



ESCHEAT

IS THE STATE THE LAST HEIR?

John V. Orth

STRICTLY SPEAKING, escheat applies only to real property. If a landowner dies without a valid will or known heir,¹ the property escheats to the state. Nowadays escheat can also refer to personal property.² If the same person dies owning chattels as well as land, the now unowned personal property also passes to the state. And, because the state takes possession of certain items of unclaimed personal property, such as inactive bank accounts, these too are loosely said to escheat.

There is, obviously, a practical reason to treat all these cases – real and personal property left by an owner who dies without a will or legal heir as well as personal property that is unclaimed – as instances of escheat. In each case, the result is the same: the state

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¹ The emphasis is on *known* heir. If the state's inheritance law admits kindred of any degree, then no one actually dies without an heir. More than two hundred years ago, Sir William Blackstone stated the obvious: "All men are in some degree related to each other." 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 205 (FACSIMILE OF THE FIRST EDITION OF 1765-1769, University of Chicago Press). The problem is establishing the exact degree of kinship.

² BLACK'S LAW DICTIONARY 584 (8th ed. 2004) defines escheat as "[r]everision of property (esp. real property) to the state upon the death of an owner who has neither a will nor any legal heirs."

takes possession. But although the property ends up in the same place, the historical and theoretical routes that lead to that destination are quite different. And the titles by which the state holds the various types of escheated property are also different – which may have practical implications even today.

REAL PROPERTY

Escheat was an incident of feudal tenure. The legal theory of the effect of the Conquest of England in 1066 by Duke William of Normandy, which made him King William I (“the Conqueror”), was that all land belonged to the king by right of conquest. When William granted out estates to his vassals, he retained his overlordship, which entitled him and his successors to the land when those estates came to an end. In the case of life estates, the death of the life tenant obviously ended the estate. In the case of estates in fee simple, which can endure forever,³ the estate ended if the owner died without a valid will or known heir.⁴

Under feudalism it was essential that the person possessed of the right to the land – the one seized of the estate – could be identified at all times. There could be “no gap in seisin.”⁵ This was because the feudal estate owed duties to the lord that had to be discharged by

³ See, e.g., 4 JAMES KENT, COMMENTARIES ON AMERICAN LAW *4 (Oliver Wendell Holmes, Jr. ed., 12th ed. 1873) (“No estate is deemed a fee, unless it may continue forever.”).

⁴ Prior to the adoption of the first Statute of Wills in 1540, 32 Hen. 8, c. 1, real property could not be devised. Also in pre-modern times, estates escheated if the tenant committed a felony (*propter delictum tenentis*). 3 Blackstone, *supra* note 1, at 258. Forfeiture as a punishment for felony is unknown in the United States, and the Federal Constitution limits the power of Congress to punish even those convicted of treason. U.S. CONST. art. III, § 3 (“The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.”). State constitutions may have similar restrictions. E.g., N.C. CONST. art. I, § 29 (“No conviction of treason [against the state] or attainder shall work corruption of blood or forfeiture.”).

⁵ See CORNELIUS J. MOYNIHAN & SHELDON F. KURTZ, INTRODUCTION TO THE LAW OF REAL PROPERTY 30 (3d ed. 2002).

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the person with seisin. On the death of a person seised in fee simple, seisin passed immediately to the decedent's heir.⁶ To this day, that remains the theory of inheritance of land. If no heir was immediately identifiable, a legal officer held a proceeding known as an inquest of office to determine if the property had escheated, that is, reverted to the Crown "from defect of heirs" (*propter defectum sanguinis*).

When the American colonies of Great Britain became independent states in 1776, they succeeded to the Crown's right of escheat. After the formation of the federal union, the national government did not assert a claim to escheated property, presumably on the view that, as a government of delegated powers, it had not been granted that aspect of sovereignty. Even in states formed out of after-acquired territories, such as those in the Old Northwest and those acquired by the Louisiana Purchase, the federal government never claimed a right to escheats, presumably on the ground that new states entered the union with the same legal rights as earlier ones.⁷

In the common-law canons of descent, listing the order in which heirs succeeded to land, the Crown (or, in America, the state) did not appear.⁸ Instead, escheat was understood as the recognition of an underlying – or, perhaps better, an overlying – title. As the Supreme Court of Nebraska once explained:

Clearly the theory of the law in the United States . . . is that first and originally the state was the proprietor of all real property and last and ultimately will be its proprietor, and what is commonly termed ownership is in fact but tenancy When this tenancy expires or is exhausted by reason of the failure of the state or the law to recognize any

⁶ 2 BLACKSTONE, *supra* note 1, at 201.

