
January 1975

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Recommended Citation

Billy F. Hicks, Comment, *Escheat in Texas: A Current Look at the Intangible Issue*, 29 Sw L.J. 575 (1975)
<https://scholar.smu.edu/smulr/vol29/iss2/4>

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COMMENTS

ESCHEAT IN TEXAS: A CURRENT LOOK AT THE INTANGIBLE ISSUE

by *Billy F. Hicks*

The doctrine of escheat in modern American jurisdictions has evolved from several feudal concepts which dealt separately with real and personal property. The states, realizing the economic sensibility behind appropriation of unclaimed property, have generally ignored historical concepts in their efforts to adopt effective escheat procedures. As lawmakers struggle to balance governmental budgets swelled by inflation, public policy favors a method which allows the state to use abandoned property rather than tax dollars drawn from a recession-angered public. In 1963, fifteen billion dollars in abandoned property was estimated to exist in the United States, increasing at the rate of an additional billion dollars per year.¹ The race to appropriate this resource has led to conflicting state claims, and the establishment of constitutional guidelines.

Texas has provided for the escheat of abandoned property since 1848,² but only since 1961 has the state required holders of abandoned property to report the existence of such property to the state under threat of civil and criminal liability for the failure to report.³ These escheat provisions make Texas one of the most active states in the appropriation of abandoned property. The Texas Supreme Court has construed the Texas escheat statutes to allow escheat to the limits of the restrictions imposed by the due process requirements of the Federal Constitution.⁴ The purpose of this Comment is to determine the state of the doctrine of escheat in Texas through an historical evaluation of the rationales of the doctrine, examination of the Texas statute in comparison with the Uniform Disposition of Unclaimed Property Act, and an analysis of past and present judicial pronouncements regarding constitutional limitations on a state's power to escheat.

I. HISTORICAL DEVELOPMENT OF THE DOCTRINE OF ESCHEAT

An escheat in modern law is the right of the state to absorb estates left vacant by the death of owners dying without a will or lawful heirs.⁵ Escheat, as a feudal term, applied only to real property which passed to the overlord following the death of the owner intestate without heirs.⁶ Before the

1. Lake, *Escheat, Federalism and State Boundaries*, 24 OHIO ST. L.J. 322, 323 (1963) (citing Wall Street Journal, Jan. 22, 1962, at 1, col. 1).

2. Ch. 145, [1848] Tex. Laws, 3 H. GAMMEL, LAWS OF TEXAS 210 (1898). Several articles in the current Texas escheat statute have not been amended since their enactment in 1848. See, e.g., TEX. REV. CIV. STAT. ANN. art. 3276 (1968).

3. TEX. REV. CIV. STAT. ANN. art. 3272a, § 13 (1968).

4. *State v. Liquidating Trustees of Republic Petro. Co.*, 510 S.W.2d 311 (Tex. 1974).

5. See, e.g., 7 R. POWELL, THE LAW OF REAL PROPERTY ¶¶ 987-90 (rev. ed. 1974); 5 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY §§ 2510-16 (repl. ed. 1957).

6. Hardman, *The Law of Escheat*, 4 L.Q. REV. 318, 323 (1888). As the system of tenures declined, the Crown was commonly the immediate overlord in England, and thus

nineteenth century a felon's lands escheated to the lord and his heirs were disinherited.⁷ Today, forfeitures to the state are rare and generally restricted by statute.⁸

The doctrine of escheat was founded on the system of English tenures by which the English Crown was treated as the ultimate owner of all lands within the realm.⁹ Following the American Revolution, the states were declared the successors of the Crown for purposes of escheat.¹⁰ Ownerless personal property passed directly to the Crown under the doctrine of *bona vacantia*.¹¹ The various processes have merged in modern times into a generalized concept of "escheat," although the property subject to escheat and the circumstances giving rise to an escheat still vary greatly among the states.¹²

The historical origins of the doctrine have rarely been considered by Texas courts; indeed, Texas courts have strengthened the generalized concept of the doctrine by a refusal to consider historical limitations.¹³ No statutory or constitutional definitions have limited the potential breadth of the doctrine in Texas. The Texas Constitution merely vests the legislature with authority to effect escheats,¹⁴ and statutes consistently refer to "property subject to escheat."¹⁵

States justify escheat on several grounds. The fundamental principle seems to be that if the ownership of property becomes vacant, the right vests in the

it is often erroneously thought that an escheat was always to the Crown. In America, where the system of tenures never flourished, the state as successor to the Crown almost always stood as immediate overlord. The American states did not long depend upon their common law heritage for a law of escheat, but began adopting statutes. The statutes were generally applicable to real and personal property and their wording contributed to the present connotation of the word "escheat."

For an excellent exposition of the effect of the English law of tenures in America see 1 AMERICAN LAW OF PROPERTY § 1.41 (A. Casner ed. 1952).

7. 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 12 (3d ed. 1939).

8. Most state statutes prohibit the forfeiture of a felon's property to the state. 5 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 2510 (repl. ed. 1957). The Texas statute makes no provision for forfeiture for felony, but the United States Constitution prohibits any forfeiture of property except for treason and then only during the traitor's lifetime. U.S. CONST. art. III, § 3.

A forfeiture could also arise at common law upon a death intestate when the only heirs were not allowed to succeed to ownership. The Texas Supreme Court aptly defined the concept: "The right to a forfeiture arises when there are heirs who can and do take, if they fail to comply with the conditions imposed by law to enable them to obtain an indefeasible estate." *Wiederanders v. State*, 64 Tex. 133, 141 (1885). Texas formerly provided for this type of forfeiture when the only heirs were aliens, but this restriction was repealed in 1965. Act of April 1, 1921, ch. 134, [1921] Tex. Laws Regular Sess. 261 (repealed 1965). For a recent decision on the validity of such statutes under the supremacy clause of the Federal Constitution see *Kolovrat v. Oregon*, 366 U.S. 187 (1961) (treaty granting foreign nationals rights of inheritance prevails over contrary state law).

9. 2 H. TIFFANY, THE LAW OF REAL PROPERTY § 316 (3d ed. 1939).

10. *Hughes v. State*, 41 Tex. 10, 17 (1874).

11. F. ENEVER, *BONA VACANTIA UNDER THE LAW OF ENGLAND* 55 (1927); R. SENTELL, *A STUDY OF ESCHATEAT AND UNCLAIMED PROPERTY STATUTES* 7 (1962).

12. See text accompanying notes 85-120 *infra*.

13. See, e.g., *State v. Liquidating Trustees of Republic Petro. Co.*, 510 S.W.2d 311 (Tex. 1974); *State v. Texas Elec. Serv. Co.*, 488 S.W.2d 878 (Tex. Civ. App.—Ft. Worth 1972, no writ); *Central Power & Light Co. v. State*, 410 S.W.2d 18 (Tex. Civ. App.—Corpus Christi 1966, writ ref'd n.r.e.), cert. denied, 389 U.S. 933 (1967).

14. TEX. CONST. art. XIII, § 1. See also TEX. CONST. art. IV, § 20 (1869); TEX. CONST. art. XIII, § 4 (1845); REPUBLIC OF TEX. CONST. § 2 (1836).

15. See, e.g., TEX. REV. CIV. STAT. ANN. art. 3272a, § 1 (1968).

whole community in whom it was vested at the origin of society.¹⁶ Rationales supporting this principle include the protection of the rights of owners, prevention of corporate windfalls, and the return of funds to the stream of commerce.¹⁷

Although historical distinctions are of dubious importance in the application of the modern doctrine of escheat,¹⁸ other distinctions require the consideration of legislators and judges. Escheat statutes among the states provide for either an absolute escheat to the state¹⁹ or for a custodial escheat.²⁰ Absolute escheat statutes vest the title to the property in the state.²¹ Custodial statutes provide for the state to hold the property for the absent owners, subject to return to rightful claimants whenever they may appear.²² Many states have adopted a hybrid statute under which claimants are barred from recovering the escheated property after the passage of a period of time.²³ Thus, the hybrid statutes are absolute in nature, although partaking of custodial attributes initially.²⁴ The absolute-custodial distinction is of little consequence since the custodial property is still used by the escheating state to produce revenue, and the holders lose the use of the property.²⁵

16. *Delaney v. State*, 42 N.D. 630, 174 N.W. 290 (1919); *cf. Robinson v. State*, 87 S.W.2d 297 (Tex. Civ. App.—El Paso 1935, writ *dism'd*).

17. For an excellent discussion of these rationales see Note, *Modern Rationales of Escheat*, 112 U. PA. L. REV. 95 (1963). See also 5 G. THOMPSON, COMMENTARIES ON THE MODERN LAW OF REAL PROPERTY § 2510 (repl. ed. 1957).

18. Since Texas and many other states have retained their common law procedure for the escheat of decedents' estates, the distinctions may occasionally be important in construing codified common law procedures.

19. See, e.g., N.J. REV. STAT. §§ 2A:37-1 to -28 (1952).

20. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT § 19 [hereinafter cited as UDUPA (all references are to the 1966 revisions)] (enacted by 25 states). For a list of states which have adopted the Uniform Act and statutory citations see tables at 8 UNIFORM LAWS ANN. 1975 SUPP. 28, 35.

21. R. SENTELL, A STUDY OF ESCHATE AND UNCLAIMED PROPERTY STATUTES 35 (1962). The distinction between the two types of statutes is important. A custodial escheat may be based on an administrative proceeding since no property right is being cut off, but an absolute escheat must follow a judicial proceeding satisfying due process. See text accompanying notes 45-55 *infra*. "Another distinction is that the rule of strict construction of escheat statutes is based upon the fact that the true owner is permanently deprived of his property under absolute escheat, and the rule is therefore inapplicable to custodial statutes." Note, *supra* note 17, at 97 n.18, citing *State v. Sperry & Hutchinson Co.*, 23 N.J. 38, 46, 127 A.2d 169, 173 (1956). This distinction is particularly valid in Texas with a custodial statute applying to abandoned property and an absolute statute applying to the estates of decedents. Compare TEX. REV. CIV. STAT. ANN. art. 3272a (1968) with TEX. REV. CIV. STAT. ANN. arts. 3273-89 (1968). The rule governing an absolute escheat was recognized in the following: "Forfeitures not being favored . . . no escheat . . . can be had except under and according to the legislative enactments . . . and . . . the method provided must not be departed from in any essential particular, otherwise the judgment will be void." *Robinson v. State*, 87 S.W.2d 297, 298 (Tex. Civ. App.—El Paso 1935, writ *dism'd*).

