect the judgment creditor and debtor in two ways. With the intent of encouraging outside bidding at execution sales, they authorize sale on credit in certain instances.¹⁹⁷ In addition, they impose a minimum bid requirement by preventing sale of property if none of the proceeds would go to satisfying a judgment creditor's judgment.¹⁹⁸ The California Legislature also repealed the right of redemption as it applied to execution sales,¹⁹⁹ which means that in California, the sale is absolute,²⁰⁰ while in Wyoming, the purchaser obtains a defeasible title for at least four months.²⁰¹ Because the purchaser's title is more certain, he must pay a higher price at the sale, and a higher price obviously benefits both parties to the judgment.²⁰²

STATUTORY GAPS

In the one hundred years since the Wyoming Territorial Legislature first adopted enforcement statutes, America's marketplace has undergone significant change. Unfortunately, the Wyoming statutes have not kept pace with this change. Modern business practices, new types of property and interests in property, and different patterns of property ownership all were unforeseen by nineteenth-century legislators. Furthermore, those legislators employed nineteenth-century terminology in drafting the statutes. While Wyoming's enforcement statutes are inscrutable and impracticable, California's are intelligible and efficacious. California legislators obtained this desirable result for two reasons. First, they wrote the statutes in non-technical language with standardized Uniform Commercial Code terminology. Second, and more importantly, they filled in previous gaps with a very comprehensive and detailed set of statutes, which now deal with almost every conceivable enforcement problem. The Wyoming Legislature would perform a great service for Wyoming judgment creditors by following California's example.

196. WYO. STAT. § 1-17-314 (1977). *But see id.* § 1-17-338, which allows a credit sale if two previous execution sales have failed.

197. CAL. CIV. PROC. CODE § 701.590 (West 1984).

198. *Id.* § 701.620.

199. *Id.* § 701.680. Note that the repeal does not extend to foreclosure sales. *Id.* (legislative committee comment).

200. CAL. CIV. PROC. CODE § 701.680(a) (West 1984).

201. WYO. STAT. §§ 1-18-103, -104 (1977).

202. In California, a higher price might also benefit other creditors of the judgment debtor, because any surplus from the sale will be distributed to them. *Id.* 708.810. In Wyoming, other creditors cannot benefit because any surplus belongs to the judgment debtor. Wyo. STAT. § 1-17-330 (1977).

Enforcement Liens

Before the revision, California's statutes failed to create various enforcement liens, such as liens in the examination proceedings, so California's courts created them instead.²⁰³ Wyoming's statutes also fail to create some enforcement liens. Unfortunately, Wyoming's courts have not had much opportunity to create these liens as a matter of case law. Yet, section 1-17-302 of the Wyoming statutes²⁰⁴ does create both an execution lien and a judgment lien.²⁰⁵ The judgment lien arises only in respect to real property,²⁰⁶ and attaches at various times, even automatically, depending upon the location of the property and the date of the judgment.²⁰⁷ The execution lien, in contrast, attaches to personal property when seized in execution.²⁰⁸

The California law continues the execution lien,²⁰⁹ and extends the judgment lien into two new areas. First, the statutes expand the judgment lien on real property to reach leasehold interests, equitable interests, and contingent interests.²¹⁰ Second, they provide for a new judgment lien on various personal property of a business,²¹¹ which is obtained by filing notice in the same manner as a security interest under the Uniform Commercial Code. This lien benefits the judgment creditor by allowing him to exert pressure on the judgment debtor to settle with him, because the property subject to the lien cannot be pledged to finance continuation of the business unless the judgment is satisfied.²¹² What is more, the judgment lien on personal property allows the judgment creditor to forego the necessity of court determined priority, in favor of a simple race-notice system in which the judgment creditor has priority if notice is filed before the security interest is perfected.²¹³

Besides judgment and execution liens, the Wyoming enforcement statutes create a third lien, arising from the "405 exam."²¹⁴ The statutes fail, however, to create a lien in the debtor's exam.²¹⁵ Recall that when JC applied for the debtor's exam, he wasn't sure when his rights in the

203. Recommendations, *supra* note 181, at 1039.

204. WYO. STAT. § 1-17-302 (1977).

205. *Id.*

206. *Id.*

207. See *supra* text accompanying notes 56-59.

208. WYO. STAT. § 1-17-302 (1977).

209. CAL. CIV. PROC. CODE § 699.710 (West 1984). See generally Recommendations, *supra* note 181, at 1041-48.

210. CAL. CIV. PROC. CODE § 697.340 (West 1984). Note that the lien will not reach leasehold interests of less than two years. *Id.* Where a homestead declaration has been recorded, a judgment lien attaches to whatever is left after satisfaction of: (1) all liens and encumbrances; and (2) the amount of the homestead exemption. Recommendations, *supra* note 181, at 1012.

