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CHOICE OF LAW IN TRUSTS AND ESTATES— THE MISSOURI VIEW

CANDLER S. ROGERS*

I. INTRODUCTION

In the field of conflict of laws, perhaps more than in any other area of law today, one is struck by the absence of certainty and exactness. The decision is based, often as not, upon an attempt to reach a just—therefore usually a familiar—result, rather than upon an effort to achieve a consistent result or mode of selecting the choice of law. Conversely, in the field of property, including the law of trusts and estates, devotion to *stare decisis* and stability is steadfast often to a point of absurdity. Predictability of result is vital to one tying up property for long periods of time.

Estates and estate plans do not conveniently respect state or national boundaries, and anyone concerned with trusts and estates must soon face the question: which state's law will govern such problems at might arise from this estate? How, in a field as uncertain as conflict of laws, where the choice of the forum might be the most determinative factor in the outcome of a dispute, can the estate planner achieve the sure result which his practice demands? It is the purpose of this article to examine the Missouri decisions on the choice of law for deciding questions related to trusts and estates, upon which the planner of an estate which includes persons or property in both Missouri and another state may find a basis for predicting the outcome of his efforts.

II. TRUSTS

A. *Land*

As is almost always the case with any questions involving interests in immovables,¹ trusts of land are governed by the law of the state wherein the

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1. LEFLAR, CONFLICT OF LAWS § 140 (1959); RESTATEMENT (SECOND), CONFLICT OF LAWS §§ 214-54 (1959). Hereinafter the RESTATEMENT (SECOND), CONFLICT OF LAWS (1959) will be cited as RESTATEMENT only.

For a comprehensive treatment of conflict of laws as related to trusts, see LAND, TRUSTS IN THE CONFLICT OF LAWS (1940).

land is situated.² This is true whether the trusts are testamentary or inter vivos,³ and also whether they are express, constructive, or resulting.⁴ The law of the situs determines the administration,⁵ the validity,⁶ and the extent of the legal and equitable interests created,⁷ and the trust is subject to the supervision of the courts of the situs.⁸

However, a problem arises where Missouri land is granted or devised under a direction that it be sold and the proceeds of the sale be held in trust by nonresident trustees. The Missouri Supreme Court applies Missouri law to determine whether there is an equitable conversion.⁹ Once it is determined under Missouri law that there is an equitable conversion, then a trust of the proceeds which is to be administered in another state is governed by the law of the other state as a trust of movables.¹⁰

It is also to be borne in mind that while the validity of an instrument creating a trust in land is governed by the law of the situs, the construction of a testamentary trust "*for the purpose of ascertaining the testator's meaning and intention as expressed therein*"¹¹ is governed by the law of the testator's domicile.¹² This rule is applied because it is believed that a testator is more familiar with the law of his domicile than the law of other jurisdictions, and that he writes his will with the law of his domicile in mind.¹³ Following this reasoning, Missouri has upheld a testamentary trust of the proceeds from the sale of Missouri land created by a Nebraska testator, although such trust might have violated the Missouri Rule Against Perpetuities if Missouri rules of construction were applied, where earlier construction by the Nebraska court was such that no violation was possible. The Missouri court's adoption of the Nebraska construction was said not to violate any "public policy or rule of law of Missouri."¹⁴ One wonders how

2. DeLashmutt v. Teetor, 261 Mo. 412, 169 S.W. 34 (1914).

3. White v. Greenway, 303 Mo. 691, 263 S.W. 104 (1924).

4. E.g., Depas v. Mayo, 11 Mo. 314 (1848).

5. DeLashmutt v. Teetor, *supra* note 2.

6. *Id.* (dictum).

7. Depas v. Mayo, *supra* note 4.

8. DeLashmutt v. Teetor, *supra* note 2.

9. Applegate v. Brown, 344 S.W.2d 13 (Mo. 1961).

10. *Ibid.*

11. Zombro v. Moffett, 329 Mo. 137, 145, 44 S.W.2d 149, 152 (1931).

12. Applegate v. Brown, *supra* note 9. As to matters of *interpretation, vis-à-vis construction*, see part I, § B(1) *infra*.

13. Zombro v. Moffett, *supra* note 11.

14. Applegate v. Brown, *supra* note 9. It would appear that the court need not have decided this point inasmuch as an equitable conversion had already been determined to exist. However, the court emphasized that matters of construction were to be determined by the law of the testator's domicile and clearly made such distinction a basis for its decision.

far this rule might be extended, although it is in accord with the great majority of decisions which sustain such trusts on the theory that the rule of the situs should not be applied to trusts which are administered in a foreign jurisdiction.¹⁵

In theory, then, Missouri law governs trusts of Missouri land except as to questions of construction, which are controlled by the law of the state of the testator's domicil. In substance, however, the validity of the devise is measured by the law of the testator's domicil, contrary to the general and oft-stated rule that the law of the situs should determine validity of any transfer of land because every state should have full and exclusive power over real estate situated within its borders, and because it would be objectionable to any state to have its lands affected by laws of a foreign state.¹⁶ This disparity between theory and substance arises because it is not clear which rules should be characterized as relating to validity and which to construction, and the Missouri court has shed little light on this question. There is a marked tendency to uphold all trusts of land whenever the local law of either jurisdiction permits, although such a generalization must not be accepted too literally.

B. *Movables*

It is apparent that the state wherein movables are located does not have the same interest in such property as it has in immovables. Thus the rules concerning trusts of movables have not developed with the same uniformity as have those dealing with trusts of land. In order to examine the law which governs trusts of movables, it is necessary to distinguish trusts *inter vivos* from testamentary trusts, and to determine whether the question is one of the trust's validity, administration, or interpretation and construction. It should also be remembered that the term "movables" embraces not only tangible chattels, but also intangibles such

15. Cavers, *Trusts Inter Vivos and the Conflict of Laws*, in *SELECTED READINGS ON CONFLICT OF LAWS* 937, 939 (Culp ed. 1956).

16. *Hines v. Hines*, 243 Mo. 480, 147 S.W. 774 (1912). *DeLashmutt v. Teetor*, *supra* note 2, states:

It is not to be conceived that any government would permit the title to the lands which constitute the foundation and define the territorial limits of its sovereignty, to depend upon the operation of the laws of any foreign State or Nation. Real estate transfers of every description, whether by act of the parties or by operation of law, depend, for their validity and effect, upon the laws of the jurisdiction in which the property is situated. Suits affecting the status of lands are local to the situs of the property.

Id. at 433, 169 S.W. at 38.

as stocks, bonds, notes, patents, accounts receivable, partnership interests, claims, debts, and other choses in action; and that some kinds of property, such as leasehold interests in land, are usually designated "personalty" but are not movables.