22. See UDUPA § 19, and text accompanying notes 86-91 *infra*.

23. ARK. STAT. ANN. § 50-612 (1971) (all claimants foreclosed after two years).

24. See, e.g., TEX. REV. CIV. STAT. ANN. art. 3286 (1968) (hybrid in that claimants foreclosed from recovery of escheated lands after four years). However, another Texas provision regulating inactive deposits left with banking institutions is truly custodial. Claimants whose deposits have been escheated "may at any time in the future establish their ownership." TEX. REV. CIV. STAT. ANN. art. 3272b § 5 (1968). The Texas scheme of escheat exhibits the historical evolution of the doctrine with new provisions being added as concepts changed.

25. Comment, *Escheat of Intangibles: The Conflicts Problems Remain*, 35 U. PITT. L. REV. 671 (1973).

The other major distinctions relevant to legislators enacting and judges interpreting escheat statutes relate to the nature of the property subject to escheat. To justify taking control of property, states have provided for a presumption of an owner's death and an apparent abandonment of property.²⁶ Generally, state statutes contemplate that the state shall take possession of all property which has not been claimed for a period of years, the absence of acts of dominion giving rise to a presumption of death.²⁷ The majority of the states have also provided for the escheat of unclaimed intangibles such as unclaimed money orders, bank deposits, corporate dividends, various deposits, and other miscellaneous debts. The burden of reporting the existence of unclaimed property is usually placed on the holder of the property.²⁸ Choice of law problems have arisen in situations in which the creditor-owner of the intangible was a citizen of a different state than the debtor-holder.²⁹ These conflicts have necessitated the entrance of federal supervision and the establishment of federal limitations on the growth of the doctrine.³⁰

II. JUDICIAL DEVELOPMENTS LIMITING POWER OF THE STATES TO ESCHATE

The United States Supreme Court has said with respect to tangible property, either real or personal, that only the state in which the property is located may escheat.³¹ Therefore, in order to give escheat jurisdiction to the state courts the res must have its "situs" within the territorial limits of the state.³² Thus, an escheat of realty is always a proceeding based on jurisdiction in rem, grounded on the principle that every sovereign state has dominion over land within its borders.³³ Further, tangible personal property may also be the basis for an action in rem without offending requirements of due process of law.³⁴

26. See, e.g., ARK. STAT. ANN. § 50-604 (1971); TEX. REV. CIV. STAT. ANN. art. 3272 (1968).

27. The Texas statute provides not only for a presumption of death, but also for the presumption that there are no heirs. TEX. REV. CIV. STAT. ANN. art. 3272 and art. 3272b, § 7 (1968).

28. See, e.g., UDUPA § 11; HAWAII REV. STAT. § 665-16 (1968); TEX. REV. CIV. STAT. ANN. art. 3272a, § 1 (1968).

29. See, e.g., Texas v. New Jersey, 379 U.S. 674 (1965); Standard Oil Co. v. New Jersey, 341 U.S. 428 (1951); State v. Amsted Indus., 48 N.J. 544, 226 A.2d 715 (1967); State v. Liquidating Trustees of Republic Petro. Co., 510 S.W.2d 311 (Tex. 1974).

30. See text accompanying notes 71-81 *infra*.

31. Texas v. New Jersey, 379 U.S. 674, 677 (1965).

32. Standard Oil Co. v. New Jersey, 341 U.S. 428, 437 (1951).

33. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 243 (1969); RESTATEMENT OF CONFLICT OF LAWS § 254 (1934).

34. Cockrill v. California, 268 U.S. 258 (1925). Escheat of unclaimed property to the state under appropriate statutes does not constitute a taking of property without due process of law in violation of the Federal Constitution. *Id.* Nor may the validity of escheat proceedings be challenged on the ground that they impair the validity of a contract in violation of the Federal Constitution. Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541 (1948). Notice in some form is necessary to make the proceeding in question "due process of law," but with respect to unknown claimants or owners, service of process may be made by publication. Hamilton v. Brown, 161 U.S. 256 (1896). For an excellent survey of federal requirements for sufficient notice see Overton, *A Study of Constitutional Problems and Policy Decisions in Drafting an Escheat Statute for Tennessee*, 34 TENN. L. REV. 173, 190 (1967). See also Annot., 7 L. Ed. 2d 871, 874 (1961), supplementing Annot., 95 L. Ed. 1092 (1951).

When the property subject to escheat consists of intangibles it is more difficult to establish its situs for jurisdictional purposes. Various rules have developed which govern the situs of intangible property. Regarding intangibles embodied in a negotiable paper, the location of the instrument determines the situs.³⁵ The rules for determining the situs of other intangibles for escheat purposes is not so clear. While the situs of a debt for purposes of attachment was established in *Harris v. Balk*,³⁶ the United States Supreme Court has followed a long and winding road in establishing rules for the determination of the situs upon which to base escheat jurisdiction.³⁷ In 1965, the Court in *Texas v. New Jersey*³⁸ adopted a comprehensive rule which covered most contingencies in the escheat of intangible property,³⁹ and in 1972 reaffirmed that rule in *Pennsylvania v. New York*.⁴⁰ However, the Court did not specifically overrule its earlier differing decisions in the field, and the earlier decisions have been resurrected by the Supreme Court of Texas in a recent singular decision.⁴¹ This necessitates a study of the judicial developments which culminated in the adoption of guidelines in *Texas v. New Jersey*.⁴²

An attack on the validity of the Texas escheat statute prior to the twentieth century provided the United States Supreme Court the opportunity to embark on a course which has since generally sanctioned the validity of such statutes.⁴³ The escheat was attacked as a taking without just compensation in violation of the due process provisions of the United States Constitution.⁴⁴ The Court said that if a man died a state was under no obligation to leave the title to his property in abeyance but through judicial proceedings could determine who had succeeded to the estate. Due process was satisfied if the proceedings followed "actual notice by service of summons to all known claimants, and constructive notice by publication to all possible claimants who are unknown."⁴⁵

Two California cases came to the Court in 1923. In *Security Savings Bank v. California*⁴⁶ the Court upheld California's escheat of funds in accounts of a California state bank. The bank contended that the statute did not provide for the seizure of the funds essential to a valid proceeding in rem, and that

35. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 63 (1969); RESTATEMENT OF CONFLICT OF LAWS § 52(a) (1934); cf. *Gilmore v. Robillard*, 44 F.2d 295 (9th Cir. 1930).

36. 198 U.S. 215 (1905). The Supreme Court stated that the debt accompanied the debtor wherever he went. *Id.* at 222. For an excellent summary of jurisdiction over intangibles for purposes of taxation see Overton, *supra* note 34, at 176.

37. See text accompanying notes 57-81 *infra*.

38. 379 U.S. 674 (1965); see text accompanying notes 78-80 *infra*.

39. Still unsettled are questions relating to the ownership of insurance policies when the insured and beneficiary are both unknown but were residents of different states. This and other problems are analyzed in a recent article, Comment, *Escheat of Intangibles: The Conflicts Problems Remain*, 34 U. PITT. L. REV. 671 (1973).

40. 407 U.S. 206 (1972).

41. *State v. Liquidating Trustees of Republic Petro. Co.*, 510 S.W.2d 311 (Tex. 1974); see text accompanying notes 204-25 *infra*.

42. 379 U.S. 674 (1965).

43. *Hamilton v. Brown*, 161 U.S. 256 (1896).

44. U.S. CONST. amends. V, XIV, § 1.

45. 161 U.S. at 275.

46. 263 U.S. 282 (1923).

the statute's notice provisions were insufficient to bind claimants and foreclose future liability against the bank.⁴⁷ The Court declared that "[t]he essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard."⁴⁸ Seizure was effected by personal service upon the bank, and the Court stated, "There is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants."⁴⁹ The door was thus opened to potential conflict with the determination that a state could escheat without having jurisdiction over both the creditor and the debtor.

In the other California case, *First National Bank v. California*,⁵⁰ the Court held that funds deposited in national banks were not subject to the California escheat statute because such statutes would interfere with the national banking system and "qualify in an unusual way agreements between national banks and their customers."⁵¹ The *First National Bank* rule was substantially undermined twenty years later by *Anderson National Bank v. Lueckett*.⁵² The Court in *Anderson*, in upholding the validity of the Kentucky abandoned property act, distinguished *First National Bank* since the statute in that case provided for an absolute escheat without a judicial determination of abandonment in fact. The Kentucky statute in *Anderson*, on the other hand, provided for custodial escheat of the funds after a period in which no acts of ownership were exercised with respect to the deposits and notice had been posted publicly. The funds remained subject to the demands of claimants. Absolute escheat followed only after a judicial proceeding determining abandonment which adequately protected the national bank from any potential double liability.⁵³ In effect, *Anderson National Bank* removed practically all restrictions on the state's power over abandoned bank deposits since statutes could easily be amended to provide the necessary protection for the bank from double liability.⁵⁴ In addition to its importance in allowing the escheat of national bank deposits, *Anderson National Bank* established the broad principle that state provisions for the custodial escheat of property without judicial proceedings are constitutional.⁵⁵ Thus, statutes in more than

47. *Id.* at 286.

48. *Id.* at 287.

49. *Id.*

50. 262 U.S. 366 (1923).

51. *Id.* at 370.

52. 321 U.S. 233 (1944).

