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## Conflict of Laws - Estoppel - Extra-Territorial Effect of Probate Decree

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CONFLICT OF LAWS—ESTOPPEL—EXTRA-TERRITORIAL EFFECT OF PROBATE DECREE—Testator, domiciled in California, by his will created a charitable trust of his residuary estate which included lands located in North Dakota. Under California law, the charitable bequest was valid to the extent of only one-third of the residuary estate. Upon distribution of the trust estate by the California court, the charity appeared and received its one-third of the entire residuary property. The trustee then filed with the North Dakota court, asking that the North Dakota land be distributed in accord with the California decree. Since there was no limitation on the validity of the charitable bequest in North Dakota, the lower court awarded all the land to the charitable devisee. On appeal, *held*, reversed. By participating in the California hearing and accepting one-third of that portion of the trust estate exclusive of the North Dakota realty to the detriment of the trust estate,<sup>1</sup> the Society is estopped from challenging the California order in North Dakota. *In re Reynold's Will*, (N.D. 1957) 85 N.W. (2d) 553.

<sup>1</sup> The detriment apparently lies in the fact that the acceptance renders impossible the estate's distribution according to California law if the Society also receives all of the North Dakota land.

Real property is subject to the laws and jurisdiction of the state where the land is located.<sup>2</sup> Thus the validity and effect of a testamentary disposition of real property are determined by the law of the situs.<sup>3</sup> A judgment or decree in one state cannot directly operate on land in another state, notwithstanding the full faith and credit clause of the Constitution.<sup>4</sup> Nonetheless the situs court may, if it desires, give conclusive effect to the findings of fact and question of law adjudicated in the foreign decree on the basis of *res judicata*.<sup>5</sup> Generally, however, a judgment or decree of a court of the testator's domicile passing on the validity of a devise of realty will not be given conclusive effect by the situs court, either as to parties or nonparties to the domicile action, whether considered under a full faith and credit, an estoppel by judgment, or a *res judicata* basis.<sup>6</sup> Accordingly, in the principal case, by the weight of authority, simply participating in the California probate proceedings would not estop the Society in North Dakota from attacking the California decree as ineffective to dispose of North Dakota land. Rather it was accepting the benefits of the California decree to the detriment of the trust estate which estopped the Society in North Dakota. Estopping a devisee who has accepted benefits, to the detriment of the estate, under a decree rendered in the state of the testator's domicile is apparently a new basis for giving extra-territorial effect to a probate decree passing on the validity of a devise of realty.<sup>7</sup> When, as in the principal case, the essential elements of an estoppel are present, the fact that the result of its application will be to give extra-territorial effect to a foreign probate decree does not seem a valid reason for not applying the estoppel. The court consequently reached a desirable and logical result.

*Thomas A. Hoya, S.Ed.*

<sup>2</sup> *Clarke v. Clarke*, 178 U.S. 186 (1900); 3 FREEMAN, JUDGMENTS, 5th ed., §1384 (1925).

<sup>3</sup> *Toledo Society for Crippled Children v. Hickok*, 152 Tex. 578, 261 S.W. (2d) 692 (1953); CONFLICT OF LAWS RESTATEMENT §249 (1934); 2 BEALE, CONFLICT OF LAWS §249.1 (1935).

<sup>4</sup> *Fall v. Eastin*, 215 U.S. 1 (1909).

<sup>5</sup> *Norton v. House of Mercy*, (5th Cir. 1900) 101 F. 382; 145 A.L.R. 583 (1943).

<sup>6</sup> *In re Ray's Estate*, 74 Wyo. 317, 287 P. (2d) 629 (1955). Cases in which there is a choice of law question involving a prior probate decree from a domiciliary court with the domiciliary law differing from the situs law, as in *In re Ray's Estate* and the principal case, can apparently be distinguished from cases in which there is no choice of law question, like *Norton v. House of Mercy*, note 5 *supra*, on that basis. There are cases recognizing a domiciliary probate decree as binding on the situs court, sometimes on statutory grounds, e.g., *Crippen v. Dexter*, 79 Mass. (13 Gray) 330 (1859). An annotation in 131 A.L.R. 1023 (1941) discusses the conclusiveness of a probate decree from a domiciliary court in a situs court.

<sup>7</sup> In the somewhat similar situation where a beneficiary has a right in each of two or more states to accept a devise of realty in that state or elect to take against the will, courts in the different states have generally held the beneficiary to the same choice which he made in the first state on principles of election and estoppel. *Coble v. Coble*, 227 N.C. 547, 42 S.E. (2d) 898 (1947); 4 PAGE, WILLS, 3d ed., §1651 (1941).