1. Inter Vivos Trusts

There appear to be no fewer than eight possible alternative choices of law available for determining the *validity*¹⁷ of an inter vivos trust. The laws of the domicil of the settlor, the domicil of the beneficiary, the place of execution and delivery of the trust instrument, the place of administration of the trust, the situs of the trust property, the law of the forum, and any of the above places stipulated by the settlor could be relied upon to sustain or defeat a trust. Missouri cases have not established a definitive picture as to the relative importance of these factors, and at most only some vague notions can be gained from those few cases which have been decided.

The *Restatement of Conflict of Laws* takes the position that the validity of an inter vivos trust of movables is governed "(a) by the local law of the state designated in the trust instrument as that of the governing law, provided that this state has a substantial connection with the trust, or, (b) if there is no such designation or it is ineffective, by the local law of the state with which the trust is most closely connected."¹⁸ There is little cause to believe that Missouri will not follow these rules. In *Spicer v. New York Life Insurance Co.*¹⁹ the settlor's right to direct that the trust should be governed by the local laws of a designated state other than his domicil was upheld. Where no determining law is designated by the settlor, Missouri courts have apparently applied the law of the state of closest connection, looking to see where the various contacts are located. However, it is not clear how much weight will be accorded such contacts. A trust created by settlors who were citizens of Kansas, appointing a Missouri trustee, executed at the office of the Missouri trustee where the same parties had previously transacted much business, allowing the trustee to perform his duties in Missouri, Kansas, or elsewhere, and naming the Kansas settlors as beneficiaries, was held to be a Missouri trust, governed by Missouri law,

17. As used in this article, the question of validity includes, as it does in the RESTATEMENT, questions of the settlor's capacity of formalities of execution, and of substantial validity. *E.g.*, RESTATEMENT § 294.

18. RESTATEMENT, § 294.

19. 237 Mo. App. 725, 167 S.W.2d 457 (Spr. Ct. App. 1942). For a discussion of whether the rule of this case confers legislative power on the settlor, and the resulting problems of legal theory, see Cavers, *supra* note 15, at 952.

and valid under the Missouri Statute of Frauds.²⁰ On the other hand, a federal district court in Missouri more recently held that an attempted trust was invalid under the Statute of Frauds of the settlor's domicile (New Jersey), and no other contacts were considered.²¹ This case is clearly out of keeping with the usual generalization that the courts prefer to choose the law under which the trust will be sustained.²² Thus the question of the relative weight to be accorded contacts in each state remains unanswered.

The *Restatement* lays greatest stress on the intention of the settlor.²³ Least weight is given the law of the forum, because of the general agreement that the result should be the same regardless of where suit is brought, and because there would be little assurance that an estate plan would be upheld if the validity of its trusts should depend upon the law of the state where an action might chance to be brought.²⁴ If the settlor's intent is not clear, and no clear majority of contacts are grouped within any single state, then the *Restatement* takes the position that the place where the trust is to be administered, which is usually the domicile or place of business of the trustee as well, will be given primary importance as furnishing the governing law.²⁵ Otherwise, all the contacts mentioned above except the domicile of the beneficiaries should be accorded approximately equal weight.²⁶ Nevertheless, a trust might be held invalid if it is against a strong public policy of a state having a significant and substantial contact with the matter, as, for instance, where a revocable inter vivos trust is in substance a testamentary disposition, or where it deprives a widow of her statutory share, or where it violates the Rule Against Perpetuities or the Rule Against Accumulations, or where the trust purposes themselves are illegal.²⁷ The *Restatement* attempts to establish greater certainty here by

20. *McGuire v. Hutchinson*, 240 Mo. App. 504, 210 S.W.2d 521 (K.C. Ct. App. 1948).

21. *Pitt v. United States*, 209 F. Supp. 624 (W. D. Mo. 1962).

22. See RESTATEMENT, § 294, comment *e*; Leflar, *Estates and Trusts—Conflict of Laws Problems*, 37 TRUST BULL. 44 (1958).

23. RESTATEMENT, § 294, comments *b*, *c*, and *d*.

24. *Id.*, comments *b* and *d*.

25. *Id.*, comment *d*. This rule is even stronger when the trustee is a corporate trustee having one principal place of business. However, it is of less validity where the trustee is qualified to do business elsewhere, or where several named individual trustees are domiciled in separate states. See Scott, *What Law Governs Trusts?*, 99 TRUSTS & ESTATES 186 (1960).

26. RESTATEMENT, § 294, comment *d*.

27. *Id.*, comment *f*. Missouri has no cases defining the situations wherein its policy would outweigh the interests of sustaining the trust, although such would appear to be the effect of certain statutes which prohibit or limit a foreign trustee of any real or personal property situated in Missouri unless there is also a Missouri cotrustee. §§ 443.350, 456.120, 363.205, RSMo 1959. However, the appoint-

spelling out that "rules concerning perpetuities, illegal accumulations, indefiniteness of beneficiaries and the validity of trust purposes will not be held to involve the strong public policy of the state."²⁸

Matters relating to *administration*²⁹ of an inter vivos trust of movables are governed by almost the same law as are matters relating to the trust's validity. The settlor may designate the local law of any state having a substantial relation to the trust as the controlling law.³⁰ Where he makes no such effective designation, "the local law of the state with which the administration of the trust is most closely connected"³¹ shall govern. This would ordinarily be the state of the trustee's domicile or place of business, inasmuch as it is presumed that most of the business of administration will be transacted there, thus making application of that state's local law most convenient. For the same reason, supervision of the administration of a trust of movables is normally exercised by the courts of the state whose local law governs the administration of the trust.³² Obviously a court cannot supervise a foreign trustee unless the actual business of administration is transacted within its jurisdiction. Consequently, the settlor may not designate the law of a particular state to supervise administration unless that state has a substantial contact with the administration or is the domicile of the trustee.

Questions of *interpretation* and *construction* of an instrument creating an inter vivos trust of movables are perhaps less difficult of solution than those of validity or administration. The *process of interpretation* is one of determining—on the basis of the ordinary meanings of the words used, their context, and other admissible evidence which casts light on the settlor's intentions—exactly what his intentions were. In this process the forum will most often apply its own rules of evidence and will draw its

ment of a sole foreign trustee is not a fatal defect in the trust. Under the rule that no trust shall fail for the want of a trustee, a Missouri trustee will be appointed to give validity to the trust. *See* Commerce Trust Co. v. Ellis, 258 Mo. 702, 167 S.W. 974 (1914); Carlock v. Ladies Cemetery Ass'n, 317 S.W.2d 432 (Mo. 1958).

28. RESTATEMENT, § 294, comment f.

29. "Administration" includes that myriad of questions relating to the rights, powers, duties and liabilities of the trustee as well as the question of the proper court to supervise the trustee in his administrative functions. For a list of typical questions relating to administration, see LEFLAR, CONFLICT OF LAWS § 209 (1959); SCOTT, *supra* note 25, at 273. However, the line between rules relating to administration and those relating to validity is sometimes quite difficult to draw. See Cavers, *supra* note 15, at 938.

