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CONFLICT OF LAWS AND NONBARRABLE INTERESTS IN ADMINISTRATION OF DECEDENTS' ESTATES*

EUGENE F. SCOLES**

INTRODUCTION AND SCOPE

An owner of property usually has power to dispose of it by inter vivos or testamentary transfer. This power is hedged about by various limitations. One common type of limitation is concerned with the formalities to be observed in making the transfer, such as the requirements of a writing, an acknowledgment, or of witnesses. In addition to these formal requirements, there are substantive limitations upon inter vivos transfers, such as those resulting from dower or homestead law. The substantive limitations upon testamentary transfers usually appear in the form of required provisions for particular members of the decedent's family. Conflict of laws problems incident to these nonbarrable interests of the family include dower, curtesy, forced share, allowances for the surviving spouse and family, and homestead rights. There are still other limitations upon testamentary dispositions, such as restrictions upon charitable gifts, rights given the pretermitted heir or spouse, and the doctrine of revocation of wills by subsequent marriage or divorce. The limitations of the nature of the last group are not discussed because they do not give to any specific person an interest that cannot be subjected to the control of the estate owner.

Description of Nonbarrable Interests

In the United States the nonbarrable interests vary widely among the states in regard to the methods used to give family protection, the amounts given, and the names employed to designate these interests.

*A related article by the author may be found in 30 IND. L.J. 293 (1955).

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Three general classes, however, can be distinguished: (1) dower or statutory forced share, (2) family allowance for support, and (3) homestead. While in some states common law dower still exists, in most states it has become a statutory forced share even though the older term *dower* may be retained.[1] The forced share statutes usually give the widow an absolute interest in one third or one half of the decedent's assets, both real and personal.[2] This interest may, in addition, have priority over the claims of the decedent's creditor's[3] A surviving husband quite generally is given the same right as a widow in the estate of a deceased spouse even though curtesy, by name, has been abolished in all but a few states.[4]

Nearly all states provide for an interim allowance for support of the widow and minor children during the time the estate is being administered.[5] Although this is usually expressed as an allowance for support only, it may include interests that overlap the forced share and homestead. For example, the amount of the allowance may be fixed by statute without regard for need, and in some states it may be claimed by surviving husbands as well as by widows.[6] The amounts allowable by statute vary from state to state, ranging from $75 upwards.[7] Many statutes provide for a reasonable amount to be determined by the courts.[8] Amounts up to $2,500 per month have been

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[1]*E.g.*, IOWA CODE §636.5 (1954); see 1 AMERICAN LAW OF PROPERTY §5.1 (Casner ed. 1952); 3 VERNIER, AMERICAN FAMILY LAWS §189 (1935).

[2]*E.g.*, COLO. STAT. ANN. c. 176, §1 (1935); FLA. STAT. §731.34 (1953); IOWA CODE §636.5 (1954); MINN. STAT. §525.16 (1953); N.Y. DEC. EST. LAW §18; see 3 VERNIER, AMERICAN FAMILY LAWS §189 (1935).

[3]*E.g.*, FLA. STAT. §731.34 (1951); IND. ANN. STAT. §6-202 (Burns 1953); Thompson v. Union & Mercantile Trust Co., 164 Ark. 411, 262 S.W. 324 (1924); see 1 AMERICAN LAW OF PROPERTY §5.42; 3 VERNIER, AMERICAN FAMILY LAWS §190 (1935).

[4]*E.g.*, ILL. ANN. STAT. c. 3, §170 (Smith-Hurd 1951); IOWA CODE §636.6 (1954); N.Y. DEC. EST. LAW §18.

[5]Some states do not give an allowance as such but limit it to homestead exemptions or widows' quarantines. See, *e.g.*, D.C. CODE ANN. §§18-201, 406 (1951); N.J. STAT. ANN. §3:37-4 (1939); WIS. STAT. §237.02 (1953).

[6]ARK. STAT. ANN. §62-2501 (Cum. Supp. 1953); ILL. ANN. STAT. c. 3, §330 (Smith-Hurd Cum. Supp. 1954); MINN. STAT. §525.15 (1953); MO. ANN. STAT. §§462.450, 460 (Vernon 1949).

[7]*E.g.*, ALA. CODE tit. 7, §665 (1940); COLO. STAT. ANN. c. 176, §211 (Cum. Supp. 1953); KAN. GEN. STAT. ANN. §59-403 (Corrick 1949); MD. ANN. CODE GEN. LAWS art. 93, §§332, 3 (1951); N.H. REV. LAWS c. 359, §1 (1942); N.C. GEN. STAT. §30-17 (Cum. Supp. 1953).

[8]*E.g.*, ARIZ. CODE ANN. §38-903 (1939); CAL. PROB. CODE §680 (Deering 1953); CONN. REV. GEN. STAT. §7033 (1949); IDAHO CODE ANN. §15-501 (1948); LA. CIV. CODE ANN. art. 2422, 3252 (West 1952); MASS. ANN. LAWS c. 193, §13 (1933); MICH.

granted, and $7,000 to $10,000 annual allowances are not uncommon.[9] These allowances usually have priority over the claims of the creditors of the estate.[10] While the true family allowance is payable whether the surviving spouse elects to take under the will or not,[11] some statutes require an election and some provide that the allowance be deducted from the distributive share later received.[12] Exempt personal assets, such as clothing, household furnishings, and supplies, are often included in the allowance to the surviving spouse.[13] These are quite similar to the homestead interests, which give exempt personalty to the surviving spouse and minor children.[14]

In addition to the exempt personalty, the homestead rights usually include a right to occupy or to receive the residence of the decedent free from the claims of creditors.[15] Those unfamiliar with it often

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STAT. ANN. §27.3178 (138) (Supp. 1953); MISS. CODE ANN. §561 (1942); PA. STAT. ANN. tit. 20, §320.211 (Purdon 1950); WASH. REV. CODE §11.52.040 (1951); WYO. COMP. STAT. ANN. §6-1501 (1945).

[9]*In re* Lux's Estate, 114 Cal. 73, 45 Pac. 1023 (1896); *In re* Foreman's Estate, 16 Cal. App.2d 96, 60 P.2d 310 (1936); Gaskins v. Gaskins, 311 Ky. 59, 223 S.W.2d 374 (1949); Mankowski's Estate, 110 N.Y.S.2d 677 (Surr. Ct. 1952); McComb's Estate, 80 N.E.2d 573 (Ohio Prob. 1948); *cf.* Dorsey v. Georgia R.R. Bank & Trust Co., 82 Ga. App. 237, 60 S.E.2d 828 (1950).

[10]ARK. STAT. ANN. §62-2501 (Cum. Supp. 1953); COLO. STAT. ANN. c. 176, §211 (Cum. Supp. 1953); KAN. GEN. STAT. ANN. §59-403 (Corrick 1949); IDAHO CODE ANN. §15-504 (1947).

[11]Wahl's Estate, 256 Mo. App. 345, 158 S.W.2d 743 (1942); Andros v. Flournoy, 22 N.M. 582, 166 Pac. 1173 (1917); Industrial Trust Co. v. Dean, 68 R.I. 43, 26 A.2d 482 (1942); O'Donnell's Estate, 71 S.D. 339, 24 N.W.2d 326 (1946); DEL. REV. CODE c. 98, §78 (1935).

[12]*E.g.,* GA. CODE ANN. §113-1007 (1935); ILL. ANN. STAT. c. 3, §334 (Smith-Hurd 1941); KAN. GEN. STAT. ANN. §59-403 (Corrick 1949); KY. REV. STAT. §391.030 (1953); ME. REV. STAT. c. 156, §§14, 16 (1954); MASS. ANN. LAWS c. 193, §13 (1933); MICH. STAT. ANN. §27.3178 (138) (1943); N.H. REV. LAWS c. 359, §1 (1942); TENN. CODE ANN. §8231 (Williams 1934). See also *In re* David's Estate, 227 Ia. 352, 288 N.W. 418 (1939); *In re* Wenzel's Estate, 161 Kan. 545, 170 P.2d 618 (1946); Porter v. Axline, 154 Kan. 87, 114 P.2d 849 (1941); Sturtevant v. Wentworth, 226 Mass. 459, 115 N.E. 927 (1917).

[13]*E.g.,* ALA. CODE ANN. tit. 7, §664 (1940); IOWA CODE §635.7 (1954); KAN. GEN. STAT. ANN. §59-403 (1949); MINN. STAT. §525.15 (1953); R.I. GEN. LAWS c. 577, §6 (1938); S.D. CODE §35.1302 (1939); W. VA. CODE §3906 (1943).

[14]*E.g.,* ARK. STAT. ANN. §62-2 (1947); FLA. CONST. art. X, §1; MISS. CODE ANN. §476 (1942); N.Y. SURROGATE'S COURT ACT §200; OKLA. STAT. ANN. tit. 58, §311 (Cum. Supp. 1954); TEX. REV. CIV. STAT. ANN. §3832 (Vernon 1925); WASH. REV. CODE §§11.52.010-.016 (1951).

[15]*E.g.,* ALA. CODE ANN. tit. 7, §661 (Cum. Supp. 1953); CAL. PROB. CODE §660 (1953); FLA. CONST. art. X, §1; MINN. STAT. §525.39 (1953); TEX. STAT. ANN. §3833 (Vernon 1925).

think of homestead as a minor right secured to a needy people of a bygone era. Although homestead was born of the needs of pioneers, it has become an important part of our modern structure of family property interests and may be the most valuable of the nonbarrable interests in many estates. It is the primary protective device for minor children and perhaps is the American counterpart of the civil law *legitime*.[16] The homestead rights of the surviving spouse are usually independent of the forced share, though some states require an election between the two.[17]

The nature of the interests given under the different legal terms vary from state to state to such a degree that there is considerable overlapping among the statutes in all categories.[18] What may be called a family allowance in one state may be similar to the interest called homestead, dower, or forced share in others. This variation in terminology suggests that caution must be used in interpreting general discussions in light of the property structure of a particular state.

