

Date and Time: Sunday, January 31, 2021 12:41:00 PM EST

Documents (58)

1. [Introductory Note](#)

Client/Matter: -None-

2. [§ 222 The General Principle](#)

Client/Matter: -None-

3. [Introductory Note](#)

Client/Matter: -None-

4. [§ 223 Validity and Effect of Conveyance of Interest in Land](#)

Client/Matter: -None-

5. [§ 224 Construction of Instrument of Conveyance](#)

Client/Matter: -None-

6. [§ 225 Equitable Conversion of Interests in Land](#)

Client/Matter: -None-

7. [Introductory Note](#)

Client/Matter: -None-

8. [§ 226 Transfer of Interest in Land by Operation of Law](#)

Client/Matter: -None-

9. [§ 227 Acquisition by Adverse Possession or Prescription of Interest in Land](#)

Client/Matter: -None-

10. [§ 228 Mortgage on Land](#)

Client/Matter: -None-

11. [§ 229 Foreclosure of Mortgage on Land](#)

Client/Matter: -None-

12. [§ 230 Lien on Land](#)

Client/Matter: -None-

13. [Introductory Note](#)

Client/Matter: -None-

14. [§ 231 Exercise of Power Created by Operation of Law to Transfer an Interest in Land](#)

Client/Matter: -None-

15. [§ 232 Exercise of Power of Attorney to Transfer an Interest in Land](#)

Client/Matter: -None-

16. [Introductory Note](#)

Client/Matter: -None-

17. [§ 233 Effect of Marriage on Existing Interest in Land](#)

Client/Matter: -None-

18. [§ 234 Effect of Marriage on an Interest in Land Later Acquired](#)

- Client/Matter:** -None-
19. [Introductory Note](#)
- Client/Matter:** -None-
20. [§ 235 Existence and Extent of Equitable Interests in Land](#)
- Client/Matter:** -None-
21. [§ 236 Intestate Succession to Land](#)
- Client/Matter:** -None-
22. [§ 237 Legitimacy as Affecting Succession](#)
- Client/Matter:** -None-
23. [§ 238 Adoption as Affecting Succession](#)
- Client/Matter:** -None-
24. [§ 239 Validity and Effect of Will of Land](#)
- Client/Matter:** -None-
25. [§ 240 Construction of a Will Devising Land](#)
- Client/Matter:** -None-
26. [§ 241 Common Law or Statutory Interest of Surviving Spouse](#)
- Client/Matter:** -None-
27. [§ 242 Forced Share Interest of Surviving Spouse and Election](#)
- Client/Matter:** -None-
28. [§ 243 Escheat of Land](#)
- Client/Matter:** -None-
29. [Introductory Note](#)
- Client/Matter:** -None-
30. [Introductory Note](#)
- Client/Matter:** -None-
31. [§ 244 Validity and Effect of Conveyance of Interest in Chattel](#)
- Client/Matter:** -None-
32. [§ 245 Effect of Conveyance on Pre-Existing Interests in Chattel](#)
- Client/Matter:** -None-
33. [§ 246 Acquisition by Adverse Possession or Prescription of Interest in Chattel](#)
- Client/Matter:** -None-
34. [§ 247 Title Moving Chattel Into Another State: Effect on](#)
- Client/Matter:** -None-
35. [§ 248 Chattel Embodied in a Document](#)
- Client/Matter:** -None-
36. [§ 249 Embodiment of Right in Document](#)
- Client/Matter:** -None-
37. [§ 250 Voluntary Assignment for Benefit of Creditors](#)
- Client/Matter:** -None-
38. [Introductory Note](#)
- Client/Matter:** -None-
39. [Introductory Note](#)
- Client/Matter:** -None-
40. [§ 251 Validity and Effect of Security Interest in Chattel](#)

- Client/Matter:** -None-
41. [§ 252 Moving Chattel Into Another State: Effect on Security Interest](#)
Client/Matter: -None-
42. [§ 253 Effect on Security Interest of a Dealing with Chattel in State to Which It Has Been Removed](#)
Client/Matter: -None-
43. [§ 254 Enforcement and Redemption of Security Interests](#)
Client/Matter: -None-
44. [Introductory Note](#)
Client/Matter: -None-
45. [§ 255 Exercise of Power Created by Operation of Law](#)
Client/Matter: -None-
46. [§ 256 Exercise of Consensual Power](#)
Client/Matter: -None-
47. [Introductory Note](#)
Client/Matter: -None-
48. [§ 257 Effect of Marriage on Existing Interests in Movables](#)
Client/Matter: -None-
49. [§ 258 Interests in Movables Acquired During Marriage](#)
Client/Matter: -None-
50. [§ 259 Removal of Movables of Spouses to Another State](#)
Client/Matter: -None-
51. [Introductory Note](#)
Client/Matter: -None-
52. [§ 260 Intestate Succession to Movables](#)
Client/Matter: -None-
53. [§ 261 Legitimacy as Affecting Succession](#)
Client/Matter: -None-
54. [§ 262 Adoption as Affecting Succession](#)
Client/Matter: -None-
55. [§ 263 Validity and Effect of Will of Movables](#)
Client/Matter: -None-
56. [§ 264 Construction of Will of Movables](#)
Client/Matter: -None-
57. [§ 265 Forced Share Interest of Surviving Spouse and Election](#)
Client/Matter: -None-
58. [§ 266 Disposition of Movables Where No Distributee](#)
Client/Matter: -None-

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property

Restat 2d of Conflict of Laws, § Scope

: As used in the Restatement of this Subject, "property" is synonymous with "interest," which comprises some aspect of the beneficial side of a legal relationship, such as a right, power, privilege or immunity. Property may denote a single interest, but is normally used to designate a group of interests in a particular thing, such as a piece of land or a chattel. The word "thing" is used with broadest connotation to include both tangibles and intangibles. Thus, a thing may be a piece of land, a chattel or an intangible, such as the good will of a business, a literary idea, a contract or other chose in action.

As here used, the "situs" of a tangible thing is the place where the thing is, and the term "conveyance" covers all attempts, whether or not effective, to transfer an interest in a thing.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 222](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 1- Property in General

§ 222 The General Principle

The interests of the parties in a thing are determined, depending upon the circumstances, either by the "law" or by the "local law" of the state which, with respect to the particular issue, has the most significant relationship to the thing and the parties under the principles stated in § 6.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section states a principle applicable to all things, to all interests in things and to all issues involving things. Topic 2 (§§ 223-243) deals with interests in immovables and Topic 3 (§§ 244-266) with interests in movables.

b. Rationale. The principles stated in § 6 underlie all rules of choice of law and are used in evaluating the significance of a relationship, with respect to the particular issue, to the potentially interested states, the thing and the parties. The factors listed in Subsection (2) of the rule of § 6 can be divided into five groups. One group is concerned with the fact that in multistate cases it is essential that the rules of decision promote mutually harmonious and beneficial relationships in the interdependent community, federal or international. The second group focuses upon the purposes, policies, aims and objectives of each of the competing local law rules urged to govern and upon the concern of the potentially interested states in having their rules applied. The third group involves the needs of the parties, namely the protection of their justified expectations and certainty and predictability of result. The fourth group is directed to implementation of the basic policies underlying the particular field of law, such as torts, contracts or property, and the fifth group is concerned with the needs of judicial administration, namely with ease in the determination and application of the law to be applied.

The factors listed in Subsection (2) of the rule of § 6 vary somewhat in importance from field to field. In contrast to torts (see § 145, Comment *b*), protection of the justified expectations of the parties is of considerable importance in the field of property. Parties enter into property transactions with forethought and are likely to consult a lawyer before doing so. They will expect certain legal consequences to ensue from a given transaction and, in the absence of strong countervailing considerations, their expectations should not be disappointed. The relative importance of a person's expectations will vary with the circumstances. When transfers of interests in things are based upon consideration, such as in the case of the sale of land or of chattels, the expectations of the transferor and of the transferee are of equal importance. In the case of gratuitous transfers, such as by will or inter vivos trust, the expectations of the transferor assume particular significance.

The need for protecting the expectations of the parties gives importance in turn to the values of certainty, predictability and uniformity of result. For, unless these values are attained, the expectations of the parties are likely to be disappointed.

Protection of the justified expectations of the parties by choice-of-law rules in the field of property is supported by those factors in Subsection (2) of § 6 which are directed to the furtherance of the needs of the parties and, usually as well, by those factors which are directed to implementation of the basic policy underlying the particular field of law. Protection of the justified expectations of the parties is a basic policy underlying most areas of the field of property.

Restat 2d of Conflict of Laws, § 222

Other factors listed in Subsection (2) of the rule of § 6 are the relevant policies of all potentially interested states and the relative interests of those states in the determination of the particular issue. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule and by the relation of the thing and the parties to that state (see Comment c).

In the case of issues involving transfers of interests in immovables, the factors listed in Subsection (2) of the rule of § 6 lead to the application of the law that would be applied by the courts of the situs (see §§ 223-243). The situs likewise plays an important role in the determination of the law governing the transfer of interests in tangible, as opposed to intangible, movables (see §§ 244-266).

c. Purpose of property rule. The purpose sought to be achieved by the property rules of the potentially interested states and the relation of those states to the thing and the parties are important factors to be considered in determining the state of most significant relationship. This is because the interest of a state in having its rule applied in the determination of a particular issue will depend upon the purpose sought to be achieved by that rule and upon the relation of the state to the thing and the parties. So the state where the land in question is situated has an obvious interest in the application of a rule limiting the period during which the power to alienate the land may be suspended. On the other hand, the state where the land is may have comparatively little interest in the application of a rule limiting the portion of an estate that a testator may leave to charity in a situation where the testator, the natural objects of his bounty and the charity involved are all most closely related to another state.

Frequently, it will be possible to decide a question of choice-of-law in a case involving property without paying deliberate attention to the purpose sought to be achieved by the relevant rules of the interested states. This will be so whenever by reason of the particular circumstances one state is obviously that of the applicable law.

d. The issue involved. The courts have long recognized that they are not bound to decide all issues under the local law of a single state. Thus, in an action involving the transfer of interests in land situated in a foreign state by parties domiciled there, a court under traditional and prevailing practice applies its own state's rules to issues involving process, pleadings, joinder of parties and the administration of the trial (see Chapter 6), while deciding other issues -- such as whether the transferor had the capacity to make the transfer -- by reference to the law selected by application of the rules stated in this Chapter. The rule of this Section makes explicit that selective approach to the choice of the law governing particular issues.

Each issue is to receive separate consideration if it is one which would be resolved differently under the local law of two or more of the potentially interested states.

e. Whether reference is to "law" or to "local law" of selected state. In the case of immovables, the reference is to the "law" of the state where the immovable is, for reasons stated in § 223, Comment *b*. The reference, in other words, is to the totality of the law, including the choice-of-law rules, of this state (see § 8), and the task of a court sitting in some other state is to arrive at the same result as a court of this state would have arrived at upon the actual facts of the case.

In the case of movables, the rule varies from situation to situation. So, for example, an issue involving the transfer of a chattel as between the parties to the transfer is determined by the "local law" of the state which, as to the particular issue, has the most significant relationship to the thing and the parties under the principles stated in § 6 (see e. g., §§ 244, 251). In such a case, the forum will not apply the choice-of-law rules of the selected state and will not have the primary objective of arriving at the same result a court of this state would have done upon the actual facts of the case. On the other hand, in judging a given state's interest in the application of one of its local law rules, the forum should concern itself with the question whether the courts of that state would have applied this rule in the decision of the case. The fact that these courts would have applied this rule may indicate that an important interest of that state would be served if the rule were applied by the forum. Conversely, the fact that these courts would not have applied this rule may indicate that no important interest of that state would be infringed if the rule were not applied by the forum (see § 8, Comment *k*).

There are situations, however, in the case of movables where the reference is to the "law" of the selected state and where the objective of the forum should be to arrive at the same result a court of this state would have arrived at upon the actual facts of the case. This will usually be so, for example, in the case of an issue involving the effect of a transfer of a chattel upon the interests of persons who were not both parties to the

Restat 2d of Conflict of Laws, § 222

transfer (see, e. g., §§ 245, 253). This will also be so of issues involving succession to interests in movables (see §§ 260-266).

f. When rule in two or more states is the same. When certain contacts involving a thing and the parties are located in two or more states with identical local law rules on the issue in question, the case will be treated for choice-of-law purposes as if the contacts were grouped in a single state.

Illustration:

1. In state X, A gives B a security interest on an automobile situated in state Y. X and Y have the same local law rule on the subject of the debtor's right of redemption. As to the issue of the debtor's right of redemption, the case will be treated for choice-of-law purposes as if the security interest had been given and the automobile situated in one state.

Comment:

g. Characterization. A thing will be classified as either an immovable or a movable and words comprising a rule of law will be defined in accordance with the law selected by application of the principles stated in § 7.

Cross Reference

ALR Annotations:

What law governs in determining who are "heirs," "heirs at law," "issue," "next of kin," or the like, who will take legacy or bequest under terms of will. [52 A.L.R.2d 490](#).

Digest System Key Numbers:

Property 6

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § Scope

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables

Restat 2d of Conflict of Laws, § Scope

: The term "immovables," as used in the Restatement of this Subject, refers to land and to things that are so attached, or otherwise related, to the land as legally to be regarded a part of it. Primarily for reasons stated in § 223, Comment a, it is a firmly established principle that questions involving interests in immovables are governed by the law of the situs.

A distinction must here be drawn between the "law" and the "local law" of the situs. The reference is to the "law" of the situs, namely to the totality of its law including its choice-of-law rules (see § 8). The reference is not to the "local law" of the situs, by which is meant its purely domestic rules (see § 4). The task of a court sitting in a state other than the state of the situs is to arrive at the same result a court of the situs would have arrived at upon the actual facts of the case. The court must therefore inquire whether the choice-of-law rules of the situs would have led the courts of that state to decide the issue in accordance with their own local law or with the local law of some other state. So, if a court of state X is faced with the question whether a deed delivered in state Y was sufficient to convey title to land in state Z, the X court will try to decide the issue in the same way a court of Z would have done. If the Z courts would have looked to their own local law for the decision of the question, Z local law will be applied by the X court. If, on the other hand, the Z court would have applied Y local law, the X court will do likewise.

In most instances, the courts of the situs would decide the case in accordance with their own local law. They would do so for sentimental and historical reasons as well as for reasons of certainty and convenience and for the sake of their title recording systems. The local law of the situs is the law with which the parties, their lawyers and title searchers will usually be most familiar. The burdens of lawyers and of title searchers would be increased if it were not possible for them as a general rule to confine their attention to the local law of the situs. Likewise, if this were not so, the security of land titles would be diminished.

In some situations, it is clear that the courts of the situs will and should apply their own local law. This is true of such issues as who may own land, the conditions under which the land may be held and the uses to which the land may be put. The state of the situs has the dominant interest in the determination of such issues and its local law should be applied. So, for example, the courts of the situs would apply their own local law to determine what restrictions, if any, are imposed upon the ownership of land by a corporation or by an alien and the period during which the power to alienate interests in land may be suspended.

The state of the situs may have less concern in the determination of other issues. Nevertheless, the situs courts have usually applied their local law in the determination of many such issues. So these courts have applied their own local law to determine how interests in local land should be divided upon intestacy even though the intestate died domiciled in another state (see § 236). So also these courts have applied their local law to determine the validity of a will insofar as it affects interests in local land even though the testator died domiciled in another state (see § 239).

Occasionally, the presence of a foreign element will qualify the range of application of local rules and statutes of the situs. So the courts of the situs might hold that certain rules of statutory incapacity are applicable only to local domiciliaries and hence do not affect a transferor, or transferee, of land who is domiciled elsewhere (see § 223,

Restat 2d of Conflict of Laws, § Scope

228). There will also be situations where the demands of certainty and the needs of a title recording system are not as pressing as are other demands. Thus, questions relating to the marital property interests of spouses, either upon divorce or at death, may be of greater concern to the state of domicile of the spouses than to the situs, and in such cases the situs courts might defer to the views of the domicile. That will particularly be so when the land is one item in an aggregate of things, both movable and immovable, which are situated in a number of states and which it is desirable to deal with as a unit. A similar view might be taken by the situs courts with respect to the allocation of interests in land among parties to other relationships than the husband-wife relationship, such as parent and child or even debtor and creditor, when regulation of the relationship is of greater concern to a state other than the situs and particularly when the land is part of an aggregate of property which it is desirable to deal with as a unit. In a proper case, the courts of the situs might resort to the doctrine of equitable conversion (see § 225) as a basis for applying the local law of some other state to determine questions involving interests in local land. Whichever law would have been applied by the courts of the situs will, in any event, likewise be so applied by the forum.

On occasion, there may be some difficulty in determining whether a given issue is one of property or one of contract or tort. Suppose that a contract to convey land in state X is entered into in state Y. Here the effect, if any, of the contract upon interests in the land will be determined by the law that would have been applied by the X courts. Thus, whether the purchaser acquired an equitable interest in the land upon the execution of the contract will be determined in the same way that this question would have been determined by the X courts. On the other hand, the law selected by application of the rules of §§ 187-188 will be applied to determine contractual matters, such as the right to damages and excuses for nonperformance (see §§ 205, 207). Again, suppose that a deed to land in state X is delivered in state Y under circumstances which, according to Y local law, make the transfer one in fraud of creditors. In this case, whether delivery of the deed was effective to pass title to the land will be determined by the law that would have been applied by the X courts. The law selected by application of the rule of § 145, however, may be applied in a suit brought to compel the transferee to reconvey the land, provided at least that a deed executed by him in compliance with the decree would be held effective by the X courts (see § 53). These latter questions are not dealt with in the present Chapter.

Restat 2d of Conflict of Laws, § 223

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title A- Conveyances

§ 223 Validity and Effect of Conveyance of Interest in Land

(1) Whether a conveyance transfers an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. All choice-of-law rules should be derived from the principles stated in the rule of § 6. The rule of this Section is derived from those principles looking to furtherance of the needs of the interstate and international systems, application of the law of the state of dominant interest, protection of justified expectations, certainty, predictability and uniformity of result and ease in the determination and application of the law to be applied.

Issues falling within the scope of the rule of this Section are the capacity of the party who conveys to make an effective conveyance, the capacity of the party to whom the conveyance is made to acquire the interest involved, the formal validity of the conveyance, the validity of the conveyance in other respects, and the nature of the interest transferred. These issues are discussed in Comments c-g.

b. Applicable law. Issues falling within the scope of the rule of this Section will be determined by the law that would be applied by the courts of the situs. If these courts would have looked to their own local law for the decision of the case, that law will be applied by the forum. If, however, these courts would have decided the question by reference to the local law of some other state, the forum will do likewise (see § 8).

Whether the courts of the situs would decide the case in accordance with their own local law may depend upon the precise issue involved. These courts would apply their own local law to determine issues in which the situs has the dominant interest. Examples of such issues are who may own the land, the conditions under which land may be held and the uses to which land may be put. So these courts would apply their own local law to determine what restrictions, if any, are imposed upon the ownership of land by a corporation or by an alien and the period during which the power to alienate interests in land may be suspended. These courts would also apply their local law rule to determine such issues as whether the land must be used for residential purposes only or whether it can be put to a commercial use.

The courts of the situs would also frequently apply their local law to determine issues in which it might be thought that the situs does not have the dominant interest. In the normal course of events, transactions involving land are not entered into until considerable thought has been given by the parties and their lawyers to the possible consequences. This is an area where it is peculiarly important that there be certainty, predictability and uniformity of result and ease in the determination and application of the law to be applied. For these reasons, the courts of the situs would apply their local law in situations where it is likely that a person relied on the record title before entering into a transaction involving interests in local land. Likewise, considerations of convenience make it desirable that a prospective purchaser and his agents, such as draftsmen and title searchers, need consult only a single law and that the one with which they are most familiar. This latter point may be illustrated by an example. Suppose that in state X, where both A and B are domiciled, A gives B a deed to land in state Y and that thereafter the question arises before a Y court whether A had the requisite

Restat 2d of Conflict of Laws, § 223

capacity to do so. It could be argued in support of application by the Y courts of X local law to determine this question of capacity that X is the state which has the dominant interest in the determination of this issue. But such a decision would complicate the task of title searchers and of other persons concerned with Y land. Thereafter, they could not always safely restrict their attention to Y local law in determining the capacity of a transferor of Y land. There would be situations, perhaps uncertain both in their nature and extent, where the local law of one or more other states would have to be consulted.

For all of these reasons, the courts of the situs would usually apply their own local law to determine questions involving the conveyance of an interest in the land.

On the other hand, situations will arise where the courts of the situs would not apply their own local law to the decision of a particular issue. So, as stated in Comments *c-d*, these courts might hold that a statutory rule of incapacity applies only to local domiciliaries or to domestic corporations and is not applicable to foreign transferors or transferees. Thus, these courts might hold that a statute which restricts testamentary gifts to charities in order to protect the members of the testator's family applies only to local testators and does not restrict a foreign testator's power to devise local land. Likewise, these courts might feel that local interests were not involved in a disposition to be made outside the state of the proceeds of the sale of local land. Hence, when by the terms of a conveyance the transferee is directed to sell local land and to dispose of the proceeds in a particular way outside the state, the courts of the situs might not apply their own local law to determine the validity of the particular disposition (see §§ 239, 278).

There may also be occasions when the courts of the situs would apply the local law of another state on the ground that the concern of that other state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of the local law of the situs. So the situs courts might apply the local law of the state of the spouses' domicile to determine certain issues involving the conveyance of interests in local land from one spouse to the other, and this is particularly likely to be so when the land is one item in an aggregate of things, both movable and immovable, which are situated in a number of states and which it is desirable to deal with as a unit.

Whichever law would have been applied by the courts of the situs in the decision of the particular issue will likewise so be applied by the forum. To date, the courts of the situs have usually applied their own local law to determine the validity of a conveyance of an interest in land. On occasion, however, these courts have applied the local law of another state, particularly in the case of certain questions involving testamentary transfers (see § 239) and transfers in trust (see § 278).

c. Capacity of transferor. For reasons stated in Comment *b*, the courts of the situs would usually apply their own local law to determine the capacity of the transferor to make a valid conveyance of an interest in the land. These courts might hold, however, that some rule of incapacity is applicable only to local domiciliaries or to local corporations and hence does not affect a foreign transferor. These courts might also apply the local law of another state on the ground that the concern of that other state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of their own local law. So the courts of the state where the land is might on occasion apply the local law of the state of the spouses' domicile or of the domicile of parent and child to determine the capacity of one of these parties to convey an interest in the land to the other.

d. Capacity of transferee. The situs has an obvious interest in the question who may hold title to interests in local land. For this reason, and for the other reasons stated in Comment *b*, the courts of the situs would usually apply their own local law to determine the capacity of the transferee to take and hold an interest in local land. These courts might hold, however, that a local statutory rule of incapacity applies only to domestic corporations and is not applicable to foreign corporations. These courts might also apply the local law of another state because of the greater concern of that state in the determination of the particular issue. So, these courts might hold that a conveyance to a foreign corporation is invalid if the corporation lacked capacity under the local law of the state of its incorporation to take and hold an interest in the land.

e. Formalities. As here used, the term "formalities" applies to such requirements as those of a writing, of a seal, of witnesses and of acknowledgment. In the absence of statute, the courts of the situs would usually apply their own local law to determine questions involving the formalities necessary for the validity of a conveyance of an interest in land. In the case of testamentary transfers, however, statutes in many states provide that a will devising an interest in local land shall be held valid with respect to formalities if it complies

Restat 2d of Conflict of Laws, § 223

with the requirements of the state where the will was executed or of some other state. These statutes represent a legislative determination that the reasons stated in Comment *b* for application of the local law of the situs are outweighed on this occasion by the desirability of upholding the validity of a conveyance with respect to issues of form. Even in the absence of statute, the courts of the situs might on occasion uphold the validity of a conveyance with respect to issues of form by application of the local law of some other state in situations where the requirements of form of the situs have been satisfied in substance.

f. Other questions of validity. Frequent questions, involving aspects of validity other than capacity and formalities, relate to illegality, the rule against perpetuities, fraud as between parties to the conveyance and fraud as against third persons, such as in the case of a conveyance in fraud of creditors. Usually, the courts of the situs would apply their own local law to determine such questions.

The situs has a substantial interest in determining the uses to which the land may be put and the conditions under which the land may be held. Hence the courts of the situs would almost invariably apply their own local law to determine whether a contemplated use of the land was, or was not, illegal. On the other hand, these courts, unless prohibited by a strong public policy, might apply the local law of another state to determine certain questions of illegality in a situation where the land is to be sold and the proceeds transmitted to the other state. Similarly, the courts of the situs would almost invariably apply their own local rule against perpetuities to determine whether an interest sought to be created in the land by the conveyance cannot take effect because the power of alienation is suspended for too long a period. On the other hand, again, these courts might apply the rule against perpetuities of another state in a situation where the land is to be sold and the proceeds transmitted to the other state and the conveyance is valid under the rule against perpetuities of the other state but not under the rule of the situs.

g. Effect of conveyance. The courts of the situs would usually apply their local law to determine the nature of the interest in land transferred by the conveyance. So these courts would usually apply their local law to determine such questions as whether equities and unrecorded titles are cut off by a conveyance, whether a conveyance without the use of words of inheritance passes a fee simple or a life estate and whether a conveyance has created a legal or an equitable estate.

h. Non-possessory interests in land. The courts of the situs would usually apply their local law to determine questions relating to the creation, transfer or termination of non-possessory interests in land, such as easements, profits and licenses. These courts might hold, however, that some statutory rule, such as one relating to capacity, is applicable only to local domiciliaries and to domestic corporations and does not affect other persons (see Comments *c-d*). These courts might apply the local law of another state in still other circumstances on the ground that the concern of this state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of their local law.

Whether a covenant runs with the land, and what effect its running may have on other interests in the land, will be determined by the law that would be applied by the courts of the situs. On the other hand, a covenant may create purely contractual obligations between the parties to the instrument. What law governs a covenant of the latter sort is considered in § 190.

For the distinction between possessory and non-possessory interests in land, see the *Restatement of Property* § 7.

i. Collateral questions. As stated in the preceding Comments, the courts of the situs would usually apply their local law to determine whether a conveyance transfers an interest in land and the nature of the interest so transferred. On the other hand, these courts might apply the local law of some other state to determine questions that are incidental or collateral to the conveyance. So when, for example, A brings suit against B in state X to cancel a deed to X land which he claims he delivered to B in state Y by reason of misrepresentations made to him by B in Y, the X court would probably apply Y local law in determining whether B's conduct amounted to actionable fraud (see § 148). Or, if the basis of A's claim is that B obtained delivery of the deed in breach of a fiduciary obligation owed A, the X court would probably apply the local law of the state having the most significant relationship to the parties with respect to the particular issue in determining whether B did owe A a fiduciary obligation and, if so, whether this obligation was breached.

A similar approach might be taken in such circumstances by the courts of some state other than that of the situs. These courts would apply the law that would be applied by the courts of the situs in determining whether an interest in land has been transferred by the conveyance and the nature of that interest. On the other hand,

Restat 2d of Conflict of Laws, § 223

these courts might apply the local law of some other state in determining whether to order the defendant to convey or to reconvey to the plaintiff the interest in land. If, in obedience to the order, the defendant were to give the plaintiff a deed to the land, the deed would be recognized as valid and effective by the courts of the situs. And, even if the defendant did not give a deed to the plaintiff, the decree ordering him to do so would, in all probability, be enforced by the courts of the situs (see § 102, Comment *d*).

Suppose, for example, that in an action brought in state X it is claimed that A in X gave B a deed to land in state Y in fraud of creditors. In such an action, the X court would determine, if the question were to arise, whether an interest in the Y land had been transferred to B in accordance with the law that would be applied by the Y courts. On the other hand, the X court might well look to X local law in determining whether the deed had in fact been given in fraud of creditors and if so, whether B should be ordered to reconvey his interest in the Y land (see § 145). Similarly, if it is claimed that, in breach of his contract with C, A in state X gave B a deed to land in state Y, that B took the deed with notice of A's contract with C, and that A, B and C are all domiciled in X, an X court might look to X local law in determining whether it should order B to convey the land to C (see § 188). Likewise, a court of state X in an action for divorce between spouses domiciled in X might apply X local law in determining whether to order the husband to convey to his wife land owned by him in state Y.

Illustration:

1. In a divorce proceeding brought by W against H in state X, W seeks an order requiring H to deed to her his interests in land in state Y. H and W are both domiciled in X; W is entitled to the relief sought under X local law but not under the local law of Y. Among the questions for the X court to determine are whether X or Y has the dominant interest in the determination of the particular issue and whether the X court can give W effective relief. As to the first question, it would appear that X is the state of dominant interest. The purpose of the X rule would clearly be furthered by its application to spouses domiciled in X whereas it is doubtful that any interest of Y would be served by application of the Y rule, which presumably is directed, at least primarily, to spouses domiciled in Y. Also the Y recording system would not be affected if the X court were to apply X local law and order H to deed to W his interests in the Y land. This is because the transfer would not be effective against third persons until the transfer from H to W had been recorded in Y in accordance with the Y requirements. Finally, an order by the X court requiring H to convey the land to W would probably be given effect in Y. This would clearly be so if H obeyed the order and gave W a deed to the Y land. But even if H disobeyed the order and failed to give W a deed, the order of the X court would in all probability be enforced in Y (see § 102). Under the circumstances, the X court could appropriately apply the X rule and order H to convey the Y land to W.

Comment:

j. As to the law governing testamentary transfers and transfers in trust of an interest in land, see §§ 239, 278.

k. A state with personal jurisdiction over the transferee may order him to convey the land to the transferor or to a third person as an equitable remedy for some breach of trust or other wrong that the transferee has committed (see § 53).

l. Failure to record. The courts of the situs would apply their own local law to determine the effect as to third persons of a failure duly to record a conveyance.

REPORTER'S NOTES

See generally 2 Beale, Conflict of Laws 938-941 (1935); Cheshire, Conflict of Laws 587-603 (6th ed. 1961); Dicey, Conflict of Laws 519-543 (8th ed. 1967); Ehrenzweig, Conflict of Laws 607-616 (1962); Goodrich, Conflict of Laws 293-296 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 342-348 (3d ed. 1963).

Comments b-d: A local rule of incapacity has been held inapplicable by the courts of the situs to foreign transferors or transferees. [Proctor v. Frost, 89 N.H. 304, 197 A. 813 \(1938\)](#); Mayor of Canterbury v. Wyburn [1895] 1 Ch. 83; Hancock, In the Parish of St. Mary le Bow, in the Ward of Cheap, 16 Stan.L.Rev. 561 (1964); Hancock, Equitable Conversion and the Land Taboo in Conflict of Laws, 17 Stan.L.Rev. 1095 (1965); Hancock, Full Faith and Credit to Foreign Laws and Judgments in Real Property Litigation, 18 Stan.L.Rev. 1299 (1966); Hancock, Conceptual Devices for Avoiding the Land Taboo in Conflict of Laws, 20 Stan. L.Rev. 1 (1967).

A local restrictive rule has been held inapplicable by the courts of the situs to a disposition to be made outside the state of the proceeds of the sale of local land. [Hope v. Brewer, 136 N.Y. 126, 32 N.E. 558 \(1892\)](#) and Hancock, In the Parish of St. Mary le Bow, in the Ward of Cheap, *supra*.

Restat 2d of Conflict of Laws, § 223

As to problems of title search, see Goodrich, Two States and Real Estate, 89 U.Pa.L.Rev. 417, 418-419 (1941); Rheinstein, Book Review, 8 J.Pub.L. 551, 556 (1959).

Comment e: See Lorenzen, The Validity of Wills, Deeds and Contracts as regards Form in the Conflict of Laws, 20 Yale L.J. 427 (1911). It has been said that, even in the absence of statute, "there is no sound reason of policy for continuing to invalidate foreign-executed wills and deeds of land merely because they do not carry all the forms required in the case of purely domestic instruments." Cook, The Logical and Legal Bases of the Conflict of Laws 269 (1942).

Comment g: See [McGoon v. Scales, 9 Wall. \(76 U.S.\) 23 \(1870\)](#); [Bronson v. St. Croix Lumber Co., 44 Minn. 48, 46 N.W. 570 \(1890\)](#); [De Graffenried v. De Graffenried, 147 App.Div. 825, 132 N.Y.S. 1107](#) (1st Dep't 1911), aff'd 204 N.Y. 667, 98 N.E. 1118 (1912); but cf. [Genet v. Delaware & Hudson Canal Co., 136 N.Y. 593, 32 N.E. 1078 \(1893\)](#); see also 2 Beale, Conflict of Laws 942-943 (1935); Goodrich, Conflict of Laws 294 (Scoles, 4th ed. 1964).

Comment h: See [Platner v. Vincent, 187 Cal. 443, 202 P. 655 \(1921\)](#); [Dalton v. Taliaferro, 101 Ill.App. 592 \(1901\)](#); [Riley v. Burroughs, 41 Neb. 296, 59 N.W. 929 \(1894\)](#); [Lyndon Lumber Co. v. Sawyer, 135 Wis. 525, 116 N.W. 255 \(1908\)](#); Goodrich, Conflict of Laws 297 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 351 (3d ed. 1963); see Heilman, Conflict of Laws, Treatment of Interpretation and Construction of Deeds in Reference to Covenants, 29 Mich.L.Rev. 277 (1931).

Comment i: The rule that a court of equity may order a person to convey, or to reconvey, his interests in foreign land was established in England by the leading case of Lord Cranston v. Johnston, 3 Ves.Jr. 170, 30 Eng. Rep. 952 (Ch.1796).

