

# Debtor Exemption Laws And The Farmer: Suggestions for Judicial Reform

*This article demonstrates the serious obsolescence of exemption laws as they apply to farmers. The policy of continued economic productivity is examined and methods are proposed for judicial expansion of current statutes to more nearly effect that policy.*

Debtor exemption laws<sup>1</sup> no longer achieve the basic economic and social policies which motivated their enactment. Exemption laws were designed to protect the debtor's family and to keep the debtor economically productive. Many exemption laws, however, have become increasingly ineffective in achieving either goal for the farmer debtor.<sup>2</sup> Some

---

1. Exemption statutes limit the property which the general creditor may seize for payment of debts. Typically they reserve the basic necessities of life, such as house, land, clothing, food and cars, to the debtor. Exemption statutes take three forms. Some list the items exempted—e.g., CAL. CODE CIV. PROC. § 690.1 (West Cum. Supp. 1977) exempts "necessary household furnishings and appliances and wearing apparel." Some merely limit the amount of personalty or realty which is exempt, leaving the debtor free to choose. E.g., Illinois exempts, among other specific exemptions, \$300 of personal property which debtor may choose. ILL. ANN. STAT. ch. 52, § 13(c) (Smith-Hurd Supp. 1978). Finally, some statutes are hybrids, limiting an item or category of items to a specified dollar limit. E.g., CAL. CODE CIV. PROC. § 690.2(a) (West Cum. Supp. 1977) currently exempts one car up to \$500 in value.

To properly understand the role of exemption laws in debtor creditor relations one must understand creditors' remedies. When a debtor fails to pay a debt, the general creditor's remedy is to demand seizure of the debtor's property by writs of attachment and execution. Creditors may seize any property of debtors which is not exempt. The property is then sold by the sheriff and the proceeds paid to the general creditor. A general creditor is one who has no lien on the property of the debtor sought by attachment. Lien here excludes judgment liens but does include security interests under article 9 of the U.C.C., real property mortgages, and mechanic and workmen's liens.

2. Commentators have noted the general obsolescence of exemption laws for years. *See, e.g., Countryman, For a New Exemption Policy in Bankruptcy*, 14 RUTGERS L. REV. 678 (1960); Lacy, *Homestead Exemption—Oregon Law: Still More*, 8 WILLAMETTE L.J. 327 (1972); Riskind, *Archaic Exemption Laws*, 39 CAL. ST. B.J. 370 (1964); Comment, *Personal Property Exemptions: A Need for Review*, 17 BAY. L. REV. 193 (1965); Comment, *Principles for Modernizing the Connecticut Debtors' Exemption Statute*, 6 CONN. L. REV. 142 (1973); Comment, *Debtor Exemptions in New Mexico*, 6 NAT. RESOURCES J. 467 (1966); Comment, *Exemption Statutes—Yesterday's Protection at Today's Costs—An Update Needed*, 74 W. VA. L. REV. 370

states have not amended their statutes in decades,<sup>3</sup> while other states have updated their exemption laws frequently but have not provided properly for the modern commercial farmer. Debtor exemption laws, especially as they relate to farmers, are now ripe for reexamination by courts, legislatures and practitioners.

The increasing obsolescence of exemption laws is particularly acute in the area of exemptions for agricultural debtors. Farmers must invest high amounts of capital in land and equipment to earn a reasonable income.<sup>4</sup> Inadequate exemptions thus hurt farmers more than other debtors. Any impairment of farmers' capital equipment and land makes such a devastating inroad on their livelihood that not only will life be harder but the potential for the successful continuation of farming is reduced.

The obsolescence of exemption laws for farmers can be easily illustrated by looking at the toll which technology, inflation and the expanded scope of farming operations has taken. For example, exemption laws passed during the last century often list technologically out-of-date items, such as horses, oxen, mules, carts, drays, horse-rakes, horse-drawn plows and harrows as exempt items.<sup>5</sup> Such exemptions have little if any practical significance. Obviously, modern farmers can no more

---

(1972). A comprehensive survey on exemption laws may be found in Vukowich, *Debtors' Exemption Rights*, 62 GEO. L.J. 779 (1974).

3. A survey of the 57 statutes from 37 states, *see* note 35 *infra*, indicates that less than 50% of the tools provisions have been amended in the past 10 years, and 10 statutes have not been amended during this century. Below is a list of the states and the dates of their most recent amendments to the tools clauses themselves. (*See* the statutory history after each statute). Where "?" appears after the date, the clause was in its present form at that date and prior history was unavailable: 1977: Connecticut, Maine, North Dakota, Virginia (farmer); 1976: Arizona, Arizona (farmer), New York; 1975: Oregon, Wyoming; 1974: West Virginia; 1973: Colorado, Colorado (farmer), Maryland, Nebraska, Nevada; 1971: Alaska, New Hampshire, New Mexico (head of household), New Mexico (single); 1970: California, Massachusetts, Ohio (family supporter), Ohio (unmarried), Virginia; 1969: Nevada (farmer); 1967: Minnesota, Minnesota (farmer); 1966: Kentucky, Kentucky (farmer); 1965: Kansas (head of family), Kansas (single), Washington, Washington (farmer); 1959: Missouri (head of family), Wisconsin (farmer); 1951: Utah, Utah (farmer); 1931: Iowa; 1927: Hawaii, Hawaii (farmer); 1921?: Montana; 1910?: Oklahoma (non head of family); 1905?: Montana (farmer), Oklahoma (head of family), Oklahoma (farmer); 1904?: South Carolina; 1895?: Idaho, Idaho (farmer); 1890?: South Dakota, South Dakota (farmer); 1887?: Georgia; 1881: Wisconsin; 1879: Delaware; 1857: Mississippi (farmer); 1848: Mississippi; 1835: Missouri (non head of family).

4. In 1976, production assets of land, tools, fodder, and working capital, averaged \$187,100 per farm in the United States; U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, 1977, Table 1160, at 687 [hereinafter STATISTICAL ABSTRACT 1977]. The per capita disposable income of the farm population in 1976 was \$4,518. *Id.* Table 1158 at 686. Taking the total farm population (8,253,000, *id.* Table 1132 at 673) and dividing by the number of farms (2,778,000, *id.* Table 1134 at 674), the average number of persons per farm is 2.97. Multiplying this times per capita income shows that the average disposable income per farm is \$13,418. This is a return of 7.17% on the investment. Few investors would be willing to invest the capital and physical labor necessary for such a return.

5. *E.g.*, ME. REV. STAT. tit. 14, § 4401(9) (1965): One plough, one cart or truck wagon or one express wagon, one harrow, one yoke with bows, ring and staple, 2 horses, one ox sled, and

farm with a hoe, wagon and team of horses than they can farm without a tractor or combine.<sup>6</sup> Thus, the rapid change in the last century from manual to mechanized agricultural production<sup>7</sup> has left exemption laws so far behind that they do not protect the modern mechanized farmer.

In addition to the technological advances which have rendered many exemption laws obsolete, inflation also has taken its toll. When exemption statutes were passed during the nineteenth century, most contained dollar limitations commensurate with living standards of that time.<sup>8</sup> With the jump in the cost of living during this century, however, some exemptions have become grossly out-of-date.<sup>9</sup> For example, in 1870, Ohio had a \$1,000 homestead exemption which would have exempted one quarter of a typical farm. In 1969 the same \$1,000 exemption still was in effect and would exempt only one-sixty-first of a typical Ohio farm.<sup>10</sup> The exemption gives the modern Ohio farmer less than seven

---

one mowing machine, one corn planter, one potatoe planter, one cultivator, one horse hoe, one horse rake, one sprayer or duster, one grain harvester and one potatoe digger.

6. While a number of statutes generally exempt farm utensils and machinery, only 2 statutes name any type of modern machinery. VA. CODE § 34-27 (Supp. 1977) limits the exemption of a tractor to \$3,000; and WIS. STAT. ANN. § 815.18(6) (West 1977) limits the exemption of a tractor to \$1,500.

7. See CHARLES A. & MARY R. BEARD, *THE RISE OF AMERICAN CIVILIZATION* (1933).

8. Statutes were often enacted with dollar limitations. For example, California's initial homestead was limited to \$5,000 to "heads of family" and \$1,000 to all others. 1851 CAL. STATS. 296. Massachusetts enacted a tools and implements provision in 1822 which was limited to \$100. 1822 MASS. ST. § 8.

9. See U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, *THE STATISTICAL HISTORY OF THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT* 210-11 (1976) [hereinafter *STATISTICAL HISTORY*] which gives the Consumer Price Index from 1800 to 1970.

10. To demonstrate the tremendous impact of inflation, comparison of exemption values may be made with the land values at the time of the passage of the Federal Homestead Act in 1862. The Homestead Act was enacted to provide a means of obtaining land title through residence and cultivation. Valuations indicate that the price of land was about 12 1/2c an acre in 1812; thus, the 640 acres allowable under the Homestead Act would come to a mere \$76.80. In comparison, the amounts for the state exemptions were between \$200 and \$5,000. M. FARNAM, *CHAPTERS IN THE HISTORY OF SOCIAL LEGISLATION IN THE UNITED STATES TO 1860*, ch. 11 at 151 (1970).

The early values below indicate an original realistic correlation between the amount of exemption and the actual value of a farm. In contrast, the exemptions today give slight coverage and at times next to nothing at all:

	Amt of Exemption	Avg value per Farm	Exemption coverage:
CAL	\$ 5,000 (1851)	\$ 2,603 (1860)	Fully Covered
	\$30,000 (1977)	\$217,730 (1969)	1/7
ARIZ	\$ 5,000 (1864)	\$ 750 (1870)	Fully covered
	\$20,000 (1977)	\$452,241 (1969)	1/22
MAINE	\$ 500 (1849)	\$ 1,173 (1850)	1/2
	\$ 3,000 (1977)	35,496 (1969)	1/7
OHIO	\$ 1,000 (1862)	\$ 4,305 (1870)	1/4
	1,000 (1977)	61,251 (1969)	1/61
SD	80 acres (1862)	\$ 784 (1860)	Fully covered
	160 acres (1977)	\$ 83,427 (1969)	Fully Covered

percent of the protection that last century's farmer enjoyed.<sup>11</sup>

Finally, the scope of exemption laws has not expanded to reflect the change from subsistence farming to mass production for the market. Most exemption laws dealing with farmers still are aimed at subsistence needs. However, today's farmer must generate an income to purchase goods which the subsistence farmer of yesterday produced on the farm. A subsistence level of production will not permit the modern farm family to satisfy all its needs.<sup>12</sup> Even the California legislature, which has frequently amended its exemption laws, does not provide adequately for the modern farmer. The average modern farmer needs \$187,000 of capital equipment and land. California currently exempts \$2,500 for tools and implements necessary for any debtor's trade<sup>13</sup> and a maximum of \$30,000 for a homestead.<sup>14</sup> Thus, even in relatively liberal California, less than twenty percent of the necessary capital investment is exempt. Since one of the objects of the laws is to leave the debtor capable of economic productivity, these provisions are ineffective for the farmer. Furthermore, neither crops nor livestock is exempt under current California law. It seems highly inequitable to deny an exemption to farmers for their crops, while granting an exemption for wages to other debtors.<sup>15</sup> Since crops are the farmers' wages, the exemption statutes do not adequately address this special circumstance of today's farmers.

