



**NO JUDGMENT, NO PROBLEM:
Prejudgment Remedies: Attachment, TROs
and Asset Freezes**

Sniadach v. Family Finance Corporation of Bay View

Court:	U.S. Supreme Court
Writing for the Court:	DOUGLAS
Citation:	Sniadach v. Family Finance Corporation of Bay View, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969)
Decision Date:	09 June 1969
Docket Number:	No. 130, 130
Parties:	Christine SNIADACH, Petitioner, v. FAMILY FINANCE CORPORATION OF BAY VIEW et al

Id. vLex Fastcase: VLEX-890541532

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395 U.S. 337

89 S.Ct. 1820

23 L.Ed.2d 349

Christine SNIADACH, Petitioner,

v. FAMILY FINANCE CORPORATION OF BAY VIEW et al.

No. 130.

Argued April 21, 1969.

Decided June 9, 1969.

Jack Greenber, New York City, for petitioner.

Sheldon D. Frank, Milwaukee, Wis., for respondents.

Mr. Justice DOUGLAS delivered the opinion of the Court.

Respondents instituted a garnishment action against petitioner as defendant and Miller Harris Instrument Co., her employer, as garnishee. The complaint alleged [*338] a claim of \$420 on a promissory note. The garnishee filed its answer stating it had wages of \$63.18 under its control earned by petitioner and unpaid, and that it would pay one-

half to petitioner as a subsistence allowance ¹ and hold the other half subject to the order of the court.

Petitioner moved that the garnishment proceedings be dismissed for failure to satisfy the due process requirements of the Fourteenth Amendment. The Wisconsin Supreme Court sustained the lower state court in approving the procedure. [37 Wis.2d 163, 154 N.W.2d 259](#). The case is here on a petition for a writ of certiorari. 393 U.S. 1078, 89 S.Ct. 849, 21 L.Ed.2d 771.

The Wisconsin statute gives a plaintiff 10 days in which to serve the summons and complaint on the defendant after service on the garnishee.² In this case petitioner was served the same day as the garnishee. She nonetheless claims that the Wisconsin garnishment procedure violates that due process required by the Fourteenth Amendment, in that notice and an opportunity to be heard are not given before the in rem seizure of the wages. What happens in Wisconsin is that the clerk of the court issues the summons at the request of the creditor's lawyer; and it is the latter who by serving the garnishee sets in motion the machinery whereby the **[*339]** wages are frozen.³ They may, it is true, be unfrozen if the trial of the main suit is ever had and the wage earner wins on the merits. But in the interim the wage earner is deprived of his enjoyment of earned wages without any opportunity to be heard and to tender any defense he may have, whether it be fraud or otherwise.

Such summary procedure may well meet the requirements of due process in extraordinary situations. Cf. [Fahey v. Mallonee](#), 332 U.S. 245, 253—254, 67 S.Ct. 1552, 1554—1556, 91 L.Ed. 2030; [Ewing v. Mytinger & Casselberry, Inc.](#), 339 U.S. 594, 598—600, 70 S.Ct. 870, 872—873, 94 L.Ed. 1088; [Ownbey v. Morgan](#), 256 U.S. 94, 110 112, 41 S.Ct. 433, 437—438, 65 L.Ed. 837; [Coffin Bros. & Co. v. Bennett](#), 277 U.S. 29, 31, 48 S.Ct. 422, 423, 72 L.Ed. 768. But in the present case no situation requiring special protection to a state or creditor interest is presented by the facts; nor is the Wisconsin statute narrowly drawn to meet any such unusual condition. Petitioner was a resident of this Wisconsin community and in personam jurisdiction was readily obtainable.

The question is not whether the Wisconsin law is a wise law or unwise law. Our concern is not what philosophy Wisconsin should or should not embrace. See [Green v. Frazier](#), 253 U.S. 233, 40 S.Ct. 499, 64 L.Ed. 878. We do not sit as a super-legislative body. In this case the sole question is whether there has been a taking of property without that procedural due process that is required by the Fourteenth Amendment. We have dealt over and over again with the question of what constitutes 'the right to be heard' ([Schroeder v. New York](#), 371 U.S. 208, 212, 83 S.Ct. 279, 282, 9 L.Ed.2d 255) within the meaning of procedural due process. See [Mullaney v. Central Hanover Bank & Trust Co.](#), 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865. In the latter case we said that the right to be heard 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether **[*340]** to appear or default, acquiesce or contest.' 339 U.S., at 314, 70 S.Ct., at 657. In the context of this case the question is whether the interim freezing of the wages without a chance to be heard violates procedural due process.

A procedural rule that may satisfy due process for attachments in general, see *McKay v. MaInnes*, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975, does not necessarily satisfy procedural due process in every case. The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern forms. We deal here with wages—a specialized type of property presenting distinct problems in our economic system. We turn then to the nature of that property and problems of procedural due process.

A prejudgment garnishment of the Wisconsin type is a taking which may impose tremendous hardship on wage earners with families to support. Until a recent Act of Congress,⁴ § 304 of which forbids discharge of employees on the ground that their wages have been garnished, garnishment often meant the loss of a job. Over and beyond that was the great drain on family income. As stated by Congressman Reuss:⁵

'The idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below the poverty level.'

Recent investigations of the problem have disclosed the grave injustices made possible by prejudgment garnishment whereby the sole opportunity to be heard comes after the taking. Congressman Sullivan, Chairman of [*341] the House Subcommittee on Consumer Affairs who held extensive hearings on this and related problems stated:

'What we know from our study of this problem is that in a vast number of cases the debt is a fraudulent one, saddled on a poor ignorant person who is trapped in an easy credit nightmare, in which he is charged double for something he could not pay for even if the proper price was called for, and then hounded into giving up his pound of flesh, and being fired besides.' 114 Cong.Rec. 1832.

The leverage of the creditor on the wage earner is enormous. The creditor tenders not only the original debt but the 'collection fees' incurred by his attorneys in the garnishment proceedings:

'The debtor whose wages are tied up by a writ of garnishment, and who is usually in need of money, is in no position to resist demands for collection fees. If the debt is small, the debtor will be under considerable pressure to pay the debt and collection charges in order to get his wages back. If the debt is large, he will often sign a new contract of 'payment schedule' which incorporates these additional charges.'⁶

Apart from those collateral consequences, it appears that in Wisconsin the statutory exemption granted the wage earner⁷ is 'generally insufficient to support the debtor for any one week.'⁸

The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage- [*342] earning family to the wall.⁹ Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing (cf. *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 423, 35 S.Ct. 625,

628, 59 L.Ed. 1027) this prejudgment a rnishment procedure violates the fundamental principles of due process.

Reversed.

Mr. Justice HARLAN, concurring.

Particularly in light of my Brother BLACK'S dissent, I think it not amiss for me to make explicit the precise basis on which I join the Court's opinion. The 'property' of which petitioner has been deprived is the use of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit. Since this deprivation cannot be characterized as de minimis, she must be accorded the usual requisites of procedural due process: notice and a prior hearing.

The rejoinder which this statement of position has drawn from my Brother BLACK prompts an additional word. His and my divergence in this case rests, I think, upon a basic difference over whether the Due Process Clause of the Fourteenth Amendment limits state action by norms of 'fundamental fairness' whose content in any given instance is to be judicially derived not alone as my colleague believes it should be, from the specifics of the Constitution, but also, as I believe, from concepts [***343**] which are part of the Anglo-American legal heritage—not, as my Brother BLACK continues to insist, from the mere predilections of individual judges.

From my standpoint, I do not consider that the requirements of 'notice' and 'hearing' are satisfied by the fact that the petitioner was advised of the garnishment simultaneously with the garnishee, or by the fact that she will not permanently lose the garnished property until after a plenary adverse adjudication of the underlying claim against her, or by the fact that relief from the garnishment may have been available in the interim under less than clear circumstances. Compare the majority and dissenting opinions in the Wisconsin Supreme Court, 37 Wis.2d 163, 178, 154 N.W.2d 259, 267 (1967). Apart from special situations, some of which are referred to in this Court's opinion, see ante, at 339, I think that due process is afforded only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property or its unrestricted use. I think this is the thrust of the past cases in this Court. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152–153, 61 S.Ct. 524, 535–536, 85 L.Ed. 624 (1941); *United States v. Illinois Cent. R. Co.*, 291 U.S. 457, 463, 54 S.Ct. 471, 473, 78 L.Ed. 909 (1934); *Londoner v. City & County of Denver*, 210 U.S. 373, 385–386, 28 S.Ct. 708, 713–714, 52 L.Ed. 1103 (1908).^{*} And I am [***344**] quite unwilling to take the unexplicated per curiam in *McKay v. McInnes*, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975 (1929), as vitiating or diluting these essential elements of due process.

Mr. Justice BLACK, dissenting.

The Court here holds unconstitutional a Wisconsin statute permitting garnishment before a judgment has been obtained against the principal debtor. The law, however, requires that notice be given to the principal debtor and authorizes him to present all of his legal defenses at the regular hearing and trial of the case. The Wisconsin law is said to violate the 'fundamental principles of due process.' Of course the Due Process Clause of the Fourteenth Amendment contains no words that indicate that this Court has power to play so fast and loose with state laws. The arguments the Court makes to reach what I consider to be its unconstitutional conclusion, however, show why it strikes down this state law. It is because it considers a garnishment law of this kind to be bad state policy, a judgment I think the state legislature, not this Court, has power to make. The Court shows it believes the garnishment policy to be a "most inhuman doctrine"; that it "compels the wage earner, trying to keep his family together, to be driven below the poverty level"; that "in a vast number of cases the debt is a fraudulent one, saddled on a poor ignorant person who is trapped in an easy credit nightmare, in which he is charged double for something he could not pay for even if the proper price was called for, and then hounded into giving up his pound of flesh, and being fired besides."

The foregoing emotional rhetoric might be very appropriate for Congressmen to make against some phases of garnishment laws. Indeed, the quoted statements were made by Congressmen during a debate over a proposed [*345] federal garnishment law. The arguments would also be appropriate for Wisconsin's legislators to make against that State's garnishment laws. But made in a Court opinion, holding Wisconsin's law unconstitutional, they amount to what I believe to be a plain, judicial usurpation of state legislative power to decide what the State's laws shall be. There is not one word in our Federal Constitution or in any of its Amendments and not a word in the reports of that document's passage from which one can draw the slightest inference that we have authority thus to try to supplement or strike down the State's selection of its own policies. The Wisconsin law is simply nullified by this Court as though the Court had been granted a super-legislative power to step in and frustrate policies of States adopted by their own elected legislatures. The Court thus steps back into the due process philosophy which brought on President Roosevelt's Court fight. Arguments can be made for outlawing loan sharks and installment sales companies but such decisions, I think, should be made by state and federal legislators, and not by this Court.

This brings me to the short concurring opinion of my Brother HARLAN, which makes 'explicit the precise basis' on which he joins the Court's opinion. That basis is:

'The 'property' of which petitioner has been deprived is the use of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit. Since this deprivation cannot be characterized as de minimis, she must be accorded the usual requisites of procedural due process: notice and a prior hearing.'

Every argument implicit in this summary statement of my Brother HARLAN'S views has been, in my judgment, satisfactorily answered in the opinion of the Supreme Court of Wisconsin in this case—an outstanding opinion [*346] on constitutional law. 37 Wis.2d 163, 154 N.W.2d 259. That opinion shows that petitioner was not required to wait until the 'culmination of the main suit,' that is, the suit between the creditor and the petitioner. In fact the case now before us was not a final determination of the merits of

that controversy but was, in accordance with well-established state court procedure, the result of a motion made by the petitioner to dismiss the garnishment proceedings. With reference to my Brother HARLAN'S statement that petitioner's deprivation could not be characterized as de minimis, it is pertinent to note that the garnishment was served on her and her employer on the same day, November 21, 1966; that she, without waiting for a trial on the merits filed a motion to dismiss the garnishment on December 23, 1966, which motion was denied by the Circuit Court on April 18, 1967; and that it is that judgment which is before us today. The amount of her wages held up by the garnishment was \$31.59. The amount of interest on the wages withheld even if computed at 10% annually would have been about \$3. Whether that would be classified as de minimis I do not know and in fact it is not material to know for the decision of this case.

In the motion to dismiss, petitioner, according to the Supreme Court of Wisconsin, asserted a 'number of grounds based on injustices and deprivations which have been, or are likely to be, suffered by others, but which she has not personally experienced.' 37 Wis.2d 163, 166, 154 N.W.2d 259, 261. The court went further and pointed out that under Wisconsin law the court would not strike down a law as unconstitutional on the ground that some person other than the challenger of that law might in the future be injured by its unconstitutional part. It would seem, therefore, that the great number of our cases holding that we do not determine the constitutionality of state statutes where the judgment on them was based on state law would prevent our passing on this case at all.

The indebtedness of petitioner was evidenced by a promissory note, but petitioner's affidavit in support of the motion to dismiss, according to the Wisconsin Supreme Court contained no allegation that she is not indebted thereon to the plaintiff. Of course if it had alleged that, or if it had shown in some other way that this was not a good-faith lawsuit against her, the Wisconsin opinion shows that this could have disposed of the whole case on the summary motion.

Another ground of unconstitutionality, according to the state court, was that the Act permitted a defendant to post a bond and secure the release of garnished property and that this provision denied equal protection of the law 'to persons of low income.' With reference to this ground, the Wisconsin court said:

'Appellant has made no showing that she is a person of low income and unable to post a bond.' 37 Wis.2d, at 167, 154 N.W.2d, at 261.

Another ground of unconstitutionality urged was that since many employers discharged garnished employees for being unreliable, the law threatened the gainful employment of many wage earners. This contention the Supreme Court of Wisconsin satisfactorily answered by saying that petitioner had 'made no showing that her own employer reacted in this manner.'

Another ground challenging the state act was that it affords 10 days' time to a plaintiff to serve the garnishee summons and complaint on the defendant after service of the summons on the garnishee. This, of course, she could not raise. The Wisconsin Supreme

Court's answer to this was that petitioner was served on the same day as the garnishee.
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The state court then pointed out that the garnishment proceedings did not involve 'any final determination of the title to a defendant's property, but merely preserve(d) the status quo thereof pending determination of the principal action.' 37 Wis.2d, at 169, 154 N.W.2d, at 262. The court then relied on *McInnes v. McKay*, 127 Me. 110, 141 A. 699. That suit related to a Maine attachment law which, of course, is governed by the same rule as garnishment law. See 'garnishment,' Bouvier's Law Dictionary; see also *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565. The Maine law was subjected to practically the same challenges that Brother HARLAN and the Court raise against this Wisconsin law. About that law the Supreme Court of Maine said:

'But, although an attachment may, within the broad meaning of the preceding definition, deprive one of property, yet conditional and temporary as it is, and part of the legal remedy and procedure by which the property of a debtor may be taken in satisfaction of the debt, if judgment be recovered, we do not think it is the deprivation of property contemplated by the Constitution. And if it be, it is not a deprivation without 'due process of law' for it is a part of a process, which during its proceeding gives notice and opportunity for hearing and judgment of some judicial or other authorized tribunal. The requirements of 'due process of law' and 'law of the land' are satisfied.' 127 Me. 110, 141 A. 699, 702—703.

This Court did not even consider the challenge to the Maine law worthy of a Court opinion but affirmed it in a per curiam opinion, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975 on the authority of two prior decisions of this Court. See also *Standard Oil Co. v. Superior Court in and for New Castle County*, 5 Terry 538, 44 Del. [*349] 538, 62 A.2d 454, 14 A.L.R.2d 405, appeal dismissed, 336 U.S. 930, 69 S.Ct. 738, 739, 93 L.Ed. 1090; *Harris v. Balk*, 198 U.S. 215, 222, 227—228, 25 S.Ct. 625, 628—629, 49 L.Ed. 1023.

The Supreme Court of Wisconsin, in upholding the constitutionality of its law also cited the following statement of our Court made in *Rothschild v. Knight*, 184 U.S. 334, 341, 22 S.Ct. 391, 393, 46 L.Ed. 573:

'To what actions the remedy of attachment may be given is for the legislature of a State to determine and its courts to decide * * *.'

Accord, *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 193, 61 S.Ct. 513, 517, 85 L.Ed. 725.

The Supreme Court of Wisconsin properly pointed out:

'The ability to place a lien upon a man's property, such as to temporarily deprive him of its beneficial use, without any judicial determination of probable cause dates back not only to medieval England but also to Roman times.' 37 Wis.2d at 171, 154 N.W.2d at 264.

The State Supreme Court then went on to point out a statement made by Mr. Justice Holmes in [Jackman v. Rosenbaum Co.](#), 260 U.S. 22, 31, 43 S.Ct. 9, 10, 67 L.Ed. 107:

'The Fourteenth Amendment, itself a historical product, did not destroy history for the States and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it, as is well illustrated by [Ownbey v. Morgan](#), 256 U.S. 94, 104, 112, 41 S.Ct. 433, 65 L.Ed. 837.'

The [Ownbey](#) case, which was one of the two cited by this Court in its per curiam affirmance of [McInnes v. McKay](#), *supra*, sustained the constitutionality of a Delaware attachment law. And see [Byrd v. Rector](#), 112 W.Va. 192, 163 S.E. 845, 81 A.L.R. 1213.

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I can only conclude that the Court is today overruling a number of its own decisions and abandoning the legal customs and practices in this country with reference to attachments and garnishments wholly on the ground that the garnishment laws of this kind are based on unwise policies of government which might some time in the future do injury to some individuals. In the first sentence of the argument in her brief, petitioner urges that this Wisconsin law 'is contrary to public policy'; the Court apparently finds that a sufficient basis for holding it unconstitutional. This holding savors too much of the 'Natural Law,' 'Due Process,' 'Shock-the-conscience' test of what is constitutional for me to agree to the decision. See my dissent in [Adamson v. California](#), 332 U.S. 46, 68, 67 S.Ct. 1672, 1683, 91 L.Ed. 1903.

ADDENDUM.

The latest statement by my Brother HARLAN on the power of this Court under the Due Process Clause to hold laws unconstitutional on the ground of the Justices' view of 'fundamental fairness' makes it necessary for me to add a few words in order that the differences between us be made absolutely clear. He now says that the Court's idea of 'fundamental fairness' is derived 'not alone * * * from the specifics of the Constitution, but also * * * from concepts which are part of the Anglo-American legal heritage.' This view is consistent with that expressed by Mr. Justice Frankfurter in [Rochin v. California](#) that due process was to be determined by 'those canons of decency and fairness which express the notions of justice of English-speaking peoples * * *.' [342 U.S. 165, 169, 72 S.Ct. 205, 208, 96 L.Ed. 183](#). In any event, my Brother HARLAN'S 'Anglo-American legal heritage' is no more definite than the 'notions of justice of English-speaking peoples' or the shock-of-the-conscience test. All of these so-called tests represent nothing more or less than an implicit adop- **[*351]** tion of a Natural Law concept which under our system leaves to judges alone the power to decide what the Natural Law means. These so-called standards do not bind judges within any boundaries that can be precisely marked or defined by words for holding laws unconstitutional. On the contrary, these tests leave them wholly free to decide what they are convinced is right and fair. If the judges, in deciding whether laws are constitutional, are to be left only to the admonitions of their own consciences, why was it that the Founders gave us a written Constitution at all?

1 Wis.Stat. § 267.18(2)(a) provides:

'When wages or salary are the subject of garnishment action, the garnishee shall pay over to the principal defendant on the date when such wages or salary would normally be payable a subsistence allowance, out of the wages or salary then owing in the sum of \$25 in the case of an individual without dependents or \$40 in the case of an individual with dependents; but in no event in excess of 50 per cent of the wages or salary owing. Said subsistence allowance shall be applied to the first wages or salary earned in the period subject to said garnishment action.'

2 Wis.Stat. § 267.07(1).

3 Wis.Stat. § 267.04(1).

4 82 Stat. 146, Act of May 29, 1968.

5 114 Cong.Rec. 1832.

6 Comment, Wage Garnishment in Washington—An Empirical Study, 43 Wash.L.Rev. 743, 753 (1968). And see Comment, Wage Garnishment as a Collection Device, 1967 Wis.L.Rev. 759.

7 See n. 1, *supra*.

8 Comment, Wage Garnishment as a Collection Device, 1967 Wis.L.Rev. 759, 767.

9 'For a poor man—and whoever heard of the wage of the affluent being attached?—to lose part of his salary often means his family will go without the essentials. No man sits by while his family goes hungry or without heat. He either files for consumer bankruptcy and tries to begin again, or just quits his job and goes on relief. Where is the equity, the common sense, in such a process?' Congressman Gonzales, 114 Cong.Rec. 1833. For the impact of garnishment on personal bankruptcies see H.R. Rep. No. 1040, 90th Cong., 1st Sess., 20—21.

* There are other decisions to the effect that one may be deprived of property by summary administrative action taken before hearing when such action is essential to protect a vital governmental interest. See, e.g., [Ewing v. Mytinger & Casselberry, Inc.](#), 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950); [Fahey v. Mallonee](#), 332 U.S. 245, 67 S.Ct. 1552, 91 L.Ed. 2030 (1947); [Bowles v. Willingham](#), 321 U.S. 503, 64 S.Ct. 641, 88 L.Ed. 892 (1944); [North](#)

Amer. Cold Storage Co. v. City of Chicago, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (1908)).
However, no such justification has been advanced in behalf of Wisconsin's garnishment law.

Fuentes v. Shevin Parham v. Cortese 8212 5039, 70 8212 5138

Court: U.S. Supreme Court

Writing for the Court: STEWART

Citation: Fuentes v. Shevin Parham v. Cortese 8212 5039, 70 8212 5138, 407 U.S. 67,
92 S.Ct. 1983, 32 L.Ed.2d 556 (1972)

Decision Date: 12 June 1972

Docket Number: Nos. 70, s. 70

Parties: Margarita FUENTES, Appellant, v. Robert L. SHEVIN, Attorney General of
Florida, et al. * Paul PARHAM et al., Appellants, v. Americo V. CORTESE et al. -5039, 70-
5138

Id. vLex Fastcase: VLEX-890839148

Link: <https://fastcase.vlex.com/vid/fuentes-v-shevin-parham-890839148>

407 U.S. 67

92 S.Ct. 1983

32 L.Ed.2d 556

Margarita FUENTES, Appellant,

v. Robert L. SHEVIN, Attorney General of Florida, et al.* Paul PARHAM et al., Appellants,
v. Americo V. CORTESE et al.

Nos. 70-5039, 70-5138.

Argued Nov. 9, 1971.

Decided June 12, 1972.

Rehearing Denied Oct. 10, 1972.

See 93 S.Ct. 177, 180.

Syllabus

Appellants, most of whom were purchasers of household goods under conditional sales contracts, challenge the constitutionality of prejudgment replevin provisions of Florida law (in No. 70-5039) and Pennsylvania law (in No. 70-5138). These provisions permit a private party, without a hearing or prior notice to the other party, to obtain a prejudgment writ of replevin through a summary process of ex parte application to a court clerk, upon the posting of a bond for double the value of the property to be seized. The sheriff is then required to execute the writ by seizing the property. Under the Florida statute the officer seizing the property must keep it for three days. During that period the defendant may reclaim possession by posting his own security bond for double the property's value, in default of which the property is transferred to the applicant for the writ, pending a final judgment in the underlying repossession action. In Pennsylvania the applicant need not initiate a repossession action or allege (as Florida requires) legal entitlement to the property, it being sufficient that he file an 'affidavit of the value of the property'; and to secure a post-seizure hearing the party losing the property through replevin must himself initiate a suit to recover the property. He may also post his own counterbond within three days of the seizure to regain possession. Included in the printed-form sales contracts that appellants signed were provisions for the sellers' repossession of the merchandise on the buyers' default. Three-judge District Courts in both cases upheld the constitutionality of the challenged replevin provisions. Held:

1. The Florida and Pennsylvania replevin provisions are invalid under the Fourteenth Amendment since they work a deprivation of property without due process of law by denying the right to a [*68]

prior opportunity to be heard before chattels are taken from the possessor. Pp. 80-93.

(a) Procedural due process in the context of these cases requires an opportunity for a hearing before the State authorizes its agents to seize property in the possession of a person upon the application of another, and the minimal deterrent effect of the bond requirement against unfounded applications for a writ constitutes no substitute for a presiezure hearing. Pp. 80-84.

(b) From the standpoint of the application of the Due Process Clause it is immaterial that the deprivation may be temporary and nonfinal during the three-day post-seizure period. Pp. 84-86.

(c) The possessory interest of appellants, who had made substantial installment payments, was sufficient for them to invoke procedural due process safeguards notwithstanding their lack of full title to the replevied goods. Pp. 86-87.

(d) The District Courts erred in rejecting appellants' constitutional claim on the ground that the household goods seized were not items of 'necessity' and therefore did not require due process protection, as the Fourteenth Amendment imposes no such limitation. Pp. 88-90.

(e) The broadly drawn provisions here involved serve no such important a state interest as might justify summary seizure. Pp. 90-93.

2. The contract provisions for repossession by the seller on the buyer's default did not amount to a waiver of the appellants' procedural due process rights, those provisions neither dispensing with a prior hearing nor indicating the procedure by which repossession was to be achieved. *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed.2d 124, distinguished. Pp. 94 96.

No. 70-5039, 317 F.Supp. 954, and No. 70-5138, 326 F.Supp. 127, vacated and remanded.

C. Michael Abbott, Atlanta, Ga., for appellants Margarita Fuentes and others, pro hac vice, by special leave of Court. [*69]

Herbert T. Schwartz, Deputy Atty. Gen., Tallahassee, Fla., for appellee Robert L. Shevin, Atty. Gen., of the State of Fla.

George W. Wright, Jr., Miami, Fla., for appellee Firestone Tire and Rubber Co.

David A. Scholl, Philadelphia, Pa., for the appellants Paul Parham and others, pro hac vice, by special leave of Court.

Robert F. Maxwell, Philadelphia, Pa., for appellees, Americo V. Cortese and others.

Mr. Justice STEWART delivered the opinion of the Court.

We here review the decisions of two three-judge federal District Courts that upheld the constitutionality of Florida and Pennsylvania laws authorizing the summary seizure of goods or chattels in a person's possession under a writ of replevin. Both statutes provide for the issuance of writs ordering state agents to seize a person's possessions, simply upon the ex parte application of any other person who claims a right to them and posts a [*70]

security bond. Neither statute provides for notice to be given to the possessor of the property, and neither statute gives the possessor an opportunity to challenge the seizure at any kind of prior hearing. The question is whether these statutory procedures violate the Fourteenth Amendment's guarantee that no State shall deprive any person of property without due process of law.

I

The appellant in No. 5039, Margarita Fuentes, is a resident of Florida. She purchased a gas stove and service policy from the Firestone Tire and Rubber Co. (Firestone) under a conditional sales contract calling for monthly payments over a period of time. A few months later, she purchased a stereophonic phonograph from the same company under the same sort of contract. The total cost of the stove and stereo was about \$500, plus an additional financing charge of over \$100. Under the contracts, Firestone retained title to the merchandise, but Mrs. Fuentes was entitled to possession unless and until she should default on her installment payments.

For more than a year, Mrs. Fuentes made her installment payments. But then, with only about \$200 remaining to be paid, a dispute developed between her and Firestone over the servicing of the stove. Firestone instituted an action in a small-claims court for repossession of both the stove and the stereo, claiming that Mrs. Fuentes had refused to make her

remaining payments. Simultaneously with the filing of that action and before Mrs. Fuentes had even received a summons to answer its complaint, Firestone obtained a writ of replevin ordering a sheriff to seize the disputed goods at once.

In conformance with Florida procedure,¹ Firestone [*71]

had only to fill in the blanks on the appropriate form documents and submit them to the clerk of the small-claims court. The clerk signed and stamped the documents and issued a writ of replevin. Later the same day, a local deputy sheriff and an agent of Firestone went to Mrs. Fuentes' home and seized the stove and stereo.