Such an order has sometimes been based upon a law other than the local law of the situs. [Irving Trust Co. v. Maryland Casualty Co., 83 F.2d 168 \(2d Cir. 1936\)](#), cert. den. 299 U.S. 571 (1936); [McElreath v. McElreath, 162 Tex. 190, 345 S.W.2d 722 \(1961\)](#); see also [Smith v. Schlein, 144 F.2d 257 \(D.C.Cir.1944\)](#); [Bell v. Wadley, 206 Ark. 569, 177 S.W.2d 403 \(1944\)](#); Bryant's Trustee in [Bankruptcy v. Stephens, 253 Ky. 573, 69 S.W.2d 1056 \(1934\)](#); [Polson v. Stewart, 167 Mass. 211, 45 N.E. 737 \(1897\)](#); Clarke v. Clarke, 46 S.C. 230, 24 S.E. 202 (1896); Weintraub, An Inquiry into the Utility of "Situs" as a Concept in Conflicts Analysis, 52 Corn.L.Q. 1 (1966).

Cross Reference

ALR Annotations:

Conflict of laws as regards validity of fraudulent and preferential transfers and assignments. 111 A.L.R. 787.

Digest System Key Numbers:

Depositories 1, 91

[Restat 2d of Conflict of Laws, § 224](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title A- Conveyances

§ 224 Construction of Instrument of Conveyance

(1) An instrument of conveyance of an interest in land is construed in accordance with the rules of construction of the state designated for this purpose in the instrument.

(2) In the absence of such a designation, the instrument is construed in accordance with the rules of construction that would be applied by the courts of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. The effect of words used in an instrument of conveyance of an interest in land may be determined in any one of three ways. On rare occasions, the words may be given a particular legal effect irrespective of the intentions of the parties (see Comment *b*). In the second place, the words may be given a meaning which it is believed, on the basis of the available evidence, was the meaning the parties intended the words to bear. This process, which is referred to as interpretation (see Comment *c*), is employed in the great majority of situations. Thirdly, situations do arise where the court is not presented with a satisfactory basis for determining the parties' intentions and where a rule of law is employed to fill the resulting gap in the instrument. This last process is here referred to as construction (see Comment *d*).

b. Legal effect. At common law, on rare occasions, the use of certain words in an instrument of conveyance or will of an interest in land was followed by definite legal consequences that were quite independent of the intentions of the person making the disposition. Thus, under the rule in Shelley's Case, when an owner of land made a conveyance to a person for life and limited a remainder to the heirs of the same person, he created an estate in fee simple in that person and not a life estate in him with a remainder to his heirs. So also, at common law it was held that a fee simple could not be created by a conveyance to a person without mentioning his heirs. So too, there was a rule at common law, sometimes called the rule of worthier title, that if the owner of land made a conveyance, in trust or otherwise, under which he reserved a life estate in himself and then purported to create a remainder interest in his heirs as such, he could not thereby create a remainder interest in his heirs but retained a reversionary interest in himself. See [Restatement of Trusts \(Second\), § 127](#), Comment *b*. The courts of the situs would usually apply their own local law in determining what language has a legal effect upon interests in land irrespective of the meaning intended, and what the particular effect of such language is. The forum will decide such questions in the same way that these questions would have been decided by courts of the situs.

The problem of legal effect has no great importance today. The rule in Shelley's Case has been abolished almost everywhere, and so too has the rule requiring the use of the words "heirs" to create a fee simple. The rule with respect to a conveyance to the grantor's heirs has become merely a rule of construction.

c. Interpretation. The meaning of words used in an instrument of conveyance or will of an interest in land will depend upon the intentions of one or more of the parties in situations where these words are not given a prescribed legal effect (see Comment *b*). In such a case, the forum will look to the law that would be applied by the courts of the situs to determine the party or parties whose intentions are material. Under this law, for example, the intentions of only one or more of the parties to a conveyance (as the grantor in the case of an inter vivos gift) may be significant. If so, only the intentions of such party or parties will be considered by the

Restat 2d of Conflict of Laws, § 224

forum. In ascertaining the intentions of the party or parties, the forum will consider the ordinary meaning of the words used, the context in which the words appear in the instrument, and the circumstances under which the instrument was drafted. The forum will consider who drafted the instrument (whether the party or parties or some third person) and whether the draftsman was probably using the language of his domicile or of the place of execution or of the situs of the land. The forum will also consider any other properly admissible evidence that casts light on the actual intentions of the party or parties. The question to be determined is one of fact rather than one of law. The forum will apply its own rules in determining the admissibility of evidence (see § 138), and it will use its own judgment in drawing conclusions from the evidence.

d. Construction. When there is no satisfactory evidence of the meaning the words were intended to bear, a rule of law is employed to fill what would otherwise be a gap in the instrument.

A typical problem of this sort arises when (1) a conveyance of land in state X is executed by a person who is domiciled in state Y, (2) some word, such as "heirs," in the instrument of conveyance bears one meaning in X and another in Y, and (3) there is no satisfactory evidence of what was actually intended. In such a case, the meaning to be attributed to the word "heirs" must be determined by a rule of construction.

e. When designated law. The forum will give effect to a provision in an instrument of conveyance that it should be construed in accordance with the rules of construction of a particular state. It is not necessary that this state have a substantial connection with the parties or the land. This is because construction is a process for giving meaning to an instrument in areas where the intentions of the parties would have been followed if these intentions had been made clear.

When the parties designate the law of a state as the applicable law in matters of construction, it is to be inferred that they intend the local law of that state to govern. The forum will therefore apply the rules of construction of the designated state.

Despite the absence of an express designation, it may be apparent from the language of the instrument or from other circumstances that the parties wished to have the local law of a particular state govern the construction of the instrument. In such a case, the rules of construction of this state will be applied.

f. When no designated law. When the instrument does not provide that it should be construed in accordance with the rules of construction of a particular state, and when the desires of the parties in this regard are not otherwise apparent, the forum will construe the instrument in accordance with the rules of construction that would be applied by the courts of the situs. The question is whether these courts would apply their own rules of construction or the rules of some other state. In this connection, the courts of the situs might distinguish between situations where the conveyance is a gift and where it is based on consideration, such as in the case of a sale or lease. These courts might further distinguish between situations where land in a single state and where land in two or more states is involved. These courts might also make the question of construction depend upon whether the conveyance is testamentary or inter vivos.

When the conveyance is a gift, the transferor's intentions are particularly important. Here authority is divided as to whether the meaning of the words used in the conveyance should, in situations where the actual intentions of the transferor are unascertainable, be determined in accordance with the rules of construction of the domicile of the transferor at the time of the conveyance or of the situs. (As to the construction of testamentary dispositions, see § 240.) The forum will apply whichever rules of construction would have been applied by the courts of the situs.

It can be argued, on the one hand, that, since a man may be expected to speak the language of his home, the meaning of a word, in the absence of controlling circumstances to the contrary, should be determined in accordance with the rules of construction of the state of the transferor's domicile at the time of the conveyance. To the contrary, it can be argued that the transferor probably had no clear intention as to the meaning of the words in question, particularly because legal instruments are normally drafted by lawyers. Also, it may be felt that the safe and easy transfer of interests in land can best be attained, and the problems of title search minimized, by having at least the great majority of questions relating thereto, including matters of construction, governed by the local law of the situs. In any event, the forum will apply whichever rules of construction would have been applied by the courts of the situs.

When the conveyance is based on consideration, such as in the case of a sale or lease, the intentions of both the transferor and the transferee are important. Here the situs courts would presumably feel that the words

Restat 2d of Conflict of Laws, § 224

used in the instrument of conveyance should not be construed in accordance with the rules of the state of the transferor's domicile unless the evidence indicates that this was the meaning actually intended by both parties, or unless the transferee was also domiciled in that state at the time, or unless the word has the same meaning in the domicile of both the transferor and the transferee. In other situations, the situs courts might well construe the words in accordance with their own local rules. All courts, in any event, will construe the words in accordance with the rules which the courts of the situs would have applied.

Illustration:

1. A, domiciled in state X, executes and delivers in that state without consideration a deed to land in state Y to B and on his death to his heirs. The courts of all states will seek to ascribe the same meaning to the word "heirs" in the conveyance as the Y courts would have done. If the Y courts would have construed the words in accordance with the X rules, all other courts will do likewise.

Comment c: A modern case showing the sources used by a court in interpreting a conveyance is [Juden v. Southeast Missouri Telephone Co., 361 Mo. 513, 235 S.W.2d 360 \(1950\)](#).

Comment d: Many of the construction cases involve trusts and are set forth in the Reporter's Note to § 277. Cases in which courts at the situs referred to the rules of construction of the domicile of the transferor (which was also the state of execution) include [New Haven Trust Co. v. Camp, 81 Conn. 539, 71 A. 788 \(1909\)](#); [Taylor v. Taylor, 310 Mich. 541, 17 N.W.2d 745 \(1945\)](#); [Brown v. First National Bank, 44 Ohio St. 269, 6 N.E. 648 \(1886\)](#).

See generally Comment, Choice of Law Rules for the Construction and Interpretation of Written Instruments, 72 Harv.L.Rev. 1154 (1959).

REPORTER'S NOTES

Comment b: Cases holding that the legal effect of a conveyance of an interest in land is determined by the local law of the situs include [McGoon v. Scales, 9 Wall. \(76 U.S.\) 23 \(1870\)](#) and [Cole v. Steinlauf, 144 Conn. 629, 136 A.2d 744 \(1957\)](#).

Cross Reference

ALR Annotations:

Conflict of laws as regards validity of fraudulent and preferential transfers and assignments. 111 A.L.R. 787.

Conflict of laws as to construction and effect of will devising real property. 79 A.L.R. 91.

Digest System Key Numbers:

Deeds 91

Restat 2d of Conflict of Laws, § 225

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title A- Conveyances

§ 225 Equitable Conversion of Interests in Land

Whether an interest in land is equitably converted by dealings with the land, so that for choice-of-law purposes the interest should be treated in the same way as an interest in a movable, will be determined in the same way as this question would be determined by the courts of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. The doctrine of equitable conversion is based upon the local law distinction between realty and personalty. When a person conveys land in trust, either by will or inter vivos, and directs the trustees to sell the land and either to hold the proceeds in trust or to distribute them, the interest of a beneficiary in the land is usually held to be personalty for local law purposes even though the trustee has not yet sold the land. This is because the right of the beneficiary is to receive the proceeds of the land rather than the land itself. So if the beneficiary were to die intestate before the land was sold, his interest, at common law, would pass to his administrator rather than to his heirs. Similarly, if a person enters into a contract to sell his land, his interest, even before the actual closing, would usually be considered personalty for local law purposes and, at common law, would pass to his administrator rather than to his heirs, if he were to die intestate. Conversely, the right of the purchaser, although he had not yet received the conveyance, would usually be considered realty for local law purposes. Whether there has been an equitable conversion for local law purposes is determined by the local law of the situs.

An interest in land, which by reason of the doctrine of equitable conversion is considered to be personalty for local law purposes, may also be considered personalty for choice-of-law purposes and treated in the same way as an interest in a movable. Suppose, for example, that a person domiciled in state X dies intestate after having entered into a contract to sell land in state Y. If the Y courts would consider this person's interest in the land personalty for local law purposes, they might likewise consider this interest to be personalty for choice-of-law purposes. If so, they would look to the law of X (see § 260) rather than to their own local law (see § 236) to determine how this interest should be distributed upon intestacy. Whether an interest in land should be considered personalty for choice-of-law purposes will be determined in the same way that this question would be determined by the courts of the situs. How these courts would determine this question may depend upon the particular issue and the policies involving that issue.

b. Importance of doctrine. Whether or not equitable conversion has taken place may be of considerable importance. Thus, upon the applicability of the doctrine may depend such questions as the extent to which a widow may share in the estate of her deceased husband (see Illustration 1), and the persons who are entitled to take in the event of an intestacy (see Illustration 2).

Illustrations:

1. In state X where he is domiciled, A contracts to sell and B to buy land in state Y. A then dies having left by will his entire estate to his children. By reason of the contract, the Y courts would treat A's interest in the land for choice-of-law purposes in the same way that they would treat an interest in a movable. Under the Y choice-of-law rules, the right of a widow to a forced share in the movables of her deceased husband is determined by the law of the state of the husband's domicile at death (see § 265). X law will be applied to determine the size of the forced share which A's widow can claim in the purchase price of the land.

Restat 2d of Conflict of Laws, § 225

2. A, domiciled in state X, directs in his will that land in state Y should be sold and the proceeds paid to C. C, who is likewise domiciled in X, dies intestate before the land is sold. By reason of the provision in A's will, the Y courts would treat an interest in the land for choice-of-law purposes in the same way that they would treat an interest in a movable. Under the Y choice-of-law rule, the division of movables upon an intestacy is governed by the law of the state of the decedent's domicil at death (§ 260). X law will be applied to determine how the proceeds of the sale of the land should be divided among C's next of kin.

Comment:

c. Full faith and credit. A finding by a court of the State where the decedent was domiciled at the time of his death that the effect of the decedent's will was to work an equitable conversion of his interests in land need not be given full faith and credit by the courts of the sister State where the land is situated provided, at least, that the parties to the proceeding in the sister State are not bound under principles of res judicata by the finding of the court in the State of domicil. *Clarke v. Clarke*, 178 U.S. 186 (1900).

d. As to the law applicable to equitable conversion in the case of trusts, see § 278. As to the law applicable to contracts for the sale of interests in land, see § 189.

REPORTER'S NOTES

See [McCaughna v. Bilhorn](#), 10 Cal.App.2d 674, 52 P.2d 1025 (1935); [Clarke's Appeal](#), 70 Conn. 483, 40 A. 111 (1898), aff'd *Clarke v. Clarke*, 178 U.S. 186 (1900); [Duckwall v. Lease](#), 106 Ind.App. 664, 20 N.E.2d 204 (1939); [Bates v. Decree of Judge of Probate](#), 131 Me. 176, 160 A. 22 (1932); [Hope v. Brewer](#), 136 N.Y. 126, 32 N.E. 558 (1892); [In re McDougal's Estate](#), 55 N.J.Super. 36, 149 A.2d 801 (1959), aff'd 29 N.J. 586, 151 A.2d 540 (1959); *In re Gerhart's Trust*, 6 Fiduciary Reporter 245 (Pa.1956); [Toledo Society for Crippled Children v. Hickok](#), 152 Tex. 578, 261 S.W.2d 692 (1953). A leading English case is *In re Berchtold*, [1923] 1 Ch. 192.

See 5 Scott, Trusts 4125-4142 (3d ed. 1967); Hancock, Equitable Conversion and the Land Taboo in Conflict of Laws, 17 Stan. L.Rev. 1095 (1965).

Cross Reference

ALR Annotations:

Conflict of laws and related problems as to equitable conversion of property. [43 A.L.R.2d 569](#).

Digest System Key Numbers:

Conversion 2

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

*Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2-
Immovables > Title B- Transfers by Operation of Law*

Restat 2d of Conflict of Laws, § Scope

: As used in this Title, the term "transfer by operation of law" refers to any transfer of an interest in land brought about by some means other than a conveyance of the interest by its owner.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 226](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title B- Transfers by Operation of Law

§ 226 Transfer of Interest in Land by Operation of Law

(1) Whether there has been a transfer of an interest in land by operation of law and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. The forum will attempt to decide whether an interest in land has been transferred by operation of law and the nature of the interest transferred in the same way that these questions would have been decided in the very case at hand by the courts of the situs. These courts would usually only give effect to transfers brought about by the operation of their own local law. If, however, the courts of the situs would give effect to a transfer by operation of some foreign law, the forum will do likewise.

b. The rule of this Section applies to a transfer by a court of equity to a person found to be entitled to the land. It also applies to an enlargement or diminution of interests in land, such as by partition, foreclosure or redemption.

Illustration:

1. A court in state X orders specific performance of a contract to convey land in state Y, and under the order of the court a master gives A a deed to the land. A acquires no interest in the land by reason of the decree and of the deed executed thereunder unless the law of Y so provides. As to the effect of such a decree, see § 102.

Comment:

c. The rule of this Section applies to situations where interests in land are terminated by forfeiture or escheat or by taking by eminent domain.

Illustration:

2. A court in state X decrees that a water company should take a certain lake by eminent domain. One end of the lake is in state Y. The company acquires by the decree no interest in that portion of the lake which lies in Y unless the law of Y so provides.

Comment:

d. The rule of this Section does not apply to transfers of interests in land that are effected by federal, as opposed to State, law. Transfers of the former sort include those effected under the National Bankruptcy Act or pursuant to federal powers of eminent domain. The effect of such transfers is determined by federal law.

REPORTER'S NOTES

See [Adams v. Hartzell, 18 N.D. 221, 119 N.W. 635 \(1909\)](#); 2 Beale, Conflict of Laws 945 (1935).

Cross Reference

Digest System Key Numbers:

Property 6

Restat 2d of Conflict of Laws, § 226

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 227](#)

*Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2-
Immovables > Title B- Transfers by Operation of Law*

§ 227 Acquisition by Adverse Possession or Prescription of Interest in Land

Whether there has been a transfer of an interest in land by adverse possession or by prescription and the nature of the interest transferred are determined by the local law of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. The rule of this Section is an application of the rule of § 226. The courts of the situs would apply their own local law to determine the questions dealt with in the present rule.

REPORTER'S NOTES

See 2 Beale, Conflict of Laws 945 (1935); Dicey, Conflict of Laws 526 (8th ed. 1967); Beckford v. Wade, (1805) 17 Ves.Jun. 87.

Cross Reference

Digest System Key Numbers:

Adverse Possession 2

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Restat 2d of Conflict of Laws, § 228

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title C- Encumbrances

§ 228 Mortgage on Land

(1) Whether a mortgage creates an interest in land and the nature of the interest created are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to such questions as the capacity to give a mortgage, the requisite formalities for doing so and the nature of the interest acquired by the mortgagee. Thus, the law selected by application of the rule of this Section will be applied to determine whether the creation of a valid mortgage requires a written document, a seal, witnesses, acknowledgment, or recording of the conveyance; whether the consideration is sufficient; and whether the transaction gives the mortgagee a legal title, an equitable title or only a lien.

b. Rationale. The rule of this Section is a specific application of the rule of § 223. For reasons stated in § 223, Comment *b*, the courts of the situs would usually apply their own local law in deciding questions falling within the scope of the present rule. If, however, these courts would have decided the question by reference to the local law of some other state, the forum will do likewise (see § 8). For example, these courts might hold that some statutory rule denying capacity to a certain category of persons is applicable only to local domiciliaries or to local corporations and does not affect other persons.

c. Underlying debt. The law selected by application of the rule of this Section determines whether the enforceability of the mortgage depends upon the validity of the debt for which the mortgage was given. The rules for ascertaining the state whose local law governs the validity of the underlying debt are stated in Chapter 8 of the Restatement of this Subject.

d. The law selected by application of the rule of this Section determines whether the mortgagee is entitled to possession of the mortgaged land before or after default by the mortgagor.

e. Assignment of mortgage on land. The law selected by application of the rule of this Section determines such questions as whether a mortgage on land is subject to assignment and, if so, whether it has been validly assigned, the capacity to make a valid assignment, the requisite formalities for doing so, the validity of the assignment in other respects and the nature of the interest created in the assignee. Usually, the courts of the situs would apply their own local law in deciding such questions.

A distinction must here be drawn between an assignment of the mortgage lien on the land and an assignment of the underlying debt. The law applicable to the latter question is determined in accordance with the rules stated in §§ 208-211. The courts of the situs would apply their own local law to determine whether the mortgage follows the underlying debt by operation of law.

f. Discharge of mortgage on land. The law selected by application of the rule of this Section determines such questions as whether the mortgage can be discharged by an attaching creditor of the mortgagor or by the payment of the mortgage debt after its maturity and whether the discharge of the underlying debt by the local law of a state which is not that of the land's situs will discharge the mortgage. Usually, the courts of the situs would apply their own local law in deciding such questions.

Restat 2d of Conflict of Laws, § 228

The rules for ascertaining the state whose local law determines whether the underlying debt (as opposed to the mortgage given to secure it) has been paid and what acts, if any, apart from payment are sufficient to discharge this debt are stated in § 212 of the Restatement of this Subject.

REPORTER'S NOTES

See [Connor v. Elliott, 79 Fla. 513, 524, 85 So. 164 \(1920\)](#); [Thomson v. Kyle, 39 Fla. 582, 23 So. 12 \(1897\)](#); [Post v. First Nat. Bank of Springfield, 138 Ill. 559, 28 N.E. 978 \(1891\)](#); [Crews v. Mutual Benefit Life Ins. Co., 104 Ind.App. 183, 8 N.E.2d 390 \(1937\)](#); Bryant's Trustee in [Bankruptcy v. Stephens, 253 Ky. 573, 69 S.W.2d 1056 \(1934\)](#); [Guardian Life Ins. Co. of America v. Rita Realty Co., 17 N.J. Misc. 87, 5 A.2d 45 \(1939\)](#); 2 Beale, Conflict of Laws 945-946 (1935); Goodrich, Conflict of Laws 301 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 346-348 (3d ed. 1963).

Comment b: A statute limiting the power of married women to mortgage their land for the benefit of their husbands has been interpreted as designed only for the protection of local inhabitants and inapplicable to a mortgage on land within the state executed by a married woman who is domiciled elsewhere. [Proctor v. Frost, 89 N.H. 304, 197 A. 813 \(1938\)](#).

Comment c: See [Connor v. Elliott, supra](#), [Burr v. Beckler, 264 Ill. 230, 106 N.E. 206 \(1914\)](#); cf. [Lamkin v. Lovell, 176 Ala. 334, 58 So. 258 \(1912\)](#).

Comment d: See [Guardian Life Ins. Co. of America v. Rita Realty Co., supra](#).

Comment e: See [Whipple v. Fowler, 41 Neb. 675, 60 N.W. 15 \(1894\)](#); [Hoyt v. Thompson's Executor, 19 N.Y. 207 \(1859\)](#); [Howell v. Kline, 156 Pa.Super. 628, 41 A.2d 580 \(1945\)](#); Beale, Conflict of Laws 946-947 (1935); cf. Goodrich, Conflict of Laws 301-302 (Scoles, 4th ed. 1964).

Comment f: See [Burnside v. Futch, 229 Ark. 644, 317 S.W.2d 717 \(1958\)](#); [Thorburn v. Wende, 235 App.Div. 424, 257 N.Y.S. 186 \(4th Dep't 1932\)](#); [Cosgrave v. McAvay, 24 N.D. 343, 139 N.W. 693 \(1913\)](#).

Cross Reference

Digest System Key Numbers:

Mortgages 2, 98

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Restat 2d of Conflict of Laws, § 229

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title C- Encumbrances

§ 229 Foreclosure of Mortgage on Land

The method for the foreclosure of a mortgage on land and the interests in the land resulting from the foreclosure are determined by the local law of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. Method of foreclosure. The courts of the situs would apply their own local law to determine the method of foreclosure, such as whether the mortgage may be foreclosed by sale without a judicial proceeding, whether upon a judicial foreclosure a sale of the mortgaged land is necessary or whether strict foreclosure is permissible.

b. Time to foreclose. The courts of the situs would apply their own local law to determine the time within which an action to foreclose the mortgage may be brought.

c. Effect of foreclosure. The courts of the situs would apply their own local law to determine the effect of the foreclosure upon interests in the land, including the mortgagor's power of redemption (see Comment *d*).

d. Redemption of land from mortgage. The courts of the situs would apply their own local law to determine such questions as the power of the mortgagor to redeem the mortgaged land and the time during which this power may be asserted.

e. Issues collateral to foreclosure. The courts of the situs would apply their own local law to determine questions involving the foreclosure which affect interests in the land. Issues which do not affect any interest in the land, although they do relate to the foreclosure, are determined, on the other hand, by the law which governs the debt for which the mortgage was given. Examples of such latter issues are the mortgagee's right to hold the mortgagor liable for any deficiency remaining after foreclosure or to bring suit upon the underlying debt without having first proceeded against the mortgaged land. The rules for ascertaining the state whose local law governs the underlying debt are stated in §§ 187-188. For the analogous rule as to chattels, see § 254, Comment *e*.

f. As to the power of a court outside the situs to sell or to order a sale in foreclosure proceedings of the land, see § 55, Comment *c*.

Comment d: See [Tate v. Dinsmore](#), 117 Ark. 412, 175 S.W. 528 (1915); [Hannah v. Vensel](#), 19 Idaho 796, 116 P. 115 (1911); [Hughes v. Winkelman](#), 243 Mo. 81, 147 S.W. 994 (1912); [Stumpf v. Hallahan](#), 101 App.Div. 383, 91 N.Y.S. 1062 (1st Dep't 1905), aff'd 185 N.Y. 550, 77 N.E. 1196 (1906); 2 Beale, Conflict of Laws 948-949 (1935); Goodrich, Conflict of Laws 301 (Scoles, 4th ed. 1964).

Comment e: Illustrative cases where some law other than the local law of the situs of the mortgaged land was applied to determine an issue relating to the personal obligation of the mortgagor include: (1) Enforcement of debt without foreclosure: [Thompson v. Lakewood City Development Co.](#), 105 Misc. 680, 174 N.Y.S. 825 (1919), aff'd 188 App.Div. 996, 177 N.Y.S. 926 (2d Dep't 1919); [Hall v. Hoff](#), 295 Pa. 276, 145 A. 301 (1929); [Mantle v. Dabney](#), 47 Wash. 394, 92 P. 134 (1907); (2) Usury: [Thomson v. Kyle](#), 39 Fla. 582, 23 So. 12 (1897); [Fessenden v. Taft](#), 65 N.H. 39, 17 A. 713 (1889); (3) Capacity of married woman to make note: [Lamkin v. Lovell](#), 176 Ala. 334, 58 So. 258 (1912); [Burr v. Beckler](#), 264 Ill. 230, 106 N.E. 206 (1914); [Thomson v. Kyle](#), *supra*.

Restat 2d of Conflict of Laws, § 229

Statutes limiting right of recovery on personal obligation of mortgagor. Statutes of various types have been enacted which limit the right of the mortgagee to enforce the personal obligation of the mortgagor. Some statutes place a moratorium upon the enforcement of the personal obligation. Other statutes restrict the amount recoverable on a deficiency judgment by requiring that the true value of the land, rather than the amount realized on foreclosure, be deducted from the face amount of the personal obligation. Still other statutes require that the personal obligation be enforced after foreclosure of the mortgage or in the action of foreclosure itself. A statute limiting the right of recovery on the personal obligation of the mortgagor will only be applied if it is a statute of the state whose local law governs the personal obligation. Thus, a court will not apply a local statute of this sort if it is not sitting in the state of the applicable law. [Guardian Life Ins. Co. v. Rita Realty Co., 17 N.J.Misc. 87, 5 A. 2d 45 \(1939\)](#); [Provident Savings Bank & Trust Co. v. Steinmetz, 270 N.Y. 129, 200 N.E. 669 \(1936\)](#); [McGill v. Brewer, 132 Ore. 422, 280 P. 508 \(1929\)](#), upheld 132 Or. 432, 285 P. 208 (1930); [Fox v. River Heights, Inc., 22 Tenn.App. 166, 188 S.W. 2d 1104 \(1938\)](#); see Note, The Extraterritorial Effect of Mortgage Moratoria, 40 Colum.L.Rev. 867 (1940). When the court finds that the personal obligation is governed by the local law of another state (commonly the situs), it will apply the statute of that state. [Belmont v. Cornen, 48 Conn. 338 \(1880\)](#); [Stumpf v. Hallahan, 101 App.Div. 383, 91 N.Y.S. 1062](#) (1st Dep't 1905), aff'd 185 N.Y. 550, 77 N.E. 1196 (1906). But if the court finds that the personal obligation is governed by the local law of the state in which it is sitting, it will, on this ground, refuse to apply the statute of the situs. [Hewitt v. Dredge, 133 Minn. 171, 157 N.W. 1080 \(1916\)](#); [Hall v. Hoff, 295 Pa. 276, 145 A. 301 \(1929\)](#).

A statute limiting the time in which suit to recover a deficiency judgment may be brought after foreclosure will be applied if it is a statute of the state whose local law governs the personal obligation. [Stumpf v. Hallahan, supra](#); [Apfelberg v. Lax, 255 N.Y. 377, 174 N.E. 759 \(1931\)](#); [Sea Grove Bldg. & Loan Ass'n v. Stockton, 148 Pa. 146, 23 A. 1063 \(1892\)](#); [In re Timmins' Estate, 338 Pa. 475, 13 A.2d 7 \(1940\)](#).

See generally 2 Beale, Conflict of Laws 947 (1935); Goodrich, Conflict of Laws 301 (Scoles, 4th ed. 1964). As to Comment *d*, see 2 Beale, *supra*, 948-949; Stumberg, Conflict of Laws 348-349 (3d ed. 1963).

REPORTER'S NOTES

Comment a: See [Federal National Mortgage Ass'n v. Kostrunck, 229 F.Supp. 777 \(D.C. Iowa 1964\)](#); [Elliott v. Wood, 45 N.Y. 71 \(1871\)](#).

Restat 2d of Conflict of Laws, § 230

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title C- Encumbrances

§ 230 Lien on Land

(1) Whether a lien creates an interest in land and the nature of the interest created are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. *Scope of section.* The rule of this Section applies to questions relating to the creation and extent of the lien, its transfer, its foreclosure, its discharge and the redemption of the land from it. Sections 228-229, which deal with mortgages, are but specific applications of the present rule. The rule is applicable whether the lien is created by the act of the parties or by operation of law and whether the lien is legal or equitable.

Among the questions falling within the scope of the rule of this Section are whether an agreement to give land as security for a debt creates an equitable lien upon the land, whether the doing of work or the using of materials upon a building creates a mechanic's or a materialman's lien and whether the enforceability of the lien is dependent upon the validity of the debt for which the lien is given. The rules for ascertaining the state whose local law determines the validity of the underlying debt are stated in §§ 187-188.

b. What is said in Comment *b* of § 223 is, in general, applicable here. Questions involving the creation and extent of a lien on land will be determined by the law that would be applied by the courts of the situs. These courts would usually apply their own local law in deciding such questions. If, however, these courts would have decided the particular question by reference to the local law of some other state, the forum will do likewise (see § 8).

c. *Charges on land.* What is said in the rule of this Section and in the Comments is also applicable to charges on land.

REPORTER'S NOTES

See [Burnside v. Futch](#), 229 Ark. 644, 317 S.W.2d 717 (1958); [Midland Valley Ry. v. Moran Bolt & Nut Mfg. Co.](#), 80 Ark. 399, 97 S.W. 679 (1906); [Thurman v. Kyle](#), 71 Ga. 628 (1883); [Bagnell Timber Co. v. Missouri, K. & T. R. Co.](#), 180 Mo. 420, 79 S.W. 1130 (1904); [Allied Thermal Corp. v. James Talcott, Inc.](#), 3 N.Y.2d 302, 144 N.E.2d 66 (1957); [Campbell v. Coon](#), 149 N.Y. 556, 44 N.E. 300 (1896); cf. [Albert and Harlow Inc. v. Great Northern Oil Co.](#), 283 Minn. 246, 167 N.W.2d 500 (1969).

Comment c: See [Williams v. Nichol](#), 47 Ark. 254, 1 S.W. 243 (1886); [Deyo v. Morss](#), 30 App. Div. 56, 51 N.Y.S. 785 (3d Dep't 1896); [In re Osborn's Estate](#), 151 Misc. 52, 270 N.Y.S. 616 (Surr. 1934).

Cross Reference

Digest System Key Numbers:

Property 6

Mortgages 98

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

*Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2-
Immovables > Title D- Powers*

Restat 2d of Conflict of Laws, § Scope

: This Title deals with powers relating to interests in immovables. Powers relating to interests in chattels and in intangible things are dealt with in §§ 255-256.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 231](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title D- Powers

§ 231 Exercise of Power Created by Operation of Law to Transfer an Interest in Land

(1) Whether an interest in land has been transferred by the exercise of a power created by operation of law and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to the power of executors, administrators, guardians, receivers, sheriffs and all other administrative officers to sell land. The rule therefore applies to such questions as whether one of two executors may sell land, or whether a power to sell land contained in a will may be exercised by an administrator c.t.a.

b. For reasons stated in § 223, Comment *b*, questions relating to the exercise of a power created by operation of law to transfer an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs. If these courts would give effect to a power created by some foreign law, the forum will do likewise.

Illustration:

1. A, a corporation of state X, owns land in state Y. An X court, in insolvency proceedings, dissolves A and orders its liquidation by B, state insurance commissioner, who under the statutes of X is vested with title to all of A's property and has power to dispose of the same. By deed, B purports to convey to C the land owned by A in Y. If the Y courts would recognize this deed as conveying good title to the land, the courts of other states will do likewise.

Comment:

c. As to the law governing powers of appointment, see § 281.

REPORTER'S NOTES

See *Watkins v. Holman*, 16 Pet. (41 U.S.) 25 (1842); [Deschenes v. Tallman, 248 N.Y. 33, 161 N.E. 321 \(1928\)](#); 2 Beale, Conflict of Laws 949-950 (1935).

Cross Reference

ALR Annotations:

Conflict of laws as to exercise of power of appointment. 150 A.L.R. 519.

Digest System Key Numbers:

Powers 2, 36(2)

Restat 2d of Conflict of Laws, § 231

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 232](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title D- Powers

§ 232 Exercise of Power of Attorney to Transfer an Interest in Land

(1) Whether the exercise of a power of attorney transfers an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to such questions as the capacity to give a valid power of attorney to transfer interests in the land, the requisite formalities for giving and for exercising the power and the nature of the interest transferred by the exercise of the power.

b. Rationale. The rule of this Section is a specific application of the rule of § 223. For reasons stated in § 223, Comment *b*, the courts of the situs would usually apply their own local law in deciding questions falling within the scope of the present rule. If, however, these courts would have decided the question by reference to the local law of some other state, the forum will do likewise (see § 8). For example, these courts might hold that some statutory rule denying capacity to a certain category of persons is applicable only to local domiciliaries or to local corporations and does not affect other persons. These courts might also apply the local law of another state in certain circumstances on the ground that the concern of that state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of their own local law.

c. As to the exercise of a testamentary power to sell land by a foreign executor or administrator, see § 338.

