

The Role of Legislation, Media and Dispute Resolution Mechanisms in the Disbursement of Unclaimed Funds

By Unyime Morgan

Mediator with Maryland Program for Mediator Excellence (MPME), Maryland, USA

Abstract

Unclaimed funds have been a persistent concern in many countries, institutions, and generations. Across the United States alone, an estimated 4,000,000,000 USD is returned to beneficiaries annually.ⁱ The existence of a significant volume of unclaimed funds in many countries can be significantly attributed to ignorance of unclaimed entitlements, holding institutions, and claim procedures. Many factors like legislation, media, dispute resolution mechanisms, policies, private investigators, and writers, have contributed to the erosion of such ignorance. In this work, I will be considering the role of legislation, media, and dispute resolution mechanisms in the disbursement of unclaimed funds.

Unclaimed Funds: History and Current Trends

Unclaimed funds in the United States have been defined as property or accounts within financial institutions or companies without activity generated (or contact with the owner) regarding the property for one year or a longer period.ⁱⁱ Unclaimed funds in the United States include checking or savings accounts, stocks, uncashed dividends or payroll checks, refunds, traveler's checks, trust distributions, unredeemed money orders or gift certificates, and in some states, certificates of deposit, customer overpayments, utility security deposits, mineral royalty payments, contents of safe deposit boxes, insurance payments or refunds, life insurance policies, and annuities.ⁱⁱⁱ According to William Lewis, the history of unclaimed funds in America can be traced to the ancient practice where the land title, failing from the defect of the heirs and devisees, reverts or escheats to the people, to which the whole community is entitled, and the lands vest immediately in the state by operations of law.^{iv}

The first nationwide unclaimed property law, the Uniform Disposition of Unclaimed Property Act (UDUPA) came into force in 1954. The UDUPA posed diverse ambiguities—multiple liabilities applied to the same property holder doing business in different states. Additionally, new forms of unclaimed property, like gift cards, have necessitated revisions to the Unclaimed Property Act.^v The current nationwide model law is the 2016 Revised US Uniform Unclaimed Property Act (Revised 2016 Unclaimed Property Act).^{vi} In recent times, the advent and widespread use of new technologies like skip-tracing, virtual verification of beneficiaries' identities, and the online search for unclaimed funds have significantly enhanced local and cross-border investigations and claims for such funds. Additionally, there has been increased awareness as a result of the activities of private investigators and institutional reporters. Another growing trend is the rise of international professionals tracing assets and the diversity of properties recognized for escheatment.

The Role of Legislation in the Disbursement of Unclaimed Funds

Escheatment is regulated distinctly in diverse jurisdictions. There are consequences for not legislating on unclaimed funds. First, there is widespread ignorance of the state of unclaimed funds. Secondly, there is no central regulation for the collection and dissemination of unclaimed funds. Thirdly, beneficiaries have to resort to consulting diverse holding institutions

like banks, courts, security, exchange bodies, etc. to inquire about and collect such funds. Legislation plays a significant role in the disbursement of unclaimed funds. An example of unclaimed funds legislation is the US Revised 2016 Unclaimed Property Act.^{vii} While the United States administers a very robust escheatment program (the coverage includes minerals and gift cards),^{viii} and transparent unclaimed trust funds, other jurisdictions' trust funds may be less elaborate.

In Nigeria, for instance, Section 77(1) of the 2020 Nigerian Finance Act, established a trust fund to host unclaimed dividends and unutilized amounts in a dormant account of a bank that has been inactive for at least 6 years.^{ix} With the exception of official bank accounts owned by the Federal Government, State Governments, Local Governments, Ministries, Departments, or Agencies, such unclaimed funds shall be transferred either by the public limited company, registrar, or deposit money bank.^x Deposits made into the trust fund shall be akin to a special debt that the Federal Government owes to shareholders and dormant bank account owners. Deposits and yields on such funds shall be available for claim upon demand by shareholders and inactive account owners.^{xi} While the Act provides a safeguard for the protection of private funds, the government must allay the fears of stakeholders about accountability by ensuring the trust fund is professionally and transparently managed and publicized to attract beneficiaries.^{xii} In Nigeria, the Securities and Exchange Commission offers a search platform for unclaimed funds to facilitate the submission of claims for dividends.^{xiii} It is noteworthy that beneficiaries have to search for properties that are not held by the trust fund with the relevant holding institution.

