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OBSOLESCENCE AND OBSTINACY IN THE LAW

By

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There are some very important features of Anglo-American law which are absurdly archaic but which the law nevertheless stubbornly clings to with characteristically English bulldog tenacity. A prime example is the rule that the price tag on an article of merchandise in a merchant's shop window or display case is not an offer to sell the article for that amount but rather is the solicitation of an offer from a prospective customer. This rule was well-founded when a merchant's prices did not mean anything and bargaining was the expected and accepted order of the day. But although there may be social evolution, political upheaval and economic transformation the law with its remarkable stability and inherent conservativism continues to play the lone part in its repertoire as an impervious resister to change. Imagine the folly of offering $37.50 for an attache-type brief case at Marshall Field's when the price tag on its handle reads $75.00.

Another classic example is the rule that when one pays a restaurant check he is not paying for the food and drink but rather is paying for the service, with the food and beverages thrown in for good measure, so to speak. Again, even this rule at one time had substance when an innkeeper or tavern proprietor watered and fed a patron's horse, welcomed the patron to spend the entire evening in his establishment, furnished the patron with entertainment and attended to the patron's errands as well as provided the patron with food and drink. In those bygone days there was a personal relationship between the proprietor and the patron with the former cast in the accepted role of social inferior. Nowadays imagine a restaurant patron in reality paying exclusively for service in an impersonal, noisy, crowded establishment with fare brought to him by female waiters.

A dawning of realization that human values are more important than property values is the criminal law concept, which is gaining ground, that property crimes should not be punished nearly so severely as human crimes. Yet despite this glimmer of enlightenment in criminal law the civil law, as for example the law governing extraordinary bailments, remains as benighted as ever. In the law of carriers a railroad incurs insurer's liability for loss, destruction or damage to cargo but is charged with only extraordinary care toward passengers in the event of loss of life or limb or other human injury. In the law of innkeepers a hotel undergoes insurer's liability for loss, destruction or damage to a guest's baggage but is responsible for mere ordinary care toward guests in the event of loss of life or limb or other human injury occurring upon the hotel's premises. Thus, the dignity of man is relegated one notch below the dignity accorded cargo in the law of carriers and two notches below the dignity accorded his baggage in the law of

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innkeepers. In concluding the discussion on this particular point this author might state that the only important instance in the civil law in which the superiority of man over property is recognized is the rule in insurance law that upon loss the insurer must pay the contract amount rather than only the amount of loss in the case of life insurance.

The most reactionary quality of that most prosaic of all branches of the law, real property, is the rule that land has a unique value. The rule was well-taken when land was the principal source of wealth. But with the advent of the Industrial Revolution machinery, or the means of production, became the principal source of wealth. Today the indicia of multiple ownership of machinery, stock certificates, constitute the principal source of wealth. Yet the law continues to do homage to the rule of the unique value of land. From that rule, as obsolete as the Neanderthal man, issues forth a multitude of sins.

The requirements that when land is the subject of a transfer such transfer must be reduced to writing, acknowledged, placed under seal, affixed with revenue stamps and recorded are illogical in view of the fact that historically land has been supplanted twice as the principal source of wealth. The sensible thing to do would be to apply the foregoing requirements equally to both real and personal property but only where such property exceedes a certain rather high amount of value. The rule that specific performance will be granted where any kind of land is involved but where only rare, valuable and not-to-be-duplicated personal property is at stake is equally illogical. A parcel of land can be duplicated insofar as acreage, landscape, composition of soil, fertility, etc. are concerned. However, an oil painting cannot be duplicated without the duplicated copy being termed a replica or reproduction and being worth a great deal less in value than the original. Monet's two paintings of "The Rock at Etretat" even though of the same scene are nevertheless both originals for they were painted three years apart by the same artist of the same scene from slightly different views. The second of these two paintings from point of time cannot be said to duplicate the first.

The rule that when realty and personalty are attached together the subject matter becomes realty is without basis since land no longer is the principal source of wealth. Likewise without foundation is the rule that if it cannot be ascertained as to whether property is realty or personalty it is to be considered as realty. The rule that with regard to the right of removal of a fixture from the realty the exclusive consideration is whether such removal will damage the realty is equally without reason. The rule that an infant cannot disaffirm a transfer of property, if land is the subject matter of such transfer, until attaining the age of twenty-one years is equally illogical. And the rule that the legal situs of personalty follows its owner while realty has a legal situs of its own irrespective of its owner is likewise illogical. The legal situs of both personalty and realty could be made either that of its owner or where it is situated. There is vast need for uniformity in rules governing real and personal property and the disposition thereof.

LEGISLATIVE

PENNSYLVANIA'S TRANSFER INHERITANCE TAX ON CHARITABLE BEQUESTS

By

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The Commonwealth of Pennsylvania imposes an inheritance tax of 15% on charitable bequests under the Act of 1919.[1] There is one exception to this tax as found in the Act of 1919.[2] This exempts from the collateral inheritance tax:

> "All estates in any buildings, grounds, books, manuscripts, curios, pictures, statuary, or other works of art, specimens of natural history, or other scientific collections, and in any moneys and funds given in connection with any of the foregoing estates, passing by will from a person seized or possessed thereof, or through the exercise, by any person, of a power of appointment with respect thereto, whether the donor of such power died before or after the date of this act, to any municipality, corporation, or unincorporated body, for the sole use of the public by way of free exhibition within the State of Pennsylvania, whether in trust or otherwise . . . ."