Shortly thereafter, Mrs. Fuentes instituted the present action in a federal district court, challenging the constitutionality of the Florida prejudgment replevin procedures under the Due Process Clause of the Fourteenth Amendment. ² She sought declaratory and injunctive relief against continued enforcement of the procedural provisions of the state statutes that authorize prejudgment replevin.³

The appellants in No. 5138 filed a very similar action in a federal district court in Pennsylvania, challenging the constitutionality of that State's prejudgment replevin process. Like Mrs. Fuentes, they had had possessions seized under writs of replevin. Three of the appellants had purchased personal property a bed, a table, and other household goods—under installment sales contracts like the one signed by Mrs. Fuentes; and the sellers of the property had obtained and executed summary writs of replevin, claiming that the appellants had fallen behind in their installment payments. [*72]

The experience of the fourth appellant, Rosa Washington, had been more bizarre. She had been divorced from a local deputy sheriff and was engaged in a dispute with him over the custody of their son. Her former husband, being familiar with the routine forms used in the replevin process, had obtained a writ that ordered the seizure of the boy's clothes, furniture, and toys.⁴

In both No. 5039 and No. 5138, three-judge District Courts were convened to consider the appellants' challenges to the constitutional validity of the Florida and Pennsylvania statutes. The courts in both cases upheld the constitutionality of the statutes. *Fuentes v. Faircloth*, 317 F.Supp. 954 (S.D.Fla.); *Epps v. Cortese*, 326 F.Supp. 127 (E.D.Pa.).⁵ We noted probable jurisdiction of both appeals. 401 U.S. 906, 91 S.Ct. 893, 27 L.Ed.2d 804; 402 U.S. 994, 91 S.Ct. 2185, 29 L.Ed.2d 159. [*73]

Under the Florida statute challenged here,⁶ '(a)ny person whose goods or chattels are wrongfully detained by any other person . . . may have a writ of replevin to recover them . . .' Fla.Stat.Ann. § 78.01 (Supp.1972-1973). There is no requirement that the applicant make a convincing showing before the seiz- [*74]

ure that the goods are, in fact, 'wrongfully detained.' Rather, Florida law automatically relies on the bare assertion of the party seeking the writ that he is entitled to one and allows a court clerk to issue the writ summarily. It requires only that the applicant file a complaint, initiating a court action for repossession and reciting in conclusory fashion that he is 'lawfully entitled to the possession' of the property, and that he file a security bond

'in at least double the value of the property to be replevied conditioned that plaintiff will prosecute his action to effect and without delay and that if defendant recovers judgment against him in the action, he will return the property, if return thereof is adjudged, and will pay defendant all sums of money recovered against plaintiff by defendant in the action.' Fla.Stat.Ann. § 78.07 (Supp.1972 1973). [*75]

On the sole basis of the complaint and bond, a writ is issued 'command(ing) the officer to whom it may be directed to replevy the goods and chattels in possession of defendant . . . and to summon the defendant to answer the complaint.' Fla.Stat.Ann. § 78.08 (Supp.1972-1973). If the goods are 'in any dwelling house or other building or enclosure,' the officer is required to demand their delivery; but if they are not delivered, 'he shall cause such house, building or enclosure to be broken open and shall make replevin according to the writ . . . ' Fla.Stat.Ann. § 78.10 (Supp.1972-1973).

Thus, at the same moment that the defendant receives the complaint seeking repossession of property through court action, the property is seized from him. He is provided no prior notice and allowed no opportunity whatever to challenge the issuance of the writ. After the property has been seized, he will eventually have an opportunity for a hearing, as the defendant in the trial of the court action for repossession, which the plaintiff is required to pursue. And he is also not wholly without recourse in the meantime. For under the Florida statute, the officer who seizes the property must keep it for three days, and during that period the defendant may reclaim possession of the property by posting his own security bond in double its value. But if he does not post such a bond, the property is transferred to the party who sought the writ, pending a final judgment in the underlying action for repossession. Fla.Stat.Ann. § 78.13 (Supp.1972-1973).

The Pennsylvania law⁷ differs, though not in its essential nature, from that of Florida. As in Florida, [*76]

a private party may obtain a prejudgment writ of replevin through a summary process of ex parte application to a prothonotary. As in Florida, the party seeking [*77]

the writ may simply post with his application a bond in double the value of the property to be seized. Pa.Rule Civ.Proc. 1073(a). There is no opportunity for a prior hearing and no prior notice to the other party. On this basis, a sheriff is required to execute the writ by seizing the specified property. Unlike the Florida statute, however, the Pennsylvania law does not require that there ever be opportunity for a hearing on the merits of the conflicting claims to possession of the replevied property. The party seeking the writ is not obliged to initiate a court action for repossession.⁸ In- [*78]

deed, he need not even formally allege that he is lawfully entitled to the property. The most that is required is that he file an 'affidavit of the value of the property to be replevied.' Pa.Rule Civ.Proc. 1073(a). If the party who loses property through replevin seizure is to get even a post-seizure hearing, he must initiate a lawsuit himself.⁹ He may also, as under Florida law, post his own counterbond within three days after the seizure to regain possession. Pa.Rule Civ.Proc. 1076.

III

Although these prejudgment replevin statutes are descended from the common-law replevin action of six centuries ago, they bear very little resemblance to it. Replevin at common law was an action for the return of specific goods wrongfully taken or 'distrained.' Typically, it was used after a landlord (the 'distrainor') had seized possessions from a tenant (the 'distrainee') to satisfy a debt allegedly owed. If the tenant then instituted a replevin action and posted security, the landlord could be ordered to return the property at [*79]

once, pending a final judgment in the underlying action.¹⁰ However, this prejudgment replevin of goods at common law did not follow from an entirely ex parte process of pleading by the distrainee. For '(t)he distrainor could always stop the action of replevin by claiming to be the owner of the goods; and as this claim was often made merely to delay the proceedings, the writ de proprietate probanda was devised early in the fourteenth century, which enabled the sheriff to determine summarily the question of ownership. If the question of ownership was determined against the distrainor the goods were delivered back to the distrainee (pending final judgment).' 3 W. Holdsworth, *History of English Law* 284 (1927).

Prejudgment replevin statutes like those of Florida and Pennsylvania are derived from this ancient possessory action in that they authorize the seizure of property before a final judgment. But the similarity ends there. As in the present cases, such statutes are most commonly used by creditors to seize goods allegedly wrongfully detained-not wrongfully taken-by debtors. At common law, if a creditor wished to invoke state power to recover

goods wrongfully detained, he had to proceed through the action of debt or detinue.¹¹ These actions, however, did not provide for a return of property before final judgment.¹² And, more importantly, on the occasions when the common law did allow prejudgment seizure by state power, it provided some kind [*80]

of notice and opportunity to be heard to the party then in possession of the property, and a state official made at least a summary determination of the relative rights of the disputing parties before stepping into the dispute and taking goods from one of them.

IV

For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' *Baldwin v. Hale*, 1 Wall. 223, 233, 17 L.Ed. 531. See *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914; *Hovey v. Elliott*, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215; *Grannis v. Odean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363. It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62.

The primary question in the present cases is whether these state statutes are constitutionally defective in failing to provide for hearings 'at a meaningful time.' The Florida replevin process guarantees an opportunity for a hearing after the seizure of goods, and the Pennsylvania process allows a post-seizure hearing if the aggrieved party shoulders the burden of initiating one. But neither the Florida nor the Pennsylvania statute provides for notice or an opportunity to be heard before the seizure. The issue is whether procedural due process in the context of these cases requires an opportunity for a hearing before the State authorizes its agents to seize property in the possession of a person upon the application of another.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not [*81]

only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment-to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we

place on a person's right to enjoy what is his, free of governmental interference. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552, 92 S.Ct. 1113, 1122, 31 L.Ed.2d 424.

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . . (And no) better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172, 71 S.Ct. 624, 647, 95 L.Ed. 817 (Frankfurter, J., concurring).

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be [*82]

awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. 'This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone.' *Stanley v. Illinois*, 405 U.S. 645, 647, 92 S.Ct. 1208, 1210, 31 L.Ed.2d 551.

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing 'appropriate to the nature of the case,' *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 657, 94 L.Ed. 865, and 'depending upon the importance of the interests involved and the nature of the subsequent proceedings (if any),' *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. E.g., *Bell v. Burson*, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, 29 L.Ed.2d 90; *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515; *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287; *Armstrong v. Manzo*, 380 U.S., at 551, 85 S.Ct., at 1191; *Mullane v. Central Hanover Tr. Co.*, *supra*, 339 U.S. at 313, 70 S.Ct. at 656; *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153, 61 S.Ct. 524, 535-536, 85 L.Ed. 624; *United States v. Illinois Central R. Co.*, 291 U.S. 457, 463, 54 S.Ct. 471, 473, 78 L.Ed. 909; *Londoner v. City & County of Denver*, 210 U.S. 373, 385-386, 28 S.Ct. 708, 713-714, 52 L.Ed. 1103. See *In re Ruffalo*, 390 U.S. 544, 550-551, 88 S.Ct. 1222, 1225-1226, 20 L.Ed.2d 117. 'That the hearing required by due process is subject to waiver, and is not fixed in form does not affect

its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event.' *Boddie v. Connecticut*, supra, 401 U.S., at 378-379, 91 S.Ct., at 783 (emphasis in original). [*83]

The Florida and Pennsylvania prejudgment replevin statutes fly in the face of this principle. To be sure, the requirements that a party seeking a writ must first post a bond, allege conclusorily that he is entitled to specific goods, and open himself to possible liability in damages if he is wrong, serve to deter wholly unfounded applications for a writ. But those requirements are hardly a substitute for a prior hearing, for they test no more than the strength of the applicant's own belief in his rights.¹³ Since his private gain is at stake, the danger is all too great that his confidence in his cause will be misplaced. Lawyers and judges are familiar with the phenomenon of a party mistakenly but firmly convinced that his view of the facts and law will prevail, and therefore quite willing to risk the costs of litigation. Because of the understandable, self-interested fallibility of litigants, a court does not decide a dispute until it has had an opportunity to hear both sides-and does not generally take even tentative action until it has itself examined the support for the plaintiff's position. The Florida and Pennsylvania statutes do not even require the official issuing a writ of replevin to do that much.

The minimal deterrent effect of a bond requirement is, in a practical sense, no substitute for an informed evaluation by a neutral official. More specifically, as a matter of constitutional principle, it is no replacement for the right to a prior hearing that is the only truly effective safeguard against arbitrary deprivation of property. While the existence of these other, less [*84]

effective, safeguards may be among the considerations that affect the form of hearing demanded by due process, they are far from enough by themselves to obviate the right to a prior hearing of some kind.

V

The right to a prior hearing, of course, attaches only to the deprivation of an interest encompassed within the Fourteenth Amendment's protection. In the present cases, the Florida and Pennsylvania statutes were applied to replevy chattels in the appellants' possession. The replevin was not cast as a final judgment; most, if not all, of the appellants lacked full title to the chattels; and their claim even to continued possession was a matter in dispute. Moreover, the chattels at stake were nothing more than an assortment of household goods. Nonetheless, it is clear that the appellants were deprived of possessory interests in those chattels that were within the protection of the Fourteenth Amendment.

A.

A deprivation of a person's possessions under a prejudgment writ of replevin, at least in theory, may be only temporary. The Florida and Pennsylvania statutes do not require a person to wait until a post-seizure hearing and final judgment to recover what has been replevied. Within three days after the seizure, the statutes allowing him to recover the goods if he, in return, surrenders other property-a payment necessary to secure a bond in double the value of the goods seized from him.¹⁴ But it is now [*85]

well settled that a temporary, nonfinal deprivation of property is nonetheless a 'deprivation' in the terms of the Fourteenth Amendment. *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349; *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90. Both *Sniadach* and *Bell* involved takings of property pending a final judgment in an underlying dispute. In both cases, the challenged statutes included recovery provisions, allowing the defendants to post security to quickly regain the property taken from them.¹⁵ Yet the Court firmly held that these were deprivations of property that had to be preceded by a fair hearing.

The present cases are no different. When officials of Florida or Pennsylvania seize one piece of property from a person's possession and then agree to return it if he surrenders another, they deprive him of property whether or not he has the funds, the knowledge, and the time needed to take advantage of the recovery provision. [*86]

The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause. While the length and consequent severity of a deprivation may be another factor to weigh in determining the appropriate form of hearing, it is not decisive of the basic right to a prior hearing of some kind.

B

The appellants who signed conditional sales contracts lacked full legal title to the replevied goods. The Fourteenth Amendment's protection of 'property,' however, has never been interpreted to safeguard only the rights of undisputed ownership. Rather, it has been read broadly to extend protection to 'any significant property interest,' *Boddie v. Connecticut*, 401 U.S., at 379, 91 S.Ct., at 786, including statutory entitlements. See *Bell v. Burson*, 402 U.S., at 539, 91 S.Ct., at 1589; *Goldberg v. Kelly*, 397 U.S., at 262, 90 S.Ct., at 1017.

The appellants were deprived of such an interest in the replevied goods-the interest in continued possession and use of the goods. See *Sniadach v. Family Finance Corp.*, 395 U.S.,

at 342, 89 S.Ct., at 1823 (Harlan, J., concurring). They had acquired this interest under the conditional sales contracts that entitled them to possession and use of the chattels before transfer of title. In exchange for immediate possession, the appellants had agreed to pay a major financing charge beyond the basic price of the merchandise. Moreover, by the time the goods were summarily repossessed, they had made substantial installment payments. Clearly, their possessory interest in the goods, dearly bought and protected by contract,¹⁶ [*87]

was sufficient to invoke the protection of the Due Process Clause.

Their ultimate right to continued possession was, of course, in dispute. If it were shown at a hearing that the appellants had defaulted on their contractual obligations, it might well be that the sellers of the goods would be entitled to repossession. But even assuming that the appellants had fallen behind in their installment payments, and that they had no other valid defenses,¹⁷ that is immaterial here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. 'To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merit.' *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424, 35 S.Ct. 625, 629, 59 L.Ed. 1027. It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods.¹⁸ [*88]

C

Nevertheless, the District Courts rejected the appellants' constitutional claim on the ground that the goods seized from them a stove, a stereo, a table, a bed, and so forth-were not deserving of due process protection, since they were not absolute necessities of life. The courts based this holding on a very narrow reading of *Sniadach v. Family Finance Corp.*, supra, and *Goldberg v. Kelly*, supra, in which this Court held that the Constitution requires a hearing before prejudgment wage garnishment and before the termination of certain welfare benefits. They reasoned that *Sniadach* and *Goldberg*, as a matter of constitutional principle, established no more than that a prior hearing is required with respect to the deprivation of such basically 'necessary' items as wages and welfare benefits.

This reading of *Sniadach* and *Goldberg* reflects the premise that those cases marked a radical departure from established principles of procedural due process. They did not. Both decisions were in the mainstream of past cases, having little or nothing to do with the absolute 'necessities' of life but establishing that due process requires an opportunity for a hearing before a deprivation of property takes effect.¹⁹ E.g., *Opp Cotton Mills v. Administrator*, 312 U.S., at 152-153, 61 S.Ct., at 535-536; *United States v. Illinois Central R.*

Co., 291 U.S., at 463, 54 S.Ct., at 473; *Southern R. Co. v. Virginia ex rel. Shirley*, 290 U.S. 190, 54 S.Ct. 148, 78 L.Ed. 260; *Londoner v. City & County of Denver*, 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103; *Central of Georgia R. Co. v. Wright*, 207 U.S. 127, 28 S.Ct. 47, 52 L.Ed. 134; *Security Trust & Safety Vault* [*89]

Co. v. Lexington, 203 U.S. 323, 27 S.Ct. 87, 51 L.Ed. 204; *Hibben v. Smith*, 191 U.S. 310, 24 S.Ct. 88, 48 L.Ed. 195; *Glidden v Harrington*, 189 U.S. 255, 23 S.Ct. 574, 47 L.Ed. 798. In none of those cases did the court hold that this most basic due process requirement is limited to the protection of only a few types of property interests. While *Sniadach* and *Goldberg* emphasized the special importance of wages and welfare benefits, they did not convert that emphasis into a new and more limited constitutional doctrine. 20

Nor did they carve out a rule of 'necessity' for the sort of nonfinal deprivations of property that they involved. That was made clear in *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90, holding that there must be an opportunity for a fair hearing before mere suspension of a driver's license. A driver's license clearly does not rise to the level of 'necessity' exemplified by wages and welfare benefits. Rather, as the Court accurately stated, it is an 'important interest,' *id.*, at 539, 91 S.Ct., at 1589, entitled to the protection of procedural due process of law.

The household goods, for which the appellants contracted and paid substantial sums, are deserving of similar protection. While a driver's license, for example, 'may become (indirectly) essential in the pursuit of a livelihood,' *ibid.*, a stove or a bed may be equally essential to provide a minimally decent environment for human beings in their day-to-day lives. It is, after all, such consumer goods that people work and earn a livelihood in order to acquire.

No doubt, there may be many gradations in the 'importance' or 'necessity' of various consumer goods. Stoves could be compared to television sets, or beds- [*90]

could be compared to tables. But if the root principle of procedural due process is to be applied with objectivity, it cannot rest on such distinctions. The Fourteenth Amendment speaks of 'property' generally. And, under our free-enterprise system, an individual's choices in the marketplace are respected, however unwise they may seem to someone else. It is not the business of a court adjudicating due process rights to make its own critical evaluation of those choices and protect only the ones that, by its own lights, are 'necessary.'²¹

There are 'extraordinary situations' that justify postponing notice and opportunity for a hearing. *Boddie v. Connecticut*, 401 U.S., at 379, 91 S.Ct., at 786. These situations, however, must be truly unusual.²² Only in a few limited sit- [*91]

uations has this Court allowed outright seizure²³ without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the State has kept strict control over its monopoly of legitimate force; the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn statute, that it was necessary and justified in the particular instance. Thus, the Court has allowed summary seizure of property [*92]

to collect the internal revenue of the United States,²⁴ to meet the needs of a national war effort,²⁵ to protect against the economic disaster of a bank failure,²⁶ and to protect the public from misbranded drugs²⁷ and contaminated food.²⁸

The Florida and Pennsylvania prejudgment replevin statutes serve no such important governmental or general public interest. They allow summary seizure of a person's possessions when no more than private gain is directly at stake. ²⁹ The replevin of chattels, as in the [*93]

present cases, may satisfy a debt or settle a score. But state intervention in a private dispute hardly compares to state action furthering a war effort or protecting the public health.

Nor do the broadly drawn Florida and Pennsylvania statutes limit the summary seizure of goods to special situations demanding prompt action. There may be cases in which a creditor could make a showing of immediate danger that a debtor will destroy or conceal disputed goods. But the statutes before us are not 'narrowly drawn to meet any such unusual condition.' *Sniadach v. Family Finance Corp.*, *supra*, 395 U.S. at 339, 89 S.Ct. at 1821. And no such unusual situation is presented by the facts of these cases.

The statutes, moreover, abdicate effective state control over state power. Private parties, serving their own private advantage, may unilaterally invoke state power to replevy goods from another. No state official participates in the decision to seek a writ; no state official reviews the basis for the claim to repossession; and no state official evaluates the need for immediate seizure. There is not even a requirement that the plaintiff provide any information to the court on these matters. The State acts largely in the dark. ³⁰ [*94]

Finally, we must consider the contention that the appellants who signed conditional sales contracts thereby waived their basic procedural due process rights. The contract signed by Mrs. Fuentes provided that 'in the event of default of any payment or payments, Seller at its option may take back the merchandise' The contracts signed by the Pennsylvania appellants similarly provided that the seller 'may retake' or 'repossess' the merchandise in the event of a 'default in any payment.' These terms were parts of printed form contracts, appearing in relatively small type and unaccompanied by any explanations clarifying their meaning.

In *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed.2d 124, the Court recently outlined the considerations relevant to determination of a contractual waiver of due process rights. Applying the standards governing waiver of constitutional rights in a criminal proceeding³¹—although not holding that such standards must necessarily apply—the Court held that, on the particular facts of that case, the contractual waiver of due process [*95]

rights was 'voluntarily, intelligently, and knowingly' made. *Id.*, at 187, 92 S.Ct., at 783. The contract in *Overmyer* was negotiated between two corporations; the waiver provision was specifically bargained for and drafted by their lawyers in the process of these negotiations. As the Court noted, it was 'not a case of unequal bargaining power or overreaching. The *Overmyer-Frick* agreement, from the start, was not a contract of adhesion.' *Id.*, at 186, 92 S.Ct., at 782. Both parties were 'aware of the significance' of the waiver provision. *Ibid.*

The facts of the present cases are a far cry from those of *Overmyer*. There was no bargaining over contractual terms between the parties who, in any event, were far from equal in bargaining power. The purported waiver provision was a printed part of a form sales contract and a necessary condition of the sale. The appellees made no showing whatever that the appellants were actually aware or made aware of the significance of the fine print now relied upon as a waiver of constitutional rights.

The Court in *Overmyer* observed that 'where the contract is one of adhesion, where there is great disparity in bargaining power, and where the debtor receives nothing for the (waiver) provision, other legal consequences may ensue.' *Id.*, at 188, 92 S.Ct., at 783. Yet, as in *Overmyer*, there is no need in the present cases to canvass those consequences fully. For a waiver of constitutional rights in any context must, at the very least, be clear. We need not concern ourselves with the involuntariness or unintelligence of a waiver when the contractual language relied upon does not, on its face, even amount to a waiver.

The conditional sales contracts here simply provided that upon a default the seller 'may take back,' 'may retake' or 'may repossess' merchandise. The contracts [*96]

included nothing about the waiver of a prior hearing. They did not indicate how or through what process—a final judgment, self-help, prejudgment replevin with a prior hearing, or prejudgment replevin without a prior hearing—the seller could take back the goods. Rather, the purported waiver provisions here are no more than a statement of the seller's right to repossession upon occurrence of certain events. The appellees do not suggest that these provisions waived the appellants' right to a full post-seizure hearing to determine whether those events had, in fact, occurred and to consider any other available defenses. By the same token, the language of the purported waiver provisions did not waive the appellants' constitutional right to a preseizure hearing of some kind.

VIII

We hold that the Florida and Pennsylvania prejudgment replevin provisions work a deprivation of property without due process of law insofar as they deny the right to a prior opportunity to be heard before chattels are taken from their possessor.³² Our holding, however, is a narrow one. We do not question the power of a State to seize goods before a final judgment in order to protect the security interests of creditors so long as those creditors have tested their claim to the goods through the process of a fair prior hearing. The nature and form of such prior hearings, moreover, are legitimately open to many potential variations and are a [*97] subject, at this point, for legislation—not adjudication.³³ Since the essential reason for the requirement of a prior hearing is to prevent unfair and mistaken deprivations of property, however, it is axiomatic that the hearing must provide a real test. '(D)ue process is afforded only by the kinds of 'notice' and 'hearing' that are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor before he can be deprived of his property . . . ' *Sniadach v. Family Finance Corp.*, supra, 395 U.S. at 343, 89 S.Ct. at 1823 (Harlan, J., concurring). See *Bell v. Burson*, supra, 402 U.S. at 540, 91 S.Ct. at 1589; *Goldberg v. Kelly*, supra, 397 U.S. at 267, 90 S.Ct. at 1020.

For the foregoing reasons, the judgments of the District Courts are vacated and these cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Vacated and remanded.

Mr. Justice POWELL and Mr. Justice REHNQUIST did not participate in the consideration or decision of these cases.

Mr. Justice WHITE, with whom THE CHIEF JUSTICE and Mr. Justice BLACKMUN join, dissenting.

Because the Court's opinion and judgment improvidently, in my view, call into question important aspects of the statutes of almost all the States governing secured transactions and the procedure for repossessing personal property, I must dissent for the reasons that follow.

First: It is my view that when the federal actions were filed in these cases and the respective District [*98] Courts proceeded to judgment there were state court proceedings in progress. It seems apparent to me that the judgments should be vacated and the District Courts instructed to reconsider these cases in the light of the principles announced in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688; *Boyle v. Landry*, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed.2d 696; and *Perez v. Ledesma*, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701.

In No. 70-5039, the Florida statutes provide for the commencement of an action of replevin, with bond, by serving a writ summoning the defendant to answer the complaint. Thereupon the sheriff may seize the property, subject to repossession by defendant within three days upon filing of a counterbond, failing which the property is delivered to plaintiff to await final judgment in the replevin action. Fla.Stat.Ann. § 78.01 et seq. (Supp.1972-1973). This procedure was attacked in a complaint filed by appellant Fuentes in the federal court, alleging that an affidavit in replevin had been filed by Firestone Tire & Rubber Co. in the Small Claims Court of Dade County; that a writ of replevin had been issued pursuant thereto and duly served, together with the affidavit and complaint; and that a trial date had been set in the Small Claims Court. Firestone's answer admitted that the replevin action was pending in the Small Claims Court and asserted that Mrs. Fuentes, plaintiff in the federal court and appellant here, had not denied her default or alleged that she had the right to possession of the property. Clearly, state court proceedings were pending, no bad faith or harassment was alleged, and no irreparable injury appeared that could not have been averted by raising constitutional objections in the pending state court proceeding. In this posture, it would appear that the case should be reconsidered under *Younger v. Harris* and companion cases, which were announced after the District Court's judgment. [*99]

In No. 70-5138, Pennsylvania Rule of Civil Procedure 1073 expressly provides that an '(a)ction of replevin with bond shall be commended by filing with the prothonotary a praecipe for a writ of replevin with bond . . . ' When the writ issues and is served, the defendant has three days to file a counterbond and should he care to have a hearing he may file his own praecipe, in which event the plaintiff must proceed further in the action by filing and serving his complaint.

In the cases before us, actions in replevin were commenced in accordance with the rules, and appellee Sears, Roebuck & Co. urged in the District Court that plaintiffs had 'adequate remedies at law which they could pursue in the state court proceedings which are still pending in accordance with the statutes and rules of Pennsylvania.' App. 60. Under *Younger v. Harris* and companion cases, the District Court's judgment should be vacated and the case reconsidered.

Second: It goes without saying that in the typical installment sale of personal property both seller and buyer have interests in the property until the purchase price is fully paid, the seller early in the transaction often having more at stake than the buyer. Nor is it disputed that the buyer's right to possession is conditioned upon his making the stipulated payments and that upon default the seller is entitled to possession. Finally, there is no question in these cases that if default is disputed by the buyer he has the opportunity for a full hearing, and that if he prevails he may have the property or its full value as damages.

The narrow issue, as the Court notes, is whether it comports with due process to permit the seller, pending final judgment, to take possession of the property through a writ of replevin served by the sheriff without affording the buyer opportunity to insist that the seller establish at a hearing that there is reasonable [*100] basis for his claim of default. The interests of the buyer and seller are obviously antagonistic during this interim period: the buyer wants the use of the property pending final judgment; the seller's interest is to prevent further use and deterioration of his security. By the Florida and Pennsylvania laws the property is to all intents and purposes placed in custody and immobilized during this time. The buyer loses use of the property temporarily but is protected against loss; the seller is protected against deterioration of the property but must undertake by bond to make the buyer whole in the event the latter prevails.

In considering whether this resolution of conflicting interests is unconstitutional, much depends on one's perceptions of the practical considerations involved. The Court holds it constitutionally essential to afford opportunity for a probable-cause hearing prior to repossession. Its stated purpose is 'to prevent unfair and mistaken deprivations of property.' But in these typical situations, the buyer-debtor has either defaulted or he has not. If there is a default, it would seem not only 'fair,' but essential, that the creditor be allowed to repossess; and I cannot say that the likelihood of a mistaken claim of default is sufficiently real or recurring to justify a broad constitutional requirement that a creditor do more than the typical state law requires and permits him to do. Sellers are normally in the business of selling and collecting the price for their merchandise. I could be quite wrong, but it would not seem in the creditor's interest for a default occasioning repossession to occur; as a practical matter it would much better serve his interests if the transaction goes forward and is completed as planned. Dollar-and-cents considerations weigh heavily against false claims of default as well as against precipitate action that would allow no opportunity for mistakes to surface and be [*101] corrected.* Nor does it seem to me that creditors would lightly undertake the expense of instituting replevin actions and putting up bonds.