211. CAL. CIV. PROC. CODE §§ 697.510-670 (West 1984). Property subject to the judgment lien includes: accounts receivable, chattel paper, equipment, farm products, inventory, and negotiable documents of title. *Id.* § 697.530.

212. Recommendations, *supra* note 181, at 1051.

213. CAL. CIV. PROC. CODE § 697.590(b) (West 1984).

214. WYO. STAT. § 1-17-405 (1977).

215. See *id.* § 1-17-301, which makes no mention of a lien.

property would vest as against others.²¹⁶ In other words, JC could not determine his priority in the property. Because the Wyoming statutes fail to delineate the primary factor in determining priorities—the date of lien—the debtor's exam is of diminished value to the Wyoming judgment creditor. The California judgment creditor, on the other hand, benefits from a specific lien in the debtor's exam, as well as in all other enforcement exams.²¹⁷

Miscellaneous Creditor's Remedies

The California enforcement statutes no longer require a return of execution before the judgment creditor can invoke any of the proceedings in aid of execution, so the examination proceedings and the creditor's bill are now known collectively as miscellaneous creditor's remedies.²¹⁸ While the statutes continue the creditor's bill,²¹⁹ the California Legislature "anticipated . . . that the less expensive and less cumbersome enforcement procedures . . . be used in the normal case."²²⁰ Accordingly, the statutes provide for one simple and effective third-party exam.²²¹ Had JC been a California judgment creditor, therefore, he could have used a single third-party proceeding to seize JD's wages, bank account, and motorcycle, instead of the three proceedings he used as a Wyoming judgment creditor.²²² One exam can replace two, and even the creditor's bill, because the California statutes specifically empower the court to make a summary and *conclusive* determination of adverse claims to the judgment debtor's property.²²³

In addition to streamlining the enforcement process, the new California statutes afford significant protection to the judgment debtor. Fortunately, the Wyoming Legislature recently granted the most significant of these protections to the Wyoming judgment debtor.²²⁴ Before this action, a Wyoming court could conduct a "405 exam" without notifying the judgment debtor,²²⁵ because notice was required only if the court "deemed [it] proper."²²⁶ In practice, this meant that the judgment debtor could lose

216. See *supra* note 90 and accompanying text.

217. CAL. CIV. PROC. CODE § 708.110-120 (West 1984).

218. *Id.* §§ 708.010-709.030 (West 1984).

219. *Id.* § 708.210.

220. *Id.* Comment to Article 3, Creditor's Suit.

221. CAL. CIV. PROC. CODE § 708.120 (West 1984).

222. See *supra* text accompanying notes 74-150.

223. CAL. CIV. PROC. CODE §§ 708.180 (West 1984). Because Wyoming courts cannot determine conflicting claims in the "405 exam," it is, for all intents and purposes, ineffectual, except in those rare instances when a third party chooses to cooperate with the judgment creditor.

224. Enrolled Act No. 76, S. 0226, 48th Leg., Gen. Sess. (1985) (creating section 1-15-119 of the Wyoming statutes and amending WYO. STAT. §§ 1-15-102(a), -103, 1-17-405, -411, 1-21-301) [hereinafter cited as Enrolled Act 76]. The new section 1-15-119 provides the judgment debtor with notice, and a right to a hearing, and also with notice of the right to claim specified exemptions. Enrolled Act 76 also amends sections 1-17-405 and 1-17-411 of the Wyoming statutes, among others, to incorporate the rights granted by section 1-15-119. The Enrolled Act becomes effective May 23, 1985.

