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Bankruptcy -- States May Not Suspend Driver's License of Bankrupt Who Fails To Satisfy Accident Judgment Debt

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NOTES

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Adolfo Perez was one of 22,000,000 Americans involved in a traffic accident in 1965.[1] Like millions of other drivers, he had no liability insurance[2] and only limited assets. When judgment was entered against him in an Arizona state court, Perez was unable to compensate his injured victim. He sought relief by filing a voluntary petition in bankruptcy. According to section seventeen of the Bankruptcy Act, the discharge Perez received released him "from all of his provable debts."[3] When Arizona nevertheless suspended his license and automobile registration because he had failed to pay the judgment debt, Perez protested that the state had denied him the full benefit of his discharge. The Arizona Motor Vehicle Safety Responsibility Act required the suspension to continue until the judgment debt was satisfied.[4] Furthermore, the Act specifically provided that "[a] discharge in bankruptcy following the rendering of such judgment shall not relieve the judgment debtor from any of the requirements of this article."[5]

Overruling two earlier decisions,[6] the Supreme Court in *Perez v. Campbell*[7] held that this provision of the Arizona statute conflicted with section seventeen of the Bankruptcy Act, making it invalid under the

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[1]NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1966).

[2]See note 53 & accompanying text *infra*.

[3]"A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as . . . [are specially enumerated in § 17a]." Bankruptcy Act § 17a, 11 U.S.C. § 35a (1970). A discharge in bankruptcy constitutes a complete and adequate remedy at law in the nature of an affirmative defense to any legal proceedings brought on the debts which were scheduled in the bankruptcy proceedings; a discharge is neither payment nor extinguishment of debts, but is merely a bar to their enforcement by legal proceedings. Helms v. Holmes, 129 F.2d 263 (4th Cir. 1942). *See generally* 1A COLLIER ON BANKRUPTCY ¶17.27 (4th ed. 1971).

Judgments arising from negligent automobile driving are generally dischargeable if provable under § 63 of the Bankruptcy Act, 11 U.S.C. § 103 (1970). They are not exempted from discharge by the "willful and malicious injuries" phrase of § 17a(8), 11 U.S.C. § 35a(8) (1970). This conclusion is based on the dictum in Tinker v. Colwell, 193 U.S. 473, 489 (1904): "One who negligently drives through a crowded thoroughfare and negligently runs over an individual would not . . . be within . . . [the 'willful and malicious' injury exception]." *See also* Lewis v. Roberts, 267 U.S. 467 (1925).

[4]ARIZ. REV. STAT. §§ 28-1162A, -1163A (1956).

[5]*Id.* § 28-1163B.

[6]Kesler v. Department of Pub. Safety, 369 U.S. 153 (1962); Reitz v. Mealey, 314 U.S. 33 (1941).

[7]402 U.S. 637 (1971).

supremacy clause of the Constitution.[8] The decision is a clear warning that the Court will no longer tolerate legislative erosion of the safeguards implicit in the bankruptcy discharge, but the major impact of the decision may be on the present automobile-accident compensation system, already in a state of flux.

Financial responsibility statutes are widespread. All fifty states and the District of Columbia have statutes similar in purpose and statutory design to the Arizona Safety Responsibility Act.[9] In addition, two states have grafted the requirement of compulsory liability insurance to the basic plan,[10] and six others have recently combined compulsory insurance and a partial "no fault" approach to liability.[11] The basic financial responsibility laws allow a motorist to drive without insurance until he is involved in an accident causing personal injury or property damages above a statutory minimum. After an accident he is required to post security, in the form of cash or an insurance policy, sufficient to cover the probable liability arising from the accident. If found liable for the accident, the driver must also show proof of future financial responsibility, normally in the form of a certificate of insurance.[12] Failure to meet these requirements or to satisfy a judgment debt arising from the accident results in the suspension of driving privileges in every jurisdiction.[13]

As the Supreme Court finally acknowledged in *Perez,* the financial responsibility laws were designed primarily to compensate injured parties;[14] their accident-deterrent function was largely a fiction. Unfortunately, even before the *Perez* decision, the laws did not form an adequate accident-compensation system. The plan leaves most motorists free *not* to insure if they so choose. Only those who have an accident that is

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[8]U.S. CONST. art. VI.