⁷ The principle had been established by the Northwest Ordinance of 1787, originally adopted under the Articles of Confederation on July 13, 1787, confirmed and adapted to the United States Constitution on August 7, 1789 (1 U.S. Stat. 50) (new states to be admitted "on an equal footing with the original States").

⁸ For England, see 2 BLACKSTONE, *supra* note 1, at 208-36; for America, see 4 KENT, *supra* note 3, at *375-*412.

person or persons in whom such tenancy can be continued, then the real estate reverts to and falls back upon its original and ultimate proprietor, or, in other words, escheats to the state.⁹

As the law concerning intestate succession became codified, the practice arose for simplicity's sake of listing the state as the ultimate taker, and as heirs came to be defined as "those who take the property under the relevant statutes of descent,"¹⁰ the state became in that sense – and in that sense only – the "last heir." But the state was never a true heir. Notoriously, an heir has no rights in the property while the ancestor lives, only a "mere expectancy,"¹¹ but the state has a right all along, a paramount title – at least, as to real property.

UNOWNED PERSONAL PROPERTY

Feudal incidents, including escheat from defect of heirs, applied only to land, not to chattels. The explanation is historical. When feudalism emerged, land was essentially the only source of wealth. The land was what King William had taken by conquest, and it was the land that he apportioned among his loyal retainers. Chattels were not held of any overlord; they were – in a word borrowed from Roman law – "allodial," subject to absolute ownership, not feudal. When, over time, personal property assumed more importance, the question arose of succession on the death of an owner

⁹ *In re O'Connor's Estate*, 252 N.W. 826, 827 (Neb. 1934). Two state constitutions have something similar: S.C. CONST. art. XIV, § 3 ("The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from defect of heirs shall revert or escheat to the people."); WIS. CONST. art. IX, § 3 ("The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail from a defect of heirs shall revert or escheat to the people.")

¹⁰ JOHN E. CRIBBET ET AL., *CASES AND MATERIALS ON PROPERTY* 258 (8th ed. 2008).

¹¹ See HERBERT THORNDIKE TIFFANY, *THE LAW OF REAL PROPERTY AND OTHER INTERESTS IN LAND* § 172 (Renard Berman ed., abr. 3d ed. 1970). Technically while the ancestor lives, there are no heirs. *Nemo est haeres viventis*. 3 BLACKSTONE, *supra* note 1, at 224.

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of personal property without a valid will or known heir. Escheat, or rather its practical effect, crossed the artificial barrier that separated land and chattels. For want of any better label, ownerless personal property was styled *bona vacantia* – vacant, that is, unowned goods¹² – and was taken by the Crown, probably because it was the royal courts that decided the matter. By the mid-eighteenth century, Lord Mansfield could lay it down that “[i]n personal estates, which are allodial by law, the king is last heir where no kin[.]”¹³

Ironically, in England, where it all began, escheat has been abolished, replaced by a right in the Crown to take land as *bona vacantia* in the same way that it takes goods.¹⁴ In America a few states, in a burst of republican ardor, constitutionalized the rule that estates in land are allodial and that feudal incidents are not allowed, without, however, abandoning their claim to escheats.¹⁵ Further confounding the old distinction between real and personal property, the intestate succession acts in most states now treat both real and personal property identically.¹⁶ So it appears that indeed the state is the last heir with respect both to land and to chattels.¹⁷

¹² Although *bona vacantia* as used in this article refers only to personal property left unowned at the death of an owner without heirs or valid will, historically it could be used to refer to any personal property for which no owner could be identified. See, e.g., 1 BLACKSTONE, *supra* note 1, at 288 (listing “royal fish, shipwrecks, treasure trove, waifs, and estrays”).

¹³ *Burgess v. Wheate*, 1 Eden 177, 229, 28 Eng. Rep. 652, 672 (Ch. 1759).

¹⁴ 15 Geo. 5, c. 3, § 41(1) & 46 (1925).