53. *Id.* at 247.

54. The *Anderson National Bank* decision has been criticized because of the Court's utilization of the absolute-custodial distinction when that distinction was never mentioned in *First National Bank*, and the failure to consider the "interference theory" which had served as the basis for the decision in *First National Bank*. R. SENTELL, A STUDY OF ESCHAT AND UNCLAIMED PROPERTY STATUTES 114 (1962).

55. 321 U.S. at 247. This principle as it applies to national banks has since received a broad construction. The Court has construed *Anderson* as holding "in substance . . . that the Constitution of the United States does not prohibit a State from escheating deposits in a national bank located and actively doing business therein, abandoned by their owners or belonging to missing persons." *Roth v. Delano*, 338 U.S. 226, 230 (1949).

half the states today provide for an administrative custodial escheat of intangible property after legislative requirements for presumptions of abandonment are met.⁵⁶

As states became more active in appropriating abandoned property, the Court was faced with the problem of which state should be allowed to escheat an asset when more than one state was a potential escheator. In 1948, the Court in *Connecticut Mutual Life Insurance Co. v. Moore*⁵⁷ allowed New York to escheat unclaimed proceeds of insurance policies issued for delivery in New York to residents of New York by a Connecticut company. While the Court refused to consider the effect of claims by other states,⁵⁸ the first sign of reasoning which would later be deemed controlling appeared with the statement: "It is the beneficiary of the policy, not the insurer, who has abandoned the moneys."⁵⁹

Three years later the Court in *Standard Oil Co. v. New Jersey*⁶⁰ returned to the reasoning of *Security Savings*.⁶¹ Standard Oil, a corporation, was domiciled in New Jersey, and this fact was held sufficient grounds for New Jersey's seizure of the debts and demands due to the corporation's creditors.⁶² Personal service was had on the corporation's agent.⁶³ The fact that the New Jersey statute provided for an immediate absolute rather than a custodial escheat was held insignificant, and jurisdiction over the absent owners was held valid since service by publication satisfied notice requirements for bringing the owners' rights within the reach of the court.⁶⁴ The Court summarily dismissed Standard Oil's contention that the New Jersey escheat statute offered it no protection beyond the state against actions by other states for the same debts or demands. The Court reasoned that the full faith and credit clause barred any such double escheat.⁶⁵ The four dissenters argued that the claims of other states should not be foreclosed.⁶⁶ Justice Douglas, dissenting, suggested that the only appropriate tribunal for the resolution of the conflict was the Supreme Court.⁶⁷ Justice Frankfurter also questioned the majority's utilization of the full faith and credit clause by stating: "The Constitution ought not to be placed in an unseemly light by

56. See, e.g., UDUPA § 13; TEX. REV. CIV. STAT. ANN. art. 3272a, § 4 (1968). The Uniform Act has been adopted in 25 states. See note 20 *supra*.

57. 333 U.S. 541 (1948).

58. *Id.* at 548.

59. *Id.* at 551. Two dissenting opinions were written. Mr. Justice Jackson with the concurrence of Mr. Justice Douglas accurately predicted that "while we may evade it for a time, the competition and conflict between states for 'escheats' will force us to some lawyerlike definition of state power over this subject." *Id.* at 563 (Jackson, J., dissenting). As pointed out in note 100 *infra*, the question of escheat jurisdiction over insurance proceeds is not yet settled.

60. 341 U.S. 428 (1951); see Annot., 95 L. Ed. 1092 (1951).

61. *Security Sav. Bank v. California*, 263 U.S. 282 (1923); see note 46 *supra* and accompanying text.

62. 341 U.S. at 438.

63. *Id.* at 440.

64. *Id.*

65. *Id.* at 443, *construing* U.S. CONST. art. IV, § 1 ("Full Faith and Credit shall be given in each state to . . . judicial proceedings of every other State.").

66. 341 U.S. at 443, 445.

67. *Id.* at 445 (Douglas, J., dissenting).

suggesting that the constitutional rights of the several States depend on, and are terminated by, a race of diligence."⁶⁸

A decade passed before the Court again faced potential conflicting claims by different states to escheat property. In 1961, in *Western Union Telegraph Co. v. Pennsylvania*,⁶⁹ the Court faced a situation in which Pennsylvania had attempted to escheat all unclaimed money orders which had been purchased in Pennsylvania on the basis that the situs of the debt was in Pennsylvania. New York, the state of corporate domicile, had already escheated some of the same funds. The Court distinguished *Standard Oil* since in that case the claim of only one state had been before it.⁷⁰ The Pennsylvania judgment was reversed because it would not protect the corporation in subsequent proceedings brought by other states with jurisdiction over it. The Court declined to answer "questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many States,"⁷¹ but suggested that controversies between states over escheat of intangibles should in the future be brought before the Court under its original jurisdiction.⁷²

Texas accepted the Court's invitation to utilize its original jurisdiction, and the long-awaited solution was presented without dissent in *Texas v. New Jersey*.⁷³ Texas brought suit against New Jersey, Pennsylvania, and the Sun Oil Company to determine who was entitled to escheat small debts totaling \$26,000 which Sun Oil had owed to stockholders and employees for periods of seven to forty years prior to the action. Florida was allowed to intervene in the suit, claiming the right to escheat the debts owing to persons whose last known addresses were in Florida.⁷⁴ Texas based its claim on a contacts theory. The debt was recorded on books kept by Sun Oil in Texas and the contacts with that state were the most significant.⁷⁵ New Jersey claimed the funds as the domicile of the debtor, relying on *Security Savings* and *Standard*

68. *Id.* at 444 (Frankfurter, J., dissenting).

69. 368 U.S. 71 (1961). The case was noted in numerous journals. *See, e.g.,* Note, *Escheat—Possible Multiple Liability of Abandoned Intangible Personal Property*, 11 DE PAUL L. REV. 337 (1962); Note, *Conflicting State Claims Under Modern Escheat Statutes*, 16 SW. L.J. 660 (1962); Note, *Conflict of Laws—Judgment Escheating Abandoned Intangibles Not Entitled to Full Faith and Credit*, 13 SYRACUSE L. REV. 478 (1962); Note, *Conflict of Laws—Escheat—Cases of Multiple Escheat Are Subject to the Original Jurisdiction of the Supreme Court*, 39 U. DET. L.J. 431 (1962).

70. 368 U.S. at 76.

71. *Id.* at 80.

72. *Id.* at 79-80.

73. 379 U.S. 674, final decree entered, 380 U.S. 518, motion for clarification and modification of opinion denied, 381 U.S. 931, motion for modification of final decree denied, 381 U.S. 948 (1965); *see* Note, *Escheat of Intangible Property and Competing State Claims*, 65 COLUM. L. REV. 1101 (1965).

74. *Texas v. New Jersey*, motion for leave to intervene granted, 373 U.S. 948 (1963). Illinois' motion for leave to intervene was denied, 372 U.S. 973 (1963). Illinois claimed the right to escheat the portion of the debts incurred in Illinois. The Court did note this contention, but refused to adopt a rule so susceptible to problems of proof. 379 U.S. at 680.

75. 379 U.S. at 679. Texas also contended that the intangible obligations should be escheatable only by it since they were derived from land located in Texas. The Court, nevertheless, held that the fact that an intangible was income from real property was not "significant enough to justify treating it as an exception" to general rules governing the escheat of intangibles. 379 U.S. at 679 n.9.

Oil which had allowed the state of incorporation to escheat.⁷⁶ Pennsylvania sought to escheat the debts because the corporation's principal offices were located there.⁷⁷

The rule proposed by Florida prevailed. The Court held the debt to be an asset of the creditor and stated that fairness among the states required that the right to escheat the debt should be accorded to the state of the creditor's last known address.⁷⁸ The Court clothed the newly adopted rule in the armour of policy by stating: "The rule . . . 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."⁷⁹

The Court provided for two further contingencies. The state of incorporation would be permitted to escheat if the creditor had no last known address, subject to the right of another state to claim the property upon proof that the creditor's last known address was within its borders.⁸⁰ If the state of the last known address did not provide for escheat of the property, the state of incorporation could escheat the property subject to the right of the state of the last known address to claim the property if and when it provided for escheat.⁸¹

The Court stressed that the solution, which it has recently reaffirmed,⁸² was not controlled by statutory or constitutional provisions, by precedent, or even by logic. Administration and equity prompted the rule which was "fairest, . . . easy to apply, and in the long run . . . the most generally acceptable to all the states."⁸³

Before consideration of the reaction of the Texas courts to the federal judicial requirements, an overview of the statutes governing escheat is necessary through an examination of the Uniform Disposition of Unclaimed Property Act, adopted in twenty-five states, and the Texas escheat statutes.⁸⁴

76. *Id.* at 680.

77. *Id.*

78. 379 U.S. at 680-81.

79. *Id.* at 681.

80. *Id.* at 682.

81. *Id.*

82. *Pennsylvania v. New York*, 407 U.S. 206 (1972). The Pennsylvania escheat statute indulged the presumption that the state in which a money order or traveler's check was issued was the state of the last known address of the owner. Pennsylvania, in an action reminiscent of the *Western Union* case decided a decade before, was still attempting to escheat unclaimed funds paid in Pennsylvania to the Western Union Telegraph Co., a New York corporation. Since money order records do not generally list an address for either the sender or payee, most of the funds would escheat to New York under the *Texas* rule. The Court, in a suit brought under its original jurisdiction, upheld a strict application of the *Texas* rule, noting that the states could require records to prevent New York's gaining all future funds. *Id.* at 215.

This decision has been criticized both for its mechanistic application of the *Texas* rule and the failure to determine whether the sender or the recipient is the "creditor" for purposes of escheat in money order transactions. Comment, *Escheat of Intangibles: The Conflicts Problems Remain*, 34 U. PITT. L. REV. 671, 682 (1973).

83. 379 U.S. at 683.