[9]Comment, *A Survey of Financial Responsibility Laws and Compenstion of Traffic Victims: A Proposal for Reform,* 21 VAND. L. REV. 1050, 1081-82 (1968).

[10]N.Y. VEH. & TRAF. LAW §§ 310-21 (McKinney 1970); N.C. GEN. STAT. §§ 20-309 to -319 (1965), *as amended,* (Supp. 1969).

[11]Massachusetts was the first state to adopt a compulsory insurance law and has also had a no fault law in effect since January 1, 1971. MASS. GEN. LAWS ch. 90, §§ 34A-N (1970). Five other states have recently enacted some form of no-fault legislation, which is generally to be effective in January, 1972. N.Y. Times, Oct. 3, 1971, § 1, at 81, col. 7.

[12]Comment, *supa* note 9, at 1052-54; *see* UNIFORM VEHICLE CODE ch. 7 (1969 version). Most states based their statute on this CODE.

[13]This provision is basic to every financial responsibility law; it is the ultimate sanction which makes the statute work. *See* R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 539 (Appendix C) (1965).

[14]402 U.S. at 644-48.

reported to state authorities are required to insure. Reporting of accidents is everywhere basically a matter of private initiative by the injured party. When there are no assets or insurance to satisfy an eventual judgment, or when some private settlement has been made at the time of the accident, the incentive to report the accident is lacking, and even the motorist who is clearly at fault is never forced to insure.[15] Worst of all, the "first" accident victim has little protection. Since the negligent driver can always elect to bow to the suspension sanction and leave the highway rather than compensate the injured party, the financial responsibility laws carry no guarantee that a judgment against him will ever be satisfied.[16]

Until *Perez* the financial responsibility laws had withstood a wide variety of constitutional attacks,[17] although they had suffered a few isolated defeats.[18] The overwhelming majority of courts have viewed such statutes as a reasonable exercise of the police power and have thus held that they do not violate the equal protection[19] or the due process[20] clauses, the right against self-incrimination,[21] or the prohibition against imprisonment for civil debt;[22] nor are such laws an improper delegation of judicial power[23] or special legislation.[24]

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[15]Most states do have reporting statutes that require motorists involved in accidents causing injury to any person or more than minimal property damage to report to the local police authorities. *E.g.*, N.C. GEN. STAT. § 20-166.1 (1965); UNIFORM VEHICLE CODE §§ 10-106, -107 (1969 version). Nevertheless, in rural and isolated urban areas compliance with the statute depends largely upon the insistence of the injured party. Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 306-07 (1950).

[16]Although the financial responsibility laws may be of no assistance to the judgment creditor in this situation, he may resort to any of the normal remedies for nonpayment of a judgment debt. In most jurisdictions, a judgment creates a lien on the property of the judgment debtor; the victim may therefore obtain a writ of execution and have the property seized and sold to satisfy the judgment. Of course, this remedy is useful only insofar as the debtor has assets to be seized.

[17]*See* Annot., 35 A.L.R.2d 1011 (1954). The validity of the Arizona Motor Vehicle Safety Responsibility Act was upheld in Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963).

[18]Miller v. Anckaitis, 436 F.2d 115 (3d Cir. 1970); People v. Nothaus, 147 Colo. 210, 363 P.2d 180 (1961).

[19]Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Williams v. Newton, 236 So. 2d 98 (Fla. 1970).

[20]Reitz v. Mealey, 314 U.S. 33 (1941); Escopedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950); Williams v. Newton, 236 So. 2d 98 (Fla. 1970).

[21]Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471, *petition for cert. dismissed per stipulation*, 323 U.S. 806 (1944).

[22]Sullins v. Butler, 175 Tenn. 468, 135 S.W.2d 930 (1940).

[23]Escobedo v. Department of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950).

[24]Watson v. Division of Motor Vehicles, 212 Cal. 279, 298 P.481 (1931).