30. Spicer v. New York Life Ins. Co., 237 Mo. App. 725, 167 S.W.2d 457 (Spr. Ct. App. 1942); RESTATEMENT, § 297(a).

31. RESTATEMENT, § 297(b).

32. *Id.*, § 299.

own conclusions from the facts presented.³³ However, when there is insufficient evidence of the settlor's intentions, a rule of *construction*, which is in reality equivalent to a presumption, will be called upon to fill the gap in the instrument. Thus whenever a trust has contacts with two or more states whose applicable rules of construction differ, a choice of law problem arises. Because such matters are to be resolved as nearly as is ascertainable on the basis of the intent of the settlor, a specific designation of the local law of any state for purposes of construction will be given effect, whether such state has any substantial contact with the trust or not.³⁴ Where the settlor makes no such designation of local law, the rule of construction of that state whose law governs the particular aspect of the trust will be applied. That is, matters pertaining to administration of the trust will be decided according to the law of the state whose local law is held to govern its administration, and all other matters will be decided according to the law of the state whose local law is held to determine the validity of the trust.³⁵ This rule rather naturally produces a tendency in the case of inter vivos trusts of movables to apply the rules of construction of the state most closely connected with the trust, and Missouri appears to follow such practice.³⁶

2. Testamentary Trusts

Where a testator attempts to create a trust of movables in his will, if the will as a whole fails then so does the attempted trust. On the other hand, the will itself may be valid, but the trust portion of the will invalid. The rules governing the validity of the testamentary trust must therefore be examined from two viewpoints: first, from that of determining the validity of the will itself; and second, from that of determining the validity of the trust incorporated within the will.

As previously mentioned, in the case of an inter vivos trust of movables the domicile of the settlor is but one contact to be considered along with many others in determining the validity of the trust. In the case of a will, however, the testator's domicile assumes a substantially greater importance, for the law of the state of his domicile at the time of his death governs the validity of the testator's will insofar as movables are concerned.³⁷ The law of the domicile of the testator governs such questions as testamentary ca-

33. *Id.*, § 299(a), comment *a*.

34. *Id.*, § 299(a), comment *b*; *cf.*, *Spicer v. New York Life Ins. Co.*, *supra* note 30.

35. RESTATEMENT, § 299(a), comment *b*.

36. See, *e.g.*, *Krause v. Jeannette Inv. Co.*, 333 Mo. 509, 62 S.W.2d 890 (1933).

37. RESTATEMENT, § 306. See part II, § C(1) *infra*.

capacity, compliance with the formalities of the statute of wills, fraud, duress, undue influence, mistake, revocation, the effect against the claims of a surviving spouse to a distributive share, the effect of giving a charity of more than an allowable portion of the estate, the effect of a disposition to a charity in a will executed immediately before the testator's death, and the effect of a pour-over provision to an existing inter vivos trust. Consequently, the validity of a testamentary trust of movables is determined by the law of the testator's domicile at the time of his death as to these matters which affect the validity of the will as a will.³⁸

The validity of a trust of an interest in movables which is incorporated within the will, except where the trust is invalid because of a strong public policy in either the state of the situs of the property³⁹ or the state of the testator's domicile,⁴⁰ is determined

(i) by the local law of the state designated in the will as that of the governing law, provided that this state has a substantial connection with the trust, or,

(ii) if there is no such designation or it is ineffective, by the local law of either the state of the testator's domicile at death or of that where the trust is to be administered, whichever makes the trust valid.⁴¹

Many of the difficulties encountered in determining the proper law to govern inter vivos trusts are apparent in this provision of the *Restatement*, and the comments to this section indicate that they should be resolved the same way. The effect of a designation of the governing law is the same.⁴² The circumstances which might result in the trust being held invalid because of a strong public policy of the state of the situs of the property are also the same.⁴³ Thus, violations of the Rules Against Perpetuities and Accumulations, rules requiring definiteness of beneficiaries, and rules concerning validity of the purposes of the trust, of the state of the situs will not invalidate the trust if it is valid under the law of the state designated, the law of the testator's domicile, or the law of the state of administration. Likewise, the question of which state is the state of administration remains the same vexing problem as in the case of inter vivos trusts of movables, and the solutions should be the same.⁴⁴ There is, however, one

38. *Id.*, § 295(a).

39. See note 27 *supra*.

40. RESTATEMENT, § 295(b).

41. *Ibid.*

42. *Ibid.* Cf., *Spicer v. New York Life Ins. Co.*, *supra* note 30.

43. RESTATEMENT, § 295, comment f.

44. *Id.*, § 298, comment c.

additional difficulty not previously mentioned. A trust is invalid everywhere if it is contrary to the strong public policy of the state of the testator's domicil at his death. Again, such concerns as Rules Against Perpetuities, illegal accumulations, indefiniteness of beneficiaries, and validity of trust purposes are specifically stated not to be matters of sufficiently strong public policy to invalidate the trust.⁴⁵ However, rules against provisions which restrain marriage, rules which are designed to protect the family or family members, or rules which limit testamentary charitable gifts are rules which would contravene a strong public policy of the state of the testator's domicil.⁴⁶

The administration of a testamentary trust of movables is also ordinarily governed by the law of the testator's domicil at death.⁴⁷ Exceptions to this rule result (1) where the testator designates the local law of another state which has a substantial connection with the trust, in which case the local law of that state controls, (2) where the administration of the trust is more closely connected with some state other than the testator's domicil, in which case the local law of that other state governs, or (3) where the law of the domicil is contrary to a strong public policy of the state where the chattel or document is situated, in which event the law of the state of the situs controls.⁴⁸ The rules for determining when the circumstances giving rise to these exceptions exist are not different from those governing like situations in inter vivos trusts of movables.⁴⁹

Questions of interpretation of testamentary trusts of movables are normally resolved on the basis of the law of the forum, as in the case of inter vivos trusts of movables.⁵⁰ Questions of construction are also resolved as in the case of inter vivos trusts, on the basis of (1) the local law designated for purposes of construction, (2) the local law of the state whose local law governs administration if the question is one of administration, or (3) if the question is not one of administration, the local law of the state whose local law is held to govern the validity of the trust.⁵¹

Numerous procedural questions, not themselves having to do with what law shall be applied by a court and thus not directly within the scope

45. *Id.*, § 295, comment *e*.

46. *Ibid.*

47. *Id.*, § 298.

48. *Ibid.* See also notes 27 and 29 *supra*. Compare §§ 456.120, 363.205, RSMo 1959.

