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Descent and Distribution - Distribution to a Nonresident Alien Prevented by State Staute

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DESCENT AND DISTRIBUTION—DISTRIBUTION TO A NONRESIDENT ALIEN PREVENTED BY STATE STATUTE—Decedent's sole heirs were residents of Poland. By virtue of a power of attorney executed and authenticated in Poland, the Polish consul general intervened to receive their distributive shares. A Massachusetts statute provided that a court may order the distributive share to be deposited for the benefit of nonresidents when it appears that they "may not receive or have opportunity to obtain" such money.[1] *Held,* the distributive shares must be kept in Massachusetts as it is uncertain that residents of Poland presently could have full benefit of the funds if transmitted. *Petition of Mazurowski,* (Mass. 1954) 116 N.E. (2d) 854.

The Massachusetts statute involved is patterned after a 1939 New York statute,[2] and similar statutes have been adopted in other eastern states.[3] Substantially, they provide that when a legatee, distributee or beneficiary would not have the use, benefit or control of money or property due him, or where other special circumstances make it appear desirable that payment be withheld, the court will not order distribution of the fund, but will preserve it in the United States for the heir's benefit until he may later be able to have the complete use and control of it. The original New York statute was prompted by fears of the legislature that intended alien recipients, especially residents of the Soviet Union, Germany, and occupied countries, never actually received the benefit of those funds, all or a part of which might be appropriated in one way or another by an unfriendly foreign power, ultimately to be used against

[1] Mass. Gen. Laws (1932) c. 206, §27, as added by Mass. Stat. (1950) c. 265.

[2] N.Y. Surrogate's Court Act §269.

[3] Conn. Gen. Stat. (1953 Supp.) §2215c; Md. Code Ann. (Flack, 1951) art. 93, §155; N.J. Rev. Stat. (1952 Supp.) §3A:25-10; R.I. Pub. Acts (1951) c. 2744, §1B.

the United States.[4] Currently, they have been used to prevent transmission of funds from estates of American decedents to residents of countries behind the Iron Curtain where inadequate currency exchange ratios and confiscation of savings through frequent currency devaluation are found to prevent full enjoyment of the funds by the recipient and to frustrate the intentions of the decedent.[5] The New York courts have interpreted the statute to mean that distribution of the estate will be denied whenever it appears "contingently possible" that the distributee would not receive the full benefit of the funds.[6] This statute does not affect the ultimate right of the heir or legatee to the funds, the amount due him being impounded until such time as it appears he will be able to enjoy fully its benefits. California and other western states have enacted more drastic statutes for similar reasons.[7] In those states, the right of the nonresident alien to the inheritance or legacy itself is conditioned upon the existence of reciprocal rights in his country whereby a United States citizen may receive an inheritance from citizens of that country. If he cannot prove this reciprocity exists, his claim to the estate in the United States lapses.[8] In some states having neither of these statutes, courts have informally adopted a policy of impounding funds when it appears unlikely that the intended recipient will receive full

[4] Matter of Weidberg's Estate, 172 Misc. 524, 15 N.Y.S. (2d) 252 (1939); Matter of Landau's Estate, 172 Misc. 651, 16 N.Y.S. (2d) 3 (1939); 17 N.Y. UNIV. L.Q. REV. 314 (1940).

[5] Matter of Best, 200 Misc. 332, 107 N.Y.S. (2d) 224 (1951) (Soviet Union); In re Well's Estate, 126 N.Y.S. (2d) 441 (1953) (Czechoslovakia); In re Url's Estate, 7 N.J. Super. 455, 71 A. (2d) 665 (1950) (Hungary); Matter of Thomae's Estate, 199 Misc. 940, 105 N.Y.S. (2d) 844 (1951) (Eastern Germany); Matter of Geffen's Estate, 199 Misc. 756, 104 N.Y.S. (2d) 490 (1951) (Lithuania); Matter of Yee Yoke Ban's Estate, 200 Misc. 499, 107 N.Y.S. (2d) 221 (1951) (China). In addition to the state statutes, the treasury department has determined that it is uncertain that intended payees in thirteen Soviet occupied or dominated areas will receive transmitted funds, and so the treasury currently prohibits the sending of United States Treasury checks to those countries. 16 Fed. Reg. 1818 (1951).

[6] Matter of Weidberg's Estate, note 4 supra.

