D R A F T

FOR DISCUSSION ONLY

Conflict of Laws in Trusts and Estates Act

Uniform Law Commission

April 15 – 16, 2023 Committee Meeting

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March 23, 2023

Conflict of Laws in Trusts and Estates Act

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Prefatory Note

The Uniform Conflict of Laws in Trusts and Estates Act (this "act") continues much of the familiar common-law approach to conflict of trust and estate laws but updates, clarifies, and simplifies it to take account of the reality of modern practice.

[Note to the Committee: What follows will likely be recast as the Prefatory Note to a trusts article within our larger project that will include intestate succession and wills too.]

This act preserves the general emphasis on settlor discretion in choosing the applicable law to govern many aspects of a trust. This emphasis on settlor discretion is necessary for stability and predictably in practical planning. Moreover, it is familiar to practitioners and consistent with the law of many states, foreign countries, and international conventions.

However, to simplify and to take account of the reality of modern trust practice, this act modifies the traditional common-law approach to conflict of trust laws in three important ways: (1) by collapsing the distinction between real and personal property; (2) by recognizing the modern use of inter vivos trusts as will substitutes and thus de-emphasizing the distinction between testamentary and inter vivos trusts; and (3) by eliminating the application of different laws to matters of trust construction and interpretation. Additionally, as to matters of validity and administration, this act preserves separate rules based upon differing policy considerations, but those rules are simplified by the elimination of distinctions between real and personal property and between testamentary and inter vivos trusts. For recent scholarship advocating for the simplification of trust-conflicts rules, see Robert B. Niles-Weed and Robert H. Sitkoff, *The Twenty-First Century Revolution in Conflict of Trust Laws*, __ TUL. L. REV. __ (forthcoming 2023).

Real and Personal Property. First, this act rejects the historic distinction between movable and immovable property for purposes of ascertaining the governing law in trust matters. In other areas, however, application of the law of situs with respect to matters involving land remains important and is a defining characteristic of conflict of laws in common-law jurisdictions. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 223 (AM. L. INST. 1969) ("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."); LUTHER L. MCDOUGAL, III, ROBERT L. FELIX & RALPH U. WHITTEN, AMERICAN CONFLICTS LAW 573 (5th ed. 2001) ("The title to land is, in theory at least, always controlled by the local law of the situs of the land."). One reason for traditionally applying different choice-of-law rules to different types of property in the trust and estates context was that different rules of substantive succession law governed the distribution of movable and immovable property. In addition, the common law historically valued uniformity in the application of law with respect to land, insofar as "each parcel of land should be subject to the state in which it is situated, and that the law which would be applied by the courts of that state, whether its own local law or the local law of some other state, should be applied by the courts of all states." RESTATEMENT (SECOND) OF CONFLICT OF LAWS, ch. 10, topic 2, intro. note.

The rationale for a rigid and absolute application of the "situs rule" has been soundly criticized. *See, e.g.*, Joseph William Singer, *Property Law Conflicts*, 54 WASHBURN L. J. 129, 134 (2014) ("Despite the strength of the situs rule, there are clear cases where the situs has no legitimate interest in applying its law. When a person is domiciled in one state and owns real property in another, the domicile state has strong interests in determining who owns the domiciliary' s property upon divorce or death."); Christopher A. Whytock, *Situs and Domicile in Choice of Law for Succession Issues*, __ TUL. L. REV. __ (forthcoming 2023). Moreover, today the distinction in the substantive law of succession for movable and immovable property no longer exists. In addition, movable property in the form of investments and financial interests now make up a greater part of an individual's wealth, often on par with or in excess of the value in immovable property. *See generally* John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722 (1988). In short, in the modern day, an inflexible application of the situs rule seems difficult to justify both because it seems easy to avoid and because it seems difficult to defend in all instances, particularly in instances where the decedent and all the beneficiaries are located in one state and the land in another. In such a case, the "value judgments" regarding state public policies are more appropriate to belong to the "legislative competence" of the former state rather than the latter. SYMEONIDES, PRIVATE INTERNATIONAL LAW 267 (2008). That is the approach of this act.

Inter Vivos and Testamentary Trusts. Second, this act adopts a more modern approach to the application of the governing law with respect to inter vivos and testamentary trusts by declining to adopt a rigid distinction in the application of laws based upon whether a trust is testamentary or inter vivos. The traditional approach was justified by a now outdated view that testamentary trusts were part of an estate plan and that inter vivos trusts were to be treated as any other inter vivos transfer of property. In light of nonprobate revolution, the traditional justification is no longer persuasive. Today, the inter vivos revocable trust is *the* nonprobate substitute that "most resembles a will in nature and function" and "has replaced the will as the centerpiece instrument for property transfer at death." ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES 454, 475 (11th ed. 2022). Because inter vivos trusts are so commonly part of an integrated estate plan, the application of differing rules for conflict-of-laws purposes is no longer warranted. Once again, the more appropriate analysis — adopted by this act — involves balancing competing value judgments and state public policies.

Validity, Administration, Construction, and Interpretation. Third, this act simplifies the common-law rules that traditionally made distinctions between matters of trust validity, trust administration, trust interpretation, and trust construction. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 268 cmt. a, 277 cmt. a. This act streamlines the traditional approach by preserving separate rules for matters of validity and administration but collapsing the distinction between construction and interpretation.

Matters of validity of a trust involve a varying array of issues, such as the standards of capacity and free consent necessary to create a trust, the formal requirements of execution necessary to establish a trust, and the rules of substantive law that embody public policy limitations on a testator's authority or discretion in creating a trust. These matters raise distinct policy questions from matters of administration and from issues of construction and interpretation, insofar as they involve a balance between technical, often unimportant issues

(e.g., some formalities) and other issues that embody strong public policies for which a settlor's discretion should be limited (e.g., capacity). As a result, this act adopts different approaches for different matters of execution. With regard to formalities, the well-accepted approach of broad alternative rules of validation for trusts is preserved. With respect to substantive matters of validity, however, this act recognizes that the settlor's domicile is often the most important jurisdiction, and therefore its law is usually applied. *See, e.g.*, Section 4(a)(1) & (b)(2).

Issues of administration pertain to the management of the trust. This act preserves the general approach of allowing the settlor discretion to choose the applicable law to govern matters of administration unless its application violates a strong public policy of the state with the most significant relationship to the trust as to the matter at issue. This approach achieves a balance between allowing for stability and planning by the settlor and preservation and recognition of strong public policies. In instances in which the settlor has not chosen an applicable law or when the choice is ineffective, this act applies the law of the jurisdiction of the principal place of administration of the trust, unless application of that law would violate a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue. This act also recognizes that the law governing the administration of a trust may change if the jurisdiction with the most significant relationship to the trust changes.

Matters of construction and interpretation, unlike matters of administration, are purely matters of the settlor's intent. Insofar as the settlor could have provided for a substantive outcome in the terms of the trust, the choice of the applicable governing law on these matters is solely within the ambit of the settlor's discretion. Although construction and interpretation are conceptually different, the conflict-of-laws rules on these issues have been harmonized in this act for ease of application and in recognition of the practical reality that the doctrinal distinction between these two areas is often murky or unappreciated. Strictly speaking, matters of interpretation concern ascertaining the actual intent of the drafter, whereas matters of construction pertain to the probable intent of the settlor when there is a "gap in the instrument." *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 268 cmt. a; RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 11.3 cmt. c.

In a matter of interpretation of a trust instrument, a court will, as a factual matter, attempt to ascertain the intent of the settlor, traditionally based upon its own rules regarding admissibility of evidence. On matters of construction, however, courts traditionally applied the law chosen by the settlor or the law of the state with the most significant relationship to the trust. While the distinction between matters of interpretation and construction is perhaps conceptually sound, the application of different rules for conflict-of-laws purposes is unwarranted in practice. Consequently, this act simplifies this issue by applying the same rule for matters of construction and interpretation, namely, the law chosen by the settlor or, in the absence of a choice, the law of the state where the settlor was domiciled when the trust became irrevocable.

On many of the above matters, this act adopts an approach of generally granting the settlor wide discretion to choose the applicable law, limited by certain factors, namely, in matters of validity and administration that the choice of law by the settlor not violate a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue. Although this act does not attempt to specify what is or is not a strong public policy, it

does provide guidance for a court in ascertaining what state has the most significant relationship to the trust as to the matter at issue, both for purposes of ascertaining whether the settlor's choice of law is valid and in instances in which the settlor did not make a choice. In many instances, the distinctions between real and personal property held in trust and between testamentary and inter vivos trusts may be relevant considerations for a court in ascertaining the jurisdiction with the most significant relationship to the trust. But this act uses those distinctions only when important value judgments are at stake and only as competing factors rather than rigid distinctions to be employed in all cases.

