

UNRAVELING THE INTRICACIES OF DOMICILE IN PRIVATE INTERNATIONAL LAW

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In the complex realm of private international law, few concepts hold as much weight as domicile. Domicile, a term derived from the Latin word “domus”, meaning home, serves as a cornerstone in determining jurisdiction, choice of law, and a myriad of other legal matters in cross-border disputes.

WHAT IS DOMICILE?

At its core, domicile refers to an individual’s permanent legal residence, a place to which they have a significant connection or intend to return. Unlike mere physical presence, domicile embodies a deeper sense of attachment to a particular jurisdiction, often characterized by factors such as family ties, property ownership, and social connections.

The general view about domicile is ‘permanent home’ but Lord Cranworth in *Whicker v Hume*¹ has defined domicile as:

“By ‘domicile’ we mean 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. I think the best I have heard is one which describes the home as the place ‘unde non sit discessurus si nihil avocet; unde cum profectus est, peregrinari videtur.’ I think that it is the best illustration, and I use that word rather than definition, to describe what I mean.”

A person is said to have domicile in the country where he resides permanently without any intention of relocating anywhere else. On the other hand, a person does not cease to have his domicile in a country merely due to the reason of temporary abode elsewhere.

Domicile, a legal concept that determines an individual’s permanent residence and establishes their legal rights and obligations, is established and changed through various factors and processes. Changing circumstances and intent are the key factors in establishing and changing

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¹ *Whicker v. Hume* 1857 W178

domicile. However, the basic test for ascertaining the domicile of an individual has remained to be that of his settled or usual abode, together with the *animus manendi*. This is the *Udny v Udny* test, and all other tests mentioned here are in effect only interpretations of this same test.

In the case of *Udny v Udny*², it was decided that an individual's domicile is the place where he has his home as a fixed abode, and to which, whenever he is absent, he has the intention of returning. This was established as the sole test for domicile in the United Kingdom for nearly a century until the case of *Winans v AG*³, where Lord Halsbury stated that the previous test was incomplete and that the intention of the individual was the sole criterion of domicile. This created some confusion until the case of *Bell v Kennedy*,⁴ where it was decided that intention was of equal importance with the residence. It was not until the case of *Loughnan v Loughnan*⁵ that there was a return to the *Udny v Udny* tests, with some clarification. Since then, subjective and objective elements have been identified, namely that the intention of the individual to change his domicile is effective only if he actually changes his residence and has no intention of returning to his former domicile, and that an individual can acquire a domicile of choice without abandoning his domicile of origin until the new domicile is in his mind sufficiently certain.

The traditional definition of domicile in English law derives from the common law and is a question of fact rather than of law. In simpler terms, this means that whether or not a person's domicile meets the necessary requirements to be classified as such is to be decided by the courts on a case-by-case basis. The tests that have been laid out by case law, however, appear at first glance to be considerably convoluted.

BACKGROUND OF LAW OF DOMICILE

Roman law is considered to be the mother of the concept of domicile in common law. 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. In ancient times, the ordinary man's Diocese had authority over him in the Consistory Court in England and a man's domicile in a Diocese was established by his habitual residence. English statutes dealing with marriage

² *Udny v. Udny* (1869) LR 1 Sc & Div 441

³ *Winans v AG* [1904] AC 287

⁴ *Bell v Kennedy* [1927] AC 773

⁵ *Loughnan v Loughnan* [1931] P 175

characterise the place where a man dwells, his dwelling place; and domicilium is a habitation or a dwelling.

SIGNIFICANCE IN LEGAL MATTERS

1. **Jurisdiction:** Domicile plays a crucial role in determining which court has the authority to hear a case. Courts typically assert jurisdiction over individuals domiciled within their jurisdictional boundaries, allowing them to adjudicate disputes involving such individuals.
2. **Choice of Law:** In conflicts of laws scenarios, where multiple legal systems may apply to a single legal issue, domicile serves as a key factor in determining which jurisdiction's laws govern the dispute. Courts often look to the domicile of the parties involved to determine the applicable legal framework.
3. **Taxation:** Domicile can have significant implications for tax purposes, as individuals are often subject to taxation in their country of domicile.
4. **Inheritance and Succession:** Domicile influences the laws governing inheritance and succession, determining which legal system governs the distribution of an individual's assets upon their death.
5. **Other Legal Matters:** Beyond jurisdiction and choice of law, domicile influences various other legal matters, including divorce proceedings, child custody disputes, and the enforcement of judgments.

