MODERN RATIONALES OF ESCHEAT

Although the principle of escheat is as ancient as the feudal law of tenures, in recent years it has experienced a rapid expansion as legislators and administrative officials awoken to its revenue possibilities. However, the rationales of modern escheat have received little exposition or clarification, and some authorities have confused modern escheat policies with their feudal predecessors. For example, a Pennsylvania¹ and an Oregon² case each decided the issue of whether a county can impose its inheritance tax on an estate which escheated to the state on the basis of whether the state took the property as sovereign or as ultimate heir, and both concluded that the state took as heir. However, they reached opposite results as to the taxability of the property. The Pennsylvania case held that the property was taxable, since the state as heir was subject to the same burdens as any other heir,³ while the Oregon case found the estate not taxable because the state took immediately as heir and public property is not taxable. Both courts, in part due to their respective state laws,⁴ failed to grapple with the relevant considerations. The state takes property of those who die intestate without heirs because there is no one else to whom it can go, but when the county claims part of the estate in inheritance taxes, that portion belongs to the county and is not truly ownerless. On the other hand, property escheated by the state may ultimately benefit the county, and also the county's powers are all delegated by the state; the nature of the state-county relations may indicate that the county cannot tax property taken by the state. In any event, the issue is very remote from the question of whether or not medieval lords seized property as heirs.

In order to clarify the rationales of modern escheat, the first part of this Note analyzes and evaluates the reasons for escheating property; the second part surveys and organizes the myriad of escheat legislation, with primary emphasis on the various types of property subject to escheat. Since the questions of situs of intangibles and jurisdiction over them have been left uncertain by the Supreme Court,⁵ and since these questions have

¹ Philadelphia v. Linton, 10 Pa. Dist. 329 (C.P. 1901).

² State Land Bd. v. Ransom, 158 Ore. 197, 75 P.2d 6 (1938).

³ Compare *In re Stack*, 29 Luzerne L. Reg. 252 (Pa. C.P. 1934). The court allowed county real estate taxes to be imposed on land taken by the state under a custodial escheat statute until the land was permanently escheated, on the ground that the land was not held for public purposes so long as heirs of the intestate could claim it.

⁴ Although an Oregon statute specifically provided that title to property of the intestate vests immediately in the state, the court discussed at length the theory that the state is an heir.

⁵ See *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961); *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948); *Security Sav. Bank v. California*, 263 U.S. 282 (1923).

been adequately covered elsewhere,⁶ they are treated here only to the extent that they bear directly on the main topic.

I. DEFINITION OF ESCHEAT

While no definition of "escheat" satisfies all authorities, they agree that the term does not include every transfer of property to the state; at least taxation, fines, eminent domain, and a gift or sale of property to the state must be excluded. The term escheat does not include the taking of property solely for purposes of state revenue, punishment of the owner when no particular property is specified, or the seizure of specific property solely for state use when the identity of the owner is irrelevant. In addition, escheat excludes the transfer of property to the state when the state has no power to take it by judicial or administrative proceeding, as in the case of a voluntary gift to the state.⁷ Two additional problems—whether the term includes statutes transferring possession but not title to the state,⁸ and whether statutes providing for the confiscation of property which is not ownerless or presumed ownerless are properly designated as escheat acts⁹—will be discussed. For the present, however, escheat may be defined as seizure by the state of property which has no owner.

II. RATIONALES

A. No Reasonable Claimant

When property is ownerless and no one could reasonably take it, escheat is clearly justified; the most common example is the estate of a person dying intestate and without heirs.¹⁰ While there are numerous rationales to justify escheat in these situations,¹¹ the best is that no reasonable alternative disposition has been proposed. Such situations are rare, however, and in most cases some person or entity holds the property or has a tenable claim to it. When such a claimant exists, some other rationale for escheat is necessary.

⁶ See, e.g., Lane, *Western Union v. Pennsylvania or Whose Mink Was Gored?*, 18 BUS. LAW. 311 (1962); 57 NW. U.L. REV. 484 (1962); 16 SW. L.J. 660 (1962); 34 TEMP. L.Q. 164 (1961); 23 U. PITT. L. REV. 1016 (1962).

⁷ But see COLO. REV. STAT. ANN. § 152-14-14(3) (1953). Some statutes specifically impose on the attorney general, escheator, or other officer responsible for bringing escheat proceedings a positive duty to bring such proceedings in all cases in which property has escheated or is escheatable. Others even allow private persons to institute escheat actions or sue to compel the escheator to institute such actions. When no duty to seize all escheated property is set forth, it has been held that the responsible official may choose what property to escheat. *State v. National State Bank*, 44 N.J. Super. 501, 130 A.2d 901 (Ch. 1957).

⁸ See text accompanying notes 16-20 *infra*.

⁹ See pp. 104-05 *infra*.

¹⁰ See note 102 *infra*.

¹¹ The view that the state is the ultimate heir was criticized in 85 U. PA. L. REV. 109 (1936).

B. Owner Protection

1. In General

The most significant rationale of modern escheat is that the state's custody protects the owner.¹² This applies only to statutes which permit the true owner to reclaim the property from the state; such statutes are called abandoned property acts or custodial statutes.¹³ Some of the custodial statutes allow claims to be advanced at any time after the state assumes custody,¹⁴ but others permit recovery only for a certain period after transfer to the state¹⁵—in effect, a statute of limitations on these claims. A sharp distinction is often drawn between custodial and permanent escheat statutes;¹⁶ this is influenced in part by the differing historical origins of escheat and *bona vacantia*, and the belief that *bona vacantia* is the predecessor of modern custodial statutes.¹⁷ However, the only significant difference between common-law escheat and *bona vacantia* is that the former applied to realty and the latter to personalty.¹⁸ Except for the protection rationale, permanent escheat and custodial statutes have many rationales in common, and some custodial statutes, particularly those

¹² See ARK. STAT. ANN. § 50-602 (Supp. 1961).

¹³ The escheator is often permitted to pay in his discretion claims he believes are valid. See, e.g., PA. STAT. ANN. tit. 72, § 504 (Supp. 1962). Only a few acts give the owner no other remedy. Most statutes provide for a judicial or administrative hearing when the claim has been disallowed by the escheator, in order to protect the rights of other possible claimants. See DEL. CODE ANN. tit. 12, § 1189 (Supp. 1962). The legislature can at any time provide an appropriation for the owner of escheated property, and in practice permanently escheated property may be returned. See 16 Sw. L.J. 660, 661 n.5 (1962). Nevertheless, the legislature is highly unlikely to return such property when the statute specifically provides that the owner may not recover it. On the other hand, when a regular procedure is established for repayment by the legislature, the legislature will probably pay any owners who appear. Thus, such statutes are properly classed as custodial. A few statutes allow recovery only upon a judicial determination. See, e.g., LA. REV. STAT. § 9:153 (Supp. 1962).

Some statutes allow the holder who paid the state to repay the owner and then secure reimbursement from the state. He may merely acquire the rights against the state of the person whom he pays, see PA. STAT. ANN. tit. 27, § 468(b) (1958), or he may be absolutely entitled to compensation by the state whether or not the person he has paid is the true owner. At least one statute, although relieving the paying holder of liability, requires him to defend any suit by the owner and provides for reimbursement by the state. N.J. STAT. ANN. § 17:34-53 (1963). Notice of the proposed payment of claims may be required in order to protect the rights of the true owner. See DEL. CODE ANN. tit. 12, § 1187 (Supp. 1962).

¹⁴ See, e.g., N.Y. ABAND. PROP. LAW § 1406; PA. STAT. ANN. tit. 27, §§ 443, 468 (1958).

¹⁵ See, e.g., CAL. CODE CIV. PROC. § 1430 (generally 5 years); N.J. STAT. ANN. § 2A: 37-28 (1952) (personal property; 2 years); PA. STAT. ANN. tit. 27, § 91 (1958) (want of heirs; 3 years), § 301 (1958) (unclaimed deposits; 10 years).

¹⁶ See Ely, *Pennsylvania Escheat Laws: Proposals for Revision*, 64 DICK. L. REV. 329, 331-32 (1960).

¹⁷ See Comment, 29 ROCKY MT. L. REV. 102, 103 (1956).

¹⁸ Another distinction is that the rule of strict construction of escheat statutes is based upon the fact that the true owner is permanently deprived of his property under absolute escheat, and the rule is therefore inapplicable to custodial statutes. *State v. Sperry & Hutchinson Co.*, 23 N.J. 38, 46, 127 A.2d 169, 173 (1956) (New Jersey Custodial Escheat Act construed to cover all money obligations, not just those specifically enumerated).

with a statute of limitations, include distinctive features of permanent escheat statutes. In addition, the practical effect of both types of statutes is similar; only a small percentage of property taken under custodial statutes is ever reclaimed,¹⁹ although some states reserve small funds for the payment of claims.²⁰ Therefore, both types of statutes are here included in the term "escheat."

The state is obviously the safest custodian of property; with its virtually unlimited taxing power, it is able to pay any claims.²¹ The custodial statutes truly protect the owner if any income or increase in the value of the property escheated is retained for the benefit of the owner. In a period of rising market values or general inflation, this can best be accomplished by the retention of the property intact; conversely, in a period of falling market values or deflation, the owner is best protected if the state converts the property into cash. However, despite current inflation, many statutes require the sale of the property escheated and the repayment to the owner of the sale price of the property.²² Also, the state's costs in escheating the property and selling it are usually deducted from the proceeds of the sale,²³ and administration expenses of the fund may be deducted. The owner will usually suffer when statutes provide that any increment or interest on the escheated property, whether held intact or converted into cash, shall be retained by the state.²⁴ If no separate provision is made for deduction of state costs, such interest may be viewed as covering the administration expenses of the state, but interest on the property is a poor measure of such expenses and usually represents profit to the state, unjustified by the protection rationale.

In addition to possible pecuniary loss, escheat may present procedural burdens to the reappearing owner.²⁵ To recover his property, the owner must at least prove his claim to an administrative official and often secure a court judgment, or even successfully petition the governor and state legislature.²⁶ This is more difficult than recovery of the property from the private holder who would retain the property in the absence of escheat. Thus, the principal protection afforded by escheat is the security of the

¹⁹ In New York, in the fiscal year of 1961-1962, \$12,646,972.45 was received and only \$573,938.35 was refunded. New York Abandoned Property Statement, April 1, 1961-March 31, 1962. In Virginia, only about 200 persons have reclaimed escheated property. Letter From A. M. Rucker, Jr., Administrator of Virginia Unclaimed Property Act, to the *University of Pennsylvania Law Review*, Sept. 28, 1962.

²⁰ See, e.g., ILL. ANN. STAT. ch. 49, § 23 (Smith-Hurd Supp. 1962) (minimum of \$25,000 must be kept in "Warrants Escheat Fund" for payment of claims); TEX. REV. CIV. STAT. ANN. art. 3272a, § 15 (Supp. 1962) (half of \$100,000 "Escheat Expense and Reimbursement Fund").

²¹ See 5 ZOLLMANN, BANKS AND BANKING § 3548 (1936).

²² See, e.g., N.Y. ABAND. PROP. LAW § 1403; PA. STAT. ANN. tit. 27, §§ 71-75 (1958).

²³ See, e.g., N.Y. ABAND. PROP. LAW § 1403(2).

²⁴ See, e.g., FLA. STAT. ANN. § 731.33 (Supp. 1962); N.Y. ABAND. PROP. LAW § 1405; *Marine Nat'l Exch. Bank v. State*, 248 Wis. 410, 22 N.W.2d 156 (1946).

²⁵ See statutes cited in notes 22-24 *supra*.

²⁶ See note 13 *supra*.

property in the hands of the state; if the property is virtually as safe in the possession of the private holder, protection of the owner does not warrant a transfer to the state.

When the holder is a private individual, the state is clearly a better custodian; an individual may become insolvent, negligently lose the property, or misappropriate it.²⁷ The protection rationale is especially significant in the escheat of unclaimed bankruptcy dividends, since assets are presumably insecure in the hands of a person who has just gone through bankruptcy. When the holder is a corporation or institution, however, the question of whether the owner is helped by escheat depends upon the circumstances surrounding the particular kind of property involved. Insurance of the property or regulation of the holder could afford the owner protection without escheat. The ordinary corporation lacks both protective features, and all statutes which provide for the escheat of unclaimed corporate stock or dividends are therefore custodial. Public utilities are strictly regulated and rarely become bankrupt, but funds held by them are uninsured; escheat of such funds is not clearly warranted, but is probably justified. Most property held by banks, trust companies, and safe deposit companies, however, is protected. Although protection of the depositor was formerly an important function of the numerous acts providing for the seizure of long neglected bank accounts, today the federal government insures most bank deposits,²⁸ banks are protected against bankruptcy,²⁹ and most states require the preservation of dormant accounts.³⁰ Thus, although the continued expansion of such acts can be predicted with confidence, they are not rationally supported by a policy of owner protection.³¹

2. Prevention of Taking by Third Party

The owner may be protected because escheat prevents acquisition of the property by someone else. For example, if the state does not escheat unclaimed dividends of a dissolved corporation, they will be divided among

²⁷ Even funds in the possession of a judicial or administrative organ of the state or local government are safer if transferred to the appropriate escheat fund, since such funds are susceptible to personal appropriation or loss by dishonest or negligent officials, particularly if held by a single person, such as a court clerk or sheriff. See *Lamberton Estate*, 352 Pa. 531, 43 A.2d 94 (1945); *Rosenfeld's Appeal*, 337 Pa. 183, 10 A.2d 570 (1940).

²⁸ See 64 Stat. 873 (1950), 12 U.S.C. §§ 1811-31 (1958), as amended, 12 U.S.C. §§ 1812-28 (Supp. IV, 1963).

²⁹ This is accomplished by means of strict regulation of banks. See generally *Pennsylvania Banking Code*, PA. STAT. ANN. tit. 7, §§ 819-1 to -1603 (1939), as amended, PA. STAT. ANN. tit. 7, §§ 819-2 to -1506 (Supp. 1962).

³⁰ A Texas provision, for example, prohibits the bank from transferring any dormant deposit to its profit or asset account so long as the deposit remains dormant. TEX. REV. CIV. STAT. ANN. art. 3272b, § 2 (Supp. 1962).

³¹ *But see* *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233 (1944); *Provident Institution for Sav. v. Malone*, 221 U.S. 660 (1911); *Umben v. Crocker First Nat'l Bank*, 203 P.2d 752 (Cal. 1949); *Taylor v. Western States Land & Mortgage Co.*, 77 Cal. App. 2d 869, 874-75, 176 P.2d 975, 978 (Dist. Ct. App. 1947); *Union Trust Co. v. Commonwealth*, 359 Pa. 363, 375-76, 59 A.2d 154, 160-61 (1948).

the stockholders who appear, since the corporation no longer exists.³² Likewise, if the funds held for unredeemed cemetery certificates are not escheated, they must be paid to the certificate owners who appear, since the cemetery corporation ordinarily is dissolved when the certificates are called for redemption.³³ But there is a high probability that some missing owners will appear later. The purchaser of a cemetery certificate is primarily interested in obtaining a family cemetery lot and only secondarily, if at all, concerned about making an investment. Therefore, he is unlikely to have any contact with the cemetery corporation until a death occurs in the family.

