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## Wyoming's Uniform Declaratory Judgments Act: Statutory and Case Law Analysis

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## COMMENT

### WYOMING'S UNIFORM DECLARATORY JUDGMENTS ACT: STATUTORY AND CASE LAW ANALYSIS

In 1923, Wyoming was one of the first adopters<sup>1</sup> of the Uniform Declaratory Judgments Act.<sup>2</sup> Declaratory relief decrees under Wyoming's Uniform Declaratory Judgments Act<sup>3</sup> are intended to terminate uncertainty and provide relief from insecurity with respect to one's rights;<sup>4</sup> prevent wrongs before their commission;<sup>5</sup> stabilize uncertain or disputed jural relations;<sup>6</sup> and generally declare rights, status and other legal relations.<sup>7</sup> The statutes should be *liberally* construed and the remedy should be *liberally* applied.<sup>8</sup> According to the Wyoming Supreme Court in *Brimmer v. Thomson*, "[b]egrudging availability of the declaratory vehicle is inconsistent with the Act's expressed remedial tenor directed to the elimination of uncertainty and insecurity and the settlement of controversy."<sup>9</sup>

Wyoming's case law for declaratory relief is still in its early stages of development, though there have been numerous cases under Wyoming's Act which have reached the Wyoming Supreme Court, the United States District Court of Wyoming and the Court of Appeals for the Tenth Circuit. Wyoming's employment of the declaratory judgment action does not begin to approach Great Britain's use of declaratory relief to resolve sixty percent of all its

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1. 1923 WYO. SESS. LAWS Ch. 50, § 1.
2. 12 UNIFORM LAWS ANN. 109-605 (1975). [Hereinafter cited in the text as the Uniform Declaratory Judgments Act or the Uniform Act].
3. WYO. STAT. § 1-37-101 through § 1-37-115 (1977). [Wyoming's version of the Uniform Act is hereinafter cited as Wyoming's Uniform Declaratory Judgments Act, the Wyoming Act or Wyoming's Act.]
4. WYO. STAT. § 1-37-114 (1977).
5. *Cranston v. Thomson*, 530 P.2d 726, 729-730 (Wyo. 1975) *citing* *Doe v. Bolton*, 410 U.S. 179 (1973) for the proposition that one should not have to violate the law and face criminal prosecution before one's rights are known. *See also* WYO. STAT. § 1-37-104 (1977) which says that a contract may be construed before there is a breach.
6. *Brimmer v. Thomson*, 521 P.2d 574, 578-579 (Wyo. 1974). *See also* WYO. STAT. §§ 1-37-102 and 1-37-114 (1977).
7. WYO. STAT. § 1-37-102 (1977).
8. WYO. STAT. § 1-37-114 (1977).
9. *Brimmer v. Thomson*, *supra* note 6, at 577 *citing* *Planned Parenthood Center of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 497 P.2d 534, 538 (1972).

equity cases.<sup>10</sup> Wyoming is still grappling with the preliminary questions of justiciability and alternative remedies.

In analyzing Wyoming's Uniform Declaratory Judgments Act, its construction, interpretation and application, this comment will: (1) review the history of declaratory relief, the enactment of the Uniform Act, and Wyoming's adoption of the Uniform Act; (2) present an overview of Wyoming's statutory declaratory relief law and Rule 57 of the Wyoming Rules of Civil Procedure;<sup>11</sup> (3) examine the availability of declaratory relief, focusing on the uniqueness of the remedy of declaratory relief, the issue of a justiciable controversy, the availability of alternative remedies, and the requirement of interested parties; (4) detail the pleadings and procedure by which declaratory relief is obtained; and (5) discuss the applications of Wyoming's Act to specific situations in the case law.

## I. HISTORY OF THE UNIFORM DECLARATORY JUDGMENTS ACT AND WYOMING'S ADOPTION OF THE UNIFORM DECLARATORY JUDGMENTS ACT.

### A. *History of Declaratory Relief*

The origins of judicial declaratory relief extend back 2,000 years.<sup>12</sup> Modern day statutory declaratory acts find their roots in the judicial declaratory proceedings of Roman and English law.<sup>13</sup> Roman law evidenced a slow and restricted growth of declaratory relief with the real maturity of such relief coming during the Middle Ages.<sup>14</sup>

The common law's rule denying relief until there was an invasion of rights impeded the development of declaratory relief.<sup>15</sup> Gradual inroads to this rule were made. By the time of Lord Coke in the seventeenth century, common law provided six writs under which anticipatory and preventive

10. ANDERSON, 1 DECLARATORY JUDGMENTS § 1, at 4 (1951). [Hereinafter cited as ANDERSON.]

11. Wyo. R. Civ. P. 57.

12. Holly Sugar Corporation v. Fritzler, 42 Wyo. 446, 296 P. 206, 209 (1931).

13. ANDERSON, *supra* note 10, at 3.

14. BORCHARD, DECLARATORY JUDGMENTS 3-5, 87-101 (2d ed. 1941).

15. ANDERSON, *supra* note 10, § 187 at 372.

relief was available.<sup>16</sup> With the advent of equity, the six writs were replaced by the action of *quia timet*. The equitable remedy of *quia timet* saw little use or development with the passage of time.<sup>17</sup> History was prepared for the expansion of declaratory relief in the form of the statutory enactments which followed.

### B. *The Uniform Declaratory Judgments Act*

The adoption of statutory declaratory relief in the United States was facilitated by the approval of the Uniform Declaratory Judgments Act in 1922 by the National Conference of Commissioners on Uniform State Laws and the American Bar Association.<sup>18</sup> Wyoming, in 1923, was one of the first adopters of the Uniform Act.<sup>19</sup> To date 41 jurisdictions, including Wyoming, have enacted some version of the Uniform Act.<sup>20</sup> Federal courts have their own declaratory judgments proceeding.<sup>21</sup>

### C. *Wyoming's Enactment of the Uniform Declaratory Judgments Act*

Wyoming enacted the Uniform Declaratory Judgments Act in its entirety in 1923.<sup>22</sup> Confronted with the argument that the Wyoming Act conferred nonjudicial power on courts and was therefore unconstitutional, the Wyoming Supreme Court declared the Wyoming Act constitutional in *Holly Sugar Corporation v. Fritzler*.<sup>23</sup>

In 1973, a minor change was made in the section regarding a fiduciary's rights.<sup>24</sup> The year 1977 saw major revision of the Wyoming Act along with some housekeeping

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16. *Id.* § 1 at 1-2.

17. *Id.* at 2.

18. 12 UNIFORM LAWS ANN. 109 (1975).

19. 1923 WYO. SESS. LAWS Ch. 50, § 1.

20. 12 UNIFORM LAWS ANN. 52 (Supp. 1980).

21. 28 U.S.C. §§ 2201, 2202 (1976).