Statement of the Conflicts Problems

When a decedent leaves assets in several states, important conflict of laws problems arise in determining the existence and scope of nonbarrable interests. For example, assume that a testator domiciled with his family in state *X* leaves considerable personal and real property in state *X*, considerable realty but little personalty in state *Y*, and considerable personalty but no realty in state *Z*. What law will determine the amount of the forced share that the widow can claim? If the law of *X*, the domicile, gives her a forced share of one half, is she entitled to one half of the property in the other two states also; or must she be limited in *Y* to the one third that *Y* local law, it will be assumed, would give her? Should the problem of determining what

[16]See, 1 AMERICAN LAW OF PROPERTY §§5.114-.120; Haskins, *Homestead Exemptions*, 63 HARV. L. REV. 1289 (1950); *cf.* BEECHLER, ELECTIONS AGAINST WILLS 5, 16 (1940); Laube, *Right of a Testator to Pauperize His Helpless Dependents*, 13 CORNELL L.Q. 559 (1928).

[17]Canavan v. McNulty, 328 Ill. 388, 159 N.E. 782 (1927); *In re* David's Estate, 227 Iowa 352, 288 N.W. 418 (1939); Wilson's Adm'r v. Wilson, 288 Ky. 522, 156 S.W.2d 832 (1941); Stanton v. Leonard, 344 Mo. 998, 130 S.W.2d 487 (1939); see Wrenne v. American Nat'l Bank, 183 Tenn. 247, 191 S.W.2d 547 (1946); Seaton v. Seaton, 184 Va. 180, 34 S.E.2d 236 (1945); 1 AMERICAN LAW OF PROPERTY §5.115.

[18]*E.g.*, ARIZ. CODE ANN. §38-902 (1939), §38-905 (Cum. Supp. 1951); CAL. PROB. CODE §645 (1953); IDAHO CODE ANN. §15-505 (1947); N.D. REV. CODE §30-1701 (1943); OKLA. STAT. tit. 58, §317.

constitutes one half the estate arise in the courts of the state of the domicile, are the assets located in other states to be included in the computation of her fractional share? If so, what would be the effect of such a decree elsewhere? To put the question in general terms, are the rights of the surviving spouse determined by the law of the domicile or of the situs of property or of the forum?

This hypothetical estate presents problems concerning the family allowance also. Can an allowance be made in a state other than the domicile? If an allowance order is made in a state in which the assets are insufficient to satisfy it, may it be enforced in another state in which other assets are located? Similar difficulties may arise as to homestead rights. For example, can homestead rights be claimed in states other than the domicile; can they be claimed simultaneously in more than one state?

It is proposed to treat these problems by first discussing the pertinent policies regarding the nonbarrable interests and then considering the governing law applicable to the various interests.

Purposes and Policies Incident to Nonbarrable Interests

Conflict of laws decisions, like those in any other field of the law, are made one way rather than another because of some reason based on social purpose or policy. The purposes reflected in a particular rule or decision may be simple or complex. They may be those relating to purely local matters such as the regularity of title to land or those incident to interstate situations such as the recognition of foreign judgments. In any event, it is necessary to consider and to weigh the relevant policies if a reasoned choice of law is to be made. While these policies are rather numerous and are found in varying combinations, the number of possible choices of law in most cases is quite limited. For example, the policies will normally refer only to the domiciles of the parties, to the place where the property is located, or to the forum. The recognition and consideration of these forces that are given effect by courts and legislatures will assist in making a realistic analysis of what has been done and in suggesting appropriate choices in future cases. The policies are listed and described at this point because they may be applicable to any one of the situations or cases later discussed. In this division of the discussion, no effort is made to determine the validity or weight of these policies. Their relative force in particular situations will be considered in the subsequent portions of the article.

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Local Law Policies

a. Supporting Nonbarrable Interests

The local law policies supporting nonbarrable interests center about the protection of the family as a primary unit of our social, governmental, and economic system and the fair consideration of the individuals concerned in a particular estate problem.

Protection of the Family. The protection of the family as a productive and social unit is a general basic policy of the law that favors giving nonbarrable interests to family members.[19] In its broader connotations this policy perhaps overlaps others. In a society in which the family is still a most important institution, evidences of family protection are bound to appear in many areas. Several of the nonbarrable interests, such as family allowance and homestead, are designed to implement this basic purpose directly. Economic protection and social protection of the family are probably inseparable,[20] since the social standing of families – in modern, as in ancient times – is often dependent upon property holdings. The force of this policy is frequently enhanced by its statutory priority over creditors.

The Support Obligation. As a means of furthering the protection of the family unit, society has imposed upon the husband an obligation to support his wife and children during his lifetime. The nonbarrable interests may be deemed essentially a continuation of this obligation in substituted form after his death.[21] Probably all of the interests involved reflect to some extent this design to extend the support obligation. The obligation continues only during the widowhood of his spouse and the minority of his children. This limitation is recognized in dower and its statutory substitutes giving the widow a life estate in certain property. Homestead rights, widow's quarantine, and family

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[19]*In re* Blair's Estate, 269 P.2d 612 (Cal. 1954); *In re* Beauchamp's Estate, 23 Del. Ch. 377, 2 A.2d 900 (Orphan's Ct. 1938); *In re* Macneal's Estate, 174 Misc. 947, 22 N.Y.S.2d 293 (Surr. Ct. 1940); *In re* Caroleo's Estate, 174 Misc. 288, 20 N.Y.S.2d 581 (Surr. Ct. 1940); *In re* Welch's Estate, 200 Wash. 686, 94 P.2d 758 (1939).

[20]Dutton v. Swann, 219 Ala. 425, 122 So. 636 (1929); *In re* Jermyn's Will, 72 N.Y.S.2d 244 (Surr. Ct. 1947); see 1 AMERICAN LAW OF PROPERTY §§5.2,3.

[21]*In re* Cooper's Estate, 97 Cal. App.2d 186, 217 P.2d 499 (1950); Williams v. Pollard, 101 Colo. 262, 72 P.2d 476 (1937); Hobbs v. Hobbs, 179 Tenn. 1, 162 S.W.2d 394 (1942); *In re* Bundy's Estate, 241 P.2d 462 (Utah 1952).

allowances further illustrate the continued effect given the support obligation in our law.

Protection of the State. The policy to protect the state from the burden of support of indigent persons and from the threat of social instability is a part of the broad family protection policy. This third aspect, however, becomes distinguishable from the first two when the general policy of society is limited by a particular jurisdiction so as to apply only to families within its borders.[22] The individual state's self-interest gives support to nonbarrable interests by promoting the maintenance of the family as a unit in order to give stability to the state's social and economic structure.[23] But this same self-interest becomes a limiting factor in some multi-state cases when the state refuses an allowance to nonresident families. For this reason it is stated as being separable from the broader societal policy of protecting families generally.

Presumed Contribution. Another subdivision of the general family protection policy is the recognition of presumed contribution to an estate by members of the decedent's family. This subpolicy finds effect in dower, forced share, and community property.[24] The support in fact for this policy is probably limited to the widow's interests, except perhaps for rural homestead rights for adult children.[25]

Economy in Transmission of Property. This policy is present in most estate problems. While economy will aid the family by leaving more for their use, this particular motive probably exists in nonfamily cases as often as not. For that reason it seems separate from the family protection policies. Formerly, a deduction equal to amounts paid

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[22]Deeble v. Alerton, 58 Colo. 166, 143 Pac. 1096 (1914); *cf.* MARSH, MARITAL PROPERTY IN CONFLICT OF LAWS 136 (1951).

[23]Robson v. Meder, 66 Cal. App.2d 47, 151 P.2d 662 (1944); *In re* Schoenfelder's Estate, 161 Misc. 654, 292 N.Y. Supp. 647 (Surr. Ct. 1937). This self-interest policy is similar to that of protecting the wife's relatives from the duty to support her at her husband's death. The self-interest of relatives, which incidentally protects the state, was given effect in earlier times in church-door dower, bride barter, and jointure provisions incident to marriage, 1 AMERICAN LAW OF PROPERTY §§5.2-.4.

[24]Cohen v. Cohen, 82 Ohio App. 260, 80 N.E.2d 813 (1947); BEECHLER, ELECTIONS AGAINST WILLS 9 (1940); MARSH, *op. cit. supra* note 22, at 11.

[25]See, *e.g.*, FLA. CONST. art. X, §1; WIS. STAT. §237.025 (1953); see also 1 AMERICAN LAW OF PROPERTY §5.117.

for support of dependents was available for federal tax purposes,[26] which gave considerable stimulus for the granting of allowances in excess of actual need. In some states the assets constituting the allowance, or exempt or homestead property, are not subject to administration, which results in savings in the expenses of administration.[27] This policy of economy finds its strongest effect in the statutes providing for settlement of small estates without administration. These statutes are often an extension of the exempt property exclusion.[28] The potential drain upon an estate by reason of expenses of administration is increased by the presence of assets in several states.[29]

Equality of the Sexes. The past century has seen an increased trend toward recognition of the individual. As those social forces emphasizing the individual increase in strength, some inroads upon the position of the family as a basic unit of society are bound to occur. Some of this emphasis is reflected in the policy of providing equal rights for men and women. In the area of nonbarrable interests this has had the somewhat anomalous effect of increasing the rights of men. For example, in some states equality of property rights for men and women has given the surviving husband a forced share similar to dower[30] and the right to a family allowance.[31] It is a policy that may become effective when the support theories are factually weakened.