3. Notice—Procedural Due Process

Protection of the owner is also ensured by the notice requirements that must be complied with before the property can be taken; the notice may reach the owner and thus remind him of forgotten assets.³⁴ The notice required by the various statutes includes mailing to the last known address of the owner,³⁵ publication,³⁶ and posting.³⁷ The notice problems are similar to those in any in rem proceeding, such as attachment or garnishment. In the case of absolute escheat, procedural due process usually requires mailing to the last known address.³⁸ The due process requirements for custodial statutes are less strict, and very minimal notice, such as posting on the courthouse door, has been upheld.³⁹ However, a statute may require notice to the owner without providing for escheat. For example, a Missouri statute requires periodic notice by banks to the depositors of dormant

³² Cf. *Mayer v. Chase Nat'l Bank*, 165 F. Supp. 287 (S.D.N.Y. 1958) (share of unknown bondholders in judgment recovered by trustee escheats to state because known bondholders have no interest in such shares). Compare notes 42-43 *infra* and accompanying text.

³³ See text accompanying notes 157-58 *infra*.

³⁴ In California, for example, "newspaper publication has resulted in considerable response, either directly from the owner or from persons knowing the owner. In addition to . . . [the state's] efforts, there are numerous private investigators who make a business of locating owners and contracting with them for recovery of property." Letter From S. J. Cord, Chief of Division of Accounting, Controller of State of California, to the *University of Pennsylvania Law Review*, Oct. 11, 1962.

³⁵ See, e.g., KY. REV. STAT. § 393.110(2) (1962).

³⁶ Publication is usually for two or three successive weeks in a newspaper of general circulation in the county where the property is located. The notice includes the name and last known address of the owner, except in special circumstances. See, e.g., PA. STAT. ANN. tit. 27, § 281 (1958). Often no notice need be published of a fund less than a certain amount, unless it is in the interest of the owner or the state. See, e.g., DEL. CODE ANN. tit. 12, § 1183 (Supp. 1962) (minimum of \$50); PA. STAT. ANN. tit. 27, § 465(c) (1958) (minimum of \$50); TENN. CODE ANN. § 56-242 (Supp. 1962) (minimum of \$50). If the minimum amount is less than, or equal to, the cost of publication, the lack of notice clearly does not violate procedural due process. However, publication probably costs less than \$50 for one unclaimed fund, and thus the statutes may be unconstitutional.

³⁷ See N.C. GEN. STAT. § 116-24 (1960) (notice on county courthouse door).

³⁸ See *Application of People*, 138 F. Supp. 661, 669 (S.D.N.Y. 1956). Cf. *Walker v. City of Hutchinson*, 352 U.S. 112 (1956) (condemnation proceeding).

³⁹ *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 243-46 (1944).

bank accounts, but contains no escheat provision.⁴⁰ On the other hand, the holder may be more diligent in his efforts to locate the absent owner when the state will take the funds if he fails.⁴¹

C. Unjust Enrichment

Another rationale is that escheat prevents unjust enrichment or windfalls. However, the doctrine of unjust enrichment generally demands the relinquishment of property wrongfully acquired or of property to which another has a superior right. The continued possession of rightfully acquired property when the owner cannot be found does not fit the usual concept. Thus, the retention of unclaimed funds could be treated as one of the benefits of the holder's business; such amounts enhance the holder's profits and might be reflected in lower rates to the public or higher dividends or interest to stockholders or other owners who do not abandon their property. For example, if insurance companies were permitted to retain unclaimed proceeds of policies, they could charge lower premiums. On the other hand, the companies might fail to reduce premiums appreciably and retain the unclaimed funds as profits.⁴² If unclaimed telegraphic money orders were not escheated, Western Union might reduce its rates and thus effect a saving to those more careful with their money. However, the rates are already very low, and such abandoned money, if not escheated, would probably become part of earned surplus rather than a current expense fund. Thus the ultimate combatants here are the state and the stockholders, and there is no particular reason why the latter should benefit instead of the general public.

Nevertheless, even when there is no affirmative reason to let the holder keep the abandoned property, he should not be deprived of it solely because otherwise he will get "something for nothing."⁴³ The windfall argument justifies escheat only when the holder has committed some wrong or done something against public policy, or when escheat will encourage the holder to act more in the owner's interest. For example, a public utility could successfully refuse to perform part of its contract with a missing consumer if the state did not escheat unclaimed deposits for services never rendered, and could charge excessive rates with some degree of impunity if the state failed to seize unclaimed overcharges ordered refunded. Escheat of un-

⁴⁰ MO. ANN. STAT. §§ 362.390-95, 363.650-60 (1952) (banks and trust companies); see TEX. REV. CIV. STAT. ANN. art. 3272b, §§ 3-4 (Supp. 1962) (depository to keep dormant bank accounts for safe-keeping and advertise annually if not escheated by state).

⁴¹ See p. 102 *infra*.

⁴² The windfall theory has been urged as the basis of statutes providing for the escheat of insurance proceeds. See 58 YALE L.J. 623, 634-35 (1949).

⁴³ The greater importance of the revenue and safe custody rationales can be seen in provisions that the state will not escheat ownerless property with a value less than a given amount. See VT. STAT. ANN. tit. 8, §§ 861-63 (1958) (bank may transfer unclaimed bank accounts of less than \$5 to its profit account). If the state were primarily interested in preventing windfalls, it would escheat such property, although the escheat would benefit neither state nor owner.

claimed gambling proceeds is justified by the public policy against gambling of almost all states.⁴⁴ Certain types of gambling, particularly horse racing, are permitted in a number of states only because they constitute a lucrative source of tax revenue. Thus, insofar as the public interest is concerned, the *raison d'être* of allowing gambling is to raise revenue for the state; it is therefore desirable that the state endeavor to take a large share of the gambling proceeds. The gambling operator, who is permitted to perform socially undesirable acts primarily for the purpose of enhancing the state's revenue, should not be able to retain funds due another when sought by the state. Even when retention of the property by the holder violates no policy of the state, the threat of escheat may induce the holders to attempt to find the owner, particularly when the owner might desire to leave his property—such as bank deposits—with the holders. Also, in the absence of escheat, certain holders might tend to extract larger sums from owners in the hope that they will never claim them. For example, public utility companies might demand higher deposits, corporations might deduct larger amounts from employees' salaries for the purchase of savings bonds, and pledgees might require greater security in the expectation that the depositor or debtor might disappear.

D. Commerce

Still another rationale of escheat is that it prevents the disuse of property and returns it to commerce. This rationale applies only if the property is inactive in the hands of the holder, and therefore is important in very few cases, for example, bailments, particularly safe-deposit box rentals. Most funds subject to escheat statutes constitute either trusts or debts, and in both cases the funds are invested while held by the trustee or debtor.

E. Revenue

1. In General

Probably the most controversial rationale is that escheat obtains revenue for the state. This is generally the foremost concern of legislators, although often unexpressed in statements of policy.⁴⁵ The importance of this rationale varies with the different types of escheat statutes. When the holder is unlikely to abandon certain property, the state gains little revenue from an escheat statute. For example, the amount recovered by the escheat of fiduciary funds is undoubtedly small, except in cases where the holder is a trustee in bankruptcy or on the dissolution of a corporation. The will or deed of trust often provides for distribution of the principal or interest

⁴⁴ Cf. *Ciampittiello v. Campitello*, 134 Conn. 51, 54 A.2d 669 (1947) (plaintiff's claim for share of gambling proceeds from brother's estate disallowed).

⁴⁵ See Garrison, *Escheats, Abandoned Property Acts, and Their Revenue Aspects*, 35 Ky. L.J. 302, 314-17 (1947); Note, 65 HARV. L. REV. 1408 (1952).

in the event that the beneficiary cannot or will not take. There are usually very few beneficiaries as compared, for example, with the number of depositors in a bank, or shareholders and creditors of a bankrupt corporation. In addition, the relationship between a trustee and beneficiaries is such that the trustee is unlikely to lose track of them, and a trustee has a higher duty than the ordinary holder to try to find the owner. On the other hand, bank accounts and insurance proceeds constitute very lucrative sources of escheat revenue,⁴⁶ since a large number of these funds are abandoned. The average bank depositor or insurance policyholder is not likely to have any special business acumen and may forget about his property; also the amount of individual bank deposits is likely to be small. Usually very little property is found in safe deposit boxes,⁴⁷ since the depositor of valuable property less frequently forgets about his deposit and often has an account in the bank against which the box rentals may be charged.

The revenue rationale has merit to the extent that it represents a desire to use abandoned or ownerless property for the common good rather than leave it with whoever may happen to possess it.⁴⁸ In almost every state, most escheated property is deposited in the common school fund;⁴⁹ sometimes such property is used for the community where the property is located or the holder resides.⁵⁰

⁴⁶ In many states dormant bank deposits constitute the largest single source of escheated property. In California, \$1,641,161.53 out of a total escheat of \$3,844,797.38 was derived from unclaimed deposits in banking and financial organizations, including certified checks, trust deposits, etc. Statement of Receipts, Disbursements and Cash Balance—Uniform Disposition of Unclaimed Property Act, 1961-62 Fiscal Year. In Hawaii, of a total escheat of \$19,505 for the fiscal year 1961-1962, inactive bank deposits provided \$18,062. Letter From Nane A. Aluli, Deputy Attorney General of Hawaii, to the *University of Pennsylvania Law Review*, Oct. 16, 1962. New York received \$9,337,148.37 from banks out of a total escheat of \$12,626,972.45 for the fiscal year 1961-1962, although this figure is about \$8,000,000.00 higher than for the average year due to the shortening of the dormancy period by statute. Letter From J. J. Mullens, Assistant Director, Department of Audit and Control of New York, to the *University of Pennsylvania Law Review*, Oct. 4, 1962. In Nevada, most seized property is apparently abandoned bank accounts. See Letter From Francis P. Finnegan, Legal Research Assistant, Department of Attorney General of Nevada, to the *University of Pennsylvania Law Review*, Oct. 18, 1962. In Virginia, the "vast majority" of amounts received consists of dormant bank accounts. Letter From A. M. Rucker, Jr., Administrator of Unclaimed Property Act of Virginia, to the *University of Pennsylvania Law Review*, Sept. 28, 1962.

⁴⁷ See *State v. National State Bank*, 44 N.J. Super. 501, 130 A.2d 901 (Ch. 1957) (nothing of substantial value in safe deposit boxes opened by bank, although bank had lien of over \$3,500 for unpaid rentals).

⁴⁸ See ARK. STAT. ANN. § 50-602 (Supp. 1961); *State v. United States Steel Corp.*, 22 N.J. 341, 359-60, 126 A.2d 168, 178 (1956).

⁴⁹ See, e.g., IDAHO CODE ANN. § 33-1002 (1948); IND. ANN. STAT. § 49-2716 (1951); IOWA CODE ANN. § 302.1(3) (1949); KAN. GEN. STAT. ANN. § 59-902 (1949). In a few states escheated property is transferred to the general fund of the state. See, e.g., MASS. GEN. LAWS ANN. ch. 29, § 46A (1961). In North Carolina, all escheated property goes to the University of North Carolina. See generally N.C. GEN. STAT. §§ 116-20 to -26 (1960).

⁵⁰ See N.D. CENT. CODE § 6-08-24.1 (Supp. 1961) (escheated bank deposits go into county welfare fund of county in which bank is located); MD. ANN. CODE art. 46, § 47 (1957) (escheated land goes to city or county where land lies).

2. Conflict with Other Policies

a. Statute of Limitations

A serious problem often created by escheat statutes which are based upon the revenue rationale is interference—usually unintentional—with other state laws or policies. Although the state succeeds only to the rights of the owner who has presumptively abandoned his property or died intestate without heirs,⁵¹ most escheat statutes⁵² and judicial decisions⁵³ dealing with the statute of limitations have provided that the limitation period on the owner's claim against the holder does not run against the state. The majority hold that the statute of limitations gives the holder no substantive right, and they argue that the purpose of the statute is to protect the holder against spurious claims, *i.e.*, loss of evidence by the holder as to whether a claimant is the true owner. There is no reason to apply the limitation period to the state, which is not seeking to prove its ownership, but merely to take property which has not been claimed.⁵⁴ The minority, however, view the statute of limitations as protecting the holder against loss of evidence needed to prove that the holder himself owns the property⁵⁵ as a defense against all claimants. Therefore, the

⁵¹ See *State v. Sperry & Hutchinson Co.*, 56 N.J. Super. 589, 604, 153 A.2d 691, 700 (App. Div. 1959), *aff'd*, 31 N.J. 385, 157 A.2d 505 (1960).

⁵² See, *e.g.*, N.C. GEN. STAT. § 116-23.1(a) (1960).

⁵³ See, *e.g.*, *Lamberton Estate*, 352 Pa. 531, 43 A.2d 94 (1945).

⁵⁴ See p. 96 *supra*.

⁵⁵ New Jersey is the leading exponent of the minority rule. This view often makes escheatability turn on whether the fund sought to be escheated is a trust or a debt, since the statute of limitations does not apply to a trust. This is the sole question in a comparatively vast amount of litigation engendered by the New Jersey rule. See *State v. Atlantic City Elec. Co.*, 23 N.J. 259, 128 A.2d 861 (1957). There is no good reason why trust property should be escheatable and debts should not; escheatability should turn rather on a weighing of the various rationales. However, after the leading case of *State v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950), in which the statute of limitations was held to bar the escheat action, the New Jersey legislature took various steps to prevent the statute from barring the state. The period of dormancy was drastically reduced so that it was much shorter than the period of limitations. The "primary purpose" of the Custodial Escheat Act was to enable the state to possess unclaimed funds before the expiration of the period of limitations. See *State v. Union Bag-Camp Paper Corp.*, 35 N.J. 390, 393, 173 A.2d 290, 292 (1961). Of course, the statute of limitations itself is a legislative creation, and the simplest course was to provide that it did not run against the state. In *State v. American-Hawaiian S.S. Co.*, 29 N.J. Super. 116, 136-39, 101 A.2d 598, 609-10 (Ch. 1953), the New Jersey Superior Court upheld a scheme whereby the statute of limitations ran against both the owner and the state until the end of the dormancy period in the escheat statute. Then the state's cause of action to escheat arose, and no statute of limitations applied to this cause of action. However, in *State v. United States Steel Corp.*, 22 N.J. 341, 353, 126 A.2d 168, 174 (1956), the court said in dictum that the statute continued to run until an order to show cause why the property should not escheat was served on the holder; this implies that the state's cause of action does not automatically accrue. Nevertheless, this should present little problem for the state in the enforcement of its escheat statutes, because the court held that the holder's failure to report the unclaimed funds as required by statute equitably estopped it from asserting the defense of the statute of limitations. *Id.* at 359, 126 A.2d at 178. "Where, however, the bar [of the statute of limitations] is used primarily as a sword rather than a shield and by one who has been responsible to disclose the actionable essentials in the face of a duty to speak, factors of vicarious enrichment become a dominant consideration which we are prone to remedy in equity and good conscience." *Ibid.*

statute should run against the state, which can take only ownerless property. However, in many types of escheat the holder almost invariably has no tenable claim to the property. For example, a reasonable claim by a trust company to the beneficial interest in trust funds in its hands is virtually inconceivable, and under either the majority or minority view the trust company would not be injured by escheat after the statute has run against the owner. Thus, except when the holder could have a valid claim to the property and the minority view prevails, permanent escheat does not conflict with the statute of limitations.