22. 1923 WYO. SESS. LAWS Ch. 50, § 1.

23. *Holly Sugar Corporation v. Fritzler*, *supra* note 12, at 209.

24. Compare WYO. STAT. § 1-1054 (1957) with WYO. STAT. § 1-37-105 (1977). The language "beneficiary of a trust" was substituted for "cestuique trust", "a minor or person under legal disability" was substituted for "an infant, lunatic, or insolvent."

amendments. The major change included the addition of a statute for the adjudication of water rights.<sup>25</sup> Housekeeping amendments<sup>26</sup> included language revisions of Sections 1-37-102,<sup>27</sup> 1-37-103,<sup>28</sup> 1-37-110,<sup>29</sup> 1-37-113,<sup>30</sup> and 1-37-114<sup>31</sup> of the Wyoming Statutes with the substance of the original statutes left intact. Other changes in 1977 included the repeal of two statutes.<sup>32</sup>

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25. 1977 WYO. SESS. LAWS Ch. 2, § 1. *Now* WYO. STAT. § 1-37-106 (1977). This comment does not purport to analyze WYO. STAT. § 1-37-106 (1977) in any detail. *See* Comment, *Determination of Federal Water Rights Pursuant to the McCarran Amendment: General Adjudication in Wyoming*, 12 LAND & WATER L. REV. 457 (1977) and Comment, *McCarran Amendment General Adjudications in Wyoming: Threshold Problems*, 16 LAND & WATER L. REV. 53 (1980).
26. *See* the introduction to 1977 WYO. SESS. LAWS Ch. 188, § 1. The introduction states that the 1977 revisions to Chapter 188 are essentially housekeeping and an attempt to clean-up the statutes. The changes to the Wyoming Act are printed in the 1977 Session Laws as Sections 1-38-101 through 1-38-114 but come out printed in the Wyoming Statutes as WYO. STAT. §§ 1-37-101 through 1-37-115 (1977).
27. *Compare* WYO. STAT. § 1-1051 (1957) with WYO. STAT. § 1-37-102 (1977).
28. *Compare* WYO. STAT. § 1-1052 (1957) with WYO. STAT. § 1-37-103 (1977). In 1977, a provision for the declaration of "rights, status or other legal relations . . . affected by the Wyoming [C]onstitution" was inserted in Section 1-37-103. The inclusion of the Wyoming Constitution and the omission of the United States Constitution could be interpreted to mean that Wyoming's Act does not afford relief to one whose federal constitutional rights are threatened—a very unpalatable but permissible result. On the other hand, if the 1977 amendments to the Wyoming Act were read as merely housekeeping, no substantive changes in the law were intended. If this latter rationale is correct, one whose federal constitutional rights are threatened and who seeks declaratory relief can resort to the general language of Section 1-37-102 which allows the declaration of "rights, status and other legal relations" without specifying the source of those rights. Further support for the argument that Wyoming's Act provides declaratory relief to one whose federal constitutional rights have been violated can be found in Section 1-37-107 which states that the enumerations in the prior sections are not the exclusive exercises of declaratory relief.
29. *Compare* WYO. STAT. § 1-1058 (1957) with WYO. STAT. § 1-37-110 (1977).
30. *Compare* WYO. STAT. § 1-1061 (1957) with WYO. STAT. § 1-37-113 (1977).
31. *Compare* WYO. STAT. § 1-1062 (1957) with WYO. STAT. § 1-37-114 (1977).
32. In 1977, the section within the Wyoming Act which defined "persons" was repealed. *See* WYO. STAT. 1-1050 (1957) and 1977 WYO. SESS. LAWS, Ch. 188, § 1. The definition of "persons" for purposes of declaratory judgment can now be found in the general definitions section of the Wyoming Statutes. *See* WYO. STAT. § 8-1-102(a)(vi) (1977). No substantive change in the definition of "persons" for the purposes of declaratory relief was made by repealing the 1957 statute and replacing it with Section 8-1-102.

For purposes of adjudicating water rights, Section 1-37-106 contains its own definition of "persons." Section 1-37-106 is more explicit than the general definitions section in that a municipality, the State of Wyoming and the United States are "persons." The general definition section's language should be broad enough, however, to reach a city, the state or the United States. *Compare* WYO. STAT. § 1-37-106(a)(i)(B) (1977) with WYO. STAT. § 8-1-102(a)(vi) (1977).

The 1957 statute, Section 1-1064, calling for uniformity of interpretation and construction of Wyoming's Acts in line with the interpretations and constructions of other states who have enacted the Uniform Act was repealed. *See* WYO. STAT. § 1-1064 (1957) and 1977 WYO. SESS. LAWS Ch. 188, § 1. This is perhaps reflective of the fact that the states who have adopted the Uniform Act are not consistent among themselves in their

## II. WYOMING'S UNIFORM DECLARATORY JUDGMENTS ACT—AN OVERVIEW

As it stands today, Wyoming's law for declaratory relief can be organized into four basic parts: (1) The introduction. (2) Particular applications of declaratory relief. (3) Procedures by which declaratory relief is obtained. (4) Rules of construction.

### A. *Introduction*

Sections 1-37-101 and 1-37-102 of the Wyoming Statutes set out the name and scope of the Wyoming Act along with general procedural considerations.<sup>33</sup>

### B. *Statutory Provisions for the Particular Applications of Declaratory Relief*

In addition to being an introductory statement, Section 1-37-102 specifies that declaratory judgment proceedings can properly be used to "declare rights, status or other legal relations."<sup>34</sup> Sections 1-37-103 through 1-37-106 detail particular applications of declaratory relief.<sup>35</sup> Section 1-37-103 allows declaratory judgment proceedings to be brought by persons

interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by the Wyoming constitution, or by a statute, municipal ordinance, contract or franchise.<sup>36</sup>

Section 1-37-104 provides that a contract may be construed either before or after a breach.<sup>37</sup> A provision allowing declaratory judgment proceedings by a fiduciary is con-

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constructions and interpretations of that law. It is also possibly a statement that Wyoming intends to develop its own declaratory relief law independent of other jurisdictions. This second rationale is supported by Wyoming's enactment of a statute as part of the Wyoming Act specifically for the adjudication of water rights when no other state so provides. Other states allow for the adjudication of water rights but none do so within their Uniform Declaratory Judgments Act.