[7] Cal. Prob. Code (Deering, 1953) §259; Mont. Rev. Code (1953 Supp.) §91-520; Nev. Comp. Laws (1942 Supp.) §9894; Ore. Rev. Stat. (1953) tit. 12, §111.070. Cf. Ariz. Code Ann. (1939) §39-111; La. Civ. Code Ann. (Dart, 1945) art. 1490; Neb. Rev. Stat. (1943) §76.405; Okla. Stat. (1951) tit. 60, §121; Tex. Civ. Stat. (Vernon, 1947) art. 177.

[8] At common law, while an alien could acquire and hold personalty on equal terms with citizens, he could not acquire realty by descent or operation of law. Fourdrin v. Gowdey, 3 My. & K. 383, 40 Eng. Rep. 146 (1834). An alien could acquire realty by devise, but could hold it only until the state claimed it through the proceeding of "office found." Ripley v. Von Zedtwitz, 201 Ky. 513, 256 S.W. 1106 (1923). Inheritance and succession rights depend entirely upon local law, and a state may prohibit alien inheritance completely or condition it on any terms it desires. Mager v. Grima, 49 U.S. 490 (1850); Irving Trust Co. v. Day, 314 U.S. 556, 62 S.Ct. 398 (1942). The power of states to control inheritance, however, is limited by the treaty-making power of the national government, as any treaty conferring inheritance rights on aliens is supreme over contrary state law. Hauenstein v. Lynham, 100 U.S. 483 (1879). The California type statute has been held to be constitutional and not inconsistent with existing treaties. Clark v. Allen, 331 U.S. 503, 67 S.Ct. 1431 (1947); Estate of Bevilacqua, 31 Cal. (2d) 580, 191 P. (2d) 752 (1948); annotation, 170 A.L.R. 953 (1947).

benefit from them.[9] The ultimate purpose intended to be achieved by these statutes appears to be a salutary one,[10] and that there is a feeling of need for them is evidenced by their number.[11] Although the statutes are intended to cover only the nonresident confiscation situation,[12] the New York type is phrased in extremely comprehensive language. The "special circumstances" clause[13] would seem to be broad enough to permit a domestic application not intended by the drafters. Situations are imaginable where it might reasonably be argued that there are special circumstances making it desirable to withhold distribution for the present. In the past, however, the statutes have been confined to their intended purpose, and only one case has been found where it was even incidentally argued to have domestic application, and the court, pointing to the purpose of the framers, summarily rejected the argument.[14] In view of the numerous judicial statements giving recognition to the legislative intent underlying these statutes, and the restraint observed by the courts in applying them, fears of future misapplication appear to be more academic than real.[15]

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[9] Pennsylvania, Michigan, Missouri, and Vermont. See Chaitkin, "The Rights of Residents of Russia and Its Satellites to Share in Estates of American Decedents," 25 So. CAL. L. REV. 299 at 314-315 (1952); In re Zielinski's Estate, 73 Pa. D. & C. 81 (1950).

[10] *Contra,* 19 UNIV. CHI. L. REV. 329 (1951).

[11] Recently the New York type statute was enacted in Michigan. Mich. Pub. Acts, No. 11, §1 (1954) effective March 13, 1954.

[12] A note attached to the New York bill explaining the intentions of the drafters is quoted in In Matter of Weidberg's Estate, note 4 supra.

[13] ". . . where other special circumstances make it appear desirable that such payment should be withheld, the decree may direct that such money or other property be paid into the Surrogate's Court for the benefit of such legatee. . . ." N.Y. Surrogate's Court Act §269.

[14] Matter of Taylor's Estate, 190 Misc. 748, 75 N.Y.S. (2d) 113 (1947). The decedent's administrator obtained a judgment for wrongful death. The judgment debtor appealed but was unable to post a judgment bond, and certain of his property was sold in execution. He argued that distribution of those proceeds should be delayed as he feared that if the decree was reversed on appeal he would be unable to obtain a refund.

[15] Some eighteen treaties provide for inheritance rights of nonresidents. 44 AM. J. INT. L. 313 (1950); Boyd, "Treaties Covering the Succession to Real Property by Aliens," 51 MICH. L. REV. 1001 (1953). In substance they provide that aliens who are nationals of the other party to the treaty shall have power to dispose of personal property to any person, regardless of the latter's nationality or residence, and that nationals of such other party shall, regardless of residence, have power to inherit or take by will real property from "any" decedent. Probably owing to the generality of the language of the New York type statute, its constitutionality has never been discussed at length. If it were to be made more specific, and in express and absolute terms prohibit distribution of an estate to nonresident aliens in the given circumstances, the possibility of its coming into direct conflict with a treaty would be increased. This seems to be the reason for the broad language.