Principal Place of Administration. This act also provides a list of considerations that courts may use in deciding the principal place of administration of a trust. This concept is important not only for purposes of ascertaining which court has primary supervision over a trust but also in deciding which jurisdiction has the most significant relationship to the trust. In many instances and on many matters, the jurisdiction that is most connected to the trust will be the state in which the trust is administered. Consequently, the concept of principal place of administration is doubly important and merits a detailed treatment in this act.

Application of Different Laws and Court Supervision. Finally, this act recognizes that the laws of different jurisdictions may be applicable to different aspects of the trust. It also adopts the principal place of administration test for ascertaining which court has primary supervision over a trust.

Summary of Act

Sections 1 and 2 provide the title of the act and definitions of terms used throughout the act.

Section 3 sets forth the scope of the act and the matters to which it does and does not apply. The act provides rules for ascertaining the governing law for the validity, administration, construction, and interpretation of a trust, as well as rules for ascertaining which court has primary supervision over a trust. It [this part] does not purport to specify rules for the validity of a will as a testamentary disposition, for the validity of a transfer to a trustee, or for matters purely external to the trust, such as matters of recordation or registration of title to trust assets and matters involving the protection of persons in dealing with a trustee or with trust assets.

Section 4 addresses validity and provides a multi-tiered approach to ascertaining the governing law. Section 4 prescribes that capacity and consent are determined not by the settlor's choice, but by the law of the settlor's domicile. As to matters of execution, however, a trust is valid if it is valid under the law of any state having a sufficient connection to the trust. For other matters of validity, such as whether a trust contains illegal conditions or improperly suspends the distribution of income, the settlor may choose the applicable law, provided the jurisdiction chosen has some substantial relationship to the trust and the choice does not violate a strong public policy of the state with the most significant relationship to the trust.

Section 5 prescribes rules for the determination of the applicable law on matters of construction and interpretation of a trust. It generally provides unfettered discretion for a settlor

to choose the applicable law, even in instances in which the chosen state has no connection to the trust. If the settlor has neglected to make a choice of the law applicable on these matters, the applicable law is the law of the jurisdiction in which the settlor was domiciled at the time the trust became irrevocable.

Section 6 provides rules to govern matters of trust administration. As with matters of construction and interpretation, the settlor generally has discretion to choose the applicable law. Unlike matters of construction and administration, however, the settlor's choice on this matter is limited to instances in which the choice does not violate a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue. In instances in which the settlor has not chosen the applicable law or when the choice made by the settlor is ineffective, Section 6 specifies that the applicable law is the law of the principal place of administration of the trust, provided application of such law does not violate a strong public policy of the jurisdiction with the most significant relationship to the trust. To aid in the application of this act and to assist in distinguishing matters of administration from matters of construction and interpretation, this section also provides an illustrative list of issues that constitute matters of administration.

Section 6 further acknowledges that in many instances the law governing a trust may change if the principal place of administration of a trust changes. The most prominent, modern application of this change in the applicable law will be as a result of decanting. *See* UNIF. TR. DECANTING ACT (UNIF. L. COMM'N 2015). This act also recognizes the existence and importance of the recent innovation of directed trusts and trust directors, *see, e.g.*, *id.*, by taking cognizance of their role in other sections of this act. *See, e.g.*, Sections 4(a)(2)(c), 6(c), 8(4), and 9(a)(1). *See generally* Jeffrey Schoenblum, *Directed Trusts and the Conflict of Laws*, __ TUL. L. REV. __ (forthcoming 2023).

Section 7 confirms the continuing applicability of the concept commonly known as *dépeçage*, which provides that either the settlor may choose or the court may apply the laws of different jurisdictions to different aspects of the trust, such as the law of State X for one aspect of administration and the law of State Y for a different aspect of administration.

Section 8 provides a list of factors and considerations for courts to use in ascertaining which jurisdiction has the most significant relationship to the trust. Determining which jurisdiction has the most significant relationship to the trust is one of the most important concepts in ascertaining the applicable law governing the trust and thus merits separate consideration in this section. The concept of "most significant relationship" is referred to and used throughout this act. *See, e.g.*, Sections 4(b), 6(a), 6(b), and 8.

Section 9 provides a list of factors and considerations for courts to use in ascertaining which jurisdiction is the principal place of administration of the trust. The concept of principal place of administration is important not only for ascertaining which court has primary supervision over the trust (see Section 10) but also, in many instances, for ascertaining which jurisdiction has the most significant relationship to the trust (see Section 8). Following the Uniform Trust Code and the Uniform Directed Trust Act, this Section allows the terms of the trust to designate the trust's principal place of administration, provided that the choice is of the

law of a jurisdiction where certain minimally sufficient administrative activity occurs. In instances in which the terms of the trust have not designated the trust's principal place of administration, this Section provides factors for a court to consider based upon the place of business and domicile of the trustees, the place where the will establishing the trust was probated, and various other factors.

Section 10 specifies that a court of a state has primary supervision over a trust if the principal place of administration of the trust is located in that jurisdiction. Courts in other states, in some instances, may also exercise supervision over the trust, but, under this act, those courts should decline to exercise supervision if doing so would unduly interfere with the supervision of the trust by the court that has primary jurisdiction.

Sections 11 through 15 concern principles of law and equity, uniform application of the act, repeal of inconsistent laws, and the effective date of the act.

Conflict of Laws in Trusts and Estates Act

Section 1. Title

This [act] may be cited as the Conflict of Laws in Trusts and Estates Act.

Reporter's Notes

The title of the act will need to be confirmed and approved by the appropriate ULC body.

Section 2. Definitions

In this [act]:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Jurisdiction" means a state, a foreign country, or, in the absence of laws governing trusts prescribed by a foreign country, the applicable political subdivision of a foreign country that has prescribed laws governing trusts.

(3) "Law" means the law of a jurisdiction exclusive of its conflict-of-laws rules, except as otherwise indicated.

(4) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

[(6) "Power of direction" means a power over a trust granted to a person by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the following powers:

(A) power of appointment;

(B) power to appoint or remove a trustee or trust director;

(C) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(D) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(i) the beneficiary; or

(ii) another beneficiary represented by the beneficiary [under Uniform Trust Code Sections 301 through 305] with respect to the exercise or nonexercise of the power; or

(E) power over a trust if:

(i) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(ii) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986 [, as amended][, and regulations issued thereunder][, as amended].]

(7) "Revocable" means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(8) "Settlor" means a person, including a testator, that creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(9) "Sign" means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(10) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(11) "Terms of a trust" means:

(A) except as otherwise provided in subparagraph (B), the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law; [or]

(ii) court order[; or

(iii) a nonjudicial settlement agreement under [Uniform Trust Code Section 111]].

[(12) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.]

(13) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Legislative Note*: The definition of "terms of a trust" in paragraph (11) follows the Uniform Directed Trust Act (2017) as well as the Uniform Trust Decanting Act and Uniform Trust Code*

as those acts were amended in 2018 to conform to the Uniform Directed Trust Act. Thus, a state that has enacted the definition of "terms of a trust" from the Uniform Directed Trust Act or the as-revised identical definition from the Uniform Trust Decanting Act or Uniform Trust Code could cross-reference that definition. A state that has enacted the prior definition from an older version of Uniform Trust Decanting Act or Uniform Trust Code, or that otherwise has a state statute defining "terms of a trust" in a way inconsistent with paragraph (11), should replace or update that definition to conform to paragraph (11).

A state that has enacted Uniform Trust Code section 103(14), (15), and (20) could replace paragraphs (7), (8), and (13) of this section with cross-references to those provisions.

A state that has not enacted Uniform Trust Code section 111 should replace the bracketed language of paragraph (11)(B)(iii) with a cross reference to the state's statute governing nonjudicial settlement or should omit paragraph (11)(B)(iii) if the state does not have such a statute.

A state that has not enacted Uniform Directed Trust Act should substitute the state's appropriate definitions of "power of direction" and "trust director" in the bracketed language in paragraphs (6) and (12). A state that has enacted Uniform Directed Trust Act sections 2(5), 2(9), and 5(b) could replace paragraphs (6) and (12) of this section with cross-references to those provisions.

[<u>Note to the Committee</u>:

(1) As explained below in Reporter's Note (2), the term "jurisdiction" is defined in a way that differs from some other uniform acts, so as to include within the definition of jurisdiction not only foreign countries but also political subdivisions of federal countries when trust law is not prescribed at the national level but a level of the province or territory, as, for example, in Canada or Australia.

(2) The term "power of direction" is defined because of its use within the definition of the term "trust director." Incorporating the definition of "power of direction" within the term "trust director" proved cumbersome and unworkable, so this section provides separate definitions of each term.]

Reporter's Notes

(1) *Electronic*. The definition of "electronic" is the standard Uniform Law Commission definition.

