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6/28/66

Memorandum 66-34

Subject: Study No. 26 - Escheat of Personal Property

Accompanying this memorandum are two copies of a revised tentative recommendation on the above subject. One copy is for you to mark and return to the staff at the July meeting; the other is for you to keep.

Attached to this memorandum as Exhibit I (pink paper) is a copy of the Supreme Court's opinion in Texas v. New Jersey.

Exhibit II (yellow paper) is a recent article by Attorney General Lynch that appeared in the Los Angeles Bar Bulletin.

The recommendation has been revised to reflect the decisions made at the June meeting as well as certain suggested language changes that were submitted to the staff at that time. The following matters should be noted:

Section 1300 was approved.

Section 1500 was approved.

Section 1501

The section was approved in substance. In subdivision (g), we have used "government or governmental subdivision or agency" as the broad term applicable to all governmental bodies. This is the phrase that is used in the Uniform Commercial Code, and we have previously used it in the recommendation relating to suit in common name.

The references to "estate" and "trust" have been deleted in accordance with the Commission's instructions, and a reference to "representative or fiduciary capacity" has been substituted.

Section 1510

We have made a major change in subdivision (c) in light of the discussion at the last meeting. There are related changes elsewhere in the statute that

we will point out below. The scheme reflected in the revised statute is this:

If a holder who is subject to California jurisdiction as described in subdivision (c) holds property belonging to an owner whose last known address is outside the state, the holder must report the property to California and pay the amount due to the State Controller in accordance with California's escheat law even though the property is subject to escheat at a later time under the laws of the state of last known address. If such property is reported and paid to the other state before it escheats to California, the holder need not report it to California.

Section 1534 authorizes the State Controller to report the receipt of such property to the state of last known address if that state will report the receipt of escheated property where the last known address of the owner was in California.

Section 1561 requires the State Controller to protect a holder who pays such property to California from the necessity of defending against or of paying the escheat claim of any other state to such property.

Section 1533 requires each holder in this state to report to the State Controller any property paid to another state where the last known address of the owner was in California.

These provisions perform several desirable functions. First, the California holder does not have to pay particular attention to any escheat laws except those of California. California will accept any property escheatable under its statutes that has not previously been paid to another state. Second, if other states enact similar provisions and enter into cooperative reporting agreements as authorized, the possibility abandoned property will escape escheat--because not subject to escheat under the laws of the only state or

states with jurisdiction over the holder--will be minimized. See question <sup>11</sup>/<sub>17</sub> raised by the Attorney General on page 417 of his article. California will require holders over whom it has jurisdiction to report and deliver the abandoned property of out-of-state owners to California, another state may require holders over whom it has jurisdiction to report and deliver the abandoned property of California owners to it. The two states will then exchange reports of such receipts and pay over the amounts properly belonging to the other state.

Subdivision (e) was added at the last meeting because we were uncertain whether Texas v. New Jersey covered the problem. Your attention is directed to page 601 of the opinion as it appears in the attached exhibit (379 U.S. 680-682). The text of the opinion under headnote reference [6] together with footnote number 11 seem to make it quite clear that the court intended to foreclose any claims based on facts such as those referred to in subdivision (e). Since subdivision (e) complicates the reporting requirements under Section 1530, we suggest that subdivision (e) be deleted.

Remainder of statute

The remainder of the statute has not been considered by the Commission.

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

\*[379 US 674]

\*STATE OF TEXAS, Plaintiff,

v

STATE OF NEW JERSEY et al.

379 US 674, 13 L ed 2d 596, 85 S Ct 626, final decree

380 US 518, 14 L ed 2d 49, 85 S Ct 1136

[No. 13, Orig.]

Argued November 9, 1964. Decided February 1, 1965.

## SUMMARY

In an action brought in the Supreme Court of the United States, Texas sued New Jersey, Pennsylvania, and a corporation owing numerous unclaimed debts, for an injunction and a declaration of rights as to which state had jurisdiction to take title to the claims by escheat. Florida intervened.

In an opinion by BLACK, J., expressing the views of eight members of the Court, it was held that the claims were subject to escheat only by the state of the last-known address of the creditor, as shown by the corporate debtor's books and records, and that with respect to property owed persons as to whom there was no record of any address at all, or whose last-known address was in a state not providing for escheat of the property owed them, the property was subject to escheat by the state of the corporate domicile, provided that another state could later escheat upon proof that the last-known address of the creditor was within its borders.

STEWART, J., dissented on the ground that only the state of the debtor's incorporation has power to escheat intangible property when the whereabouts of the creditor are unknown.

## HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

## Escheat § 2 — tangible property

1. With respect to tangible property, real or personal, the rule in all jurisdic-

tions is that only the state in which the property is located may escheat.

## ANNOTATION REFERENCES

Validity under Federal Constitution of state escheat statutes. 95 L ed 1092, 7 L ed 2d 871.

Suits between states in the Supreme Court. 74 L ed 784, 98 L ed 85.

Validity under Federal Constitution of state statutes relating to disposition of unclaimed bank deposits. 94 L ed 18.

Constitutionality, construction, and application of statutes governing disposition of unclaimed proceeds of life insurance policies. 92 L ed 879.

Escheat or forfeiture to state of property held by corporation in excess of its power or contrary to law. 90 L ed 14.

Escheat of unclaimed bank deposits. 67 L ed 1030.

Uniform Disposition of Unclaimed Property Acts. 98 ALR2d 304.

Escheat of personal property of intestate domiciled or resident in another state. 50 ALR2d 1375.

TEXAS v NEW JERSEY

379 US 674, 13 L ed 2d 596, 35 S Ct 626

Supreme Court of the United States  
§ 54.5 — suits between states —  
escheat

2. In a controversy between states as to which will be allowed to escheat intangible property, it is the responsibility of the Supreme Court of the United States in the exercise of its original jurisdiction to provide a rule to settle the question where there is no applicable federal statute, since the states separately are without constitutional power to settle the controversy.

Courts § 642 — jurisdiction — exclusiveness

3. A state court's jurisdiction of a defendant or his property rights, based on sufficient contact with the state, need not be exclusive.

Escheat § 2 — intangibles — income of real property

4. The fact that an intangible is income of real property with a fixed situs is not significant enough to justify treating it as an exception to the general rule governing escheat of intangibles.

Courts § 756 — rules of decision — case-by-case determinations

5. Any proposed rule of law requiring a decision in each case of the sometimes difficult question of where a company's principal offices are located leaves so much for decision on a case-by-case basis that it should not be adopted unless no other rule is available which is certain and yet still fair.

Escheat § 2 — debts — creditor's last-known address

6. A debt which a person is entitled to collect is subject to escheat only by the state of the last-known address of the creditor, as shown on the debtor's books and records.

Escheat § 2 — debts — corporate debtor's domicile

7. Property owed to persons as to whom there is no record of any address at all, or whose last-known address is a state which does not provide for escheat of debts owed to others, is subject to escheat by the state of the corporate debtor's domicile, provided that another state can later escheat upon proof that the last-known address of the creditor was within its borders.

APPEARANCES OF COUNSEL

W. O. Shultz argued the cause for plaintiff.

Charles J. Kehoe argued the cause for defendant, State of New Jersey.

Fred M. Burns argued the cause for intervenor, State of Florida.

Augustus S. Ballard argued the cause for defendant, Sun Oil Co.

Joseph H. Resnick argued the cause for defendant, State of Pennsylvania.

Ralph Oman argued the cause for the Life Insurance Association of America, amicus curiae.

OPINION OF THE COURT

[379 US 675]

\*Mr. Justice Black delivered the opinion of the Court.

Invoking this Court's original ju-

isdiction under Art III, § 2, of the Constitution,<sup>1</sup> Texas brought this action against New Jersey, Pennsylvania, and the Sun Oil Company

1. "The judicial Power shall extend . . . to Controversies between two or more States . . . ."

"In all Cases . . . in which a State shall be Party, the supreme Court shall have original Jurisdiction."

for an injunction and declaration of rights to settle a controversy as to which State has jurisdiction to take title to certain abandoned intangible personal property through escheat, a procedure with ancient origins<sup>2</sup> whereby a sovereign may acquire title to abandoned property if after a number of years no rightful owner appears. The property in question here consists of various small debts totaling \$26,461.65<sup>3</sup> which the Sun Oil Company for periods of approximately seven to 40 years prior to the bringing of this action has owed to approximately 1,730 small creditors who have never appeared to collect them. The amounts owed, most of them resulting from failure of creditors to claim or cash checks, are either evidenced on the books of Sun's two Texas offices or are owing to persons whose last known address was in Texas, or

\*[379 US 676]

both.<sup>4</sup> \*Texas says that this intangible property should be treated as situated in Texas, so as to permit that State to escheat it. New Jer-

sey claims the right to escheat the same property because Sun is incorporated in New Jersey. Pennsylvania claims power to escheat part or all of the same property on the ground that Sun's principal business offices were in that State. Sun has disclaimed any interest in the property for itself, and asks only to be protected from the possibility of double liability. Since we held in *Western Union Tel. Co. v Pennsylvania*, 368 US 71, 7 L ed 2d 139, 82 S Ct 199, that the Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating a given item of property, we granted Texas leave to file this complaint against New Jersey, Pennsylvania and Sun, 371 US 873, 9 L ed 2d 113, 83 S Ct 144, and referred the case to the Honorable Walter A. Huxman to sit as Special

\*[379 US 677]

Master to take evidence \*and make appropriate reports, 372 US 926, 9 L ed 2d 732, 83 S Ct 869.<sup>5</sup> Florida was permitted to intervene since it

28 USC § 1251(a) (1958 ed) provides in relevant part:

"The Supreme Court shall have original and exclusive jurisdiction of:

"(1) All controversies between two or more States . . . ."

2. See generally *Enever, Bona Vacantia Under the Law of England*; Note, 61 Col. L. Rev. 1319.

3. The amount originally reported by Sun to the Treasurer of Texas was \$37,853.37, but payments to owners subsequently found reduced the unclaimed amount.

4. The debts consisted of the following:

(1) Amounts which Sun attempted to pay through its Texas offices owing to creditors some of whose last known addresses were in Texas, some of whose last known addresses were elsewhere, and some of whom had no last known address indicated:

(a) uncashed checks payable to employees for wages and reimbursable expenses;

(b) uncashed checks payable to suppliers for goods and services;

(c) uncashed checks payable to lessors of oil- and gas-producing land as royalty payments;

(d) unclaimed "mineral proceeds," fractional mineral interests shown as debts on the books of the Texas offices.

(2) Amounts for which various offices of Sun throughout the country attempted to make payment to creditors all of whom had last known addresses in Texas:

(a) uncashed checks payable to shareholders for dividends on common stock;

(b) unclaimed refunds of payroll deductions owing to former employees;

(c) uncashed checks payable to various small creditors for minor obligations;

(d) undelivered fractional stock certificates resulting from stock dividends.

5. Texas' motion for leave to file the bill of complaint also prayed for temporary injunctions restraining the other States and Sun from taking steps to escheat the property. The other States voluntarily agreed not to act pending determination of this case, and so the motion for injunctions was denied. 370 US 929, 8 L ed 2d 804, 82 S Ct 1575.

claimed the right to escheat the portion of Sun's escheatable obligations owing to persons whose last known address was in Florida, 373 US 948, 83 S Ct 1677.<sup>6</sup> The Master has filed his report, Texas and New Jersey each have filed exceptions to it, and the case is now ready for our decision. We agree with the Master's recommendation as to the proper disposition of the property.

[1, 2] With respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat. But intangible property, such as a debt which a person is entitled to collect, is not physical matter which can be located on a map. The creditor may live in one State, the debtor in another, and matters may be further complicated if, as in the case before us, the debtor is a corporation which has connections with many States and each creditor is a person who may have had connections with several others and whose present address is unknown. Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to adopt a rule which will settle the question of which State will be allowed to escheat this intangible property.

\*[379 US 678]

[3, 4] \*Four different possible

6. Illinois, which claims no interest in the property involved in this case, also sought to intervene to urge that jurisdiction to escheat should depend on the laws of the State in which the indebtedness was created. Leave to intervene was denied. 372 US 973, 10 L ed 2d 140, 83 S Ct 1108.

7. E. g., *Schmidt v Driscoll Hotel, Inc.*, 249 Minn 376, 82 NW2d 365; *Auten v Auten*, 308 NY 155, 124 NE2d 99; *Haumschild v Continental Casualty Co.* 7 Wis 2d

rules are urged upon us by the respective States which are parties to this case. Texas, relying on numerous recent decisions of state courts dealing with choice of law in private litigation,<sup>7</sup> says that the State with the most significant "contacts" with the debt should be allowed exclusive jurisdiction to escheat it, and that by that test Texas has the best claim to escheat every item of property involved here. Cf. *Mullane v Central Hanover Bank & Trust Co.* 339 US 306, 94 L ed 865, 70 S Ct 652; *Atkinson v Superior Court*, 49 Cal 2d 338, 316 P2d 960, appeals dismissed and cert denied sub nom. *Columbia Broadcasting System, Inc. v Atkinson*, 357 US 569, 2 L ed 2d 1546, 78 S Ct 1381. But the rule that Texas proposes, we believe, would serve only to leave in permanent turmoil a question which should be settled once and for all by a clear rule which will govern all types of intangible obligations like these and to which all States may refer with confidence. The issue before us is not whether a defendant has had sufficient contact with a State to make him or his property rights subject to the jurisdiction of its courts, a jurisdiction which need not be exclusive. Compare *McGee v International Life Ins. Co.* 355 US 220, 2 L ed 2d 223, 78 S Ct 199; *Mullane v Central Hanover Bank & Trust Co.* supra; *International Shoe Co. v Washington*, 326 US 310, 90 L ed 95, 66 S Ct 154, 161 ALR 1057.<sup>8</sup> Since this Court has held in *Western Union Tel. Co. v*

130, 95 NW2d 814. See also *Clay v Sun Insurance Office, Ltd.* 377 US 179, 12 L ed 2d 229, 84 S Ct 1197; *Watson v Employers Liability Assurance Corp.* 348 US 66, 99 L ed 74, 75 S Ct 166; cf. *Richards v United States*, 369 US 1, 7 L ed 2d 492, 82 S Ct 585; *Vanston Bondholders Protective Committee v Green*, 329 US 156, 91 L ed 162, 67 S Ct 237.

