

Stand Down. Repeat, Stand Down: Your Fire Engine, Saturday Night Special and Prosthesis are Exempt from Judgment

BY ROBERT HERNQUIST, ESQ. AND KURT R. MATTSON, ESQ.

NRS § 21.090 lists the types of property that are exempt from execution. That list includes some logical exceptions, such as private libraries, works of art, musical instruments, jewelry, necessary household goods, furnishings, electronics, wearing apparel, other personal effects, yard equipment, farm trucks, farm stock, farm tools, farm equipment, supplies and seed—all up to certain dollar limits. These exemptions appear to make some degree of sense; the list allows the debtor to continue to live and work (and, okay, perhaps also to enjoy his or her art collection).

To that end, in 1882 the Nevada Supreme Court wrote that our state constitution provides “the privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for payment of any debts or liabilities hereafter contracted.”¹

Wholesome laws, you say?

The statute goes on to say that a debtor may keep one gun (to be selected by the debtor); any prosthesis or equipment prescribed by a physician or dentist; and all fire engines, hooks and ladders, along with the carts, trucks and carriages, hose, buckets, implements, apparatus, furniture and uniforms of any fire company or department organized under the laws of Nevada.

While we all can see the significant need for the retention of our hooks and ladders, artificial appendages and dentures, the question can only be *why*? Was the sponsor of this legislation an amputee firefighter with a six-shooter? Were these exceptions historically necessary? Were there really Wild West lawyers executing on prosthetic limbs, dentures, fire hoses, gruel from the orphanages and personal armories? We, as the authors, *aimed* to find out.

Legislative History

The historical purpose of these exemptions is to allow a debtor to retain the basic necessities of life, “so that he and his family will not be left destitute.”² As the Nevada Supreme Court explained, “The real purpose and intent of the exemption laws which are to save for the debtor from his financial wreck a certain amount of necessary property which will

continued on page 13



Stand Down. Repeat, Stand Down

enable him to keep himself and family from actual want while attempting a new start in life.”³

Okay, financial wreck = bad. But why the fire trucks?

In 1892, the Nevada Supreme Court stated that the general policy of all exemption laws is that “the unfortunate debtor shall not be left without the means of supporting himself and his family in the vocation usually pursued by him.”⁴ As a result, the court held that “two oxen or two horses or two mules, and their harness, two cows, and one cart or wagon, with food for one month,” are included among the exempt articles. (You may want to write that down somewhere...)

In 1911, the Nevada Legislature enacted what is now NRS § 21.090 to fulfill the mandate set forth in Nevada’s Constitution.⁵ The exemptions in NRS § 21.090 are “absolute and unqualified,” with few exceptions, and their effect is “to remove the property beyond the reach of legal process.”

While many of the exceptions set forth in NRS § 21.090 sparked our imaginations, causing us to wonder about the potentially fascinating stories behind them, we are sad to inform you otherwise. We could not find a single case, in Nevada or elsewhere, in which a dastardly Mr. Potter-esque⁶ judgment creditor executed upon all the prosthetic limbs, libraries and/or fire stations in town. Instead, the exceptions set forth in NRS § 21.090 codify sound public policy and largely track the exceptions universally recognized following the American Revolution, which were then later adopted and codified in most states.

Shortly after the American Revolution, many of the original 13 states enacted statutes exempting certain categories of property from execution. Exemptions typically included clothes, bibles, schoolbooks, tools necessary for a trade and firearms used for militia purposes. Those laws were discussed in guidebooks (published for justices of the peace, sheriffs and constables) that devoted long sections to a discussion of which types of goods might be seized.⁷

Likewise, the immunity of the property of sovereigns dates back to English common law, and this concept has been applied to the exemption from execution of property used for public purposes, such as hospitals, schools, fire engines, courthouses and jails, waterworks and the like.⁸

Similarly, the exceptions regarding one gun that were adopted by most states reflect the indispensable nature of firearms in American life during the 1700s and 1800s. Unlike most states, Texas allows debtors to exempt two firearms. (Insert your favorite Texas joke here... Okay, make it two.)