The role of legislation in the disbursement of unclaimed funds is discussed below:

Defining What Constitutes Unclaimed Funds:

The 2016 Revised US Uniform Unclaimed Property Act addresses the constituents of unclaimed funds in the United States. It is noteworthy that individual states can further refine what unclaimed funds are. The unclaimed property list in the Revised 2016 Unclaimed Property Act seems to be very elaborate.^{xiv} It includes traveler's check, money order, state or municipal bond, bearer bond, or original-issue-discount bond; the debt of a business

association; a payroll card or demand, savings, or time deposit,^{xv} money or a credit owed to a customer as a result of a retail business transaction,^{xvi} the amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated.^{xvii} Unclaimed funds in the US encompass distributable proceeds of a dissolving business association, proceeds of a class action and court judgment, property held by the government or governmental subdivision, agency or instrumentality, municipal bond interest, and unredeemed principal under the administration of a paying agent or indenture trustee.^{xviii}

Additionally, wages, commissions, bonuses, employee reimbursements, and compensation for personal services, other than amounts held in a payroll card, deposit, or refund owed to a subscriber by a utility.^{xix} The US Act is very intentional about the collection and disbursement of unclaimed funds. Nonetheless, the list is not exhausted.

Article 2 also envisages the protection of tax-deferred retirement accounts,^{xx} custodial account for minors,^{xxi} **contents of the safe deposit box,**^{xxii} **stored-value card,**^{xxiii} **gift card,**^{xxiv} security,^{xxv} loyalty card,^{xxvi} mineral,^{xxvii} mineral proceeds^{xxviii} and even virtual currency.^{xxix} As mentioned above, states have the discretion to disallow the collection and administration of certain properties. For instance, worthless properties can be excluded from the unclaimed fund trust. Additionally, Section 102(33) of the Revised 2016 Unclaimed Property Act identifies security as worthless if the cost of liquidation and delivery to the administrator exceeds the value of the security on the date a report under the Act is due. Section 209 of the Revised 2016 Unclaimed Property Act provides that where a class of unclaimed property is presumed to be abandoned, any other property right or interest accrued or accruing from the property and not previously presumed abandoned is also presumed abandoned. Legislation plays a significant role in pulling together unclaimed property.

Legislation Provides Directives on the Time Frame for Escheatment:

Section 201 of the Revised 2016 Unclaimed Property Act provides a range of time frames for the determination of abandonment by a property owner. A traveler's check, for instance, is deemed to be abandoned 15 years after issuance; a money order, seven years after issuance; state or municipal bond, bearer bond, or original-issue-discount bond, are deemed to be abandoned three years after the bond matures or the obligation to pay the principal of the bond

arises (whichever is earlier); and money or credit owed to a customer as a result of a retail business transaction.^{xxx} The debt of a business association is considered abandoned three years after the obligation arose.^{xxx} The designated time frame determines when reporting by the holder, escheatment of the property, and administration of unclaimed property are triggered.

The Duty of Holding Institutions to Report Unclaimed Funds:

According to Section 401 of the Revised 2016 Unclaimed Property Act, a holder of property that is presumed to be abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property. Furthermore, a holder may contract with a third party to make the report required.^{xxxii} The third party referred to above may be professional and corporate companies that can be commissioned to carry out holding companies' reporting duties. The mandated report should, amongst other things, be signed by or on behalf of the holder and verified as to its completeness and accuracy; submitted in a secure format approved by the administrator if filed electronically; describe the property adequately; contain the name, if known, last-known address, if known, and Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of \$[50] or more (except for a traveler's check, money order, or similar instrument); contain a commencement date for determining abandonment; state that the holder has complied with the notice requirements of Section 501 of the Revised 2016 Unclaimed Property Act; and contain any other information the administrator prescribes by rules.^{xxxiii} Attention should be paid to the required particulars of the holding institution's report. In line with Section 403(c) of the Revised 2016 Unclaimed Property Act, the report must be filed before November 1 of each year and cover the 12 months preceding July 1 of that year.

Payment or Delivery of Property to the Administrator:

Legislation coordinates the payment of unclaimed funds by the holding institution to the administrator and, where necessary, the recovery of funds paid by the holder. By the prescription of Section 603, the holder shall pay or deliver to the administrator the property described in the report. Upon the payment or delivery of property to the administrator under the Revised Act, the administrator, acting as an agent of the state, assumes custody and responsibility for the safekeeping of the property.^{xxxiv} Having made the payment in good faith

and substantially complied with Sections 501 (**Notice to the apparent owner by the holder**) and 502 (**Contents of notice by the holder**) of the Revised Act, the holder is thereby relieved of liability concerning payment or delivery of the property to the administrator.^{xxxv} Section 605(a) of the Revised 2016 Unclaimed Property Act permits the recovery of deposited property from the administrator. Section 605(a) provides that a holder who pays money to the administrator under this Act may file a claim for reimbursement from the administrator of the amount paid if the holder had paid the money in error or the holder had paid money to a person the holder reasonably believed was entitled to the money after paying the money to the administrator.

