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WILLS — APPORTIONMENT OF ESTATE TAX — UNIFORM ESTATE TAX APPORTIONMENT ACT HELD TO REQUIRE THAT ONLY CLEAR AND UNAMBIGUOUS LANGUAGE MAY DIRECT THAT RESIDUARY LEGATEES BEAR THE ESTATE TAX ON THE WHOLE OF THE ESTATE. *JOHNSON v. HALL,* 283 Md. 644, 392 A.2d 1103 (1978).

I. INTRODUCTION

At death, a decedent's taxable estate is subject to federal and state estate taxes.[1] Maryland's Uniform Estate Tax Apportionment Act,[2] remedial legislation designed to abrogate a harsh common law rule,[3] directs that these taxes be paid on a pro rata basis by all parties with interests in the tax-generating assets.[4] The Act includes an exception provision permitting the testator to provide for imposition of the estate tax burden in a manner other than apportionment.[5] In *Johnson v. Hall,*[6] the Court of Appeals of Maryland construed the will of Catherine Johnson, M.D., which directed that all debts, expenses and taxes "be paid as soon after my death as can lawfully and conveniently be done."[7] The court held, in a five-to-one decision, that this language was too unclear and ambiguous to operate as a directive against apportionment.[8] In so holding, the court declined to align Maryland with the majority of jurisdictions that have construed similar language — holding it to express an intent that

1. *See* I.R.C. §§ 2001-2621 (Federal); MD. ANN. CODE art. 62A (Supp. 1979).
   Under the federal statute, the taxable estate is determined by subtracting allowable deductions from the value of the decedent's gross estate. I.R.C. § 2051. These deductions, set forth in I.R.C. §§ 2053-2057, include federal and administrative expenses, claims against the estate, uncompensated casualty losses arising during the settlement of the estate, transfers for public, charitable, and religious uses, the marital deduction for certain bequests to the surviving spouse, and the orphan's deduction. S. SURREY, W. WARREN, P. MCDANIEL & H. GUTMAN, FEDERAL WEALTH TRANSFER TAXATION (1977). A limited credit against the federal estate tax is allowed for the amount of state estate and inheritance taxes paid. I.R.C. § 2011.
   The Maryland estate tax is equal to the remainder, if any, resulting from the subtraction of state taxes, including other jurisdictions' death taxes, from the amount due under the federal scheme, as computed under I.R.C. § 2011(b). MD. ANN. CODE art. 62A, § 2 (Supp. 1979).
2. MD. EST. & TRUSTS CODE ANN. § 11-109 (1974).
3. See text accompanying notes 16-19 *infra.*
4. MD. EST. & TRUSTS CODE ANN. § 11-109(b) (1974).
5. MD. EST. & TRUSTS CODE ANN. § 11-109(k) (1974) provides that the statutory rule of apportionment applies "[e]xcept as otherwise provided in the will."
   A testator does not always have the power to avoid apportionment of estate taxes. Where he directs, for example, that the taxes be imposed solely upon the residuary estate, and it happens that the amount of tax is greater than the value of the residue, the excess will be apportioned among the general and specific legatees. *In re* Estate of Thompson, 118 N.H. 361, 386 A.2d 1280 (1978); Mitnick, *State Legislative Apportionment of the Federal Estate Tax,* 10 MD. L. REV. 289, 314 (1949) [hereinafter cited as Mitnick].
6. 283 Md. 644, 392 A.2d 1103 (1978).
7. Brief for Appellant at E.1, Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978).
8. 283 Md. at 657, 392 A.2d at 1111.

estate taxes be paid entirely from the residuary portion of the estate.[9] *Johnson* reflects the court's strict adherence to the cardinal principle of will construction in apportionment disputes that, to be effective, testamentary language asserted to direct against apportionment must be clear and unambiguous.[10] The holding is consonant with two other recent Maryland decisions in which the courts declined to give effect to controverted testamentary language when to do so might frustrate the purpose of remedial legislation.[11]

II. STATUTORY IMPOSITION OF THE ESTATE TAX BURDEN — AN HISTORICAL BACKGROUND

The first estate tax statute was enacted by Congress in 1916.[12] This tax, levied upon the decedent's estate as a whole,[13] was justified as the price of the privilege of transferring property at death.[14] Because this statute did not designate upon whose interests the tax would be imposed,[15] a rule developed at common law that estate taxes were payable from the residuary portion of the estate, absent

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9. *E.g.*, Starr v. Watrous, 116 Conn. 448, 165 A. 459 (1933); *In re* Estate of Collins, 368 So. 2d 1350 (Fla. 1979); *In re* Bett's Estate, 2 Ill. App. 2d 453, 119 N.E.2d 801 (1954); University of Louisville v. Liberty Nat'l Bank & Trust Co., 499 S.W.2d 288 (Ky. 1973) (overruling McKinney v. Mt. Sterling Nat'l Bank, 310 Ky. 186, 220 S.W.2d 379 (1949)); *In re* Jones, 172 So. 2d 312 (La. App. 1965); Thomas v. Fox, 348 Mass. 152, 202 N.E.2d 912 (1964); *In re* Hund's Will, 266 A.D. 379, 42 N.Y.S.2d 505 (1943) (per curiam); Gaither v. United States Trust Co., 230 S.C. 568, 97 S.E.2d 24 (1957); *In re* Cudahy's Will, 251 Wis. 116, 28 N.W.2d 340 (1947); *In re* Ogburn's Estate, 406 P.2d 655 (Wyo. 1965).

10. "Practically all the cases agree that a directive against apportionment should be expressed in clear and unambiguous language." *In re* Ogburn's Estate, 406 P.2d 655, 657 (Wyo. 1965). *E.g.*, Estate of Lindner, 85 Cal. App. 3d 219, 223, 149 Cal. Rptr. 331, 335 (1978); *In re* Estate of Kelly, 584 P.2d 640, 641 (Colo. App. 1978); Union & New Haven Trust Co. v. Sullivan, 142 Conn. 685, 692, 116 A.2d 908, 912-13 (1955); Merchants Nat'l Bank v. Merchants Nat'l Bank, 318 Mass. 563, 577, 62 N.E.2d 831, 839 (1945); *In re* Pepper's Estate, 307 N.Y. 242, 246, 120 N.E.2d 807, 808-09 (1954); *In re* Estate of Erieg, 439 Pa. 550, 556, 267 A.2d 841, 845 (1970); *In re* Estate of Henderson, 46 Wash. 2d 401, 402, 281 P.2d 857, 858 (1955); *In re* Estate of Hilliar, 498 P.2d 1237, 1239 (Wyo. 1972). Annot., 71 A.L.R.3d 247, 315 (1976).