Weapons used for militia purposes have been exempt in most states since the founding of our country.

Liberal Statutory Construction for Creditor

Court decisions have held that statutes permitting execution against specified kinds of property must be liberally construed for the benefit of creditors. The general rule is, “if the interest is assignable or transferable, it is subject to execution.”⁹

As in many other states, Nevada’s exemption laws were enacted just after the Civil War and have failed to keep pace with modern times. For example, North Carolina’s exemptions, crafted during the Civil War, allow a debtor \$500 worth of personal property and a homestead exemption of \$1,000.¹⁰ Although this may have been considered a right generous sum in the days of Abe Lincoln and Ulysses S. Grant, these limits wouldn’t be of much help to those living in the Tarheel State today; the median sale price for property in North Carolina is \$175,600, and the median list price per square foot is \$128. One thousand bucks just ain’t what it used to be (we reckon’).

Does Nevada Have a “Wildcard?”

Some states provide a general-purpose exemption called a wildcard exemption. This exemption gives a debtor a dollar amount that he or she can apply to any type of property. Like a wildcard in poker, it can be used any way the debtor/player wants. For purposes of the statute, a debtor can apply the wildcard exemption to property that would not otherwise be exempt.

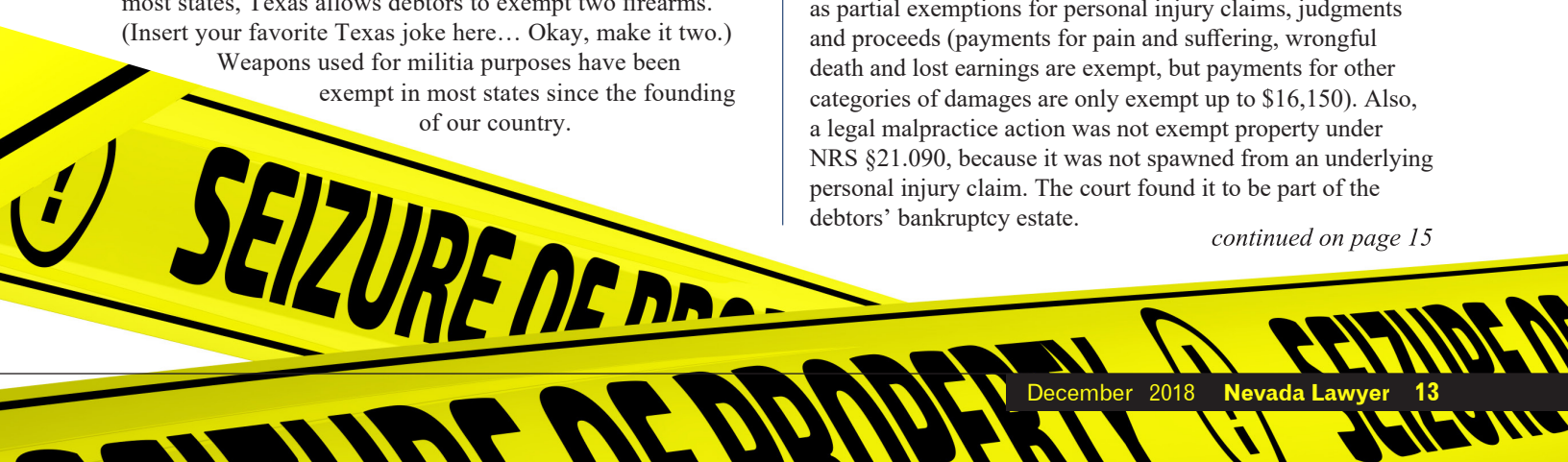
Now, if any state should have a wildcard exemption, it ought to be Nevada, right? After all, this is the state that had a total gaming win of nearly \$1 billion in July of this year.

Rest assured, wildcards work in the Silver State. NRS § 21.090(1)(z) is the so-called wildcard exemption. It now allows a debtor to exempt up to \$10,000 in any personal property, including stock. However, the Supreme Court says that, based on the statute’s plain language in subsections (1)(f) and (z), Nevada law doesn’t allow debtors to claim motor vehicle and wildcard exemptions on behalf of their non-debtor spouses. The statute was amended in 2017 to increase the amount from \$1,000.

