

Domicile as a Personal Connecting Factor: An Assessment of Judicial Decision

Moin Uddin

LL.B & Master of Comparative Laws (MCL),
International Islamic University Malaysia

Abstract

Domicile is a legal terminology which discusses the connection between a personal and a sovereign state. It provides a dualistic character in private international law. It also conveys international unity with domestic acknowledgement and implementation as well as autonomous actions with the private affairs. This study aims to illustrate the function and nature of domicile as personal connecting factor in decision making to the choice of law. The qualitative approach has been chosen to discuss this study and to find out the data. This research has found that domicile originates with different foreign elements in sui generis because it depends on judiciary system, the nature of disputes and the covenants accompanied by the municipal policies of the particular country. This research paper also claims that every personal connecting factor can be applied globally in all similar circumstances as there are not much effectual deviations in their application. Thus, the outcomes of this study will help to identify the specific nature of domicile to cooperate judgment making in international legal system.

Keywords: Domicile; connecting factors; locality; personal law; living permanently.

Introduction

Domicile is one of the connecting factors ordinarily used in common law judicial systems (Dicey and Morris, 1993, p.115). It is basically known as a permanent place of dwelling of a person. It has a lawful connection between an individual and a locality ("US Legal Support", n.d.). McClean & Morris (1993) stated that domicile is a complex idea to explain, however, it gives a unique relationship between district system of law and a person. It confirms that no person can be without a domicile, even if they lack a permanent home (Singh, A., 2011, p. 1). Similarly, a person may have more homes, but cannot have more than one domicile at a particular time. A current domicile will be assumed to continue until

a change is proven on the balance of probabilities (“Law Teacher.net”, 2013). The proof of changing domicile of origin is heavy one (Dicey and Morris, 1993, p.122).

Domicile adjusts the legal capacity of a person at a particular time (“Law Note.net”, n.d.). For instance, the legality of an individual to marry and the distribution of property of a deceased are judged on the basis of domicile (“Law Teacher.net”, 2013). This example can be illustrated in such a way that a married man domiciled in Malaysia is under the jurisdiction of Malaysia for purposes of divorcing or dissolving his marriage. In this modern era, people are moving from one state to another. In the process of travelling, an individual is questing which will be applicable to him, his marriage, his contracts and so on. Then passport is generated to connect a person to a legal jurisdiction. Therefore, the domicile as personal connecting factor and it’s rationally under private international law is going to be explained profoundly.

Therefore, personal connecting factors are the situations which create relationship between event, thing, transaction, person and country. According to Falconbridge. J. D. (1954), they are defined by the *lex fori*. They support courts to identify the choice of law rule to administrate the immovable property of the person. They also assist court to decide under which legal system and within the jurisdiction of which country certain issues are to be determined. Similarly, connecting factors connect legal categories to applicable laws. Moreover, they create a natural connection between factual situation before court and particular jurisdiction (Kitime, E., n.d.). However, in most of the civil law countries the rule of domicile has been changed to nationality.

History and Definition of Domicile

Domicile is originated from the Roman law. The modern usage of domicile comes through the Canon law. According to a modern Canonist, “The term *domicilium* is derived from *domum colere*, to foster or inhabit the home. Domicile is not any place of residence but a place of habitual residence (“Law Teacher.net”, 2013).” It is pointed out from the common law history that the Diocese had authority over ordinary man in the Consistory Court in England. Thus, domicile of a man in a Diocese was recognised by his habitual residence (The Law Reform Commission, 1981, p.97). The Bishop who was habitual residence of the Diocese had jurisdiction in religious issues. The jurisdiction included probate and matrimonial matters even before the Matrimonial Causes Act 1857 and the Court of Probate Act 1857. English statutes characterised marriage of a man according to the place where he dwells. Thus, *domicilium* is a habitation or a dwelling which came from Diocese to Roman Canon law and to the English Canon law.

Dicey and Morris (1993) on the Conflict of Laws explained that the word “domicile” means a fixed, permanent and principal home to which an individual

always intends to return. There is no unique definition of domicile. However, Stone. P. (1995) said that domicile consists of two fundamental elements that must exist simultaneously such as physical presence in the jurisdiction and the intention to stay forever.