49. See part I, § B(1) *supra*.

50. RESTATEMENT, § 299(a), comment *a*.

51. *Id.*, § 299(a), comment *b*. *Cf.*, Spicer v. New York Life Ins. Co., *supra* note 30; Krause v. Jeannette Inv. Co., *supra* note 36.

of this article, might nevertheless have a substantial effect upon the choice of law governing a trust of movables and should not be overlooked. These include such questions as the qualifications of trustees, or whether a testator may pour over property to nonqualified foreign trustees of an existing inter vivos trust to be administered in the foreign state. There are also many problems which arise out of a change of place of administration of a trust.⁵²

One other conflict of laws difficulty with trusts should be mentioned. A forum will apply only its own remedies, and therefore the extent of available relief does to a certain extent depend upon the choice of the forum. For example, in *Keeney v. Morse*⁵³ a creditor's bill was brought in the courts of New York to reach a beneficiary's share in the income of a Rhode Island trust. This procedure was available under Rhode Island law, but not under the law of New York. Consequently the requested remedy was denied.⁵⁴

In light of the foregoing, the obvious question for the Missouri estate planner and draftsman is: where a conflicts problem is foreseeable, how can he best protect against litigation? First, he should decide which state's local law he prefers to have govern. An expression of intent to choose that law will be given effect so long as the chosen state has a substantial connection with the trust and there is no clear violation of a strong public policy of the state of the settlor's domicil or the state of the situs of the property. Second, all contacts with the trust which may practicably be placed in the state whose law is chosen should be placed there in order to avoid any question of whether that state has a substantial connection with the trust, as well as to avoid the risk that the existence of that contact elsewhere will provide a violation of strong public policy in the state having such contact. Finally, a clause should be inserted in the trust instrument indicating the settlor's clear intent. A short, concise clause such as "The validity, administration, and construction of this trust shall be governed by the local law of the State of _____." should suffice. While this procedure is not foolproof, it does remove many of the uncertainties and resulting questions.

52. For a discussion of these and similar problems, see Scott, *supra* note 25, at 274-75.

53. 71 App. Div. 104, 75 N.Y.S. 728 (1902).

54. This and other examples are given in LEFLAR, *op. cit. supra* note 29, at § 211.

III. DECEDENT'S ESTATES

A. *Intestate Succession*

When a decedent leaves no effective will, which state's local laws will govern the descent and distribution of his property? In the case of immovables, there is no split among the common-law authorities. The ownership, and likewise the descent, is so closely identified with the state wherein it is situated that the interests in land descend according to the laws of that state.⁵⁵

It is also well settled in Missouri, and in the United States generally, that descent and distribution of movables is made according to the laws of the state in which the decedent was domiciled at the time of his death.⁵⁶ This rule is based upon the belief that one's movables, wherever situated, should descend as a unit, and that the domicile of the decedent at the time of his death is the only place whose law could logically be employed for such unified distribution when the property is physically scattered.⁵⁷ However, there is nothing to prevent a state wherein the property is located from applying its own law of intestate succession, and in at least one case Missouri has done so. In that case, *Locke v. McPherson*,⁵⁸ a woman previously domiciled in Missouri married a New York domiciliary with the intention of residing in New York. She died, however, shortly after the marriage and before leaving Missouri. The local law of Missouri at the time of marriage was applied to determine whether the husband had any marital interests in movables owned by the wife in Missouri. New York law was held not to apply because the property would have passed there under common-law marital rights, and not according to a statute of distribution, and the law of the state of the wife's domicile at the time of marriage was held to govern what marital rights, if any, the husband acquired in her movables. This case clearly appears to be based upon special circumstances, however, and does not seem to threaten the general rule applying the law of descent and distribution of the decedent's domicile at his death.

The application of these rules obviously calls for a characterization of

55. § 473.675(2), RSMo 1959; *Hines v. Hines*, 243 Mo. 480, 147 S.W. 774 (1912).

56. § 473.675(2), RSMo 1959; *In re Toler's Estate*, 325 S.W.2d 755 (Mo. 1959).

57. LEFLAR, *op. cit. supra* note 29, at § 184; GOODRICH, *CONFLICT OF LAWS* § 165 (3d ed. 1949).

58. 163 Mo. 493, 63 S.W. 726 (1901). For discussion of this case as a problem of characterization on the one hand and selection on the other, see MARSH, *MARITAL PROPERTY IN CONFLICT OF LAWS* 133-34, 182-85 (1952).

the decedent's property as movable or immovable, and the choice of one state's laws for making that characterization. The local law of the situs of the property controls this characterization since, if by its law the property is an immovable, the state of the situs has such an interest in its disposition that it would not be compelled to recognize a characterization as a movable based upon another state's law.⁵⁹

B. *Interests of a Surviving Spouse⁶⁰ or Minor Child*

Marital property interests in immovables which are dependent upon the survivorship of the spouse are generally governed by the law of the situs, as are most other interests in land. Thus, the law of the situs of the land determines the extent of the surviving spouse's interest in the decedent's land, the conditions necessary to have that interest established, and the conditions necessary to have that interest continue.⁶¹

Originally, marital property interests in movables dependent upon the survivorship of the spouse were generally governed by the law of the decedent spouse's domicile, even if the result was to deprive the surviving spouse of all property.⁶² These interests included such property as the surviving spouse's statutory substitutes for dower and curtesy, exempt property, and family allowance. However, since 1957, in order to insure protection of decedents' families with regard to any property located in Missouri, support and family allowances to surviving spouses and unmarried minor children of nonresident decedents are by statute said to be governed by whichever of the laws of Missouri or the domicile of the decedent are more liberal in behalf of the surviving spouse or children.⁶³ This statute does

59. STUMBERG, CONFLICT OF LAWS 409, n. 2 (2d ed. 1951).

60. No attempt shall be made here to deal with problems of separate or marital property during marriage or during the lives of the spouses. For a discussion of these matters see MARSH, *op. cit. supra* note 58. This section will be confined to the problems of choice of law which determine the surviving spouse's marital property rights upon the death of the other.

61. LEFLAR, *op. cit. supra* note 29, at § 185; RESTATEMENT, § 248; Wyatt v. Wilhite, 192 Mo. App. 551, 183 S.W. 1107 (K.C. Ct. App. 1916); Thomas v. McGhee, 320 Mo. 519, 8 S.W.2d 71 (1928).

62. LEFLAR, *op. cit. supra* note 29, at § 185; RESTATEMENT, §§ 301, 303; Richardson v. Lewis, 21 Mo. App. 531 (St. L. Ct. App. 1886); Wyatt v. Wilhite, *supra* note 61; *In re Toler's Estate*, *supra* note 56. However, Missouri has held that the situs has power to retain control over such movables and apply its own law if extraordinary circumstances warrant. Locke v. McPherson, *supra* note 58.