Custodial escheat conflicts with this policy, however, under either majority or minority view, if claimants are permitted to recover the escheated property from the state after the limitation period has expired. The policy of the statute of limitations demands that the period run against the owner despite escheat, since the dangers of loss of evidence as to the identity of the true owner are magnified by the fact that state officials have no first-hand knowledge of the holder's obligation. Furthermore, when the statute has run prior to the state's taking, custodial escheat will produce unreasonable distinctions between various owners because obviously property can escheat only if the owner is missing at the time of transfer to the state. Thus, the owner who vanishes and then reappears after the statute has run but before the property has escheated—perhaps because he received notice of the proposed escheat—is in a worse position than the owner who has not received actual notice of the escheat proceeding and does not appear until the property has escheated. Since the state is seldom able to prove actual notice, he can deliberately keep out of sight until the property has been taken by the state and then come forward and claim it. Also, spurious claimants may find it worthwhile to wait until the state has seized the property before pressing their claims, even though the holder is required by many statutes to give the state all pertinent information relating to the escheated fund. When the statute has run before escheat, recovery should be denied to any claimant. However, this in effect converts the custodial statute into a permanent escheat statute; and, when the sole rationale of the escheat statute is owner protection, the statute of limitations should bar escheat altogether, since owner protection can never support immediate absolute escheat. When the statute of limitations has not run at the time of transfer, escheat cannot be barred; but, regardless of the escheat statute's rationale, a claimant's right to recover should terminate at the end of the limitation period, even though the recovery period of the custodial statute is longer.

b. Freedom of Contract

Another policy which escheat law may contradict is that of freedom of contract. The holder of property otherwise subject to escheat may provide by contract with the owner that if the property is unclaimed for a certain period shorter than the statutory escheat period, the property shall

belong to the holder.⁵⁶ In *State v. Jefferson Lake Sulphur Co.*,⁵⁷ the board of directors of the company had adopted a resolution providing that every dividend unclaimed for three years reverted to the corporation; the statutory escheat period was five years. The court said that the escheat statute represented the public policy of the state to take unclaimed dividends for the common good,⁵⁸ that this public policy was part of the contract between the corporation and its stockholders, and that the resolution was contrary to public policy and therefore *ultra vires*.⁵⁹ The court also expressed concern that the corporation and the state legislature might engage in an "unseemly race" in which each would try to make its period shorter than that adopted by the other. However, the court stressed the fact that the sole purpose of the Jefferson Lake resolution was an attempt to avoid escheat;⁶⁰ when a charter provides for reversion to the company for a valid corporate purpose, the provision might be upheld, despite the resulting circumvention of the escheat law.⁶¹ By basing its holding on the intent to evade the escheat law rather than on a public policy of protecting stockholders from contracts which provide for forfeiture of their dividends to the corporation, the court ignored the protection rationale and strongly emphasized the revenue rationale. Since the statute in *Jefferson Lake* was custodial, ignoring the protection rationale placed the shareholders in a position analogous to that of an owner against whom the statute of limitations has run. The holding apparently does not require the corporation to pay a shareholder who reappears after the expiration of the company's three-year period but before the property escheats, although the corporation probably would do so. The stockholder who files a claim after the fifth year can recover his dividend from the state and thus may be in a better position than the shareholder who appeared earlier.

3. Moral Obligation

The revenue rationale more strongly justifies escheat when the missing owner is morally indebted to the government for specific benefits received without compensation. The clearest application of this rationale is found in statutes providing for the escheat of funds held by state institutions for

⁵⁶ See Note, 65 HARV. L. REV. 1408, 1409 (1952).

⁵⁷ 36 N.J. 577, 178 A.2d 329, *appeal dismissed and cert. denied*, 370 U.S. 158 (1962).

⁵⁸ For a criticism of the court's reference to public policy, see 24 U. PRR. L. REV. 193 (1962).

⁵⁹ This was an alternate holding; the court first held that there was no valid contract with the stockholders providing that unclaimed dividends revert to the corporation.

⁶⁰ *State v. Jefferson Lake Sulphur Co.*, 36 N.J. 577, 591, 596, 178 A.2d 329, 336, 338 (1962).

⁶¹ See 38 NOTRE DAME LAW. 99 (1962). The writer suggests that in the case of a valid contract between the corporation and the stockholders, escheat might impair the obligation of the contract. *Id.* at 102.

departed patients who did not fully pay for the services obtained. The moral obligation is reflected in the provisions of some of the acts that the funds escheated be used for the benefit of the particular institution that held them;⁶² that the unclaimed period is short, ranging from one⁶³ to three years;⁶⁴ and that the statutes generally provide for absolute escheat after a short period. A federal statute provides for the escheat of unclaimed estates of veterans who die in veterans' homes intestate and without heirs.⁶⁵ The act is not fully justified by the moral obligation rationale, however, since the right to live in a veteran's home may be considered part compensation for services performed and an inducement to enlist. Also, the act covers the veteran's entire estate, not just amounts deposited with the home or received from the federal government, such as pensions.⁶⁶ Nevertheless, Congress expected the escheated amounts to be small, since a veteran with any financial means would be unlikely to enter a home.⁶⁷ More important than the moral obligation rationale is the protection of the veteran's heirs; the federal statute is purely custodial, and thus their right to recover is not cut off, as it might be under state statutes that would apply in the absence of the federal statute. This is especially important when the veteran has been sent by the government from his domicile to a home in a distant state, since the heirs may not learn of his death until years later and may be unfamiliar with the laws of the foreign state.

F. Undue Accumulations

Escheat is also said to prevent undue accumulations. Without escheat, most unclaimed funds would be retained by the holder for the owner indefinitely, and interest on the funds would be added to them. Although the property is in commerce, no one is receiving any direct benefit from the interest, and the state may be losing tax revenue otherwise derived from the interest payments. These concerns, together with a desire to prevent a decedent's "dead hand" from controlling the disposition of property long after his death, have led to the Rule Against Perpetuities for private trusts and the so-called "Thellusson" acts for charitable trusts. However, escheat of the entire fund is not the only way to avoid undue accumulations. Heavy taxation of the interest, for example, would restrict the fund's growth without disturbing the principal. Escheat of only the interest on the interest would leave the principal and the interest intact for the owner while preventing undue accumulations.

⁶² See IOWA CODE ANN. § 218.68 (1949); MO. REV. STAT. § 202.060 (1962); N.D. CENT. CODE § 37-15-16 (1960).

⁶³ See FLA. STAT. ANN. § 965.08(4) (Supp. 1962); N.D. CENT. CODE § 37-15-16 (1960); R.I. GEN. LAWS ANN. § 40-2-11 (1956).

⁶⁴ See MD. ANN. CODE art. 59, § 45 (1957).

⁶⁵ 72 Stat. 1259, 38 U.S.C. §§ 5220-28 (1958), as amended, 38 U.S.C. § 5226 (Supp. III, 1962).

⁶⁶ See 72 Stat. 1259, 38 U.S.C. § 5220(a) (1958).

⁶⁷ 87 CONG. REC. 5202-04 (1941).

1. Holder Protection

Escheat may be needed to relieve the holder of abandoned property and release him from his duties in regard to it. Especially in the case of funds in the hands of officers of the court, such as administrators of decedents' estates and trustees in bankruptcy, escheat is a necessary alternative to a wasteful and onerous duty to keep the estate open indefinitely.

G. State Security and Public Protection

1. In General

A frequent argument in favor of escheat is that it protects the state or the public. A great variety of provisions manifest this rationale, but all share the common feature that the property is not ownerless in fact but is declared ownerless by operation of law. However, these statutes do not specifically state that the property is ownerless, but merely provide for confiscation by the state. This has led some writers to limit the term "escheat" to the taking of property when the owner has abandoned it or has died intestate without heirs, or when a presumption has arisen that either event has occurred.

Nevertheless, all authorities agree that the seizure of property because the owner is in a class which is not permitted to own any or a certain kind of property constitutes escheat. Feudal lords granted land to their subjects for the purpose of obtaining their service and homage in return; thus the courts held the fee subject to two implied conditions, and the breach of either would cause the fee to revert to the original grantor, the lord. One condition was that the ownership of the fee could not lapse so that there was no one to render service to the lord. This condition was broken upon the death of the owner without heirs capable of taking. Incapable heirs included bastards, monsters, and aliens; they were incapable of taking because they were considered unable to serve their lord. In medieval times, the prohibition against inheritance by any alien was reasonable, since loyalty to the sovereign was important to the welfare of the state and alliances with other nations were usually temporary and for limited purposes. Today, however, the rationales have changed; except for wartime emergency measures, such as the Trading With the Enemy Act, the concern no longer is the disloyalty of the alien. One present motive is to treat citizens of another nation the same as that nation treats American citizens,⁶⁸ in order to encourage foreign countries to allow inheritance and ownership by U.S. citizens. Another purpose is to prevent property from going into nations

⁶⁸ This is the rationale of the reciprocity statutes, which generally provide for absolute escheat. However, a California court has applied the common-law rule that when an alien heir is disqualified his share passes into the residue of the estate and escheats only if there is no other heir. *Estate of Michaud*, 53 Cal. App. 2d 835, 128 P.2d 595 (Dist. Ct. App. 1942).

whose governments will probably confiscate it.⁶⁹ This promotes the security of the state and prevents the unjust enrichment of foreign governments.

The feudal rationale of service to the lord has vitality in a few rare cases in which property is escheated because it is not being used for the positive benefit of the state or the public. These are primarily cases in which land is ceded by the state on the condition that the grantee make some particular public use of it.

The second implied condition in a feudal grant of land was that the owner remain loyal to the lord. This condition was breached upon conviction of treason or other felony. Such a conviction resulted in the attainder or "corruption of the blood" of the offender, and he became an obstruction in the chain of inheritance. This doctrine resembled the Saxon doctrine of "forfeiture," by which the property of a convicted felon could be seized by the Crown as part of his punishment. The United States Constitution has alleviated the harsh effect of attainder on the traitor's heirs by prohibiting forfeitures for treason except during the life of the person convicted.⁷⁰ Although the importance of forfeitures has greatly declined, the policy of punishment or deterrence of criminals is still found occasionally. A few statutes provide for the seizure of specific property illegally used. For example, the purpose of an Ohio statute providing for the confiscation of any device, such as a gun or trap, used to take wild animals in violation of the game laws⁷¹ is to prevent the illegal killing of such animals. The statute is also intended to prevent future illegal killings by use of that device.

Acts which prohibit corporations or religious associations from holding more real estate than is necessary for their business purposes have ancient statutes as their models. Originally this type of statute was intended to restrain the power of the Church. Modern rationales include the promotion of land ownership by the occupant, the discouragement of land speculation, the prevention of monopolies in land,⁷² and the avoidance of tax revenue losses due to the extensive ownership of tax-exempt lands by religious organizations. These policies are reflected in the fact that some of the statutes apply only to rural or farm lands and some only to religious associations.⁷³

The confiscation of property illegal per se, such as narcotics or gambling devices, is generally not termed escheat. The policies in this area are varied, and a treatment of them will not be attempted here.

2. Escheat From Third Parties of Property Which Is Not Ownerless

The force of the rationale of state and public protection is demonstrated in instances in which escheatable property has been conveyed from the

⁶⁹ See *Sobko Estate*, 88 Pa. D. & C. 76 (Orphans' Ct. 1954). The purpose of these statutes is to protect the alien heirs, and such statutes are purely custodial. See generally Chaitkin, *The Rights of Residents of Russia and Its Satellites To Share in Estates of American Decedents*, 25 So. CAL. L. REV. 297 (1952).

⁷⁰ U.S. CONST. art. III, § 3.

⁷¹ OHIO REV. CODE § 1531.13 (1954).

⁷² See MISS. CODE ANN. §§ 4088, 4108 (1956).

⁷³ E.g., KY. REV. STAT. § 273.090 (1962).

incapable holder to an innocent third party before escheat proceedings begin. In *Texas Co. v. State ex rel. Coryell*,⁷⁴ the state unsuccessfully sought to escheat land on the ground that the corporation which had sold the land to the present owner had violated a state statute which forbade corporations from holding such real estate. The court decided the case on the basis of whether the land had been escheated or was merely escheatable when the corporation took title,⁷⁵ rather than looking to the policies behind the escheat statute. In this case the court ruled in favor of the purchaser, a result which lessens the effectiveness of the state policy prohibiting corporations from holding real estate. Even if the title were only voidable, the state could recover from the purchaser on a theory that he is not a bona fide purchaser for value. He is charged with notice of the statute, and therefore might be held to constructive knowledge that the corporation held the land illegally. It might be reasonable to impose upon the purchaser the burden of investigating the nature of the corporation, the nature of the land, and the amount of land held by the corporation to determine whether the statute is violated. However, if such an investigation would not reveal the violation, he is a bona fide purchaser and should be allowed to keep the property. He is nevertheless not injured if he can recover the purchase price from the corporation. If the corporation's title was void, he undoubtedly has a cause of action against the corporation under the warranties of title in the ordinary deed. Thus, he will be injured only if the corpora-

⁷⁴ 198 Okla. 565, 180 P.2d 631 (1947).

⁷⁵ The majority held that the corporation had acquired a voidable title, but had conveyed a good title to the owner, since title had not been voided by the state. *Id.* at 570-71, 180 P.2d at 637. The minority contended that the statute prohibited the acquisition of title as well as the holding of it, and that title passed directly to the state upon the purported purchase by the corporation. *Id.* at 576, 180 P.2d at 643 (dissent). Therefore, the corporation had no title to convey to the purchaser. The majority opinion appears to distort the terms of the statute by declaring, in effect, that a corporation can acquire land although the statute specifically forbids it to do so. Compare Ky. REV. STAT. § 381.300 (1962). That statute allows the state to escheat the real estate of an alien only after the expiration of eight years from the time he acquires title, and thus clearly permits him to acquire a title merely voidable by the state after eight years. See also KY. REV. STAT. § 271.145 (1962) (corporation can hold real estate for only five years).

