

California's Automobile Deficiency Judgment Problem

Sad experience has taught us that a power of sale, coupled with a right to a deficiency judgment, can be harder on the debtor than strict foreclosure ever was. The surplus to be returned to the debtor after the sale is a glittering mirage; the deficiency judgment is the grim reality.

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I. INTRODUCTION

In California today many commercial automobile vendors and financiers are reaping excessive profits at the expense of unwary defaulting consumers by means of the state's statutorily authorized "deficiency judgment."²

A "deficiency," strictly speaking, is the balance due on a secured debt after the collateral has been repossessed, resold, and the proceeds have been applied toward the contractual obligation. A "deficiency judgment," however, is actually larger than a net "deficiency." It also includes such other costs as repossession expenses, reconditioning expenses (the amount necessary to resell the collateral), interest from the date of repossession, court costs and reasonable attorney's fees.³ These costs when added to the net balance due,

¹2 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY*, 1188 (1965) [hereinafter cited as GILMORE].

²CAL. CIV. CODE § 2983.2 (West Supp. 1971); CAL. COMM. CODE § 9504(2) and (3) (West 1964).

³37 AM. JUR. *Mortgages* § 857 (1959); *Harrow v. Metropolitan Life Ins. Co.*, 285 Mich. 349, 280 N.W. 785 (1938).

equal the total deficiency that the judgment holder may collect from a defaulting buyer.⁴

The purpose of this article is to examine California's statutorily authorized automobile deficiency judgment, weighing its advantages and disadvantages on the scale of creditor-consumer parity. It will be seen that the deficiency judgment is both unnecessary and unfair. First, this article will examine the history and practice of the deficiency judgment in California. Next, it will present basic policy arguments for and against the deficiency judgment. Lastly, it will offer and evaluate various proposals for alleviating or eliminating the problems created by the deficiency judgment.

II. THE HISTORY AND PRACTICE OF THE DEFICIENCY JUDGMENT IN CALIFORNIA

A. HISTORY

1. AT COMMON LAW

Until the early nineteen thirties, the common law in California allowed a seller of real property or goods his choice of two remedies against a defaulting buyer: he could *either* sue to recover the balance due on the contract, *or* he could repossess the collateral.⁶ These two remedies were deemed mutually inconsistent so that the pursuit of one was an election of remedies which prevented later resort to the other. This meant that once the seller chose to repossess and resell the property, he could not thereafter sue for any balance remaining due on the debt, that is, a "deficiency."⁷

The traditional reasoning given for the election of remedies requirement centered around the logical concept of passage of title.⁸ That is, a suit for the price affirms the sale, passes title, and thereby bars a retaking of the collateral. Repossession, on the other hand, rescinds the sale, prevents passage of title, and therefore precludes suit on the contract.⁹

⁴CAL. COMM. CODE § 9504 (1) (a) (West 1964).

⁵CAL. CIV CODE § 2983.2 (West Supp. 1971).

⁶James v. Allen, 23 Cal. App. 2d 205, 72 P.2d 570 (1937).

⁷*Id.* at 206, 72 P.2d at 570.

⁸3 WILLISTON, SALES § 571 (rev. ed. 1948); Note, 25 HARV. L. REV. 462 (1912); Ravissa v. Budd & Quinn, Inc., 19 Cal. 2d 289, 293, 120 P.2d 865, 867 (1942) (dictum).

⁹3 WILLISTON, SALES § 571 (rev. ed. 1948).

Shrouded behind the passage of title concept, however, lay the real rationale for the election of remedies doctrine. Due to the rigidly independent and inflexible nature of the early forms of action at common law, there was originally nothing to prevent sellers from recovering both the property and the *full* contract price (rather than a mere deficiency). This was often referred to in the cases as “double recoveries.”¹⁰

Procedure in the common law courts was inflexible. Judgments merely adjudicated that the plaintiff or the defendant had won the suit then before the court The seller frequently sought to enforce his concurrent remedies by securing both the price and the goods¹¹

And although there appears to be no decision in California where the seller was actually allowed to both repossess and obtain the *full* contract price,¹² courts in other jurisdictions did so allow.¹³

In practice, however, the election of remedies requirement was frequently circumvented. “Freedom of contract,” another basic common law concept,¹⁴ allowed vendors to expressly reserve the right to obtain a deficiency after resale.¹⁵ Form contracts including such reservation clauses became widespread.¹⁶

In the absence of statutory regulation the courts were faced with the policy decision of the effect to be given these contracts. And the reluctance of the courts to interfere with the rights of parties to provide for the terms of their agreement encouraged and necessitated legislative intervention.¹⁷

¹⁰Note, 29 COLUM. L. REV. 960, 961 (1920); Warren, *Statutory Damages and the Conditional Sale*, 20 OHIO STATE L. J. 289, 295 (1959) [hereinafter cited as Warren]; *Kreisa v. Stoddard*, 127 Cal. App. 2d 627, 274 P.2d 164 (1954).

¹¹Note, 29 COLUM. L. REV. 960, 961 (1920).

¹²Hines, *Rights and Remedies Under California Conditional Sales*, 23 CALIF. L. REV. 557, 575 (1935) [hereinafter cited as Hines].

¹³Note, 29 COLUM. L. REV. 960, 961 (1920) (Massachusetts); Note, 17 MINN. L. REV. 66 (1932) (Minnesota); Aarons, *Conditional Sales-Waiver By Buyer of Statutory Provisions*, 7 WIS. L. REV. 38 (1931) (Wisconsin).

¹⁴Warren, *supra* note 10, at 298.

¹⁵*James v. Allen*, 23 Cal. App. 2d 205, 72 P.2d 570 (1937). Some courts allowed a deficiency judgment even in the absence of contractual provisions. See *Jeanson v. Zangl* 119 Cal. App. 692, 7 P.2d 314 (1932); *Matteson v. Equitable M. & M. Co.* 143 Cal. 436, 77 P.144 (1904).

¹⁶Warren, *supra* note 10, at 296.

¹⁷*Id.* at 300. See generally Sienkiewicz & Vergari, *Regulation of Consumer Installment Credit*, 16 TEMP. L. Q. 6 (1940); Hubachek, *The Drift Toward a Consumer Credit Code*, 16 U. CHI. L. REV. 609 (1949); Project, *Legislative Regulation of Retail Installment Financing*, 7 U.C.L.A. L. REV. 618, 714 (1960) [hereinafter cited as U.C.L.A. Project].

2. INROADS ON THE COMMON LAW RULE — STATUTORY REGULATION

Beginning in 1918, and continuing vigorously through the nineteen-fifties, the states, through statutory regulation, began to depart from the election of remedies doctrine, and to expressly authorize the deficiency judgment.¹⁸

One criticism of the election doctrine was that it had no validity with regard to conditional sales since in such sales passage of title is meaningless.¹⁹ Another argument attacked it as always aiding the party who is in default.²⁰ The argument primarily responsible for its abolition, however, was that the election doctrine deprived vendors of their bargain.²¹ Because the seller has parted with his goods, and is entitled to recover the full contract price, repossession should only be regarded as designed to help satisfy that contract price. If previous part payments plus the value of the repossessed collateral do not equal the price, then the buyer ought to pay the deficiency.²²

Throughout the various states three major statutory patterns soon developed. These were, first, the Uniform Conditional Sales Act (UCSA),²³ second, various state retail installment sales acts, and third, the Uniform Commercial Code (UCC).²⁴

a. Uniform Conditional Sales Act

The UCSA, first approved for adoption in 1918, contained comprehensive provisions regulating default situations in conditional sales. Although never adopted in California, by the year 1959 it had been adopted in at least twelve states.²⁵

¹⁸Warren, *supra* note 10, at 300. Because the scope of this article is limited primarily to conditional sale transactions, no mention will be made of California law governing primarily non-consumer type sales under chattel mortgage, pledge, trust receipt, accounts receivable, or inventory lien contracts. See 1 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* 5-288 (1965). Although in California, the deficiency judgment was statutorily authorized under some of these contractual arrangements before it was in conditional sales, such authorization did not antedate the 1918 Uniform Conditional Sales Act, discussed *infra*, as adopted in some of the other states. See CAL. COMM. CODE § 9501, Comments 1, 2 (West 1964). It should be noted, furthermore, that all these various transactions are now governed in 49 states, as are conditional sales, by article 9 of the Uniform Commercial Code. CAL. COMM. CODE §§ 9102-9104 (West 1964).

¹⁹Hines, *supra* note 12, at 572.

²⁰*Id.* See Note, 29 COLUM. L. REV. 960 (1920).

²¹*Id.* See also Warren, *supra* note 10, at 294.

²²*Id.* See also Bogert, *The Proposed Uniform Conditional Sales Act*, 3 CORN. L. Q. 1, 22 (1917) [hereinafter cited as Bogert]. See note 85, *infra*.

²³Hereinafter referred to as UCSA.

²⁴Hereinafter referred to as UCC.

²⁵Warren, *supra* note 10, at 300 n.32.

Section 24 of the UCSA specifically abolished the election of remedies doctrine in all cases except where the seller had recovered the full contract price.²⁶ Section 22, furthermore, expressly gave the seller the right to sue for a deficiency judgment after repossession and resale.²⁷

In 1943, the UCSA was withdrawn from the active list of Uniform Acts by the National Conference of Commissioners on Uniform State Laws pending preparation of the Uniform Commercial Code.²⁸

b. California Automobile Sales Act and Rees-Levering Motor Vehicle Sales and Finance Act

In 1945, California enacted the Automobile Sales Act (ASA),²⁹ the state's first retail installment sales act. As amended in 1957, this Act was also California's first statutory authority expressly allowing the deficiency judgment in conditional sales agreements.³⁰ The election of remedies doctrine was thus abolished as to conditional automobile sales.

