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Notes

Unitary Administration of Decedents’ Intangibles

Intangible property often is subject to probate administration in several states because such property, having no spatial existence, can be deemed to have its situs in a number of jurisdictions. Where two or more states administer the same property, conflict and confusion exists, with resulting prejudice to all those concerned with the estate. The author of this Note examines present means of reducing these conflicts and explores the possibility of limiting administration of each intangible to a single state. She concludes that due process should require that only one state have jurisdiction to administer each intangible and suggests that all intangibles be administered by the decedent’s domicile.

INTRODUCTION

The traditional foundation of jurisdiction to administer a decedent’s estate is similar to that of an in rem action. This concept that jurisdictional power over a res exists only in the state where the res is situated is the theoretical basis of the prevailing practice of ancillary administration of a non-resident decedent’s local assets. Although the situs of a decedent’s real or tangible personal property is readily ascertainable, it is an evanescent concept when applied to intangible property. Thus, there is little to restrict a state from determining that an intangible is “within” its territory whenever it can show some degree of power over the property. Although courts are often in agreement as to the situs of a specific intangible for purposes of jurisdiction to administer, the fact that any choice is somewhat arbitrary has led to divergent results in some cases.


The consequence of conflicting decisions on the situs of a given intangible is that two or more states may assert exclusive jurisdiction to administer the same property. Apart from the obvious disadvantages of confusion, delay, additional litigation, and increased expense, multiple administration of the same intangible property may result in the threat of double liability for the asset's obligor. Furthermore, the possibility exists that several states will reach conflicting results on succession to the same intangible. Even where courts are in agreement on the situs of various intangibles so that each is administered only once, needless inefficiency can result. To the extent that different types of intangible property are deemed to be located in different states, ancillary administration in each situs state normally will be required thus promoting delay and increasing the expense of probate administration.

Increasing interstate travel, coupled with a larger percentage of decedents who held intangible property, will likely increase the difficulties involved in administering intangible assets. Therefore, it is desirable to re-examine the standards which determine the situs of intangibles for estate administration. This Note will first examine the inadequacies of existing means of resolving the difficulties engendered by conflicting claims to administer intangibles and then will consider whether multiple administration of the same intangible can be eliminated by establishing a uniform situs for each intangible. Finally, the possibility of establishing unitary administration of all intangibles by replacing ancillary administration with a single administration at the decedent's domicile will be developed.

I. EXISTING MEANS OF REDUCING CONFLICT AND THEIR LIMITATIONS

A. Degree of Uniformity on Situs

The possibility exists that two or more states will conclude


4. Various aspects of the issues herein considered are discussed in the following: Ehrenzweig, Conflict of Laws (1962); Stumberg, Conflict of Laws (2d ed. 1951); Carpenter, Jurisdiction Over Debts for the Purposes of Administration, Garnishment, and Taxation, 31 Harv. L. Rev. 905 (1918); Hopkins, Conflict of Laws in Administration of Decedents' Intangibles (pts. 1,2), 28 Iowa L. Rev. 422, 613 (1943); Morrill, Multi-State Estates, 103 Trusts & Estates 734 (1964); Simmons, Conflict of Laws and Constitutional Law in Respect to Intangibles, 26 Calif. L. Rev. 91 (1937); Stimson, Conflict of Laws and the Administration of Decedents' Personal Property, 46 Va. L. Rev. 1345 (1960); Note, 30 St. John's L. Rev. 224 (1956).
that the situs of a decedent’s stock, negotiable instruments, choses in action, or other intangible personal property is within their boundaries and will assert jurisdiction to administer the property. However, multiple claims to probate jurisdiction over the same asset are reduced by substantial uniformity in the decisions as to the situs of particular intangibles. Thus, for purposes of administration, the majority of cases hold that shares of stock are situated in the state of incorporation;\(^5\) simple contract debts are located at the debtor’s domicile;\(^6\) a debt evidenced by an instrument has its situs where the instrument is found;\(^7\) and insurance payable to the estate is an asset wherever the insurer does business.\(^8\) When two or more states which might assert jurisdiction


\(^6\) E.g., Neely v. Havana Elec. Ry. Co., 136 Me. 352, 10 A.2d 358 (1940); In the Matter of Estate of Atychides, 26 Misc. 2d 898, 203 N.Y.S.2d 677 (Surr. Ct. 1960); In re Will of Brauff, 247 N.C. 92, 100 S.E.2d 254 (1957). See also Hopkins, supra note 4, at 430; Stimson, supra note 4, at 1587 nn. 238–41. Bank deposits have been analogized to the debtor-creditor relationship and are subject to administration where the bank is located. See In re Estate of Kane, 90 Ill. App. 2d 470, 175 N.E.2d 290 (1961); Gregory v. Lansing, 115 Minn. 73, 131 N.W. 1010 (1911).