33. WYO. STAT. § 1-37-101 and § 1-37-102. (1977).

34. WYO. STAT. § 1-37-102 (1977).

35. WYO. STAT. § 1-37-103 through § 1-37-106 (1977).

36. WYO. STAT. § 1-37-103 (1977).

37. WYO. STAT. § 1-37-104 (1977).

tained in Section 1-37-105.<sup>38</sup> Section 1-37-106 allows declaratory relief to be applied to the adjudication of water rights.<sup>39</sup> Section 1-37-107 states that the enumerations in Sections 1-37-103 through 1-37-106 are not exclusive.<sup>40</sup>

*C. Statutory Procedure by Which Declaratory Relief is Obtained*

Section 1-37-102 sets out general procedural considerations.<sup>41</sup> The form of the relief may be either negative or affirmative and the declaration shall have the effect of a final judgment.<sup>42</sup> Section 1-37-106 specifies particular guidelines in cases involving the general adjudication of water rights.<sup>43</sup>

The main sections dealing with procedures are Sections 1-37-108 through 1-37-113.<sup>44</sup> The granting of declaratory relief is discretionary;<sup>45</sup> final declaratory decrees are appealable;<sup>46</sup> relief supplemental to declaratory relief is available;<sup>47</sup> declaratory proceedings allow for the determination of issues of fact;<sup>48</sup> costs may be awarded;<sup>49</sup> and interested persons including the state and municipalities shall be made parties under specified circumstances.<sup>50</sup> The interplay of the specific procedural requirements of Section 1-37-106 and the more general procedures of Sections 1-37-102 and 1-37-108 through 1-37-113 is not clear. The inclusion of Section 1-37-106 in Wyoming's Act indicates that the drafters of that section intended to have the general procedures of the Wyoming Act as well as the specific requirements of Section 1-37-106 apply in cases of the general adjudication of water rights.

Rule 57 of the Wyoming Rules of Civil Procedure cannot be forgotten in defining the procedures by which

38. WYO. STAT. § 1-37-105 (1977).

39. WYO. STAT. §§ 1-37-106 (1977).

40. WYO. STAT. §§ 1-37-107 (1977).

41. WYO. STAT. § 1-37-102 (1977).

42. *Id.*

43. WYO. STAT. § 1-37-106 (1977).

44. WYO. STAT. §§ 1-37-108 through § 1-37-113 (1977).

45. WYO. STAT. § 1-37-108 (1977).

46. WYO. STAT. § 1-37-109 (1977).

47. WYO. STAT. § 1-37-110 (1977).

48. WYO. STAT. § 1-37-111 (1977).

49. WYO. STAT. § 1-37-112 (1977).

50. WYO. STAT. § 1-37-113 (1977).

declaratory relief is obtained.<sup>51</sup> This rule states that the Wyoming Rules of Civil Procedure shall apply to declaratory proceedings, that the right to a jury trial in declaratory proceedings is defined by Rules 38 and 39 of the Wyoming Rules of Civil Procedure, that the existence of an alternative remedy does not preclude declaratory judgment and that declaratory proceedings may be advanced on the court's calendar.<sup>52</sup>

#### *D. Rules of Construction.*

The rules for construing Wyoming's Act are set out in Sections 1-37-114 and 1-37-115.<sup>53</sup> The Wyoming Act is to be liberally construed and administered with an eye toward affording relief from uncertainty as to one's rights.<sup>54</sup> In construing the Wyoming Act, the invalidity of one provision shall not necessarily render the remaining provisions invalid.<sup>55</sup>

### III. AVAILABILITY OF DECLARATORY RELIEF: UNIQUENESS OF THE REMEDY, JUSTICIABLE CONTROVERSY, ALTERNATIVE REMEDIES AND INTERESTED PARTIES

#### *A. Uniqueness of the Remedy*

In deciding whether to rely upon an action for declaratory relief as opposed to other forms of relief, the attorney practicing in Wyoming should keep in mind the characteristics which distinguish declaratory relief from other actions. The uniqueness of declaratory relief is threefold.

First, the plaintiff's remedy is a declaration of rights, statutes and legal relationships<sup>56</sup> as opposed to the granting of coercive relief. Plaintiff may supplement the declaratory remedy with coercive relief<sup>57</sup> but that is not necessary to procure the court's jurisdiction.

51. WYO. R. CIV. P. 57.

52. *Id.* See also WYO. R. CIV. P. 38 and 39.

53. WYO. STAT. § 1-37-114 and § 1-37-115 (1977).

54. WYO. STAT. § 1-37-114 (1977).

55. WYO. STAT. § 1-37-115 (1977).

56. WYO. STAT. § 1-37-102 (1977).

57. WYO. STAT. § 1-37-110 (1977).



Second, the showing necessary to obtain the court's jurisdiction is that of a showing of the existence of a justiciable controversy.<sup>58</sup> This is in contrast to the showing of the invasion of one's rights or the commission of a wrong<sup>59</sup> which is necessary when coercive relief is sought.

Third, by choosing a declaration of rights, plaintiff can avoid certain technical formalities which accompany other forms of relief. For example, plaintiff can avoid the stringent requirement of posting a bond which accompanies a request for an injunction.<sup>60</sup> Declaratory relief cannot give the coercive relief that an injunction can, but declaratory relief may be a sufficient remedy in itself in certain cases.<sup>61</sup>

Beyond being able to distinguish declaratory relief from other civil actions, attorneys in Wyoming should be aware of the distinct requirements which are necessary to obtain declaratory relief;<sup>62</sup> they should be aware of the rules of practice and procedure which accompany declaratory relief actions;<sup>63</sup> and they should be cognizant of judicial decisions regarding specific applications of declaratory relief.<sup>64</sup>

### *B. Justiciable Controversy*

*Cranston v. Thomson* has characterized the issue of a justiciable controversy as the "threshold question" which the plaintiff must hurdle in a declaratory judgment action.<sup>65</sup> A justiciable controversy is a jurisdictional prerequisite to a declaratory relief action.<sup>66</sup>

*Brimmer v. Thomson* sets out the four elements of a justiciable controversy:

First, a justiciable controversy requires parties having existing and genuine, as distinguished from theoretical, rights or interests. Second, the contro-

58. See text accompanying notes 65-94, *infra*.

59. ANDERSON, *supra* note 10, § 187 at 372. See also note 5, *supra*.

60. Wyo. R. Civ. P. 65.

61. For a criticism of the use of declaratory relief actions as a way around the requirements of an injunction see Note, *Declaratory Relief in Louisiana: The Potential for Procedural Misuse*, 31 LA. L. REV. 549 (1971).

62. See text accompanying notes 65-125, *infra*.

63. See text accompanying notes 126-140, *infra*.

64. See text accompanying notes 141-178, *infra*.

65. *Cranston v. Thomson*, *supra* note 5, at 728.

