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Due Process Notice in California's Unclaimed Property Law: The 9th Circuit's Decisions in *Taylor v. Chiang*

A series of cases in California raised challenges to the constitutionality of the State's unclaimed property law. The basis was that the State's failure to give notice to missing property owners before property was taken into the State's protective custody was a violation of the Due Process Clause of the Federal Constitution. The California Court of Appeal rejected that challenge in appeals from judgments dismissing the actions. It concluded that the State's alleged failure to notify owners before receipt of property and prior to liquidating any property does not constitute a violation of constitutional due process rights or an uncompensated taking of private property.¹ The same challenge was brought in federal court. In appeals from a dismissal for lack of subject matter jurisdiction and then from a denial of a preliminary injunction, the U.S. Court of Appeals for the Ninth Circuit criticized the State's unclaimed property program and ruled that the federal court did have jurisdiction and that there was sufficient likelihood that the plaintiff would succeed on the merits so that a preliminary injunction was proper to preclude the State from "disturbing property rights" before the State itself gives notice to the missing owners.² Ostensibly, neither of the Ninth Circuit's rulings was on the merits, proceeding as they do on the sole assumption that the plaintiffs' allegations were true. Other federal courts, however, especially those in the Ninth Circuit, may be bound by the explication of the law set out in reaching those rulings.³ The Ninth Circuit's explication of the law is problematic as to the notice requirement of due process in the unclaimed property law context and is contrary to binding Supreme Court precedent.

In *Anderson Nat'l Bank v. Lockette*, a 1944 case involving unclaimed bank deposits, the U.S. Supreme Court ruled that the unclaimed property statute itself is notice to all depositors of the conditions on which inactive accounts would be presumed abandoned

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1. *Fong v. Westly*, [117 Cal. App. 4th 841](#), 12 Cal. Rptr.3d 76 (2004), *review denied*, [2004 Cal. LEXIS 5805](#) (Cal. June 24, 2004); *Harris v. Westly*, [116 Cal. App. 4th 214](#), 10 Cal. Rptr. 3d 343 (2004); *Porcile v. Connell*, No. B1877092, Cal. App. Unpub. LEXIS 4878 (Cal. Ct. App. June 19, 2007).
 2. *Taylor v. Connell*, 2002 U.S. Dist. LEXIS (E.D. Cal. June 25, 2002)(memorandum and order dismissing action), *rev'd sub nom Taylor v. Westly*, [402 F.3d 924](#) (9th Cir. 2005), *preliminary injunction denied*, [2005 U.S. Dist. LEXIS 45202](#) (E.D. Cal. Aug 16, 2005) (memorandum and order re: motion for preliminary injunction), *rev'd*, [488 F.3d 1197](#), *preliminary injunction granted sub nom. Taylor v. Chiang*, [2007 U.S. Dist. LEXIS 43711](#) (E.D. Cal. June 1, 2007), *preliminary injunction dissolved*, [2007 U.S. Dist. LEXIS 80007](#) (E.D. Cal. Oct. 17, 2007), *appeal filed*, No. 07-16902 (9th Cir. Oct. 24, 2007).
 3. *Suever v. Connell*, No. C 03-00156, [2007 U.S. Dist. LEXIS 79265, at *20](#) (N.D. Cal. Oct 12, 2007).

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and their proceeds delivered into a State's protective custody.⁴ The principle that the statute itself provides all the notice that due process requires has been a foundation of State unclaimed property law. It was again reiterated by the Supreme Court in 1982 in *Texaco, Inc. v. Short*, a case involving unclaimed mineral interests.⁵ Describing the unclaimed property law as a self-executing statute, the Court explained that a legislature need do nothing more than enact and publish the law and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. It refused to require that each citizen must in some way be given specific notice of the impact of a new statute on the person's property before that law may affect a person's property rights. The Court also expressly abnegated the due process notice standard from its 1950 seminal decision in *Mullane v. Central Hanover Bank & Trust Co.*,⁶ which generally requires notice reasonably calculated under all the circumstances to apprise parties of the pendency of judicial proceedings. It pointed out that *Mullane* does not apply in the situation where a State enacts a general rule of law governing the abandonment of property.

