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Trusts - Jurisdiction - Trustee and Trust Assets Outside Jurisdiction of Forum

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TRUSTS—JURISDICTION—TRUSTEE AND TRUST ASSETS OUTSIDE JURISDICTION OF FORUM—Problems relating to jurisdiction of courts to try actions involving trusts of personal property have taken on greater importance in recent years because of the increased shifting of population from one state to another. Jurisdiction, as used in the following discussion of these problems, refers to the power of a court to create interests which will be recognized as valid in other states. It is distinguished from problems of choice of law, i.e., problems as to which state's law will be applied to a particular legal question. It is further distinguished from due process problems of notice and opportunity to be heard.¹

A court has jurisdiction to pass on an action involving a trust where both the trustee and trust property are before it.² Further, if a court has parties to a trust, and not the trust property, before it, it also has jurisdiction to act, but can act only in personam, i.e., against the parties who are before it.³ Thus, for example, such a court may determine the liability of a trustee who is before it, but may not resolve a contest between two beneficiaries who are not before it.⁴ If, on the other hand, the trust property alone is within the jurisdiction of a court, such court has the power to decide all questions pertaining to the trust even though the trustees and beneficiaries are nonresidents.⁵ There are certain situations where trust property may be subject to the jurisdiction of a court independent of the presence of the physical trust assets and trustee within the state, thus giving such court complete jurisdiction over the trust. Such situations usually involve a subsisting relationship of some sort between the forum and the trust assets or the parties to the trust. The courts are not in full agreement as to the nature of this relationship and they resort to many varied rationales with which to support their conclusions. The purpose of this comment is to examine these rationales and determine their validity—first as to testamentary trusts and then as to inter vivos trusts.

I. Testamentary Trusts

A. *Trustee as officer of probate court or trust assets in custodia legis.* A court will have the power to decide questions concern-

¹ Perry, "The Mullane Doctrine—A Reappraisal of Statutory Notice Requirements," *CURRENT TRENDS IN STATE LEGISLATION* 33 at 40-41 (1952).

² *DuPuy v. Standard Mineral Co.*, 88 Me. 202, 33 A. 976 (1895); *Braman v. Braman*, 236 App. Div. 164, 258 N.Y.S. 181 (1932).

³ *Harvey v. Fiduciary Trust Co.*, 299 Mass. 457, 13 N.E. (2d) 299 (1938).

⁴ *LAND, TRUSTS IN THE CONFLICT OF LAWS* 259 (1940).

⁵ *Erdheim v. Mabee*, 305 N.Y. 307, 113 N.E. (2d) 433 (1953); *Clark v. Williard*, 294 U.S. 211 (1935).

ing a trust where a testator, whose will created the trust, died while domiciled within the jurisdiction of such court, and his will was probated in such court. This applies irrespective of the fact that the trustee and trust assets are either legally or illegally in another state. The most common reasons given in support of this conclusion are that the trust assets are in *custodia legis* or that the testamentary trustee is an officer of that court.

In *Marsh v. Marsh's Executors*⁶ a beneficiary requested that the New Jersey court order a trustee to make an accounting of his trust assets. The will which created the trust had been probated in New York, the domicile of the testator at the time of his death. The trust had not been before a New York court at any other time and at the time of the action much of the trust property was in New Jersey. Despite the fact that the New Jersey court had in personam jurisdiction over the trustee, it deferred to the jurisdiction of New York, holding that the New York probate court held the trust assets in *custodia legis* and that the trustees were officers of such court. "This results from the fact that the trustees derive title through the probate of the will and the receipt of letters testamentary from the New York court, and that court has therefore jurisdiction for the settlement of the trustees' accounts, wherever they may reside."⁷

*Jenkins v. Lester*⁸ involved a suit in Massachusetts by a creditor of a beneficiary against a testamentary trustee to recover payment out of the trust fund. The trustee was domiciled, and the trust assets located, in Massachusetts. The testator had been domiciled in New York at the time of his death, and his will was probated in that state. Although the trust had never been before a New York court subsequent to the probate proceedings, the Massachusetts court held that suit should be brought in New York since the testamentary trustee is an officer of the court which probated the will which created the trust. "The case does not differ in principle from that of an executor or administrator appointed in another State, who is not responsible in this Commonwealth for assets received here, if he has not here taken out letters of administration, nor for assets received in the other State, even if he has taken out

⁶ 73 N.J. Eq. 99, 67 A. 706 (1907).

⁷ Id. at 104.