225. WYO. STAT. § 1-17-405 (1977).

226. *Id.*

his property without even knowing why. The new Wyoming legislation specifically requires notice to the judgment debtor of a "405 exam," opportunity for a hearing, and notice of the right to claim certain exemptions.²²⁷ The protections do not, however, apply in the case of a "501 exam." Insofar as conflicting claims to the judgment debtor's property are litigated in the "501 exam," and not in the "405 exam," it would seem that notice is of even greater necessity in the "501 exam."

The California statutes not only protect the judgment debtor, they also yield practical benefits to the judgment creditor. For example, a judgment debtor will often fail to appear at the debtor's exam. In Wyoming, the judgment creditor has but one remedy for this, a contempt order; in California, the judgment creditor may get attorney's fees, as well as a contempt order.²²⁸ When the judgment debtor fails to appear, most courts would probably rather award attorney's fees to the judgment creditor, than to subject the judgment debtor to contempt proceedings. Because punishment is more likely, the judgment debtor has more incentive to appear; as a result, enforcing a judgment becomes easier.

The California judgment creditor also benefits from a new remedy which allows him to apply to the court for an order requiring the debtor to assign rights to future payments.²²⁹ With the assignment order, the California Legislature allowed the judgment creditor to reach forms of property that could not be reached by levy under a writ of execution, such as wages due from the federal government, rents, royalties, commissions, payments falling due on accounts receivable, general intangibles, judgments, and the loan value of insurance policies.²³⁰ The advantage of the assignment order to the judgment creditor is twofold: it eliminates the need for a receiver, and it avoids the necessity of multiple writs of execution.²³¹

Execution

Section 1-17-301 of the Wyoming statutes²³² may only apply to *full legal* interests in property, so the judgment creditor may not be able to enforce his judgment against the judgment debtor's mortgaged property, for example.²³³ In other words, an issue arises as to whether the Wyoming judgment creditor can direct the sheriff to levy upon property subject to other interests. In California, a judgment creditor may "seize all property of the judgment debtor,"²³⁴ "regardless of type or interest."²³⁵ All property includes mortgaged property, leaseholds, security interests,

227. Enrolled Act 76, *supra* note 224, § 2.

228. CAL. CIV. PROC. CODE § 708.170 (West 1984).

229. Recommendations, *supra* note 181, at 1020-21.

230. CAL. CIV. PROC. CODE § 708.510 (West 1984).

231. See generally THE ENFORCEMENT OF JUDGMENTS LAW—ONE YEAR AFTER ITS EFFECTIVE DATE 57-61 (Cal. Continuing Education of the Bar 1984).

232. WYO. STAT. § 1-17-301 (1977).

233. Rudolph, *supra* note 24, at 159-62.

234. CAL. CIV. PROC. CODE § 695.010 (West 1984).

235. *Id.* § 695.010 Law Revision Comm'n Comment.

and it even includes contingent future interests.²³⁶ The California judgment creditor can, therefore, seize almost any valuable property belonging to the judgment debtor.

As a consequence of the variety of property available for enforcement, the California statutes specify upwards of nineteen specific levy procedures.²³⁷ In comparison, the Wyoming statutes only provide two levy procedures: one for real and personal property,²³⁸ and one for corporate stock.²³⁹ Due to their specificity, the California statutes facilitate determining the exact time when a lien is created against such diverse property as real estate, safe deposit boxes, and minerals to be extracted.²⁴⁰ Besides settling priorities, moreover, the California law enhances the value of the real property recording system by requiring the judgment creditor to record a copy of the writ of execution in the county clerk's office.²⁴¹

In addition to the property-specific levy procedures, the California legislators fabricated various rules of execution that both protect the judgment debtor and aid the judgment creditor. The judgment debtor's greatest protection is notice of exemptions,²⁴² but where his property is perishable or rapidly depreciating, he may profit more from the appointment of a person "to take any action . . . necessary to preserve the value of [his] property, including but not limited to selling the property."²⁴³ The judgment debtor loses some protection—and the judgment creditor gains an advantage—insofar as the new California statutes authorize the sheriff to use force, if necessary, to levy on personal property in a private place.²⁴⁴ In practice, this means that the sheriff can break into a judgment debtor's home or office to collect property therein. The judgment creditor is also aided by the imposition of specific duties on a garnishee, such as the duty to report²⁴⁵ and turn over²⁴⁶ any of the judgment debtor's property in his possession.