REPORTER'S NOTES

See [Williams v. Courton, 172 Ark. 129, 287 S.W. 745 \(1926\)](#); [Linton v. Moorhead, 209 Pa. 646, 59 A. 264 \(1904\)](#); 2 Beale, Conflict of Laws 950 (1935).

See Falconbridge, Conflict of Laws 433 (2d ed. 1954) suggesting that the agent may be held to have a power to bind his principal under the law of the situs, although he had no such power under the law governing the principal-agent relationship.

Cross Reference

ALR Annotations:

Conflict of laws as to exercise of power of appointment. 150 A.L.R. 519.

Digest System Key Numbers:

Principal and Agent 2

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

*Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2-
Immovables > Title E- Marital Property*

Restat 2d of Conflict of Laws, § Scope

: The term "marital property," as used in the Restatement of this Subject, means any interest which one spouse acquires, solely by reason of the existence of the marital relation, in the immovables and movables of the other spouse, other than the expectancy of inheriting upon the death of the other. As here used, the term includes such matters as dower, curtesy, homestead and community property.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 233](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title E- Marital Property

§ 233 Effect of Marriage on Existing Interest in Land

(1) The effect of marriage upon an interest in land owned by a spouse at the time of marriage is determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to the interest, such as inchoate dower or curtesy, which one spouse may acquire upon marriage in the land of the other spouse and which cannot be extinguished by the other's conveyance inter vivos or by an execution sale procured by the other's creditors. The rule had greater significance at common law. The rights of dower and curtesy have now been abolished or modified or supplanted in many states by statutory rights of different scope.

b. Rationale. For reasons stated in § 223, Comment *b*, the courts of the situs would usually apply their own local law in deciding questions relating to the effect of marriage upon existing interests in land. If, however, these courts would have decided the question by reference to the local law of some other state, the forum will do likewise (see § 8). A possible example of such a situation is where H and W, his wife, are both domiciled in state X, and H conveys land in state Y to a trustee with the direction that upon H's death the land should be conveyed to his estate. In such a situation, the Y courts might apply X local law to determine the effect of the conveyance upon the dower rights of H's wife. They might do so for the reason that X is the state which has the dominant interest in the parties and that accordingly its local law should be applied to determine whether by means of such a conveyance H could deprive W of any marital interests she might have in his land. The courts of the situs might apply the local law of another state in still other circumstances on the ground that the concern of that state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of their own local law.

c. In community property States of the United States, a spouse acquires no marital property interest in land owned by the other spouse at the time of the marriage.

d. For the law governing the interest which a surviving spouse has in the land of the deceased spouse, see § 242.

REPORTER'S NOTES

See [Dempster v. Stephen, 63 Ill.App. 126 \(1896\)](#); [Henderson v. Trousdale, 10 La. Ann. 548 \(1855\)](#); 2 Beale, Conflict of Laws 952 (1935); Dicey, Conflict of Laws 524-525 (8th ed. 1967); Goodrich, Conflict of Laws 245 (Scoles, 4th ed. 1964); Marsh, Marital Property in Conflict of Laws 183-184 (1952).

Ante-nuptial contracts with respect to land owned at the time of marriage have been construed in accordance with the local law of the situs. [Heine v. Mechanics' and Traders' Ins. Co., 45 La. Ann. 770, 13 So. 1 \(1893\)](#); [Richardson v. De Giverville, 107 Mo. 422, 17 S.W. 974 \(1891\)](#).

Cross Reference

Restat 2d of Conflict of Laws, § 233

ALR Annotations:

Conflict of laws regarding election for or against will; and effect in one state of election in another. 105 A.L.R. 271.

Digest System Key Numbers:

Husband and Wife 2, 110 1/2, 246

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 234](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title E- Marital Property

§ 234 Effect of Marriage on an Interest in Land Later Acquired

(1) The effect of marriage upon an interest in land acquired by either of the spouses during coverture is determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. The forum will attempt to decide questions as to the effect of marriage upon an interest in land acquired during coverture in the same way that these questions would have been decided in the very case at hand by the courts of the situs. These courts would not always decide such questions in accordance with their own local law. They would usually hold that any marital property interests which the spouses had in the funds or other property exchanged for the land have been transferred to the land itself. So if land in a common law state is purchased with funds that are held in community because acquired while the spouses were domiciled in a community property state (compare § 258), the courts of the situs would usually hold that the spouses -- at least as between themselves -- have the same marital property interests in the land as they formerly had in the funds. On the other hand, these courts would usually apply their own local law in situations where the rights of some third person, such as a creditor or a transferee, are involved.

Illustration:

1. H and W, husband and wife, are domiciled in state X, a community property state. With community funds, H purchases in his own name land in state Y, a common law state. If the Y courts, despite the fact that community property is unknown to their local law, would hold that the wife, W, has the same interest in the land as she had in the funds with which the land was purchased, the courts of all other states will hold likewise.

Comment:

b. *Ante-nuptial contract.* The rule of this Section applies to questions of the effect on an ante-nuptial contract upon the interests of the spouses in the land. The rules for ascertaining the law governing the contract itself are stated in §§ 187-188.

c. For the law governing the interest which one spouse has in the land of the other upon the death of the other, see §§ 241-242.

REPORTER'S NOTES

See [Trapp v. United States, 177 F.2d 2 \(10th Cir. 1949\)](#), cert. den. 339 U.S. 913 (1950); [Hammonds v. Commissioner of Internal Revenue, 106 F.2d 420 \(10th Cir. 1939\)](#); [De Graffenried v. De Graffenried, 147 App.Div. 825, 132 N.Y.S. 1107](#) (1st Dep't 1911), aff'd 204 N.Y. 667, 98 N.E. 1118 (1912); [Matter of Majot, 199 N.Y. 29, 92 N.E. 402 \(1910\)](#).

A valid ante-nuptial contract that was intended to cover land acquired subsequent to the marriage has been given effect by the courts of the situs. [Kleb v. Kleb, 70 N.J.Eq. 305, 62 A. 306 \(1905\)](#), aff'd [71 N.J.Eq. 787, 65 A. 1118 \(1907\)](#).

Restat 2d of Conflict of Laws, § 234

As between the spouses themselves, the courts of the situs would usually hold that the land assumes the marital property character -- i.e., either separate or community property -- of the funds or other assets used in acquiring it. So where the husband acquires land in a common law state with community property funds, the wife should be held to have the same interest in the land as she previously had in the funds. Compare [Rau v. Rau](#), 6 *Ariz.App.* 362, 432 *P.2d* 912 (1968); [Tomaier v. Tomaier](#), 23 *Cal.2d* 754, 146 *P.2d* 905 (1944); [McDowell v. Harris](#), 49 *Tex.Civ. App.* 150, 107 *S.W.2d* 647 (1937); [In re Pugh's Estate](#), 18 *Wash.2d* 501, 139 *P.2d* 698 (1943). The courts of the situs would be more likely to apply their own local law when the rights of third parties -- creditors or transferees -- are involved (compare [Marshburn v. Stewart](#), 113 *Tex.* 507, 254 *S.W.* 942, 256 *S.W.* 575, 260 *S.W.* 565 (1924) with [Dohan v. Murdock](#), 41 *La. Ann.* 494, 6 *So.* 131 (1904)). See generally Marsh, Marital Property in Conflict of Laws 189-192 (1952).

The marital property character of the rents, issues and profits from land presents an additional choice of law problem. A typical situation is where spouses are domiciled in state X under whose local law the income from a spouse's separate property falls into the community, and the husband holds as his separate property land located in state Y under whose local law income from land so held is his separate property. It is believed that, as between the spouses, the marital property character of income from land should be determined in accordance with the rule of § 258, which provides for the usual application of the local law of the state of the spouses' domicile at the time when the income is earned. This is because the state of the spouses' domicile has the greatest interest in them. Also income can reasonably be treated as separate and distinct from the land from which it is derived. In cases involving a third person, such as a creditor or transferee of a spouse, considerations of fairness may require application of the local law of the situs.

The view here expressed that, as between the spouses, the marital property character of income from land should usually be determined by the local law of their domicile is supported by [Succession of Packwood](#), 9 *Rob.* 438 (La. 1845) characterizing the issue as one of acquisition of movables and applying the local law of the domicile. But that case may have been silently overruled by [Succession of Robinson](#), 23 *La.* 174 (1871), and the remaining few cases in point have determined the question in accordance with the local law of the situs. [Commissioner v. Skaggs](#), 122 *F.2d* 721 (5th Cir. 1941), cert. den. 315 *U.S.* 811 (1942); [Commissioner v. Black](#), 114 *F.2d* 355 (9th Cir. 1940); [W. D. Johnson](#), 1 *T.C.* 1041 (1943); app. dism. 139 *F.2d* 491 (8th Cir. 1943); [In re Clark's Will](#), 59 *N.M.* 433, 285 *P.2d* 795 (1955). It should be noted that three of these four cases involve characterization for federal income tax purposes.

See 2 Beale, Conflict of Laws 952-953 (1935). As to Comment *b*, see Dicey, Conflict of Laws 524-525 (8th ed. 1967); Goodrich, Conflict of Laws 252 (Scoles, 4th ed. 1964).

Cross Reference

Digest System Key Numbers:

Husband and Wife 2, 110 1/2, 246

[Restat 2d of Conflict of Laws, § Scope](#)

***Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2-
Immovables > Title F- Equitable Interests***

Restat 2d of Conflict of Laws, § Scope

: This Title is concerned with all kinds of equitable interests in land other than express trusts, which are dealt with in §§ 276-282. Equitable liens, charges and constructive trusts fall within the scope of this Title. For the distinction between legal and equitable interests in land, see *Restatement of Property* § 6, Comment *b* and [Restatement of Trusts \(Second\), § 2](#), Comment *f*.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 235

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title F- Equitable Interests

§ 235 Existence and Extent of Equitable Interests in Land

(1) The existence and extent of an equitable interest in land are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. This Section is concerned with all kinds of equitable interests in land other than express trusts, which are dealt with in §§ 276-282.

b. The forum will attempt to determine questions as to the existence and extent of equitable interests in land in the same way that these questions would have been decided in the very case at hand by the courts of the situs. For reasons stated in § 223, Comment *b*, these courts would usually decide such questions in accordance with their own local law. These courts, however, might hold that some statutory rule, such as one relating to capacity, is applicable only to local domiciliaries and to domestic corporations and does not affect other persons. Under some circumstances, these courts might apply the local law of another state on the ground that the concern of that state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which would be served by application of their own local law.

c. *Equitable interest in land distinguished from personal right against owner.* An equitable interest in land, such as a lien or constructive trust, must be distinguished from a right to compel the owner to convey the land in reparation for some wrong, such as a breach of contract or the receipt of the land by a transfer in fraud of the transferor's creditors. The existence of such a right may be determined by the law governing the contract or the tort rather than by the local law of the situs. The conveyance may be ordered by any court which has personal jurisdiction over the owner (see § 55). Interests in the land will be affected in such a case if the owner transfers the land pursuant to the decree. As to the effect of such a decree when the owner fails to comply therewith, see § 102.

d. *Vendee under land contract.* Whether a vendee under an executory contract for the sale of land has an equitable interest in the land is determined by the law selected by application of the rule of this Section. The courts of the situs, provided that they apply the common law rules of choice of law, would determine the validity of a contract for the sale of an interest in land in accordance with the law selected by application of the rule of § 189. Whichever law would have been applied by these courts in the ultimate decision of the case will likewise be so applied by the forum.

Illustrations:

1. A contracts in state X to sell B land in state Y. X then sells the land to C, who had prior knowledge of the contract with B. Whether B has an equitable interest in the land will be decided by the law that would be applied by the Y courts.

2. A owns land situated in state X. On a Sunday in state Y, A enters into a contract in which he promises to convey the land to B in return for a specified consideration. A's contract with B is illegal and void under Y local law. Thereafter, A deeds the land to C who takes with knowledge of A's promise to B. Whether B can enforce a lien on the land as against C will be decided by the law that would be applied by the X courts. If the X courts

Restat 2d of Conflict of Laws, § 235

would have held that B has no lien on the land by reason of the illegality under Y local law of his contract with A, the forum will do likewise.

REPORTER'S NOTES

See [Acker v. Priest, 92 Iowa 610, 61 N.W. 235 \(1894\)](#); [Knox v. Jones, 47 N.Y. 389 \(1872\)](#); [Bates v. Decree of Judge of Probate, 131 Me. 176, 160 A. 22 \(1932\)](#).

For a discussion of the differences between an equitable interest in land and a personal right against its owner, see 2 Beale, Conflict of Laws 953-955 (1935); Goodrich, Conflict of Laws 299-301 (Scoles, 4th ed. 1964).

Cross Reference

ALR Annotations:

Conflict of laws and related problems as to equitable conversion of property. [43 A.L.R.2d 569](#).

Digest System Key Numbers:

Property 6

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 236](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 236 Intestate Succession to Land

(1) The devolution of interests in land upon the death of the owner intestate is determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. For reasons stated in § 223, Comment *b*, questions relating to intestate succession to interests in land will be determined by the law that would be applied by the courts of the situs. These courts would usually apply their own local law in deciding such questions. They would do so for reasons that are in part historical and sentimental and in part pragmatic. The state of the situs has an obvious interest in having interests in local land decided upon intestacy in a manner that complies with its notions of what is reasonable and just. This point, however, should not be overemphasized. There may in the given case be other states which have an even greater interest in this question, such as would probably be true of a state where the decedent and all of his heirs were domiciled. Also undoubtedly all States of the United States provide for a method of distribution upon intestacy that is reasonable and just, and the differences between the laws of the several States as to the manner of division may be said to lie more in the area of detail than of principle. Hence it is unlikely that any policy of the state of the situs would be seriously infringed if the distribution upon intestacy of interests in local land were to be decided in accordance with the local law of another state.

The convenience of title searchers and of other persons concerned with land at the situs is another factor to be considered. In the normal course of events, parties and their lawyers do not take action with respect to interests in land without having given considerable thought to the possible consequences. This is an area where it is peculiarly important that there be certainty, predictability and uniformity of result and ease in the determination and application of the law to be applied (see § 6). If, under the practice of the situs, the persons who are entitled to succeed upon intestacy to interests in local land are conclusively determined as against all others by a court decree in the administration proceedings or otherwise, there is no reason so far as title searchers and other third persons are concerned why intestate succession should not on occasion follow the local law of another state. For such title searchers and other third persons would only have to consult the local decree to determine the person or persons who had succeeded to interests in the land. The situation is different in those states where the matter of heirship is not conclusively determined in the course of the administration proceedings or by other court decree. In such states, a greater burden would be imposed upon title searchers and upon other persons concerned with local land if they could not always assume that the local law of the situs would be applied to determine the distribution upon intestacy of interests in local land.

There will be situations in any event where the courts of the situs would look to the local law of some other state to determine questions involving intestate succession to local land. For example, although these courts would usually look to their own local law to determine what categories of persons will inherit upon intestacy, they might look to the local law of some other state to determine whether a given person belongs to one of these categories. So these courts would usually determine whether a person was a "wife" within the meaning of their local succession statute in accordance with the local law of the state selected by application of the rule of §

283. Similarly, these courts might determine the validity of an agreement waiving rights to inherit from the decedent in accordance with the local law of the state selected by application of the rules of §§ 187-188. The courts of the situs might also determine questions of intestate succession to an interest in local land that they consider to be personal property for local law purposes in accordance with the law that would be applied by the courts of the state of the decedent's domicile at death (see § 260) on the ground that, since the particular interest is characterized as personal property for local law purposes, it should be governed for succession purposes by the law applicable to movables. So if these courts characterize a leasehold or mortgage interest in local land as personal property, they might hold that questions of intestate succession to such an interest should be determined in accordance with the law of the state of the decedent's domicile at death.

Whichever law would have been applied by the courts of the situs in the decision of the particular issue will likewise be so applied by the forum.

REPORTER'S NOTES

See *Clarke v. Clarke*, 178 U.S. 186 (1900); [Hills v. Hansen, 176 Cal. 232, 168 P. 20 \(1917\)](#); 2 Beale, Conflict of Laws 965-966 (1935); Cheshire, Private International Law 603-604 (6th ed. 1961); Dicey, Conflict of Laws 525-526 (8th ed. 1967); Ehrenzweig, Conflict of Laws 659-660 (1962); Goodrich, Conflict of Laws 323-324 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 371-373 (3d ed. 1963).

To the effect that the choice-of-law rules of the situs should be applied, see [Munson v. Johnston, 16 N.J. 31, 106 A.2d 1 \(1954\)](#); [Greaves v. Fogel, 12 N.J. Super. 5, 78 A.2d 719 \(1951\)](#); *In re Stirling*, [1908] 2 Ch. 344; Dicey, Conflict of Laws 34-39 (8th ed. 1967); 4 Rabel, Conflict of Laws 355-365 (1958); Wolff, Private International Law 206-211 (2d ed. 1950).

In [Craig v. Craig, 140 Md. 322, 117 A. 756 \(1922\)](#), the intestate died domiciled in Pennsylvania leaving a leasehold interest in Maryland land. The Maryland courts treated this interest as personal property and held that it should be distributed in accordance with the Pennsylvania rules of intestacy. As to intestate succession to mortgage interests, see 5 Scott, Trusts 4149-4151 (3d ed. 1967).

In a minority of States, no provision is made for a conclusive determination in administration proceedings or otherwise of the persons to whom interests in land should be distributed upon intestacy. See Patton, Improvement of Probate Statutes -- The Model Code, 39 Iowa L.Rev. 446 (1954); Patton, Omission of Realty in Probate Administration, 42 Ky.L. Rev. 666 (1954); Basye, Proof of Succession to Land Under the New Missouri Probate Code, 25 U.Kan.C.L.Rev. 67 (1957); 2 Patton on Titles 407-413 (2d ed. 1957).

Cross Reference

Digest System Key Numbers:

Descent and Distribution 4

Restat 2d of Conflict of Laws, § 237

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 237 Legitimacy as Affecting Succession

(1) Whether a person must be legitimate in order to inherit an interest in land upon intestacy or to receive a forced share therein is determined by the law that would be applied by the courts of the situs. These courts would usually apply their own local law in determining this question.

(2) The courts of the situs would usually determine a person's legitimacy in accordance with the law selected by application of the rule of § 287.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is limited to the question whether a person must be legitimate in order to inherit interests in land upon intestacy or to receive a forced share therein. The rule does not apply to problems relating to the interpretation and construction of wills, such as whether only legitimate children were intended to be included within the scope of some such term as "issue" or "children" (see § 240).

b. Distinction between law governing inheritance and law governing legitimacy. The courts of the situs would usually look to their own local law to determine whether a person must be legitimate in order to inherit interests in land upon intestacy or to receive a forced share therein against the provisions of a will. On the other hand, these courts would usually determine whether a person is legitimate in accordance with the law governing legitimacy under the rule of § 287. If, however, these courts would have looked to some other law to determine the question of legitimacy, the forum will do likewise. A person may be legitimate either because he was born legitimate or because he was legitimated after birth.

c. Requirements other than legitimacy. On rare occasions, the state of the situs may require that in order to inherit an interest in local land upon intestacy or to receive a forced share therein a person must have been born in wedlock. If so, a person not born in wedlock cannot inherit the land even though he is legitimate either because he was made legitimate at birth by the law governing his legitimacy or was legitimated thereafter.

d. The courts of the situs would usually apply their own local law to determine whether a legitimated child can inherit interests in the land upon intestacy only from direct ancestors or whether he can do so from collateral relatives as well.

e. Distinction between statutes governing inheritance and statutes governing legitimation. Statutes providing a process by which an illegitimate person is made capable of inheritance have sometimes been classified by the courts as statutes governing succession, or as statutes governing legitimacy, or as statutes governing both succession and legitimacy. If the statute is classified as one governing succession, it will be applied to provide for the inheritance upon intestacy of interests in land within the state of enactment by illegitimate persons who qualify under its terms. If the statute is classified as one governing legitimacy, it will be applied to make a person legitimate if the state of enactment is the state which has the most significant relationship to the person and his parent under the circumstances stated in § 287. If the statute is classified as governing both succession and legitimacy, it will be applied to legitimate certain persons and at the same time will be applied to provide for the inheritance by certain illegitimate persons of interests in land located within the state of its enactment (compare § 261, Comment *f*, which deals with the identical problem in the field of movables).

f. There may be constitutional limitations upon the power of a State of the United States to deny rights of succession to illegitimate children. In [Levy v. Louisiana, 391 U.S. 68 \(1968\)](#), the Supreme Court held it a

violation of the equal protection clause of the Fourteenth Amendment for a State to deny to illegitimate children the right, granted by its local law to legitimate children, to recover for the wrongful death of a parent. And in [Glon v. American Guarantee & Liability Insurance Company, 391 U.S. 73 \(1968\)](#), the Court held that it was also a violation of equal protection for a State to deny to the parent of an illegitimate child the right, granted by its local law to the parent of a legitimate child, to recover for the child's wrongful death.

REPORTER'S NOTES

Subsection (1): See [McNamara v. McNamara, 303 Ill. 191, 135 N.E. 410 \(1922\)](#), cert. den. 260 U.S. 734 (1922); [Caballero v. Executor, 24 La. Ann. 573 \(1872\)](#); [Milton v. Escue, 201 Md. 190, 93 A.2d 258 \(1952\)](#); [Howells v. Limbeck, 172 Ohio St. 297, 175 N.E.2d 517 \(1961\)](#); [Re Moretti's Estate, 16 Pa.D. & C. 715 \(1932\)](#); [Rhode Island Hospital Trust Co. v. Hopkins, 93 R.I. 173, 172 A.2d 345 \(1961\)](#); [Evans v. Young, 201 Tenn. 368, 299 S.W. 2d 218 \(1957\)](#); [Smith v. Mitchell, 185 Tenn. 57, 202 S.W.2d 979 \(1947\)](#). See generally, Annotation, [87 A.L.R.2d 1274 \(1963\)](#).

Subsection (2): It has been held that full faith and credit does not require a State of the United States to recognize for purposes of inheritance of local land a status of legitimacy created in another State. [Olmsted v. Olmsted, 216 U.S. 386 \(1910\)](#).

As to inheritance by illegitimate children, see Ester, *Illegitimate Children and the Conflict of Laws*, 36 Ind.L.J. 161 (1960); Ehrenzweig, *Conflict of Laws* 394 (1962). But see [In re Bruington's Estate, 160 Misc. 34, 289 N.Y.S. 725 \(Surr.1936\)](#) refusing on the grounds of public policy to permit children of a bigamous marriage to inherit their father's local land upon his intestacy, although the children were legitimate under the local law of the state where both they and their father were domiciled.

Comment e: The following cases classified their local statute as governing succession: [McMillan v. Greer, 85 Cal.App. 558, 259 P. 995 \(1927\)](#); [Hall v. Gabbert, 213 Ill. 208, 72 N.E. 806 \(1904\)](#); [Harvey v. Ball, 32 Ind. 98 \(1869\)](#); [Franklin v. Lee, 30 Ind.App. 31, 62 N.E. 78 \(1901\)](#); [Van Horn v. Van Horn, 107 Iowa 247, 77 N.W. 846 \(1899\)](#); [Moen v. Moen, 16 S.D. 210, 92 N.W. 13 \(1902\)](#); [Withrow v. Edwards, 181 Va. 344, 25 S.E.2d 343 \(1943\)](#), mod. on reh. on other grounds, [181 Va. 592, 25 S.E.2d 899 \(1943\)](#).

The following cases classified their local statute as governing legitimacy: See [Jambrone v. David, 16 Ill.2d 32, 156 N.E.2d 569 \(1959\)](#); [Milton v. Escue, supra](#); [Howells v. Limbeck, supra](#); [Evans v. Young, supra](#).

The following cases classified their local statute as governing both legitimacy and succession. [Leonard v. Braswell, 90 Ky. 528, 36 S.W. 684 \(1896\)](#); [In re Crowell's Estate, 124 Me. 71, 126 A. 178 \(1924\)](#).

Comment f: See [Schmoll v. Creecy, 54 N.J. 194, 254 A.2d 535 \(1969\)](#); Krause, *Levy v. Louisiana -- First Decisions on Equal Protection and Paternity*, 36 U. Chi.L.Rev. 338 (1969); Krause, *Equal Protection for the Illegitimate*, 65 Mich.L.Rev. 477 (1967).

Cross Reference

ALR Annotations:

Conflict of laws as to legitimacy or legitimation or as to rights of illegitimates, as affecting descent and distribution of decedent's estate. [87 A.L.R.2d 1274](#).

Recognition of status created by foreign adoption or legitimation for purposes of testate or intestate distribution of decedent's estate in a jurisdiction in which such status could not have been created even in the case of one domiciled there. 153 A.L.R. 199.

Digest System Key Numbers:

Bastards 96

Restat 2d of Conflict of Laws, § 237

Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 238

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 238 Adoption as Affecting Succession

(1) Whether an adopted child can inherit an interest in land upon intestacy or receive a forced share therein is determined by the law that would be applied by the courts of the situs. These courts would usually apply their own local law in determining the question.

(2) The courts of the situs would usually determine questions relating to the validity of an adoption in accordance with the law selected by application of the rule of § 289.

COMMENTS & ILLUSTRATIONS

Comment:

a. *Scope of section.* The rule of this Section is limited to the question whether an adopted child can inherit interests in land upon intestacy or receive a forced share therein. The rule does not apply to problems relating to the interpretation and construction of wills, such as whether an adopted child was intended to be included within the scope of some such term as "issue" or "children" (see § 240).

b. *Distinction between law governing inheritance and law governing adoption.* The courts of the situs would usually look to their own local law to determine whether an adopted child can inherit interests in land upon intestacy or receive a forced share therein. On the other hand, these courts would usually determine the validity of an adoption in accordance with the law governing adoption under the rule of § 289 (compare § 237, Comment b). If, however, these courts would have looked to some other law to determine the question of adoption, the forum will do likewise.

c. On rare occasions, the state of the situs may provide that, while children adopted within the state can inherit interests in local land upon intestacy, those adopted elsewhere may not do so. As between States of the United States, such a rule has been held constitutional as not failing to give the necessary full faith and credit to the foreign adoption proceedings. [Hood v. McGehee, 237 U.S. 611 \(1915\)](#).

d. The courts of the situs would usually apply their own local law to determine whether an adopted child may inherit interests in the land upon intestacy only from his adoptive parent or whether he may do so also from certain blood relatives of the adoptive parent. These courts would also usually apply their own local law to determine the persons who can inherit from an adopted child interests in land upon intestacy or receive a forced share therein (compare § 262, Comment c, which deals with the identical problem in the field of movables).

e. There may be constitutional limitations upon the power of a State of the United States to deny rights of succession to adopted children (see § 237, Comment f).

REPORTER'S NOTES

See [Brown v. Finley, 157 Ala. 424, 47 So. 577 \(1908\)](#); [Mott v. First Nat. Bank, 98 Fla. 444, 124 So. 36 \(1929\)](#); [McNamara v. McNamara, 303 Ill. 191, 135 N.E. 410 \(1922\)](#), cert. den. 260 U.S. 734 (1922); [Van Matre v. Sankey, 148 Ill. 536, 36 N.E. 628 \(1893\)](#); [Anderson v. French, 77 N.H. 509, 93 A. 1042 \(1915\)](#); [Frey v. Nielson, 99 N.J.Eq. 135, 132 A. 765 \(1926\)](#); [Greaves v. Fogel, 12 N.J.Super. 5, 78 A.2d 719 \(1951\)](#); [Ross v. Ross, 129 Mass. 243 \(1880\)](#); [Finley v. Brown, 122 Tenn. 316, 123 S.W. 359 \(1908\)](#); 2 Beale, Conflict of Laws 967-968

Restat 2d of Conflict of Laws, § 238

(1935); Goodrich, Conflict of Laws 290 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 340 (3d ed. 1963); Taintor, Adoption in the Conflict of Laws, 15 U.Pitt.L.Rev. 222 (1954).

See [McLaughlin v. People, 403 Ill. 493, 87 N.E.2d 637 \(1949\)](#) holding that a person validly adopted in another state when she was 48 years old was a "child legally adopted" within the meaning of the local inheritance statute.

For a case holding that money from the sale of local land was personalty, so that the right of an adopted child to take through her adoptive father from her adoptive grandmother was governed by the law of the domicile of the deceased grandmother, see [Cook v. Todd's Estate, 249 Iowa 1274, 90 N.W.2d 23 \(1958\)](#).

Several early decisions denied to children adopted in sister States rights of inheritance enjoyed by locally adopted children. [Brown v. Finley, supra](#); [Tankersley v. Davis, 128 Fla. 507, 175 So. 501 \(1937\)](#); [Frey v. Nielson, supra](#). Most of these decisions have now been overruled by statute.

Cases applying the local law of the situs to determine whether an adopted child may inherit upon intestacy from collateral relatives include [Keegan v. Geraghty, 101 Ill. 26 \(1881\)](#); [Cook v. Todd's Estate, supra](#) (dictum); [In re Reimann's Estate, 124 Kan. 529, 262 P. 16 \(1927\)](#). The same law has been applied to determine the right of the adoptive parent to inherit upon intestacy from the adopted child. [Calhoun v. Bryant, 28 S.D. 266, 133 N.W. 266 \(1911\)](#).

Cross Reference

ALR Annotations:

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate. [87 A.L.R.2d 1240](#).

What law, in point of time, governs as to inheritance from or through adoptive parent. [18 A.L.R.2d 960](#).

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate. 154 A.L.R. 1179.

Recognition of status created by foreign adoption or legitimation for purposes of testate or intestate distribution of decedent's estate in a jurisdiction in which such status could not have been created even in the case of one domiciled there. 153 A.L.R. 199.

Conflict of laws as to adoption as affecting descent and distribution of decedents' estate. 73 A.L.R. 964, s. [87 A.L.R.2d 1240](#).

Digest System Key Numbers:

Descent and Distribution 4

Restat 2d of Conflict of Laws, § 239

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 239 Validity and Effect of Will of Land

(1) Whether a will transfers an interest in land and the nature of the interest transferred are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is applicable to questions relating to testamentary dispositions of interests in land. Thus, the law selected by the present rule determines the capacity of a person to make a will or to accept a devise, the formal validity of the will and the validity of the will in other respects, such as whether it violates the rule against perpetuities or constitutes a forbidden gift to a charity, the nature of the estate created, and whether land acquired after the execution of the will passes under its terms. Questions concerning the required form of the will and the manner of its execution also fall within the scope of the present rule.

b. Rationale. For reasons stated in § 223, Comment *b*, questions relating to a testamentary disposition of an interest in land are determined by the law that would be applied by the courts of the situs. These courts would usually apply their local law in deciding questions relating to a testamentary disposition of an interest in local land. They would do so in the case of issues in which the situs has the dominant interest, such as what categories of persons may own land, the conditions under which land may be held and the uses to which land may be put. These courts would also frequently apply their local law to issues in which it might be thought that the situs does not have the dominant interest.

c. Capacity of testator. The courts of the situs would usually apply their own local law to determine the capacity of the testator to make a valid will insofar as it devises an interest in local land. These courts might hold, however, that some rule of incapacity is applicable only to local domiciliaries and hence does not affect a testator who dies domiciled in another state. These courts might also apply the local law of another state on the ground that the concern of that other state in the decision of the particular issue is so great as to outweigh the values of certainty and predictability which would be served by application of their own local law.

The order admitting a will to probate in the state of the situs will determine, among other things, that the testator had the requisite capacity to make a valid will. For this reason, application by the courts of the situs of the local law of another state to determine issues relating to the testator's capacity should not lead to inconvenience or result in the insecurity of land titles. Since the testator's capacity will have been conclusively established by the order, it will not be necessary for title searchers and others to consult the local law of another state with respect to this issue.

d. Capacity of devisee. The situs has an obvious interest in the question who may hold title to interests in local land. For this reason, and for the other reasons stated in Comment *b*, the courts of the situs, would usually apply their own local law to determine the capacity of the devisee to take and hold an interest in local land. These courts might hold, however, that some local rule of incapacity is applicable only to local domiciliaries or to local corporations. So these courts might look to the local law of the state of incorporation to determine whether a corporation has the requisite capacity to receive a particular devise (see § 223, Comment *d*).

e. Formalities. As here used, the term "formalities" applies to such requirements as those of a writing, of witnesses and of acknowledgment. Statutes in many states provide that a will of interests in local land shall be upheld as to formalities if it complies either with the state's own requirements or with the requirements of one or more other states, such as the state where the will was executed or where the testator was domiciled at the time that the will was executed or where the testator was domiciled at the time of his death. If the state of the situs has such a statute, its provisions will be applied by the courts of other states.

The order admitting a will to probate in the state of the situs will determine, among other things, that the will was executed with the proper formalities. For this reason, a statute at the situs which provides for application of the local law of another state to determine issues of formalities will not lead to inconvenience or result in the insecurity of land titles. Since the order will have conclusively established that the will is valid as to formalities, it will not be necessary for title searchers and others to consult the local law of another state with respect to this issue.

f. Other problems of validity. Frequent questions, involving aspects of validity other than capacity and formalities, relate to the rule against perpetuities, restrictions on testamentary gifts to charity and restrictions on testamentary trusts.

