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## **HOMESTEAD, PERSONAL PROPERTY, AND WAGE EXEMPTIONS IN MISSOURI AND IN OTHER STATES**

PAUL D. HESS, JR.\*

In view of the apparent cyclical trend towards another era in which the debtor class may become disproportionately enlarged, it has been deemed timely to examine some of the following items: the reasons for the existence of homestead<sup>1</sup> and personal property exemptions; a comparison of the types and extent of the exemption provisions applied in the other states; an analysis of the Missouri law, as of the dates of the creation of the exemptions and of the present, with regard to the present day applicability of statutory form, and, in view of other factors and of more recent legislation, the necessity for such exemptions. The exemptions to be set forth are of three types: that of the homestead, which normally encompasses a tract of real estate with the buildings and appurtenances; that of varied and numerous objects of personal property; and that of wage exemptions—this last type being, except in the later consideration of state statutory provisions, regarded herein as part of the personalty exemption.

### HOMESTEAD EXEMPTIONS

There are various principles advanced as the bases of the homestead laws, all of which tend to become highly diffused. It is said that the "homestead laws are founded upon . . . public policy, their purpose being to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune."<sup>2</sup> Their ". . . purpose is to secure the home to the family even at

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1. "The term 'homestead,' as used in law, embraces a variety of conceptions. One of these is an immunity from the claims of creditors, which may continue after the decease of the owner of the property embraced by the homestead exemption. (This immunity is the type of homestead herein discussed.) Another is the restriction of the conveyance or encumbrance of such property. Still another is a provision for the surviving spouse and minor children, out of a decedent's lands, which may or may not be property to which a homestead exemption has attached. . . . In yet another sense . . . a homestead right is a right, based on residence and cultivation, to acquire a portion of the public lands of the United States, and the subject of the right is termed a homestead." 26 AM. JUR., Homestead, § 1.

2. 26 AM. JUR., Homestead, § 6.

the sacrifice of just demands, the preservation of the home being deemed of paramount importance."<sup>3</sup> The incentive has not been one of charity,<sup>4</sup> but to stimulate ". . . diligence and high morals, (and) . . . also as a means of enlisting the individual's self-interest in the preservation of established rights and in the promotion of general prosperity."<sup>5</sup> Although the theory of the homestead and personal property exemptions is essentially the same, ". . . the exemption in personal property is not in the nature of an estate in the property analogous to the homestead right in land, but the debtor's interest at all and if anything beyond a mere negative immunity from disturbance under a particular writ is in the nature of a chattel interest."<sup>6</sup>

"In some jurisdictions the (personal property) exemption is regarded as being allowed for the benefit of the debtor, while in others it is regarded as being in the nature of a police regulation primarily for the benefit of the community."<sup>7</sup> One motive advanced is that in the settling of America there developed ". . . a frontier philosophy that would throw a portion of the risks of the struggle upon the creditor . . .,"<sup>8</sup> and secure debtors ". . . from unjust and harassing litigation. . ."<sup>9</sup> Another legislative desire was to ". . . encourage industry and thrift and the building up of homes by placing beyond the reach of creditors such property as the debtor may require to prosecute his labor or business, (and) . . . no doubt it is better that some creditor go unpaid than to take away from the debtor and his family that which the lawmakers believe is essential for their education, culture, and spiritual upbuilding."<sup>10</sup> Whatever theory is presented, "the protection of the *family* from dependence and want is the expressed object of nearly all the homestead and (personal property) exemption laws."<sup>11</sup>

Prior to a compilation of the statutory, or in some instances—constitutional, homestead and personalty exemption provisions of the other states it was intended to submit charts of each type of exemption; it was discovered, however, that the provisions are so varied as to preclude such an approach. Of the laws governing the homestead exemptions, it is the gen-

3. *Ibid.*

4. Keeline v. Sealy, 257 Mo. 498, 515, 165 S. W. 1088 (1914).

5. Note, *State Homestead Exemption Laws* (1937) 46 YALE L. J. 1023, 1030.

6. 25 C. J. 8.

7. *Ibid.* See also 22 AM. JUR., Exemptions, § 4.

8. Vance, *Homestead Exemption Laws* (1932) VII ENCYC. SOC. SCIENCES 441.

9. 22 AM. JUR., Exemptions, § 4.

10. *Ibid.* Note (1927) 47 A. L. R. 300 (validity of contractual stipulation waiving debtor's exemption).

11. THOMPSON, HOMESTEAD EXEMPTION LAWS (1878) 39.

eral rule that such are limited to persons who are residents of the particular state, who are heads of the family,<sup>12</sup> and who own and occupy the realty in question as the home. In some states there must be a written declaration of the homestead right prior to any attempted execution, while in others the right may be first asserted at the time of levy; and it will be noted that some states have one comprehensive exemption, whereas others differentiate between city and country homesteads. Also, in some states the provisions for acreage and for value, of the land *with* the dwelling house and appurtenances, are co-limiting, *i.e.*, in Arkansas the country homestead cannot exceed 160 acres *nor* exceed \$2,500 in value, and thus if an alleged homestead consisted of 160 acres but was worth \$3,000 the acreage would have to be decreased to the value of \$2,500;<sup>13</sup> whereas in other states, as in Colorado,<sup>14</sup> the acreage or value is independent. Delaware, the District of Columbia, and Rhode Island have no homestead exemptions. In the following listing the size is expressed in acres unless otherwise indicated.

HOMESTEAD EXEMPTIONS IN OTHER STATES<sup>15</sup>

State	Size	Value	Size	Value	Size	Value
	One Exemption		Country		City	
Alabama*	160	\$2,000				
Arizona		4,000				
Arkansas*			160	\$2,500	1	\$2,500
	(not less than 80 acres in the country, nor less than ¼ acre in the city, without regard to value)					

12. Many states enumerate those persons who shall be deemed to be "heads of families" or those who shall have the same rights, such as persons 60 years of age. However, absent such specific provision, there were formerly raised such questions as—would the phrase include single persons, and male or female, supporting others; or, a widow whose spouse was living at the time the exemption was claimed, *i.e.*, was her exempt status changed; or, a man divorced but paying alimony for the support of previous wife and minor children? As might be anticipated, the answers vary among the jurisdictions. In Missouri it has been held that the phrase "head of a family" means one who controls, supervises, and manages the affairs about the house, not necessarily a father or husband, *Ridenour-Baker Grocery Co. v. Monroe*, 142 Mo. 165, 43 S. W. 633 (1897).

13. Conversely, if the alleged homestead consisted of 200 acres, worth only \$2,500, the excessive 40 acres would not be exempt.

14. Another possibility is shown by the case of *Chase v. Swayne*, 88 Tex. 218, 30 S. W. 1049 (1895), wherein improvements valued at \$125,000 and placed on a homestead were declared exempt, the provision being that the homestead shall not exceed in value \$5,000 "excluding the value of any improvements thereon."

15. The provisions in the states marked with an asterisk (\*) are co-limiting. The sources for the homestead exemptions are: ALA. CODE (1940) tit. 7, § 625; ARIZ. CODE ANN. (1939) c. 24, § 501; ARK. DIGEST (Walter L. Pope, 1937) c. 83,

State	Size One Exemption	Value	Size Country	Value	Size City	Value
California		5,000				
		(also permitted to one not head of family to the value of \$1,000)				
Colorado		2,000				
Connecticut		1,000				
Delaware		(specifically non-exempt)				
District of Columbia		(none)				
Florida			160		½	
Georgia						
		"50 acres, and 5 additional acres for each child under 16; land shall include dwelling house if house not exceed \$200 . . . provided that none of the above land shall be within limits of city, and shall not include cotton or wool factory . . . or other machinery over \$200, and provided that land is not used for other than agricultural purposes. Or, in lieu of above land, real estate in city not exceeding \$500."				
Idaho		\$5,000				
		(also permitted to one not head of family to the value of \$1,000)				
Idaho		\$5,000				
Illinois		1,000				
Indiana						
		"An amount of property both real and personal . . . not over \$1,000 is not liable for sale . . . , provided that amount of real estate not exceed \$700, and provided that amount of personal property not exceed \$600."				
Iowa			40		½	