Where property is prone to a sacrifice sale—accounts receivable, chattel paper, instruments, and money judgments, for example—the California statutes encourage collection rather than sale. If the judgment creditor undertakes collection, the new law allows him to collect for the duration of the execution lien, which is two years.²⁴⁷ Thus, the judgment creditor can secure the full value of these assets over time, instead of a fraction of their value immediately. Not only does collection benefit the judgment creditor by yielding a greater recovery, it benefits the judgment debtor by minimizing the disruption of his business relations.

236. Recommendations, *supra* note 181, at 1042-43.

237. CAL. CIV. PROC. CODE §§ 700.010-200 (West 1984).

238. WYO. STAT. § 1-17-310 (1977).

239. *Id.* § 1-19-103.

240. Recommendations, *supra* note 181, at 1059.

241. CAL. CIV. PROC. CODE § 700.015(a) (West 1984).

242. *Id.* § 700.010.

243. *Id.* § 699.070.

244. *Id.* § 699.030.

245. *Id.* § 701.030.

246. *Id.* § 701.010.

247. See generally Recommendations, *supra* note 181, at 1014.

CONCLUSION

When an attorney wins a civil case, the most important job just begins. To satisfy the client, the attorney must collect the money judgment. Furthermore, the attorney who neglects the enforcement process effectively wastes the time and effort spent in litigation, because if the client does not get paid, the attorney probably will not either. Thus, the successful attorney invests as much time in the post-judgment process, as in the pre-judgment process. Indeed, both the client and the attorney will profit from a well planned process of discovery, seizure, and satisfaction.

Unfortunately, as Jerry Chargeoff, the hypothetical judgment creditor in this comment, discovered, the Wyoming statutes severely complicate this process. While statutory discovery procedures do exist, the wise judgment creditor will avoid them, relying upon simpler, more effective, non-statutory methods. The statutes also require the judgment creditor to seize the judgment debtor's most illiquid asset—real property—before his more liquid assets such as cash. Finally, the statutes often force the sheriff to sell the property seized for a small fraction of its value. As a result, Wyoming's enforcement process is frequently inadequate.

Besides creating these various procedural obstacles, the Wyoming statutes ignore modern legal and financial practices. Perhaps the worst consequence legally is the judgment debtor who is unaware that some court is conclusively determining rights to his property. The worst consequence financially is the unavailability of the judgment debtor's assets for enforcement. Of lesser consequence, but still significant to both the judgment creditor and debtor, is the sale of assets which are more suited to collection. These gaps are not unexpected, however, because the Wyoming enforcement statutes are one-hundred years old.

California's enforcement statutes, on the other hand, are less than two years old. Given that California lawyers enforce many more judgments than do Wyoming's, California lawyers desperately needed statutes which provided a very detailed, yet efficient, enforcement process. California legislators responded with a comprehensive set of statutes written with modern terminology. Though the need is less urgent in Wyoming, it is every bit as real. Following California's example, the Wyoming Legislature should completely overhaul the Wyoming enforcement statutes.

STEPHENSON D. EMERY

APPENDIX

FORM 1

STATE OF WYOMING)	IN THE DISTRICT COURT
)	SS. SECOND JUDICIAL DISTRICT
COUNTY OF ALBANY)	CIVIL NO. 81059

JERRY CHARGEOFF,)
)
Plaintiff,)
)
v.)
)
JOE DOKES,)
)
Defendant.)

PRECIPE

TO THE CLERK OF SAID COURT:

WHEREAS Jerry Chargeoff has obtained judgment against Joe Dokes pursuant to order entered in the District Court of the Second Judicial District of the State of Wyoming, on the 10th day of August, 1984, for the total sum of \$10,000, plus interest, plus costs of suit.

You are therefore hereby requested to issue a writ of execution in the above-entitled action on behalf of the Judgment Creditor directed to the Sheriff of Albany County, Wyoming and made returnable according to law.