8. Nor, since we are dealing only with escheat, are we concerned with the power

Pennsylvania, *supra*, that the same property cannot constitutionally be

\*[379 US 679]

escheated \*by more than one State, we are faced here with the very different problem of deciding which State's claim to escheat is superior to all others. The "contacts" test as applied in this field is not really any workable test at all—it is simply a phrase suggesting that this Court should examine the circumstances surrounding each particular item of escheatable property on its own peculiar facts and then try to make a difficult, often quite subjective, decision as to which State's claim to those pennies or dollars seems stronger than another's. Under such a doctrine any State likely would easily convince itself, and hope to convince this Court, that its claim should be given priority—as is shown by Texas' argument that it has a superior claim to every single category of assets involved in this case. Some of them Texas says it should be allowed to escheat *because* the last known addresses of the creditors were in Texas, others it claims *in spite of* the fact that the last known addresses were *not* in Texas. The uncertainty of any test which would require us in effect either to decide each escheat case on the basis of its particular facts or to devise new rules of law to apply to ever-developing new categories of facts, might in the end create so much uncertainty and threaten so much expensive litigation that the States might find that they would lose more in litigation expenses than they might gain in escheats.<sup>9</sup>

of a state legislature to regulate activities affecting the State, power which like court jurisdiction need not be exclusive. Compare *Osborn v Ozlin*, 310 US 63, 84 L ed 1074, 60 S Ct 758

[4] 9. Texas argues in particular that at least the part of the intangible obligations here which are royalties, rents, and

New Jersey asks us to hold that the State with power to escheat is the domicile of the debtor—in this case New Jersey, the State of Sun's

\*[379 US 680]

incorporation. This plan has \*the obvious virtues of clarity and ease of application. But it is not the only one which does, and it seems to us that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exalt a minor factor to permit escheat of obligations incurred all over the country by the State in which the debtor happened to incorporate itself.

[5] In some respects the claim of Pennsylvania, where Sun's principal offices are located, is more persuasive, since this State is probably foremost in giving the benefits of its economy and laws to the company whose business activities made the intangible property come into existence. On the other hand, these debts owed by Sun are not property to it, but rather a liability, and it would be strange to convert a liability into an asset when the State decides to escheat. Cf. *Case of the State Tax on Foreign-held Bonds*, 15 Wall 300, 320, 21 L ed 179, 187. Moreover, application of the rule Pennsylvania suggests would raise in every case the sometimes difficult question of where a company's "main office" or "principal place of business" or whatever it might be designated is located. Similar uncertainties would result if we were to attempt in each case to determine the State in which the debt was created and allow it to escheat. Any

mineral proceeds derived from land located in Texas should be escheatable only by that State. We do not believe that the fact that an intangible is income from real property with a fixed situs is significant enough to justify treating it as an exception to a general rule concerning escheat of intangibles.

379 US 574, 13 L ed 2d 596, 85 S Ct 626

rule leaving so much for decision on a case-by-case basis should not be adopted unless none is available which is more certain and yet still fair. We think the rule proposed by the Master, based on the one suggested by Florida, is.

[6] The rule Florida suggests is that since a debt is property of the creditor, not of the debtor,<sup>10</sup> fairness among the States requires that the right and power to escheat the debt should be accorded to the State of

\*[379 US 681]

the creditor's \*last known address as shown by the debtor's books and records.<sup>11</sup> Such a solution would be in line with one group of cases dealing with intangible property for other purposes in other areas of the law.<sup>12</sup> Adoption of such a rule involves a factual issue simple and easy to resolve, and leaves no legal issue to be decided. It takes account of the fact that if the creditor instead of perhaps leaving behind an uncashed check had negotiated the check and left behind the cash, this State would have been the sole possible escheat claimant; in other words, the rule recognizes that the debt was an asset of the creditor.

The rule recommended by the Master will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. And by using a standard of last known address, rather than technical legal concepts of residence and domicile, administration and application of escheat laws should be simplified. It may well be that some addresses left by vanished creditors will be in States other than those in which they lived at the time the obligation arose or at the time of the escheat. But such situations probably will be the exception, and any errors thus created, if indeed they could be called errors, probably will tend to a large extent to cancel each other out. We therefore hold that

\*[379 US 682]

each item of property \*in question in this case is subject to escheat only by the State of the last known address of the creditor, as shown by the debtor's books and records.<sup>13</sup>

[7] This leaves questions as to what is to be done with property owed persons (1) as to whom there is no record of any address at all, or (2) whose last known address is in a State which does not provide for

10. On this point Florida stresses what is essentially a variation of the old concept of "mobilia sequuntur personam," according to which intangible personal property is found at the domicile of its owner. See *Blodgett v Silberman*, 277 US 1, 9-10, 72 L ed 749, 756, 757, 48 S Ct 410.

11. We agree with the Master that since our inquiry here is not concerned with the technical domicile of the creditor, and since ease of administration is important where many small sums of money are involved, the address on the records of the debtor, which in most cases will be the only one available, should be the only relevant last-known address.

12. See, e. g., *Baldwin v Missouri*, 281 US 586, 74 L ed 1056, 50 S Ct 436, 72 ALR 1303; *Farmers Loan & Trust Co. v Minnesota*, 280 US 204, 74 L ed 371, 50 S Ct 28, 65 ALR 1000; *Blodgett v Silberman*, 277 US 1, 72 L ed 749, 48 S Ct 410. However, it has been held that a State may allow an

unpaid creditor to garnish a debt owing to his debtor wherever the person owing that debt is found. *Harris v Balk*, 198 US 215, 49 L ed 1023, 25 S Ct 625. But cf. *New York Life Ins. Co. v Dunlevy*, 241 US 518, 60 L ed 1140, 36 S Ct 613.

13. Cf. *Connecticut Mutual Life Ins. Co. v Moore*, 333 US 541, 92 L ed 863, 68 S Ct 682. As was pointed out in *Western Union Tel. Co. v Pennsylvania*, 368 US 71, 77-78, 7 L ed 2d 139, 143, 144, 82 S Ct 199, none of this Court's cases allowing States to escheat intangible property decided the possible effect of conflicting claims of other States. Compare *Standard Oil Co. v New Jersey*, 341 US 428, 443, 95 L ed 1078, 1090, 71 S Ct 822; *Connecticut Mutual Life Ins. Co. v Moore*, supra; *Anderson National Bank v Lueckett*, 321 US 233, 88 L ed 692, 64 S Ct 599, 151 ALR 824; *Security Savings Bank v California*, 263 US 282, 68 L ed 301, 44 S Ct 108, 21 ALR 391.

escheat of the property owed them. The Master suggested as to the first situation—where there is no last known address—that the property be subject to escheat by the State of corporate domicile, provided that another State could later escheat upon proof that the last known address of the creditor was within its borders. Although not mentioned by the Master, the same rule could apply to the second situation mentioned above, that is, where the State of the last known address does not, at the time in question, provide for escheat of the property. In such a case the State of corporate domicile could escheat the property, subject to the right of the State of the last known address to recover it if and when its law made provision for escheat of such property. In other words, in both situations the State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the

property for itself only until some other State comes forward with proof that it has a superior right to escheat. Such a solution for these problems, likely to arise with comparative infrequency, seems to us conducive to needed certainty and we therefore adopt it.

\*[1979 US 633]

\*We realize that this case could have been resolved otherwise, for the issue here is not controlled by statutory or constitutional provisions or by past decisions, nor is it entirely one of logic. It is fundamentally a question of ease of administration and of equity. We believe that the rule we adopt is the fairest, is easy to apply, and in the long run will be the most generally acceptable to all the States.

The parties may submit a proposed decree applying the principles announced in this opinion.

It is so ordered.

#### SEPARATE OPINION

Mr. Justice Stewart, dissenting.

I adhere to the view that only the State of the debtor's incorporation has power to "escheat" intangible property when the whereabouts of the creditor are unknown. See *Western Union Tel. Co. v Pennsylvania*, 363 US 71, 80, 7 L ed 2d 139, 145, 82 S Ct 199 (separate memorandum). The sovereign's power to escheat tangible property has long been recognized as extending only to the limits of its territorial jurisdiction. Intangible property has no spatial existence, but consists of an obligation owed one person by another. The power to escheat such property has traditionally been thought to be lodged in the domiciliary State of one of the parties to the obligation. In a case such as

this the domicile of the creditor is by hypothesis unknown; only the domicile of the debtor is known. This Court has thrice ruled that where the creditor has disappeared, the State of the debtor's domicile may escheat the intangible property. *Standard Oil Co. v New Jersey*, 341 US 428, 95 L ed 1078, 71 S Ct 822; *Anderson Nat. Bank v Lockett*, 321 US 233, 88 L ed 692, 64 S Ct 599, 151 ALR 824; *Security Savings Bank v California*, 263 US 282, 68 L ed 301, 44 S Ct 108, 31 ALR 391. Today the Court overrules all three of those cases. I would not do so. Adherence to settled precedent seems to me far better than giving the property to the State within which is located the one place where we know the creditor is not.

# Interstate Conflicts Over the Escheat of Intangibles

By Thomas C. Lynch  
Attorney General  
of California



Attorney General Thomas C. Lynch is a native of California and was educated at Santa Clara University and San Francisco Law School. Prior to becoming the Attorney General of California, he had extensive experience in governmental service having been an Assistant United States Attorney for the Northern District of California, Chief Assistant District Attorney of San Francisco for eight years, and District Attorney of San Francisco from 1951 to 1964. Mr. Lynch is a fellow in the American College of Trial Lawyers.

» » WHAT WOULD A STATE GOVERNMENT SEEK more eagerly than a "continuing source of revenue requiring no new taxation"? Those are the words of a California Assembly Subcommittee used in 1959 to describe the Uniform Disposition of Unclaimed Property Act. As the report went on to point out, not only does this law produce money, but also it benefits many owners of unclaimed property by requiring notice to apparent owners of abandoned property before such property goes into State custody,<sup>1</sup> and by permitting owners to file claims for such property, or its proceeds, after it has been delivered to the State.<sup>2</sup>

It is not surprising that in 1961 the Supreme Court could count at least

20 laws applicable to intangible property, all new in some respect since 1941.<sup>3</sup> California is one of 11 states which has adopted some form of the Uniform Act since its promulgation in 1955.

Escheat or unclaimed property laws are not favored by everyone. Some resistance to such laws and their administration comes from holders of unclaimed property who receive a windfall if neither the owner nor the state claims it.<sup>4</sup> A more legitimate complaint has been that escheat laws create a hazard of double liability. This is particularly true of intangible property to which several states may be in a position to lay claim. The existence of uncertainty has materially

<sup>1</sup>CCP § 1511. This section provides for notice by publication, and notice by mail where the apparent owner has a listed address.

<sup>2</sup>CCP § 1518. Since there is no time limit for filing such a claim, the owner may recover property from the State even though he may have been barred by the Statute of Limitations had the property remained in the hands of the holder or obligor. CCP § 1519 provides for hearing and decision regarding such claims by the

State Controller, and CCP § 1520 provides for judicial review of the Controller's decision.

<sup>3</sup>Western Union v. Pennsylvania, 368 U.S. 71, 79, n. 5 (1961).

<sup>4</sup>Douglas Aircraft Co. v. Cranston, 58 Cal. 2d 462 (1962), holds that the California Legislature did not intend to escheat property the holders of which were protected by the Statute of Limitations when the California law was enacted.

EDITOR'S NOTE: On March 18 and 19 of this year, the National Association of Attorneys General held its midyear meeting in Washington, D.C. As Chairman of the Association's Escheat Committee, Attorney General Lynch presented a paper related to the background and impact of the Supreme Court's decision in *Texas v. New Jersey*, 379 U.S. 843 (1965). His text has been summarized and revised to reflect discussions held at the Washington meeting with members of the Escheat Committee and with Dr. Mitchell Wendell, counsel for the Council of State Governments and a distinguished legal scholar in the field of interstate cooperation.\*

hindered enforcement of escheat statutes.

The landmark decision of *Texas v. New Jersey* has resolved many of the problems which existed previously in this area.<sup>5</sup> First, it implemented the principle established in 1961<sup>6</sup> that the Supreme Court's original jurisdiction was available to resolve controversies between states involving unclaimed property. Prior litigation over a state's jurisdiction to escheat unclaimed property took place between a state and the holder of property. Now, however, the Supreme Court has declared its own function:<sup>7</sup>

"Since the States separately are without constitutional power to provide a rule to settle this interstate controversy and since there is no applicable federal statute, it becomes our responsibility in the exercise of our original jurisdiction to

adopt a rule which will settle the question of which State will be allowed to escheat this intangible property."