11. See text accompanying notes 80-95 *infra*.

12. Revenue Act of 1916, Pub. L. No. 271, §§ 200-212, 39 Stat. 777-80 (1916). A tax was imposed on the transfer of decedents' estates. *Id.* at § 202. The constitutionality of this statute was upheld in New York Trust Co. v. Eisner, 256 U.S. 345 (1921). *See generally* C. LOWNDES, R. KRAMER & J. MCCORD, FEDERAL ESTATE AND GIFT TAXES § 3.2 (3d ed. 1974) [hereinafter cited as LOWNDES].

13. The estate tax differs from an inheritance tax. The latter is a tax on the right to receive property from a decedent. In contrast, the estate tax is imposed upon the decedent's right to transfer property at death. 1 R. PAUL, FEDERAL ESTATE AND GIFT TAXATION § 1.05 (1942).

14. LOWNDES, *supra* note 12, at § 1.1.

15. Limited exceptions exist in the Internal Revenue Code. Recipients of life insurance proceeds included in the decedent's estate and recipients of a power of appointment over estate property must contribute the amount of tax generated by inclusion of those assets in the gross estate, unless the decedent directs otherwise in his will. I.R.C. §§ 2206, 2207.

expression of a contrary intent by the testator.[16] Application of the common law rule often substantially distorted the testator's overall testamentary plan, especially when taxable property passed outside his estate.[17] In many instances the burden of unforeseen estate taxes severely diminished the share of the residuary legatees,[18] who were often closely related to or dependent relatives of the testator. The harsh effect of the common law rule upon such natural objects of the testator's bounty prompted many states to enact estate tax apportionment statutes.[19]

Estate tax apportionment statutes typically prorate the estate tax burden among those beneficiaries whose interests in the estate contribute toward generating the tax.[20] The first such legislation in Maryland, enacted in 1937, followed this scheme.[21] This act proved too restricted in scope,[22] however, and in 1945, it was revised to broaden its coverage.[23] In 1965, the Maryland General Assembly

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16. *See* Powell, *Ultimate Liability for Federal Estate Taxes,* 1958 WASH. U.L.Q. 327, 329 [hereinafter cited as Powell]. Aside from the exceptions mentioned in note 15 *supra,* the manner of determining who must pay the estate tax assessment is governed by state law. Riggs v. Del Drago, 317 U.S. 95, 97-98 (1942). Commentators differ over whether a federal statute should govern the allocation of the federal estate tax. Those in favor of federal legislation in this area see a need to reduce private and interstate conflicts. Scoles & Stephens, *The Proposed Uniform Estate Tax Apportionment Act,* 43 MINN. L. REV. 907 (1959) [hereinafter cited as Scoles & Stephens]. The opposite side views any attempt by the federal government to dictate the manner of allocating the burden of the debts of the decedent, even those debts created by federal law, as an unnecessary invasion of territory "naturally controllable" by the states. Gump, *Apportionment of the Federal Estate Tax,* 6 MD. L. REV. 195, 204 (1942) [hereinafter cited as Gump].
17. Scoles & Stephens, *supra* note 16, at 915. Many testators unwittingly thought that they were providing for their loved ones by leaving them the residuary estate. *Id.*
18. *See, e.g., In re* Mill's Estate, 189 Misc. 136, 141, 64 N.Y.S.2d 105, 109-10 (1946), *aff'd,* 272 A.D. 229, 70 N.Y.S.2d 746 (1947), *aff'd mem.,* 297 N.Y. 1012, 80 N.E.2d 535 (1948).
19. *See, e.g., In re* Edwards' Estate, 377 Pa. 606, 610, 105 A.2d 312, 315 (1954). New York enacted the first estate tax apportionment statute. *See* NEW YORK DECEDENTS' ESTATE LAW § 124 (1930) (now N.Y. ESTS., POWERS & TRUSTS LAW § 2-1.8 (McKinney 1967)).
20. *See* Scoles & Stephens, *supra* note 16, at 915. The statutes, however, are not uniformly applied. Some states' apportionment statutes apportion taxes only among those parties with interests in the non-probate estate, while others include beneficiaries of probate property as well. *Id.* at 915 n.35.
21. Law of June 1, 1937, ch. 546, 1937 Md. Laws 1320 (repealed in 1947).
22. The 1937 Act failed to cover the proceeds of taxable life insurance or an appointee under a taxable power of appointment. The statute did not require contribution from a joint tenant or a tenant by the entireties. Moreover, the Act failed to provide for contribution from any legatee of probate assets. Gump, *supra* note 16, at 205. *See* Karch, *The Apportionment of Death Taxes,* 54 HARV. L. REV. 10, 35-36 n.108 (1940).
23. Law of June 1, 1947, ch. 156, 1947 Md. Laws 223 (repealed in 1965). Unlike its predecessor, the 1947 Act required contribution from life insurance proceeds receivable by a beneficiary other than the executor, from property over which the decedent had a power of appointment, and from any other property included in the gross estate but not included in the decedent's estate under Maryland's intestacy laws. Mitnick, *supra* note 5, at 300.

enacted the present apportionment statute,[24] which provides in pertinent part:

> The tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.[25]

In addition, the statute specifies that "[e]xcept as otherwise provided in the will, or other controlling instrument, the provisions of this section shall apply to the apportionment of, and contribution to, the federal and Maryland estate taxes."[26] In short, apportionment is mandatory unless the text of the will or other controlling instrument expresses a contrary intent.[27]

The most frequently litigated estate tax apportionment issue is whether the language used in the decedent's will is sufficient to overcome the rebuttable presumption that the testator intended that

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24. Law of June 1, 1965, ch. 907, 1965 Md. Laws 1551 (codified at MD. EST. & TRUSTS CODE ANN. § 11-109 (1974)). By passing this legislation, the Maryland General Assembly enacted its own version of the Uniform Estate Tax Apportionment Act.
25. MD. EST. & TRUSTS CODE ANN. § 11-109(b) (1974).
26. *Id.* at § 11-109(k).

    Currently, ten states have enacted either the 1958 or the 1964 version of the Uniform Estate Tax Apportionment Act. In the absence of legislation, a testator had no power to designate that non-testamentary assets should bear their pro rata share of the tax. This was the case regardless of whether the recipients were residents or non-residents of the state. The 1958 Act enabled the testator to designate that that portion of the tax attributable to non-testamentary assets be recovered from the recipients. Moreover, the 1958 Act was drafted to deal with the jurisdictional problem encountered when property included in the decedent's taxable estate was transferred inter vivos to a non-resident, enabling executors to collect the pro rata share of the tax from the non-resident recipient. Four states retain the 1958 version of the Uniform Act. ALASKA STAT. § 13.16.610 (Supp. 1979); MICH. COMP. LAWS ANN. §§ 720.11 to 720.21 (1968); N.H. REV. STAT. ANN. §§ 88-A:1 to 88-A:12 (1970); WYO. STAT. §§ 2-7-101 to 2-7-111 (Supp. 1977).