A direct result of the expanding mass production in agriculture is a decline in the farm population.<sup>16</sup> Society today cannot afford to ignore

The "Average Value per Farm" is from STATISTICAL HISTORY, *supra* note 9, Series K 17-81, at 462. The latest values are for 1969 since 1970 was the last of the ten-year census which was taken.

11. Another striking example of the impact of inflation is Vermont's statute which exempts a cow with value up to \$100. VT. STAT. ANN., tit. 12, § 2740 (1973). In 1969 dollars, this exemption is worth 5/9 of a cow. STATISTICAL HISTORY, *supra* note 9 at 519.

12. This is particularly true of the equipment used in today's farming. Combines, tractors and harvesters cannot be made on the farm. To buy such machinery, the farmer must earn an income from sales of farm products to third persons.

13. CAL. CODE CIV. PROC. § 690.4 (West Cum. Supp. 1977).

14. CAL. CIV. CODE §§ 1237-1304 (West 1954 & Cum. Supp. 1977). The operative provisions for purposes of this article are § 1240 (West 1954) which exempts the homestead from execution or forced sale, and § 1260 (West Cum. Supp. 1977) which sets the dollar limitations of \$30,000 for head of family and \$15,000 for others. Recently, because the strict filing requirement in California often defeated the homestead claim, the legislature enacted a complementary provision in the Code of Civil Procedure for those who had not filed in time for the traditional type of homestead. CAL. CODE CIV. PROC. § 690.31 (West Cum. Supp. 1977). This provides for an exemption ". . . to the same extent and in the same amount, . . . as a homestead . . ." *Id.*

15. CAL. CODE CIV. PROC. § 690.6 (West Cum. Supp. 1977).

16. Farm population has been falling dramatically since 1930 both as a percentage of the total population (24.9% in 1930 to 3.9% in 1976) and in absolute terms (30.5 million to 8.3 million). STATISTICAL ABSTRACT 1977, *supra* note 4, Table 1132, at 673. Size of farms has grown from an average of 151 acres to 590 acres, and the number of farms has dropped from 6,546,000 to 2,758,000. *Id.* Table 1134, at 674. Obviously, as farmers leave the rural setting, others are not taking their place. Thus, the number of skilled farmers is reduced. A greater burden is left on the remaining farmers to provide food for the balance of the population.

the needs of the commercial farmer if it expects to be fed. Today almost ninety-six percent of the American population is urban and depends on four percent of the populace to provide food.<sup>17</sup>

Exemption laws, as much as possible, should prevent creditors from driving this small skilled segment of the population from their profession.<sup>18</sup> Exemption laws generally are inadequate for farmer debtors nationwide.<sup>19</sup> The best way to handle these severe problems is for state legislatures to enact a special set of exemption statutes designed to deal with occupational needs of farmers.<sup>20</sup> Because of the unique high capital needs of farmers, the legislatures must extend special protection to

---

17. STATISTICAL ABSTRACT 1977, *supra* note 4, Table 1132, at 673.

18. Farmers have a good credit history. In fiscal year 1975-1976, there were 245,383 voluntary bankruptcies in the United States. UNITED STATES COURTS, ADMINISTRATIVE OFFICE, TABLES OF BANKRUPTCY STATISTICS, FISCAL YEAR ENDING JUNE 30, 1976, Table F3 (1976). During the same year, there were only 672 bankrupt farmers. *Id.* The total population of the United States in 1976 was 215,100,000, and the rural population was 8,253,000. STATISTICAL ABSTRACT 1977, *supra* note 4, Table 2, at 5, & Table 1132, at 673. Thus, farmers comprised 3.9% of the population, yet accounted for but .28% of the bankruptcies.

While farmers have been a good risk, the most recent statistics indicate that farmer bankruptcy is on the rise over the past two years. While the absolute numbers remain small, the rise indicates that farmers need help. Between 1975 and 1977, there was a 13% decline in voluntary bankruptcies, UNITED STATES COURTS, ADMINISTRATIVE OFFICE, TABLES OF BANKRUPTCY STATISTICS, FISCAL YEAR ENDING JUNE 30, 1975, Table F3 (1976) & UNITED STATES COURTS, ADMINISTRATIVE OFFICE, TABLES OF BANKRUPTCY STATISTICS, FISCAL YEAR ENDING JUNE 30, 1977, Table F3 (unpublished). In that same time period, there was an increase of 34% in farmer bankruptcies (550 to 736, *id.*).

19. This article discusses only individual farmers since, as a rule, only natural persons may claim exemptions. The incorporated farmer may claim none of the discussed exemptions if the property is owned by the corporation. *See generally*, Cavanaugh, *Agricultural Corporations and Homestead Laws*, 18 BUS. LAW. 453 (1963).

20. Four special statutes for farmers would be helpful: homestead; tools and machinery; crops; and livestock. The suggestions are not on specific wording but only on a general framework. While these proposals are aimed at the California legislature, they should be as valid in other states.

"Farmer" must be defined, since only farmers should be eligible for these statutes, and the Bankruptcy Act definition of farmers seems an appropriate starting place. 11 U.S.C. § 1 (17) (1976). The definition should expressly include orchard growers, vineyard growers and perhaps vintners. In addition, the statute would have to address crop failure when the farmer's income would, of necessity, come from non-farm sources. If the principal part of the debtor's income for the previous five years is derived from farming, that should be sufficient to qualify the individual as a farmer. Finally, the legislature should seriously consider whether a closely-held family farm corporation should be allowed to claim as exempt property belonging to the corporation.

The homestead for farmers should vary according to the type of farming operations. There are two suggestions on how to deal with this equitably. The statute might use a general standard, exempting the amount of land from which a comparable farmer in the locale could generate a taxable income at 1 1/2 times the poverty level set by the United States Department of Health, Education and Welfare. Another solution is to set an acreage amount for each type of farming. This acreage amount could be set by the legislature or by an authorized state agency.

If the homestead exemption is properly structured, a tools and machinery exemption could be fairly easy to codify. It would exempt the machinery necessary to continue producing on the exempted homestead and no more. The court would determine which machinery at the time of execution. Although this method may seemingly lack certainty, the lack of certainty in know-

farmers. Although recent amendments have been enacted for many statutes, particularly homesteads, they have been aimed at a predominantly urban society. Scant attention has been given to the modern farmer's special needs for land and equipment. Since neither the original statutes nor their recent amendments afford farmers adequate protection, practitioners and the courts must try to use other remedial measures until adequate legislation is enacted.

The courts have several methods at their disposal to update exemption laws. None of these will thoroughly update exemption laws in a given state, however, and some may be unavailable because of conflicts in the specific wording of the statutes and/or state constitutions. Nevertheless, some courts have succeeded in interpreting exemption statutes within normal rules of construction in a manner which may prove helpful to the troubled farmer. Part I discusses the policy of continued economic productivity underlying personalty exemptions. It demonstrates three methods to update personalty exemptions: functional analysis, definitional expansion and constructional expansion. Part II discusses the policies underlying the homestead exemptions and two methods to update them. The two methods are: removal of judicial glosses and adjustments to statutory dollar limitations.<sup>21</sup>

## I. PERSONALTY EXEMPTIONS

The key to interpreting exemption laws in all states is that such laws are "remedial" and thus are construed liberally.<sup>22</sup> Liberal interpretation has been based on the original policies behind the personalty exemption

---

ing what is exempt has been common in tools and implements statutes to date and seems to have caused no problem.

Since the homestead and tools are the farmer's capital, creditor access could be fatal to continuing farm operations. Conversely, access to farm income, if limited, might allow creditor satisfaction without jeopardizing production. Therefore, crops and livestock, which are the farmer's income, could be exempt absolutely to a certain amount, while a lien could be placed on all or part of the excess.

In the absence of state legislative action, assistance could come from Congress. However, to date no serious consideration has been given to Congressional power to federalize exemption laws for all purposes.

21. This article will use tools and implements statutes and specific provisions in the homestead statutes to illustrate the methods for updating statutes. There are many exemptions which a farmer could claim beyond those used here. For example, exemptions of clothing, life insurance, personal cars, burial plots and family bibles would be available in many states. However, none is peculiar to the farmer as a farmer and therefore are not considered here.

22. 3 SUTHERLAND, STATUTORY CONSTRUCTION § 69.06 (4th ed. 1974) Some courts have mistakenly applied the common law statutory interpretation rule that a statute in derogation of the common law is to be strictly construed. The homestead statutes are not in derogation of the common law, since the right to seize land was a creature of statute. Personal property was available under the common law for payment of debts. However, since the policy behind personalty exemptions was similar to those behind real property exemptions, liberal construction afforded the latter has been extended to the former. *See S. THOMPSON, A TREATISE ON HOMESTEAD AND EXEMPTION LAWS, § 1 (1886).*

laws. In early times, a debtor had to pay the creditor or go to prison. The glimmer of a more humanistic policy first appeared when the debtor was allowed to keep one suit of clothing and bedding.<sup>23</sup> Realizing that imprisonment hindered repayment, a public policy emerged which permitted the debtor to retain enough property to remain economically productive.<sup>24</sup> This policy of continued economic productivity helped both the creditor and the debtor, while at the same time placing the burden of support upon the debtor rather than the state.

In the modern welfare state, the public policy of keeping the debtor economically productive in society is just as viable. If debtors cannot pursue their trades or occupations, they are supported by the state through unemployment insurance and other government subsidies. The government in effect repays the creditor, since after the debtor loses all possessions, he or she is "reimbursed" for living expenses. Creditors are entitled to repayment, but it seems better policy to have the debtors repay through their own efforts rather than through the taxes of others.<sup>25</sup> To this end, exemption laws attempt to reconcile repayment of creditors with economic productivity of debtors by leaving debtors with property sufficient to remain employed.<sup>26</sup> There are certain liberal construction

---

23. In England, prior to the Insolvency Acts, a debtor could be imprisoned for failure to pay any debt. The Insolvency Acts provided for the debtor's release from imprisonment for a debt of under £100. It also provided for exemption of clothing, bedding and tools of the debtor's trade. Insolvency Acts, (1759), 32 Geo. II, c. 28. 22 Pickering Statutes at Large 1759, 496-97 (1766).

24. This policy can be seen in early American law. *E.g.*, Connecticut provided: ". . . it shall not bee lawfull for such officer to levye any mans necessary bedding, apparrell, tooles or armes, neither implements of household, which are for the necessary upholding of his life . . ." Code of 1650 at 63. (This is a compilation of early Connecticut law. It is classified by the Library of Congress under these headings: I. Connecticut (Colony) Constitution 1639. II. New Haven (Colony) Laws, statutes, etc. III. Title: Blue Laws. Its call number is KFC 3630 1650 A324.)

British statutes reflected this policy as well. *See, e.g.*, The Statute of Westminster 2, (1285) 13 Ed. I, c. 18 (providing for an exemption of oxen and beasts of the plow); Insolvency Acts, note 23, *supra*.

There are two other major goals of exemptions besides leaving the debtor capable of economic productivity. First, respect for the dignity of the individual, which precludes seizure of certain personal items of no significant economic value. *Cities Serv. Oil Co. v. North River Ins. Co.*, 82 S.W.2d 184, 187 (1935). Second, a family protection policy which suggests a home for the family be exempt. *Charles & Blow v. Lamberson*, 1 Iowa 435 (1855). For an excellent discussion of the family underpinnings of exemption laws, *see Folz, Exemption Laws and Public Policy*, 53 AM. L. REG. 721, 722-37 (1905). This article focuses on the economic policy since it is the most neglected of the policies by the modern courts and commentators.