Second, the Supreme Court set forth and applied rules which promise to resolve, fairly and efficiently, most of the jurisdictional problems. While the new use of the original jurisdiction is the most noteworthy aspect of *Texas v. New Jersey*, the utility of the device is likely to be judged by the rules promulgated. Hence, we look first at those rules.

The Court had before it, on exceptions, the report of a Special Master in a case which involved competing claims of Texas, New Jersey, Pennsylvania, and Florida. The unclaimed property in question consisted of approximately \$26,000 of mostly unclaimed or uncashed checks owed to 1,730 creditors by Sun Oil Company for periods of from 7 to 40 years. Sun

<sup>5</sup>379 U.S. 843 (1965).

<sup>6</sup>*Western Union v. Pennsylvania*, 368 U.S. 71 (1961).

<sup>7</sup>379 U.S. at ..., 85 S. Ct. at 628.

\*Attorney General Lynch was accompanied by Assistant Attorney General Jay L. Shavelson, whose assistance and that of Deputy Attorney General Elizabeth Miller in the preparation of this paper he wishes to acknowledge.

Oil was a New Jersey corporation with its principal place of business in Pennsylvania. The debts were on the books of two of Sun Oil's Texas offices or they were owed to persons whose last known address was in Texas.

In formulating a general rule to resolve interstate conflicts over unclaimed intangible property, the Court considered four possibilities and eliminated all but the last.

First, it considered the "contacts" test advocated by Texas. This rule, although it had more support in the Court's prior decisions than any other, was characterized as one which would insure "permanent turmoil," and in fact is no rule at all.<sup>8</sup>

Second, the Court rejected the domiciliary test, advocated by New Jersey, the debtor Sun Oil's state of incorporation. The Court conceded, however, that this rule has at least clarity and ease of application.

Third, the Court rejected Pennsylvania's claim which was based on the ground that Pennsylvania contains Sun Oil's principal office. The test would apparently have provided certainty with respect to Sun Oil. In other cases, location of the principal office or place of business would require a contest on difficult facts. Moreover, the Court rejected Pennsylvania's

argument that it should prevail because Pennsylvania had had most to do with creation of Sun Oil's assets. The property here was Sun Oil's debt, which is the opposite of an asset.

The fourth possibility, and the one selected by the Court, was the creditor's last known address as shown by the debtor's books and records. However, if the state of last known address cannot be determined, or if that state does not have an applicable escheat law, jurisdiction then rests in the state of the debtor's incorporation. This was the rule advocated by Florida. It is substantially the rule recommended by the Master. We may speculate that both the Master and the Court itself took their policy guide from section 10 of the Uniform Act.<sup>9</sup>

The decision goes far to remove the uncertainty which has beset businesses and impeded states in their collection efforts in recent years. It is broad enough to apply to any type of intangible personal property which is likely to be subject to escheat. So far as it goes, it settles both the problem of multiple liability and the "race of diligence" between competing states. It accomplishes what was sought by section 10 of the Uniform Act.

Although the decision is applicable

<sup>8</sup>The "contacts" test had previously been applied in *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), and *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), cases which may now be regarded as substantially overruled.

<sup>9</sup>Section 10 of the Uniform Act reads as follows:

"If specific property which is subject to the provisions of Sections 2, 5, 6, 7, and 9 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific

property is not presumed abandoned in this state and subject to this act if:

"(a) It may be claimed as abandoned or escheated under the laws of such other state; and

"(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state."

C.C.P. § 1509 is substantially similar.

only to intangible property, this is not a serious limitation upon its future utility because, as noted by the Court:<sup>10</sup>

"With respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat."

However, the Court's decision is not a panacea. Several questions still remain unanswered:

1. Are the criteria stated in *Texas v. New Jersey* to have retroactive effect so as to enable the state of the creditor's last known address to recover property escheated by another state applying Supreme Court decisions prior to *Texas v. New Jersey*? If so, does it make a difference that the former escheat was in satisfaction of a judgment or was merely a voluntary payment in compliance with the escheat law?

2. In *Texas v. New Jersey*, the Court said that the domiciliary state of the debtor may escheat the property subject to the rights of the state of the creditor's last known address when it enacts an escheat law or when it obtains information as to the address. What are the time limits within which the state of last known address may assert its rights?

3. By what criterion is the debtor's state of incorporation to be determined in cases of multiple incorporation or federal incorporation?

4. Assuming that the state of the creditor's last known address has an applicable escheat law, must it also have jurisdiction over the debtor in order to assert the right set forth in *Texas v. New Jersey*? The problem is unlikely to arise, since escheat laws

generally require that the escheating state have jurisdiction over the debtor. However, there is no such statement in the Supreme Court's recital of criteria. This raises the possibility that the state of the creditor's last known address will be frustrated because it lacks jurisdiction over the debtor, and the state of the debtor will be frustrated because the state of the creditor in fact has an applicable escheat law.

5. Is property entirely immune from escheat where the debtor's state of incorporation has no escheat law, and there is no record of the creditor's address or the state of the creditor's last known address likewise has no escheat law?

The foregoing questions relate to legal criteria still in some uncertainty. There may be difficult factual questions as well in any given case. For example, *Texas v. New Jersey* followed the Court's invitation to assume original jurisdiction set forth in *Western Union v. Pennsylvania*, 368 U.S. 71 (1961), where Pennsylvania sought to escheat debts owing by the telegraph company to either the payee or the purchaser of a money order. In such cases, depending on the nature of the transaction, the creditor will sometimes prove to be the payee and sometimes the purchasing remitter.

How will these questions be resolved? In the original jurisdiction of the Supreme Court in litigation between competing states? In litigation in state or lower federal courts between the state's officials administering the escheat law and the debtor? To what extent can and should answers be sought through reciprocal state legislation, through interstate compact, or through federal legislation?

(Continued on page 442)

<sup>10</sup>379 U.S. at \_\_\_\_\_, 85 S. Ct. at 628.

INTERSTATE CONFLICTS OVER THE ESCHEAT OF  
INTANGIBLES . . . from page 417

Favor Exploring Interstate Compact

The consensus at the meeting of the Escheat Committee favored exploration of an interstate compact, which requires both legislation by each compacting state and consent by Congress. A simpler and more flexible alternative may be reciprocal state legislation, such as that in section 10 of the Uniform Act. Dr. Mitchell Wendell, counsel for the Council of State Governments, is drafting a proposed compact which it is hoped may be ready for consideration by the National Association of Attorneys General at its June meeting in San Antonio, Texas.

Exploration of various methods for answering these and other unanswered questions is stimulated by the realization that the original jurisdiction of the Supreme Court is unlikely to produce satisfactory answers. In 1959, editors of the *Stanford Law Review* counted 123 original proceedings since 1789, and the Court's docket is constantly becoming more crowded.<sup>11</sup> Access to the original jurisdiction is not a matter of right, as the Court recognized in its 1961 *Western Union* opinion.<sup>12</sup>

"Whether and under what circumstances we will exercise our jurisdiction to hear and decide these controversies ourselves in particular cases, and whether we might under some circumstances refer them to United States District Courts, we need not now determine."

Since, as a practical matter, it would appear that most litigation involving two or more states will have to be tried initially in the Federal District Courts, Federal legislation establishing such original jurisdiction and the procedure therefor may well be desirable.<sup>13</sup>

To whatever extent decisions are made by United States District Courts or by state courts, Supreme Court review is critically important. *Texas v. New Jersey* ended a thoroughly unsatisfactory situation in which more than one state had jurisdiction to escheat the same property. In *Connecticut Mut. Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the Court had affirmed on appeal a New York decision that proceeds of life insurance policies delivered in New York by out-of-state insurers might be escheated in New York, at least if the insured had not ceased to be a New York resident. In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), the Court affirmed a decision of a New Jersey court escheating to New Jersey stock dividends and dividend checks based upon the debtor's incorporation in New Jersey. In both cases, a minority of the Court doubted a decision of any kind was appropriate when conflicting claimant states were not before the Court.

In *Western Union v. Pennsylvania*, 368 U.S. 71 (1961), the views of the dissenting minority became the views of the Court. The Court reversed a judgment for Pennsylvania and sug-

<sup>11</sup>Note, 11 *Stan. L. Rev.* 685 (1959).

<sup>12</sup>368 U.S. at 79.

<sup>13</sup>See section 105 of the proposed Federal Act to Resolve Conflicting State Claims

to Abandoned Property, 1 *Harvard Journal on Legislation* 151, 154 (1964) for suggested legislation accomplishing this purpose.

gested litigation by the states in the original jurisdiction. Inspiration was found in *Texas v. Florida*, 306 U.S. 398 (1939). In that case, on unique and bizarre facts,<sup>14</sup> Texas, Florida, New York, and Massachusetts had litigated in the original jurisdiction of the Supreme Court their respective jurisdictions to tax the estate of Hetty Green's peripatetic heir. Supreme Court adjudication was possible in that case only because competing claims of the states fortuitously added up to more than 100 per cent of the estate to be taxed.

Does *Western Union v. Pennsylvania*, 368 U.S. 71 (1961), mean that all new questions presented to a state or lower federal court in escheat litigation between a state and a holder of unclaimed property are to be left unanswered until the affected states can secure an answer from the United States Supreme Court sitting in the original jurisdiction? It could be so argued, but the practical result would please no one.

Alternatively, can state and lower federal courts fill in details of the *Texas v. New Jersey* criteria, subject to review by the Supreme Court? This runs into the difficulty that interstate conflicts would be resolved in actions to which competing states are not represented. However, with the basic notions well established in *Texas v. New Jersey*, this is clearly a lesser evil than sending all litigants to the Supreme Court.

Even better, maybe, is reciprocal legislation or interstate compact to resolve the remaining problems. One

state's legislation cannot provide a definitive answer to an interstate problem. Legislation can evidence a state's cooperative willingness to abide by a specific solution. The Supreme Court in *Texas v. New Jersey* and in the *Western Union* case indicated keen awareness that legislation can be an effective source of principle to resolve an interstate conflict. The problem is practical; the Court has shown an awareness of the need for a practical solution.

This discussion raises more questions than it answers, but it may serve to stimulate interest in a fascinating and important problem. It is presented to readers of this Bulletin in the hope that they may have comments to direct to the office of the Attorney General.

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<sup>14</sup>Lewis, *The Day They Shook the Plum Tree* (1963), is a popular account of the birth, growth, and dissolution of the Green fortune.

1126

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

THE ESCHEAT OF PERSONAL PROPERTY

June 30, 1966

California Law Revision Commission  
Law School  
Stanford University  
Stanford, California

WARNING: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

TENTATIVE RECOMMENDATION  
of the  
CALIFORNIA LAW REVISION COMMISSION  
relating to  
THE ESCHEAT OF PERSONAL PROPERTY

Although the ancient concept of escheat that existed at common law was somewhat different, escheat is now considered generally to be the right of the government to claim property that has no owner. Note, 61 COLUM. L. REV. 1319 (1961). Under this modern concept of escheat, there are two classes of property that are usually subjected to a state's escheat claims. First, many states claim by escheat property that has been abandoned by its owner. Second, virtually all states claim by escheat the property that belonged to a person who died without heirs. California's escheat statutes have provided for the escheat of all property in the second category and for the escheat of certain classes of property in the first category. Recent decisions by the courts, however, have rendered the existing California statutes inadequate to deal with the problems that exist in this field. The statutes claim escheat rights that this state cannot lawfully assert, and they do not provide for the assertion of escheat rights that the state is entitled to assert.

Escheat of Abandoned Property

In 1959 the Uniform Disposition of Unclaimed Property Act was enacted in California as Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. The act provides a comprehensive scheme for the reporting to the State Controller and the subsequent delivery of various kinds of unclaimed personal property. The Uniform Act replaced a less

comprehensive scheme for the escheat of various kinds of personal property. For the most part, the Uniform Act applies to intangible property--wages, bank deposits, dividends, corporate shares, etc. The act applies also to some forms of tangible personal property, such as that found in safety deposit boxes. The Uniform Act provides generally that if the owner of such property has failed to claim it for a specified period of time, the holder is required to report this fact to the State Controller. Subsequently, after due notice, the property is transferred to the custody of the State Controller who then holds the property subject to any claim the true owner might make. The property subject to the Uniform Act is limited to that held by persons doing business in this state or otherwise subject to the jurisdiction of this state.

Since the enactment of the Uniform Act the United States Supreme Court decided Texas v. New Jersey, 379 U.S. 674 (1965). In Texas v. New Jersey, the Supreme Court held that only one state has the power to escheat intangible personal property. Even though the holder of the property is subject to the jurisdiction of more than one state, the holder cannot be subjected to escheat claims by more than one state. In determining which state can escheat such property, the Supreme Court rejected a contention that the right of a state to escheat intangible property should be based upon the state's jurisdiction over the holder of the property. Instead, the Supreme Court held that: (1) intangible property escheats to the state of the last known address of the owner as shown on the books and records of the holder and (2) if the books and records do not reflect an address of the owner, such property may be escheated by the state where the holder is domiciled. In cases falling in the second category, if another state proves that the last known address of the owner was actually within its borders, that state may escheat the property and recover it from the holder or from the state that first escheated it. If the state of the last

known address of the owner as shown by the books and records of the holder does not provide for the escheat of abandoned property, the Supreme Court held that the state where the holder is domiciled may escheat the property subject to the claim of the state of last known address if and when its law makes provision for the escheat of such property.