\(^8\) New England Life Ins. Co. v. Woodworth, 111 U.S. 138 (1884). In cases where a nonresident has been killed in an automobile accident within the forum, some courts have held that potential indemnification under a liability insurance policy issued by a company doing business within the state is an
over a particular intangible acknowledge the same situs, multiple administration of the same property is eliminated, an obligor is free from the threat of double liability, and succession to that particular intangible is determined by only one state.

Nonetheless, there is less than complete agreement on the situs of intangibles for purposes of probate jurisdiction. For example, one state occasionally will seek to administer corporate stock based on the presence of the certificates while another state claims jurisdiction because it is the state of incorporation. Further, even when states are agreed in abstract terms on the situs of a particular type of intangible, conflicts may occur as a result of incompatible characterization by two states of an intangible asset. One state might characterize an obligation as a contract debt and place the situs at the debtor's domicile while another state might determine that the same obligation is evidenced by an instrument whose location determines the situs. Moreover, even though situs of specific intangibles may be agreed on, since this situs may be different for each of the decedent's intangibles, administration of these assets will be scattered among several states, thus preventing the economy and efficiency of unitary administration.

B. Comity

Although the full faith and credit clause presently is ineffectual in solving jurisdictional disputes in the administration of intangibles, the principle of comity does have an ameliorating influence.
On the basis of comity, a second state with potential jurisdiction over an intangible often acquiesces to the state first assuming jurisdiction. For example, in *Lohman v. Kansas City So. Ry.*, the decedent's New York administrator had possession of stock certificates of a Missouri corporation. In a New York action, the Missouri administrator contended that he was entitled to administer the stock since the corporation's domicile was Missouri. He was unsuccessful in that action and sought relief in the Missouri courts. Acknowledging that the full faith and credit clause did not require recognition of New York's jurisdiction, the Missouri court nonetheless declined to assert jurisdiction on behalf of the Missouri administrator. Resting its decision on the principle of comity, the Missouri court acquiesced in New York's prior assertion of jurisdiction on the basis of the presence of the certificates. The court pointed out that there was no need to insist upon jurisdiction in the absence of Missouri creditors or other persons interested in the estate — thus emphasizing a weakness inherent in comity as a means of avoiding multiple administration. Since its application is only a matter of grace, a court may disregard the principle where local interests will be served by the exercise of jurisdiction. Further, comity safely may be relied on only at the conclusion of two lawsuits — one in which one forum takes jurisdiction and another in which a second forum accedes to the jurisdiction of the first. Even then, a third state may claim jurisdiction.

C. **Substantial Uniformity on Choice of Law**

One of the problems created by multiple administration of intangibles is the possibility of conflicting decisions on succession. If a state decides that an intangible was in the state, the full faith and credit clause does not require the second forum to recognize the judgment or decree; the latter is not bound by the former's assertion of jurisdiction but may inquire whether that court met the jurisdictional standards imposed by the United States Constitution. Riley v. New York Trust Co., 315 U.S. 348 (1942); Adam v. Saenger, 303 U.S. 59 (1938); Thompson v. Whitman, 85 U.S. (18 Wall.) 437 (1873); *Ehrenzweig, Conflict of Laws §§ 57, 58 (1959); Restatement, Conflicts § 429 comment (e), (g) (1934). However, if a constitutional standard were developed for determining in which state an intangible is located, the second forum could not refuse to acquiesce to the first state's assertion of jurisdiction, provided it met the constitutional standard. See text accompanying notes 48-46 infra.

14. 326 Mo. 868, 33 S.W.2d 117 (1930).
to the asset. This problem is mitigated by the choice of law rule, adhered to by most jurisdictions, which looks to the law of the decedent's last domicile to determine succession to personal property. Moreover, a determination by the domicile that a will is valid is generally recognized by other states, so that normally there will be no dispute as to whether distribution should be testamentary or by intestate succession. However, this choice of law rule comes into play only after a court has assumed jurisdiction. It has no utility for determining which state should have jurisdiction to administer an intangible. Thus the possibility of multiple administration of the same intangible and/or of the intangible assets of the estate as a whole exists despite this rule.