66. *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*, 561 P.2d 706, 707, 710 (Wyo. 1977).

versy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument evoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships of one or more of the real parties in interest, *or, wanting these qualities be of such great and overriding public moment as to constitute the legal equivalent of all of them.* Finally, the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues. Any controversy lacking these elements becomes an exercise in academics and is not properly before the courts for solution. (Emphasis added.)<sup>67</sup>

The *Brimmer v. Thomson* court also set out the exception to the general rule, "The rule requiring the existence of justiciable controversies is not followed or is relaxed in matters of great public importance."<sup>68</sup> The court cautioned that the exercise of the exception "must be a matter where strict standards are applied to avoid the temptation to apply the judge's own beliefs and philosophies to a determination of what questions are of great public importance."<sup>69</sup>

In relaxing the general rule the court will look for two factors: (1) Is there an issue of great public importance? (2) Once an issue of great public importance has been found, are any of the four requisites of a justiciable controversy present? In deciding the question of whether an issue is of great public importance, the court will look to the nature of the right affected.<sup>70</sup> In *Brimmer v. Thomson*, the right to vote coupled with the right to seek election to public office constituted an issue of great public importance.<sup>71</sup> The court found the issue of state financing of public education

67. *Brimmer v. Thomson*, *supra* note 6, at 578 citing *Sorenson v. City of Ballingham*, 80 Wash.2d 547, 496 P.2d 512, 517 (1972).

68. *Id.*

69. *Id.*

70. *Id.* See also *Cranston v. Thomson*, *supra* note 5.

71. *Id.* at 578-579.

to be an issue of great public importance in *Washakie County School District Number One v. Herschler*.<sup>72</sup> In addition to hurdling the issue of public importance, the plaintiff will have to make a showing that some of the other conditions necessary to a justiciable controversy are present.<sup>73</sup> How many of the four conditions must be present is not clear. It is clear, however, that the determination that an issue is of great public importance, in and of itself, is insufficient to warrant relaxation of the general rule.<sup>74</sup>

In cases applying the general rule rather than the exception, all four requirements of a justiciable controversy must be present.<sup>75</sup> The lines between the four requirements are not distinct lines, but rather fade into each other.

The first condition requires that the parties must have legitimate interests that can be protected.<sup>76</sup> If the interests are purely theoretical, no justiciable controversy is present.<sup>77</sup> In *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*, an insurance carrier sought a declaration of rights to ascertain which of two insurance carriers was liable to a third party under the insurance policies. The plaintiff insurer did not present its own contract for construction and interpretation but instead relied solely on the terms within defendant insurer's policy for the determination of liability.<sup>78</sup> The court refused to determine the liabilities of the two insurers saying that plaintiff insurer was not a "person interested under a . . . contract."<sup>79</sup> Without the second insurance contract before the court, plaintiff's interest was merely theoretical.<sup>80</sup>

The second condition necessary to demonstrate a justiciable controversy requires that a controversy be present.<sup>81</sup>

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72. *Washakie County School District Number One v. Herschler*, 606 P.2d 310, 318 (Wyo. 1980).

73. *Cranston v. Thomson*, *supra* note 5, at 729.

74. *Id.*

75. *Brimmer v. Thomson*, *supra* note 6, at 578.

76. *Id.*

77. *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*, *supra* note 66, at 709.

78. *Id.*

79. *Id.* at 709-711 *citing* what is now WYO. STAT. § 1-37-103 (1977).

80. *Id.* at 709-711.

81. *Brimmer v. Thomson*, *supra* note 6, at 578.

This condition has often been phrased in terms of an *actual* controversy.<sup>82</sup> The United States Supreme Court in *Aetna Life Insurance Company v. Haworth* has declared the word "actual" to be one of emphasis, rather than of definition, when interpreting the Federal Declaratory Judgment Act.<sup>83</sup> Similarly, a close analysis of Wyoming case law shows that the terms controversy and actual controversy are used interchangeably and that the use of "actual" is merely emphatic.<sup>84</sup>

Instead of defining the term controversy, the Wyoming Supreme Court has declared what is not a controversy. Abstract questions, controversies in anticipation of events that have not occurred, speculative disputes and questions regarding future rights are not controversies according to *Cranston v. Thomson*.<sup>85</sup> *Anderson v. Wyoming Development Company* states that moot and theoretical questions are not controversies.<sup>86</sup> In addition, questions already adjudicated by a court are not controversies.<sup>87</sup>

In the final analysis, what does or doesn't constitute a controversy will be a matter of degree.<sup>88</sup> The court may involve itself in splitting hairs as it did when it tried to distinguish *Brimmer v. Thomson* from *Cranston v. Thomson*.<sup>89</sup>

The third requirement necessary to a showing of a justiciable controversy is that the effect and form of the declaration of rights will be that of a judgment or judicial decree rather than an advisory opinion.<sup>90</sup> The declaration must be a binding determination of rights.<sup>91</sup>

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82. Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company, *supra* note 66, at 709.

83. *Aetna Life Insurance Company v. Haworth*, 300 U.S. 227, 240 (1937).

84. Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company, *supra* note 66, at 709-710. See also *Anderson v. Wyoming Development Company*, 60 Wyo. 417, 154 P.2d 318, 339 (1944).

85. *Cranston v. Thomson*, *supra* note 5, at 728-729.

86. *Anderson v. Wyoming Development Company*, *supra* note 84, at 335.

87. *Id.* at 338.

88. *Cranston v. Thomson*, *supra* note 5, at 729.

89. *Id.* at 733. The dissenting opinion of Justice McClintock criticizes the majority in *Cranston v. Thomson* for its effort to distinguish *Brimmer v. Thomson* on the existence versus the nonexistence of an attorney general's opinion.

90. *Brimmer v. Thomson*, *supra* note 6, at 578. See also *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*, *supra* note 66, at 709.

91. *Brimmer v. Thomson*, *supra* note 6, at 579.

The fourth requirement calls for an adversarial proceeding.<sup>92</sup> Though the dispute in *Brimmer v. Thomson* was "friendly" in nature, the questions were sufficiently concrete and the issues were strongly enough contested to constitute an adversarial proceeding.<sup>93</sup> The court will pierce the pleadings, statements and the briefs to determine whether there is sufficient adversity.<sup>94</sup>

### C. *The Existence of an Alternative Remedy as Precluding Declaratory Relief*

At equity, before jurisdiction was proper, the plaintiff had to demonstrate the absence of an alternate remedy at law.<sup>95</sup> In an effort to negate the effect of this rule, Rule 57 of the Wyoming Rules of Civil Procedure was enacted.<sup>96</sup> This rule states that the "existence of another alternate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."<sup>97</sup> The language "where it is appropriate" is ambiguous. When it comes to defining what an alternative remedy is and when the alternative remedy appropriately precludes declaratory relief, Wyoming case law is lacking. The language "where it is appropriate" potentially creates an exception so large that it swallows the general rule set forth in Rule 57 of the Wyoming Rules of Civil Procedure favoring declaratory relief though an alternative remedy exists.

