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CONFLICT OF LAWS-TESTAMENTARY TRUSTS

CONFLICT OF LAWS—TESTAMENTARY TRUSTS.—The rules of conflict of laws are, in many instances, in chaotic condition. Particularly is this true in parts of the law applying to trusts of personal property created by will. When the domicile of the testator, the place of execution of the will, the residence of the trustees, and the trust estate are all in the same jurisdiction, it is evident that the law of that state will control. But when the domiciles of the trustees and the testator differ, or when the trust estate is in a foreign land, we are presented with our specific problem of the conflict of laws. What law governs the creation, and what the administration, of the trust?

The general rule that the validity of a will, so far as it affects personalty, depends on the domicile of the testator, likewise applies when the form of testamentary disposition is by trust. *Wood v. Wood,* 5 Paige (N. Y.) 596; *Whitney v. Dodge,* 105 Cal. 192. In accord with this doctrine, courts are constantly applying the rule that all matters of form and construction of the trust, and of the capacity of the testator, are to depend solely on the law in force in the testator's domicile. *Merritt v. Corties,* 24 N. Y. S. 561; *Handley v. Palmer,* 91 Fed. 948; *Hussey v. Sargent,* 116 Ky. 53; *Whitney v. Dodge,* 105 Cal. 192. "If valid by that law, it will be recognized and enforced everywhere, though the trustee is domiciled at the time in another state which would hold the trust invalid, or subsequently removes there, though the beneficiaries live there, or the property is there at the time that the trust is created." Joseph H. Beale's "Equitable Interests in Foreign Property," 20 HARV. L. REV. 382, 393. However, it has been recognized that when, by the law of the testator's domicile, a testamentary trust is well executed and within the capacity of the testator, the capacity of the cestui to take will be determined by reference to the law of his domicile. *Congregational Unitarian Soc. v. Hale,* 51 N. Y. S. 704. But if the law of the testator's domicile forbids bequests for any particular purpose, or in any other way limits the capacity of the testator in the disposal of his property, a gift in contravention thereof would be void everywhere. *Chamberlain v. Chamberlain,* 43 N. Y. 424, 433; *Congregational Unitarian Soc. v. Hale,* 51 N. Y. S. 704.

What law governs the administration of such a trust presents a more questionable matter. In many cases, of course, the estate, beneficiaries, trustees, and the testator are all resident in the same jurisdiction; in which case, the law of that state is conclusive. *Farmers' and Mechanics' Savings Bank v. Brewer,* 27 Conn. 600. Only when the administration is to be carried out in a state foreign to that of the testator's domicile, does any complication occur. Many courts quote a rule that the law of the testator's domicile will govern the administration of the trust estate, unless there is evidence in the will that the testator intended otherwise. *Lozier v. Lozier,* 99 Ohio St. 256. *Rosenbaum v. Garrett,* 57 N. J. Eq. 186, holds that the mere appointment of a trustee and the cestui que trust with a domicile other than that of the testator does not indicate intent to subject the administration of the estate to the foreign law.

Nor does the existence of the trust fund in another state necessitate the application of that law. *Farmers' and Mechanics' Savings Bank v. Brewer,* 27 Conn. 600. The place of administration will ordinarily be the place of settling the estate; that is, the domicile of the testator, irrespective of the domiciles of the trustees or the beneficiaries. Only express direction on necessity of administration will be sufficient to remove it to a foreign jurisdiction. One such case is a gift to a charity located in a foreign state. In *Hope v. Brewer,* 136 N. Y. 126, a gift by testementary trust, which by the law of the testator's domicile and the place of creation of the trust failed to comply with the requirements in regard to perpetuities, was held valid since it complied with the law of the jurisdiction in which the charity was permanently located, and in which it was held that the administration was to be carried on. *Mount v. Tuttle,* 183 N. Y. 358. In such instances, all matters of the capacity to create are governed by the law of the testator's domicile, while questions of administration and competency of the beneficiaries to take are subject to the foreign law. *Healy v. Reed,* 153 Mass. 197.