The Court relies on prior cases, particularly *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971); and *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). But these cases provide no automatic test for determining whether and when due process of law requires adversary proceedings. Indeed, '(t)he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. . . .' '(W)hat procedures due process may require under any given set of circumstances must begin [*102] with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.' *Cafeteria and Restaurant Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961). See also *Stanley v. Illinois*, *supra*, 405 U.S., at 650, 92 S.Ct., at 1212; *Goldberg v. Kelly*, *supra*, 397 U.S., at 263, 90 S.Ct., at 1018. Viewing the issue before us in this light, I would not construe the Due Process Clause to require the creditors to do more than they have done in these cases to secure possession pending final hearing. Certainly, I would not ignore, as the Court does, the creditor's interest in preventing further use and deterioration of the property in which he has substantial interest. Surely under the Court's own definition, the creditor has a 'property' interest as deserving of protection as that of the debtor. At least the debtor, who is very likely uninterested in a speedy resolution that could terminate his use of the property, should be required to make those payments, into court or otherwise, upon which his right to possession is conditioned. Cf. *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972).

Third: The Court's rhetoric is seductive, but in end analysis, the result it reaches will have little impact and represents no more than ideological tinkering with state law. It would appear that creditors could withstand attack under today's opinion simply by making clear in the controlling credit instruments that they may retake possession without a hearing, or, for that matter, without resort to judicial process at all. Alternatively, they need only give a few days' notice of a hearing, take possession if hearing is waived or if there is default; and if hearing is necessary merely establish probable cause for asserting that default has occurred. It is very doubtful in my mind that such a hearing would in fact result in protections for the debtor substantially different from those the present laws pro- [*103] vide. On the contrary, the availability of credit may well be diminished or, in any event, the expense of securing it increased.

None of this seems worth the candle to me. The procedure that the Court strikes down is not some barbaric hangover from bygone days. The respective rights of the parties in secured transactions have undergone the most intensive analysis in recent years. The Uniform Commercial Code, which now so pervasively governs the subject matter with which it deals, provides in Art. 9, § 9-503, that:

'Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. . . .'

Recent studies have suggested no changes in Art. 9 in this respect. See Permanent Editorial Board for the Uniform Commercial Code, Review Committee for Article 9 of the Uniform Commercial Code, Final Report, § 9-503 (April 25, 1971). I am content to rest on the judgment of those who have wrestled with these problems so long and often and upon the judgment of the legislatures that have considered and so recently adopted provisions that contemplate precisely what has happened in these cases.

* Together with No. 70-5138, *Parham et al. v. Cortese et al.*, on appeal from the United States District Court for the Eastern District of Pennsylvania.

1. See *Infra*, at 73-75.

2. Both Mrs. Fuentes and the appellants in No. 5138 also challenged the prejudgment replevin procedures under the Fourth Amendment, made applicable to the States by the Fourteenth. We do not, however, reach that issue. See n. 32, *infra*.

3. Neither Mrs. Fuentes nor the appellants in No. 5138 sought an injunction against any pending or future court proceedings as such. Compare *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669. Rather, they challenged only the summary extra-judicial process of prejudgment seizure of property to which they had already been subjected. They invoked the jurisdiction of the federal district courts under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).

4. Unlike Mrs. Fuentes in No. 5039, none of the appellants in No. 5138 was ever sued in any court by the party who initiated seizure of the property. See *infra*, at 77-78.

5. Since the announcement of this Court's decision in *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 summary prejudgment remedies have come under constitutional challenge throughout the country. The summary deprivation of property under statutes very similar to the Florida and Pennsylvania statutes at issue here has been held unconstitutional by at least two courts. *Laprease v. Raymours Furniture Co.*, 315 F.Supp. 716 (N.D.N.Y.); *Blair v. Pitchess*, 5 Cal.3d 258, 96 Cal.Rptr. 42, 486 P.2d 1242. But see *Brunswick Corp. v. J. & P., Inc.*, 424 F.2d 100 (CA10); *Wheeler v. Adams Co.*, 322 F.Supp. 645 (D.Md.); *Almor Furniture & Appliances, Inc. v. MacMillan*, 116 N.J.Super. 65, 280 A.2d 862. Applying *Sniadach* to other closely related forms of summary prejudgment remedies, some courts have construed that decision as setting forth general principles of procedural due process and have struck down such remedies. E.g., *Adams v. Egley*, 338 F.Supp. 614 (S.D.Cal., 1972); *Collins v. Viceroy Hotel Corp.*, 338 F.Supp. 390 (N.D.Ill.1972); *Santiago v. McElroy*, 319 F.Supp. 284 (E.D.Pa.); *Klim v. Jones*, 315 F.Supp. 109 (N.D.Cal.); *Randone v. Appellate Dept.*, 5 Cal.3d 536, 96 Cal.Rptr. 709, 488 P.2d 13; *Larson v. Fetherston*, 44 Wis.2d 712, 172 N.W.2d 20; *Jones Press, Inc. v. Motor Travel Services, Inc.*,

286 Minn. 205, 176 N.W.2d 87. See *Lebowitz v. Forbes Leasing & Finance Corp.*, 326 F.Supp. 1335, 1341-1348 (E.D.Pa.). Other courts, however, have con-

strued *Sniadach* as closely confined to its own facts and have upheld such summary prejudgment remedies. E.g., *Reeves v. Motor Contract Co.*, 324 F.Supp. 1011 (N.D.Ga.); *Black Watch Farms v. Dick*, 323 F.Supp. 100 (D.Conn.); *American Olean Tile Co. v. Zimmerman*, 317 F.Supp. 150 (D.Hawaii); *Young v. Ridley*, 309 F.Supp. 1308 (D.C.); *Termplan, Inc. v. Superior Court of Maricopa County*, 105 Ariz. 270, 463 P.2d 68; 300 West 154th Street Realty Co. v. Department of Buildings, 26 N.Y.2d 538, 311 N.Y.S.2d 899, 260 N.E.2d 534.

6. The relevant Florida statutory provisions are the following:

Fla.Stat.Ann. § 78.01 (Supp.1972-1973):

'Right to replevin.-Any person whose goods or chattels are wrongfully detained by any other person or officer may have a writ of replevin to recover them and any damages sustained by reason of the wrongful caption or detention as herein provided. Or such person may seek like relief, but with summons to defendant instead of replevy writ in which event no bond is required and the property shall be seized only after judgment, such judgment to be in like form as that provided when defendant has retaken the property on a forthcoming bond.'

Fla.Stat.Ann. § 78.07 (Supp.1972-1973):

'Bond; requisites.-Before a replevy writ issues, plaintiff shall file a bond with surety payable to defendant to be approved by the clerk in at least double the value of the property to be replevied conditioned that plaintiff will prosecute his action to effect and without delay and that if defendant recovers judgment against him in the action, he will return the property, if return thereof is adjudged, and will pay defendant all sums of money recovered against plaintiff by defendant in the action.'

Fla.Stat.Ann. § 78.08 (Supp.1972-1973):

'Writ; form; return.-The writ shall command the officer to whom it may be directed to replevy the goods and chattels in pos-

session of defendant, describing them, and to summon the defendant to answer the complaint.'

Fla.Stat.Ann. § 78.10 (Supp.1972-1973):

'Writ; execution on property in buildings, ect.-In executing the writ of replevin, if the property or any part thereof is secreted or concealed in any dwelling house or other building or enclosure, the officer shall publicly demand delivery thereof and if it is not delivered by the defendant or some other person, he shall cause such house, building or enclosure to be broken open and shall make replevin according to the writ; and if necessary, he shall take to his assistance the power of the county.'

Fla.Stat.Ann. § 78.13 (Supp.1972-1973):

'Writ; disposition of property levied on.-The officer executing the writ shall deliver the property to plaintiff after the lapse of three (3) days from the time the property was taken unless within the three (3) days defendant gives bond with surety to be approved by the officer in double the value of the property as appraised by the officer, conditioned to have the property forthcoming to abide the result of the action, in which event the property shall be redelivered to defendant.'

7. The basic Pennsylvania statutory provision regarding the issuance of writs of replevin is the following:

Pa.Stat.Ann., Tit. 12, § 1821. Writs of replevin authorized

'It shall and may be lawfull for the justices of each county in this province to grant writs of replevin, in all cases whatsoever,

where replevins may be granted by the laws of England, taking security as the said law directs, and make them returnable to the respective courts of common pleas, in the proper county, there to be determined according to law.'

The procedural prerequisites to issuance of a prejudgment writ are, however, set forth in the Pennsylvania Rules of Civil Procedure, 12 P.S. Appendix. The relevant rules are the following:

'Rule 1073. Commencement of Action

'(a) An action of replevin with bond shall be commenced by filing with the prothonotary a praecipe for a writ of replevin with bond, together with

'(1) the plaintiff's affidavit of the value of the property to be replevied, and

'(2) the plaintiff's bond in double the value of the property, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee, conditioned that if the plaintiff fails to maintain his right of possession of the property, he shall pay to the party entitled thereto the value of the property and all legal costs, fees and damages sustained by reason of the issuance of the writ.

'(b) An action of replevin without bond shall be commenced by filing with the prothonotary

'(1) a praecipe for a writ of replevin without bond or

'(2) a complaint.

'If the action is commenced without bond, the sheriff shall not replevy the property but at any time before the entry of judgment the plaintiff, upon filing the affidavit and bond prescribed by subdivision (a) of this rule, may obtain a writ of replevin with bond, issued in the original action, and have the sheriff replevy the property.

'Rule 1076. Counterbond

'(a) A counterbond may be filed with the prothonotary by a defendant or intervenor claiming the right to the possession of the property, except a party claiming only a lien thereon, within seventy-two (72) hours after the property has been replevied, or within seventy-two (72) hours after service upon the defendant when the taking of possession of the property by the sheriff has been waived by the plaintiff as provided by Rule 1077(a), or within such extension of time as may be granted by the court upon cause shown.

'(b) The counterbond shall be in the same amount as the original

bond, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee, conditioned that if the party filing it fails to maintain his right to possession of the property he shall pay to the party entitled thereto the value of the property, and all legal costs, fees and damages sustained by reason of the delivery of the replevied property to the party filing the counterbond.

'Rule 1077. Disposition of Replevied Property. Sheriff's Return

'(a) When a writ of replevin with bond is issued, the sheriff shall leave the property during the time allowed for the filing of a counterbond in the possession of the defendant or of any other person if the plaintiff so authorizes him in writing.

'(b) Property taken into possession by the sheriff shall be held by him until the expiration of the time for filing a counterbond. If the property is not ordered to be impounded and if no counterbond is filed, the sheriff shall deliver the property to the plaintiff.

'(c) If the property is not ordered to be impounded and the person in possession files a counterbond, the property shall be delivered to him, but if he does not file a counterbond, the property shall be delivered to the party first filing a counterbond.

'(d) When perishable property is replevied the court may make such order relating to its sale or disposition as shall be proper.

'(e) The return of the sheriff to the writ of replevin with bond shall state the disposition made by him of the property and the name and address of any person found in possession of the property.'

8. Pa.Rule Civ.Proc. 1073(b) does establish a procedure whereby an applicant may obtain a writ by filing a complaint, initiating a later court action. See n. 7, *supra*. In the case of every appellant in No. 70-5138, the applicant proceeded under Rule 1073(a) rather than 1073(b), seizing property under no more than a security bond and initiating no court action.

9. Pa.Rule Civ.Proc. 1037(a) establishes the procedure for initiating such a suit:

'If an action is not commenced by a complaint (under Rule 1073(b)), the prothonotary, upon praecipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within twenty (20) days after service of the rule, the prothonotary, upon praecipe of the defendant, shall enter a judgment of non pros.'

None of the appellants in No. 70-5138 attempted to initiate the process to require the filing of a post-seizure complaint under Rule 1037(a).

10. See T. Plucknett, *A Concise History of the Common Law* 367-369 (1956); 3 W. Holdsworth, *History of English Law* 284-285 (1927); 2 F. Pollock & F. Maitland, *History of English Law* 577 (1909); J. Cobbe, *Replevin* 19-29 (1890).

11. See Plucknett, *supra*, n. 10, at 362-365; Pollock & Maitland, *supra*, n. 10, at 173-175, 203-211.

12. The creditor could, of course, proceed without the use of state power, through self-help, by 'distraint' the property before a judgment. See n. 10, *supra*.

13. They may not even test that much. For if an applicant for the writ knows that he is dealing with an uneducated, uninformed consumer with little access to legal help and little familiarity with legal procedures, there may be a substantial possibility that a summary seizure of property-however unwarranted-may go unchallenged, and the applicant may feel that he can act with impunity.

14. The appellants argue that this opportunity for quick recovery exists only in theory. They allege that very few people in their position are able to obtain a recovery bond, even if they know of the possibility. Appellant Fuentes says that in her case she was never told that she could recover the stove and stereo and that the deputy sheriff seizing them gave them at once to the Firestone agent, rather than holding them for three days. She further asserts that of 442 cases of prejudgment replevin in small-claims courts in Dade County, Florida, in 1969, there was not one case in which the defendant took advantage of the recovery provision.

15. *Bell v. Burson*, 402 U.S. 535, 536, 91 S.Ct. 1586, 1587, 29 L.Ed.2d 90. Although not mentioned in the *Sniadach* opinion, there clearly was a quick recovery provision in the Wisconsin prejudgment garnishment statute at issue. Wis.Stat. Ann. § 267.21(1) (Supp.1970-1971). *Family Finance Corp. v. Sniadach*, 37 Wis.2d 163, 173-174, 154 N.W.2d 259, 265. Mr. Justice Harlan adverted to the recovery provision in his concurring opinion. 395 U.S. 337, at 343, 89 S.Ct. 1820, at 1823, 23 L.Ed.2d 349.

These sorts of provisions for recovery of property by posting security are, of course, entirely different from the security requirement upheld in *Lindsey v. Normet*, 405 U.S. 56, 65, 92 S.Ct. 862, 870, 31 L.Ed.2d 36. There, the Court upheld a requirement that a tenant wanting a continuance of an eviction hearing must post security for accruing rent during the continuance. The tenant did not have to post security in order to remain in possession before a hearing; rather, he had to post security only in order to obtain a continuance of the hearing. Moreover, the security requirement in *Lindsey* was not a recovery provision. For the tenant was not deprived of his possessory interest even for one day without opportunity for a hearing.

16. The possessory interest of Rosa Washington, an appellant in No. 5138, in her son's clothes, furniture, and toys was no less sufficient to invoke due process safeguards. Her interest was not protected by contract. Rather, it was protected by ordinary property law, there being a dispute between her and her estranged husband over which of them had a legal right not only to custody of the child but also to possession of the chattels.

17. Mrs. Fuentes argues that Florida law allows her to defend on the ground that Firestone breached its obligations under the sales contract by failing to repair serious defects in the stove it sold her. We need not consider this issue here. It is enough that the right to continued possession of the goods was open to some dispute at a hearing since the sellers of the goods had to show, at the least, that the appellants had defaulted in their payments.

18. The issues decisive of the ultimate right to continued possession, of course, may be quite simple. The simplicity of the issues might be relevant to the formality or scheduling of a prior hearing. See *Lindsey v. Normet*, 405 U.S. 56, 65, 92 S.Ct. 862, 869, 31 L.Ed.2d 36. But it certainly cannot undercut the right to a prior hearing of some kind.

19. The Supreme Court of California recently put the matter accurately: 'Sniadach put the matter accurately: Sniadach in constitutional adjudication. It is not a rivulet of wage garnishment but part of the mainstream of the past procedural due process decisions of the United States Supreme Court.' *Randone v. Appellate Dept.*, 5 Cal.3d 536, 550, 96 Cal.Rptr. 709, 718, 488 P.2d 13, 22.

20. *Sniadach v. Family Finance Corp.*, supra, 395 U.S., at 340, 89 S.Ct., at 1822; *Goldberg v. Kelly*, 397 U.S. 254, 264, 90 S.Ct. 1011, 1018, 25 L.Ed.2d 287. Of course, the primary issue in *Goldberg* was the form of hearing demanded by due process before termination of welfare benefits; the importance of welfare was directly relevant to that question.

21. The relative weight of liberty or property interests is relevant, of course, to the form of notice and hearing required by due process. See, e.g., *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 and cases cited therein. But some form of notice and hearing-formal or informal-is required before deprivation of a property interest that 'cannot be characterized as de minimis.' *Sniadach v. Family Finance Corp.*, supra, 395 U.S., at 342, 89 S.Ct., at 1823 (Harlan, J., concurring).

22. A prior hearing always imposes some costs in time, effort, and expense, and it is often more efficient to dispense with the opportunity for such a hearing. But these rather ordinary costs cannot outweigh the constitutional right. See *Bell v. Burson*, supra, 402 U.S., at 540-541, 91 S.Ct., at 1589-1590; *Goldberg v. Kelly*, supra, 397 U.S., at 261, 90 S.Ct., at 1016. Procedural due process is not intended to promote efficiency or accommodate all possible

interests: it is intended to protect the particular interests of the person whose possessions are about to be taken.

'The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.' *Stanley v. Illinois*, 405 U.S. 645, 656, 92 S.Ct. 1208, 1215, 31 L.Ed.2d 551.

23. Of course, outright seizure of property is not the only kind of deprivation that must be preceded by a prior hearing. See, e.g., *Sniadach v. Family Finance Corp.*, *supra*. In three cases, the Court has allowed the attachment of property without a prior hearing. In one, the attachment was necessary to protect the public against the same sort of immediate harm involved in the seizure cases—a bank failure. *Coffin Bros. & Co. v. Bennett*, 277 U.S. 29, 48 S.Ct. 422, 72 L.Ed. 768. Another case involved attachment necessary to secure jurisdiction in state court—clearly a most basic and important public interest. *Ownbey v. Morgan*, 256 U.S. 94, 41 S.Ct. 433, 65 L.Ed. 837. It is much less clear what interests were involved in the third case, decided with an unexplicated *per curiam* opinion simply citing *Coffin Bros.* and *Ownbey*. *McKay v. McInnes*, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975. As far as essential procedural due process doctrine goes, *McKay* cannot stand for any more than was established in the *Coffin Bros.* and *Ownbey* cases on which it relied completely. See *Sniadach v. Family Finance Corp.*, *supra*, 395 U.S., at 340, 89 S.Ct., at 1822; *id.*, at 344, 89 S.Ct. 1823 (Harlan, J., concurring).

In cases involving deprivation of other interests, such as government employment, the Court similarly has required an unusually important governmental need to outweigh to right to a prior hearing. See, e.g., *Cafeteria and Restaurant Workers v. McElroy*, 367 U.S. 886, 895-896, 81 S.Ct. 1743, 1748-1749, 6 L.Ed.2d 1230.

Seizure under a search warrant is quite a different matter, see n. 30, *infra*.

24. *Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289. The Court stated that '(d)elay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied.' *Id.*, at 597, 51 S.Ct., at 611 (emphasis supplied). The Court, then, relied on 'the need of the government promptly to secure its revenues.' *Id.*, at 596, 51 S.Ct., at 611.

25. *Central Union Trust Co. v. Garvan*, 254 U.S. 554, 566, 41 S.Ct. 214, 215, 65 L.Ed. 403; *Stoehr v. Wallace*, 255 U.S. 239, 245, 41 S.Ct. 293, 296, 65 L.Ed. 604; *United States v. Pfitsch*, 256 U.S. 547, 553, 41 S.Ct. 569, 571, 65 L.Ed. 1084.

26. *Fahey v. Mallonee*, 332 U.S. 245, 67 S.Ct. 1552, 91 L.Ed. 2030.

27. *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088.

28. *North American Cold Storage Co. v. Chicago*, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195.

29. By allowing repossession without an opportunity for a prior hearing, the Florida and Pennsylvania statutes may be intended specifically to reduce the costs for the private party seeking to seize goods in another party's possession. Even if the private gain at stake in repossession actions were equal to the great public interests recognized in this Court's past decisions, see nn. 24-28, *supra*, the Court has made clear that the avoidance of the ordinary costs imposed by the opportunity for a hearing is not sufficient to override the constitutional right. See n. 22, *supra*. The appellees argue that the cost of holding hearings may be especially onerous in the context of the creditor-debtor relationship. But the Court's holding in *Sniadach v. Family Finance Corp.*, *supra*, indisputably demonstrates that ordinary hearing costs are no more able to override due process rights in the creditordebtor context than in other contexts.

In any event, the aggregate cost of an opportunity to be heard before repossession should not be exaggerated. For we deal here only with the right to an opportunity to be heard. Since the issues and facts decisive of rights in repossession suits may very often be quite simple, there is a likelihood that many defendants would forgo their opportunity, sensing the futility of the exercise in the particular case. And, of course, no hearing need be held unless the defendant, having received notice of his opportunity, takes advantage of it.

30. The seizure of possessions under a writ of replevin is entirely different from the seizure of possessions under a search warrant. First, a search warrant is generally issued to serve a highly important governmental need-e.g., the apprehension and conviction of criminals-rather than the mere private advantage of a private party in an economic transaction. Second, a search warrant is generally issued in situations demanding prompt action. The danger is all too obvious that a criminal will destroy or hide evidence or fruits of his crime if given any prior notice. Third, the Fourth Amendment guarantees that the State will not issue search warrants merely upon the conclusory application of a private party. It guarantees that the State will not abdicate control over the issuance of warrants and that no warrant will be issued without a prior showing of probable cause. Thus, our decision today in no way implies that there must be opportunity for an adversary hearing before a search

warrant is issued. But cf. *Quantity of Books v. Kansas*, 378 U.S. 205, 84 S.Ct. 1723, 12 L.Ed.2d 809.

31. See *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468, 25 L.Ed.2d 747; *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461. In the civil area, the Court has said that '(w)e do not presume acquiescence in the loss of fundamental rights,' *Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U.S. 292, 307, 57 S.Ct. 724, 731, 81 L.Ed. 1093. Indeed, in the civil no less than the criminal area, 'courts indulge every reasonable presumption against waiver.' *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393, 57 S.Ct. 809, 812, 81 L.Ed. 1177.

32. We do not reach the appellants' argument that the Florida and Pennsylvania statutory procedures violate the Fourth Amendment, made applicable to the States by the Fourteenth. See n. 2, *supra*. For once a prior hearing is required, at which the applicant for a writ must establish the probable validity of his claim for repossession, the Fourth Amendment problem may well be obviated. There is no need for us to decide that question at this point.

33. Leeway remains to develop a form of hearing that will minimize unnecessary cost and delay while preserving the fairness and effectiveness of the hearing in preventing seizures of goods where the party seeking the writ has little probability of succeeding on the merits of the dispute.

* Appellants Paul and Ellen Parham admitted in their complaints that they were delinquent in their payments. They stipulated to this effect as well as to receipt of notices of delinquency prior to institution of the replevin action, and the District Court so found.

Appellant Epps alleged in his complaint that he was not in default. The defendant, Government Employees Exchange Corp., answered that Epps was in default in the amount of \$311.25 as of August 9, 1970, that the entire sum due had been demanded in accordance with the relevant documents, and that Epps had failed and refused to pay that sum. The District Court did not resolve this factual dispute. It did find that Epps earned in excess of \$10,000 per year and that the agreements Epps and Parham entered into complied with the provisions of Pennsylvania's Uniform Commercial Code and its Services and Installment Sales Act.

As for appellant Rosa Washington, the District Court, based on the allegations of her complaint, entered a temporary restraining order requiring that the property seized from her be returned forthwith. At a subsequent hearing the order was dissolved, the court finding 'that the representations upon which the temporary restraining order of September 18, 1970, issued were incorrect, both as to allegations contained in the complaint and representations made by counsel.' (App. 29.)

It was stipulated between appellant Fuentes and defendants in the District Court that Mrs. Fuentes was in default at the time the replevin action was filed and that notices to this effect were sent to her over several months prior to institution of the suit. (App. 25-26.)

Mitchell v. Grant Company 8212 6160

Court:	U.S. Supreme Court
Writing for the Court:	WHITE
Citation:	Mitchell v. Grant Company 8212 6160, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974)
Decision Date:	13 May 1974
Docket Number:	No. 72, 72
Parties:	Lawrence MITCHELL, Petitioner, v. W. T. GRANT COMPANY —6160

Id. vLex Fastcase: VLEX-890223273

Link: <https://fastcase.vlex.com/vid/mitchell-v-grant-company-890223273>

416 U.S. 600

94 S.Ct. 1895

40 L.Ed.2d 406

Lawrence MITCHELL, Petitioner,

v. W. T. GRANT COMPANY

No. 72—6160.

Argued Dec. 4, 1973.

Decided May 13, 1974.

Syllabus

The Louisiana Code of Civil Procedure makes available to a mortgage or lien holder a writ of sequestration to forestall waste or alienation of the encumbered property. While the writ is obtainable on the creditor's ex parte application without notice to the debtor

or an opportunity for hearing, the writ will issue only upon a verified affidavit and upon a judge's authority (with respect to the parish involved in this case) after the creditor has filed a sufficient bond. The debtor may immediately seek dissolution of the writ, which must be ordered unless the creditor proves the grounds for issuance (existence of the debt, lien, and delinquency), failing which the court may order return of the property and assess damages, including attorney's fees, in the debtor's favor. Respondent-seller filed suit against petitioner in the New Orleans City Court for the overdue balance of the price of certain personal property that petitioner had purchased under an installment sales contract and on which respondent had a vendor's lien. On respondent's application, the trial judge in accordance with the Louisiana procedure ordered sequestration of the property without prior notice or opportunity for a hearing, and denied petitioner's motion to dissolve the writ on the asserted ground, inter alia, that the seizure violated the Due Process Clause of the Fourteenth Amendment. The appellate courts affirmed. Held: The Louisiana sequestration procedure is not invalid, either on its face or as applied, and, considering the procedure as a whole, it effects a constitutional accommodation of the respective interests of the buyer and seller by providing for judicial control of the process from beginning to end, thus minimizing the risk of the creditor's wrongful interim possession, by protecting the debtor's interest in every way except to allow him initial possession, and by putting the property in the possession of the party who is able to furnish protection against loss or damage pending trial on the merits. *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556, distinguished. Pp. 603—620.

263 La. 627, 269 So.2d 186, affirmed.

Robert J. Hobbs, New Orleans, La., for petitioner; John W. Reed, New Orleans, La., on the brief.

Thomas J. O'Sullivan, New York City, for respondent; Marshall J. Favret, New Orleans, La., on the brief. [*601]

Mr. Justice WHITE delivered the opinion of the Court.

In this case, a state trial judge in Louisiana ordered the sequestration of personal property on the application of a creditor who had made an installment sale of the goods to petitioner and whose affidavit asserted delinquency and prayed for sequestration to enforce a vendor's lien under state law. The issue is whether the sequestration violated the Due Process Clause of the Fourteenth Amendment because it was ordered *ex parte*, without prior notice or opportunity for a hearing.