§ § 7179, 7180; CAL. CIV. CODE (Deering, 1941) 1260; COLO. S. A. (1935) c. 93, § 23; CONN. G. S. (1930) § 5042; DEL. REV. CODE (1935) c. 133, § 4792; FLA. STAT. (1941) § 222.01 and FLA. CONST. (1885) Art. X, Sec. 1; GA. CODE (1933) § 51-1301; IDAHO CODE (1932) § 54-1001; ILL. REV. STAT. (1945) c. 52, § 1; IND. STAT. ANN. (1933) § 2-3501; IOWA CODE (1939) § § 10135-10137; KANS. GENL. STAT. (1935) § 60-3501; KY. REV. STAT. (2d ed., 1944) § 427.060; LA. CODE OF PRAC. (Dart, 2d ed. ann., 1942) art. 645; ME. REV. STAT. (1944) c. 99, § 68; MD. ANN. CODE (1939) art. 83, § 8; MASS. GENL. LAWS (1932) c. 188, § 1; MICH. COMP. LAWS (1929) § 14608; MINN. STAT. (Mason's, 1927) § § 8336 and 8337; MISS. CODE ANN. (1942) § § 318 and 320; MONT. REV. CODE (1935) § 6968; NEBR. REV. STAT. (1943) § 40-101; NEV. COMP. LAWS (1929) § 3315; NEW HAMP. REV. LAW (1942) c. 260, § 1; NEW JERSEY REV. STAT. (1937) § 2.26-110; NEW MEXICO STAT. (1941) § 21-601; N. Y. CIV. PRAC. ACT (1926) § 671; N. C. GENL. STAT. (1934) § § 1-369 and 1-372; N. DAK. REV. CODE (1943) § 47-1801; OHIO REV. CODE (1936) § § 11730 and 11738; OKLA. STAT. ANN. (1937) tit. 31, § 2; ORE. COMP. LAWS (1940) § 6-1302; PA. STAT. (Purdon's, 1936) tit. 12 § § 2164 and 2166; S. C. CODE (1942) § 9085; S. DAK. CODE (1939) § § 51.1701 and 51.1710; TENN. STAT. (Shannon, 1918) § 3798; TEX. STAT. (Vernon's, 1936) § 3833; UTAH REV. STAT. (1933) § 38-0-1; VT. PUB. LAW (1933) § 2559; VA. CODE (1936) § 6531; WASH. REV. STAT. (Remington, 1933) § 552; WEST VA. CODE (1943) § 272.20; WYO. REV. STAT. (1931) § § 89-2984 and 89-2987. And see note (1937) 46 YALE L. J. 1023 for discussion of exemptions in foreign countries also.

## HOMESTEAD, WAGE EXEMPTIONS

State	Size One Exemption	Value	Size Country	Value	Size City	Value
(but if, in either case, its value is less than \$500, size may be increased until its value reaches that amount)						
Kansas			160		1	
Kentucky		1,000				
Louisiana	160					
Maine		1,000				
Maryland		100	(of money, land or goods)			
Massachusetts		800				
Michigan*			40	\$1,500	1 lot	\$1,500
Minnesota			80			
(If within an incorporated place having 5,000 people or over, not exceed 1/3 of acre, and if within incorporated place having less than 5,000 people, not exceed 1/2 acre)						
Mississippi*			160	3,000		3,000
Missouri*	(see discussion, <i>infra</i> )					
Montana*			320	2,500	1/4	2,500
Nebraska*			160	2,000	2 lots	2,000
Nevada		5,000				
New Jersey		1,000				
New Hampshire		500				
New Mexico		1,000				
New York*	1 lot	1,000				
North Carolina		1,000				
North Dakota*			160		2	\$8,000
(as to the city homestead value, it is provided: ". . . not over \$8,000 over and above liens or encumbrances, or both. . .")						
Ohio		1,000				
(Further provided that a husband and wife living together and not owner of homestead, in lieu thereof, may hold exempt real or personal property up to \$500, in addition to amount of chattel property otherwise exempted)						
Oklahoma*			160	\$3,000	1	5,000
(as to the city homestead, it cannot be reduced to under 1/4 acre, without regard to its value)						
Oregon*			160	3,000	1 block	3,000
Pennsylvania		300				
(in real estate, bank notes, money, stocks, judgments or other indebtedness)						
Rhode Island		(none)				
South Carolina		1,000				
South Dakota			160		1	

State	Size One Exemption	Value	Size Country	Value	Size City	Value
(Also provided: "If the homestead is claimed upon any land, the title or right of possession of which was acquired under the laws of the United States, relating to mineral lands, then the area, if within town plat, cannot exceed 1 acre, and if without town plat cannot exceed 40 acres, if title has been acquired as a placer claim, but if the title has been acquired under the Laws of Congress as a lode mining claim, the area of homestead cannot exceed 5 acres.")						
Texas			200			5,000
Tennessee		1,000				
Utah		2,000				
(The homestead of the \$2,000 valuation is for the head of the family, it being provided for a further exemption of \$750 for the spouse and \$300 for each other member of the family.)						
Vermont		1,000				
Virginia		2,000				
(or in lieu of the homestead, \$2,000 worth of personal property may be selected as exempt, in addition to the otherwise exempt chattels)						
Washington		2,000				
West Virginia		1,000				
Wisconsin*			40	\$5,000	½	\$5,000
Wyoming		2,500				

The variance in the sizes and values of the homestead exemptions is interesting to note, and may be attributed at least in part to such factors as the dates of the passing of the provisions in relation to the then existing stage of state or national development, the economic era of prosperity or depression, or the then predominate social groups; the physical nature of the state; the financial and educational backgrounds of the members of the various legislatures; and most probably the presence or absence of political pressure groups.

#### PERSONAL PROPERTY EXEMPTIONS

In next considering the personal property exemptions, the types of provisions may be classified into two major groups: (1) those very few which briefly place a monetary limitation upon any personalty which the debtor selects for his exemption, and (2) those which set forth at length, with or without monetary limitations, the specific articles which may or shall be exempt—this listing in a large majority of the states being quite

detailed. The following states<sup>16</sup> are those which fall within the first grouping: Alabama, \$1,000 plus all necessary wearing apparel, portraits and pictures, and all books used in the family; Arkansas, wearing apparel, plus \$500 if head of a family, or plus \$200 if not head of a family; Florida, \$1,000 worth of personal property as desired; Indiana, not to exceed \$600;<sup>17</sup> New Jersey, \$200 plus all wearing apparel; North Carolina, \$500; South Carolina, \$500 if head of a family, and if not head of a family the necessary wearing apparel, and tools and implements of trade, up to \$300; West Virginia, \$200 if head of a family, and, any mechanic, artisan, or laborer, whether he be husband or parent or not, the working tools of his trade up to \$50. One state, though falling within the second grouping, is individually noteworthy because its provisions vary in application among its counties; however, as there are but three counties in this state, Delaware,<sup>18</sup> the difficulty of application is not so great as might be anticipated.

The second grouping includes those states not mentioned above and will be dealt with generally, because in most of them the provisions are very similar, the differences being those of width of coverage and, where the widths are comparable, of the extent of itemization. One statute, that of the State of Washington,<sup>19</sup> is quite typical, the personal property exemption consisting of:

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16. The sources for the state personal property exemptions listed within this grouping are: ALA. CODE (1940) tit. 7, § 629; ARK. DIGEST (Walter L. Pope, 1937) c. 83, 83, § § 7183 and 7184; FLA. STAT. (1941) § 222.06 and FLA. CONST. (1885) Art. X, Sec. 1; IND. STAT. ANN. (1933) § 2-3501; NEW JERSEY REV. STAT. (1937) § 2:26-99; N. C. GENL. STAT. (1943) § 1-378; S. C. CODE (1942) § 9090; WEST VA. CODE (1943) § 3897.

17. Indiana's provision is singular in that it provides as follows: an amount of property both real and personal of any resident householder not over \$1,000 owned by the householder is not liable for sale, *provided* that the amount of real estate does not exceed \$700, and *provided* that the amount of personal property does not exceed \$600.

18. Delaware differentiates among its counties of New Castle, Sussex and Kent as follows: a Bible, school books and family library, pew in place of worship, all wearing apparel, and tools for carrying on business, not to exceed \$75 in New Castle and Sussex counties and \$50 in Kent county. And, in another section, it is stated that every person in New Castle and Kent counties, being head of a family, is also exempt for other personal property up to \$200 in New Castle county and \$50 in Kent county, this latter section specifically not applying to Sussex county. DEL. REV. CODE (1953) c. 133, § § 4793 and 4794.