The ASA was later replaced by the current Rees-Levering Motor Vehicle Sales and Finance Act.³¹

c. Uniform Commercial Code

The UCC has now been adopted in all the states except Louisiana. In those states which had adopted the UCSA, the UCC has since superceded it.³²

California adopted the UCC, with but minor changes, in 1963.³³ As complimented by the Rees-Levering and Unruh retail installment sales act, discussed *infra*, the UCC governs the entire area of conditional sales of personal property in the state.³⁴ As did the UCSA, the UCC abrogates the election of remedies doctrine³⁵ by expressly allowing the deficiency judgment.³⁶

²⁶UNIFORM CONDITIONAL SALES ACT § 24. See Horack, *The Uniform Conditional Sales Act in Iowa*, 5 IOWA L. B. 129, 169-171 (1920) [hereinafter cited as Horack].

²⁷UNIFORM CONDITIONAL SALES ACT § 22. See Horack, *supra* note 26, at 168.

²⁸HANDBOOK, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM LAWS AND PROCEEDINGS 67 (1943). See Warren, *supra* note 10, at 300 n. 33.

²⁹Ch. 1030, [1945] Cal. Stats. 1991 [hereinafter referred to as ASA].

³⁰Ch. 613, § 1 [1957] Cal. Stats. 1822.

³¹CAL. CIV. CODE § 2981 *et seq.* (West Supp. 1971) [hereinafter referred to as Rees-Levering].

³²Warren, *supra* note 10, at 300 n. 34.

³³CAL. COMM. CODE § 1100 *et seq.* (West 1964).

³⁴CAL. COMM. CODE § 9203(2) (West 1964).

³⁵CAL. COMM. CODE § 9504(2) and (3) (West 1964).

³⁶*Id.*

3. TURNING AWAY FROM THE DEFICIENCY JUDGMENT IN CONSUMER TRANSACTIONS

Even before California adopted the ASA, its first statutory authority for the deficiency judgment, the state was already moving to restrict the deficiency judgment in other areas. Discussion of the policies behind this countertrend will be deferred to a later point in this article.

a. Residential Real Property

In 1933, California enacted § 580(b) of the Code of Civil Procedure.³⁷ This section prohibits the deficiency judgment in the sale of real property.³⁸ In 1949, this no-deficiency rule was extended to the combined sale of personal and real property held both under a chattel mortgage and deed of trust or mortgage.³⁹ In 1963, the section was again changed,⁴⁰ though this time to limit the no-deficiency rule in purchase money security interests for the sale of real property to vendors as opposed to lenders.⁴¹ The rule was also amended at the same time, however, to expressly cover all residential real property occupied by as many as four families.⁴²

b. All Consumer Goods Except Motor Vehicles

In 1959, California adopted the Unruh Act,⁴³ California Civil Code § 1801 *et seq.*, to provide extensive regulation of consumer credit transactions over all consumer goods except motor vehicles. The Unruh Act, at the time of its original adoption, did not prohibit the use of the deficiency judgment. It did, however, restrict its use to retail installment contracts where, by the time of default, the buyer had not yet paid an amount equal to 80 percent or more of the total contract price.⁴⁴ Later, in 1963, the Act was amended to prohibit the availability of “any” deficiency judgment under a retail installment contract for consumer goods covered by the Act.⁴⁵

³⁷Ch. 642, § 5, [1933] Cal. Stats. 1673.

³⁸“No deficiency judgment shall lie in any event after any sale, or under a deed of trust, or mortgage, given to secure payment of the balance of the purchase price of real property.” *Id.*

³⁹Ch. 1599, § 1, [1949] Cal. Stats. 2846.

⁴⁰Ch. 2158, § 1, [1963] Cal. Stats. 4500.

⁴¹*Id.* See also *Review of 1963 Code Legislation*, 38 CALIF. B. J. 601, 671 (1963).

⁴²Ch. 2158, § 1, [1963] Cal. Stats. 4500.

⁴³Ch. 201, § 1, [1959] Cal. Stats. 2092.

⁴⁴CAL. CIV. CODE § 1812.5 (West Supp. 1960).

⁴⁵CAL. CIV. CODE § 1812.5 (West Supp. 1971), *amending* CAL. CIV. CODE § 1812.5 (West Supp. 1963).

c. Attempts to Abolish the Deficiency Judgment in the Sale of Motor Vehicles

There have been five separate proposed amendments since 1963, attempting to prohibit or restrict the deficiency judgment in automobile sales. The first four proposals were all reported from various Senate and Assembly committees without further action.⁴⁶ The fifth proposal, in 1970, passed through the Assembly and failed to pass by only one vote in the Senate Judiciary Committee.⁴⁷ The sponsor of this bill, Assemblyman Henry Waxman, has already reintroduced the bill in the 1971 Legislative Session.⁴⁸

For the present, however, the automobile deficiency judgment remains in California, just as deficiency judgments in all conditional sales are permitted in every other state.⁴⁹

B. THE DEFICIENCY JUDGMENT IN ACTUAL PRACTICE

1. SPECIFIC PROVISIONS OF THE REES-LEVERING ACT

The Rees-Levering Act replaced California's original Automobile Sales Act in 1962.⁵⁰ As complimented by Article 9 of the California Commercial Code,⁵¹ Rees-Levering provides that upon the buyer's default in a motor vehicle conditional sales contract, the seller or other holder of the contract has the right to repossess the automobile.⁵² This may be done without any prior notice to the buyer and without judicial process, so long as the repossession does not breach the peace.⁵³ The buyer may, however, redeem the vehicle at any time

⁴⁶CAL. A. B. 2504, 1963 Reg. Sess. This bill, introduced by Assemblymen Beilenson and Zenovich, proposed to restrict the deficiency judgment to cases where less than 80% of the total contract price had been paid prior to default; CAL. A. B. 220, 1967 Reg. Sess. This bill, sponsored by Assemblymen Ralph, Roberti, Brown, and Negri, would have prohibited the deficiency judgment in all conditional sales; CAL. S. B. 1111, 1968 Reg. Sess. This, Senator Petri's bill, also proposed to abolish all deficiency judgments; CAL. A. B. 1788, 1969 Reg. sess. This, Assemblyman Waxman's bill, also proposed to abolish all deficiency judgments.

⁴⁷CAL. A. B. 536, 1970 Reg. Sess., *as amended* April 3, 1970 and August 3, 1970, proposed to abolish the deficiency judgment only in the sale of "used" vehicles, as defined in CAL. VEH. CODE § 665.

⁴⁸CAL. A. B. 620, 1971 Reg. Sess.

⁴⁹Curran, TRENDS IN CONSUMER CREDIT LEGISLATION 112 (1965).

⁵⁰Ch. 1626, § 4, [1961] Cal. Stats. 3538.

⁵¹CAL. COMM. CODE § 9203(2) (West 1964).

⁵²CAL. CIV. CODE §§ 2983.2 and 2983.3 (West Supp. 1971); CAL. COMM. CODE § 9503 (West 1964).

⁵³CAL. COMM. CODE § 9503 (West 1964).

before the seller has disposed of it.⁵⁴

The repossessed automobile may then be sold to anyone, including the secured party,⁵⁵ at either public or private sale.⁵⁶ At least ten days' written notice of intent to sell the repossessed vehicle must be given to all persons liable on the contract.⁵⁷ This notice must be given to all persons liable on the contract.⁵⁷ This notice must be either personally served or sent by certified mail, return receipt requested.⁵⁸

Rees-Levering, the reader should note, imposes no limitations on the vendor's resale procedure. The Commercial Code, on the other hand, does require him to act in a "commercially reasonable" manner.⁵⁹ The vendor can be compelled to reimburse the buyer for any damages resulting from violations of this requirement.⁶⁰

The secured party is not required to resell the vehicle. He may propose to retain it as a discharge of the buyer's obligation, so long as he first gives the buyer written notice of such proposal, and he receives no notice of written objection from the buyer within 30 days.⁶¹

The proceeds of the resale (the actual resale price less any credits for statutorily required rebates on the finance charge⁶² and prepaid insurance premiums⁶³) are to be applied, first, to the expenses of retaking, holding, preparing for sale, and selling the vehicle, including attorney's fees and court costs; the remaining proceeds are then applied to the indebtedness between the buyer and the repossessing secured party.⁶⁴ Any surplus must be returned to the buyer.⁶⁵ But so

⁵⁴CAL. COMM. CODE § 9506 (West 1964).

⁵⁵CAL. COMM. CODE § 9504(3) (West 1964).

⁵⁶*Id.*

⁵⁷CAL. CIV. CODE § 2983.2 (West Supp. 1971).

⁵⁸*Id.*

⁵⁹CAL. COMM. CODE § 9507 (West 1964). This amorphous requirement has not been sharply defined nor vigorously enforced by the California courts with regard to resale of motor vehicles. The only case to have reached the appellate level, *Hill v. Dominguez*, 138 Cal. App. 2d Supp. 891, 291 P.2d 203 (1956), is of little value in this respect. The court in that case held that a subsequent resale of the automobile within two weeks for more than twice the initial resale price (\$2810.31 vs. \$1400.00) was "persuasive proof that the seller did not use ordinary care to obtain the best price obtainable and hence failed to discharge his legal duty to the buyer." This single case in the area leaves uncertain how much less a difference in the resale prices than this, will result in a failure to discharge the duty owed the buyer. *See also* CAL. COMM. CODE § 9507(2) (West 1964).