JERRY CHARGEOFF

By _____
(Attorney)

DATED:

FORM 2

[CAPTION]

EXECUTION

TO THE SHERIFF OF ALBANY COUNTY, GREETING:

WHEREAS Jerry Chargeoff has obtained judgment against Joe Dokes pursuant to order entered in the District Court of the Second Judicial District of the State of Wyoming, on the 10th day of August, 1984, for the total sum of \$10,000.00, plus interest, plus costs of suit.

YOU ARE therefore hereby commanded, that of the goods and chattels of the said Joe Dokes not exempt by law from being seized on execution, you cause to be made the aforesaid sum of \$10,000.00 and accruing costs, and for want of goods and chattels you cause the same to be made of the lands and tenements of the said Joe Dokes and make due return of this Writ according to law.

WITNESS CLARK CLANCY, Clerk of said Court, and the seal thereof, at Laramie, Wyoming, this ____ day of _____, 19____.

CLARK CLANCY
Clerk of District Court

By _____
(Deputy)

FORM 3

[CAPTION]

MOTION FOR JUDGMENT DEBTOR'S EXAM

COMES NOW plaintiff in the above entitled matter by and through its attorney of record and hereby moves the Court for an order directing the defendant to appear and answer concerning his property before the Judge herein at a time and place within the county to be specified in said order. In support of this motion the plaintiff respectfully shows to the Court that judgment was entered against the defendant in the total amount of \$10,000.00 on August 10, 1984 and that thereafter execution against the property of the defendant judgment debtor was issued to the Sheriff of Albany County, Wyoming wherein the judgment debtor conducts business and that the said execution was unsatisfied in whole.

JERRY CHARGEOFF

By _____
(Attorney)

DATED:

FORM 4

[CAPTION]

ORDER FOR DEBTOR'S EXAM

This matter coming on for hearing before the Court upon the motion of plaintiff herein for an order directing the defendant to appear and answer concerning his property before this Court at a time and place hereinafter mentioned, and the Court having examined the files herein and being fully advised in the premises FINDS that the said motion of plaintiff should be granted;

WHEREFORE, IT IS HEREBY ORDERED, that the defendant Joe Dokes be and he hereby is ordered to appear and answer concerning his property before this Court on the ___ day of _____, 19___, 9:30 A.M. in the Equity Courtroom of the District Court, Second Judicial District, Laramie, Albany County, Wyoming.

DATED this ___ day of _____, 19___.

BY THE COURT:

JUDGE

FORM 5

[CAPTION]

SUBPOENA DUCES TECUM

TO: Mr. Joe Dokes
1515 Grand
Laramie, WY 82070

You are hereby commanded to appear in the Equity Courtroom of the District Court in and for the County of Albany, Second Judicial District, State of Wyoming on the ___ day of _____, 19___, at 9:30 o'clock A.M. to testify in regard to your property and not depart without leave; and you are commanded to bring with you all documents, papers and records tending to indicate your net worth and present financial statements issued to any lending institution or any other agency or persons inquiring into your financial status. You are further commanded to bring with you all documents, papers and records tending to indicate your net worth, present financial condition, property holdings, and monthly income.

WITNESS CLARK CLANCY, Clerk of said Court and the seal thereof this ___ day of _____, 19___.

CLARK CLANCY
Clerk of District Court

By _____
Deputy

FORM 6

SAMPLE INTERROGATORIES

(9A AMJUR PL & PR FORMS (REV) Form 331)

1. If there are any suits, actions, or legal proceedings of any kind against you pending and undetermined, state the full particulars as to each.
2. Are there any other judgments on record against you?
 - a. What amount and where?
 - b. Have payments been made on account thereof by you or by any third party for you?
 - c. By what person?
 - d. Was satisfaction recorded?
 - e. If answer to item d. is "No," state why.
3. Are supplementary proceedings on any of these judgments pending against you?
4. Has any judgment creditor's action been commenced against you?
5. Have you any interest in real estate in this state or elsewhere?
 - a. Are you entitled to any reversion, remainder, or contingent interest in real estate; or is any real property held in trust for you?
 - b. Do you own any leasehold or have you any interest in any lease of real property?
 - c. Do you lease any real property?
 - d. Have you a lien on any interest in or under a lien on real property?
6. Have you any interest under any will or trust?
 - a. Have you recently received any money or property under any will by inheritance?
 - b. If answer to item a. is "Yes," state disposition.
7. What property have you in this state, real or personal?
 - a. Have you made any transfers of same and to whom?
 - b. State circumstances.
8. Give description and location of any property you have outside the state.
9. Have you any mortgages on real or personal property or other investments, such as stocks, bonds, dividend certificates, interest coupons, certificates of deposit, promissory notes, drafts, or checks?
10. Have you any interest in any pension, patent, copyright, or invention, or in any royalties?
11. Do you own a seat in any stock, commodity, or other commercial exchange?
12. Have you any right or interest or any prospect of pecuniary advantage under any contract or any interest in any suit in the courts of this or any other state, or in the federal courts?
13. Are there any judgments in your favor in any action by or against you, or have any judgments been assigned to you?