II. PROPOSED METHODS OF ELIMINATING CONFLICT

A. SINGLE SITUS FOR EACH INTANGIBLE

1. State Legislative Action

Multiple administration of the same intangible and the undesirable consequences it fosters could be eliminated if each type of intangible property were accorded a single and exclusive situs. The long standing rule which requires property to be administered in the state where located has necessitated assigning a judicially created situs to various types of intangibles. The fact that intangible property has no spatial existence, and the fact that different conclusions have been reached on the situs of certain intangibles does not preclude establishment of a definitive and exclusive situs for each type of intangible. Individually, the states do not have power to impose a uniform situs upon each other, unless by reciprocal legislation. Presently at least two states have enacted statutes which set forth the situs of designated intangible property for purposes of administration. If all

17. See, e.g., Niles v. Niles, 35 Del. Ch. 106, 111 A.2d 697 (Ch. 1955); Martin v. Harris, 305 Ky. 235, 203 S.W.2d 78 (1947); In re Sherman's Will, 71 N.Y.S.2d 492 (Sup. Ct. 1947); Atkinson, Wills § 94 (2d ed. 1953); Restatement, Conflicts § 306 (1934). For a collection of statutes which have embraced the common law rule, see Rees, American Wills Statutes (pts. 1, 2), 46 Va. L. Rev. 613, 856 (1960).
states were to adopt identical statutes, conflicting claims to administer intangibles would be substantially reduced.\textsuperscript{20}

\section{Federal Constitutional Mandate}

In the absence of state legislation, the possibility of judicial establishment of a uniform situs for each intangible by constitutional mandate may be considered. Several Supreme Court decisions have incidentally ruled upon the situs of various intangibles. In \textit{Wyman v. Halstead}\textsuperscript{21} the District of Columbia ancillary administrator of an Alabama domiciliary secured a writ of mandamus compelling the United States Treasurer to pay him a debt due the estate. The Treasurer refused to pay, contending that only the domiciliary representative could compel payment. The Supreme Court dissolved the writ, holding that the Treasurer could, at his discretion, pay either administrator and had not abused the discretion by refusing to pay the ancillary administrator. Citing several state cases, the Court indicated in dictum that in cases not involving the United States simple contract debts have their situs at the debtor's domicile for purposes of founding administration,\textsuperscript{22} regardless of where the paper evidence is located. In \textit{Iowa v. Slimmer},\textsuperscript{23} however, the Court indicated that debts evidenced by an instrument are subject to ancillary administration wherever the instrument is located. In \textit{Baker v. Baker, Eccles & Co.},\textsuperscript{24} the Court stated that "the State which has created a corporation has such control over the transfer of its shares of stock that it may administer upon the shares of a deceased owner . . ."\textsuperscript{25}

However, all of the foregoing decisions seem to be merely inclusionary rather than exclusionary in establishing jurisdiction. In none of these cases did the Court intimate that jurisdiction to administer is limited to the state whose power was sustained by the decision. Indeed, the decision in \textit{New England Mutual Life Ins. Co. v. Woodsworth}\textsuperscript{26} leads to the possibility that several states may assert jurisdiction over the same asset. In that case the

\begin{itemize}
\item \textsuperscript{20} See note 37 infra. Of course, conflicts would remain to the extent that the various state courts would apply different provisions of their identical statutes by characterizing a given intangible differently.
\item \textsuperscript{21} 109 U.S. 654 (1884).
\item \textsuperscript{22} Compare \textit{In re Noyes' Estate}, 182 Ore. 1, 185 P.2d 555 (1947) (Salary owed by United States to deceased serviceman has situs at his domicile).
\item \textsuperscript{23} 248 U.S. 115 (1918).
\item \textsuperscript{24} 242 U.S. 394 (1917).
\item \textsuperscript{25} Id. at 401.
\item \textsuperscript{26} 111 U.S. 198 (1884).
\end{itemize}
Court declined to restrict administration of a life insurance policy to the decedent's domicile or to the company's principal place of business and held that life insurance payable to the estate is an asset in any state where the company does business and has an agent for service of process.\textsuperscript{27}

On the other hand, the Court in none of these cases considered whether the Constitution may limit jurisdiction to administer given intangibles to a single state. In \textit{Wyman}, for example, the Court did not attempt to choose between the states which might have administered the property. And in \textit{Baker} the Court did not purport to establish an exclusive situs for shares of stock. Indeed, the Court did not discuss whether the shares could be deemed to have another situs, but characterized the action as one affecting "the ownership of shares of stock in a Kentucky corporation having no situs outside its own State so far as appears . . . ."\textsuperscript{28} Although \textit{Woodworth} does suggest that several states may have jurisdiction, the Court has never expressly ruled upon the constitutionality of multiple jurisdiction to administer intangibles.\textsuperscript{29}