However, both majority and minority in *Texas Co.* saw the issue as a technical question of when title passes to the state. The various statutes and judicial decisions differ as to whether the property escheats immediately upon the happening of the event which gives rise to the state's claim to escheat, see IND. ANN. STAT. § 3-2013 (1946) (legal title deemed to be in state from time of escheat), or only upon a judicial or administrative judgment that the property is escheated, see ILL. ANN. STAT. ch. 6, § 5 (1941) (title to lands subject to escheat because owned by aliens released, provided that no proceedings begun to enforce escheat). Under the former view, the judicial decision is that the property has escheated; under the latter, the property is merely escheatable and the judicial determination is that the property is thereby escheated. However, there is no procedural difference between the two views—some action must be brought to transfer possession to the state in either case—and there is no substantive difference except when the owner has disposed of the property prior to the escheat proceeding. A resolution of such a case should rest not on the theoretical question of when title passes to the state, but on a weighing of the two policies involved. The court should seek to deter corporations from buying land while at the same time protecting innocent purchasers. The minority in *Texas Co.* is in harmony with the state policy to keep land out of corporate hands, while the majority affords corporations a successful means to evade the statute. See 198 Okla. at 577, 180 P.2d at 643 (1947) (dissent).

tion is judgment-proof, although he is burdened with the expense and trouble of two suits. A better procedure would be a direct punitive action by the state against the corporation for a sum equivalent to the sale price or value of the land when sold by the corporation, whichever is higher.

III. CONSTITUTIONAL REQUIREMENT THAT PROPERTY BE OWNERLESS

The various escheat rationales are relevant only when the property is ownerless; escheat of property which has an owner constitutes a deprivation of property in violation of the fourteenth amendment, in the absence of a valid statute prohibiting a particular type of owner from acquiring or holding a certain kind of property. The substantive due process issue turns on the provisions of the statute involved, and the Supreme Court has determined the constitutionality of only a few types of provisions;⁷⁶ but, nevertheless, some general principles may be discerned. A state cannot take property by absolute escheat without a judicial determination that the owner has died intestate without qualified heirs or has abandoned the property, except when property is declared ownerless by operation of law. These determinations of fact may usually be made on the basis of statutory presumptions⁷⁷ which shift the burden of going forward to the holder or claimant. The substantive due process requirements for custodial statutes are less strict; no judicial determination of fact is necessary, but there must be a reasonable presumption of the fact that would be determined by a court under an absolute escheat statute. The holder may assert the due process rights of the true owner.⁷⁸

Every permanent escheat statute satisfies the judicial decision requirement either by expressly providing therefor or by limiting the applicability of the statute to funds under the jurisdiction of a court.⁷⁹ Thus, the Pennsylvania provision for the escheat of trust funds, which applies only to fiduciaries under the control of a court, and the statutes providing for the escheat of unclaimed bankruptcy dividends or unclaimed assets of a dissolved corporation are undoubtedly constitutional. Since in the latter case

⁷⁶ See *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948); *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233 (1944).

⁷⁷ See TEX. REV. CIV. STAT. ANN. art. 3272b, § 7 (Supp. 1962) (owner of bank account dormant for seven years presumed to have died intestate and without heirs); WIS. STAT. ANN. § 220.25(2) (1957) (owner of bank account dormant for twenty years presumed to have died intestate without heirs or to have abandoned it).

Expiration of the statutory unclaimed period gives rise to a presumption of death or abandonment, but does not affect the substantive law of title to the property. See *State v. Phoenix Sav. Bank & Trust Co.*, 60 Ariz. 138, 141-42, 132 P.2d 637, 639 (1942). Thus, the state must allege that the owner is unknown or unlocatable, not merely that the property has remained unclaimed for the statutory period.

⁷⁸ The overwhelming majority of statutes relieve the holder of any liability to the owner of the property after transfer to the state; so the holder cannot object to escheat on the ground that a third party has a claim to the property. See, e.g., N.Y. ABAND. PROP. LAW § 1404(2).

⁷⁹ The intestacy escheat statutes satisfy due process, since the absence of heirs is generally determined by a probate court in its regular proceedings. See IDAHO CODE ANN. § 15-1329 (1948).

the bankruptcy court has control over the whole proceeding, the declaration of abandonment is always by court order—even though escheat to the state is often not considered a part of the dissolution or bankruptcy proceeding and the escheat action may be brought in another court.

Under almost all statutes, the presumption of abandonment appears reasonable. This is especially so when the owner fails to fulfill an obligation to the holder as consideration for the return of the property held, and the property is likely not to exceed greatly the amount of the payment. For example, the presumption of abandonment of the contents of a safe deposit box by a lessee who fails to pay the rent for a given period is reasonable, since he probably considers the contents not worth the payment of rent.⁸⁰ Likewise, the debtor who fails to pay his debt has probably abandoned the collateral deliberately.

The reasonableness of the presumption of abandonment may depend upon the length of the "unclaimed period," the specified period of time during which the owner must be unknown or not located in order to give rise to the presumption. This period varies greatly according to the type of property involved. When the parties intend that property shall be transferred to the owner very soon after an obligation becomes due or after the holder and owner have entered their relationship, a short unclaimed period is reasonable. For example, little time need elapse in order to give rise to a reasonable presumption of abandonment of unclaimed parimutuel winnings. Bets are almost always placed the day of the race, and the bettor will know almost immediately whether money is due to him or not. Thus, the most reasonable explanation for his failure to claim his money is that he has deliberately abandoned it and not that he has forgotten it or moved away. The shortness of the unclaimed period in a number of bankruptcy and dissolution escheat statutes may be justified on several grounds. The claimant is usually a businessman or other person who might reasonably be expected to use sound business judgment in looking after his financial affairs. Prolonged litigation is undesirable; courts are generally anxious to terminate dissolution proceedings as rapidly as possible and prevent the tieup of corporate funds for long periods.⁸¹ Also, notice of the proceeding is usually sent to creditors and shareholders at some stage before notice of the final decree. On the other hand, most statutes providing for the escheat of dormant bank accounts have adopted an unusually long unclaimed period—a recognition of the fact that many depositors intend their deposits to constitute a long term investment and consider their money safe indefinitely in a bank. Nevertheless, no court has yet held an escheat statute unconstitutional because the unclaimed period was too short to support a presumption of abandonment, although the courts have indicated that some unclaimed period must be provided in the statute.

⁸⁰ See note 47 *supra* and accompanying text.

⁸¹ See *Girard Trust Co. v. Commonwealth*, 367 Pa. 223, 231, 79 A.2d 666, 670 (1951).

The presumption of abandonment may be unreasonable due to the time at which the unclaimed period begins to run. For example, the period of dormancy for public utility deposits and advance payments under the Uniform Disposition of Unclaimed Property Act runs from the time of termination of services "for which the deposit or advance payment was made."⁸² The New York period runs from the same time, but when services are rendered after that time and the deposit is held to secure payment for them, the period runs from the termination of such later services.⁸³ This added provision recognizes that a consumer who continues to receive service would be unlikely to seek the return of his deposit even though the service for which he made the deposit has expired. Thus, a deposit of a subscriber who is still receiving utility service may be taken by the state under the Uniform Act—a situation in which a presumption of abandonment seems unreasonable.

Property owned by the holder is of course not ownerless, and escheat of such property will violate the due process rights of the holder. In *State v. Sperry & Hutchinson Co.*,⁸⁴ New Jersey unsuccessfully attempted to seize a percentage of the proceeds from the sale of trading stamps; the percentage represented a conservative estimate of the number of stamps that would never be redeemed. A condition precedent to the redeemability of the stamps was that complete books be filled with stamps. The purpose of this requirement was to induce customers to buy more products from the retailers in order to accumulate enough stamps to fill a book. The court held that the state had the burden of proving that one individual had aggregated enough stamps to fill one book before it could succeed to that individual's redemption rights. The court properly refused to presume that sufficient stamps had been gathered by any one consumer; it is more likely that the stamps were not redeemed because the purchaser had not yet received enough. The underlying, though unexpressed, basis of the court's holding was that the funds were not ownerless, since the company owns them until the book is filled. Thus, although the court based its holdings on the statute, escheat of the redemption funds appears unconstitutional.

The court required only that the state show a sufficient accumulation of stamps,⁸⁵ not that the stamps had actually been pasted in a book or presented. The obvious purpose of requiring the customer to present the stamps pasted in a book is to ensure that only the true owner is paid. The state could never make such a presentation, since the very theory on which it is proceeding is that no books have been presented for redemption; and a requirement that it do so would enable any holder of otherwise escheatable

⁸² UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 4(a) [hereinafter cited as UNIFORM ACT].

⁸³ N.Y. ABAND. PROP. LAW § 400(1)(a).

⁸⁴ 49 N.J. Super. 165, 139 A.2d 463 (Ch. 1958); *aff'd*, 56 N.J. Super. 589, 153 A.2d 691 (App. Div. 1958), *aff'd per curiam*, 31 N.J. 385, 157 A.2d 505 (1960).

⁸⁵ 49 N.J. Super. at 173, 139 A.2d at 467.

property to avoid escheat by the simple expedient of requiring the presentation of some paper in the possession of the owner as a condition precedent to payment.

In *Connecticut Mut. Life Ins. Co. v. Moore*,⁸⁶ the United States Supreme Court held that the New York statute which escheated unclaimed life insurance proceeds did not impair the obligation of the contract between the insurance company and the insured,⁸⁷ even though the state did not comply with the conditions precedent to recovery by the insured in the policy.⁸⁸ However, the status and condition of the insured are facts which are not discoverable by the insurance company unless it can locate the insured, but may constitute a defense to an action by the beneficiaries for the proceeds of a policy.⁸⁹ For example, the insured may have committed suicide or died in some other manner not covered by the policy; if his whereabouts cannot be ascertained, the company is unable to learn the cause of his death. On the other hand, the statutory presumption that the insured has died intestate without heirs could easily be extended to the presumption that he has died a natural death intestate without heirs. However, as the number of presumptions increases, there is a corresponding decrease in the probability that the overall presumption is correct. Nevertheless, one writer has expressed the opinion that the insurer is rarely injured by the state's taking custody.⁹⁰

In most cases, however, conditions precedent to recovery are imposed by the holder in order to identify the owner, not provide knowledge of possible defenses which the holder may assert. Thus it would be unreasonable to require the state, which does not claim to be the owner, to comply with these conditions. For example, the status of a depositor would not affect the defenses which a bank might assert against the depositor, and through him against the state.

IV. SURVEY OF ESCHATE LEGISLATION

Modern escheat law bears only superficial resemblance to its hoary ancestors; some of the rules are the same, but the underlying reasons have necessarily changed. The old common-law escheat was an incident of feudal tenure,⁹¹ and escheat occurred only when the owner of land died intestate without capable heirs or when he was convicted of a felony or

⁸⁶ 333 U.S. 541 (1948).

⁸⁷ *Id.* at 545-47.

⁸⁸ *Id.* at 547. The court's reason for refusing to compel the state to comply with the contract conditions was that it was acting as conservator of the property, not as a party to the contract. See N.C. GEN. STAT. § 116-23.1(a) (1960) (state not required to surrender policy or submit proofs of death).

⁸⁹ One court held that the state has as against the policyholder any defense available to the company and as to other persons any defense available to the policyholder. *Barker v. Legett*, 102 F. Supp. 642 (W.D. Mo. 1951). However, if the insurance company has a valid defense against the policyholder, the state cannot escheat the fund in the first place.

⁹⁰ See 58 YALE L.J. 628, 631-34 (1949).

⁹¹ See 4 BLACKSTONE, COMMENTARIES *418.

treason. Under no other circumstances would property escheat. Upon the dissolution of a corporation, for example, the land did not escheat. It reverted to the persons who had conveyed it to the corporation on a theory similar to that underlying feudal escheat; the conveyance was subject to the implied condition of the continued existence of the corporation.⁹²

The doctrine of *bona vacantia* had an origin entirely independent of escheat. According to this doctrine certain abandoned or unowned objects were seized by the sovereign for his own use and benefit. The goods subject to seizure were those which were either valuable or rare and thus enhanced the king's revenues, or dignity; the finder was entitled to all other abandoned property.⁹³

A. Current U.S. Statutes

Escheat to the lords was abolished in England by the Statute *Quia Emptores*, and the Crown became the sole entity with the power to escheat.⁹⁴ This power passed to the American states as part of their sovereignty or police power, but the old rationales were gone. The absence of a feudal system and the breakdown of the distinctions between land and personalty in the laws of descent and distribution effected a merger of common law escheat and *bona vacantia* into one doctrine, called "escheat," which became purely statutory.⁹⁵ There is great variety in the kind and extent of legislation in the various states. Some states have only a few provisions for escheat in specific cases, usually common ones such as death intestate without heirs.⁹⁶ These states are declining in number as legislators become increasingly aware of the revenue potential of escheat. Recent developments have included the extension of escheat to novel types of property and the growth of the custodial statutes. Unfortunately states frequently expand their escheat laws by adopting separate provisions in a piecemeal fashion, often as a part of statutes covering various other topics. Statutes may overlap and thus raise unnecessary problems. In Pennsylvania and New Jersey, for example, the state may be empowered to take the same property under either a custodial or an absolute escheat statute.⁹⁷ Potentially escheatable property may not be covered by the express terms of the statutes. To remedy this, some states have adopted only one general provision that all abandoned or ownerless property shall escheat to the

⁹² See 2 *id.* at *256.

⁹³ See 1 *id.* at *295-96; 7 HOLDSWORTH, A HISTORY OF ENGLISH LAW 495-96 (1938).

⁹⁴ See 3 *id.* at 72-73 (1909).

⁹⁵ See *Kennedy v. Gatz*, 194 F. Supp. 795 (D. Alaska 1961).

⁹⁶ Georgia is the most limited; it provides for escheat on the failure of heirs and in no other case. GA. CODE ANN. § 85-1101 (1935).

⁹⁷ See *State v. American Sugar Ref. Co.*, 20 N.J. 286, 119 A.2d 767 (1956). However, Pennsylvania has counteracted the overlapping to some extent by providing that a particular provision shall be exclusive as to a certain kind of property. See PA. STAT. ANN. tit. 27, § 471 (1958) (unclaimed funds of life insurance companies).

state.⁹⁸ Such a statute plugs the loopholes, but raises other problems. No test is provided to determine when the property is ownerless, and it is sometimes unclear what property the legislature intended to escheat. No recognition is given to the unique circumstances of various types of property and the need for different procedures in various cases. Furthermore, such a general statute fails to focus the attention of the escheator on specific kinds of property or to give certain holders notice that property in their possession is subject to escheat. Other states have retained their piecemeal legislation and in addition have enacted a catch-all provision,⁹⁹ but the problem of *ad hoc* legislation remains. The best solution is one comprehensive escheat act in a separate chapter of the state code. This would include provisions applicable to all escheatable property and a catch-all section.¹⁰⁰

B. Death Intestate Without Heirs

The oldest form of escheat, and the only circumstance producing escheat in every state, is death intestate without heirs.¹⁰¹ Such escheat is clearly warranted when there are no heirs in fact, since the state is the only reasonable taker.¹⁰² When the state is the only adverse party to a person claiming to be an heir, the courts generally construe the escheat statutes strictly and resolve any doubts in favor of the claimant.¹⁰³

⁹⁸ See ARK. STAT. ANN. §§ 50-603 to -604 (Supp. 1961) (escheat of all kinds of personal property, tangible and intangible, if "abandoned" for seven years).

⁹⁹ See ALASKA COMP. LAWS ANN. § 57-8-8 (1949).

¹⁰⁰ A good example of such a statute is KY. REV. STAT. §§ 393.010 to .990 (1962).