The rules laid down by the United States Supreme Court are inconsistent with the provisions of the Uniform Disposition of Unclaimed Property Act. The Uniform Act is based upon this state's jurisdiction over the holder. But under the Supreme Court's decision, California has no right to escheat much of the abandoned property that is held by holders who are subject to the jurisdiction of the California courts. On the other hand, California has the right to escheat much abandoned property in the hands of holders who are not subject to the jurisdiction of its courts, but the provisions of the Uniform Act do not provide for the escheat of such property.

Accordingly, the Law Revision Commission recommends a comprehensive revision of the California law relating to escheat to bring it into harmony with the decisions of the United States Supreme Court.

When the Uniform Act was enacted in 1959, it superseded statutes that provided for the permanent escheat of abandoned property. The superseded statutes provided that after a requisite period of time and due notice to the owner, the title to the abandoned property vested absolutely in the state and the owner's claim was forever barred. The Uniform Act does not provide for such permanent escheat. Under the Uniform Act the Controller may never close his books upon the property delivered to him under its terms. The owner or his descendants or successors have a perpetual right to claim the

property. The Commission recommends that the act be revised to again provide for the permanent escheat of abandoned property after proper notice and opportunity to claim the property has been given to the owner of the property.

Before Texas v. New Jersey was decided, the National Association of Attorneys General had begun work on an unclaimed property compact designed to resolve many of the problems between the signatory states that were resolved by the Supreme Court in Texas v. New Jersey. After Texas v. New Jersey was decided, the Association continued work on a compact. The compact that has been prepared by the Association is designed to provide rules to govern those situations involving more than one state where the rules set forth in Texas v. New Jersey do not necessarily yield a single escheat claimant. The compact is also designed to settle the status of property that was unclaimed prior to February 1, 1965, the date on which Texas v. New Jersey was decided.

The proposed compact establishes a reasonably complete set of rules for determining entitlement to unclaimed property in cases of multiple state claims. It will bring order into the field and assist this state as well as other states that become signatories to the compact to secure unclaimed property to which they are entitled. Therefore, the Law Revision Commission recommends that this state join in the compact.

#### Escheat of Property Upon Owner's Death Without Heirs

Probate Code Section 231 provides that if a decedent leaves no one to take his estate or any portion thereof under the laws of this state, the same escheats to this state at the death of the decedent. In Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), the court held that the rule stated in

Section 231 is subject to the rule stated in Section 946 of the Civil Code, to wit:

If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Applying Section 946, the court held that a California bank account owned by a Montana domiciliary who died without heirs escheated to the state of Montana and not to the state of California. The rule stated by the court is broad enough to apply to all personal property, including tangible personal property located in California.

Other states have not been as solicitous of California's escheat claims as the California court was of Montana's escheat claim in the Nolan case. In In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947), and in In re Menshefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954), it was held that bank accounts located in Michigan and New York that belonged to California domiciliaries who died without heirs escheated to Michigan and New York respectively, and not to California. Thus, under these decisions, California surrenders whatever right it has to escheat personal property located within California or in the hands of a holder located in California when the owner dies domiciled elsewhere, and California is powerless to claim the escheat of property located elsewhere that belongs to California domiciliaries who die without heirs.

It is impossible to determine what effect Texas v. New Jersey, 379 U.S. 674 (1965), may have on the results reached by the California, Michigan, and New York courts. The situation presented to the Supreme Court in Texas v. New Jersey involved property which was merely unclaimed. No one knew what had happened to the owner. He had merely disappeared or had failed to claim what was his. The California, Michigan, and New York courts were concerned with property belonging to a known decedent. In each case, the administrator of that decedent was asserting a claim to the property. There was no dispute

in each case as to the domicile of the decedent, although the last known address of the decedent from the books and records of the holder may well have differed from his last actual address. It is possible that when a decedent's estate is involved the Supreme Court may not require distribution of the property to the state of the last known address according to the books and records of the holder where that last known address is clearly neither the domicile nor the last address of the owner. It is possible, too, that there may be other departures from the Texas v. New Jersey rules occasioned by the fact that facts concerning the last owner are reasonably ascertainable.

Because it is impossible to determine what rules the United States Supreme Court will develop to deal with property of persons dying without heirs, the Law Revision Commission recommends that Section 231 of the Probate Code be revised so that California will be entitled to assert an escheat claim to any property it may be entitled to escheat under whatever rules the United States Supreme Court develops. The statute should be amended so that this state no longer loses the property of both domiciliaries and nondomiciliaries in every case where there is more than one state interested in the situation.

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The recommendations of the Law Revision Commission would be effectuated by the enactment of the following legislation:

An act to amend Sections 1300, 1500, 1501, and 1614 of, to amend and renumber Sections 1502, 1504, 1506, 1507, 1508, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1520, 1521, 1522, 1524, 1525, 1526, and 1527 of, to amend the heading of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of, to add a new article heading immediately preceding Section 1500 of, to add Article 2 (commencing with Section 1510) to Chapter 7 of Title 10 of Part 3 of, to add Sections 1512 and 1514 to, to add a new article heading immediately preceding Section 1510 (renumbered Section 1530 by this act) of, to add Sections 1533 and 1534 to, to add Article 4 (commencing with Section 1540) to Chapter 7 of Title 10 of Part 3 of, to add Section 1542 to, to add Article 5 (commencing with Section 1550) to Chapter 7 of Title 10 of Part 3 of, to add a new article heading immediately preceding Section 1513 (renumbered Section 1560 by this act) of, to add Section 1561 to, to add a new article heading immediately preceding Section 1515 (renumbered Section 1570 by this act) of, to add Sections 1571, 1572, and 1573 to, to add a new article heading immediately preceding Section 1525 (renumbered Section 1580 by this act) of, and to repeal Sections 1503, 1505, 1509, 1518, 1519, and 1523 of, the Code of Civil Procedure and to repeal Section 3081 of the Civil Code, relating to unclaimed property.

The people of the State of California do enact as follows:

SECTION 1. Section 1300 of the Code of Civil Procedure is amended to read:

1300. For the purposes of this title, the following definitions shall apply:

(a) "Property," unless specifically qualified, includes all classes of property, real, personal, and mixed.

(b) "Unclaimed property," unless specifically qualified, means all property which is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or which, under any provision of law, will become unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or to the possession of which the state is or will become entitled, if not claimed by the person or persons entitled thereto within the time allowed by law, whether or not there has been a judicial determination that such property is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state ~~;-but-such-term-does-not-include-property which-is-subject-to-escheat-under-the-provisions-of-an-act-entitled "An-act-relating-to-the-rights,-powers-and-disabilities-of-alien and-of-certain-companies, associations-and-corporations with respect to property-in-this-state, providing-for escheats-in certain-cases, prescribing-procedure-therein,-requiring-reports-of certain-property holdings-to-facilitate-the-enforcement-of-this-act, prescribing penalties for-violation-of the-provisions-hereof, and-repealing-all acts-or-parts of acts inconsistent-or in-conflict herewith,"-approved-by electors November-2, 1920,~~ as amended .

(c) "Escheated," "Escheat," unless specifically qualified, means "~~title to which has vested in the State,~~" the vesting in the state of title to property without a known owner, whether by judicial determination or by operation of law, subject, however, to the right of claimants to appear and claim the escheated property or any portion thereof, ~~as provided in this title .~~ When used in reference to the law of another state, "escheat" includes the transfer to the state of the right to the custody of such property.

(d) "~~Permanently escheated~~" "Permanent escheat" means "~~title to which has vested absolutely in the State~~" the absolute vesting in the state of title to property without a known owner, pursuant to judicial determination, ~~pursuant to a proceeding of escheat as provided by Chapter 5, or pursuant to~~ or by operation of law, after the period has elapsed during which claimants may appear and claim the property, ~~or any portion thereof, as provided in this title~~ and the barring of all claims to the property by the former owner thereof or his successors .

(e) "Controller" means the State Controller, and "Treasurer" means the State Treasurer.

Comment. Section 1300 is amended to permit more convenient use of the defined terms in Chapter 7 (commencing with Section 1500) of this title.

The term "presumptively abandoned" has been deleted from subdivision (b) because it is no longer used, as it formerly was, in the substantive provisions relating to the escheat of abandoned property. The reference to the initiative act approved in 1920 has been deleted from subdivision (b) because it is obsolete. The act referred to was declared unconstitutional (Sei Fujii v.

State, 38 Cal.2d 718, 242 P.2d 617 (1952)) and has been repealed (Cal. Stats. 1955, Ch. 316, §§ 1-2, p. 767; Cal. Stats. 1957, p. cxxxvii).

The definitions in subdivisions (c) and (d) have been broadened to include escheats under the law of other states as well as escheats under the law of this state; for under Section 1510, the right of California to escheat certain intangible property depends on whether such property is subject to escheat under the law of another state. Under the laws of some states, the right to the custody of abandoned property vests in the state after the property has remained unclaimed for a requisite period of time, but the state never acquires the technical title to the property. The revised definition in subdivision (c) makes it clear that this transfer of the right to custody is embraced in the term "escheat."

SEC. 2. The heading of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure is amended to read:

CHAPTER 7 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT LAW

SEC. 3. A new article heading is added immediately preceding Section 1500 of the Code of Civil Procedure, to read:

ARTICLE 1. SHORT TITLE AND DEFINITIONS

SEC. 4. Section 1500 of the Code of Civil Procedure is amended to read:

1500. This chapter may be cited as the ~~Uniform~~ Disposition of Unclaimed Property Act LAW . None of the provisions of this chapter shall apply to any type of property received by the state under the provisions of Chapters 1 to 6, inclusive, of this title.

Comment: This chapter has been substantially revised in order to harmonize its provisions with the recent decision of the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965). The short title of the chapter has been revised, therefore, to reflect the fact that the chapter is no longer substantially the same as the Uniform Disposition of Unclaimed Property Act promulgated by the Commissioners on Uniform State Laws.

Although the provisions of this chapter do not apply to any type of property received by the state under Chapters 1-6 of this title, certain provisions in those chapters apply to this chapter. For example, Section 1300 provides that its definitions apply throughout this title. Therefore, the definition of "escheat" and "permanent escheat" that appear in that section govern the construction of this chapter as well as the construction of the other chapters in this title.

SEC. 5. Section 1501 of said code is amended to read:

1501. As used in this chapter, unless the context otherwise requires:

(a) "Banking organization" means any national or state bank, trust company, banking company, savings bank or institution for savings, safe deposit company, ~~ex-a private banker engaged-in-business-in-this~~ State, or any similar organization.

(b) "Business association" means any private corporation (~~either than-a-public-corporation-or-utility-~~, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals, whether or not for profit, including, but not by way of limitation, a banking organization, financial organization, and insurance corporation).

(c) "Financial organization" means any federal or state savings and loan association, building and loan association, credit union, ex investment company engaged-in-business-in-this-State, or any similar organization.

(d) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(e) "Life insurance corporation" means any association or corporation transacting ~~within-this-State~~ the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(g) "Person" means any individual, business association, government or ~~political~~ governmental subdivision or agency, ~~public~~ authority, -estate, -trust, two or more persons having a joint or common interest, or any other legal or commercial entity ~~other than~~ any public corporation or utility, whether such person is acting in his own right or in a representative or fiduciary capacity.

~~(h) -- "Utility" means any person who owns or operates within this State, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.~~

Comment. The definitions in Section 1501 have been revised to reflect the fact that the revised chapter applies to persons in other states who are holding property belonging to another. All of the definitions have been revised, therefore, to eliminate any requirement that such persons be engaged in business in California.

The listing of certain additional organizations in subdivision (a) is intended to be clarifying and to eliminate whatever doubts there may be that the mentioned organizations are covered by the subdivision.

The reference to "utility" has been deleted from subdivision (b) as unnecessary in light of subdivision (d) of Section 1582, which is added by this statutory revision. The other revisions of subdivision (b) are

nonsubstantive, clarifying changes.

The words "federal or state" have been added to subdivision (c) to eliminate any uncertainty concerning whether all such organizations are covered by the chapter.

The reference to "any public corporation or utility" has been deleted from subdivision (g) as unnecessary in the light of Section 1582. The other revisions of subdivision (g) are nonsubstantive, clarifying changes.

Subdivision (h) has been deleted as unnecessary in the light of Section 1582.

SEC. 6. Article 2 (commencing with Section 1510) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 2. ESCHEAT OF UNCLAIMED PERSONAL PROPERTY

1510. Unless otherwise provided by statute of this state, intangible personal property escheats to this state under this chapter if the conditions for escheat described in Sections 1511 to 1517, inclusive, are satisfied, and if:

(a) The last known address of the owner appearing on the records of the holder is in this state;

(b) No address of the owner appears on the records of the holder, and the holder is (1) domiciled in this state, or (2) a court of this state, or (3) a federal court within this state, or (4) a public corporation, public authority, or public officer of this state or a political subdivision thereof;

(c) The last known address of the owner appearing on the records of the holder is in another state, such property has not been paid to such other state pursuant to any laws of such state providing for the escheat of such property, and the holder is (1) domiciled in this state, or (2) a court of this state, or (3) a federal court within this state, or (4) a public corporation, public authority, or public officer of this state or a political subdivision thereof;

(d) The property escheats to this state under the terms of the Unclaimed Property Compact (Section 1620); or

(e) The last domicile of the owner was in this state. For the purpose of this subdivision, the last domicile of the owner is presumed to be at the place of his last known address. This presumption is a presumption affecting the burden of proof.