Designing the Procedure for Claims:

Legislation designs the procedure for making claims and the administrator's role in fulfilling the claim. A person claiming ownership of a property may file an accurate and complete claim on a form prescribed by the administrator.^{xxxvi} However, the administrator may waive the form-filling requirement and pay or deliver property directly to a person if the person receiving the property or payment is shown to be the apparent owner included on a report filed under Section 401 of the Revised 2016 Unclaimed Property Act (**report required by the holder**); the administrator reasonably believes the person is entitled to receive the property or payment; and the property is valued less than \$250.^{xxxvii} Not later than [90] days after the owner's claim is filed under Section 903(a) of the Revised 2016 Unclaimed Property Act, the administrator shall allow or deny the claim and notify the claimant.^{xxxviii} It is noteworthy that, if the administrator does not take action on a claim during the 90 days following the filing of a claim under Section 903(a) of the Revised 2016 Unclaimed Property Act, the claim is deemed denied.^{xxxix} If the claim is denied, the administrator shall inform the claimant of the reason for the denial and state if additional evidence is required for the claim to be allowed.^{xl} The claimant may file an amended claim with the administrator or commence an action under Section 906 of the Revised 2016 Unclaimed Property Act, and the administrator shall consider an amended claim filed under paragraph (2) as an initial claim.^{xli}

Prescription of Penalties:

Legislation prescribes penalties for non-compliance with the administrative structures of unclaimed funds in each jurisdiction. Particularly, legislation determines liability for unreported properties that are eligible to be reported, failure to act promptly, contracting to evade regulated obligations, and fraudulent reporting are also penalized. According to Section 1012 of the Revised 2016 Unclaimed Property Act, following the administrator's determination from an examination conducted under Section 1002 of the Revised 2016 Unclaimed Property Act (which deals with the examination of records to determine compliance) that a putative holder failed or refused to pay or deliver to the administrator reportable property, the administrator shall issue a determination of the putative holder's liability to pay or deliver and notify the putative holder of the determination. The administrator's determination can be challenged in court within 90 days.^{xliii} A holder who fails to report or deliver up unclaimed funds in their custody in a timely manner shall pay interest on delinquent taxes to the Department of Revenue of the state on the property or value of the property from the date the property should have been reported, paid, or delivered to the administrator until the date reported, paid, or delivered.^{xliiii} The penalty can also spring from contracts or other arrangements made by holders to evade obligations or willfully fail to perform a duty imposed on the holder, hence, the administrator may require the holder to pay the administrator interest as provided in Section 1204(a), a civil penalty of \$[1,000] for each day the obligation is evaded, up to a cumulative maximum amount of \$[25,000], plus [25] percent of the amount or value of property that should have been but was not reported, paid, or delivered as a result of the evasion or failure to perform.^{xliv} A similar penalty awaits holders who make a fraudulent report.^{xlv}

Legislation Determines the Validity of the Property Finder's Agreement:

An apparent owner can contract with another person to recover a property held by the administrator.^{xlvi} **Section 1301 of the Revised 2016 Unclaimed Property Act provides that an agreement to locate property and provide ancillary activities like delivery and recovery is enforceable only if the recorded agreement clearly states the nature of the property, the services to be provided, is signed by or on behalf of the apparent owner, states the amount or value of the property reasonably expected to be recovered, and is computed before and after a**

fee or other compensation to be paid to the person has been deducted. An agreement to locate property is void if entered into within 24 months from the date it was paid to the administrator, unless it relates to abandoned minerals.^{xlvii} An unconscionable compensation is unenforceable except by the apparent owner, however, any of the parties may file an action in the appropriate court to reduce the compensation to the maximum amount that is not unconscionable and may, on application, award the [plaintiff] [prevailing party] its reasonable attorney's fees, costs, and expenses of litigation.^{xlviii} However, Section 1302 of the Revised 2016 Unclaimed Property Act does not apply to the agreement of the apparent owner with an attorney to recover or contest the denial of recovery of a specifically identified property held by the administrator.^{xlix}

Legitimizing Claims:

Legislation legitimizes the delivery, administration, and collection of unclaimed funds. In addition to the publicly available copies of legislation that detail the duties, rights, and penalties associated with unclaimed funds, engaging unclaimed funds search websites; adopting media tools like newspapers and online posts, and engaging the services of private investigators, all work hand-in-hand to bring the letters of the legislation to life. Legislation builds trust in the unclaimed funds process thereby attracting individual, joint, and corporate beneficiaries. To many, the suggestion of entitlement to unclaimed funds triggers concerns about the possibility of being defrauded, scammed, or losing sensitive personal financial information. Legislation and publicity ultimately play very significant roles in allaying these fears.