⁶⁰CAL. COMM. CODE § 9507(1) (West 1964).

⁶¹CAL. COMM. CODE § 9505(2) (West 1964).

⁶²CAL. CIV. CODE § 2982(c) (West Supp. 1971).

⁶³CAL. INS. CODE §§ 481-483, 779.14 (West 1955); CAL. GOVT. CODE § 11409 (West 1966) and 10 CAL. ADM. CODE § 2248.10.

⁶⁴CAL. COMM. CODE § 9504(1) (West 1964).

long as the buyer is given the required written notice of this possible liability 60 days before repossession, the secured party may also collect any deficiency.⁶⁶ As will be seen below, while inspecting the realities of this system in practice, the seller almost always recovers a deficiency against the defaulting buyer.⁶⁷

2. A HYPOTHETICAL OF THE DEFICIENCY JUDGMENT IN PRACTICE

The law outlined above appears on its face to be a rational and equitable system. In practice, however, it is not. A typical automobile sales transaction will serve to place the deficiency judgment problem in perspective. Recent studies made by legal aid societies in Santa Clara⁶⁸ and San Diego⁶⁹ counties, California, provide the statistics for this transaction.

John Luckless, let us assume, purchases a recent model used car. The contract price is \$2800 (\$2200 purchase price plus \$600 finance and insurance charges). John makes a down payment of \$300 (either from his own savings or from a side loan the dealer helped him obtain⁷⁰), and promises to pay the balance in 24 monthly installments. After making ten \$100 monthly payments, John runs into financial difficulties. Assume he has just been laid off his job at a de-escalating national defense installation.⁷¹ John cannot make his next payment and therefore defaults. After subtracting the credit for the statutorily required rebate on finance and insurance charges, John now owes \$1400 (\$1500 balance, minus the \$100 rebate⁷²).

The car is now repossessed, either by agents of the dealer or of the lending institution to whom the dealer has assigned John's obligation. If a lending institution is involved, it usually has a recourse type

⁶⁵CAL. COMM. CODE § 9504(2) (West 1964).

⁶⁶CAL. CIV. CODE § 2983.2 (West Supp. 1971).

⁶⁷See note 80, *infra*.

⁶⁸Bowen, Greene, Schwartz & Westinghouse, A Proposal for a Revised Procedure After Default on a Conditional Sales Contract for a Motor Vehicle in California, 1970 (unpublished article in Stanford Law School Legal Aid Society Library) [hereinafter referred to and cited as the Santa Clara Study].

⁶⁹Enstrom, 56 A.B.A.J. 364 (1970) [hereinafter referred to and cited as the San Diego Study].

⁷⁰CAL. CIV. CODE § 2982.5(b) (West Supp. 1971).

⁷¹D. CAPLOVITZ, DEBTORS IN DEFAULT pt. 4 at 8, January 1970 (study conducted through the Bureau of Applied Social Research, Columbia University, New York) [hereinafter referred to and cited as the Caplovitz Study], indicates that most default-debtors default due to loss of work.

⁷²COMM. ON THE CONTINUING EDUCATION OF THE BAR, STATE BAR OF CALIFORNIA; CALIFORNIA RETAIL INSTALLMENT SALES § 2.45 (1969) [hereinafter cited as CALIFORNIA RETAIL INSTALLMENT SALES].

contractual agreement with the dealer.⁷³ Under such an agreement, upon the buyer's default, the dealer is obliged to buy back the car from the institution for the amount equal to the balance owed on the contract. Assuming a lending institution is in the picture here, and assuming it has such a recourse type arrangement with the dealer, then one of the most commonly used resale procedures is as follows: The original dealer "buys-back" the repossessed car from the institution for \$1400, the balance due on John's contract. In the process, the dealer gives the financial institution two checks to cover the balance due.⁷⁴ One check is equal to the wholesale price of the car, in John's case, \$1000. The other fulfills the remainder of the dealer's obligation to the institution, in John's case, \$400. The \$1000 wholesale price is considered the resale price, and therefore the basis for determining the deficiency judgment claim. John owes a net deficiency, then, of \$400.

Another popular manner of resale used in those cases where the financier does not have a recourse contractual arrangement with the dealer who sold the car is as follows. First, the credit grantor, either the lending institution or the dealer, has his agent repossess the car. He then "resells" it at either public or private sale, to himself or to a friendly dealer with whom he has a reciprocal arrangement.⁷⁵ The resale price obtained in this type of arrangement is typically the wholesale price of the car or less.⁷⁶ Assuming in John Luckless's case that the car is resold for \$1000, the net deficiency claim against him would again be \$400 (the contract balance of \$1400 less the resale price of \$1000).

No matter which of the above procedures is used, therefore, the proceeds from the first resale are typically no greater than the car's wholesale value. "Thus the first resale of the car is by 'public' or by private sale, either to the reposessor himself or to another automobile dealer, but not to a retail customer."⁷⁷

⁷³Shuchman, *Profit on Default: An Archival Study of Automobile Repossession and Resale*, 22 STAN. L. REV. 25, 29 (1969) [hereinafter referred to and cited as the Shuchman Study].

⁷⁴*Id.*

⁷⁵Under this arrangement dealer A agrees with dealer B that each will buy the other's repossessed automobiles for an established fraction of their true market value. This type arrangement has been used for many years in California, according to testimony found in Assembly interim hearings. See ASSEMBLY INTERIM COMMITTEE ON FINANCE AND INSURANCE, FINAL REPORT, Ass. Int. Comm. Reports, Vol. 15, No. 24 (1959-1961) [hereinafter cited as FINAL REPORT]. Transcripts of the Committee's hearings held in Los Angeles, May 17, 1960, and San Francisco, August 5, 1960, may be found in the Documents Section of the Library of the University of California, Berkeley.

⁷⁶Shuchman Study, *supra* note 73, at 30.

⁷⁷*Id.*

To John's net deficiency claim are next added repossession expenses (usually \$50 to \$150),⁷⁸ reconditioning expenses, interest from the date of repossession, court costs, and attorney's fees (typically \$150).⁷⁹ The total gross deficiency for which John would be liable is \$650.

The car is then resold a second time, by he who purchased it for the wholesale price, whether it be a second dealer or the original dealer himself. The price received upon this latter resale is typically much higher than the former.⁸⁰ A marked disparity exists, therefore, between the first (wholesale) resale price, which forms the basis for determining the deficiency, and the subsequent (retail) resale price.

To summarize where the various parties to the original automobile sale transaction stand, therefore, we find that the credit grantor has realized his entire profit on the original sale of the car. He has also gained the favor of the car dealer purchasing on resale, who, by being able to buy the car cheaply and thereby to make a handsome profit on it, will in the future, undoubtedly repay him in kind.⁸¹ The buyer, John Luckless, on the other hand, has gained nothing. Not only has he paid out \$1300 for the mere use of the car for ten months, having been deprived of its ownership now, but he also must still pay \$650. In all likelihood, a collection agency may soon be knocking at his door. After a typical default judgment,⁸² whatever non-exempt property he owns may be levied upon⁸³ and/or his wages may be garnished.⁸⁴

III. ARGUMENTS FOR AND AGAINST THE DEFICIENCY JUDGMENT

A. ARGUMENTS AGAINST

1. UNFAIR TO CONSUMERS AS PRESENTLY ABUSED

a. Creditors' Abuses

The deficiency judgment is not *intrinsically* illogical or unfair. "It

⁷⁸Santa Clara Study, *supra* note 68, pt. D at 9.

⁷⁹*Id.*

⁸⁰Shuchman Study, *supra* note 73, at 23.

⁸¹*Id.* at 29. *See also* note 75, *supra*.

⁸²*Id.* at 36; Santa Clara Study, *supra* note 68, pt. D at 6.

⁸³CAL. CODE CIV. PROC. § 681 *et seq.* (West 1955).

⁸⁴CAL. CODE CIV. PROC. § 537 *et seq.* (West Supp. 1971); 15 U.S.C. §§ 1671-1677 (Supp. V, 1965).

is elementary justice that the seller who has parted with his goods should have the contract price of them. If the resale price plus the part payments previously made do not equal the contract price, the buyer should pay the deficiency."⁸⁵ The seller, in other words, ought to be put in as good a position as he would have been had the contract not been breached.⁸⁶ He ought to get the full benefit of his bargain. In practice, however, abusive reliance upon the deficiency judgment by many creditors has proved unfair to consumers. Abuse of the deficiency judgment begins with the secured party's wholesale resale procedure. As seen above,⁸⁷ this procedure includes at least a tacit reciprocal agreement between the original dealer or lending institution and the automobile dealer-purchaser on resale. Under this agreement, the latter buys the automobile for a deflated resale price.⁸⁸ The consideration to an institutional lender would be the continued trade of the purchasing dealer. The consideration to the original dealer would be future in-kind bargains from the second dealer. After the defaulting buyer's deficiency is computed, the vehicle is resold a second time at a much higher price, invariably reflecting the true retail market value of the automobile.⁸⁹

The Shuchman Study⁹⁰ found, for instance, that the price of the first resale averaged only 51% of the "Redbook"⁹¹ retail price and 71% of "Redbook" wholesale price of the car on the day of repossession.⁹² The Santa Clara Study, by using more liberal techniques in favor of secured parties,⁹³ found that the first resale price averaged only 73 percent of the "Bluebook"⁹⁴ retail price of the car on the day

⁸⁵Bogert, *supra* note 22, at 22.

⁸⁶*Id.* See also CAL. COMM. CODE §§ 2706(1) and 2708 (West 1964).