25. For a discussion of both the policy of payment of debts and the inappropriateness of the welfare system to support indigent debtors, *see Vukowich, supra* note 2, at 786, 866-71.

26. One commentator has noted:

The exemption and homestead provisions are an attempt on the part of the legislature to reconcile the rights between debtor and creditor consistent with providing a modest home for the debtor and his family and the basic tools or equipment to enable him to earn a living for his family so as not to become a charge upon society.

Rifkind, *Archaic Exemption Laws*, 39 CAL. ST. B.J. 370, 370 (1964).

methods the courts can utilize to exempt tools, land and crops, which will enable the farmer debtor to remain economically productive.<sup>27</sup>

### A. Functional Analysis

Technological advances have rendered obsolete certain personalty exemption statutes that list specific items, such as horses and carts, which no longer are used in commercial farming. The effect is to deny present day farmers an exemption which the farmer of yesterday was granted. The courts should make an effort to update such provisions. Where specific lists are encountered, the exemptions may be updated by permitting the debtor to exempt the present day counterpart. This process might be termed "functional analysis," since it calls for an analysis of the function of the obsolete item and substitution of the modern day functional equivalent.<sup>28</sup>

Functional analysis has great potential. For example, under such analysis a tractor could be exempted even though the literal language of a statute only exempts animals. The analysis would be: (1) a team of horses was the motive power for farm equipment such as plows; (2) this function is still performed; (3) a tractor is the modern counterpart that performs the function; and (4) therefore, the tractor is exempt.

Admittedly a tractor does not come within the definition of "horse," but it is appropriate for a court to interpret the literal words of the statute flexibly for two reasons. First, if a court does not interpret the exemption statute flexibly in such a situation, today's farmer is prevented from performing a job which the farmer of last century could perform with exempt property. For example, without a tractor today's farmers cannot plow, plant or tend all their crops. Yet, last century's farmers could do these things since horses were exempt. The horse, however, does the modern farmer little good. Thus, the modern farmer cannot even plant a crop if the exemption is denied. The second reason that exemption statutes should be interpreted so flexibly is that it is the only

---

27. This article will not discuss crops in depth. Only a few states have specific exemptions for crops. ME. REV. STAT., tit. 14, § 4401(5) (Supp. 1977-78); N.D. CENT. CODE § 28-22-02(8) (1974); UTAH CODE ANN. § 78-23-1(3) (1977); and VT. STAT. ANN. tit. 12, § 2740 (1973). Two states allow partial crop exemptions: ALA. CODE tit. 7, § 520 (1960) and S.C. CODE § 15-41-430 (1976).

Courts have been inconsistent in classifying crops as realty or personalty. See 25 C.J.S. *Crops* §§ 1-10 (1966). The courts should find a way to include crops in some exemption. As a suggestion, in a state which allows a large personalty exemption, crops could be considered chattels and exempted under such a statute.

28. One commentator suggests that it is no longer valid for courts to say the statute does not apply because the item did not preexist enactment. Comment, *Technological Change and Statutory Interpretation*, 1968 WIS. L. REV. 556, reprinted in 4 SUTHERLAND, STATUTORY CONSTRUCTION 237 (4th ed. 1974). The author further states that courts must flexibly interpret statutes and proposes that analysis of the legislative intent may permit expansion of the literal words of the statute.

way to effect the policy of continued economic productivity. If the intent of exemption statutes is to keep debtors capable of supporting themselves and their families, little purpose is served by permitting seizure of necessary equipment merely because it is not specifically named in the statute.<sup>29</sup>

As an example, one court<sup>30</sup> permitted a debtor to exempt a truck as a "wagon" under a statute allowing to a family an exemption of "two horses and a wagon."<sup>31</sup> The thrust of the decision was the functional analogy between a wagon and a truck.<sup>32</sup> The court explained that: "In making the exemption, the legislature had in mind the use or purpose to which the vehicle was put rather than the specific character of the vehicle named."<sup>33</sup> In sixteen states there are currently exemptions for teams of work animals which could be updated if the argument were made to the courts.<sup>34</sup> Functional analysis could rapidly update other obsolete provisions as well and still stay within the legislative intent.

---

29. One commentator has suggested that if the policy ends of the statute will be met then ". . . the court is justified in mangling the literal language of the specific referent: That is, to achieve the end it may mangle the means used in the statute." *Id.* at 558, 4 SUTHERLAND at 239.

30. *Stichter v. Southwest Nat'l Bank*, 258 S.W. 223 (1924).

31. *Id.* at 225.

32. *Stichter* was preceded by *Parker v. Sweet*, 60 Tex. Civ. App. 10, 127 S.W. 881 (1910) which had permitted a car to be exempt as a "carriage or buggy." *Parker* had held that "car" was within the definition of "carriage." *Stichter* paid lip service to this definitional approach, stating:

If the . . . reasoning [of *Parker v. Sweet*] is adopted . . . we are impelled to the conclusion that the Ford truck in the instant case is included within the term "wagon." Its use is more necessary to the head of the family than is that of the pleasure vehicle, and the term "wagon" is just as much a generic term as is "carriage or buggy."

*Stichter v. Southwest Nat'l Bank*, 258 S.W. 223, 225. Nonetheless, the functional analogy seems to have carried greater weight in the court's decision.

33. *Stichter v. Southwest Nat'l Bank*, 258 S.W. 223, 225. The court further noted the change in technology as a reason for updating the exemption:

The legislature believed that a vehicle used for carrying commodities was necessary for the use of the head of a family and so designated the wagon as exempt for that purpose, *because it was the vehicle then in use for such purpose* . . .

We therefore hold that an automobile truck of the kind and character this one is, and *put to the use that is made of this truck*, is included in the exemption statute.

*Id.* (emphasis added).

Two further cases indicate an analysis much like *Stichter*. *Pellish Bros. v. Cooper*, 38 P.2d 607 (Wyoming 1934); *Estate of Klemp*, 119 Cal. 41, 50 P. 1062 (1897).

34. COLO. REV. STAT. § 13-54-102(g) (1973); GA. CODE ANN. § 51-1301(2) (1974); HAW. REV. STAT. § 651-66(2) (1968); IDAHO CODE § 11-205(3) (Supp. 1977); IOWA CODE ANN. § 627.6(18) (West 1950); ME. REV. STAT. tit. 14, § 4401(7) (1964); MISS. CODE ANN. § 85-3-1(9)(a) (1972); MO. ANN. STAT. § 513.435(6) (Vernon Supp. 1978); MONT. REV. CODE ANN. § 93-5814(1) (1947); N.H. REV. STAT. ANN. § 511:2(XII) (Supp. 1975); OKLA. STAT. ANN. tit. 31, § 1(9) (West Supp. 1977); OR. REV. STAT. § 23.160(1)(c) (1977); S.D. COMPILED LAWS ANN. § 43-45-5(3) (1967); UTAH CODE ANN. § 78-23-1(3) (1977); VT. STAT. ANN. tit. 12, § 2740 (1973); WIS. STAT. ANN. § 815.18(6) (West 1977).

### B. Definitional Expansion

A second method of updating personalty exemption laws is to expand the definitions of words in the statutes. Although definitional expansion is not as drastic an approach as functional analysis since it does attempt to remain within the literal words of the statutes, it can be just as effective.

One type of exemption law which is in particular need of attention is the frequently encountered exemption for tools and implements.<sup>35</sup> A typical statute exempts:

*Tools or implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of five hundred dollars . . . the instruments and chest of a surgeon, physician, surveyor and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law and professional libraries and office furniture of attorneys, counselors and judges, and the libraries of ministers of the gospel.*<sup>36</sup>

---

35. There are 57 statutes in 37 states regarding tools. In some states, a separate provision is made for farm machinery or implements, which are also noted. ALASKA STAT. § 09.35.080(4) (Supp. 1977); ARIZ. REV. STAT. § 33-1130(1) (Supp. 1977-1978); ARIZ. REV. STAT. § 33-1130(5) (Supp. 1977) (special farmer provision); CAL. CODE CIV. PROC. § 690.4 (West Cum. Supp. 1977); COLO. REV. STAT. § 13-54-102(i) (1973); COLO. REV. STAT. § 13-54-102(g) (1973) (special farmer provision—head of family and single); Pub. Act No. 77-466 § 2(b), 1977 Conn. Pub. Acts 505 (1977); DEL. CODE tit. 10, § 4902(b) (1974); GA. CODE ANN. § 51-1301(8) (1974); HAW. REV. STAT. § 651-66(3) (1968); HAW. REV. STAT. § 651-66(2) (1968) (special farmer provision); IDAHO CODE § 11-205(4) (Supp. 1977); IDAHO CODE § 11-205(3) (Supp. 1977) (special farmer provision); IOWA CODE ANN. § 627.6(17) (West 1950); KAN. STAT. § 60-2304(5) (1976) (head of family); KAN. STAT. § 60-2305(3) (1976) (non head of family); KY. REV. STAT. § 427.030 (1970); KY. REV. STAT. § 427.010(1) (1970) (special farmer provision); ME. REV. STAT. tit. 14, § 4401(6) (Supp. 1977); MD. CTS. & JUD. PROC. CODE ANN. § 11-504(3) (1974); MASS. GEN. LAWS ANN. ch. 235, § 34(5) (West Supp. 1977); MICH. STAT. ANN. § 27A.6023(5) (1977); MINN. STAT. ANN. § 550.37(6) (Supp. 1978); MINN. STAT. ANN. § 550.37(5) (Supp. 1978) (special farmer provision); MISS. CODE ANN. § 85-3-1(3) (1972); MISS. CODE ANN. § 85-3-1(2) (1972) (special farmer provision); MO. ANN. STAT. § 513.435(7) (Vernon Supp. 1978) (head of family); MO. ANN. STAT. § 513.430(2) (Vernon 1952) (non head of family); MONT. REV. CODES ANN. § 93-5814(2) (1947); MONT. REV. CODES ANN. § 93-5814(1) (1947) (special farmer provision); NEB. REV. STAT. § 25-1556 (1975); NEV. REV. STAT. § 21.090(d) (1977); NEV. REV. STAT. § 21.090(c) (1977) (special farmer provision); N.H. REV. STAT. ANN. § 511:2(IX) (Supp. 1975); N.M. STAT. ANN. § 24-5-1 (Supp. 1975) (head of household); N.M. STAT. ANN. § 24-5-2 (Supp. 1975) (single); N.Y. CIV. PRAC. LAW § 5205(a)(7) (McKinney 1963 & Supp. 1977); N.D. CENT. CODE § 28-22-04(4) (Supp. 1977); OHIO REV. CODE ANN. § 2329.66(E) (Page Supp. 1977) (family supporter); OHIO REV. CODE ANN. § 2329.62(B) (Page Supp. 1977) (unmarried); OKLA. STAT. ANN. tit. 31, § 1(5) (West Supp. 1977) (head of family); OKLA. STAT. ANN. tit. 31, § 4(3) (West Supp. 1977) (non head of family); OKLA. STAT. ANN. tit. 31, § 1(4) (West Supp. 1977) (special farmer provision); OR. REV. STAT. § 23.160(1)(c) (1977); S.C. CODE § 15-41-310 (1976) (head of family and non head of family); S.D. COMPILED LAWS ANN. § 43-45-5(4) (1967); S.D. COMPILED LAWS ANN. § 43-45-5(3) (1967) (special farmer provision); UTAH CODE ANN. § 78-23-1(4) (1977); UTAH CODE ANN. § 78-23-1(3) (1977) (special farmer provision); VA. CODE § 34-26 (Supp. 1977); VA. CODE § 34-27 (Supp. 1977) (special farmer provision); WASH. REV. CODE ANN. § 6.16.020(7) (Supp. 1976); WASH. REV. CODE ANN. § 6.16.020(5) (Supp. 1976) (special farmer provision); W. VA. CODE § 38-8-1 (Supp. 1977); WIS. STAT. ANN. § 815.18(8) (West 1977); WIS. STAT. ANN. § 815.18(6) (West 1977) (special farmer provision); WYO. STAT. ANN. § 1-20-106 (1977).

