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Uniform Simultaneous Death Act, The

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Legislation

The Uniform Simultaneous Death Act

Common disaster cases, involving multiple deaths at apparently the same instant, present "some of the most vexing problems that lawyers and judges meet."[1] These problems, moreover, are not mere academic exercises; the disposition of an entire estate may depend upon the proof or, more often, the lack of proof as to which of the victims in his dying moments held most tenaciously to life. And one can reasonably suppose that, with the resumption of transportation at its normal, breath-taking pace, such accidents will occur with increasing frequency.

In an attempt to establish an orderly scheme applicable to instances where no proof of survivorship can be made, the Uniform Simultaneous Death Act was formulated. As of September 10, 1947, this act is effective in Missouri. As the commissioners who formulated it state, "The theory of the present act makes no effort whatever to resolve the un-resoluble . . . (It is) that as to the property of each person he is presumed to be the survivor and it is administered accordingly."[2] This statement may sound simple. If so, it is deceptive, since the uniform act should effect significant changes in the Missouri law as it stood prior thereto. It is our purpose here to examine briefly the application of the uniform act and certain of the changes it seems reasonable to expect.

Each provision of the act specifies that it only applies where "there is no sufficient evidence that the persons have died otherwise than simultaneously."[3] To determine when the rules of the uniform act are to govern, therefore, we must ascertain where the court will draw the line as to the sufficiency of evidence of survivorship. In this connection, it should be noted that Missouri, in accord with most states, has refused to indulge in any presumption of survivorship, as contrasted to the complex presumptions based on sex, age and other factors found in the civil law.[4] While the uniform act would render any such presumptions nugatory had they existed, this fact is mentioned as perhaps shedding light upon some of the decisions in regard to what is sufficient evidence of survivorship. The absence of presumption may account for a con-current leniency in the requirements of proof.

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1. Tracy and Adams, *Evidence of Survivorship In Common Disaster Cases*, 38 Mich. L. Rev. 801 (1940).

2. Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Fiftieth Annual Conference 266 (1940).

3. Mo. Rev. Stat. Ann. § § 317.1, 317.2, 317.3, 317.4 (Supp. 1947).

4. U.S. Casualty Co. v. Kacer, 169 Mo. 301, 69 S.W. 370 (1902). Although cited in 1 Fla. L. Rev. 75, at 77 (1948) as having been decided upon an implicit presumption of simultaneous death, the language in Garbee v. St. Louis-San Francisco Ry., 220 Mo. App. 1245, 290 S.W. 655 (1927), intimating that such a presumption may be used where there is no proof otherwise, does not appear to be more than a concession for the sake of argument.

Four cases seem to show the Missouri law as to when simultaneous death has been proved by the evidence, in which case this act would necessarily apply. When a husband, his wife, and their son were occupying an automobile directly in the path of a train traveling at the rate of 55 miles per hour, all of them being dead when the train backed up to investigate following the accident, the court held there were sufficient facts to support a finding that all three died at the same time.[5] In a similar accident, a husband and wife were killed, both being dead when witnesses reached them. Again the court stated that the evidence was sufficient to find that the husband did not survive the wife, "but that both died at the same time."[6] In each of these cases, the evidence relied on by the court seemed to be the obvious destructive force with which the train struck the auto, the extent to which the car was demolished, the distance the bodies were thrown by the collision, and the fact that all the parties were dead as soon as others reached them. Where a husband and wife were both killed by gas fumes in the bathroom of their home, the body of the husband being clothed and closer to the source of the gas and the body of the wife nude and more distance from the stove, the court, while admitting that plausible theories could be advanced to show survivorship by either victim, seemed to uphold the trial court's finding that the parties died at the same moment.[7] Where the body of the husband was found on the floor beside the seat of the railroad coach the body of the wife occupied, both having been killed in the same pre-dawn collision, the court said that if there was a burden to show simultaneous death of the parties, it was sustained by showing the time of day the collision took place, the force and type of the collision, and the position of the bodies.[8] Thus it seems that the Missouri courts, while applying no presumption either of survivorship or of simultaneous death, in the interests of justice have not been too demanding in requiring proof that life departed from the two or three persons involved at precisely the same moment.

On the other hand, two Missouri cases show what is deemed sufficient proof of survivorship, thus delineating situations where our uniform act would presumably not apply. Where the claims of the adverse parties depended upon whether or not a child had survived its mother who died before its birth, proof that the infant showed a faint heartbeat for a minute or two and uttered a cry or gasp, not living more than one or two minutes at the most, was held sufficient to prove that the child outlived the mother.[9] Where the deceased husband and wife were employees on the same steamboat, the fact that the wife was seen in the stream approximately one and one-half minutes after the boat had capsized and turned completely over, while the husband's body was not recovered from under the boat until it was righted, was held to be sufficient to show that the wife survived the husband.[10]

5. Garbee v. St. Louis-San Francisco Ry., *supra* note 4.
6. McCall v. Thompson, 348 Mo. 795, 155 S.W. 2d 161 (1941).
7. Abrams v. Unknown Heirs of Rice, 317 Mo. 216, 295 S.W. 83 (1927).
8. Aley v. Missouri Pacific Ry., 211 Mo. 460, 111 S.W. 102 (1908).
9. Taylor v. Cawood, 211 S.W. (Mo. 1919).
10. Warren v. Aetna Life Inc. Co. of Hartford, Conn., 202 Mo. App. 1, 213 S.W. 527 (1919).