Addressing Uncertainties in Unclaimed Funds Legislation

There are many lessons to learn from the legislative journey of the US **Revised 2016 Unclaimed Property Act**. Ethan Millar, Scott Heyman, and Charolette Noel in their work, "The Revised Uniform Unclaimed Property Act Is an Improvement, but Constitutional Defects Should Be Addressed before Approval"¹ examine the limitations of the US **Revised 2016 Unclaimed Property Act**. **Summarily, the authors acknowledge improvements in the Act but recommend that** the American Bar Association should not endorse the 2016 Uniform Unclaimed Property Act in its present state for a number of reasons including the fact that

several provisions are unconstitutional and the generation of revenue for the state is sustained at the expense of the owners and putative holders of unclaimed property.^{li}

Respect for State Sovereignty:

Unclaimed funds legislation must respect the sovereignty of other nations. Section 103 of the 2016 Revised Unclaimed Property Act provides that the act does not apply to property held, due, or owing in a foreign country if the transaction out of which the property arose was a foreign transaction. How does the US Revised Unclaimed Property Act interact with foreign rights? Section 1202(a) of the Revised 2016 Unclaimed Property Act permits the exchange of information with another state or foreign country relating to property presumed abandoned or relating to the possible existence of property presumed abandoned and authorizes in a record another state or foreign country or a person acting on behalf of the other state or country to examine its records of a putative holder,^{lii} provided the foreign country has a reciprocal confidentiality and security requirement or commits on record to comply with the confidentiality and security requirements in Article 14 of the Revised 2016 Unclaimed Property Act.^{liii} Additionally, the Revised Unclaimed Property Act defines permitted interactions with foreign countries during judicial proceedings. Such permitted acts include joining another state or foreign country to examine and seek enforcement of the Revised Unclaimed Property Act against a putative holder; honoring another state or foreign country's request to commence an action against a putative holder, and enforcing another state or foreign country's unclaimed property law.^{liv}

The escheatment of foreign property should be treated with caution. First, mandating the escheatment of foreign property is likely to be unconstitutional.^{lv} Secondly, states risk encroachment on the federal government's exclusive power over foreign affairs.^{lvi} Thirdly, the sole and exclusive power to regulate foreign commerce is vested in Congress.^{lvii} In *Zschernig v. Miller*,^{lviii} for instance, the Supreme Court invalidated an Oregon statute because it had more than "some incidental or indirect effect in foreign countries" and posed a "great potential for disruption and embarrassment" of the nation's foreign relations.^{lix} Particularly, it was held that such cases may delve into minute inquiries like the actual administration of foreign law, the credibility of foreign diplomatic statements, and speculation on the delivery of funds.^{lx}

Defining the Scope of Unescheated Property:

Legislation should play a role in defining what can or cannot be escheated. The legislative note to Section 209 of the Revised 2016 Unclaimed Property Act provides that it is permissible for states to include or exclude in-store credits for returned merchandise from its unclaimed funds' administration. States are sovereign. An aspect of sovereignty is control over escheated properties, financial policies, instruments, and their interactions with foreign instruments. For internal socio-political reasons, states maintain diverse escheatment portfolios. While some are very robust, accommodating gift cards, virtual currencies, and mineral proceeds, others are very lean, consisting of only the proceeds of bank accounts and securities. A defining legislative provision including or excluding designated properties from escheatment infuses certainty in the escheatment legislation. Such provisions are particularly important for states that do not want to protect emerging monetary instruments like gift cards^{lxi} and virtual currencies.^{lxii} Nonetheless, legislators should contrast the benefits of legislative reform with the likelihood of increased litigation on escheatment.^{lxiii}

Jurisdiction of Unclaimed Property:

Should the jurisdiction of unclaimed properties be defined by a hypothetical conflict of laws domicile rules? Conflict of law rules have been very beneficial in identifying the most likely jurisdiction and applicable law where the primary law is uncertain. In this light, it is expedient for the law to meticulously address issues that may arise in the jurisdiction and choice of applicable law. Section 301 of the Revised 2016 Unclaimed Property Act provides indices for establishing jurisdiction and applicable law. The determinants of the jurisdiction and applicable law include the last-known address of an apparent owner and the United States postal zip code associated with the apparent owner. However, the address of the apparent owner of a life or endowment insurance policy, annuity contract, or its proceeds is presumed to be the address of the insured or annuitant.^{lxiv} One of the jurisdictional challenges arises from the escheatment of foreign properties, especially where there is no prior agreement with the foreign state under consideration. Ethan Millar, Scott Heyman, and Charolette Noel, have noted that the official commentary does not address the conflict of foreign-owned property escheatment with the commerce clause by regulating commercial relations with foreign countries.^{lxv} On this note,

the 2016 Act can be said to violate the Federal Common-Law Rules limiting states' jurisdiction to escheat unclaimed intangible property

Practicality of the Required Due Process:

Legislation plays an important role in outlining the due process and the mechanisms required for compliance. For instance, Section 501(a) of the Revised 2016 Unclaimed Property Act provides that the holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail if the holder has a valid address of the apparent owner and the value of the property is \$[50] or more. Electronic mail is additionally required if the owner has consented to receive electronic mail.^{lxvi} Legislation should be engaged to legitimize modern avenues of communication. For instance, if the apparent owner has consented to receive text messages and calls, this may be a very practical option to contact owners. Phone calls and text messages are commonly used by commercial institutions, employers, and government agencies. Many of the holding institutions employed mobile communication to attract these owners. The same avenue can be used to contact them for the remittance of unclaimed funds and thus limit the amount due for escheatment. The **Revised 2016** Unclaimed Property Act also advocates for the use of newspapers^{lxvii} in the publication of unclaimed funds. How practical is the use of newspapers currently?