In *School Districts Nos. 2, 3, 6, 9 and 10 v. Cook*, one of the few Wyoming cases to address the issue of an alternative remedy, the court held that the statutory remedy of an appeal from a consolidation order by the county superintendent is not an alternate remedy which precludes the entry of a declaratory judgment.<sup>98</sup>

*City of Cheyenne v. Sims* requires the exhaustion of one's administrative remedies before declaratory relief is appropriate:

92. *Id.* at 578.

93. *Id.* at 577-579.

94. *Id.* at 579.

95. *Yellowstone Sheep Company v. Ellis*, 55 Wyo. 63, 96 P.2d 895, 903 (1940).

96. Wyo. R. Civ. P. 57.

97. *Id.*

98. *School Districts Nos. 2, 3, 6, 9 and 10 v. Cook*, 424 P.2d 751, 756 (Wyo. 1967).

The doctrine of exhaustion of remedies as contrasted to the primary jurisdiction doctrine is applicable because when the sole original determination lies with another body than the courts it is proper to apply such doctrine.<sup>99</sup>

The requirement that *administrative* remedies be exhausted before applying for declaratory judgment is sound. It protects courts from being subverted into performing routine administrative duties. The requirement prevents distortion of the hierarchical division of authority which exists in the administrative versus judicial structure. The rule requiring exhaustion of administrative remedies should not be applied, however, to cases where the issue is one of excess of agency power.

In other cases, Wyoming's application of Rule 57's language is dangerously approaching the "Pennsylvania muddle."<sup>100</sup> Despite statutory language to the contrary, Pennsylvania still clings to the "no alternative remedies requirements."<sup>101</sup> Pennsylvania applies its Uniform Act as though declaratory relief were an "unusual or extraordinary" remedy.<sup>102</sup> In Pennsylvania, before declaratory relief is proper, the nonexistence of *any* alternate remedy must be shown.<sup>103</sup>

Though Wyoming has not gone so far as to require the nonexistence of any alternative remedy, the Wyoming Supreme Court has declared in *Dickerson v. City Council of Buffalo* that because quo warranto to try title to public office is available and because it is an appropriate, adequate and exclusive remedy for those questions, a declaratory judgment action is improper.<sup>104</sup> The rule which emerges from this case should be read narrowly to say that the *availability, adequacy and exclusivity* of a *statutory* remedy preclude the exercise of declaratory relief. A broader reading

99. *City of Cheyenne v. Sims*, 521 P.2d 1347, 1349 (Wyo. 1974).

100. Note, *Declaratory Judgments—Pennsylvania Still Clings to Its "No Alternative Remedies" Requirements*, 74 DICK. L. REV. 549 (1970).

101. Amram, *A Look at Declaratory Judgments in Pennsylvania Today*, 41 PENN. B. A. Q. 384, 387 (1970).

102. *Id.*

103. *Id.*

104. *Dickerson v. City Council of Buffalo*, 582 P.2d 80, 83 (Wyo. 1978).

of the rule from this case would conflict with the language of Rule 57 of the Wyoming Rules of Civil Procedure and would seriously jeopardize the benefits of Wyoming's declaratory relief law.

Though the holding in *Wyoming Humane Society v. R.I. Post* is correct, the Wyoming Supreme Court has begun to dangerously muddy the waters of declaratory relief case law.<sup>105</sup> Plaintiff, the Wyoming Humane Society, sought a declaration of rights against the state veterinarian, the enforcer of the state's cruelty laws, saying that the activity of steer roping and busting constituted cruelty to animals. Declaratory relief was correctly denied because concrete facts were not pleaded; a general as opposed to a detailed description of the problem was set out; and there could be no termination of the controversy upon the facts as pleaded.<sup>106</sup> The court began to cloud the issue of alternative remedies when, by way of dicta, it refused declaratory relief because other remedies existed.<sup>107</sup>

The case is improperly decided for the following reasons: (1) Though the court refused to delineate the alternatives to declaratory relief, they did suggest that criminal prosecution and injunctive relief were possible alternatives to declaratory relief. Criminal prosecution and injunctive relief are not alternatives. They are both coercive forms of relief. A declaration of rights defining the legal rights, status and legal relations of the parties in and of itself might be a sufficient resolution to the parties' dispute and might allow the parties to voluntarily conduct themselves. Besides the difference in the form of the relief that exists between injunctions and declaratory judgment actions, there are strict requirements, such as posting bonds, which must be met before an injunction is granted.<sup>108</sup> These are not prerequisites to obtaining declaratory relief. (2) Plaintiffs will be discouraged from pursuing declaratory relief. Rather than file an action for declaratory judgment, face the

105. *Wyoming Humane Society v. R. I. Post*, 404 P.2d 834 (Wyo. 1965).

106. *Id.* at 835.

107. *Id.*

108. *Wyo. R. Civ. P.* 65.

possibility that an alternative remedy is appropriate, and be out in the cold because the statute of limitations has run, the plaintiff will opt for an alternative course of action. (3) The court's decision runs counter to Section 1-37-114's requirements that declaratory relief is to be liberally administered.<sup>109</sup> (4) The court said that persons or agencies who *had violated* the cruelty laws should be joined.<sup>110</sup> This statement is incorrect in that it suggests a violation is a prerequisite to declaratory judgment action. Declaratory relief is a preventive mechanism and as such does not require the commission of a wrong before it is properly brought. The court's statement, on the other hand, is correct in part. If violators of the cruelty laws were brought in there would be specific facts upon which declaratory relief could operate. As the facts were presented, the court was unwilling to say that *all* steer roping and busting activity was *per se* cruelty. Perhaps if specific acts had been pleaded, the court would have been willing to say that the acts of steer roping and busting *as pleaded* constituted cruelty to animals. Requiring actual violators of the act to be parties was a convenient way for the court to avoid declaring all steer roping and busting to be wrong.

#### D. Parties to a Declaratory Relief Action

Section 1-37-113 requires that "all persons shall be made parties who have or claim an interest which could be affected by the declaration."<sup>111</sup> The status of interested parties is said to be at least that of "proper" parties.<sup>112</sup> Under appropriate situations they may be necessary or indispensable parties.<sup>113</sup>

Case law has set out the consequences of the failure to join interested parties. In *Quackenbush v. City of Cheyenne*,

109. WYO. STAT. § 1-37-114 (1977).

110. Wyoming Humane Society v. R. I. Post, *supra* note 105, at 835.

111. WYO. STAT. § 1-37-113 (1977).

112. Holly Sugar Corporation v. Fritzler, *supra* note 12, at 218. The court cites Morton v. Pacific Construction Company, 36 Ariz. 97, 283 P. 281 (1929) for the proposition that the requirement of bringing in all interested parties is not mandatory. The court, in its discretion, may refuse to hear a case if all interested parties are not brought before the Court.

