The Uniform Simultaneous Death Act For Ohio

With the developments in modern transportation, and larger and more frequent mass gatherings today, the incidence of simultaneous deaths has greatly increased. One of the many legal problems resulting from such deaths involves the devolution of property. For example, a husband and his wife are riding on a train. There is a serious accident which, as far as the facts are ascertained, results in the simultaneous deaths of the married pair. Whose heirs should get their respective property? Do their wills, if they have any, take care of this particular exigency?

Under civil law codes, when such deaths occurred a presumption was spelled out in terms of the age and sex of the decedents. Louisiana has adopted such a method.[1]

A few jurisdictions presume that both died at the same time,[2] so that one seeking to prove that his donor survived the other must overcome the presumption.

A third rule, the one adopted by most common-law states, is that there is no presumption as to survival. Hence the necessity of additional proof to overcome a presumption is absent, yet this rule gives no adequate solution to the riddle. One whose rights depend upon the survival of one of the decedents, has the burden of proof to show such survival, but if the deaths were truly simultaneous this burden could not be met.

The law in Ohio is unsettled as to whether we follow the common-law rule of no presumption [3] or the rule that both are presumed to have died simultaneously.[4]

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[1] "If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived.

"If they were above the age of sixty years, the youngest shall be presumed to have survived.

"If some were under sixty years of age, and some were sixty years of age or older, the first shall be presumed to have survived.

"If some were under the age of fifteen years, and some were fifteen years or older and less than sixty years of age, the latter shall be presumed to have survived.

"If those who have perished together were fifteen years of age or older and under sixty years, the male shall be presumed to have survived, where there was an equality of age or a difference of less than one year, otherwise the younger must be presumed to have survived the elder whether male or female." LA. CIV. CODE, Art. 938, 939 (1947).

[2] Conway and Bertsche, *The New York Simultaneous Death Law,* 13 FORD L. REV. 19 (1944).

[3] Ware v. Kinch, 29 Ohio C.C. (N.S.) 353 (1919).

[4] *In re* Francis, 29 Ohio Op. 502 (P. Ct. 1940).

THE UNIFORM ACT AND THE OHIO STATUTES

The Uniform Simultaneous Death Act was drafted to meet the problems arising from simultaneous deaths.[5] This Uniform Act has been enacted in thirty-four states since its drafting in 1941.[6]

Section 1 of the Act provides:

> Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Act.[7]

Ohio adopted a statute in 1932 which covers in substance the same material as found in the above section.[8] The intent and effect has been that the property which belonged to each decedent prior to his death shall descend to his respective heirs at law. There is no presumption established but rather another arbitrary answer to the problem.

Section 2 governs the disposition of property when successive beneficiaries die at the same time. It states:

> Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.[9]

This section would be applicable in only a few situations. One is where *A* gives *B* a life estate and the remainder to *C* if *C* survives *B*, otherwise to *D*. If *B*, *C*, and *D* died simultaneously the property would be divided between *C* and *D*. Perhaps the term "alternatively" should be used as well as the term "successively" to avoid a strict interpretation of the latter term.[10] Ohio's present

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[5] 9 UNIFORM LAWS ANN. 657 (1942).

[6] Ark., Cal., Colo., Conn., Del., Fla., Hawaii, Idaho, Ill., Ind., Iowa, Kan., Ky., Me., Md., Mass., Mich., Minn., Mo., Neb., N. H., N. J., N. Y., N. C., N. D., Ore., Pa., R. I., S. D., Tenn., Vt., Wash., Wis., and Wyo. 9 UNIFORM LAWS ANN. 182 (Supp. 1947).

[7] 9 UNIFORM LAWS ANN. 659 (1942).

[8] "When there is no evidence of the order in which the death of two or more persons occurred, no one of such persons shall be presumed to have died first and the estate of each shall pass and descend as though he had survived the other or others. . . ." OHIO GEN. CODE § 10503-18 (1938).

[9] 9 UNIFORM LAWS ANN 659 (1942).

[10] KAN. LAWS c. 239 § 2 (1947); WASH. REV. STAT. ANN. § 1370-2 (Supp. 1943).

statutory law will not settle the above problem; rather, the result would depend upon which one has the burden of proof.