In essence, domicile serves as a legal anchor, tethering individuals to specific legal systems and shaping the resolution of cross-border dispute

DIFFERENCE BETWEEN DOMICILE AND RESIDENCE

While domicile and residence are often used interchangeably in colloquial language, they have distinct legal meanings:

Domicile: As mentioned earlier, domicile refers to an individual's permanent, legal residence—the place they consider their true home and where they have a significant connection.

Residence: Residence simply refers to where an individual lives at a given time. It may be temporary or permanent and does not necessarily imply any intention to remain in that location indefinitely.

In summary, domicile is more about intention and legal ties, while residence is a factual determination of where someone lives.

HOW DOMICILE IS ESTABLISHED AND CHANGED

Establishment:

- **Domicile of Origin:** Typically, an individual acquires their domicile of origin at birth, usually from their parents. This is often the domicile of the individual's father at the time of their birth.
- **Domicile of Choice:** An individual can also acquire a domicile of choice by voluntarily moving to a new jurisdiction with the intention of making it their permanent home. This requires both physical presence and the intention to remain indefinitely.

Change:

- **Abandonment:** Domicile can be abandoned by ceasing to reside in a jurisdiction and forming the intention to permanently leave it.
- **Acquisition of a New Domicile:** An individual can acquire a new domicile by moving to a new jurisdiction with the intention of making it their permanent home.

Domicile is a legal concept that can be complex and varies between jurisdictions, but it plays a fundamental role in private international law and has significant implications for individuals and businesses operating across borders.

TYPES OF DOMICILE

1. Domicile of Origin:

- Definition: Domicile of origin is the domicile an individual acquires at birth, typically from their parents.
- Example: In many legal systems, a child acquires the domicile of their father at the time of their birth. For instance, if a child is born in France to French parents, they would acquire French domicile of origin.

2. Domicile of Choice:

- Definition: Domicile of choice is acquired by an individual voluntarily choosing to establish a permanent home in a new jurisdiction.

- Example: Consider an individual born in the United States who moves to the United Kingdom for work and intends to reside there indefinitely. By establishing their permanent home in the UK and forming the intention to remain there, they acquire a domicile of choice in the UK.

3. Domicile by Operation of Law:

- Definition: Domicile by operation of law is acquired automatically as a result of certain legal events or circumstances.

- Example: In some legal systems, marriage may result in the automatic acquisition of a new domicile by operation of law. For instance, if a person domiciled in France marries someone domiciled in the United Kingdom and they establish a permanent home in the UK, the French spouse may acquire a domicile in the UK by operation of law.

4. Deemed Domicile:

- Definition: Some jurisdictions have provisions for deeming individuals to have a particular domicile for specific legal purposes, regardless of their actual domicile.

- Example: In the context of taxation, some countries have rules for deeming individuals who have been resident in the country for a certain number of years to be domiciled there for tax purposes, even if they maintain a domicile elsewhere.

5. Domicile of Dependency:

- Definition: A domicile of dependency is a domicile acquired by individuals who are legally incapable of forming their own domicile, typically minors or individuals under guardianship.

- Example: A minor child usually has the same domicile as their parent or legal guardian until they reach the age of majority and can establish their own domicile.

These examples and types of domicile illustrate the various ways in which individuals can acquire domicile under different legal systems. Domicile plays a crucial role in determining an individual's legal status, rights, and obligations, particularly in the context of private international law.

INFLUENCE ON JURISDICTIONAL ISSUES IN CROSS-BORDER DISPUTES

Domicile plays a crucial role in determining which court has the authority to hear a cross-border dispute. Courts typically assert jurisdiction over individuals domiciled within their jurisdictional boundaries. This means that the domicile of the parties involved can determine which court will adjudicate the dispute. For example, if a dispute arises between two individuals domiciled in different countries, each country's courts may claim jurisdiction based on the domicile of the respective parties.