Nowhere in its discussion about due process notice does the Ninth Circuit address the binding force of those two Supreme Court precedents. Instead, the Ninth Circuit court asserts that under the Supreme Court's 2006 decision in *Jones v. Flowers*,⁷ the government must satisfy the *Mullane* standard before it may disturb a person's ownership of property. In *Jones*, however, the Court disclaimed that it was imposing any new rule or was significantly departing from *Mullane*. That being the case, because *Mullane* does not apply to a general law governing unclaimed property and was not changed by *Jones*, then the latter case is no authority for deviation from the ruling in *Texaco*. Further, *Jones* is distinguishable for important reasons. It involved a "taking" of real property, which may raise certain constitutional strictures. Unclaimed property laws govern the disposition of personal property. And in *Texaco*, the Supreme Court concluded that an unclaimed property law does not affect a "taking" that violates the Federal Constitution.

Because enactment of an unclaimed property law itself satisfies notions of due process, the notice provisions in unclaimed property law should not be confused with due process requirements. The National Conference of Commissioners on Uniform State laws has drafted Uniform Unclaimed Property Acts that have been enacted in most States. As the drafter of the first Uniform Act in 1954 explained, notice published or

4. *Anderson Nat'l Bank v. Lucketta*, [321 U.S. 233](#), 64 S. Ct. 599, 88 L. Ed. 692 (1944).

5. *Texaco, Inc. v. Short*, [454 U.S. 516](#), 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).

6. *Mullane v. Central Hanover Bank & Trust Co.*, [339 U.S. 306](#), 70 S. Ct. 652, 94 L. Ed. 865 (1950).

7. *Jones v. Flowers*, [547 U.S. 220](#), 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

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mailed is not necessary to achieve due process of law in the unclaimed property situation. Rather, the notice provision was designed as means to locate the owner and reunite the owner with the unclaimed property. In the first instance, unclaimed property laws impose upon the holder the obligation to communicate with owner and take necessary steps to prevent the abandonment from being presumed. Not only the law, but common sense and practicality require that the business entity holding the property exercise due diligence to contact the owner because that entity is the one that has all of the information about the owner and the property and with that information, is in the best position to locate the owner and notify the owner about the property. For example, the SEC's lost securityholder rules require that securities transfer agents conduct database searches when mailings to an owner are returned as undeliverable and the owner is deemed lost.⁸ Hence in other words, any further notice that the State mails will be sent to an address already proven to be incorrect. The Ninth Circuit, however, casts aside the due diligence duties imposed upon an unclaimed property holder, finding that they bear no significance on the due process notice obligations of the State itself. If the State does have a due process notice obligation beyond that provided by the law's own enactment, it is unclear why it cannot legislatively impose that obligation on the party in possession of the pertinent information—the unclaimed property holder—in the first instance, in the same manner as court rules impose notice obligations on litigants as a prerequisite to action by the court itself.

Supreme Court jurisprudence establishes that if a decision of that Court has direct application in a case, even if it rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case that directly controls, leaving to the Supreme Court the prerogative of overruling its own decisions.⁹ *Luckette* and *Texaco* establish that State unclaimed property laws satisfy due process notice requirements by their very enactment and without any further action. The Ninth Circuit's decisions provide no explanation why those Supreme Court decisions and their underlying reasoning are no longer controlling.

For further discussion, see, [California Legal Forms--Transaction Guide § 102C.18, Unclaimed Property Law](#)

8. 17 C.F.R. § 240.17Ad-17.

9. *Rodriguez de Quijas v. Shearson/American Express, Inc.*, [490 U.S. 477, 484](#) , 109 S. Ct. 1917, 1921-1922, 104 L. Ed. 2d 526 (1989).

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