84. TEX. INS. CODE ANN. art. 4.08 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, 3272b (1968).

III. ABANDONED PROPERTY STATUTES

All states provide a procedure for the escheat of property, both real and personal, upon the death of an intestate owner without heirs.⁸⁵ Since the promulgation of the Uniform Disposition of Unclaimed Property Act in 1954, the great majority of the states have adopted more comprehensive legislation, providing for the escheat of intangible property.⁸⁶ Under the old statutes most abandoned intangible property never came to the state's attention, and when it did, the state was put to the onerous task of proving death or absence for a sufficient number of years to raise a presumption of death.⁸⁷ Now, statutes generally require holders of intangible property to report the existence of the assets after a period in which no acts of ownership are exercised over the property and the owner is unknown, greatly lessening the states' problems of discovery and proof.⁸⁸ Forty-four states appear to have general statutes dealing with unclaimed or abandoned intangible property.⁸⁹ Of these forty-four, twenty-five have adopted the Uniform Act,⁹⁰ and several other states have adopted statutes closely akin to the Uniform Act.⁹¹ Texas is not among the states enacting the Uniform Act, but its statute partakes of many advantages first conceived by the national commissioners.

A. *The Uniform Disposition of Unclaimed Property Act*

The Uniform Act, originally approved in 1954, was revised in 1966. Minor revisions were made in only four sections, and do not justify a distinction for purposes of this overview.⁹² The Uniform Act is purely

85. Garrison, *Escheats, Abandoned Property Acts, and Their Revenue Aspects*, 35 Ky. L.J. 302, 304 (1947).

86. See *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71, 79 (1961). The Court referred to the "rapidly multiplying state escheat laws" which had originally applied only to tangible property.

87. Braswell, *Texas' New Abandoned Property Statutes*, 25 TEX. B.J. 767 (1962).

88. *Id.*

89. Comment, *Escheat of Intangibles: The Conflicts Problems Remain*, 34 U. PITT. L. REV. 671, 678 (1973). The author listed the states without general statutes as Alaska, Colorado, Kansas, Louisiana, Mississippi, Missouri, North Dakota, South Dakota and Tennessee. *Id.* at n.9. However, Louisiana and South Dakota have since adopted the Uniform Act. LA. REV. STAT. §§ 9:151-82 (Supp. 1974); S.D. CODE §§ 43-41A-1 to -52 (1973). Alaska's statute seems general in providing for escheat of intangibles. ALASKA STAT. §§ 09.50.070-.160 (1973). Holders of unclaimed personalty are required to report it to the state after a period of dormancy. ALASKA STAT. § 09.50.140 (1973). Thus 44 states, rather than the 41 reported in the 1973 article, now provide for escheat of intangibles. Tennessee could arguably be included among these states as its statute purports to apply to estates, real and personal, but establishes no reporting procedures. TENN. CODE ANN. §§ 31-801 to -829 (1956).

90. For a list of states which have adopted the Uniform Act and statutory citations see tables at 8 UNIFORM LAWS ANN. 1975 SUPP. 28, 35.

91. See, e.g., KY. REV. STAT. §§ 393.010-.990 (1972); PA. STAT. ANN. tit. 27A, §§ 1-30 (1974). California enacted the Uniform Act in 1959, but in 1968 revised the law so that it no longer substantially represents the Uniform Act. California Unclaimed Property Law, CAL. CIV. PRO. CODE §§ 1500-82 (West 1972).

92. The Act was revised because of special problems concerning money orders and traveler's checks. In § 2, 15 years was set as the period necessary for raising a presumption of abandonment for traveler's checks instead of the seven-year period for other property. Requirements of reporting the name and address of owners of money orders and traveler's checks in § 11 were eliminated. Section 12 was amended to eliminate traveler's checks and money orders from the requirement of publication of a list, and

custodial in nature and extends only to intangible personal property. The common law tradition adequately provided for the escheat of tangibles.⁹³ Accordingly, under the Uniform Act, the state takes custody of the property and retains it subject to the owner's demand for return at any time in the future.⁹⁴ The holder merely transfers the assets to the particular state agent, after notice and administrative procedures have been complied with. The holder is then relieved of all claims to the property paid over to the state, and the owner is granted direct recourse against the state.⁹⁵

The Uniform Act consists of thirty-two sections arranged in four general areas. The first area commences with a series of definitions.⁹⁶ The second area defines and describes the circumstances under which various classes of property are to be presumed abandoned.⁹⁷ The Act provides for a presumption of abandonment of property held or owing by banks or other financial organizations, insurance companies, public utilities, business associations, fiduciaries, and state and public agencies, if it has been held for seven years without being claimed.⁹⁸ Section nine is an omnibus section covering all intangible personal property, not otherwise covered, that is held in the ordinary course of the holder's business and has remained unclaimed for more than seven years after it became payable. The section's devious breadth is appreciated when one studies the opening definitions and discovers that the holder may be an individual, public corporation, "or any other legal or commercial entity."⁹⁹

The third general area of the Act is embodied in section ten, the reciprocity provision, an early solution to the double escheat problem. The section provides that property owed to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state is not presumed abandoned in the enacting state, if the other state provides for escheat and grants similar reciprocity. Section ten does not apply to property held by insurance companies, public utilities and by state courts and public officials.¹⁰⁰ The Supreme Court's mandate in *Texas v. New Jersey* seems to

payment under § 13 was made dependent on the filing of a report of the property rather than publication. Additionally, the definition of persons covered by the Act was expanded by including the phrase "a business association" in § 2.

93. The Uniform Act does provide for escheat of tangible property in two situations: abandoned bank deposit box contents and a rare occurrence of corporate liquidations in kind. UDUPA §§ 2, 5.

94. UDUPA § 19.

95. *Id.* § 14.

96. *Id.* § 1.

97. *Id.* §§ 2-9.

98. *Id.* §§ 2-8. Section two is an exception to the seven-year period in that traveler's checks are not presumed abandoned until 15 years after issuance. Several states have enacted different periods of time in establishing a presumption of abandonment. Minnesota, for example, substitutes 20 years for seven years in its enactment. MINN. STAT. §§ 345.32, .33, .35, .37 (1972).

99. UDUPA § 1(g).

100. The Commissioners justify the retention of this property "for the reason that in each of these instances practical considerations have resulted in limiting the jurisdiction in such manner as to preclude the possibility of multiple state jurisdiction." UDUPA § 10, Commissioners' Note. Whether the nature of this property can justify an exception to the *Texas* rule is questionable in light of the recent decision in *Pennsylvania v. New York*. See note 82 *supra*. The Uniform Act's provisions for insurance proceeds are generally consistent with the *Texas* rule. Under the Uniform Act proceeds always go to the beneficiary's last known address. The Act differs from *Texas v. New Jersey* only

destroy the efficacy of section ten as it relates to states without reciprocal provisions. Under *Texas v. New Jersey*, if the reciprocity provision was not met, the state of the owner's address would be the only state allowed to escheat if it had an applicable escheat law.¹⁰¹ If reciprocity exists, section ten forbids the escheat of funds held by a business association which is outside the enacting state's jurisdiction. Thus, the state of corporate domicile may escheat the funds consistently with *Texas v. New Jersey* since no other state has an applicable law when the funds are owed to a citizen of a state without jurisdiction over the holder. The end result of a state's refusal to grant reciprocity will often be to prevent any state from utilizing the funds since the state of the owner's address may not have jurisdiction over the holder to require the reporting of the existence of the funds, even though equipped with an applicable escheat statute. Section ten can still be efficient in insuring the reporting of all abandoned properties and their escheat among states which have enacted it. Continued employment of its approach among those states would not result in a double escheat or court struggle. In demonstrating the limitations on section ten's effectiveness, one author has already noted that none of the states with liberal corporation laws have reciprocity provisions in their comprehensive escheat statutes.¹⁰²

The fourth and last area of the Uniform Act encompasses a broad field of provisions treating the procedures of administration.¹⁰³ These sections require the reporting of unclaimed property,¹⁰⁴ the publication of notice to owners,¹⁰⁵ payment into the custody of the state,¹⁰⁶ and provide methods for claimants to recover their property¹⁰⁷ from a special trust fund.¹⁰⁸ The Act also provides that the running of a statute of limitations in regard to property is not to bar the presumption of abandonment of the property nor the right of the state to the property.¹⁰⁹ Final sections give the treasurer power to bring action against holders refusing to deliver abandoned property

when the beneficiary is unknown. In such a case the last address of the person entitled to the funds is presumed to be the same as the insured's last address. *Texas* would require that the funds go to the state of corporate domicile. For a discussion of the identical Texas provisions see the text accompanying notes 163-84 *infra*.

101. See text accompanying notes 78-81 *supra*.

102. Comment, *supra* note 89, at 679 (1973), citing at n.42 DEL. CODE ANN. tit. 12, § 1197 (Supp. 1972); NEV. REV. STAT. § 78.292 (1970); NEV. REV. STAT. § 673.339 (1969); NEV. REV. STAT. § 704.550 (1971); N.J. REV. STAT. § 2A:37-11 (1952).

103. UDUPA §§ 11-32.

104. *Id.* § 11.

105. *Id.* § 12.

106. *Id.* § 13.

107. *Id.* §§ 19-21.

108. *Id.* § 18.