The conflict which the Supreme Court finally recognized as intolerable in *Perez* was that between the Bankruptcy Act and the provisions of the Arizona Motor Vehicle Safety Responsibility Act that deny a judgment debtor the full immunity given him by section seventeen of the Bankruptcy Act. Twice in the past, in construing state provisions almost identical to those in *Perez*, the Court resolved the conflict in favor of the financial responsibility acts. Thirty years ago in *Reitz v. Mealey*,[25] the Court upheld New York's statute,[26] which provided for suspension of the judgment debtor's driving privileges so long as the judgment was not satisfied and also required satisfaction other than by a discharge in bankruptcy. Without denying the bankrupt-appellant's contention that one of the primary purposes of the Bankruptcy Act is to give the honest debtor a fresh start,[27] the Court deferred to the legitimate state interest in highway safety and the protection of the public from the financially irresponsible motorist.[28] Writing for the majority, Justice Roberts conceded that the financial responsibility act conflicted to a certain extent with the discharge provision[29] but reasoned that dilution of the impact of the suspension sanction would emasculate the act:

> The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expediency of voluntary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute.[30]

Although Justice Roberts' cavalier characterization of bankruptcy as a "simple expediency" is not necessarily accurate,[31] the problems he forsaw if this door were opened for the judgment debtor now confront those states with financial responsibility plans.

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[25]314 U.S. 33 (1941).

[26]N.Y. VEH. & TRAF. LAW §§ 330-68 (McKinney 1970). The Arizona Motor Vehicle Safety Responsibility Act contains the same basic provisions. ARIZ. REV. STAT. §§ 28-1161 to -1178 (1956), *as amended*, (Supp. 1970).

[27]*E.g.*, Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934). The other major objective is an equal distribution of the debtor's assets among his creditors. *E.g.*, United States v. Embassy Restaurant, Inc., 359 U.S. 29, 31 (1959).

[28]314 U.S. at 36-37. The Court has long recognized the states' high degree of interest in highway safety. *E.g.*, South Carolina State Highway Dep't v. Barnwell Bros., 303 U.S. 177, 187 (1938).

[29]314 U.S. at 38.

[30]*Id.* at 37.

[31]*See* text at notes 60-68 *infra*.

More recently the Court in *Kesler v. Department of Public Safety*[32] rejected another constitutional attack, this time against Utah's Motor Vehicle Safety Responsibility Act. Two creditor-control provisions in that Act were even more suspect than those approved in *Reitz*—the power to initiate suspension by requesting the clerk of court to notify the Motor Vehicle Commission of the unsatisfied judgment and the power to revoke and restore the suspension in response to the debtor's degree of cooperation.[33] Again the Court acknowledged the conflict but sustained the state legislation:

> Certainly some inroad is made on the consequences of bankruptcy if the creditor can exert pressure to recoup a discharged debt, or part of it, through the leverage of the State's licensing and registration power. But the exercise of this power is deemed vital to the State's well-being . . . .[34]

Overruling these two decisions, the majority in *Perez v. Campbell* considered the conflict much more elemental. The Court was aided in reaching this decision by a candid construction of the state law by the Arizona Supreme Court, which had repeatedly said that the law's "principal purpose" was "protection of the public . . . from financial hardship" resulting from involvement in traffic accidents with uninsured motorists unable to respond to a judgment.[35] The legislation therefore had little relation to highway safety; the major emphasis was on providing leverage for the collection of damages, even after the judgment debtor had been discharged in bankruptcy.[36] Thus characterized, the law was clearly in conflict with the Bankruptcy Act, which was promulgated at least in part to give the bankrupt an opportunity to start afresh in life, unhampered by existing debt.

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[32]369 U.S. 153 (1962).

[33]Ch. 71, § 12, [1951] Utah Sess. L., codified at UTAH CODE ANN. § 41-12-13 (1970). These powers are effective even after a judgment debtor's discharge in bankruptcy, and state officials must follow the creditor's directions. *Id.* By written request, the creditor places the clerk of court under a duty to notify the Commission of the unsatisfied judgment; upon receiving the notice, the Commission must suspend the registration and license of the debtor. UTAH CODE ANN. § 41-12-14(a). With the creditor's consent, the suspension may be raised, but if the creditor subsequently withdraws his consent, the Commission must reinstate the suspension. *Id.* § 41-12-14(b).