19. WASH. REV. STAT. (Remington, 1933) § 563. The sources for the state personal property exemptions not previously presented are as follows those states which have several sections setting forth the exemptions will be indicated appropriately, but with only the initial section cited. ARIZ. CODE ANN. (1939) § 24-601; CAL. CIV. CODE (Civ. Proc., Deering, 1941) § 690.1 *et seq.*; COLO. S. A. (1935) c. 93, § 13 *et seq.*; CONN. GENL. STAT. (1930) § 5791; D. C. CODE (1940) § 15-401; GA. CODE (1933) § 51-1301; IDAHO CODE (1932) tit. 8, § 204; ILL. REV. STAT. (1945) c. 52, § 13;



(1) all wearing apparel of every person and family; (2) all private libraries, up to \$500 and all family pictures and keepsakes; (3) to each householder, 1 bed and bedding and 1 additional bed and bedding for each additional member of the family, and other household goods and utensils and furniture up to \$500; (4) to each householder, 2 cows with their calves, 5 swine, 2 stands of bees, 36 domestic fowls, and provisions and fuel for comfortable maintenance for householder and family for 6 months, and feed for animals for 6 months, *provided*, that in case householder does not have or desire the animals, he may select from other property up to \$250; (5) to a farmer, 1 span of horses or mules, with harness, or 2 yoke of oxen, and 1 wagon; also farming utensils actually used up to \$500; also 150 bushels of wheat, 150 bushels of oats or barley, 50 bushels of potatoes, 10 bushels of corn, 10 bushels of peas, and 10 bushels of onions for seeding purposes; (6) to a mechanic, tools and instruments to carry on a trade for support of himself and family, and material used in his trade up to \$500; (7) to a physician, his library up to \$500; also 1 horse, with harness and buggy, instruments used in practice, and medicines up to \$200; (8) to attorneys, clergymen and other professional men, libraries up to \$1,000; also office furniture, fuel and stationery up to \$200; (9) all firearms kept for the use of any person or family; (10) to any person, a canoe, skiff or small boat, with oars, sails, and rigging up to \$250; (11) to a person engaged in lightering for support of self or family, one or more lighters, barges, etc., and a small boat, with oars, up to \$250; (12) to a teamster or drayman in that business for support of self or family, his team, consisting of 1 span of horses, or mules, with harness, yoke, 1 wagon, truck, cart, or dray; (13) to a person engaged in logging business for support of self or family, 3 yoke of work cattle and yokes, and axes, chains, and other camp equipment up to \$300; (14) sufficient quantity of hay or feed to keep the animals mentioned alive for 6 months.

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IOWA CODE (1939) § 11760 *et seq.*; KANS. GENL. STAT. (1935) § 60-3505; KY. REV. STAT. (2d ed., 1944) § 427.010 *et seq.*; LA. CODE OF PRAC. (Dart, 2d ed. ann., 1942) art. 644; ME. REV. STAT. (1944) c. 99, § 67; MD. ANN. CODE (1939) art. 83, § 11; MASS. GENL. LAWS (1932) c. 235, § 34; MICH. COMP. LAWS (1929) § 16179; MINN. STAT. (Mason's, 1927) § 9447; MISS. CODE ANN. (1942) § 307; MONT. REV. CODE (1935) § 9427 *et seq.*; NEBR. REV. STAT. (1943) § 25-1556; NEV. COMP. LAWS (Supp., 1941) § 8844; NEW HAMP. REV. LAWS (1942) c. 412, § 21; NEW MEXICO STAT. (1941) § 21-501 *et seq.*; N. Y. CIV. PRAC. ACT (1926) § 665; N. DAK. REV. CODE (1943) § 28-2202 *et seq.*; OHIO REV. CODE (1936) § § 11721 and 11725; OKLA. STAT. ANN. (1937) tit. 31, § 1; ORE. COMP. LAWS (1940) § 6-1201; PA. STAT. (Purdon's, 1936) tit. 12, § 2167 *et seq.*; R. I. GENL. LAWS (1938) c. 557, § 1; S. DAK. CODE (1939) § 51.1802 *et seq.*; TENN. STAT. (Shannon, 1918) § 3794, TEX. STAT. (Vernon's, 1936) § 3832; UTAH REV. STAT. (1933) § 104-37-13; VT. PUB. LAWS (1933) § 2250; VA. CODE (1936) § 6552 *et seq.*; WISC. STAT. (1943) § 272.18; WYO. REV. STAT. (1931) § 89-2990 *et seq.*

Other articles which are within the listings of most of the state statutes are a Bible, burial site, seat in house of public worship, loom and spinning wheel, and arms of militiamen; in many states are provisions for sewing machines, watches, typewriters, and bicycles. Yet the most noteworthy differences are those exemptions applicable to only one or a few states and which are indicative of the importance of local personal necessities or certain fields of work; herein are included prospectors' outfits in Arizona; nautical instruments and apparel in California; cabins and sluices of miner in California, Idaho, Montana and Nevada; printing press, types, material and newspaper office in Arizona, California, Iowa, Minnesota and Utah; all anthracite coal up to 5 tons, all bituminous coal up to 50 bushels, and \$50 worth of lumber, wood or bark in Maine; boats, fishing tackle and nets in Maine and Massachusetts; a sleigh in Minnesota; a molasses mill and equipments in Mississippi; specimens and cabinets of natural history or science, whether animal, vegetable or mineral, except such as may be intended for show or exhibition for money or pecuniary gain in New Mexico; a ferry boat in Texas; and concerning pets, the provisions range from 1 dog, in Texas, to, in Virginia, all cats, dogs, birds, squirrels, rabbits, and other pets not kept for sale. The most specific listing of relatively modern farming machinery is in Wisconsin, which, in addition to other items, exempts one of each of the following: binder, corn binder, mower, spring-tooth harrow, disc harrow, seeder, hay loader, and corn planter. Only four states, California, Michigan, Montana, and Nevada, specifically provide for the exemption, under certain conditions, of a motor vehicle, although other states have so provided through statutory construction.<sup>20</sup>

The problems of interpretation which are common to the personal property exemptions are several. Again, it must be decided as to what conditions are necessary that one constitute the "head of the family"; and the next most confusing question has been the meaning of "necessary", when used in conjunction with the phrases wearing apparel or tools of a person's trade or business. Further, what is the context of "tools", "tools and implements", or "tools, implements, and instruments", as these phrases are used to exempt such of the mechanic or laborer? What items are included

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20. However, other states have also exempted automobiles through the process of statutory construction—Iowa and Texas (where the statute exempted a mule and a carriage and the court had already held that a mule could mean a horse, the court then later reasoned that "if a mule is a horse, undoubtedly an automobile is a carriage"); note (1924) 28 A. L. R. 74.

under "furniture", "libraries", or "farming utensils"? May an expensive ring or watch be withheld as being included under "wearing apparel", or must such be specifically mentioned in the statute?<sup>21</sup> If a person works at different occupations, may he have exempt the tools or instruments of each occupation or only of that which is considered to be his primary occupation?<sup>22</sup> If a farmer engages in greatly diversified types of agriculture, is his equipment for each type protected or only for that type which yields the major part of his income?<sup>23</sup> Who are "mechanics"? The answers to these questions of necessity change with the wording of the statutes, the judicially construed legislative intent, the item concerned, the attitude of the court, and of course the manner in which the case arises; thus, absent any attempt to set forth general "rules", some of the answers given by the courts to the above questions will be presented.

The word "necessary", as applied to household furniture," . . . while it excludes superfluities and articles of luxury, was not intended to denote those articles of furniture which are indispensable to the bare subsistence of the debtor and his family, but embraces those things which are requisite to enable the debtor and his family to live in a convenient and comfortable manner."<sup>24</sup> However, such application of the term as here suggested is not possible where the statute also imposes a monetary limitation, in which case the exempt furniture might not include even those "indispensable" items.<sup>25</sup> Although the scope of "tools and implements" is limited by some jurisdictions to ". . . some simple instrument used by hand . . ." <sup>26</sup> still ". . . the mere fact that tools claimed as exempt are expensive does not defeat the claim, if they are in fact tools as distinguished from machinery."<sup>27</sup> It seems desirable that whether a particular chattel is exempt as a tool of the owner's occupation should be a mixed question of law and fact,<sup>28</sup> for "at present, when the application of motive power to the operation of what formerly were hand tools as a matter of common, everyday practice, it

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21. New York specifically exempts a wedding ring, and, a watch not to exceed \$35 in value; N. Y. CIV. PRAC. ACT (1926) § 665.

22. The better view seems to be that the debtor may have as exempt the tools or instruments of each occupation which he follows; this question is discussed in Note (1928) 52 A. L. R. 826.

23. Here also it seems proper that the farmer should be allowed the implements of each type of his agricultural pursuits; see Note (1928) 52 A. L. R. 826.

24. THOMPSON, *HOMESTEAD AND EXEMPTION LAWS* (1878) 636; see also 22 AM. JUR., Exemptions, § 49.

25. 22 AM. JUR., Exemptions, § 49.

26. THOMPSON, *op. cit. supra* note 24, at 614.

27. 25 C. J. 50.

28. Note (1919) 2 A. L. R. 826.

cannot be said that propulsion by power *per se* excludes an implement from the exemption which the statute would otherwise afford.”<sup>29</sup> With regard to farming utensils, “the implements of husbandry which are exempt are ordinarily those which are used by the farmer in conducting his own farming operations, and such tools or implements as he keeps for renting or hiring out are usually not exempt.”<sup>30</sup> In applying the term “mechanic,” it “. . . has sometimes been given a limited meaning as applying only to a skilled workman employed in shaping materials, such as wood, metal, or stone, into some kind of a structure or machine or other object requiring the use of tools, but the prevailing tendency is to broaden and enlarge the scope of the word. Thus it has been defined as one who works with machines or instruments and has been construed as including a baker, barber, a dentist, a master workman, a tailor, and others.”<sup>31</sup>

### WAGE EXEMPTIONS

The last type of exemption to be considered is that of certain sums or percentages of wages and salaries, and some states set up the exemption on the basis of any earnings within a specified time. In connection with the following listing it must be noted that most states have provisions for decreasing the exemption allowed when the indebtedness is due to the purchase of necessaries—only a few of such states being indicated; also, the majority of states restrict the wage exemption to “heads of families”, or sometimes a smaller exemption is provided for persons without dependents.