109. *Id.* § 16. Texas courts have held that the statute of limitations will bar the state's right to escheat property held contractually, but not in a fiduciary relationship, on the principle that the state's right is derivative and can be no greater than the owner's. *Shell Oil Co. v. State*, 442 S.W.2d 457 (Tex. Civ. App.—Houston [14th Dist.] 1969, writ ref'd n.r.e.); *Central Power & Light Co. v. State*, 410 S.W.2d 18 (Tex. Civ. App.—Corpus Christi 1966, writ ref'd n.r.e.), *cert. denied*, 389 U.S. 933 (1969). The court in *Central Power & Light* discussed the legislative history of the Texas abandoned property statute and the failure of an amendment that would have prohibited the running of the statute of limitations against the state. 410 S.W.2d at 25-26. The case concerned the question of whether utility deposits were debts or pledges. The court held the deposits to be debts and thus subject to the statute. The case was noted in Note, *Security Deposits with Utilities—Debts or Pledges?*, 21 Sw. L.J. 857 (1967). See text accompanying notes 193-96 *infra*.

and set forth penalties against persons wilfully failing to report or deliver abandoned property under the Act.¹¹⁰

B. *The Texas Escheat Statutes*

Historical Development. The State of Texas has provided for the escheat of both real and personal property since the nineteenth century in a fairly modern statutory scheme. A presumption of death intestate without heirs arises when an estate remains vacant with no lawful acts of ownership exercised over it for a period of seven years if no will has been recorded in the county where the property is located during that period.¹¹¹ This scheme tended to focus attention on the estates of decedents since the state had no procedure requiring reports from holders of personal property which had become subject to escheat. When the state did locate personalty subject to escheat, it had the additional burden, in the absence of direct proof of death, of proving a seven-year absence. The state legislature acted in the early 1960's to remedy the situation, adopting several procedures utilized in the Uniform Act.¹¹² This legislative reform took the form of supplements to the old scheme of escheat.¹¹³ The old provisions were retained for the escheat of real property and the estates of decedents. They provide for an absolute escheat to the state after notice and a judicial proceeding determining that the estate has escheated.¹¹⁴ Three new statutes were enacted governing personal property. Article 3272a establishes a broad scheme for the custodial escheat of personal property held by any entity other than a banking institution or life insurance company.¹¹⁵ Article 3272b deals with funds held by banking institutions.¹¹⁶ Article 4.08 of the Insurance Code deals with funds held by life insurance companies.¹¹⁷

The new statutes retain the presumptions of the old scheme, but otherwise differ from traditional escheat statutes. Under the new articles, the owner retains title to the property; the state acts merely as conservator pending the

Kentucky has provided by statute that the statute of limitations may serve as a defense. KY. REV. STAT. § 393.110 (1972). Oklahoma appears to have a constitutional prohibition against reviving a cause of action barred by the statute of limitations. *Mires v. Hogan*, 79 Okla. 233, 192 P. 811 (1920).

110. UDUPA § 24-25.

111. TEX. REV. CIV. STAT. ANN. arts. 3272, 3273-89 (1968).

112. TEX. INS. CODE ANN. art. 4.08 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, 3272b (1968). Basically the new articles utilize the administrative procedures popularized by the Uniform Act. Initially, the abandoned property statute, article 3272a, relied on judicial proceedings and provided for an absolute escheat with title vesting in the state. The Act was amended in 1965 to provide for a custodial escheat following administrative proceedings. TEX. REV. CIV. STAT. ANN. art. 3272a, ch. 21, § 1, [1961] Tex. Laws 1st Called Sess. 49, as amended, TEX. REV. CIV. STAT. ANN. art. 3272a (1968). For an analysis of article 3272a before its 1965 revamping see Braswell, *Texas' New Abandoned Property Statutes*, 35 TEX. B.J. 767 (1962).

113. "The provisions of this Article 3272a are . . . supplementary to and shall not be construed to repeal, alter, change, or amend any of the provisions of Articles 3273 to 3289, . . . which provide for the escheat of estates of decedents." TEX. REV. CIV. STAT. ANN. art. 3272a, § 14 (1968). See also *id.* art. 3272b, § 10.

114. TEX. REV. CIV. STAT. ANN. arts. 3273-89 (1968).

115. See text accompanying notes 123-45 *infra*, and note 240 *infra*.

116. See text accompanying notes 146-62 *infra*, and note 240 *infra*.

117. See text accompanying notes 163-84 *infra*, and note 240 *infra*.

appearance of the owner.¹¹⁸ Special funds are established for the reimbursement of claimants.¹¹⁹ The procedure is purely administrative since no property rights are cut off.¹²⁰ The holder delivers the property to the state and is relieved of any subsequent liability with respect to the property so delivered.¹²¹ Judicial proceedings are used only upon noncompliance with any provisions of the statutes, and rather stringent punishment is allowed against wilful noncompliance.¹²²

Unclaimed Personal Property. Article 3272a consists of sixteen sections and establishes a comprehensive scheme for the custodial escheat of practically all imaginable escheatable assets with the exception of bank deposits¹²³ and funds held by life insurance companies.¹²⁴ Holders specified as subject to the terms of the statute include individuals, corporations, business associations, partnerships, governmental subdivisions, estates, trusts, trustees, court officers, liquidators, and other entities.¹²⁵ Property subject to the statute's coverage includes money, securities, dividends, accrued interest, claims for money or indebtedness, utility and other service deposits, proceeds from mineral estates, "and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State."¹²⁶ Holders of such property are required to file a report of the property with the State Treasurer within sixty days after the property becomes subject to escheat, and subsequently must file an annual report of the property.¹²⁷

Sections three and four provide for the actual administration of the statute. Names of the owners as reported by the holders are posted on the courthouse door or bulletin board in the holder's county. If the property is worth more than \$50, notice is published in a newspaper in the county of the last known

118. TEX. INS. CODE ANN. art. 4.08, § 7 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, § 4, 3272b, § 6 (1968).

119. TEX. INS. CODE ANN. art. 4.08, § 9 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, § 4(c), 3272b, § 4 (1968).

120. See text accompanying note 56 *supra*. Judicial proceedings reserved for decedents' estates may be employed in some circumstances over abandoned property upon the petition of the attorney general, or any district, criminal district, or county attorney. "This procedure shall be supplementary to and cumulative of any actions or procedures authorized in article 3272a with respect to escheat of personal property and either procedure may be followed in applicable cases." TEX. REV. CIV. STAT. ANN. art. 3273 (1968).

However, the Unclaimed Funds Statute for Life Insurance Companies provides that "[n]o other Statute of this state relating to escheat . . . shall apply to life insurance companies . . ." TEX. INS. CODE ANN. art. 4.08, § 13 (Supp. 1974).

121. TEX. INS. CODE ANN. art. 4.08, § 7 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, § 4(c), 3272b, § 4 (1968).

122. TEX. INS. CODE ANN. art. 4.08, § 14 (Supp. 1974); TEX. REV. CIV. STAT. ANN. arts. 3272a, § 13, 3272b, § 9 (1968).

123. TEX. REV. CIV. STAT. ANN. art. 3272a, § 1(a) (1968).

124. Although not exempted by article 3272a, the unclaimed insurance funds statute, enacted two years after article 3272a, provides that no other escheat statutes shall apply to life insurance companies. TEX. INS. CODE ANN. art. 4.08, § 13 (Supp. 1974).

125. TEX. REV. CIV. STAT. ANN. art. 3272a, § 1(a) (1968).

126. *Id.* § 1(b).

127. *Id.* §§ 1, 2. Property subject to escheat must meet article 3272's requirements of a seven-year absence without the filing of a will in the county where the property is situated. *Id.* § 1(c).

address of any owner named in the report, and if no address is known, then in the county of the holder's principal place of business or registered office.¹²⁸ Notice is also mailed to the address of each owner entitled to property worth more than \$50.¹²⁹ At the expiration of ninety days from the publication of notice, or of 120 days from the filing of the report if no publication was required, the holder pays or delivers the property to the State Treasurer if the owner has not established his right to the property with the holder.¹³⁰ The holder is relieved of all liability to the extent of the value of the property so paid or delivered and all subsequent claims must be directed to the state.¹³¹ The State Treasurer may sell any escheated property at public sale under specified conditions.¹³²

The next sections provide for refunds,¹³³ establish an administrative procedure for claimants,¹³⁴ and allow suit against the state in state district courts by any claimant aggrieved by an administrative decision.¹³⁵

Section ten of the Texas statute is a reciprocity provision almost identical to section ten of the Uniform Act. The Texas statute differs in only one detail, but that detail is quite significant. The Uniform Act provides that property is not deemed abandoned in the enacting state if (1) the other state has jurisdiction over the holder, (2) the last known address of the owner was in the other state, (3) it *may* be claimed under the laws of the other state, and (4) the other state has a reciprocal provision.¹³⁶ Texas utilizes the Uniform Act's wording exactly, except for substitution of the word "may."¹³⁷ Thus, in Texas the property is subject to escheat unless it "has" been claimed under the laws of another state and the laws of such other state make reciprocal provisions. Double escheats would theoretically be possible under section ten of the Texas act. Even if another state had already escheated property, the State of Texas would escheat if the laws of the other state did not contain a reciprocal provision. The section does not provide the true reciprocity of the Uniform Act, since Texas attempts to escape any restraints and to gain all benefits. The spirit of the section is destroyed by the Texas substitution. If the Supreme Court adheres to its rule in *Texas v. New Jersey*, the force of section ten will never be felt, presuming a holder willing and able to appeal, since the section's provisions are obviously at odds with the guidelines established by the Court.¹³⁸ Restraint by Texas officials in utilizing section ten may be the preventive which will leave it on the books.¹³⁹

128. *Id.* § 3.

129. *Id.* § 3(e).

130. *Id.* § 4.

131. *Id.* §§ 4(c), 6.

132. *Id.* § 5. The proceeds of the sale are held for any claimants. Purchasers receive good title free from any claims of the owner or prior holder. The sale must be preceded by published notice. *Id.* This procedure differs from the disposition of realty escheated under article 3273 which must be held for two years before being sold. TEX. REV. CIV. STAT. ANN. art. 3279 (1968).

133. *Id.* art. 3272a, § 6 (1968).

134. *Id.* § 7.

135. *Id.* § 8.