The situs has a substantial interest in determining the uses to which the land may be put and the conditions under which the land may be held. Hence the situs courts would almost invariably apply their own local law to determine the validity of a testamentary provision which directs that the land shall be put to a certain use. On the other hand, these courts, unless prohibited by a strong public policy, might apply the local law of another state in a situation where the will directs that the land should be sold and the proceeds transmitted to the other state on the ground that under the circumstances the state of the situs has no substantial interest in the disposition of the proceeds of the sale. Similarly, the courts of the situs would almost invariably apply their own local rule against perpetuities to determine whether an interest sought to be created in the land by the will cannot take effect because the power of alienation is suspended for too long a period. On the other hand, again, these courts might apply the rule against perpetuities of another state in a situation where the will directs that the land be sold and the proceeds transmitted to the other state.

With respect to testamentary gifts to charity, the courts of the situs would almost certainly hold that a statute intended to regulate the ownership of local land by charitable corporations is applicable to the will of a foreign testator, since the question of what categories of persons can own local land is of primary concern to the state of the situs. The question is more difficult if, as would usually be the case, the purpose of the statute is to protect the testator's family against overly generous gifts to charity. To date, the courts of the situs have usually applied a local statute of this sort to invalidate a charitable devise in the will of a foreign testator even though he died domiciled in a state whose law did not give his family any similar protection. Similarly, the courts of the situs have to date usually refused to invalidate a charitable devise which was not invalid under their own local law by application of the statute of the state where the testator was domiciled at the time of his death. It may be, however, that in the future situs courts will, at least on occasion, determine the validity of a charitable devise of an interest in local land by application of the local law of the state where the testator was domiciled at the time of his death on the ground that this state has the dominant concern in the protection of the testator's family. As to restrictions on testamentary trusts on interests of land, see § 278.

In many states, the order admitting a will to probate does not determine the validity of a particular devise. In such states, application by the situs courts of their own local law to determine questions of substantial validity would favor the convenience of title searchers and the security of land titles. Application on occasion by the situs courts of the local law of another state to determine the substantial validity of a devise of an interest in local land would to some extent at least complicate the task of title searchers and of other persons interested in land at the situs. Such persons could no longer safely restrict their attention to the local law of the situs in determining the substantial validity of a particular devise. There would be situations, perhaps uncertain both in their nature and number, where the local law of one or more other states would have to be consulted.

In any event, whichever law would have been applied by the courts of the situs in the decision of the particular issue will likewise be so applied by the forum.

g. Validation. Situations will arise where a will, although invalid under the local law of the situs, is valid under the local law of some other state having a close contact with the case, such as the state where the testator was domiciled at the time of his death. If in such a case the courts of the situs would uphold the validity of the will

by application of the local law of the other state, the forum will do likewise. The courts of the situs might be particularly likely to reach such a result in a situation where the difference between their own local law and that of the other state is relatively slight and does not stem from a significant divergence in policy. In such a case, the courts of the situs might feel it more important to give effect to the intentions of the testator by upholding the will than to insist upon a rigid application of their local law.

h. As to the construction of a will insofar as it devises an interest in land, see § 240.

i. Revocation of will. The effect upon a will, insofar as it concerns immovables, of an intentional act of revocation by the testator, such as the physical destruction of the will, is determined by the law that would be applied by the courts of the situs. The same law will be applied to determine whether the will has been entirely or partially revoked by operation of law, such as by marriage or by the birth of a child subsequent to the will's execution.

The courts of the situs would usually apply their own local law in deciding such questions. Sometimes, however, these courts would apply the local law of another state. So these courts might interpret a local statute, providing that a will shall be held valid as to matters of form if it complies with the requirements of the state where it was executed, to mean that a revocation likewise shall be held valid as to matters of form if it complies with the requirements of the state where the act of revocation was done. These courts might also apply the local law of another state in still other circumstances on the ground that the concern of that state in the decision of the particular issue is so great as to outweigh the values of certainty and convenience which application of their own law would achieve. An example might be a situation where a testator, domiciled in state X, owns land in state Y and where under X local law a will is revoked by subsequent marriage or divorce. Here the Y courts might feel that X has the primary concern in determining whether a will has been revoked under such circumstances and that consequently X local law should be applied.

Likewise, the courts of the situs would usually refrain from applying their own local law, or would apply the local law of another state, in situations where to do otherwise would defeat the expectations of the testator. An example might be a situation where the testator does an act which would not revoke the will under the local law of the state of his domicile but would do so under the local law of the situs. In such a situation, the situs courts would probably not apply their local law and hold the will revoked if, in their opinion, such action would defeat the expectations of the testator.

Comment c: Most cases have determined the question of capacity of a testator to devise land in accordance with the local law of the situs. [Woodville v. Pizzati, 119 Miss. 442, 81 So. 127 \(1919\)](#); [In re Stewart's Will, 11 Paige \(N.Y.\) 398 \(1845\)](#); [Carpenter v. Bell, 96 Tenn. 294, 34 S.W. 209 \(1896\)](#). It has been suggested that a situs court might determine questions of capacity in accordance with the law of the state where the testator was domiciled at the time of his death. Ehrenzweig, Conflict of Laws 661 (1962); Goodrich, Conflict of Laws 327 (Scoles, 4th ed. 1964).

Comment e: In the absence of a statute, the local law of the situs of land has been applied to determine the validity of a will as to matters of form. [In re Estate of George, 298 F.Supp. 741 \(D.Virgin Islands, 1969\)](#); [Trotter v. Van Pelt, 144 Fla. 517, 198 So. 215 \(1940\)](#); [White v. Greenway, 303 Mo. 691, 263 S.W. 104 \(1924\)](#). See also [McCaughna v. Bilhorn, 10 Cal.App.2d 674, 52 P.2d 1025 \(1935\)](#). The majority of States have statutes providing that a will should be held valid as to matters of form if it complies with the requirements of one or more specified states. Rees, American Wills Statutes: II, 46 Va.L.Rev. 856 (1960).

Comment f: See [Freedman v. Scheer, 223 Ga. 705, 157 S.E.2d 875 \(1967\)](#). The local law of the situs will be applied to determine whether there has been a violation of the rule against perpetuities. [Monypeny v. Monypeny, 202 N.Y. 90, 95 N.E. 1 \(1911\)](#); [Hobson v. Hale, 95 N.Y. 588 \(1884\)](#).

As to the effect of an order admitting a will to probate, see 3 American Law of Property 718-728 (1952); 2 Patton on Titles 395 (2d ed. 1957); 3 Page on Wills 327-333 (Bowe-Parker rev. 1961).

See generally 5 Scott, Trusts 4101-4115 (3d ed. 1967); 2 Beale, Conflict of Laws 969-971 (1935); Cheshire, Private International Law 604 (6th Ed. 1961); Goodrich, Conflict of Laws 330-332 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 375-380 (3d ed. 1963); Hancock, In the Parish of St. Mary le Bow, in the Ward of Cheap, 16 Stan.L.Rev. 561 (1964); Hancock, Equitable Conversion and the Land Taboo in Conflict of Laws, 17 Stan.L.Rev. 1095 (1965); Hancock, Full Faith and Credit to Foreign Laws and Judgments in Real Property

Litigation, 18 Stan.L.Rev. 1299 (1966); Hancock, Conceptual Devices for Avoiding the Land Taboo in Conflict of Laws, 20 Stan.L.Rev. 1 (1967).

Comment i: Whether a will has been revoked by an act of the testator has been determined, as to land devised by the will, in accordance with the local law of the situs. [Trotter v. Van Pelt, supra](#); [Castens v. Murray, 122 Ga. 396, 50 S.E. 131 \(1905\)](#); [In re Estate of Barrie, 240 Iowa 431, 35 N.W. 2d 658 \(1949\)](#), cert. den. sub nom. [Hodge v. First Presbyterian Church, 338 U.S. 815 \(1949\)](#); [In re Estate of Hollister, 18 N.Y. 2d 281, 221 N.E.2d 376 \(1966\)](#); Re Alberti [1955], 1 W.L.R. 1240.

Whether a will has been revoked by the happening of certain subsequent events, such as marriage or the birth of a child, has been determined, as to land devised by the will, in accordance with the local law of the situs. [Sternberg v. St. Louis Union Trust Co., 163 F.2d 714 \(8th Cir. 1947\)](#), cert. den. 332 U.S. 843 (1947); [Ensley v. Hodgson, 212 Ala. 526, 103 So. 465 \(1925\)](#); [Crossett Lumber Co. v. Files, 104 Ark. 600, 149 S.W. 908 \(1912\)](#); [Sternberg v. St. Louis Union Trust Co., 394 Ill. 452, 68 N.E.2d 892 \(1946\)](#); [Peet v. Peet, 229 Ill. 341, 82 N.E. 376 \(1907\)](#); [Van Wickle v. Van Wickle, 59 N.J.Eq. 317, 44 A. 877 \(1899\)](#); Bloomer v. Bloomer, 2 Bradf. (N.Y.) 339 (Surr.1853); [In re Culley's Will, 182 Misc. 998, 48 N.Y.S.2d 216 \(Surr.1944\)](#). Compare [Gailey v. Brown, 169 Wis. 444, 171 N.W. 945 \(1919\)](#) holding that decree of domiciliary court (Illinois) that will devising lands in Wisconsin had been revoked by subsequent marriage must be accepted as conclusive under a Wisconsin statute providing that foreign wills devising local real estate, when allowed by probate court of domicil, should have same effect as local wills.

On the question whether a revocation valid as to form in the state where the act of revocation was done will be held effective under a statute of the situs, see [In re Barrie's Estate, 331 Ill.App. 443, 73 N.E.2d 654 \(1947\)](#); [In re Traversi's Estate, 189 Misc. 251, 64 N.Y.S.2d 453 \(Surr.1946\)](#); Goodrich, Conflict of Laws 328 (Scoles, 4th ed. 1964); 5 Scott, Trusts 4104 (3d ed. 1967); Hancock, Conceptual Devices for Avoiding the Land Taboo in Conflict of Laws, 20 Stan.L.Rev. 1, 2-8 (1967).

Section 2-602 of the Uniform Probate Code provides that the "meaning and legal effect" of a will shall be determined by the "local law" of the state selected by the testator in the will unless the application of this law would be contrary to the "public policy" of the state of the "otherwise applicable" law.

REPORTER'S NOTES

Comment b: As to the possibility that the courts of the situs might decide a particular issue in accordance with the local law of some other state, see 4 Rabel, Conflict of Laws 355-365 (1958); Robertson, Characterization in the Conflict of Laws 135-162 (1940).

Cross Reference

Digest System Key Numbers:

Wills 2, 22, 70, 436

Restat 2d of Conflict of Laws, § 240

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 240 Construction of a Will Devising Land

(1) A will insofar as it devises an interest in land is construed in accordance with the rules of construction of the state designated for this purpose in the will.

(2) In the absence of such a designation, the will is construed in accordance with the rules of construction that would be applied by the courts of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. The rule of this Section is an application of the rule of § 224. In general, the Comments to that Section are applicable here.

As stated in § 224, Comment a, the effect of words used in a will may be determined in any one of three ways. On rare occasions, the words may be given a particular legal effect irrespective of the intentions of the testator (see Comment b). In the second place, the words may be given a meaning which it is believed, on the basis of the available evidence, was the meaning the testator intended the words to bear. This process, which is referred to as interpretation (see Comment c), is employed in the great majority of situations. Thirdly, situations do arise where the court is not presented with a satisfactory basis for determining the testator's intentions and where a rule of law is employed to fill the resulting gap in the will. This third process is here referred to as construction (see Comments d-f).

b. *Legal effect.* The use of certain words in a will was followed at common law on rare occasions by definite legal consequences that were quite independent of the intentions of the testator. Examples, as elaborated at greater length in § 224, Comment b, were the rule of Shelley's Case and the rule sometimes called that of worthier title. If such a rule exists in the local law of the state of the situs, it would usually be applied by the situs courts even in the case of a testator who died domiciled in another state. If so, the forum will do likewise.

c. *Interpretation.* The meaning of words used in a will depends upon the intentions of the testator except in those rare situations where the words are given a prescribed legal effect (see Comment b). In ascertaining the intentions of the testator, the forum will consider the ordinary meaning of the words used, the context in which they appear in the will and the circumstances under which the will was drafted. The forum will consider whether the draftsman was probably using the language of the state where the testator was domiciled at the time when the will was executed or of the situs of the land. The forum will also consider any other properly admissible evidence that casts light upon the intentions of the testator. The question to be determined is one of fact rather than one of law. The forum will apply its own rules in determining the admissibility of evidence (see § 138), and it will use its own judgment in drawing conclusions from the evidence.

d. *Construction.* As stated in § 224, Comment d, if it is found impossible to ascertain the testator's intentions from the evidence, a rule of law is employed to fill what would otherwise be a gap in the will. This is done in order to carry out what was probably the testator's intention, or what probably would have been his intention, if he had foreseen the matter in dispute.

e. *When designated law.* The forum will give effect to a provision in a will that it should be construed in accordance with the rules of construction of a particular state. It is not necessary that this state have a substantial connection with the testator or with the land. This is because construction is a process for giving

Restat 2d of Conflict of Laws, § 240

meaning to a will in areas where the intentions of the testator would have been followed if these intentions had been made clear.

When the testator designates the law of a state as the applicable law in matters of construction, it is to be inferred that he intends the local law of that state to govern. The forum will therefore apply the rules of construction of the designated state.

Despite the absence of an express designation, it may be apparent from the language of the will or from other circumstances that the testator wished to have the local law of a particular state govern the construction of the will. In such a case, the rules of construction of this state will be applied.

f. When no designated law. When the testator has not provided that his will should be construed in accordance with the rules of construction of a particular state, and when his desires in this regard are not otherwise apparent, the forum will construe the will in accordance with the rules of construction that would be applied by the courts of the situs. The question is whether these courts would apply their own local rules of construction or the rules of some other state, such as the state where the testator was domiciled at the time when the will was executed.

Application of the rules of construction of the state of the situs may be justified in those states where the final decree of distribution does not amount to a judicial construction of the will. In those states, in the absence of a decree construing the will in an action brought for this purpose by an interested party, title searchers will have to use their own judgment in construing a devise in a chain of title. Hence it would appear that in such states both the convenience of title searchers and the security of titles would be served if the rules of construction of the situs were always applicable. Otherwise, there would be situations, perhaps uncertain both in their nature and number, where the rules of construction of one or more other states would have to be consulted.

Even in such states, however, there are weighty reasons favoring application of the rules of construction of the state where the testator was domiciled at the time the will was executed. The testator is more likely to have been familiar with the rules of this state than with those of the state of the situs, and the same is true of the lawyer who drafted the will provided that he was employed in the state of the testator's domicil. The land may be located in two or more states. If so, it is almost certain that the testator intended the words used in the will to bear a single meaning and not mean perhaps as many different things as there are states in which there is land covered by the will (see § 224, Comment *f*). Also, the land may have been acquired after the execution of the will. Furthermore, application of the rules of construction of the state of the testator's domicil is desirable in the interest of applying a single rule not only to his movables but also to his land wherever situated (see §§ 263-264). The purpose of construction is to carry out the testator's intentions and it is probable that he intended the words used in the will to bear the same meaning throughout and not mean perhaps different things when applied to land and to movables.

There would seem to be little justification for applying the rules of construction of the situs rather than those of the testator's domicil in those states where the final decree of distribution amounts to a judicial construction of the will. In such states, questions of construction can easily be determined by an examination of the decree.

It should be reiterated that the significant domiciliary state will almost certainly be the state where the testator was domiciled at the time the will was executed and not the state where he was domiciled at the time of his death. A change of domicil after the execution of the will could hardly be considered as affecting the meaning of the words used therein.

Whichever rules of construction would be applied by the courts of the situs will also be applied by the forum.

REPORTER'S NOTES

Cases in which courts at the situs applied their local rules, instead of the rules of the testator's domicil, in construing devises of local land include [Bowen v. Frank, 179 Ark. 1004, 185 S.W. 2d 1037 \(1929\)](#); [Peet v. Peet, 229 Ill. 341, 82 N.E. 376 \(1907\)](#); [Scofield v. Hadden, 206 Iowa 597, 220 N.W. 1 \(1928\)](#); [Thompson v. Penn, 149 Ky. 158, 148 S.W. 33 \(1912\)](#); [Monypeny v. Monypeny, 202 N.Y. 90, 95 N.E. 1 \(1911\)](#). Courts at the situs have refused to apply the rules of construction of the domicil of the testator even when the devise covered land in several states. [McCartney v. Osburn, 118 Ill. 403, 9 N.E. 210 \(1886\)](#); [Fidelity Union Trust Co. v. Ackerman, 123 N. J.Eq. 556, 199 A. 379 \(1938\)](#); [In re Good's Will, 304 N.Y. 110, 106 N.E.2d 36 \(1952\)](#) (stating that

Restat 2d of Conflict of Laws, § 240

statutory rule dictating result was merely codification of the common law rule). Contra: [Keith v. Eaton, 58 Kan. 732, 51 P. 271 \(1897\)](#).

Courts at the testator's domicile have construed wills in accordance with their own rules of construction without determining what the courts at the situs would have done. [Higinbotham v. Manchester, 113 Conn. 62, 154 A. 242 \(1931\)](#); [Houghton v. Hughes, 108 Me. 233, 79 A. 909 \(1911\)](#); [Martin v. Eslick, 229 Miss. 234, 90 So.2d 635 \(1956\)](#), mod. [92 So. 2d 244 \(1957\)](#); [Zombro v. Moffet, 329 Mo. 137, 44 S.W.2d 149 \(1931\)](#) (land in several states).

The English rule is that a will of immovables is construed according to the system of law intended by the testator and, in the absence of evidence to the contrary, this law is presumed to be the law of the testator's domicile at the time the will was executed. Cheshire, *Private International Law* 606-608 (6th ed. 1961).

In [Nolan v. Berger, 203 N.E. 2d 274 \(Ohio Prob.Ct.1963\)](#), the court applied the rules of construction of Ohio, the state of the testator's domicile, with respect to Missouri land. The court did so on the ground that these were the rules which would have been applied by a Missouri court.

As to problems of title search, see 2 Patton on Titles 392-403 (2d ed. 1957); 4 Page on Wills 188-192 (Bowe-Parker rev. 1961).

See generally 5 Scott, *Trusts* 4090-4101 (3d ed. 1967); 2 Beale, *Conflict of Laws* 972-975 (1935); Goodrich, *Conflict of Laws* 330-332 (Scoles, 4th ed. 1964); Stumberg, *Conflict of Laws* 380-382 (3d ed. 1963).

Section 2-602 of the Uniform Probate Code provides that the "meaning and legal effect" of a will shall be determined by the "local law" of the state selected by the testator in the will unless the application of this law would be contrary to the "public policy" of the state of the "otherwise applicable" law.

Cross Reference

ALR Annotations:

What law governs in determining who are "heirs," "heirs at law," "issue," "next of kin," or the like, who will take legacy or bequest under terms of will. [52 A.L.R.2d 490](#).

Digest System Key Numbers:

Wills 436

Restat 2d of Conflict of Laws, § 241

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 241 Common Law or Statutory Interest of Surviving Spouse

(1) The existence and extent of a common law or statutory interest of a surviving spouse in the land of a deceased spouse are determined by the law that would be applied by the courts of the situs.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The law selected by application of the rule of this Section determines whether the surviving spouse has such common law or statutory interests as curtesy, dower or homestead in the land of the deceased spouse. As to the law governing a surviving spouse's right to a forced share interest in the land of the deceased spouse, see § 242.

b. For reasons stated in § 223, Comment *b*, questions relating to the common law or statutory interest which one spouse has in the land of a deceased spouse will be determined by the law that would be applied by the courts of the situs. Usually, these courts would apply their own local law in deciding such questions. If, however, these courts would have decided the particular question by reference to the local law of another state, the forum will do likewise (see § 8).

The situs courts would usually look to the law selected by application of the rule of § 283 to determine the validity of the marriage.

c. The courts of the state of a testator's domicile at the time of his death may compel his surviving spouse to elect between releasing the interest given the spouse in the land by the local law of the situs or releasing the spouse's interests under the will to an extent necessary to carry out the intentions of the testator (compare § 265).

d. The effect of a foreign judicial decree upon the interest of one spouse in the land of the other spouse will be determined in the same way as would be determined by the courts of the situs. Sometimes these courts would hold that a foreign divorce puts an end to the interest of one spouse in the land of the other. In such a case, the interest is not terminated by the foreign decree but rather by operation of the law of the situs.

REPORTER'S NOTES

See *Spence v. Spence*, 239 Ala. 480, 195 So. 717 (1940); *Bankers' Trust Co. v. Greims*, 110 Conn. 36, 147 A. 290 (1929); *Brinckerhoff v. Hartley*, 223 Ill. App. 591 (1929); *Cheney v. Cheney*, 214 Mass. 580, 101 N.E. 1091 (1913); *Sinclair v. Sinclair*, 99 N.H. 316, 109 A.2d 851 (1954); *Burnet v. Burnet*, 46 N.J.Eq. 144, 18 A. 374 (1889); *Thorburn v. Wende*, 235 App.Div. 424, 257 N. Y.S. 168 (4th Dep't 1932). For a discussion of the California statute, see Note, 47 Calif.L.Rev. 211 (1959); Marsh, Marital Property in Conflict of Laws 137 (1952).

The argument was made to the court in *Ehler v. Ehler*, 214 Iowa 789, 243 N.W. 591 (1932) that the local law of the marital domicile should be applied to determine the wife's interests in her deceased husband's immovables. This argument was rejected and the local law of the situs applied. In *Estate of Bir*, 83 Cal.App.2d 256, 188 P.2d 499 (1948), two women, who had been validly married to the decedent in India, were allowed to share in his estate as his "widows."

Restat 2d of Conflict of Laws, § 241

Whether a foreign divorce bars dower in land at the situs has been determined by the local law of the situs. [*Hawkins v. Ragsdale*, 80 Ky. 353, 44 Am.Rep. 483 \(1882\)](#); [*Peff v. Peff*, 2 N.J. 513, 67 A.2d 161 \(1949\)](#); [*Snyder v. Buckeye State Bldg. & Loan Co.*, 26 Ohio App. 166, 160 N.E. 37 \(1927\)](#).

See generally Harper, Effect of Foreign Divorce upon Dower and Similar Property Interests, 26 Ill. L.Rev. 397 (1931); Krauskopf, Divisible Divorce and Rights to Support, Property and Custody, 24 Ohio St.L.J. 346 (1963).

Cross Reference

ALR Annotations:

Right of nonresident surviving spouse or minor children to allowance of property exempt from administration or to family allowance from local estate of nonresident decedent under statute of decedent's domicil. 51 A.L.R.2d 1034.

Conflict of laws regarding election for or against will; and effect in one state of election in another. 105 A.L.R. 271.

Governing law as to rights of spouse in estate of deceased spouse. 88 A.L.R. 861.

Digest System Key Numbers:

Descent and Distribution 4

Homestead 4

Husband and Wife 2, 246

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 242

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 242 Forced Share Interest of Surviving Spouse and Election

(1) The forced share interest of a surviving spouse in the land of the deceased spouse is determined by the law that would be applied by the courts of the situs.

(2) Whether a surviving spouse for whom provision has been made in the will of the deceased spouse may elect to take a forced share or dower interest in the land of the deceased spouse rather than to take under the will is determined by the law that would be applied by the courts of the situs.

(3) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Meaning of "forced share." As here used, the term "forced share" refers to the share, normally a specified percentage of the decedent's estate, which the surviving spouse has the right to claim against the provisions of the will.

b. Scope of section. The rule of this Section is applicable to determine the forced share interest of a surviving spouse in the land of the deceased spouse who made no provision for her in his will. Another question falling within the scope of the rule is whether a surviving spouse for whom provision has been made in the will of the deceased spouse may elect to take a forced share interest in the land rather than to take under the will.

Whether a provision in a will, in the absence of satisfactory evidence of the testator's intentions, is in addition to, or in lieu of, a forced share or dower is a question of construction which will be determined by the law that would be applied by the courts of the situs. This is a special application of the rule of § 240.

c. Rationale. For reasons stated in § 223, Comment *b*, questions relating to the forced share interest of a surviving spouse in the land of the deceased spouse will be determined by the law that would be applied by the courts of the situs. Usually, these courts would apply their own local law to determine such questions. On the other hand, these courts might apply the forced share rules of the state of the spouses' common domicile if it were appear that the deceased spouse had bought land in the situs in an attempt to avoid application of the rules of the common domicile. Likewise, the courts of the situs might look to the local law of another state to determine whether the surviving spouse followed the appropriate procedure in electing to receive her forced share rather than to take under the will. Whichever law would have been applied by the courts of the situs in the decision of the particular issue will likewise so be applied by the forum.

d. The courts of the state of the husband's domicile at the time of his death may compel the widow to elect between releasing the interest given her in the land by the local law of the situs or releasing her interests under the will to an extent necessary to carry out the intentions of the testator (compare § 241, Comment *c*).

REPORTER'S NOTES

The courts of the situs have applied their own local law in determining whether a widow may elect to take a dower interest in the land rather than to take under her husband's will. [*Pfau v. Moseley*, 9 Ohio St.2d 13, 222 N.E. 2d 639 \(1966\)](#).

Restat 2d of Conflict of Laws, § 242

A widow who has elected to take under the will in the state where her husband died domiciled has been denied the right by the courts of the situs to claim a forced share or dower in the land. [Lawrence's Appeal, 49 Conn. 411 \(1881\)](#); [Brooks v. Carson, 166 Kan. 194, 200 P.2d 280 \(1948\)](#); [Washburn v. Van Steenwyk, 32 Minn. 336, 20 N.W. 324 \(1884\)](#); [Lee's Summit Building & Loan Ass'n v. Cross, 345 Mo. 501, 134 S.W.2d 19 \(1939\)](#); Marsh, Marital Property in Conflict of Laws 137, n. 24 (1952); Scoles, Conflict of Laws and Elections in Administration of Decedents' Estates, 30 Ind.L.J. 293 (1955). Similarly, a widow's renunciation of the will in domiciliary administration has usually been held to preclude her from taking under the will in the state of the situs even though the latter's requirements for the making of a renunciation and election were not complied with. [Security Trust Co. v. Hanley, 32 Del.Ch. 70, 79 A.2d 807 \(1951\)](#); [Russell v. Shapleigh, 275 Mass. 15, 175 N.E. 100 \(1931\)](#); [Colvin v. Hutchison, 338 Mo. 576, 92 S.W.2d 667 \(1936\)](#); [Coble v. Coble, 227 N.C. 547, 42 S.E.2d 898 \(1947\)](#). Contra: [Bish v. Bish, 181 Md. 621, 31 A.2d 348 \(1943\)](#); [McGinness v. Chambers, 156 Tenn. 404, 1 S.W.2d 1015 \(1928\)](#). See generally, Marsh and Scoles, supra.

An election made in a state of ancillary administration may not be accorded the binding effect of an election made at the domicile, but courts in the domicile or at the situs will require, as a condition to permitting a contrary election, that the surviving spouse account for benefits received in the ancillary administration. [Griley v. Griley, 43 So.2d 350 \(Fla.1949\)](#); [Murphy v. Murphy, 125 Fla. 855, 170 So. 856 \(1936\)](#).

Cross Reference

ALR Annotations:

Right of nonresident surviving spouse or minor children to allowance of property exempt from administration or to family allowance from local estate of nonresident decedent under statute of decedent's domicile. 51 A.L.R.2d 1034.

Conflict of laws regarding election for or against will; and effect in one state of election in another. 105 A.L.R. 271.

Governing law as to rights of spouse in estate of deceased spouse. 88 A.L.R. 861.

Digest System Key Numbers:

Wills 436

Restat 2d of Conflict of Laws, § 243

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 2- Immovables > Title G- Succession on Death

§ 243 Escheat of Land

Whether there is an escheat of an interest in land is determined by the local law of the situs.

COMMENTS & ILLUSTRATIONS

Comment:

a. The courts of the situs would decide questions as to the escheat of interests in local land in accordance with their own local law. When the validity of a will is in issue, these courts might be directed by a local statute to uphold the validity of the will as to formalities if it complies with the requirements of some other state (see § 239, Comment e). The forum will attempt to decide questions as to escheat in the same way that these questions would have been decided by the courts of the situs.

REPORTER'S NOTES

See [Christianson v. King Co., 239 U.S. 356 \(1915\)](#); 2 Beale, Conflict of Laws 977 (1935); Re Hole, [1948] 4 D.L.R. 419; cf. Wolff, Private International Law 525-527 (2d ed. 1950).

Cross Reference

ALR Annotations:

Escheat of personal property of intestate domiciled or resident in another state. [50 A.L.R.2d 1375](#).

Digest System Key Numbers:

Property 6

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables

Restat 2d of Conflict of Laws, § Scope

The Code states rules (principally in Articles 2, 2A, 6, 7, 8 and 9) which determine most issues arising from the non-gratuitous transfer of interests in movables, including secured transactions. By reason of the adoption of the Code by all States of the United States (by Louisiana in part only) and by the District of Columbia and the Virgin Islands, local law rules with respect to non-gratuitous conveyances (Title A) and encumbrances (Title B) of interests in movables will henceforth be uniform in most respects throughout the United States and choice-of-law problems involving them will arise only infrequently. * Such problems, however, will continue to arise on occasion. This is so because the Code does not cover all transactions or all issues involving interests in chattels. The Code does not, for example, cover gratuitous conveyances or most aspects of bailments or of liens for services or materials. Nor does the Code, by and large, regulate such issues as "capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause" or usury (see §§ 1-103 and 9-201) or "impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers" (§ 2-102). Likewise, the Code has been enacted with slight variations in a number of States, and almost certainly some of its provisions will not be interpreted uniformly by the courts of all States. Choice-of-law problems, in any event, will continue to arise in the case of transactions involving foreign nations.

The Uniform Commercial Code sets forth certain provisions on choice of law. The most important of these provisions are found in § 1-105, which reads as follows:

Territorial Application of the Act; Parties' Power to Choose Applicable Law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Leases. Sections 2A-105 and 2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Perfection provisions of the Article on Secured Transactions. Section 9-103.

The text of § 9-103 is set forth in the Introductory Note to Title B, which precedes § 251. The choice-of-law portions of the other provisions are:

* As of December 1988, Article 2A on Leases, added to the Code in 1987, had been adopted by two States. The 1977 revisions to Article 8 on Securities had been adopted by a majority of the States. The 1972 revisions to Article 9 on Secured Transactions had been adopted by all but one State.

Restat 2d of Conflict of Laws, § Scope

...

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

Subject to the provisions of Sections 2A-304(3) and 2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

...

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

...

(4) . . . all bulk transfers of goods located within this state are subject to this Article.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

- (a) registration of transfer of a certificated security;
- (b) registration of transfer, pledge, or release of an uncertificated security; and
- (c) sending of statements of uncertificated securities.

Choice-of-law decisions must henceforth be based upon these provisions, to the extent that they are applicable, in States which have adopted the Code. It is thought, however, that, even with respect of matters falling within the scope of these provisions, the rules stated in Titles A and B of this Topic, which are based upon existing case law, continue to have validity and should be of assistance to the courts in applying these provisions of the Code. It is also thought, in part because of the widespread adoption of the Code, that what is said here with respect to the state of most significant relationship should prove of assistance to the courts in interpreting the term "appropriate relation" in § 1-105(1) of the Code. Likewise, it is thought that what is said in § 187 as to the circumstances in which the parties may choose the law to govern their rights and obligations should prove of assistance to the courts in interpreting the term "reasonable relation" which also is to be found in § 1-105(1) of the Code.

The term "movables," as used in the Restatement of this Subject, refers to all things that are not "immovables." A movable may be either tangible or intangible. A chattel, which is a tangible movable, can be moved from state to state. This serves to distinguish it from land which by its nature must remain fixed in a single place. A state is unlikely to have the same interest in a chattel within its territory as it has in land situated there. Also, one reason for the normal application of the local law of the situs in a transaction involving land is that the task of the title searcher would be more difficult and uncertain if he were forced to consult the law of any state other than that where the land is. This consideration has less significance in the case of chattels since transactions involving them are not usually preceded by a comparable title search.

These differences lead to rules different from those that apply to immovables. When a controversy relating to interests in a chattel is between parties to a single inter vivos transaction, the applicable law is the local law of

Restat 2d of Conflict of Laws, § Scope

the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel, and the transaction. This is the law which governs contractual aspects of the transaction (see §§ 187-188), such as whether a secured creditor is entitled to recover from the debtor any deficiency that may remain after a foreclosure (see § 254, Comment e). This is also the law which governs property aspects of the transaction, such as whether the transaction amounted to an outright sale of the chattel or to a security interest or what are the rights of redemption of the debtor. The local law of the state of most significant relationship governs the property rights, as well as the contractual rights, of the parties to a single transaction involving a chattel, or a group of chattels, because this is the law that can most appropriately govern such controversies between the parties, and because in these situations there may be no clear line of distinction between property and contractual rights.

Different choice-of-law rules apply in other situations. Sometimes a controversy involving interests in a chattel is between parties to different transactions, such as when a secured creditor is seeking to reclaim the chattel from a transferee of the debtor or when an attaching creditor of the debtor is seeking to prevail over the secured creditor. Here more than one transaction is involved and there was no prior relationship between the parties. Questions of this sort are determined in the same way that they would be determined by the courts of the state where the chattel was situated at the time of the second transaction. So, if a security interest is created in a chattel while it is situated in state X, and the chattel is then taken by the debtor to state Y and is there sold to a third person, questions involving the respective rights in the chattel of the secured creditor and of the third person will be determined in the same way as such questions would be determined by the courts of state Y (see § 253).

Different problems are posed by assignments for the benefit of creditors (see § 250), marital property interests (see §§ 257-259), transfers upon death (see §§ 260-266) and trusts, both testamentary and inter vivos (see §§ 267-275). Interests in a group of chattels will usually be involved in such cases, and it is desirable that a single law should be applied. Largely for this reason, the reference is to the law of a single state, which is frequently the state of domicile of one or more of the parties, rather than to the law of the situs of each chattel composing the group.