This, then, is the state of Missouri law on what is sufficient proof of survivorship and what is proof of simultaneous death. Since the rules under the uniform act apply when no proof of survivorship is made, no positive finding of simultaneous death would appear to be necessary. Therefore we might well question whether the cases discussed *supra* which seem to be extreme in holding, on the bases of the evidence before the court, that simultaneous death occurred will continue to represent the law. The uniform act in effect establishes a presumption of simultaneous death in the situations it covers; and if we assume that the rules of the act are substantially just, the court can find that simultaneous death occurred by applying the statutory presumption, without torturing the facts.

The first section of the uniform act[11] lays down the general rule that in a simultaneous death situation "the property of each person shall be disposed of as if he had survived," with the exceptions carved out by the further provisions of the act which apply to specific relationships between the deceased persons.

Section 2 of the act,[12] dealing with beneficiaries "designed to take successively by reason of survivorship under another person's disposition of property," may perhaps need judicial decision to delineate the extent of its application. In a simultaneous death situation involving such beneficiaries, the property is to be divided into as many portions as there were beneficiaries, and the portions distributed respectively as if each beneficiary had survived.

The application of this section can be shown by two illustrations to which the law would apparently pertain. (1) A by a will, deed, or trust agreement provides that his land shall go to B and C for their joint lives, the remainder to go to the survivor of them.[13] Prior to the uniform act, if B and C were killed under such circumstances as to render it impossible to prove which survived the other, it would appear that claimants under neither could succeed to the property and it would revert to the grantor, A. Now the uniform act applies, dividing the property and giving one-half to the successors of each party. (2) A by a will, deed, or trust agreement provides that his land shall go to his son B in fee, but if his son C survives B, then the land shall go to C in fee. Here, assuming simultaneous death of B and C, without the aid of the statute it would appear that the land would descend to the successors of B, since claimants under C would not be able to establish the occurrence of the condition precedent to their taking. Under the uniform act, however, the successors of each party would take one-half of the property. While it may be said that this is in derogation of the words of the grant, which require proof of C's surviving B before anything vests in C, it seems clear that it is more in accord with the true desires of the grantor under these unusual circumstances.

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11. Mo. Rev. Stat. Ann. § 317.1 (Supp. 1947).
12. *Id.* § 317.2.
13. *Cf.* Runions v. Runions, 207 S.W. 2d 1016 (Tenn. 1948), where this type of estate apparently resulted from an attempt by a husband to create a tenancy by the entirety in himself and his wife by a conveyance of an undivided one-half interest to the wife.

The third section of the act provides that 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."[14] If there are more than two joint tenants and all of them have so died, the section provides for a proportional distribution.

Another instance where it appears that the uniform act has made a change in the Missouri law is in the situation where the disposition of the proceeds of a life insurance policy is in issue, the insured and the beneficiary having died under circumstances preventing proof of the survival of either. The law as it existed prior to the uniform act could decide adversely to the party bearing the burden of proof; and whether the claimant under the insured or under the beneficiary had the burden depended upon the interpretation given to the rights of the beneficiary under the particular policy involved. Thus where an ordinary policy was payable to the insured's daughter "if surviving; if not, to the legal representatives of the insured," and no right to change the beneficiary was reserved to the insured, it was held that the daughter had a vested interest in the proceeds and the claimant under her must prevail over the insured's legal representatives, who could not sustain the burden of proving that the daughter failed to survive her father.[15] On the other hand, in a case involving the same factual situation except that the administrator of the daughter was seeking to recover on a certificate issued by a fraternal benefit association under which the insured had the right to change beneficiaries, the case was decided adversely to the administrator on the ground that the daughter did not have a vested interest under such a policy and hence a claimant through her must fail, being unable to sustain the burden of proving that she survived her father.[16] Section 4 of the uniform act,[17] creating as it does an irrebutable presumption in such a case that the insured survived, reaches a more desirable conclusion in that the disposition of the fund is not made to depend upon the technical distinction of whether or not the beneficiary had a vested interest under the policy. Moreover, it fulfills the presumably usual desire of the insured to have the proceeds go to his successors rather than to those of the beneficiary when the beneficiary dies at approximately the same time.

Section 6 of the act,[18] in providing that the act shall not apply where an applicable will, living trust, deed or contract of insurance provides for disposition in a manner different from the scheme of the act, suggests what would seem to be

14. Mo. Rev. Stat. Ann. § 317.3 (Supp. 1947).
15. U.S. Casualty Co. v. Kacer, *supra* note 4.
16. Supreme Council of Royal Arcanum v. Kacer, 96 Mo. App. 93, 69 S.W. 671 (1902). A keen concurring opinion by Bland, P.J., points up the logical difficulties that present themselves in such a situation in that a presumption of simultaneous death of the parties is as faulty as a presumption that either survived the other, and that, in the absence of some advantage given to one claimant by the contract to insurance the situation would amount to an insoluble dilemma.
17. Mo. Rev. Stat. Ann. § 317.4 (Supp. 1947).
18. *Id.* § 317.6.

the most desirable solution to such situations, notwithstanding the adoption of the uniform act: that the instrument specifically provide for the desired disposition in case a simultaneous death situation should occur.[19] For maximum efficacy this provision should extend beyond the strict situation to which the simultaneous statute applies, governing the disposition in all cases where the subsequent beneficiary dies, say, within thirty days of his predecessor. Tailored to fit the precise situation, such a provision would most adequately fulfill the wishes of the grantor, devisor or insured who normally prefer that his successor or beneficiary survive him by an appreciable length of time before the property involved should pass.

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19. Matter of Fowles' Will, 222 N.Y. 222, 118 N.E. 611 (1918), illustrates the use of such a provision.