14. Have you any insurance on your life?
 - a. To whom was same made payable?
 - b. When were the beneficiaries changed?
15. Are you the beneficiary under a policy on the life of any other person?
16. What property did you have at the time when the debt for which this judgment was secured was contracted? Trace the disposition of this property.
17. Where do you live?
 - a. How long have you lived there?
 - b. How much do you pay for rent, board, services, etc.?
18. Are you a member of any club?
 - a. What are the dues?
 - b. Are they paid?
19. What salary or income have you?
20. Have you any uncollected debts or other money coming to you?
21. What is your occupation?
22. Are you married?
 - a. Have you a family?
 - b. How large?
 - c. How many are dependent on you?
 - d. With whom do you live?
23. What money have you received within the last sixty days from any source, and what have you done with it?
24. Have you a bank account?
 - a. When did you make your last deposit?
 - b. When did you draw your last check?
25. Do you have any property that you have pledged or pawned?
26. Do you own or rent the place where you live?
 - a. Who owns the furniture in it?
 - b. What does it consist of?
27. Have you made a will?
 - a. When?
 - b. State property devised.
28. What money have you spent since the service of this order?
29. Had you at the time of the service of this order any rights, real, or personal property, money, debts, claims, mortgages, leases, choses in action, judgments, insurance, watches, jewelry, checks, notes, bills of exchange, bonds, stocks, or certificates; any interest in a contract, patent, copyright, invention or royalties, which you are not now possessed of, or in which you now have no interest, or a lesser interest?

Dated _____, _____, 19_____.

JERRY CHARGEOFF

By _____
(Attorney)

FORM 7

[CAPTION]

AFFIDAVIT

Robert Crippen, being first duly sworn upon his oath deposes and states as follows:

1. That he is the attorney for plaintiff in the above entitled action.
2. On August 10, 1984, a judgment was rendered in District Court of the Second Judicial District of the State of Wyoming, in the above-entitled action, in favor of Jerry Chargeoff, and against Joe Dokes, in the amount of \$10,000.00, plus interest, plus costs of suit.
3. On August 25, 1984, a writ of execution was duly issued, but such writ was returned wholly unsatisfied.
4. Affiant is informed and believes, and on such information and belief, alleges that Al's Garage is indebted to defendant by reason of defendant's employment with said garnishee.
5. This Affidavit is made for the purpose set forth in Wyoming statutes, 1977 republished edition, § 1-17-405.

DATED this ____ day of _____, 19____.

Robert Crippen

FORM 8

[CAPTION]

GARNISHEE NOTICE AND SUMMONS

TO: Al's Garage, Inc.; Bobby Ledgerman, Agent for Service of Process on Al's Garage.

YOU ARE HEREBY NOTIFIED that you are attached as garnishee of Joe Dokes, defendant, and that you are required not to pay any debts due or owing, or hereafter to become due or owing, from you to said defendant, or that may be under your control; and that all goods, chattels, stocks, or interests in stocks, credits, moneys, certificates of deposit, rights and effects of said defendant, in your custody and possession, or in your control, are hereby attached; and that you must retain the same in your possession subject to the further order of the Court, to the end that the same may be dealt with according to law.

LIMITATION OF GARNISHMENT — In the case of *wages, salaries, commission* or other compensation for personal services, the maximum part of the aggregate disposable earning of an individual subject to garnishment may not exceed the lesser of 25% of his disposable earnings for that week or the amount by which his disposable earnings for that week exceed 30 times the Federal minimum hourly wages.