In law point of view, domicile is the status or attribution of being a permanent dweller in a specific jurisdiction. Domicile can be remained in a jurisdiction even after leaving it, if the person is maintaining sufficient links with that jurisdiction or is not displayed an intention to leave permanently (Davrados, N. A., 2017, p. 129). For example, it can be said that if person has not yet moved to a different state, or has not yet formed an intention to remain there indefinitely. In the case of *Waicker V Hume* (1858) 10 HLC 124, where appellant, a Scottish went to the East Indies and worked in a company for more than twenty years. He then resumed to Scotland and placed his name on the books of the municipality, acquired a house, married, did business, and became various societies' member. Later, he left Scotland in wrath, closed business, and removed his name from the books and societies, and declared he will never come back. After that he went to London and worked as a literature and tried to sale some of his books written on the Hindostanee language. A few years later, he left London to Paris to avoid some difficulties. However, he never made any declaration with respect to London. He died in Paris, having a will in the English form. The Court decided that appellant had lost his Scottish domicile and acquired an English domicile. In this case, Lord Chelmsford said in defining domicile that "A place is perfectly the domicile of an individual in which he has willingly fixed the dwelling of himself and his family, not for a mere special or temporary purpose but with a present intention of permanent home... (Essayist, 2013)." Lord Cranworth has also defined domicile in that case as, "Domicile means home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it (Dicey & Morris, 1993, p.115)."

Therefore, domicile is a place where a person resides permanently without any intention of moving. For jurisdictional purposes, domicile means a legal residence which is the place where a person has fixed dwelling with an intention of making it his/her permanent home (*Snyder v. McLeod*, 971 So. 2d 166). On the other hand, temporarily residing in a different place does not invalidate to have permanent home in a locality (*Abdrakhmanova, E. S., & Nyssanbekova, L. B., 2013, p. 1692*).

Domicile plays a vital role in judicial decision making in a forum as it provides a pre-requisite presumption of the forum jurisdiction or assumption and acceptance of an overseas jurisdiction. It also confirms the basic rights of a person such as right to vote, right to hold public office and so on. Furthermore, it stipulates entitlement of numerous supports in respect of various needs such as ill-health or unemployment and liability to various forms of taxation ("Law Teacher.net", 2013).

Moreover, domicile has a governing role in family and matrimonial property law. Lastly, Falconbridge. J. D. (1954) said that domicile ascertains the capacity of a person to make contracts, to validate a marriage, divorce, a will, matrimonial causes, legitimacy and succession. Thus, domicile is very necessary to link a legal relationship of a person to a legal system.

The Rules of Domicile

Domicile is an idea of law which separates from the notion of permanent home. The components of domicile go beyond the requirements for the acquirement of a permanent home as it acquires a must intend to reside permanently or indefinitely (LEX 47, n.d.).

There are several rules that govern domicile as connecting factor in private international law. The rules can be classified in five major doctrines (“Law Teacher.net”, 2013). Firstly, a domicile is fixed for everyone. Domicile of origin is established by the law at the time of birth. Therefore, a legitimate child has the domicile of his father and an illegitimate child has the domicile of his mother. A foundling person has the domicile of the place where he is found. The domicile of origin remains until a new domicile is acquired by law. Secondly, no person has two domiciles at a time under international law. He may have more than one residence but one domicile will be established by looking at linking factors. Thirdly, it ties a person with a territorial law system. However, it is not necessarily the same principles for all the classes of persons because different rules will apply to different categories of people according to their religion, race or caste. Fourthly, an existing domicile will be assumed continuation. If anyone alleges the domicile of certain country, he must need to prove on the balance of probability. Fifthly, the domicile determines according to the English Common law unless there are some statutory exceptions. In *Re Annesley* [1926] Ch 692 case, the British man was domiciled in France. The issue was whether the conflict of laws of domicile will be decided based on English law or France. The court held that where a person is domiciled is determined according to English law which is *lex fori*.

These principles are explained in the case of *Mark v Mark* [2005] UKHL 42 where the concern was about a husband and wife who were Nigerian nationals. The wife wrote petition for divorce and also applied for ancillary relief in England. The issue was whether the court has jurisdiction over Nigerian citizens. It was held that the wife is having the domicile of choice or habitual residence in England. In deciding the case, the court came out with the principles that every person has domicile of origin and no person has two domiciles under international law (Singh, A., 2011, p. 1). These rules provide that every person has one domicile either of origin or of choice. Presence of one domicile excludes the other. The court also viewed that there must be proof of domicile and the standard of proof is based on

the majority or balance of probability. Normally the domicile of person is determined according to English law. Finally, the domicile of person connotes single system of jurisdiction.