Newspapers are often widely distributed in larger cities and towns but are less available in rural areas.^{lxviii} Physical newspapers are expensive and rapidly losing relevance with the advent of freely accessible information and news on the internet.^{lxix} These limitations can be remedied if the newspaper publication is virtual and there is awareness of the periodic publication of unclaimed funds by the administrator. It has also been suggested that states utilize tax, real estate, motor vehicle registration databases, State Vital Statistics database, the Postal Service's National Change of Address database, and public databases like Accurint and Google records available to them to locate and reunite with apparent owners.^{lxx}

The Role of Media in Enhancing Disbursement of Unclaimed Funds

Mass media^{lxxi} refers to channels of communication like television, newspapers, and online publications utilized for transmitting information to a large number of people.^{lxxii} In this work, media includes the internet, newspapers, websites, news, and other avenues through which awareness of unclaimed funds is created. Media can be used to create awareness of unclaimed funds, direct owners to search platforms, publish legislation and government policies on unclaimed funds, promote public trust in the administrative mechanisms and structures that support the disbursement of claims, educate on the process of searching for unclaimed funds and making claims and for the routine publication of beneficiaries. The media plays an important role in the running of government institutions and shaping the corporate policy of holding institutions and beneficiaries.^{lxxiii} It plays the role of an informant, motivator, and bridge between the state and the public.^{lxxiv} The widespread benefits of media can be engaged in the efficient disbursement of unclaimed funds. To attain the desired effect, the media should be free, independent, accurate, and comprehensive.^{lxxv}

Routine Publication of Unclaimed Funds and Beneficiaries:

Various forms of publicity can be utilized for routine awareness of properties held by an administrator. Section 503(a) of the Revised 2016 Unclaimed Property Act provides that the administrator shall give notice to an apparent owner that property presumed abandoned and which appears to be owned by the apparent owner is held by the administrator under the Unclaimed Property Act. According to Section 503(c) of the Revised 2016 Unclaimed Property Act, the administrator shall publish in at least one newspaper of general circulation in each county of the designated state and maintain an electronically searchable website or database of apparent owners of property held by the administrator, accessible by the public. The administrator is also permitted to use other printed publications, telecommunication, internet, or other media to inform the public of the existence of unclaimed property held by the administrator.^{lxxvi} Newspaper publication is also expected where a sale of abandoned property is to be carried out other than on the internet.^{lxxvii}

Educate and Sensitize on Legislation and Government Policies on Unclaimed Funds:

Mediation is a potent tool for public sensitization and the dissemination of information across geographical boundaries.^{lxxviii} Section 104 of the Revised 2016 Unclaimed Property Act

empowers **the** administrator to adopt rules for the implementation and administration of the Unclaimed Funds Act. Media can play a significant role in disseminating the salient provisions of unclaimed funds legislation and associated administrative rules. Media also plays a significant role in publicizing the existence of unclaimed funds and the process of making claims. In that regard, Section 503(d) of the Revised 2016 Unclaimed Property Act provides that the website or database maintained by the administrator must provide instructions that beneficiaries require for filing with the administrator, a claim to the property and a printable claim form with instructions for its use. In other words, the process for making claims should be simplified to the beneficiaries' understanding. These communications are made possible by the employment of diverse media platforms for enlightening owners and other stakeholders involved in the administration of unclaimed funds. To ensure effective results from the use of media, ancient and modern tools including print fiction, newspapers, television shows, social media, and the internet generally should be employed to reach every audience.^{lxxxix}

Promote Public Trust in the Administration and Disbursement of Unclaimed Funds:

Media plays an important role in building and maintaining a good public image. Public opinion has been defined as the common belief, feeling, or opinion of people in any particular society.^{lxxx} The general public opinion on unclaimed funds administration determines the level of beneficiaries' engagement with the administrator, website and database. Additionally, the media can also be engaged to generate awareness of scams that may create unpleasant experiences which can deter beneficiaries from making claims for their entitled funds. The administrator has a significant role in educating the public and assisting owners and professionals like private investigators who aid in the recovery of unclaimed funds. Evaluative exercises like surveys, feedback, and reviews should be engaged to assess public opinion. Testimonials should be incorporated into unclaimed funds sites, promotional resources, and plays to boost public trust in the administration of unclaimed funds. The media improves transparency regarding information production or sponsorship.^{lxxxii}

The Role of Dispute Resolution Mechanisms in the Disbursement of Unclaimed Funds:

Dispute resolution mechanisms play pivotal roles in solving disputes arising from uncertainties such as ownership of unclaimed funds and non-compliance. Dispute resolution mechanisms under consideration include litigation, arbitration, and mediation. If parties choose to mediate,

a trained neutral third party is enlisted to explore their interests and positions and assist them come to a consensus.^{lxxxii} If parties decide to arbitrate, a neutral third party is appointed to listen to the arguments and evidence presented by each side and render a binding and often confidential decision.^{lxxxiii} Nonetheless, parties can negotiate aspects of the mediation process.^{lxxxiv} Civil litigation is typically an adversarial process often dominated by lawyers with provisions for negotiation and mediation in the pretrial stage.^{lxxxv} A judge or a judge and jury weighs the parties' facts and evidence and makes a publicly accessible record.^{lxxxvi} Below are some of the roles that dispute resolution mechanisms play in the disbursement of unclaimed funds.

Determination of Questions of Law and Rights Arising from Claim:

The court is saddled with the responsibility of interpreting the law. Regarding unclaimed property, the court adjudicates on questions about jurisdiction, and the role of stakeholders like the state, auditors, investigators, beneficiaries, etc to ensure the smooth administration of unclaimed funds. Courts occupy the role of regulatory watchdogs giving effect to legislative policies.^{lxxxvii}

Determination of the Rightful Beneficiary:

At the center of unclaimed property disbursement are the beneficiaries to whom unclaimed funds are due. Courts have been consulted on many occasions to determine the rightful beneficiary when available facts do not support a clear decision by administrators of the state's unclaimed funds.

Sharing of Claimed Funds:

Inheritance, joint account ownership, joint shareholding, and other forms of joint property ownership are common sources of joint beneficiary entitlements to unclaimed funds. Where disputes arise from the sharing proportion of joint unclaimed funds. Alternative dispute resolution mechanisms like mediation, arbitration, and litigation can be used where there are disputes from joint claims. Mediation would be a choice medium of dispute resolution where parties want to play a more active role in the resolution of unclaimed funds disputes.

Adjudication on Offences and Non-Compliance:

Sections 1104 and 1201 of the 2016 Uniform Unclaimed Funds Act on judicial remedies and judicial actions to enforce liability respectively details the role of the court in the disbursement of unclaimed funds. While there are administrative functions associated with driving compliance with unclaimed funds legislation, the court is saddled with the responsibility of determining liability and allocating punishment to offenders.

Conclusion

The disbursement of unclaimed funds can be enhanced by legislation, media, and dispute-resolution mechanisms. Where legislation exists, it plays a defining role in delineating the scope of unclaimed funds held by the state; beneficiaries, intermediaries, claim structures, and offenses. The media creates awareness and builds public trust in the administration of unclaimed funds. Various dispute resolution mechanisms can be gainfully engaged to dispel uncertainties surrounding ownership, resolve questions of law, and penalize non-compliance with unclaimed funds regulations and policies.

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Legislations

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Revised US Uniform Unclaimed Property Act 2016

United States Constitution Art. I and II, §8, cl. 3

Uniform Disposition of Unclaimed Property Act (UDUPA) 1954

Cases

Buttfield v. Stranahan, 192 U.S. 470, 493 (1904)

United States v. Pink, 315 U.S. 203, 233 (1942)

Zschernig v. Miller 389 U.S. 429 (1968)

Endnotes

ⁱ National Association of Unclaimed Property Administrators, <https://unclaimed.org/search/> Accessed 14 March 2024

ⁱⁱ National Association of Unclaimed Property Administrators, "What Exactly is Unclaimed Property?" <https://unclaimed.org/search/> Accessed 14 March 2024

ⁱⁱⁱ National Association of Unclaimed Property Administrators, "Types of Unclaimed Property" <https://unclaimed.org/search/> Accessed 14 March 2024

^{iv} William Lewis, the dean of the University of Pennsylvania's Department of Law (1898) in UPPO, "Whose Property Is It, Anyway? – A Brief History of Escheatment Law"

20 January 2013

<https://www.uppo.org/blogpost/925381/157316/Whose-Property-Is-It-Anyway--A-Brief-History-of-Escheatment-Law> Accessed 14 March 2024

^v UPPO, "Whose Property Is It, Anyway? – A Brief History of Escheatment Law"

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^{vi} Updated 26 May 2022, available at <https://www.uniformlaws.org/viewdocument/final-act-148?CommunityKey=4b7c796a-f158-47bc-b5b1-f3f9a6e404fa> Accessed 14 March 2024

^{vii} *ibid*

^{viii} For a full list of items comprising US unclaimed funds, see National Association of Unclaimed Property Administrators, "Types of Unclaimed Property" <https://unclaimed.org/search/> Accessed 14 March 2024