(2) *Jurisdiction*. The term "jurisdiction" is broadly defined in this act to ensure the applicability of this act to trusts established under or governed by the laws in foreign countries as well as the various American states, as a trust may have its principal place of administration in a country other than the United States. In situations in which the law of a foreign country does not prescribe applicable trust law, the law of the relevant political subdivision of the foreign country that does prescribe trust law should be applied. For example, the term "jurisdiction" should be understood to refer to Quebec law for a trust created under the law of Quebec, as Canadian law does not prescribe trust law.

(3) *Law*. The definition of "law" as used in this act refers to a jurisdiction's "internal" law, rather than the "whole" law of a jurisdiction. In doing so, this act generally excludes

application of the concept of *renvoi* under which a jurisdiction's conflict-of-laws rules are considered. Consequently, this act allows the courts of a state to apply the law of another jurisdiction without consideration of the other jurisdiction's conflict-of-laws rules. This approach accords with modern conflict-of-laws codifications. *See, e.g.*, RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 5.06 (Tentative Draft No. 3 March 2022); LA. CIV. CODE art. 3517.

(4) *Person*. The definition of "person" is the standard Uniform Law Commission definition.

(5) *Power of direction*. The definition of "power of direction" is taken from the Uniform Directed Trust Act sections 2(5) and 5(b). The meaning of that term and its operation within the Uniform Directed Trust Act is explained in John D. Morley & Robert H. Sitkoff, *Making Directed Trusts Work: The Uniform Directed Trust Act*, 44 ACTEC L.J. 3, 10-30 (2019).

(6) *Record*. The definition of "record" is the standard Uniform Law Commission definition.

(7) *Revocable*. The definition of "revocable" is taken from the Uniform Trust Code section 103(14). It refers to trusts "whose revocation is substantially within the settlor's control." UNIF. TR. CODE § 103(14) cmt.

(8) *Settlor*. The definition of "settlor" in taken from the Uniform Trust Code section 103(15) and the Uniform Directed Trust Act section 2(6).

(9) *Sign*. The definition of "sign" is the standard Uniform Law Commission definition.

(10) *State*. The definition of "state" is the standard Uniform Law Commission definition.

(11) *Terms of a trust*. The definition of "terms of a trust" is taken from the Uniform Directed Trust Act section 2(8) and Uniform Trust Code section 103(18) and recognizes that court orders and nonjudicial settlement agreements, both of which are of growing practical significance, are sometimes used to vary the terms of a trust from a settlor's original intent. The definition also takes notice of a power in a trustee or a trust director to modify the terms of a trust. The expanded definition of "terms of a trust" in this paragraph is consistent with the Restatement, which recognizes the possibility that the terms of a trust may later be varied from the settlor's initial expression. *See* RESTATEMENT (THIRD) OF TRUSTS § 76 cmt. b(1) (2007) ("References . . . to the terms of the trust . . . also refer to trust terms as reformed or modified by court decree, and as modified by the settlor or others or by consent of all beneficiaries.").

(12) *Trust director*. The definition of "trust director" is taken from the Uniform Directed Trust Act section 2(9).

(13) *Trustee*. The definition of "trustee" is taken from the Uniform Directed Trust Act section 2(8), and follows the Uniform Trust Code section 103(20), which provides that the term "trustee" includes an original, additional, and successor trustee, and a cotrustee.

Section 3. Scope

(a) This **[act]** applies only to matters of conflict of laws pertaining to:

(1) the validity of a trust and the terms of a trust;

(2) the construction and interpretation of the terms of a trust;

(3) trust administration; and

(4) court supervision over administration of a trust.

(b) This **[act]** does not apply to matters of conflict of laws pertaining to:

(1) the validity of a will;

(2) the validity of a transfer to a trustee;

(3) the recordation or registration of title to trust assets; and

(4) the protection of a person other than a beneficiary or a trust director in dealing with a trustee or with trust assets, subject to Sections 4, 5, and 6.

[Note to the Committee:

(1) The term "act" as used subsections (a) and (b) (and throughout this act) will need to be modified once this act is incorporated into a broader uniform act that governs estates as well as trusts.

(2) At the meeting of September 30, 2022, the Committee suggested that the phrase "including a trust's duration" be included in subsection (a)(1) regarding validity. Implementing the Committee's suggestion proved problematic, as trust duration may in some instances not be a matter of validity but rather a matter of construction or interpretation. When trust duration does implicate a matter of validity of the trust or the terms of the trust, trust duration is governed by Section 4(b).]

Reporter's Notes

This section sets out the scope and applicability of this act. Matters to which this act applies pertain to the validity of the trust, which is governed by Section 4; matters of construction and interpretation of the terms of the trust, which is governed by Section 5; matters of trust administration, which is governed by Section 6; and supervision of courts over a trust, which is governed by Section 10.

Matters to which this act does not apply include the validity of a will as a testamentary disposition and include issues of whether a will was executed in an appropriate format or

whether the testator, at the time of execution of will, lacked capacity or was subject to fraud, duress, or undue influence. To the extent that a will is affected by fraud, for example, and includes a trust, the invalidity of the will could also correspondingly result in the trust created by the will being invalid. This is not, however, a matter subject to this [act/part] and appropriate disposition of the validity of the trust would be dependent in this case on the validity of the will. Although the Restatement prescribes rules regarding the validity of wills as testamentary dispositions, it does so by referencing the rules regarding the validity of wills. *See, e.g.,* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 269 cmt. a (referencing the law of domicile for the validity of trusts created by will that involved personal property and the law of the situs for the validity of trusts created by will that involved real property). *See also id.*; RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 263; Hague Convention on the Law Applicable to Trusts and on Their Recognition art. 4, July 1, 1985, 23 I.L.M. 1388 [hereinafter Hague Trust Convention] ("The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.").

Similarly, this act does not apply to matters regarding the validity of a transfer to a trustee. Under basic principles of trust law, a trust in some instances may not be created until a trust *res* exists or until the trustee receives property. *See, e.g.*, UNIF. TR. CODE § 401(1) & cmt.; RESTATEMENT (THIRD) OF TRUSTS §§ 10, 40. As a result, the failure to effect a transfer of property to the trustee could cause the invalidity of a trust. Despite Section 4's application to other matters of validity regarding a trust, this Section expressly excludes from the applicability of this act the validity of a transfer to a trustee. Other areas of law regarding the validity of inter vivos transfers or transfers by will may be applicable, rather than this act.

In addition, this act does not apply to matters pertaining to the recordation or registration of title to trust assets or generally the protection of persons other than a beneficiary or a trust director in dealing with trust assets. The historic justification for application of the rigid situs rule regarding trusts of real property was that third persons concerned with real estate would be subject to a "greater burden, . . . if they could not always assume that the local law of the situs would be applied" and that certainty and predictability were necessary for land titles. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 236 cmt. a. This justification is persuasive insofar as a state may have an interest in ensuring the applicability of its recordation system when immovable property within its borders is involved. Similarly, a jurisdiction may justifiably seek to apply its good faith purchaser doctrine or law of adverse possession when real estate is located within a state. Unfortunately, the situs rule has been applied broadly and pervasively and resulted in all trust matters, even those purely internal to the trust, to the law of the jurisdiction of the situs of the real property. The rationale for doing so is less compelling when the matter does not involve persons or other issues external to the trust. As a result, this act removes certain external matters from application of this act and therefore avoids overuse of the broad situs rule to matters internal to the trust. At the same time, this act allows a state to apply its general law to protect its recording system and third parties without interference or application of this act.

Subsection (b)(4) also contains an important qualification to the above, namely that it is subject to Sections 4, 5, and 6 of this act. In other words, if a matter connected with a person who is not a beneficiary or trust director also deals with an issue of trust validity, administration, or interpretation and construction, this act would apply to such matters. For instance, if there is a

question of whether a trustee under the terms of a trust has authority to perform an action, this question may involve application of construction of the trust instrument pursuant to Section 5.

This section differs from current law and from the Hague Trust Convention. The Restatement provides differing rules for validity, depending upon whether a trust involves land or personal property and whether the trust is a testamentary or inter vivos one. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 269, 270, 278. The Hague Trust Convention maintains a unified approach for the law applicable to validity, administration, construction, and effects. *See* Hague Trust Convention art. 8.

Section 4. Validity

(a) A trust is valid:

(1) regarding matters of capacity and consent, if the trust is valid as to matters of capacity and consent under the law of the jurisdiction in which the settlor was domiciled either at the time of execution or at the time the trust became irrevocable, provided all matters of capacity and consent shall be assessed under the law of the same jurisdiction.

(2) regarding matters of execution, if the trust is valid as to matters of execution under any of the following:

(A) the law at the time of execution of the jurisdiction in which the settlor was physically located when the trust instrument was executed;

(B) the law of the jurisdiction in which the settlor was domiciled, had an abode, or was a national, at the time of execution or at the time of death;

(C) the law of the jurisdiction in which a trustee or a trust director was domiciled or had a place of business at the time of execution; or

(D) the law of the jurisdiction in which any trust property was located at the time of execution.