Comment. Subdivisions (a) and (b) of Section 1510 describe types of abandoned intangible property that this state may claim by escheat under the rules laid down in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court held in that case that intangible personal property that has been abandoned by its owner is subject to escheat by the state of the last known address of the owner as indicated by the books and records of the debtor. Where the books and records of the debtor do not provide a record of the owner's last address, the Supreme Court held that the property is subject to escheat by the state where the debtor is domiciled.

Subdivision (c) relates to a third type of property dealt with by the Supreme Court in Texas v. New Jersey. The Supreme Court held that the state of the debtor's domicile may escheat abandoned intangible property if the state of the owner's last known address "does not, at the time in question, provide for escheat of the property." 379 U.S. at 682. Subdivision (c) provides that abandoned intangible property held by a holder domiciled in this state escheats to this state if the property has not previously escheated and been paid to the state of the owner's last known address. After the escheated property has been paid to the State Controller, Section 153<sup>4</sup> authorizes the State Controller to report such payment to the state of last known address if that state will report the receipt of any property it receives that is subject to escheat to this

state under subdivision (a). The exchange of reports thus authorized will permit each state to learn of and claim property that has escheated to it even in cases where it has no jurisdiction over the holder and, thus, would be unable to require submission of a report from the holder.

Subdivision (d) is the substantive escheat provision that provides for the escheat to this state of property described in the Unclaimed Property Compact. See Section 1620.

Subdivision (e) relates to a problem that was not clearly decided in Texas v. New Jersey. Subdivision (e) provides a basis for this state to claim by escheat any intangible property owned by a person whose last domicile or last known address was in this state where the books of the holder reflect an earlier address of the owner.

SEC. 7. Section 1502 of said code is renumbered and amended to read:

~~1502.~~ 1511. Subject to Section 1510, the following property held or owing by a ~~banking-or-financial-organization-or~~ business association ~~is-presumed-abandoned~~ escheats to this state :

(a) Any demand, savings, or matured time deposit made ~~in-this~~ State with a banking organization, together with any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the State Controller, unless the owner has, within 15 years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization.

(b) Any funds paid ~~in-this-State~~ toward the purchase of shares or other interest in a financial organization or any deposit made therewith ~~in-this-State~~, and any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where paid or made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the State Controller, unless the owner has 2 within 15 years:

(1) Increased ~~or decreased~~ the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization.

(c) Any sum payable on any travelers checks issued ~~in this State~~ by a business association ~~maintaining its principal place of business in this State, or issued in this State by a banking or financial organization,~~ that has been outstanding for more than 15 years from the date of its issuance, unless the owner has within 15 years corresponded in writing with the business association ~~or banking or financial organization~~ concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with such ~~organization or~~ association.

(d) Any sum payable on any other written instruments issued ~~in this State~~ on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, drafts, certified checks, and money orders, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, unless the owner has within seven years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(e) Any  ~~funds~~ cash or other tangible personal property located in this state, and any intangible personal property or evidences thereof ,  ~~tangible-or-intangible,~~ after discharge of any obligation or lien  ~~or liens~~ for storage charges, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box  ~~in this~~ state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, that  ~~have~~ has been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

~~Nothing-in-this-section-shall-be-constructed-to-relate-to-any instrument held-or-payable only-outside-the-limits-of-the-United States-or-payable-only-in currency-other-than-United-States-currency, nor to-any funds-held-only-in or-payable-only-in-a-foreign-country.~~

Comment. Section 1511 is substantially the same as former Section 1502. The revisions made to the section make the section applicable to property held by out-of-state businesses as well as property held by businesses within this state.

SEC. 8. Section 1503 of said code is repealed.

1503. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this State. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment. Section 1503 is superseded by Section 1512.

§ 1512

SEC. 9. Section 1512 is added to said code, to read:

1512. Subject to Section 1510, any funds held and owing by any life insurance corporation to an insured or annuitant, or beneficiary or other person entitled thereto, escheats to this state if unclaimed and unpaid for more than seven years after the funds became due and payable, as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. If it is not definite and certain from the records of the corporation what person is entitled to the funds, the last known address of the person entitled to the funds is deemed to be the same as the last known address of the insured or annuitant according to the records of the corporation. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained or would have attained the limiting age under the mortality table on which the reserve is based, unless the person appearing to be entitled thereto has, within the preceding seven years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan or (b) corresponded in writing with the life insurance corporation concerning the policy. Any funds otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

§ 1512

Comment. Section 1512 is in substance the same as former Section 1503 with such modifications as are necessary to provide for the escheat of property held by out-of-state life insurance corporations.

SEC. 10. Section 1504 of said code is renumbered and amended to read:

~~1504, 1513.~~ (a) Subject to Section 1510, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, escheats to this state. ~~is presumed abandoned if:~~

~~(1)--It is held or owing by a business association organized under the laws of or created in this State; or~~

~~(2)--It is held or owing by a business association doing business in this State, including a national banking association, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State.~~

(b) Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, owned by a person who has not claimed a dividend or other sum escheated ~~presumed abandoned~~ under subdivision paragraph (a) of this section, and who has not corresponded in writing with the business association concerning such interest for 15 years following the time such dividend or other sum escheated, escheats to this state. ~~was presumed abandoned, is presumed abandoned if:~~

~~(1)--The business association was organized under the laws of or created in this State; or~~

§ 1513

~~(2) The business association is doing business in this State, including a national banking association, but was not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled to such interest is in this State.~~

For the purposes of this chapter the business association with respect to such interest shall be deemed a holder.

(c) Subject to Section 1510, any dividends or other distributions held for or owing to a person at the time the stock or other security to which they attach became ~~presumptively abandoned are also presumed abandoned~~ escheats to this state also escheat to this state as of the same time.

Comment. Section 1513 is substantially the same as former Section 1504. The revisions made to the section are those necessary to provide for the escheat of property held by out-of-state business associations as well as business associations within this state.

SEC. 11. Section 1505 of said code is repealed.

~~1505.--All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this State, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.~~

Comment. Section 1505 is superseded by Section 1514.

SEC. 12. Section 1514 is added to said code, to read:

read:

1514. Subject to Section 1510, all tangible personal property located in this state, and all intangible property, distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association that is unclaimed by the owner at the date of final distribution or liquidation escheats to this state.

Comment. Section 1514 is similar to former Section 1505. Unlike the former section, however, Section 1514 applies to tangible personal property located in this state as well as intangible personal property. Section 1514 also extends the state's escheat claim to property distributable by any business association whether or not organized under the laws of this state. Section 1514 provides that the property escheats at the time of final distribution or liquidation of the business association's assets. Under the former section, the state's claim to the property did not arise until two years after the date for final distribution. Inasmuch as property escheated to this state under Section 1514 remains subject to the owner's claim for several years, there appears to be no reason to postpone the transfer of the custody of the property to the state.

SEC. 13. Section 1506 of said code is renumbered and amended to read:

~~1506.~~ 1515. Subject to Section 1510, all intangible personal property and any income or increment thereof, held in a fiduciary capacity for the benefit of another person ~~is presumed abandoned~~ escheats to this state unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary :

~~(a) -- If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this State; or~~

~~(b) -- If it is held by a business association, banking organization, or financial organization (including a national banking association) doing business in this State, but not organized under the laws of or created in this State, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this State; or~~

~~(c) -- If it is held in this State by another person.~~

For the purpose of this section, when a ~~banking organization (including a national banking association)~~, a business association, or a person holds the above described property as an agent for a business association, such holder shall be deemed to hold such property in a fiduciary capacity for the business association alone, unless the agreement between such a holder and such a business association clearly provides the contrary. In the event such property is deemed held for the business association alone such association shall be deemed the holder of such property for all purposes contemplated by this chapter.

Comment. Section 1515 is substantially the same as former Section 1506. The revisions made to the section are those necessary to make the section applicable to fiduciaries and business associations wherever located.

§ 1516

SEC. 14. Section 1507 of said code is renumbered and amended to read:

~~1507.~~ 1516. Subject to ~~the provisions of Section 1526~~ Sections 1510 and 1582 , all tangible personal property located in this state, and all intangible personal property , held for the owner by any court, including a federal court, public corporation, public authority, or public officer of ~~this~~ any state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years ~~is presumed abandoned~~ escheats to this state .

Comment. Section 1516 is substantially the same as former Section 1507. The section is modified to make it applicable to tangible as well as intangible property and to make it applicable to intangible property no matter where the holder of such property may be located.

§ 1517

SEC. 15. Section 1508 of said code is renumbered and amended to read:

~~1508.~~ 1517. Subject to Section 1510, all tangible personal property located in this state and all intangible personal property, except property of the classes mentioned in Sections 1502,-1503,-1504, 1505,-1506,-and-1507-of-this-code 1511, 1512, 1513, 1514, 1515, and 1516 , including any income or increment thereon and deducting any lawful charges, that is held or owing ~~in this State~~ in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is ~~presumed-abandoned~~ escheats to this state .

Comment. Section 1517 is substantially the same as former Section 1508. The section is modified to make it applicable to tangible as well as intangible property and to make it applicable to intangible property no matter where the holder of such property may be located.

SEC. 16. Section 1509 of said code is repealed.

~~1509.--If specific property which is subject to the provisions of Sections 1502, 1504, 1505, 1506, and 1508 of this code is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this chapter if:~~

~~(a)--It may be claimed as abandoned or escheated under the laws of such other state; and~~

~~(b)--The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.~~

Comment. Section 1509 is inconsistent with the Supreme Court's decision in Texas v. New Jersey, 379 U.S. 674 (1965), and the revisions made in this chapter to conform to that decision. Hence, Section 1509 is repealed.

§ 1530

SEC. 17. A new article heading is added immediately preceding Section 1510 of said code, which section is renumbered as Section 1530 by this act, to read:

ARTICLE 3. IDENTIFICATION AND DISPOSITION OF ESCHEATED PROPERTY

SEC. 18. Section 1510 of said code is renumbered and amended to read:

~~1510~~ 1530. (a) Every person holding funds or other property ~~,-tangible or intangible,-presumed-abandoned~~ escheated to this state under this chapter shall report to the State Controller with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of more than ten dollars (\$10) ~~or here-presumed-abandoned~~ escheated under this chapter;

(2) In case of ~~unclaimed~~ funds of life insurance corporations, the full name of the insured ~~, or annuitant~~ , or beneficiary and his last known address according to the life insurance corporation's records;

(3) In case of ~~money~~ cash or other ~~personal~~ property removed from a safe deposit box or other repository or agency, reference to such property. The report shall set forth any amounts owing to the holder for unpaid rent and for the cost of opening the safe deposit box.

(4) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value ~~under~~ of ten dollars (\$10) or less each may be reported in aggregate;

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(6) Other information which the State Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the ~~person holding property presumed abandoned~~ holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1st of each year as of June 30th or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

~~(e) -- If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. -- The holder shall exercise reasonable diligence to ascertain the whereabouts of the owner.~~

~~(f)~~ (e) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

~~(g)~~--The initial report filed under this chapter shall include all items of property held for another person which are ascertainable from the available records of the holder, which items of property would have been presumed abandoned if this chapter had been in effect at and after the time such property first became payable, demandable or returnable; provided, that only such moneys which first became unclaimed funds, as that term is defined in this chapter, within three years preceding the effective date of this chapter must be included within the initial report and any other moneys constituting unclaimed funds as thus defined may be included within the initial or any subsequent report and if so included the holder shall be entitled to the protection afforded by Section 1513.--All items of property, less proper charges and offsets, other than unclaimed funds, which on January 1, 1949 appeared from the available records to be held for another person and were thereafter without notice to the owner or without prior approval of any regulatory or licensing authority of this State transferred or credited by the holder directly to capital or surplus or undivided profits shall be deemed to be subject to the provisions of this chapter and shall be included within the initial report.

Comment. Section 1530 is substantially the same as former Section 1510. The changes made in the section are, for the most part, technical and are necessary to conform the section to the remainder of the chapter.

It should be noted that subdivision (a) refers to every person holding funds or other property. If property which would escheat to this state under Section 1510(a) has been paid to another state pursuant to its escheat laws, Section 1530 does not apply because the holder is no longer holding the property. Therefore, Section 1530 does not require a report and Section 1532 does not require the payment of such property to the State Controller. However, Section 1533 does require that a report be made to the State Controller to inform him of the delivery of the property to the other state.

The items that a holder may report in the aggregate have been changed from those of less than \$10 to those of \$10 or less, so that the items that do not have to be separately stated will be those that correspond with the amount the Controller may charge for servicing the property under Section 1540(d).

Former subdivision (e) has been omitted because subdivision (e) merely duplicated the notice requirement of subdivision (d) of Section 1531.

Former subdivision (g) has been omitted because it was a temporary provision governing the property subject to the reporting requirement as of September 18, 1959. Section 47 of this statute preserves the force of subdivision (g) to the extent that it is needed.

SEC. 19. Section 1511 of said code is renumbered and amended to read:

~~1511.~~ 1531. (a) Within ~~120-days~~ three months from the final date for filing the reports required by Section ~~1510~~ 1530 , the State Controller shall cause a notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in ~~the~~ each county in this state in which is located :

(1) The last known address , as listed in the reports, of any person ~~to be~~ named in the ~~notice.~~ reports as the owner of property escheated to this state under this chapter; or

(2) If no address of any owner named in the reports is listed , or if the address listed in the reports for any owner named therein is outside this state, ~~the notice shall be published in the county in which the holder of the abandoned property has his~~ the principal place of business within this state of the holder of the owner's property .