However, there is no certain rule on common law to identify domicile of a person. It can be seen from the various judgments. The landmark principle was laid down in the case of *Whicker v Hume* [1858] 7 HLC 124, where domicile was defined as ‘permanent home’, but there are many other decided cases where a person lived in a place many years and did not obtain a domicile of that place. For example, in the case of *Ramsay v Liverpool Royal Infirmary* [1930] AC 588, the appellant was Scottish domicile. He left there and moved to Liverpool where he lived for the last 36 years of his life. During that period of time he never set foot in Scotland. The House of Lords held that appellant was still domiciled in Scotland at the date of his death. A similar principle was ruled in the case *Cyganik v Agulian* [2006] 1 FCR 406. In this case, the Court decided that a man who had lived and worked in England for the last 43 years. Dicey, Morris & Collins (2007) stated that the court looked back at the whole of his life and decided that he had not lost his domicile of origin in Cyprus. Moreover, in the case of *Winans v AG* [1904] AC 289, a man was living in England for the last 37 years and had not lost his domicile of origin even he did not visit that place for the last 47 years of his life. After analysing the stated cases it can be said that the rule of domicile is very ambiguous in nature.

Classification of Domicile

Domicile can be divided into three categories. Such as (a) domicile of origin, (b) domicile of choice and lastly (c) domicile of dependent persons. These three kinds will be discussed in followings.

A. Domicile of Origin

The main attribute of domicile of origin is birth. It is certified by law at birth of every individual. It actually refers to domicile of the parent (Dicey & Morris, 1993, p.124). In this category, it is irrelevant that some family members are living in different places and having different domiciles. This kind of domicile continues from generation to generation (Kitime, E., n.d.). Lord Cranworth in *Whicker v Hume* [1858] 7 HLC 124, stated that a person’s domicile is his permanent home. However, the basic domicile is his domicile of origin, which is ascribed by operation of law at his birth. It is not necessarily the country of his family’s permanent home at the time of his birth. As a minor, his domicile is considered as dependence as the same of one or both parents. Dicey & Morris (1993) stated that “Every person receives at birth a domicile of origin;

- a. A legitimate child born during the lifetime of his father has his domicile of origin in the jurisdiction in which his father was domiciled at the time of his birth.
- b. A legitimate child not born during the lifetime of his father or an illegitimate child has his domicile of origin in the jurisdiction in which his mother was domiciled at the time of his birth.
- c. A foundling has his domicile of origin in the jurisdiction in which he was found.”

Therefore, a domicile of origin is qualified by process of law to every person at birth. North. P., (1993) illustrated that it is not necessary to have connection between the place of birth and the domicile of origin. It is not on where the person was born or where the parents live. For example, in the case of *Udny v. Udny* (1869) LR 1 HL 441, Udny was born and lived in Tuscany. His father resided in England, but domicile of origin was in Scotland. So, Udny acquired domicile of origin in Scotland by birth. The court opined that domicile by origin is acquired at birth. It stands by operation of law (Abdrakhmanova, E. S., & Nyssanbekova, L. B., 2013, p. 1691).

The domicile of the mother will be taken as domicile of origin in both cases where a child is born after the death of the father or if an illegitimate child is later legitimated (*Udny v. Udny*). An adopted child acquires the domicile of origin of the adoptive parents as born in lawful wedlock (Dicey & Morris, 1993, p.125). However, domicile of a founding child is determined on the basis of the place where he was found and not on the basis of his parents’ as the original domicile is unknown. This principle was established in the case of *Re McKenzie* (1951) 51 S.R. (N.S.W.) 293, where the domicile of an illegitimate child was determined on the basis of the place where he was found because the domicile of his mother was unknown.

There are some tenacities of domicile of origin. It is quite reasonable as it is reflecting social factors. When a person acquires it at the time of his birth, then its strong tenacity it is hard to lose. It automatically revives once domicile of choice is lost without acquiring a new domicile of choice. Thus, it is always linked with the person wherever he lives. This domicile is a too powerful concept that even if a person leaves his country of origin with an intention that he will not return, he is still considered to be domiciled there until he obtains a new domicile of choice. In the case of *Bell V Kennedy* [1868] LR 1 Sc and Div 307, Bell had a Jamaican domicile of origin but after leaving Jamaica, he was uncertain whether to settle on Scotland or England. Therefore, the House of Lords held that he had not lost his Jamaican domicile of origin. Lord Westbury stated in the case that “The domicile of origin adheres until a new domicile is acquired.” Therefore, a person who has never even visited a particular country can have the domicile of origin of that place.