63. § 473.675(3), RSMo 1959. This statute is consistent with the Missouri legislature's great concern for protecting widows and unmarried minor children. See Fratcher, *Trusts and Succession in Missouri*, 24 Mo. L. REV. 497, 501 (1959), where the Missouri Probate Code, because of its extensive provisions protecting widows, is called "The Golddigger's Dream Come True."

not affect marital rights other than those of support and family allowance, however, and marital rights in all property beyond the support and family allowance continue to be determined by the laws of the domicil of the decedent.⁶⁴

In the event that a surviving spouse elects to take against the will of the decedent, which state's laws are applicable? Again, if the property is land, the law of the state where the land is situated governs the election as to both the extent of the forced share and the procedure for claiming it.⁶⁵ However, where a surviving spouse elects to take under the will in the state of the decedent's domicil at death, he may not elect a forced share in the state wherein the land is situated.⁶⁶ Similarly, if he renounces the will in the state of the domicil of the deceased spouse, the survivor is not allowed to take under the will in the state of the situs of the land even though he has not complied with the requirements of the situs for making a renunciation and election.⁶⁷ The converse of these rules is likewise applied, so that an election to take under the will or to renounce in the state of the situs of the land forecloses the taking of the opposite move in the state of the domicil of the deceased spouse.⁶⁸ These rules are based upon the equitable idea that one may not claim inconsistent rights with regard to the same subject, thereby "having his cake and eating it too."⁶⁹

If the property constitutes interests in movables, the nature and extent of the forced share and the procedures for claiming the share are governed by the law of the state in which the decedent was domiciled at the time of his death.⁷⁰

C. Wills

1. Validity

The choice of law rules for determining the validity of wills are about the same as those governing intestate succession. The common law usually held that the validity of wills devising immovables was governed by the

64. § 473.675(2), RSMo 1959.

65. RESTATEMENT, § 253; § 473.675 (1), RSMo 1959; Lee's Summit Bldg. & Loan Ass'n v. Cross, 345 Mo. 501, 134 S.W.2d 19 (1939).

66. *Ibid.*; Wood v. Conqueror Trust Co., 265 Mo. 511, 178 S.W. 201 (1915); Lindsley v. Patterson, 177 S.W. 825 (Mo. 1915).

67. Colvin v. Hutchison, 338 Mo. 576, 92 S.W.2d 667 (1936).

68. Wood v. Conqueror Trust Co., *supra* note 66 (dictum). These situations are less likely to occur since election would normally first be made in the state of the decedent's domicil where the will would be established by probate.

69. Colvin v. Hutchison, *supra* note 67.

70. Richardson v. Lewis, *supra* note 62; § 473.675(1), RSMo 1959. Apparently here, also, the state of the situs of the chattels or documents might in extraordinary circumstances apply its own local law. *Cf.*, Locke v. McPherson, *supra* note 58.

law of the state where the land was located, and that the validity of wills bequeathing movables was governed by the law of the testator's domicile at the time of his death.⁷¹ The Missouri decisions concerning land generally follow the common-law rule.⁷² However, there has been some confusion among the Missouri cases as to whether the local law of the testator's domicile at the time of his death, or that of the place where the will was executed, or that of Missouri, should determine the validity of a will of movables which are located in Missouri.⁷³ An effort to resolve the matter seems to have been made with the enactment in 1957⁷⁴ of Section 473.675(2) of the Missouri Revised Statutes, which provides in part:

Real property of a testate nonresident decedent may be devised by his last will if duly executed according to the laws of this state, and his personal property may be bequeathed by his last will if duly executed according to the laws of this state or of the state in which it was executed.

Note that a literal reading of this section ignores the common-law view so that the validity of a will of movables is no longer determined by the testator's domicile at all,⁷⁵ but by the laws of Missouri or the laws of the state where the will is executed. Under these rules a single will may quite obviously be valid to dispose of part of the property it mentions, but invalid as to another part, and just as obviously this situation could result in substantial inequality. To avoid this result, there has been a strong trend toward applying any reasonably relevant law under which the will can be sustained rather than defeated.⁷⁶ It is questionable whether the Missouri courts will consider Section 473.675(2) as having abolished the common-

71. STUMBERG, *op. cit. supra* note 59, at 413; LEFLAR, *op. cit. supra* note 29, § 186.

72. § 473.675(2), RSMo 1959; *White v. Greenway*, 303 Mo. 691, 263 S.W. 104 (1924); *Thomas v. McGhee*, *supra* note 61; *Cunningham v. Kinnerk*, 74 S.W.2d 1107 (St. L. Mo. App. 1934).

73. See, e.g., *Nat v. Coons*, 10 Mo. 543 (1847) (domicil of testator); § 466.080, RSMo 1949 (domicil of testator); § 468.200, RSMo 1949 (Missouri or state where will is probated); *Cunningham v. Kinnerk*, *supra* note 72 (dictum in headnote) (state where will is executed). Also BOUR & PARKS, *MISSOURI ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF CONFLICT OF LAWS* § 306 (1937), for an analysis and discussion of this uncertainty.

74. Mo. LAWS 1957, at 860, § 1. The two statutes which appeared irreconcilable and created the confusion in the first instance have both been repealed. § 466.080, RSMo 1949 was repealed by Mo. LAWS 1957, at 860, § 9; and § 468.200, RSMo 1949 was repealed by Mo. LAWS 1955, at 385, § A.

75. The state where a will is executed will normally be the state of the testator's domicile at that time, but will not necessarily be his domicile at the time of his death.

76. Yiannopoulos, *Wills of Movables in American International Conflicts Law: A Critique of the Domiciliary "Rule,"* 46 CALIF. L. REV. 185 (1958).

law rule and as having substituted for it a rule by which validity of the will is determined according to the local laws of Missouri or of the state in which the will was executed, or will hold that these latter choices of law are intended to supplement the common-law domiciliary rule. The latter interpretation of the statute would appear preferable as applied to matters of both formal and substantive requirements inasmuch as it would clearly help to eliminate inequalities which might otherwise result.

2. Interpretation and Construction

As would be expected, the general rules of choice of law for purposes of construction and interpretation of wills are that if the testator designates any state's law, that state's law governs, and if no designation is made, wills of immovables are governed by the law of the situs of the land and wills of movables are governed by the law of the testator's domicil at death.⁷⁷ The Missouri cases are in harmony with these general rules except as they apply to land.⁷⁸ As concerns land, however, there is considerable confusion. On the one hand it is argued that the state of the situs has such an interest in all lands within its borders that its rules should apply to matters of construction and interpretation as well as to questions of validity of wills. On the other hand the argument is often made that a testator executes his will with the law of his domicil in mind and that in order best to effectuate those intentions they should be ascertained in light of the law of his domicil. This argument carries additional weight when the testator devises land in more than one state by a single will, for it would not be presumed that the testator intended the words to have one meaning in one state and another elsewhere. The Missouri courts do not make it clear whether by testator's domicil they mean domicil at death or domicil at the time of executing the will, but it would be supposed the latter meaning is intended, because the law of his domicil at the time of execution of the will would be most likely that which he intended to have control, and a change of domicil after the will was executed could hardly be considered to affect the meaning of the words used in the will.

