

Jurisdiction and Reciprocal Reporting

2011 Maine Unclaimed Property Holder Seminar

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Escheat in England

Escheat dates back to English feudal law

- If a tenant died without heirs the land reverted to his immediate lord
- If the lord could not be determined the land reverted to the King
- This system developed to assure continued performance of services by the tenant in consideration for the grant of land by the lord
- If no successor tenant existed to perform the services the land “escheated” to the lord

Bona Vacantia in England

Bona vacantia was a concept similar to escheat but applied to personal property

- If a person died without heirs the King could claim his personal property
- The King could claim certain personal property and hold it against all but the rightful owner
- If there were no rightful owner, or if no owner appeared, the King kept title to the property

Escheat and Bona Vacantia in America

- The concepts of escheat and bona vacantia were taken into American law after the Revolutionary War
- It was assumed that the states had the power to enact escheat laws as the successors to the right of royal sovereignty
- Bona vacantia, which arose from a lack of any owner claim to personal property, was a right asserted by the states incident to their general police powers

Escheat and Bona Vacantia in America *(continued)*

- English common law was adopted by all the American colonies and later by all American states except Louisiana
- The states began to enact escheat statutes applicable to real property in the 19th century
- By the late 19th century a few states had escheat statutes applicable to personal property

Escheat and Bona Vacantia in America *(continued)*

Early court decisions established 4 important principles

- The states and not the federal government were the successors to the English common law of escheat and bona vacantia
- Escheat is a valid exercise of the power to regulate the succession to property
- There is no distinction between a state's legislative power to claim real property (historic escheat) and abandoned personal property, tangible or intangible
- The states could legislatively expand the regulation of succession to property to include not only intestate succession but situations in which an owner could not be located or had apparently abandoned a claim to or was unaware of property

Modern Unclaimed Property Legislation

- All 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted unclaimed property laws
- Modern unclaimed property laws are primarily custodial in nature
- Most state unclaimed property laws are based on one of the Uniform Unclaimed Property Acts (1954/66, 1981, or 1995)

The Road from Escheat and Bona Vacantia to Modern Unclaimed Property Law

- A culture of personal property ownership grew
- The U.S. industrialized, capitalism thrived, and more and more people owned financial assets
- Financial assets went unclaimed and, over time, the laws of unclaimed property as we know them were developed

The Road from Escheat and Bona Vacantia to Modern Unclaimed Property Law *(continued)*

- Early cases involved property and parties located in one state
- In such cases, the courts held that the state was entitled to hold the property for the missing or unknown owner
- Eventually, cases arose involving competing claims between states to the same property
- These claims were ultimately resolved, and rules were established, by the Supreme Court

The Landmark Case of Texas v New Jersey

- Texas sued New Jersey and Pennsylvania in the US Supreme Court seeking a declaration of rights to claim unclaimed property held by Sun Oil Company
- Four other states intervened
- Each state claimed the property based on its contacts with Sun Oil (state of incorporation, offices located in the state, business conducted in the state, etc.)

The Landmark Case of Texas v New Jersey (*continued*)

The Supreme Court established priority rules for escheat

The Primary Rule: Property is payable to the state of the owner's last known address

The Secondary Rule: If there is no last known address, property is payable to the holder's state of incorporation

These rules are based on the Court's analysis that the owner is the creditor and the holder is the debtor in the underlying transaction

The Court Confirms the Priority Rules

Two subsequent Supreme Court cases affirmed the priority rules set out in Texas v New Jersey

- Pennsylvania v New York involved uncashed money orders
 - The holding in this case was subsequently overturned by Congress
 - Money orders, traveler's checks, and similar instruments are reportable to the place of purchase
- Delaware v. New York involved securities property held by banks and brokers in street name

Reciprocal Reporting

Property must be reported to the last known address of the owner, which may be in a state other than Maine, but holders may file all property with Maine in certain circumstances

- The other state(s) must be notified and must allow the reciprocal reporting
- The business must hold less than \$1000 or 10 items for owners in another state
- Tangible and stock properties must be reported to the other states directly

Questions





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