(b) ~~The~~ Each published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain ~~-(1)~~ the names in alphabetical order and last known addresses if any, of :

(1) Those owners ~~persons~~ listed in the reports and entitled ~~to notice~~ as having a last known address within the county ~~as here-~~ before-specified ; and

(2) Those owners listed as having a last known address outside this state or as having no last known address in a report filed by a holder with his principal place of business within the county .

(c) Each published notice shall also contain:

~~(2)~~ (1) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Controller.

~~(3)~~ (2) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction ~~within 65 days from the date of the second published notice;~~ before a date specified in the notice (which shall be the date five months from the final date for filing the report), the abandoned property will be placed not later than ~~85 days~~ one month after such ~~publication~~ date in the custody of the State Controller and all further claims must thereafter be directed to the State Controller.

(3) A statement that if no claim is filed with the State Controller within five years after the close of the calendar year in which the property is paid or delivered to the State Controller, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

~~(c)~~ (d) The State Controller is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

~~(d)~~ (e) Within ~~120-days~~ three months from the ~~receipt-of-the~~ final date for filing a report required by Section ~~1510~~ 1530, the State Controller shall mail a notice to each person having an address listed therein who appears to be entitled to property ~~of-the-value-of-twenty-five-dollars-(\$25)-or-more-presumed-abandoned~~ escheated under this chapter.

~~(e)~~ (f) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Controller, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the State

Controller and all further claims must be directed to the State Controller.

(4) A statement that if no claim is filed with the State Controller within five years after the close of the calendar year in which the property is paid or delivered to the State Controller, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

Comment. Section 1531 is substantially the same as former Section 1511. Section 1532 requires holders to remit their payments to the State Controller six months, instead of seven months (as previously required), after the final date for filing reports. In order to provide an owner with adequate notice and opportunity to claim his property, the time limits in Section 1531 have been revised to fit into the revised timetable prescribed by Section 1532.

Paragraph (3) has been added to subdivision (c) and Paragraph (4) to subdivision (f) to conform with Section 1550. Subdivision (e) has been revised to require the State Controller to send a notice to all persons who may claim property held for them by a holder or the State Controller under this chapter. Former subdivision (e) of Section 1530 required the holder alone to send notices to owners of property valued at less than \$25. This burden has been transferred to the State Controller because the state, not the holder, will eventually succeed to the property. As the state receives substantial benefits as the ultimate successor to unclaimed property, it should also bear whatever burdens of notice are required to accomplish the escheat of such property.

SEC. 20. Section 1512 of said code is renumbered and amended to read:

~~1512.~~ 1532. Every person who has filed a report as provided by Section ~~1510~~ 1530 shall, within ~~seven~~ six months from the final date for filing reports as required by Section ~~1510~~ 1530 , pay or deliver to the State Controller all ~~abandoned~~ escheated property specified in the report ~~;-provided,-that~~ . However, if the owner establishes his right to receive any ~~abandoned~~ such property to the satisfaction of the holder before such property has been delivered to the State Controller, or if it appears that for some other reason the ~~presumption of abandonment is erroneous~~ property is not subject to escheat under this chapter , the holder need not pay or deliver the property ~~;-which will no longer be presumed abandoned,~~ to the State Controller, but in lieu thereof shall file with the State Controller a written explanation of the proof of claim or of the ~~error in the presumption of abandonment~~ reason the property is not subject to escheat . The holder of any interest under subdivision (b) of Section 1504(b) ~~1513~~ shall deliver a duplicate certificate to the State Controller. Upon delivery of a duplicate certificate to the State Controller, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate ~~presumed abandoned~~ or the duplicate of such certificate issued to the State Controller for any losses or damages resulting to such person by the issuance and delivery to the State Controller of such duplicate certificate.

Comment. Section 1532 is substantially the same as former Section 1512. The revisions of the section are, for the most part, technical. The time period for remitting escheated property to the Controller has been shortened from seven to six months from the final date for filing reports so that the property may be received by the State Controller in some month other than the last month of the fiscal year.

SEC. 21. Section 1533 is added to said code, to read:

1533. (a) Every person who has held funds or other property escheated to this state under this chapter and who has paid or delivered such property to another state pursuant to the escheat laws of such other state shall report to the State Controller with respect to the property as provided in this section.

(b) The report shall be verified and shall include all of the information specified in Section 1530 and, in addition, the name of the state to which the property was paid or delivered and the date of such payment or delivery.

(c) The report shall be filed at the same time as the report required by Section 1530, and the reports required by this section and by Section 1530 may be consolidated into a single report.

Comment. Section 1530 requires reports to be filed by persons holding escheated property. Section 1533 requires similar reports to be filed by persons who have paid property which escheats to this state under this chapter to another state pursuant to its escheat laws. This will inform this state that property belonging to a person whose last known address was in California has been delivered to another state and, thus, will enable this state to assert its escheat claim to such property.

SEC. 22. Section 1534 is added to said code, to read:

1534. If any intangible personal property is paid to the State Controller pursuant to Section 1532, and the last known address of the owner appearing on the records of the holder is in another state, the State Controller shall report the receipt of such property to the executive head of such other state or to the officer thereof responsible for the administration of its escheat laws if such other state makes reciprocal provision in its laws or such officer has agreed that the receipt of intangible personal property by such other state pursuant to its escheat laws shall be reported to this state, or to the State Controller, whenever the last known address of the owner appearing on the records of the holder is in this state.

Comment. Section 1534 authorizes the State Controller to report that this state has received property which is subject to escheat by another state to such other state if such other state will submit similar reports to California. By such cooperation, each state can collect property which has escheated to it that might otherwise remain unknown and uncollectible.

SEC. 23. Section 1516 of said code is renumbered and amended to read:

~~1516-~~ 1535. (a) All abandoned escheated property other than money and securities listed on any established stock exchange delivered to the State Controller under this chapter shall be sold by the State Controller to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The State Controller may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

Securities listed on an established stock exchange shall be sold at the prevailing prices on said exchange.

(b) Any sale of abandoned escheated property, other than money and securities listed on any established stock exchange, held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Controller shall execute all documents necessary to complete the transfer of title.

(d) No action shall be brought or maintained by any person against the state or any officer thereof for or on account of any transaction entered into pursuant to and in accordance with the provisions of this section.

Comment. Section 1535 is substantially the same as former Section 1516.

SEC. 24. Section 1517 of said code is renumbered and amended to read:

~~1517-~~ 1536. (a) All money received under this chapter, including the proceeds from the sale of property under Section ~~1516~~ 1533 , shall be deposited in the Unclaimed Property Fund in an account titled "Abandoned Property."

(b) All money in the abandoned property account in the Unclaimed Property Fund is hereby continuously appropriated to the State Controller, without regard to fiscal years, for expenditure ~~for~~ in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

- (1) For payment of claims allowed by the State Controller under the provisions of ~~Section 1519;~~ this chapter.
- (2) For refund, to the person making such deposit, of amounts, including overpayments, deposited in error in such fund ; .
- (3) For payment of the cost of appraisals incurred by the State Controller covering property held in the name of an account in such fund ; .
- (4) For payment of the cost incurred by the State Controller covering the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the State Controller, or which arose from complying with this chapter with respect to such property or funds ; .
- (5) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner ; .

(6) For payment of costs incurred by the State Controller for the repair, maintenance and upkeep of property held in the name of an account in such fund ; .

(7) For payment of costs of official advertising in connection with the sale of property held in the name of an account in such fund ; .

(8) For transfer to the General Fund as provided in paragraph subdivision (c) of this section .

(c) At the end of each month, or oftener if he deems it advisable, the State Controller shall transfer all money in the abandoned property account in excess of fifty thousand dollars (\$50,000), to the General Fund. Before making this transfer, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned escheated property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, and the name of the corporation. The record shall be available for public inspection at all reasonable business hours.

Comment. Section 1536 is substantially the same as former Section 1517. The preliminary language of subdivision (b) has been modified to broaden the purposes for which the money in the abandoned property account may be expended. Certain expenses that the Controller is authorized to incur in the administration of this fund are not clearly included among the specific purposes listed in subdivision (b). For example, litigation costs incurred under Sections 1571-1573 are not clearly covered by the itemized list. The revised language eliminates any uncertainty over the availability of the fund for such ordinary administrative expenses.

§ 1537

SEC. 25. Section 1521 of said code is renumbered and amended to read:

~~1521.~~ 1537. Any property delivered to the State Controller pursuant to this chapter which has no obvious commercial value shall be retained by the State Controller until such time as he determines to destroy or otherwise dispose of ~~the same~~ it . If the State Controller determines that any property delivered to him pursuant to this chapter has no obvious commercial value, he may at any time thereafter destroy or otherwise dispose of the ~~same~~ property , and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the State Controller pursuant to this chapter with respect to said the property.

Comment. Section 1537 is substantially the same as former Section 1521.

SEC. 26. Article 4 (commencing with Section 1540) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 4. PAYMENT OF CLAIMS

1540. (a) Any person, not including another state, claiming an interest in property paid or delivered to the State Controller under this chapter may file a claim thereto or to the net proceeds of the sale thereof at any time before such property is permanently escheated to the state under this chapter. The claim shall be on a form prescribed by the State Controller and shall be personally verified by the claimant.

(b) The State Controller shall consider each claim within 90 days after it is filed. He may hold a hearing and receive evidence concerning the claim. If a hearing is held, the State Controller shall make a written finding on each claim presented or heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record.

(c) There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, one percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.

Comment. Section 1540 repeats in substance the provisions of former Sections 1518 and 1519. Although the time limit specified in subdivision (b) did not appear in either of the superseded sections, it did appear from the provisions of former Section 1520 (superseded by Section 1541).

SEC. 27. Section 1518 of said code is repealed.

~~1518.--Any person claiming an interest in any property delivered to the State under this chapter may file a personally verified claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Controller.~~

Comment. Section 1518 is superseded by Section 1540.

SEC. 28. Section 1519 of said code is repealed.

~~1519.--(a)--The State Controller shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it.--If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision.--The decision shall be a public record.~~

~~(b)--There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, 1 percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.~~

Comment. Section 1519 is superseded by Section 1540.

§ 1541

SEC. 29. Section 1520 of said code is renumbered and amended to read:

~~1520.~~ 1541. Any person aggrieved by a decision of the State Controller or as to whose claim the Controller has failed to act within 90 days after the filing of the claim, may file a petition to establish his claim in the superior court in any county or city and county in which the Attorney General has an office. The proceeding shall be brought within 90 days after the decision of the State Controller or within 180 days from the filing of the claim if the State Controller fails to act. A copy of the petition and of a notice of hearing shall be served upon the State Controller and the Attorney General and the Attorney General shall have ~~not-less-than-30~~ 60 days within which to respond by answer. In lieu of answer, the Attorney General may file a statement of noninterest whereupon the petitioner shall present to the court his ~~prima facie-proof~~ evidence of entitlement. The proceeding shall be tried without a jury. If judgment is awarded in favor of petitioner, the State Controller shall make payment subject to any charges provided by subdivision (d) of Section 1519(b) 1540 . No costs of trial shall be allowed for or against the petitioner.

Comment. Section 1541 is substantially the same as former Section 1520. The former section did not provide a time limit within which the Attorney General is required to respond by answer. The revised section does contain such a limit.

SEC. 30. Section 1542 is added to said code, to read:

1542. (a) At any time after property has been paid or delivered to the State Controller under this chapter, and notwithstanding the permanent escheat of such property pursuant to Section 1550 or 1551, any other state is entitled to recover such property if:

(1) The property escheated to this state under subdivision (b) of Section 1510 because no address of the owner of the property appeared on the records of the holder when the property was escheated under this chapter and the last known address of the owner was in fact in such other state; or

(2) The last known address of the owner of the property appearing on the records of the holder is in such other state, the property escheated to this state under subdivision (c) of Section 1510, and, under the laws of such other state, the property has escheated to that state.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to the State Controller, who shall hold a hearing on each such claim within 90 days after it is presented. He shall make a written finding on each claim heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record. He shall allow a claim if reasonably satisfied of the right of the other state to recover the escheated property. Any claim allowed under this section is subject to any charges provided in subdivision (c) of Section 1540.

Comment. Section 1542 has no counterpart in the previous statutory law of California. It is necessary, however, to provide a procedural means for this state to comply with the decision in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court in that case held that property escheated by one state under the conditions that are now specified in subdivisions (b) and (c) of Section 1510 could subsequently be claimed by another state under the circumstances described in subdivision (a) of Section 1542. Section 1542 provides the administrative procedure for handling such claims.

SEC. 31. Article 5 (commencing with Section 1550) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 5. PERMANENT ESCHEAT

1550. (a) At any time after the close of the fifth calendar year after the year in which any property escheated under this chapter is paid or delivered to the State Controller, if no claim therefor has been made and established by any person, not including another state, entitled thereto, the State Controller may commence a civil action in the superior court for Sacramento County for a determination that such property shall permanently escheat to the state; but if at the expiration of such fifth year, an action previously brought by a claimant under Section 1541 is pending, or if a person who has filed a claim to the property under Section 1540 remains entitled at the expiration of such fifth year to bring a court action under Section 1541, the State Controller may not commence his civil action until after a final court judgment has been rendered adversely to the petitioning claimant, or until after the expiration of the period in which a claimant would be entitled to bring a court action under Section 1541.