¹⁰¹ See, e.g., COLO. REV. STAT. ANN. § 152-14-14 (1953); FLA. STAT. ANN. § 731.33 (Supp. 1962); IDAHO CODE ANN. § 15-1613 (1948); IOWA CONST. art. 9(2d), § 3 (1949); KY. REV. STAT. § 393.020 (1962); ME. REV. STAT. ANN. ch. 170, § 1(VIII) (1954); MD. ANN. CODE art. 93, § 152 (1957); MINN. STAT. ANN. § 525.161 (Supp. 1962); MISS. CODE ANN. § 480 (1942); NEB. REV. STAT. § 30-102(7) (1956).

¹⁰² However, the two most common theories advanced are that the state is the reversioner, see *In re Estate of O'Connor*, 126 Neb. 182, 252 N.W. 826 (1934), and that the state is the "ultimate heir" of the deceased, see *Klein v. Brodbeck*, 15 F. Supp. 473 (E.D. Pa. 1934). Several states also provide for escheat when the heir or legatee fails to claim property to which he is entitled. See, e.g., IDAHO CODE ANN. § 15-1330 (1948); KY. REV. STAT. § 393.020 (1962); WIS. STAT. § 318.03 (1961); WYO. STAT. ANN. § 9-688 (Supp. 1961). Thus, the lack of heirs may be due to the fact that none exist or can be found, that they refuse to accept the property, or that the heirs or legatees are not qualified to take. The four major rationales come into play only when there is a holder; here there is no holder except the probate court and its officers. However, some items in the estate, such as insurance proceeds, may have a holder, and such property might be dealt with under specific statutes, rather than under the intestate section. A distinction might be made between cases in which it is proved that the deceased had no heirs and cases in which the deceased might have heirs but they cannot be found. In the former situation, the property is truly ownerless, while in the latter, there is merely a presumption that the heirs have themselves died intestate without heirs or have abandoned their shares of the estate. However, the special statutes are designed to apply to the abandonment of the property by the person depositing it, not by his heirs. The heirs may never know about the fund, and thus the presumption of abandonment may not be reasonable. Therefore, it is reasonable to deal with the entire estate under the intestate escheat statute, rather than under statutes for particular types of property.

¹⁰³ See *State v. United States Steel Corp.*, 22 N.J. 341, 355, 126 A.2d 168, 181 (1956). Intestacy escheat is much rarer today than at common law, since "contemporary intestate succession statutes are liberally drafted and construed." Note, 61 COLUM. L. REV. 1319, 1321 (1961).

Certain heirs, however, are incapable of taking property. Under some statutes the share of the estate which an incapable heir would otherwise receive will pass into the residue of the estate, and escheat operates only when no other heirs exist. Thus, almost all states prohibit a murderer from inheriting his victim's estate, and under all decisions and most statutes the murderer's share passes as if he did not exist.¹⁰⁴ Other statutes, however, provide that the share of the incapable heir shall escheat to the state, notwithstanding the existence of other capable heirs. Most statutes prohibiting inheritance by aliens provide for the escheat of their shares,¹⁰⁵ although most grant alien heirs a long period in which to dispose of the property before escheat.¹⁰⁶ The only rationale for the escheat of property otherwise descending to aliens or murderers is the state's revenue, since they could as easily be deemed to have predeceased the decedent, and thus their shares would be distributed among the other heirs, as is commonly done under most slayer's acts.

The old common-law rule against alien inheritance began to erode as treaties between the United States and other nations provided that the citizens of each signatory could inherit property from the citizens of the other;¹⁰⁷ such treaties of course superseded all inconsistent state statutes.¹⁰⁸ Many states also repealed such statutes altogether¹⁰⁹ or introduced reciprocity clauses permitting inheritance by any alien whose country extended the same privilege to United States citizens.¹¹⁰ These reciprocity provisions are justifiable under the public protection rationale, since they are designed primarily to protect American heirs of foreign estates by encouraging other nations to let them inherit.

World War II led to statutes providing for the escheat of inheritances of enemy aliens¹¹¹ and gave rise to the first extensive use of a form of federal escheat—the Trading With the Enemy Act¹¹²—designed to prevent

¹⁰⁴ See, e.g., ALASKA COMP. LAWS ANN. § 60-1-15 (1958); PA. STAT. ANN. tit. 20, § 3443 (Supp. 1962).

¹⁰⁵ But see ORE. REV. STAT. § 111.070(3) (1961) (escheat only when no other heirs, devisees or legatees); WYO. STAT. ANN. § 2-43.1(b) (Supp. 1961) (same).

¹⁰⁶ See IND. ANN. STAT. § 56-501 (1961) (five years); IOWA CODE ANN. § 567.1 (1950) (twenty years). Compare KAN. GEN. STAT. §§ 59-511 to -512 (1949) (sale of land by probate court and distribution of proceeds to ineligible alien).

¹⁰⁷ However, the treaties are usually more restrictive than most modern state statutes. See Note, *Property Rights of Aliens Under Iowa and Federal Law*, 47 IOWA L. REV. 105, 116 (1961).

¹⁰⁸ See U.S. CONST. art. VI, cl. 2; *Hauenstein v. Lynham*, 100 U.S. 483, 488-90 (1880).

¹⁰⁹ Two major reasons have been advanced for the elimination of such statutes. One is the desire of states to see the intention of the testator carried out as closely as possible, and the other is the fear that such statutes would interfere with U.S. foreign policy and embarrass the federal government in its relations with other nations. See Note, *supra* note 107, at 119-20.

¹¹⁰ See, e.g., ARIZ. REV. STAT. ANN. § 14-212(c) (1956).

¹¹¹ Such a statute was first enacted in 1939 in New York and was aimed at Nazi Germany, her allies, and conquests. See Chaitkin, *The Rights of Residents of Russia and Its Satellites To Share in Estates of American Decedents*, 25 So. CAL. L. REV. 297, 298 (1952).

¹¹² 40 Stat. 411 (1917), 50 U.S.C. APP. § 1 (1958).

property in this country from being used against the Allies in the war. A current outgrowth has been the rash of statutes whose purpose is to prevent property from going behind the Iron Curtain.¹¹³ While some specifically prohibit heirs in communist countries from taking, others provide simply for the escheat of property which would otherwise descend to heirs in nations where they would probably not receive it.¹¹⁴ Such language has uniformly been interpreted to apply to the Sino-Soviet Bloc. Even in the absence of escheat statutes, some courts find no difficulty in ordering the escheat of estates that would otherwise go to communist nations.¹¹⁵ They may require the actual appearance in court of the alien heir or someone with a valid power of attorney from the heir;¹¹⁶ actual appearance is virtually impossible and a power of attorney may be disbelieved. The court may also disbelieve the evidence that the heirs are living, by taking judicial notice of the communist governments' long record of deceit. These actions can be justified on the rationales that escheat prevents the unjust enrichment of foreign governments, and protects the security of the state by keeping property out of the hands of our Cold War enemies.

C. Abandoned Property

A second type of escheat involves property abandoned by its owner. Tangible property clearly lost or abandoned accounts for a comparatively small volume of escheated property, and jurisdictions are split on whether such property may be kept by the finder¹¹⁷ or escheats to the state.¹¹⁸ Many statutes provide for the escheat of specific personalty abandoned¹¹⁹ or lost, such as automobiles left on the highway, floating timber,¹²⁰ or stray

¹¹³ See generally Chaitkin, *supra* note 111.

¹¹⁴ These statutes include a federal statute which empowers the Secretary of the Treasury to determine nations to which U.S. Treasury checks may not be sent because of the lack of assurance that the payee will receive the check. 54 Stat. 1086 (1940), as amended, 31 U.S.C. § 123 (1958).

¹¹⁵ See *Sobko Estate*, 88 Pa. D. & C. 76 (Orphans' Ct. 1954). The judicial policy of impounding funds otherwise going to aliens in countries which would probably confiscate them has been called the Pennsylvania rule, due to the relatively large number of reported cases in that state. See Chaitkin, *supra* note 111, at 313-16. Five other states also escheat such funds by court procedure, although they have few reported decisions. *Ibid.* The courts generally base their holdings on the theory that it is their duty to carry out the testator's intent to see that the money actually reaches the beneficiaries.

¹¹⁶ See *Estate of Kuhn*, 248 Wis. 475, 22 N.W.2d 508 (1946). See also *Deshko Estate*, 1 Pa. Fiduciary Rptr. 110 (Orphans' Ct. 1950).

¹¹⁷ See CAL. CIV. CODE § 1871 (applies only to lost, not abandoned, property, see § 1872); MASS. GEN. LAWS ANN. ch. 134, §§ 4, 6 (1957). Generally the finder must notify the proper authorities or attempt to locate the owner himself.

¹¹⁸ See *Escheat of \$92,800*, 361 Pa. 51, 62 A.2d 900 (1949) (money found in box escheats to state when finder disclaims interest in it). Florida compromises by providing that half the proceeds from lumber found adrift in the sea will go to the finder and half to the county treasurer. FLA. STAT. ANN § 706.18 (1944).

¹¹⁹ See, e.g., CONN. GEN. STAT. REV. § 15-76 (Supp. 1961) (aeronautics commission or policy officer may seize apparently abandoned aircraft and deduct charges; balance escheats absolutely to state after one year).

¹²⁰ See KY. REV. STAT. § 364.020 (1962) (boat, raft or platform, or timber prepared for market).

beasts.¹²¹ Escheat in these situations is justifiable not only to protect the owner, but also to prevent unjust enrichment of the finder, whose connection with the property is purely fortuitous.

D. Presumption of Abandonment or Death Intestate Without Heirs

By far the most significant kind of escheat occurs when the owner of property is presumed to have died intestate without heirs or to have abandoned the property. In most cases, the presumption arises when the owner cannot be found and has had no contacts with the property or the holder, usually for a long period of time.

1. Bailments and Pledges

Some statutes provide for the escheat of tangible personalty left unclaimed for a certain period with a bailee.¹²² These include items left with jewelers and tailors,¹²³ baggage in the possession of a common carrier,¹²⁴ goods stored in warehouses,¹²⁵ and automobiles left in garages.¹²⁶ The statutes usually provide that the holder may sell the property at auction,¹²⁷ deduct his charges and sale costs from the proceeds,¹²⁸ and transfer the balance to the state.¹²⁹ Some statutes authorize a bank or safe-deposit company to remove the contents of a safe-deposit box when the lessee has failed to pay the rent for a given period.¹³⁰ As in the bailment statutes, the bank or company may usually sell the contents, deduct the rent, and segregate the balance. After a further period, the contents are presumed abandoned, and the balance escheats. Property pledged as security may

¹²¹ See CONN. GEN. STAT. REV. § 50-6 (1958).

¹²² See, e.g., CONN. GEN. STAT. REV. §§ 50-1 to -5 (1958), as amended, §§ 50-1 to -5 (Supp. 1961). This act supplements the Uniform Act in Connecticut, which covers primarily intangible property. See CONN. GEN. STAT. REV. § 50-1 (Supp. 1961).

¹²³ See LA. REV. STAT. arts. 9:4687-88 (1951) (unclaimed clothes at laundries, tailor shops, etc.; escheat after six months); LA. REV. STAT. arts. 9:4701-03 (1951) (goods, jewelry, etc., worth less than \$10; escheat after one year).

¹²⁴ See CONN. GEN. STAT. REV. § 50-3 (1958); MINN. STAT. ANN. § 345.09 (1957).

¹²⁵ See MINN. STAT. ANN. § 345.01 (1957).

¹²⁶ A special provision may be set forth for perishable goods, since the period of abandonment must be very short. See CONN. GEN. STAT. REV. § 50-1 (Supp. 1961) (one week); MINN. STAT. ANN. § 345.02 (1957). The period for nonperishable goods will usually be longer. See CONN. GEN. STAT. REV. § 50-2 (Supp. 1961) (six months); MINN. STAT. ANN. § 345.02 (1957) (one year). However, these periods represent the time after which the holder may sell the property. The balance left from the proceeds of the sale after deduction of costs may not escheat to the state for the usual long period. See CONN. GEN. STAT. REV. § 50-5 (Supp. 1961) (escheat to state after ten years).

¹²⁷ See, e.g., MINN. STAT. ANN. § 345.11 (1957).

¹²⁸ See, e.g., MINN. STAT. ANN. § 345.12 (1957).

¹²⁹ See, e.g., *ibid.*

¹³⁰ See, e.g., N.Y. ABAND. PROP. LAW § 300(1)(d) (escheat ten years after opening box).

also be escheated under some statutes after the secured party has deducted from the pledge the amount of the unpaid debt.¹³¹ These statutes fall under the rationales of owner protection and commerce.

2. Trusts

a. In General

Property held in a fiduciary capacity may be escheated on the same theory as bailed or pledged property, even though legal title to the property has passed to the fiduciary.¹³² The beneficial owner, rather than the legal owner, is presumed to have abandoned it or died intestate without heirs. Only Pennsylvania¹³³ and section 7 of the Uniform Act specifically provide for the escheat of property held by a fiduciary. Colorado has a statute which applies only to trustees of decedents' estates,¹³⁴ and New Jersey allows escheat of property abandoned by the "beneficial owner."¹³⁵ Several other general statutes could be interpreted to cover trust property,¹³⁶ although "title" to the property is in the trustee and he is the "owner." The probable legislative intent was to include equitable titles and owners, but under the general rule of strict construction of escheat statutes, trust funds might be found exempt from escheat. However, this rule is usually invoked for the benefit of the true owner rather than the holder.

The Colorado statute omits any standard or time limit for determining when trust property is abandoned, but merely provides that the trustee of a decedent's estate "may" pay the state when the property is "unclaimed."¹³⁷ Under the Pennsylvania act, trust funds escheat when the property is without a rightful owner, no one is entitled to the property on the termination of the trust, the beneficiary's identity or whereabouts have been unknown for seven years, or the property has remained unclaimed for that period.¹³⁸ Section 7 of the Uniform Act simply provides for escheat when the trust property has been unclaimed for a certain period. The property is "unclaimed" when the beneficial owner has not "increased

¹³¹ See, e.g., KY. REV. STAT. § 393.080 (1962).

¹³² Since the state succeeds only to the rights of the missing beneficiary, it has only an equitable interest in the trust property. Thus, where a tenant for years disappears, escheat of the income by the state for the rest of the period will not injure the remainderman. However, when both the tenant for years and remainderman are gone, the state can escheat the legal interest directly without waiting for the end of the term. Courts have not hesitated to give the state a legal interest when practical. See 1A BOGERT, TRUSTS AND TRUSTEES 188-90 (1951).

¹³³ PA. STAT. ANN. tit. 27, §§ 331-401 (1958).

¹³⁴ COLO. REV. STAT. ANN. § 152-14-14(3) (1954) (applies only to fiduciary of decedent estate).

¹³⁵ N.J. STAT. ANN. § 2A:37-13 (1952).

¹³⁶ In addition, upon the death of a sole trustee intestate and without heirs, legal title passes to the state, subject to the trust, and the courts will appoint a new trustee. Some statutes provide for escheat in every case in which a sole trustee dies, even if he leaves heirs, since the heirs have no particular qualification to serve as trustees. See 5 BOGERT, TRUSTS AND TRUSTEES § 529 (2d ed. 1960).