36. IDAHO CODE § 11-205(4) (Supp. 1977) (emphasis added).

Despite any variations in language from state to state, most statutes exempting tools are amenable to a liberal construction that reflects the technological advances that have occurred since their enactment. Three terms that need liberal interpretation are: what is "necessary," what are "tools and implements," and who is a "mechanic or artisan." These terms will be used to illustrate how definitional expansion can be used to update exemption statutes.

Many tools and implements statutes exempt only those tools which are "necessary" in the debtor's trade or calling.<sup>37</sup> This limitation is either stated expressly in the statutes or imposed judicially. Indeed, both in fairness to the creditor and in the interest of efficiently effecting the policy of economic productivity, only those items truly necessary to the debtor should be exempted. While such a limitation appears reasonable since it gives the debtor just enough property to be economically productive without limiting the creditor's remedy any more than required, the obvious question is how should courts define "necessary".

Courts generally use three standards to measure what is "necessary." Some courts require that the tools be "indispensable."<sup>38</sup> Taken literally, such a standard is overly strict and would put the farmer back behind the horse and plow. A horse, a plow and hard work can plant a small crop, but a farmer is likely either to go into bankruptcy or into another profession rather than plow with a horse. One court went to the opposite extreme by including any items reasonably "necessary, suitable or convenient"<sup>39</sup> to carry on a trade. This approach destroys the effectiveness of the word "necessary" since it exempts virtually everything. The credi-

---

37. In 32 states, there is either a dollar limitation on tools exemptions, which makes a limitation of "necessary" unnecessary since the dollar limitation itself acts as a curb on excessive exemptions (Arizona (farmer), Colorado, Colorado (farmer), Hawaii (farmer), Idaho (farmer), Kentucky, Kentucky (farmer), Michigan, Minnesota (farmer), Montana (farmer), Nebraska, Nevada, Nevada (farmer), New Hampshire, South Carolina, South Dakota (farmer), Utah (farmer), Virginia, Washington, Washington (farmer), West Virginia, Wisconsin, Wisconsin (farmer), and Wyoming) or the word "necessary" itself is present (Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Idaho, Kansas (head of family), Kansas (non head of family), Maine, Maryland, Massachusetts, Minnesota, Mississippi, Mississippi (farmer), Missouri, Missouri (farmer), Montana, New York, Ohio (family supporter), Ohio (unmarried), Oregon, and Utah). Virginia (farmer) is not listed since that statute lists specific items only.

In six states there is neither a dollar limitation nor is the word "necessary" present. In three of these states (Georgia, North Dakota, South Dakota) no cases discuss "necessary." In the remaining three, however, there are cases which read "necessary" into the statute: Iowa, *Hoyer v. McBride*, 202 Iowa 1278, 211 N.W. 847 (1927); New Mexico, *New Mexico Nat'l Bank v. Brooks*, 9 N.M. 113, 49 P. 947 (1897); Oklahoma, *Brummage v. Kenworthy*, 27 Okla. 431, 112 P. 984 (1911). See note 35 *supra* for statutory cites.

38. *Patten v. Smith*, 4 Conn. 450 (1823); *Prather v. Bobo*, 15 La. Ann. 524, Book 28 La. Ann. 523 (1910 Reprint) (1860); *Dowling v. Clark*, 83 Mass. 283 (1 Allen) (1861). These old decisions have not been overruled in their home jurisdictions. Hopefully, however, the "indispensable" standard, which has not surfaced in exemption law in this century, is dead and buried.

39. *Childers v. Brown*, 81 Or. 1, 158 P. 166, 168 (1916).

tor is burdened unreasonably if everything is exempted. A third, middle-of-the-road standard exempts those tools and implements which allow the debtor to "effectively compete" with others engaged in the same occupation.<sup>40</sup> If a debtor is permitted to keep the equipment necessary to compete effectively, then the debtor should be economically productive. Such a standard is reasonable to debtor and creditor alike and correlates well with the continued economic productivity policy. Thus, courts should interpret "necessary" according to what is necessary to compete effectively.<sup>41</sup>

The next term that needs liberal interpretation is the definition of the phrase "tools and implements" itself.<sup>42</sup> Many courts define the phrase "tools and implements" in exemption statutes narrowly. Some courts refuse to consider even simple machines as "tools."<sup>43</sup> They reason that a

---

40. *Strozier v. Long*, 40 So. 2d 254 (1949). In rather prosaic terms the court stated: "A logging operator in this day and time without the use of an automobile would be about as effective as a cowboy, on foot, attempting to round up range cattle." *Id.* at 255. See also *Nutting v. Scannell*, 1 LaBatt 91 (4th Judicial Dist. Cal., 1857); *Dowling v. Clark*, 83 Mass. 283 (1 Allen) (1861).

41. Several problems are not discussed in the text but do appear in the cases. One problem is whether a tool which is not used by the debtor but by employees or family may be considered a "necessary" tool. Courts have generally answered in the affirmative. *Hoyer v. McBride*, 202 Iowa 1278, 211 N.W. 847 (1927). A similar problem is whether a tool which is rented or loaned out may be considered necessary. *Estate of Klemp*, 119 Cal. 41, 50 P. 1062 (1897), permitted exemption of a combined harvester loaned out in exchange for help at harvest time.

42. The exemptions are unlimited in Connecticut, Georgia, Hawaii, Iowa, Maryland, Mississippi, Missouri (farmer), Missouri (head of family), Missouri (non head of family), Montana, New Mexico (head of family), New Mexico (single), Oklahoma (head of family), Oklahoma (non head of family), Oklahoma (farmer), South Dakota and Virginia. Thus 17 of 57 statutes in 12 of the 37 states could prove highly lucrative. The remaining dollar limits are: \$5,000: Kansas, Minnesota, Minnesota (farmer); \$2,500: Alaska, Arizona, California; \$2,000: Kansas (non head of family); \$1,600: Oregon; \$1,500: Arizona (farmer), Colorado (head of family farmer), Kentucky (farmer), Nebraska, Nevada, Nevada (farmer), Washington (farmer); \$1,250: South Dakota (farmer); \$1,000: Maine, Michigan, North Dakota, West Virginia, and Wyoming; \$750: Colorado, Colorado (single farmer); \$600: Montana (farmer), New Hampshire, New York, Ohio (married); \$500: Hawaii (farmer), Idaho, Massachusetts, South Carolina (head of family), Utah; \$300: Idaho (farmer), Kentucky, Ohio (single), South Carolina (non head of family), Utah (farmer), Wisconsin (farmer); \$200: Wisconsin; \$75-50: Delaware. See note 35 *supra* for cites. Wisconsin provides a list of specific farm exemptions in addition to the \$300 above. Virginia provides a list of farm tools which are exempt. The words "tools" and "implements" appear most frequently, and the words "apparatus," "instrument," "power tool," "machine," "equipment," "mechanical instrument," and "utensils" appear in a few of the statutes. We will focus on "tools" and "implements" since the others have received scant attention.

43. There has been a long history of courts refusing to find that machinery falls under a "tools" exemption: *Seeley v. Gwillim*, 40 Conn. 106 (1873) (bookbinder machine not exempt); *Buckingham v. Billings*, 13 Mass. 82 (1816) (printing press not exempt); *Danforth v. Woodward*, 27 Mass. 423 (1830) (printing press not exempt); *Bartol v. Justice of Peace Court*, 102 Mont. 1, 55 P.2d 691 (1936) (mining equipment not exempt).

As recently as 1971 two courts reiterated these old rules. The court in *Rietz v. Butler*, 322 F. Supp. 1029 (N.D. Ga. 1971) stated that under a 67-year-old Georgia law, "tools" means "simple and inexpensive appliances used in his trade." *Id.* at 1031. In *Davis v. Schultz*, 474 S.W.2d 804 (1971), a Texas court held that no restaurant equipment was exempt. Included in debtor's claimed property was a hot dog machine, silverware, glassware and a cash register. In a vigor-

“tool” is descriptive of a small hand-held implement such as a knife, hammer or crowbar. Other courts permit manually operated machines to be exempt, but refuse to consider motorized machines as “tools.”<sup>44</sup> They reason that “tools” refers to muscle-powered items and not motorized machinery. Such narrow interpretations, however, prevent the farmer from exempting most modern equipment.

Courts should realize that the legislature intended to exempt implements which the debtor needs to engage in a trade. At the time such exemptions were enacted, machinery was often sparse and unnecessary whereas it is essential in modern farming. The lack of reference to machinery in tools exemption statutes should be seen as a reflection of the era in which the legislation was proposed and not as a blanket exclusion of such machinery from exempt status.<sup>45</sup> Only if “tools” is read to include all implements, apparatus and machinery necessary to a debtor’s trade can the courts effectuate the policy of continued economic productivity.

A California court<sup>46</sup> permitted a cemetery owner to exempt a mower, tractor mower, shovels and a grave-lowering device by broadly interpreting “tools and implements.” The court stated: “. . . the term ‘tools and implements’ includes any implement needed and used for the purpose of carrying on one’s trade or business.”<sup>47</sup> This is an appropriate modern interpretation. It allows the debtor to claim those items which were originally intended to be exempt—the necessary implements to keep the debtor economically productive.

In addition to the limitation in some statutes that debtors can exempt only necessary tools and implements, some statutes grant such exemptions only to “mechanics or artisans.”<sup>48</sup> A number of courts exclude

---

ous dissent, Judge Cadena criticized the majority for relying on 60-year-old precedents. He argued that liberal construction would permit the exemption.

44. *Peyton v. Farmers’ Nat’l Bank*, 261 F. 326 (5th Cir. 1919) (machinery connected with grain mill and propelled by electric motors not exempt). The most liberal courts, however, have not had trouble, many even exempting cars or trucks as “tools”: *Lopp v. Lopp*, 198 Cal. App. 2d 474, 18 Cal. Rptr. 338 (2d Dist. 1961); *Waterhouse v. Johnson*, 194 Iowa 343, 189 N.W. 669 (1922); *Termplan, Inc. v. Tucker*, 215 So. 2d 383 (La. Ct. of App. 1968); *In re Trotter*, 97 F. Supp. 249 (W.D. La. 1951) *Dowd v. Heuson*, 122 Kan. 278, 252 P. 260 (1927).

45. A creditor might argue that if the legislature enacted an amendment without changing the word “tools” into “machines” it intended to retain the narrow meaning of the word. This seems unlikely, since the most common reason to update is to increase valuations. In all probability, the word was not brought to the attention of the legislators. It should not be seen as overruling prior case law in the jurisdiction unless the legislature expressly so provides.

46. *Peebler v. Danziger*, 104 Cal. App. 2d 490, 231 P.2d 894 (2d Dist. 1951).

