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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ANALYSIS OF LAW OF DOMICILE IN PRIVATE INTERNATIONAL LAW**

AUTHORED BY - MS. MAARIA LAKDAWALA (A017)

YEAR: BBA-LLB 4th YEAR, SEMESTER-VII

THE SVKM'S NMIMS, NAVI MUMBAI

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## **DECLARATION**

I, MAARIA LAKDAWALA, hereby declare that the paper titled “*Analysis of Law of Domicile in Private International Law*” submitted to the Kirit P. Mehta, School of Law represents our original work and has not been previously submitted for academic or publishing purposes. Furthermore, this paper represents my own opinions and conclusions. The materials/sources utilized in this paper are given their due credit.

Date: 30.09.2022.

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Thankyou Proffessor.

## **ABSTRACT**

*This paper majorly deals with the concept, definitions, different kinds of domiciles and domiciles in relation to individuals in domestic and international forum. This paper understands the differences and contrast in national and international law, the difficulties in application as this is a domain of law albeit very crucial is not developed to its potential. The paper looks into jurisdictional problems and also how application is through English Common Law, although few but this paper also look*

*into case laws that have proved and paved the way in forming precedents in context of domicile of individuals in private international law.*

*Applicability and recognition is found to be a problematic aspect, the paper also looks into independent and dependent domiciles. For better understanding the topic of married women and the historical perspective of the domicile, the issues of legitimate and illegitimate children and their domicile, adopted children, mentally deficient children's domicile under the umbrella of dependent domiciles is briefly analyzed to get an overview of the topic.*

*The paper's methodology is focused on primary and secondary research through publications, journals and statutes of relevant laws. To reiterate the main focus solely of the research paper is domicile of individuals in private international law.*

## **CHP 1- INTRODUCTION**

The idea of "domicile" is one that either falls under the purview of private international law or the area of conflict of laws. A basic legal notion known as "domicile" refers to the nation you perceive to be your "roots" or your primary residence.

A person's or an individual's domicile often applies to the entire nation, not just a portion of it. No person or individual can be without a domicile, according to common law. A person who owns multiple homes is likewise prohibited from domicile in more than one place at once. Until a change is shown by the propositus on the balance of probability, a domicile is deemed to remain the same. And it is clear from this that the idea of residence in and of itself varies from country to country according to the laws and values that are upheld there<sup>1</sup>.

## **CHP 1 A- Importance of Domicile**

Domicile, as a document, plays a critical part in the life of an individual living in the global forum. A person who selects his or her domicile is subject to a variety of legal repercussions and implications associated with the idea of domicile. It frequently determines the authority to assess state income and death taxes; (ii) the primary authority to probate wills and administer estates; and

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<sup>1</sup> The Law Essay Professionals, *Domicile in Common Law Systems*, LAW TEACHER, <https://www.lawteacher.net/free-law-essays/commercial-law/domicile-in-common-law-systems-commercial-law-essay.php>.



(iii) judicial jurisdiction over an individual.

- Domicile also influences if and where a person has the right to exercise certain legal rights and privileges, such as voting,
- A person's or an individual's domicile determines the marital law applicable to each participant based on his or her domicile.
- The notion of divorce is only relevant to parties who have a domicile to ensure which law would be applicable
- The interpretation of a person's will is determined by the law of domicile. The intestate succession or execution of that individual's will occurs according to the person's domicile.
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## **CHP 2- PRINCIPLES GOVERNING DOMICILE LAW**

The main goal of domicile law is to attach or assign an individual to a distinct or unique collection or system of laws to which the individual most closely corresponds. There are four key principles that regulate the law of domicile in any country under both the Private International Law System and the Indian Law System. They are as follows:

- No person or individual can exist or remain without a home or domicile.
- Every person or individual is required by law to have a place of domicile. It is an unbreakable rule that cannot be altered under any circumstances.
- The reason for establishing this principle is that every individual should have a relationship to a certain legal system so that his or her acts can be managed by categorising or arranging the actions into a set of laws. An individual has the right to change his or her domicile. However, the opposite is true. That is, no one residing in the international forum has the option to have no domicile. In the case of *Udny v Udny*<sup>2</sup> it was held that - A person's or individual's domicile is initially decided by his or her birth. If a child is legitimate, he or she inherits the domicile of his or her father; if the child is illegitimate, the individual

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<sup>2</sup> *Udny V Udny*, (1869) L.R. 1SC

inherits the domicile of his or her mother.

