

Eyes on the Prize

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Procedures and Strategies for Collecting Money Judgments and Shielding Assets

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*This book is dedicated to the memory of
Stefan A. Riesenfeld*

We stand on the shoulders of giants

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Foreword

This is a book about the civil procedure that few talk about and many do not know exists. It charts the metamorphosis by which the caterpillar of a money judgment is transformed into the butterfly of ... money. Its primary audience comprises law students, to respond to the constant reproach in legal commentary that modern law schools do not teach students the methods and mechanics by which a money judgment is enforced. Designed to be inserted as a unit into a course on Civil Procedure, Remedies, Debtor-Creditor Rights, Bankruptcy, Secured Transactions, or perhaps other subjects, this book describes how lawyers achieve what civil litigation clients pay for—not a judgment declaring that the plaintiff is entitled to money, but actual money that the plaintiff can use to compensate for the contractual or tortious injury on which the lawsuit was based.

It is also addressed to practicing lawyers and even laypeople who want or need to understand the details of the critical point at which the rubber meets the road in a civil lawsuit. Most judgments in the US awarding money to a victorious plaintiff are not self-enforcing. Plaintiffs' lawyers and their clients need to have some sense from the very beginning of a lawsuit how a paper victory might ultimately (or not) be translated into lucre, most plaintiffs' real goal. Not to leave out the defense side, this book also describes the many ways by which defense counsel and their clients can invoke the law to protect themselves from expropriation of the defendant's assets by judgment creditors, not only while the judgment enforcement process is unfolding, but also in advance.

This book is a survey, not a treatise. It does not examine the multivariate laws of the 50 states, the District of Columbia, and the federal system. That being said, it does provide a detailed examination of the specific procedural rules implicated in the money judgment enforcement process, and it makes precise and fairly exhaustive reference to the statutes and jurisprudence of several key jurisdictions. Most references are to the state and federal law of three key, high-population states in which substantial collection activity takes place—New York,

California, and Illinois—but other states’ laws figure prominently here as well—Texas, Florida, and Pennsylvania in particular. Not all of the minute details of the money judgment enforcement laws of any of these states or the federal system are presented here, but all of the fundamentals are covered and arranged in logical order to allow readers to proceed to enhance their understanding by (1) finding the relevant additional details in these states’ laws, and/or (2) anticipating and finding the relevant provisions in states whose law is not specifically analyzed. This is a guidebook, leading the reader to and describing the highlights, but leaving some of the adventure to be undertaken independently.

For teachers inclined to drill students on what lawyers really do, a series of hypothetical problem exercises is included in the end. These problems are designed to allow students to cut their teeth on putting this material into action, applying the law to determine precisely which steps a plaintiff’s lawyer would have to take to collect on a money judgment for a particular plaintiff, and how the law would or could protect the assets of a particular defendant (and the interests of third parties). These problems can be worked either by referring to the reading and the excerpts of the statutes included in the appendices, or by applying the rules of a different jurisdiction (state or perhaps non-US country) to which the commentary in this book will have guided the students—and to which a professor might make more precise reference.

Over my years of teaching this material to students in a one-week unit of my Civil Procedure course, I have been surprised at the degree of enthusiasm with which they have devoured the material. I have been equally surprised by the volume of gratitude expressed over the years as these students have encountered money judgment enforcement or defense issues in practice, either in a pre-graduation clerkship or in their later law practice. These students often report that they have been among the only members of their firms with any specific knowledge of these rules and their operation, knowledge that has served them and their clients well and frequently. I hope my publication of these materials arouses similar enthusiasm and provides similarly valuable knowledge to students, lawyers, and others whom I have not had the pleasure of meeting.

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Chicago, IL
2019*

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