⁸ 131 Mass. 355 (1881).

ancillary administration in this Commonwealth.”⁹ Today it is generally recognized that a testamentary trustee may sue or be sued wherever he or the trust assets are found.¹⁰

A recent decision by a New York court reaffirmed the doctrine that a court of original probate, because it holds the trust assets in *custodia legis*, has jurisdiction over all actions involving a trust created by a will which was probated in such court. In *In re Barrett's Estate*¹¹ the power of a New York probate court, which probated the will creating the trust, to determine the validity of the exercise by will of a power of appointment over the trust assets by a deceased New Jersey resident was questioned. The creator of the trust had died in New York in 1934, where he was then domiciled. He left certain properties in trust to a New Jersey corporation for the benefit of *A*, a resident of New Jersey, for life, remainder to whom *A* appoints by will. *A* died in 1938 and his will, which purportedly exercised such power, was probated in New Jersey. Heirs of the testator attacked the validity of such exercise. The New York probate court, holding that it had power to determine this question, reasoned that the trust property was still part of the estate of the testator.¹² The situs of the trust was not fixed by the physical location of the trust assets in New Jersey nor the residency of the donee in that state, but by the domicile of the testator and the location of the trust assets in New York at the time of the testator's death. This, according to the court, made the trust property in *custodia legis* of the New York probate court. Thus, the court held that “wherever the fund now may be physically located, this court has jurisdiction to construe the will and to determine the validity of the exercise of the power of appointment. . . .”¹³

Absent statute, it is incorrect to equate a testamentary trustee to an executor.¹⁴ An executor has no authority to act on behalf of the decedent's estate until he is commissioned by the probate court. A testamentary trustee, on the other hand, takes as a devisee

⁹ *Id.* at 357.

¹⁰ See notes 3 and 5 *supra*.

¹¹ 206 Misc. 363, 132 N.Y.S. (2d) 755 (1954).

¹² The problem of choice of law must not be confused with jurisdiction in this case. The law of New York, since the power was created under it, would quite clearly apply in determining the validity of the exercise of the power. However, this does not mean that New York has the jurisdictional power to apply its own law.

¹³ *Matter of Barrett*, 206 Misc. 363 at 366, 132 N.Y.S. (2d) 755 (1954).

¹⁴ *In re Beauchamp's Estate*, (Mo. App. 1945) 184 S.W. 729; *Farmers Loan and Trust Co. v. Pendleton*, 37 Misc. 256, 75 N.Y.S. 294 (1902).

or legatee under the will.¹⁵ An executor can sue or be sued, absent statute, only in the jurisdiction in which he was appointed.¹⁶ A testamentary trustee may sue or be sued, in matters relating to the trust, wherever he can be found, or wherever the physical trust assets are located.¹⁷ However, modern statutes have shown a marked trend toward intervention by the probate courts.¹⁸ In some states the administration of a testamentary trust is a proceeding in the probate court much the same as the administration of a decedent's estate.¹⁹ Thus, testamentary trustees may be required to file oaths or bonds or other undertakings that they will faithfully perform their duties, and letters of administration are often issued to them as evidence that they are still acting as trustees. Further, inventories, appraisals, and periodic accountings are often provided for. It is very likely that where such a statute applies, the probate court will have continuing jurisdiction over all suits relating to the testamentary trust. Nevertheless, where such a statute is not applicable, it cannot be said that the testamentary trustee is an officer of the probate court. Indeed, the courts which have relied on this rationale were not in jurisdictions which had such statutes at the time the cases were decided.

For the same reasons it cannot be said that the trust assets are held in *custodia legis* by the probate court unless such is authorized by statute. The only act which the probate court performs in the course of its administration of the testator's estate with respect to the trust assets is the admission of the will to probate and the decree distributing the trust estate to the trustee. It does not make any affirmative decree with respect to either the trustee or trust

¹⁵ *Burrows v. Goodman*, (2d Cir. 1931) 50 F. (2d) 92; *Helme v. Buckelew*, 229 N.Y. 363, 128 N.E. 216 (1920).

¹⁶ Capron, "Situs of Trusts in Conflict of Laws," 93 TRUSTS AND ESTATES 878 at 882 (1954).

¹⁷ *Ibid.*

¹⁸ See SIMES AND FRATCHER, CASES AND MATERIALS ON THE LAW OF FIDUCIARY ADMINISTRATION 9 (1956); 1A BOGERT, TRUSTS AND TRUSTEES §151 (1951); Kayser, "Judicial Supervision of the Administration of Trusts," 35 MICH. L. REV. 479 (1937).