I

On February 2, 1972, respondent W. T. Grant Co. filed suit in the First City Court of the City of New Orleans, Louisiana, against petitioner, Lawrence Mitchell. The petition alleged the sale by Grant to Mitchell of a refrigerator, range, stereo, and washing machine, and an overdue and unpaid balance of the purchase price for said items in the

amount of \$574.17. Judgment for **[*602]** that sum was demanded. It was further alleged that Grant had a vendor's lien on the goods and that a writ of sequestration should issue to sequester the merchandise pending the outcome of the suit. The accompanying affidavit of Grant's credit manager swore to the truth of the facts alleged in the complaint. It also asserted that Grant had reason to believe petitioner would 'encumber, alienate or otherwise dispose of the merchandise described in the foregoing petition during the pendency of these proceedings, and that a writ of sequestration is necessary in the premises.' Based on the foregoing petition and affidavit, and without prior notice to Mitchell or affording him opportunity for hearing, the judge of the First City Court, Arthur J. O'Keefe, then signed an order that 'a writ of sequestration issue herein' and that 'the Constable of this court sequester and take into his possession the articles of merchandise described in the foregoing petition, upon plaintiff furnishing bond in the amount of \$1,125.' Bond in that amount having been filed by the respondent, the writ of sequestration issued, along with citation to petitioner Mitchell, citing him to file a pleading or make appearance in the First City Court of the city of New Orleans within five days. The citation recited the filing of the writ of sequestration and the accompanying affidavit, order, and bond. On March 3 Mitchell filed a motion to dissolve the writ of sequestration issued on February 2.¹ The motion asserted that the personal property at issue had been seized under the writ of February 7, 1972, and claimed, first, that the goods were exempt from seizure under state law and, second, that the seizure violated the Due Process Clauses of the State and Federal Constitutions **[*603]** in that it had occurred without prior notice and opportunity to defend petitioner's right to possession of the property.² The motion came on for hearing on March 14. It was then stipulated that a vendor's lien existed on the items, arguments of counsel were heard, and on March 16 the motion to dissolve was denied. The goods were held not exempt from seizure under state law. The trial court also ruled that 'the provisional seizure enforced through sequestration' was not a denial of due process of law. 'To the contrary,' the trial judge said, 'plaintiff insured defendant's right to due process by proceeding in accordance with Louisiana Law as opposed to any type of self-help seizure which would have denied defendant possession of his property without due process.' The appellate courts of Louisiana refused to disturb the rulings of the trial court, the Supreme Court of Louisiana expressly rejecting petitioner's due process claims pressed under the Federal Constitution. 263 La. 627, 269 So.2d 186 (1972). We granted certiorari, 411 U.S. 981, 93 S.Ct. 2276, 36 L.Ed.2d 957 (1973), and now affirm the judgment of the Louisiana Supreme Court.

II

Petitioner's basic proposition is that because he had possession of and a substantial interest in the sequestered property, the Due Process Clause of the Fourteenth Amendment necessarily forbade the seizure without prior notice and opportunity for a hearing. In the circumstances presented here, we cannot agree. **[*604]**

Petitioner no doubt 'owned' the goods he had purchased under an installment sales contract, but his title was heavily encumbered. The seller W. T. Grant Co., also had an interest in the property, for state law provided it with a vendor's lien to secure the unpaid balance of the purchase price. Because of the lien, Mitchell's right to possession

and his title were subject to defeasance in the event of default in paying the installments due from him. His interest in the property, until the purchase price was paid in full, was no greater than the surplus remaining, if any, after foreclosure and sale of the property in the event of his default and satisfaction of outstanding claims. See La.Code Civ.Proc.Ann., Art. 2373 (1961).³ The interest of Grant, as seller of the property and holder of a vendor's lien, was measured by the unpaid balance of the purchase price. The monetary value of that interest in the property diminished as payments were made, but the value of the property as security also steadily diminished over time as it was put to its intended use by the purchaser.

Plainly enough, this is not a case where the property sequestered by the court is exclusively the property of the defendant debtor. The question is not whether a debtor's property may be seized by his creditors, *pendente lite*, where they hold no present interest in the property sought to be seized. The reality is that both seller and buyer had current, real interests in the property, and the definition of property rights is a matter of state law. Resolution of the due process question must take account not only of the interests of the buyer of the property but those of the seller as well.

With this duality in mind, we are convinced that the [*605] Louisiana sequestration procedure is not invalid, either on its face or as applied. Sequestration under the Louisiana statutes is the modern counterpart of an ancient civil law device to resolve conflicting claims to property. Historically, the two principal concerns have been that, pending resolution of the dispute, the property would deteriorate or be wasted in the hands of the possessor and that the latter might sell or otherwise dispose of the goods. A minor theme was that official intervention would forestall violent self-help and retaliation. See Millar, *Judicial Sequestration in Louisiana: Some Account of Its Sources*, 30 Tul.L.Rev. 201, 206 (1956).

Louisiana statutes provide for sequestration where 'one claims the ownership or right to possession of property, or a mortgage, lien, or privilege thereon . . . if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action.' Art. 3571. The writ, however, will not issue on the conclusory allegation of ownership or possessory rights. Article 35014 provides that the writ of sequestration shall issue 'only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts' shown by a verified petition or affidavit. In the parish where this [*606] case arose, the clear showing required must be made to a judge,⁵ and the writ will issue only upon his authorization and only after the creditor seeking the writ has filed a sufficient bond⁶ to protect the vendee against all damages in the event the sequestration is shown to have been improvident.⁷ Arts. 3501 and 3574.

The writ is obtainable on the creditor's *ex parte* application, without notice to the debtor or opportunity for a hearing, but the statute entitles the debtor immediately to seek dissolution of the writ, which must be ordered unless the creditor 'proves the grounds upon which the writ was issued,' Art. 3506, the existence of the debt, lien, and delinquency, failing which the court may order return of the property and assess damages in favor of the debtor, including attorney's fees.⁸ [*607]

The debtor, with or without moving to dissolve the sequestration, may also regain possession by filing his own bond to protect the creditor against interim damage to him should he ultimately win his case and have judgment against the debtor for the unpaid balance of the purchase price which was the object of the suit and of the sequestration. Arts. 3507 and 3508.9

In our view, this statutory procedure effects a constitutional accommodation of the conflicting interests of the parties. We cannot accept petitioner's broad assertion that the Due Process Clause of the Fourteenth Amendment guaranteed to him the use and possession of the goods until all issues in the case were judicially resolved after full adversary proceedings had been completed. It is certainly clear under this Court's precedents that issues can be limited in actions for possession. Indeed, in *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133, 35 S.Ct. 279, 59 L.Ed. 501 (1915) (Holmes, J.), the Court upheld such limitations in possessory actions for real property in Louisiana. See also *Bianchi v. Morales*, 262 U.S. 170, 43 S.Ct. 526, 67 L.Ed. 928 (1923); *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972). Petitioner's claim must accordingly be narrowed to one for a hearing on the issues in the possessory action—default, the existence of a lien, and possession of the debtor—before property is taken.

As to this claim, the seller here, with a vendor's lien to secure payment of the unpaid balance of purchase price, had the right either to be paid in accordance with its contract or to have possession of the goods for the purpose of foreclosing its lien and recovering the unpaid balance. By complaint and affidavit, the seller swore [*608] to facts that would entitle it to immediate possession of the goods under its contract, undiminished in value by further deterioration through use of the property by the buyer. Wholly aside from whether the buyer, with possession and power over the property, will destroy or make away with the goods, the buyer in possession of consumer goods will undeniably put the property to its intended use, and the resale value of the merchandise will steadily decline as it is used over a period of time. Any installment seller anticipates as much, but he is normally protected because the buyer's installment payments keep pace with the deterioration in value of the security. Clearly, if payments cease and possession and use by the buyer continue, the seller's interest in the property as security is steadily and irretrievably eroded until the time at which the full hearing is held.

The State of Louisiana was entitled to recognize this reality and to provide somewhat more protection for the seller. This it did in Orleans Parish by authorizing the sequestration of property by a judge. At the same time, the buyer being deprived of possession, the seller was required to put up a bond to guarantee the buyer against damage or expense, including attorney's fees, in the event the sequestration is shown to be mistaken or otherwise improvident. The buyer is permitted to regain possession by putting up his own bond to protect the seller. Absent that bond, which petitioner did not file in this case, the seller would be unprotected against the inevitable deterioration in the value of his security if the buyer remained in possession pending trial on the merits. The debtor, unlike the creditor, does not stand ready to make the opposing party whole, if his possession, pending a prior hearing, turns out to be wrongful.

Second, there is the real risk that the buyer, with possession and power over the goods, will conceal or [*609] transfer the merchandise to the damage of the seller. This is one

of the considerations weighed in the balance by the Louisiana law in permitting initial sequestration of the property. An important factor in this connection is that under Louisiana law, the vendor's lien expires if the buyer transfers possession. It follows that if the vendor is to retain his lien, superior to the rights of other creditors of the buyer, it is imperative when default occurs that the property be sequestered in order to foreclose the possibility that the buyer will sell or otherwise convey the property to third parties against whom the vendor's lien will not survive. The danger of destruction or alienation cannot be guarded against if notice and a hearing before seizure are supplied. The notice itself may furnish a warning to the debtor acting in bad faith.

Third, there is scant support in our cases for the proposition that there must be final judicial determination of the seller's entitlement before the buyer may be even temporarily deprived of possession of the purchased goods. On the contrary, it seems apparent that the seller with his own interest in the disputed merchandise would need to establish in any event only the probability that his case will succeed to warrant the bonded sequestration of the property pending outcome of the suit. Cf. *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971); *Ewing v. Mytinger & Casselberry*, 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950). The issue at this stage of the proceeding concerns possession pending trial and turns on the existence of the debt, the lien, and the delinquency. These are ordinarily uncomplicated matters that lend themselves to documentary proof; and we think it comports with due process to permit the initial seizure on sworn ex parte documents, followed by the early opportunity to put the creditor to his proof. The nature of the issues at stake minimizes the risk that the [*610] writ will be wrongfully issued by a judge. The potential damages award available, if there is a successful motion to dissolve the writ, as well as the creditor's own interest in avoiding interrupting the transaction, also contributes to minimizing this risk.

Fourth, we remain unconvinced that the impact on the debtor of deprivation of the household goods here in question overrides his inability to make the creditor whole for wrongful possession, the risk of destruction or alienation if notice and a prior hearing are supplied, and the low risk of a wrongful determination of possession through the procedures now employed.

Finally, the debtor may immediately have a full hearing on the matter of possession following the execution of the writ, thus cutting to a bare minimum the time of creditor- or court-supervised possession. The debtor in this case, who did not avail himself of this opportunity, can hardly expect that his argument on the severity of deprivation will carry much weight, and even assuming that there is real impact on the debtor from loss of these goods, pending the hearing on possession, his basic source of income is unimpaired.

The requirements of due process of law 'are not technical, nor is any particular form of procedure necessary.' *Inland Empire Council v. Millis*, 325 U.S. 697, 710, 65 S.Ct. 1316, 1323, 89 L.Ed. 1877 (1945). Due process of law guarantees 'no particular form of procedure; it protects substantial rights.' *NLRB v. Mackay Co.*, 304 U.S. 333, 351, 58 S.Ct. 904, 913, 82 L.Ed. 1381 (1938). 'The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230

(1961); *Stanley v. Illinois*, 405 U.S. 645, 650, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972). Considering the Louisiana procedure as a whole, we are convinced that the State has reached a constitutional accommodation of the respective interests of buyer and seller. [*611]

III

Petitioner asserts that his right to a hearing before his possession is in any way disturbed is nonetheless mandated by a long line of cases in this Court, culminating in *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969), and *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). The pre-Sniadach cases are said by petitioner to hold that 'the opportunity to be heard must precede any actual deprivation of private property.'¹⁰ Their import, however, is not so clear as petitioner would have it: they merely stand for the proposition that a hearing must be had before one is finally deprived of his property and do not deal at all with the need for a pretermination hearing where a full and immediate post-termination hearing is provided. The usual rule has been '(w)here only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.' *Phillips v. Commissioner*, 283 U.S. 589, 596—597, 51 S.Ct. 608, 611, 75 L.Ed. 1289 (1931). See also *Scottish Union & National Ins. Co. v. Bowland*, 196 U.S. 611, 632, 25 S.Ct. 345, 352, 49 L.Ed. 619 (1905); *Springer [*612] v. United States*, 102 U.S. 586, 593—594, 26 L.Ed. 253 (1881). This generality sufficed to decide relatively modern cases. For example, in *Ewing v. Mytinger & Casselberry*, 339 U.S. 594, 70 S.Ct. 870, 94 L.Ed. 1088 (1950), the statute at issue permitted multiple seizures of misbranded articles in commerce "when the Administrator has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Agency that the misbranded article . . . would be in a material respect misleading to the injury or damage of the purchaser or consumer." *Id.*, 339 U.S. at 595—596, 70 S.Ct. at 871. The specific seizure challenged, made administratively without prior notice or hearing, concerned a concentrate of alfalfa, watercress, parsley, and synthetic vitamins, combined in a package with mineral tablets. There was no claim or suggestion of any possible threat to health. The sole official claim was that the labeling was misleading to the alleged damage of the purchaser. The Court sustained the ex parte seizure saying that '(w)e have repeatedly held that no hearing at the preliminary stage is required by due process so long as the requisite hearing is held before the final administrative order becomes effective.' *Id.*, at 598, 70 S.Ct., at 872. 'It is sufficient, where only property rights are concerned, that there is at some stage an opportunity for a hearing and a judicial determination.' *Id.*, at 599, 70 S.Ct., at 873.¹¹ [*613]

More precisely in point, the Court had unanimously approved prejudgment attachment liens effected by creditors, without notice, hearing, or judicial order, saying that 'nothing is more common than to allow parties alleging themselves to be creditors to establish in advance by attachment a lien dependent for its effect upon the result of the suit.' 'The fact that the execution is issued in the first instance by an agent of the State but not from a court, followed as it is by personal notice and a right to take the case into court, is a familiar method in Georgia and is open to no objection.' *Coffin Bros. v. Bennett*, 277 U.S.

29, 31, 48 S.Ct. 422, 423, 72 L.Ed. 768 (1929). To the same effect was the earlier case of *Ownbey v. Morgan*, 256 U.S. 94, 41 S.Ct. 433, 65 L.Ed. 837 (1921). Furthermore, based on *Ownbey* and *Coffin*, the Court later sustained the constitutionality of the Maine attachment statute. *McKay v. McInnes*, 279 U.S. 820, 49 S.Ct. 344, 73 L.Ed. 975 (1928). In that case, a nonresident of Maine sued in the Maine courts to collect a debt from a resident of the State. As permitted by statute, and as an integral part of instituting the suit, the creditor attached the properties of the defendant, without notice and without judicial process of any kind. In sustaining the procedure, the Maine Supreme Court, 127 Me. 110, 141 A. 699 (1928), described the attachment as designed to create a lien for the creditor at the outset of the litigation. 'Its purpose is simply to secure to the creditor the property which the debtor has at the time it is made so that it may be seized and levied upon in satisfaction of the debt after judgment and execution may be obtained.' *Id.*, [*614] at 115, 141 A., at 702. The attachment was deemed 'part of the remedy provided for the collection of the debt,' *ibid.*, and represented a practice that 'had become fully established in Massachusetts, part of which Maine was, at the time of the adoption of the Federal Constitution.' *Id.*, at 114, 115, 141 A., at 702. The judgment of the Maine court was affirmed without opinion, citing *Ownbey* and *Coffin*.

In *Sniadach v. Family Finance Corp.*, *supra*, it was said that *McKay* and like cases dealt with '(a) procedural rule that may satisfy due process for attachments in general' but one that would not 'necessarily satisfy procedural due process in every case,' nor one that 'gives necessary protection to all property in its modern forms.' 395 U.S., at 340, 89 S.Ct., at 1822. *Sniadach* involved the prejudgment garnishment of wages—'a specialized type of property presenting distinct problems in our economic system.' *Ibid.* Because '(t)he leverage of the creditor on the wage earner is enormous' and because 'prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall,' it was held that the Due Process Clause forbade such garnishment absent notice and prior hearing. *Id.*, at 341–342, 89 S.Ct., at 1822. In *Sniadach*, the Court also observed that garnishment was subject to abuse by creditors without valid claims, a risk minimized by the nature of the security interest here at stake and the protections to the debtor offered by Louisiana procedure. Nor was it apparent in *Sniadach* with what speed the debtor could challenge the validity of the garnishment, and obviously the creditor's claim could not rest on the danger of destruction of wages, the property seized, since their availability to satisfy the debt remained within the power of the debtor who could simply leave his job. The suing creditor in *Sniadach* had no prior interest in the property attached, and the opinion did not purport to govern the typical case of [*615] the installment seller who brings a suit to collect an unpaid balance and who does not seek to attach wages pending the outcome of the suit but to repossess the sold property on which he had retained a lien to secure the purchase price. This very case soon came before the Court in *Fuentes v. Shevin*, where the constitutionality of the Florida and Pennsylvania replevin statutes was at issue. Those statutes permitted the secured installment seller to repossess the goods sold, without notice or hearing and without judicial order or supervision, but with the help of the sheriff operating under a writ issued by the court clerk at the behest of the seller. Because carried out without notice or opportunity for hearing and without judicial participation, this kind of seizure was held violative of the Due Process Clause. This holding is the mainstay of petitioner's submission here. But we are convinced that

Fuentes was decided against a factual and legal background sufficiently different from that now before us and that it does not require the invalidation of the Louisiana sequestration statute, either on its face or as applied in this case.

The Florida law under examination in Fuentes authorized repossession of the sold goods without judicial order, approval, or participation. A writ of replevin was employed, but it was issued by the court clerk. As the Florida law was perceived by this Court, '(t)here is no requirement that the applicant make a convincing showing before the seizure,' 407 U.S., at 73–74, 92 S.Ct., at 1991; the law required only 'the bare assertion of the party seeking the writ that he is entitled to one' as a condition to the clerk's issuance of the writ. *Id.*, at 74, 92 S.Ct., at 1991. The Court also said that under the statute the defendant-buyer would 'eventually' have an opportunity for a hearing, 'as the defendant in the trial of the court action for repossession . . . ' *Id.*, at 75, 92 S.Ct., at 1991. The Pennsylvania law was considered to be essentially the same as that [*616] of Florida except that it did 'not require that there ever be opportunity for a hearing on the merits of the conflicting claims to possession of the replevied property.' *Id.*, at 77, 92 S.Ct., at 1992. The party seeking the writ was not obliged to initiate a court action for repossession, was not required formally to allege that he was entitled to the property and had only to file an affidavit of the value of the property sought to be replevied. The Court distinguished the Pennsylvania and Florida procedures from that of the common law where, the Court said, 'a state official made at least a summary determination of the relative rights of the disputing parties before stepping into the dispute and taking goods from one of them.' *Id.*, at 80, 92 S.Ct., at 1994.

The Louisiana sequestration statute followed in this case mandates a considerably different procedure. A writ of sequestration is available to a mortgage or lien holder to forestall waste or alienation of the property, but, different from the Florida and Pennsylvania systems, bare conclusory claims of ownership or lien will not suffice under the Louisiana statute. Article 3501 authorizes the writ 'only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts' shown by verified petition or affidavit. Moreover, in the parish where this case arose, the requisite showing must be made to a judge, and judicial authorization obtained. Mitchell was not at the unsupervised mercy of the creditor and court functionaries. The Louisiana law provides for judicial control of the process from beginning to end.¹² This control is one of the measures [*617] adopted by the State to minimize the risk that the ex parte procedure will lead to a wrongful taking. It is buttressed by the provision that should the writ be dissolved there are 'damages for the wrongful issuance of a writ' and for attorney's fees 'whether the writ is dissolved on motion or after trial on the merits.' Art. 3506.

The risk of wrongful use of the procedure must also be judged in the context of the issues which are to be determined at that proceeding. In Florida and Pennsylvania property was only to be replevied in accord with state policy if it had been 'wrongfully detained.' This broad 'fault' standard is inherently subject to factual determination and adversarial input. As in *Bell v. Burson*, where a driver's license was suspended without a prior hearing, when the suspension was premised on a fault standard, see *Vlandis v. Kline*, 412 U.S. 441, 446–447, 93 S.Ct. 2230, 2233–2234, 37 L.Ed.2d 63 (1973), in

Fuentes this fault standard for replevin was thought ill-suited for preliminary ex parte determination. In Louisiana, on the other hand, the facts relevant to obtaining a writ of sequestration are narrowly confined. As we have indicated, documentary proof is particularly suited for questions of the existence of a vendor's lien and the issue of default. There is thus far less danger here that the seizure will be mistaken and a corresponding decrease in the utility of an adversary hearing which will be immediately available in any event.

Of course, as in Fuentes, consideration of the impact on the debtor remains. Under Louisiana procedure, however, the debtor, Mitchell, was not left in limbo to await a hearing that might or might not 'eventually' occur, as the debtors were under the statutory schemes before the Court in Fuentes. Louisiana law expressly provides for an immediate hearing and dissolution of the writ 'unless the plaintiff proves the grounds upon which the writ was issued.' Art. 3506.

To summarize, the Louisiana system seeks to minimize the risk of error of a wrongful interim possession by the creditor. The system protects the debtor's interest in every conceivable way, except allowing him to have the property to start with, and this is done in pursuit of what we deem an acceptable arrangement pendente lite to put the property in the possession of the party who furnishes protection against loss or damage to the other pending trial on the merits.

The Court must be sensitive to the possible consequences, already foreseen in antiquity, of invalidating this state statute. Doing so might not increase private violence, but self-help repossession could easily lessen protections for the debtor. See, for example, [Adams v. Southern California First National Bank](#), 492 F.2d 324 (C.A.9 1973).¹³ Here, the initial hardship to the debtor [*619] is limited, the seller has a strong interest, the process proceeds under judicial supervision and management, and the prevailing party is protected against all loss. Our conclusion is that the Louisiana standards regulating the use of the writ of sequestration are constitutional. Mitchell [*620] was not deprived of procedural due process in this case.¹⁴ The judgment of the Supreme Court of Louisiana is affirmed.

So ordered.

APPENDIX TO OPINION OF THE COURT

STATUTES

PROVISIONS OF THE LOUISIANA CODE OF CIVIL PROCEDURE

Art. 281. Certain articles not applicable to Civil District Court for the Parish of Orleans

The provisions of Articles 282 through 286 do not apply to the clerk and the deputy clerks of the Civil District Court for the Parish of Orleans.

Art. 282. Acts which may be done by district court clerk

The clerk of a district court may:

(1) Grant an appeal and fix the return day thereof; fix the amount of the bond for an appeal, or for the issuance of a writ of attachment or of sequestration, or for the release of property seized under any writ, unless fixed by law; appoint an attorney at law to represent a nonresident, absent, incompetent, or unrepresented defendant; or dismiss without prejudice, on application of plaintiff, an action or proceeding in which no exception, answer, or intervention has been filed; and . . .

Art. 283. Orders and judgments which **[*621]** Art. 283. Orders and judgments which may be signed by district court clerk

(2) An order for the issuance of executory process, of a writ of attachment or of sequestration, or of garnishment process under a writ of fieri facias, attachment, or of sequestration; the release under bond of property seized under a writ of attachment or of sequestration; or to permit the filing of an intervention . . .

Art. 325. Right of entry for execution; may require assistance of others if resistance offered or threatened

In the execution of a writ, mandate, order, or judgment of a court, the sheriff may enter on the lands, and into the residence or other building, owned or occupied by the judgment debtor or defendant. . . .

Art. 2373. Distribution of proceeds of sale

After deducting the costs, the sheriff shall first pay the amount due the seizing creditor, then the inferior mortgages, liens, and privileges on the property sold, and shall pay to the debtor whatever surplus may remain.

Art. 3501. Petition; affidavit; security

A writ of attachment or of sequestration shall issue only when the nature of the claim and the amount thereof, if any, and the grounds relied upon for the issuance of the writ clearly appear from specific facts shown by the petition verified by, or by the separate affidavit of, the petitioner, his counsel or agent.

The applicant shall furnish security as required by law for the payment of the damages the defendant may sustain when the writ is obtained wrongfully.

Art. 3504. Return of sheriff; inventory

The sheriff, after executing a writ of attachment or of sequestration, shall deliver to the clerk of the court from **[*622]** which the writ issued a written return stating the manner in which he executed the writ. He shall annex to the return an inventory of the property seized.

Art. 3506. Dissolution of writ; damages

The defendant by contradictory motion may obtain the dissolution of a writ of attachment or of sequestration, unless the plaintiff proves the grounds upon which the writ was issued. If the writ of attachment or of sequestration is dissolved, the action shall then proceed as if no writ had been issued.

The court may allow damages for the wrongful issuance of a writ of attachment or of sequestration on a motion to dissolve, or on a reconventional demand. Attorney's fees for the services rendered in connection with the dissolution of the writ may be included as an element of damages whether the writ is dissolved on motion or after trial on the merits.

Art. 3507. Release of property by defendant; security

A defendant may obtain the release of the property seized under a writ of attachment or of sequestration by furnishing security for the satisfaction of any judgment which may be rendered against him.

Art. 3508. Amount of security for release of attached or sequestered property

The security for the release of property seized under a writ of attachment or of sequestration shall exceed by one-fourth the value of the property as determined by the court, or shall exceed by one-fourth the amount of the claim, whichever is the lesser.

Art. 3510. Necessity for judgment and execution

Except as provided in Article 3513 (perishables), a final judgment must be obtained in an action where a writ of attachment or of sequestration has issued before the property seized can be sold to satisfy the claim. **[*623]** Art. 3571. Grounds for sequestration

When one claims the ownership or right to possession of property, or a mortgage, lien, or privilege thereon, the may have the property seized under a writ of sequestration, if it is within the power of the defendant to conceal, dispose of, or waste the property or the revenues therefrom, or remove the property from the parish, during the pendency of the action.

Art. 3574. Plaintiff's security

An applicant for a writ of sequestration shall furnish security for an amount determined by the court to be sufficient to protect the defendant against any damage resulting from a wrongful issuance, unless security is dispensed with by law.

Art. 3576. Release of property under sequestration

If the defendant does not effect the release of property seized under a writ of sequestration, as permitted by Article 3507, within ten days of the seizure, the plaintiff may effect the release thereof by furnishing the security required by Article 3508.

Mr. Justice POWELL, concurring.

In sweeping language, *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), enunciated the principle that the constitutional guarantee of procedural due process requires an adversary hearing before an individual may be temporarily deprived of any possessory interest in tangible personal property, however brief the dispossession and however slight his monetary interest in the property. The Court's decision today withdraws significantly from the full reach of that principle, and to this extent I think it fair to say that the *Fuentes* opinion is overruled.

I could have agreed that the Florida and Pennsylvania statutes in *Fuentes* were violative of due process be- [*624] cause of their arbitrary and unreasonable provisions. It seems to me, however, that it was unnecessary for the *Fuentes* opinion to have adopted so broad and inflexible a rule, especially one that considerably altered settled law with respect to commercial transactions and basic creditor-debtor understandings. Narrower grounds existed for invalidating the replevin statutes in that case.

I

The constitutional guarantee of procedural due process applies to governmental deprivation of a legitimate 'property' or 'liberty' interest within the meaning of the Fifth or Fourteenth Amendment. It requires that any such deprivation be accompanied by minimum procedural safeguards, including some form of notice and a hearing. *Arnett v. Kennedy*, 416 U.S. 134, at 164, 94 S.Ct. 1633, at 1649, 40 L.Ed.2d 15 (separate opinion of Powell, J.); *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). In the present case, there can be no doubt that under state law both petitioner and respondent had property interests in the goods sought to be sequestered. Petitioner, as the vendee-debtor under an installment sales contract, had both title and possession of the goods subject to his contractual obligation to continue the installment payments. Respondent, as the vendor-creditor, had a vendor's lien on the goods as security for the unpaid balance.

The determination of what due process requires in a given context depends on a consideration of both the nature of the governmental function involved and the private interests affected. *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961); *Goldberg v. Kelly*, 397 U.S. 254, 263–266, 90 S.Ct. 1011, 1018–1019, 25 L.Ed.2d 287 (1970). The governmental function in the instant case is to provide a reasonable and fair framework of rules which facilitate commercial transactions on a [*625] credit basis. The Louisiana sequestration statute is designed to protect the legitimate interests of both creditor and debtor. As to the creditor, there is the obvious risk that a defaulting debtor may conceal, destroy, or further encumber goods and thus deprive the creditor of his security. This danger is particularly acute where, as here, the vendor's lien may be vitiated merely by transferring the goods from the debtor's possession. In addition, the debtor's continued use of the goods diminishes their resale value. In these circumstances a requirement of notice and an adversary hearing before sequestration would impose a serious risk that a creditor could be deprived of his security.