⁸⁷See text accompanying notes 68-84, *supra*.

⁸⁸Shuchman Study, *supra* note 73, at 23.

⁸⁹*Id.* at 31 n.43.

⁹⁰This was an archival study conducted by Professor Philip Shuchman in the State of Connecticut. See note 73, *supra*.

⁹¹The *Redbook* is a publication of the National Automotive Publishers. It lists by model and year (and standard equipment packages) three prices for all automobiles: The retail, wholesale, and finance values. It is published eight times a year and broken down by geographic areas. *Id.* at 27 n.28. The West Coast edition is known as the *Bluebook*.

⁹²*Id.* at 31 n.44.

⁹³Professor Bowen and his associates used only the resale price between the original dealer and the second dealer as the basis from which the hypothetical deficiency judgment was calculated. They disregarded the fact that the price actually used may have been that agreed upon by an original credit grantor institution and the original car dealer. This price would undoubtedly have been lower than the one used in the study. This lower price would have produced a correspondingly higher deficiency claim. See Santa Clara Study, *supra* note 68, pt. D at 2.

⁹⁴*Bluebook* and *Redbook* are the same publication. The former is used in the Western United States, the latter in the Eastern United States. See note 91, *supra*.

of repossession.⁹⁵

Indirectly, therefore, through mutual backscratching, many secured automobile creditors are reaping extra profits from defaulting consumers. And the desire to maintain this plush position has, in turn, caused these creditors to rely heavily on default-oriented business.⁹⁶

The first manifestation of this reliance is the overextension of credit. Because they want to sell as many automobiles as possible in an inflationary, tight-monied,⁹⁷ and therefore extra competitive market,⁹⁸ and because they know they can always repossess and sue for a deficiency, automobile financiers are extending easy credit to poor credit risks.⁹⁹ These buyers are lured into deals by the popular gimmicks of low or no down payments, no credit checks, and long term credit financing.¹⁰⁰

The San Diego Study clearly substantiates the claim that many vehicles are being sold at higher prices and with much more extension of credit than warranted. This is demonstrated first by the statistical relation between the low down payment with respect to the total purchase price, and second by the high cost of financing with relation to the purchase price.¹⁰¹

Although it might seem a noble gesture at first sight, this easy extension of credit to the poor credit risk is unhealthy both for him and the economy as a whole. What was said with respect to regulation under the Unruh Act¹⁰² is no less relevant here:

If large numbers of such people [poor credit risks] are induced to contract . . . beyond their ability to pay, there is a serious danger to the whole economy. . . . [T]he paramount interest of the general public over and above the rights of the sellers and buyers should be the determining factor.¹⁰³

Many of the restrictions imposed by the proposed bill are directed toward attracting more attention to the *quality* of the installment debt rather than to the aggregate of installment debt

⁹⁵Santa Clara Study, *supra* note 68, pt. D at 8.

⁹⁶Shuchman Study, *supra* note 72, at 42. *See also* U.S. FEDERAL TRADE COMM'N, ECONOMIC REPORT ON INSTALLMENT CREDIT AND RETAIL PRACTICES OF DISTRICT OF COLUMBIA RETAILERS xv (1968) [hereinafter cited as U.S. FEDERAL TRADE COMM'N].

⁹⁷*See* note 168, *infra*.

⁹⁸*Outlook - Business and Finance*, L.A. Times, June 7, 1970, § 1, at 1.

⁹⁹San Diego Study, *supra* note 69, at 366.

¹⁰⁰FINAL REPORT, *supra* note 75, at 19 and 29.

¹⁰¹San Diego Study, *supra* note 69, at 366.

¹⁰²CAL. CIV. CODE § 1801 *et seq.* (West Supp. 1971).

¹⁰³ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE, FINAL REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, Ass. Int. Comm. Reports, Vol. 15, No. 22, at 86-87 (1959) [hereinafter cited as Unruh FINAL REPORT].

outstanding. . . . If installment credit is sound in individual cases, it is then likely to be sound in the aggregate.¹⁰⁴

The second manifestation of automobile creditors' reliance on default oriented business is a high rate of repossession. According to the findings of the Shuchman Study and of the Federal Trade Commission in a recent District of Columbia survey,¹⁰⁵ repossession is more frequently¹⁰⁶ and more readily resorted to than ever before.¹⁰⁷ Only slight untimeliness in making a payment can bring the "night visitors"¹⁰⁸ to the buyer's doorstep. One cannot, in this context, dismiss the matter as the derelictions of a few "deadbeats."¹⁰⁹

This manifestation of the default business mentality, just like the overextension of credit, has its own bad effects on the economy and society as a whole. Of primary importance with specific reference to repossession is a growing disrespect for the rule of law among a large segment of our population. This effect will be discussed in some detail below.¹¹⁰

b. Bad Social Effects

There are a number of bad effects flowing from the reliance on the deficiency judgment in addition to the overextension of credit and excessive repossessions. These effects are termed "social" because they more visibly affect the community at large than do the former. At the outset it should be noted that the more general "social" effects do not derive solely from the existence of the deficiency judgment. They would arise in the event of default, to some extent, even in the absence of the deficiency judgment. They are, however, critically intensified by the existing abusive reliance on the deficiency judgment, and concomittant overextension of credit and high rate of repossession.

To better understand the context in which these general social effects arise, the plight of the "typical" defaulting buyer¹¹¹ against whom a deficiency has been assessed will be delineated.

After the buyer defaults, the creditor, or collection agency to whom

¹⁰⁴PRELIMINARY REPORT OF SUBCOMMITTEE ON LENDING AND FISCAL AGENCIES, Ass. Int. Comm. Reports, Vol. 15, No. 19, at 17 (1958) (emphasis in original) [hereinafter cited as PRELIMINARY REPORT].

¹⁰⁵See Shuchman Study, *supra* note 73, at 42; U.S. FEDERAL TRADE COMM'N, *supra* note 96, at xv.

¹⁰⁶Immel, *The Night Visitors—Repossession Practices For Cars Called Unfair to Defaulting Buyers*, the Wall Street Journal, June 21, 1970, at 1 [hereinafter cited as *The Night Visitors*].

¹⁰⁷See Shuchman Study, *supra* note 73, at 42 n.89.

¹⁰⁸*The Night Visitors*, *supra* note 106, at 1.

¹⁰⁹Shuchman Study, *supra* note 73, at 42.

¹¹⁰See text accompanying notes 130-134, *infra*.

¹¹¹"Typical" refers to "average figures" as compiled in the Santa Clara Study, *supra* note 68, and the San Diego Study, *supra* note 69.

the contract has been sold,¹¹² ordinarily garnishes the buyer's wages.¹¹³ Although recent federal legislation outlaws employers from willfully firing employees whose wages are garnished,¹¹⁴ it is too early to know what impact this legislation will have on this heretofore common practice.¹¹⁵ Assuming, however, the buyer is not fired, he will then find one-quarter of his net wages gone every pay day until the debt, now increased by the addition of garnishment costs,¹¹⁶ is paid.¹¹⁷

The buyer at this point usually finds himself in difficult economic straits. Already burdened with too many debts, he finds it practically impossible for his family to survive on three-quarters of his previous salary.¹¹⁸ He must take some action to alleviate this dilemma.

It is unlikely that the buyer will obtain another loan. First, because of the previous default, his credit rating has further suffered. More importantly, he undoubtedly fears incurring a debt which would but replace the existing burden on his already meager income.¹¹⁹

Rather than obtaining a new loan, buyers typically take one or both of two alternative actions: They either declare bankruptcy or quit work so that their families can receive welfare.¹²⁰ These choices introduce us to the additional bad social effects caused by the deficiency judgment.

(i.) Increased Number of Bankruptcies

Garnishment having precipitated the buyer's insolvency, bankruptcy often appears the most attractive alternative available. The popularity of this alternative is demonstrated by a 1961 California State Assembly Interim Committee report on Finance and Insur-

¹¹²WAGE GARNISHMENT—IMPACT AND EXTENT IN LOS ANGELES COUNTY 22-23, 1968 (study conducted for the Univ. of Southern Calif. Western Center on Law and Poverty) [hereinafter referred to and cited as the L.A. Study].

¹¹³See Shuchman Study, *supra* note 73, at 37; *see also* note 84, *supra*.

¹¹⁴15 U.S.C. §§ 1671-1677 (Supp. V, 1965).

¹¹⁵This practice has existed because many employers refuse to absorb the administrative costs of garnishing employees' wages. *See generally* Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 CALIF. L. REV. 1214 (1965).

¹¹⁶United States Marshalls who typically carry out the garnishment procedure are allowed fees for their trouble, including mileage costs. *See generally* Article, *Attachment and Garnishment in California*, 4 U.C.D.L. REV. 57 (1971).

¹¹⁷15 U.S.C. §§ 1672 and 1673 (Supp. V, 1965).

¹¹⁸The L.A. Study, *supra* note 112, revealed that more than 50 percent of those employees whose wages were garnished had a take-home pay of less than \$120 per pay period, and one-fourth had a take-home pay of less than \$100 per pay period. *Id.* at 15.