47. *Id.* at 490, 231 P.2d at 895.

48. Thirteen states make such exemptions. In these statutes, “mechanic” is in all, “artisan” is in most, and “miner,” “trade,” “electrician,” “other laborer” and “other person” each appear at least once. As we will concentrate on the first two, the statutes hereinafter will be called “mechanic and artisan” statutes.

There is no dollar limit in Hawaii, Iowa, Missouri (head of family), Missouri (non head of family), Montana, South Dakota, and Virginia. The remaining states have these limits: \$2,500:

farmers from a mechanic or artisan classification.<sup>49</sup> They reason that at the time exemption statutes were enacted, farmers and mechanics were two distinct groups of individuals. The mechanic was self-employed and possessed specialized skills and tools, but had to rely on providing services to third parties to earn a living. Without the tools, the mechanic could not function. The subsistence farmer, on the other hand, could provide for all family needs from the land with a few simple farm implements. Today, however, farmers stand in relation to the general population much as the mechanic stood a century ago. Farmers provide food for many beyond their immediate families and the farmer like the mechanic is self-employed, possesses specialized skills and, most importantly, requires specialized equipment. Since farmers are now in analogous circumstances, they should be considered "mechanics or artisans."

The Tenth Circuit<sup>50</sup> exempted a combine to a farmer by using such a liberal construction. Kansas had two exemption statutes. One exempted the tools of a "mechanic, miner or other person"<sup>51</sup> and the other exempted up to \$300 of farm utensils.<sup>52</sup> A farmer attempted to exempt a combine worth thousands of dollars under the exemption for "mechanic, miner or other person." The court agreed that the combine was a tool and that the farmer was an "other person" within the first statute. The language of the decision indicates that the court would have granted the mechanic exemption even if the phrase "other person" were not present. The court reasoned as follows:

Thus Kansas has insisted at all times upon giving effect to the manifest intent of the statute, that every Kansan who is head of a family may hold exempt his means of livelihood. To be sure, the language of the statute is directed to the more primitive agrarian economy of 1868, but the Kansas court has insisted that this manifest intent be given contemporary effect through the technique of "liberal construction."<sup>53</sup>

Such an interpretation of a mechanic statute effectuates the legislative intent of continued economic productivity far better than would a stricter reading. Thus, definitional expansion could be a helpful tool to

---

Arizona; \$2,000: Kansas; \$1,000: North Dakota; \$500: Idaho and Utah; \$300: Kentucky; \$200: Wisconsin. (North Dakota provides that mechanic and farmer provisions are mutually exclusive.) See note 35 *supra* for cites.

49. See, e.g., *Poznanovic v. Maki*, 209 Minn. 379, 296 N.W. 415 (1941); *Miller v. Dixon*, 176 Neb. 659, 127 N.W.2d 203 (1964); *Bevitt v. Crandall*, 19 Wis. 610 (1865).

50. *Cantrell v. Molz-Frick Implement Co.*, 278 F.2d 546 (10th Cir. 1960).

51. *Id.* at 547. The statute has been amended to combine a list of items, stock, grain, with "other tangible means of production regularly and reasonably necessary in carrying on his or her profession, trade, business or occupation in an aggregate value not to exceed \$5,000." KAN. STAT. § 60-2304 (1976). The language on mechanics or artisans is retained in KAN. STAT. § 60-2305(3) (1976) which grants an exemption for tools to a non head of household.

52. *Cantrell v. Molz-Frick Implement Co.*, 278 F.2d 546, 547. The statute referred to is now recodified, see note 51, *supra*.

53. *Id.*

the courts in their reading of exemption laws.<sup>54</sup>

### C. Constructional Expansion

A third method of updating exemption laws is constructional expansion. Unlike functional analysis and definitional expansion which focus on meanings of specific words, this method focuses on the conjunctive possibilities of various provisions in a given code.

Again, the exemptions for tools and implements will be used to illustrate how constructional expansion operates. In a number of states there are two tools and elements provisions—one for farmers and one for mechanics and artisans. A court must decide two issues: first, whether the debtor may freely choose the statute under which to claim exemptions and second, whether the statutes should be read as cumulative or as mutually exclusive.

On the issue of freedom of choice, some courts hold that the court rather than the debtor will decide whether the debtor belongs under the farmer or the mechanic provision. This can create an undesirable result, since if a court holds that a farmer may be a mechanic for purposes of a mechanic statute, the farmer and mechanic provisions probably will overlap. In such a situation the court should allow the debtor to choose. The Tenth Circuit<sup>55</sup> has followed the latter alternative and permitted the debtor to choose under either statute. A Nebraska court,<sup>56</sup> however, decided that a farmer could not claim an exemption under a mechanic statute. The debtor in that case owned a combine but no land and hired out to local farmers. Two statutes were involved. One exempted tools of a "mechanic, miner or other person" without limit.<sup>57</sup> The other exempted fifty dollars to persons "engaged in the business of agriculture."<sup>58</sup> Despite the fact that the debtor did no farming for himself, the court held that he was "engaged in agriculture" within the farming statute and, therefore, could not claim under the mechanic statute.<sup>59</sup> The

---

54. A problem analogous to the "mechanic or artisan" statute definitions was found in statutes exempting tools and implements of debtors "trade." The latest case clearly held that farming was a trade, and no cases to the contrary have been decided since. *Young v. Geter*, 185 La. 709, 170 So. 240 (1963).

55. *Cantrell v. Molz-Frick Implement Co.*, 278 F.2d 546 (10th Cir. 1960). The court held: "It is enough for us to say that in our judgment the Kansas court would not hold paragraphs six and eight mutually exclusive in the sense that the farmer is exclusively confined to his exemptions under paragraph six. We are certain he can claim his combine under paragraph eight." *Id.* at 548.

56. *Miller v. Dixon*, 176 Neb. 659, 127 N.W.2d 203 (1964).

57. *Id.* 127 N.W.2d at 205.

58. *Id.*

59. The court relied on *Poznanovic v. Maki*, 209 Minn. 379, 296 N.W. 415 (1941) (special truck of farmer was neither a "wagon" exempted to a farmer, nor eligible for tools of a mechanic or artisan exemption) and *Bevitt v. Crandall*, 19 Wis. 581 (1865) (farmer could not claim exemptions under both exemption provisions).

debtor lost his livelihood because seizure was allowed. Thus, for the sake of pedantry, the policy of continued economic productivity was totally defeated.

The second issue that arises when there is an exemption for farmers and one for mechanics is whether the provisions are cumulative or mutually exclusive. Only one court has addressed this problem and it held that such provisions are mutually exclusive.<sup>60</sup> The court reasoned that if the legislature set up two categories, debtors could fall into only one. While this may have been reasonable at one time, today the exemptions together often are insufficient to leave the debtor all necessary tools. Exemption laws are intended to leave the debtor sufficient equipment to continue working. When a debtor falls under two exemption provisions which together do not exempt more than the debtor needs to continue to be economically productive, both should be granted.<sup>61</sup> If a court holds the provisions mutually exclusive, it places a restriction on a remedial statute which the legislature did not. The legislature is capable of expressly making the provisions mutually exclusive and has done so in a number of states.<sup>62</sup> Since remedial statutes should be liberally construed, a restriction which was not expressly enacted should not be implied. Courts should allow farmer debtors to apply both mechanic and farmer exemption statutes if they fully qualify under both provisions.

## II. HOMESTEAD EXEMPTIONS

The farmers' land is as important to continuing economic productivity as are the necessary tools and implements. Without both, the farmer is left without a means of generating income to pay for family needs or to pay off debts. A homestead statute typically exempts a debtor's land,<sup>3</sup>

---

The reader should note the dates and jurisdictions of the above decisions, neither of which is controlling on a Nebraska court. Even more conspicuous is the absence of reference to *Cantrell v. Molz-Frick Implement Co.*, 278 F.2d 546 (10th Cir. 1960) which was on point. See text accompanying notes 50-54 *supra*.

60. *Bevitt v. Crandall*, 19 Wis. 610 (1865). Again, the lack of recent cases seems to indicate that the claims are not being asserted by debtors, rather than that the issue is settled. Perhaps practitioners should attempt to claim exemptions under both provisions in bankruptcy to force modern courts to resolve the issue.

61. For example, Arizona has two brand new exemptions. There is a \$2,500 exemption for mechanics and artisans, ARIZ. REV. STAT. § 33-1130(1) (Supp. 1977-78), and a \$1,500 exemption for farmers, ARIZ. REV. STAT. § 33-1130(5) (Supp. 1977-78). The legislature has not made these provisions mutually exclusive. Even if the courts allowed both provisions, a farmer could get only \$4,000. Since the average farmer in this country requires \$187,100 of capital assets, see note 4 *supra*, including land and equipment, both provisions together will fall far short of the farmer's requirements. Nevertheless, \$4,000 is better than \$1,500 for the farmer. The court should permit both exemptions, since these remedial statutes contain no bar on cumulative use.

62. Colorado and Washington so provide. COLO. REV. STAT. § 13-54-102(g), (i) (1973); WASH. REV. CODE ANN. § 6.16.020(7) (Supp. 1976). Minnesota provides that the two provisions may not be used cumulatively, which has the same effect. MINN. STAT. ANN. § 550.37(5), (6), (7) (West Supp. 1978).

house, appurtenances and improvements, limited in extent by value, acreage or both.<sup>63</sup> Homestead exemptions need serious revision in most states and thus they can benefit from judicial revision and updating.<sup>64</sup>

63. There is quite a diversity among the specific homestead provisions. Connecticut, Delaware, Maryland, New Jersey, Rhode Island and the District of Columbia have no homestead exemption provisions. Pennsylvania and Virginia have no separate homestead exemption, but give a general exemption for a specified dollar amount for both "real and personal" property. Twenty-five states have essentially no urban-rural distinction and therefore no acreage provisions, but give only dollar amounts for exemptions. A tremendous disparity appears between the highest and the lowest amounts: North Dakota with \$60,000 and Iowa with \$500. Of the states which do have an urban-rural distinction and therefore an acreage limitation, the acreage limitation varies. Iowa and Michigan allow 40 acres; Georgia allows 50 acres; Alabama and Minnesota allow 80 acres; Arkansas, Alaska, Florida, Kansas, Mississippi, Nebraska, Oklahoma, Oregon, South Dakota and North Dakota all allow 160 acres; and Montana allows 320 acres. Hawaii is an exception, allowing one acre, rural or urban, up to \$20,000. *See* note 64 *infra* for statutory cites. The additional provisions are: ARK. CONST. art. 9, § 4; OR. REV. STAT. § 23.250 (1977); N.D. CENT. CODE § 28-22-02(8) (1974); and S.D. COMPILED LAWS ANN. § 43-31-4 (1969).