[34]369 U.S. at 171.

[35]Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963); *accord,* Camacho v. Gardner, 104 Ariz. 555, 558, 456 P.2d 925, 928 (1969).

[36]The Colorado Supreme Court had made the same observation ten years ago. People v. Nothaus, 147 Colo. 210, 215-216, 363 P.2d 180, 183 (1961).

Writing for the majority, Justice White relied upon *Gibbons v. Ogden*[37] for his standard in weighing the two laws, primarily to stress that the two earlier decisions on financial responsibility were "aberrational"[38] and to counter in advance the stare decisis argument Justice Blackmun raised in dissent:[39]

> As early as *Gibbons v. Ogden* . . . (1824), Chief Justice Marshall stated the governing principle—that "acts of the State Legislatures . . . [which] *interfere with*, or are contrary to the laws of Congress . . ." are invalid under the Supremacy Clause.[40]

The *Kesler* and *Reitz* decisions "ignored this controlling principle."[41] The Arizona law frustrated the desired operation of the Bankruptcy Act by denying the bankrupt the full benefit of his discharge and is therefore void.[42] Justice White criticized the two earlier decisions for their myopic reliance upon declarations of legislative purpose:

> Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law.[43]

Furthermore, concluded the majority, even if the supremacy clause analysis of *Kesler* and *Reitz*—looking to the ostensible purpose rather than to the effect of state laws on federal legislation—is accepted, the Arizona statute must be invalidated because the state's expressed legislative purpose is the protection of "judgment creditors from 'financial hardship' by giving them a powerful weapon with which to force bankrupts to pay their debts despite their discharge."[44]

The majority in *Perez* clearly seems to have the stronger position. There can be no doubt that most preexisting tort judgments are prova-

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[37] 22 U.S. (9 Wheat.) 1 (1824).

[38] 402 U.S. at 651.

[39] "I am not prepared to overrule [*Reitz* and *Kesler*] and to undermine their control over Adolfo Perez' posture here." 402 U.S. at 664. *See also id.* at 667-68.

[40] *Id.* at 649, *quoting Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824) (emphasis by the *Gibbons* Court).

[41] 402 U.S. at 650.

[42] *Id.* at 651-52.

[43] *Id.* at 652.

[44] *Id.* at 654.

ble[45] as fixed liabilities within the meaning of section sixty-three of the Bankruptcy Act.[46] Furthermore, such a judgment does not fall within one of the classes of debts barred from discharge by section seventeen of the Act if the driver was merely negligent and not "willful and malicious" in his conduct.[47] Since judgment debts are therefore dischargeable, a state cannot create a device for their collection which survives a discharge in bankruptcy. The federal bankruptcy power is "unrestricted and paramount;" the states "may not pass or enforce laws to interfere with . . . the Bankruptcy Act or to provide additional or auxiliary regulations."[48] Under the Arizona statute, the creditor whose judgment claim has been discharged had a powerful ally in the State Highway Department, which would suspend the bankrupt's license until the judgment was paid. The state had given the creditor a remedy which survived bankruptcy and had therefore interferred with the Bankruptcy Act to an intolerable degree. As Justice Douglas, the Court's bankruptcy expert,[49] observed in dissent to the *Reitz* decision thirty years ago, "[i]n practical effect the bankrupt may be in as bad, or even worse, a position than if the state had made it possible for a creditor to attach his future wages. Such a device would clearly contravene the Bankruptcy Act."[50]

The significance of the *Perez* ruling might easily be overlooked because the Supreme Court invalidated only one small sub-section of the Arizona Act, not the entire financial responsibility statute. In the writer's opinion, however, that sub-section was the keystone of a complex accident compensation scheme.[51] By removing it the Supreme Court may have added new impetus to what is developing as the most powerful movement for reform of the automobile insurance laws in forty years.[52] Largely as a result of the free choice and the slippage in acci-

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[45]Lewis v. Roberts, 267 U.S. 467 (1925).