As is likewise true of immovables (see the Introductory Note to Topic 2 of this Chapter, which precedes § 223), a further source of complexity arises from the fact that many transactions involving chattels have both contractual and property aspects. Essentially contractual matters, such as the right to damages for breach of warranty and excuses for non-performance, are determined by the law selected by application of the rules of §§ 187-188, while property questions relating to interests in the chattel are determined by the law selected by application of the rules stated in this Topic. Similarly, whether a certain dealing with a chattel amounts to a tort is determined by the law selected by application of the rule of § 145. On occasion, it may be difficult to determine whether a given issue is essentially one of property or of contract or tort.

Intangible things can be divided into two categories. Those which are embodied in a document, such as a promissory note or a bill of exchange, are in general governed by the same law as the document itself (see § 249). Intangible things which are not so embodied, such as informal contracts and debts, lack physical substance and hence are not within the control of a state in the same way as is a document or other chattel. As to them, there is less reason to refer to the totality of law, including the choice-of-law rules, of any particular state. Some rules relating to intangibles of the latter sort are stated in this Chapter; others are set forth in §§ 208-211.

REPORTER'S NOTES

Changes: The Introductory Note has been rewritten to reflect the effect of the Uniform Commercial Code on choice-of-law issues.

The Committee on Stock Certificates of the Section of Corporation, Banking, and Business Law of the American Bar Association proposed an amendment to § 8-106 of the Uniform Commercial Code as part of a complete revision of Article 8. The revision became the 1977 amendments to the Code, which have now been enacted by a majority of the States. The earlier version of § 8-106, still in effect in a minority of States, reads as follows:

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

Restat 2d of Conflict of Laws, § Scope

Restatement of the Law, Second, Conflict of Laws (1988 Revisions)
Copyright (c) 1988, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables

Restat 2d of Conflict of Laws, § Scope

: Mention should be made at the outset of the Uniform Commercial Code. The Code states rules (principally in Articles 2, 6, 7 and 9) which determine most issues arising from the non-gratuitous transfer of interests in movables, including secured transactions. By reason of the almost universal adoption of the Code by States of the United States, local law rules with respect to non-gratuitous conveyances (Title A) and encumbrances (Title B) of interests in movables will henceforth be uniform in most respects throughout the United States and choice-of-law problems involving them will arise only infrequently. Such problems, however, will continue to arise on occasion. This is so because the Code does not cover all transactions or all issues involving interests in chattels. The Code does not, for example, cover gratuitous conveyances or most aspects of bailments or of liens for services or materials. Nor does the Code, by and large, regulate such issues as "capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause" or usury (see §§ 1-103 and 9-201) or "impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers" (§ 2-102). Likewise, the Code has been enacted with slight variations in a number of States, and almost certainly some of its provisions will not be interpreted uniformly by the courts of all States. Choice-of-law problems, in any event, will continue to arise in the case of transactions involving foreign nations.

The Uniform Commercial Code sets forth certain provisions on choice of law. The most important of these provisions are found in § 1-105 which reads as follows:

Section 1-105. Territorial Application of the Act;
Parties' Power to Choose Applicable Law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2-402.

Applicability of the Article on Bank Deposits and Collections. Section 4-102.

Bulk transfers subject to the Article on Bulk Transfers. Section 6-102.

Applicability of the Article on Investment Securities. Section 8-106.

Policy and scope of the Article on Secured Transactions. Sections 9-102 and 9-103.

Of these latter sections, the text of §§ 9-102 and 9-103 is set forth in the Introductory Note to Title B (which precedes § 251). The relevant portions of the other provisions are:

Section 2-402 . . .

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the

Restat 2d of Conflict of Laws, § Scope

goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

Section 4-102 . . .

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Section 6-102 . . .

(4) . . . all bulk transfers of goods located within this state are subject to this Article.

Section 8-106.

The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

Choice-of-law decisions must henceforth be based upon these provisions, to the extent that they are applicable, in States which have adopted the Code. It is thought, however, that, even with respect of matters falling within the scope of these provisions, the rules stated in Titles A and B of this Topic, which are based upon existing case law, continue to have validity and should be of assistance to the courts in applying these provisions of the Code. It is also thought, in part because of the widespread adoption of the Code, that what is said here with respect to the state of most significant relationship should prove of assistance to the courts in interpreting the term "appropriate relation" in § 1-105(1) of the Code. Likewise, it is thought that what is said in § 187 as to the circumstances in which the parties may choose the law to govern their rights and obligations should prove of assistance to the courts in interpreting the term "reasonable relation" which also is to be found in § 1-105(1) of the Code.

The term "movables," as used in the Restatement of this Subject, refers to all things that are not "immovables." A movable may be either tangible or intangible. A chattel, which is a tangible movable, can be moved from state to state. This serves to distinguish it from land which by its nature must remain fixed in a single place. A state is unlikely to have the same interest in a chattel within its territory as it has in land situated there. Also, one reason for the normal application of the local law of the situs in a transaction involving land is that the task of the title searcher would be more difficult and uncertain if he were forced to consult the law of any state other than that where the land is. This consideration has less significance in the case of chattels since transactions involving them are not usually preceded by a comparable title search.

These differences lead to rules different from those that apply to immovables. When a controversy relating to interests in a chattel is between parties to a single inter vivos transaction, the applicable law is the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel, and the transaction. This is the law which governs contractual aspects of the transaction (see §§ 187-188), such as whether a secured creditor is entitled to recover from the debtor any deficiency that may remain after a foreclosure (see § 254, Comment e). This is also the law which governs property aspects of the transaction, such as whether the transaction amounted to an outright sale of the chattel or to a security interest or what are the rights of redemption of the debtor. The local law of the state of most significant relationship governs the property rights, as well as the contractual rights, of the parties to a single transaction involving a chattel, or a group of chattels, because this is the law that can most appropriately govern such controversies between the parties, and because in these situations there may be no clear line of distinction between property and contractual rights.

Different choice-of-law rules apply in other situations. Sometimes a controversy involving interests in a chattel is between parties to different transactions, such as when a secured creditor is seeking to reclaim the chattel from a transferee of the debtor or when an attaching creditor of the debtor is seeking to prevail over the secured creditor. Here more than one transaction is involved and there was no prior relationship between the parties. Questions of this sort are determined in the same way that they would be determined by the courts of the state where the chattel was situated at the time of the second transaction. So, if a security interest is created in a chattel while it is situated in state X, and the chattel is then taken by the debtor to state Y and is there sold to a third person, questions involving the respective rights in the chattel of the secured creditor and of the third

Restat 2d of Conflict of Laws, § Scope

person will be determined in the same way as such questions would be determined by the courts of state Y (see § 253).

Different problems are posed by assignments for the benefit of creditors (see § 250), marital property interests (see §§ 257-259), transfers upon death (see §§ 260-266) and trusts, both testamentary and inter vivos (see §§ 267-275). Interests in a group of chattels will usually be involved in such cases, and it is desirable that a single law should be applied. Largely for this reason, the reference is to the law of a single state, which is frequently the state of domicile of one or more of the parties, rather than to the law of the situs of each chattel composing the group.

As is likewise true of immovables (see the Introductory Note to Topic 2 of this Chapter, which precedes § 223), a further source of complexity arises from the fact that many transactions involving chattels have both contractual and property aspects. Essentially contractual matters, such as the right to damages for breach of warranty and excuses for non-performance, are determined by the law selected by application of the rules of §§ 187-188, while property questions relating to interests in the chattel are determined by the law selected by application of the rules stated in this Topic. Similarly, whether a certain dealing with a chattel amounts to a tort is determined by the law selected by application of the rule of § 145. On occasion, it may be difficult to determine whether a given issue is essentially one of property or of contract or tort.

Intangible things can be divided into two categories. Those which are embodied in a document, such as a promissory note or a bill of exchange, are in general governed by the same law as the document itself (see § 249). Intangible things which are not so embodied, such as informal contracts and debts, lack physical substance and hence are not within the control of a state in the same way as is a document or other chattel. As to them, there is less reason to refer to the totality of law, including the choice-of-law rules, of any particular state. Some rules relating to intangibles of the latter sort are stated in this Chapter; others are set forth in §§ 208-211.

REPORTER'S NOTES

See [*General Electric Credit Corp. v. R. A. Heintz Const. Co.*, 302 F.Supp. 958 \(D.Or.1969\)](#)

Restat 2d of Conflict of Laws, § 244

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 244 Validity and Effect of Conveyance of Interest in Chattel

(1) The validity and effect of a conveyance of an interest in a chattel as between the parties to the conveyance are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the conveyance under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel, or group of chattels, at the time of the conveyance than to any other contact in determining the state of the applicable law.

COMMENTS & ILLUSTRATIONS

Comment:

a. As to the effect of the Uniform Commercial Code, see the Introductory Note to this Topic.

b. *Scope of section.* The rule of this Section is applicable to issues arising between the immediate parties and their privies from voluntary transfers inter vivos of interests in chattels other than assignments for the benefit of creditors (see § 250) and encumbrances (see §§ 251-254). As to testamentary transfers, see §§ 263-264.

Issues falling within the scope of the rule of this Section are the capacity of the party who conveys to make a valid conveyance, the capacity of the party to whom the conveyance is made to acquire the interest involved, the formal validity of the conveyance, the validity of the conveyance in other respects and the nature of the interests transferred. These issues are discussed in Comments *h-l*.

c. *Rationale.* A conveyance of interests in a chattel, or in a group of chattels, is likely to involve both property and contractual questions. Under the rule of this Section, the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the conveyance under the principles stated in § 6 will be applied to determine both the property and contractual aspects of the conveyance as between the parties and their privies. There is no clear line of distinction in these cases between property and contractual rights (see § 191). So the law selected by application of the rule of this Section will be applied to determine such issues as what interests in the chattel are transferred by reason of the conveyance from one party to the other and whether one party has a right of action for breach of warranty against the other.

The principles stated in § 6 underlie all rules of choice of law and are used in evaluating the significance of a relationship, with respect to the particular issue, of the potentially interested states to the parties, the chattel and the conveyance. For a discussion of the five groups into which the factors listed in Subsection (2) of § 6 can be placed, see § 222, Comment *b*.

The factors listed in Subsection (2) of the rule of § 6 vary somewhat in importance from field to field and from issue to issue. Thus, the protection of the justified expectations of the parties is of considerable importance in property and contracts (see § 188, Comment *b*), whereas it is of relatively little importance in torts (see § 145, Comment *b*). Parties enter into property transactions and into contracts with forethought and are likely to consult a lawyer before doing so. Sometimes, they will intend that the validity of a conveyance and its effect upon interests in the chattel should be determined by the local law of a particular state. In this event, the local law of this state will be applied, subject to the qualifications stated in the rule of § 187. In situations where the

Restat 2d of Conflict of Laws, § 244

parties did not give advance thought to the question of which should be the state of the applicable law, or where their intentions in this regard cannot be ascertained, it may at least be said, subject perhaps to rare exceptions, that they expected that the conveyance would be valid.

The need for protecting the expectations of the parties gives importance in turn to the values of certainty, predictability and uniformity of result. For unless these values are attained, the expectations of the parties are likely to be disappointed.

Protection of the justified expectations of the parties by choice-of-law rules in the field of movables is supported both by those factors in Subsection (2) of § 6 which are directed to the furtherance of the needs of the parties and by those factors which are directed to implementation of the basic policy underlying the particular field of law. Protection of the justified expectations of the parties is an important policy underlying most areas of the field of pproperty.

Parties to a conveyance of an interest in a chattel will expect at the very least, subject perhaps to rare exceptions, that the conveyance is valid. Their expectations should not be disappointed by application of the local law of the state which would strike down the conveyance or a provision there of unless the value of protecting the expectations of the parties is outweighed in the particular case by the interest of the state with the invalidating rule in having its rule applied. The extent of the interest of a state in having its rule applied should be determined in the light of the purpose sought to be achieved by the rule and by the relation of the parties, the chattel and the conveyance to that state (see Comment *d*).

d. Purpose of pproperty rule. The purpose sought to be achieved by the pproperty rules of the potentially interested states, and the relation of these states to the parties, the chattel and the conveyance, are important factors to be cconsidered in determining the state of most significant relationship. This is because the interest of a state in having its rule applied in the determination of a particular issue will depend upon the purpose sought to be achieved by that rule and upon the relation of the state to the parties, the chattel and the conveyance. So the state where a party to the conveyance is domiciled has an obvious interest in the application of its rule designed to protect that party against the unfair use of superior bargaining power. And the state where, under the provisions of the conveyance, the chattel is to be put to a certain use has an obvious interest in the application of its rule designed to regulate or to prohibit that particular use. On the other hand, the purpose of a rule and the relation of a state to the parties, the chattel and the conveyance may indicate that the state has little or no interest in the application of its rule in the particular case. So a state may have little interest in the application of a rule designed to protect parties to a conveyance against the unfair use of superior bargaining power if the chattel is situated in another state which is the domicile of the party seeking the rule's protection. And a state may have little interest in the application of a rule designed to prohibit a certain use of a chattel when under the terms of the conveyance the chattel is to be put to the particular use in another state.

e. The issue involved. The courts have long recognized that they are not bound to decide all issues under the local law of a single state. Thus, in an action involving the conveyance of a chattel situated in a foreign state by parties domiciled there, a court under traditional and prevailing practice applies its own state's rules to issues involving process, pleadings, joinder of parties and the administration of the trial (see Chapter 6), while deciding other issues -- such as whether the conveyance amounted to a sale or to the transfer of a security interest -- by reference to the law selected by application of the rules stated in this Chapter. The rule of this Section makes explicit that selective approach to the choice of law governing particular issues.

Each issue is to receive separate cconsideration if it is one which would be resolved differently under the local law rule of two or more of the potentially interested states.

f. State of most significant relationship. The validity of a conveyance of interests in a chattel, or in a group of chattels, and the rights created thereby as between the parties to the conveyance will be determined by the law chosen by the parties under the circumstances stated in § 187 (see also § 1-105 of the Uniform Commercial Code). In the absence of an effective choice of law by the parties, the forum, in applying the principles of § 6 to determine the state of most significant relationship, should give cconsideration to the relevant policies of all potentially interested states and the relative interests of those states in the decision of the particular issue.

In determining the state of the applicable law, greater weight will usually be given to the location of the chattel, or group of chattels, at the time of the conveyance than to any other contact. The values of certainty and predictability of result are furthered as a consequence, since the place where a chattel is situated at a given

time will either be known to the parties or else, except in rare instances, will be readily ascertainable. Likewise since interests in the chattel, or group of chattels, form the subject matter of the conveyance, the place where the chattel, or group of chattels, was located at the time of the conveyance can be considered the latter's focal point. The importance of a chattel's location at the time of the conveyance in the choice of the applicable law depends somewhat upon the intended permanence of this location. If the parties intended that the chattel should remain in this location more or less permanently, the state of the chattel's location will in all probability be the state of most significant relationship and thus the state of the applicable law. The situation is different when it is understood that the chattel will be kept only temporarily in the state where it was located at the time of the conveyance. Here it is more likely that, with respect to the particular issue, some other state will have the most significant relationship to the parties, the chattel and the conveyance and be the state of the applicable law. Thus, if a chattel is delivered in state X for the temporary use of the transferee and if both the transferor and the transferee are domiciled in state Y and it is understood that in due course the transferee will probably bring the chattel into Y, it is likely that Y, rather than X, will be the state of the applicable law.

The problem is different when a group of chattels is involved and when not all of the chattels belonging to the group are located in a single state. If the great bulk of the chattels is located in a single state, this state will be given nearly the same weight in the choice of the applicable law as would have been given it if only a single chattel had been involved and if this chattel had been located in the state. If, however, the chattels composing the group are scattered more or less evenly throughout a number of states, the forum will give predominant weight to other contacts in determining the state of the applicable law.

In determining the state of most significant relationship, and thus of the applicable law, the forum will consider other contacts in addition to the location of the chattel, or group of chattels, at the time of the conveyance. Thus, the forum will consider the domicile, nationality, place of incorporation and place of business of the parties. Also where it is understood that a chattel will be moved to a more or less permanent location following the conveyance, the forum will give consideration to the place of its intended destination.

g. When local law of state where chattel was situated at time of conveyance will not be applied. On occasion, a state which is not the state where the chattel was situated at the time of the conveyance will nevertheless, with respect to the particular issue, be the state of most significant relationship to the parties, the chattel and the conveyance and hence the state of the applicable law. This may be so, for example, when the conveyance would be invalid under the local law of the state where the chattel was situated at the time of the conveyance but valid under the local law of another state with a close relation to the parties, the chattel and the conveyance. In such a situation, the local law of the other state should be applied unless the value of protecting the expectations of the parties is outweighed in the particular case by the interest of the state where the chattel was situated in having its invalidating rule applied. There will also be occasions when the local law of some state other than that where the chattel was situated at the time of the conveyance should be applied because of the intensity of the interest of that state in having its local law applied to determine the particular issue. See also Comments *h-j*.

h. Capacity. The law selected by application of the rule of this Section will be applied to determine, as between the parties to the conveyance, the capacity of the transferor to convey an interest in the chattel and the capacity of the transferee to receive such an interest. The capacity of a party to convey, or to receive, an interest in a chattel will usually be upheld if he has such capacity under either the local law of the state of his domicile or the local law of the state where the chattel was situated at the time of the conveyance. If the state of a person's domicile has chosen to give him capacity to contract, or in other words has determined that he is not in need of the protection which a rule of incapacity would bring, there can usually be little reason why the local law of some other state should be applied to give him this protection and to declare the conveyance invalid to the disappointment of the parties' expectations (compare § 198).

i. Formalities. The law selected by application of the rule of this Section will be applied to determine, as between the parties to the conveyance, what formalities are necessary for the validity of a conveyance of an interest in the chattel. This law will be applied to determine such matters as the need and the form of a writing. Formalities will usually be acceptable if they meet the requirements either of the state where the instrument of conveyance was executed by the transferor or of the state where the chattel was situated at the time of the conveyance. Situations will arise, however, where a conveyance valid with respect to formalities under the local law of either or both the state where the transferor executed the instrument of conveyance and the state

Restat 2d of Conflict of Laws, § 244

where the chattel was situated at the time of the conveyance will nevertheless be held invalid by application of the local law of the state which, with respect to the particular issue, is the state of most significant relationship under the choice-of-law principles stated in § 6. Such an eventuality is particularly likely to occur in the rare situation where both the place of execution and the place where the chattel was situated at the time are fortuitous and bear no real relation to the parties, the chattel and the conveyance. In any event, a conveyance which satisfies the requirements with respect to formalities either of the state of execution or of the state where the chattel was situated at the time will not be declared invalid by application of the local law of another state in situations where the requirements of the states involved differ only in matters of detail (compare § 199).

j. Other questions of validity. The law selected by application of the rule of this Section will be applied to determine other questions of validity as between the parties to the conveyance. For example, this law will be applied to determine whether the conveyance is tainted with illegality and, if so, whether it is void or voidable as a result. This law will also be applied to determine the existence and effect of fraud and of a violation of the rule against perpetuities. So this law will be applied to determine whether the conveyance is voidable as between the parties because of fraud or whether an interest sought to be created by the conveyance cannot take effect because the time of its vesting is too remote. The validity of a conveyance which meets the requirements of the state where the chattel was situated at the time should be upheld except in the rare situation where the materially greater interest of a state with an invalidating rule in the decision of the particular issue requires that the rule of this latter state be applied. Situations will also arise where a conveyance which does not meet the requirements of the state where the chattel was situated at the time should nevertheless be upheld by application of the validating rule of another state on the ground of the interest of this state in the decision of the particular issue and also on the ground of the choice-of-law policy favoring protection of the justified expectations of the parties. Also when the state with the invalidating rule has the greater interest in the determination of the particular issue, the validating rule of a state with a lesser but substantial interest should nevertheless be applied if the local law rules of the two states differ only in matters of detail. Here it can be said that the interests of the first state would not be seriously infringed by application of the local law of the latter state, and that accordingly effect should be given to the policy favoring protection of the justified expectations of the parties.

k. Even though the conveyance is entirely valid, a state with personal jurisdiction over the transferee may order him to transfer the chattel to the transferor or to a third person as an equitable remedy for some breach of trust or other wrong that he has committed (see § 55).

Illustrations:

1. A, aged 18, executes and delivers to B in state Y an instrument conveying to B A's interest in a chattel situated in state Y. A is domiciled in state X and B in Y. The conveyance is valid and enforceable under Y local law, which provides that persons acquire contractual capacity when they reach eighteen. The conveyance, however, is invalid for lack of capacity on the part of A under the local law of X, which provides that minors do not acquire contractual capacity until they become twenty-one. B brings suit in Y for a declaratory judgment that he owns the chattel. Among the questions for the Y court to determine is whether Y's interest in the application of its validating rule, as buttressed by the policy favoring protection of the justified expectations of the parties, is outweighed by X's interest in the application of its invalidating rule. The Y court should answer this question in the negative and hold that the conveyance is valid by application of Y local law for the reason, among others, that the difference in the X and Y rules as to the age of contractual capacity probably does not represent an important difference in policy.

2. Same facts as in Illustration 1 except that A lacks capacity under Y local law but not under the local law of X. Factors favoring application by the Y court of the X validating rule of capacity are that (a) Y would have little interest in the application of its rule of incapacity since presumably the purpose of this rule is to protect Y domiciliaries, (b) X's interests would surely not be infringed by application of its rule of capacity and (c) upholding the conveyance would further the choice-of-law policy favoring protection of the justified expectations of the parties.

3. Same facts as in Illustration 1 except that both A and B are domiciled in X. In this case, X has a greater interest in the application of its rule of incapacity than it had in Illustration 1. Among the questions for the Y court to determine is whether X's interest in the application of its rule of incapacity outweighs Y's interest in the application of its rule of capacity favoring protection of the justified expectations of the parties. If it were to

Restat 2d of Conflict of Laws, § 244

appear that the X courts would not apply their rule of incapacity to the facts of the present case, there would be ground for the conclusion that no important interest of X would be affected if the Y court were to uphold the conveyance by application of Y local law.

4. By reason of an innocent misrepresentation made to him by B in state X, A in X delivers to B an instrument conveying to B A's interest in a chattel situated in state Y. A is domiciled in X and B in Y. The conveyance is voidable on account of B's misrepresentations under X local law. It is not voidable under the local law of Y. A brings suit in Y to have the conveyance set aside. Among the questions for the Y court to determine is whether Y's interest in the application of its rule is outweighed by X's interest in the application of its invalidating rule. By reason of the misrepresentation, it is unlikely that the policy favoring protection of the justified expectations of the parties is a factor to be considered in this case. Factors favoring application by the Y court of its own validating rule are that the chattel was situated in Y and B is a Y domiciliary. Presumably, the Y validating rule was intended at the very least to protect Y domiciliaries in their transactions involving a chattel situated in Y. If it were to appear that the X courts would not apply their invalidating rule to the facts of the present case, there would be ground for the conclusion that no important interest of X would be affected if the Y court were to uphold the conveyance by application of Y local law.

Comment:

l. Effect of conveyance. The law selected by application of the rule of this Section determines the effect of a conveyance upon interests in the chattel of the parties to the conveyance. This law determines, for example, whether the conveyance amounted to a sale or to a bailment.

Protection of the justified expectations of the parties plays a less significant role in the choice-of-law process with respect to issues that involve the effect of a conveyance upon interests in the chattel rather than the validity of the conveyance itself. By and large, it is for the parties themselves to determine the effect of a conveyance upon their interests in the chattel. They can spell out the nature of these interests in the instrument of conveyance or, as a short-hand device, they can provide that the nature of these interests shall be determined by the local law of a given state (compare § 187, Comment c). If the parties do neither of these things, the resulting gap in the instrument of conveyance must be filled by application of the relevant local law rule of a particular state. What is important for present purposes is that a gap in the instrument of conveyance usually results from the fact that the parties either never gave thought to the issue involved or else that their minds never met on this issue. Hence with respect to questions of this sort, protection of the justified expectations of the parties is unlikely to play so significant a role in the choice-of-law process. As a result, greater emphasis in fashioning choice-of-law rules in this area must be given to the other choice-of-law principles of § 6.

Illustration:

5. A and B, who are domiciled in state X, enter in that state into a contract in which A agrees to transfer a portrait to B upon payment of a specified price. The contract provides that the price is to be paid in X but that, since the portrait is in state Y, A is to deliver it to B in Y. The parties understand that it is B's intention to place the portrait in his home in X. The contract further provides that during a two-year period A shall have the right to reclaim the portrait from B upon payment of the original price plus eight per cent interest. Thereafter, A brings an action against B in state Z claiming that B is not the absolute owner of the portrait but received only a security interest therein by reason of the conveyance. A's contention would be correct under Y local law but not under the local law of X. Among the factors favoring application by the Z court of the X local law rule are that (a) X would seem to have the greater interest in the resolution of the issue since A and B are both domiciled in X and contemplated that the portrait would be brought to X, while (b) Y would seem to have relatively little interest in the issue since neither of the parties is domiciled there and it was understood that the portrait would be removed from Y to X and (c) the contract was negotiated and executed in X. If it were to appear that the Y courts would not apply their rule to the facts of the present case, there would be ground for the conclusion that no important interest of Y would be affected if the Z court were to find for B by application of X local law.

Comment:

m. Reference is to the "local law" of selected state. The reference, except as stated in § 187, Comment h, is to the "local law" of the state of the applicable law and not to that state's "law," which means the totality of its law including its choice-of-law rules (see § 4). Values of certainty of result and of ease of application dictate that the forum should apply the local law of the selected state and not concern itself with the complexities that might

Restat 2d of Conflict of Laws, § 244

arise if the forum were to apply that state's choice-of-law rules. There is no basis for supposing that fairness requires the forum to apply the choice-of-law rules of the selected state. To the extent that they may give thought to choice-of-law problems before becoming parties to a conveyance of interests in a chattel, persons would presumably expect, except as stated in § 187, Comment *h*, that the local law of the state selected by application of the present rule would be applied.

On the other hand, in judging a given state's interest in the application of one of its local law rules, the forum should concern itself with the question whether the courts of that state would have applied this rule in the decision of the case. The fact that these courts would have applied this rule may indicate that an important interest of that state would be served if the rule were applied by the forum. Conversely, the fact that these courts would not have applied this rule may indicate that no important interests of that state would be infringed if the rule were not applied by the forum (see § 8, Comment *k*). It should be reiterated that in the area covered by the present rule the forum, except as stated in § 187, Comment *h*, will not apply the choice-of-law rules of another state. The forum will consult these rules, however, for whatever light these rules may shed upon the extent of the other state's interest in the application of its relevant local law rule.

n. When rule in two or more states is the same. When certain contacts involving a conveyance of an interest in a chattel are located in two or more states with identical local law rules on the issue in question, the case will be treated for choice-of-law purposes as if these contacts were grouped in a single state.

REPORTER'S NOTES

See [Cook and Sons Equipment, Inc. v. Killen, 277 F.2d 607 \(9th Cir.1960\)](#); [Shanahan, Inc. v. Landers Construction Co., 266 F.2d 400 \(1st Cir. 1959\)](#); [United Securities Corp. v. Tomlin, 198 A.2d 179 \(Del.Super.1964\)](#); [Universal C. I. T. Credit Corp. v. Hulett, 151 So. 2d 705 \(La.App.1963\)](#); [Bjudget Plan, Inc. v. Sterling A. Orr, Inc., 334 Mass. 599, 137 N.E.2d 918 \(1956\)](#); [Jewett v. Keystone Driller Co., 282 Mass. 469, 185 N.E. 369 \(1933\)](#); [Auffenberg Lincoln-Mercury v. Wallace, 318 S.W.2d 528 \(Mo.App.1958\)](#); [Osgood Co. v. Wilkinson, Adm'x, 239 App.Div. 676, 268 N.Y.S. 802 \(4th Dep't 1934\)](#), rev'd on other grounds, [265 N.Y. 70, 191 N.E. 779 \(1934\)](#); [Watts v. Swiss Bank Corp., 43 Misc.2d 758, 252 N.Y.S.2d 196 \(S.Ct.1964\)](#); [Stevenson v. Lima Locomotive Works, 180 Tenn. 137, 172 S.W.2d 812 \(1943\)](#); [Pioneer Credit Corp. v. Morency, 122 Vt. 463, 177 A.2d 368 \(1962\)](#); [Magoon v. Motors Acceptance Corp., 238 Wis. 1, 298 N.W. 191 \(1941\)](#).

Comment h: See [Hill v. Pine River Bank, 45 N.H. 300 \(1864\)](#); [Marks v. Loewenberg, 143 La. 196, 78 So. 444 \(1918\)](#); [King v. Bruce, 145 Tex. 647, 201 S.W.2d 803 \(1947\)](#), cert. den. [332 U.S. 769 \(1947\)](#); [Lee v. Abdy, \(1886\) 17 Q. B.D. 309](#); [Republica de Guatemala v. Nunez, \[1927\] 1 K.B. 669](#); but cf. [Farmers & Merchants National Bank v. Loftus, 133 Pa. 97, 19 A. 347 \(1890\)](#).

See generally Lalive, *The Transfer of Chattels in the Conflict of Laws* 125 (1955); Smith, *Capacity in the Conflict of Laws, 1 Int'l and Comp.L.Q.* 446 (1952).

Comment i: Dicta in the following cases state that formalities for a valid transfer are governed by the local law of the chattel's situs at the time of the conveyance. [Campbell v. Bagley, 276 F.2d 28 \(5th Cir. 1960\)](#); [U. S. v. Winnett, 165 F.2d 149 \(9th Cir. 1947\)](#); [In re Bulova's Will, 14 A.D.2d 249, 220 N.Y.S.2d 541 \(1st Dep't 1961\)](#); [King v. Bruce, supra](#); cf. Ehrenzweig, *Conflict of Laws* 620 (1962).

Comment j: See [Royal Baking Powder Co. v. Hessey, 76 F.2d 645 \(4th Cir. 1935\)](#), cert. den. sub nom. [Lowendahl v. Hessey, 296 U.S. 595 \(1935\)](#); [Dobbins v. Martin Buick Co., 216 Ark. 861, 227 S.W.2d 620 \(1950\)](#); [Brockway v. Maloney, 102 Mass. 308 \(1869\)](#); [Val Blatz Brewing Co. v. Bobrecker Bros., 79 Mo.App. 65 \(1899\)](#); [Snyder v. Lincoln, 156 Neb. 190, 55 N.W.2d 614 \(1952\)](#); [Handley Motor Co. v. Wood, 237 N.C. 318, 75 S.E.2d 312 \(1953\)](#); [Plummer v. Kingsley, 190 Ore. 378, 226 P.2d 297 \(1951\)](#); [Dame v. Flint, 64 Vt. 533, 24 A. 1051 \(1892\)](#).

Comment l: See [Susi v. Belle Acton Stables, Inc., 360 F.2d 704 \(2d Cir. 1966\)](#); [Brown v. Universal C. I. T. Corp., 331 F.2d 246 \(7th Cir. 1964\)](#); [Cook and Sons Equipment, Inc. v. Killen, supra](#); [Shanahan, Inc. v. Landers Construction Co., supra](#); [United Securities Corp. v. Tomlin, supra](#); [Universal C. I. T. Credit Corp. v. Hulett, supra](#); [Jewett v. Keystone Driller Co., supra](#); [Auffenberg Lincoln-Mercury v. Wallace, supra](#); [National Bank v. Vermont Packing Co., 90 N.H. 232, 6 A.2d 176 \(1939\)](#); [Youssoupoff v. Widener, 246 N.Y. 174, 158 N.E. 64](#)

(1927); *Stevenson v. Lima Locomotive Works, supra*; *Pioneer Credit Corp. v. Morency, supra*; *Magoon v. Motors Acceptance Corp., supra*.

Cross Reference

ALR Annotations:

Conflict of laws as to conditional sales of chattels. 25 A.L.R. 1153, s. 57 A.L.R. 535, 87 A.L.R. 1308, 148 A.L.R. 375, [13 A.L.R.2d 1312](#).

Digest System Key Numbers:

Gifts 2

Sales 3, 55

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 245

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 245 Effect of Conveyance on Pre-Existing Interests in Chattel

(1) The effect of a conveyance upon a pre-existing interest in a chattel of a person who was not a party to the conveyance will usually be determined by the law that would be applied by the courts of the state where the chattel was at the time of the conveyance.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is concerned only with the effect of a conveyance upon the pre-existing interests in the chattel of a person who was not a party to the conveyance. The rule of this Section is thus confined to situations where the controversy is between persons who claim interests in the chattel by reason of different transactions. As to the law governing the effect of a conveyance upon the interests in the chattel of the parties to the conveyance, see § 244.

b. Rationale. All choice-of-law rules should be derived from the principles stated in § 6. The rule of this Section is derived from those factors set forth in Subsection (2) of § 6 which look toward protection of justified expectations, certainty, predictability and uniformity of result and ease in the determination and application of the law to be applied.

In the situations covered by the present rule, the parties involved were not parties to the same conveyance. To the extent possible, the choice-of-law rule should here be definite and precise so that a person may know before he deals with a chattel what law will govern the effect of his dealing upon existing interests in the chattel. Likewise the applicable rule should provide the parties with a fair basis for determining without suit the nature and extent of their interests in the chattel.