Justice and Fairness Among Beneficiaries. While the policy of promoting justice and fairness among the beneficiaries of an estate is perhaps another aspect of the growing importance of the individual,

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[26]This deduction was formerly allowed by 28 U.S.C. §812(b)(5), but this provision was repealed by the Revenue Act of 1950.

[27]See notes 13, 14 *supra;* Bishop v. Johnson, 242 Ala. 551, 7 So.2d 281 (1942); Spencer v. Stewart, 202 Cal. 695, 262 Pac. 331 (1927); Dinquel v. Dacco, 273 Ill. 117, 112 N.E. 337 (1916); Moore v. Rick, 186 Okla. 351, 97 P.2d 884 (1939).

[28]See note 16 *supra.*

[29]The policy favoring economy of transmission of property may be opposed in some cases to the forced share of the surviving spouse. In some situations the transfer from the deceased to the surviving spouse may be taxed, and at the death of the spouse the transfer to the children may again be taxed. Thus two taxes are collected per generation of transmission. This potential tax burden is reduced by the marital deduction and previously taxed property exemption of the federal tax statute, INT. REV. CODE §2056.

[30]See note 4 *supra.*

[31]See note 6 *supra.*

it seems more a development of the abstract concepts of fair play. This policy of fairness is of particular force in matters concerning election between inconsistent interests in an estate when the actual intention of the testator is not fully consistent with social policy.

b. Opposed to Nonbarrable Interests

There are strong policies at the local law level that often appear to oppose the recognition of nonbarrable interests. These rest largely upon the concepts that an individual should be able to dispose of his property as he desires and that he should pay his debts before he displays generosity.

Freedom of Testamentary Disposition. This is a local law policy opposed to all nonbarrable interests. One of the strongest policies underlying the law concerning the disposition of property at death is that of giving effect to the intention of the testator. This policy, in certain situations, must give way to some extent to those policies favoring protection of the family. No general scheme of distribution of property can fit the needs of all the individuals of which society is composed. The policy favoring freedom of testamentary disposition meets the need for limitless variation in disposition that is necessary in a society that values individuality. Accordingly, there probably is a democratic value recognizing that individual action in property disposition at death should be free from interference unless good cause is shown.

General economic reasons for freedom of testamentary disposition are perhaps more difficult to spell out. Economic benefit resulting from regularity of titles to property is probably promoted, because a will is better and easier to prove as a muniment of title than is heirship. In addition, it may be urged that greater production of goods and services is encouraged by permitting the individual to anticipate free disposition of the returns of his efforts. Incident to this anticipation is the fact that the savings accumulated result in making more capital available for investment in production facilities. Thus a greater production capacity may exist in a large estate undivided into smaller shares by the statutes. Most people, however, are driven to produce goods by the desire to provide for their families. These drives normally coincide with policies favoring the nonbarrable interests. Because of this motivation it seems doubtful that unlimited testamentary freedom

is necessary to accomplish the economic results important to the satisfaction of this policy.[32]

Protection of Creditors. The protection of creditors is a general policy of the law often opposed to the nonbarrable interests. Many of the nonbarrable interests have a priority in payment over the claims of the decedent's creditors.[33] Protection of creditors is one of the strongest and most consistently effective policies in our legal system. That it is subverted in this area indicates the strength of the family protection policies. The normal order of priority of payment under the local law statutes of the various states is: (1) homestead, which is often entirely excluded from administration, (2) dower, (3) costs of administration and expenses of the last illness and funeral, (4) widow's and family allowance, (5) taxes, (6) creditors' claims, (7) statutory forced share, and (8) distribution.[34] The priority of dower and forced share interests differs from state to state. In some states these two interests may be free of creditors' claims, as common law dower usually is, or may be subject to such claims, as the statutory share often is. In states having both interests, the priority is generally as stated above. From the order of priority it is apparent that the interests of creditors are often opposed to those of the preferred family members. This means that when the policies favoring the family are weakened by unusual facts the courts will often limit the nonbarrable interests in favor of creditors. Thus in conflict cases the local creditor may prevail over the nonresident family member.

Alienability of Land. The free alienability of land is a policy opposed to those interests, such as inchoate dower and homestead,

[32]The sometimes asserted policy favoring wider distribution of wealth has no real application here because of the limited nature of the nonbarrable interests. With the possible exception of the spouse's forced share, little opportunity exists for undue accumulation of wealth. In fact, nonbarrable interests tend to prevent accumulation in many instances.

[33]See note 10 *supra.*

[34]CAL. PROB. CODE §950 (1953); COLO. STAT. ANN. c. 176, §195 (1935); FLA. STAT. §733.20 (1953); GA. CODE ANN. §113-1508 (1935); ILL. ANN. STAT. c. 3, §354 (Smith-Hurd Cum. Supp. 1954); IOWA CODE §§635.65-.66 (1954); LA. CIV. CODE ANN. arts. 1189, 3191, 3276 (1945); ME. REV. STAT. c. 114, §1 (1944); MD. ANN. CODE GEN. LAWS art. 93, §5 (1951); MICH. STAT. ANN. §27.3178(165) (Cum. Supp. 1953); N.H. REV. LAWS c. 353, §19 (1942); N.M. STAT. ANN. §31-8-10,11 (1953); OHIO REV. CODE ANN. §2117.25 (Page 1954); OKLA. STAT. ANN. tit. 58, §591 (Cum. Supp. 1954); R.I. GEN. LAWS c. 578, §33 (1938); UTAH CODE ANN. §75-9-21,22 (1953); WIS. STAT. §313.16 (1953).

that place limitations upon inter vivos conveyances by making it necessary for the spouse to join in the conveyance.[35] This policy, however, does not seem opposed to those interests that are measured solely by the property held by the deceased at the time of his death. The reasons for this policy are found in the commercial values incident to sales and credit transactions derived from free transferability of land and those reasons favoring freedom of testamentary disposition, this policy's post-mortem counterpart. In addition to the limitations upon transfers by the decedent during his lifetime, the cotenancies resulting from the operation of the forced share statutes make subsequent inter vivos transfers by the next takers more difficult. Thus the policy of free alienability may be restricted by nonbarrable interests for successive generations of property owners.

Conflict of Laws Policies

The local law policies discussed above arise in nearly any case. The multi-state cases, however, make it necessary to consider social values and policies that extend beyond the interests of any one state.[36] These conflict of laws policies become important when a state is forced by the interstate or international character of the factual situation to recognize that the interests of other political units are involved. Since it is a function of conflict of laws to provide reasonable solutions to multi-state problems, these policies are of particular force in these areas and may be sufficient to cause a result different from that reached in a purely local matter. The conflict of laws policies represent the reasons behind particular conflict of laws conclusions. The forces of the several conflict of laws policies vary in given cases and in some factual situations are so coextensive in their application that it is difficult to distinguish related values. A recognition of their presence, however, should aid in the determination of results that will reasonably satisfy the primary interests of all states and parties involved. Those conflict of laws policies that seem most pertinent in the cases involving nonbarrable interests are listed and described briefly so that subsequent reference to them may be made when the occasion arises.

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[35]See 1 AMERICAN LAW OF PROPERTY 624; BEECHLER, ELECTIONS AGAINST WILLS 8 (1940).

[36]See Cheatham and Reese, *Choice of Applicable Law*, 52 COL. L. REV. 959 (1952), for a more extensive collection of the major policies having effect generally in conflict of laws cases.

The State of Dominant Interest. An extremely important conflict of laws policy is the recognition and application of the law of the state having the dominant interest. It is sometimes suggested that uniformity is the primary purpose of conflict of laws. Any concept of uniformity assumes a focal reference — some state must furnish the applicable rules. The determination of this focal state is perhaps what is done in every conflicts case. If other states are to adopt a uniform disposition, the focal state must be one that other states may reasonably recognize. Consequently, it should be the state that most courts would consider as having the dominant interest in a multistate controversy. The state of dominant interest may be determined by reason of the number and weight of its significant contacts or connections. The underlying local law purpose of the possibly applicable rules will normally determine whether some contacts outweigh others. For example, the purposes of homestead provisions in affording a family home and sustenance seem to make the state of the domicile of the deceased, which is usually the home of his family, the clear focal point in controversies concerning homestead. Thus, another state that is a fortuitous forum could reasonably be expected to recognize the dominant interest of the domicile and decide a particular homestead controversy in accord with the laws of the domicile.

Application of Local Laws. The policy of giving effect to local law is likewise an important consideration in most cases. Clearly, if the legislature has enacted a statute applicable to conflict situations it must be applied. Even when no statute applies directly, there is a strong tendency to apply local law. This is particularly true when the effect of the applicable law is to ensure the protection of domiciliaries of the forum. This policy of applying local law stems from confidence in, and familiarity with, the results and purposes of the local rules. The court that uses its own law can be expected to do so with less chance of error than if foreign law is used. Often the local law application will correspond with local policies favoring protection of the family. The family protection policies conflict, however, with the fundamental policy behind succession at death, namely, the intent of the testator. These two very strong local law policies are constantly present. Family protection policies will probably prevail if the beneficiaries are residents of the forum, whereas if they are nonresidents the fundamental policy of observing the intention of the testator, expressed or presumed, becomes relatively stronger in deciding conflicts cases.

Ease of Determination of Applicable Law. A part of the conflict of laws policy favoring ease in the determination of the applicable law is the theory that a choice of law reference should be one that other states might reasonably be expected to recognize. This policy is probably of greater significance in the administration of decedents' estates than in many other fields, because most issues are tried in the probate courts, which are notoriously local law minded. If a court is to be convinced that some law other than its own is to be applied, it must be convenient for the court to determine this law. Although other policies are of greater theoretical significance, the practical consequences are likely to be such that the convenience of the court may well decide many close cases.