64. The following are the constitutional and statutory provisions for the homestead. The dates in parentheses indicate the dates of the most recent amendments. Some of the statutes are old and ossified because of unchanged state constitutional provisions. ALA. CONST. art. 10, § 205 (1901, date in parentheses is date of last amendment); ARK. CONST. art. 9, § 3 (1874), and amend. 22 § 1(1930); CAL. CONST. art. 20, § 1.5 (1976); FLA. CONST. art. 7, § 6 (1968) & art. 10, § 4 (1972); GA. CONST. § 2-123 (1976); KAN. CONST. art. 15, § 9 (1944); LA. CONST. art. 12, § 9 (1974); MICH. CONST. art. 10, § 3 (19—); MINN. CONST. art. 1, § 12 (1974); MONT. CONST. art. 13, § 5 (1972); NEV. CONST. art. 4, § 30 (1977); N.C. CONST. art. 10, § 2 (1970); N.D. CONST. art. 17, § 208 (1960); OKLA. CONST. art. 12, § 1 (1907); S.C. CONST. art. 3, § 28 (1895); S.D. CONST. art. 21, § 4 (1889); TENN. CONST. art. 11, § 11 (1870); TEX. CONST. art. 16, §§ 50, 51 (1973); UTAH CONST. art. 22, § 1 (1895); WASH. CONST. art. 19, § 1 (1889); W. VA. CONST. art. 6, § 48 (1973); WIS. CONST. art. 1, § 17 (1848); WYO. CONST. art. 19, § 9 (1889). The statutory homestead provisions are given below, followed by the most recent date of statutory amendments and the most recent amended dollar amounts: ALA. CODE tit. 7, § 625 (1960)—\$2,000, 1901; ALASKA STAT. § 09.35.090 (1973)—\$12,000, 1972; ARIZ. REV. STAT. § 33-1101 (Cum. Supp. 1977-78)—\$20,000, 1977; ARK. STAT. ANN.—none, amount set by the Arkansas Constitution of 1874—\$2,500; CAL. CIV. CODE, § 1260 (West Supp. 1977)—\$30,000, 1976; COLO. REV. STAT. § 38-41-201 (Supp. 1976)—\$7,500, 1975; FLA. STAT. ANN. § 222.01 (West 1977)—amount set by Constitutional Amendment of 1934—\$5,000; GA. CODE ANN. § 51-101 (Supp. 1977)—\$5,000, 1976; HAW. REV. STAT. § 651-65 (Supp. 1975)—\$20,000, 1972; IDAHO CODE §§ 55-1001, 55-1201 (1957 and Supp. 1977)—\$10,000, 1963; ILL. ANN. STAT. ch. 52, § 1 (Smith-Hurd Supp. 1978)—\$10,000, 1972; IND. CODE ANN. § 34-2-28-1(a) (Burns Supp. 1977)—\$5,000, 1977; IOWA CODE ANN. §§ 561.1, 561.2 (West 1950)—\$500, 1939; KAN. STAT. § 60-2301 (1976)—no value limitation; KY. REV. STAT. § 427.060 (1972)—\$1,000, 1902; LA. REV. STAT. ANN. § 20:1 (West Supp. 1978)—\$15,000, 1978; ME. REV. STAT. tit. 14, § 4551 (Supp. 1977-78)—\$5,000, 1973; MASS. GEN. LAWS ANN. ch. 188, § 1 (West 1977)—\$30,000, 1975; MICH. STAT. ANN. § 27A. 6023(8) (1977)—\$3,500, 1963; MINN. STAT. ANN. § 510.01, 510.02 (West 1947 and Supp. 1978)—no value limitation; MISS. CODE ANN. § 85-3-21 (1972)—\$15,000, 1970; MO. ANN. STAT. § 513.475 (Vernon Supp. 1978)—\$5,000, 1976; MONT. REV. CODES ANN. § 33-124 (Supp. 1977)—\$20,000, 1973; NEB. REV. STAT. § 40-101 (1974)—\$4,000, 1973; NEV. REV. STAT. §§ 21.090(n), 115.010 (1977)—\$25,000, 1977; N.H. REV. STAT. ANN. § 480:1 (Supp. 1975)—\$2,500, 1973; N.M. STAT. ANN. § 24-6-1 (Supp. 1975)—\$10,000, 1973; N.Y. CIV. PRAC. LAW § 5206 (McKinney Supp. 1964-1977)—\$10,000, 1977; N.C. GEN. STAT. § 1-369 (1969)—amount set by Constitution of 1901, \$1000+; N.D. CENT. CODE § 47-18-01 (Supp. 1977)—\$60,000, 1977; OHIO REV. CODE ANN. § 2329.73 (1954)—\$1,000, 1869; OKLA. STAT. ANN. tit. 31, §§ 1, 2 (West 1976 and Supp. 1977-78)—\$5,000, 1910; OR. REV. STAT. § 23.240 (1977)—\$12,000, 1975; PA. STAT. ANN. tit. 12, § 2161 (Purdon, 1967)—\$300 for both realty and personalty; S.C. CODE § 15-41-10

Homestead exemption laws were enacted to protect a debtor's family from the improvidence of the debtor and to maintain the integrity of the family.<sup>65</sup> Homestead exemptions initially covered only debtors with families. Almost uniformly the statutes specified the need for family status to be eligible for the exemption.<sup>66</sup> The legislatures intended that family members remain economically productive, at least so that they could work the land to provide for their own food and shelter needs.<sup>67</sup>

---

(1976)—\$1,000, 1895; S.D. COMPILED LAWS ANN. § 43-31-1 (Supp. 1976)—no value limitation; TENN. CODE ANN. § 26-301 (Supp. 1977)—\$1,000, 1975; TEX. REV. CIV. STAT. ANN. art. 3833 (Vernon Supp. 1978)—\$10,000, 1973; UTAH CODE ANN. § 28-1-1 (Supp. 1977)—\$6,000+, 1975; VT. STAT. ANN. tit. 27, § 101 (1975)—\$5,000, 1968; VA. CODE § 34-4 (Supp. 1977)—\$5,000 for both realty and personalty, 1977; WASH. REV. CODE ANN. §§ 6.12.010-6.12.050 (1963 and Supp. 1976)—\$10,000, 1971; W. VA. CODE § 38-9-1 (Supp. 1977)—\$5,000, 1974; WIS. STAT. ANN. § 815.20 (West 1977)—\$25,000, 1973; WYO. STAT. ANN. § 1-20-101 (1977)—\$6,000, 1975.

65. "The primary purpose of the homestead right is to preserve a home for the protection of the family." *Hannon v. Southern Pac. P. Co.* 12 Cal. App. 350, 107 P. 335 (1909). *See also* *Lee v. Brown*, 18 Cal. 3d 110, 553 P.2d 1121, 132 Cal. Rptr. 649 (1976); *Becker v. Lindsay*, 16 Cal. 3d 188, 545 P.2d 260, 127 Cal. Rptr. 348 (1976); *Swearingen v. Byrne*, 67 Cal. App. 3d 580, 136 Cal. Rptr. 736 (1977).

The family protection policy grew directly out of early homestead law. Homesteads are a heritage of the civil law influence in Texas brought there by Mexican settlers. The Mexican Government promoted the "empresario" system of colonization, a system of free land grants. In order to promote settlements, the Mexicans guaranteed every settler's property interest against creditors. The goal was to promote effective and productive occupation of the land. This exemption was codified in Texas in 1829 when it was still a part of Mexico. Between 1841 and 1862, 27 states of the Union had followed suit and had passed homestead laws. The avowed purpose of all of these laws was to give the debtor protection. To this day lip service is still paid to this purpose whether or not the debtor actually receives such protection. M. FARNAM, *CHAPTERS IN THE HISTORY OF SOCIAL LEGISLATION* 148-52 (1970).

66. Twenty-nine states have some form of family requirement. For example, fourteen states specify "head of family"—Alaska, California, Florida, Georgia, Hawaii, Idaho, Missouri, North Dakota, South Carolina, Tennessee, Utah, Virginia, Washington (Const. provision), and Wyoming; six specify "family"—Arkansas, Colorado, Kansas, Oklahoma, South Dakota, Texas; four specify "head or householder with family"—Illinois, Kentucky, Massachusetts, Mississippi; two specify "householder" (meaning a person with a family)—Indiana, Maine; two specify "married" or "parent"—New Mexico, Ohio; and West Virginia specifies "head of household."

On the question of what is a "family" or "head of family", the states vary widely in their interpretations. Some states do not define the degree of relationship while other states go into a detailed discussion. *E.g.*, N.D. CENT. CODE § 47-18-02 (Supp. 1977). The basic idea for a "family" is that there be a spouse and/or dependents.

Only a small number of states allow a homestead exemption to a single person. Arizona, Louisiana, New Hampshire and Vermont give the exemption to "any person." California, Hawaii and Idaho have separate and lesser provisions to "other persons", *i.e.*, those who do not fall into the "married/head of family" categories. Only Nevada and Texas give the same exemption to single persons and families. Alabama, Iowa, Michigan, Nebraska, New York, North Carolina and Wisconsin do not designate who may claim the exemption, leaving the decision up to the courts. *See* note 64 *supra* for statutory cites.

67. The legislative intent generally has been to allow the land only for the family's own use. Thus, lands leased or rented to others are no longer "used" by the family and, therefore, cannot be claimed, even though the leased property is on the same lot. *See, e.g.*, *Clausen v. Sanders*, 109 La. 996, 34 So. 53 (1903). If the property is rented out, the family head lacks the requisite intent to use the land permanently for the convenience and enjoyment of the family. *Oppenheimer v. Fritter*, 79 Tex. 99, 14 S.W. 1051 (1890). Furthermore, rural homesteads are

This policy is analogous to the policy of continuing economic productivity underlying tools exemptions. Ultimately, both are intended to keep debtors self-supporting. If courts are to effectuate the family protection policy and the economic productivity policy, they must construe the statutes to exempt sufficient land to maintain a commercial level of production.<sup>68</sup>

Consistent with the maxim of liberal construction, the courts can expand the homestead exemption beyond current limitations in two ways. First, remove the judicial glosses on "use and occupancy" and on "contiguity." Second, adjust statutory dollar limitations.<sup>69</sup>

### A. Removal of Judicial Glosses

The usual method for claiming a homestead is through "use and occupancy."<sup>70</sup> Generally, a homestead must be "occupied" as the main abode of the family and the land must be "used" for farming.<sup>71</sup> Two

---

allowed for lands on which the home may not be situated but which is used "for agricultural purposes," *De Fontenay v. Childs*, 93 Mont. 480, 19 P.2d 650 (1933); *Vaughn v. Vaughn*, 279 S.W.2d 427 (Tex. Ct. App. 1955); *Roche v. DuBois*, 223 Wis. 438, 271 N.W. 84 (1937).

68. Today's farmer must produce at commercial levels for two reasons. First, since 3.9% of the population produces food for the other 96.1%, the farmer today must support twenty or more non-farmers. STATISTICAL ABSTRACT 1977, *supra* note 4, Table 1132, at 673. Second, today's commercial farmer is forced to specialize and is unable to provide for all family needs off the land. Thus, the farmer must produce enough income from sales to purchase the goods and equipment for farming and personal needs. The only way to produce that income is to grow at commercial levels and sell those products on the market.

69. As noted at note 27 *supra*, crops are a particular problem, since so few statutes exempt them. It was suggested above that crops be exempt under personalty exemptions. As an alternative, however, crops could be considered a part of the homestead. In *Ewing v. Riley*, 246 S.W. 94 (Tex. Ct. App. 1923), a rural homestead consisted of a dwelling, land, crops and improvements. Judicial interpretation thus could include crops in the homestead. To avoid low dollar limitations, the crops might be considered as having a value of zero since they could be destroyed at any time. Having zero value, they would be taken "free" with whatever land could be exempted.