136. UDUPA § 10; see text accompanying notes 100-02 *supra*.

137. Compare UDUPA § 10 with TEX. REV. CIV. STAT. ANN. art. 3272a, § 10 (1968).

138. See text accompanying notes 78-81 *supra*.

139. The State Treasurer may prescribe necessary rules and regulations for the

The statute makes an unusual anticipation in providing that in the event the federal government enacts laws furnishing information regarding abandoned property held by it, the State Treasurer is authorized to compensate the federal government for the costs of examining records.¹⁴⁰ If the federal government delivers such property to the state, the state will assume all liability to the owners of such property.¹⁴¹ In deference to national interests, the statute also provides that it does not apply to bank accounts within Texas whose last known owner was a citizen and resident of another country.¹⁴²

An Escheat Expense and Reimbursement Fund is established in the amount of \$100,000 for payment of claims and expenses of administration.¹⁴³ Funds delivered to the State Treasurer are used to maintain the fund with any excess paid to the state's general revenue fund.¹⁴⁴ Compliance with the Act is prompted by authorization of penalties of not less than \$500, nor more than \$1000, or not more than six months in jail or both against holders wilfully failing to file a report or refusing to permit examination of records.¹⁴⁵

Inactive Bank Deposits. Banking institutions administer inactive accounts under article 3272b, a statute which relies for administration on the provisions of article 3272a, but which differs conceptually both from its sister 3272a and the Uniform Act.¹⁴⁶ The term "depository" applies to any "banking institution . . . which receives and holds for others deposits of money . . . in banking practice or other personal property in this State, or in other States for residents last known to have resided in this State."¹⁴⁷ A dormant or inactive account is an account of indebtedness which has remained inactive for a period of more than one year without any action taken in regard to the account by the depositor or his agent.¹⁴⁸ Dormant accounts lose their status when a deposit or withdrawal is made from the account by the depositor himself or through an agent, other than the depository itself.¹⁴⁹ Depositories are forbidden to reduce any dormant deposit through any service charges "or any other procedure" so long as the deposit remains in a dormant status.¹⁵⁰ Costs of publishing notice are the only charges allowed to be assessed against the deposit.¹⁵¹

administration of the statute. TEX. REV. CIV. STAT. ANN. arts. 3272a, § 12, 3272b, § 8 (1968). He might restrict the Texas reciprocity clause to insure consistency with the clauses adopted by Uniform Act states. See text accompanying notes 235-38 *infra*.

140. TEX. REV. CIV. STAT. ANN. art. 3272a, § 11 (1968).

141. *Id.*

142. *Id.* § 10a.

143. *Id.* § 15.

144. *Id.*

145. *Id.* § 13. Broad inspection power is given to the State Treasurer or Texas Attorney General or their representatives at "all reasonable times" to "examine the books and records of any person to enforce this Article . . ." *Id.* § 9.

146. Amendments to sections four and five in the last legislative session have virtually destroyed article 3272b's distinctiveness. Prior to the 1975 amendments the Act aimed for conservation of inactive deposits by the depository. Now the state takes custody of the funds rather than allowing them to remain under the custody of the depository. See text accompanying notes 154-59 *infra*.

147. TEX. REV. CIV. STAT. ANN. art. 3272b, § 1(a) (1968).

148. *Id.* § 1(b).

149. *Id.*

150. *Id.* § 2.

151. *Id.*

After a deposit remains dormant continuously for seven years, the depository, not knowing the whereabouts of the depositor, is required to publish a notice of the existence of the fund in a newspaper of the city or county in which the depository is located. Such notice must list the names of all owners of such deposits in alphabetical order and the last known addresses, if any, of such persons.¹⁵² This procedure must be repeated annually during the month of May.¹⁵³ On or before May 1 of the year following the first publication required by the statute, the depository must file a report with the State Treasurer listing the names of all depositors whose names were published whose whereabouts still remain unknown.¹⁵⁴ The amount listed in this report is delivered to the State Treasurer, and the depository is then relieved of liability with respect to the deposits.¹⁵⁵ Before the 1975 amendment of this section the depository was required to deliver accounts in excess of \$25 only if it concluded that "further cost and effort to locate the depositor or creditor would be unwarranted."¹⁵⁶ Under the prior law the depository had to report the existence of deposits in excess of \$25 which were advertised but not claimed.¹⁵⁷ Such funds remained the responsibility of the depository until paid to the owner, to the State Treasurer under the statute, or escheated under judicial proceedings.¹⁵⁸

Funds held by depositories are paid into the State Conservator Fund which covers administrative expenses and reimbursement claims.¹⁵⁹ Whenever moneys in the fund exceed \$250,000, they are transferred to the Available School Fund.¹⁶⁰ Claims are handled under the procedure established in article 3272a with the exception that claimants may seek reimbursement from the depository which will then be reimbursed from the Conservator Fund.¹⁶¹ Depositories wilfully failing to publish the list of depositors required by the act are subject to penalties of not less than \$500 or not more than six months in jail, or both.¹⁶²

152. *Id.* § 3.

153. *Id.*

154. Ch. 263, § 1, [1975] Tex. Laws Reg. Sess. 638, amending TEX. REV. CIV. STAT. ANN. art. 3272b, § 4 (1968).

155. *Id.* This procedure may be contrary to the *Texas* rule since the last known address of the depositor is not taken into consideration. See text accompanying note 187 *infra*, and notes 78-81 *supra*.

156. Ch. 3, § 4, [1962] Tex. Laws 3rd Called Sess. 7. The depository was relieved of liability for these larger payments also. *Id.*

157. *Id.*

158. *Id.* Note that before 1975 judicial proceedings under article 3273 were the only method by which the state could escheat funds held by depositories which exceeded \$25 if the depository did not choose to voluntarily pay the money to the state. See note 120 *supra* and accompanying text.

159. Ch. 263, § 2, [1975] Tex. Laws Reg. Sess. 639, amending TEX. REV. CIV. STAT. ANN. art. 3272b, § 5 (1968). Section five saw only two changes in the recent legislature. The State Treasurer is now required to compile an alphabetical list of dormant account owners which shall be available for public inspection. Formerly the Treasurer had only to keep a record of names which was available only to those satisfying him of their "interest or possible interest therein."

160. *Id.* Thus, escheated properties in Texas eventually benefit three separate funds: lands to the permanent free school fund, *id.* art. 3281; bank deposits to the available school fund, *id.* art. 3272b, § 5; and abandoned personal property and insurance funds to the general revenue, TEX. INS. CODE ANN. art. 4.08, § 9 (Supp. 1974); TEX. REV. CIV. STAT. ANN. art. 3272a, § 15 (1968).

161. TEX. REV. CIV. STAT. ANN. art. 3272b, § 6 (1968).

162. *Id.* § 9. This section places a \$1000 ceiling on liability.

Unclaimed Life Insurance Funds. Until 1963, life insurance companies were regulated by article 3272a. Since that time they have been required to administer unclaimed funds under the Unclaimed Funds Statute for Life Insurance Companies of the Texas Insurance Code¹⁶³ which covers "unclaimed funds . . . of any life insurance company doing business in this state where the last known address, according to the records of such company, of the person entitled to such funds is within this state."¹⁶⁴ When there is doubt as to the person entitled to the funds, or someone other than the insured or annuitant is entitled to the funds and his address is unknown, the act provides for a presumption 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.¹⁶⁵ This is the same rule provided in the Uniform Act¹⁶⁶ and hopefully will withstand any attacks grounded on the *Texas v. New Jersey* rule.¹⁶⁷

Unclaimed funds are defined as funds which have remained unclaimed for seven years or more after they became due under any life or endowment insurance policy or annuity contract which has matured or terminated.¹⁶⁸ Annual reports of unclaimed funds must be made to the State Treasurer.¹⁶⁹ In September the treasurer is required to give notice of the unclaimed funds of \$50 or more.¹⁷⁰ The notice is published in each county of the last known address of a person entitled to funds¹⁷¹ and sets forth the names of persons in that county to whom funds are due and information regarding the amount due and the company.¹⁷² On or before the following December 20, all unclaimed funds not paid to claimants are required to be paid to the State Treasurer.¹⁷³ The statute provides that companies making such payments are relieved of all liability,¹⁷⁴ and in a series of special provisions unique to this act establishes a mechanism to insure such relief. If a company is sued by an individual or another state with respect to any funds paid to the State Treasurer, the company is to notify the State Treasurer and the Attorney General, and the Attorney General "in his discretion" may intervene.¹⁷⁵ If judgment is entered against a life insurance company for any amount paid to the State Treasurer including any interest, the State Treasurer is directed to immediately reimburse the company the amount paid in satisfaction of the

163. TEX. INS. CODE ANN. art. 4.08 (Supp. 1974). Article 3272a's application was rescinded in a provision that no other escheat statutes should apply to life insurance companies. *Id.* § 13.

164. TEX. REV. CIV. STAT. ANN. art. 3272a, § 13 (1968).

165. *Id.*

166. UDUPA § 3.

167. See text accompanying notes 78-81 *supra*, and note 100 *supra*.

168. TEX. INS. CODE ANN. art. 4.08, § 3 (Supp. 1974). Policies not matured by proof of death are deemed matured and the proceeds due "only if such policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based." *Id.*

169. *Id.* § 4.

170. *Id.* § 5.

171. *Id.* § 5(a).

172. *Id.* § 5(b).

173. *Id.* § 6.

174. *Id.* § 7.