¹³⁷ See note 134 *supra*.

¹³⁸ PA. STAT. ANN. tit. 27, §§ 282, 333 (1958).

or decreased the principal, accepted payment of principal, or income, or corresponded in writing concerning the property, or otherwise indicated an interest [in it]" All three statutes are custodial, but the Colorado act bars all claims after 21 years. The interest on the trust res is part of the escheatable property under the Uniform Act,¹³⁹ and probably also under the Colorado and Pennsylvania statutes, since the interest itself is "property . . . [held] in a fiduciary capacity"¹⁴⁰ by the terms of most trusts. Protection of the owner is the most significant rationale for statutes escheating trust funds.

b. Dissolution and Bankruptcy

Unclaimed dividends or shares of a corporation which has dissolved¹⁴¹ or reorganized, or has gone through bankruptcy or insolvency, or unclaimed assets of an individual who has gone through bankruptcy, are subject to escheat in many states.¹⁴² Such dividends or shares are generally considered held in trust,¹⁴³ and statutes providing for the escheat of fiduciary funds have been interpreted to include them.¹⁴⁴ A fortiori, any general statutes under which trust property is escheatable include undistributed shares of dissolved or bankrupt corporations. In addition, the ten Uniform Act states¹⁴⁵ and fifteen others¹⁴⁶ specifically provide for the escheat of some of this property. Section 6 of the Uniform Act and three other provisions are limited to voluntary dissolutions,¹⁴⁷ while three acts apply only to involuntary dissolutions.¹⁴⁸ Six statutes cover bank dissolutions only,¹⁴⁹ one applies to fraternal or social organizations exclusively,¹⁵⁰ and

¹³⁹ UNIFORM ACT § 7.

¹⁴⁰ PA. STAT. ANN. tit. 27, § 333(a) (1958).

¹⁴¹ See, e.g., PA. STAT. ANN. tit. 72, § 1311 (1949). Section 1201 of the New York Abandoned Property Law provides that when a corporation has failed to claim its funds deposited in court for a certain period, the corporation shall be presumed to be dissolved and no longer in existence.

¹⁴² For a treatment of some jurisdictional problems, see *Schoener v. Continental Motors Corp.*, 362 Mich. 303, 106 N.W.2d 774 (1961).

¹⁴³ See, e.g., DEL. CODE ANN. tit. 8, § 281 (1953).

¹⁴⁴ See *Girard Trust Co. v. Commonwealth*, 367 Pa. 223, 228-32, 79 A.2d 666, 668-70 (1951).

¹⁴⁵ UNIFORM ACT § 6.

¹⁴⁶ ALASKA COMP. LAWS ANN. §§ 57-8-11 to -12 (1949); ARK. STAT. § 67-609 (Supp. 1957); CONN. GEN. STAT. REV. § 3-60a (Supp. 1961); DEL. CODE ANN. tit. 12, §§ 1174-76 (Supp. 1962); IOWA CODE ANN. § 496A.101 (1962); ME. REV. STAT. ANN. ch. 53, § 112 (Supp. 1959); MASS. GEN. LAWS ANN. ch. 167, § 35 (1959) (banks); MASS. GEN. LAWS ANN. ch. 216, § 123 (1955) (other corporations and individuals); MICH. COMP. LAWS § 567.22 (1948); N.H. REV. STAT. ANN. §§ 294:125-27 (Supp. 1961), 395:25 (1955); N.J. STAT. ANN. § 17:9A-289 (1950); N.C. GEN. STAT. § 53-20(p) (1960); PA. STAT. ANN. tit. 72, § 1311 (1949); TEX. BUS. CORP. ACT art. 7.11 (1956); WIS. STAT. § 186.29(13) (1961), as amended, WIS. STAT. ANN. § 186.29(13) (Supp. 1963); WYO. STAT. ANN. § 13-166 (1957). See also MICH. COMP. LAWS § 567.41 (1948).

¹⁴⁷ E.g., Michigan, cited note 146 *supra*.

¹⁴⁸ Delaware, Maine, and New Hampshire, cited note 146 *supra*.

¹⁴⁹ Delaware, Massachusetts, New Hampshire, New Jersey, North Carolina, and Wyoming, cited note 146 *supra*.

¹⁵⁰ Alaska, cited note 146 *supra*.

one deals only with cooperatives.¹⁵¹ Five acts contain no qualification as to the type of corporation or the kind of liquidation involved.¹⁵² Under the bankruptcy and dissolution statutes, property is escheatable only if the corporation is truly dissolved, and not when a parent or other corporation is entitled to the property.¹⁵³ Only one statute specifically provides for the escheat of the unclaimed assets of a bankrupt individual.¹⁵⁴

Dividends or deposits are presumed abandoned if not claimed within a certain period from the final court decree, or if the owner is unknown or cannot be found. Most of the statutes provide that the state may take custody after a comparatively short time,¹⁵⁵ and a few allow absolute escheat after a brief period.¹⁵⁶ Nevertheless, the owner protection rationale is significant during the custodial period in most states; the holder protection rationale is also important when fiduciaries are under an indefinite obligation to account for unclaimed property.

The same reasoning which motivates the escheat of unclaimed dividends applies in the case of unredeemed cemetery certificates. One court¹⁵⁷ allowed the escheat of such certificates on the theory that each represented an interest in a specific plot of ground and a contingent interest in the rest of the cemetery land. The court stated that the amount payable to redeem the certificates was held in trust for the missing certificate owners.¹⁵⁸

3. Trusts or Debts

Many statutes provide for the escheat of intangibles that could be either trusts or debts, depending upon the circumstances. With few exceptions, it is not important whether the fund constitutes a trust or a debt, provided of course that the statute does not apply only to trusts or debts.

a. Insurance Proceeds

A rather popular subject of custodial statutes is the unclaimed proceeds of life and endowment insurance policies which have matured or terminated.¹⁵⁹ These funds have proved an important source of custodial

¹⁵¹ Oregon, cited note 146 *supra*.

¹⁵² Connecticut, Iowa, Pennsylvania, Texas, and Wisconsin, cited note 146 *supra*.

¹⁵³ See *Trustees of Transylvania Presbytery, U.S.A., Inc. v. Board of Educ.*, 348 S.W.2d 846 (Ky. 1961) (upon dissolution of local church, property goes to national church, not to state).

¹⁵⁴ Massachusetts, cited note 146 *supra*.

¹⁵⁵ Oregon and Wisconsin both provide that the state may take the property if unclaimed for six months after dissolution.

¹⁵⁶ Arkansas provides for absolute escheat after one year.

¹⁵⁷ *Commonwealth v. Woodlands Cemetery Co.* (No. 2), 13 Pa. D. & C.2d 548 (C.P. 1957).

¹⁵⁸ Cf. TENN. CODE ANN. §§ 46-309 to -311 (Supp. 1962) (vacant cemetery lots owned by person dying intestate without heirs escheat to owners of cemetery).

¹⁵⁹ See generally Note, 35 VA. L. REV. 336, 343 (1949).

revenue.¹⁶⁰ Pennsylvania first enacted such a statute¹⁶¹ and, encouraged by the Supreme Court's decision upholding the constitutionality of these statutes,¹⁶² the Uniform Act states and eight other states followed.¹⁶³ The proceeds of life insurance policies are also undoubtedly covered by most general escheat statutes.¹⁶⁴ Section 3(a) of the Uniform Act provides for the escheat of unclaimed reserves held to pay the policyholder or beneficiaries of insurance policies which have matured or terminated. All non-Uniform Act states have substantially the same statutes, which clearly show a common origin with the Uniform Act.¹⁶⁵ All except North Carolina require that the proceeds be unclaimed for a given period.¹⁶⁶ Section 3(b) of the Uniform Act and four other acts¹⁶⁷ provide that a policy is deemed to be matured if it was in force when the insured reached the limiting age under the mortality table upon which the reserve is based, unless within a given preceding period the policyholder has taken some action with regard to the policy or has corresponded with the company. Every statute is purely custodial, and the person entitled to the funds may recover them at any time from the state.¹⁶⁸ In addition, six states permit the insurance company, although relieved of liability by payment to the state, to pay any claimant whose funds have been paid to the state and then secure reimbursement from the state.¹⁶⁹ Owner protection is the primary rationale behind these statutes.

¹⁶⁰ See 1 STAN. L. REV. 342, 343 (1949). In the fiscal year 1961-1962, California escheated about \$700,000 from the unclaimed proceeds of insurance policies, see Statement of Receipts, Disbursements and Cash Balances—Uniform Disposition of Unclaimed Property Act, 1961-1962 Fiscal Year, and New York took slightly over \$300,000, see New York Abandoned Property Statement, April 1, 1961-March 31, 1962.

¹⁶¹ 1 STAN. L. REV. 342, 343 (1949).

¹⁶² See *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948).

¹⁶³ DEL. CODE ANN. tit. 12, §§ 1180-94 (Supp. 1962); MASS. GEN. LAWS ANN. ch. 175, § 149A (1959); MICH. STAT. ANN. § 26.1053(5)(b)(8) (Supp. 1961); NEV. REV. STAT. §§ 670.180 to .300 (1961); N.J. STAT. ANN. §§ 17:34-49 to -58 (Supp. 1962); N.Y. ABAND. PROP. LAW § 700; N.C. GEN. STAT. § 116-23.1 (1960); PA. STAT. ANN. tit. 27, §§ 461-73 (1958); TENN. CODE ANN. §§ 56-238 to -249 (Supp. 1962).

¹⁶⁴ See *Lapland v. Stearns*, 79 N.D. 62, 79, 54 N.W.2d 748, 758 (1952) (applying what is now N.D. REV. CODE § 54-01-02 (1960)).

¹⁶⁵ Every statute except that of Michigan contains some Uniform Act provisions almost verbatim. For example, PA. STAT. ANN. tit. 27, § 462 (1958) and TENN. CODE ANN. § 56-239 (Supp. 1962) are identical to § 2(a) of the Uniform Act.

¹⁶⁶ See, e.g., DEL. CODE ANN. tit. 12, § 1181 (Supp. 1962) (seven years); TENN. CODE ANN. § 56-241 (Supp. 1962) (ten years).

¹⁶⁷ The Massachusetts statute differs from the Uniform Act in two important respects. It applies only to life insurance companies doing business in the state, and it omits the provision that the insured must have been absent for a certain period before the policy can be deemed matured. Of course, the period must still elapse between the time maturity is presumed and the time the state can take the funds. See MASS. GEN. LAWS ANN. ch. 175, § 149A (1949). The other three statutes also apply only to companies doing business in the state. DEL. CODE ANN. tit. 12, § 1181 (Supp. 1962); NEV. REV. STAT. § 690.200 (1961); N.C. GEN. STAT. § 116-23.1(a) (1960).

¹⁶⁸ See, e.g., PA. STAT. ANN. tit. 27, § 468 (1958); TENN. CODE ANN. § 56-247 (Supp. 1962).

¹⁶⁹ DEL. CODE ANN. tit. 12, § 1187 (Supp. 1960); MASS. GEN. LAWS ANN. ch. 175, § 149D (Supp. 1962) (insurance company must defend suit by claimant in order to be entitled to reimbursement); NEV. REV. STAT. § 690.250 (1961); N.J. STAT. ANN. § 17:34-53 (1963); N.C. GEN. STAT. § 116-23.1(g) (1960); TENN. CODE ANN. § 56-245 (Supp. 1962).

b. Unclaimed Funds With Public Utilities

The escheat of unclaimed funds in the hands of public utilities at present is relatively unimportant both in the extent of legislation¹⁷⁰ and in the amount of revenue.¹⁷¹ The New York Abandoned Property Act¹⁷² and section 4 of the Uniform Act, adopted in all Uniform Act states¹⁷³ except California¹⁷⁴ and Connecticut,¹⁷⁵ provide that any unclaimed "deposit made by a subscriber with a utility to secure payment for . . . utility services", "sum paid in advance" for such services, or "sum which a utility has been ordered to refund" is presumed abandoned.¹⁷⁶ In three other states, unclaimed refunds for overcharges also pass to the state,¹⁷⁷ although there is no provision for the escheat of deposits or advance payments. In most states, however, public utilities may keep unclaimed deposits or overcharges, either by express provision or mere silence. The leading rationales for the escheat of deposits and advance payments are owner protection and public protection, by discouraging public utilities from

¹⁷⁰ Only fourteen states provide directly for the taking of such funds. In some states, overcharges may in effect escheat under a procedure whereby the entire amount of a judgment must be paid into court and unclaimed court funds escheat to the state.

¹⁷¹ In two of the most active escheat states, New York and California, the amounts recovered for the fiscal year 1961-1962 were only \$70,619.96 and less than \$5,000.00, respectively. See N.Y. Abandoned Property Statement, April 1, 1961-March 31, 1962; California Statement of Receipts, Disbursements and Cash Balance—Uniform Disposition of Unclaimed Property Act, 1961-62 Fiscal Year. Nothing was recovered from public utilities in Nevada. See Letter From Francis P. Finnegan, Legal Research Assistant, Department of Attorney General of Nevada, to the *University of Pennsylvania Law Review*, Oct. 18, 1962.

¹⁷² N.Y. ABAND. PROP. LAW § 400. The usual New York provisions for reports, publication of notice, and payment to the state comptroller follow this section. N.Y. ABAND. PROP. LAW §§ 401-03.

¹⁷³ The only substantive difference in the statutes is the length of the period during which the amount must be unclaimed in order to raise the presumption of abandonment. ARIZ. REV. STAT. ANN. § 44-354 (1956) (seven years); FLA. STAT. ANN. § 717.05 (Supp. 1962) (fifteen); ILL. ANN. STAT. ch. 141, § 104 (Smith-Hurd Supp. 1962) (seven); N.M. STAT. ANN. § 22-22-5 (Supp. 1961) (ten years for deposits and advance payments and seven for refunds); ORE. REV. STAT. § 98.316 (1961) (seven); UTAH CODE ANN. § 78-44-4 (Supp. 1961) (three); VA. CODE ANN. § 55-210.5 (Supp. 1962) (seven); WASH. REV. CODE ANN. § 63.28.100 (1961) (seven). The Virginia statute is applicable only to deposits made after 1961, apparently in deference to the fact that many utilities probably have transferred old deposits from the deposit liability account to a general asset account. See VA. CODE ANN. § 55-210.5(a) (Supp. 1962). The Florida act adds a provision that "any sum paid to a utility for a utility service, which service has not, within fifteen years of such payment, been rendered" shall be presumed abandoned, FLA. STAT. ANN. § 717.05 (Supp. 1961). This provision is probably superfluous, since such a sum is included in the phrase "any sum paid in advance" for utility services.

¹⁷⁴ See CAL. CIV. PROC. CODE §§ 1500-27.

¹⁷⁵ See CONN. GEN. STAT. REV. §§ 3-56a to -75a (Supp. 1961).

¹⁷⁶ See UNIFORM ACT § 4.