Predictability and Protection of Justified Expectations. These policies, which lead to uniformity in matters regarding decedents' estates, are very important in cases involving assets in different states. While in particular cases it is usually possible to separate the two, they overlap so often that they are here considered together. In this regard, it is necessary to have uniformity in two respects: first, in the treatment of parts of the same estate however the issue is raised (internal uniformity); and, second, in the treatment of different estates in the same state (predictability) so that effective future planning is possible. This dual uniformity is not only important to the participants in an estate but also to those third parties who may deal with an estate owner or a beneficiary upon the belief that certain assets will be available for the satisfaction of their claims. These policies are present in local law questions, but their force is more significant in conflict of laws cases, inasmuch as there is a greater possibility of nonuniform results because different states have more or less independent opportunities to weigh the policies that may lead to varied results. Because of this, the policies favoring certainty, uniformity, and predictability are frequently thought of as the most important policies in conflicts cases. They are particularly strong in the estates area.

Uniformity of treatment of the various parts of an estate assumes that all courts concerned with a particular estate should use the same standard to measure the interests of persons claiming adversely. In most instances the use of some single standard would prevent injustice as a result of the fortuitous location of assets. Consequently, included in the uniformity policies or at least related thereto is the policy favoring justice in the individual case. Since application of justice in the abstract would many times turn on the personal predilections of

the tribunal, it is necessary to determine it in relation to some standard. In estate matters, this standard is the law of the state having the dominant interest in the estate, and it is indicated by the policies favoring uniformity.

Needs of Interstate and International Systems. The field of conflict of laws assumes a federal or international system of geographically separated jurisdictions, each having some independent power to make effective determinations of litigated issues. The assumption of such a system contemplates its continued existence. Accordingly, another important policy of conflict of laws, in this area of estates as well as others, concerns the needs of interstate and international systems. The interests of international or interstate society must be expected at times to conflict with those of its individual members. A court deciding a conflict of laws question should bear in mind the consequences of its decision upon the interstate system and expect to exercise considerable self-restraint in the application of purely local policy. There is perhaps an obligation upon the courts when deciding conflicts cases to reach conclusions that other states may reasonably be expected to recognize as appropriate. This can probably be furthered by considering, together with other factors, the law of the state that would normally be the most probable forum in similar factual situations. As a matter of general administration of justice, this should tend to produce uniform results in different cases.

In short, any court deciding a multi-state controversy is not solely a local court but, on the conflicts issue, sits as a court of the international or interstate system. While no suggestion is intended that all conflicts questions should become federal constitutional issues, it should be apparent that, as individuals are citizens of both state and nation, so too are courts both state and "federal" when deciding a conflicts point. Accordingly, every court is expected to act without discrimination against foreigners or foreign facts and to give effect to the needs of the existing interstate and international systems.

The policies discussed are not the only ones that may be taken into consideration. They do appear, however, to be those that are likely to be most significant in deciding cases involving nonbarrable interests and conflict of laws.

LAW GOVERNING NONBARRABLE INTERESTS

The law that courts have held to govern the problems incident

to nonbarrable interests is often in accord with traditional views in analogous matters. Because of the different weight the various policies have been given by different states, however, some peculiar results have occurred. In discussing the cases the subjects of forced share and dower, family allowance, and homestead will be treated in turn; and immovables and movables will be considered under each.

Dower or Statutory Forced Share

a. Immovables

The view generally taken as to the law governing dower or statutory forced share in immovables is consistent with the usual conflict of laws position. The interest that a surviving spouse takes in an immovable owned by the deceased spouse is determined by the law of the state of the situs of the immovable. This is simply an example of the well-settled rule that distribution of immovables is governed by the law of the situs.[37] The suggestion has been made that the domicile of the married couple or of the husband at death should control. This argument was made to the Iowa court in *Ehler v. Ehler*[38] on the ground that the law of the marital domicile is part of the marital contract, which is binding on the husband's assets wherever located.[39] The argument was rejected and the local law of the situs applied.

The continuing strength of the rule of reference to the situs of immovables is illustrated in the cases involving priority of dower over creditors. In *Griggs Estate*,[40] a Pennsylvania lower court decision, the decedent died domiciled in Pennsylvania, leaving a badly insolvent estate. Included in the assets was some New Jersey land that was sold and the proceeds transmitted to Pennsylvania. The widow was given her dower share of the proceeds of the New Jersey land free of the

[37]*In re* Barrie's Estate, 240 Iowa 431, 35 N.W.2d 658 (1949); *In re* Randolph's Estate, 175 Kan. 685, 266 P.2d 315 (1954); Meyer v. Rogers, 173 Kan. 124, 244 P.2d 1169 (1952); *In re* Vincent's Estate, 189 Misc. 489, 71 N.Y.S.2d 165 (Surr. Ct. 1947); 2 BEALE, CONFLICT OF LAWS §248.1 (1935); GOODRICH, CONFLICT OF LAWS §§164, 166 (3d ed. 1949); RESTATEMENT, CONFLICT OF LAWS §248 (1934); STUMBERG, CONFLICT OF LAWS 312 (2d ed. 1951).

[38]Ehler v. Ehler, 214 Iowa 789, 243 N.W. 591 (1932).

[39]A somewhat similar argument was made in Spence v. Spence, 239 Ala. 480, 195 So. 717, 723 (1940), but without avail, the court concluding that local Alabama law should be applied; *cf.* Smith's Estate, 55 Wyo. 181, 97 P.2d 677 (1940).

[40]54 Pa. D. & C. (1945).

claims of creditors as provided under New Jersey law.

While the law of the situs admittedly controls the surviving spouse's share in a decedent's estate, the law applied is not always local in every respect. Some references may be made to foreign law for different incidental matters. For example, in *Estate of Bir*[41] the California court permitted two women to claim the widow's share in the decedent's estate. The decedent, a citizen of India, had there validly married the two ladies many years before. These marriages were unimpaired until the death of the deceased, who was domiciled in California. Relying on the rule that marriages valid where celebrated are valid elsewhere, the court concluded that no public policy of California was violated by permitting the two Indian wives to divide the "widow's" share. This case and others like it[42] are probably not evidence of a weakening of the situs rule in succession to land but rather an indication of a more understanding construction of the law of the situs itself. From the cases involving land it is clear that courts will consider the situs to be the state having the dominant interest in land. This has appeared to bring about a predictable result. The *Bir* case, however, illustrates the fact that a situs forum may recognize that foreign law has a greater significance than its own local law on a particular point, even though land is primarily involved. The situs in this way discharges its obligation as a member of an international system.

b. Movables

The forced distributive share that the surviving spouse may elect to take in the movable assets of a deceased spouse is governed, almost without exception, by the law of the decedent's domicile.[43] In this regard no real distinction is drawn between tangible and intangible movables. Although there are many problems as to where intangibles may be administered, there is little doubt as to which law the forum

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[41]83 Cal. App.2d 256, 188 P.2d 499 (1948).

[42]Royal v. Cudahy Packing Co., 195 Iowa 759, 190 N.W. 427 (1922); Rogers v. Cordingley, 212 Minn. 546, 4 N.W.2d 627 (1942); Yew v. Attorney Gen., 1 D.L.R. 1166 (1923); see 2 BEALE, CONFLICT OF LAWS §121.1 (1935); Beckett, *Recognition of Polygamous Marriages,* 48 L.Q. REV. 341 (1932); Comment, *Polygamy and the Conflict of Laws,* 32 YALE L.J. 471 (1923).

[43]*E.g.,* Bullen v. Wisconsin, 240 U.S. 625 (1916); *In re* Estate of Randolph, 175 Kan. 685, 266 P.2d 315 (1954); see GOODRICH, CONFLICT OF LAWS §§165, 168 (3d ed. 1949); RESTATEMENT, CONFLICT OF LAWS §§300, 303, 306 (1935); STUMBERG, CONFLICT OF LAWS 411-427 (2d ed. 1951).

will apply.[44] Likewise, the size of the share is governed by the domicile of the decedent at death.[45] For example, if a person dies leaving movable property in state *Y*, which provides that a widow may elect to take a statutory share of one third of the decedent's personalty, and the domicile, *X*, provides that her elective share is to be one half, state *Y* may be expected to apply the law of the domicile, *X*. If *Y* distributes the movables there administered in ancillary administration, it will give the widow one half.[46] The usual alternative is to send the surplus property to the domicile for distribution, where the *X* court will apply its own law to give the widow one half.[47]

This reference to the domicile by the situs of movables perhaps need not be made, but the practice is so well established that it is the near uniform rule in the common law states of this country.[48] If a state should refuse to refer to the domicile, however, and distribute according to its own law in ancillary administration, the result would probably not be unconstitutional. For example, a unique statute of Mississippi provides:[49]

> "All personal property situated in this state shall descend and be distributed according to the laws of this state regulating the descent and distribution of such property, regardless of all marital rights which may have accrued in other states, and notwithstanding the domicile of the deceased may have been in another state, and whether the heirs or persons entitled to distribution be in this state or not; and the widow of such deceased person shall take her share in the personal estate according to the laws of this state."

The Mississippi court, in construing the statute, has clearly supported the policy of giving effect to local law and has applied this

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[44]*Ibid.;* see Hopkins, *Conflict of Laws in Administration of Decedents' Intangibles*, 28 IOWA L. REV. 422, 613 (1943).

[45]2 BEALE, CONFLICT OF LAWS §301.1 (1935); see also note 43 *supra*.

