

Trust Law Conflict of Laws: Restatement (Second)				
	Movables		Land	
	Testamentary	Inter Vivos	Testamentary	Inter Vivos
JURISDICTION OF THE COURT				
Supervision of Administration	By court of state where trustee has qualified; or if no qualification, then by court of “state in which trust is administered.” (§ 267)		By court of situs, as long as land remains subject to trust (§ 276), but...	
	“State in Which Trust is to be Administered”			
	State selected by settlor in trust instrument; if no selection or no manifestation of intent by the settlor, then “reasonable to infer ... that the ... settlor expected the trust to administer the trust at his or its place of business or domicil.” (§ 267 cmt (c))		... “[a] court of a state other than that of the situs may exercise jurisdiction if it does not ‘unduly interfere’ with the control by the courts of the situs” (e.g., a court with jurisdiction over a trustee may entertain proceedings re: trustee liability). (§ 276 cmt (b))	
LAW TO BE APPLIED BY COURT WITH JURISDICTION				
Interpretation	Law of the forum to ascertain settlor’s actual intent (§ 268, cmt (a); § 277, cmt (a))			
Construction	Law chosen by settlor (§ 268(1))		Law chosen by settlor (§ 277(1)); if no law chosen, then in accordance with rules of construction that “would be applied by the courts of situs” <sup>1</sup> (§ 277(2))	
	If no law chosen, then:		Law that “would be applied by the courts of situs”	
	<ul style="list-style-type: none"><li>Matters of administration, the law governing administration (§ 268(2)(a))</li><li>Other matters, in accordance with rules of construction of state that the settlor “probably would have desired.” (§ 268(2)(b))</li></ul>			
	Law settlor “probably would have desired”			
	Law of settlor’s domicile, usually, even if administered elsewhere (§ 268 cmt (f))	Not necessarily law of settlor’s domicile; consider jurisdiction with “most significant relationship” <sup>2</sup> to trust on matter at issue. (§ 268 cmt (g))	Law of situs or testator’s domicile, but more likely domicile (§ 277 cmt (c))	Likely law of situs, rather than settlor’s domicile (§ 277 cmt (c))

<sup>1</sup> The law that “would be applied by the courts of the situs” could either be the situs jurisdiction’s own local law or the law of another state. *See, e.g.*, RESTATEMENT (SECOND): CONFLICT OF LAWS § 277 cmt (c).

<sup>2</sup> “Contacts which will be considered in determining the state of the ‘most significant relationship’ may include the state where the trust instrument was executed and delivered; the state where the trust assets were then located; the state of the domicil of the settlor at that time; and the state of the domicil of the beneficiaries.” *See, e.g.*, RESTATEMENT (SECOND): CONFLICT OF LAWS § 270 cmt (c).

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	Testamentary	Inter Vivos	Testamentary	Inter Vivos
<b>Validity (Formal and Substantial)</b>	For matters that affect <u>validity of will</u> , law that would be applied by courts of domicile at death. (§ 269)	Law <u>chosen by settlor</u> , provided it has “substantial relation” <sup>3</sup> to the trust and application does not violate “strong state public policy” <sup>4</sup> of state that has “most significant relationship” <sup>2</sup> to the trust, as to the matter at issue. (§ 270(a))	Law that “would be applied by courts of the situs” <sup>1</sup> (§ 278)	
	For matters that affect <u>validity of trust</u> provisions (§ 269): <ul style="list-style-type: none"> <li>• <i>Law chosen by settlor</i>, provided it has “substantial relationship”<sup>3</sup> to the trust and application does not violate a “strong state public policy”<sup>4</sup> of state of testator’s domicile at death.</li> <li>• <i>If no law chosen</i>, then by law of domicile at death, except law of state where trust is administered will be applied, if necessary to sustain trust validity</li> </ul>	If <u>no law chosen</u> , then by the law of state that has “most significant relationship” <sup>2</sup> to the trust, as to the matter at issue. (§ 270(b))		

<sup>3</sup> See, e.g., RESTATEMENT (SECOND): CONFLICT OF LAWS § 270 cmt (b) (stating that “[a] state has a substantial relation to a trust when it is the state, if any, which the settlor designated as that in which the trust is to be administered, or that of the place of business or domicil of the trustee at the time of the creation of the trust, or that of the location of the trust assets at that time, or that of the domicil of the settlor, at that time, or that of the domicil of the beneficiaries.”).

<sup>4</sup> See, e.g., RESTATEMENT (SECOND): CONFLICT OF LAWS § 270 cmt (b) (suggesting that the creation of a trust in a jurisdiction other than that of the settlor’s domicile in an attempt to “avoid the application of the local law of his domicil giving his surviving spouse a forced share of his estate” may be violative of a “strong state public policy” of the law of the state of the settlor’s domicile); but see *id.* § 269 cmts (g) & (i) (suggesting the same is not true for the rule against perpetuities or accumulations).

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LAW TO BE APPLIED BY COURT WITH JURISDICTION (CONTINUED)				
Administration	Law chosen by settlor		Law that “would be applied by the court of situs,” <sup>1</sup> as long as land remains subject to trust (§ 279)	
	For matters that <u>can be controlled by terms of trust</u> , law chosen by settlor to govern administration (§§ 271(a), 272(a)) and no connection with the chosen state is necessary (§§ 271, cmt (c); 272, cmt (c))			
	For matters that <u>cannot be controlled by terms of trust</u> :			
	• law of domicile may apply (§ 271, cmt (h))	• probably local law of state in which administration is fixed (§ 272, cmt (f))		
	No law chosen by the settlor			
	• by law of state of domicile at death, unless administered elsewhere, in which case local law of that state (§ 271(b))	• by law of state to which administration is “most substantially related.” <sup>2</sup> (§ 272(b))		
Restraints on Alienation	Law of the settlor’s domicile at death, unless settlor “manifested an intention that the trust is to be administered” elsewhere.	Law of the state that the settlor “manifested an intention that the trust is to be administered.”	Law that “would be applied by the court of situs,” <sup>1</sup> as long as land remains subject to trust (§ 280)	
	If intention manifested, then by law of the state that the settlor “manifested an intention that the trust is to be administered.” (§ 273(a))	If no “manifestation of intention,” then by law of the state to which the administration is “most substantially related.” <sup>2</sup> (§ 273(b))		

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POWERS OF APPOINTMENT				
Existence (by virtue of general bequest without specific mention)	Law of construction of donee’s will, unless donor manifested a different intention (§ 275)		Law that “would be applied by the court of situs” <sup>1</sup> (§ 282)	
Exercise	Valid, unless invalid under strong state public policy of state of domicile at death (§ 274)		Law that “would be applied by the court of situs” <sup>1</sup> (§ 281)	
	If valid, then governed by:			
	Substantial validity (§ 274(a))			
	<ul style="list-style-type: none"><li>Special Power: law that determines validity of trust</li><li>General Power: Law applicable to disposition by donee of his own property</li></ul>			
	Formal validity & capacity of donee (§ 274(b))			
	Either: <ul style="list-style-type: none"><li>Law that determines validity of trust; or</li><li>Law applicable to disposition by donee of his own property</li></ul>			