(b) At the time such action is commenced, the State Controller shall cause notice thereof to be published once each week for two successive weeks in a newspaper having general circulation in the county in which is situated the last known address of the owner according to the records of the State Controller. If no address is listed, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state. Such notice shall be entitled "Notice of Proceedings to Declare Certain

Abandoned Property Permanently Escheated to the State of California" and shall include the following matters:

- (1) The name of the owner and his last known address, if known.
- (2) A brief description of the property.
- (3) The name of the prior holder or holders.
- (4) The amount or value of the property.
- (5) A statement that a complaint has been filed in the action for permanent escheat.

(6) The place, time, and date of the hearing.

(7) A direction that unless any person claiming to be entitled to the property, or his representative, makes claim for the property in the manner provided in Section 1540 before the hearing, or appears at the hearing to substantiate his claim, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

(c) At the time such action is commenced, the State Controller shall mail to the last known address of the owner according to the records of the State Controller a notice alike in all respects to the published notice required under subsection (b).

(d) The court shall enter a judgment that the subject property has permanently escheated to the state and that all right, title, or interest therein of the owners is terminated and all claims of the owners thereto forever barred if the court is satisfied by evidence that the State Controller has complied with this chapter, and:

(1) No person files a claim or appears at the hearing to present a claim; or

§ 1550

(2) The court determines that a claimant is not entitled to the property claimed by him.

Comment. Sections 1550 and 1551 have been added to this chapter in order to harmonize the escheat provisions of this chapter with the escheat provisions appearing in Chapters 1-6 (Sections 1300-1476) of the title on unclaimed property. The earlier escheat provisions all provide for the permanent escheat of property that is paid or delivered to the State Controller after a requisite period of time has elapsed within which ~~the~~ owner may claim the property. This procedure permits the Controller to clear his books in regard to such property. Sections 1550 and 1551 provide a comparable procedure for the permanent escheat of property paid or delivered to the State Controller under this chapter.

Section 1550 describes a procedure which must be followed to accomplish the permanent escheat of all property valued at more than \$1,000 and which may be followed to accomplish the permanent escheat of any property. Section 1551 describes an alternate procedure which may be followed for the permanent escheat of property valued at ~~\$1,~~000 or less.

1551. (a) At any time after any money or other personal property of a value of \$1,000 or less has heretofore been or is hereafter paid or delivered to the State Controller as escheated property pursuant to this chapter, the State Controller may, in lieu of the procedure provided in Section 1550, prepare a return listing such property and give notice thereof in the manner provided in this section.

(b) The return shall list each item and show all of the following:

(1) The amount of the property, if money, or a description thereof if other than money.

(2) The name of the owner or claimant and his last known address, if known.

(3) The name and address of the person delivering the property to the State Controller.

(4) The facts and circumstances by virtue of which it is claimed the property has escheated or vested in the State.

(5) Such other information as the State Controller may desire to include to assist in identifying each item.

(c) When the return has been completed, the Controller shall prepare, date, and attach thereto a notice that the property listed in the return has escheated or vested in the state. Copies of such return and notice shall then be displayed and be open to public inspection during business hours in at least three offices of the Controller, one in the City of Sacramento, one in the City and County of San Francisco, and one in the City of Los Angeles.

(d) The Controller shall then cause notice to be given by publication in one newspaper of general circulation published in the City of Sacramento, in one newspaper of general circulation published in the City of San Francisco, and in one newspaper of general circulation published in the City of Los Angeles, at least once each calendar week for four consecutive weeks, that the return and notice that the property listed in the return has escheated or vested in the state has been prepared and is on display and open to public inspection during business hours, giving the addresses and room numbers of the locations where the return may be inspected. Such publication shall be made within 90 days after attaching the notice to the return. Notice by such publication shall be deemed completed four months after attaching the notice to the return.

(e) Within five years after such notice by publication is completed, any person entitled to such property may claim it in the manner provided in Section 1540. All persons who fail to make such claim within the time limited are forever barred and the property is permanently escheated to the state except that infants and persons of unsound mind have the right to appear and claim such property at any time within the time limited, or within one year after their respective disabilities cease, whichever is the later date.

Comment. Section 1551 describes a procedure which may be followed by the Controller to permanently escheat property valued at \$1,000 or less. Section 1551 follows closely the provisions of Section 1415. The section permits the State Controller to proceed by notice only in those cases where the amount of the property involved does not warrant the expense that would be incurred in a judicial proceeding to escheat the property.

SEC. 32. A new article heading is added immediately preceding Section 1513 of said code, which section is renumbered as Section 1560 by this act, such new article heading to read:

ARTICLE 6. OBLIGATIONS OF HOLDER AFTER PAYMENT OR DELIVERY

SEC. 33. Section 1513 of said code is renumbered and amended to read:

~~1513.~~ 1560. Upon the payment or delivery of ~~abandoned~~ escheated property to the State Controller, the state shall assume custody and shall be responsible for the safekeeping ~~thereof~~ of the property . Any person who pays or delivers ~~abandoned~~ property to the State Controller under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Property removed from a safe deposit box or other repository shall be received by the State Controller subject to any valid lien of the holder for rent and other charges, such rent and other charges to be paid out of the proceeds remaining after the State Controller has deducted therefrom his selling cost. ~~Any holder who has paid moneys to the State Controller pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon filing proof of such payment and proof that the payee was entitled thereto, the State Controller shall forthwith reimburse the holder for the payment.~~

~~Any holder who has delivered personal property including a certificate of any interest in a business association to the State Controller pursuant to this chapter may reclaim such personal property if still in the possession of the State Controller without payment of any fee or other charges upon filing proof that the owner thereof has claimed such personal property from such holder.~~

§ 1560

Comment. Section 1560 is substantially the same as former Section 1513. Provisions that appeared in the former section permitting the holder to reclaim escheated property for the purpose of paying it to the true owner have been deleted as unnecessary. The owner can claim the property directly from the Controller. The former holder, having paid or delivered the property to the Controller, has no interest in resisting a claim by an alleged former owner. It seems inadvisable, therefore, to permit an alleged former owner to process his claim through a former holder and thus avoid subjecting his claim to the scrutiny of the Controller.

SEC. 34. Section 1561 is added to said code, to read:

1561. If any holder pays or delivers any property to the State Controller pursuant to Section 1532 and at any time thereafter another state claims such property from the holder under its laws relating to escheat, the State Controller shall, upon written notice of such claim, undertake to defend the holder against such claim and shall indemnify and save harmless the holder against any liability upon such claim.

Comment. Under Section 1510, some property escheats to this state that may later escheat to another state. To protect a holder who has delivered such property to this state from the necessity for defending the second escheat claim, Section 1561 requires the State Controller to defend the holder against the claim and to save him harmless from any liability thereon. If the claiming state is in fact entitled to the property, the State Controller may deliver the property to the claiming state as provided in Section 1542.

SEC. 35. Section 1514 of said code is renumbered and amended to read:

~~1514.~~ 1562. When property other than money is delivered to the State Controller under this chapter, any dividends, interest or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into money, shall upon receipt be credited to the owner's account by the State Controller. Except for amounts so credited the owner is not entitled to receive income or other increments on money or other property paid or delivered to the State Controller under this chapter. All interest received and other income derived from the investment of moneys deposited in the Unclaimed Property Fund under the provisions of this chapter shall, on order of the State Controller, be transferred to the General Fund.

Comment. Section 1562 is the same as former Section 1514.

SEC. 36. A new article heading is added immediately preceding Section 1515 of said code, which section is renumbered as Section 1570 by this act, such new article heading to read:

ARTICLE 7. COMPLIANCE AND ENFORCEMENT

SEC. 37. Section 1515 of said code is renumbered and amended to read:

~~1515-~~ 1570. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, ~~shall~~ does not prevent the money or property from being ~~presumed-abandoned-property~~ escheated, nor affect any duty to file a report required by this chapter or to pay or deliver ~~abandoned~~ escheated property to the State Controller.

Comment. Section 1570 is substantially the same as former Section 1515.

SEC. 38. Section 1523 of said code is repealed.

~~1523.--If-any-person-refuses-to-deliver-property-to-the-State  
Controller-as-required-under-this-chapter,-the-State-Controller-shall  
bring-an-action-in-a-court-of-appropriate-jurisdiction-to-enforce-such  
delivery.~~

Comment. Section 1523 has been superseded by the provisions of  
Section 1571.

§ 1571

SEC. 39 Section 1571 is added to said code, to read:

1571. (a) The State Controller may bring an action in a court of appropriate jurisdiction, as specified in this section, for any of the following purposes:

(1) To enforce the duty of any person under this chapter to permit the examination of the records of such person.

(2) For a judicial determination that particular property known by the State Controller to be held by any person is subject under law to escheat by this state pursuant to this chapter.

(3) To enforce the delivery of any property to the State Controller as required under this chapter.

(b) The State Controller may bring an action under this chapter in any court of this state of appropriate jurisdiction in any of the following cases:

(1) Where the holder is any person domiciled in this state, including any business association organized under the laws of, or created in, this state, and any national bank, or federal savings and loan association located in this state, but not including any federal court within this state.

(2) Where the holder is any person engaged in or transacting business in this state, although not domiciled in this state.

(3) Where the property is tangible personal property and is held in this state.

(4) Where the holder is any court of this state, or any public corporation, public authority, or public officer of this state, or a political subdivision of this state.

(c) In any case where no court of this state can obtain jurisdiction over the holder, the State Controller may bring an action in any federal or state court with jurisdiction over the holder.

Comment. Section 1571 is designed to clarify the circumstances under which the State Controller may sue in the courts of this state or another state or in the federal courts to enforce compliance with the provisions of this chapter. The section generally requires the State Controller to proceed in the California courts unless the California courts cannot obtain jurisdiction over the holder.

SEC. 40. Section 1572 is added to said code, to read:

1572. At the request of any other state, the Attorney General of this state is empowered to bring an action in the name of such other state in any court of this state or federal court within this state, to enforce the unclaimed property laws of such other state against a holder in this state of property lawfully subject to escheat by such other state, if all of the following exist:

(a) The courts of such other state cannot obtain jurisdiction over the holder.

(b) Such other state makes reciprocal provision in its laws for the bringing of an action by an officer of such other state in the name of this state at the request of the Attorney General of this state, to enforce the provisions of this chapter against any person in such other state believed by the State Controller of this state to hold property subject to escheat under this chapter, where the courts of this state cannot obtain jurisdiction over such person.

(c) The laws of such other state provide for payment to this state of reasonable costs incurred by the Attorney General of this state in bringing an action under this section at the request of such other state.

Comment. Section 1572 authorizes the Attorney General to sue in this state to enforce compliance with the unclaimed property laws of another state. Under the provisions of Section 1572, however, the Attorney General may do so only if the other state will similarly act to enforce the unclaimed property laws of California against holders of unclaimed property to which California is entitled.

SEC. 41. Section 1573 is added to said code, to read:

1573. (a) If a person in another state is believed by the State Controller of this state to hold property subject to escheat under this chapter and the courts of this state cannot obtain jurisdiction over such person, the Attorney General of this state may request an officer of such other state to bring an action in the name of this state to enforce the provisions of this chapter against such person.

(b) This state shall pay all reasonable costs incurred by any other state in any action brought by such other state at the request of the Attorney General of this state under this section. Any state bringing such action shall be entitled additionally to a reward of fifteen percent of the value, after deducting reasonable costs, of any property recovered for the state as a direct or indirect result of such action, such reward to be paid by the State Controller. Any costs or rewards paid pursuant to this section shall be paid from the abandoned property account in the Unclaimed Property Fund and shall not be deducted from the amount that is subject to be claimed by the owner in accordance with this chapter.

Comment. Section 1573 authorizes this state to request the officials of another state to bring action to recover property escheated to California under the provisions of this chapter. In order to provide an incentive for the recovery of such escheated property, the section authorizes the payment of a fifteen percent reward for the recovery of escheated property. This reward, however, is not paid from the escheated property itself. It would be inappropriate to charge the owner of the property with this fifteen percent in the event he should later recover this property, for California's claim to the property is not made for the owner's benefit, it is made for the state's own benefit.

§ 1574

SEC. 12. Section 1524 of said code is renumbered and amended to read:

~~1524.~~ 1574. (a) Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of ten dollars (\$10) for each day such report is withheld, but not more than one thousand dollars (\$1,000).

(b) Any person who wilfully refuses to pay or deliver ~~abandoned~~ escheated property to the State Controller as required under this chapter shall be punished by a fine of not less than ~~five hundred~~ dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than six months, or both, in the discretion of the court.

Comment. Section 1574 is substantially the same as former Section 1524.

§ 1580

SEC. 43. A new article heading is added immediately preceding Section 1525 of said code, which section is renumbered as Section 1580 by this act, such new article heading to read:

ARTICLE 8. MISCELLANEOUS

SEC. 44. Section 1525 of said code is renumbered and amended to read:

~~1525.~~ 1580. The State Controller is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

Comment. Section 1580 is the same as former Section 1525.

§ 1581

SEC. 45. Section 1522 of said code is renumbered and amended to read:

~~1522~~ 1581. (a) The State Controller may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

(b) When requested by the State Controller, such examination shall be conducted by any licensing or regulating agency otherwise empowered by the laws of this state to examine the records of the holder. For the purpose of determining compliance with this chapter, the Superintendent of Banks and the Savings and Loan Commissioner are hereby respectively vested with full authority to examine the records of any banking organization and any savings and loan association doing business within this state but not organized under the laws of or created in this state.

Comment. Section 1581 is substantially the same as former Section 1522.