Under the rule of this Section, questions as to the effect of a conveyance upon an existing interest in the chattel of a person who was not a party to the conveyance will usually be determined by the law that would be applied by the courts of the state where the chattel was at the time of the conveyance. This will not be so, however, in an exceptional situation where some other state has the most significant relationship to the parties and the chattel with respect to the particular issue. An example of such a situation might be one where all parties concerned are domiciled in some state other than that where the chattel was at the time of the conveyance and where no action was taken in justifiable reliance upon the local law of the latter state.

c. Application of local law of situs. The courts of the state where the chattel was at the time of the conveyance would usually apply their own local law to determine the effect of the conveyance upon the pre-existing interests of a third person in the chattel. Application of this law would in all probability be in accord with the expectations of the person who dealt with the chattel in the state. Also application of the local law of this state would avoid the uncertainties and complexities which might be entailed by a choice-of-law rule requiring application of the local law of some other state. On occasion, however, the courts of the state where the chattel was at the time of the conveyance might hold that some local statutory provision such as one concerned with filing, is not applicable because of the foreign aspects of the case. The problem is considered at greater length in § 253.

Illustration:

Restat 2d of Conflict of Laws, § 245

1. In state X, A delivers a chattel to B pursuant to a contract of bailment. B then takes the chattel to state Y and there sells it to C, who is domiciled in Y. The effect of the sale to C upon A's interests in the chattel will be decided in the same way as the Y courts would have decided in the very case at hand. At least as to most issues, the Y courts would apply their own local law.

REPORTER'S NOTES

See [*Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664 \(1876\)](#); [*Universal Credit Co. v. Marks*, 164 Md. 130, 163 A. 810 \(1938\)](#); [*Metro-Plan, Inc. v. Kotcher-Turner, Inc.*, 296 Mich. 400, 296 N.W. 304 \(1941\)](#); [*Goetschius v. Brightman*, 245 N.Y. 186, 156 N.E. 660 \(1927\)](#). The leading English case is *Cammell v. Sewell*, 5 Hurl. & N. 728, 157 Eng.Rep. 1371 (1860).

An old opinion by the Supreme Court might be read to suggest that application of the rule of this Section is required by full faith and credit. [*Green v. Van Buskirk*, 5 Wall. \(72 U.S.\) 307 \(1866\)](#), [*7 Wall. \(74 U.S.\) 139 \(1868\)*](#). But compare what is said in § 9.

Cross Reference

Digest System Key Numbers:

Gifts 2

Sales 3, 55

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 246

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 246 Acquisition by Adverse Possession or Prescription of Interest in Chattel

Whether there has been a transfer of an interest in a chattel by adverse possession or by prescription and the nature of the interest transferred are determined by the local law of the state where the chattel was at the time the transfer is claimed to have taken place.

COMMENTS & ILLUSTRATIONS

Comment:

a. *Rationale.* The state where a chattel is situated has the dominant interest in determining the circumstances under which an interest in the chattel will be transferred by adverse possession or by prescription. The local law of this state is applied to determine whether there has been such a transfer and the nature of the interest transferred.

b. If a chattel is held in a state for a period sufficient to establish title by adverse possession or prescription under the local law of that state, this title will be recognized in every other state. Such a result can come about in either one of two ways. First, the chattel may be held adversely in the state for the entire period required by its local law for the transfer of title by adverse possession (see Illustration 1). Second, the chattel may successively be held adversely in two or more states, and although the period it is so held in the last of these states is not of itself sufficient, title to the chattel is nevertheless transferred under the local law of that state because account is taken of the time the chattel has already been held adversely in the other state or states. (see Illustration 2).

Illustrations:

1. The period of adverse possession in state X is four years; in state Y it is three years. A chattel is held adversely in Y for three years and thereafter is taken into X. The adverse possessor's title will be recognized everywhere.

2. The period of adverse possession in state X is four years; in state Y it is three years. A chattel is held adversely in Y for two years and thereafter is taken into X where it is held adversely for two years more. Under X local law, title to the chattel passed by adverse possession because account is taken of the time during which the chattel was held adversely in Y. The adverse possessor's title will be recognized everywhere.

Comment:

c. Whether a holding is or is not adverse is determined by the local law of the state in which the chattel is held.
d. For the effect in the United States of an attempted transfer of interests in movables by operation of the local law of a foreign nation, see Restatement of the Foreign Relations Law of the United States §§ 41-46.

REPORTER'S NOTES

See [Shelby v. Guy, 11 Wheat. \(24 U.S.\) 361 \(1826\)](#); [Newcombe v. Leavitt, 22 Ala. 631 \(1861\)](#); cf. [Curtis v. Daniel, 23 Ark. 362 \(1861\)](#). See generally 2 Beale, Conflict of Laws 982-983 (1935); Ehrenzweig, Conflict of Laws 625 (1962); Goodrich, Conflict of Laws 307 (Scoles, 4th ed. 1964); 4 Rabel, Conflict of Laws 97-99 (1958); Wolff, Private International Law 530 (2d ed. 1950); Zaphiriou, The Transfer of Chattels in Private International Law 116-117 (1956); Watson, The Doctrine of Adverse Possession, 7 Tul.L.Rev. 451 (1933).

Cross Reference

Digest System Key Numbers:

Adverse Possession 2

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § 247](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 247 Title Moving Chattel Into Another State: Effect on

Interests in a chattel are not affected by the mere removal of the chattel to another state. Such interests, however, may be affected by dealings with the chattel in the other state.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. Commercial convenience and the needs of international and interstate relations alike require that interests in a chattel should not be affected simply by its removal from one state to another. An interest having once been acquired by the local law of the state where the chattel was at the time the interest was acquired will be recognized by a state into which the chattel is subsequently taken. This is so even though no such interest would have been acquired in the latter state if the chattel had been there at the time of the conveyance or other transaction. Conversely, no interest is acquired in a chattel upon its removal to a second state merely because such an interest would have arisen under the local law of the second state if a particular transaction which occurred prior to the chattel's removal to the state had taken place after the chattel had been removed there.

Illustration:

1. A conveys to B a chattel which is at the time in state X. A and B are both domiciled in X and X is the state of the applicable law under the rule of § 244. By the local law of X, B became absolute owner of the chattel. B subsequently takes the chattel to state Y under whose local law the conveyance would have given B only a security interest in the chattel. The mere removal of the chattel to Y does not affect B's interest in the chattel.

Comment:

b. The rule of this Section is applicable irrespective of the nature of the event by which the interest is acquired. It is applicable, for example, to the acquisition of title pursuant to a voluntary sale, a sale under legal process, or to the acquisition of title by adverse possession or prescription, as to which see § 246.

Illustrations:

2. A United States vessel is abandoned by master and crew in Spanish waters and is driven ashore by the wind. A Spanish court acting under Spanish local law sells the vessel as derelict. The purchaser brings the vessel back to the United States where a different rule prevails. His title will be recognized as against the original owner.

3. Title to a chattel is acquired in state X by adverse possession. The chattel is brought by the new owner into state Y where the period of adverse possession has not run. The original owner brings suit in Y to recover the chattel. He cannot recover.

4. A's automobile is stolen in state X and is used there by the thief to transport intoxicating liquor. The automobile is therefore forfeited in a court of X and sold by judicial sale to B. B brings the car into state Y, where A claims it, and B refuses to give it up. A sues B for conversion of the car. A cannot recover.

Comment:

c. As to the effect of a dealing with the chattel in the state to which it is taken, see §§ 245 and 253.

REPORTER'S NOTES

Restat 2d of Conflict of Laws, § 247

See [Mead v. Dayton, 28 Conn. 33, 42 \(1859\)](#); [Cleveland Machine Works v. Lang, 67 N.H. 348, 30 A. 20 \(1892\)](#); [National Trailer Convoy Co. v. Mount Vernon Nat. B. & T. Co., 420 P.2d 889 \(Okla. 1966\)](#); [Sleeper v. Pennsylvania R. R. Co., 100 Pa. 259 \(1882\)](#); [Cammell v. Sewell, 5 Hurl. & N. 728, 157 Eng.Rep. 1371 \(1860\)](#); 2 Beale, *Conflict of Laws* 983-984 (1935); [Goodrich, *Conflict of Laws* 305-306 \(Scoles, 4th ed. 1964\)](#).

As to adverse possession, see Zaphiriou, *The Transfer of Chattels in Private International Law* 116-117 (1956).

Refiling in the state to which the chattel is taken may be required to protect a security interest in the chattel against the claim of the trustee in bankruptcy of the debtor. See § 70(c) of the Bankruptcy Act ([11 U.S.C. § 110](#)) and § 9-103(3) of the Uniform Commercial Code.

Cross Reference

Digest System Key Numbers:

Property 6

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 248

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 248 Chattel Embodied in a Document

(1) Whether the title to a chattel is embodied in a document is determined by the local law of the state where the chattel was at the time the document was issued.

(2) As between persons who are not both parties to the conveyance:

(a) the effect of a conveyance of an interest in a chattel, title to which is embodied in a validly transferred document, is determined by the law that would be applied by the courts of the state where the chattel was at the time of the conveyance;

(b) the effect of a conveyance of an interest in a document, in which title to a chattel is embodied, is determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment on Subsection (1):

a. Whether title to chattel is embodied in a document. The rule under which title to a chattel is embodied in a document, such as a bill of lading or warehouse receipt, owes its existence to the demands of commercial convenience. In most states, the principal result of such an embodiment, whether brought about by statute or by common law, is that for many purposes the title to the chattel can be dealt with only through the medium of the document (see § 62, Comment a). This Section does not state the extent to which, in various situations, title to a chattel is embodied in a document; it is concerned only with the question of what law determines whether such an embodiment has taken place.

b. Whether the title to a chattel is embodied in a document is determined by the local law of the state where the chattel was at the time the document was issued.

Comment on Subsection (2):

c. Parties to conveyance. The effect of a conveyance of an interest in a chattel title to which is embodied in a document as between the parties to the conveyance is determined by the law selected by application of the rule of § 244.

d. Transfer of interests in chattel title to which is embodied in document. The effect of a conveyance of an interest in a chattel as between persons who were not both parties to the conveyance is determined by the law that would be applied by the courts of the state where the chattel was at the time of the conveyance. This is true even though title to the chattel has previously become embodied in a document under the rule of Subsection (1). In such a situation, the courts of the chattel's situs at the time of the conveyance would usually hold that, once the title is so embodied, a subsequent conveyance of an interest in the chattel is governed as to persons who were not both parties to the conveyance by the law that would be applied by the courts of the state where the document was at the time (see Comment *f*). Sometimes, however, this will not be so (see Comment *e*).

e. There are situations where the courts of the state where the chattel is situated would apply their own local law, rather than the law that would be applied by the courts of the state where the document was at the time, to

determine the effect of a dealing with the chattel. So, for example, the Uniform Commercial Code provides that "[a] buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated" (§ 7-205) and "[a] document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them . . ." (§ 7-503). The Code also gives preference to the lien of a warehouseman (§ 7-209) and of a carrier (§ 7-307) over the interest of the holder of a negotiable warehouse receipt or of a negotiable bill of lading. In addition to these examples from the Uniform Commercial Code, the courts of the state where the chattel is situated would usually apply their own local law to determine whether a transfer of interests in the chattel has resulted from acts done within their territory in preserving the chattel (see Illustration 1 and compare § 9-104 of the Uniform Commercial Code), in the exercise of the state's police and taxing powers (see Illustration 2), or in the exercise of the state's power of eminent domain (see Illustration 3).

Illustrations:

1. A chattel, title to which is embodied in a document, is stored in A's warehouse in state X. Acting under the local law of X, A sells the chattel to B in order to enforce his warehouseman's lien. B gets title to the chattel.
2. A ships animals from state X to state Z, receiving from the carrier a negotiable bill of lading. While passing through state Y on the journey, the animals become diseased. Acting under the local law of Y, health authorities in Y seize the animals and sell them to B for immediate slaughter and use in B's rendering plant. B gets title to the animals.
3. A stores grain in a warehouse in state X and is given a negotiable warehouse receipt therefor. He sends this receipt to state Y. Under wartime legislation, the grain is seized by public authorities in X and sold to B, a miller. B gets title to the grain.

Comment:

f. Transfer of interests in document. A document is itself a chattel. Questions of the effect of a conveyance of interests in the document as between persons who were not both parties to the conveyance will be determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions (see § 245, Comment c).

g. An interest in a chattel title to which is embodied in a document, acquired in accordance with the local law of the state in which the chattel was at the time the interest was acquired, will be recognized in another state into which either the chattel or the document is subsequently brought (see § 247).

REPORTER'S NOTES

Subsection (1): See [Barrett v. Bank of Manhattan Co., 218 F.2d 763 \(2d Cir. 1954\)](#); [Lynn Storage Warehouse v. Senator, 3 F.2d 558 \(1st Cir. 1925\)](#); [In re Richheimer, 221 F. 16 \(7th Cir. 1915\)](#); [Standard Bank of Canada v. Lowman, 1 F.2d 935 \(W.D.Wash. 1924\)](#); [Hallgarten v. Oldham, 135 Mass. 1 \(1883\)](#); [Craig v. Columbus Compress & Warehouse Co., 210 So.2d 645 \(Miss. 1968\)](#); see also [Selliger v. Commonwealth of Kentucky, 213 U.S. 200 \(1909\)](#); Beale, *The Situs of Things*, 28 Yale L.J. 525 (1919).

Subsection (2): See Schmitthoff, *The English Conflict of Laws* 203 (3d ed. 1954); Zaphiriou, *The Transfer of Chattels in Private International Law* 199 (1956).

In the case of goods that are in transit and title to which is embodied in a document of title, the law of the situs of the document has been applied to determine whether a transfer of the document transfers ownership in the goods. [Roland M. Baker Co. v. Brown, 214 Mass. 196, 100 N.E. 1025 \(1913\)](#); *North Western Bank v. Poynter* [1895] A.C. 56 (House of Lords, Scot.).

As to the substantive law governing warehouse receipts, bills of lading and other documents of title, see Article 7 of the Uniform Commercial Code. As to the perfection of a security interest in a document of title, see §§ 9-304 and 9-305 of the Uniform Commercial Code.

Cross Reference

ALR Annotations:

Restat 2d of Conflict of Laws, § 248

Conflict of laws as to chattel mortgages. 57 A.L.R. 702, [13 A.L.R.2d 1312](#).

Digest System Key Numbers:

Gifts 2

Sales 3, 55

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 249

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 249 Embodiment of Right in Document

(1) Whether a right is embodied in a document is determined by the law which governs the right.

(2) As between persons who are not both parties to the conveyance,

(a) the effect of a conveyance of a right embodied in a document depends upon the effect of the conveyance of the document; and

(b) the effect of a conveyance of an interest in a document in which a right is embodied is determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment on Subsection (1):

a. Whether right is embodied in document. This Section deals with intangible rights embodied in documents such as bonds and negotiable drafts (bills of exchange), including checks and notes, and certificates of deposit. The principal result of such embodiment, which is brought about because of the demands of commercial convenience, is that for many purposes the right can be dealt with only through the medium of the document. This Section does not state the extent to which, in various situations, a right is embodied in a document; it is concerned only with the question of what law determines whether such an embodiment has taken place.

b. The law which governs the right determines whether it is embodied in a document. The rules for determining what law governs a contractual right are stated in §§ 187-188.

Comment on Subsection (2):

c. Parties to conveyance. The validity of a conveyance of a right that is embodied in a document as between the parties to the conveyance is determined by the law selected by application of the rule of § 244.

d. Transfer of right embodied in document. Since an intangible right is without physical substance, it usually has no location in space. To the extent that the right is embodied in a document, it is completely identified therewith and the effect of any conveyance of the right as between persons who are not both parties to the conveyance depends upon the effect of the conveyance of interests in the document.

e. As to the special considerations which apply to the conveyance of title to a corporate share, see § 303. As to the assignment of rights not embodied in a document, see §§ 208-211.

f. Transfer of interests in document. A document is itself a chattel. Questions of the effect of a conveyance of interests in the document as between persons who were not both parties to the conveyance will be determined by the law that would be applied by the courts of the state where the document was at the time of the conveyance. These courts would usually apply their own local law in determining such questions.

Illustration:

1. A, a married woman, domiciled in state X, gives to B in X a power of attorney to transfer negotiable city and state bonds which are in state Y. B, in Y, transfers the bonds to C. By the local law of X, A has no capacity to transfer these securities either directly or by power of attorney. The Y courts, however, would hold that B had effectively transferred A's interest in the securities to C. The title to the bonds is in C.

Comment:

g. An interest in a right embodied in a document, acquired in accordance with the local law of the state in which the document was at the time the interest was acquired, will be recognized in another state into which the document is subsequently brought (compare § 248, Comment *g*).

Illustration:

2. A bond payable to bearer is stolen in state Y and is there negotiated. Under the law governing the underlying right, the right is embodied in the bond. The Y courts would hold that the purchaser got perfect title; no title would pass in the circumstances under the local law of X. The purchaser presents the bond for payment to the bank in X at which it is payable. He is entitled to receive such payment.

Comment:

h. In the Restatement of this Subject, the word "document" is used to refer both to documents of title, such as bills of lading and warehouse receipts, and to instruments, such as negotiable instruments and any other writing which evidences a right to the payment of money (see §§ 62-63). In the Uniform Commercial Code, however, "document" is used to refer only to documents of title (see §§ 1-201 and 9-105) while "instrument" is used to refer to writings evidencing a right to the payment of money (see §§ 3-102, 3-109, 8-102, 9-105).

REPORTER'S NOTES

See [*United States v. Guaranty Trust Co.*, 293 U.S. 340 \(1934\)](#); [*Weissman v. Banque de Bruxelles*, 254 N.Y. 488, 173 N.E. 835 \(1930\)](#); *Embiricos v. Anglo-Austrian Bank* [1905] 1 K.B. 677; *Alcock v. Smith* [1892] 1 Ch. 238; *Falconbridge*, Conflict of Laws 356 (3d ed. 1956).

Cross Reference

Digest System Key Numbers:

Gifts 2

Sales 3, 55

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Restat 2d of Conflict of Laws, § 250

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title A- Conveyances

§ 250 Voluntary Assignment for Benefit of Creditors

Whether a voluntary assignment for the benefit of creditors of the debtor's interests in movables is effective to transfer the debtor's interests in chattels or in intangible rights is determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the debtor and the assignment. This state will usually be the state of domicil, if the debtor is an individual, and the state of incorporation, if the debtor is a corporation.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is applicable only to determine the effect of an assignment of interests in the movables of the debtor for the benefit of creditors. It is not applicable to determine the effect of a conveyance of the debtor's interests in a single chattel.

b. Rationale. It is desirable that a voluntary assignment of all the debtor's interests in movables should be governed by a single law rather than perhaps by as many laws as there are states in which the debtor happens to have chattels. The effectiveness of an assignment in transferring the debtor's interests in chattels and in intangible rights is determined, subject to what is said in Comment *c*, by the local law of the state which, with respect to the particular issue, has the most significant relationship to the assignor and the assignment. In the case of an individual, the state of most significant relationship will usually be the state of domicil. In the case of a corporation, this state will usually be the state of incorporation. In a situation where the individual's or the corporation's principal place of business is in a state other than that of domicil or incorporation, the state of most significant relationship may be the state of the principal place of business. An individual engaged in business or a corporation will usually have made the assignment at the principal place of business. And this is also the state where the debtor's creditors would usually bring suit to enforce their claim.

An assignment by a debtor with preferences to certain classes of creditors which is valid under the local law of the state of most significant relationship will be recognized as valid in states where the debtor has chattels, subject to what is said in Comment *c*, even though under the local law of those states assignments with preferences are not permitted.

c. The courts of a state where a chattel covered by a foreign assignment is situated may apply their local law to deny effect to the assignment in order to avoid unfair prejudice to the interests of local creditors.

d. For reasons stated in § 244, Comment *m*, the reference is to the "local law" of the state of the applicable law and not to that state's "law," which means the totality of its law including its choice-of-law rules.

e. As to the situation where the local law of two or more states is the same, see § 244, Comment *n*.

REPORTER'S NOTES

The rule that the effectiveness of a general assignment for the benefit of creditors is usually governed by the local law of the state of the assignor's domicil or incorporation was established at an early date. *Laive*, *The Transfer of Chattels in the Conflict of Laws* 41 (1955). Indeed, it has been suggested that the reason why the courts at one time applied the local law of the owner's domicil to assignments of particular chattels was that they found it "established as the governing law for general assignments" and extended it unthinkingly to other fields, *Cheshire*, *Private International Law* 472 (6th ed. 1961). The rule seems a practical and desirable one. It

Restat 2d of Conflict of Laws, § 250

is important that such assignments should be governed by the local law of a single state. And considerations of fairness to creditors dictate that this state should be one that is closely connected with the debtor and where he could readily have been subjected to suit. The domicile or state of incorporation of the debtor, provided at least that it is also the principal place of business, best fulfills these requirements. See [Barnett v. Kinney, 147 U.S. 476 \(1893\)](#); [McKay v. Swenson, 232 Mich. 505, 205 N.W. 583 \(1925\)](#); [Vanderpoel v. Gorman, 140 N.Y. 563, 35 N.E. 932 \(1894\)](#); [Rogers v. Pell, 154 N.Y. 518, 49 N.E. 75 \(1898\)](#); [Yost v. Graham, 50 W.Va. 199, 40 S.E. 361 \(1901\)](#).

A fair number of opinions, on the other hand, contain statements that the effectiveness of a general assignment depends on the local law of the state where it was made. But, in at least the great majority of these cases, the place of making was either the domicile or state of incorporation of the assignor. Assignments invalid under the local law of the place of assignment have been upheld on the ground that they were valid under the local law of the debtor's domicile or state of incorporation. [Vanderpoel v. Gorman, supra](#); [Rogers v. Pell, supra](#).

Since a general assignment is an act of bankruptcy under § 3(a) (4) of the Bankruptcy Act (11 U.S.C. § 21) a general assignment can be avoided by putting the assignor into bankruptcy.

Cross Reference

Digest System Key Numbers:

Assignments for Benefit of Creditors 18-21

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

Restat 2d of Conflict of Laws, § Scope

Under the 1972 amendments to the Code, issues arising between the secured creditor and the original debtor are determined by the law selected under § 1-105, set forth in the Introductory Note which appears prior to § 244.

Questions of perfection, i.e., questions affecting the rights of the secured creditor against a transferee or attaching creditor of the original debtor, are determined by the law selected by application of § 9-103. The current (1987) version of this provision, is set forth below:

Perfection of Security Interests in Multiple State Transactions.

(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of Section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

Restat 2d of Conflict of Laws, § Scope

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the Foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

Restat 2d of Conflict of Laws, § Scope

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

This provision does not definitively answer all choice-of-law problems that may arise. Certain transactions are excluded from the scope of Article 9 by § 9-104. Examples of such excluded transactions are a landlord's lien and, generally speaking, a "lien given by statute or other rule of law for services or materials"

Under these circumstances, it is felt that the rules stated in this Title, which are based upon existing case law, continue to have validity and may be of assistance to the courts in applying the provisions of the Code.

As used in the Restatement of this Subject, the term "encumbrance" includes an encumbrance of "chattel paper" as defined in § 9-105 of the Uniform Commercial Code. A sale of chattel paper, however, is a "conveyance" in the terminology used in this Restatement. Certain sales of chattel paper are treated as creating "security interests" by §§ 9-102 and 9-104 of the Code.

Restatement of the Law, Second, Conflict of Laws (1988 Revisions)
Copyright (c) 1988, The American Law Institute

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

Restat 2d of Conflict of Laws, § Scope

: In the forty-nine States which have enacted the Uniform Commercial Code, determination of a choice-of-law question involving a security interest must commence with §§ 9-102 and 9-103 of the Code, which provide:

Section 9-102.

(1) Except as otherwise provided in § 9-103 . . . , this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state . . .

Section 9-103.

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. . . .

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

These Sections do not definitively answer all choice-of-law problems that may arise. For example, it has not been determined what issues are covered by the term "validity" as used in § 9-103. Undoubtedly, the term

Restat 2d of Conflict of Laws, § Scope

does include certain requirements as to formalities (see § 9-203), but it is not clear that the term covers such issues as capacity, illegality and fraud. Also it is not clear that the term covers issues of redemption.

Also certain transactions are excluded from the scope of Article 9 by § 9-104. Examples of such excluded transactions are a landlord's lien and, generally speaking, a "lien given by statute or other rule of law for services or materials . . ."

Under the circumstances, it is felt that the rules stated in this Title, which are based upon existing case law, continue to have validity and may be of assistance to the courts in applying the provisions of the Code.

As used in the Restatement of this subject, the term "encumbrance" includes an encumbrance of "chattel paper" as defined in § 9-105 of the Uniform Commercial Code. A sale of chattel paper, however, is a "conveyance" in the terminology used in this Restatement. Certain sales of chattel paper are treated as creating "security interests" by §§ 9-102 and 9-104 of the Code.

REPORTER'S NOTES

See [*General Electric Credit Corp. v. R. A. Heintz Const. Co.*, 302 F.Supp. 958 \(D.Or.1969\)](#).

The Review Committee for Article 9 of the Uniform Commercial Code has recommended substantial revision of §§ 9-102 and 9-103. (Preliminary Draft No. 2, 1970).

Restat 2d of Conflict of Laws, § 251

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

§ 251 Validity and Effect of Security Interest in Chattel

(1) The validity and effect of a security interest in a chattel as between the immediate parties are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel at the time that the security interest attached than to any other contact in determining the state of the applicable law.

COMMENTS & ILLUSTRATIONS

Comment:

a. As to the effect of the Uniform Commercial Code, see the Introductory Note to this Title.

b. *Meaning of security interest.* As used in the Restatement of this Subject, the term "security interest" means "an interest in personal property or fixtures which secures payment or performance of an obligation" (see § 1-201(37) of the Uniform Commercial Code). Included within the scope of the term are such interests as those represented by chattel mortgages, conditional sales and pledges.

c. *Scope of section.* The rule of this Section is applicable to issues arising between the immediate parties and their privies to a security interest in a chattel. The law selected by application of the rule of this Section determines such questions (except as otherwise provided in § 9-103 of the Uniform Commercial Code) as the capacity of the parties to create a valid security interest, the requisite formalities for doing so and the nature and extent of the rights acquired thereby. Thus, this law determines whether a secured creditor has a legal or an equitable interest in a chattel which is in the possession of the debtor. This law also determines the secured creditor's power to foreclose or to repossess, and the right of the debtor to redeem (see § 254). The effect of the removal to another state of a chattel, which is subject to a valid security interest, is stated in §§ 252-253.

d. *Rationale.* The creation of a security interest in a chattel is likely to involve both property and contractual questions. Under the rule of this Section, the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in § 6 will be applied to determine both the property and contractual aspects of the security interest as between the parties and their privies. There is no clear line of distinction in these cases between property and contractual rights (see § 191). The law selected by application of the present rule will be applied to determine such issues as what interests in the chattel are transferred by reason of the security interest from one party to the other and whether following a foreclosure or repossession the secured creditor can obtain a deficiency judgment against the debtor.

The rule of this Section is a specific application of the rule of § 244.

What is said in Comments c-e and h-j of § 244 is also applicable here.

e. *State of most significant relationship.* Except as otherwise provided in §§ 9-102 and 9-103 of the Uniform Commercial Code (see the Introductory Note to this Title), the validity and effect of a security interest, created by agreement of the parties, in a chattel, or in a group of chattels, will be determined as between the parties by the law chosen by the parties under the circumstances stated in § 187. In the absence of an effective choice of

Restat 2d of Conflict of Laws, § 251

law by the parties, the forum, in applying the principles of § 6 to determine the state of most significant relationship, should give consideration to the relevant policies of all potentially interested states and the relative interests of those states in the decision of the particular issue.

In determining the state of the applicable law in the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel, or group of chattels, at the time the security interest attached than to any other contact. The values of certainty and predictability of result are furthered as a consequence, since the place where a chattel is situated at a given time will either be known to the parties or else, except in rare instances, will be readily ascertainable. Likewise since interests in the chattel, or group of chattels, form the subject-matter of the security interest, the place where the chattel, or group of chattels, was located at the time the security interest attached can be considered the latter's focal point. And this is particularly true in the case of a pledge, an essential element of which is the delivery of the pledged chattel by the pledgor to the pledgee. The importance of a chattel's location at the time the security interest attached in the choice of the applicable law depends somewhat upon the intended permanence of this location. If the parties intended that the chattel should remain in this location more or less permanently, the state of the chattel's location will in all probability be the state of most significant relationship and thus the state of the applicable law. The situation is different when it is understood that the chattel will be kept only temporarily in the state where it was located at the time the security interest attached. Here it is more likely that, with respect to the particular issue, some other state will have the most significant relationship to the parties, the chattel and the security interest and be the state of the applicable law. Thus, if a chattel is delivered in state X for the temporary use of the debtor and if both the debtor and the secured creditor are domiciled in state Y and it is understood that in due course the debtor will bring the chattel into Y, it is likely that Y, rather than X, will be the state of the applicable law.

The problem is different when a group of chattels is involved and when not all of the chattels belonging in the group are located in a single state. If the great bulk of the chattels is located in a single state, this state will be given nearly the same weight in the choice of the applicable law as would have been given it if only a single chattel had been involved and if this chattel had been located in the state. If, however, the chattels composing the group are scattered more or less evenly throughout a number of states, the forum will give predominant weight to other contacts in determining the state of the applicable law.

In determining the state of most significant relationship, and thus of the applicable law, the forum will consider other contacts in addition to the location of the chattel, or group of chattels, at the time the security interest attached. So the forum will consider the domicile, nationality, place of incorporation and place of business of the parties. Also where it is understood that a chattel will be moved to a more or less permanent location following the creation of the security interest, the forum will give consideration to the place of its intended destination.

f. Non-consensual liens. The rule of this Section applies to liens that arise by operation of law and are not dependent upon the intentions of the parties. The rule applies, for example, to a vendor's lien, a lien acquired by levy of execution, a lien for labor or supplies, and an attorney's lien. As stated in the Introductory Note to this Title, "a lien given by statute or other rule of law for services or materials" is excluded, generally speaking, from the scope of Article 9 of the Uniform Commercial Code (§ 9-104).

A person who deals with a chattel should have a definite and precise basis for determining whether he will acquire a non-consensual lien on the chattel by reason of such dealing. Such a person would usually expect that the local law of the state where he dealt with the chattel would be applied to determine whether he had acquired a non-consensual lien thereon.

g. When local law of state where chattel was situated at time security interest attached will not be applied. On occasion, a state which was not the state where the chattel was situated at the time the security interest attached will nevertheless, with respect to the particular issue, be the state of most significant relationship to the parties, the chattel and the transaction and hence the state of the applicable law. This may be so, for example, when the security interest would be invalid under the local law of the state where the chattel was situated at the time the security interest is claimed to have attached but would be valid under the local law of another state with a close relation to the parties, the chattel and the transaction. In such a situation, the local law of the other state should be applied unless the value of protecting the expectations of the parties is outweighed in the particular case by the interest of another state with an invalidating rule in having this rule applied. There will also be occasions when the local law of some state other than that where the chattel was situated at the time

the security interest attached should be applied because of the intensity of the interest of that state in having its local law applied to determine the particular issue (see Illustration 2). As to some issues it would seem that, on certain rare occasions, the state of the applicable law may be one which had no relationship to either the parties or the chattel at the time that the security interest attached. Suppose, for example, that in state X, where both A and B are domiciled at the time, A gives B a security interest on his automobile, which is situated in X, as security for a loan. On these facts, it is clear that X local law governs the rights and obligations of the parties. But suppose that thereafter A changes his domicile to state Y and with B's consent takes the automobile to that state. Later still A defaults on his payments and B seizes the automobile in state Y and has it sold in that state in partial satisfaction of A's debt to him. Under these circumstances, it would seem that Y local law should be applied to determine, for example, whether B gave A adequate notice of the seizure of the automobile and waited a sufficient time before selling it.

Illustrations:

1. Pursuant to a conditional sale contract made in state X, A delivers a steam shovel to B in state Y. A is domiciled in X. B is domiciled and has his only place of business in Y. B falls behind in his payments and A repossesses the shovel in Y and then takes it back to X where he sells it to a third person. B sues A for conversion in a court of state Z claiming that his rights of redemption have been violated. This would not be true under X local law but would be true under Y local law, since A had not kept the shovel in Y after the repossession for the period required by Y local law. Among the questions for the Z court to determine is whether the interests of both X and Y would be furthered by application of their respective local law rules. This is a question that can only be determined in the light of the respective purposes of these rules. The purpose of the Y rule is obviously to protect Y debtors. Hence the interests of Y would be furthered by application of its rule. On the other hand, X's interests would be furthered by application of its rule if, as is probably the case, the rule was intended to assist X secured creditors in realizing on their security. Since the interests of X and Y would each be furthered by application of their respective rules, the Z court must choose between them. Factors that should induce the Z court to apply the Y rule and find for B are that (a) the parties, to the extent that they thought about the question, would presumably have expected that Y local law would be applied since they undoubtedly contemplated that the shovel would be kept in Y during the life of the security interest and (b) Y has a greater interest in the determination of the issue than has X for the reason, if for no other, that the shovel was to be kept in Y.

2. Same facts as in Illustration 1 except that the contract provided that A was to deliver the shovel to B in state C to assist B in completing a construction job in that state. The parties understood that B would remove the shovel to Y, the state of his domicile, as soon as the job had been completed, and B in fact does so. B's claim for conversion would not be good under the local law of either X or C but, for reasons stated in Illustration 1, would be good in Y. The Z court should pay little regard to the fact that the contract called for delivery of the shovel in C since this was done only for a temporary purpose. The Z court should find for B by application of Y local law for the reasons stated in Illustration 1.

Comment:

h. Subsequently acquired chattels. Whether a chattel acquired by the debtor subsequent to the creation of the security interest becomes subject to the security interest as between the parties thereto is determined by the law selected by application of the rule of this Section.

i. For reasons stated in § 244, Comment *m*, the reference is to the "local law" of the state of the applicable law and not to that state's "law," which means the totality of its law including its choice-of-law rules.

j. As to the situation where the local law rule of two or more states is the same, see § 244, Comment *n*.