¹⁵ ARK. CONST. art. II, § 28 (“All lands in this State are declared to be allodial; and feudal tenures of every description, with all their incidents, are prohibited.”); MINN. CONST. art. I, § 15 (“All lands within the state are allodial and feudal tenures of every description with all their incidents are prohibited.”); WIS. CONST. art. I, § 14 (“All lands within the state are declared to be allodial, and feudal tenures are prohibited.”).

¹⁶ See JESSE DUKEMINIER ET AL., *WILLS, TRUSTS, AND ESTATES* 33 (7th ed. 2005). But see N.C. GEN. STAT. § 29-14 (2007) (continuing distinction between real and personal property where decedent is survived by a spouse and one or more descendants).

¹⁷ See, e.g., UNIF. PROBATE CODE § 2-711 (1990, amended 1993) (italics added):

If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated

UNCLAIMED PERSONAL PROPERTY

Much personal property also passes to the state today other than by intestate succession. Under the circumstances of modern economic life, large amounts of property are held by corporations or similar entities on behalf of individuals: deposit accounts, amounts due for interest or dividends, customers' overpayments, employees' unpaid wages, tenants' security deposits, stocks, bonds, proceeds of insurance policies, the contents of safe deposit boxes, and many more.¹⁸ Pursuant to legislation, states take possession of such property if its owner initiates no action with respect to it for a specified number of years¹⁹ and provide publication notice to the owner.²⁰ The practical reason behind the states' action is to prevent unclaimed personal property being eventually appropriated by the present holder.²¹ The states are better able to provide

individual's "heirs," "heirs at law," "next of kin," "relatives," or "family," or language of similar import, the property passes to those persons, *including the state . . .*

¹⁸ For an even longer list, *see* UNIF. UNCLAIMED PROP. ACT § 1(13) (1995). *See also* *Rose's Stores, Inc. v. Boyles*, 416 S.E.2d 200 (N.C. Ct. App. 1992) ("escheat" of abandoned layaway payments). Of course, holders of the property of others do not have to be corporations, although they usually are. *See* UNIF. UNCLAIMED PROP. ACT § 1(6) (1995) (defining "holder" as "a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to this [Act]."); *id.* § 1(12) (defining "person" to mean "an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.").

¹⁹ *See* UNIF. UNCLAIMED PROP. ACT § 2(a) (1995) (period of inactivity varies from one to fifteen years, depending on the type of property).

²⁰ *Id.* § 9 (notice in "a newspaper of general circulation in the [county] of this State in which is located the last known address of any person named in the notice").

²¹ "Many retailers shift unused gift-card credits from a liability account to an income account . . ." Erica Alini, *Governments Grab Unused Gift Cards*, WALL ST. J., June 30, 2009, at A3 (citing filings with the Securities and Exchange Commission and annual financial statements). The states generally make no claim to unclaimed personal property not in the possession of a holder, that is, to personal property that is lost or abandoned, such as an item found on the public street. In this case, the owner did not intentionally transfer possession to another to hold on his behalf. For a critical reappraisal of the law of finders, *see* John V. Orth, "What's

long-term (perpetual) custody. In addition, it is sometimes admitted that the statutes are also a means of raising revenue.²² Many states dedicate unclaimed personal property, along with escheats, to the support of education.²³

Wrong With the Law of Finders and How to Fix It,” 4 GREEN BAG 2d 391 (2001).

²² See, e.g., *La. Health Serv. & Indem. Co. v. McNamara*, 561 So.2d 712, 716 (La. 1990) (“Although one purpose of such acts is to protect the missing owners, the primary rationale behind this legislation is its use as a revenue raising device.”). See also 1 DAVID J. EPSTEIN, UNCLAIMED PROPERTY LAW & REPORTING FORMS § 1.07 (2008). The revenue-raising aspect is not new. In the eighteenth century Blackstone listed *bona vacantia* as one of the sources of royal revenue. 1 BLACKSTONE, *supra* note 1, at 288. The sums involved today are enormous. The Wall Street Journal (Feb. 4, 2008), citing data from the National Association of Unclaimed Property Administrators and the state of Delaware, reported that as of June 2006 the states collectively held almost \$35 billion in unclaimed property. Scott Thurm & Pui-Wing Tam, *States Scooping Up Assets From Millions of Americans*, WALL ST. J., Feb. 4, 2008, at A1.