(b) Regarding matters of creation and validity not provided for in subsection (a),

(1) a trust and the terms of a trust are valid, if the trust and the terms of the trust

are valid as to the matter at issue under the law of the jurisdiction designated by the settlor in the terms of the trust to govern validity of the trust, unless the designated jurisdiction has no substantial relation to the trust or the application of the law of the designated jurisdiction violates a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue, in which case the law of the jurisdiction with the most significant relationship to the trust as to the matter at issue shall govern;

(2) when no law has been designated by the settlor to govern matters of creation and validity of a trust under paragraph (1), matters of creation and validity not provided for in subsection (a) shall be governed by the law of the jurisdiction in which the settlor was domiciled at the time the trust became irrevocable, unless application of that law violates a strong public policy of the jurisdiction that has the most significant relationship to the trust, in which case the law of the jurisdiction that has the most significant relationship to the trust shall govern as to the matter at issue.

Legislative Note*: A state that has enacted Uniform Trust Code section 403 (amended 2010) pertaining to "trusts created in other jurisdictions" or which has comparable applicable laws should repeal those provisions to be replaced by this section.*

[Note to the Committee:

(1) This section does not attempt to define the terms "capacity," "consent," "execution," or "creation" but instead relies on the traditional understanding of these terms as used in case law and in other uniform acts.

(2) This section also does not attempt to define the term "domicile," which is important for conflict-of-laws purposes but has been subject to frequent litigation. Standard definitions of domicile include those of the Restatement (Second) of Conflict of Laws section 11(1) (1971) (defining "domicile" as "a place, usually a person's home" and accords significance to that place "because of the person's identification with that place") and the tentative draft of the Restatement (Third) of Conflict of Laws section 2.01(2) and (3) (Am. L. Inst., Tentative Draft No. 1, 2020) (presuming that one's domicile, for natural persons, is the place where one's "life is centering for resolving choice-of-law issues" and, for juridical persons, where its "principal place of business for resolving a particular choice-of-law issue" is located). For further discussion of the meaning and application of the concept of domicile in conflict of laws, see PETER HAY ET AL., CONFLICT OF LAWS ch. 4 (6th ed.

2018); RUSSEL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS ch. 2 (6th ed. 2010); LUTHER L. MCDOUGAL, III ET AL., AMERICAN CONFLICT OF LAWS ch. 2 (5th ed. 2001).

(3) Subsection (b) does not attempt to spell out what issues are included in matters "not provided for in subsection (a)," but the comment (below) does list some examples, i.e., the rule against perpetuities, the rule against suspension of income, illegal conditions, etc.]

Reporter's Notes

Subsection (a) recognizes that the modern use of an inter vivos trust is predominantly as a will substitute and correspondingly adopts unified conflict-of-laws rules for validity, similar to those for wills, for both inter vivos and testamentary trusts.

Matters of capacity and consent. Matters of capacity and consent generally involve issues of disability related to minority, incompetence, and insanity, as well as the conduct of third parties that taint the free expression of a settlor's consent, such as fraud, duress, or undue influence. These matters are sometimes referred to as "intrinsic validity." *See, e.g.*, GEORGE GLEASON BOGERT ET AL., BOGERT'S LAW OF TRUSTS AND TRUSTEES § 293 ("The question of 'intrinsic validity' of a will or trust instrument usually relate to the competency or capacity of the person creating the will or trust instrument, or to fraud, undue influence, or another factor invalidating its creation."); N.Y. EST. POWERS & TRUSTS § 3-5.1(a)(4). Unlike matters of formal execution of a trust instrument, which are generally accorded liberal flexibility, a jurisdiction may have a stronger interest in ensuring that its standard of capacity for execution of a trust is complied with when it differs from other states. *See, e.g.*, UNIF. TR. CODE § 601 ("The capacity required to create . . . a revocable trust . . . is the same as that required to make a will."); RESTATEMENT (THIRD) OF TRUSTS § 11(3) ("A person has capacity to create an irrevocable inter vivos trust by transfer to another or by declaration to the same extent that the person has capacity to transfer the property inter vivos free of trust in similar circumstances."). Similarly, jurisdictions may have different standards and particular interests in ensuring that a settlor's consent to create a trust was freely given and not affected by fraud, duress, or undue influence. *See, e.g.*, UNIF. TR. CODE § 406 ("A trust is void to the extent its creation was induced by fraud, duress, or undue influence.").

This Section adopts the approach advocated by some scholars of finding capacity and free consent to exist if the settlor had capacity and free consent under the law of the jurisdiction of domicile either at the time of execution or a later time, such as the time the trust became irrevocable. *See generally* Symeon Symeonides, *Exploring the "Dismal Swamp": The Revision of Louisiana's Conflicts Law on Successions*, 47 LA. L. REV. 1029, 1053 (1987); SYMEON SYMEONIDES, CODIFYING CHOICE OF LAW: AN INTERNATIONAL COMPARATIVE ANALYSIS 253 (2014); 4 ERNST RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 322 (1968). Care, however, has been taken to ensure that the law of only a single jurisdiction is used in assessing both capacity and free consent, as to do otherwise could result in a trust was not valid under the law of any one particular jurisdiction but treated as valid only because the laws of one state were used to assess capacity while the laws of another state were employed to evaluated free consent. *See, e.g.*, Ronald J. Scalise Jr., *Validity in Wills and Trusts: Conflict Rules in Search of a Theory*,

__ TUL. L. REV. __ (forthcoming 2023). For example, if a settlor executes a revocable inter vivos trust in State A but dies in State B after having acquired a new domicile there, whether the settlor had capacity and was subject to undue influence must be assessed under either the law of State A or the law of State B. If the settlor had capacity and free consent under the law of either State A or State B, the trust will be valid. State A's law cannot be used only for matters of capacity, while State B's law is used to assess free consent.

Matters of execution. Matters of execution involve compliance with the formal execution of an instrument, such as a writing requirement. A jurisdiction's interest in enforcing its own laws on formal execution is typically less significant than the protective functions served by the law of capacity and free consent. Thus, this act, like the Uniform Trust Code and the Uniform Probate Code, adopts a broad validating principle on matters of form. *See* UNIF. TR. CODE § 403; UNIF. PROB. CODE § 2-506. After all, "[i]t is improbable that the settlor intended to execute an instrument wholly or partially invalid." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 270 cmt. d. With respect to formal validity, "[i]f the settlor creates a trust to be administered in one state and is domiciled in another state at the time of the creation of the trust or at the time of his death, the trust is valid if valid under the local law of either of the states." *Id.* Because not all jurisdictions impose identical form requirements for the creation of a trust, a broad validating rule is necessary to sustain the validity of trusts generally. *See, e.g.*, FLA. STAT. ANN. § 736.0403(2)(b) ("The testamentary aspects of a revocable trust, executed by a settlor who is a domiciliary of this state at the time of execution, are invalid unless the trust instrument is executed by the settlor with the formalities required for the execution of a will in this state. For purposes of this subsection, the term 'testamentary aspects' means those provisions of the trust instrument that dispose of the trust property on or after the death of the settlor other than to the settlor's estate."); LA. REV. STAT. 9:1752 ("An inter vivos trust may be created only by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the settlor or by the affidavit or one of the attesting witnesses."); Hague Trust Convention art. 3 ("The Convention applies only to trusts created voluntarily and evidenced in writing.").

Although subsection (a)(2) borrows from existing law on the validity of the matter of formal execution of trusts, existing laws are not without controversy. *See generally* Scalise, *Validity in Wills and Trusts*, *supra*, at __. For example, use of the law of a jurisdiction in which the settlor has an "abode" has been criticized as being no clearer than the traditional terms of "domicile" or "habitual residence." *See, e.g.*, Jeffrey Schoenblum, *Multijurisdictional Estates and Article II of the Uniform Probate Code*, 55 ALB. L. REV. 1291, 1294 (1991-92); Scalise, *Validity in Wills and Trusts*, *supra*, at __. Moreover, use of the law of the settlor's "nationality" can also raise questions when the settlor has more than one nationality or when the law of a particular nation does not prescribe rules regarding trusts. *See id*. Under this act, a settlor with more than one nationality would be allowed to use the law of any of the jurisdictions in which the settlor is "a" national. F.A. Mann, *The Formal Validity of Wills in Case of Dual Nationality*, 35 INT'L L. Q. 423, 424 (1986). Thus, settlors with more than one nationality are afforded additional options of alternative validating laws. When a settlor is a national of a non-unified or composite jurisdiction that does not prescribe trust law on a national level, the law of "the jurisdiction in which the settlor was . . . a national" should be considered to be the law of political subdivision of the nation that does prescribe laws pertaining to trusts. *See, e.g.*, Section

2(2) (defining jurisdiction to include political subdivisions of a foreign country when the laws of a foreign country do not prescribe laws governing trusts). The approach of this act is consistent with the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions and the English Wills Act but differs from the Uniform Trust Code and the Uniform Probate Code on this matter. *Compare* Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions art. 1, Oct. 5, 1961, 510 U.N.T.S. 175, *and* Eng. Wills Act § 6(2) (1963), *with* UNIF. PROB. CODE § 2-506, *and* UNIF. TR. CODE § 403.

