

## Memorandum 82-44

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

Under existing California law, if property in a decedent's estate would otherwise escheat to the state because the decedent has no relatives, certain relatives of a predeceased spouse become entitled to inherit. Prob. Code § 229(d). This creates a burdensome problem of having to locate and give notice to relatives of a predeceased spouse. Prob. Code § 328 (notice must be given to "each heir").

At the March meeting the Commission decided to replace inheritance by relatives of a predeceased spouse with a procedure allowing such persons to claim property that has escheated. This will avoid the location and notice problem, while still giving the persons who may have been close to the decedent a share of the decedent's property. The Commission directed the staff to consider whether persons dependent on the decedent and perhaps other persons should also be able to claim escheated property.

Attached is the staff draft of the relevant provisions. The Commission should note the following features about the draft, and determine whether these features are desirable:

(1) Persons entitled to claim the property. The staff draft goes well beyond existing law, which limits persons entitled to inherit property that would escheat, to children, parents, and siblings of a predeceased spouse or their issue. The staff draft permits these persons to claim escheated property, but puts a number of other classes of persons before them.

The first priority class is persons named in the decedent's will. The theory here is that these persons are plainly ones the decedent intended to benefit; hence, if the decedent had known that property was going to escheat, the decedent would have wanted the property to go to these persons. Escheated property would be shared by persons in this category in proportion to the value of the property devised to them by the decedent.

If there are no persons in the first class who claim the property, it goes next to persons the decedent was legally obligated to support at the time of death. Although one would think that this category should

be first, we are already providing family maintenance legislation to take care of the needs of these persons. They should be able to receive escheated property over and above their support needs only if there is no one else the decedent plainly intended to benefit. Their share of the escheated property would be proportionate to the support obligation. One consequence of this scheme is that a former spouse of the decedent, with whom the decedent may have parted on bad terms, would be able to take from the escheated property.

If there are no persons the decedent was obligated to support who claim the escheated property, the next class is persons whom the decedent was actually supporting at the time of death, even though there was no legal support obligation. This could include unrelated persons whom the decedent felt a moral obligation to or otherwise showed kindness to. Persons in this class would share in proportion to the amount of support the decedent was giving. The concept is that the decedent would have wanted the property to go to persons he or she was supporting had the decedent known that the property would escheat.

Only if there are no claimants whom the decedent was supporting would close relatives of a predeceased spouse be entitled to take. These persons are in-laws and step-children of the decedent; in some cases the decedent may have had a close relationship with them, in others not. It seems proper that the property go to them rather than escheat, even though they are given a relatively low priority in the draft scheme. They would share equally within a class--first children, then parents, then siblings (or their issue)--as under existing law.

(2) Share received by claimants. Under the staff scheme the share received by the claimants of escheated property is mechanically determined, based on the amount of property or support received from the decedent or on the number of claimants within a class. The aim of this scheme is a simple system that will not require litigation. It would be possible to create a scheme that is based on equitable considerations applicable to the claimants--their relative needs, their closeness to the decedent, their age, etc.--on which the court could exercise its discretion. The staff believes that the mechanical scheme proposed is superior because it gives a rough measure of justice without substantial burden on the judicial system. We would not relish a scheme that pitted

acquaintances of the decedent against each other arguing each other's relative merits.

(3) Time within which claim is determined. Under existing escheat statutes, claims may be made for a period of five years after the property is distributed to the state, after which time the escheat becomes permanent. Claims made at any time within the five-year period are determined as soon as they are made. The staff has modified this system for the proposed statute that allows persons other than heirs to claim escheated property. Since the share of these persons is determined by the total number of claimants in their own and other classes, the staff draft requires all claims to be held and determined at one time. The main question is, how long should the claims be held? Since some of the claimants may be persons the decedent supported or was obligated to support, an early determination seems called for. On the other hand, the needs of these persons should be taken care of by family maintenance legislation. The existing escheat statutes allow true heirs of the decedent a full five years to claim escheated property; a shorter period of time for determining claims of non-heirs under the proposed statute would in effect cut off the rights of the true heirs. The staff draft resolves this conflict by holding the claims for five years before they are determined, consistent with the escheat laws generally.

(4) Manner in which claims are determined. Under existing escheat law, claims of less than \$1,000 are determined administratively by the Controller, except claims in decedents' estates. Code Civ. Proc. § 1352. Claims over \$1,000 and claims in decedents' estates are determined by the superior court in Sacramento or any other county in which the Attorney General has an office. Code Civ. Proc. § 1353. The staff draft incorporates this scheme; claims under the proposed statute would be determined under a judicial rather than administrative proceeding.

Respectfully submitted,

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Article 5. Right to Escheated Property

§ 284.010. Right of certain persons to escheated property

284.010. (a) If property in the estate of a decedent escheats and is distributed to the state, the persons described in this subdivision have a right to the property. The right to the property is in the following order of priority by class, the right of a person in any class contingent on there being no person in a prior class who claims the property:

(1) Persons named as devisees under a valid will, in proportion to the value of the devised property.

(2) Persons the decedent had a legal obligation to support at the time of the decedent's death, in proportion to the amount of the obligation.

(3) Persons actually supported by the decedent at the time of the decedent's death, in proportion to the amount of the support.

(4) The following relatives of a spouse who predeceased the decedent during marriage with the decedent, equally:

(A) Children and their issue by representation.

(B) Parents.

(C) Brothers and sisters and their issue by representation.

(b) A person shall claim property pursuant to this section in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure. The claim shall be made within five years after the date of the decree making the distribution to the state. A person who does not so claim the property is forever barred.

(c) Notwithstanding any other statute, a claim pursuant to this section shall not be determined until the time for making claims pursuant to this section has expired. A claim pursuant to this section shall be allowed only if no heir or devisee of the decedent has claimed the property at the time the claim pursuant to this section is determined.

Comment. Section 284.010 supersedes subdivision (b) of former Section 229. The former provision gave inheritance rights to persons who are not relatives of a decedent in order to prevent escheat. Section 284.010 reverses this and provides rights for persons who are not heirs of a decedent to claim escheated property. Because the rights provided by Section 284.010 are not rights of inheritance and are subordinate to rights of heirs, no notice of either probate or escheat need be given

and the persons provided the rights are not parties to the probate proceedings. See Sections \_\_\_\_\_ and \_\_\_\_\_ [administration].

Subdivision (a) prescribes the priority of classes of claimants to escheated property. Persons lower in priority are entitled to take only if there are no claimants higher in priority. Claimants in any class share in the proportion specified based on the total number of claimants in that class. Subdivision (a)(1) prescribes as the highest priority named devisees in a will; the presumed intent of the testator would be to benefit such persons in the event of escheat. Subdivisions (a)(2) and (3) supplement the family maintenance provisions, which take into account the needs of certain persons supported by the decedent. See Sections 245.010-245.080 (family maintenance). Subdivision (a)(4) is drawn from former Section 229(a); it applies to any number of predeceased spouses and their relatives. Subclasses within subdivision (a)(4) take in order of priority in the same manner as larger classes within subdivision (a).

Subdivision (b) is comparable to Section 1027 (claims of heirs and devisees against escheated property). Subdivision (c) makes clear that the rights provided in this section are subordinate to the rights of the decedent's heirs and devisees.