Against this concern must be balanced the debtor's real interest in uninterrupted possession of the goods, especially if the sequestration proves to be unjustified. To be sure, repossession of certain items of personal property, even for a brief period, may cause significant inconvenience. But it can hardly be said that temporary deprivation of such property would necessarily place a debtor in a 'brutal need' situation. [Goldberg v. Kelly, supra](#); [Arnett v. Kennedy, supra](#).

In my view, the constitutional guarantee of procedural due process is fully satisfied in cases of this kind where state law requires, as a precondition to invoking the State's aid to sequester property of a defaulting debtor, that the creditor furnish adequate security and make a specific factual showing before a neutral officer or magistrate of probable cause to believe that he is entitled to the relief requested. An opportunity for an adversary hearing must then be accorded promptly after sequestration to determine the merits of the controversy, with the burden of proof on the creditor.

The Louisiana statute sub judice satisfies these requirements and differs materially from the Florida and [*626] Pennsylvania statutes in *Fuentes*.¹ Those statutes did not require an applicant for a writ of replevin to make any factually convincing showing that the property was wrongfully detained or that he was entitled to the writ. Moreover, the Florida statute provided only that a post-seizure hearing be held eventually on the merits of the competing claims, and it required the debtor to initiate that proceeding. The Pennsylvania statute made no provision for a hearing at any time.

By contrast, the Louisiana statute applicable in Orleans Parish authorizes issuance of a writ of sequestration 'only when the nature of the claim and the amount thereof, if any, and the grounds relied upon . . . clearly appear from specific facts shown by the petition verified by, or by the separate affidavit of, the petitioner, his counsel or agent.' La.Code Civ.Proc.Ann., Art. 3501 (1961). The Louisiana statute also provides for an immediate hearing, and the writ is dissolved 'unless the [*627] (creditor) proves the grounds upon which the writ was issued.' Art. 3506.

The Court's opinion makes these points well, and I need not elaborate them further. In brief, the Louisiana statute satisfies the essential prerequisites of procedural due process and represents a fairer balancing of the interests of the respective parties than the statutes in *Fuentes*. I therefore agree that the Louisiana procedure should be sustained against petitioner's challenge.

II

Mr. Justice STEWART reproves the Court for not adhering strictly to the doctrine of *stare decisis*. *Post*, at 1913—1914.

To be sure, *stare decisis* promotes the important considerations of consistency and predictability in judicial decisions and represents a wise and appropriate policy in most instances. But that doctrine has never been thought to stand as an absolute bar to reconsideration of a prior decision, especially with respect to matters of constitutional interpretation.² Where the Court errs in its construction of a statute, correction may

always be accomplished by legislative action. Revision of a constitutional interpretation, on the other hand, is often impossible as a practical matter, for it requires the cumbersome route of constitutional amendment. It is thus not only our prerogative but also our duty to re-examine a precedent where its reasoning or understanding of the Constitution is fairly called into [*628] question. And if the precedent or its rationale is of doubtful validity, then it should not stand. As Mr. Chief Justice Taney commented more than a century ago, a constitutional decision of this Court should be 'always open to discussion when it is supposed to have been founded in error, (so) that (out) judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.' *Passenger Cases*, 48 U.S. (7 How.) 283, 470, 12 L.Ed. 702 (1849).

Moreover, reconsideration is particularly appropriate in the present case. To the extent that the *Fuentes* opinion established a Procrustean rule of a prior adversary hearing, it marked a significant departure from past teachings as to the meaning of due process.³ As the Court stated in *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S., at 895, 81 S.Ct., at 1748, '(t)he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' The *Fuentes* opinion not only eviscerated that principle but also sounded a potential death knell for a panoply of statutes in the com- [*629] mercial field.⁴ This fact alone justifies a re-examination of its premises. The Court today reviews these at length, and I join its opinion because I think it represents a reaffirmation of the traditional meaning of procedural due process.

Mr. Justice STEWART, with whom Mr. Justice DOUGLAS and Mr. Justice MARSHALL concur, dissenting.

The Louisiana sequestration procedure now before us is remarkably similar to the statutory provisions at issue in *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). In both cases the purchaser-in-possession of the property is not afforded any prior notice of the seizure or any opportunity to rebut the allegations of the vendor before the property is summarily taken from him by agents of the State. In both cases all that is required to support the issuance of the writ and seizure of the goods is the filing of a complaint and an affidavit containing pro forma allegations in support of the seller's purported entitlement to the goods in question. Since the procedure in both cases is completely ex parte, the state official charged with issuing the writ can do little more than determine the formal sufficiency of the plaintiff's allegations before ordering the state agents to take the goods from the defendant's possession.¹ [*630]

The question before the Court in *Fuentes* was what procedures are required by the Due Process Clause of the Fourteenth Amendment when a State, at the behest of a private claimant, seizes goods in the possession of another, pending judicial resolution of the claimant's assertion of superior right to possess the property. The Court's analysis of this question began with the proposition that, except in exceptional circumstances,² the deprivation of a property interest encompassed within the Fourteenth Amendment's protection must be preceded by notice to the affected party and an opportunity to be heard. The Court then went on to hold that a debtor-vendee's interest in the continued possession of purchased goods was 'property' within the Fourteenth Amendment's protection and that the 'temporary, nonfinal deprivation of (this) property (is) . . . a

'deprivation' in the terms of the Fourteenth Amendment.' 407 U.S., at 85, 92 S.Ct., at 1996. Accordingly, Fuentes held that such a deprivation of property must be preceded by notice to the possessor and by an opportunity for a hearing appropriate under the circumstances. Matters such as [*631] requirements for the posting of bond and the filing of sworn factual allegations, the length and severity of the deprivation, the relative simplicity of the issues underlying the creditor's claim to possession, and the comparative 'importance' or 'necessity' of the goods involved were held to be relevant to determining the form of notice and hearing to be provided, but not to the constitutional need for notice and an opportunity for a hearing of some kind.

The deprivation of property in this case is identical to that at issue in Fuentes, and the Court does not say otherwise. Thus, under Fuentes, due process of law permits Louisiana to effect this deprivation only after notice to the possessor and opportunity for a hearing. Because I would adhere to the holding of Fuentes, I dissent from the Court's opinion and judgment upholding Louisiana's ex parte sequestration procedure, which provides that the possessor of the property shall never have advance notice or a hearing of any kind.

As already noted, the deprivation of property in this case is identical to that in Fuentes. But the Court says that this is a different case for three reasons: (1) the plaintiff who seeks the seizure of the property must file an affidavit stating 'specific facts' that justify the sequestration; (2) the state official who issues the writ of sequestration is a judge instead of a clerk of the court; and (3) the issues that govern the plaintiff's right to sequestration are limited to 'the existence of a vendor's lien and the issue of default,' and '(t)here is thus far less danger here that the seizure will be mistaken and a corresponding decrease in the utility of an adversary hearing,' supra, at 618. The Court's opinion in Fuentes, however, explicitly rejected each of these factors as a ground for a difference in decision.

The first two purported distinctions relate solely to [*632] the procedure by which the creditor-vendor secures the State's aid in summarily taking goods from the purchaser's possession. But so long as the Louisiana law routinely permits an ex parte seizure without notice to the purchaser, these procedural distinctions make no constitutional difference.

The Louisiana affidavit requirement can be met by any plaintiff who fills in the blanks on the appropriate form documents and presents the completed forms to the court. Although the standardized form in this case called for somewhat more information than that required by the Florida and Pennsylvania statutes challenged in Fuentes, such ex parte allegations 'are hardly a substitute for a prior hearing, for they test no more than the strength of the applicant's own belief in his rights. Since his private gain is at stake, the danger is all too great that his confidence in his cause will be misplaced. Lawyers and judges are familiar with the phenomenon of a party mistakenly but firmly convinced that his view of the facts and law will prevail, and therefore quite willing to risk the costs of litigation.' 407 U.S., at 83, 92 S.Ct., at 1995.

Similarly, the fact that the official who signs the writ after the ex parte application is a judge instead of a court clerk is of no constitutional significance. Outside Orleans Parish,

this same function is performed by the court clerk. There is nothing to suggest that the nature of this duty was at all changed when the law was amended to vest it in a judge rather than a clerk in this one parish. Indeed, the official comments declare that this statutory revision was intended to 'mak(e) no change in the law.'³ Whether the issuing functionary be a judge or a court clerk, he can in any event do no more than ascertain the formal sufficiency of the plaintiff's allegations, after [*633] which the issuance of the summary writ becomes a simple ministerial act.⁴

The third distinction the Court finds between this case and *Fuentes* is equally insubstantial. The Court says the issues in this case are 'particularly suited' to ex parte determination, in contrast to the issues in *Fuentes*, which were 'inherently subject to factual determination and adversarial input,' *supra* at 617, 618. There is, however, absolutely no support for this purported distinction. In this case the Court states the factual issues as 'the existence of a vendor's lien and the issue of default.' *Supra*, at 617. The issues upon which replevin depended in *Fuentes* were no different; the creditor-vendor needed only to establish his security interest and the debtor-vendee's default. As Mr. Justice White acknowledged in his *Fuentes* dissent, the essential issue at any hearing would be whether 'there is reasonable basis for his (the creditor-vendor's) claim of default.' 407 U.S. at 99-100, 92 S.Ct., at 2004. Thus, the Court produces this final attempted distinction out of whole cloth.

Moreover, *Fuentes* held that the relative complexity of the issues in dispute is not relevant to determining whether a prior hearing is required by due process. 'The issues decisive of the ultimate right to continued possession, of course, may be quite simple. The simplicity of the issues might be relevant to the formality or scheduling of a prior hearing. But it certainly cannot undercut the right to a prior hearing of some kind.' *Id.*, at 87 n. 18, 92 S.Ct., at 1998 (citation omitted). Similarly, the probability of success on the factual issue does not affect the right to prior notice and an opportunity to be heard. [*634]

'The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. 'To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.' It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a hearing on the contractual right to continued possession and use of the goods.' *Id.*, at 87, 92 S.Ct., at 1997 (internal quotation marks and citation omitted).

In short, this case is constitutionally indistinguishable from *Fuentes v. Shevin*, *in*, and the Court today has simply rejected the reasoning of that case and adopted instead the analysis of the *Fuentes* dissent. In light of all that has been written in *Fuentes* and in this case, it seems pointless to prolong the debate. Suffice it to say that I would reverse the judgment before us because the Louisiana sequestration procedure fails to comport with the requirements of due process of law.

I would add, however, a word of concern. It seems to me that unless we respect the constitutional decisions of this Court, we can hardly expect that others will do so. Cf.

Roofing Wholesale Co. v. Palmer, 108 Ariz. 508, 502 P.2d 1327 (1972). A substantial departure from precedent can only be justified, I had thought, in the light of experience with the application of the rule to be abandoned or in the light of an altered historic environ- [*635] ment. 5 Yet the Court today has unmistakably overruled a considered decision of this Court that is barely two years old, without pointing to any change in either societal perceptions or basic constitutional understandings that might justify this total disregard of stare decisis.

The Fuentes decision was in a direct line of recent cases in this Court that have applied the procedural due process commands of the Fourteenth Amendment to prohibit governmental action that deprives a person of a statutory or contractual property interest with no advance notice or opportunity to be heard.⁶ In the short time that has elapsed since the Fuentes case was decided, many state and federal courts have followed it in assessing the constitutional validity of state replevin statutes and other comparable state laws.⁷ No data have been brought to our attention to indicate that these decisions, granting to otherwise defenseless consumers the simple rudiments of due process of law, have worked any untoward change in the consumer credit market or in other commercial relationships. The only perceivable change that has occurred since Fuentes is in the makeup of this Court.⁸ [*636]

A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve.

Mr. Justice BRENNAN is in agreement that *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), requires reversal of the judgment of the Supreme Court of Louisiana.

1 The motion asked for dissolution of the writ with respect to the refrigerator, stove, and washer. For some reason, unexplained by the parties, the motion was not addressed to the stereo.

2 There is some dispute between the parties as to when the writ was actually executed by the sheriff. The sheriff's return, furnished by petitioner but apparently not in the record below, indicates that execution was on the 18th of February, rather than on the 7th. The Louisiana Supreme Court assumed that the writ was executed on the 7th. Because we see no legal consequence attaching to a choice of dates, we assume for purposes of decision that the writ was executed on the 7th.

3 Article 2373 and other pertinent provisions of the Code, including those referred to in the text, are set out in the Appendix to this opinion.

4 Historically, the writ would issue only if the creditor had 'good reason to fear' that the debtor would damage, alienate or waste the goods, and the creditor was required to show the grounds for such fear. Under present law, however, the apprehension of the creditor is no longer the issue, and the writ may be obtained when the goods are within the power of the debtor. Reporter's Comment (a) to La.Code Civ.Proc.Ann., Art. 3571. The necessity of showing such 'power' is not irrelevant, because the vendor's privilege will not lie against goods not within the 'power' of the debtor. Margolin, Civil Law, Vendor's Privilege, 4 Tul.L.Rev. 239 (1930); H. Daggett, On Louisiana Privileges and Chattel Mortgages § 51 (1942).

5 Articles 282 and 283 of the Code provide, generally, that the court clerk may issue writs of sequestration. But Art. 281 confines the authority to the judge in Orleans Parish. There is no dispute in this case that judicial authority for the writ was required and that it was obtained as the statute requires. The validity of procedures obtaining in areas outside Orleans Parish is not at issue.

6 As previously noted, the judgment prayed for in this case was in the amount of \$574.17. Grant was ordered to furnish security in the amount of \$1,125.

7 When a writ is issued by the judge, it is served upon the debtor by the sheriff, Art. 3504, who thereafter becomes responsible for the property's safekeeping. See Johnson, Attachment and Sequestration: Provisional Remedies Under the Louisiana Code of Civil Procedure, 38 Tul. L.Rev. 1, 21–22 (1963). The plaintiff-creditor, however, see Art. 3576, may himself take possession of the goods if the defendant within 10 days does not secure possession of the goods by posting his own bond as permitted by Art. 3507, but he has no right to sell the goods until final judgment on the merits. Art. 3510.

8 Damages would compensate for the period during which the buyer was deprived of the use of the property, but are not restricted to pecuniary loss. They may encompass injury to social standing or reputation as well as humiliation and mortification. Johnson, *supra*, n. 7, at 28.

9 The debtor's bond necessary to repossess the property 'shall exceed by one-fourth the value of the property as determined by the court, or shall exceed by one-fourth the amount of the claim, whichever is the lesser.' Art. 3508.

10 Petitioner relies particularly on: *Covey v. Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956); *New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 73 S.Ct. 299, 97 L.Ed. 333 (1953); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Griffin v. Griffin*, 327 U.S. 220, 66 S.Ct. 556, 90 L.Ed. 635 (1946); *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 61 S.Ct. 524, 85 L.Ed. 624 (1941); *West Ohio*

Gas Co. v. Pub. Util. Comm'n, of Ohio, 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761 (1935); United States v. Illinois Central R. Co., 291 U.S. 457, 54 S.Ct. 471, 78 L.Ed. 909 (1934); Southern R. Co. v. Virginia, 290 U.S. 190, 54 S.Ct. 148, 78 L.Ed. 260 (1933); Goldsmith v. United States Board of Tax Appeals, 270 U.S. 117, 46 S.Ct. 215, 70 L.Ed. 494 (1926); Coe v. Armour Fertilizer Works, 237 U.S. 413, 35 S.Ct. 625, 59 L.Ed. 1027 (1915); Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708, 52 L.Ed. 1103 (1908); Central of Georgia R. Co. v. Wright, 207 U.S. 127, 28 S.Ct. 47, 52 L.Ed. 134 (1907); Roller v. Holly, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520 (1900); Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897); Scott v. McNeal, 154 U.S. 34, 14 S.Ct. 1108, 38 L.Ed. 896 (1894); Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed. 914 (1876); Ray v. Norseworthy, 23 Wall. 128, 23 L.Ed. 116 (1875); Rees v. City of Watertown, 19 Wall. 107, 22 L.Ed. 72 (1874); Baldwin v. Hale, 1 Wall. 223, 17 L.Ed. 531 (1864). Brief for Petitioner 10—11.

11 Conceding that the multiple seizure might cause irreparable damage to a business, the Court responded:

'The impact of the initiation of judicial proceedings is often serious. Take the case of the grand jury. It returns an indictment against a man without a hearing. It does not determine his guilt; it only determines whether there is probable cause to believe he is guilty. But that determination is conclusive on the issue of probable cause. As a result the defendant can be arrested and held for trial. See *Beavers v. Henkel*, 194 U.S. 73, 85 (24 S.Ct. 605, 607, 48 L.Ed. 882); *Ex parte United States*, 287 U.S. 241, 250 (53 S.Ct. 129, 131, 77 L.Ed. 283). The impact of an indictment is on the reputation or liberty of a man. The same is true where a prosecutor files an information charging violations of the law. The harm to property and business can also be incalculable by the mere institution of proceedings, Yet it has never been held that the hand of government must be stayed until the courts have an opportunity to determine whether the government is justified in instituting suit in the courts. Discretion of any official may be abused. Yet it is not a requirement of due process that there be judicial inquiry before discretion can be exercised.' 339 U.S., at 599, 70 S.Ct., at 873.

12 The approval of a writ of sequestration is not, as petitioner contends, a mere ministerial act. 'Since a writ of sequestration issues without a hearing, specific facts as to the grounds relied upon for issuance must be contained in the verified petition in order that the issuing judge and properly evaluate the grounds.' *Wright v. Hughes*, 254 So.2d 293, 296—297 (La.Ct.App.1971) (on rehearing). To the same effect is *Hancock Bank v. Alexander*, 256 La. 643, 237 So.2d 669 (1970), where the court held that a simple allegation of indebtedness for money due on an automobile, where no deed of trust was referred to or produced, did not satisfy the 'specific facts' test. The court stated:

'Strict application of the rules established for the issuance of conservatory writs has been uniformly required by the Courts in the past. It is implicit in those remedies that they should not be availed of unless the conditions which permit them exist; that is to say, it is a prerequisite to their issuance that proper grounds be alleged and sworn to.' *Id.*, at 653—654,

237 So.2d, at 672. (Emphasis added.) *Zion Mercantile Co. v. Pierce*, 163 La. 477, 112 So. 371 (1927), upon which petitioner relies, is not to the contrary. The Louisiana court merely held there that it is not necessary to 'file' papers requesting the writ with the clerk, or pay court costs, before the judge is empowered to issue the writ.

13 The advisability of requiring prior notice and hearing before repossession has been under study for several years. A number of possibilities have been put forward to modify summary creditor

remedies, whether taken through some form of court process or effected by self-help under Art. 9 of the Uniform Commercial Code, § 9—503. Influenced by Sniadach, and providing pre seizure notice and hearing, are two model acts drafted by the National Consumer Law Center: National Consumer Act §§ 5.206—5.208 (1970), and Model Consumer Credit Act § 7.205 (1973). Other similar reforms are reflected in the Report of the National Commission on Consumer Finance, Consumer Credit in the United States 30—31 (1972); the Wisconsin Consumer Act, Wis.Stat.Ann. §§ 421.101—427.105 (special pamphlet 1973); and the amendments to the Illinois Replevin Statute, Public Act 78—287, Ill.Laws 1973. Looking in the other direction and leaving summary procedures intact for the most part are the National Conference of Commissioners on Uniform State Laws, Committee on Uniform Consumer Credit Code, Uniform Consumer Credit Code, Working Redraft No. 5, Nov. 1973, §§ 5.110, 5.112; and the Permanent Editorial Board for the Uniform Commercial Code, Review Committee for Art. 9 of the Uniform Commercial Code, Final Report, § 9—503 (Apr. 25, 1971), together with revised Art. 9 of the U.C.C., 1972 Official Text and Comments, § 9—503.

As revealed in the various studies and proposals, the principal question yet to be satisfactorily answered is the impact of prior notice and hearing on the price of credit, and, more particularly, of the mix of procedural requirements necessary to minimize the cost. The commentators are in the throes of debate, see, e.g., Symposium, Creditors' Rights, 47 S.Cal.L.Rev. 1—164 (1973), and basic questions remain unanswered. See generally Note, Self-Help Repossession; the Constitutional Attack, the Legislative Response, and the Economic Implications, 62 Geo.L.J. 273 (1973).

We indicate no view whatsoever on the desirability of one or more of the proposed reforms. The uncertainty evident in the current debate suggests caution in the adoption of an inflexible constitutional rule. Our holding in this case is limited to the constitutionality of the Louisiana sequestration procedures.

14 We are advised by counsel for petitioner of a tide of cases following *Fuentes* and are cautioned that affirmance in this case would set off a riptide with considerable consequences. We perceive no such result. Our decision will not affect recent cases dealing with garnishment or summary self-help remedies of secured creditors or landlords. Nor is it at all clear, with an exception or two, that the reported cases invalidating replevin or similar

statutes dealt with situations where there was judicial supervision of seizure or foreclosure from the outset.

1 The Court outlined the deficiencies of the statutes in *Fuentes*:

'There is (under the Florida statute) no requirement that the applicant make a convincing showing before the seizure that the goods are, in fact, 'wrongfully detained.' Rather, Florida law automatically relies on the bare assertion of the party seeking the writ that he is entitled to one and allows a court clerk to issue the writ summarily. It requires only that the applicant file a complaint, initiating a court action for repossession and reciting in conclusory fashion that he is 'lawfully entitled to the possession' of the property, and that he file a security bond' 407 U.S., at 73–74, 92 S.Ct., at 1991 (emphasis added).

The Court noted that the Pennsylvania statute required even less than the Florida statute, since the party seeking the writ 'need not even formally allege that he is lawfully entitled to the property.' *Id.*, at 78, 92 S.Ct., at 1993. All that was required was the filing of an "affidavit of the value of the property to be replevied." *Ibid.* Moreover, the Pennsylvania law did 'not require that there ever be opportunity for a hearing on the merits of the conflicting claims to possession of the replevied property.' *Id.*, at 77, 92 S.Ct., at 1992.

2 See *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 93, 56 S.Ct. 720, 744, 80 L.Ed. 1033 (1936) (Stone and Cardozo, JJ., concurring in result); *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 405, 406–408, 52 S.Ct. 443, 446, 447–448, 76 L.Ed. 815 (1932) (Brandeis, J., dissenting). For the view that stare decisis need not always apply even to questions of statutory interpretation, see *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235, 255, 90 S.Ct. 1583, 1594, 26 L.Ed.2d 199 (1970) (Stewart, J., concurring).

3 The *Fuentes* opinion relied primarily on *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969). That case involved a prejudgment garnishment of wages in which the creditor had no pre-existing property interest. It is readily distinguishable from the instant case where the creditor does have a preexisting property interest as a result of the vendor's lien which attached upon execution of the installment sales contract. Indeed, depending on the number of installments which have been paid, the creditor's interest may often be greater than the debtor's. Thus, we deal here with mutual property interests, both of which are entitled to be safeguarded. *Fuentes* overlooked this vital point.

In addition, the Court recognized in *Sniadach* that prejudgment garnishment of wages could as a practical matter 'impose tremendous hardship' and 'drive a wage-earning family to the wall.' *Id.*, at 340, 341–342, 89 S.Ct., at 1823. By contrast, there is no basis for assuming that

sequestration of a debtor's goods would necessarily place him in such a 'brutal need' situation.

4 For a discussion of the far-reaching implications of the Fuentes rationale, see Clark & Landers, Sniadach, Fuentes and Beyond: The Creditor Meets the Constitution, 59 Va.L.Rev. 335 (1973). The authors suggest that Fuentes could require invalidation of many summary creditor remedies in their present form.

1 The Louisiana Supreme Court held that Fuentes did not govern the present case. Essentially, that court held that because the Louisiana vendor's privilege is defeated if the vendee alienates the property over which the vendor has the privilege, this case falls within the language in Fuentes that '(t)here may be cases in which a creditor could make a showing of immediate danger that a debtor will destroy or conceal disputed goods.' Fuentes v. Shevin, 407 U.S. 67, 93, 92 S.Ct. 1983, 2000, 32 L.Ed.2d 556 (1972). The Court today quite correctly does not embrace this rationale. In discussing the "extraordinary situations" that might justify the summary seizure of goods, the Fuentes opinion stressed that these situations 'must be truly unusual.' Id., at 90, 92 S.Ct., at 1999. Specifically, it referred to 'special situations demanding prompt action.' Id., at 93, 92 S.Ct., at 2000. In effect, the Louisiana Supreme Court held that all vendor-creditors in the State can be conclusively presumed to be in this 'special' situation, regardless of whether the individual vendor could make a showing of immediate danger in his particular case. But if the situation of all such vendors in a State could be conclusively presumed to meet the 'extraordinary,' 'unusual,' and 'special' conditions referred to in Fuentes, the basic constitutional rule of that case would be wholly obliterated in the State.

2 407 U.S., at 90—93, 92 S.Ct., at 1999—2000.

3 La.Code Civ.Proc.Ann., Art. 281 (1961).

4 The Louisiana authorities cited by the Court are not to the contrary. [Wright v. Hughes](#), 254 So.2d 293 (La.Ct.App.1971), and [Hancock Bank v. Alexander](#), 256 La. 643, 237 So.2d 669 (1970), stand only for the proposition that a writ should not issue unless the sworn allegations are formally sufficient, which may mean nothing more than that the proper standardized form be completely filled in.

5 See, e.g., [North Dakota Board of Pharmacy v. Snyder's Drug Stores](#), 414 U.S. 156, 94 S.Ct. 407, 38 L.Ed.2d 379 (1973); [Brown v. Board of Education](#), 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

6 See, e.g., *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); and *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971).

7 See, e.g., *Turner v. Colonial Finance Corp.*, 467 F.2d 202 (C.A.5 1972); *Sena v. Montoya*, 346 F.Supp. 5 (N.M.1972); *Dorsey v. Community Stores Corp.*, 346 F.Supp. 103 (E.D.Wis.1972); *Thorp Credit, Inc. v. Barr*, 200 N.W.2d 535 (Iowa 1972); *Inter City Motor Sales v. Judge of the Common Pleas Court for the City of Detroit*, 42 Mich.App. 112, 201 N.W.2d 378 (1972); and *Montoya v. Blackhurst*, 84 N.M. 91, 500 P.2d 176 (1972).

8 Although Mr. Justice Powell and Mr. Justice Rehnquist were Members of the Court at the time that *Fuentes v. Shevin* was announced, they were not Members of the Court when that case was argued, and they did not participate in its 'consideration or decision.' 407 U.S., at 97, 92 S.Ct., at 2002.

CHAPTER 31 - ATTACHMENT, GARNISHMENT AND OTHER EXTRAORDINARY REMEDIES

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ATTACHMENT

NRS 31.010 Application to court for writ of attachment: Timing; requirements when Department of Taxation has taken over management of local government.

1. Except as otherwise provided in subsection 2, the plaintiff at the time of issuing the summons, or at any time thereafter, may apply to the court for an order directing the clerk to issue a writ of attachment and thereby cause the property of the defendant to be attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment as provided in this chapter.

2. If the Department of Taxation has taken over the management of a local government at the request of the local government pursuant to subsection 3 of [NRS 354.685](#), and if a plaintiff is allowed by law to apply to a court for an order directing the clerk to issue a writ of attachment, the action must be stayed until the following conditions have been satisfied:

(a) The plaintiff must meet with the Department to formulate a program for the liquidation of the debt owed by the local government to the plaintiff; and

(b) The Department must adopt a program for the liquidation of the debt owed by the local government to the plaintiff as described in paragraph (a). The Department shall formulate the program not later than 60 days after meeting with the plaintiff pursuant to paragraph (a). The formulation of the program is a final decision for the purposes of judicial review.

