

Memorandum 82-30

Subject: Study L-615 - Probate Law (Escheat)

Probate Code Sections 231-236 provide rules governing the escheat of decedent's estates when there are no takers. These provisions are largely the product of a Commission recommendation enacted in 1968. See 1968 Cal. Stats. ch. 247; Recommendation Relating to Escheat, 8 Cal. L. Revision Comm'n Reports 1001, 1015-17, 1067-70 (1969). A copy of existing Sections 231-236 is attached hereto as Exhibit 2.

The staff draft of the escheat provisions, attached to this memorandum as Exhibit 1, is self-explanatory. We have discovered no significant policy issues concerning Probate Code Sections 231-236. The staff draft makes some editorial changes and revises the Comments to existing law accordingly. Appropriate section numbers will be supplied when the proposed organization of this portion of the Probate Code is finalized.

The Uniform Probate Code provides little guidance in this area. Section 2-105 of the UPC provides, without Comment:

If there is no taker under the provisions of this Article, the intestate estate passes to the [state].

UPC Section 3-914 provides for the disposition of unclaimed assets, but the section is "bracketed to indicate that the National Conference does not urge the specific content . . . over recent comprehensive legislation on the subject which may have been enacted in an adopting state."

California has such legislation in Probate Code Sections 231-236 and 1027-1028. Probate Code Section 1027 and 1028 which deal with distribution to the state will be considered when the administration provisions are considered.

Respectfully submitted,

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EXHIBIT 1

STAFF DRAFT

ESCHEAT OF DECEDENT'S ESTATE

Probate Code §§ [1-8] (added). Escheat of decedent's estate

SEC. . [Chapter ____] (commencing with Section _____) is added to Division 2 of the Probate Code, to read:

[Chapter ____]. ESCHEAT OF DECEDENT'S ESTATE

§ [1]. Escheat of decedent's estate

[1]. Property in the estate of a decedent, whether or not he or she was domiciled in this state, escheats to this state at the time of his or her death as provided in this [chapter] if, under the laws of this state or of any other jurisdiction, the decedent leaves no one to take the property by will and no one other than a government or governmental subdivision or agency to take the property by intestate succession.

Comment. Section [1] continues the substance of subdivision (a) of former Section 231.

§ [2]. Property subject to charges and trusts

[2]. Property that escheats to this state, whether held by the state or by its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by will and is subject to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure relating to escheated estates.

Comment. Section [2] continues the substance of subdivision (b) of former Section 231.

§ [3]. Benefits distributable from certain trusts

[3]. Notwithstanding any other provision of law, a benefit consisting of money or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement, death, unemployment or similar benefits does not pass to or escheat to the state under this [chapter], but goes to the trust or fund from which it is distributable, subject to the provisions of Section 1521 of the Code of Civil Procedure. If such plan has terminated and the trust has been distributed to its beneficiaries prior to the distribution of the benefit from the estate, the benefit from the estate escheats to this state under this [chapter].

Comment. Section [3] continues the substance of subdivision (c) of former Section 231 [as proposed to be amended in AB 2341].

§ [4]. Real property

[4]. The decedent's interest in real property in this state escheats to this state.

Comment. Section [4] continues the substance of former Section 232.

§ [5]. Tangible personal property not subject to administration in this state

[5]. If tangible personal property owned by the decedent is not subject to administration in this state pursuant to Division 3 (commencing with Section 300), it escheats to this state if it was customarily kept in this state prior to the decedent's death, regardless of its location at the time of the decedent's death.

Comment. Section [5] continues the substance of former Section 233. The introductory clause makes clear that the rule provided in this section and the rule provided in Section [6] are mutually exclusive.

§ [6]. Tangible personal property subject to administration in this state

[6]. (a) Except as provided in subdivision (b), if tangible personal property owned by the decedent is subject to administration in this state pursuant to Division 3 (commencing with Section 300), it escheats to this state.

(b) Property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its laws.

(2) The decedent customarily kept the property in the other jurisdiction prior to the decedent's death.

(3) This state would have the right to escheat tangible personal property being administered as part of a decedent's estate in the other jurisdiction if the decedent customarily kept the property in this state prior to the decedent's death.