113. Quackenbush v. City of Cheyenne, 52 Wyo. 146, 70 P.2d 577, 584 (1937). See Tobin v. Pursel, 539 P.2d 361, 363 (1975) for the proposition that the attorney general *must* be served when the validity of a statute is challenged.



the Wyoming Supreme Court remanded the case with direction to dismiss saying that it would be improper to make declarations which would prejudice the rights of necessary parties.<sup>114</sup> In *Quackenbush v. City of Cheyenne*, persons entitled to reimbursement for improvements to real estate were not made parties to the action for a declaration invalidating the city's sale of the real estate and were therefore not affected by any declarations.<sup>115</sup>

According to *Tobin v. Pursel*, the consequence of failing to serve the state in an action challenging the constitutionality of a statute is that the declaration is void.<sup>116</sup> Section 1-37-113 requires that the attorney general be served with a copy of the proceedings in cases where the constitutionality of a statute is challenged.<sup>117</sup> The requirement is mandatory and jurisdictional.<sup>118</sup>

The mechanism by which persons are made parties requires adequate notice. In cases where a statute is challenged, the state is notified by service upon the attorney general.<sup>119</sup> In cases involving heirship, the court in *In re Lonquest* required compliance with the statutory notice procedures regarding heirship.<sup>120</sup>

The consequences of governmental immunity are the same in declaratory judgment actions as in other civil actions.<sup>121</sup> The state can only be sued when it has given its consent.<sup>122</sup>

Section 1-37-113's requirement that all interested persons be made parties presents a potential stumbling block for plaintiffs who wish to contest the validity of a statute.<sup>123</sup> Potentially all citizens can be affected by statutes and thus should be treated as interested persons. *Washakie County*

114. *Quackenbush v. City of Cheyenne*, *supra* note 113.

115. *Id.*

116. *Tobin v. Pursel*, *supra* note 113, at 366.

117. WYO. STAT. § 1-37-113 (1977).

118. *Tobin v. Pursel*, *supra* note 113.

119. WYO. STAT. § 1-37-113 (1977).

120. *In re Lonquest*, 526 P.2d 994, 997-998 (Wyo. 1974).

121. *Retail Clerks Local 187 v. University of Wyoming*, 531 P.2d 884, 886 (Wyo. 1975).

122. *Id.*

123. WYO. STAT. § 1-37-113 (1977).

*School District Number One v. Herschler* rejected this argument.<sup>124</sup> The Wyoming Supreme Court in *Washakie County School District Number One v. Herschler* demonstrated its ability to liberally construe and apply the Wyoming Act when it rejected the argument that all taxpayers were interested in public education and therefore had to be made parties in a declaratory judgment action to determine the validity of the financing of Wyoming's public education system. The court summarily dismissed the argument saying it lacked reason and that the attorney general had been properly served in compliance with Section 1-37-113.<sup>125</sup> To have held otherwise would seriously have jeopardized the application of Wyoming's Act to questions of statutory construction and constitutionality.

#### IV. PLEADINGS AND PROCEDURE IN DECLARATORY RELIEF ACTIONS

##### A. *The Nature of the Declaratory Relief Remedy*

Courts interpreting the Uniform Declaratory Judgments Act have split in their characterizations of and attitudes toward declaratory relief as a liberal versus limited remedy. Some courts have adopted a broad view of declaratory relief as an alternative remedy to facilitate the administration of justice while others have followed a narrower construction of the remedy by hedging the application of relief with technicalities and limiting the application to exceptional circumstances.<sup>126</sup>

Courts generally agree that declaratory relief is not intended to supplant other remedies nor to extend the court's jurisdiction to render advisory opinions.<sup>127</sup> Courts will differ, however, on the existence of an alternative remedy as precluding relief and the extent to which the jurisdiction of the

124. *Washakie County School District Number One v. Herschler*, *supra* note 72.

125. *Id.* citing WYO. STAT. § 1-37-113 (1977).

126. ANDERSON, *supra* note 10, § 3 at 16-19.

127. *Id.* See also *Brimmer v. Thomson*, *supra* note 6, at 579 for the proposition that the declaratory judgment action should not be used to render advisory opinions.

courts is or is not expanded by declaratory relief.<sup>128</sup> Wyoming's attitude toward declaratory relief is not entirely clear.<sup>129</sup>

Beyond a characterization of the declaratory judgment action as a broad versus narrow remedy, courts have differed over the classification of declaratory relief as either legal or equitable. The Wyoming Supreme Court has characterized declaratory relief as essentially equitable in nature.<sup>130</sup> The characterization of declaratory relief as either legal or equitable is not important. It is the characterization of the nature of the specific case problem and not the characterization of the declaratory judgment vehicle which determines the right to a jury trial.<sup>131</sup>

### B. Pleadings and Procedures

Rule 57 of the Wyoming Rules of Civil Procedure states that the procedure for obtaining declaratory relief "shall be in accordance with these rules."<sup>132</sup> It follows that the procedure by which declaratory relief is obtained is governed by the same rules which apply to ordinary civil actions.

Pleadings in declaratory judgment actions parallel those in other civil actions. The only major distinction between the pleadings in a declaratory judgment action and the pleadings in other civil actions will be that the plaintiff

128. For Wyoming's position as to whether or not an alternative remedy precludes declaratory relief see text accompanying notes 95-110, *supra*. In *Morad v. Brown*, 549 P.2d 312, 315-317 (Wyo. 1976) the court allowed the declaratory judgment proceeding to be used to acquire jurisdiction though the plaintiff was not in possession of the property as would have been required to obtain jurisdiction if a quiet title action was brought. Another Wyoming case addressing the issue of jurisdiction is *Retail Clerks Local 187 v. University of Wyoming*, *supra* note 121. This case can be read narrowly and limited to the issue of the ability to sue the state under declaratory relief proceedings. On the other hand, it can be read for the broader proposition that declaratory relief is not to be used to expand the court's jurisdiction in any circumstance.

129. *Supra* text accompanying note 9. While the Wyoming Supreme Court has stated that declaratory relief should not be given begrudgingly it has, on the other hand, engaged in splitting hairs in distinguishing justiciable from nonjusticiable controversies and waffled on the issue of when an alternative remedy precludes declaratory relief. See text accompanying notes 65-110, *supra*.

130. *Holly Sugar Corporation v. Fritzler*, *supra* note 12, at 211-212.

131. *Goodson v. Smith*, 69 Wyo. 472, 243, P.2d 163 (1952), reh. denied, 244 P.2d 805 (1952).