¹¹⁹*Id.*

¹²⁰42 U.S.C. § 607 (Supp. V, 1965); CAL. WELF. & INST. CODE §§ 11250-11265 (West Supp. 1971).

ance,¹²¹ in which it was estimated that between 25 and 50 percent of the bankruptcies in the State are the result of deficiency judgments on installment contracts.¹²²

Once the buyer has filed for bankruptcy, both he and his creditors incur losses. The buyer has still further worsened his credit rating and status in the community, not to mention the loss of pride and self-esteem that he and his family must endure. The buyer's creditors, including the automobile financier, have also lost. Although the secured automobile financier does not have to return the repossessed car, his unsecured deficiency claim is merged with the claims of the buyer's other unsecured creditors.¹²³ The claims of the latter, moreover, already diluted by the unnecessarily inflated deficiency judgment of the former, are typically much greater than the buyer's assets, and are therefore discharged with little or no payment.¹²⁴

(ii.) Increase in the Welfare Rolls

If the defaulting buyer cannot afford the legal expenses involved in filing a bankruptcy,¹²⁵ his only remaining alternative for economic survival is to quit work so that his family can receive welfare.¹²⁶ At this point the buyer's debt has become immune to garnishment. Although he may be pressured and harassed by the garnishor to pay his debt,¹²⁷ California law plainly forbids any public assistance funds from being used for this purpose.¹²⁸

Once the buyer has lost or given up his job and his family has begun

¹²¹UNRUH FINAL REPORT, *supra* note 103, at 74 and 85.

¹²²*Id.* Although the deficiency judgment has been abolished on all consumer goods except motor vehicles since the publication of this report, trustees in bankruptcy have assured us that the number is still very substantial. Letter from Robert Loheit, Trustee in Bankruptcy for the United States District Court, Northern District of California, to Assemblyman Henry Waxman, 1969.

¹²³11 U.S.C. §§ 35 and 103 (Supp. V, 1965).

¹²⁴*See* L.A. Study, *supra* note 112, at 89 n.24. *See also* Countryman, Proposed New Amendments for Chapter XIII, 22 BUS. LAWYER 1151, 1155 (1967) [hereinafter cited as Countryman].

¹²⁵Notice that Chapter XIII is a viable alternative to straight bankruptcy, where costs are an issue. *See* Countryman, *supra* note 124, at 1155. But Chapter XIII proceedings are only offered in a few areas throughout the state. *See generally* Article, *Number Eight and Still Trying Harder—An Analysis of Chapter XIII in Sacramento*, 4 U.C.D.L. REV. 301 (1971).

¹²⁶42 U.S.C. § 607 (Supp. V, 1965); CAL. WELF. & INST. CODE §§ 11250-11265 (West Supp. 1971). *See generally* CAPLOVITZ Study, *supra* note 71. This study shows that of those debts which resulted from purchases under conditional sales contracts (70%), automobile debts led to wage garnishment more often than any other (26%). *Id.*, pt. 3 at 4 and 9. Further data shows that of those who quit or lost their jobs, 31 percent applied for unemployment insurance, 82 percent of those applying receiving it. Of the 16 percent who applied for welfare aid 64 percent received it. *Id.*, pt. 13.

¹²⁷L. A. Study, *supra* note 112, at 102.

¹²⁸CAL. WELF. & INST. CODE § 11002 (West Supp. 1971).

to receive welfare payments, no one has benefitted, not the buyer, not the dealer, not the community. The buyer, to be specific, has lost his job, and has suffered the humiliation of having his family become welfare recipients. Furthermore, there is an incentive for him to remain in this position, considering his freedom from debt which he feels he should not have to pay and the constant threat that he will again be liable for the debt whenever he takes a new job and removes his family from the welfare rolls.¹²⁹ The dealer, although he has not lost money on the deal, has neither gained the extra profit he has so diligently sought. And the community at large, the public taxpayers, are also losers. They bear the burden of increased welfare costs and, moreover, are deprived of the labor and skills of the buyer in the work force.

(iii.) Disrespect for Rule of Law Engendered

The deficiency judgment causes yet another bad social effect, this one unrelated to the particular economic predicament of the buyer. The deficiency judgment, by leading to a higher rate of repossessions, is creating a growing disrespect for the rule of law among its victims—a large and increasing segment of our population. This loss of respect has manifested itself in the form of increased self-help and crime.

Consumer groups, for instance, have been forming to fight back at unfair creditors' practices throughout the country. These groups avoid legal disputes in favor of self-help tactics such as picketing.¹³⁰

Increased crime has also clearly resulted from this loss of respect. Repossession men, for instance, have made it standard operating procedure to work at night, in order to avoid increasing consumer resistance.¹³¹ Two repossessors were, in fact, recently shot to death in the Los Angeles area.¹³² It was pointed out by the National Advisory Commission on Civil Disorders (The Kerner Commission), furthermore, that among the most intense grievances underlying the riots of the summer of 1967 were those that derived from conflicts between ghetto residents¹³³ and merchants.¹³⁴

2. AN UNNECESSARY DEVICE

Not only is the deficiency judgment unfair to consumers and the

¹²⁹See L. A. Study, *supra* note 112, at 102-105.

¹³⁰See San Diego Study, *supra* note 69, at 365.

¹³¹*Id.* at 364-365. See also *The Night Visitors*, *supra* note 106.

¹³²See *The Night Visitors*, *supra* note 106, at 1.

¹³³Many default debtors are very likely to also be ghetto dwellers, because the most "typical" default debtor is a male Negro, relatively uneducated, with an average per year income from \$3,000-\$6,000. See L.A. Study, *supra* note 112, at 14-15.

¹³⁴NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 139-141 (1968).

community as presently abused, it is also unnecessary under existing California law and commercial conditions.

As discussed earlier, the espoused purpose behind the deficiency judgment has been to prevent creditors from suffering losses at the hands of defaulting buyers.¹³⁵ In order, therefore, to determine whether the deficiency judgment is still needed to effectuate that purpose, we must examine the possible sources of loss which the seller might experience after default, in the absence of the deficiency judgment. The two most likely sources of loss, that is, reasons why the value of the repossessed vehicle might not cover the remaining balance due from the debtor, are physical damage to the vehicle and/or ordinary depreciation. In fact, however, losses from these two causes generally do not, or need not occur.

Loss to the seller because of damage to the vehicle can immediately be discounted. Most dealers seldom suffer loss due to physical damage¹³⁶ because they typically require collision and comprehensive insurance on most newer model cars sold with the premiums normally paid for by the buyer.¹³⁷ Consequently, they are compensated for any substantial damage.

The other source of possible loss is depreciation. Due to changing market conditions and general wear and tear on the automobile, sellers fear that in most cases, its resale will not yield enough to cover the remaining debt. Consequently, a deficiency judgment is necessary to recover the difference. As discussed below also,¹³⁸ this fear has little or no basis in fact. First, any decrease in value from depreciation could be made up at least in part to the seller if the car were resold at retail rather than wholesale. Second, studies show that the average default takes place eleven or twelve months after the sale; consequently, according to a comparison of "Bluebook" retail prices between selected 1969 and 1970 automobiles, it is more than likely that any reduction in the value of the repossessed car due to depreciation will be fully offset by the amount already paid under the contract by the time of default.¹³⁹

¹³⁵See note 21, *supra*.

¹³⁶See note 148, *infra*.

¹³⁷Shuchman Study, *supra* note 73, at 31 n.48.

¹³⁸See text accompanying notes 174 and 175, *infra*. *But see* Williams v. Caruso Enterprises, Inc., 140 Cal. App. 2d 973, 980, 295 P.2d 592, 597 (App. Dep't Super. Ct. 1956).

¹³⁹The Shuchman and Santa Clara Studies both show that most automobile buyers default within an 11-12 month period after sale. Schuchman Study, *supra* note 73, App'x 1; Santa Clara Study, *supra* note 68, pt. D at 1.

The San Diego Study shows that at the time of repossession the "typical" buyer had paid \$1066 on an automobile costing \$2,058. San Diego Study, *supra* note 69, at 366.

In conclusion, the deficiency judgment does not appear generally necessary to prevent sellers' losses upon default.

B. ARGUMENTS FOR AND REBUTTALS

1. THE DEFICIENCY JUDGMENT AS A DETERRENT

a. Deterrent to Default

The first argument in favor of the deficiency judgment is that it deters buyers from defaulting and engenders a feeling of financial responsibility.¹⁴⁰ Without it, its supporters claim, there would be nothing to stop unscrupulous persons from working a fraud on creditors by their habitually buying and then failing to make payments.¹⁴¹

Rebuttal

The deficiency judgment does not deter the typical consumer from defaulting. First, it is doubtful whether many consumers are aware of the remedy's existence. Even many law school graduates are surprised to learn that they may be liable for a debt on an automobile contract after the automobile has been repossessed.¹⁴² It is questionable whether the average consumer is better informed.

Assuming, *arguendo*, that an average consumer were aware and cognizant of the remedy's threat, it still would probably not deter him

A comparison of Bluebook retail prices of selected 1969 and 1970 automobiles costing substantially more than \$2,058 reveals an average 12 month depreciation loss of \$598, an amount substantially less than what the average defaulting buyer invested even in the \$2,058 automobile.

The conclusion is that in most cases, creditors' losses due to depreciation should be more than offset by what buyers have paid in before default.

The automobiles whose prices were compared were chosen from each of the three major American automobile manufacturers, plus one make from both Japan and West Germany. They were also selected on the basis of retail price, an attempt being made to include representative models from different price ranges. The price range itself was limited to models selling between \$2,000 and \$3,200 in 1970.

