Title

Creating a nonvoidable domestic asset protection trust (DAPT) that has multijurisdictional contacts: The state and federal conflict-of-laws minefields

Text

Creating a domestic asset protection trust (DAPT) that both has multijurisdictional contacts and is nonvoidable in whole or in part is easier said than done. There are the state conflict-of-laws issues, a few of which I have touched upon in prior JDSUPRA postings. See https://www.jdsupra.com/legalnews/when-the-parties-to-a-trust-5693362/ and https://www.jdsupra.com/legalnews/uniform-trust-code-utc-and-uniform-9217529/. And then there is the possible applicability of the Full Faith and Credit Clause of the federal constitution that our scrivener would need to contend with. See my prior JDSUPRA posting on that subject: https://www.jdsupra.com/legalnews/the-domestic-asset-protection-trust-dap-30858/. In §9.28 of *Loring and Rounds: A Trustee's Handbook* (2025), due out in December of 2024, the state and federal conflict-of-laws considerations in the DAPT space have been brought together under one roof. One-stop shopping as it were. The draft of the 2025 version of §9.28 is reproduced in its entirety in the appendix below.

Appendix

§9.28 The Domestic Asset Protection Trust (DAPT) [from *Loring and Rounds: A Trustee's Handbook* (2024), with enhancements for 2025]**.**

The DAPT. Since time immemorial it has been a bedrock principle of law and equity that one may not impress a trust on one's own property for one's own benefit and in so doing deprive one's creditors of access to that property. See generally §5.3.3.1 of this handbook. Even in the face of a spendthrift clause or full, exclusive discretion in the trustee, the maximum amount that *could* be distributed to or for the benefit of the settlor is accessible to the settlor's creditors immediately and going forward. This is the case whether or not the entrustment was fraudulent, and whether or not the trust is revocable.

The federal Employee Retirement Income Security Act of 1973 (ERISA) worked a limited federal preemption of this equitable doctrine, namely in the context of trusts that are associated with employee benefit plans that are private and federally tax-qualified. See generally §9.5.1 of this handbook. Since ERISA is of national application, the Full Faith and Credit Clause is not implicated. In 1987, however, Alaska via a state-specific piece of legislation, authorized the establishment and administration within its borders of domestic asset protection trusts (DAPTs). A DAPT is a type of trust the underlying property of which is insulated by statute from the reach of the settlor's creditors notwithstanding the fact that the settlor is the initial and primary beneficiary. In other words, by statute a DAPT's spendthrift provision is enforceable even as against the settlor's creditors. There is one critical exception: The funding of a DAPT

may not be the product of a fraudulent conveyance. For a survey of fraudulent-conveyance/transfer doctrine in the trust context, see §8.15.99 of this handbook.

Following Alaska's lead, a number of the states, but by no means all of them, have gotten into the DAPT business. That some but not all of the states are DAPT states potentially implicates the Full Faith and Credit Clause of the U.S. Constitution. What if, for example, a debtor has established with all his property a trust in a DAPT state and the creditor owns a judgment against the debtor that has emanated from the court of a non-DAPT sister state? Is the creditor entitled under the Full Faith and Credit Clause to have the judgment satisfied from the assets of the DAPT via a secondary action duly brought in the courts of the DAPT state?

State conflict-of-laws jurisprudence applicable to the DAPT. There is an absence of adequate textual coordination between the UTC and another codification, namely the UVTA. Specifically, UTC § 403 and UVTA §§ 4 & 10 are in apparent conflict.

The Uniform Trust Code. UTC § 403 provides that "a trust created not by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation: (1) the settlor was domiciled, had a place of abode, or was a national; (2) *a trustee* was domiciled or had a place of business; or (3) any trust property was located."