This principle was established in the case of *Grant v Grant* (AC 37658) where a child was born in India but his domicile of origin was held to be English following his father's domicile of origin. The domicile of origin also discussed in the case of *Ramsay v Liverpool Royal Infirmary* [1930] AC 588, where the appellant was Scottish domicile. He left there and moved to Liverpool where he lived for the last 36 years of his life. During that period of time he never set foot in Scotland. The House of Lords held that appellant was still domiciled in Scotland at the date of his death. A similar principle was ruled in the case of *Cyganik v Agulian* [2006] 1 FCR 406, where the Court decided that a man who had lived and worked in England for the last 43 years and had not lost his domicile of origin in Cyprus. Moreover, in *Winans v AG* [1904] AC 289, a man was living in England for the last 37 years and had not lost his domicile of origin even he did not visit that place for the last 47 years of his life. Likewise in *IRC v Bullock* [1976] 1 WLR 1178, a man with a domicile of origin of Canada who lived in England for forty years and also married an English woman, had not acquired an English domicile of choice. The Court of Appeal held that his domicile of origin still sustained because he had the intention to go back to Nova Scotia if his wife predeceased him. However, it requires strong evidence to prove its loss where as it is less onerous to prove change of other types of domiciles. Therefore, this concept of domicile ensures that everyone has one domicile and only one domicile at all times.

This obvious principle had been started from 1869 (*Udny v Udny*) and until now the courts have attached great significance to the persistence of domicile of origin. The judges have always highlighted on the fact that domicile of origin is hard to lose it. On the other hand, if any person alleges domicile of origin, he needs to provide a higher standard of proof to establish the change to domicile of choice. This principle was established in the cases of *Henderson v Henderson* [1843-60] All E.R. Rep. 378 and *Cramer v United States* (1945) 1 U.S. 325. In *Henderson v Henderson* case, Sir Jocelyn P has suggested that when change in domicile of origin is alleged, the standard of proof goes beyond a mere balance of probabilities. But Scarman J in *Re Fuld Estate* [1968] P 675 (No3) agreed with the decision of Court of Appeal in *Buswell v IRC* [1974] 2 All ER 520, rejecting the standard required in criminal cases only.

Domicile of origin revives in a case when a person losses his domicile of choice or dependency. According to McClean & Morris (1993), domicile of origin can be replaced by domicile of choice or dependence, but it will never be lost permanently. When domicile of choice is abandoned, the domicile of origin revives automatically (The Law Commission and the Scottish Law Commission, n.d., p. 2). Thus, domicile of origin has a significant rule revival which cannot be found in other two kinds of domiciles. It is the fundamental of domicile identified by birth, but domicile of choice is very challenging to acquire because of complexity of laws.

The principle of revival of domicile of origin was illustrated in the middle of nineteenth century by House of Lords in the case of *Undy v Undy* where domicile of origin was decided to revive after losing domicile of choice. After that, the rule of revival was followed by the Court in the case of *Tee v Tee* [1999] 2 FLR 61. In this case a British man acquired a domicile of choice in America. Later, he went to Germany for work, but never acquired new domicile there as he was willing to return in America. Finally, He intended to stay permanently in England. The court held that he got domicile of origin automatically as he lost the domicile of choice. Therefore, it can be concluded that automatic revival rule refills the gap of abandonment of one domicile until a new domicile of choice acquired.

Similarly, in the *Harrison v Harrison* [2009] All ER (D) 61, case, Harrison had a domicile of dependence in England. His parents moved to South Australia when he was eighteenth. At twentieth, he went to New Zealand and got married there. However, he returned to England after a short time when he reached at twenty-one. His wife started a divorce proceeding in England. It is held that the court has the jurisdiction because he acquired domicile of origin automatically as he never achieved a domicile of choice after finishing of domicile of dependence. Therefore, it is inferred that domicile of origin survives permanently as the doorstep of the lack of domicile.

There are many benefits of tenacity and revival of domicile of origin. The principle of domicile of origin always reminds the origin of the man and always welcomes the person to the root place. There are few advantages and disadvantages can be found from the concept of domicile of origin. Such as;

a. Ability to deal with strange situations

The concept of domicile of origin can be practiced in a strange situation where a legal system of a place will apply which a man has abandoned willingly. If the principle of revival will not be applied, the person will be in dilemma to find a legal system. For example, a man leaved Malaysia to England with the intention that he will be settled there permanently. However, after a few years, he left England and went to New Zealand. After leaving England and before achieving new domicile of choice, the domicile of origin will be applied in all legal expects. It's to ease choosing the jurisdictional system in all time.

b. Theoretical benefits

The doctrine of Domicile of origin helps court to look into the entire life of propositus. It is a quiet deep concept which directs court to establish a balance and accurate decision. Such as, Mummery LJ stated that the position of domicile is identified at the date of his death. The court shall look back to the complete life the deceased. It will infer by examining all activities of

his life and then will look into his intention of acquiring a domicile of choice (Cyganik v Agulian [2006] 1 FCR 406).

c. Identification of Personal Law

The concept of domicile of origin identifies the private law for an individual to resolve legal issues. It is established in the title of “Revival of domicile of origin” that the domicile of origin will never be abandoned or abolished. The proper example can be found in previously explained cases namely Bell v Kennedy [1868] LR 1 Sc and Div 307 and Harrison v Harrison [2009] All ER (D) 61. In the former case domicile of origin was revived when domicile of choice was abandoned, and later case domicile of dependence was revived after finishing the dependence period as new domicile not acquired.