The automobiles and their respective depreciation losses are as follows: (1) \$2,000 range-Toyota HT \$300, Volkswagen sedan \$240; (2) \$2,300 range-Chevrolet Nova V-8 sedan \$395; (3) \$2,500 range-Ford Fairlane sedan \$575, Dodge Dart Swinger V-8 HT \$420, Dodge Coronet Delux sedan \$510; (4) \$2,600 range-Ford Torino sedan \$425, Chevrolet Malibu sedan \$455; (5) \$2,700 range-Ford Mustang 6 \$425; (6) \$2,800 range-Ford Galaxy sedan \$665, Chevrolet Impala V-8 sedan \$665; (7) \$3,000 range-Dodge Monaco V-8 sedan \$695; (8) \$3,100 range-Dodge Charger 500 V-8 HT \$695; and (9) \$3,200 range-Chevrolet Caprice HT \$700. S. and R. KELLY, BLUE BOOK (Nov.-Dec. 1970) 44-245. See also note 91, *supra*.

¹⁴⁰*The Night Visitors*, *supra* note 106, at 1.

¹⁴¹Letter from "Kent's Cars" (San Diego) to Assemblyman Henry Waxman, 1969.

¹⁴²Kripke, *Consumer Credit Regulations: A Creditor-Oriented Viewpoint*, 68 COLUM. L. REV. 445, 481 n.104 (1968) [hereinafter cited as Kripke].

from defaulting. This is because most debtors do not default intentionally or by reason of culpable mismanagement. According to a recent study made by Professor David Caplovitz in four major metropolitan areas in the Eastern United States,¹⁴³ 54 percent of the first reasons given for defaults were various involuntary misfortunes of the debtor such as loss of income or marital difficulties. Another 22 percent of the first reasons given attributed default to the creditor's conduct in some respect, as, for instance, fraud or ambiguity in the terms of payment. Only 24 percent of the first reasons given placed the blame on the debtor's voluntary overextension of obligations or other obligations or other financial irresponsibility.¹⁴⁴ Many of the latter kinds of defaults could be avoided by greater caution on the part of the creditor in extending credit in the first place. And although there are some who make it a practice of deceiving creditors, who plan never to fully pay for the cars they purchase,¹⁴⁵ these are an extremely small percentage of total buyers.¹⁴⁶

b. Deterrent to Damage

Proponents of the deficiency judgment also fear that without it more repossessed cars will become damaged. Even now, some assert, with the deficiency judgment, most repossessions are "banged up, dirty and not cared for".¹⁴⁷

Rebuttal

As to this alleged deterrence value one must again make the questionable assumption that buyers are aware of the deficiency judgment's existence. Again, despite this assumption, the deterrence value is miniscule.

In the first place, the Shuchman Study shows that most repossessed cars are not significantly damaged.¹⁴⁸ In the second place, because of common, dealer-required collision, fire, and theft insurance policies, dealers seldom lose anything due to damage.¹⁴⁹ The premiums on

¹⁴³See Caplovitz Study, *supra* note 71, pt. 1 at 25-29.

¹⁴⁴The Caplovitz Study showed that voluntary overextension of credit was the first reason given for 13 percent of the defaults of those debtors interviewed (which is arguably the fault of both debtor *and* creditor). It also found that *only 4 percent* of the defaults were primarily due to debtor irresponsibility. See Caplovitz Study, *supra* note 71, pt. at 8.

¹⁴⁵Kripke, *supra* note 142, at 480 n.102.

¹⁴⁶See note 144 *supra*. Arguably, the group of debtors who pre-plan their defaults before purchasing makes up just a small fraction of the 4 percent found to have defaulted by reason of "irresponsibility" in general.

¹⁴⁷*The Night Visitors*, *supra* note 73, at 31.

¹⁴⁸Shuchman Study, *supra* note 73, at 31.

¹⁴⁹*Id.* at 31 n.48.

these policies, furthermore, are ordinarily paid by the buyers.¹⁵⁰ Finally, “if a credit grantor acts responsibly the number of his repossession will be small, his losses insignificant”.¹⁵¹

2. THE DEFICIENCY JUDGMENT PERMITS WIDER CREDIT AVAILABILITY

The deficiency judgment, its proponents argue, gives automobile creditors freedom in which to offer credit to more persons and on easier terms.

a. Easier Credit Extension to Poor Credit Risks

The first benefit alleged to flow from this increased freedom of creditors is their ability to offer lower down payments. Lower down payments, in turn, are allegedly responsible for extending good transportation to more consumers, primarily those in the lower economic strata. Without the security of the deficiency judgment, they forewarn, dealers would not be willing to sell cars to anyone who does not have a very good credit rating.¹⁵² This would mean, then, that lower income people who might be able to make payments on such contracts, but who do not have good credit ratings, would be deprived of the opportunity to obtain the same reliable transportation as people of greater means. To alleviate this situation, many poor credit risks would be forced into the hands of loan sharks and financial institutions who could charge them much higher interest rates¹⁵³—a fate much worse than any inequities found in the current system.¹⁵⁴

Rebuttal

The deficiency judgment, it is conceded, may be one reason dealers are free to offer more credit. It does not necessarily follow, however, that this extension of credit actually benefits “low income consumers.” In the first place, although a large proportion of poor credit risks are low income consumers, the two groups are far from synonymous.¹⁵⁵ In the second place, the consequences that such low income consumers must endure upon default may well prove to outweigh the advantages of more liberal credit in the long run.

Moreover, it is doubtful whether dealers would simply refuse to sell cars to low income consumers if the deficiency judgment were abolished. It would seem logical, at least in theory, that such persons

¹⁵⁰*Id.*

¹⁵¹Ziegel, *Consumer Credit Regulation: A Canadian Consumer-Oriented Viewpoint*, 68 COLUM. L. REV. 488, 506 (1968) [hereinafter cited as Ziegel].

¹⁵²Kripke, *supra* note 142, at 482.

¹⁵³CAL. CIV. CODE § 22451 (West Supp. 1971).

¹⁵⁴Kripke, *supra* note 142, at 479.

¹⁵⁵L. A. Study, *supra* note 112, at 14-17.

would not be deprived of purchasing all cars, but only of purchasing the more expensive models. In this event, they would not be deprived of reliable transportation. This conclusion has in fact been proven in Canada.¹⁵⁶ Four provinces there now deny deficiency claims in all installment sales. But consumer credit has not been curtailed. According to Professor Ziegel's Study,¹⁵⁷ "The per capita volume of consumer credit is not lower in those Canadian provinces which have adopted a no-deficiency rule than in those which have not".¹⁵⁸ If the Canadian experience has any validity for our purposes, it seems clear there would be no demand for loan sharks, contrary to the horror story to that effect.

b. Lower Credit Costs to Good Credit Risks

The second benefit alleged to flow from creditors' resort to the deficiency judgment is the ability to offer lower credit costs to good credit risk consumers. Without the deficiency judgment, it is suggested, credit costs would have to rise for better credit risk consumers in order to offset financiers' losses incurred when poor credit risk consumers default.¹⁵⁹

Rebuttal

It is difficult to understand why credit costs would increase for good credit risk consumers. This argument is apparently built upon the assumption that automobile financiers will incur greater losses upon default without the deficiency judgment. According to the findings of the Shuchman Study, this is an erroneous assumption.¹⁶⁰ That study shows, to the contrary, that even without the deficiency judgment, if the first resale had been made at the retail "Redbook" price, the average price would have yielded 108% of the reposessor's net claim.¹⁶¹ Thus, it is evident that if credit grantors would retail repossessed automobiles with as much zeal as they did to the defaulting buyers, they would not lose their "original" profits.

This conclusion is supported by the Canadian experience, where there have been no reports of increased credit costs to the general consumer public after adoption of the no-deficiency rule.¹⁶² In accord is California's own experience with regard to sales of non-motor vehicle

¹⁵⁶Ziegel, *supra* note 151, at 504-506.

¹⁵⁷*Id.* at 505.

¹⁵⁸*Id.*

¹⁵⁹Felsenfeld, *Some Ruminations About Remedies in Consumer-Credit Transactions*, 8 B. C. IND. & COM. L. REV. 535 (1967).

¹⁶⁰Shuchman Study, *supra* note 73, at 32; *See also* Santa Clara Study, *supra* note 68, pt. D at 8.

¹⁶¹Shuchman Study, *supra* note 73, at 32 n.51.

¹⁶²*See* note 157, *supra*.

consumer goods under the Unruh Act.¹⁶³ Furthermore, even assuming creditors were to incur greater losses, it would seem only natural in light of their present practices, that they would raise only the price of credit for the poorer risks to compensate for those losses.¹⁶⁴

c. Stimulation of the Economy

A third benefit alleged to flow from the increased freedom of creditors provided by the deficiency judgment is stimulation and consequent strengthening of the economy.¹⁶⁵ This is accomplished first by an increased volume of sales due to easier credit terms, and second by increased work created by passing repossessed automobiles through more hands.

Rebuttal

The *quantity* of sales is not an accurate standard by which to judge the condition of the economy. More concern should be given to the *quality* of installment debt. "If installment credit is sound in individual cases, it is then likely to be sound in the aggregate."¹⁶⁶ In other words, if by the extension of easy credit, the poor credit risk consumer is not ultimately being benefited, neither is the economy as a whole likely to be. Credit in automobile sales, furthermore, is commonly being *overextended* to the poor credit risk, in reliance on a high default rate.¹⁶⁷

Neither is the economic stimulation caused by passing repossessed automobiles through many hands necessarily desirable in view of the bad effects these transactional turnovers may have in other areas. That is, increases in bankruptcy, welfare, and disrespect for the rule of law may well offset any general economic stimulation.