State <sup>32</sup>	Amount Stated	Percentage	Miscellaneous Factors
Alabama	\$25 monthly		
Arizona		½ for services rendered within 30 days	
Arkansas*			last 60 days
California		½ for services rendered within 30 days, if such ½ is necessary; <i>all</i> , if necessary for resident family	

29. 22 AM. JUR., Exemptions, § 41; this discussion further states that “the test of whether a tool, implement, or instrument is exempt is its adaptability to use in the trade or occupation of the debtor, rather than its size or value.” However, many courts will not permit the unrestricted application of this test.

30. *Id.* § 42. Notes (1928) 52 A. L. 826 and (1925) 36 A. L. R. 669 (what are tools, implements, utensils, or apparatus?).

31. 22 AM. JUR., Exemptions, § 26:

32. The states indicated with an asterisk (\*) restrict the exemptions to certain classes of workers. The sources of the state wage exemptions are: A.L.A. CODE

State	Amount Stated	Percentage	Miscellaneous Factors
Connecticut	\$15		
Delaware		90%, for people in New Castle County 60%, for people in Kent and Sussex counties	
D. C.	\$100 monthly, for two months preceding		
Florida			("no writ of attachment or garnishment or other process shall issue from any of the courts of this state to attach or delay the payment of any money or other thing due to any person who is the head of a family residing in this state, when the money or other thing is due for the personal labor or services of such person")
Georgia	\$1.25 per day of daily, weekly, or monthly wages, and 50% of excess thereof	75% earned within 30 days, but not to exceed \$100	
Kentucky		90% of person earning \$75 or less monthly	
Illinois	\$25 weekly, if on payroll, exclusive of payroll deductions; if on commission, \$20		
Indiana*	\$25, so long as employee remains in such employment		
Iowa			last 90 days
Kansas			(10% and court costs not over \$4 may be taken by garnishment, if remainder proven to be necessary for family maintenance; if debtor is sick, garnishment not permitted for two months after recovery)

(1940) tit. 7, § 630; ARIZ. CODE ANN. (1939) c. 25, § 217; ARK. DIGEST (Walter L. Pope, 1937) c. 83, § 7185; CAL. CIV. CODE (Civ. Proc., Deering, 1941) § 690.11; COLO. S. A. (1935) c. 93, § 16; CONN. GENL. STAT. (1930) § 5793; DEL. REV. CODE (1935) c. 133, § 4804; D. C. CODE (1940) § 15-403; FLA. STAT. (1941) § 222.11; GA. CODE (1933) § 46-208; IDAHO CODE (1932) § 8-204; ILL. REV. STAT. (1945) c. 62, § 14; IND. ANN. STAT. (1933) § 3-505; IOWA CODE (1939) § 11763; KANS. GENL. STAT. (1935) § 60-3495; KY. REV. STAT. (2d ed., 1944) § 4427.010; LA. CODE OF PRAC. (Dart, 2d ed. ann., 1942) art. 644; ME. REV. STAT. (1944) c. 101, § 55; MD. ANN. CODE (1939) art. 9, § 33; MASS. GENL. LAWS (1932) c. 246, § 28; MICH. COMP. LAWS (1929) § 16179; MINN. STAT. (Mason's, 1927) § 9447; MISS. CODE ANN. (1942) § 307; MONT. REV. CODE (1935) § 9429; NEBR. REV. STAT. (1943) § 25-1558; NEV. COMP. LAWS (Supp., 1941) 8844; NEW HAMP. REV. LAWS (1942) c. 412, 21; NEW JERSEY REV. STAT. (1937) § 2:26-183; NEW MEXICO STAT. (1941) § 21-501, 21-607, 22-227; N. Y. CIV. PRAC. ACT (Justice Ct., 1926) § 300; N. C. GENL. STAT. (1943) § 1-362; N. DAK. REV. CODE (1943) § 32-0902; OHIO REV. CODE (1936) § 11725 and 11721; OKLA. STAT. ANN. (1937) tit. 31, § 1 and 4; ORE. COMP. LAWS (1940) § 6-1202; PA. STAT. (Purdon's, 1936) tit. 42, § 886; R. I. GENL. LAWS (1938) c. 557, § 1; S. C. CODE (1942) § 750; S. DAK. CODE (1939) §§ 37.2807 and 37.5001; TENN. STAT. (Shannon, 1918) § 3795a3; TEX. STAT. (Vernon's, 1936) § 3832; UTAH REV. STAT. (1933) § 104-37-13; VT. PUB. LAWS (1933) § 1754; VA. CODE (1936) 6555; WASH. REV. STAT. (Remington, 1933) § 703; WEST VA. CODE (1943) § 3834 (3); WISC. STAT. (1943) § 272.18; WYO. REV. STAT. (1931) § 89-3125.

State	Amount Stated	Percentage	Miscellaneous Factors
Kentucky		90% of person earning \$75 or less monthly	
	\$77.50 of person	earning more than \$75 monthly	
Louisiana		80%, but a minimum of \$60 always exempt	
Maine			("no person shall be adjudged a trustee . . . by reason of any amount due from him to the principal defendant, as wages for his personal labor, or that of his wife or minor children, for a time not exceeding one month next preceding the service of process, and not exceeding \$20 of the amount due and payable to him as wages for his personal labor; and \$10 shall be exempt in all cases. . . .")
Maryland	\$100		
Massachusetts	\$20, though only \$10 if wages attached for necessities		
Michigan			(amounts stated range from \$50 to \$4 and percentages range from 60% to 30%, there being several categories, dependent upon length of time during which the work was done)
Minnesota	\$35 for 30 day period		
Mississippi	\$50		
Missouri	(see footnote no. 36, <i>infra</i> )		
Montana			last 45 days if necessary for family use
Ohio		80% of first \$200 and 60% of balance	
Nevada			last 30 days if needed for family
New Hampshire	\$20, though only \$10 if wages attached for necessities		
New Jersey			(execution may issue upon wages not to exceed 10%, unless the income of debtor exceeds \$1,000 per annum, in which case the judge may order a larger percentage)
New Mexico <sup>33</sup>			last 60 days if necessary for support
New York			(where wages due debtor are to the amount of \$12 or more per week, execution shall become lien thereon not to exceed 10% thereof)

33. Two of the New Mexico provisions must be jointly considered; one section says that no person shall be charged as garnishee for more than 20% of wages due debtor for last 30 days, unless the wages exceed \$75, in which case the creditor can garnish for the 20% of \$75 and all earned over \$75 monthly; another section states as exempt the personal earnings of the debtor for the last 60 days when it appears that such earnings are necessary for family support; NEW MEXICO STAT. (1941) § § 22-227 and 21-501. Note (1930) 65 A. L. R. 1283 (issuance of successive writs of garnishment or other process to reach property or earnings exempt in whole or in part).

State	Amount Stated	Percentage	Miscellaneous Factors
North Carolina			last 60 days if necessary for family use
North Dakota	\$20 weekly		
Ohio		80% of first \$200 and 60% of balance of earnings for last 30 days, but not under \$60	
Oklahoma		75% earned within 90 days	
Oregon	\$75 earned within 30 days		
Pennsylvania			("the wages of any laborer, or the salary of any person in public or private employment shall not be liable to attachment in the hands of the employer")
Rhode Island	\$10		
South Carolina			last 60 days if necessary for family use
South Dakota			(evidently regarded as being covered by the liberal personal property exemption provisions)
Tennessee		90% of person earning \$40 or less monthly	
	\$36 of person earning more than \$40 monthly		
Texas			all current wages
Utah		½ earned within 30 days if necessary for family; though if earned \$20 a day or less, then entitled to \$30	
Vermont		90%	
West Virginia	\$10 weekly		
Washington	\$20 weekly		
Virginia	\$50 monthly		
Wisconsin			(complicated provisions for computing amount subject to garnishment; different tests are applied, on percentage of 60%, based on whether head of family, number of months during which wages were earned, amount of wages earned, with further provision for additional exemptions allowed for each child under 18 years of age or other person dependent upon debtor for support)
Wyoming		½ earned within 60 days	

As is evident from the most cursory glance, the lack of uniformity among the state wage exemption provisions is their most outstanding feature.