In contrast, the Court has fully considered the constitutionality of multiple state jurisdiction to impose death taxes on testamentary transfers of intangible property and to escheat abandoned intangibles. In the tax cases, the Court has vascillated between upholding and disallowing multiple taxation. Its present position, which was first established at the turn of the century, is that the Constitution does not require that the power to tax intangibles

\textsuperscript{27} The requirement that the company have an agent for service of process undoubtedly is no longer significant in view of the decisions in \textit{International Shoe Co. v. Washington}, 326 U.S. 310 (1945), and \textit{McGee v. International Life Ins. Co.}, 355 U.S. 220 (1957), which have expanded the scope of jurisdiction over foreign corporations and insurance companies.

\textsuperscript{28} 242 U.S. at 400.

\textsuperscript{29} In \textit{Hanson v. Denckla}, 357 U.S. 235 (1958), 72 Harv. L. Rev. 695 (1959), 48 Minn. L. Rev. 669 (1959), 107 U. Pa. L. Rev. 261 (1958), the Supreme Court implicitly left open the question of whether multiple administration of intangibles was unconstitutional:

In considering restrictions on the power to tax, this Court has concluded that "jurisdiction" over intangible property is not limited to a single State. . . . Whether the type of "jurisdiction" with which this opinion deals may be exercised by more than one State we need not decide.

\textit{Id.} at 247. The precise type of jurisdiction to which the Court was referring is unclear. However, the quoted language appears in that portion of the opinion dealing with in rem jurisdiction and it is reasonable to assume that the Court meant to leave open the issue of the permissibility of multiple, in rem, probate jurisdiction over the same intangibles. Compare Buchanan & Myers, \textit{supra} note 2, at 944.
be limited to a single state. In *Blackstone v. Miller*, 30 the Court held that New York had not violated due process by imposing a death tax on the testamentary transfer of a New York bank deposit even though the decedent was a domiciliary of Illinois and the transfer was also taxed by that state. In 1930, however, in *Farmers Loan & Trust Co. v. Minnesota*, 31 the majority concluded that the possibility of several states taxing choses in action such as negotiable instruments "suggest a wrong premise." 32 The Court overruled *Blackstone* and held that in general only the state of domicile could constitutionally impose an inheritance tax on bonds left by a decedent. 33 The Court reasoned that intangible property is not materially distinct from tangible property and since the latter could only be taxed by one state, a similar rule should be applied to the former. The domiciliary state was accorded exclusive power to tax by application of the maxim *mobilia sequuntur personam*, which locates personal property at the decedent's domicile. 34 Single state taxation survived only about a decade. In 1942, in *State Tax Comm'r v. Aldrich*, 35 the Court restored the *Blackstone* view and allowed multiple state

30. 188 U.S. 189 (1903).
31. 280 U.S. 204 (1930).
32. Id. at 210. The Court's holding was the result of a pragmatic approach to taxation:
   The inevitable tendency of that view [Blackstone's] is to disturb good relations among the States and produce the kind of discontent expected to subside after establishment of the Union... Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences.
   Id. at 209, 212. For a similar approach, see First Nat'l Bank v. Maine, 294 U.S. 312 (1932) (involving shares of corporate stock).
33. The Court did recognize the possibility of taxation of intangibles by a state other than the owner's domicile if the property has acquired a taxable "business" situs elsewhere. See Farmer's Loan & Trust Co. v. Minnesota, 250 U.S. 204, 218 (1930).
34. The maxim appears to have at least two meanings. One definition is that personal property of the deceased wherever located is subject to the law of his domicile. Another meaning is that the situs of intangible personal property is at the owner's domicile. The maxim is applied for various purposes, including jurisdiction to tax and to administer a decedent's estate. See generally Miller v. McColgan, 17 Cal. 2d 432, 110 P.2d 419 (1941) (maxim applied to income taxation); Hewit v. Freeman, 231 Ind. 675, 51 N.E.2d 6 (1943); Massey-Harris Co. v. Douglas County, 143 Neb. 547, 10 N.W.2d 346 (1943). For a discussion of the maxim as applied in the tax cases and a criticism of its use, see Stimson, *supra* note 4, at 1370-78. Compare Hanson v. Denckla, 357 U.S. 235 (1958); *In re Estate of Schultz*, 180 Kan. 444, 304 P.2d 539 (1948).
35. 316 U.S. 174 (1942).
taxation of intangibles.\textsuperscript{36} In that case Utah levied an inheritance
tax on shares of a Utah corporation left by a decedent who was
domiciled in New York. Although neither the stock certificates
nor the corporation’s transfer books were located in Utah, the
Supreme Court upheld the tax. Under the Court’s rationale,
power to tax rests with any state which has extended benefits or
protection to the owner or his property and also with any state
which can demonstrate it actually has power over property.
Although no constitutional barriers to multi-state taxation of
intangibles were found, the Court did note: “we believe that a
different system should be designed to protect against multiple
taxation, [but] it is not our province to provide it.”\textsuperscript{37}