The earliest Missouri decision appears to have preferred the law of the state in which the land was situated for purposes of construction and

77. LEFLAR, *op. cit. supra* note 29, at § 188.

78. *Spicer v. New York Life Ins. Co.*, 237 Mo. App. 725, 167 S.W.2d 457 (Spr. Ct. App. 1942); *Freund v. Schilling*, 222 Mo. App. 901, 6 S.W.2d 673 (K.C. Ct. App. 1928); *Bernheimer v. First Nat'l Bank of Kansas City*, 359 Mo. 1119, 225 S.W.2d 745 (En Banc 1950).

interpretation.⁷⁹ However, the next case chose that of the testator's domicil.⁸⁰ Since that time the cases have been almost equally divided between the choice of law of domicil and situs,⁸¹ and there appears no basis for distinguishing them, such as whether the land is in Missouri or the foreign state. Each line of cases seems to ignore those which have made the opposite choice, and the courts appear to have made no substantial effort to resolve the conflict. The *Restatement*⁸² and most authors⁸³ appear to favor the choice of the law of the situs, perhaps most often for the practical reason of enabling title examiners in the state of the situs to check all questions of title uniformly by the law of the situs. Still, most recognize a certain validity in the selection of the law of the domicil at the time of the execution of the will. In light of such discord, there appears little immediate hope for the certainty of the choice of any one state's local law governing construction of wills. Thus the estate planner would best be advised to designate the state whose local law he desires to have govern construction and interpretation of the will if he foresees any possible problems in this regard.

3. Probate

Where a testator dies domiciled elsewhere, but leaves property in Missouri, what effect, if any, will Missouri give to probate at his domicil or elsewhere? Probate of a will in another state constitutes a judicial proceeding which is entitled under the full faith and credit clause of the United States Constitution⁸⁴ to recognition in Missouri to the extent that the admitting court had jurisdiction. However, no foreign probate court has jurisdiction over real property situated in Missouri,⁸⁵ and it is doubtful whether a will of movables located in Missouri admitted to probate in a foreign state must be recognized as valid.⁸⁶ Therefore, probate in a for-

79. *Applegate v. Smith*, 31 Mo. 166 (1960).

80. *In re Estate of Riesenberg*, 116 Mo. App. 308, 90 S.W. 1170 (St. L. Ct. App. 1905).

81. *E.g.*, cases choosing the law of the situs of the land include *Crawford v. Arends*, 351 Mo. 1100, 176 S.W.2d 1 (En Banc 1943); *White v. Greenway*, 303 Mo. 691, 263 S.W. 104 (1924); *Dobschutz v. Dobschutz*, 279 Mo. 120, 213 S.W. 843 (1919). Among those decisions selecting the law of the testator's domicil are *Applegate v. Brown*, 344 S.W.2d 13 (Mo. 1961); *Zombro v. Moffett*, 329 Mo. 137, 44 S.W.2d 149 (1931); *Jones v. Park*, 282 Mo. 610, 222 S.W. 1018 (1920).

82. § 251.

83. *E.g.*, LEFLAR, *op. cit. supra* note 29, § 188 (1959); GOODRICH, *op. cit. supra* note 57, § 167.

84. U. S. CONST. art. 4, § 1.

85. *Keith v. Johnson*, 97 Mo. 223, 10 S.W. 597 (1889), overruling a number of earlier decisions.

86. MAUS, MISSOURI PROBATE LAW and PRACTICE, § 253, 3 MO. PRAC. (1959); *cf.*, *In re Toler's Estate*, *supra* note 56.

foreign court, although in no way detrimental to subsequent Missouri probate, is given only such effect as Missouri chooses to give, and in fact Missouri appears to give no effect to the foreign probate.⁸⁷ Thus, as to real or personal property located in Missouri, the Missouri courts clearly have probate jurisdiction conferred upon them by statute,⁸⁸ and probate proceedings must be had in Missouri.⁸⁹ The methods and procedures for establishing the will of one domiciled in another state are clearly spelled out by statute.⁹⁰

D. Administration⁹¹

Administration of decedents' estates is essentially local in nature. That is, each local administration is in theory wholly independent of others, whether the administration is principal or ancillary. However, an estate with properties in several states is nevertheless one unit for purposes of management, and the administration in any one state is dependent upon

87. *Keith v. Johnson*, *supra* note 85; *Gaven v. Allen*, 100 Mo. 293, 13 S.W. 501 (1890). *But cf. Cunningham v. Kinnerk*, *supra* note 72, where a will admitted to probate only in Kentucky was held admissible to show an interest in a Missouri trust fund, and was said to have the same force and effect as an unrecorded deed.

88. § 473.671, RSMo 1959. The situs of intangibles under this statute should be noted:

The courts of this state have jurisdiction over all tangible and intangible property of a nonresident decedent having a situs in this state. For the purpose of such jurisdiction it is recognized as to other states and countries, and declared with respect to this state, that the situs of debts, rights and choses in action which are embodied in legal instruments such as stock certificates, bonds, negotiable instruments, insurance policies payable to an estate and other similar items is in that state or country in which such legal instruments are located, so that whatever state or country has jurisdiction of such instruments has, and of right ought to have, jurisdiction to administer upon or otherwise direct the disposition of the debts, rights and choses in action which they embody, or voluntarily relinquish such jurisdiction to other states and countries. For such purposes the situs of other debts, rights and choses in action is where the debtor is found.

89. § 473.668, RSMo 1959. It should be noted that usually a will probated at the testator's last domicile is recognized as valid elsewhere, but Missouri does not follow that general rule. *GOODRICH, op. cit. supra* note 57, § 172.

90. §§ 474.370, 380, ch. 473, RSMo 1959. See also 3 MAUS, *op. cit. supra* note 86, at § 254-57; Maus, *Ancillary and Domiciliary Administration*, §§ 16.1-B, in Mo. EST. ADM. (MoBarCLE 1960).

91. For purposes of this discussion, there is no valid reason for distinguishing between executors and administrators. Therefore the term "administrator" as used here will refer to executors as well as administrators, and also to their female counterparts, unless otherwise specified.

On the general topic of administration of estates of nonresidents in Missouri, see MAUS, MISSOURI PROBATE LAW AND PRACTICE, ch. 33, 5 Mo. PRAC. (1959); Maus, *Ancillary and Domiciliary Administration*, ch. 16, in Mo. EST. ADM. (MoBarCLE 1960).

the administration elsewhere. This situation causes a great deal of inconvenience, especially inasmuch as the courts refuse to treat all the separate local administrations as units of a common scheme.⁹² Under such a system, in order to effectuate efficiency in administration, protect the rights of creditors, heirs, and other interested persons, and avoid waste, the conflict of laws rules are of especial importance.