    The 1964 version of the Act amended the 1958 version in two respects. It provided for the apportionment of the expenses incurred by the estate in connection with the determination of the tax and its apportionment. *See, e.g.*, MD. EST. & TRUSTS CODE ANN. § 11-109(c)(3) (1974). The 1964 act, in providing a non-resident fiduciary a remedy against a resident of the state, eliminated the necessity of federal reciprocity provisions. *See* MD. EST. & TRUSTS CODE ANN. § 11-109(h) (1974). Six states have enacted the 1964 version of the Uniform Estate Tax Apportionment Act. HAW. REV. STAT. §§ 236A-1 to 236A-9 (1976); MD. EST. & TRUSTS CODE ANN. § 11-109 (1974); N.D. CENT. CODE § 30.1-20-16 (1976); OR. REV. STAT. §§ 116.303 to 116.383 (Supp. 1977); R.I. GEN. LAWS §§ 44-23.1-1 to 44-23.1-12 (Supp. 1978); VT. STAT. ANN. tit. 32, §§ 7301 to 7309 (Supp. 1978). The Uniform Probate Code has copied the Uniform Estate Tax Apportionment Act. *See* U.P.C. § 3-916.
27. Johnson v. Hall, 283 Md. 644, 648, 392 A.2d 1103, 1106 (1978).

the taxes on his estate be apportioned.[28] Arising from this litigation is the cardinal judicial principle that in order to defeat the application of an apportionment scheme, the testator's expression of a contrary intent must be clear and unambiguous.[29] This cardinal principle lay at the heart of the controversy surrounding Catherine Johnson's will.[30]

III. THE APPORTIONMENT DISPUTE IN *JOHNSON*

At her death, Catherine W. Johnson, M.D., left a will disposing of a gross estate valued at approximately $580,000.00. The controversial tax clause appeared in the first provision of her will. It provided:

> *FIRST*: I direct that all lawful debts I owe at the time of my death, including funeral and administrative expenses and the expenses of my last illness (but not including debts secured by mortgages on real property, except matured obligations as they fall due) *and all estate and inheritance taxes* be paid as soon after my death as can lawfully and conveniently be done.[31]

The third clause established specific bequests. Among these were gifts of stock to two doctors who attended Dr. Johnson in her final illness, W. Luther Hall and James M. Bacos.[32] The last of the

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28. Mitnick, *supra* note 5, at 310. Equitable apportionment of the estate taxes is the presumed intention of testators. *E.g., In re* Estate of Erieg, 439 Pa. 550, 556, 267 A.2d 841, 845 (1970).
29. See note 10 *supra*.
    In addition, the courts have fashioned several "corollary" principles when questions of apportionment arise. For instance, those who contend that a will directs against apportionment bear the burden of proof. *E.g., In re* Estate of Cummings, 263 Cal. App. 2d 661, 668, 69 Cal. Rptr. 792, 797 (1968); *In re* Pepper's Estate, 307 N.Y. 242, 250-51, 120 N.E.2d 807, 811 (1954); *In re* Estate of Hilliar, 498 P.2d 1237, 1239 (Wyo. 1972). *See also* Annot., 71 A.L.R.3d 247, 310 (1976). Furthermore, will provisions asserted to direct against apportionment are subject to strict construction; doubts are resolved in favor of apportionment. *E.g., In re* Estate of Hilliar, 498 P.2d 1237, 1239 (Wyo. 1972). *See also* Annot., 71 A.L.R.3d 247, 319 (1976).
30. Both Maryland appellate courts recognized that "[i]n a tax allocation problem the text of the will is to be scanned only to see if there is a clear direction *not* to apportion, and if such *explicit* direction is not found, *construction of text ceases because the statute states the rule.*" Johnson v. Hall, 283 Md. 644, 649, 392 A.2d 1103, 1107 (1978) (quoting *In re* Mill's Estate, 189 Misc. 136, 142, 64 N.Y.S.2d 105, 110 (1946) (emphasis in original), *aff'd*, 272 A.D. 229, 70 N.Y.S.2d 746 (1947), *aff'd*, 297 N.Y. 1012, 80 N.E.2d 535 (1948), *quoted in* Hall v. Johnson, 38 Md. App. 589, 596, 382 A.2d 332, 336 (1978)).
31. Johnson v. Hall, 283 Md. 644, 650, 392 A.2d 1103, 1107 (1978) (emphasis added).
32. Drs. Hall and Bacos were the personal physicians of the testatrix. *Id.* at 646, 392 A.2d at 1105. Prior to the apportionment dispute, the testatrix' husband and daughter instituted a caveat proceeding to have the doctors' bequests declared void on the ground of undue influence. The parties reached a settlement on this matter and the physicians agreed to have their legacies reduced by 15%. *Id.* at 647 n.2, 392 A.2d at 1105 n.2.

dispositive clauses established a residuary trust for the testatrix' son Carman, who had a history of recurring mental illness.[33]

Prior to making a final accounting and distribution, Dr. Johnson's personal representative[34] sought approval from the Orphans' Court of Prince George's County to apportion the federal estate tax according to Maryland's Uniform Estate Tax Apportionment Act. The two doctors opposed apportionment, asserting that the will directed that the estate tax be paid entirely from the residuary trust.

IV. *JOHNSON* IN THE COURTS

A. The Orphans' Court

The issue before the orphans' court was whether "Article FIRST" of Dr. Johnson's will, directing that "debts . . . expenses . . . . [and] taxes" be paid promptly, indicated an intent by Dr. Johnson that the federal estate tax be imposed solely upon the residuary legatee. The court found that the controversial language in the first clause of the will was "not of the explicit nature to warrant abatement of the apportionment of taxes,"[35] and ruled that Maryland's statute required that the taxes on Dr. Johnson's estate be apportioned.

B. The Court of Special Appeals

On appeal, the Court of Special Appeals of Maryland[36] construed the first clause of the will in conjunction with other clauses in the will, and held that it sufficiently evidenced an intent to avoid apportionment. It reversed the orphans' court, and ordered satisfaction of the estate tax liability solely from the residuary portion of the estate.[37] Inasmuch as the court agreed with the cardinal principle universally applied in resolving apportionment disputes, it evidently concluded that the tax clause constituted a clear and unambiguous expression of an intent not to apportion.[38]

In deciding the issue, one of first impression in Maryland,[39] the court of special appeals considered itself bound by the apportion-

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33. There were indications in the *Johnson* will that the continuous care of Carman was the paramount concern of the testatrix. *See* Brief for Appellant at E.2-E.6, Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978).
34. The personal representative was Jule Abner Johnson, another son of the testatrix. 283 Md. at 646, 392 A.2d at 1105.
35. *See* Brief for Appellant at E.59, Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978).
36. Hall v. Johnson, 38 Md. App. 589, 382 A.2d 332 (1978).
37. *Id.* at 598, 382 A.2d at 337.
38. *Id.* at 597, 382 A.2d at 337. See note 10 and accompanying text *supra*.
39. The court of special appeals stated, "[t]he precise issue put to us does not appear to have been decided by an appellate court of this State, although courts of other States have come to grips with the matter." *Id.* at 593, 382 A.2d at 334.

ment statute's uniformity of construction provision[40] to follow only cases from Uniform Act jurisdictions.[41] The Maryland statute states that "[s]uch of the provisions of this section as are uniform with statutes enacted in other states shall be so construed as to effectuate their purpose to make uniform the laws of those states which enact such provisions."[42] The court of special appeals found cases on point from two such jurisdictions. In those decisions, courts in New Hampshire[43] and Wyoming[44] construed tax clauses similar to that in Dr. Johnson's will. Both interpreted such clauses to express an intent to avoid apportionment.