[46]Bankruptcy Act § 63, 11 U.S.C. § 103 (1970).

[47]*Id.* § 17a, 11 U.S.C. § 35a (1970); *see* note 3 *supra.*

[48]International Shoe Co. v. Pinkus, 278 U.S. 261, 265 (1929).

[49]"Justice Douglas doubtless brought to the Supreme Court a greater knowledge of the law and practice of bankruptcy than any justice who had preceeded or any who has followed him." Countryman, *Justice Douglas: Expositor of the Bankruptcy Law,* 16 U.C.L.A.L. REV. 773-74 (1969).

[50]314 U.S. at 41-42.

[51]*See* Justice Roberts' reference to the importance of an undiluted suspension sanction in text preceding note 30 *supra.*

[52]Widespread criticism of early state insurance laws resulted in adoption of the original financial responsibility laws almost forty years ago. The first of the financial responsibility statutes was enacted in Connecticut in 1925. Ch. 183, [1925] Conn. Pub. Acts 3956 (now codified at CONN. GEN.

dent reporting under the financial responsibility laws, approximately fifteen percent of all drivers in the United States have no liability insurance.[53] This figure represents seventeen million drivers.[54] A motorist with even moderate assets will normally buy insurance to cover a possible adverse liability judgment, whereas the uninsured usually lack sufficient assets to satisfy even an atypically small adverse liability judgment.[55] They are effectively "judgment proof" in the language of the tort lawyer. As a noted torts authority has said, they are also our worst drivers:

> It is also undoubtedly true that uninsured drivers on the highway are those who tend on the whole to be driving unsafe vehicles, to be the most slipshod, law-violating and reckless, and to cause a disproportionately large percentage of the accients.[56]

When liability fell on an uninsured driver, the plight of the traffic victim in a financial responsibility state was bleak enough before *Perez*.[57] In such a case the only leverage an injured person had was the threat of permanent suspension of the judgment debtor's license and registration if the judgment was not at least partially satisfied. *Perez* effectively undercuts that sanction. As noted above, the uninsured are normally judgment proof and without assets. Faced with a judgment debt which could easily be 25,000 dollars, the debtor now has two choices. If he cannot satisfy the judgment but is nevertheless reluctant to be adjudged a bankrupt, he will lose his driving privilege permanently or at least until

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STAT. ANN. §§ 14-112 to -133 (1970)). The scheme swept through at least thirty states in one wave between 1925 and 1935. Aberg, *Effects of and Problems Arising from Financial Responsibility Laws*, 1943 INS. L.J. 72.

[53]NAT'L UNDERWRITER, Sept. 6, 1968, at 13. But the Department of Transportation estimated that twenty percent of the vehicles in the United States were uninsured as of 1967. W. YOUNG, CASES AND MATERIALS ON THE LAW OF INSURANCE 69 (1971). The great variation between states is seen in the estimate of thirty-five percent uninsured in Texas, Loiseaux, *Innocent Victims 1959*, 38 TEX. L. REV. 154 n.5 (1959), and only one percent uninsured in Massachusetts, Note, *Compensation Problems Created by Financially Irresponsible Motorists*, 66 HARV. L. REV. 1300, 1307 (1953).

[54]In 1970 there were 111,000,000 licensed drivers in the United States. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 40 (1971).

[55]Grad, *supra* note 15, at 311.

[56]W. PROSSER, LAW OF TORTS § 85, at 578-79 (3d ed. 1964).