#### EXEMPTIONS UNDER MISSOURI STATUTES

The Missouri exemptions in which we are here interested are embodied within five sections, three of which compel but brief mention as they per-

tain only to personal property exempt to one not the head of a family,<sup>34</sup> property which the head of a family may select in lieu of other personal property as exempt,<sup>35</sup> and wage exemptions for heads of families.<sup>36</sup> The two most important exemptions are those dealing with the homestead and with the personal property exemptions for heads of families. The former statute is as follows:<sup>37</sup>

"The homestead of every housekeeper or head of a family, consisting of a *dwelling house* and *appurtenances*, and the *land* used in connection therewith, not exceeding the amount and value herein limited, which is or shall be used by such housekeeper or head of a family as such homestead, shall, together with the *rents*, *issues* and *products* thereof, be exempt from attachment and execution, except as herein provided; such homestead in the *country* shall not include more than one hundred and sixty acres of land, or exceed the total value of fifteen hundred dollars; and in *cities* having a population of forty thousand or more, such homestead shall not include more than eighteen square rods of ground, or exceed the total value of three thousand dollars; and in *cities* having a population of ten thousand and less than forty thousand, such homestead shall not include more than thirty square rods of ground, or exceed the total value of fifteen hundred dollars; and in *cities* and incorporated towns and villages having a population less than ten thousand, such homestead shall not include more than five acres of ground, or exceed the total value of fifteen hundred dollars (all preceding italics added The husband shall be debarred from and incapable of selling, mortgaging or alienating the homestead in any manner whatever, and every such sale, mortgage or alienation is hereby declared null and void: *Provided, however*, that nothing herein contained shall be so construed as to prevent the husband and wife from jointly conveying, mortgaging, alienating or in any other manner disposing of such homestead, or any part thereof."

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34. MO. REV. STAT. (1939) § 1323: "The following property only shall be exempt from attachment and execution, when owned by any person other than the head of a family: First, the wearing apparel of all persons; second, the necessary tools and implements of trade of any mechanic, whilst carrying on his trade."

35. MO. REV. STAT. (1939) § 1327: "Each head of a family, at his election, in lieu of the property mentioned in the first and second subdivision of section 1324 may select and hold, exempt from execution, any other property, real, personal or mixed, or debts and wages, not exceeding in value the amount of three hundred dollars, except ten per cent of any debt, income, salary or wages due such head of a family."

36. MO. REV. STAT. (1939) § 1562. ". . . nor shall any person be charged as garnishee for more than ten per cent of any wages due from him to a defendant in his employ for the last thirty days' service: *Provided*, such employee is the head of a family and a resident of this state. . . ."

37. MO. REV. STAT. (1939) § 608.



The personal property exemptions are set forth in the following manner:<sup>38</sup>

"The following property, when owned by the head of the family, shall be exempt from attachment and execution: *First*, ten head of choice hogs, ten head of choice sheep, and the product thereof in wool, yarn or cloth, two cows and calves, two plows, one ax, one hoe and one set of plow gears, and all necessary farm implements for the use of one man; *second*, two work animals, and feed of the value of twenty-five dollars for the stock above exempted; *third*, the spinning wheels and cards, one loom and apparatus, necessary for manufacturing cloth in a private family; *fourth*, all the spun yarn, thread and cloth manufactured for family use; *fifth*, any quantity of hemp, flax and wool, not exceeding twenty-five pounds each; *sixth*, all wearing apparel of the family, four beds with usual bedding, and such other household and kitchen furniture, not exceeding the value of one hundred dollars, as may be necessary for the family . . .; *seventh*, the necessary tools and implements of trade of any mechanic while carrying on his trade; *eighth*, any and all arms and military equipments required by law to be kept; *ninth*, all such provisions as may be on hand for family use, not exceeding one hundred dollars in value; *tenth*, the Bibles and other books used in a family, lettered gravestones, and one pew in a house of worship; *eleventh*, all lawyers, physicians, ministers of the gospel, and teachers, in the actual prosecution of their calling, shall have the privilege of selecting such books as shall be necessary to their profession, *in the place of other property herein allowed*, at their option; and doctors of medicine, *in lieu of other property exempt from execution*, may be allowed to select from their medicines." (all italics added)

The "homestead" is a purely statutory estate,<sup>39</sup> and being remedial, but not in derogation of the common law,<sup>40</sup> has been liberally construed.<sup>41</sup> It has been held, however, that this liberal construction ". . . should not extend beyond the plain purpose of their enactment as evidenced by the usual and obvious meaning of the words employed or dispense with the necessity of parties bringing themselves within the spirit and purpose of

38. MO. REV. STAT. (1939) § 1324.

39. *Stanton v. Leonard*, 344 Mo. 998, 130 S. W. (2d) 487 (1939).

40. *Sperry v. Cook*, 247 Mo. 132, 135, 152 S. W. 318, 319 (1912) saying, "It also assists us if we bear in mind that these statutes are not in derogation of the common law, and the homestead statute sare simply restrictive of the innovation . . . for, by the common law a man could only have satisfaction of the goods, chattels, and the present profits of land, . . . but not the possession of the lands themselves." *Brewington v. Brewington*, 211 Mo. 48, 109 S. W. 723 (1908).

41. *Brennecke v. Riemann*, 102 S. W. (2d) 874, 109 A. L. R. 1214 (Mo., 1937); *Keeline v. Sealy*, 257 Mo. 498, 165 S. W. 1088 (1914).

the laws unaided by judicial construction."<sup>42</sup> Only one homestead is allowed,<sup>43</sup> it requiring both ownership and occupancy,<sup>44</sup> and the provisions of size and value are, similarly to a few other states, co-limiting.<sup>45</sup> Although the homestead is not exempt from debts incurred prior to its acquisition,<sup>46</sup> nor from tax payments,<sup>47</sup> yet concerning debts incurred subsequent to its acquisition the homestead may be conveyed free from the claims of the vendor's creditors,<sup>48</sup> and the vendor may invest the proceeds of his sale in another homestead, the exemption carrying over from the first into the second homestead.<sup>49</sup> It is specifically provided that the husband and wife may jointly mortgage the homestead,<sup>50</sup> and the exemption right may be lost by abandonment;<sup>51</sup> yet any attempted conveyance of, or contract to convey,<sup>52</sup> all or part of the homestead by the husband alone is void not only as to the wife and children but also as to the husband.<sup>53</sup>

Turning then to the personal property exemptions, again it is found that "while a liberal interpretation is always to be indulged in construing

42. *Regan v. Ensley*, 283 Mo. 297, 303, 222 S. W. 773 (1920).

43. *Scheerer v. Scheerer*, 287 Mo. 229 S. W. 192 (1921); Notes (1940) 128 A. L. R. 1431 (multiple dwelling house part of which is occupied by owner as subject of homestead), (1938) 114 A. L. R. 209 (use of property for business as well as residence purposes), (1931) 73 A. L. R. 116 (inclusion of different tracts or parcels in homesteads).

44. *Rouse v. Caton*, 168 Mo. 288, 67 S. W. 578, 67 S. W. 578, 90 Am. St. Rep. 456 (1902); although as to whether it is sufficient if the tracts of land are contiguous compare *Grimes v. Portman*, 99 Mo. 229, 12 S. W. 792 (1889) with *Overfield v. Overfield*, 326 Mo. 83, 30 S. W. (2d) 1073 (1930).

45. *Acreback v. Myer*, 165 Mo. 685, 65 S. W. 1015 (1901).

46. *Shipman v. Fitzpatrick*, 350 Mo. 118, 164 S. W. (2d) 912 (1942); *Stivers v. Horne*, 62 Mo. 473 (1876).

47. *Robinson v. Levy*, 217 Mo. 498, 117 S. W. 577 (1909).

48. *Kendall v. Powers*, 96 Mo. 142, 8 S. W. 793, 9 Am. St. Rep. 326 (1888).

49. *New Madrid Banking Co. v. Brown*, 165 Mo. 32, 65 S. W. 297 (1901). However, if the proceeds of the sale are not, within a reasonable length of time, invested in another homestead, then the proceeds are no longer exempt; note (1935) 50 U. OF MO. BULL. L. SER. 58, 60, citing *Osborne & Co. v. Evans*, 185 Mo. 509, 84 S. W. 867 (1904).

50. *Grimes v. Portman*, 99 Mo. 229, 12 S. W. 792 (1889). Notes (1939) 4 MO. LAW REV. 73 (discussing a wife's privilege to claim homestead in an estate by the entirety) and (1914) 3 U. OF MO. BULL. L. SER. 33 (discussing the wife's homestead rights existent after the husband's death).

51. *Klotz v. Rhodes*, 240 Mo. 499, 144 S. W. 791 (1912). However, the owner of a homestead who rents it temporarily and occupies a rented house elsewhere does not thereby forfeit his homestead right, *Spratt v. Early*, 169 Mo. 357, 69 S. W. 13 (1902). And though this personal privilege of exemption may be waived, *Parke-ton v. Pugsley*, 142 Mo. App. 537, 121 S. W. 789 (1909), it is not essential for the debtor to specify the section of the statute under which he claims his exemptions, *Rolla State Bank v. Borgfield*, 93 Mo. App. 62 (1902).