1. Jurisdiction of State to Administer Estates

It is well established that Missouri or any other state has exclusive jurisdiction over the administration⁹³ of real and tangible personal property which is located within its borders,⁹⁴ irrespective of the domicile of the decedent, and irrespective of the value of the property.⁹⁵ It may likewise be stated that the state which is the situs of intangible property has jurisdiction to administer that property.⁹⁶ But what is the situs of an intangible? Until 1957 Missouri had followed the view that the situs of a chose in action not represented by any document was the domicile of the debtor.⁹⁷ The situs of an intangible embodied in a document was likewise the domicile of the debtor⁹⁸ except in the case of corporate stock. Some of the early Missouri cases held that the situs of corporate stock was the state of incorporation,⁹⁹ although that view had been effectively overruled.¹⁰⁰ However, in 1957 a legislative enactment provided that a chose in action not embodied in a document has its situs wherever the debtor can be found, and an intangible embodied in a document has its situs in the state wherein the document is physically located.¹⁰¹

92. LEFLAR, *op. cit. supra* note 83, at § 193.

93. Jurisdiction to administer a decedent's estate also includes authority to dispense with administration if the state so desires. Missouri does in fact dispense with the requirement of administration of personal property in the estate of a nonresident in certain instances. §§ 473.668-694, RSMo 1959.

94. § 473.671, RSMo 1959; MAUS, MISSOURI PROBATE LAW AND PRACTICE, § 1602, 5 Mo. PRAC. (1959). It should be noted that the domiciliary administrator of a Missouri resident has at least some indefinite duty to preserve the decedent's assets even though they have a foreign situs. *Bank of Seneca v. Morrison*, 200 Mo. App. 169, 204 S.W. 1119 (Spr. Ct. App. 1918).

95. *Turner v. Campbell*, 124 Mo. App. 133, 101 S.W. 119 (St. L. Ct. App. 1907).

96. § 473.671, RSMo 1959.

97. *Crohn v. Clay County State Bank*, 137 Mo. App. 712, 118 S.W. 498 (K.C. Ct. App. 1909); *Miller v. Hoover*, 121 Mo. App. 568, 97 S.W. 210 (K.C. Ct. App. 1906).

98. *Pinet v. Pinet*, 239 Mo. App. 500, 191 S.W.2d 362 (K.C. Ct. App. 1945).

99. *Troll v. Third Nat'l Bank*, 278 Mo. 74, 211 S.W. 545 (En Banc 1919).

100. *Lohmann v. Kansas City Southern Ry.*, 326 Mo. 819, 33 S.W.2d 112 (En Banc 1930).

101. § 473.671, RSMo 1959, quoted in full, *supra* note 88.

As a general rule, the situs of personal property is established by its location at the time of the death of the decedent.¹⁰² However, there is some authority to the effect that the situs is determined by the effective appointment of a local administrator who reduces the property to his possession. Thus if the property is moved to Missouri from another state before it has been reduced to possession by the administrator in that state it is subject to Missouri administration,¹⁰³ but if it is brought into Missouri after the foreign administrator has reduced it to possession, then the Missouri courts have no jurisdiction for purposes of administration.¹⁰⁴ The decedent's domicile also has jurisdiction for purposes of administration even though there are no assets located there.¹⁰⁵

From the foregoing it follows quite naturally that whenever a state has jurisdiction for purposes of administration, that state also has authority to appoint an administrator to conduct the administration,¹⁰⁶ and to prescribe rules as to qualification and conduct of that administrator.¹⁰⁷

2. Suits By or Against the Administrator

It is well settled as a general rule in Missouri that the power of an administrator in his representative capacity extends only to the state of his appointment, and therefore he may neither sue¹⁰⁸ nor be sued¹⁰⁹ in that official capacity outside the state of his appointment.¹¹⁰ To this general rule, however, certain exceptions must be recognized. Special statutory authority has permitted a foreign executor to bring an action for wrongful death in Missouri,¹¹¹ and a suit against a domiciliary admin-

102. MAUS, *supra* note 94.

103. Turner v. Campbell, *supra* note 95.

104. Hill v. Barton, 194 Mo. App. 325, 188 S.W. 1105 (K.C. Ct. App. 1916).

105. LEFLAR, *op. cit. supra* note 83, at § 192; GOODRICH, *op. cit. supra* note 57, at § 178.

106. §§ 473.668, .675, .681, RSMo 1959; Turner v. Campbell, *supra* note 95; RESTATEMENT, § 467.

107. §§ 473.117, .675, .681, .668, RSMo 1959; RESTATEMENT, § 468.

108. Turner v. Alton Banking & Trust Co., 166 F.2d 305 (8th Cir. 1948); Hartnett v. Langan, 282 Mo. 471, 222 S.W. 403 (1920); Crohn v. Clay County State Bank, *supra* note 97.

109. *In re* Thompson's Estate, 339 Mo. 410, 97 S.W.2d 93 (1936).

110. There is some question as to whether this rule would be applied in light of § 473.671, RSMo 1959, to documentary choses in action when the document is located in another state. Apparently the foreign administrator appointed at the situs of such property would be permitted to maintain an action in Missouri to enforce the documentary chose in action. MAUS, *MISSOURI PROBATE LAW AND PRACTICE*, § 1604, 5 Mo. PRAC. (1959).

111. Wells v. Davis, 303 Mo. 388, 261 S.W. 58 (1924); Demattei v. Missouri-Kansas-Texas R.R., 345 Mo. 1136, 139 S.W.2d 504 (1940).

istrator of a nonresident motorist was allowed under the Missouri "long-arm" statute.¹¹² It has also been held that if the administrator takes property of the estate into a jurisdiction other than that of his appointment, those beneficially entitled to the property may maintain an action in equity to reach that property.¹¹³

The general prohibition against suit by or against a foreign administrator extends to him only in his official capacity as the decedent's representative. Consequently, once he has reduced to his possession property of the decedent located in a foreign state and thereafter brings such property into Missouri, the foreign administrator may sue for the possession of this property in Missouri.¹¹⁴ He may also maintain an action in Missouri on a contract entered into in his official representative capacity.¹¹⁵ Likewise, a foreign administrator may sue in Missouri on a foreign judgment obtained in his capacity as administrator against a Missouri resident.¹¹⁶ But he may not sue in Missouri on a foreign judgment obtained either by the decedent¹¹⁷ or by a Missouri administrator.¹¹⁸ Neither is a foreign judgment against an ancillary administrator binding upon, or even evidence of a cause of action against, the Missouri domiciliary administrator.¹¹⁹

In almost all other particulars the administration of a nonresident decedent's estate having a situs in Missouri is treated "as if the decedent had been a resident of this state,"¹²⁰ and the procedural and substantive administrative rights and proceedings are governed by the local law of Missouri, except for non-documentary choses in action.¹²¹

IV. POWERS OF APPOINTMENT

No Missouri cases dealing directly with the choice of law governing powers of appointment have been found. However, there is no reason to

112. *State ex rel. Sullivan v. Cross*, 314 S.W.2d 889 (Mo. En Banc 1958).