¹⁹ See, for example, Mich. Comp. Laws (1948) §§704.1, 704.3, 704.28, 704.38, 704.56, 707.2; Ohio Rev. Code (1953) c. 2109. See generally 4 BOGERT, TRUSTS AND TRUSTEES §§963-968 (1948). The Probate Court for Washtenaw County interprets the Michigan statute as requiring that (a) the trustee file bond for the full amount of personalty, (b) the probate judge appoint the trustee by issuing letters of trusteeship, and (c) the trustee account to the probate court yearly. The trust is filed with the probate court under the same case number as the original probate proceeding.

The Uniform Trustees' Accounting Act, which has not been adopted by any state, requires, both as to inter vivos and testamentary trusts, that the trustee file an inventory with the court, and that he make accountings annually, at the time of distributions and upon termination of the trust. 9A U.L.A. 322 (1951).

assets as such. Absent statute, the probate court retains no more control over assets distributed to a testamentary trustee than it does over assets distributed to any other legatee or devisee.

B. *Mobilia sequuntur personam*. Courts have also resorted to the maxim *mobilia sequuntur personam* in order to locate the situs of a trust within their jurisdiction, irrespective of the location of the physical trust assets. *In re Hoyt*²⁰ involved a petition by a nonresident trustee for an accounting in a New York probate court. The trust assets were at all times physically located in New York. The testator's will had been probated in New York, although the testator had been a domiciliary of another state. The court rejected the theory that the testamentary trustee was an officer of the probate court since the will and not the court had appointed him. However, since personalty follows its owner, the legal situs of the trust is in the state where the testator resided at the time of his death, not the state where the will was probated or where the physical property is located.

The use of the maxim *mobilia sequuntur personam* as a means of locating the legal situs of the trust res is little more than make-weight, and courts now generally recognize it as such.²¹ But even if we accept its validity, the trustee is the legal owner of the trust assets and such assets would be located at his domicile, not that of the testator. This argument should be used in conjunction with a theory such as that the trust assets remain in *custodia legis* although the trustee subsequently removes them from the state, even though the New York court in the *Hoyt* case specifically rejected this doctrine.

C. *Continuing jurisdiction over single action*. It has been held that since all proceedings involving a trust are part of a single action, once jurisdiction is obtained over the trustee and trust assets such jurisdiction continues throughout all subsequent proceedings. In *Boone v. Wachovia Bank and Trust Company*²² the United States District Court for the District of Columbia entertained a suit on a judgment by the court of original probate in North Carolina, which had ordered the removal of the appellant as trustee of a testamentary trust. The trustee and trust assets were in the District of Columbia at the time of the North Carolina

²⁰ 103 Misc. 614, 170 N.Y.S. 846 (1918).

²¹ *Hutchison v. Ross*, 262 N.Y. 381, 187 N.E. 65 (1933). See generally LAND, TRUSTS IN THE CONFLICT OF LAWS 18-20 (1940).

²² (D.C. Cir. 1947) 163 F. (2d) 809.

suit. The testator was domiciled in North Carolina at the time of his death, and the trustee was a domiciliary of, and the trust assets located in, that state at the time the will was probated. The district court held that the North Carolina judgment must be accorded full faith and credit, and ordered the trust funds turned over to the successor trustee pursuant to an accounting by an officer of the district court. It gave three separate reasons for its decision. First, the court of probate, having established the trust and appointed the trustee can remove him, wherever he may be, by a quasi-in-rem proceeding. Secondly, the probate court has continuing jurisdiction over the trust assets, which form the res upon which the quasi-in-rem proceeding is based. It equated such jurisdiction with the situation where assets have been attached by a court prior to their removal from the jurisdiction, differentiating the case where an inter vivos trust has never been before a court.²³ Thirdly, the removal of a trustee is part of the general supervisory proceeding in the court in which the trust is administered. The court, having obtained in personam jurisdiction over the trustee during the original probate proceedings, such jurisdiction continues throughout the existence of the trust, each subsequent trust proceeding being part of the original probate action. In support of this final reason, the district court cited the decision of the United States Supreme Court in *Michigan Trust Company v. Ferry*,²⁴ which held that a state may make all proceedings involved in the probate of a will part of a single action. In evaluating the rationale of the District of Columbia court, it should be noted that North Carolina has no statute making all actions involving a trust part of a single action, and that the North Carolina court did not expressly reserve jurisdiction either over the trustee or the trust assets. It is true that there is a doctrine that an equity court, once having jurisdiction over a trust, will continue to have that jurisdiction throughout the life of the trust.²⁵ But the probate proceed-

²³ The court differentiated the case of *Parker v. Kelley*, (W.D. N.Y. 1908) 166 F. 968, in which it was held that New York did not have to give full faith and credit to a Massachusetts decree removing the trustee of an inter vivos trust which had been created in Massachusetts, when the trustee and trust assets were in New York. The circuit court held that Massachusetts would have had jurisdiction if the trust had at any time been before one of its courts.