[46]Lawrence v. Kitteridge, 21 Conn. 577, 56 Am. Dec. 385 (1852); GOODRICH, CONFLICT OF LAWS §194 (3d ed. 1949).

[47]RESTATEMENT, CONFLICT OF LAWS §522 (1935).

[48]See 2 BEALE, CONFLICT OF LAWS §300.1 (1935); GOODRICH, CONFLICT OF LAWS §165 (3d ed. 1949); *cf.* Glassford's Estate, 249 P.2d 908 (Cal. App. 1952); *In re* Menschefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1st Dep't 1954).

[49]MISS. CODE ANN. §467 (1942). Illinois formerly had a somewhat similar provision, since amended to accord with the usual reference to domicile, ILL. ANN. STAT. c. 3, §162 (Smith-Hurd Cum. Supp. 1954).

law to the case of the widow electing against the will as well as to intestate succession.[50] The statute has not been involved in any case before the United States Supreme Court, but in other situations that Court has taken the attitude that the actual situs of personal property controls distribution on death and that the laws of other states have no bearing except as the situs state adopts them.[51]

In the discussion of the share a surviving spouse might claim as her nonbarrable interest in the estate of a deceased spouse it has been assumed that the spouse would be permitted to elect in ancillary administration to take against the will. Whether a surviving spouse may elect at any given time in a particular state will not be discussed in detail; it is sufficient at this point to note that, if the spouse may take a statutory share of movables, the extent of that share is governed by the law of the domicile of the decedent.[52] The domicile reference is so well established that the courts give little indication of the policies that have led them to this position. The difficulty of determining domicile has led to some question as to its desirability as a reference.[53] Nevertheless, in a society in which substantial accumulations of wealth are most often in the form of movables and in an area involving the family, the domicile clearly seems to be the state having the dominant interest and the state to which others should refer in order to obtain the internal uniformity so desirable in the administration of a multistate estate.

c. Measurement by Assets Located in Another State

The courts of the domicile generally have not taken into consideration the value of real property located elsewhere when determining the amount of the local forced share. The leading case is *Bankers' Trust Co. v. Greims,*[54] in which the Connecticut court refused to

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[50]Bolton v. Barnett, 131 Miss. 802, 95 So. 721 (1923); Slaughter v. Garland, 40 Miss. 172 (1866); *cf.* Neblett v. Neblett, 112 Miss. 550, 73 So. 575 (1916).

[51]Frick v. Pennsylvania, 268 U.S. 473 (1925); *cf.* Irving Trust Co. v. Day, 314 U.S. 556 (1942); Green v. Van Buskirk, 72 U.S. (5 Wall.) 307 (1866), 74 U.S. (7 Wall.) 139 (1868).

[52]See 2 BEALE, CONFLICT OF LAWS §306.5 (1935); GOODRICH, CONFLICT OF LAWS §170 (3d ed. 1949); Scoles, *Conflict of Laws and Elections in Administration of Decedents' Estates,* 30 IND. L.J. 293 (1955).

[53]See Texas v. Florida, 306 U.S. 398 (1939); Hill v. Martin, 296 U.S. 393 (1935); *In re* Estate of Dorrance, 115 N.J. Eq. 268, 170 Atl. 601 (Prerog. Ct. 1934); Dorrance's Estate, 309 Pa. 151, 163 Atl. 303 (1932).

[54]110 Conn. 36, 147 Atl. 290 (1929); *accord, In re* Bassford's Will, 127 N.Y.S.2d

Florida Law Review, Vol. 8, Iss. 2 [1955], Art. 1

measure the forced share of the surviving husband by land in New York and New Jersey. The reasons given were based primarily on the construction of a Connecticut statute. The court recognized, however, that the rights of the surviving spouse in realty are governed by the law of the situs, where distribution normally occurs. Since distribution could not be controlled by the domicile, the foreign land was excluded.[55]

The matter of movables is different; movable assets are distributable according to the law of the domicile wherever located, and they are usually transmitted to the domicile for distribution.[56] Accordingly, there is sufficient reason for the domicile to measure the legal forced share by all movable assets in the estate wherever located. The domicile can enforce this by adjusting its distribution to compensate for any inconsistent distribution in ancillary administration.[57] *Henderson v. Usher*[58] is one of the few cases treating this problem directly. The Florida domiciliary left tangible movables in New York as well as in Florida. The Florida Supreme Court directed that the widow's statutory forced share be measured by such assets even though they were subject to debts of the deceased in ancillary administration in New York. The amount of the dower was specifically not to be reduced by the amount of the debts due in New York.[59] In applying domicile law and including foreign assets in the measurement of the forced share of movables, the case seems clearly sustained by analogous authority.[60]

653 (Surr. Ct. 1953); *cf. In re* Estate of Dwyer, 159 Cal. 680, 115 Pac. 242 (1911); Decker v. Vreeland, 220 N.Y. 326, 115 N.E. 989 (1917); Paschal v. Acklin, 27 Tex. 174 (1863).

[55]*Cf.* Briggs, *Utility of the Jurisdictional Principle in a Policy Centered Conflict of Laws,* 6 VAND. L. REV. 667 (1953). This case illustrates the different types of uniformity needed in estates. The reference to the situs by the Connecticut nonsitus forum is the usual recognition that the situs, because of control, is, to the nonsitus forum, the state of dominant interest. New Jersey, however, could well refer to Connecticut in order to achieve internal uniformity within the particular estate. *Cf.* Estate of Bir, 83 Cal. App.2d 256, 188 P.2d 499 (1948).

[56]Lawrence v. Kitteridge, 21 Conn. 577 (1852); RESTATEMENT, CONFLICT OF LAWS §522 (1934).

[57]For a more extensive discussion of this residual control by the domicile see cases cited *infra* note 60.

[58]125 Fla. 709, 170 So. 846 (1936).

[59]Because of the effect of local policies protecting creditors, it is doubtful that New York would give such a priority over creditors if an estate were in fact insolvent, even though Florida did so.

[60]Griley v. Griley, 43 So.2d 350 (Fla. 1949); Murphy v. Murphy, 125 Fla. 855, 170 So. 856 (1936); Caruso v. Caruso, 106 N.J. Eq. 130, 148 Atl. 882 (Ct. Err. & App.

Another problem arises in ancillary administration under the modern statutes providing for special treatment of small estates. In response to the family protection policies, these statutes are aimed at preserving for the family a minimum inheritance free of the difficulties incident to splitting small estates into still smaller shares. To accomplish this, in estates not exceeding stated amounts the surviving spouse may be given the entire estate prior to, or after, certain creditors.[61] These statutes are framed in general terms, and the question arises whether the statutory amount includes only assets within the forum or whether the estate is to be measured by the assets located in other states as well.

The small estate statutes are by no means uniform, and the effective provisions may be found in the dower, forced share, allowance, homestead, or intestate succession statutes, depending upon the state. So far as they involve intestate succession of real property, the courts in two important cases have indicated that, although the law of the situs of the land determines its succession, testate or intestate, still the situs can and will consider out-of-state contacts when making the internal choice between the situs' regular succession statutes and the situs' small estates statute. In the first of these cases, *Hite v. Hite*,[62] the Massachusetts court took the position that, while the law of the state in which realty is located governs its devolution, the courts of the situs can consider the fact of nonresidence of the decedent and widow. Because of this nonresidence, the court applied the ancillary administration statute, which incorporated the general succession statute giving the spouse one half. The court reasoned that the purpose of the small estates statute was to aid widows of resident owners of small estates and that the small estate statute should not apply when part of the assets are governed by a different law. In addition, this widow had previously received a $2,400 allowance in Ohio, the domicile of the decedent, and would take three fourths of the personalty on distribution. The court refused to rely upon the fact that, even though local assets were less than the statutory limit, the total value of the estate did not meet the requirements of the Massachusetts small estate statute.

1930); Cumming's Estate, 153 Pa. 397, 25 Atl. 1125 (1893); Van Dyke's Appeal, 60 Pa. 481 (1869); *In re* Lawrence's Will, 93 Vt. 424, 108 Atl. 387 (1919).

[61] IOWA CODE §636.32 (1954); MASS. ANN. LAWS c. 190, §1 (1955); N.H. REV. LAWS c. 359, §§10-13 (1942); N.Y. DEC. EST. LAW §83; statutes cited *supra* note 18.

[62] 301 Mass. 294, 17 N.E.2d 176 (1938); *cf.* Cheney v. Cheney, 214 Mass. 580, 101 N.E. 1091 (1913).

An Iowa court in *Estate of Clemmons*[63] held that the small estate statute governed the devolution of Iowa land owned by a Wisconsin decedent. To determine whether the statutory amount had been exceeded, the court looked to assets in both states and, finding the combined estate to be within the legislative limit, allowed the widow of the foreign domiciliary to receive all the Iowa land under the Iowa statute.

An analogous New York statute[64] giving the first $10,000 worth of assets to the surviving spouse was construed in *Ineson's Estate*[65] in such a manner as to afford a potential windfall to the surviving spouse by reason of the location of assets in different states. The widow of a Connecticut decedent was given all the New York real estate on the theory that realty devolves by the law of the situs and that therefore only the value of local land can be considered in determining distribution.

The cases construing small estate statutes illustrate the variant results possible within the well-established situs rule. Even though the situs controls, it is not necessary for that state to limit its vision to its own territory in determining to give effect to the policies that it considers significant. The *Hite* case concluded that the statute was in support of local widows even while recognizing that the particular claimant had already been provided a support allowance elsewhere. On the other hand, the Iowa court chose to apply its statute to all widows before its courts, provided the total assets everywhere fell below the statutory limit. In both cases the court gave effect to its own policy while recognizing that the entire estate was, in proper perspective, one unit which could easily be treated as a whole. There seems no real reason why either the domicile or the state of ancillary administration should close its eyes to the fact that assets are located elsewhere. Should the policy of the domicile conflict with that of ancillary jurisdiction, the policies of the state of dominant interests should be given effect.