REPORTER'S NOTES

It has been suggested that § 9-103 of the Uniform Commercial Code requires that default rights as between the security holder and the debtor should be determined by the law which governs perfection and reperfecton. 2 Gilmore, *Security Interests in Personal Property* 1274-1280 (1965). As to the uncertain meaning of "validity" in § 9-103, see Cavers, *The Conditional Seller's Remedies and the Choice-of-Law Process*, 35 N.Y.U.L.Rev. 1128, 1146 (1960).

Cases involving rights of the parties inter se include:

Restat 2d of Conflict of Laws, § 251

(1) Secured creditor's right to deficiency judgment: [United Securities Corp. v. Tomlin, 198 A.2d 179 \(Del.Super.1964\)](#); [Universal C.I.T. Credit Corp. v. Hulett, 151 So.2d 705 \(La.App.1963\)](#); [Auffenberg Lincoln-Mercury v. Wallace, 318 S.W.2d 528 \(Mo.App.1958\)](#); [Industrial Credit Company v. J.A.D. Construction Corp., 29 A.D.2d 952, 289 N.Y.S.2d 243 \(2d Dep't 1968\)](#); [Osgood Co. v. Wilkinson, Adm'x, 239 App.Div. 676, 268 N.Y.S. 802 \(4th Dep't 1934\)](#), rev'd [265 N.Y. 70, 191 N.E. 779 \(1934\)](#).

(2) Debtor's right of redemption: [Cook and Sons Equipment, Inc. v. Killen, 277 F.2d 607 \(9th Cir. 1960\)](#); [Shanahan, Inc. v. Landers Construction Co., 266 F.2d 400 \(1st Cir. 1959\)](#); [Jewett v. Keystone Driller Co., 282 Mass. 469, 185 N.E. 369 \(1933\)](#); [Rubin v. Gallagher, 294 Mich. 124, 292 N.W. 584 \(1940\)](#); [Stevenson v. Lima Locomotive Works, 180 Tenn. 137, 172 S.W.2d 812 \(1943\)](#); [Magoon v. Motors Acceptance Corp., 238 Wis. 1, 298 N.W. 191 \(1941\)](#).

(3) Secured creditor's right to repossess: [Renaire Corp. v. Vaughn, 142 A.2d 148 \(D.C.App.1958\)](#); [Bullock v. Young, 118 A.2d 917 \(D.C.App.1955\)](#); [United Securities Corp. v. Tomlin, supra](#).

Comment f. See [Universal Credit Co. v. Marks, 164 Md. 130, 163 A. 810 \(1933\)](#); [Willys Overland Co. v. Evans, 104 Kan. 623, 180 P. 235 \(1919\)](#); [Jackson v. Kusmer, 411 S.W.2d 257 \(Mo.App.1967\)](#); [Southern Finance Co. v. Zegar, 120 W.Va. 420, 198 S.E. 875 \(1939\)](#).

As to the law governing a secured creditor's lien for the unpaid purchase price, see [Willis v. Glenwood Cotton Mills, 200 F. 301 \(D.S.C.1912\)](#).

Cross Reference

ALR Annotations:

Conflict of laws as to chattel mortgages. 57 A.L.R. 702, [13 A.L.R.2d 1312](#).

Digest System Key Numbers:

Chattel Mortgages 2

Secured Transactions 3-7

[Restat 2d of Conflict of Laws, § 252](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

§ 252 Moving Chattel Into Another State: Effect on Security Interest

A security interest in a chattel neither gains nor loses validity by the mere removal of the chattel to a second state. Interests in the chattel may, however, be affected by dealings with the chattel in the second state.

COMMENTS & ILLUSTRATIONS

Comment:

- a. The rule of this Section is an application of the rule of § 247; its rationale is set forth in Comment a of that Section.
- b. The rule of this Section is concerned only with the mere removal of the chattel to another state after the creation of the security interest. The rule is applicable irrespective of whether the security interest was valid or invalid under the local law of the first or the second state. The rule is likewise applicable whether the chattel's removal into the second state was with or without the consent of the creditor.
- c. As to the effect of dealings with the chattel in the second state, see § 253.

REPORTER'S NOTES

See [National Trailer Convoy Co. v. Mount Vernon Nat. B. & T. Co., 420 P.2d 889 \(Okla. 1966\)](#); 2 Beale, Conflict of Laws 993 (1935); Goodrich, Conflict of Laws 305-306 (Scoles, 4th ed. 1964); Lalive, The Transfer of Chattels in the Conflict of Laws 154-157, 168-175 (1955); Zaphiriou, The Transfer of Chattels in Private International Law 162-173 (1956); Vernon, Recorded Chattel Security Interests in the Conflict of Laws, 47 Iowa L.Rev. 346 (1962).

Refiling in the state to which the chattel is taken may be required to protect a security interest in the chattel against the claims of the trustee in bankruptcy of the debtor. See § 70(c) of the Bankruptcy Act ([11 U.S.C. § 110](#)) and § 9-103(3) of the Uniform Commercial Code.

Cross Reference

Digest System Key Numbers:

Chattel Mortgages 101

Searches and Seizures 3-7

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

[Restat 2d of Conflict of Laws, § 253](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

§ 253 Effect on Security Interest of a Dealing with Chattel in State to Which It Has Been Removed

When a chattel, which is subject to a valid and perfected security interest, is removed to another state, the effect of a dealing with the chattel in that state upon the security interest will usually be determined in the same way that this question would be determined by the courts of that state.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies only (1) when the security interest is valid as between the parties thereto under the law selected by application of the rule of § 251 and (2) when the necessary steps have previously been taken to perfect the interest of the secured creditor against the claims of third persons under the local law of a state where the chattel was located at the time. Such protection is normally obtained by filing.

b. How situs courts would decide question. The courts of the forty-nine States which have enacted the Uniform Commercial Code would apply the provisions of § 9-103 to determine the effect of a dealing with the chattel in a state to which it was removed following the creation under the local law of another state of a security interest of a type covered by Article 9 of the Code. The provisions of § 9-193 are set forth in the Introductory Note to this Title.

Under pre-Code case law, the courts of a state to which the chattel was removed would usually hold that the owner of an already perfected security interest was not required to comply with their local filing requirements so long as he remained unaware that the chattel was in the state. So compliance with local filing requirements would not usually be required initially to protect an already perfected security interest in a chattel which had been brought into the state without the knowledge or consent of the secured creditor. In other words, the courts of the state to which the chattel was removed under these circumstances would usually give a secured creditor the same protection against bona fide purchasers and the like that he would have enjoyed if he had satisfied the local filing requirements. Once the secured creditor became aware, however, that the chattel was in the state for more than a temporary purpose, he would usually be required to comply within a reasonable time with that state's filing requirements. Likewise, the secured creditor would usually be required to comply with the filing requirements of a state to which the chattel had been removed with his knowledge or consent if the removal of the chattel to that state had some degree of permanence. It would appear that § 9-103 does not make the obligation of the secured creditor to perfect his security interest in the second state depend upon whether he knows, or has reason to know, that the chattel has been brought there.

c. Lien on chattel. A dealing with the chattel in the state to which it is taken either with or without the knowledge or consent of the secured creditor may result, under the local law of that state, in the creation of a lien having preference over the interest of the secured creditor, which otherwise remains intact. If so, the subordination of the security interest to the new lien will be recognized in other states. Article 9 of the Uniform Commercial Code is not generally applicable to a "lien given by statute or other rule of law for services or materials . . ." (see § 9-104).

Illustrations:

Restat 2d of Conflict of Laws, § 253

1. A thief in state X steals an automobile in which A has a security interest and drives it into state Y, where he wrecks it. He sends it to B's garage for repairs. B repairs it, restoring value equal to the cost of the repairs. A claims the car. Under Y local law, the repairer has a lien on the car superior to that of the secured creditor. A must pay the repair bill before he takes the car.
2. A security interest in the rolling-stock of the M railroad in state X is given to A. Without A's knowledge or consent, a car from this stock is wrongfully taken by the M railroad to state Y. B is appointed receiver of M's chattels in Y and has C make necessary expenditures on the car. As a result, C acquires under Y local law a lien on the car which is superior to that of A. The subordination of A's lien to that of C will be recognized in other states. (Article 9 of the Uniform Commercial Code does not apply to "an equipment trust covering railway rolling stock" (see § 9-104).)

Comment c: [Northern Financial Corp. v. Meinhardt, 209 Iowa 895, 226 N.W. 168 \(1928\)](#); [Universal Credit Co. v. Marks, 164 Md. 130, 163 A. 810 \(1933\)](#); [Jackson v. Kusmer, 411 S.W.2d 257 \(Mo.App.1967\)](#); [Mack Motor Truck Corp. v. Wolfe, 303 S.W.2d 697 \(Mo.App.1957\)](#).

For a detailed discussion, see 1 Gilmore, Security Interests in Personal Property 599-631 (1965); Lalive, The Transfer of Chattels in the Conflict of Laws 175-184 (1955).

When a security interest is created in a chattel in one state and the chattel is then taken to a second state, it has been said that "the whole law, including the choice-of-law rules of the second state, determines the extent to which dealings in that state affect the interest of the secured creditor." [Davis v. P.R. Sales Co., 304 F.2d 831, 834 \(2d Cir. 1962\)](#).

REPORTER'S NOTES

Comment b: For pre-Code cases involving the situation where the chattel was removed to a state without the knowledge or consent of the secured creditor, see [First Security Bank of Idaho v. Crouse, 252 F.Supp. 230 \(D.Colo.1966\)](#); [In re Swasey, 112 F.Supp. 773 \(N. D. Ohio 1953\)](#); [Hinton v. Bond Discount Co., 214 Ark. 718, 218 S.W.2d 75 \(1949\)](#); [Mercantile Acceptance Co. v. Frank, 203 Cal. 483, 265 P. 190 \(1928\)](#); [Morris Plan Bank v. Terrell, 44 Del. \(5 Terry\) 533, 62 A.2d 452 \(1948\)](#); [First National Bank v. Swegler, 336 Ill.App. 107, 82 N.E.2d 920 \(1948\)](#); [Merchants and Farmers State Bank v. Rosdail, 257 Iowa 1238, 131 N.W.2d 786 \(1964\)](#), [136 N.W.2d 286 \(1965\)](#); [Metro-Plan, Inc. v. Kotcher-Turner, Inc., 296 Mich. 400, 296 N.W. 304 \(1941\)](#); [Silver v. McDonald, 172 Minn. 458, 215 N.W. 844 \(1927\)](#); [First Nat. Bank v. Stamper, 93 N.J.Super. 150, 225 A.2d 162 \(1966\)](#); [Farnham v. Eichin, 230 App.Div. 639, 246 N.Y.S. 133 \(3d Dep't 1930\)](#); [Bank of Atlanta v. Fretz, 148 Tex. 551, 226 S.W.2d 843 \(1950\)](#).

Pre-Code cases where the security interest was lost because of the failure of the owner of the security interest to record in the state to which the chattel was removed with the owner's knowledge or consent or after the owner had learned of the removal include [Brown v. Universal C.I.T. Corp., 331 F.2d 246 \(7th Cir. 1964\)](#); [Davis v. P.R. Sales Co., 304 F.2d 831 \(2d Cir. 1962\)](#); [Enterprise Optical Mfg. Co. v. Timmer, 71 F. 2d 295 \(6th Cir. 1934\)](#); [Davis v. Sheriff, 81 A.2d 344 \(D.C.App. 1951\)](#); [Hess-Harrington, Inc. v. State Exchange Bank, 155 Kan. 118, 122 P.2d 739 \(1942\)](#); [Zendman v. Harry Winston, Inc., 305 N.Y. 180, 111 N.E.2d 871 \(1953\)](#); [Eli Bridge Co. v. Lachman, 124 Ore. 592, 265 P. 435 \(1928\)](#); [Great Am. Indem. Co. v. Utility Contractors, Inc., 21 Tenn.App. 463, 111 S.W.2d 901 \(1937\)](#); [Boston Law Book Co. v. Hathorn, 119 Vt. 416, 127 A.2d 120 \(1956\)](#). A recent case where the security interest was not lost on the ground that the chattel was "only transitorily" in the second state is [Clark Equipment Co. v. Poultry Packers, Inc., 254 Miss. 589, 181 So.2d 908 \(1966\)](#). See generally 1 Gilmore, Security Interests in Personal Property 599-631 (1965); Vernon, Recorded Chattel Security Interests in the Conflict of Laws, 47 Iowa L.Rev. 346, 353 (1962).

Cross Reference

Digest System Key Numbers:

Chattel Mortgages 101

Searches and Seizures 3-7

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 254

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title B- Encumbrances

§ 254 Enforcement and Redemption of Security Interests

(1) As between the parties to a security interest, the power of the secured creditor to sell or to repossess a chattel and the right of the debtor to redeem are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the security interest under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the place where the chattel was located at the time that the security interest attached than to any other contact in determining the state of the applicable law.

COMMENTS & ILLUSTRATIONS

Comment:

- a. As to the effect of the Uniform Commercial Code, see the Introductory Note to this Title.
- b. *Scope of section.* The rule of this Section is limited to situations where the controversy is between the parties to a security interest and their privies. It applies to the creditor's right to sell or to repossess as against the debtor or his privies. It also applies to the debtor's right to redeem. As such, the rule is an application of the rule of § 251, and the Comments to this Section are applicable here.
- c. The rule of this Section does not apply in situations where following the creation of the security interest, a third person deals with the chattel. In these situations, the question whether the interest of the third person in the chattel is superior to that of the secured creditor will be determined as it would have been determined in the very case at hand by the courts of the state where the chattel was located at the time of the dealing (see § 253).
- d. If sale, repossession or redemption required resort to judicial machinery to enforce the security interest or to redeem an interest in the chattel, the procedural requirements of the forum must be satisfied (see §§ 123-130). Thus, the kind and character of the notice which must be given to the interested parties before a sale can take place are determined by the local law of the forum.
- e. *Issues collateral to sale and repossession.* Issues which do not affect interests in the chattel, although they do relate to the enforcement of a security interest, are determined by the law which governs the underlying debt for which the security interest was given. Examples of such issues are the creditor's right to hold the debtor liable for any deficiency remaining after sale or repossession or to bring suit upon the underlying debt without having first proceeded against the chattel. The rules for ascertaining the state whose law governs the underlying debt are stated in §§ 187-188. For the analogous rule as to land, see § 229, Comment e.
- f. For reasons stated in § 244, Comment *m*, the reference is to the "local law" of the state of the applicable law not to that state's "law," which means the totality of its law including its choice of law rules.
- g. As to the situation where the local law rule of two or more states is the same, see § 244, Comment *n*.

REPORTER'S NOTES

See [Cook and Sons Equipment, Inc. v. Killen, 277 F.2d 607 \(9th Cir. 1960\)](#); [Shanahan, Inc. v. George B. Landers Construction Co., 266 F.2d 400 \(1st Cir. 1959\)](#) (repossession); [Renaire Corp. v. Vaughn, 142 A.2d 148 \(D.C.Mun. App. 1958\)](#) (repossession); [Bullock v. Young, 118 A.2d 917 \(D.C. App.1955\)](#) (repossession); [Universal C.I.T. Credit Corp. v. Hulett, 151 So.2d 705 \(La.App.1963\)](#) (deficiency judgment); [Gross v. Jordan, 83](#)

Restat 2d of Conflict of Laws, § 254

[Me. 380, 22 A. 250 \(1891\)](#) (redemption); [Auffenberg Lincoln-Mercury v. Wallace, 318 S.W.2d 528 \(Mo.App.1938\)](#) (deficiency judgment); [Jewett v. Keystone Driller Co., 282 Mass. 469, 185 N.E. 369 \(1933\)](#) (redemption); [Rubin v. Gallagher, 294 Mich. 124, 292 N.W. 584 \(1940\)](#) (repossession); [Osgood Co. v. Wilkinson, 239 App.Div. 676, 268 N.Y.S. 802](#) (4th Dep't 1934), rev'd on other grounds, [265 N.Y. 70, 191 N.E. 779 \(1934\)](#) (deficiency judgment); [Stevenson v. Lima Locomotive Works, 180 Tenn. 137, 172 S.W.2d 812 \(1943\)](#) (foreclosure); [Pioneer Credit Corp. v. Morency, 122 Vt. 463, 177 A.2d 368 \(1962\)](#) (deficiency judgment); [Magoon v. Motors Acceptance Corp., 238 Wis. 1, 298 N.W. 191 \(1941\)](#) (repossession).

Cross Reference

Digest System Key Numbers:

Chattel Mortgages 2, 82, 101

Secured Transactions 3-7

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title C- Powers

Restat 2d of Conflict of Laws, § Scope

: This Title deals with powers relating to interests in movables. Powers relating to interests in land are dealt with in §§ 231-232.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 255

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title C- Powers

§ 255 Exercise of Power Created by Operation of Law

(1) Whether an interest in a chattel has been transferred by the exercise of a power created by operation of law and the nature of the interest transferred are determined by the law that would be applied by the courts of the state where the chattel was at the time of the exercise.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to the power of executors, administrators, guardians, receivers, sheriffs and other administrative officers to transfer interests in a chattel.

b. Rights embodied in a document. A document is a chattel. For choice-of-law purposes, interests in rights embodied in a document, such as a bond, negotiable note or bill of exchange, are treated like interests in chattels. Questions as to the effect of the exercise of a power to transfer an interest in such a right will be determined by the law that would be applied by the courts of the state where the document was located at the time of the exercise.

c. How situs courts would decide question. The courts of the state where the chattel or document was located at the time the power was exercised would not hold the exercise effective unless in their view the power itself was valid. These courts would, of course, recognize a power created by operation of their own local law. On occasion, these courts would also recognize the validity of a power created by operation of the local law of another state to transfer an interest in the chattel or right embodied in the document. Instances of this sort include the frequently recognized powers of domiciliary administrators to transfer interests in chattels which belong to the estate of their decedent or of their debtor, but which are not located in the state of their appointment (see § 332).

Once the power has been determined to be valid, the question will then arise as to the validity of the exercise. The courts of the state where the chattel or document is located would usually apply their own local law in determining the validity of an exercise of a power created by operation of law to transfer an interest in the chattel or a right embodied in the document.

Cross Reference

Digest System Key Numbers:

Powers 2

Restat 2d of Conflict of Laws, § 256

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title C- Powers

§ 256 Exercise of Consensual Power

(1) The validity of the exercise of a power to transfer an interest in a chattel, which has been created by the owner of the interest, and the rights created thereby as between the parties to the transfer are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the exercise of the power under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the place where the chattel was located at the time of the conveyance than to any other contact in determining the state of the applicable law.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is applicable to issues involving the exercise of the power which arise between the owner of the chattel, the person exercising the power and the transferee of the transferred interest in the chattel. The rule applies to such issues as the capacity of the owner of the chattel to create the power and of the transferee to receive the transferred interest, the formalities required for an effective exercise of the power and the validity, in other respects, of the exercise.

b. Rationale. The rule of this Section is an application of the rule of § 244 which is concerned with the law governing the transfer of an interest in a chattel. The fact that the transfer is made through the exercise of a power does not, so far as choice of law is concerned, alter the situation in any significant way. What is said in the Comments to § 244 is, in general, applicable here.

Illustration:

1. A, a married woman, and B are both domiciled in state X. After negotiations that are conducted in X, A and B enter into a contract in X whereby B is to sell A's piano for a stipulated commission which is payable in X. The piano is in state Y at the time, and there B sells it to C, who is domiciled in Y. By the local law of X, a married woman lacks capacity to make contracts or to transfer chattels. The contrary is true under Y local law. A brings suit in state Z to recover the piano from C. Among the questions for the Z court to determine is whether Y's interest in the application of its rule of capacity is outweighed by X's interest in the application of its rule of incapacity. Factors favoring application by the Z court of the Y rule of capacity are the policy favoring protection of the justified expectations of the parties (see § 6), the fact that C, if he relied on the application of any law, presumably relied on the application of the local law of Y since he was domiciled in that state and there obtained possession of the piano from B and the fact that A must have contemplated that B would exercise the power in Y, since the piano was located there. Whether B can recover the stipulated commission from A presents a different question. X would have a substantial interest in the application of its rule of incapacity to this issue since both A and B are domiciled in X and the contract between them was negotiated there.

Comment:

c. Rights embodied in a document. A document is a chattel. For choice-of-law purposes, interests in rights embodied in a document, such as a bond, negotiable note or bill of exchange, are treated like interests in

Restat 2d of Conflict of Laws, § 256

chattels. Questions as to the effect of the exercise of a power to transfer an interest in such a right are governed by the same choice-of-law rule as that applicable to the effect of the exercise of a power to transfer an interest in a chattel.

d. As to powers of appointment and the exercise thereof, see §§ 274-275, 281-282.

e. For reasons stated in § 244, Comment *m*, the reference is to the "local law" of the state of the applicable law and not to that state's "law," which means the totality of its law including its choice-of-law rules.

f. As to the situation where the local law rule of two or more states is the same, see § 244, Comment *n*.

REPORTER'S NOTES

See [*Farmers' and Mechanics' National Bank v. Loftus*, 133 Pa. 97, 19 A. 347 \(1890\)](#); Goodrich, Conflict of Laws 304-307 (Scoles, 4th ed. 1964).

Cross Reference

Digest System Key Numbers:

Powers 2

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title D- Marital Property

Restat 2d of Conflict of Laws, § Scope

: The term "marital property," as used in the Restatement of this Subject, means any interest which one spouse acquires, solely by reason of the marital relation, in the immovables and movables of the other spouse, apart from the expectancy of inheriting upon the death of the other.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 257

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title D- Marital Property

§ 257 Effect of Marriage on Existing Interests in Movables

Whether as a result of the marriage one spouse acquires an interest in the movables then owned by the other spouse is determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the movables under the principles stated in § 6. This state will usually be that where the other spouse was domiciled at the time of the marriage.

COMMENTS & ILLUSTRATIONS

Comment:

a. The rule of this Section is of minor importance, since in no State of the United States does a spouse acquire any marital property interest, as defined in the Introductory Note to this Title, in the movables owned by the other spouse at the time of the marriage. The rule may come into play, however, in a situation involving marital property interests in the movables of a spouse domiciled in a foreign nation at the time of marriage.

b. *Rationale.* For a general discussion of the rule of § 6 and the factors listed in Subsection (2) of that rule, see § 222, Comment b.

Of the factors listed in Subsection (2) of § 6, that which is of particular importance with respect to marital property interests is the one which calls for implementation of the relevant policies of the state with the dominant interest in the determination of the particular issue. Except in rare circumstances, this state will be the state where the spouse in whose movables marital property interests are claimed was domiciled at the time of the marriage. For this reason, the local law of this state will usually be applied, except perhaps in the rare case where a valid contract between the spouses provides otherwise. Other factors supporting the rule of this Section are uniformity of result and ease in the determination and application of the law to be applied. The factor favoring protection of the justified expectations of the parties has little role to play in this situation except in the rare situation where there is a valid contract between the parties with respect to the marital property interests which each spouse should have in the movables owned by the other at the time of the marriage (compare § 258, Comment b).

c. The rule of this Section is applicable even though the spouses intend after the marriage to live in the state of the husband's domicil.

d. *Ante-nuptial contract.* The rule of this Section is not applicable if a valid ante-nuptial contract between the spouses provides otherwise. The rules for determining the validity of such an ante-nuptial contract are stated in §§ 187-188.

REPORTER'S NOTES

The great majority of cases have applied the local law of the husband's domicil to determine marital interests in movables owned by the wife at the time of marriage. See, e. g., [*Jaffrey & Co. v. McGough*, 83 Ala. 202, 3 So. 594 \(1888\)](#); [*Connor's Widow v. Heirs of Connor*, 10 La. Ann. 440 \(1855\)](#), aff'd sub nom. [*Connor v. Elliot*, 18 How. \(59 U.S.\) 591 \(1855\)](#); [*Mason v. Homer*, 105 Mass. 116 \(1870\)](#). The most recent case in point, however, applied the local law of the wife's domicil at the time of marriage to determine whether the husband acquired any marital interests in movables owned by the wife at that time. [*Locke v. McPherson*, 163 Mo. 493, 63 S.W. 726 \(1901\)](#).

Restat 2d of Conflict of Laws, § 257

A case involving marital property interests of spouses domiciled in a foreign country at the time of marriage is [Harral v. Harral, 39 N.J.Eq. 279 \(1884\)](#). There the matrimonial property law of France was applied to give the wife an interest in such of the husband's movables as were located in New Jersey at the time of marriage.
Comment c: See Marsh, Marital Property in Conflict of Laws 186-189 (1952).

Cross Reference

Digest System Key Numbers:

Husband and Wife 2, 110 1/2, 246

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 258

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title D- Marital Property

§ 258 Interests in Movables Acquired During Marriage

(1) The interest of a spouse in a movable acquired by the other spouse during the marriage is determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the spouses and the movable under the principles stated in § 6.

(2) In the absence of an effective choice of law by the spouses, greater weight will usually be given to the state where the spouses were domiciled at the time the movable was acquired than to any other contact in determining the state of the applicable law.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is applicable to determine the interest of one spouse in movables acquired by the other spouse at any time during the continuance of the marital relation. The rule applies to chattels, to rights embodied in a document and to rights that are not embodied in a document. As to the effect of the removal of a chattel or document acquired in one state to another state, see § 259.

Comment on Subsections (1) and (2):

b. Rationale. For a general discussion of the rule of § 6 and of the factors listed in Subsection (2) of that rule, see § 222, Comment *b*.

Only in a rare case will the spouses have agreed to have their marital property interests in each other's movables determined by the local law of a particular state. When they have reached such an agreement, the local law of the selected state should be applied unless the value of protecting the justified expectations of the spouses is outweighed in the particular case by the intensity of the interest of another state, which would usually be the state of the spouses' domicile at the time of the acquisition of the particular movable, in having its own rule applied. In the normal situation, where the spouses have not reached agreement on an applicable law, protection of their justified expectations will have relatively little role to play in the choice of the applicable law.

Of the factors listed in Subsection (2) of § 6, that which is of particular importance in the present context is the one which calls for implementation of the relevant policies of the state with the dominant interest in the determination of the particular issue. Except in rare circumstances, this state will be the state where the spouses were domiciled at the time the movable was acquired. Other factors of importance are uniformity of result and ease in the determination and application of the law to be applied. These factors make it desirable that marital property interests in movables should to the extent possible be governed by a single law rather than perhaps that interests in each separate movable should be determined by the local law of the state where the movable was situated at the time when it was acquired by a spouse. On the other hand, it would be inconsistent with state interests and perhaps unfair to the spouses themselves to hold, in the absence of an agreement on their part to the contrary, that irrespective of any change of domicile they nevertheless remain subject during the entire period of their marriage to the local law of one state.

For the reasons stated above, the local law of the state where the spouses were domiciled at the time the movable was acquired will usually be applied to determine marital property interests therein in the absence of an effective choice of law by the parties.

c. When spouses have separate domicils. When the spouses have separate domicils at the time of the acquisition of the movable, the local law of the state where the spouse who acquired the movable was domiciled at the time will usually be applied, in the absence of an effective choice of law by the parties, to determine the extent of the other spouse's marital interest therein.

Illustration:

1. H and W are domiciled in state X under whose local law spouses have community property interests in each other's movables which they do not have power to affect by an agreement with each other. H and W deposit cash and securities in a joint account in a bank in state Y and sign a form agreement prepared by the bank which provides that the Y rule of survivorship shall apply. Under this rule, the entire interest in the cash and securities would go to the surviving spouse upon the death of the other. Under X local law, on the other hand, the estate of the deceased spouse would be entitled to a one-half interest in the cash and securities. H dies and W has the cash and securities moved from Y to state Z for safekeeping. In an action brought in Z against W by H's executor, a Z court is asked to determine the respective interests in the cash and securities of W and H's estate. The first question for the Z court to determine is whether the interests of both X and Y would be furthered by the application of their respective local law rules. This is a question that can only be determined in the light of the respective purposes of these rules. One purpose of the X rule is surely to regulate the marital property interests of X domiciliaries. Hence the interests of X would be furthered by the application of the X rule. Since H and W were never domiciled in Y, it is doubtful if Y's interests would be furthered by application of the Y rule. Y's interests would be furthered if one purpose of the Y rule was to make definite the consequences of dealing with Y banks. Even if the Y rule had such a purpose, it would seem reasonably clear that X has the greater interest in the application of its rule. The Z court should next determine if H and W really intended when they signed the form agreement with the Y bank to have Y local law govern their interests in the cash and securities. If H and W did not intend such a result, the Z court should determine the issue by application of X local law. If, on the other hand, H and W did wish to have Y local law applied, the Z court must determine whether the value of protecting the justified expectations of H and W is outweighed in the particular case by the intensity of X's interest in having its rule applied.

Comment:

d. The rule of this Section is not applicable if a valid contract between the spouses provides otherwise.

e. For reasons stated in § 244, Comment *m*, the reference is to the "local law" of the state of the applicable law and not to that state's "law," which means the totality of its law including its choice-of-law rules.

f. As to the situation where the local law rule of two or more states is the same, see § 244, Comment *n*.

g. A special problem arises when funds or other movables acquired during the marriage are used, either by way of purchase or exchange, to acquire still other movables. Here justice to the spouses demands that they should have the same marital property interests in the newly acquired movables as they previously had in the movables that were sold or exchanged. As to the situation where a movable owned by one of the spouses is taken to another state, see § 259.

h. Interests of third persons. The interests of a third person, such as a creditor or transferee, in a movable owned by one or both of the spouses will be determined by the law that would be applied by the courts of the state where the movable was located at the time the interest is claimed to have been acquired. These courts would apply their own local law, rather than the local law of the state of the spouses' domicile, when required to do so by considerations of justice to the third person. This will be so when the third person has justifiably relied upon that state's local law (see § 259, Comment *c*), as he is likely to have done if he is domiciled in the state.

REPORTER'S NOTES

Subsection (1): See [Shilkret v. Helvering, 138 F.2d 925 \(D.C. Cir. 1943\)](#); [Wrightsmann v. Commissioner, 111 F.2d 227 \(5th Cir. 1940\)](#); [Muus v. Muus, 29 Minn. 115, 12 N.W. 343 \(1882\)](#); [In re Crichton's Estate, 20 N.Y.2d 124, 228 N.E.2d 799 \(1967\)](#); [Wyatt v. Fulrath, 16 N.Y.2d 169, 211 N.E. 2d 637 \(1965\)](#); [Matter of Mesa y Hernandez, 172 App.Div. 467, 159 N.Y.S. 59 \(1st Dep't 1916\)](#), aff'd sub nom. [In re Hernandez, 219 N.Y. 566, 114 N.E. 1069 \(1916\)](#); Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 Calif.L.Rev. 1584, 1588-1590 (1960).

Subsection (2): See [Birmingham Waterworks Co. v. Hume, 121 Ala. 168, 25 So. 806 \(1899\)](#); [Jones v. Aetna Ins. Co., 14 Conn. 501 \(1842\)](#); [Cooper and Co. v. Cotton, 6 La. Ann. 256 \(1851\)](#); [Woodcock v. Reed, 5 Allen \(87](#)

Restat 2d of Conflict of Laws, § 258

[Mass.\) 207 \(1862\); Worthington v. Hanna, 23 Mich. 530 \(1871\); Matter of James, 221 N.Y. 242, 116 N.E. 1011 \(1917\).](#)

Comment h: See Marsh, Marital Property in Conflict of Laws 196-197 (1952).

Cross Reference

Digest System Key Numbers:

Husband and Wife 2, 110 1/2, 246

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 259

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title D- Marital Property

§ 259 Removal of Movables of Spouses to Another State

A marital property interest in a chattel, or right embodied in a document, which has been acquired by either or both of the spouses, is not affected by the mere removal of the chattel or document to a second state, whether or not this removal is accompanied by a change of domicil to the other state on the part of one or both of the spouses. The interest, however, may be affected by dealings with the chattel or document in the second state.

COMMENTS & ILLUSTRATIONS

Comment:

a. Rationale. Considerations of fairness and convenience require that the spouses' marital property interests in a chattel or right embodied in a document should not be affected by the mere removal of the chattel or document to another state. Likewise these interests are not affected by a change of domicil to another state by one or both of the spouses. Similarly, an interest in a right not embodied in a document that was acquired by either or both of the spouses during the marriage is not affected by a subsequent change of domicil to another state by one or both of the spouses. The rule of this Section is an application of that of § 247.

b. Dealings with movable upon interests of spouses. When a chattel or document is taken into a second state and is there exchanged for some other movable or immovable, the spouses acquire the same interests therein as they had in the original chattel or document. Thus, when a husband takes an automobile, which is his alone, from a separate property state to a community property state and then, having sold the automobile, uses the proceeds to purchase a truck, the truck will be the husband's separate property. On the other hand, if the husband had originally held the automobile in community with his wife and had exchanged it for a truck in a separate property state, the wife's interests in the truck would be the same as those she had previously had in the automobile.

c. Dealings with movable upon interests of third persons. The interests of a third person, such as a creditor or transferee, in a chattel or document owned by one or both of the spouses will be determined by the law that would be applied by the courts of the state where the chattel or document was located at the time the interest is claimed to have been acquired. These courts would apply their own local law when required to do so by considerations of justice to the third person. This will be so when the third person has justifiably relied upon that state's local law, such as is likely to have been the case if he is domiciled in the state. Thus when a chattel or other movable held in community in one state is sold by the husband after having been brought into a separate property state and the proceeds are there invested in land, of which he alone is the record owner, the courts of the latter state would usually hold that the husband can convey the land without his wife's joinder although such joinder would be required under the community property law of the first state. Similarly, when separate property is brought into a community property state, the courts of this state would apply their own local law when required to do so by considerations of justice to the third person. This, however, will rarely be the case. Persons who deal with the spouse in the second state will generally be benefited by the application of the separate property law of the state from which the movable was brought, since that law will usually allow the spouse greater freedom in dealing with the movable than the community property law of the second state.