70. "Use" generally means that the homestead is used by the family for its support, convenience and enjoyment. Use has been found in the following situations: *Carroll v. Jeffries*, 39 Tex. Civ. App. 126, 87 S.W. 1050 (1905) (a mill and gin on an adjacent piece of land and used in part to support the family); *Stocker v. Curtis*, 264 Ill. 582, 106 N.E. 441 (1914) (a house on one lot with a garden on another lot both fell within the homestead provision). For a short discussion of both occupancy and use, see G.L. Haskins, *Homestead Exemptions*, 63 HARV. L. REV. 1288, 1296-97 (1950).

In California the trend has been to allow the homestead even though only a portion is used for homestead purposes but only if all buildings are situated on one lot. In *re Allan*, 79 Cal. 293, 20 P. 679 (1889) (allowed as homestead the lot on which the house was built, but disallowed the second lot on which the outhouses were built); *Lorenz v. Hunt*, 91 Cal. App. 78, 266 P. 617 (3d Dist. 1928) (second lot disallowed since it had a business, a dance hall). On the other hand, if both the residence and the business are on the same lot, California courts will normally extend the exemption to the entire lot. *Phelps v. Loops*, 64 Cal. App. 2d 332, 148 P.2d 674 (2d Dist. 1944) (large house with nine apartments and nine rented rooms allowed as a homestead). *Accord*, *Bodden v. Community Nat'l Bank*, 271 Cal. App. 2d 432, 76 Cal. Rptr. 278 (5th Dist. 1969).

71. Fencing and prior cultivation of the land is insufficient for claiming a homestead. *Rodriguez v. Saegert*, 74 S.W.2d 171 (Tex. Ct. App. 1934). However, if at the same time a

thirds of the states that have homestead statutes require actual physical presence on the premises to fulfill the "use and occupancy" requirements.<sup>72</sup> A few states require a formal declaration of homestead, usually through filing a declaration to that effect, before the homestead can be claimed. The "use and occupancy" requirements, however, are enforced in all states regardless of the formal declaration requirements. The "use and occupancy" requirements should be the only requirements since they adequately protect both creditor and debtor.

In addition to use and occupancy, statutes in some states also require some underlying property interest, usually an "ownership" interest.<sup>73</sup> In the states which impose this additional requirement, the courts increasingly allow a lesser quantum of interest to suffice for the homestead exemption. In many states, any estate in land, even though less than a fee, is sufficient to satisfy the requirement. For example, leaseholds,<sup>74</sup> life estates,<sup>75</sup> and equitable interests<sup>76</sup> all satisfy the requirement.

The dilution in many homestead statutes in the quantum of interest needed to satisfy the underlying property requirement should be en-

---

house were built on the land being cultivated, the latter would be a sufficient act to make the premises a homestead. *McMullen v. Carlis*, 133 Okla. 204, 271 P. 665 (1928).

72. The most frequently used words are "occupied" and "resides." "Occupied" is used in 16 states: Alabama, Arkansas (Const.), Colorado, Illinois, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, Oregon, Wisconsin and Wyoming. "Resides" is used in seven states: Arizona, Hawaii, Idaho, Louisiana, Nebraska, North Dakota, Washington. Six other states have differing language, "used" and "principal place of abode", but the same meaning: Alaska, Iowa, Maine, South Dakota, Texas and Vermont. Thus, of the 44 states allowing homestead exemptions, 32 states have language on occupancy written into their statutes. See note 64 *supra* for statutory cites.

73. "Owner" is mentioned in the state constitutions of Alabama, Florida, Kansas, North Carolina, and Oklahoma; and "owner" is in the statutes of Colorado, Florida, Hawaii, Iowa, Kansas, Nebraska, Oklahoma, Oregon, South Dakota and Wisconsin. "Owned" or "owning" is found in the constitutions of Arkansas and Illinois; and "owned" or "owning" is in the statutes of Alabama, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New York, Vermont and West Virginia. Additionally, Louisiana's statute requires a "bona fide title." See note 64 *supra* for statutory cites.

One state, Nevada, has two separate sets of provisions: one for those who are owners of their homes, NEV. REV. STAT. § 115.010 (1977); and one for those who "occupy . . . a home . . . where the dwelling is situate on lands not owned by him." NEV. REV. STAT. § 21.090(n) (1977). Both provisions are for \$25,000. Thus, by such specific statutory language, Nevada allows the same amount of exemption to both owner and non-owner occupier.

74. *Miller v. Farmers State Bank*, 137 Okla. 183, 279 P. 351 (1929) is a well-considered case on this point.

75. The life estate may be for one's own life or *pur autre vie*; *Arighi v. Rule & Sons, Inc.*, 41 Cal. App. 2d 852, 107 P.2d 970 (3rd Dist. 1940).

76. *Radford v. Kachman*, 27 Ohio App. 86, 160 N.E. 875 (1927). How attenuated an equitable interest may be can be gauged from *Childs v. Lambert*, 230 Ark. 366, 323 S.W.2d 564 (1959). It was held that where an assignee of a vendee's interest had possession, the assignee's wife had a sufficient equitable interest. Even those who make oral contracts and then enter into possession and make improvements have been given the right. *Atkins v. Schmid*, 129 S.W.2d 412 (Tex. Ct. App. 1939). Thus, some courts will strain to construe statutes as literally as possible in order to find almost any property interest sufficient and therefore to allow a maximum number of persons a right to the homestead exemption.

couraged. Indeed, the statutes should be read to permit an exemption where the underlying property interest is no more than a tenancy at will or sufferance.<sup>77</sup> The family protection and economic productivity policies are not fulfilled if the homestead is denied to the farmer holding a tenancy at will or sufferance. Such a tenancy has the relevant indicia of ownership, which is rightful present possession of the land. Since an underlying property interest beyond rightful possession is not relevant to either the family protection or continued economic productivity policy, property interests should not be determinative in granting homestead exemptions. Rightful possession ensures that the debtor does not claim a homestead on the land of another, while "use and occupancy" requirements ensure that dual homesteads are not claimed. Any further requirement of ownership is superfluous and should not be required.

In those statutes which do not require an underlying property interest, courts should employ only a "use and occupancy" test for qualification.<sup>78</sup> Some courts, however, have imposed an ownership requirement even though no state statute specifically requires it.

For example, although Texas statutes require only possession for their homestead exemption, a Texas cropper was denied the exemption because he possessed no underlying property interest in the land.<sup>79</sup> The

---

77. Case law is in conflict over the tenancy at will/sufferance question. For collections of cases *see* Annot., 89 A.L.R. 511 (1934) and Annot., 74 A.L.R.2d 1355 (1960). Early considerations allowed a tenancy at will or sufferance to be the basis for a homestead claim only if the nature of the interest was "an assignable interest in land." *Berry v. Dobson*, 68 Miss. 483, 10 So. 45 (1891). However, later cases have shown a departure from consideration of the quantum of interest to be conveyed, if any, and gravitated to consideration of the quantum of interest necessary to support a homestead claim. *Mercer v. McKeel*, 188 Okla. 280, 108 P.2d 138 (1940).

Although from the creditor's point of view the tenancy at will or sufferance may seem like an ephemeral and useless claim to make, the shift in emphasis demonstrates that the paramount consideration should be the claimant's interest rather than the creditor's. In some cases there may be no creditor involved and yet a person may desire to make a homestead claim. For example, in a state where a formal declaration of homestead is required, the initial question may be: what quantum of interest is necessary for such a filing? In such a case, there is no creditor involved, only the claimant's interest in the land.

78. States which have so held are: *In re Wineland*, 3 F. Supp. 796 (N.D. Okla. 1933); *First Nat'l Bank v. Jones*, 59 S.W.2d 1103 (Tex. Ct. App. 1933); *Altman v. Schuneman*, 39 Wyo. 414, 273 P. 173 (1929); *Ferguson v. Roberts*, 64 Ariz. 357, 170 P.2d 855 (1946); *Application of Rauer's Collection Co.*, 87 Cal. App. 2d 248, 196 P.2d 803 (1st Dist. 1948); *Blackburn v. Drake*, 211 Cal. App. 2d 806, 27 Cal. Rptr. 651 (1st Dist. 1963); *Gann v. Montgomery*, 210 S.W.2d 255 (Tex. Ct. App. 1948). Other states where mere possession is sufficient are Alabama, Florida, Georgia, Kentucky, Missouri, Mississippi, Montana, and Ohio.

79. *Cry v. J.W. Bass Hardware*, 273 S.W. 347 (Tex. Ct. App. 1925). The court said: The distinction between a mere cropper and a tenant, entitling the tenant to a homestead right in the premises, is clear. One has a possession of the premises for a fixed time exclusive of the landlord, the other has not. The possession of the land is with the owner as against the mere cropper, because a mere cropper is in the status of an employee, one hired to work the land and to be compensated by a share of the crop raised, with the right only to ingress and egress on the property. This is not so as to the tenant, who has a substantial right in the land itself for a fixed time.

court reasoned that, since the debtor had no set term like a lessee for remaining on the land, he was closer to an employee.<sup>80</sup> The court pointed out that the cropper had no right to ownership.<sup>81</sup> The right to ownership, however, seems irrelevant to the policies of the exemption statute. If the land is used and occupied as a homestead and is the only homestead being asserted, the fact that the landowner could enter without permission seems of little consequence. The Texas cropper should have been granted a homestead by use and occupancy alone. To discriminate against a cropper because no property interest is held seems to deny an exemption to a needy debtor for no good reason. States which do not require a property interest by statute should not introduce such additional requirements by case law.

Another judicial gloss on homesteads of questionable value is the requirement that different parcels must be contiguous to be claimed under the homestead exemption. While a majority of states allow exemptions of non-contiguous lots, a few do not.<sup>82</sup> Some of the latter, however, go to the extreme length of considering cornering lots as non-contiguous to meet the requirement.<sup>83</sup> There is no real difference, though, between farmer *A* who has two contiguous parcels making up 200 acres and farmer *B* who farms a 100 acre parcel which is a half-mile from another 100 acre parcel similarly farmed.<sup>84</sup> Use and occupancy limits on the homestead ensure that geographic non-contiguity of the claimed parcels will not result in the exemption of two homes, the prime concern of courts imposing the contiguity requirement. Unless there is some exceptional reason why other parcels should not be claimed, noncontiguity of land should not defeat the homestead exemption. Since the statutes generally are silent on the question of noncontiguity and the limitations that are presently imposed were judicially created, this area is particularly amenable to a new outlook and to liberal judicial construction.

---

*Id.* at 350. The distinction is made clear that the cropper earns "wages;" however, nowhere is it stated that the cropper has also both "used and occupied" the land, which are the true and necessary ingredients for claiming a homestead. Since Texas' statute does not specifically require "ownership," such an element should not be introduced.

80. *Id.*

81. *Id.*

82. One-third of the states have no contiguity requirement: Alabama, Iowa, Kentucky, Massachusetts, Mississippi, Missouri, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah and Vermont. Other states impose contiguity requirements: Arizona, Arkansas, Florida, Illinois, Kansas, Louisiana, Minnesota, Oregon, Washington and Wisconsin. Whatever the inhibitions imposed by contiguity, the courts generally agree that, contiguous or not, a homestead cannot be both rural and urban at the same time.

83. Cornering lots are considered as non-contiguous in Kansas and Minnesota, but as contiguous in Montana and Arizona. See, e.g. *Oregon Mortg. Co. v. Dunbar*, 87 Mont. 603, 289 P. 559 (1930).