175. *Id.* § 8(b).

judgment.¹⁷⁶ Expenses incurred in the legal proceedings are also to be reimbursed.¹⁷⁷

A special trust fund is established¹⁷⁸ from which claims which may be made at any time are paid.¹⁷⁹ Unclaimed funds which have remained in the trust fund for seven years or more are annually paid into the state's general revenue fund as long as the trust fund's assets are not reduced below \$100,000.¹⁸⁰ If the State Treasurer refuses a claim, suit may be brought against the state in his name.¹⁸¹ Additionally, claimants may seek payment from the insurance companies which are authorized to make payments to persons "appearing to such company to be entitled thereto and upon proof of such payment the State Treasurer shall forthwith reimburse such company for such payment."¹⁸² Before entering a court of law, claimants should exhaust both their remedies since the determinations of the State Treasurer and the insurer are not dependent upon each other.¹⁸³ Penalties under the act are the same as those for violations of articles 3272a and 3272b.¹⁸⁴

Areas of Conflict. Analysis of the Texas statutes shows several potential areas of conflict with the rule announced by the Supreme Court in *Texas v. New Jersey*.¹⁸⁵ After the passage of the seven-year period required to raise the presumption of abandonment, property is subject to escheat, "whether held within this State, or without the State for a person or beneficiary whose last known residence was in this State."¹⁸⁶ Thus, unless such property has already been escheated under the conditions specified in section ten of article 3272a, Texas may escheat, *Texas v. New Jersey* to the contrary notwithstanding. The Texas provisions for the escheat of bank deposits also fail to conform to the *Texas v. New Jersey* rule since the holder-depository's and not the creditor's domicile is determinative for escheat purposes. However, these provisions will probably not soon be attacked since other states can utilize the Texas procedure to claim the funds rather easily.¹⁸⁷

The United States Supreme Court in *Texas v. New Jersey* attempted to resolve conflicting state claims to property subject to escheat. Henceforth, the state of the creditor's last known address shown on the corporate books would be the only state allowed to escheat.¹⁸⁸ If there was no last known address or the state of the last known address did not provide for escheat of

176. *Id.*

177. *Id.*

178. *Id.* § 9.

179. *Id.* § 10.

180. *Id.* § 9. The State Treasurer may pay a claim out of the general revenue fund if the special trust fund is insufficient. *Id.* § 11.

181. *Id.* § 10.

182. *Id.* § 8(a).

183. The State Treasurer has no discretion. If an insurance company pays a claimant, it merely produces proof of the payment for reimbursement. *Id.*

184. *Id.* § 14 (not less than \$500, nor more than \$1000, or not more than six months in jail or both). See also text accompanying notes 145 and 162 *supra*.

185. See text accompanying notes 78-81 *supra*.

186. TEX. REV. CIV. STAT. ANN. art. 3272a, § 1(b) (1968) (not applicable to banking institutions and life insurance companies).

187. TEX. REV. CIV. STAT. ANN. art. 3272b. See text accompanying notes 146-62 *supra*.

188. See text accompanying note 78 *supra*.

the property, the state of corporate domicile could escheat subject to the right of the state of the last known address to recover if it could prove such address or if it subsequently enacted an applicable escheat law.¹⁸⁹ Presumably unincorporated and individual debtors would be subject to the same rule.

Administration of escheat statutes under the *Texas* rule leaves a troublesome gray area in which much property remains unreported and unclaimed.¹⁹⁰ This is that class of property held by debtors neither domiciled in nor doing business in the state of the last known address of the owner. Texas and other states require the reporting of such property, but enforcement against foreign holders is not easily effected.¹⁹¹ This problem was recognized and confronted by the Supreme Court of Texas in a recent case, *State v. Liquidating Trustees of Republic Petroleum Co.*,¹⁹² allowing custodial escheat of assets due to creditors whose last known addresses were not in Texas, without regard to the existence of applicable escheat laws in other states. Such other states upon learning of the assets could utilize the simple Texas procedure to assert any superior rights they might have. The result seems equitable, but the decision merits further consideration. Historically, federal rules regarding escheat have changed each decade. Perhaps the rumblings of change will once more be prompted by Texas greed.

IV. CONSTITUTIONAL LIMITATIONS ON ESCHATE IN TEXAS

Before succeeding in the Texas Supreme Court in 1974, the Texas Attorney General had twice before contended in Texas appellate courts that the state should be allowed to "take custody" of funds owed to creditors whose last known addresses were in other states having applicable escheat laws. In the first of those cases, *Central Power and Light Co. v. State*,¹⁹³ the state attempted to escheat \$462 in unclaimed dividends owing to persons with last known addresses in nine other states having applicable escheat laws.¹⁹⁴ The court of civil appeals cited only the *Texas v. New Jersey* decision of the previous year in reversing the trial court's decree of escheat.¹⁹⁵ The court stated that the question had been "authoritatively settled" and Texas was not entitled to escheat the property.¹⁹⁶

A different court of civil appeals was faced with the *Texas* rule in 1972 in *State v. Texas Electric Service Co.*,¹⁹⁷ an action by an electric company to recover funds paid to the state under article 3272a. Over \$90,000 in debts upon which the statute of limitations had run had been paid to the state.

189. 379 U.S. at 682.

190. See generally Comment, *Escheat of Intangibles: The Conflicts Problems Remain*, 34 U. PITT. L. REV. 671, 684-85 (1973).

191. TEX. REV. CIV. STAT. ANN. art. 3272a (1968); see text accompanying notes 227, 229-32 *infra*.

192. 510 S.W.2d 311 (Tex. 1974).

193. 410 S.W.2d 18 (Tex. Civ. App.—Corpus Christi 1966, writ ref'd n.r.e.), cert. denied 389 U.S. 933 (1967). See also note 109 *supra*.

194. The state also attempted to escheat unclaimed wages and customer's service utility deposits totaling several thousand dollars. That attempt failed, but on other grounds which are dealt with in note 109 *supra*.

195. 410 S.W.2d at 26.

196. *Id.* at 26-27.

197. 488 S.W.2d 878 (Tex. Civ. App.—Ft. Worth 1972, no writ).

Since in Texas the state can escheat only the right which the absent owner would have,¹⁹⁸ the company had paid over funds which it could have retained. The court denied recovery since the company had waived its right to plead any defense.¹⁹⁹ The company had also paid \$1,323 in stock dividends to the state which were owing to persons whose last known addresses were in other states. The company asserted that *Texas v. New Jersey* precluded the state's retention of the dividends.²⁰⁰ The court refuted this contention with a dubious construction of the *Texas* rule.

According to the language of the [C]ourt in *Texas v. New Jersey*, if the appellee desired to defeat the right of the State of Texas to escheat the dividends in question, it was incumbent upon appellee to produce proof that the laws of the states of last known address of the shareholders provided for the escheat of those dividends.²⁰¹

This construction seems inconsistent with the reasoning in *Texas v. New Jersey*. Since the escheating state gains the benefit of custody of the funds, it would seem that the state should have the burden of proving no other state's right to them.²⁰² Additionally, the court of civil appeals ignored the rule of evidence followed in Texas that "[t]he law of another state or country is presumed to be the same as that of Texas in the absence of pleading and proof of such law. [This presumption] extends to the statutory law of the foreign state [as well as the common law]."²⁰³ The state of Texas would retain the funds. *Texas v. New Jersey* was not mortally wounded, but its foundations had felt the first tremor of an attack.

The next year found the state again claiming assets held in Texas for creditors whose last known addresses were in other states in *State v. Liquidating Trustees of Republic Petroleum Co.*²⁰⁴ The liquidating trustees of the Republic Petroleum Company, a New Mexico corporation dissolved under the laws of that state in 1949, held a fund of liquidating dividends in a Dallas bank. The surviving trustees had resided in Texas for at least fifteen years prior to the filing of suit for the custody of the funds. The trustees had reported the existence of the funds in compliance with article 3272a, but contended they were not subject to escheat by Texas.²⁰⁵ The dividends were owed to 208 stockholders, only one of whom had a last known address in Texas.²⁰⁶ The trial and appellate courts sustained the trustees' contentions, allowing the state to escheat only the \$114.40 owing the one stockholder

198. See note 109 *supra*.

199. 488 S.W.2d at 880.

200. *Id.* at 882.

201. *Id.*

202. See *Texas v. New Jersey*, 379 U.S. 674, 681-82 (1965).

203. 1 C. MCCORMICK & R. RAY, TEXAS LAW OF EVIDENCE § 99, at 132 (2d ed. 1956); see authorities cited *id.*, n.60.

204. 497 S.W.2d 527, 528 (Tex. Civ. App.—Waco 1973), *rev'd*, 510 S.W.2d 311 (Tex. 1974).

205. If a holder refuses to deliver property to the State Treasurer which is deemed escheated under the statute's presumptions, the Texas Attorney General is authorized to bring suit to compel delivery of the property. TEX. REV. CIV. STAT. ANN. art. 3272a, § 4(d) (1968).

206. Six stockholders had last known addresses in foreign countries; the remaining 201 stockholders had last known addresses in states other than Texas. 497 S.W.2d at 528.

whose last known address was in Texas. The state's arguments centered around the custodial nature of the statute, the context of previous cases, and the *Texas Electric Service Co.* construction of the *Texas v. New Jersey* rule.²⁰⁷ The court of civil appeals looked to the *Texas* rule as applied in *Central Power and Light*²⁰⁸ and held that the contentions of the state had been foreclosed by the decisions of the United States Supreme Court.²⁰⁹ Although the trustees had not produced proof that the laws of the other states provided for escheat, the court held that there was a presumption that the law of "all other states in question is the same as the law in Texas," thus defeating Texas' claims under the *Texas Electric Service Co.* requirement of proof of applicable law in other states in order to defeat Texas' claims.²¹⁰

The Texas Supreme Court granted the state's writ of error and reversed the decision of the lower court in *State v. Liquidating Trustees of Republic Petroleum Co.*²¹¹ The unanimous court distinguished the *Western Union* and *Texas* cases, and returned to the reasoning of *Standard Oil*.²¹² Texas was held to be "the situs of the intangible personal property" over which the struggle for custody was taking place.²¹³ The trustees contended that New Mexico laws giving corporate life until liquidation was complete, coupled with the liberal long-arm statute of New Mexico, would subject them to in personam jurisdiction in that state and possible multiple liability for the funds since New Mexico's enactment of the Uniform Act allowed that state to escheat.²¹⁴ The Texas court, nevertheless, held that Texas was the domiciliary state of the stakeholders and that New Mexico could not claim to be the domiciliary state of the corporation for escheat purposes.²¹⁵ The court quoted article 3272a's provision relieving the holder "of all liability to the extent of the value of the property so paid . . . for any claim which . . . may arise or be made in respect to the property,"²¹⁶ and then noted that "express provisions are made for reimbursement to any person, including any State, which comes forward with proof of a valid superior claim to any of such funds."²¹⁷ Since the holder would be protected from multiple liability, there was held to be no violation of due process.