The Constitution does, however, prevent multiple jurisdiction
to escheat a single intangible. In \textit{Western Union Tel. Co. v. Pennsylvania},\textsuperscript{38} the Court held that the due process clause of
the fourteenth amendment protects the obligor of intangible
property from double liability by limiting escheat of a single
piece of property to one state. Since due process requires that only
one state escheat intangible property, in \textit{Texas v. New Jersey},\textsuperscript{39}
the Supreme Court was faced with determining which state
should be chosen. However, the Constitution does not furnish
guidelines for making this choice and thus the Court’s decision-
making process was analogous to that of a common law court.\textsuperscript{40}
Several alternatives for determining which state’s claim should
prevail were urged upon the Court: the state with the most sig-
nificant contacts with the debt; the state of the debtor’s domicile;
the state of the debtor’s principal place of business; the state of

\textsuperscript{36} See generally Guterman, \textit{Revitalization of Multiple Death Taxation},
42 \textit{Columbia L. Rev.} 1949 (1949); Traynor, \textit{State Taxation and the Supreme
Court}, 1938 Term, 28 \textit{Calif. L. Rev.} 1 (1939). Prior to \textit{Aldrich} the Court’s position in
\textit{Farmers Loan & Trust Co.} had been severely eroded in \textit{Curry v. Mccanless}, 307 U.S. 357 (1939).

\textsuperscript{37} 316 U.S. at 181. Most states have enacted reciprocal exemption legis-
lation which curtails multiple taxation of intangibles. See Freedman, \textit{Practical Aspects of Multiple State Taxation of Intangibles of Nonresident Decedents Since the Aldrich Case}, 24 \textit{Notre Dame Law.} 41 (1948); Comment, 16
permits taxation only by the state of its situs. See \textit{Thomas v. Virginia}, 364

708 (1962).

\textsuperscript{39} 85 Sup. Ct. 626 (1965).

\textsuperscript{40} The case reached the Court through its original jurisdiction over con-
the creditor’s last known address. The last alternative was selected because it “recognizes that the debt was an asset of the creditor . . . [and] will tend to distribute escheats among the States in the proportion of the commercial activities of their residents. . . .” 41 The creditor’s last known address, as recorded by the debtor, was favored over the technically legal domicile because of its administrative simplicity. 42

While estate administration undoubtedly has similarities to both the tax and escheat areas, it is submitted that the rationale of the escheat area is particularly applicable to the administration of intangibles and ought to compel a single state jurisdiction to administer. In the Western Union Tel. case the Court reasoned that the obligor of intangible property is denied due process when he can be compelled by one state to perform the obligation with no assurance that another state will not also hold him liable for the same obligation. The obligor of intangible property subject to multiple administration is also in such a position of potential double liability. Although the mere fact that a probate court considers the asset subject to its administration proceedings does not in itself prejudice the obligor, ultimately several administrators will seek to enforce the obligation. At this point he is indistinguishable from the obligor in the escheat area because both have multiple claimants seeking to compel his performance. 43 And payment to one claimant does not necessarily protect

41. 85 Sup. Ct. at 630.

42. Previously there was division in state authority as to whether a non-resident’s property which is subject to escheat goes to the decedent’s domicile or to the state of situs. Compare In re Rapoport’s Estate, 317 Mich. 291, 26 N.W.2d 777 (1947) (upholding situs escheat) with In re Nolan’s Estate, 135 Cal. App. 2d 16, 286 P.2d 899 (1955) (upholding domiciliary escheat, irrespective of situs), and California v. State Tax Comm’n, 55 Wash. 2d 155, 346 P.2d 1006 (1959) (same). See generally Note, 61 COLUM. L. REV. 1319 (1961).