- No one can have two domiciles at the same time.
- One of the fundamental concepts of domicile is that because no one can stay or leave without a domicile, no one can have two domiciles at the same time. The reason for this law of domicile principle is that residence binds an individual to a specific set of laws. The essential intent and purpose of having a domicile to regulate an individual's conduct would be undermined and frustrated if a person or an individual is allowed to have one or more domiciles. In the case of *Pradeep Jain V. Union*<sup>3</sup> of India it was held that – “The Indian Constitution only recognises one domicile for one person and his idea of intention to reside permanently or indefinitely”
- The primary goal of domicile is to bind an individual to a territorial legal system.
- In the case of *D.P. Joshi V. State of Madhya Pradesh*<sup>4</sup> it was held that - Domicile refers to the legal system that governs a person, and when we speak of a country's domicile, we believe that the same legal system governs the entire country. However, it is possible that the laws governing succession and marriage could differ across the country, and that different sections of the state will have distinct laws in these areas. In such event, each territory with its own set of laws would be considered a country for the purposes of domicile.
- *The presumption is always in favour of the existing domicile continuing.*
- This fourth principle states that until or unless it is proven that a person has a new domicile, it will be assumed that he has the old domicile and the burden of proof will fall on the party who states that the person has changed the domicile. However, some jurists argue that the burden of proof varies depending on the type of domicile and that "the burden of proof is considered fragile when the domicile in question is domicile of dependence and very strong when the domicile in question is domicile of independence."<sup>5</sup>

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<sup>3</sup> 1984 SC 1420.

<sup>4</sup> AIR 1955 SC 334

<sup>5</sup> The Law Essay Professionals, *Importance of Domicile*, LAW TEACHERS

## **CHP 3 -DISTINCTION BETWEEN DOMICILE AND NATIONALITY**

It is usual in private international law practise for the court to have some difficulties in identifying whether domicile or nationality is a determining element in choosing which law should be applied. Nationality represents a person's political standing, which determines who owes allegiance to a specific country<sup>6</sup> Domicile denotes a person's civil status, the country in which he has made his permanent residence. However, courts have utilised either of them to attain just decisions, particularly in deciding which should be adopted among nationalities.

Nationality to a specific state can be obtained through the following methods:

- By birth - This type of nationality is bestowed upon the individual or person as a result of his or her birth in that particular country.
- By descent - This type of nationality is bestowed upon an individual by descend from one of the country's own citizens.
- Naturalisation - This type of nationality can be conferred on an individual or a person through adoption, marriage, government job appointment, and so on.

As we understand it, domicile is the link between a person and his or her residence, which is also considered a permanent home. The individual's domicile may persist even though he or she has left the residence. In contrast, nationality is the link between an individual and a country(to which a person owes his allegiance to).<sup>7</sup> Nationality typically confers some protection by the state and certain obligations on the individual toward the state.<sup>8</sup>

## **CHP 4- DISTINCTION BETWEEN DOMICILE AND RESIDENCE.**

Domicile refers to a person's permanent place of residence and is a legal relationship between a person and a municipality. It may or may not have the same connotation as 'residence.' Domicile refers to an individual's intent, whereas residence refers to something objective.<sup>9</sup>

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<sup>6</sup> Cheshire and north, Private international law p159

<sup>7</sup> The Essayist, *The law of Domicile*, LEGAL RESCUE, <http://legalrescue.blogspot.in/2013/01/the-law-of-domicile.html> (last visited Apr. 26, 2018)

<sup>8</sup> *id*

<sup>9</sup> US Legal, *Distinction between Domicile and Residence*, US LEGAL US Legal, 2018

Domicile consists of or is determined by two key criteria.

i.e., the intention to live and reside. Residence is a temporary state, whereas domicile is a permanent state. A person or individual can only have one domicile, while he or she can have many dwellings.