52. *Gum v. Wolfenbarger*, 338 Mo. 968, 93 S. W. (2d) 667 (1936).

53. *Haines v. Carroll*, 327 Mo. 1026, 38 S. W. (2d) 1047 (1931); note (1941) 130 A. L. R. 1028 (enforcement of claim for alimony against exemptions).

(these statutes) . . . for the benefit of families, and what is within the plain meaning and implication of such statutes is as much a part of them as its strict letter, yet these rules of interpretation are also wholly ineffectual to strike out the letter of an act, or to work their destruction, when they are plain and unambiguous."<sup>54</sup> Partnership assets cannot be included among the personalty exemption.<sup>55</sup> Generalized statements are not so applicable to the personalty exemptions as they are to the above homestead exemptions, because the Missouri statute is of the type consisting mainly of a listing of specified articles of personal property—the problem thus being limited primarily to the interpretation of certain phrases as “necessary farm implements,” “work animals,” “necessary tools and implements,” or “books as are necessary.”

Having seen the phraseology of these provisions and the approach of the courts, further consideration should be given to the present applicability of the statutes. Missouri is among those states which differentiate between homestead in the country and in the city, the Missouri statute having done so at and since its original passage in 1865. Only minor changes in the original statute have been made, these pertaining to the wife's recordation of the homestead—with the later omission of such proceeding<sup>56</sup>—and to a change in the area and value of certain city homesteads.<sup>57</sup> Thus essentially the homestead exemption of 1865 must be the same as that of today; but is it? Though without intent to slight correlative economic factors, resort must be had to the property valuations, where available, of the property during the period when the exemption laws were passed.

In view of the fact that, in the Missouri homestead exemption, the restrictions on size and value are co-limiting, the assumption may be made that when the provisions were passed the following were the usual valuations, of the land together with the dwelling house and appurtenances: in the *country*, \$9.375 an acre; in *cities* having 40,000 or more population, \$166.666 per square rod or per 11.25% of an acre; in *cities* having 10,000 but less than 40,000 population, \$50 per square rod or per 18.75% of an acre; and in *cities* having less than 10,000 population, \$300 an acre. However, it is at once

54. *Payne v. Fraley*, 165 Mo. 191, 196, 65 S. W. 292 (1901); *Caldwell v. Renfro*, 99 Mo. App. 376, 73 S. W. 340 (1903).

55. *State ex rel. Billingsley v. Spencer*, 64 Mo. 355, 27 Am. Rep. 244 (1877).

56. Inserted by Mo. Laws, 1873, p. 16 and then changed by Mo. Laws, 1895, p. 185.

57. The section was put into its present wording, concerning size and value of homesteads, by Mo. Laws, 1881, p. 139.

apparent that such classification is worthwhile only concerning the country property, the unit of measure used concerning city property being too large. Therefore, the consideration of the city valuations, as limited by the statute, must be in regard only to the monetary limitations of \$3,000 in cities of 40,000 or more population and \$1,500 in cities of less than 40,000 population; and it must be assumed that these valuations express the then average value of homes with the land owned by those entitled to the homestead exemption. Because of the absence of more accurate data, the task of securing which is beyond the scope of this study,<sup>58</sup> two factors must be mentioned generally: (a) unquestionably there has been a constant rise in the value of city and town residential property, due to population growth, business expansion, higher standards of living and other recognized elements, but we are without the benefit of any comprehensive state wide surveys of this matter, absent which no accurate conclusions can be reached; and, (b) regarding those few statistics following, the figures do not distinguish between property which may fall within the homestead exemption requirements and property which may be owned by persons not entitled to this exemption. True, the number of persons concerned in the latter group might be relatively small, but there can be no certainty, without comprehensive research, that the value of the property held by these persons would not substantially affect any purported "average value" figure.

As presented in the FIFTEENTH CENSUS,<sup>59</sup> 1930, the *median* value of owned nonfarm homes in Missouri was for the State—\$4,050, for urban homes—\$5,104, for rural-nonfarm homes—\$2,178, for Kansas City—\$5,671, and for St. Louis—\$6,456. According to the next census in 1940,<sup>60</sup> the values had decreased to the following: for urban homes—\$3,005, for rural non-farm homes—\$1,316, for Kansas City—\$3,085, and for St. Louis—\$3,590. No sources were discovered which contained the alleged values of residential properties for the present; yet it will be readily apparent that

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58. Material dealing with early urban land values seems limited to studies within a very few of the largest cities in the country; one of the best of these is HOYT, ONE HUNDRED YEARS OF LAND VALUES IN CHICAGO (1st ed., 1933) in which the author listed, Appendix II, p. 460, the main methods employed in determining the value of Chicago realty as being: assessments for taxation purposes, advertised or listed prices in brokers' offices, appraisals and opinions of experts, and actual sales or market prices. An interesting pamphlet, *Catalogue of Missouri Lands*, published in 1865 by a Missouri real estate agency, Allen P. Richardson & Co., lists the offering prices and descriptions for numerous tracts of realty in practically all of the counties in the state.

59. FIFTEENTH CENSUS (1930) Population, Vol. VI, Table 8, p. 730.

60. SIXTEENTH CENSUS (1940) Housing, Vol. II, Part 3, Table 17, p. 883.

any listing of present valuations would be worthless because of the highly inflationary conditions existing generally and specifically with regard to residences. However, in comparing only the values set forth above with those mentioned in the statute, it appears that the question is worthy of legislative investigation if the purposes for, and the persons to be benefitted by, the homestead exemptions are still substantially the same.

Due at least in part to the importance of agriculture in the development of our country, statistics are available which prove the continued rise in the value of farm properties, the fluctuation of which values are interesting as reflecting national conditions. Table I shows the national rise, Table II indicates the regional rise, and Table III reflects the trend in Missouri.

TABLE II<sup>61</sup>

Value of Specified Classes of Farm Property in the United States: 1850 to 1940 (Land and Buildings)

Year	Per farm (average)	Per acre (average)
1940	\$ 5,518	\$31.71
1935	4,823	31.16
1930	7,614	48.52
1925	7,764	53.52
1920	10,284	69.38
1910	5,471	39.60
1900	2,896	19.81
1890	2,909	21.31
1880	2,544	19.02
1870	2,799	18.26
1860	3,251	16.32
1850	2,258	11.14

TABLE II<sup>62</sup>

Average Value & Index Number of all Farm Real Estate (Land and Buildings) by Geographic Divisions: 1850 to 1930 West North Central

Year	Average value per acre	Index Number
1930	\$57.10	114
1925	66.64	133
1920	95.22	191
1910	49.92	100
1900	23.14	46
1890	19.68	39
1880	14.83	30
1870	15.55	31
1860	11.20	22
1850	6.40	13

61. SIXTEENTH CENSUS (1940) Agriculture, Vol. III, Table 5, p. 35.

62. FIFTEENTH CENSUS (1930) Agriculture, *Farm Real Estate Values in the*

TABLE III<sup>63</sup>

Average Value of Farm Land and Other Property in Missouri: 1850 to 1910

Year	Acreage value per farm		Average value per acre	
	All farm prop.	Land & bldg.	All farm prop.	Land & bldg.
1910	\$7,405	\$6,190	\$59.35	\$49.61
1900	3,626	2,963	30.39	24.82
1890	3,304	2,629	25.55	20.33
1880	2,271	1,742	17.56	13.47
1870	2,658	2,119	18.16	14.48
1860	3,158	2,485	14.65	11.54
1850	1,599	1,161	8.95	6.50

The difference in values between the respective columns represents the value of implements, livestock, and machinery, which categories will be considered in connection with the personal property valuations.

In supplementing Table III by reference to the last census,<sup>64</sup> computations indicate that in 1940 the average value of Missouri farm property, land and buildings only, was \$4,324, the average value per acre being \$31.87—although with the actual values varying from \$9.03 in Ozark county to \$74.88 in Clay County, exclusive of the outstanding valuations, which of course really distort the state average, of \$1,264.92 in St. Louis City, of \$224.12 in St. Louis County, and of \$111.85 in Jackson County.<sup>65</sup> Unless the following ratio can be disregarded because of other economic bases, in comparing the previously estimated value of \$9.375 per acre, of the country property in 1865, with the 1940 average value of \$31.87 per acre, it seems undeniable that our 1865 homestead exemption statute can no longer adequately fulfill the objects for which it was originally intended.

Proceeding next to the Missouri exemptions of personal property, it is believed that several portions of the provision may be disposed of by mention. The third, fourth, and fifth subsections can be of value to only an infinitely small percentage of the Missouri residents—these sections dealing

*New England States*, Table 2, p. 17. "West North Central" includes the states of Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska and Kansas; for the "Index Number" the year 1910 is the base 100%.

63. THIRTEENTH CENSUS (1910) Agriculture, Vol. V, Table 34, p. 93; see also *Statistical Abstract of the United States* (1942) Table 648, p. 694.