RELEVANCE IN DETERMINING APPLICABLE LAWS

In conflicts of laws scenarios, where multiple legal systems may apply to a single legal issue, domicile helps determine which country's laws govern the dispute. Courts often look to the domicile of the parties involved to decide the applicable legal framework. For instance, in a contract dispute between parties domiciled in different countries, the court may apply the laws of the country where the party with the closest connection or domicile resides.

SIGNIFICANCE IN MATTERS SUCH AS INHERITANCE, DIVORCE, AND CHILD CUSTODY CASES

- **Inheritance:** Domicile determines the laws that govern the distribution of an individual's assets upon their death. For example, if a person domiciled in the United States owns property in France, their estate may be subject to both U.S. and French inheritance laws.

- **Divorce:** Domicile can influence jurisdictional issues in divorce proceedings. Courts may assert jurisdiction over a divorce case based on the domicile of one or both spouses, affecting issues such as property division, alimony, and child support.

- **Child Custody Cases:** Domicile often determines which court has jurisdiction over child custody disputes. The court in the child's country of habitual residence or the domicile of the child's primary caregiver may have jurisdiction to decide custody arrangements.

CHALLENGES AND CONTROVERSIES

- **Ambiguities in Application:** The application of domicile can vary significantly between jurisdictions, leading to ambiguities and inconsistencies in determining an individual's domicile, especially in cases involving multiple nationalities or frequent international travel.

- **Forum Shopping:** Individuals or businesses may engage in forum shopping, strategically choosing jurisdictions with favourable laws or more advantageous legal procedures based on domicile-related factors.

- **Enforcement of Judgments:** Domicile can affect the enforcement of judgments across borders, as courts may refuse to enforce judgments from jurisdictions where the defendant is not domiciled or has no assets.

Navigating domicile-related issues in international contexts can be complex and challenging, requiring careful consideration of legal principles, jurisdictional rules, and potential conflicts of laws. Individuals and businesses often seek expert legal advice to address these challenges effectively.

RECENT LEGAL DEVELOPMENTS AND LANDMARK CASES

One recent legal development in the realm of domicile and private international law is the increasing harmonization of rules across jurisdictions to address inconsistencies and ambiguities in determining domicile. Landmark cases such as *Vedanta Resources PLC and another v Lungowe*⁶ in the UK Supreme Court have clarified the jurisdictional scope and liability of multinational corporations in transnational tort claims, highlighting the importance of domicile in determining jurisdiction.

PRACTICAL CONSIDERATIONS

1. **Seek Legal Advice:** Given the complexity of domicile-related issues, individuals and businesses involved in international transactions or disputes should seek expert legal advice from lawyers specializing in private international law.
2. **Document Intentions:** Individuals intending to change their domicile should document their intentions clearly and consistently through actions such as obtaining residency permits, registering to vote, and updating official records to reflect their new domicile.
3. **Consider Tax Implications:** Domicile can have significant tax implications, so individuals and businesses should consider seeking advice from tax professionals to understand the tax consequences of their domicile status in different jurisdictions.

⁶ *Vedanta Resources PLC and another v Lungowe* [2019] UKSC 20

4. **Stay Informed:** Stay informed about recent legal developments and changes in domicile laws, especially if involved in cross-border transactions or disputes, to ensure compliance with relevant regulations.

By staying informed, seeking expert advice, and documenting intentions clearly, individuals and businesses can navigate domicile-related matters effectively in international transactions or disputes.

Understanding domicile is essential for individuals and businesses operating in a globalized world as it determines their legal status, rights, and obligations across borders. Domicile influences jurisdictional issues, choice of law, taxation, inheritance, and other legal matters, making it a fundamental concept in private international law.



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LEGAL DATABASES:

- Westlaw – [Link to Westlaw](<https://www.westlaw.com/>)
- LexisNexis – [Link to LexisNexis](<https://www.lexisnexis.com/en-us/home.page>)
- HeinOnline – [Link to HeinOnline](<https://home.heinonline.org/>)