²⁴ 228 U.S. 346 (1913).

²⁵ Capron, "Situs of Trusts in Conflict of Laws," 93 TRUSTS AND ESTATES 878 at 883 (1954). The trust had been before the North Carolina court for accounting purposes several times after the probate proceedings, but the district court did not base its decision on this fact.

ing cannot be properly termed an action involving the trust, since the will and not the probate court appoints the testamentary trustee.²⁶ A testamentary trust, immediately after the probate proceedings, should be considered in essence no different from an inter vivos trust which has never been before a court.

D. *Intent of the testator.* Some courts have held that a testator may establish the legal situs of a testamentary trust, for jurisdictional purposes, in a jurisdiction other than the one in which he was domiciled at the time of his death and in which his will was probated. The usual method is to infer that the testator intended that the legal situs of the trust be located in the state which has the most connections with the trust. The factors usually taken into account are (a) the domicile of the testator at the time of his death, (b) the state where the will was originally probated, (c) the domicile of the trustee at the time the will was probated, (d) the state where the testator directed that the property be located, and (e) the domicile of the beneficiaries at the time the will was probated.²⁷ Thus, in *Reynolds v. Reynolds*²⁸ the North Carolina court held that it had jurisdiction over a Maryland trust company, the trustee of a testamentary trust, because all the above factors centered in North Carolina except the location of the trust property and the trustee in Maryland. In *Matter of Rogers*²⁹ the New York court held that the state in which the testator directed that the trust be administered is the controlling factor.

The main criticism of placing the legal situs of a trust in the state in which the testator intends it to be is that it lends uncertainty to the law. However, it has the advantage of being realistic and providing the beneficiaries with the protection that the testator contemplated. If a testator provides that trust funds be administered in a particular state, he undoubtedly must contemplate that the courts of that state will give protection to the beneficiaries of the trust. Further, the courts of the state in which the trust is being administered are in a better position to supervise the trust. Despite these virtues, most courts have placed the legal situs of a trust in the state in which the testator was domiciled at the time

²⁶ See note 15 supra.

²⁷ Swabenland, "The Conflict of Laws in Administration of Express Trusts of Personal Property," 45 YALE L.J. 438 (1936).

²⁸ 208 N.C. 578 at 627, 182 S.E. 341 (1935).

²⁹ 225 App. Div. 286, 232 N.Y.S. 609 (1929), *affd.* 254 N.Y. 592, 173 N.E. 880 (1930).

of his death and in which his will was probated, irrespective of the state where he directed that the trust be administered.³⁰

It is impossible, because of the sparsity of the case law and the contradictory theories of the courts, to evolve a general rule regarding jurisdiction over testamentary trusts when neither the trustee nor trust assets are physically within the jurisdiction of a court.³¹ Although it is not indicated by the cases, it is likely that a court would be influenced by the type of action before it. If it has been alleged that the trustee has illegally removed the trust assets from the state, a court will find some way of justifying its jurisdiction over the action. However, if the action is one for a voluntary accounting by the trustee, a court may find that it does not have jurisdiction over the action, holding that the testator intended the trust to have its situs in another jurisdiction or that the accounting should be made in the court of original probate, depending on the fact situation.³²

II. *Inter Vivos Trusts*

Where the courts of a settlor's domicile have had no contact with an inter vivos trust, such courts cannot predicate jurisdiction over the trust on theories of *custodia legis* or continuing jurisdiction. Thus, in *Parker v. Kelley*,³³ a federal court held that New York did not have to give full faith and credit to a Massachusetts decree removing a New York trustee, despite the fact that the deed of trust had been executed in Massachusetts by a domiciliary of that state. In *Matter of Berry*³⁴ a New York court similarly refused to entertain a suit by a settlor for termination of a trust, despite the fact that the settlor was domiciled, and the trust assets located, in New York. The court reasoned that the situs of the

³⁰ *Jenkins v. Lester*, 131 Mass. 355 (1881); *In re Barrett's Estate*, 206 Misc. 363, 132 N.Y.S. (2d) 755 (1954); *In re Hoyt*, 103 Misc. 614, 170 N.Y.S. 846 (1918).