^{ix} Sections 77(2) and (4) of the 2020 Nigerian Finance Act

^x *ibid*

^{xi} Section 77(11) of the 2020 Nigerian Finance Act

^{xii} Uche Matthew, "Nigeria: Finance Act 2020: What You Need To Know About The Unclaimed Funds Trust Fund" 23 February 2021

<https://www.mondaq.com/nigeria/fund-management-reits/1039472/finance-act-2020-what-you-need-to-know-about-the-unclaimed-funds-trust-fund> Accessed 14 March 2024

^{xiii} Securities and Exchange Commission, "U-eDiv Search" <https://sec.gov.ng/non-mandated/?limit=50&page=2> accessed 30 March 2024

^{xiv} Unlike the 2020 Nigerian Finance Act, which mainly caters for dividends and unutilized amounts in dormant bank accounts. Section 77(2) and (4) of the 2020 Nigerian Finance Act.

^{xv} This includes a deposit that is automatically renewable.

^{xvi} Except in-store credit for returned merchandise

^{xvii} Section 201 of the Revised 2016 Unclaimed Property Act

^{xviii} *ibid*

^{xix} *ibid*; Section 102(31) of 2016 Revised US Uniform Unclaimed Property Act Utility has been defined as a person who owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services: the transmission of communications or information; production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or the provision of sewage or septic services; or trash, garbage, or recycling disposal.

^{xx} Section 202, Revised 2016 Unclaimed Property Act

^{xxi} Section 204, Revised 2016 Unclaimed Property Act

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- xxii Section 205, Revised 2016 Unclaimed Property Act
 - xxiii Section 206, Revised 2016 Unclaimed Property Act
 - xxiv Section 207, Revised 2016 Unclaimed Property Act
 - xxv Section 208, Revised 2016 Unclaimed Property Act
 - xxvi Section 102(14), Revised 2016 Unclaimed Property Act
 - xxvii Section 102(15), Revised 2016 Unclaimed Property Act
 - xxviii Section 102(16), Revised 2016 Unclaimed Property Act
 - xxix Section 102(32), Revised 2016 Unclaimed Property Act
 - xxx Other than in-store credit for returned merchandise
 - xxxi Section 201(1-4)(6) of the Revised 2016 Unclaimed Property Act
 - xxxii **Section 401 of the Revised 2016 Unclaimed Property Act**
 - xxxiii **Section 402 of the Revised 2016 Unclaimed Property Act**
 - xxxiv **Section 604(a) of the Revised 2016 Unclaimed Property Act**
 - xxxv **ibid**
 - xxxvi **Section 903(a) of the Revised 2016 Unclaimed Property Act**
 - xxxvii **Section 903(b) of the Revised 2016 Unclaimed Property Act**
 - xxxviii **Section 904(b) of the Revised 2016 Unclaimed Property Act**

xxxix **Section 904(d) of the Revised 2016 Unclaimed Property Act**

xl **Section 904(c) of the Revised 2016 Unclaimed Property Act**

xli **Section 904(c)(2)(3) of the Revised 2016 Unclaimed Property Act**

xlii **Section 1104(a) of the Revised 2016 Unclaimed Property Act**

xliii **Section 1204(a) of the Revised 2016 Unclaimed Property Act**

xliv **Section 1205(a) of the Revised 2016 Unclaimed Property Act**

xliv **Section 1205(b) of the Revised 2016 Unclaimed Property Act**

xlvi **Section 1303(a) of the Revised 2016 Unclaimed Property Act**

xlvii **Section 1302(a)(b) of the Revised 2016 Unclaimed Property Act**

xlviii **Section 1302(c) of the Revised 2016 Unclaimed Property Act**

xliv **Section 1302(e) of the Revised 2016 Unclaimed Property Act**

¹ Ethan Millar, Scott Heyman, and Charolette Noel, "The Revised Uniform Unclaimed Property Act Is an Improvement, but Constitutional Defects Should Be Addressed before Approval" 15 February 2018

https://www.americanbar.org/groups/business_law/resources/business-law-today/2018-february/the-revised-uniform-unclaimed-property-act/ accessed 28 March 2024

li **ibid**

lii **See Article 10 of the Revised 2016 Unclaimed Property Act**

liii **See Section 1202(b) of the Revised 2016 Unclaimed Property Act**

liv **See Section 1203(a-c) of the Revised 2016 Unclaimed Property Act**

lv Ethan Millar, Scott Heyman, and Charolette Noel, "The Revised Uniform Unclaimed Property Act Is an Improvement, but Constitutional Defects Should Be Addressed before Approval" 15 February 2018

https://www.americanbar.org/groups/business_law/resources/business-law-today/2018-february/the-revised-uniform-unclaimed-property-act/ accessed 28 March 2024

lvi See *United States v. Pink*, 315 U.S. 203, 233 (1942) Where the court held that no State can rewrite our foreign policy to conform to its domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively; U.S. Constitution Art. I, §8, cl. 3 (to regulate commerce with foreign nations, among the several states, and with the Indian tribes); and Art. 1, §10, cl. 1–3 (on treaties, imports, compacts, and foreign duties).

lvii See *Buttfield v. Stranahan*, 192 U.S. 470, 493 (1904) to the effect that Congress' power over foreign commerce is "exclusive and absolute."