²³ E.g., N.C. CONST. art. IX, § 10(2) (“All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State.”); N.C. GEN. STAT. § 116B-7(a) (2007) (limiting expenditure to income derived from Escheat Fund). Prior to June 30, 1971, such property was appropriated by the North Carolina Constitution “to the use of The University of North Carolina.” N.C. CONST. art. IX, § 10(1). See JOHN V. ORTH, THE NORTH CAROLINA STATE CONSTITUTION: A REFERENCE GUIDE 6, 7, 21, 148-49 (1993). Many state constitutions devote the money more generally to educational purposes. See ALA. CONST. art. XIV, § 258 (“the furtherance of education”); ARIZ. CONST. art. XI, § 8 (“[a] permanent State school fund”); COLO. CONST. art. IX, § 5 (“[t]he public school fund”); IDAHO CONST. art. IX, § 4 (“[t]he public school permanent endowment fund”); IND. CONST. art. 8, § 2 (“[t]he Common School fund”); MO. CONST. art. IX, § 5 (“the state school fund”); MONT. CONST. art. X, § 2 (“[t]he public school fund”); NEB. CONST. art. VII, § 7 (“perpetual funds for common school purposes, including early childhood educational purposes operated by or distributed through the common schools”); NEV. CONST. art. 11, § 3 (“for educational purposes”); N.M. CONST. art. XII, § 4 (“the current school fund”); N.D. CONST. art. IX, § 1 (“a perpetual trust fund for the maintenance of the common schools of the state”); OKLA. CONST. art. X, § 32 (“a State Public Common School Building Equalization Fund”); OR. CONST. art. VIII, § 2 (“the Common School Fund”); S.D. CONST. art. VIII, § 2 (“a per-

Property that is equivalent to cash, such as the balance of an inactive bank account, is immediately deposited in a designated state fund, while marketable property, such as stock in a publicly traded corporation, is sold by a state officer – according to a common statutory provision, within three years of receipt²⁴ – and the proceeds of sale are added to the fund. All statutes require the return of the property (or its value, if it was sold) to the owner on demand, regardless of how much time has elapsed.²⁵ Under some acts, the owner is entitled only to the original value of the property,²⁶ while other statutes allow the owner of saleable property in addition any increments that accrued at or prior to sale,²⁷ and still other statutes add accumulated interest on the amount taken from interest-bearing accounts for a certain number of years while in the state’s custody.²⁸

petual fund for the maintenance of public schools in the state”); WASH. CONST. art. IX, § 3 (“the common school fund”); WIS. CONST. art. X, § 2 (“the school fund”); WYO. CONST. art. VII, § 2 (“perpetual funds for school purposes”).

²⁴ UNIF. UNCLAIMED PROP. ACT § 12 (1995).

²⁵ *Id.* § 16. According to the official comment on this section, “The owner’s rights are never cut off; under this Act, the owner’s rights exist in perpetuity.” 8C U.L.A. 132 (2001).

²⁶ *E.g.*, N.C. GEN. STAT. § 116B-64 (2007) (unclaimed personal property is held “without liability for income or gain”); IND. CODE § 32-34-1-30(b) (2002) (owner not entitled to receive dividends, interest, or other increments accruing after the state takes possession); 765 ILL. COMP. STAT. 1025/15 (2001) (owner not entitled to receive income or other increment accruing after state takes possession); OHIO REV. CODE 169.08(D) (2007) (“Interest is not payable to claimants of unclaimed funds held by the state.”). The Supreme Court of Ohio held the foregoing statute unconstitutional in *Sogg v. Zurz*. See *infra* note 42 and accompanying text.

²⁷ See state statutes modeled on the UNIF. UNCLAIMED PROP. ACT § 21 (1981) (*e.g.*, HAW. REV. STAT. § 523A-21 (2006); S.D. CODIFIED LAWS ANN. § 43-41B-22 (1997)). Prior versions of the uniform act did not provide for payment to the owner of any income or other increment accrued after delivery to the state officer. *Id.* Comment. 8C U.L.A. 239 (2001).

