

PREFACE TO THE 2020 SUPPLEMENT

This 2020 Update to *Collection Law, Debtor/Creditor Practice Procedure, Remedies*, Fourth Edition, contains analyses of new cases, statutes, rules and additional materials that will help prosecuting and defending in all types of debt collection proceedings.

Topics covered and material provided in this Pocket Part include the following:

- New Practice Tips on how to use trustee process and supplementary process to enforce foreign judgments that have been “filed” under the new *Massachusetts Uniform Enforcement of Foreign Judgment Act*
- Where enforcement of foreign judgment is sought by filing an action on that judgment (so as to obtain a Massachusetts judgment), interest on the new judgment will be determined under Massachusetts law
- The critical difference between seeking relief from *default...* and seeking relief from *default judgment*
- New requirements for Military Affidavit ... which must be filed with all requests for default judgment
- Valid contract “choice of law” provision may defeat Massachusetts 20% usury limit on interest damages
- Plaintiff’s attorney fees were not excessive even if “disproportionately” high compared to small amount of judgment damages.
- Interest added to contingent fee award must be computed by clerk from date of breach, if established
- No attorney fees awarded as sanction for attorney’s violation of Mass. R. Civ. P. 11 where “insufficient evidence of intent”
- Special burden on plaintiff to prove good service of process where defendant corporation asserts that person served at corporation’s principal place of business was not the person in charge.
- Revised list of exempt income and property issued by Trial Court...useful when proposing and negotiating agreed-upon payment orders
- Reach and apply relief sought by creditor in debtor’s action with third party ... to enjoin settlement between parties in that action

- Legal theories of piercing corporate veil and corporate successor liability successfully used to reach parties other than debtor corporation for payment of creditor's claim
- Remedy of imposing constructive trust is similar to action for fraudulent transfer ... except latter requires "bad motive"
- Case law on time limits for actions for personal injury or death against personal representative of a decedent – time limits based on date of death and on date when action accrued
- Using a firm name such as "and Associates" where there is only one attorney may violate the Fair Debt Collection Practices Act by causing a debtor to believe there are many attorneys
- Supreme Court decision that law firm engaged in no more than non-judicial foreclosures is not a "debt collector" under FDCPA
- No personal liability for court-appointed receiver for any loss or liability incurred by act or omission... except where gross negligence or willful misconduct involved
- Billing records of defendant in hands of a third party showing accounts receivable ... and certain funds of defendant held in escrow ... are not subject to trustee process
- New form seeking issuance of execution where original execution was lost
- New form of judgment for repossession after default

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