The Uniform Voidable Transactions Act. UVTA § 4 provides that "a transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation…with actual intent to hinder, delay, or defraud any creditor of the debtor…" A property transfer within, or out of, a non-DAPT state to the trustee of a trust under which there has been a reserved beneficial interest would be captured by § 4, as per its official commentary. UVTA § 10 provides that a claim for relief in the nature of a claim for relief under the UVTA "is governed by the local law of the jurisdiction in which the *debtor* is located when the transfer is made or the obligation is incurred."

The practical implications of the textual conflict between the UTC and the UVTA. Assume a property owner is domiciled in a non-DAPT state that has enacted both the UTC and the UVTA. He endeavors to insulate his property from the reach of his future creditors by transferring the property to a trustee who is domiciled in a DAPT state. The trust is initially for the settlor's own benefit. The spendthrift clause purports to insulate the property from the reach of the settlor's future creditors. In other words, it is intended as a garden-variety DAPT. UTC § 403 provides that the trust has been validly created and that its spendthrift clause is, in fact, enforceable against the settlor's future creditors. Why? Because the *trustee* is domiciled in a DAPT state and because UTC § 403 regulates the property-transfer process as well as the trust-creation process. In other words, UTC § 403 "applies to the entire process of a trust creation." See UTC § 403, cmt. The UVTA, on the other hand, provides that the out-of-state trust is voidable, that it is not a true DAPT. It is the fraudulent-conveyance law of the *debtor's* domicil, which in our fact pattern is a non-DAPT state, that governs whether the transfer-in-trust is voidable, that is whether the spendthrift clause would be unenforceable in the face of an attack by the settlor's future creditors. A literal reading of the UVTA's text and accompanying commentary suggests that the spendthrift clause would be unenforceable. It is "unclear" how a court is expected to "reconcile" the conflicting statutory

approaches to DAPT creation.[1] Had the non-DAPT state been a DAPT state, we would not necessarily have the conundrum as the legislature of the debtor's domicil having authorized the establishment of DAPTs "must have expected them to be used."[2]

The Restatement (Second) Conflict of Laws. The Restatement (Second) specifically addresses what state's law governs the construction and enforcement of the spendthrift clause of a trust with multijurisdictional contacts.

Section 273, entitled *Restraints on Alienation of Beneficiaries' Interests* (movables), provides that whether the interest of a beneficiary of a trust of movables is assignable by the beneficiary and can be reached by the beneficiary's creditors is determined in the case of a testamentary trust by the local law of the testator's domicil at death, unless the testator has manifested an intention that the trust is to be administered in another state, in which case it is governed by the local law of the state. In the case of an inter vivos trust of movables, it is the local law of the state, if any, in which the settlor has manifested an intention that the trust is to be administered, and otherwise by the local law of the state to which the administration of the trust is most substantially related.

Section 280, entitled *Restraints on Alienation of Beneficiaries Interests* (land), provides that whether the interest of a beneficiary of a trust of an interest in land is assignable by him and can be reached by his creditors is determined by the law that would be applied by the courts of the situs as long as the land remains subject to the trust. Moreover, the accompanying comment, specifically comment a, asserts that the courts of the situs would apply their own local law to determine the question when land is involved.

Federal constitutional conflict-of-laws jurisprudence applicable to the DAPT. *A Full Faith and Credit primer*. Article IV of the U.S. Constitution provides as follows: "Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State." The doctrine of comity is distinguished from full faith and credit "in that the latter is an explicit constitutionally based provision involving relationships only among the states, whereas comity is based, not on a constitutional provision, but on concepts such as harmony, accommodation, policy, and compatibility."[1] Still, a judgment out of a court of one state, call it the judgment state, is subject to collateral attack in a sister state if there was no subject-matter or personal jurisdiction to render the judgment under the judgment state's internal law or if the judgment state's assertion of jurisdiction over the defendant violated the Due Process Clause. Could the sister state by statute effectively limit the judgment state's jurisdiction over a particular type of cause of action? Not in the case of transitory causes of action.[2] "If the transaction on which [an] action is founded could have taken place anywhere, the action is generally regarded as transitory; but if the transaction could only have happened in a particular place … the action is local."[3] An action to set aside a fraudulent conveyance is a transitory action properly cognizable wherever jurisdiction can be obtained over the defendant.[4] A proceeding *in rem* to settle title to a parcel of real estate *per se* would be an example of a local action.