Section 3 provides:

> Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in proportion that one bears to the whole number of joint tenants.[11]

This section, in its present form, would be of doubtful application in Ohio. Conveyances of either personalty or realty to two or more persons are almost uniformly construed to create tenancies in common rather than joint tenancies.[12] Joint tenancies in land are said not to exist in Ohio.[13] The same result is reached when there is a conveyance to a husband and wife.[14] However, instruments giving a common interest to two or more persons with a right of survivorship are recognized as valid.[15] The section is apparently not applicable to persons who take under such an instrument. If it were to provide for this contingency, the scope of its application would be greatly increased.

The above sections of the Uniform Act and the Ohio statute dealing with simultaneous deaths govern the distribution of property belonging to the decedent at the time of his death. The proceeds of an insurance policy do not come into existence until the death of the insured and are not deemed to be the decedent's property. So such a statute as Section 4 of the Act is a necessary one.

> Section 4. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.[16]

Under the present Ohio law, if the insured reserved the right to change the beneficiary and the insured and beneficiary die at the same time, the heirs of the insured would take the proceeds of the policy.[17] Since the insured has reserved the right to change the

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[11] 9 UNIFORM LAWS ANN. 660 (1942).

[12] Wilson and Marsh v. Fleming, 13 Ohio 68 (1844).

[13] Sergeant v. Steinberger, 2 Ohio 1 (1826); Lessee of Miles v. Fisher, 10 Ohio 1 (1840).

[14] Farmers' & Merch. Bank v. Wallace, 45 Ohio St. 152, 12 N.E. 439 (1887).

[15] *In re* Hutchison, 120 Ohio St. 542, 166 N.E. 687 (1929); Martin, *The Incident of Survivorship in Ohio*, 3 OHIO ST. L. J. 48 (1936).

[16] 9 UNIFORM LAWS ANN. 660 (1942).

[17] *In re* Francis, 29 Ohio Op. 502 (P. Ct. 1940).

beneficiary, the beneficiary does not have a vested interest in the policy and hence the heirs of the beneficiary have the burden of proof of showing that the beneficiary survived the insured. Where the insured has not reserved the option to change the beneficiary and the policy was payable to the beneficiary if surviving, it has been held that the beneficiary has a vested interest, subject to being divested by her predeceasing the insured and that the representatives of the insured have the burden of proof that the beneficiary had not survived the insured.[18]

It is apparent that the drafters of this Uniform Act have felt that the insured has the primary interest in determining who should get the proceeds of the insurance policy, and that normally he would rather have his heirs possess the funds if the one he had chosen could not participate in the benefits. To be sure, if the policy expressly provided that the beneficiary and his heirs and assigns should take regardless of the priority of death then the courts would not have to rely on the presumption established by the Act.[19]

Section 5 provides that, "This Act shall not apply to the distribution of the property of a person who has died before it takes effect." [20] It is inserted to prevent any attempted retroactive application of the Act. New York and Massachusetts have both added to this section an additional precaution so that the Act will not affect any property passing under an instrument, other than a will, executed before the effective date of the Act.[21]

Section 6 is a limiting provision:

> This Act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this Act.[22]

Naturally if the intent of testator, donor, grantor or insured is clear then it should be followed. The main provisions of the Act are established to handle those unfortunate situations wherein one has not expressly provided for the distribution of his property in light of the possibility of simultaneous deaths.

CONCLUSION

It should be pointed out that this Act is not limited to deaths occurring in common disasters but rather to those deaths where there is no evidence to show that they died other than simulta-

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[18] United States Casualty Co. v. Kacer, 169 Mo. 301, 69 S.W. 370 (1891).

[19] 13 FORD. L. REV. 19, 31 (1944).

[20] 9 UNIFORM LAWS ANN. 660 (1942).

[21] N. Y. DEC. EST. LAW § 89 (5); MASS. GEN. LAWS c. 190A, § 2 (Cum. Supp. 1947).

[22] 9 UNIFORM LAWS ANN. 660 (1942).

neously. Too, this Act does not change the rules of evidence as to what quantum of evidence is necessary to show survival. Rather, once the court has determined that there is no sufficient evidence then the Act establishes an orderly and equitable distribution of the property and obviates the necessity of the court's using little or no evidence to establish the priority of death.[23]

The Act apparently has covered every possibility as to the distribution of property following simultaneous deaths of the parties having an interest in the property. It goes much further than do the present Ohio statutes. To be left to the unprovable burden-of-proof formula as we now have in all situations other than that covered by General Code Section 10503-18 is too harsh a solution. This Uniform Act, which affords an equitable distribution of property and which provides for ease in handling, would be an asset to the laws of Ohio.

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[23] *See* Ware v. Kinch, 29 Ohio C.C. (N.S.) 353 (1919).