

NO JUDGMENT, NO PROBLEM



PRE-JUDGMENT REMEDIES

Commercial Law League of America
2026 Western Region Conference
Universal City, California





CLLA Trivia:

**WHAT ARE THE TOTAL
SQUARE MILES OF THE
REGIONS?**

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1. Southern Region: 1,659,089 square miles (including Mexico)
 2. Eastern Region: 1,420,036 square miles (including Northeastern Canadian provinces)
 3. Midwestern Region: 1,252,005 square miles.
 4. Southern Region: 1,659,089 square miles
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**WHAT ARE THE TOTAL
SQUARE MILES OF THE
WESTERN REGION? $\frac{+}{\circ}$ •**



The Western Region is

3,199,589 SQUARE MILES



ARE PRE-JUDGMENT REMEDIES CONSTITUTIONAL?



**IS THIS
CONSTITUTIONAL?**



Wisconsin Procedure:

You commence a collection case:
you can serve a garnishment first
and then serve the Defendant within
10 days.

The Defendant's non-exempt
wages are frozen.

The wages are "unfrozen" if the
Defendant wins the case.

The Defendant could post a bond
to release garnished property.

DUE PROCESS?
TAKING?



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

WISCONSIN PROCEDURE UNCONSTITUTIONAL

The interim freezing of the ages without a chance to be heard, violates procedural due process (Due Process Clause of the Fourteenth Amendment)

No notice and opportunity to be heard prior to seizure of property.

JUSTICE HUGO BLACK DISSENTING:



1. Procedure approved by Wisconsin Legislature
2. The Defendant was able to challenge the garnishment on a motion to dismiss.
3. The Plaintiff attached \$31.59.
4. The Defendant did not contest liability on the Promissory Note.
5. Temporary deprivation of use of the wages.

JUDGE HUGO BLACK'S DISSENT

**IS THIS
CONSTITUTIONAL?**



Florida Procedure:

1. Simultaneous with the filing of an action to recover personal property “wrongfully detained,” the clerk summarily issues a writ of replevin to seize the property.
2. The plaintiff must file a security bond double the value of the property on condition that plaintiff prosecute without delay.
3. The writ of replevin allows the sheriff to demand delivery, or break open the house or building.
4. The sheriff keeps it for 3 days so that the Defendant can post a bond for 2x value, if not plaintiff gets property.
5. If the defendant wins, the plaintiff must return property and

DUE PROCESS?

TAKING?

Pennsylvania Procedure

1. Plaintiff can apply to the “prothonotary” (clerk) for a writ with a bond 2x value
2. Pennsylvania procedure does not require the plaintiff to file an action for repossession.
3. If the Defendant wants to the return of property, the Defendant must file their own bond in 3 days, or initiate their own lawsuit.

DUE PROCESS?

TAKING?

In the Florida case, Fuentes purchased a gas stove and a stereophonic phonograph from Firestone Tire & Rubber Co.

In the Pennsylvania case, the consumer bought a bed, table and household goods.



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

FLORIDA AND PENNSYLVANIA PROCEDURES UNCONSTITUTIONAL

“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.”
(Justice Potter Stewart writing for the Court)

The possessory interest in those chattels were within the protection of the 14th Amendment.

1. The Defendants did not deny default, nor allege a right to possession of the property.
2. Right to possession is conditioned on making payment
3. It is in the interest of creditors that transactions move forward as planned. Given the expense of replevin, a creditor is less likely to make a false claim for possession.
4. The creditor has an interest in preventing further use and deterioration of the property.

**JUSTICE WHITE,
JUSTICE
BLACKMUN, AND
CHIEF JUSTICE
BURGER**

The Louisiana sequestration procedure is Constitutional.

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.

**IS THIS
CONSTITUTIONAL?**



Louisiana Procedure

1. A lien holder may get a writ of sequestration to forestall waste or alienation of the encumbered property without notice to the debtor or an opportunity for hearing.
2. The creditor must file a sufficient bond.
3. 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.

DUE PROCESS?

TAKING?



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

LOUISIANA PROCEDURE CONSTITUTIONAL



Justice Byron White, who dissented in Fuentes, wrote the opinion.

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.



MR. JUSTICE STEWART reproves the Court for not adhering strictly to the doctrine of stare decisis.

WHAT PRE-JUDGMENT REMEDIES ARE AVAILABLE?



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DEBTOR'S PRISON?

Nevada Revised Statute §31.520

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.

You're UNDER ARREST
for gross negligence of
fiscal responsibility!

FINES

KA-POW! ? ? ?

COLLECTIONS
DEPT.

Okay, okay!
I'll pay!

WHAM!

CUSTODY

KA-POW!

ARRESTED!



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1. ATTACHMENT
 2. GARNISHMENT
 3. CLAIM AND DELIVERY (Replevin)

NEVADA PRE- JUDGMENT REMEDIES

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.

PRE-JUDGMENT ENFORCEMENT WITHOUT (BEFORE) NOTICE NRS 31.017

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

**PRE-JUDGMENT
ENFORCEMENT
WITHOUT
(BEFORE) NOTICE
NRS 31.017**

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.

PRE-JUDGMENT ENFORCEMENT WITHOUT (BEFORE) NOTICE NRS 31.017

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.

PRE-JUDGMENT ENFORCEMENT WITHOUT (BEFORE) NOTICE NRS 31.017

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.

PRE-JUDGMENT ENFORCEMENT WITHOUT (BEFORE) NOTICE NRS 31.017

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.

**PRE-JUDGMENT
ENFORCEMENT
WITHOUT
(BEFORE) NOTICE
NRS 31.017**

7. In an action brought under chapter 112
of NRS.

(fraudulent transfer)

**PRE-JUDGMENT
ENFORCEMENT
WITHOUT
(BEFORE) NOTICE
NRS 31.017**

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.

PRE-JUDGMENT ENFORCEMENT WITHOUT (BEFORE) NOTICE NRS 31.017



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

5. THE AMOUNT OF SECURITY WHICH MUST BE GIVEN BY THE PLAINTIFF BEFORE THE WRIT WILL ISSUE.

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.

1. Immediate Order to Show Cause for the Debtor to Show Cause why a Writ of Possession should not issue
2. No bond or security requirement if you have a UCC perfected security interest.

CLAIM & DELIVERY (REPLEVIN)

EXHAUSTING JUDICIAL REMEDIES



1. Lis Pendens
2. Pre-Judgment Writ (NRS 31.017(7))

FRAUDULENT TRANSFER REMEDIES

CALIFORNIA CODE, CODE OF CIVIL PROCEDURE - CCP §484.010



THANK YOU