^{lviii} 389 U.S. 429 (1968)

^{lix} *ibid* [435]

^{lx} *ibid*

^{lxi} It has been argued that a state's escheatment of gift cards is contrary to public policy because it deprives the card issuer of profit from sales of the card. Ethan Millar and John Coalson, "Some States Escheating Unredeemed Gift Cards Ignore Federal Laws" *Tax Analysts* (May 3, 2010) 381 - 385, 384

^{lxii} It is noteworthy that many jurisdictions do not make provision for the escheatment of the proceeds of class action settlement proceeds. Ethan Millar and John Coalson, "The Pot of Gold at the End of the Class Action Lawsuit: Can States Claim It As Unclaimed Property" *University of Pittsburgh Law Review*, (Vol. 70, Summer 2009, Issue 4) 511–554, 554

^{lxiii} See Mary Fellows and E Spitko, "How Should Non-Probate Transfers Matter in Intestacy?" *University of California, Davis* (2020) [Vol. 53] 2207- 2268, 2229; Mary Fellows and E Spitko et al, "An Empirical Assessment of the Potential for Will Substitutes to Improve State Intestacy Statutes" *Indiana Law Journal* [Vol.85]409 -448, 447

^{lxiv} **Section 301(4) of the Revised 2016 Unclaimed Property Act**

^{lxv} Ethan Millar, Scott Heyman, and Charolette Noel, "The Revised Uniform Unclaimed Property Act Is an Improvement, but Constitutional Defects Should Be Addressed before Approval" 15 February 2018

https://www.americanbar.org/groups/business_law/resources/business-law-today/2018-february/the-revised-uniform-unclaimed-property-act/ accessed 28 March 2024

^{lxvi} Section 501(b) of the Revised 2016 Unclaimed Property Act

^{lxvii} Section 503(c) of the Revised 2016 Unclaimed Property Act

^{lxviii} -----, "The Role of the Media and Press Freedom in Society" *Media Law Handbook for Southern Africa*, Volume 1, 18

<https://www.kas.de/documents/285576/11521648/MLHSA+2021++1+The+role+of+the+media.pdf/f54a092e-1f2d-543d-291a-9603556b3773?t=1612258525961> accessed 23 March 2024

^{lxix} *ibid*

^{lxx} Ethan Millar, Scott Heyman, and Charolette Noel, "The Revised Uniform Unclaimed Property Act Is an Improvement, but Constitutional Defects Should Be Addressed before Approval" 15 February 2018

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^{lxxi} A medium is a 'channel of communication' through which information is sent and received.

^{lxxii} *Sociology.org.uk*, "Defining the Mass Media" 2011 http://sociology.org.uk/notes/media_defined.pdf Accessed 14 March 2024

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^{lxxiv} Geetali Tilak, "The Study and Importance of Media Ethics" *International Journal of Disaster Recovery and Business Continuity* Vol. 11 No. 1 (2020) 448–466, 448

^{lxxv} Annicka Engblom, "The Role of the Media in Times of Crises (Provisional Ver2 December 2021 Parliamentary Assembly, Sweden, Group of the European People's Party"

<https://assembly.coe.int/LifeRay/CULT/Pdf/TextesProvisoires/2021/20211202-MediaTimesCrisis-EN.pdf> accessed 23 March 2024

^{lxxvi} Section 503(e) of the Revised 2016 Unclaimed Property Act

^{lxxvii} Section 102(e) and Section 701(e) of the Revised 2016 Unclaimed Property Act

^{lxxviii} South Africa Lists, “Roles of Mediation in South Africa’ <https://southafricalists.com/roles-of-media/> accessed 25 March 2024

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^{lxxx} Deb Aryal “Role of Media in Social Change”⁵

<https://www.cambridge.org/engage/api-gateway/coe/assets/orp/resource/item/644df99e80f4b75b535a5a49/original/role-of-media-in-social-change.pdf>
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^{lxxxi} Bertin Martens, Luis Aguiar, Estrella Gomez-Herrera and Frank Mueller-Langer, The digital transformation of news media and the rise of disinformation and fake news - An economic perspective; Digital Economy Working Paper 2018-02; JRC Technical Reports 5

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<https://www.pon.harvard.edu/daily/conflict-resolution/what-is-conflict-resolution-and-how-does-it-work/>
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^{lxxxiv} *ibid*

^{lxxxv} *ibid*

^{lxxxvi} *ibid*

^{lxxxvii} Patricia Popelier, “The Role of Courts in Legislative Policy Diffusion and Divergence”

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