43. The estate obligor may be able to interplead all administrators who claim the property under the Federal Interpleader Act, 28 U.S.C. § 1335 (1958). See, e.g., Cramer v. Phoenix Mut. Life Ins. Co., 91 F.2d 141 (8th Cir.), cert. denied, 302 U.S. 739 (1937). Compare Treinies v. Sunshine Mining Co., 308 U.S. 66 (1939). See generally Chafee, Federal Interpleader Since the Act of 1936, 49 YALE L. J. 377 (1940); Chafee, Broadening the Second Stage of Federal Interpleader, 56 HARV. L. REV. 541, 929 (1943). This remedy may not be available to the person holding escheatable property. See Worcester County Trust Co. v. Riley, 302 U.S. 292 (1937) which held that the eleventh amendment forecloses use of the interpleader statute as a means of forcing two states into the same court. In addition, since the Constitution gives the Supreme Court original jurisdiction in controversies between states, arguably the federal district courts could not take interpleader jurisdiction where the claimants are two states. Despite the fact that interpleader may be available
the obligor from another's claim.\(^4\) In addition, application of the rationale of the escheat cases to require single state administration of each intangible arguably is not precluded by the related tax cases which permit multiple taxation of the same intangible. The tax cases can be distinguished on the ground that multiple taxation involves the taking by two or more states of only a portion of the intangible asset rather than an attempt by each state to assume control of the entire property, as in administration and escheat.\(^4\)

If due process were to require single state administration of each intangible, the Supreme Court ultimately would have to choose an exclusive situs for each intangible. The Court might simply adopt the rules presently followed by the majority of states in locating various types of intangible property.\(^5\) On the other hand, it might follow the approach taken in Texas v. New Jersey and make an independent judgment as to the state in which a particular intangible should be deemed to have its situs.

**B. THE POSSIBILITY OF A SINGLE SITUS FOR ALL INTANGIBLES**

Even the conclusion that multiple administration of an intangible is unconstitutional and a determination of the proper situs of a particular intangible would not diminish the incidence of ancillary administration. However, the Supreme Court could follow up a decision that multiple administration of an intangible violates due process with a determination that all intangibles to the estate obligor, this does not necessarily place him in a better position than the escheat obligor since there are limitations on the efficacy of interpleader. Under the statute, the amount in controversy must be over $500, and the claimants must be of diverse citizenship. It is unclear whether the remedy is available where the obligor disputes the amount or existence of his liability. See HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 924–25 (1953). But cf. Prudential Ins. Co. v. Shawver, 208 F. Supp. 464 (W.D. Mo. 1962).

\(^4\) Payment to one administrator does not automatically bar the claim of an administrator appointed by another state because of the traditional theory that the two administrators are not in privity with each other. See Comment, 55 MICH. L. REV. 261 (1956). While some states have developed rules which protect an estate obligor from double liability the extent of their protection varies. For a discussion of these rules see Hopkins, supra note 4, at 485–490, 495–49, 620–24, 628–34. If the estate obligor knew he could pay an administrator without risk of double liability, voluntary payment would be promoted.

\(^5\) Multiple taxation that exceeds 100% of the estate can be prevented by the exercise of original jurisdiction in a suit between the states. Cf. Texas v. Florida, 306 U.S. 398 (1939).

\(^4\) See cases and authorities cited notes 5–8 supra and accompanying text.
should be administered in a single state. If all intangible property were deemed to have a situs in one state, the property would be treated as the decedent had treated it—as a unit. 47 It is submitted that as a logical matter the decedent’s domicile should be that state. Not only is domiciliary administration usually regarded as the primary proceeding, but domiciliary law is generally applied to determine succession to personal property. 48 In most instances, the domicile has had more sustained contacts than any other state with the decedent and probably with his intangible property. Exclusive probate at the domicile not only would channel the proceedings to the forum whose law governs, but also would be a movement in the direction of unitary administration of all the decedent’s assets. Such a result would effect a greater “ease of administration,” a factor that the Supreme Court relied on as a basis for choosing one state over another in the context of escheat. 49

Conceptually, intangible property could readily be deemed to have its situs at the decedent’s domicile. Such property is really the right of the deceased obligee to compel performance of an obligation running to him. It is an asset that is identified with the owner, and under the maxim mobilia sequuntur personam, it could be deemed to have a situs at the owner’s domicile upon his death. Although one recent case disparaged the idea that the maxim could be used to locate intangible property at the decedent’s domicile, 50 the Supreme Court’s most recent consideration of the maxim indicates it may have some vitality. 51

Although persuasive reasons exist for limiting administration of all intangibles to the decedent’s domicile, a 1958 Supreme Court decision, Hanson v. Denckla, 52 may not permit such a rule.

47. The various uniform acts in the area of probate attempt to foster the policy of treating the estate as a unit. See Atkinson, The Uniform Ancillary Administration and Probate Acts, 67 Harv. L. Rev. 619 (1954).