²⁸ See state statutes modeled on the UNIF. UNCLAIMED PROP. ACT § 11 (1995) (interest for up to 10 years at lesser of legal rate or rate paid while held by private depository) (*e.g.*, LA. REV. STAT. 9:164 (2004); ME. REV. STAT. ANN. tit. 33,

The theory by which the states take possession of unclaimed personal property is unclear. The Uniform Unclaimed Property Act, which in one version or another (1954, 1966, 1981, 1995) forms the basis for much state legislation, describes the property as “presumed abandoned,”²⁹ although it emphasizes that the state “does not take title to unclaimed property, but takes custody only, and holds the property in perpetuity for the owner.”³⁰ The theoretical difficulties are significant. As one appellate court recognized: “While it is true that the Act is not a true escheat act, it is also true that it is not purely custodial in nature.”³¹ The right acquired by the state is anomalous, sometimes described as “custodial escheat.”³²

Abandoned property is unowned, not unclaimed, and ordinarily belongs to the first person to take possession of it.³³ Strictly speaking, personal property is abandoned the moment an owner surrenders dominion and control with the intention never to reclaim the item.³⁴ A common example is an item intentionally deposited in a

§ 1962 (1999)).

²⁹ *Id.* § 2.

³⁰ Prefatory Note to the UNIF. UNCLAIMED PROP. ACT (1995), 8C U.L.A. 89 (2001). Similar language appeared in the earlier versions of the Act. *Id.* Any legally protected interest in property is in some sense a “title,” but the distinction drawn here is the commonly encountered one between an interest good “against all the world” and an interest that is inferior to some other (or others).

³¹ *Smyth v. Carter*, 845 N.E.2d 219, 223 (Ind. Ct. App. 2006).

³² *La. Health Serv. & Indem. Co. v. McNamara*, 561 So.2d 712, 717 (La. 1990).

³³ *See, e.g.*, LA. CIV. CODE art. 3412 (2004) (“Occupancy is the taking of possession of a corporeal movable that does not belong to anyone. The occupant acquires ownership the moment he takes possession.”).

³⁴ 1 AM. JUR. 2D, *Abandoned, Lost, and Unclaimed Property* § 10 (2005) (“In order to establish an abandonment of [personal] property, actual acts of relinquishment, accompanied by an intention to abandon, must be shown.”) (footnote omitted). Title to real property cannot be abandoned, although interests in real property, such as easements, can be. *See* POWELL ON REAL PROPERTY § 423 at 574 (one-vol. ed. by Richard R. Powell & Patrick J. Rohan 1968) (“Ownership of land cannot be lost by abandonment at common law, even when originally acquired by adverse possession Concerning easements, however, while courts welcome some other basis for finding extinguishment, no cases have been found denying the possibility of extinguishment by abandonment, and many easements have been lost this

wastebasket. Most instances of abandoned personal property involve a tangible item (*chose in possession*), not an intangible interest such as the ownership of the balance of a bank account or the share of ownership in a corporation represented by a stock certificate (*chose in action*). Almost all the personal property taken by the state as unclaimed is of the latter type.³⁵

The presumption of abandonment raised by the statute is rebuttable at any time since the state never claims title, but only perpetual custody. Ordinarily, non-use of property, even long-continued non-use, is not conclusive of an intent to abandon.³⁶ Once rebutted, the presumption of abandonment disappears and the owner's interest is recognized as uninterrupted – relating back to the state's first taking of possession.

Custody also seems an awkward description of the state's right to unclaimed personal property. Traditionally distinguished from bailment by reference to the owner's intent, custody is transferred when the owner places goods in the physical control of another but does not intend to surrender dominion over them. The handing of goods to a customer in a store to examine under supervision is a common example.³⁷ A custodian has physical control and some duty to protect and preserve the property for the owner, but state officers with custody of unclaimed personal property are regularly em-

way.”) (footnote omitted).

³⁵ Tangible personal property, such as jewelry or even cash, may be included among the contents of an unclaimed safe deposit box. See UNIF. UNCLAIMED PROP. ACT § 3 (1995) (concerning “[t]angible property held in a safe deposit box”).

³⁶ 1 AM. JUR. 2D, *Abandoned, Lost, and Unclaimed Property* § 9 (2005) (“[A]ctual intent to abandon must be shown; it is not enough that the custodian, into whose hands the owner entrusted it, intentionally discarded it. However, if there is no expressed intent, the intent may be inferred from the acts of the owner. Mere non-use does not, in itself, constitute abandonment.”) (footnotes omitted). See, e.g., *Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel*, 221 F.3d 634 (4th Cir. 2000) (Spain had not abandoned ship wrecked hundreds of years ago); *State v. West*, 235 S.E. 2d 150 (N.C. 1977) (state had not abandoned 200-year-old documents that had been lost).