Along with the deep benefits of domicile of origin, there are also some drawbacks of tenacity and revival of domicile of origin. Based on the proposals of the Law Commission Report (1987), the revival of domicile of origin appears to be redundant and is not necessary in the modern world. This report proposed that the respected country of birth and parents will decide what will be the domicile of the person (“Law Teacher.net”, 2013). Moreover, a domicile of choice can be continued until a new domicile is acquired. Furthermore, it is rational that domicile of choice and dependence are sufficient to identify a person’s private law to resolve all legal matters.

Moreover, it is an unacceptable and complex doctrine in a forum. It is established that a legitimate child will take the domicile of father while an illegitimate child and a posthumous child will take the domicile of the mother (Udny v Udny). This principle creates a complex situation in the society. Firstly, legitimacy of a child cannot be identified unless a domicile has been established. On the other hand, a domicile cannot be established unless legitimacy of a child is ascertained. This complex situation can be only in a way that the child considered as legitimate. Then either parent’s domicile can be taken for the child. Secondly, the Domicile and Matrimonial Proceedings Act 1973 abolished the rule that a legitimate child follows the domicile of the father and a married woman is also no longer dependent on her husband’s domicile. In the case of divorce, it is also more logical to say that the child will take the domicile of dependence with whom he is living to remove the complexity of law. Similarly, the principle of revival rule of domicile of origin cannot be applicable in the modern era because it refers original native home of the person when he is abandoned from his domicile in all stages of his life. In this global world, people are moving from one place to another. They may not have any connection with their origin. Thus, it would be the best way to find a domicile of a person on the country where he is closely connected.

Furthermore, the revival of domicile of origin may bring some odd results. This situation can be seen in the case of *Grant v Grant* (AC 37658) where an English domicile of origin was followed generation to generation as domicile of dependence. The problem is that even though a generation is not going back to the origin still the domicile of origin needs to follow. Thus, it is deemed to be a strong drawback of domicile of origin.

B. Domicile of Choice

One person who is legally qualified to change his or her domicile of origin can acquire domicile of choice (The Law Commission and the Scottish Law Commission, n.d.). It is to show that he or she is bound by new legal system for remaining life permanently. On other words, the person in question established his residence in a certain country with the intention of remaining there indefinitely (McClellan & Morris, 1993, p.17). It is stated in *Mark v Mark* [2005] 2 FLR 1193 case that domicile of choice is not a question of law but fact. It requires the combination and coincidence of residence in a country and a bona fide intention to make a home in that country permanently or indefinitely (Cheshire North & Fawcett, 2008, p.143). Therefore, there must be co-existence of two tests that are objective test of residence factum, subjective test of intention animus. These two tests are firstly ruled out in American case of *White v Tennant* (1888) 31 W Va. 790. In this case the deceased returned his dwelling place from West Virginia to Pennsylvania. However, he went back on the same day to West Virginia to take care his wife who was suffering with typhoid. Later he caught same disease and died there. Now the issue arose regarding which state would have the jurisdiction for intestate succession. The court decided that the succession and distribution of a decedent's personal estate is controlled by the law of the state where the decedent was domiciled at the time of death. Westlake. J. (1986) stated that domicile is a residence, actual or developing, with the lack of any intent to make a domicile elsewhere.

Similarly, when a person is living in a country and later leaves it with good intention that he will return if necessary, then he will not get the domicile of that country. It is not essential to live long time in a place to have a domicile but a few hours is also suffice. As long as having residence and intention, a person will get domicile of that place. Lord Chelmsford further ruled that domicile of choice is not acquired until definite intention of permanent residence and intention to genuine residence there (*Bell v. Kennedy* (1868) LR 1 Sc & Div 307). Dicey & Morris (1973) also illustrated that this domicile cannot be attained by illegal dwelling because a court cannot allow a person to acquire a domicile in contradiction of the law which that court itself governs. In the *Puttick v Att-Gen* [1980] Fam 1, [1981] QB 767 case, a member of a German terrorist group claimed a domicile of choice

in England. She bought a passport fraudulently. The court held by following Dicey & Morris illustration that a domicile of choice cannot be achieved by illegal residence.