*A DAPT primer***.** For a general discussion of the subject of conflict of laws in the trust context, particularly how public policy can influence which state's law shall govern a matter in dispute, the law of

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[1] *See* Thomas P. Gallanis, *Trusts and the Choice of Law: What Role for the Settlor's Choice and the Place of Administration?*, 97 Tul. L. Rev. 805, 820-821 (2023).

[2] UVTA § 4, cmt.

[1] 16B Am. Jur. 2d Constitutional Law §1018.

[2] *See* Tenn. Coal, Iron, & R.R. Co. v. George, 233 U.S. 354 (1914).

[3] *Action*, Black's Law Dictionary (10th ed. 2014).

[4] *See generally* §8.15.99 of this handbook.

the litigation forum or some other law, see §8.5 of this handbook.[5] Here, however, our focus is the self-settled trust with a spendthrift provision, particularly the trust whose property is sited and administered in a state that no longer has a public policy that would categorically prevent enforcement of the provision as against *the settlor's* creditors.[6] "All United States jurisdictions permit creditors to set aside fraudulent transfers."[7] A U.S. domestic asset protection trust (DAPT) jurisdiction is a jurisdiction that seeks by legislation to protect the assets of a self-settled trust from attack by the settlor's *future* creditors, provided the establishment of the trust is not the result of a fraudulent conveyance and the provisions of the trust meet certain statutory requirements.[8]

In 1997, Alaska enacted a statute that may insulate certain self-settled discretionary trusts created after April 1, 1997, from the reach of the settlor's creditors.[9] The reserved contingent equitable interest may be unavailable to the settlor's creditors if (1) the trust is irrevocable,[10] (2) the trust is fully discretionary as to income and principal at its inception, (3) the trustee with the discretionary authority is someone other than the settlor, (4) the transfer in trust is not established to defraud preexisting creditors[11] and the settlor so swears in an affidavit,[12] (5) at the time of transfer, the settlor is not in default by thirty or more days of making payment due under a child support judgment or order, and (6) the trust is sited in Alaska.[13] The Alaska statute rejects the public policy at the heart of §156(2) of the Restatement (Second) of Trusts, namely "that a settlor cannot place property in trust for his own benefit and keep it beyond the reach of creditors."[14]

Effective July 1, 1997, Delaware responded by enacting a similar but not identical statute. In 1999, Rhode Island and Nevada did the same. Utah has since joined the group, as has South Dakota. Oklahoma's DAPT legislation, known as the Family Wealth Preservation Act, was enacted June 9, 2004, effective for trusts settled thereafter. Oklahoma, however, has placed a cap on the amount that can be sheltered in a self-settled trust from attack by the settlor's creditors. Missouri's DAPT legislation was signed into law July 9, 2004, as part of its Uniform Trust Code legislation. It is effective for all trusts created on, before, or after

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[5]*See also* 7 Scott & Ascher §45.7.1.2 (Inter Vivos Trusts/Spendthrift Clauses/Conflict of Laws).

[6]*See also* 7 Scott & Ascher §45.7.1.2 (Inter Vivos Trusts/Spendthrift Clauses/Conflict of Laws).