132. Wyo. R. Civ. P. 57.

demands a declaration<sup>133</sup> rather than a coercive judgment. The declaration may be either affirmative or negative in form and effect.<sup>134</sup>

Certain procedural requirements have to be met in a declaratory judgment action: (1) The plaintiff in a declaratory judgment action has to allege a justiciable controversy to obtain the court's jurisdiction according to *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*.<sup>135</sup> (2) Interested parties under Section 1-37-113 should be before the court.<sup>136</sup> (3) The plaintiff will have to show it is not using Wyoming's Act to prevent removal to federal court as the court will not allow the declaratory judgment action to be a vehicle for forum shopping for the plaintiff.<sup>137</sup> (4) The statute of limitations "applicable to ordinary actions at law and suits in equity" will be considered by the court.<sup>138</sup> (5) A jury trial, if it is desired, must be demanded.<sup>139</sup> In *Goodson v. Smith*, the right to a jury trial in an action under Wyoming's Act depends on the nature of the case.<sup>140</sup>

## V. PARTICULAR APPLICATIONS OF WYOMING'S UNIFORM DECLARATORY JUDGMENTS ACT IN THE CASE LAW

### A. *Questions of Heirship, The Construction of Wills and Forfeiture of an Interest in an Estate*

Case law has held it proper to apply Wyoming's Uniform Declaratory Judgments Act to determine questions of heirship,<sup>141</sup> to construe wills,<sup>142</sup> and to determine whether a wife-petitioner forfeited her interest in her husband's estate by having caused or procured a third person to take her husband's life.<sup>143</sup>

133. WYO. STAT. § 1-37-102 (1977).

134. *Id.*

135. *Mountain West Farm Bureau Mutual Insurance Company v. Hallmark Insurance Company*, *supra* note 66.

136. WYO. STAT. § 1-37-113 (1977).

137. *Beatty v. Chicago B. & Q. R. Co.*, 49 Wyo. 22, 52 P.2d 404, 409-410 (1935).

138. *Anderson v. Wyoming Development Company*, *supra* note 84, at 337.

139. *Holly Sugar Corporation v. Fritzler*, *supra* note 12, at 214.

140. *Goodson v. Smith*, *supra* note 131, at 176.

141. *In re Longest*, *supra* note 120, at 996.

142. *Murrell v. Stock Growers National Bank of Cheyenne*, 74 F.2d 827, 831 (10th Cir. 1934).

143. *State v. District Court of the Fourth Judicial District*, 426 P.2d 431, 437 (Wyo. 1967).

In the case of *In re Lonquest*, the Wyoming Supreme Court held that heirship may be determined under Wyoming's Uniform Declaratory Judgments Act if there is sufficient adherence to the requisite statutory procedures for determining heirship and to the statutes and rules for giving notice of the proceedings to persons claiming to be heirs.<sup>144</sup> The district court lacked the jurisdiction to determine heirship in the case of *In re Lonquest* because a person claiming to be an heir had not been made a party to the declaratory judgment action under the Wyoming Rules of Civil Procedure and under what are now Sections 1-37-105 and 1-37-113.<sup>145</sup> The parties bringing the action also failed to file an affidavit stating that service of process could not be had on the other person claiming to be an heir.<sup>146</sup>

In *Murrell v. Stock Growers National Bank of Cheyenne*, the Court of Appeals for the Tenth Circuit was asked to declare null and void a prior decree issued by the state district court which had construed a will and determined the rights, duties and powers of the beneficiaries therein, including the rights of the life tenant.<sup>147</sup> The federal court refused to set aside the judgment of the state court, saying the state court had jurisdiction under what are now Sections 1-27-102, 1-37-103, 1-37-105, and 1-37-114, to determine questions of the validity of a will, to construe the will, and to declare the rights, status or legal relations thereunder and to determine questions of the administration of the estate.<sup>148</sup>

The Wyoming Supreme Court in *State v. District Court of the Fourth Judicial District* held that a declaratory judgment proceeding as to whether wife-petitioner had forfeited the right to share in her husband's estate by allegedly having arranged for a third person to take her husband's life was within the subject matter jurisdiction of the district court.<sup>149</sup>

144. *In re Lonquest*, *supra* note 120.

145. WYO. STAT. § 1-37-105 and § 1-37-113 (1977).

146. *In re Lonquest*, *supra* note 120.

147. *Murrell v. Stock Growers National Bank of Cheyenne*, *supra* note 142, at 830.

148. *Id.* at 831.

149. *State v. District Court of the Fourth Judicial District*, *supra* note 143.

## B. Construction of Trusts

In *First National Bank and Trust Company of Wyoming v. Brimmer*, the Wyoming Supreme Court held that Wyoming's Act was the proper vehicle by which to construe the terms of a trust but that Section 1-37-114's language calling for liberal construction is not a mechanism by which "actual violence" is done to the thing being construed.<sup>150</sup> The court refused to force the words of the trust "out of their natural meaning" and refused to grant the declaratory relief requested.<sup>151</sup>

## C. Interests in Real and Personal Property

In *Ohio Oil Company v. Wyoming Agency*, the Wyoming Supreme Court declared that an action to quiet title is essentially an action for declaratory relief.<sup>152</sup> Though the action was not properly presented to the court as an action for declaratory relief, the court found that declaratory relief was the appropriate remedy and granted relief thereunder.<sup>153</sup> Similarly in *Morad v. Brown*, the Wyoming Supreme Court held that Wyoming's Uniform Declaratory Judgments Act was available to quiet title.<sup>154</sup> Jurisdiction was proper under Wyoming's Act to settle and afford relief from uncertainty though the plaintiff was not in possession as would have been required under a quiet title action.<sup>155</sup>

In *MacGuire v. Sturgis*, the United States District Court for the State of Wyoming, using Wyoming's Uniform Declaratory Judgments Act, established the validity of certain mining claims and denied relief to other claimants.<sup>156</sup> Declaring rights under deeds has been held to be a proper exercise of declaratory relief. In an action to construe a contract for warranty deed, the court found there was no fraud, duress or mistake in the execution of the contract

150. *First National Bank and Trust Company of Wyoming v. Brimmer*, 504 P.2d 1367, 1369 (Wyo. 1973) citing what is now WYO. STAT. § 1-37-114 (1977).

151. *Id.* at 1369-1370.

152. *Ohio Oil Company v. Wyoming Agency*, 63 Wyo. 187, 179 P.2d 773, 780 (1947).

153. *Id.*

154. *Morad v. Brown*, *supra* note 128.