207. *Id.* See also Petitioner's Application for Writ of Error at 3, 4, *State v. Liquidating Trustees of Republic Petro. Co.*, 510 S.W.2d 311 (Tex. 1974).

208. 410 S.W.2d 18; see text accompanying notes 193-96 *supra* and note 109 *supra*.

209. 497 S.W.2d at 528, citing *Western Union Tel. Co. v. Pennsylvania*, 368 U.S. 71 (1961), and *Texas v. New Jersey*, 379 U.S. 674 (1965).

210. 497 S.W.2d at 529.

211. 510 S.W.2d 311 (Tex. 1974). The court cited every major escheat case to have come before the United States Supreme Court since *Security Savings* in 1923 with the exception of *Pennsylvania v. New York*. See text accompanying notes 46-83 *supra* and note 82 *supra*.

212. 341 U.S. 428 (1951); see text accompanying notes 60-68 *supra*.

213. 510 S.W.2d at 313.

214. *Id.* at 312-13. See also Respondent's Reply Brief at 2-3, 6, *State v. Liquidating Trustees of Republic Petro. Co.*, 510 S.W.2d 311 (Tex. 1974). The trustees in liquidation were also directors of the New Mexico corporation. The New Mexico long-arm statute provides for in personam jurisdiction over persons who have transacted business within the state. N.M. STAT. ANN. § 21-3-16 (1953). Thus, the trustees fears seem to have substantial basis. New Mexico does provide for the escheat of funds held by business associations organized under its laws in its enactment of the Uniform Act. N.M. STAT. ANN. § 22-22-6 (Supp. 1973).

215. 510 S.W.2d at 312.

216. *Id.* at 314.

217. *Id.*

The Texas Supreme Court looked to the facts of both *Western Union* and *Texas v. New Jersey* and held those cases "clearly distinguishable" since in both cases more than one state had claimed the property and the holders were subject to multiple jurisdiction.²¹⁸ Further, *Western Union* was inapplicable since the trustees had "no problem of protection against subsequent liability to other States" because of the nature of the Texas statute.²¹⁹ The case before the court was said to be like *Standard Oil Co. v. New Jersey* in which no other states were making active claims, and New Jersey was allowed to escheat dividends owed to persons with last known addresses outside of New Jersey.²²⁰ The court stressed that *Western Union* had not overruled *Standard Oil*, but the results merely differed because of the "distinguishing fact that the claim of no other state to the property was before the Court."²²¹

Texas v. New Jersey was held to be "likewise distinguishable."²²² Not only did it involve an actual controversy between states, but it had received an erroneous interpretation by the lower Texas courts. If the interpretation of the lower courts that a mere showing of an applicable escheat statute of a state of a creditor's last known address could defeat an action by Texas even though the other state had not come forward was followed, "stakeholders [could] hold, and in many cases dissipate, the property even though no other State ever [claimed it]."²²³ The *Central Power and Light* and *Texas Electric Service Co.* decisions were overruled.²²⁴

The Texas court quoted extensively from *Texas v. New Jersey* before formulating its own rule.

In view of the last sentence of the Supreme Court's opinion [in *Texas v. New Jersey*] . . . , we interpret that decision to mean that in a suit strictly between the domiciliary State and a resident stakeholder, the State is entitled to a judgment against the stakeholder for custody of the property, subject to some other State coming forward at a subsequent time with proof that it has a superior right to escheat or custody.²²⁵

The "last sentence" relied upon for their interpretation seems hardly capable of justifying such a construction unless taken completely out of context. It follows:

In other words, in both situations [state of last known address has no applicable escheat law, or no last known address exists] 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.²²⁶

218. 510 S.W.2d at 313. Texas was held to be the only state with jurisdiction over the holders, disregarding New Mexico's long-arm statute. *Id.*; see note 214 *supra*.

219. 510 S.W.2d at 313.

220. *Id.* at 314.

221. *Id.*

222. *Id.*

223. *Id.* at 315.

224. *Id.*

225. *Id.*

226. *Texas v. New Jersey*, 379 U.S. 674, 682 (1965).

The court concluded with the observation that its interpretation was "the only interpretation which would permit the purpose of State escheat and custodial laws to be effective as to abandoned properties within the jurisdiction of one State but owed to disappeared persons with last known addresses in States which have no jurisdiction to require reporting or delivery of the property."²²⁷ Other states would be able to learn "of the funds and assert administratively and in our courts any superior rights which they may claim."²²⁸

Superficially this new development seems consistent with the "ease of administration" envisaged by the United States Supreme Court when it first announced the *Texas v. New Jersey* rule. If Texas will afford other states a simple and fair administrative procedure for assets due them under the *Texas* rule, the new position adopted in *Republic Petroleum* will warrant little criticism, even for its devious birth.

In *State v. Amsted Industries*²²⁹ the Supreme Court of New Jersey reached a contrary conclusion to *Republic Petroleum* in a factually similar case. The state contended that it could custodially escheat unclaimed dividends held by a corporation for persons whose last known addresses were in states with applicable escheat laws but which possessed no jurisdiction over the holding corporation. The New Jersey court examined *Texas v. New Jersey* and concluded that "nothing . . . in *Texas [v. New Jersey]* . . . lends any support to New Jersey's contention that creditor's state supplants the state of incorporation only if [the corporation is subject to the jurisdiction of the creditor's state]."²³⁰ The unanimous court interpreted *Texas v. New Jersey* as granting "the creditor's state . . . the paramount interest and other states should do what they can to honor it."²³¹ Expanding concepts of jurisdictional power might provide jurisdiction for the creditor's states, and if not, the court noted that New Jersey's courts were open to other states for escheat actions.²³²

In closing, it may be noted that the solution adopted by the Texas Supreme Court in *Republic Petroleum* is not the only answer to effective escheat of property held outside the jurisdiction of the state with the "superior" right under the *Texas* rule. Some writers have suggested adoption of a special jurisdictional rule for escheat proceedings, allowing any state entitled to escheat to do so in its own state.²³³ New Hampshire has adopted a potential solution in providing that its attorney general, at the request of another state, may bring an action in New Hampshire to enforce the

227. 510 S.W.2d at 315.

228. *Id.*

229. 48 N.J. 544, 226 A.2d 715 (1967).

230. *Id.* at 717-18.

231. *Id.* at 718.

232. *Id.*

233. See Comment, *A State Statute for the Disposition of Unclaimed Property*, 3 HARV. J. LEGIS. 135, 186 (1965); Note, *Escheat of Corporate Intangibles*, 41 NOTRE DAME LAWYER 559, 569 (1966); Note, *Unclaimed Debts Owed by Corporation Held Escheatable by State of Creditor's Last Known Address*, 9 UTAH L. REV. 1045, 1048 (1965).

abandoned property laws of the other state if the other state makes reciprocal provisions.²³⁴ So far, New Hampshire stands alone.

The Uniform Act also has succeeded in providing for escheat of all unclaimed dividends and distributions.²³⁵ The Uniform Act allows escheat of dividends and distributions only if they are held by a business association incorporated in that state or by a business association doing business in that state whose records show the last known address of the claimant to be in that state. The Act does not provide for escheat of funds held by a corporation neither domiciled in nor doing business in the state, regardless of the last known address of the creditor.²³⁶ Thus, under *Texas v. New Jersey*, the state with jurisdiction over the holder in the absence of an applicable law in the state of the last known address may escheat.²³⁷

Probably the Texas courts never realized how very near a solution they were with the almost perfect wording of the Texas reciprocity clause.²³⁸ If the Texas Supreme Court in *Republic Petroleum* had opted for a strict construction of *Texas v. New Jersey*, Texas could validly have escheated the funds due to the twenty-five states which have the Uniform Act, since their laws do not provide for escheat in this situation. The Texas statute could have been limited by the rule of *Texas v. New Jersey*, and Texas could have joined the Uniform states with truly reciprocal legislation. Instead, Texas has chosen a singular path. That *Republic Petroleum* can withstand federal scrutiny is doubtful. With the Uniform Act's solution shining as a bright star in the horizon, that "ease of administration" sought by the Court seems tangibly close.

V. CONCLUSION

Substantial conflicts problems remain in the field of escheat of intangibles. Solutions are possible through either truly uniform legislation or resolution on a case-by-case basis by the United States Supreme Court. For the moment, the Uniform Act offers an effective solution to at least the major problem of jurisdiction over intangibles for purposes of escheat and is consistent with the federal guidelines.²³⁹ The jurisdictional solution adopted by the Texas Supreme Court in *Republic Petroleum*, however, ignores the trend of Supreme Court decisions during the last two decades and is inconsistent at the threshold with the controlling rule of *Texas v. New Jersey*.²⁴⁰ The Texas court should have considered the current state of the law in other jurisdictions before adopting the "only possible" solution.

234. N.H. REV. STAT. ANN. § 471-A:15(IV) (1968).

235. UDUPA § 10; see text accompanying notes 100-02 *supra*.

236. UDUPA §§ 5, 10.

237. *Id.* § 10. The Act's reciprocity clause limits this jurisdictional benefit to other states with similar legislation.

238. TEX. REV. CIV. STAT. ANN. art. 3272a, § 10 (1968); see text accompanying notes 137-38 *supra*.

239. An exception to this statement may exist with respect to the Uniform Act's provisions regarding utility deposits. See note 100 *supra*.

240. Texas administrative escheat proceedings from Jan. 1970—Aug. 1975 brought over \$4½ million into various state funds. Over 5,000 reports were filed under the administrative escheat statutes. Letter from Assistant Attorney General Scott Garrison of Sept. 17, 1975. See text accompanying notes 115-117 *supra*.