All other matters of creation and validity. Creation of a trust may involve other matters in addition to capacity, consent, and formal execution of a trust instrument. As such, a trust or various provision thereof may not be effective because the trust violates some other rule for creation or validity. *See, e.g.*, UNIF. TR. CODE § 402 (providing, among other things, that a trust is created only if the settlor indicates an intent to create a trust, the trust has definite beneficiaries, and the trustee has duties to perform). In addition, a trust may be invalid because it violates the rule against perpetuities or the rule against suspension of income, because the trust contains an illegal condition, or for a variety of other reasons. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 269 cmt. a. The matter of duration of a trust is also a matter of creation and validity subject to subsection (b). Depending upon the applicable law, a trust may either be invalid or the term of the trust regarding duration may be invalid and subject to reformation, if the trust violates the applicable state law regarding the rule against perpetuities.

With regard to these "other matters of creation and validity," subsection (b)(1) allows the settlor to choose the applicable law, provided the chosen jurisdiction has a substantial relationship to the trust and the chosen jurisdiction does not violate a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue. This section is consistent with the Restatement in generally allowing a settlor to choose the law of a particular jurisdiction to govern validity for trusts of movables but differs insofar as the Restatement applies the situs rule for trusts involving real estate. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 269, 270(a), 278. Like the Restatement, this section limits the settlor's choice to the extent such a choice does not violate a strong public policy of the state with the most substantial relationship to the trust. *See also Russell v. Wachovia Bank, N.A.*, 578 S.E.2d 329, 335 (S.C. 2003) (upholding the validity of various trusts and noting that "a testator may designate the local law to govern the validity of the trust unless application of the designated law would be contrary to public policy of the state of testator's domicile at death" and unless the selected state did not have a substantial relation to the trust). To ascertain the jurisdiction with the most significant relationship to the trust, see Section 8. This section differs from the Hague Trust Convention, which maintains a unified approach for the law applicable to validity, administration, construction, and effects. *See* Hague Trust Convention art. 8.

Subsection (b)(2) provides the rule for determining the applicable law when the settlor has failed to designate an applicable law. In such a case, the applicable law will usually be the law of the jurisdiction in which the settlor was domiciled at the time the trust became irrevocable. In the opinion of the drafting committee, the law of the settlor's domicile at the time the trust becomes irrevocable will ordinarily be the jurisdiction with the most significant relationship to the trust. Consequently, in the interest of efficiency and predictably, the law of the settlor's domicile is used as the default rule under this subsection rather than the more

amorphous test of the jurisdiction with the most significant relationship to the trust. Just as in the prior subsection, however, the law of the jurisdiction with the most significant relationship to the trust is still relevant and applicable when application of the law of the settlor's domicile would violate a strong public policy of the jurisdiction that has the most significant relationship to the trust.

Strong Public Policy Exception. Subsection (b) adopts the long-standing "strong public policy" exception to matters that are within the settlor's choice. In other words, this act generally accords broad flexibility to the settlor in choosing the applicable law, but not insofar as the choice of law would be counter to the strong public policy of the state with the most significant connection to the trust. Like other uniform acts, this act "does not attempt to specify the strong public policies sufficient to invalidate a settlor's choice of governing law. These public policies will vary depending upon the locale and may change over time." *See* UNIF. TR. CODE § 107 cmt. The Hague Trust Convention also recognizes that there are certain public policies for which the forum may decide to override the choice of law that would otherwise apply. *See* Hague Trust Convention art. 15. The Uniform Probate Code similarly provides that a testator may not choose the applicable law regarding matters of the elective share, exempt property and allowances, "or other [matters of] public policy of this state otherwise applicable to the disposition." UNIF. PROB. CODE § 2-703.

Section 5. Construction and Interpretation

(a) Regarding matters of construction and interpretation, a trust is governed by the law designated by the settlor in the terms of the trust for that purpose.

(b) When no law has been designated pursuant to subsection (a), matters of construction and interpretation of a trust shall be governed by the law of the jurisdiction in which the settlor was domiciled at the time the trust became irrevocable.

Reporter's Notes

Settlor Autonomy. Subsection (a) provides the general rule of unlimited settlor autonomy to select the law governing the construction and interpretation of the trust. It is consistent with the Restatement and with other international conventions and codifications. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 268(1), 269(b)(i), 270(a), 271(a), 272(a), 277(1); *see also* Hague Trust Convention art. 6 ("A trust shall be governed by the law chosen by the settlor."); Conflict of Laws Rules for Trusts Act, R.S.B.C. 1996, ch. 65, § 3(1) (B.C.) ("A trust is governed by the law chosen by the settlor, which choice may be express or implied."). It is similar to the approach on this matter provided by the Uniform Trust Code, which also grants a settlor a broad ability to choose the applicable law even the law of jurisdiction with little or no connection to the trust. Under the Uniform Trust Code, "[t]he settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor's lifetime." UNIF. TR.

CODE § 107 cmt. In some instances, for example, a settlor may expressly provide that "the law of State A will govern matters of construction and interpretation of the trust." In other instances, ascertaining whether the testator designated a law for the purpose of construction and interpretation may itself be a matter of construction or interpretation, such as when a settlor without expressly referencing the concepts of construction or interpretation more generally provides that "the law of State A will govern the trust."

This section differs from the Uniform Trust Code, however, insofar as it does not provide a limitation on the settlor's discretion in choosing the applicable law to govern matters or construction and interpretation. *See* UNIF. TR. CODE § 107 ("The meaning and effect of the terms of a trust are determined by . . . the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue."). Nineteen states have similarly deviated from the approach of the Uniform Trust Code on this issue. *See, e.g.*, Thomas P. Gallanis, *Trusts and Choice of Law: What Role for the Settlor's Choice and the Place of Administration?*, __ TUL. L. REV. __ (forthcoming 2023) (citing ARIZ. REV. STAT. § 14-10107; FLA. STAT. § 736.0107; 760 ILL. COMP. STAT. 3/107; KANS. STAT. § 58a-107; 203E; MASS. GEN. LAWS 203E § 107 (reserved); MINN. STAT. § 501C.0107; MISS. CODE ANN. § 91-8-107; NEB. REV. STAT. § 30-3807; N.H. REV. STAT. § 564-B:1-107; N.C. GEN. STAT. § 36C-1-107; N.D. CENT. CODE § 59-09-07; OHIO REV. CODE § 5801.06; 20 PA. CONS. STAT. § 7707; S.C. CODE ANN. § 62-7-107; TENN. CODE ANN. § 35-15-107; UTAH CODE § 75-7-107; W. VA. CODE § 44D-1-107; WIS. STAT. § 701.0107; WYO. STAT. § 4-10-107).

Unifying Construction and Interpretation. This section unifies the rules governing the applicable law for matters of interpretation and construction, unlike the Restatement, which provided different rules governing matters of interpretation and construction.

Traditionally, matters of interpretation concern ascertaining the actual intent of the drafter, whereas matters of construction pertain to the probable intent of the settlor when there is a "gap in the instrument." RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 268 cmt. a, 277 cmt. a. In a matter of interpretation of a trust instrument, a court will, as a factual matter, attempt to ascertain the intent of the settlor, which under the Restatement was done based upon a court's own rules regarding admissibility of evidence. *Id.* §§ 268 cmt. a, 277 cmt. a. For example, if the settlor names Mary as a beneficiary of the trust, it is a matter of interpretation based upon admissible evidence under local law whether it can be established that the settlor actually intended Sally to be the beneficiary and mistakenly wrote Mary. Once actual intent is established to a sufficient degree of certainty, modern law allows for reformation of the document to comport with the drafter's intent. *See, e.g.*, RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 12.1 cmt. c (requiring "clear and convincing evidence . . . to establish that the document does not adequately express intention"). On the other hand, if the settlor created a trust of property in State X and named his "lineal heirs per stipes" in State Y as beneficiaries of a trust, it would be a matter of construction, in the absence of evidence of actual intent, whether the phrase "per stirpes" should be construed to mean "English per stirpes" or "modern per stirpes." *See generally* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 224 cmts. c & d.

Although interpretation and construction are conceptually distinct, the practical significance of differentiating between these matters counsels in favor of a unified approach. The Restatement (Third) of Property: Wills and Donative Transfers explains that "[i]nterpretation and construction are not completely distinct processes, however, nor are they applied sequentially. Interpretation and construction are part of a single process." RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 11.3 cmt. c. Both construction and interpretation endeavor to discover the intention of the testator or settlor, whether through evidence of actual intention or through default rules in the absence of sufficiently persuasive evidence of contrary actual intention." *Id*. In either case, "the process of construction requires all factors to be brought to bear simultaneously and conflicting factors to be considered against each other. This is a single process." *Id*.

