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## Recent Cases: Wills — Descent of Insurance Proceeds Covering Extinguished Specific Bequests

Allan J. Garfinkle

*University of Nebraska College of Law*

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**Wills—Descent of Insurance Proceeds Covering  
Extinguished Specific Bequests**

Two recent cases involving the disposition of proceeds of insurance policies covering property given by specific bequest and destroyed immediately before testator's death reach apparently opposite, but readily distinguishable, results. In a Kansas case a farmer had bequeathed his realty to his children and his personalty to his wife. A

tornado destroyed the farm buildings and fatally injured the farmer. *Held*: the proceeds from insurance covering the farm buildings descended to the heirs of the realty.<sup>1</sup> An Oklahoma case involved the accidental destruction of an insured automobile and consequent death of its owner. *Held*: the insurance proceeds went to the legatee of the personal estate; only the wreckage of the automobile went to the legatee of the car.<sup>2</sup>

Both cases involved destruction of a specific bequest between the time of the execution of the will and death of the testator. In one the bequest was of personalty; in the other it was of realty. Therein lies the distinction between the two cases and the basis for a reconciliation of their holdings.

The general doctrine applicable to such situations is that of "ademption." When the object of a specific bequest is destroyed between execution of the will and death of the testator, the bequest is "adeemed," or extinguished.<sup>3</sup> Since ademption only operates pro tanto,<sup>4</sup> the legatee takes whatever is left of the bequest, such as the wreckage of the car in the Oklahoma case. Thus that case seems decided correctly as falling squarely within the confines of the doctrine.

The fact that the devise was of realty in the Kansas case, on the other hand, enabled the court to remove it from the bounds of the doctrine of ademption and decide it on the basis of the principal of "equitable conversion." Equitable conversion is defined as "...that constructive alteration in the nature of property whereby, in equity, real estate is considered for certain purposes as personalty, or vice versa, and is transmissible and descendible as such."<sup>5</sup>

It is generally said that equitable conversion will apply only where the will contains an express mandate or overwhelming implication to sell the bequeathed property.<sup>6</sup> It is also said, however, that the fundamental principle involved is the effecting of the testator's intent.<sup>7</sup> A few courts have, therefore, applied the doctrine where insured property has been destroyed.<sup>8</sup> In such cases there has been an involuntary

<sup>1</sup> In re Elliott's Estate, 174 Kan. 252, 255 P.2d 645 (1953).

<sup>2</sup> In re Barry's Estate, 252 P.2d 437 (Okla. 1952).

<sup>3</sup> Lewis v. Hill, 387 Ill. 542, 56 N.E.2d 619 (1944); In re Hilpert's Estate, 165 Misc. 430, 300 N.Y. Supp. 886 (Surr. Ct. 1937); Brady v. Brady, 78 Md. 461, 28 Atl. 515 (1894); Tolman v. Tolman, 85 Me. 317, 27 Atl. 184 (1893).

<sup>4</sup> In re Hilpert's Estate, 165 Misc. 430, 300 N.Y. Supp. 886 (Surr. Ct. 1937).

<sup>5</sup> Schneider v. Schneider, 135 Kan. 734, 737, 12 P.2d 834, 836 (1932); In re Hencke's Estate, 212 Minn. 407, 4 N.W.2d 353 (1942); Malague v. Marion, 107 N.J. Eq. 333, 152 Atl. 637 (Ch. 1930); Graham v. Graham, 202 Ala. 56, 79 So. 450 (1918); Painter v. Painter, 220 Pa. 82, 69 Atl. 323 (1908).

<sup>6</sup> Schneider v. Schneider, 135 Kan. 734, 737, 12 P.2d 834, 836 (1932); State v. O'Connell, 121 Wash. 542, 209 Pac. 865 (1922).

<sup>7</sup> In re Hencke's Estate, 212 Minn. 407, 4 N.W.2d 353 (1942); In re McGuire's Estate, 251 App. Div. 337, 296 N.Y. Supp. 528 (2d Dep't 1937).

<sup>8</sup> Swayne v. Chase, 88 Tex. 218, 30 S.W. 1049 (1895).

conversion of the property, and the proceeds of the insurance, when paid, stand in the place of the property which has been destroyed.

Since the doctrine has never been extended to include a change of personal property into other personal property,<sup>8</sup> the distinction between the two cases is clear. In the Oklahoma case the automobile could not be converted into insurance money since the doctrine of ademption applied. In the Kansas case the buildings were a part of the realty, and thus the cash insurance proceeds could be equitably converted.

ALLAN JAY GARFINKLE, '56

<sup>8</sup> In re Dodge's Estate, 207 Iowa 374, 223 N.W. 106 (1929).