[7]Richard W. Nenno, *Planning with Domestic Asset-Protection Trusts: Part I*, 40 Real Prop. Prob. & Tr. J. 263, 276–286 (Summer 2005). *See generally* Jeffrey A. Schoenblum, 1 Multistate and Multinational Estate Planning 1461 (1999) (The Onshore Alternative: Alaska and Delaware Asset Protection Trusts). *See also* John E. Sullivan III, *Gutting the Rule Against Self-Settled Trusts: How the New Delaware Trust Law Competes with Offshore Trusts*, 23 Del. J. Corp. L. 423 (1998); Gideon Rothschild, *Asset Protection Trusts*, in Trusts in Prime Jurisdictions 424 (Alon Kaplan ed., 2000).

[8]*See generally* 3 Scott & Ascher §15.4.3; §8.15.99 of this handbook (surveying fraudulent conveyance/transfer jurisprudence in trust context).

[9]Alaska Stat. §§34.40.010 to 34.40.130, 13.36.390, 34.40.110.

[10]Note that Alaska Stat. §13.36.360(b) provides that, unless there is an express provision to the contrary in the governing trust instrument, an irrevocable trust may not be modified or terminated under §13.36.360 while a settlor is also a discretionary beneficiary of the trust.

[11]*Cf.* Breitenstine v. Breitenstine, 2003 WY 16, 62 P.3d 587 (Wyo. 2003) (holding that an "intent to hinder or delay creditors," a phrase that has been excised from the Alaska statute, is enough to consider a conveyance fraudulent even if there is no actual fraud). *See generally* Henry J. Lischer, Jr., *Professional Responsibility Issues Associated with Asset Protection Trusts*, 39 Real Prop. Prob. & Tr. J. 561 (2004).

[12]Alaska Stat. §34.40.110(k). The affidavit requirement may afford some protection to the lawyer who drafts the trust.

[13]Alaska Stat. §34.40.110(k). The settlor, however, may serve as a cotrustee, may serve as an adviser, and/or may appoint a trust protector. *See* Alaska Stat. §§34.40.110(g), 34.40.110(i). An implied agreement, however, between the settlor and the trustee that attempts to grant or permit the retention of greater rights or authority than is stated in the trust instrument would be void as a matter of law. *See* Alaska Stat. §34.40.110(j).

[14]Ware v. Gulda, 331 Mass. 68, 117 N.E.2d 137 (1954).

January 1, 2005. In 2007, Tennessee and Wyoming followed suit. On January 1, 2009, New Hampshire came on board. Hawaii has done so as well, effective July 1, 2010. As has Virginia, effective July 1, 2012; Ohio, effective March 27, 2013; Mississippi, effective July 1, 2014; West Virginia, effective June 8, 2016; and Michigan, effective March 8, 2017. Effective July 1, 2019, Indiana became the 18th state to have DAPT-enabling legislation. Effective January 1, 2020, Connecticut also got into the DAPT business. Alabama joined the group in 2021.

Colorado may or may not be a domestic asset protection jurisdiction.[15] On the books is a statute dating back to the time before Colorado was a state, which reads as follows: "All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for the use of the person making the same shall be void as against the creditors existing of such person."[16] Some have suggested that because the statute only mentions "existing" creditors of the settlor, by implication a settlor's future creditors would not have access to the entrusted property. A number of experienced Colorado trusts and estates lawyers are not so sure. We know of no trial or appellate court decision that has yet addressed the issue.

Generally, existing creditors may attack a transfer by the later of four years from the transfer or one year from the time the transfer was or could reasonably have been discovered by the creditor.[17] Future creditors must make a claim within the four-year period. Nevada is the exception: Its periods are two and six months, respectively. Query: Might a trustee, under certain circumstances, have a duty to relocate the trust's principal place of administration to one of these DAP jurisdictions? The UTC provides that "[a] trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries."[18]

One hope is that this asset protection legislation will save estate taxes. Here is how: The property of a fully discretionary "self-settled" irrevocable inter vivos trust has been subject to estate tax upon the death of the settlor-beneficiary not because the settlor died with a reserved contingent equitable interest[19] but because the property was reachable by the settlor's creditors such that §2038 of the Internal Revenue Code is implicated.[20] The legislation aims to eliminate what makes such arrangements tax-sensitive, namely, creditor accessibility.[21] The hope is that even if a gift tax should be owed at the time the trust is established,