Relative to matters of validity and administration, issues of construction and interpretation seem least related to the interests of a particular jurisdiction, and thus the settlor is accorded maximum flexibility in choosing the applicable law. After all, the testator could have specified his or her actual intent in the trust instrument. Thus, both Section 268 of the Restatement, regarding movables, and Section 277 of the Restatement, regarding immovables, begin with a general statement that the trust instrument will be "construed in accordance with the rules of construction of the state designated for this purpose in the instrument." RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 268, 277. This is true even if the state law chosen to govern matters of construction has no connection with the trust. *Id.* § 268 cmt. b. This section continues the approach of the Restatement, and neither this section, nor the Restatement, limits a settlor's discretion in choosing the law applicable for matters of construction to laws that are not contrary to the "strong public policy" of the jurisdiction with the "most significant relation" to the trust.

Subsection (b) provides the rule for determining the applicable law when the settlor has failed to select an applicable law. In such a case, the applicable law is the law of the jurisdiction in which the settlor was domiciled at the time the trust became irrevocable. In the opinion of the drafting committee, the law of the settlor's domicile at the time the trust becomes irrevocable will ordinarily be the jurisdiction with the most significant relationship to the trust. Consequently, in the interest of efficiency and predictably, the law of the settlor's domicile is used as the default rule under this subsection rather than the more amorphous test of the jurisdiction with the most significant relationship to the trust. For both testamentary and revocable inter vivos trusts, the applicable law at the time the trust becomes irrevocable will ordinarily be the law of the decedent's domicile at the time of death. For irrevocable inter vivos trusts, the applicable law at the time the trust becomes irrevocable will be the law of the jurisdiction at the time of execution.

Section 6. Administration

(a) Regarding matters of administration, a trust is governed by the law designated by the settlor in the terms of the trust for that purpose, unless application of that law violates a strong public policy of the jurisdiction with the most significant relationship to the trust as to the

matter at issue.

(b) When no law has been designated by the settlor to govern the administration of the trust or when the law designated by the settlor is inapplicable pursuant to subsection (a), matters of administration of a trust shall be governed by the law of the jurisdiction of the principal place of administration of the trust under Section 9(b), unless application of that law violates a strong public policy of the jurisdiction that has the most significant relationship to the trust, in which case the law of the jurisdiction that has the most significant relationship to the trust shall govern as to the matter at issue.

(c) Matters of administration include the exercise of powers in the adherence to the duties of a trustee or a trust director.

(d) The law applicable to the administration of a trust may change if the principal place of administration of the trust changes, unless:

(1) the terms of a trust provide otherwise; or

(2) a change in the law governing matters of administration of the trust would violate a strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue.

[Note to the Committee:

(1) This Section and the previous one presuppose that one knows the difference between a matter of administration and a matter of construction/interpretation. None of these terms, however, are defined, except for the specification of powers and duties being included in the term administration in subsection (c).

(2) Subsection (c) collapses the illustrative list of matters that fall within the general heading of "trust administration" in favor of a more generic reference to "powers" and "duties" of a trustee or trust director. The illustrative list previously in the statutory text in the last draft has been moved to the Reporter's Notes, as various matters included in the illustrative list could in some circumstances be matters of administration but matters of construction in others. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 268 cmt. h (The issue of allocation of expenses and receipts to income or principal "could conceivably be treated as a question of administration and governed by the local law of the place of administration. On the

other hand, it can be treated as a question of the distribution of the trust property and governed by the local law of the testator's domicil. For the purposes of the choice of the applicable law, it is generally held that it is a question of construction and that the local law of the testator's domicil is applicable.").

(3) Should all trust property governed be administered under the law of the same jurisdiction or should the settlor or the court, as applicable, be allowed to choose or apply the law of different jurisdictions for administration of different assets? The current draft allows the settlor, the trustees, or the court to apply the laws of different jurisdictions. The Restatement (Second) of Conflict of Laws also allows the settlor to choose different laws, but, in the absence of such a choice, the Restatement counseled that "[i]t is desirable that a trust should be treated as a unit, and, to this end, that the same law should be applied to all the movables included in a trust." RESTATEMENT (SECOND) OF CONFLICT OF LAWS, topic 1 (Movables), intro. note.]

Reporter's Notes

Settlor Autonomy. Subsection (a) provides the general rule, subject to some limitation, of settlor autonomy to select the law governing the administration of the trust. It is consistent with the Restatement and with other international conventions and codifications. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 268(1), 269(b)(i), 270(a), 271(a), 272(a), 277(1); *see also* Hague Trust Convention art. 6 ("A trust shall be governed by the law chosen by the settlor."); Conflict of Laws Rules for Trusts Act, R.S.B.C. 1996, ch. 65, § 3 (B.C.) ("A trust is governed by the law chosen by the settlor, which choice may be express or implied."). Subsection (a) provides a limitation on the settlor's ability to choose the applicable law governing administration, namely, when the settlor's choice of the law would violate the strong public policy of the jurisdiction with the most significant relationship to the trust as to the matter at issue. Unlike in Section 5, a settlor does not have unfettered discretion as to the choice of the applicable law with regard to matters of administration, as some matters of trust administration may embody issues of public policy. For example, if State X allows for trustee exoneration from liability on a different basis than State Y, and a settlor seeks to avoid the law of State X and adopt the law of State Y, such an attempt will be successful only to the extent the application of the law of State Y does not violate a strong public policy of the state with the most significant relationship to the trust, State X. The Hague Trust Convention also recognizes that certain public policies of the forum may override the choice of law by the settlor. *See* Hague Trust Convention art. 15.

Subsection (b) specifies the applicable law to govern a trust when no law has been chosen by the settlor or when the choice of the governing law in inapplicable. In such a case, the law that does apply is a function of the jurisdiction of the principal place of administration of the trust, unless application of that law would violate a strong public policy of the jurisdiction with the most significant relationship to the trust. This approach is not identical to but generally accords with the approach of the Restatement with regard to inter vivos trusts. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 272(b). In the opinion of the drafting committee, the law of the jurisdiction of the principal place of administration of the trust will ordinarily be the jurisdiction with the most significant relationship to the trust, and, in the interest of efficiency

and predictably, the law of the jurisdiction of the principal place of administration of the trust is used as the default rule under this subsection rather than the more amorphous test of the jurisdiction with the most significant relationship to the trust. Application of the "most significant relationship" test is, however, a long-standing and important approach used by courts and is still relevant under this subsection as a public policy limitation on the application of the law of the jurisdiction of the principal place of administration of the trust. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 270(a)-(b), 272(b). *See also Hutchinson v. Ross*, 187 N.E. 65 (N.Y. 1933) (upholding a trust created by a Quebec settlor, which would have been invalid under Quebec law but was valid under New York law, because the trust res was located in New York and the trust was administered in New York). For factors relevant in determining the most significant relationship to the trust, see Section 8. This provision also generally accords with existing law and with the Hague Trust Convention. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 270(a)-(b), 272(b); Hague Trust Convention art. 7.

Administration. Subsection (c) provides a generic description of matters that fall within the ambit of administration, i.e., matters related to the exercise of powers and duties of a trustee or trust director. More specifically, matters of administration may include, among other things: the *extent* of a trustee's or trust director's power and duties; liabilities of a trustee or trust director for breach of his duties; the propriety of a trustee's or trust director's decision regarding investments or allocation between principal and income; the propriety of a trustee's or trust director's decision regarding decanting; the propriety of a trustee's or trust director's decision regarding distributions of trust property; a trustee's or trust director's right to compensation and indemnity for expenses; removal of a trustee or trust director and appointment of successors; and the ability to modify or terminate a trust. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 271 cmt. a. Matters of administration do not, however, include matters of ascertaining the appropriate beneficiaries of a trust or the extent of their interests. These are more properly considered matters of construction. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 271 cmt. a.

Change in Applicable Law. Subsection (d) recognizes that the law applicable to a trust's administration may change if the principal place of administration of the trust changes. The Restatement also recognizes that the governing law may change when the place of administration of the trust changes, such as when a successor trustee is appointed who is domiciled in a different state. At least with respect to movable property, the Restatement counsels that this "depends upon the terms of the trust, express or implied." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 272 cmt. e. If the settlor has authorized the change, then it can be inferred that the governing law should change. For instance, "[a] simple power to appoint a successor trustee may include a power to appoint a trust company or individual in another state. In such cases, the law governing the administration of the trust thereafter is the local law of the other state and not the local law of the state of original administration." *Id.* § 272 cmt. e. *See also id*. § 271 cmt. g; Hague Trust Convention art. 10.