³¹ See, however, 1 PERRY, TRUSTS AND TRUSTEES, 7th ed., §71, p. 56 (1929), to the effect that if a trust is created by the will of a citizen of a state, and his will is probated there, and the court of that state appoints a trustee, the equity court will have jurisdiction, even though the property and the trustee are outside the court's jurisdiction.

³² These observations should not be confused with the right of a court to defer, on equitable principles, jurisdiction to the courts of another state. See LAND, TRUSTS IN THE CONFLICT OF LAWS, 261 et seq. (1940). The case of *Jenkins v. Lester*, 131 Mass. 355 (1881) is in direct conflict with the observations of the author. There the court held that it did not have jurisdiction over an action by creditors of a beneficiary even though the trust was administered in Massachusetts.

³³ (W.D. N.Y. 1908) 166 F. 968. *Accord*: *Holcomb v. Kelley*, 114 N.Y.S. 1048 (1907); *Newlin v. Newlin*, 114 Ind. App. 574, 52 N.E. (2d) 503 (1944).

³⁴ 178 App. Div. 144, 164 N.Y.S. 990 (1917). *Accord*, *Lozier v. Lozier*, 99 Ohio St. 254, 124 N.E. 167 (1919).

property followed the trustee who was domiciled in Massachusetts. Despite these decisions, the weight of authority places the legal situs of an inter vivos trust at either the domicile of the settlor at the time of the creation of the trust or the place intended by the settlor, thus giving such court continuing jurisdiction over actions involving the trust.

A. *Situs at domicile of settlor.* It has been held that the legal situs of a trust, which forms the basis for quasi-in-rem jurisdiction, is located at the domicile of the settlor, irrespective of where the deed of trust was executed, the trust property located, or the trustee domiciled. In *Swetland v. Swetland*,³⁵ the leading authority for this proposition, a beneficiary sued a nonresident trustee in New Jersey, requesting an accounting and removal of the trustee. The deed of trust had been executed in New York by a New Jersey domiciliary. The court held that the situs of the trust was New Jersey, the domicile of the settlor at the time the deed of trust was executed, and that the courts of the situs of a trust have jurisdiction to direct its administration and to require the trustee to account wherever he may reside. The Florida court made a similar holding in *Henderson v. Usher*.³⁶ The deed of trust had been executed in Florida, the domicile of the settlor. At that time the trustees were domiciled in New Jersey and New York, and the trust assets were located in the latter state. The action was brought in order to determine the rights of the widow of the donee of a general testamentary power of appointment created by the deed of trust, who elected to take against her husband's will, to have the trust property included in her husband's estate. The Florida court, in holding that it had jurisdiction, said:

"The rule is settled in this country that an *inter vivos* trust has its situs at the residence of the creator of the trust even though he subsequently removes to the state where the trustees and beneficiaries reside and dies there. This rule is not changed by reason of the fact that the trustee resides in another state . . . or by reason of the fact that the trust property has been converted under a general authority in the trust instrument and removed to another state."³⁷

B. *Situs at place intended by the settlor.* It has been held that the situs of an inter vivos trust is not necessarily at the domicile

³⁵ 105 N.J. Eq. 608, 149 A. 50 (1930), *affd.* 107 N.J. Eq. 504, 153 A. 907 (1931).

³⁶ 118 Fla. 688, 160 S. 9 (1935).

³⁷ *Id.* at 693, 694.

of the settlor, but at the place intended by the settlor. The place so "intended" is held to be the state with a preponderance of connections with the trust.³⁸ *In re Saddy*³⁹ involved a suit in New York by the settlor of an inter vivos trust agreement for appointment of a successor trustee. The settlor was at all times a domiciliary of New York and the trust agreement was executed in that state. The trust assets, consisting of promissory notes of corporations, were at all times in the possession of the trustee, a Pennsylvania trust company. The New York court held that the intent of the settlor, as implied from the factual situation at the time the trust was created, determines what state has jurisdiction. Since most of the controlling factors were centered in Pennsylvania—particularly the location of the trustee and trust property there—the trust must be considered as having its situs in that state. Thus, the New York court did not gain jurisdiction over the nonresident beneficiary by constructive service outside of New York, and did not have the power to appoint a successor trustee. The court, in reaching its decision, relied wholly on "choice of law" authorities, suggesting either that it confused jurisdiction with choice of law, or that it considered the same principles applicable to both.