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[15]*See* Colo. Rev. Stat. §38-10-111; 3 Scott & Ascher §15.4.3 n.20 and accompanying text (observing that though the Colorado statute seems to be the exact opposite of an "asset protection" statute, it is open to interpretation that self-settled spendthrift limitations are effective as to posttransfer creditors). *See generally* David G. Shafter, *Comparison of the Twelve Domestic Asset Protection Statutes* (updated through November 2008*)*, 34 ACTEC L.J. 293, 294 (2009) (accompanying the Colorado entry are some case and commentary citations).

[16]Colo. Rev. Stat. §38-10-111.

[17]*But see* Alaska Stat. §34.40.110(d) (narrowly defining a preexisting creditor as someone who demonstrates by a preponderance of the evidence that he or she asserted a specific claim against the settlor before the settlor transferred assets to the trust).

[18]UTC §108(b).

[19]For a discussion of whether a self-settled fully discretionary trust might implicate I.R.C. §2036(a)(1) as a retained right to income or enjoyment, *see* David G. Shaftel, *Domestic Asset Protection Trusts: Key Issues and Answers*, 30 ACTEC L.J. 1024 (2004).

[20]A general inter vivos power of appointment is the power to appoint to oneself *or* one's creditors. If the property of an irrevocable discretionary self-settled trust is reachable by the settlor's creditors, then the settlor has reserved a general inter vivos power of appointment exercisable by the incurring of debts. *See generally* §8.9.4 of this handbook (tax-sensitive powers).

[21]*See* Blattmachr, *Practice Alert: Alaska Trusts Offer New Estate Planning Opportunities*, 1997 RIA Estate and Financial Planners Alert, June 1997, at 3 (discussing how the Alaska asset protection legislation might enhance the attractiveness of *Crummey* Trusts; Life Insurance Trusts; Unified Credit and

any subsequent appreciation in the value of the trust property would escape estate tax upon the settlor's death.

The Full Faith and Credit Clause is irrelevant to bankruptcy proceedings, bankruptcy being a federal matter. For more on the origins and reach of the federal Bankruptcy Code, see generally §9.11 of this handbook. Here, creditor accessibility is likely to hinge on whether the court recognizes the "applicable nonbankruptcy law" transfer restrictions of the DAPT jurisdiction.[22] It should be noted that Congress amended the Bankruptcy Code in 2005 to allow a bankruptcy trustee to reach certain transfers to a DAPT made by the debtor going back ten years from the filing of the bankruptcy petition.[23] One federal bankruptcy court has voided the transfer of assets into an Alaska DAPT with an Alaska choice-of-law provision, the trust having been established by a resident of Washington, a state that has a strong public policy against self-settled asset protection trusts. There were simply too few Alaska contacts: "In the instant case, it is undisputed that at the time the Trust was created, the settlor was not domiciled in Alaska, the assets were not located in Alaska, and the beneficiaries were not domiciled in Alaska. The only relation to Alaska was that it was the location in which the Trust was to be administered and the location of one of the trustees, AUSA."[24]

Finally, it does not necessarily follow that a creditor who is foreclosed from reaching into a DAPT also would be foreclosed from obtaining a judicial charging order. Such an order would snare any distributions actually made by the trustee.[25]

In any case, let there be no misunderstanding: Domestic asset protection legislation is controversial. Some feel that placing one's assets in a DAPT is fraught with risk.[26] Others are adamant that a state should not be enabling a debtor to eat his cake and have it too:

> Interestingly, the Uniform Trust Code flatly rejects the notion of an "asset protection trust." Likewise, the Third Restatement adheres unapologetically to the traditional rule. So also, the scholarly reaction to asset protection trusts has been almost universally negative … In any event, the concept of the asset protection trust has already generated an immense amount of commentary.[27]