The issue of change of the law governing administration of the trust arose in *In re Peierls Family Inter Vivos Trust (Peierls III)*, where the beneficiaries of five inter vivos family trusts that were originally governed by the laws of either New Jersey or New York filed a petition

requesting, among other things, that the Delaware chancery court accept jurisdiction over and modify the trusts. 77 A.3d 249 (Del. 2013). The court held that the initial designation of a law to govern the administration of a trust at its inception is "not absolute and unchangeable" when the settlor allows for the appointment of a successor trustee. *Id.* Consequently, when a Texas trust company became a successor trustee to a trust originally governed by New York law, the place of administration of the trust became Texas, as did the relevant law governing administration of the trust. *Id*.

If, however, the settlor has expressed his intent that the local law of his domicile always be applied, then a change in the place of administration should not bring about a change in the law governing administration. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 272 cmt. e. Likewise, the Uniform Trust Decanting Act recognizes that although "a change of principal place of administration will usually change the law governing the administration of the trust, that is not the result under all circumstances." UNIF. TR. DECANTING ACT § 5 cmt. A careful review of the terms of the trust will be necessary to ascertain the settlor's intent, which may be implied by the terms of the trust rather than expressly stated. In addition, in instances in which a strong public policy of the jurisdiction with the most significant relationship to the trust would be violated, a change in the law should not result when a change in the trust's principal place of administration occurs.

Section 7. Application of Different Laws

Different aspects of a trust may be governed by the laws of different jurisdictions.

Reporter's Notes

This section confirms the continuing applicability of the common-law principle of *dépeçage.* Under this principle, the settlor may choose or a court may decide that the laws of different jurisdictions are applicable to different aspects of a trust. Most commonly, different laws may be chosen by a settlor to govern different matters of administration. For example, the settlor may choose the law of State X to govern matters of trustee compensation and the law of State Y for matters regarding investment decisions. The flexibility provided in this section to allow a settlor to choose different laws to govern different aspects of a trust is consistent with the law recognized in virtually all state trust laws. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 272 cmt. c ("The settlor may provide that different matters of administration shall be governed by different laws. Thus, he may provide that the local law of one state shall govern the compensation of the trustee and that the local law of another state shall govern investments.").

This section, however, should not be interpreted to *require* different laws be applied to different matters involving a trust. For instance, if a settlor domiciled in State X creates a trust involving real property in State X but names a trustee to administer the trust located in State Y, a court is not required to apply different laws to different aspects of the trust. Depending upon the circumstances, a court may choose to avoid scission in favor of uniformity and apply the law of State Y not only to matters of administration, but also to matters of construction and interpretation. Matters of validity, however, should be assessed under Section 4. This section is consistent with Article 9 of the Hague Trust Convention. *See* Hague Trust Convention art. 9 ("In

applying this Chapter a severable aspect of the trust, particularly matters of administration, may be governed by a different law.").

Section 8. Most Significant Relationship to the Trust

(a) In ascertaining the jurisdiction that has the most significant relationship to a trust, the totality of the circumstances shall be considered, including the following factors:

(1) the principal place of administration of the trust;

(2) the place where trust assets are located, particularly if the trust assets include real property;

(3) the place of domicile of a settlor;

(4) the place of domicile or business of a trustee or a trust director; and

(5) the place of domicile of the beneficiaries.

(b) If four of the above five factors occur in the same jurisdiction, that jurisdiction shall be deemed to be the jurisdiction with the most significant relationship to the trust.

[Note to the Committee:

(1) It has been suggested that it might be preferable to avoid the term "most significant relationship" out of a concern of importing the Restatement (Second) of Conflict of Laws approach into this act. In an effort to avoid the same problem, the Restatement (Third) of Conflict of Laws employs the term "manifestly most appropriate law." *See, e.g.*, RESTATEMENT (THIRD) OF CONFLICT OF LAWS § 5.03 (AM. L. INST., Tentative Draft No. 3, 2022).

(2) The approach of Section 8 is to provide a multi-factor balancing test for the court to consider, but no one factor is dispositive. In response to the desire for certainty in this area, I have added section (b) as a suggested approach.

(3) Subsection (b) deviates substantially from the issue-by-issue approach of other sections of this act. For example, subsections (4)(b)(1), (4)(b)(2), and 6(b) assess the most significant relationship to the trust "as to the matter at issue." Under subsection (b), however, if four of the factors in subsection (a) all point to the same jurisdiction, that jurisdiction shall be deemed the jurisdiction with the most significant relationship to the trust for all matters.]

Reporter's Notes

Rather than prescribe definite rules for which state has the most significant relationship to a trust, subsection (a) opts for a more flexible approach that is informed — but not rigidly

dictated — by an illustrative list of certain factors. In determining the jurisdiction with the "most significant relationship," courts have long considered a multiplicity of factors, including the jurisdiction where the trust instrument was executed, the jurisdiction where the trust assets are located, the jurisdiction of domicile of the settlor, and the jurisdiction of the domicile of the beneficiaries. This section continues that approach by providing factors for a court to consider in determining the jurisdiction with the most significant relationship to the trust. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 270 cmt. c. *See also* UNIF. TR. CODE § 107 cmt. (factors to consider in ascertaining the most significant relationship to the trust and thus determining, in many instances, "the governing law include the place of the trust's creation, the location of the trust property, and the domicile of the settlor, the trustee, and the beneficiaries"); Hague Trust Convention art. 7; Conflict of Laws Rules for Trusts Act, R.S.B.C. 1996, ch. 65, § 3(4) (B.C.). In a change from prior law, however, this act uses concepts of "domicile" and "principal place of administration" as default rules in lieu of applying the law of the jurisdiction with the "most significant relationship" to the trust for matters of validity and administration, thereby reducing the significance of the role previously played by the concept of the jurisdiction with the "most significant relationship" to the trust.

Primarily, the jurisdiction of the principal place of administration of the trust is very often likely to be the jurisdiction with the most significant relationship to the trust, particularly when the matter at issue involves a matter of administration. For factors relevant in the consideration of a trust's principal place of administration, see Section 9.

In addition, when a trust includes real property, this section includes the location or situs of the real property as a factor in the balance to determine what jurisdiction is most significantly connected to the trust. The approach of the Restatement, by contrast, is to mandate that the law of the state of situs of the real property applies. *See, e.g.,* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 278, 280. Although this act eliminates the traditional separation of rules based upon whether the trust assets are real or personal, it does not suggest that the distinction between real and personal property is entirely irrelevant. Rather, it recognizes in subsection (a)(2) that the situs of real property is a relevant factor in determining the most significant relationship to the trust.

Similarly, if a trust is testamentary, special consideration under this section may be given to the state of domicile of the decedent, whereas the Restatement mandated that the law of the decedent's domicile be applied in many instances. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 271(b) & cmt. h. As with the distinction between real and personal property, the elimination of rules mandating the application of the law of the decedent's domicile is not meant to suggest that the distinction is irrelevant. The Uniform Probate Code, for instance, grants broad flexibility to a testator in choosing the law applicable to wills, but makes that choice ineffective as to maters of public policy, such as matters affecting the elective share, exempt property and allowances, or any other public policy of this state otherwise applicable to the disposition. Under this section, a court may choose to apply the law of the decedent's domicile when to do otherwise would violate a jurisdiction's strong public policy.

In ascertaining the jurisdiction with the most significant relationship to the trust, it is often important to consider the specific matter at issue, rather than the trust's general connections

to a particular jurisdiction. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 270 cmt. e ("What state has the most significant relationship with the trust may depend upon the particular ground of invalidity."). Despite the above, in an effort to facilitate planning, subsection (b) creates an irrebuttable presumption in cases in which four of the above five factors in subsection (a) all point to the same jurisdiction as the jurisdiction with the most significant relationship to the trust based upon the trust's general connections to a particular jurisdiction. In such a case, that jurisdiction is deemed to be the jurisdiction with the most significant relationship to the trust. In the vast majority of cases, subsection (b) will simply create certainty as to the jurisdiction that actually is the jurisdiction that has the most significant relationship to the trust. For example, if the trustee, the settlor, the trust assets, and the principal place of trust administration are all located in State X but other beneficiaries are located in States Y and Z, subsection (b) confirms that State X has the most significant relationship to the trust and that a court should apply the law of State X when it has been designated by the settlor as the applicable law to govern, for example, the matter of trustee compensation, pursuant to Section 8(a) of this act.

Section 9. Principal Place of Administration

(a) The terms of a trust designating the principal place of administration are valid and controlling, if:

(1) a trustee's principal place of business is located in or a trustee or a trust director is a resident of the designated jurisdiction; or

(2) all or part of the administration occurs in the designated jurisdiction.