Domicile of choice can be achieved by residence and intention. The meaning of residence is physical presence as an inhabitant. There are many cases which illustrate that there must be even very little more than physical existence of a person to establish his residence (McClellan & Morris, 1993, p.18). For example, in the case of *IRC v Duchess of Portland* [1982] Ch 314, 318-319 where Nourse J confirmed that residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it (Dicey & Morris, 1993, p.127). It is not required by law that the person must stay a period of time to establish a residence. A short period of time also enough to establish residence of a person. In American case *White v Tennant* (1888) 31 W Va. 790, stated that part of a day was enough. An immigrant can acquire a domicile instantly on arrival if he or she intends to live. A good example of that is in *High Tech International v Deripaska* [2006] EWHC 3276 case where a Russian multi-millionaire who owned twenty houses round the world and used his two houses in England as mere stop-overs whilst on business trips was not resident in England as he never intended to settle there. A residence must be freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors or the relief from illness (Cheshire, North & Fawcett, 2008, p.143).

In addition, the intention is determined on the basis that the propositus resides permanently or indefinitely in a country. This principle is laid down in the case *Mark v Mark* [2005] UKHL 42, where the court stated that an intention to reside permanently or indefinitely. The essence is that the residence could not be for a short period or a certain desire (Dicey and Morris, 1993, p.128). A permanent intention could be attained by looking to the nature of intention and the evidence of intention.

There is no specific rule to identify the nature of intention and the evidence of intention. It can be said that all events and incidents in a man's life is a relevant and admissible indication of his state of mind. Thus, nothing must be neglected that can possibly indicate a person's intention such as aspirations, whims, prejudices, health, religion, financial expectations and so on (Cheshire, North & Fawcett, 2008, p.143). However, naturalization could be considered the strongest evidence of a person intends to remain there permanently and indefinitely. For example, in *Bullock* case where the propositus had not changed his nationality was considered as relevant in deciding he had not get domicile of choice. In another case of *Bheekhun v Williams* [1999] 2 FLR 229, the claimant had come from Mauritius to live in England. He was given a choice British or Mauritius passport after the independence of Mauritius. He decided to take British passport which shows his clear intention settlement. Similarly, purchasing real property (*Re Flynn* [1968] 1

WLR 103) and the degree of social integration also could be major factors to find the permanent intention.

When a person moves with a contingency, the court will look to nature of it whether it is vague and indefinite. If the contingency is clear and foreseen, the person will not get the domicile of choice as it does not show the intention to settle permanently or indefinitely. In *IRC v Bullock* [1976] 1 WLR 1178, the Court of Appeal held that his domicile of origin still sustained because he had the intention to go back to Nova Scotia if his wife predeceased him. The court stated that he had in mind a definite, not a vague, contingency. There was a sufficiently substantial possibility of the contingency happening. Similarly, Scarman J. (1968) stated that: “If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g. the end of his job, the intention required by law is lacking; but if he has in mind only a vague possibility, such as making a fortune (for example, winning a lottery), or some sentiment about dying in the land of his father, such a state of mind is consistent with the intention required by law (*Re Fuld’s Estate* [1968] P 675 (No 3).”

By comparing stated two cases, the test in *Re Fuld* (No 3) is openly better. In *Bullock* case, there was a substantial possibility of his wife dying before propositus. It seems unlikely that the propositus would reasonably expect his wife (younger than him) to die before him but it could be happened otherwise. However, in *Lawrence v Lawrence* (1985) FLR 1097 case, the propositus loved Brazil but was prepared to leave it. However, he made a contingency that “if there were to be a revolution and things got badly out of hand.” Therefore, the court held that this contingency was too unclear to prevent him to get Brazil’s domicile.

It is identified that there are some differences between domicile of origin and choice. Firstly, the domicile of origin is acquired by birth. It doesn’t depend on the act and intention of the person. But domicile of choice is ascertained by the intention of the person to remain in a place permanently and indefinitely. Secondly, domicile of origin is stronger than a domicile of choice. Domicile of choice can be abandoned at any time but domicile of origin remains forever unless changed intentionally. Thirdly, domicile of origin can be revived. However, domicile of choice cannot be revived but can be renewed. Fourthly, domicile of origin can be revived without any condition which was established by *Udny v Udny* case while domicile of choice is conditional to acquire.

