

Escheat

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Escheat (pronounced /ɪsˈtʃiːt/^[1]^[2]^[3]^[4]) is a common law doctrine which transfers the property of a person who dies without heirs to the crown or state. It serves to ensure that property is not left in limbo without recognised ownership. It originally applied to a number of situations where a legal interest in land was destroyed by operation of law, so that the ownership of the land reverted to the immediately superior feudal lord.

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Modern application

Most common-law jurisdictions have abolished the concept of feudal land tenure of property, and so the concept of escheat has lost something of its meaning. In England and Wales, where escheat still operates as a doctrine of land law, since the abolition of feudal tenure in 1660 there are no legally recognised ^[5] feudal overlords to take property on an escheat, so that in practice the recipient of an escheated property is the Crown, under its allodial title.

The term is often now applied to the transfer of the title to a person's property to the state when the person dies intestate without any other person capable of taking the property as heir. For example, a common-law jurisdiction's intestacy statute might provide that when someone dies without a will, and is not survived by a spouse, descendants, parents, grandparents, descendants of parents, children or grandchildren of grandparents, or great-grandchildren of grandparents, then the person's estate will escheat to the state.

In some jurisdictions, escheat can also occur when an entity, typically a bank, credit union or other financial institution, holds money or property which appears to be unclaimed, for instance due to a lack of activity on the account by way of deposits, withdrawals or any other transactions for a lengthy time in a cash account. In many jurisdictions, if the owner cannot be located, such property can be revocably escheated to the state.

In commerce, it is the process of re-assigning legal title in unclaimed or abandoned payroll checks, or stocks and shares whose owners cannot be traced, to a state authority (in the United States). A company is required to file unclaimed property reports with its state annually and, in some jurisdictions, to make a

good-faith effort to find the owners of their dormant accounts. The escheating criteria are set by individual state regulations.

Etymology

The term "escheat" derives ultimately from the Latin *ex-cadere*, to "fall-out", via mediaeval French *escheoir*.^[6] The sense is of a feudal estate in land falling-out of the possession by a family into the possession by the overlord.

Origins in feudalism

In feudal England, escheat referred to the situation where the tenant of a fee (or "fief") died without an heir or committed a felony. In the case of such decease of a tenant-in-chief, the fee reverted to the King's demesne permanently, when it became once again a mere tenantless plot of land, but could be re-created as a fee by enfeoffment to another of the king's followers. Where the deceased had been subinfeudated by a tenant-in-chief, the fee reverted temporarily to the crown for one year and one day by right of *primer seisin* after which it escheated to the over-lord who had granted it to the deceased by enfeoffment. From the time of Henry III, the monarchy took particular interest in escheat as a source of revenue.

Background

At the Norman Conquest of England all the land of England was claimed as the personal possession of William the Conqueror under allodial title. The monarch thus became the sole "owner" of all the land in the kingdom, a position which persists to the present day. He then granted it out to his favoured followers, who thereby became tenants-in-chief, under various contracts of feudal land tenure. Such tenures, even the highest one of "feudal barony", never conferred ownership of land but merely ownership of rights over it, that is to say ownership of an estate in land. Such persons are therefore correctly termed "land-holders" or "tenants" (from Latin *teneo* to hold), not owners. If held freely, that is to say by freehold, such holdings were heritable by the holder's legal heir. On the payment of a premium termed feudal relief to the treasury, such heir was entitled to demand re-enfeoffment by the king with the fee concerned. Where no legal heir existed, the logic of the situation was that the fief had ceased to exist as a legal entity, since being tenantless no one was living who had been enfeoffed with the land, and the land thus technically was owned by the crown without a tenant. Logically therefore it was in the occupation of the crown alone, that is to say in the royal demesne. This was the basic operation of an escheat, a failure of heirs. Where the fee had been subinfeudated by the tenant-in-chief to a mesne lord, and perhaps the process of subinfeudation had been continued by a lower series of mesne-lords, the operation of an escheat altered so that on failure of the heir of the holder of the fee the escheat would be to the demesne of the holder's immediate overlord.