113. *In re Thompson's Estate*, *supra* note 110.

114. *Miller v. Hoover*, *supra* note 97; *Hill v. Barton*, *supra* note 104. But this exception does not allow a foreign administrator to sue a debtor who, at the time of the decedent's death, resided in the state of appointment and later moved to Missouri. *Turner v. Campbell*, *supra* note 95.

115. *Wolf v. Sun Life Ins. Co.*, 75 Mo. App. 306 (K.C. Ct. App. 1898).

116. *Tittman v. Thornton*, 107 Mo. 500, 17 S.W. 979 (1891).

117. *Miller v. Hoover*, *supra* note 97.

118. *Wright v. Hetherlin*, 277 Mo. 99, 209 S.W. 871 (1919).

119. *First Nat'l Bank v. Dowdy*, 175 Mo. App. 478, 161 S.W. 859 (Spr. Ct. App. 1913); *First Nat'l Bank v. Blessing*, 231 Mo. App. 288, 98 S.W.2d 149 (K.C. Ct. App. 1936).

120. § 473.675, RSMo 1959.

121. §§ 473.688-.694, RSMo 1959; *Maus*, *supra* note 91; *Maus, Ancillary and Domiciliary Administration*, ch. 16, in *Mo. Est. ADM.* (MoBarCLE 1960).

believe that the Missouri courts would follow rules other than those of the common law. These, summarized very generally, are as follows: The law which determines validity of the creation of a power to dispose of property, movable or immovable, is the same as that which controls the validity of the type instrument in which the power is contained.¹²² The construction and interpretation of a power is usually determined by the law of the donor's domicile at the time of the execution of the instrument. The validity of the exercise of a power of appointment of land depends upon the law of the situs. The validity of the exercise of a power of appointment of movables depends upon the law of the domicile of the donor of the power at the time the power is created.¹²³

V. STATE TAXATION OF TRUSTS AND ESTATES

It is immediately apparent that almost all types of taxation may present problems of conflict of laws to those dealing with trusts and estates in Missouri. Property, both real and personal, which is in the hands of an administrator or trustee or other fiduciary may be subject to state and local property taxes, and income on such property may be subject to state income taxes and local earnings taxes. Jurisdiction to tax is a problem not only of conflict of laws, but of constitutional law as well, and may be based upon the fiduciary's domicile, the situs of the property, or any other of numerous factors. Inasmuch as these problems are not peculiar to estates or trusts, but are common to all general property and income taxation matters, they will not be dealt with here.¹²⁴

However, Missouri taxation on inheritance is a problem peculiarly applicable to decedents' estates, and should be examined in this discussion to the extent that it relates to nonresident decedents who leave property situated in Missouri, and to decedents domiciled in Missouri who leave property located elsewhere. The Missouri inheritance tax statute imposes a tax on "any property, real, personal, or mixed . . . when the transfer . . .

122. RESTATEMENT, §§ 232-34, 282-83, 294, comment g, 295, comment g. See on the subject of conflict of laws and powers of appointment generally, Mulford, *The Conflict of Laws and Powers of Appointment*, 87 U. PA. L. REV. 403 (1939), and Durand & Herterich, *Conflict of Laws and the Exercise of Powers of Appointment*, 42 CORNELL L. Q. 185 (1956).

123. 6 PAGE, WILLS § 60.19 (Bowe-Parker rev. 1962); GOODRICH, CONFLICT OF LAWS, §§ 175-77 (3d ed. 1949).

124. See the article in Part II of this symposium on state and local taxation by Anderson, *State Taxation and Boundary Lines*; Bittker, *The Taxation of Out-of-State Tangible Property*, 56 YALE L. J. 640 (1947); Merrill, *Jurisdiction to Tax—Another Word*, 44 YALE L. J. 582 (1935).

is from any person who is a resident of this state at the time of his death."¹²⁵ Despite such general language, however, only the real property and tangible personal property of the decedent which is actually located in Missouri is subject to the inheritance tax, even though the decedent is a Missouri resident.¹²⁶ Similarly, real and tangible personal property located in Missouri is subject to the inheritance tax of this state irrespective of the owner's domicile or residence at the time of his death.¹²⁷

Intangible personal property presents a more difficult problem. As seen earlier, the Missouri statute places the situs of intangible personalty in the state where the legal instruments or documents are located, or in the state where the debtor is found if the intangible right is not embodied in an instrument, for purposes of administration and disposition.¹²⁸ However, the Missouri inheritance tax statute places the situs of intangibles for purposes of such tax at the domicile of the owner.¹²⁹ The effects are that no Missouri inheritance tax is imposed on the transfer of intangible movables located in Missouri but owned by a nonresident, and intangibles owned by one domiciled in Missouri at the time of his death are subject to the inheritance tax no matter where they are located. One domiciled in Missouri is therefore well-advised in planning his estate to place any document representing intangible property within this state, inasmuch as it will be subject to the Missouri inheritance tax regardless of its location, in order to avoid any question of double taxation by having it taxed also at its situs.¹³⁰

125. § 145.020-1(1), RSMo 1959. For more complete analyses of the Missouri inheritance tax, see Rogers, *Estate Planning Problems in Missouri*, 31 U. KAN. CITY L. REV. 1 (1963); Sheets, *Missouri Inheritance Tax*, ch. 10 in MO. EST. ADM. (MoBarCLE 1960); Neuhoff, *Estate Planning Under the Missouri Inheritance Tax*, 23 MO. L. REV. 249 (1958).

126. Opinion of Attorney General of Missouri, July 12, 1934, CCH INH., EST. & GIFT TAX REP., Mo. ¶¶ 1605.80, 1610.80.

127. *Ibid.*

128. § 473.671, RSMo 1959. This statute is set out in full, *supra* note 88.

129. § 145.020.3(1), RSMo 1959. The proper place to levy an inheritance tax on intangibles has been the subject of much constitutional litigation in the United States Supreme Court. *E.g.*, State Tax Comm'r v. Aldrich, 316 U.S. 174 (1942), overruling First Nat'l Bank v. Maine, *supra*; Greenough v. Tax Assessors, 331 U.S. 486 (1947); Curry v. McCannless, 307 U.S. 357 (1939); First Nat'l Bank v. Maine, 284 U.S. 312 (1932); Baldwin v. Missouri, 281 U.S. 586 (1930); Farmer's Loan & Trust Co. v. Minnesota, 280 U.S. 204 (1930); Blodgett v. Silberman, 277 U.S. 1 (1928); Wheeler v. Sohmer, 233 U.S. 434 (1914); Blackstone v. Miller, 188 U.S. 189 (1903).

130. This is even more important in light of § 473.671, RSMo 1959, which could easily be construed by a court in the state where the instrument is located or the debtor is found as an invitation from Missouri to levy an inheritance tax there since the situs of intangibles "to administer upon or otherwise direct the disposition" is expressly placed in such foreign state.