SEC. 46. Section 1526 of said code is renumbered and amended to read:

~~1526-~~ 1582. This chapter ~~shall~~ does not apply to :

(a) Any property that ~~has-been-presumed-abandoned-or~~ was escheated under the laws of another state prior to ~~the-effective date-of-this-chapter;-nor-shall-this-chapter-apply-to~~ September 18, 1959.

(b) Any property in the official custody of a municipal utility district ~~;-nor-to~~ .

(c) Any property in the official custody of a local agency if such property may be transferred to the General Fund of such agency under the provisions of Sections 50050-50053 of the Government Code.

(d) Any property paid or delivered to a utility as a deposit to guarantee payment for services or as payment for service, which the utility, in accordance with the orders and regulations of the Public Utilities Commission of this state, is not entitled to retain in payment for the services provided by the utility.

Comment. Section 1582 is substantially the same as former Section 1526. The provisions of subdivision (d) have been added to meet a problem that was met under the previous law by excluding utilities from the operation of this chapter entirely.

§ 1583

SEC. 47. Section 1527 of said code is renumbered and amended to read:

~~1527.~~ 1583. No agreement entered within nine months after the date of filing report under subdivision (d) of Section ~~1510(4)~~ 1530 shall be is valid if any person thereby undertakes to locate property reported under Section ~~1510~~ 1530 for a fee or other compensation exceeding 10 percent of the value of recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof, as such facts are so reported . ~~;~~ ~~provided,~~ ~~that~~ Nothing herein in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate property is based upon an excessive or unjust consideration.

Comment. Section 1583 is substantially the same as former Section 1527.

§ 3081

SEC. 48. Section 3081 of the Civil Code is repealed.

~~3081. Any corporation engaged in the business of renting to the public safe deposit boxes may dispose of the unclaimed contents of the safe deposit boxes in the manner set forth in Sections 30a to 30r, inclusive, of the Bank Act.~~

Comment. Section 3081 is superseded by the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

§ 1614

SEC. 49. Section 1614 of the Code of Civil Procedure is amended to read:

1614. Property received under this chapter shall be deposited or sold by the State Controller as though received under ~~the Uniform Disposition of Unclaimed Property Act~~ Chapter 7 (commencing with Section 1500) of this title . Property received under this chapter shall not be subject to claim within two years following the date upon which it is paid to or received by the state. Thereafter, claims shall be made in the manner provided in Chapter 7 of Title 10 of Part 3 of this code.

Comment. This is a technical, nonsubstantive amendment.

SEC. 50. This act does not affect any duty to file a report with the State Controller or any duty to pay or deliver property to the State Controller that arose prior to the effective date of this act under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. Any such report or any such payment or delivery shall be made in accordance with the law in effect prior to the effective date of this act as if this act had not been enacted.

Comment. This act modifies the requirements for filing unclaimed property reports and delivering such property to the State Controller. It omits the provisions of former Section 1510(g), which prescribed the contents of the initial report to be filed under the Uniform Disposition of Unclaimed Property Act after it became effective on September 18, 1959. Section 46 is intended to make clear that the enactment of this act does not affect whatever obligation the provisions of the previous statute imposed upon persons who were subject to its terms in regard to filing reports and paying or delivering property to the State Controller.

II

An act to add Chapter 9 (commencing with Section 1620) to Title 10 of Part 3 of the Code of Civil Procedure, relating to the Unclaimed Property Compact.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 1620) is added to Title 10 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 9. UNCLAIMED PROPERTY COMPACT

1620. The Unclaimed Property Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

UNCLAIMED PROPERTY COMPACT

ARTICLE I

Purposes

It is the purpose of this compact and of the states party hereto:

(a) To eliminate the risks and inconvenience to which holders of unclaimed property may be subject by reason of actual or possible claims thereto or to the custody thereof by more than one state.

(b) To provide a uniform and equitable set of standards for the determination of entitlement to receive, hold and dispose of unclaimed property.

(c) To provide methods whereby the party states may cooperate with each other in the discovery and taking possession of unclaimed property.

ARTICLE II

Definitions

As used in this compact, the term:

(a) "Unclaimed property" means any property which under the laws of the appropriate state is subject to delivery to that state for its use or custody by reason of its having been unclaimed or abandoned for such period as the laws of that state may provide.

(b) "Holder" means any obligor or any individual, business association, government or subdivision thereof, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity having possession, custody or control of unclaimed property.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

### ARTICLE III

#### Determination of Entitlement to Unclaimed Property

(a) Only the state in which unclaimed real property or unclaimed tangible personal property is located shall be entitled to receive, hold and dispose of such property in accordance with its laws.

(b) In the case of unclaimed property the disposition of which is not determined by the application of paragraph (a) of this Article, and the holder of which property is subject to the jurisdiction of only one state, that state and no other shall be entitled to receive, hold and dispose of such unclaimed property in accordance with its laws.

(c) In respect of all unclaimed property the disposition of which is not determined by the applications of paragraphs (a) or (b) of this Article, entitlement shall be determined as follows:

1. The state in which is located the last known address of the person entitled to the property shall be entitled to receive, hold and dispose of the same in accordance with its laws. The last known address shall be presumed to be that shown by the records of the holder.

2. If the identity of the person entitled is unknown; if no address for the person sufficient to meet the requirements of subparagraph 1. of this paragraph is known; or if the laws of the state of last known address do not subject the property in question to taking, the state under whose laws the holder is incorporated (if the holder is a corporation) or organized (if the holder is an association or artificial entity other than a corporation), or the state where the holder is domiciled (if the holder is a natural person) shall be entitled to receive, hold and dispose of the same in accordance with its laws. If the holder is incorporated or organized under the laws of more than one party state, such party states shall be entitled to take equal shares of the property covered by this paragraph. In such event, each shall bear a proportionate share of the costs of the taking.

3. If the disposition of any unclaimed property is not determined by application of any preceding provision of this Article,

the state in which is located the office of the holder making the largest total disbursements within its immediately preceding fiscal year shall be entitled to receive, hold and dispose of the property in accordance with its laws.

4. Whenever unclaimed property has been taken by a party state in accordance with this paragraph, within one year from the taking of such property, or within one year from the earliest time at which another party state would have been entitled to take the property in question pursuant to its unclaimed property laws, whichever date is later, any party state shall be entitled to establish the identity and last known address of an entitled person previously thought to be unknown, or to establish a later known address for an entitled person. Upon such establishment, and on the basis thereof a party state shall upon demand be entitled to receive the property from the state initially taking the same and to hold and dispose of it in accordance with its laws. This subparagraph shall not apply to a claim made by a state under a statute enacted subsequent to the time when the initial state took the property.

#### ARTICLE IV

##### Cooperation

The party states pledge to each other faithful cooperation in the administration of their respective unclaimed property laws. To this end, a party state shall, upon the request of any other party state, make available to any such state any information which it may have in its possession by reason of its administration of its own unclaimed property laws, unless disclosure thereof is expressly prohibited by the laws of the party state of which the request is made. Unless the party states concerned otherwise agree, the party state making a request for information pursuant to this Article shall be entitled to receive it only by bearing such costs as may be involved in furnishing the information requested.

#### ARTICLE V

##### State Laws Unaffected in Certain Respects

Each party state may enact and continue in force any statute not in conflict with this compact and may employ the escheat, custodial, or any other principle in respect of unclaimed property.

## ARTICLE VI

### Finality

Except as provided in Article III (c) 4:

1. No unclaimed property escheated or received into the custody of a party state, prior to February 1, 1965, pursuant to its laws shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim.

2. No unclaimed property escheated or received into the custody of a party state on or after February 1, 1965 shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim; provided that such taking was consistent with the provisions of this compact.

## ARTICLE VII

### Extent of Rights Determined

The only rights determined by this compact shall be those of the party states. With respect to any non-party state, an assertion of jurisdiction to receive, hold or dispose of any unclaimed property made by a party state shall be determined in the same manner and on the same basis as in the absence of this compact. In any situation involving multiple claims by states, both party and non-party, the standards contained in this compact shall be used to determine entitlement only as among the party states. With respect to the claims of any non-party state any controversy shall be determined in accordance with the law as it may be in the absence of this compact. The enactment of this compact shall not constitute a waiver of any claim by a party state as against a non-party state.

## ARTICLE VIII

### Entry into Force and Withdrawal

This compact shall enter into force and become binding as to any state when it has enacted the same into law. Any party state may withdraw from the compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive head of each other party state. Any unclaimed property which a state shall have received, or which it shall have become entitled to receive by operation of this compact during the period when such state was party hereto shall not be affected by such withdrawal.

## ARTICLE IX

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

1621. The State Controller may enter into any agreements necessary or appropriate to cooperate with another state or states and sharing of costs pursuant to Article III(c)2 of the compact, or for the assumption or bearing of costs pursuant to Article IV thereof.

1622. With reference to this state and as used in Article VIII of the compact, the term "executive head" means the Governor.

An act to amend Section 231 of the Probate Code, relating to escheat.

The people of the State of California do enact as follows:

SECTION 1. Section 231 of the Probate Code is amended to read:

231. (a) If ~~the~~ a decedent leaves no one, other than a state or governmental entity, to take his estate or any portion thereof by intestate succession under the laws of this state or of any other jurisdiction, the same escheats to the state at as of the date time of the death of the decedent in accordance with subdivision (b).

(b) Notwithstanding Section 946 of the Civil Code, whether or not the decedent dies domiciled in this state:

(1) Real property located in this state and tangible personal property located in this state escheats to this state rather than to another jurisdiction.

(2) Except as otherwise required by the law of the United States or by a statute of this state, intangible personal property, wherever situated, escheats to this state rather than to another jurisdiction.

(c) Property passing to the state under this section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to the provisions of Title 10 of Part 3 of the Code of Civil Procedure relating to escheated estates.

(d) Notwithstanding any other section or provision of this code

or any other statute, rule, regulation, law  , or decision, moneys held by a trust funds for the purposes of providing health and welfare, pension, vacation, severance, supplemental unemployment insurance benefits  , or similar benefits shall not pass to the state or escheat to the state  , but such moneys go to the trust fund holding them .

Comment. Section 231 sets forth the circumstances under which the property of a person who dies without heirs escheats to this state.

Subdivision (a) states the general rule that the estate of a person dying without heirs escheats to the state. Under the law of some jurisdictions, property does not escheat in the sense that it does under the law of California and most Anglo-American jurisdictions. Instead, the government inherits the property when there are no collateral kindred of the decedent within a specified degree of kinship. See Estate of Maldonado, [1954] P. 223, [1953] 2 All. E.R. 300 (C.A.). The revised language of subdivision (a) makes it clear that the claim of such a jurisdiction will not prevent the property of a decedent from escheating under the law of California.

Subdivision (b) describes the types of property that are subject to escheat to the State of California. Paragraph (1) provides that all real property and tangible personal property that is located within the state escheats to the State of California upon the death of its owner without heirs. Paragraph (1) restates the existing law insofar as it relates to real property, but it probably changes the existing law insofar as it relates to personal property. See Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955). In the Nolan case, the court held that real property within the state escheats to California but that personal property escheats to the government

of the jurisdiction where the decedent was domiciled at his death. Although the personal property involved in the Nolan case was intangible property (bank accounts), the rationale and language of that case are applicable to tangible as well as intangible personal property. Under Section 231 as revised, however, it will be clear that tangible personal property within the state escheats to the State of California, not to the government of the decedent's domicile.

Paragraph (2) of subdivision (b) provides that all intangible personal property belonging to a person dying without heirs escheats to the State of California. The residence or domicile of the decedent is not determinative of the state's right of escheat under this paragraph, nor is the residence, domicile, or state of incorporation of the debtor or obligor. Under this paragraph, the State of California may claim the escheat of intangible personal property even though the decedent was not a domiciliary of California at his death and even though, for example, the bank account sought to be escheated is in an out-of-state bank. The only stated limitations on the state's right to escheat intangible property are those contained in the law of the United States and the statutes of California. There may be in some cases an additional practical limitation insofar as foreign assets are concerned that will result from the state's lack of jurisdiction over the decedent's representative or the obligor or both.

The limit of the right of escheat that the state may claim under paragraph (2) is not clear because the existing federal law is not clear. The United States Supreme Court has decided, in regard to the escheat of abandoned intangible property, that only one state may escheat the property and the proper state to exercise the right of escheat is the state of the last known residence of the owner as shown on the books of the debtor.

Texas v. New Jersey, 379 U.S. 674 (1965). But, it is impossible to determine whether this holding is applicable to the escheat of intangible property owned by a person who has died without heirs.

The right to escheat intangibles that is asserted in paragraph (2) changes the existing California law. Under Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), California asserts a right to escheat the intangibles owned by a person who has died without heirs only when the decedent was domiciled in California at his death. Thus, California permits other states to escheat the money left in California bank accounts by nondomiciliary decedents. Yet, some other states escheat the bank accounts and other intangible property left in those states by California domiciliaries who die without heirs. See In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947); In re Menschefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954). Paragraph (2) of subdivision (b) will permit California to assert a right to escheat intangibles where there is any basis--domicile of decedent, last address of decedent, domicile or location of debtor, etc.-- for doing so until the United States Supreme Court establishes a uniform rule governing the escheat of decedents' property just as it has established a uniform rule governing the escheat of abandoned property.

Subdivisions (c) and (d) continue the law that was stated in the previous version of Section 231. The words added at the end of subdivision (d) are intended to be clarifying. The section did not indicate previously what disposition should be made of the unescheated property.