### Merits of domicile:

- Domicile is the only appropriate criterion in nations created by state union or federal form, such as the United Kingdom, Australia, and the United States of America.
- It is more natural and appropriate as a determinant of personal law domicile is useful in the sense that if a person has opted to depart his nation "of origin," he has also (automatically) abandoned its laws. Domicile is suitable because natural justice demands one to judge by laws that constrain him.
- Domicile is only a practical criteria in particular political units, such as the United Kingdom and the United States, where people of the same nationality but different legal systems coexist.

### Demerits of domicile:

- Long residence is not equivalent to domicile if accompanied by the contemplation of some certain event the occurrence of which will cause a termination of residence. Legal or social uncertainties may arise and cause one's permanent home to be terminated, such as the expiration of living permits, the outbreak of civil wars, and so on.
- Third, domicile is difficult to determine; a person must explain his intention in order to determine domicile; yet, the intention of a litigant is elusive, making it difficult to identify with precision; it is up to the court to decide after thoroughly reviewing the facts.

## **CHP 5- ANALYSIS OF DIFFERENT TYPES OF DOMICILES**

***Domicile of Independents:*** Domicile of an Independent natural persons falls under the following two categories:

***Domiciles of Origins:*** Every human is born with a domicile under the law of domicile. This is referred to as a domicile of origin. It is not necessarily required for the country of birth to be the person's domicile of origin. In most cases, the person's father's domicile is bestowed upon in the event of a legitimate child, and the mother's domicile is conferred upon in the case of an illegitimate child. A domicile of origin is extremely important and is preserved unless there is clear evidence

that another domicile has been acquired.<sup>10</sup>

***Domicile of Choice:*** An autonomous individual can alter his or her abode, as established in private international law. A person of 16 years of age or older is considered "independent" in this context. This is referred to as domicile of choice. Any other exterior region can be used as a temporary domicile for a period of time. To establish a domicile of choice, an individual must sever most or all ties with his domicile of origin and settle in the territory where he intends to establish a domicile, with the evident goal of establishing a permanent home there. If a person intends to establish a domicile of choice, he must demonstrate that this has occurred and that the domicile of origin has been displaced as a result.

Now, if an individual or a person want to obtain a domicile of choice, he or she must meet the following two requirements:

1. The individual must be a resident of the country in which he or she is attempting to get the domicile of choice.
2. The individual must have a clear intention of permanently residing in the state in order to acquire the domicile of choice.

A person or an individual can obtain a new domicile by having a fixed and permanent habitat in the nation that is not the person's domicile by origin, according to ***Section - 10 of the Indian Succession Act, 1925***. The two variables of intention and residence are critical for establishing a domicile of choice.

***Domicile of Dependents:*** Under the law of domicile, dependents can also be classified as persons or individuals who are unable to establish domicile of their own volition. As a result, the dependent individual gets the domicile of dependency of the individual on whom he or she is reliant. A dependent's domicile can change if the person on whom the individual is dependent changes his or her domicile.

***Domicile of Legitimate Children in India:*** A legitimated kid is to be treated as though it were legitimate under common law, if legitimating by subsequent marriage was effective. The norm of legitimating by future marriage is unknown in Indian law, although Muslims can recognise that an

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<sup>10</sup> Jikku Seban George, *Domicile and Nationality*, LEGAL3.



illegitimate kid is legitimate; however, this can only be done if it is unclear whether the parties were married, not if it is confirmed that they were not<sup>11</sup>

***Domicile of Illegitimate Children:*** The residence of an illegitimate kid was that of his mother under common law, in the other Common Law countries, and in India. In Australia, the legal status of illegitimacy no longer exists; the domicile of an illegitimate child, known as an ex-nuptial child, is determined in the same way as that of a nuptial child; its domicile is that of the father if the parents are living together, and with the parent the child is living with if the parents are separated.<sup>12</sup>

***Domicile of disable and mentally challenged children:*** 42. At common law, a mentally retarded person cannot acquire a domicile of choice and must preserve the domicile he had before he began to be legally considered as insane, if he was born mentally retarded or becomes retarded as a kid. It's also the law in Australia and Canada. There are no Indian rulings on the matter, although Section 8 of the Indian Succession Act 1925 states that a lunatic cannot acquire a residence on his or her own.<sup>13</sup>

### Domicile of Adopted Children:

What is an adopted child's domicile of dependency? Is the minor child's domicile changed to that of the adoptive parent? Or does it remain that of the natural parent? There is no English authority on this subject, although Dicey suggests that the domicile of an adopted infant is the same as the domicile of the adopting parents. These adhere to the premise that when a kid is adopted, the legal implications of the parent-child relationship are erased and re-established as between the adopter and child. In Indian law, the Madras High Court<sup>14</sup> ruled that the adopted child's domicile is the adopting parent's domicile.