Under the cases dealing with the various types of forced share for the surviving spouse, different law will be applied to the same estate, depending upon whether the assets involved are immovables or movables. Most states will treat immovables according to the law of

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[63]242 Iowa 1248, 49 N.W.2d 883 (1951).

[64]N.Y. DEC. EST. LAW §83.

[65]198 Misc. 999, 104 N.Y.S.2d 12 (Surr. Ct. 1951); *cf. In re* Harris' Estate, 150 Misc. 758, 271 N.Y. Supp. 464 (1934).

the situs and movables according to the law of the domicile of the decedent at death. There are indications, however, that the force of the policies favoring uniform treatment of the entire estate will lead the situs of immovables to consider nonsitus policies that may have greater significance than purely local law policies.

Widows' and Family Allowances

a. Effect of Residence or Nonresidence

In the cases involving allowances it makes very little difference, for conflict of laws purposes, whether the allowance is to be made out of immovable or movable assets. In either case it is necessary to petition the court having the property within its jurisdiction for the allowance. Because of this, the problems concerning both classifications of assets will be discussed together. This singular treatment of the allowance problem stems from the fact that family allowances are generally characterized for nonconflicts purposes as expenses for debts of administration, payable prior to creditors' claims, and also from the fact that allowances are often viewed as provisions for the protection of local families.[66] For example, in determining the priority of claims, support allowances are traditionally preferred claims, even prior to tax claims in some instances;[67] and the federal tax statute treated them as deductible expenses until recently.[68] The combined effect has been that the courts usually look to their own local statutes for the solution even while referring to a so-called general rule that only the domiciliary administration can determine or make an allowance for the family in absence of specific statutory provision.[69] Most of the statutes make no reference to governing law;[70] a few provide for the families

[66]Wigington v. Wigington, 112 Colo. 78, 145 P.2d 980 (1944); *In re* Estate of Wernet, 61 Ohio App. 304, 22 N.E.2d 490 (1938); Atwood v. Miller, 10 Ohio Supp. 131 (1942).

[67]Postmaster v. Robbins, 19 Fed. Cas. 1126, No. 11,314 (D. Me. 1829); *In re* Carl's Estate, 94 N.E.2d 239 (Ohio Prob. 1950); Fackler's Estate, 27 Ohio Op. 232 (1942); see note 34 *supra.*

[68]See note 26 *supra.*

[69]*In re* Estate of Beauchamp, 23 Del. Ch. 377, 2 A.2d 900 (Orphan's Ct. 1938); Mitchell v. Word, 64 Ga. 208 (1879); Smith v. Howard, 86 Me. 203, 29 Atl. 1008 (1894); Richardson v. Lewis, 21 Mo. App. 531 (1886); *In re* Estate of Bleicher, 142 Misc. 549, 255 N.Y. Supp. 368 (Surr. Ct. 1931); Jones v. Layne, 144 N.C. 600, 57 S.E. 372 (1907); *In re* Babcock's Estate, 64 S.D. 283, 266 N.W. 420 (1936); *cf. In re* Metcalf's Estate, 93 Mont. 542, 19 P.2d 905 (1933).

[70]See generally statutes cited *supra* notes 6, 7, 8, except as noted *infra* notes

of nonresident decedents;[71] and some expressly prohibit such allowances.[72]

In considering the effect of residence or nonresidence of the parties in family allowances, three practical questions should be borne in mind: (1) will the forum entertain the petition; (2) if so, will the forum use its local law or foreign law to measure the allowance; and (3) will the forum consider the value of assets everywhere or only those in the forum? The results that have been reached in the cases cast some doubt on the existence of any generally accepted single rule for determining the solution of these questions. There are four basic situations in which the problems arise: (1) resident decedent and resident claimant, (2) resident decedent and nonresident claimant, (3) nonresident decedent and resident claimant, and (4) nonresident decedent and nonresident claimant. It will be seen that the first two situations arise in domiciliary administration, while the latter two are ancilliary administration problems.

Resident Decedent and Resident Claimant. No conflict of laws problems are presented in this local situation. The forum's rule is applied.

Resident Decedent and Nonresident Claimant. The nonresident claimant in the domiciliary administration presents a problem in some states. If the allowance is viewed as an extension of the husband's duty to support, the nonresident widow and children may claim the allowance provided in the statutes of the forum-domicile.[73] If the policy behind the allowance is viewed as protecting the state from the burden of care of indigent persons, the nonresident of the claimant precludes the entertaining of a petition for allowance. Unfortunately, several states have taken this latter view.[74] Although some of the cases

71, 72.

[71]See, *e.g.*, MINN. STAT. §525.15 (1953); OHIO REV. CODE §2117.20 (Page 1954).

[72]See, *e.g.*, KAN. GEN. STAT. ANN. §59-403 (Corrick 1949); PA. STAT. ANN. tit. 20, §320.211 (Purdon 1950).

[73]Farris v. Battle, 80 Ga. 187, 6 S.E. 581 (1887); Shaffer v. Richardson's Adm'r, 27 Ind. 122 (1866); International Harvester Co. v. Dyer's Adm'r, 297 Ky. 55, 178 S.W.2d 966 (1944); Barrett v. Heim, 152 Minn. 147, 188 N.W. 207 (1922); *In re* Pompal's Estate, 150 Wash. 242, 272 Pac. 980 (1928); *cf.* Estate of Parkinson, 193 Cal. 354, 224 Pac. 453 (1924); Caldwell v. Caldwell, 192 Iowa 1157, 186 N.W. 58 (1922).

[74]Lyons v. Egan, 107 Colo. 32, 108 P.2d 873 (1940); *In re* Metcalf's Estate, 93 Mont. 542, 19 P.2d 905 (1933); *In re* Babcock's Estate, 64 S.D. 283, 266 N.W. 420

denying an allowance at the domicile to a nonresident widow may be explained by analogies to the barring of dower by misconduct,[75] such as desertion and elopement, no such explanation exists as to minor children.[76] A view taken by the state of the domicile of the deceased that it will deny an allowance unless it may become burdened with the claimant's care seems inconsistent with any attempt to unify these aspects of administration around the domicile of the deceased. States of ancillary administration can scarcely be expected to defer to the domicile of the deceased in the matter of family allowances if that state refuses to recognize any responsibility for a nonresident family. The benefits of the policy of self-protection and self-interest would seem reasonably to carry with it a duty upon a state to recognize the estate and family obligations as a unit, so that the fortuitous location of assets would not prevent a claim by a group whose preferential claims to assets are generally recognized everywhere.

Nonresident Decedent and Resident Claimant. In this instance in ancillary administration, the policies exert considerable pressure upon the forum to grant an allowance to the resident claimant. Both the policies favoring support of the family and those favoring self-interest of the state are present. If the domicile of the deceased should be one of the states adopting the single view of self-interest, the ancillary forum will probably find the force of its local policies irresistible and grant an allowance from local assets. This illustrates the undesirability, from a conflict of laws view, of decisions based solely upon the local self-interest policy. The decisions granting allowances from personal property of a nonresident under the statute of the forum have been few; they have done so by means of characterizing the support allowance as an expense of administration payable before any question as to distribution of the estate is reached. On this basis, a Tennessee court has indicated that support may be granted a resident infant child of a nonresident decedent from personal property administered in Tennessee even though the state of the decedent's

(1936). The dissent in *Metcalf's Estate* advocating the opposite result includes a good discussion of the statutory constructive problem present in many similar statutes. *Accord,* Krumenacker v. Andis, 38 N.D. 500, 165 N.W. 524 (1917); White v. Bickford, 146 Tenn. 608, 244 S.W. 49 (1922). *But cf.* Hyder v. Hyder, 16 Tenn. App. 64, 66 S.W.2d 235 (1932).

[75]Odiorne's Appeal, 54 Pa. 175, 93 Am. Dec. 683 (1867); Spier's Appeal, 26 Pa. 233 (1856); *cf. In re* Grieve's Estate, 165 Pa. 126, 30 Atl. 727 (1895).

[76]See, *e.g.,* Lyons v. Egan, *supra* note 74; *In re* Metcalf's Estate, *supra* note 74.

domicile makes no provision for support.[77]

Nonresident Decedent and Nonresident Claimant. The situation in which neither the decedent nor the beneficiary is domiciled in the state of ancillary administration of movables has given rise to considerable litigation. Many cases have restated the general rule that an allowance to a nonresident decedent's family is governed by the domicile of the deceased. Some of these rely upon the self-interest theory of protecting only resident families;[78] others consider it a part of the distribution problem.[79] There is some suggestion that if an allowance in the ancillary administration is made at all it must be made according to the law of the decedent's domicile.[80] More often than not, however, the view is that only the courts of the domicile should entertain such petitions.[81]

The harshness of blindly adopting the view that the law of the domicile not only governs the amount but also that its courts alone may grant an allowance is illustrated by *Jaeglin v. Moakley*.[82] The decedent died domiciled in California. His wife predeceased him, but three minor children survived. The only asset in the estate was realty in Missouri. At the time of the petition for an allowance out of the Missouri realty two children were still residing in California, but the third was residing with a relative in Missouri. The Missouri court denied an allowance for the support of the infants after intervention and objection by a nonresident creditor. The court concluded that the children must look to the domicile of the decedent for allowances, stating: "That court's exclusive authority to grant the allowance is not altered by the unfortunate circumstance that it has no assets within its jurisdiction out of which the allowances can be paid."[83] The court apparently preferred the policy of protecting creditors over those favoring the support of the family and the state's self-interest, since one

[77]Hyder v. Hyder, 16 Tenn. App. 64, 66 S.W.2d 235 (1932); *accord,* Jones v. Layne, 144 N.C. 600, 57 S.E. 372 (1907), in which the analogy to priority of claims is expressly made. *But cf.* White v. Bickford, 146 Tenn. 608, 244 S.W. 49 (1922).