48. See cases and authorities cited notes 17 & 18 supra.


51. In Texas v. New Jersey the Court explicitly recognized that the rule it adopted limiting escheat to the state of the creditor's last known address was simply a variation on this maxim, 357 U.S. at 630 n.10.

52. 357 U.S. 235 (1958). That case involved a dispute between the appointees under an inter vivos appointment and the residuary legatees under the will of the settlor who exercised the power. While domiciled in Pennsylvania the settlor executed a deed of trust in which she retained a power of appointment over the corpus. The trust assets were corporate securities held by Delaware trustees. The settlor later became domiciled in Florida and exercised the power there on the same day she executed her will, which was
Therein, the Court stated: "The settlor-decedent's Florida domicile is equally unavailing as a basis for jurisdiction over the trust assets .... The fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction in rem." This broad language might be construed to foreclose the possibility of a decedent's domicile exercising exclusive jurisdiction over his intangible property. However, it is possible to confine this language to cases involving inter vivos dispositions of property since Hanson involved an action to determine the validity of an inter vivos exercise of a power of appointment over an inter vivos trust. Indeed, other language in the opinion intimates that the Court left open the question of whether a state could exercise in rem probate jurisdiction over intangible property of a deceased domiciliary. The Court stated:

Whatever the efficacy of a so-called "in rem" jurisdiction over assets admittedly passing under a local will, a State acquires no in rem jurisdiction to adjudicate the validity of inter-vivos dispositions simply because its decision might augment an estate passing under a will probated in its courts.

Moreover, the arguments in favor of domiciliary jurisdiction probably were not fully considered by the Court because both parties assumed that the intangibles in question had their situs in Delaware and failed to argue that jurisdiction over intangibles could be approached in terms other than the traditional situs. That was also the situation in the related Supreme Court subsequently probated in Florida. A declaratory judgment proceeding was instituted in a Florida court by the testamentary beneficiaries to determine whether the trust assets passed by virtue of the appointment or were part of the estate subject to probate. The Delaware trustees and some of the appointees were not personally served, and did not appear, but the Florida Supreme Court ruled it had jurisdiction over the absent defendants and held the exercise invalid. One of the issues before the Supreme Court was whether Florida had jurisdiction to adjudicate the validity of the appointment. The Court held Florida had neither in rem jurisdiction over the trust assets nor personal jurisdiction over the Delaware trustees.

53. Id. at 249.
54. Id. at 248. (Emphasis added.)
55. Id. at 247.
56. A recent Kansas statute attempted to grant jurisdiction to the probate courts of that state over all intangible assets of resident decedents. Kansas was one of the few states which declined jurisdiction over nonresident decedent's personal property in favor of the domiciliary state. See In re Miller's Estate, 90 Kan. 819, 136 Pac. 255 (1913); cf. In re Plasterer's Estate, 49 Wash. 2d 339, 301 P.2d 539 (1956). The purpose of the statute was to force other states, and particularly Missouri, to decline jurisdiction over intangible assets
Thus, attainment of unitary administration of a decedent's intangibles by judicial fiat is theoretically possible. Further, it can be made consistent with the interests of the parties interested in such proceedings. Of course, administration of intangibles at the decedent's domicile would be palatable only if the interests of nondomiciliary tax authorities, creditors, and beneficiaries are satisfied. Tax claims of states other than the domicile might still be enforced even if those states were precluded from administering by a determination that the situs of all intangibles is at the decedent's domicile for purposes of administration. Arguably, an intangible could be deemed to have its situs in a state for purposes of jurisdiction to tax even though the situs for administration is elsewhere. In this situation a tax proceeding could be held in that state without a full ancillary administration. Alternatively, the tax claim itself well might be enforced in the state of administration.

57. 315 U.S. 343 (1942). In that case representatives of the decedent appointed in Georgia and New York both sought to have the obligor turn the property over to them. The obligor, a Delaware corporation, interpleaded the two claimants in a Delaware court. The decedent's will was probated in Georgia where it was held it was the domicile. However, a special administrator appointed in New York claimed that New York was the domicile. The Delaware court refused to give credit to Georgia's determination of domicile and held that New York was the domicile. The Supreme Court held that Delaware was not required to give full faith and credit to the Georgia judgment since that judgment could not operate in rem upon stock which had its situs in Delaware. Nonetheless, the case does not stand for the proposition that the assets could not be deemed to have a situs at the decedent's domicile. The Court did not reach that question since the parties stipulated, and the Court assumed, that the stock had its situs in Delaware.