The court of special appeals used reasoning similar to that employed in the Wyoming case, *In re Ogburn's Estate*,[45] when it noted that because Catherine Johnson was a successful medical doctor guided by competent legal advice in the preparation of her will, it was "safe to infer that Dr. Johnson possessed a reasonable command of the English language and knew what she had written in Article FIRST of her will."[46] Refusing to allow the tax clause to pass without legally operative consequences, the court imputed to the testatrix an awareness that the first clause of her will implied a direction against apportionment of estate taxes.[47] However, the court did not indicate why, if the tax clause had to be given some legally operative consequences, those consequences need consist of a departure from the statutory apportionment scheme. The New Hampshire court, on the other hand, stated that its examination of the will in that case revealed that the testatrix preferred the specific legatees to the residuary beneficiaries and, consequently, that the testatrix intended the latter to bear the tax burden.[48] The Wyoming

40. MD. EST. & TRUSTS CODE ANN. § 11-109(i) (1974).
41. The standardUniform Estate Tax Apportionment Act's uniformity of interpretation provision provides: "This Act shall be construed to effectuate its general purpose to make uniform the laws of those states which enact it." UNIFORM ESTATE TAX APPORTIONMENT ACT § 9 (1964).
42. MD. EST. & TRUSTS CODE ANN. § 11-109(i) (1974). While the standard Act focuses its call for uniformity of construction only upon those states that have adopted the Uniform Estate Tax Apportionment Act, the Maryland Act's uniformity clause is not similarly restricted. Despite this difference, the court of special appeals implicitly accepted the idea that cases on point in states that have adopted the Uniform Act are to be considered more persuasive than decisions from jurisdictions which have not enacted it. Hall v. Johnson, 38 Md. App. 589, 593-94, 382 A.2d 332, 335 (1978). *But see* note 55 *infra*.
43. *In re* Crozier's Estate, 105 N.H. 440, 201 A.2d 895 (1964).
44. *In re* Ogburn's Estate, 406 P.2d 655 (Wyo. 1965).
45. *Id.*
46. Hall v. Johnson, 38 Md. App. 589, 597, 382 A.2d 332, 337 (1978).
47. *Id.* The court of special appeals evidently believed that Catherine Johnson included the word "tax" purposefully and with the intent that the tax not be apportioned. The court's reasoning, that a testator's use of a tax clause is not mere surplusage, has been used in other cases that hold clauses directing payment of taxes are directions against apportionment. *E.g., In re* Estate of Collins, 368 So. 2d 1350 (Fla. 1979); University of Louisville v. Liberty Nat'l Bank & Trust Co., 499 S.W.2d 288, 290 (Ky. 1973) (overruling McKinney v. Mt. Sterling Nat'l Bank, 310 Ky. 186, 220 S.W.2d 379 (1949)).
48. *In re* Crozier's Estate, 105 N.H. 440, 442, 201 A.2d 895, 896-97 (1964).

court found that, "inclusion of the tax clause in the introductory portion of the will directing payment of debts and expenses, which are ordinarily satisfied from the residuary estate, indicates that the testatrix intended that the death taxes be paid from the same source."[49] No comparable reasoning is found in the opinion of the court of special appeals.[50]

C. *The Court of Appeals*

The court of appeals,[51] unlike the court of special appeals, did not interpret the Maryland apportionment statute's uniformity of construction provision[52] to require Maryland courts to follow only the cases from New Hampshire[53] and Wyoming.[54] Thus, it examined decisions on point in numerous jurisdictions that have enacted apportionment statutes.[55] The court recognized that a vast majority[56] of these jurisdictions have held that tax clauses similar to "Article FIRST" in Dr. Johnson's will sufficiently manifest an intention not to prorate the tax burden.[57] It nevertheless refused to follow the majority view,[58] stating, "We decline to accept as persuasive authority cases which appear to change the judicial role from one of discerning intent to one of creating it on the basis of vague implications and innuendos."[59]

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49. *In re* Ogburn's Estate, 406 P.2d 655, 659 (Wyo. 1965).
50. What reasoning there is seems inconsistent. While the court was willing to allow the direction in the first article to pay debts and expenses to pass without legally operative consequences, i.e., that such direction was not intended to affect the source of payment for these charges, it inexplicably found that the mention of taxes in the same clause had the effect of altering the source from which the taxes are normally paid. The court stated: "Certainly, the first portion of the Article is a mere formal recitation directing the personal representative to do what the law clearly requires be done, *but* the law does not require that bequests be paid over free and clear of federal estate taxes." Hall v. Johnson, 38 Md. App. 589, 597-98, 382 A.2d 332, 337 (1978) (emphasis in original). The judicial presumption that words in a will are never to be rejected as meaningless or repugnant if by any reasonable construction they may be given effect, Cole v. Bailey, 218 Md. 177, 181, 146 A.2d 14, 16 (1958), and the presumption that a testatrix does not use superfluous language in her will, National State Bank v. Nadeau, 57 N.J. Super. 53, 63, 153 A.2d 854, 859 (1959), need not have determined the outcome of the case. Other courts have treated the direction to pay taxes as surplusage. *See, e.g., In re* Estate of Carrington, 1 Ohio Op. 2d 72, 74, 136 N.E.2d 182, 185 (P. Ct. 1956).
51. Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978).
52. MD. EST. & TRUSTS CODE ANN. § 11-109(i) (1974).
53. *In re* Crozier's Estate, 105 N.H. 440, 201 A.2d 895 (1964).
54. *In re* Ogburn's Estate, 406 P.2d 655 (Wyo. 1965).
55. The court of appeals noted that because Maryland's statute differs from the standard Uniform Act, Maryland courts are not constrained to follow only authority from Uniform Act jurisdictions. 283 Md. at 653-54 n.9, 392 A.2d at 1109 n.9.
56. *See* note 9 and accompanying text *supra*.
57. 283 Md. at 650, 392 A.2d at 1107.
58. *Id.* at 651, 392 A.2d at 1108.
59. *Id.* at 654 n.9, 392 A.2d at 1109 n.9.

