

# CREDITORS REMEDIES AND DEBTORS PROTECTION

Mr. Appel

## Syllabus — Fall 2004

“CB” means the course case book, Warren and Westerbrook, *The Law of Debtors and Creditors*. A good additional resource is Seifert, *Colorado Methods of Practice, Creditor’s Remedies-Debtors’ Relief*, which is accessible on Westlaw under Colorado Materials>Forms, Treatises, etc>Colorado Practice Series>Table of Contents>Creditors’ Remedies—Debtors’ Relief.

### I. Introduction

- A. Overview
- B. Definition of Terms
- C. Debtors and Creditors - an historical perspective

See C. Dickens, *Little Dorrit*, Chapter 6,

[http://www.online\\_literature.com/dickens/little\\_dorrit/7/](http://www.online_literature.com/dickens/little_dorrit/7/), for a vivid description of debtor’s prison before our “enlightened age.”

### II. Collection Without Courts

- A. NonJudicial Collection Methods

CB, pages 3-16, including problem set number 1.

- B. Restrictions on Nonjudicial collection: Consumer
  - 1. Usury Laws
  - 2. Common Law Remedies
  - 3. Federal Statutory Controls

*Heintz v. Jenkins*<sup>1</sup>

CB, pages 16-32, including problem set number 2.

- C. Restrictions on Creditors: Business
  - 1. Introduction to Lender Liability

*K.M.C. Co., Inc. v. Irving Trust Co.*

  - 2. Another Perspective

CB, pages 33-44, including problem set number 3.

- D. Confession Judgments
  - 1. *D. H. Overmyer v. Frick*, 405 U.S. 174 (1972)
  - 2. Colorado law: *Hecker v. Vail*, 431 P.2d 11 (Colo. 1967)

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<sup>1</sup> Generally, cases listed in the Syllabus that are also in the casebook will be discussed in class and cases in the Syllabus that are not in the casebook will be referred to in class, but not discussed.

- E. Setoff
  - i. Allied Sheet Metal v. Peoples National Bank, 518 P.2d 734 (Colo. 1974)

### III. Constitutional Issues - Procedural Due Process - Notice and Hearing - Due process clause

- A. Post-judgment remedies

*Endicott Johnson Corp. v. Encyclopedia Press*, 266 U.S. 285 (1924)

- B. Prejudgment Remedies

Co rcp rule 104 (replevin)

38-20-101 for C.R.S.A. CRS §§ 38-20-101 to 38-20-116;  
38-20-201 - 210 (agistor, landlord and artisans' liens)

- 1. State Action Requirement

*Flagg Bros. v. Brooks*, 436 U.S. 149 (1978)

*Connecticut v. Doehr*, 111 S.Ct. 2105 (1991)

*Lugar v. Edmonson Oil Co*, 457 U.S. 922 (1982)

- 2. Content of Procedural Due Process (we will discuss the following federal court cases in class)

*Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969)

*Fuentes v. Shevin*, 407 U.S. 67 (1972)

*Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974)

*North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975)

*Connecticut v. Doehr*, 111 S.Ct. 2105 (1991)

Colorado Law

*Bankers Trust Company v. El Paso Pre-Cast*, 560 P.2d 457 (1977)

*Antonoff v. Denver*, 577 P.2d 281 (Colo 1978)

*Chaffin v. Wallain*, 689 P.2d 684 (Colo. App. 1984)

*Denver Welfare Rights Org v. PUC*, 547 P.2d 239 (Colo 1976)

### IV. Judgments - Creation and General Aspects of Commencement of Litigation

Creation of Judgments, Default Judgments, and Limitations

C.R.C.P. 54, 55, 58, 59, 60, 79 (judgments)

C.R.C.P. 3, 4 and 5 (commencement and service)

C.R.C.P. 62, C.A.R. 8 (stay)

C.R.S. §13-63-101 (default judgments in civil actions)  
50 U.S.C. §520 et seq. (Soldiers and Sailors Relief Act limitations on default judgments)

**V. State Law Debt Collection**

A. Collection Remedies

1. Introduction to Judgment Collection.  
*Federal Trade Commission v. Affordable Media.*

CB, pages 45- 64.

2. The Struggle Among Creditors: Priorities.
  - a. Background.
  - b. Competing Unsecured Creditors.

*In re: Estate of Robbins  
Weaver v. Weaver*

- c. *Execution*

*Credit Bureau of Broken Bow v. Moninger.*

CB, pages 64-78.

CRS §13-52-102 and C.R.C.P. 54(h) (judgment liens)  
28 U.S.C. §1962 (lien of federal court judgment) and CRS §13-52-104 (state filing authorization). CRS § 38-35-109 (Colorado recording act)

C.R.S. §§ 13-52-101 to 13-52-111 (property subject to levy), 13-55-102 (service of notice of levy), 13-56-101 to 13-57-103 (execution, notice of levy, certificates of levy)

- d. The Federal Priority and Federal Tax Lien; State Tax Liens
        1. Federal Priority  
1 U.S.C. § 3713 (federal priority)
        2. Federal Tax Lien

26 U.S.C. (Int. Rev. Code) §§ 6321 to 6323 (federal tax lien)

CRS §§ 38-25-101 to 38-25-107 (Uniform federal lien registration act)

*United States v. Vermont*, 377 U.S. 351; *United States v. McDermott*, 507 U.S. 447.