What Isn’t Exempt

Notable for practitioners are the exceptions to the exemptions. While choses in action and judgments may generally be executed upon, the Nevada statute contains absolute exemptions for child support and alimony, as well as partial exemptions for personal injury claims, judgments and proceeds (payments for pain and suffering, wrongful death and lost earnings are exempt, but payments for other categories of damages are only exempt up to \$16,150). Also, a legal malpractice action was not exempt property under NRS § 21.090, because it was not spawned from an underlying personal injury claim. The court found it to be part of the debtors’ bankruptcy estate.

continued on page 15



Stand Down. Repeat, Stand Down

And for all of you new Las Vegas Raider fans, a bankruptcy court recently held that a debtor improperly claimed a football helmet he owned as a keepsake or work of art.¹¹ So, if even if Coach Jon Gruden gives you an NFL helmet bearing his signature, it's not likely to be protected from creditors.

Takeaway

Without some significant legislative overhaul, creditors and attorneys should steer clear of property that is related to a debtor's basic means of providing for his or her family.

And, of course, hands off the fire truck. **NL**

1. *Elder v. Williams*, 16 Nev. 416, 423 (1882), citing NV CONST. ART. I, SEC. 14.
2. *In re Dawson*, No. BK-S-03-21264-LBR, 2004 Bankr. LEXIS 2039, at *5 (Bankr. D. Nev. Nov. 30, 2004). Interestingly, in some states the exemptions were limited to debtors that constituted a "family," and could not be claimed by a single man. See, e.g., *Simmons v. Gulley*, 7 Ala. 721 (Ala. 1845).
3. *I.H. Kent Co. v. Miller*, 77 Nev. 471, 476, 366 P.2d 520, 522 (1961).
4. *Kreig v. Fellows*, 21 Nev. 307, 309-10, 30 P. 994, 995 (1892).
5. *Savage v. Pierson*, 123 Nev. 86, 90, 157 P.3d 697, 700 (2007) ("The legislative purpose of NRS 21.090 is 'to secure to the debtor the necessary means of gaining a livelihood, while doing as little injury as possible to the creditor.'").
6. Harry F. Potter from the Frank Capra film, *It's a Wonderful Life*, is ranked sixth on the American Film Institute's list of "The 50 Greatest Villains in American Film History."

7. *The Conductor Generalis or, the Office, Duty, and Authority of the Justices of the Peace* 142 (1792) (Philadelphia); *Jeremiah Perley, The Maine Civil Officer or the Powers and Duties of Sheriffs, Coroners, Constables, and Collectors of Taxes* 29-30 (1825) (Maine); *James Ewing, A Treatise on the Office and Duty of a Justice of the Peace* 70 (1832) (New Jersey).
8. C. H. Weston, *Actions Against the Property of Sovereigns*, 32 HARV. L. REV. 266 (1919).
9. *Sportsco Enters. v. Morris*, 112 Nev. 625, 630, 917 P.2d 934, 937 (1996), citing 30 AM. JUR. 2d EXECUTIONS AND ENFORCEMENTS OF JUDGMENTS § 165 (1994).
10. N.C. STAT. §§ 1C-1601 and 1C-1602.
11. *In re Bailey*, 2015 Bankr. LEXIS 4575 (Bankr. D. Nev. Feb. 27, 2015).

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The two gentlemen first conspired together during the final days of Lionel Sawyer & Collins. They weren't all that funny back then, either.

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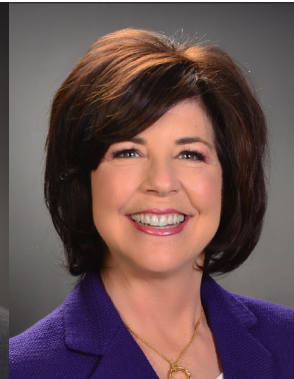
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