The *Johnson* court of appeals decision cited the analysis in a Virginia case, *Baylor v. National Bank of Commerce,*[60] as typifying the reasoning employed by the courts adopting the majority view. Under this analysis, a testator, by grouping debts, taxes, and expenses together in a single clause, manifests an intent that "all of the items [are] to be treated alike and to be paid in the same manner and from the same fund."[61] Applying the common law presumption that, unless otherwise provided in the will, debts and expenses are charged to the residue,[62] the *Baylor* court reasoned that, because taxes had been grouped with debts and expenses, they were intended to be treated in like fashion and charged to the residue.[63] The court of appeals rejected this reasoning,[64] arguing that inferring the intent to impose the estate tax burden solely upon the residuary estate merely because the will grouped taxes with debts and expenses gave the common law presumption precedence over the statutory presumption that estate taxes are intended to be apportioned.[65] Because the court considered the common law and statutory presumptions coequal, it concluded that it should draw no inference from the fact that the testatrix grouped the debts, taxes, and expenses together in the same clause.[66] In support of its decision, the *Johnson* court pointed out that the analysis employed by the *Baylor* court could, with equal justification, be used to sustain an argument that grouping debts and expenses with taxes in a single clause expresses an intent to apportion debts and expenses among the beneficiaries.[67]

The court of appeals recognized that by declining to follow the overwhelming majority of jurisdictions, it might appear to be ignoring the apportionment statute's uniformity of construction provision.[68] It reasoned, however, that its decision was in harmony with the other states' interpretations of their apportionment statutes, because all jurisdictions on both sides of the controversy agree that in order to defeat an apportionment statute the intent of the testator must be clear and unambiguous.[69] The difference in the court's holding was explained as a difference in the construction of the language in the *will,* not in the construction of the exception provision in the *statute.*[70]

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60. 194 Va. 1, 72 S.E.2d 282 (1952).
61. *Id.* at 5, 72 S.E.2d at 284.
62. *See* T. ATKINSON, WILLS § 136 (2d ed. 1953).
63. 194 Va. at 5, 72 S.E.2d at 284.
64. Johnson v. Hall, 283 Md. 644, 652, 392 A.2d 1103, 1108 (1978).
65. *Id.* at 652-53, 392 A.2d at 1108.
66. *Id.*
67. *Id.* at 655, 392 A.2d at 1110.
68. *Id.* at 653, 392 A.2d at 1109. See text accompanying note 42 *supra.*
69. *Id.*
70. *Id.* It is doubtful that the Maryland statute's uniformity of construction provision was intended to govern the construction of wills, as this would frequently contravene the testator's intent. See text accompanying notes 104-111 *infra.*

The court also addressed the argument that failure to infer a direction against apportionment from the first clause in Dr. Johnson's will would render the clause legally meaningless, because payment of taxes was already the statutory duty of the personal representative.[71] Although it acknowledged the rule of construction that "words in a will are never to be rejected as meaningless or repugnant if by any reasonable construction they may be given effect and made consistent and significant,"[72] the court found its interpretation of the tax clause in harmony with this rule of construction, saying:

> Simply because the words of the will restate the law or add nothing of substance to what would have occurred without them does not deprive those words of their effect for they are indicative of the testator's intent and must be respected and carried out independently of any parallel consistent provision of the law.[73]

The court of appeals further buttressed its argument by noting that,

> the logic of the [doctors'] argument — that by mentioning taxes the testatrix must have intended something other than what the law provides — requires that they likewise be able to assign some special role, other than one parroting the law, to the remainder of the words of the first clause directing payment of expenses and debts. This they make no effort to do.[74]

The court of appeals considered two other arguments raised by the doctors in support of their contention that Dr. Johnson's will directed against apportionment. The tenth clause in the will empowered the personal representative to pay the charges enumerated in the first clause either from real property or personalty. Because only the residuary portion of the estate included real property, the doctors contended that Dr. Johnson therefore intended the payment of all enumerated charges in the first clause, including taxes, from the residuary estate. The court rejected this contention, construing the tenth clause as a provision permitting the personal representative to satisfy from realty or personalty any claim the

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71. *Id.* at 654-55, 392 A.2d at 1110. The personal representative has a statutory duty to pay the estate tax under Maryland and federal law. *See* MD. EST. & TRUSTS CODE ANN. § 7-401(j) (1974); I.R.C. § 2002. This obligation is an administrative rule ensuring payment of the tax, and does not in any way affect the rights of the heirs and distributees as among themselves. Trimble v. Hatcher's Executors, 295 Ky. 178, 184, 173 S.W.2d 985, 988, *cert. denied,* 321 U.S. 747 (1943).
72. Johnson v. Hall, 283 Md. 644, 654, 392 A.2d 1103, 1110 (1978) (quoting Cole v. Bailey, 218 Md. 177, 181, 146 A.2d 14, 16 (1958)).
73. 283 Md. at 654-55, 392 A.2d at 1110.
74. *Id.* at 655, 392 A.2d at 1110.

residuary legatee ultimately owed, rather than as a directive carrying a necessary implication that the estate taxes be paid from the residue.[75] Because the priority in abatement rule between real and personal property has been abrogated by statute in Maryland, the court viewed the tenth clause as a precautionary measure and another example of the testatrix' providing in her will for that which was already prescribed by law.[76]

Finally, the court considered whether the arrangement of clauses in the Johnson will evidenced an intent not to apportion the taxes.[77] Drs. Hall and Bacos argued that the order of the will provisions — the tax clause appearing first, followed by clauses establishing specific bequests, and concluding with a clause establishing the residuary trust — indicated that the testatrix intended the residue to consist of what remained after satisfaction of debts, taxes, expenses, and specific bequests.[78] The court dismissed this argument, stating that the testatrix' arrangement of clauses indicated nothing more than that the will was "artfully and logically drawn."[79]

V. ANALYSIS

Johnson v. Hall[80] is the most recent in a series of Maryland cases in which the appellate courts have held controverted testamentary language to lack the clarity necessary to be legally effective in the manner contended. In *Leidy Chemicals Foundation, Inc. v. First National Bank,*[81] the court of appeals ruled on the effectiveness of language asserted to exercise a power of appointment created by a deed of trust. In his residuary clause, the testator had bequeathed to a corporate foundation all the property that he had the "right to dispose of" at death.[82] The trust deed restricted those who could take by appointment to persons and corporations

75. *Id.* at 655–56, 392 A.2d at 1110. Maryland courts, following the common law rule, historically satisfied estate debts from personal property before real property. Reno, *The Maryland Order of Abatement of Legacies and Devises,* 17 MD. L. REV. 285, 288–89, 291 (1957).
76. MD. EST. & TRUSTS CODE ANN. § 9–103(b) (1974).
77. Johnson v. Hall, 283 Md. 644, 656, 392 A.2d 1103, 1110 (1978).
78. *Id.*
79. *Id.*
80. 283 Md. 644, 392 A.2d 1103 (1978).
81. 276 Md. 689, 351 A.2d 129 (1976).
82. *Id.* at 692, 351 A.2d at 130–31. The testator and his father were settlors of a life insurance trust which created the power. *Id.* at 690, 351 A.2d at 129–30. The testator's status as donee of the power of appointment was contingent upon his surviving his mother. *Id.* at 691, 351 A.2d at 130. His mother was living at the time he executed his will, but predeceased the testator shortly thereafter. *Id.* Hence, the testator's power of appointment had not vested when he executed his will. This may serve to explain why his bequest of the appointive property to the chemical foundation was framed in the uncertain language, bequeathing "all . . . property . . . which I own or have the right to dispose of at the time of my death." *Id.* at 692, 351 A.2d at 130.