There is a growing modern tendency to assign great importance to the "seat of the trust," the place where it is to be administered. Joseph H. Beale, "The Progress of The Law," 34 HARV. L. REV. 52. Thus it is contended that a trust estate as a whole may have a situs of its own, fixed by its place of doing business. Even if the sole activity of the trust were the holding or management of an estate, would not the domicile of the trustee ordinarily be the place of business of the trust? On such a basis, courts have held that the fund is taxable at the "seat of the trust." *Thorne v. State,* 145 Minn. 412; *State v. Phelps,* 172 Wis. 147. And again we find that the trust estate as a composite *res* will have its situs fixed by the law of that jurisdiction with which it has the most substantial connection. 19 COL. L. REV. 486. Doubtless, however, the place of closest relation to the trust would generally be the "seat of the trust."

In the absence of statutory regulation of the rules of the conflict of laws, the doctrines above are of general application. While there may be legislative enactment as suggested in 20 HARV. L. REV. 394, limiting the capacity of the testator or of the beneficiary which will create a new rule of conflict of laws, one of the most interesting examples of statutory regulation is seen in *Johns Hopkins Univ. v. Uhrig* (Md. 1924) 125 Atl. 606, where art. 93, § 334 of the Code of Public General Laws of Maryland is applied. The statute provided that on the death of a party domiciled in a foreign state, who had previously been domiciled in Maryland, his will should be admitted to probate in the courts of the latter state, and that when admitted, should be construed and interpreted according to the law of Maryland without regard to the *lex domicilii,* unless the testator should have expressly declared a contrary intent. Holding that the statute, in such instances, required the application of the same rule of law as were it a domestic will, the court disregarded the place of the testator's last domicile, and his capacity to bequeath by its law. Thus, by the *lex domicilii,* the testator was without capacity to make the bequests of the will, as against public policy; while by the *lex fori,* the trust was upheld. While the statute

would be effective with this interpretation when the trust fund was in the jurisdiction of Maryland, its application could hardly be successful were the estate situated in the state of the testator's domicile, where the probate of the will had already declared it invalid.

It is arguable however, that the court was not warranted in its interpretation of the statute. While the statute declared in express terms that the foreign will in such instances should "be governed and construed and interpreted according to the law of Maryland," was its real meaning that given by the court? Technically, it would seem that the matters of interpretation and construction of the will were thereby made subject to the domestic law of that state. Questions of remoteness, capacity of the legatee, and suspension of alienation should thereby be determined solely by regard to the domestic rules of law. But as the statute looks to the law of the testator's domicile to test the validity of the execution of the will, and as it is silent on this further point, is it not reasonable to hold that others matters relaing to its validity, such as the capacity of the testator to so bequeath, are likewise to be governed by reference to the laws of the testator's domicile? In light of the general agreement of authorities that such is the practice in the absence of statutes, it would seem that it is the only warranted interpretation. *Chamberlain v. Chamberlain,* 43 N. Y. 424; *Cross v. U. S. Trust Co.* 131 N. Y. 330; *Hope v. Brewer,* 136 N. Y. 126. Applying the Maryland statute as thus construed, the court would have held the will void in so far as so declared by the law of the testator's domicile in its restriction on the capacity of the testator, even though it would have resulted in the loss of the legacy to the domestic institution. While this construction was not even mentioned by the court in the principal case, it is supported by the general rules of conflict of laws, and by the fact that its application would be free from the difficulties of administration, as suggested above, that would be incident to the interpretation given by the court. Even though legislation of this type is exceptional, it deserves more than passing interest, for the questions thus raised are of extreme importance. While it may tend in some instances to carry out the policy of the jurisdiction in question, it is possible that it may finally result in such a complication of administration as to render it generally undesirable. V. J. V.