Procedure

From the 12th century onward, the Crown appointed *escheators* to manage escheats and report to the Exchequer, with one escheator per county established by the middle of the 14th century. Upon the death of a tenant-in-chief, the escheator would be instructed by a writ of *diem clausit extremum* ("he has closed his last day", i.e. he is dead) issued by the king's chancery, to empanel a jury to hold an "inquisition *post mortem*" to ascertain who the legal heir was, if any, and what was the extent of the land held. Thus it would be revealed whether the king had any rights to the land. It was also important for the king to know who the heir was, and to assess his personal qualities, since he would thenceforth form a

constituent part of the royal army, if he held under military tenure. If there was any doubt, the escheator would seize the land and refer the case to the king's court where it would be settled, ensuring that not one day's revenue would be lost. This would be a source of concern with land-holders when there were delays from the court.

English common law

Historical position

Thus, under English common law, there were two main ways an escheat could happen:

1. A person's property escheated if he was convicted of a felony (but not treason, when the property was forfeited to the Crown). If the person was executed for the crime, his heirs were attainted, i.e. ineligible to inherit. In most common-law jurisdictions, this type of escheat has been abolished outright, for example in the United States under Article 3 § 3 of the United States Constitution, which states that attainders for treason do not give rise to posthumous forfeiture, or "corruption of blood".
2. If a person had no heir to receive their property under a will or under the laws of intestacy, then any property he owned at death would escheat. This rule has been replaced in most common-law jurisdictions by *bona vacantia* or a similar concept.

Current operation

Escheat can still occur in England and Wales, if a person is made bankrupt or a corporation is liquidated. Usually this means that all the property held by that person is 'vested in' (transferred to) the Official Receiver or Trustee in Bankruptcy. However, it is open to the Receiver or Trustee to refuse to accept that property by disclaiming it. It is relatively common for a trustee in bankruptcy to disclaim freehold property which may give rise to a liability, for example the common parts of a block of flats owned by the bankrupt would ordinarily pass to the trustee to be realised in order to pay his debts, but the property may give the landlord an obligation to spend money for the benefit of leasees of the flats. The bankruptcy of the original owner means that the freehold is no longer the bankrupt's legal property, and the disclaimer destroys the freehold estate, so that the land ceases to be owned by anyone and effectively escheats to become land held by the Crown in demesne. This situation affects a few hundred properties each year.

Although such escheated property is owned by the Crown, it is not part of the Crown Estate, unless the Crown (through the Crown Estate Commissioners) 'completes' the escheat, by taking steps to exert rights as owner.

However, usually, in the example given above, the tenants of the flats, or their mortgagees would exercise their rights given by the Insolvency Act 1986 to have the freehold property transferred to them. This is the main difference between escheat and *bona vacantia*, as in the latter, a grant takes place automatically, with no need to 'complete' the transaction.

One consequence of the Land Registration Act 1925 was that only estates in land (freehold or leasehold) could be registered. Land held directly by the Crown, known as property in the "royal demesne", is not held under any vestigial feudal tenure (the crown has no historical overlord other than, for brief periods, the papacy) and there is therefore no estate to register. This had the consequence that freeholds which escheated to the Crown ceased to be registrable. This created a slow drain of property out of registration, amounting to some hundreds of freehold titles in each year.

The problem was noted by the Law Commission in their report "Land Registration for the Twenty-First Century". The Land Registration Act 2002 was passed in response to that report. It provides that land held in demesne by the Crown may be registered.

See also

- Quia Emptores
- History of the English fiscal system
- Container deposit legislation
- Breakage

Sources

- S.T. Gibson, "The Escheatrics, 1327-1341", *English Historical Review*, 36(1921).
- John Bean, *The Decline of English Feudalism, 1215-1540*, 1968.

External links

- <http://www.unclaimed.org/>

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- ↑ Walker, John (1838). *A Critical Pronouncing Dictionary and Expositor of the English Language*. http://books.google.com/books?id=gO97flqb_-cC&lpg=PR1&dq=pronounce%20escheat%20english&pg=PR1#v=onepage&q&f=false.
- ↑ There exist a few ancient English families, such as the Berkeley family of Berkeley Castle, who continue to hold lands originally granted as feudal baronies, still in possession of great tenanted estates, who might still be deemed feudal overlords to their tenants were it not for the operation of the 1660 act
- ↑ Collins Dictionary of the English Language, London, 1986, p.520

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