[78]*In re* Estate of Beauchamp, 23 Del. Ch. 377, 2 A.2d 900 (Orphan's Ct. 1938).

[79]Shannon v. White, 109 Mass. 146 (1872); Richardson v. Lewis, 21 Mo. App. 531 (1886).

[80]Mitchell v. Word, 64 Ga. 208 (1879); Simpson v. Cureton, 97 N.C. 113, 2 S.E. 668 (1887).

[81]Smith v. Howard, 86 Me. 203, 29 Atl. 1008 (1894); Jaeglin v. Moakley, 236 Mo. App. 254, 151 S.W.2d 524 (1941).

[82]236 Mo. App. 254, 151 S.W.2d 524 (1941).

[83]*Id.* at 260, 151 S.W.2d at 527.

infant had become a Missouri resident. The creditor that prevailed probably could not have recovered in California had the land been there, or in Missouri if the deceased had been domiciled in that state. By the court's refusal the nonresident creditor recovered, whereas he could not have done so in a local situation in either state. That this is a desirable solution of the conflicting policies seems questionable. Certainly conflict of laws policies are opposed to a windfall resulting from fortuitous contacts and the cumulative effect of blind application of conflicts doctrines.

The states of California and Washington have been exceptionally liberal in granting allowances in ancillary administration. Decisions there have indicated that nonresident claimants can obtain allowances under the statutes of the forum, at least as long as the estate is solvent.[84] For example, the California court in *Estate of Foreman,*[85] in approving a "reasonable" allowance to the widow of $1,250 per month over the contention by a creditor that the law of the decedent's domicile governed, indicated that neither the residence of the deceased nor of the surviving spouse was controlling. The court did, however, call attention to the fact that the widow had since become domiciled in California. The basis of the California decision seems to be the characterization of the allowance as a preferred claim against the estate rather than a distributive share.[86]

Ohio has one of the few statutes expressly providing for allowances to nonresidents in ancillary administration.[87] This statute provides for such an allowance only when not provided for by the domicile. The statute may well have been designed to cover the situation in which the state of a decedent's domicile adopts a self-interest attitude and denies an allowance to dependents resident in Ohio. If this was the purpose, the statute is not so limited by its terms. Probably the policy of the state goes beyond retaliatory self-interest and favors support allowances generally for dependents claiming assets in Ohio administration. The former view of allowances as tax-saving devices may have been partially responsible also. At any rate the statute suggests a preference for nonresident dependents over resident creditors.

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[84]*In re* Pugh's Estate, 22 Wash.2d 83, 154 P.2d 308 (1944); *In re* Johnson's Estate, 114 Wash. 61, 194 Pac. 834 (1921).

[85]16 Cal. App.2d 96, 60 P.2d 310 (1936).

[86]*Id.* at 100, 60 P.2d at 312 (quoting with approval from 2 BANCROFT, PROBATE PRACTICE 1322).

[87]OHIO REV. CODE §2117.23 (Page 1954); see also MINN. STAT. §525.15 (4) (1953).

The interesting case of *In re McComb's Estate*[88] construed the Ohio statute in a situation in which both the decedent and the claimant were nonresidents. The court concluded that a domiciliary statute making the granting of an allowance to the widow dependent upon the insufficiency of the widow's separate estate did not satisfy the Ohio conditions, so an allowance of a year's support of $7,500 was properly made in the Ohio ancillary administration. The construction of the Ohio statute is for the Ohio courts, but whether a statute of the domicile is unreasonable because it makes the allowance depend upon need of the claimants is a matter upon which reasonable men can differ. In the matter of interstate administration it would seem that considerable deference should be made to the domicile if any provision would be made there for the claimant.

The family allowance problem may assume very serious proportions, especially in smaller estates. The states generally recognize, at least in local cases, that the members of the decedent's family who were dependent upon him for support are to be given a limited prior claim. The need for this support allowance is not, of course, alleviated by the fact that all assets or parties are not within the same state; actually, multi-state cases may often have factors increasing the need of the dependents for the allowance. It seems, therefore, that the primary policy is to provide interim maintenance for those dependents. The device must not be used to abuse the policies favoring protection of creditors or the distribution of assets to those properly entitled. It is submitted that the rank of these policies in conflict of laws is, in broad outline, the same as that indicated in the local statutes of nearly every state providing for priority of disbursements of estate funds. This priority is generally as follows: (1) family and widow's allowances, (2) creditors' claims, (3) distribution. In an interstate estate the allocation to each of these must reasonably reconcile the policies of all states involved. Each state should be aware that its own detailed provisions are not the only reasonable ones that might be adopted and that accommodation must be made to the policies of other states.

The case of *Simpson v. Cureton*[89] suggests in part at least a reasonable solution. The decedent died domiciled in South Carolina, leaving personal assets in North Carolina. Although the North Carolina court denied the nonresident widow's application for allowance under the

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[88] 80 N.E.2d 573 (Ohio Prob. 1948).
[89] 97 N.C. 113, 2 S.E. 668 (1887).

statutes of North Carolina, it indicated that allowance should be made according to the law of the decedent's domicile and that, if the assets in South Carolina were insufficient to satisfy the allowance, North Carolina assets would be used to satisfy the allowance, subject to claims of North Carolina creditors. This is one of the few cases purporting to view the problem as one involving a single estate.

In viewing family allowance problems as a whole, it is clear that an allowance should be made somewhere to protect the family; still, this should not unduly impair the reasonable expectations of creditors and distributees. Above all, it should not invite retaliation by another state. Domicile is the unifying center about which estates are administered. Creditors normally file their claims at the domicile and, for their protection, investigate exemptions there. This is not, however, the case in some situations in which the domicile is not readily known. In order to meet this possibility it seems reasonable in ancillary administration to grant at least the lesser allowance permitted under either the law of the forum or of the domicile, deducting any amounts already received elsewhere.[90] This would give a reasonable allowance and yet not create a windfall to creditors simply because of the multistate nature of the case. It would also preclude the use of the family allowance statutes to effect a different final distribution of the assets from that provided by governing law. Such a solution could at least cover the emergency period of administration without threat of retaliation or creditors' suits until distribution could be made. This would be consistent with the statutes permitting a discretionary allowance and also could fit within the lump sum provisions by reason of crediting payments already made elsewhere. Lump sum provisions would never be exceeded, though less might be granted.

b. Enforcement of Foreign Allowance Orders

An important question arises when the assets at the domicile are insufficient to satisfy an allowance order and the domiciliary order is sought to be enforced in ancillary administration. The foreign allowance order is usually denied enforcement in ancillary administration. This conclusion has been uniform in the few cases decided.[91] The

[90]See, *e.g.*, MINN. STAT. §525.15 (4) (1953), which expressly provides for deduction of amounts received at the domicile from that reserved in Minnesota.

[91]Smith v. Smith, 174 Ill. 52, 50 N.E. 1083 (1898); Gaskins v. Gaskins, 311 Ky. 59, 223 S.W.2d 374 (1949); Short v. Galway, 83 Ky. 501, 4 Am. St. Rep. 168 (1886); *In re* Estate of Schram, 132 Neb. 268, 271 N.W. 694 (1937); see RESTATEMENT OF

recent Kentucky case of *Gaskin v. Gaskin*[92] illustrates the position usually taken. The Kentucky court refused to honor an allowance order from the domiciliary probate court in Georgia as a claim against realty in Kentucky. The court based its decision on the ground that to enforce the decree would permit foreign law to determine the devolution of Kentucky land. The court reached its conclusion in spite of the constitutional argument that the Georgia decree was entitled to full faith and credit. The Supreme Court of the United States has not yet passed on this issue.

Normally great weight would be given to the argument that the domicile is the state most interested in matrimonial matters and that when the husband's duty to support is reduced to a court decree it should be enforceable everywhere. A post mortem extension of this duty seems to stand on no different ground. This conclusion is not so easily reached, however, when the nature of the modern family or the widow's allowance is considered. Is a widow's allowance for support or is it also a partial distribution of the estate? As has been mentioned before, the overlap of the statutory provisions for family allowance, forced share, and homestead is such that it is doubtful that a substitution for the husband's duty to support is the only factor leading to their adoption. This is particularly true when a surviving husband can claim a support allowance, or when the allowance overlaps the small estate distribution scheme.

The policies present in distributive share interests are also present in the allowance statutes of many states. To the extent that a foreign allowance order constitutes partial distribution, its application to local realty is inconsistent with traditional conflict of laws rules governing distribution of realty; and, since administration is viewed as an *in rem* proceeding, the foreign court is without jurisdiction.[93] Accordingly, as long as family allowance statutes are so diverse and the danger to creditors' interests so great, the conclusion that the domicile's order need not be enforced against foreign real estate is perhaps justified.[94]

CONFLICTS §302, comment *a* (1934).

[92]311 Ky. 59, 223 S.W.2d 374 (1949).

[93]It is believed that inter vivos support obligations and statutes are sufficiently uniform not to be subject to the objection present in allowances from decedent estates and thus are distinguishable in regard to foreign enforcement under the full faith and credit clause. *Cf.* Scoles, *Enforcement of Foreign "Non-final" Alimony and Support Orders,* 53 COL. L. REV. 817 (1953).