64. SIXTEENTH CENSUS (1940) Agriculture, Vol. I, County Table I, p. 244 *et seq.*

65. See also the values imposed by the State Tax Commission, June 1, 1943, submitted in the *Fourteenth Biennial Report of the Missouri State Tax Commission for the Years 1943-1944*, p. 41-44.

with the spinning wheels, cards and looms necessary for manufacturing cloth, spun yarn, and twenty-five pounds of hemp, flax and wool. The eighth subsection, pertaining to arms and military equipments required by law to be kept, is of value, if any, only to some governmental agencies and then in but a very indirect manner. The ninth subsection, permitting the exemption of \$100 worth of provisions, is of course not so effective as when it was passed, but any limitation on these goods if expressed in terms of money value seems undesirable; instead, as set forth in some states, why not exempt provisions necessary for a specified number of months, or, all provisions then on hand? The tenth subsection, exempting the Bibles and other books used in a family, lettered gravestones, and one pew in a house of worship, is not open to serious criticism, except that collections of rare books might well be specifically non-exempt. Parts of the remaining subsections appear to be presently ineffective, and these will be considered individually. Prior to this consideration, however, it should be noted that, in addition to the item of flexibility of context of certain phrases and of the values of enumerated articles, the varied meanings and possibly increased values are important to lawyers, physicians, ministers of the gospel, and teachers because of the wording of the eleventh subsection which makes the essential part of their exemption dependent upon, in the words of the statute, "other property herein allowed."

The sixth subsection, exempting family wearing apparel, four beds and usual bedding, and "such other household and kitchen furniture, not exceeding the value of \$100, as may be necessary for the family," in its third phrase clearly indicates the need for statutory revision. Although it is realized that the following nineteenth century prices are but rough estimations of the then existing retail prices, even this data could be secured only by reference to the probate court records—this source being a factor to be remembered in considering the comparative values. In one appraisal<sup>66</sup> during July, 1859, twelve chairs were valued at \$12, one arm chair at \$2.50, one small table at \$4, one easy chair at \$10, one bureau at \$10, one lounge at \$4, four other chairs at \$40; another appraisal<sup>67</sup> during November, 1859, listed one bookcase and bureau at \$25, one rocking chair at \$2.50, one stove and family room furniture at \$18, one hair seat rocking chair at \$8, one drawer table at \$1, one parlour stove and fixtures at \$12; and in a sale<sup>68</sup> in 1844,

66. Boone County Probate Court, Estate of James S. Thomas, No. 1641.

67. Boone County Probate Court, Estate of James H. Parker, No. 1672.

68. Boone County Probate Court, Estate of Francis Rogers, No. 401.

one writing desk sold for \$5, one dressing table for \$3, one bureau for \$5, and one book case for \$3. Assuming that these figures are fairly indicative of the prices at that time, the statutory limitation of \$100 on household and kitchen furniture may originally have been quite suitable. (The \$100 limitation was substituted in 1855 for the first limitation of \$25 in 1825) However, let us then compare with the above some of the average prices of household furniture during the 1940-1942 period;<sup>69</sup> the following quotations were given by merchants as being an approximate figure for the average priced product of standard make. A dining room table was said to sell for \$39, a writing desk for \$40, a chair for \$39.50, a rug for \$40, a bureau for \$40, a davenport for \$139.50, a seven-foot-box refrigerator for \$175, a stove for \$98. It is hastily granted that no sound generalized conclusions can be drawn from such limited data; yet it is submitted that the facts at least show a need for legislative consideration.

The first, second, and seventh subsections are objectionable because their provisions, which pertain to farmers and mechanics, are so phrased that they have been dependent upon judicial construction, for the most part, for their scope of application. These subsections being faulty, the inevitable outcome is that the eleventh subsection, pertaining to lawyers, physicians, ministers and teachers, is also faulty, because the exemption granted by the latter is governed by the scope of exemptions granted in the former. In other words, as the construed effect of these provisions has been to limit the farmer's exemption practically to those implements used when the statute was passed, the doctor's exemption has then been limited to the value of the farmer's exemption; and, even assuming that the monetary value of both types of exemption should be approximately the same, the features remain that the latter is dependent upon the former, and the former either is subject to the unbridled whims of a jury or is already limited by *stare decisis*. Certainly the implements necessary to a farmer will vary throughout the state because of the various types of farming and farming problems,<sup>70</sup> but that should not require that the value of the lawyer's or doctor's exemption must likewise vary. It should be noted that one case<sup>71</sup>

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69. The present 1946 prices were not used because of their clearly being disproportionately excessive with regard to their true economic value.

70. As suggested in 25 C. J. 55, ". . . the conflict of opinion being accounted for undoubtedly, quite as much by the varying farming methods and practices in different parts of the country, as by the phrasing of the statutes."

71. *Brown v. Hoffmeister*, 71 Mo. 411, 413 (1880) stating, "We think it a far more reasonable construction of the statute to hold that, while a lawyer may select



seems to say that the doctors' and lawyers', et cetera, exemption of books and medicines is really "in lieu" of specified exemptions of the spinning wheels, loom, yarn, hemp, wearing apparel, beds and bedding, and the household furniture. This does not appear correct, however, because the statute apparently grants specified exemptions to all heads of families, and then includes specific provisions as to farmers, mechanics, and those following professions.

The problem being similar in regard to the provisions affecting both farmers and mechanics, any conclusions as to one group is applicable to the other. This problem is founded on the ambiguity of the phrases, respectively, "all necessary farm implements for the use of one man" and "the necessary tools and implements of trade of any mechanic." As undoubtedly the vast majority of instances where exemptions were claimed were not cases which ever reached our appellate courts, we are without substantial judicial guidance as to whether or not in actual practice this ambiguity under present day living tends to defeat the original statutory purposes; yet as noted above,<sup>72</sup> in several jurisdictions, where statutory phraseology permits—as it does also in the Missouri provisions, there is a tendency to limit the exemption granted by these phrases to inexpensive hand tools and implements. Instead of there being leeway in the statute for any such tendency, the legislative intent should be clearly stated.

The early agriculture of this country was largely a pioneer woodland agriculture,<sup>73</sup> and in the earlier half of the nineteenth century the farmer depended mostly on simple hand tools;<sup>74</sup> thus it is understandable that some courts would take the view that the statute should be interpreted in the light of the conditions then existent. However, "after the Civil War, shortage of labor supply and the rapid development of agriculture in the prairie regions resulted in an increased demand for labor saving machinery and a

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such books as may be necessary to his profession, yet as such books are to be selected 'in the place of other property,' which the same section previously exempts, the books should not exceed in value 'other property' in lieu of which the books may be selected; in short, that the mere option of the debtor should not enlarge his exemptions under the law."

72. See footnote 24 *supra*. Further, "in keeping with the construction given by some courts to the word 'tools' as extending only to such tools as are used by hand, farming tools would include hoes, axes, pitchforks, shovels, spades, scythes, and other articles of that character, but not machinery or implements drawn by animals or heavy complicated devices . . ." 22 AM. JUR., Exemptions, § 42.

73. ROGIN, *THE INTRODUCTION OF FARM MACHINERY* (1931), p. 14.

74. Report of the Federal Trade Commission on the Causes of High Prices on Farm Implements (May 4, 1920), p. 45.

marked improvement in agricultural implements."<sup>75</sup> Even if the court, without legislative action, were to decide that it would be permissible for the farmer to have exempt a very expensive farm tractor, this would not solve the problem. "Mechanization of the farm involves more than the purchase of a tractor. It practically calls for a reorganization of the farm on a different scale, the acquisition of new and a higher degree of planning. It also involves a higher capital investment and a greater dependence of the farm on credit resources and manufactured products in the form of power units, parts and fuel. Commercial farmers who are not in a position to mechanize face increasing difficulties resulting from competition of the mechanized farms."<sup>76</sup> As summarized by the latest census,<sup>77</sup> the value of agricultural implements and machinery per acre has shown a marked increase, as follows:

TABLE IV

Value of Implements and Machinery on Farms in the United States:  
1850 to 1940

Year	Average value per farm	Average value per acre
1940	\$502	\$2.88
1930	525	3.35
1925	422	2.91
1920	557	3.76
1910	199	1.44
1900	131	.89
1890	108	.79
1880	101	.76
1870	102	.66
1860	120	.60
1850	105	.52

For estimated values of farm implements as shown by probate appraisals one set of values registered during November, 1821<sup>78</sup> were four weeding hoes for \$3.50, one bare shear plow \$6.50, one pair single trees \$2, one pitchfork \$.75, three falling axes \$6, three cleavizes and twisted link \$2.50, one claw hammer \$.50, one pair sheep shears \$.75, one horse plow \$5, one hand

75. *Ibid.*

76. McKibben and Griffen, *Changes in Farm Power and Equipment—Tractors, Trucks and Automobiles*, WPA National Research Project, Report No. A-9 (December, 1938) p. XIII.