C. Domicile of Dependent Persons

According to North. P. (1993), a dependent person’s domicile goes to the domicile of another person. It concerns dependent persons. It is also known as

domicile of operation of law. For instance, a married woman's domicile was considered with the domicile of her husband in common law. A legally dependent person's domicile is also surrendered to the domicile on whom he is. When a child reaches maturity and becomes independent, he may change his domicile to domicile of choice. It should be taken into consideration that a child receives two domiciles at his birth that are domicile of origin and dependence. The domicile of origin will be overlapped by the domicile of dependence. In later life, the child may obtain a domicile of choice when he converts independent. However, if there is an abandonment of new domicile, the domicile of origin will be revived automatically (as discussed in the title of "revival of domicile of origin"). Thus, domicile of dependent persons are considered in two categories such as:

1. Domicile of children

According to the Domicile and Matrimonial Proceedings Act 1973 (UK), the domicile of a child under 16 years is acquired domicile of dependent. Many other countries formed age of majority is 18 to 21 years (North. P., 1993, p. 6). The child's domicile is quiet complicated. Dicey and Morris (1993) stated that the legitimate child's domicile is of his father. When an illegitimate child is legitimated, the domicile will be of his father but domicile of origin is of his mother. If the father is died before the child's birth or illegitimate child, the domicile is of his mother. Furthermore, the founding child's domicile is according to the place where he is found and lastly adopted child will get the domicile of his adopted parents or parent (Dicey & Morris, 1993, p. 124). In addition, if the mother wants to change the domicile of child, she may change for the best interest of the child which is applied in the case of *Re Beaumont* [1893] 3 Ch 490.

There are three exceptions can be found in section 4 of the Domicile and Matrimonial Proceedings Act 1973. These exceptions applied to legitimate and legitimated children only whose parents are divorced or the mother died (The Law Commission and the Scottish Law Commission, n.d., p. 4). Firstly, the home of the child is with mother and father has no home, mother's domicile will be accepted. Secondly, if father has no home, the child can apply at any time to change his domicile to his mother. Lastly, mother's domicile will last at mother's death if he was living with his mother and father has no home (LEX 47, n.d.).

2. Domicile of married woman

The domicile of dependent persons of married women has been abolished on 1 January 1974 by the Domicile and Matrimonial Proceedings Act 1974. After the enactment of the Act, the married women can acquire domicile of choice independently. However, the women married before

enforcement of the act; need to follow their husband's domicile. This principle applied even they are living apart. In *Re Scullard* [1957] Ch107 case, domicile was in England. After divorce, wife went to Guernsey and living permanently. The court decided that she can acquire a new domicile from the date of death of her husband. It can be seen that she lived many years with the domicile of husband after separation.

According to the present law, it is assumed that the wife can take her husband's domicile until she changes it voluntarily. Similarly, when a widow marries second time, she will take the domicile of her new wife unless she changes it by the domicile of choice ("US Legal Support", n.d.).

Domicile and Categories of Persons

There are certain people who are living in different categories in different society. The categories can be separated in different groups. Such as:

a. Prisoners

The prisoners generally maintain their domicile. However, he can make a new domicile if he wants to stay in a place permanently (*Dunston v Paterson* (1858) 5 C.B.(N.S) 267). Thus, the domicile of a prisoner is same as domicile of independent person. There is no power on the authority to change his domicile but with his free choice (Dicey & Morris, 1993, p. 139).

b. Persons liable to deportation

Dicey & Morris (1993) stated that deportation is such a person whose residence is precarious. He cannot stay there anymore even with perfect intention. It is necessary for him to get a new domicile of choice. His domicile will remain until he is deported. In the case of *Cruh v Cruh* (1945) All ER 545, a man of Austrian or German origin recommended for deportation for conspiracy. Lord Denning J. decided that the domicile of choice remains until actual deportation is taken place.

c. Refugees and fugitives

A political refugee can take a new domicile of choice if he has no intention to return to the native land. However, if his intention is to come back after the political situation will change, then he can be remained in his domicile of origin (Dicey & Morris, 1993, p. 140). In the case of *Re Martin* [1900] P211, a French prof ran from France to England to escape from France law. The court held that he got the domicile of choice in England as he has the intention to live there permanently. Similarly, in *Moynihan v Moynihan* [1997] 1 FLR 59 (Nos 1 and 2), Mr. M. had left the UK to Philippines. He

wanted to avoid arrest on serious fraud charges against him. Sir Stephen Brown P stated that he acquired a domicile of choice of Philippines as he is living there, having business and married there with blessed children. However, in *Re Benko* [1968] SASR 243, case, a Hungary domiciled came to Australia and lived in different places. The issue was whether he acquired the domicile of choice. The court decided on evidences that he lived in different places but didn't get a new domicile in Australia. Thus, the domicile of origin remains stable. To sum up, the refugee must intend to stay permanently and indefinitely in a place to get a new domicile.

d. Invalids

A person may reside in a state for the health purpose or for some other drives. In those conditions, he will not get the domicile of choice. There are two reasons such as the dwelling is for a special motive and no freely choice. However, in the case of *Hoskins v Matthews* [1855] 8 De GM & G 13, the person went to England for better health and lived there permanently. The court held that he acquired domicile of choice as he intended to live indefinitely with free choice. Thus, invalids cannot get a domicile of choice but with free choice (Dicey & Morris, 1993, p. 140) to live there permanently.