GST Exemption Trusts; GRATs, GRUTs, and GRITs; QPRTs; Charitable Lead Trusts; and Charitable Remainder Trusts and also discussing how non-U.S. persons might find an Alaska Trust advantageous). *See also* Douglas J. Blattmachr & Jonathan G. Blattmachr, *A New Direction in Estate Planning: North to Alaska*, Trs. & Ests., Sept. 1997, at 48 (suggesting that an Alaska asset protection trust can afford a settlor both protection from creditors and estate tax reduction).

[22]Under the Federal Bankruptcy Code, the bankruptcy estate does not include any beneficial interest of the debtor in a trust where the interest is subject to a restriction on alienation that is enforceable under "applicable nonbankruptcy law." 11 U.S.C. §541(c)(2). *See generally* Richard W. Nenno, *Planning with Domestic Asset-Protection Trusts: Part I*, 40 Real Prop. Prob. & Tr. J. 263, 292–319 (Summer 2005); §5.3.3.3(d) of this handbook (trusteed employee benefit plans and IRAs). *See also* Rest. (Second) of Conflict of Laws §270 (1971) (suggesting that with respect to an inter vivos trust of movables, a court should look to the law of the state designated by the settlor in the governing instrument as the law that is to govern the validity of the trust).

[23]*See* 11 U.S.C. §548(e)1. *See, e.g.*, Waldron v. Huber (*In re* Huber), 493 B.R. 798 (Bankr. W.D. Wash. 2013).

[24]Waldron v. Huber (*In re* Huber), 493 B.R. 798 (Bankr. W.D. Wash. 2013).

[25]*See, e.g.*, Hamilton v. Drogo, 241 N.Y. 401, 150 N.E. 496 (1926). *See also* UTC §501 (allowing for attachment under certain circumstances of "future distributions").

[26]*See, e.g.*, Michael A. Passananti, *Domestic Asset Protection Trusts: The Risks and Roadblocks Which May Hinder Their Effectiveness*, 32 ACTEC L.J. 260, 271 (2006).

[27]3 Scott & Ascher §15.4.3.

Some non-U.S. jurisdictions also have rejected the creditor-friendly policy of §156(2) of the Restatement of Trusts. This has given rise to the so-called Offshore Asset Protection Trust discussed briefly in §9.10 of this handbook. For a discussion of how DAPTs compare with offshore asset protection trusts, readers are referred to Jeffrey A. Schoenblum.[28]

*The Constitution's Full Faith and Credit Clause: Its politics and policy***.** Justice Jackson once referred to the Full Faith and Credit Clause as the "Lawyer's Clause" of the Constitution. "And so it is, for its concern is with litigation, and it is unlikely that many members of the general public have heard of it. After all, what are they likely to know of choice of law or preclusive effect? Yet the Framers thought it important enough to include in the wonderfully concise document they drafted in 1787."[29]

Again, Article IV, Section 1 of the U.S. Constitution, which deals with relations between and among the states, provides as follows: "Full faith and credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The framers intended that the Full Faith and Credit Clause, which establishes a rule of evidence rather than jurisdiction, close off an area of likely domestic cross-border friction, namely the full re-litigation out-of-state of matters that had been duly litigated to final judgment in-state.[30] It was all about trammeling the "runaway judgment debtor." The court of the sister state must defer to the rendering court's valid resolution of a matter, even if to do so would violate the public policy of the jurisdiction in which the court of the sister operates.[31] "[I]n other words, the judgment of the rendering State gains nationwide force."[32] Money judgments at law and in equity are particularly sacrosanct.[33] All the judgment creditor need do is submit to the court of the sister state a copy of the judgment along with a proper seal and attestation from the rendering court. Simple. This is the case even if the judgment is the product of a mistake of law.[34] There is a critical exception to this rule of judicial deference, namely if the procedures followed by the rendering court had violated the Due Process Clause of the Fourteenth Amendment.[35]