[1911 CPA § 205; RL § 5147; NCL § 8703]—(NRS A [1973, 1170](#); [2005, 1394](#); [2015, 738](#))

NRS 31.013 Issuance of writ of attachment after notice and hearing. The court may after notice and hearing, order the clerk to issue a writ of attachment in the following cases:

1. In an action upon a judgment or upon a contract, express or implied, for the direct payment of money:

(a) If the judgment is not a lien upon or the contract is not secured by mortgage, lien or pledge upon real or personal property situated in this state; or

(b) If such lien or security has, without any act of the plaintiff or the person to whom the security was given, become valueless or insufficient in value to secure the sum due the plaintiff, in which case the attachment shall issue only for the unsecured portion of the amount due the plaintiff, which is equal to the excess of the amount due the plaintiff above the value of the security.

2. In any case where the attachment of the property of the defendant is allowed pursuant to this chapter or other provision of law.

3. In any other case where the court finds that extraordinary circumstances exist which will make it improbable for the plaintiff to reach the property of the defendant by execution after the judgment has been entered.

(Added to NRS by [1973, 1171](#))

NRS 31.017 Issuance of writ of attachment without notice and hearing.
The court may order the writ of attachment issued without notice to the defendant only in the following cases:

1. In an action by a resident of this State against a defendant not residing in this State. For purposes of this subsection only, domestic corporations and foreign corporations who are doing business in this State and who have qualified to do business in this State as required in [chapter 80](#) of NRS shall be deemed residents of this State. Alien corporations and foreign corporations who have not qualified to do business shall be deemed nonresidents.

2. In an action upon a foreign judgment for the direct payment of money.

3. In an action for the recovery of the value of personal property, where such personal property is owned by the plaintiff and has been taken or converted by the defendant without the consent of the plaintiff.

4. In an action by a resident of this State, where the defendant is about to remove the defendant's money or property, or any part thereof, from this State, and the defendant's property which may remain within this State, if any, will be insufficient to satisfy plaintiff's claim. For purposes of this subsection only, a foreign corporation qualified to do business in this State as provided in [chapter 80](#) of NRS shall be deemed a resident of this State.

5. Where the defendant is about to give, assign, hypothecate, pledge, dispose of or conceal the defendant's money or property or any part thereof and the defendant's

money or property remaining in this State or that remaining unconcealed will be insufficient to satisfy the plaintiff's claim.

6. In an action for the recovery of money or property, or the proceeds thereof, obtained from the plaintiff by the defendant through embezzlement, forgery, larceny or extortion.

7. In an action brought under [chapter 112](#) of NRS.

8. In an action by the State, or a political subdivision thereof, brought under [chapter 130](#) of NRS.

9. In an action where jurisdiction in this State can only be obtained by the attachment of the defendant's property.

(Added to NRS by [1973, 1172](#))

NRS 31.020 Affidavit for attachment: Contents.

1. All applications to the court for an order directing the clerk to issue a writ of attachment without notice to the defendant shall be accompanied by the affidavit of the plaintiff or any other person having personal knowledge of the facts constituting one or more of the grounds for attachment, which affidavit or affidavits shall:

(a) Set forth clearly the nature of the plaintiff's claim for relief and that the same is valid.

(b) Set forth the amount which the affiant believes the plaintiff is entitled to recover from the defendant, and if there is more than one plaintiff or more than one defendant, the amount the affiant believes each plaintiff is entitled to recover or the amount that the plaintiff is entitled to recover from each defendant.

(c) Describe in reasonable and clear detail all the facts which show the existence of any one of the grounds for an attachment without notice to the defendant.

(d) Describe in reasonable detail the money or property sought to be attached and the location thereof if known.

(e) If the property sought to be attached is other than money, set forth to the best knowledge and information of the affiant, the value of such property less any prior liens or encumbrances.

(f) Name all third persons upon whom a writ of garnishment in aid of the writ of attachment will be served.

(g) In an action upon a foreign judgment attach a copy of the judgment to the affidavit for attachment as an exhibit.

(h) State whether, to the best information and belief of the affiant, the money or property sought to be attached is exempt from execution.

2. All applications to the court for an order directing the clerk to issue a writ of attachment with notice to the defendant shall be accompanied by an affidavit setting forth the item required by subsection 1, except that such affidavit may show the existence of any one of the grounds for attachment with notice.

[1911 CPA § 206; RL § 5148; NCL § 8704]—(NRS A [1973, 1172](#))

NRS 31.022 Procedure when notice and hearing not required. The court shall, without delay, examine the plaintiff's application and affidavit and receive additional evidence if necessary, and shall order the clerk to issue a writ of attachment without notice to the defendant if:

1. The plaintiff's affidavit, alone or as supplemented by additional evidence, meets the requirements of subsection 1 of [NRS 31.020](#); and

2. The court determines, specifically, that there exist one or more grounds for attachment without notice as indicated in such affidavit or by additional evidence.

(Added to NRS by [1973, 1173](#))

NRS 31.024 Procedure when notice and hearing required: Order to show cause. If the plaintiff's application is for an order directing the clerk to issue a writ of attachment after notice and hearing, and the plaintiff's affidavit, alone or as supplemented by additional evidence received by the court, meets the requirements of subsection 2 of [NRS 31.020](#), the court shall issue an order directed to the debtor to show cause why the order for attachment should not be issued. The order must:

1. Fix the date and time for hearing on the order, which must not be set sooner than 3 days after the service of the order.

2. Direct the time within which service of the order must be made upon the defendant or the defendant's attorney.

3. Fix the manner in which service of the order must be made, which may be by personal service upon the defendant or service upon the defendant's attorney. If such service cannot be made, service may be by publication or in such a manner as the court determines is reasonably calculated to afford notice to the defendant under the circumstances set forth in the plaintiff's affidavit.

4. State that the debtor:

(a) Is entitled to certain exemptions, describe those exemptions in the manner set forth in subsection 2 of [NRS 31.045](#) and explain that the debtor may claim an exemption if it appears that exempt property may be seized;

(b) Has the right to file affidavits on the debtor's behalf; and

(c) May appear personally or by way of an attorney, and present testimony on the debtor's behalf at the time of hearing.

5. State that if the defendant fails to appear the defendant shall be deemed to have waived his or her right to the hearing and that in such case the court may order the clerk to issue a writ of attachment.

(Added to NRS by [1973, 1173](#); A [1989, 1140](#))

NRS 31.026 Procedure when notice and hearing required: Hearing. A hearing on the order to show cause shall be conducted by the court without a jury. The court at such hearing shall consider all affidavits, testimony and other evidence presented and shall make a determination of the probable validity of the plaintiff's underlying claim against the defendant. If the court determines such claim is probably valid it shall order the clerk to issue a writ of attachment.

(Added to NRS by [1973, 1174](#))

NRS 31.028 Contents of order for attachment. The court or judge issuing any order for attachment with or without notice shall set forth in the order:

1. The ground or grounds for attachment relied upon for the issuance of the order.
2. The facts or reasons why the court believes the ground or grounds exist.
3. The fact that the plaintiff has alleged a meritorious claim for relief.
4. The amount for which the attachment will issue.

5. The amount of security which must be given by the plaintiff before the writ will issue.

6. The names of all third persons upon whom writs of garnishment in aid of attachment may be served.

7. A description in reasonable detail of the money or property to be attached, and, if property, the value of the property based upon the evidence or affidavits presented to the court. The writ of attachment shall demand the amount for which attachment will issue, as specified in the order, and the court may order several writs to be issued at the same time to the sheriffs of different counties.

(Added to NRS by [1973, 1175](#))

NRS 31.030 Written undertaking on attachment; additional bond; exception to sufficiency of sureties; vacation of writ.

1. The court, in its order for attachment, shall require a written undertaking on the part of the plaintiff payable in lawful money of the United States in a sum not less than the amount claimed by the plaintiff or the value of the property to be attached, whichever is less, with two or more sureties to the effect that if the plaintiff dismiss such action or if the defendant recover judgment the plaintiff will pay in lawful money of the United States all costs that may be awarded to the defendant, and all damages which the defendant may sustain by reason of the attachment including attorney's fees, not exceeding the sum specified in the undertaking. Each of the sureties shall annex to the undertaking an affidavit that the surety is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking over and above all the surety's debts and liabilities, exclusive of property exempt from execution. In the case of an attachment issued with notice to the defendant, or in any case upon showing by the defendant after notice to the plaintiff, the court may require an additional bond. No bond may be required of the State or of an officer or agency thereof.

2. Before issuing the writ of attachment the clerk shall require the filing by the plaintiff of the written undertaking required by the court pursuant to subsection 1.

3. At any time after the issuing of the attachment, but not later than 5 days after actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If the defendant fails to do so, the defendant is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, within 5 days from service of written notice of exception, upon notice to the defendant of not less than 2 nor more than 5 days, must justify before the judge, justice, or clerk of the court in

which the action is pending; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the writ of attachment must be vacated.

[1911 CPA § 207; A [1949, 499](#); 1943 NCL § 8705]—(NRS A [1957, 271](#); [1965, 1003](#); [1973, 1174](#))

NRS 31.040 Sheriff to attach and keep property; undertaking by defendant.

The writ must be directed to the sheriff of any county in which property of the defendant may be and require the sheriff to attach and keep safely all the money or property of the defendant described in the order for attachment within the county not exempt from execution, or so much thereof as is sufficient to satisfy the amount demanded by the writ of attachment, whichever is less, unless the defendant gives the sheriff security by the undertaking of at least two sufficient sureties in an amount equal to the amount demanded by the writ or the value of the property levied upon, whichever is less, apart from costs, in lawful money of the United States, in which case the writ must require the sheriff to take such an undertaking.

[1911 CPA § 208; RL § 5150; NCL § 8706]—(NRS A [1973, 1175](#); [1989, 586](#); [1997, 419](#))

NRS 31.045 Notice of execution on writ of attachment: Service required; form; contents.

1. Execution on the writ of attachment by attaching property of the defendant may occur only if:

(a) The judgment creditor serves the defendant with notice of the execution when the notice of the hearing is served pursuant to [NRS 31.013](#); or

(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in [NRS 21.076](#).

↪ If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

Plaintiff, (name of person), alleges that you owe the plaintiff money. The plaintiff has begun the procedure to collect that money. To secure satisfaction of judgment, the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Social Services of the Department of Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, including, subject to the provisions of [NRS 115.055](#), the proceeds from the sale of such property, not to exceed \$605,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to [NRS 115.010](#) is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage on the date the most recent writ of garnishment was issued was \$770 or less, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage on the date the most recent writ of garnishment was issued exceeded \$770, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to [chapter 353B](#) of NRS, any applicable regulations adopted pursuant to [chapter 353B](#) of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the interest has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of [NRS 78.746](#) except as set forth in that section.

➡ These exemptions may not apply in certain cases such as proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to the indigent or elderly persons). If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to [NRS 21.076](#) which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing must be held within 7 judicial days after the objection to the claim of exemption and notice for a hearing is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.

(Added to NRS by [1989, 1139](#); A [1991, 814, 1415](#); [1993, 2631](#); [1995, 230](#); [1997, 269, 3416](#); [2003, 1014, 1816](#); [2005, 387, 1017, 2233](#); [2007, 2713, 3021](#); [2009, 811](#); [2011, 1413, 1901](#); [2017, 1974](#); [2019, 286, 1842](#))

NRS 31.050 Attachment of shares of stock, debts due defendant and other property. Subject to the order for attachment and the provisions of [NRS 78.746](#) and [chapters 104 to 104C](#), inclusive, of NRS, the right of shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

[1911 CPA § 209; RL § 5151; NCL § 8707]—(NRS A [1965, 914](#); [1973, 1175](#); [2007, 2716](#))

NRS 31.060 Execution of writ of attachment: Manner in which property is to be attached. Subject to the requirements of [NRS 31.045](#), the sheriff to whom the writ is directed and delivered shall execute it without delay, and if the undertaking mentioned in [NRS 31.040](#) is not given, as follows:

1. Real property must be attached by leaving a copy of the writ with the occupant of the property or, if there is no occupant, by posting a copy in a conspicuous place on the property and recording the writ, together with a description of the property attached, with the recorder of the county.

2. Personal property must be attached:

- (a) By taking it into immediate custody, and, if directed by the plaintiff, using the services of any company which operates a tow car, as defined in [NRS 706.131](#), or common motor carrier, as defined in [NRS 706.036](#), to transport it for storage in a warehouse or storage yard that is insured or bonded in an amount not less than the full value of the property; or

- (b) By placing a keeper in charge of a going business where the property is located, with the plaintiff prepaying the expense of the keeper to the sheriff, during which period, the defendant, by order of the court or the consent of the plaintiff, may continue to operate in the ordinary course of business at the defendant's own expense if all sales

are for cash and the full proceeds are paid to the keeper for the purpose of the attachment.

➡ If the property is stored pursuant to paragraph (a), the property must be segregated from other property and marked by signs or other appropriate means indicating that it is in the custody of the sheriff.

3. Any mobile home, as defined in [NRS 40.215](#), must be attached by:

(a) Posting a copy of the writ in a conspicuous place on the mobile home;

(b) Taking it into immediate custody, subject to the provisions of subsection 2; or

(c) Placing a keeper in charge of the mobile home for 2 days, with the plaintiff prepaying the expense of the keeper to the sheriff:

(1) During which period, the defendant may continue to occupy the mobile home; and

(2) After which period, the sheriff shall take the mobile home into the sheriff's immediate custody, subject to the provisions of subsection 2, unless other disposition is made by the court or the parties to the action.

4. Debts and credits, due or to become due, and other personal property in the possession or under the control of persons other than the defendant must be attached by service of a writ of garnishment as provided in [NRS 31.240](#) to [31.460](#), inclusive.

[1911 CPA § 210; A [1953, 548](#)](NRS A [1957, 272](#); [1965, 914](#); [1971, 1500](#); [1973, 1176](#); [1989, 462, 586, 605, 1141, 1147](#); [1997, 419](#); [2001, 1749](#); [2017, 1978](#))

NRS 31.065 Deposits by plaintiff of money with sheriff to pay expenses of taking, transporting and keeping certain personal property; liability of sheriff.

1. In cases where the sheriff is instructed to take into possession easily transportable personal property, whether it is to be placed in a warehouse or storage yard or in the custody of a keeper, the sheriff shall require, as prerequisite to the taking of the property, that in addition to written instructions the plaintiff or the plaintiff's attorney of record deposit with the sheriff a sum of money sufficient to pay the expenses of taking, transporting and keeping safely the property for a period not to exceed 30 days.

2. If a further detention of the property is required, the sheriff shall make written demands upon the plaintiff or the plaintiff's attorney for further deposits to cover

estimated expenses for periods not to exceed 30 days each. If the attaching party desires to make a greater deposit, the attaching party may do so. Such demand must be personally served on the plaintiff or the plaintiff's attorney or left with a responsible person or in a proper receptacle at the office or residence of the plaintiff or the plaintiff's attorney or the demand must be deposited in the post office in a sealed envelope, as first-class registered or certified mail postage prepaid, addressed to the person on whom it is served or the person's attorney at the last known office or place of residence.

3. If the money so demanded is not paid, the sheriff shall notify the defendant within 5 days after money for storing and handling the property is no longer available and shall release the property to the persons from whom it was taken. Failure so to notify the defendant imposes liability on the sheriff for the expenses unless sufficient money can be obtained from the plaintiff.

(Added to NRS by [1965, 1226](#); A [1969, 95](#); [1973, 1177](#); [1989, 463](#))

NRS 31.070 Third-party claims in property levied on; undertaking by plaintiff; liability of sheriff; exception to sufficiency of sureties; hearing to determine title to property.

1. If the property levied on is claimed by a third person as the person's property by a written claim verified by the person's oath or that of the person's agent, setting out the person's right to the possession thereof, and served upon the sheriff, the sheriff must release the property if the plaintiff, or the person in whose favor the writ of attachment runs, fails within 7 days after written demand to give the sheriff an undertaking executed by at least two good and sufficient sureties in a sum equal to double the value of the property levied on. If such undertaking be given, the sheriff shall hold the property. The sheriff, however, shall not be liable for damages to any such third person for the taking or keeping of such property if no claim is filed by any such third person.

2. Such undertaking shall be made in favor of and shall indemnify such third person against loss, liability, damages, costs and counsel fees by reason of such seizing, taking, withholding or sale of such property by the sheriff. By entering into such an undertaking the sureties thereunder submit themselves to the jurisdiction of the court and irrevocably appoint the clerk of the court as agent upon whom any papers affecting liability on the undertaking may be served. Liability on such undertaking may be enforced on motion to the court without the necessity of an independent action. The motion and such reasonable notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

3. Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking given in other cases under titles 2 and 3 of NRS. If they, or others in their place, fail to justify at the time and place appointed, the sheriff must release the property; but if no exception is taken within 7 days after notice of receipt of the undertaking, the third person shall be deemed to have waived any and all objections to the sufficiency of the sureties.

4. The sheriff may demand and exact the undertaking herein provided for notwithstanding any defect, informality or insufficiency of the verified claim served upon the sheriff.

5. Whenever a verified third-party claim is served upon the sheriff upon levy of the writ of attachment, the plaintiff or the third-party claimant is entitled to a hearing within 10 days therefrom before the court having jurisdiction of the action, in order to determine title to the property in question, which hearing must be granted by the court upon the filing of an application or petition therefor. Seven days' notice of such hearing must be given to all parties to the action and all parties claiming an interest in the property, or their attorneys, which notice must specify that the hearing is for the purpose of determining title to the property in question. The court may continue the hearing beyond the 10-day period, but good cause must be shown for any such continuance.

[1911 CPA § 210 1/2; added [1933, 88](#); 1931 NCL § 8708.01]—(NRS A [1965, 550](#); [1973, 1178](#))

NRS 31.100 Examination of person served with copy of writ and defendant; delivery and memoranda of personal property. After the writ has been issued, any person owing debts to the defendant or having in the person's possession or under the person's control any credits or other personal property belonging to the defendant, may, by subpoena, be required to give a deposition or attend before the court, or judge, or a master appointed by the court or judge, and be examined on oath respecting the same. After the writ has been issued, the defendant may also be required to give a deposition or attend for the purpose of giving information respecting the defendant's property, and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

[1911 CPA § 213; RL § 5155; NCL § 8711]—(NRS A [1973, 1178](#))

NRS 31.110 Sheriff's return of writ; certificate. The sheriff shall return the writ of attachment within 25 days after its receipt, with a certificate of the sheriff's

proceeding endorsed thereon or attached thereto. The certificate must contain the date, time and place of each levy upon real or personal property, a full inventory of the personal property attached, a description of all real property attached, and the date, time and place where each writ of garnishment was served. The sheriff shall also attach to the writ of attachment a true and correct copy of each writ of garnishment served.

[1911 CPA § 214; RL § 5156; NCL § 8712]—(NRS A [1973, 1179](#); [1991, 195](#))

NRS 31.120 Sale of attached perishable property; sheriff to retain proceeds and attached property to answer judgment. If any of the property attached is perishable, the sheriff shall sell it in the manner prescribed by the court. The proceeds and other property attached by the sheriff shall be retained by the sheriff to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by the sheriff, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

[1911 CPA § 215; RL § 5157; NCL § 8713]—(NRS A [1973, 1179](#))

NRS 31.130 Sale of attached property; proceeds to be deposited in court. Whenever property has been taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court, or a judge thereof, that the interest of the parties to the action will be subserved by a sale thereof, the court or judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment of the action. Such order can be made only upon notice to the adverse party or the adverse party's attorney.

[1911 CPA § 216; RL § 5158; NCL § 8714]

NRS 31.140 Satisfaction of judgment by sales of attached property. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by the sheriff which has not been delivered to the defendant or a claimant, as hereinafter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by the sheriff or of any debts or credits collected by the sheriff, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, the sheriff shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain

in the sheriff's hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

[1911 CPA § 217; RL § 5159; NCL § 8715]

NRS 31.150 Deficiency after sale of attached property; sheriff to collect balance as upon an execution. If, after selling all the property attached by the sheriff remaining in the sheriff's hands, and applying the proceeds, together with the proceeds of any debts or credits collected by the sheriff, deducting the fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the attached property remaining in the sheriff's hands, and any proceeds of the property attached unapplied on the judgment.

[1911 CPA § 218; RL § 5160; NCL § 8716]

NRS 31.160 Plaintiff may prosecute undertaking if execution returned unsatisfied. If the execution be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to [NRS 31.040](#) or [31.190](#), or the plaintiff may proceed as in other cases upon the return of an execution.

[1911 CPA § 219; RL § 5161; NCL § 8717]

NRS 31.170 Discharge of attachment after judgment for defendant or dismissal of action; stay of release pending appeal. If the defendant recovers judgment against the plaintiff, or if the claim for relief upon which the attachment is based is dismissed, then any undertaking received in the action, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or the defendant's agent, and the order of attachment shall be discharged and the property released therefrom; but if an appeal is taken from an order dissolving or discharging the attachment, from a final judgment in favor of the defendant or from an order dismissing the claim for relief upon which the attachment is based, the court may, upon such terms as are just, stay or enjoin the release by the sheriff and the dissolution of the writ pending the appeal.

[1911 CPA § 220; A [1913, 30](#); NCL § 8718]—(NRS A [1973, 1179](#))

NRS 31.180 Defendant, having appeared in action, may move for discharge of attachment upon giving undertaking; stipulations for release of attachments.

1. Whenever the defendant shall have appeared in the action, the defendant may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending,

or to the judge thereof, for an order to discharge the attachment, wholly or in part, upon the execution and filing of the undertaking mentioned in [NRS 31.190](#). Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts or credits attached, as the case may be. All the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in the sheriff's hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff.

2. The plaintiff and defendant may stipulate in writing that the attachment of defendant's property may be released wholly or in part. Upon the filing of such a stipulation, the sheriff shall release the property pursuant to the stipulation.

[1911 CPA § 221; RL § 5163; NCL § 8719]—(NRS A [1967, 270](#))

NRS 31.190 Undertaking of defendant; determination of disputed value of property; justification by sureties.

1. On granting an order for discharge of attachment pursuant to [NRS 31.180](#), the court or the judge shall require an undertaking on behalf of the defendant, with at least two sureties, residents and freeholders, or householders, in the county, which shall be filed:

(a) To the effect, in case the value of the property or the amount of money, debts, or credits sought to be released equals or exceeds the demand of the writ, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action or the demand of the writ, whichever is less; or

(b) To the effect, in case the value of the property or the amount of money, debts, or credits sought to be released is less than the demand of the writ, that the defendant will pay the amount of money, debts or credits, or value of the property sought to be released, in lawful money of the United States.

2. The value of the property sought to be released, if disputed, shall be determined by the court or judge thereof, upon proof or by a sworn appraiser or sworn appraisers, not exceeding three, to be appointed by the court or judge for that purpose.

3. Before filing the undertaking, the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, the plaintiff shall give notice thereof to the defendant within 2 days; or at the time of giving notice of motion for an order to discharge the attachment, the defendant may in the defendant's notice

name the sureties, and if the plaintiff require them to justify the plaintiff shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the court in which the suit is pending, or the judge thereof, after reasonable notice.

[1911 CPA § 222; RL § 5164; NCL § 8720]—(NRS A [1961, 421](#); [1973, 1180](#))

NRS 31.200 Grounds for discharge of attachment.

1. The defendant may also, at any time before trial, apply by motion, upon reasonable notice to the plaintiff, to the court in which the action is brought or to the judge thereof, for a discharge of the attachment, or the money or property attached through the use of a writ of garnishment, on the following grounds:

(a) That the writ was improperly or improvidently issued.

(b) That the property levied upon is exempt from execution or necessary and required by the defendant for the support and maintenance of the defendant and the members of the defendant's family.

(c) That the levy is excessive.

2. If the court or the judge thereof on the hearing of such motion shall find that any of the grounds stated in subsection 1 exist, the attachment and levy thereof shall be discharged. If the motion is based upon paragraph (c) of subsection 1 only, and the fact is found to exist, the discharge of attachment shall be only as to the excess.

[1911 CPA § 223; A [1921, 4](#); NCL § 8721]—(NRS A [1973, 1180](#))

NRS 31.210 When motion to discharge attachment made on affidavits, plaintiff may oppose by affidavits. If the motion is made upon affidavits on the part of the defendant, the plaintiff may oppose it by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

[1911 CPA § 224; RL § 5166; NCL § 8722]—(NRS A [1973, 1181](#))

NRS 31.220 Improperly, improvidently or irregularly issued writ must be discharged; issuance of new writ. If upon such application it satisfactorily appears that the writ of attachment was improperly, improvidently or irregularly issued, it must be discharged; but the release of the property shall not be ordered if, at or before the hearing on such application, the court orders a new writ to be issued as provided in [NRS 31.024](#) and [31.026](#), in which case the sheriff shall replevy upon the property under the new writ.

[1911 CPA § 225; RL § 5167; NCL § 8723]—(NRS A [1973, 1181](#))

NRS 31.235 Constables have powers and duties of sheriff with respect to writ of attachment. A constable may perform any of the duties assigned to a sheriff and has all of the authority granted to a sheriff pursuant to this chapter with respect to a writ of attachment.

(Added to NRS by [2011, 1901](#))

GARNISHMENT

NRS 31.240 Writ of garnishment may issue at time of issuance of writ of attachment or later. At the time of the order directing a writ of attachment to issue or at any time thereafter, the court may order that a writ of garnishment issue, and thereupon cause the money, credits, effects, debts, choses in action and other personal property of the defendant in the possession or under the control of any third person to be attached as security for any judgment the plaintiff may recover in the action against the defendant.

[1911 CPA § 227; RL § 5169; NCL § 8725]—(NRS A [1973, 1181](#))

NRS 31.249 Application to court for writ of garnishment.

1. No writ of garnishment in aid of attachment may issue except on order of the court. The court may order the writ of garnishment to be issued:

(a) In the order directing the clerk to issue a writ of attachment; or

(b) If the writ of attachment has previously issued without notice to the defendant and the defendant has not appeared in the action, by a separate order without notice to the defendant.

2. The plaintiff's application to the court for an order directing the issuance of a writ of garnishment must be by affidavit made by or on behalf of the plaintiff to the effect that the affiant is informed and believes that the named garnishee:

(a) Is the employer of the defendant; or

(b) Is indebted to or has property in the garnishee's possession or under the garnishee's control belonging to the defendant,

↪ and that to the best of the knowledge and belief of the affiant, the defendant's future wages, the garnishee's indebtedness or the property possessed is not by law exempt

from execution. If the named garnishee is the State of Nevada, the writ of garnishment must be served upon the Division of Human Resource Management of the Department of Administration.

3. The affidavit by or on behalf of the plaintiff may be contained in the application for the order directing the writ of attachment to issue or may be filed and submitted to the court separately thereafter.

4. Except as otherwise provided in this section, the grounds and procedure for a writ of garnishment are identical to those for a writ of attachment.

5. If the named garnishee is the subject of more than one writ of garnishment regarding the defendant, the court shall determine the priority and method of satisfying the claims, except that any writ of garnishment to satisfy a judgment for the collection of child support must be given first priority.

(Added to NRS by [1973, 1181](#); A [1985, 1012](#); [1989, 700](#); [2025, 24](#))

NRS 31.260 Issuance and contents of writ of garnishment; notice of execution.

1. The writ of garnishment must:

(a) Be issued by the sheriff.

(b) Contain the name of the court and the names of the parties.

(c) Be directed to the garnishee defendant.

(d) State the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address.

(e) Require each person the court directs, as garnishees, to submit to the sheriff an answer to the interrogatories within 20 days after service of the writ upon the person.

2. The writ of garnishment must also notify the garnishee defendant that, if the garnishee defendant fails to answer the interrogatories, a judgment by default will be rendered against the garnishee defendant for:

(a) The amount demanded in the writ of garnishment or the value of the property described in the writ, as the case may be; or

(b) If the garnishment is pursuant to [NRS 31.291](#), the amount of the lien created pursuant to that section,

↪ which amount or property must be clearly set forth in the writ of garnishment.