3. Selected State Tax Lien Provisions (browse)

Employment Security Tax Lien, CRS §8-79-103

General Ad Valorem Property Tax Lien, CRS §§39-1-105 and 39-1-107

Income Tax Lien, CRS 39-21-114

Income Withholding Tax Lien, CRS 39-22-604

Inheritance and Succession Tax Lien, CRS 39-23-132

Gift Tax Lien, CRS 39-25-110

Sales Tax Lien, CRS 39-26-117 and 39-26-118

Use Tax Lien and Priority, CRS 39-26-205

3. Other Collection Issues.

a. Discovery

F.R.C.P. 69 (execution), C.R.C.P. 69 (execution)

b. Collection in Other Jurisdictions.

*Keeton v. Hustler Magazine, Inc.*, 815 F.2d 857 (2<sup>nd</sup> Cir. 1987)  
(will be discussed in class)

28 U.S.C. § 1963 (registration of federal judgments)

U.S. Constitution, Article IV, Section 1 (Full Faith and Credit Clause)

28 U.S.C. §§ 1738, 1738A, and 1739 (implementing statutes for full faith and credit)

CRCP 60 (attack on judgment in action in which rendered)

CRS §§ 13-82-101 to 13-82-107 (Uniform Conflicts of Laws — Limitations Act)

CRS §§ 13-53-101 to 13-53-108, (Uniform Enforcement of Foreign Judgments Act, 1964)

CRS §§ 13-62-102 to 13-62-109 (Uniform Foreign Money Judgments Recognition Act)

CRS §§ 13-62.1-101 to 13-62.1-118 (Uniform Foreign\_Money Claims Act)

CB, pages 78-81, including problem set number 4.

4. Garnishment.

*Webb v. Erickson*

*Commonwealth Edison v. Denson*

*Network Solutions, Inc. v. Umbro International, Inc.*

C.R.S. §§13-54.5-101 to 13-54.5-111, 13-55-101 (claim of exemption)

C.R.C.P. 103 (garnishment rule for general and continuing garnishment)

42 U.S.C. §§ 659 to 661(garnishment of the United States for wages of employee)

CRS §§ 13-61-101 to 13-61-105 (garnishment of State of Colorado and its subdivisions for wages of employee), CRCP 103, Section 13

CB, pages 81-101

5. Pre-Judgment Remedies.

CRCP 102 (attachment)

CRCP 103, Section 5 (prejudgment garnishment)

Federal Court Prejudgment Procedures FRCP 64 and 4(e) (seizures and service)

CB, pages 101-2

6. Abuse of Process.

CB, pages 102-3, including problem set number 5.

7. Mechanics Liens

CRS §§ 38-22-101 to 38-22-133 (mechanic's lien)

Outline of mechanic's liens (Course materials on Twen)

Palcanis article on the Colorado Mechanics' Lien Law (Course materials on Twen)

8. Foreclosure (Enforcement) of and Redemption from Liens Against Land

a. Foreclosure

Outline of real estate foreclosures in Colorado (Course materials on Twen)

CRS §§ 38-35-117 (lien theory of mortgages)  
CRS §§ 38-38-103 and 38-38-104 (statutory right to cure, and notice)  
CRS §§ 38-38-101 to 38-38-111 (foreclosure of deeds of trust)  
CRS § 38-39-101 (private deeds of trust and mortgages must be enforced through court action)  
CRS § 38-38-701 (application of foreclosure provisions to other liens and enforcement proceedings against land, including sales on execution)  
CRS §§ 38-38-301 to 38-38-506 (other provisions on foreclosure)  
50 U.S.C. § 532 (Soldiers' and Sailors' Relief Act — limitations on foreclosures)  
C.R.C.P. 120 (order for sale under power)  
C.R.C.P. 105 and C.R.C.P. 105.1 (real estate actions)

b. Redemption

CRS §§ 38-38-301 to 38-38-306 (redemption from trust deed sales)  
CRS § 38-38-701 (redemption provisions made applicable to enforcement of other liens and enforcement provisions against land, including sales on execution)  
CRS §38-38-506 Omitted Parties Information

**B. Property Exempt from Seizure.**

1. Introduction.

CRS §§ 13-54-101 to 13-54-107 (general exemptions)  
CRS §§ 13-55-101 to 13-55-110 (claim of exemptions) (See also exemption provisions of CRCP 102 and 103 (attachment and garnishment), above)  
CRS §§ 38-41-201 to 38-41-212 (homestead exemption)

CB, pages 104-13.

2. Classification of Property.

*In re: Johnson*  
*In re: Pizzi*

CB, pages 113-18.

3. Proceeds and Tracing.

*In re: Williams.*

*Holmes v. Blazer Financial Services.*

CB, pages 118-22

4. Partially Exempt Property.

CB, pages 122-23.

6. Homestead Exemptions.

CB, pages 123-5, including problem set number 6.

**C. Fraudulent Transfers.**

1. Fraudulent Transfers Under State Law.

CB, pages 127-52, including problem set number 7.

CRS §§ 38-8-101 to 38-8-112 Colorado Uniform Fraudulent Transfers Act  
CRS §§ 38-10-101 and 38-10-102 (Colorado version of Statute of 27  
Elizabeth); CRS §§ 38-10-114 and 38-10-115 (fraudulent retention of  
possession of personal property following sale)

2. Fraudulent Transfers Under the Bankruptcy Code

11 U.S.C. section 548

**D. State Collective Remedies.**

1. Assignment for the Benefit of Creditors.

2. Composition and Extension.

3. Receiverships.

CB, pages 152-55.

**BARNEY'S PROBLEM**

CB, page 155.

**VI. Bankruptcy**

Overview and informational lectures, if time allows. If we do have time, I'll post an outline under Course materials on Twen.