155. *Id.*

156. *MacGuire v. Sturgis*, 347 F. Supp. 580, 584 (D. Wyo. 1971).

and declared the rights of the parties thereunder.<sup>157</sup> In the case of *Allen v. Allen*, the Wyoming Supreme Court granted reformation of the contract and adjudicated the rights of the parties to the contract.<sup>158</sup> In *Cheyenne National Bank v. Citizens Savings Bank*, the court resolved a controversy as to the priority of two chattel mortgages under Wyoming's Act.<sup>159</sup>

#### D. Construing Contracts

Though *Holly Sugar Corporation v. Fritzler* was not the first case to reach the Wyoming Supreme Court under Wyoming's Uniform Declaratory Judgments Act, it was the first major case to interpret Wyoming's Act.<sup>160</sup> The case stands for several principles, one of which is that an action is properly brought under Wyoming's Act to construe contracts and to declare rights under those contracts.<sup>161</sup>

Construing insurance policies and determining the rights thereunder is the proper exercise of declaratory relief according to *Poling v. North American Life and Casualty Company*.<sup>162</sup> *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company* limits *Poling v. North American Life and Casualty Company* in that before declaratory relief is available to one seeking construction of an insurance policy the plaintiff must be a "person interested under a . . . . contract" and must have placed its policy before the court.<sup>163</sup>

*Police Protective Association of Casper v. City of Casper* places a further restriction on the construction of contracts in that declaratory relief presupposes the existence of a valid contract before a declaration can be made.<sup>164</sup> The

157. *Goodson v. Smith*, *supra* note 131, at 170-173.

158. *Allen v. Allen*, 550 P.2d 1137, 1144 (Wyo. 1976).

159. *Cheyenne National Bank v. Citizens Savings Bank*, 391 P.2d 933, 936-937 (Wyo. 1964).

160. *Holly Sugar Corporation v. Fritzler*, *supra* note 12, at 212-213.

161. *Id.*

162. *Poling v. North American Life and Casualty Company*, 593 P.2d 568, 571 (Wyo. 1979).

163. *Mountain West Farm Bureau Mutual Insurance Company, Inc. v. Hallmark Insurance Company*, *supra* note 66, at 709.

164. *Police Protective Association of Casper v. City of Casper*, 575 P.2d 1146, 1148 (Wyo. 1978).

Wyoming Supreme Court declared the contract between the city and the police association null and void because it was intended to continue *in perpetuo* or because it was lacking in a specific period of duration.<sup>165</sup> Once the contract was invalidated, the court refused to construe any of its terms.

*E. Statutory Construction, Rights Under Statutes, Issues of Constitutionality*

Wyoming's Act has been used to declare statutes unconstitutional, to declare a part of a statute unconstitutional and to uphold the constitutionality of a statute. The first case before the Wyoming Supreme Court to apply Wyoming's Act was *Simkin v. City of Rock Springs*.<sup>166</sup> This case relied on the declaratory judgment proceedings in Wyoming's Act to declare unconstitutional a statute providing that only taxpayers could vote at a bond election.<sup>167</sup> Wyoming's Act was later used to declare statutes regarding criminal abortions and soliciting a miscarriage unconstitutional in *Doe v. Burk*.<sup>168</sup> In *Bell v. Gray*, the Wyoming Supreme Court used the Wyoming Act to declare part of a statute unconstitutional, while leaving the remaining portion of the statute intact.<sup>169</sup> *Ludwig v. Harston* was a case in which declaratory relief was used to uphold the constitutionality of a statute imposing a sales tax on oleomargarine.<sup>170</sup> Wyoming's declaratory relief proceedings have most recently been used to declare unconstitutional the state's system of financing public education in *Washakie County School District Number One v. Herschler*.<sup>171</sup>

Besides declaring statutes unconstitutional, Wyoming's Act has been used to interpret statutes and the Wyoming Constitution. Cases which have done so include: *Quinn v. John Whittaker Ranch Company* in which questions of rights and duties under water appropriation statutes were

165. *Id.* at 1149.

166. *Simkin v. City of Rock Springs*, 33 Wyo. 166, 237 P. 245 (1925).

167. *Id.*

168. *Doe v. Burk*, 513 P.2d 643, 645 (Wyo. 1973).

169. *Bell v. Gray*, 377 P.2d 924, 926 (Wyo. 1963).

170. *Ludwig v. Harston*, 65 Wyo. 134, 197 P.2d 252 (1948).

171. *Washakie County School District Number One v. Herschler*, *supra* note 72, at 337.



declared;<sup>172</sup> *Day v. Armstrong* in which public versus private rights to certain waters were determined under the United States Constitution, the Wyoming Constitution, laws of Wyoming and judicial decisions;<sup>173</sup> *School Districts Nos. 2, 3, 6, 9 and 10 v. Cook* in which the court determined that a consolidation plan was not approved by voters in accordance with state law;<sup>174</sup> *O'Neal v. School District No. 15 School Board* which determined that it was within the school district's power by statute to refuse to transport a student;<sup>175</sup> *Brimmer v. Thomson* in which certain incumbent state senators were declared eligible under Wyoming's Constitution to become candidates for governor although their terms as state senators were not due to expire for several years;<sup>176</sup> *Jackson v. Wyoming State Treasurer ex rel. Workmen's Compensation Department* which declared the Workmen's Compensation Department was entitled to reimbursement from settlement money as provided for by statute;<sup>177</sup> and *Karn v. Hayes* which declared appellant ineligible under Wyoming law to be a candidate for municipal election.<sup>178</sup>

## VI. CONCLUSION

Declaratory relief is a unique remedy. It is the declaration of rights rather than the execution of those rights. It is a break with the common law rule requiring that one's rights be invaded before relief is available. Relief is available before the law is broken. In cases where the declaration of rights will suffice as a remedy, as opposed to the cases where coercive relief is needed, the plaintiff can avoid certain technical prerequisites such as might accompany injunctive relief.

After 58 years of existence and at least forty recorded cases construing its terms and applying its remedy, Wyoming's Uniform Declaratory Judgments Act is still in its

172. *Quinn v. John Whittaker Ranch Company*, 54 Wyo. 367, 92 P.2d 568 (1939).

173. *Day v. Armstrong*, 362 P.2d 137 (Wyo. 1961).

174. *School District Nos. 2, 3, 6, 9 and 10 v. Cook*, 724 P.2d 751 (Wyo. 1967).

175. *O'Neal v. School District No. 15 School Board*, 51 P.2d 791 (Wyo. 1969).

176. *Brimmer v. Thomson*, *supra* note 6, at 578-580.

177. *Jackson v. Wyoming State Treasurer ex rel. Workmen's Compensation Department*, 521 P.2d 571 (Wyo. 1974).

178. *Karn v. Hayes*, 530 P.2d 156 (Wyo. 1975).

early stages. The attorney practicing in Wyoming will potentially be faced with two major preliminary hurdles in securing declaratory relief. First, the presence of a justiciable controversy as a jurisdictional prerequisite will have to be demonstrated. What constitutes a justiciable controversy will not always be clear. In the past, the Wyoming Supreme Court has involved itself in the splitting of hairs when it comes to distinguishing a *justiciable* controversy from a *nonjusticiable* one. Second, the practicing attorney will be faced with the issue of the nonexistence of an alternative remedy as a prerequisite to declaratory relief. Where the Wyoming Supreme Court will go on this issue is not clear. Having said that the remedy of declaratory relief *should not begrudgingly be given*, the Wyoming Supreme Court should avoid a strict requirement that *all* alternative remedies must be exhausted.

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