Nor does the Full Faith and Credit Clause mandate that sister states adopt the practices of judgment-rendering states regarding the time, manner, and mechanisms for enforcing judgments.[36] In other words, enforcement measures do not "travel" out of state along with a judgment.[37] Accordingly, a judgement relating to out-of-state real estate may be ineffective to pass legal title, though effective in sorting out the rights, duties and obligations of the parties, assuming there is personal jurisdiction.[38] Thus there *may be* more than one constitutional way to skin the debtor cat in a multijurisdictional setting: "It may not be doubted that a court of equity in one State in a proper case could compel a defendant before it to convey property situated in another State."[39] In the case of the debtor-settlor-beneficiary of a domestic asset protection trust (DAPT), however, legal title to the underlying property *and the right/power to convey it* are not in the debtor-settlor-beneficiary but in the trustee.

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[28]Jeffrey A. Schoenblum, 1 Multistate and Multinational Estate Planning 1467 (1999).

[29]William L. Reynolds, *The Story of the Full Faith and Credit Clause*, 41-DEC Md. B. J. 34 (2008).

[30]*See* Wisconsin v. Pelican Ins. Co., 127 U.S. 265 (1888) (Confirming that the Full Faith and Credit Clause establishes a rule of evidence rather than jurisdiction).

[31]*See* Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[32]Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[33]*See* Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[34]*See* Fauntleroy v. Lum, 210 U.S. 230 (1908).

[35]*See generally* William L. Reynolds, *The Story of the Full Faith and Credit Clause*, 41-DEC Md. B. J. 34 (2008).

[36]*See* Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[37]*See* Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[38]*See* Baker v. Gen. Motors Corp., 522 U.S. 222 (1998).

[39]Robertson v. Howard, 229 U.S. 254 (1913).

A DAPT full-faith-and-credit practice tip. So let us return to the question we posited at the beginning of this subsection: What if a debtor has established with all his property a trust in a DAPT state and the creditor owns a judgment against him that has emanated from the court of a non-DAPT sister state? Is the creditor entitled under the Full Faith and Credit Clause to have the judgment satisfied from the assets of the DAPT via a secondary action brought in the courts of the DAPT state? It would seem that it depends upon whether the action in the non-DAPT state had been a transitory one, in this case whether the DAPT had been funded via a fraudulent conveyance.[40] If there is an out-of-state judgment to that effect, then the property ostensibly in the DAPT would be accessible to the settlor's out-of-state judgment creditors. Moreover, a unilateral effort by the legislature of the DAPT state to grant its courts exclusive jurisdiction over such out-of-state fraudulent-conveyance claims would not be entitled to respect under the Full Faith and Credit Clause.[41]

On the other hand, had the property lawfully found its way into the hands of the DAPT trustee, then, going forward, a judgment out of the DAPT jurisdiction that the property in the DAPT trust is unreachable by the settlor's creditors domestic and out-of-state, itself, would likely be entitled to the respect of the out-of-state courts by virtue of the Full Faith and Credit Clause.

Here is the practice tip: The debtor-friendly terms of a statutory DAPT are likely enforceable, provided (1) funding had not been via a fraudulent conveyance,[42] (2) the settlor-debtor was and is a resident of the DAPT state, (3) the settlor-debtor is not subject to another state's personal jurisdiction, and (4) the Bankruptcy court is not in the picture. Otherwise, *caveat emptor*.

[40]*See generally* §8.15.99 of this handbook (surveying fraudulent-conveyance/transfer doctrine in trust context).

[41]*See, e.g.*, Toni 1 Tr. v. Wacker, 413 P.3d 1199 (Alaska 2018).

[42]*See generally* §8.15.99 of this handbook (surveying fraudulent-conveyance/transfer doctrine in trust context).