Pennsylvania stands almost by itself in penalizing the bequest to a charity. Ohio and New Jersey have similar taxes. These states impose taxes of 5% or 7% on charitable bequests. Twelve (12) states grant an exemption to charitable bequests. Twenty-one (21) states grant an exemption for bequests to charities within the state and an exemption for bequests to charities located in other states, which other states would either not impose a tax upon bequests to charities located in such state or provide a reciprocal exemption.

Seven (7) states grant an exemption for bequests to charities for use only in such state. Four or five other states have either no inheritance tax or an inheritance tax which is based upon the allowable Federal credit and is, therefore, in effect an Estate tax.

Among the states taxing charitable bequests, New Jersey exempts grants to educational institutions and Ohio grants exemptions to educational institutions, non-profitable hospitals, and for the printing and distribution of the Bible.

Inheritance taxes are big business in Pennsylvania. Collections for the year ending December 31, 1954 totaled $31,885,815.02. For the year ending December 31, 1953 - $37, 331,194.70 was collected. For the year ending December 31, 1952 - $28, 533,330.50 was collected.

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1 PA. STAT. ANN. tit. 72, § 2302 (1949).
2 PA. STAT. ANN. tit. 72, § 2483 (1949).

How much of this money was collected on charitable bequests? The writer, to-date, has been unable to ascertain the figures for the State of Pennsylvania.

An unofficial survey of counties of Montgomery, Delaware, and Chester indicates the following:

County	Total Tax Collected (2% & 15%)	Total tax from collateral heirs (15%)	Collected on charities bequests
Montgomery	$2,479,476.	$1,553,528.	$109,069
Delaware	1,617,758	895,713	86,816
Chester	581,866	424,902	77,080*
Totals	$ 4,679,101	$ 2,874,144	$ 273,875

(* in this total, a bequest to Coatesville Hospital was taxed $11,-000; one to Bucknell University was taxed $14, 000; and a bequest to a group of charities was taxed $29,000; that is, three wills accounted for $54,000 of this total)

In view of the three large gifts, we should disregard Chester County's figures. We should take the amounts from Delaware and Montgomery County's and analyze the same. There was a total of $4,097,234. collected from inheritance tax. Of this, $2,449,241. was collected from collateral heirs. $195,885. was collected on charitable bequests.This comes to a rough figure of 8%. If this percentage be true for Pennsylvania, it is possible that the total collection by the State annually amounts to approximately $2,500,000. on charitable bequests.

There have been a number of Bills introduced in the 1955 Session of the General Assembly to end collateral inheritance tax on charitable bequests. I am the co-sponsor of House Bill No. 727 which parallels the exemptions granted by the Internal Revenue Code for Income Tax purposes. The exemption would apply to charitable bequests for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art, and the prevention of cruelty to children or animals. Likewise, the proposed exemption would apply to charitable bequests to any Veterans' organization incorporated by Act of Congress or of its Department or Local Chapters or Posts.

When legislation is proposed, it does not necessarily embody lengthy legal reasonings pro and con. Instead, proposed legislation often is a question of what is the best for the people of the Commonwealth.

In the present case, against the exemption it can be argued that the State of Pennsylvania needs the two and one-half million dollars per year. This is the only argument that can be used against this Bill. In favor of the Bill are the factors that encourage private enterprise to be interested in the great charities. When private enterprise is discouraged from supporting hospitals, colleges, and the other benefactors of mankind as specified in House Bill No. 727, the Commonwealth of Pennsylvania has to step in. The 1953-55 budget of the Commonwealth carried an item of $40,902,880. for grants to certain colleges and universities of the Common-

wealth. The 1955-57 budget as recommended by the Governor provides for $53,405,052. In the 1953-55 budget medical and surgical hospitals received state aid in the amount of $16,772,400. The budget as recommended by the Governor for 1955-57 carries an item of $24,000,000. These are two items picked at random from the 17th Biennial Budget of the Commonwealth of Pennsylvania as submitted to the General Assembly by Governor Leader in April 1955.

The question in my mind is whether or not by taxing charitable bequests we are not entering into a vicious circle. A tax yield of two and one-half million dollars might well be resulting in greatly increased State costs.

In conversations with various Trustees of state-aided hospitals, I have been convinced that these hospitals would not request state aid if they had other sources of funds available. State supervision follows state funds. Local people like to operate free of interference from the Commonwealth. On the other hand, their funds are limited, their services are essential, and the Commonwealth must assume its burden of partial support. One of the greatest arguments in favor of House Bill 727 is that our charities, must be as free, as possible, from state subsidy. Charities based on free-will gifts are much more effective than charities dependent on state subsidy. One of America's most honored customs is the support of religious, educational, and other charitable institutions, by free will, inter vivos or testamentary gifts. Discouragement of such gifts, whether in large sums or in small sums, is a certain step toward a welfare state.

To the law student, who will shortly be entering the practice of law in the Commonwealth, may I state that one day you will be greatly embarrassed to explain to a small church why when a decedent leaves $100.00 by will, you are only to turn over to the church $85.00. In the average attorney's practice, this happens many times and is most disturbing. If the Commonwealth continues to demand its 15% pound of flesh, will the continuation of this confiscatory tax dry up free-will or testamentary gifts to public charities, thereby increasing that required from the Commonwealth in the form of state aid? This is a matter of vital concern to our great religious organizations, the hospitals, our institutions of higher education, our welfare agencies, and the Veterans' groups.

In conclusion, I feel that we should not overlook the reciprocity feature as contained in the tax laws of twenty-one (21) states. One of our great religious bodies is considering moving its corporate situs from Pennsylvania because some out of state testamentary bequests to it are taxed. If it would re-incorporate in a different state allowing reciprocal exemptions, such bequests would not be taxed.