³⁷ RAY ANDREWS BROWN, *THE LAW OF PERSONAL PROPERTY* § 76, at 269 (2d ed. 1955).

powered to commingle the property with other state property and use it for state purposes, as well as to sell marketable property, conferring good title on the purchaser.³⁸ Even in the case of statutes that provide for accounting to the owner for increments in the value of saleable property or for interest on funds taken from interest-bearing accounts, the accumulation ceases after a period of time, despite the assertion that the state is a “perpetual custodian.”³⁹

The practical significance of the difficulty in identifying the state’s right to unclaimed personal property is demonstrated by suits brought by owners seeking not just the return of their property – which is readily conceded by the state – but also an accounting for interest accrued while in the state’s possession. Although recent suits have been against states that deny all interest, the same claim could eventually be made against states that limit the accumulation of interest or terminate it altogether after a certain number of years.⁴⁰ Some courts have upheld the state’s refusal to account for interest on the ground that the proximate cause of the owners’ loss was not the state’s action but the owners’ delay,⁴¹ while others have

³⁸ UNIF. UNCLAIMED PROP. ACT § 12(c) (1995) (“A purchaser of property at a sale conducted by the administrator pursuant to this [Act] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them.”). In this section the property is referred to simply as “abandoned,” not “presumed abandoned.”

³⁹ It is true that interest bearing accounts would have continued to accrue interest if they had been left with the holder, but the depositor would also have borne the risk of loss by the holder’s default or dishonesty.

⁴⁰ With respect to saleable unclaimed personal property, statutes limit the owner’s accumulation to increments that accrued at or prior to its sale. *See, e.g.*, UNIF. UNCLAIMED PROP. ACT § 21 (1981). Statutes that provide for interest on balances taken from interest-bearing accounts limit the amount (lesser of legal rate or rate paid while held by private depository) and the period of accumulation (no more than 10 years). *See, e.g.*, UNIF. UNCLAIMED PROP. ACT § 11 (1995). No statute provides for the compounding of interest for the entire period of the state’s potential custody: in perpetuity. If it did, it would implicate the concerns reflected in the common-law Rule Against Accumulations of Income. *See* *Thellusson v. Woodford*, 11 Ves. Jun. 112, 32 Eng. Rep. 1030 (Ch. 1805).

⁴¹ *See* *Smyth v. Carter*, 845 N.E.2d 219 (Ind. Ct. App. 2006); *Rowlette v. North Carolina*, 656 S.E.2d 619 (N.C. Ct. App. 2008), appeal dismissed, 666 S.E.2d

held the state's retention of interest an unconstitutional taking.⁴² Even in the latter case, a statute of limitation will eventually bar the owner's claim.⁴³

IS THE STATE THE LAST HEIR?

If a person owning real and personal property dies without a valid will or known heir, the property passes to the state. In the case of escheat of land, the state has title; with respect to *bona vacantia*, it takes title.⁴⁴ By contrast, unclaimed personal property passes only into the state's "perpetual custody." The state never claims title. Interest earned by unclaimed personal property is another matter. Whether denied outright by the statute or limited by it in certain ways, title to the interest on unclaimed personal property sooner or later belongs to the state either as adverse possessor or as "last heir."



487 (N.C. 2008); *Smolow v. Hafer*, 867 A.2d 767 (Pa. Commw. Ct. 2005).

⁴² See *Sogg v. Zurz*, 905 N.E.2d 187 (Ohio 2009); *Canel v. Topinka*, 818 N.E.2d 311 (Ill. 2004).

⁴³ See *Sogg*, 905 N.E.2d 187 (applying four-year statute of limitation for conversion). Although it is a maxim of law as well as of economics that "interest follows principal," HERBERT BROOM, A SELECTION OF LEGAL MAXIMS 497 (8th Am. ed. 1882), interest is nonetheless distinct from principal and may be converted even when the principal is not. In similar manner, the state may acquire easements by prescription (adverse use), while leaving title to the underlying fee simple unaffected.

⁴⁴ Ordinarily, final probate court decisions bar claims by "lost heirs" or devisees under previously undiscovered wills. See, e.g., UNIF. PROBATE CODE §§ 3-108 (3 years after death of decedent) and 3-412 (sooner of 6 months after filing of closing statement by personal representative or 12 months after entry of any order). In similar fashion, nonclaim statutes bar creditors' rights. *Id.* § 3-803 (one year).