[57]"When there is no insurance, therefore, the present system falls far short of affording compensation even in those cases where there is a theoretical legal right to it." James & Law, *Compensation for Auto Accident Victims: A Story of Too Little & Too Late*, 26 CONN. B.J. 70, 78-79 (1952).

the debt is paid.[58] If he is willing and financially able to file a bankruptcy petition, however, he will recover his license and registration when the discharge is granted. The seventeen million drivers who, like Adolfo Perez, are uninsured and without assets have been given the opportunity for one "free" accident every six years.[59]

This is not to say that the escape from liability offered by the "simple expediency of voluntary bankruptcy"[60] is without expense or limitations. Not only is discharge available to a debtor only once every six years,[61] but, contrary to popular belief, a bankruptcy proceeding is priced beyond the reach of the totally indigent.[62] The debtor must pay a filing fee of fifty dollars before receiving his discharge,[63] and attorney's fees for an uncomplicated voluntary bankruptcy range from 250 to 350 dollars.[64] For these reasons, bankruptcy experts advise that bankruptcy should not be considered unless the debtor owes at least one thousand dollars of "disposable debts."[65] During the bankruptcy proceedings, the debtor must surrender to the trustee in bankruptcy all of his property

[58]Under most financial responsibility laws, the judgment debtor need satisfy the liability judgment against him only up to a stautory limit to avoid suspension of his license; the normal limit is $20,000 for two or more personal injuries and $5,000 property damage. *E.g.*, ARIZ. REV. STAT. § 28-1164 (Supp. 1970); UNIFORM VEHICLE CODE § 7-316 (1969 version).

[59]A discharge is available to a debtor only once every six years. Bankruptcy Act § 11c(5), 11 U.S.C. § 32c(5) (1970).

[60]Reitz v. Mealey, 314 U.S. 33, 37 (1941). *See* text preceding note 30 *supra.*

[61]Bankruptcy Act § 11c(5), 11 U.S.C. § 32c(5) (1970).

[62]There is at least a discernable trend in the lower federal courts toward a sharp reduction in costs for the "poor" bankrupt. In the first ruling on the question of access by indigents to bankruptcy proceedings since the landmark decision of Boddie v. Connecticut, 401 U.S. 371 (1971), it was held that bankruptcy, like divorce in *Boddie*, is a "fundamental" right which cannot be denied an indigent. As applied to indigent bankruptcy petitioners, the statutory requirement of prepayment of a filing fee to obtain a discharge violates the fifth amendment right to due process, including equal protection. *In re* Kras, 331 F. Supp. 1207 (E.D.N.Y. 1971). Without benefit of the *Boddie* decision, two other federal courts recently split on the same constitutional question. *In re* Garland, 428 F.2d 1185 (1st Cir. 1970), *cert. denied,* 402 U.S. 966 (1971) (filing-fee requirement not denial of due process); *In re* Smith, 323 F. Supp. 1082 (D. Colo. 1971) (filing-fee requirement is denial of equal protection).

[63]Bankruptcy Act §§ 40c(1), 48c, 52a, 11 U.S.C. §§ 68c(1), 76c, 80a (1970).

[64]D. COWANS, BANKRUPTCY LAW AND PRACTICE § 59 (1963). This is not an assignment which legal aid lawyers will normally perform for a welfare client. *But see* note 62 *supra.* If this new line of cases is upheld, poverty lawyers may be expected to undertake bankruptcies as they are beginning to handle divorces for indigent clients.

[65]"Disposable debts" are defined as "those the debtor need not pay after bankruptcy either as a matter of law or of practical necessity. . . . [T]his means [the debtor] should enjoy a net gain of at least $1000 in his economic condition by elimination of indebtedness." D. COWANS, *supra* note 64.

except that which is exempted under state statute or under section seventy of the Bankruptcy Act; the proceeds from the liquidation of the bankrupt's estate are distributed among his creditors.[66] It is this writer's contention that the typical uninsured motorist will not have sufficient assets over and above those that are exempt to make this collection and distribution a threat to the debtor's status or a significant benefit to his creditors, including the injured victim.[67] Finally in most jurisdictions the negligent driver will have to carry liability insurance to protect the motoring public in the future, but only for one to three years after the accident.[68]

Hopefully, the states that had relied on a financial responsibility law to protect the driving public from the financially irresponsible motorist will realize that the *Perez* decision has undercut the only sanction in an already imperfect law and will therefore be more open to suggestions for major reform in their insurance law. If new legislation is not enacted, thousands of Americans will be killed and maimed on the highways each year without adequate compensation for their injuries. Even if they are involved in accidents only in proportion to their numbers on the roads, uninsured motorists will be involved in some 2,400,000 accidents resulting in 8,100 deaths and 26,250 permanent disabilities this year and every year in the foreseeable future.[69]