Comment b: See [Gluck v. Cox, 75 Ala. 310 \(1883\)](#), [90 Ala. 331, 8 So. 161 \(1890\)](#); [Estate of Nickson, 87 Cal. 603, 203 P. 106 \(1921\)](#); [Smith v. Chapell, 31 Conn. 589 \(1863\)](#); [Van Ingen v. Brabrook, 27 Ill.App. 401 \(1888\)](#); [Coombs v. Read, 16 Gray \(82 Mass.\) 271 \(1860\)](#); [Stokes v. Macken, 62 Barb. 145 \(N.Y.Sup. Ct. 1861\)](#).

See Marsh, Marital Property in Conflict of Laws 239-249 (1952).

REPORTER'S NOTES

Comment a: The mere transportation of a chattel from one jurisdiction to another does not alter marital property interests therein. [Jones v. Weaver, 123 F.2d 403 \(9th Cir. 1941\)](#); [Tomaier v. Tomaier, 23 Cal.2d 754, 146 P.2d 905 \(1944\)](#); [In re Thornton's Estate, 1 Cal.2d 1, 33 P.2d 1 \(1934\)](#); [Estate of Warner, 167 Cal. 686, 140 P. 583 \(1914\)](#); [Sherrod v. Callegan, 9 La. Ann. 510 \(1854\)](#); [Stoneman v. Erie Railway Co., 52 N.Y. 429 \(1873\)](#); [Craycroft & Co. v. Morehead, 67 N.C. 422 \(1872\)](#); [Davis v. Zimmerman, 67 Pa. 70 \(1870\)](#); [King v. Bruce, 145 Tex. 647, 201 S.W.2d 803 \(1947\)](#), cert. den. 332 U.S. 769 (1947); compare Abel, Barry, Halsted and Marsh, Rights of a Surviving Spouse in Property Acquired by a Decedent While Domiciled Outside of California, 47 Calif.L.Rev. 211 (1959); Schreter, "Quasi-Community Property" in Conflict of Laws, 50 Calif.L.Rev. 206 (1962). Nor are marital interests in a chattel affected by a change of domicile by one or both of the spouses. [Wrightsmen v. Commissioner, 111 F.2d 227 \(5th Cir. 1940\)](#); [Mueller v. Mueller, 127 Ala. 356, 28 So. 465 \(1900\)](#); [Townsend v. Maynard, 45 Pa. 198 \(1863\)](#); [Bank of Columbia v. Walker, 82 Tenn. 299 \(1884\)](#).

Cross Reference

Digest System Key Numbers:

Husband and Wife 2, 110 1/2, 246

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

[Restat 2d of Conflict of Laws, § Scope](#)

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

Restat 2d of Conflict of Laws, § Scope

: This Title is devoted to problems of succession on death. Succession on death involves the division among the members of the decedent's family and other beneficiaries of what remains after the administration of his estate. Statutory provision is generally made for the support of the widow and minor children during the time the estate is being administered.

Questions of administration are dealt with in Chapter 14.

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 260

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 260 Intestate Succession to Movables

The devolution of interests in movables upon intestacy is determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to a decedent's interests in chattels, in rights embodied in a document and in rights that are not embodied in a document.

b. Rationale. The rule of this Section is supported particularly by those factors listed in Subsection (2) of § 6 which call for implementation of the relevant policies of the state with the dominant interest in the issue to be decided, protection of the justified expectations of the parties, certainty, predictability and uniformity of result, and ease in the determination and application of the law to be applied.

It is desirable that insofar as possible an estate should be treated as a unit and, to this end, that questions of intestate succession to movables should be governed by a single law. This is the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. This state would usually have the dominant interest in the decedent at the time.

Provided that they apply the common law rules of choice of law, the courts of the state where the decedent was domiciled at the time of his death would look to their own local law to determine what categories of persons are entitled to inherit upon intestacy. Application of this law to determine such questions would presumably be in accord with the reasonable expectations of the decedent and his family. On the other hand, these courts might look to the local law of some other state to determine whether a particular person claiming a share in the movables of an intestate belonged to such a category. So whether a person is a "widow" within the meaning of the statute of succession of the state where the decedent was domiciled at the time of his death would usually be determined in accordance with the law selected by application of the rule of § 283. Similarly, these courts might determine the effect of an agreement releasing all rights to inherit from the decedent in accordance with the law governing the agreement (see §§ 187-188).

Whichever law would have been applied in the ultimate decision of the case by the courts of the state where the decedent was domiciled at the time of his death will likewise be so applied by the forum.

c. The courts of the state where the decedent was domiciled at the time of his death would usually determine questions of intestate succession in accordance with their local law as it was at the time of his death and not as it may have been changed thereafter.

REPORTER'S NOTES

See [Ennis v. Smith, 14 How. \(55 U.S.\) 400 \(1852\)](#); [Simmons v. Simmons, 203 Ark. 566, 158 S. W.2d 42 \(1942\)](#); [Caruso v. Caruso, 106 N.J.Eq. 130, 148 A. 882 \(1930\)](#); [Dupuy v. Wurtz, 53 N.Y. 556, 573 \(1873\)](#); [Matter of Bulova, 14 A.D.2d 249, 220 N.Y.S.2d 541](#) (1st Dep't 1961); [Matter of Zietz, 198 Misc. 77, 96 N.Y.S.2d 442 \(Surr.1950\)](#); [White v. Tennant, 31 W.Va. 790, 8 S.E. 596 \(1888\)](#); see generally 2 Beale, Conflict of Laws 1029-1033 (1935); Goodrich, Conflict of Laws 324-326 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 373-374 (3d ed. 1963).

Restat 2d of Conflict of Laws, § 260

A Mississippi statute provides for the application of the Mississippi local law of intestate succession to movables located there. Miss.Code Ann. § 467 (1956 Recomp.).

In a number of cases, the courts of the state of the decedent's last domicile determined the effect of an agreement releasing rights to inherit from the decedent in accordance with the law governing the agreement rather than in accordance with their own local law. [Robinson v. Shivley, 234 Ark. 222, 351 S.W.2d 449 \(1961\)](#); [Matter of Weeks, 294 N.Y. 516, 63 N.E.2d 712 \(1945\)](#). See also Wolff, Private International Law 206-209 (2d ed. 1950); Robertson, Characterization in the Conflict of Laws 135-152 (1940).

Comment c: See Lynch v. Paraguay, L.R. 2 P. & D. 268 (1871).

Cross Reference

Digest System Key Numbers:

Descent and Distribution 5

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 261

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 261 Legitimacy as Affecting Succession

(1) Whether a person must be legitimate in order to inherit an interest in movables upon intestacy or to receive a forced share therein is determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually apply their own local law in determining such questions.

(2) The courts of the state where the decedent was domiciled at the time of his death would usually determine a person's legitimacy in accordance with the law selected by application of the rule of § 287.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is limited to the question whether a person must be legitimate in order to inherit an interest in movables upon intestacy or to receive a forced share therein. The rule does not apply to problems relating to the interpretation and construction of wills, such as whether only legitimate children were intended to be included within the scope of some such term as "issue" or "children" (see § 264).

b. Rationale. For reasons stated in § 260, Comment *b*, questions relating to the effect of legitimacy upon succession to movables are determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually look to their own local law to determine such questions.

c. Distinction between law governing inheritance and law governing legitimacy. The courts of the state where the decedent was domiciled at the time of his death would usually look to their own local law to determine whether a person must be legitimate in order to inherit interests in movables upon an intestacy or to receive a forced share therein. On the other hand, these courts would usually determine whether a person is legitimate in accordance with the law selected by application of the rule of § 287. If, however, these courts would have looked to some other law for the decision of this question, the forum will do likewise.

d. If the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death allows a legitimated child to take a distributive share, the child will take such a share even though the law governing the legitimation would not allow him to take. If the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death does not allow a legitimated child to take a distributive share, he cannot do so although the law governing the legitimation would allow him to take.

Illustration:

1. A has an illegitimate son, B. While domiciled in state X, A publicly recognizes B as his child and, under X local law, this act is sufficient to legitimate B as to A. A then moves his domicile to state Y where he dies intestate. Under Y local law, a legitimated child can inherit from his father upon the latter's intestacy. B will inherit an intestate share in A's estate.

Comment:

e. The courts of the state where the decedent was domiciled at the time of his death would usually apply their own local law to determine whether a legitimated child can inherit only if he is a direct descendant of the decedent or whether he can do so likewise if he is a collateral relative.

Restat 2d of Conflict of Laws, § 261

f. Distinction between statutes governing inheritance and statutes governing legitimation. Statutes providing a process by which an illegitimate person is made capable of inheritance have sometimes been classified by the courts as statutes governing succession, or as statutes governing legitimacy or as statutes governing both succession and legitimacy. If the statute is classified as one governing succession, it will be applied to provide for the inheritance by illegitimate persons who qualify under its terms of intestate shares in the movables of persons who died domiciled in the state of enactment. If the statute is classified as one governing legitimacy, it will be applied to make a person legitimate if the state of enactment is that state which has the most significant relationship to the person and his parent under the circumstances stated in § 287. If the statute is classified as governing both succession and legitimacy, it will be applied to legitimate certain persons and at the same time will be applied to provide for the inheritance by certain illegitimate persons of interests in the movables of those who died intestate while domiciled in the state of enactment (compare § 237, Comment e, which deals with the identical problem in the field of immovables).

g. There may be constitutional limitations upon the power of a State of the United States to deny rights of succession to illegitimate children (see § 237, Comment *f*).

REPORTER'S NOTES

Subsection (1): See [Lingen v. Lingen, 45 Ala. 410 \(1871\)](#); [Smith v. Derr's Adm'rs, 34 Pa. 126 \(1859\)](#); [Evans v. Young, 201 Tenn. 368, 299 S.W.2d 218 \(1957\)](#).

Subsection (2): See [Meekins v. Meekins, 169 Ark. 265, 275 S.W. 337 \(1925\)](#); [Vergnani v. Guidetti, 308 Mass. 450, 32 N.E.2d 272 \(1941\)](#); cf. [Re Lund's Estate, 26 Cal.2d 472, 159 P.2d 643 \(1945\)](#); [Re Wehr's Estate, 96 Mont. 245, 29 P.2d 836 \(1934\)](#).

Cross Reference

ALR Annotations:

Conflict of laws as to legitimacy or legitimation or as to rights of illegitimates, as affecting descent and distribution of decedent's estate. [87 A.L.R.2d 1274](#).

Recognition of status created by foreign adoption or legitimation for purposes of testate or intestate distribution of decedent's estate in a jurisdiction in which such status could not have been created even in the case of one domiciled there. 153 A.L.R. 199.

Digest System Key Numbers:

Bastards 96

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Restat 2d of Conflict of Laws, § 262

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 262 Adoption as Affecting Succession

(1) Whether an adopted child can inherit an interest in movables upon intestacy or receive a forced share therein is determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually apply their own local law in determining this question.

(2) The courts of the state where the decedent was domiciled at the time of his death would usually determine the validity of an adoption in accordance with the law selected by application of the rule of § 289.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section applies to such questions as whether an adopted child can inherit an interest in movables upon intestacy or receive a forced share therein from an adoptive parent or relative by adoption or from a natural parent or blood relative. The rule does not apply to problems relating to the interpretation and construction of wills, such as whether an adopted child was intended to be included within the scope of some such term as "issue" or "children" (see § 264).

b. Rationale. For reasons stated § 260, Comment *b*, the question whether an adopted child can inherit an interest in movables upon intestacy or receive a forced share therein is determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually apply their own local law to determine this question.

c. Distinction between law governing inheritance and law governing adoption. The courts of the state where the decedent was domiciled at the time of his death would usually look to their own local law to determine whether an adopted child can inherit interests in movables upon an intestacy or receive a forced share therein. On the other hand, these courts would usually determine the validity of an adoption in accordance with the law governing adoption under the rule of § 289. If, however, these courts would have looked to some other law for the decision of this question, the forum will do likewise.

d. If the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death allows an adopted child to take a distributive share, the child will take such a share even though the law governing the adoption would not allow him to take. If the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death does not allow an adopted child to take a distributive share, he will not do so although the law governing the adoption would allow him to take.

e. The law that would be applied by the courts of the state where the decedent was domiciled at the time of his death determines whether an adopted child may inherit only from his adoptive parent or whether he may do so also from certain blood relatives of such a parent (compare § 238, Comment *d*, which deals with the identical problem in the field of immovables).

f. The law that would be applied by the courts of the state where an adopted child was domiciled at the time of his death determines the persons who will inherit an intestate share in his movables or receive a forced share therein.

g. There may be constitutional limitations upon the power of a State of the United States to deny rights of succession to adopted children (see § 237, Comment *f*).

REPORTER'S NOTES

See generally 2 Beale, Conflict of Laws 1034 (1935); Goodrich, Conflict of Laws 290 (Scoles, 4th ed. 1964); Annotation, [87 A.L.R. 2d 1240 \(1960\)](#).

In [Doulgeris v. Bambacus, 203 Va. 670, 127 S.E.2d 145 \(1962\)](#), a child adopted in Greece, where neither the consent of the natural mother nor an investigation into the best interests of the child were necessary for an adoption, was held not entitled to inherit from her adoptive brother on the ground that "this type of adoption . . . is so different from the adoption contemplated by our statutes that it would be contrary to the public policy of this State to hold that she is a 'legally adopted child'" within the meaning of the Virginia inheritance statute.

The rule of this Section also applies to the question whether an adopted child will inherit from or through his natural parents. [Rauhut v. Short, 26 Conn.Super. 55, 212 A.2d 827 \(1965\)](#); [Arciero v. Hager, 397 S.W.2d 50 \(Ky. 1965\)](#); but cf. [Slattery v. Hartford-Connecticut Trust Co., 115 Conn. 163, 161 A. 79 \(1932\)](#); [Zoell's Estate, 345 Pa. 413, 29 A.2d 31 \(1942\)](#), cert. den. 318 U.S. 778 (1943).

Cross Reference

ALR Annotations:

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate. [87 A.L.R.2d 1240](#).

What law, in point of time, governs as to inheritance from or through adoptive parent. [18 A.L.R.2d 960](#).

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate. 154 A.L.R. 1179.

Recognition of status created by foreign adoption or legitimation for purposes of testate or intestate distribution of decedent's estate in a jurisdiction in which such status could not have been created even in the case of one domiciled there. 153 A.L.R. 199.

Conflict of laws as to adoption as affecting descent and distribution of decedents' estate. 73 A.L.R. 964, s. [87 A.L.R.2d 1240](#).

Digest System Key Numbers:

Descent and Distribution 5

Restat 2d of Conflict of Laws, § 263

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 263 Validity and Effect of Will of Movables

(1) Whether a will transfers an interest in movables and the nature of the interest transferred are determined by the law that would be applied by the courts of the state where the testator was domiciled at the time of his death.

(2) These courts would usually apply their own local law in determining such questions.

COMMENTS & ILLUSTRATIONS

Comment:

a. Scope of section. The rule of this Section is applicable to questions relating to testamentary dispositions of interests in movables. Thus, the law selected by application of the present rule determines the capacity of a person to make a will or to accept a legacy, the validity of a particular provision in the will, such as whether it violates the rule against perpetuities or constitutes a forbidden gift to a charity, and the nature of the estate created. Questions concerning the required form of the will and the manner of its execution also fall within the scope of the present rule. The rule applies to a decedent's interests in chattels, in rights embodied in a document and in rights that are not embodied in a document.

b. Rationale. For reasons stated in § 260, Comment *b*, questions relating to the validity of a will of movables and the rights created thereby are determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually apply their own local law to determine such questions as the testator's capacity to make a will, the nature of the estates that can validly be created and the categories of legatees to whom the testator may leave his movables. These courts would also usually apply their own local law in determining whether a legacy for charitable purposes is invalid, in whole or in part, because of statutory restrictions on the power of a testator to make charitable dispositions by will.

On the other hand, these courts might look to the local law of some other state to determine a legatee's capacity to take a legacy. Whether a corporation, for example, has the requisite capacity might be determined in accordance with the local law of the state of incorporation, and whether an individual legatee has attained his majority might be determined in accordance with the local law of the state of his domicil.

Illustration:

1. A, a national of state X, dies domiciled in state Y. The validity of A's will, insofar as it concerns movables, will everywhere be determined in the same way as would have been determined by the courts of Y. If the Y courts would determine such questions in accordance with their own local law, the courts of other states will do likewise. If, on the other hand, the Y courts would apply the local law of X, the courts of other states will do likewise.

Comment b (cont.)

Similarly, the courts of the state where the testator was domiciled at the time of his death might determine the effect of an agreement by the testator to dispose of his property in a certain way in accordance with the law governing the agreement (see §§ 187-188). Whichever law would have been applied in the ultimate decision of the case by the courts of the state where the testator was domiciled at the time of his death will likewise be so applied by the forum (see § 8).

Restat 2d of Conflict of Laws, § 263

c. Formalities. As here used, the term "formalities" applies to such requirements as those of a writing, of witnesses and of acknowledgment. Statutes in many states provide that the wills of local domiciliaries shall be held valid as to form if they comply either with the state's own requirements or with those of one or more other states, such as the state where the will was executed or where the testator was domiciled at the time of execution. If, by reason of such a statute, a will would be held valid in the state where the testator was domiciled at the time of his death, it will also be held valid in other states.

d. Change of domicil after making will. If, after making his will, a person changes his domicil, the validity and effect of his will are determined under the rule of this Section by the law that would be applied by the courts of the state of his domicil at the time of his death, and not by the law that would be applied by the courts of the state of his domicil at the time of executing the will.

e. Will disposing of both land and movables. In case a will disposes of both land and movables, the validity of devises of land is determined by the law that would be applied by the courts of the situs (see § 239); the validity of bequests of movables is determined by the law selected by application of the rule of this Section.

f. Election. Whether a legatee must elect between the provisions of the will and his rights outside the will in the testator's movables is determined by the law selected by application of the rule of this Section. See also § 265.

g. Validation. Situations will arise where a will although invalid under the local law of the state where the decedent was domiciled at the time of his death, is valid under the local law of some other state having a close relationship to the case such as the state where the testator was domiciled at the time the will was executed. If in such a situation the courts of the state of the last domicil would uphold the validity of the will by application of the local law of the other state, the forum will do likewise. The courts of the last domicil would be particularly likely to reach such a result in a situation where the difference between their own local law and that of the other state is relatively slight and does not stem from a significant divergence in policy. In such a situation, the courts of the last domicil might feel it more important to give effect to the intentions of the testator by upholding the will than to insist upon a rigid application of their local law.

h. As to the construction of a will insofar as it bequeaths an interest in movables, see § 264.

i. Revocation of will. The effect upon a will, insofar as it concerns movables, of an intentional act of revocation by the testator, such as the physical destruction of the will, is determined by the law that would be applied by the courts of the state where the testator was domiciled at the time of his death. The same law will be applied to determine whether the will has been entirely or partially revoked by operation of law, such as by marriage or by the birth of a child subsequent to the will's execution.

The courts of the state where the testator was domiciled at the time of his death would usually apply their own local law in deciding such questions. Sometimes, however, these courts would apply the local law of another state. So these courts might interpret a local statute, providing, that a will shall be held valid as to matters of form if it complies with the requirements of the state where it was executed, to mean that a revocation likewise shall be held valid as to matters of form if it complies with the requirements of the state where the act of revocation was done. Likewise, the courts of the state where the testator was domiciled at the time of his death would usually refrain from applying their own local law, or would apply the local law of another state, in situations where to do otherwise would defeat the expectations of the testator. An example might be a situation where, while domiciled in state X, the testator does an act which would not revoke the will under X local law but would do so under the local law of Y, where he died domiciled. In such a situation, the Y courts would probably not apply their local law and hold the will revoked if, in their opinion, such action would defeat the expectations of the testator.

REPORTER'S NOTES

See generally 2 Beale, Conflict of Laws 1034-1037 (1935); Goodrich, Conflict of Laws 332-335 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 375-378 (3d ed. 1963).

To the effect that the choice-of-law rules of the state where the testator was domiciled at the time of his death should be applied, see Wolff, Private International Law 206-209 (2d ed. 1930); Robertson, Characterization in the Conflict of Laws 135-152 (1940). That the determination of status and capacity of the legatees may be determined by the law governing these questions under normal choice-of-law rules, rather than by the local law of the state where the testator was domiciled at the time of his death, is shown by [Starkweather v. American Bible Society, 71 Ill. 50 \(1873\)](#); Estate of Jones, N.Y. L.J., 6/8/65, p. 20, col. 5; In re Schnapper [1928] Ch. 420;

Restat 2d of Conflict of Laws, § 263

In re Hellmann's Will, (1866) L.R. 2 Eq. 363; see also Dicey, Conflict of Laws 602 (8th ed. 1968); 4 Rabel, Conflict of Laws: 355-365 (1958).

The courts of the state where the testator was domiciled at the time of his death may determine the effect of an agreement by the testator to dispose of his property in accordance with the law governing the agreement. [Bernkrant v. Fowler, 55 Cal.2d 588, 360 P.2d 906 \(1961\)](#); [Strebler v. Wolf, 152 Misc. 859, 273 N.Y.S. 653 \(1934\)](#).

Some states provide by statute that their own local law shall be applied to govern the validity and effect of the will of a non-resident testator, insofar as it affects movables located within the state, if the testator has expressed a desire in his will to have this law applied. See, e. g., 3 Ill.Rev.Stat. § 89b (1959); [New York Estates, Powers and Trusts Law § 3-5.1 \(h\)](#). Even in the absence of statute, a few courts have recognized a similar power of choice on the part of non-resident testators. See, e. g., [In re Chappell's Estate, 124 Wash. 128, 213 P. 684 \(1923\)](#); Bright, Permitting a Non-Resident to Choose a Place of Probate, 95 Trusts and Estates 865 (1956).

Comment c: See § 2-506 of the Uniform Probate Code.

Comment i: See [In re Estate of Hollister, 18 N.Y.2d 281, 221 N.E. 2d 376 \(1966\)](#); [In re Harris' Will, 47 Misc.2d 836, 263 N.Y.S.2d 393 \(Surr. 1965\)](#); 2 Beale, Conflict of Laws 1037-1038 (1935); Goodrich, Conflict of Laws 337 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 387 (3d ed. 1963); Annotation, [9 A.L.R.2d 1412 \(1950\)](#).

Section 2 -- 602 of the Uniform Probate Code provides that the "meaning and legal effect" of a will shall be determined by the "local law" of the state selected by the testator in the will unless the application of this law would be contrary to the "public policy" of the state of the "otherwise applicable" law.

Cross Reference

Digest System Key Numbers:

Wills 2, 22, 70, 436

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Restat 2d of Conflict of Laws, § 264

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 264 Construction of Will of Movables

(1) A will insofar as it bequeaths an interest in movables is construed in accordance with the local law of the state designated for this purpose in the will.

(2) In the absence of such a designation, the will is construed in accordance with the rules of construction that would be applied by the courts of the state where the testator was domiciled at the time of his death.

COMMENTS & ILLUSTRATIONS

Comment:

a. The meaning and effect of words used in a will may be determined in any one of three ways (see § 224). On extremely rare occasions, these words may be given a particular legal effect irrespective of the intentions of the testator (see Comment *b*). In the second place, the words may be given a meaning which it is believed, on the basis of the available evidence, was the meaning the testator intended the words to bear. This process, which is here referred to as interpretation (see Comment *c*), is employed in the great majority of situations. Thirdly, situations do arise where the court is not presented with a satisfactory basis for determining the testator's intentions and where a rule of law is employed to fill the resulting gap in the will. This third process is here referred to as construction (see Comments *d-f*).

b. Legal effect. The use of certain words in a will insofar as it devised an interest in land was followed at common law on rare occasions by definite legal consequences that were quite independent of the intentions of the testator (see § 240, Comment *b*). On still rarer occasions, similar legal consequences were given at common law to words used in a will insofar as it bequeathed an interest in movables. Such rules of legal effect are extremely unlikely to be encountered today. If, however, such a rule exists in the local law of the state where the decedent was domiciled at the time of his death and if this rule would be applied by the courts of that state to determine the effect of certain words used in the will under consideration, this rule will also be applied by the forum.

c. Interpretation. The meaning of words used in a will depends upon the intentions of the testator except in those rare situations where the words are given a prescribed legal effect (see Comment *b*). In ascertaining the intentions of the testator, the forum will consider the ordinary meaning of the words used, the context in which they appear in the will, and the circumstances under which the will was drafted. The forum will consider whether the draftsman was probably using the language of the state where the testator was domiciled at the time when the will was executed. The forum will also consider any other properly admissible evidence that casts light on the actual intentions of the testator. The question to be determined is one of fact rather than one of law. The forum will apply its own rules in determining the admissibility of evidence (see § 138), and it will use its own judgment in drawing conclusions from the evidence.

d. Construction. If it is found impossible to ascertain the testator's intentions from the evidence, a rule of law is employed to fill what would otherwise be a gap in the will. This is done in order to carry out what was probably the testator's intention, or what probably would have been his intention, if he had foreseen the matter in dispute.

e. When designated law. The forum will give effect to a provision in the will that it should be construed in accordance with the rules of construction of a particular state. It is not necessary that this state have a substantial relationship to the testator or his estate. This is because construction is a process for giving

meaning to a will in areas where the intentions of the testator would have been followed if these intentions had been made clear.

When the testator designates the law of a state as the applicable law in matters of construction, it is to be inferred that he intends the local law of that state to govern. The forum will therefore apply the rules of construction of the designated state.

Despite the absence of an express designation, it may be apparent from the language of the will or from other circumstances that the testator wished to have the local law of a particular state govern the construction of the will. In such a case, the rules of construction of this state will be applied.

f. When no designated law. When the testator has not provided that his will should be construed in accordance with the rules of construction of a particular state and when his desires in this regard are not otherwise apparent, the forum will construe the will in accordance with the rules of construction that would be applied by the courts of the state where the testator was domiciled at the time of his death. These courts, in the absence of controlling circumstances to the contrary, would usually construe a given word or phrase in accordance with the usage prevailing in the state where the testator was domiciled at the time the will was executed. This would presumably be in accord with the expectations of the testator.

Illustrations:

1. T dies domiciled in state X leaving a will, also executed in X, which bequeaths interests in certain movables to B's heirs. B has an adopted son, A. In the absence of satisfactory evidence as to what T meant by "heirs," the question whether A belongs to the class comprehended by the term will be decided in accordance with X usage.
2. Same facts as in Illustration 1 except that T executes his will while domiciled in state Z. In the absence of satisfactory evidence as to what T meant by "heirs," the courts of state X would probably decide whether A belongs to the class comprehended by the term in accordance with Z usage.

Comment:

g. Judicial interpretation in state of applicable law. An interpretation placed upon a will, insofar as the will bequeaths interests in movables, by a court of the state where the testator was domiciled at the time of his death, will be followed in other states.

Illustration:

3. Same facts as in Illustration 1 except that (a) A is claiming before a court in state Y that T's will gave him an interest in certain movables located in state Y at the time of T's death, and (b) the X courts have already held that A is an "heir" of B within the meaning of T's will. The Y courts will likewise hold that A is such an heir.

REPORTER'S NOTES

See [Executive Council of Protestant Episcopal Church v. Moss, 231 A.2d 463 \(Del.Ch.1967\)](#); [Rhode Island Hospital Trust Co. v. Votolato, 102 R.I. 467, 231 A.2d 491 \(1967\)](#); 5 Scott, Trusts 3837-3850 (3d ed. 1967); 2 Beale, Conflict of Laws 1038-1039 (1935); Goodrich, Conflict of Laws 334-335 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 380-386 (3d ed. 1963).

Section 2-602 of the Uniform Probate Code provides that the "meaning and legal effect" of a will shall be determined by the local law of the state selected by the testator in the will unless the application of this law would be contrary to the "public policy" of the state of the "otherwise applicable" law.

Cross Reference

ALR Annotations:

What law governs in determining who are "heirs," "heirs at law," "issue," "next of kin," or the like, who will take legacy or bequest under terms of will. [52 A.L.R.2d 490](#).

Digest System Key Numbers:

Wills 436

Restat 2d of Conflict of Laws, § 264

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 265

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 265 Forced Share Interest of Surviving Spouse and Election

(1) The forced share interest of a surviving spouse in the movables of the deceased spouse is determined by the law that would be applied by the courts of the state where the deceased spouse was domiciled at the time of his death. These courts would usually apply their own local law in determining such questions.

(2) Whether a surviving spouse for whom provision has been made in the will of the deceased spouse may elect to take a forced share interest in the movables of the deceased spouse rather than to take under the will is determined by the law that would be applied by the courts of the state where the deceased spouse was domiciled at the time of his death.

COMMENTS & ILLUSTRATIONS

Comment:

a. Meaning of "forced share." As here used, the term "forced share" refers to the share, normally a specific percentage of the decedent's estate, which the surviving spouse, and sometimes a child, has the right to claim against the provisions of the will.

b. Rationale. For reasons stated in § 260, Comment *b*, questions relating to the forced share interest of a surviving spouse in the movables of the deceased spouse and the right of the surviving spouse to claim a forced share interest rather than to accept a provision made for her in the will are determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. These courts would usually apply their own local law in determining such questions. On the other hand, these courts would usually determine whether a person is a "widow" within the meaning of their local statute regulating forced shares in accordance with the law governing the validity of the marriage (see § 283). Similarly, these courts might determine the effect of an agreement not to claim a forced share in accordance with the law governing the agreement (see §§ 187-188).

Whichever law would have been applied in the decision of the particular issue by the courts of the state where the decedent was domiciled at the time of his death will likewise be so applied by the forum.

REPORTER'S NOTES

See [Nelson v. Goree's Administrator, 34 Ala. 565 \(1859\)](#); [Hewitt v. Cox, 55 Ark. 225, 15 S.W. 1026, 17 S.W. 873 \(1891\)](#); [In re O'Connor's Estate, 218 Cal. 518, 23 P.2d 1031 \(1933\)](#); [Henderson v. Usher, 125 Fla. 709, 170 So. 846 \(1936\)](#); [Matter of Clark, 21 N.Y.2d 478, 236 N.E.2d 152 \(1968\)](#); [Matter of Slade, 154 Misc. 275, 276 N.Y. S. 956 \(Surr.1935\)](#); [In re Mallory's Estate, 300 Pa. 217, 150 A. 606 \(1930\)](#); [Singleton v. St. Louis Union Trust Co., 191 S.W.2d 143 \(Tex.Civ.App.1945\)](#).

The effect of an agreement not to claim a forced share in the decedent's movables will be determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death. [Matter of Bulova, 14 A.D.2d 249, 220 N. Y.S.2d 541](#) (1st Dep't 1961). These courts, on the other hand, might determine the effect of the agreement in accordance with the law that governs the agreement as a contract. See cases cited in Reporter's Note to § 264.

Cross Reference

Digest System Key Numbers:

Wills 436

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document

Restat 2d of Conflict of Laws, § 266

Restatement of the Law, Conflict of Laws 2d - Official Text > Chapter 9- Property > Topic 3- Movables > Title E- Succession on Death

§ 266 Disposition of Movables Where No Distributee

The chattels of an intestate pass to the state in which they are administered when it is determined that by law no person is entitled to succeed thereto.

COMMENTS & ILLUSTRATIONS

Comment:

a. The rule of this Section is concerned with the state which may escheat the assets of a decedent in the absence of a person entitled to succeed thereto. Chattels present no particular problems in this regard. The state where a particular chattel is situated is the state which may escheat it. Likewise, in the case of a right embodied in a document (see § 249), the state where the document is situated is the state which may escheat the right.

Intangible rights that are not embodied in a document present greater difficulties, since they have no physical situs. Speaking of the escheat of such rights, the Supreme Court said in [Western Union Telegraph Company v. Commonwealth of Pennsylvania, 368 U.S. 71 \(1961\)](#) that a person would be deprived of due process if he were compelled to pay his debt to a state "without assurance that he will not be held liable again in another jurisdiction or in a suit brought by a claimant who is not bound by the first judgment." The Supreme Court further said in the same case that it was prepared as controversies came before it to lay down precise rules with respect to the circumstances in which a state may escheat a right not embodied in a document. In an earlier case, the Supreme Court had held that a State where a bank is located may escheat unclaimed deposits made in that bank. [Security Savings Bank v. California, 263 U.S. 282 \(1923\)](#). In its most recent decision, the Court held that the power to escheat an unclaimed debt owed by a corporation "should be accorded to the State of the creditor's last known address as shown by the debtor's books and records." [State of Texas v. State of New Jersey, 379 U.S. 674 \(1965\)](#).

b. Whether there are persons entitled to succeed to the assets of a decedent will be determined by application of the law governing succession (see §§ 260-265). Each state will, however, determine for itself whether a form of transfer provided by the law governing succession falls within the category of succession (see § 7).

c. As to what states may administer the movables of a decedent, see §§ 318-331.

REPORTER'S NOTES

See [In re Rapoport's Estate, 317 Mich. 281, 26 N.W.2d 777 \(1947\)](#); 2 Beale, Conflict of Laws 1039-1040 (1935); Wolff, Private International Law 579-580 (2d ed. 1950).

Comment b: Local assets have been distributed to the state of the decedent's last domicile or to a subdivision thereof in situations where the state or the subdivision were entitled to the assets under that state's rules of succession. [In re Utassi's Will, 15 N.Y.2d 436, 209 N.E.2d 65 \(1965\)](#); In the Estate of Maldonado, [1954] P. 223 [C.A.].

Cross Reference

Digest System Key Numbers:

Escheat 1

Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

End of Document