(b) In the absence of a valid and controlling designation pursuant to subsection (a), the principal place of administration for conflict-of-laws purposes shall be determined by the following:

(1) the jurisdiction designated for administration of the trust by **[all / a majority?]** of the trustees in the most recent signed record, provided at least one trustee resides or maintains a place of business in the designated jurisdiction;

(2) in the absence of an effective designation pursuant to subsection (1);

(A) in the case of a testamentary trust, the jurisdiction in which the will establishing the trust was probated or where a trustee has qualified as a trustee,

(B) in the case of an inter vivos trust,

(i) if some or all trustees are corporate trustees, the jurisdiction where the trust officer responsible for supervising the trust account is physically located.

(ii) if all trustees are individual trustees, the jurisdiction of the place of domicile of the most active individual trustee.

[Note to the Committee:

In subsection (b)(1), the bold and bracketed language is highlighted for the Committee's consideration. Should unanimity be required for the trustees' agreement on the principal place of administration of the trust or would a simple majority suffice?]

Reporter's Notes

Subsection (a) is derived from Section 108 of the Uniform Trust Code and Section 3 of the Uniform Directed Trust Act. It recognizes that "[a] settlor expecting to name a trustee or cotrustees with significant contacts in more than one state may eliminate possible uncertainty about the location of the trust's principal place of administration by specifying the jurisdiction in the terms of the trust." UNIF. TR. CODE § 108 cmt. Such a designation is controlling provided the conditions of subsection (a)(1) or (2) are met. In other instances, a court may consider the designation, but designation of principal place of administration should not be viewed as controlling when no part of the administration occurs in that jurisdiction and the trustee or trust director has no presence in that place. As the Uniform Trust Code acknowledges, "[d]esignating the principal place of administration should be distinguished from designating the law to determine the meaning and effect of the trust's terms, as authorized by Section 107. A settlor is free to designate one jurisdiction as the principal place of administration and another to govern the meaning and effect of the trust's provisions." UNIF. TR. CODE § 108 cmt. For recent scholarship regarding the settlor's discretion to choose the principal place of administration of a trust, see Gallanis, *Trusts and Choice of Law, supra*, at __.

Subsection (b) provides a hierarchical list of controlling considerations in the absence of a valid and controlling designation by the settlor as to the trust's principal place of administration. Subsection (b)(1) allows a trustee to specify or cotrustees to agree upon the principal place of administration of a trust. The section can help facilitate certainty and predictability as to the principal place of administration of a trust. Of course, the designation or agreement as to the principal place of administration of a trust is effective only if the trust has some connection with the jurisdiction, namely at least one trustee resides or maintains a principal place of business in the jurisdiction. If cotrustees agree that the principal place of administration of a trust is a state with no connection to the trust, a court should decline to defer to such an agreement. In the more typical instance in which multiple cotrustees are in different states and all perform administrative functions, an agreement among them as to the principal place of administration is effective provided they chose the location of the principal place or administration or residence of a trustee.

Subsection (b)(2)(A) recognizes that in the absence of an effective designation by the trustees, the principal place of administration will differ depending upon whether the trust is testamentary or inter vivos. Although trustee qualification under court supervision was the dominant approach in the past, today the opposite is true. Nevertheless, qualification in court is still possible in instances where testamentary trusts are created. In that case, under subsection (b)(2)(A), the place where the will establishing the trust was probated should be considered as the principal place of administration, particularly when a court exercises continuing jurisdiction and supervision over the trust. Of course, a will may be probated or a trustee may qualify in one court but the trust may be administered in another jurisdiction, in which case, the place where the trustee has qualified may be the court with primary jurisdiction, if the court exercises "active control" over the trust. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 267 cmt. e. If not, however, then the court of the place of administration is more likely to be the court with primary supervision. *Id.* Matters of supervision under this act are governed by Section 10.

In the case of inter vivos trusts, courts often look to the location of a corporate trustee as the place of administration of a trust. *Id.* § 267 cmt. c. If multiple corporate trustees are appointed, the Restatement (Second) of Conflict of Laws selected the place of business of the most active corporate trustee as the place of administration of the trust. *See id*. In the age of national trust companies with numerous satellite offices, ascertaining the place of business of a corporate trustee is not always an easy task. In lieu of the Restatement approach, subsection (b)(2)(B)(i) opts for the jurisdiction where the trust officer responsible for supervising the trust account is located. *See, e.g.*, UNIF. TR. CODE § 108 cmt.

If an inter vivos trust has only individual trustees, the place of business or domicile of the most active individual trustee is likely the place of administration, as recognized in subsection (b)(2)(B)(ii). On this matter, the Restatement suggests that "it is reasonable to infer in most situations that . . . [the] settlor expected the trustee to administer the trust at his or its place of business or domicil." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 267 cmt. c. *See also* UNIF. TR. CODE § 108.

Section 10. Court Supervision

(a) A court of the jurisdiction in which the principal place of administration of a trust is located has primary supervision over the trust.

(b) If the principal place of administration of a trust is not located in this state, a court of this state should decline to exercise supervision over the trust if doing so would be an undue interference with the court that has primary supervision over the trust.

Reporter's Notes

Subsection (a) provides the familiar rule that the principal place of administration serves as the basis for a court to assert primary supervision over a trust. UNIF. TR. CODE § 108 cmt.

("Locating a trust's principal place of administration will ordinarily determine which court has primary if not exclusive jurisdiction over the trust."); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 267 ("The administration of a trust of interests in movables is usually supervised by the court, if any, in which the trustee has qualified as trustee or by the courts of the state in which the trust is to be administered.").

Primary Supervision is Not Exclusive Supervision. Subsection (b) makes clear that even after the principal place of administration of a trust is established, primary supervision by courts in the state of administration does not necessarily preclude courts in other states from exercising supervision over the trust. Rather, the appropriate consideration by a court that does not have primary supervision should be whether exercising supervision over the trust would unduly interfere with the supervision by the court with primary supervision. *See, e.g.*, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 267 cmt. e. Whether such an interference will occur depends upon a number of factors, including the relief sought. *See id*. For example, if a court has acquired jurisdiction over a trustee, it may compel him to redress a breach of trust, but it will ordinarily decline to engage in decisions regarding matters such as the validity, administration, or construction and interpretation of the trust. *See id*.

This approach is consistent with modern judicial practice. For instance, in *IMO Daniel Kloiber Dynasty Trust*, the Delaware Chancery Court concluded that, even though Delaware was the current situs of the trust and Delaware law had been chosen as the applicable law for administrative purposes, a Kentucky court could still exercise jurisdiction over the trust. 98 A.3d 924 (Del. Ch. 2014). In *Kloiber*, a party who was both the primary beneficiary and the "special trustee" was involved in a divorce proceeding in which a Kentucky court entered a status quo order preventing dissipation of marital assets. *Id.* The wife in the divorce proceeding argued that the trust was a marital asset, but the husband, nonetheless, resigned as special trustee and appointed his son as successor special trustee, who in turn ordered the transfer of $100,000 from the trust to a separate account. *Id.* The Kentucky court added the trust as a party to the divorce proceeding and held the husband in contempt; the trust thereafter sought a declaration from the Delaware court that it had exclusive jurisdiction. *Id.* The Delaware court held that, despite a Delaware exclusive jurisdiction statute, the connecting factors to Delaware, namely, the situs of the trust and the applicable law for administrative purposes, were "fragile" features, insofar as both could be changed by those who controlled the trust. *Id.* Consequently, the Delaware court would not interfere with the Kentucky court's exercise of its jurisdiction over the trust. *Id.*

Although exclusive jurisdiction statutes are not uncommon, many states court have declined to find them binding. *See Kloiber*, 98 A.2d at 940 n.6. For instance, in *Toni 1 Trust v. Wacker*, the Alaskan Supreme Court concluded that an Alaskan statute that purported to grant exclusive jurisdiction to Alaska courts over Alaskan trusts could not deprive a Montana state court or an Alaskan bankruptcy court of jurisdiction over fraudulent transfers made to the Alaska trust in an attempt to shield assets from a Montana state court judgment. 413 P.3d 1199 (Alaska 2018). To the extent courts in other states may give deference to the Alaska "exclusive jurisdiction" statute, it is out of comity, which is "not a legal rule; rather it is 'a principle under which the courts of one state give effect to the laws of another state . . . out of deference or respect.'" *Id*. at 1205. Although courts may elect to give deference to other statute statues, "they are not compelled to do so." *Id*.

Section 11. Common Law and Principles of Equity

The common law and principles of equity supplement this [act], except to the extent modified by this [act] or law of this state other than this [act].

Reporter's Notes

This section confirms that the common law and principles of equity remain applicable to a directed trust except to the extent modified by this act or other law.

Section 12. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 13. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended." A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

[Section 14. Repeals; Conforming Amendments

[(a)] . . .]

[(b) . . .]

Legislative Note: *A state should examine its statutes to determine whether conforming amendments are required by provisions of this act.*

Section 15. Effective Date

This [act] takes effect . . . .