expressly designated by the donee-testator.[83] Construing the purpose of this restriction to be identical to that of a Maryland statute[84] designed to prevent the inadvertent exercise of powers of appointment, the court held that the language in the testator's residuary clause was not explicit enough to exercise the power in favor of the foundation.[85]

Similarly, in *Caruthers v. Buscher*,[86] the court of special appeals addressed the issue of whether, by directing the payment of all just debts from his estate, a testator had evidenced an intent sufficiently clear to exonerate devised realty from an encumbrance.[87] Maryland's

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83. *Id.* at 691, 351 A.2d at 130. Instead of construing this language to require the testator to appoint expressly *who* shall take the property by appointment, the court interpreted it to mean that the testator could exercise the power only by a reference in his will "to the instrument creating the power or . . . to the estate which was subject to the power." *Id.* at 695, 351 A.2d at 132.

84. MD. EST. & TRUSTS CODE ANN. § 4-407 (1974) provides:

> Subject to the terms of the instrument creating the power, a residuary clause in a will exercises a power of appointment held by the testator only if:
>
> (1) An intent to exercise the power is expressly indicated in the will; or
>
> (2) The instrument creating the power of appointment fails to provide for disposition of the subject matter of the power upon its nonexercise.

The deed of trust creating the power provided that in the event the testator did not expressly appoint named persons and corporations, the trust property should pass to those persons who would have taken as his heirs had he died intestate. 276 Md. at 691, 351 A.2d at 130. Thus, apart from the restriction in the trust deed, the power of appointment in *Leidy* could have been exercised, if at all, only under MD. EST. & TRUSTS CODE ANN. § 4-407(1) (1974). Referring to the restriction in the deed of trust, the court noted that "the draftsman used the language customarily used by careful draftsmen to minimize the possibility of an inadvertent exercise of the power." 276 Md. at 696, 351 A.2d at 132-33. Earlier in the opinion, the court stated that the purpose of MD. EST. & TRUST CODE ANN. § 4-407 was "to prevent an inadvertent exercise of the power, which had been possible under the prior law." *Id.* at 694, 351 A.2d at 132.

85. 276 Md. at 697, 351 A.2d at 133. The court of appeals based its decision on the restriction in the trust deed requiring express language, *Id.* at 695, 351 A.2d at 132, quoting the § 4-407 provision that it is "*subject to the terms of the instrument creating the power.*" *Id.* at 694, 352 A.2d at 131 (emphasis in original). The court found that the purpose of the restriction was identical to the purpose of § 4-407. This may indicate that § 4-407(1) requires a testator's intent to exercise a power of appointment to be manifested by an express reference to the instrument creating the power or the estate subject to the power. See note 83 *supra*.

86. 38 Md. App. 661, 382 A.2d 608 (1978).

87. The appellees' contention that the direction to pay all just debts indicated an intention to exonerate was strengthened by the testator's use of different language in two subparagraphs of his will, each devising a parcel of realty. In a devise of a condominium unit, the testator bequeathed the property to a legatee, "subject to his assuming the encumbrance thereon." *Id.* at 663, 382 A.2d at 610. In another subparagraph, the testator devised residential property encumbered at the time of the will's execution, but made no mention that it should pass subject to an encumbrance. *Id.* Nevertheless, the court indicated that this difference in language, even when construed with the direction to pay all debts, did not constitute the clear expression of intent, required by MD. EST. & TRUST CODE ANN. § 4-406, to exonerate the residential property from the encumbrance. 38 Md. App. at 672, 382 A.2d at 615.

anti-exoneration statute requires that an intent to exonerate be indicated expressly in the will in order to be given effect.[88] This statute was enacted to abrogate the unpopular common law rule that all encumbrances on a testator's real estate existing at the time of the will's execution are discharged using funds from his personal estate, unless a contrary intent is clearly manifested in the will.[89] In *Caruthers,* the court held that the testator's general direction to pay his just debts did not expressly indicate the intent to exonerate the devised realty.[90]

The *Leidy, Caruthers,* and *Johnson* decisions highlight the deference paid by the courts to remedial legislation, and indicate that where the Maryland General Assembly has enacted such remedial legislation, only clear language will be given effect as a testamentary directive to depart from the remedial legislative scheme. This is particularly evident in *Johnson,* because there is no statutory requirement that an intent to impose estate taxes in a manner other than apportionment be expressly stated.[91] The statutes in *Leidy* and *Caruthers,* however, both contained such a requirement.[92] The legislature's omission of the word "expressly" from the exception provision[93] in Maryland's apportionment statute provided the *Johnson* court with an opportunity and rationale to permit non-apportionment in the instance of less than express language.[94] The *Johnson* court allowed this opportunity to pass unexercised, suggesting that the court was concerned primarily with promoting

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88. MD. EST. & TRUST CODE ANN. § 4-406 (1974). This statute provides, in part: "Unless a contrary intent is expressly indicated in the will, a legacy of specific property shall pass subject to a security interest or lien on the property which existed at the time of the execution of the will . . . ."
89. 38 Md. App. at 666-67, 382 A.2d at 612.
90. *Id.* at 671, 382 A.2d at 615.
91. Maryland's Uniform Estate Tax Apportionment Act states only that its provisions shall apply to the apportionment of estate taxes "[e]xcept as otherwise provided in the will." MD. EST. & TRUSTS CODE ANN. § 11-109(k) (1974).
92. *See* MD. EST. & TRUSTS CODE ANN. §§ 4-407(1), 4-406 (1974).
93. MD. EST. & TRUSTS CODE ANN. § 11-109(k) (1974).
94. Moreover, there is authority that could have encouraged the court to accept the doctors' argument that Dr. Johnson's "Article FIRST" should be construed as a direction against apportionment. Under Maryland's 1947 estate tax apportionment statute, language similar to that in the disputed tax clause would have been construed as a direction that taxes not be apportioned. This statute provided in part:

> Whenever any decedent shall in substance provide in his will that any and all estate taxes on his estate shall be paid out of his estate, such provision shall be construed to exonerate from contribution to the payment of the estate tax all persons otherwise liable for contribution thereto under the provisions of this section, unless the decedent shall specifically direct such contribution.