¹⁷⁷ COLO. REV. STAT. ANN. §§ 115-8-1 to -4 (1954) (escheat to municipality or county commissioners; three-year limit on recovery by claimants); NEV. REV. STAT. § 704.550(8) (1961) (absolute escheat two years after final order for refund); OKLA. STAT. ANN. tit. 17, § 125 (1953) (absolute escheat after two years). The Colorado Supreme Court recently held that the Colorado statute does not constitute a special law conflicting with the general escheat act. *People ex rel. Dunbar v. People ex rel. Denver*, 141 Colo. 459, 349 P.2d 142 (1960).

extracting large deposits. Unclaimed refunds resulting from overcharges are escheated to prevent the utility's unjust enrichment through illegal rates.¹⁷⁸

c. *Gambling Proceeds*

Only four states provide for the escheat of unclaimed winnings on pari-mutuel tickets,¹⁷⁹ and none appears to have influenced the others in the terms of the statute, although the peculiar nature of state policies in regard to gambling lead to certain common features. They all tend to be especially stringent; the period from the date of the race until the winnings are presumed abandoned is comparatively short—it varies from 130 days¹⁸⁰ to two years.¹⁸¹ Louisiana cuts off the ticket-holder's right after 120 days—even before the state can escheat.¹⁸² The Florida law specifically declares a public policy of possessing all unclaimed winnings and, in contrast to the usual view, states that the law is to be liberally construed.¹⁸³ Michigan provides that a violation of the statute constitutes a misdemeanor.¹⁸⁴ Nevertheless, all the acts except that of Louisiana are purely custodial.¹⁸⁵ The rationale of these statutes is to prevent the unjust enrichment of the track operator from a socially undesirable activity.

d. *Corporate Stock and Dividends*

A surprisingly minor type of intangible property, insofar as legislation¹⁸⁶ and revenue¹⁸⁷ are concerned, is unclaimed corporate stock and dividends.¹⁸⁸ Section 5 of the Uniform Act provides for the taking of

¹⁷⁸ See *Murdoch v. Pennsylvania R.R.*, 19 Pa. D. & C.2d 573 (C.P. 1958) (customers' deposits with railroad escheated under fiduciary statute); *State v. Atlantic City Elec. Co.*, 23 N.J. 259, 128 A.2d 861 (1957) (5-to-2 decision). The majority and dissent in the latter case merely disagreed over whether a debt or trust was created. The majority stressed the facts that interest was paid and that the deposits were commingled with other funds, while the minority noted that the consumers never intended to "loan" the company money and emphasized the fact that the utility carried the deposits as a liability indefinitely and repaid claimants at any time.

¹⁷⁹ The states are Florida, Kentucky, Louisiana, and Michigan. See FLA. STAT. ANN. § 550.164 (1962); KY. REV. STAT. § 393.095 (1962); LA. REV. STAT. § 4:163 (Supp. 1962); MICH. STAT. ANN. § 18.967(1) (Supp. 1961); MICH. STAT. ANN. § 18.967(4), (7) (1957).

¹⁸⁰ See LA. REV. STAT. § 4:163 (Supp. 1962).

¹⁸¹ See KY. REV. STAT. § 393.095 (1962).

¹⁸² LA. REV. STAT. § 4:163 (Supp. 1962).

¹⁸³ FLA. STAT. ANN. § 550.164(1) (1962).

¹⁸⁴ MICH. STAT. ANN. § 18.967(7) (1957).

¹⁸⁵ See, e.g., MICH. STAT. ANN. § 18.967(1) (Supp. 1961).

¹⁸⁶ Only the Uniform Act states and six other states escheat such property by specific provisions. See, e.g., TEX. REV. CIV. STAT. ANN. art. 3272a(1)(b) (Supp. 1962).

¹⁸⁷ See Note, *Escheat of Corporate Dividends*, 65 HARV. L. REV. 1408, 1416 n.48 (1952).

¹⁸⁸ For a discussion of the jurisdictional problems involved, see Note, 65 HARV. L. REV. 1408 (1952); Note, 27 IND. L.J. 113 (1951).

"stock or other certificate of ownership," dividends, "or other sum held or owing by a business association for or to a shareholder" or other security holder, "who has not claimed it, or corresponded in writing with the business association concerning it" within a certain period "after the date prescribed for payment or delivery."¹⁸⁹ New York also has a separate escheat provision for unclaimed stock and dividends;¹⁹⁰ Hawaii,¹⁹¹ Kentucky,¹⁹² Massachusetts,¹⁹³ and New Jersey¹⁹⁴ include stock and dividends among other intangible personal property in their general custodial statutes. None of the statutes contains special procedural provisions for stock and dividends.¹⁹⁵ The main rationale of these provisions is owner protection.

All escheat statutes declare that "increments" or "accretions" on the property also escheat, but in *State v. United States Steel Corp.*,¹⁹⁶ the New Jersey Supreme Court held that such a term does not include dividends on stock, since a dividend represents a claim separate from the stock itself. Therefore, the state cannot take dividends until unclaimed for the full statutory period from the time they are declared, and they cannot be taken along with the stock when the stock has been abandoned for the period.¹⁹⁷ While a dividend is an independent debt of the corporation and may be assigned by the shareholder independently of the stock, he is unlikely to neglect his claim to the stock for several years and yet assign his dividend rights in that stock. The dividends can reasonably be presumed abandoned when the stock has been unclaimed for the requisite period, even though the dividends have just been declared. The New Jersey court's interpretation imposes on the state the burden of either taking each dividend in a separate proceeding or waiting until the period for the last dividend expires, foregoing the use of the revenue until then.¹⁹⁸ The *United States Steel* holding does not, however, render the accretion clause superfluous,¹⁹⁹ since the clear implication of the court's premise that a dividend is a separate claim from the stock is that an increment, such as interest, which does not constitute a right independent of the fund on which it accrues, would be an "accretion." A contrary result was reached in *Kennedy v. Gatz*,²⁰⁰ where an heir claimed an estate which had escheated because of an apparent failure of heirs. The heir recovered stock in the custody of the state but not the

¹⁸⁹ California omits "stock or other certificate of ownership" and thus applies only to dividends and other items of distribution. CAL. CIV. PROC. CODE § 1504.

¹⁹⁰ N.Y. ABAND. PROP. LAW §§ 500-03.

¹⁹¹ HAWAII REV. LAWS §§ 235-15, 235-21 (1955).

¹⁹² KY. REV. STAT. § 393.090 (1962).

¹⁹³ MASS. GEN. LAWS ANN. ch. 200A, § 5 (Supp. 1961).

¹⁹⁴ N.J. STAT. ANN. §§ 2A:37-29 to -44 (1952).

¹⁹⁵ See, e.g., KY. REV. STAT. § 393.020 (1962); MASS. GEN. LAWS ANN. ch. 200A, § 5 (Supp. 1961).

¹⁹⁶ 12 N.J. 38, 95 A.2d 734 (1953) (4-to-3 decision).

¹⁹⁷ *Id.* at 47, 95 A.2d at 738-39.

¹⁹⁸ See *State v. United States Steel Corp.*, 12 N.J. 38, 49-50, 95 A.2d 734, 739-40 (1953) (dissenting opinion).

¹⁹⁹ *Id.* at 49, 95 A.2d at 740 (dissenting opinion).

²⁰⁰ 194 F. Supp. 795 (D. Alaska 1961).

dividends declared after the decedent's death, on the ground that the Alaska statute did not allow a claimant to recover increments on the escheated property.

A corporation probably cannot evade the escheat law merely by mailing a check to the stockholder, and the New Jersey Supreme Court has held that payment by check does not, absent an agreement to the contrary, constitute payment of the dividend until the check is cashed.²⁰¹ Ordinarily, the shareholder has a cause of action against the corporation on the underlying obligation to pay the dividend despite the mailing of the check, and the state succeeds to the shareholder's rights. However, Arizona has modified its Uniform Act by exempting dividends for which a negotiable instrument has been issued and "delivered."²⁰² If delivery is interpreted to include actual receipt by the stockholder, this presents little problem; otherwise it provides a means to avoid the statute.

A special problem is created by the payment to a record owner, such as a broker or dealer,²⁰³ who is not the beneficial owner. The corporation clearly has nothing the state can escheat, and the state will have to pursue the broker. Section 5 of the Uniform Act probably is not intended to cover unclaimed dividends held by brokers for customers, and Utah has added to section 5 of its act a provision for the taking of such dividends.²⁰⁴ Nevertheless, these dividends can be caught by other provisions, such as section 7 of the act.

e. Unclaimed Funds Held by the Government

Although few states have them,²⁰⁵ provisions for the escheat of unclaimed funds in the hands of government organs and officials are particularly desirable.²⁰⁶ Unlike private individuals or corporations, public agencies cannot transfer funds to which some person is entitled into their general funds, or use such funds for their general expenses, without statutory authorization. Section 8 of the Uniform Act and a North Dakota statute²⁰⁷ provide for the escheat of property held by a public corporation, public authority, or public officers of the state.²⁰⁸ Such provisions present little difficulty, since they merely call for a transfer of the unclaimed funds

²⁰¹ *State v. United States Steel Corp.*, 12 N.J. 38, 95 A.2d 734 (1953).

²⁰² ARIZ. REV. STAT. ANN. § 44-355 (1956).

²⁰³ See Note, 65 HARV. L. REV. 1408 (1952).

²⁰⁴ UTAH CODE ANN. § 78-44-5(3) (Supp. 1961).

²⁰⁵ These consist of the Uniform Act states and the states whose acts are cited in notes 207-08, 210, 215-17 *infra*.

²⁰⁶ Possibly a number of states provide for the transfer of private funds from one department into the school fund or general fund of the state, but do not call the procedure "escheat," although it is an escheat in effect.

²⁰⁷ N.D. CENT. CODE § 54-01-02.1 to -02.3 (1960).

²⁰⁸ A few states have specific provisions for the escheat of property held by an arm of the state. See HAWAII REV. LAWS § 128-46 (1955) (surplus after tax sale shall escheat if unclaimed for ten years); ILL. ANN. STAT. ch. 95½, § 7-503 (Smith-Hurd Supp. 1962) (escheat of securities deposited by motor vehicle operator after accident and unclaimed for more than three years).

from one arm of the state to another; in North Dakota, for example, the unclaimed funds merely pass into the general fund of the taxing district represented by the holding officer or agency.²⁰⁹

Six states have enacted special provisions for the escheat of unclaimed funds held by state institutions for patients or inmates who have left the institutions.²¹⁰ These funds may be property held by the patient when he enters the institution or money deposited by relatives for his care and not exhausted. Without a special statute, such funds would be escheatable under statutes covering the estates of those who die intestate without heirs only if the law of that state governed the distribution of the estate. Since an institutional inmate may be domiciled elsewhere, the statute of distribution of the state where the institution is located would often not govern such estates. Moreover, it is possible that the inmate's state of domicile may claim the property held by the out-of-state institution under the former's statute of distribution. Were the owner protection rationale the basis for these statutes, it might be better to allow the domiciliary state to hold the property; presumably an heir would be more likely to seek property there than in the state where the decedent was institutionalized. However, these statutes are justified under the moral obligation rationale, thus giving the state of the institution a superior claim to the property.

Three states escheat only the unclaimed funds of inmates of certain specific institutions,²¹¹ and the other three cover all state institutions. Four statutes apply only to deceased inmates,²¹² one to deceased and escaped,²¹³ and one to deceased and discharged.²¹⁴ There is no good reason to restrict the act to deceased inmates only, unless the legislature is unwilling to declare a presumption of abandonment.

The Uniform Act states and six others²¹⁵ provide for the escheat of unclaimed moneys held by a court.²¹⁶ The only major problem in this area involves state escheat of funds held by federal courts. Several states specifically provide for the escheat of such funds,²¹⁷ but others apparently

²⁰⁹ N.D. CENT. CODE § 54-01-02.3(a) (1960).

²¹⁰ FLA. STAT. ANN. § 965.08(4) (Supp. 1962); IOWA CODE ANN. §§ 218.67 to .68 (1949); MD. ANN. CODE art. 59, § 45 (1957); MO. ANN. STAT. § 202.060 (1962); N.D. CENT. CODE § 37-15-16 (1960); R.I. GEN. LAWS ANN. § 40-2-11 (1956).

²¹¹ Maryland (state hospital or training school); Missouri (institutions for mental diseases); and North Dakota (soldiers' home).

²¹² Florida, Iowa, Missouri, and North Dakota.

²¹³ Maryland.

²¹⁴ Rhode Island.

²¹⁵ DEL. CODE ANN. tit. 12, §§ 1160-63 (Supp. 1962); HAWAII REV. LAWS § 235-10 (1955); MICH. COMP. LAWS § 567.21 (1948); MO. ANN. STAT. §§ 470.270 to .350 (1956); N.Y. ABAND. PROP. LAW §§ 600-03; PA. STAT. ANN. tit. 27, § 334 (1958).

²¹⁶ A few states also provide for the escheat of specific types of funds held by courts. See LA. REV. STAT. ANN. art. 15:26.2 (Supp. 1962) (escheat to parish of money used as evidence in criminal cases and not disposed of within five years). Unclaimed alimony payments have been escheated in Michigan. See *Pokorny v. County of Wayne*, 322 Mich. 10, 33 N.W.2d 641 (1948).

²¹⁷ *E.g.*, TENN. CODE ANN. § 31-822 (1955); VA. CODE ANN. § 55-210.9 (Supp. 1962).

exclude them. It is debatable whether the phrases "court in the state"²¹⁸ or "court of this state,"²¹⁹ as used in the Uniform Act,²²⁰ would include federal courts. Section 8 of the Uniform Act is entitled "Property Held by State Courts" Thus, the term as used there probably excludes federal courts, and two of the Uniform Act states have inserted a reference to federal courts.²²¹ The New Jersey Superior Court has held that a provision excluding "personal property in custody of any court in this state" from the coverage of the escheat statute did not exclude property in the custody of the federal courts, since the purpose of the provision was merely to exclude types of property subject to other escheat statutes.²²² This conclusion, however, was based more on the legislative policy of escheating all possible property than on the specific wording of the statute.²²³ When the statute purports to escheat all property held by courts in the state, the legislative policy indicates an intent to escheat funds in federal courts. If the phrase "courts *in* this state" does not cover federal courts, the phrase "courts *of* this state" certainly does not.

f. Miscellaneous

Under general escheat statutes, some states have taken or attempted to take other types of property which could be considered either trusts or debts. A number of states have escheated unclaimed wages,²²⁴ and New Jersey, a particularly imaginative state, has escheated sums withheld from the salaries of former company employees for the purchase of United States bonds which amounted to less than the price of one bond.²²⁵ Owner protection is given as the main rationale.

Pennsylvania also has been active in the escheat field. In the famous *Western Union Tel. Co. v. Pennsylvania*²²⁶ case, the state court had held telegraphic money orders escheatable when neither addressee nor sender could be found,²²⁷ and the United States Supreme Court upheld the constitutionality of the statute.

5. Debts—Bank Deposits

Bank accounts constitute the only important kind of escheatable intangible which is almost universally recognized as a debt. Except for estates of persons dying intestate without heirs, unclaimed bank deposits

²¹⁸ See, e.g., MINN. STAT. ANN. § 345.08 (Supp. 1962).