Comment. Section [6] continues the substance of former Section 234.

§ [7]. Intangible personal property not subject to administration in this state

[7]. If intangible personal property owned by the decedent is not subject to administration in this state pursuant to Division 3 (commencing with Section 300), it escheats to this state if the decedent was domiciled in this state at the time of the decedent's death.

Comment. Section [7] continues the substance of former Section 235. The introductory clause makes clear that the rule provided in this section and the rule provided in Section [8] are mutually exclusive.

§ [8]. Intangible personal property subject to administration in this state

[8]. (a) Except as provided in subdivision (b), if intangible personal property owned by the decedent is subject to administration in this state pursuant to Division 3 (commencing with Section 300), it escheats to this state whether or not the decedent was domiciled in this state at the time of death.

(b) Property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its laws.

(2) The decedent was domiciled in the other jurisdiction at the time of death.

(3) This state would have the right to escheat intangible personal property being administered as part of a decedent's estate in the other jurisdiction if the decedent was domiciled in this state at the time of death.

Comment. Section [8] continues the substance of former Section 236.

EXHIBIT 2

Text of Probate Code Sections 231-236
(To Be Repealed)

Article 2. Escheat of Decedents' Property

§ 231. Escheat of decedents' property

231. (a) If a decedent, whether or not he was domiciled in this state, leaves no one to take his estate or any portion thereof by testate succession, and no one other than a government or governmental subdivision or agency to take his estate or a portion thereof by intestate succession, under the laws of this state or of any other jurisdiction, the same escheats at the time of his death in accordance with this article.

(b) Property passing to the state under this article, 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 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure relating to escheated estates.

(c) Notwithstanding any other provision of law, a benefit consisting of moneys or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits shall not pass to the state or escheat to the state under this article, but shall go to the trust or fund from which distributable, subject to the provisions of Section 1521 of the Code of Civil Procedure. If, however, such plan has terminated and the trust or fund has been distributed to the beneficiaries thereof prior to distribution of such benefit from the estate, such benefit shall pass to the state and escheat to the state under this article.

Comment. The substance of subdivision (a) of former Section 231 [as proposed to be amended in AB 2341] is continued in Section [1]. The substance of subdivision (b) is continued in Section [2]. The substance of subdivision (c) is continued in Section [3].

§ 232. Escheat of real property

232. Real property in this state escheats to this state in accordance with Section 231.

Comment. The substance of former Section 232 is continued in Section 4.

§ 233. Tangible personal property customarily kept in this state

233. All tangible personal property owned by the decedent, wherever located at the decedent's death, that was customarily kept in this state prior to his death, escheats to this state in accordance with Section 231.

Comment. The substance of former Section 233 is continued in Section [5].

§ 234. Tangible personal property subject to administration in this state

234. (a) Subject to subdivision (b), all tangible personal property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) of this code escheats to this state in accordance with Section 231.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes that:

(1) The other jurisdiction is entitled to the property under its laws;

(2) The decedent customarily kept the property in that jurisdiction prior to his death; and

(3) This state has the right to escheat and take tangible personal property being administered as part of a decedent's estate in that jurisdiction if the decedent customarily kept the property in this state prior to his death.

Comment. The substance of former Section 234 is continued in Section [6].

§ 235. Intangible personal property of decedent domiciled in this state

235. All intangible property owned by the decedent escheats to this state in accordance with Section 231 if the decedent was domiciled in this state at the time of his death.

Comment. The substance of former Section 235 is continued in Section [7].

§ 236. Intangible personal property subject to administration in this state

236. (a) Subject to subdivision (b), all intangible property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) of this code escheats to this state in accordance with Section 231 whether or not the decedent was domiciled in this state at his death.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes that:

(1) The other jurisdiction is entitled to the property under its laws;

(2) The decedent was domiciled in that jurisdiction at his death; and

(3) This state has the right to escheat and take intangible property being administered as part of a decedent's estate in that jurisdiction if the decedent was domiciled in this state at his death.

Comment. The substance of former Section 236 is continued in Section [8].