Finally, assuming the predictions of dealers and financiers should materialize, namely, that credit would be harder to get under a no-deficiency rule, this loss may not be particularly detrimental to our present economy. For years economists have been reminding us that the upward spiral of consumer credit feeds and perpetuates inflation.¹⁶⁸ Much concern has been expressed recently over the already too rapidly rising per capita consumer credit in this country.¹⁶⁹ It has reportedly risen from \$99 per person in 1948 to \$556 per person in

¹⁶³Hearings on the Proposed Uniform Consumer Credit Code Before the Subcomm. on Consumer Affairs of the House Committee on Banking and Currency, 91st Cong., 1st Sess., pt. 1, at 25 (1969).

¹⁶⁴Jordan & Warren, *Disclosure of Finance Charges: A Rationale*, 64 MICH. L. REV. 1285, 1321 (1966) [hereinafter cited as Jordan & Warren].

¹⁶⁵Kripke, *supra* note 142, at 481.

¹⁶⁶See PRELIMINARY REPORT, *supra* note 104, at 17.

¹⁶⁷Shuchman Study, *supra* note 73, at 42 n.91.

¹⁶⁸H. DOUGALL, CAPITAL MARKETS AND INSTITUTIONS, 96 and 156 (1970).

¹⁶⁹See note 171, *infra*.

1968.¹⁷⁰ President Nixon, in fact, has proposed federal laws to broaden the rights of consumers to deal with the problem, which to some is reminiscent of stock prices in the twenties.¹⁷¹ It seems reasonable, therefore, that the deficiency judgment could be, by aiding inflation, hindering rather than helping the present economy.

3. PROTECTS AGAINST HIGH DEPRECIATION LOSSES

Lastly, proponents of the deficiency judgment contend that the automobile's especially rapid depreciation rate makes the deficiency judgment an essential security device to financiers of automobile installment sales contracts.¹⁷² This argument is urged especially with respect to new cars, which often can lose several hundred dollars in value just by being driven out of the showroom.¹⁷³

Rebuttal

This argument may appear to have some validity with regard to the sale of new automobiles. They do lose a great deal of value within the first year after sale. Such is not the case, however, with regard to used cars. And at any rate, as pointed out *supra*,¹⁷⁴ depreciation would normally not prevent the creditor from recovering his full debt if the car were resold at retail and/or because of the proportionately greater amounts already paid by the buyer at the time of the average default. Furthermore, there should be little need for deficiency claims if credit grantors would protect themselves by more thorough credit investigations and decline to extend less easy credit to high risk consumers. Finally, the Canadian experience supports the fact that dealers can adapt to the no-deficiency rule with surprising ease. There have been no reports that automobile sales have dropped off or that greater losses have been incurred in those Canadian provinces which have adopted the no-deficiency rule.¹⁷⁵

¹⁷⁰See Memorandum in Support of Assembly Bill 1788, June 4, 1969, by Richard A. Elbrecht, Attorney, Legal Aid Society of Santa Clara County.

¹⁷¹115 Cong. Rec. H10309 (daily ed. Oct. 1969) (message from President Nixon to the Congress).

¹⁷²*The Night Visitors*, *supra* note 106, at 16.

¹⁷³See notes 91 and 94, *supra*.

¹⁷⁴See text accompanying notes 138 and 139, *supra*.

¹⁷⁵Ziegel, *supra* note 151, at 505.

IV. ALTERNATIVE PROPOSALS TO ERADICATE THE PROBLEMS CAUSED BY THE DEFICIENCY JUDGMENT

Herein are listed and critiqued several proposals to eradicate the problems that result from the availability and abuse of the deficiency judgment. Basically, there are two ways of dealing with the problems.

The first is to regulate the resale procedure of repossessed automobiles. The goal of this type of regulation is to require resales to be conducted in a commercially reasonable manner. A commercially reasonable resale would be a condition precedent to the collection of any deficiency claim.

The second way of dealing with the present dilemma is to either restrict or abolish the deficiency judgment. Restriction would attempt to limit the availability of the remedy to cases in which the chances of abuse are minimal. Abolition is offered as the most radical means to eliminate the problems that stem from the deficiency judgment. For the reasons that follow, the author favors this last proposal over the rest. It is the only measure which promises to fairly yet effectively end the many problems arising from the deficiency judgment.

A. RESTRICTIONS ON RESALE PROCEDURE

There are two common avenues through which states have attempted to prevent abuses by repossessioners upon the resale of cars. One requires strict notice to be given buyers.¹⁷⁶ The other requires repossessed vehicles be sold only at public sale.¹⁷⁷

1. NOTICE REQUIREMENT

Failure to give the defaulting buyer proper notice of resale has consistently been held commercially unreasonable behavior.¹⁷⁸ This requirement is founded on the implicit assumption that buyers will attempt to redeem, or at least to oversee the sale of their repossessed vehicles.¹⁷⁹ Repossessioners, consequently, will be forced to sell in a commercially reasonable manner and for a reasonable price.

Critique

As originally adopted, the California Rees-Levering Act contained notice requirements as strict as those demanded by most other states.

¹⁷⁶CAL. CIV. CODE § 2983.2 (West Supp. 1971).

¹⁷⁷See note 185, *infra*.

¹⁷⁸CAL. COMM. CODE § 9507(1) (West 1964). See also *McMillen v. Pippin*, 211 Cal. App. 2d 674, 27 Cal. Rptr. 590 (1963).

¹⁷⁹FINAL REPORT, *supra* note 75, at 17.

And recognizing the inadequacies of these notice requirements, moreover, California made them even stricter in 1965.¹⁸⁰ As shown by both the Santa Clara and San Diego Studies, however, notice requirements have as yet proven insufficient to prevent abuses attendant the deficiency judgment.¹⁸¹ They have been based upon the erroneous assumption that the defaulting buyer can and will attempt to redeem his automobile. Contrary to this assumption, however, the typical defaulting buyer is in no condition to utilize his legal rights. He does not even usually know of them.¹⁸² Furthermore, even in those cases where the buyer does seek legal assistance, because of his inability to pay an attorney, because of many attorneys' reluctance to handle such cases, and because of the creditor's frequently dogged litigational resistance,¹⁸³ he is seldom able to successfully attack the creditors' actions.¹⁸⁴

2. PUBLIC SALE REQUIREMENT

This requirement presently exists only in Maryland and the District of Columbia.¹⁸⁵ In all other states, retail installment acts and the Uniform Commercial Code allow reposseors to sell at *either* public *or* private sale.¹⁸⁶ The necessary machinery to carry out this requirement in most other states does already exist, however. There are at the present, throughout both California and the Nation, many successful public automobile auctions.¹⁸⁷ These auctions usually wholesale cars to dealers through competitive bidding. They are held at regularly scheduled intervals throughout the year, and often draw large numbers of bidders.¹⁸⁸

Compulsory public resale operates on the same basic assumption

¹⁸⁰CAL. CIV. CODE § 2983.2 (West Supp. 1971).

¹⁸¹Santa Clara Study, *supra* note 68, pt. D at 6-8; San Diego Study, *supra* note 69, at 366.

¹⁸²*See* note 82, *supra*.

¹⁸³FINAL REPORT, *supra* note 75, at 30.

¹⁸⁴*Id.*

¹⁸⁵The District of Columbia has provisions which insure a public sale or auction if the obligor has paid 50 percent or more of the cash sale price; but if he has paid less than 50 percent the obligor must request such a sale plus pay a \$15 deposit to cover its cost. *See* D.C. Commissioners' Orders 60-302 and 303. The Maryland statute is similar in that all obligors who have paid 50 percent or more of the cash sale price may obtain a public auction sale. He must, under Maryland law, however, request such sale by registered mail plus pay a \$10 fee to cover costs. The obligor who has paid less than 50 percent may not demand public sale. MD. ANN. CODE art. 83, § 143 (1969).

¹⁸⁶UNIFORM COMMERCIAL CODE § 9504(3).

¹⁸⁷Shuchman Study, *supra* note 73, at 43.

¹⁸⁸*Id.*

as does a notice requirement; namely, that all the problems caused by the deficiency judgment can be cured if only creditor resale procedures are monitored.¹⁸⁹ In addition, the defaulting buyer, as in the case with strict notice requirements, is presumed to have gained an extra chance at redemption.¹⁹⁰

Critique

Adopting the public auction sale requirement would not cure all the abuses in the present system. Auction sales, at best, usually only realize the wholesale price of repossessed cars.¹⁹¹ The public auction sale, therefore, although it might do away with questionable dealer arrangements, would still fall within the criticism of Professor William Hogan, one of the leading legal scholars in the field of secured transactions, as failing to provide the debtor a retail resale market for his retail debt.¹⁹² The buyer would still be stuck with an unreasonably large deficiency balance due. He would still experience the hardships incident to the situation.¹⁹³

The defaulting buyer, furthermore, is usually in no financial condition to redeem his car at a public auction.¹⁹⁴

B. RESTRICTION OR ABOLITION OF THE DEFICIENCY JUDGMENT

1. RESTRICTION

There are four major type restrictions which have been proposed throughout the Nation to limit abuses of the deficiency judgment. For the reasons that will follow, none of these proposals offers a completely satisfactory solution to the problem.

a. Deficiency Judgment Restricted By A Statutory Presumptive Resale Price

The Pennsylvania Motor Vehicle Sales Finance Act provides that either the repossessed car's "reasonable value" or its resale price,

¹⁸⁹UNIFORM CONDITIONAL SALES ACT §19, Comment.

¹⁹⁰See note 179, *supra*.

¹⁹¹The average auction sale price for repossessed cars was 95 percent Redbook wholesale value in the Shuchman Study. See Shuchman Study, *supra* note 73, at 45.