3. Execution on the writ of garnishment may occur only if the sheriff mails a copy of the writ with a copy of the notice of execution to the defendant in the manner and within the time prescribed in [NRS 21.076](#). In the case of a writ of garnishment that continues for 180 days or until the amount demanded in the writ is satisfied, a copy of the writ and the notice of execution need only be mailed once to the defendant.

[1911 CPA § 229; RL § 5171; NCL § 8727]—(NRS A [1973, 1182](#); [1989, 1141](#); [2001, 474](#); [2017, 1979](#))

NRS 31.270 Service of writ; tender of garnishee's fees.

1. The writ of garnishment shall be served by the sheriff of the county where the garnishee defendant is found, unless the court directs otherwise, in the same manner as provided by rule of court or law of this state for the service of a summons in a civil action.

2. At the time of the service of the writ of garnishment, the garnishee shall be paid or tendered by the plaintiff in the action or the officer serving the writ a fee of \$5, and unless such sum is paid or tendered to the garnishee defendant or the person upon whom service is made for the garnishee defendant, service shall be deemed incomplete.

[1911 CPA § 230; A [1953, 548](#)]—(NRS A [1973, 1182](#))

NRS 31.280 Service and return of writ give court jurisdiction. The sheriff's return of the writ of garnishment showing due service of the writ of garnishment upon one or more garnishee defendants with the payment or tender of the garnishee's fees shall give the court jurisdiction to proceed against each such garnishee.

[1911 CPA § 231; RL § 5173; NCL § 8729]—(NRS A [1973, 1183](#))

NRS 31.290 Form of interrogatories to garnishee; garnishee to answer in writing under oath.

1. The interrogatories to be submitted with any writ of execution, attachment or garnishment to the garnishee may be in substance as follows:

INTERROGATORIES

Are you in any manner indebted to the defendants.....

.....

.....

,

or either of them, either in property or money, and is the debt now due? If not due, when is the debt to become due? State fully all particulars.

Answer:.....

.....

Are you an employer of one or all of the defendants? If so, state the length of your pay period and the amount of disposable earnings, as defined in [NRS 31.295](#), that each defendant presently earns during a pay period. State the minimum amount of disposable earnings that is exempt from this garnishment, which is the federal minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., in effect at the time the earnings are payable multiplied by 50 for each week of the pay period, after deducting any amount required by law to be withheld.

Calculate the garnishable amount as follows:

(Check one of the following) The employee is paid:

[A] Weekly: __ [B] Biweekly: __ [C] Semimonthly: __ [D] Monthly: __

(1) Gross Earnings \$ _____

(2) Deductions required by law (not including child support)
_____ \$

(3) Disposable Earnings [Subtract line 2 from line 1] \$ _____

(4) Federal Minimum Wage \$ _____

(5) Multiply line 4 by 50 \$ _____

(6) Complete the following directions in accordance with the letter selected above:

[A] Multiply line 5 by 1 \$ _____

[B] Multiply line 5 by 2 \$ _____

[C] Multiply line 5 by 52 and then divide by 24 \$ _____

[D] Multiply line 5 by 52 and then divide by 12 \$ _____

(7) Subtract line 6 from line 3 \$ _____

This is the attachable earnings. This amount must not exceed 18% of the disposable earnings from line 3 if the employee's gross weekly salary or wage on the date the most recent writ of garnishment was issued was \$770 or less, or 25% of the disposable earnings from line 3 if the employee's gross weekly salary or wage on the date the most recent writ of garnishment was issued exceeded \$770.

Answer:.....

.....

What is the gross weekly salary or wage of the employee? The gross weekly salary or wage of an employee must be determined as follows:

1. Except as otherwise provided in numbers 2 and 3 below, by dividing the employee's gross earnings for the current calendar year as of the date the most recent writ of garnishment was issued by the total number of weeks the employee has worked in the current calendar year.

2. If the most recent writ of garnishment was issued at the beginning of the current calendar year before the employee received any earnings in the current calendar year, but the employee received earnings in the previous calendar year, by dividing the employee's gross earnings for the previous calendar year by the total number of weeks the employee worked in the previous calendar year.

3. If the employee has not been employed long enough to have been paid as of the date the most recent writ of garnishment was issued, or if the provisions of number 1 or 2 above do not otherwise apply, the gross weekly salary or wage of the employee is the anticipated gross weekly earnings of the employee as determined by his or her employer.

For the purpose of determining the total number of weeks the employee has worked in the current calendar year or the total number of weeks the employee worked in the previous calendar year, as applicable, if the total number of weeks is not exact, the number must be rounded down if the number of days the employee was on the payroll of his or her employer in excess of a whole week is 3 days or less, and rounded up if the number of days the employee was on the payroll of his or her employer in excess of a whole week is 4 days or more.

Answer:.....

.....

Did you have in your possession, in your charge or under your control, on the date the writ of garnishment was served upon you, any money, property, effects, goods, chattels, rights, credits or choses in action of the defendants, or either of them, or in whichis interested? If so, state its value, and state fully all particulars.

Answer:.....

.....

Do you know of any debts owing to the defendants, whether due or not due, or any money, property, effects, goods, chattels, rights, credits or choses in action, belonging to or in whichis interested, and now in the possession or under the control of others? If so, state particulars.

Answer:.....

.....

Are you a financial institution with a personal account held by one or all of the defendants? If so, state the account number and the amount of money in the account which is subject to garnishment. As set forth in [NRS 21.105](#), \$2,000 or the entire amount in the account, whichever is less, is not subject to garnishment if the financial institution reasonably identifies that an electronic deposit of money has been made into the account within the immediately preceding 45 days which is exempt from execution, including, without limitation, payments of money described in [NRS 21.105](#) or, if no such deposit has been made, \$400 or the entire amount in the account, whichever is less, is not subject to garnishment, unless the garnishment is for the recovery of money owed for the support of any person. The amount which is not subject to garnishment does not apply to each account of the judgment debtor, but rather is an aggregate amount that is not subject to garnishment.

Answer:.....

.....

State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served.

Answer:.....

.....

.....

Garnishee

I (insert the name of the garnishee), declare under penalty of perjury that the answers to the foregoing interrogatories by me subscribed are true and correct.

.....

(Signature of garnishee)

2. The garnishee shall answer the interrogatories in writing upon oath or affirmation and submit the answers to the sheriff within the time required by the writ. The garnishee shall submit his or her answers to the judgment debtor within the same time. If the garnishee fails to do so, the garnishee shall be deemed in default.

[1911 CPA § 232; RL § 5174; NCL § 8730]—(NRS A [1973, 1183](#); [1985, 20](#); [1989, 700, 1142, 1146](#); [2001, 20, 475](#); [2011, 1905](#); [2017, 1980](#))

NRS 31.291 Garnishment of certain financial institutions.

1. Debts and credits, due or to become due, from a bank incorporated under the laws of the State of Nevada or the laws of the United States of America, or other personal property held by the bank must be garnished by serving a copy of the writ of garnishment on one of the following officers of the bank:

(a) If the bank has no branches, trust department or military facility, on the president, vice president, assistant vice president, cashier, assistant cashier, manager or other managing officer in charge of the bank owing the debts, or having in its possession or under its control the credits or other personal property.

(b) If the bank has branches or military facilities owing the debts or having in its possession or under its control the credits or other personal property, on the vice president, assistant vice president, assistant cashier, manager or other managing officer in charge of the branch or in charge of the military facility. Service on that officer or agent constitutes a valid levy on any debt, credit or other personal property owing by any branch or military facility of the bank.

(c) If the bank has a trust department owing the debts or having in its possession or under its control the credits or other personal property, on the vice president and trust officer, trust officer, assistant trust officer or other managing officer of the trust department.

2. Debts and credits due or to become due from a credit union, savings and loan association or savings bank incorporated under the laws of the State of Nevada or the laws of the United States of America or other personal property and choses in action held by the credit union, savings and loan association or savings bank must be garnished by serving the writ of garnishment in the same manner as upon banks pursuant to subsection 1.

3. A garnishment pursuant to this section creates a lien only upon the amounts in the accounts or to the credit of the debtor at the time of service of the writ of garnishment. An item in the process of collection is included in the amount of an account unless the item is returned unpaid. Money in the accounts that the garnishee has declared under oath and in answers to interrogatories to be exempt from execution is not included in the amount of the account.

4. No garnishment may occur until the defendant has been served with the notice of execution in substantially the form prescribed in [NRS 31.045](#) and in the manner prescribed in [NRS 21.076](#).

(Added to NRS by [1973, 1185](#); A [1985, 21](#); [1989, 1143](#); [1995, 107](#); [1999, 1455](#))

NRS 31.292 Garnishment of court clerks, sheriffs, justices of the peace, peace officers, other public officers, executors and administrators.

1. Clerks of the courts, sheriffs, justices of the peace, peace officers and all other officers who may, by virtue of their office, collect or hold money belonging to a defendant and all guardians, attorneys and trustees are subject to garnishment in the same manner and to the same extent as other persons are subject to be garnished.

2. Executors and administrators may be garnished for debts due by the legatees or distributees, but no judgment may be rendered against them until a settlement is made

of the estate, unless they assent to the legacy or admit assets to pay the amount claimed, or some portion thereof, out of the distributive share of the debtor.

(Added to NRS by [1973, 1185](#))

NRS 31.293 Unpaid subscription to corporate stock subject to garnishment by creditor of corporation. Any creditor of a corporation may, by garnishment, subject the unpaid subscription of any stockholder in such corporation to the payment of its debts.

(Added to NRS by [1973, 1185](#))

NRS 31.294 Procedure for garnishment when another action pending. Money, property, demands, debts, claims, choses in action and any other property which is subject to garnishment may be reached and subjected even though another action is pending thereon. If the other action is not pending in the court from which the garnishment issues, the court, on proof by the garnishee of the pendency of the other action, must stay such proceedings against such garnishee until notified that a final judgment has been rendered. Upon such notification the court shall make an appropriate order, according to the judgment, in favor of the defendant for the use of the plaintiff or in favor of the garnishee defendant. The judgment, if rendered against the garnishee, acquits the garnishee from all demands by the defendant for all money, property, goods, effects and credits paid, delivered or accounted for by the garnishee by force of such judgment.

(Added to NRS by [1973, 1185](#))

NRS 31.2945 Garnishment under foreign judgment: Liability for failure to comply with Uniform Enforcement of Foreign Judgments Act.

1. Any judgment debtor who is a resident of this State and who maintains an account or any other property at a branch of a financial institution located in this State or whose earnings are derived from employment in this State may bring a civil action against a judgment creditor under a foreign judgment if the judgment creditor, without satisfying the requirements of [NRS 17.330](#) to [17.400](#), inclusive, has obtained a writ of garnishment to satisfy all or part of the foreign judgment from:

- (a) The earnings of the judgment debtor derived from employment in this State; or
- (b) Money in the account or any other property maintained by the judgment debtor at a branch of a financial institution located in this State.

2. A judgment debtor who prevails in an action brought under this section may recover from the judgment creditor damages equal to two times any amount paid to the judgment creditor under the writ of garnishment. If the judgment debtor prevails in an action brought under this section, the court must award reasonable attorney's fees and costs to the plaintiff.

3. As used in this section, "foreign judgment" has the meaning ascribed to it in [NRS 17.340](#).

(Added to NRS by [2017, 1973](#))

NRS 31.295 Garnishment of earnings: Limitations on amount.

1. As used in this section:

(a) "Disposable earnings" means that part of the earnings of any person remaining after the deduction from those earnings of any amounts required by law to be withheld.

(b) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

2. The maximum amount of the aggregate disposable earnings of a person which are subject to garnishment may not exceed:

(a) Eighteen percent of the person's disposable earnings for the relevant workweek if the person's gross weekly salary or wage on the date the most recent writ of garnishment was issued was \$770 or less;

(b) Twenty-five percent of the person's disposable earnings for the relevant workweek if the person's gross weekly salary or wage on the date the most recent writ of garnishment was issued exceeded \$770; or

(c) The amount by which the person's disposable earnings for that week exceed 50 times the federal minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., in effect at the time the earnings are payable,

↪ whichever is less.

3. The restrictions of subsection 2 do not apply in the case of:

- (a) Any order of any court for the support of any person.
- (b) Any order of any court of bankruptcy.
- (c) Any debt due for any state or federal tax.

4. Except as otherwise provided in this subsection, the maximum amount of the aggregate disposable earnings of a person for any workweek which are subject to garnishment to enforce any order for the support of any person may not exceed:

(a) Fifty percent of the person's disposable earnings for that week if the person is supporting a spouse or child other than the spouse or child for whom the order of support was rendered; or

(b) Sixty percent of the person's disposable earnings for that week if the person is not supporting such a spouse or child,

↪ except that if the garnishment is to enforce a previous order of support with respect to a period occurring at least 12 weeks before the beginning of the workweek, the limits which apply to the situations described in paragraphs (a) and (b) are 55 percent and 65 percent, respectively.

(Added to NRS by [1971, 1499](#); A [1985, 1430](#); [2005, 1020](#); [2017, 1982](#))

NRS 31.2955 Garnishment of earnings: Calculations for determining gross weekly salary or wage of employee.

1. For the purposes of [NRS 31.240](#) to [31.460](#), inclusive:

(a) Except as otherwise provided in paragraphs (b) and (c), the gross weekly salary or wage of an employee must be determined by dividing the employee's gross earnings for the current calendar year as of the date the most recent writ of garnishment was issued by the total number of weeks the employee has worked in the current calendar year.

(b) If the most recent writ of garnishment was issued at the beginning of the current calendar year before an employee received any earnings in the current calendar year, but the employee received earnings in the previous calendar year, the gross weekly salary or wage of the employee must be determined by dividing the employee's gross

earnings for the previous calendar year by the total number of weeks the employee worked in the previous calendar year.

(c) If an employee has not been employed long enough to have been paid as of the date the most recent writ of garnishment was issued, or if the provisions of paragraph (a) or (b) do not otherwise apply, the gross weekly salary or wage of the employee is the anticipated gross weekly earnings of the employee as determined by his or her employer.

2. For the purpose of determining the total number of weeks an employee has worked in the current calendar year pursuant to paragraph (a) of subsection 1 or the total number of weeks an employee worked in the previous calendar year pursuant to paragraph (b) of subsection 1, if the total number of weeks is not exact, the number must be:

(a) Rounded down if the number of days the employee was on the payroll of his or her employer in excess of a whole week is 3 days or less; and

(b) Rounded up if the number of days the employee was on the payroll of his or her employer in excess of a whole week is 4 days or more.

(Added to NRS by [2017, 1974](#))

NRS 31.296 Garnishment of earnings: Period of garnishment; fee for withholding; termination of employment; periodic report by judgment creditor.

1. Except as otherwise provided in subsection 3, if the garnishee indicates in the garnishee's answer to garnishee interrogatories that the garnishee is the employer of the defendant, the writ of garnishment served on the garnishee shall be deemed to continue for 180 days or until the amount demanded in the writ is satisfied, whichever occurs earlier.

2. In addition to the fee set forth in [NRS 31.270](#), a garnishee is entitled to a fee from the plaintiff of \$3 per pay period, not to exceed \$12 per month, for each withholding made of the defendant's earnings. This subsection does not apply to the first pay period in which the defendant's earnings are garnished.

3. If the defendant's employment by the garnishee is terminated before the writ of garnishment is satisfied, the garnishee:

(a) Is liable only for the amount of earned but unpaid, disposable earnings that are subject to garnishment.

(b) Shall provide the plaintiff or the plaintiff's attorney with the last known address of the defendant and the name of any new employer of the defendant, if known by the garnishee.

4. The judgment creditor who caused the writ of garnishment to issue pursuant to [NRS 31.260](#) shall prepare an accounting and provide a report to the judgment debtor, the sheriff and each garnishee every 180 days which sets forth, without limitation, the amount owed by the judgment debtor, the costs and fees allowed pursuant to [NRS 18.160](#) and any accrued interest and costs on the judgment. The report must advise the judgment debtor of the judgment debtor's right to request a hearing pursuant to [NRS 18.110](#) to dispute any accrued interest, fee or other charge. Any subsequent application for writ made by the judgment creditor concerning the same debt must not be approved unless such an accounting and report are submitted with the application.

(Added to NRS by [1989, 699](#); A [2011, 1907](#); [2013, 3811](#); [2017, 1983](#))

NRS 31.297 Garnishment of earnings: Liability of employer for refusal to withhold or for misrepresentation of earnings.

1. If without legal justification an employer of the defendant refuses to withhold earnings of the defendant demanded in a writ of garnishment or knowingly misrepresents the earnings of the defendant, the court may order the employer to appear and show cause why the employer should not be subject to the penalties prescribed in subsection 2.

2. If after a hearing upon the order to show cause, the court determines that an employer, without legal justification, refused to withhold the earnings of a defendant demanded in a writ of garnishment or knowingly misrepresented the earnings of the defendant, the court shall order the employer to pay the plaintiff, if the plaintiff has received a judgment against the defendant, the amount of arrearages caused by the employer's refusal to withhold or the employer's misrepresentation of the defendant's earnings. In addition, the court may order the employer to pay the plaintiff punitive damages in an amount not to exceed \$1,000 for each pay period in which the employer has, without legal justification, refused to withhold the defendant's earnings or has misrepresented the earnings.

(Added to NRS by [1989, 699](#))

NRS 31.298 Garnishment of earnings: Unlawful to discharge or discipline employee. It is unlawful for an employer to discharge or discipline an employee exclusively because the employer is required to withhold the employee's earnings pursuant to a writ of garnishment.

(Added to NRS by [1989, 700](#))

NRS 31.300 Property to be delivered to sheriff; sale; judgment against garnishee.

1. If the answer of the garnishee shows that the garnishee has personal property of any kind in his or her possession, or under his or her control, belonging to the defendant, the court, upon application of the plaintiff with written notice to the garnishee at the address supplied on the answers to the interrogatories or to the attorney for the garnishee, shall enter judgment that the garnishee deliver the same to the sheriff, and if the plaintiff recover judgment against the defendant in the action, such property or so much thereof as may be necessary shall be sold as upon execution, and the proceeds applied toward the satisfaction of such judgment, together with the costs of the action and proceedings, and if there be a surplus of such property, or of the proceeds thereof, it shall be restored to the defendant.

2. If the answer shows that the garnishee is in possession of money, debts, credits or choses in action, or has any of such items under the garnishee's control, or is in any way indebted to the defendant, then, if the plaintiff recover judgment against the defendant in the action, the court shall also, upon application of the plaintiff with written notice to the garnishee or the garnishee's attorney in the manner provided in subsection 1, enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for the amount of the indebtedness, choses in action, debts or credits admitted in the answer; but the judgment against the garnishee shall not be for a greater sum than is necessary to satisfy the judgment of the plaintiff against the defendant, together with costs as aforesaid; and in no case shall the garnishee be chargeable with costs unless the garnishee's answer shall be successfully controverted as hereinafter provided.

[1911 CPA § 233; RL § 5175; NCL § 8731]—(NRS A [1973, 1186](#))

NRS 31.310 Property to be retained by garnishee or delivered to officer; effect of delivery; certificate of receipt of property.

1. Subject to order of the court, a garnishee defendant upon whom a writ of garnishment has been duly served shall not pay any debt due or to become due to the defendant and shall retain in the garnishee's possession and control, or deliver to the sheriff as provided herein, all personal property, effects, goods, chattels, rights, debts, credits or choses in action of the defendant.

2. In all cases the garnishee, upon submitting the garnishee's answers to the garnishee interrogatories, may deliver to the sheriff or the officer serving the writ the property belonging to the defendant, together with the money due to the defendant, and

the sheriff or officer shall give the garnishee defendant a receipt therefor, and thereupon the garnishee is relieved from further liability in the proceedings, unless the garnishee's answer is successfully controverted.

3. The sheriff or officer shall hold the property and money to be dealt with as provided in [NRS 31.300](#) and shall, by certificate, make return to the court showing the receipt thereof specifically describing the money and property and setting forth the date and time of its receipt. The certificate forms a part of the return of the writ of garnishment.

[1911 CPA § 234; RL § 5176; NCL § 8732]—(NRS A [1973, 1186](#); [2001, 476](#))

NRS 31.320 Judgment against garnishee on failure to answer; relief from judgment.

1. If the garnishee has been duly served with the writ of garnishment and interrogatories, and been paid or tendered the fee of \$5, and the fact of the payment or tender is duly certified by the officer who served the writ over the officer's official signature, or that fact is made to appear by the person serving the writ under oath, but the garnishee fails, neglects or refuses to answer the interrogatories within the time required, the court shall, upon application therefor by the plaintiff with at least 5 days' notice of the hearing upon the application given to each defendant who has appeared in the action, enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for:

(a) The value of the property or amount of money specified in the writ of garnishment; or

(b) If the garnishment is pursuant to [NRS 31.291](#), the amount of the lien created pursuant to that section.

2. On motion and upon such terms as are just, the court may relieve a garnishee defendant or the garnishee defendant's legal representative from any final judgment against the garnishee defendant for the same reasons and upon the same terms and conditions as provided for by rule of court for relief from a judgment or order in civil cases.

[1911 CPA § 235; RL § 5177; NCL § 8733]—(NRS A [1973, 1187](#); [2001, 476](#))

NRS 31.330 Answer of garnishee; reply of plaintiff by affidavit. If the garnishee answers as required by the writ, the plaintiff may, within 20 days after the expiration of the time allowed for the filing of such answer, reply to the whole or any

part thereof by an affidavit traversing the same; the plaintiff may also in the plaintiff's reply allege any matters which would charge the garnishee with liability according to the provisions of this chapter, and such affidavit may be upon information and belief. If the plaintiff fails to reply within the time aforesaid, the plaintiff shall be deemed to have accepted the answer of the garnishee as true, and judgment may be entered accordingly.

[1911 CPA § 236; RL § 5178; NCL § 8734]—(NRS A [1973, 1187](#))

NRS 31.340 New matter in plaintiff's reply deemed denied; trial; judgment; costs; attorney's fees. New matter in the affidavit replying to the answer of the garnishee shall be taken as denied or avoided, and the matter thus at issue without further pleadings shall be tried in the same manner as other issues of like nature, and upon the verdict or finding thereon, judgment shall be entered the same as if the garnishee had answered according to such verdict or finding; but if the verdict or finding is as favorable to the garnishee as the garnishee's answer, the garnishee shall recover costs of the proceeding against the plaintiff, together with a reasonable attorney's fee, otherwise the plaintiff shall recover costs against the garnishee, together with a reasonable attorney's fee.

[1911 CPA § 237; RL § 5179; NCL § 8735]—(NRS A [1973, 1187](#))

NRS 31.350 Third person may be interpleaded as defendant; notice; proceedings. When the answer of the garnishee discloses that any other person than the defendant claims the indebtedness or property in the garnishee's hands, and the name and address of such claimant, the court shall, on motion and notice to all parties to the action including the garnishee defendant, order that such claimant be interpleaded as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court shall direct, be served upon the claimant, and that after such service shall have been made, the garnishee may pay or deliver to the officer or the clerk such indebtedness or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action, and shall answer within 20 days, setting forth the claimant's claim, or any defense which the garnishee might have made. In case of default, judgment may be rendered which shall conclude any claim upon the part of such defendant.

[1911 CPA § 238; RL § 5180; NCL § 8736]—(NRS A [1973, 1188](#))

NRS 31.360 Garnishee may retain or deduct amounts due to garnishee by either party; record of judgment to show any counterclaims allowed. Every garnishee shall be allowed to retain or deduct out of the property, effects or credits of the defendant in the garnishee's hands all demands against the plaintiff and all demands against the defendant of which the garnishee could have availed himself or herself if the garnishee had not been summoned as garnishee, whether the same are at the time due or not, and the garnishee shall be liable for the balance, only after all mutual demands between the garnishee and plaintiff and defendant are adjusted, not including unliquidated damages for wrongs and injuries; but the verdict or finding as well as the record of the judgment shall show in all cases against which party, and the amount thereof, any counterclaim shall be allowed, if any shall be allowed.

[1911 CPA § 239; RL § 5181; NCL § 8737]

NRS 31.370 Judgment acquits garnishee for amounts paid. The judgment against a garnishee shall acquit the garnishee from all demands by the defendant for all goods, effects and credits paid, delivered or accounted for by the garnishee by force of such judgment.

[1911 CPA § 240; RL § 5182; NCL § 8738]

NRS 31.380 Discharge of garnishee does not bar action by defendant; exception. If the person summoned as garnishee is discharged for any reason, except the payment by the garnishee of the money or property the garnishee holds for the benefit of the defendant, the judgment shall be no bar to an action brought against the garnishee by the defendant for the same demand.

[1911 CPA § 241; RL § 5183; NCL § 8739]—(NRS A [1973, 1188](#))

NRS 31.390 Judgment against garnishee for debt not due; execution deferred until debt due. When the judgment is rendered against any garnishee and it shall appear that the debt from the garnishee to the defendant is not yet due, execution shall not issue until the debt shall have become due.

[1911 CPA § 242; RL § 5184; NCL § 8740]

NRS 31.400 Property in hands of garnishee subject to security interest to be delivered to sheriff on payment or tender by plaintiff. When any personal property, choses in action or effects of the defendant in the hands of a garnishee are subject to a security interest, or in any way liable for the payment of a debt to the garnishee, the plaintiff may, under an order of the court for that purpose, pay or tender

the amount due to the garnishee, and thereupon the garnishee shall deliver the personal property, choses in action and effects to the sheriff as in other cases.

[1911 CPA § 243; RL § 5185; NCL § 8741]—(NRS A [1965, 915](#))

NRS 31.410 Property held by garnishee to secure performance to be delivered to sheriff upon performance or tender by plaintiff. If the personal property or effects are held for any purpose other than to secure the payment of money, and if the contract, condition or other thing to be done or performed is such as can be performed by the plaintiff without damage to the other parties, the court may make an order for the performance thereof by the plaintiff, and upon such performance, or a tender of performance, the garnishee shall deliver the personal property and effects to the sheriff as in other cases.

[1911 CPA § 244; RL § 5186; NCL § 8742]

NRS 31.420 Disposal of property received by sheriff; reimbursement of plaintiff. All personal property, choses in action and effects received by the sheriff under either [NRS 31.400](#) or [31.410](#) shall be disposed of in the same manner as if they had been delivered by the garnishee without condition, except that the plaintiff shall, out of the proceeds thereof, be first repaid the amount paid by the plaintiff to the garnishee for the redemption of the same, or shall be indemnified for any other act or thing by the plaintiff done or performed, pursuant to the order of the court for the redemption of the same.

[1911 CPA § 245; RL § 5187; NCL § 8743]

NRS 31.450 Issuance of writ of garnishment after judgment; procedure; liberal construction. Any person having a judgment remaining unsatisfied in any court of record in the State, upon which execution has been issued and delivered, and which remains in the hands of the proper officer uncollected and unsatisfied, may, without application to the court, have a writ of garnishment issued, and thereupon attach the credits, effects, debts, choses in action and other personal property of the judgment debtor in the possession or under the control of any third person as garnishee, for the security of such judgment, and all rights, remedies and proceedings under this chapter are hereby made specifically available and applicable for the relief and security of such judgment creditor, the same as for a plaintiff in attachment, and the same are also made especially available and applicable for the protection and security of the judgment debtor and the garnishee, the same as for the defendant and garnishee in attachment; and the forms of all affidavits, interrogatories, writs, answers, oaths, orders, trials, judgments and other process and proceedings hereinbefore provided for cases of garnishment before judgment, with appropriate variations, shall apply to cases of

garnishment after judgment; and all courts shall be liberal in allowing amendments, and in construing this chapter so as to promote the objects thereof.

[1911 CPA § 248; RL § 5190; NCL § 8746]—(NRS A [1973, 1188](#))

NRS 31.460 New trials and appeals. Motions for new trial may be made in the same time and manner and shall be allowed for the same grounds in garnishment proceedings as in other civil trials; and appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.