e. Mentally disorder

McClellan & Morris (1993) stated that a mentally ill person cannot acquire a domicile of choice. This person's domicile can be considered in two ways, firstly if the person is confirmed mentally ill when he is adult; his domicile will be frozen at the domicile where he was until recovers from the illness. Secondly, however, if the person is mentally disable from childhood, he will remain in his parents' or parent's domicile.

f. Members of the armed forces

A person will get or lose a domicile after entering into arm forces. Previously, the armed personality could not acquire a new domicile, but now based on *Donaldson v Donaldson* [1949] P 363 case principle; the armed forces can acquire a domicile of choice with their free intention (Dicey & Morris, 1993, p. 141). The same principle can be found in the case of *Baker v Baker* [2008] EWHC 977 (Ch).

g. Employees and students

A person who goes merely for work or studying to another country will not acquire new domicile of choice except willing to settle there permanently and indefinitely. For example, in the case of *AG v Rowe* (1862) 1 H & C

31, where a barrister had English domicile went to Ceylon to get pension. The court held that his domicile of origin remained as he has no intention to stay Ceylon permanently. Similarly, a student also can get new domicile if he wants to stay in a place permanently (*Kapur v Kapur* [1984] FLR 920).

h. Diplomats

A diplomat is like other independent persons' domicile. He will not acquire a domicile according to his place of office but with the free choice to settle permanently (*Dacey & Morris*, 1993, p. 143). Generally, diplomats do not form the intention of settling in the country to which they have been accredited. But if they form the intention of residing permanently or indefinitely, they can, like everybody else, acquire a domicile of choice in that country. An example is found in the South African case of *Naville v Naville* [1957] (1) SA 280, where the Court ruled that a foreign diplomat can obtain a domicile of choice in South Africa when continuing his service.

i. Domicile of companies or corporations

Domicile of a company or a corporation is according to the place of incorporation. *National Bank of Greece and Athens SA v Metliss* [1958] AC 509 is an important case where Greek court governed the rule of corporations. According to this case, the company or corporation has the obligation in that place where it is incorporated.

Loss of Domicile

It is to ensure that domicile of origin will never be lost. It remains to fill up any gap created when domicile of choice abandoned (The Law Commission and the Scottish Law Commission, n.d.). Thus, domicile of origin is considered as the reservation source. In the case of *Bell v. Kennedy* (1868) LR 1 Sc & Div 307, Bell had Jamaican domicile of origin. He went Scotland for study and later went back to Jamaica. Then he moved to England and France to stay permanently. However, he didn't get any domicile specifically. Thus, the court held that his domicile of origin revives as he has no domicile of choice. Similarly, in the case of *Re Benko* [1968] SASR 243, Benko had domicile of origin in Hungary but he wanted to settle in Australia. Finally, he failed to get the domicile of Australia because of complexity of law. Thus, the court decided that he cannot simply go out from the domicile of origin and it revives as domicile of choice is not acquired.

Therefore, it is understood from the discussion that the domicile of choice can be abandoned but domicile of origin survives all time to connect a person to a legal system. A person cannot live without a domicile at any particular time. In the modern world, it is arguable that a person is living many years in a foreign country

but how his succession will be distributed according to his native law. It seems the law of domicile creates problem in legal system. However, it is better to be seen that a domicile fixes the law for all persons wherever they live permanently or indefinitely.

Conclusion

Domicile is one of the most important connecting factors in conflict of laws. It is dominating the process of jurisdiction regarding marriage, matrimonial property, succession and some other sectors such as contractual rights and obligations. In the context of domicile, no child is born without any domicile whether he is legitimate or illegitimated. It is called domicile of origin. It is automatically connected to the person. On the other hand, domicile of choice can be acquired by residence and an intention to reside permanently and indefinitely unless there is a valid contingency. When this domicile of choice is lost or abandoned by any reason, the person will return to his domicile of origin. Thus, there is no scope of living without a domicile.

Similarly, domicile of dependent person is also fixed by law. The legitimate children below 16 years old will acquire domicile of their father but illegitimate children will get their mother's domicile. When they will reach at the age of 16 can acquire a domicile of choice. Until the achievement of the domicile of choice, they will be considered in the domicile of dependent as this domicile is acquired by birth. Additionally, in recent world domicile of origin gives certainty in decision making as it is really difficult to find all necessary evidences to establish intention of the domicile of choice because people are continuously moving around the world. ***

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