¹⁹²Hogan, *Pitfalls in Default Procedure*, 2 U.C.C. L. J. 244, 255 (1970) [hereinafter cited as Hogan]. One of the reasons the UCC drafters rejected the UCSA compulsory public resale requirement was to benefit debtors by encouraging secured parties to obtain a higher price through private sale. See UNIFORM COMMERCIAL CODE §9504, Comment 1.

¹⁹³See text accompanying notes 85-134, *supra*.

¹⁹⁴See note 118, *supra*.

whichever is higher, shall be credited to the buyer's debt.¹⁹⁵ The deficiency balance is thus restricted by statute to the difference between the balance owed and the judicially determined resale price.

This restriction, in theory, would seem to eliminate the abuses committed by secured parties in reselling repossessions. It is offered on the presumption that to avoid reliance on the good faith of repossessioners to sell in a commercially reasonable manner and at a commercially reasonable price, is to avoid the abuses committed against consumers.

Critique

Both in theory and in practice, this proposed restriction is faulty. First, both the statute and the courts have failed to dictate any sharply defined standard by which to determine "reasonable value."¹⁹⁶ By default, automobile creditors have interpreted it to mean "wholesale" price.¹⁹⁷ And this interpretation has placed the defaulting buyer in the same dilemma as has the public sale requirement: It has forced him to accept a *wholesale* price credit for his *retail* debt.¹⁹⁸

But even if "reasonable value" were interpreted to mean "retail value," consumers might still be abused. In the case of conflict, the costly burden of litigating and rebutting the presumed reasonableness of the resale price would be on the buyer.¹⁹⁹

This proposal, therefore, although having some merit, would not cure the deficiency judgment ills that presently beset the defaulting buyer.

¹⁹⁵PA. STAT. ANN. tit. 69, §627 (1965); HAWAII REV. LAWS §476-28 (1968). *See also* D.C. Commissioners' Orders 60-302 and 303, which states that proceeds are deemed to be the amount received or the fair market value, only if sold at private sale.

¹⁹⁶The Pennsylvania statute, furthermore, has its own special creditor bias. It declares that the "actual" resale price shall be *prima facie* evidence of the "reasonable value". This means first, that in order for the buyer to rebut this presumption, litigation is required. Second, if the buyer is atypical enough to litigate the matter, he, not the seller, has the burden of proof as to the car's reasonable value. This is a stiff burden for him to handle, considering such factors as the length of time, the unknown whereabouts or the changing condition of the car between litigation and resale. Even if the buyer wanted to contest the resale price, litigation time and costs are often prohibitive. PA. STAT. ANN. tit. 69, §627 (1965).

¹⁹⁷Letter from David A. Scholl, attorney with the Philadelphia Community Legal Services, Inc., to James Phillips, March 24, 1971. Mr. Scholl stated he has not yet seen a case where more than two-thirds of the Redbook retail value was obtained upon resale. *See also* letter from Wayne Theophilus, attorney in charge at the Legal Aid Society of Pittsburg, to James Phillips, March 30, 1971.

¹⁹⁸Hogan, *supra* note 192, at 255.

¹⁹⁹*See* note 196, *supra*.

b. Deficiency Judgment Restricted To Cases In Which The Defaulting Buyer Has Paid Less Than A Certain Percentage Of The Purchase Price

According to Professor Kripke,²⁰⁰ “The only type restriction on deficiency judgments that could be defended is one under which the debtor would be excused from deficiency if he had performed a certain percentage of his obligation—for example, if he had paid 60% of the amount of his original contract before submitting to repossession.”²⁰¹ It is offered on the rationale that in those cases where at the time of repossession, the value of the collateral is very likely to be equal to the remaining balance due on the debt, retention of the collateral is all that need be allowed to satisfy the debt.²⁰²

Critique

There is one basic reason why this proposal is impracticable. It would not help the vast majority of abused defaulting buyers. As seen earlier, most cars are repossessed within a year after sale.²⁰³ In most cases this clearly would not be time enough for buyers to pay 60% of the car’s credit purchase price.²⁰⁴ Moreover, sellers might be encouraged to extend credit further, over more lengthy installment periods so as to keep the deficiency judgment available longer.

c. Deficiency Judgment Restricted To Cases In Which The Automobile Sold For More Than A Certain Price

This proposed restriction bases the availability of the deficiency judgment on the value of the automobile when purchased. It is founded first on the assumption that “lower income buyers” are usually the ones who default and incur the deficiency judgment. Second, it assumes that most lower income buyers purchase cars worth less than a specified value. The conclusion is that, if the deficiency judgment’s availability is restricted to cars sold for more than low income buyers can afford, it will be used less often, with most of its attendant abuses disappearing.²⁰⁵

This type restriction was included in the 1968 Uniform Consumer Credit Code (UCCC) as drafted and approved by the National Con-

²⁰⁰Kripke, *supra* note 142, at 477.

²⁰¹*Id.*

²⁰²Kripke, *supra* note 142, at 478.

²⁰³Santa Clara Study, *supra* note 68, pt. D at 1; San Diego Study, *supra* note 69, at 366.

²⁰⁴*See* note 139, *supra*.

²⁰⁵Letter from Blair Schick, co-ordinator of the National Consumer Law Center at Boston College Law School and the National Consumer Act, to John Bowen, 1969.

ference of Commissioners on Uniform State Laws.²⁰⁶ The UCCC is being actively considered by many state legislatures, with Utah and Oklahoma having already enacted it.²⁰⁷ A similar proposal has been included in the 1969 National Consumer Act (NCA) as promulgated by the National Consumer Law Center, an Office of Economic Opportunity funded project at Boston College Law School. Although presently not enacted in any state, it too is under active consideration in many.²⁰⁸

Section 5.103(2) of the UCCC provides that deficiency judgments are available in consumer credit sales only where the cash price of the goods sold exceeds \$1,000. Section 5.211 of the NCA provides that deficiency judgments are available only where the unpaid balance at the time of default is \$2,000 or more.²⁰⁹

Critique

First, not all default debtors are low income debtors.²¹⁰ Higher income debtors should have the same protection against deficiency judgment abuses as low income debtors. Second, despite the fact that the majority of defaulting buyers are lower income, not all these buyers purchase low cost automobiles.²¹¹ Third, unless the State Legislature would keep it up to date, any absolute dollar amount as a criterion for determining when the deficiency judgment is to be available, could easily become antiquated in a fluctuating economy.

d. Deficiency Judgment Restricted To The Sale Of New Cars

This last proposed restriction could be called a corollary of the preceding one. They are both predicated on the same basic assump-

²⁰⁶Kass, *Uniform Consumer Credit Code and National Consumer Act: Some Objective Comparisons*, 8 SAN DIEGO L. REV 82 (1971).

²⁰⁷*Id.*

²⁰⁸*Id.*

²⁰⁹*Id.* at 89. Three specific criticisms of the UCCC, which do not exist with regard to the NCA are as follows: (1) the UCCC only applies to credit sales, not loans. NCA applies to both. (2) The UCCC only restricts the deficiency judgment on cars sold for more than \$1,000 cash price. This cut-off point would almost eliminate the code's application to motor vehicle sales since, according to the Shuchman Study, less than 10 percent of repossessed cars sold for less than this amount. See Shuchman Study, *supra* note 73, at 46-47. NCA only restricts the deficiency judgment to cases where at the time of default the *unpaid balance* is less than \$2,000. (3) The UCCC fails to define "cash price." Trade-in prices could therefore vary it considerably. NCA avoids this problem by referring to the "unpaid balance" at the time of default. *Id.* at 89.

²¹⁰See note 155, *supra*.

²¹¹See note 139, *supra*.

tion that restricting the deficiency judgment to new, high valued vehicles will eliminate the necessity for creditors using it in most cases.²¹² Furthermore, it is felt that this restriction will provide credit grantors protection against the rapid depreciation rate peculiar to the new, high cost automobile.²¹³

Critique

This proposal is appealing at first glance, but lacks substance upon closer scrutiny. Repossessors could more than recover their debts on all cars, new and used, if they would only resell them at retail.²¹⁴ If they would extend less easy credit, there would be little need for the deficiency judgment even for new cars.²¹⁵

2. ABOLITION OF THE DEFICIENCY JUDGMENT

A no-deficiency rule would seem to eliminate all potential for abuse against defaulting consumers. The creditor would be limited to his common law election of remedies, either suit on the contract or repossession of the collateral. It has been seen that the deficiency judgment is both unnecessary and unfair. The no-deficiency rule, contrary to creditor horror stories, is a workable and most equitable alternative to the present system. It has been proven sound by the Canadian experience²¹⁶ and by the success of California's own Unruh Act as well.

V. CONCLUSION

The promotion of repossession, overextension of credit, and questionable business practices have all been shown to result from automobile financiers' abusive reliance on the deficiency judgment. Increased bankruptcy, welfare complacency, loss of manpower in the labor force, unequal treatment among creditors and a growing disrespect for the law among a large segment to the society, all do likewise flow from its full availability.

Moreover, abolition of the deficiency judgment would not be an irreparable loss to the larger segment of the automobile finance industry. It would affect mainly the financier who engages in question-

²¹²See note 205, *supra*.

²¹³See note 172, *supra*.

²¹⁴Shuchman Study, *supra* note 73, at 36.

²¹⁵*Id.*

²¹⁶Ziegel, *supra* note 151, at 504-506.

able credit transactions, the unscrupulous creditor who profits at the expense of the unwary.

Any valid attempt to align the established legal order with the realities of our modern automobile credit market, and to establish a real parity between creditors and consumers so that free enterprise can operate in its intended fashion, demands repeal of the deficiency judgment.

James Phillips