²¹⁹ See, e.g., IND. ANN. STAT. § 49-2711 (1951).

²²⁰ UNIFORM ACT § 8.

²²¹ UTAH CODE ANN. § 78-44-8 (Supp. 1961); VA. CODE ANN. § 55-210.9 (Supp. 1962).

²²² *State v. Gallaher*, 44 N.J. Super. 59, 129 A.2d 593 (Ch. 1957).

²²³ See *id.* at 65, 129 A.2d at 596.

²²⁴ See, e.g., *State v. United States Steel Corp.*, 12 N.J. 51, 95 A.2d 740 (1953). See also KY. REV. STAT. § 413.460 (1962) (escheat of unclaimed deductions for purchase of government bonds from salaries of state employees who have left office).

²²⁵ See *ibid.*

²²⁶ 368 U.S. 71 (1961).

²²⁷ *Commonwealth v. Western Union Tel. Co.*, 400 Pa. 337, 162 A.2d 617 (1960).

are the type of property most commonly covered by specific statutes.²²⁸ Thirty states provide for the taking of inactive bank deposits,²²⁹ and general provisions in two other states apparently encompass bank accounts.²³⁰ Only Arkansas specifically prohibits the seizure of bank accounts,²³¹ although the cryptic Georgia provision also clearly excludes them.²³²

Section 2 of the Uniform Act, a typical provision, states that deposits in a banking organization or funds paid toward the purchase of shares or other interest in a financial organization are presumed abandoned when the owner has not done any of the following for a given period: increased or decreased the amount of the deposit, presented the passbook or other evidence of deposit for the crediting of interest, corresponded in writing with the organization concerning the funds or deposit, or otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization. The dormant period in the Uniform Act is only seven years, but most statutes provide for an unusually long period.

Of the thirty specific bank deposit statutes, only North Dakota's contains no provision for the recovery of funds by the owner,²³³ although

²²⁸ Early statutes were often limited to this kind of property. See Garrison, *Escheats, Abandoned Property Acts, and Their Revenue Aspects*, 35 KY. L. REV. 302, 307 (1947).

²²⁹ ALASKA COMP. LAWS ANN. § 57-8-8(a) (Supp. 1958); ARIZ. REV. STAT. ANN. § 44-352 (1956); CAL. FIN. CODE § 874; CONN. GEN. STAT. REV. § 3-57a (Supp. 1961); DEL. CODE ANN. tit. 12, §§ 1170-73 (Supp. 1962); FLA. STAT. ANN. § 717.03 (Supp. 1962); HAWAII REV. LAWS §§ 235-11 to -12 (1955); IDAHO CODE ANN. § 14-502 (Supp. 1961); KY. REV. STAT. §§ 393.060 to .080 (1962); LA. REV. STAT. art. 6:164-66 (1950); LA. REV. STAT. art. 9:1587 (1950) (pertaining to New Orleans transactions only); ME. REV. STAT. ANN. ch. 59, § 1-0, 120 (Supp. 1961); MD. ANN. CODE art. 11, §§ 46, 206 (1957) (latter section apparently repealed former by implication, see Opinion of Attorney General, Daily Record, Aug. 31, 1951); MASS. GEN. LAWS ANN. ch. 200A, §§ 3-4 (1955); MICH. COMP. LAWS §§ 567.11, 567.15(b), (d) (1948); MINN. STAT. ANN. §§ 48.522 to .524 (1946 & Supp. 1962); N.H. REV. STAT. ANN. § 386:24 to :30 (1955); N.J. STAT. ANN. §§ 17:9-18 to -940 (1963); N.M. STAT. ANN. § 22-22-3 (Supp. 1962); N.Y. ABAND. PROP. LAW §§ 300-03; N.C. GEN. STAT. § 116-24 (1960); N.D. CENT. CODE § 6-08-24.1 (Supp. 1961); ORE. REV. STAT. §§ 98.306, 120.120 (1961); PA. STAT. ANN. tit. 27, §§ 241-301 (1958); R.I. GEN. LAWS ANN. §§ 19-11-9 to -13 (Supp. 1962); TEX. REV. CIV. STAT. ANN. art. 3272b (Supp. 1962); UTAH CODE ANN. § 78-44-2 (Supp. 1961); VT. STAT. ANN. tit. 8, §§ 851-63 (1958); VA. CODE ANN. § 55-210.3 (Supp. 1962); WASH. REV. CODE ANN. § 63.28.080 (1961); WIS. STAT. § 220.25 (1957).

²³⁰ MONT. REV. CODES ANN. § 91-502 (Supp. 1961) (failure of title presumed when owner missing for twenty years and property unclaimed; real or "personal property" may escheat); OKLA. STAT. ANN. tit. 84, § 271 (1951) (seven years' absence raises presumption of death intestate without heirs, and real or "personal property" may escheat). The term "personal property" undoubtedly includes bank deposits. See *Allen v. Barnett*, 186 Ark. 494, 496, 54 S.W.2d 399, 400 (1940) (interpretation of statute); *Estate of Northcutt*, 16 Cal. 2d 683, 107 P.2d 607 (1940) (will construed so as to prevent partial intestacy); *Colonial Life & Acc. Ins. Co. v. South Carolina Tax Comm.*, 233 S.C. 129, 150, 103 S.E.2d 908, 918 (1958) ("personal property" includes deposits in building and loan associations).

The Commissioner's note to section 2 of the Uniform Act reports that 36 states have legislation "designed to capture dormant bank deposits"; this statement probably indicates a somewhat broader interpretation of some statutes than the author would make.

²³¹ ARK. STAT. ANN. § 50-603(c) (Supp. 1961) (abandoned property shall not include bank deposits).

²³² GA. CODE ANN. § 85-1101 (1955) (escheat on failure of heirs and in no other case).

²³³ See N.D. REV. CODE § 6-08-24.1 (Supp. 1961).

two other states sharply limit this right.²³⁴ Five states allow a claimant to recover within a specified time only,²³⁵ and the remaining twenty-two are purely custodial.²³⁶

E. Property Ownerless by Operation of Law

In addition to provisions against alien inheritance, several states forbid aliens to hold property, particularly land, acquired in any manner.²³⁷ The rationales of these statutes are the same as for the statutes prohibiting alien inheritance. The usual provision prohibits aliens or foreign corporations from holding title to land in the state. Aliens acquiring land in enforcement of a lien generally have a certain time within which to dispose of it. The statute may require the alien himself to dispose of the land within a certain time, or it may provide for immediate seizure of the land with full compensation to the alien.²³⁸ The present trend is toward repeal of these statutes.²³⁹

A number of statutes prohibit a corporation from holding more land than is necessary and proper to its corporate function.²⁴⁰ Corporations are often forbidden to acquire farm land, and the land holdings of tax-exempt institutions may be restricted.

Some statutes provide for the escheat of property which is illegal per se. Such property consists of objects whose predominant use is illegal and

²³⁴ In Alaska, only owners of seized funds of not more than \$1,000 can reclaim those funds; a provision that the refund procedure shall not be construed to deprive the claimant of any other remedy allowed by law apparently confers no right on claimants of more than \$1,000, particularly since the statutes provide no other remedy. See ALASKA COMP. LAWS ANN. § 57-8-8(b) (Supp. 1958). Maine renders refund completely discretionary by making the exclusive procedure one of petition to the governor and council. See ME. REV. STAT. ANN. ch. 59, §§ 1-0, 120 (Supp. 1961).

²³⁵ HAWAII REV. LAWS § 235-13 (1955) (five years); MINN. STAT. ANN. § 48.527 (Supp. 1961) (forty); N.H. REV. STAT. ANN. §§ 386:28, 395:25 (1955) (fifteen) (the former section provides that the "disposition" of deposits shall be the same as the disposition of unclaimed dividends of insolvent institutions; "disposition" probably includes the latter section, a refund provision, despite § 386:30, which provides a special procedure for reclaiming escheated bank deposits but mentions no time in which such claim must be brought); PA. STAT. ANN. tit. 27, § 301 (1958) (ten); WIS. STAT. ANN. § 220.25(5) (d) (1957) (five).

²³⁶ These consist of the ten Uniform Act states and the following: DEL. CODE ANN. tit. 12, §§ 1144(a), 1146 (Supp. 1960); KY. REV. STAT. § 393.140(2) (1959); LA. REV. STAT. art. 6:165 (1950); MD. ANN. CODE art. 11, § 206(c) (1957); MASS. GEN. LAWS ANN. ch. 200A, § 101 (1955); MICH. STAT. ANN. § 26.1053(53) (Supp. 1961); N.Y. ABAND. PROP. LAW § 1406; N.C. GEN. STAT. § 116-24 (1960); R.I. GEN. LAWS ANN. § 19-11-12 (Supp. 1961); TEX. REV. CIV. STAT. ANN. art. 3272b(g) (Supp. 1962); VT. STAT. ANN. tit. 8, §§ 855-58 (1958).

²³⁷ See, e.g., KY. REV. STAT. § 381.300 (1959) (right to escheat eight years after alien acquires title).

²³⁸ See NEB. REV. STAT. § 76-408 (1958).

²³⁹ Idaho requires appearance of nonresident aliens within two years after the death of the decedent. IDAHO CODE ANN. § 14-116 (1948).

²⁴⁰ See KY. REV. STAT. § 271.145 (1959). The corporation may be required to dispose of the land within a certain time itself, see *ibid.*, or the state may seize it and dispose of it.

includes certain narcotics and gambling devices.²⁴¹ The state usually cannot sell or auction such property, since no one could legally purchase it; and its only recourse is to destroy it.

A few statutes provide for the escheat of property acquired illegally. Idaho prohibits the acquisition of electric utility property by anyone other than an electric utility, and provides for the escheat of property held in violation of this provision. In some cases public utility refunds may constitute property illegally acquired, and some statutes provide for the escheat of refunds from companies other than public utilities.²⁴² In Missouri, unclaimed refunds resulting from unreasonable fire insurance rates are escheated.²⁴³

The rationale of escheat as punishment for violation of law remains in statutes which provide for the seizure of property illegally used, although the property itself is neutral. For example, Ohio provides for the taking of a gun, boat, trap, or other device used to take wild animals in violation of the game laws.²⁴⁴

Service to the lord is of little importance today, but there are situations in which land is ceded by the state on the condition that the grantee make some particular public use of it. For example, a Delaware statute provides that land ceded to the United States for the construction of an aid to navigation shall escheat unless building is begun within two years and completed within ten.²⁴⁵

V. CONCLUSION

The foregoing discussion indicates the inadequacy of one general escheat statute for all types of property. Specific provisions are essential to give recognition to the various rationales for escheat, and the varying constitutional standards which apply to escheat of different types of property. In drafting a comprehensive escheat act, legislators must first decide what circumstances will support a reasonable presumption of abandonment in each case. Four separate groups have some interest in most unclaimed property: the owner, the holder, the public (represented by the state), and, when the property in question is a share of some larger fund, the persons who own the other shares in the fund. Their interests, which often conflict, must be weighed to reach a just result in each case.

²⁴¹ The rationale for the confiscation of such property is so different from that for the taking of unclaimed property that the Arizona Supreme Court has held that a statute entitled "Relating to Unclaimed Moneys or Property in the Hands of Public Officials" fails to give notice that it contains a provision for the seizure of slot machines. *In re Twenty-One Slot Machines*, 72 Ariz. 408, 236 P.2d 733 (1951).

²⁴² Cf. *State v. Goodbar*, 297 S.W.2d 525 (Mo. 1957), in which illegally collected excess insurance premiums were taken under a statute providing for the escheat of unclaimed court funds.

²⁴³ Mo. STAT. ANN. § 379.395 (1949).

²⁴⁴ OHIO REV. CODE § 1531.13 (1954).

²⁴⁵ DEL. CODE ANN. tit. 29, § 103(c) (1953).

Legislators are inclined to accord the greatest weight to the state's interest and thus overstress the revenue rationale because of their duty to raise money for the state. When they decide not to escheat a certain type of ownerless property, they must rely on other sources of state revenue, especially taxes, for the money that would otherwise come from escheated funds. It may be more just to take property from those who do not own it than to raise taxes applicable to all, including those who have not benefited from windfalls. However, the revenue from escheats is uncertain and may fluctuate widely; and some of the funds taken under custodial acts must be reserved for payment of claims. Furthermore, the legislature can accomplish a policy of imposing a heavier burden of support on persons who do not earn or give consideration for their property by the simple expedient of a high tax on ownerless property, or a tax measured by the amount of ownerless property received by the taxpayer. Indeed, this tax might extend to the full value of the property escheated. The distinction between escheat and taxation in such a case is not merely semantic. The tax would be paid in money, so the holder might keep the ownerless personality and still pay the state. Under escheat statutes, either all of the abandoned property must be taken or none of it; no rationale justifies the seizure of only a portion of the ownerless property. However, a windfall tax would avoid both Scylla and Charybdis and give effect to otherwise conflicting state policies. The portion taken would tend to satisfy the rationales in favor of escheat, while the portion retained would help meet the interest of the holder and possible reasons for permitting him to benefit from abandoned property. In particular, a tax rather than escheat will avoid the confusion resulting from the current tendency to invoke every rationale but the revenue rationale as a basis for legislation which in practice is passed only to obtain revenue.

The owner protection rationale is probably the most important today, and it should be recognized whenever possible by adopting custodial statutes. The same considerations behind statutes of limitations should determine the period after which the right of recovery is cut off. An unintentional extension of the statute of limitations is especially undesirable in the custodial statutes.

In the rare situations in which the holder would want the state to escheat—cases in which the holder protection rationale is important—the state should almost invariably do so. The holder obviously has no claim to the property, and furthermore the involuntary holder will tend to relax his efforts and diligence in the management of the property.

Thus, a comprehensive statute should provide for each specific situation in which property shall escheat, in order to allow for differing circumstances and to make the legislative intent plain. The statute should also enumerate the circumstances under which ownerless property, constitutionally escheatable, will not escheat. The catch-all provision should not merely state that all other abandoned property shall escheat, but should set forth the legisla-

tive standards by which the courts can determine whether property not specifically mentioned in the statute shall escheat.

The second major concern of legislators is to prevent the ownership of certain kinds of property by particular owners. It is important that legislators frequently review escheat by operation of law statutes to see whether they should be revised in light of changing facts and state policies. In particular, the question of whether estates may go to heirs behind the Iron Curtain calls for a legislative, not a judicial, determination. This hinges on questions of fact as to the practices of foreign governments and as to U.S. foreign policy, which can best be ascertained by means of the legislative machinery.

Each state should reexamine its escheat legislation in the light of the current rationales. Although the revenue rationale has been discounted somewhat in this Note, a statutory revamping would probably increase escheat revenues, since many new types of property could be included. Individual rights would undoubtedly be accorded greater respect, since the interests of the holder, other claimants, and the owner would be considered. Escheat has reached a stage of development where it cannot afford to remain a feudal vestige with haphazard modern trappings, the sole function of which is to fill the state's coffers.

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