In the case of pay periods other than weekly, the aggregate disposable earnings of an individual subject to garnishment may not exceed the *lesser* of 25% of his disposable earnings or the multiple of the Federal minimum hourly wage for pay periods other than a week as determined below:

(1) Where the employee is paid by the day, the multiple shall be 6, for 2 days shall be 12, for 3 days shall be 18, and for 4 days shall be 24 or 6 times the number of days.

(2) Where the employee is paid either every two weeks or semi-monthly, then the multiple shall be $2\frac{1}{6} \times 30 \times$ the Federal minimum hourly wage.

(3) Where the employee is paid monthly, then the calendar month shall be considered to consist of $4\frac{1}{3}$ work weeks and the formula shall be $4\frac{1}{3} \times 30 \times$ the Federal minimum hourly wage.

(4) Where the employee is paid once every two months, then the multiple shall be $8\frac{2}{3} \times 30 \times$ the Federal minimum hourly wage.

YOU ARE FURTHER NOTIFIED that within twenty days after the date of the service of this Garnishee Notice and Summons, you are to turn over to the officer having this execution, or pay to the Clerk of the above entitled Court, all monies or other property belonging to the judgment debtor in your possession or under your control, not exceeding the amount of the judgment or the balance thereof and costs, and notify the Court in writing concerning your liability as garnishee.

Failing this, you are hereby summoned and are required to be and appear before the said District Court, in and for said County of Albany at 9:30 a.m. in said County twenty days after service, where said cause is now pending, and not to depart without leave of Court; and then and there answer under oath all questions put to you touching the property of every description and the credits of the said defendant in your possession or under your control and disclose truly the amount owing by you to the said defendant, whether due or not and answer said interrogatories as may be propounded to you touching your liability in the premises, or that you will in the event of failure to appear and answer as required by law, be liable to pay the entire Judgment obtained by plaintiff, against the said defendant.

WITNESS my hand and official signature, this ____ day of _____.

WALLY PIPP
Sheriff in and for
Albany County, Wyoming

By _____
Deputy

RETURN OF SERVICE

STATE OF WYOMING)
) ss.
COUNTY OF ALBANY)

The undersigned, Sheriff in and for Albany County, Wyoming, does hereby certify that I served the within Garnishee Notice and Summons on

by delivering a copy thereof to: _____.

Witness my hand this ____ day of _____, 19____.

WALLY PIPP,
Sheriff

By _____
Deputy

Service: \$ _____

Return: \$ _____

Mileage: \$ _____

Total: \$ _____

FORM 9

[CAPTION]

COMPLAINT FOR CREDITOR'S BILL

I

Defendants, Joe Dokes and Bob Jones, reside in the City of Laramie, County of Albany, State of Wyoming.

II

On August 10, 1984, plaintiff obtained a judgment in the District Court of the Second Judicial District of Wyoming against defendant, Joe Dokes, for \$10,000.

III

On August 25, 1984, an execution was issued upon the above-described judgment against the real and personal property of the defendant, Joe Dokes, to the Sheriff of Albany County, in which county the defendant then resided.

IV

The above-described execution was returned by the sheriff wholly unsatisfied.

V

At the time the above-described judgment was rendered, defendant Joe Dokes was the owner in fee simple and possessed a 1983 Dogasaki motorcycle of the value \$1,500, located at Laramie, in this county and state.

VI

On August 15, 1984, defendant, Joe Dokes, delivered to defendant, Bob Jones, the above-described motorcycle.

VII

The conveyance and transfer of the above-described motorcycle was made with actual intent to hinder, delay, and defraud plaintiff, and prevent his collecting his just claim as aforesaid against defendant, Joe Dokes, and without fair consideration being paid or given therefor by defendant, Bob Jones.

Wherefore, plaintiff demands judgment that the above-described conveyance made by defendant, Joe Dokes, to defendant, Bob Jones, be adjudged and declared fraudulent and void and a nullity as to this plaintiff, and that plaintiff have such other and further relief as the court may deem just with the costs and disbursements of this action.

JERRY CHARGEOFF

By _____
(Attorney)