The decision in *Perez v. Campbell* was a sound one from the point of view of bankruptcy law; it protects the discharged debtor from what had become a flagrant erosion of the protection promised him under the Bankruptcy Act. Concomitantly, however, the decision left the individual injured by an uninsured motorist with much less protection and hope for compensation than before. By opening wide the door through which

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[66]Bankruptcy Act §§ 47a, 60, 67, 70, 11 U.S.C. §§ 75a, 96, 107, 110 (1970). *See* cases cited note 27 *supra.*

[67]Eighty-eight percent of all consumer bankruptcy cases are "no assets" or "nominal assets" situations. Countryman, *Chapter XIII Wage Earners' Plans: Past, Present and Future*, 18 CATHOLIC U.L. REV. 275 (1969).

[68]Most financial responsibility laws allow the negligent driver to operate a motor vehicle without proof of financial responsibility three years after the date such proof was first required of him if he has not had another accident during that period. *E.g.*, ARIZ. REV. STAT. § 28-1178 (1956); UNIFORM VEHICLE CODE § 7-335 (1969 version).

[69]There were 54,800 motor vehicle deaths in 1970 and 2,000,000 disabling injuries; 175,000 persons suffered permanent impairments. Total economic loss from the 16,000,000 auto accidents was $13,600,000,000. There have been more than 52,000 deaths per year for the past five years. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 3,5,15,40 (1971).

financially irresponsible motorists may escape liability for their negligence, the Supreme Court may have unwittingly added new momentum to the drive for wholesale reform of our automobile accident compensation system.

THOMAS A. LEMLY

Constitutional Law—Bar Admissions—New Standards for Inquiry into Applicants' Associations and Beliefs†

Bar associations have long conducted inquiries into the associations and beliefs of applicants and excluded those "subversives" likely to be a threat to the judicial system.[1] Since the first amendment applies to the states[2] and protects the rights of belief and association, constitutional problems arise when the state attempts to probe into this area. In February 1971 the United States Supreme Court decided three cases dealing with the power of state bar associations to compel answers to questions about the political associations of bar applicants. In *Baird v. State Bar*[3] and *In re Stolar*[4] questions posed by the Arizona[5] and Ohio[6] bars were held to be overly broad because they touched upon innocent as well as

†The potential effects of the primary cases used here were analyzed while appeals to the Supreme Court were pending in Note, *Attorneys—Admission to the Bar—Consideration of the Constitutionality of Bar Examiners' Inquiries into Political Associations and Beliefs*, 48 N.C.L. REV. 932 (1970). Having come before the highest court, they now deserve further consideration.

[1]Remarks of Hon. Samuel J. Kanner, Chairman of the Florida Board of Bar Examiners, in 54 THE BRIEF 153, 154-55 (1959).

[2]*E.g.*, NAACP v. Alabama, 357 U.S. 449, 460 (1958).

[3]401 U.S. 1 (1971).

[4]401 U.S. 23 (1971).

[5]Question 25 of the Arizona examination asks: "List all organizations, associations and club [*sic*] (other than bar associations) of which you are or have been a member since attaining the age of sixteen years." Question 27 asks: "Are you now or have you ever been a member of the Communist Party or any organization that advocates the overthrow of the United States by force or violence?" ARIZ. REV. STAT. ANN., S. CT. RULE 28(c), Exhibit A (Supp. 1970-71). Mrs. Baird answered Question 25 satisfactorily but refused to answer Question 27. 401 U.S. at 4-5.

[6]Stolar declined to answer the following questions:

> 12. State whether you have been or presently are . . . (g) a member of any organization which advocates the overthrow of the government of the United States by force . . . .
> 13. List the names and addresses of all clubs, societies or organizations of which you are or have been a member. 7. List the names and address of all clubs, societies or organizations of which you are or have become a member since registering as a law student.

401 U.S. at 27.