77. SIXTEENTH CENSUS (1940) Agriculture, Vol. III, Table 5, p. 35. See also Report of the Federal Trade Commission on the Causes of High Prices on Farm Implements (May 4, 1920) Table 6, p. 44, and, McKibben and Griffen, *op. cit. supra* note 76, at p. 5.

78. Boone County Probate Court, Estate of James Beattie, No. 12.

saw \$.75, one crosscut saw \$9; and, during August, 1859<sup>79</sup> two ploughs were appraised at \$9. Among other appraisals during 1859, one<sup>80</sup> in September listed four weeding hoes for \$1.50, one hay rake for \$5, one log chain and iron hooks \$1, two cultivators \$5, one dirt scraper \$3, two pair plough gear \$5, one straw cutter \$.75, one bathing trough \$3, two 2-horse ploughs and double trees \$15, and, during June, 1866, another plough was valued at \$10.<sup>81</sup> Going from those valuations to retail prices existing during 1940-1942 the changes in terminology and price are self-evident, with an 18-inch disc harrow selling for \$185, a cultivator for \$130, a combine for \$775, a corn middle-buster for \$287.15, a small five foot mowing machine for \$116, a side delivery rake for \$138.50, a pick up baler for \$1200. Absent any contention that, for example, an expensive baler should always be included among the exemptions, it does seem clear that sufficient progress has occurred to warrant conjunctive statutory progress through official research and de-liberation.

#### OTHER FACTORS AND CONCLUSION

The assumption that the original purposes of the exemption laws still exist has been noticed throughout the discussion. However, concerning the homestead exemption one writer suggested, "it may be that the social needs served by the homestead exemption movement . . . have become less urgent and universal, in view of the changing status of the family, and the revolution which has taken place in the habit of home ownership. Homestead exemption laws serve little purpose in great cities where most housing is rented; it seems safe to predict that whatever utility such legislation will have in the future will be restricted largely to agricultural regions."<sup>82</sup> Similarly, with reference to the personal property exemptions, it is the view of another that "it may fairly be said that laws creating exemptions to a large extent have defeated their purpose. They have tended to make credit of more than nominal proportions dependent upon security. So far as the taking of security in general improves the safety of credit, it may be an advance in business methods; but

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79. Boone County Probate Court, Estate of David Todd, No. 1649. As shown also by these probate records, it must be remembered that the use of slaves played a large part in the earlier farming methods in Missouri.

80. Boone County Probate Court, Estate of William H. Hudson, No. 1641.

81. Boone County Probate Court, Estate of Jonathan Amerine, No. 1663.

82. Note, *State Homestead Exemption Laws* (1937) 46 YALE L. J. 1023, 1040. Possibly ". . . we should allow the family which does not own a home larger exemptions of other kinds—a rent exemption, for instance," Lewis, *Principles of Exemption Laws* (1928) 2 DAK. L. REV. 140, 142.

when, as with the small farmer or laborer, it results in mortgaging the necessities of life, the means of family protection, the articles which should be exempt if anything should be exempt, it partially destroys the effect of exemption laws and invalidates the exemption principle. In practice, it also gives a preference to certain kinds of business, those which can more easily and feasibly take security. The bank and the farm machinery house take security, the retail merchant does not."<sup>83</sup> And further, "the exemption of tools of a trade has to a large extent outlined its usefulness. . . . The amount of capital today required in various occupations is too great to make its exemption as tools of trade desirable without such a strict limit."<sup>84</sup>

It cannot be disputed that a wide spread use of credit has become a business necessity as well as convenience. With reference to agriculture, "the average value of a farm, land and buildings, in the United States in 1940 was (approximately) \$5,500, which was low compared to the 1930 average of \$7,600 or the 1920 average of \$10,300. "Even though a farmer has the initial investment of \$5,500 to purchase the farm without using credit, he still has the task of accumulating the working capital, equipment and livestock needed to operate the farm. Investment in livestock and equipment averages approximately one-fourth the land and building total. A rough estimate for an average farm would be \$500 for machinery and implements, \$800 for livestock, and \$200 for working capital, a total of \$1,500. To avoid credit, therefore, accumulated savings of \$7,000 would be required. . . . The farm laborer in 1941, with a monthly wage of \$40, might well consider farm ownership impossible without credit, and might wonder about the probability of becoming even a tenant without the use of credit."<sup>85</sup> In view of these statements one possible approach is that, as the use of credit is indispensable in any event, and as the exemption laws would not include the necessary expensive equipment, therefore the exemption laws should be eliminated as surplusage.

Also to be considered is the effect of the Federal Farm Loan Act,<sup>86</sup> because "for the period September 1, 1935, through March 31, 1941, 150,644

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83. Lewis, *supra* note 82, at 141.

84. *Id.* at 145.

85. MURRAY, AGRICULTURAL FINANCE (1941) 5.

86. 12 U. S. C. A. § 1016; note (1943) 147 A. L. R. 743, 744 stating, "The beneficent purpose of loans under the Federal Farm Loan Act is to enable farmers who are in debt, and without ability to make payment, to constitute the Federal agency the sole creditor and thereby eliminate, by way of compromise, all other creditors."

individual cases were handled involving indebtedness totaling 453 million dollars prior to the adjustment. In the process of adjustment, 100 million dollars of debts were cancelled. In most cases new loans were obtained as a part of the adjustment procedure.<sup>87</sup> The effectiveness of this program, however, has been questioned on the following grounds: "There is danger of credit being extended on too generously a scale; politics and farm credit do not mix well; the prospects of governmental farm credit reducing tenancy seem none too bright; the difficulties introduced by rising land values suggest the central problem in farm credit, fluctuations in the price level—without stability a large element of uncertainty is sure to exist concerning the success of governmental agencies in assisting tenants into ownership."<sup>88</sup>

Our Missouri Unemployment Compensation Law<sup>89</sup> has a basic concept very similar to the principles of the exemption laws, the statement of the public policy saying that "Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state resulting in a public calamity." Yet this certainly does not have the effect of replacing the exemption law because its purposes are limited to "increasing opportunities for placements" and "providing for the payment of compensation." Further, the spirit of the bankruptcy Act<sup>90</sup> directly embraces the application of the exemption laws; as stated by the United States Supreme Court, "it is the two fold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors, and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched."<sup>91</sup> The rights of a bankrupt to property are those given to him by the state statutes, and if such exempt property is not subject to levy and sale under those statutes then it cannot be made to respond under the act of Congress.<sup>92</sup>

Despite the often required use of credit and regardless of the incidental benefits to debtors derived from other forms of legislation, it must be remem-

87. MURRAY, *op. cit. supra* note 85, at 298.

88. *Id.* at 316. See also notes (1938) 112 A. L. R. 1467, 1476 and (1935) 99 A. L. R. 1378.

89. MO. REV. STAT. (1939) § 9422.

90. 11 U. S. C. A. § 24: "This title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such months than in any other State. . . ."

91. Burlington v. Crouse, 228 U. S. 459, 33 S. Ct. 564, 57 L. ed. 920, 46 L. R. A. (NS) 148 (1913).

92. Smalley v. Laugenour, 196 U. S. 93, 25 S. Ct. 216, 49 L. ed. 400 (1905).

bered that "since the beginning of the century there have been 546,000 commercial failures involving liabilities of \$10,818,000,000. Since 1919 the annual number has steadily risen from 6,451 with liabilities of \$113,291,000 to 28,285 failures with liabilities of \$736,310,000 in 1931. In 1932, commercial failures reached the record-breaking total of 31,822, with liabilities of \$928,313,000."<sup>93</sup> Yet with possibly another record-breaking period of commercial failures in the offing, no other form of legislation has been presented as supplanting the exemption laws; rather, various forms of legislation, if not expressly recognizing the exemption provisions, may be said to impliedly presume the continued existence of such exemptions in some form. From these factors at least one conclusion could be that there is a present necessity for the application of the original exemption purposes.

Any study of this problem leads to the following questions: "(1) what are the actual needs of the debtor today, as contrasted with his needs when the present exemption laws were enacted? (2) Can those needs be provided for without a complete revision . . . of our statutes? (3) Is there lacking in the present form of the statutes that symmetry and balance between the policy of the state in protecting the debtor from subjection to absolute want, and the right of the creditor to the collection of his claim?"<sup>94</sup> In other words, are the provisions of our exemption statutes operating in all-around fairness? Any conclusive answers to these questions cannot, of course, be summarily given. However, it is submitted that even the general indications of our very substantial economic evolution are sufficient to direct, if not to compel, legislative attention toward the remedial action requisite to insure against further usage of seemingly outmoded standards and undesirable phraseology.

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93. EPSTEIN, *INSECURITY—A CHALLENGE TO AMERICA* (2d rev. ed., 1938) 13.

94. Note (1935) 10 WISC. L. REV. 277, 278.