[94]See Hansel v. Chapman, 2 App. D.C. 361, 372 (1894): ". . . it would breed endless confusion in the administration of justice if real estate in this District were

Although the same arguments can be made as to enforcement of domiciliary allowance orders against movables in ancillary administration, there is no real reason why such orders should not be enforced when the estate is solvent. This result is based on the different law governing distribution. The argument that the domiciliary allowance order is in effect distribution has no weight against enforcement, since domiciliary law governs distribution of movables.

To recognize that foreign allowance orders do not come within the ambit of the full faith and credit clause is not to say that, when need is shown, the state of the situs of land should refuse an allowance to the widow and family simply because of the estate owner's nonresidence. Considering the relative weight of the policies protecting the family and those protecting creditors, at least as much protection should be allowed a nonresident family as a resident one. The creditors can be amply protected by the court's taking into consideration sums actually received under foreign orders and directing that only the balance be paid; this will bring the total amount received to at least the lesser amount allowed by either the domicile or the situs.

Homestead

Immovables. The interests arising from probate homestead exemptions relating to land are such as to be peculiarly within the control of the state in which the immovable is located. This is for several reasons: (1) the interest is within the usual situs reference rule; (2) the situs is by far the most probable forum of litigation of such interests; and (3) situs and domicile coincide to give the situs state the most dominant interests. Requirements for the acquisition of a homestead are based upon (1) residence or domicile upon a particular piece of land or (2) the setting aside of a homestead in the state of domicile of the deceased.[95] This means that the determination of homestead interests is a matter nearly always local to the state of the situs. Even in situations involving conflicting conclusions as to domicile, it is a local matter for the state of the situs to decide whether it is to be bound by a foreign domicile finding. The very purpose of

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liable to be subjected to the arbitrary, and probably discordant charges that might be sought to be made against it by other States, and even by foreign nations, under the guise or pretense of widow's allowance, homestead exemptions, or other similar provisions, peculiarly matters of local public policy."

[95]See statutes cited *supra* note 15; 1 AMERICAN LAW OF PROPERTY §5.114; Haskins, *Homestead Exemptions,* 63 HARV. L. REV. 1289 (1950).

homestead — to protect the continuing home of the family — prevents many substantial conflict of laws problems from arising. Even the problem as to whether the claimant as well as the decedent must be a resident of the situs state is essentially a local problem of statutory construction.[96]

The problem of priorities and interests in the proceeds from sale of foreign homestead realty ordinarily will not arise, because the homestead is located at the domicile, the place to which the proceeds of such a sale normally would be transmitted for distribution if not distributed locally. One way for the proceeds of a sale of homestead realty to be subject to administration in a state other than the domicile is by operation of the doctrine of equitable conversion. If the owner of homestead land makes a contract to sell it, the vendor's right against the purchaser for the purchase price may be administered where the purchaser is subject to suit. Another example of the unusual situation in which a fund representing the homestead may be found in another state arises when insurance proceeds covering damage to the homestead are garnished in another state. In *Sanders v. Armour Fertilizer Works*[97] the United States Supreme Court affirmed the Illinois court's characterization of the inter vivos debtor's homestead exemption as the creature of local law and without force outside the state.

Whether the same result would be reached in a probate homestead case is uncertain. There is adequate reason in the policies behind the probate homestead laws to view them in a different light from the inter vivos debtor's homestead provisions. In the inter vivos cases the defendant seeks to protect himself from his own undertakings. The interests of the family survivors in the probate homestead, however,

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[96]Matthews v. Matthews, 249 Ala. 611, 32 So.2d 514 (1947), illustrates the usual view. The court stated at 612, 32 So.2d at 514: "The prerequisite to a widow's right to homestead exemptions is the residence in this state of her husband at the time of his death and residence as here considered means domicile, the place where his habitation was fixed without any present intention of changing it." *Accord*, Croker v. Croker, 51 F.2d 11 (5th Cir. 1931); *In re* Graham's Estate, 73 Ariz. 179, 239 P.2d 365 (1951); Collins v. Collins, 150 Fla. 374, 7 So.2d 443 (1942); Miller v. West Palm Beach Atl. Nat'l Bank, 142 Fla. 22, 194 So. 230 (1940); Leonetti v. Tolton, 264 Mich. 618, 250 N.W. 512 (1933); S. D. Scott & Co. v. Jones, 230 N.C. 74, 52 S.E.2d 219 (1949); *Ex parte* Morrow, 183 S.C. 170, 190 S.E. 506 (1937); Dorn v. Stidham, 139 S.C. 66, 137 S.E. 331 (1927); Carson v. McFarland, 206 S.W.2d 130 (Tex. Civ. App. 1947); United States Bldg. & Loan Ass'n v. Midvale Home Finance Corp., 86 Utah 506, 44 P.2d 1090 (1935).

[97]292 U.S. 190 (1934).

are often opposed to the testamentary disposition of the deceased as well as to the interests of his creditors. In other words, the interest of the survivors is more analogous to dower than to the debtor's inter vivos exemptions. The surviving family has an interest in its own right; this should be recognized even if raised in litigation in another state.[98] Although the priorities of creditors under inter vivos debtor's exemption statutes are usually considered to be procedural matters governed by the forum, it is preferable in decedents' homestead matters to enforce the situs priorities and avoid the windfall for creditors based on "fortuitous" or other destruction of homestead premises.[99]

Movables. Very few conflict of laws questions arise as to homestead rights in movable property. This is because the statutes providing for homestead exemptions of personal property usually relate to personalty located on the real estate homestead.[100] Since homestead rights as to both personalty and realty depend upon domicile, there are few instances in which problems arise in ancillary administration. This means that there normally are no rights before the forum other than those granted by local law. The possibility of casual insurance proceeds being garnished in a state other than the domicile is present here as in realty homestead. Should this occur, the results would probably parallel those discussed above.

An interesting case raising some potential problems is *O'Donnell v. Wendell,*[101] in which the decedent died domiciled in Michigan and was survived there by his widow. The decedent and his widow owned jointly three pieces of residential real property, each fully furnished. One was their home in Michigan, another a summer place in Canada, and the third a winter place in Florida. The widow, having succeeded to the title of the realty by reason of her survivorship, refused to account to the estate for the household furnishings at any of the three residences. The Michigan court sustained her action on the ground that under the Michigan statute she was entitled to the household furniture wherever located. The reasoning was that creditors could

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[98]Griggs' Estate, 54 Pa. D. & C. 25 (1945); *cf.* Equitable Life Assur. Soc'y v. McRae, 75 Fla. 257, 78 So. 22 (1918); Hoffman v. Hoffman, 8 N.J. 157, 84 A.2d 441 (1951); United States Mtge. & Trust Co. v. Ruggles, 258 N.Y. 32, 179 N.E. 250 (1932).

[99]Compare the insurable interest requirements of insurance law with the "fortuitous" nature of the windfall possible to creditors in this situation.

[100]See note 14 *supra.*

[101]331 Mich. 592, 50 N.W.2d 166 (1951).

not object because this exemption was prior to creditors' claims. Although the provision involved was part of the widow's allowance statute rather than a homestead exemption, it is one that often is included in homestead statutes. Some doubt may be raised as to the effectiveness in ancillary administration of such a statute of the domicile if a reasonable balance is to be struck between the policies favoring creditors and widows. Normally such provisions are construed to apply to local assets only.[102]

CONCLUSION

The choice of law patterns suggested in this discussion of nonbarrable interests in decedents' estates are centered around the state of the domicile. The problems have as their orbit the family and the family home. This means that the state most concerned is the state with which the family and the decedent have had some kind of enduring relationship. Domicile is a continuing relationship between persons and a state. Thus, while it is an unsatisfactory concept in many instances, domicile is the best contact at hand and — what is more important — it corresponds to the factual situations in most cases. It is submitted that the policies involved in these matters of nonbarrable interests in multi-state administrations clearly indicate the need for recognition of the single measure that the state of the domicile can give. Even so, it is not suggested that every case should be governed by the law of the domicile. Rather, it is believed that the pertinent policies should be considered as they appear in each case and that the conflict of laws problems should be resolved by reference to the law of the state indicated by these policies. In matters concerning interests created by reason of the family relation, it is expected that these should be of most interest to the state in which the family has its home.

[102]*In re* McCombs' Estate, 80 N.E.2d 573 (Ohio Prob. 1948).

TABLE OF HEADINGS AND SUBHEADINGS

Introduction and Scope 151
Description of Nonbarrable Interests 151
Statement of the Conflicts Problems 154

Purposes and Policies Incident to Nonbarrable Interests 155
Local Law Policies 156
Supporting Nonbarrable Interests 156
Protection of the Family 156
The Support Obligation 156
Protection of the State 157
Presumed Contribution 157
Economy in Transmission of Property 157
Equality of the Sexes 158
Justice and Fairness Among Beneficiaries 158
Opposed to Nonbarrable Interests 159
Freedom of Testamentary Disposition 159
Protection of Creditors 160
Alienability of Land 160
Conflict of Laws Policies 161
The State of Dominant Interest 162
Application of Local Laws 162
Ease of Determination of Applicable Law 163
Predictability and Protection of Justified Expectations 163
Needs of Interstate and International Systems 164

Law Governing Nonbarrable Interests 164
Dower or Statutory Forced Share 165
Immovables 165
Movables 166
Measurement by Assets Located in Another State 168
Widows' and Family Allowances 172
Effect of Residence or Nonresidence 172
Resident Decedent and Resident Claimant 173
Resident Decedent and Nonresident Claimant 173
Nonresident Decedent and Resident Claimant 174
Nonresident Decedent and Nonresident Claimant 175
Enforcement of Foreign Allowance Orders 178
Homestead 180
Immovables 180
Movables 182

Conclusion 183