84. One case where a homestead exemption was not extended to a noncontiguous lot is *Cabler v. Alexander*, 111 Or. 257, 224 P. 1076 (1924). See also Annot., 73 A.L.R. 116 (1931) for a collection of pertinent cases.

*B. Adjustments to Statutory Dollar Limitations*

The value of homestead exemptions critically needs updating.<sup>85</sup> Since many of the exemption amounts are no longer calibrated realistically to today's higher prices, the need for liberal judicial interpretation in this area is great.

The Texas courts have shown a high degree of ingenuity in liberally interpreting statutory values. Essentially two methods have been used to upgrade static valuation of the homestead exemption to a more realistic level.<sup>86</sup>

One method interprets the language to mean that the value of the homestead is not affected by inflation. The language of the exemption provision in the Texas constitution specified that ". . . the homestead . . . shall not . . . exceed \$5,000 at the time of designation as a homestead."<sup>87</sup> Thus, in one case,<sup>88</sup> when the value of the homestead was at or below the exemption amount at the time of designation as a homestead, then the entire homestead was exempted from that time forward regardless of inflation. For example, if at the time the property is designated as a homestead it is worth \$4,000 and the exemption is \$10,000 the property would be fully exempted, even if its value rises to \$60,000 at the time the exemption actually is claimed.<sup>89</sup> This method of combatting the effects of inflation remains viable in Texas today and was utilized as recently as 1975.<sup>90</sup>

---

85. A highly recommended practice adopted by a few states is giving a flat acreage amount with no value limit. Four states at present allow this type of exemption: Kansas (160 acres), Minnesota (80 acres), South Dakota (160 acres) and Texas (rural only, 200 acres).

Contrast this situation with the debtor in Iowa who is limited to \$500 and up to a maximum of 40 acres. Here the acreage provision is almost completely nullified by the dollar limitation. There are eight states with dollar provisions of \$5,000 or less: Alabama, Arkansas, Florida, Georgia, Iowa, Michigan, Nebraska and Oklahoma. In each of these states, the house alone would today be worth \$5,000 or more, making the acreage provision useless. If an acreage limitation is provided for the rural homestead, a dollar limitation should not be imposed by the legislatures.

Finally, there are several states where there is only a dollar limitation of very low value, though no acreage limitation. These limitations render the exemption equally useless when applied to the farmer. The states are: Colorado, Indiana, Kentucky, Maine, Missouri, New Hampshire, North Carolina, Ohio, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming.

*See* note 64 *supra* for statutory cites.

86. For a good explanation of these methods see Comment, *The Changing Homestead: When the City Meets the Farm*, 18 So. TEX. L.J. 145 (1976).

87. TEX. CONST. art. 16, § 51 (1955). This was revised to \$10,000. TEX. CONST. art. 16, § 51 (1973); TEX. REV. STAT. ANN. art. 3835 (Vernon Supp. 1975). "Date of designation" is discussed in text accompanying note 96 *infra*.

88. *Swayne v. Chase*, 88 Tex. 218, 30 S.W. 1049 (1895).

89. Comment, *The Changing Homestead: When the City Meets the Farm*, 18 So. TEX. L.J. 145, 151-152 (1976).

90. *O'Neil v. Mack Trucks, Inc.*, 533 S.W.2d 832 (Tex. Ct. App. 1975); *rev'd on other grounds*, 542 S.W.2d 112 (Tex. 1976).

If the value of the homestead at the time of designation already exceeded the exemption amount, another method is applied to update exemption values. An apportionment formula is used to raise the dollar limitation on the homestead. As the land goes up in value, so does the exemption. For example, in one Texas case,<sup>91</sup> a home was valued at \$12,250 at the time of designation as a homestead in 1955. It was valued at \$36,750 at the time of attachment in 1969. The amount of the homestead exemption was \$5,000 at the time of designation<sup>92</sup> and the excess was subject to creditors' attachment.<sup>93</sup> Normally this would mean that \$31,750 would have been available for the creditor (\$36,750-\$5,000 = \$31,750). However, the Texas court embarked on a novel solution to the problem of the decreasing value of the homestead exemption in the face of inflation.<sup>94</sup> The court held that the ratio of the exemption to the fair market value was fixed at the time of designation as a homestead. In 1955, the amount of the homestead exemption was \$5,000 and the fair market value was \$12,250. This gave an exemption ratio of 20/49 (\$5,000/\$12,250) which was applied to the 1969 value of \$36,750, yielding a \$15,000 exemption and \$21,750 for the creditor. Thus, the debtor was allowed a \$15,000 exemption despite the statutory limitation of only \$5,000.<sup>95</sup> The result seems fair, for it permits both the debtor and the creditor to take advantage of the appreciation in property value. In the above example, not only did the debtor receive three times the original exemption, but the creditor also received three times the original excess.

The date of "designation as a homestead" is obviously critical under both adjustment methods. In states with filing requirements the date of filing is an easy point for determining the value of the homestead and the amount of the exemption. In states that do not require actual filing for a homestead claim, the date of designation as a homestead must be determined in each case. In Texas, the date of designation as a home-

---

91. *Hoffman v. Love*, 494 S.W.2d 591 (Tex. Ct. App. 1973).

92. TEX. CONST. art. 16, § 51.

93. TEX. REV. CIV. STAT. ANN. art. 3844 and 3856 provide for execution on the excess over homestead exemption. This means that creditor may force a sale of the premises, but debtor will be paid in full for the exemption before anyone else gets paid.

94. The Texas court cited a number of Texas cases in which the apportionment idea was germane. As early as 1920, Texas had used the idea of apportionment, but the particular case relied upon by the *Hoffman* court was a 1926 case. In each case the method of computation was different. However, the basic idea is one of "proportionate increase". 494 S.W.2d at 595-598. For in-depth discussions, see Comment, *Calculating Urban Homestead Exemptions: A Proportionate Increase Theory*, 11 HOUS. L. REV. 491 (1974) and Note, *Homesteads—Creditors' Rights*, 5 TEX. TECH. L. REV. 865 (1974).

95. ". . . the lot was exempt in the proportion which the \$5,000 exemption bore to the \$12,250 value at that time, so that 20/49 (\$5,000 out of \$12,250) was exempt and 29/49 (\$7,250 out of \$12,250) was subject to the lien. He [the trial judge] apportioned the increase in value in the same ratio and held that \$15,000 of the value (20/49 of \$36,750) was exempt and \$21,750 (29/49 of \$36,750) subject to the lien. The judgment orders the property sold and allows plaintiffs satisfaction of their lien out of the proceeds to the extent of \$21,750." *Hoffman v. Love*, 494 S.W.2d 591, 595 (Tex. Ct. App. 1973).

stead, in the absence of filing, is determined by allowing the trier of fact to find the date of first occupancy and use as a homestead.<sup>96</sup> The solution that Texas has developed seems both workable and fair.

Courts in other states may be able to use the Texas approaches or elaborate on provisions of their own state statutes and constitutions. Even if a state is less disposed toward debtors, it still should be encouraged to use the type of creativity that Texas courts used to bring the value of the homestead exemption more in conformity with present dollar values.<sup>97</sup> Because homestead exemptions in virtually every state are so low that little if any land is left to the farmer for farming purposes, liberal interpretations of homestead exemptions are needed. If the policy of keeping the farmer debtor economically productive is to have any hope of success, courts must expand the meager dollar limitations in any way possible.

### III. CONCLUSION

Several different policies operate in the enactment of exemption laws. The policy behind personalty exemptions is to keep the debtor economically productive, while the policy behind the exemption of homesteads is to protect the family. Yet the basic economic policy of leaving the debtor with sufficient property to be economically productive runs through both homestead and personalty exemptions. Such a policy has validity in the modern welfare state. Since the farmer produces crops to generate an income and the populace needs the farmer to produce in quantity, the economic policy will be accomplished only by granting exemptions of land, tools, crops and livestock to farmers in sufficient quantity to allow them to produce at a "commercial level."

With exemption statutes close to obsolescence, either the legislatures must update them or the courts must expand them through liberal construction. This article has shown that exemption laws may be updated through a number of judicial methods. These include functional analysis, definitional and constructional expansions, removal of judicial glosses, and adjustments to statutory dollar limitations.

For the farmers to take full advantage of these exemption provisions and the methods of updating, however, the claims must be asserted. Otherwise, the courts will not have the issues before them and the farmer will not get the property. Up to now, it seems that debtors and their attorneys have not been creative in asserting exemption claims.<sup>98</sup>

---

96. *M.H. Lauchhelmer & Sons v. Saunders*, 97 Tex. 137, 76 S.W. 750 (1903).

97. See note 10 *supra*.

98. The exemption laws of the various states are critically important in bankruptcy proceedings. Section 6 of the Bankruptcy Act states: "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed . . . by the State laws in force at the time of the filing of the petition . . ." 11 U.S.C. § 24 (1976). This is important for the attorney of the

For example, over the past forty years there have been millions of bankruptcies, but only six appellate cases dealing with tools and implements have been written by federal courts in that same period.<sup>99</sup> Since thirty-seven states have such statutes and twelve states have unlimited dollar amounts, the lack of litigation indicates that far too few claims have been made by practitioners.<sup>100</sup> Practitioners should be asserting that tractors are horses and that dollar limitations on homesteads should be adjusted. Such claims will help update the exemption laws so they will more nearly fulfill the underlying policies. Hopefully, some interim progress can be made through the efforts of both practitioners and the courts to assist the ailing farmer.

*Margaret S. Y. Loo*  
*Thomas E. Olson*

---

bankrupt farmer to remember. In bankruptcy, all property of the bankrupt vests in the trustee as of the date the petition is filed ". . . except insofar as it is . . . property which is held to be exempt . . ." Bankruptcy Act § 70, 11 U.S.C. § 110 (1976). Rule 403 sets out the procedures for claiming exemptions. 11 U.S.C. Rule 403. It is at that time that the bankrupt must claim items as exempt. Careful consideration should be given to the suggested interpretations in Parts I and II of this article, since if the bankrupt wishes to argue that a tractor is a horse, for example, the tractor must be claimed at the time the petition is filed and exemptions claimed under Rule 403. 1A COLLIER ON BANKRUPTCY ¶ 6.19, at 903 (14th ed. 1978).

99. In 1975 there were 253,198 voluntary bankruptcy petitions filed. UNITED STATES COURTS, ADMINISTRATIVE OFFICE, TABLES OF BANKRUPTCY STATISTICS, FISCAL YEAR ENDING JUNE 30, 1975, Table F3 (1976). These statistics represent an increase over previous years, but it is evident that there have been millions who have gone through bankruptcy in the past four decades. In all that time, there have been but 6 reported federal cases dealing with tools and implements exemptions. Either the claims are made and creditors are not objecting, or they are not being made at all. Since the property which is not exempt goes to the trustee under § 70 of the Bankruptcy Act, 11 U.S.C. § 110 (1976), if the claim is not timely made, it will be lost. 1A COLLIER ON BANKRUPTCY ¶ 6.19 at 903 (14th ed. 1978).

100. As a further example, in *Cantrell v. Molz-Frick Implement Company of Wichita, Kan.* 278 F.2d 546 (10th Cir. 1960), a farmer was permitted to exempt a combine as a tool. That case has been cited once in 18 years and only for a rudimentary rule of construction. It is almost inconceivable that no farmer in possession of a large piece of machinery has gone bankrupt in the past 18 years in a state with an exemption for tools. Thus it seems that attorneys for bankrupt farmers must be more aggressive.