Baker v. Baker, Eccles & Co., 242 U.S. 394 (1917), could be explained on the same basis since the Court there simply assumed its conclusion that the stock had its situs in the state of incorporation rather than at the decedent's domicile. Id. at 400.

58. Although full faith and credit has been construed not to require a
As far as nondomiciliary creditors are concerned, unitary administration generally would be a more equitable manner of satisfying debts of the estate. The burden is slight because those creditors who can find no property of the decedent within their state have always been required to seek out the forum where there are estate assets. Moreover, with respect to the decedent's intangible property, unitary domiciliary administration would prevent one creditor from securing satisfaction of his debt while another goes unpaid. To the same extent it also would curtail forum shopping by creditors whose claims have been disallowed in one jurisdiction but who are still able to seek payment out of assets in another state.69

The position of prospective takers of the decedent's property by will or intestacy is essentially unchanged by domiciliary administration of all intangibles. It means only that they must go to the domicile if they wish to contest the disposition of intangible property. Absent their personal appearance, a determination of the domiciliary probate court as to succession to intangibles would not prevent them from litigating any issue with respect to real or tangible personal property in another forum.60 Because domiciliary administration of intangibles would merely limit the jurisdiction in which persons interested in the estate can present claims to or against intangible property it does not seem harsh when weighed against the delay and expense concomitant with ancillary administration of each intangible in a different situs state.61

state to entertain tax claims, many jurisdictions presently will entertain such claims. See Comment, 16 Hastings L. J. 101 (1964); 46 Minn. L. Rev. 393, 400–01 (1961). Furthermore many states by reciprocal legislation will not impose a tax on the intangibles of a nonresident. See note 37 supra.


61. For an article concluding that unitary administration of intangibles is not desirable, see Buchanan & Myers, The Administration of Intangibles in View of First National Bank v. Maine, 48 Harv. L. Rev. 911, 950–53 (1935).
Notwithstanding the policies favoring determination that the decedent's domicile is the sole situs for all intangibles and the absence of any judicial authority directly contrary to this result, attainment of such a goal faces serious obstacles. As noted above, a determination that multiple administration of an intangible violates due process does not lead inexorably to the establishment of a single situs for all intangibles. To hold the decedent’s domicile the situs of all intangibles would require upsetting a great body of law as to the situs of various intangibles. Further, conflict would not cease even if the decedent’s domicile were accorded exclusive jurisdiction to administer. Since each state might readily persuade itself that it was the domicile, conflicts over that issue would replace conflicts over situs. In order to effectively limit administration to the domicile, domicile itself would have to acquire a federal constitutional meaning. Arguably, there is no impediment to the Supreme Court enunciating a federal standard. If due process were to require that only the domicile be allowed to administer intangibles, then domicile itself could well be deemed a federal question, at least for purposes of determining jurisdiction to administer. Alternatively, the full faith and credit clause might be interpreted in such a manner that Congress could provide a federal legislative standard for domicile. Since that clause gives Congress power to prescribe the manner of proving, and the “effect” of judicial proceedings in each state, arguably it would be permissible for that body to determine that when facts A, B, and C have been proven, the “effect” shall be to conclusively establish domicile. Adoption of this approach would, however, greatly increase the judicial load of the Supreme Court as final arbiter of domicile.

Finally, even if a single state were designated for administration of all of a decedent’s intangible property, unitary administration of the entire estate would still be thwarted to the extent that

62. See notes 5–10 supra and accompanying text.


the decedent's real and tangible personal property has its situs elsewhere. Although not inconceivable, radical changes in the existing law would be required to subject such property to the exclusive jurisdiction of the domicile.

CONCLUSION

The present concept of in rem probate jurisdiction under which states may arbitrarily assign a situs to intangible property is inadequate insofar as it permits or facilitates multiple administration of the same intangible, and insofar as it requires ancillary administration in each situs state. Confronted with the proper case, a court should hold that multiple administration of the same intangible violates due-process because of the potential prejudice to its obligor. Having decided this, the court eventually must establish a situs for each type of intangible. This would eliminate the existing possibility of multiple claims to administer the same intangible property. However, in order to facilitate efficient and economical estate administration the court could go further and achieve unitary administration by establishing the decedent's domicile as the exclusive situs of all intangibles. The likelihood of attainment of such a result by judicial fiat is greatly diminished by the existing body of law which places the situs of specific intangibles in states other than the domicile. Nonetheless there is no express judicial precedent to prevent this result and in balance the scheme would probably result in a better method of probate administration without unduly injuring existing interests in ancillary proceedings.