Law of June 1, 1947, ch. 156, § 126(5)(b), 1947 Md. Laws 227 (repealed 1965). Similarly, the Attorney General of Maryland advised in 1939 that when a will directed that "all transfer, inheritance, estate or succession taxes be paid out of my general estate," the testator intended that estate taxes should not be apportioned pursuant to the 1937 apportionment statute. 24 Op. Md. Att'y Gen. 884, 887 (1939).

the remedial purpose underlying Maryland's Uniform Estate Tax Apportionment Act.[95]

In his dissenting opinion,[96] Chief Judge Murphy contended that the *Johnson* majority had engrafted the word "expressly" onto the Maryland apportionment statute.[97] Although the court did state at one point that a direction against apportionment must be "plainly stated,"[98] lending credence to Chief Judge Murphy's assertion, it also indicated that "a few simple words which need not be couched in terms of a negative direction against apportionment . . . will be sufficient if they demonstratively express the testator's intent."[99] This latter language seems to indicate that less than an express direction not to apportion will be given effect.[100] Whether an effective

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95. Remedial statutes are normally construed liberally to suppress the evil and advance the remedy. 3 J. SUTHERLAND, STATUTORY CONSTRUCTION 29 (4th ed. 1974). While statutes that are in derogation of the common law are given a strict construction, Maryland's Uniform Estate Tax Apportionment Act is both a remedial statute and one in derogation of the common law. Notwithstanding the remedial nature of the statute, the rule of liberal construction will yield to a strict construction when application of the rule would defeat the purpose of the legislation. *Id.* "[A] testator generally reads with care only the dispositive provisions of a will and not the so-called 'boilerplate.' " Brief for Amicus Curiae at 5, Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978). Only a strict construction of the "[e]xcept as otherwise provided in the will" language in MD. EST. & TRUSTS CODE ANN. § 11-109(k) (1974) will afford the necessary protection to testators who may not foresee the tax allocation problems arising from a boilerplate tax clause.

96. Johnson v. Hall, 283 Md. 644, 657, 392 A.2d 1103, 1111 (1978) (Murphy, C.J., dissenting).

97. *Id.* at 662, 392 A.2d at 1113-14 (Murphy, C.J., dissenting).

Discussing what the Maryland General Assembly might have meant when it drafted the word "expressly" into some of its statutory provisions but not others, the Court of Special Appeals of Maryland in Caruthers v. Buscher, 38 Md. App. 661, 382 A.2d 608 (1978), noted that "a comparison of terms, in pursuance of the maxim that 'if the Legislature wanted such and such it could have said so as it did elsewhere' " was not of much assistance. *Id.* at 671 n.9, 382 A.2d at 614 n.9. See text accompanying notes 81-91 *supra.*

In Sollers v. Mercantile-Safe Deposit & Trust Co., 262 Md. 606, 278 A.2d 581 (1971), the court of appeals interpreted the statutory phrase "[u]nless a contrary intention *expressly* appears," in MD. EST. & TRUSTS CODE ANN. § 1-21(d) (1974) (emphasis supplied), to mean "in the absence of a clear expression of contrary intention." 262 Md. at 610, 278 A.2d at 583. This interpretation is reasonable and, if it were actually the legislature's intended definition, the Chief Judge's contention would be accurate.

98. 283 Md. at 649, 392 A.2d at 1106.

99. *Id.* at 649, 392 A.2d at 1107 (citation omitted).

100. Nevertheless, clarity of expression remains the standard by which the efficacy of testamentary directives against estate tax apportionment will be measured. The *Johnson* court expressly adopted the principle "that a statute directing apportionment will be ignored only if the testator clearly and unambiguously indicates that to be his intention." *Id.* at 652, 392 A.2d at 1108.

Although the court of appeals had no prior occasion to adopt this principle with regard to estate tax apportionment, there is Maryland case precedent indicating that testamentary language must be clear and unambiguous when directing that inheritance taxes, normally apportioned, are to be allocated to the residuary estate. *Cf.* General German Aged People's Home v. Johns Hopkins Hosp., 170 Md. 128, 183 A. 247 (1936) (general testamentary direction to pay

direction against apportionment can be couched in less than express, yet unambiguous, language must await further decisions.[101] This issue was not resolved in *Johnson* because the controverted language was neither express nor unambiguous.[102]

Also contained in the dissent is the suggestion that the bequest to the residuary beneficiary was ample. This suggestion is used to support the argument that the testatrix intended that her son's residuary share bear the entire burden of the estate tax, rather than apportioning it among the other presumably less-munificently-provided-for legatees.[103] The reasoning underlying this contention is at best conjectural, inasmuch as the amount of wealth considered ample will vary widely from person to person. Moreover, it can as

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taxes was not sufficient direction against apportionment of inheritance taxes) (this case is captioned *Textor v. Textor* in unofficial report).

101. It is conceivable that a result contrary to *Johnson* would occur were a Maryland testator to demonstrate in the remainder of his will a clear intention to avoid apportionment. The *Johnson* court appears to have adopted the "examination of the entire will" approach applied in *In re* Crozier's Estate, 105 N.H. 400, 201 A.2d 895 (1964). In *Crozier,* the New Hampshire court noted that the testatrix' tax clause standing alone did not clearly direct against apportionment, but by its examination of the entire will the court found that the testatrix preferred the specific legatees and intended that they be freed from their estate tax responsibilities. Hence, the court held that the taxes should be paid from the residue. *Id.* at 442, 201 A.2d at 896. Oregon expressly adopted the *Crozier* approach in Skaggs v. Yunck, 10 Or. App. 536, 539, 599 P.2d 1230, 1231 (1972). The *Skaggs* court held that a tax clause alone did not clearly indicate an intent to avoid apportionment, and its examination of the rest of the will revealed no evidence that would bolster the assertion that the testator intended not to apportion the estate taxes. *See* Brief for Amicus Curiae at 8, Johnson v. Hall, 283 Md. 644, 392 A.2d 1103 (1978). Similarly, the *Johnson* court examined Catherine Johnson's will as a whole and decided that she did not intend to avoid apportionment. The court noted that her use of a marital deduction trust, perpetuities savings clause, and common disaster clause indicated care and precision in the drafting of her will. 283 Md. at 656, 392 A.2d at 1110. Moreover, the court found that the second item of her will directing that the gift of her interest in the Johnson residence be freed from mortgages indicated that Dr. Johnson was well aware of a proper method of exonerating a bequest from an encumbrance when she wished to do so. *Id.* at 656, 392 A.2d at 1111.

102. There is no question that the language within "Article FIRST" of Dr. Johnson's will directing the early payment of taxes was ambiguous. Both the court of appeals, 283 Md. 644, 649, 392 A.2d 1103, 1107, and the court of special appeals, 38 Md. App. 589, 596, 382 A.2d 332, 336, adopted the principle that "[i]n a tax allocation problem the text of the will is to be scanned only to see if there is a clear direction not to apportion; and if such explicit direction is not found, *construction of the text ceases because the statute states the rule,*" in support of their opposite decisions.