In essence there is no real distinction between the two rationales examined. Both hold that the state in which the situs of a trust is located has continuing quasi-in-rem jurisdiction over actions involving an inter vivos trust. One group of cases, as typified by the *Swetland* case, holds that the situs is located at the domicile of the settlor at the time the deed of trust is executed. The other group, as typified by the *Saddy* case, holds that the situs is located in the state intended by the settlor. Possibly the difference between these holdings is due to a confusion of jurisdictional principles with choice of law principles. In cases involving the essential *validity* of a deed of trust, the law of the settlor's

³⁸ The facts taken into account are (a) domicile of the settlor at the time of the creation of the trust, (b) domicile of the trustee, (c) place of execution of the deed of trust, (d) location of the trust property at the time of execution of the deed of trust, and (e) location of the trust property at the time of the action. See *Russell v. Joys*, 227 Mass. 263, 116 N.E. 549 (1917); *Greenough v. Osgood*, 235 Mass. 235, 126 N.E. 461 (1920). See generally Swabenland, "The Conflict of Laws in Administration of Express Trusts of Personal Property," 45 *YALE L.J.* 438 (1936). However, a settlor cannot confer jurisdiction on a state unless it has some real connection with the trust. In *Harvey v. Fiduciary Trust Co.*, 299 Mass. 457, 13 N.E. (2d) 299 (1938), the fact that the beneficiary was domiciled in Ohio was not enough to allow a settlor to confer jurisdiction on that state.

³⁹ 129 N.Y.S. (2d) 163 (1954).

domicile generally governs.⁴⁰ Where *construction* of the deed of trust or administration problems are in issue, the law of the state intended by the settlor generally governs.⁴¹ It does not necessarily follow that because the law of a state governs a particular question, that that state has jurisdiction over the action. However, it is quite natural to make this inference. The only criticism that might be made of either approach is the inconvenience that it might cause a nonresident trustee. If a Pennsylvania resident is required to make an accounting to a New York court, the expense and inconvenience involved might offset any added protection to the beneficiaries.

III. *Conclusion*

One writer has offered a single theory by which jurisdiction, when the trustee and the physical trust assets are outside the jurisdiction of a court, can be determined in the case of both testamentary and inter vivos trusts.⁴² He distinguishes between two types of *res* which form the basis of quasi-in-rem jurisdiction of the courts—one consisting of the location of the physical trust assets within the court's jurisdiction, and the other consisting of a non-physical relationship between the testator or settlor and his domicile. The latter arises either because the testator, at the time he died, or the settlor, at the time he executed the deed of trust, was domiciled within the jurisdiction of the court. It is a continuing relationship, much like the relationship of a married person to his domicile, which gives the courts of his domicile jurisdiction over the trust whether the testator or settlor, or the trustee, subsequently change their domicile, or the trust assets are located in another jurisdiction. This relationship, which the author calls the trust entity, could originally be established in a jurisdiction other than the testator's or settlor's domicile if an intent were expressed that it be in another state, and there were sufficient connections between the trust and that state. This theory forms a much more reasonable basis than those used in the cases discussed in this com-

⁴⁰ *Wilmington Trust Co. v. Wilmington Trust Co.*, (Del. Ch. 1936) 186 A. 903. New York chooses the law which will uphold the validity of the deed of trust. See generally LAND, TRUSTS IN THE CONFLICT OF LAWS §26.1 (1940).

⁴¹ *Matter of Dialogue*, 159 Misc. 18, 287 N.Y.S. 237 (1936); *Lanius v. Fletcher*, 100 Tex. 550, 101 S.W. 1076 (1907). See generally LAND, TRUSTS IN THE CONFLICT OF LAWS §§28.2, 36 (1940).

⁴² Capron, "Situs of Trusts in Conflict of Laws," 93 TRUSTS & ESTATES 378 (1954).

ment, and would support any of these holdings. It is essentially the same rationale used in the inter vivos trust cases, but differs from those used in the case of testamentary trusts. It protects the beneficiary at a time when trust assets can be easily moved from one state to another. However, if the trust entity is located in a jurisdiction other than the one in which the fund is administered, it might form the basis for a beneficiary to harass unreasonably the trustee and add unnecessary expense to the administration of the trust. But in such a case, a court has the right, on equitable principles, to defer jurisdiction to the courts of the state where the fund is being administered.⁴³

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⁴³ See LAND, TRUSTS IN THE CONFLICT OF LAWS §43 (1940).