[1911 CPA § 249; RL § 5191; NCL § 8747]

ARREST AND BAIL

NRS 31.470 Arrest in civil cases. No person shall be arrested in a civil action except as prescribed by this chapter.

[1911 CPA § 145; RL § 5087; NCL § 8643]

NRS 31.480 Cases in which defendant may be arrested. The defendant may be arrested, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the State with intent to defraud the defendant's creditors, or when the action is for libel or slander.

2. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied or converted to his or her own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk in the course of his or her employment as such or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in professional employment, or for a willful violation of duty.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff.

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention or conversion of which the action is brought.

5. When the defendant has removed or disposed of the defendant's property, or is about to do so, with intent to defraud the defendant's creditors.

[1911 CPA § 146; RL § 5088; NCL § 8644]

NRS 31.490 Order for arrest. An order for the arrest of the defendant shall be obtained from a judge of the court in which the action is brought.

[1911 CPA § 147; RL § 5089; NCL § 8645]

NRS 31.500 Order for arrest made when plaintiff's affidavit shows a sufficient cause; requisites and filing of affidavit. The order may be made whenever it shall appear to the judge, by the affidavit of the plaintiff or some other person, that a sufficient cause of action exists, and the case is one of those mentioned in [NRS 31.480](#). The affidavit shall be either positive or upon information and belief; and when upon information and belief it shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit shall be filed with the clerk of the court.

[1911 CPA § 148; RL § 5090; NCL § 8646]

NRS 31.510 Undertaking from plaintiff. Before making the order the judge shall require a written undertaking, payable in lawful money of the United States, on the part of the plaintiff, with sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs and charges that may be awarded to the defendant, and all damages which the defendant may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least \$500. Each of the sureties shall annex to the undertaking an affidavit that the surety is a resident and householder or freeholder within the State, and worth double the sum specified in the undertaking over and above all the surety's debts and liabilities, exclusive of property exempt from execution. The undertaking shall be filed with the clerk of the court.

[1911 CPA § 149; RL § 5091; NCL § 8647]

NRS 31.520 Order and arrest; return of order. The order may be made to accompany the summons, or any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest the defendant and hold the defendant to bail in a specified sum, naming the money or currency in which it is payable, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

[1911 CPA § 150; RL § 5092; NCL § 8648]

NRS 31.530 Delivery of affidavit and order to sheriff and defendant. The order of arrest, with a copy of the affidavit upon which it is made, shall be delivered to

the sheriff, who, upon arresting the defendant, shall deliver to the defendant the copy of the affidavit, and also, if desired, a copy of the order of arrest.

[1911 CPA § 151; RL § 5093; NCL § 8649]

NRS 31.540 Arrest of defendant. The sheriff shall execute the order by arresting the defendant and keeping the defendant in custody until discharged by law.

[1911 CPA § 152; RL § 5094; NCL § 8650]

NRS 31.550 Defendant to be discharged on bail or deposit. The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest in the money or currency therein named, as provided in this chapter.

[1911 CPA § 153; RL § 5095; NCL § 8651]

NRS 31.560 Defendant may give bail. The defendant may give bail by causing a written undertaking, payable in the money of the contract (if any be named), and in other cases as directed by the judge, to be executed by two or more sufficient sureties, stating their places of residence and occupations, to the effect that they are bound in the amount mentioned in the order of arrest; that the defendant shall at all times render himself or herself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

[1911 CPA § 154; RL § 5096; NCL § 8652]

NRS 31.570 Bail may surrender defendant. At any time before judgment, or within 10 days thereafter, the bail may surrender the defendant in their exoneration; or the defendant may surrender to the sheriff of the county where the defendant was arrested.

[1911 CPA § 155; RL § 5097; NCL § 8653]

NRS 31.580 Arrest, delivery and surrender of defendant by bail; exoneration of bail. For the purpose of surrendering the defendant, the bail at any time or place before they are finally charged may themselves arrest the defendant; or by a written authority, endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, or upon delivery of the defendant to the sheriff by the bail, or upon the defendant's own surrender, the bail shall be exonerated; provided, such arrest, delivery or surrender shall take place before

the expiration of 10 days after judgment; but if such arrest, delivery or surrender be not made within 10 days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within 10 days thereafter.

[1911 CPA § 156; RL § 5098; NCL § 8654]

NRS 31.590 Action against bail. If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, an action may be commenced against bail for the amount of the original judgment.

[1911 CPA § 157; RL § 5099; NCL § 8655]

NRS 31.600 Bail exonerated by death, imprisonment or discharge of defendant. The bail shall also be exonerated by the death of the defendant, or by the defendant's imprisonment in a state prison, or by the defendant's legal discharge from the obligation to render himself or herself amenable to the process.

[1911 CPA § 158; RL § 5100; NCL § 8656]

NRS 31.610 Return of order; plaintiff may except to bail. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with the sheriff's return endorsed thereon, together with a copy of the undertaking of the bail. The sheriff shall retain the original undertaking in the sheriff's possession until filed, as herein provided. The plaintiff, within 10 days thereafter, may serve upon the sheriff a notice that the plaintiff does not accept the bail, or the plaintiff shall be deemed to have accepted them, and the sheriff shall be exonerated from liability. If no notice be served within 10 days, the original undertaking shall be filed with the clerk of the court.

[1911 CPA § 159; RL § 5101; NCL § 8657]

NRS 31.620 Notice of justification of bail. Within 5 days after the receipt of notice, the sheriff or defendant may give to the plaintiff or the plaintiff's attorney notice of the justification of the same, or other bail (specifying the places of residence and occupations of the latter), before the judge of the court, or clerk, at a specified time and place; the time to be not less than 5 nor more than 10 days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking.

[1911 CPA § 160; RL § 5102; NCL § 8658]

NRS 31.630 Qualifications of bail. The qualifications of bail shall be as follows:

1. Each of them shall be a resident and householder, or freeholder, within the county.

2. Each shall be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all debts and liabilities of the bail, exclusive of property exempt from execution; but the judge, or clerk, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

[1911 CPA § 161; RL § 5103; NCL § 8659]

NRS 31.640 Examination of bail. For the purpose of justification, each of the bail shall attend before the judge, or clerk, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching the bail's sufficiency, in such manner as the judge, or clerk, in the exercise of discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

[1911 CPA § 162; RL § 5104; NCL § 8660]

NRS 31.650 Allowance of bail exonerates sheriff. If the judge, or clerk, find the bail sufficient, the judge or clerk shall annex the examination to the undertaking, endorse the judge's or clerk's allowance thereon, and cause them to be filed, and the sheriff shall thereupon be exonerated from liability.

[1911 CPA § 163; RL § 5105; NCL § 8661]

NRS 31.660 Deposit by defendant in lieu of bail. The defendant may, at the time of the defendant's arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

[1911 CPA § 164; RL § 5106; NCL § 8662]

NRS 31.670 Sheriff must pay deposit into court. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment; the one of which the sheriff shall deliver or transmit to the plaintiff or the plaintiff's attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

[1911 CPA § 165; RL § 5107; NCL § 8663]

NRS 31.680 Undertaking may be substituted for deposit. If the money be deposited, as provided in [NRS 31.660](#) and [31.670](#), bail may be given and may justify upon notice at any time before judgment; and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

[1911 CPA § 166; RL § 5108; NCL § 8664]

NRS 31.690 Disposition of deposit. Where money shall have been deposited, if it remain on deposit at the time of a recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall, under like direction of the court, refund to the defendant the whole sum deposited and remaining unapplied.

[1911 CPA § 167; RL § 5109; NCL § 8665]

NRS 31.700 Liability of sheriff for escape or rescue. If, after being arrested, the defendant escape or be rescued, the sheriff shall be liable as bail; but the sheriff may discharge himself or herself from such liability by the giving and justification of bail at any time before judgment.

[1911 CPA § 168; RL § 5110; NCL § 8666]

NRS 31.710 Recovery on official bond of sheriff. If a judgment be recovered against the sheriff, upon the sheriff's liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the sheriff's official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

[1911 CPA § 169; RL § 5111; NCL § 8667]

NRS 31.720 Defendant may move to vacate arrest or reduce bail; hearing. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those on which the order of arrest was made.

[1911 CPA § 170; RL § 5112; NCL § 8668]

NRS 31.730 Vacation of order of arrest and reduction of bail. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated, or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

[1911 CPA § 171; RL § 5113; NCL § 8669]

DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

NRS 31.740 Persons confined on execution issued on judgment may be discharged. Every person confined in jail on an execution issued on a judgment rendered in a civil action shall be discharged therefrom upon the conditions hereinafter specified.

[1911 CPA § 172; RL § 5114; NCL § 8670]

NRS 31.750 Notice of application for discharge. Such person shall cause a notice in writing to be given to the plaintiff, or the plaintiff's agent or attorney, that at a certain time and place the person will apply to the district judge of the county in which such person may be confined for the purpose of obtaining a discharge from imprisonment.

[1911 CPA § 173; RL § 5115; NCL § 8671]

NRS 31.760 Service of notice of application. Such notice shall be served upon the plaintiff, or the plaintiff's agent or attorney, 1 day at least before the hearing of the application. If the plaintiff be not a resident of the county, and have no agent or attorney in the county, no such notice need be served.

[1911 CPA § 174; RL § 5116; NCL § 8672]

NRS 31.770 Hearing on application. At the time and place specified in the notice, such person shall be taken before such judge, who shall examine the person under oath concerning the person's estate and property and effects, and the disposal thereof, and the person's ability to pay the judgment for which the person is committed, and such judge shall also hear any other legal and pertinent evidence that may be produced by the debtor or creditors.

[1911 CPA § 175; RL § 5117; NCL § 8673]

NRS 31.780 Oath of defendant on discharge. If, upon examination, the judge be satisfied that the prisoner is entitled to discharge, the judge shall administer to the prisoner the following oath: "I,....., do solemnly swear, or affirm, that I have not

any estate, real or personal, to the amount of \$50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of with design to secure the same to my use, or to defraud my creditors.”

[1911 CPA § 176; RL § 5118; NCL § 8674]

NRS 31.790 Order of discharge. After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, if the prisoner is imprisoned for no other cause; and the officer, upon service of such order, shall discharge the prisoner forthwith, if the prisoner is imprisoned for no other cause.

[1911 CPA § 177; RL § 5119; NCL § 8675]

NRS 31.800 Renewal of application for discharge. If such judge should not discharge the prisoner, the prisoner may apply for discharge at the end of every succeeding 10 days, in the same manner as above provided, and the same proceeding shall thereupon be had.

[1911 CPA § 178; RL § 5120; NCL § 8676]

NRS 31.810 Effect of discharge; judgment remains in force. The prisoner, after being so discharged, shall be forever exempt from arrest and imprisonment for the same debt; but the judgment against the prisoner shall remain in full force against any estate, present or future, of the prisoner, not exempt from execution.

[1911 CPA § 179; RL § 5121; NCL § 8677]

NRS 31.820 Plaintiff may order discharge of prisoner; effect of discharge. The plaintiff in the action may, at any time, order the prisoner to be discharged, and the prisoner shall not thereafter be liable to imprisonment for the same cause of action.

[1911 CPA § 180; RL § 5122; NCL § 8678]

NRS 31.830 Creditor to advance money to jailer for support of prisoner. Whenever a person is committed to jail on a judgment recovered in a civil action, the creditor, or the creditor’s agent or attorney, shall advance to the jailer immediately upon such commitment sufficient money to pay for the support of the prisoner for at least 2 weeks, at the rate of \$2.50 per day, and in case the money should not be so advanced, the jailer shall forthwith discharge such prisoner from custody, and such discharge shall be a bar against imprisonment for the same debt. At the expiration of such 2 weeks, should such creditor refuse to advance a like sum, the prisoner will be discharged as above provided, and with the same effect.

[1911 CPA § 181; RL § 5123; NCL § 8679]

CLAIM AND DELIVERY

NRS 31.840 Delivery may be claimed before answer. Except as provided in [NRS 179.1171](#), the plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to the plaintiff as provided in this chapter.

[1911 CPA § 182; RL § 5124; NCL § 8680]—(NRS A [1985, 1468](#); [1987, 1384](#))

NRS 31.850 Requisites of affidavit by plaintiff. Where a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in the plaintiff's behalf, and filed with the court showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof.
2. That the property is wrongfully detained by the defendant.
3. The alleged cause of the detention thereof according to the plaintiff's best knowledge, information and belief.
4. That the same has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an execution or an attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure.
5. The actual value of the property.

[1911 CPA § 183; RL § 5125; NCL § 8681]—(NRS A [1973, 1151](#))

NRS 31.853 Order to show cause; contents; service. The court shall promptly examine the affidavit, and if it is satisfied that it meets the requirements of [NRS 31.850](#), shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall:

1. Fix the date and time for the hearing thereon, which shall be no sooner than 10 days from the date of issuance of the order.
2. Inform the defendant that the defendant may file affidavits on the defendant's behalf with the court and may appear and present testimony on the defendant's behalf

at the hearing, or that the defendant may, at or prior to such hearing, file with the court a written undertaking to stay delivery of the property pursuant to [NRS 31.890](#).

3. Inform the defendant that if the defendant fails to appear, the plaintiff will apply to the court for a writ of possession.

4. Require service of the affidavit and order upon the defendant, and fix the time and manner within which such service shall be made, which shall be by personal service or in such other manner as the court may determine to be reasonably calculated to afford notice of the proceeding to the defendant under the circumstances appearing from the affidavit.

(Added to NRS by [1973, 1149](#))

NRS 31.856 Issuance of writ of possession without hearing; order shortening time for hearing; undertaking by plaintiff.

1. A writ of possession may be issued prior to the hearing provided by [NRS 31.853](#) if the plaintiff, by affidavit or by presentation of other evidence, establishes reasonable cause to believe the probability of any one of the following:

(a) The defendant gained possession of the property by the commission of any criminal act forbidden by [chapter 205](#) of NRS.

(b) The property possessed by the defendant consists of one or more negotiable instruments or credit cards.

(c) The property sought to be returned either:

(1) Is perishable, and will perish before any hearing upon notice can be had; or

(2) By reason of threatened action by the holder, such property is in immediate danger of destruction, serious harm, concealment, removal from this state or sale to an innocent purchaser.

2. Where a writ of possession has been issued prior to hearing under the provisions of this section, the defendant or other person from whom possession of such property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause, and the court may, upon such application, shorten the time for such hearing, and direct that the matter shall be heard on not less than 48 hours' notice to the plaintiff.

3. No writ of possession may issue pursuant to this section until the plaintiff has filed with the court an approved written undertaking as required by [NRS 31.863](#).

(Added to NRS by [1973, 1149](#))

NRS 31.859 Temporary restraining order in lieu of immediate issue of writ of possession. In addition to the issuance of an order to show cause provided by [NRS 31.853](#), and in lieu of the immediate issuance of a writ of possession provided by [NRS 31.856](#), the court may issue such temporary restraining orders directed to the defendant prohibiting such acts with respect to the property as may appear necessary for the preservation of rights of the parties and the status of the property.

(Added to NRS by [1973, 1150](#))

NRS 31.863 Hearing on order to show cause; undertaking by plaintiff.

1. Upon the hearing on the order to show cause, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination which party, with reasonable probability, is entitled to possession, use, and disposition of the property pending final adjudication of the claims of the parties. If the court determines that the action is one in which a prejudgment writ of possession should issue, it shall direct the issuance of such writ.

2. A writ of possession shall not issue until plaintiff has filed with the court a written undertaking executed by two or more sufficient sureties, approved by the court, to the effect that they are bound to the defendant in double the value of the property, as determined by the court, for the return of the property to the defendant if return thereof is ordered, and for the payment to the defendant of any sum as may from any cause be recovered against the plaintiff, except that if there is reasonable cause to believe that the plaintiff is a secured party, as defined in [chapters 104 to 104C](#), inclusive, of NRS, no undertaking shall be required for the issuance of the writ of possession.

(Added to NRS by [1973, 1150](#))

NRS 31.866 Writ of possession.

1. The writ of possession shall be directed to the sheriff within whose jurisdiction the property is located. It shall describe the specific property to be seized, and shall specify the location or locations where, as determined by the court from all the evidence, there is probable cause to believe the property or some part thereof will be found. It shall direct the levying officer to seize it if it is found, and to retain it in the officer's custody. There shall be attached to such writ a copy of the written undertaking

filed by the plaintiff, and such writ shall inform the defendant that the defendant has the right to except to the sureties upon such undertaking or to file a written undertaking for the redelivery of such property, as provided in [NRS 31.890](#).

2. Upon probable cause shown by further affidavit or declaration by plaintiff or someone on the plaintiff's behalf, filed with the court, a writ of possession may be endorsed by the court, without further notice, to direct the levying officer to search for the property at another location or locations and to seize it, if found.

(Added to NRS by [1973, 1150](#))

NRS 31.870 Sheriff to take property described in writ; service of writ and undertaking on defendant. Upon receipt of the writ of possession, with a copy of the written undertaking attached, the sheriff shall forthwith take the property described in the writ, if it be in the possession of the defendant or the defendant's agent, and retain it in the sheriff's custody. The sheriff shall also, without delay, serve on the defendant a copy of the writ and undertaking, by delivering the same to the defendant personally, if the defendant can be found, or to the defendant's agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

[1911 CPA § 185; RL § 5127; NCL § 8683]—(NRS A [1973, 1151](#))

NRS 31.880 Defendant may except to sufficiency of sureties. The defendant may, within 2 days after the service of the writ and the undertaking, give notice to the sheriff that the defendant excepts to the sufficiency of the sureties. If the defendant fails to do so, the defendant shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest; and the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify. If the defendant excepts to the sureties the defendant cannot reclaim the property, as provided in [NRS 31.890](#).

[1911 CPA § 186; RL § 5128; NCL § 8684]—(NRS A [1973, 1151](#))

NRS 31.890 Return of property to defendant upon giving written undertaking. At any time before the delivery of the property to the plaintiff, the defendant may, if the defendant does not except to the sureties of the plaintiff, require the return thereof, upon the filing with the court, and serving of a copy upon the plaintiff or the plaintiff's attorney, of a written undertaking, approved by the court and executed by two or more sufficient sureties, to the effect that they are bound in double the value

of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for payment to the plaintiff of such sum as may for any cause be recovered against the defendant. If a return of the property is not so required within 5 days after the taking thereof and the serving of the writ of possession and undertaking upon the defendant, it shall be delivered to the plaintiff, except as provided in [NRS 31.940](#).

[1911 CPA § 187; RL § 5129; NCL § 8685]—(NRS A [1973, 1152](#))

NRS 31.900 Justification of defendant's sureties. The defendant's sureties, upon notice to the plaintiff of not less than 2 nor more than 5 days, shall justify before the judge or the clerk in the same manner as upon bail on arrest; and upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until the justification is completed or expressly waived, and may retain the property until that time. If they or others in their place, fail to justify at the time and place appointed, the sheriff shall deliver the property to the plaintiff.

[1911 CPA § 188; RL § 5130; NCL § 8686]

NRS 31.910 Qualifications of sureties and manner of justification. The qualifications of sureties and their justification shall be such as are prescribed by this chapter in respect to bail upon an order of arrest.

[1911 CPA § 189; RL § 5131; NCL § 8687]

NRS 31.920 Sheriff may take concealed property by force after demand. If the property, or any part thereof, be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, the sheriff shall cause the building or enclosure to be broken open, and take the property into the sheriff's possession, and, if necessary, the sheriff may call to the sheriff's aid the power of the sheriff's county.

[1911 CPA § 190; RL § 5132; NCL § 8688]

NRS 31.930 Sheriff to keep property in secure place; to deliver upon receipt of fees and expenses. When the sheriff shall have taken property, as in this chapter provided, the sheriff shall keep it in a secure place, and deliver it to the party entitled thereto upon receiving the sheriff's lawful fees for taking and necessary expenses for keeping the same.

[1911 CPA § 191; RL § 5133; NCL § 8689]

NRS 31.940 Claim by third party; undertaking by plaintiff; determination of title.

1. If the property taken is claimed by any other person than the defendant or the defendant's agent, and such person makes an affidavit of the person's title thereto, or right to possession thereof, stating the grounds of such title or right, and files the affidavit with the court and serves a copy upon the sheriff, the sheriff is not bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of the sheriff or the sheriff's agent, indemnifies the sheriff against such claim by an undertaking by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and are freeholders or householders in the county. No claim to such property by any other person than the defendant or the defendant's agent is valid against the sheriff unless so made.

2. The title to such property shall be determined in the manner provided for in cases of third-party claims after levy under a writ of execution or attachment.

[1911 CPA § 192; RL § 5134; NCL § 8690]—(NRS A [1971, 153](#); [1973, 1152](#))

NRS 31.950 Sheriff to make return within 20 days after taking property. The sheriff shall file the writ of possession and undertaking with the sheriff's proceedings thereon, with the clerk of the court in which the action is pending, within 20 days after taking the property mentioned therein.

[1911 CPA § 193; RL § 5135; NCL § 8691]—(NRS A [1973, 1152](#))

CHAPTER 112 - FRAUDULENT TRANSFERS (UNIFORM ACT)

[NRS 112.140](#) Short title.

[NRS 112.150](#) Definitions.

[NRS 112.160](#) Insolvency.

[NRS 112.170](#) Value; reasonably equivalent value; present value.

[NRS 112.180](#) Transfer made or obligation incurred with intent to defraud or without receiving reasonably equivalent value; determination of intent.

[NRS 112.190](#) Transfer made or obligation incurred by insolvent.

[NRS 112.200](#) Time at which transfer or obligation deemed made or incurred.

- [NRS 112.210](#) Rights of creditor in action for relief against transfer or obligation.
- [NRS 112.220](#) Avoidance of transfer or obligation: Protection of good faith transferee or obligee; recovery of judgment for value of asset transferred; certain transfers not voidable.
- [NRS 112.230](#) Limitation of actions; exception for spendthrift trusts.
- [NRS 112.240](#) Supplementary general provisions of law applicable.
- [NRS 112.250](#) Construction of chapter.
-

NRS 112.140 Short title. This chapter may be cited as the Uniform Fraudulent Transfer Act.

(Added to NRS by [1987, 8](#))

NRS 112.150 Definitions. As used in this chapter, unless the context otherwise requires:

1. “Affiliate” means:

(a) A person who directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

- (1) As a fiduciary or agent without sole discretionary power to vote the securities; or
- (2) Solely to secure a debt, if the person has not exercised the power to vote;

(b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

- (1) As a fiduciary or agent without sole power to vote the securities; or
- (2) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person who operates the debtor’s business under a lease or other agreement or controls substantially all of the debtor’s assets.

2. “Asset” means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties or as community property to the extent it is not subject to process by a creditor holding a claim against only one tenant.

3. “Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

4. “Creditor” means a person who has a claim.

5. “Debt” means liability on a claim.

6. “Debtor” means a person who is liable on a claim.

7. “Insider” includes:

(a) If the debtor is a natural person:

(1) A relative of the debtor or of a general partner of the debtor;

(2) A partnership in which the debtor is a general partner;

(3) A general partner in a partnership described in subparagraph (2); and

(4) A corporation of which the debtor is a director, officer or person in control;

(b) If the debtor is a corporation:

(1) A director of the debtor;

(2) An officer of the debtor;

(3) A person in control of the debtor;

(4) A partnership in which the debtor is a general partner;

(5) A general partner in a partnership described in subparagraph (4); and

(6) A relative of a general partner, director, officer or person in control of the debtor;

(c) If the debtor is a partnership:

- (1) A general partner in the debtor;
 - (2) A relative of a general partner in, a general partner of, or a person in control of the debtor;
 - (3) Another partnership in which the debtor is a general partner;
 - (4) A general partner in a partnership described in subparagraph (3); and
 - (5) A person in control of the debtor;
- (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (e) A managing agent of the debtor.

8. “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien and a statutory lien.

9. “Person” includes a government and a governmental subdivision or agency.

10. “Property” means anything that may be the subject of ownership.

11. “Relative” means a natural person related by consanguinity within the third degree as determined by the common law, a spouse, or a natural person related to a spouse within the third degree as so determined, and includes a natural person in an adoptive relationship within the third degree.

12. “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.

13. “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

(Added to NRS by [1987, 8](#))

NRS 112.160 Insolvency.

1. A debtor is insolvent if the sum of the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

2. A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

3. A partnership is insolvent under subsection 1 if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

4. Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

5. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

(Added to NRS by [1987, 10](#))

NRS 112.170 Value; reasonably equivalent value; present value.

1. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

2. For the purposes of paragraph (b) of subsection 1 of [NRS 112.180](#) and [NRS 112.190](#), a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

3. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

(Added to NRS by [1987, 710](#))

NRS 112.180 Transfer made or obligation incurred with intent to defraud or without receiving reasonably equivalent value; determination of intent.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;
or

(2) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due.

2. In determining actual intent under paragraph (a) of subsection 1, consideration may be given, among other factors, to whether:

- (a) The transfer or obligation was to an insider;
- (b) The debtor retained possession or control of the property transferred after the transfer;
- (c) The transfer or obligation was disclosed or concealed;
- (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) The transfer was of substantially all the debtor's assets;
- (f) The debtor absconded;
- (g) The debtor removed or concealed assets;
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(Added to NRS by [1987, 11](#))

NRS 112.190 Transfer made or obligation incurred by insolvent.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(Added to NRS by [1987, 11](#))

NRS 112.200 Time at which transfer or obligation deemed made or incurred. For the purposes of this chapter:

1. A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.

4. A transfer is not made until the debtor has acquired rights in the asset transferred.

5. An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

(Added to NRS by [1987, 12](#))

NRS 112.210 Rights of creditor in action for relief against transfer or obligation.

1. In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in [NRS 112.220](#), may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or garnishment against the asset transferred or other property of the transferee pursuant to [NRS 31.010](#) to [31.460](#), inclusive; and

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(3) Any other relief the circumstances may require.

2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

(Added to NRS by [1987, 12](#))

NRS 112.220 Avoidance of transfer or obligation: Protection of good faith transferee or obligee; recovery of judgment for value of asset transferred; certain transfers not voidable.

1. A transfer or obligation is not voidable under paragraph (a) of subsection 1 of [NRS 112.180](#) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

2. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (a) of subsection 1 of [NRS 112.210](#), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3 of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(a) The first transferee of the asset or the person for whose benefit the transfer was made; or

(b) Any subsequent transferee other than a transferee who took in good faith for value or from any subsequent transferee.

3. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

4. Notwithstanding voidability of a transfer or an obligation under this chapter, a transferee or obligee who took in good faith is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (a) A lien on or a right to retain any interest in the asset transferred;
- (b) Enforcement of any obligation incurred; or
- (c) A reduction in the amount of the liability on the judgment.

5. A transfer is not voidable under paragraph (b) of subsection 1 of [NRS 112.180](#) or [NRS 112.190](#) if the transfer results from:

- (a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (b) Enforcement of a security interest in compliance with [NRS 104.9101](#) to [104.9709](#), inclusive.

6. A transfer is not voidable under subsection 2 of [NRS 112.190](#):

- (a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
- (b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(Added to NRS by [1987, 12](#); A [1999, 389](#))

NRS 112.230 Limitation of actions; exception for spendthrift trusts.

1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

- (a) Under paragraph (a) of subsection 1 of [NRS 112.180](#), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (b) Under paragraph (b) of subsection 1 of [NRS 112.180](#) or subsection 1 of [NRS 112.190](#), within 4 years after the transfer was made or the obligation was incurred; or
- (c) Under subsection 2 of [NRS 112.190](#), within 1 year after the transfer was made or the obligation was incurred.

2. This section does not apply to a claim for relief with respect to a transfer of property to a spendthrift trust subject to [chapter 166](#) of NRS.

(Added to NRS by [1987, 13](#); A [1999, 1239](#); [2015, 1423](#))

NRS 112.240 Supplementary general provisions of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions.

(Added to NRS by [1987, 14](#))

NRS 112.250 Construction of chapter. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Added to NRS by [1987, 14](#))