Declarations of a testator's intent both prior to and contemporaneous with the execution of his will are admissible where his intention is not clearly ascertainable on the face of the will. *E.g.,* Veditz v. Athey, 239 Md. 435, 449, 212 A.2d 115, 123 (1965); Shellady v. Herliky, 236 Md. 461, 474, 204 A.2d 504, 511 (1964). In *Shellady,* the court stated, "[w]here . . . there is a latent ambiguity, declarations of intention are admissible, with extrinsic evidence, in the interpretation of the latent ambiguity, but declarations are admissible only for the purpose of establishing what the testator understood was signified by the words employed in the will." *Id.* While the orphans' court could have received oral or written extrinsic evidence as to what Catherine Johnson actually intended when "Article FIRST" was drafted, apparently none was offered.

readily be contended that the testatrix would view the appellee-doctors, practitioners of a remunerative profession, as less in need of a gratuitous transfer of wealth than her son, the residuary legatee, whose recurring mental illness might handicap his future employment opportunities.

As evidenced by its inclusion of an exception provision enabling the testator to direct that his taxes not be apportioned,[104] the Maryland General Assembly did not intend to contravene the basic rule that the intent of the testator as ascertained from the four corners of his will controls the disposition of his estate.[105] In so far as the court of special appeals held the view that the uniformity of construction clause in Maryland's Uniform Estate Tax Apportionment Act required it to follow precedent from Uniform Act jurisdictions in construing Dr. Johnson's will,[106] it contravened that basic proposition by holding that the construction placed upon similar language by the courts of those jurisdictions must be followed mechanically, without independent consideration being given to the testator's intent in using that language. Adoption of this view as the ratio decidendi for deciding *Johnson* creates, in effect, a rule of law insensitive to a testator's intent, rather than a rule of construction.[107]

The court of appeals, on the other hand, did not feel constrained by the uniformity clause to construe "Article FIRST" of Dr. Johnson's will in harmony with courts from other Uniform Act jurisdictions.[108] The decision of the court of appeals implicitly recognizes that mechanical adoption of precedent exalts form over substance and trammels the intent of the testator.[109] Moreover, subtle distinctions in intent, reflected in nuances of language in tax clauses, cannot be given effect if the determination of their import is

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103. Johnson v. Hall, 283 Md. 644, 655, 392 A.2d 1103, 1111 (1978) (Murphy, C.J., dissenting).
104. MD. EST. & TRUSTS CODE ANN. § 11-109(k) (1974).
105. *E.g.*, Wesley Home, Inc. v. Mercantile-Safe Deposit & Trust Co., 265 Md. 185, 198, 289 A.2d 337, 344 (1972). The *Johnson* court acknowledged this when it stated, "[t]his enactment . . . is in harmony with the firmly established rule that, unless prohibited by statute or public policy, the intent of the testator as ascertained from the four corners of the will controls the disposition of a decedent's estate." 283 Md. at 648-49, 392 A.2d at 1106.
106. Hall v. Johnson, 38 Md. App. 589, 593-94, 382 A.2d 332, 335 (1978).
107. "No two testators are situated precisely the same, and it is both unsafe and unjust to interpret the will of one man by the dubious light afforded by the will of another." Bradbury v. Jackson, 97 Me. 449, 455, 54 A. 1068, 1070 (1903).
108. See text accompanying notes 68-70 *supra*.
109. In Moore v. Emery, 137 Me. 259, ____, 18 A.2d 781, 790 (1941), the court stated:
> There is no particular magic in isolated phrases. Language which may mean one thing when applied to one state of facts may have to be interpreted differently when applied to another. Precedents are of less importance than elsewhere in the law; and to quite an extent each case must be considered by itself.

made solely so as to promote uniformity among jurisdictions.[110] As was stated by Jeremy Bentham 150 years ago, "[i]n evident reason and common justice, no . . . will ought to be taken as a rule for any other; no more than the evidence in one cause is a rule for the evidence to different facts in another cause."[111]

Whatever significance a clause merely directing that debts and expenses be paid may have had in the past, today such ritualistic preambles perform no legal function regarding *who* must pay estate debts and expenses.[112] Were the clause omitted from the will, debts and expenses would be exacted from the residuary estate, absent a contrary direction. The inclusion of taxes in such a boilerplate recitation should not be construed to evidence a desire to change the source from which estate taxes are usually satisfied. Rather, the fact that debts, expenses, and taxes all share the quality of being exacted inexorably from decedents' estates is a sufficient logical basis for their being grouped together in a pro forma clause. Language such as that in "Article FIRST" of Dr. Johnson's will may be viewed as an acknowledgment by the testatrix that such charges are owing, legally and morally, and that it is her foremost intention to satisfy the claims of her creditors — both public and private.

Finally, the *Johnson* decision promotes the remedial function the apportionment statute was designed to perform. The statute was enacted because application of the common law rule frequently severely diminished the share of residuary beneficiaries — a result often unintended and unforeseen by the testator.[113] Frustration of the remedial purposes that prompted enactment of the apportionment statute becomes probable in any instance when language that falls short of being a clear direction not to apportion is given effect.

VI. CONCLUSION

Maryland's Uniform Estate Tax Apportionment Act was enacted in order to abrogate a rule of common law that operated to diminish the legacies of residuary beneficiaries. In *Johnson v. Hall*,[114] the court of appeals adhered to the purpose underlying this

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110. In Judik v. Travers, 184 Md. 215, 40 A.2d 306 (1944), the court of appeals stated that "the interpretation of wills, depending mainly upon the particular words chosen by the testator in a given instance, can derive but little aid from adjudicated cases, in which other wills, different in their terms and provisions, have been judicially construed." *Id.* at 222, 40 A.2d at 309.

111. 5 J. BENTHAM, RATIONALE OF JUDICIAL EVIDENCE 590 (1827) (unnumbered footnote).

112. This type of clause may be found in most legal form books. *See, e.g.*, S. ROUNDS, MURPHY'S WILL CLAUSES, Form 4:11-4 (1979); 2 INSTITUTE FOR BUSINESS PLANNING, ESTATE PLANNING ¶ 25,059AC. 1 (1979).

113. See text accompanying notes 17-19 *supra*.

114. 283 Md. 644, 392 A.2d 1103 (1978).

legislation by holding boilerplate language in Dr. Catherine Johnson's will to be ineffective as a directive to depart from the statutory apportionment scheme. The decision is consonant with the cardinal principle of will construction in apportionment disputes that an intent not to apportion estate taxes must be expressed clearly and unambiguously. *Johnson,* when read in conjunction with two other recent Maryland cases,[115] indicates the courts' unwillingness to limit the application of remedial statutes governing the construction of wills. These decisions reveal that clarity of expression is the benchmark by which Maryland courts guage the efficacy of testamentary language directing against the application of such legislation.

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115. Leidy Chem. Foundation, Inc. v. First Nat'l Bank, 276 Md. 689, 351 A.2d 129 (1976); Caruthers v. Buscher, 38 Md. App. 661, 382 A.2d 608 (1978).