### Historical analysis of domicile of Married Women:

Under English common law, a married woman's domicile was identical to and changed with her husband's domicile. This rule was regarded as absolute, allowing no deviations under any circumstances. In accordance with the traditional principle of the common law, husband and wife

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<sup>11</sup> Atul Setalvad, Conflict of Laws, page.136

<sup>12</sup> Ibid ,p137.

<sup>13</sup> Ibid.

<sup>14</sup> Vasant Atmaram And Anr. vs Dattoba Rajaram, AIR 1956 Bom 49

were historically considered to be the same person in the eyes of the law<sup>15</sup>. The preceding law about the unity of husband and wife's abode was heavily criticised by both academic writers and courts.

In *Puttick v. A.G.*<sup>16</sup>, the petitioner, a German person with a German domicile of origin, was imprisoned in Germany and accused with a series of serious crimes. While on bail, she fled to England and married an Englishman in 1975, using a passport fraudulently obtained from a German national. Before the court was the question of whether she had acquired an English domicile. It was determined that the Domicile and Matrimonial Proceedings Act of 1973 eliminated the rule of unity of domicile of husband and wife, and consequently she did not obtain a domicile in England. The court further determined that she did not and could not acquire a domicile of choice in England because she was in England to evade prosecution in Germany and not to establish a permanent abode; her illegal entry and residence prevented her from acquiring an English Domicile. In India, however, the now obsolete legal idea of the oneness of domicile of the husband and wife remains unchanged.

The Indian Succession Act's<sup>17</sup> Sections 15 & 16 are based on the old English rule. Historically, the common law countries adhered to English Common Law. In Australia, Canada, the Republic of Ireland, and New Zealand, however, the law that married women had the domicile of their husband has been repealed, so that a married woman is recognised as having an autonomous domicile like any other person.

## **CHP 6- CONCLUSION**

As a connection, domicile plays a crucial role in conflict of laws. It plays a crucial part in taxation laws, marriage laws, and property laws, and is of great assistance in conflict situations. It determines the contractual ability of the parties based on these areas of law.

Origin domicile is indestructible. Even if an individual or a person acquires a domicile of choice, the domicile of origin will always be there to fill in any gaps if the domicile of choice is abandoned in the future. Every person is born with their place of birth, and it tends to remain with them for life (if only in abeyance).

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<sup>15</sup> Private international Law, Author-Paras Diwan, Publication- Deep & Deep, 4th Edition, p165

<sup>16</sup> 1979)3 All E.R 463.

<sup>17</sup> 1925

When a person or individual abandons the domicile of choice by ceasing to dwell in that nation, a new domicile of choice must be assumed or the domicile of origin returns by operation of law. The domicile legislation in India is absolutely clear and devoid of any ambiguity. This is essential for resolving "conflict of laws" in India. In India, there appears to be a lack of understanding of the concept in its actual context. In this sense, there is an urgent need to increase "public awareness." Particularly in India, there is a shortage of domicile-related legislation. Cases are decided based only on English law. It is to our advantage that English and Indian legal systems are comparable. When studying either Private International Law or Public International Law, the definitions of the terms Domicile, Nationality, and citizenship have been the source of much controversy and confusion. The term nationality refers to an individual's politico-legal position as a member of a certain state, although the term citizenship is frequently used in municipal law. Citizen refers to the national who enjoys complete political and civil rights. Domicile, on the other hand, is an attribute of nationality and reflects a person's place of residence; it is the relationship between a person and the area where he or she resides permanently. Consequently, it is conceivable for a person to be a national of one state while residing in another, and resolving the complexity of these terms mitigates about half of the international issues by providing the appropriate forum to address the issue's specific nature. Consequently, knowing the notion of domicile is crucial in private international law and in fact in every area of law.

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